

PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

Friday 26 August 2022

Examination of proposed expenditure for the portfolio area

FINANCE, EMPLOYEE RELATIONS

CORRECTED

The Committee met at 9:30.

MEMBERS

The Hon. Tara Moriarty (Chair)

The Hon. Taylor Martin

The Hon. Daniel Mookhey

The Hon. Chris Rath

The Hon. Adam Searle

The Hon. Penny Sharpe (Acting Deputy Chair)

PRESENT

The Hon. Damien Tudehope, *Minister for Finance, and Minister for Employee Relations*

* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 823
Parliament House
Macquarie Street
SYDNEY NSW 2000**

The CHAIR: Good morning, everybody. Welcome to the initial public hearing for the inquiry into budget estimates 2022-2023. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past, present and emerging, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. Welcome, Minister, and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolios of Finance and Employee Relations.

Before we commence, I'd 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. The proceedings are also being recorded, and a transcript will be placed on the Committee's website once it becomes available. In accordance with broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. All witnesses in budget estimates have the right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances witnesses are advised that they can take questions on notice and provide an answer within 21 days.

If witnesses wish to hand up documents, they should do so through the Committee staff. Minister, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. All witnesses will be sworn prior to giving evidence. Minister, I remind you that you do not need to be sworn, as you've already sworn an oath to your office as a member of Parliament. Ms Campbell, I also remind you that you do not need to be sworn as you have been sworn at an earlier budget estimates hearing before this Committee.

Ms SONYA CAMPBELL, Acting Deputy Secretary, Commercial and Procurement, NSW Treasury, on former oath

Mr CHARLIE HEUSTON, Executive Director, Employee Relations, Department of Premier and Cabinet, affirmed and examined

Ms SAMARA DOBBINS, Deputy Secretary, People and Operations, Department of Premier and Cabinet, sworn and examined

Mr MICHAEL COUTTS-TROTTER, Secretary, Department of Premier and Cabinet, sworn and examined

Mr SCOTT JOHNSTON, Chief Commissioner of State Revenue, Revenue NSW, sworn and examined

Mr CULLEN SMYTHE, Commissioner of State Revenue, Revenue NSW, sworn and examined

Mr RICHARD HARDING, Chief Executive Officer and Managing Director, icare, affirmed and examined

The CHAIR: Today's hearing will be conducted from 9.30 a.m. to 12.45 p.m. with a 15-minute break at 11.00 a.m. We are joined by the Minister in the morning, and in the afternoon we will hear from departmental witnesses from 2.00 p.m. to 5.15 p.m. with a 15-minute break at 3.30 p.m. During these sessions there will be questions from the Opposition and crossbench members only. If required, an additional 15 minutes is allocated at the end of the morning and afternoon sessions for Government questions. Thank you for your attendance today. We'll begin with questions from the Opposition.

The Hon. PENNY SHARPE: Thank you, Minister, and welcome to your officials who are here today. Minister, are you going to be introducing the land tax legislation into the spring session of Parliament?

The Hon. DAMIEN TUDEHOPE: The land tax to which you're referring—there's the Land Tax Management Act, which is already currently, of course, a bill before the Parliament.

The Hon. PENNY SHARPE: Your proposed new changes to stamp duty and land tax.

The Hon. DAMIEN TUDEHOPE: That's a matter for the Treasurer. The Treasurer has flagged the proposal in respect of the removal of the impediment to first home purchasers of a lump sum stamp duty and giving first home purchasers the benefit of a choice in respect of the manner in which they elect to purchase their property. That's purely within his remit, and I would expect the bill to be introduced by him. Of course you'd be aware that that would be a money bill, if it is introduced. It would be introduced in the Legislative Assembly, but potentially I would have carriage of it if it comes to our House.

The Hon. PENNY SHARPE: I would have thought so, but you can't tell me what the plans are in relation to putting it into the Parliament?

The Hon. DAMIEN TUDEHOPE: I have not been briefed in respect of the exact timing of the introduction of that legislation, although I would anticipate that it will be introduced this year.

The Hon. PENNY SHARPE: There's some confusion about this, so this is what we're trying to understand. So you think that it's coming, but you're not sure? You can't confirm?

The Hon. DAMIEN TUDEHOPE: I can't confirm the timing, Ms Sharpe. I know it is part of the Government's agenda, and it was certainly flagged in the budget.

The Hon. PENNY SHARPE: Yes, that's right, so you're planning on going ahead before the election rather than taking it to the election?

The Hon. DAMIEN TUDEHOPE: Considering that there has been a debate for nearly four years in relation to this, no-one would be taken by surprise in respect of the Government's commitment to at least pursuing some sort of tax reform in the area of stamp duty because, as a tax, it is one of the more aggressive taxes. I have to say I don't think there's a financial commentator in the country that doesn't think that there is a necessity for reform in this area. The Government has certainly been out there; we've had a large consultation process in respect of it. There has been a committee charged with bringing a report in respect of the proposal. To the extent that it represents a new policy which should be taken to an election, I have to say that that would be misconceived. It would be predicated on an idea that we want to make the proposal a political issue rather than embracing reform. I'd be saying that the time has come now to actually embrace reform. Let's make sure that we give first home purchasers the best opportunity of getting into their homes.

The Hon. PENNY SHARPE: Minister, a lot of debate has been going on for a number of years now, but a range of different models have been put forward. In the Budget Speech, the Treasurer said that the new tax

will only apply to first home owners, but the Premier has also said that he would like the tax to apply across the board. Will you be applying it just to first home owners? What guarantees are there that it's not going to be expanded?

The Hon. DAMIEN TUDEHOPE: That's a question which is obviously predicated on a potential "How do we manufacture a scare campaign out of this?"

The Hon. PENNY SHARPE: No, it's a question. The Premier—

The Hon. DAMIEN TUDEHOPE: The fact is that the proposal in the budget certainly only relates to introducing legislation in respect of first home purchasers. All of the preceding discussion which has surrounded this issue has been a broad-ranging discussion about the manner in which we should have stamp duty reform. The Premier, when he was the Treasurer, was committed to the reform of stamp duty in this State and was applauded, and should be applauded, for having the fortitude to be able to embrace new ideas. Something which I think we, as a government, should always be looking to do is—how do we embrace new ideas? Let's ventilate them, and let's have discussions in relation to them and make sure that we get the parameters right and that there are no people that fall through the cracks in relation to it. But let's not be afraid of reform in this area. Don't, for goodness sake, have a scare campaign which stops good reform from taking place.

The Hon. PENNY SHARPE: Minister, you don't think that pensioners are concerned about the proposition that they may have to pay land tax in the future?

The Hon. DAMIEN TUDEHOPE: If you want to frame it that way—that they should be concerned—the answer is that they will clearly develop concerns. What I would be saying to you is this: Let's do this in a way where we acknowledge that the best process is to explain properly what is happening and the choice which is available in relation to any decision to embrace stamp duty reform. Whether it's pensioners or first homebuyers, the duty is on all of us—not only the Government—to say, "This is good for the State. Let's get it right."

The Hon. PENNY SHARPE: Just to be clear, the budget papers seem to assume that the new system will apply from January next year. Is that your understanding?

The Hon. DAMIEN TUDEHOPE: If that's what's been foreshadowed by the Treasurer. In fact, it does accord with my understanding. On that basis, I would have anticipated the legislation would be introduced to reflect the commitment by the Government to that reform.

The Hon. PENNY SHARPE: I'm going to move on from this but just to be clear, the Premier has indicated that he would like to apply the tax more broadly—in fact, to everyone over time. Is that going to be included in the legislation that's provided to the House?

The Hon. DAMIEN TUDEHOPE: The answer is we will see the legislation when it arises. But it will be the legislation which will commit the Government to the process which it is involved in. All of the discussion and all of the, I suppose, stakeholder consultation in relation to this has been predicated upon a principle of people having a choice and electing where they will go. The commitment of the Government in the budget was only in terms of a first home owner or first home purchaser scheme. I think some modelling I saw suggested that the maximum number of take-up in relation to that would be in the order of about 6,000 potential applicants in the first tranche of people who may have to or would be given that opportunity of an election.

The Hon. PENNY SHARPE: That sounds like good modelling, Minister. Would you provide it to the Committee?

The Hon. DAMIEN TUDEHOPE: To the extent that it's not Cabinet-in-confidence modelling. If it is in the public arena, I'm more than happy to give it to the Committee. The principle is this: We have committed to stamp duty reform, and we are proposing to introduce into the Parliament legislation in accordance with the commitment made in the budget. The commitment made by the Government thus far is that it only applies to first home purchasers.

The Hon. PENNY SHARPE: And you think it's going to be 6,000 people that will take it up?

The Hon. DAMIEN TUDEHOPE: I think some figures I saw suggested that.

The Hon. PENNY SHARPE: I'm interested in these figures, Minister.

The Hon. CHRIS RATH: Point of order—

The Hon. PENNY SHARPE: He's doing okay. He doesn't need you to interrupt him.

The Hon. CHRIS RATH: From the beginning though, I'd like to say that this isn't budget estimates for the Treasurer. This is budget estimates to the Minister for Finance. Most of these issues that Ms Sharpe is questioning the Minister about fall within the Treasury portfolio. Whilst the Minister doesn't need—

The Hon. PENNY SHARPE: He is in charge of revenue, so understanding the modelling and the amount of tax that's going to be taken is actually fairly and squarely within his portfolio.

The CHAIR: I'm happy to rule on this. The questions are in order.

The Hon. DAMIEN TUDEHOPE: Just reiterating the point: In accordance with prudent government policy, what I would be saying is that we are introducing a reform of stamp duty. It is something which we have committed to, and I would say that the legislation which will be introduced will be in accordance with the Treasurer's commitment.

The Hon. PENNY SHARPE: Thank you, Minister. My understanding of your policy and proposed legislation, which is yet to be seen, is that first home buyers that are in the bottom 80 per cent of the market are the people who will be eligible to make this decision in terms of the changes to land tax. How are you going to determine the price threshold to determine the 20 per cent of residential properties who will be excluded?

The Hon. DAMIEN TUDEHOPE: To Mr Rath's point, that would probably be included in the legislation. To the extent to which it is within the Treasurer's purview to draft the legislation, I'd probably defer to him in relation to that sort of question and the modelling that he would do or the manner in which he would be drafting the legislation.

The Hon. PENNY SHARPE: So you're not going to be able to tell us? We're interested, obviously, in the spread across New South Wales. The housing market is quite different. We're trying to understand where—you've already indicated that you think there's going to be 6,000 potential applicants. I'm trying to get an idea of what modelling you have about geographically where you think they're going to be.

The Hon. DAMIEN TUDEHOPE: It's a fair question. I'm delighted that you're interested in it, and I'm delighted that your interest would, in fact, probably run to supporting the policy.

The Hon. PENNY SHARPE: Don't verbal me, Minister.

The Hon. DAMIEN TUDEHOPE: Perhaps in respect of that modelling, Sonya, do you have some details in relation to that? It's better that Treasury—

SONYA CAMPBELL: No. Unfortunately, Mr Tudehope, that's not part of my portfolio.

The Hon. DAMIEN TUDEHOPE: Maybe I'll take that part of it on notice. What I'll be urging on the Opposition, and the Parliament generally, is let's not shy away from the retrogressive tax that stamp duty is and an opportunity of reforming stamp duty, giving first home owners a better opportunity to enter the market and giving people an election or a choice in respect of whether they pay a lump sum or elect to pay a property tax over a period of time. I think that is good reform. I defer to the Treasurer in terms of how he will draft that legislation to make clear exactly how that will be delivered.

The Hon. PENNY SHARPE: My understanding is that the budget say that it's going to cost about \$660 million over four years. How are you going to plug that hole in the budget?

The Hon. DAMIEN TUDEHOPE: I'm sure you asked the Treasurer that question. It's a question that would be directed to the Treasurer.

The Hon. PENNY SHARPE: You are in charge of revenue, are you not?

The Hon. DAMIEN TUDEHOPE: I am.

The Hon. PENNY SHARPE: Are you concerned about a \$660 million cost?

The Hon. DAMIEN TUDEHOPE: The responsibility for the budget is the Treasurer.

The Hon. PENNY SHARPE: Thank you. Minister, you're responsible for the Government's procurement policy, are you not?

The Hon. DAMIEN TUDEHOPE: Correct.

The Hon. PENNY SHARPE: Are you aware that Service NSW has entered into a three-year contract with Optus to manage inbound phone services?

The Hon. DAMIEN TUDEHOPE: I saw the reporting of it, yes.

The Hon. PENNY SHARPE: You're aware that it's a change away from Telstra to Optus?

The Hon. DAMIEN TUDEHOPE: Well, I assume that they have moved from one provider to another. I wasn't sure that it was Telstra who was the previous provider.

The Hon. PENNY SHARPE: What's your role in terms of overseeing the procurement process around conflict of interest declarations and the probity of these contracts?

The Hon. DAMIEN TUDEHOPE: The role of procurement is to set the policy parameters in relation to procurement. The actual agencies then have the responsibility for complying with those policy parameters, and I would expect that the agency itself—and I'm sure you will have plenty of time to ask Minister Dominello in relation to this, but it is his responsibility to make sure that the procurement policy parameters are applied by the agency.

The Hon. PENNY SHARPE: The reason I'm asking this, Minister, is that my understanding is Optus confirmed that the contract was won by its enterprise and business team, which is led by former Premier Berejiklian. Are you aware of that?

The Hon. DAMIEN TUDEHOPE: Absolutely.

The Hon. PENNY SHARPE: Are you able to let the committee know—and you can come back to us if you need to—around whether all of the appropriate conflict of interest declarations were made?

The Hon. DAMIEN TUDEHOPE: Again I should defer to Sonya Campbell.

SONYA CAMPBELL: Thank you, Minister Tudehope. Ms Sharpe, that procurement would have been run by DCS in accordance with the Government's procurement policy framework. I don't think those are questions that the Minister would be able to answer, other than that the procurement framework sets the basis upon which a proper process would be run.

The Hon. PENNY SHARPE: On that basis, can you at least take me through what the conflict of interest and arrangements that would be required for this contract?

SONYA CAMPBELL: I wouldn't have direct knowledge of that, Ms Sharpe.

The Hon. PENNY SHARPE: I'm happy if you come back this afternoon in terms of what the guidelines are. I'm not asking you specifically about that contract, I'm asking you about what would have been required.

SONYA CAMPBELL: Thank you, Ms Sharpe. I will take that on notice.

The Hon. PENNY SHARPE: Thank you. Minister, you announced new training courses to help small business win government tenders in October last year.

The Hon. DAMIEN TUDEHOPE: That's when I was in a different portfolio, not this portfolio.

The Hon. PENNY SHARPE: So the procurement training for small business is not your responsibility, is that what you're telling me?

The Hon. DAMIEN TUDEHOPE: Correct. You will recall that Minister Petinos was appointed the Minister for Fair Trading and Small Business, and after she left office I think the responsibility fell to the Minister for Customer Service.

The Hon. PENNY SHARPE: Even though it says "procurement" training, it's not your area at all?

The Hon. DAMIEN TUDEHOPE: No. I'm aware of the principle around procurement training. It was something that I was quite keen on, having small business being able to procure from government.

The Hon. PENNY SHARPE: But it's not your problem anymore.

The Hon. DAMIEN TUDEHOPE: No.

The Hon. PENNY SHARPE: Thank you, Minister. How many applications for the electric vehicle stamp duty exemptions have been received since November last year?

The Hon. DAMIEN TUDEHOPE: In terms of the exact number, I'll ask Mr Johnston for that number.

SCOTT JOHNSTON: In 2021-22 we had 3,275 applications for EV rebates received.

The Hon. PENNY SHARPE: Are they all approved?

SCOTT JOHNSTON: No, 2,810 have been paid. There were 278 rejected.

The Hon. PENNY SHARPE: What's the basis that they get rejected?

SCOTT JOHNSTON: The major reasons were they were used vehicles over the \$68,750 cap to be eligible for the rebate or they were leased vehicles.

The Hon. PENNY SHARPE: So they are just not eligible within the criteria?

SCOTT JOHNSTON: Correct.

The Hon. PENNY SHARPE: If people have their applications knocked back, is there a process that they can ask questions about that and have that reviewed?

SCOTT JOHNSTON: Yes, they can do that through channels within Revenue NSW to consider their rejection.

The Hon. PENNY SHARPE: Do we know whether there's been many challenges, how many challenges there's been?

SCOTT JOHNSTON: Could I take that on notice? I can come back later.

The Hon. PENNY SHARPE: That's fine. I know it's a very specific question. Are you able to tell us what the total value of the stamp duty exemptions have been? I assume you can give it to me for 2021-22?

SCOTT JOHNSTON: I'll come back to you with that as well. That will be easy to find.

The Hon. PENNY SHARPE: We can get to that this afternoon.

SCOTT JOHNSTON: Yes.

The Hon. PENNY SHARPE: Have there been any changes to the eligibility criteria since the program was introduced?

SCOTT JOHNSTON: Not that I'm aware of. I'll confirm that, but as far as I'm aware it's been consistent.

The Hon. PENNY SHARPE: Minister, I wanted to ask you about the COVID fines issued to children. What's the total number of infringement notices that were issued to young people aged 17 and under for breaches of COVID orders?

The Hon. DAMIEN TUDEHOPE: I anticipate you'll have substantive questions in relation to that. So that I can confirm the number, I'll start with the number that have been introduced, and I'm sure Mr Johnston has that number at his fingertips.

SCOTT JOHNSTON: I do. COVID fines for under-18s amounted to 3,843.

The Hon. PENNY SHARPE: Are you able to give me the total dollar value for those notices?

SCOTT JOHNSTON: The value for those is \$2,365,360.

The Hon. PENNY SHARPE: Can you tell me what the status of those is?

The Hon. DAMIEN TUDEHOPE: I'll tell you what the status is. There are 17 unresolved.

The Hon. PENNY SHARPE: When you say 17 unresolved, can you give me the breakdown of what's then happened to the 3,743?

The Hon. DAMIEN TUDEHOPE: I'm sure there's no-one else to ask questions, so you can continue.

The Hon. PENNY SHARPE: Not saved by the bell.

The Hon. DAMIEN TUDEHOPE: No, that's okay. I think there's a starting point in relation to this. I anticipated that this line of questioning in relation to COVID fines for children would arise. The commissioner is vested with large discretion in respect of vulnerable people. Children, of course, are a category of vulnerable people. So when the commissioner gives figures in respect of the manner in which fines for vulnerable people are dealt with, it generally is against a background where he has a discretion to either waive fines, he has a discretion to come to a payment arrangement, he may have a discretion to seek to work with the young person in respect of a work and development order. A work and development order may be something like attending and refereeing a soccer match, in other words.

Fundamentally, of course, Revenue is a collection agency. It does not dictate how the fines have been issued; it just collects the fines. In that regard, the commissioner—because of what you are rightly identifying as the vulnerable cohort with which he is dealing, you are rightly asking are we applying the correct guidelines or the correct discretion in respect of those fines. I'll let the commissioner now break up how those fines for children have been dealt with.

SCOTT JOHNSTON: There are a few numbers here. The total was 3,843, as I've said. Sorry, would you like the dollar value to these as well?

The Hon. PENNY SHARPE: Yes, please, if you're able.

SCOTT JOHNSTON: The total that is fully resolved is 3,444 to a value of \$2,075,840.

The Hon. PENNY SHARPE: When you say fully resolved, does that mean that the fine has been paid?

SCOTT JOHNSTON: It could be a range of things, which I'm going to break that down for you now. So 827 have been paid to a value of \$415,960. Completed work and development orders, there were 363 to a value of \$219,920. There are 1,965 fines that have been written off to a value of \$1,204,000.

The Hon. PENNY SHARPE: Can I just clarify, when you say written off, does that mean waived?

SCOTT JOHNSTON: No.

The Hon. PENNY SHARPE: What does it mean?

SCOTT JOHNSTON: Written off is when a fine progresses through its cycle of attempted contact multiple times—we make an assessment on a number of factors which includes the situation, the circumstances for the person who has received the fine, their capacity to pay that.

The Hon. PENNY SHARPE: Is it essentially an acknowledgement that the person has no way of paying the fine?

SCOTT JOHNSTON: For many. It could be that it is impossible for us to collect the money, which might be that factor, or we can't contact them or reach them. There is a significant number of the total where we have taken that action.

The Hon. PENNY SHARPE: How much was that worth?

SCOTT JOHNSTON: That was worth \$1,204,860. There were seven that have been cautioned to the value of \$9,000, 92 court elected to the value of \$112,120 and 190 have been withdrawn to the value of \$113,980. Withdrawn being different to—

The Hon. PENNY SHARPE: Yes, explain that to me.

SCOTT JOHNSTON: Withdrawn means a decision was made that this fine was incorrectly issued.

The Hon. PENNY SHARPE: Okay. Who makes that decision?

SCOTT JOHNSTON: Ultimately, that falls to myself as Commissioner of Fines Administration in consultation with the issuing authority, which, for COVID fines, was primarily New South Wales police.

The Hon. PENNY SHARPE: Court elected—they basically go to court over it and I assume that some of those are not resolved? Or are they all resolved? They've all been dealt with?

SCOTT JOHNSTON: In the simplest terms, they will be resolved from our purposes as for us to collect. It may return to us for some outcome where there might be further money to collect.

The Hon. PENNY SHARPE: But once they have gone to court, you kind of wait for the outcome and see what happens? So we don't know.

SCOTT JOHNSTON: Correct.

The Hon. PENNY SHARPE: Do you know if any garnishee orders have been issued through these infringement notices?

SCOTT JOHNSTON: Not for under-18s, no. We don't issue garnishee orders for under-18s, in any case.

The Hon. PENNY SHARPE: Is that a policy decision or is there an issue about them being under 18 in relation to this? Do we know?

SCOTT JOHNSTON: It's not something we have any intention to do. I think there's legal reasons why.

CULLEN SMYTHE: Principally policy.

SCOTT JOHNSTON: It's principally a policy reason.

The Hon. PENNY SHARPE: Thank you, Mr Smythe.

SCOTT JOHNSTON: I can give you some more numbers?

The Hon. PENNY SHARPE: Yes, I appreciate these.

SCOTT JOHNSTON: That should have added up to the 3,444, which I've—

The Hon. PENNY SHARPE: We'll get the calculator out later.

SCOTT JOHNSTON: Please do. Then, resolved but not finalised, there are 33 on payment plans currently to the value of \$24,060.

The Hon. PENNY SHARPE: They are quite big fines, then, if there are only 33 and it's \$24,000.

SCOTT JOHNSTON: For those ones, they average \$800 or so. There are 203 on current work and development orders to the value of \$131,580. Now, to unresolved, there are 14 outstanding, which is a value of \$1,640. We have a number that are work and development orders, and 149 have lapsed. We're now individually looking through them to see the circumstance—whether the work and development order will be completed or we have to have a look at another mechanism, which adds to \$132,240. That should all add up to 3,843.

The Hon. PENNY SHARPE: We'll check later, but thank you. I appreciate that. Minister, how many of the Dine & Discover vouchers expired without being redeemed?

The Hon. DAMIEN TUDEHOPE: Again, that is not in my purview.

The Hon. PENNY SHARPE: It's not you?

The Hon. DAMIEN TUDEHOPE: It is certainly, again, Department of Customer Service. I have to say that, even personally, there were two that I failed to use—inexcusably.

