REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2020 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE AND LIFETIME CARE AND SUPPORT SCHEMES

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Tuesday 25 May 2021

The Committee met at 09:45.

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Anthony D'Adam

The Hon. Scott Farlow

The Hon. Trevor Khan

The Hon. Taylor Martin

The Hon. Shaoquett Moselmane

The Hon. Rod Roberts

Mr David Shoebridge

The CHAIR: Welcome to the first combined hearing for the current review of the Compulsory Third Party [CTP] Insurance and Lifetime Care and Support schemes. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginal people present. Today we will be hearing from representatives from a range of organisations involved in one or both of these schemes. I thank each organisation for making the time to appear today to contribute to these regular oversight reviews.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing 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 broadcast guidelines, I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses may say outside of their evidence at this hearing. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard it is important that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take the question on notice. Written answers to questions on notice are to be provided within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff. In terms of audibility for today's hearing I remind both Committee members and witnesses to speak into the microphones. Those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally everyone should turn mobile phones to silent for the duration of the hearing.

NICOLE BROOKE, Chief Executive Officer, Australian Community Industry Alliance, sworn and examined

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

Dr BROOKE: Thank you for the opportunity to present and respond to our submission to the 2020 review of Lifetime Care and Support Scheme. I note that this is our third opportunity to respond to the Committee regarding this scheme. We welcome the continued interest and support of our engagement. I respectfully begin by acknowledging the traditional custodians of the land on which we meet today and pay my respects to the Elders past and present and extend that respect to Aboriginal and Torres Strait Islander people here today. Australian Community Industry Alliance [ACIA] is the peak body in quality care, representing more than 100 providers in aged care and disability and community care nationally. I come to represent ACIA as a CEO. However, I do note I have been in the role only for a month. I will do my best to provide some information in a timely manner to the best of my ability.

The community industry alliance certifies and supports compliance through the implementation of the Australian Community Industry Standard [ACAS], which we are currently operating in the model named "2018". It commenced its certification journey in 2018, where it was developed as the Attendant Care Industry Management System Standard. It is currently under review and will also seek to target corporate governance, clinical governance, leadership and rights-based care. As well as expanding its scope and managing complex care needs, we are looking to include areas such as palliative care, pain management, brain injuries and spinal injuries, bariatric care, cognitive impairment, mental health, and the use of assistive technology. ACIA uses independent trained assessors, who are required to undergo professional development and ongoing supervision.

ACIA undertakes an annual review of ACAS-certified providers nationally. Of the 56 providers who were reviewed in 2020, 31 received full certification, 24 received surveillance audits, of which—unsurprising for a sector that is full of the most complex and high-needs clients—there were 12 noncompliances or major noncompliances and 68 minor noncompliances. That was across the six standards that we accredit. Of those, we additionally note that there was commendation for best practice in 14 across those six standards. All the services received compliance during following periods of rectification and improvements. This is a testament to the systems and processes implemented to support and safeguard the care and delivery of services. To become a Lifetime Care and Support-approved attendant care panel provider, it is accepted that a determining factor is that the provider has received ACAS certification as well as met the procurement requirements of the contract. We again welcome the inquiry and your support for the lifetime care scheme.

The CHAIR: Thank you very much for your opening statement. We will start with questioning now.

Mr DAVID SHOEBRIDGE: Thanks very much for your submission. In terms of your members getting a fair rate of remuneration out of the scheme, do you feel like there is a fair rate of remuneration across the scheme? How are those rates being set?

Dr BROOKE: It is a good question. On paper you would have some concerns when you do a like-for-like comparison on hourly rates versus what is in the National Disability Insurance Scheme [NDIS]. However, I think that what the scheme does do, which is not acknowledged in an hourly rate-for-rate comparative analysis like the NDIS, is that icare goes, in my experience, above and beyond in terms of case management. They provide ongoing training for complex care needs. Where there are behavioural support needs, ventilator, airway management, or complexity in other forms, they will provide specific training. They do a lot more case management than I have seen in other providers. You are not just paying for an hourly rate; you are also paying for the case management services they are providing. I do believe that has beneficial attributes to both the client and the provider. I think you can see that there are quite a few providers that solely base their business on icare's attendant care business or largely base them. They have remained in a viable position. So you would hope that there is an ongoing viability there.

Mr DAVID SHOEBRIDGE: There is a different model for payment under CTP than we do have with NDIS. There are always pushes to try to make them more uniform. But you see benefits in the way the CTP packages remunerate allied health professionals?

Dr BROOKE: I do. I have always been a fan of a case management approach and a bespoke model, especially when we are dealing with this level of complexity. I think it would be very hard to provide a specific case mix. The aged-care and disability sector has tried very hard to define what that case mix is. They have not been able to define that in itself yet. I think it would be a big jump, to actually define that this early in the transition or in their development.

Mr DAVID SHOEBRIDGE: Can you speak to both the Lifetime Care and Support and the CTP? Or you are really just looking at Lifetime Care and Support?

Dr BROOKE: Lifetime Care and Support.

Mr DAVID SHOEBRIDGE: One of the concepts behind Lifetime Care and Support is, basically, a preapproved package of supports based upon the categorisation of injury. That is one of the elements of Lifetime Care and Support. Is that right?

Dr BROOKE: Yes.

Mr DAVID SHOEBRIDGE: How is that working in practice?

Dr BROOKE: From our members' feedback, it is working well. I think there are always opportunities to improve that. But icare or Lifetime Support has been very amenable to the changing complexity that has been in the position. You will look at even a COVID response. They were flexible and malleable in their intent to respond to providers' needs way outside of the scope of their contract obligations. They went and supported the additional training, the additional personal protective equipment needs and the ongoing support. This level of case management is actually advantageous, in my opinion.

Mr DAVID SHOEBRIDGE: When Lifetime Care and Support has a new entrant come into the scheme, when do your members get involved with setting out that treatment plan? How does that work in practice?

Dr BROOKE: It is my understanding that once the new client or participant comes on board, an individual contract is made with whoever is the attendant care provider. A contract is negotiated at that time for what the level of care and services is. That contract is reviewed annually in terms of its remuneration and hourly requirements as well as any additional costs, but that is an ongoing review as well. If the provider finds that there are additional challenging needs in behavioural modification or behavioural support, they can come back to the attendant care unit and negotiate that additional support.

Mr DAVID SHOEBRIDGE: Do you see particular categories of injury, for example young motorcyclists or perhaps men in their fifties wanting to finally get the motorcycle they want? Do you see any particular patterns that we should be aware of where we should be addressing motorists' behaviour, given the people you are seeing coming into the scheme?

Dr BROOKE: I am not seeing those trends but it would be interesting to understand what that data looks like. I do not have visibility over that data.

The CHAIR: You spoke about the noncompliance. I think you said there were 12 noncompliant cases. Are you able to provide some details of those? What, if any, remedial action is usually implemented?

Dr BROOKE: There were 12 major noncompliances over the year 2020. Not all of those are icare providers. The details of that—we do a review particularly looking at what themes are there, if it would help just to identify the themes.

The CHAIR: Yes, I guess a broader overview would be handy.

Dr BROOKE: Yes. The themes that I would have identified are themes of complexity of care, where we are really seeing some challenges with managing the level of complexity and I will explain the actions that we are doing; escalations in care, making sure that where incidents are happening or deterioration is happening that it is escalated quickly; and just the general incident management and making sure that incidents are responded to in a timely manner. It is these findings as well as some consultative findings that we have really taken on board as to why we are reviewing the Australian Community Industry Standard [ACIS] in its next iteration.

You will note that corporate governance and clinical governance are not front and centre now. They are elements there, but we are developing a whole module or standard just on clinical governance. That is primarily with the intent that this complexity of care, the incident management—we really feel that there is a strength that needs to be bolstered around these clients by our learnings around escalations, incident management and complexity of care. The reason we are expanding the scope in our new ACIS to include brain and spinal injuries, to include dysphasia or difficulty swallowing and nutritional needs and to expand it into pain management is purely because a lot of the feedback we got in this review would suggest that level of complexity could be also further managed.

The CHAIR: With regard to what sort of remedial actions might be needed, do you have some views on that?

Dr BROOKE: Yes. In all cases where evidence was provided, it is a variation of requirements. We would expect that the policies are reviewed, there is training that is undertaken and there is increased supervision

of the care that is being undertaken. But there are no consistent themes on what should be undertaken. If I read through the summary of findings, each had its own individual action plan that was undertaken and reviewed in a timely manner to the assessor's comfort.

The CHAIR: So to your mind there was not an individual systemic issue. It was a variety of issues that culminated in the noncompliances and a variety of remedial actions that were required in order to bring a closure to the issues.

Dr BROOKE: Yes, I would say that why we are including corporate governance and clinical governance is it is a theme. That is why we are really focusing on bringing that into the new ACIS. I think the sector will have a way to go to make sure that they are complying with those corporate governance and clinical governance requirements, but I think that is an expectation that we should have of them. The only other theme, if you like, in terms of their responding is looking at benchmarking and monitoring. We will really be bolstering that requirement in the ACIS to make sure that they are looking at those incidents, that they are benchmarking and monitoring those incidents in a more considered manner. I think those themes are what we are trying to address.

The Hon. ANTHONY D'ADAM: In your submission you raised the issue around personal protective equipment. Will you elaborate further on the issues associated with that? It is obviously an expectation that service providers in the normal course of their work would be providing whatever relevant personal protective equipment is necessary, but obviously with the current COVID arrangements there is a heightened need for additional personal protective equipment. Will you elaborate on how that arrangement works now and what specifically you think needs to be done?

Dr BROOKE: Personal protective equipment is not provided by Lifetime Care; it is provided by the provider. That is a requirement from a safety point of view—that the provider will provide all relevant personal protective equipment. I think that is reasonable. We will say that within the COVID time, because of some of the shortages that were there, icare really tried to help provide support and extended their resources to ensuring that there were additional supplies if needed. I do not think the uptake was really there. I think providers were able to manage that, from what we can understand. There is an ongoing requirement for personal protective equipment. I think the change in policy and looking forward on that is that there is a tighter diligence on what is required. I think in the past it might have been a bit looser in its requirements, but definitely we are seeing a tightening up of what service providers are providing and the necessary elements to that.

The Hon. ANTHONY D'ADAM: I just have one other question about your submission. You raise the issue of maintaining a standalone quality standard for the Lifetime Care scheme. How different is it from the NDIS quality standard? How much of a gap is there in terms of the two approaches to quality?

Dr BROOKE: It is a good question. At the moment we would see largely quite a strong difference in the systems. We are looking to map that to close some of those gaps and to help providers minimise some of the administrative burdens when they already have an NDIS application with an approved provider. But what we have to remember is the NDIS does not have—there are a few elements. Their auditors do not need to undergo the formal qualifications for auditing that we do. All of our auditors must undergo formal qualifications in auditing and they must have a registered nurse, whereas NDIS only has to have a registered nurse present for a few elements of the NDIS requirement. We look at the complexity of needs that are in our clients here and really that would be a flaw for us.

The other element is that NDIS only reviews and looks at the clients or the participants that are actually receiving NDIS. The ACIS certification actually looks at the entire service provider, not just the NDIS. We might have service providers that only have one NDIS participant and it would be a lack of due diligence on our behalf to say that that service provider is providing holistic governance and clinical governance and leadership when they are only being audited on one participant as an example. Whereas, we have requirements to look at adequate sampling across the entire spectrum of the service.

I think there are other areas that we improve on. I think we both look very closely at the rights and responsibilities. I think we can improve our area of human rights care, and I think that is an area that we are working through. I think our community engagement is very strong in NDIS, as it is in ACIS, but I think the areas of corporate governance and clinical governance are not well represented in the NDIS legislation. I think if you look at the service environment, looking at sharps management, infection control management, outbreak management, emergency management, that is not well covered in NDIS either. Probably the scope of the complex care—we do that in a lot more thorough aspect. Even the fact that we are now including mental health, assistive technologies into our scope of additional services, that is not well covered in the NDIS.

Mr DAVID SHOEBRIDGE: There is a standalone quality standard for Lifetime Care and Support which is separate to the quality standard under NDIS, and you see a benefit in maintaining that.

Dr BROOKE: I do.

Mr DAVID SHOEBRIDGE: Can you explain why?

Dr BROOKE: At the moment, the NDIS—and if I expand that even into the aged care sector, there are gaps in all of those systems. Both of those systems do not necessarily represent the complexity of your clients within the system. The breadth of complexity is quite a lot more significant I would suggest. I think that the NDIS framework in the way it actually assesses the participants, it is only in the singular assessment rather than looking at the whole service provision. I think there are challenges there. I have just recently mapped across both systems and I would like to think that there are some crossover, of which there are in rights and responsibilities, community engagement, service user delivery, but I think there are areas, given the complexity, that we can improve upon. I think from a safeguard point of view we really need to be looking to make sure that those safeguards are well managed.

Mr DAVID SHOEBRIDGE: Is there pressure to say that Lifetime Care and Support should step away from having its own separate set of standards and just adopt the NDIS standards, and that pressure may grow as there is increasing competition for attendant care workers?

Dr BROOKE: I do not think that there is pressure to do that. I think that there is a clear acknowledgement that NDIS accreditation processes do not capture all the needs. I think we have got to be very clear about what we are actually trying to safeguard here and NDIS will not do that at the moment, like aged care does not safeguard across the spectrum either.

Mr DAVID SHOEBRIDGE: Are you unambiguously saying that Lifetime Care and Support should maintain standalone quality standards, given the nature of the injuries they are dealing with and the complexity of the injuries they are dealing with, that have benefits to the injured person?

Dr BROOKE: I honestly believe that.

Mr DAVID SHOEBRIDGE: I was asking you before about the cohorts that you deal with. When you look at the numbers that we get from SIRA and from icare, it is pretty clear that the largest entry point is people aged 15 to 24—young people getting severely injured in motor accidents and entering the scheme. They are seriously overrepresented in the data. I know you do not have the data to your fingertips, but would that accord with your anecdotal observations?

Dr BROOKE: Anecdotally, absolutely.

Mr DAVID SHOEBRIDGE: Is there some specific supports put in place to deal with young people in those circumstances facing a life of severe disability and those challenges so early on in their life? Is there a separate set of supports that deal with young people than those that deal with people later in their life?

Dr BROOKE: I think that is a really good observation and one of the reasons why we are adding a whole additional module to ACIS. Since 2018, ACIS in its entirety is adding a whole module on mental health. I think that the major theme that I am not seeing covered with younger people—and also if you expand that out to the carers in their circle or sphere of influence—is that I think we have got to be more mindful of the mental health aspect and the adjust to changes to their lifestyle. I think we are very good at managing the care and the actual technical requirements of that, but I think the challenges that we are not probably dealing with so well at the moment is the mental health aspect.

Mr DAVID SHOEBRIDGE: I put it in the context of looking at the numbers. In the breakdown based on the age someone entered the scheme—each one of these cases is a tragedy—there are 170 people entering the scheme aged under 15 years of age but then 503 aged between 15 and 24, and then the next highest category is 25 to 34 where it is 277. More than double the number of people aged 15 to 24 are entering the scheme.

Dr BROOKE: Yes.

Mr DAVID SHOEBRIDGE: It does not sound to me like there are any kind of specific modules or supports to deal with those particular concerns of young people.

Dr BROOKE: The two areas I think that we need to work on are the brain injury and spinal injury as a specific area. That is currently not in the module and we are working towards August to release that because the specific needs around brain injury and spinal injury, especially for a younger cohort of the population, are very bespoke. I think the other area is around the mental health and, to expand that further, the complexity for behaviour modification for somebody who is presenting in a younger age group. That is what we are trying to address. I think

that we are on the same path in terms of: These are things that I think we probably have not done as much as we could do, hence the changes that we would like to actually implement and support the sector in.

The Hon. TREVOR KHAN: Could you expand on, for instance, the behaviour modification? I might be misquoting you, but why is that essentially a bespoke issue with that younger age group as compared to older?

Dr BROOKE: Sometimes in acquired brain injuries or spine injuries especially, the mental health aspect or the behavioural aspect of that can be quite challenging.

The Hon. TREVOR KHAN: I absolutely accept that. But why is that linked to age? Or is it?

Dr BROOKE: I am not sure if it is linked to the age or the actual time of the diagnosis and the life span of the acceptance of that disease prognosis. I think it kind of is quite tightly linked to a challenge that people would face and we see that are faced in someone who has a spinal injury at a young age. The behavioural needs, the mental health supports, the physical supports are quite unique and bespoke to an age group where they are challenged with societal pressures and societal norms anyway. I think they are very different when you are dealing with, as an example, a spinal injury in an 80-year-old—very different environments. I think we have got to be very mindful that the majority of spinal injuries are occurring in that younger age group and it does require a certain skeleton of services and supports around them, from both physical but also emotional and mental health. I think you get behavioural challenges with that, as part of the normal healing and grieving.

Mr DAVID SHOEBRIDGE: I suppose I was thinking of a young person who has not had the opportunity to live a life, get a partner and have kids, none of which is closed off from you if you have a terrible injury, but it is definitely more challenging and the horizons shrink. That has got to place a different set of social and psychological stresses on a younger person than perhaps an older person, who may have a support network around them. They may have a partner and may have kids.

Dr BROOKE: Absolutely.

Mr DAVID SHOEBRIDGE: If you are doing some work in that space, could you provide on notice what the time line is and what the expected outcomes are in that work?

Dr BROOKE: At the moment, we would say we are working with the industry specialists to develop some guidelines to help support better care pathways for those groups of people. We are expecting that in probably August or September.

Mr DAVID SHOEBRIDGE: Okay. The other question is: As that younger cohort ages and as their parents age, who are often the alternate primary carers—

Dr BROOKE: The carers, yes.

Mr DAVID SHOEBRIDGE: —are there strategies in place with Lifetime Care and Support to ensure that those carers feel comforted that, as they age and die or are unable to look after their kids, somebody else will be there in place and the arrangements are in place? Are carers being looked after in that strategy?

Dr BROOKE: I am not sure I can answer that specifically. I could say that good case management suggests looking at the holistic group of people and the support network. I do see evidence that Lifetime Support is doing that, and they look at the resources ongoing for that carer. I am quite comfortable that that is in play. I think there is always opportunity to improve how we provide ongoing care, but I am very comfortable that that is in the provision of their purview.

Mr DAVID SHOEBRIDGE: Yes, but none of your services are directed at the carers, are they? I am not criticising you, but the carers are kind of incidental in the service provision. No-one is actually looking after the carers.

Dr BROOKE: By default, they are, actually. The case management element and the service delivery element looks at the care canvas and looks at who is providing that support. Even within the mental health element, we look at the carer's strain, responsibilities and wellbeing because it would be naive of us to think that you can just look at the individual and not the carers. I am very comfortable that that is included.

The CHAIR: Thank you. Do any other Committee members have any questions?

The Hon. SCOTT FARLOW: I might just ask one. You call out in your submission the challenges on the horizon, effectively, with the NDIS and more demand in the market and finding suitable staff. While it is a challenge, is there a pathway forward, do you think, that the Government should be looking at?

Dr BROOKE: Look, I think workforce is an ongoing issue. I think the availability of skilled workforce—

The Hon. SCOTT FARLOW: Are you seeing it at present? Is it already becoming—

Dr BROOKE: Yes, definitely. Definitely, without any doubt. We saw it within the COVID epidemic that we had. We were struggling with getting workers, but then the overlay of making sure they are skilled and correctly motivated—I do not think we have to define that they have to have a Certificate III qualification. It is about finding the right people for the right job, and that is going to be an ongoing challenge, but I feel that the current milieu is more significant than it has been probably in the last decade.

The Hon. SCOTT FARLOW: Okay. In terms of ways to be able to address it, encouraging more people to have a career through TAFE and other vocational training and to be looking for those courses, identification of more staff out there and promotion that there is a career in the industry as well—is that the mix, do you think?

Dr BROOKE: Absolutely. I think conversations have to start earlier rather than waiting until—a year 12 student, or such. I think we should be really looking early on to encourage people to look at career pathways in disability and community care, and providing some more supports and resources to open up those opportunities.

The Hon. TREVOR KHAN: Can I just ask a follow-up question to that? Do you know what percentage of your providers' staff—do you have any figures, I suppose, on what percentage were essentially overseas workers, who are here either temporarily or on some sort of extended stay?

Dr BROOKE: I would like to say I did. We were trying to get some figures on what that actually involved because there was talk that those changes would impact on the sector, but we have not been able to actually ascertain specific numbers.

The Hon. TREVOR KHAN: Thank you.

The CHAIR: In that instance, you have done fantastically well and you have a fantastic submission, so we are able to conclude questioning a little bit early. I do not think there have been any questions taken on notice. The Committee thanks you for your appearance today, Dr Brooke.

Dr BROOKE: Thank you very much.

(The witness withdrew.)

(Short adjournment)

MICHAEL TIMMS, Treasurer and Committee Member, Australasian College of Road Safety – New South Wales Chapter, sworn and examined

KEVIN HENRY, Chairman, Motorcycle Council of NSW Incorporated, affirmed and examined

BRIAN WOOD, Secretary, Motorcycle Council of NSW Incorporated, affirmed and examined

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

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

The CHAIR: Welcome. Would any or all of the witnesses like to start by making a short opening statement?

Mr TIMMS: The Australasian College of Road Safety [ACRS] is focused on saving lives and preventing serious injuries on our roads. As the compulsory third party insurance scheme and Lifetime Care and Support Scheme are linked to the treatment and care of people in road crashes, ACRS New South Wales Chapter appreciates the opportunity to contribute to this inquiry. Speaking last year transport Minister Constance placed the annual cost of road trauma in New South Wales at $8 billion. More than half that amount—$5 billion—is attributed to injury crashes. Nationally the cost of road trauma to the Australian economy is over $30 billion.

