

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

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

CORRECTED

At Macquarie Room, Parliament House, Sydney on Wednesday 26 May 2021

The Committee met at 9:30.

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. Daniel Mookhey

The Hon. Rod Roberts

The CHAIR: Welcome to the second combined hearing for the current review of the Compulsory Third Party 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 Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginal people present. Today we will be hearing from icare and SIRA in relation to the performance of each of those two schemes.

Before we commence I will make some brief comments about the procedures for today's hearing. The 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 the 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. For 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, can everyone please turn their mobile phones to silent for the duration of the hearing.

RICHARD HARDING, Chief Executive Officer and Managing Director, icare, affirmed and examined
NICK ALLSOP, Group Executive, Care and Community, icare, affirmed and examined
RASHI BANSAL, Group Executive, Organisational Performance, icare, sworn and examined
SUZANNE LULHAM, General Manager, Care Innovation and Excellence, icare, 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 HARDING: I have a short opening statement, Chair, if that is alright?

The CHAIR: Excellent, thank you.

Mr HARDING: Good morning everybody. It is a pleasure to be here this morning to meet with you to discuss the important work icare does for the people who are part of our Lifetime Care and Support scheme. Lifetime Care provides long-term treatment, rehabilitation and care for nearly 1,600 people who have severe injuries and disabilities across New South Wales. The vast majority of these people have brain injuries. Around one in four of our participants have spinal cord injuries, while the remainder have a range of other injuries such as amputations. Some examples include a child injured in utero in a car accident that resulted in a brain injury, a young man with a spinal cord injury who was injured after celebrating with a friend before going to university, and a young father with a serious brain injury whose behaviour means he cannot live in the family home.

We want our participants to have an improved quality of life, independence and the ability to actively engage in their local communities. We constantly review and update the way we provide care to meet our participants' needs, and there has been a lot happening since the last time we were here at the Committee a couple of years ago. Providing continuity of care in bushfires, floods and the pandemic has been a particular challenge and we have also seen increased mental health challenges for our participants. I thought I could provide you with a quick snapshot of some of the challenges and achievements of the past couple of years.

In respect to the bushfires and floods, we ensured participants had emergency plans in place and connected them with local emergency services operators to ensure they were safe and we could continue to provide care for them. With respect to COVID, our participants obviously have compromised immunity, and we are proud that our care for our participants has continued throughout the pandemic. We faced supply challenges for some everyday items such as wound care and continence products and so forth, and we saw many of our participants experience greater anxiety during the lockdown period.

Pain and mental health has become a bigger issue. Many of our participants continue to experience significant pain. In fact, more than 70 per cent of participants with a spinal cord injury and 50 per cent of participants with a brain injury were still experiencing significant pain eight to 10 years after suffering their injury. We are now working with NSW Health to develop pain services for people with a brain injury. In respect to our financial position, Lifetime Care continues to be in a sound financial position. The recent review by Robert McDougall has confirmed that the appropriate economic funding ratio—and on this basis as of 31 March—for the Lifetime Care and Support Scheme is running at 144 per cent. Lastly, our participants' population is aging and they are telling us that they want to stay in their own homes as long as possible. We are trying to work out and continue to provide resources to our participants to make this happen wherever that is possible.

I would like to thank the Committee for the opportunity to appear today. Before handing back to you for questions, I want to also publicly thank all of the providers that work within the scheme and do exceptional work; we really appreciate it. We have had feedback from a couple of our participants recently which brings home what we do in partnership with these service providers. One participant said that what we do helps maintain their "independence to live in the community" where they can "live and function like everyone else". While another participant said, "I don't feel ostracised by my disability or my inability." I think that is what the scheme is all about. Finally, to the participants and their families, it is our privilege to provide care and support for you.

The Hon. DANIEL MOOKHEY: Greetings to you, Mr Harding, and to your executives. It is good to see you again. Is it possible for you to table your opening statement?

Mr HARDING: Yes, of course, no problem at all.

The Hon. DANIEL MOOKHEY: In your opening statement, you said we have 1,600 people currently in the lifetime care scheme.

Mr HARDING: Yes.

The Hon. DANIEL MOOKHEY: How many people entered in the past year?

Dr ALLSOP: If I may take that. The number of people that enter the scheme annually is approximately 120. There is some variability around that depending on various things like road conditions during the course of the year, the randomness of accidents and the injuries that those cause.

The Hon. DANIEL MOOKHEY: So it is about 120, on average?

Dr ALLSOP: Around that sort of number.

The Hon. DANIEL MOOKHEY: Has that been stable for the past three years?

Dr ALLSOP: It has been relatively stable. We expected that we might see a drop with lower numbers of vehicles on the road during the lockdown periods. That did not eventuate. There are many hypotheses on why that may have occurred, but the numbers have been relatively stable over the past few years.

The Hon. DANIEL MOOKHEY: The 120-odd people who are entering, are they entering predominantly immediately into lifetime care or are they coming into the scheme after being cared for by other insurers prior? Do you have those numbers?

Ms LULHAM: We have 180 that come in as interim participants each year, of which about 75 per cent have a brain injury, about 23 per cent have a spinal cord injury and the other 2 per cent is amputees. Of that, about 110 to 120 stay as lifetime participants. The scheme grows every year via the 110 to 120. We have about 180 that come in, of which probably about 90 per cent to 95 per cent come directly from the brain and spinal injury units. We do get some late notifications, some a couple of years late, but it would only be a handful that would be later than, say, eight months.

Dr ALLSOP: I think the key point for the Committee to note is that we have an interim period of two years where for the majority of our participants it is relatively clear that they are going to be members of the scheme for life, based on the nature of injuries. But for some of the less severe brain injuries, there is a period where we wait for the injury to stabilise. We support them through that period and then make a determination of their long-term eligibility at that two-year point once they have had the ability to have their injury stabilise and perhaps hopefully receive a degree of recovery.

The Hon. DANIEL MOOKHEY: How many people are entering from the workers compensation scheme?

Dr ALLSOP: It is a separate scheme, so—

The Hon. DANIEL MOOKHEY: Above the 30 per cent impairment or that no longer happens, or am I wrong?

Dr ALLSOP: The lifetime care scheme does not accept people who are injured in the workplace.

The Hon. DANIEL MOOKHEY: After the five years? Have I just got that wrong? Mr Harding is politely nodding that I have got that wrong. You were polite, which I appreciate.

The CHAIR: Chalk that one up, Mr Harding.

Dr ALLSOP: There is a separate scheme that was created as part of the 2017 reforms to the CTP Act that allows for people injured in motor vehicle accidents who have treatment and care needs that run beyond five years post their accident to be supported in a scheme that we have named CTP Care.

The Hon. DANIEL MOOKHEY: At the risk of continuing my ignorance, the scheme is funded through a levy; is it not?

Dr ALLSOP: The lifetime care scheme is funded through a levy on motorists. That is correct.

The Hon. DANIEL MOOKHEY: There is no separate asset basis put aside for lifetime care; is that correct?

Dr ALLSOP: Sorry, can you clarify that?

The Hon. DANIEL MOOKHEY: There is no investment portfolio that supports the fund that is separate for lifetime care?

Ms BANSAL: There is.

The Hon. DANIEL MOOKHEY: What is the size of that right now?

Ms BANSAL: The assets as at 31 March are \$7.4 billion.

The Hon. DANIEL MOOKHEY: What are your expected future liabilities?

Dr ALLSOP: We have a funding ratio of 144 per cent.

The Hon. DANIEL MOOKHEY: That is the economic funding ratio. I accept that that is the economic funding ratio. But if we were not to use the economic funding ratio and we were to use the previous ratio, what would it be?

Mr HARDING: It is approximately between 102 and 103, but that is a number off the top of my head.

Ms BANSAL: Our funding ratio on an accounting basis, which I think is what you are asking for—

The Hon. DANIEL MOOKHEY: Yes.

Ms BANSAL: —is 103 per cent at 31 March. The funding ratio as per our accounts at 31 March 2021 is 103 per cent. Our assets, I do not have the exact number of the accounts as at 31 March but I can tell you the numbers as at 30 June 2020.

The Hon. DANIEL MOOKHEY: Please.

Ms BANSAL: Yes. At 30 June 2020, our outstanding claims was \$7.354 billion.

The Hon. DANIEL MOOKHEY: That is about 101 per cent, 102 per cent?

Ms BANSAL: That is exactly right; 103 per cent.

The Hon. DANIEL MOOKHEY: Okay. Can we just get the accounting numbers for the last few years, please?

Ms BANSAL: Yes, sure.

The Hon. DANIEL MOOKHEY: It is 101 per cent at June 2021, or you are expecting that. What was the previous figure?

Ms BANSAL: Yes. As I said, at 31 March 2021 it is 103 per cent. At 30 June 2020, on an accounting basis, it is 97 per cent. At 30 June 2019 it is 110 per cent. At 30 June 2018 it is 124 per cent.

The Hon. DANIEL MOOKHEY: Got it. That 97 per cent dip, was that a result of the COVID pandemic?

Ms BANSAL: Absolutely. There were two key factors for that. COVID over that year gave us quite a significant investment loss in the year; investment markets dropped by around 40 per cent over the period of a month. The second reason is that we have seen increases in attendant care costs come through, which we have had to allow for in our future projections and therefore our outstanding claims liabilities. Those were the two key drivers for that funding ratio to drop. I just want to bring to your attention, Mr Mookhey, that the outstanding claims liabilities that I have just quoted here and the funding ratios use a risk-free rate of return, which has significantly dropped over the last couple of years.

The Hon. DANIEL MOOKHEY: Yes.

Ms BANSAL: The cash rate is currently, as you know, 0.1 per cent. The funding ratio that we should be talking about for the financial sustainability measure of the scheme going forward has stayed stable over that period at 144 per cent.

The Hon. DANIEL MOOKHEY: I accept that there is a different metric that is now proposed by Mr McDougall, which I can accept that icare has decided to use. Having said that, I still want to pursue understanding the accounting figures as well, given that until this point in time that was generally how we talked about it. I accept, therefore, that the investment markets are a reason that the funding ratio dropped to 97 per cent. How much has the recovery in the funding ratio been attributed to improved performance on the investment side?

Ms BANSAL: The majority of the improvement in the funding ratio for this financial year has been to do with improvement in the investment markets. We have seen an uplift in our investment returns. The year-to-date investment return is close to 10 per cent. We have not seen any significant deterioration or movement in outstanding claims liabilities over this financial year.

The Hon. DANIEL MOOKHEY: I accept that, and that is good that the investment markets have helped here.

Mr HARDING: Yes.

The Hon. DANIEL MOOKHEY: What do you think is the reason that over the past three years, on an accounting ratio basis, it has dropped from 124 to 101, or 102?

Ms BANSAL: The biggest reason by far is the change in the risk-free rates over that period. The yield curve, which is what we use, which is a projection of our future risk-free rates of return on a bond portfolio, have dropped significantly over the last two-and-a-half or three years. They were at an average of around 6 per cent and they are currently at around 1 per cent over the duration of the liabilities that we have for the scheme. As a result, the funding ratio has had an impact of around 35 per cent over that period for just changing to use the risk-free rates. We had an accounting policy change in 30 June 2018 where we shifted to using the risk-free rates, in conjunction with the Audit Office. Just to quote that number again, the change in market inflation and risk-free rates over that period has been a 45 per cent impact on our funding ratio.

The Hon. DANIEL MOOKHEY: Chair, I am happy to continue with a few more questions on the finances, if the Committee members—

The Hon. TREVOR KHAN: No, it's fascinating. Keep going.

The CHAIR: Yes.

The Hon. DANIEL MOOKHEY: I'm as thrilled about yield curves on a Tuesday morning as everyone, I have to say.

The Hon. SCOTT FARLOW: Wednesday morning. It has been a long week for you already.

The Hon. DANIEL MOOKHEY: Yes, it has.

The Hon. TREVOR KHAN: Getting longer.

Ms BANSAL: Mr Mookhey, can I just complete my answer, if that is okay?

The Hon. DANIEL MOOKHEY: Sure. I presumed you had, but feel free.

Ms BANSAL: Sorry. You asked what the key reasons were. One of the key reasons is, as I said, the change in risk-free rates, which have dropped significantly and impacted our funding ratio. Another impact has been COVID impacts, so the drop in our investment portfolio. The third impact has been increased superimposed inflation that we have seen in attendant care costs over this period. We have seen significant superimposed inflation in attendant care costs driven in the market because of multiple reasons, and I will get Dr Allsop to elaborate on that further. That has also meant that our projected liabilities have had to increase.

The Hon. DANIEL MOOKHEY: Trust me, I am sure we will have the opportunity to ask Dr Allsop and others about the superimposed inflation and the medical costs of the scheme shortly.

Ms BANSAL: Sure.

The Hon. DANIEL MOOKHEY: But I just want to continue on the finances a little.

Mr HARDING: Could I perhaps also—

The Hon. DANIEL MOOKHEY: Of course, Mr Harding.

Mr HARDING: Just to add, one of the reasons that we and the actuarial review that was undertaken by Robert McDougall ended up recommending the funding ratios is because it removes the noise of the risk-free rate. You can see that the funding ratio has actually been stable at an economic ratio level—a small deterioration, which is the relationship to the attendant care that Ms Bansal has just talked about. But really, the whole point is to remove the noise that is driven by movements in the yield curve rather than actual outcomes in the scheme.

The Hon. DANIEL MOOKHEY: Mr Harding, I accept that is a fair explanation as to Mr McDougall's recommendation. But equally, and I say this with complete respect, I have heard various people who have been in your position before at various earlier forms of this hearing provide as eloquent explanations as to why we should accept the metrics that they were arguing for at the time, which at that point included the risk-free rate. I recall that. I accept that that is now where we are heading towards.

Mr HARDING: I think it is a well-established actuarial principle, so it is not just a management point of view.

The Hon. DANIEL MOOKHEY: Yes, I understand. Can we just now turn to the operating results?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: The Auditor-General advised us that the lifetime care scheme lost circa \$800-odd million.

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: How much precisely was the loss in the last 12 months?

Ms BANSAL: The Lifetime Care and Support Scheme, including CTP Care, had a net loss of \$878 million at 30 June 2020 for the full financial year.

The Hon. DANIEL MOOKHEY: What was the previous year?

Ms BANSAL: It was a loss of \$576 million.

The Hon. DANIEL MOOKHEY: And the year previous?

Ms BANSAL: It was \$656 million.

The Hon. DANIEL MOOKHEY: Do you have the year previous to that?

Ms BANSAL: Yes, I do. It was a profit of \$317 million, so a positive. The year prior to that was a positive \$219 million.

The Hon. DANIEL MOOKHEY: Yes, got it. We have gone from a reversal of what was it?

Ms BANSAL: So, 877 at the last full financial year.

The Hon. DANIEL MOOKHEY: Yes, but four years ago the positive profit figure circa—

Ms BANSAL: It was a \$317 million net result. But again, I just want to clarify, back to my previous point, the reason we have seen those losses is because we changed to using risk-free rates. The risk-free rates have continuously dropped over this period of time. Therefore, your outstanding claims liability has to increase because it does not allow for future investment income. As Mr Harding was saying, that is not an actual result. If you look at our cash flow results, they do not reflect that drop. This is just an accounting basis where we are actually only looking at the risk-free rates. We are not allowing for future investment income, which has stayed strong over this period. That is why we have seen those losses over that period.

The Hon. DANIEL MOOKHEY: Okay, but do you agree with me that it is concerning that in the last three years the lifetime care scheme has lost circa \$1.8 billion?

Ms BANSAL: No. If you look at the funding ratio on an economic basis, the funding ratio over that period has stayed stable at 144 per cent. At 30 June 2015 it was—

The Hon. DANIEL MOOKHEY: Just to be clear: When you say "funding ratio", you mean "economic funding ratio"?

Ms BANSAL: The economic funding ratio over that period has stayed extremely stable; it has only deteriorated by 2 per cent. That is the best way to look at the financial sustainability of this scheme.

The Hon. DANIEL MOOKHEY: Explain to me exactly why we should not be concerned that the scheme has lost \$1.8 billion on an operating result.

Mr HARDING: I think the simplest answer to try and clarify it is that those losses are directly attributable to the change in risk-free rates that occurred in the marketplace at that point in time. That is why they are accounting losses and they come through. As happens in investment markets, they go up and down. As happens in interest rate markets, they go up and down. This is the natural volatility of a very long-term scheme. The point of the economic funding ratio is that the average duration for participants in this scheme is, on average, 21 years. The year-to-year movement is actually—yes, it is important, but what is important is are we funded for the longer term? That is what the economic funding ratio is telling us.

The Hon. DANIEL MOOKHEY: Mr Harding, I do not dispute that it is important that we are funded for the long term. I have an open question for you to respond to.

Mr HARDING: Sure.

The Hon. DANIEL MOOKHEY: I struggle to accept a view that this is effectively accounting losses when the Auditor-General said it is not, it includes operational aspects which, to be fair, as you have already indicated, includes medical costs and super inflation.

Mr HARDING: Yes.

The Hon. DANIEL MOOKHEY: That is what is concerning. Do you agree that it is not just the risk-free rate and the adjustments in the risk-free rate, that this also reflects deteriorations in operating conditions? I am not suggesting that is necessarily the fault of icare.

