

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 1 – PREMIER AND
FINANCE**

WORKERS COMPENSATION AMENDMENT BILL 2021

CORRECTED

At Preston-Stanley Room, Parliament House, Sydney on Wednesday, 2 February 2022

The Committee met at 9:00 am

PRESENT

(Chair)

The CHAIR: Good morning, everybody. Welcome to the hearing of Portfolio Committee No. 1 – Premier and Finance inquiry into the Workers Compensation Amendment Bill 2021. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land on which the Parliament sits. I would also like to pay respect to the Elders past, present and emerging of the Eora nation, and extend that respect to other Aboriginals viewing this broadcast.

Before we commence today I would like to advise that the Committee would have preferred to have held this hearing in person at Parliament House. Unfortunately, the current health situation has prevented that from occurring. I note that this inquiry received many submissions and survey responses from frontline workers, and I would like to acknowledge the work and commitment demonstrated by our frontline workers throughout this pandemic. I will be wearing a mask during this hearing as the rules for Parliament House require masks to be worn in all public spaces.

Today's hearing is being conducted virtually. I would ask for everyone's patience through any technical difficulties we may encounter today. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link as provided by the Committee secretariat. Today we will be hearing from a range of witnesses across a number of sectors. I thank these witnesses for making the time to give evidence to this inquiry.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded 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 say outside of their evidence at the virtual hearing. Therefore, I urge witnesses to be careful about comments you make to the media or to others after you complete your evidence.

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 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. The Committee has resolved that there be no questions taken on notice for this inquiry.

Finally, a few notes on virtual hearing etiquette to minimise disruptions and assist our Hansard reporters. Can I ask Committee members to clearly identify who questions are directed to, and could I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Please remember to turn your microphones back on when you are getting ready to speak. If you start speaking whilst muted, please start your question or answer again so that it can be recorded in the transcript. Members and witnesses should avoid speaking over each other so we can all be heard clearly. Also, to assist Hansard, may I remind members and witnesses to speak directly into the microphone and avoid making comments when your head is turned away.

VERONICA BLACK, Lead Work Health and Safety Professional Officer, NSW Nurses and Midwives' Association, affirmed and examined

AYSHE LEWIS, Manager, Human Resources and Industrial Division, Health Services Union, affirmed and examined

ANTONY SARA, President, Australian Salaried Medical Officers Federation – Doctors Union, sworn and examined

DANIELLE McMULLEN, President, Australian Medical Association (NSW), affirmed and examined

The CHAIR: I welcome our first panel of witnesses. For the record, I note that Dr Sara is not with us at the moment. I ask each witness to start by making a short statement. We will start with Ms Black. Please keep it to no more than three minutes; we have a very tight timetable today.

Veronica BLACK: Thank you for the opportunity to appear this morning. My name is Veronica Black. I am the Lead Work Health and Safety Officer with the NSW Nurses and Midwives' Association. We represent around 72,000 members working in areas including public and private hospitals, aged care, corrections, disability and GP practices. Our members have been at the forefront of the pandemic response, providing COVID screening, running vaccination clinics, providing direct care for people with COVID in addition to their regular work. Nurses and midwives remain at high risk of contracting COVID at work. This risk is currently heightened with high rates of community transmission, seeing more people in hospital with COVID, some as COVID patients but also asymptomatic carriers among visitors, patients and other workers.

We currently have a situation where almost two-thirds of our aged care facilities in New South Wales have current active outbreaks. We also have healthcare workers who are close contacts being directed to work in order to address the staffing crisis. All of this increases the risk of our members contracting COVID at work. Throughout January the association has averaged 110 calls per day from members in relation to COVID. These calls have been on a range of topics, including lack of access to properly-fitting PPE, critically short staffing, no access to meal rooms, working outdoors in extreme high temperatures in full PPE and access to leave. Our members are burnt out and exhausted. In addition—

The CHAIR: Sorry, Ms Black, I am going to interrupt you there. Committee members, I can hear some chatter. I ask Committee members to please mute because we can hear you. Thank you. Ms Black, continue.

Veronica BLACK: In addition to extremely heavy workloads, they are constantly in fear of contracting COVID themselves and taking it home to their loved ones. A recent survey conducted by the association saw six out of 10 ICU nurses saying they had no intention of staying in the profession after their experience of the pandemic. This is not the time to be removing income protection should they become ill with COVID, nor to transfer the burden of proving where they contracted the disease to people who are sick and exhausted after two years of dealing with COVID. I would like to close with two short statements from members.

Alexandra works in a large private hospital: "Workers compensation meant a lot for me when I contracted COVID at work from another worker. During COVID I had been very cautious with where I went and who I hung out with as I have family at home who are high risk. The day I found out I was a close contact I immediately isolated myself and then tested positive three days later. I was new to the facility, which meant I had no holiday pay or sick pay. If it was not for workers compensation, I would not have been able to pay my bills nor have food delivered during my isolation period."

The second one is from Josh, who is an ED nurse in a public hospital: "While working in emergency, I have been identified as a close contact twice. I was isolating in hotel quarantine for a total of four weeks as my sister is asthmatic and mum's had collapsed lungs. On top of this, I was recently diagnosed with COVID-19, requiring me to isolate again for a further two weeks away from my family and away from my friends, not only dealing with the physical side effects of COVID but also the psychological impacts of this disease. As we all know, this pandemic has taken a toll on everyone, but all frontline staff have done an exceptionally good job in attempting to provide best care and protect the people of New South Wales. Taking this support away from one of the most essential services is unjust and simply just cruel. We are asking all politicians to do the right thing and block this repeal."

The CHAIR: Thank you, Ms Black. Ms Lewis?

Ayshe LEWIS: Ayshe Lewis from the Health Services Union. The HSU's original submission to the inquiry was lodged on 20 December 2021, and I do not intend to go over anything that is already in that document. It was a time when the State's rate of infection had just started to spike as a result of the Omicron strain. This coincided with a lifting of restrictions and a drastic scaling back of contact tracing. In the weeks since then we

have seen record numbers of new infections, hospitalisations and deaths from the virus. In aged care the number of cases and deaths have skyrocketed. In the last few weeks the number of resident cases have risen 907 from 3,876 to 4,783, while the number of active staff cases has surged fivefold—1,194 to 5,916. At the same time many of our members are coping with higher levels of risk than have previously been the case. The staff have been required to return to work following COVID illness while there is a possibility that they are still shedding the virus and increasing the risk of infection in the workplace. In public health we are seeing that due to the high number of staff on furlough, support staff are being called on to take on duties that they would not normally do and with a level of protection less than that required for clinical staff.

In food services, for example, hospital assistants are now being required to enter so-called red zones, where there is active COVID infection, to deliver and collect meal trays. NSW Health guidelines for this require them to prepare in the kitchen with P2/N95 and protective eyewear but not necessarily an apron such as would be required for a nurse. They then complete their ward duties and return to the kitchen to doff the PPE. In these circumstances access to workers compensation for potential infection gives a level of reassurance to workers coping with unprecedented levels of risk workplace stress. We repeat our assertion that the Government's proposed changes to these workers compensation arrangements, which place the onus on the worker to prove that they caught COVID-19 at work, are both premature and unfair, and show a patent disregard for the selfless efforts of frontline workers over the past two years.

The Workers Compensation Amendment Bill 2021 was introduced in the Legislative Assembly on 17 November 2021. In his second reading speech, the Minister declared:

It is now business as usual for New South Wales living with COVID-19.

This has been shown not to be the case, and this bill is an entirely inappropriate and irresponsible measure for these times. Thank you.

The CHAIR: Thank you. Dr McMullen?

Danielle McMULLEN: The Australian Medical Association of New South Wales is a member organisation representing over 9,000 doctors across New South Wales in both public and private hospitals as well as private practice. We have spoken on behalf of doctors and our patients on a number of issues throughout this pandemic, and on this issue hopefully you have all read our brief submission, so I will just summarise by saying that we recognise the importance of an efficient, effective and sustainable workers compensation scheme that must, of course, be balanced against the protection for frontline workers during a pandemic. We are concerned that under changes in the bill a worker being tasked with proving that the virus had been contracted at their place of work would be unnecessarily onerous, stressful and difficult and that the data regarding the impacts of claims under section 19B of the Act is only now becoming available. On that basis, we submit that the presumption should remain for medical practitioners and other healthcare workers for a further period of 12 months, at which time the evidence could be reviewed to determine the impact of claims made by medical practitioners and other healthcare workers on the workers compensation scheme.

The CHAIR: Thank you all for your opening submissions. We will now start the questions from Committee members. We will start with the Opposition. Mr Mookhey, do you want to start?

The Hon. DANIEL MOOKHEY: I thank all the witnesses for their appearance today and for the quality of their submissions. Can I ask each of the panellists, perhaps starting with the—given the first person I see is from the Health Services Union, were you at all consulted by any member of the Government or the ministry prior to the Government announcing its intention to repeal this presumptive legislation?

Ayshe LEWIS: No.

The Hon. DANIEL MOOKHEY: Was the nurses association or any part consulted at all?

Veronica BLACK: No.

The Hon. DANIEL MOOKHEY: Were the doctors at all consulted?

Danielle McMULLEN: Not to my knowledge.

The Hon. DANIEL MOOKHEY: So was the first time you heard about this proposal when the Ministers announced it on 14 November or thereabouts?

Danielle McMULLEN: Yes.

Veronica BLACK: Yes.

Ayshe LEWIS: Yes.

The Hon. DANIEL MOOKHEY: Thank you. Can I now turn to aspects that have been raised in your submissions? First, before I do that, it is fair to say, is it not, that our health system is under tremendous pressure right now?

Danielle McMULLEN: Yes.

Veronica BLACK: Yes.

Ayshe LEWIS: Yes.

The Hon. DANIEL MOOKHEY: In respect to your respective memberships, both in aged care and in the hospital system, both private and public, is that resulting in additional demands on the time of your members?

Veronica BLACK: It is Veronica Black from the nurses' union. We are getting regular feedback from members about working impossibly long shifts. We have many members that are working double shifts. We have a lot of excessive overtime being worked. We have got situations where highly specialised staff, such as ICU nurses, are now working on a team nursing model where you might have one qualified ICU nurse trying to supervise a range of other workers who are not trained ICU nurses in order to provide the care to patients that is required. So we are seeing extreme, extreme stress on the system and that is having a massive impact on our members.

The Hon. DANIEL MOOKHEY: Is that the same for the Health Services Union membership?

Ayshe LEWIS: It certainly is. We are hearing reports of members that are all over the place that are being required to just fill in where they can. We have health professionals that are cleaning bedpans because of staff shortages. We have seen, and all experienced, the delays in pathology due to short staffing. We have seen, as I have said earlier, staff being required to do duties that they would not normally be required to do, and we are seeing areas where private companies are being brought in to assist with patient transport because of the short staffing.

The Hon. DANIEL MOOKHEY: Is that the same as well for the doctors?

Danielle McMULLEN: The strain on our medical workforce is similar. Obviously, at the peak of case numbers there was significant workforce shortage due to staff being furloughed due to contracting COVID-19 or being considered a close contact. We have had reports of doctors whose leave has been cancelled, those working outside of the usual scope of practice, cancellations to elective surgery and other outpatient clinics, for example, and other non-COVID healthcare services have impacted doctors' ability to perform their usual tasks and provide their usual care to patients.

That strain has also been felt in the private sector, both in general practice and non-general practice, specialist rooms and those who visit aged care facilities, as you have outlined. I would also make particular mention of doctors in training whose progression through training and ability to have adequate supervised training and the usual scope of training that they would have in our hospital system has been significantly impacted over the past couple of years and continues to be.

The Hon. DANIEL MOOKHEY: So given that and given, as you have all said in your opening statements, that your membership are all engaging heavily with the response to the COVID pandemic, which is exposing them to further risk of exposure to COVID, is it the case that your members have enough spare time to be able to prove liability for the purposes of accessing workers compensation? Is that an easy thing for your members to do, and do they have the time in the middle of this crisis to have a fight with an insurer about proving that they contracted COVID at work? Starting with you, Ms Black.

Veronica BLACK: It is Veronica Black speaking. It is not only an issue of time; it is also an issue of the ability to provide that proof. So now that we have seen significant changes to contact tracing and massive winding back of that contact tracing, that makes it more difficult. It is also very difficult to demonstrate, with higher rates of community transmission, that you did not in fact contract it while you were on the train or the bus on the way to work or when you were in the supermarket picking up your groceries on the way home from work, regardless of how careful you might have been. There is very little genomic sequencing that is done. It is certainly not within access of your average worker to be able to access that information to prove that the COVID that they caught relates to their contact with a particular patient, as opposed to someone they might have been sitting next to on a bus or at a family function. It is very difficult for members to be able to do that, and, particularly if they are unwell, having that additional administrative burden and potential legal expense is too high a bar.

The Hon. DANIEL MOOKHEY: Ms Lewis, do your membership have the skills required to undertake genomic sequencing in order to establish liability for the purposes of accessing workers compensation, and do they have the time to do so?

Ayshe LEWIS: firstly, we agree with the comments made by the nurses' association on this. On top of that, there is a significant proportion of our membership whose English is not their first language, and they would have enormous difficulty. They do not have the resources to do this. They do not have the time. They are often required to—at the moment they are working double shifts, they are coming in working overtime, they are being called back whilst they are still potentially sick and infected with the virus. So with that type of burden placed on our members, it is absolutely difficult.

The workers comp system is difficult at the best of times to navigate. This extra burden on them at this time, particularly when contact tracing is being rolled back by the authorities and the onus is coming more and more back on the individual and on managers in the workplaces to actually do that local contact tracing—so all of that is adding to the enormous difficulty. And as well, people do not have enough leave, and that is a huge issue for our members. They are running out of sick leave, and they do not have any other leave. They are sick and they are not able to access leave, and so they are actually coming into work when they are still sick because they just cannot afford it.

The Hon. DANIEL MOOKHEY: Is that the trade-off that your members—

The CHAIR: Sorry, Mr Mookhey, that is time.

The Hon. DANIEL MOOKHEY: That was quick.

The CHAIR: Unfortunately, that is going to be our day today. Also, can I just note that Dr Sara has joined us.

Antony SARA: I do apologise for the delay. I was expecting a calendar invitation, and I did not read the email.

The CHAIR: That is okay. You are here now, and we welcome you. Thank you very much. It is now time for the crossbench. Mr Shoebridge?

Mr DAVID SHOEBRIDGE: Does Dr Sara want to give a very brief opening statement, which might be useful?

Antony SARA: Thank you, yes. Essentially, I would be agreeing with my colleague. It is very difficult to prove that you have got the virus without genomic testing and sequencing. Is that possible? It may not be possible. It would be extremely difficult to arrange that, and I mean it is really a David-and-Goliath situation. You have got a single worker who has been doing it hard for many months and years, overworked, stressed. To prove that they got it from work beyond reasonable doubt becomes extremely difficult. We think that it is just sending the wrong message. All the public and private sector workers during these COVID times have been doing it extremely hard.

We have seen the video from overseas in the beginning of the pandemic of doctors and nurses and allied health dying on the job. Thinking that they may take it back to their families, it is an extremely stressful time. So the legislative provision that was put in place is reasonable. If someone gets the disease and then comes to work, and clearly they did not get it at work, then they are not going to be making a claim, but if there is a high probability that they got it from work then it is reasonable to assume they got it from work and that the workers compensation provisions should apply. That is essentially our view and our position and the views of our members. It really sends a very bad message to public-sector health workers.

Mr DAVID SHOEBRIDGE: Thanks, Dr Sara. Starting with you, Ms Black, and then going to you, Ms Lewis, that idea of what message this sends if the Parliament stripped away this protection from your members now, given how under stress they are, given how much support they need—how would that be received, do you think, by the workforce?

Veronica BLACK: It is Veronica speaking. I think that would be received extremely poorly from the workforce. They are already feeling like they have been asked to go beyond anything that is reasonable. They have had a lot of difficulty accessing PPE. They have had a lot of difficulty accessing enough staff to get the job done. Vaccine clinics and testing has been taken from numbers from within the health system already, which has left everybody else short-staffed. People are feeling under extreme pressure and like they are not being supported, and this would be just a further example of that lack of support from the Government at a time when they most need that support.

Mr DAVID SHOEBRIDGE: Ms Lewis?

Ayshe LEWIS: I repeat those comments and we totally agree with them, and they would apply to our members. I would say that there is a severe risk here now of staff leaving the system because there is a tipping point, and they have worked tirelessly over the last couple of years out there supporting the health system, being

out there in the front line. There is a tipping point, and we are seeing it already in aged care. People are starting to leave the system; they have had enough.

Mr DAVID SHOEBRIDGE: As I understand your evidence, your members are already stretched to the point of breaking. You call it a "tipping point". Call it the straw that broke the camel's back, but if they had these COVID protections taken away from them, that could lead to mass resignations amongst your membership. Is that part of the concern?

Ayshe LEWIS: It is a concern. It is a risk. If you cannot rely on paid leave when you get sick, if you cannot rely on support from your employer when you get sick for protecting the public against the very virus that you have caught, then there is a real, genuine fear that people will start walking away and saying, "This is all too much. We are going elsewhere to work."

Mr DAVID SHOEBRIDGE: What about from the doctors' perspective—the AMA or Dr Sara?

Danielle McMULLEN: Obviously, we would agree with the previous comments given: that to wind back this provision at this time would be felt as a slap in the face to the many staff who have stepped up to the front line over the past couple of years and would feel that that sense of risk at the workplace was not being taken seriously by their employer or the insurance system, not the workers compensation system.

Antony SARA: My comment would be roughly the same as the others. The groups that are particularly affected are the young doctors. They are starting out their careers, they are unlikely to resign en masse, but they will have this long-term resentment against the public sector employer for doing this, for saying, "We don't care." It is a very bad, bad message to send to young doctors in training. We already treat them poorly. There are already industrial moves elsewhere that members of the Committee may be aware of. It is a really deep, dark message to send, and we would strongly argue against sending this message to young doctors.

Mr DAVID SHOEBRIDGE: Thank you all. Ms Black, can you tell us the experience of nurses who have used this to get their workers comp and compare that to the usual practice of getting a workers comp claim up? Have you spoken with your members about how it works in practice?

Veronica BLACK: Yes. We do find that a number of our members are concerned about putting in workers compensation claims. They have had previous negative experience of workers compensation claims, of them being contested, of it being a difficult process, particularly for nurses who have had experience of workers comp in relation to occupational violence and psychological injury. Often those are quite contested claims, and they have a lot of difficulty with that. So when we have been speaking to members who have contracted COVID about their right to claim workers compensation, often they start off very hesitant about that because of their previous experiences.

However, as is indicated by the couple of statements that I gave in my introduction, because we have got this presumption, it has been a much more straightforward process. And so nurses who have claimed workers compensation, that claim has gone through, they have had the support that they need at the time that they need it. That is particularly important for people who have got limited amounts of leave or do not have access to other kinds of leave. It is a really important thing for them, so having that presumption and making that a much more streamlined and straightforward process has meant a lot to our membership.

Mr DAVID SHOEBRIDGE: So it is actually working?

Veronica BLACK: Yes.

Mr DAVID SHOEBRIDGE: Is that your experience too with your members, Ms Lewis?

Ayshe LEWIS: Yes, it is. It has certainly been a lot easier when we have been talking to our members. We are reassuring them that they are able to make a workers comp claim and that that would be accepted. It has been making the conversation easier with the members when they are under a lot of stress because they have the virus and they believe strongly they caught it at work doing their job. And they have been reluctant to use the workers comp system in the past because it is difficult for our members to navigate the process. We are often getting calls, of course, in normal matters when workers comp claims have been denied. It is a difficult process for them. There are lawyers involved. So it has been much easier for us to have that conversation and discussion with our members and reassuring them.

Mr DAVID SHOEBRIDGE: Thanks all, and thanks to all of your members too. We really appreciate it.

The CHAIR: That is time. Thank you, Mr Shoebridge. I turn to Government questions.

The Hon. SCOTT FARLOW: I have a couple of questions, Madam Chair. Could I ask all the witnesses what is the situation in other States when it comes to similar workers compensation under contracting-COVID provisions that exist? Are you familiar with those?

Veronica BLACK: It is Veronica speaking. I am not familiar with the arrangements in other States. I did provide some comprehensive information about arrangements internationally in my submission, so if you would like to go back and have a look at that there is a lot of information about what is happening worldwide.

The Hon. SCOTT FARLOW: Okay. I believe that Queensland, for instance, does not have any similar provisions to section 19B, like New South Wales. There is a nexus that is required. Of course, I do appreciate the situation that all your workforce are under when it comes to COVID and the risk of COVID in the workplace. But in terms of this suggestion of genomic sequencing, does that come from anywhere? Is there any view that there is a requirement to show genomic sequencing in order to prove contraction in a workplace? My question is to any of the witnesses. I know it has been suggested.

Antony SARA: The understanding is that if push comes to shove and it was difficult to prove on the basis of contact tracing or movements and whatever, that if you are required to prove beyond reasonable doubt—that is a legal standard of proof, not on the balance of probabilities—you would have to get genomic sequencing, and the only way you can get genomic sequencing done is from New South Wales pathology. No-one else does it, and it is very hard to get. To be able to provide that could be extremely difficult. I think, going back to what the other witnesses are saying, we did a survey of our, whatever it is, 4,000 or 5,000 members, and we got 800 responses. The uniform tone of those responses was extremely resentful. In terms of the other States, I do not know, as the other witnesses have said.

The Hon. SCOTT FARLOW: I am also interested, from all the witnesses, what is the situation at present under the workers compensation scheme in terms of the proof requirements for the contraction of any other contractible disease within the workplace for your members?

Veronica BLACK: I can provide an example that relates to an outbreak of tuberculosis in a large facility in New South Wales.

The Hon. SCOTT FARLOW: That would be helpful, thank you.

Veronica BLACK: Sorry? It is Veronica speaking.

The Hon. SCOTT FARLOW: I was just saying that would be helpful, thank you.

Veronica BLACK: Yes, it is Veronica speaking. There was an outbreak of tuberculosis in a large Sydney hospital about 18 months or so ago, and during that outbreak a number of people contracted TB. They had difficulty during that process of claiming workers compensation until such time as the sequencing was done because the employer initially ran the argument that they could have been infected overseas, they could have been infected in their private life and that there was no proof that they had contracted that at work, despite the fact that they were working in an emergency department without PPE for 18 hours with a highly infectious patient. So we did have a couple of members who ended up very sick and who ended up hospitalised as a result of that exposure, and it was not until the sequencing was done that they were able to access workers compensation and have their leave reinstated.

The Hon. SCOTT FARLOW: Thanks very much. That is it from me, Madam Chair. One of my colleagues might have another question.

The CHAIR: No-one else from the Government?

Mr DAVID SHOEBRIDGE: If you want to take their workers comp protections off them, you had better put it to them.

The Hon. DANIEL MOOKHEY: I have further questions if we have time.

The CHAIR: We have a couple of minutes so I will open it up to the Opposition and the crossbench.

The Hon. DON HARWIN: I do have a question. My question is in fact to the president of the Australian Medical Association. You would be familiar with the situation in other States, would you not?

Danielle McMULLEN: I am not—so I am the State President of AMA (NSW).

The Hon. DON HARWIN: Oh you are the State President.

Danielle McMULLEN: I am not familiar with the workers compensation [disorder].

The Hon. DON HARWIN: And so you are not familiar with the situation in hospitals in other States for health workers?

Danielle McMULLEN: Not with regards to the workers compensation liability requirements for COVID-19.

The Hon. DON HARWIN: Okay, thank you very much.

The Hon. DANIEL MOOKHEY: I was just going to ask in terms of dealing with icare that you would have to go through the process with, in general is that an easy process or is that a difficult process, and do you find that it is responsive to your members' needs and equipped to be able to assist them if your members had to prove that they contracted COVID at work? Starting perhaps with Ms Lewis and then Ms Black.

Ayshe LEWIS: The experience of our members generally with workers comp is that they see icare as the [inaudible] of the employers' position. So they struggle to actually prove that their illness/injury was obtained from work, and we do not hear [audio malfunction].

The CHAIR: Okay, we have lost everybody.

Ayshe LEWIS: [Audio malfunction].

The CHAIR: Sorry, bear with us, everybody. We think there is an issue with the broadcast.

Mr DAVID SHOEBRIDGE: [Audio malfunction] additional premiums being lodged against employers in providing workplaces. That is a fair way, is it not, of sharing the burden of COVID?

Antony SARA: It is. That is what it should be, yes.

Mr DAVID SHOEBRIDGE: Are you also aware that there are provisions that prevent employers being penalised for their future premiums if claims are made under these provisions, expressly penalised, so that it does not form part of their claims history for future premiums?

Veronica BLACK: It is Veronica. I was not aware, but that sounds very sensible.

Mr DAVID SHOEBRIDGE: Indeed, because in this case—

The CHAIR: Sorry, that is time. Apologies, everyone, we seem to have lost the broadcast at some end for the last couple of minutes. However, that is time for this session. Given the time frame, we will have to say thank you very much to our first round of witnesses this morning. We really do appreciate your time and also the work that your members do. Please pass on our thanks on behalf of the Committee. You are all now excused, and we will introduce the next round of witnesses.

(The witnesses withdrew.)

GAVIN WEBB, Chief Legal Officer, Transport Workers' Union of NSW, affirmed and examined

MEL GATFIELD, NSW Secretary, United Workers Union, affirmed and examined

NATALIE LANG, Branch Secretary, Australian Services Union NSW & ACT (Services) Branch, sworn and examined

BERNIE SMITH, Branch Secretary, Shop, Distributive and Allied Employees' Association New South Wales Branch, sworn and examined

SHERRI HAYWARD, Legal/Industrial Officer, CFMEU (NSW Branch) Construction and General Division, affirmed and examined

The CHAIR: Good morning, everybody. Thank you for joining us for this second round of our panels for the hearing this morning. Welcome and thanks to all of you and your members for the work that you do on the best of days, let alone through this pandemic. I will now invite each of you to make a brief opening statement. We will start with you, Mr Smith.

Bernie SMITH: The SDA represents retail, fast food, warehousing, online retail, pharmacy and pharmaceutical manufacturing workers, who have all been essential workers throughout the pandemic. Section 19B was put in place by the Government as a protection for essential workers as part of a social contract made with essential workers that during COVID if you kept turning up to serve our community in community-facing roles we will ensure that you are covered if you do get COVID and are compensated for it. The impacts of COVID are far from over, as can be seen by continuing infection rates. Many of the workers covered by section 19B have also been the subject of vaccine mandates from either the Government or from their employers based on risk assessments of them contracting COVID at work.

In the retail industry, government mandates previously included all essential retail workers in the relevant LGAs in Sydney. On the reopening of the economy, that was expanded to all non-essential retail workers across New South Wales. And today many large retail employers, based on their risk assessments, have vaccine mandates in place, including ALDI, Costco, Coles and Woolworths. In January the pressure on COVID-impacted workplaces such as retail and warehousing also led to changes to isolation rules for these workers covered by section 19B such that they were permitted to return to work sooner, even if they were a close household contact of somebody with COVID, due to the need for them to serve their community. So if they were asymptomatic and returned a negative RAT test, they could return to work.

All these issues go to show that the risk to these workers that led to section 19B being put in place remains today. These workers cannot work from home. They did not work from home throughout the pandemic, and no matter what happened they had to turn up to work to serve our communities so that we got the essential goods that we require. They had to interact with the community, serving hundreds of customers every day. This risk still exists of these workers contracting COVID at work. So who should bear the risk? This attempt to repeal section 19B is really an attempt to shift all of the risk around COVID-19 to the essential worker. If you remove the presumption, that makes it almost impossible for a worker to prove they caught COVID at work, particularly as we see contact tracing being wound back and QR code tracing due to end at the end of February. All these issues place the risk back on the worker, and that risk is substantial.

Just yesterday Karen from Castle Hill, a retail worker who contracted COVID-19, was—her claim was rejected. This current section 19B presumption is rebuttable by an employer and is often rebuttable. We are currently challenging that for Karen on the basis that she worked right up until Christmas; started to feel ill; went to see a doctor on Boxing Day; took her PCR test—the test came back inconclusive; had to take another PCR test, which came back positive; and she was off work for a month, which cost her about \$3,750 in leave entitlements and unpaid leave through that period of time. So there is a significant cost being shifted to the worker who has been out there serving us through the community throughout this.

What is the public policy good of removing section 19B? From what I can gather from all the public commentary on this, it really has been some employers being concerned about increases to workers compensation premiums for them if they have a claim made against them in relation to section 19B. As we say, that is a rebuttable presumption anyway, but does repealing section 19B stop these premium rises necessarily? No. If a small retailer has a successful claim against them made by a retail worker, then they will still see an increase to their premium rises. So the alleged aim of repealing section 19B will not be achieved anyway if a successful claim was made. So if the public policy aim is to prevent workers comp premium rises for employers who have been part of providing a social good during the pandemic, there are other approaches that do not shift all the risk to essential workers who have been providing this public good throughout the pandemic. If the workers and employers

covered by section 19B have been providing a social good to the community, then it is not unreasonable that they do not bear the increased risks and costs associated with providing those services.

But rather than repealing section 19B, the Government should have brought to Parliament a proposal whereby the costs for COVID-related workers compensation claims were borne by the whole scheme rather than by individual employers so that essential workers remain covered by the social contract we made with them all to keep turning up to serve our community throughout COVID and that individual employers who also provided those services were not required to bear the costs of increased workers comp premiums. Removing section 19B just puts all the risks onto essential low-paid workers who have served our community and is no thanks for the good they have provided to the community through these difficult times, and continue to provide.

The CHAIR: Thank you, Mr Smith. Ms Gatfield?

Mel GATFIELD: United Workers Union has a very diverse membership covering food production, warehousing, hospitality workers and people providing care for early education and also in-home care. I know that brevity is the key today so I would just reinforce everything that we have put in our submission and say that since we wrote our submission before Christmas the [audio malfunction] the rules have changed a lot for people providing these essential services. I can give you an example of our members working in early childhood education where they are providing a really important service so that other [audio malfunction] can go to work, and they could be at work all day. Working with young children, it is really hard to socially distance. With young children you need to provide that care, and then a child could have COVID but that is not deemed to be [audio malfunction] contacts.

[Audio malfunction] none of those protections that we have in place are [audio malfunction]. We really do not want to repeal 19B. We are very concerned about putting the burden onto this workforce. Again this essential workforce list that puts food onto the table and is providing care for our elderly and vulnerable are often migrant workers, casualised workers that do not have the access to other leave and good working conditions. I thank the Committee for this opportunity but I will leave it there, and I am happy to take any questions.

The CHAIR: Thanks, Ms Gatfield. Mr Webb?

Gavin WEBB: I would like to begin by thanking the Committee for the invitation to participate in the hearing today. I am attending in my capacity as the chief legal officer for Transport Workers' Union of New South Wales, and our State secretary, Richard Olsen, offers his apologies to the Committee for not being able to attend today. Like many other essential workers represented by other unions on the panel today, transport workers have been on the front line each and every day throughout the pandemic. But despite the critical role that they have played, the State and Federal governments have failed to recognise just how vital our transport workers are, and the bill we are here to discuss today is a prime example of that.

The Government's proposal to remove presumptive workers compensation protection for workers in the transport industry at a time when COVID case numbers remain extremely high is the clearest indication that this Government's attitude towards transport workers has not changed. While this Government seems happy to proceed with its let-it-rip approach to COVID and hoping that if they close their eyes for long enough COVID will just go away on its own, the reality is that COVID is still a major problem in the community, particularly the transport industry which we have all seen and experienced in the form of supermarket shortages over the past month or two.

Just towards the end of last year we saw an outbreak of COVID cases at a bus depot in Leichhardt where up to 200 workers were required to isolate and many of them contracted COVID. If the State Government had gotten its way, this bill would have already passed Parliament and workers such as these would have been left without any protection at all. The TWU urges the Committee to recommend that Parliament rejects the amendment bill, and I again thank the Committee for this opportunity and look forward to answering your questions.

The CHAIR: Thank you. Ms Lang?

Natalie LANG: Thank you for the opportunity to appear today before this Committee in this important inquiry. The Australian Services Union represents workers providing essential services in the water, transport, aviation, disability and community sector industries, including youth refugees and services, women's refugees and services, homelessness services, neighbourhood services and disability services. Providing close personal services, often in congregate living settings, to people who have suspected or confirmed cases of COVID-19 can absolutely be described as being on the front line of this pandemic.

Since making our submission to this inquiry, our members have experienced the full force of the Omicron outbreak. We undertook a survey of our members in early January and in just three days we received over 700 responses from members working in community and disability services. Nine per cent of those surveyed have contracted COVID since November 2021. Of those who contracted COVID, 27 per cent did not have access to

paid leave entitlements for their period of recovery. Also since making our submission, the New South Wales Government has significantly changed its approach to test, trace and isolate requirements. Without robust contact tracing how are workers to prove that the source of their infection is through work?

We have seen cases of workers being provided inadequate personal protective equipment [PPE], lack of access to rapid antigen tests for workers and clients and of workers not being informed by their employer that they are providing support to a person with a confirmed case of COVID. National Skills Commission data which mapped the occupational risk of exposure to COVID-19 considering both the frequency of exposure and proximity of exposure has shown that community and disability workers are all at high risk of frequent and close occupational exposure to COVID-19. They are a predominantly female, characteristically low paid and insecurely employed workforce with a high frequency of occupational exposure, and this bill will remove their presumed entitlement to workers compensation in the event of contracting COVID, leaving workers to try and prove their source of infection in an environment of suboptimal, or indeed DIY, contact tracing.