We know that financial hardship or disadvantage is keeping some drivers out of safer vehicles. CTP insurance is by its very name compulsory. Therefore, customers should expect to be provided with help to make better decisions. College members have heard of younger drivers paying for their first vehicle many times over through the cost of various insurances. Why did I say "vehicle" and not "car"? Anecdotally, younger drivers are following the trend towards pick-up trucks and dual cab utes. With used car prices on the rise, these vehicles are often older than the people in them. Older vehicles lack modern safety features that can reduce the severity of injuries or even prevent crashes from occurring in the first place. Newer vehicles can do less harm to pedestrians, bicycle riders and motorcyclists.

The Centre for Road Safety recently reported that just under half of young drivers involved in fatal crashes were driving a vehicle made before 2005. Those pre-2005 vehicles would not have had features such as electronic stability control, autonomous emergency braking, lane keeping assistance, blind spot monitoring or reversing technology. They may not even have had anti-lock brakes. Yesterday Victoria released its Road Safety Action Plan for 2021-23. It contained $6.9 million funding for a targeted trial to incentivise up to 1,000 young regional Victorians to replace older vehicles with one less than 10 years old with a high safety rating.

The best way to sustainably deliver high-level post-crash care and lower CTP premiums is by reducing and eventually eliminating road trauma in New South Wales. The good news is that it does not always have to be about legislation. The 2018 review into the previous National Road Safety Strategy said that non-regulatory initiatives are a valuable ally in helping to achieve early safety gains. Stakeholders should adopt the targets and goals contained in the new United Nations, Australian and State road safety strategies as corporate policy and report on what they are doing about them. Everyone here in these next two days is a stakeholder and everyone should hold themselves accountable for road safety.

Mr WOOD: I will just clarify some of the points in our submission as it is seven months since we made that submission. The Motorcycle Council is continuing to have quarterly meetings with SIRA where they update us on the current number of claims and the cost of those motorcycle claims. They give us quite detailed information on that. But unfortunately it is still unclear whether the number of claims as a result of the 2017 scheme has plateaued or not. COVID has disrupted the trend, so it may be another six months or so before we can see whether that number of claims has plateaued. It appears that it is plateauing at a level lower than what was initially predicted.

It is probably too early for us to determine whether we are getting our 57 cents in the dollar return as a benefit to riders because of the long tail nature of claims, particularly those that are the ones not at fault. That has not stabilised. It is predicted that the cost of those claims will be about seven times that of an at-fault claim. Currently they are well below that level. Motorcycle premiums are trending down. Since the inception of the scheme our premiums have gone down 7 per cent, which is encouraging. Obviously we would like to see it go further but at least it is going down, because when the scheme was introduced we were told we were lucky our premiums did not go up from the previous scheme. So it is encouraging that there is a 7 per cent reduction.

We have concerns about the transitional excess profit and loss [TEPL] scheme and the way that that is structured because there is no way of knowing whether the insurers are sticking to that 8 per cent profit that they agreed to, because that 8 per cent is calculated on the whole scheme, not individual classes within that. So it may be working well for the majority—car drivers—but it may not still be working well for motorcyclists. Part of that

TEPL is that there is an innovation-type scheme whereby they can give grants if they believe they are over that 8 per cent but we would much prefer that the premium is set at the correct level rather than trying to claw back money that is in excess profit. We prefer to have the lower premiums in the first place.

We are working with SIRA to produce a brochure that explains what your cover is if you have a crash interstate. That brochure is very close to being published, but I think a lot of people would not realise that if you crash interstate it is the legislation in the State in which you crash that covers what compensation you get. We certainly were very surprised when we were contacted by a rider who crashed in Tasmania and was facing a $20,000 ambulance flight bill which would not be covered either by his New South Wales policy or by the Tasmanian policy. That is a result of the fact that their scheme is based on it needing to have a Tasmanian registered vehicle involved in the crash. In this case the rider was a single vehicle crash so he was not eligible for compensation.

We have also asked SIRA to look at what the cost is, if any additional cost, in extending policies so they do cover you up to the level of the sort of compensation you would be entitled to if the crash had been in New South Wales. They are currently working on that. But recently my wife received an NRMA CTP renewal and in the exclusions it actually says that you are only excluded if you are eligible for compensation from an interstate scheme. I am not 100 per cent certain that they have answered my question clearly but it does indicate that the NRMA policy is that if you do crash interstate and you are not eligible for compensation from that State you will be covered by your New South Wales policy. And that applies to both motorcycles and cars. In the case of NRMA there would be no additional cost. We are still to take it up with SIRA about how we might make the scheme more efficient for motorcycles. We have left that until it is a bit clearer as to where the scheme actually settles at so we know exactly what we are talking about. But this is certainly something we are interested in discussing with SIRA and they are willing to do that—as to how we can make the scheme more efficient for motorcycle policyholders.

Mr ROGERS: The NSW Taxi Council would like to thank the New South Wales Legislative Council Standing Committee on Law and Justice for the opportunity to participate in the hearing today in the review of the compulsory third party insurance scheme. Our submission was prepared on behalf of the members of two associations affiliated with the New South Wales taxi industry—the NSW Taxi Council and the Country Taxi Operators Association. Whilst the terms of reference are covering four areas, we have only commented on two—workers compensation and the motor accident scheme. The NSW Taxi Council acknowledges the current challenges in the competitive set within the point to point transport sector. Hence we are grateful for the ongoing collaboration and consultation between the NSW Taxi Council and the State Insurance Regulatory Authority working towards addressing some of these challenges.

We are pleased to note that there has been a commitment by the State Insurance Regulatory Authority as we work towards delivering a competitor-neutral scheme between rideshare, hire cars and taxis. Whilst there have been developments in the point to point sector in relation to CTP, more is required to achieve a true level playing field for all participants. The NSW Taxi Council, together with its members, strongly believes that a true levelling of the playing field will only be achieved if all point to point service providers, including taxis, were grouped in class 1 for CTP.

In addition to CTP inequities, there is also a significant issue in the disparity of workers compensation between taxis and rideshare. Taxi operators are mandated to take out a workers compensation policy for any drivers they bail a taxi to. However, rideshare operators do not have the same requirement for any drivers they lease a vehicle to. We have seen the rideshare model evolve over the recent years from an individual choosing to drive part-time to earn some additional income to now seeing more full-time participants enter rideshare on a full-time basis. That has led to individuals operating fleets of rideshare vehicles and leasing them out to drivers in the same manner as a taxi operator bails a taxi to a driver. So why are taxi operators required to take out workers compensation and yet rideshare operators do not? What happens if a rideshare driver is injured?

We are also concerned that the safety costs are being determined by the price you charge for a trip. It is perplexing that you can have a scenario where you can have a similar driver, similar vehicle and similar passengers, yet if one charges a fair—a taxi or point to point vehicle—and the other is free—a courtesy vehicle—then they fall under different requirements for CTP. We look forward to continuing to work with the State Insurance Regulatory Authority as we aim to achieve a more competitor-neutral scheme with the point to point and wider transport sector delivering safer and improved outcomes for the travelling customers.

The CHAIR: Mr Abrahim, did that cover you also?

Mr ABRAHIM: Nothing further. Thank you, Mr Chair.

Mr DAVID SHOEBRIDGE: Thank you all for your submissions. We are still in the early stages of the scheme. We do not really know what the final claims results will look like. But we do know from SIRA that for the period between the start of the scheme in December 2017 and December 2020—the first full two years—the scheme took in $6 billion in premiums and has paid out just over $700 million in payments to either claimants or health or legals. Have you been following that overall performance of the scheme in terms of how much is getting paid back to your members?

Mr WOOD: Is that question directed to me?

Mr DAVID SHOEBRIDGE: We will start with you, Mr Wood.

Mr WOOD: No, we have not looked at that in detail, but it is certainly something to know the numbers. But, yes, I think it is possible that, yes, in those early days because riders were not aware in many cases that under the new scheme they are capable of obtaining compensation. So it is a learning curve for us and for riders.

The Hon. TREVOR KHAN: Can I follow up? Why do you say they were not aware of their entitlement to make a claim?

Mr WOOD: Because under the old scheme if you are at fault—even under the old scheme there was the ANF, the accident notification form type payment. You could receive up to $5,000. Many riders were not aware of that under the old scheme, so they were under the impression that if they were at fault—and that is quite often; motorcycle single-vehicle crashes are relatively high—they were not aware of it. So, no, riders just continued to assume that there were no longer covered. I guess perhaps many thought because their premiums did not change—whereas car drivers could claim a rebate, motorcyclists were excluded from that, so that was probably the assumption, that there was no real difference to the scheme for them.

Mr DAVID SHOEBRIDGE: That is probably borne out because the number of statutory benefits claims that are paid out have seemed to have tracked lower than what the actuaries were assuming would be paid out. That is something we can explore with other witnesses. But your anecdotal evidence from your members is that many of them did not know the no-fault benefits were in place.

Mr WOOD: Correct.

Mr DAVID SHOEBRIDGE: I see you nodding, Mr Henry.

Mr HENRY: Yes, definitely. Unfortunately, a lot of motorcyclists do not do much research on this sort of incident as well, so they just bear the brunt.

Mr WOOD: I think in many cases people do not understand what CTP is about in the first place. It is just something that they have to pay to be able to register their vehicle. As I say, it came as a shock to us that your New South Wales policy—and some of the information on SIRA's website did sort of indicate your policy covered you in Australia, but it did not indicate that the coverage you were getting was dependent on the legislation in the State where you crashed.

Mr DAVID SHOEBRIDGE: Yes, they were dark days in my legal career, doing *Breavington v Godleman* and all of that, and the lex locus of the tort. I did not enjoy that.

The Hon. TREVOR KHAN: I was just doing prescribed concentration of alcohol cases. It means nothing to me.

Mr DAVID SHOEBRIDGE: Has that changed? Is there now a communication strategy to motorcyclists to alert them of the fact that if it is a single-vehicle accident they have no-fault benefits?

Mr WOOD: I am not aware of a campaign to do that. Obviously we do that through our own network—discussing CTP—but, no, I am not aware of a government or a SIRA campaign to let riders know.

Mr DAVID SHOEBRIDGE: What about in your industry, Mr Timms? Is there an awareness of the no-fault benefits in place?

Mr TIMMS: It was interesting that when I was preparing the submission on behalf of the college, my renewal papers came. I read the couple of pamphlets that I received, and they talked about the breakdown of the benefits and the Medical Care and Injury Services levy and how at-fault drivers can now be covered. One of my colleagues manages a young man who was seriously injured in a crash several years ago, well prior to this, and he received no benefits. I was aware that there is some improved performance now. As a college, we support these no-fault type schemes. We are certainly not here to reinvestigate crashes. We are very happy with the way that it is moving forward. Certainly, any education that would encourage people to learn more about it and to get more information out would be something that the college would support.

The Hon. TREVOR KHAN: Can I follow up, particularly with Mr Henry and Mr Wood? The scheme provides, does it not, that there is a six-month period of no-fault cover. The length of that period is relevant to us. If you ended up bunged into hospital as a result of a motor vehicle accident, there is a six-month cover under your CTP insurance, is there not?

Mr WOOD: Yes, if you are at fault you get that six months' cover.

The Hon. TREVOR KHAN: It is no fault, so does not matter if you are at fault or not.

Mr WOOD: I guess the compensation you receive depends on whether you are at fault or not at fault.

The Hon. TREVOR KHAN: It is relevant to this extent: During that six-month period the first thing that a motor accident—we will call them "victim"—will do is they, or a spouse or guardian, will have to fill in the claim form so that the hospital will be covered in terms of the costs of the bed and the medical treatment. Correct?

Mr WOOD: Yes.

The Hon. TREVOR KHAN: And during that six-month period there will then be contact both by, I suggest, the insurer, because they will probably want further details, and also by, I think, SIRA following up in terms of that claim.

Mr WOOD: It is my understanding that the patient or the victim has to initiate the claim. I do not think it is initiated—

The Hon. TREVOR KHAN: That is correct. We will go back a step. They have to put in the claim form, but the hospital is going to shove it into their or their spouse's or guardian's hands. They need a signature on the form so they get paid.

Mr WOOD: Yes, but part of it also is that motorcyclists are reluctant to report a crash to the police for fear of getting a neg driving charge. We do know that—

The Hon. TREVOR KHAN: Mr Wood, if you are in hospital with your leg broken—

Mr WOOD: Yes, but we do know that they can match a police report to only half of the hospital presentations for motorcycle crashes. So for only half of those who present to hospital is it identified at that stage that it is a motor vehicle accident.

Mr DAVID SHOEBRIDGE: Sorry, feel free to explore that again. I think it is relevant.

The Hon. TREVOR KHAN: Yes, sure.

Mr DAVID SHOEBRIDGE: As part of making a claim for the statutory benefits, the documentation with the police needs to go in. Is that your understanding, Mr Wood?

Mr WOOD: Sort of. That is the information that is given, that you must have a police report. But I do know of cases where the claim has been accepted without a police report.

Mr DAVID SHOEBRIDGE: And the anxiety that you are hearing from your members is if they put a police report about a single-vehicle accident that they are worried about—

Mr WOOD: A neg driving charge.

Mr DAVID SHOEBRIDGE: —that they are weighing up the prospect of a neg driving charge as against whatever benefits they may get.

Mr WOOD: Yes. We do know that it is I think three times as likely if you a single-vehicle motorcycle crash to be charged with neg driving than you are if you are a car driver in the same circumstances.

The Hon. TREVOR KHAN: Mr Wood, can I tell you that many years ago I had a single-vehicle accident where I fell asleep in Boggabri and hit the back of a truck. They charged me with neg driving as quick as a flash. I was told by the cops, "It's because it's a single-vehicle accident." They were my friends, too.

Mr WOOD: Well, you hit the back of a—it was a parked truck, maybe?

The Hon. TREVOR KHAN: Sorry?

Mr WOOD: It was a parked truck? There was another vehicle involved?

The Hon. TREVOR KHAN: No, it was actually on the road but it just drove off and left me as a steaming wreck in the middle of the road.

Mr WOOD: To me, everyone who has a crash should be charged with neg driving because they have been negligent. I do not think—well, unless you are a suicide or something you are not deliberately going out to have a crash, so you have been negligent in causing that crash.

The Hon. TREVOR KHAN: But Mr Wood, I have a bit of difficulty with this. If you are charged with neg drive I cannot remember—Rod may remember—how many points you lose and what the fine is. Is it three?

Mr WOOD: I think it is three.

The Hon. TREVOR KHAN: That sort of rang a bell. It is three points; I cannot remember what the fine is.

Mr TIMMS: About $400.

The Hon. TREVOR KHAN: Yes. Compared to what the cost of your hospital stay is—not only the hospital stay but the treatment you can get during that six-month period—it is chalk and cheese, is it not?

Mr WOOD: Yes, but under the old scheme you would not be eligible for CTP compensation whereas now under the new scheme—

The Hon. TREVOR KHAN: Exactly.

Mr WOOD: As riders become more aware they can weigh that up. But I guess if they are high on points and they are going to lose their licence it is not just perhaps the medical part of it; it is, "What do I do if I lose my licence for six months?"

Mr DAVID SHOEBRIDGE: A maximum $2,200 fine for neg driving.

The Hon. TREVOR KHAN: Yes, but it is dealt with by way of an infringement notice—

Mr DAVID SHOEBRIDGE: A Penalty Infringement Notice. It will be less, yes.

The Hon. TREVOR KHAN: Yes.

Mr HENRY: If I may, the other problem is that if you are using your licence as a career—I have got a heavy vehicle licence and I can proudly boast that I have had no driving under the influence, no neg drivings and no culpables. It makes a difference when you go to an employer when you have got neg driving charges. Even though you may not have been totally responsible for the accident, it looks bad when you go to an employer seeking employment, which is another reason why people do not want to get involved with saying what actually happened. I have had friends who have turned up 24 hours later after a serious accident where they have been assisted to a hospital. It is a major concern for some of us older riders who were used to being handled under the old system.

Mr DAVID SHOEBRIDGE: Yes. But anyhow, that kind of information about what actual benefits are available—six months' wage replacement, full medical expenses—that kind of information does not seem to have been disseminated broadly through at least your industries. What about the taxi industry, Mr Rogers?

Mr ROGERS: We would be in a similar situation in terms of the promotion of the benefits. We have not done a lot around the benefits of the promotion. We were more focused on the premiums that were paid and the welcome reduction in the premiums due to the no-fault policies coming into play. The benefits for members are out there but it has not been consistently communicated.

Mr DAVID SHOEBRIDGE: Do you think that that should be the job of, say, SIRA or icare to get out and actually tell your sectors at a minimum?

Mr ROGERS: I think it is a contribution from all: a contribution from those that from a policy perspective that are writing the policy, the regulatory authorities that are doing it and also from the associations that represent. I think it is a combination approach of all to ensure that everybody who is participating is fully informed.

Mr DAVID SHOEBRIDGE: Do you think maybe icare should pull together a bunch of stakeholders like you and say, "How do we communicate to your members? How do we let them know?"

Mr ROGERS: It would be beneficial.

Mr DAVID SHOEBRIDGE: Would you all be willing to take part in that?

Mr ROGERS: Yes.

Mr TIMMS: Yes.

Mr HENRY: Yes.

Mr WOOD: Yes, but when you get a registration renewal you do usually get a brochure in there from SIRA. This brochure—

The CHAIR: Does anybody ever read those?

Mr DAVID SHOEBRIDGE: Mr Timms is the one person who ever read the brochure. Well done, Mr Timms.

Mr WOOD: We are hoping that this brochure will clarify what your cover is interstate. We are hoping that that will be able to be distributed with registration renewals.

Mr DAVID SHOEBRIDGE: Do you think perhaps that no-fault benefit at a minimum should be extended if there is not a parallel one in another State?

Mr WOOD: I think really you should get the level of compensation you would receive had the crash been in New South Wales. That is how it works in Victoria with the Transport Accident Commission [TAC]. When you fill out the form for an interstate crash in Victoria you actually send the forms to TAC and they handle it from there, is my understanding.

Mr DAVID SHOEBRIDGE: I could be wrong, but I think there is High Court authority that says the law where the accident happens is the—

Mr WOOD: It prevails, yes.

Mr DAVID SHOEBRIDGE: —substantive law. There are very good policy reasons to have that so you do not have lawyers fighting at 10 steps about where the greatest connection is to the injury if you have—

Mr WOOD: Yes. I understand the reasons.

Mr DAVID SHOEBRIDGE: —two vehicles with different registrations—one in Tasmania and one in New South Wales—even though it happens in Queensland. There are very good policy reasons to have that outcome, Mr Wood, do you accept?

Mr WOOD: Yes. But in Victoria TAC will top up what compensation you would receive from the State you had the crash in. It tops it up to the same as what you would have received had the crash been in Victoria. I do know it is stated that if you are going to hire a car, hire one registered in Victoria because you will get the best compensation if you do happen to have a crash.

The Hon. SHAOQUETT MOSELMANE: Just a couple of items as a result of your introductory comments, Mr Timms. You mentioned something about the United Nations road safety principles. How are they different to the principles that we have in Australia or New South Wales?

Mr TIMMS: The Global Decade of Action for Road Safety 2011-2020 has just concluded. The next steps were in drafting for some time. On 31 August last year the United Nations General Assembly passed resolution A/74/299 proclaiming this decade as the second decade of action on road safety. They have nominated as the goal that globally between now and 2030 countries need to aim for a 50 per cent reduction in deaths and a 50 per cent reduction in injuries. In Australia that is varying. The States, for some reason, have different schedules as to when they implement their road safety strategies.

In New South Wales they are currently looking at Road Safety Action Plan 2026. I think New South Wales is doing it in the correct order. The United Nations have had their say. Federally, the next National Road Safety Strategy has been released; it was released in draft several months ago. The Australasian College of Road Safety did make some comments on it. The National Road Safety Strategy does not mirror the United Nations declarations. The National Road Safety Strategy is looking for that 50 per cent reduction in deaths—they have added "per capita"—but in terms of injuries they are looking for a 30 per cent reduction per capita. There has been a difference there between what the United Nations General Assembly is looking for and what we are looking for nationally. We await to see what the goals are in New South Wales. The Centre for Road Safety has been actively consulting the community about the next Road Safety Plan 2026 but we await and see how it comes about.

The Hon. SHAOQUETT MOSELMANE: Was Australia a participant in that debate at the United Nations?

Mr TIMMS: It was adopted by the General Assembly unopposed.

The Hon. SHAOQUETT MOSELMANE: Right.

Mr TIMMS: There was also—a lot of this got absorbed by COVID. You might remember in about February last year there was the Stockholm Declaration. It was a meeting of transport Ministers globally, held in Stockholm. It was probably about the last major global event that happened before the shutdown and Australia was a member of that as well. Australia sent a delegation.

The Hon. SHAOQUETT MOSELMANE: On the current statistics, are we likely to get anywhere near the resolution of the United Nations?

Mr TIMMS: The previous decade the last National Road Safety Strategy 2011-2020 failed. It was looking for a 30 per cent reduction nationally in road deaths, so it has failed. It was going well until about mid-decade. Globally, countries hit a metaphorical wall. Road tolls started to go back up and Australia was no exception. Road deaths in Australia started to trend upwards. The other report that I referenced, the 2018 review into that national road toll strategy, was run under the auspices of the Australasian College of Road Safety. Dr John Crozier and Professor Jeremy Woolley authored that report. It came up with a number of recommendations, one of which was that they stand up a Federal office of road safety, which, federally, they have. We started to see some trends from that. New South Wales also had that 30 per cent target in the Road Safety Plan 2021, which they are pretty much on track with at the moment. Injuries are a concern for us and they are obviously the concern in terms of these schemes.