The Hon. PENNY SHARPE: Obviously, it does impact in terms of how much was budgeted for and how much was spent. Are you able to perhaps not give me the detail of the number that were put out and redeemed, but how about the amount that was committed to and not spent?

The Hon. DAMIEN TUDEHOPE: Again, it is probably not my purview.

The Hon. PENNY SHARPE: Are you sure about that, Minister?

The Hon. DAMIEN TUDEHOPE: I'm sure about that—well, unless I'm advised to the contrary. It's not something that I had any eyes on, in relation to the collection of Dine & Discover or the spending of Dine & Discover vouchers.

The Hon. PENNY SHARPE: So you're not going to provide us with the figures?

The Hon. DAMIEN TUDEHOPE: Well, I don't have it. It is Department of Customer Service. I had no administration over the budgeting for or the delivery of Dine & Discover vouchers.

The Hon. PENNY SHARPE: That's fine. I'll hand over to my colleague. We've got lots of time because there is no crossbench.

The Hon. DAMIEN TUDEHOPE: It's all good.

The Hon. ADAM SEARLE: Minister, in March, when we were having another one of these conversations, I was trying to get a better handle on the precise nature of your role as industrial relations Minister in the Government. I think you said—on page 16 of the transcript—your chief role, as you see it, is to ensure industrial harmony is maintained, but—

The Hon. DAMIEN TUDEHOPE: I'm not doing a good job of that.

The Hon. PENNY SHARPE: Clearly.

The Hon. ADAM SEARLE: I'll come to that. I welcome that concession. But you said:

To the extent that you are suggesting that I ought immerse myself into the negotiation, I am a bit reluctant to do that ...

The impression I got in our conversation was very much that you're there in a support role. You're not as sort of hands on like the portfolio Ministers in terms of the nitty-gritty of industrial negotiations. But things seem to have taken a turn for the worse. You seem to have had quite a bit of involvement in the rail matter. How and why did that happen?

The Hon. DAMIEN TUDEHOPE: The how and why is potentially because of the inability of the unions to adopt a consistent and clear position in respect of trying to reach an outcome, and the Premier directed that I do have a more hands-on attitude in terms of ensuring that government policy, and bargaining parameters which were approved by the Government, were adhered to by agencies in terms of making sure that we had a consistent government position which was to be used for the purposes of negotiating with the unions.

Now, in respect of the rail union, as you would probably appreciate, this is a union which never has a consistent position. Whenever you reach an agreement with them one day, it changes the next. To the extent that I have had more profile in these negotiations than potentially other negotiations, which have been ongoing and I'm sure of which you are aware, that profile has been (a) because we have had to try and get a consistent government position agreed to and a position where we can reach a new enterprise agreement, and we are dealing with a union who consistently moves the goalposts in respect of the outcomes that it is seeking to achieve in relation to both the enterprise agreement and, I suppose, the terms that it wants to achieve. I don't seek the profile, Mr Searle, I can tell you.

The Hon. ADAM SEARLE: That's not like you.

The Hon. DAMIEN TUDEHOPE: I would prefer to have no profile in respect of this. But I do expect that agencies and unions would negotiate, and the Government would negotiate, in accordance with the bargaining parameters which are set by the Government. To that end, I do have a role to play.

The Hon. ADAM SEARLE: We'll come back to the bargaining parameters, but surely it seems that the Premier's direction for you to become involved was really a sort of vote of no confidence in the portfolio Minister. The Minister, himself, just a few moments ago, in another room, said his frustration with the intervention of colleagues such as yourself and the Treasurer into the process was a matter of public record. Surely the Premier's direction for you to become involved is really a vote of no confidence in the transport Minister?

The Hon. DAMIEN TUDEHOPE: No, quite the contrary. In fact, I think it's a reflection of the fact that this was a recalcitrant union.

The Hon. ADAM SEARLE: I'll come to—

The Hon. DAMIEN TUDEHOPE: No, that's an important point.

The Hon. ADAM SEARLE: No, the point you were making was about your involvement because the bargaining parameters weren't being adhered to in relation to enterprise bargaining. But the key driver of this dispute has been the issue over the safety of the new intercity fleet, the NIF—the new fleet—and whether the Government was going to make adjustments. That had nothing to do with wages and conditions. In fact, it is your Government that has sought to conflate the two as part of the new deal.

The Hon. DAMIEN TUDEHOPE: No, quite the contrary. It was the union's position that in respect of the employment agreement they wanted the position in respect of changes to the NIF to be included as part of the employment agreement negotiations. It was not our position. In fact, I made it very clear very early on that I thought the safety issues that were being raised by the unions in respect of those negotiations were entirely wrong.

The Hon. ADAM SEARLE: The Government has now conceded.

The Hon. DAMIEN TUDEHOPE: No, they haven't.

The Hon. ADAM SEARLE: But you'll be making changes, though, won't you, to the fleet?

The Hon. DAMIEN TUDEHOPE: The rationale for that, Mr Searle—

The Hon. ADAM SEARLE: That's a climbdown from what the Government was saying just a few weeks ago.

The Hon. DAMIEN TUDEHOPE: The rationale for that is that we value the commuters of this State in terms of their ability to get to work and to make sure that the economy of this State runs. Any concession we have made in relation to that is not predicated upon an acceptance by the Government that this work needs to be done. It is predicated upon a view that we value the commuters of this State, which is something that this union does not do.

The Hon. ADAM SEARLE: That's an outrageous assertion.

The Hon. DAMIEN TUDEHOPE: It reflects the fact—

The Hon. ADAM SEARLE: The unions put safety of the travelling public front and centre in this matter.

The Hon. DAMIEN TUDEHOPE: It reflects the facts.

The Hon. ADAM SEARLE: Don't point your finger, please.

The Hon. DAMIEN TUDEHOPE: You pointed at me.

The Hon. ADAM SEARLE: Well, I withdraw.

The Hon. DAMIEN TUDEHOPE: It reflects the facts, that this is a union that does not value the commuters. Any union that is content to see people squeezed onto trains cheek by jowl, onto platforms cheek by jowl, does not have any regard to safety of those people. Any union that in fact says that safety issues are conflated with whether there is a spilt can of Coke or chewing gum on a seat and doesn't —

The Hon. ADAM SEARLE: Those are your words, Minister.

The Hon. DAMIEN TUDEHOPE: Are you pointing at me now? Sorry?

The Hon. ADAM SEARLE: Those are your words, Minister.

The Hon. DAMIEN TUDEHOPE: No, they are in the public arena, Mr Searle, that these are the things that the union is saying are reasons why they would not drive a train this morning. There were 700-odd services this morning that were cancelled because a driver turned up to run a train this morning and decided that they would not run the train for either a cleaning reason or other—what they say were perceived safety reasons. They're not decisions that the Government made. These were members of the RTBU saying to the public, "We don't care if your train turns up this morning. We don't care whether you get to work this morning. We don't care whether the small business—

The Hon. ADAM SEARLE: I'm sure that's not the position of the commuter.

The Hon. DAMIEN TUDEHOPE: It is the position, Mr Searle. No other construction can be placed on a strike that occurred today in terms of drivers making decisions about running those strains other than they have no regard to the commuters of this State. Any concession that the Government made in relation to doing work on that fleet was primarily based not on the fact that we conceded that that safety work needed to be done but because we wanted the commuters of this State to have a reliable transport service—something that this union thumbs its nose at.

The Hon. ADAM SEARLE: Minister, are you seriously saying here on your oath that the Government is contemplating spending one-quarter of a billion dollars or more adjusting this fleet in circumstances where it doesn't agree that that work needs to be done?

The Hon. DAMIEN TUDEHOPE: I am seriously saying that on my oath.

The Hon. ADAM SEARLE: As the finance Minister of the State, that would be a ridiculous position, wouldn't it?

The Hon. DAMIEN TUDEHOPE: I am saying on my oath that a concession has been made because we want industrial peace in this State for the benefit of the commuters of this State. The office of the safety regulator has approved this fleet of trains to run within New South Wales. These trains run in other parts of the world without these modifications. What is occurring here is that this union—which funds your party, by the way, and your election campaigns, by the way—is conducting a hostage circumstance for the Government where it is seeking alterations to an employment agreement predicated on industrial chaos.

The Hon. ADAM SEARLE: I'll move to another topic, Minister.

The Hon. DAMIEN TUDEHOPE: I'm sure you will.

The Hon. ADAM SEARLE: Minister, this morning the transport Minister again recommitted that he had no plans to cancel the existing industrial agreement with the RTBU. But it has been reported in the AFR of 10 August and in other places that you have consistently kept that on the table as an option.

The Hon. DAMIEN TUDEHOPE: Yes.

The Hon. ADAM SEARLE: So what is the Government's policy? The Minister is saying there are no plans to cancel the agreement, but you seem to be saying that that remains under active consideration.

The Hon. DAMIEN TUDEHOPE: It's part of what is available to the Government in the way that it deals with a consistent process where this union causes such problems for the people of this State.

The Hon. ADAM SEARLE: So this is bad cop, good cop.

The Hon. DAMIEN TUDEHOPE: Well, no—

The Hon. ADAM SEARLE: So what is the Government's policy? Are you considering cancelling the agreement or not?

The Hon. DAMIEN TUDEHOPE: The Government's policy is that this remains part of the process. If we need to go to the Fair Work Commission to get a resolution of this, this may be something that we can avail ourselves of. But let me just say in relation to that, we have always given a commitment that if we go down this path we will do it in such circumstances that there will be no wage losses for any employees as part of that process. What we are dealing with is potentially an agreement which is causing the train system in this State not to be able to run properly, where strike action is consistently being used to thwart commuters being able to get to work. It must remain as part of something which is available to the Government in those circumstances. It must remain.

The Hon. ADAM SEARLE: Must it?

The Hon. DAMIEN TUDEHOPE: It must, and in fact I notice that your Federal colleagues are going down this path of being able to remove the right of employers to terminate employment agreements. You would know that 96 per cent of applications for the termination of employment agreements are uncontested.

The Hon. ADAM SEARLE: Usually because there's a new instrument to be put in place. It's not used to sort of put wages and conditions into freefall, to cut people's pay by 40 per cent—

The Hon. DAMIEN TUDEHOPE: But I've just explained that to you.

The Hon. ADAM SEARLE: —which would be the illegal effect of what you're proposing.

The Hon. DAMIEN TUDEHOPE: I know. I have just explained that to you. I would not allow that to occur. It would be against a background where we would give a commitment that wages would not go into freefall.

The Hon. ADAM SEARLE: All right. Minister Elliott also said that other radical proposals in relation to the workforce were being considered as part of this. Can you outline to this estimates Committee what other radical proposals your Government's considering—

The Hon. DAMIEN TUDEHOPE: No.

The Hon. ADAM SEARLE: —in the context of this?

The Hon. DAMIEN TUDEHOPE: No. If Mr Elliott has ideas relating to radical proposals, they are purely a matter for him. As industrial relations Minister, I only use the levers that are available to me. I get advice in respect of where we would go in respect of ensuring that the commuters of this State are front and centre of what we do. The commuters are, and not union bosses. If you want to go down the track of standing up for the chaos that these union bosses are causing, that's a matter for you. But I have to say that that will never be the position of this Government.

The Hon. ADAM SEARLE: You talked about going down that track potentially and going and making an application, presumably, to the Fair Work Commission. But the last time you were down there, the tribunal talked about the Government making inexplicable claims about harm to the New South Wales economy. Basically your application was unsubstantiated by evidence that was hard to fathom. How is it that with all the support of the Department of Premier and Cabinet in fulfilling this role that you have you were able to mount such a poor argument? It really didn't seem to have any merit, did it?

The Hon. DAMIEN TUDEHOPE: Mr Searle, you and I can agree or disagree on the merit, but you'd also agree with me that, having been a lawyer in practice for many years, always someone loses. When someone loses, they regret losing. I have to say that an application to terminate was not the same as an application to suspend protected industrial action.

The Hon. ADAM SEARLE: No, I know.

The Hon. DAMIEN TUDEHOPE: A different set of evidence and circumstances would be relied upon in those circumstances.

The Hon. ADAM SEARLE: But you've had access to some pretty good legal minds. I see you've had a significant number of barristers acting for you. You've got the Crown Solicitor's Office, which also has a wealth of experience. You'd have internal legal experts from Transport for NSW as well as DPC. How did you all get it so terribly wrong?

The Hon. DAMIEN TUDEHOPE: I have to say that potentially at the end of the day I'm not convinced that we did get it terribly wrong. The decision certainly went against the Government and the commissioner was not satisfied—Commissioner Cross, as I recall.

The Hon. ADAM SEARLE: The Deputy President.

The Hon. DAMIEN TUDEHOPE: Deputy President Cross was not convinced of the economic impact or the manner in which the impact of the protected action would in fact impact on the economy. I happen to disagree with that. But he is the commissioner at the end of the day. You and I can agree—

The Hon. ADAM SEARLE: We may not.

The Hon. DAMIEN TUDEHOPE: We ought to all abide by and respect the decisions of industrial relations umpires.

The Hon. ADAM SEARLE: Absolutely.

The Hon. DAMIEN TUDEHOPE: In fact, you'd be agreeing with me that, if they are not respected, then in those circumstances there ought to be penalties which flow from not respecting those umpires' decisions.

The Hon. ADAM SEARLE: There are already.

The Hon. DAMIEN TUDEHOPE: But they ought to be effective.

The Hon. ADAM SEARLE: That's a matter of discussion, isn't it. Minister, I couldn't see in the budget papers—I'm here looking at—

The Hon. DAMIEN TUDEHOPE: Just while I'm on it, of course, you do accept that one consequence of taking that protected industrial action was that the union did, in fact, pull back on some of the industrial action that it was, in fact, foreshadowing at that time. The process of actually engaging in the application to the commission did deliver some significant benefits in terms of reaching agreements on moving away from some of the protected action which was occurring.

The Hon. ADAM SEARLE: Minister, I'll have to take your word for that. But, Minister, I can't see anything in the budget paper about the Industrial Relations office or whatever has replaced it. Who are these highly skilled professionals that you rely on for your support in—

The Hon. DAMIEN TUDEHOPE: Three of them are here.

The Hon. ADAM SEARLE: I understand that. Mr Coutts-Trotter I know well, and Mr Heuston. But, presumably, there's more. What is the budget that underpins this function with DPC? Maybe Mr Coutts-Trotter's best placed to answer that.

MICHAEL COUTTS-TROTTER: I'll broadly, across the employee relations function, which includes, of course, important compliance work around long service leave, aspects of the transport industry and some issues coming out of local councils—I think, Charlie, you reminded me this morning that we had about 50 people engaged in that function? But I'm happy to pass to my colleague Samara Dobbins or Charlie Heuston for more information.

CHARLIE HEUSTON: The employee relations function sits within the Department of Premier and Cabinet. The budget for the area is in the order of \$8 million a year, thereabouts. It fluctuates a little bit from year to year. In terms of staffing, we have about 50 full-time equivalent employees. The largest portion of that, as Mr Coutts-Trotter mentioned, is engaged in compliance work. That's about half of the area. We also then have a public sector team within that and also a policy team.

The Hon. ADAM SEARLE: How big is the public sector team?

CHARLIE HEUSTON: About 14 people.

The Hon. ADAM SEARLE: Is that the team that works in relation to live industrial matters like the rail dispute or others?

CHARLIE HEUSTON: That's correct. That's part of the function. Obviously, we divide up the work as per portfolio areas.

The Hon. ADAM SEARLE: It's about 15 people that work in that space?

CHARLIE HEUSTON: Thereabouts.

The Hon. ADAM SEARLE: What's the budget? Is it just pro rata? Fifteen divided by 50 times \$8 million gives us roughly the—

CHARLIE HEUSTON: We don't budget down to that level.

The Hon. ADAM SEARLE: Apart from the directly employed people in this area, do you engage outside consultants to assist with this work and provide advice in relation to live, other than—

CHARLIE HEUSTON: Not with this work. We do engage some externals to help with the development of—it might be educational sort of services. For example, we develop e-learning-type modules across the area that are published and available publicly through our website for people to learn about public sector industrial relations or appearing before the commission and the like. But, in terms of expertise in and advice on employee relations matters, that's a matter which is generally dealt with internally with the assistance of Crown Solicitor's Office.

The Hon. ADAM SEARLE: I note you said "generally". I'm not trying to be tricky, but does that mean sometimes you do engage outside consultants to assist with this work?

CHARLIE HEUSTON: Rarely, but it does happen.

The Hon. ADAM SEARLE: Have you done so in the last year?

CHARLIE HEUSTON: Yes.

The Hon. ADAM SEARLE: Have you done so in relation to the rail dispute?

CHARLIE HEUSTON: I might have to take that on notice, I think.

The Hon. ADAM SEARLE: Happy for you to do so. Minister, I note that I think, at the last count, some 80 awards and agreements were due to expire at the end of June. Apart from the rail matter, what other of those matters are you actively being engaged in with the assistance of DPC?

The Hon. DAMIEN TUDEHOPE: Actively engaged in negotiations? Other than, I suppose, ensuring that our wage policy is adhered to, I've had meetings with the unions and representatives certainly in relation to the health unions. I've had meetings with the teachers' union, not in terms of a participation in the negotiation but more as a getting-to-know-you session, to understand that I do have a role in ensuring that the Government's bargaining parameters are adhered to, one of which will always include our wages policy. Generally, those agencies conduct and have conducted the negotiations with the unions fruitfully. I receive updates from Ms Dobbins and Mr Heuston on a fortnightly basis in terms of where things are up to in relation to those negotiations. Interestingly enough, generally, there has been not the level of position changing in respect of those unions as there has been in respect of the RTBU. Read into that what you will, but there seems to be an absolute recalcitrance by this union specifically—

The Hon. ADAM SEARLE: Minister, I'm not asking about that. I think you're taking a bit of a liberty here. Perhaps I can ask you this question—

The Hon. DAMIEN TUDEHOPE: But it is a comparison worth making, Mr Searle.

The Hon. ADAM SEARLE: I think we can assume you've already made that. How many of those agreements, the 80-odd that expired at the end of June, have been renewed or remade?

MICHAEL COUTTS-TROTTER: We can take that on notice. But just as a general guide, more than half of the public sector employees are now subject of recently remade awards that include the Government's wages policy.

The Hon. ADAM SEARLE: I note, Minister, you said that wages policy was one of the government levers or policies in this industrial relations space. The last time we had a discussion here at budget estimates, I think it was your evidence that the only really overarching industrial relations policy this Government had was the wages policy. Has that changed since March? Do you have other policy instruments or tools, other than the wages policy?

The Hon. DAMIEN TUDEHOPE: All agencies have different work conditions which they would be—

The Hon. ADAM SEARLE: Other than conditions, in terms of tools with which you approach bargaining and manage the workforce.

The Hon. DAMIEN TUDEHOPE: One of them, of course, would be our approach to productivity, which, in the second year of the wages policy, allows the Government to work with unions to identify productivity outcomes.

The Hon. ADAM SEARLE: I'll just take you up on that. That's where an additional half per cent is available on top of the original 2.5 per cent.

The Hon. DAMIEN TUDEHOPE: Correct.

The Hon. ADAM SEARLE: That's correct? That's what you're referring to?

The Hon. DAMIEN TUDEHOPE: Yes.

The Hon. ADAM SEARLE: How is that extra half per cent to be accessed by workers collectively? What is the policy parameters around accessing that other half per cent?

The Hon. DAMIEN TUDEHOPE: What I would be saying to each of the individual unions which are bargaining on behalf of the public sector is, "Identify what you say are productivity enhancements." In respect of the HSU, for example, some productivity enhancement may, in fact, involve a rewording or reworking of a plain English employment agreement. That may, in fact, be a productivity enhancement. But what we effectively are saying to the unions is, "Identify productivity outcomes, and come to us with what you say are productivity enhancements."

The Hon. ADAM SEARLE: What I'm asking you as the relevant Minister is how the Government will evaluate productivity propositions.

The Hon. DAMIEN TUDEHOPE: Let's assess them as they arrive.

The Hon. ADAM SEARLE: I'm asking how you will assess them. What is the policy by which you will evaluate any proposals? Because, to be fair, Minister, without setting that out with clarity, you're not really giving workers or unions a clear guide as to what might be acceptable in terms of counting towards that.

The Hon. DAMIEN TUDEHOPE: We are saying to them that there is 0.5 per cent available to be accessed by each individual employee group. It is up to the union to identify the productivity enhancements which they say that they can identify to achieve that additional 0.5 per cent.

The Hon. ADAM SEARLE: Let's assume they do that and they come to you with a proposal. What are the tools with which you will evaluate those propositions?

The Hon. DAMIEN TUDEHOPE: You know I know that the unions are adept at identifying what they would say—

The Hon. ADAM SEARLE: No, I'm not asking about—

The Hon. DAMIEN TUDEHOPE: And I can—

The Hon. ADAM SEARLE: Seriously, if you're asking people, in good faith, to think hard, to develop meaningful proposals and come to government, they have a right to know how the Government is going to evaluate that. That may influence the proposals they put forward. It might influence the way in which they package different ideas together. But if they have no guidance and no ideas, it sounds like you're just plucking it out of thin air?

The Hon. DAMIEN TUDEHOPE: No—except that we have the benefit of the IRC to be able to assist us in identifying what is a productivity enhancement.

The Hon. ADAM SEARLE: At the moment, your—

The Hon. DAMIEN TUDEHOPE: In fact, a useful tool to have is the IRC to be able to sit between the parties and assess whether a particular proposal meets a productivity enhancement. What I would be saying is, and I'm sure Mr Heuston will correct me if I'm wrong in relation to this, we recently identified a potential productivity enhancement in respect of the firies, where individual workers there were able to carry out additional use of—they were using, I think, ventilators to assist? There was some additional training which members used for the purposes of emergency circumstances, where that was identified as a productivity enhancement, engaging in that extra training and the like, and that was for the purposes of reaching an agreement. Something was identified by the union for the benefit of their members. I would be saying to those negotiating, "Come to us with what you say is a productivity enhancement and, if it truly is a productivity enhancement or the IRC rules that it is a productivity enhancement, they're the facts and circumstances in which the employees would be entitled to that additional 0.5 per cent."

The Hon. ADAM SEARLE: Just correct me if I'm wrong, but it was the case, wasn't it, when the Government originally adopted the wages policy, that, to do better than the 2.5 per cent, productivity gains had to be identified and put to government, because the Government's position was always you could better than 2.5?

The Hon. DAMIEN TUDEHOPE: No, I think savings was a better way of looking at it.

The Hon. ADAM SEARLE: Yes. I was going to say, it was dollar-for-dollar savings?

The Hon. DAMIEN TUDEHOPE: Indeed, there had to be.

The Hon. ADAM SEARLE: So these additional proposals had to yield real, tangible, identifiable dollars and cents before you could get beyond the 2.5 per cent. That's correct?

The Hon. DAMIEN TUDEHOPE: Yes. That was under the previous wages policy. There had to be—

The Hon. ADAM SEARLE: Yes, I understand. So is that the same metric by which you're going to measure—

The Hon. DAMIEN TUDEHOPE: No, is the short answer.

The Hon. ADAM SEARLE: —proposals for the extra half per cent? No?

