REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Monday 3 August 2020

The Committee met at 09:30.

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Catherine Cusack
The Hon. Antony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Scott Farlow
The Hon. Trevor Khan
The Hon. Daniel Mookhey
Mr David Shoebridge
The Hon. Rod Roberts

The CHAIR: Welcome to the second hearing of the Standing Committee on Law and Justice 2020 Review of the Workers Compensation Scheme. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay respect to the Elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today we will hear from the legal community, including representatives from Australian Lawyers Alliance, the Law Society of NSW and Maurice Blackburn, representatives from Suncorp, the Workers Compensation Independent Review Officer, representatives from the State Insurance Regulatory Authority [SIRA], and representatives from icare.

Before we commence I will make some brief comments about the procedures for today's hearing. While Parliament House is closed in terms of public access at the moment, today's hearing is a public hearing and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record committee members and witnesses, people in the gallery should not be the primary focus of any filming or photography. I also 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. I urge witnesses to be careful about any comments to the media or to others after you complete your evidence as such comments will not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take the question on notice and provide answers within 21 days. 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. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. I welcome our first witnesses from the Australian Lawyers Alliance, the Law Society of NSW and Maurice Blackburn.

SHANE BUTCHER, NSW Spokesperson for Workers Compensation, Australian Lawyers Alliance, sworn and examined

RICHARD HARVEY, President, Law Society of NSW, sworn and examined

TIMOTHY CONCANNON, Deputy Chair, Injury Compensation Committee, Law Society of NSW Partner, Carroll & O'Dea Lawyers, sworn and examined

ROD HODGSON, Queensland Leader of Litigation and Legal Strategy, Maurice Blackburn, before the Committee via teleconference, affirmed and examined

The CHAIR: Would each of you like to start by making a short opening statement? Please keep it to no more than a couple of minutes.

Mr HARVEY: Yes, Chair. On behalf of the Law Society of NSW, I am happy to answer any questions that the members of the Committee have in relation to our submission of 28 May. I have with me Mr Timothy Concannon who is the deputy chair of our Injury Compensation Committee and an expert in the field.

The CHAIR: Does anybody else wish to make an opening statement?

Mr HODGSON: Yes, please. Thank you for the invitation to appear. I have been supporting injured workers my entire 33-year career and critically, in the context of the submissions to be made, I am an observer of what makes a successful workers compensation scheme. Clearly enough of the New South Wales scheme is in dire straits. When we consider what a successful scheme is, we need to avoid the false dichotomy that a scheme is either good for workers or good for employers. That dichotomy is usually underpinned by silly ideology and we can see how that ideology has played out in the New South Wales scheme. It has stripped workers' rights and yet scheme solvency is less none 100 per cent. It has multibillion-dollar losses across the last five years and without radical change it looks like employers will face a huge hike in premiums.

Function follows form and good governance. If you get the design right and the right expertise running the scheme it will deliver excellent outcomes for employers and injured workers. Typically when faced with a crisis such as New South Wales there can be a temptation to further slash workers' rights and entitlements—that does not work—or to change private insurers who apply existing laws even more harshly to drive their probability or to tinker at the edges and hope that the results will differ. But the good news is that New South Wales does not have to start from scratch. We know what good scheme design is for workers compensation. Scheme design which has underpinned the lowest premiums for employers in the country on average for over 15 years. Premiums today which are the lowest in the country. A scheme which delivers surpluses consistently. A scheme which as at today and despite the COVID hits to investments has got a funding ratio of 152 per cent. Nearly eight out of 10 workers and employers are satisfied. A scheme design which recognises the fundamental importance of safer workplaces and supports that through access to the common law, holding employees who play loose with safety accountable, excellent return-to-work rates and low disputation.

Those metrics are powerful. They work hand in glove with a collaborative approach between all stakeholders, by the scheme administrators and regulator, with a little of the "insurers know best and workers and lawyers really need to know their place" attitude, which seems common enough in other jurisdictions And administrators who recognise and proactively address emergent serious health issues like silicosis—that scheme is Queensland's. Take a good look north of the Tweed and you will see that scheme design and quality governance means that that scheme ticks economic boxes of both government and employers as well as meeting fairness tests for workers and their families.

The CHAIR: Thank you very much, Mr Hodgson. I will now open up to questioning.

Mr BUTCHER: We are happy to get into it.

Mr DAVID SHOEBRIDGE: Do you want to get into it with a free kick to start, Mr Butcher?

Mr BUTCHER: No, we are fine.

The Hon. ANTHONY D'ADAM: We heard evidence in our earlier hearing from Unions NSW about the operation of section 248, the section around the protection of injured workers from a dismissal. I am happy to open it up to any member of the panel to offer some views about whether that section is operating as it was originally intended?

Mr CONCANNON: I must say from my perspective as a private lawyer practising in workers compensation, it is rare that I have seen that actually being used to benefit workers in my experience. It seems to be honoured perhaps more in the breach than in terms of compliance.

The CHAIR: Does any other member wish to make a contribution to that?

Mr BUTCHER: I think that is a fair comment that Mr Concannon has made. Personally I did not come across it very often in my in my practice dealing mostly with statutory benefits. I think if you speak to injured workers they will tell you that they do not feel very protected from employers' actions, at least the clients I speak to anyway.

The Hon. ANTHONY D'ADAM: Does anyone on the panel have any recommendations about how the provision might be strengthened to provide greater protection for workers?

Mr CONCANNON: I think we would have to take that question on notice.

The Hon. ANTHONY D'ADAM: I move to the submission from the Law Society about section 32A. I am wondering if you might be able to elaborate a bit further on the developments in the case law on that particular provision. This is the one that deals with the definition of suitable employment.

Mr CONCANNON: I am not sure there has been anything terribly recent. This is probably a submission that harks back to past submissions in around 2013-2014. The reality, what the case law back then indicated was that, look, it does have to be a real job but it does not necessarily have to be a job that is reasonably accessible to the worker or is geographically near where the worker lives. Provided it is a real job and not a made-up job, it is suitable employment.

Mr DAVID SHOEBRIDGE: It is not just what the case law says; that is what the section says—and that is the problem.

Mr CONCANNON: It is what the section says and what the case law reaffirms, as I understand it. I am happy to reinforce those relevant case authorities. Mr Butcher may be able to assist.

Mr BUTCHER: It has been a problem since it came around—applying these theoretical tests over jobs that just are not available. It is problematic for decision-makers. It is problematic for lawyers advising injured workers. Telling someone that their payments are being cut off because there is a job that they can do when that job in reality is not available for them to even apply for causes confusion amongst those that are involved in the scheme—that being the injured worker—and provides hardship for them.

Mr CONCANNON: I suppose the other thing is we have got a CTP scheme that is looking to potentially be assessed in the same jurisdiction and they have different tests of what suitable employment is, so the unfairness of how the suitable employment test works in workers compensation is being accentuated by the fact that there is a different test in the CTP scheme.

Mr DAVID SHOEBRIDGE: When you talk to injured workers in the regions—I have had a number of them come to me—they say that the current workers compensation test particularly impacts upon them in the regions. Because if you live in Bathurst and you have a significant injury the employer can say, "Well, there's a job in Sydney," or, "There's a job in Bega," or there is a job in Sydney, Newcastle or Wollongong. And often if you are an injured worker in a region you are being told you are going to lose your benefits because there is some notional job for you in the cities. Is that your experience?

Mr CONCANNON: Indeed, yes. Probably the greatest inequity is to those rural workers. I have had a case where suitable employment has been determined to be a ticket holder at a cinema at Merimbula, let's say. The reality is that there is one movie theatre in a couple of hundred kilometres in terms of proximity to where that worker lives. So it is just one example of just how unrealistic that sort of test is.

The Hon. CATHERINE CUSACK: Is this true across all types of injury or is it more difficult in relation to different categories of injury?

Mr CONCANNON: I think it is pretty much a common issue really, perhaps more so the back or neck injury in the country for your labouring type of duties. If it is suggested that there is an injury that involves sedentary employment, well, obviously there is less sedentary employment in the country.

Mr BUTCHER: That is right. I do not think it is different from injury to injury. I think regardless of the injury it is the same test and an insurer or decision-maker can look to some job that is just simply not available and apply that test and cut benefits.

The Hon. DANIEL MOOKHEY: This question is, I guess, more directed towards Mr Hodgson on the teleconference. Mr Hodgson was speaking about features of other State systems that create lower premiums and more stability. I was asking if Mr Hodgson can please identify which system he is referring to and what are the features of that system that are lacking in New South Wales that would provide the New South Wales system with more stability, lower premiums and a better return to work outcome.

Mr HODGSON: Was that question directed to me?

The Hon. DANIEL MOOKHEY: Yes.

Mr HODGSON: I am sorry; I did not hear a word of it. The microphone might be a bit too far away.

The Hon. DANIEL MOOKHEY: Mr Hodgson, I was asking for you to follow up on your opening statement in which you identify that there are other systems that provide more stability, lower premiums and better return to work outcomes. I am asking if you can identify which system you are referring to and what are the features of that system that are currently lacking in New South Wales?

Mr HODGSON: I am referring primarily to two schemes that I have had the deepest experience with, Victoria and Queensland, and the latter more recently. The first thing is something I alluded to in my opening and that is that there is a very non-ideological collaborative approach to the way the scheme functions. The scheme WorkCover Queensland, which is effectively a statutory monopoly insurer save for some very small number of self-insurers which make up a very small proportion of the workforce. They are not burdened with the behaviours of private insurers that we have seen reported on recently and included in ombudsmen's reports elsewhere. So their mindset is, "Let's run the scheme properly without some of the ideology that permeates decision-making elsewhere."

The scheme regulator talks regularly with the scheme operator. So WorkCover Queensland and the workers compensation regulator are collaborative and cooperative in their approach and it seems to be guns at 10 paces in New South Wales. In terms of scheme design predominantly the Queensland scheme is a shorter tail scheme. There are some long tail elements to the scheme but long tail schemes by their nature generally form larger bureaucracies and incentivise the sort of behaviours that we saw reported upon in the *Four Corners* program whereby people are turfed off payment often using tactics which are unfair and tenuous in terms of their ethics.

There is a very significant ability, by way of differentiation from many other schemes, to pursue common law damages claims in Queensland. We are not burdened with things known as thresholds, which apply in many other States and Territories in Australia. If a person is injured in an unsafe workplace in Queensland then they have an ability to pursue a common law damages claim and that common law damages claims brings finality to their claim. Finality is a powerful psychological motivator. People do not want to be on the system for extended periods of time by and large. Some people with very, very serious injuries—catastrophic injuries—do need an additional safety net but by and large people are keen to have finality. The finality also means that the scheme has less administrative and financial burdens upon it to actually run the long tail elements of the scheme. Those are probably the key elements: strong and increasing focus on return to work, which I think is going to be incredibly important as we move forward in the difficult economic times that are facing us.

Mr DAVID SHOEBRIDGE: Building on from Mr Hodgson's answer, in a number of the submissions there are concerns about all the barriers to getting a final payment and a final resolution in the New South Wales scheme. A number of them mention 87EA as being an unnecessary and unfortunate barrier. Do you have any views about that? Then I might go to the balance of the panel.

Mr HODGSON: I think that answer is better flicked past to the practitioners who are working on a daily basis with that legislative provision in New South Wales. It is probably best not left to a Queensland practitioner.

Mr DAVID SHOEBRIDGE: Alright. Well, can I ask before I go then: Is there a way of settling the statutory benefits in Queensland—

Mr HODGSON: There is.

Mr DAVID SHOEBRIDGE: —and getting an all up commutation in addition to—

Mr HODGSON: No, they are not—

Mr DAVID SHOEBRIDGE: They are all by common law?

Mr HODGSON: Yes. So broadly the operation of the scheme, save for people with catastrophic injuries who are fed into something which is broadly similar to what used to be known as your long-term care and support scheme, which is now the long-term component of icare—save for that component, after the acceptance of the statutory claim, that claim progresses to a point where the person's condition is stabilised. The phrase in the Act is "stable and stationary", which is probably a tautology. Once the condition has stabilised they have their impairment assessed and that produces a table of maims offer. The person then has a right of election between the acceptance of the table of maims offer on the one hand or pursuing a common law damages claim on the other and in respect of the second, if they can prove negligence, and that does not face a threshold of the character that we see in other jurisdictions.

The only exception that is if a person is assessed as having a whole of person damage of 20 per cent or more, they can accept the table of maims offer and pursue their common-law damages claim. But in either scenario the statutory claim comes to an end at one or both of those steps and then the person, in some cases, can proceed with a common-law damages claim. For a person with a catastrophic injury, meeting the entry criteria for the Queensland equivalent of the long-term care and support scheme, they will receive a very substantial permanent impairment lump sum claim or they will pursue common law.

In respect of their common law, they have an opt-out right, which exists on the care and equipment scheme. In other words, they can take their care and equipment damages as a lump sum—a conventional common-law way—and exit the long tail scheme, or they can elect to remain in the long tail scheme and receive all other common law heads of damage, save for care and equipment. Now, I think you practised as a workers compensation barrister, so you will know a lot of the terminology that I have used, but some of the members might not. If that was not clear I am happy to explain it in greater detail.

Mr DAVID SHOEBRIDGE: No, that detail was sufficient from my end, Mr Hodgson. How does that compare to the New South Wales scheme? Does the inability to get out of the scheme cost workers and the scheme?

Mr HODGSON: Again, I would probably throw to the New South Wales practitioners on that front, but I would preface it by saying, it is a powerful psychological issue. People I have asked who have been traumatised by their work injury almost invariably are keen to get off the system, and to get off the system in a way that provides them with some financial basis to get out from behind the financial eight ball that they have been put behind by virtue of their injury. The common-law claim is one method by which that can occur; they can be table of maims as an alternative or where fault cannot be proven; and in some other jurisdictions, commutation of benefits is a vehicle for that as well.

Mr BUTCHER: Mr Hodgson referred to flicking it over to those who deal with 87EA—I think our point is we are not dealing with it: matters are not being commuted; thresholds are king, as Mr Hodgson pointed out. I agree that there is a powerful psychological advantage for workers being able to get out of the system. We talk about thresholds—we are talking about there is a 10 per cent, a 15 per cent, a 20 per cent and a 30 per cent threshold. But it is the 15 per cent threshold that workers really want to reach. To get lifetime coverage in New South Wales, you have to be greater than 20 per cent impairment, but those workers who are 15 per cent to 20 per cent always inevitably try to get out, even if it means pursuing a common-law claim where the prospects are not as great as one would otherwise pursue. It is pursued to try to get out of the system. People over 20 per cent will still pursue a common-law claim, even though they have lifetime coverage. Getting out of the system is powerful psychologically and we hear stories—clients come back to us for various reasons, but it is after the event and much improved having got on with their life and taken some autonomy back in their finances, which I think has been really helpful for them.

Mr DAVID SHOEBRIDGE: Mr Concannon?

Mr CONCANNON: I agree absolutely. Settlement is perhaps the most powerful medicine in terms of return to work, in my experience. I am old enough to remember the old scheme under the 1926 Workers Compensation Act, where it was not called a commutation but what is called a redemption. A redemption required the approval of the judge of the Compensation Court, effectively, as being in the interests of the worker. I have never quite understood why WorkCover has, at the outset of the 1987 scheme, required—approval was required of them. In my experience I saw any number of businesses that were put up as being the basis for a commutation subsequently fail, with the money that was awarded to the claimant under a settlement being frittered away. I absolutely support what Mr Butcher has said about that.

Mr BUTCHER: I would imagine the number of commutations is very small in New South Wales.

Mr CONCANNON: I could count on one hand the number of commutations I think I have had over the past 10 years.

Mr DAVID SHOEBRIDGE: So what are the barriers? What are the requirements in section 87EA? You have the 15 per cent or greater whole person impairment, but you also need to have the approval of the regulator?

Mr CONCANNON: You have to have exhausted return-to-work options, rehabilitation options and then you still have to satisfy the regulator.

The Hon. DANIEL MOOKHEY: Mr Butcher, can I ask you about an unrelated matter to do with a person who may well be one of your clients, the corrections officer who was on *Four Corners* last week. Is that a person you represent?

Mr BUTCHER: Yes.

The Hon. DANIEL MOOKHEY: Since when have you been representing him?

Mr BUTCHER: Early June, I think.

The Hon. DANIEL MOOKHEY: It surfaced last week that after much litigation on his part, he obtained a draft of a report that said, amongst other things—I won't read it out, we will be reading it later. It was basically proof, or at least a contemporaneous record of a phone conversation in which a person from Corrections NSW talks to a QBE employee who, at the time, was a scheme agent for icare. That record says the two of them were effectively denying his claims as a way in which to exert economic pressure into him to return to work. Does that accord with your memory of what was said?

Mr BUTCHER: It accords with my recollection of what that note said, yes.

The Hon. DANIEL MOOKHEY: Are you in a position to talk us through—obviously nothing that you cannot disclose. I cannot ask you to—You have your duty to your client, of course.

Mr BUTCHER: Yes.

The Hon. DANIEL MOOKHEY: Where are we up to in terms of that particular worker being able to get a response from either the regulator, icare or Corrections NSW, and what is the attitude being displayed by all the relevant agencies towards him reaching a settlement, which, as Mr Concannon just said, is probably the best way to return someone to work?

Mr BUTCHER: I am just thinking carefully about what he has given me permission to say and what he has not given me permission to say.

The Hon. DANIEL MOOKHEY: Of course, please do.

Mr BUTCHER: We anticipated we might be asked some questions on his case. He currently has proceedings before the court and a hearing date has been set for early next year. There are negotiations going on between our office and the solicitors for the insurer. Further than that, I do not want to say where those negotiations are up to but we have not yet reached any resolution. I understand Mr Fitzpatrick feels that SIRA has been quite supportive of his position and I think that is all I can say at the moment.

The Hon. TREVOR KHAN: Perhaps Mr Butcher can take it on notice and provide a response in writing.

The Hon. DANIEL MOOKHEY: Yes, maybe you could. Can I just ask one other question and see whether you are in a position to answer it?

Mr BUTCHER: Yes.

The Hon. DANIEL MOOKHEY: And if you are not, of course, you are not. In the course of those negotiations, has any lawyer from icare put to you or Mr Fitzpatrick that they will not be pursuing any dialogue with him now that he has raised the matter in the media?

Mr BUTCHER: I will take that one on notice.

Mr DAVID SHOEBRIDGE: Are they the same lawyers acting on the current claim as gave the advice that has been "assessed"—would be the polite description of it—in those various KPMG reports?

Mr BUTCHER: No.

Mr DAVID SHOEBRIDGE: Different firm?

Mr BUTCHER: Yes.

The Hon. GREG DONNELLY: Gentlemen, thank you for coming along today and making yourselves available. Your submissions are very helpful. My question is quite a large one in terms of its proposition. The submissions raise issues with respect to the current workers compensation system in New South Wales. Most of you are familiar with the way in which over the decades worker compensation law has changed in this State. Dare I say—to use a phrase that is often being used at a political football at the time in terms of the debates when they play themselves out before the Parliament, sometimes in the most excruciating ways. Looking at the scheme presently in New South Wales and looking at, what I will describe as concerns with the scheme in New South Wales, as outlined in your submissions, do you have an opinion about the way in which work could be undertaken—and I use "work" in the broadest political sense—to tackle a number of these issues? In other words, are we talking about looking at the existing scheme and seeking to make some amendments to that scheme reflecting some of the concerns you outline in your submissions and your oral evidence today, or do we really

have to undertake what has been done in the past—that is, to engage in that raw political act of arguing for a fundamental change and new legislation, and that will have to play itself out? I pose that to you.

Mr HARVEY: I will answer that. I think we should say that from the Law Society's point of view we are not getting involved in the political side of it. Our role largely is to assist government in terms of what legislation is in place, changes to legislation, what effects it will have on particular people, in this case particularly what it has on workers, employers and insurers. It is not a question which we would engage in. The submission that we have—and I will let Mr Concannon speak to this in a second—really goes to those things which under the current legislation are causing problems for workers and for employers.

The Hon. GREG DONNELLY: I pose this back to you: Understanding the response you have given, with respect to some or all of these issues that you have raised in your submission, do you believe that they could be best dealt with through amendments to the existing legislation as a way of addressing them? If the answer to that is no, how else might they be tackled?

Mr HODGSON: Perhaps I can offer an observation, perhaps not saddled with New South Wales local politics. As to the football point, the history in Queensland is instructive. Across my entire time in Queensland, which is about a quarter of a century, and coming from Victoria, there has only been a couple of occasions upon which workers compensation has had any heat in it as a political issue. People have looked at it from both sides of the political spectrum through a prism with two angles; firstly, are employers getting a fair deal on premiums; and secondly, are workers getting a fair deal on what is delivered. We had a fellow up here named Campbell Newman for a little while. He deeply politicised the workers compensation sector, but only for a short period of time and his changes—which were to impose some thresholds against a recommendation of a parliamentary committee with a majority of his own people—were reversed as soon as he left office. Save for that there has been excellent bipartisanship.

As to the do you tinker at the edges question or do you have a wholesale structural review, my observation from a distance is that you have got serious structural problems. The Treasurer I think was reported—if it is correct—saying there would not be an insurance scheme anywhere that has not taken a COVID hit. Respectfully, that misses the point. Firstly, it is beyond any doubt that New South Wales scheme's problems had their genesis years ago, well before COVID hit. Secondly, if scheme design and governance is up to scratch, then history tells us that schemes will be robust enough to ride out and bounce back from hits to their investment performance. A $2 billion loss for the nine months to March 2020, when COVID did not hit until around mid-March, that is pretty dramatic. I think it is emblematic of some structural problems. My suggestion in response to your question, tinker at the edges or have a wholesale review and deal with it structurally, real forest or the tree stuff, is definitely the latter.

Mr DAVID SHOEBRIDGE: I think we can all agree that you would not start from here if you wanted to work out how best to serve injured workers in New South Wales and employers.

Mr HODGSON: Indeed.

Mr BUTCHER: For the ALA's part the items we raise in our submission can be addressed through changes to the current legislation. Issues that have arisen and played out in the media in recent weeks were done after the submissions were done. If we are talking about solving those problems, we are not actuaries but I will say in our view vision should not be cast towards the injured worker to try to solve the problem by cutting benefits further. The injured worker took a cut to benefits in 2012 for the sake of preserving the scheme and if it has problems now, if it has, we are not actuaries but if there are issues to be resolved then we say do not come looking to the injured worker. We have to find another solution.

Mr DAVID SHOEBRIDGE: Could I ask you about your experience in practice? Icare has gone to a single provider model, then they went to a computer generated triage system in 2018, which saw a lot less direct contact between case workers and injured workers. Since then we have seen it collapse in return to work. What is your experience from a practitioner's perspective? Did you see things change in 2018? Did you see any impact from that?

Mr CONCANNON: My own impression as a practitioner is that I was very surprised when EML was appointed as the sole agent, and I must say in the early period after they were appointed my experience was that they were accepting a number of claims which I was somewhat surprised about and their scheme for claims management did not seem to be particularly tailored to any particular claim. It seemed to be a one-size-fits-all approach. Of more recent times I have not noticed that issue so much. I think there has been some improvement over recent times.

Mr BUTCHER: I think Mr Concannon is right, we were equally surprised at EML being chosen as the sole provider, particular psychological claims appeared to be accepted on a higher rate than we previously saw.

Requests for surgery and treatment were probably accepted on a higher rate. We look at these files, they come to us usually after they have been through the initial phase. Clients come to us when liability is denied or they are looking to get a lump sum or looking to do something with their file and you see claims where you are happy they have been looked after, but you think: That is the kind of file that I would have seen previously had some objection raised by an insurer. It smelt of, we did not have the time, we did not have the manpower, so it might have been easier to just let these move through and approve. What was happening behind the scenes, I do not really know.

Mr DAVID SHOEBRIDGE: Did you see cases where you would have expected someone to be back at work but they were not because they did not have rehabilitation or they did not have that active case manager intervention? Or is it hard to do that from the perspective you have?

Mr CONCANNON: I think it is pretty difficult as their lawyer to be able to make that call. I do not know about Mr Butcher.

Mr BUTCHER: Yes. Most of the clients we deal with are the more seriously injured out of a 100,000 people. Even prior to that most of the clients who came to us were the ones that are likely to be off work anyway. Whether there were people who would have come into the scheme and out of the scheme without having any contact with a lawyer, whether that increased or not I am not sure.

Mr DAVID SHOEBRIDGE: The Construction, Forestry, Maritime, Mining and Energy Union in their submission last week gave some details about the way in which section 151A of the Workers Compensation Act works where if a settlement is made or a payment is made for damages relating to the injury then that terminates the benefits and there is a repayment required. They pointed out how they had particular concern the way that worked in relation to statutory discrimination cases and other cases not being common law cases and how it has an unfairness. Do you have any experience in that?

Mr CONCANNON: I really would not have any comment on that. I have not got any experience of any particular issue there.

Mr BUTCHER: For my part in practice, I work in a firm that does essentially compensation only, but people who have problems in the workplace, which include an injury but other issues as well, will sometimes come to our firm where they have already engaged another lawyer to engage in another type of dispute with the employer and we often have to be very careful and tell them, look, there are these provisions within the Act which might come back and cause some difficulty for you. If it is classified as a damages claim in some sort of fashion that could close off their workers compensation benefits. It does cause great difficulty for us.

Mr CONCANNON: I agree that when you are dealing with industrial remedies and generally you have got different practitioners acting, it can be a real minefield if you are advising them in a damages claim and at the same time someone else is acting and looking at a modest settlement of an industrial relations claim, if that is what the purport of your question is.

Mr DAVID SHOEBRIDGE: Either an industrial relations claim, or there may be a disability discrimination claim, or there may be an harassment claim and there can be similar factual underpinnings. Is that when 151A becomes a problem?

Mr CONCANNON: Correct.

Mr DAVID SHOEBRIDGE: Do you see a rationale for 151A to work in that way, to terminate compensation benefits in those circumstances?

Mr CONCANNON: I think the decision of the president in the name of the case that unfortunately escapes me does create real practical difficulties, even if the settlement of that claim specifically excluded workers compensation or common law work injury damages rights. I think some rewording of that provision needs to be seriously looked at in light of it.

Mr DAVID SHOEBRIDGE: If either of you wanted to give some further detail on that on notice, that would be useful.

Mr CONCANNON: Yes.

Mr BUTCHER: I am happy to as well.

The Hon. ANTHONY D'ADAM: Mr Butcher, I want to take you back to your evidence just now about the impact of the triage system. Are you suggesting that the triage system actually led to a reduction in disputation and that, actually, the decisions that were being made were more beneficial to workers?

Mr BUTCHER: I think for a short period of time there was. As I think Mr Concannon also pointed out, you do not see that as much anymore. But certainly when EML came on board as a sole provider, I did experience that, yes.

Mr DAVID SHOEBRIDGE: EML came on and then it was some time after that the triaging system changed. They did not happen simultaneously, did they?

Mr BUTCHER: No, no. Correct.

Mr DAVID SHOEBRIDGE: What point in time are you talking about? Was it when EML first assumed the role as the single provider or that later period in time, in 2018, when the triaging system was put in place?

Mr BUTCHER: It would have been after that, but clients that come to our firm usually lag—

The Hon. SCOTT FARLOW: Sorry, just to clarify—after what? After EML came on?

Mr BUTCHER: After both. It would have been after both. Clients who seek out personal injury lawyers do not tend to come to us a week or two after their injury. They might have been involved in the system for weeks, months or sometimes years before they see a lawyer. So it is hard for me to pinpoint what was the cause of that. But after both of those in time, that is the experience I had.

The Hon. ANTHONY D'ADAM: So you are suggesting that that is now stabilised and a more rigorous approach to claims management has returned?

Mr BUTCHER: It appears so, yes, in my experience.

Mr DAVID SHOEBRIDGE: You are looking at that from a lawyer's perspective—

Mr BUTCHER: Correct.

Mr DAVID SHOEBRIDGE: —in terms of payment of benefits, lump sum claims and the like. But you are probably not the best positioned witnesses to talk about the rehabilitation, the return to work, the negotiation with the employer—all that stuff happens, really, before you get to see a case.

Mr BUTCHER: Correct. I am talking about disputes, section 78 notices, declining weekly payments, declining surgeries, making claims for a lump sum, those claims being accepted or declined.

Mr DAVID SHOEBRIDGE: And that rehabilitation, negotiations with the employer, actively working with an injured worker to get them back to work—that is before you get to see it, normally, That is probably where you see the biggest issue on return to work. Is that right?

Mr BUTCHER: Yes, it usually happens before—and sometimes during, but they are already engaging in those types of services before they come to our firm, usually.

The CHAIR: Thank you very much for attending our hearing today. The Committee has resolved that questions taken on notice will be returned to us within 21 days. The secretariat will contact you in relation to those questions that you have taken on notice.

(The witnesses withdrew.)

(Short adjournment)

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

SARAH HILT, Head of Workers Insurance Claims Contracts, New South Wales Workers Compensation Claims and Customer Solutions, Personal Injury Insurance, Suncorp, affirmed and examined

The CHAIR: Would either of you like to start by making a short opening statement? If so, please keep it to no more than a couple of minutes, if that is okay.

Mr McHUGH: Yes, Chair. Good morning, Chair, and good morning, Committee. On behalf of Suncorp, I welcome the opportunity to appear here before the Committee as part of the 2020 Review of the Workers Compensation Scheme in New South Wales. My name is Chris McHugh, Executive General Manager of Personal Injury Insurance at Suncorp. I am responsible for our CTP, privately underwritten workers compensation and claims contracts businesses nationally. Appearing with me is Sarah Hilt, the Head of Claims Contracts, who is responsible for our work with icare and the Nominal Insurer Scheme. Suncorp has a national personal injury business with a presence in all four privately underwritten CTP schemes and all four privately underwritten workers compensation schemes, as well as our claims contracts in New South Wales. In total, we participate in 10 individual personal injury schemes nationally.

Across all these jurisdictions, we actively contribute to debate on scheme design, reform and sustainability. Our presence here today is consistent with our approach we take across all jurisdictions—actively seeking to provide our insight and support in achieving equitable, sustainable personal injury schemes that provide for the needs of injured persons. As an organisation we consistently advocate for early intervention in injuries, a primary focus on rehabilitation and care and the minimisation of friction costs in an effort to direct the highest proportion of schemes costs towards early rehabilitation and care of injured persons—in turn ensuring the affordability and sustainability of those schemes. We also advocate for competitive dynamics in both government-underwritten and privately underwritten schemes on the basis that it drives better performance, higher customer focus and investment toward the betterment of scheme outcomes.

In New South Wales we are a scheme agent for icare—the business that Ms Hilt runs. Our GIO business and that brand has been a mainstay in New South Wales workers compensation since the scheme's inception in the 1920s. Today we have around 400 passionate claims staff and support personnel in New South Wales. Each one of them turns up each day ready to do their best for injured workers. They proudly deliver scheme-leading return-to-work outcomes. We are committed to this scheme, to its sustainability and to making it as effective as possible for injured workers and businesses in New South Wales. That commitment was clearly evidenced through our response to the outcomes of the 2017 tender for claim services. Throughout this period GIO has maintained its position as a market leader in returning injured workers back to work and introducing novel innovations to guide the recovery of long-term injured workers—otherwise known as "tail claims".

For example, we are the proud pioneer of the Change Room program, which has now been adopted throughout the scheme and has had proven success because of its focus on the individual injured worker and their needs. Our written submission and testimony here today focus on one priority: supporting the Committee to ensure the long-term viability of the Nominal Insurer Scheme in New South Wales, run by icare. When it was established in December 2015, icare set a vision to become Australia's leading social insurer—putting the injured worker at the centre of everything they do. We strongly support this vision at Suncorp. We always put our people and our customers at the centre of what we do, and that means looking after injured workers. It is our view that returning to provide customers with choice as part of the scheme, with appropriate incentives on performance, is one of a number of key imperatives critical to achieving icare's vision.

Scheme agents driven by return-to-work outcomes—appropriately weighted, as recommended as part of SIRA's 21-Point Action Plan—would offer choice to employers and support a more sustainable scheme. Further to this, the extensive work that SIRA does can be well informed by best-practice models of regulation of personal injury schemes across the country. Our experience is that a strategically aligned and collaborative approach to regulation produces the best outcomes for injured workers, employers and the scheme, as well as reducing bureaucracy, inefficiency and cost. We encourage the Committee to consider other schemes closely. These schemes offer insights into the benefits of providing customers with greater choice, as well as methods used in those schemes to better regulate and manage claims in New South Wales. Once again, thank you for the opportunity to appear before you today and share our insights in relation to personal injury insurance and the Workers Compensation Scheme in New South Wales. We believe that this review is timely and that the Committee has an opportunity to act now to seek better outcomes for injured workers and business in New South Wales. We are now happy to assist the Committee with questions.

Mr DAVID SHOEBRIDGE: Thank you very much for your submission and your engagement. Could I just take you back to 2017, when icare moved to its single provider model. What was your reaction or, as best as you can report on it, the industry's reaction when you found that EML had won the contract to become the single provider?

Mr McHUGH: I was directly involved in the announcement and the discussions associated with the outcome of the tender. At that point in time we were advised that we were unsuccessful in the tender process and they were moving to a single provider. It obviously came as a shock to our organisation. At that point in time we were a clear leader in relation to driving return-to-work outcomes in the scheme. However, at that point in time we were given options. We could effectively exit from the scheme from December; that was a period of three months. We could continue through to the end of June the following year—so, from September, nine months' transition. They were the options afforded to us. However, at that point in time I discussed with Mr Nagle the approach, the considerations and what their strategy was and I could foresee huge challenges for that organisation in implementing that strategy. So at that point in time I stepped away from that announcement and came back to icare a week later with a view that we could provide support moving forward. That was the catalyst for Suncorp GIO in accepting the tail contract.

Mr DAVID SHOEBRIDGE: But what about the choice of EML? What was the response to EML being chosen, out of all the different workers compensation insurers in Australia?

The Hon. TREVOR KHAN: There were four or five were in the scheme at that stage, were there not?

Mr DAVID SHOEBRIDGE: Correct, yes.

The Hon. TREVOR KHAN: Five or four?

Ms HILT: Five.

Mr McHUGH: Five. Again, I cannot speak for the other insurers and I will not speak for the market. I can say that we were surprised in both the outcome, because the construct of the tender did not indicate movement towards a single provider, and I was also—

The Hon. DANIEL MOOKHEY: Sorry, can you just pause there? You are saying that the construct of the tender did not indicate a single claims model?

Mr McHUGH: That is correct.

The Hon. DANIEL MOOKHEY: When you were asked to tender you were not told to tender on the basis that there be one agent conducting the work?

Mr McHUGH: We were tendering on a basis of market share scenarios. None of those were 100 per cent.