The Hon. SHAOQUETT MOSELMANE: I am interested in one more area you spoke about, Mr Timms. You suggested the Victorian example where they assist some with older cars—financially, I am not sure. Can you elaborate on that?

Mr TIMMS: Yes, I picked it up last night. They are one of the States that has already issued their road safety strategy, which they issued last year. It has a very unambitious injury target, I might add. All they talk about is a gradual decline in injury crashes. They have not put a figure on it, so you could reduce them by one per year and successfully meet the target. However, it was interesting to see. I have not had time to read budget papers. That is something else I do, Mr Shoebridge: sometimes I read budget papers.

The Hon. SCOTT FARLOW: A collective interest.

Mr TIMMS: Yes, we cannot travel so I guess we have to do something.

The Hon. SHAOQUETT MOSELMANE: You suggested some financial assistance to replace older cars of some form.

Mr TIMMS: That is something that has really been in the space, is trying to incentivise—as I said, there are a lot of people in financial hardship or from financially disadvantaged backgrounds who simply cannot afford later model cars. But there is a lot of information available now if people know where to look and where they can get older style cars with that five-star rating. I think that is the sort of thing that the Victorians are looking at. It could be a game changer what they are proposing down there.

The Hon. SHAOQUETT MOSELMANE: You said it was about $7 million?

Mr TIMMS: The figure was $6.9 million, so it will be very interesting to track that. I suppose they will have a look at outcomes as to whether anybody who takes up that scheme is later involved in a crash and what the outcomes were. But it is very interesting and certainly one to watch.

The Hon. SHAOQUETT MOSELMANE: Has anybody written about it in New South Wales who is interested in advancing those ideas from Victoria?

Mr TIMMS: There was an article in 2019 in *CarAdvice*, which quoted and talked about how no government—certainly up until yesterday—has looked at some sort of package to incentivise people into safer vehicles through some sort of financial incentive. It will be very interesting. It is only just new so we will have to wait to flesh out the details to see what the different criteria are.

The Hon. SHAOQUETT MOSELMANE: Does that cut across motorcycles as well?

Mr TIMMS: It is probably too early to tell. Again, we have seen the trend of dual cab pick-ups—some of them may be five stars but not all of them have the same friendliness towards pedestrians in the event of crashes.

The CHAIR: Maybe the roads Minister can fund it out of the rivers of cash he is getting from speed cameras.

The Hon. TREVOR KHAN: Oh, Wes, please. That is very unnecessary.

The Hon. SCOTT FARLOW: Have a chat to Paul Toole.

The Hon. TAYLOR MARTIN: I have a question for the representatives here today from the Motorcycle Council. In your submission you refer to insurance companies not pursuing claiming costs from other insurance companies or road authorities, in many cases. Are you able to elaborate a bit more on why that happens and what the benefits might be to the insurer?

Mr WOOD: I guess it is general practice within the insurance industry that they do not really claim against each other because they know, "I claim against them this week but it will be the reverse next week."

The Hon. TAYLOR MARTIN: It comes out in the wash.

Mr WOOD: To me, CTP is a bit different in that it is a compulsory scheme so any sort of additional cost in the scheme is paid for by the policyholders. We have had cases where we have identified that someone else was responsible for the crash, such as leaving sand on the road, and we were able to get the costs associated with that injury paid for by the party responsible for the crash or for placing that sand there. So, yes, it is something we are certainly keen to pursue. We have not had any cases raised with us recently where we have pursued that idea. I guess particularly for motorcycles, where there are potholes, gravel or some other road defect that the road authority should be aware of, they should be taking responsibility for the fact that they contributed to the crash.

The Hon. TAYLOR MARTIN: Fair enough.

Mr WOOD: I would just add that, yes, we have been pleased that SIRA has followed up the cases that we have raised with them and the outcome from our point of view has been positive.

The Hon. ANTHONY D'ADAM: I want to come back to Mr Timms' observations around the socio-economic issue. Is it correct that the data bears out the assertion that because lower socio-economic communities are driving older vehicles, there is a higher frequency of accidents arising from those?

Mr TIMMS: The issue with older vehicles is that they do not have the modern types of safety features like stability controls—even anti-lock brakes did not become mandatory in Australia until 1999. I think Mr Henry will be able to tell me that for motorcyclists that is only just coming online now.

Mr HENRY: It is fairly recent.

Mr TIMMS: From our point of view we would rather see people in newer vehicles. Not only will they lessen the severity of injury should people be involved in a crash but they may be able to prevent those crashes from occurring.

The Hon. ANTHONY D'ADAM: Is it that older vehicles are more likely to injure pedestrians or is it more likely that drivers will be injured in an older vehicle? What does the balance—

Mr TIMMS: Well, both of those.

The Hon. ANTHONY D'ADAM: Does it lean one way or another? Is there data on that?

Mr TIMMS: We know that there is a lot of data about the increased likelihood of people to be injured if they are driving an older vehicle. That is available and I can lay my hands on some of that here. Obviously that is the main message we would like to get across here—that we would like to see more older vehicles put out to pasture.

The Hon. ANTHONY D'ADAM: Off the road. That will obviously have an impact—you can either carrot or stick in terms of that approach. If you take a more assertive position, that will have an impact on lower socio-economic communities.

Mr TIMMS: It is not easy. We all know there are some stories circulating about the increase in used-car prices—some incredible prices that they are getting. Globally, there are supply chain issues with new cars at the moment with semiconductor issues and all sorts of things impacting new cars. That is all flowing on and affecting the price of used cars and even the choice of vehicles nowadays. If we look at the top 10 vehicles sold in Australia, four of them are pick-ups and there are plenty of SUVs. Some of them have quite good safety ratings in terms of pedestrians but, unfortunately, it has taken a long time to get a lot of those safety features, such as stability control, fitted to standard in some of these light trucks. If we go back to models from the early 2000s and even the 1990s, for a lot of young people that is what they are getting and that is what they are into. In my day it was Commodores and Falcons and that was your choice. Nowadays they are getting into those types of dual cabs and in some of them the safety features are non-existent.

The Hon. ANTHONY D'ADAM: I was interested in your observation that young people are disproportionately driving older vehicles. What other steps can be taken so that younger people are in safer vehicles?

Mr TIMMS: I think a lot of it is mindsets from parents as well. Parents quite often bear the burdens of paying for various insurances and getting quotes. Even in my street we have a bit of a straw poll and for quite a few people in our street the new driver is given the oldest vehicle. I understand that basic economics is why parents make those decisions but, unfortunately, in terms of crashes and production of injuries, the most vulnerable drivers—be they at either end of the spectrum, younger or older—should be in the safest possible vehicles.

The Hon. ANTHONY D'ADAM: I wanted to ask the Taxi Council representatives about the issue you raised in your opening submission about courtesy vehicles and taxis paying different CTP. Can you elaborate on why that is and how that system works?

Mr ROGERS: Thank you very much. It is a good question. It comes down to the point to point transport regulations. Under the point to point transport regulations, you have to be registered as a service provider if you are receiving a fare from the trip. Therefore, if you are receiving a fare from the trip, when it comes down to the CTP if you are a booking service provider, it takes you on a variable rate model. It starts as a class 1 price and then depending on the kilometres that you travel, you pay a variable component in the point to point regulations. If you do not come under the point to point regulations, then you do not have to pay that variable amount. The issue is—and that is our concern around the point to point regulations—who should be in the point to point regulatory environment? It should not be about whether you pay a fare or whether it is free.

As I mentioned, if I took a car—a vehicle—myself and I drove passengers and I charge them for a fare, I now fall under the point to point regulations. Therefore, I come under a different CTP requirement. If I took myself, the same vehicle, the same passengers, but did not charge them—if I was a courtesy bus going back and forth, so the same trips—I do not fall under the point to point transport regulations. Therefore, I only have to pay the one class up-front for my CTP requirements. That is a bit of a problem because all of a sudden safety is determined by the price you pay. It should be based on the activity you do, not the price you charge. That is an issue.

The Hon. TREVOR KHAN: Is it safety that is at jeopardy in that description that you give or is it simply a cost? Because the courtesy vehicle example you give, in that it is essentially the pub that provides a bus, isn't it?

Mr ROGERS: It potentially is, yes. All I go back to is—

The Hon. TREVOR KHAN: That is not a safety issue. That is simply a cost issue.

Mr ROGERS: It is a cost to run the vehicle. However, the contribution to the insurance schemes around providing for when issues happen changes based on whether you fall under one regulatory environment or not. The question that would be asked is how come CTP and our contribution to the premiums for those schemes is determined by the price you charge for a fare?

The CHAIR: That would also capture things like community transport for rural and regional areas, wouldn't it?

Mr ROGERS: If you look at the point to point transport regulations, there are some providers that are exempt if they have government contracts. But in reality it should be looked at to ask what is the activity you are undertaking? The activity you are undertaking should determine your part in any scheme and we all should be part of that. That is how we look at it from all providers.

The CHAIR: Except one is a for-profit arrangement and the other one would usually be a community or a donation-type, charity-type arrangement.

Mr ROGERS: Why would whether I am for profit or a charity determine whether my contribution to the insurance scheme should change?

The Hon. ANTHONY D'ADAM: Should it not be based on risk?

Mr DAVID SHOEBRIDGE: That is what he is saying.

The Hon. SCOTT FARLOW: Your thesis on this effectively is the risk. If you are on the road more often, there is a higher risk and therefore you should have a higher payment. But, of course, as the Hon. Wes Fang is pointing out as the Chair, there is profit that underlines it as well. As you are pointing out with some of the exceptions, there are exemptions that are in place because of either government contracts or what is seen as community need. What do you think can be the balance in that? I also pick up on some of the points you have made with respect to the distance-based component that is there and how you need to have the up-front cost. What do you think can be done in that space as well to see some improvements in balancing that fair share, so to speak?

Mr ROGERS: In terms of the whole scheme, the challenge that we have here is around the operations of the point to point transport industry in itself and the variable nature of how some of the vehicles are used part time and some of them are used full time. A taxi is something that is used full time and therefore it pays CTP insurance on all of the kilometres that it travels. When you have a private vehicle used in the rideshare space, it is about determining when it is used for private and when it is used for rideshare services, hence a different variable component around that. The challenges that exist in our industry are we are all small businesses in reality and cash flow is critical. In the taxi industry, to participate in the CTP scheme you have to pay over $2,000 up-front to participate. In the rideshare space, you just pay your standard CTP and then there is a variable amount for every kilometre you do when you are operating under rideshare. The challenge is how you go about matching that from the point of view of operators in the taxi space.

We are saying that class 1 for everyone in our space would help with the cash flow for operators and it levels the playing field. The real challenge that exists is with the new way in which SIRA is looking at the CTP scheme, it is about looking at how larger businesses can work with insurers. Yet if you look at the point to point transport regulations, what they are looking at doing is trying to promote more small businesses to come into the point to point regulation. To become a service provider you have to just pay $120, or $160 if you want to do both taxi and booking work. So they are trying to promote more competition in that space. "Let's create more service providers over here in the small business space," yet the CTP way we are going is, "Let's work with larger businesses to work with the insurer." So you have two opposing interests. If we are trying to promote small business, then we should have pretty much a fixed scheme and the same price for how you participate. In the past the taxi, whether it does one kilometre or 100,000 kilometres, had to pay the same CTP.

We would be saying that to fix the issues and promote small business and allowing them to come in, it is CTP class 1 for everyone. Yes, it would increase policies across all vehicles by a few dollars per year, but it is a way that then we can contribute. It is a way in which it does not matter whether you are community transport, whether you are a courtesy bus, whether you are a taxi, a hired vehicle or a ride-sourcing vehicle, you are all in the market together paying the same and you can then compete on other things, not just the cost of CTP. The biggest cost for taxi operators is insurance, it is the biggest cost to put a vehicle on the road. It is one of the inhibiting costs when you have to come up with the up-front money. When you look at the issues of COVID-19, 2,000 taxis got deregistered. The primary reason they got deregistered was the cost to keep them with insurance. It was cheaper to have them parked and deregistered and the plates handed back in.

The Hon. SHAOQUETT MOSELMANE: Just to follow up on that one, you mentioned that the biggest cost is insurance. To some of the taxi operators who are of a multicultural background or of a non-English speaking background, there are additional complexities to the challenges and the complexities that you are talking about. How does your organisation assist them in understanding whether to go to CTP or rideshare or the other systems they can be protected under in terms of their vehicle insurance and so forth?

Mr ROGERS: Great question. In terms of us, we are taxi. We are not saying rideshare. We are saying taxis are an important part—an essential part—of offering a service. Your rank market, your hail market or your booked market—we do all three of those services. When it comes to CTP—back three or four years ago it changed where the amount you drive determines what part of the scheme you should look at. For CTP currently, as you would be aware, you can pay the whole lot for the year or you can pay using what is called an opt-in model three times a year in metropolitan Sydney, so every four months you pay a top-up amount. You start with that $2,000 and then you pay an amount. In regional it is twice a year.

We would work with the operators to determine how many kilometres they are looking to do in a taxi on a yearly basis. In metropolitan Sydney, if it is over 107,000 kilometres, they would be better off paying the whole lot up-front and from a cash flow point of view getting that sorted because they are going to pay that anyway over the course of the year. If they are going to pay less than that, then we would encourage them to do the opt-in model where they pay a little bit up-front and then as they go through the year, they pay a little bit more. The challenge that still exists is we would like to see them only pay the $500 or $600 up-front—that is it—or if they had to do a variable model, how we help them through that space. We are not there yet but we have that ongoing dialogue with them around that. The aim is always to think about how as an industry we can get the costs of insurance—this vital part to protect people when they are injured—the same across the board when we are doing the same type of activity. We do not ask them to go and become a rideshare, we encourage them to work within the taxi space, but how do we look at it from the point of view of either up-front or opt in? As I mentioned before, the easiest for any of them would be it is the one policy and the same price for everyone for the whole year.

Mr ABRAHIM: Can I just add to that as well? Because the question is around the diverse nature of the taxi industry, something that we are very proud of—especially people coming from non-English speaking backgrounds. The Taxi Council is also a registered training organisation, so training is a key part of the delivery of information, skill and knowledge. A big part of that, and I will give you an example, is the wheelchair accessible

taxi training. When we accredit drivers to go to that space, they are entering a whole new market. The training is critical to ensure the skill and competency is there. Also with that is knowledge.

One area around doing wheelchair taxi work is around public liability insurance, as another example. That is not mandatory, the same as comprehensive insurance is not mandatory, but we obviously educate a lot of these drivers to consider these insurances because of the likelihood of something going wrong and what those consequences could be. That is the role that we play in helping to keep these stakeholders informed with those other products and services that are available to ensure they are considering that. Damaging a wheelchair, luggage or things that might happen outside the vehicle is potentially likely to happen. Information is very critical, so we share that with them so that they are aware of what is available.

Mr DAVID SHOEBRIDGE: We asked SIRA about some of this in advance and asked them about what would be the effect of categorising taxis as class 1 vehicles, the same as other passenger vehicles. They reject that as a concept because their data show taxis are 11 times as likely to have a CTP claim as an ordinary passenger vehicle and it is wrong to pool taxis with ordinary passenger vehicles. Do you accept at least that starting point, that putting taxis in with just every other passenger vehicle as a class 1 vehicle is probably not the solution because of the different risk profile?

Mr ROGERS: We appreciate the data that has come back and said it was 11 times in certain circumstances. Without looking at what those circumstances are and where they operate and where those claims come from—whether it is rank, whether it is hail, whether it is booked services—we are still of the opinion that the whole area is moving towards a space of mobility as a service and paid transport in the future. We would like to see still class 1 for the vehicles that operate in this space. When the information is coming back, from a booking service or rideshare, to what are the likelihoods of the claims increased over and above the normal population, data is not fully in yet, but it might be about three times or whatever it might say. But it is not fully in in terms of where the same is.

Mr DAVID SHOEBRIDGE: They are now tracking the data of rideshare vehicles. They say that early data for rideshare vehicles indicate that this classification is likely to have a higher frequency of a CTP claim compared to an ordinary passenger car in class 1. But they have not provided you with any more insight than that general assertion?

Mr ROGERS: No. I think there was some indication it was around three times or something. I am not sure of the exact amount. But what it does show is that potentially there is a higher risk in the area of these two spaces of operation.

Mr DAVID SHOEBRIDGE: SIRA then says that they are consulting on a proposed CTP premium setting solution for taxis and hire vehicles and they had submissions in March. You are part of that consultation process?

Mr ROGERS: Yes.

Mr DAVID SHOEBRIDGE: They give a promise—we will put it on transcript now—that they are going to have a solution by 1 December 2021. Have they told you that deadline?

Mr ROGERS: The deadline is there because the regulations expire. The challenge is the time it takes to implement new regulatory environment that suits.

The Hon. TREVOR KHAN: Sorry, Mr Rogers. Can I just go back. You said potentially there is a greater liability. Do you accept the SIRA figures that in terms of taxis it is 11 times? If not, what are your figures?

Mr ROGERS: No, we would take on board what SIRA has said in terms of the data. That is all we can have. They present the data of claims history. That is all we can take.

The Hon. TREVOR KHAN: If the rideshare factor is demonstrated to be three or five times whatever it is, does that then give an indicator as to really the taxi industry and the rideshare industry cannot be treated simply the same?

Mr ROGERS: We would challenge actually the data on the rideshare space. One of the big concerns that we have in this whole space is how do you know when a private vehicle is operating as a private vehicle when it has an accident versus when it is operating as a rideshare vehicle when it has an accident. When you go back and have a look at—

The Hon. TREVOR KHAN: It might be from the evidence of the passenger who has been injured.

Mr ROGERS: Again I do not know. I guess the question that needs to be looked at is what thoroughness is done in terms of identifying those claims and what was the origin of the journey, all of those things, and whether

the vehicle itself is registered properly at the outset, to say, "Is it a private vehicle? Or has it been registered as a booking service provided vehicle?" This is where you would not know. If I turned around and said to a rideshare person, "Show me all your vehicles. How are they registered?"—this is one of the things in the submission. The point to point transport commission has a great thing called a DVD portal. It is driver vehicle dashboard. If it was mandatory to put into that portal all of the vehicles that operate under your service provision—we currently do it for drivers—then you could easily track if that vehicle is actually registered. If it is not, it should not even be on the road in the first place.

Mr DAVID SHOEBRIDGE: I think your position is CTP premiums should be based upon risk. That is your starting point?

Mr ROGERS: Yes.

Mr DAVID SHOEBRIDGE: If the data shows a different risk profile for rideshare compared to taxis and you are ultimately persuaded by the data, you would agree that there should be different rates because it should reflect the risk?

Mr ROGERS: It comes down to looking at the risk and the operations. We would say, "Let's have a look at the data first."

The Hon. TREVOR KHAN: No. Do you not start with the principle and then look at the data? If there is a difference in the risk profile, if that is your assertion and you accept that principle, then you get the data to prove or disprove the risk.

Mr ROGERS: We would say that we do not believe taxis and rideshare are any less risky or more risky than the other, operating in the same space.

Mr DAVID SHOEBRIDGE: But ultimately, if there is a compelling set of data put to you that assesses the risk and if you are persuaded by the data and the risk profiles are different—I thought we agreed that the premiums should reflect risk.

Mr ROGERS: I was saying we have got to see the data. Our position would be that taxis and rideshare have the same risk profile, operating in the point to point market.

Mr DAVID SHOEBRIDGE: Do you think one of the ways that might assist in getting transparency would be, when the next set of CTP regulations about point to point travel are put in, that there be a requirement, if a vehicle has ever been identified as being in the point to point industry, for the rideshare operator to share the data about whether or not they were on a journey at the time of the claim?

Mr ROGERS: Yes, that would be an ideal thing to do. How do we also get back to the point of actually tracking everyone right from the outset? We would say anyone coming into the marketplace who wants to operate in the point to point space—their vehicle has to be registered with a service provider. That service provider should put into a portal so you can actually track that it is actually a registered vehicle so instantly when it comes to an insurance claim it has got the right level of insurance so you can ask the right question right at the start.

Mr DAVID SHOEBRIDGE: Surely, that is something you are asking for in your consultation with SIRA.

Mr ROGERS: We have been asking for it for about four years.

Mr DAVID SHOEBRIDGE: So if a vehicle is put on a platform—all of the rideshare happens through different platforms—those platforms are required to provide that information to SIRA to ensure that, if rideshare shows an elevated level of risk, they are paying the appropriate premium.

Mr ROGERS: I would probably say it is probably more that government agencies should talk to each other, that the point to point transport commission and SIRA should be talking together with the data they have—not necessarily the service provider talking to SIRA but the service provider talking to the point to point transport commission, "If you want to operate in this space, you are welcome to, especially as we want more small businesses to come into this space. You need to register your drivers, need to register your vehicles." That could be checked then immediately with SIRA as to whether they have got the right level of insurance. If not, they need to be notified back to the service provider, they cannot operate.

Mr ABRAHIM: Can I make a comment just in addition, please, Mr Shoebridge, just a point on the taxis and the 11 times risk in regards to CTP claims, if we unpack that just a little bit more. We have been advised—probably a couple of years ago, we seen this data—also, a lot of those accidents are happening on a Friday, Saturday evening and there is a higher representation of that happening in the CBD, for example, if you look at Sydney. Yet, from a rideshare perspective, we understand that in Friday, Saturday night, for every one taxi that is

operating, you have got about five rideshare vehicles operating. In the Sydney CBD is where they peak and where they are at. The question around the data Mr Shoebridge quoted from SIRA—it says "early data indicates". Now we are nearly six years since rideshare started operating legally.