The Hon. TREVOR KHAN: Let him answer rather than converse.

The Hon. DANIEL MOOKHEY: I am. I thought we were having a nice conversation, but fair enough.

The Hon. TREVOR KHAN: You were.

The Hon. SCOTT FARLOW: You were. It was very respectful.

The Hon. TREVOR KHAN: He wants to answer you.

The Hon. DANIEL MOOKHEY: Hence the concern.

Mr HARDING: The first point is to say obviously it is a concern to see a fund lose money in that way, the same way it has been for us on the Nominal Insurer side. The difference between the Nominal Insurer side and this side is that in terms of the lifetime scheme, it is majority driven by those economic factors being movements in investment markets or interest rates. There is some small operational deterioration related to, as we talked about, attendant care. That is very important because attendant care and those services are one of the larger drivers of long-term costs for the scheme. We are not shirking that. It is an area where Dr Allsop and his team have a strong focus and a program. The reality is that as markets recover, as they are doing right now, those investment returns will recover and that money will return back to the fund, as it has to date. Ensuring that we have a long-term position and that we understand that in 10 years' time, in 20 years' time the fund is sound is what our focus is.

The fund currently, and I can give you rough numbers, brings in levies for the year to cover all the participants in that year of roughly \$400 million to \$500 million. It pays claims each year of roughly \$200 million to \$250 million in claims. There is a clear surplus in the cash flows of the business. That is why we are not so worried about the immediate short-term economic deterioration in the business around the investment markets. Our focus is making sure that the long-term cost drivers of the scheme such as attendant care and medical costs are managed and managed well. Obviously we have a strong program with TCorp to manage the investment markets and the interest rate returns. I am trying to say to you that we are not ignoring your question, it is just it is not a long-term question, it is a short-term volatility piece that we have to manage.

The Hon. DANIEL MOOKHEY: I accept that is your view. I am not disputing or contesting it, for what it is worth. I also accept that you say it is concerning. What I want to ask before I get onto the implications of the levy is—I appreciate the \$877 million figure from 30 June 2020—what is the projection for the coming year?

Ms BANSAL: The full year for 30 June 2021, net result is a positive \$222 million and, as you would appreciate, that is a projection based on our latest modelling.

The Hon. DANIEL MOOKHEY: That is presumably reflecting the improvements in the investment markets, if you follow the logic of what you said.

Ms BANSAL: That does not reflect the full improvement in the investment markets. This is based on a projection that we did looking at 31 January investment assets. I do want to note that investment return has continued to improve over February, March and April more than expected.

The Hon. DANIEL MOOKHEY: Yes, sure. In terms of the levy implications, you put your levy on this to SIRA, do you not?

Dr ALLSOP: Yes, we do. We submit our levy requirements in total dollar terms through to SIRA.

The Hon. DANIEL MOOKHEY: When do you do that?

Dr ALLSOP: SIRA then determines how to allocate that across the various motor vehicle classes and regions in New South Wales.

The Hon. DANIEL MOOKHEY: When did you put yours in?

Dr ALLSOP: I would have to check the exact date but the filing, or the submission or request, went through for the 2021-22 year about a month ago.

The Hon. DANIEL MOOKHEY: Do you usually apply for one-year approval at a time?

Dr ALLSOP: Yes. We reassess the levy requirements every year and make a submission through to SIRA every year.

The Hon. DANIEL MOOKHEY: In addition to providing the application for the coming year, do you provide an indication as to your intentions for the following years as well?

Dr ALLSOP: Certainly when requested, we give additional information to clarify what our projections are.

The Hon. DANIEL MOOKHEY: Insofar as the application you made about a month ago, what was the application in terms of the levy? What did you ask SIRA to approve?

Dr ALLSOP: We asked them to approve a total collection amount of \$509 million for the 2021-22 year.

The Hon. DANIEL MOOKHEY: How much did you ask for last year?

Dr ALLSOP: We asked for \$491 million.

The Hon. DANIEL MOOKHEY: Could we get those two figures again?

Dr ALLSOP: They were \$491 million for the 2020-21 year and \$509 million for the 2021-22 year.

The Hon. DANIEL MOOKHEY: Do you have the year previous?

Dr ALLSOP: The year previous was \$461 million.

The Hon. DANIEL MOOKHEY: Do you have the year previous to that?

Dr ALLSOP: It was \$453 million.

The Hon. DANIEL MOOKHEY: Over the course of the last four years, the amount asked of motorists has effectively risen by \$80 million. Is that fair?

Dr ALLSOP: Yes.

The Hon. DANIEL MOOKHEY: If we accept the assurances that Mr Harding and Ms Bansal were making earlier that this is effectively due to short-term movements in investment markets, why are we seeking to collect an additional \$80 million? Mr Harding, given that you just pointed out to us—

The Hon. TREVOR KHAN: Seeing that you have asked that question, and I think it is a very relevant question—

The Hon. DANIEL MOOKHEY: Okay, I will do it in two stages.

Dr ALLSOP: Let me provide a little bit of elaboration around how the levy is determined each year.

The Hon. DANIEL MOOKHEY: I appreciate that but I just asked the question. The question specifically was why are we asking motorists for more money, if we are to accept your earlier assurances?

Dr ALLSOP: Because the cost of providing the treatment and support we give to participants in the lifetime care scheme is driven by inflationary pressures on medical treatments and also inflationary pressures in particular on attendant care costs. Attendant care costs, we are very much a price-taker in that market. The overall market rates are not set by us. Where the market moves, we need to follow essentially in order to ensure that we can provide that support to the participants in our scheme.

The Hon. DANIEL MOOKHEY: I appreciate that, Dr Allsop. Mr Harding, a few minutes ago you assured us that on a cash flow basis you were collecting \$450 million into the scheme and were paying out claims of \$250 million. You made the point that that difference is what is shoring up the scheme, which I accept.

Mr HARDING: Well, no—

The Hon. DANIEL MOOKHEY: Let me finish. Therefore, why in the last year have we asked for an additional \$20 million if we are to accept the earlier assurance that the gap between money in and money out is \$150 million?

Mr HARDING: Obviously the gap is there to go into the investment pool to provide for future needs for scheme participants. Each year the levy is, as I think Dr Allsop was going to describe to you, collected for the participants during that year for their lifetime in the scheme. It reflects the nature of the fact that we get the 120-odd participants in the scheme and they will be with us for life. That is the basis upon which the levy is collected. The gap reflects the future needs and the investment income on that gap—that is why the economic ratio is important—is what funds the future needs of the participants who arrive in each year. That is the basis of it. What I was implying to you from a cash flow perspective is that the solvency and the nature of the business, because the scheme is not yet at a point of stability—the scheme is still growing—it is an important measure to know that for the longer term we have the scheme fully funded.

The Hon. DANIEL MOOKHEY: What do you define as "not yet at the point of stability"? What does that mean?

Dr ALLSOP: A steady-state position for the lifetime care scheme will be when the number of new participants entering the scheme is offset by the number of participants who exit the scheme. That is some decades away. We see maybe 30 people exit the scheme per annum at the moment. Unfortunately, the majority of those exits are because the participant passes away. But until those entries and exits offset, the scheme will continue to grow.

The Hon. DANIEL MOOKHEY: Yes, that is true. I accept that. You have discretion in terms of the levy application you made, do you not?

Dr ALLSOP: Sorry. In terms of the levy application?

The Hon. DANIEL MOOKHEY: I may rephrase the question.

The Hon. TREVOR KHAN: What you have said is that you do an estimate of what the liability arising from each person coming into the scheme is. So that is the basis of the calculation.

Dr ALLSOP: PricewaterhouseCoopers do an assessment every year of the expected number of participants who will enter the scheme and the characteristics of—

The Hon. TREVOR KHAN: That is not the hard bit, I suspect.

Dr ALLSOP: No, and the characteristics of those participants as well: what proportion will be brain injury, what proportion will have spinal injury and what the range of injuries' severities will be. Based on the people that we already have in the scheme, we look at the treatment and support costs for those people and form an estimate of the expected costs for the new participants entering the scheme. That accounts for things like longevity—how long we expect people to live for; the way their treatment needs may change over time—as people age with a disability, what will their support need to look like, how will that need to change; and what sort of medical interventions would we expect over the life of a participant as well. All those factors go into forming an estimate of what the cost associated with the people entering the scheme in the coming year will be.

The levy we then collect probably represents about 20 per cent of what we actually expect to pay for those participants entering the scheme. The rest of the money to fund those participants needs to come through the investment earnings on that levy. That is why it is so important that we take a long-term view in terms of the outcomes of the scheme, and it is why, over the life of the scheme, this will change as well. As the scheme matures and we get closer to that steady state, the cash flow difference that we are talking about at the moment will begin to normalise out. But at the moment, because we are expending a very small proportion of the levy income that we get each year and the rest is going into that investment pool to make sure that we are sustainable into the future, we have no financial concerns in terms of our solvency and our ability to meet the support requirements of the people we are here to serve.

The Hon. TREVOR KHAN: Can you give us an indication as to when the scheme will be in equilibrium? What will be the size of the investment portfolio that will then exist?

Dr ALLSOP: I know we have done that work relatively recently. I do not have the figures to hand. I did the same work some years ago. It was circa 2047. But I think it will be more like maybe 2050, 2053.

Ms BANSAL: I was going to say 2050. Obviously, there is a lot of uncertainty in projections, when you do projections for 30 years down the track. But we do expect it to be multiple decades before this scheme reaches steady state or equilibrium as per your comment.

Dr ALLSOP: Yes. Rough expectations is there may be 5,000 participants in the scheme. But it is all very dependent on accident rates, road safety improvements. If all our cars are driverless at that point, then maybe we have no new participants entering the scheme.

The Hon. TREVOR KHAN: I think we have seen from the United States that having driverless cars does not necessarily mean you do not have accidents.

The Hon. DANIEL MOOKHEY: Is this a fair and accurate description: The levy is cost recovery of anticipated future claims?

Dr ALLSOP: No. It is funding of the expected lifetime costs, allowing for investment income on that levy, for the new participants entering the year.

The Hon. DANIEL MOOKHEY: How much of that proportion that you are collecting is attributable to the desire for investment returns? Can you tell us that number?

Ms BANSAL: Sorry. Could you repeat that question?

The Hon. DANIEL MOOKHEY: The proportion of the levy, not the dollar amount, that is collected for the purposes of future investment income.

Ms BANSAL: The whole levy goes into our investment assets and is invested for an investment rate of return and future income. We draw that to meet our claims needs on a regular basis. We maximise our investment returns. It is managed on a regular basis. We have monitoring as to how much we need to draw down to pay our claimants or operational expense needs. We work with TCorp on that.

Dr ALLSOP: I can just elaborate. As Mr Harding mentioned, our annual expenditure out of the scheme is circa \$200 million to \$250 million. If we are bringing in 500, expending 250, accepting that that 250 is across all participants in the scheme since its inception—so a portion of that 250 relates to more recent participants entering the scheme. But, far and away, the bulk of it relates to those already in the scheme for a number of years.

The Hon. DANIEL MOOKHEY: The operating expenses for last year, Mr Harding, I think you said earlier, was \$250 million-ish.

Mr HARDING: From the claims perspective, yes.

The Hon. DANIEL MOOKHEY: What is the projection for the next two years on that?

Dr ALLSOP: It does not materially move. It is a long-term scheme. It takes a long time for those cash flows to shift. As participants enter the scheme and the scheme grows, they will grow. But that takes many years.

The CHAIR: I was just going to clarify for my own sake. I just did some quick calculations. The percentage increase that you have applied for, I think, was around 3.8 per cent.

Ms BANSAL: It was 3.7.

The CHAIR: Do you have any projections on what increase you will have for the levy moving forward? Or is that harder to—

Dr ALLSOP: Seventy per cent of the costs relating to participants entering the scheme comes through attendant care. We estimate that attendant care costs will grow roughly 4 per cent per annum on average. That is factored into the levy-setting process. If 70 per cent of the costs are expected to grow 4 per cent per annum, we do expect to see ongoing levy increases around that 4 per cent mark as a consequence.

The Hon. DANIEL MOOKHEY: The application for this year for approval was 3.7 per cent. Correct?

Dr ALLSOP: Correct.

The Hon. DANIEL MOOKHEY: But you have indicated to us, and presumably you have indicated to SIRA, that you anticipate that it will rise in future years, each year, by about 4 per cent. Is that fair?

Dr ALLSOP: Approximately. Yes.

The Hon. DANIEL MOOKHEY: How long do you maintain those projections for in general?

Ms BANSAL: Because the scheme has quite a long duration, in excess of 40 years, our scheme actually has projections that go out quite into the future to be able to do modelling and also estimate our levies. We project for 10 years as part of our budget and business plan that we submit to Treasury and Parliament.

The Hon. DANIEL MOOKHEY: That is helpful.

The Hon. TREVOR KHAN: That 4 per cent is before any allowance for inflation?

Dr ALLSOP: No. That is the allowance for inflation.

Mr HARDING: The 4 per cent reflects the assumptions that we make about how, largely, attendant care costs will rise into the future. They are assumptions. They could be right, they could be wrong, as all assumptions are. That is the nature of modelling.

The Hon. TREVOR KHAN: Actually we have seen some modelling somewhere else which—

The CHAIR: That will be questioned with the next participants.

Mr HARDING: It is a reflection of the inflation that we have seen in the past and how we expect that to roll forward.

The Hon. ANTHONY D'ADAM: I just want to ask about that 4 per cent. I am assuming that is predominantly wages, is it not?

Dr ALLSOP: It is, and attendant care—

The Hon. ANTHONY D'ADAM: Wage growth is not looking anything like 4 per cent. How do you arrive at that figure?

Dr ALLSOP: There is a real strain on supply for attendant care workers. There are numerous factors driving that. There is also pressure on the price setter, being the National Disability Insurance Agency [NDIA], in terms of their need to source appropriately skilled attendant care providers. That does put wage growth challenges into that sector. Maybe my colleague Ms Lulham could elaborate more on the drivers of wage increases across the attendant care sector.

The Hon. SCOTT FARLOW: I would say in terms of that workforce issue the Australian Community Industry Alliance gave that evidence yesterday as well—that there was a real constraint in the workforce, in particular with the NDIS [National Disability Insurance Scheme] competition in the market as well, and that there was a problem with labour. But I will hand over.

Ms LULHAM: No, you are completely right. The other factor is that the award that we pay under the Social, Community, Home Care and Disability Services award did a fair wage increase—

The Hon. DANIEL MOOKHEY: That is the social, community and disability award?

Ms LULHAM: Yes. Something—

The Hon. DANIEL MOOKHEY: I know my awards.

Ms LULHAM: You do. As you probably know, it did a 36 per cent increase under the fair wage thing. That expired this year, that 36 per cent over five years. The new award has not come out yet, so we really do not know what that increase might be over the next few years. If it comes out anything like that then that is a real pressure on that 4 per cent again.

The Hon. SCOTT FARLOW: That 36 per cent over five years is an over 7 per cent year-on-year increase?

Ms LULHAM: Yes.

The Hon. SCOTT FARLOW: Were you seeing attendant care costs increasing by about that much? I imagine that is one factor in terms of attendant care, but it would be a main driver.

Ms LULHAM: When we set our fees, we put an allowance of about 70 to 80 per cent of the fee on the actual labour cost of that. So yes, it is the fair proportion of it. But as Dr Allsop said, the big driver is also the demand through both the NDIS and the aging royal commission as well. That will, I guess, dry things up a little bit in that market and most of the providers are suffering in terms of trying to recruit into that area. The lack of overseas students has also really had an impact in terms of the recruitment.

The CHAIR: Can I just clarify, of the 3.7 or 3.8 per cent figure you said 70 per cent is 4 per cent of the increase, plus then whatever the CPI would be is how you achieve that 3.7 per cent.

Ms LULHAM: That is roughly.

The CHAIR: Yes. The other question I was going to ask was: In previous years, noting that you do projections, did you project a 4 per cent increase? Let us say four years ago, were you projecting forward that you would have this increase in cost or are you fairly much running on where you had projections?

Dr ALLSOP: So 4 per cent is our long-run inflation assumption. That is what we use to determine our economic funding ratio. That is what we use to set the levy. Where we have seen movements in the levy that are different to the 4 per cent, there are a number of factors that can drive that. There can be actual changes as a result of award changes that adjust rates. There could be other factors such as NDIS moving their rates and consequently creating a step change in the market. We can also see changes in our portfolio composition, which the actuaries PwC then factor into their expectations for the future cost of the year coming in. There can be many factors that influence what ultimately we need to put forward to SIRA as our projected best estimate of the future costs for that year.

The Hon. TREVOR KHAN: Your portfolio composition, does that mean your clients?

Dr ALLSOP: It does, yes.

Mr HARDING: The mixture of different injuries.

Ms BANSAL: Of different types of injuries.

Mr HARDING: Brain injury versus spinal versus other, yes.

Ms BANSAL: Just on the 4 per cent, we need to remember that it is a best estimate assumption very much into the future. It is unlikely to change until we see some significant evidence around that, but we do update it as we see evidence for actuals. But our expected 4 per cent has been quite stable over the past couple of years.