The Hon. DAMIEN TUDEHOPE: No. Are you able—

MICHAEL COUTTS-TROTTER: The constraint in the previous policy was that you had to identify and deliver up-front savings to employee-related costs before you could get access to a wages settlement above 2.5 per cent. The features of the new approach are the constraint is the agency's forward budget, but that is the whole of the agency's forward budget, not just its employee-related expenses. So if either management approaches staff and unions or the unions approach management with a proposal that adds to the productivity of the agency, it does more within its existing budget, then that could attract the additional half per cent, but it has to be paid for within the agency's total budget. So it's a loosening of the constraint that applied to the previous policy. It encourages a broader range of ideas about how you might improve the quality of the service, make for a better climate for staff, but it has to be paid for within the forward budgets that have been set in the 2022-23 State budget.

The Hon. ADAM SEARLE: Okay. So I guess my question, again, is—taking your evidence that it allows for a loosening of the approach and a wider range of proposals to be put forward and considered—

MICHAEL COUTTS-TROTTER: Yes, exactly.

The Hon. ADAM SEARLE: —is there a government document that sets out how those matters are to be approached and evaluated?

MICHAEL COUTTS-TROTTER: I can invite Mr Heuston to go into greater detail if you want it, Mr Searle, but we're in the process of working across agencies to identify some ideas and initiatives that we'll bring to government and then take to industrial parties and staff, as a starting point for discussions. But if you wanted some more information on that, I can get—

The Hon. ADAM SEARLE: Mr Heuston, can you enlighten us further as to how these matters are going to be evaluated by government?

CHARLIE HEUSTON: In short, we have an established process for dealing with bargaining proposals and this would be a similar category. As options are identified through agencies, they would bring that to the Senior Officials Wages Advisory Committee, which consists of representatives from DPC and Treasury, to review and evaluate those proposals which, once that's occurred, would be referred to the Expenditure Review Committee for approval.

The Hon. ADAM SEARLE: Assuming this sounds like a better idea, to loosen things up a bit and encourage a wider range of ideas to come forward for workplace change that benefits the workers, why didn't you adopt this earlier, Minister? How and why did this additional idea come about?

The Hon. DAMIEN TUDEHOPE: It's got a good industrial relations Minister.

The Hon. ADAM SEARLE: So it predates you?

The Hon. DAMIEN TUDEHOPE: No, the good ideas have only come with me.

The Hon. ADAM SEARLE: Is that right? So this is your policy?

The Hon. DAMIEN TUDEHOPE: Without being flippant in relation to it, it was self-evident that, in the current economy, there needed to be a long look at our current wages policy.

The Hon. ADAM SEARLE: Because you knew it had been too stingy, like, wages—

The Hon. DAMIEN TUDEHOPE: No, in fact, it had been too generous. For the 10 years in which that wages policy had been in place, it had delivered real wage outcomes for the public sector which were way ahead of the inflation rate, way ahead of the private sector wages increase and, in fact, in real terms—

The Hon. ADAM SEARLE: Inflation is currently running at over 5 per cent now.

The Hon. DAMIEN TUDEHOPE: And that's part of what we needed to take into account in terms of where we are in terms of moving the parameters in relation to wages policy. But we don't want to be—and you'll agree with me in relation to this, I'm sure, Mr Searle—a contributor to inflation; we want to be a solver of inflation.

The Hon. ADAM SEARLE: Minister, taking up the point that I think Mr Coutts-Trotter and Mr Heuston were mentioning about some proposals being developed and brought forward to the industrial parties, are you able to enumerate or identify at least the kinds of proposals that you're considering? Or is it too early?

MICHAEL COUTTS-TROTTER: Prospectively, no, because I haven't seen them.

The Hon. ADAM SEARLE: Okay.

MICHAEL COUTTS-TROTTER: But perhaps to give some examples of things that have happened previously, to possibly illustrate the point: examination arrangements were changed in concert with the relevant unions so that HSC markers did their work in a different way and were, as a result, more productive; there were a range of operational changes within the Police Force, which enabled a pay rise above prevailing wages policy at the time; new technology at Port Kembla which increased the efficiency and productivity of the port, allowing for a pay rise above 2.5 per cent. They are examples from recent history. But, really, the Government's new policy does allow a deal more creativity because you don't have to link it solely to savings to employee-related costs. You can look at other benefits that are available to the community, and we wait with interest to see what colleagues across the sector come in with.

The Hon. ADAM SEARLE: Who's generating these proposals? You mentioned colleagues across the sector. Is that IR people in the different departmental agencies or DPC?

MICHAEL COUTTS-TROTTER: I would assume it would actually happen in concert with IR people in different agencies. But it would be functional leaders who would have a better understanding and insight on the kind of things that they could do in their area. They'd, I'm sure, take specialist advice from their IR or HR teams, but I would imagine it's people who have a responsibility for delivering public services, in the front line.

The Hon. ADAM SEARLE: Okay. Are you able to say which agencies are actively engaged in this process?

CHARLIE HEUSTON: I would hope all. We've been discussing with agency cluster representatives about the development of proposals. It's still at an early stage at this point, but we hope to be in a position later this year where we have some clarity on what sorts of things might be able to be progressed further.

The Hon. ADAM SEARLE: To give them that guidance, is there like a Premier's department circular or is there a document that we can have a look at that sets out the kind of agenda you're setting?

CHARLIE HEUSTON: Not at this stage.

The Hon. ADAM SEARLE: At this stage, am I to understand or is the Committee to understand that these are verbal discussions only at this reasonably high level of abstraction that we've been discussing here?

CHARLIE HEUSTON: To an extent.

The Hon. ADAM SEARLE: Things are either put in writing or they're not.

CHARLIE HEUSTON: There is some documentation in terms of, for example, a letter to agencies saying, "We welcome your ideas about productivity enhancements." There was some reluctance to provide detail at an early stage that might then operate to confine things unnecessarily. As a starting point, we thought it was of value to hear all the ideas before narrowing anything.

The Hon. ADAM SEARLE: Sure. And this is happening outside any IRC supervised process.

CHARLIE HEUSTON: That's correct.

The Hon. ADAM SEARLE: This is something that you're driving at at departmental levels.

MICHAEL COUTTS-TROTTER: Yes.

The Hon. ADAM SEARLE: You mentioned productivity, Mr Heuston. Mr Coutts-Trotter, if I didn't misrecall, I think you used the word "creativity". I assume these aren't terms of art. These are ordinary English language words that are sort of impressionistic, not subject to any particular rigour. You want to bring forward ideas and evaluate them in the light of what is put to you.

MICHAEL COUTTS-TROTTER: Yes.

The Hon. ADAM SEARLE: I'm just trying to get a sort of sense of the process and how it's going to work.

The Hon. DAMIEN TUDEHOPE: It's a fair call. I think there is some work to be done, and one of the things that we would expect is the unions and those who represent the various public sector unions to make a contribution of what they think productivity enhancement is and contribute to that discussion.

The Hon. ADAM SEARLE: Just on this, on the last occasion at budget estimates when we were having a chat, I think there was a level of industrial unrest and I think we discussed that there'd been nurses, I think teachers, you had other health professionals—the doctors have launched a significant underpayment of wages case against the Government in the Supreme Court. There's the rail matter. Some of these matters aren't to do with wages as such; these are to do with other conditions of work—the issue about adequate staffing, work hours, that kind of thing. I invited you to consider that maybe looking at this in the narrow frame of the wages policy only and wages discussions, given the root causes of a lot of these matters were not particularly wage-related and you should take a more sort of root analysis approach—in that context, I note your Industrial Relations Advisory Council doesn't seem to have met since 2014. Isn't this a useful role you could've used that body to engage in to try and bring together an analysis of what is driving a lot of these difficulties in the workplace?

The Hon. DAMIEN TUDEHOPE: I hear what you're saying. I'm well advised in relation to industrial matters.

The Hon. ADAM SEARLE: So you don't need the Industrial Relations Advisory Council?

The Hon. DAMIEN TUDEHOPE: I've just been handed a note so I'll have a look at that in a minute.

The Hon. ADAM SEARLE: I think a review in 2016 suggested that council was no longer fulfilling a useful purpose.

The Hon. DAMIEN TUDEHOPE: Yes.

The Hon. ADAM SEARLE: Are you going to reactivate it or are you just going to let it drift?

The Hon. DAMIEN TUDEHOPE: I'm happy to take advice in relation to the necessity of that, but I'm just going to indicate to you that what you indicated was the level of industrial unrest, which you identified when we were last here, and you've identified a lot of workplace conditions in respect of things which were agitating a lot of the public sector workers. One of the things you didn't identify of course was that the secretary of the Labor Council in a political way called this "the year of the strike", so there is a political motivation—

The Hon. ADAM SEARLE: I think it's cart before the horse, Minister.

The Hon. DAMIEN TUDEHOPE: —which is sitting well behind this. You've identified a series of issues, and I don't necessarily quibble that they are front and centre issues but there is, certainly in respect of a number of the industrial campaigns which have been launched, a political purpose which has been motivated by the New South Wales Labor Council, your colleagues who are out there agitating for industrial—

The Hon. ADAM SEARLE: Minister, if people are being overworked—

The Hon. DAMIEN TUDEHOPE: No, no, no, Mr Searle—

The Hon. ADAM SEARLE: If people are being overworked and not rested between shifts, then there is a level of difficulty.

The Hon. DAMIEN TUDEHOPE: Mr Searle, I get it. I get it.

The CHAIR: We need one person at a time. Hansard needs to keep a record of this—one at a time.

The Hon. DAMIEN TUDEHOPE: I get it, Mr Searle. You're up for preselection. You need to be able to satisfy those union bodies which are instrumental in your preselection; I get it. But the fact of the matter is that there is a political component to a lot of the industrial—and I don't say for one minute that there are not legitimate workplace concerns that some of the unions have identified as being front and centre for their employment agreement negotiations. But there is certainly—and I have to say, let's get it on the record since you've put it on the record in relation to all the other issues, that there is a political component involved as well.

The Hon. ADAM SEARLE: What I'm asking you to reflect on is that last time I asked you, given that a number of these concerns in different public sector workforces were not wage-related—they related to other conditions of work, such as overwork, excessive hours, not being paid for hours worked and the like—wouldn't it be better to look at these in a global and systems way to address those underlying issues rather than looking at it through the narrow prism of the wages policy and wage bargaining only?

The Hon. DAMIEN TUDEHOPE: And I expect agencies would in fact be, on an individual basis, negotiating exactly along those lines.

The Hon. ADAM SEARLE: But you're the IR Minister or the employee relations Minister. You get involved when things are not being addressed as they ought to be in the view of the Government. Why aren't you getting yourself involved to make sure that there's a systems approach here and that the root causes of these matters are being properly—

The Hon. DAMIEN TUDEHOPE: Generally the agencies conduct these negotiations and report back to me on a regular basis, and I have utmost confidence in respect of the manner in which those issues are being dealt with. But you would agree that every agency has its own set of workplace conditions.

The Hon. ADAM SEARLE: They do.

The Hon. DAMIEN TUDEHOPE: If I look at one thing, one of the issues that nurses have raised is in relation to ratios. I do note that your side of politics has walked away from supporting nurses' ratios and yet it is still under active consideration by the union and they are still pressing for that. So I would expect, in the circumstances, you would join with the Government in saying that that's not the appropriate way to in fact resolve that issue with nurses and that there needs to be something else which needs to be done in relation to making sure the work hours for nurses are correct.

The Hon. ADAM SEARLE: There's a whole issue of workforce constraints right across the health services. Inadequate staffing is common.

The Hon. DAMIEN TUDEHOPE: And you will see in the budget the commitment that the Government has made to making sure that we in fact relieve some of those workforce pressures by in fact funding the additional places for nurses and healthcare workers.

The Hon. ADAM SEARLE: I think the Government said you were going to employ, was it an extra 7,000 workers in the—was it the health sector or was it across the whole public sector?

The Hon. DAMIEN TUDEHOPE: I don't have the figure available—

The Hon. ADAM SEARLE: Maybe Mr Coutts-Trotter could assist us.

The Hon. DAMIEN TUDEHOPE: —but I recall it was substantial.

The Hon. ADAM SEARLE: Yes. How's that going?

The Hon. DAMIEN TUDEHOPE: You'll have to ask the health Minister in relation to that. What is important though—and I'm sure you would agree—is that we have funded it.

The Hon. ADAM SEARLE: Have you?

The Hon. DAMIEN TUDEHOPE: Certainly we have.

The Hon. ADAM SEARLE: Okay, well that's very interesting. Minister, today the Federal industrial relations Minister was talking about the cancer of gig work and the difficulties that it causes for people who have no options but to work in that space—

The Hon. DAMIEN TUDEHOPE: But there's plenty who do want to work.

The Hon. ADAM SEARLE: —and you'd be familiar with the report of the upper House—

The Hon. DAMIEN TUDEHOPE: I am.

The Hon. ADAM SEARLE: —on the impact of technological or other change on the future of work. The evidence before that committee, on which I serve, was quite clear that gig workers have no capacity to bargain. There's gross inequality of bargaining power between themselves as sessional workers and the multinational platforms that they engage with. They have no legal minimum pay, no sick pay, no superannuation and no workers compensation. In some of these situations there have been very tragic outcomes, not only in terms of gross exploitation and underpayment but also people dying at work and SafeWork having a fairly tardy response. What is your Government doing to respond to the recommendations made by that inquiry or the issue in general?

The Hon. DAMIEN TUDEHOPE: We'll be delivering a response to the inquiry in October in accordance with the Government's commitment.

The Hon. ADAM SEARLE: Can you tell us whether, as a result of that, the Government will be proposing any changes to the law?

The Hon. DAMIEN TUDEHOPE: It will be interesting because I think that part of the report would seem to suggest that a lot of the issues which you've identified and which the majority identified are largely within

the ambit of Commonwealth jurisdiction. You might suggest that there are other things that we can do as a State government.

The Hon. ADAM SEARLE: There are, because while employee relations is largely now governed by the Federal Parliament because of the corporations power, the gig workers aren't employees. That is rather the problem for them—they don't have employee rights. Because of that, it would be permissible for any State to regulate or legislate, should it choose.

The Hon. DAMIEN TUDEHOPE: I must say, that's your view of it.

The Hon. ADAM SEARLE: It's certainly the majority view.

The Hon. DAMIEN TUDEHOPE: But it's my view that the Independent Contractors Act actually expressly prohibits States from legislating for rights and entitlements of independent contractors.

The Hon. ADAM SEARLE: That's if they're independent contractors.

The Hon. DAMIEN TUDEHOPE: Isn't there a High Court decision which has just found that where there is a contract which spells out the rights, then the High Court have said that they will consider them as independent contractors?

The Hon. ADAM SEARLE: That's a fairly new development, but it also raises a problem for those workers.

The Hon. DAMIEN TUDEHOPE: But it is being implemented by the Fair Work Commission. To the extent that the Federal Government says that they need to intervene, that's probably consistent with the view of some members of the Committee that this is specifically a Commonwealth responsibility. As a matter of principle, though, while I am very cognisant of making sure that people who work in that industry, in the gig economy, do have work safety entitlements and do have an entitlement to have a safe system of work, what I would be saying is that the nature of the gig economy has created opportunity as well as some of the difficulties that you've identified.

The Hon. ADAM SEARLE: Sure, but in the twenty-first century, it's not an outrageous—

The Hon. DAMIEN TUDEHOPE: To those who are considering this question—and I'm sure it will be raised next week in another forum—what I would be saying is that whilst we have a responsibility to make sure that people are not placed in an unfair and unsafe system of work, let's not also kill a model of work which, in fact, for some people and for some employees has provided an opportunity to work, whether it's students or whether it's people who want an extra job or the like. Let's make sure that we don't kill that opportunity for those workers.

The Hon. ADAM SEARLE: The inquiry found that the majority of people working in this space wanted more hours. They were actually looking for permanent and stable work. It wasn't the part-timers and the students of the kind that you're talking about; they were people looking for proper, stable incomes.

The Hon. DAMIEN TUDEHOPE: I don't quibble with that as an assessment.

The Hon. ADAM SEARLE: Minister, you're not advancing the proposition that every worker in the twenty-first century shouldn't have a minimum rate of pay or entitlement to sick pay and workers compensation, are you?

The Hon. DAMIEN TUDEHOPE: I predicated my view to you that they have got to be treated fairly.

The Hon. ADAM SEARLE: With legally enforceable minimum conditions?

The Hon. DAMIEN TUDEHOPE: Well, how that is spelled out is going to be a matter—

The Hon. ADAM SEARLE: You just can't say it, can you?

The Hon. DAMIEN TUDEHOPE: Of course, I'm a great believer that people—

The Hon. ADAM SEARLE: You just don't want workers to have legally enforceable minimum conditions, do you?

The Hon. DAMIEN TUDEHOPE: I'm a great believer that people, wherever they are employed, must be treated fairly and have a safe system of work.

The Hon. ADAM SEARLE: I think that's probably the best I'm going to get from you on that point. Do you accept that wage theft is a problem that needs better addressing?

The Hon. DAMIEN TUDEHOPE: Of course I do.

The Hon. ADAM SEARLE: In fact, you said that in the second reading speech on the Tax Administration Amendment (Combating Wage Theft) Bill, didn't you?

The Hon. DAMIEN TUDEHOPE: Yes, and I haven't changed my position, Mr Searle.

The Hon. ADAM SEARLE: No, and an inquiry into that legislation reported to the upper House in June of last year, but the bill has been left languishing like an orphan. Although there were criticisms about that bill not really tackling wage theft, you haven't even progressed your own fairly weak proposal.

The Hon. DAMIEN TUDEHOPE: I thought they were strong proposals. What we sought was an agreement with your side of politics that you would not amend that bill, because it delivered real benefits in terms of making sure that those companies that weren't paying their fair share of payroll tax were identified, that there was transparency in relation to people who had avoided payroll tax and that there was an opportunity to share information in relation to the non-payment of payroll tax. That was what we thought was eminently supportable legislation. We had always and have always taken the view that wage theft is an issue for the Commonwealth Government to deal with. We have pressed that and, in fact, in recent discussions I had with the Federal industrial relations Minister, he has indicated that he will be bringing forward a Federal bill in relation to wage theft. In those circumstances, we would hope that that covers the field in respect of the issue.

The Hon. ADAM SEARLE: But the criminal law of the State has always been governed by State legislation. Are you wanting to cede State criminal law sanctions to the Commonwealth?

The Hon. DAMIEN TUDEHOPE: But you would be aware that many of the corporations who have been involved are cross-jurisdictional in terms of their reach and where their employees are. What I would be saying to you—and the Federal Minister agrees with this—is that the appropriate place for wage theft legislation to be developed is by way of a Federal law, which in fact covers corporations generally who work in circumstances where they are paying payroll tax and where they are not meeting their commitments to their workers.

The Hon. ADAM SEARLE: The attitude of the Commonwealth has only recently changed with the change of government.

The Hon. DAMIEN TUDEHOPE: I quibble with that.

The Hon. ADAM SEARLE: But Victoria took action long ago, and Queensland has taken action. But New South Wales—

The Hon. DAMIEN TUDEHOPE: And how many prosecutions are successful in those jurisdictions?

The Hon. ADAM SEARLE: It's about changing culture, isn't it? It's about naming the behaviour you don't want people to engage in.

The Hon. DAMIEN TUDEHOPE: Then pass our legislation as it currently stands, without amendment.

The Hon. ADAM SEARLE: I don't accept that there was an agreement about that; I'm not privy to any such arrangement. But you won't even bring it forward for debate.

The Hon. DAMIEN TUDEHOPE: What I'm saying to you is give us a commitment that you will pass the legislation in its current form. In those circumstances, I will lodge it in the first sitting week. I will debate it and pass it.

The Hon. ADAM SEARLE: But why are you frightened of debate that improves legislation? That's the parliamentary process, Minister.

The Hon. DAMIEN TUDEHOPE: What I want is the commitment. Why won't you give us a commitment that you identify the legislation that we are proposing as worthwhile legislation that achieves a lot of the outcomes that you would like to see achieved in terms of the responsibilities of the office of revenue and, in fact, use that as a tool?

The Hon. ADAM SEARLE: Minister, the upper House doesn't give governments a blank cheque, and you know that.

The Hon. DAMIEN TUDEHOPE: But there is an opportunity to identify good legislation, Mr Searle.

The Hon. ADAM SEARLE: Minister, the bill does not require Revenue NSW to use its assessment of payroll taxes to work out if employers are paying correct wages. It's all about payroll tax. It could be enhanced to give Revenue NSW an enhanced role in terms of identifying wage theft and then notifying relevant authorities. Why won't you accept that sort of change to the legislation to improve it?

The Hon. DAMIEN TUDEHOPE: Generally, as I understand it, the circumstances in which underpayment of payroll tax arises—and perhaps the commissioner or Mr Smythe might be able to elaborate on this, but it does identify circumstances where corporations have in fact faced prosecutions or where it has been identified through the Fair Work Commission that there has been underpayment of wages. That information then triggers an opportunity for an investigation by Revenue about the correct payment of payroll tax. That's a worthwhile thing, but what I would identify for you is the sharing of information between the tax office, the Fair Work Commission and Revenue is an important component in identifying, potentially, corporations who are not paying their tax. The appropriate way to do it is to share the information with the enforcement authorities, being the Fair Work Commission or the Tax Office, rather than use this as a blunt instrument to identify wage theft, when the Commonwealth is the appropriate jurisdiction to do that.

The Hon. ADAM SEARLE: The Fair Work Ombudsman in the past identified that the problem is one of actually detecting wrongdoing. Even with enhanced resources and even with complaints coming forward, there weren't enough resources in the Federal regulator to actually identify all the wrongdoing. It sounds like they always need all the help they can get.

The Hon. DAMIEN TUDEHOPE: Well, they need to beef them up. They need to resource it.

The Hon. ADAM SEARLE: They need all the help they can get, so why wouldn't you make it clear in this legislation that Revenue NSW, apart from assessing and identifying under and non-payment of payroll tax, would also identify non-payment of appropriate wages and refer that to the relevant authorities?

The Hon. DAMIEN TUDEHOPE: I think the legislation does in fact encompass that. Have a look at it.

The Hon. ADAM SEARLE: The Committee said that it wasn't that clear and it could be enhanced, so why are you resisting that process, Minister?

The Hon. DAMIEN TUDEHOPE: It's my understanding that the legislation does in fact achieve that purpose.

The Hon. ADAM SEARLE: You say it may achieve that purpose but, if it's not clear, why are you resisting enhancing the legislation so that is abundantly clear, including the sharing of information?

The Hon. DAMIEN TUDEHOPE: I think what is envisaged, Mr Searle, is not only clarifying the sharing of information but to actually create criminal penalties.

The Hon. ADAM SEARLE: Of course, that's the other shortcoming in the legislation: It doesn't actually criminalise wage theft.

The Hon. DAMIEN TUDEHOPE: No, because that's the appropriate jurisdiction of the Commonwealth to do.

The Hon. ADAM SEARLE: I was about to get onto the issue of the gender pay gap. Recently—I think in August—the gender pay gap nationally has been identified as being something around 14 per cent. In New South Wales it is 12 per cent. On the last occasion, we were discussing the *State of the NSW Public Sector Report 2021* and how the gender pay gap across the public sector has again, for the third or fourth consistent year, deteriorated. I was asking yourself and Mr Coutts-Trotter about strategies and actions to reduce that. Leaving aside the issue of gender segmentation, which I know is a big problem, what are you doing to make sure, in the SEB branch, that men and women are getting equal pay for doing equal or comparable work?

The Hon. DAMIEN TUDEHOPE: I will pass that to Mr Coutts-Trotter.