The question I would like to understand from the SIRA perspective is what period is that data, how early is that data, because one of the challenges they had was not having much data at all because of not being able to distinguish rideshare. As our CEO has been noting, that needs to be identified much better. I think there is quite a bit of disparity and inequity in regards to the data for rideshare versus taxis, because we know there is overrepresentation of rideshare vehicles significantly—like I said, five to one at a minimum—yet the data is telling a different story.

Mr DAVID SHOEBRIDGE: I suppose we will have to ask SIRA about that. One of your other submissions from the Taxi Council is to amend the workers comp legislation to ensure that the people operating rideshare services are also covered as deemed workers. You say again that is about providing a level playing field?

Mr ABRAHIM: Yes, sure. In relation to the workers compensation scheme, the major inequity that we are operating under at the moment is that taxis fall under a framework going back to 1985. What is creating this un-level or unfair playing field is that there is a term in their determination under bailment, which is what taxis operate. Rideshare, even though they are similar models, does not operate by definition under a bailment arrangement and that captures the taxis' requirement. Therefore every operator within the taxi space—it is mandatory if they have a driver—must take out workers compensation. We have seen the advent of a larger amount of operators entering the rideshare space and doing similar models, similar work, as what they do in taxis. However, they are not required to take out workers compensation for their drivers. The difference is because we are working on that older framework that has not kept up, unfortunately, with today's market.

Mr DAVID SHOEBRIDGE: How pervasive is the—

The Hon. TREVOR KHAN: Point of order—

Mr DAVID SHOEBRIDGE: I accept. I think it is relevant and interesting.

The Hon. TREVOR KHAN: As do I.

Mr DAVID SHOEBRIDGE: I am glad we have that on the record but we cannot fix that in this inquiry. I think that is the point.

The Hon. TREVOR KHAN: I think when we did the taxi inquiry some years ago when Ajaka was in the chair, this was an issue that was ventilated at that stage. There is plenty of evidence on it, but it is not in this inquiry.

Mr DAVID SHOEBRIDGE: Anyhow, I will stop you by saying I agree. It appears I cannot progress that any further.

The Hon. ANTHONY D'ADAM: Just leading on from this, I was going to ask the question around delivery riders and the CTP that applies to delivery riders on motorbikes. Are there issues there in terms of an increasing utilisation of motorbikes as commercial vehicles? Do we need to look at the risk profile in terms of CTP for those vehicles? Perhaps Mr Wood might happen opinion on that.

Mr WOOD: We have raised concern about food delivery riders, but what CTP they may be paying or whether they are a commercial vehicle is not something that we have investigated. We could take that as a question on notice if you wish.

The Hon. ANTHONY D'ADAM: Sure.

The Hon. TREVOR KHAN: It is the electric bikes that interest me, which are sort of the transition—

The Hon. SHAOQUETT MOSELMANE: What about those which appear to be like bikes but are also powered by small engines?

The Hon. TREVOR KHAN: Exactly.

Mr WOOD: They would not be registered as a motorcycle. I guess the most appropriate classification is a power-assisted bicycle, which do not have to be registered.

The Hon. ANTHONY D'ADAM: What is the cut-off? How much power before you become—

Mr WOOD: Depending on how it is made, I think it is 250 or 200 watts.

Mr TIMMS: For e-bikes I think it is 200 watts, off the top of my head.

Mr WOOD: From what you see on the road, I think many are well in excess of 200 watts.

The Hon. TREVOR KHAN: Do you reckon?

Mr DAVID SHOEBRIDGE: From the speed they go past you sometimes you may think differently, but I think that is the case. Mr Timms, I have been trying to find the data somewhere in these papers that shows that the age of motor vehicles registered in New South Wales has increased over the past two years.

Mr TIMMS: You would have to talk to the Centre for Road Safety or Transport for NSW, which would hold that. They are the gatekeepers of all that.

Mr DAVID SHOEBRIDGE: It is in here somewhere, anyhow, that in fact over the past two years the age of vehicles on the roads has increased. Are you aware of that?

Mr TIMMS: The last time I looked into the age of vehicles, about 13 years was about the average age of the Australian light vehicle fleet—cars and light trucks—so quite old.

Mr DAVID SHOEBRIDGE: I think it is about 10½ years for passenger vehicles, so it is slightly older for—

Mr TIMMS: Probably slightly older, yes.

Mr DAVID SHOEBRIDGE: Far from going in the right direction, which is getting newer and safer vehicles, it is actually going the wrong direction. Have you seen that in your sector?

Mr TIMMS: As I said it is something that comes up quite regularly, this conversation. Whenever we have our national road safety conferences there are always papers being delivered on younger drivers; there are always papers being delivered on older vehicles and newer technologies. It is something that does come up in the world of road safety. I was asked before about the prevalence of older vehicles. I did find on page 6 of my original submission that the Transport Accident Commission [TAC] in Victoria refer to Australian research that estimated that if all young drivers killed or seriously injured in crashes over the past five years had been driving the safest vehicle then more than 500 young deaths and serious injuries could have been prevented. It is a staggering statistic.

Mr DAVID SHOEBRIDGE: And the data that we have about access to, for example, the Lifetime Care and Support Scheme for the most seriously injured shows a very large, disproportionate number of entrants going into that scheme aged 15 to 24.

Mr TIMMS: And with lifetime injuries requiring lifetime care, as the name suggests.

Mr DAVID SHOEBRIDGE: Your submission talks about moving from conventional thinking in this space to a kind of safe systems approach—moving from blaming young drivers for only having access to cheaper, older cars to actually having a coordinated approach to look at reducing the age of the vehicle fleet and improving the accessibility of safer vehicles, particularly for younger people.

Mr TIMMS: This is something that we call on everyone to do. Regardless of whether you are a company owner, whether you are a family or whether you are a sporting group—anyone in the community should start thinking about the whole system of their transport. Do you need to take that trip or can you use a train? Can you use an alternative source? It is not just about cars.

Mr DAVID SHOEBRIDGE: Yes, but at a minimum a kind of public education program that has—you could imagine an ad where a young person is asking for the keys to the car and they are given the keys to the older vehicle because the family is worried about damage to the newer vehicle, whereas actually what they should be thinking about is keeping that driver safe and damage to their child.

Mr TIMMS: Yes, correct.

Mr DAVID SHOEBRIDGE: Changing that thinking in that space would be important too, would it not?

Mr TIMMS: Yes, changing the thinking that it is more important to—we should be happy to replace an airbag, not replace a limb. That is the type of thinking that we need to get.

Mr DAVID SHOEBRIDGE: Do you see that happening anywhere in the country, trying to change that decision-making so that we are encouraging putting young people in newer cars because their safety is more important than paying the excess on a ding?

Mr TIMMS: We do applaud one of the facets of the new National Road Safety Strategy where they are talking about what they call a social model, trying to bring forces to bear outside of the normal transport bureaucracy—outside of your centres for road safety and outside of your police. Anyone that has a motor vehicle

and anyone that is a road user has a stake in this. It is just trying to get people to change that point of view. Maybe it is friends that can make that suggestion: "Oh, gee, is it really a good idea to put your son or daughter in that car? Maybe you should think about, if you can afford it, putting them in the safest possible vehicle." You are quite right.

Mr DAVID SHOEBRIDGE: But do you think that the State Government should be considering a public education campaign in this space?

Mr TIMMS: The New South Wales chapter would support any public education initiatives that would help deliver safer outcomes.

Mr DAVID SHOEBRIDGE: And maybe for the moment targeting it at those families where you have learner drivers and the like.

Mr TIMMS: Precisely.

The CHAIR: To be fair, I do recall one that happened out on the grass with a crashed vehicle that was 10 years older than another one and the difference in the—

The Hon. TREVOR KHAN: They were utes.

The CHAIR: Yes, so it has occurred.

Mr DAVID SHOEBRIDGE: But I am sure I am not the only person who has had conversations with their peers who have said, "We are putting off buying a new vehicle because our daughter or son is learning and we do not want to get the new vehicle dented". I am not trying to be judgemental here; we all have those kinds of thoughts at different times. But that is exactly the wrong pattern of thinking, is it not?

Mr TIMMS: Yes, and there are plenty of people in the road safety space—the Australasian New Car Assessment Program [ANCAP] is another one that does different promotions of the two Corollas, the '99 Corolla and the 2016 Corolla, and shows the dramatic differences. I would like to see them do one with the Hiluxes seeing they are so popular on the roads, particularly for the regional people. Our nephew is in the process of getting his licence in southern New South Wales and they bought him a ute. That is what they want.

Mr DAVID SHOEBRIDGE: The other aspect from a road safety point of view—we are seeing an increasing number of these sorts of mega-utes coming onto the market. What is the impact on pedestrian safety and pedestrian survivability of having these larger vehicles?

Mr TIMMS: It is probably not something that I could really comment on because we would have to see what ANCAP has to say. Not every vehicle gets put through the ANCAP process. Maybe, again, that is something that could be looked at. When I received my green slip renewal, again, there was nothing on that paperwork to say, "Your vehicle was tested in such and such a year and it received a five-star rating," which I thought was rather perplexing. They were worried about the age of the youngest driver and what my driving record was. I thought we were insuring the vehicle, not the person.

Mr DAVID SHOEBRIDGE: Sorry, I thought all vehicles had to have an ANCAP—

Mr TIMMS: No, not all vehicles. Some vehicles are niche vehicles and the manufacturers just do not—they are not going to sell enough of them. They are not going to crash an Aston Martin Lagonda or anything like that because they are just not going to sell that many of them. But vehicles that are—

The Hon. TREVOR KHAN: If you are dealing with the question that Mr Shoebridge asked with regard to the utes, a BT-50, a Ranger—

Mr TIMMS: Yes, all tested.

The Hon. TREVOR KHAN: All those styles.

Mr TIMMS: All tested. Yes. Some more later than others. Toyota has been quite progressive in getting vehicles tested. I think the latest Isuzu D-MAX has been tested. Ford Ranger I think was 2015 and the VW Amarok was 2014. That makes it harder again for the consumer. They see five stars but the standards have been increasing progressively, and we are now seeing in 2021 new standards again where they are recognising sideways movements in a road crash and promoting side airbags to stop people's passengers from hitting their heads. You are quite right. This could benefit from increased education just to better inform the public about what their buying options are and help them make the safest choices.

The CHAIR: And AEB was not compulsory back in 2014, was it?

Mr TIMMS: No, AEB was not compulsory and there are different reports. When you go onto the ANCAP website and actually look at those reports, some of them are—

The CHAIR: Sorry, AEB is autonomous emergency braking. The issue is that when the standards increase, people assume that a five-star car that is published as five-star even though it was in 2014 would now perhaps receive a four- or three-and-a-half-star rating given the current standards.

Mr TIMMS: Yes, and that is not a criticism of ANCAP. They have decided that they want to keep five stars and not add a sixth star or a seventh star. It is at least something to go on for the members of the public that if they download—the Centre for Road Safety has a used car buying guide on its website and it tells you star ratings for used cars.

Mr DAVID SHOEBRIDGE: I am surprised that someone can advertise a five-star ANCAP rating if the vehicle was tested in 2014 and they can keep doing that.

Mr TIMMS: Yes, it is an interesting point.

Mr DAVID SHOEBRIDGE: Surely that could be resolved by saying that there is a—

The Hon. TREVOR KHAN: Not by us.

Mr DAVID SHOEBRIDGE: But by putting an expiry time on—

The CHAIR: It would be a Federal issue.

Mr DAVID SHOEBRIDGE: One of the issues that is at play is that as the claims experience plays out and even though there has been a substantial reduction in premiums, there may well be, if we look at the numbers 18 months from now two years from now, a substantial amount of premiums that have not been paid out as benefits and that have been retained as profit. One of the options before the Parliament at that time would be to extend the no-fault benefits cover from six months to 12 months or two years and do it in a way that did not raise premiums because there would be potentially excess premiums collected. What are your thoughts about extending the no-fault premiums scheme as opposed to automatically cutting premiums as the two policy choices? We will start with Mr Rogers.

Mr ROGERS: Obviously in the interest of our members, reduced premiums would obviously be beneficial from a point of view of the operation to their businesses in staying viable. There would have to be consideration given to what the additional benefit is to the recipients extending it to 12 months and two years. It is a question that would need to be raised and discussed before a decision would be made. In the interest of our members, reduced premiums would obviously help with keeping the viability, especially given the way in which the industry calculates and how we pay CTP premium at present.

Mr DAVID SHOEBRIDGE: But you would consult with your members about the benefits of extended cover if they are at fault.

Mr ROGERS: I think we would always be open to that and having a look at that position and seeing where you would go. It is a trade off between the two.

Mr DAVID SHOEBRIDGE: Mr Wood? Mr Henry?

Mr WOOD: It is not something we have given direct thought to, but certainly from our members there is a push to reduce premiums. I think we would have to look at the data as to what may be required past that six months. Six months does provide adequate cover, because how do you just keep extending it out to 12 months. I guess then you would get the same compensation as if you were not at fault.

Mr DAVID SHOEBRIDGE: Given that many of your members own the access if they are in a single vehicle accident, albeit at the no-fault scheme, arguably your members will benefit most from an extension. Would they not?

The Hon. TREVOR KHAN: Yes.

Mr WOOD: Correct. Yes.

Mr DAVID SHOEBRIDGE: Mr Timms?

Mr TIMMS: Probably not really an issue for the college.

Mr DAVID SHOEBRIDGE: It is not a road safety issue.

The CHAIR: I draw this session of the hearing to a close. For witnesses who have taken questions on notice, the Committee has resolved that they be returned within 21 days. The secretariat will be in contact with you about questions that you have taken on notice.

(The witnesses withdrew.)

(Luncheon adjournment)

CHRIS BUTEL, Chair of the Insurance Council of Australia's New South Wales Compulsory Third Party Insurance Committee, sworn and examined

MEGHAN ISLEY, Member of the Insurance Council of Australia's New South Wales Compulsory Third Party Insurance Committee, affirmed and examined

ESTELLE PEARSON, Actuary supporting the Insurance Council of Australia, affirmed and examined

The CHAIR: Welcome back to the afternoon session of our hearings. I welcome our next set of witnesses. Would any of you like to start by making a short opening statement?

Mr BUTEL: Yes, I will make an opening statement. Thank you for inviting the Insurance Council of Australia [ICA] to appear at today's hearing. The ICA is the representative body for the general insurance industry and our members includes the five insurance groups that underwrite the New South Wales CTP Insurance Scheme. As mentioned, my name is Chris Butel and I chair the Motor Accident Injuries Scheme committee. Alongside me today are Meghan Isley and Estelle Pearson. As outlined in the ICA's submission to the inquiry, the 2017 reform to the CTP scheme under the Motor Accident Injuries Act has delivered significant improvements. The introduction of no-fault benefits has allowed injured people faster access to treatment and financial support following a motor vehicle accident. In contrast, under the previous scheme injured people could wait three to five years for any financial benefits at the settlement of the claim. Prompt access to support can alleviate financial distress and allow injured people to focus on recovering.

Another significant aspect of the new scheme is the "minor injury" definition, defined to deliver a greater proportion of benefits to those who are most seriously injured. As outlined in the ICA's supplementary submission, the ICA supports the "minor injury" definition and believes it is generally working well. A growing body of evidence suggests that lengthy involvement in compensation schemes can negatively impact on a person's recovery. The "minor injury" definition supports the timely resolution of minor injury claims, reducing the length of time that an injured person needs to spend in the personal injury compensation scheme. Of course there is always room for improvement in the scheme and consideration should be given to extending the 26-week statutory benefit period for people at fault who sustain non-minor injuries. We believe this would provide a fairer and more equitable outcome for these injured people. Insurers remain committed to continual improvement in performance to ensure all injured people receive the best recovery and health outcomes. We are happy to answer any questions the Committee may have.

The CHAIR: Thank you very much. We will now turn to questions from the Committee.

The Hon. TREVOR KHAN: Look, I am happy to lead off. This is perhaps for me the more interesting part of it because we are actually talking about the claims experience of the injured person, as opposed to the more esoteric thing about the level of premiums and the like. In the last round we had some witnesses who were talking about, in a limited way, the claims experience and indeed, it was suggested, a reluctance to participate in the scheme because of a concern about getting a neg driving charge. I will just park that there.

What I am interested in is this: Can you walk us through an injured person arriving at a hospital, as to what happens with that person to get them into the scheme and what interaction there is with that person from that point on? Look, just so everyone knows, I am doing this from the point of view that my 93-year-old mother was injured in a motor vehicle accident 18 months ago or thereabouts. I have more than an intimate knowledge, at least in her case, as to what happened, but I do not think a lot of other people actually understand how radical the change has been in terms of the exercise.

Ms ISLEY: Yes. Look, I am happy to take that question.

The Hon. TREVOR KHAN: Excellent. Go for it.

Ms ISLEY: Obviously starting with the hospital system, I can talk as far as I understand. We get contacted—

The Hon. TREVOR KHAN: I am not expecting you to give medical advice.

Ms ISLEY: Yes. It is our understanding that when a person presents to hospital following a motor vehicle accident, very quickly the social workers get involved in that case and look to support the injured person to lodge the claim as soon as possible.

The Hon. TREVOR KHAN: Can I just stop you there? One of the reasons for that, of course, is because it determines how the hospital gets paid. That is right, is it not?

Ms ISLEY: Absolutely, yes.

The Hon. TREVOR KHAN: There is, in a sense, an incentive that the hospital has to get the person signed up under the scheme rather than allowing them to drift through the normal system. Would that be fair?

Ms ISLEY: That is correct. Ambulance costs are of course picked up by the insurers as well, so there is an incentive to get them into the scheme quickly. From our point of view, we want to have the customers come to us as soon as possible so that we can look to get the support in place that they need, whether they are in hospital or, more importantly, once they get discharged from hospital.

The Hon. TREVOR KHAN: Right. So, in terms of filling in the form, the social worker or somebody in the hospital system arrives either at the injured person's bed or with a relative and they fill out a form. Is that right?

Ms ISLEY: That is right.

The Hon. TREVOR KHAN: How extensive is that form?

Ms ISLEY: It has the details of the accident and their injuries, and it requires a medical certificate to be submitted as well.

The Hon. TREVOR KHAN: Right, and that is essentially a certificate that is written by one of the registrars on the ward?

Ms ISLEY: That is right. Any doctor who fills out the form is fine.

The Hon. TREVOR KHAN: And how long does the insurer then have from the submission of that form—I take it that actually the social workers go off with the form and then PDF them and send them off to the insurer. Is that right?

Ms ISLEY: That is right, yes.

Mr DAVID SHOEBRIDGE: Sorry. That is when it is all going well, but is that uniform?

The Hon. TREVOR KHAN: Well, you might not have been here. The hospitals do it because they get paid.

Mr DAVID SHOEBRIDGE: No, I was here when you said that. In a perfect world they would do it and close the loop, but is that social worker—is that uniform?

Ms ISLEY: Look, I cannot answer that question. I am not aware of many claims that get missed from the hospital system. Certainly we do get lots of notifications coming through the hospital system, but what is missed I cannot comment on.

The Hon. TREVOR KHAN: Now, how long does the insurer then have to respond to the claim that is submitted?

Ms ISLEY: Actually, I cannot tell you off the top of my head exactly how many days it is, but it is a number of days before the insurer is required to respond.

The Hon. TREVOR KHAN: Right. Does SIRA keep a track of performance in terms of that response rate?

Ms ISLEY: Yes. We have to capture a large amount of data about what we do on the claims and SIRA has access to that data.

The Hon. TREVOR KHAN: Alright. Once the claim has been submitted, what happens next?

Ms ISLEY: Once the claim is submitted, we look to contact the injured person as soon as possible. If the injured person is in hospital, of course we would look to contact their next of kin to establish what they need in the very first start of the claim. It is a no-fault scheme—

The Hon. TREVOR KHAN: For the first six months.

Ms ISLEY: That is right. So, 98 per cent of our claims are accepted in that first six months. We do not have that same pressure that we used to around the urgent liability decision because the vast majority of claims are accepted. The next focus is working with the injured person to get in place what they need to support their recovery.

The Hon. TREVOR KHAN: Alright, so can you walk us through that? Let's assume the person is in hospital for three months. What happens after that?

Ms ISLEY: The person in hospital is actually, in the first instance, a little easier for us because their care is being taken in the hospital.

The Hon. TREVOR KHAN: Yes. So all you are doing, essentially, is paying the bills.

Ms ISLEY: Paying the bills and monitoring and looking to put things in place for the discharge. A person—if they were transferred to rehab then we would be working very closely with the rehab hospital on their discharge plan, essentially. Once they get home, it will be establishing what ongoing treatment needs they have and also what care needs they have, and getting those things put in place. At the same time, we are assessing liability because we do have to make a liability decision at three months and, of course, we have to make a minor injury determination as well at three months.

The Hon. TREVOR KHAN: Right. Again, is that one of the key performance indicators [KPIs] that SIRA monitors in terms of the compliance with that?

Ms ISLEY: Absolutely. The timeliness of the decisions is captured in the data and then they have undertaken a number of audits looking at the quality of those decisions.

The Hon. TREVOR KHAN: Right. In terms of those home care needs and the like, what form do they take?

Ms ISLEY: Under this scheme, paid care has to be supported by the scheme. There is no avenue for gratuitous care or care provided by the family to be reimbursed, so it is paid care services that we look to get in, where needed.

The Hon. TREVOR KHAN: Are these paid care schemes—I think I know the answer—somewhat similar to the aged-care packages that are provided?