It is not surprising that nearly 30 per cent of workers in the community and disability sector have told us that they intend on leaving their job in the next 12 months. This presents a looming workforce crisis amongst a workforce that nobody in this room could disagree is an absolutely essential workforce funded by the Government to provide essential services to our communities most vulnerable on behalf of the Government. We strongly recommend that this proposed legislation should not be introduced and instead the Government should be introducing paid isolation leave for workers who are delivering these essential services. I welcome questions from the Committee.

The CHAIR: Thank you, Ms Lang. Ms Hayward?

Sherri HAYWARD: The CFMEU welcomes the opportunity to speak to this inquiry on the presumption. Not unlike the other unions here today, our members have not had the benefit of remote working during this pandemic. They have worked continuously for this State throughout the pandemic, helping to keep the economy moving. As evidenced by the witness statements attached to our submissions, our members are passionate about the presumption and the value it can provide. Just having the presumption in place has provided peace of mind for the workers, who in many cases are the sole or main providers for their families.

As outlined in our submissions, the case for repeal is not borne out in the evidence. In addition to the original projections being significantly inflated, when you compare the average cost per claim to the potential cost associated with disputing a claim, the numbers actually favour retaining the presumption. The case for repealing the presumption is unsound and unsupported. For workers in New South Wales to be hung out to dry on the back of flimsy statements and inaccurate reporting is disheartening and concerning. The workers compensation system deserves better. The workers represented here today deserve better. The workers that this profession supports have done and continue to do the heavy lifting throughout the pandemic at considerable risk to themselves and their families. It is our position that it should remain in place.

The CHAIR: Thank you all for those submissions. Before I hand to Mr Mookhey, I ask one opening question to all of you. Given, as you have indicated in your opening statements, the nature of the employment done by your members, if this bill passes, what happens to those people who still have to continue to work with the community, cannot work from home and are in precarious or casual employment and do not have sick leave? What happens to them if this bill does pass?

Sherri HAYWARD: Sherri for the CFMEU. We have a high incidence of casual and precarious employment in our industry and a real problem with sham arrangements. Those people who fall into those categories who happen to contract COVID will be left with nothing. The fact that they will not have access to sick leave or annual leave entitlements to use during that period, it is not unusual for us to get calls from partners and mothers and even in cases children concerned about the impact of COVID on their fathers and their mothers who are working in the industry. It will be a significant financial disadvantage to the majority of the construction industry not to have this presumption in place.

The CHAIR: Thank you. Anyone else?

Mel GATFIELD: Chair?

The CHAIR: Yes, Ms Gatfield?

Mel GATFIELD: I would just say that people would be devastated if this goes. The people that you refer to that work in hospitality and in child care, these are the backbone of the New South Wales economy. We need these people in these jobs, and if they are not able to get the protections here, what do they do? What happens is they end up getting pressured to go to work, they spread the virus further, not because they want to but because they cannot do anything else. We are hearing more and more of people being told, "Don't worry about that. Just

come back. Don't report it. Don't act on it." We need to make sure that people are safe. But the [audio malfunction] say that this is a huge cost burden and it is a cost burden that we in the community [audio malfunction] share.

The CHAIR: Mr Smith?

Bernie SMITH: The risk does not go away. One in five of our members has reported being spat on or coughed on during the pandemic. That is disgusting and vile, but it is a reality that our members face every day and they continue to face. The risk does not go away. If people contract COVID at work, they will either continue to work, as Ms Gatfield said, because they have no choice because they do not have leave entitlements or they will be out of pocket if they cannot steer their way through the complex arrangements that the Federal Government has in place in terms of providing social service benefits to people, or if they do get those benefits, then the Government will bear the cost anyway. We have to ask ourselves, should essential workers bear the cost of serving the community through the pandemic or should the community support those workers who have supported us through the pandemic? They are the only two options that we have before us really.

The CHAIR: Ms Lang?

Natalie LANG: If I can add, I would like to echo the comments in particular of Ms Gatfield with regard to the concerning driver that this may send workers back to work when they are unwell and further spread the virus. I would also like to note that, as I have previously referenced, 27 per cent of our members who have contracted COVID just since November have not had any paid leave entitlements for that period. We know that with our members high frequency of exposure, they are also having to isolate not necessarily just because of the confirmed case of COVID but because of being a close contact. It is a residential setting often that our members are working in, in close congregate living arrangements. Quite frequently our members would have already exhausted their leave entitlements through isolation periods before getting to the point of a future positive case of COVID-19.

I would also like to add that it is not a zero-sum game. Right now, the National Disability Insurance Scheme, by the Government's own data, has around 40 per cent casualised workforce. Both the New South Wales Government and the Federal Government are investing heavily in trying to attract workers into the National Disability Insurance Scheme as this is a workforce that we desperately need to grow to be able to provide essential services. It makes absolutely no sense that we would look at implementing a different initiative, which is currently before this Committee, which we know would lead to—it is 36 per cent of our members in the National Disability Insurance Scheme who are saying they are looking at leaving their job in the next 12 months. It makes no sense to invest on one side of the ledger to try to attract workers where we have a workforce shortage while at the other time taking an initiative that is driving skilled and experienced essential workers away from these essential service industries.

The Hon. DANIEL MOOKHEY: I might just pick up from there, Chair, as well, on the point that Ms Lang just raised about workers leaving the industry, and I just direct that to particularly the SDA and the TWU and the UWU. You all represent parts of our supply chain. What is the risk of repeal leading to retail workers, transport workers, warehouse workers leaving their jobs and therefore adding more pressure to our supply chain if they were to lose this presumption?

Gavin WEBB: I am happy to pick it up from there, Chair. Gavin Webb from TWU. Just echoing what all the other panellists have said earlier, it is no surprise that the same issues are present in the transport industry. The reality is that without government support, without access to workers compensation, without access to paid leave or without access to COVID leave—paid COVID leave has only been negotiated because of their representatives in their union—essential workers such as passenger transport workers and in particular bus drivers are left with what is an unenviable choice between staying home when they may have symptoms or getting tested and going to work and being able to earn a wage and put food on the table for their families and pay off their mortgages. It is an unenviable choice that no-one should have to face, and the amendments of this bill put those workers in that position when we should be doing everything possible to get them out of that position.

In terms of our supply chains and going to Mr Mookhey's question, we know with our discussions with bus companies in particular in the passenger transport industry, with which we are currently undertaking negotiations with new enterprise agreements across the entire industry, that there is a significant shortage already for bus drivers in the bus industry. That is without the complications and the pressures that the COVID pandemic has brought upon that industry. In circumstances where there is already a significant supply shortage of labour in that industry, removing the ability for people to know that they have a secure job to go to, particularly in a high-risk environment where the likelihood of catching COVID is significantly high, knowing that they do not have it, that they may [disorder]—

The Hon. DANIEL MOOKHEY: Thank you. Can I just ask Mr Smith and Ms Gatfield and Ms Hayward to respond. Is there a real risk that we are going to see workers leave the retail industry, the warehousing industry and construction industry if all of a sudden they lose access to workers compensation which is easy and accessible? Mr Smith you are on mute. Maybe Ms Gatfield can answer.

Bernie SMITH: There are two possible answers there in relation to that issue. I have already seen a lot of early retirements from people who have been lifelong retail workers who can no longer take the pressure that they are facing. We are seeing that as they see wound back the idea that they will be supported through the pandemic by the community. They have given a lot over the past two years. They have been called essential by everybody until it comes time to hand out the money. When it comes time to hand out the money and actually support them in a real concrete sense, they feel deserted by governments and by commissions and the like. There is a real frustration there and I am seeing long-term members of the retail industry leave the retail industry.

But the other side of it is, a lot of people cannot afford to leave no matter what and will continue to work with COVID, and I think that is the point that Ms Gatfield made earlier. You will see two things. You will see those who will leave an industry already suffering. You have seen the shortages in supermarkets across the January period. One in five retail workers was off at that period in time. In the supply chain it was 30 per cent of workers were off at that period of time, and so real pressures there. People are responding to those pressures and people are leaving the industry. But the alternative pressure is that those who cannot afford to leave will continue to work when they are ill because they do not have the protections in place to do otherwise.

The Hon. DANIEL MOOKHEY: Is that the same for Ms Gatfield's members and Ms Hayward's?

Mel GATFIELD: Yes, I would definitely reinforce that. What we are hearing from members in food production [audio malfunction] is that as the pressure on the supply chain grows, the pressure on the workforce grows. Safety systems that have been put in place have been discarded. Bubbles that were set up so that workers were working with a limited group of people have gone. People are being pressured to come in to do their shifts. [Audio malfunction] can find another job, they will go [audio malfunction]. I would also draw your attention to the early childhood sector. [Audio malfunction] of our members in early childhood and over 4,000 responses, and those workers are really looking to go. They provide care so that other people can go to work and do these jobs. I think that is a forgotten important part of this sector. We know [audio malfunction] they have had it, they want to get out.

Lastly, in hospitality, we are hearing from the hospitality sector that they are really struggling to find staff because people do not feel safe going to work. We have had reports from members that they have only heard about cases of colleagues from the colleague and that their employer is not providing a safe environment for them to work in. Hospitality workers are saying, "Hey, maybe this is not for me anymore. I do not feel safe here." I think there are key parts of the economy where people are moving on, if they can. Otherwise they are going to work and [audio malfunction].

Sherri HAYWARD: I would have to agree. Certainly our older more experienced tradesmen are making decisions to leave the industry earlier than they would initially have intended to. But what we are actually seeing is more of an impact on family. Those who remain in the industry with the COVID risk are seeing break-ups with their family because their partners do not want to be exposed. They do not want their carpenter husband bringing home COVID. Even if it is not affecting the workers themselves, it is certainly affecting their family relationships.

Mr DAVID SHOEBRIDGE: Thanks all for your evidence and also for your members' work. It has been essential. You have kept our food on the tables. You have kept the economy running. You have kept us all safe and looked after us when we have been unwell, and we should stand by you. Mr Smith, first of all I might put to you, are you aware that in fact section 19B contains within it the powers for the Government to make regulations to share the cost of any increase in insurance across all employers? There is a risk equalisation measure already in it so that the cost will be shared across all employers.

Bernie SMITH: I was not aware of that, Mr Shoebridge, but that is exactly what they should be putting in place so that the complaints of organisations like COSBOA of smaller retailers being concerned about increased costs could be met. That is another definite reason to keep section 19B in place and achieve the social good of spreading the cost across the whole community.

Mr DAVID SHOEBRIDGE: I would urge you to tell those employer groups if they are in your ear about this that they should get the Government to pass regulations under 19B (8) (c) and (d) of the Act and actually share the risk amongst all employers. If the Government has failed to act, you should urge those groups to get the Government to act. Are any other witnesses aware of that?

Sherri HAYWARD: Yes. It was raised during the regulation consultation but SIRA said they did not have time to consider the impact of that at that time.

Mr DAVID SHOEBRIDGE: When was SIRA saying that they did not have time to consider that?

Sherri HAYWARD: This was back when the presumption first passed. I was involved in the consultation around regulations, and the discussions were mostly focused on the effect of JobKeeper on PIAWE benefits and whether or not some testing requirements should be included in the regulations in terms of having tested it at a regular interval. When I raised the cost-sharing provisions at that time the people I was speaking to did not have the instructions to deal with that matter.

Mr DAVID SHOEBRIDGE: That was in the middle of 2020, Ms Hayward?

Sherri HAYWARD: Yes.

Mr DAVID SHOEBRIDGE: Since the middle of 2020 the Government has been sitting on and not moving to put in regulations to share the cost even though they have had the power. Is that your understanding, Ms Hayward?

Sherri HAYWARD: That is my understanding having looked at the regulations this morning.

Mr DAVID SHOEBRIDGE: All of your members represent people who are essential to keep the economy running and keep us safe, but you are outside of the health workers who are often seen as the focus for this. I might start with you, Mr Smith. How important is it that we have these protections in place so that your members can do what they do for the rest of society?

Bernie SMITH: It is absolutely vital, Mr Shoebridge. The reality is that low-paid retail workers cannot afford the risk. Karen from Castle Hill is out of pocket \$3,750 for serving her community until we get the decision of her insurer reversed, which we will. That is the reality. That is the cost that we are going to put onto low-paid workers who turned up on the darkest days of the pandemic and continue to turn up now at real risk to themselves and their families, and they cannot bear that cost. A large number of our members are casual; those members do not have any paid leave entitlements to rely on. A large number of members in some of the non-essential areas that shut down during the pandemic for periods of time have exhausted their leave arrangements, particularly under the previous JobKeeper scheme where employers could make people take their leave. These people have no reserves to fall back on and that means that they are at real risk in terms of being able to provide the essential service that we depend upon and that you have seen across January has been really stretched.

Mr DAVID SHOEBRIDGE: Ms Gatfield, when your members were told that they should go back to work if they have been exposed to people with COVID and that period was shortened, did you get any feedback about how vulnerable they felt?

Mel GATFIELD: Really concerned. They feel really concerned about their families. If they have to work, they are often working in more than one job so they are going to different sites and working with different people. They are really concerned about their co-workers. They are all trying to do the right thing, but those protections have gone. To your former question, I reinforce what Mr Smith said, but again in order for the health system to work as well as it has under such enormous pressure, we need all of these other services around it to support it. We need early childhood educators to look after the nurses' and doctors' children to make sure that they can go to work. I think we have to really think about what is an essential worker, and this last year has shown us that people that work in warehouses, people that are making our food, delivering our food and serving our food are really essential.

Mr DAVID SHOEBRIDGE: Ms Lang, your members without these protections, often surviving on lower wages than they should have—really pay cheque to pay cheque—there is a risk that they may force themselves to go to work and some of the clients they work with are particularly vulnerable. Can you expand on that?

Natalie LANG: Yes, absolutely, and thank you for the question. It is quite interesting that last year it was the Government that was saying on the basis that the people our members support that they are so vulnerable that it would be mandatory for all of our members to be vaccinated. They said, "You are supporting such vulnerable people; you absolutely must be vaccinated." That is the imperative. But then when it comes to removing a disincentive to workers remaining at home, not going to work when they are sick and putting vulnerable people at risk, suddenly it is not that essential and people are not that vulnerable that are being supported by our members by the Government's account. That is a real concern.

We have also seen real life cases of members who have contracted COVID, and that has actually been identified through the course of routine rapid antigen testing for the purposes of trying to remove the risk of COVID coming into workplaces. That member was an asymptomatic infection and the employer tried to deny them access to sick leave saying, "You are not sick because you do not have symptoms, but you are so sick that you are COVID positive and you cannot come to work." What we see here is a worker who is stuck between a

rock and a hard place. They are stuck in industrial disputation while being unwell, while worrying about their family contracting the virus, not being able to go to work and earn an income. Then, absolutely, that is going to put both the workers and the vulnerable people that they are supporting at significant risk of very bad health outcomes.

Also what we know, and what really concerns me, Mr Shoebridge, is the fact that we continuously hear daily about case numbers and about the terrible fatalities that we are seeing with this virus, and when we look at the breakdown that is provided to us by our leaders in government and by NSW Health, we are told as if it is supposed to give us some sense of comfort that those who have passed away because of this terrible virus had underlying health issues, for example, or were from an older segment of our community. Those are the very people who are being supported by our members. I would like to say, no, I do not take comfort from hearing that those who are passing away have underlying health issues. They are our most vulnerable people. They should be being supported, and the way to support them is to ensure that their direct care workers are able to ensure they are not going to work with any risk of transmitting the virus.

Mr DAVID SHOEBRIDGE: Ms Hayward, your members have kept working right throughout this pandemic, and are particularly essential for keeping food on the table and the rent paid for much of western and south-western Sydney during the lockdown. How do your members react to the Government's proposal to strip away their protections?

Sherri HAYWARD: To be frank, they are really annoyed and they are really mad about this. They have done the hard work. Out of everybody they were only locked down for two weeks. They were forced, from their perspective. They were among the first to have the vaccine mandate to allow them to go to work. There were strange controls put in place as to who should or should not be vaccinated in the construction industry, lockdown based on your area of concern or your LGA, and you could be working next to somebody who is not vaccinated but because you come from Bankstown you have to be vaccinated. To see them be treated in this manner by this Government is really disappointing to them and they are very angry about it. It is not usual for us to put witness statements in our submissions to parliamentary inquiries. The fact that our members wanted us to tell their stories just goes to show how passionate they are about keeping the presumption in place.

Mr DAVID SHOEBRIDGE: Finally, Mr Webb, do you see these COVID-19 protections as part of a series of measures put in place to ensure our supply chains are robust? Are they important in terms of supply chain security from your members' perspective?

Gavin WEBB: Yes. It is really important that workers know that they can go to work knowing that if they get sick at work, they will still get paid if they have to stay home, and removing these protections puts people in a very precarious position where they have felt they do not have a secure job. I think it was 20 per cent to 30 per cent of transport workers had to isolate during the peak of the Omicron wave, and if we saw similar numbers like that moving into the future in the transport industry, we will see again supermarkets without food on shelves, people not getting their deliveries on time, businesses not getting their deliveries on time and essential services such as hospitals not receiving deliveries on time either. It is essential that workers feel protected and they feel secure in the workplace knowing that if they go to work and get sick, they can still earn a living.

Mr DAVID SHOEBRIDGE: And 19B critically means that if those workers have symptoms, if they are concerned at all, they are encouraged to get tested and they are not fearful of losing their income. [Disorder].

Gavin WEBB: [Disorder]. That is 100 per cent correct and we have already seen examples of that in some of the major transport companies who have come to us in recent weeks trying to amend their COVID leave policies that we have negotiated with them because the cost is becoming too high for them. But they are essentially putting the burden back on the worker to make that unenviable choice that I referred to earlier between going to work and potentially putting themselves and other people at risk or working and earning a wage to put food on the table for their families.

The Hon. TAYLOR MARTIN: Just a moment ago Sherri Hayward said members want to tell their story. I just want to ask, are you aware of how many of your members have utilised this presumption so far?

Sherri HAYWARD: In terms of numbers it is very difficult because we have faced a situation where employers are refusing to make the claims. It has actually been quite a problematic situation for us where we tell workers what their rights are in relation to the presumption, they tell their employer, their employer says no and people do not want to lose their jobs so they do not fight the issue. The statements that are attached to our submission contain a few examples where we have been aware of six or seven people on site testing positive at one time. With the presumption in place there is less need for me to intervene so it is difficult for me to collect that data. But my biggest problem is—

The Hon. TAYLOR MARTIN: Okay. Any other members—

Sherri HAYWARD: [Disorder].

The Hon. TAYLOR MARTIN: Yes. Any other witnesses and their representative of their unions have any of that data? Mr Smith?

Bernie SMITH: Yes. Approximately 400-odd members in the retail industry made claims at the time that 19B was being proposed to be repealed. Also at that time, though, a lot of employers have had in place very generous leave provisions around isolation, and then if people did actually have COVID they were paying people special paid pandemic leave. A lot of those measures have been wound back which makes the need for 19B all the more vital now. As some employers find it harder to bear the costs that they did bear through the pandemic, it makes it more important that 19B is in place for the whole community to bear that cost, particularly if that regulation capacity is in there to cost-share, and I think that should reduce the concerns of some of the small employers who may have raised their concerns about it. I would expect those numbers to increase if 19B remains in place, but nowhere near the sort of estimates that were made by the Government at the time that 19B was proposed to be repealed. I think that the McKell Institute will be giving evidence later today, and they have put in a submission which indicates that it is at least half the costs at a maximum that was being proposed by the Government.

The Hon. TAYLOR MARTIN: Okay, and you say around 400 of your members. How many members do you represent in New South Wales?

Bernie SMITH: About 60,000.

The Hon. TAYLOR MARTIN: Sure. Anyone else want to pick up on how many of their members have used this presumption? No? Okay. Mr Smith you were just talking about the changing landscape and the changing support that has been provided from both the State and Federal government and, as you say, also from particular retailers making their own arrangements for leave. Would you like to make a comment about the change? These things were brought in when vaccination rates were either non-existent or very low. We now have rates in the mid-to-high nineties of vaccination. Do you have any comment about the impact that vaccination has had in the past eight months?

Bernie SMITH: I will go back a step and say that these measures were brought in place when it was evident that COVID-19 was a real threat to the community and that we needed essential workers who could not work from home to continue turning up to serve the community—if you like, paid workers.

The Hon. TAYLOR MARTIN: Yes.

Bernie SMITH: That being the reason why it is in place, I do not think the landscape has changed that much. In fact, Omicron has increased the transmissibility rate which means that we are seeing more people isolate in more recent times than we saw at the pre-vaccine period. That is not a comment on vaccination; that is a comment on just the changed variant that we see, and hopefully the vaccination rates mean that we are seeing a less severe impact on people in the long term.

But what we are seeing in the short term is actually higher rates of people being pushed out of work for a period of time and an increased concern among our members that they may get COVID at work and bring it home as well and so an increased desire from them, which we saw at the back end of last year, to have 19B remain in place as part of the social contract that was made with them to say that, "If you cannot work from home and you have to serve the community and you are a low-paid worker, don't worry, we will look after you."

But at the moment what they see is that social contract being broken with them at a time of peak transmissibility of COVID in our community. Low-paid workers across New South Wales are really concerned, Mr Martin. They are very concerned. Even if they have not had to call upon the COVID presumption, the fact that it was there gave them peace of mind that if they were putting their health at risk, at least they were not putting their families financial health at risk as they provide that service to the community.

The Hon. TAYLOR MARTIN: Okay. This is an open question for all witnesses here in front of us. Is anybody aware of any other States that have a similar presumption?

Sherri HAYWARD: With respect, I am not sure why that is relevant. If we did everything based on what other States did, government would never do anything. To me, New South Wales took a chance in moving ahead with this and it did so for the benefit of its population. That in itself is a good enough public policy reason to keep it in place regardless of what other States are doing. Other States did not do lockdown LGAs with strange vaccine mandate requirements. We still did it. It seems irrelevant to compare us to other States. If we wanted to go down that route, we are way behind in other areas in our workers comp system compared to other States.

The Hon. TAYLOR MARTIN: With respect, I do not think it is irrelevant. I think it is entirely relevant that States either work together, which has happened in the past two years, and for consistency sake as well. On that subject, are any of your affiliate unions in other States pushing for this presumption?

Sherri HAYWARD: They certainly are.

The Hon. SCOTT FARLOW: Can I just add in a sense why that is relevant and why it is relevant as a question because of course the State does have borders. There is competition between the States in terms of both for workforce and for business, and a lot of the concerns that we have heard have actually come about the different arrangements that operate in Victoria and Queensland in particular, as well as South Australia, border States and border communities that have actually raised this as a challenge for them in both businesses and businesses' survival—what has been a very difficult time and no doubt a difficult time for workers but also a very difficult time for businesses as they have navigated through the pandemic. It is actually relevant—

Mr DAVID SHOEBRIDGE: We are [disorder]—

The Hon. SCOTT FARLOW: It is actually relevant in terms of—

Mr DAVID SHOEBRIDGE: Point of order—

The Hon. SCOTT FARLOW: —what the other States position is—

The CHAIR: Sorry, Mr Farlow, there is a point of order, and I do hope we are getting to a question here. Mr Shoebridge?

The Hon. SCOTT FARLOW: My question is—

Mr DAVID SHOEBRIDGE: That is my point of order—that we get to a question.

The Hon. SCOTT FARLOW: Yes, and my question is on that point. Have you heard anything from your workers or businesses about the arrangements in other States and have you had any workers that have been saying that they want to go to other States because of the arrangements that they have there particularly? Because we have heard, certainly in our submissions from businesses, that there are plenty of businesses that have actually indicated because of these arrangements that they are looking at relocating to other States because it is too difficult to conduct the business in New South Wales because of section 19B.

Sherri HAYWARD: I can tell you that the members feel exactly the same way, and it is mostly because the New South Wales workers compensation system has its own flaws anyway. If we had had a system that did not have icare in place, if we had a system that protected workers at a better rate than it currently does, we would not need the presumption. If you look at Queensland, they have a State-based workers comp system which is run at a central point. They do not have an icare to deal with. To compare New South Wales to other States is not comparing apples and apples, it is comparing apples and pears, and they are two very different fruits. It does not make sense to consider benefits across schemes. Not every scheme has a work capacity decision system in place; we do in New South Wales. Not every system has a PIAWE system like ours; we do. To compare us to other States is really obscuring the issue here. At the end of the day, our system is completely different to everybody else which is why the [audio malfunction] presumption exists. [Audio malfunction] and if there is a proper [audio malfunction].

The CHAIR: Ms Lang?

Natalie LANG: The members that we represent work in not-for-profit community organisations that are funded by the New South Wales Government to deliver us [disorder]. Thank you. Our members work for not-for-profit non-government organisations delivering essential community services to the members of the New South Wales public. Our out-of-home care system is not going to pick up stumps and move and [audio malfunction] of workers compensation premiums. These are essential services. The Government has absolutely failed these workers by failing to implement paid test, trace and isolate and quarantine leave entitlements [audio malfunction] essential services to our most vulnerable.

To suggest that there is a competitive driver that will see our out-of-home care system, our [audio malfunction] pull up stumps and move interstate because of workers compensation premiums is completely ludicrous, and that is exactly what the Government is proposing in looking to repeal this presumption. These workers need this protection. They will continue to work in New South Wales. These services will continue to operate in New South Wales. The New South Wales Government will continue to need these services to be operated. The workers should not be picking up the bill when they go to work every single day guaranteeing a continuity of service that is so important to the New South Wales Government and putting their health and safety on the line for vulnerable members of the public who are the responsibility of the New South Wales Government.

The CHAIR: Mr Smith, you had your hand up.

Bernie SMITH: I am not aware of any retailer proposing to relocate their business out of New South Wales because of workers compensation costs outweigh any increased premiums even if they were to occur. The Government could take advantage of the regulation that Mr Shoebridge drew our attention to to cost equalise and significantly reduce or eliminate any cost impact to the businesses that were being thrown around late last year would have increased costs of potentially \$11,000. Karen from Castle Hill faced \$3,750 in her time off work if this was transferred to her as a personal risk rather than to the scheme as whole. I do not think that that is correct. In terms of comparisons, can I say that with the exception of section 19B, a worker in New South Wales would have been better off in 1926 under the very first workers comp Act than they are today. An injured retail worker today is worse off than an injured retail worker in 1926 with the exception only of section 19B. To keep 19B we have got one thing that is better for our members compared to other States, otherwise we are worse compared to all other States. [Audio malfunction].

Gavin WEBB: From the Transport Workers' Union's perspective, [audio malfunction] bus operator in New South Wales has told the New South Wales Government that it has considered relocating to upstate. [Audio malfunction].

The CHAIR: I do not think anyone can hear us.

Gavin WEBB: [Audio malfunction].

The CHAIR: I am not sure if we are still broadcasting from this room, but we—no. Will we just stop?

Gavin WEBB: [Audio malfunction].

The CHAIR: I do not think I can be heard, but this is now morning tea. That session has been completed, at least for Hansard's purposes, and we will take a break in proceedings until 10.50 a.m.

(The witnesses withdrew.)

(Short adjournment)

SHAY DEGUARA, Manager, Industrial Support, Public Service Association, affirmed and examined

ANGUS SKINNER, Research Manager, Police Association, affirmed and examined

JASON HART, Industrial Officer, Australian Rail Tram and Bus Industry Union NSW, affirmed and examined

NATASHA FLORES, Industrial Officer, WHS and Workers Compensation, Unions NSW, affirmed and examined

The CHAIR: Welcome to our next panel with our next group of witnesses. Thank you so much for your time today and for joining us, and thank you for the work that your members do. I will now invite each of you to make a brief opening statement, if you wish. Mr Hart, if you would like to start?

Jason HART: Thank you, Chair and Committee members. I acknowledge the Dharawal people as the traditional custodians of the country on whose lands that I am working and living in my home town of Towradgi on the South Coast, in the Illawarra. I pay my respects to the Elders past and present. I also extend my support to The Uluru Statement from the Heart in achieving true reconciliation, truth-telling and a permanent First Nations voice to Parliament.

Committee members, thank you for the opportunity to present our submissions today and to be witnessed in evidence for the proceedings on behalf of our members. Our members, as you would rightly understand, have been frontline workers throughout the pandemic and work across all areas of transport associated with rail, bus, tram and ferry transportation in New South Wales. It appears to me that, effectively, the Government's two principal contentions are that modelling based from the Doherty Institute indicates that there may be in excess of 25,000 workers compensation claims made with respect to COVID-19 injuries or illnesses contracted in the workplace. It seems to suggest also that that modelling indicates that could exceed in excess of \$638 million in the coming year.

I am reminded, Committee members, that in 2012 there were amendments made to the Workers Compensation Act by the then Liberal Government led by Premier Barry O'Farrell. The amendments were made on the back of a crisis declared with respect to the workers compensation scheme. The crisis was described in terms of a \$4.1 billion deficit that the scheme faced, and yet within the 12 months that followed the passage of the amendments to that Workers Compensation Act the scheme had reduced its revenues by granting employers more than 12.5 per cent in reduction in their premiums and then, suddenly, within the space of that same period, there was no longer a crisis declared with the scheme. It reminds me, similarly, of accounting methods used when we think about the Transport Asset Holding Entity and the controversy that surrounds that with the accounting methods that have been applied in denoting or describing particular crises in the public funding that is used to fund those entities.

What I would like to say is that the dramatic turnaround of the crisis in funding back in 2012 raised validity questions about the actuarial assumptions that underpinned the deficit. What happened though was the rapid recovery of the scheme's financial position was achieved through a dramatic reduction in the compensation that was provided to and allocated to injured workers. What we also can see through the attempt to repeal section 19B of the Workers Compensation Act is that it is similarly based on what I would say are flawed assumptions that there will be a blowout in costs associated with the scheme. We do not accept that that is a legitimate premise or basis on which the reduction or the repeal of the provision should be based.

It is clear to us, from modelling done by the McKell Institute in response to the Doherty Institute's figures, that in fact only 261 workers compensation claims were made up to 3 December last year for every 10,000 COVID cases, and of that number more than 10 per cent of those claims were rejected through the rebuttable presumptions that are contained in section 19B of the Act.

We also know, Chair, that the Australian Bureau of Statistics has indicated that the leading causes of death in Australia, as of December 2020, still remain ischemic heart disease as the number one leading cause of death, suicide is fifteenth ranked and thirty-eighth is COVID. I draw the Committee's attention to these figures because what we say is that the risk to the workers comp scheme with regards to any potential COVID workers compensation claims is negligible in the quantum of the scheme's purpose. What we would like to finish with is that the proposed amendments, if achieved, will only result in injured workers and their families being the net sum losers to a scheme that is not in crisis and does not require the passage of these amendments. Thank you.

The CHAIR: Thank you. Mr Skinner?

Angus SKINNER: Thank you. COVID-19 has created an unprecedented risk to everyone's health and as a necessity to protect ourselves and our loved ones we have spent much of the past two years working from home or altering our work procedures. Even today we are meeting remotely so as to not expose each other to that

risk. There is a cohort of workers to whom New South Wales said, "While we all change our work patterns to protect ourselves, in order for society to continue to function we need you to keep showing up to work, interacting with people face to face to keep them safe, to treat them when they are sick or ensure they have access to necessities. We need you to do this even if it exposes you and your family to COVID-19." As a small exchange for that selfless act that they have made, we made this promise to them: If you contract the disease that you are working so hard to protect us from, you will be looked after.

Now this bill proposes to take that protection away at a time when cases are higher than ever and the capacity for those workers to determine where they contracted COVID-19 is more difficult than ever. This is a great disappointment and we hope the Parliament makes the right decision. Our submission provided a case study of a police officer who had a terrible experience with COVID, who became extremely ill, was off work for a considerable amount of time and their life was put in danger. Our great fear is that it is precisely that type of member who would suffer those consequences but be unable to demonstrate that they contracted COVID at work, and that is what we are here to prevent today. Thank you.

The CHAIR: Thank you, Mr Skinner. Mr Deguara?

Shay DEGUARA: Thank you for the opportunity to present to the Committee today. I would also like to acknowledge the traditional owners of the land on which we all meet today. The effect of this bill, when read in the context of the current case numbers, the ineffectiveness of contract tracing and the inability of vaccinations to stop infections, is that individual workers and their families will be bearing the cost of the Government's management of this pandemic. These same workers were the first to get vaccinated and have been at the forefront of attending to our community needs by attending work throughout the pandemic for the last few years.

The PSA and its sister union, CPSU, represent workers affected by this amendment, including all but three of the prescribed categories in section 19B. These laws are needed in New South Wales because of the way that liability for injury is defined in the New South Wales workers compensation system. One of the changes that Mr Hart referred to in 2012 was an amendment to the definition of an injury—and I have put that inside our submission—and now requires only if employment was "the main contributing factor". There are people who are living on farms and going to work and getting COVID and isolating themselves from all other community things. They would find it very hard to prove that it is only because employment was the main contributing factor, even though they are isolating themselves from the rest of their communities.

Despite the cries of Chicken Little from the Government that COVID claims with section 19B would go through the roof, it appears to be in line with comparable claims data for other States' workers compensation systems, and that is probably because of that section 4. Our scheme also does not appear to be in line with a number of other States in relation to keeping track with other presumptive legislation in those States. We are several decades behind.

These essential workers have worked throughout the pandemic, recently had their requirement for isolation reduced—not because of COVID being less infectious but because of the shortage of people to undertake these critical roles, as many of them are infected and required to self-isolate. Unfortunately, many are also leaving. Also, many are being asked to turn up to work if they are positive for COVID because most of their work clients are also positive.

Close contact definitions have changed to focus on the household, but our members will spend sometimes multiple shifts with their clients in disability houses, in correctional and youth justice residential centres and in close contact in our schools, as well as in hospitals looking after clients. Despite the letter to parents on Monday from the Premier, social distancing is not possible in our school environments, especially for school support staff. Our workers often work in poorly ventilated workplaces, have an inability to socially distance due to the type of work that they do or the clients they service and are reliant on low-level effectiveness controls, such as masks, to keep them COVID-free at work. They cannot work from home.