MICHAEL COUTTS-TROTTER: We have had discussions between secretaries. We've looked at the data, particularly in more senior roles, where there does appear to be a continuing gap. From memory, the gap was about 4 per cent on the last report. It was a bit volatile, from memory, in the last report. It had been fairly consistent prior to that and consistently lower. We have asked the question, and my colleagues are having a look within their organisations to see if they can better understand why it bounced in the last report. We have got another report coming up later this year. I am more than happy to take the question on notice and come back with any specifics that my colleagues might be able to provide.

The CHAIR: We will now break for 15 minutes for morning tea, which will bring us back at 11.17 a.m.

(Short adjournment)

The CHAIR: Welcome back, everybody. We will continue with questions from the Opposition.

The Hon. DANIEL MOOKHEY: It is good to see you, Minister.

The Hon. DAMIEN TUDEHOPE: Mr Mookhey, it's always a pleasure to see you. In fact, I was disappointed when you weren't here when I arrived. A question of your priorities arose when you elected another Minister to go and see before you elected to come and see me.

The Hon. DANIEL MOOKHEY: I want to say, I did miss you. It is clear that absence has made your heart grow fonder too.

The Hon. DAMIEN TUDEHOPE: To the extent that these sessions often involve a character assessment of you and I, let's keep it civil. You ask the questions, and I will give you the answers. You won't interrupt me, and I won't interrupt you, okay?

The Hon. DANIEL MOOKHEY: I'm not going to lie, Minister, the other room was too much of a love-in. I felt like it was necessary to come here to finally be put back into my place. It's good to see you. Greetings to your officials. Thank you for being here. Minister, have you collected the money that Uber owes us in back payroll taxes?

The Hon. DAMIEN TUDEHOPE: I'll pass to Mr Johnston.

SCOTT JOHNSTON: Not as yet.

The Hon. DANIEL MOOKHEY: Where are we up to in terms of that litigation, Minister?

CULLEN SMYTHE: It's currently before the courts.

The Hon. DANIEL MOOKHEY: We were in a period where, I think, it was identified last time that there were alternative disputes or, at least, there were negotiations or conversations happening as to whether or not it was possible to reach a settlement point prior to the Supreme Court having to make a decision. Have those conversations not reached fruition, Minister?

The Hon. DAMIEN TUDEHOPE: You'll appreciate that I don't get involved in matters which are before a court. To the extent that you want an update—

The Hon. DANIEL MOOKHEY: Yes, I'll take that.

The Hon. DAMIEN TUDEHOPE: —about where those proceedings are up to—

CULLEN SMYTHE: Exactly where we're up to with discussions, I'd need to take that on notice. I'll be able to come back to you very quickly.

The Hon. DANIEL MOOKHEY: When is it set for hearing?

CULLEN SMYTHE: I believe a mention is later this year.

The Hon. DANIEL MOOKHEY: But when is it going to trial?

CULLEN SMYTHE: I'll take that on notice.

The Hon. DANIEL MOOKHEY: It has been in litigation for more than a year, correct? You lodged a statement of claim last year, didn't you?

CULLEN SMYTHE: That's correct.

The Hon. DANIEL MOOKHEY: Early last year?

CULLEN SMYTHE: Last year, yes.

The Hon. DANIEL MOOKHEY: So, what, is there some hold-up in the Supreme Court? What's going on? Two years to a court hearing isn't usual, so what's happening?

CULLEN SMYTHE: There's nothing I can add to the comments I've just made.

The Hon. DANIEL MOOKHEY: Well, it's an \$81 million suit. It's the biggest enforcement action I think Revenue NSW has done.

CULLEN SMYTHE: I'm definitely aware of that, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I've got to say, I've previously been critical of whether or not we have been taking the action we should be to make sure that we are, so it's appreciating the fact that this is a big, big item of compliance and enforcement. I would expect the chief commissioner, the Minister and/or the commissioner to at least know, why is it taking two years for us to be getting to a court hearing?

The Hon. DAMIEN TUDEHOPE: Well, you have an answer. We'll come back to you in writing with an update in relation to it. I don't think there should be any criticism of the court process. One can't sit here and

speaking for what response Uber makes and how the proceedings are drawn out. There might be a perfectly rational explanation. What I'll be saying to you, Mr Mookhey, is allow the officials to give you a written update in relation to it. I agree with you: It is a significant amount of money to be collecting. When we do collect it, I will be the first out on the doorstep wanting to say how great the officials from Revenue are for pursuing a debt which is owed to the State.

The Hon. DANIEL MOOKHEY: Let's just see how far we go down that pathway, Minister, before you call that press conference.

The Hon. DAMIEN TUDEHOPE: I don't call press conferences like you do, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I do appreciate the update that will be forthcoming from officials. But if it is possible perhaps for us to see what information might be available for this afternoon, that would be appreciated too.

SCOTT JOHNSTON: We'll do our best to come back with some more information.

The Hon. DANIEL MOOKHEY: Have we lodged any other statements of claims in relation to companies that are from the gig economy?

The Hon. DAMIEN TUDEHOPE: Not that I've been advised, but there might be.

SCOTT JOHNSTON: In the past, since we were last here, where we advised we'd completed 16 investigations in relation to the gig economy, we've completed three further.

The Hon. DANIEL MOOKHEY: You've completed three investigations.

SCOTT JOHNSTON: Three further investigations.

The Hon. DANIEL MOOKHEY: Has that led to the lodgement of a reissuing of a tax assessment notice?

SCOTT JOHNSTON: I would have to take on notice where the status of those are, but my expectation is the answer is yes, that we've issued a notice.

The Hon. DANIEL MOOKHEY: You've reissued assessment notices.

SCOTT JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Have any of those assessment notices prompted a challenge in a court?

CULLEN SMYTHE: Not that I'm aware at the moment. As you know, Mr Mookhey, the way that these processes normally work is: After an investigation, if a new or an amended notice of assessment is issued, there's then a period of time for the recipient to object.

The Hon. DANIEL MOOKHEY: It's 90 days, is it?

CULLEN SMYTHE: Around that, but we do give leeway. But this is to object internally.

The Hon. DANIEL MOOKHEY: Yes, I know.

CULLEN SMYTHE: And then, once that is considered, that may take a little bit of time, may involve the toing and froing and provision of additional arguments, potentially some additional information.

The Hon. DANIEL MOOKHEY: Yes, I'm aware of that.

CULLEN SMYTHE: Then a determination is made and then there's a 60-day period for the recipient, the taxpayer.

The Hon. DANIEL MOOKHEY: Basically, according to that timetable, Commissioner, you would've had to have issued the updated notice of assessment earlier this year; fair?

SCOTT JOHNSTON: Yes. I'll confirm where those three further—

The Hon. DANIEL MOOKHEY: I'm not going to ask you to reveal the additional assessment but I am going to ask you to identify the three people who had—and bear in mind we've gone through this multiple times in multiple forums as to what you can say and can't say and various practices have been established between us, I'm sure. So I will just ask you now, can you identify the three companies that had additional notices of assessments put on them?

SCOTT JOHNSTON: I'll have to take that on notice, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you. No problems. If it's possible we can get some information this afternoon, that would be helpful as well—if it is possible. I just want to move to another matter that arises from the gig economy, Minister, if that's okay. I understand that icare has made a payment to the family of a rider who tragically was killed on our roads last year. I want to acknowledge icare for that. I'm sure they would have followed the law, but that was a matter that was raised in these forums previously and I've met with the family myself. I was hoping we could get an update on that particular matter, about that family from Hungry Panda.

The Hon. DAMIEN TUDEHOPE: Again, you wouldn't expect me to give you an update on that.

The Hon. DANIEL MOOKHEY: No, I'm asking the CEO.

The Hon. DAMIEN TUDEHOPE: Mr Harding.

The Hon. DANIEL MOOKHEY: I wouldn't expect you, Minister.

RICHARD HARDING: Mr Mookhey, I'm not sure if you're referring to the settlement that occurred through the processes with the PIC.

The Hon. DANIEL MOOKHEY: I am.

RICHARD HARDING: That was a settlement between Uber and the individual.

The Hon. DANIEL MOOKHEY: No, I'm talking about the Hungry Panda matter.

RICHARD HARDING: Sorry, Hungry Panda. Let me come back to you. I don't have the details of the individual case with me.

The Hon. DANIEL MOOKHEY: Do you mind taking that on notice?

RICHARD HARDING: I can certainly take it on notice.

The Hon. DANIEL MOOKHEY: Thank you. It is the case right now that there's a separate dispute that's taking place in the PIC, after icare—to be fair to icare, confirmed the opinion that they perhaps had given to us at a separate hearing in respect to the death of that Uber rider as well. The Fredy family is the incident that I'm specifically referring to. It is the case, is it not, that icare did reject that claim for compensation on the basis that the person wasn't an employee?

RICHARD HARDING: Mr Mookhey, I'm not sure exactly where you're going. Again, specifically in relation to that case that you're talking about, I'll have to come back to you. In general, though, it is a case by case assessment, as has been the case all along, based on the contractual relationship between the individual and the company. The case that we just talked about, Hungry Panda, where there was a settlement, wasn't a process where the PIC made a decision. That was a decision of the company involved to make a settlement. So there are different outcomes based on case by case assessment of the relationship between, in this case, the riders and their contracting entities.

The Hon. DANIEL MOOKHEY: Mr Harding, we might pick that up a bit later today as well. But, Minister, is icare doing a superb job?

The Hon. DAMIEN TUDEHOPE: Well, how long's a piece of string? All my interactions with icare and the icare board—and I have to say the icare board is very well run by John Robertson. He provides me with updates in relation to icare. All my interactions with Mr Harding have all been very professional. Notwithstanding that they face a very difficult environment in which they work in terms of the expectations on them as an organisation, I have to say that I have the utmost confidence in them as an organisation. I've been given no reason to believe that we should have no confidence in them as an organisation.

The Hon. DANIEL MOOKHEY: So your view is that they are doing a superb job.

The Hon. DAMIEN TUDEHOPE: I beg your pardon?

The Hon. DANIEL MOOKHEY: They're doing a superb job.

The Hon. DAMIEN TUDEHOPE: I've got no reason to believe that they are—how you want to describe it as a superb job, I think in my capacity as the Minister, I would have to form a view as to the level of confidence that I have in them and the level of support and the manner in which they report to me. There are some indicators that I would look at. To what extent has the culture of the organisation changed? You will no doubt potentially raise with me issues in respect of the return to work rates and the like. I am satisfied that the people who are running this organisation are the best people that we could get for this job and they have my support.

The Hon. DANIEL MOOKHEY: What was the net result of the Nominal Insurer in the last financial year?

The Hon. DAMIEN TUDEHOPE: Have you got the exact figure?

RICHARD HARDING: Yes, absolutely. Do you mean the year ended 30 June 2022, Mr Mookhey?

The Hon. DANIEL MOOKHEY: I do.

RICHARD HARDING: The net result was a loss of \$993 million. Would you like me to give you the details?

The Hon. DANIEL MOOKHEY: We'll get to that. Don't mind, Mr Harding, we certainly will. Can you just give me that figure again, please?

RICHARD HARDING: It's a negative net result of \$993 million.

The Hon. DANIEL MOOKHEY: Last year, Minister, the Nominal Insurer's net result was positive \$63.3 million, wasn't it?

The Hon. DAMIEN TUDEHOPE: Is that correct? You're quoting the figure. I've got no reason to believe that it's not true.

The Hon. DANIEL MOOKHEY: In the last 12 months, icare's position in the Nominal Insurer has reversed by the tune of more than a billion dollars. Is my maths accurate there?

RICHARD HARDING: Would you like me to give you the details, Mr Mookhey?

The Hon. DANIEL MOOKHEY: Mr Harding, we'll happily give you ample time to give us the details, but I'm just asking the Minister here. When were you advised that, in the past 12 months, icare's position with respect to the Nominal Insurer had reversed by more than \$1 billion?

The Hon. DAMIEN TUDEHOPE: Mr Mookhey, you would be aware of the pressures on every insurer in the insurance industry. The Nominal Insurer is not just insuring workers compensation. It acts as the insurer for the HBCF, it acts as the insurer for Lifetime Care, it acts for—

The Hon. DANIEL MOOKHEY: Minister, the Nominal Insurer doesn't act as the HBCF, nor does it act as the TMF, nor does it act as the sports injury fund. The Nominal Insurer only does workers compensation. You are aware of that, aren't you?

The Hon. DAMIEN TUDEHOPE: Yes.

The Hon. DANIEL MOOKHEY: I'll go back to my question.

The Hon. DAMIEN TUDEHOPE: And you would be aware of the additional pressures on the workers compensation fund over the last 12 months.

The Hon. DANIEL MOOKHEY: I've been aware of the pressures that the workers compensation fund has been under for a number of years, but I'm asking you a very specific question. When were you advised that the agency that you have expressed utmost confidence in had a turnaround of negative \$1 billion? Do you recall when you were briefed?

The Hon. DAMIEN TUDEHOPE: There is a loss of that amount.

The Hon. DANIEL MOOKHEY: When were you briefed?

The Hon. DAMIEN TUDEHOPE: I'm briefed every fortnight by icare. It would have been included in briefing materials that—I don't know—

RICHARD HARDING: Perhaps, if I could jump in?

The Hon. DANIEL MOOKHEY: So it comes as no surprise—

The Hon. DAMIEN TUDEHOPE: I think it's important that Mr Harding does give context.

The Hon. DANIEL MOOKHEY: Minister, we will have ample time. There is no shortage of time here. But I'm concentrating on your role.

The Hon. DAMIEN TUDEHOPE: Mr Mookhey, you have asked a question. I'm entitled to answer it. In giving that answer, I will have deference to Mr Harding, who will give context to the answer. Mr Harding?

The Hon. DANIEL MOOKHEY: I am not uninterested in context. I'm happy to hear from Mr Harding.

The Hon. DAMIEN TUDEHOPE: No, you asked me about the—

The Hon. DANIEL MOOKHEY: Yes, I'm very happy to go to Mr Harding. To be clear here, Minister, the question that I asked you, which I would love to hear Mr Harding's answer to—if Mr Harding has this information, because you don't have it, I will happily hear from him.

The Hon. DAMIEN TUDEHOPE: He needs to give the context to it, Mr Mookhey.

The Hon. DANIEL MOOKHEY: The question is how often have you been briefed? Now, Mr Harding, if you want to say how often you have been briefing the Minister, I'd love to hear it.

The Hon. DAMIEN TUDEHOPE: Thank you.

RICHARD HARDING: As the Minister has said, we speak with the Minister on a fortnightly basis. Each month—when the monthly rolls round in the fortnightly—the Minister receives the information about the financial condition of the fund.

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

RICHARD HARDING: You will appreciate, Mr Mookhey, that in this current environment, with interest rate movements, with investment market movements, it has been a very, very volatile period.

The Hon. DANIEL MOOKHEY: Indeed. But, Minister—

RICHARD HARDING: Over \$892 million has been a result of the investment losses over—

The Hon. DANIEL MOOKHEY: Sorry, Mr Harding, you're not—

The Hon. DAMIEN TUDEHOPE: No, I think it's important that he finishes this answer, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Harding, I—

RICHARD HARDING: Over \$1 billion has been the result of—

The Hon. DANIEL MOOKHEY: I'm almost tempted to take a point of order.

RICHARD HARDING: —interest rates and inflation.

The Hon. DANIEL MOOKHEY: Point of order: I am sorry, but this is the time during which we can question the Minister. I have no doubt Mr Harding will be in a position to provide the relevant information this afternoon, when we will be returning to many of these subject matters. But this is the opportunity to question the Minister.

The Hon. CHRIS RATH: To the point of order: The Minister can choose to answer the question any way he wishes, including deferring to officials.

The CHAIR: My ruling has two parts. The Minister actually has to be directly relevant to the question that has been asked. You are entitled to engage your officials here to assist with the answer, but you do have to be directly relevant. The question was very specific about when you were briefed. You have provided that answer. We have heard the confirmation from Mr Harding. The further information is straying from the question. I think that is Mr Mookhey's point.

The Hon. DAMIEN TUDEHOPE: Well, it isn't.

The CHAIR: Well, it is.

The Hon. DAMIEN TUDEHOPE: With due respect.

The CHAIR: It is. I will uphold the point of order. That doesn't mean you can't defer to your officials, but you do have to be directly relevant and so does Mr Harding.

The Hon. DANIEL MOOKHEY: Minister, there is no implication that I'm suggesting that icare withheld information, and I want to acknowledge the fact that icare has been regularly reporting to you on this matter. Given that you've been receiving regular reports about this \$1 billion reversal in the position of the Nominal Insurer, what steps have you taken and directions have you given icare to ensure that this pattern of \$1 billion losses doesn't continue?

The Hon. DAMIEN TUDEHOPE: There are a number of levers that can exist in relation to stemming losses. There can be an improvement in investment returns, as Mr Harding started to tell you, but you didn't want to hear.

The Hon. DANIEL MOOKHEY: Is that what you directed him to do?

The CHAIR: Continue, Minister.

The Hon. DAMIEN TUDEHOPE: Are you going to let me answer?

The Hon. DANIEL MOOKHEY: Sure.

The Hon. DAMIEN TUDEHOPE: Thank you. There is an improvement in investment returns. There can be an improvement in the manner in which claims are being managed. There can be an improvement in operational expenses, and there can be increases in premiums. So they're the sort of levers that you would expect an organisation to avail itself of in respect of trying to improve its position. There are other things at play here, including inflation and the like, which do impact on the insurer, but there are a variety of levers which it is able to pull to try and reverse that position.

The Hon. DANIEL MOOKHEY: It would be impolite of me not to ask: What is the funding ratio of the Nominal Insurer now, and the insurance ratio?

The Hon. DAMIEN TUDEHOPE: The insurance ratio of the NI is 102 per cent and the accounting ratio is 94 per cent.

The Hon. DANIEL MOOKHEY: Minister, this time last year, at the end of the previous financial year, the insurance ratio was 122 per cent.

The Hon. DAMIEN TUDEHOPE: Correct.

The Hon. DANIEL MOOKHEY: And the funding ratio was 99 per cent. The insurance ratio has dropped by an astonishing 20 per cent in one year and the funding ratio has gone down by 4 per cent. In light of that alarming deterioration, do you stand by your comments that you have utmost confidence in the way icare is doing its job?

The Hon. DAMIEN TUDEHOPE: Yes.

The Hon. DANIEL MOOKHEY: Fair enough. The only other figure which I wanted to get this morning—and we can come back this afternoon—is are you in a position to tell me what the underwriting loss was for the Nominal Insurer for the last financial year.

The Hon. DAMIEN TUDEHOPE: Tell me what you mean by an underwriting loss.

The Hon. DANIEL MOOKHEY: Standard definition, Minister.

The Hon. DAMIEN TUDEHOPE: No, you tell me what you mean by it. Does it include investment returns?

The Hon. DANIEL MOOKHEY: No, that's not it. Minister, just to be clear here, icare has always reported its underwriting positions and its net positions. I accept the legitimacy of your point, which is that investment returns are there.

The Hon. DAMIEN TUDEHOPE: What you're going to do is you're going to misconstrue an underwriting loss without taking into account investment returns.

The Hon. DANIEL MOOKHEY: Why don't we do the following: You tell me what the underwriting loss was and then you can give me the explanation you wish to give. What is the underwriting loss?

The Hon. DAMIEN TUDEHOPE: I think it was six—

RICHARD HARDING: Very happy to tell you, Mr Mookhey. The underwriting result for the Nominal Insurer was a \$101 million loss.

The Hon. DANIEL MOOKHEY: A \$101 million loss? Thank you.

RICHARD HARDING: Which reflects the point we were making before about the volatility of external factors.

The Hon. DANIEL MOOKHEY: Sure. Is there anything you'd like to add to that?

The Hon. DAMIEN TUDEHOPE: No.

The Hon. DANIEL MOOKHEY: Fair enough. In respect to icare and its remuneration practices, have you instructed icare not to pay any bonuses this year?

The Hon. DAMIEN TUDEHOPE: I've given no instruction. The individuals who work for icare have contracts with icare. I expect the icare board, which is capably led, to in fact take into account the contracts which it has entered into with its employees and provide me with a briefing in terms of—

The Hon. DANIEL MOOKHEY: Is icare going to be paying bonuses this year?

The Hon. DAMIEN TUDEHOPE: It's a matter which is still under discussion, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Do you have any objections to them paying any bonuses?

The Hon. DAMIEN TUDEHOPE: What I would say in relation to that is my principal position is that icare ought be employing the best possible workforce that it can to serve the workers of this State. I would take you to this, Mr Mookhey: icare works in a very important commercial environment, where the people who work in the insurance industry are highly prized and highly sought after. Mr McDougall, in his report, had this to say in consideration of the remuneration for icare—

The Hon. DANIEL MOOKHEY: Sorry, Minister.

The Hon. DAMIEN TUDEHOPE: No. Just let me finish, please.

The Hon. DANIEL MOOKHEY: If you don't mind just answering the question, that might make things a little easier.

The Hon. DAMIEN TUDEHOPE: I will come to it. I'm still answering a question about remuneration.

The Hon. DANIEL MOOKHEY: Minister, my time is limited.

The Hon. DAMIEN TUDEHOPE: Mr McDougall said this:

When one considers the size and purpose of icare and its responsibilities, icare's executive remuneration packages sit appropriately within the range of other public and private sector organisations.

That's the primary position. It was established by Mr McDougall that that is the current position with the executives who work in this organisation. By and large, I have already said to you, I value those executives. And, in the circumstances, I think that they ought be paid appropriately. The question of bonuses this year and alteration to remuneration packages is still under discussion, and I expect a brief in relation to that to be provided to me shortly.

The Hon. DANIEL MOOKHEY: So you have no objections to icare's board choosing to pay bonuses if they think that's necessary?

The Hon. DAMIEN TUDEHOPE: If the board reaches a decision and makes a recommendation that they pay, that will then be a discussion between the chair of the board, John Robertson, and me.

The Hon. DANIEL MOOKHEY: Can I just ask, does losing \$1 billion in the Nominal Insurer and requiring a \$1.9 billion injection of funds in the TMF justify the payment of bonuses in your view?

The Hon. DAMIEN TUDEHOPE: I beg your pardon?

The Hon. DANIEL MOOKHEY: Does losing nearly \$1 billion in the Nominal Insurer and seeking a \$1.9 billion injection of funds into the Treasury Managed Fund justify a claim for bonuses?

The Hon. DAMIEN TUDEHOPE: I'm sure that they are circumstances that are considered by the board for the purposes of making a decision in relation to bonuses. But let's just identify the \$1.9 billion that you've identified. Is that the figure that you identified for the TMF?

The Hon. DANIEL MOOKHEY: That's what the Treasurer told us was required as an injection. Actually I was going to ask you about this, Minister. I'm glad we can talk about this because I was going to ask you, given the Treasurer told us on Monday that he was required to execute a further \$1.9 billion injection of funds into the TMF and that follows Treasurer Perrottet's decision to inject \$2 billion in 2020—meaning that in the past three years we've had to inject nearly \$4 billion into the Treasury Managed Fund—did Treasurer Kean tell you he was about to inject \$1.9 billion into the TMF?

The Hon. DAMIEN TUDEHOPE: He would have made that decision on or around the time of the budget. But what I say to you is this—

The Hon. DANIEL MOOKHEY: Did you concur with icare's request for a bailout?