The CHAIR: I guess that is what I was looking at because the figures that you gave, I ran them all through the calculator and the increase year on year to the levy was around 4 per cent. An assumption of 4 per cent, obviously with CPI probably being lower at the moment given the economic environment we are in, but you then have the wage growth around the assisted—

Ms BANSAL: Attendant care.

The CHAIR: Yes, so it has basically levelled out at around 4 per cent. Your projections previously are about in line now with what you are actually recognising and you are still projecting 4 per cent into the future?

Ms BANSAL: Yes.

Mr HARDING: Yes.

The Hon. ANTHONY D'ADAM: Can I ask about the attendant care? Are the providers highly concentrated or is it highly atomised?

Ms LULHAM: We have a panel of attendant care providers, so we have them on contract. It is a fixed-price contract. We currently have 35 providers on our panel.

The Hon. DANIEL MOOKHEY: Just to clarify, that is a panel that is purely for the Lifetime Care and Support Scheme?

Ms LULHAM: Yes.

The Hon. ANTHONY D'ADAM: In the last report there was an observation about award compliance. How do you actually go about doing that? How are you assuring that the attendant care providers are actually meeting their award obligations? What is the mechanism for that?

Ms LULHAM: To be on our panel you have to comply with the Australian Community Industry Standard [ACIS], which I think you heard about yesterday. Part of that is around compliance with the various awards. The other thing is their contract with us specifically stipulates that they must pay a minimum of award rate. Obviously some providers will pay more than that as well. We ourselves do a—I will not say a thorough check of that, but we do go out and do a sort of audit of the providers and things like that as well.

The Hon. ANTHONY D'ADAM: What does that look like? What does that involve?

Ms LULHAM: It is not specifically, I have to admit, around the award stuff. It is around their compliance with things like incident reporting, the training of the providers' staff—those sorts of things.

The Hon. DANIEL MOOKHEY: On that, though, the panel—did you say 30 or 35?

Ms LULHAM: Thirty-five.

The Hon. DANIEL MOOKHEY: When was that panel formed?

Ms LULHAM: It was probably three years ago. I think we will be going out to a new panel the year after next.

The Hon. TREVOR KHAN: When you say "going out to a new panel", does that mean—

Dr ALLSOP: Going to tender.

Ms BANSAL: Tender, request for proposal [RFP].

Ms LULHAM: Tender, yes. This is our fourth tender; that will be our fifth tender.

The Hon. DANIEL MOOKHEY: Is the panel closed in between the tender periods or can new people join?

Ms LULHAM: Very few new people do join, but we have the ability within the contracts and with the procurement process to open it if required.

The Hon. DANIEL MOOKHEY: Have you exercised that power?

Ms LULHAM: No.

The Hon. DANIEL MOOKHEY: On notice are you able to provide us with the amount expended by provider each year for the past three years, since the panel was formed?

Ms LULHAM: Yes. We have a few providers that probably have a large proportion of our business and some providers have very small amounts.

The Hon. DANIEL MOOKHEY: Why is that?

Ms LULHAM: We have left it to the participants to choose their provider, so a lot is the original conversations that they might have with the provider. It is where they live. A lot of programs are set up as people get discharged from hospital, so a lot of it is also which providers the hospital staff feel comfortable with in terms of their competence.

The Hon. ANTHONY D'ADAM: On notice, will you provide us with the list of providers—the 35?

Ms LULHAM: Yes.

The Hon. DANIEL MOOKHEY: And the amount expended by each provider for each year for the past three years.

Ms LULHAM: And the costs, yes.

The Hon. DANIEL MOOKHEY: That would be most helpful. Just moving on, technically under law it is the Lifetime Care and Support Scheme as administered by icare. Is that a fair description?

Dr ALLSOP: I would have to check the details of the Act but it does not sound unreasonable.

The Hon. DANIEL MOOKHEY: And this is one of the many schemes that you manage, correct?

Mr HARDING: That is correct, yes.

The Hon. DANIEL MOOKHEY: You therefore get the opportunity to attribute aspects of icare's operating expenditure to each scheme; is that correct?

Mr HARDING: Some costs go directly to the scheme but there are some costs that get attributed, yes.

The Hon. DANIEL MOOKHEY: What is the distinction there, Mr Harding?

Dr ALLSOP: For example, staff employed directly to support participants in the Lifetime Care and Support Scheme, their costs are allocated directly to the scheme.

The Hon. DANIEL MOOKHEY: I understand.

Mr HARDING: But, for example, the costs for employing me or Ms Bansal are attributed on an allocation basis.

The Hon. DANIEL MOOKHEY: Of icare's operating expenditure that has been attributed to the Lifetime Care and Support Scheme, how much has been attributed?

Ms BANSAL: I do not have a breakdown of that at hand, Mr Mookhey, as to the allocation of expenses.

Mr HARDING: We can provide it on notice.

Ms BANSAL: We can provide it on notice.

The Hon. DANIEL MOOKHEY: Given that you have nine schemes, circa—

The Hon. ANTHONY D'ADAM: Yes, what is the formula?

The Hon. DANIEL MOOKHEY: —what is the formula by which you decide how to attribute?

Ms BANSAL: The total operating expenses, including direct expenses, as Dr Allsop was saying, for the scheme for year end of 30 June 2021 were \$49 million. That included an allocation as well the direct cost base.

The Hon. DANIEL MOOKHEY: Sorry, could you just repeat that? So \$49 million—

Ms BANSAL: Was the total operating expenses for the Lifetime Care and Support Scheme.

Mr HARDING: Both direct and allocated.

Ms BANSAL: Yes, both direct and allocated expenses. I would not describe the allocation as a formula. It is a complex, bottom-up approach as to allocate costs based on time and effort by back-office functions that is allocated to each scheme. It is a documented methodology, which is audited each year.

The Hon. DANIEL MOOKHEY: Let us just unpack that step by step, if you do not mind. You say that \$49 million has been attributed to Lifetime Care.

Mr HARDING: No, \$49 million is the total cost.

Ms BANSAL: It is the total expenses for the Lifetime Care and Support Scheme, which includes the direct component—for example, case managers who the Lifetime Care and Support Scheme would employ to support its participants.

The Hon. DANIEL MOOKHEY: Okay. You made some reference to back office or—

Ms BANSAL: Yes, so that \$49 million is made up of two components: the direct costs that the scheme would have and then an allocation from icare for, for example, as Mr Harding said, my time and Mr Harding's time.

The Hon. DANIEL MOOKHEY: Sure. So the global cost is \$49 million but you are not in a position—

The Hon. TREVOR KHAN: Sorry, would things like IT also be the sort of function that is—

Ms BANSAL: Yes. IT, risk, finance—all of those functions.

Mr HARDING: IT is probably quite a good one to try to unpack.

The Hon. TREVOR KHAN: It is a very interesting one.

The Hon. DANIEL MOOKHEY: Just before we unpack it, what you took on notice was—

Ms BANSAL: Is a breakdown of—

The Hon. DANIEL MOOKHEY: —that \$49 million between those two categories.

Ms BANSAL: Yes, noted.

The Hon. DANIEL MOOKHEY: Mr Harding, you were telling us—

Mr HARDING: The Lifetime Care and Support Scheme runs on a separate IT platform called Navigate and those costs are largely direct; however, there is a team of people in the IT division who provide support across multiple platforms. That is where we get to the point where there is some allocation based on their efforts to support each system. That is why Ms Bansal is saying it is a bottom-up process—we are trying to get an assessment of how much time and effort each group of people spend on each of the schemes depending on what their functions are in the business. So it is quite a complex process.

The Hon. ANTHONY D'ADAM: Are there service level groups within each of the schemes and the icare administration? Is that how it works?

Mr HARDING: Icare is one organisation so service level agreement, no.

The Hon. TREVOR KHAN: So it is an accounting allocation?

The Hon. ANTHONY D'ADAM: The schemes are separate legal entities, are they not?

Mr HARDING: The schemes are separate legal entities, yes.

The Hon. ANTHONY D'ADAM: You are charging the schemes?

Mr HARDING: Yes.

The Hon. ANTHONY D'ADAM: There must be some arrangement between each scheme and icare, surely?

Mr HARDING: No, as Ms Bansal has identified, there is an accounting methodology for that, which is audited. What the basis for that accounting methodology is we are firm on from a legal perspective. From an auditing perspective, does it seem rational or reasonable? Is it a good basis for allocation?

The Hon. TREVOR KHAN: So your allocation for IT might be X amount or X percentage of the overall cost and for human resources it would be another figure et cetera.

Ms BANSAL: Yes.

The Hon. TREVOR KHAN: So each is done—

Ms BANSAL: At a very low level of detail to make sure we can get it as accurate as possible. We have also received legal advice from the Crown Solicitor on our ability to allocate costs to the scheme and our methodology to do so.

The Hon. DANIEL MOOKHEY: On notice, can we have access to that legal advice?

Mr HARDING: I think it is probably privileged, but I will investigate it for you.

The Hon. TREVOR KHAN: Well—

The Hon. DANIEL MOOKHEY: I can ask and they can dispute.

The CHAIR: Mr Khan, do you want to—

The Hon. ANTHONY D'ADAM: We could receive it confidentially.

The Hon. SCOTT FARLOW: Let us see what the response is.

Mr HARDING: I am happy to take it away and find out whether the privilege exists.

The Hon. DANIEL MOOKHEY: I am happy to leave it there, Mr Harding.

The Hon. TREVOR KHAN: I am just a bit concerned that we can go down burrows that actually go nowhere.

The Hon. DANIEL MOOKHEY: Mr Harding has chosen to take it on notice. I respect his choice. That \$49 million was for last year; is that correct?

Ms BANSAL: Yes, for the full 12 months to 30 June 2020.

The Hon. DANIEL MOOKHEY: What are the previous years?

Ms BANSAL: For the full financial year to 30 June 2019 it was \$49 million, for the full financial year to 30 June 2018 it was \$51 million and for the full financial year to 30 June 2017 it was \$36 million.

The Hon. DANIEL MOOKHEY: Did you say \$36 million?

Ms BANSAL: Yes, that is correct. And to the financial year 30 June 2016 it was \$35 million.

The Hon. DANIEL MOOKHEY: So we went from 35 to 36 to 51 to 49, yes?

Ms BANSAL: So 35, 36, 51, 49 and then 49 again.

The Hon. DANIEL MOOKHEY: That is quite a spike over that period of time.

Ms BANSAL: I just want to again remind that the scheme is not yet in equilibrium, which is the word we used before, or steady state. The scheme is continuing to grow and the number of participants in the scheme grows by circa 120 each year. As we have more participants in the scheme, the operating expenses of the scheme will continue to grow.

The Hon. DANIEL MOOKHEY: Sure. Of that, given that you have identified the taxonomy of that as falling into two categories, direct and allocated, and given that—again, there is nothing suspect about this—if there are more schemes going up, you are basically saying that the rise in cost is attributable to the direct side of it, not the attributable side. Is that a fair summary?

Ms BANSAL: Historically, I would expect so, yes.

The Hon. DANIEL MOOKHEY: On notice, when you come back to us as to the allocation of 49 to 50 of that within the two categories, is it possible that we can on notice get the same replicated for each of the years?

Ms BANSAL: Yes, I am happy to take that on notice.

The Hon. DANIEL MOOKHEY: I appreciate that. You said that this is a process that is documented and audited. Did I hear that correctly?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: When does this process take place each year? Or does it take place each week, each month—how do you guys do it?

Ms BANSAL: We have an annual review process where, as part of our budget-setting process, we look at allocation principles and we look at the historical time spent. We also do a projection for that year as to what those expenses will be. We do a review of that on an ongoing basis and we look at our accounts every month to update those numbers. The information and the methodology are submitted to the board. It is also documented in our business plan annually. We also provide a copy of the working papers and the methodology to the Audit Office and their audit partners, EY, for an annual review. That forms part of the basis of the full annual review as at 30 June each year.

The Hon. DANIEL MOOKHEY: So that process operates in icare from September to December each year?

Ms BANSAL: Every month.

The Hon. DANIEL MOOKHEY: You then provide this to the board every month?

Ms BANSAL: The actuals are provided to the board every month—so we update our allocation of expenses to the board every month. They are updated twice. The first, annually, as I said, is part of the budget process and also again as part of the half-year review process. Both of those are provided to the board as part of the approval of our budget and our financials forecast.

The Hon. DANIEL MOOKHEY: Does the board then exercise a proof of authority?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: On notice, are you able to provide us with the documentation that you say sets out this methodology?

Ms BANSAL: Sure, I can take that on notice.

The Hon. DANIEL MOOKHEY: Thank you. You make the point that this is then referred as part of, I presume, the Auditor-General's audits of your financial statements each year as part of her process. Is that correct?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: Judging from when the Auditor-General tends to report, you would provide, for example, the financial year ending 30 June 2020 sometime between June 2020 and December 2020?

Ms BANSAL: The Auditor-General report and our financial statements are normally around the September month.

The Hon. DANIEL MOOKHEY: That is when you provide it to them or that is when—

Ms BANSAL: No, we are already working with them as part of our hard close for April. We provide them information all through the year. The audit work is currently underway. The final Auditor-General's report and our audit sign-off is provided—obviously, there are a multiple points we get that over April through to September. The final report is in September.

The Hon. DANIEL MOOKHEY: Got it, and then the Auditor-General tends to release her report in September to December, which brings me to the reasons we are asking these questions. I read the Auditor-General's report in December last year and she made the point that, to paraphrase, the methodology to allocate icare's cost between the schemes, to be generous to icare, is opaque—amongst other things that she says. At various points I think she made the point that it was not even documented or apparent. But I do not want to verbal her by any means. I want to give you an opportunity to respond to the Auditor-General's views—not our views—about the process you just described.

Ms BANSAL: I accept all findings from the Auditor-General. It was an audit finding at our 30 June 2020 report that we needed to do more work around documentation of our expenses. We started a project to address that audit finding late last year. As part of that we have done a thorough review and invested effort in documenting our approaches. As part of that we have also received the Crown Solicitor's advice. That work has happened over the past six months. We have uplifted the level of documentation that we have and the level of audit trail that we have around our expenses and we are providing that work to the Audit Office as part of the annual audit for this year.

The Hon. TREVOR KHAN: The Crown Solicitor's advice that you earlier referred to is the Crown Solicitor's advice obtained since December of last year, is it?

Ms BANSAL: That is right.

The Hon. TREVOR KHAN: Had there been an earlier attempt at obtaining legal advice with regards to this? I am not being critical.

Ms BANSAL: Sorry, I am not able to answer that. I am not sure.

The Hon. DANIEL MOOKHEY: Was the first time that you were prompted to perhaps improve the processes as described when you received the Auditor-General's criticism?

Ms BANSAL: It is an ongoing process. We have been doing work on it over the last 24 months. But, yes, as part of the audit finding we have concentrated effort to make sure that we have more detailed, robust documentation of our approach and methodology.

The CHAIR: Could I just check: Is that approach one that you are adopting moving forward, or is it going to be retrospective, as in are you going to retrospectively—

The Hon. TREVOR KHAN: The account is closed.

Ms BANSAL: We have not had any concerns with our allocation of expenses in past years. There is no restatement of expenses for past years. This is just documentation of our methodology and approach to make sure that we have all of that audit trail. Expenses, as I said, are reviewed annually and there is no restatement of expenses in past years.

Mr HARDING: I can provide some other, broader context if—

The Hon. DANIEL MOOKHEY: Before we get past that—

The CHAIR: I will let Mr Harding provide his answer.

Mr HARDING: With my experience in other organisations, including other government organisations, this is a very common accounting function. It is very common for accounting processes to allocate indirect costs through to products, schemes or functions within the business, and it is very common for auditors to review that and have that process. I do not think there is anything magical happening here. It is a very standard approach. I think what Ms Bansal has been—

The Hon. TREVOR KHAN: In companies it happens all the time. Head office expenses have to be allocated across the profit centres.

Mr HARDING: Absolutely. Even in the business I ran in the Northern Territory, which was a government-owned business, we had a motor accidents scheme, which was a monopoly scheme, and we had a commercial business that was operating and we had to allocate costs between those two. It was a very common, normal business organisation accounting practice. There is nothing magic here. I think what we are talking about and what Ms Bansal is trying to say is there is always a continuous process, from an accounting point of view, to try and improve those allocations. In my experience accounting, especially actuarial accounting functions, are looking to find the next best answer each time they do it every year so that you can get more and more accurate because that gives us greater clarity, from a performance and accounting perspective.

The Hon. TREVOR KHAN: I suppose what interests me is that say you were in a commercial enterprise and you had various profit centres and head office was allocating costs, there is an internal tension that develops because the managers of the profit centre will be saying, for instance, "Why are you bunging that level of IT expenses onto my profit centre? It is an inappropriate allocation."

Mr HARDING: Yes.

The Hon. TREVOR KHAN: Does the relationship between Lifetime Care and Support and icare generally provide that sort of internal tension that allows that—

Mr HARDING: I would suggest to you there are two elements. There is one that you have just described, which is more an individual tension around someone feeling accountable, which is part of the reason I have tried to reorganise the business to be clearly accountable by scheme. Its intent is obviously that Dr Allsop does not want costs allocated to the scheme that are not related to the scheme.