Ms ISLEY: Exactly. It depends where the person is located and what is available, but we would either work directly with the care providers or have a rehab provider allocated to support the injured person to get all their needs sorted out—care, home equipment and all that sort of thing—in addition to their treatment needs.

The Hon. TREVOR KHAN: So, for instance, the insurer will pay for renovations to the home. Is that right? To allow the injured person to—

Ms ISLEY: Renovations to the home gets a little bit more complex because people who require renovations are often covered under the Lifetime Care scheme, so those type of renovations would be picked up by that scheme. Nonetheless, one of either the insurer or the Lifetime Care scheme would look to support those things that are reasonable and necessary to get the person back home and assist recovery.

The Hon. TREVOR KHAN: Right, and that style of provisions lasts for how long? Putting aside the renovations, but—the home support.

Ms ISLEY: It depends on need, of course, in the first instance. The cases you are describing who are coming through the hospital system—there is very little chance that they would be a minor injury. For the most part, they are going to be non-minor injuries. Treatment and care for those non-minor injuries is available for up to five years, supported by the insurers, and then after that it is transferred into the longer term scheme under icare for treatment beyond five years.

Mr DAVID SHOEBRIDGE: One of the concerns raised in the submissions—and this has come from particularly the lawyers—is the transfer of the claim at the end of six months. I think the submissions largely suggest that the no-fault scheme is working well, people are being entered into the scheme and that part of it is working well for the first six months, but at the end of six months it is a very mixed story about decisions being made as to whether or not an injury is a minor injury or not. Can you tell us what your members are doing to ensure that the right decision is being made in a timely fashion with the right information?

Ms ISLEY: Yes, sure. I think the first thing to say is that we need to remember that the vast majority of people do recover in three months, and a six-month period for a minor injury is quite a generous time for recovery. I think actually Professor Ian Harris mentioned that at the last law and justice hearings. As I said, we make the minor injury determination at three months. Injured people are aware at three months of when their benefits are likely to cease if they are a minor injury. Of course, if they still are requiring treatment towards that six-month point, then we are constantly in touch with them and helping them to get things in place if further treatment is needed. The key for those people who are not fully recovered—the scheme actually allows, for minor injury, for treatment to continue after the six-month point if it will improve their outcomes. We are seeing discretionary treatment approved for the customers after six months.

Mr DAVID SHOEBRIDGE: Have you spoken with your members about their decision-making on the minor injury threshold?

Ms ISLEY: Yes, there has been lots of conversation about the minor injury decision-making since the start of the scheme.

Mr DAVID SHOEBRIDGE: Some of the data would suggest that a number of those initial determinations get overturned upon internal review—about a quarter of them have been overturned on internal review. Is that right?

Ms ISLEY: That is right.

Mr DAVID SHOEBRIDGE: Does that data raise any concerns with you—that a quarter of the initial decisions are being overturned on internal review?

Ms ISLEY: It is an interesting question because, if no decisions were being overturned, I would be concerned that the internal review process was not working. So we do not have anything to benchmark the internal review overturn rates against, but I think a quarter is at least demonstrating that the system is working.

Mr DAVID SHOEBRIDGE: It could also be demonstrating that there is a problem in the initial decision-making.

Ms ISLEY: That is true.

Mr DAVID SHOEBRIDGE: Have you approached your members and asked them to test that?

Ms ISLEY: We have had lots of conversations around both minor injury and the internal review. I would just like to refer to some notes. The internal review process is important to ensure that the right decision is being made. There are times when new information is being presented at the internal review process, so it is important to consider that the information that the first decision is being made on may be different to what the internal review decision-maker has. So that will account for some of the overturn rate.

Ms PEARSON: Could I add some more statistics on that, Mr Shoebridge? I am not sure about the 25 per cent overturn rate. The rates we have looked at are more like 11 per cent on minor injury. But we can obviously check that. But when we did look at that in more detail we found that the overturn rate where there was a psychological injury involved was more like 35 per cent. We have previously submitted that it can be difficult and challenging to make the decision on minor injury where there is a psychological injury involved just because of the nature of those injuries. That higher overturn rate on claims where there is a psychological injury does suggest that there is further information as the claim evolves over time, whereas on physical injury the overturn rate is very low from the stats that we have looked at.

Mr DAVID SHOEBRIDGE: I might come back to psychological injury. I think it is a separate issue. I think they are related, but I think there is a distinct question there about whether or not the guidelines are robust enough and whether or not the appropriate medical advice has been sought about psychological injury. But could I go back to the decision-making. Because it is not just about minor injury. At the end of six months you are also making a liability determination.

The Hon. TREVOR KHAN: Have we got agreement on whether it is 11 per cent or 25 per cent?

Mr DAVID SHOEBRIDGE: The figures I had were 22 per cent of decisions were overturned on internal review.

Ms ISLEY: That is right, as a global figure.

Mr DAVID SHOEBRIDGE: But that is a global figure. I have not got a breakdown beyond that.

Ms PEARSON: For minor injuries, 11 per cent. It is a higher overturn rate on the at-fault decision and on treatment and care.

Mr DAVID SHOEBRIDGE: Do you have that data, Ms Pearson?

Ms PEARSON: I do not have that in front of me but we could provide that.

Mr DAVID SHOEBRIDGE: We will ask SIRA as well.

The CHAIR: Are you able to provide that on notice?

Ms PEARSON: Yes.

Mr DAVID SHOEBRIDGE: The other aspect of decision-making at the end of six months is a liability decision. I will, in fairness, read to you part of the submission from the Australian Lawyers Alliance [ALA], which gives a flavour of the concerns. It says:

> Where the ALA does raise an issue with regards scheme performance is the transition at six months. Prior to the conclusion of the six month period, the insurer needs to make a decision both as to liability and as to minor injury. The general quality of this decision making is woeful.

And then there are further details and concerns. I am not asking you to adopt that characterisation but I am giving you the chance to respond to it. Because my understanding is, on both the issues of minor injury but also on liability, a number of the initial decisions being made are just wrong.

Ms ISLEY: I would like to refer to a report by John Watts. SIRA requested that John Watts come in and look at a sample of 50 internal review decisions across the insurers. Actually the finding of his review was that insurers are independent in their decision-making process, which is of course a key element of internal review, and that we are demonstrating the required skills to make fair and just determinations. So that is in contrast to the ALA submission.

Mr DAVID SHOEBRIDGE: Perhaps I was not putting my question clearly enough. It does seem to me that there is some kind of robustness in your internal review because you are overturning about a quarter of decisions. The problem I have is that a quarter of decisions need to be overturned on internal review and of course only a small proportion of the initial decisions that are made are actually ever challenged on a review. So I am more concerned about the initial decision-making.

Ms ISLEY: I think internal review is a really important process to upskill that initial decision-making. Where a decision is made that may have not been the best decision at the time, there is a quick and efficient internal review and there is a feedback loop directly into the claims consultants to ensure that there is an uplift in that decision-making. It is a really important part of the scheme.

Mr DAVID SHOEBRIDGE: Putting to one side the issue about minor injury, it seems that a number of the initial determinations made on liability and on treatment are, when they are reviewed by a review team, wrong. Do you have a strategy in place to make sure that less of those decisions are wrong?

The Hon. TREVOR KHAN: It would not be them. It would be the insurers.

Mr DAVID SHOEBRIDGE: Your members.

Ms ISLEY: I can talk to the experience of that. One thing to consider is that the more complex decisions go through to review. To your point around how many decisions are being made that might be not the best decision at the time, they are more complex ones going through to internal review for the most part. As I said, there is a feedback loop into the initial decision-makers to ensure that they understand why there has been a change in the decision at internal review.

The Hon. TREVOR KHAN: What is the time frame for the undertaking of the internal review?

Ms ISLEY: The maximum period for an internal review to be completed, where there is a request for some additional information, is 28 days.

The Hon. TREVOR KHAN: Is that also a metric that SIRA—

Ms ISLEY: Absolutely. Yes. There has been a bit of focus on that in the scheme and it is in the quarterly reports. The timeliness of internal reviews is measured on a quarterly basis.

Ms PEARSON: If I can add a statistic in there, the latest report that we saw on that on SIRA's website was that in 2021—obviously that is not the full year—90 per cent of internal reviews were completed in the time frame, which was an improvement from 60 per cent in the previous year. There was a significant focus and improvement on that by the members.

Mr DAVID SHOEBRIDGE: I am going through the Macquarie University review of the first 1,000 claims. The number of claims that actually go through an internal review process is relatively tiny.

Ms ISLEY: There have been just over 14,500 internal reviews undertaken since December 2017.

Mr DAVID SHOEBRIDGE: I go back to the question that I still do not know I have had an answer to. When you talk to your members, are they saying, "We are seeing a large number of claims overturned on internal review, particularly around treatment and liability. We will look at how we deal with those initial determinations to try to get it right in the first place." I have asked that a couple of times, but I have not yet—

Ms ISLEY: Definitely, absolutely, yes.

Mr DAVID SHOEBRIDGE: You keep saying internal reviews are working, which is kind of avoiding the question.

Ms ISLEY: Yes, of course there is a focus on ensuring that the right decision is made in the first instance.

Mr DAVID SHOEBRIDGE: Is there a benchmark that will be looked at? Has SIRA said to you, "We want to see this change?"

Ms ISLEY: No, SIRA has not provided a benchmark. As I said, it is a bit difficult to know what the benchmark is because the internal review process is new in our scheme.

The Hon. ANTHONY D'ADAM: Are they desktop reviews? How does it work?

Ms ISLEY: Yes, desktop reviews of the decision made. They actually do contact the injured person. That is a critical part of the internal review. It is designed to be informal, to work through with the injured person why the decision was made and if they have any new information they would like to add to the review process. Then, once the decision is made, it is communicated to the injured person verbally and detailed reasons are provided as well.

The Hon. ANTHONY D'ADAM: So they do that on the basis of the information that is already collected in terms of the initial assessment. Is that right? It is not a process of obtaining further information.

Ms ISLEY: They can request further information if they think that is required to inform their decision, yes. And where they request further information, there is an additional time period added to the review decision being made, up to 28 days.

The Hon. ANTHONY D'ADAM: How common is it that further information would be obtained in an internal review?

Ms ISLEY: I would have to take that on notice. I am not sure.

Mr DAVID SHOEBRIDGE: There is no legal assistance, is there, for a claimant for an internal review application?

Ms ISLEY: No, that is right.

Mr DAVID SHOEBRIDGE: Given that you say internal reviews are important and a key part of the system, what is the insurance council's position on providing some kind of fair remuneration to allow lawyers to assist on an internal review?

Ms ISLEY: It is our position that internal reviews are designed to be informal and inquisitorial rather than adversarial. It is our position that legal assistance should not be required on an internal review.

Mr DAVID SHOEBRIDGE: But let us say English is not the person's first language or they have very rudimentary education.

The Hon. TREVOR KHAN: A lawyer may not solve that problem, David.

Mr DAVID SHOEBRIDGE: But in most cases you will be a great deal better off with a lawyer in your corner than not.

The Hon. SCOTT FARLOW: Not if you cannot communicate with a lawyer.

The CHAIR: Say the lawyers.

The Hon. TAYLOR MARTIN: Says one lawyer to another.

Mr DAVID SHOEBRIDGE: If you have a better set of advocates who are ready and who understand the complexities of the scheme, the law and dealing with it, let me know.

The Hon. TREVOR KHAN: You were dealing with the question of language, David.

The Hon. SHAOQUETT MOSELMANE: Some lawyers speak more than one language.

Mr DAVID SHOEBRIDGE: Accepting the claimants may well be injured—almost certainly are—perhaps traumatised by what has happened to them, and may have other barriers, whether it is language or education and the like, that is the class of people who, without any assistance, have to put a review application in. I understand they have a right to review. I understand there might be an error and they then put a review application in. They are the people putting the review application in. Against that is a highly resourced insurance company with a whole lot of skills. That does not seem to me a fair playing field.

Ms ISLEY: Going back to your question of people who need the additional support, where that is required we would use interpreters, as necessary, which I know is not perfect. We would also be working with their treatment providers directly to understand what the injured person needs and what their concerns are, or with any advocates they may have. For example, any family members acting on their behalf. All that information is put together to ensure the process is inquisitorial, as I said, and not adversarial so that we can make the decision as quickly as possible.

Mr DAVID SHOEBRIDGE: But you do not have the same interests as the claimant. It is ultimately your money that the claimant wants to get access to. You have divergent interests. For an inquisitorial system to be fair, the inquisitor needs to not have a conflict of interest with the claimant, does it not?

Ms ISLEY: I think from a statutory benefits point of view, our interest is in helping the person to recover quickly because at the end of the day that means it costs us less money in the longer term. So I think it is unfair to say that we are sitting here reluctant to hand over the money. We are interested in getting people better.

The Hon. SCOTT FARLOW: Could I follow up on that point? As regards your internal review processes, when you talk about the alignment of interests, I imagine you look at what could possibly be defendable in the future as well and what might give you legal exposure if a claim was not correct. As much as you might want injured parties to be rehabilitated in this process, there is also another financial incentive for you, is there not, to make sure that it is right at that point rather than getting to another point where there is an external legal case that may emerge?

Ms ISLEY: Yes. If we are making a liability decision, absolutely, we want to make the right decision at that point.

Mr DAVID SHOEBRIDGE: But there is no penalty if you get it wrong.

The Hon. SCOTT FARLOW: The penalty is costs.

Mr DAVID SHOEBRIDGE: If you refuse liability and that gets overturned at a later point, you end up paying the same amount.

The Hon. SCOTT FARLOW: And then you pay for the lawyers.

Mr DAVID SHOEBRIDGE: There is no penalty.

Ms ISLEY: And it extends the life of the claim.

The CHAIR: Where there is a dispute around liability and we have had the internal review, what processes are in place then and what supports are provided for the claimant?

Ms ISLEY: On the internal review, we provide all the reasons that inform that decision. If the injured person is still not satisfied with the decision, then they can take it to what was the Dispute Resolution Service and is now the Personal Injury Commission [PIC]. When they take that to the Personal Injury Commission, legal costs are allowed, so they do have the option of getting legal advice to support their submission to the PIC.

The CHAIR: The provision of a second opinion: Is that exercised at all? Who picks up the cost? What is the mechanism? There may be a dispute around the evidence provided for the initial application and also the internal review.

Ms ISLEY: When you say "second opinion", do you mean a second medical opinion?

The CHAIR: A second medical opinion, yes.

Ms ISLEY: An injured person can get a second medical opinion to inform the Personal Injury Commission.

The CHAIR: Will that be at their cost?

Ms ISLEY: The ideal situation would be a joint medical assessment, which would be paid for by the insurers. If they get an assessment with the support of a lawyer, then that is a cost that they would initially bear—

The CHAIR: The claimant would bear that.

Ms ISLEY: —but we would pick up later in a damages claim.

The CHAIR: I think you said about 10 per cent of the claims at the moment on the current figures were outside the 28 days. Is that correct, Ms Pearson?

Ms PEARSON: That was based on the latest SIRA report, yes.

The CHAIR: Ms Isley, I think you said that where there is a request for further evidence to be provided, that would extend the 28 days.

Ms ISLEY: No, 28 days is the maximum in which to undertake the internal review. Depending on the type of review, if there is no additional information requested, it is 14 and 21 days.

The CHAIR: What would be the usual reason for 10 per cent of the internal reviews not to meet the 28-day deadline?

Ms ISLEY: The deadline that Ms Pearson referred to was actually—there are two deadlines in an internal review. One is to acknowledge the internal review in two days and the second deadline is, of course, to complete it within the time period.

The CHAIR: So 100 per cent of the internal reviews are completed within 28 days?

Ms ISLEY: No.

The Hon. TREVOR KHAN: No, that is not what she said.

Ms ISLEY: No. I will go back to your question of why would they not meet that time frame. Over the course of the past year there have been occasions where insurers have been caught out by the volume of reviews coming through, so they have not been able to complete them in time. That has been a teething issue in the new scheme.

The Hon. TREVOR KHAN: But it had improved from 60 per cent complying with the 28 days to 90 per cent.

Ms ISLEY: Yes. There has been a big focus on ensuring that we are completing these reviews in time because it is so important for the scheme and for the customer outcomes.

The Hon. SHAOQUETT MOSELMANE: Ms Isley, I think you indicated that you are interested in the quick recovery of patients.

Ms ISLEY: Yes.

The Hon. SHAOQUETT MOSELMANE: Obviously, we are all interested in that. But earlier on you raised an issue about patient discharge. You follow up the discharge of the patient. Is any pressure applied to the hospitals to discharge the patient at all, perhaps to minimise costs?

Ms ISLEY: No, it is usually the other way; hospitals are very keen to get rid of injured people quickly.

The Hon. SHAOQUETT MOSELMANE: But if the hospital is getting paid?

Ms ISLEY: In my experience it comes down to the hospital wanting the beds more than—

The Hon. TREVOR KHAN: They want to put them into the rehabs.

Ms ISLEY: That is right. The pressure is on the insurers, usually, to make sure that there is that smooth transition to rehab.

The Hon. SHAOQUETT MOSELMANE: Is there greater cost at rehab than hospital, in your experience?

Ms ISLEY: No, rehab beds I think are cheaper, but that is probably a question best taken on notice. But I do believe that rehab beds are cheaper on a per-day basis.

The Hon. ANTHONY D'ADAM: I just wanted to come back to the internal review process. How do you ensure the integrity of the internal reviewer? What are the mechanisms to ensure that they are independent and impartial?

Ms ISLEY: Different insurers take different approaches to that. All of the insurers have the team completely independent from the groups that are making the original decision. Some insurers have them based in their customer relations department whereas others have them as part of the CTP department. But in either case, as John Watts actually referred to in his report, they are absolutely independent from the original decision-maker. As I said, they do receive all the information that informs the initial decision. The other sort of—

The Hon. ANTHONY D'ADAM: Is it a single person who makes the decision or is it done on a team basis?

Ms ISLEY: It is a single person but there are processes in place for peer review of those decisions, where the insurer decides that that is a beneficial process. The insurers have to ensure that there are independent decision-makers but obviously each insurer takes various approaches to ensuring they are making good decisions.

The Hon. ANTHONY D'ADAM: There is no standard approach taken across the industry, then?

Ms ISLEY: The independence is standard. But as referred to in John Watts' report, there are various different models that the insurers use.

The Hon. ANTHONY D'ADAM: Are they generally legally qualified?

Ms ISLEY: We are making decisions on both medical matters and legal matters, so there is a mix of skill in the teams that complete the internal reviews.

The Hon. ANTHONY D'ADAM: Is there any standard in terms of the remuneration structure for those people?

Ms ISLEY: No.

The Hon. ANTHONY D'ADAM: I think the NSW Bar Association raised this figure of 5 per cent of premium dollars being returned to injured claimants. Can you offer some comment on that? Is that figure correct? I am assuming it is based on SIRA data but perhaps you—

Ms PEARSON: Is it okay if I take that question?

The Hon. ANTHONY D'ADAM: Sure.

Ms PEARSON: I think that what the NSW Bar Association are doing is comparing payments to date with premiums received to date. But because the scheme is a long-tail scheme not all the payments have been made yet. I think if you look, again, at the SIRA report by their actuaries on how the scheme is performing—the latest I looked at it was on the weekend—they said that I think for the first year of the scheme so far about 24 per cent of the payments had been made and 75 per cent of the payments were yet to be made. For that first year—the 2018 accidents—over the next three years about one-quarter of the total expected payments have been made for those people injured in those accidents and three-quarters are still to be paid. The reason it is still to be paid is that obviously the people with non-minor injuries can continue to get some treatment and care up to five years and they are only a maximum of three years so far.

Also what we see is that most of the claims for damages do not come in until about 20 months and then there is a three-year sort of statute of limitations time frame. Again, we have not even got to that three-year period for all of those claims and that first year, 2018, will only get to that period by the end of this year. We are starting to see more claims for damages get paid but they are yet to be paid. I think that based on the EY Australia document they were estimating $1.5 billion of payments from the first year of the scheme, ultimately, with say, at the moment, about one-quarter of that paid. That will be 70 per cent of the premium for that period around. I just think that the Bar Association figures are not quite comparing apples with apples in the way that they are put together.

The Hon. TREVOR KHAN: The only thing—you mentioned the 20 months. That is essentially the threshold to commence a claim in most circumstances, is that not right?

Ms PEARSON: For non-minor claims less than 10 per cent whole-person impairment, it is. For those more than 10 per cent whole-person impairment they can put a damages claim at any point, but obviously a lot of people would want to wait for their injuries to stabilise before they go through that process and obviously they can receive loss-of-income benefits. I think they have to put a claim in at three years to continue to get loss-of-income benefits up to five years and they can get treatment and care up to five years. I guess we were expecting to see a lot of common law payments over the next two to three years from that first year of the scheme.

The Hon. TREVOR KHAN: Okay.

Mr DAVID SHOEBRIDGE: Even in the fourth and the fifth year, Ms Pearson?

Ms PEARSON: Pardon?

Mr DAVID SHOEBRIDGE: You mean those claims crystallising in the fourth and fifth year?

Ms PEARSON: The damages claims. I think with the damages claims, so far for that first year of the scheme I think the numbers, again from an EY Australia or SIRA report, were 13,600 claims, 3,800 not at fault non-minor claims, and 2,200 damages claims—remembering that there is still another up to seven months or maybe a bit longer for claimants to lodge a damages claim. That 2,200 claims figure I think EY Australia expected to go up to something over about 3,000 claims.

Mr DAVID SHOEBRIDGE: You are saying just for the first premium year?

Ms PEARSON: That is just for the first year of the scheme, I understand.