The Hon. DAMIEN TUDEHOPE: What I say to you is this: The problem that you have in understanding the TMF—and I think, quite frankly, that you have misrepresented this for a long period of time for your political purposes—

The Hon. DANIEL MOOKHEY: Tell me. Please, let me know. How have I done that?

The Hon. DAMIEN TUDEHOPE: You do not understand that the TMF is a self-insurer. If there are facts and circumstances where a self-insurer needs to pay claims and they are not covered by agency levies, which

fund the TMF, then in those circumstances consolidated revenue is required to fund the TMF for the purposes of meeting the claims. You'd be aware, and I hope you are aware—some of your public pronouncements do not indicate that you are aware—that we have had a significant amount of flood activity.

The Hon. DANIEL MOOKHEY: Yes.

The Hon. DAMIEN TUDEHOPE: They involve the repatriation of public buildings. You would be aware that there are roads that have been significantly destroyed by flood. All those events impact self-insurers. We can elect not to fix the road, to which you would say, "Why aren't you fixing the roads?" Well, if it is a result of a flood or if a hospital needs repatriating because of a flood event or a school needs repatriating because of a flood event or a fire event or some other event, then in those circumstances a self-insurer needs to, in fact, provide the funds to actually do that work.

The Hon. DANIEL MOOKHEY: Minister, I do acknowledge—

The Hon. DAMIEN TUDEHOPE: So what I just would say to you, Mr Mookhey, is do not characterise the \$1.9 billion as anything exceptional, other than to say we are meeting our insurance obligations as a self-insurer.

The Hon. DANIEL MOOKHEY: No doubt, Minister, and I do agree—

The Hon. DAMIEN TUDEHOPE: I just make this point. Mr McDougall, in respect of exactly the same point that you continue to make, says this:

... the allegation of a \$4 billion 'bailout' was factually incorrect.

...

And, to the extent that the media commentary—

often supported by you—

sought to assign to icare responsibility for the need for the transfer of cash into the TMF, it was wrong.

He also said:

... the losses in the TMF were not attributable to icare's mismanagement.

So if you want to ask if—

The Hon. DANIEL MOOKHEY: Minister, just bear in mind McDougall made his finding a good year before the \$2 billion injection, so I don't think you should verbal him.

The Hon. DAMIEN TUDEHOPE: Do you accept the premise that I put to you, Mr Mookhey, that this is a self-insurer relying on its own funds to meet its commitments?

The Hon. DANIEL MOOKHEY: Minister, I'm prepared to acknowledge the profound insight you have that insurers are required to pay claims. That is true.

The Hon. DAMIEN TUDEHOPE: But it's an insight that you seem to ignore. You seem to consistently ignore it.

The Hon. DANIEL MOOKHEY: But the issue you have is that Treasury told us that the flood costs to the TMF were circa \$200 million to \$300 million paid out from you, so when they gave us—

The Hon. DAMIEN TUDEHOPE: Are you asserting mismanagement?

The Hon. DANIEL MOOKHEY: Yes, actually, to be clear.

The Hon. DAMIEN TUDEHOPE: Well, to be clear then, point it out.

The Hon. DANIEL MOOKHEY: Minister, let me ask the question. I enjoyed you getting very confident in your point there. But just to be clear here, when we asked Treasury what were the reasons for the bailout, they actually did itemise it. The flood factor no doubt is important, but it's not the whole cost. The extent to which you continue to hide behind flood and flood-related events to disguise a deterioration—

The Hon. DAMIEN TUDEHOPE: There are other events.

The Hon. DANIEL MOOKHEY: Let me just finish. It doesn't bode well for you. I know this because I'm looking at the budget, and every single agency—every single one of them—is having to pay more in workers comp premiums to icare—

The Hon. DAMIEN TUDEHOPE: Correct!

The Hon. DANIEL MOOKHEY: —to account for the fact that the TMF's performance is deteriorating.

The Hon. DAMIEN TUDEHOPE: No.

The Hon. DANIEL MOOKHEY: So that was a nice seven-minute exchange you and I had. Let's just get to the actual—

The Hon. DAMIEN TUDEHOPE: I'll go through some of the other factors—

The Hon. DANIEL MOOKHEY: No, let's just actually get—

The Hon. DAMIEN TUDEHOPE: Because you've raised flood; I'll go through some of the other factors.

The Hon. DANIEL MOOKHEY: Minister, no, because the question that I—

The Hon. DAMIEN TUDEHOPE: What about the increasing incidence of psychological—

The CHAIR: Can we just take a pause? We need one person at a time. We have to keep a transcript.

The Hon. DAMIEN TUDEHOPE: Indeed, but he has asked me about—

The CHAIR: We'll have a question, followed by the answer.

The Hon. DANIEL MOOKHEY: I will ask the question, Chair.

The Hon. DAMIEN TUDEHOPE: He has in fact asked me about those things that impact in relation to the \$1.9 billion.

The Hon. DANIEL MOOKHEY: No, I will take a point of order.

The Hon. DAMIEN TUDEHOPE: Let's go through them.

The CHAIR: Minister, sorry. Mr Mookhey will ask the question that he chooses. There's no point trying to guess what the question is going to be.

The Hon. DAMIEN TUDEHOPE: He should not interrupt my answer.

The CHAIR: Perhaps you should both stop interrupting each other so that we can have an orderly proceedings.

The Hon. DAMIEN TUDEHOPE: In that case, Chair, I'll finish my answer.

The Hon. DANIEL MOOKHEY: I hadn't actually asked a question.

The CHAIR: I'm not sure that he actually asked a question.

The Hon. DAMIEN TUDEHOPE: Because you don't want to know.

The Hon. DANIEL MOOKHEY: Point of order—

The Hon. DAMIEN TUDEHOPE: You don't want to know.

The Hon. DANIEL MOOKHEY: The Leader of the Government knows full well that I should be allowed to ask the question and then he can go and tell me how the question is wrong, which is what you usually do in this forum. So let me at least just go back to the question, if that's okay, Chair.

The CHAIR: I will uphold the point of order.

The Hon. DAMIEN TUDEHOPE: Don't misrepresent it. Don't misrepresent then.

The CHAIR: Let's have the question. Then you can give the answer however you like, as long as it's directly relevant.

The Hon. DAMIEN TUDEHOPE: Don't misrepresent it.

The Hon. DANIEL MOOKHEY: The only real question before you went on that seven-minute exercise was this: When did Treasurer Kean tell you—

The Hon. DAMIEN TUDEHOPE: No, there was a question in between, though.

The Hon. DANIEL MOOKHEY: Now the question is this—

The Hon. DAMIEN TUDEHOPE: Let me finish answering the first one, Mr Mookhey.

The Hon. DANIEL MOOKHEY: No, you did finish it.

The Hon. DAMIEN TUDEHOPE: No, you don't want me to answer the first one.

The Hon. DANIEL MOOKHEY: Point of order: Literally, the Minister just interrupted me again. Can he just allow me to ask the question?

The CHAIR: Minister, we need to hear the question, followed by the answer. I'll let you answer the question. If he cuts you off, I will deal with that. But let's hear the question.

The Hon. DAMIEN TUDEHOPE: To the point of order: I don't know if I can take that.

The CHAIR: No, you can't. Sorry, Minister.

The Hon. CHRIS RATH: To the point of order: As prompted by the Minister, it is unhelpful that the Hon. Daniel Mookhey interjects midway through the Minister answering the question. This should be a question-and-answer format and the Minister should have an opportunity to answer each question that the Hon. Daniel Mookhey presents to him. I'm particularly interested in the question about the other drivers behind the claims costs, rather than just floods.

The Hon. DAMIEN TUDEHOPE: Correct.

The Hon. CHRIS RATH: It would be good to get an answer from the Minister on that particular point.

The CHAIR: We're straying from point of order territory here.

The Hon. DAMIEN TUDEHOPE: But he raised it.

The CHAIR: Mr Mookhey and the Minister will stop interrupting each other. It's not Mr Mookhey interrupting The Minister; it's both of them. I have repeatedly asked both of them to stop. We'll have the question, followed by the answer et cetera.

The Hon. DANIEL MOOKHEY: You've got us both put into the naughty corner, I have to say, Minister. The question is simple: Did you sign off on the request for an additional injection of funds or not?

The Hon. DAMIEN TUDEHOPE: No.

The Hon. DANIEL MOOKHEY: Thank you. Let's talk about the premiums.

The Hon. DAMIEN TUDEHOPE: Can I finish my answer to your earlier questions about those things that impact on the \$1.9 billion—

The Hon. DANIEL MOOKHEY: Minister, you gave me an extensive answer to that question.

The Hon. DAMIEN TUDEHOPE: No, I haven't finished it.

The Hon. DANIEL MOOKHEY: I really valued the information you gave.

The Hon. DAMIEN TUDEHOPE: No, I would like to complete my answer in relation to that.

The Hon. DANIEL MOOKHEY: Again, Minister, you are again threatening to have us both sent, for a second time, into the naughty corner.

The Hon. DAMIEN TUDEHOPE: But I'm entitled to answer the question in fullness as to those things that impact. You in fact said, "Fairly, Minister, is not only floods," and I agree with you. That's why it is important that I spell out the other impacts on the fund that lead to—

The Hon. CHRIS RATH: Just let him answer it. It'll be one minute.

The Hon. DANIEL MOOKHEY: Just to be clear, I never thought I'd ever have to say this but you'd find that David Elliott seems to have a better understanding of estimates procedure than you are evincing right now. So perhaps if you could just let me get back to my questions—

The Hon. DAMIEN TUDEHOPE: That's a bit unfair.

The Hon. DANIEL MOOKHEY: Minister, I appreciated the fact that you did issue a direction that capped the premium increase that took place for the coming financial year.

The Hon. DAMIEN TUDEHOPE: Yes.

The Hon. DANIEL MOOKHEY: To be clear, I think that the 3.2 million businesses that have to pay premiums to icare appreciated that too. But it is the fact now, is it not, that given the Nominal Insurer has lost another billion dollars, that's going to mean 3.2 million businesses will be facing year after year after year of premium increases? Isn't that correct?

The Hon. DAMIEN TUDEHOPE: You will then appreciate the difficulty of making that decision in the circumstances where businesses were seeking to recover from a pandemic, when they were, potentially, facing circumstances where they needed to be able to reopen their doors, pay back increasing amounts of rent, catch up on mortgage repayments and the like. I have to say I think you have indicated you agree with, potentially, the position that I took. Next year a further application will be made, I am sure, by icare for premium increases. What I would hope is that the economy is in such a state that businesses are able to cope with the level of premium increase which will need to be passed on. But, Mr Mookhey, it's never easy to make a decision in relation to a premium increase in circumstances where we were faced with very fraught circumstances coming out of the pandemic.

The Hon. DANIEL MOOKHEY: Minister, I understand and do appreciate the fact that it's never a good time for a premium increase, but you do understand right now it's an especially bad time because businesses are dealing with the worst inflation crisis in three decades, caused by multiple factors and rising interest rates, which is increasing the cost of capital. But, at the same time, 3.2 million businesses in New South Wales will be facing premium increases that will have to run at least into the middle of next decade, just to compensate for the last four years of poor performance by icare in its management of the Nominal Insurer.

The Hon. DAMIEN TUDEHOPE: But that part of your assertion, I disagree with. I do not necessarily agree with that you are able to, in fact, make that speculation in relation to that.

The Hon. DANIEL MOOKHEY: If it wasn't—

The Hon. DAMIEN TUDEHOPE: What I would say is that, given the assertion which you have made, there are other things that icare can do to make sure that it tries to keep premiums under control. Claims management performance would be one way that we can drive down, potentially, premiums—in fact, if we got better outcomes in respect of workers returning to work, their operational efficiencies that icare can make, which will potentially drive down premiums. All you are engaging in at the moment is speculation which is driven by your inherent pessimism and pursuit of a headline. Fine. But give credit to icare. They are also in the business of making sure that they try and keep premiums down for businesses, as well. They are, in fact, charged with, in many respects, doing things internally, which will, in fact, relieve the opportunity. So you've pursued—

The Hon. DANIEL MOOKHEY: So, Minister, you're maintaining the position, that I'm making this up.

The Hon. DAMIEN TUDEHOPE: I understand that you're pursuing your headline that you want to get out, that businesses are facing premiums increases.

The Hon. DANIEL MOOKHEY: But you're—

The Hon. DAMIEN TUDEHOPE: The fact of the matter is that a responsible approach to that would be to say we have such a good organisation that they are inherently cognisant of the fact that there are levers that they can pull for the purposes of making sure that we reduce the pressure on those premiums.

The Hon. DANIEL MOOKHEY: But, Minister, I just want to give you a clear opportunity to accuse me of this, just to be clear. Are you accusing me of making up the assumption that premiums are going to need to rise for the next decade? I want you to be very clear about the accusation you wish to make about me.

The Hon. DAMIEN TUDEHOPE: I'm accusing you of—saying that that is speculation on your part. What I am saying is that an organisation, a commercial organisation like icare has lots of levers available to it to try and make sure that it's driving premiums down.

The Hon. DANIEL MOOKHEY: You're accusing me of speculating about future premium increases, are you?

The Hon. DAMIEN TUDEHOPE: Of course, next year I might be faced with similar circumstances. Who knows what direction I will give in relation to premiums?

The Hon. DANIEL MOOKHEY: I appreciate the clarity of your accusation, Minister. Let me now just read to you—

The Hon. DAMIEN TUDEHOPE: No, no. The clarity that I'm trying to afford to you, Mr Mookhey, is to identify and acknowledge that icare is well run and that it is focused on claims management—

The Hon. DANIEL MOOKHEY: I'm not going to acknowledge that icare is well run.

The Hon. DAMIEN TUDEHOPE: It is focused on change culture. It is focused on operational outcomes. You should focus on the quality of the board of management, led by John Robertson, that manages this organisation.

The Hon. DANIEL MOOKHEY: I'm very happy to deny any accusation that I've made that icare is well run. Let me just put to you you've accused me of speculating about future premium increases. I want to be fair to you, Minister, about this too. But I'm just going to read to you from the Nominal Insurer's financial conditions report that was presented to the icare board last year. It says this, "A series of increases in premium collection rates are achieved, with 1.5 to 2 per cent of wages to be collected in FY '22-'23 and then annual increase of 2.9 per cent by five years, achieved 1.75 to 2028, followed by more gradual increases in the next four years, to achieve 1.88 by 2031-32." It's not my speculation here. It's the report that's going to your organisation's board.

Your organisation's board has been told that, in order to rectify the losses that were incurred until last year—which, to be clear, doesn't include the \$1 billion that's been lost since—premiums that will be paid by 3.2 million businesses will have to rise by more than 33 per cent by 2031-32. It is not speculation. It's what your board has been told. Your board has been advised that the 3.2 million businesses that pay into the Nominal Insurer's fund will be facing premium increases of 33 per cent by the end of the decade. Do you want to take this opportunity to apologise for them for the mismanagement that's taken place under your Government's watch?

The Hon. DAMIEN TUDEHOPE: I again say to you, Mr Mookhey, it behoves the Labor Party to stop talking down the good public servants of this State, who do an excellent job in looking after the commercial organisations which provide services to the workers of New South Wales.

The Hon. DANIEL MOOKHEY: They're not actually public servants, to be clear. Minister, I've got to pull you up there.

The Hon. DAMIEN TUDEHOPE: What you would be better doing is, instead of talking down our public service agencies, engage. If you did it just by 10 per cent, stopped doing that by 10 per cent and concentrate on policy work—guess what?—you'd probably contribute a lot better to public discourse. That's the way that public discourse improves.

The Hon. DANIEL MOOKHEY: Minister, I'm going to have to pull you up there, just in case you haven't realised. Icare aren't public servants. You may have missed that. I've got a bill in Parliament, that will change it. You're welcome to support that—

The Hon. DAMIEN TUDEHOPE: In fact, I certainly won't support that.

The Hon. DANIEL MOOKHEY: I'm not shocked. But you can understand how terrible those 3.2 million—

The Hon. DAMIEN TUDEHOPE: Public organisations, though.

RICHARD HARDING: There's 328,000 employers in the Nominal Insurer, Mr Mookhey, not 3.2 million.

The Hon. DANIEL MOOKHEY: Sorry—3.2 million workers. Sorry. I do apologise, Mr Harding.

The Hon. DAMIEN TUDEHOPE: You didn't get that?

The Hon. DANIEL MOOKHEY: I appreciate the correction. The 328,000 businesses that cover 3.2 million workers would be pretty outraged. They are facing at least a 2.9 per cent premium increase this year, and premium increases running for the next decade, at the same time that icare's performance is once more—its return to work rates are again falling back.

The Hon. DAMIEN TUDEHOPE: Why is that, Mr Mookhey? Why is that?

The Hon. DANIEL MOOKHEY: I hope you know.

The Hon. DAMIEN TUDEHOPE: Do you know?

The Hon. DANIEL MOOKHEY: I have a theory. But let's just get to my question.

The Hon. DAMIEN TUDEHOPE: But do you know?

The Hon. DANIEL MOOKHEY: Minister, let me just get to my question.

The Hon. DAMIEN TUDEHOPE: You didn't allow me to answer the question previously.

The Hon. DANIEL MOOKHEY: Do you accept that those 328,000 businesses would be outraged at even the mere hint of a suggestion that the additional premiums that they're going to have to pay in the worst inflation crisis in three decades would go to bonuses to the executives that have been responsible for presiding over a disaster?

The Hon. DAMIEN TUDEHOPE: I would expect that all those businesses would be grateful for the fact that I have pegged the premium increases at a time when they were significantly under pressure, when they were emerging from a pandemic. What I would say to you is that the premiums will be revisited next year, in the light of what circumstances exist at that time. That's the appropriate time to be asking that question. What I would further say to you is any forecast which is a 10-year forecast is absolutely speculative. There are many unknowns which may exist. Some of the ones I've already, potentially, pointed out to you.

There are two parts to your question. Am I outraged that our premiums are going towards making sure that we have a very skilled workforce? The board will make a decision in terms of the remuneration package which it represents. I have every confidence in the decision-making power of that board. It is run well by John Robertson. In fact, it surprises me that you never called him to be a witness in these proceedings, because some of the allegations you want to make against icare I would like you to make those same allegations against him as the chair of a board which is responsible for overseeing the decisions of this organisation. But you never do. You never do and—

The Hon. DANIEL MOOKHEY: Well, careful—

The Hon. DAMIEN TUDEHOPE: —it surprises me that you never asked John Robertson to participate in these proceedings and ask him whether he supports a remuneration increase.

The Hon. DANIEL MOOKHEY: Well, Minister, we might take you up on that offer.

The Hon. DAMIEN TUDEHOPE: Well, you haven't, in all the times that I have been to these estimates and he has been the chair of the board, you never, ever, seek to call him and ask him the same questions as you want to ask in relation to the performance of icare. I just wonder why that's the case. Why is that the case?

The Hon. DANIEL MOOKHEY: So you're happy for Mr Robertson to come to the supplementary hearings?

The Hon. DAMIEN TUDEHOPE: I would be happy for Mr Robertson to come at any time to answer— but it is open to you to call Mr Robertson and ask him the question about whether he supports the remuneration packages which he wants to—

The Hon. DANIEL MOOKHEY: Minister, I do seek your forgiveness for having the temerity to be asking the Minister the questions. But, nevertheless, let me just—

The Hon. DAMIEN TUDEHOPE: But it's curious, don't you think? It is curious that you—

The Hon. DANIEL MOOKHEY: Well, I would have thought that the person who perhaps should be responsible is, I don't know, the Minister of the Government. But, to be fair, I grant you this—

The Hon. DAMIEN TUDEHOPE: No, you misunderstand how icare operates—you misunderstand.

The Hon. DANIEL MOOKHEY: —your Government does have unusual arrangements set in place for who answers what questions. I do confess to struggling to keep up with who is responsible for what in your Government. But, to be fair, I think your Government struggles even harder.

The Hon. DAMIEN TUDEHOPE: Mr Mookhey, the gratuitous exchanges we can avoid, okay?

The Hon. DANIEL MOOKHEY: Well, you started it. Can I—

The Hon. DAMIEN TUDEHOPE: If you want to engage in rhetoric and all that sort of stuff, that's a matter for you.

The Hon. DANIEL MOOKHEY: Clearly, I'm the only one who does. I'm the only one who does in this hearing. Can I just say—

The Hon. DAMIEN TUDEHOPE: Yes, well, just ask me the question and don't engage in the rhetoric around it, okay?

The Hon. DANIEL MOOKHEY: I'd like to, if you'd actually let me ask you the question.

The Hon. DAMIEN TUDEHOPE: Just don't engage in the rhetoric which goes around it.

The Hon. DANIEL MOOKHEY: Okay, let me ask you this one then.

The Hon. DAMIEN TUDEHOPE: Yes, okay. Good. Just give us the next one.

The Hon. DANIEL MOOKHEY: I am worried by continued reports that icare is still—for good reasons and for perhaps some not good reasons—underpaying injured workers when it comes to calculating their PIAWE.

What briefings have you received about whether or not icare is continuing to underpay and, to be clear, overpay workers when it comes to calculating their pre-injury average weekly earnings?

The Hon. DAMIEN TUDEHOPE: I get regular reports. In fact, to make sure that you get accurate information, I will ask Mr Harding to give you that update.

RICHARD HARDING: Mr Mookhey, at the moment we're in the process of finalising the remediation of the PIAWE miscalculation errors.

The Hon. DANIEL MOOKHEY: Not so much the remediation, it's the calculation of PIAWE for current claimants. Where are we up to in terms of figuring out how many of them are still prone to underpayments or overpayments?

RICHARD HARDING: The process of improving the calculation of PIAWE—as we've talked about before, PIAWE is quite a complex process. What we have instigated is a process of quality assurance around that, continual training and development of the CSP staff who are accountable for it, and we continue to drive that as a continuous improvement effort. We've worked with SIRA on a simplification of the approach to that, so that we can ensure that injured people do get paid accurately at the point in time that they make a claim and then when new information does come to hand that the claim can then be adjusted and the information applied to that.

It is a matter of continuous improvement, Mr Mookhey. It is a matter of us running quality assurance processes—as all good businesses do—looking at the results of those, working with the CSPs to drive further improvement and to continue to make that improvement across the board. It is not a simple answer of "solve it". We have reinstigated new wage calculators to help support the CSPs in that process. It is ongoing, it is not a—in fact, I don't think it will ever end, Mr Mookhey, because it is by its nature a complex process, and by its nature it's a process where we need to keep that high visibility on the QA process and high visibility on how we ensure that we continually improve it.

The Hon. DANIEL MOOKHEY: Look, Mr Harding, and to the Minister, I do want to acknowledge that, certainly in respects when it comes to PIAWE, SIRA has questions to answer too about their role as a regulator in clarifying precisely what insurers have to respond to.

RICHARD HARDING: We found SIRA to be very helpful in clarifying and providing us with guidance, so we now apply that guidance.

The Hon. DANIEL MOOKHEY: Indeed. I was just going to ask my question, Mr Harding.

RICHARD HARDING: I just remind you, Mr Mookhey, that at any time anyone who feels they've been underpaid can request a review, and that's an ongoing process as well.

The Hon. DANIEL MOOKHEY: Mr Harding, I appreciate that and, trust me, we will pick it up again this afternoon. But I do want to ask a question to the Minister. Minister, it was a welcome initiative when your Government decided, after some advocacy on behalf of many injured workers as well, to issue a blanket repayment collectively worth \$38 million to the 53,000 injured workers who were underpaid between 2012 and 2019. I just want to place on record that, finally, that was a good decision to go down that pathway. But can we get an update from you, Minister, as to how many of the 53,000 injured workers who were entitled to a payout have actually received it?