The Hon. TREVOR KHAN: I did see a certain smile on his face.

Mr HARDING: The second element is that the schemes are governed by Acts that do not allow those costs to be allocated when they are not attributable to the scheme. In the commercial sector, in my previous life, it is a good conversation on a commercial basis. There is a legal boundary here. We cannot allocate costs that are not appropriate. That is the whole point, I suppose.

The Hon. DANIEL MOOKHEY: Again, I do not think anyone is in dispute about the need for icare to attribute its costs to its various schemes. I do not think that anyone is suggesting that you have an alternative, really. But what I am getting at is that the Auditor-General's criticisms were quite clear here. I accept Ms Bansal's explanation as to the remediation that is now in train in respect to that finding as well. When do you anticipate that that remediation of your processes will complete?

Ms BANSAL: We have wrapped up that project. As I said, as part of that we established a working group, we increased our documentation and we reviewed our methodology. We had legal advice as well. We have

now wrapped that project up and we have provided that evidence and we are working with that to provide to the Auditor-General's office—the Audit Office and Ernst & Young—to gain any feedback from them and their review of that.

The Hon. TREVOR KHAN: Is there a time frame in which you anticipate the Auditor-General coming back with a sign-off?

Ms BANSAL: It will be part of their annual audit, Mr Khan. As I said, the annual audit for 30 June—

The Hon. TREVOR KHAN: December, yes.

Ms BANSAL: —which takes the following three or four months.

The Hon. DANIEL MOOKHEY: And that is because the Auditor-General's habit is to usually provide an appendix about her previous audit findings; is that fair? Is that how you anticipate this will be updated by the Auditor-General? To be fair, it is not really a question for you; I should ask that of the Auditor-General.

Ms BANSAL: Okay.

The Hon. DANIEL MOOKHEY: You did make a point in response to the questioning from the Chair that it is not your intention to make any adjustments for previous years. Did I hear that correctly?

Ms BANSAL: There are no restatements or adjustments for expenses for previous years.

Mr HARDING: There is no basis to make those restatements.

The Hon. DANIEL MOOKHEY: As a part of this remediation of the allocations, did you review any that required reversal?

Ms BANSAL: We looked at the allocation methodology that was in use currently. We reviewed that and then we updated our documentation and methodology documents and the sign-off processes around that. There was no basis for us to restate any of our expenses.

The Hon. DANIEL MOOKHEY: I appreciate that, but that was not precisely the question that I asked. The question I asked was: As a result of that process that you just described, did that identify any amount that was inappropriately allocated to the Lifetime Care and Support Scheme?

Ms BANSAL: Not to my knowledge.

The Hon. DANIEL MOOKHEY: In respect to the legal advice that you received, was that specific to the lifetime care scheme or was it specifically across all your schemes?

Ms BANSAL: It was all our schemes of icare.

The Hon. DANIEL MOOKHEY: That legal advice was prepared by the Crown Solicitor, you say?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: Presumably at icare's request?

Mr HARDING: Yes.

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: No-one else told you to do it? You decided to get the advice yourself?

Mr HARDING: Yes.

The Hon. DANIEL MOOKHEY: Did that advice say that any aspect of your methodology breached any law?

Mr HARDING: No.

Ms BANSAL: Look, I do not have the advice in front of me, but no.

The Hon. DANIEL MOOKHEY: And that advice was provided to your board?

Ms BANSAL: I would have to—

Mr HARDING: I believe it has been—

The Hon. TREVOR KHAN: I take it this is before Mr Harding's time; is that right?

The Hon. DANIEL MOOKHEY: Well, I am not sure that is true.

Mr HARDING: I do not actually remember when the advice was—it was probably earlier in the year.

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

Mr HARDING: We have had a discussion with the board about the process and we have had a discussion about the allocations. Whether the legal advice was provided I think is a question we can take on notice.

The Hon. DANIEL MOOKHEY: Sure. Insofar as your board is overseeing the remediation of this particular issue—which, to be fair, perhaps presents itself as more of a problem in some other schemes, not necessarily this one—are you reporting directly to the board or are you going through a board committee on this?

Mr HARDING: It is normal for audit items, of course, to be dealt with through the audit and risk committee. But all matters that are raised through the audit and risk committee meeting ultimately get discussed at the board because the audit committee really cannot make decisions to the process of referring.

The Hon. DANIEL MOOKHEY: No, I accept that that is general board procedure that you have a committee look into some issues and detail them but it is actually the board that makes the decision. I accept that. This specific remediation project, which includes lifetime care but extends beyond it, has been reported to your audit and risk committee this year, I presume?

Ms BANSAL: Yes. All audit findings are discussed at the audit and risk committee.

The Hon. DANIEL MOOKHEY: Then presumably they signed off on the processes that you just described as being appropriate; correct?

Mr HARDING: They do that as part of the accounts process, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Sure. Therefore we can infer from that answer, Mr Harding, that it was not an explicit sign-off of this remediation but rather they accepted that this work was being done. Is that fair?

Mr HARDING: That is right. The work has certainly been discussed in detail. The Crown Solicitor's advice has been discussed. I will take it on notice as to whether the paper actually went to them. The remediation process has been part of the audit review process in the committee. When the accounts come, it will be part of that process for them to sign off on those allocations.

The Hon. DANIEL MOOKHEY: What about your governance committee? What role will they play in all of this?

The Hon. TREVOR KHAN: Point of order: This is an inquiry into the operation of the Lifetime Care and Support Scheme. I think we are starting to drift somewhat from looking at the scheme to looking at much broader issues.

The Hon. DANIEL MOOKHEY: I accept the caution. It is really my last question on this particular one.

The Hon. TREVOR KHAN: Alright, fine. We are working simpatico.

The CHAIR: I will allow the question.

Mr HARDING: We do not have multiple committees look at the same thing. The audit committee is looking at the issues related to the audit. The governance committee is looking at broader other issues related to governance. The two certain things are separate.

The Hon. DANIEL MOOKHEY: I am happy to move off this to the next topic if members are content, unless anyone has any more questions on this.

The Hon. TREVOR KHAN: I think we have done that one to death.

The CHAIR: As is his way.

The Hon. DANIEL MOOKHEY: Not everything can be as exciting as U-curves. As part of the lifetime care scheme, you provide income replacement for participants, do you not?

Dr ALLSOP: No, we do not.

Ms LULHAM: No.

Dr ALLSOP: It is purely treatment and support to allow people to live with maximum quality of life.

The CHAIR: I think I know where that one was going.

The Hon. DANIEL MOOKHEY: I think you reasonably inferred correctly, but it might not continue much further now as a result of that question. I will move on to the issue of attendant costs. Let us be clear, you are a buyer of services; yes?

Ms LULHAM: Yes, we are.

The Hon. DANIEL MOOKHEY: The rates you pay are not regulated?

Ms LULHAM: We set the rates for our providers, and it is part of the contract.

The Hon. DANIEL MOOKHEY: So it is not regulated by anyone else other than icare; is that fair?

Ms LULHAM: No.

The Hon. DANIEL MOOKHEY: How do you do that rate review process?

Ms LULHAM: We do it annually. Obviously, we look at what is happening in the market and usually, in particular, what increases there have been in the National Disability Insurance Scheme. Then we look at the award and at CPI, and we usually have a talk to our providers. As I alluded to earlier, unless there is anything extra that we need to take account of, we usually do an increase that reflects the award increase and a smaller increase that reflects CPI.

The Hon. DANIEL MOOKHEY: You directly manage your panel, all 35; correct?

Ms LULHAM: Yes.

The Hon. DANIEL MOOKHEY: You do not use any other intermediary to manage any other care?

Ms LULHAM: No, we manage our panel, although I have to say we do have some participants who have been receiving services off-panel, but it is a small number.

The Hon. DANIEL MOOKHEY: Insofar as you manage the care directly, how many case managers do you have to do this work, or how big is the division?

Ms LULHAM: Support workers or people who manage each of the participants?

The Hon. DANIEL MOOKHEY: Ms Lulham, if you nominate two categories I will ask you for the answer for both categories.

Ms LULHAM: Every one of our participants will have what we call a contact within lifetime care, so they have a dedicated contact. They will all have that. Sometimes that person will be an internal case manager or what we would call a coordinator. For those who are more newly injured or those who are extremely complex, we also engage external case managers who are very experienced, usually health professionals in brain injury or spinal cord injury. A proportion of our participants will have that as well. Each program that is in play will also have allocated, from the attendant care provider, a care coordinator as well.

The Hon. DANIEL MOOKHEY: You were about to tell me the numbers.

Ms LULHAM: Of our own staff, I cannot tell you off the top of my head—maybe about 170.

Dr ALLSOP: Not all of whom are case managers.

Ms LULHAM: No.

Dr ALLSOP: But we have—

The Hon. DANIEL MOOKHEY: Dr Allsop, this is your division?

Dr ALLSOP: Yes, correct.

The Hon. DANIEL MOOKHEY: Maybe this question is better directed to you.

Dr ALLSOP: Yes, absolutely. As Ms Lulham was saying, we have some internal case managers and some coordinators. Our frontline teams are structured with a mix of case managers and coordinators, and that is part of a recent operational change that we have enacted where we have tried to get closer to our participants by bringing the case management for some of the less complex or more stable cases back in house. We have recently started recruiting in case managers directly so we can provide that more direct contact with our participants. Of the 147 people who work in the lifetime care scheme at icare, I think maybe we have about 15 to 20 case managers. I would have to check the exact number, but it is in that sort of region, with many more of the staff being coordinators who facilitate the access of our participants to external case managers and the providers that then provide support from an attendant care or medical perspective as well.

The Hon. DANIEL MOOKHEY: So there are about 147 in the lifetime care division; is that fair?

Dr ALLSOP: Yes.

The Hon. DANIEL MOOKHEY: Generally icare has 1,200 staff?

Mr HARDING: In total, about 1,600.

The Hon. DANIEL MOOKHEY: About 1,600. So roughly 8 per cent of people in icare work in the lifetime care division. Do you accept that? Is that about right, reasonable?

Mr HARDING: Yes, reasonable.

The Hon. DANIEL MOOKHEY: Mr Harding, in some of your statements I think you flagged that it is your intention to reduce operating costs across icare. Did I read correctly?

Mr HARDING: Yes.

The Hon. DANIEL MOOKHEY: That includes a reduction in headcount across the organisation?

Mr HARDING: In some areas, yes.

The Hon. DANIEL MOOKHEY: Does that encompass the lifetime care division?

Mr HARDING: The goal is not to impact frontline staff—people working directly for injured participants, whether they are lifetime care or other scheme. The goal is to reduce the number of layers of management between the front line and the executive.

The Hon. DANIEL MOOKHEY: Mr Harding, no-one is disputing whether that is necessary or not. It is ultimately a judgement for the organisation.

The CHAIR: Are we sure?

The Hon. DANIEL MOOKHEY: No-one is disputing yet.

The Hon. SCOTT FARLOW: Daniel has done more to get rid of senior staff at icare than anyone.

The Hon. DANIEL MOOKHEY: I am always happy to help. I accept that your formulation there is that it is your intention to remove the management layers that are not going to affect frontline services. Is that a fair statement?

Mr HARDING: Yes.

The Hon. DANIEL MOOKHEY: How progressed are you in that insofar as it applies to the lifetime care division?

Mr HARDING: We are progressing that across the organisation as we speak.

The Hon. DANIEL MOOKHEY: Have you decided what impact that policy will have on the lifetime care division yet?

Mr HARDING: As I said, that process is in consultation with staff as we speak. I am trying to ensure that the staff who are being informed about it hear from their direct manager rather than me saying it to you in the Committee.

The Hon. DANIEL MOOKHEY: To be fair, Mr Harding, I will not ask you specifically to name the people or the positions. I am asking you about the aggregate, given that we have 147 people in the division. At the conclusion of your process how many do you anticipate will be in the lifetime care division?

Mr HARDING: I might ask Mr Allsop to answer. It is not much less than 147.

Dr ALLSOP: As Mr Harding says, the current proposal is in consultation so nothing is fixed, but it has a reduction of maybe two roles in lifetime care.

The Hon. DANIEL MOOKHEY: The lifetime care division?

Dr ALLSOP: The lifetime care division.

The Hon. DANIEL MOOKHEY: So we expect to go from 147 to 145-ish?

Dr ALLSOP: "Ish", because we are still—

Mr HARDING: You can appreciate that the process of consultation may result in change.

The Hon. DANIEL MOOKHEY: I accept that. That is the process of consultation, I presume.

Mr HARDING: Just to be clear, we are not trying to hide anything. I just do not want people who are watching, who will be our staff, to hear us say something here that we have not said to them in person. I am very conscious that we treat them with respect as they go through—because there are a lot of people at icare at the moment who are being told about this change. Personally as their leader, I do not want them to be sitting there watching this and hear it from me when I have not had the opportunity to tell them directly.

The Hon. DANIEL MOOKHEY: Firstly, I respect that, and of course it is certainly my view that all staff in all manner of organisations, through all processes, should be consulted with and respected throughout that process. There is certainly no jeopardy whatsoever, but do forgive us; we only see you once every two years about this.

Mr HARDING: I understand. I am happy to answer the question perhaps offline and have a conversation in private.

The Hon. SCOTT FARLOW: Can I suggest—

The Hon. DANIEL MOOKHEY: Maybe on notice—

The Hon. SCOTT FARLOW: I was going to suggest that.

The Hon. DANIEL MOOKHEY: On notice, if you wish to provide any further detail about what the impact of these changes will be on the lifetime care division, it will be most welcomed by the Committee.

Mr HARDING: We can do that, absolutely.

The CHAIR: You may elect to request that we keep it confidential.

The Hon. DANIEL MOOKHEY: For a period of time.

The CHAIR: Yes.

Mr HARDING: Let me just be clear, in the next—

The Hon. TREVOR KHAN: Let us be clear: It is for the Committee to decide whether it is confidential, not for the witness.

The CHAIR: I know.

The Hon. TREVOR KHAN: I might be in favour but—

The CHAIR: I was going to indicate that you can indicate whether you believe it is confidential or should be held that way for a set period of time.

Mr HARDING: Thank you.

The CHAIR: It is for the Committee to determine that, but we do take those requests into consideration.

Mr HARDING: The only reason is that we are literally in the middle of that conversation with people yesterday and today. In a week it will be public. I am happy to provide it on notice, in which case you will get it in time—

The Hon. DANIEL MOOKHEY: Mr Harding, of course we want to give you the respect that is required for you to facilitate those changes, so it is not an issue.

Dr ALLSOP: I think it is important for the Committee to note as well that as the scheme grows there will be a need for more frontline resources and we are certainly budgeting for that ongoing growth as well.

The Hon. DANIEL MOOKHEY: I appreciate that, Dr Allsop.

The Hon. ANTHONY D'ADAM: I want to come back to the attendant care contracts. Can you clarify the contract periods for me?

Ms LULHAM: The contracts are for three years with the possibility of a two-year extension.

The Hon. ANTHONY D'ADAM: Are all those contracts let at the same time or is it staggered so that different providers are on different time—

Ms LULHAM: No, each procurement action we have undertaken has been at a point in time so we bring the whole panel on at that point in time. Over the period of the contract some providers do leave the panel as well, so we might start off with more than we end up with.

The Hon. ANTHONY D'ADAM: Do the contracts have an annual adjustment in terms of the fee?

Ms LULHAM: When we go out to tender, we include the fee schedule in that tender and the contract stipulates that we will review the fee annually.

The Hon. ANTHONY D'ADAM: But it is at your discretion whether you review; is that right?

Ms LULHAM: It is at our discretion whether we make an adjustment, I guess, but we need to review it.

The Hon. ANTHONY D'ADAM: You have budgeted for 4 per cent per annum adjustment. How much of that is translated into additional payments? Do the contractors get 3 per cent or the whole 4 per cent? How does that work?

Ms LULHAM: When we review the fee, that is done separately to the valuation. We review the fee on, as I said, what is happening around the market, what is happening in terms of CPI and the award, so it is a separate process. Last year, for instance, there were very significant increases in the NDIS fees—13 per cent to 15 per cent—so we actually did have to do a slightly higher increase. One of the other things with the COVID impact, we brought our increase forward. We usually do the increase at the end of June, and we did bring it forward to the beginning of May to assist with some of the COVID.

The Hon. ANTHONY D'ADAM: For the next financial year, what do you anticipate will be the fee adjustment? What is the range that you are looking at?

Ms LULHAM: The award increase unfortunately never comes out to almost just the end of June. But at this stage, as there is no new fair wage case, I would be surprised. It is purely my own guess that it would not hit 3 per cent to 3.5 per cent.

The Hon. ANTHONY D'ADAM: In terms of the attendant care, is it charged on an hourly basis?

Ms LULHAM: An hourly rate.

Dr ALLSOP: And it has different categories as well. There are weekend rates, overtime rates—those sorts of things as well.

The Hon. ANTHONY D'ADAM: In terms of an individual in care, do they get an allocation?

Ms LULHAM: We do an assessment of their care needs. They are assessed by another one of our panel providers, a care needs assessor, who is skilled in knowing what someone with a brain injury needs. They go into their home and do the assessment. They provide us with an assessment, so it might be, for instance, this person needs 20 hours of care a day or it may be that they need 10 hours of care, and they would say that they need it for helping, getting out of bed in the morning, going to work—those sorts of things.