Mr DAVID SHOEBRIDGE: Because that does not seem to accord with the data we got from SIRA in answers to questions on notice. They told us that for the first three years, from December 2017 to December 2020, that there were only 2,333 outstanding damages claims for the whole period, which would seem to be significantly lower if it is for three years.

Ms PEARSON: Some 2,172 damages claims from the first year of the scheme was the figure I had from a different SIRA report on their website, but there really would not be a lot of damages claims from the second or third year of the scheme yet because they have not gone past a lot of those thresholds or those time frames when people would make damages claims, so I am not sure that the numbers are inconsistent. But we can certainly take it on notice to clarify the numbers.

Mr DAVID SHOEBRIDGE: But the figures that we have from SIRA as at 31 December for all claims from 1 October 2018 to 31 December 2020 show that there were $6 billion in premiums taken in and a little over $700 million in payments going out to claimants, medical and legal. There is a $5.3 billion gap there. Do you have any observations about that?

Ms PEARSON: The observation is that those payments keep going up. I think when I looked at their website on the weekend that $700 million was up to $914 million, so they do keep going up. But I believe that you have to really break that down and just look at each accident year on its own merits. There is about $2 billion of premium income each year. As I say, EY Australia were estimating $1.5 billion total payments for that first year of the scheme with about one-quarter of that already having been paid. Obviously, most of those payments to date have been the statutory benefits, not the damages payments. I think my memory, again, was that their estimate of the outstanding common law payments was about $900 million.

Mr DAVID SHOEBRIDGE: But my understanding is that they estimated that the payments will be in the order of $1.5 billion for that first year. I think we agree on that?

Ms PEARSON: Yes.

Mr DAVID SHOEBRIDGE: But premiums taken in were in the order of $2 billion.

Ms PEARSON: That is right.

Mr DAVID SHOEBRIDGE: That 25 per cent differential is bigger than what the actuaries were suggesting when the premiums were written.

Ms PEARSON: My calculation was that the ultimates were about 70 per cent of the premium that they were estimating.

Mr DAVID SHOEBRIDGE: What do you estimate the insurers' profit to be for the first year?

Ms PEARSON: That is not a calculation that we do. That calculation is done by SIRA's actuaries. They do that calculation every year and then they go through a process set out in the transitional excess profit and loss provision—

Mr DAVID SHOEBRIDGE: Which keeps getting referred to as "TEPL".

Ms PEARSON: Yes, TEPL. The actuaries do an estimate every year of the profit. They then look at how certain they are about that profit and that sort of depends on what has been paid so far. So until they are more certain about the level of profit, there is no further action taken but they keep measuring it.

Mr DAVID SHOEBRIDGE: What is the current measure as you understand it for that first premium year?

Ms PEARSON: I believe SIRA has asked its actuaries to do that calculation again.

Mr DAVID SHOEBRIDGE: What was the first calculation, though, Ms Pearson?

Ms PEARSON: I am not aware of the result of the calculation.

The CHAIR: We can perhaps ask SIRA tomorrow.

Mr BUTEL: I believe it is too early to be able to determine it, given there has only been 24 per cent of payments. The level of uncertainty as to what that ultimate profit might be was highly uncertain.

Mr DAVID SHOEBRIDGE: My understanding is that they had a figure. Maybe it was contested, but none of you can recall what the figure was?

Mr BUTEL: No, I think that would be a question better asked of SIRA.

Mr DAVID SHOEBRIDGE: I am asking you, though.

The Hon. TREVOR KHAN: David, this is—

Mr DAVID SHOEBRIDGE: No, there is a huge amount of uncertainty.

The Hon. TREVOR KHAN: It is a serious calculation.

Mr DAVID SHOEBRIDGE: There is a huge amount of uncertainty about it, which I think we all accept because you have only had 24 per cent of the claims. But it is important to know where it is tracking.

The CHAIR: We can ask SIRA tomorrow, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: You cannot assist on that? It is actually better to get the data here so that you can respond to it rather than get the data from SIRA and not have you able to respond to it. It is actually in your interest.

The Hon. TREVOR KHAN: Why would they need to respond to it at all?

Ms PEARSON: We do not have that data so I think that when the previous assessment was done—obviously, it was a year ago so there would have been even less than 25 per cent paid, so far so the uncertainty would be even greater. I believe they are doing it at the moment.

Mr DAVID SHOEBRIDGE: I believe the figure from a year ago would be useless.

Ms PEARSON: It is probably a question that is best for SIRA. The way that the process works is that the calculation keeps getting done until the actuaries advise SIRA that they are confident enough in the level of profit—that they can estimate it with sufficient certainty. That then triggers or does not trigger the excess profit provisions. If it does trigger those provisions then the insurers pay a certain amount of the premium back into the authority fund to the extent that it is above the excess profit amount that is in the guidelines. So there is a very clear process in the guidelines about how that whole process unfolds.

Mr DAVID SHOEBRIDGE: And we would expect that to crystallise about five years after.

The CHAIR: We can ask SIRA that, I suspect.

Ms PEARSON: I think it is a question for SIRA. It will really depend on when there is sufficient certainty in the estimate of the profit.

The CHAIR: I am just going to ask quickly, noting that we are virtually out of time, does anybody else have any points that they wish to address before we close this session? Mr Shoebridge, do you have anything else burning that you want to ask before we close?

Mr DAVID SHOEBRIDGE: Do you have a position as to whether or not there should be greater ability to maintain medical treatment in no-fault claims beyond the current six-month expiry?

Ms ISLEY: Yes, our position is that it should be considered for non-minor at-fault drivers to extend benefits.

Mr DAVID SHOEBRIDGE: To extend that?

Ms ISLEY: That is correct.

The CHAIR: Do you have a position on what that might be?

Ms ISLEY: In our submission we talked about extending that up to two years, and then the two options of it being treatment or treatment and income support.

Mr DAVID SHOEBRIDGE: If things track on—this is the first time we have had any kind of detailed evidence about how the system is working and it seems to be working a great deal better than the previous system. That is as I read the evidence and that is a good thing.

Ms ISLEY: Yes, I think that is correct.

Mr DAVID SHOEBRIDGE: Premiums are going down, which is a good thing. But if there is surplus in the system, there are two things to do with it. One is to return it back in terms of premium cuts and the other would be to put it to deal with extending medical benefits and, potentially, no-fault benefits to up to two years or so.

Ms ISLEY: That is our preference, to extend benefits for the at-fault drivers for up to two years.

The Hon. TREVOR KHAN: Can I just ask something that flows from that? Why two years? I can remember when we first talked about this. I think 12 months ago, even if it was informally, we talked about the prospect of extending it to 12 months. Why such a momentous jump to two years?

Mr DAVID SHOEBRIDGE: Because it is only 40 per cent of the Australian Capital Territory.

Ms ISLEY: Part of it is a compromise position on insurers. Some insurers think it should be extended longer than that and others prefer a shorter period. It is a compromise position. I also think it is important to look at it from the injured person's perspective, most importantly, and two years would allow time for those non-minor injuries to fully recover. So there should not be too many people needing treatment after that.

The Hon. TREVOR KHAN: Sure. I suppose I wonder how many more people would benefit by extending the six months to 12 months and from six months to two years.

Ms ISLEY: I think that is analysis that has to be done in assessing what this would cost.

The Hon. TREVOR KHAN: It has not been done?

Ms ISLEY: I do not believe so, unless it was done when this scheme was being designed and looking at how long the at-fault benefits should extend for. Now we have a bit more data about what those at-fault driver claims are costing us, we would be better informed for any analysis that is done.

The Hon. TREVOR KHAN: But in reaching your figure of two years—and, again, this is not being critical—you have not done an analysis of how many extra people would be captured within the system as, say, compared with 12 months?

Ms ISLEY: No.

The CHAIR: With that we will call this session to a close. The Committee has resolved that any answers to questions on notice will be returned to us within 21 days. The secretariat will be in contact with you in relation to those questions.

(The witnesses withdrew.)

(Short adjournment)

ANDREW STONE, Representative, Australian Lawyers Alliance, affirmed and examined

ROBERT SHELDON, Chair of the New South Wales Bar Association's Common Law Committee, New South Wales Bar Association, affirmed and examined

ELIZABETH WELSH, Deputy Chair of the New South Wales Bar Association's Common Law Committee, New South Wales Bar Association, affirmed and examined

TIMOTHY CONCANNON, Chair, Injury Compensation Committee, The Law Society of New South Wales, sworn and examined

LEIGH DAVIDSON, Deputy Chair, Injury Compensation Committee, The Law Society of New South Wales, sworn and examined

The CHAIR: Would any or all of you like to start by making a short opening statement? If so, please keep it to no more than a couple of minutes. Mr Stone, would you like to start?

Mr STONE: Yes, thank you, I will. First of all, on behalf of the Australian Lawyers Alliance [ALA], we would like to express how much we appreciate the work of this Committee. I think I have been appearing before this Committee for well over a decade. It makes various recommendations over time and they are critically important in prompting both State Insurance Regulatory Authority [SIRA] and its predecessor, the Motor Accidents Authority, and the Government to think about the operation of this scheme and potential improvements within it. We view this as a critical opportunity to raise issues of concern with us in relation to scheme operations. Secondly, I acknowledge the excellent working relationship that the ALA has with SIRA and its staff. They are pleasant, courteous and they answer the phone repeatedly. They call you back and we have full and frank discussions with them. They are open, available and a pleasure to talk to. They are unfailingly courteous.

Having given that compliment, the frustration we have is that although they are very pleasant and polite to deal with, actually getting things done is the hard part. This is a new Act and it has a lot rough edges that we working very hard to draw them to their attention and persuade them to do things about them. We are concerned that with too many of those issues they have kicked the proverbial can down the road into a three-year review. But 3½ years in, they have only just announced who will be conducting the review and they have not yet started on it. There are problems with representation in getting people access to their benefits. Again, there is a review into legal support and that has dragged out from being a three- or four-month review to being a six-month review. We still have not seen the result of that. We have no timetable for implementing or actioning what that comes up with. There are a variety of other issues that we have raised that we would like to see some faster action on. There are issues with the robustness of SIRA as a regular in its capacity to pursue complaints and advise you about the outcome.

There are certainly substantial issues in relation to minor injury and there are some very major issues in relation to internal review. The insurers did a wonderful job of brushing over the fact that two of the major insurers for a year each managed to barely deliver an internal review decision within time and to keep people waiting up to seven weeks when they should have been receiving decisions within two weeks. Neither SIRA nor the insurers have any particular interest in telling you just how badly that aspect of the scheme operated for a very, very large number of people. I have some additional information from you that I have brought up with me in response to some of the issues that have been raised about internal review, but I might let others do their opening statement and come back to that. I have some up-to-date data for you.

The CHAIR: Thank you very much. Mr Sheldon?

Mr SHELDON: Ms Welsh will speak for the New South Wales Bar Association.

Ms WELSH: Thank you for inviting us here today. The New South Wales Bar Association wishes to have meaningful involvement in the future development of this scheme. We have been attending meetings for probably five years now and done thousands of hours of consultation. I cannot say that we feel that we have been able to make the contribution that we have wanted or that we have been heard. As it turns out, 60 per cent of claims have been classified as minor injuries in the scheme and I agree with Ms Estelle Pearson that the most recent figure on common law claims for year one is 2,172 claims. We were told that there would be 6,000 common law claims per annum in this scheme, so something is already going seriously wrong. Some data that we received yesterday shows that there are only just over 4,000 claims in the first accident year, which are non-minor. That puts a ceiling on how many potential common law claims there can be.

Inevitably, there will be quite a lot less than that for a variety of reasons. So the actuarial assumptions have fallen apart at that level. They have also fallen apart at the level of dispute resolution because we were told that there would be 40,000 disputes in the statutory benefit scheme; that is why we could only have $1,600 for a

dispute. Ernst & Young was out by 32,000; there have been 8,000 disputes in the scheme. So the lawyers are out of the statutory benefit scheme because it is not possible to provide a service on apparent costs regulation, and injured people are having to fend for themselves. We see there being two fundamental problems with the scheme. One is that the minor injury test is too severe: It is capturing a lot of people who are not genuinely minor. The second is that the insurers have the dominance in the operation scheme, which makes it unfair to the extent that it is biased towards them. The current operation of the scheme is clouded by revised assumptions and estimates. We have been trying to understand what is actually happening in the scheme as it has evolved. What we are met with is constant revisions of the expectation of what is going to happen in the scheme, as opposed to actually being told what is happening in the scheme.

We cannot consult constructively without that information. We made a Government Information Public Access Act request for it and we were told it was commercial-in-confidence. This is public money. It is being given to private insurance companies. It has to be accounted for. We ask that this Committee recommends that all the bodies that are consulted with for the purpose of scheme development are given actual real-time data about the operation of the scheme.

This work is important to the bar and public confidence is important to the operation of the scheme. The insurers are strangely quiet. We did not hear any complaints on behalf of the Insurance Council of Australia. Why would they complain? This has to be the most profitable venture that each of them has on their books at the moment. Their profits are guaranteed. The objective of lower premiums has been achieved. It is only the delivery of benefits that has not been achieved.

The CHAIR: Mr Concannon or Mr Davidson, do you have a combined opening statement?

Mr CONCANNON: I will make the statement. The Law Society thanks the Committee for the opportunity to appear before it. The Law Society considers that the primary objective of any motor accident scheme must necessarily be to provide effective, fair and timely support to people injured on New South Wales roads. As outlined in our submissions, we consider the current system presents some barriers to achieving these objectives. Firstly, the current minor injury definition operates to deprive many genuinely injured people of appropriate benefits and compensation despite the legitimacy and accepted realities of their injuries. Secondly, the complexity of the scheme exacerbates power imbalances between parties, particularly where access to legal assistance is largely unavailable. Thirdly, the 20-month delay in making a common law damages claim draws out the resolution of a claim and leaves affected parties in a state of uncertainty for a protracted period.

Whilst the Law Society supports the development of a non-adversarial CTP insurance scheme, particularly with respect to the provision of statutory benefits, in practice the current systems and structures do not support this objective. Many of the fundamental problems with the current CTP scheme have occurred as a direct result of the decision to remove or significantly reduce the role of lawyers in the scheme without similar attempts to build processes to ensure the injured people are given access to the benefits they are entitled to or the treatment they need to recover. Now that the new motor accident scheme has passed its three-year anniversary, we are now seeing further friction points developing in the common law damages system due partly to significant delays in medical assessments and ongoing issues with the Personal Injury Commission's electronic case management system. The society has greater longer-term concerns regarding legislative barriers that curtail the early obtaining of legal advice and the timely access to common law damages. We look forward to assisting the Committee in its inquiries.

Mr DAVID SHOEBRIDGE: We will start with something relatively discrete. The 20-month cooling-off period, if I could call it that, from the time of injury to when a claim could be put in for all claims that are not greater than 10 per cent whole person impairment [WPI] was intended to allow for maximum medical improvement.

Mr STONE: No, it was not.

Mr DAVID SHOEBRIDGE: That was the sales pitch.

Mr STONE: It was intended to make people walk away.

Mr DAVID SHOEBRIDGE: The sales pitch was to allow for maximum medical improvement.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: How is that working in practice?

Mr STONE: Appallingly. Under the old Act you gave the insurer notice of the damage claim within six months and they got on with investigating liability. Now they are taking no action on the claim until 20 months. I had one recently where we got the liability decision denying liability the day before the three-year limitation

period expired. So three years after the accident is the first time we learn there is a dispute over the circumstances of an accident. It is appalling. It is ridiculous. You have a whole lot of people who could have their damages claim wrapped up at 12 months or 18 months because they have spent six months of work, they have got back to work, they have been paid their statutory benefits but they are missing 15 per cent of their wages and the superannuation top-up that they were not paid. There is somebody who deserves $5,000 or $10,000 in compensation but they are told, "Wait until 20 months until you can get it," in the hope that they walk away.

The SIRA answer to questions on notice says, "We have recently been having to chase up thousands of people who have walked away, forsaking those entitlements." They are cross-subsidising the scheme, giving up on their wages to do it. For everybody else who is going to pursue a claim and who has a real, meaningful and substantial claim, waiting 20 months before you can start the process is just slowing things down. If you do anything out of this, and we have a lot of recommendations for you, can you please recommend the removal of that and the return to being able to give notice of the claim and make the insurer get on with processing the claim? It will get earlier liability decisions, it will get earlier hearing dates, it will get earlier resolution of claims and you will get the insurer organising earlier medicals to determine whether you are over 10 per cent whole person impairment. It is building in delay. We agree with the insurance council that early resolution is good for health, yet this is a mechanism that is actually getting worse health outcomes because it is pushing everything out to the four- or five-year mark.

Mr CONCANNON: I wanted to add something very briefly to that. One of the real issues with the 20-month waiting period is that insurers are invariably not briefing outside of the insurer until that notice has been given. Then you get insurers' lawyers wanting to arrange medico-legals to determine whether WPI is assessed, for instance, at being above 10 per cent. You have a whole waiting game again because they have three months to make that decision.

Mr DAVID SHOEBRIDGE: So it is 23 months?

Mr CONCANNON: Twenty-three months effectively and you cannot settle for 24 months as well.

Mr STONE: Plus, plus, plus.

Mr DAVID SHOEBRIDGE: We asked this as a preliminary question to SIRA, and they do not really appear to have a rational defence of it other than to say it is a matter under review. If nothing else it is delaying getting the evidence on liability issues, and it may well allow that evidence to go stale.

Mr STONE: Correct, especially in some circumstances. For example, if you are injured in the course of your employment as an interstate truck driver, you are shovelled off to workers compensation to have workers compensation deal with your statutory benefits. So you do not even notify the CTP insurer about the claim, and cannot until 20 months. At least if you are with the CTP insurer for statutory benefits, they have been looking at liability there, although often not as well or as thoroughly as they will later. Some cases are coming to them completely cold at 20 months because they will not touch them. They say, "No, you are not allowed to give us this until 20 months." None of them has had the common sense to say, "Look, give us something provisional. Nudge, wink, we will start looking and you can officially give it to us at 20 months."

Mr DAVID SHOEBRIDGE: Mr Davidson?

Mr DAVIDSON: I think one of the questions you have to ask is all of these people have made it through the minor injury threshold in the first place, we are dealing with severely injured people already, so why do we need to wait for 20 months? The doctors are the ones who tell us whether an injury has stabilised. What is the legislative purpose for having that 20-month threshold there? It is a very hard one to justify when you are sitting there saying, "We already have this minor injury threshold and you have cut a huge portion of people out of the scheme already, so why put further time constraints on those severely injured people actually getting their compensation?" It just does not make sense.

Mr DAVID SHOEBRIDGE: I think I understand your combined position on that. Mr Stone, you said you had some more data on the internal reviews.

Mr STONE: Is there someone who can hand it around?

The Hon. TREVOR KHAN: Sorry, could I go back to that 20 months? You are saying get rid of the 20-month entirely or adjust the time frame?

Mr CONCANNON: Get rid of it entirely.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: It used to be six months, didn't it?

Ms WELSH: Yes.

Mr STONE: Yes.

Ms WELSH: I would have thought that one of the reasons why they wanted the 20 months was they did not want lawyers, who have a pretty minimal involvement in this scheme, starting the cases early for some reason because there would be damages instead of weekly payments. But that cannot be a legitimate reason because the insurer can keep making the weekly payments even though there is a common law claim on foot. There is really no reason why it needs to be there, if that is part of the explanation.

The Hon. TREVOR KHAN: What you say there is correct. A common law claim can certainly be on foot and the weekly payment continue.

Ms WELSH: That is right. The insurers have control of their own behaviour. If they want to pay someone some money, they can pay them some money.

The Hon. TREVOR KHAN: You spoke earlier of, I think, the previous exercise being 12 months?

Mr STONE: Six months.

Mr CONCANNON: Six months. I must say, as I recall, to the extent that there was any reasoning given for the 20-month period, I thought it was an anti-fraud measure originally. If so, I would have thought the provisions in the current Act to avoid the risk of fraud are very significant, including the minor injury definition, let's say. It has already achieved its aim in terms of weeding out those smaller claims that were the bane of the previous system, those minor injury claims.

The Hon. TREVOR KHAN: You would understand that I like to support recommendations that have a sound rationale that actually the Ministers might support as opposed to "This is just rubbish, and we should never have put it in in the first place." That is unlikely to attract terribly much positive feedback. The anti-fraud issue is attractive in that regard, if those parts of it are working.

Mr DAVID SHOEBRIDGE: But there is additional rigour before you can put a common law claim in now, because you need to satisfy the insurer that you are not a minor injury. So there is significant additional material, apart from just—

Mr CONCANNON: Yes.

Ms WELSH: I have got to say that anything that is going to put more pressure back on an injured person at that six-month mark is not going to be good for them, because at the moment they have a very short sharp fight with an insurance company within months of the accident. Things are happening at the insurer's side that normally would happen over the space of a couple of years, with a lawyer navigating what was happening on the claimant's side, whereas they are finding they have a liability decision that in 60 per cent of cases says they are a minor injury within three months if the insurer does what it is supposed to at the three-month mark. That person does not even necessarily know their case is over at that stage. These are people who do not even know what rights they are losing. Then, if you just give the insurer an added incentive to really throw everything at it back then—I do not think that is going to help injured people, quite honestly. Something has got to be—

The Hon. TREVOR KHAN: Does that not argue against actually—

Ms WELSH: It does. That is what I am saying. You cannot make it worse for the injured. Sure, if you get rid of the 20 months, other things have to change back there so that it is not just that awful fight where people are discouraged from prosecuting their rights.

Mr DAVID SHOEBRIDGE: I see that this chart you have handed around, Mr Stone, talks about that there is the internal review but there is also the Dispute Resolution Services [DRS] review, which was a SIRA review and is now the PIC review. Is that right?