RICHARD HARDING: Mr Mookhey, as at 1 August—there are two components to the remediation program, as I stated earlier—we have reviewed over 24,322 eligible claims, of which 1,238 payments have been made and they total \$6½ million; 21,000 workers have been offered the proactive payment to date; 10,782 workers have taken that up, totalling about \$7.4 million. We're actually very happy with that take-up rate. The advice we received from Deloitte—the wage remediation experts that we have engaged to support us with this process—was suggesting other wage remediation programs such as this had take-up rates as low as 25 per cent, and we're seeing it around about 50 per cent. Unfortunately, the remaining number of workers—the process we've been working through with the Department of Customer Service and Service NSW to make those final payments has been delayed. It's been delayed as the Government prioritised COVID-19 relief payments and flood relief grants. So we are working with Service NSW to get the final injured workers contacted and payments made by the end of the year.

The Hon. DANIEL MOOKHEY: I appreciate the update, Mr Harding. Minister, were you advised a decision had been made—well, firstly, this was a policy that was announced around 11 November 2021, correct?

The Hon. DAMIEN TUDEHOPE: Yes.

The Hon. DANIEL MOOKHEY: When were you advised that the Government had decided to delay the repayments to these injured workers?

The Hon. DAMIEN TUDEHOPE: I couldn't give you the exact date.

The Hon. DANIEL MOOKHEY: Were you advised?

The Hon. DAMIEN TUDEHOPE: I was advised. In fact, I was aware of the delay because of—

The Hon. DANIEL MOOKHEY: Who made the decision?

The Hon. DAMIEN TUDEHOPE: It's a resourcing decision. The decision to actually use the resources of Service NSW involves them having to make sure that they had the appropriate resources to be able to make those payments.

The Hon. DANIEL MOOKHEY: But who actually made the request? Did they ask you or did you ask them, or what?

The Hon. DAMIEN TUDEHOPE: No, they didn't ask me.

RICHARD HARDING: No, we were informed by the Department of Customer Service that they needed to delay the work that we were doing with them to enable the Government to address these other priorities. So it's been in the hands of—

The Hon. DANIEL MOOKHEY: So DCS made the call?

The Hon. DAMIEN TUDEHOPE: Yes.

RICHARD HARDING: It's been in the hands of Service NSW.

The Hon. DAMIEN TUDEHOPE: It's a resourcing issue.

The Hon. DANIEL MOOKHEY: What I'm asking you, Minister, is did you have discussions with Minister Dominello about this or not?

The Hon. DAMIEN TUDEHOPE: No.

The Hon. DANIEL MOOKHEY: So, what, this was a decision made by Service NSW?

The Hon. DAMIEN TUDEHOPE: Well, it's an administrative decision that they have so many resources available. And I think even you would agree—I don't know if you would, but you probably would—that looking after flood victims, getting COVID payments out, getting businesses their payments, did in fact create some headwinds for the personnel at Service NSW and resourcing the grants and payments that needed to be got out the door.

The Hon. DANIEL MOOKHEY: I don't dispute that there are—

The Hon. DAMIEN TUDEHOPE: So I wasn't surprised by the advice, and I could understand it in the context of the resources which were available.

The Hon. DANIEL MOOKHEY: And no-one would dispute the fact that at certain parts of this year, last year and the year before Service NSW has been under immense administrative pressure. That's clear. But it is the case that that leaves 32,000 injured workers who are not yet contacted and told that they might be entitled—

The Hon. DAMIEN TUDEHOPE: Well—

The Hon. DANIEL MOOKHEY: Just let me finish. To be clear, these workers were underpaid from 2012 onwards.

The Hon. DAMIEN TUDEHOPE: Sorry?

The Hon. DANIEL MOOKHEY: Some of these workers have been underpaid from 2012 onwards. The bulk of the underpayments, according to icare's previous evidence in various inquiries, took place between 2012 and 2015. That means that these workers have waited nearly a decade. Some of them have waited a decade for this. I accept that there are administrative pressures, but what are your expectations as to when icare will complete this? What parameters have they got to—what are your expectations as Minister for when these workers will get the money that they are owed?

The Hon. DAMIEN TUDEHOPE: The advice that was provided to me was that in May of this year Service NSW went live in contacting approximately 23,000 workers with a campaign, which is now complete. The remaining 20,000 workers are awaiting the Privacy Commissioner's approval to utilise Service NSW dataset to email those workers. Is that correct, Mr Harding?

RICHARD HARDING: That's correct, yes.

The Hon. DANIEL MOOKHEY: So the campaign began in May?

The Hon. DAMIEN TUDEHOPE: There was a campaign in May about contacting workers.

The Hon. DANIEL MOOKHEY: Did it stop because of administrative pressures or did it stop because of the Privacy Commissioner?

RICHARD HARDING: They're two different issues, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Harding. So both issues have stopped it?

RICHARD HARDING: The work on the Privacy Commissioner relies on Service NSW and Service NSW had to prioritise the work on the other two relief payments, which would have similar issues in contacting people—using the Privacy Commissioner, so they're interrelated. They're all one thing.

The Hon. DANIEL MOOKHEY: But the effort to contact workers only began in May. That's what you're saying, Minister?

RICHARD HARDING: Can I help, Mr Mookhey?

The Hon. DANIEL MOOKHEY: According to the Minister, if the Minister says you can, you can.

The Hon. DAMIEN TUDEHOPE: He can help.

RICHARD HARDING: As you may be aware from our previous conversations, we actually wrote to people last year, and that is the reason that we have the original 24,322 reactive responses to people requesting a review. Every person has been notified of the opportunity and they can request a review at any point in time. The campaign that started in May was the actual issue of mailing out and phone calls from Service NSW around the proactive payment.

The Hon. DANIEL MOOKHEY: Indeed, and I appreciate the context, Mr Harding, but part of the reason we went to the proactive payment policy, which is a good policy, was because the earlier efforts had not succeeded. So I'm just asking you in respect to the proactive policy component of this remediation effort. It was announced in November but it didn't begin till May. Is that the fact, Minister?

The Hon. DAMIEN TUDEHOPE: No, I think there was some work done in February.

RICHARD HARDING: As you can imagine, Mr Mookhey, arranging the data transfers to Service NSW, setting up the processes for the phone calls, the processes for the payments, negotiating with the department of social security, negotiating with the tax office to ensure that when we do make payments, payments don't impact people for either their social security benefits or their tax benefits does take some time. Between the announcement of the policy and the implementation in May, we did an enormous amount of work on all of those issues, including setting up Service NSW so they had a clear understanding of the process, the script, the rights of individuals, the processes for requesting reviews et cetera. So it's not a simple, straightforward, push a button and it happens.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Harding. Minister, I will return to my earlier question, which incidentally you haven't answered. When do you expect the proactive programs of repayment to be complete?

The Hon. DAMIEN TUDEHOPE: I think it depends—

RICHARD HARDING: As I said earlier, we are targeting December but we are dependent on the Department of Customer Service in that regard.

The Hon. DANIEL MOOKHEY: That's basically three months. Are you confident, Minister, that that will be hit?

The Hon. DAMIEN TUDEHOPE: I'm not running the process.

The Hon. DANIEL MOOKHEY: Yes, but you're accountable for it.

The Hon. DAMIEN TUDEHOPE: I am confident that given that there are no other exigencies which get in the way of DCS actually delivering these payments, that's an achievable target.

The Hon. DANIEL MOOKHEY: Can we talk about the underpayment of people and estates that were underpaid collectively apparently \$93 million who were the victims of dust diseases. Minister, what's your understanding of where we're up to in terms of remediating the people who have died from dust diseases and the people who are still living with dust diseases and the money that was owed them?

The Hon. DAMIEN TUDEHOPE: My understanding is that it has been completed.

RICHARD HARDING: It's completed. I'm happy to give you the data, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Please, could you?

RICHARD HARDING: Just to clarify the number, the number is \$34.3 million, and we have contacted 1,179 participants and estates and all payments have been made to those. There are 33 estates that remain uncontactable at this point, which you can imagine I'm sure going back the beneficiaries and the executives of those estates over time disperse. We are in contact with 150 estates. We've contacted but we are awaiting information to enable the payment to happen. That process is finalised to the extent other than those small numbers and payments have been made.

The Hon. DANIEL MOOKHEY: I do appreciate that update, Mr Harding, and to be very clear here, my understanding is that all these events which led to that underpayment took place well before your involvement with icare.

RICHARD HARDING: Well before icare was formed.

The Hon. DANIEL MOOKHEY: That's disputed.

The Hon. DAMIEN TUDEHOPE: Why is it disputed?

The Hon. DANIEL MOOKHEY: Because I'm about to dispute it for you, Minister. It's clear the icare board was told about this in 2015; the report is there. They were told in 2015, and granted I appreciate that was before you were the Minister as well. It was then apparently re-highlighted—

The Hon. DAMIEN TUDEHOPE: Listen, let's not have the rhetoric. You've got your answer; it has been paid.

The Hon. DANIEL MOOKHEY: No.

The Hon. DAMIEN TUDEHOPE: Let's not have the storytelling, okay? It has been paid; they've been paid.

The Hon. DANIEL MOOKHEY: Minister, your board was told in—

The Hon. DAMIEN TUDEHOPE: It has been finalised.

The Hon. DANIEL MOOKHEY: Your board was told in 2015 about it. They were re-told about it circa 2017 and 2018. Literally the explanation that was then given when it was rediscovered was apparently nothing happened.

The Hon. DAMIEN TUDEHOPE: Mr Mookhey, if you're using this forum to tell a story—

The Hon. DANIEL MOOKHEY: Minister, I'm using this forum to ask a question, and it's an important one.

The Hon. DAMIEN TUDEHOPE: You're taking a long time to get to the question.

The Hon. DANIEL MOOKHEY: Lots of people here have been dealing with this organisation at the same time that they've been dealing with diseases like mesothelioma, Minister, so maybe you should just let me ask the question and you can respond however you see fit.

The Hon. DAMIEN TUDEHOPE: If you want to tell a five-minute story before you ask the question—

The Hon. DANIEL MOOKHEY: Minister, many of the reasons why we are struggling to find these estates is because people died whilst this has all happened. It's a relevant consideration, the fact that your organisation was told about this in 2015 and we've had multiple people who have died in the period since. It's an important question. The question is: What steps have you taken to ascertain why icare never got around to remediating these people and their estates until it was re-brought, to Mr Harding's credit, back after he became CEO? That's the question, because part of the reason why we can't find these people—

The Hon. DAMIEN TUDEHOPE: The question is I'm satisfied that Mr Harding has dealt with it.

The Hon. DANIEL MOOKHEY: What steps have you taken to ascertain why it is that icare was able to ignore this problem until Mr Harding's arrival?

The Hon. DAMIEN TUDEHOPE: I think that's an appropriate question for you to ask the chairman of the board.

The Hon. DANIEL MOOKHEY: No. I'm asking you as Minister given you have the responsibility here. What steps have you taken as Minister to ascertain why it is that icare was allowed to ignore this problem until the arrival of Mr Harding and his new team?

The Hon. DAMIEN TUDEHOPE: What steps I've taken is ensuring that we have the best and most competent people available to make sure that this is actually delivered. I think you've acknowledged that Mr Harding has delivered it.

The Hon. DANIEL MOOKHEY: So you've done nothing.

The Hon. DAMIEN TUDEHOPE: Mr Mookhey, I have ensured that the payments have been made.

The Hon. DANIEL MOOKHEY: Minister, what is the consequence for the HBCF of Oracle's collapse?

The Hon. DAMIEN TUDEHOPE: I think there have been 170 identified homes in New South Wales. My understanding is that HBCF has in fact delivered application forms for those 170—

RICHARD HARDING: We're in the process of talking to them, yes.

The Hon. DANIEL MOOKHEY: I'm happy to hear an update from Mr Harding if he has one.

The Hon. DAMIEN TUDEHOPE: Okay. It is early days, Mr Mookhey.

The Hon. DANIEL MOOKHEY: It is very early days, Minister.

The Hon. DAMIEN TUDEHOPE: The assessment of the exposure of HBCF to the Oracle collapse is probably some way away from being ascertained.

RICHARD HARDING: It's preliminary.

The Hon. DAMIEN TUDEHOPE: But Mr Harding can—

RICHARD HARDING: What the Minister said is basically the answer. There are 179 current policies home owners that we're in contact with to ensure they have the opportunity to make a claim. At this stage we have a very early and preliminary estimate of around about \$10 million; it's hard to say. That doesn't include a defect rate at this stage. So, as I said, it's two or three days a week since the collapse and we're still working with the participants to identify.

The Hon. DANIEL MOOKHEY: When was Oracle first provided with policy?

RICHARD HARDING: I don't have the original information. But what I can tell you, Mr Mookhey, is that we suspended Oracle from coverage in May this year.

The Hon. DANIEL MOOKHEY: Sorry, can you bring the microphone closer?

RICHARD HARDING: I don't have the information that you just asked for, but I'm happy to get it. I imagine it goes back a number of years.

The Hon. DANIEL MOOKHEY: It would.

RICHARD HARDING: We suspended their coverage in May this year.

The Hon. DANIEL MOOKHEY: Why did you suspend their coverage in May this year?

RICHARD HARDING: They no longer met the criteria for eligibility for the fund.

The Hon. DANIEL MOOKHEY: In which respect?

RICHARD HARDING: I think it's a little bit obvious now—in respect to their financial condition and stability. I don't know that there's value in us raking through an individual company's accounts here. They have made statements in the media about their situation, and I think that's the relevant information.

The Hon. DANIEL MOOKHEY: Mr Harding, whether it's valuable or not is in the eyes of the beholder. But I'll just continue to ask the questions, if you don't mind. It is the case, is it not, that HBCF eligibility has to be checked every 12 months upon reapplication?

RICHARD HARDING: Yes, we do regular checks. Some are six months; some are 12 months, depending on the nature of the business.

The Hon. DANIEL MOOKHEY: Was Oracle subjected to an earlier check six months prior to the May decision?

RICHARD HARDING: I would have to find out for you, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Could you? Could you also identify whether or not any issues were flagged at that point in either of those two checks?

RICHARD HARDING: I'll find out, yes.

The Hon. DANIEL MOOKHEY: You said it was \$10 million, did you not, that you likely—

RICHARD HARDING: Approximately. I think it's a very early estimate, so I wouldn't be—

The Hon. DANIEL MOOKHEY: What is the current funding ratio of the HBCF?

RICHARD HARDING: As you are aware, Mr Mookhey, HBCF has two parts. The pre-2017 elements of the HBCF are underwritten by NSW Treasury. They effectively don't have a funding ratio, but the amount of funds that are in there is about 23 per cent. In respect of the post-2017 period, the funding ratio is 80 per cent. The insurance ratio is 80 per cent.

The Hon. DANIEL MOOKHEY: The insurance ratio is 80 per cent, and what's the funding ratio?

RICHARD HARDING: The accounting ratio is 78 per cent.

The Hon. DANIEL MOOKHEY: That's a good improvement from what it was last year, and that's basically a result of repricing premiums?

RICHARD HARDING: As you'd know, there's been a consistent, since 2017, process of repricing premiums. We are now at a point where premiums are at a sustainable level. There are probably some risk-based assessments to be made around that, but at an overall level, it's at a sustainable level. It's the first year that we've reached that. Over the next few years the funding ratio will continue to improve, which is obviously what the policy and the strategy has been since 2017.

The Hon. DANIEL MOOKHEY: Indeed, but it is the case that liabilities still exceed assets to the tune of 22 per cent.

RICHARD HARDING: Obviously, yes.

The Hon. DANIEL MOOKHEY: At the same time that's when the Oracle claim—which would rank as one of the larger claims that have been made in the past 12 months or 24 months?

RICHARD HARDING: It's a similar size to the previous claims that have been made, yes.

The Hon. DANIEL MOOKHEY: In total?

RICHARD HARDING: In total.

The Hon. DANIEL MOOKHEY: How many claims does the HBCF usually process per year?

RICHARD HARDING: I don't have that data in front of me, Mr Mookhey.

The Hon. DANIEL MOOKHEY: But 170-ish would be equal to, so it's a big claim. We accept that.

RICHARD HARDING: When I say "equal to", equal to others such as Privium and other builders who have had challenges in the last 12 months. It's a similar scale to those critical builders. I actually have the number—648 claims, we had, in the last year.

The Hon. DANIEL MOOKHEY: So it's about 25 per cent of the total claims per year if it were benchmarked to last year. That's fair. At this point, though, we're in contact with the home purchasers?

RICHARD HARDING: Yes.

The Hon. DANIEL MOOKHEY: Thank you. That is important for us to clarify for those people who are dealing with it.

The Hon. DAMIEN TUDEHOPE: Absolutely.

The Hon. DANIEL MOOKHEY: Minister, I will be sensitive about this one as well, given this one is a slightly different one. I will give you or Mr Harding the opportunity to provide us with an update as to where we are in respect of the Metricon issue.

The Hon. DAMIEN TUDEHOPE: We gave you a very extensive briefing in relation to that.

The Hon. DANIEL MOOKHEY: A couple of months ago you did, and I did appreciate that, just to be very clear. But it's a continuing issue that's perhaps even more important given that we've had another claim, as

we've just established, with Oracle. All I'm asking for is a further update at this point about where we are with the Metricon matter.

RICHARD HARDING: I think the Minister is right in asking—

The Hon. DAMIEN TUDEHOPE: I think it is sensitive, because we would not want to—

RICHARD HARDING: We're talking about a private company that's in the process of restructuring itself. They have made public announcements about their restructure. We have worked with them and their partners. We're comfortable with where they are at this stage. We are monitoring them on a monthly basis and working with them, and they're making progress towards their restructured outcomes. At this point there is no change in the situation with Metricon. We've worked with them, and they are addressing their restructuring issues.

The Hon. DANIEL MOOKHEY: Indeed. In terms of what's been publicly identified information, it has been publicly identified that icare did impose a cap on the number of policies that could be issued to Metricon. Is that cap continuing?

RICHARD HARDING: Maybe if I speak clearly: I think this is quite difficult, Mr Mookhey, because we're getting to commercially sensitive information for the builder.

The Hon. DANIEL MOOKHEY: It is difficult; I accept that. But this is a public accountability function that we have to discharge.

The Hon. DAMIEN TUDEHOPE: Well, don't abuse it.

The Hon. DANIEL MOOKHEY: I'm not, Minister.

The Hon. DAMIEN TUDEHOPE: Good.

The Hon. DANIEL MOOKHEY: I'm referring to information that's already identified in the public domain. I'm asking a really simple question: Has there been a change to that position?

RICHARD HARDING: What I can say to you, Mr Mookhey, is we have agreed a plan with Metricon that is part of their restructuring that includes changes to the number of new dwellings that they can take on over time. But I really do not think it's appropriate for us to get into conversations about how many and when and where. I think that is—

The Hon. DANIEL MOOKHEY: I didn't ask you how many, when or where, Mr Harding. I asked you whether or not the cap remains.

RICHARD HARDING: Just anticipating where you might like to go next.

The Hon. DANIEL MOOKHEY: Please don't anticipate, and instead try answering.

RICHARD HARDING: I did answer, thank you.

The Hon. DANIEL MOOKHEY: The question was really straightforward. Has there been a change to the cap? I'm not even identifying what the cap was. I'm just asking, has there been a change?

RICHARD HARDING: We have agreed a plan with Metricon that they are following and that is part of their overall restructuring with their partners.

The Hon. DANIEL MOOKHEY: Minister, what advice are you currently receiving about the state of the building industry, which is under well-known pressures, and the ability of the HBCF to survive the collapse of one or more major builders in New South Wales?

The Hon. DAMIEN TUDEHOPE: It's a really good question. In fact, I think it really is something that is worthy of a very extensive discussion, because the abolition of the ABCC, of course, is going to play into a circumstance where lots of building companies are placed under significant additional pressure because of the actions of bodies like the CFMEU and the increased pressure placed on those building companies because of the regulatory regime being removed. I have to say that in the current climate—

The Hon. DANIEL MOOKHEY: Are you worried about the HBCF collapsing for that reason?

The Hon. DAMIEN TUDEHOPE: I am worried about a potentially increased number of claims on the HBCF because of increased pressures. We have supply chain issues; we have liquidity issues in respect of a number of building companies, all of which play into, potentially, a circumstance where we do have—

The Hon. DANIEL MOOKHEY: So I'm asking you: Are you—

The Hon. DAMIEN TUDEHOPE: It just gives rise to this, doesn't it? If ever we were faced with the circumstances where you would not want to place any additional pressures on the building industry by removing organisations like the ABCC, now is the time to make sure that you didn't do that.

The Hon. DANIEL MOOKHEY: Minister, maybe we should do this—

The Hon. DAMIEN TUDEHOPE: I'll be calling on you, Mr Mookhey, to agitate with your colleagues federally that you do not go down that that path, because the pathway forward both for the State—

The Hon. DANIEL MOOKHEY: I will give your request all the due consideration it deserves.

The Hon. DAMIEN TUDEHOPE: Good, I'm glad you will do that. But I think for the State and for the building industry generally—

The Hon. DANIEL MOOKHEY: Rest assured I will give it all the due consideration it deserves.

The Hon. DAMIEN TUDEHOPE: No, you can say that, but it is a serious issue.

The Hon. DANIEL MOOKHEY: Minister, I have been treating this as a serious matter when it comes to the HBCF in the current climate.

The Hon. DAMIEN TUDEHOPE: And you should.

The Hon. DANIEL MOOKHEY: And perhaps you should too.

The Hon. DAMIEN TUDEHOPE: I do.

The Hon. DANIEL MOOKHEY: So I'll go back to my question: What advice have you received about the HBCF's ability to cope with the collapse of one or more major builders in New South Wales?

The Hon. DAMIEN TUDEHOPE: I'm satisfied that the fund is operated in a way where all building companies are regularly reviewed in terms of their ability to meet their commitments, and perhaps Mr Harding would like to just expand on that because—

The Hon. DANIEL MOOKHEY: Before he does—because we've only got two minutes and then, sadly, our time comes to an end, Minister, which is disappointing—I am specifically interested in whether or not your Government has obtained reinsurance for the HBCF.

The Hon. DAMIEN TUDEHOPE: Does the Government do that?

RICHARD HARDING: Mr Mookhey—

The Hon. DANIEL MOOKHEY: We've got more time with each other.

The Hon. DAMIEN TUDEHOPE: No. Well, you can have more time if you want.

The CHAIR: Until 12.45 p.m.

The Hon. DAMIEN TUDEHOPE: But they have 15 minutes—

The Hon. ADAM SEARLE: Yes, at 12.45 p.m.

The Hon. PENNY SHARPE: At 12.45 p.m. We finish at 1.00 p.m.

The Hon. DAMIEN TUDEHOPE: I'm relaxed.

The Hon. ADAM SEARLE: We're having so much fun.

The Hon. PENNY SHARPE: Nice try. We can tell.

RICHARD HARDING: The Government hasn't in the past purchased reinsurance for the HBCF. I'm sure you can imagine that buying reinsurance at this point in time is not cost effective.

The Hon. DANIEL MOOKHEY: I agree with you on that, Mr Harding.