The Hon. ANTHONY D'ADAM: Is that an assessment for a 12-month period? How frequently is that assessment made?

Ms LULHAM: It really depends on how stable the person is. If they are fairly newly injured and soon out of hospital, those assessments might occur every four to six months. For those of our participants who have been in the scheme for longer periods of time, probably maybe every two years; they could be quite stable. But we always make a point of doing a bit of a review. We do not let them go any longer than that, even if it is just a quick review.

The Hon. ANTHONY D'ADAM: Is there any mechanism in terms of ensuring the continuity of care with a particular individual? That is, a client who has the same attendant, effectively. What mechanisms are there to ensure that they have got some continuity of care and that the person who is providing the assistance is actually the same person?

Ms LULHAM: Most of the actual direct service is an arrangement between our participant and the attendant care provider. Where possible, the attendant care provider will always give the participant some choice, sometimes even some choice in the selection as well. A large care program might have eight carers or 12 carers across the program, of which you would always hope that there would be some stability in care provision. We have had some programs where the same care providers have been in place for the past 12 to 15 years. I will say, we do actually have some concerns where there is not too much change in the care program. Things can get a little bit comfortable sometimes and perhaps risks are not reassessed and things like that. That is one of the things we are noticing now that we have become a slightly older scheme, is that we do need to keep on top of those programs where there is not too many people coming in or new people.

The Hon. ANTHONY D'ADAM: You do not exercise direct control over the selection of them?

Ms LULHAM: No, we do not.

The Hon. ANTHONY D'ADAM: In the charge-out rate, is that premised on a casual employment arrangement?

Ms LULHAM: That we leave up to the attendant care provider. As long as they pay the award rates, it is up to them. There is a variety; some will use permanent staff, some use casual and some use contractors.

The Hon. ANTHONY D'ADAM: If you have got a casual loading then that is going to be reflected in that hourly charge-out rate, is it not?

Ms LULHAM: We pay the fee. It is up to them how they employ the person.

The Hon. ANTHONY D'ADAM: You could be paying them with the casual loading but they actually might be engaging someone on a permanent basis; is that right?

Ms LULHAM: Yes. Our fee does not change.

Dr ALLSOP: We fix our hourly rate. That is what we pay a panel provider. How they then pass that on to the people they employ is their choice.

The Hon. ANTHONY D'ADAM: I suppose what I am getting at with this is: Are there any efforts in terms of trying to provide stability of employment and certainty for employees in the attendant care contracts?

Dr ALLSOP: I think our role in this is around the provisioning of support, so the reviews of support requirements for our participants. We look at how their needs are likely to change over time and we make sure that we are establishing the right levels of support and providing that through to the providers themselves—and that is why we do the one- and two-year programs—so they have some certainty over what sort of resources they will need to employ to fill those programs. By doing, say, two-year packages of care for people who are more stable, that allows the provider to then build its resource network and then provide that support on a more continuous basis to the participants themselves.

The Hon. ANTHONY D'ADAM: It is a volatile labour force, though, is it not?

Mr HARDING: Your question is really a question for the providers though.

Ms LULHAM: Yes, but I will add that the attendant care workers themselves often prefer a casual arrangement. I guess we have always tried to encourage perhaps more permanent, but they themselves often prefer a more casual arrangement or a contract arrangement.

The Hon. ANTHONY D'ADAM: They do not want employment certainty; is that what you are suggesting?

Ms LULHAM: Some do. We made that assumption in the beginning, but they themselves sometimes prefer a more casual arrangement. But it is up to the provider to manage that.

Mr HARDING: If I can, this conversation is a conversation you should have with the providers. We do not have that much influence here.

The CHAIR: Is it part of your remit to look at the employment contracts of the providers?

Ms LULHAM: We would not usually choose to do that. Providing the service is provided to a quality and our participants are happy with it, that is really—

The CHAIR: The mechanisms with which they provide that service is immaterial to you. You pay a fixed hourly rate and whether they provide that service with an employee or a casual—the service is provided to the clients, which you are supporting.

Ms LULHAM: Yes, but if our participant was complaining that they were not getting any regularity, that is something that we could step in and take up with the provider if needed.

The Hon. DANIEL MOOKHEY: What is the quality standard framework that you benchmark an audit against?

Ms LULHAM: We do not, but they have to meet the ACIS standard.

The Hon. DANIEL MOOKHEY: Sorry, the acronym please?

Ms LULHAM: The Community Industry Standard.

The Hon. DANIEL MOOKHEY: This is a standard that has been generally developed for aged care; is that correct?

Ms LULHAM: No, for attendant care.

The Hon. DANIEL MOOKHEY: With the provider pool that you use of 35 firms, it is fair to say that lifetime care would be one of the schemes that they are providing services for?

Ms LULHAM: Yes.

The Hon. DANIEL MOOKHEY: The other two tend to be the NDIS—

Ms LULHAM: NDIS and the aging.

The Hon. DANIEL MOOKHEY: The aged-care sector?

Ms LULHAM: Yes.

The Hon. DANIEL MOOKHEY: When you made the earlier point that this might be a small proportion of their work, that was fair?

Ms LULHAM: It is, though I have to say for some of our providers we are a reasonable amount of their work. They have made an active decision to work much more in the disability space than in the aged-care space.

The Hon. DANIEL MOOKHEY: Given that the NDIA is upping quality standards and given that now as a result of the aged care royal commission, quality standards are going up too, can you take us through how icare intends to update its quality standards as a result?

The Hon. TREVOR KHAN: I have got to say—

The CHAIR: I was going to say—

The Hon. DANIEL MOOKHEY: Let me rephrase it. Are you updating your standards as a result?

Ms LULHAM: We will and it will be part of the next contract. We have not definitely decided yet, but we are talking with the industry at the moment. What I think we will be doing is that we will have a baseline of the practice standards with the NDIS Quality and Safeguards Commission. That will be a baseline and then we will develop with the Australian Community Industry Alliance—what we are calling a bridging standard—which will be what is required over and above the NDIS standard. They will need to meet both. The audits that they do for the NDIS will need to include lifetime care participants in those audits as well, which they do not at the moment.

The CHAIR: I think the Committee is satisfied with the answers that we have been given today.

Mr HARDING: I just have one update, Chair, relating to a question on notice from members. The Crown Solicitor's advice was provided to the icare board in February.

The CHAIR: Thank you very much. We will conclude this session of the hearing. 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 the questions you have taken on notice.

(The witnesses withdrew.)

(Short adjournment)

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

PETRINA CASEY, Acting Executive Director, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: Welcome back to the final session. I now welcome our next witnesses. Would either of you like to make a short opening statement?

Ms DONNELLY: I will. Thank you very much and let me begin by acknowledging the traditional custodians. We pay our respects to Elders past, present and emerging. I would like to update you on the scheme and some work underway. Firstly turning to premiums for CTP, the average green slip is down \$149 since 2017 from \$635 to \$486. The average for a passenger sedan—a family car—is down \$144 from \$595 to \$451. Over three million vehicle owners—policyholders—have received over \$215 million in refunds, with the average refund being \$65. There has been \$29 million in unclaimed refunds, plus a further \$9 million of administrative savings, that have now been returned to policyholders in lower SIRA fund levies. In 2020, 3.1 million people used SIRA's Green Slip Check to shop around for the best price for their green slip and 94 per cent of them gave that product a thumbs up—a positive rating.

A new insurer entered the market last year, Youi, the first new entrant for, I understand, around 20 years. There were 34,838 injured people who received statutory benefits since the beginning of the 2017 scheme as of 31 March. Of those, 5,800 or so were drivers or riders of the at-fault vehicle, who are receiving more benefits than they would have in the previous scheme. Ninety-seven to 98 per cent of statutory benefit claims have been accepted by insurers; 53 per cent of the injured people who are eligible for weekly benefits who were earners at the time of their injury are receiving income support within the first four weeks, and that compares to potentially up to five years before people received benefits in the old scheme; and 78 per cent of injured people begin receiving benefits in their first three months, compared to 26 per cent in the old scheme.

There has also been a lot of change, the most recent of which is the establishment of the Personal Injury Commission and the transfer of dispute resolution, and also the Independent Review Officer. We have obviously been working to support that transfer and also to adapt to COVID in the recent period. In terms of work underway to continue to listen and improve the scheme, we are working to reinforce the culture shift that was intended to support injured people to recover. Some of the innovation that we have implemented is the first customer survey independently conducted, looking at a range of deep measures around customer experience across both CTP and workers compensation, which we have published and which will develop measures that we will use to publicly rate insurers and hold them accountable for customer experience and outcomes.

We have a framework for health outcomes that we have introduced. We are introducing consistent and stronger measures of return to work both for the CTP scheme and workers compensation, so they can be compared to hold insurers accountable again for the outcomes. We are working to strengthen our regulatory methods, listening to calls for more visibility about our regulatory action. We have begun publishing more detail about that. Relevant to some of the issues raised in the submissions, we have commenced an independent statutory review, which will be undertaken by Clayton Utz and Deloitte. There will be more information on the SIRA website about this and opportunities for consultation later. We have already referred all the submissions to this inquiry to that statutory review and SIRA will update the list of issues to be referred to that review after the hearings this week.

We also have in place a review of independent legal supports, and that is a thorough examination of what is needed so that injured people can make informed choices at key milestones in their claim, so whether or not to have an internal review, whether or not to have a dispute and whether or not to lodge an award of damages. That is in addition to the SIRA information that is provided, the outward-bound calls from our CTP Assist service to check in on people at key points in the claim, the information that we require insurers to provide and the existing access to legal services. There may be outcomes from that that can be flowed through to the statutory review. There may be some that do not require that, and we can advise Government about regulation modification out of that review. We will publish that probably around July.

Lastly, I turn to insurer profit. In 2017 the Parliament and the Government in the legislation gave SIRA strong powers to prevent excess profit through the transitional excess profit and loss [TEPL] mechanism. Currently we are undertaking the independent actuarial and independent peer review actuarial work with the statutory CTP Premium Committee. That is underway; it is quite a thorough process. It is a thorough review of both the 2018 and 2019 accident years to assess whether or not there has been excess profit that would trigger SIRA to take action to recover excess profit and loss. If there is a case to trigger that TEPL, as we call it—trigger the clawback and prevention of excess profit and loss—I can assure you there is no question that SIRA will act swiftly to use its strong powers to prevent insurers from retaining excess profit. I will stop there, Chair. That is a

bit of a summary. I am afraid I did not type it out for Hansard, but I will check carefully when you give me the transcript. Thank you.

The CHAIR: Thank you very much, Ms Donnelly. It shows how often we invite you here that you know that we will ask for a written statement, if it is available.

The Hon. DANIEL MOOKHEY: Yet Ms Donnelly is yet to write it down.

Ms DONNELLY: I think I am a lost cause.

The Hon. DANIEL MOOKHEY: I feel, Ms Donnelly, that perhaps the time has expired for you to pick up that skill.

Ms DONNELLY: All my staff know that I do not actually read the speech that is written for me, anyway.

The CHAIR: I admire that.

The Hon. DANIEL MOOKHEY: You should think about running for Parliament then.

The CHAIR: I am actually going to start with Mr Khan, given that some of the issues that you raised were ones from yesterday.

The Hon. TREVOR KHAN: I gather, Ms Donnelly, that either you or some of your staff spied on some of the testimony that was given yesterday.

Ms DONNELLY: I was able to look at a little bit, but I did have other commitments. I do think some of my staff were spying, to use your words, yes.

The Hon. TREVOR KHAN: I am not being critical of it; it actually makes it somewhat helpful if you know where it is going.

Ms DONNELLY: Hopefully I will be able to help you out, yes.

The Hon. TREVOR KHAN: The first area I want to go to is actually the experience of the claimant—the injured person. As I made clear yesterday, I am sort of living the experience with my mother, at the present time, who was the subject of an accident. I am left in this interesting position that some of the evidence I have received is actually inconsistent with what I have experienced, on behalf of my mother. The first area I want to go to is directly to SIRA; that is, CTP Assist. What is SIRA's involvement with the claimant through the various stages? Can you explain that?

Ms DONNELLY: Yes. I will start and Dr Casey may be able to add to that. Let me firstly say that I am sorry to hear about your mother. I hope she is okay.

The Hon. TREVOR KHAN: She is alive, so that is a plus.

Ms DONNELLY: Yes. To add to some of the things that may have already been advised to you, there is information on the SIRA website. We have animations that are quite easy to understand and information in several languages. You can click through from there. It gives you advice about how to go into Service NSW and make a claim, which is open to you as well. CTP Assist is a service that will be available to help people through those stages of identifying whether they should make a claim and how to make a claim. I have the number if you would like me to read it on to the record. We invite people to call us but you can find that contact detail on our website as well. Also, in identifying which insurer, we help people right through that process. They also call people within the first 30 days after the injury and say, "I'm from SIRA. I'm from the regulator. I just want to know how you're going." There are other milestones where they call as well. Dr Casey may want to add to that.

Dr CASEY: Thanks, Ms Donnelly. I am happy to give a bit more information. As Ms Donnelly said, it is a proactive outbound call service. Every single person who lodges a claim gets a call from CTP Assist. The milestone calls are triggered at key milestones, so those key times that it is likely that an injured person may need a bit more information and may need a bit more pointing in what direction to go. That is three weeks post claims lodgement; 10 weeks after the accident, which is really important for people who are receiving income replacement because there is a step down at 13 weeks, to answer any questions they may have about that particular process; 23 weeks after the date of the accident, which is really important because for some people with minor injuries that is just prior to when that 26 weeks will kick in and they also help them with arrangements post that 26 weeks; and then 76 weeks from the date of accident because that is when the commencement of another weekly entitlement period starts. Another really important milestone is in relation to people who are eligible to lodge a claim for damages. At that 20-month mark there is another call made where advice is given to them. That includes advice that they may want to seek legal assistance as well.

The Hon. TREVOR KHAN: I have experienced the first two calls. For what it is worth, they were very useful.

Dr CASEY: Okay.

The Hon. TREVOR KHAN: It was quite informative.

Ms DONNELLY: That is very pleasing.

The Hon. TREVOR KHAN: From my experience, it has worked quite well. I want to go to an area where it may or may not be working well. We were provided with a document yesterday that dealt with dispute resolution cases by insurer, their status and also the outcomes of determined dispute resolution service [DRS] reviews. There was some evidence given on this yesterday, particularly by what we could describe as the legal panel. There was not inconsiderable criticism of some of the insurers with regard to it. Do you have a view as to how the internal review process is working? What sort of checks is SIRA undertaking to ensure that there is an effective internal review process being undertaken by each of the insurers?

Ms DONNELLY: I will give you some information and Dr Casey may add to that.

The Hon. TREVOR KHAN: It is entirely your call as to how you do this.

Ms DONNELLY: We certainly have been monitoring and supervising very closely the internal review process. The immediate focus has been on timeliness, which we have reported transparently that there was a problem with. I am pleased to say that has improved significantly. Probably the most public data does not show how much it has improved. We are now at the point of the high 90s percentage compliance with the timeliness.

The Hon. TREVOR KHAN: This is within the 28-day compliance; is that right?

Ms DONNELLY: Yes. Some of them are 14, some are 21, some are 28 days. There are different types of time frames. We have also done a sample file review with an independent person—I think you heard about that yesterday—Mr John Watts, which is around the quality of the process. Some of the other evidence is about the numbers that are overturned and flowing through. I might use, as a bit of a case study, that we particularly were looking at Suncorp. Our supervision of them in this issue now indicates that their internal reviews are within time frames 99 per cent of the time. There has been a shift in that way.

I will say that there is going to need to be ongoing active analysis, particularly as the Personal Injury Commission [PIC] beds down, looking right through the pathway of where people have a disagreement with their insurer, have an internal review and go through disputes, to analyse whether or not the access to justice is as it should be. If you had no internal reviews and no disputes, it is not necessarily a good thing because that is about access to justice. Whether or not the rates of them being overturned are as they should be—if there are too many being overturned, we would go back to more forensically looking at the quality of decision-making, are the insurers learning from the precedents or not, and are we getting repeats of the same sorts of issues? We deal with that in quite a detailed way, depending on what the trends are. Dr Casey may have some additional information.

Dr CASEY: The only thing that I would add is that, as we heard in the evidence yesterday, the internal review is a very important structural part of the new system. There has been a lot of focus from SIRA as the regulator to ensure that that is working as intended. It is something that we will continue to monitor closely.

The Hon. TREVOR KHAN: There seemed to be a suggestion yesterday from Andrew Stone—I do not want to verbal him because I might be wrong—that perhaps we should get rid of internal reviews and go straight to the Personal Injury Commission.

Ms DONNELLY: Certainly I have noted from the Australian Lawyers Alliance [ALA] submission, which has quite a lot in it, that there is some suggestion that internal reviews may not be high value for every type of dispute and that that could be considered. The responsible thing for us is to say, "Yes, that can be considered in the statutory review, most certainly." I think their submission does note that there have been some changes in the workers compensation scheme that used to have the mandatory and then CTP has the mandatory. That is an area for examination and we need to keep looking at that. However, there certainly are decisions that get overturned at internal review, which happen quite quickly. That is a rapid access to justice for those people. So there is a place for them. The evidence would indicate that as well.