Whilst the figures bandied around are questionable, as mentioned by Mr Hart, we know that the provision of special leave in the public sector has ensured safer workplaces as people have been more able and comfortable to remain at home if infectious, regardless of the employment status. We have had our fair share of infections across the sector, and despite a relative reduction in the share of cases over the Omicron phase, the age profile of our industry has seen our fair share of workers getting long COVID or other severe injuries. Surprisingly, PPE masks don't cut it to remove the risk. We have had relatively young and healthy workers get long-term lung issues, preventing them from being able to return to work or, if they do, function at well below 100 per cent, making it difficult to do even the most basic of tasks. Some workers, we have been told, who were infected last year are unlikely to ever make a return to work again.

There are many industries where casualisation is rife that workers will be enormously affected by these changes. The two fundamental issues that really affect our workers, in our context, are long COVID and return to work and job security. These are insured by section 19B liability. We are also now faced with many workplaces where the client base has COVID—such as disability, corrections, youth justice—where workers have had to make a decision every day on whether they attend work and put their family at risk of financial and long-term health effects.

The union is keen to preserve this provision, as the worker who gets COVID at work with presumptive liability has employment protections, has a right to return and also has the ability to get the necessary reasonable adjustments to the work to return to work and start the slow rehabilitation process. Without this, they are going to be on their own.

This is a real opportunity for the new Premier to govern for everyone and step in to actually support businesses and workers who are getting the State through this period by providing financial and capital support to the workers compensation system, just as Victoria has done to their scheme, to reduce the burden on those who have supported us. We recommend that you continue section 19B.

The CHAIR: Thank you. Ms Flores?

Natasha FLORES: I am going to keep this really short because most of what I was going to say has been said and our affiliates, obviously, are at the forefront of this with their members, so their experiences are lived experiences that are extremely valuable for the Committee to hear. I would like to thank the Committee for the opportunity to speak today. We have disputed the Government's forecasted blowout of costs. To date a small number of workers have accessed workers compensation through this system. Recent figures suggest that, despite the surge of Omicron, there are only 131 claims per every 10,000 COVID cases. Now that may be because workers understand that the workers compensation system is not an easy system, despite what some other submissions have suggested. The system is a difficult system and we have anecdotal reports from a union that I believe will be speaking later today that some workers who should be covered by section 19B are still having to run disputes. Some of them are gravely ill whilst doing this. One, in particular, was unconscious for quite some time and unable to fight the insurer because of this.

We believe that COVID-19 presents a global challenge unlike anything witnessed by any other generation post World War II and such unprecedented challenges cannot be times of austerity. The Government is able to inject funding into the system and share the financial risk and relieve the burden from businesses, as was the case in Victoria. The Government cannot remove public health orders and then expect workers, especially those who are casual or contractors, to be able to prove where they caught COVID, and they cannot leave these workers hanging on their own with no support whatsoever, no financial income. The spread of COVID will only continue if these workers are forced to go to work because they need to keep a roof over their head and food on the table.

The Victorian Government has demonstrated a scheme can be established to protect workers and support local businesses through modest injections of funds to the workers comp scheme, and we suggest this should be considered in New South Wales. It also means that workers should not have to choose between their health and putting food on the table and a roof over their head. I do recall at one stage we set the gold standard in New South Wales, so I believe that, given this, we should continue to set the gold standard and look after our workers and ensure that they are safe and are able to rest and recover if they do end up contracting COVID. I would also suggest that there are great benefits to the citizens of New South Wales if this is done because all citizens are at risk if our workers are not safe. I think that is all from me. Thank you.

The CHAIR: Thank you, very much, to all of you for that. We will now open it up to the Committee for questions. We will start with the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair. Can I first thank all the witnesses for their appearance and, of course, thank your members for the work that they do too. Can I just pick up where perhaps Ms Flores and Mr Deguara made a point about the Victorian Government's approach? We have heard this morning about comparisons between what New South Wales does and what Victoria does. Ms Flores, when you are referring to the support of the Victorian Government, are you referring to the grant the Victorian Government made which was \$550 million to WorkSafe Victoria for WorkSafe Victoria to absorb the cost of COVID claims without having any impact on premiums?

Natasha FLORES: Yes.

The Hon. DANIEL MOOKHEY: I think this was implemented by the Victorian Government on 30 June 2021 or thereabouts. Is that your recollection as well?

Natasha FLORES: Yes.

The Hon. DANIEL MOOKHEY: It is the case, is it not, that as a result of the Victorian Government's decision to put that money into their scheme they have not had to increase or adjust premiums whatsoever insofar as COVID-related costs?

Natasha FLORES: That is my understanding, yes.

The Hon. DANIEL MOOKHEY: Have you ever been given a reason why New South Wales has not done the same?

Natasha FLORES: Sorry?

The Hon. DANIEL MOOKHEY: Has anyone from the New South Wales Government ever given you a reason or an explanation as to why they have not done this?

Natasha FLORES: No. No, we do not get very much information from the New South Wales Government at all.

The Hon. DANIEL MOOKHEY: Can I now move to a second point here? Are you aware that in the half-year budget review last year the Government put aside \$7 billion for what they said was "COVID contingencies"?

Natasha FLORES: No, I am not.

The Hon. DANIEL MOOKHEY: Are any of the panel members aware that the New South Wales Government identified \$7 billion of money for COVID contingencies in the budget update that was given in December last year?

Angus SKINNER: Yes, I believe that was part of the budget estimates hearings in relation to initial forecasts on provisions such as this, but—

The Hon. DANIEL MOOKHEY: No, I am referring to the \$7 billion of money that they put aside in contingencies in the half-year budget update which was given on 16 December last year. Were you aware of that at all—that such money was put aside? No. Is it not the case that, given the Government has not described whatsoever what it intends to do with that money, that could be the way in which we could mimic what the Victorian Government does and therefore provide a presumption to our workers without any impact on premiums for New South Wales businesses?

Natasha FLORES: Absolutely.

The Hon. DANIEL MOOKHEY: Equally, are you aware that the existing regulation—as Mr Shoebridge has pointed out this morning—contains mechanisms to spread the cost across the scheme so that it is not located in only one insurer or any specialist insurer or any self-insurer? Are you aware of that?

Natasha FLORES: I am aware of that, yes. There is that provision under the regulation, yes.

The Hon. DANIEL MOOKHEY: And you are aware that the Government has not triggered that or tried to use it whatsoever?

Natasha FLORES: Not that I am aware of.

The Hon. DANIEL MOOKHEY: I might ask this specifically to the Police Association and to the PSA, and the RTBU—no offence, Ms Flores. What message does it send to your members that the New South Wales Government is taking away a presumption which will force your members to have to fight an insurer to get care if they get COVID where at the same time it has money put aside for COVID contingencies and it is choosing not to use it, and in doing so is breaking from a precedent that has been established by Victoria? What message does it send to your members to have to lose this presumption, knowing that the New South Wales Government has the money to pay for it?

Angus SKINNER: Our members are well-versed in hearing words calling them "heroes" or that their actions should be praised and that their efforts have gotten us through the pandemic, only for practical decisions to be made that are massively to disadvantage them. It is a real sense of disillusionment and disappointment when things like that occur and it is really disappointing for all our members when we hear words such as those examples in the submission but then, at the same time, a decision is made that will make it harder for them to access support when they are ill as a direct result of things that they are doing to protect the community. It is a significant cause of disillusionment and burnout at a time when they are already working very hard under very difficult circumstances.

The Hon. DANIEL MOOKHEY: Mr Deguara, you represent prison officers who have been involved in multiple lockdowns and sources of infection. What message does it send to them to have to lose this presumption, knowing the New South Wales Government has the money to pay for this presumption?

Shay DEGUARA: It is highly disappointing because often they will turn up to work knowing that there is COVID cases—there are quite a number of them today, we were told, in the MRRC. They will know that they are putting themselves and their families at risk by turning up to work. They are doing it really tough at the moment. There is a lot of unavailability of staff. They are doing double and some are even doing triple shifts, just to try and make sure that the inmates' welfare is maintained—going into hospitals, waiting there for days to look after the inmates. The same with youth justice as well. So they are highly disappointed and they are angry as well. They feel let down by that.

The Hon. DANIEL MOOKHEY: Mr Hart, do your members feel the same?

Jason HART: Thank you, Mr Mookhey. I just echo the sentiments of the other witnesses who have already responded to your question and, absolutely, our members would feel equally let down and disappointed. I note that the workers compensation scheme in New South Wales is no friend to an injured worker. There has been numerous instances—and all the affiliate unions would have numerous examples—of how difficult it is for injured workers to access the scheme outside the remit or the bounds of even COVID injuries. But we know from the changes in the 2012 amendments that workers' rights to entitlements under the workers comp scheme were stripped out, such that: they had capacity assessments that were imposed on them, they were removed from their workers compensation scheme after a period of 12 months, the introduction of a sliding scale of pre-injury average weekly earnings that gradually stepped down workers' entitlements on weekly payments.

There were delays in approval processes when it came to the insurers even authorising treatment, which in many instances had significant adverse impacts on injured workers to be able to get the necessary treatment. In some cases, injured workers were unable to get the necessary treatment and then, consequentially, ended up—in one instance that I am familiar with, went deaf because they had sustained an injury at work, got a hearing infection which then turned into an abscess, which then in turn, because of the delays of the insurer refusing treatment, the member suffered permanent deafness as a consequence of the delays. So, as I said, we would say that the workers comp scheme is no friend to an injured person in this State and any obstacles that are put in the way are just an anathema to justice and a fair go for injured workers.

The Hon. DANIEL MOOKHEY: Can I just—

The CHAIR: Sorry, we are at time. So, to the crossbench, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: Thanks, Chair. Thanks all, for your evidence and the work of your members. I want to go to you first, Mr Skinner. In terms of the work that your members have done over the last two years being on the frontend of the pandemic response, being placed there by the Government, when you speak to your members what is their response to the Government's plan to strip away these COVID protections?

Angus SKINNER: Well, it is a significant concern. As I said, our major fear is that there will be cases where someone cannot ascertain where they contracted the disease and are having considerable problems recovering, time off work. It caused terrible consequences to some of our members who spent significant time in treatment and that is really, frankly, scary for them—the concept that they would be left out of that protection as it currently applies to them. Our members have to work in circumstances where it is impossible to socially distance, where the effectiveness of PPE may be reduced. There are exemptions in place to request that they return to work despite isolation procedures that would have otherwise applied to them, meaning that they have to work amongst colleagues that would otherwise be isolating. It seems that on one side of the argument there is a willingness to expose them to an increased risk, to have people come out of isolation they would otherwise be in, but then at the other end of it the protections are removed despite the likelihood being increased. So it is really concerning when they have to go through that process.

Mr DAVID SHOEBRIDGE: Mr Hart, throughout this pandemic your members have turned up to work. They have kept us moving. They have done so at personal risk. How important were these section 19B COVID protections for your members, knowing they had to turn up to work and put themselves at risk?

Jason HART: Thank you, Mr Shoebridge. It is vitally important, it just goes without saying, that they are captured as part of the definition of what are essential workers with respect to section 19B of the Act. Without those protections it would be enormously difficult for a lot of people who are working either in insecure employment or are underemployed. I would go on to say that many of them are earning \$25 or \$30 an hour, which is not a large sum of money, and they are working in customer forward-facing roles—customer service upon platforms, on trains, on buses. So these protections—and notwithstanding my previous comments about the difficulty of accessing the workers comp scheme—are yet another assistance, a safety measure, to protect workers

who are vulnerable and who are attending and going to work every single day of the pandemic, particularly in light of the fact that the vaccinations were not available until mid last year.

PPE was not readily available or was actively discouraged for distribution amongst our members, bus drivers in particular, where we were told by particular relevant transport officers that the wearing of masks would in fact give people a false sense of confidence and that they were basically incubators of germs and that they would not protect people from the prevalence of the transmission of the virus—which we all now know to be a spurious assertion. But these were the difficulties our members were facing at the time to even have safety measures such as PPE or rapid antigen testing or PCR testing done as a safety measure in the workplace. So this limb in itself as a safety measure is vitally important and it needs to continue.

Mr DAVID SHOEBRIDGE: Does it work? What is the report back from your members about making a claim using the presumption compared to other claims?

Jason HART: We do not have the data on the number of claims that our members make.

Mr DAVID SHOEBRIDGE: I am not asking about numbers of claims, because that is probably SIRA's job. I am asking about how it actually works, using the presumption as against having to prove all the causation elements?

Jason HART: The presumptive elements in favour of the worker in this instance are, as I say, vitally important because it removes the onus on the worker to prove that the work was a significant or main contributing factor to the injury or illness.

Mr DAVID SHOEBRIDGE: Mr Skinner or Mr Deguara, do either of you have any reports from your members about whether or not it is easier or more efficient to make the claims using 19B?

Angus SKINNER: Yes. Our members still encounter obstacles; some inherent to the workers compensation claims process, some of them due to miscommunications or misunderstandings about the application of the presumption. So we still get circumstances where it does end up, in practice, being more difficult than it is meant to be. On the most part the claims process subject to the presumption is, in our experience, working as intended, which is that our members are not abusing the presumption. When they are aware that they were likely exposed off work they are disclosing that information and that is something that the employer is aware of. It is those cases where it is truly difficult to know where the exposure occurred and in all likelihood it was at work and it is people that need support, those are the cases where the presumption is making such a big, positive difference. So in our view the presumption is not being abused, it is not causing anymore claims experience than was intended and it is providing the protection that it was legislated to perform.

Mr DAVID SHOEBRIDGE: Mr Deguara, what are your members telling you?

Shay DEGUARA: Yes, it has helped and it has made for more speedy determinations, especially when people have needed it when they have been hospitalised and the like. It has helped, having that presumptive liability.

Mr DAVID SHOEBRIDGE: What do you make of the timing of the Government trying to remove these protections at the same time as it is forcing your members to go back to work with even shorter isolation periods? Have your members spoken to you about that—the timing of those two measures coming together?

Shay DEGUARA: Our members are very concerned. Some of them are considering using the work health and safety provisions to minimise their risk. I think that is one of the things which will make it even harder because there will be less people available to do the work. The work that the people do is really essential. You cannot leave disabled people in a group home by themselves. You cannot leave kids at school unattended. I think it is a really big problem. I know it has all been done by modelling but the problem with these models is that it seems to be taking it away at the time that we actually need it.

Mr DAVID SHOEBRIDGE: Mr Hart, your members are being told to go back to work with shorter isolation periods because they are essential workers, putting them at more risk and their co-workers at more risk, at the same time as the Government wants to take these protections away. What have your members said in response to that?

Jason HART: Thank you. The members obviously are quite concerned about this because of the truncated isolation periods and the risks of even further variants—from Delta through to Omicron and then who knows what will flow from the Omicron variations that we are hearing about—so they are deeply concerned about these changes.

Mr DAVID SHOEBRIDGE: Mr Skinner?

Angus SKINNER: The exemptions to the normal isolation procedures are by no means a get out of isolation free card. It is an unpleasant process. It is one our members are willing to do when it is required to perform the work and to meet the demand of their services to the State. But leaving isolation to go to work, it does not resolve any of the difficulties once you are off shift. You are back to work, it is hard to get your groceries, it is not like you are going and socialising. It is not a pleasant experience and it does cause angst to those that have to work with them if they do subsequently test positive and then the whole process starts for those that they might be a contact to. But in the context of the increasing case numbers over the last few months, whether the exposure was by that colleague is impossible to determine, so there is significant uncertainty.

The CHAIR: That is time for this section. It is the Government's time.

The Hon. SCOTT FARLOW: I might start off. We have talked about the Victorian scheme and the injection that the Victorian Government made into their scheme. Does Victoria have the same presumption that exists under the New South Wales Workers Compensation Act?

Angus SKINNER: My understanding—and I have to preface this by saying I am not an expert in any of the schemes outside of New South Wales—is that they do not have exactly the same presumption but their definition of a compensable disease contracted at work is a much more easy to demonstrate standard than in New South Wales. So while they are not one of the jurisdictions that specifically legislated a presumption that mirrors 19B, the process to demonstrate that evidentiary standard of "I contracted it at work" to the standard required by workers compensation is much easier than it would be in New South Wales if the presumption was not in New South Wales.

Shay DEGUARA: Yes, Mr Farlow, it is the changes in 2012 to the definition of injury that really made the difference as far as compared to other States.

Angus SKINNER: Yes, so I think the definition—

The Hon. SCOTT FARLOW: Would you be able to walk through what that looks like in comparison to New South Wales? Have you got that knowledge or is that something you could take on notice?

Shay DEGUARA: I will take it on notice.

The Hon. SCOTT FARLOW: That would be good. Thank you.

The CHAIR: There is—

The Hon. SCOTT FARLOW: Sorry, we are not taking questions on notice.

The CHAIR: No. Sorry—the time frame.

The Hon. SCOTT FARLOW: Okay.

Angus SKINNER: I believe it is to do with the definition that incorporates nature of the work, whereas our definition is much more narrow. But, again, I would have to preface that by saying I am not an expert in the Victorian system so I may be incorrect. But on my reading of their legislation, that definition encompasses more ways to demonstrate that are applicable to COVID-19 that would be far less difficult than ours and that provision—as we have said, we cannot take anything on notice but if you can look into the provisions of the nature of the work that are included in the Victorian Act I think you will find that that is the cause of why it would not be so great a challenge.

The Hon. SCOTT FARLOW: Thanks, Mr Skinner. That is helpful and I will look into that in Victoria as well. Are there any other presumptions that exist under the workers compensation scheme for any of your workers when it comes to infectious diseases?

Shay DEGUARA: We have got them for people in what was the old Department of Agriculture. They have got the brucellosis and the Q fever provisions. Some of the other States have it for avian flu as well. It is a bit of a mismatch around the country because New South Wales has not really updated their presumptive diseases as much as some of the other States have. So that is why in the Safe Work Australia guideline that you actually have a lot more diseases than are available in our part of the Workers Compensation Act. But, yes, there are a number of other ones in there already for zoonotic diseases, for example.

The Hon. SCOTT FARLOW: In the defined terms and defined categories of workers—okay. Thank you. I will hand you over to my colleague, Mr Martin.

The Hon. TAYLOR MARTIN: [Inaudible].

The CHAIR: Any other questions from the Government? Okay. We have got a couple of minutes before the next panel. Any other questions?

The Hon. DANIEL MOOKHEY: Yes.

The CHAIR: We have got one minute until the next panel.

The Hon. DANIEL MOOKHEY: That's good because my question is only for one minute. Mr Deguara and Mr Skinner and Mr Hart, your members are predominantly covered by the Treasury Managed Fund—certainly all police are, certainly all public servants are and Sydney Trains and NSW Trains are certainly covered by that. Is it the case that if this presumption was to move in respect to your members the actual employer that would be notionally saving money on premiums is in fact the New South Wales Government?

Angus SKINNER: Yes.

Shay DEGUARA: That is correct.

Jason HART: Equally, for the Rail Tram and Bus Industry Union that is also correct.

The Hon. DANIEL MOOKHEY: To the extent to which the Government is advancing this case that says by removing this presumption it is lowering premiums for employers, what it is not disclosing is that it is the main employer who is most likely to benefit from the removal of the presumption far more than any small businesses in New South Wales. Is that a fair statement to make?

Jason HART: I would agree with that.

Angus SKINNER: Yes, as far as it applies to our members. That is the extent of our knowledge so, yes, that statement would be true.

Shay DEGUARA: Yes and if you look at the SIRA data, even then we have reduced in our portion but it seems to be the large, self-insured employers who will be profiting more—and they seem to have profited quite a lot from the pandemic already.

The Hon. DANIEL MOOKHEY: So the beneficiaries of its removal are in fact the Treasury Managed Fund which is controlled by the NSW Treasury and the Treasurer, and the self-insurers of which I believe the two biggest are Woolworths and Coles—that's fair?

Shay DEGUARA: That is right.

The CHAIR: Thank you, very much. That is the end of the time for this panel. Thank you all for your attendance and thank you, I am sure on behalf of all of the Committee, to your members for the work that they do at all times and especially during this COVID period. You are excused and we will now join the next panel.

(The witnesses withdrew.)

CAROL MATTHEWS, Acting Secretary, Independent Education Union of Australia, NSW/ACT Branch, affirmed and examined

AMBER FLOHM, Senior Vice President, NSW Teachers Federation, affirmed and examined

The CHAIR: Just for everyone's information, we have one witness who has joined us so far and we are just having some trouble connecting the second witness. We will proceed and then when we can get the second one to join us we will swear them in. Ms Matthews, welcome and thank you for joining us today. You are now invited to make a short opening statement, if you wish.

Carol MATTHEWS: Thanks, very much. As indicated in the submission, we have over 30,000 members in New South Wales non-government schools, early learning centres and secondary colleges. Employment in all of these—certainly in preschools, early learning centres and schools—is face to face at the moment and it is prescribed employment for the purposes of section 19B. The educational staff in early learning centres and schools have been exempted from the isolation rules applying to household contacts and that was under the exemption—I think it was made on 28 January 2022. That seems to indicate that it is anticipated that there will be a higher risk of those people catching COVID and that their absence from—the combination of the number of cases of COVID and the isolation rules would make it impossible for preschools, early learning centres and schools to operate. So it seems to us that there has been a recognition by the Government that it is anticipated there will be a large number of cases in these sort of workplaces. That is certainly the academic and other predictions of everyone in the industry as well. We are anticipating a lot of cases in this sector.

It is really hard to maintain safety precautions that might exist in other industries in schools and early learning centres. I think it is well known that mask wearing would not normally occur amongst early learning centre children. It is not compulsory amongst primary-aged children, and distancing is very difficult. All schools have adopted a cohort approach to try and minimise contact between different students. But, of course, that is impossible in some situations. Small schools find it particularly difficult where everyone is the one cohort. Where students travel together on school buses obviously there is a lot of mingling. All of these things mean that, compared to some other workplaces, schools and early learning centres are less safe. Even in health services, where of course frontline health workers face enormous risks—even in that environment the patient is masked and the provider, the worker, is masked. In schools and early learning, particularly primary and early learning, that would not be the case necessarily.

Notwithstanding the fact that there has been a lot of illness amongst staff—or certainly some illness and more is anticipated with Omicron—in our view there have not been many workers compensation cases. We have had some informal discussions with employers in our industry and it seems like the number is very small. Employer organisations report that it is not an issue of concern for them. I note there has been no submission by any employer from the non-government education sector. AIG has some membership in early learning but they did not raise any issues about early learning centres. So we do not think employers are concerned about the workers comp issue. One large Catholic employer said, "You know, we're Catholic; we look after our staff. It's not an issue for us if people are making workers compensation claims. There's very few of them. But we don't have a concern about it." So whatever the main industry employer organisations might have put, we say that is not applicable to education and early learning. There is no concern in our sector.

I also say that the AIG submission refers to a report by Safe Work Australia about deemed diseases and whether COVID should be a disease where you are deemed to have caught it at work, as a national guideline. As I understand it, that recommendation is that that should be the case for frontline health workers. That report or list document was produced in December—no indication of whether that was before or after Omicron and no indication of whether there was any consideration of education. As I have indicated, staff in education in some ways have quite limited protection. Although, of course, we recognise that frontline health workers face enormous challenges, as do other frontline emergency services and other workers.

We are obviously seeking that the presumption be retained for all people that it currently covers, without a doubt. But, in particular, if the Committee was minded to look at separate industries, we say schools and early learning have clearly been recognised as different, the isolation rules do not apply in the same way and the presumption should continue to apply in these industries. Thanks.

The CHAIR: Thank you, Ms Matthews. Ms Flohm, you have joined us. We have sorted some technical difficulties—without jinxing you. You are also now welcome to make an opening statement, if you wish.

Amber FLOHM: Thanks, very much. Firstly, thank you to the Committee for the opportunity to contribute to the inquiry today, to appear as a witness and of course for taking the time to read our submission. At the outset, the federation indicates its strong opposition to the repealing of section 19B of the Act which removes

the presumption, unless the contrary is established, that the COVID-19 disease was contracted by the worker in the course of their employment.

The CHAIR: I think we have lost you. We have lost sound, if you just want to try that last bit again.

Amber FLOHM: Sure. Additional pressure—how is that?

The CHAIR: Yes, that is better.

Amber FLOHM: Great. Additional pressure applied on our members in the current context will exacerbate harm on an already very fragile workforce. It has the potential to lead to greater staffing shortages, which are already forecasted to worsen under the current Omicron strain and ultimately lead to further disruptions to the provision of education for our students, which none of us want. Much is made of keeping schools open and student learning continuing and there is no question that teachers, students and parents are on the same page when it comes to face to face teaching being everyone's preferred option. Of course, let's not forget that this is the *raison d'être* of the teaching profession: the advancement of students' educational and psychosocial outcomes.

But, for the record, the public school system has never been closed. We have remained operational throughout the last two years. As a system there has not been a time when teachers and principals have closed their doors of their schools, even at the height of the lockdown last year. We have always been open for our families and children of essential workers who have needed us. Teachers have always fronted up to their students and school communities, no matter what the circumstances, and they continue to do that. What they rightly expect from this Government in return for this commitment and dedication from our members, and as we move forward into the new school year, is support for our teachers in their endeavours by ensuring that they have the protections if and when they contract COVID-19 at work, without having to undertake lengthy administrative and potential legal processes to access workers compensation entitlements, which were previously a presumption through the course of their work. The federation urges this Committee to make an unambiguous recommendation in their report that this bill be defeated. Thank you.

The CHAIR: Thank you very much for that. We will now open it up for questions from the Committee. We will start with the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair. On this back-to-school week, can I thank you and convey my thanks and the thanks of my six-year-old to your members, as well. Can I ask first of the Teachers Federation and then the IEU—it is the case, is it not, that as students return each of them has to provide two negative rapid antigen test results per week to teachers in schools, in order to attend classrooms currently? Is it a government requirement?

Amber FLOHM: No, that is not a government requirement. It is voluntary for students, and there is no collection of the results of tests by schools being negative. Of course, if they are positive, then they need to be reported to the school and through the New South Wales services app, as is the case for the broader community.

The Hon. DANIEL MOOKHEY: The fact that such requirements exist, even in a voluntary capacity, is an admission that schools are likely to be a source of transmission and dispersion of COVID-19 currently.

Amber FLOHM: Certainly. We are hearing frequently from this Government, from the Premier, the education Minister, NSW Health and senior officials of the Department of Education. It is reported continuously throughout the media and through our schools that there will be, and I quote, an "uptick" of cases as a result of the return to school. That is why the federation's position is that we must go beyond the minimum requirements to ensure that everybody is safe—our teachers, other staff and students—when students return. We were told by the Premier just yesterday that there will be bumps along the way and it will not all be smooth sailing. "We are going to have a spike" is what our members are hearing from this Government, fuelled by students' return to school and the lagging booster rollout. That is what we hear.

The Hon. DANIEL MOOKHEY: How are your members—who are our teachers, the people who teach our children—feeling when the Premier is telling them that there is likely to be a surge to which they are exposed, yet at the same time the Government is trying to repeal the one law that at least gives them some confidence that if they get sick at work they will not have to battle an insurer to get the care that they deserve? How are your members reconciling these two pieces of information that are being given to them by this Government at the same time?

Amber FLOHM: Certainly they are not reconciling it at all. It is just another example of the incredible disrespect and contempt for the teaching profession and the role that they play in caring for and educating our young children and young adults. Of course our members are concerned, but they take their responsibility to educate public school students seriously. What they demand of government is the rightful protection when they do that work.

The Hon. DANIEL MOOKHEY: Ms Matthews, how do your members reconcile this advice that has been given by the Government to teachers in the independent sector—the risk of returning to school at the same time that they are losing the presumption?

Carol MATTHEWS: Look, they are also very concerned. Of course, the non-government sector is quite fragmented in comparison with the government sector. In relation to the protocols in place and guidelines and all of that, although most employers are following the Department of Education guidelines, it is not mandatory and not all employers follow those safe workplace guidelines in the same way. I would say that also causes a lot of concern for our members. The workplace is certainly perceived as unsafe. As you have said, by comparison, if this bill was passed they would no longer at least have that safety blanket of being able to make a workers compensation claim if they became seriously unwell as a result.

The Hon. DANIEL MOOKHEY: Ms Matthews and Ms Flohm, in your view, have your members been provided any information that would assist them in showing and proving that they contracted COVID at work? And do they have the time and the skills to be able to take on an insurer and prove that they contracted this disease as a result of a workplace transmission?

Amber FLOHM: Certainly from the Teachers Federation and the public school teacher workforce perspective, they certainly do not have the time. But what is worth noting is that in term four last year, under the Delta strain, there were over 500 schools—not 500 cases; many more than that—that were impacted as a result of cases. During that period there was one workers compensation claim accepted by this Government for public school teachers—one claim in a workforce of 70,000. What it suggests to us, of course, is that teachers are taking their own sick leave. They do not have guidance around workers compensation, and certainly we refute the cost to Government that has been put forward in relation to those claims.

The Hon. DANIEL MOOKHEY: Ms Flohm, your members are covered by the Treasury Managed Fund, which is controlled by the Treasurer and is funded by the New South Wales Government premiums. Is it the case that if the Government achieves what it says its objective this year, which is to lower premiums, at least as far as your members go, the actual employer who benefits from that is the New South Wales Government itself, is it not?

Amber FLOHM: Yes, that is correct.

The Hon. DANIEL MOOKHEY: So it is the case, is it not, that the New South Wales Government is, in effect, taking a protection off your members to effectively save the money that they would otherwise have to provide to the Treasury Managed Fund? Is that a fair statement?

Amber FLOHM: Yes, that is a very fair statement.

The Hon. DANIEL MOOKHEY: Ms Matthews, your members are predominantly insured, I think, by specialist insurance. Is it the case that the Government's failure to use section 19B and apply a levy across the entire scheme means that your employers are effectively denied the means of recouping the cost of COVID claims from the broader system that the Parliament originally intended? Is that fair?

Carol MATTHEWS: That is probably correct. But can I just say that, as I indicated before and consistent with the evidence that Ms Flohm just gave, we think there are very few cases in the sector and it is because of the difficulties of proof. That will be even worse this year compared to last year because of the cessation of contact tracing and genomic analysis. If there is no presumption, it will be almost impossible, I would imagine, for an employee to be successful with a claim. But the fact is that there have been very few claims, and I think that the evidence which was prepared by SIRA predicting a huge number of claims—I think that is total conjecture. Non-government education is a not insignificant part of the economy. If our employers are reporting that there are very few claims, I would really question the evidence that the SIRA analysis is based on.

Amber FLOHM: If I may, too, just supplement briefly: We know from the Gallop inquiry and the evidence presented before it that classroom teachers are spending on average 55 hours per week at work—58 for executive and 63 for principals. It does not really leave a lot of time for people to be contracting COVID outside of work. That is, of course, before the pandemic; they were the baseline workloads in 2020, before COVID-19 started to impact. It is also really important to note from the perspective of our casual teacher members that they have an evidentiary requirement that is quite distinct. They do not have access to sick leave, and so, therefore, the further protection of workers compensation for our casual teacher workforce is even more important. We note that the Government is relying heavily on our casual teacher workforce, in fact calling in retired teachers and university students who have yet to complete their studies to address what they are describing as "backfilling guidelines", recognising that there will be teachers sick. It is really important for those teachers not to be forgotten in relation to the provision of evidentiary requirements. Thank you.

The CHAIR: That's time. We are up to the crossbench. Mr Shoebridge?

Mr DAVID SHOEBRIDGE: Thank you both for your evidence and for the work of your members. Can you tell us what the feedback has been from your members as they have been going back into schools, last week for many of your members, Ms Matthews, and this week for most of your members, Ms Flohm? What have they been saying about their concerns about COVID?

Carol MATTHEWS: Look, there is a significant number of our members who would actually prefer schools to be closed. When I say "significant"—a significant minority. Everyone recognises the importance of schools, but I think people who have comorbidities or who have family members who are vulnerable are very nervous. There is no doubt at all about that. So, whilst absolutely recognising the importance of face-to-face teaching in schools, people are very nervous and anyone who has a susceptibility is probably more than nervous. It is a very stressful time. Often for teachers, the teacher may be the primary breadwinner in the family. Obviously if they become unwell that affects everybody, and there is the risk of long COVID. I think people are very worried about that extended absence from work, or worse.

Mr DAVID SHOEBRIDGE: Thanks, Ms Matthews. Ms Flohm?

Amber FLOHM: Thanks, Mr Shoebridge. Look, our members returned yesterday, face to face, not with the entire public school community. We are still staggering; some of our kinders and more senior students are not back yet. But it is important to note that our members have been on duty since last Friday, and what they have been doing is distributing the six million RAT tests that were distributed to schools but not into the hands of our parents and families. So certainly they have been focused on COVID throughout those two staff development days that are provided for teachers for professional development, and over the weekend—in many cases, our teachers and principals distributing those kits. But, that said—

Mr DAVID SHOEBRIDGE: I have witnessed firsthand, Ms Flohm, teachers doing basic distribution work of RAT tests, and I thank them for the work they did. I saw that myself—not teaching, but yet more admin. Ms Flohm?

Amber FLOHM: Thanks very much. Noted. In relation to the return yesterday, we are in a global pandemic. Nowhere in our community is totally safe, and that is why our role is to go beyond the minimum in terms of the provision of safety requirements for our teachers, for our students and for our broader public school communities. We have been pursuing that and continue to do so. That is the focus of our members: masks for all students of all ages in all settings and, of course, as Ms Matthews has mentioned, protection for our vulnerable workers, et cetera. That is what our members are focused on, but I will say that they do love teaching; that is why they are in the game. Of course, being back with their students is what they are there for.