Mr STONE: Yes. The earlier discussions focused on what percentage of initial decisions were being overturned by internal review. That is an interesting question about the utility of internal review because, if they are changing their mind almost none of the time, then that is a pretty good argument that the internal review is not working.

The Hon. TREVOR KHAN: It was compelling, I thought.

Mr STONE: But the second check on that is what percentage of the combined initial decision and agreed internal review decision are being upheld by the independent umpire because—if they are getting it wrong twice, why bother to make them do it twice. Get to the independent umpire faster. The document I have passed you is from the March 2021 report, entitled *CTP Insurer Claims Experience and Customer Feedback Comparison*,

published by SIRA. The full report is on their website. I grabbed this as I was on my way out up here. What that shows is that, in aggregate, 41 per cent of internal review decisions that proceeded to a determination by the independent umpire, then DRS, were overturned. That is by and large overturned in favour of the claimant. When it comes to, for example, liability decisions, 64 per cent of them are being overturned. In other words, the insurer's internal review decision is being overturned almost two-thirds of the time.

In fact, this is an undercount. I have spoken to SIRA about the undercount. The reason it is an undercount is that this only counts actual decisions; it does not count cases where there has been an adverse internal review, you put on the application with DRS and the insurer then gives up and backs down. By and large, the claimant, having gone to the trouble to lodge the application, never backs down. The insurer is backing down on better than 40 per cent of the cases I am involved in before we actually get to a decision. But for some reason, neither the DRS then or the PIC now measure the withdrawals, as in where one side surrenders or the other, and where the outcome changes. So we do not actually have a genuine measure of the extent to which internal review decisions are upheld or are found to be sound. But I suspect this figure comes up from 41 per cent and goes over 50 per cent across the board and would go over two-thirds in relation to liability disputes.

The Hon. TREVOR KHAN: How long does it take for a PIC decision to be made once an application for review is lodged with PIC, if that be the correct terminology?

Mr STONE: The DRS fell in a hole last year. Getting appointments and getting decisions out of them extended out well over six months. It should not be that; it should be decisions you are getting within three months. They are massively behind. They are not promising to fix their backlog before the end of the year. But that is really a debate for another day. These should be decisions that you are getting within a couple of months.

Mr DAVID SHOEBRIDGE: But PIC has only kicked off on 1 March. I understand it has not been the easiest launch. I understand they had a big backlog to deal with, coming out of DRS.

Mr STONE: They inherited a mess.

Mr DAVID SHOEBRIDGE: But we probably do not really know where that is going yet, do we?

Mr STONE: We have asked them, "Can we have some KPIs? Even if you are not meeting them now, we can at least then work out when you do." They are steadfastly refusing to give any KPIs of what should be the turnaround time across each of these dispute categories. It would be good if they eventually had some.

The Hon. TREVOR KHAN: Would you anticipate that there would be much of a difference in terms of the length of time to resolve each of these categories?

Mr STONE: The minor injury and the weekly should be quite—that is a question if both sides lodge their forms, find a doctor who can do the appointment, get somebody in front of a doctor, get the doctor's report in and send it back out to the parties. That should be something that can be done in a three- or four-month turnaround. It should not be a six-, seven- or eight-month turnaround, as is some of the current experience.

Mr DAVID SHOEBRIDGE: But fundamentally there should be—we do not have the data now to really assess what is happening with PIC.

Mr STONE: No.

Mr DAVID SHOEBRIDGE: But that data should be available and should be regularly updated on a dashboard for public review, I would have thought.

Mr STONE: We are all in favour of accountability as to how many cases we have, where we are at, how efficiently we are processing them and where we are experiencing delays.

Mr DAVID SHOEBRIDGE: That kind of transparency should be part of the design of a new system, should it not?

Mr STONE: I am all in favour of that.

Mr DAVID SHOEBRIDGE: Have we had any decisions out of them yet?

Ms WELSH: There are some decisions on the website, not many.

Mr STONE: Remember, there were medical appointments in train before they started and they would have been receiving reports in from doctors on day one of their operation from appointments that occurred the week before. So, yes, there are things coming through.

Ms WELSH: There are some wage decisions on the website.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: Ms Welsh, you spoke about some of the friction points in minor injury disputes. I do not think we got a chance to really explore it with the Insurance Council, but one of the issues is psychological claims and psychological injuries. Pretty much every side of the record says that is a mess at the moment. Do any of you want to speak about that?

Ms WELSH: I do not think you can give a short answer.

Mr DAVID SHOEBRIDGE: I did not ask for a short answer.

The CHAIR: We are happy with a long one if that is what it takes.

Ms WELSH: Mr Stone might want to say something on this.

Mr STONE: Yes. The ALA's biggest complaint about the insurer approach to minor psychological injury is that it very much appears as if they are looking for reasons to try to say no. For example, we see cases—and we have given you a case study of one in our submission—where they say, "Well, your GP has not clearly enough articulated how you meet the specific criteria under DSM-5 so we are cutting you off", or "The GP has refused to respond to a letter we sent them asking them to clarify, so we are cutting you off." They have basically, in effect, put the onus on the claimant to give them the evidence that they have an ongoing entitlement, rather than insurers viewing it as they should because it is the way the Act is written, as the insurer bears the onus to assemble the evidence to declare that you have a minor injury.

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

Mr CONCANNON: Absolutely. I think the real issue is that they do not seem to take—they are under a proactive duty to perform an independent assessment, whether internally or externally. There does not seem to be any effort being made to seek out the treating medical evidence, for a start, to the extent that there should be. I think that is one of the big issues. A full clinical assessment of the claimant with a full history is not being obtained as the guidelines provide for in many, or indeed any, of the cases I have seen. So these assessments are being done on inadequate evidence, in my experience.

The CHAIR: Could I ask then, in the instance where on average we have 22 per cent of those internal decisions being overturned at the review, are you suggesting that it should potentially be a lot higher than that or are you suggesting that it is not rigorous enough? Twenty-two per cent is quite a large figure—we are talking about almost one in four.

Mr CONCANNON: I thought the figure was actually closer. If you look at our submission on minor injury internal reviews I think it is 9 per cent; I think Ms Pearson said 11 per cent. I think it was around about those figures rather than if you look at minor injury itself.

The CHAIR: Yes. It was coupled with, I think—

Mr DAVID SHOEBRIDGE: But the Insurance Council of Australia said when you decouple that gross figure it was about one-third, they said, on psychological injuries had been overturned on internal review.

Mr SHELDON: That means they are wrong in one-third of cases.

Mr DAVID SHOEBRIDGE: That is what I was trying to explore with the Insurance Council of Australia.

Mr STONE: I would be interested to know the extent to which that one-third of internally overturned decisions relates to free legal representation—because we cannot charge for it; it has to be free—for the claimant on that internal review, where a lawyer has helped the claimant assemble the evidence from the treating psychiatrist, treating psychologist or treating GP to put before the insurer to satisfy them that somebody does have an ongoing psychiatric injury versus someone trying to do that on their own who does not know how to assemble all of that evidence and, therefore, does not get the decision overturned on internal review.

Mr DAVID SHOEBRIDGE: Do you think a GP's opinion is the right way of proving psychological injury if you have got to get a DSM-5—

Mr SHELDON: It is DSM-IV.

Mr DAVID SHOEBRIDGE: Sorry, yes.

Mr STONE: Sorry, that is me.

Mr SHELDON: But that was part of the scheme design: "Let's get the lawyers—

Ms WELSH: That is right. It was the whole idea.

Mr SHELDON: —"let's get the medico-legal out of it. Let's deal with the treaters."

Ms WELSH: This was the whole new world of insurer behaviour.

Mr STONE: I would prefer the opinion of a GP to the opinion of a claims officer from Allianz, QBE, NRMA or Suncorp.

Mr DAVID SHOEBRIDGE: Yes—or potentially a hired gun from either side.

The CHAIR: Mr Davidson, did you have a contribution?

Mr DAVIDSON: I was just going to say that I think the other challenge you have got is that early in the piece when the insurers are making these decisions—because they are being made at three months for liability being done at six months. When they are making these decisions quite often they have not been referred to a psychologist or a psychiatrist. The GP is actually the only treatment provider they have seen. The only person who can actually give that independent opinion at that point in time is the GP. Most people will go and see a physiotherapist or something along those lines but they are not the appropriate qualification.

One other thing I would point out is that if you look at the John Walsh Centre for Rehabilitation Research submission on page 30 where they have reviewed—there was just an interesting comment as to the motivations for why minor injury decisions are made the way they are. I just thought it might assist you because it calls out that minor injuries:

> … are therefore most likely to not be aligned with best practice clinical management and health outcomes, but rather with operational practices and business management.

In effect, my interpretation of that is what you are seeing is that if there is a 50-50 call and there is insufficient evidence it is always going to go the way of the insurer because it is in their operational interest to do so. To then put it back onto the claimant—and the claimant does not have legal representation, necessarily, at that point, and even if they do we are not paid to do it, so you do have this gross inequity. A lot of people will just walk away from it. When it comes to the minor injury threshold it is not necessarily everything on par.

Mr DAVID SHOEBRIDGE: There is the ongoing review about whether to extend the ILARS assistance into the CTP space. I cannot for the life of me recall the acronym that is ILARS: Independent Legal Assistance—

Mr CONCANNON: Review Service.

Mr DAVID SHOEBRIDGE: —Review Service. Do you support ILARS?

Mr CONCANNON: We 100 per cent support it. I regularly practice in the workers comp jurisdiction and it is a very reasonable and flexible method of legal costing, in my opinion.

Mr DAVID SHOEBRIDGE: And that would resolve the power imbalance issue, in your minds, rolling out ILARS into the statutory benefits?

Mr CONCANNON: Correct.

Ms WELSH: Not really, because SIRA is still promoting that people do not need to have a lawyer and that they can do it all themselves, not informing them about their rights. We are confronted with a system that is actively advising people that they should not get legal advice.

Mr DAVID SHOEBRIDGE: But the availability of payment for legal services would be a substantial step forward for the—

Mr DAVIDSON: Assuming there are necessary events like ILARS has—because their events are quite different to what is currently available under the CTP scheme. Assuming that there are available events for early legal advice, for example—that does not exist currently under the CTP scheme but it does under workers comp—assuming that those kinds of events were brought across, then absolutely.

Mr SHELDON: Can I come back to your initial question, Mr Shoebridge, about the suitability of a GP opinion on a—

Mr DAVID SHOEBRIDGE: Psych.

Mr SHELDON: I do not practice as extensively as the people on either side of me do in this area, but one of the things I see is that people cannot afford to pay to see a psychiatrist or a psychologist very often so they have to search around for a bulk-billing psychiatrist. I do not know that there are many of them, but if there are there are lengthy delays. Meanwhile, the time problems under the Act are accumulating. In a sense what I think Mr Stone's point boils down to is that the practical reality is that the GP—and I think he said it, almost—is the best-placed, reasonably available opinion and it is being doubted by people who have no medical qualifications.

The CHAIR: Mr Sheldon, I think you will find that even if you have the funds to do so, finding a psychologist or psychiatrist appointment is often difficult.

Mr STONE: And they will often refuse to become involved where it is CTP cases because they do not want to have to deal with the hassle of funding through the insurer. The problem is far more acute in regional and rural areas than it is in the CBD. There is a myriad of problems. The reality is that GPs are at the forefront of public health.

Mr CONCANNON: There is also a limit on the amount that you can charge as a psychiatrist for a report fee: $1,660. If you consider the average psychiatric report has to take a full past psychiatric history, on market value it would be probably double that but for the regulation. It just results in there being very few psychiatrists prepared to provide opinions at that early stage in the process, even if you are assuming you had the time to do so.

Mr DAVID SHOEBRIDGE: Do you think the exclusion of adjustment disorder and acute stress disorder is fair for the minor injury threshold?

Mr STONE: It would be if adjustment disorder was defined as being something that resolved within six months. We have given you the email from SIRA saying that when this was designed that was the intent. The problem is that once you get into the weeds of DSM, it is not. We have given you a very detailed submission across that issue as to how there needs to be some very specific adjustment so that a chronic adjustment disorder is distinguished from an acute adjustment disorder. If the intent was that people who have got something that is fixed within six months by definition have a "minor injury" we have not got a problem with that, which is why there was initially no objection to those two because those two diagnoses were not available if they ran for more than six months. But due to some complex reasons that I do not want to get into the weeds of—but that are covered in our submissions—they do not work, and SIRA has not properly dealt with it or responded to the difficulty we have given them. I think that was another one that got kicked down the road into the three-year review.

Mr DAVID SHOEBRIDGE: At the moment we seem to have a very small pool of data for the first claims year. Only a tiny fraction of the premiums seem to have been paid out. Have any of you been watching what is happening in terms of the overall scheme performance in terms of the proportion of premium that has been returned to lawyers and the proportion that has been returned to injured claimants?

Ms WELSH: I can tell you that from the schedule 1 assumptions to the Act at present, according to EY Australia—this is a document we have only recently received from them—that the allocation of funding for legal costs per premium year was $274 million. Claimant legal costs in the last 12 months have been about $15 million. It is just not tracking at all. It might as well not exist.

Mr DAVID SHOEBRIDGE: If that is a more recent EY Australia report did you want to tender it to the—

Ms WELSH: I had assumed that it was being provided to the Committee but we can certainly provide it.

Mr DAVID SHOEBRIDGE: I do not think I have seen that one.

The CHAIR: I have not seen it.

Ms WELSH: It is in the executive summary to one of their recent documents. We can certainly make it available later today.

Mr STONE: London to a brick there will be insurer super profits in year one. Overall claim numbers are not as projected, primarily because a whole lot of people did not put in no-fault statutory benefits claims for the first six months because they did not want to cop to the neg drive, and every time there is no claim then the budget—

The Hon. TREVOR KHAN: I am not particularly compelled by that argument. The fine and loss of points I really struggle with in terms of—that people would not put in a claim.

Ms WELSH: The claims have been pretty stable over the last three years.

Mr STONE: If you are a single vehicle motorcyclist who can have a month or two months or three months off work largely covered by some accumulated sick leave or getting by and your medical bills will largely be dealt with through the public hospital scheme and Medicare and your private health insurer, why would you take the last three points or six points off your licence at the risk of that, if that is where you are at with your licence, compared to covering it through other means? We do know the claims numbers are down. There might be some other reason why, but I can tell you they are short 3,000 claims across year one that they thought were going to be there, and that is just pure super profit because they were allocated a budget and they are not there. The budget ran at something like 40,000 disputes being run through the system, which was the original EY estimate, and a legal budget for that, and the dispute numbers by the time we are done on year one are now estimated to be around 8,500. That is 30,000-plus in dispute costs that are not going to occur and that is, again, over $40-odd million in legal budget set aside that will not be expended.

There are significant pockets of super profits that you can already see in year one, even allowing for the fact that the vast majority of damages claims have not yet been resolved. I would be remarkably surprised if year one profits were not double the 8-odd per cent on which it was budgeted. I would anticipate that it is going to be higher than 16 and I would have thought there is a reasonable chance it would be getting up around 20, which coincidentally would put it about in the same sort of super profits we saw across the first four to five years of the 1999 Act where all sorts of excess allowances were built in for the scheme not working properly. It did work properly and there were massive insurer super profits that ensued. You can ask SIRA tomorrow where their projections are at and what steps they have started taking to claw some of that back and fund it back into the scheme. But I would be very surprised if we were not looking significantly over the 8 per cent benchmark rather than under the 8 per cent benchmark. You cannot be missing 20 to 25 per cent of your claims and not have super profits.

Mr DAVID SHOEBRIDGE: These are the most recent set of claims experience. It is a set of data that SIRA has given us on all claims up to December 2020. If you have a look on the back of it, it has got "Scheme Measures – Financial Metrics". I was surprised at just how accurate SIRA's predictions were, if you accept this document. You see it says on claims that up until December 2020 there have been 37,449 lodged and they say that their expectation was 37,721.

Ms WELSH: Constantly revised.

Mr SHELDON: Constantly revise the expectation.

Mr DAVID SHOEBRIDGE: Can I just take you through this? Then we will come back to that. Then on lodged they say that there are 33,845 lodged, and that is extraordinarily close to their 33,897 expected—within a whisker. At fault: 5,687 lodged; 5,783 expected. Not at fault minor injuries: 14,582 actual; 15,244 expected. Then not at fault non-minor: 9,601 actual; 10,333 expected. Either they were Nostradamus or somehow the expected figure has—well, I do not know how they came up with such an accurate figure.

Ms WELSH: It is because they change the underlying assumptions over time. They are adjusting their assumptions in line with the actual claims experience, which is why we—

The Hon. TREVOR KHAN: I am not having a shot at you. What does that mean?

Ms WELSH: It means they are just changing the numbers to fit the results.

Mr SHELDON: They are back analysing the prediction, which is why they are converging on the reality. If you go back to the original assumptions underlying the scheme, they are miles away from this, and that is what I understood the evidence given to you before the break established. They accepted that. The line keeps moving to get closer to what is happening, obfuscating the difference between what was predicted years ago and what has actually transpired.

The CHAIR: In that case, are they not also adjusting in line with the expectations moving, the costs of the scheme and the buffers that are being assumed from start to now?

Mr SHELDON: No, because of course there is no room because the scheme is performing as predicted because we keep adjusting the predictions.

The Hon. TREVOR KHAN: What is the rationale for adjusting a prediction?

Mr SHELDON: I am out.

Mr STONE: As the Chair indicated, it is relevant for future management to look at what is our actual experience and moving forward let us set premium based on our actual experience. But at the same time you want to measure: Have we been accurate in our prior predictions and what allowance do we need to make in future predictions for the accuracy of our prior predictions?

The Hon. TREVOR KHAN: Indeed that would seem to be the core analysis to undertake, would it not?

Mr STONE: Yes.

The Hon. TREVOR KHAN: What did we predict? What was the outcome? What do we learn from our predictive model? That is the—isn't it?

Ms WELSH: Yes.

Mr STONE: Yes. The question for SIRA tomorrow when you look at this table and deal with just, for example, the lodged number and the expected to date being 37,721, what was the date on which that expected figure was set? Was it 1 November 2017 when we launched on this exercise or was it reset last week in light of the actual experience? My understanding is the answer is the second of those, not the first of those. This is giving you no useful information as to whether the scheme is performing in accordance with original predictions. It is only giving you that the scheme is performing in accordance with revised predictions, where the revised predictions are, "Let's measure what has actually happened." It is not comparable at all. The ALA did deal with it at some length in our submissions because we have exactly this issue about it.

Mr DAVID SHOEBRIDGE: Do we not need to know what the expectations were when the premiums were set—

Ms WELSH: Yes.

Mr STONE: Yes.

Mr CONCANNON: Yes.

Mr DAVID SHOEBRIDGE: —for each year and then track that against how many claims were actually made?

Ms WELSH: Yes.

Mr DAVID SHOEBRIDGE: Those are static figures because I would have thought that would be one of the fundamental parts of a premium price—how many claims are going to be made—so we need to track those static figures over time and see how they played against the actual numbers of claims lodged for the different categories.

The Hon. TREVOR KHAN: It needs to be more than that, but yes.

Mr DAVID SHOEBRIDGE: That is a pretty good starting point.

Ms WELSH: It is a difficult process.

Mr STONE: We can see where that has happened in relation to dispute numbers. That one we could hold them to because when we sat down with them in 2017, they brought us the EY information pack and explained how, on their estimates, there were going to be 40,000 disputes generated out of each premium collection year. We have spent the past two months in very constructive meetings with them where that estimate is now down to 8,500, at least across the first several years of the scheme and with vast numbers of caveats—things might yet change and addendums added to it. But basically we have gone from setting a scheme budget based around 40,000 disputes per year and now having a revised estimate of that on 8,500, which leaves the question: How much money did you set aside to cover what is now the missing 32,000? Where has that money gone and what are we doing to get it back?

The Hon. TREVOR KHAN: You are not saying that having 8,500 as opposed to 40,000 is a bad outcome?

Mr STONE: No. We always told them the 40,000 was too high.

Mr CONCANNON: It is a bad outcome when out of the original premium dollar calculation in July 2017, $69 out of the standard premium was allocated to legal costs and only about a quarter of that has actually been—

Ms WELSH: Not even.

Mr CONCANNON: Not even a quarter of that has been used up.

Ms WELSH: A tenth.

Mr CONCANNON: It is pretty unsatisfactory.

The CHAIR: Is it your opinion that the 40,000 was drastically over assumed at the start?

Ms WELSH: Yes.

The CHAIR: Or is it a case that the scheme has produced less disputes? Or people are electing not to dispute the situation given the lack of legal advice and the difficulties in the 20 months?

Mr DAVID SHOEBRIDGE: Or a bit of each.

The Hon. TREVOR KHAN: There is probably agreement to all.

Ms WELSH: The problem is that the assumption of 40,000 was made for the purpose of calculating the legal costs. It was hyper-inflated. It gave us a very paltry amount of money for legal costs, and it was because of that number of 40,000. We all made submissions and we all tried to grapple with the numbers to arrive at a reasonable amount of money for lawyers to be involved in the process. Everyone—SIRA and everyone—suggested higher figures than we wound up with, I think. It was all because of that EY assumption. We are always going to be caught up with whatever EY predicts.

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

Mr DAVID SHOEBRIDGE: Maybe if you have an issue with why this data is not right, now is the time to explore it. If we ask SIRA what the predictions were at each time the premiums were set for the number of claims and the number of disputes broken down into category and we compare that to actually how many disputes and how many claims were made, that would be a good stress test about their ability, at least, to predict the scheme.