RICHARD HARDING: What I can say in respect of your previous questions is: Now that we have pricing at a sustainable level, the sort of volatility that is normally expected in the building industry—and it goes in cycles—is priced into the way we think about premiums. Whilst we have a funding ratio of 80 per cent—obviously, it isn't yet at 100 per cent—the scheme is robust and sustainable in that regard. Multiple significant builders collapsing would clearly be challenging. But large builders, the scheme can absorb those and we can work through—

The Hon. DANIEL MOOKHEY: I appreciate the answer, Mr Harding, in respect to reinsurance at current rates. I might ask the Minister, but I suspect that the Minister may need to take this on notice—certainly icare might need to. In 2018 was icare advised that reinsurance might be necessary for the HBCF?

The Hon. DAMIEN TUDEHOPE: You're right; I do need to take it on notice.

The Hon. DANIEL MOOKHEY: I thought so. Does Mr Harding have any further information on that? I wouldn't suspect that he would. He wasn't here.

RICHARD HARDING: I don't know what happened in 2018. It is something that we think about. Again, it comes back to the cost-effectiveness of it on a regular basis, given that the scheme is underwritten and the tail of the scheme is underwritten. Normally, what you are worried about is the tail. The tail of the scheme is underwritten by the NSW Treasury, so—

The Hon. DANIEL MOOKHEY: Mr Harding, I appreciate you taking it on notice. If you are going to take it on notice—and to the Minister as well—if we can take these specific questions on notice, it would be appreciated. The specific questions I'm interested in are: Did icare undertake an analysis of the effect of the collapse of a major builder on the HBCF in 2018? Did that analysis yield a recommendation for icare and the Government's consideration about obtaining reinsurance? Did icare then obtain that reinsurance? If icare did not obtain that reinsurance, what were the reasons for icare not choosing to reinsure the HBCF in 2018? If it is possible, Minister, could you take those questions on notice?

The Hon. DAMIEN TUDEHOPE: You'd be surprised if I had the answers at my fingertips, wouldn't you?

The Hon. DANIEL MOOKHEY: I'd be astonished and full of praise for you, Minister, if you did. In the event that you don't, do you mind taking those four questions on notice?

The Hon. DAMIEN TUDEHOPE: Sure.

The Hon. DANIEL MOOKHEY: I might pass to my colleague.

The Hon. ADAM SEARLE: Minister, in the March budget estimates we were discussing various dust diseases and afflictions and the way in which the legislation was constructed. We discussed that a number of reviews had identified at least five diseases that weren't covered. I'm happy to say that a regulation has been supplied to me which indicates that five afflictions have been added. That is good. But we also discussed the tragic nature of having to rely on historical experience to then identify these new afflictions, and then there is always a period of catch-up to add them to the list. We did discuss the possibility of maybe flipping the way the legislation works so that it was sort of all-inclusive rather than having to play catch-up all the time. You indicated that you would be happy to work with the Parliament in relation to that. Where have you gotten to over the past few months in terms of progressing that idea?

The Hon. DAMIEN TUDEHOPE: I acknowledge that I made that concession, and I acknowledge that you identified at the time that it sounded like a good idea. There is a bill, obviously, before the Parliament at the moment. I think we have achieved a significant outcome by identifying the five additional—I haven't been advised, currently, that we need to actually reverse the process so that these are in fact added when they're identified. Can I still maintain my position that I think it's an ongoing discussion?

The Hon. ADAM SEARLE: Okay. We also discussed the possibility of mandatory health screening in the stone industry. For example, it is done in the coalmining industry. Coal Services very successfully operates a compulsory health screening.

The Hon. DAMIEN TUDEHOPE: And I think we talked about the van and the silica—

The Hon. ADAM SEARLE: We did. I think you said that data of that kind would certainly inform the process, but you didn't know whether we were at the stage where it was warranted. That's at page 10 of the transcript, at the top. Are you advised, is there a number of victims at which the threshold tips, where the Government would be convinced to do mandatory health screening? Is this something you're working on?

The Hon. DAMIEN TUDEHOPE: It's interesting you raise this, because I met with Unions NSW, and my office met with Unions NSW, to discuss this issue. It might've been a fortnight ago.

The Hon. ADAM SEARLE: I'm unaware of that so, please, tell us.

The Hon. DAMIEN TUDEHOPE: We gave them, at the time, a commitment that we'd explore other testing options and other data collection options which would be available. That's ongoing. There is some additional work. Are there any other testing opportunities? We certainly have the mobile van testing.

RICHARD HARDING: We currently have the Pitt Street office and the mobile van. We are investing in a second mobile van. We are relocating the Pitt Street office to Kent Street so that the costs are reduced and we can more actively manage the process. In respect to silicosis, we have done a lot more screening. We have had regular contact with the major provider, Caesarstone, and over 800 workers have been screened there since the last time we spoke.

The Hon. ADAM SEARLE: Since March?

RICHARD HARDING: Yes, I believe so.

The Hon. ADAM SEARLE: It's not a trick question. It's fairly safe.

RICHARD HARDING: It is an ongoing process of making sure we get as much coverage as possible. The issue of the mandatory nature of it is an issue for the Government.

The Hon. ADAM SEARLE: One of the other things that we discussed, which I think has been identified in other reviews and has been taken up in other States, is the idea of registration. We discussed this issue as well, Minister, where is the Government up to with the notion of registration? Is it something you've rejected? Is it something you're still considering?

The Hon. DAMIEN TUDEHOPE: I haven't rejected it.

The Hon. ADAM SEARLE: May we hopefully infer that this is something that you're still actively considering? For the benefit of Hansard, the Minister has nodded.

The Hon. DAMIEN TUDEHOPE: I nodded, yes.

The Hon. ADAM SEARLE: That is very good. In relation to health and safety standards, there are, I think, 11 exemptions that SafeWork has granted. For example, one example is audiometric testing of workers who are frequently required to use PPE in workplaces with noise levels that exceed the exposure standard for noise. Obviously, by exposing workers to above-standard health risks such as to noises, it is inexorably going to lead to more health problems and, therefore, more pressures on the workers comp scheme and pressures on premiums. Why is the Government continuing to grant those health exemptions? As I said, there is one on hearing, I think there is one on lead testing and there is one on hazardous chemicals. All of these are taking a risk with the health and safety of workers, aren't they?

The Hon. DAMIEN TUDEHOPE: WorkSafe stuff is Minister Dominello's domain.

The Hon. ADAM SEARLE: I understand that, but you're the Minister responsible for the scheme.

The Hon. DAMIEN TUDEHOPE: The point you make is the potential impact on workers compensation premiums.

The Hon. ADAM SEARLE: For your benefit, Minister, these exemptions have only been granted since, I think, 2016.

The Hon. DAMIEN TUDEHOPE: I get the point. I think it is probably worthy of a broader discussion with the work safety Minister about the circumstances under which those exemptions are provided. I'm not sure that we're ever briefed in respect of them. Maybe the point is that, if there is to be an exemption granted by WorkSafe, perhaps we ought to be. I'm not sure whether icare gets briefed in respect of work safety exemptions.

RICHARD HARDING: Depending on the nature of them—if they are broad-based, yes. In the hearing one, we have seen significant escalation in hearing loss claims in recent times. Whether the exemptions played a part in that, I can't tell you.

The Hon. ADAM SEARLE: It seems like a logical proposition. It's hard enough to enforce safety standards, but if you allow workplaces to operate, shall we say, in excess of those standards, you are just inviting risk, aren't you?

The Hon. DAMIEN TUDEHOPE: In fact, Mr Searle, I have to say that given the synergy which exists between WorkSafe and icare, I've often thought it curious that the Minister responsible for icare isn't also responsible for work safety.

The Hon. ADAM SEARLE: I've often reflected on that strangeness myself, Minister.

The Hon. DAMIEN TUDEHOPE: Because I think it allows us to talk to employers about their work environment from a work and safety perspective and potentially reduce premiums, with a view to the manner in which individual workplaces comply with work safety.

The Hon. ADAM SEARLE: Indeed.

The Hon. DAMIEN TUDEHOPE: That's just an idle reflection.

The Hon. ADAM SEARLE: I think there's a lot of sense in that, Minister. Might I, Minister, through you, just go back to Mr Harding. You indicated that hearing claims had escalated. Can you tell us how much they've escalated?

RICHARD HARDING: I don't have the data with me. I can get it on notice if you'd like.

The Hon. ADAM SEARLE: Yes, if you could on notice provide, say, the last three years to see whether or not we can see a pattern. Do you have any figures with you at all, like any numbers?

RICHARD HARDING: No. My bad habit is to try and give you stuff off the top of my head.

The Hon. ADAM SEARLE: No, that's fine.

RICHARD HARDING: I'd rather give it to you on notice, if that's all right.

The Hon. ADAM SEARLE: Okay. Do you know if there's any pattern in the claims, geographical patterns, such as where people might live or where they might work?

RICHARD HARDING: Without using a commonly used term, there is some element of particular lawyers being involved.

The Hon. ADAM SEARLE: Is it broken down by occupation or by background?

RICHARD HARDING: I can provide it with some element of granularity around occupation and the claim numbers. But the pattern isn't so necessarily occupation related as much as it's related to the practices of particular law firms.

The Hon. ADAM SEARLE: In relation to silicosis screening, New South Wales hasn't undertaken the same sort of case finding studies as Queensland and Victoria. You have got a firm called Golder Associates that have done it, but they've done it triangulating existing data held by Health, SafeWork and icare rather than conducting their own investigations. The royal college of physicians has indicated that without that proper interrogation you're not going to get the right data. Is that something as Minister you're reflecting on?

The Hon. DAMIEN TUDEHOPE: Again, it would be something we would work with icare on, because data obviously is, in many respects, the key to properly addressing the issue.

The Hon. ADAM SEARLE: Yes. Mr Harding, do you have anything to add?

RICHARD HARDING: No, I agree with the Minister.

The Hon. ADAM SEARLE: Do you have any reflection on the methodology used by Golder Associates to do that?

The Hon. DAMIEN TUDEHOPE: Specifically I don't.

The Hon. ADAM SEARLE: Are you happy to take that on notice and to go back and give us an answer?

The Hon. DAMIEN TUDEHOPE: Sure.

The Hon. ADAM SEARLE: That would be good. When we were talking about making sure we identified all the people who might be at risk, I think, Minister, you indicated at estimates last year that silicosis screening and identification of workers was a bit hit and miss. I think Mr Harding also indicated that he relied on information from SafeWork. There was input from unions. Obviously you're working with responsible employers, but it's an ongoing process to keep identifying people who are exposed. Registration is obviously something that would go a long way towards fixing that. What is it going to take to push the New South Wales Government to take a more systematic approach to identification of people at risk in New South Wales?

The Hon. DAMIEN TUDEHOPE: Again, I'd probably take that on notice. Whether registration is the right answer or whether awareness campaigns or the like are potentially part of the answer—we have individual specific locations where silicosis is potentially a problem. In every individual building site there could be issues arising in respect of potential silicosis sites. Whether registration solves the problem where we would need to identify every single potential silicosis building site—

The Hon. ADAM SEARLE: It wouldn't hurt.

The Hon. DAMIEN TUDEHOPE: It may be the subject of an awareness campaign. Perhaps even a component of that would be to have building sites and the like avail themselves of the use of the silicosis bus testing facility. These are just sort of a bit thought bubble-ish. I was on a site recently and there were people

cutting kitchen tops on the site. That site, in my view, gave rise to (a) was there a SafeWork issue but (b) was there a silicosis awareness issue?

The Hon. ADAM SEARLE: In October 2019 you were very aware of the need for CT scans to detect silicosis and you said that issue was front and centre for you. Yet today icare's initial screening still uses an X-ray, not a CT scan. When will you move to CT scans? WA has done it, so why can't New South Wales?

The Hon. DAMIEN TUDEHOPE: I think we are moving that way.

RICHARD HARDING: To create the mobility of the lung bus and to enable us to get out and actually screen people, a CT scan is not feasible in that environment. So we prefer to start with the standard form of screening. What I can say, though, is we do also, when we identify through that screening someone who has potential exposure, encourage and recommend that they go to their local place—whatever you want to call it—to get a CT scan as a matter of course. We can't enforce that; that is a matter of us recommending it. But to enable us to do the mobility of actually being out in the community and out in workplaces, the trade-off is partly that you can't do that with a CT scan. It is just not feasible. But we do ensure that everyone who's identified knows that they have to have a CT scan to follow it up.

The Hon. CHRIS RATH: Thank you, Minister, for appearing today. I wanted to ask if you could provide an update on your efforts to facilitate a new enterprise agreement with the RTBU.

The Hon. PENNY SHARPE: Please tell us, Minister.

The Hon. DAMIEN TUDEHOPE: It is difficult to facilitate an outcome with a union that doesn't want to, in fact, reach an agreement. I know there's a meeting happening later today, hopefully to finalise a document which will satisfy the RTBU in relation to the Government's commitment to carry out work on a perfectly safe train to satisfy a union demand. Now, as outrageous as that is, it is the price that the Government is prepared to pay for the purposes of trying to make sure that the economy of the State is serviced and not vandalised by a union which seems intent on vandalising every single business in this State, vandalising every student in the State in getting to and from school and the like.

Where we are at the moment is we're faced with a political campaign and I think there are some levers which we need to do to understand exactly what is driving this. I have heard the Leader of the Opposition in this State regularly saying, "Get people in a room and get them to solve it." Well, I think he needs to actually come clean on this and say to what extent he's coordinating it. There is no doubt, in my view, that there is a level of coordination between NSW Labor and this union for the purposes of making sure that the commuters of this State are held to ransom as a result of this industrial activity. You only have to see a circumstance where every new member joining the upper House or previously, in my experience, the lower House gets up and thanks their friends in the union movement—

The Hon. PENNY SHARPE: Point of order: Nice try, Minister. You've got to actually be directly relevant to the question that was asked. Now you're getting into a whole range of other issues that have nothing to do actually with the question that the Hon. Chris Rath kindly asked you.

The CHAIR: I'll uphold the point of order. Minister, you have to be directly relevant.

The Hon. TAYLOR MARTIN: I think he was just about to mention Alex Claassens name.

The CHAIR: Well, it has to be directly relevant.

The Hon. CHRIS RATH: My further question in Government time: Is there anything further you would like to add, Minister, about the link between NSW Labor and the RTBU that, in your opinion, might be stalling the finalisation of a new enterprise agreement?

The Hon. DAMIEN TUDEHOPE: I'm grateful for that question because it is clear that, if NSW Labor had an interest in resolving this issue, they would have been much more involved in wanting to come out and condemn the actions of the union movement. This is a union movement who regularly wears Labor T-shirts at election campaigns, who sit on campaign committees for the Labor Party, who regularly meet with the Leader of the Opposition in terms of working out what tactics ought to be adopted for the purposes of running the agenda for the Labor Party in the State.

I have to say that trying reach an outcome with this union is against a background where there is a political agenda at play, and the extent to which reaching an enterprise agreement with the union and reaching an understanding which will bring to an end industrial activity is being hampered by the industrial and political outcomes which the Labor Party in this State have in their sights. What I think we ought to be doing today is to call on those who meet with the RTBU to (a) tell us where you are meeting. Tell us what the discussions are about.

Give us an insight into what directions you are giving to the RTBU in relation to conducting this industrial activity. Maybe then we can get some industrial peace and get some outcomes for the commuters of this State.

The Hon. CHRIS RATH: Hear, hear! Thank you, Minister.

The CHAIR: What a shame; we have come to the conclusion of this morning's proceedings. You are now excused, Minister. We have completed our questions with you. We will see everybody else back, after the lunch break, at 2.00 p.m.

(The Minister withdrew.)

(Luncheon adjournment)

The CHAIR: Welcome back, everybody. We'll continue our questioning with the Opposition.

The Hon. DANIEL MOOKHEY: Thank you, Mr Secretary and your officials, for your return. One should never take these things for granted.

MICHAEL COUTTS-TROTTER: This invites a white lie where I say we're happy to be here.

The Hon. DANIEL MOOKHEY: Just as happy as I am to be asking you, Secretary, I'm sure. Can we start with a couple of questions with respect to the rail dispute? Do we have, first, the costs that were incurred by the public of the application that was made in February to seek a termination of the bargaining agreement?

MICHAEL COUTTS-TROTTER: No, we don't have it to hand, but we can take that on notice and respond to you, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Do you also have the cost of the application that was made in May to terminate the bargaining period?

MICHAEL COUTTS-TROTTER: No. Again, we are happy to take it on notice and respond.

The Hon. DANIEL MOOKHEY: How many barristers did we utilise in the May proceedings?

CHARLIE HEUSTON: It was two.

MICHAEL COUTTS-TROTTER: I might invite my colleague Mr Heuston.

CHARLIE HEUSTON: Certainly in the July proceedings there were two.

The Hon. DANIEL MOOKHEY: Is it possible that we could use the microphones?

MICHAEL COUTTS-TROTTER: We thought we were, sorry.

The CHAIR: You might have to pull it closer. Some of them are a little better than others.

The Hon. DANIEL MOOKHEY: Sorry, I didn't hear that. How many?

MICHAEL COUTTS-TROTTER: He's very softly spoken.

CHARLIE HEUSTON: Two.

The Hon. DANIEL MOOKHEY: Who were they?

CHARLIE HEUSTON: It was Kylie Nomchong and Haren Pararajasingham.

The Hon. DANIEL MOOKHEY: What rank are they?

CHARLIE HEUSTON: Kylie Nomchong is Senior Counsel and Haren was a junior.

The Hon. DANIEL MOOKHEY: Have we retained any solicitors firms to assist in this dispute?

CHARLIE HEUSTON: No, we engaged the Crown Solicitor's Office.

The Hon. DANIEL MOOKHEY: Secretary, by any chance, have you read the decision from the May proceeding?

MICHAEL COUTTS-TROTTER: I did skim it.

The Hon. DANIEL MOOKHEY: Were you surprised when the commission described your evidence as being unconvincing and highly unpersuasive? Did that create any concern for you?

MICHAEL COUTTS-TROTTER: On the face of it, yes. The question is: Was there something we could have done better to communicate the information we had available to us? I think there are possibly some lessons learnt there, that you need to more specifically identify the quantified impact of each element of protected

industrial action. So we have considered that. To the broader question of the value or sense of making that intervention, it did have the impact of seeing a number of notified protected industrial actions withdrawn, most notably on the metro system. So it had the effect of preventing what would otherwise have been costly disruptions.

The Hon. DANIEL MOOKHEY: But, Secretary, you do accept that in all but name the commissioner felt that your claims were exaggerated, unpersuasive and not supported by evidence?

MICHAEL COUTTS-TROTTER: As I read it, our advocates weren't able to adequately explain the assumptions behind the calculations.

The Hon. DANIEL MOOKHEY: Do you, by any chance, happen to have the cost to date involving all proceedings in the New South Wales Industrial Relations Commission as they involve the dispute with the NSW Teachers Federation?

MICHAEL COUTTS-TROTTER: Gosh no, but we can take that on notice.

The Hon. DANIEL MOOKHEY: Could you? Can you also take on notice the same cost figures for all disputes involving the New South Wales nurses association?

MICHAEL COUTTS-TROTTER: Yes, okay.

The Hon. DANIEL MOOKHEY: Are you contemplating seeking orders in the Industrial Relations Commission ahead of any action that may or may not be taking place next week from the New South Wales nurses association?

MICHAEL COUTTS-TROTTER: I thought that we had sought orders and obtained them.

CHARLIE HEUSTON: Orders were made yesterday against the nurses association in relation to the planned strike action on 1 September.

The Hon. DANIEL MOOKHEY: Secretary, when were you asked to prepare advice or the legislation that has been presented to the upper House with respect to the fines issued for industrial organisations?

MICHAEL COUTTS-TROTTER: I would need to call on my colleague Mr Heuston for his best recollection.

CHARLIE HEUSTON: I would have to take that on notice.

The Hon. DANIEL MOOKHEY: When did you draft the legislation?

CHARLIE HEUSTON: It's not a matter I know off the top of my head.

MICHAEL COUTTS-TROTTER: Yes, we'll take it on notice and give you a chronology if you want.

The Hon. DANIEL MOOKHEY: What impact are you expecting that legislation to have on the rail dispute?

CHARLIE HEUSTON: Noting that the matter is currently before Parliament—however, it relates to matters within the State jurisdiction.

MICHAEL COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: So no impact?

CHARLIE HEUSTON: I note that the rail dispute is a matter within the Federal jurisdiction.

MICHAEL COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: Indeed, so therefore it will have no effect?

CHARLIE HEUSTON: I don't expect so.

The Hon. DANIEL MOOKHEY: How many fines are currently outstanding against the New South Wales nurses association, and what is the value of those fines?

CHARLIE HEUSTON: I will take that on notice.

The Hon. DANIEL MOOKHEY: How much is currently outstanding against the NSW Teachers Federation?

CHARLIE HEUSTON: There are matters that are currently live before the courts.

The Hon. DANIEL MOOKHEY: But we've issued the fines, haven't we, or we've sought the orders? We've sought to enforce, haven't we?

CHARLIE HEUSTON: Applications have been made, but have not yet been concluded.

The Hon. DANIEL MOOKHEY: Where is that proceeding up to? When was the application made it?

CHARLIE HEUSTON: I will have to take that on notice, but there are a number of matters about contravention of orders made by the Industrial Relations Commission, which have been made but not yet concluded.

The Hon. DANIEL MOOKHEY: How much have we collected in fines in the last 12 months from registered industrial organisations of any kind?

CHARLIE HEUSTON: I'll have to take that on notice, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Can we also get on notice a list of the registered industrial organisations that have paid those fines or have those fines outstanding?

CHARLIE HEUSTON: Certainly.

The Hon. DANIEL MOOKHEY: Secretary, through you to Mr Harding—is that possible?

MICHAEL COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: Mr Harding, do you have any further information you want to add from questioning this morning that you didn't have the opportunity to put onto the record?

RICHARD HARDING: I would like to talk, Mr Mookhey, about the conversation you were having about the TMF, if that's possible.

The Hon. DANIEL MOOKHEY: Indeed. Yes, I do want to ask you some questions about the TMF. I didn't get the opportunity to ask you this morning about what precisely was the net result for the TMF last year. Do you have that figure to hand?

RICHARD HARDING: Yes.

The Hon. DANIEL MOOKHEY: What is it?

RICHARD HARDING: The TMF had a loss of \$317 million.

The Hon. DANIEL MOOKHEY: That's a reversal from the \$782.4 million positive number in the previous year, correct?

RICHARD HARDING: Yes.

The Hon. DANIEL MOOKHEY: Again, that's another billion-dollar deterioration on net result?

RICHARD HARDING: I think you've got to come to understand how insurance works, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I'm sure very soon you'll explain it to me, but let me just do the maths first.

RICHARD HARDING: In an absolute, very simple manner, yes.

The Hon. DANIEL MOOKHEY: Thank you. What is the current funding ratio of central estimate for the TMF?

RICHARD HARDING: The insurance funding ratio is 124 per cent.

The Hon. DANIEL MOOKHEY: No, I asked you the funding ratio of central estimate.

RICHARD HARDING: They're all funding ratios, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Harding, I'm just asking you exactly—

RICHARD HARDING: The accounting ratio for the TMF is 106 per cent, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you. What did you say the insurance ratio was?

RICHARD HARDING: It is 124 per cent.

The Hon. DANIEL MOOKHEY: What exactly are the investment funds under management for the TMF?

RICHARD HARDING: It is \$14.3 billion in assets.