Dr CASEY: The only thing that I would add is that one of the main reasons for the overturn rate is that new information is introduced. I think there is work that we can do to try to get that information earlier in the process. I just wanted to add that to what Ms Donnelly said.

Ms DONNELLY: I could add to that too. The Personal Injury Commission, established on 1 March, has been implemented very smoothly with its own rule committee that sets out the rules. I believe that there is

great potential for the Personal Injury Commission to provide leadership in the quality of dispute resolution, including considering whether or not you can bring information to the table late in terms of a decision. There may be cultural practices that can be improved in the way that these decisions are made. There could be a good influence that flows down from the Personal Injury Commission as well.

The CHAIR: I was going to ask a question that is related to this. Now might be a good time, unless you have a clarification?

The Hon. TREVOR KHAN: Give me a few minutes.

The CHAIR: Okay.

The Hon. TREVOR KHAN: Are you able to clarify for me whether the review that is undertaken by the PIC is a hearing de novo or is it simply a review of the decision that has previously been made and internally reviewed?

Ms DONNELLY: My understanding is it is de novo. But I am really happy to go and check that because I cannot speak for them and I think it is better if we do a fact check and come back to you on notice.

The Hon. TREVOR KHAN: The file goes directly to—we will call it the DRS review because that is the material we have been provided. I am a little concerned on the basis of the document that dealt with data between December 2017 and 28 February 2021, which showed that, for instance, on the area of dispute being "Is injured person mostly at fault?", the overturn rate is 64 per cent and on treatment and care—I am not quite sure of what R&N is—it is 46 per cent. There is a whole series of figures there. I suppose I want your comment. Are you are comfortable with an overturn rate of 50 or more per cent or thereabouts in terms of a number of these if you have already gone through a review process that, you would have thought, would have picked up a goodly percentage of these?

Ms DONNELLY: I will make a few comments. I think Dr Casey has got some further analysis of that. She may be able to share. I am not going to say that we are comfortable. I think we need to say that we are actively analysing and wanting to get to the bottom of what is driving those results. A high overturn rate, if it is repeat decisions, repeat mistakes by insurers, means that there may be a quality issue further down the line that we would then look into with file reviews and audits and examine. But a very low overturn rate might mean that people are pursuing reviews without any benefit—that is just another stressor for them—and so they are not getting enough information about how the system works. Our primary focus is to understand that.

The other thing that, I think, Dr Casey may be able to share with you is the number that we are talking about here. I think we can do a little better in presenting this information. Before I go to her, I will say we need to acknowledge that the DRS is no longer run by SIRA. The PIC, as I said, I think has great promise for having an impact in this area. We are actively working with the Personal Injury Commission about privacy impacts and what are the requirements that we both need to undertake to fulfil our duties for us to continue to have a flow of information so that there can be transparency and analysis about what is happening right through the journey that someone might have, if they are taking that dispute up with the insurer.

Dr CASEY: I will just add that the data is to February because the PIC commenced on 1 March. So the next report will obviously have the PIC information. Just looking at "Is the injured person mostly at fault?", that line represents 179 matters. Those tend to be the ones where there are complex liability issues. Sometimes they are quite complex. Having access to a system that allows the decision to be looked at in detail is one of the things that Ms Donnelly just addressed. In relation to treatment and care, that "R&N" is reasonable and necessary. That represents 378 matters. Out of all the matters that are determined either to be not at fault or at fault or having treatment and care, the actual numbers that are getting escalated to the DRS or the PIC in future is not a significant number. Potentially, it is important that those have access to have another opportunity to look at the information. As I said before, most of the ones, 67 per cent of matters that are overturned at DRS—there is new information that the DRS assessor has been considering than the insurer had. So it is not necessarily suggesting the insurer's decision was incorrect when there is new information presented. It is a bit of a complex picture.

Ms DONNELLY: Mr Khan, if I may. My team have just texted me through that. De novo is correct. So I may be able to reward the team by avoiding a question on notice. That is one less piece of work for later, if you do not mind.

The Hon. TREVOR KHAN: I am satisfied.

The CHAIR: That is one question.

The Hon. TREVOR KHAN: The final question really relates to time frames in terms of the speed with which the PIC is able to perform its role. The evidence received yesterday was that time frames were slipping out

with the DRS. What is the assurance that you can give the Committee that the PIC is going to produce a more efficacious outcome?

Ms DONNELLY: I can certainly give you an explanation for those delays.

The Hon. TREVOR KHAN: That is good enough. That is a good start, anyway.

Ms DONNELLY: I am going to very respectfully not give an assurance on behalf of the PIC, because they are an independent body and I do not speak for them. But I am able to tell you what they are telling people and what is on their website. Let me just paint a picture for you. We know that COVID struck in March. We know that there were health admin orders that meant that in-person consultations with medical assessors became something that we needed to adapt to and say, "Are they going ahead or not?" There was a period where they were not going ahead. We moved as many consultations as possible to be by video. That required some digital capability. It required some training and some recognition of the fact that these assessments may take longer by video than they may have in person in order to be fair and robust and durable decisions.

Once the ability to have face-to-face consultations was being reintroduced in July, we started to also have logistic issues that we needed to manage, which you can imagine, around social distancing and how many people can be in a place at the same time. Some assessors, who are often towards the end of their career, decided to retire rather than be still doing face-to-face work during COVID, from the second half of last year. We recruited more, but that obviously added to the logistic challenge. Some assessors lived in places where there were border closures or hotspots that meant they could not travel. Some claimants lived in Queensland or other places where there were border problems and they could not travel. We hired additional staff to be able to make that transition, all the while supporting and arranging for the process for the transfer to the PIC.

I in no way want to underestimate and I do understand the impact on injured people. But I also think we should acknowledge the enormous undertaking and effort that went into the independent decision-makers and everyone adapting to the situation. I think it is quite surprising that the word "COVID" was not mentioned at all in the evidence yesterday. Turning to the PIC, the PIC have been quite clear. They expect to be able to return to situation normal by the end of this year. They are dealing with those delayed matters, making appointments in a methodical way in order to have high-quality assessments and durable decisions. They are giving updates through the PIC news bulletin, which is available to everybody. I am confident that they will deal with this. It is not an ongoing issue.

The CHAIR: I am just on the line of inquiry but not so much with the DRS system but taking a step back to where we were looking at internal reviews. Accepting that there was arguments around 30 per cent or 10 per cent but, across the board, 25 or 22 per cent was what was discussed as the overturn rate in internal review, that is one in four or one in five. You talked about too many being a problem and not enough also being an issue. Where do you see that level being? I guess my view of it is when you have got one in four or one in five reviews being overturned on an internal review that is probably too high, I would think.

Ms DONNELLY: Look, I will assure you that we are actively monitoring that. I think the point that I made earlier is quite important, that you need to actually disaggregate, understand the particular types of decisions and use it in a forensic way to say that is an area where it might indicate that the insurers need to pull their socks up in terms of the quality of decision-making. That has really been the problem-solving approach that we have taken first. I think that is a more constructive way of intervening in the system and improving the system for injured people than having, at this stage, just a number.

The CHAIR: A benchmark.

Ms DONNELLY: It is about using it to dive in deeper and target our audits and our file reviews to understand what might be going well or wrong, and we are mainly focusing on where we think there are problems.

The CHAIR: Am I to assume right that if you are identifying that a large percentage of the changes, the overturning in the DRS, was due to new evidence, given that there is an overturn rate of 20-odd per cent internally before they get to the DRS—

The Hon. TREVOR KHAN: It was 22.

Ms DONNELLY: Yes, similar.

The CHAIR: —is that also with new evidence?

Ms DONNELLY: Yes, that is our understanding.

The CHAIR: They have an overturn rate, for example, of the injured person most at fault of 64 per cent at the DRS. You can assume that there was already some overturning at an internal review.

Ms DONNELLY: Certainly that is my understanding. It is about new information coming forward. Again, I do not want to speak for the Personal Injury Commission although I have been a member of the PIC rule committee. I do understand that there is an intention for there to be further areas for the rule committee to look at improving procedures, and late provision of information is something that might mean matters could be resolved better if that information had been available earlier.

The CHAIR: That is exactly where I was leading to. Is it better that we have all the evidence up front before we do the decision-making, appreciating that there are time frames? That you have to go to the third bite of the cherry to actually get this right and that you have an overturn rate of 64 per cent indicates to me that there are a lot of internal pressures around time frames to achieve a result, and we are getting the wrong result.

Ms DONNELLY: I think you are kicking against an open door, to use one of Mr Khan's phrases that I have heard him use. It is an area for continued improvement and there is some potential for improvement to be led by the Personal Injury Commission. Some of the samples where we are pulling out matters are giving us qualitative information that helps us form a hypothesis for where to go to improve the experience. It is exploratory but often gets down to quite a granular level.

The Hon. ANTHONY D'ADAM: I just wanted to clarify: Is the Watts review in the public domain?

Dr CASEY: Yes, it is.

Ms DONNELLY: Which review? The statutory review?

The Hon. ANTHONY D'ADAM: The Watts review.

Dr CASEY: Yes.

Ms DONNELLY: Yes, we have published it and we are certainly happy to provide a copy to the Committee.

The Hon. DANIEL MOOKHEY: Ms Donnelly, congratulations on your new appointment.

Ms DONNELLY: Thank you.

The Hon. DANIEL MOOKHEY: You can probably take this question on notice, but I have many constituents who have contacted me and said that their electricity bills and their water rates are too high. On notice, will you come back to us and tell us what you will do about it? That would be good.

The CHAIR: I will rule that out of order.

Ms DONNELLY: I am not really in a position to tackle it yet.

The Hon. DANIEL MOOKHEY: We might have other places in which we can ask you in the future.

Ms DONNELLY: I would be surprised if we do not meet again, yes.

The Hon. DANIEL MOOKHEY: Indeed. Just to establish a few basics about SIRA's leadership, you are off and Dr Casey is acting; is that correct?

Ms DONNELLY: No, Ms Theresa Fairman is acting for a short period and the announcement was made yesterday of the incoming chief executive.

The Hon. DANIEL MOOKHEY: Sorry, I should rephrase: the specific aspect of the CTP regulatory role.

Ms DONNELLY: She is acting in that role, yes.

The Hon. DANIEL MOOKHEY: When do you anticipate that the CTP regulatory function will be confirmed, or will you be awaiting the next CEO to confirm?

Ms DONNELLY: No, it is shortly. I have led that process and I am only running shortly behind to enable the top few candidates to meet the incoming chief executive before it is finalised.

The Hon. DANIEL MOOKHEY: Of course. It is just an important question as to who is actually—

Ms DONNELLY: It will be finished before I go.

The Hon. DANIEL MOOKHEY: When are you going again?

Ms DONNELLY: I have two more weeks and then I will actually have a holiday. I am very pleased about having negotiated that.

The Hon. DANIEL MOOKHEY: Eight hours rest, eight hours work and eight hours play, I say. Well done on that. Can I just talk you through some market conditions? We have a new entrant in the market; correct?

Ms DONNELLY: That is right.

The Hon. DANIEL MOOKHEY: That is Youi.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: And they entered when?

Ms DONNELLY: November last year.

The Hon. DANIEL MOOKHEY: Do you maintain data on market share by the—what are we up to now, five or six providers?

Ms DONNELLY: Dr Casey might have that. We certainly do track market share; I just cannot remember. I will let her look for that and we might come back so we are not wasting your time.

The Hon. DANIEL MOOKHEY: Sure. Are any further applications pending?

Ms DONNELLY: I am usually a little circumspect about that. There are some other parties that we have been providing information to.

The Hon. DANIEL MOOKHEY: Ahead of a potential application for a licence?

Ms DONNELLY: Yes. I know that we have been providing information.

The Hon. DANIEL MOOKHEY: How many?

Ms DONNELLY: I will take that on notice.

The Hon. DANIEL MOOKHEY: I respect the confidentiality, so whatever you need to take on notice for confidentiality reasons is of course accepted. When did those discussions commence?

Ms DONNELLY: I will take that on notice.

The Hon. DANIEL MOOKHEY: Okay, great. But that process is still ongoing insofar as there are persons who are talking to you about a potential entry?

Ms DONNELLY: I will take that on notice.

The Hon. DANIEL MOOKHEY: Okay. You have 21 days but you are out of here in 14.

Ms DONNELLY: The organisation can answer the questions, yes.

The Hon. DANIEL MOOKHEY: I want to turn to some of the excellent information that you provided us in your submission.

Ms DONNELLY: Dr Casey has the answer to your earlier question.

Dr CASEY: The market shares by premium.

The Hon. DANIEL MOOKHEY: Sorry, premium collected?

Dr CASEY: By premium collected, yes. Allianz is 19.5 per cent, NRMA is 31 per cent and QBE is 24.6 per cent. AAMI and GIO—or Suncorp as you know the brands, but they are split up—AAMI is 8.2 per cent, GIO is 16.6 per cent and Youi is 0.1 per cent.

The Hon. DANIEL MOOKHEY: AAMI and GIO are brands of Suncorp?

Dr CASEY: Yes.

The Hon. DANIEL MOOKHEY: You have that by premium covered?

Dr CASEY: Yes.

The Hon. DANIEL MOOKHEY: Do you have the data by claims?

Dr CASEY: Yes, I do.

The Hon. DANIEL MOOKHEY: Will you go through that too?

Dr CASEY: Allianz is 18.5 per cent, NRMA is 31.9 per cent, QBE is 22.8 per cent, AAMI is 8.4 per cent, GIO is 18.4 per cent and Youi—I think they have four claims. I do not have a percentage.

The CHAIR: Negligible.

Dr CASEY: Negligible.

The Hon. DANIEL MOOKHEY: That is claims received?

Dr CASEY: Yes.

The Hon. DANIEL MOOKHEY: Do you have payments by insurer?

Ms DONNELLY: We might need to take that on notice.

Dr CASEY: I will take that on notice. We would have it but I do not have it with me.

The Hon. DANIEL MOOKHEY: That would be good.

Ms DONNELLY: I see why you made that point about questions on notice before.

The Hon. DANIEL MOOKHEY: Indeed.

The CHAIR: Or your delegate may provide them within 21 days.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: Indeed. She is answering in the capacity of the CEO so I am sure that the CEO would return it, but either way. On that, do you maintain profit levels by insurer?

Ms DONNELLY: The assessment that we are undertaking at the moment is looking firstly at the whole industry, the market, and then it breaks down by insurer.

The Hon. DANIEL MOOKHEY: Yes, that is true. Do we have those numbers?

Ms DONNELLY: No, I cannot give you those figures at the moment. That assessment is underway. Once the assessment is complete, which will be in a few months' time—I do not want to commit other people but I imagine it would be later this year that that would be made available.

The Hon. DANIEL MOOKHEY: This is the TEPL mechanism that you are referring to?

Ms DONNELLY: That is the TEPL mechanism.

The Hon. DANIEL MOOKHEY: And the acronym is?

Ms DONNELLY: Transitional excess profits and loss.

The Hon. DANIEL MOOKHEY: Or, for want of a better term, the policy that was put in place to deal with the issue of super profits.

Ms DONNELLY: That was the intention, absolutely.

The Hon. DANIEL MOOKHEY: I think last time we chatted about the TEPL mechanism we learnt that it is a process that you flagged would be undertaken circa now—2021-22, I think you said.

Ms DONNELLY: That is right and that is true.

The Hon. DANIEL MOOKHEY: You said at the time—or SIRA said at the time—it would take a few years for the mechanism to operate.

Ms DONNELLY: That is right.

The Hon. DANIEL MOOKHEY: Which premium years is the TEPL process contemplating currently?

Ms DONNELLY: At the moment the assessment has been looking at the 2018 accident year and is looking at the 2019 accident year.

The Hon. DANIEL MOOKHEY: So the 2018 and the 2019—

Ms DONNELLY: Of course, there are different levels of development.

The Hon. DANIEL MOOKHEY: Before we go too far, Ms Donnelly, just so that we are abundantly clear, "accident year" means what precisely? Is that the calendar year? Is it the premium application process? What are we talking about when we talk about the accident year?

Ms DONNELLY: It is roughly calendar year. For the first year we also have the month of December, so I might need to take it on notice because I think we probably have a 13-month year to confuse you. It is roughly based on that calendar year.

The Hon. DANIEL MOOKHEY: So 2018 and 2019 accident years. Why are the earlier years not being examined?

Ms DONNELLY: The scheme began 1 December 2017 and this mechanism only comes into play effective from the policies sold from 1 December.

The Hon. SCOTT FARLOW: Which is effectively why you have a 13-month year.

Ms DONNELLY: Absolutely correct.

The Hon. DANIEL MOOKHEY: That was because legislation only created a TEPL mechanism that you could use—

Ms DONNELLY: In this scheme. It did not exist before.

The Hon. DANIEL MOOKHEY: Yes, we recall advocating and barracking in the pits for it.

Ms DONNELLY: Yes, that is right.

The Hon. DANIEL MOOKHEY: Just to be clear, we are examining whether or not insurers, in layman's terms, made super profits in the 2018 and 2019 calendar years. Is that correct?