The Hon. DANIEL MOOKHEY: The basis of the arrangement that prevailed in the scheme between 2015 and 2016 was the basis upon which you were tendering?

Mr McHUGH: We were also tendering on the basis of the tender submission and the interactions you have in that process.

The Hon. DANIEL MOOKHEY: Just a last question before I hand back to my colleague: I remember in the last Standing Committee on Law and Justice hearing when we were sitting here—

The Hon. TREVOR KHAN: It all is a blur.

The Hon. DANIEL MOOKHEY: —and looking at the respective market share of the five people who were providing claims management services to icare between 2015 and 2017. If memory serves me correctly, EML was the smallest by market share, or one of the smallest. Does that accord with your recollection?

Mr McHUGH: They were likely one of the smallest, with mid-teen percentage market share, from memory.

The Hon. DANIEL MOOKHEY: Sure. Mr Shoebridge?

The Hon. TREVOR KHAN: Your memory is the same as mine, that they were the smallest.

The Hon. DANIEL MOOKHEY: Yes.

Mr DAVID SHOEBRIDGE: Did you have to provide in that tender evidence of your scale and capacity, the ability to run the whole scheme? Was that part of the tender documentation?

Mr McHUGH: Yes, you do. You have to work off market share scenarios and you have to provide, obviously, plans, strategies and evidence of capability to provide that.

Mr DAVID SHOEBRIDGE: But that is to deal with 20 per cent or maybe, at best, 30 per cent of the market share that you would expect to get under a successful tender. It was not part of Suncorp's thinking or part of the tender documents to say, "Well, this is how I will deal with 90 per cent to 100 per cent", was it?

Mr McHUGH: No, we had not envisaged a 100 per cent outcome, no.

Mr DAVID SHOEBRIDGE: And it was not apparent from the tender that that was moving to a 100 per cent outcome?

Mr McHUGH: No.

The Hon. DANIEL MOOKHEY: Were you asked to tender on the basis that you would be providing close to 80 per cent to 90 per cent of claims management services?

Mr McHUGH: No, we did not tender for that proportion—

The Hon. DANIEL MOOKHEY: That was not in any of the tender documents identified that that was a key requirement of a tender?

Mr McHUGH: Not from my recollection.

The Hon. DANIEL MOOKHEY: When did you find out that the tender was being assessed on one agent providing the bulk of services?

Mr McHUGH: We were never aware that it was being tendered on a single-agent model.

The Hon. DANIEL MOOKHEY: You learnt that when it was publicly made available?

Mr McHUGH: I heard it when the outcome was discussed with me by Mr Nagle.

The Hon. DANIEL MOOKHEY: When was that?

Mr McHUGH: Approximately September 2017.

The Hon. DANIEL MOOKHEY: Did you ask him why the tender was conducted on the basis—

Mr DAVID SHOEBRIDGE: Sorry, Mr McHugh. Would it have been April 2017?

Mr McHUGH: No, I cannot—

Ms HILT: May.

Mr McHUGH: May, sorry.

Ms HILT: Around May.

Mr McHUGH: Sorry. It was a very—

Ms HILT: It was a protracted process.

Mr McHUGH: —protracted process that we were engaged in. I am probably referring to our further conversations. I have not looked back at that period of time so I apologise, Mr Shoebridge.

The Hon. DANIEL MOOKHEY: Was it a phone call with Mr Nagle or was it a meeting?

Mr McHUGH: No, it was a direct meeting.

The Hon. DANIEL MOOKHEY: Where?

Mr McHUGH: At icare's offices.

The Hon. DANIEL MOOKHEY: Who was in the meeting?

Mr McHUGH: Mr Nagle and myself.

The Hon. DANIEL MOOKHEY: Just the two of you?

Mr McHUGH: Correct.

The Hon. DANIEL MOOKHEY: Did you ask Mr Nagle or make any inquiries as to why the tender was conducted on a competitive basis but the grant was given on a single claims agent basis?

Mr McHUGH: I asked about the rationale for the outcome. At that point in time I was considering what the options were for our organisation and how we were going to sort of transition through to that. I did not challenge Mr Nagle on the outcome.

The Hon. DANIEL MOOKHEY: Of course, because it was his decision and the contract was presumably signed at that point.

Mr McHUGH: I can only assume.

The Hon. DANIEL MOOKHEY: What did he say in reply?

Mr McHUGH: Again, it is some time ago and, again, he indicated that that was the model that they were going towards and he would like us to be participating in that transition process—that is where the choices were through to December of that year or to June the following year. He wanted to understand how we would approach that transition period.

The CHAIR: I am just seeking some clarification here. If the tender documents that you had did not specify a single provider model moving forward, were the documents that EML received the same that you would have received? If so, how were they able to either (a) tender for a single provider model if they were not aware that that was what was happening, or, (b) were they invited to tender for a single provider model that you were not?

The Hon. DANIEL MOOKHEY: Excellent question.

Mr McHUGH: That would be speculation on my behalf. I can only assume and have trust in the procurement process in New South Wales. I fully expect that we received exactly the same tender requirements. In a tender process you are allowed to submit nonconforming tenders. I am unaware of whether or not that was a proactive strategy by EML or whether or not they were encouraged to do so. I am unaware.

The CHAIR: I think that is a question we will be asking EML.

The Hon. CATHERINE CUSACK: You must have sought feedback. Did you get any feedback, and what was it?

Mr McHUGH: In relation to the tender outcome, it was clear that they were moving to a different strategy and that they chose a partner that they thought was best placed to support them in that strategy.

The Hon. CATHERINE CUSACK: Was this the feedback that you received or was this your reading of it? I guess what I am saying is that if you have just lost all of this work you must have said to someone, "What happened to our tender?" and got some feedback. I am really curious what the actual feedback was that you received.

The Hon. TREVOR KHAN: And perhaps in stronger terms.

Mr McHUGH: I have been involved in the personal injury market in New South Wales for 20 years and I have participated in multiple managed-fund tenders and Treasury Managed Fund [TMF] tenders. The process around feedback here was different to what we have experienced historically. Historically, there has been a very structured process in relation to providing you exactly your outcomes across the performance metrics and evaluation criteria of a tender. That process was not employed in this instance.

The Hon. CATHERINE CUSACK: You did not receive feedback?

Mr McHUGH: Not specifically as it related to our offer, no.

The Hon. DANIEL MOOKHEY: And not in the way that you usually received it.

Mr McHUGH: This was a different mechanism.

The Hon. TREVOR KHAN: Sorry, it might be a small point, but with what is clearly a large financial transaction, potentially, that is going on did you expect, or is it normal in business transactions such as this, that advices are received on a one-on-one in an office like that? Or am I being unduly sensitive?

Mr McHUGH: There are multiple interactions through this process. However, to your point, have we experienced that model of outcome and debrief before? No.

The Hon. TREVOR KHAN: Right. That is your throat being cut on a one-on-one. That is essentially what it is, is it not?

Mr McHUGH: You could interpret it that way.

The Hon. TREVOR KHAN: Well, it is.

Mr McHUGH: However, what I would say is that—

The Hon. DANIEL MOOKHEY: We might interpret it that way.

Mr McHUGH: —our response to that was, again, to focus on what we saw as huge challenges for the scheme going forward with the selection of the model and the selection of the participant to support that model. My focus was not to be aggrieved in that outcome. I was still focused on what role we could play going forward.

The Hon. TREVOR KHAN: That was very mature.

Mr McHUGH: That certainly played into my conduct and the level of inquiry I made, because my focus was purely on how we could perhaps educate icare as to the challenges that it is facing and still play a constructive role in the scheme going forward.

The Hon. TREVOR KHAN: Can I ask a follow up to that, in terms of the maturity of his response? We will put EML to one side, which no doubt was holding a party at a Hemmes institution at this stage. What did the other three claims agents do when in some way provided with the advice that their throats were being cut as well?

Mr DAVID SHOEBRIDGE: Scheme agents.

Mr McHUGH: I was not party to those conversations, but I—

The Hon. TREVOR KHAN: No, I know.

Mr McHUGH: —do not think that they responded in the same way.

The Hon. TREVOR KHAN: Did all of them remain in or did some of them exit the scheme?

Mr McHUGH: CGU exited almost immediately.

The Hon. TREVOR KHAN: I thought that was the case.

Mr McHUGH: QBE then followed and then Allianz maintained a small participation, particularly for the purpose of running a pilot around the authorised provider model.

The Hon. TREVOR KHAN: Right. Just one final question: The potentiality was for these little soirees in Mr Nagle's office that the outcome could have been that by the end of 2019 all but EML could have been left holding the baby?

Mr DAVID SHOEBRIDGE: The end of 2018.

Mr McHUGH: At the commencement of 2018.

The Hon. TREVOR KHAN: Sorry, yes.

Mr McHUGH: Yes, absolutely.

The Hon. TREVOR KHAN: It could have been a quick exit.

Mr McHUGH: That was a very real possibility and for me that would have been dire.

Mr DAVID SHOEBRIDGE: Mr McHugh, you are being quite polite about your concerns about the future. You say that you felt like you should basically stay in because you had concerns about the future, but if I am going to read through your answers, you basically saw that EML was small, that going to a single provider was going to be a disaster and that it was all going to come unstuck and you would be needed. But that be a summary?

Mr McHUGH: Correct. That is correct, Mr Shoebridge.

The Hon. DANIEL MOOKHEY: And is it incorrect to say that you were effectively ambushed by icare when they made the decision to go to a single claims provider?

Mr McHUGH: I cannot talk to icare's motivations.

The Hon. DANIEL MOOKHEY: Did you feel ambushed?

Mr McHUGH: At the time I was surprised and disappointed with the outcome.

The Hon. DANIEL MOOKHEY: Can I ask this now: You are currently providing scheme management services for icare and you are managing the long tail aspects. From my previous knowledge, the type of claims are those for people who have more serious injuries. Is that a correct characterisation of the services you provide for icare?

Ms HILT: Yeah, that is correct. As part of our tail portfolios we have the transition to portfolios from CGU, QBE and Allianz. The nature of those claims means that they are older claims, so pre-2018, and they are inherently complex because of the age.

The Hon. DANIEL MOOKHEY: But just so that we are all very clear about what a scheme agent is, to cut to the chase of it do you have independence from icare why must you work at icare's direction in how you manage those claims?

Ms HILT: We largely work independently of icare's direction. We do have certain components under our scheme agent agreement where we do take direction from icare in relation to the management of claims.

The Hon. DANIEL MOOKHEY: But icare has the ability to meet with you regularly, inquire with you, talk to you about their intentions, ask you to undertake certain tasks for them: That is all correct?

Ms HILT: Yes, absolutely. That would be part of normal operational engagement with icare.

The Hon. DANIEL MOOKHEY: And that happens through you, Ms Hilt?

Ms HILT: It happens through myself and across my broader team at many levels.

The Hon. DANIEL MOOKHEY: But basically you are responsible for that on a day-to-day basis. Is that correct?

Ms HILT: Yes. I am accountable for the icare business.

The Hon. DANIEL MOOKHEY: I turn now to this issue that has arrived in the public domain and this is about whether or not earlier this year icare was exploring any initiative to remove an additional 13,000 workers from the scheme by reinterpreting section 38. Is this something that in your interaction with icare you have any familiarity with?

Ms HILT: Yes. I cannot comment on the number or intent, but we certainly have had a number of conversations earlier this year around section 38 (2) and we have had those conversations as part of monthly operational meetings between the tail teams and my operational scheme management teams. The question has been around how the application of section 38 (2) could work, particularly around the test for indefinite incapacity beyond the second entitlement period.

The Hon. DANIEL MOOKHEY: You are obviously far more in-depth about the technical detail than I am but section 38 (2), as interpreted now, means that people can effectively stay on if they have an indefinite capacity. Is that a fair assessment?

Ms HILT: Yes. Effectively this section says that weekly payments cease unless the worker has no capacity and is likely to continue indefinitely to have no current working capacity.

The Hon. DANIEL MOOKHEY: So take me through this conversations. What did icare ask you to do?

Ms HILT: There are a number of interactions but effectively we were asked to consider how we had applied section 38 (2) and how we would specifically consider the test for indefinite ongoing incapacity.

The Hon. DANIEL MOOKHEY: With what purpose were you being asked?

Ms HILT: I think there was a view that we could potentially look at this in a different way than we had in the past. I cannot speak for what icare's intent was but we certainly felt that the test for indefinite incapacity had not been properly tested in the commission so it was not something that we routinely applied, to cease benefits.

Mr DAVID SHOEBRIDGE: Ms Hilt, basically the idea was you have a tougher interpretation of the second element for the entitlement, which is indefinitely having no work capacity, you take a tougher interpretation of that and you cut a bunch of workers off. That is the summary, is it not?

Ms HILT: That is a possible outcome of taking this interpretation.

The Hon. DANIEL MOOKHEY: Did they say that they intended to run a test case in the commission with you?

Ms HILT: Not to my knowledge.

The Hon. DANIEL MOOKHEY: Did they ask you to prepare any list of claims that otherwise would be affected by reinterpretation of section 38 (2)?

Ms HILT: Yes. In early May we were given a set of parameters on which we could run a potential list of claims that we could review against section 38 (2).

The Hon. DANIEL MOOKHEY: This was in May?

Ms HILT: Yes.

The Hon. DANIEL MOOKHEY: Two months ago?

Ms HILT: Yes.

The Hon. DANIEL MOOKHEY: So you were given what—a list?

Ms HILT: A list of parameters to run across our portfolio to identify potential claims.

The Hon. DANIEL MOOKHEY: Did you run that list?

Ms HILT: Yeah, we did.

The Hon. DANIEL MOOKHEY: And what did it result in?

Ms HILT: The list came up to around 840 claims but that is as far as the list went. We never acted on the list.

The Hon. DANIEL MOOKHEY: But did you provide that list to icare?

Ms HILT: No, we did not provide that list to them. We had conversations about the cohort that we had produced in those monthly operational meetings.

The Hon. TREVOR KHAN: Did they ask for the list?

The Hon. DANIEL MOOKHEY: But to be absolutely clear about this—

The Hon. TREVOR KHAN: Did they ask for the list?

The Hon. DANIEL MOOKHEY: Icare asked you to produce a list with the parameters that they gave you. Icare asked you to produce a list with their parameters. You produced 840. That all happened at icare's direction.

Ms HILT: That is correct. We were given the parameters to run the list.

The Hon. CATHERINE CUSACK: Mr Mookhey, I want to request if you could ask more specifics about who asked and whether it was written?

The Hon. DANIEL MOOKHEY: Sure. Who asked?

Ms HILT: The request came from someone in the existing claims team from icare. This is the team that works with my team on tail management claims.

The Hon. CATHERINE CUSACK: Was it a written request?

Ms HILT: Yes, an email.

Mr DAVID SHOEBRIDGE: Could you give us copies of the written request, Ms Hilt?

Ms HILT: Yes. I can do that on notice.

The Hon. DANIEL MOOKHEY: Have you ever heard of the number 13,000 being floated in circles?

Ms HILT: No, I have not. As I said, our number, which was just the initial run of the list, was around 840 but we do have probably a smaller cohort of claims in this age bracket.

The Hon. DANIEL MOOKHEY: Presumably EML would have the bulk of that, would it not, because EML has the bulk of the claims.

Ms HILT: I would imagine they may have more but I cannot say how that was produced out of their portfolio.

Mr DAVID SHOEBRIDGE: Was it is focused on claims that had been in the system for a particular period of time? What were the parameters that were being looked at, Ms Hilt?

Ms HILT: I do not know them by heart but it was around looking at claims with capacity around the 130-week entitlement period.

The Hon. DANIEL MOOKHEY: The effect of this of course is that if icare is able to credibly explain to their actuaries that they have a pathway towards removing a large cohort of workers for the scheme, that would diminish their future liabilities. Is that correct?

Mr DAVID SHOEBRIDGE: That may not be a question to these witnesses.

The Hon. DANIEL MOOKHEY: But you are an insurance company. If you are able to identify to your actuaries that are cohort of claims is to disappear, that would reduce your liabilities, would it not?

Ms HILT: Certainly it is normal to have conversations with your actuaries around potential claims in changing claims strategy. I would say that if a strategy was to commence on a fairly new basis it would take some months before the actuaries would seek to recognise a shift, and given that there had been no application of this decision-making particularly in our portfolio I would not anticipate the actuaries to recognise it as yet.

The Hon. DANIEL MOOKHEY: Have you heard anything from icare in respect to this particular project since May?

Ms HILT: The last conversation that I have been involved in is in the operational existing claims meeting in June and at that point the discussion was around the impacts on the labour market and that we should cease to assess section 38 (2) until we had gotten through the challenges we were facing around COVID.

The Hon. DANIEL MOOKHEY: Right. That was in June.

Ms HILT: Yes.

The Hon. DANIEL MOOKHEY: That is presumably in a period prior to when icare was in—you would not know this so I will not ask that question. Mr McHugh, were you aware? Was this brought your attention? Are you aware of any conjecture in the industry about 13,000?

Mr McHUGH: No, it was not brought to my attention operationally. I am not involved in those meetings and the only conjecture that I have seen has obviously been what has been ventilated in the press.

The Hon. DANIEL MOOKHEY: Yes, but can I ask this to be clear? I have heard that potentially 26,000 people were in this cohort that could be affected by a reinterpretation of section 38 (2). Have you heard anything like that?

Mr McHUGH: No.

Ms HILT: No.

The Hon. CATHERINE CUSACK: Following the tender decision, I want to ask questions about what happened to all the cases that were under management. How many cases were you managing? What happened to those cases in the transition? Was that part of the transition plan discussions with all of the providers who were exiting?

Mr McHUGH: I might just talk broadly at a macro level about how that process occurred and Ms Hilt will talk to the specifics. This was quite an iterative process in relation to the transition activity.

The Hon. TREVOR KHAN: What does that mean?

Mr McHUGH: What that means is that there was not any clear intent at the beginning of the process. I was seeking to be constructive regardless of the outcome and work with icare to help them have a successful transition that will minimise the impact on injured workers. We started with CGU and then it went to QBE and then a third tranche was Allianz. It was not a set plan at the beginning of the process to say, you will now in a structured way take over cohorts from CGU, QBE and Allianz in a very controlled way. It was quite iterative how we ended up where we were.

The Hon. CATHERINE CUSACK: Does transferring cohorts mean a handover of cases?

Mr McHUGH: Absolutely.

The Hon. CATHERINE CUSACK: So, there was no continuity?

Mr McHUGH: It is the largest transition of claims in the scheme's history. We had to establish two and ultimately a third additional site in Newcastle, in Charlestown, a site in Wollongong, a separate site in Sydney, and we did that in three months. We trained up over 400 staff within a period of three months. We never planned to do that. This was quite an organic approach to transition these claims. Ultimately, we transitioned a tranche from CGU, then QBE, then Allianz, and others, over 30,000.

Ms HILT: Between the three portfolios it was around 22,000 in claims in the end. The way we would do that operationally is that there was extensive planning around continuity and handover. Clearly, as agents were exiting there could be no continuity between their claims manager in many instances. Although, we did work closely with the exiting agents to attempt to retain talent where we could.

The Hon. CATHERINE CUSACK: The talent being the staff who were managing the cases?

Ms HILT: That is right: the claims advisors.

The Hon. CATHERINE CUSACK: Where that was possible those cases could have the continuity?

Ms HILT: We certainly worked with icare and the exiting agents to provide options for staff to be employed at Suncorp if they wanted to. The take-up of that was very low. In terms of how we managed customer continuity and care throughout the transition, it was a challenging process, there is no way around it when you move claims. The icare team, our teams and the exiting agent teams did have extensive planning underway around case file handovers, communication to workers and employers and providers to make sure that we did minimise the impact on them as much as we could. We certainly learnt along the way how to do that better.

The Hon. CATHERINE CUSACK: I appreciate that. This is not a criticism of anybody, I am just trying to establish numerically, because it does seem to me that it is incredibly disruptive to the case for a person to have to start again with a new person and for that person not to have knowledge of the background of their case. I see in your submission, in terms of the scheme's performance, there has been a decline of around 10 per cent in return to work. I wonder if this disruption could have contributed to that decline in performance. I wonder if that was anticipated and supervised by icare. It has obviously been expensive to the scheme that that has occurred. There are questions that we will put to icare later, but I am interested in drilling into your experience of what occurred.

Ms HILT: Sure. In relation to return to work, that metric largely looks at the 26-week outcomes for claims. These transition portfolios sit outside that. It is unlikely that activity has had a direct impact on that metric. Having said that, acknowledging that it is a challenging process for workers we did attempt to—

The Hon. CATHERINE CUSACK: Can I pause you there? You did say had fallen by 10 per cent for every measure for four-week, 13-week, 26-week return to work rates.

Ms HILT: The tail claims do not fall into those early return to work periods.

The Hon. CATHERINE CUSACK: I understand.

The CHAIR: Given that in your initial meeting where you were told that you were not successful in continuing as a claims agent and that EML had taken the sole contract you said discussions were around three or nine months to transition out. How would EML have been placed, given that you had put so much work into training and retaining staff in order to take just the tail component alone, to have taken on those complex cases that have effectively now fallen under your jurisdiction?

Mr McHUGH: It was clear to me that it was not possible and that is why we made the offer that we did.

The CHAIR: Do you know if there was any plan for transition given that CGU, Allianz and QBE had all exited in quick succession?

Mr McHUGH: No, I do not know. I would expect that icare would have had to be responsive to the behaviour and reaction of each of the scheme participants. They would have to be responding to how each of the agents behaved.

Mr DAVID SHOEBRIDGE: I just want to tidy up a few things. In terms of the section 38 assessment that there were discussions about. There were 840 claims that you identified out of how many?

Ms HILT: I would have to check, but our portfolio is around 12,000 open claims.

Mr DAVID SHOEBRIDGE: But overwhelmingly those claims are the long tail claims, they have been in the system for much more than 130 weeks?

Ms HILT: That is correct. We just have a small portion of new claims coming in.

Mr DAVID SHOEBRIDGE: Do you have any understanding of what proportion of the new claims were potentially at risk from the section 38 reassessment?

Ms HILT: I would imagine that the same parameters would be applied to the new claims. So a claim around the 130-week mark with capacity, but I do not know the proportion.

Mr DAVID SHOEBRIDGE: Given your role as the scheme agent, the relationship with icare can sometimes be—I am trying to think of a polite term—one-sided insofar as icare has the power and you pretty much respond to icare's directions; would that be an unfair characterisation of it?

Ms HILT: I would say that given our long history in the scheme and our partnership with icare we probably have a unique relationship. We frequently raise challenges and concerns and have very open dialogue with icare. At times, yes, we are issued with direction. That is a mechanism that is available to them under our deed.

Mr DAVID SHOEBRIDGE: Have you been issued with directions to go out and help your competitors, EML? Have you been directed to help fix up some of the problems in EML, has that happened?

Ms HILT: They did not use the contract requirement, the direction, but we certainly have reached out and supported EML extensively when they were initially setting up to be ready on the icare Guidewire system. We provided training support to their staff. We already manage on the Guidewire system, that was something that we provided a significant amount of hours to support them with.

Mr DAVID SHOEBRIDGE: Was that at icare's request?

The Hon. DANIEL MOOKHEY: Did they pressure you to help them?

Ms HILT: It was at icare's request. We did have the skills and capability available to support them. As Mr McHugh has talked about, it is in our interest that the scheme succeed and we were willing to provide that support to EML.

The Hon. TREVOR KHAN: Mr Shoebridge, Mr McHugh has looked uncomfortable and he wishes to say something.

Mr DAVID SHOEBRIDGE: I was going to test it a little. It is nice, Ms Hilt, that you have trained your competitors, but I have to say in business that would be a very unusual arrangement. Can I ask you about the realistic pressure?

Mr McHUGH: Mr Shoebridge, I would say that we are a unique provider in the market and that is not something I say lightly, it is something that we fundamentally believe. Our absolute interest and passion is personal injury. We are absolutely passionate about the scheme. We will, at times, make commercial decisions that are not necessarily in our best interests. I would think that this is an example of that.

The Hon. DANIEL MOOKHEY: Can I turn to another matter that thematically may be similar? I was looking at the LinkedIn profile of Mr Tony Pescott. We learnt last week that a company he owns with his son was the recipient of an $11 million contract to provide net promoter scores to icare. On each profile he lists himself as having worked at icare from 2015 to 2018 in a consultant capacity. In December 2018 he leaves icare and in starts service at Suncorp—basically in the same month he transitions to Suncorp. How did he end up working at Suncorp?

Mr McHUGH: While I was not responsible for hiring Mr Pescott I am privy to and was involved in discussions around his hiring. Mr Pescott was hired by Suncorp originally within the personal injury claims function. He was hired by David Hutton and Jane Stafford. He was hired for the purposes of implementing NPS, a voice-of-customer program, across our personal-injury business, initially extending that program within our managed funds but with a view to implementing it in markets like South Australian CTP where we were entering into a competition model and regulatory—

The Hon. DANIEL MOOKHEY: So he was providing the same voice for customer service at Suncorp that he did at icare.

Mr McHUGH: There is correct.

The Hon. DANIEL MOOKHEY: And how much did Suncorp pay him for his services?

Mr McHUGH: Again, I was not involved in the actual hire. He was a maximum term contractor so he was not a permanent employee,

The Hon. DANIEL MOOKHEY: So what was the value of his contract?

Mr McHUGH: Again, I did not sign the contract but he was a contractor. He was employed at that point in time to perform that role but for nationally—

The Hon. DANIEL MOOKHEY: Do you know the value of the contract?

Mr McHUGH: So as an individual he was paid a contracting rate. Again, I am not sure—

Mr DAVID SHOEBRIDGE: Mr McHugh, you can take that on notice.

Mr McHUGH: I can take that on notice.

The Hon. DANIEL MOOKHEY: I accept that you were not involved in the direct decision to hire but you then subsequently found out or at least became familiar with the circumstances. Were any conversations had with Suncorp and Mr Nagle about the hiring of Tony Pescott?

Mr McHUGH: I would say that I was involved in the hiring in that the decision to hire Mr Pescott was taken to me for my advice. As a consequence I took it upon myself to meet Mr Pescott and David Hutton in advance of him being hired. It was purely for the purpose of understanding his capability and what he would be doing in the claims team.

Mr DAVID SHOEBRIDGE: Due diligence.

Mr McHUGH: So I was involved in the process. I do recall a brief conversation with Mr Nagle. It was at the icare Care and Service Excellence [CASE] awards, which is icare's awards evening, that this conversation around the opportunity to hire Mr Pescott discussed with me by Mr Hutton arose. I asked the circumstances around how this was coming about—

The Hon. DANIEL MOOKHEY: You mean the circumstances in why he was leaving icare?

Mr McHUGH: Correct. There was an assertion or that there was a potential conflict issue associated with that.

Mr DAVID SHOEBRIDGE: Who initiated a conversation?

Mr McHUGH: This was a conversation I had with one of our staff at that point in time, which was with Mr David Hutton. I then had a brief conversation with Mr Nagle that evening.

The Hon. DANIEL MOOKHEY: So you had a conversation with Mr Nagle at the icare awards and you asked Mr Nagle, "Why is Mr Pescott leaving?"

Mr McHUGH: It was a very brief and casual dialogue. There were two lines of my inquiry. The first one was, "Well, what is he doing and what is he like?" Mr Nagle indicated that he was doing a good job and that it was a matter for us. That was a very clear position. It was a matter for us to consider whether to hire him.

The Hon. DANIEL MOOKHEY: But he gave a positive reference?

Mr McHUGH: He gave a positive reference. Yes, he did. And then the second one was the conversation that then occurred at the table around, "Well, what are the circumstances of his departure?" And Mr Nagle—again, this is paraphrasing because it was a very brief conversation a couple of years ago—indicated that there was no issue, however, there was an audit going on and that from a general perspective it was considered best—

The Hon. DANIEL MOOKHEY: Hang on, he said that there is an audit going on—

The Hon. TREVOR KHAN: You cut off the final word. That might become relevant in due course.

The Hon. DANIEL MOOKHEY: Sorry.

Mr McHUGH: Yes, there was an audit or inquiry or something of that nature. Again, I cannot remember the exact words. There was not an issue. There was nothing in it but there was a general perception issue that there was—

The Hon. DANIEL MOOKHEY: That there was a conflict.

Mr McHUGH: That Mr Pescott should leave.

The Hon. DANIEL MOOKHEY: Do I infer from that that whatever audit Mr Nagle was referring to was not completed but that Mr Pescott had decided to leave. He was bringing it to your attention that this was underway at the time inside icare. There was an audit or some form of a review into whether there was a conflict of interest associated with Mr Pescott and he communicated this to you directly.

Mr McHUGH: In broad terms. To put it in context, a casual conversation at an awards function—

The Hon. DANIEL MOOKHEY: Did he ever disclose to you what the conflict of interest was?

Mr McHUGH: No. He indicated to me that there was not and it was not an issue.

The Hon. DANIEL MOOKHEY: Just to be clear: This conversation is happening at the same time icare is undertaking an audit into this.

Mr McHUGH: I am not sure at what time the overlap is.

Mr DAVID SHOEBRIDGE: I think it is probably finding out roughly when the conversation happened. Do you remember when it was?

Mr McHUGH: This conversation was the icare CASE awards in 2018. That would have been around mid-November sometime I would imagine from memory.

Mr DAVID SHOEBRIDGE: Right at the end of 2018.

Mr McHUGH: Correct

Mr DAVID SHOEBRIDGE: When he was talking about the conflict of interest concerns, you said at one point that Mr Nagle's answer was that there was nothing in it, is that your recollection?

Mr McHUGH: He was indicating to me that there was no issue. I could only infer from that and from his advice that it was not an issue.

Mr DAVID SHOEBRIDGE: And when he said there was an audit going on, at that point did you connect it at all with the Janet Dore review that was happening?

Mr McHUGH: No, not at that time.

Mr DAVID SHOEBRIDGE: Did you connect it with anything at the time?

Mr McHUGH: No, I think a lot of the issues that have been ventilated now were not as apparent.

The CHAIR: I note that we are approaching time. I will allow for a number of brief questions.

The Hon. DANIEL MOOKHEY: Why did Mr Pescott leave Suncorp?

Mr McHUGH: I would have to take that question on notice.

The Hon. TREVOR KHAN: I want to go back to the line of questioning that I think was Mr Shoebridge's where your final response was something in the nature of that icare had to be responsive to the scheme agents' decisions or something of that nature. It goes back to the point that was raised before. I would like you to tell me how icare was responsive to the decision of the scheme agents as they dropped out. What were they saying or telling you to do? What were you observing that icare was doing to handle the situation?

Mr McHUGH: I think that we were quite active in that process. I cannot say that icare had a forward-looking plan about that.

The Hon. TREVOR KHAN: That is why I was asking about the word "responsive".

Mr McHUGH: We were simply working with them when we understood what the circumstances were going to be with respect to each of the exiting agents. We would work with them around what the transition process would look like, what the timing around that would look like and the scale. We were simply responding to conversations on outcomes that they were having with other agents. All we could do was offer our assistance and that is what—

Mr DAVID SHOEBRIDGE: You just stayed in the game because you could see was going to be a basket case.

The CHAIR: With regard to moving to a single claims agent, obviously you were affected and a number of the other existing claims agents were affected. Do you know if anybody raised any concerns with SIRA as to the change of icare to a single provider model of claims agents? And if so, what was the response from SIRA?

Mr McHUGH: I am not aware personally. I know that we certainly did not raise it with SIRA as a regulatory issue.

Mr DAVID SHOEBRIDGE: My question is on a totally different front so I might ask you to take it on notice. If you look at return-to-work rates—it does matter whose numbers you look at, SIRA or icare—the numbers show a significant reduction not just in the nominal insurer but also in the Treasury Managed Fund. In terms of the Treasury Managed Fund from your experience with the Treasury Managed Fund, is that across the whole of the fund or are there particular agencies that have had worse performances or more difficult performances than others? Can you give us any insight into that?

Mr McHUGH: We obviously do not work within the Treasury Managed Fund currently. By way of background, in my 20 years I have worked directly in the TMF and used to run claims for the TMF historically and was in the public sector for 12 years myself. So I have deep domain knowledge of TMF. What I would say in relation to general deterioration in the TMF is that from a claims model perspective there is no logical rationale for a deterioration. We would look at it and say because of the huge disruption to the industry, the market, the skills capability and particularly of the participants servicing the TMF today—including EML and others—that the focus and support of that scheme I suspect has been materially disrupted. As a consequence, what we are seeing is a contagion effect into there and that is just around the responsiveness, focus and management of the

claims within that. I would not expect that it is specific to agency type or size. But that is again based on my experience.

Mr DAVID SHOEBRIDGE: The whole system is under such strain because of what is happening with the nominal insurer. It is almost inevitable, in your eyes, that you will see that flow over into TMF—is that right?

Mr McHUGH: That would be my expectation.

The Hon. TREVOR KHAN: Wow.

The Hon. DANIEL MOOKHEY: Did Suncorp budget for a $850 million loss pre-COVID or any loss pre-COVID in any of your businesses?

Mr McHUGH: No, we did not.

The Hon. DANIEL MOOKHEY: Is there any other insurer in the country that you are aware of that budgeted for an $850 million loss before COVID?

Mr McHUGH: Not privately underwritten.

The CHAIR: Since we are over time, thank you very much for your appearance today. The Committee has resolved that answers to questions on notice be returned within 21 days. The secretariat will be in contact with you in relation to those questions that you have taken on notice.

Mr DAVID SHOEBRIDGE: Mr Chair, can I just for the record thank Suncorp for their engagement with this? I think it has been extremely valuable and I think your evidence was very measured and considered. I personally found it of great assistance.

The Hon. DANIEL MOOKHEY: I join the sentiment and also thank Suncorp for appearing not just at this inquiry but at every inquiry that we have undertaken since the formation of SIRA and icare.

Mr McHUGH: We would like to thank you for the opportunity to speak today and wish you every success in your deliberations and inquiries for the betterment of the scheme, so thank you.

Mr DAVID SHOEBRIDGE: Thanks, Mr McHugh.

The CHAIR: Thank you.

(The witnesses withdrew.)

SIMON COHEN, Workers Compensation Independent Review Officer, Workers Compensation Independent Review Office, affirmed and examined

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

Mr COHEN: Thank you, Chair. Thank you for the opportunity to appear before the Committee. I will take as read our submission, which highlights the issues we have seen over the past 12 months impacting on injured workers who engage in the workers compensation system. For me, as the new independent review officer, I have seen as a guiding light for our role some of the key principles in workers compensation laws: first, the legislative prescription that a worker who has received an injury shall receive compensation in accordance with the Workers Compensation Act; and, secondly, the key objectives for worker injury management and compensation, including the prompt treatment and effective and proactive management of injuries to assist injured workers and to promote their return to work, to provide injured workers and their dependants with income support during incapacity and payment for reasonable treatment and other related expenses and to be fair, efficient and effective.