Mr DAVID SHOEBRIDGE: The majority of teachers who have contacted my office in the last month or so have recognised how essential it is that they be back at school, if they can safely be back at school, and how important that is for their students and society. But they have been desperately concerned about the exposure to COVID and the risks that they face. How important is 19B to them at least having some level of protection when they face those risks, Ms Flohm?

Amber FLOHM: It is absolutely critical, given the context that I previously described around what we are being told by Government is an inevitability, in part, of transmission in schools. We only have to look around the world to see that. It is critical to providing not only physical safety, of course; the psychological impact of having that protection really cannot be understated. If we look at the most recent data of members' access to EAPs, the employee assistance program services, with 2019 as the base, there has been an increase of access to those hours by 37 per cent in 2020 and 60 per cent in 2021—COVID-related. That goes to the very point that you raise around impact under workers compensation, but also psychological, rather than just the physical, illness, which, of course, is also important.

Mr DAVID SHOEBRIDGE: Ms Matthews?

Carol MATTHEWS: Yes, I would totally agree with that. I think teachers are very anxious. I sometimes think that when union officials, politicians and bureaucrats are in their offices, which is socially distanced and has space around it and has a door on it that you can shut, it is just totally different from a school environment, where the teacher or the staff member is mingling constantly with other people. I think that makes people anxious. As Ms Flohm said, they are very keen to be back at work, but they are anxious. I think the security of knowing that if they catch COVID at work and if they get really sick they will have a backup and can make a workers compensation claim—I think that is really important for people.

Mr DAVID SHOEBRIDGE: What kind of message do you think it would be to your members if, right as they are being sent back to work with all of those risks—many of the kids are not vaccinated or not properly

vaccinated. What kind of message would it be from the Government to, at the same time, strip these workers compensation protections from your members? How would they receive that, Ms Matthews and Ms Flohm?

Carol MATTHEWS: Look, I think it would definitely be seen as contemptuous, insulting and simply not understanding how schools operate and what is happening there. It is a lack of contact with the day-to-day reality of schools, not to even mention early learning centres, where there are even greater risks. People are really, really nervous in early learning centres, absolutely.

Amber FLOHM: I would of course agree but add that it would be really disingenuous because we do hear platitudes from the Government about how much they thank teachers and the work of teachers. Well, as we say, actions speak much louder than words. If you really support the teaching profession and the work that they do for the future, our young people, our children and their ongoing outcomes in education and wellbeing, then you would put behind that the protections they need in order to do their work. It is one less thing for teachers to worry about in an environment where they are incredibly overwhelmed, incredibly overworked, concerned—as has been raised today—and unsure of the uncertainty of what the next few weeks and months will bring without contact tracing and other measures that Ms Matthews referred to. It is at very little cost to Government in terms of the financial budget.

Mr DAVID SHOEBRIDGE: Ms Flohm, you are very appropriately reminding me of my high school motto, which was "gesta non verba"—actions, not words—and that is what you want from the Government. Is that right?

Amber FLOHM: Absolutely, and it is what our teachers instil in our students every day.

The CHAIR: Mr Shoebridge, do you have any other questions? Otherwise, there are 20 seconds left and it is Government's time. Does the Government have any questions?

The Hon. TAYLOR MARTIN: Chair, I am just having trouble with my link. I cannot get the video to work, but I can ask questions without video, if that is alright with everybody?

The CHAIR: Yes, that's fine. We will see what we can do, but you are welcome to ask questions this way.

The Hon. TAYLOR MARTIN: Thank you. Ms Flohm, earlier I picked up that you mentioned there was one claim accepted. Do you have any idea of how many claims were made?

Amber FLOHM: You would have to ask the Government that question—how many claims they rejected. We are not privy to that information.

The Hon. TAYLOR MARTIN: Yes, but I am just asking how many of your members made a claim.

Amber FLOHM: We do not have overall statistics on how many claims were made. All we know from the Department of Education is the number which they have accepted. What we do know, as I previously stated, is that our members have taken their own sick leave as a result of them contracting COVID through their work. That has been what they have done in the vast majority of cases, and the Government is aware of that. Their sick leave statistics would show that.

The Hon. TAYLOR MARTIN: But surely, as the union, you would have an idea of how many members have come to you seeking support and assistance for these matters? No?

Amber FLOHM: Certainly we do. What I stated was that we are aware of one accepted claim. We have not been inundated by workers compensation claims by our members. They have taken their own sick leave.

The Hon. TAYLOR MARTIN: Okay, understood. Thank you. Ms Matthews, do you have anything to add on the matter?

Carol MATTHEWS: I would agree with what Ms Flohm has said generally, which is that members have taken their own sick leave. Our members do not routinely contact us if they make a workers compensation claim. We only become involved if the claim is disputed and if they choose to come to us, so we do not have any idea of the overall number. But we understand just from some informal discussions we have had with employers that the total number would be minuscule, probably. I would say that it may well be that there will be more people making claims, because it may be that people have taken quite a lot of personal/carer's leave last year and there may be further absences—not just personal/carer's leave because they have been ill themselves, but because they have been caring for a family member who has been ill. The longer the crisis goes on, given that schools are such frontline environments, one would anticipate that teachers would be taking more personal/carer's leave; therefore, if that leave is exhausted, they would almost certainly make a workers compensation claim in those circumstances.

The Hon. TAYLOR MARTIN: Alright, thank you. Are either of you aware of any similar presumption or any similar circumstance that exists for other diseases?

Amber FLOHM: Yes. Our members have always been able to claim workers compensation as a result of other infectious diseases in schools, such as chickenpox or anything else.

The Hon. TAYLOR MARTIN: Alright. And are any of you aware—

Mr DAVID SHOEBRIDGE: There are cancers in Victoria, too. Occupational cancers are deemed to be work related for people who work near fire—firefighters and the like.

The Hon. TAYLOR MARTIN: Yes. Are any of you aware of similar situations in other States that your affiliate unions are facing? Are there any similar circumstances that you can shed light on, or is it very similar to New South Wales?

Amber FLOHM: I am not across the national legislation in relation to workers compensation. I am sorry.

The Hon. TAYLOR MARTIN: Alright. Ms Matthews?

Carol MATTHEWS: Look, I am aware that traditionally in Victoria there have been a large number of deemed diseases. I am assuming that COVID has not yet reached that status; I really do not know. Of course, Victoria is a little different in that the schools were closed for much longer in Victoria. So I think the COVID cases amongst staff would be correspondingly less, but no doubt they will be having a similar experience this year.

The Hon. TAYLOR MARTIN: Thank you. I appreciate it.

The CHAIR: Any other questions from the Government?

The Hon. TAYLOR MARTIN: I don't think so, at this point in time.

The CHAIR: That's fine. Are there any other questions from anybody else? We have a couple of minutes. Otherwise, thank you very much to both of our witnesses in this panel. We really appreciate your attendance today. Thank you again—on behalf of the Committee, I am sure—for the work that your members do at all times. Good luck with the first week back this week. Thank you for your time. You are excused. For everybody else, we will now take a lunch break and we will return for the afternoon session of the hearing at 1.00 p.m. Just a reminder for those who are participating at home: Switch off your computers, cameras, microphones, et cetera.

(The witnesses withdrew.)

(Luncheon adjournment)

BEN DAVIES, Director, Workplace and Corporate Governance Policy, Business Council of Australia, sworn and examined

DAVID HARDING, Executive Director, Policy and Advocacy, Business NSW, sworn and examined

ALEXI BOYD, CEO, Council of Small Business Organisations Australia, affirmed and examined

TRACEY BROWNE, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, affirmed and examined

The CHAIR: Welcome back, everybody, to this afternoon's session of this inquiry into the workers compensation legislation. We have a business panel this afternoon. I will now invite each of you to make a brief opening statement, if you wish. Mr Harding?

David HARDING: Thank you and, again, good afternoon. I would like to make a brief opening statement and then take questions afterwards. Business NSW welcomes the opportunity to make a submission to the New South Wales Legislative Council Portfolio Committee No. 1 – Premier and Finance inquiry into the Workers Compensation Amendment Bill 2021. As New South Wales' peak business organisation, Business NSW has more than 40,000 member businesses across New South Wales. We work with businesses spanning across all industry sectors, including small, medium and large enterprises. We operate throughout a network in metropolitan and regional New South Wales, and we represent the needs of businesses at a local, State and Federal level. Sydney Business Chamber—or Sydney's Chamber of Commerce, as it was originally known—is Australia's second-oldest company. In 1912 we set up an insurance company which was instrumental in establishing the New South Wales workers compensation scheme. Therefore, we have retained a keen and supportive interest in the progress of New South Wales workers compensation ever since.

As we know, the question we are answering today is: Should section 19B, which was inserted in May 2020, be repealed? I would briefly like the indulgence to go back to a couple of first principles. First of all, the New South Wales compensation scheme is a statutory trust to be used primarily to pay for the cost of a worker's injury, which must first of all be a diagnosed injury and have causation in having a close connection to the place of work. Section 19B was inserted into the legislation in May 2020. It was contained in a suite of emergency measures bills debated before Parliament in early 2020, but at that time very little was known about COVID-19 and a vaccine, if it did exist, was not approved. Having a broad presumption in favour of certain types of workers, should they contract COVID-19 as they continued to work when others were in lockdown, was broadly appropriate at that time. But COVID in February 2022 is a very different situation than COVID in May 2020.

The close connection between contracting COVID and the worker's employment no longer firmly exists. As we transition from a pandemic to COVID-19 being, in part, endemic, much of the population will be exposed to the virus in social and private settings. This has been borne out by recent events, and 19B now sets an unrealistic and unworkable precedent with regards to a freely circulating virus in all of our communities. A public health issue normally requires a solution or solutions paid for by public health, and Business NSW believes attention should now turn to investigate how that might sensibly happen. In this COVID operating environment, Business NSW's focus is certainly on how to find the best solution for a public health issue. Our focus is on identifying and prosecuting the best solutions for businesses to keep their doors open and their workers in gainful employment. Our own business condition surveys throughout this pandemic have clearly shown in painful detail where significant financial strains are bearing on our members, their businesses, their families and their mental health.

In addition to the huge strains of the pandemic and the shortage of customers and staff, 60 per cent of our customers report rising insurant health costs as the foremost cost issue. Only the week before last, 40 per cent of our members reported that their cash flow was only to last another three months. Whilst the original intent of section 19B was laudable and may well have been appropriate at the time, it is now in conflict, we believe, with the very purpose of our statutory trust. The trust is considered to be the inappropriate vehicle, inappropriate to carry the cost and risk of living alongside COVID. We hold that 19B puts an unfair burden of a public health crisis onto the ledgers of our most vulnerable New South Wales entrepreneurs, of whom we as a community should be supportive and proud. Thank you, Chair. I am happy to take any questions.

The CHAIR: Thanks, Mr Harding. We will just take some other opening statements. There is that echo again. Can I ask if anyone else is streaming or listening to this on any other devices, can you not? When you are not speaking, can you mute? Let's see if that is any better. Yes. Okay, Ms Boyd?

Alexi BOYD: Good afternoon, everyone. The Council of Small Business Organisations Australia thanks the council for the opportunity to make this statement to the New South Wales Legislative Council and appreciates your willingness to receive input from a broad range of stakeholders with respect to the bill. We are pleased to

provide a submission on behalf of our national industry association members and small-business people in New South Wales. For background, COSBOA is the peak body representing the interest of small business. Collectively our members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia. As a collaboration of peak organisations across a wide range of industries, we acknowledge that small-sized enterprises are major contributors to the Australian economy.

We believe that section 19B is no longer fit for purpose. When it was implemented, there was little understanding of the impact of viruses. There were no vaccines, no support for workers. But we are now living at a stage in the virus where the presence is evolving to be endemic within the community, and small businesses, like everyone else, need to learn to live with its presence. It is not the right mechanism to compensate workers who fall ill with COVID-19. We suggest a State-based mechanism similar to the COVID pandemic leave disaster payment would be better to support those who require support during extended periods of sick leave as a result of contracting the virus. The workers compensation system was not designed to offset losses caused by a virus that is likely to become endemic—one that people can catch everywhere when they are doing anything.

Since workers compensation is compulsory, employers count it towards the total cost of employing someone. If they have to spend more money on insurance, they will spend less on wages; therefore, they might reduce the number of people that they employ. They might have no choice but to employ fewer people. Small businesses are already concerned about the accumulating liability of leave. The requirements around this amendment to workers comp adds to this confusion. Whilst currently hyper-conscious of their obligations, small businesses do not have the HR departments of big business to fully understand and implement correctly, amongst all the other changes, the requirements that come with this bill. Since the beginning of the pandemic, small businesses have been bending over backwards to protect their workers, their workplace, themselves and their communities, but to expect small businesses to continue to wear additional costs through a concern around increased premiums of workers compensation is simply unfair.

Considering the workplace health and safety measures small businesses have undertaken, sometimes at a great expense, the assumption that the virus is definitely contracted in the workplace is neither fair nor equitable. Additionally, COSBOA is concerned that there is a potential for younger employees to be considered more likely to catch COVID out in the community, simply by their everyday activities, and therefore considered a greater risk to the employer. This may disincentivise their employment for that reason. Another concern for small businesses is that it potentially exposes small-business owners to litigation; that is, being held vicariously liable for harm caused to a third person who has been shown to be infected by a worker who has been deemed to have contracted COVID in the workplace. All of these things are very difficult for small businesses to unpack, particularly in the environment in which they are working at the moment.

An employer cannot be held liable for every aspect of an individual's behaviour when it is about the individual's health. An employer should have a COVID-safe plan in place but cannot be responsible for every possible infection in or out of the workplace. We understand that the presumption was created with good intentions at the time, but the maintenance of this provision is no longer in the public interest. Using the workplace compensation system to offset losses that are created by a virus is neither fair nor reasonable for small businesses. Workers compensation is designed to compensate employees for injuries arising from workplace accidents only. For this reason, we request that the bill is repealed. Thank you.

The CHAIR: Thank you, Ms Boyd. Mr Davies?

Ben DAVIES: Thank you. The Business Council of Australia strongly supports the bill and urges the Legislative Council to pass it as soon as possible, in order to remove the current COVID-19 deeming provisions as they apply to private sector businesses. There are three key points that I wish to emphasise. First, throughout a pandemic that has impacted all of Australia, New South Wales is the only State or Territory that has enacted such deeming provisions. Second, it is simply incorrect to assert that the bill will remove rights to workers compensation for employees who contract COVID-19 at work. This is a complete falsehood. Rather, the removal of these provisions will see New South Wales workers entitled to the same compensation protections as those in every other State and Territory in Australia. Third, the current legislation is imposing an unprecedented burden on New South Wales businesses due to the sheer amount of mandatory notifications and claims they have to make for workers who are eligible, most of whom do not even wish to receive workers compensation.

The amendment to introduce the deeming provisions was passed during the first COVID lockdown, in April 2020, when most workers could not attend work and those who could were exposed to higher risks. Whilst the rationale was understandable then, it is clearly not valid now. We now have sufficient evidence to show that it is clearly the wrong policy moving forward. To take one example of a typical national business that is a member of the BCA, in the first three weeks of January 2022 it had as many workers compensation claims in New South Wales as it would typically have in a whole year. During the same period, this business did not receive a single

workers compensation claim for COVID-19 anywhere else in Australia. The current legislation requires a business to notify workers and initiate a claim within seven days of becoming aware they have tested positive. In the same business, over 80 per cent of those workers who had claims initiated indicated that they did not wish to receive workers compensation because they knew they had not got the virus at work.

In addition, the current legislation provides that an employee need only work a single shift in the previous 21 days to be eligible. A casual worker could work one shift and then attend an unlimited number of exposure sites on the 20 other days, yet still be eligible for workers compensation. By any measure, this now represents a clear public policy failure. Retaining the status quo is simply not a responsible option. I also emphasise that the full impact has not yet been felt. The consequences are yet to fully flow through to increases in workers compensation premiums and liquidity pressure on private insurance arrangements. There will be a further lag of several months before these impacts start to bite. If the bill is not passed as a matter of urgency, these impacts will cause even more damage to businesses. Very importantly, the rights of employees who genuinely require workers compensation will continue to be protected once the bill has passed. I look forward to questions.

The CHAIR: Thank you. Ms Browne?

Tracey BROWNE: Thank you. Australian Industry Group welcomes the opportunity to make a submission. We have nothing further to add since we made that submission, so we will not be making an opening statement. I hope that the answers we provide to questions from the Committee will assist in your deliberations.

The CHAIR: Great. Thank you very much. I will now open it up to the Committee for questions. We will start with the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair, and thank you to all the representatives of all the organisations for your submissions. Equally, thank you for the work that your members do. I cannot help but feel that Mr Harding might be having some connection issues.

David HARDING: Chair, I do not have any sound from Mr Mookhey.

The CHAIR: Okay. Let's see what we can do with that—and I have an echo again.

The Hon. DANIEL MOOKHEY: I think Mr Harding might be echoing and might not be hearing, so he might be able to hear you but not me.

The CHAIR: Yes. Can you hear me, Mr Harding?

David HARDING: I can hear you loud and clear, Chair.

The CHAIR: Just not Mr Mookhey.

David HARDING: Correct.

Mr DAVID SHOEBRIDGE: I can hear you, Daniel.

The CHAIR: And everyone else can. They are nodding. I am not an IT person; I have no idea what to suggest. Did you want to jump out and come back in?

David HARDING: I will try the Marconi fix and come back in.

The Hon. DANIEL MOOKHEY: I might ask, therefore, perhaps first to the AIG and then to COSBOA—and then when we get Business NSW back, because it is a very specific to New South Wales question. It is the case, is it not, Ms Browne, that premiums for the Nominal Insurer are currently rising this year? Is that correct?

Tracey BROWNE: It is my understanding that that is the case, yes.

The Hon. DANIEL MOOKHEY: And that they are also due to rise next year—as in, the filing that is being put in by icare to SIRA to commence by April or May would also contain a 2.6 per cent premium increase. Is that fair?

Tracey BROWNE: That is what we are expecting to see, yes.

The Hon. DANIEL MOOKHEY: And it is the case, is it not, that over the next seven years premiums in New South Wales for the Nominal Insurer will rise by a cumulative 26 per cent? Is that not the case?

Tracey BROWNE: I could not comment specifically on that.

The Hon. DANIEL MOOKHEY: Okay. Well, it has been reported—I think we learnt that through an inquiry that we did at the end of last year—that premiums in New South Wales that will be paid for by businesses

will rise 26 per cent as a result of icare's poor return-to-work performance. Is that, broadly speaking, in keeping with what you expected?

Tracey BROWNE: The numbers I am not sure about, but definitely the concerns about return-to-work experience—yes.

The Hon. DANIEL MOOKHEY: And that is irrespective of what happens with this presumption. Are you aware of that? Mr Harding is echoing again.

The CHAIR: This isn't going to work for Hansard. Mr Harding, have you only got one appliance on? You're not listening to this from a phone and a computer at the same time?

David HARDING: No, just one, Chair.

The CHAIR: Okay. Can we ask you to mute? Hang on; I will just ask the IT people. Do you have headphones that you can use? That might help. You do not?

David HARDING: I can hear you loud and clear, Chair. When I just came back in, I could hear Mr Mookhey.

The CHAIR: Yeah, that's great. We're just getting an echo, which is going to make this difficult.

UNIDENTIFIED: I think if Mr Harding stays just on mute, perhaps, that might be the best strategy.

The CHAIR: I think so, because we have Hansard to record, as well, so we have to make sure it is accurate. Mr Harding, if you can mute, then when it is time for you to answer a question we will do the best we can. Thank you. Let's continue.

The Hon. DANIEL MOOKHEY: Sorry, Chair. I don't know how much time I have left as a result. The point is that, regardless of what happens with this presumption, it is the case, is it not, that New South Wales businesses are facing a massive hike in premiums, which is far more to do with icare's performance than it is to do with this presumption? Is that fair?

Tracey BROWNE: There is definitely a concern about premium increases, and there is a lot of discussion about return-to-work activity, yes.

The Hon. DANIEL MOOKHEY: Thank you. So, in such a circumstance where a repeal of this presumption will not deliver what businesses are seeking, which is lower premiums, is there any reason why New South Wales should not be looking at what Victoria did when the Victorian Government provided a \$550 million injection into their workers comp scheme in order to mitigate the impact on premiums, which I think was a move that was welcomed by your organisations in Victoria? I think the AIG welcomed the \$550 million injection from the Victorian Government. Is that fair?

Tracey BROWNE: We definitely would welcome that. In our submissions in relation to the cost-sharing inquiry or consultation that SIRA initiated, we did raise there that an alternative to cost sharing across all of businesses was to find an option for the cost to be covered by the Government, by the community, and not for the cost of the public health issue to be dealt with by businesses, many of whom were actually required to be closed during significant parts of the—

The Hon. DANIEL MOOKHEY: That is also the point Business NSW was making, which is that we should not be causing business to have to internalise these costs either. As I understand it, Mr Harding—I do not know if you can comment, as a result of your technical issues—your Victorian counterpart organisation also welcomed the additional \$550 million for the Victorian workers comp scheme. Is there any reason why we shouldn't be doing that in New South Wales?

David HARDING: Mr Mookhey, we would welcome anything to make sure that there weren't increases in premiums or any decrease in the benefits. The exact detail of what has happened in Victoria is beyond my immediate knowledge, but I would encourage anything that keeps premiums to level, increases benefits and maintains and increases the efficiency of icare for us and all members.

The Hon. DANIEL MOOKHEY: Ms Boyd, I think your Victorian counterpart branch may have also had some role in convincing the Victorian Government to provide an additional \$550 million into their workers compensation scheme. Would that not alleviate the concern that your members might have about the premium impact of this presumption, if the New South Wales Government was to mimic Victoria's policy here?

Alexi BOYD: I do not know what you mean by COSBOA's branch. We are a Federal body only. We do not have branches in States, so I am unable to comment—

The Hon. DANIEL MOOKHEY: Sorry, I may be wrong.

Alexi BOYD: I am unable to comment about—I am unaware of any specific submissions, at this stage, that we may have made in relation to any Victorian counterpart measures. But, just to echo what the other business associations have said, aren't we looking to make sure that we do not see any additional unnecessary increase to premiums?

The Hon. DANIEL MOOKHEY: Indeed, and I guess the question is—that can be achieved by one of two ways. One is removing a benefit or a presumption; two, providing an additional injection of funds into the scheme, which is what Victoria did, which, as a result, meant that Victoria did not have to increase its premiums. Now, given that I have somewhat limited time, which I think is even more limited—I am not sure if the business organisations are aware but, in the half-year budget review that was issued on 16 December, the Government set aside \$7 billion for COVID contingency. It is not explained as to how that money is being used whatsoever; in fact, the \$7 billion contingency fund that they established is almost triple the size of what New South Wales had to pay for JobSaver. Is there any reason why we shouldn't be using some of that money to cover any impact that may result as a result of this presumption?

Alexi BOYD: Daniel, is that directed to me? Who are you directing the question to?

The Hon. DANIEL MOOKHEY: I am asking that to all of the business groups, but I am happy to have any question—whoever wishes to take the lead. Ms Boyd, you seemed to volunteer. Is there any particular reason why we shouldn't be encouraging the New South Wales Government—if they are not willing to use the recovery mechanism that is already in place in terms of the regulation, why shouldn't the New South Wales Government be using some of this COVID contingency money to deal with any premium impact, if it is to result whatsoever from this presumption?

Alexi BOYD: It has been COSBOA's stance since the beginning of the pandemic that we need to have tailored support and that we need multiple ways of alleviating the concerns and the costs to small business, so we would welcome anything that would help small businesses. However, what we are talking about today is the repeal of the bill, and we believe that repealing what we are talking about today will alleviate those costs. I cannot speak to how the New South Wales Government may or may not choose to spend other aspects of their money. I can only speak today on what it is that we are discussing. We continue to work with the New South Wales Government to look at multiple ways that they support small businesses in their recovery.

The Hon. DANIEL MOOKHEY: I appreciate that, but you would not oppose the use of such funds?

Alexi BOYD: Well, each option given to us by the New South Wales Government is discussed in collaboration with groups, and we welcome those opportunities to discuss those and unpack them. I cannot speak on any specific [audio malfunction].

The Hon. DANIEL MOOKHEY: Thank you. Ms Browne, you said that you had raised this with SIRA—

The CHAIR: Sorry, we are at time. Mr Harding, I see you have turned your sound on. Did you want to respond to that last question? I will give everyone a chance to respond, but otherwise, we are at time.

David HARDING: Thank you, Chair. I need to say that we agree that public health issues should be paid for from the public health purse, but we do not agree that the mechanism of a vehicle being proposed by Mr Mookhey is appropriate, given the other principal issues as raised in our opening statement. Thank you.

The CHAIR: If there is no-one else on that question, we will move to the crossbench. Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Thanks to the witnesses for your attendance today. Mr Harding, was it you who said you attended a roundtable put together by some part of the New South Wales Government to discuss cost-sharing provisions for this workers comp amendment?

David HARDING: No, Mr Shoebridge. That was not me.

Mr DAVID SHOEBRIDGE: Has anybody?

Tracey BROWNE: I did mention reference to cost-sharing. It was the SIRA consultation paper that was put out in late 2000, I think—sorry, I have not got it right in front of me. Yes, November to December 2020.

Mr DAVID SHOEBRIDGE: Did you attend a SIRA workshop on it, did you say, Ms Browne?

Tracey BROWNE: No, we made a submission.

Mr DAVID SHOEBRIDGE: What was the effect of your submission? Did you support cost-sharing provisions or did you oppose it?

Tracey BROWNE: We raised concerns about the uneven impact of cost sharing, particularly for businesses that have been required to be closed whilst others were operating and potentially having the COVID claims. So we proposed an alternative, which was a public health-funded option rather than an employer-funded option.

Mr DAVID SHOEBRIDGE: Do you recognise that it is good for businesses everywhere to have core functions in our society? Hospitals, our supply chains, our supermarkets have those core functions operating is good for businesses everywhere. Do you recognise that, Ms Browne?

Tracey BROWNE: Of course it is good for business. It is good for society. It is good for the community. But for individual businesses that were closed at the time, then they were not getting the economic input that they would have had otherwise.

Mr DAVID SHOEBRIDGE: If it is good for society to have essential workers in place, to have these frontline workers in place, you do not think that there is a role for businesses across the State to fairly contribute to that for the good of society? Is that your position?

Tracey BROWNE: I believe that it is for the community as the whole to contribute those costs, but I am also not sure how this applies to the discussion today about presumptive legislation, or something very similar—

Mr DAVID SHOEBRIDGE: You want to repeal 19B—that is your position, is that right?

Tracey BROWNE: That is, yes.

Mr DAVID SHOEBRIDGE: There is a risk equalisation measure in 19B that would be repealed if you did that. That risk equalisation measure allows any increase for premiums as a result of 19B to be spread across all employees across New South Wales. You want to repeal that, and I am just trying to understand why you want to repeal that.

Tracey BROWNE: Our submission is in relation to the presumptive entitlement to workers compensation under COVID for a select group of people, some of which who are the frontline workers; some of whom are not necessarily seen in that construct. Given that we do have the scheme in New South Wales that allows for a provisional liability if somebody makes the claim for any type of injury, including COVID, we do not see an ongoing need for a presumptive legislation requirement for COVID-19.

Mr DAVID SHOEBRIDGE: Do you have legal advice that the provisional liability elements of the Workers Compensation Act would fill the gap currently met by 19B? Do you have any legal advice to that effect? If so, I would be fascinated to see it.

Tracey BROWNE: SIRA have actually issued expectations under statement 32.3, which does direct insurers that when somebody makes the COVID-19 claim they need to assert, first of all, whether they fit into a prescribed employment, but then further down in that instruction it says that they must:

- provisionally accept liability and commence provisional payments without delay.

Mr DAVID SHOEBRIDGE: That is because of the existence of 19B. That is because the provisional liability is being rapidly turned around.

Tracey BROWNE: No.

Mr DAVID SHOEBRIDGE: You cannot divorce the two in that advice from SIRA—or do you say otherwise?

Tracey BROWNE: I would be surprised because it is actually in relation to COVID-19 generally, not just in relation to the presumption.

Mr DAVID SHOEBRIDGE: Your position is that SIRA says every COVID-19 claim has to be paid under provisional liability. You say that is the advice from SIRA.

Tracey BROWNE: That is my understanding—

Mr DAVID SHOEBRIDGE: I will ask SIRA about that this afternoon.

Tracey BROWNE: That would be good because that is my understanding of it.

Mr DAVID SHOEBRIDGE: In which case, if you are right—to be quite frank, I do not believe you are—but if you are right, then what on earth would be the benefit of repealing of 19B, because everything is already being met under provisional liability? You seem to have gotten yourself into a bit of a cul-de-sac here, Ms Browne.

Tracey BROWNE: I think what I am saying there is that it would mean that everyone in New South Wales who believed that they had a work-related COVID illness would have the same status for lodging a claim, and there would be a provisional liability occurring while that claim was determined.

Mr DAVID SHOEBRIDGE: Mr Davies, what do you say to the nurses, to the doctors, to those frontline workers who have to go to work and put themselves at risk of COVID-19? What do you say to their evidence this morning that 19B is really essential to their members and gives them a degree of protection when they go to work, Mr Davies? What do you say to them?

Ben DAVIES: I would say, if I could answer your rhetorical statement with my own rhetorical statement—

Mr DAVID SHOEBRIDGE: You could just answer the question, Mr Davies. What do you say to them?

Ben DAVIES: I would ask them about their views of the provisions in all other States, none of which have deeming provisions. On the question of essential workers, I would suggest that deeming provisions do have a role to play in the workers compensation system. They exist in all jurisdictions where there is scientific evidence that certain workplaces have a higher risk profile. If the scientific evidence is that frontline health workplaces do have a higher risk profile, then deeming provisions can be considered in those workplaces. But I would also say that the Business Council does not represent such workplaces. So I would say trust the science, as I am sure you would agree, and the science in this case, however it is settled, being in the vast majority of private sector workplaces, there is no greater risk of contracting COVID; in fact, the science shows that the opposite is the case.

Mr DAVID SHOEBRIDGE: What do you say to those often young casually employed workers who are keeping our supermarkets open during the COVID pandemic and who are at risk of catching of COVID at work, often casual and do not have sick leave? Do you say that, if they get COVID, they should just rely on their own resources? Is that your view?

Ben DAVIES: I would like to respond with some verbatim quotes that I have been provided with by a supermarket business from its own employees.

Mr DAVID SHOEBRIDGE: If they address the question, by all means.

Ben DAVIES: These are from employees, they are eligible for compensation claims, and these are some of the quotes they provided them: "I don't wish to receive workers compensation. I got it from my family, as my cousin tested positive for COVID on a business day"; "My daughter's day care had a case. We went to get a PCR test for my daughter and she tested positive, then the whole family tested positive"; "I went Schoolies in Byron Bay and attended a music festival with a bunch of friends, and we all tested positive to COVID following"; or, "I went to a pub with a group of friends where one of them was positive and didn't know. Soon after it was flagged on Service NSW as an alert. I went to get a PCR test and was positive." These are all direct quotes from young supermarket workers [disorder].

Mr DAVID SHOEBRIDGE: You know that nobody is compelled to make a claim under 19B, Mr Davies?

Ben DAVIES: No, that is not correct.

The CHAIR: Order! Sorry, I am going to interrupt you. Listen, both of you need to be quiet for a second. I am sorry. I am going to interrupt here. We have Hansard recording this and it is really important that we have an accurate transcript. So as much as I love the colour and movement, I am all for it, we need a proper record of this. We are also at time here. Mr Shoebridge, I will let you finish that question. Mr Davies and anyone else that is relevant can answer it, and then it is time for the Government.

Mr DAVID SHOEBRIDGE: Mr Davies, you know that nobody is required to make a claim under 19B. Are you saying, though, that there are a series of people working in the supermarket industry who will intentionally abuse 19B and that is why you want to have it repealed? Is that your point?

Ben DAVIES: I completely reject both premises of your question. Your first premise is incorrect that no-one is required to make a claim. That is completely incorrect—businesses are required to notify workers of their eligibility.

Mr DAVID SHOEBRIDGE: Workers are not required to make a claim.

Ben DAVIES: Secondly, I completely reject your premise that it is likely to be abused. In fact, as I said with my evidence, in over 80 per cent of cases of eligible workers in the retail sector they indicated that they did not wish to seek workers compensation; that is hardly evidence of abuse.

The CHAIR: That is time.

Mr DAVID SHOEBRIDGE: Why the need to repeal if 80 per cent of workers are not using that, I cannot comprehend why you then add one and one together and make [disorder]—

The Hon. SCOTT FARLOW: Thank you very much, Madam Chair.

Ben DAVIES: Then I'd invite you to read my submission today.

The CHAIR: Thank you. We have got the submission.

Ben DAVIES: I said I would invite you to read my submission.

The CHAIR: Thank you, both of you. It is now time for the Government.

The Hon. SCOTT FARLOW: Mr Davies, just wanting to pick up on those examples that you outlined there, is it the case that every one of those examples would be entitled to make a claim under section 19B as it stands and then it would be up to the employer to be able to prove that that person did not contract COVID in the workplace? Is that the case under the current legislation?

Ben DAVIES: Under the current legislation, they are deemed to be eligible, and the practice under the current legislation, because this is the legal obligation on a business, is that the business must notify employees of their eligibility and initiate a claim for them. It is then open to an employee to decline to proceed with the claim, and that has been the experience in over 80 per cent of cases in this particular example.

The Hon. SCOTT FARLOW: We have had a lot of discussion today in terms of the scheme, and I would just be interested in your understanding—and, of course, from COSBOA and from the Australian Industry Group as well—in terms of what schemes are operating in other States? How are other States handling this issue?