Ms DONNELLY: I would say we are examining—we have a benchmark from a discussion of what we would consider excess profits.

The Hon. ANTHONY D'ADAM: What is that?

Ms DONNELLY: Above 10 per cent.

The Hon. SCOTT FARLOW: Is it above 10 per cent or 8 per cent?

Ms DONNELLY: So 8 per cent is the maximum for a filed prospective profit.

The Hon. DANIEL MOOKHEY: Yes, and then 10 per cent is the return.

Ms DONNELLY: There is a range from 10 per cent to 3 per cent, and below 3 per cent it is seen as excess losses. Above 10 per cent it is seen as excess profits as they are realised—if that clarifies. Although I agree with you when you said it was about super profits, the mechanism is actually stronger than that. It enables SIRA to prevent insurers from keeping profits above a certain level and they do not need to be at the same levels that were described as super profits in the old scheme. It is above that threshold.

The Hon. DANIEL MOOKHEY: Got it. Again, just to unpack that step by step so we can at least all have a common understanding, what you are talking about is that since the 2017 reforms insurers are able to file assuming a profit of 8 per cent. Is that correct?

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: Then what this mechanism does is look back after we can see a bit of the tail and see whether or not the figure—the actual profit—was close to that 8 per cent. Is that correct?

Ms DONNELLY: Yes. Or, in fact, above or well below.

The Hon. DANIEL MOOKHEY: And then should the level of extra profit exceed 10 per cent, that is when you have the option of exercising your powers—correct?

Ms DONNELLY: Yes. There is quite a thorough process in assessing whether or not we would make a decision to trigger, but that is it in a nutshell.

The Hon. DANIEL MOOKHEY: Sure. The 10 per cent figure—forgive my ignorance, but was that put into legislation or is that a SIRA policy?

Ms DONNELLY: From recollection, I think it may be in part of the legislation but it is also in SIRA's guidelines.

The Hon. DANIEL MOOKHEY: As I understood the legislation, we provided the power for you to decide, not necessarily to decide for you. That is my recollection.

Ms DONNELLY: Okay.

The Hon. DANIEL MOOKHEY: Am I wrong?

Ms DONNELLY: I would like to check because there are two provisions in the legislation: the transitional excess profit and loss and also the excess profit and loss post the transitional period.

The Hon. DANIEL MOOKHEY: Yes, there are. Therefore, why did you settle on 10 per cent?

Ms DONNELLY: It was a decision of the board based on independent actuarial advice. I may be able to give you a more detailed explanation of the decision, which was made a few years ago.

The Hon. DANIEL MOOKHEY: Yes, are we in a position to provide more detail on that? Because I think that you made the point in your submission that some of this has to do with return on capital—what you deem to be reasonable. I think it is on page—it is in your scheme performance report. I am positive you have a section on the TEPL mechanism. Forgive me if I do not have it immediately to hand. Either way, can you take that on notice?

Ms DONNELLY: I am happy to take it on notice and give you some more of the rationale.

The Hon. DANIEL MOOKHEY: It is on page 21.

Ms DONNELLY: Of the original submission?

The Hon. DANIEL MOOKHEY: Of the *CTP Scheme Performance Report 2020: Motor Injuries Act 2017*.

Ms DONNELLY: The scheme performance report, yes.

The Hon. DANIEL MOOKHEY: In which you say:

Under the TEPL mechanism, where the collective profit of the insurers is deemed to be excessive (i.e. above ten percent), SIRA will recoup excess profit from those insurers who are above the target profit margin of eight percent. Conversely, where insurer losses are excessive ... SIRA will reimburse ...

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: Which is basically what you just said, is it not?

Ms DONNELLY: Yes, that is what I said. Chair, I did note that yesterday there was a bit of discussion about that it would be good for the Committee to have a briefing on this. I did make the offer several times to give an informal briefing. I know the Committee has an extraordinary workload. If I am able to commit other people, I am sure that SIRA would be happy to do that at some later point.

The CHAIR: Thank you.

The Hon. DANIEL MOOKHEY: Sure. Just to continue on this, the 2018 and 2019 accident years for which you are examining the issue of the profit levels and for which you said you think you will have that completed relatively soon—the premium applications that were filed for that year assumed an amount and cost of claims in the at-fault and no-fault categories. Is that correct?

Ms DONNELLY: There are a lot of estimations and assumptions that go into the guidance that we gave through the Motor Accident Guidelines about parameters for premium, including numbers of claims. That is right.

The Hon. DANIEL MOOKHEY: So that includes, does it not, the amount insurers expect there will be at-fault and the amount that will be no-fault—correct?

Ms DONNELLY: Yes, and if I can explain a matter that did come up in the questioning yesterday, the initial estimates were related to a mature scheme. So there would have been high figures, say, expecting 17,000 claims. But that was never used to steer premiums because there was an assumption that there would be a honeymoon period, as it is often called, and, as is normal for a new personal injury scheme, there is a very intensive process of looking at what the actual claims process is and progress and what we experience and then refreshing that estimation. The estimates that have been going into premium guidelines and directions for insurers are lower than those initial estimates for a mature scheme—if that assists.

The Hon. DANIEL MOOKHEY: It does assist. But, to be fair, you are now moving through time, where I am still concentrating on the accident years that we were reviewing and to the TEPL mechanism.

The CHAIR: It was raised yesterday, though.

The Hon. DANIEL MOOKHEY: I agree and I accept that. It is good evidence; it is useful, too. Just to be clear, in the 2018 and 2019 accident years, insurers filed a premium assuming a certain level of no-fault claims—correct?

Ms DONNELLY: Yes, they obviously had to make an assumption and we had to make an assumption.

The Hon. DANIEL MOOKHEY: Of course. And everyone at that time, especially in those two years, were still getting their models right, which was fair enough because it was the first new scheme and the first

application introduction of a no-fault component in New South Wales. I one hundred per cent agree. But do you agree with me that the number of no-fault claims presented in 2018 and 2019 were not what was expected?

Ms DONNELLY: I think that is reasonable. One of the strengths of the TEPL mechanism—I hope that acronym is okay—is that it was in fact learning from the early years of the previous scheme, where there was that honeymoon period and there were windfall profits. It is understanding that particularly the first few years of the scheme are high risk for that.

The Hon. DANIEL MOOKHEY: Just to be clear, when you talk about windfall profits in this context we are talking about the income that is retained by insurers as a result of not having to pay out the number of no-fault claims that was expected?

Ms DONNELLY: Yes. In the 1999 scheme what happened was that there was not this excess profit and loss clawback mechanism and insurers needed to obviously reserve enough capital and collect enough premium to pay out all claims. They had to fully fund their liabilities in each year for all the claims that might ensue. There was, in a nutshell, two things: probably some level of conservative estimation and a safety dividend from improved road safety. That is what I was particularly thinking about when there was a windfall in that scheme.

The Hon. DANIEL MOOKHEY: They may be the reasons that the amount of claims did not present as expected, which is a relevant factor. But is it inaccurate to say that to the extent to which SIRA is contemplating the exercise or at least investigating whether or not the TEPL mechanism needs to be activated is because, in large part, the number of no-fault claims in those years was out of alignment from the amount that the premiums filed were assuming?

Ms DONNELLY: They are your words, but I would actually say that the reason that we are doing this assessment is that we are committed to doing this assessment each year and we know that the first few years of the scheme—with any scheme—are high risk for excess profit. Certainly our analysis is, I think it is fair to say, a lot more sophisticated than watching whether particular types of claim numbers are up or down, or particular dispute numbers. We have got a lot of data that goes into the analysis. But it is because we have been given these strong powers that we are absolutely committed to using them. I just think it is a little simplistic to say it is because there is a lower number of claims. We would be doing it anyway, doing the due diligence in order to ensure that the insurers do not get to retain excess profit.

The Hon. DANIEL MOOKHEY: I accept that it might be simplistic but it is not wrong, is it?

Ms DONNELLY: I am sorry, I did not mean that to be offensive.

The Hon. DANIEL MOOKHEY: No, it is fine.

Ms DONNELLY: It is not just one data point, is my point. I could have made that point better.

The Hon. DANIEL MOOKHEY: But it is not wrong, though?

Ms DONNELLY: No, it is not wrong that that is a consideration. Absolutely.

The Hon. DANIEL MOOKHEY: You did make the point that they were the amounts filed for those years. But since then, now that everyone has been able to see how the scheme is actually performing, is it the case now that insurers have lowered the amount of assumed no-fault claims in the subsequent years in terms of their applications—not your approvals, but their applications?

Ms DONNELLY: What has happened—and this does go to the point that I was making about yesterday's evidence—is that the independent scheme actuaries and, in fact, the peer review actuaries have at different points been commissioned by us to review the premium parameters. They are regularly reviewing whether or not the projected numbers of different types of claims and different types of claims costs are as projected and they adjust those estimates. I think the Chair actually made this point yesterday and understood: The purpose of adjusting those estimates is to feed them into the premium parameters that guide the insurer's premium—

The Hon. DANIEL MOOKHEY: I accept that.

Ms DONNELLY: —as the first step to making sure that there are not excess premiums being charged and to keep on refining those estimates. To give you a sense of that, in 2017, before the scheme started, the first assessment of those premium parameters gave us, as SIRA, an indication from the actuaries that the premium price for a mature scheme would be \$551. The starting price in that guidance that we had was \$528 as the guidance around a reasonable premium; it is now \$503, and the insurers are filing for an average of \$487. There is competition in the market also, contrary to some of the evidence yesterday, driving the pricing down and also the

regulator stepping in and saying we are fine-tuning those estimates that you can use to reflect what is actually happening.

The Hon. DANIEL MOOKHEY: Ms Donnelly, I appreciate the processes of due diligence that SIRA undertakes, which you just described, before you issue your approvals. But the question was, have the insurers adjusted the applications that they file, not the processes after you interrogate their applications and the system guidance processes. I want to know whether or not insurers are persisting with these assumptions that we now know were perhaps a bit too—depending on your perspective—conservative or optimistic?

Ms DONNELLY: Let me just clarify: If we could show you that they are filing to bring the price down; is that what you are after?

The Hon. DANIEL MOOKHEY: Specifically about the no-faults issue. That is what I am particularly interested in. I accept that there are multiple factors that go into premium calculations, but it is pretty large. The no-fault one is a pretty significant component of it; the amount that is asked for and the amount that is paid out. To be fair, when that reform was introduced—for good reasons—for this Committee, amongst others, this was a foreseen problem. I just want to know whether or not the insurers' market behaviour in that respect is adjusting.

Ms DONNELLY: I can—

The Hon. DANIEL MOOKHEY: Maybe on notice you might have information?

Ms DONNELLY: I can, but I can tell you that the guidance that we have given includes built into it an analysis of the expected at-fault claims. They are accepted on a no-fault basis, if you like, but they are the driver or the rider of the at-fault vehicle, and that has been adjusted down. The insurers are required to comply with that. I think that might answer your question.

The Hon. DANIEL MOOKHEY: Thank you. It probably does. In respect to some of the factors that preceded the introduction of these reforms, we learnt in the last inquiry that of every dollar collected in premiums approximately 47c—at the time—was being paid out in claims.

Ms DONNELLY: That is right, yes.

The Hon. DANIEL MOOKHEY: I think we also identified—this is really from memory—that 22c were in super profits at the time. That is, insurer profit.

Ms DONNELLY: I think that is testimony from another stakeholder and may be their calculation.

The Hon. DANIEL MOOKHEY: But equally, it was agreed that roughly 16c of that were legal costs at the time?

Ms DONNELLY: I cannot recall the figures.

The Hon. DANIEL MOOKHEY: Okay, sure. Either way, 47c was being paid out in claims?

Ms DONNELLY: I do remember that figure, yes.

The Hon. DANIEL MOOKHEY: How much is now being paid out?

Ms DONNELLY: Some 59c.

The Hon. DANIEL MOOKHEY: We are at 59c. What are our projections for the next few years?

Ms DONNELLY: I might have to take that on notice.

The Hon. DANIEL MOOKHEY: The Victorian scheme, which is a very different scheme, tends to return 88c or thereabouts.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: If you live in Albury and you pay a premium you get 59c but if you live in Wodonga you will get 88c back. Do we agree that 59 per cent is too low?

Ms DONNELLY: To be fair, the Victorian scheme is quite different and it is really not a SIRA decision. It is about the legislation, the scheme design and the will of the Parliament. Our role is to administer that. Certainly the cross-border comparison might be something that can be considered as part of statutory review. But to be fair, if what you are asking me to do is weigh up the New South Wales legislation against the Victorian legislation—

The Hon. DANIEL MOOKHEY: I am not, to be fair. We might be here for a while, Ms Donnelly, if we were to do that.

The Hon. SCOTT FARLOW: What about Queensland?

The Hon. DANIEL MOOKHEY: Where are we up to? Do you maintain benchmarks in respect to other States?

Ms DONNELLY: It is difficult to compare because the schemes are quite different. It is certainly something that we look at from time to time.

The Hon. DANIEL MOOKHEY: But can you give us any sense as to whether or not you think more money or less money is going to be returned to claimants through this scheme in the next few years?

Ms DONNELLY: Whether more is going to be—well, I can tell you—

The Hon. DANIEL MOOKHEY: Is the 59c going to go up or down? Or do we think it is stable?

Ms DONNELLY: I think this is probably not the place for making predictions.

The Hon. TREVOR KHAN: Is that not a policy decision for the Government?

The Hon. DANIEL MOOKHEY: No, it is sort of how the current law and schemes are working.

Ms DONNELLY: But what I can say with confidence is even if we look at that 2018 year, as you know one of the issues that has been raised in the stakeholder submissions was—not for people who have a whole-person impairment over 10 per cent but for those below that—there is hardwired into the legislation waiting periods before they can put in claims for awards of damages and, therefore, there is quite an amount of money to be paid out yet in awards of damages. That is relevant both to the efficiency and also the assessment of ultimate profit. Over 70 per cent of the claims payments that come out are going to be for those more seriously injured people in lump-sum settlements. I think we will, obviously, monitor it and know more, but there is quite a bit of payment to come out yet.

The CHAIR: Can I check then: Is 59c the current rate?

Ms DONNELLY: That is an estimate.

The CHAIR: Does it include that payout for more complex cases?

Ms DONNELLY: That is probably the strongest prediction I am going to make at this point. That is our current estimate, but of course it will become an estimate with more confidence as more of the payments are made.

The CHAIR: Which you are very good at doing. But we will address that one a bit later.

The Hon. DANIEL MOOKHEY: The only other question I had in relation to the TEPL mechanism is: Do you anticipate that after you complete the examination of 2018-19 you will examine the 2020 year in the future?

Ms DONNELLY: Actually, I would like to take the opportunity to explain what we are working towards because I think it is not well understood, and I think some of the other witnesses may not understand either. That is not on them. Obviously we need to explain, and it will become more apparent as we work through the process. You can expect that we will undertake this assessment on every accident year. The approach that we are certainly working towards is that we would not be waiting for seven, eight, nine years until you have 100 per cent confidence of what is the ultimate profit before we need to trigger the TEPL and exercise that. What we can envisage is that for the 2018 year, should there be a case to trigger TEPL and that is administered, then let us just say for future year one, you could begin reducing the fund levy, having clawed back a proportion that you have confidence is excess profit. Then you could do the same thing for the next year—for the 2018 year—and keep doing that until you have a higher degree of confidence.

In year two if the TEPL has been triggered with excess profits for the 2019 accident year, you might start to claw back an amount that you have confidence is going to be excess profit as well. The next year, in year three, you may be finding that the 2020 year has triggered TEPL and there is an amount that you can claw back. The benefit in that is that it is not about waiting for several years until you have an ultimate 100 per cent crystallisation of what is the profit before you bring it back. The other benefit of doing it in a staged way is that, having alluded to the number of reviews in my opening statement, we are definitely at a point where we know enough to be starting to refine and review the scheme and improve it where that is warranted. If there is an extension of further legal services to injured people or if there are, at the statutory review, other benefits, there is enough flexibility to adjust for that to be factored in without having a volatility of the amount of profit going up and down in our estimates. We are looking at having a staged and structured approach, with each year potentially triggering TEPL and perhaps being clawed back if it does over a period of time. I have to say the losses may go the other way as well.

The CHAIR: I was going to ask that because we had a discussion yesterday around what we should do with any profits that are clawed back through TEPL and how those are allocated. Noting, as you said, that anything under 103 per cent is considered a loss, does SIRA hold a proportion of the funds?

Ms DONNELLY: I am happy to explain. The provision is that if there is excess profit the insurer would be required to pay an amount back into the SIRA fund. That would enable us to offset that amount from the levy in the same way that we did with the CTP refunds with the unclaimed amount.

The Hon. DANIEL MOOKHEY: Just to unpack that, that is the industry as a collective has made excess profit?

Ms DONNELLY: Step one, the industry as a collective has made excess profit. There is an assessment for each individual insurer and then—

The Hon. DANIEL MOOKHEY: A levy or a charge on that insurer?

Ms DONNELLY: A charge on that insurer. There is obviously procedural fairness and quite a lot of technical work that goes into that to make sure.

The Hon. DANIEL MOOKHEY: Then that insurer returns the money to the SIRA fund?