In approaching the role, the critical need for Workers Compensation Independent Review Office [WIRO] to be and to be seen as independent is self-evident. How else could we have the confidence of injured workers and insurers to solve complaints, or the confidence of lawyers to fairly administer a legal grants scheme? That said, the lens we have into the system is informed by the complaints and disputes that injured workers and their representatives bring to us. It is not the simple matters that are easily managed in the system or low-level injuries that temporarily impact upon workers. It is the matters where something has not gone smoothly and that result in a complaint, or where the injury is significant that may require expert legal assistance to ensure fair compensation is received—that is the work of WIRO. These types of matters highlight the pressure points, from an injured worker's perspective, in the workers compensation system.

Our submission highlights a range of these fault lines, from delays in determining liability to errors in payments and inadequate communications. It demonstrates the very real impact on workers of errors in receiving the right compensation and or delays in accessing prompt treatment to promote an early return to work. These go to the heart of the system and how well it achieves its objectives. Added to this, and perhaps my earliest impression of the workers compensation system, is that it is self-evidently complex, with entitlements dependant on a range of matters such as when an injury occurred, when the claim was made, the category of worker, the time that has passed since the claim has been made or the last payment of benefits, the duties being undertaken by the employee and even an assessment of their permanent impairment.

In the course of recovering from their injury the worker may not only deal with and need the assistance of their employer and the workers compensation insurer and its case managers, but treating and assessment specialists, rehabilitation consultants, lawyers and government agencies, just to name a few. So it is easy to understand how workers get lost in this system. In this environment, having an independent officer and expert agency to quickly solve worker complaints, to assure access to expert legal assistance and to actively work toward improvement can only enhance the fairness, efficiency and effectiveness of the system. My submission points to further steps that might be taken to enhance WIRO's independence and hence our effectiveness. It also outlines briefly our priorities in the coming years to increase the impact of our work. I again thank the Committee for the opportunity to speak to you.

The Hon. DANIEL MOOKHEY: Can Mr Cohen table his opening statement so we have it with us?

The CHAIR: Mr Cohen, would you mind tabling the opening statement?

Mr COHEN: Of course.

The CHAIR: Thank you very much.

The Hon. DANIEL MOOKHEY: Mr Cohen, firstly, thank you for your appearance and congratulations on becoming the WIRO as well.

Mr COHEN: Thank you.

Mr DAVID SHOEBRIDGE: Be careful what you ask for, Mr Cohen.

The Hon. DANIEL MOOKHEY: Can I ask just a simple question to start off with: Can you take us through the use of the Independent Legal Assistance and Review Service [ILARS] scheme in the past year to two years, how many injured workers has it supported and how is it functioning currently?

Mr COHEN: Certainly. The ILARS scheme in 2019-20 has received approximately 18,000 applications from approved lawyers to assist injured workers in either providing them with advice in relation to a potential claim, seeking to assist them to resolve a claim or assisting them with legal representation before the Workers Compensation Commission. We have seen in the past 12 months a significant increase in demand for that service, up from around 12,000 to up to around 18,000 applications when we report for annual report 2019-20.

Mr DAVID SHOEBRIDGE: That is of lawyers seeking legal costs?

Mr COHEN: That is right, of lawyers seeking a grant of funding to assist injured workers.

The Hon. DANIEL MOOKHEY: Could I just pause you there? The system usually receives, I think from memory, 50,000 to 60,000 claims a year, which means if 18,000 applications for ILARS have been received over the same period, are we right to infer that effectively one in five claims result in an ILARS application?

Mr COHEN: My understanding is that in 2018-19 there were 110,000 new claims.

The Hon. DANIEL MOOKHEY: Sorry, my maths might be wrong.

Mr COHEN: But, yes, that is about right.

The Hon. DANIEL MOOKHEY: One in 10, basically?

Mr COHEN: No, probably around one in 20 if you base it on that proportion, albeit there is a lag between when a claim is made.

The Hon. DANIEL MOOKHEY: Of course, because of the nature of the disputes.

Mr COHEN: Exactly right, and it may be a number of years before an injured worker needs to approach an approved lawyer in order to seek assistance in their claim.

The Hon. DANIEL MOOKHEY: But would you agree that ILARS are a lagging indicator about disputes and, therefore, we can infer that if there are claims arising then you can expect ILARS to follow suit?

Mr COHEN: I think that is one of the factors that impacts on demand for our services. In this past year we have made some changes to the way ILARS provides its grants of funding—in essence, to bring forward when an approved lawyer might make an application for funding. We think that has had some impact on bringing forward some of the demand for the ILARS service.

The Hon. DANIEL MOOKHEY: The moving towards closer in time?

Mr COHEN: Absolutely. Putting that to one side, you would certainly think a greater volume of claims would result in a greater volume of ILARS applications.

Mr DAVID SHOEBRIDGE: Mr Cohen, you have some figures in your submission that I find a little difficult to understand, which are on page 14. You have the number of ILARS grant applications for the first three-quarters. I assume that is to compare like to like because you only had the numbers up to 31 March 2020.

Mr COHEN: That is correct.

Mr DAVID SHOEBRIDGE: Do you now have the full year numbers?

Mr COHEN: I do. I would have to take that on notice, if I might, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: But do I understand, though, from your answer to the Hon. Daniel Mookhey that, while the first three-quarters from 1 July 2019 to 31 March had 12,795, the last quarter has seen close to five and a bit thousand, is that right?

Mr COHEN: Yes, so we have seen a similar trend. I do not have the precise number with me but I think it is around 17,000 and then some. So, a similar trend of more applications this year than we received last year.

Mr DAVID SHOEBRIDGE: Alright. Can you give us your understanding of—you say one of the reasons the capacity to make the grant has been brought forward, so that might have brought some of next year's claims into this year.

Mr COHEN: Yes.

Mr DAVID SHOEBRIDGE: Are there any other reasons why you think we have seen that increase?

Mr COHEN: I think a second reason is because there are more applications being made—more claims being made. So, we have seen, for example—my understanding from information published by SIRA is that in 2016-17 there were 90,000 claims; in 2018-19 there were 110,000 claims. They are round figures and, again, we can give you the precise numbers that we understand, on notice. We would expect to see that that would have an

impact in terms of more applications being made at some point for funding by approved lawyers. In addition to that, clearly, if workers are having difficulty in accessing their entitlements, they are more likely to approach a lawyer. I think one of the areas we have seen an increase in applications relates to medical treatment expenses.

Mr DAVID SHOEBRIDGE: Are you able to say whether or not you can see any correlation between the changes in the way that icare and the nominal insurer determine to manage claims and the number of disputes that have been brought forward?

Mr COHEN: No. I could say that I could not see a correlation in relation to that. I suppose I would point to—I have thought deeply about this—two elements that make me pause before indicating that there is any correlation. The first is that, in broad terms, the proportion of applications we are seeing from the nominal insurer, TMF [Treasury Managed Fund], self-insured and specialised insurers from approved lawyers in relation to those matters have remained approximately consistent over the past three years. That also holds out in relation to our solutions data—our complaints data. So, we are not seeing a change in the make-up of those matters.

Mr DAVID SHOEBRIDGE: The same proportions are holding?

Mr COHEN: The same proportions are holding.

The Hon. DANIEL MOOKHEY: But you are seeing a higher volume?

Mr COHEN: Just a higher volume, exactly right.

The Hon. DANIEL MOOKHEY: But the higher volume might be related to changes that icare has made to the nominal insurer.

Mr COHEN: Only that you would expect that you would see more claims—a higher proportion—in relation to the nominal insurer as against other insurers.

The Hon. DANIEL MOOKHEY: Yes, but I am benchmarking the nominal insurer over time.

Mr COHEN: Certainly the nominal insurer and others, in terms of both complaints and applications, we have seen increases. But there are range of matters that may have impacted upon those. I have given some examples in relation to ILARS. In relation to complaints, one of the things that has made it difficult for us to do a time series has been the change in jurisdictions. From 1 January 2019 we started dealing with all complaints by injured workers and as a consequence of that we have seen a significant increase in the number of complaints from injured workers. Even if we look at the issue types over time, while there is some difficulty in comparing those matters because of a change in the way we capture issues, we are certainly seeing similar issues arise in the complaints we deal with, as well.

Mr DAVID SHOEBRIDGE: Did you hear the evidence that Suncorp gave?

Mr COHEN: I only heard a very small part of the evidence.

Mr DAVID SHOEBRIDGE: One of the final bits of evidence was, in asking about how it is that the TMF fund has seen a deterioration in return to work that tracks in some degree with what is happening with the nominal insurer, was that they spoke of the contagion effect—that there is so much chaos and upheaval in the way claims are being managed with the nominal insurer and the changes in all the scheme agents that that is having an impact on the Treasury Managed fund as well. Do you have any observations about that?

Mr COHEN: Look, it is not really something that I could offer any further comment on, Mr Shoebridge. We have looked at what our data is showing and I cannot offer much further light on what we are seeing, other than more complaints, more applications—and a range of reasons that might sit behind those—but, broadly speaking, a similar mix to those matters over time.

Mr DAVID SHOEBRIDGE: Can you give us your four-year data on notice?

Mr COHEN: Of course.

Mr DAVID SHOEBRIDGE: I am grateful for the three-quarter year data in your submission, because at least it allows you to compare like with like. Could you also, to the extent you can, break it down between the specialised insurers, the industry insurers, the Treasury Managed Fund and the nominal insurer?

Mr COHEN: Of course. We would be pleased to provide that. Can I ask, do you want that over a number of years?

Mr DAVID SHOEBRIDGE: If you could, so we could track changes—as best you can.

The Hon. DANIEL MOOKHEY: Any additional analysis you wish to provide of that data would be most welcome, too.

Mr COHEN: Of course.

The Hon. DANIEL MOOKHEY: Can I turn to another matter? Previously, before your time, the prison officer who has now identified himself in public as being in dispute, Mr Fitzpatrick, approached the WIRO for assistance, and I believe it was declined. Is that your recollection?

Mr COHEN: I must note, in the first instance, Mr Mookhey, that I feel somewhat constrained on what I am able to speak about in relation to individual matters.

The Hon. DANIEL MOOKHEY: I will respect the boundary, Mr Cohen.

Mr COHEN: Thank you. I can also indicate that I have undertaken to meet with Mr Fitzpatrick this month to discuss with him his matter. My understanding is that we did not provide him with further assistance, but I do not know at this stage the full history of our dealings with Mr Fitzpatrick.

The Hon. DANIEL MOOKHEY: Sure. Look, the other question I was going to ask is, are you going to meet with him and are you going to review that decision?

Mr COHEN: I am going to meet with him, understand what his concerns are and have a look at all of the material that we have dealt with. If there are opportunities to do things better or to assist further, then we will certainly consider all of those.

The Hon. ANTHONY D'ADAM: I had a couple of questions about ILARS. In terms of the growth in the number of ILARS applications, is one of the possible explanations that there has been an expansion in the types of legal services that are funded?

Mr COHEN: My understanding is that the reforms that we brought in in September last year have not materially altered the nature of services that an approved lawyer can seek to have funded. What they have done is changed the staging in which applications might be made and in particular brought forward what we call the stage one applications, where the initial advice might be provided to an injured worker about the workers compensation system and their entitlements and how they might be investigated or pursued. But in terms of a material change to the nature of the services for which an approved lawyer might receive payment, no.

The Hon. ANTHONY D'ADAM: That initial advice was not being funded by ILARS, is that what you are saying? It would only be funded if the application proceeded to the next stage. Is that correct?

Mr COHEN: That is not my understanding, that it would only be funded if the application proceeded to the next stage. I think that there have been some changes in terms of the makeup of the various funding amounts. But I would probably need to take on notice the detail around that and provide you with further information into the precise change pre and post September 2019 and how they impact on the funding amounts for approved lawyers.

The Hon. ANTHONY D'ADAM: I just want to clarify, it is your evidence earlier given that the number of applications is increasing. Is this indicative of more friction in the system?

Mr COHEN: From our review of the information I think there are a number of matters that relate to ILARS applications. One concerns the change in the way we fund most matters, which I have given information in relation to. Another concerns an increase in the number of claims in the system more generally. A third may relate to increased disputation in the system and part of the reason that I have that view is that we are seeing more complaints in the system as well, and even when you take into account the fact of the change in WIRO's role, there still seems to be an increasing number of complaints that we are receiving over time. Those matters to me indicate that there may be increasing disputation in the system more generally.

The Hon. ANTHONY D'ADAM: Can I ask about the statistics that you collect in terms of ILARS funded matters? Do you collect statistics that might indicate whether the dispute resolved in favour of the worker or in favour of the insurer?

Mr COHEN: We certainly collect information about whether as a result of the application for funding there was a change of decision which resulted in an improved outcome for the injured worker, and I am happy to provide information to the Committee about that if it is of assistance.

The Hon. ANTHONY D'ADAM: Are you able to indicate whether there is any discernible trend? Are there more applications that are resolving in favour or to the benefit of the worker than previously or is that relatively stable?

Mr COHEN: I would need to take that on notice. My understanding is that the substantial majority of matters that are the subject of an ILARS application result in an improved outcome to the worker. What that trend is over time I do not have information in relation to.

The Hon. ANTHONY D'ADAM: On matters relating to disputes over return to work, could you provide some information about the trend in relation to that?

Mr COHEN: We certainly can provide what information we have. Measuring return to work is not something that falls specifically within our role.

Mr DAVID SHOEBRIDGE: Which you must be grateful for at the moment.

The Hon. ANTHONY D'ADAM: My point is about disputes. If there is a dispute relating to return to work—I am assuming you categorise the disputes on the basis of the issue that is in dispute. One of those issues might be return to work and looking at those statistics whether there is a trend around more favourable outcomes for workers on the return to work disputes that are funded through ILARS.

Mr COHEN: Certainly some of those matters may come to the surface through work capacity decisions that are made by insurers and we keep data in relation to those. I am happy to see what information we can give the Committee in respect of those matters. The other area where we sometimes see issues around return to work emerges in relation to our solutions work and that might be where an injured worker has some concerns about suitable employment and where in that circumstance they have got a concern, for example, in relation to what it might mean in respect of their workers compensation entitlements and we assist in the resolution of those matters as well.

The Hon. ANTHONY D'ADAM: Do you collect any statistics in relation to the utilisation of section 248? This is the provision around dismissal of a worker after six months.

Mr COHEN: That is not something that we would generally have a role in relation to. My understanding is that those matters are dealt with by the Industrial Relations Commission not by the Workers Compensation Commission. Generally our role relates to matters that relate to those compensation elements.

The Hon. ANTHONY D'ADAM: Are you aware of anywhere in the system, whether it is icare or SIRA, that might collect those statistics?

Mr COHEN: I would need to take that on notice. I am not aware immediately, but I am certainly happy to take it on notice.

The Hon. GREG DONNELLY: Thank you for your submission, it is very helpful. I take you to page 20, specifically the third dot point which makes reference back to recommendation five from the 2018 inquiry. It states:

> Recommendation 5 is that SIRA consider resolving legislative ambiguities including issues of back-pay following resumption of weekly payments, …

The second paragraph states:

> I understand that SIRA will provide to the Committee an update on this recommendation.

How did you come to that view? Did someone say that to you?

Mr COHEN: Given I was not the Independent Review Officer at the time that the recommendation was made and that a number of the matters that the recommendation related to that I know had been progressed since the Committee's recommendations, I spoke to Carmel Donnelly, the Chief Executive Officer of SIRA, to seek her advice in relation to that and she indicated to me, and my understanding was that SIRA would provide an update in relation to that recommendation.

The Hon. GREG DONNELLY: Was that specifically said to you as part of this inquiry that that information would be provided or was it in some other context?

Mr COHEN: I cannot remember the precise context. It was certainly in the context of us thinking about our own submission to the Committee because we wanted to make sure that we had covered off on all of the relevant parts we thought the Committee would be interested in.

The Hon. GREG DONNELLY: Continuing on in that paragraph you say:

> I note that since my commencement as Independent Review Officer, regular meetings have been established with the President of the Commission and Chief Executive Officer of SIRA.

How regular are those meetings, just approximately, are they monthly, bimonthly meetings?

Mr COHEN: They are occurring at the moment on a monthly basis. At the moment we are doing them using Skype for Business or Microsoft Teams. It includes the president and the CEO and myself, sometimes there might be another attendee. To date since I have commenced, as I say, the focus has really been very much on COVID-19 and they have been quite informal in their nature and it has included sharing information about our

responses to COVID-19 and some of the things that we have been seeing in the system. That has been a real theme to those meetings.

Mr DAVID SHOEBRIDGE: Mr Cohen, there has been a very significant increase in the amount of work that your office does. Has that been matched by a significant increase in your budget?

Mr COHEN: There has been an increase in our budget—in particular, in 2019—to manage the additional work that we had received as a result of the changes to the solutions work that we did to make sure that we could deal with all injured worker complaints. We have put forward a budget submission for 2020-21; we are yet to receive advice in relation to that budget submission. I certainly think we have about the right capacity to do our day-to-day work—so the dealing with the solutions matters and the dealing with ILARS applications—albeit over recent times, certainly, our ILARS principal lawyers have had some increased case loads and have been working at a very hard rate. What we probably do not have is significant capacity to fully undertake the third aspect of our role, which is really about inquiring into and looking for opportunities for improvements within the system. We have certainly flagged that this year as an area that we would like to focus on strategically over the next several years to really build our capacity and capability. We think that there are some important and unique insights that we can provide to the system. So at this stage we are settling our direction in that respect. Once we have that settled, we will certainly look to understand what the cost of that might be.

Mr DAVID SHOEBRIDGE: So the funding increase you got in 2019 was sufficient to deal with the additional case load that came in?

Mr COHEN: In terms of our capacity to deal with our solutions work, we have the right staff to ensure we can answer pretty much every phone as soon as it comes through; and that we can deal with, I think, 80 per cent of matters within seven days and 95 per cent of matters within 14 days, and literally a score of matters that take longer than 30 days for us to deal with. In terms of our ILARS applications, we are processing these applications faster on average this year than we were last year, and we have been really meeting those timeliness benchmarks, I think, to a high level.

Mr DAVID SHOEBRIDGE: But what you have not got the resources for is that strategic system-wide thinking.

Mr COHEN: That is right.

The Hon. DANIEL MOOKHEY: Just to follow up on that line of questioning from my colleague Mr David Shoebridge, I would like to put a series of propositions to you and you tell me if you disagree with them. Is it the case that when WIRO intervenes in a matter, usually it resolves a dispute prior to it having to go further in the system?

Mr COHEN: Where a complaint is made to WIRO, we are able to either get a solution to it—either a different outcome or a change in action; or we are able to give information to the injured worker that explains and validates the decision that has been made in relation to the matter; or we are able to refer them to somebody else—in particular, an approved lawyer—who may be able to further assist them with their matter.

The Hon. DANIEL MOOKHEY: But under all three pathways, it results in workers getting more information and more knowledge of their rights and at least helps them return to work better equipped with that information or better equipped to make decisions on how they wish to proceed further on an informed basis. You would agree with that?

Mr COHEN: Absolutely, or access to medical treatment that might have otherwise been refused.

The Hon. DANIEL MOOKHEY: And that saves the WCC time from disputes that they would otherwise have to deal with. Is that correct?

Mr COHEN: Absolutely, and reduces the frustration and agitation of those injured workers who just are not having their voice heard when they make those complaints.

The Hon. DANIEL MOOKHEY: And that reduces any secondary psychological injury that a worker may incur by participating in the more formal dispute resolution functions of the system?

Mr COHEN: It reduces the potential for mental health issues, it reduces the potential for additional physical issues, and it reduces the prospect of financial hardship for that worker and their family. Absolutely.

The Hon. DANIEL MOOKHEY: Is it the case, simply put, that early investment in WIRO saves the system money later?

Mr COHEN: Ensuring there are effective processes to handle complaints by workers at the front door saves the system later in all sorts of areas in terms of, ultimately, legal costs for injured workers needing to get

approved lawyers to take their matters further. Indeed, approved lawyers will often ask injured workers to make a complaint to WIRO or make one themselves, because they know the effectiveness of our processes. It reduces insurer costs, it reduces potential dispute costs of the commission and it promotes early return to work and a cohesive relationship between the injured worker, their employer and their claims manager.

The Hon. DANIEL MOOKHEY: Just so I can understand how WIRO currently is legally structured, it is the case that your staff and your office are a part of the Customer Service cluster? Is that correct?

Mr COHEN: That is right.

The Hon. DANIEL MOOKHEY: And subject, ultimately, to the direction of the Secretary of the Department of Customer Service?

Mr COHEN: Ultimately, the secretary is their employer; albeit, in terms of their day-to-day work, they are certainly subject to my direction and the way that we undertake our work.

The Hon. DANIEL MOOKHEY: Of course, but the actual allocation of staff to your office, the quantum of staff—both the grant and withdrawal—is ultimately a matter for the Secretary of the Department of Customer Service, should she or he wish to weigh in on that.

Mr COHEN: That is right.

The Hon. DANIEL MOOKHEY: Your budget, technically, under the Act is a part of—your costs are recovered from the levy. That is correct?

Mr COHEN: That is right.

The Hon. DANIEL MOOKHEY: But it is SIRA that decides the levy and how much of that you get.

Mr COHEN: That is right.

The Hon. DANIEL MOOKHEY: Is there ambiguity in your ability to contest SIRA's views?

Mr COHEN: To my knowledge there is no formal way to seek to dispute what those budget outcomes might be; albeit elements of our budget are driven by demand rather than by the costs of the office per se.

The Hon. DANIEL MOOKHEY: I will end with this: Basically, your staff is a part of the Customer Service cluster but ultimately subject to the direction of the secretary. I am not suggesting by any means, way, shape or form either this secretary or any secretary prior has sought to intervene in the operations of WIRO.

Mr COHEN: Yes.

The Hon. DANIEL MOOKHEY: That is not the concern that I am raising, at all. But they have the legal capacity and your budget, ultimately, is subject to SIRA's decisions. Is that an unfair characterisation of your legal setup?

Mr COHEN: No, it is an absolutely fair categorisation. In describing it that way, Mr Mookhey, you indicate the unsatisfactory nature of it from my perspective as an independent officer. I believe it has—

The Hon. DANIEL MOOKHEY: This is what I am trying to get to. You are called the independent officer, but it does not look like, under statute, you have statutory independence—certainly not like other people who call themselves independent officers.

Mr COHEN: I think my submission points out some of the areas where I think there is independence but a whole range of areas where it is deficient and where it can be improved, from the establishment of a separate public sector agency through to proper protection for injured workers if they make a complaint.

The Hon. DANIEL MOOKHEY: I said that my previous question would be my last question, but clearly I misled. Can I conclude on this basis: Surely a worker is more likely to trust WIRO, which is held out to them as being independent, if WIRO is actually independent?

Mr COHEN: My view is that the whole system would have greater confidence in WIRO's independence if it had—

The Hon. DANIEL MOOKHEY: Independence?

Mr COHEN: —better foundations to guarantee that.

Mr DAVID SHOEBRIDGE: We might explore this in another avenue this week.

The Hon. ANTHONY D'ADAM: In the first review of the workers compensation scheme that this Committee did, there was a recommendation around imposing a model litigant policy on the insurers. Do you

collect data on complaints in relation to breaches of the model litigant policy? If yes, have there been complaints along those lines?

Mr COHEN: I have no data in relation to that. I do not think we collect that at all.

The CHAIR: Mr Cohen, thank you very much for appearing today. The Committee has resolved that answers to questions taken on notice will be returned within 21 days. The secretariat will contact you in relation to the questions that you have taken on notice.

(The witness withdrew.)

(Luncheon adjournment)

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

DARREN PARKER, Executive Director, Workers and Home Building Compensation Regulation, State Insurance Regulatory Authority, affirmed and examined

PETRINA CASEY, Director, Health Policy, Prevention and Supervision, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: I now welcome our next witnesses, representing the State Insurance Regulatory Authority. Would you like to start by making a short opening statement?

Ms DONNELLY: I begin by acknowledging the traditional custodians and paying respects to Elders. I would like to speak on two key things: the priority of improving return to work in the workers compensation system right now and some key points out of the significant compliance and performance review of the nominal insurer that I commissioned and SIRA undertook since the Committee last reviewed workers compensation. As the Committee will be well aware, the objectives of the workers compensation system are to prevent; to provide early treatment, rehabilitation and return to work; and to also provide income support and fair, affordable and viable premiums and an efficient and effective system. Pivotal to that is early return to safe, good work.

Speaking about why, I know that members will be aware that that has been illustrated most recently with the *Four Corners-Sydney Morning Herald-The Age* investigation, but it has been known to many of us for a long time. The injured person needs early, coordinated support and treatment, obviously for their recovery of health and also to assist with their return to work. There needs to be coordination with the injured person, their employer, their insurer, health professionals and others. It needs to be early, tailored and, most importantly, working with the employer who runs the business where they are going to go back to work. The longer a person takes to return to work, there is strong evidence it is less likely they will return to work at any time. People who do not return to work have poorer health outcomes and social outcomes. It is significant for the impact on the individual but also the impact on the ongoing health costs and income support costs that then translate into premiums and viability. It is important because the scheme performance has been deteriorating. It is important because in the COVID pandemic we now have to have a concerted effort to improve return to work while there are economic stresses. To that end, SIRA will lead a return-to-work strategy for the State as part of the COVID recovery.

Another thing about return to work that was very clearly illustrated on the *Four Corners* program is the importance of choosing the right metrics to measure performance. SIRA has changed the return-to-work measurement from relying on financial measures—cessation of benefit, when someone is cut off their benefit—to real return to work. I want to see real return to work reported by the worker saying, "I am back at work". That is pivotal and it has been clearly illustrated recently that if you measure and reward on ending weekly benefits, if you measure and reward on cutting someone off benefits you create perverse behaviours, rather than a focus on the early coordinated support that will deliver return to work.

To that end, I will be writing to Safe Work Australia. Members may know that I was the New South Wales representative on Safe Work Australia. In that role I advocated strongly for a national return-to-work strategy, which has now been put in place. Recently Safe Work Australia released its framework for measuring return to work. I will be writing to Safe Work Australia to urge members from around the country to consider that learning, that continued measurement throughout the industry by insurers of return to work as if it is cessation of benefits—as if it is being kicked off weekly benefits—needs to be reconsidered, and that I would recommend Safe Work Australia considers in its benchmarks that it more strongly focuses—and we all more strongly focus—on measuring real return to work.

Turning to the compliance and performance review, the Committee will be well aware that there are many insurers in the system, most of them small and self-insurers. SIRA supervises all of them. We do find that the self- and specialised insurers are more willing to respond to the regulator, and we address issues with them individually. However, as you would be aware, our focus has been very strongly on icare and on the nominal insurer in particular. Icare, through the nominal insurer, manages 67 per cent of the claims in the system and, with the Treasury Managed Fund, another 17 per cent. Together, that is 84 per cent of the claims in the system. It is clear that it has a much larger impact on the people of New South Wales than any of the other insurers. The nominal insurer in particular has had a significant and concerning decline in return to work.

Seeing that performance decline, I commissioned the independent compliance and performance review. I have made those findings public, in great detail, and SIRA has launched a 21-Point Action Plan. It is abundantly clear from that independent report that there has been a claims management failure, that implementation of too many changes at once without due regard to risk compliance and return-to-work performance has occurred. My focus now is on the action plan on seeing that turnaround. The people of New South Wales need to know that injured workers are returning to work, are recovering and are getting on with their lives.

Today we will give the Committee an update, a document especially for the Committee on the progress of that 21-point plan. In particular, I have three areas of concern. One is that the targets for return to work by icare are still far too low and based on the financial metric of cessation of benefits. Secondly, they have not yet given every worker who is off work for seven days a dedicated case manager who can undertake that coordination with the employer and with the health providers to get that injured worker all the support they need to recover at work. Thirdly, SIRA has recommended that the icare board undertakes an assessment of culture, accountability, governance and remuneration similar to the assessments that the Australian Prudential Regulation Authority [APRA] undertakes, and that has not occurred.

Further to that, I will just add that Ms Janet Dore did make a recommendation to the Government in the independent review that legislative powers be strengthened for SIRA. The Government has acknowledged that that can be considered in the upcoming statutory review of the State Insurance and Care Governance Act 2015, but I recognise the important role that this Committee has played over many years in oversight of personal injury schemes. I do have some suggestions that the Committee may consider and I am happy to speak to those. Thank you for the opportunity for the opening statement, and I am certainly ready to take questions.

The Hon. DANIEL MOOKHEY: Thank you Ms Donnelly, Mr Parker and Dr Casey for your appearance today. Ms Donnelly, do you mind tabling your opening statement for the Committee?

Ms DONNELLY: I have not written it out. My staff will say, "Yes, we thought she would do that".

The Hon. DANIEL MOOKHEY: That is okay. Do not worry about that. We will go off memory.

The Hon. SCOTT FARLOW: You can read *Hansard*.

The Hon. DANIEL MOOKHEY: Ms Donnelly, you said on *Four Corners* last week that you have grave concerns for the nominal insurer. Do you maintain those grave concerns?

Ms DONNELLY: I do.

The Hon. DANIEL MOOKHEY: Okay. I would like to now talk about wage underpayment, please.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: I direct a question to either you or Mr Parker, however you see fit to allocate the questions.

Ms DONNELLY: Absolutely. If you ask the questions, we will work it out between us.

The Hon. DANIEL MOOKHEY: Sure. Have you seen icare's answers, the pre-hearing answers, to this Committee?

Ms DONNELLY: I have, yes.

The Hon. DANIEL MOOKHEY: Do you have a copy in front of you?

Ms DONNELLY: I have a copy somewhere.

The CHAIR: Do you have a spare copy?

The Hon. DANIEL MOOKHEY: I do not. I am happy to hand over this copy.

The CHAIR: It is all right. We have a copy.

Ms DONNELLY: I am happy for you to start the question while we look rather than use your time.

The Hon. DANIEL MOOKHEY: I want to read you the relevant part of that answer in response to a question that the Committee posed, which states:

> Where is the PIAWE claims management review and mediation work up to? To date, what is the total that injured workers have been underpaid and overpaid?

Amongst other aspects of detail the key sentence in their answer states:

> Of the 100 detailed claim assessments, 19 were identified as potentially requiring additional payments with further quality assurance checks being performed. Under icare, the average weekly potential difference was about $56.

This has been a claim that icare has made repeatedly in the media since last Monday and the claim has been repeated in Parliament as well. It has been used to say that the wage underpayment is not, as was first reported by icare, $80 million, but much lower than that. Does that accord with your memory of what has taken place so far?

Ms DONNELLY: I have heard comments to that—

The Hon. DANIEL MOOKHEY: After you received the initial notification—and we explored this in budget estimates, if you recall.

Ms DONNELLY: We did, yes.

The Hon. DANIEL MOOKHEY: You received the initial notification—and we will go into the circumstances in which that was obtained by you and your staff as well later, but for current purposes you received it towards the end of February.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: From what I can tell you reviewed it relatively quickly and you made a public disclosure at the time by way of a bulletin you issued.

Ms DONNELLY: That is exactly correct, yes.

The Hon. DANIEL MOOKHEY: That initial notification was based on the assessment of 3,000 claims. Is that correct?

Ms DONNELLY: That is correct.

The Hon. DANIEL MOOKHEY: And thereafter, sometime between budget estimates and now, is it the case that either you or icare engaged GIO to review 100 of those files?

Ms DONNELLY: Mr Parker may speak with more detail but certainly since that time we have required them to have a review and remediation plan. We have met with them. We have required changes and all of that.

The Hon. DANIEL MOOKHEY: We will get to that, Ms Donnelly. I am just asking you specifically—

Ms DONNELLY: There has been a review of—

The CHAIR: I am sorry, Mr Mookhey. I am going to ask you if you could allow the witness to complete her answer before you start.

The Hon. DANIEL MOOKHEY: It is good that you got in early, Mr Fang.

The Hon. SCOTT FARLOW: Set the tone.

The CHAIR: Thank you.

Ms DONNELLY: But, yes, I understand you want us to go quickly to the review of 100 claims. Mr Parker can talk about that.

The Hon. DANIEL MOOKHEY: GIO was commissioned to review 100 of those claims. That is correct?

Mr PARKER: I understand icare organised for 100 further claims to be reviewed. It was led by icare.

The Hon. DANIEL MOOKHEY: By GIO?

Mr PARKER: Whether they were GIO claims, I would have to check.

The Hon. DANIEL MOOKHEY: But they reviewed the files and did that review find that of the 100, 60 of them had insufficient information to recalculate pre-injury average weekly earnings [PIAWE]?

Mr PARKER: Yes.

The Hon. DANIEL MOOKHEY: So 60 files of the 100 rechecked did not have the information to perform the calculation. Is that correct?

Ms DONNELLY: Yes.

Mr PARKER: That is correct.

The Hon. DANIEL MOOKHEY: Is it the case that icare therefore deemed that all 60 of those must have been paid correctly.

Mr PARKER: Yes. When that was raised, there were some questions we immediately had about that.

The CHAIR: Mr Parker, I might ask you to just bring your microphone a little bit closer. We are struggling to hear you, given the distance in the room.

The Hon. TREVOR KHAN: And the material is fairly important so it would be good to be able to hear.

The CHAIR: Yes.

The Hon. SCOTT FARLOW: And maybe tilt the microphone up as well.

The Hon. DANIEL MOOKHEY: Let me repeat the question just in case it was missed by anybody. Of the 100 that were reviewed, 60 of them did not have the information to perform the recalculation and icare assumed therefore that all 60 must be right.

Mr PARKER: That is correct.

The Hon. DANIEL MOOKHEY: Of the 40 that did have the information, is it the case that 35 of them had errors?

Mr PARKER: I would have to look at what happened with the other 40, but your earlier comment around 19 of them that had an underpayment, yes.

The Hon. DANIEL MOOKHEY: That is an underpayment. We are talking about overpayments, too. But they had an error rate of 88 per cent on the ones that had sufficient information to recalculate. That is correct?

Mr PARKER: So the breakdown of the figures that I know is that it started with 100. You take off 60 that had insufficient evidence to determine whether it was right or wrong. Icare has determined—assumed—that they must be right. We are left with 40.

Mr DAVID SHOEBRIDGE: That is a brave assumption.

The Hon. DANIEL MOOKHEY: We will get to that. We will interpret these facts in a minute but let us first just get the facts on the record.

Mr PARKER: And then the 40, I do know that it was 19 that were determined underpayment. For the difference between the 40 and the 19, I would have to look at my notes.