Ben DAVIES: Is that a question to me, to BCA?

The Hon. SCOTT FARLOW: Yes, to yourself, to COSBOA and the Australian Industry Group as well.

Ben DAVIES: I would say that in the other States, bearing in mind that no other State has this presumption for private sector businesses, where there is any evidence of transmission in a workplace there are some very significant obligations that apply to businesses. They are required to notify the relevant health authorities under the public safety legislation. Under work health and safety legislation, they have a positive duty to take all reasonable steps to address the health risk, including notifying employees who may have been exposed. In those circumstances, they do have a positive obligation to seek out employees who may have caught it at work and assist them in dealing with the consequences. So I completely reject some of the assertions that have been made in the debate on this bill that if 19B is repealed the onus would be solely on workers to prove where they caught it, because that is simply not the case and that is simply not how businesses are operating throughout Australia.

Alexi BOYD: I might come in next, Scott, just to echo and agree entirely with what Ben has said but if I could just put a small business perspective on this. In a lot of cases, small businesses work in very close proximity alongside their workers. They are there in the same space. They see them, under normal circumstances, more often than they do their family, and it is always their intention to make sure that they are looked after, that they create a safe workplace that the workers and their employees and community wants to attend and be part of. I think that what is happening in a lot of ways is that we are having a conversation I guess more about what the requirements are rather than what is actually happening on the ground in small businesses. They are bending over backwards to make sure that they are keeping their workplace safe, and what we are seeing here is another thing that needs to be done. So I would just echo what Ben was saying that when you distil it down to what small businesses are experiencing, we need to keep those workplaces open as much as possible and added expenses or added requirements or added confusion is not helping the situation at all.

The Hon. SCOTT FARLOW: Ms Browne from the Australian Industry Group, have you got any views on the situation in other States and whether that presumption exists in other States as well?

Tracey BROWNE: The only other presumption I am aware of is for healthcare workers in Western Australia. I am not aware of presumptions in any of the other jurisdictions for COVID claims. They are triggered under the normal circumstances and, unlike New South Wales, they are triggered in most jurisdictions without a provisional liability. So there is a period of time in which there may be a need to determine the claim.

The Hon. SCOTT FARLOW: In the time we have got remaining I might just turn to some of the alternative suggestions that have been raised here today. One of them is—and I think it was addressed, forgive

me if I am wrong, to Mr Harding previously—in terms of spreading the cost across all workplaces rather than to individual employers. I just want to hear your submissions on that and if that is of concern to you, and if so, why.

Ben DAVIES: If I could [audio malfunction].

The Hon. SCOTT FARLOW: Yes, I will go [inaudible] Mr Davies, and then, Mr Harding, if you want to come off mute and maybe contribute.

Ben DAVIES: I defer to Mr Harding.

David HARDING: Thank you, Mr Farlow. With regard to spreading risk, we think that there are two principal issues here. One is the one that I raised earlier on that this is a statutory trust, which employers contribute to for injury which is in the workplace, and therefore the risk is bound by those two principles. What has been suggested today is that the very principle of the statutory trust is widened to manage the much wider risk of a pandemic turning into an endemic. Secondly, to that, I think that the risk should not be placed on those hardest-working, particularly small businesses, at the moment which have come through a terrible two years. This is an inappropriate vehicle used wrongly to spread the risk of a pandemic into those small businesses which are least able to carry that risk.

Alexi BOYD: If I may, I might just add to that as well.

The Hon. SCOTT FARLOW: Ms Boyd.

Alexi BOYD: As I mentioned before, there is also the concern about the additional costs in any way, whether it be mitigating risk or dealing with roster changes or potential increase in premiums. That all goes to the cost of employment. From a small business owner's perspective, if those costs go up per employee, that means you can employ less people and have less people working in the business in the future, which affects growth, which affects your potential to service your customers' needs. At the moment, with worker shortages, it can affect your ability to stay open in normal hours as well. So all of those things are considered when you are thinking about potential employment. Like we said in our submission and also earlier in our opening statement, we do not believe that this is the right vehicle for supporting workers who need to take time off or who have extenuating circumstances from having contracted COVID, and we explained that quite clearly in our statement and in our letter as well. Thank you.

The Hon. SCOTT FARLOW: Thank you. Mr Davies, I know you have been eager to contribute on this one, if you would like to comment.

Ben DAVIES: The idea of cost-sharing would only apply to businesses that are insured under the State arrangements. It will not make any difference for those who are insured under their own private arrangements, nor will it make any difference to businesses who self-insure, in which case they do not pay premiums and they simply bear the entire cost of workers compensation on their own bottom line. I would also make the point that if the sort of logic of this alternative is extended to its logical extent, why not deem every transmissible disease in New South Wales to be a deemed disease and let the workers compensation share the cost if that is seen as a social benefit?

The CHAIR: We are at time. Thank you all for your time and your appearance this afternoon. On that note, you are excused, and we will bring in the next panel.

(The witnesses withdrew.)

SIMON SAWDAY, Manager of Policy and Government, Clubs NSW, affirmed and examined

SEAN MORRISSEY, Deputy Chief Executive Officer, Australian Hotels Association NSW, sworn and examined

WES LAMBERT, CEO, Restaurant and Catering Australia, affirmed and examined

PAUL ZAHRA, CEO, Australian Retailers Association, affirmed and examined

The CHAIR: Welcome to our next panel. We appreciate your time this afternoon and the work that you have put into this. I invite each of you to make a brief opening statement, and we might just do it in the same order. Mr Lambert. I think you are on mute.

Wes LAMBERT: I am on mute? Sorry. I will keep this brief; I know that it is a very short session this time. Certainly, Restaurant and Catering now represents 50,000 restaurants, cafes and caterers around the country, of which there are over 20,000 in New South Wales according to the latest ABS entry/exit report from December 2021, employing hundreds of thousands of people in New South Wales and certainly very affected by this bill and certainly against it continually. I look forward to both presenting continued evidence and also answering any questions.

The CHAIR: Thank you, Mr Lambert. Mr Sawday.

Simon SAWDAY: Thank you, Chair. Could I please thank the Committee for inviting Clubs NSW to take part in this hearing. Could I please start by disclosing that Clubs NSW beneficially owns 25 per cent of Hospitality Employers Mutual Limited, a specialised workers compensation insurer, who I will reference in my opening comments. To start off with, Clubs NSW supports this bill because section 19B of the Workers Compensation Act unfairly makes clubs financially liable for injuries where there is no connection to the workplace. A survey of 187 clubs reveals the devastating impacts of the Omicron surge. More than 18,000 functions and events have been cancelled over the holidays in clubs, 55 per cent of clubs have been required to close or reduce hours over the holidays, and it is estimated that the industry is losing \$143 million in revenue per month.

Regrettably, our concern that section 19B would impose an undue financial burden on the industry has proved accurate. Data from Hospitality Employers Mutual shows that there have been 691 COVID-19 claims as of 27 January 2022. The average incurred cost has been \$2,700 per claim, which does not account for the longer term costs such as long COVID or mental health injuries associated with COVID. Hospitality Employers Mutual have modelled between 1,500 and 3,000 claims this financial year. Clubs NSW understands that premium increases of 15 to 20 per cent will be necessary to fund these costs. With household and social settings being the major drivers of transmission, Clubs NSW believes it is unfair and without basis to make clubs financially responsible if their employee contracts COVID-19. Unlike social and household transmission, interactions between hospitality workers and patrons are more brief and likely to feature controls such as masks and physical distancing. The elevated risk of household transmission is reflected by National Cabinet's reclassification of "close contact" as household interactions exceeding four hours.

Section 19B also fails to reflect that a worker has a much better opportunity to demonstrate that they caught COVID-19 in the workplace compared to an employer demonstrating that a worker did not catch COVID-19 in the workplace. With rapid test becoming more accessible, workers are more likely to identify if a positive case is at work or an outbreak. Workers are also likely to advise their colleagues that if they test positive for COVID-19 and businesses are likely to inform their employees if there is a positive case or a possible transmission at the venue. Just lastly, I would mention that the presumption in section 19B also fails to reward businesses who protect their employees and implement effective controls. Many clubs are going above and beyond to protect their staff by mandating vaccinations and requiring staff to do rapid tests and section 19B makes these clubs liable without any consideration of the controls, because whether the club's measures are actually successful at mitigating transmission is irrelevant under section 19B. Thank you again for considering the club industry's position, and I welcome any questions.

The CHAIR: Thank you. Mr Zahra.

Paul ZAHRA: Thank you, Madam Chair, for the opportunity to appear in front of the Committee today. The Australian Retailers Association is the oldest, largest and most diverse industry retail body, representing the country's largest private employer, with membership of approximately two-thirds of the \$360 billion sector that employs 1.3 million Australians. Our members have over 100,000 shopfronts across the country and operate across all retail categories—from food to fashion, hairdressing to hardware, and cosmetics to computers. We

represent the rich diversity of Australian retail from our largest national and international retailers to our smaller medium-sized members who make up about 95 per cent of our membership.

With our national members operating extensive store networks through New South Wales and around 1,800 small and medium-sized members with stores across the State, this is an important issue for the ARA. It is also an important issue for our sector, given that New South Wales drives more than 30 per cent of Australia's retail sales. What happens in New South Wales impacts the profitability of national retailers and the viability of the sector nationally. Like the peak bodies that have provided testimony before us today, the ARA is calling for section 19B of the Workers Compensation Act to be repealed and with it the presumption that if a worker contracted COVID-19 they did so in the workplace. When this provision did come into effect in May 2020, Government-mandated lockdowns meant that if someone contracted COVID-19, it was a lot more likely that they would have done so at work. With the recent surge in cases of the high-transmissible Omicron variant though, the considerable number of people working from home and the definition of close contacts confined to household contacts, there is not now a disconnect between where cases are deemed to have originated or where transmission has occurred.

Despite this, retailers even in New South Wales are still processing claims on the presumption that transmission occurred in the workplace, increasing costs and complexity at a time when we need to be helping the retail community back on the path to sustain recovery. These impacts have been exacerbated by the recent surge in cases due to Omicron, with one of our members processing as many claims in the first month of this year as they did in the previous 12 months. Retailers have borne many of the costs of this pandemic and they have done so in good faith. If section 19B is not repealed, they will face even higher costs of doing business and higher workers compensation premiums into the future. To lay this additional burden on business, one which is clearly not able to be accurately linked to the practices of that business, is clearly unreasonable and unsustainable.

Finally, the argument that workers compensation rights are being stripped away is flawed. Of course, employees that can demonstrate they contracted COVID-19 in the workplace will have a rightful claim to workers compensation. Repealing clause 19B will not affect those rights; actually, it will make it easier for employees with genuine claims to be lodged with WHS teams because the administration burden will start to ease as soon as the May 2020 provisions are repealed. In conclusion, the presumption that COVID-19 was contracted in the workplace is no longer reflective of where transmission is occurring and is placing an unacceptable burden on New South Wales retailers, threatening an already shaky recovery. Thank you again for your time.

The CHAIR: Thank you. Mr Morrissey.

Sean MORRISSEY: Thank you, Chair, and thank you again to the Committee for the opportunity to appear and assist today. At the outset, and to echo Mr Sawday's earlier disclosure and consistent with that, I wish to note for the record that the Australian Hotels Association is the sole shareholder in a single-purpose entity which holds a 25 per cent interest in Hospitality Employers Mutual, the specialised industry insurer's workers compensation insurance scheme. The association, as a result of that interest, receives remuneration from HEM from its investment from time to time. I represent the Australian Hotels Association NSW. Very briefly, we are the peak hospitality industry body for hotels in New South Wales. We represent over 1,800 hotels, ranging from your small bush pub to your large five-star accommodation establishment. As noted in our submissions to the Committee, which I will not go into any detail in the interest of time, the association strongly supports the proposed repeal of the presumptive liability provisions as proposed under the relevant bill.

As we all know, this pandemic has had a devastating impact on our society and our economy over the last two years, and the hospitality industry, as I am sure we are all aware, has felt the brunt of this impact as much as anyone else. We have been the first one to close, the last one to reopen and, for necessary public health reasons, have been and continue to be subject to a range of ongoing trading restrictions, which considerably impact on our ability to try and generate revenue, employment and a range of services to our customers at pre-pandemic levels. Our members are just continuing to do it incredibly tough. The substance of our argument in support of the repeal of the presumptive liability provisions are contained in our submissions as I mentioned. I just wish to make the following key observation.

These provisions, if not repealed, based on the modelling that has been prepared by our specialised workers compensation scheme insurer, HEM, will lead to a direct cost being passed on to our member businesses by way of increased workers compensation insurance premiums, potentially in the order of 15 to 20 per cent. We of course, like all others, strongly support a strong and robust safety net for all members of the community, including our employees, to have assistance and support in the event that they contract this terrible virus. However, what we do say critically is that the workers compensation scheme is not fit for that purpose. It is not what it is designed for, it is not the appropriate vehicle, as the default and presumed basis for any employee to make a workers compensation claim against their employer in circumstances where it is so difficult, as many have

acknowledged, to ascertain the true source of contracting the virus. As a result, we say this is an inappropriate and unfair cost that is being passed on to our members and to businesses and to employers. It is a cost they just simply cannot afford in the current circumstances, as I have described. Thank you again for the opportunity and happy to take any questions.

The CHAIR: Thank you all for those statements. We will now open it up to the Committee for some questions. We will start with the Opposition.

The Hon. DANIEL MOOKHEY: Thank you to all the representatives that are present today and for the work that you do and the work that your members do too. In the first instance, I might just direct these questions to both Clubs NSW and to the AHA about Hospitality Employers Mutual Limited. That is a specialist insurer, is it not?

Sean MORRISSEY: Yes, Mr Mookhey. Happy to take that question. Yes, that is a specialist [inaudible].

The Hon. DANIEL MOOKHEY: And that is a specialist insurer that is 50 per cent owned by EML, 25 per cent by the AHA and 25 per cent by Clubs NSW?

Sean MORRISSEY: That is correct.

The Hon. DANIEL MOOKHEY: What is its current funding ratio?

Sean MORRISSEY: I do not have the current funding ratio before me, Mr Mookhey. That particular detail, I would have to take that on notice.

The Hon. DANIEL MOOKHEY: [Inaudible].

Sean MORRISSEY: [Disorder].

The Hon. DANIEL MOOKHEY: Does Clubs NSW know what the funding ratio is of your scheme?

Simon SAWDAY: Likewise, I would have to take that question on notice.

The Hon. DANIEL MOOKHEY: Presume that the Parliament agrees with you and does repeal section 19B. How will Hospitality Employers Mutual provide the provisional liability aspects to the workers compensation laws to decide COVID claims? That is, are you going to decide that everybody is provisionally liable, pending further investigation by HEM?

Simon SAWDAY: Thank you, honourable member. I cannot speak on behalf of Hospitality Employers Mutual. On that basis, I can forward the question to them, but I cannot speak to how they will—

The Hon. DANIEL MOOKHEY: Surely this is a question and inquiry you have made of them, given that whatever gain you get from repealing the presumptive requirements could easily be taken away, depending on the attitude they apply towards provisional liability. It is a pretty straightforward question, actually, in that respect.

Simon SAWDAY: I would say that the approach they will take I can only assume would be consistent with the legislation and the law [disorder] if section 19B repealed.

The Hon. DANIEL MOOKHEY: If SIRA is to decide that everybody in the system has to, on a provisional liability basis, agree to a COVID claim, then effectively the benefits of the repeal bill to your members is neutral to none? Is that correct?

Sean MORRISSEY: Mr Mookhey, I do not know that I could accept the premise of that at face value. Again, that would be something I would have to take on notice, in consultation with HEM.

The Hon. DANIEL MOOKHEY: On the question of the actual cost, have you at all raised with the Government why they have not triggered—this is first to Clubs NSW and the AHA, please. Has Clubs NSW raised with the Government why they have not triggered the recovery mechanisms that are contained in 19B that would spread the cost from the specialist insurers to the entire scheme?

Simon SAWDAY: We have not made those inquiries.

The Hon. DANIEL MOOKHEY: Why not?

Simon SAWDAY: Our position is that the workers compensation scheme is not the appropriate vehicle to deal with the cost associated with COVID-19. For instance, that figure of \$2,700 is the average cost per claim. A high proportion of that figure is the cost of a person's income while they are self-isolating [disorder].

The Hon. DANIEL MOOKHEY: Sorry, Mr Sawday. I have got limited time and I did ask a question, so I might ask AHA the same question. Has the AHA raised with the Government in any way at all the idea or

made inquiries as to why the Government has not triggered the recovery mechanisms that are contained in 19B that would spread the costs from your specialist insurer to the rest of the scheme? Have you raised this with the Government?

Sean MORRISSEY: We are aware of those mechanisms being available, Mr Mookhey. We have not raised those directly with government. As I said, we are aware that that is a mechanism the legislation does provide for. However, to the best of my knowledge, I am not aware that, I guess, alternative proposal has been explored in any further detail. Going again to that very point, the premise of our argument, that would result in the pass-through of the cost to the employer as well. I go back to my opening remarks whereby we simply say that the workers compensation scheme is not fit for purpose nor the appropriate vehicle for its cost to be passed on in any form or via any mechanism, cost-sharing or otherwise.

The Hon. DANIEL MOOKHEY: I might just hear from Mr Lambert and Mr Zahra as to whether or not you have raised with the Government the idea that they would actually trigger the provisions contained within the law. Maybe Mr Zahra first.

Paul ZAHRA: I am not aware of any—so I am not aware.

The Hon. DANIEL MOOKHEY: Mr Lambert, have you or your organisation raised with the Government?

Wes LAMBERT: No, we have not raised it with the Government, but I will also reiterate what both Mr Morrissey and Mr Sawday have said about the fit-for-purpose nature of 19B. I am reading directly from the Fair Work Act—or the Fair Work Ombudsman website. It says, "Workers compensation provides medical expenses, lost wages and rehabilitation costs to employees who have become injured or become ill in the course and scope of their job." Now, no-one gets COVID in the course and scope of performing their job, period. You get COVID—

The Hon. DANIEL MOOKHEY: Sorry, Mr Lambert. Your view is that a health worker, a nurse, anyone in a hospital would not contract COVID under any circumstances from workplace exposure. Is that what you are [disorder]?

Wes LAMBERT: I do not represent the health industry.

The Hon. DANIEL MOOKHEY: But that is what you just said, Mr Lambert.

Wes LAMBERT: I represent the hospitality industry and legislation needs to apply to all industries in a fair and equal way. To say that you contract COVID in a hospitality business in the scope and course of your job is not—at this point in time when there are so many cases in the community is very difficult to prove in one case but also if the assumption is that you have gotten it through the course and scope of your job, it is very difficult, if at all possible, to prove that. So having it open-ended always one way with very difficult mechanisms for proof, it certainly is not something that we can support.

The Hon. DANIEL MOOKHEY: I think my time is soon coming to an end, so I will ask these questions to the panel. Given Victoria provided a \$550 million grant to cover the costs of workers comp in their State, is there any reason you can see why the New South Wales Government should do the same, and if they were to do that, wouldn't that alleviate the concerns of you and your members? That is the point that Mr Sawday was making, which is that we should not be using a workers compensation scheme to pick up the cost of a health crisis. Wouldn't that solve the problem?

Paul ZAHRA: Mr Mookhey, if I can go first, I do not think it does. I cannot talk for government of course, but I think we have got two issues here. One is about future premiums going up. The current issue we have got is actually just the administration burden right now and the cost escalating right now. So even if government were to make a contribution towards workers compensation, it does not actually help the administration burden that we are experiencing. We are a diverse group, a broad church. One of the major retailers is saying it has cost them to date about \$2.4 million just in the administration cost just to lodge every claim. They are a large employer. It says 1,600 claims, 80 per cent of those—

The Hon. DANIEL MOOKHEY: [Inaudible].

Paul ZAHRA: That I do not know. I could find that out though. I could possibly assume so because they are large; they are a major. But regardless of that, to lodge those claims—80 per cent have not been proven to be—sorry, 80 per cent of those claims, the employees have chosen not to proceed. It is just the administration that we are dealing with right now that is of grave concern, plus the future premium rises.

The Hon. DANIEL MOOKHEY: That is my time, Chair.

The CHAIR: Yes, it is. If no-one else wanted to respond to that, it is crossbench time.

Mr DAVID SHOEBRIDGE: Thanks all for your attendance today and your submissions. Mr Lambert, did I understand you correctly to say that people cannot catch COVID in the course of working in your industry, the hospitality industry? Well, I did hear you say that, but can you explain to me why that is true?

Wes LAMBERT: I did not say that they could not. What I said was that the assumption that that is where they got it is not reasonable in the terms of a pandemic that has become endemic. Especially since we have had almost two and a half million cases since 16 December throughout Australia, it is very difficult, if impossible, to make the assumption that someone working in the hospitality industry caught COVID in their workplace as the default rather than the exception. That is also bolstered by the changes to the close contact rules that you are only a close contact if you are around someone for four hours at home—at least in New South Wales as per the Federal definition of close contact. Also, I am sure that my fellow hospitality industry associations here can say that our industry has been one of the most COVID-safe throughout the entire pandemic. We have had mask requirements, QR code requirements, vaccine mandates, COVID-safe plans, ventilation plans. We have had almost every possible requirement put on to our industry as much as some health services industries to ensure that people do not catch COVID in [disorder].

Mr DAVID SHOEBRIDGE: Is it your position it is next to impossible to prove that you got COVID at a hospitality workplace?

Wes LAMBERT: With two and a half million cases since 16 December, it would be very difficult to make the assumption on its face that you caught COVID in the workplace. [Disorder]—

Mr DAVID SHOEBRIDGE: Sorry, it is just that we have limited time, Mr Lambert. How could any worker who has done an eight-hour shift at the workplace, been exposed to COVID at the workplace, possibly prove that they got it at work? Your position is that [disorder].

Wes LAMBERT: I ask the question back: How could you prove that they did get it at work?

Mr DAVID SHOEBRIDGE: I am asking—

Wes LAMBERT: [Disorder].

The CHAIR: Sorry, I am going to interrupt here. I understand you are both very keen, but we need to get the record accurate for Hansard. One person at a time, question followed by answer.

Mr DAVID SHOEBRIDGE: Mr Lambert, I am asking this question because the uniform position of employer groups is these protections are not needed because workers will already be protected under the Workers Compensation Act and they will have their rights under the Workers Compensation Act. Yet your evidence is that it is next to impossible for workers to prove it in relation to the hospitality industry. To be honest, I am largely agreeing with you in terms of the difficulty of proof. So I am going to ask you: Do you think that is fair on the workers in the hospitality industry?

Wes LAMBERT: Ultimately, the purpose, as is defined by the Fair Work Ombudsman, of workers comp is to provide medical payments, wages and other benefits to workers who through the course of their work are injured or become sick. So—

Mr DAVID SHOEBRIDGE: Mr Lambert, I might just stop you there because if you are telling us what the Federal Ombudsman says and the Fair Work Act say [inaudible]—they are not of relevance to the State law and they do not [disorder].

Wes LAMBERT: No, of course. We are talking—

Mr DAVID SHOEBRIDGE: We have got limited time. We might just move on, if you are just going to tell us what the Federal Ombudsman says.

Wes LAMBERT: No, no. Ultimately, what I am just trying to convey is that with so many cases in the community, if the default stays that all cases of COVID are assumed to have been caught in the workplace, it is not a fair or reasonable assumption to make.

Mr DAVID SHOEBRIDGE: Mr Morrissey, given how your workers are exposed as frontline workers and they are covered by the presumptions under 19B, how do you explain to your members that you have not gone to the Government and asked for the cost of 19B to be shared amongst all employers? How do you explain to your members that you have not made those efforts to reduce the cost to your members of 19B? It seems inexplicable that you have not done that.

Sean MORRISSEY: With the greatest of respect, Mr Shoebridge, I respond by saying that I just do not think we are at that point in time as yet. The position of the association has since the enactment of this amendment, the creation of the presumptive liability, advocated for its repeal. We have said all along it is unfair, it is unjust, and it is the inappropriate vehicle to do it. Just to answer your question, if ultimately it is the case government wishes to explore as an alternative to the repeal, repeal being the principal objective that we are working towards and we support now, then of course we will explore that.

Mr DAVID SHOEBRIDGE: So for now it has been an all-or-nothing approach to you—you want it entirely removed and you have not been willing to sit down with government and work out cost-sharing approach with 19B. That has been your approach to date?

Sean MORRISSEY: As I said, that is just simply a position at a point in time it has not been [inaudible] as yet, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Mr Sawday, have you taken the same all-or-nothing approach and refused to sit down and negotiate with the Government a cost-sharing approach to 19B?

Simon SAWDAY: Mr Shoebridge, I would not characterise it the same way as an all-or-nothing approach. I would say that presumption in section 19B is the basis and the core of our concern and that by exercising regulation-making powers under that section is not the most appropriate public policy means to resolve the issue, and the approach which will impose the lowest administrative burden on our members and the fairest approach is to repeal section 19B.

Mr DAVID SHOEBRIDGE: Have you explained to your members or conveyed to your members that there is a cost-sharing provision there, and have you explained to them why you have not negotiated with the Government or opened discussions with the Government to share the costs around all employers? It seems quite incredible from somebody with your interests not to do that.

Simon SAWDAY: We have communicated to our members the details of section 19B and the changes to the workers compensation law. We have been clear with our members that we are taking the position that the Government should repeal section 19B.

Mr DAVID SHOEBRIDGE: Mr Morrissey, I think you said that you had modelling provided by the sector insurer, HEM, the specialised insurer. Is that right?

Sean MORRISSEY: Yes, that is correct, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Is there a reason that it has not been provided to the Committee?

Sean MORRISSEY: I referenced a few aspects of our submission which I think allude to a range of that, not being directly. But I would be happy to, of course, take on notice and provide the Committee with the detail of any modelling that might assist [disorder].

Mr DAVID SHOEBRIDGE: We do not have the ability to take matters on notice. But, if you have the modelling available, if it could be provided today, we could receive it today. But it does seem to me unusual, if you have modelling, that you do not provide it to the Committee. So I am going to ask you again. Was there a tactical or strategic thinking behind not providing the modelling to the Committee?

Sean MORRISSEY: No, Mr Shoebridge, not at all. I understand from HEM that, in a range of correspondence that has been provided directly from HEM to SIRA, the regulator, in various correspondence that has gone directly to SIRA throughout the course of this matter being deliberated over, that modelling has been produced. There is certainly nothing strategic, no secrets there at all. I will undertake to go immediately back to HEM and provide the Committee directly with whatever modelling that we can assist with.

Mr DAVID SHOEBRIDGE: Thanks, Mr Morrissey.

The CHAIR: Sorry. We are actually at time here. Just for our witnesses' information—because of the tight time frame for this and when the report is due, there is no provision for taking things on notice. However, Mr Morrissey, if you could table that at your earliest convenience, if that is possible, then we can accept that. But it is now time for Government questions. Government.

Mr DAVID SHOEBRIDGE: Sorry. Just so there is no confusion—if Mr Morrissey provides it by email, we can accept it as a late submission.

The CHAIR: We can.

Mr DAVID SHOEBRIDGE: I think that would be very useful, Mr Morrissey.

Sean MORRISSEY: I will undertake to do my absolute best to get that as expeditiously as possible, of course.

The CHAIR: Thank you. The Government.

The Hon. SCOTT FARLOW: Thanks, Madam Chair. I think it has been put to you by both Mr Mookhey and by Mr Shoebridge, effectively, between the two of them, as far as I see it, a proposal to increase the cost of the scheme by paying for compensation with cases that are not necessarily contracted in the workplace, then sharing the cost of that scheme amongst all workplaces, irrespective of any risk, and then taking away from other COVID support in order to pay for those increases in the cost of the scheme. Do you see any problems with this at all, from any of you? Anyone wants to respond?

Paul ZAHRA: I am happy to respond there. I think it comes back to fairness and equity and making sure that the costs are not imposed unfairly onto particular industries. That would be a great concern.

Simon SAWDAY: I would make the comment—I have made it clear that our primary position is that we support the repeal of section 19B. We would prefer the option which Mr Farlow has set out, relative to the current position.

The Hon. SCOTT FARLOW: I think, probably, best put to you, Mr Zahra, and also you, Mr Lambert. You operate across the nation with your organisations. What is your understanding of the operation of schemes in other jurisdictions when it comes to your members and how workers compensation works for them in those jurisdictions?

Paul ZAHRA: I am not aware of any other jurisdiction with this particular clause or anything similar to it. We have national retailers that are looking for a national framework. This would sit at odds with what is occurring in the other jurisdictions.

Wes LAMBERT: I will reiterate that. I am also not aware of any other schemes that are similar to 19B around the country. Certainly, as a national organisation, we hope for and are looking for consistency.

The Hon. SCOTT FARLOW: I think this has been stressed as well during this panel. Your industries are the ones that largely are the most impacted when it comes to COVID restrictions, the first to close, the last to open, so to speak, in terms of operation because of the transition risk that Health has deemed to be potential in your areas. I imagine your businesses are struggling significantly at the moment, throughout this whole period of the last two years. How big a concern are workers compensation premiums for your businesses at present?

Sean MORRISSEY: Happy to take that first up, Mr Farlow. It is and always has been a cost of doing business, workers compensation premiums. Speaking on behalf of the association, which very proudly established HEM as the specialised insurer over a decade ago—the results that we have been able to achieve through maintaining low premiums and great return-to-work results for our members and their employees through the scheme is something that we are very proud of and we stand by. Our members who are participating in that scheme have significantly better results and records than many who are insured under the default icare scheme. For that reason, we are particularly concerned about the impact that this will have in terms of that cost of business. As I said at the start and as you have just alluded to, we are doing it extremely tough at the moment. An increase in workers comp insurance premiums of 15 to 20 per cent, particularly for a small country pub, is just something that is really hard to fathom in the current context of doing business and the context of what our members and our industry has been through over the last two years.

Wes LAMBERT: Wes Lambert is here. We actually have a copy of our 2021 benchmarking reports in hand. Staff on-cost, including workers compensation, were 5.4 per cent in the 2014-15 financial year and have skyrocketed to 8 per cent in the most recent financial year. So workers compensation costs are a big deal to restaurants, cafes and caterers. Continuing to put pressure on those costs for the hardest-hit industry, as we are still in a wave of COVID, will certainly lead to potential closure of businesses and, certainly, the loss of jobs in an environment where that just is not acceptable in our industry.

The Hon. SCOTT FARLOW: Thank you. I think I might be at time there, Madam Chair.

The CHAIR: Yes. We are at time for this session. Thank you very much to all of you for your attendance and participation this afternoon. We really do appreciate it. You are all excused.

(The witnesses withdrew.)

LINDSAY CARROLL, Deputy CEO and Legal Director, National Retail Association, affirmed and examined

SCOTT HARRIS, Director of Workplace Relations and Business Policy, NSW Branch, Pharmacy Guild of Australia, affirmed and examined

LUKE ACHTERSTRAAT, NSW Executive Director, Property Council of Australia, sworn and examined

BRAD ARMITAGE, NSW Deputy Regional Executive Director, Housing Industry Association, affirmed and examined

The CHAIR: Thank you very much. You are each invited to make a brief opening statement if you wish. We might start with Mr Armitage.

Brad ARMITAGE: Good afternoon. Thank you for inviting the Housing Industry Association to attend today's hearing. The HIA is Australia's only national industry association representing the interests of residential building industry, including new home builders, renovators, trade contractors, developers, building professionals, and suppliers and manufacturers of building products. HIA agrees that appropriate and adequate protection for workers from workplace injuries is of the utmost importance. Workers should have access to the benefits and support they need to recover and safely return to work. However, it is also important that the workers compensation scheme is affordable and remains financially sustainable. HIA supports the bill.

Working in the housing industry already attracts some of the highest workers compensation premiums, compared with other industries. Without the bill, it is likely that premiums will increase further, placing significant pressure on our members, who are already dealing with significant disruptions to supply chains, material-price increases and labour shortages. Clearly, workers might not contract COVID-19 at work. For example, many New South Wales workers have contracted COVID-19 through contact with their family. With the reopening of New South Wales, workers will be participating in normal social activities, at pubs, clubs, bars, restaurants, sporting events and other potentially high-risk settings. Importantly, however, HIA notes that, if the bill is passed, workers who contract COVID-19 would still be able to make a claim for compensation. As outlined in greater detail to the Committee in our submission, HIA supports the bill. Thank you.

The CHAIR: Thank you very much for that. Mr Harris?

Scott HARRIS: Thank you, Chair. I have a very short statement to go with. Pharmacy Guild of Australia is the national peak organisation representing community pharmacies in Australia and welcomes the opportunity to contribute to this review process. The pharmacy guild supports the bill and suggests that the Legislative Council passes it as soon as possible in order to remove the current COVID-19 provisions as they apply to the private sector businesses, which does include community pharmacies. The key points the pharmacy guild wishes to outline in this particular thing first is the change will return the legislation back to the pre-pandemic interpretations. Secondly, the change does not remove any rights for an employee to make a workers comp claim if it is proven that they contracted it within the workplace. Thirdly, the current legislation does impose additional costs and red tape onto the business doing it.

The amendments were passed during the first COVID lockdown, in April 2020, when most workers could not attend work and those who could were potentially exposed to high risks, which is understandable. However, that is no longer valid in the current situations. Based upon the pharmacy guild's experience, including members' commentary, yes, the community pharmacy workplace presents a high risk to possible exposures due to ill community members entering the workplace. However, with the necessary PPE, regular cleaning proceedings and the employees' knowledge now, possibly now the safest place to be is in the workplace, compared with being in the general community to go with it for risk of exposure. That makes it in lines with the current version of the Omicron coming out. It should be noted that the full impact of the changes are not on the workplace yet due to increase cost of workers compensation or general insurance premiums. However, it is mainly important we reinforce it does not remove, if the legislation is passed, the rights for an employee to make a workers comp claim. I look forward to answering any questions from that side.