Ms DONNELLY: Yes, which enables the net amount of the SIRA fund levy to be reduced for that period. The opposite is really what happens if there are excess losses. So there are swings and roundabouts, but what the team at SIRA is contemplating is that if we take that staged approach and we are not delaying before we start to—where we can have certainty that there is an amount that can be triggered with TEPL and we are managing several years, adding them on, that if there are losses and excess profits they can net out, and so the impact at the point of green slip purchase is maintained responsibly. But also the period of time from which you are clawing back profit enables a high degree of confidence about it being the right amount and also effectively gives the government of the day the ability to adjust benefits and services without having to go, "Whoops, the profit was not what we thought it was." There is room for some adjustment, so we think that is a sensible approach.

The CHAIR: I interrupted Mr Farlow.

The Hon. SCOTT FARLOW: You asked my question actually.

The Hon. ANTHONY D'ADAM: I want to clarify whether the assessment of excess profit includes investment returns.

Ms DONNELLY: Yes, it does. It certainly includes a discount rate so that it is calculated at net present value.

The Hon. ANTHONY D'ADAM: I see.

The CHAIR: Does triggering TEPL also trigger an analysis of the premiums that are currently being charged?

Ms DONNELLY: Great question. They are absolutely linked, yes. The revision of estimates about what is happening in the scheme in terms of numbers of claims, numbers of disputes and costs et cetera is influencing both the parameters that guide premium as well as the assessment of what the ultimate profit or loss will be.

The CHAIR: We were provided with this table. It is from your organisation, so I assume you have seen it. It was discussed at length yesterday so I am sure you are aware of it. It looks at the "expected to date" columns versus the actual columns. It was noted that they were very much in alignment.

Ms DONNELLY: That is exactly the point. I was trying to show that. That is because it is important that we keep on reassessing and fine-tuning those estimates so that you are correctly feeding into the premium guidance and the assessment of profit estimates that reflect what is happening with the scheme now, not the mature scheme and not what we thought first would be the honeymoon period parameters but what is actually happening, and then fine-tuning those estimates for the next period.

The CHAIR: But should not that process in itself make the analysis for the TEPL activation easier?

Ms DONNELLY: Yes, that is what it is for.

The CHAIR: In effect you have said, "We should have had X number of claims. We have got X minus 20,000 claims." Therefore, that difference of 20,000 should feed in fairly simply.

Ms DONNELLY: It does. It absolutely does, although I do want to just add to what you have outlined there. If we go back to the first estimate of what would be a mature scheme—say 17,000 claims—we have never used that figure in driving the insurer premiums because we always knew it would take some time for a growth

in, for instance, at-fault claims. We used a figure that was much more like 13,000-something, and we have been fine-tuning that through the actual experience and then making sure that we are driving the premiums down further. But we are not assessing profit on either the estimates of what would happen in the scheme in eight or nine years after it started or the estimates that we had a couple of years ago. We are doing it based on what is happening now so that it is as close as possible to an accurate estimate of what the premiums should be and what the profit is.

The CHAIR: I think that was potentially part of the issue we had yesterday by having the legal panel after the insurance council, because I could see they were in the background watching the evidence and I think they wanted to address some of those points but obviously we had heard from them earlier in the day. With regard to what happens with the money that is returned to the SIRA fund, should there be any? That is an assumption at this stage. There was talk whether it would be returned either through a refund or a lower premium on future policies—

The Hon. TREVOR KHAN: Before you go on, who makes the decision about what happens with that money?

Ms DONNELLY: The SIRA board. It is an independent decision. Do you want to finish your question or will I have a stab at answering it?

The Hon. TREVOR KHAN: It just seems, Chair, you might be asking Ms Donnelly to make a prediction about what—

Ms DONNELLY: I can absolutely answer the question about what the process would be. I will not make any predictions to bind anybody else.

The Hon. TREVOR KHAN: Yes.

Ms DONNELLY: Yes, your point is very important.

The CHAIR: I will not hold everyone in suspense. I will finish my question and then you can actually let me know if I am in the ballpark or not.

Ms DONNELLY: Certainly.

The CHAIR: We heard from other members who said that potentially there is more benefit in actually having those funds to provide instead of six months, 12 months. That six-month period is in the legislation, but that would require the Government of the day to amend legislation. That mechanism requires the Parliament to do something as opposed to the SIRA board electing to.

Ms DONNELLY: We have thought about that, and that is why we are not proposing that if we assessed that there was excess premium, that we would try and grab it all in one year or that we would wait until we have got 100 per cent confidence about it and everyone is being paid out and then grab it later. What we are wanting to do is do it in a staged way. That staged amount might only be a proportion of what our best estimate is—this is all hypothetical but our best estimate of what the excess profit is. We might say, "We have got an estimate that it is X. We have really only got a high degree of confidence about a fraction of that, but we will bring the fraction back where we have got a high degree of confidence and we will bring another fraction back the next year and the next year." For that amount, it would be a decision of the SIRA board and it would go back into the SIRA fund. Effectively, we are running like a not-for-profit. We are funding our costs, the money that we pay the health system, the money that we pay the Independent Review Office, the PIC and others, and we would therefore collect less in levy because we had had that amount transferred. At the point of purchasing a green slip there would be some level of discount.

To your point, which is a very good point and we have been thinking about this, even in the current assessment, knowing that there is a statutory review which may make recommendations that potentially could lead to down the track government or Parliament legislating for amendments, or the legal services review, in fact, which is handling some of the issues and looking into some of the issues that have been raised about should people have more legal support at different points in the claim, which could be adjusted by regulation, either of those potentially would change the estimates of what are the costs and the profit. But by only doing it in stages a bit each year over a period of time, we will have the time to take the decision each year about what is the amount and we will avoid the volatility of bringing it all back and then having to find that we have to adjust our estimate.

We make decisions based on the best information of what changes might be going to be made and what is the level of confidence about what excess profit can be harvested back, if you like. I know that that has been a quite complex explanation, but I think we are working towards an approach that does deal with both of those issues, ensuring that people do not have to wait for a long time before they start to get some of that money back,

but at the same time we enable provision and room for Parliament or the Government to adjust the scheme to improve it and not find that they cannot afford to do that.

The Hon. TREVOR KHAN: You have mentioned the statutory review, and I may have been outside. What is your anticipated time frame for the completion of the statutory review?

Ms DONNELLY: We are anticipating that we will have more information about the review itself on the SIRA website next week. We will have a discussion paper through June, public consultation through June or July and further analysis. We have got work underway that will feed into it, including that legal supports review, and then the report is a review for the Minister or the Minister's review and it is required to be tabled before 1 December this year. Really, November is the time frame.

The Hon. TREVOR KHAN: You have answered the question with regard to the provision of legal services as well in that review.

Ms DONNELLY: That will be undertaken at the same time as the SIRA board is considering the TEPL as well. They will obviously have information about what is coming through that review, although it is being undertaken by Clayton Utz and Deloitte as an independent review for the Minister.

The CHAIR: In relation to the other proposals which were ventilated yesterday around potentially increasing the period of which people would access care and coverage, does SIRA look to undergo that analysis to see what percentage of people were fully covered in the 26-week period or could have benefited from, say, a 12-month period or two years as some suggested?

The Hon. TREVOR KHAN: Could I put it a different way? You have indicated that the submissions that have been received by this inquiry—

Ms DONNELLY: That is right, have already been provided.

The Hon. TREVOR KHAN: —are going to be looked at in the context of the statutory review; is that right?

Ms DONNELLY: They have already been provided to Clayton Utz and Deloitte. Other issues from the testimony we will make sure are taken forward to that.

The CHAIR: They could do our job for us.

The Hon. TREVOR KHAN: That is precisely it.

Ms DONNELLY: There are certainly issues that would require legislative amendment and I think are appropriately dealt with in that statutory review. Although, this particular one has terms of reference established in the legislation that are quite comprehensive and more detailed than the traditional, "Are the objects of the Act still valid and is the Act effective in meeting them?" There are some suggestions that have been made in the submissions and in the evidence certainly that my team has briefed me on and some of the bits that I saw that could also be perhaps tackled through regulation change—again, a matter for the Minister. That would be a matter for us to advise or the Committee to make recommendations for the Minister to decide and whether or not, as the statutory review is the Minister's review, you want to see them aligned.

But if I give you an example, one of the things that Dr Casey and I have been discussing that we think we could do that would be helpful is we have some clinical advisory committees, we have roundtables going on at the moment with healthcare providers around our healthcare reform strategy. We noted that there are some matters around adjustment disorder around some of the other minor injuries that even our own review identified need to be watched and we thought could come forward to the statutory review, if need be. What we noted was that there are not submissions to this inquiry from clinical groups—from medical groups—and you have not had witnesses there. One of the things that we are thinking is we could get an independent body to facilitate a roundtable and make sure that some of that information goes into the statutory review as well, or is provided to the Minister. In terms of minor injury and going back to the fact that the insurers have discretion to extend payment and are doing so for people who are not better by six months. We are aware that—and I am just thinking that Dr Casey probably has the actual numbers—people with psychological injury do tend to certainly be a group that has been raised by the stakeholders and are in that group that our data is showing.

Dr CASEY: That is correct. There is a higher proportion of those with psychological injuries who continue to receive support after the 26 weeks.

Ms DONNELLY: Yes. That is discretionary with the insurers at the moment, and they are doing so to assist people's recovery. But I think that is one of the issues that, to some degree, does not need legislative change but needs regulation change. Again, it is a matter for the Minister as to the best way to deal with that.

The CHAIR: It is just ensuring that that analysis is happening by somebody because, given that it was raised yesterday, it is not something that I think this Committee would be geared to do. I am not sure that SIRA is necessarily the body responsible to do it. But, yes, a statutory review looking at that evidence and doing analysis on the numbers would be of benefit to—

Ms DONNELLY: I think we could step up and do it.

Dr CASEY: Yes.

Ms DONNELLY: The discussions that we had ourselves yesterday were noting that it was coming up and that there were not submissions or testimony from medical, and they would need to be consulted, and that is what has happened throughout the life of the scheme. Perhaps we could commission that and have that available.

The Hon. ANTHONY D'ADAM: I want to ask about data. The Bar Association raised some issues around data provision on scheme performance. I wanted to give you an opportunity to perhaps offer a comment on that.

Ms DONNELLY: I would be very happy to offer a comment. It is very important that we are transparent. We have had open data portals established. We are publishing lots of data and we are continuing to work on what else we can publish. On that matter, we do also have legislated obligations about protected information from insurers—that is in the legislation—and privacy protection. The request from the Bar Association was a Government Information (Public Access) Act [GIPAA] request. I will have to say I have not looked into that GIPAA request because the way that we undertake GIPAA requests in SIRA is that we have a formal GIPAA officer who makes that decision without any little messages coming in from the chief executive, who wants to talk to you or wants to see what you have done or wants an explanation. They make their decision.

The Hon. TREVOR KHAN: Gosh, really?

Ms DONNELLY: Absolutely. Most of those decisions in that period that the Bar Association—we have had some that have been released that have required me to deal with the fact that this information is going public, but we really respect that process. Most of the GIPAA applications in that year were provided in full. We are talking about over 50. Four were knocked back—not in full. Under that legislation a person with a GIPAA request can seek an internal review and if they do not accept the finding of the internal review, they can challenge that at the NSW Civil and Administrative Tribunal [NCAT]. I have to say that, while I respect the right of the Bar Association to make commentary about their disappointment about that GIPAA request being knocked back, we went through a proper process. They would certainly be capable of seeking an internal review or in fact arguing at NCAT if they believed that SIRA's decision was not lawful, and they did not choose to do that.

The Hon. ANTHONY D'ADAM: The request was relating to data relevant to the premium calculation. Is there some specific reason that that information could not be provided now?

Ms DONNELLY: Yes. The independent GIPAA officer within SIRA made that decision. As I said, I did not influence it and I have not looked at that decision. There are legislative provisions that protect us from providing very detailed data, including protecting commercial-in-confidence, but also privacy. The Bar Association could have challenged the lawfulness of that decision and chose not to.

The Hon. ANTHONY D'ADAM: There is a range of questions that seem reasonable in the ALA submission posed to SIRA.

Ms DONNELLY: There are a lot of questions in the ALA submission.

The Hon. SCOTT FARLOW: Pages of them.

The Hon. ANTHONY D'ADAM: I wonder whether you would be prepared to take those on notice and provide answers where possible?

Ms DONNELLY: All of them?

The Hon. ANTHONY D'ADAM: Yes, all of them.

The CHAIR: Are you putting all of them on notice?

Ms DONNELLY: All of the questions—

The Hon. ANTHONY D'ADAM: In the ALA submission.

Ms DONNELLY: I am going to apologise to my team. There are a lot of them and I am very conscious of the fact that I have two weeks to go and we have three weeks to respond. But obviously we want to help the Committee, so, yes.

The Hon. DANIEL MOOKHEY: Go out on a high, I say.

The Hon. SCOTT FARLOW: An issue was raised yesterday by the Motorcycle Council of NSW—I do not know if you are familiar with it—in terms of interstate coverage when it comes to CTP.

Ms DONNELLY: Yes.

The Hon. SCOTT FARLOW: I think interstate coverage is something that Committee members really had not—at least that was the impression I got—actually considered in the past.

Ms DONNELLY: Tasmania, I think, was the example.

The Hon. SCOTT FARLOW: Yes. They advised that SIRA would be coming back with some news at a future meeting with them on that. Is there anything you could update the Committee with on that front?

Ms DONNELLY: Dr Casey has been working on that, so I think I will hand to her.

Dr CASEY: Yes. Our team has been working closely with the Motorcycle Council. It is developing a fact sheet or a cheat sheet for their members that explains exactly what happens for somebody who is injured interstate, and it includes the entitlements which they would get if that happens interstate. I am happy to provide the Committee—it is with the Motorcycle Council now—the final version. Once that is done, we will publish it on our website and they will distribute it to their members. I am happy to send that to the Committee.

The Hon. ANTHONY D'ADAM: Mr Shoebridge alluded to a High Court authority that suggested that the scheme's coverage could not be extended to interstate; is that correct?

Ms DONNELLY: Far be it from me to contradict Mr Shoebridge in legal matters.

The Hon. ANTHONY D'ADAM: He is often wrong. He never admits it.

Ms DONNELLY: Certainly it does get complicated cross-border because the coverage of benefits can be based on the jurisdiction in which the accident occurred but the insurance policy will come from the jurisdiction in which the vehicle has a policy and is registered. So there are some restrictions—for instance, Tasmania—where the benefits are not the same if you are not from Tasmania or it is a Tasmanian vehicle, whereas that is not the case in New South Wales.

The Hon. ANTHONY D'ADAM: In terms of border communities—

Ms DONNELLY: That goes back to my point that there are quite interesting variations between the different jurisdictions.

The Hon. SCOTT FARLOW: Just to pick up on that—I think it is probably where Mr D'Adam was going as well—in terms of border communities, do those problems exist in Queensland, South Australia or Victoria in a similar way to Tasmania?

The Hon. ANTHONY D'ADAM: Or the ACT?

The Hon. SCOTT FARLOW: Or the ACT?

Ms DONNELLY: Not exactly the same ones. It is probably a fairly complex task to go through and do a comparison. But I will say there is another one that does relate to the Personal Injury Commission which is relevant to some of the delayed matters, which is that if the vehicle is, for argument's sake, from Queensland and the accident is in New South Wales, under Federal law there is a question about whether the Personal Injury Commission can hear the matter or if it needs to go to the District Court. There are lots of different detailed—

The Hon. SCOTT FARLOW: Combinations.

Ms DONNELLY: I give that as an example that it may not be the same issue that the motorcyclists are facing, but there are friction points between the jurisdictions that mean that there are cases that get complicated.

The Hon. ANTHONY D'ADAM: Has this issue been canvassed at a ministerial council level, with some kind of interstate arrangement that may deal with some of these questions?

Ms DONNELLY: I am not aware that it has, to tell you the truth. In fact, because the CTP schemes are based on State law and there is not so much of a Federal jurisdiction—

The Hon. ANTHONY D'ADAM: There could be harmonisation, though.

The Hon. DANIEL MOOKHEY: There is the Federal Interstate Registration Scheme.

Ms DONNELLY: It is a harmonisation journey yet to be embarked upon.

Dr CASEY: I was going to add, that as the regulator in New South Wales we have forums where we meet with the other interstate regulators.

Ms DONNELLY: We do.

Dr CASEY: I have not been in the role very long—I am acting—but I would be very surprised if we have not discussed cross-border arrangements.

Ms DONNELLY: That is basically the heads of the regulators.

Dr CASEY: The heads of the regulators.

Ms DONNELLY: There is one area on which there is national collaboration, which we have not touched on today, but it is a very interesting one, and that is automated vehicles.

The Hon. DANIEL MOOKHEY: We might save that for another day.

The CHAIR: One for a future appearance, I suspect. I call an end to this session. Ms Donnelly, I thank you very much for your appearances before this Committee in my time as Chair. I am sure I speak for all members in wishing you well in your next role.

Ms DONNELLY: Thank you.

The CHAIR: The Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice.

(The witnesses withdrew.)

The Committee adjourned at 12:57.