The Hon. DANIEL MOOKHEY: Okay, please do. But it is the case that the actual average underpayment was not $59. It was $1,000. That is correct? That is in the SIRA—

Mr PARKER: I can say I was surprised when I heard that the average man was so small, yes.

The Hon. DANIEL MOOKHEY: Are there documents that SIRA has produced—

The Hon. TREVOR KHAN: Sorry, could I just ask at that we clarify? Apart from surprise, are we able to just confirm?

Mr PARKER: Sure

The Hon. TREVOR KHAN: I am not—

Mr PARKER: No. That is fair. I have got the review of the 100. I will just read it off: "The review component of this phase was completed in May and found 22 of the 100 had underpayment errors of which 19 are to be remediated based on the status of the claim. The underpayment amounts ranged from $1 to $358 per week, or $2 to $5,000 per claim."

Mr DAVID SHOEBRIDGE: So when icare says that the average weekly potential difference was about $56, that error has played out in many cases for a substantial period of time. Do you know what the average underpayment is in total?

Mr PARKER: Oh, the total, sorry. Do you want me to start calculating?

Mr DAVID SHOEBRIDGE: I do not want you to do it there, Mr Parker, because I think you probably do not have the information.

Mr PARKER: No, roughly. I can go to the initial 3,000.

The Hon. DANIEL MOOKHEY: Yes. Let us do that.

Ms DONNELLY: I can talk to that.

The Hon. DANIEL MOOKHEY: Please.

Mr DAVID SHOEBRIDGE: Whoever is best.

Ms DONNELLY: So of the initial 3,000, again roughly 50 per cent did not have enough information on the file to make a decision whether there was an error or not. Then of the 50 per cent roughly that had an error about half were underpayment, half were overpayments. The average potential underpayment for the claims before 2016 was in the order of three and a half thousand dollars, estimated at that point. And for the matter where the

error was from 2016 on, it was a lower amount of $1,123. One thing to note, though, is that it is clear from the report that while the size of the error is higher pre-2016, the rate of error, the number of errors, the proportion where there were errors, is higher from 2016 and later.

The Hon. DANIEL MOOKHEY: Yes. We will get into that, Ms Donnelly.

The Hon. SCOTT FARLOW: Just quickly on that point. You mentioned that there was an overpayment as well. What is the average for the overpayments that were made?

Ms DONNELLY: The best advice that we got in that initial pack was that it would be of similar—

The Hon. DANIEL MOOKHEY: Magnitude.

Ms DONNELLY: —magnitude. I wrote, as Mr Mookhey has said, almost immediately to Mr Nagle and sought some questions, got some further information. I was happy to be getting more precise information and that was where the reasonable estimate of it being $40 million in total underpayment and overpayment came from. It came from correspondence from Mr Nagle to myself.

The Hon. DANIEL MOOKHEY: I just want to now return back in time to the point of notification. Mr Parker, I think this is directed to you—but of course Ms Donnelly you have rank. But can I say on 25 May this year there was a meeting of the joint claims and assurance committee, was there not, and that was attended by both SIRA and icare representatives and that was for the purpose of working through the PIAWE remediation plan? Is that correct to the best of your recollection?

Mr PARKER: I am happy to follow your lead on that.

The Hon. DANIEL MOOKHEY: Okay. And at that meeting, data was presented by icare, was it not, that 22 of the 35, or 63 per cent, had an average underpayment of a thousand dollars with the upper range estimated at $4,000. Does that accord with your recollection of that meeting, Mr Parker?

Mr PARKER: Roughly, yes.

The Hon. DANIEL MOOKHEY: So we are talking about average underpayment of a thousand dollars but we have icare telling this Committee the average weekly potential difference was about $56. Now I can do my maths on $56 by 52. It is not going to get that figure at all. On that basis is it unreasonable for us to conclude that the answers that icare has provided this Committee are nonsense?

Ms DONNELLY: I can assure you that as we have been hearing that the estimated numbers are reduced and the estimated number of error and size of underpayment has reduced we have been considering how we will continue to audit and monitor in order to verify that, but we have not yet undertaken that kind of validation.

The Hon. DANIEL MOOKHEY: When did you first hear icare's view that the average weekly difference was $56?

Mr PARKER: It would have been in the notes at that meeting, the Joint Claims Assurance Committee meeting that you are talking about.

Mr DAVID SHOEBRIDGE: At that meeting did you take issue with icare's conclusion that if there was not information they assumed there was not underpayment? I would have thought such a bizarre proposal you would have taken issue with immediately. Did you take issue with it?

Mr PARKER: Yes, I did.

Ms DONNELLY: We have actually taken issue with that throughout the whole process, Mr Shoebridge, in terms of the kinds of issues with claims management and records found through the Dore review. Concern that there is not adequate documentation on the files goes more broadly than here.

The CHAIR: Have you done that through writing to icare?

Ms DONNELLY: We have the comprehensive four volumes of reports from the Dore review and we have provided claims audits.

The CHAIR: What I mean is have you communicated that to icare in writing?

Ms DONNELLY: Absolutely, with thorough documentation from independent audits.

The Hon. DANIEL MOOKHEY: After the independent meeting of the joint claims assurance committee did SIRA send a letter which said, amongst other things, that, however, it raises new concerns that the average payment miscalculation is significantly higher than the figures provided in the initial review.

Mr PARKER: I think you are referring to a letter I do not have.

The Hon. DANIEL MOOKHEY: But, you did write a letter to that effect?

Mr PARKER: I am not disputing it if you have the letter.

The Hon. DANIEL MOOKHEY: You have the meeting. To get to the question that Mr Shoebridge raised and the Chair raised, you find out that the average underpayments could be $1,000, not the $59 that we have been told.

Mr DAVID SHOEBRIDGE: I think one is weekly and one is in total.

The Hon. DANIEL MOOKHEY: Sure. Either way. Then you write a letter that says that raises new concerns that average payment miscalculation is significantly higher than the figures provided in the initial review. What happens then? Does icare agree with you, do they disagree with you, because the next thing we hear—

The Hon. TREVOR KHAN: Hold on, you asked a question.

The Hon. DANIEL MOOKHEY: I take your point. What happens then?

Mr PARKER: As was mentioned, there were a number of questions. I will go to the first one. That was about the 60 claims that did not have sufficient information—did we respond to that and what did we say? I think it would be helpful for the Committee to look at two things, one thing in each of the two reviews, and it would be that very assumption. Because that assumption in the 100 claims that were reviewed, that assumption that icare has tabled has said exactly that. The 60 claims that did not have sufficient information, we are assuming they are correct. In the 3,000 claims that were reviewed between March 2019 and November 2019, there is an assumptions document that talks about how they applied that very issue. That assumption says that if there are claims that are identified that do not have sufficient information to determine a correct PIAWE or not then that will be deemed as an incorrect to failure. That is a different application from an assumption in the first review to this newer review.

Mr DAVID SHOEBRIDGE: And there is a rationale for that assumption, is there not? If you do not have sufficient information on the records to work out whether it is right or wrong there is a fairly high likelihood that it will be wrong—if you do not have the correct information in hand?

Mr PARKER: The language at the meeting was to the effect of: I am struggling with that new assumption, can you talk me through how you have determined that to be the case because I am not following that logic? We follow that up in the minutes, and we followed it up with a record and icare committed to come back to us to explain that methodology; as to how, if they cannot do the calculation, how can they assume it is correct?

The Hon. DANIEL MOOKHEY: Most people would think that if you are missing the information you got it wrong. I cannot see why most people would be wrong in that scenario. Can I conclude this part of the questioning on this basis, who from icare was providing this information to you?

Mr PARKER: There would be minutes of that meeting.

The Hon. DANIEL MOOKHEY: Was it Ms Beth Uehling?

Mr PARKER: Ms Uehling was there, yes.

The Hon. TREVOR KHAN: Can we clarify at this stage that they have not come back?

Ms DONNELLY: Yes. My absolute priority is that the injured workers who have been underpaid should have that rectified and we are not yet in a position at SIRA to be confident or satisfied that the program is underway to do that.

The Hon. SCOTT FARLOW: Have any been sorted out at this stage?

Ms DONNELLY: The latest advice I have is that by the end of July those 19 workers would start to have repayments.

The Hon. TREVOR KHAN: Nineteen.

The Hon. SCOTT FARLOW: Sorry, 19 from the 100 that were assessed from the GIO?

Ms DONNELLY: Nineteen—full stop.

The Hon. SCOTT FARLOW: The 3,000 before, none have been rectified at any point?

Ms DONNELLY: To my knowledge, no. In fairness, it is complicated and the remediation has to be got right but we are not yet, today, able to say when a significant program for repayment will be underway and when it will be finished.

The Hon. DANIEL MOOKHEY: Basically, there is no plan yet that icare has filed with SIRA to repay the workers who have been underpaid?

Ms DONNELLY: Not that I am confident of and satisfied with.

Mr DAVID SHOEBRIDGE: It is more fundamental than that, is it not? There is not even an agreed assessment to determine who has been underpaid, because icare is saying that in the absence of information we are going to assume that it is all sweet and everybody else on the planet thinks that is foolish. You have not got an agreed methodology, is that correct?

Ms DONNELLY: Not to my satisfaction, no.

Mr DAVID SHOEBRIDGE: The last time we heard of a bounce back and forth was in May, we are now in August, what is SIRA's plan? Are you going to step in and require an independent third-party to do it or are you going to leave it in the hands of icare?

Ms DONNELLY: I have a further claim management audit underway now that includes looking at PIAWE calculation independently as part of the scope. And I will be considering that while we are seeking more information about the things that have been said publicly about the size of the problem from icare to see the evidence for that. That is where we are at now.

Mr DAVID SHOEBRIDGE: If I was an injured worker and I thought maybe I had been underpaid and I was struggling to get by, when could I expect, in that situation, to get my underpayment sorted? That is the key question, when is it going to get sorted?

The Hon. DANIEL MOOKHEY: You cannot answer that, can you?

Mr DAVID SHOEBRIDGE: Do you have a timeframe?

Ms DONNELLY: I cannot answer that at this point. I think that you asked, quite properly, at what point will we step up and step in further. The consideration we have at the moment is our own independent audit, again looking at the level of error with PIAWE as part of the scope and getting an answer back to the questions we have asked. At that point we will be considering what further steps we take.

The CHAIR: The audit you have spoken of, are you able to provide the size of that audit and the number of cases that you are analysing?

Ms DONNELLY: Certainly. I will take that on notice and provide the terms of reference. We are doing a rolling program of audits.

The CHAIR: Will that include some of the cases that have already been assessed in the 100, or is this a completely new dataset that you are working with?

Ms DONNELLY: It will be probably more recent claims on the whole but I will need to come back to you with how many are in the different cohorts.

The Hon. TREVOR KHAN: When will it be completed?

Ms DONNELLY: We are adapting to COVID but we want to move back to doing an audit each quarter and therefore having a report each quarter. It has just gone into the field now so I would say September.

The Hon. DANIEL MOOKHEY: I just have two other questions to do with the underpayment issue. The first is to do with this issue that has surfaced in the public debate as to whether these issues predated the establishment of icare or took place afterwards and to what degree. You made some reference to this earlier in evidence and I said I would return to the issue. Is it the case that of the initial 3,000 claims provided and 1,563 claims assessed, only 311 of the claims were for the 2013-15 period and the balance of the period of the claims belonged to the 2016 onwards, which is after the formation of icare? Is it the case that the pre-2015 claims had a greater degree of accuracy with 56 per cent of them accurate versus the post-2016 period of which 49 per cent were accurate. There was a seven point drop in the accuracy of PIAWE calculations after icare was established, is that your recollection or your information?

Ms DONNELLY: That is the data that I received in February, yes.

The Hon. DANIEL MOOKHEY: Icare has said publicly that this issue predated them but actually what it shows is that the bulk of the claims of underpayment took place under them and the rate of error was seven points higher under them. Is that an unfair interpretation of the data?

Ms DONNELLY: No, I think that is an accurate interpretation of the data.

The Hon. DANIEL MOOKHEY: Is it the case that icare knew about the underpayment issue 12 months before they notified you as the regulator?

Ms DONNELLY: I understand that they commissioned that initial risk review in early 2019. They were aware that we were undertaking work all through the time that Ms Dore was undertaking the review for us and that they received the report of that review towards the end of 2019. The pack that they prepared for us was dated January, we received it at the end of February.

The Hon. DANIEL MOOKHEY: You have a policy with them that requires them to notify of significant business matters within five days of them learning. Is that correct?

Ms DONNELLY: We have an expectation of all insurers that they will advise us of significant matters, yes.

The Hon. DANIEL MOOKHEY: Within five days or thereabouts?

Ms DONNELLY: Or thereabouts, yes.

The Hon. DANIEL MOOKHEY: Akin to a continuous disclosure regime, is it not?

Ms DONNELLY: It is.

The Hon. DANIEL MOOKHEY: I can only assume that you would have deemed the underpayment of workers to the tune of $80 million a significant business issue?

Ms DONNELLY: I did, yes.

The Hon. DANIEL MOOKHEY: Therefore did you have the expectation that that should have been notified to you within that five to seven day period?

Ms DONNELLY: I did, yes.

The Hon. DANIEL MOOKHEY: And were you disappointed that it was not?

Ms DONNELLY: I was and I was also disappointed that it was not raised with Ms Dore. We checked with her that it had not been.

Mr DAVID SHOEBRIDGE: To finalise this and pre-empt what might come from icare, icare in its answers to questions on notice said in relation to this underpayment point:

> Clarity on the legislative ability to undertake the remediation is awaiting advise from SIRA.

Do you know what if anything that is referring to?

Ms DONNELLY: When we received the initial pack it was positioned as needing advice from us as to what they should do and whether or not in fact SIRA would share the cost of the repayments, which I pointed out with the transitional and consequential amendments to legislation was not our liability and we did not have the funds. In terms of seeking clarity, I think I have been very clear that it was the law. The workers should have been paid their entitlement and our expectation is that underpayments will be rectified.

Mr DAVID SHOEBRIDGE: Lastly, the answer also suggests that it is awaiting advice about taxation, Centrelink and other potential issues which may impact on injured workers if they get a lump sum payment. You can see how that would be a likely problem for injured workers. Have those things been resolved?

Ms DONNELLY: I certainly agree with you that thinking through any untoward or unintended impacts for those injured workers is appropriate. I am not sure if—

The Hon. TREVOR KHAN: But that must be an issue that arises almost daily when there has been a miscalculation. That is not an issue that suddenly arises.

Ms DONNELLY: I will make a strong point that as a regulator our job is not to give legal advice to the regulated entities. They are supposed to undertake the work.

The Hon. TREVOR KHAN: I am not being critical of you.

Ms DONNELLY: No, I am probably agreeing with you, but it is up to them to find a way to rectify and be compliant with the law. I am not sure that—

Mr DAVID SHOEBRIDGE: As Mr Khan is saying, whenever there is a complaint that there has been an underpayment, that then often becomes a dispute, the dispute is resolved and the underpayment is resolved with a back payment. That does not happen once a year; that would happen 50 times a day. Surely that is not a reason not to proceed and get on with it.

Ms DONNELLY: No, surely there would be people who are able to give expert advice on that and then you work out your plan.

The Hon. DANIEL MOOKHEY: In the aftermath of the initial notification of 3,000, either at your direction or its own, icare initiates a review into the Treasury Managed Fund to see whether the same issues present. To be clear, this means effectively whether or not police officers, firefighters, paramedics, nurses, teachers or others covered by that fund have been underpaid. Is it the case that the result of that review shows that there is only enough information to calculate correctly for 3 per cent of claims?

Ms DONNELLY: I will ask Mr Parker if that concords with the information he has been given.

Mr PARKER: We did ask the questions about the status of those 500 and it was in the context of the assumptions that we talked about before with the initial 100. The feedback on that question was that out of the 500 claims, they could not gain access to sufficient information on 90 per cent to determine whether in fact that was correct or not.

The Hon. DANIEL MOOKHEY: The biggest claimant class in the TMF—and I could be wrong—is police officers and nurses. It is the Department of Health and the police force that would have the data. Are we seriously being told—not by you to be fair, by icare—that it cannot get the data for sick and injured nurses and police officers from the NSW Police Force or NSW Health and therefore we do not know whether 90 per cent of people were paid correctly? Is that seriously the position it has put you?

Mr PARKER: Yes, that is right. We encouraged them to connect up with those departments to obtain access to all the information they need.

Mr DAVID SHOEBRIDGE: There is a difference with public sector workers because often they are very aware of what their pay rates are. They have a sizable union and are less likely to have the error.

Ms DONNELLY: Potentially a top-up pay.

The Hon. DANIEL MOOKHEY: It is far less complicated but 90 per cent of them did not have the information on file to calculate the data correctly. That is the evidence that we have learned so far.

Mr PARKER: I think that was icare's update. When we asked, "What is the update on the review?" that is what we were advised.

The CHAIR: Mr Parker, on the answer you just previously gave you said "We strongly suggested"—I am paraphrasing your response to icare. You are the regulator. Are not you insisting that icare receive the data? Strongly suggesting is not something I would put as—

Ms DONNELLY: It is a very good question and it actually goes to some of the suggestions that I wanted to put to the Committee in terms of our powers. We have the unambiguous power to impose any licence condition consistent with the legislation on the self and specialised insurers but not on the nominal insurer and the Treasury Managed Fund. What I see from that is that compared to other insurers who will come to us, explain what they are going to do, take suggestions and want to avoid us imposing licence conditions, they are very aware that if we are not happy with how the claims management plays out we can impose conditions that do have enforceability and direct them about how they will provide their services.

With the Treasury Managed Fund and with the nominal insurer we have less of that ability up-front before there is a compliance problem that we can enforce, up-front when it is still in play for the experience of those injured workers. We have less ability and less force to be able to direct as to how they will undertake their case management. Clearly we can send warning shots that this is a noncompliance and we need to have it rectified. Our focus has initially been on assuming that they will understand that the absolute priority should be to find where the errors are and repay but one of the factors here is that we do not have the same array of powers.

The CHAIR: But given that—and apologies to the other Committee members—if accepting that what you have just said is you are able to fire a warning shot to say, "This is a noncompliance," then a noncompliance is a noncompliance whether it is in play or not. Surely you have the power—and you have acknowledged that you have the power if there is a noncompliance to enforce. So in this instance where you have strongly suggested as opposed to insisted, I would argue that the statutory power within SIRA is there for you to enforce it as opposed to strongly suggest.

Ms DONNELLY: Well, let me just clarify: The power to impose a penalty or a letter of censure or to take enforcement action is an important power but it is not the same as directing how they will deliver their service right now.

Mr DAVID SHOEBRIDGE: Surely, if there is a time to use it, it is now—or then.

Ms DONNELLY: Certainly—under consideration, yes.

The Hon. DANIEL MOOKHEY: Can I just be clear about how many people we are talking about here? If there are error rates approximately of approximately 52 per cent, we are talking about over this period of time 110,000 workers we are dealing with.

Ms DONNELLY: So, out of that, I will base it on the 3,000 sample, because it is the larger sample. If roughly half of them do not have enough information and we were to assume that they have the same pattern as the others then 50 per cent are in error and half of those would be underpayment and overpayment.

The Hon. DANIEL MOOKHEY: So it is about 52,000.

Ms DONNELLY: That is where the 52,000 comes from.

The Hon. DANIEL MOOKHEY: Yes. So it is 52,000 workers potentially underpaid, just from the nominal insurer.

Ms DONNELLY: That is where that comes from, using that kind of model of estimation, yes.

The Hon. SCOTT FARLOW: Just hold up one second. You were saying half underpayment, half overpayment—is that correct?

Ms DONNELLY: The sample of 3,000, where they found that it was an error—and that is where there had been enough information to make an assessment—half were underpayment and half were overpayment.

The Hon. SCOTT FARLOW: Of a class of 52 per cent you could assume that half would be overpayment instances and half would be underpayment instances.

The Hon. DANIEL MOOKHEY: Of the 110,000, half are underpaid and half are overpaid, which means 52,000 underpaid.

The Hon. SCOTT FARLOW: Yes, of the 52 per cent.

The Hon. DANIEL MOOKHEY: Yes. That is how we get to the 52,000 figure.

Mr DAVID SHOEBRIDGE: Tens of thousands of workers have been underpaid. The exact figure is still under investigation.

The Hon. SCOTT FARLOW: They have been overpaid as well.

Ms DONNELLY: As of today we do not know the exact figure and there are a number of estimation methods you could take. But it is a concern.

Mr DAVID SHOEBRIDGE: You can comfortably say tens of thousands on the information to hand.

Ms DONNELLY: Based on the information I had, based on a sample of 3,000, I think you could comfortably say that. I place more weight, scientifically, on a larger sample, particularly if it is a random sample—likely to be more reliable. So I have not yet seen any data that has convinced me that a smaller sample's finding overrides a larger sample's finding.

Mr DAVID SHOEBRIDGE: Can we move to a different—

The Hon. DANIEL MOOKHEY: Just one last question on this because it arises from Mr Farlow's question—

The Hon. TREVOR KHAN: You keep saying "one last question".

The Hon. DANIEL MOOKHEY: Have you got an estimate as to what the premium impact has been on the overpayments for employers?

Ms DONNELLY: No, I do not.

The CHAIR: I am going to pass down to Mr Shoebridge, who I suspect will want to change tack.

Mr DAVID SHOEBRIDGE: Thanks, Mr Chair. One injured worker's case has been highlighted recently, some appalling behaviour that he and two of his colleagues were subjected to—that is Mr Fitzpatrick.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: I understand you have met with Mr Fitzpatrick.

Ms DONNELLY: I have met Mr Fitzpatrick, yes.

Mr DAVID SHOEBRIDGE: Has SIRA undertaken any of its own investigations in relation to Mr Fitzpatrick's matter?

Ms DONNELLY: I met Mr Fitzpatrick. I had already on the basis of questions asked by Mr Mookhey sought a reassessment of an earlier complaint that he had made to both ourselves and the WIRO. When I met him I was concerned and we through him and other sources received a lot more evidence. I commissioned an extensive investigation of the complaint and the matters raised—those allegations—as well as a comprehensive claims audit. I have used my powers to obtain about 10,000 documents which we have been working through in a comprehensive investigation.

Mr DAVID SHOEBRIDGE: How far through that investigation are you and do you anticipate a final report being produced?

Ms DONNELLY: The investigation is still in progress. I have received some preliminary information from the investigation team. I am considering at this point further using my powers to obtain some additional documentation. I am also considering what regulatory action might arise out of the investigation and I am hoping to have a final report within weeks, without wanting to in any way say it is not going to be a thorough and proper investigation.

Mr DAVID SHOEBRIDGE: What are the preliminary conclusions that you have been provided with?

Ms DONNELLY: I want to take care, Mr Shoebridge, in what I say because I do want to be able to effectively take regulatory and enforcement action if that is required. What I will say, and this applies also to some of the documentation that is in that 10,000, if we have—obviously under the Government Information (Public Access) Act [GIPAA] our policy is to provide information unless there is an overriding public interest against disclosure. When we have the final report I will be giving consideration to that. My reservation at this point in giving information is that I do not yet have the final report and I need to consider whether maybe for a point in time it would jeopardise any enforcement action to make any information public.

Mr DAVID SHOEBRIDGE: Is one of the matters you are considering in that review whether or not declining claims to induce financial hardship was undertaken by QBE more generally?

Ms DONNELLY: That kind of matter is in scope.

Mr DAVID SHOEBRIDGE: I am not asking about that kind of matter; I am asking about that matter quite specifically because we have the recorded conversation between the employer—in this case, Corrective Services—and QBE.

Ms DONNELLY: Yes—which is in a report that my agency has released under GIPAA.

Mr DAVID SHOEBRIDGE: I am not critiquing you for releasing that, Ms Donnelly. I will not read it onto the record now but to say it is deeply offensive and inhumane is actually, I think, an understatement.

The Hon. DANIEL MOOKHEY: "Morally repugnant" perhaps might be the way I would describe it.

Mr DAVID SHOEBRIDGE: So we know what has happened in one instance. Is the question of using financial pressures to force injured workers to settle under investigation in your review?

Ms DONNELLY: Certainly the specific allegations, the specific behaviour that you are talking about is in scope and I will reserve the right, obviously, post this review to broaden and go further into the conduct of any of the parties where it may well be systemic.

Mr DAVID SHOEBRIDGE: I ask this because KPMG in their initial report—before it was workshopped by icare—said, "We recommend the case manager is interviewed to understand if declining claims to induce financial hardship was undertaken by QBE in this case or generally at the request of employers." KPMG thought it was important. They had seen all this material. I am asking, and I think it is an important question, if SIRA thinks it is important and is doing the same investigation.

The Hon. TREVOR KHAN: Well, she has answered it, to be fair.

Ms DONNELLY: I have said, look, this is a—

Mr DAVID SHOEBRIDGE: As I understand it you are only talking about the one case.

Ms DONNELLY: No, I am not.

Mr DAVID SHOEBRIDGE: Well, I misunderstood your answer.

The CHAIR: Mr Shoebridge, to be fair, Ms Donnelly has given you an indication of what she may do post receiving the final report.

Mr DAVID SHOEBRIDGE: Which is different to my question about if it is the subject of the report.

Ms DONNELLY: And I also did in my first answer—I said that. We are not undertaking this investigation in such a way that we are going to carve out anything that is not specifically—if in undertaking our work we identify problems, noncompliance, conduct that is not consistent with our legislation or other legislation, we will continue to investigate and bring those things into scope.

The Hon. DANIEL MOOKHEY: I have one last question on this particular matter. As part of your investigation are you examining why this conversation was recorded verbatim in the first KPMG report but by the time we get to the fourth has been deleted?

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: Thank you.

Mr DAVID SHOEBRIDGE: Sorry, on this one matter as well, it raises a number of deeply disturbing issues. One of the concerns that has been raised is that QBE falsely told the injured worker that the matter had been referred to icare and actually gave an email address, which has since become apparent was a false address. Are you aware of that issue?

Ms DONNELLY: As I said, I have not yet received the final report. I can assure you that the investigation team has been looking at everything in great detail so I am sure our team is aware of it.

Mr DAVID SHOEBRIDGE: Mr Parker, are you aware of that issue—that QBE falsely said that the matter had been referred to icare and deliberately gave a false email address to try to cover its tracks?

Mr PARKER: I have heard that suggestion previously. I cannot reflect right now as to whether it was in relation to this claim or some other claim.

The Hon. DANIEL MOOKHEY: Are you investigating any other claims like this?

Ms DONNELLY: We are investigating about 10 matters related to icare.

The Hon. DANIEL MOOKHEY: Is that related to a specific claims experience of a claimant?

Mr PARKER: Yes. We have a number of investigations underway and they have escalated complaints, and then we have our compliance team looking at a number of complaints.

The Hon. DANIEL MOOKHEY: Are they the thematically similar to Mr Fitzpatrick's matter?

Mr PARKER: There are a range of allegations and there is concern. There are similarities and differences.

The Hon. DANIEL MOOKHEY: What is the nature of allegations?

The CHAIR: Mr Mookhey, I am going to ask all members to acknowledge that I do not want anything that happens within this Committee to jeopardise any future actions. With the witnesses being as succinct and circumspect as they are, I ask members to respect that because I do not want any work that this Committee does to jeopardise anything into the future and any future actions. I want that acknowledged.

The Hon. DANIEL MOOKHEY: Thank you, Chair. I respect that and will stick to your guidance. Of course, I trust the witnesses to pull us up, should they find that any questions we are asking are creating any jeopardy. Is it the case that you are currently investigating 10 other matters to do with icare?

Mr DAVID SHOEBRIDGE: Ten matters in total.

Ms DONNELLY: Ten matters in total.

Mr DAVID SHOEBRIDGE: Mr Parker, could you get me an answer on notice about that email question?

Mr PARKER: Yes.

Ms DONNELLY: Yes, we will take that on notice and tell you what we can.

The Hon. DANIEL MOOKHEY: I would like to switch now to another matter. This morning I read in Adele Ferguson's column in the Financial Review about SIRA commissioning Ernst & Young [EY] to examine the December valuation of the scheme by Finity actuaries. As I understand it, icare has to have its scheme liabilities checked every six months, is that right?

Ms DONNELLY: Yes, they do it every six months.

The Hon. DANIEL MOOKHEY: Yes, and then they file that with the regulator, is that correct?

Ms DONNELLY: We obtain it from them, yes.

The Hon. DANIEL MOOKHEY: You, at your discretion, decide whether or not that is a valid report or otherwise?

Ms DONNELLY: We usually commission independent scheme actuaries to undertake a review. It is not an external peer review because they are not writing there at the time of the valuation—I need to clarify. But it is a risk review for us. Ordinarily, we do that where we think there is high risk or high impact. So, we routinely do it the nominal insurer. We would not do it for every other self-insurer, for instance.

The Hon. SCOTT FARLOW: Have you done it for other insurers, though?

Ms DONNELLY: Look, there have been other insurers where we have required them to do more frequent valuations and come in and meet us every week because of our concern about financial strength—so, yes. I will say here that we do not usually make that report public; it is usually a behind-the-scenes regulator tool. We would use that from time to time to prepare a SIRA report that we might give to the Minister or publish, about how we see the viability of the nominal insurer. On this occasion, I received the draft report and within less than two days sent it to Mr Nagle.

The Hon. DANIEL MOOKHEY: Sorry, let's just slow up a bit.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: You receive icare's December valuation by Finity—

The Hon. TREVOR KHAN: Sorry, could I just ask, the witness was part way through an answer, which was directly on point—

The Hon. DANIEL MOOKHEY: I was not understanding the context of the answer.

The Hon. TREVOR KHAN: I would like to hear the complete answer before you ask further questions.

Ms DONNELLY: I will try to do both.

The Hon. DANIEL MOOKHEY: I just thought I would do it piece by piece.

Ms DONNELLY: The sequence is that icare engage Finity—its independent scheme actuaries—to undertake a liability valuation as at December 2019. They did not have that peer-reviewed; they would routinely have the June valuation peer-reviewed. We received the draft report in March. My records would indicate we first got the final report in April—it might have been formally given to us later than that.

The Hon. DANIEL MOOKHEY: Yes, we were asking about that in estimates.

Ms DONNELLY: We then commissioned our independent scheme actuaries, Ernst & Young, to undertake a risk review of it to identify for us, as intended as an internal regulatory piece of advice, where there may be risks, so that we could direct our regulatory activity. When I received that draft report, it raised a number of questions for me and I wrote to Mr Nagle that I thought the best thing to do would be to share that draft report, noting that we had not in the past even shared the final risk reports, but to seek comment from icare and to be able to have that feedback given to EY before it was finalised. I have not spoken publicly before about what those questions were but, suffice to say, it made me wonder whether there was a risk of a bias towards positivity.

The Hon. DANIEL MOOKHEY: Mr Nagle effectively confirmed on *Four Corners* that they are positive in their outlook. Has the EY report that you commissioned now been completed?

Ms DONNELLY: Mr Nagle wrote back to me a couple of times in response to my invitation to him to give feedback and we also received documents from Finity and further reports from PricewaterhouseCoopers, the peer review actuaries. I provided all of those to EY and allowed them to independently finalise their report, which they have done and provided to me yesterday. So, I do have it.

The Hon. DANIEL MOOKHEY: Can you table it?

Ms DONNELLY: Yes, the team probably has some copies to table and I might also ask that we give the Committee the update on the 21-point plan, as well.

The Hon. SCOTT FARLOW: When was it that you wrote to Mr Nagle?

Ms DONNELLY: We received the draft report on 7 July and I think the letter went to him the ninth.

The Hon. SCOTT FARLOW: Of July?

Ms DONNELLY: Of July.

The Hon. DANIEL MOOKHEY: Whilst that report is being tabled and provided, I would welcome the update on the Dore review or the 21-Point Action Plan, as well. If you have an update on the Dore review I would prefer that to be tabled, too.

Ms DONNELLY: The team can probably do that, yes.

The Hon. DANIEL MOOKHEY: Can you take us through the preliminary findings of EY about the scheme's liabilities and about Finity's actuarial valuation?

The Hon. TREVOR KHAN: Sorry, can we just get it?

The Hon. DANIEL MOOKHEY: Sure.

The Hon. TREVOR KHAN: I am not trying to slow anyone down but it would be nice have the document.

The Hon. DANIEL MOOKHEY: No, I am happy to wait.

The CHAIR: Can I also just confirm that the document being tabled now—the EY report—what is it status?

Ms DONNELLY: It is a final report to me to advise me of risks and suggested regulatory action.

The CHAIR: And publishing by the Committee?

Ms DONNELLY: I do not normally publish it but I am aware that the Committee may want to.

The CHAIR: I was just wondering if you had an objection?

Ms DONNELLY: No, I do not. We may need to take on notice whether there is anything in there that we would suggest is redacted before. Can we do that, Chair?

The CHAIR: I appreciate that.

The Hon. TREVOR KHAN: It is not being suggested that questions cannot be asked of it.

The CHAIR: I guess what I am trying to ask is, now that you have tabled the document and it has been provided to us, no doubt the Committee will generate questions from this report. Is there information in this report that we should not be raising publicly now? Because once we have it and we start asking questions about it, unless it has been redacted, I expect that the Committee will ask questions immediately.

Ms DONNELLY: I think we might ask that you exercise some caution. There have been a lot of questions here and I feel that there are a couple I have not answered, which might help the Committee to interpret this and understand what will happen next—what weight to place on it and what not to base it on—if I may?

The CHAIR: Just before we do that, what I might suggest is that we ask broader-type questions out of the EY report, which has just been tabled, and we may have to discuss more specific questions if any do arise.

The Hon. DANIEL MOOKHEY: Perhaps the way forward would be to just ask the witnesses to explain the report to us.

Ms DONNELLY: Let me make some comments that I think may be helpful to the Committee. This is not a report that tells you whether or not—it is not an external peer review exercise over the December valuation firstly. It is guidance to us about where the risks may be if there is a bias towards positivity and what me might undertake in terms of stepping up supervision in order to assure ourselves. My approach to this firstly, and I will come back to a couple of comments about the sorts of risks—but my priority now is to ensure that a similar level of risk review is undertaken both by EY and our peer review actuary Taylor Fry, in a manner that actually was suggested by icare and their scheme actuaries, to engage more early in the exercise so that we can have that risk review at an earlier phase. Noting, of course, that the June valuation will be absolutely key in assessing the financial position of the scheme and creating confidence in it, and noting that it is also subject to audit by the Auditor-General. One of the risks, to give an example, that is called out there is the risk that there is an expectation that an increased number of people—injured workers—will be exited off benefits through work capacity decisions.

The Hon. DANIEL MOOKHEY: This is a section 38 issue, is it not?

Ms DONNELLY: It would include section 38.

The Hon. DANIEL MOOKHEY: So basically what you are identifying in what you have just said is that if icare can reinterpret section 38 to remove workers under that provision then obviously their future liabilities will be lower, that is correct?