The CHAIR: Thank you, Mr Harris. Ms Carroll?

Lindsay CARROLL: Thank you, Chair. As I said earlier, I am from the National Retail Association. We represent over 6½ thousand retailers across all subsectors of the industry, right across the country. I will not take up the Committee's time with a lengthy opening statement. We made a written submission late last year, in support of the repeal of section 19B and in support of the amendments. I am happy to take questions from the Committee in this regard. Thank you.

The CHAIR: Thank you very much. Mr Achterstraat.

Luke ACHTERSTRAAT: Thanks, Chair. The Property Council of Australia is very pleased to provide evidence at today's inquiry. Property is the nation's biggest industry, representing one-ninth of Australia's GDP and employing more than 1.4 million Australians. We are Australia's largest employer. In New South Wales the industry creates more than \$581 billion in flow-on activity, generating around 400,000 jobs. Our members are the nation's major investors, owners, managers and developers of properties of all asset classes. They create landmark projects, environments and communities, where people can live, work, shop and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive and sustainable places.

Chair, we are here today because the New South Wales Government has set out to repeal this section of legislation, which contains a default presumption: that workers who contract COVID-19 assumes they contracted it in the workplace. But, Chair, as health advice and a broader understanding of the virus has evolved, policy settings need to be reviewed and made fit for purpose. So we welcome today's inquiry. When section 19B was introduced, governments had a very limited knowledge of the virus. It was novel and made blanket assumptions about the nature of its transmission. But, just as our knowledge has evolved, so too should our policy response. To echo some of the other contributors today, let us be clear. The proposed repeal of this presumption does not affect the ability for workers who have contracted COVID in the workplace to make a claim. That right is retained. The repeal is about removing the automatic assumption in the Act. That will have unintended consequences. There needs to be clear and reasonable guidelines so genuine claims are dealt with efficiently, to provide certainty to both employees and employers.

The first case of COVID was detected in Australia over two years ago. Section 19B has served its purpose. Its repeal would be a step towards learning to live with the virus. The removal of 19B would ensure a fair and balanced approach is implemented when assessing claims made under the Act. The property and construction industries have a strong and proud track record on workers' safety during the pandemic. Our businesses led the charge with COVID-safe plans, check-in codes and high vaccination rates, which allowed construction worksite capacity to resume. Members may recall the shutdown of the construction industry in July. We worked closely with our friends in the union movement and the New South Wales Government to comply with the vaccine mandate and to ensure that workplaces were safe and secure, to ensure that we could get back to work and build the jobs and homes that the people of New South Wales need. This is a testament to the strong safety and site management protocols that are part of everyday life for many workers attending building sites across New South Wales. Thanks for your time, Chair. We recommend that the Committee support the Workers Compensation Amendment Bill 2021 in its current form. Thank you.

The CHAIR: Thank you very much. We will now open the Committee up for questions for each of you. We will start with the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair. Again can I thank all the representatives for the work that you do as equally for the work that your members have done in the last two years as well. I might direct this question at first instance to the Housing Industry Association and the property council. Of course, the NRA and the pharmacy guild will as well. You are aware that premiums are increasing in New South Wales this year by 2.6 per cent?

Luke ACHTERSTRAAT: Brad, would you like to go first, or would you like me to chip in there?

Brad ARMITAGE: You can go first, Luke.

Luke ACHTERSTRAAT: Yes, Mr Mookhey, I was made aware of that in your previous questioning to the previous speakers. We would encourage consideration of increased premiums to be top of mind for members of this Committee. The cost of doing business is a really important policy area. We welcome your focused attention on that particular issue today.

The Hon. DANIEL MOOKHEY: If you heard the earlier questioning, then you would have heard that premiums are set to rise by 26 per cent over the next six years. Did you hear that, Mr Achterstraat?

Luke ACHTERSTRAAT: Yes, Mr Mookhey, I did. We just encourage you to—

The Hon. DANIEL MOOKHEY: Yes. And—

Luke ACHTERSTRAAT: Sorry. Go on.

The Hon. DANIEL MOOKHEY: And you are aware that that arises more to do with icare's faltering performance and has anything to do with COVID?

Luke ACHTERSTRAAT: Mr Mookhey, I think the best use of the time today is to focus on what we can do to deal with the workers compensation scheme. I think the most—

The Hon. DANIEL MOOKHEY: I am, Mr Achterstraat. I am asking a question because I am focusing on that. You have said here that you would like to see the cost of premiums, amongst other factors—it is a concern of your members. I am asking. Are your members concerned with a 26 per cent premium increase that is taking place over the next six years due to icare's poor performance? Given that we have been told in separate inquiries that has nothing to do with the presumption, how much do you expect to save on premiums if this presumption is repealed?

Luke ACHTERSTRAAT: Mr Mookhey, I think your characterisation of icare is one that you are entitled to. I think our members are looking for constructive changes, such as the repeal of 19B, to provide more certainty to the workers compensation scheme. But we certainly welcome you taking up that issue of the cost of doing business. It is something that our members are acutely aware of. The repeal of 19B, we feel, would be a very positive step, to provide that certainty to employers and employees alike.

The Hon. DANIEL MOOKHEY: Mr Achterstraat, I might move now to the HIA. How much do you expect premiums to fall if this presumption is removed? Have you been told by SIRA or the Government how much premiums will go down if they remove this presumption?

Brad ARMITAGE: No, we have not been told how much they will go down. Our submission is based on how much they are projected to go up.

The Hon. DANIEL MOOKHEY: Thank you. Has any organisation been told by SIRA or any other part of the Government how much premiums will fall if we repeal this provision?

Brad ARMITAGE: That information, to my knowledge, is not available at this stage. The projections are on that [disorder]

The Hon. DANIEL MOOKHEY: Thank you. Has the NRA been told? Has the pharmacy guild been told? Has the property council been told? Has anyone told you how much your premiums will go down if this presumption is removed?

Lindsay CARROLL: We have not been informed whether premiums will decrease as a result of this amendment.

The Hon. DANIEL MOOKHEY: Is one of the reasons why, potentially, because premiums will not fall whatsoever if this presumption is removed because icare's return-to-work performance continues to fall to record lows and your members are having to pay for that? Is that the actual reason why you have not been told, because they are not going to fall?

Lindsay CARROLL: I cannot answer that question.

The Hon. DANIEL MOOKHEY: Thank you. In respect to actions that have been taken by other States—I think, first to the HIA. Are you aware that the Victorian Government provided an additional \$550 million on 30 June 2021 to its workers compensation scheme, to mitigate any premiums impact that COVID might have for Victorian employers?

Brad ARMITAGE: That is something that I have heard you mention, Mr Mookhey, in the previous Committee.

The Hon. DANIEL MOOKHEY: But I presume that the Property Council of Australia, as well as the National Retailers Association, are aware that the Victorian Government provided a grant to their schemes to stop any premium impact from COVID.

Luke ACHTERSTRAAT: Yes, Mr Mookhey, we are aware of that policy.

The Hon. DANIEL MOOKHEY: Did you oppose that policy? Would you oppose that policy?

Luke ACHTERSTRAAT: Mr Mookhey, as the New South Wales executive director, I do not have a view on that Victorian policy. I think the best thing the New South Wales Government can do—and the crossbench—for that matter would to ensure the repeal of 19B.

The Hon. DANIEL MOOKHEY: Then I might ask the national organisations. Did the National Retailers Association and/or the pharmacy guild oppose the additional \$500 million the Victorian Government provided to their scheme?

Scott HARRIS: I do not have an answer to that at the moment, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Did the National Retailers Association—did you oppose the \$500 million the Victorian Government provided to their scheme?

Lindsay CARROLL: We did not oppose it.

The Hon. DANIEL MOOKHEY: Is there any reason why the New South Wales Government should not be considering a policy like that, which means that workers can still have confidence that they are not going to have to fight an insurer and employers can have confidence that there is not going to be a premium impact?

Lindsay CARROLL: Our written submission does touch on this lightly, to essentially say that, if something like that was to be introduced through policy or legislative measure, similar to previous Government disaster payments, we would be in support of it being done that way, rather than through leftover emergency-style measures, which is what we consider section 19B to be. Of course, that approach, if it is taken, would be something that would apply equally to all employers and workers, rather than only certain businesses, who were able to trade through lockdowns, for example.

The Hon. DANIEL MOOKHEY: Mr Achterstraat, would the property council oppose the New South Wales Government providing a \$500 million injection or anything like that to absorb the cost?

Luke ACHTERSTRAAT: Mr Mookhey, the property council is always engaging with New South Wales Government on various policy matters and would welcome broader discussions about the cost of doing business in this State.

The Hon. DANIEL MOOKHEY: I asked a specific question, though. Would you oppose that?

Luke ACHTERSTRAAT: That is a hypothetical, Mr Mookhey. That is a policy that has occurred in Victoria. I understand that is probably not a matter before the New South Wales Government. As such, it is not a really relevant question at this moment in time.

The Hon. DANIEL MOOKHEY: Have you raised it with the New South Wales Government in any conversations you have had? First to Mr Achterstraat and then the other organisations, please.

Luke ACHTERSTRAAT: Mr Mookhey, we have raised the cost of doing business. The best thing the Government can do on that front is to repeal section 19B. That has been the strong advocacy driven from our members. The property council is made up of a number of committees, Mr Mookhey. We have a number of committees who inform—

The Hon. DANIEL MOOKHEY: Mr Achterstraat, you were not in a position to tell us earlier how much money you expect your members to save if the Government was to do it. Hence I am now asking you. Have you explored any alternative policies with the New South Wales Government? Or is this really the only view that you have in terms of the workers compensation scheme in New South Wales?

Luke ACHTERSTRAAT: We are looking for quick, fast and effective policy responses here, Mr Mookhey. 19B is creating a big headache for employers, as you have heard today. I think the most effective thing for those interested in helping the cost of business in New South Wales would be to repeal section 19B. Conversations with Government, with yourself, Mr Mookhey—we welcome the opportunity to catch up with you in due time as well, to talk about the broader cost sharing, a whole range of issues you have ventilated today. But really we are here today to strongly convince you and your colleagues that 19B needs to be repealed.

The Hon. DANIEL MOOKHEY: Has the HIA explored any alternative policy solutions at all? Or is it a case that you also only prefer the repeal of this as a solution?

Brad ARMITAGE: Mr Mookhey, HIA has been in weekly and even twice-weekly meetings with various departments across Government, related to the issues facing our industry ever since the breakout of the pandemic, two years ago. It relates to a range of issues and different forums. In this forum our submission is related to whether or not we support the workers compensation bill, which we do.

The Hon. DANIEL MOOKHEY: Yes. But I am asking you. Have you had any conversations with the Government or advanced any proposition other than this one?

Brad ARMITAGE: No.

The Hon. DANIEL MOOKHEY: Thank you. Has the pharmacy guild had any conversations with the Government about this directly?

Scott HARRIS: Not to my knowledge on this particular topic. But we are always talking to the Government about ways of doing business and providing care to the community on that side of it. We are here to discuss 19B and the possible repeal of it. As we have stated from the front, Mr Mookhey, if the repeal goes ahead, employees still have the right to access workers comp if they do contract the disease in the workplace.

The Hon. DANIEL MOOKHEY: Indeed. I think my time might be coming to an end, Chair.

The CHAIR: Yes. Last question.

The Hon. DANIEL MOOKHEY: Insofar as the existing mechanism that is contained within section 19B to spread the cost across the schemes, has any of your organisations ever made any inquiries of the Government as to why they have not triggered that provision? Has anyone made any inquiries with the Government as to why they had not triggered that position?

Luke ACHTERSTRAAT: Mr Mookhey, I just refer you to my previous answer, that we are maintaining open dialogue with Government at all times, around the cost of doing business, but cannot specifically—

The Hon. DANIEL MOOKHEY: Appreciate that. Other organisations, anyone?

Lindsay CARROLL: To my knowledge, no, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you. Does the pharmacy guild or the HIA?

Scott HARRIS: Not to my knowledge at the same time, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Does HIA to your knowledge?

Brad ARMITAGE: No, not specifically.

The Hon. DANIEL MOOKHEY: Thank you.

The CHAIR: Thank you. Crossbench. Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Thank you, Chair. Thanks, everybody, for their assistance today with your evidence. Did any of your organisations make a submission to SIRA on their paper about cost sharing? They delivered a discussion paper on cost sharing, sought submissions on it. Did any of you make submissions?

Lindsay CARROLL: No, Mr Shoebridge, not from the National Retail Association.

Mr DAVID SHOEBRIDGE: Mr Harris?

Scott HARRIS: Not from the pharmacy guild. But we were a part of the Australian Chamber and ABL submissions that were filed.

Mr DAVID SHOEBRIDGE: What did their submissions seek in terms of cost sharing?

Scott HARRIS: We are just a part of the membership of that one, Mr Shoebridge. I am unsure of exactly what was written within those submissions.

Mr DAVID SHOEBRIDGE: Did they support it, or oppose it?

Scott HARRIS: I have only just come onto that part of the conversation, so I cannot answer that side of it.

Mr DAVID SHOEBRIDGE: Mr Achterstraat, did your organisation make a submission?

Luke ACHTERSTRAAT: Mr Shoebridge, to the best of my knowledge, we did not make a submission.

Mr DAVID SHOEBRIDGE: Is there a reason why you have not engaged in that discussion about sharing the cost, equitably sharing the cost amongst all employers?

Luke ACHTERSTRAAT: Mr Shoebridge—sorry, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: No, you go ahead. We will do it in reverse order.

Luke ACHTERSTRAAT: Thank you very much. No, I do not think there would be one specific or concrete reason why a submission was not put forward on that particular matter. The property council have a wide range of policy interests that we prosecute. We have a committee structure, Mr Shoebridge, which I mentioned earlier. 19B came to our attention quite a few months ago from a lot of members with concerns. So that is what has brought us here today, through a robust policy development process. But, no, in regards to your question, that specific submission you referred to, I cannot think of a specific reason why we would not have participated.

Mr DAVID SHOEBRIDGE: I did not mean to leave you outside, Mr Armitage. Did your organisation make a submission?

Brad ARMITAGE: Yes. HIA made a submission in December 2020.

Mr DAVID SHOEBRIDGE: What did your submission say?

Brad ARMITAGE: HIA did not support the cost-sharing mechanism and the anticipated increases.

Mr DAVID SHOEBRIDGE: Did you inform your members, by not sharing the cost amongst all employers, the construction sector would have to pay a higher share of premiums? Did you tell your members what the effect of that submission was?

Brad ARMITAGE: Our members are aware of all of the submissions that we make, in detail. I think our—

Mr DAVID SHOEBRIDGE: Did you tell them that, by opposing cost sharing, your members would pay a relatively higher impost? Did you inform them that was the effect of your submission?

Brad ARMITAGE: Our members will pay a significantly higher proportion to what other industries do already. So any increase would be disproportionate for us [disorder]

Mr DAVID SHOEBRIDGE: Mr Armitage, did you tell them that the effect of you opposing the cost sharing was that your members would pay more? Did you tell them that?

Brad ARMITAGE: We informed them that they would be paying more under this proposal.

Mr DAVID SHOEBRIDGE: No. Under your submission to the cost sharing, Mr Armitage—is my question not clear enough? As a result of your submission—your submission sought not to share the cost across all employers. Your members are part of the subset of employers who are frontline workers. As a result of your submission, obviously, being successful, that cost sharing has not occurred. Your members will have to pay higher premiums as a result of it. Have you told your members that that was the import of your submission?

Brad ARMITAGE: That is a very specific question. I think it would be unreasonable for us to support half of the bill and not in total. We do not support 19B as it is.

Mr DAVID SHOEBRIDGE: Mr Armitage, do you normally make submissions that actually prejudice your sector of the economy? Do you normally make your submissions that mean your members have to pay relatively higher workers compensation premiums? Is this part of your usual practice?

Brad ARMITAGE: I do not agree with that presumption. Our members are very connected to the submissions that we make on their behalf.

Mr DAVID SHOEBRIDGE: How do you defend putting a submission in, the effect of which, if adopted—the Government has agreed with you so far—has been to make your members pay a relatively higher workers comp premium? I just cannot work out why an industry association would do that. How do you defend it?

Brad ARMITAGE: That is not something I can answer.

Mr DAVID SHOEBRIDGE: Why was the submission put in? Mr Armitage, why did you put in a submission that financially harms your members?

Brad ARMITAGE: We do not believe that it does.

Mr DAVID SHOEBRIDGE: Ms Carroll, you are aware of there being a cost-sharing mechanism which would benefit the retail industry? Can you explain why you have not sought, for the benefit of your members, to have that mechanism in place? You are muted, Ms Carroll.

Lindsay CARROLL: Thank you, Mr Shoebridge. Like one of my colleague's responses earlier, we have a number of different policy priorities. Like both employee unions and employer unions over the last couple of years, our resources have been directed and sometimes stretched very thin in response to COVID and the pandemic and the measures associated with that, across all State and Federal governments. I cannot answer that question as to why we did not prioritise a submission.

Mr DAVID SHOEBRIDGE: You found time to put a submission in when it comes to removing rights from workers. I am just curious about why you did not find time to put a submission in when it comes to benefiting your members by sharing the costs around all employers. I cannot understand why you are able to find the resources to put a submission in that impacts negatively on workers but why you could not find the resources to put a submission in to impact positively on your members. Is it ideological?

Lindsay CARROLL: Like I said, I cannot answer that question.

Mr DAVID SHOEBRIDGE: Mr Harris, is it an ideological thing, that it is easier to put a submission in, talking about the removal of benefits rather than the sharing amongst other employers? Is it an ideological position from your association?

Scott HARRIS: Mr Shoebridge, I do not believe you have actually categorically made the comment there true. 19B is removal of an automatic entitlement. Employees still have the right to make a workers comp claim if it is contracted in the workplace. They have not lost any rights at all.

Mr DAVID SHOEBRIDGE: You are telling me that a worker in your industry will have the same rights after the presumption is removed as they have currently. Is that seriously your position, Mr Harris?

Scott HARRIS: They are still entitled to workers compensation. It is not just automatic where they may have contracted the disease from.

Mr DAVID SHOEBRIDGE: They have a fundamentally different right and a lesser right because they have to go through the process of proving where they got it. There is no genomic testing. There is no contact tracing. They have a fundamentally lesser right if 19B is removed. I cannot work out how you can say otherwise, Mr Harris. It just seems grossly disingenuous to say otherwise. I am giving you the chance to explain.

Scott HARRIS: Mr Shoebridge, we will disagree on our interpretation.

Mr DAVID SHOEBRIDGE: It just seem futile to spend time, calling black "white", but you want to insist upon that position, that removal of 19B does not take away any rights. Is that actually your position?

Scott HARRIS: That is what we have written in the [inaudible] That is the position we hold.

Mr DAVID SHOEBRIDGE: It seems incomprehensible, but that is okay.

The CHAIR: We are at time, actually. On that note, are there any questions from the Government?

The Hon. SCOTT FARLOW: Yes, there are. I am just wanting to pick up on this issue raised by Mr Shoebridge with respect to—I think that what he is referring to is 19B (8) (d), in terms of sharing of the financial risk. Has there been evidence that is put forward, to any of your organisations, that has in fact said that your members would be paying less if that provision was actually enacted?

Lindsay CARROLL: I can answer that, Mr Farlow. The answer is no.

The Hon. SCOTT FARLOW: Yes. Thank you. Any other organisations?

Brad ARMITAGE: Mr Farlow, we would agree with that. There has been a lack of data about how this would operate in any way, which is where a lot of our concern comes from.

The Hon. SCOTT FARLOW: Thank you. Mr Achterstraat or Mr Harris?

Luke ACHTERSTRAAT: Nothing further to add to those comments, Mr Farlow.

Scott HARRIS: No to myself, Mr Farlow.

The Hon. SCOTT FARLOW: Thank you very much for all of you for being here today. I am just wanting to pick up as well on some of the issues you raised. Mr Harris, I might turn to you in that last exchange with Mr Shoebridge, in terms of the rights and entitlements that would still exist under the Workers Compensation Act if somebody contracted COVID in the workplace. You from the pharmacy guild, I take it, operate in all of Australia at the moment. Is that correct?

Scott HARRIS: Yes, we do, Mr Farlow.

The Hon. SCOTT FARLOW: I think we have had it settled today that, effectively, 19B presumptive provisions do not exist in any other jurisdiction in Australia. I take it that your members, if they contract COVID in the workplace, are able to seek workers compensation for that in other jurisdictions. Is that correct?

Scott HARRIS: That is correct, Mr Farlow. We have had several of those people already who have, during the early stages of the virus, where they were contracted in the workplace because they did not have appropriate protections or cleaning into place.

The Hon. SCOTT FARLOW: I guess that we have come to a different stage of the pandemic, with Omicron. We are, of course, seeing Australia move away from COVID zero. We have seen an open economy. We have seen COVID cases increase in the community. What are you seeing in terms of claims at this stage with respect to contracting COVID under the Workers Compensation Act as it stands at the moment? Are you seeing an increase in claims?

Scott HARRIS: For myself and the pharmacy guild, I have not actually seen that formal data. But, working with the members, the claims going in have decreased to nil.

The Hon. SCOTT FARLOW: And from other member organisations?

Luke ACHTERSTRAAT: Mr Farlow, I just emphasise I think that is the right mentality here. We have got to learn to live with this virus, Mr Farlow. I think all the industry groups you have heard from today have emphasised that, that 19B was fit for purpose at one stage in time but is no longer fit for purpose. New South Wales should be proud of itself for hitting 95 per cent full vaccination rate. Governments all around the country are looking to grapple with Omicron. But 19B—its value has really run its course. The default presumption that we have all agreed is a handbrake on business, on investment and creates uncertainty, Mr Farlow, as well. We can talk all day around different modelling and who has modelled what and "Can we guarantee prices will go down?" No-one will ever want to make those sorts of guarantees. But the administrative burden, the red tape that 19B is providing to all the employers you have heard today, I think, is a universal and shared message.

The Hon. SCOTT FARLOW: Thank you. Ms Carroll?

Lindsay CARROLL: I echo those same sentiments. It is important to keep in mind that the retail industry is one of the highest employers of young people in the country. As the economy has opened up and people are socialising, going to sporting events, music festivals and the like, there is a real probability, that if they contract COVID, it is not necessarily in the retail environment.

The Hon. SCOTT FARLOW: Yes. The likelihood of contracting COVID has increased outside of the workplace than what it otherwise would have been when this was first introduced. I think that is something we can all agree with and may be from our own knowledge and experience as well. Mr Achterstraat, just wanting to turn to you and probably for you as well, Mr Armitage. You are both in industries where you serve as border communities. You have players in your industries who can work in New South Wales or Victoria or Queensland. Are you finding this at all an issue for some of those companies as they are looking at where they are working, those border communities in particular, whether they are picking up jobs in New South Wales or they are picking up jobs in Queensland or across the border, in Victoria? Is that something your members have expressed to you?

Luke ACHTERSTRAAT: Thanks, Mr Farlow. I am happy to go first on this, Mr Armitage, if that suits you. Mr Farlow, as I have expressed, our members are very concerned about the cost of doing business. I think that is a theme you have heard from the evidence given today, both by myself and my colleagues. I think a lot of industry representatives and lot of investors are wanting to see good policymaking in response to COVID. We want to be convinced that governments understand how we live with COVID. A big example of that would be to repeal 19B. This is not a radical measure. This is about a sensible centre, making sure the workers compensation scheme is fit for purpose, the sorts of assurances that our CEOs, our investment directors from our member companies are seeking, so that they will choose New South Wales as a safe place for doing business. There has been a range of policy settings that will influence their ability to invest in New South Wales.

I would urge you and your colleagues and the crossbench to pass this bill, to provide investors with as much certainty as possible. We need more houses in New South Wales. We need more supply of homes. We need more hospitals built. We need a really strong and robust construction industry. I alluded to the industry being shut down for a couple of weeks in July. That really made us double down on our commitment to workers' safety—I am sure Mr Armitage will echo those comments too—putting in place the QR codes, the check-in systems in New South Wales to ensure that all of those workplaces in New South Wales were as safe as possible and in compliance with New South Wales Government regulation.

Brad ARMITAGE: Mr Farlow, the point you raise is a really good one. Our members in border regions have had a really difficult time throughout COVID. That is for all reasons. Particularly in some instances, the rules between different States have varied significantly. In one State, they are permitted to go to work. In another State, they are not allowed to leave. Often in cases, they are living in one State and working in another and have jobs across different borders. They may have contractors and employees living in different States as well. It is easy to underestimate just how much of a small business's resources goes into navigating these issues. This issue is another one on top of that. That is why HIA supports the workers compensation bill.

The Hon. SCOTT FARLOW: Thank you very much. I am out of time. I think you are out of time for the session. Thanks a lot.

The CHAIR: Indeed. Yes. That is the end of this session. Thank you so much, all of you, for joining us and for your participation today. We do appreciate it. You are all excused. As for the Committee, we will now take a break. We will resume proceedings at 3.20. Reminder: Switch off your—

Mr DAVID SHOEBRIDGE: Just before we go to the break, Chair, I will table electronically with the Committee the cost-sharing mechanism discussion paper from SIRA on COVID-19. The Committee can draw its own conclusions from it. But it makes it very clear that it redistributes the cost away from the industries that were represented in that panel and reduces the cost to those industries. But I will table it in the break, and we can have it in our deliberations.

The CHAIR: Okay. Thank you very much.

(The witnesses withdrew.)

(Short adjournment)

MICHAEL BUCKLAND, CEO, McKell Institute, sworn and examined

RICHARD HOLDEN, Professor of Economics, University of New South Wales, sworn and examined

The CHAIR: Welcome back, everybody, to the final couple of sessions for this inquiry this afternoon. We have our next panel ready to go. You are now each invited to make an opening statement if you wish. We will start with you, Mr Buckland.

Michael BUCKLAND: Thank you. I just have a brief opening statement on behalf of Richard and I. Our submission considers two claims made to justify the amendment, namely, that failure to pass it will lead to 25,000 additional workers compensation claims at a cost of \$638 million. We note that a considerable amount of time given to the debate has centred on who should bear the cost of COVID-related workers compensation claims in general, and not limited just to the amendment 19B. Since our submission to the inquiry Omicron has led to the largest outbreak in infections since the pandemic began. The outbreak highlights the need to properly scrutinise data before making any decisions in this case. As Professor McCaw of the Doherty Institute told us as we prepared the submission, "any such considerations need to accept the vast uncertainty in future epidemic behaviour and hopefully embrace that uncertainty."

Given Omicron and the different public policy response we think it is useful to provide the Committee with three quick updates. Firstly, workers compensation claims are becoming less likely. Our submission found that for every 10,000 COVID cases there were 261 workers compensation claims. That has now been reduced to 131. This means that fewer workers compensation claims are being made, compared to the size of the outbreak. This is likely because the working age population is now highly vaccinated, as well as the growth in the proportion of infections among people under 19 years of age. While we expect there to be some lag in claims, it is unlikely that they will return to previous levels. Secondly, Omicron requires us to examine a worst case scenario. If the current rate of infections in the first few months of 2022 were to continue, we would expect 10.5 million COVID infections in 2022 foot. I submit to your judgement and the judgement of the Committee that out of a population of eight million that is 95 per cent vaccinated, this is highly unlikely. What is more likely is that we will have relatively low levels of cases between intermittent outbreaks.

Finally, intermittent large-scale outbreaks would lead to worse outcomes and some of the scenarios we examined, but still not bad enough to satisfy the claims that the amendment is based on. As included in our submission, for the 25,000 additional workers compensation claims to materialise people in New South Wales would need to be exposed to approximately 8.7 million COVID infections. In the worst month of the Omicron outbreak there were 895,000 infections. Therefore, to reach these claims New South Wales would need to experience nine more Omicron outbreaks in the next 11 months. When we spoke to Professor James McCaw of the Doherty Institute he told us that the Doherty Institute modelling provides scenarios for planning but none of them can be considered quantitative predictions, yet figures described as based on Doherty Institute modelling are being used to justify the changes. The Premier is rightly alarmed when he is presented with the huge costs some people are providing to him. These numbers have been misrepresented and misapplied and we hope the Committee can help clear this up.

The CHAIR: Thank you to both of you for joining today and thank you, Mr Buckland and McKell, for the opening statement. We will now open it up for questions. I will start with the Opposition.

The Hon. DANIEL MOOKHEY: Thank you, Chair, and Mr Buckland and Professor Holden for your appearance. The McKell Institute recently published its views as to what the likely cost is of COVID, did you not?

Michael BUCKLAND: We produced a couple of different scenarios, including what the likely cost of COVID would be.

The Hon. DANIEL MOOKHEY: That was work you undertook, was it not, Professor Holden?

Richard HOLDEN: That is correct.

The Hon. DANIEL MOOKHEY: Can you take us through your results. What is the most likely scenario, as you see it?

Richard HOLDEN: Thank you for that, Mr Mookhey. As this submission makes clear what our starting point was were the numbers provided by SIRA to conclude that as a result of repealing section 19B there would be an additional 25,000 workers compensation claims in 2022, at a cost of \$638 million. As the submission makes clear, and one of the quotes we have provided from Professor McCaw makes clear, trying to predict the future with epidemiological models is tricky. What we think is important is consistently using the best available evidence within the context of any such exercise, and basing public policy on the best available numbers. We looked at one

of the important assumptions behind the numbers that were provided, and that was the vaccination rate of the public. Because it was based on Doherty modelling, which is perfectly appropriate, but it was based on an assumption about an 80 per cent vaccination rate. Already in December we knew that vaccination rates, thankfully, were substantially higher than that.

Just an obvious adjustment to make. And that is one that we made in our submission, was to say, well let us take everything else as given by the SIRA numbers and adjust an 80 per cent vaccination rate to the 95 per cent vaccination rate that we saw. That immediately reduces that 25,000 additional claims and the \$638 million cost down to about 12,000 claims and a \$315 million cost. I am not suggesting that \$315 million is by any means a prediction about the cost. What I am saying and what the submission says is that we should use the best available assumptions, particularly ones that are important drivers. That is, if you like, an illustration of what happens when you update the SIRA numbers with the best available evidence.

The point that we have really tried to emphasise here—sorry, I will finish very shortly—the point that we have really tried to emphasise is to think about what is the correct alternative or what is the correct counterfactual here. This is about what happens to claims if section 19B is repealed. Not what total claims are going to be overall, not the state of the workers compensation system in general, but what is the incremental difference in the cost of workers compensation claims due to COVID-19 by repealing section 19B. As Michael said in his opening statement, and as we say in the report, we think that is a fraction of the kind of numbers that have been used as a basis to inform potential amendment to 19B.

The Hon. DANIEL MOOKHEY: Professor, I think I follow that. If we drop the claims from 25,000 to 12,000, not all those claims are covered by the presumption, is that fair?

Richard HOLDEN: That is correct.

The Hon. DANIEL MOOKHEY: Do have an estimate or a basis to estimate how many of the 12,000 claims are actually covered by the presumed workers or the presumed industries?

Michael BUCKLAND: If I can chip in there, Mr Mookhey. One of the things that we found in our research was that in other jurisdictions where the presumption did not apply, up to 11 per cent of all claims were rejected. That includes claims rejected for lots of reasons, not just because they were not at work. So, therefore, the maximum number from that 12,000 that could be considered to be rejected because of the section—if you did not have a presumption—would be about 11 per cent of that. In this case we are talking about just over 1,000.

The Hon. DANIEL MOOKHEY: Really if you follow your relatively straightforward mathematics, even if the Parliament did decide to repeal 19B we are talking about a minimum impact in terms of the scheme, are we not, is that fair?

Richard HOLDEN: Yes, that is correct.

The Hon. DANIEL MOOKHEY: Is it likely that by excluding these 1,100 odd claims, by repealing the presumption, that we are going to see workers compensation premiums tumble in New South Wales?

Michael BUCKLAND: We have not modelled the effect on premiums. If the current modelling is based on 25,000 additional claims, because of section 19B and the actual number is a fraction of that, then we would expect the increase to be far lower or negligible.

The Hon. DANIEL MOOKHEY: That is because there is , so far, unlikely to be any correlation between premiums in New South Wales and the existence or not of section 19B, is that fair?

Michael BUCKLAND: I would say that is fair.

Richard HOLDEN: Certainly we are not aware of any evidence to that effect, correct.

The Hon. DANIEL MOOKHEY: Professor, can you just expand on that? Are you aware of any evidence that would suggest that New South Wales premiums, or for that matter any premiums in any State, has been affected by presumptive legislation of this type? Let us just limit it to New South Wales. Are you aware of anyone who has made that claim in New South Wales?

Richard HOLDEN: I have not seen any evidence to support that claim.

The Hon. DANIEL MOOKHEY: To the next line of inquiry that I have. The core point that you are making is that the scenario that SIRA had modelled is now out of date, is that fair?

Richard HOLDEN: That is correct.

The Hon. DANIEL MOOKHEY: And it became out of date the moment vaccination exceeded 80 per cent double dose in New South Wales, is that fair?

Richard HOLDEN: That is fair.

The Hon. DANIEL MOOKHEY: And we hit 80 per cent double dose circa late October, from memory, is that about right?

Michael BUCKLAND: I do not have that in front of me, but that sounds about right.

The Hon. DANIEL MOOKHEY: The Ministers cited this study on 14 November, when they announced their policy of repealing. At that point is it not correct that at the time the three Ministers issued the press release calling for the repeal of section 19B, they cited evidence that was already out of date at that point in time, that is a fair inference for us to draw?

Richard HOLDEN: I think that is the only conclusion that one can draw from that time line.