Ms WELSH: Yes. It is a big compliance issue because schedule 1 (e) to the guidelines sets out the assumptions that are made for the purpose of the premium calculation. There is provision there for the actual experience to be added to the table; actual experience is never there. There is just a change to the assumption in the original column, so it becomes very difficult to follow what is going on.

The Hon. TREVOR KHAN: Can I just ask: If there were to be 40,000 disputes, how is the DRS/PIC to cope with that number of disputes in the light of what seems to have been an ever-increasing delay?

Ms WELSH: The figure was arrived at—

The Hon. TREVOR KHAN: I am not trying to be cute.

Ms WELSH: It was arrived at by looking over the life of a claim. The actuaries were assuming that there may be up to 10 disputes in an individual claim, thinking, "There would be a couple of disputes about treatment. There might be a dispute about care. There might be a dispute about weekly payments, et cetera."

The Hon. TREVOR KHAN: And some of those would be dealt with by way of internal review, I take it?

Ms WELSH: No, no. We do not get paid for that. This was just disputes where we get paid.

The Hon. TREVOR KHAN: No, no. I understand that. You are talking about the ones that go through—

Ms WELSH: That is right.

Mr STONE: No. The 40,000 was dispute numbers, paid or unpaid.

Ms WELSH: Oh, okay.

Mr STONE: It was the total category of disputes and included the unpaid element.

The Hon. TREVOR KHAN: Right, but there would be a bleed through on 40,000 into the DRS/PIC.

Mr STONE: Yes, and because there is a lifetime entitlement to treatment expenses for somebody who gets past minor injury, if a two-year-old is injured in a motor vehicle accident their last treatment dispute might come 80 years later. That 40,000 covers the lifetime of that accident year.

Mr DAVID SHOEBRIDGE: On one view, though, if we are going to have—most common law claims for the first year for non-minor injuries will not have finalised yet, so the costs will not have been paid. Probably I need to caveat: the overwhelming bulk of most common law claims for that first claim year will not have actually

finalised yet. When you are looking at, say, $15 of $69 being paid on average per premium for that first year, we really will not know until those common law claims are paid what the actual proportion of legal costs is, will we, because the bulk of them will happen at the end?

Mr STONE: Agreed. But on the other hand, for year one the vast majority of statutory benefits disputes have occurred. The liability disputes, because they all have to be in within a relatively short period of time—so the statutory benefits, the liability disputes, the statutory benefits wage disputes and the likely majority of treatment disputes have all been had. You will have a few tail treatment disputes running over the lifetime of the people involved, but by and large statutory benefits is done and we know that the statutory benefits numbers are spectacularly less than was budgeted for. That alone I thought was giving, from recollection, rise to $30,000 or $40,000 as spare change in the scheme in year one alone.

Mr DAVID SHOEBRIDGE: Thirty or forty million?

Mr STONE: Yes, as allocated to statutory benefits disputes not used.

Mr SHELDON: The difference between the projected legal costs to this point in time and what has actually been paid is three-quarters of a billion—with a B—dollars.

Mr DAVID SHOEBRIDGE: No, no, but I think that is total payments for the first claim year. My understanding is—I could be wrong—they were not expecting the legal costs for year one to be paid in year one. Those costs will probably start largely crystallising in years three, four and five, as the common law claims are settled.

Mr SHELDON: You correctly apprehend their point, but it is three-quarters of a billion dollars just in—

Mr DAVID SHOEBRIDGE: There is a huge gap, is what you are saying.

Mr SHELDON: Yes.

Mr DAVID SHOEBRIDGE: As I understand it, your evidence is that it is highly unlikely that huge gap will be made up by common law claims crystallising.

Mr SHELDON: There will be no lawyers in Phillip Street if three-quarters of a billion dollars finds its way into our pockets.

Mr DAVID SHOEBRIDGE: If that happens in the next 12 to 18 months, yes.

Mr SHELDON: Five years.

Mr DAVID SHOEBRIDGE: You'd better hope the travel ban lifts.

The Hon. TREVOR KHAN: That might explain why Silks closed.

Mr DAVID SHOEBRIDGE: It would appear though, on those numbers, that there would be ample capacity within the scheme to fund an ILARS system without seeing any premium rises.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: We can say that pretty comfortably, can't we?

Mr SHELDON: Indeed.

Ms WELSH: Yes—and to move the goalposts on minor injury.

The CHAIR: That was my tangential point, actually. Given that the scheme has largely collected more premium than paid out and the profit—

The Hon. TREVOR KHAN: This is precisely the line of questioning that we did in workers compensation years ago and the predictions on that turned out to be fairly wrong.

Mr DAVID SHOEBRIDGE: For complex reasons.

The CHAIR: Given that there is some debate around the profitability aspects, and we have heard the evidence that potentially we could use the increased profits to back-fund an increase from six months to, say, 12 months or two years, what opinions do you have around that as opposed to greater involvement in the scheme by the legal fraternity?

Ms WELSH: That is something that the insurers can offer up which is not going to cost a lot of money. It is just some extra treatment for a period. It will not affect their bottom line at all. It might give someone a

benefit. It will not assist any single not-at-fault person in the scheme to recover what the scheme was designed to give them, beyond what—

Mr CONCANNON: I think, Chair, you are referring to at-fault extension of benefits beyond 26 weeks, are you?

The CHAIR: Yes, correct.

Mr CONCANNON: Yes. I think society's attitude towards that would be that you have got to pay for that from somewhere. I would have thought the more deserving person is the minor injury, soft tissue, spinal injury, who otherwise loses his or her benefits after 26 weeks, rather than an at-fault driver—whether they get paid for another 6, 12 or 18 months, in the case of what the insurance council was arguing.

The Hon. TREVOR KHAN: I remember you running a similar sort of argument in a previous hearing and I struggled with this moral culpability argument that you sort of run on an at-fault driver being unworthy of cover.

Mr SHELDON: It is more that the not-at-fault, minor-injured person is entitled to better than they are getting. That is the proper way of looking at it, we submit.

The Hon. TREVOR KHAN: Well, it seems to me that you might have an argument for both, but I do not necessarily know that somebody who makes a mistake in the nature of negligence and therefore is held to be at fault necessarily should lose—

The CHAIR: Is less worthy?

The Hon. TREVOR KHAN: Yes—is less worthy of cover. I am not compelled by that argument.

Mr STONE: Then I will be delighted to see that you will be taking up the ALA's submission that somebody who is rear-ended and blows 0.051 the day after the accident should not lose their statutory benefits for the illegality of their action, despite the fact that the illegality was in no way causative of their injury. That is an interesting moral wine that we draw.

The Hon. TREVOR KHAN: As an old traffic court lawyer I have seen many drivers, as Mr Concannon would know—many incidents of young men in motor vehicle accidents where there is a great argument over the contribution of alcohol to the accident. Many of those men ended up in jail. I know you have used the rear end, but alcohol is a really serious problem which I do not think you are going to get a lot of sympathy for.

Mr STONE: I join you in the condemnation of it, but let's at least have it be causative. If it is not causative, why are we punishing people? The criminal law is there to punish people. The compensation system should be fair.

The Hon. TREVOR KHAN: Again, I always take the view that there are some fights worth fighting and others that are not.

Mr DAVID SHOEBRIDGE: But if the no-fault benefit was extended to two years, as is one of the options not endorsed but considered by the insurance council—one of the options they say should be open, and I think Suncorp has a similar sort of consideration. If the no-fault benefit extended for two years for wages and medicals, that would provide substantial benefits for those currently minor injury claims that you would want to tip over into common law. It may not fix everything but it would be a substantial benefit.

Mr STONE: I have got a track record, I think, of appearing before this Committee for the better part of 15 years universally advocating for the rights of the injured as distinct from the rights of the legal profession. I very much accept that fault is a rationing mechanism of what we are prepared to pay for as a CTP premium. Sure, I would love a full no-fault scheme but it costs $1,000 a premium and apparently the community is not prepared to fund that so we have to ration somewhere. The third part that I want to bring to this is that there is no point extending rights to people if they are unable to gain access to them and pursue them. That is the difficulty we have got at the moment. There is a less than 30 per cent representation rate across statutory benefits disputes. Where people are represented they are getting better outcomes. Where they are represented they get a better overturn rate on internal review. Where they are represented they get a better overturn rate of the internal review at DRS, now the PIC. Giving people assistance leads to better and different outcomes. It is all very well saying we would like to extend the rights, but a right you do not have the capacity to assert, or the skill and knowledge to obtain, is of no use to you whatsoever.

Mr DAVID SHOEBRIDGE: But it does not have to be that dichotomy, does it? You could actually resource the dispute resolution scheme, roll out the ILARS, and you could extend the no-fault benefits together. They are not a binary choice.

Mr STONE: If we could do both within the funding envelope that apparently we all have to live within, then I am delighted. But at that point we come back to the actuaries and what they tell us this will cost and what we can afford.

The Hon. TREVOR KHAN: But built into this some way has to be in some way an expansion of the PIC in terms of capacity to deal with disputes in a timely manner, I take it.

Mr STONE: They say they will have that under control by the end of the year.

Ms WELSH: Could I come back to this document at some stage?

The CHAIR: Now seems appropriate.

Ms WELSH: Under "average paid" in the bottom of the middle column, you will see "minor injury claims actual to date $6,900, expected $6,900". When you go to the original 1 (e) assumptions, the expected was $12,700. The numbers that we got yesterday shows that the actual is now $5,050. So if you look at the original expectation $12,700, now $5,050, we have got a $7,500 difference.

The CHAIR: Forty per cent.

Ms WELSH: That is 40 per cent of what they said it was going to be.

Mr DAVID SHOEBRIDGE: This is on minor injury claims?

Mr STONE: That is right.

Mr DAVID SHOEBRIDGE: But this is tracking perfectly as expected according to this document.

The CHAIR: Mr Shoebridge, I think we know the answer to that.

Mr STONE: It would be fairer if it was relabelled from "expected to date" to "expected today". Because that is today's expectation based on our accumulated experience where we match column A, and column B is what is in column A rather than what we said column A was going to be three years ago.

The CHAIR: When we are talking about premiums falling, is it based on a difference between what was originally charged at the scheme inception to now where we have got, for example, just talking about minor injury claims alone, 40 per cent of what was perhaps expected is actually being paid out? Are we seeing the premiums falling by that level of difference between year one expectations versus the year three expected column now, or are we seeing a gradual decline but this huge discrepancy in year one to now actual costs?

Ms WELSH: We know that the original premium objectives have been met in terms of reducing premium. So the objective of the Act and what the Minister set out as being the desired outcome for premium has been met. We cannot answer anything about the precise mechanism of calculating premium, I expect.

The CHAIR: If I was simplifying my question, are they still making large amounts of profit off premiums being paid today—

Ms WELSH: Yes, probably.

The CHAIR: —given that we have not seen a fall in the premium like we have seen a fall in the payouts expected versus what year one is.

Mr STONE: The answers you will be given when you ask that question tomorrow are it is far too early to say, there is absolutely no claims experience for year three, we barely have enough claims experience for year one and it is all too early to say. There will be an element of truth in that, but we have pretty good claims experience of statutory benefits from year one, we have got reasonably solid claims experience of statutory benefits from year two, we have got no idea of the claims experience in relation to damages even for year one, but on the other hand we have 20 years of those same assessments of damages under the old Act. The 10 per cent WPI threshold has not changed to get to general damages. It is still holding where it was. Claims for economic loss should be about where they were. We have removed the claims for domestic assistance and lump sums for future treatment so there should in fact be less disputes because there are no longer arguments about those things. The claims experience for damages should be relatively stable and predictable between the two Acts because the claims experience has not changed.

We have 20 years of data on which to make projections of where damages claims are likely to go and what they are likely to cost. I think that they should be in a reasonably good position to say that dispute numbers are well down and accident numbers are well down. That is year one experience. There is no reason to think that is going to be different in year two and year three. It will take years for people to get used to this scheme and fully asserting their rights under it. Perhaps those 3,000 missing claims will reappear at some point as people become

more familiar with the scheme. But I would reasonably confidently predict that with premiums having been relatively stable over the last three years the super profit that I predict for year one will occur in year two and year three.

The CHAIR: In that case then, SIRA obviously has visibility on data from a number of insurance companies but I imagine each insurance company would keep their information discreet. Yet they have not analysed the data that they have and made drastic changes like one company to another on their premiums. As you said, they are all really much tracking along one way.

Mr DAVID SHOEBRIDGE: There was $8 difference in the average premium between the different—

The CHAIR: Given that they are all producing the same premium result when the actuaries are doing their calculations by risk, does that not indicate that there is perhaps something in what they are saying?

Mr STONE: You have lost me on the "what they are saying" part.

The CHAIR: All the insurance companies are producing, within a couple of dollars, the same premium given the risk profiles. If there was a dramatic fall in their costs, you would expect maybe one or two of the companies to say that we can afford to cut our premiums by more. Yet they are not doing that.

Mr STONE: So you are saying that a free market should see somebody trying to obtain market share by reducing price where they are making super profit in order to attract a bigger share of the market. We did that last time around with this Committee. That does not work. It does not work in CTP for this particular reason, which is that nobody wants to have the lowest price. They have taken some steps to try to address that by doing some risk equalisation programming, but the reality is if you have the lowest price then you attract the people in the oldest cars who buy purely on the basis of price and who are the highest risk.

This is a difficult market because being the price leader attracts the worst possible risk and they have set up mechanisms to try to deal with that, but I suspect that has not yet led to any insurer wanting to be the market leader on low pricing or indeed advertising on pricing. If you gave every insurer their choice, they would take well off people driving new cars from the North Shore who have comprehensive insurance as being the ones they want to insure because that is where they see there being an negligible degree of risk of them causing accidents.

The Hon. TREVOR KHAN: Hence why they link their—

The CHAIR: Discounts.

The Hon. TREVOR KHAN: No, hence why they link, for instance, getting your finance with the vehicle, why NRMA carries a large load of undesirable insured—because of their branch structure as opposed to some of the others that do it through the finance companies.

Mr DAVID SHOEBRIDGE: Yes, and you get penalised doubly if you reduce your premiums because you get all the 18-year-old drivers who—

Mr STONE: Are less experienced and more likely to take risks and cause accidents.

Mr DAVID SHOEBRIDGE: Which is why we saw all the competition with all the add-ons prior to the no fault—

The Hon. TREVOR KHAN: It is an imperfect market.

Mr STONE: In fairness, SIRA has introduced a risk equalisation mechanism where it pools the bottom 10 per cent of risk. It can better explain that to you tomorrow, but I do not know that that has yet sunk through to any insurer who we want to be a leader. Plus, to be blunt, if politically this level of premium is acceptable and there is no heat on you from government, and if you can make 20 per cent out of this rather than 8 per cent, why would you not shut the darn up, pocket your money and not make a fuss if the other four are not going to follow you down? It is not a well-functioning market in that sense.

Mr DAVID SHOEBRIDGE: In a new scheme there will be a large amount of uncertainty.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: As these things work, almost certainly the uncertainty will be on the conservative side if you are setting insurance premiums, and that is probably what has played out as a starting point.

Mr STONE: Yes, although (a) about some things they were ultra conservative in terms of the dispute numbers and (b) some things were well known. We had 20 years of history of what damages claims looked like under the scheme.

Mr DAVID SHOEBRIDGE: But putting that to one side, the conservative nature of it is—and we are meant to put the TEPL in there to fix that over time. Assume that your predictions turn out right—that there is something in the order of 20 per cent of super profits going forward—

Mr STONE: Sorry, 20 per cent of profit. Twelve over eight would be—

Mr DAVID SHOEBRIDGE: 20 per cent of profit, 12 per cent of super profits.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: Will the TEPL be an adequate mechanism for dealing with that?

Mr STONE: I cannot answer that. That is an answer for actuaries.

Mr DAVID SHOEBRIDGE: What role should this Committee have in supervising that to ensure that if there are super profits the right decisions are made about future premiums, future benefit mixes, or do we just let SIRA do that in its three-year statutory review?

Mr STONE: I do not know whether it will reach the point that this Committee will need its own actuaries to help it understand whether that mechanism is working accurately or whether this Committee is sufficiently confident that it can understand what SIRA's actuaries are saying to work out the answers. I have never been involved in a meeting with SIRA or had a presentation with SIRA addressing how that mechanism was going to work and how well it is now being applied and is working. If it wants to hold the seminar, I will turn up and I will try to learn and then assist you as best I can. I understand almost every other nook and cranny of the motor accidents scheme. That is one that I have just not been near, and nor, I think, has anybody else at this table.

Ms WELSH: No.

Mr DAVID SHOEBRIDGE: Perhaps the way of understanding that is not in a contested hearing with SIRA, but perhaps getting an offline briefing with it so that it can take us through the TEPL at some point to understand how that is going to work.

Mr STONE: I would love to turn up and learn.

Mr SHELDON: But the other thing that the Committee needs to bear in mind about that, which is probably obvious, is that there are a large number of claimants for whom the TEPL will make absolutely no difference. It will be too late to do anything about what has happened to them. So putting it off and hoping that it is solved there does not actually address the problem, which is the minor injury definition here—that there are people whose lives fall apart while the insurers take the money and invest it.

Ms WELSH: Can I just say in relation to that: Back to this document, it shows that the insurers have closed 22,500 files since the scheme started, and there are only 11,200 active. So they have closed more than two years' worth of claims files out of three years of scheme activity, which does not sound good for claim numbers and for damages claims. I think it confirms what we have been saying.

Mr DAVID SHOEBRIDGE: Potentially, or potentially it just confirms what we have always seen, which is the vast bulk of injuries do not end up finding themselves into common law claims, but are minor injuries and resolve in the first three months. I think that has been consistent forever.

Ms WELSH: No, but the point is if the majority of the year one—say half the year-one common law claims have not eventuated yet—

The Hon. TREVOR KHAN: Sorry, could you just say that again?

Ms WELSH: Just say that half of the year-one common law claims have not eventuated yet: There are 2,000. Say there were going to be 4,500 of them. There should be 11,500 of them in the system to date potentially, and the insurers only have 11,000 files open at the moment. That includes all the minor injuries for the past six to 12 months, whatever.

Mr SHELDON: Which are running at 60 per cent.

Ms WELSH: Whichever way you look at the numbers—this is our point—it does not stack up to what the Government said and what SIRA said was going to be the way the scheme would work. This is not our wish list about numbers for damages claims; this is what the actuaries told us would eventuate from the scheme based on their understanding over 20 years. We are just taking them back to their numbers. That is all we are doing. We are not trying to reinvent anything; we are just trying to understand what is going on and keep a comparison going with what we were told was going to eventuate.

Mr STONE: I am less sure about the maths of that because if that number is only actual claims, rather than projected claims, it will not include any damages claims from year three because, courtesy of the 20-month barrier, no-one will have been allowed to lodge one yet.

Ms WELSH: Yes, but why would they be closing a claim if there was a damages claim?

Mr STONE: But, again, I would need to get into the weeds of what they are measuring. If they are measuring open and closing stat benefits and then opening and closing damages separately, you might have two entries per claim rather than one.

Mr DAVID SHOEBRIDGE: You may well close the statutory claim at the end of six months.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: And then open a common law claim at 21 months.

Ms WELSH: But if you are a minor injury, you cannot have a common law claim. If it is closed at six months, see you later.

Mr SHELDON: It is a minor injury.

The CHAIR: But if you have disputed the definition or the determination, then I would imagine that the claim would stay open, would it not?

Ms WELSH: But I think that is all taken into account in the figures to date.

Mr DAVID SHOEBRIDGE: But either way, we are now well into the first year. We should be able to get some more accurate predictions from SIRA about that first claims year.

Ms WELSH: Yes, and Estelle Pearson said it is her belief that 70 per cent of premiums are going to be returned to the injured. I do not think I have heard 70 per cent before.

Mr DAVID SHOEBRIDGE: Can I go back to the psychological injury point? I accept the collective wisdom here that it will not be practical to get a psychiatrist's opinion in the time frame, at least for determining minor injury or not within that first six months. But if 34 per cent of decisions of insurers are being flipped on internal review on psychological claims, it is currently not working. What would help?

Mr DAVIDSON: I think an extension of the consideration period for minor injury in the case of some if not all psychological injuries, particularly those that are late manifesting. Post-traumatic stress disorder is a classic example because in many cases that cannot even be diagnosed under DSM until at least six months have passed since the accident.

Mr STONE: And I think some more muscular regulatory action. You were told by the insurers about the review that John Watts had done. He reviewed 50 files. They were randomly drawn. He looked across each insurer, at one or two wages decisions, one or two liability decisions and one or two minor injury decisions. Let us have the next review—and you can give it back to Mr Watts if he will do it or somebody else—and look at not a random selection of 50 but instead look at 50 where the insurer's internal review decision was overturned by the medical assessment or where their liability decision was overturned, and look at the learning across 50 files where they have been reversed to work out why and what are the common patterns of error that are occurring. If you look at 50 where you are lucky if you have one or two that were then disputed and then went further to be reversed and he did not look at any of that process, you are not going to pick up a great deal other than that their process appears superficially satisfactory. It is not a very good measure of what are we learning from the inaccurate outcomes, so pick a different sample next time.

The CHAIR: On that note, we have reached time. I want to make sure that all Committee members are satisfied that they have the answers they want.

The Hon. TREVOR KHAN: I hope SIRA has been watching carefully.

The CHAIR: I am sure it has. I thank the witnesses. The Committee has resolved that answers to questions on notice are to be returned within 21 days. The secretariat will be in contact with you if you have taken questions on notice. That concludes today's hearing. We will return tomorrow morning for the second half-day of hearing. Thank you very much.

(The witnesses withdrew.)

The Committee adjourned at 15:29.