Ms DONNELLY: Let me clarify and put it into context. If you are an injured worker and you don't have enough support early to return to work and recover at work, because that would be the best outcome, then larger numbers of workers will be continuing on weekly benefits for a longer period of time, which does increase your liability. There are provisions in the legislation which are law—they are the will of the Parliament and both ourselves and icare are bound to administer those—which mean that for some workers, at particular points, like 130 weeks, there are tests that are put in place to see whether or not they continue on weekly benefits. There are a couple of things in play here. My reading of the information that you have—putting it together into a larger picture—is that more people, instead of returning to work early, are continuing on benefit. Therefore, the experience that they have will be coming up against one of those tests at 130 weeks, or at another time, like 260 weeks—five years—where they are exited off benefits having not had real return to work. The other aspect there is that if there has not been enough prompt engagement with the worker to do those work capacity decisions and exit people then there may be a backlog.

The Hon. DANIEL MOOKHEY: But the key in this context—

The Hon. TREVOR KHAN: Can we just make sure that the witness has finished her answer before you jump in? Ms Donnelly is being extraordinarily helpful to the Committee.

The Hon. DANIEL MOOKHEY: I think that she just confirmed that she had finished her answer.

The Hon. TREVOR KHAN: I just want to make certain of that.

Ms DONNELLY: Thank you, both.

Mr DAVID SHOEBRIDGE: My initial reading of this actuarial review is that it shows that the number of assessments for work capacity have doubled by icare. They have doubled the number of workers that they are putting through, or more, work capacity assessments. Is that part of what this data shows?

Ms DONNELLY: What the data shows is that the initial valuation was based on there being a plan to increase the number of exits, and the emergent data would indicate that has happened.

Mr DAVID SHOEBRIDGE: I will take you to page 15 of this report. This shows the number of work capacity decisions that have been made over time. Do you see that?

Ms DONNELLY: And page 16 is useful too.

Mr DAVID SHOEBRIDGE: Page 15 shows that when they went to their triaging system of—well, since they brought EML on as the sole provider, the number of work capacity decisions collapsed. That is the first thing this shows, isn't it?

Ms DONNELLY: It shows a drop, absolutely.

Mr DAVID SHOEBRIDGE: Not a drop—it shows that from an average of 300 or more per quarter, it goes down to 50. That is not a drop, that is a collapse, isn't it?

Ms DONNELLY: That is your word, Mr Shoebridge. It is a significant and dramatic—

The CHAIR: Mr Shoebridge, please allow the witness to answer; please do not put words in the witness's mouth. Again, I am going to remind all members that we are responsive to the procedural fairness motion that was passed by Parliament, and I would ask everybody to be respectful during their questioning.

Mr DAVID SHOEBRIDGE: The graph speaks for itself.

Ms DONNELLY: The graph speaks for itself.

Mr DAVID SHOEBRIDGE: You can call it a big dipper or whatever you want, but there is a drop.

Ms DONNELLY: I have no need to embellish the numbers—the numbers are there.

Mr DAVID SHOEBRIDGE: What we see in the September quarter is a more than doubling of work capacity decisions being done. The assumption is that going forward that is going to increase to historically high levels. Is that the assumption?

Ms DONNELLY: Yes, and our operational information would certainly indicate that is being acted upon.

Mr DAVID SHOEBRIDGE: What figure 1 on page 16 shows is that icare is projecting that there will be record numbers of workers, at least for the period that we see here, exiting the scheme really from here onwards.

Ms DONNELLY: That is what that figure shows.

Mr DAVID SHOEBRIDGE: What this suggests to me is that icare may have a plan for remediating some of their financial problems, but their plan is throwing record numbers of workers off benefits. That is how I read this. Am I wrong?

Ms DONNELLY: I am not saying that you are wrong. I went to check the operational data that we have. We have, in other data, been told that as of 11 June EML and icare have done 39,000 claim reviews on over 17,000 claims to target claims to move them off benefit.

The Hon. DANIEL MOOKHEY: Can you repeat those figures?

Ms DONNELLY: They have undertaken over 39,000 claim reviews.

The Hon. DANIEL MOOKHEY: Over what period?

Ms DONNELLY: Between 11 February and 11 June this year.

The Hon. DANIEL MOOKHEY: So 39,000 claims reviewed this year?

Ms DONNELLY: No, 39,000 reviews on over 17,000 claims.

Mr DAVID SHOEBRIDGE: How does that compare to historical figures? It seems to me to be an awful lot of reviews and it appears that a number of claims have been reviewed more than once.

Ms DONNELLY: Well, it certainly implies that. Going to my point—and what you have said looking at that graph—there is an element there of catching up. Also, a concern for me is that there is a cohort, which we are monitoring very closely, who were not served well in having missed the opportunity for early return to work through active support. They are then part of a larger group of workers who are not returned to work by six months and then eventually will be subject to further reviews.

The Hon. DANIEL MOOKHEY: To put this in context, December's valuation by Finity shows that at a 75 per cent probability of assessment, the scheme's funding ratio is at 103 per cent?

Ms DONNELLY: It was, I think, 106.7 at 75 per cent probability of sufficiency and 103 at 80.

The Hon. DANIEL MOOKHEY: At 80 per cent it is at 103. That is 31 December, and then you are saying in February, two months later, icare initiates the review of 17,000 claims with a view towards reassessing work capacity in order to determine whether they can be exited. Then they check those 17,000 workers, just on the maths, on average 2.5 times. Am I right to infer that?

Ms DONNELLY: That is the information that we were provided.

The Hon. DANIEL MOOKHEY: Why should we not conclude that the reason why icare has aggressively stepped up a search to find workers to be exited from the scheme—why should we not conclude that that is directly a result of their scheme performance deteriorating and the scheme coming under massive financial pressure?

Ms DONNELLY: Let me be clear, they do have an obligation to administer the law, and, for workers who are between 78 and 130 weeks, undertake work capacity decisions. The bigger issue for me is that there are unnecessarily injured workers who are in that cohort who did not receive good enough early support to return to work and recover.

The Hon. DANIEL MOOKHEY: Yes, they have been treated poorly twice. First by not getting treatment and now being subjected to repeated work capacity decisions.

Ms DONNELLY: I refer you back to my opening statement where I said there is very clear evidence that where a person does not return to work early their likelihood of returning to work decreases and decreases.

The Hon. TREVOR KHAN: That was the whole rationale of the scheme.

Ms DONNELLY: That is the whole rationale. That is why it is pivotal.

The Hon. TREVOR KHAN: I think it is on the same theme. Can we go to page 11 of the report and figure 3. I am just trying to, and I am not trying to slow anything down and I agree—

The Hon. DANIEL MOOKHEY: I just want to seek guidance before Mr Khan initiates his questions and just flag for your consideration, Mr Chair, that we will seek to extend this hearing with these witnesses for 30 more minutes.

The CHAIR: The first thing I think we need to do for procedural fairness is to check with the witnesses to see whether they are amenable to staying for an extra half an hour past 2.30 p.m. as they may already have plans.

Ms DONNELLY: That is fine.

The CHAIR: We will ask the next lot of witnesses whether they are happy to be pushed back half an hour. Ms Donnelly, are you amenable to extending your time here to 3.00 p.m.?

Ms DONNELLY: We are fine to do that, yes.

The CHAIR: If we have got confirmation from both of the next witnesses then I have got no issue with that.

The Hon. DANIEL MOOKHEY: Thank you, Mr Chair.

The Hon. TREVOR KHAN: Ms Donnelly, this is beyond my capacity. I am just an old traffic court lawyer.

Ms DONNELLY: I only got the report yesterday, too.

The Hon. TREVOR KHAN: I would like you to explain to me, in a sense, what figure 3 means. On the face of it, it seems to me that what we have is a picture of deteriorating fit for work rates until December 2018 and then a projection of improvement—I take it projection on behalf of icare—in terms of performance. Are we to assume that there is some concern being expressed in this report as to how we have got what has become an historical drop in performance suddenly now changing into an improvement in performance?

Ms DONNELLY: My reading, yes, is that, as advised to me, it is highlighting a risk of a bias towards positivity in that particular area where the decline suddenly is corrected. It may be that there is evidence supporting that, but part of our role in supervising, and my main focus going forward is the June valuation, is to highlight that this is an important area of the valuation. There may be a risk that we need to manage for in our supervision that the projection has a bias towards positivity.

The Hon. TREVOR KHAN: Apart from figure 3 and the material surrounding figure 3 on page 11, are you able to identify in the report other indicia of bias towards positivity?

Ms DONNELLY: One of the things I think that we will be able to conclude is that we did not give EY a scope of work to assess the overall valuation. We asked them to narrow down the areas where there might be risk to the viability of the scheme, so most of their observations will be picking out the areas where there may be a bias towards positivity. I am happy to take questions on notice.

The Hon. TREVOR KHAN: Is there anywhere else in the report where you identify the same sort of concern?

Ms DONNELLY: I think the executive summary is helpful in pulling out the key ones.

Mr DAVID SHOEBRIDGE: It is at both ends, is it not, that we see the optimism? One is that the fit for work numbers will return back to an historic norm fairly rapidly and the other is that the exits will ramp up. Both of those assumptions are heroic given the historical material.

Ms DONNELLY: Again, Mr Shoebridge, your words. I am going to be impartial and temperate and basically say—I am now on notice to be supervising the June valuation to be alert for a risk of a bias towards positivity.

Mr DAVID SHOEBRIDGE: That being said, whatever might be the case over the next 12 to 18 months in terms of things like fitness for work and exits, over say five to 10 years you would assume that those would return to an historic norm. If you are looking at the medium and longer term it would probably be fair to assume they will return to historic norm on the assumption that management gets sorted out at icare.

Ms DONNELLY: There are a couple of things that I am not. I am not an actuary and I am also not a fortune teller. I probably would be putting this in a more practical way rather than assuming what is going to happen. What I have called for is some urgent action to turn around the services that support early return to work. I believe the problems with the scheme now need to be solved to avoid a sharp increase in premiums and to avoid any cuts to benefits, and can be solved through service delivery approach, through operations and through better

implementation. With that, it is possible, absolutely, to have over the medium to long term improved return to work, and that would be pivotal to turning those figures around.

The Hon. SCOTT FARLOW: Just picking up a point in terms of the assessments and the reviews conducted, you mentioned that icare had a legislative requirement to conduct these reviews. What is that requirement and what is icare's power to exit an individual from the scheme?

Ms DONNELLY: I am happy to give you more detail on notice but, basically, between 78 weeks on weekly benefits to 130 weeks there needs to be a work capacity decision, which is a binding decision, that enables them to then assess whether the person has an ongoing entitlement to weekly benefits or not, and the insurer makes that decision. There is a dispute resolution pathway through the Workers Compensation Commission [WCC] that can consider whether those decisions have been made, but we can give you some more information about that on notice.

The CHAIR: I just wanted to confirm, the report that you have tabled, the EY report, I think you said earlier that you had shared the draft report with icare. Is that correct?

Ms DONNELLY: That is right.

The CHAIR: Having only received the report yesterday, I do not expect that you would have had a chance to compare the draft to the final report, but is the final report fairly indicative of what was presented in the draft report?

Ms DONNELLY: My read of it is that it does reflect some changes from the feedback that we received on the draft report.

The CHAIR: I am only asking because I am pre-empting. I suspect that with icare witnesses coming next they will not have had a chance to see this report, therefore we need to be very careful about the questions that we ask as they have only seen the draft.

Ms DONNELLY: I am somewhat uncomfortable about having mentioned that I received it and I have not provided it to them.

The Hon. TREVOR KHAN: Is there a possibility of a soft copy being provided to icare, particularly to Mr Nagle, now?

Ms DONNELLY: I can ask the team to do that.

Mr PARKER: If I may, Chair, and other Committee members, page 22, without drawing reference to the numbers but the question around the sensitivity, that is consistent with the draft report. Some changes have been made but we can provide a copy.

The CHAIR: I want to ensure procedural fairness all round, given that icare has only seen the draft report not the final report. I want to ensure that we are not asking questions of them which they are unable to answer because they have not seen this report yet.

Ms DONNELLY: I think to your point, perhaps more information on notice or questions on notice would be more appropriate.

The Hon. DANIEL MOOKHEY: To finish this line of questioning, basically you are saying to us that you as the regulator will be paying close attention to their actuarial assessments because there are assumptions that they are using which are not consistent with past practice or other industry practice. Is that a fair summation of what you just said?

Ms DONNELLY: I am not sure that I agree with the way that you have said it. The criteria I am using for paying close attention is that they are such a large part of the workers compensation system that the financial position has clearly been deteriorating and return to work has been clearly deteriorating and there is a very strong link between the two.

The Hon. DANIEL MOOKHEY: Of course.

Ms DONNELLY: And that there is a need for public confidence that the actual financial position, and therefore facing up to and fixing any risks to the viability, is clear. The quality of the June evaluation is important. This is about me having got advice about what risks to look out for, having made a decision from this to step up supervision and have more independent actuarial involvement. I do have the power to go in and undertake evaluation ourselves, SIRA, the nominal insurer. I am not deciding to do that at this point. I am certainly confident that between icare, their independent scheme actuaries and ours and the Audit Office we will have a confident position.

The Hon. DANIEL MOOKHEY: Mr Parker, this is more to you than it is to Ms Donnelly, because I think you are a direct participant in this, on 2 June did you have a Skype meeting with officials from icare, including Ms Uehling?

Mr PARKER: I am happy to follow the rest of the question.

The Hon. DANIEL MOOKHEY: Sure. In that meeting was there something discussed called the section 38A project?

Mr PARKER: I have had discussions with Ms Uehling about the section 38 project, yes.

The Hon. DANIEL MOOKHEY: What is the section 38 project"

Mr PARKER: That was to the earlier witness, I think it was Sarah Hilt.

The Hon. DANIEL MOOKHEY: From Suncorp, yes.

Mr PARKER: Talked through the application of section 38. It is about targeting claims with a provision that how could that be considered, and then, I am just repeating Ms Hilt's evidence from this morning.

Mr DAVID SHOEBRIDGE: You heard Ms Hilt's evidence?

Mr PARKER: I did, yes.

Mr DAVID SHOEBRIDGE: Does that accord with your memory, as well?

Mr PARKER: It accords to that was the line of questioning that I was asking, yes.

The Hon. DANIEL MOOKHEY: It is the case that at a meeting that you held with icare, icare reported that they were embarking upon a project to reinterpret section 38, or to that effect, or at least establish parameters to assess whether or not an additional cohort of workers could be exited through a reinterpretation of that provision, because that is what Ms Hilt's evidence was. Ms Hilt's evidence of it was that as a result of the parameters that she was told to run by icare, she identified 800 people who would fall into that category. That is consistent with what was reported to you?

Mr PARKER: No it is not. From the evidence this morning and the line of questioning about section 38, the discussion I am reflecting on with Ms Uehling was that it was based on some intelligence that I heard that icare were commencing to go down a pathway of reviewing a high number of claims.

The Hon. DANIEL MOOKHEY: You had intelligence saying icare was intending to review a high number of claims and it was raised at that meeting?

Mr PARKER: Yes, I raised it at that meeting to test that.

The Hon. TREVOR KHAN: I am not—

Mr PARKER: I raised it at that—

The Hon. TREVOR KHAN: You raised it?

Mr PARKER: I did.

The Hon. DANIEL MOOKHEY: What did Ms Uehling say in response?

Mr PARKER: She said that that was not the case, that they do not know where that has come from and that is not what they are doing.

Mr DAVID SHOEBRIDGE: One of the concerns that has been raised with my office is about icare paying brokering fees contrary to the Workers Compensation Act. The relevant section of the Workers Compensation Act is section 192, which prohibits the payment of brokerage fees. Has this issue been raised or reviewed by SIRA?

Mr PARKER: Yes. We have received information that that may have been occurring, yes.

Mr DAVID SHOEBRIDGE: Not occurring in small sums. When I looked at the most recent annual report it had icare paying for something called risk consulting services, and from 2016-17 it was at $1.5 million in payments; 2017-18—

The Hon. TREVOR KHAN: Sorry, Mr Parker nodded. The answer might become important.

Mr PARKER: Yes. I am listening and following.

Mr DAVID SHOEBRIDGE: In 2017-18 it jumped up to $8.2 million in payments. Does that accord with your memory, Mr Parker?

Mr PARKER: Broadly, yes.

Mr DAVID SHOEBRIDGE: In the most recent annual report it was more than $11.5 million in payments for these so-called risk consulting services. Does that accord with your recollection?

Mr PARKER: It does.

Mr DAVID SHOEBRIDGE: What do you understand the risk consulting services paid for are?

Mr PARKER: As part of our supervision activities we receive a range of intelligence and when that intelligence comes through we take steps to verify it and then there would be a point in time, potentially, that we would ask those questions of icare. Without having any specifics of where that intelligence was coming from, I have asked the senior executive of icare are they making payments to brokers, and we had a response to that. I have to check but it was, say it was a year ago. More recently over recent months I had a follow up discussion to clarify are there agreements in place with brokers and are they continuing to make payments, and also what are those arrangements, what are they doing. And the response was from the senior executives that yes, they do have, I will say contracts in place with brokers to provide risk management services.

Mr DAVID SHOEBRIDGE: But the Act is explicit. It says:

> A licensed insurer—

and icare is a licensed insurer—

> shall not pay any amount by way of commission or other remuneration to an insurance broker, agent or intermediary in relation to the issue or renewal of a policy of insurance.

It could not be more explicit, could it?

Ms DONNELLY: It would be a noncompliance, yes.

Mr DAVID SHOEBRIDGE: But it is not a small noncompliance.

Ms DONNELLY: No.

Mr DAVID SHOEBRIDGE: It is $11.5 million just last year. My question is, what is happening on that?

The Hon. TREVOR KHAN: Before you get on to that, can we just clarify with Mr Parker, what did icare describe the payment as?

Mr PARKER: They have got a name for a project, so they do have a name for it, which I cannot remember.

The Hon. DANIEL MOOKHEY: Is it risk consulting services?

Mr PARKER: I am not sure if that is it.

The CHAIR: You can take it on notice.

Mr PARKER: We did ask for some documented evidence, and icare did provide in the days after I asked that question for information, provided information around that initiative.

The Hon. TREVOR KHAN: The first time you raised this, which was, I take it, twelve months ago, is that right?

Mr PARKER: Yes.

The Hon. TREVOR KHAN: Did you, either at the time of making the initial inquiry or subsequently, say to these senior executives at icare, "This looks dodgy. This is noncompliant with the Act."

Mr PARKER: The section of the Act talks about relating to premiums, and I understand that to be in a previous world when there was a larger number of agents and perhaps that payment was used if they could influence with employers which agent they would go for. So there would be some remuneration around that, whereas now we are in, as we know, a different world with one agent. Potentially the role of the broker has since changed. So my line of inquiry is are the payments to brokers appropriate. That is the line of investigation.

Mr DAVID SHOEBRIDGE: But there is even less reason, is there not, to pay a broker in the current environment, where there is no choice? What on earth are brokers being paid $11.5 million from icare for? That is $11.5 million that cannot go to injured workers. What is its purpose?

Mr PARKER: Yes. With guidance from the chief executive, to the Chair's point, it is an active investigation that we are looking at right now.

The Hon. DANIEL MOOKHEY: Can I pick up on this? Mr David Shoebridge is being generous here. He is saying it is $11.5 million in 2018-19. Just go back in the annual reports: in 2016-17 it was $1.5 million; in 2017-18 it jumped to $8.2 million; and in 2018-19 it jumped to $11.5 million. That means it has risen by a factor of 10 in three years. The number of payments that icare is making to brokers has risen by a factor of 10, in breach of section 192 of the Workers Compensation Act. What is going on?

The CHAIR: Mr Mookhey, I am going to disallow that question for the reason that Mr Parker has just indicated that Ms Donnelly has identified that that issue is currently under investigation.

The Hon. DANIEL MOOKHEY: I accept your point, Mr Chair. I will ask a different question. When did you initiate the investigation?

Mr DAVID SHOEBRIDGE: Before we do that, can I assume we have agreed to at least a 15-minute extension? Reality seems to have proven that.

The CHAIR: We have agreed to an extension to 3.00 p.m.

The Hon. DANIEL MOOKHEY: When did you initiate this investigation? I respect the boundary that the Chair has outlined and I do not want to jeopardise any active investigation that you are under. But when did SIRA initiate its investigation into payments to brokers that may be in breach of the law.

Ms DONNELLY: Mr Mookhey, I am going to answer more generally and perhaps take it on notice.

The Hon. DANIEL MOOKHEY: Sure. I respect that.

Ms DONNELLY: I am going to say that during the compliance and performance review, we obviously very publicly consulted, sought submissions and engaged with stakeholders. As a result, at the end of that, we had a number of matters outside of the scope of Ms Dore's review but still within our obligation as a regulator to look into and take action on—or my obligation as a principal officer of a public sector organisation. So we had a number of matters that we began investigations or other actions late last year or beginning of this year.

The Hon. DANIEL MOOKHEY: I understand. Has this been referred to ICAC?

Ms DONNELLY: I have indicated—I think perhaps even in questions from you, Mr Mookhey, in budget estimates a couple of times—that I can assure you that I fulfil my obligations under section 11 of the Independent Commission Against Corruption Act proactively and I have already confirmed that there are matters from icare that I have referred to ICAC. That is now public knowledge. I am not going to speak about those matters in detail. The guidance from ICAC is not to do so and I will not do so.

The Hon. DANIEL MOOKHEY: I will respect that in the way we did last time we had this conversation, Ms Donnelly.

Mr DAVID SHOEBRIDGE: Mr Parker, you might be able to answer this. I am having trouble working out what possible rationale icare could have for making multimillion-dollar payments to brokers. Can you recall what, if any, explanation was given when you first made the inquiry, Mr Parker?

Ms DONNELLY: I am going to jump in there and say we have told you there is an active investigation. But I will say to you that question is a very reasonable question and perhaps a question you should put to icare.

Mr DAVID SHOEBRIDGE: Given the job of a broker is basically to match a policy with a client—

Ms DONNELLY: And there is less competition and choice. Yes.

Mr DAVID SHOEBRIDGE: —and there is only one player in this—

Ms DONNELLY: It is a reasonable question.

Mr DAVID SHOEBRIDGE: —can you, Ms Donnelly, see a role for the payment of brokers in that environment?

Ms DONNELLY: I think it would be evident, Mr Shoebridge, that it is not my role to defend a practice undertaken by icare. We are investigating it, so I am not going to be defending it now.

The Hon. TREVOR KHAN: We have got 23 minutes, David.

Mr DAVID SHOEBRIDGE: I will just ask this: These figures first showed up on the books in 2016-17, as far as I am aware. They rapidly rose in 2018. Has there been timely oversee oversight of this by SIRA? I

would have thought a sixfold increase between 2016-17 and 2017-18 should have been enough for the regulator to say, "Hang on, there's something happening here." Why are we only doing that now, Ms Donnelly?

Ms DONNELLY: I am just going to say it is on the public record that I have been consistently raising issues about the performance and conduct at icare for at least two years, since the period we are talking, about a number of different matters. We have been actively supervising and reviewing, and we have had a number of those matters to deal with.

Mr DAVID SHOEBRIDGE: There was a lot on your plate—that is your answer?

The CHAIR: Point of order—

Ms DONNELLY: Unfortunately, yes. I wish that it was not the case, but unfortunately, yes.

The CHAIR: Order! I reverted to my other, usual role. Mr Shoebridge, I ask you to cease those comments after a witness has provided an answer. They are unhelpful and I do not think they are professional.

Mr DAVID SHOEBRIDGE: That is where we have to disagree. It is well within scope to put those conclusions to a witness.

The Hon. DANIEL MOOKHEY: Ms Donnelly, have you seen any evidence that this practice has stopped?

Ms DONNELLY: I am not able to answer that question. We will take it on notice.

The Hon. DANIEL MOOKHEY: If you cannot answer this, please say so: Was the payment of $11 million to brokers and, over this period of time, $22 million or thereabouts to brokers ever reported to the icare board? Have you seen any documents that would show that the icare board knows about this?

Ms DONNELLY: I do not think we are able to answer that definitively right now, so we will take it on notice.

The Hon. SCOTT FARLOW: We have heard about the icare funding arrangements and the funding ratio. Are there any other reports from other providers in the scheme in terms of their funding ratios at this stage?

Ms DONNELLY: We do supervise quite closely, and I will say that right now is obviously a very challenging time in terms of COVID. It is an extraordinary time in terms of where the funding position may be for insurers, probably globally, in terms of both the investment performance and the underwriting performance. What I would say is that the nominal insurer stands out for the level of risk because we entered this period of the pandemic with them already having such a deterioration in return to work and in the funding ratio and, as has been called out by the independence compliance and performance review and commented on in budget estimates already, that means there is a reliance on returns on investment. And the size means it is very material for New South Wales.

The Hon. SCOTT FARLOW: Is it possible, on notice, to provide the Committee with those funding ratios for the other providers in the system?

Ms DONNELLY: For any that are considered on a kind of watchlist?

The Hon. SCOTT FARLOW: On a watchlist, so to speak, that you might have.

Ms DONNELLY: I will take that on notice and provide that if we can, yes.

The Hon. SCOTT FARLOW: We have heard a lot through this inquiry with respect to return-to-work ratios and performance, and it has been pointed out that that is an issue for the nominal insurer but also for other insurers in the market. What are your views with respect to why this is a problem across the scheme? It is not just a problem with one provider, but across many of the providers in the scheme. What are some of the issues that you believe are driving that?

The Hon. DANIEL MOOKHEY: Could I just ask a follow-up: Is it the case that the trend lines are similar? I looked at your dashboard and it says that the self-insurers and specialist insurers out-perform the nominal insurer on return to work by a factor of seven points, often. Is it the case that there actually is a uniform performance and this return-to-work issue is the same? From what I can see, even if you compare Woolworths as a self-insurer—and Woolworths is not necessarily the kindest of insurance companies—they seem to have the exact same law and they return people to work much faster than nominal insurers—

Mr DAVID SHOEBRIDGE: Is page 9 of your submission—

The CHAIR: Sorry, no, stop.

Mr DAVID SHOEBRIDGE: —page 9 of your submission has all the graphs.

The CHAIR: Pause. We have now had two members—

Ms DONNELLY: I have had three questions without a chance to answer.

The CHAIR: —ask Ms Donnelly a question. I ask Ms Donnelly if she would like to provide a response.

Ms DONNELLY: I will do my best to answer, canvassing those matters. It is of a concern to me that every insurer has good return to work. In taking on this role, I would have hoped that what I was going to see on my watch was that it would improve. My focus will be on doing that: turnaround and improve. It is true: The level of decline for the nominal insurer is worse than for the Treasury Managed Fund and for the specialised and self-insurers as a group. We have some additional information that we can provide the Committee that is quite detailed; it is an update on material we have provided before. In it, you will see that amongst the specialised insurers some of them are indeed superior. There are some that have some particular struggles, probably due to their industry and other issues. It is similar for self-insurers.

I am concerned that overall there has been a level of decline in performance, but if I give you an example, the Treasury Managed Fund in January 2018—I am going to go forward to January 2020 so we are not talking about COVID impacts—went from, at six months, some 90 per cent of injured workers being back at work after six months to 87 per cent, compared to 82 per cent for the nominal insurer. Everyone was at 89 per cent or 90 per cent two years ago. We are talking mid to high 80 per cent for the others and lower for the nominal insurer. One of the things that you raised there is what are the causes. I would also like to talk about the moment in time we have for a new strategy to improve return to work. Some of the causes are clearly not enough coordinated, complex human and health service delivery for an individual who needs to be supported—they have had a trauma, they need health care, they need their employer brought on board to tailor a return-to-work plan for them. Not enough of that is happening upfront.

It is clear from the coinciding of that decline with changes at the nominal insurer. The working hypothesis for me is that those operational changes were so massive, with case managers losing work and moving around and others being hired, et cetera, that there has been a disruption to the service providers in the market as a whole. I cannot as easily prove that, but I think that is a reasonable working hypothesis. Another factor is there has been an increase in psych claims. We know from very good evidence—we have participated in analysis nationally—that for people who have a mental health issue returning to work has been harder. That leads me to a call for action about right now, this moment in time. A mental health issue is a disability. All of the people who end up with not a full recovery end up with a disability from a workplace injury.

This is a moment in time where we have changed as a society. We have embraced the idea that we do not have to commute. We have embraced the idea that you can do a whole lot of your work digitally—that if you need a carer to get you up in the morning and you have not been able to make it to the office by nine o'clock, that is no longer a barrier to you engaging in work. We are no longer the society that existed when workers compensation was established, where you had male breadwinners and women did not work. You had no Medicare. You had no rehabilitation medicine. You assumed that if someone had an injury they were broken.

You did not have a society that said, "We want everyone to participate in work, in community, in life. We do not want to have discrimination and we want to see people with disability"—who, like everybody else, if they are in work they will be healthier. They will live longer. This is a moral imperative. Right now we have an opportunity in time and I think this is what we need to turn around. It is quite a challenge, but if we frame this as people with disability, now is the time to reduce the barriers. Now is the time to leverage the economic change that will come out of the COVID recovery and find ways to open the doors for people to engage in work and return to work if they have acquired a disability. That, I think, is the call to action.

Mr DAVID SHOEBRIDGE: Ms Donnelly—

The CHAIR: Sorry, Mr Shoebridge. Just before we continue with the questioning I wanted to give witnesses the opportunity—acknowledging that you have been generous in providing the Committee with an extra half an hour of time, and noting that you have provided the 21-Point Action Plan update, I wanted to give you the opportunity to speak to that, given that you have taken the time to provide the document to us. I am wondering how much time you believe you would need to speak to it, because we only have about 12 minutes left. I want to give you enough time to speak to this document before I allow any more questions.

The Hon. DANIEL MOOKHEY: Mr Chair, in addition to that, I think the witnesses flagged that they would table an update to the Dore review? I am not sure whether that has happened?

Ms DONNELLY: That is what I am going to talk to.

The CHAIR: That is the 21-point plan, yes.

The Hon. DANIEL MOOKHEY: That is it?

The CHAIR: Yes.

Ms DONNELLY: Exactly.

The Hon. DANIEL MOOKHEY: Okay, great.

Ms DONNELLY: This is an update to the 21-Point Action Plan that arose from the Dore review.

The CHAIR: Do you want to speak to that now? Then I will allow some final questions before we hit 3.00 p.m.

Ms DONNELLY: All right. There is one recommendation that is not covered through this 21-Point Action Plan, and that goes to Ms Dore's suggestion that the Government should investigate whether SIRA should have more powers. I might come to that at the end.

The CHAIR: You have been pretty clear on that—

Ms DONNELLY: There are a couple of other suggestions. I am also happy to give those on notice if you would like.

The CHAIR: Given the time frame, I think that is—

The Hon. TREVOR KHAN: Let's just go.

Ms DONNELLY: On the 21-Point Action Plan, overall the summary there is that some actions have been completed and there are others in progress. My view on it is that I am disappointed with the speed of action and there are a couple of areas where I think it is now urgent. The one that I would call out are this issue of targets for return to work. I have included in this update that we have not had the ability to impose conditions and say, "These will be your return-to-work targets", but we have had the ability under division 4 of the Workers Compensation Act 1987 to require a resubmission of a business plan. I wrote to Mr Nagle 11 months ago saying I required more of a program in icare's business plan to address return to work. I was not satisfied, and we rejected its business plan and said it was not compliant, that we required more. We got a resubmitted business plan, which I am also happy to table if the Committee does not already have it from the sweep of the many, many documents.

The Hon. DANIEL MOOKHEY: No, do you mind tabling that?

Ms DONNELLY: I am sure the team might have a copy with them.

The Hon. TREVOR KHAN: You have probably written all over it now.

Ms DONNELLY: The targets are not inspiring, let me say. That needs to be addressed. Although we have clear legislative power to set the performance targets and monitor the performance and we have done it on the basis of real return to work—the worker has said they are back at work—icare insists on its targets being financial cessation of benefits. I have spoken on that already as creating more of an incentive to cut off benefits than real return to work. The other area is the dedicated case manager—action 5 in the plan—where, in my view, the 60 per cent of workers who have more than seven calendar days on weekly benefits should have a dedicated case manager. It is around 60 per cent. We have asked that it be seven days; icare so far has moved to 14 days and I very much recommend that it move to seven days. There is a recommendation about remuneration and incentives for return to work. I would feel much more comfortable about those if they are based on real return to work.

The last one that I will touch on is a recommendation that icare undertakes an assessment of its culture, accountability and governance. That is in the context of the Hayne royal commission identifying that attention to non-financial risks has been lacking in the insurance industry. Many of the insurers we regulate, being subject to APRA regulation, have already been undertaking those assessments. My concern is that in companies as large and as important as icare delivering these services there needs to be an ability to learn from failure. There needs to be an ability to monitor outcomes and adapt where it is not working. You need to have a culture where the internal voice is not stronger than the external voice and an ability for people to raise issues and point out where things are going wrong and be able to do that safely within their organisation. I believe the board of icare would benefit from undertaking that so that they can be assured that issues are being escalated to them and issues are being faced up to and fixed early.

I have a particular concern since the *Four Corners* report about that. Mr Nagle was asked—and this was reported in *The Sydney Morning Herald*—whether he had a concern about ICAC. He made a comment that in his six years in the public service he had seen a culture of complaint. Firstly I would say that I have been a public servant in New South Wales Government for 30 years. I worked in the emergency services for nine years and in

the health system for nine years. I have not seen a culture of complaint. I have seen a culture of service. I initially read that and thought, "How do the people working in icare feel?" I know that there are many of them who are fine people and who work very hard. Then I thought, "If you are talking in the context of ICAC and you describe a culture of complaint amongst your employees, let us be clear: A person who raises an issue that may be suspected corruption is a whistleblower. It is not a culture of complaint."

CEOs in the New South Wales Government have a very important duty under the ICAC Act and they have a very important duty under the Public Interest Disclosures Act to protect whistleblowers. They have an expectation that they will, as leaders, create an organisation where their workers know they can raise an issue and wrongdoing but they will psychologically safe when it happens and it will be acted upon. We know that in Financial Services as well that is being called out. For me to see a CEO effectively denigrate whistleblowers on the public record, I am concerned for the people within icare who are whistleblowers. I am concerned for the people in icare who may feel that to speak up about a problem they are going to be labelled as part of a culture of complaint and I am concerned that this assessment of the culture has not yet happened.

Just turning to the powers, there are two other things that I would say. In the 2015 reforms there was a power introduced into division 4 of the '87 Act for the making of a prudential regulation. That would be an opportunity for Government, and possibly considered or even disallowed by the Parliament, to be explicit about what the capital adequacy standards should be and who, whether it is the icare board or it is SIRA or anyone else, steps in when they are not being met. I did give advice about that in 2016. The regulation was not made. One option would be to consider whether it should be legislation, not regulation.