The Hon. DANIEL MOOKHEY: To the extent to which the Government and others persist in making that claim, they are repeating a claim that is now known to be false, is that fair?

Richard HOLDEN: I cannot speak to who knows what, but I think it is clear that it is based on out of date numbers that are material.

The Hon. DANIEL MOOKHEY: To be fair to SIRA they came before the Parliament in a separate inquiry at the end of last year and said that their modelling was out of date and they had not undertaken any further modelling. Are you aware of anyone, other than yourselves, who have done any further modelling on this since December last year?

Richard HOLDEN: I am not aware of anyone, that is certainly not so that it does not exist. One thing I would say is that one thing I made investigations about is to see if other people had done that when considering making a submission. I do not know or speak to perhaps every epidemiologist in Australia, but I spoke to several of the leading ones. And the feedback I got I think is captured by those quotes from Professor McCaw, saying that these numbers should not be taken as quantitative predictions, that their work should not be taken as quantitative predictions.

The Hon. DANIEL MOOKHEY: Can we talk about what impact Omicron and the Omicron wave has had on your model and your work. A really basic question, have the numbers that we have experienced since of the Omicron wave fundamentally changed your conclusions?

Michael BUCKLAND: They have not. And I might jump in there if I can, Mr Mookhey. Two things have changed: The number of cases, which has increased dramatically and so that requires us to look at higher scenarios, which is what we have done when we mentioned in the opening statement that it would take nine more Omicrons in the next 11 months for us to reach the 25,000 additional workers compensation claims predicted. But, the other side is that the number of workers compensation claims per case is declining. So, where once it was 2.6 per cent now only 1.3 per cent of cases result in a workers compensation claim. To some degree that will increase over time because there is a lag in these claims, but that is still half of what it was and is unlikely to increase. I might just make one more point, which is that I did hear in evidence earlier today that the average workers compensation claim was about \$2,500. That was said by the Business Council, I believe. Our figures assume the current \$638 million divided by 25,000 claims, which is \$25,000 per claim. We are assuming a far higher cost to claims than it looks like is likely to materialise. That means that we would be making a very conservative assumption.

The Hon. DANIEL MOOKHEY: You have basically taken the highest cost possible and assumed [inaudible], is that fair, Mr Buckland, did I interpret that right?

Michael BUCKLAND: Yes.

The Hon. DANIEL MOOKHEY: And even under that scenario you do not get anywhere near the \$638 million figure?

Michael BUCKLAND: Yes.

The Hon. DANIEL MOOKHEY: It is the case, as you have already established, that therefore that has no bearing on premiums to the best of your knowledge, or you cannot say?

Michael BUCKLAND: Yes.

The Hon. DANIEL MOOKHEY: Fair enough. Can I just ask, did you engage with SIRA or did you provide your report to SIRA?

Michael BUCKLAND: We have not, we wrote the submission for this inquiry.

The Hon. DANIEL MOOKHEY: It is very specialised.

Michael BUCKLAND: We only note that when SIRA has previously discussed claims on their website they did walk back saying claims that workers compensation liabilities are rising have been overstated. And that was the do not reflect my views as SIRA chief executive. That is what is contained on page 5 of our report.

The Hon. DANIEL MOOKHEY: It is the case, is it not, that all insurers are not the same as other insurers. In fact, for the public service workers the insurer is the Treasury Managed Fund, that is your knowledge, yes?

Michael BUCKLAND: Yes.

The Hon. DANIEL MOOKHEY: That means that the Government is paying for the insurance, is it not?

Michael BUCKLAND: In many cases, yes.

The CHAIR: We are actually out of time, Mr Mookhey. I turn to the crossbench.

Mr DAVID SHOEBRIDGE: Thank you very much for your submissions. If your modelling is based on a \$25,000 average cost claim, but the evidence is that in fact the average cost claim is one tenth of that, is it as simple as just saying the real cost is 10 per cent of the maximum you have put in?

Richard HOLDEN: Yes.

Michael BUCKLAND: Yes. We have not redone the model, but that would be logical.

Mr DAVID SHOEBRIDGE: I am always anxious about making those assumptions on models. It looks simple at the outset but, Mr Holden?

Richard HOLDEN: Yes, that is correct in this case. That is just it is directly proportional or it is linear, if you like, so there is no need to rerun the model to do that one.

Mr DAVID SHOEBRIDGE: Sorry, Professor Holden, for not using your title. Professor Holden, assuming that do you have any idea about what the total cost is likely to be for a calendar year?

Richard HOLDEN: I am reticent with changing circumstances to try and pin down an exact cost. In fact, I think this entire exercise is, again, Professor McCaw said quite eloquently, and we quoted, that trying to use these kinds of epidemiological models as prediction exercises is a little fraught. What I think is clear though, the numbers provided by SIRA are a many multiples over estimate of what the cost would be, even maintaining a number of their assumptions. We have pointed to a few that are really very significant. One is the dramatically increased vaccination rate from 80 per cent mark to over 90 per cent mark. Second is the one that you just pointed out, Mr Shoebridge, about the cost being again according to earlier testimony in the earlier of one tenth of what is currently assumed. And the third, is the claims that would be rejected that Mr Buckland talk to earlier, which is again 11 per cent also. There are many factors that reduce very meaningfully the numbers that SIRA are using.

Mr DAVID SHOEBRIDGE: Indeed, some of these factors are interrelated. So the significant increase in vaccination rates not only reduces claims numbers but it also, almost certainly, reduces severity and sees a greatly reduced quantum for the bulk of cases. Would that be fair to say?

Richard HOLDEN: I think that is fair, yes.

Mr DAVID SHOEBRIDGE: Do you think we are seeing that? Are we able to go forward with at least some comfort that the rate of vaccinations and the effectiveness of vaccinations means that those highly inflated figures we saw last year from SIRA are likely never to rise again?

Richard HOLDEN: I think the claims that we are seeing at the moment, that Mr Buckland spoke to earlier, are certainly consistent with that. They are totally consistent with significant higher numbers of vaccinations and are arguably again what epidemiologists say publicly is a less virulent strain, even though it is more infectious, of the virus.

Mr DAVID SHOEBRIDGE: Can I ask you from a system design point of view: If you have thousands of claims that have an average quantum in the order of about \$2,500, relatively small claims, does it make good system design to have those claims determined in as perfunctory a manner as you possibly can and efficiently, rather than spending potentially a multiple of that on determining issues like causation? Are there system design benefits in 19B?

Michael BUCKLAND: I think as an economist I would say that there are two system design features that would be advisable and desirable in this sort of circumstance. One which I do not want to put words in your

mouth, Mr Shoebridge, but I think I interpret you as alluding to, which is one does not want to take a \$2,500 claim and then have very significant, what economists would say are transaction costs associated with adjudicating each claim. Adding hundreds or even thousands of dollars to making a determination with each claim is undesirable. The other thing about it is just the timeliness and robustness of this. Having a clear, well specified default allows the system to work much more efficiently and in a more timely manner. From just a first principles economics perspective, I agree very much with what you said.

Mr DAVID SHOEBRIDGE: The McKell Institute, is there any clarity at all from SIRA or icare, or anybody, about what the actual cost would be of determining a fully contested claim is, as opposed to a claim under 19B? Are you aware of any evidence to that effect?

Michael BUCKLAND: No, we were unable to secure that information.

Mr DAVID SHOEBRIDGE: That is probably something we could usefully pursue with icare and SIRA, to work out the difference in system costs between a fully contested matter and a presumptive matter. That also goes to system design, Professor, do you agree?

Richard HOLDEN: Yes, I completely agree. One has to think about the all in costs with these things, and that goes to not only what payments are made to a claimant but the cost of administering the system and adjudicating claims.

Mr DAVID SHOEBRIDGE: In terms of the benefits of a workers compensation scheme, one of the key benefits of a workers compensation scheme is it is universal that all workers are protected. In moments of crisis such as a pandemic, that can have a really positive feedback into the economy, can it not; getting workers protected, ensuring that they do not go to work if they are a potential carrier of disease and properly resourced and able to get back to work quickly. Do you think that this bill ignores that, or does it take into account those kind of system benefits of universal cover?

Richard HOLDEN: I think that you rightly point to the idea that having confidence in the knowledge that not only am I protected when I go to work but other people in my workplace are protected, which gives me confidence about the likelihood of me being affected. What I do not want and what no one wants, is to go to work worrying that somebody else who should not be at work is at work out of necessity. That is terribly important. If that sort of thing occurs you get what often happens in these markets, which is these markets can unravel. It can have a very meaningful effect on confidence and on productivity in the economy. I think giving people confidence that workers are taking care of both themselves and others, is very beneficial.

Mr DAVID SHOEBRIDGE: Indeed, in the context of a \$1 trillion economy like New South Wales the marginal additional costs of 19B need to be seen in light of that strengthening of the overall economic response to a pandemic, do you agree with that?

Richard HOLDEN: I agree with that, and I think you are touching on this broader important point that confidence in being able to go about as normally as possible in the middle of a pandemic, confidence on the part of consumers, on the part of workers and on the part of businesses is tremendously important and has huge multiplier benefits. We have seen that throughout the pandemic and we have seen across the country that when people are worried about either getting sick at work or getting sick by going and being outside that economic activity drops a great deal. I think there is a great payoff to providing the kind of confidence to people.

Mr DAVID SHOEBRIDGE: Indeed, the obverse of that is if you pull the rug from protections at a time like this—where we have seen an Omicron surge, we have kids going back to school, teachers going back to school, people coming back from holidays—if you take away protections at a place like this it can have that obverse ripple, can it not?

Richard HOLDEN: Absolutely.

Mr DAVID SHOEBRIDGE: It can have a really serious macro-economic impact?

Richard HOLDEN: Absolutely. We have the lowest consumer confidence numbers since 1992. There is no need to make it any worse.

Mr DAVID SHOEBRIDGE: Mr Buckland?

Michael BUCKLAND: Yes. I would just add that in the context of tight labour market conditions when businesses are reporting labour shortages creating additional frictions that are going to restrict or decrease the number of people in the workforce is undesirable, and removing their protections would be one of those.

Mr DAVID SHOEBRIDGE: Could I ask you about one element of the bill that the Government has not implemented, which is a cost sharing mechanism. These claims for frontline workers are going to tend to be

focused in a number of sectors of the economy: health, retail, transport and construction. There is a mechanism in place that the Government has not activated, to share the costs of any premium increases equitably across all employers. Do have a view about the benefits of activating or, if there are problems, the problems in activating that cross-sharing mechanism?

Michael BUCKLAND: I might start there and mention the first principle of insurance is around spreading risk and reducing risk concentration. So, anything to encourage risk is going to make for a more equitable and efficient insurance scheme. Our submission did not look specifically as to who should bear the costs, but rather that the costs of 19B are a lot less than would otherwise be predicted.

Mr DAVID SHOEBRIDGE: I know you have mentioned the principle of insurance is spreading risk, but do you have a view about whether that is a potential design benefit of 19B from sharing the costs across all employers?

Michael BUCKLAND: Yes, it would be a design benefit to be able to share the cost across employers and ensure that industries that have outsized rates of claims or rates of exposure, are better able to share it. Yes, that would be an absolute benefit.

Mr DAVID SHOEBRIDGE: There is a theoretical rationale for this, which is that all employers benefit from these critical parts of our economy being up and running during a pandemic. In fact, it is only equitable that all employers make a fair contribution towards it. Do you agree with that?

Michael BUCKLAND: Yes, I searched the literature.

Richard HOLDEN: Sorry, Michael, go ahead, please.

Michael BUCKLAND: I was just going to say, yes. And nowhere has that been more seen than in the supply chain issues that many industries are facing. That has been where one industry may be exposed but the knock-on effect have been huge. If anything we are coming to realise just how interdependent we are. I will throw to Richard Holden.

Richard HOLDEN: I think Mr Buckland said it very well. We live in an incredibly interconnected economy, more so than we ever have been. And blockages in one part of the economy really affect businesses and consumers in other parts, seemingly quite far away. I think there is both a benefit to spreading the risk across all, and an equity dimension to it as well.

Mr DAVID SHOEBRIDGE: Many of those employees in those critical sectors—transport, distribution, retail, and particularly food retail—they can have quite precarious employment arrangements and therefore 19B protections have an even greater impact on securing those parts of our economy, do you agree?

Michael BUCKLAND: I do. I think that goes to the point I raised in an adjacent context earlier, which is one does not want people who should not be going to work and know they should not be going to work feeling that they have to because they have no alternative.

The CHAIR: That is time. We are now up to the Government. Any questions from the Government?

The Hon. SCOTT FARLOW: Thank you, Madam Chair. I just want to go through some of your logic. Of course you criticise the model produced by SIRA and I can understand that things have certainly changed in that context. But your modelling works on the basis of, at best, 300 daily cases. Of course Omicron has changed that game. My reckoning as of today is that we have had 40 times that number just on today's basis, I think it is about 12,000 cases today. What have you done to update your modelling since? How has that impacted your final result of a \$315 million cost of the system?

Michael BUCKLAND: So, what we did is look at a couple of different scenarios, approaching it from different ways. One was to look at the 25,000 cases a year and then extrapolate from their and the other was to look at the case numbers as they were at the time, which were far lower. To make sure that we are providing you better, more relevant information we looked at this again in light of Omicron. During the Omicron outbreak there were just under 900,000 COVID cases. That is in the worst month the outbreak. So, if you take about 15 days on either side of the peak. That is unlikely to be sustained. If it was it would lead to 10.5 million cases in New South Wales. Looking at that it is a judgement call for this Committee as to whether out of a population of eight million there is likely to be more cases than there are people, when we have a 95 per cent vaccination rate. So, we do not think—

The Hon. SCOTT FARLOW: I take it that is on an annual basis, that 10.5 million?

Michael BUCKLAND: That is right. We think that it is unlikely that the current rate of infection will last. Where it will go goes to our point earlier, which is that the Doherty Institute modelling was not designed to

be a forecast model. In fact they warn against it, which is one of the concerns about using this model to justify decisions in this case.

The Hon. SCOTT FARLOW: On that basis, the Doherty Institute modelling is actually less than what the actual scenario has been under Omicron. The Doherty Institute modelling, from what I see here in terms of what has been provided as the executive summary for symptomatic infections on one year from EY extrapolation was 701,000 cases. As you are talking about, there are 900,000 cases. I take your point before that effectively under Omicron I think you have said that the claim rate had gone from 2.6 per cent to 1.3 per cent, so that is halved. You have still got an increase in cases. Does that not change the model completely?

Michael BUCKLAND: It will change what the dollar amounts are. The model predictions, which are to look at the 25,000 figure and extrapolate from there. There are two ways to build this model. The first is to look at the number of cases and what we assume will be the number of cases, which we have not made an assumption about that, we have given various scenarios. You can extrapolate then what you think the likely number of workers compensation claims will be, which is 1.31 per cent of cases. And then how many of them would be affected by 19B, which is as we mentioned earlier about 11 per cent, so 0.11. That gives you an outcome, through a few more steps, of where you would be. That is something we have tried to steer away from because we do not know how many cases there are going to be this year. What we do know is that the numbers being used in this case are 25,000 workers compensation claims would be avoided if we get rid of section 19B.

That 25,000 workers compensation claims, therefore, is about 11 per cent of the total workers compensation claims, which means that we have to expect 250,000 or so—I am doing this off the top of my head I am afraid—total workers compensation claims. For 19B to have that benefit we would have to have a quarter of a million workers compensation claims. To date, in two years, including during the Omicron outbreak, there has been 12,000. That is over a two-year period, it is substantially less. We are not trying to give you a prediction of what it will be, but we are trying to say that the numbers currently provided are wrong.

The Hon. SCOTT FARLOW: Okay, fair enough in terms of the numbers currently provided are wrong. I will grant that I think the modelling has changed, certainly with Omicron things are different. In terms of what you put forward. You have done your adjusted DI model on the 95 per cent mark vaccination rate. You have come to a claim cost there of \$315 million. Taking the assumptions you have just raised with Omicron and I think 900,000 cases you are talking about at the peak for each wave, what is your new cost figure for that workers compensation claim cost? I imagine that has changed in terms of your modelling is well.

Michael BUCKLAND: So, \$315 million represents—if you assume that \$638 million is the cost and that is at 80 per cent mark vaccination rate, then at 95 per cent mark vaccination rate \$315 million would be the cost. I am afraid just going to the question you put, that would not give you—that is using numbers that already existed, based on the vaccination rate. That does not get updated with Omicron of a number of cases, it is building it backwards. It is building the model backwards from the numbers that are there rather than building it forwards from the numbers from COVID cases.

The Hon. SCOTT FARLOW: In terms of your update to your model to take into account Omicron you have not come to a sort of a final figure on that, is that correct, or equated that to the model as it stands at present?

Michael BUCKLAND: We have not provided an updated dollar figure, we have only provided the context, like I said, about nine additional Omicrons to get there. No, we have not redone the modelling in dollar figures.

The Hon. SCOTT FARLOW: Considering that \$315 million, for instance, do you think that is an acceptable cost for business to bear in terms of COVID claims? Is that something that you think would be acceptable under the current scenario with 19B?

Michael BUCKLAND: I do not think anybody wants to be arguing costs. The version of 19B, I think that is still substantially higher than is likely the cost of the claims resulting from section 19B. I would not be defending that figure at all.

The Hon. SCOTT FARLOW: McKell these days has a relatively large footprint across the nation. I know, of course, you have established something in Victoria and Queensland, and I am not sure if you operate in other jurisdictions. I have not checked lately. Have you advocated for other States to take up a similar presumption when it comes to their workers compensation legislation?

Michael BUCKLAND: I am not aware of any other inquiries about this. I note that in Victoria they have a very different workers compensation scheme. The State Government provided guarantees, provided payments. No, we have not advocated elsewhere. I am happy to, if there is a forum to do so.

The Hon. SCOTT FARLOW: Thanks. That is it from me, Madam Chair.

The CHAIR: We are almost at time for the next panel. There is one minute if people want to ask a final question in this round. Thank you to the McKell Institute, Mr Buckland and Professor for your time today and the work you put into the submission. We appreciate it. You are now both excused and we will bring in the next panel.

(The witnesses withdrew.)

ADAM DENT, Chief Executive, State Insurance Regulatory Authority, affirmed and examined

RICHARD HARDING, CEO and Managing Director, icare, affirmed and examined

MARY MAINI, Group Executive, Workers Compensation, icare, affirmed and examined

The CHAIR: Thank you for joining us for the final panel of the day, we do appreciate it. Icare and SIRA are invited to make an opening statement if you wish. Mr Dent, we will start with you.

Adam DENT: Thank you, Chair. Thank you for the opportunity to address the Community. SIRA is an independent agency within the Customer Service cluster of the New South Wales government. We regulate three statutory insurance schemes in New South Wales, including the workers compensation. As the evidence presented today highlights, there are strongly divergent views on the issue of the COVID-19 presumption and its impacts, with or without a presumption, are quite different on different individuals and businesses. I acknowledge the work of frontline workers in New South Wales over the last two years.

Ernst and Young modelling on behalf of SIRA was conducted based on initially a report of the potential cost of COVID-19 in April 2020. It was informed by international experience at the time. The scenario estimated that the potential cost of claims to be up to \$8.6 billion over the duration of the claims if 20 per cent of the population contracted COVID-19. The Australian experience replicated what was happening overseas. It is important to note that was not really modelling, but a range of scenarios based on the data available at the time. Detailed modelling was completed by EY in October 21, based on the Doherty Institute's modelling of the pandemic at that point in time. We provided that executive summary to this Committee.

That assumed and 80 per cent double vaccination rate and then up to 25,000 claims, including over 320 deaths at a cost of up to \$638 million. Since that modelling has been undertaken—and we have certainly discussed it at great length over time—Omicron has also emerged, double vaccination rates passed 93 per cent in New South Wales, various suppressant strategies have been introduced including lockdowns, capacity limits and masks. Fortunately hospitalisation and fatality rates have not reached anything like the modelled scenarios. If this remains the case, actual costs will likely not be anywhere near as high as those modelled scenarios.

The latest data, as at 20 January 2022, is that there have been just over 14,000 claims and notifications. Around 13,000 of those were for confirmed diagnosis of COVID. The rest relate to psychological claims and other causes, such as vaccination reactions. We do not know yet what the costs are going to be from this recent increase in claims, due to the lag between claims costs being finalised and reported through to SIRA. As at 30 November 2021, COVID-related claims totalled around 28 million based on about 2500 claims received to that point. That is not to suggest that is the final number, as the claims have continued to develop over time. Looking forward, forecasts of case numbers and the impacts of COVID-19 are frequently changing and very hard to source, given the high level of uncertainty and the novel nature of this pandemic.

The changing nature of the virus and the uncertainty around long-COVID and its impacts further complicate any ability project cost of claims over time. There are many voices providing opinions on the pandemic that we could be aware of. Unfortunately, there is no consensus on what the long-term future holds. Despite this uncertainty, insurers are currently looking at the potential cost impact from COVID-19 as part of their premium filing that is due to SIRA for the 2022-23 year in March. How rapidly and unpredictably things change is demonstrated by the estimation and infection and claim numbers that we just heard from the McKell Institute. Their submission in December clearly changed between then and now and I think that speaks to the point that it is very difficult to find the right type of data to make these predictions from.

I just want to make one quick point of clarification before I finish. Mr Buckland mentioned a statement in relation to a report being withdrawn by SIRA as being related to COVID. That report was actually unrelated to COVID numbers and modelling. It was in relation to an overall scheme performance matter that was discussed last year. I thought I needed to clarify that. That was certainly not the case, as it might have been represented. I look forward to being able to assist the Committee with its inquiry today.

The CHAIR: Thank you very much, Mr Dent. Mr Harding or Ms Maini, would you like to make an opening statement on behalf of icare?

Richard HARDING: No, thank you, Chair. We have no statement to make.

The CHAIR: We will open it up to the Committee for questions. We will start with the Opposition, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you, Chair. And thank you, Mr Dent, for your appearance today, and thank you, Mr Harding, and thank you Ms Maini, for your appearance today. Please convey on my

behalf, and I am sure on behalf of the Committee, our thanks to your staff for the work that they have performed, especially in the last two months since we last had an opportunity as a Parliament to see you. Mr Dent, I just heard one figure, which before I get into a broader line of questioning I will ask you to repeat, I am not sure that I heard it correctly. You said that the total cost as of which date was \$28 million?

Adam DENT: That would have been 30 November.

The Hon. DANIEL MOOKHEY: And how many claims was that?

Adam DENT: That was based on approximately 2,500.

The Hon. DANIEL MOOKHEY: So, that works out to be an effective cost per claim of \$11,200 at the time?

Adam DENT: At that point in time, yes.

The Hon. DANIEL MOOKHEY: Equally, you told us that there are, and your website confirms, 14,000 cases that have been notified to you, or thereabouts, is that correct?

Adam DENT: It is 14,066 in total. Probably what is important, Mr Mookhey, is that 12,972 of those are related to a confirmed diagnosis of COVID. The balance are related to psychological claims, which might be vaccination injuries. So, for the purpose of this conversation 12,972 confirmed diagnosis of COVID have been made as notifications from insurers.

The Hon. DANIEL MOOKHEY: How many of them are presumed workers in presumed industries?

Adam DENT: Of that, at the moment, it would appear a significant number of those. I cannot answer that quite specifically. I am looking for that. A large number of those has been presumed industries. If you look back just before Christmas, for example, we were at probably closer to 2,800. The economy then opened up, which of course exposed a number of those presumed injuries to having workers at work, and the large jump that occurred over the Christmas period is predominately in those industries.

The Hon. DANIEL MOOKHEY: Could I just ask you then—I know I am drilling down but it is somewhat important—of those presumed workers in that 12,000 figure, how many of them are in the Nominal Insurer?

Adam DENT: The Nominal Insurer, at this point in time—and I will ask Mr Harding to correct me at any point he feels the need—the Nominal Insurer has around 2,500. The self and specialised insurers represent 8,498 of those. Sorry, self-insurers 8,498, and specialised a further 930.

The Hon. DANIEL MOOKHEY: I am looking at your [inaudible] board and it says what you said, but broadly speaking the Nominal Insurer is about 2,500. I think the Treasury Managed Fund is at about 1,600 or 1,700, thereabouts, is that right?

Adam DENT: In terms of total claims, yes.

The Hon. DANIEL MOOKHEY: And the balance is falling really on the self-insurer, is it not, not the specialist insurers, it is the self-insurers?

Adam DENT: That is correct, yes.

The Hon. DANIEL MOOKHEY: I want to concentrate on the Nominal Insurer here, because that is the one that obviously businesses and workers are most anxious about because it is by far the largest. Mr Dent, the Nominal Insurer sees on average 65,000 claims per year?

Adam DENT: I will ask Mr Harding to answer that.

Richard HARDING: On average, Mr Mookhey, it is about 63, rounded up.

The Hon. DANIEL MOOKHEY: Sure. In the two years that the Nominal Insurer has presumably had 126,000 claims, thereabouts?

Richard HARDING: Yes, roughly.

The Hon. DANIEL MOOKHEY: Again, it is not complicated mathematics. It had 2,500 claims as a proportion of 126,000 claims, that is 1.98 per cent of all claims to the Nominal Insurer COVID-related, is that fair?

Richard HARDING: At this point in time, that is clearly the case.

The Hon. DANIEL MOOKHEY: And of that do you have any specific—Mr Harding or Ms Maini—information as to how any of those 2,500 claims over two years the NI has received are from presumed categories?

Richard HARDING: I do not have any specific data. I can tell you that the majority of them arise from industries including manufacturing, transporting, grocery, retailing, aged care and cinemas. I cannot give you specific number on that, unfortunately. That is the general themes that we have seen.

The Hon. DANIEL MOOKHEY: It is a smaller amount of the 1.98 per cent. Even if it is 1.7 or 1.5, that is fair for us to assume?

Richard HARDING: Sure. I am conscious that really this is an industry-wide issue. This is not a Nominal Insurer-related issue, because clearly the majority of claims are not falling to the Nominal Insurer at this point in time. I take your points, but that is the nature of how currently claims are falling under the presumption to self-insurers and specialised insurers. They are not all coming to icare, which is just the nature of where things are arising.

The Hon. DANIEL MOOKHEY: I strongly agree with you, Mr Harding. But I think part of the anxiety about what this presumption means, certainly amongst business groups, is what it means for Nominal Insurer premiums and what it means for the NI finances given that, as Business NSW told us it is their statutory trust, as they put it. It is fair to say, is it not, that so far—actually, I will ask you this: How much does the Nominal Insurer expect premiums to fall if 19B is repealed?

Richard HARDING: The premiums will not fall at all in relation to 19B, because there has not been a price for 19B in the last two years. It has not been included in premium rates last year and it has not been, to date, included in premium rates. It will not fall at all in that context. The question is more what will be the premium impact going forward? As Mr Dent pointed out, the data is at the very early stages of development. We need to see some more experience before we can get to that point. There is a high degree of uncertainty to be seen with Omicron and other changes, even if they are past changes to the Government's approach. Those things all impact how we might see those costs arise in the scheme. We are at a very early point in that conversation.

The Hon. DANIEL MOOKHEY: Again, Mr Harding, I strongly agree. But you are saying to me, if I understand you correctly, you do not have enough information to properly model what the impact will be going forward?

Richard HARDING: Not at this point in time. As Mr Dent has clearly said from an industry perspective, there is no one single source that can provide us with a clear projection going forward. And there is I think every person, including McKell, who have attempted some form of modelling and projection scenario analysis of COVID, whether it be Daugherty and the Federal Government right through to our own experience with SIRA, we have found it very difficult to get an accurate projection on that. At this point in time we would like to see some more experience, we would like to see it unfold. Clearly the risk here is that there is a significant financial impact on the scheme at a point in time when the scheme, as you have pointed out before, Mr Mookhey, is not in the most sound financial position. It is clearly at a point where we are doing repair work to improve the scheme.

The Hon. DANIEL MOOKHEY: I accept your angle. And to be fair to you, Mr Harding, I agree with you that no insurer has been able to model this. The issue is—and I will go back to Mr Dent—that we have been told by the Government that by getting rid of this we are going to save \$638 million. We have just heard from Mr Harding that it has no relationship with the premiums whatsoever. It is the case, is it not—

Richard HARDING: Perhaps if I could clarify what I said. It has not been promised into premiums to date. It will certainly have an impact on premiums going forward, the question is how much.

The Hon. DANIEL MOOKHEY: Indeed. But right now, as we stand, I put this to you Mr Harding: If Parliament was to repeal this section tomorrow will you be filing to lower premiums come March?

Richard HARDING: The clean answer to that is, no. What I suggest to you is the question that needs to be asked is: What is the risk of significant impact to premiums. You have to remember that the Nominal Insurer insures roughly 280-odd thousand small businesses. We are really talking about the majority of impact being currently felt in larger self-insurers. Having that impost on small businesses, I think, is a very significant concern that the Government should take into consideration when it thinks about the presumption overall. It is not in premiums today, no.

The Hon. DANIEL MOOKHEY: But it is not in premiums today; it is not factored in—that is fair?

Richard HARDING: Not at this point.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Harding. Is it the case that icare last year released \$96 million of its prior year reserves and that was because of the partial removal of COVID-19 specific risk margin due to reduced uncertainty?

Richard HARDING: That is correct. I think it also is a further demonstration of the uncertainty that we face. The actuaries at that point in time were reacting to the experience of the portfolio at that point in time.

The Hon. DANIEL MOOKHEY: Sure.

Richard HARDING: I am fully expecting when we receive the December valuations, and I have that conversation with our board, that we will see a significant strengthening this December, or this year, come January time when I meet with the board, or February time when I meet with the board, that we will see a strengthening in reserves as a result of COVID-19. So, these things are uncertainties that the valuation is trying to take into account, but not absolutes.

The Hon. DANIEL MOOKHEY: Mr Harding, I agree that what you include in what you reserve and increase liability for fluctuates. But, when you released \$96 million last year from future expected claims, for want of a better term, or costs, at that point the presumption existed, did it not?

Richard HARDING: Yes, I a hundred per cent agree. Also at that point the country was, and specifically New South Wales, coming out of a lockdown, had low case numbers, we were not seeing an increase in infections or virility, and in fact Omicron had not taken place, so it was a very different point in time to what we experience ourselves today.

The Hon. DANIEL MOOKHEY: I appreciate that. Mr Dent, back to you. Have you updated your modelling? Have you produced any modelling that would give us, given all the uncertainty Mr Harding noted—you are responsible for the scheme, you are responsible for deciding everybody's filings, what information are you going to use to decide whether or not to approve or reject a premium claim insofar as it relates to presumption?

Adam DENT: To the first part of your question, Mr Mookhey, no, we do not have any new modelling. I am at the basis of the difficulty in establishing any new or more reliable data to build that modelling from. In terms of what would be considered in terms of premium filings, they will be based on the experience that insurers had in their portfolio at the time and, as we would in any case, we would look at the reasonableness of those premiums and determine whether we do not reject them. If I may just very quickly clarify one point, the \$638 million number was the model to total potential cost of COVID claims, not the presumption itself. So, just to be really clear, that \$638 million was not what might be saved if there was no presumption. I just wanted to make sure that was—

The Hon. DANIEL MOOKHEY: Do you have that figure? Even assuming the 80 per cent mob vaccination rate that the \$638 million cost assumed, of that \$638 million how much of that relates to the [inaudible]?

Adam DENT: It is difficult to answer, sorry. That is not directly in front of me, and to be honest, given how much I would actually use that report with any degree of certainty right now, I am not sure it would actually be all that helpful.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Dent. But last year you told law and justice that that modelling was now out of date. That remains your position?

Adam DENT: Correct. That remains my position. The assumptions used by EY using the Doherty model at the time were around an 80 per cent vaccination rate, which we exceeded relatively quickly thereafter. It used a range of cost assumptions based on claims that had been potentially looked at at that time. There was very little data to base that on. Our experience since then is obviously dramatically different. I am comfortable that I did indeed say in law and justice that I would no longer rely on this modelling.

The Hon. DANIEL MOOKHEY: Mr Dent, if the Parliament were to repeal this presumption tomorrow, what guidance will you be giving insurers as to how they should apply the provisional liability parts of the Act to COVID claims?

Adam DENT: We have already said to insurers in very recent weeks that we would expect them to apply a pragmatic and empathetic approach to any employee who came with a claim for COVID-19. They would use the usual process of establishing any causal connection to work and we would expect them to be very reasonable about that. It is a decision for an insurer whether they accept liability, particularly if there was no presumption applicable, and there are those who may have made claims at this point in time that were not in presumptive injuries, but in industries, I would expect insurers to continue to behave within our customer conduct principles.

The Hon. DANIEL MOOKHEY: Right now for non-presumptive workers who are making claims, are insurers applying the provisional liability claims provisions in accepting the claims prior to establishing final liability?

Adam DENT: I would not speak generally about that, but I would suggest that where a claim was brought with sufficient evidence that it was not to be reasonably excused at that point in time, then they would likely apply provisional liability.

The Hon. DANIEL MOOKHEY: Mr Harding, what is the NT's policy for non-presumed workers when it comes to provisional liability?

Richard HARDING: It is very straight forward. We have taken on board SIRA's guidance, obviously, and we have a very pragmatic and simple approach to provisional liability. We go through a series of questions with the injured worker and make determinations as quickly as we can. It is as pragmatic as we can be. We obviously need to follow the legislation.

The Hon. DANIEL MOOKHEY: Do you have figures for how many non-presumed workers who you granted provisional liability for as a proportion of all claims made by that category of workers?

Richard HARDING: I do not have that number. What I do have is that for the Nominal Insurer of the 3,000-odd claims in total that we have received to date, about 31 per cent of them have been processed through provisional liability. And for the TMF, that is in the order of 32 per cent. We are using the provisional liability where we can to ensure that process works in the interests of injured workers.