The Hon. DANIEL MOOKHEY: Hang on, let me just pause you there, Ms Donnelly. This is an important issue. You are saying that you provided advice about a regulation needing to be made about what should be the capital adequacy requirements of icare.

Ms DONNELLY: Across the insurers, across the market.

The Hon. DANIEL MOOKHEY: Yes, and that is because icare is not subject to APRA regulation. That is correct?

Ms DONNELLY: They certainly are not, no.

The Hon. DANIEL MOOKHEY: Therefore, as opposed to general insurers and private insurers who can have conditions imposed by APRA and are subject to APRA's rules around capital adequacy, as is every other bank, icare is unique in Australia in that they are not subject to APRA's capital requirements. Is that correct?

Mr DAVID SHOEBRIDGE: Well, I do not think "unique".

Ms DONNELLY: The APRA legislation does not cover State insurers.

The Hon. DANIEL MOOKHEY: Yes, that is true. I am going to finish this question and throw back to you that I have seen documents in which icare proposes investment strategies in which they say that they should take advantage of the fact that they are not regulated by APRA and can take more risk in their investments and you are saying that that is because there is a gap in the regulation. Is that correct? That is my question. Now back to you.

Ms DONNELLY: So the tools that APRA uses are obviously not established for State-based insurers and they are looking at having viable and sustainable private sector underwriters and other financial institutions, and they will set capital requirements with a view to the strategic asset allocation and whether there are risky assets or not. I think that is what is being referred to there. There is also a quite reasonable argument that where a State Government somehow—and I will need to come back to that—a State insurer is underwriting, then there is not the same need for minimal capital requirements.

The Hon. DANIEL MOOKHEY: Because the taxpayers are backstopping it.

Ms DONNELLY: Yes. Now the nominal insurer—

Mr DAVID SHOEBRIDGE: But also there are statutory benefits.

The Hon. TREVOR KHAN: Hold on!

The Hon. SCOTT FARLOW: Let her finish.

Ms DONNELLY: There is an argument to be had that why would you sock away a whole lot of capital on the State's accounts and take it out of the productive economy?

The Hon. DANIEL MOOKHEY: And I am not disputing that. Just to clarify my question—

Ms DONNELLY: But—no, I do want to finish this one, Mr Mookhey—the nominal insurer is not on the State accounts. It is not the State Government. It is a unique legislated entity and this is one of the other issues that goes to powers. There are entities that I am regulating, the nominal insurer and the Treasury Managed Fund. It is ambiguous in law as to who is the natural person who is accountable? Who is the insurer in some of those matters? Therefore the nominal insurer is not captured by APRA but is also not governed without that prudential regulation by the State in terms of its capital adequacy.

The CHAIR: Ms Donnelly, we are fast approaching three o'clock. Any further issues or any points you would like to make about powers of SIRA, if you could make those on notice. Mr Shoebridge has been very patient and has been seeking the call for quite a while.

The Hon. TREVOR KHAN: Always, always.

The CHAIR: I am going to allow him the last question and then three o'clock will be upon us.

Mr DAVID SHOEBRIDGE: Well, given the time, what I was going to ask has now changed. The initial question I had was going to take some time. But one of the issues that is raised is executive remuneration that has been a substantial concern at icare.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: To get some sense of relativity is, if I could, can I ask you, Ms Donnelly, what your remuneration package is?

Ms DONNELLY: My salary and superannuation that I contribute and the employer's superannuation together add up to just under $420,000 per year.

Mr DAVID SHOEBRIDGE: All right.

Ms DONNELLY: It is set under standard and government sector employment arrangements. I certainly regard it as a privilege to work for New South Wales and I work hard to do my best to earn every single cent.

Mr DAVID SHOEBRIDGE: Yes. No, no, and I appreciate the answer, Ms Donnelly, and I appreciate the transparency.

Ms DONNELLY: It is in the annual report as well.

The Hon. SCOTT FARLOW: I think it is in the annual report as well.

The CHAIR: Since it is now past three o'clock, I would like to thank the witnesses. The Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to the questions that you have taken on notice. I thank you for coming in today.

(The witnesses withdrew.)

DAI LIU, Chief Actuary, icare, affirmed and examined

RASHI BANSAL, Group Executive, Organisational Performance, icare, sworn and examined

ELIZABETH UEHLING, Group Executive, Personal Injury Claims, icare, sworn and examined

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

ANDREW ZIOLKOWSKI, Group Executive, Prevention and Underwriting, icare, affirmed and examined

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

Mr NAGLE: Thank you, Chair. We would like to thank the Committee for the opportunity to correct the campaign of misinformation and accusations based on inaccuracies that has recently been generated. Since its creation in 2015 icare has been on a journey to improve outcomes for citizens with a personal injury in New South Wales in how they are supported. It has been an epic journey to date and as we have previously reported not everything we have attempted has worked as planned, but we are on the journey to get this right. We have taken the feedback and concerns and reacted and changed our direction where needed. We will keep this continuous improvement mindset well into the future. Many of the issues recently raised in the media are complex and will require adequate explanation.

Many of the issues raised existed well before the creation of icare. We operate in a complex ecosystem of competing objectives that have always been adversarial. Taking a neutral pathway is challenging and friendless. We remain true to our DNA of a commercial mind and social heart. Chair, we seek your support in being able to provide adequate answers to these issues. The workers compensation schemes operated by icare are financially sound, designed for the long tail nature of the liabilities and is evidence by direct customer feedback steadily improving in meeting their expectations and needs.

The Hon. SCOTT FARLOW: In the last session we were presented by SIRA with a copy of an evaluation report, is that something you have seen prior to this hearing?

Mr NAGLE: Which evaluation report would that be?

The Hon. SCOTT FARLOW: This is the EY associated with the 31 December 2019 nominal insurer evaluation dated 2 August.

Mr NAGLE: We have not seen the 2 August report. We were presented some weeks ago with a draft unsigned report which did not meet any of the actuarial standards.

The Hon. SCOTT FARLOW: You have not had an opportunity to see this report?

Mr NAGLE: No.

The Hon. SCOTT FARLOW: There is nothing you can say to this report at this stage?

Mr NAGLE: No, not at this stage.

The Hon. SCOTT FARLOW: We heard some comments with respect to brokerage fees particularly associated with risk consulting services. Does icare pay brokerage fees?

Mr NAGLE: I will pass to Mr Ziolkowski to answer that in more detail, but no, we do not pay brokerage fees.

Mr ZIOLKOWSKI: Just to be clear, we do not pay brokers fees in relation to the issuing of policies under section 192, not at all.

The Hon. SCOTT FARLOW: So, what does this relate to then?

Mr ZIOLKOWSKI: We have an engagement, a memorandum of understanding, with a number of brokers where they perform a prevention and risk process with large employers to try and reduce the prevalence of work health and safety issues in the workplace. It is an excellent program that we have been launching and it has had the opportunity to change the risk culture for about 40,000 workers across over 70 large employers in New South Wales. This is part of the process of trying to improve and reduce the risk or injury to workers.

The Hon. SCOTT FARLOW: We heard earlier today of increased assessments being undertaken on workers with a view to exiting the scheme. Are you projecting or undertaking to remove 17,000 workers from the workers compensation scheme?

Mr NAGLE: I will pass to Ms Uehling to give more detail, but that is a fabrication. Icare normally reviews claims on a regular schedule. We have 65,000 new claims every year for the nominal insurer, we have about 40,000 open claims at any one time and those files are constantly reviewed. This commentary is a figment of somebody's imagination. Ms Uehling has some more detail.

Ms UEHLING: In the third quarter of 2019 we commenced a data and case management practice review. During that review—which is part of our normal practice of going through claims and making sure that they are reviewed—it was determined that we had not always or the scheme agents had not always been consistently applying the legislation or taking as much proactive case management as we had desired, which was the whole point of doing the review.

The Hon. SCOTT FARLOW: I asked this question of SIRA as well. What are your obligations under the legislation?

Ms UEHLING: To apply the legislation by the law and fairly.

The Hon. SCOTT FARLOW: What power do you have under that legislation to have somebody exit the scheme?

Ms UEHLING: There are different sections of the Act. There is section 43, which is a work capacity decision, there is also returning people to work and there is section 38.

The Hon. SCOTT FARLOW: Can you exit somebody from the scheme unilaterally?

Ms UEHLING: No, not without an assessment and a process that is undertaken.

The Hon. SCOTT FARLOW: What does that process involve?

Ms UEHLING: It depends upon which section of the Act. For a work capacity decision you must give fair notice, you must do a vocational reassessment and a standard of practice that goes through as required by the regulator.

The Hon. SCOTT FARLOW: That is all required by SIRA, is it?

Ms UEHLING: In their guidelines, standards of practice as well as under the legislation.

The Hon. SCOTT FARLOW: Do they have an assessment or a check on that?

Ms UEHLING: They do quarterly audits of us that they have been undertaking starting with this last quarter.

The Hon. SCOTT FARLOW: In the last quarter how many people have exited the scheme?

Ms UEHLING: I would have to come back to you with that on notice.

The Hon. SCOTT FARLOW: Not 17,000 though?

Ms UEHLING: Not 17,000, no.

The Hon. SCOTT FARLOW: We have had quite a lot of commentary in terms of the current funding ratio position of icare and, this report notwithstanding, what does your independent actuary say with respect to your funding ratio position and what assessments are undertaken by either a peer-reviewed actuary or any other audit process?

Mr NAGLE: The assessment of liabilities happens twice a year, so at the end of each financial year and part way through the year. It is effectively a revolving summary assessment of our liabilities. In December the evaluation is a review of whatever the prediction was in June, what are the outcomes and has anything changed in that six months, with a projection looking forward to the next June to say what do they anticipate. The valuations are basically checked against the reality. I will pass to Ms Bansal to give more detail and she may pass on to Mr Lai, who is our chief actuary.

Ms BANSAL: The valuation of our liabilities has a very robust and complete process around it. We have independent scheme actuaries Finity Consulting, who were chosen after a procurement process, tender process, in 2017. They value our liabilities twice a year in December and in June of each year. These liabilities at the June date are independently audited by the audit office who are supported by EY and the EY actuaries and the most senior actuarial partner there is on the EY team as well.

The Hon. SCOTT FARLOW: Sorry to stop you there. I take it a very different EY team than is conducting this?

Ms BANSAL: Yes.

The Hon. SCOTT FARLOW: There are Chinese walls in place, are there?

Ms BANSAL: Yes, that is right. We also have an external peer review by PwC. They are external and independent, they comply with our prudential standards as well as the institute of actuaries professional standards in completing that review. Furthermore, we have our internal actuarial team and our chief actuary review the results and look at all the models and underlying assumptions. We have a risk margin built in. You have mentioned a 75 per cent probability of adequacy [POA], probability of adequacy, we have a $1.8 billion risk margin at that level for any inherent uncertainty in the valuation of the liabilities. We also engage TCorp and Mercer independently to provide us all underlying economic assumptions that we use in the valuation of our liabilities. As at 30 June 2019 we had an unqualified audit opinion on our liabilities and a clear report from the external peer review actuary.

The Hon. DANIEL MOOKHEY: And the 75 per cent POA?

Ms BANSAL: That is right. So at 80 per cent POA our risk margin is even higher. It is in excess of $2 billion.

The Hon. SCOTT FARLOW: And there was an unqualified audit report to substantiate that as well?

Ms BANSAL: Our accounts, which includes our risk margin, had an unqualified audit opinion at 30 June 2019. We are currently finishing our audit for 2020. We are providing all our information to the Audit Office and EY as requested.

The Hon. DANIEL MOOKHEY: The figures you just recited were of 30 June 2019?

Ms BANSAL: I can provide you risk margin at both 30 June 2019 and 31 December 2019.

The Hon. DANIEL MOOKHEY: Yes, thank you.

Mr NAGLE: As we mentioned the valuations are revolving so the assumptions are checked. In December Finity, as the lead actuary, would have made projections about what they anticipate to see over six months. That is what is currently being audited by the Audit Office at the moment. In terms of an interim report that has gone to our audit and risk committee just the other day, in section 3 of the report it says: "Based on our review thus far, on balance we believe evaluation actuaries have approached the valuation and setting the assumptions in the appropriate manner. It also says that we have found the assumptions underpinning the liabilities to be reasonable but will continue to provide updates incoming meetings and future meetings as we finalise our order procedures on the June valuation models." So this is one of the most—

The Hon. DANIEL MOOKHEY: Can you table that report?

Mr NAGLE: This section of the report, absolutely.

The Hon. DANIEL MOOKHEY: No, the report.

Mr NAGLE: I would have to take advice from the Audit Office on that.

The Hon. DANIEL MOOKHEY: You said that was presented to your audit and risk committee. Can you table that report?

The CHAIR: You can take that on notice.

Mr NAGLE: I believe I will have to take that on notice.

Mr LIU: Just to provide some context around the liabilities, the seventy-fifth probability means that it is a $1.8 billion risk margin on top of the central estimates or the best estimates came up with by Finity actuaries. The eightieth will have an even larger risk margin. It will have a $2.4 billion risk margin on top of the central estimates or the best estimates from Finity actuaries.

The Hon. SCOTT FARLOW: With respect to the position, there has been a deterioration. There has been some commentary that that is not something that icare is alone in because of COVID. Do you want to speak to that at all in terms of what has been the COVID impact in the deterioration of your position and are there any other factors that need to be considered?

Mr NAGLE: Indeed. I will also ask Ms Bansal to add some additional comment. COVID is impacting us a number of ways. Firstly, we have $17 billion invested in the market for the nominal insurer. The investment on those funds is a large part of what pays our own expenses and also goes into the funding of the day-to-day activities for the nominal insurer. When the investment markets changed—and they have quite dramatically in that period from February through—our investment income is impacted. Secondly, through the early period of COVID our focus was in supporting employers and our own organisation to respond to COVID. In terms of the

isolation period we gave a lot of support to employers in New South Wales who were either having to shut their business or were financially impacted. I believe we have deferred about $93 million worth of premium and adjusted another $68 million worth of premium that was due. There was a direct impact onto our income. Finally, as COVID has developed, clearly people who were on return-to-work duties and their businesses have closed have now gone back onto the scheme—

The Hon. SCOTT FARLOW: Do you have any figures on the quantum of individuals?

Mr NAGLE: I will check with the team if I can. As employers still struggle with the on-again off-again impacts, it is already harder to return people to work and it is going to continue to be harder. It is also harder to influence treating doctors. People may be fit for work but where they do not have a job to return to, the sympathy of the treating doctor naturally goes to the injured worker. We are going to have to work very closely with them over this next period on how we can support the injured worker back. More recently we have been talking to the rehabilitation industry where the traditional model of rehabilitation that they have offered is not going to work in this environment. We started a series of discussions with them about the proactive programs we can develop between us to support people to return to work and be in the best shape mentally particularly to return to work after an extended period.

Ms BANSAL: We are still working through what the COVID impacts are for our 30 June accounts. As Mr Nagle said, the biggest impact has been on our investments. The domestic shares market as per ASX 200 dropped in excess of 30 per cent from its peak in mid-February to the end of March. That was all COVID related uncertainty. As a result our investments have also had an impact. We have had a very defensive investment strategy put into place for the nominal insurer, which has meant that the impact on our scheme has been lower than 35 per cent. We are working through what that impact is at the moment.

It is in the vicinity of more than a half a billion dollars of lost investment income compared to previous years because of the investment market movement. Furthermore, as Mr Nagle said, for our premiums we have seen lower premiums come through in this financial year and we expect that to continue to next financial year. We are also allowing for that and that is in excess of $100 million for premium income. We have also seen impacts on claims because of return to work. I will pass to Ms Uehling to cover that. Furthermore, from an expense perspective, we have worked closely with Property NSW and we have had to impair the value of our leases in line with the accounting policy because of COVID impacts and that has also hit our accounts. We are finalising all our detail for our 30 June 2020 accounts.

Ms UEHLING: EML has been reporting to us since COVID commenced that there is about a 10 per cent drop in the availability of suitable duties with employers and also that there has been a delay or, as Mr Nagle pointed out, the doctors are talking about less full capacity for work to the tune of about 8 per cent. EML has been reporting that to us since the beginning of COVID in about March. That is having or will have an impact on our return-to-work rates in the fullness of time.

Ms BANSAL: We are also working with our scheme actuaries to see if we need an additional risk margin that we would look at 30 June to allow for the uncertainty around COVID. That would be in addition to the risk margin that we held as at 31 May or 30 December last year.

The Hon. DANIEL MOOKHEY: Firstly, Mr Nagle, I thank you for your appearance and the appearances of your respected officials. As we have done with the other witnesses, do you mind tabling your opening statement for the Committee?

Mr NAGLE: I am happy to do that.

The Hon. DANIEL MOOKHEY: Mr Nagle, what were you paid last year and what was your bonus last year?

Mr NAGLE: As we have expressed previously I do not have that information in front of me. I am happy to take on notice.

The Hon. DANIEL MOOKHEY: You do not know how much you were paid last year?

Mr NAGLE: I know broadly how much I was paid last year but I would much rather take it on notice and give you the full details of the package.

Mr DAVID SHOEBRIDGE: Mr Nagle, that is disingenuous.

The CHAIR: Mr Shoebridge, this is not a good start.

Mr DAVID SHOEBRIDGE: I agree 100 per cent.

The CHAIR: No, please. Mr Nagle has answered the question. We will to continue this Committee with respect and professionalism. Mr Nagle has answered the question and he is entitled to take the question on notice. I do not need commentary from Mr Shoebridge or any other member about the answers that are given.

The Hon. ANTHONY D'ADAM: Point of order: Mr Nagle is not entitled to take the question on notice. It is an option at the discretion of the Committee.

The Hon. SCOTT FARLOW: If he does not have the information with him, which he says he does not.

The CHAIR: Mr Nagle has answered the question. I ask Mr Shoebridge to not interject.

The Hon. DANIEL MOOKHEY: Ms Uehling, were you paid a bonus and do you know what your remuneration is?

Ms UEHLING: I am afraid I am going to have to take that on notice as well.

The Hon. DANIEL MOOKHEY: Mr Ziolkowski, you are a group executive, are you not?

Mr ZIOLKOWSKI: I am.

The Hon. DANIEL MOOKHEY: Do you know what your remuneration is?

Mr ZIOLKOWSKI: I would prefer to take that on notice and provide you with the appropriate details.

The Hon. DANIEL MOOKHEY: Are Ms Bansal or Mr Liu group executives?

Ms BANSAL: Yes, I am a group executive.

The Hon. DANIEL MOOKHEY: Do you know your remuneration, Ms Bansal?

Ms BANSAL: I also would like to take that on notice to provide you detailed information.

The Hon. DANIEL MOOKHEY: Can I be clear, Mr Nagle, to be fair, in preparation for a hearing before the Parliament under oath in which you have been given more than enough notice that we would be asking questions about your remuneration, neither of your group executives, none of you came prepared with that information? Given that we have 90 minutes, is it possible that perhaps before this hearing is complete you could obtain that information?

Mr NAGLE: We could make inquiries.

The Hon. DANIEL MOOKHEY: Thank you, Mr Nagle.

Mr DAVID SHOEBRIDGE: Did you want to add something about this, Mr Nagle?

Mr NAGLE: Just to remind the Committee that our salaries—whilst we are not part of the group salary continuance—are set in alignment with the bandings of the public service.

Mr DAVID SHOEBRIDGE: Sorry, Mr Nagle, can I put this to you: We had the chief executive officer from SIRA in here. Her entire remuneration package is $420,000 per annum. She runs all of SIRA. You have seven members of your executive who all receive more than $475,000 per annum on an average remuneration of $660,000. How can you say that your remuneration is commensurate with that of the public sector? It is plainly not.

The Hon. SCOTT FARLOW: That was not what he said.

The Hon. DANIEL MOOKHEY: You are paid more than the secretary of the department of premier—

The CHAIR: No, sorry. Mr Shoebridge has asked a question.

The Hon. SCOTT FARLOW: I will respect it.

The CHAIR: Thank you.

Mr DAVID SHOEBRIDGE: How can you say that?

Mr NAGLE: That is why we would like to provide the detail on notice so that you actually have the breakdown of our remuneration. Our remuneration is set in line with the public service, right, in terms of our basic salary. Everyone at this table representing icare takes a significant salary reduction to work at icare. All of us could work and receive substantially more in the commercial sector. We have chosen to be here, chosen to accept the salary that is on offer and the terms that are on offer.

Mr DAVID SHOEBRIDGE: You see, Mr Nagle, the answer you are giving now about relating your pay to the public service is at odds with the answer that you gave on notice to a question asked on the parliamentary record where you said, "Icare has invested in attracting staff with the right capabilities and diverse experience from across insurance, financial services, customer service, medical and allied health and other areas of the private sector. Icare recognises that to be a competitive employer it must offer competitive remuneration. Fixed remuneration is generally aligned to the middle of the market and variable remuneration is generally below market according to the widely used Aon remuneration reports." You are fixing your salaries not against the public service, as you just sought to say in your answer earlier; you are fixing your salaries against the private market. That is what you told Parliament.

Mr NAGLE: That is correct.

The Hon. DANIEL MOOKHEY: So which is it then?

Mr NAGLE: But that does not mean to say that they are not in a line with the upper bands of the public service.

The Hon. DANIEL MOOKHEY: The upper bands of the public service sees the Secretary of NSW Treasury get paid $599,000, sees the Secretary of the Department of Premier and Cabinet get paid $599,000, sees the police commissioner incidentally get about there. Your base salary is $50,000 above their maximum salary and you get a bonus. And you do not have the information with you here. Are you seriously suggesting that your remuneration is in line with the top bands of the public service? Would you like to revisit your answer, sir?

Mr NAGLE: I do not believe so. As I mentioned, I am happy to provide the details on notice. The reality is we are in a competitive market to attract talent in icare.

The Hon. DANIEL MOOKHEY: Okay. Your remuneration, sir—

Mr NAGLE: We set our remuneration in alignment with the dictates of the public service. Our board review that. They review what is available in the open market and they make a determination about what the available offer is. So wherever possible we try to align our salaries with the expectation of the community and the public service. Having said that, because we are in a competitive position for talent, we have made arrangements where we have a bonus pool available.

The Hon. DANIEL MOOKHEY: Sure.

Mr DAVID SHOEBRIDGE: Mr Nagle, can we be clear that you got a bonus last year?

Mr NAGLE: You can be.

Mr DAVID SHOEBRIDGE: So that is not in dispute that you got a bonus last year.

Mr NAGLE: No.

Mr DAVID SHOEBRIDGE: Did every one of your senior executive team, your band 4 team, get a bonus last year?

Mr NAGLE: I would have to check those figures.

Mr DAVID SHOEBRIDGE: Mr Nagle, how could you get a bonus in circumstances where probably the key metric that is used to test the performance of your organisation, the return to work metric, had collapsed in the same year you got a bonus? How do you square that circle?

Mr NAGLE: At the start of every year the board and the executive sit down and look at what are the objectives of the organisation. We run a $38 billion company. It is the same size as an ASX 50 company. The nominal insurer, return to work, the funding ratio are just part of our activities and duties. So the board takes a holistic view of all of our activities across the year and then remuneration is adjusted based on our performance against that scorecard. And on some of those areas we have not performed and on other areas we have outperformed.

The Hon. DANIEL MOOKHEY: Mr Nagle, when you say "the board", to be clear, we are talking about, I presume, the remuneration committee—is that correct?

Mr NAGLE: That is correct. Well, the remuneration committee makes recommendations to the board.

The Hon. DANIEL MOOKHEY: And you are a member of the remuneration committee, are you not?

Mr NAGLE: I am.

The Hon. DANIEL MOOKHEY: And I can only presume that you absented yourself from all meetings of the remuneration committee when your remuneration was being discussed.

Mr NAGLE: When remuneration is discussed I discuss the remuneration of my direct reports and across the organisation.

The Hon. DANIEL MOOKHEY: That is not my question, Mr Nagle.

Mr NAGLE: My own remuneration is handled directly by the board.

The Hon. DANIEL MOOKHEY: So is your remuneration discussed at the remuneration committee or the board?

Mr NAGLE: At the board.

The Hon. DANIEL MOOKHEY: And you are on the board too.

Mr NAGLE: And I am not present when that is discussed.

The Hon. DANIEL MOOKHEY: And you have absented yourself from all discussions.

Mr NAGLE: That is correct.

The Hon. DANIEL MOOKHEY: Does the public sector wage freeze that the Treasurer announced that applies to every government agency apply to icare?

Mr NAGLE: We are waiting for the determination from the Government at the moment. So we have advised all staff, executives and award staff, that until that is determined we cannot make any announcement around potential salary increase or a potential freeze.

The Hon. DANIEL MOOKHEY: Can I first be clear on the last question in terms of your remuneration: Your annual reports say 10 per cent of your remuneration is tied to net promoter scores—is that correct?

Mr NAGLE: That is correct.

Mr DAVID SHOEBRIDGE: Mr Nagle, I also asked some questions on the parliamentary record about Capgemini and the contract with Capgemini. I asked if the contract between icare and Capgemini was available on the public record. The answer I got was that the contract forms part of the GIPAA remediation program, which is currently underway. What does that mean?

Mr NAGLE: As you are aware, we ran into a scenario where we had not declared a number of historical contracts. This was picked up by the Audit Office and we started our remediation program to review those records and make sure that they were disclosed in accordance with the GIPAA.

Mr DAVID SHOEBRIDGE: Is it now publicly available? Do you now have a copy of the Capgemini contract available on the public record?

Mr NAGLE: I would have to look that up. I know that we have recently disclosed about 300 current and historical records. We have disclosed the existence of the Capgemini contract in our annual report some time ago.

Mr DAVID SHOEBRIDGE: Well, you had to disclose the existence of it because you have now paid more than $360 million under that contract, is that not right?

Mr NAGLE: That could be a number around that, yes. Well, sorry—to Capgemini, no. For the build of our system we have paid that amount.

Mr DAVID SHOEBRIDGE: More than $360 million.

Mr NAGLE: There is a combination of the licensing, the build of the system and then the transformation program that went with it.

Mr DAVID SHOEBRIDGE: Is it true that the initial tender value was between $110 million and $140 million?

Mr NAGLE: For the build of the system?

Mr DAVID SHOEBRIDGE: For the entire project.

Mr NAGLE: No.

Mr DAVID SHOEBRIDGE: So it was between $110 million and $140 million for the build of the system.

Mr NAGLE: Correct.

Mr DAVID SHOEBRIDGE: And what was the total of the initial tender?

The Hon. DANIEL MOOKHEY: The initial project budget perhaps.

Mr DAVID SHOEBRIDGE: Was it anywhere near $360 million?

Mr NAGLE: I would have to take the exact number on notice but my understanding or my recollection is it was about $260 million—that was for the licence and the build. The transformation was on top.

Mr DAVID SHOEBRIDGE: Have any of the tender documents now been put out on the public record? Are they part of the GIPAA remediation program as well, the actual tender documents?

Mr NAGLE: I do not believe so. I do not think we have ever been asked to submit those.

The Hon. DANIEL MOOKHEY: What do you mean by "not asked"? You have a legal requirement under the Act to publish. No-one is meant to ask you to publish. You are meant to publish when contracts reach or are above a certain value. So who are you waiting to ask you to publish these contracts?

Mr NAGLE: It may be my misunderstanding of it. If the requirement is there as part of the remediation we would have put the documents up.

The Hon. DANIEL MOOKHEY: The requirement is, sir, under the government information Act all contracts over $250,000 have to be published. So it is not like you have discretion in this matter. You are required to publish them.

Mr NAGLE: In which case we will publish them, if we have not already.

The Hon. DANIEL MOOKHEY: But they are meant to be published within 45 days of you entering them.

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: We are now years after this.

Mr DAVID SHOEBRIDGE: Five years and 20 days.

The Hon. DANIEL MOOKHEY: You were put on notice about this at estimates. We heard from the Information Commissioner that she had launched an investigation into your practices. It is now five or six months after. This is a project which, on any way you cut it, has gone from $140 million or $250 million to $360 million and you are sitting here saying that you have not published the contracts yet. Can you give us an explanation why not?

Mr NAGLE: The remediation program has been working through all our historical programs. Ms Bansal has been heading that program for us.

Mr DAVID SHOEBRIDGE: Could I ask you about the tender—

The Hon. TREVOR KHAN: Sorry, I think there might be some—

The Hon. DANIEL MOOKHEY: The questions are to Mr Nagle.

Mr DAVID SHOEBRIDGE: Oh, no, I do not mind if Ms Bansal has some more information about this contract.

Ms BANSAL: The GIPAA remediation program that you spoke about, Mr Shoebridge, is a high priority of ours and we have, as Mr Nagle said, over the last few months published in excess of 300 contracts as part of our GIPAA remediation. We have a handful of contracts that are remaining which we will be finalising in the coming weeks. We have been publishing our contracts now within the 45 day requirement. So, Mr Mookhey, your comments around publishing them on the NSW Procurement website, that is what this remediation program has been focusing on.

The Hon. DANIEL MOOKHEY: But, Ms Bansal, I check that database quite regularly and I see that a lot of contracts that you published in February have now gone. They have disappeared from the platform.

Ms BANSAL: I understand that is the NSW Procurement. So once we publish them they stay on that website for a period of time. I would have to take on notice how long they stay on that website for. We provide that information for upload and NSW Procurement manages that website.

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

Ms BANSAL: Yes, sure.

Mr DAVID SHOEBRIDGE: Mr Nagle, you would accept that a $260 million tender for the kind of transformational information technology work that the Capgemini and Guidewire team eventually delivered is a complex tender, isn't it?

Mr NAGLE: It is, yes.

Mr DAVID SHOEBRIDGE: And in order to assess a complex tender, you need time, you need deliberation, you may even need to—if you want to tender for something like that, somebody may need to ask your organisation questions about it. Do you agree?

Mr NAGLE: Correct.

Mr DAVID SHOEBRIDGE: So, Mr Nagle, how is it that the tender was put out on 10 July 2015 and responses closed on 17 July 2015—just a week later? How is it that that happened?

Mr NAGLE: That was a request for pricing.

The Hon. DANIEL MOOKHEY: Sorry, could you repeat that?

Mr NAGLE: We had already gone through an extensive period of consultation across the industry. We had also gone through a request for tender, where we had a number of parties file for consideration and they put out their systems to see whether they met the requirements. That then narrowed down the field quite considerably, so that the final piece we were looking for was the actual pricing.

Mr DAVID SHOEBRIDGE: Sorry, a contract and a tender as large and complex as a $260 million contract, you required a seven day turnaround on the pricing?

Mr NAGLE: Following all the prior discussion, yes.

Mr DAVID SHOEBRIDGE: Were the prior discussions a tender process or was it some sort of informal sounding out?

Mr NAGLE: It was a tender process. From the tender process a short list was drawn up, discussions were had with a number of parties about their system and processes and what we could expect, and then we called for final prices.

Mr DAVID SHOEBRIDGE: So when do you say the tender process started, Mr Nagle?

Mr NAGLE: I would have to take that on notice. I know that October 2015 was when we took most of the information we had already garnered on what was available to our board.

Mr DAVID SHOEBRIDGE: Well, you see, Mr Nagle, the information that I have is, is that icare put out a tender for the provision, implementation and support of an insurance platform—and I will give you the actual number that you have—RFT ID Nominal Insurer/461666/2015. That was the tender that went out on 10 July and responses were due back on 17 July. That, in fact, was the tender process, was it not, Mr Nagle? A one-week tender process for a $260 million project.

Mr NAGLE: For the pricing. Look, I would have to go back five years ago—quite a bit of detail that I would have to look into. I am happy to provide information.

Mr DAVID SHOEBRIDGE: Was the board not presented, in the weeks before that one-week tender went out, a summary and a feasibility case, which included material that had the Capgemini logo on it? That was provided to the board before they won the tender, was not it?

Mr NAGLE: I would have to take that on notice, but that is possible.

The Hon. DANIEL MOOKHEY: How many other companies did you approach in this pre-tender—I will describe it as a "pre-tender"?

Mr NAGLE: From memory, we had nine or 11 responses.

The Hon. DANIEL MOOKHEY: How did you solicit those responses?

Mr NAGLE: Based on the requirements of the tender.

The Hon. DANIEL MOOKHEY: No, this was before the formal tender that Mr Shoebridge issued in point in time. You say there are 11. On notice, are you able to provide us the 11 other people who participated in this prior to 10 July?

Mr NAGLE: I am very happy to take that on notice and provide that detail.

The Hon. DANIEL MOOKHEY: Great. Was the Capgemini contract that Mr Shoebridge just referred to ever subjected to any internal compliance review or check by icare after you issued it?

Mr NAGLE: Not that I am aware of, no.

The Hon. DANIEL MOOKHEY: Was it examined by your chief risk officer in any way at any point in time, ever?

Mr NAGLE: Possibly as part of his duties it could have been.

Mr DAVID SHOEBRIDGE: Mr Nagle, at the time this was happening—at the time the $260 million contract was being awarded—did you know any of the key players in Capgemini? Had you worked with them previously?

Mr NAGLE: No.

Mr DAVID SHOEBRIDGE: Had Mr Bhatia? Did Mr Bhatia know any of them or worked with them previously?

Mr NAGLE: You would have to ask Mr Bhatia.

Mr DAVID SHOEBRIDGE: Were you aware of whether or not there was any friendship between the two?

Mr NAGLE: I cannot answer that question. You asking a very subjective question, there. Mr Bhatia is a very well-respected member in the Indian business community.

The Hon. DANIEL MOOKHEY: Well, the Australian business community, to be fair.

Mr NAGLE: Sorry?

The Hon. DANIEL MOOKHEY: The Australian business community.

Mr NAGLE: The Australian business community. On that basis, he knows a lot of people across that business community.

Mr DAVID SHOEBRIDGE: Well, you see, I tried to get some answers on this on the parliamentary record. I asked if there were any conflict notices placed on the record at icare regarding cap Gemini and, if so, by whom. The answer I got was, "All members of the selection panel completed conflict of interest undertakings." Were there any conflicts of interest placed on the record regarding Capgemini?

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

The Hon. DANIEL MOOKHEY: Were you on the selection panel?

Mr NAGLE: Yes, I was

The Hon. DANIEL MOOKHEY: Did you put a declaration in?

Mr NAGLE: I would have.

The Hon. DANIEL MOOKHEY: Was this all tabled at a meeting of the selection panel?

Mr NAGLE: The standard practice in any of those large tenders is that anyone who is on the selection panel goes through a format with the probity advisor where they list any conflicts as they go forward. So, if anyone had a conflict it would have been noted by the probity advisor at the time.