The Hon. DANIEL MOOKHEY: Bear in mind, that presumably is over a very small cohort, given that—

Richard HARDING: It is very small. As I said, it is 3,000 people for the Nominal Insurer. It is about 1,700 people for the TMF. So, it is a portion of those people, yes.

The Hon. DANIEL MOOKHEY: But it is a proportion of the non-presumed category, what you are talking about.

Richard HARDING: I have not got that number for you, I am sorry. I cannot break it up between presumed and non-presumed.

The Hon. DANIEL MOOKHEY: And you would apply the same approach to workers who are currently classified as presumed if the section was revealed? You would apply the same policy, would you not?

Richard HARDING: Absolutely. We provide the same policy now in terms of ensuring that we are pragmatic and follow SIRA's guidance in respect to looking at the evidence that is before us. Obviously, regardless of the presumptive nature, we still need to follow the legislation, make the causal link between the workplace and the illness or injury, depending which way it falls. Absolutely, we would be as pragmatic as we can be.

The Hon. DANIEL MOOKHEY: Indeed. I am inferring, and tell me if this is wrong, but there is still a reasonable chance that if this presumption is repealed, many, many of these workers, if they persist with your processes, could find themselves in a position where they are still getting their claims accepted and the scheme is still paying for their care, as it should. That is fair?

Richard HARDING: Absolutely. I think if you take a step back, Mr Mookhey, it is not a case where the outcome is that someone should not be able to make a claim if there is a clear connection between their illness and the workplace. That is the purpose of workers' compensation. I think where I come from personally, I am conscious that I am not the policy agency here, SIRA clearly has a position. We have moved a lot since the presumption was put in as a community, and the nature of COVID itself has changed considerably. We have now got a situation where the community and the Government itself have adopted a live with it strategy and really looked to move that from pandemic to endemic, not [inaudible] other communicable diseases. I suppose my suggestion would be is it really the workers' compensation system that should be the first line of defence in that case? I am not suggesting workers' compensation should not be able to be triggered where it is entirely appropriate, and that is normal for any workplace injury, but should it be the first line of defence for something like a communicable disease that we fully intend as a community will end up being like influenza or a similar communicable disease? That is not the nature of what workers' compensation was intended for.

The Hon. DANIEL MOOKHEY: I understand that is the view that you are adopting in that respect. I go to Mr Dent. Mr Dent, because I have limited time, did you at all examine the response of the Victorian Government, and particularly its decision to provide a \$550 million grant to WorkSafe Victoria? Did you examine that process?

Adam DENT: Mr Mookhey, I cannot specifically say that we did. We did do a broad scan of what was going on around other jurisdictions, particularly as it related to a presumption and provided advice on what we could see to Government. I cannot say that I think we specifically looked at the circumstances under which the Victorian Government made that contribution.

The Hon. DANIEL MOOKHEY: Well, they made it on 30 June 2021 at the point where they had to lock down their economy to deal with Delta, I believe. Have you provided any advice to Government as to alternative ways in which to mitigate premium impact for businesses other than repeal?

Adam DENT: We have provided Government with a range of advice on a range of options, all of which was in a Cabinet submission, so I cannot really speak in great detail about it. The decisions the Government takes when they take advice from both SIRA and other parts of Government are theirs to make, not mine. We have done our best to provide balanced advice on a range of options to Government.

The Hon. DANIEL MOOKHEY: Indeed. I am not going to push you on Cabinet advice at this point in time, but given that you are an independent regulator what other options are there that the Government could explore that would limit premium impact, in addition to this particular proposal?

Adam DENT: Mr Mookhey, that would essentially have me start to divulge what was in the Cabinet submission by virtue of asking the question a slightly different way. So, I think—

The Hon. DANIEL MOOKHEY: But there are [inaudible] options, are there not?

Adam DENT: There are multiple ways to look at this and I think it would be fair to say there are a series of options that all have pros and cons that would be available for the Government to weigh up.

The Hon. DANIEL MOOKHEY: But has the Government sought any further advice at all since January this year?

Adam DENT: In relation to the presumption?

The Hon. DANIEL MOOKHEY: Yes.

Adam DENT: We have not provided any further advice since January this year, no, at this point in time.

The Hon. DANIEL MOOKHEY: Have you had any contact at all with the Government about this particular proposal and where it stands and what the Omicron impact has been?

Adam DENT: I think it is fair to say I do not have a choice but to speak to the Government nearly every day, Mr Mookhey. Obviously, we have been providing updated figures around the claim numbers, notification numbers and cost to the Government.

The Hon. DANIEL MOOKHEY: But have you provided any specific advice on the impact that the Omicron wave has had on the presumptive legislation proposal to repeal?

Adam DENT: Not specifically in relation to the proposals for repeal. We have provided advice to the Government though on how the Omicron wave has played out. I think, as Mr Harding also suggested, it is difficult to say what that cost has at the moment, so it is hard to predict—

The CHAIR: Last question. We are at time as well. I will let you finish with Mr Dent, but we are out of time.

The Hon. DANIEL MOOKHEY: My last question to Mr Dent. I find that a bit extraordinary, that we are being asked as a Parliament to agree your proposal and we are told by some that it is now even more urgent as a result of the Omicron wave, but you as the system regulator have not provided advice as to what, if any, impact Omicron has on this particular proposal, nor has the Government sought it. Why have you not provided that advice, regardless of whether or not the Government has sought it?

Adam DENT: We provide regular advice to the Government on the impact of Omicron on the system as a whole. I have not provided any specific advice as it relates to a repeal or not a repeal of this legislation.

Mr DAVID SHOEBRIDGE: Thanks to the three of you for your attendance today and your evidence. Mr Dent, the Government issued a media release at the end of last year saying that 19B was required to be repealed to save some \$615 million of costs arising from COVID-19. Have you ever given the Government any figures that identify how much 19B itself actually has cost?

Adam DENT: To date—at that point in time we would have probably in our regular reporting provided the up in fact, and it would have not been any different I suspect to what we might have provided you in law and justice and those sorts of environments. We would have provided at the time the cost of claims as we knew them

and those that related to the presumption. So, I think, for example, we provided in December an answer up to 31 October that suggested that across the scheme the gross incurred cost was around \$13 million where the COVID presumption had applied, and 11 where it had not applied. That advice has been provided and including to the law and justice committee.

Mr DAVID SHOEBRIDGE: Of the claims as at November, did you have a breakdown of those that were under the presumption and those that were not under the presumption?

Adam DENT: Yes, so, as at November—

Mr DAVID SHOEBRIDGE: Good. Rather than waste our time with November—I am sorry, I should not have started that way. Do you have a breakdown now of the 13,000 cases that are for COVID diagnoses, those that have come in under the presumption, and those that have not?

Adam DENT: It is too early to be quite specific as the data flows. We are talking about notifications from insurers. We ask for them weekly, so they are not as detailed as we get the claims. However, I can say it is [inaudible] to be about 90 per cent of that 12,900 or so would be likely from presumed employees.

Mr DAVID SHOEBRIDGE: Do you know what the average cost per claim has been? We heard from the McKell Institute that the modelling that SIRA had last year was based on an average cost of \$25,000 per COVID claim. First of all, is that right? Secondly, do you have any actual figures that show what the average costs of claims are?

Adam DENT: That number is not how it is materialised and a large part of that would be driven by the considerably lower number of deaths and hospitalisations than were originally in the modelling. Again, as at November, which is where we have more reliable claims data, if we are related to just confirmed diagnosis, so if I exclude psychological claims and other vaccine injury claims, for example, the confirmed diagnosis average cost has been around \$5,619 and that again takes out any death claims. We are looking purely at the most likely case is about \$5,619 across the system.

Mr DAVID SHOEBRIDGE: And it may well be that that has reduced this year as vaccination rates have increased and Omicron is producing, it would appear, less severe results.

Adam DENT: It would not be unreasonable to make that assumption.

Mr DAVID SHOEBRIDGE: Is it true that the Doherty analysis was based upon a cost claim of \$25,000 at the time that was done?

Adam DENT: That would be correct, yes. There was a considerably higher number of death claims, for example, the hospitalisation claims would have made up that number. If I may, in total as at November the gross incurred cost when you take into account all of the types of claims, so confirmed diagnosis and psychological claims, et cetera, that was closer to \$10,000. Even with lower hospitalisation it was still considerably higher if you take those other types of—

Mr DAVID SHOEBRIDGE: But those psychological claims and others tend to be more expensive in disputation, they tend to be longer running—

Adam DENT: Yes, of course.

Mr DAVID SHOEBRIDGE: —and are not covered by 19B, are they?

Adam DENT: That is correct. That is why we are saying \$5,619 where we are using a confirmed diagnosis. That is most relevant to the point of today's inquiry.

Mr DAVID SHOEBRIDGE: Even if we were just to plonk that into the Doherty modelling, that would reduce the figures produced by the Doherty modelling by at least 75 per cent?

Adam DENT: Yes, correct. On quite rough maths, yes.

Mr DAVID SHOEBRIDGE: And in fact it is likely that the average cost per claim is significantly lower than that. The Business Council of Australia I think said that they thought the average cost per claim is about \$2,500. Can you shed any light on whether or not that might be accurate or not?

Adam DENT: I think in certain industries where we are seeing literally just weekly benefits for a short period of time, that would probably drive those numbers lower. I do not have any specific data to reflect on that, but I would say again that is not unreasonable in terms of what we are likely to see. What is important, just in relation to the numbers that were used by EY against the Doherty model, we had very little claims experience at that point to base an average cost on and in the same way that that 2,700, those claims will not have developed at this point in time, so that is not unreasonable.

Mr DAVID SHOEBRIDGE: Mr Dent, if there is one thing we have learnt in this, it is that actuarial assumptions in a developing crisis and a pandemic are highly unreliable, I think would be the \$8.6 billion answer I would give to that. Do you agree?

Adam DENT: I find myself in the unusual position of wanting to agree with you, Mr Shoebridge, on that front. But what I will say, if you do not mind, is that I just need to clarify. That \$8.6 billion was not modelling, it was a set of scenarios that if claims were to be—the population was up. I do not think that it is an entirely fair characterisation, but I would suggest to you that at the moment trying to do actuarial modelling with the moving piece we have is unreliable.

Mr DAVID SHOEBRIDGE: But what we do know is the costs per claim are substantially lower than earlier feared. I do not know what astronomical figure went into the \$8.6 billion modelling, but instead of being the \$25,000 in Doherty, the evidence shows at the end of last year it was down to about \$5,600 as an average cost and this year it is likely to be lower again. We can reasonably comfortably go with that fact.

Adam DENT: As it relates to claims where the presumption would apply, I do not think I would want to say that as a general rule, because we certainly do not understand what the impact of, say long COVID, might be or some of the other psychological claims in the system that may be considerably more expensive.

Mr DAVID SHOEBRIDGE: But for what is on the table here, which is 19B, we can go with a degree of satisfaction about that?

Adam DENT: I would not use "satisfaction", but it is not unreasonable to suggest that that is the direction it is headed.

Mr DAVID SHOEBRIDGE: You are pointing out how hard it is to prove these things without a presumption, Mr Dench, you know that.

Adam DENT: I do not have a position on that, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Mr Harding, what is the average cost to the system of the lawyers and the doctors and the dispute handling costs of a contested workers' compensation claim?

Richard HARDING: I am sorry, Mr Shoebridge, I do not have that number with me.

Mr DAVID SHOEBRIDGE: Just a ballpark figure.

Richard HARDING: We do not have it at hand. Happy to provide it afterwards if you like, but we do not have that at hand.

Mr DAVID SHOEBRIDGE: We do not have a capacity to provide matters on notice, given how tight it is.

Richard HARDING: I am sorry, I do not have it on hand.

Mr DAVID SHOEBRIDGE: If you are looking at the benefits and demerits of 19B I would have thought one of the obvious things to look at is how much it has reduced disputation costs. Has SIRA or icare looked at whether or not it has had a significant reduction in disputation costs and claims determination costs? I will start with you, Mr Dent, then go to you, Mr Harding.

Adam DENT: Again, I do not think we are far enough in, in terms of seeing the numbers of claims that we have been able to predict that number I understand in any detail. I imagine in the EY modelling there would have been some consideration for what that might have been, but for the very reason we have discussed I do not think that would be helpful.

Mr DAVID SHOEBRIDGE: Mr Harding, you must have, surely?

Richard HARDING: We have not seen a significant level of disputes as a result of the COVID claims coming through. I repeat the same language as Mr Dent.

Mr DAVID SHOEBRIDGE: Is that because there is a presumption, it reduces the dispute costs, the transaction costs, if I can put it?

Richard HARDING: Regardless of the presumption, we still need to go through a process to ensure we follow the legislative path, which is about creating that causal link to the workplace. The presumption obviously reduces the hurdle from significant to main, but we still have to go through that process. It is probably quite a marginal difference in the actual claims assessing process between a presumptive and a non-presumptive claim.

Mr DAVID SHOEBRIDGE: It changes fundamentally the evidence that an injured worker has to put before you, does it not, if they are relying upon the presumption? It changes fundamentally that upfront cost for

injured workers and I would have thought in doing that it changes fundamentally the costs of responding to a case by an insurer.

Richard HARDING: In terms of the administrative cost, I do not know that it changes it that significantly. Again, to tell you the truth, we are talking about things we do not have facts in front of us on, so I am talking about my intuition more than I am talking about my understanding.

Mr DAVID SHOEBRIDGE: Mr Harding, I will put my intuition to you and you can tell me if I am right or I am wrong. If you do not have the presumption, you need to as an injured worker prove how you got it at work. You may need a variety of witness statements about where you were, you may need to go into some substantial detail about other events you had attended, other places you had been. You may need to reach out and get genomic testing of your sample, all of which is substantially more than you need for a presumption case. Do you agree with that?

Richard HARDING: I would not put it as substantially. I think we still ultimately need to review and understand the causal link, significant versus main. At the moment, whether it is presumptive or non-presumptive, we are not going to the limits that you just described, we are asking injured workers where they have been exposed, whether at work, if they have a PCR test or a RAT test. We are following the SIRA guidelines around trying to be as pragmatic as possible. As I said before, we are talking about our intuition here rather than what is known. And the other thing I point out, Mr Shoebridge, if we are talking about the financial impact to the scheme, the administrative cost is not really the issue at hand.

The CHAIR: Last question, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: You keep talking about testing on main, there is a presumption in favour. Are you saying that in each case you are directing your claims agents to actually gather evidence to oppose these presumptive cases?

Richard HARDING: No. We are seeking to understand the link between the workplace and satisfy that the condition of the main.

Mr DAVID SHOEBRIDGE: With your indulgence there is one important question that I failed to put to SIRA.

The CHAIR: Yes.

Mr DAVID SHOEBRIDGE: SIRA put out a consultation paper about cost sharing mechanism for COVID-19 workers' compensation claims and in the course of that set out a whole series of very real benefits for cost sharing, I will not read them onto the record because we do not have the time. What happened to that proposal and why is there not a cost sharing mechanism in place?

Adam DENT: That discussion led to in large part not being able to achieve support across the insurer base. Predominantly it was only supported by a handful of specialised insurers at the time and not all of them. It was broadly unsupported by the self-insurers. There was certainly not consensus on the process by which a risk equalisation mechanism could be applied or a cost sharing mechanism, which is probably a more accurate way to describe it. At that point in time, given we could not get any form of real agreement on the model, we took the decision to continue to monitor the situation and engage with insurers regularly on the impacts on them to see at which point maybe an alternative model could either be brought together or it would be necessary to trigger it.

Up until the end of last year in real terms the costs had not eventuated in a way that necessarily justified it. That situation is starting to shift and the conversation would then become about what is an appropriate thing to do. Mr Harding might have a stronger view on this or more accurate view but I would suggest that to a large extent within the nominal insurer there is already a degree of cost sharing that would occur in terms of how premiums are priced. What that means is essentially there is a small number of insurers who would effectively benefit against a large number of businesses at the moment as it would be proposed for which it would be shared across. There has not been a burning platform, if you will, to implement that mechanism just yet. As I have said, we have made a commitment that we would continue to provide advice if the situation changed.

The CHAIR: Mr Harding?

Richard HARDING: I think Mr Dent has answered the question very clearly. I think the impact that I was trying to allude to earlier is that what you are effectively doing is asking 280,000 small businesses to cross-subsidise the likes of Coles, Woolworths, Qantas and the other self-insurers. I think that is a question for government as to whether that is the intent of their policy. That is the impact of it is a degree of cross-subsidisation where the majority of the Nominal Insurer's current small business employers would pick up that cost and subsidise large self-insurer employers.

The Hon. SCOTT FARLOW: Following up from some of the earlier questions with respect to the burden of proof required if 19B were to go, I guess there is an assessment that you can make now that there are those that are covered by the presumption and then there are those that are not. What would be the burden of proof required for those not covered by the presumption at the moment? I think this probably is best directed at icare rather than SIRA.

Richard HARDING: I might ask Ms Maini to answer this question, if you are comfortable with that? She has a lot more detail than I have of the process.

Mary MAINI: Happy to. Thank you, Mr Harding. I am happy to also provide the Committee if they like just the training material and everything that we have put together in terms of managing the claims and also the notifications that we have received to date. What we do is with every notification we receive we actually call them a workers' hug call. We try and make sure that, we run a script that we ask the following questions, and those questions are directed at, "Have you tested positive to COVID? Was it contracted at work?" If the answer is no then we have another conversation. If the answer is yes then we ask, "What was the date that you last worked? Was your employer alerted that there was a positive COVID case in your workplace? Did you work with a colleague who was positive?" We ask this sort of series of questions to make sure that we manage the claim as efficiently as possible without putting undue or any additional investigation processes in place. We keep going. If no, "Were any of your family or friends tested positive? What date did they test positive? When did you start experiencing symptoms?"

We try and ask questions around, "Have you sought any medical treatment? If so, what treatment and the duration of frequency? What was the method of testing, RAT or PCR?" And if I could just pause there in terms of RAT or PCR, we are trying to make sure that we do everything we can to expedite these claims and take that pragmatic approach, especially whilst we were going through that phase where people were unable to obtain a PCR. We continue; if PCR we request a screen shot, if it is a RAT then we ask for confirmation that the test has been registered with Service NSW, if not we ask it to be registered so it could have that material and then ask for that to be processed. Then we talk about the current New South Wales isolation requirements, take them through that, ask whether there were any expenses incurred, ask for receipts to come through and try and make sure we get as much information so we can make that determination, especially on provisional liability, early.

Then we make sure that we contact the employer and ask the employer a series of questions. They are, "Were you notified by your employee of the positive test? When was the last date that they worked? Were you alerted? Have you alerted NSW Health? Are you aware of any other staff members testing positive?" They are the sort of questions that we run through. I am more than happy, as I said, provide more detail and our training material that supports all of those questions for the Committee. What we are trying to do is make sure that we get enough information so we can address the causal link, ensure that we comply with the legislative requirements and also process these claims as quickly as we can.

The Hon. SCOTT FARLOW: Thank you, Ms Maini. For those workers who are not covered by the presumption, are they required to provide any genomic testing or the like to evidence their claim?

Mary MAINI: The questions that we ask, for those that are not covered by the presumption, they are the questions that I ran through. If they have the—

The Hon. SCOTT FARLOW: So there is no requirement for genomic sequencing or the like?

Mary MAINI: We are not asking that level of detail.

The Hon. SCOTT FARLOW: To any of the witnesses, with respect to the Omicron surge we have seen throughout the community, have you seen a subsequent increase in claims as well coming through in recent months?

Mary MAINI: I am happy to answer that on behalf of icare, then I will hand over to Mr Dent if you would like to just focus, we only represent a portion of the scheme. What we have actually seen is that since 1 December we have been tracking an increase and we have seen an almost 80 per cent increase, 86 per cent increase since Omicron came through in terms of our total notifications. If I could break those figures down, we are looking at a total of 4,794 claims, and since 1 December where we had 2,937 claims. More than happy again to provide the Committee with more information in terms of a breakdown across the Nominal Insurer and the TMF for those if you require that.

The Hon. SCOTT FARLOW: Thank you. I think as has been said before, we are unfortunately unable to take questions on notice today but I think there is the provision for an additional submission, which can be made to the inquiry as well. I think Mr Shoebridge might have settled on before, that might be helpful for the Committee's information. Mr Dent, did you want to provide anything further on that?

Adam DENT: Yes, thank you, Mr Farlow. I think what we have also seen across the self and specialised insurer segment is obviously over December since Omicron a really considerable increase in numbers. They have gone from a very small number initially, then when the economy reopened you have seen something closer to 9,000 notifications in that environment now. That has meant for some a considerable increase in having to put on staff resources to manage those incoming notifications and for self-insurers we heard earlier today that has been the case and for employers to administer and manage that. In addition to the number of cases there has been an impact in the number of case management staff, for example, to be able to respond to that surge in numbers.

The Hon. SCOTT FARLOW: I imagine this is putting a significant burden on the system for these insurers but also for the employers as well who are no doubt administering these claims.

Adam DENT: And for some in particular the most impacted specialised insurers, they have had to put on tens of additional staff as a consequence to make sure they can meet the requirement to respond quickly to these claims. That is certainly the case. Some have had to make contractual arrangements around emergency surge increases for staff. There is administrative pressure on insurers to deliver, given what we have seen with Omicron, but I think certainly was not happening at the pace prior with, say the previous Delta wave.

The Hon. SCOTT FARLOW: With respect to the 9,000 figure and the 4,000 figure, or thereabouts I should say, do you have any breakdown in terms of how many of those attract the presumption, how many of those do not attract the presumption?

Adam DENT: I will not be specific, Mr Farlow, but of the 12,972 confirmed diagnoses of COVID cases we believe around 90 per cent are likely to fall to presumptive employees, just on the basis of which insurers those have come from. There are some for whom all of the members of those schemes would be presumed.

The Hon. SCOTT FARLOW: Ms Maini, any view from icare?

Richard HARDING: In relation to the Nominal Insurer I cannot give you a percentage as Mr Dent has but what I can tell you is the majority have come from presumptive industries, such as retail, the aged-care sector, transport, grocery, cinemas, manufacturing. Obviously in the TMF, the majority are from health services and some of the emergency services.

Adam DENT: Mr Farlow, it might be helpful, just indicatively, up until the end of November the key sectors that were impacted by claims were health care, corrections and passenger transport services. What we are seeing now based on the notifications coming through is that top three has now shifted to being supermarkets, hospitality, entertainment, and then public transport. The balance of where the impact is happening has moved and perhaps not surprisingly given that those businesses were not open in the same way as they have been since 15 December.

The Hon. SCOTT FARLOW: That is very helpful, Mr Dent. Thank you very much. In terms of premium rises, of course this is having an impact on the system and we may quibble around the quantum of that impact and the modelling, and Mr Dent, as you said before, the different scenarios may play out to be, but when could we expect to see any sort of subsequent increase in premiums?

Adam DENT: Again I will start and perhaps ask Mr Harding if he has anything to add. We would expect to see filings from insurers come through in March, as is the normal process. What tends to happen is they tend to be based on the experience up until perhaps the September the year prior. I would expect that insurer filings this year would be based on the previous year's experience, which would not take into account in any level of detail the impact of Omicron. Potentially we would see some small increases in filings are possible this round but we may not see the full impact, certainly as those claims need to develop and the Omicron wave being so significant. We might not see that full impact until further down the track in either a subsequent filing or the next filing year for insurers.

Richard HARDING: I totally agree with Mr Dent's perspective there. It is very early days. I mentioned before that we had yet to receive a final version of our valuation for December which gives us the steps of how the actuaries have responded to the current experience. That is in draft at the moment and still being worked through. I would expect that there will be a significant impact in that valuation from the experience we have had to date and that will be something we would take into consideration for our March filing with SIRA. Clearly it is very early days, is the point that I would make. We both said before that there is a lot of development yet to happen. Whilst we are not seeing the sort of impact that self and specialised insurers are, but self and specialised insurers have had 8,000 claims in the last month and a half, there is still a lot of development yet to come on the cost of those claims that would not be in the system today and that is the nature of how claims work and develop.

I also might say, and going out on a bit of a limb, but the McKell perspective that put forward a view about 12,000-odd claims and so forth, depending where they fall, we talked about in terms of the Nominal Insurer

having an average of 60,000-odd claims a year, that is a 20 per cent increase on what the Nominal Insurer would experience if that were the case. Either way, my concern is that there is a significant financial impact on the scheme that would need to be passed on to employers. Because, as we have talked before at various committees, law and justice and in budget estimates, the Nominal Insurer is in a situation where we are needing to repair the scheme, not in a situation where the scheme is flush with cash that can absorb the sort of impacts that we are talking about.

I also thought in terms of the conversation about the \$550 million in Victoria, I just wanted to clarify that the Nominal Insurer, and I think the Business NSW people think of it as their mutual, but the Nominal Insurer is actually an employer mutualist, it is not underwritten or guaranteed by the Government. So the prospect of the Government inserting capital into the Nominal Insurer I think is a challenge from a policy perspective to the Government. Again, that is a matter for the Government. I just thought I would point out that the Nominal Insurer is not like the Victorian scheme where I believe it is underwritten and guaranteed by the—the second part I am not entirely sure about—but there is a different relationship between the Government in Victoria and the scheme than there is here in New South Wales. I thought that was a pretty important point to make.

The Hon. SCOTT FARLOW: That is very helpful for the Committee. Thank you very much, Mr Harding, on that point as well. Do you keep any level of rejection comparison between presumptive employees and those who do not attract the presumption? Either SIRA or icare?

Adam DENT: I do not have that information at hand, unfortunately not. Again, as you suggested, we can perhaps provide some of that in a subsequent submission.

The Hon. SCOTT FARLOW: Thank you very much for that. That is about it from me. The only other question, I think we had some discussion in terms of that cost sharing mechanism and that process. Is there any further work that has been done on that since, I think that was mentioned before, November 2020 where the consultation was put out to industry? Has there been any further work done on investigating such a scheme?

Adam DENT: Mr Farlow, we have continued to actively engage with the insurer base to, as I said, understand the impacts on them and to whether or not any further work at that point in time had been justified. At this point in time we have not tried to come up with an alternative mechanism that insurers might agree to. I think there was a more resounding lack of agreement than there was any probability of it being accepted any time soon. The short answer is not really, but the long answer is as the experience develops over the last month or so, if the situation shifts that it is necessary we will continue to look at that, provide options, but it was quite divisive as a consultation piece and there was certainly nothing close to an agreement on the right way forward with that at the time we did that.

The CHAIR: There are a couple of minutes. Yes, Mr Mookhey?

The Hon. DANIEL MOOKHEY: Do you mind, Chair?

The CHAIR: No, we have a couple of minutes left if members do have final questions.

The Hon. DANIEL MOOKHEY: I do. A couple of questions arise from some of the interesting points that were made by Mr Harding. Firstly, do you have data on what the typical return to work rate is for a person who has a COVID claim in the NI?

Richard HARDING: I will just check with Ms Maini. I do not have it with me on hand but it is possibly something that we could include in the submission again, yes.

The Hon. DANIEL MOOKHEY: Ms Maini, do you have that figure?

Mary MAINI: I do not have that but we could provide that to you, I think we would say on Monday.

The Hon. DANIEL MOOKHEY: That would be great. Mr Dent, do you maintain such figures as to what the average return to work rate is at four weeks for a COVID patient?

Adam DENT: Because of the lag on that final claims data coming through to us, we would not have anything that reflected the last few months with any degree of accuracy and I think, particularly given the shift over the last couple of months, it would be more material. Given that our most recent all claims data from insurers is at November, we have not really got anything that would be useful at this point. We would expect over time to have that.

The Hon. DANIEL MOOKHEY: To be fair, you would have that figure for the Delta wave. That is very useful, given Delta seems to be more severe in terms of health impact than Omicron.

Adam DENT: Yes, and from what I understand, I do not have it to hand, Mr Mookhey, I am sorry, the four week return to work rate for COVID claims was certainly higher than the average, as you might expect. I think there is still far too much development in any of those claims to get to any reasonable position.

The Hon. DANIEL MOOKHEY: Sure, but we are two years in and so far the data suggests that a person with COVID is getting back to work quicker than a person with a non-COVID claim, at least as of November last year.

Adam DENT: Yes, looking at a note I saw with a very basic point on it, yes. We would have data and we could produce that sort of information.

The Hon. DANIEL MOOKHEY: That would be good, because it is a key question as to how long is a person off and how long is the scheme supporting a person with COVID relative to a non-COVID claim. I really would appreciate that, Mr Dent.

Adam DENT: It certainly would not include at this point in time any of the recent wave.

The Hon. DANIEL MOOKHEY: Sure. With that caveat, it is still very useful information, so that would be great.

Mr DAVID SHOEBRIDGE: Sorry, Mr Mookhey, just while we are doing this and we are asking for additional points to be put in, and I think I heard the secretariat whispering Monday would be the latest to get those submissions in by.

The CHAIR: The very latest.

Mr DAVID SHOEBRIDGE: Thank you. Mr Harding, would you be able to put in the average costs of dealing with a disputed claim and any data you have about dealing with COVID-19 claims? I see Ms Maini nodding, so that is a good sign.

Richard HARDING: I am certainly happy to try, Mr Shoebridge. I cannot guarantee by Monday what we can deliver but we are certainly happy to try and find what we can to get some information to help.

Mr DAVID SHOEBRIDGE: I am assuming you know what it costs to assess claims on average, but if you also have got it looking at COVID that would be great too.

Richard HARDING: Yes, but it is splitting out COVID that is going to be the test. Leave it with us, we understand that you would like that information and we are happy to try and help in whatever way we can.

The Hon. DANIEL MOOKHEY: Mr Harding, you earlier made the point that you are expecting to have to reserve or you expect your actuaries will tell you to reserve or put aside an increase to the reserves as a result of COVID. Did you mean for the NI, the TMF or both?

Richard HARDING: I expect for both. At the time I made the comment I was talking about the NI in particular, but clearly it is both.

The Hon. DANIEL MOOKHEY: How does it compare to the reservation you are going to have to make as a result of, as we have explored in estimates and law and justice, the slow down in the return to work rates?

Richard HARDING: As I mentioned, we currently have some draft reports. They are still being worked through. I do not have the final data in front of me, so I cannot give you that information. There is a process that we need to go through there but that will be public when we finalise it, Mr Mookhey.

The Hon. DANIEL MOOKHEY: You made the point, and it is a good point, the scheme's finances are in a precarious state and you made the point that this could add pressure to it, but I am wanting to understand what is the size and scope of that pressure relative to the faltering rates of return to work performance in the NI and the TMF relative to each other. If in your additional submission you could provide us any analysis on that point it would be really useful.

Richard HARDING: I think they are two very—and with the greatest of respect I understand the point you are trying to make—but I think they are two very different issues here. Really, as it relates to the ongoing nature of the repair program that we have to bring the Nominal Insurer back to where we all like it to be, that is a long-term program of work. What we are talking about now is a different issue, which is highly uncertain.

The CHAIR: Last questions. We are out of time.

Mr DAVID SHOEBRIDGE: It goes to relativity. The enormous costs that have occurred, many of them before your time, Mr Harding, the enormous additional costs the scheme is having to meet with because of

those systemic failings, as against the relatively modest cost of 19B. It is a question of relativity. Do you have any evidence about that?

Richard HARDING: I have no information to give you on that at the moment and I would repeat what I said. They are two very different issues. One is not related to the other and they are obviously—

Mr DAVID SHOEBRIDGE: But one is a freight train and the other one is a scooter. That is what we are putting to you. What is the—

Richard HARDING: I have no basis to accept your assertion because I do not know that is the case. The claims for COVID are yet to be fully developed, yet to see the full costs come through. As we just talked about, actually the realisation of the cost of COVID is in the self-insurers anyway. I think it is a spurious sort of connection to try and make.

The Hon. DANIEL MOOKHEY: Mr Harding, I accept that is your view.

The CHAIR: Last question.

The Hon. DANIEL MOOKHEY: This is my last question. We are talking about an adjustment in the valuation from 30 June 2021 to 31 December 2021. That is the variation that I think you were referring to in the Nominal Insurer liability valuation.

Richard HARDING: Yes.

The Hon. DANIEL MOOKHEY: You said you were expecting your actuaries to tell you to reserve further in that six-month period. That is, you will have to put more aside on 31 December 2021 than you did on 30 June 2020. What I am wanting to understand is just for that six-month period what is the additional amount that you said was significant relative to the additional we are going to have to put aside as a result of the faltering return to work rates over that six-month period? If you disagree feel free to tell me, but that is the relativity—just for that six-month period of time.

Richard HARDING: I have just given you my view that it is spurious. On the answer to your question, the valuation is in draft. It needs to go through a process through our board, it needs to go through a process where we finalise it with the actuaries. That will happen in due course and as we have done in the past [inaudible] to SIRA, we also generally put a summary of it on our website, et cetera. That is [inaudible] trying to have that conversation when we actually have the facts. Right now we are jumping at shadows and I think the connection is—

The Hon. DANIEL MOOKHEY: You are the one who said it. You are the one who said that you are all intending to expect to put aside different reservations. It was not us, that was your statement. Hence—

Richard HARDING: Mr Mookhey, that is entirely true because that is the impact of COVID and the impact of the presumption. That is a fact.

The CHAIR: That is time. Thank you to icare and SIRA for your attendance this afternoon, we appreciate it. I understand that there has been some commitment to providing an additional submission. Given the really tight time frame for this report if we can receive whatever you can submit by Monday at the absolute latest, that would be really helpful. Other than that, thank you very much again for your time, we appreciate it. You are now excused. That concludes the formal proceedings for the day.

(The witnesses withdrew.)

The Committee adjourned at 17:04.