Mr DAVID SHOEBRIDGE: Mr Nagle, how do you explain a more than $100 million blowout in the contract with Capgemini and Guidewire, so that it is now more than $360 million going to that?

Mr NAGLE: As I have explained a number of times, there is no blowout. The additional money is a transformation cost. When you are building a large program like this you have a number of factors. Firstly, you have the system itself—that is, either you are buying it directly or you are buying the licence to operate the system. Then you engage someone to actually build the system to your requirements as you go forward. Then, having got the licences and built the system, you have to operationalise it. That operationalising is a transformation in most organisations. It certainly was for icare. The reality is, prior to that, we had up to five different agents with five different systems, we had inconsistent data, inconsistent behaviours and so building our single platform enabled us to undertake a number of the transformations that we have subsequently rolled out.

It saved us approximately $110 million in our underwriting activities by bringing the underwriting and the control of the customer's policy in-house. We also discovered about $90 million of leakage and premium. We then carried on from there and built the claims system. The claims system is starting to generate significant scale

benefits for us across our operating environment. You cannot do all of that and not invest in significant change activity at the same time—so the build and the licensing of the system is distinct to the operation transformation—they are quite different things.

Mr DAVID SHOEBRIDGE: Mr Nagle, while this contract was going from an initial tender price of $260 million to now $360 million or more, is it true that you flew to Las Vegas and attended a conference run by Guidewire, which was the software company that was one of the beneficiaries of this tender?

Mr NAGLE: In October 2018 I was invited to be a keynote speaker at the Guidewire annual conference, yes.

The Hon. DANIEL MOOKHEY: Can I ask, sir, who paid for your travel?

Mr NAGLE: Guidewire.

The Hon. DANIEL MOOKHEY: So Guidewire sponsored you to travel to Vegas?

Mr NAGLE: That is right.

The Hon. DANIEL MOOKHEY: How much was the cost of the trip?

Mr NAGLE: I am not certain.

The Hon. DANIEL MOOKHEY: Just to be clear—you have answered the question, so thank you. You went there in October 2018 to be a keynote speaker at their conference in Las Vegas, but in May, or that year, or earlier—at least when you were the interim CEO—you appeared, as did a lot of your group executives, in an endorsement video for Guidewire. So months before they fly you to Vegas, you appeared in a video endorsing their product. Did you get the permission of your board to endorse their product?

Mr NAGLE: I would have to take that particular point on notice.

The Hon. DANIEL MOOKHEY: Because no other public servant is able to endorse a commercial product. I accept that you are in a slightly different category, but it is unheard of that we would have an executive team at an agency like yours endorsing a private product and then four months later you are flown by the same people to Vegas to speak at a conference. Does that raise any concerns with you?

Mr NAGLE: No, it does not. I think what you are trying to drive at is flimsy at best. The reality is, Guidewire is the leading platform in this environment.

The Hon. DANIEL MOOKHEY: Sure, I am not disputing that.

Mr NAGLE: There are 260 instances of it around the world. On the basis that we had selected it—

The Hon. DANIEL MOOKHEY: Just to be clear, you say that—

The Hon. TREVOR KHAN: Point of order: Apart from issues of fairness, there is another issue of fairness. Hansard has to be able to take this down and we all have to read it.

The Hon. DANIEL MOOKHEY: I take your point, Mr Khan. I will let Mr Nagle complete.

Mr NAGLE: On the basis of selecting the system at a later date, because we were one of the first insurers, and certainly in workers compensation, to go into what they call their cloud environment. Guidewire approached us and asked us whether we could give commentary on their cloud environment and the use of their system. What we endorsed was our encouragement of the cloud because it gave us great security as we went forward, and that has actually proven to be even more valuable to us through this COVID period. In terms of appearing as a guest speaker, that is almost a normal scenario at any given time where you have a key relationship, and they are a key relationship. It was our opportunity to participate in their strategy, give our feedback as a customer on what has worked for us and what has not worked for us and also have a direct impact on where they were looking to design their product for the future.

The Hon. DANIEL MOOKHEY: I understand your explanation. Can I table this and provide it to the witness please?

The CHAIR: Could you provide some clue?

The Hon. DANIEL MOOKHEY: I am happy to provide some commentary. It is an excerpt from the icare's annual report that year. I will provide it in a minute. In this it discloses that two officials travelled to Las Vegas to represent icare at the Guidewire Connections conference, that is T. Abbott and T. Moore. You were at the same conference. You are not on the annual report. Under law you are required to disclose your international

travel. Why are you not in this? Why have you been left out of the annual report and two other officials have been starred as attending the Guidewire conference?

Mr NAGLE: I would have to take that on notice. I am not 100 per cent certain.

Mr DAVID SHOEBRIDGE: It just needs to be given to the witness.

The Hon. DANIEL MOOKHEY: You are aware that your annual report requires disclosures of all your international travel?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: Ms Uehling has a trip there disclosed in that year. Two other of your officials, were they paid for by Guidewire or paid for by icare?

Mr NAGLE: They were paid for by icare.

The Hon. DANIEL MOOKHEY: Is the reason why your travel is not disclosed on that annual report because yours was paid by Guidewire?

Mr NAGLE: Possibly. I would have to check what the requirement was.

The Hon. DANIEL MOOKHEY: Can I give you an opportunity to perhaps revise your answer now. Do you think that if this is not improper that at least it creates the perception of impropriety that a leader of a public sector agency endorses a commercial product months before they are then flown to Vegas to speak at a conference and none of that is disclosed in the annual report, notwithstanding the fact that there is an argument to say at least you have a legal obligation to do so? Do you not think that perhaps creates the impression of impropriety, if not impropriety?

Mr NAGLE: I do not believe it is improper at all. I can understand a perception argument, but I find that quite weak as well.

Mr DAVID SHOEBRIDGE: Mr Nagle, can you explain why you did not disclose the fact that you received a substantial financial benefit in terms of, I assume first-class tickets? Were they first-class tickets?

Mr NAGLE: No.

The Hon. DANIEL MOOKHEY: Business?

Mr DAVID SHOEBRIDGE: Business-class tickets?

Mr NAGLE: Business class.

Mr DAVID SHOEBRIDGE: Hotel accommodation. Did they pay any expenses for you, Mr Nagle?

Mr NAGLE: Did not pay any expenses for me, no.

Mr DAVID SHOEBRIDGE: You have business-class tickets, accommodation in Vegas, all given to you because you are the CEO of a public entity. Why did you not disclose that, and why are we finding out about it only now in a parliamentary inquiry? Why did you not disclose it?

Mr NAGLE: I am happy to take that on notice. It would have been on advice that was given at the time.

The Hon. DANIEL MOOKHEY: From whom, sir?

Mr NAGLE: The reality is I received no direct benefit from that. Preparing for a 40-minute speech in front of 2½ thousand people is not a lot of fun. In terms of presenting the icare vision, the icare direction and our need for Guidewire to keep building in a strategic direction that was useful to us is part of my duties.

The Hon. DANIEL MOOKHEY: Were you the only person paid for by Guidewire to go to this conference from—

Mr NAGLE: I would have to take that on notice as well, but I believe so.

The Hon. DANIEL MOOKHEY: You believe so?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: Did you disclose this to your board?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: And your board endorsed this decision?

Mr NAGLE: Correct.

Mr DAVID SHOEBRIDGE: Mr Nagle, I will put the whole picture to you, which I believe is deeply concerning. There is a seven-day tender process for a $260 million contract, which Capgemini and Guidewire win in July 2015. You commercially endorse them in May of 2018.

The Hon. DANIEL MOOKHEY: Thereabouts.

Mr DAVID SHOEBRIDGE: You receive a paid return trip to Las Vegas from Guidewire towards the end of 2018, which you do not disclose, and the overall contract for that particular tender has now come to some $360 million or more in 2020. Do you not see a problem with that package of material? You do not see a problem with that?

Mr NAGLE: I see quite a significant problem with the way you described it. The reality is, as I have said, the $360 million included $100 million of transformation costs. The Guidewire portion is the licensing fee, which is about $30 million over a three-year period, or $35 million over a three-year period. So they do not get the whole $260 million, and never have been. The reality is the understanding of this is quite complex and, as we have said, happy to take it on notice and give you more detail. The scenario around the flight and any declaration I would have to take on notice to understand what the advice I received at the time.

Mr DAVID SHOEBRIDGE: On what basis did the contract go from a $260 million contract, which was the seven-day tender, to a $360 million? How was the extra $100 million in transformational projects determined and awarded?

Mr NAGLE: Again, you are conflating issues. The transformation project is our internal costs and it is the costs of other advisers we have brought in around change management, around training, around other programs who support the move to a single platform. We have explained a number of times now, both here and at prior hearings, that that $360 million is a large transformation program of which component parts are built into licensing, build, and then the change element. You prefer to refer to it as a $360 million contract. Once again, it is not a $360 million contract and never has been.

Mr DAVID SHOEBRIDGE: Perhaps you can give us the exact payments on notice, Mr Nagle.

Mr NAGLE: Happy to do so.

The Hon. DANIEL MOOKHEY: Perhaps on notice can you table the written advice that you received about your trip to Vegas and the disclosure that you made to the board and the board's minutes approving your decision?

Mr NAGLE: I never said that we received written advice. I said I would have taken advice. I would have to check what form that advice took.

The Hon. DANIEL MOOKHEY: You are saying here right now no written advice was provided to you?

Mr NAGLE: No, I am not saying that. I am saying I need to check.

The CHAIR: The Opposition and crossbench time has expired. I now pass to Mr Farlow for the Government.

The Hon. SCOTT FARLOW: I turn now to another tender issue which has been raised today. Suncorp were before the inquiry before with respect to the 2017 tender process where, of course, there was the emergence of a sole operator in EML that was awarded. We have heard from Suncorp earlier today that they had no understanding that the tender was looking for a sole provider. Could you explain perhaps what advice was provided to all tenderers and what was the detailed process that related to that tender process?

Mr NAGLE: I can provide the initial advice and then I might pass to Ms Uehling on that. All people who participated in the tender were asked to provide pricing on a hundred per cent, 50 per cent, or their nominated preference. Very disingenuous of Suncorp to say they were not aware that there was a possibility of a hundred per cent.

The Hon. SCOTT FARLOW: That was an explicit requirement in that tender?

Mr NAGLE: That was an explicit requirement, and they actually tendered on that basis. They were the second highest priced behind EML for a hundred—

The Hon. SCOTT FARLOW: Suncorp put in a tender for a hundred per cent?

Mr NAGLE: Absolutely, they responded to that. In various discussions leading up to the tender we had discussed with all scheme agents that we were looking to make a significant change and that that ranged from bringing the scheme in-house, potentially, taking it on ourselves, to combinations of maybe going to one agent. There were no issues that we would not look at in the tender process, and we structured the tender to give us the ultimate flexibility about how we could reorganise the portfolio. And the outcome of the tender is that we still had three scheme agents at the end of it. We had EML as what we call the new model leader, where they would help us set up the new model.

GIO undertook a contract where we consolidated what we call the tail claims—claims that were coming from QBE and CGU, who were not successful, and Allianz. I think over the last three years they have been paid close to $400 million for those services, which is not an insubstantial amount. Allianz agreed to stay on and support some of our larger customers and to undertake a trial for us of what we call the authorised provider model. They piloted that concept with us quite extensively. Ms Uehling, do you have any other detail?

Ms UEHLING: I can add some more detail on the tender process, if you would like. It was undertaken as a normal tender process. All questions fielded by icare were then distributed back out to all of the participants. There were information sessions held with all scheme agents, so that they could all hear each other's questions and hear the response, and there was an external probity advisor appointed to oversee the process from Procure.

The Hon. SCOTT FARLOW: With respect, Suncorp outlined to the Committee that it did not receive adequate feedback in terms of its tender. What sort of feedback was provided to tenderers throughout the process? Was a formal response provided to them, or an informal briefing session?

Mr NAGLE: There was an extensive debriefing session provided to all tenderers. I had personal conversations with them one on one, because I knew they were very disappointed. Ms Uehling and the team that we had running the tender gave them very specific feedback on why they were not successful and where they were not successful. We then were involved in significant negotiations with them on the cost of bringing the tail together. Their original pricing for that was even more substantial than we looked at. We then had working groups and project groups where we looked at how we would actually go about consolidating the tail together. So across the scheme we moved 300,000 files and the attendant data. We moved over 40,000 open claims at that time to GIO. We were involved in extensive discussions with them about, at the time of moving, how we wanted injured workers to be treated—understanding the impact of moving them from one case manager to a new case manager, who was going to have to come up to speed on the individual. We did an exhaustive program on that with them. So I am frankly just amazed that GIO could make any comment like that.

Ms UEHLING: It is my understanding they have been given absolute feedback on it. I am more than happy to unfold that with them again if they would like. I was surprised by the comments myself.

The CHAIR: I just want to clarify: The feedback that was provided to Suncorp and also the other providers who were unsuccessful—was any formal written feedback given, or was it all verbal?

Mr NAGLE: No, there would have been a formal response.

The CHAIR: Which went into detail as to why they were unsuccessful?

Mr NAGLE: I would have to look up the exact detail. Effectively, each tenderer applied slightly differently, based on their own likes.

The CHAIR: Another question that came out of this morning was about the tail, which, in effect, Suncorp has taken on. What was the plan from EML, which was successful tenderer, should a company like Suncorp not have taken it on? Did EML have a plan in place to take those more complex cases? Did it have the capacity?

Mr NAGLE: As part of the outcomes, we spoke to all of the individual organisations and the opportunity to undertake the tail was a possibility with other organisations. We had some initial conversations with QBE. We did not have those conversations with Allianz, because their pricing was far in excess of anybody else's. We also considered bringing that tail in-house and running it ourselves. But in the end GIO had an interest in undertaking the tail work, as we call it, and it was a reasonably simple process to work with them on that. In terms of their expertise in moving data and their expertise and size, we were comfortable that they could undertake the work.

The CHAIR: So it was not part of the tender itself; it was a separate component which you either would have brought in-house or given to another—

Mr NAGLE: Provision for discussion around tail arrangements was part of the tender.

The Hon. TREVOR KHAN: Provision for the tail work was part of the tender. But is it correct that if an organisation such as Suncorp was unsuccessful in this, it could have, essentially, walked away in what I take

to be a few months or nine or ten months from the scheme? I am just trying to work out how you were going to, potentially, transition in the worst-case scenario after the announcement that you were going to the one scheme agent model.

Mr NAGLE: Ms Uehling may have some more detail on what the contingency plans were. But leading up to the tender, we had had lots of discussions across all of the industry. As I say—

The Hon. TREVOR KHAN: No, we have moved on from discussions. I am interested in what your contingency plans were in the event that each of, I think, the four scheme agents said, "Well, it's not worth our while now. We'll head off and look after car insurance," for instance.

Mr NAGLE: I think, as I mentioned, GIO has obtained $400 million over the three years. That is at no—

The Hon. TREVOR KHAN: Mr Nagle, I hear what you say. I am asking about what your contingency plans were. I am not here to have a go at you, but it is a simple question. What were your contingency plans in the event that the others said, "We're no longer interested"?

Mr NAGLE: The final option would be to do it ourselves or to award that to EML in addition.

The Hon. TREVOR KHAN: How many claims officers had you reckoned you would have needed to bring it in-house?

Mr NAGLE: We estimated somewhere around 180 to 220, from memory.

Ms UEHLING: Total number of claims officers would have—

Mr NAGLE: If we moved the tail in-house.

Ms UEHLING: Just the tail? I would have to take that on notice to look at it, but we did do that calculation.

The CHAIR: I think Suncorp said it had brought in 400 to manage that tail.

Ms UEHLING: That is more in line with my thinking, or my recollection.

The Hon. ANTHONY D'ADAM: Earlier, Mr Nagle, you said that GIO had an interest but you did not elaborate. Could you elaborate on what that interest was that GIO had in taking on the tail?

Mr NAGLE: Yes. As I mentioned, when we were looking at the tender, everybody had the opportunity to put in pricing based on what segments of the portfolio they were interested in. From memory—and I have to double-check—GIO expressed an interest in taking on the tail.

The Hon. ANTHONY D'ADAM: Do you know why?

Mr NAGLE: It is quite lucrative: $400 million over three years.

The Hon. TREVOR KHAN: Are you saying that it was posited to Suncorp—because it puts your evidence in direct contradiction of Mr McHugh—that they were being invited to contemplate taking on the tail, that is, there being one appointed and them having, in a sense, that discrete component of tail? That was a matter involved in the tender process?

Mr NAGLE: Again, I would have to double-check the tender documents. But everyone who was asked was given the option to express an interest of whether they wanted to be involved in the tender or not.

The Hon. TREVOR KHAN: Yes, that is right.

Mr NAGLE: And GIO—

The Hon. TREVOR KHAN: They were given various scenarios.

Mr NAGLE: That is right.

The Hon. TREVOR KHAN: Let us say 25 per cent, 50 per cent, 100 per cent. Yes? That is not taking on the tail, Mr Nagle.

Mr NAGLE: No—

The Hon. TREVOR KHAN: That is not taking on the tail, because at the time when they were tendering, somebody like Suncorp already had a percentage of the market. That is different, with respect, from the evidence that we received from Mr McHugh that the discussions about the tail arose post the discussion that occurred in your office and in the context of various of the insurers pulling the pin. In all fairness to you, you have

said Mr McHugh's evidence was disingenuous. If you are saying Mr McHugh's evidence was disingenuous, I want to be clear what your evidence is on this point.

Mr NAGLE: I am happy to submit the tender documents. It is quite clearly—

The Hon. TREVOR KHAN: Mr Nagle, I am not asking about the tender documents. What I am asking about is your proposition that the negotiation about the tail was part of the tender process and not a post-discussion.

Mr NAGLE: The opportunity to participate in the tail was part of the tender. Following the results of the tender, we then had discussions with GIO about how to bring that tail together.

The CHAIR: Can we be clear, then: The tender was awarded. The tail was part of the tender. Who was awarded the tail when the tender was awarded? At the time the tender was awarded, who was given the tail at that time?

Mr NAGLE: Once we made the decision to move to EML as the primary provider we then entered into discussions with GIO about the tail, because that was the—

The CHAIR: When you said earlier that the tail was part of the tender process, the tender was awarded to EML.

Mr NAGLE: Yes.

The CHAIR: You then had post-conversations with Suncorp/GIO about the tail. It was not part of the tender award at all, then.

Mr NAGLE: Possibly we are at cross purposes, Chair. The way the tender was structured was we were looking for go-forward services.

The CHAIR: Yes.

Mr NAGLE: On that basis, the decision was made to go forward with EML. We then had the opportunity for provision of other services as we made that change. All of the tenderers had that opportunity. All of them expressed an interest in the go-forward and in the run-off.

The Hon. SCOTT FARLOW: That was contemplated in the original tender, was it?

Mr NAGLE: That is correct.

The CHAIR: Mr McHugh's evidence was that in his debrief with you he was given two options: to exit the scheme within three months or exit the scheme within nine months; that on contemplation, going back to Suncorp, he then reapproached you and said, "How about we take on the tail?" as other insurers immediately left the scheme. Your evidence is in conflict with the evidence that Mr McHugh provided this morning. I think we need to be very clear about what each person's evidence is and what the reality was. Again I will ask you: How was it awarded and what was the timeline here? This is rather important.

Mr NAGLE: I understand, Chair, and thank you. I am happy to take it on notice. I am relying on my memory, but I am reasonably confident on that outcome. Ms Uehling, do you have any further recollection?

The Hon. TREVOR KHAN: Mr Nagle, can I put this to you? Each of the three scenarios that were dealt with in the tender involved 55 per cent to 65 per cent of new claims. If it involved 55 per cent to 65 per cent of new claims in each of the three scenarios then that is not tail.

Mr NAGLE: Correct.

The Hon. TREVOR KHAN: Again, if the three scenarios were for portions—whether it be 25 per cent, 50 per cent, 100 per cent—that is not an invitation to tender on tail.

Mr NAGLE: I think you have to look at all of the tender documents. I think it is best that I take it on notice and come back to you with the full scenario.

The Hon. GREG DONNELLY: Mr Nagle, in the tender process was there provision for an unsolicited proposition to come forward from one of the tenderers?

Mr NAGLE: From memory the provision was that negotiation on the tail was allowed for in the tender document.

The Hon. DANIEL MOOKHEY: Point of order: Chair, can I flag that we are seeking to have the witnesses remain until 5.00 p.m.?

The CHAIR: My understanding is that the secretariat has already spoken with representatives from icare and that the witnesses are able to stay until 5.00 p.m. Can I confirm that with you now?

Mr NAGLE: It is the first I have heard of it.

The CHAIR: Is it possible that you are able to stay until 5.00 p.m. today so that we can continue the questioning for another 48 minutes?

Mr NAGLE: Yes, absolutely.

The CHAIR: The Committee thanks you very much for your consideration. What we will do is we will start another 30 minutes now and then we will divide the remaining time one-third to two third.

Mr DAVID SHOEBRIDGE: Thank you, Chair. Mr Nagle, the last time we discussed this issue I asked you some questions about The Bridge International. Do you remember that?

Mr NAGLE: I do.

Mr DAVID SHOEBRIDGE: Indeed, I asked you about declarations of conflicts of interest given the substantial common involvement between the icare leadership teams, including yourself, and the members of The Bridge International. Do you remember that?

Mr NAGLE: I do.

Mr DAVID SHOEBRIDGE: I asked you whether or not a conflict of interest had been declared and you said, "Yes". Then you said:

> Part of the reason that The Bridge International were considered was because of their expertise in large-scale operationalising of the kind of model that we were looking for.

Then you said:

> So the interests between myself and others in the icare team and The Bridge International principals were declared.

Do you remember that evidence?

Mr NAGLE: I do.

Mr DAVID SHOEBRIDGE: What were the interests that you were discussing between yourself and others in the icare team and The Bridge International?

Mr NAGLE: That we knew them.

Mr DAVID SHOEBRIDGE: Well, it was not just casual. You knew them extremely well and you had worked with them for many years.

Mr NAGLE: I worked with a couple of them for some years, yes.

Mr DAVID SHOEBRIDGE: You knew them extremely well. They were friends and colleagues, correct?

Mr NAGLE: "Friends and colleagues"? They were definitely colleagues, and they are nice people.

Mr DAVID SHOEBRIDGE: You said in your evidence that the conflicts were declared. I asked for further details on that, including any conflict register. The answers we got back were that, actually, in accordance with ICAC guidelines no conflicts of interest were raised.

Mr NAGLE: That is right.

Mr DAVID SHOEBRIDGE: How is it that you accepted you had interests that should be declared, thought you had declared them, but then on a search there were no conflicts of interest declared? How did this happen?

Mr NAGLE: My understanding is when we responded we corrected the record. The scenario was that I asked the team to go back and check what my involvement in any Bridge International matter was and I had no involvement, so there was no conflict of interest.

Mr DAVID SHOEBRIDGE: I asked you about the scale of the contracts between The Bridge International and either icare or EML. You said that you were aware of only one, and that was with icare and was to the value of $50,000. Do you remember that evidence?

Mr NAGLE: I do.

Mr DAVID SHOEBRIDGE: Then I asked you to consider that on notice. We did not have any further details on notice, but then on answers to separate questions in Parliament it became apparent that The Bridge International, instead of having $50,000 in contracts, had more than $1.8 million in contracts. How did you get it so wrong?

Mr NAGLE: From my memory of our conversation, you asked me what my evidence was that I had arranged a contract directly with Bridge International, which was the contract that I was referring to. I asked them, following some of the work they had done at EML, to turn the lens that they had applied working with EML onto icare—what were the barriers and what were the issues that EML were experiencing in interacting with icare. That was the only direct involvement I had with The Bridge International and that is what my testimony was about.

Mr DAVID SHOEBRIDGE: Mr Nagle, I will read you what the record states:

> **Mr DAVID SHOEBRIDGE:** How many contracts has The Bridge International obtained without a tender to either you or icare?
>
> **Mr NAGLE:** In terms of my knowledge, only one.
>
> **Mr DAVID SHOEBRIDGE:** Was that with icare?
>
> **Mr NAGLE:** Yes, that was a $50,000 contract.

In a separate set of answers where, again, the question was how many contracts icare had with The Bridge International that were not put out to tender, the answer was seven, and not to a value of $50,000 but to a value of $1.8 million. Were you trying to avoid having that information come out when you answered my earlier questions?

Mr NAGLE: No, I do not believe so at all. I gave you the answer to the information I had available and what I was involved in. My understanding is that The Bridge International tendered for an initial contract back in November 2018 and they were partially successful in that tender. The only contract I was involved in directly with them was the one I spoke about.

Mr DAVID SHOEBRIDGE: Mr Nagle, I asked you before if icare directed EML to enter into contracts with The Bridge International so I am going to ask you again: Did icare, anyone in icare, or did you yourself direct EML either formally or informally to contract with The Bridge International?

Mr NAGLE: The only instructions we have given EML is that they needed support and they had a number of choices on the organisations they could choose. The Bridge, of course, was one of those.

The Hon. DANIEL MOOKHEY: So you had a conversation with EML in which you identified The Bridge International as being one of the companies with which they could contract, to be clear.

Mr NAGLE: I cannot recollect a conversation like that.

The Hon. DANIEL MOOKHEY: Well, how then do we interpret the answer you just gave?

Mr NAGLE: That my understanding is in the discussions, and I will pass to Ms Uehling shortly because she was more involved in the detail, but we made it very plain to EML that their performance was not meeting requirements and they needed to get or take assistance from a consulting firm. Now there are a range of firms available to them.

Mr DAVID SHOEBRIDGE: Mr Nagle—

The Hon. DANIEL MOOKHEY: When did that conversation happen, sir?

Mr NAGLE: I would not know off the top of my head.

The Hon. DANIEL MOOKHEY: Was it around the time that they entered into—had they entered into a contract with The Bridge?

Mr NAGLE: From my original recollection, this goes back to the first contract we had with Bridge, which went to tender. In 2018 we asked Bridge and I think it was PwC at the time to undertake a review of performance and Bridge were involved as part of that contract. So, Ms Uehling, do you—

Mr DAVID SHOEBRIDGE: Mr Nagle, I want to be clear. You had significant prior knowledge of and business dealings with some of the key personnel of The Bridge International and then you directed EML, via a project service order, to contract with The Bridge International. Is that what happened?

Mr NAGLE: No.

Mr DAVID SHOEBRIDGE: Did icare use a project service order?

Mr NAGLE: I believe so.

Mr DAVID SHOEBRIDGE: Which would require EML to do it, would it not—a project service order?

Mr NAGLE: No. The project service order is an agreement where we undertake to refund or fund project work that they do. Ms Uehling, are you able to what do you want to comment on that because you were in charge of it?

Mr DAVID SHOEBRIDGE: Before we go to Ms Uehling, I will put this to you, Mr Nagle: A project service order, under the project service order, EML does the contracting. The contract is with EML but all of the payments are met by icare, including the service fee to icare. Is that what happens?

Mr NAGLE: We have a variety of project service orders.

Mr DAVID SHOEBRIDGE: That is the basic model that I put to you, is it not?

Mr NAGLE: It is part of a model, yes.

The Hon. DANIEL MOOKHEY: Can I just say—

Mr DAVID SHOEBRIDGE: Mr Nagle, that enables icare to pay for contracts with The Bridge International without the contract with The Bridge International appearing on icare's books. It is disingenuous way of distancing yourself and icare from The Bridge International, is it not?

Mr NAGLE: No.

The Hon. DANIEL MOOKHEY: EML is remunerated on a costs-plus basis, is it not?

Mr NAGLE: It is, yep.

The Hon. DANIEL MOOKHEY: If you were to use a project service order as just described by my colleague Mr Shoebridge, you would issue it to EML, they went into the contract, but they would pass the cost on to icare because it is costs plus.

Mr NAGLE: If we agreed the contract.

The Hon. DANIEL MOOKHEY: Yes. Either way, it ends up back with icare being paid for it but it is not disclosed; nor would all the conflict of interest provisions that would otherwise apply be triggered if you do it through that arrangement. Is that an unfair characterisation?

Mr NAGLE: I think it is a grossly unfair characterisation. You are trying to paint a picture which I struggle to understand. We have a standalone business that is looking to improve its services. It is being told by us it needs to improve its services. It has had a range of support from PwC, Athena and I cannot even remember some of the other consulting firms that were involved. The instruction we gave them is that they needed assistance to improve their operational performance. They have a choice of organisations. They could have gone to any one of those organisations. They could have gone to someone that we had not heard of.

The only issue we would have been involved in was the work that was going to be undertaken in line with our requirements and in line with improving the outcomes as we had devolved it. At a certain point when they would have approached us and said, "This is the firm. This is the organisation. How do we fund it?", Then negotiation would have been, "Well, what are you going to fund because it's your problem versus what are we going to fund that we see as our problem?"

Mr DAVID SHOEBRIDGE: No, Mr Nagle. Icare suggested The Bridge International. That did not come from EML and you are being disingenuous when you are telling us that EML proposed The Bridge International. Icare suggested The Bridge International and you had substantial prior involvement with the senior management at The Bridge International and you did not declare it. You asked me what the problem is. That is the problem.

The Hon. TREVOR KHAN: Sorry: Was that a question?

The Hon. DANIEL MOOKHEY: We are putting that to you to respond.

Mr NAGLE: I think that is entirely wrong.

Mr DAVID SHOEBRIDGE: All right, well. What is the problem with that proposition? You said you did not understand what the problem is. I am telling you now the problem is this: substantial prior relations with key managers at The Bridge International. You do not disclose them. There are multiple contracts with The Bridge International that do not go to tender and then there is a project service order arrangement with the EML where they contract with The Bridge International, paid for by icare, and that does not appear on icare's books. That is the problem.

Mr NAGLE: Firstly and foremost, it is an EML contract. They have a choice. Secondly—

The Hon. DANIEL MOOKHEY: Just to be clear—

Mr NAGLE: —I was not involved in any of the contracting so what conflict would I have had? I keep saying, and I have made this testimony before, after 40-odd years in the industry there are not many people in senior role who I do not know or have had some involvement in. I have also worked with some of them in various organisations over the years. How far back does it go? Six years after I leave an organisation I am meant to have been chummy with all these people and come up with some arrangement. The absurdity of what you are putting I have to—you know, it is just flabbergasting and it is wrapped up in a public interest scenario. I really find it quite offensive, to be honest.

Mr DAVID SHOEBRIDGE: Well, Mr Nagle, you yourself referenced "the interests between myself and others in the icare team and The Bridge International principals". You said those interests were declared.

Mr NAGLE: That is what I thought at the time.

Mr DAVID SHOEBRIDGE: You knew there were interests and you did not declare them and you are still suggesting there is not a problem today. These are your own words, Mr Nagle.

Mr NAGLE: The interests are that I know people and in the kind of outcome that you are painting knowing someone is fatal; knowing someone is actually a bad thing; knowing someone who has got the right experience is poor; knowing someone who can deliver a good outcome is poor. So I do not understand how far and how wide you want this to go. You know, I started in the industry on 17 January 1977. I know thousands of people globally and at some point I may have knocked on some of their doors and said, "Can you help us?"

The Hon. DANIEL MOOKHEY: Yes. No-one disputes that, Mr Nagle. The question is not so much with you know them; it is whether or not you followed all the requirements that are expected of a public agency. That is the issue. If these practices took place in any other public agency the people responsible would have lost their jobs and that is what we are getting at here. No-one disputes—

The Hon. TREVOR KHAN: Sorry, is this a question?

The Hon. DANIEL MOOKHEY: Yes, it is. It is about to open up to a question. What I am asking you is this: Did you get advice at any point in time from anyone that the arrangement that you have just described was in compliance with public sector requirements—Procurement Board requirements?

Mr NAGLE: As I have told you, I was not involved in the arrangements so I did not obtain advice.

The Hon. DANIEL MOOKHEY: Okay. I will move on.

Mr DAVID SHOEBRIDGE: The final question is: Could you take on notice the number of project service orders from or between icare and EML which involved The Bridge International and how much was paid by icare under each of those, Mr Nagle?

Mr NAGLE: Happy to.

The Hon. DANIEL MOOKHEY: Can I now turn to some other matters that have arisen in respect to the GIPAA remediation project, as it is now described. Firstly, there was an earlier reference of 300 contracts that have been disclosed but we have checked. It is 180. Why is there a 120 discrepancy?

Mr NAGLE: If I could pass to Ms Bansal for that?

Ms BANSAL: Yes. In February we uploaded 170—circa 170—contracts. Since February to July we have uploaded around about 150 contracts.

The Hon. DANIEL MOOKHEY: Some were going up and some were coming down, basically, what is going on in accordance with the Procurement Board.

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: Okay. I understand that now.

Mr DAVID SHOEBRIDGE: And that is your earlier evidence, Ms Bansal, about they take them off after they have been on for a few months.

Ms BANSAL: Yes, for a specified period of time.

The Hon. DANIEL MOOKHEY: I would like to ask about some of those contracts that were reported at various points in time since February. I would like to first ask about the contract that was entered into with Internal Consulting Group to the value of $500,000, which was entered into late last year and concluded at the

start of this year. Was there any related party interests between Internal Consulting Group and any executive at icare?

Mr NAGLE: We would have to take that on notice, what the contract is.

The Hon. DANIEL MOOKHEY: To be specific, is there any relationship between Internal Consulting Group and the chief operating officer of icare, Mr Rob Craig, of any type? Be it previous associations or any other form of direct association whether pecuniary, financial, professional, previous employment, anything like that?

Mr NAGLE: I would have to take that on notice. I know he has been a consultant in his past life.

The Hon. DANIEL MOOKHEY: Company records show that someone has a beneficial interest in that company. Were there any disclosures entered into by any official of icare in relation to the Internal Consulting Group contract?

Mr NAGLE: I am happy to take that on notice and check our records.

The Hon. DANIEL MOOKHEY: Can we go to another one. I cannot see it and I would like to ask about whether or not this is to be published. It has been put to my office that a contract has been entered into with a company called Rubicon Consulting. Is there any relationship between Rubicon Consulting and any official, current or former, of icare?

Mr NAGLE: I do not know who Rubicon are, so I would have to take that on notice.

The Hon. DANIEL MOOKHEY: Is there a relationship between Darren Rock and Rubicon Consulting in any form?

Mr NAGLE: Okay. Darren Rock is a consultant to us in the business technology space and I am assuming that Rubicon is his private company.

The Hon. DANIEL MOOKHEY: Did he previously provide services to icare under Darren Rock Consulting?

Mr NAGLE: I would have to look that up.

The Hon. DANIEL MOOKHEY: Can we get some information as to what the tender process was to award Mr Rock that contract?

Mr NAGLE: Certainly.

The Hon. DANIEL MOOKHEY: Who are P&L Corporate Communications and have they provided services to icare?

Mr NAGLE: Off the top of my head I am not aware of who they are, I am happy to look into it.

The Hon. DANIEL MOOKHEY: Have they assisted icare with any of its response to media questions in the last two months?

Mr NAGLE: I would have to look that up.

The Hon. DANIEL MOOKHEY: Have they provided you with direct training as to how to appear before this Committee?

Mr NAGLE: No.

Mr DAVID SHOEBRIDGE: Has icare engaged a PR company to help with your engagement with Parliament?

Mr NAGLE: Not with our engagement with Parliament, no. We have engaged media training for most of our executives, we have done training on communications in general across most of our executive and leadership teams.

The Hon. DANIEL MOOKHEY: What is icare Support Solutions [ISS] Proprietary Limited?

Mr NAGLE: icare Support Solutions Proprietary Limited is an organisation that we set up when we awarded the new contract. It is designed to—

The Hon. DANIEL MOOKHEY: What contract?

Mr NAGLE: The new case model.

The Hon. DANIEL MOOKHEY: To EML?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: Why was icare Support Solutions established?

Mr NAGLE: It is a vehicle that allows us to transfer, at the end of the contract or through the period of the contract, if we need to transfer staff from EML to another entity or take on claims direct. Because they were under the Fair Work legislation we would have to import them into a proprietary limited company that is under Fair Work while we made other arrangements.

The Hon. DANIEL MOOKHEY: Who are the shareholders of icare Support Solutions?

Mr NAGLE: The nominal insurer.

The Hon. DANIEL MOOKHEY: Is it a company limited by guarantee? Or, is it a proprietary limited?

Mr NAGLE: It is a proprietary limited.

The Hon. DANIEL MOOKHEY: Has the existence of this company been disclosed to Treasury?

Mr NAGLE: I am sure it has because it is part of our disclosures.

The Hon. DANIEL MOOKHEY: When you say "it is part of our disclosures", which disclosures are you referring to?

Mr NAGLE: Probably in our annual accounts, I would have to look that up.

The Hon. DANIEL MOOKHEY: You see, they are not in your annual accounts, that is why am asking you the questions. We checked your annual accounts and there is no reference to icare Support Solutions Proprietary Limited in any of your annual accounts, certainly in the last three years. Why is this subsidiary of yours not listed in your annual accounts?

Mr NAGLE: Because it has no trading.

The Hon. DANIEL MOOKHEY: You said 30 seconds ago that you thought it was listed in your annual accounts and now you are saying that it is not listed in your annual accounts because it effectively does not function?

Mr NAGLE: No. My assumption is that it would have been in the annual accounts. I will pass to Ms Bansal because that is her area. The reality is that it is simply a vehicle that sits there as a contingency, it is the contracting vehicle between icare and EML. icare arranges services on behalf of the nominal insurer, icare Support Solutions is owned by the nominal insurer, it then contracts with EML for the provision of services.

The Hon. DANIEL MOOKHEY: What services does it contract for?

Mr NAGLE: For claims services.

The Hon. DANIEL MOOKHEY: Hang on.

Mr DAVID SHOEBRIDGE: Ms Bansal is going to give further information.

The CHAIR: Everyone, pause please. Mr Nagle, you indicated that Ms Bansal may wish to provide a response.

Mr NAGLE: She may have additional information.

Ms BANSAL: Unfortunately, I will have to take that on notice. I will have to look at the annual report to see what is included in there. We do look at finances of the icare Support Solutions entity and there are not substantial amounts of money in there. I can take on notice to provide more detail to the Committee.

The Hon. TREVOR KHAN: Can I just say the only thing that interests me in terms of it was one of the inferences I drew from an earlier answer was that it was doing nothing and then it was suggested that it was actually a contracting party with EML, is that right Mr Nagle?

Mr NAGLE: That is right.

The Hon. TREVOR KHAN: That would suggest it is far from inactive.

Mr NAGLE: It is inactive in a trading sense. It is a vehicle that allows us to do two things. As a pass through from the nominal insurer to EML it sits there and instructions to EML and icare and the nominal insurer pass through.

The Hon. DANIEL MOOKHEY: Who is on the board?

The Hon. TREVOR KHAN: That does not make it inactive, Mr Nagle.

Mr NAGLE: Probably a poor choice of words, I was probably thinking financially.

The Hon. TREVOR KHAN: I understand.

Mr NAGLE: In terms of financially there is nothing that goes through it, it is all guaranteed through the nominal insurer.

Ms BANSAL: Yes, I can confirm that.

Mr NAGLE: But, as a vehicle it is designed to give us the flexibility if we had to step into the contract or make alternative arrangements at any given time.

The Hon. SCOTT FARLOW: On that point, is it and if or is it used in that form already?

Mr NAGLE: It is and if.

The Hon. SCOTT FARLOW: It is not being used in that form at present?

Ms BANSAL: Mr Farlow, I can confirm that ISS is a dormant entity with no financial transactions passing through its accounts.

Mr DAVID SHOEBRIDGE: Are there any directors fees or executive remuneration paid by that company?

Ms BANSAL: Not that I am aware of.

The Hon. DANIEL MOOKHEY: Who is on the board?

Mr DAVID SHOEBRIDGE: Can you take that on notice?

Ms BANSAL: Yes, happy to.

Mr NAGLE: Myself, Ms Uehling, Mr Ziolkowski, Mr Craig—

Ms BANSAL: —and Mr Don Ferguson.

The Hon. DANIEL MOOKHEY: Mr Nagle, have you have had a member of your family perform work for icare in any capacity?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: Who?

Mr NAGLE: My wife.

The Hon. DANIEL MOOKHEY: And in what capacity?

Mr NAGLE: She was contracted to undertake some training work.

The Hon. DANIEL MOOKHEY: And contracted when?

Mr NAGLE: I am not 100 per cent certain, either late 2016 or 2017.

The Hon. DANIEL MOOKHEY: Has the contract concluded?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: And what was the value of the contract?

Mr NAGLE: I have no idea.

The Hon. DANIEL MOOKHEY: Was it put to tender?

Mr NAGLE: No, she was employed as a contractor.

The Hon. DANIEL MOOKHEY: Am I right to infer from your answer that it was not put to tender because she was a contractor?

Mr NAGLE: Yes, she was employed in her own capacity to undertake work.

The Hon. DANIEL MOOKHEY: Are you aware of the public sector requirements that contracts over a value of $50,000 should be disclosed?

Mr NAGLE: Well, she was employed as a contractor. I am not sure that employment as a contractor —

The Hon. DANIEL MOOKHEY: You are right in saying that some of your obligations might turn on what was precisely the form of legal engagement, I accept that. Are you, on notice, able to provide us what precisely was the form of contract?

Mr NAGLE: Absolutely, I can make those inquiries.

The Hon. DANIEL MOOKHEY: How long was the contract work performed for?

Mr NAGLE: Probably about 18 months, maybe longer.

The Hon. DANIEL MOOKHEY: How was your spouse identified as a person able to do the work?

Mr NAGLE: She applied for a role and was interviewed.

The Hon. DANIEL MOOKHEY: By whom?

Mr NAGLE: Whoever was organising the project.

The Hon. DANIEL MOOKHEY: Which project?

Mr NAGLE: It was part of our change project or training project for the nominal insurer.

The Hon. DANIEL MOOKHEY: Is that answerable to a group executive? Was it a project under the auspices of a group executive?

Mr NAGLE: The overall project was.

The Hon. DANIEL MOOKHEY: Which group executive?

Mr NAGLE: Myself, at the time.

The Hon. DANIEL MOOKHEY: Yourself?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: How did you manage the conflict?

Mr NAGLE: I declared it to the chief executive when she was accepted for the role, the chief executive then had conversations with the chief people officer and they made arrangements and I had no direct involvement and no reporting line to me.

The Hon. DANIEL MOOKHEY: Did you participate in any of the selection panels?

Mr NAGLE: No.

The Hon. DANIEL MOOKHEY: You did not?

Mr NAGLE: No.

The Hon. DANIEL MOOKHEY: But you declared it. Was that declaration written?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: Just to be clear, it was declared to the chief people officer at the time and was that then reported to the CEO at the time?

Mr NAGLE: I reported it to the CEO first and then also made sure that the chief people officer was aware as well.

The Hon. DANIEL MOOKHEY: To be clear, you reported it directly to the CEO after the panel made a decision, is that correct?

Mr NAGLE: Correct.

The Hon. DANIEL MOOKHEY: How did you find out that panel's decision?

Mr NAGLE: When my wife told me she had been offered a role.

The Hon. DANIEL MOOKHEY: And then you disclosed it to Mr Bhatia at the time, who was the CEO?

Mr NAGLE: Correct.

The Hon. DANIEL MOOKHEY: You make, effectively, a dual notification to the chief people officer as well?

Mr NAGLE: Correct.

The Hon. DANIEL MOOKHEY: Was the notification to Mr Bhatia in writing?

Mr NAGLE: I believe so.

The Hon. DANIEL MOOKHEY: Can you table the correspondence and the notification to Mr Bhatia at some point or take it on notice?

Mr NAGLE: I can take it on notice.

The Hon. DANIEL MOOKHEY: Was that then reported to the board?

Mr NAGLE: I am not aware.

The Hon. DANIEL MOOKHEY: Then you become CEO of icare. When did you become CEO of icare?

Mr NAGLE: May 2018.

The Hon. DANIEL MOOKHEY: Was your spouse performing work for icare at the same time you were the CEO?

Mr NAGLE: Correct.

The Hon. DANIEL MOOKHEY: And what then were the conflict-of-interest arrangements or at least the separation requirements that you put in place to manage the conflict when you were the CEO?

Mr NAGLE: She was on a project that was due to finish in October.

The Hon. DANIEL MOOKHEY: Of which year?

Mr NAGLE: Of 2018. So on that basis when I had applied for that role we had agreed that when her contract finished that she would leave the organisation prior—

The Hon. DANIEL MOOKHEY: When you say, "We agreed", who is the we?

Mr NAGLE: My wife and I.

The Hon. DANIEL MOOKHEY: What about you and the board?

Mr NAGLE: I was coming to that answer. My understanding was that the conflict of interest that I declared previously was what the board was aware of.

The Hon. DANIEL MOOKHEY: When you say it was aware, it was brought to the attention of the audit and risk committee?

Mr NAGLE: I would not know at that time.

The Hon. DANIEL MOOKHEY: But you were the CEO and the group executive, how do you not know if it was brought to the audit and risk committee?,

Mr NAGLE: I did not bring into the attention of the audit and risk committee when I became CEO, no.

The Hon. DANIEL MOOKHEY: Okay. Did the chief people officer notify the audit and risk committee?

Mr NAGLE: I am not aware.

The Hon. DANIEL MOOKHEY: Was it ever discussed at the board?

Mr NAGLE: It was discussed at the board later on. There was a complaint about my wife working for icare and so the board had a discussion about it.

The Hon. DANIEL MOOKHEY: When did that take place?

Mr NAGLE: Either late 2018 or early 2019.

The Hon. DANIEL MOOKHEY: And what did the board decide?

Mr NAGLE: The board found that the disclosure that I had made should have been clearer to them.

The Hon. DANIEL MOOKHEY: Are we to infer from that answer that your original disclosure was found by the board to be deficient?

Mr NAGLE: That was their conclusion.

The Hon. DANIEL MOOKHEY: What form of remediation did the board propose?

Mr NAGLE: My wife had already left the organisation and the board counselled me on the need to ensure that they were aware of any conflicts like that.

The Hon. DANIEL MOOKHEY: In counselling you that they should have been aware of it, is it right to infer that the board felt that you had failed to make them aware of it in a manner they had expected?

Mr NAGLE: That is correct.

The Hon. DANIEL MOOKHEY: Were you sanctioned?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: In what form?

Mr NAGLE: I lost part of my bonus.

The Hon. DANIEL MOOKHEY: In which year?

Mr NAGLE: The prior year.

The Hon. DANIEL MOOKHEY: So 2017-18?

Mr NAGLE: No, 2018-19.

The Hon. DANIEL MOOKHEY: Do you know which proportion of your bonus was discounted as a result or what the weighting was in the way in which your bonus was decided?

Mr NAGLE: In terms of what their penalty was?

The Hon. DANIEL MOOKHEY: What was the penalty?

Mr NAGLE: I lost the full-term incentive for that year.

The Hon. DANIEL MOOKHEY: So 5 per cent or 10 per cent of it?

Mr NAGLE: I lost 100 per cent of it.

The Hon. DANIEL MOOKHEY: You lost 100 per cent of your short-term incentive at the time?

Mr NAGLE: That is right.

The Hon. DANIEL MOOKHEY: Did it occur to you at that point to perhaps resign?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: Why did you not resign?

Mr NAGLE: Because at that time I discussed it with the Chair. I was extremely unhappy at the treatment, feeling that I had disclosed and it had been a well-known issue. The Chair asked me to reconsider. I reconsidered. We were also in the middle of the SIRA review and I felt it was more appropriate to support the organisation and carry on.

The Hon. DANIEL MOOKHEY: When did that conversation with the Chair take place?

Mr NAGLE: I could not tell you off the top up my head. I would have to look it up.

The Hon. DANIEL MOOKHEY: You say that this was during the Dore review so that implies that the conversation with the chair in which you expressed your displeasure at being sanctioned by the board took place last year.

Mr NAGLE: Yes, July 2019 roughly from memory.

The Hon. DANIEL MOOKHEY: And is that because that is when your remuneration is usually decided, around the middle of the financial year?

Mr NAGLE: No, because the board had made the decision earlier at the beginning of June.

The Hon. DANIEL MOOKHEY: So when you said to Mr Carapiet, who is the chair, that you were disappointed with the board's decision to sanction you, what did Mr Carapiet say back to you? Did he talk you out of resigning? Is that what you are implying?

Mr NAGLE: Effectively.

The Hon. DANIEL MOOKHEY: And for what reasons?

Mr NAGLE: I think this is a very sensitive matter to me. The reality is that he expressed the board's disappointment. He expressed the support of the board to me to carry on. Given the scenario that icare was in with the Dore review ongoing, I agreed to review. I advised him at the time that I would take a short period of time. Unfortunately, my youngest brother had also passed away at the same time and I felt I was not in a position to make a career decision.

Mr DAVID SHOEBRIDGE: Mr Nagle, I invite you to do two things: One is to provide such documentation as there is about this to the Committee on notice. And two, if you wish to put some further detail on notice that you provide that to the Committee?

Mr NAGLE: I am happy to do that.

The Hon. SCOTT FARLOW: I want to turn back to the operation of the scheme with the return to work rates. I asked the question of SIRA before in terms of return to work rates and their deterioration seemingly across all scheme participants whether it be the nominal insurer, self-insurers or the like. What are your perspectives in terms of why there has been that drop as of late. There has been some sort of discussion as well about whether that has any bearing with SIRA's changed definition, so to speak, of return to work.

Mr NAGLE: I might give some opening comments and then pass to Miss Uehling who has the more detailed information. When we introduced the new model in 2018, if you look at the SIRA return to work metrics you will find that the whole industry had started to reduce return to work. From around about 2016-2015 onwards you can to see a slow decline. The decline that we experienced with the launch of the new model was greater than we anticipated. We thought we would go backwards about three to four points on return to work whilst the new model rolled out for two reasons: (a) It was a new model, and (b) We were trying to launch what we regarded as a fairer model.

We knew that there were many instances, and I think that this comes through in the Victorian Ombudsman's report, where under the old contracts injured workers were forced back to work earlier than they should have been. That was anecdotally very clear to us in a lot of the interviews we had done leading up to the new model. We went back further than that. Part of our confusion in the 2018 year was we felt that there was a deficiency in the data we were collecting. We saw a reduction. We assumed it was a reduction caused by data, not an actual performance. It was late 2018 when we realised that it was primarily a performance issue and we started to work. Over that period the industry as a whole reduced by about 7 percentage points and the nominal insurer reduced by 10. We have recovered from some of that so we are at about 8 percentage points, broadly in line with the overall industry model. However, we are not happy with that outcome and we still think we need to improve it.

Ms UEHLING: I think it is absolutely true that the system-wide return to work rates where self-insurers have declined by six, specialised by seven, TMF by four, and the nominal insurer by 10. Our early return to work latest metrics show us as declining by about eight. Some of that is the regulatory environment, absolutely, because you can see it consistently across all insurers but that said the claims model is standing up. The teething in operationalisation has been more difficult than we anticipated.

The Hon. TREVOR KHAN: Can I ask in regards to that, on page 9 of the SIRA document there is a figure with return to work figures up to six weeks.

Mr NAGLE: Sorry, which report are you referring to?

The Hon. TREVOR KHAN: I am referring to the submission by SIRA on page 9. I am not trying to be tricky. There is a chart there which seems to show return to work rates. I have had some involvement in this since before the 2012 legislation came in. I was on the inquiry that advanced the legislation. Central to the legislation was return to work rates and improvement in return to work rates. We have sat here time and again where we have talked about return to work rates. I have heard icare talk about return to work rates and how we are going. Page 9 has a chart that seems to show the nominal insurer doing worse than everyone else up until March 2020. I want to know whether that chart that SIRA has advanced is wrong? And if so, why?

Mr NAGLE: The chart is not wrong. We agree. The dispute around—

The Hon. TREVOR KHAN: Look, I have heard these figures of 7 per cent, 8 per cent. The chart looks ugly.

Mr ZIOLKOWSKI: Sorry, is that the 26 week return to work SIRA metric? That is the chart that demonstrates over the last three years that specialised insurers have fallen about seven points and the nominal insurer fell about 10 points from their starting point.

The Hon. TREVOR KHAN: With respect, have a look at the chart.

Mr ZIOLKOWSKI: We have looked at the chart and we have seen the open data. We have also seen the latest figure including April, which shows a further decrease for specialised insurers.

The Hon. TREVOR KHAN: Well, I have got the chart.

The Hon. SCOTT FARLOW: Where you are saying you had an improvement.

The Hon. TREVOR KHAN: If you want to give me more, give me more, because that looks ugly.

Mr DAVID SHOEBRIDGE: This shows a 5 per cent differential with self-insurers, it shows an 8 per cent differential with government self-insurers, it shows a 7 per cent differential with specialised insurers and it shows for the first time in decades the return to work rate for the nominal insurer below 80 per cent—that is what this shows.

Mr NAGLE: Yes.

Mr DAVID SHOEBRIDGE: You have said it is not wrong. So that is the question. That is not everyone tracking in the same direction. That is the nominal insurer doing significantly worse than all of the other players. That is what that shows.

Mr NAGLE: Look, we have on various testimony agreed that the return to work rates are not where we need them to be. We have talked about where we believe the causes have been. We have given that evidence previously. We have publicly admitted that the return to work rates are not where we have been. We have publicly accepted that we did not get the executing in the 2018 year in particular well. We have also pointed out that since the middle of 2019 the rates and performance of EML has improved quite dramatically. That is evidenced in a number of touchpoints: return to work rates and in promoter score feedback from employers and injured workers. We have recently for some time now—almost two years in fact—been asking SIRA for the detail on how they calculate their new metric. On at least three—and maybe Mr Liu can give more information—or four occasions we have been told we have been given the formula and on every occasion we have found that we have not been given the full formula so we cannot replicate how they measure it.

In February this year we were so frustrated we asked Mr John Trowbridge to review our return to work submission that we were making to the consultation that SIRA had asked for. We also asked them to check our thinking: What is it about our thinking about return to work that we were getting wrong? He has carried on that work, working with us and SIRA, and believes that we are both wrong in terms of how return to work is being calculated. He has also participated in the consultation process. But, having said that, we cannot resile from the fact that return to work has gone backwards over the last two years. The mitigations and improvements that we are making with EML are designed to get us back to what we believe is an acceptable return to work. That will be compounded now by the impact of COVID. So we are working with the regulator to say what would be an underlying performance and what would be a COVID impact that we can agree now before we get into any future argument going down the track. And again we are asking Mr Trowbridge to assist us in that.

The Hon. TREVOR KHAN: My understanding was, with the Ernst & Young key risks for nominal insurer valuation 31 December 2019 document that was tabled to the Committee by Ms Donnelly today, we had asked that a soft copy be forwarded to you half an hour or three-quarters of an hour before you gave evidence so I am not suggesting you would have had a chance to read it. But in due course I invite you to have a look at page 11 and figure 3, if we are talking about metrics, and if you would like to explain, when dealing with fit to work rate at development quarter four—and I am not asking for the answer now—but what appears to be a metric there, which suggests—in my uninformed way—a radical improvement in return to work rates that does not appear to be demonstrated on the figures that we have to date. So I am not pointing fingers at anyone. I am not going to use the term "positive bias" or whatever else that has been used. I am just simply asking if you are able to justify the underpinnings for your future performance?

Mr NAGLE: Oh, look, absolutely. Mr Liu has some information on that. We are very encouraged by the regulator's move to bring in a peer review of EY. We have so many issues with EY's analysis. It was greatly encouraged to—

The Hon. TREVOR KHAN: Mr Nagle, I am not getting involved in an argument about Ernst & Young and whether they are good or bad and whether these reports are bad. What I am asking is, in terms of your

assumptions going forward, how you are underpinning an argument for an improvement in return to work rates. That is what I am asking.

Mr DAVID SHOEBRIDGE: Or fitness for work, I think. He means fitness for work.

The Hon. TREVOR KHAN: Yes.

Mr NAGLE: Mr Liu, do you want to add to that comment.

Mr LIU: Absolutely. It seems there are a few questions for me to answer for the time being.

The Hon. TREVOR KHAN: Sure.

Mr LIU: The figures that you refer to is actually an extract from the Finity valuation report.

The Hon. TREVOR KHAN: Indeed. I gathered that.

Mr LIU: It is the fit for work rate at development quarter four. It shows the actual numbers and the Finity assumptions. The first thing I will need to point out is Finity is the independent actuary for icare and they set these assumptions as central estimates. I will go through some reasoning why they set these assumptions. Finity in setting these assumptions have had a look at icare's return to work metric, which is payments based, and an improvement in the 13-week return to work metric. In conjunction with that Finity have seen a payment speed up of weekly payments essentially starting faster than in the history of the scheme. So it is evidence around the front end turnaround and performance turnaround. From that evidence Finity then used that data to project out how the improvements in the payments return to work metric will play out into the 26 and then the 52. The development quarter four is 52 essentially. And so they have actually put that improvement up. I would note that in these assumptions they assume improvements and it does not go all the way back up to the previous levels.

The Hon. TREVOR KHAN: Indeed, yes.

Mr LIU: And the reason for that is to be prudent until the evidence actually shows through that the improvements have completely carried through.

The Hon. TREVOR KHAN: Thank you.

Mr ZIOLKOWSKI: Mr Chair, I just want to add one point of clarification to the earlier part of that conversation as well. Just to be clear, I am now looking at the SIRA open data for the SIRA 26 week return to work metric. Specialised insurers from mid-2017 have fallen from about 92 per cent down to about 85 per cent as at the April statistics, which is probably not, to be fair, in your papers or submission from SIRA, which probably only goes to March, I suspect. So that is the seven point fall that we were referring to earlier.

Mr DAVID SHOEBRIDGE: And what is the nominal insurer at?

Mr ZIOLKOWSKI: The nominal insurer has fallen 10 points over that same period.

Mr DAVID SHOEBRIDGE: And what are you at now?

Mr ZIOLKOWSKI: Based upon our metric we believe we have fallen eight points over that same period. So our point is specialised insurers have fallen seven points, nominal insurer eight points. So our point is that there is also something in the broader environment of greater concern as well.

Mr DAVID SHOEBRIDGE: Mr Ziolkowski, you are comparing apples and oranges. You are using on the one hand in that answer your metric, which is where you get the 8 per cent; on the other hand for specialised insurers you are using SIRA's metric. You cannot do that and have a credible position—comparing your metric to SIRA's metric, when they are assessing different things.

Mr ZIOLKOWSKI: Sure. The points remain the same, which is specialised insurers have fallen seven points over that period and the nominal insurer has fallen 10 points, as I said. So the point being that there is a broader impact on the environment, on the workers compensation scheme, impacting all insurers over the last three years—that is my point.

The Hon. ANTHONY D'ADAM: What do you say is actually driving this decline across all the insurers in the scheme? Ms Donnelly in her evidence gave an explanation that attributed the overall decline to some kind of disruptive impact of the changes to the operating system of the nominal insurer.

The Hon. TREVOR KHAN: As did Mr McHugh give similar evidence.

The Hon. ANTHONY D'ADAM: What is your proposition to counter that evidence? What do you say is happening that is driving this decline in return to work rates across the system?

Mr NAGLE: We have been trying to understand what that could be, and have that engagement with SIRA. We have a number of hypotheses that range from the impact of gig economy growing, and we have written about that previously and asked SIRA to review that. We have had plenty of conversations with them about excessive medical costs and the cost of treatment, and conversations with them about rehabilitation costs and impacts. We have had conversations on lots of areas. We have not been able to land a proper hypothesis that makes us feel comfortable. We do not know where the regulator believes it is occurring, but it is evident that there has been some kind of systemic shift in the industry over this last period.

The Hon. ANTHONY D'ADAM: It is clear from the data—

The Hon. TREVOR KHAN: Mr Nagle, the problem I have with that answer—and I am not having a shot—but it seems to me SIRA is the regulator with certain powers and certain oversight, but you are the CEO of icare; you are the operator. It is not a question of you having conversations, with respect, with SIRA. When we ask you your opinion of what is going on, we are actually seeking your opinion—not that you are having a conversation with SIRA about it.

Mr NAGLE: Fair comment.

Mr ZIOLKOWSKI: Sorry, just a point on that to understand the question—

The CHAIR: Look, I think we need to—we have 10 minutes left on the clock. I know that Mr Mookhey and Mr Shoebridge have a number of questions that they have been seeking to ask, so I am going to allow them to finalise with those questions.

Mr DAVID SHOEBRIDGE: Ms Uehling, I want to show you a document—a letter authored by yourself on 15 March last year. I will not reference the claimant's name, but that claimant whom you are corresponding with is also claimant three in the KPMG report regarding, amongst others, Mr Fitzpatrick, whose name is on the record. Do you remember writing that letter?

Ms UEHLING: I do remember the letter. I do not remember all the specifics and the content thereof—it has been a year and a half.

Mr DAVID SHOEBRIDGE: Ms Uehling, that was 11 months after icare first received the initial report of KPMG regarding those three claimants—the forensic claim file review—which was received by icare in April 2018. That is right, isn't it?

Ms UEHLING: I take your word for it. I would have to go back and check, but it sounds accurate.

Mr DAVID SHOEBRIDGE: One of the things that this claimant three is making complaints about is the way QBE handled their claim, including the work injury damages and liability termination. That is right, isn't it?

Ms UEHLING: That is correct.

Mr DAVID SHOEBRIDGE: You say, "In relation to the liability determination, I can confirm that although QBE's dispute notice did not individually list the documentation you provided, the decision was made based on all available evidence." That is your conclusion. Do you see that on page 1?

Ms UEHLING: Yes, I do.

Mr DAVID SHOEBRIDGE: Ms Uehling, at that time icare had in its possession a report from KPMG that included this—and I will read it onto the record. This is a conversation between the employer, Corrections NSW, and the QBE case manager. The employer says this:

> … if we go now and say fine we accept this, yack yack yack, we won't get him back to work. If we go down the declinature line where he is actually utilising his own personal leave, which will run out soon, and sometimes my words are sometimes it's cruel to be kind and got to hit them in the pocket and when he's not getting any money and he is married with kids and most probably his own home, he's most probably got to think well fuck sake I've got to do this

Then the QBE claims manager says, "Yeah that's right, I think he's close to that now." The employer then says, "if we accept it now, we'll stay off as long as he can", and the claims manager says, "yeah, good point". And then they declined his claim. And then KPMG says they recommend the case manager is interviewed to understand if declining claims to induce financial hardship was undertaken by QBE in this case or generally at the request of employers. Ms Uehling, you say to the same claimant, 11 months after icare has received this report, that you can confirm, "that although QBE's dispute notice did not individually list the documentation you provided, the decision was made based on all available evidence." How could you possibly have done that? How could you not have supported this man, given the evidence you had?

Ms UEHLING: I do not think the conversation between QBE and Corrective Services is appropriate at all, in any way. I also do not think it constitutes evidence of declinature or not declinature, but I do think it was completely inappropriate.

The Hon. DANIEL MOOKHEY: How do you interpret that evidence? What do you think that conversation points to?

Ms UEHLING: I think it points to, at the time, a very bad culture at QBE. I think it points to an unacceptable approach to managing claims on behalf of the injured worker.

The Hon. DANIEL MOOKHEY: Then what did you do after you reached the conclusion that that points to a bad culture at QBE? Because we have one letter where you said to him that you support the decision to decline. You have now said that you have concerns. Did you have concerns at the time that you issued that letter that that points to that culture at QBE?

Ms UEHLING: This was quite a ways after.

The Hon. DANIEL MOOKHEY: So what have you done?

Ms UEHLING: We have taken the approach of changing the case manager and we have brought the claim in-house. We have counselled and trained QBE, we have let them know it is not acceptable and QBE themselves have taken action in order to—

The Hon. DANIEL MOOKHEY: Did you report it to the regulator?

Ms UEHLING: I would have to go back and look.

Mr DAVID SHOEBRIDGE: Ms Uehling, this claimant was asking for your help, said that he thought he had been treated very badly and asked you to investigate it. You have detailed evidence of not just bad treatment, but grossly unethical treatment. You do not tell him about it and you tell them that it is all handled and the decision was made based on all available evidence. Ms Uehling, you were not fairly treating that claim, you were not fairly responding to his concerns and you were protecting QBE. That is my conclusion of it, and I am giving you the opportunity to explain how you did what you did.

Ms UEHLING: I am sorry, I am not sure I understand the question. How I sent the letter?

The Hon. DANIEL MOOKHEY: We are putting it to you—

Mr DAVID SHOEBRIDGE: Let me be clear—

Ms UEHLING: Because it happened back in July 2015.

The CHAIR: Sorry, pause for a moment. Allow Ms Uehling to ask for clarification and then you can provide that clarification.

The Hon. TREVOR KHAN: One of you.

Mr DAVID SHOEBRIDGE: It is my question. What is not clear, Ms Uehling?

Ms UEHLING: The dispute notice was issued on 7 July 2015, according to this letter. That was even before icare was formed. The letter is dated 15 March 2019. Over the course of that time, QBE itself had changed the management on the claim, had changed the management structure, undertaken training and we had supported and directed them to do so.

Mr DAVID SHOEBRIDGE: Sorry, Ms Uehling, that just makes matters worse because, as you rightly point out, the declinature happened on 7 July 2015 and the conversation I took you to happened just five days earlier, on 2 July 2015. You do not draw a link, you do not raise concerns, you do not tell the claimant, you do not help him out, you just say that you dismiss his complaint and I cannot understand why you did that and did not help.

The CHAIR: What is the question, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: Can you explain why you did not help him?

Ms UEHLING: What is the question? I am asking for clarification.

Mr DAVID SHOEBRIDGE: Why didn't you help?

Ms UEHLING: Because we are entitled—we have to apply the legislation as per the law.

The Hon. DANIEL MOOKHEY: Can I ask now, Mr Nagle, this was a matter that you and I pursued extensively at supplementary estimates, if you recall? Do you recall that?

Mr NAGLE: I do.

The Hon. DANIEL MOOKHEY: You said at the time that this was subjected to a forensic claim review and that was provided to the audit and risk committee and to the board, and we subsequently learned from your answers to the questions on notice at the budget estimates that you paid $250,000 for that. At the time, I was asking you questions about whether there were multiple KPMG reports. I asked you that at supplementary estimates and I asked you that at estimates in February this year. We have now learnt that there were. At the time you were not in a position to answer—fair enough. But we have now seen the first version of the KPMG report and between the first version of the KPMG report and what we think is the fourth version of the KPMG report, the conversation that my colleague just read on to the record disappears from the report. I asked you at estimates then whether there were any changes between the first version and the other versions, and you were not in a position to answer. Now that we have established that the first report concluded this had this conversation in it and the fourth did not, would you like to provide us an explanation as to why that was removed from the first report and the final report that went the board?

Mr NAGLE: Following our rather extensive conversations, I asked my team to go back and review what had occurred. My understanding, based on their feedback, is that from the first report to the final report the question back to KPMG was: what was the evidence, what could they actually define and what was supposition and what was hearsay and what actually impacted the claim decision. That is what we were trying to understand. I think this is what Ms Uehling is saying, that the very poor behaviour of QBE through the claim was clear. The actions that QBE actually took were in line with the legislation.

The Hon. DANIEL MOOKHEY: Basically, you are saying that QBE could engage in this behaviour legally? Is that what you are saying?

Mr NAGLE: No.

The Hon. DANIEL MOOKHEY: Are you saying that that conversation, which is a contemporaneous note of a phone call by one of the participants in that phone call, is hearsay? Because that is not hearsay. That is a direct record of a conversation by a participant. I go back to my original question; why was that conversation removed from the first report and the final report?

Mr NAGLE: You would have to ask KPMG. We asked them to refine the report based on what was evidence.

The Hon. DANIEL MOOKHEY: What did you tell them was the evidentiary standard that they should be applying?

Mr NAGLE: I was not involved, so I would not know. But I think it is pretty straight forward that we said to them, "Tell us what we can see on the file? What is actually evidence on the file and how a decision is made from that?"

The Hon. DANIEL MOOKHEY: Let me put this to you, Mr Nagle, and you can tell me that again I am getting it wrong and these allegations I am making to you are flimsy, but it appears to me that this was removed to effectively cover up the poor treatment that these three workers were subjected to.

Mr NAGLE: Was that a question?

The Hon. DANIEL MOOKHEY: Yes. I am putting it to you. If you disagree please say so and for what reasons.

Mr NAGLE: Look, I cannot condone any of the behaviour of QBE. As Ms Uehling has said, they have taken action, we have taken action.

The Hon. DANIEL MOOKHEY: What have you done?

Mr NAGLE: As Ms Uehling said, we counselled them over their code of conduct.

The Hon. DANIEL MOOKHEY: Did you report it to the regulator, as the CEO?

Mr DAVID SHOEBRIDGE: I think Mr Nagle was in the middle of telling us.

The CHAIR: Mr Mookhey and Mr Shoebridge, that is time.

Mr DAVID SHOEBRIDGE: I think Mr Nagle was in the middle of his answer. He should be able to provide a full answer.

The CHAIR: If Mr Nagle wishes to continue his answer then I will permit him to do so, otherwise I will bring the hearing to a conclusion.

Mr NAGLE: I am happy to leave my answer as is. Thank you, Chair.

The CHAIR: Thank you very much for attending the hearing today and in particular for agreeing to stay for what was a much more extended period. The Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice. That draws the second day of hearings to a close.

(The witnesses withdrew.)

The Committee adjourned at 17:09.