The Hon. DANIEL MOOKHEY: What was the investment return last year for the TMF?

RICHARD HARDING: I don't have that. Yes, I do. No, I don't.

The Hon. DANIEL MOOKHEY: Do you mind taking that on notice?

RICHARD HARDING: I'm happy to take it on notice. It's obviously a negative return.

The Hon. DANIEL MOOKHEY: Do you have access to, currently, the investment benchmark for the TMF?

RICHARD HARDING: The investment benchmarks at TMF is a long-term benchmark.

The Hon. DANIEL MOOKHEY: Is it still 17.6 per cent?

RICHARD HARDING: No. I don't believe it was ever 17.6 per cent, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Let me read from your annual report from last year, which on page 40 lists investment benchmark, TMF only, at 17.6 per cent.

RICHARD HARDING: That may have been that current year's performance. As you know, the investment market goes up and down. What the benchmark actually is, Mr Mookhey, will be a factor of CPI plus a percentage, AWE plus a percentage—

The Hon. DANIEL MOOKHEY: Just to be clear, Mr Harding, your annual report last year listed investment return TMF at 17.9 and investment benchmark at 17.6.

RICHARD HARDING: Yes. That would've been the performance of the benchmark, Mr Mookhey, not what the benchmark is.

The Hon. DANIEL MOOKHEY: Thank you for clarifying. If you can on notice tell me what the current statuses are in respect to those figures, that would be appreciated. But it's fair to say that, in the last year, the insurance ratio went from 141 per cent to 121 and your accounting ratio went from 111 to 106. But it got to as low as 102 earlier this year, did it not?

RICHARD HARDING: Yes, Mr Mookhey.

The Hon. DANIEL MOOKHEY: That's what put the TMF in breach of the net asset holding policy, did it not?

RICHARD HARDING: Yes. That's the policy that governs how the TMF works, Mr Mookhey.

The Hon. DANIEL MOOKHEY: It is. In fact, that policy was revised, I think, prior to your appointment as CEO, from requiring a minimum of 115 per cent, down to 105. That's correct, isn't it?

RICHARD HARDING: No. The minimum has always been 105.

The Hon. DANIEL MOOKHEY: Two of your three predecessors—

RICHARD HARDING: Can I finish, please, Mr Mookhey? The minimum has always been 105. The 115 was the point at which the Government made or the Treasury made a decision as to whether to withdraw funds from the TMF, not put money into the TMF. The range was between 105 and 115 per cent.

The Hon. DANIEL MOOKHEY: Thank you for clarifying.

RICHARD HARDING: And we removed the cap.

The Hon. DANIEL MOOKHEY: When did it get to 102?

RICHARD HARDING: Earlier in the year. Perhaps if we talk about the NAHLP, Mr Mookhey, because that is the fundamental basis on which the self-insurance scheme works.

The Hon. DANIEL MOOKHEY: Before we do, did you say that the 102 was reached towards the end of last year?

RICHARD HARDING: Yes. It would've been after we did the December valuation, Mr Mookhey, which would have been in January time.

The Hon. DANIEL MOOKHEY: Was that the lowest it reached last year?

RICHARD HARDING: I would have to take that on notice.

The Hon. DANIEL MOOKHEY: Thank you. You were just about to explain to me how insurance works.

RICHARD HARDING: No, actually, because this is not insurance.

The Hon. DANIEL MOOKHEY: What do you wish to explain, Mr Harding?

RICHARD HARDING: This is the NAHLP, which is the Government's policy for how it manages the TMF. The TMF is a very different fund to the NI, for example.

The Hon. DANIEL MOOKHEY: You made the point to me earlier, Mr Harding, that you wished to explain to me various things about how insurance works. So I want to give you the opportunity to explain to me how insurance works in whichever respect you like.

RICHARD HARDING: Let's start with the TMF, and then we can move on to insurance. With respect to the TMF, the TMF is the Government's shock absorber for the activities that it undertakes on a day-to-day basis. Over time, the NAHLP, net asset holding level policy, governs the funding of that shock absorber. If we incur events such as natural disasters or changes in the nature of the scheme, such as the Parliament's decision to enable the civil liabilities Act to provide access for victims of child abuse to common law, these things all affect the claims that then the TMF incurs. Over the last 12 months, we have seen a significant, obviously, number of events that have incurred, in terms of the flood events. Correctly the Treasurer talked to about \$400 million worth of claims arising from the flood events. But that is not alone what has caused the need for an injection.

There is also the impact on the workers compensation scheme, that you rightly pointed out earlier, of the increase in psychological claims. Psychological claims in the public sector are now almost at the rate of one in four, heading towards one in three new claims coming into the scheme. As you would be aware, psychological claims cost about six times more than a physical claim and have a significant impact on the duration of claims in the scheme. As I mentioned, the civil liabilities Act changes in access to common law for victims of historical child abuse has added about \$600 million to the claims resulting from that scheme. Further, there's about another \$280 million relevant to increases in medical malpractice claims arising through the stresses that are being experienced in the health system. On top of that, Mr Mookhey, you'll no doubt be aware that the investment market has moved to the tune of \$858 million in terms of negative against the scheme. Further, wage inflation has shifted, which has had an impact on the workers compensation scheme, of around about \$300 million.

There are a number of external factors and factors that are actually in the nature of the scheme itself, the reason the scheme exists. If we go back in time, Mr Mookhey, certainly the last five years have been intense. As you rightly pointed out, almost \$4 billion of injections into the scheme. Interestingly, though, if we look at the previous five years, the scheme paid \$1.6 billion back to the Government. The previous five years before that, there was a requirement of around \$2 billion of injections. The previous five years before that, the scheme further paid back to the Government, to the Treasury, \$2.1 billion. It is in the nature of how the scheme works, and to characterise it any other way is quite unnecessary.

The Hon. DANIEL MOOKHEY: Mr Harding, I appreciate your explanation. It's almost word-for-word identical to the explanation I heard from one of your predecessors when the first \$2 billion—

RICHARD HARDING: That'd be because this is how the scheme works, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Harding, perhaps just let me put the question to you. Given that the factors that you just described were all the same factors, almost identical, in terms of what you described, to what caused Treasurer Perrottet to have to authorise an up to \$4 billion injection in 2020, of which \$2 billion was accessed—

RICHARD HARDING: So it was a \$2 billion injection, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I'm glad you heard me correctly, Mr Harding. Given that these factors are identical, you're honestly telling me that none of this has anything to do with the fact that you've presided over, once more, a collapse in return to work rates. You're telling me that has nothing to do with it.

RICHARD HARDING: Mr Mookhey, return to work rates have nothing to do with either investment markets, wage inflation, floods, storms or, for that matter, child abuse claims. All of these things are, in fact, the activities of the New South Wales Government. That's what the TMF is here to support. To suggest that we're doing anything otherwise than supporting the activities as the Minister said earlier today, rebuilding hospitals and schools, ensuring we support the health system at a time in need through malpractice claims, ensuring that we delicately treat the issue of historical child abuse through the redress scheme and through the system there, making sure that we actually get people back on track—those are the reasons that the TMF exists, and those are the reasons that we need \$1.9 billion. As I've just painted to you, it's very much a natural part of the history. Each year, we sit down with Treasury and look at the status of the fund and whether there is funds to be withdrawn from the scheme or funds to be added to the scheme to make the scheme sustainable.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Harding. If you don't mind, let's talk about the Nominal Insurer's return to work rates. Was it the case that in April '22, which is the last available data as put up by the regulator, your return to work rate at the 13-week level was 75 per cent?

RICHARD HARDING: The April '22 data? I have 78 per cent, Mr Mookhey, for the rolling 12-month SIRA data.

The Hon. DANIEL MOOKHEY: That's what they say on their website, that that particular month it was at 75.

RICHARD HARDING: I'm sorry. My notes say 78, but I'm happy to work with your number if you prefer. Let's work with that.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Harding. Was it the case that, in May '18, it was at 83?

RICHARD HARDING: No. I'm afraid, I don't have numbers going back to May '18.

The Hon. DANIEL MOOKHEY: The SIRA website does. It says it was at 83. When did you become CEO?

RICHARD HARDING: In January of '21.

The Hon. DANIEL MOOKHEY: What was it at January '21?

RICHARD HARDING: It was around 79. December 2020, it was 79. March '21, it was still at 79.

The Hon. DANIEL MOOKHEY: Why has it gone from 79 to 75 on your watch?

RICHARD HARDING: There is actually a very good explanation for this, Mr Mookhey, that goes back to 2006. We have recently had some research conducted by Professor John Buchanan of the University of Sydney, who, I believe, you're well acquainted with. Professor Buchanan is one of the pre-eminent members of our labour market and health—

The Hon. DANIEL MOOKHEY: I know who he is.

RICHARD HARDING: What we look at when we look at the longitudinal study is that, actually, return to work has been on a decline since 2006, and there are significant shifts in the nature of the labour market and the economy that have driven this. Obviously, we have seen a move away from manufacturing into services industries. The biggest employment growth in that period has been in health and community services. The second biggest employment growth has been in education, and the third largest employment growth is actually in the area of professional services. Now, health and community services, the rate of psychological claims in health and community services is double the next closest rate of claims, and we are seeing significant impact to the scheme as a result of this overall change. That, combined with, logically, the changes that have been more recently seen in the community from COVID, working in different ways from home et cetera, as well as the 24/7 technology economy that we're in, all of these things are having an impact.

The other issue that Professor Buchanan has identified is that there has been a significant drop in the engagement in employers in return to work of psychological claims. We know that when an employer is actively engaged in the return to work activities of an individual, especially in respect to psychological claims, that we get a 20 per cent to 25 per cent improvement in return to work. Professor Buchanan's work has identified that that has dropped significantly, around about 15 per cent in the last few years. Possibly, this is a result of COVID; we don't have a causal analysis yet. All of these factors have gone to why return to work has declined over the last short period of time—the last 10 years—and we are always looking towards improving return to work. I'm happy to tell you, Mr Mookhey, that in more recent periods, if we look at the four and 13-week rate and we look at it in a shorter time frame than the 12-month rolling average, that we have seen significant improvements. So the four-week rate—

The Hon. DANIEL MOOKHEY: Mr Harding—

RICHARD HARDING: —the three-month rolling as of April was 62.6 per cent and now at 66.7 per cent—sorry, as of December, 62.6 per cent, now it's 66.7 per cent as of May.

The Hon. DANIEL MOOKHEY: Mr Harding—

RICHARD HARDING: The 13-week rate was at 77.8 in December. It is now at 80.3. So we are seeing green shoots.

The Hon. DANIEL MOOKHEY: Mr Harding—

RICHARD HARDING: If I could just finish one last point, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Harding, I've let you speak for approximately four minutes straight.

RICHARD HARDING: Well, I only have one last point to make, Mr Mookhey, which is quite important.

The Hon. DANIEL MOOKHEY: I would like to pick up on some of what you've said before—

RICHARD HARDING: Let me just finish and then we can have—

The Hon. TAYLOR MARTIN: I think it's fair enough to let him just finish.

The Hon. DANIEL MOOKHEY: If it's short.

RICHARD HARDING: It is very short. Our June valuation, from the actuarial outcome, included a release of \$450 million as a result of these positive signs in return to work over the last six months. So we are seeing some green shoots. But as I have said to you all along, this is not a sprint. Especially when you consider the changes since 2006, we're not going to see it turn around tomorrow. It is going to take concerted and long-term effort, which is why we're doing the work we're doing around the claims model. So I will stop there and then let you ask your question.

The Hon. DANIEL MOOKHEY: Thank you. Mr Harding, in respect to the two main points you just made, the first is about Mr Buchanan's research. Again, I heard almost the exact same explanation, word for word, from your predecessor hours before he resigned, about technological change and workforce change. Equally, in respect to your other point about the green shoots recovery, I have heard multiple people who have held your job before explain various ways in which we should be calculating this. In fact, that led to tremendous disputation with the regulator, which has been resolved. So, basically, is it your evidence that when it comes to the collapse in return to work rates that you've presided over, you and your organisation are effectively blameless?

RICHARD HARDING: No, that's not what I said at all, Mr Mookhey. I said there are clearly a number of significant factors that are affecting return to work across the economy. This isn't a factor that's just affecting icare.

The Hon. DANIEL MOOKHEY: So what's your target?

RICHARD HARDING: The rates of change have fallen in Victoria, to the extent that the Victorian Government has contributed over \$800 million in the last two years into the workers compensation scheme, to ensure its continued support. We see in the UK, in fact—

The Hon. DANIEL MOOKHEY: I don't disagree with you.

RICHARD HARDING: —that these days the UK is experiencing one in two of its workplace injury claims as mental health claims. This is not something that's unique to icare.

The Hon. DANIEL MOOKHEY: I'm not suggesting it is.

RICHARD HARDING: Let me just finish again.

The Hon. DANIEL MOOKHEY: Well, Mr Harding, you're not actually answering my question.

RICHARD HARDING: I am about to.

The Hon. DANIEL MOOKHEY: Perhaps, before we do the preamble, a direct answer might be advisable. I do not dispute, at all, that workers comp schemes in Australia and across the world are under pressure. But you're honestly suggesting to me—

RICHARD HARDING: If you let me finish, we are clearly also dealing with the issues that arose through icare and the claims model that was implemented in 2017-19.

The Hon. DANIEL MOOKHEY: I am interested—

RICHARD HARDING: And we are in the process of undertaking a very significant transformation and remediation program to address those issues

The Hon. DANIEL MOOKHEY: What target has the board imposed on you in terms of return to work rates?

RICHARD HARDING: I don't have those targets with me right now. The targets that were imposed in—or that were provided that we agreed in the previous year, as I said to you in the last budget estimates, were, in hindsight, not relevant or achievable. I'm happy to give you—

The Hon. DANIEL MOOKHEY: In hindsight, what were they?

RICHARD HARDING: I don't have them with me. I'm happy to give you—

The Hon. DANIEL MOOKHEY: So the targets that the board signed you up for, in your view, in hindsight, were not achievable. Is that what you said?

RICHARD HARDING: Nor relevant.

The Hon. DANIEL MOOKHEY: And so the board imposed irrelevant targets on you?

RICHARD HARDING: Well, the board didn't impose them, Mr Mookhey. I work collaboratively with the board.

The Hon. DANIEL MOOKHEY: But you agreed to an irrelevant set of targets, did you?

RICHARD HARDING: I'm a member of the board, if you recall—I'm the managing director.

The Hon. DANIEL MOOKHEY: But did you agree to an irrelevant set of targets?

RICHARD HARDING: At the time, I didn't know what I know today, Mr Mookhey, and that's the nature of life.

The Hon. DANIEL MOOKHEY: So what are they now?

RICHARD HARDING: I'm happy to get them for you on notice, because we're just in the process of agreeing this coming year's targets. So I'm happy to do that.

The Hon. DANIEL MOOKHEY: But I presume that the ones that you say now are irrelevant were not achieved?

RICHARD HARDING: Clearly, Mr Mookhey—we've just spent 15 minutes talking about the decline in return to work rates since 2006.

The Hon. DANIEL MOOKHEY: We did. What is the operational break-even premium?

RICHARD HARDING: It's 1.88.

The Hon. DANIEL MOOKHEY: Currently?

RICHARD HARDING: Yes, as of the last premium filing with SIRA.

The Hon. DANIEL MOOKHEY: And currently the actual premium is 1.52, isn't it? Or am I wrong?

RICHARD HARDING: Approximately, yes.

The Hon. DANIEL MOOKHEY: So it's at 1.52 and your operational break-even is at 1.8. Do you have a forecast as to what that's going to be in 12 months' time?

RICHARD HARDING: No, Mr Mookhey, because we need to take into account all of the factors that we've just discussed and look at the premium filing on its face at that point in time when we get to the next year's premium filing.

The Hon. DANIEL MOOKHEY: But the operational break-even point is 0.28 higher than the current, correct?

RICHARD HARDING: Mr Mookhey, I think we've been on record before saying to you that premiums need to go up.

The Hon. DANIEL MOOKHEY: They do.

RICHARD HARDING: The fact is, how to do that over time in an appropriate manner—

The Hon. DANIEL MOOKHEY: What I'm alarmed about—

RICHARD HARDING: —in a staged way to get to where we need to be in 10 years' time. This is a long-tail scheme. As we've talked about, looking at investment returns, whether we talk about looking at wage inflation, all of these factors need to be thought about in the long term. If you respond to the short-term volatility, then we'll have very different issues for employers experiencing spikes in pricing. Our goal is to manage that over time and, to be very clear, we've not shied away from the fact that premium rates need to increase.

The Hon. DANIEL MOOKHEY: I appreciate your candour.

RICHARD HARDING: They've had eight years of being flat—

The Hon. DANIEL MOOKHEY: Mr Harding, I do commend you on your candour in that respect because, to be fair, your predecessors were not as candid as you are. I respect you for doing it. But it is the case that, with an operational break-even premium of 1.8 and the current premium set at 1.52, given the fact that your liabilities exceed your assets, there is no way that any of the 328,000 small businesses that pay into your fund should expect anything but premium increases for year after year after year—that's correct?

RICHARD HARDING: Mr Mookhey, as I just said, we have always, since I started, talked about the fact that we need to manage all four levers of the scheme, and I have always said to you that premiums need to increase. The key here is doing it in a way where we don't kneejerk react to short-term cyclical changes, that we actually tackle it on a long-term deliberate basis, and that we look at it each year, we set it each year with a view to that long-term outcome, and we manage it towards the ultimate goal of getting to the break-even premium.

The Hon. DANIEL MOOKHEY: Is that 1.82 as of the 30 June 2022 valuation?

RICHARD HARDING: It would have been as at the filing that we made with SIRA, Mr Mookhey, which would have been January this year—or, probably, in March this year.

The Hon. DANIEL MOOKHEY: The equivalent break-even premium for the period last year was 1.77. So the operational break-even premium has gone up, even within 12 months. So it's not like we're getting closer. We're actually getting further away to what the premium point of collection is equal to?

RICHARD HARDING: This points to the point I'm making about looking at it over the long term. You need to not react to short-term changes.

The Hon. DANIEL MOOKHEY: Mr Harding, I'm trying to give you the opportunity to give me—

RICHARD HARDING: As at 30 June, Mr Mookhey, the break-even premium rate went down. I just don't have it off the top of my head.

The Hon. DANIEL MOOKHEY: But you just said 1.8.

RICHARD HARDING: That short-term volatility between December and June is exactly what I'm talking about not reacting to. We need to manage it on a long-term basis to get to a long-term outcome.

The Hon. DANIEL MOOKHEY: I appreciate that you do for a long-tail scheme, but every indication we have is that over the long term, short term, medium term, this scheme's performance is getting worse. No matter how you cut it, it's getting worse. We've lost another billion dollars. The operational break-even premium has gone up again. The return to work rate is collapsing once more. Can you give me any information or any data whatsoever that would suggest that in respect to any of this—

RICHARD HARDING: I have just talked to you about improvement in return to work rates since December this year. That is giving us some positive sense of change.

The Hon. DANIEL MOOKHEY: —your internal method of calculating would be correct?

RICHARD HARDING: No, this is SIRA-based data just looking at it on a different smoothing, Mr Mookhey, because when you look at a 12-month rolling average, you're not actually getting a lot of short-term change being seen in that, are you? If you look at it at a three-month rolling average, you get to actually see what's happening in the scheme.

The Hon. DANIEL MOOKHEY: Mr Harding, do you sit on the remuneration committee of your board?

RICHARD HARDING: The chair is Ms Elizabeth Carr. The other members are the chairman, John Robertson, and Mark Goodsell.

The Hon. DANIEL MOOKHEY: When are you taking your recommendations for the payment of any short-term or long-term incentives to that committee?

RICHARD HARDING: Over the next month, Mr Mookhey, and—

The Hon. DANIEL MOOKHEY: Have you prepared your report?

RICHARD HARDING: There is an ongoing conversation that we've had with the board about our remuneration.

The Hon. DANIEL MOOKHEY: Are you recommending the payment of bonuses to the 200 or about 150 staff that last time we checked were entitled to them?

RICHARD HARDING: One hundred and eighteen. The conversation is ongoing and it's a matter for the board.

The Hon. DANIEL MOOKHEY: It is, but you are the managing director; you get to bring the recommendations.

RICHARD HARDING: In this case, it's a matter where I'm conflicted, Mr Mookhey.

The Hon. DANIEL MOOKHEY: You are in respect to yours but not in respect to everybody else, including your direct reports.

RICHARD HARDING: The board is having an ongoing conversation, and when the board's finished its deliberations, I'm sure you can ask Mr Robertson.

The Hon. DANIEL MOOKHEY: I will—rest assured.

RICHARD HARDING: It's not appropriate for me at this stage to tell you what the board's deliberations are.

The Hon. DANIEL MOOKHEY: I'm not asking you to tell me what the board's deliberations are, especially given the board hasn't deliberated. I'm asking you: Are you intending to recommend to that committee that they approve the payment of bonuses to any staff at icare?

RICHARD HARDING: I will answer it this way, Mr Mookhey. There are a number of different options being provided to the board about remuneration structures and outcomes that they are considering.

The Hon. DANIEL MOOKHEY: Given that you have said that at least in respect to your own targets they are now in hindsight irrelevant and given also that your organisation has lost \$1 billion in the NIs and required a \$1.9 billion injection of the TMF having lost nearly \$1 billion in that fund, what performance do you think your executives have engaged in which would warrant the payment of a short-term incentive?

RICHARD HARDING: Mr Mookhey, I'm not going to conduct a performance review on my executives with you. That's the job for me and my team and for the board.

The Hon. PENNY SHARPE: I don't have a lot of questions, by the way, but I do have some. I wanted to go back to the electric vehicles issue. Is that you, Mr Johnston?

SCOTT JOHNSTON: Yes. I'll try and help.

The Hon. PENNY SHARPE: We talked about the stamp duty exemption, and I'm just wondering, was there actually a target for how many applications that you thought you would get?

SCOTT JOHNSTON: If I could have one moment, could I start with the response from this morning around the objections? The question—my understanding—was how many objections and what was the outcome. We had received 59 objections relating to electric vehicles. Of those, 40 were for the rebate and 19 were for the duty exemption. Seven were allowed and 51 were disallowed and one is yet to be determined. The reasons for why they were disallowed were similar to why the initial applications were; they were either used vehicles over the cap or it was a leased vehicle.

The Hon. PENNY SHARPE: Is there any consideration of changing the criteria? I know you said that the criteria hadn't changed, but in terms of encouraging uptake is there any consideration of either hybrids or electric vehicles?

SCOTT JOHNSTON: I think that's a question for the Government or Treasury. Our function in Revenue is the administration of it.

The Hon. PENNY SHARPE: That's great, but are you able to tell me whether there was a target in relation to the exemptions?

SCOTT JOHNSTON: For vehicles registered after 1 September 2021, there were rebates for the first 25,000 new battery electric vehicles and hydrogen fuel cell vehicles. So there was a maximum amount.

The Hon. PENNY SHARPE: Is that within the financial year, or is that over the whole program?

SCOTT JOHNSTON: I believe that was over the course of the program, but I'll confirm. I'll hopefully be able to get that answer quickly.

The Hon. PENNY SHARPE: What I'm trying to understand is: What was your yearly target, and are you meeting the target?

SCOTT JOHNSTON: We haven't been sent a specific target other than that there was an allocation of so many positions. There are still 22,002 available, of the 25,000, as of 30 June.

The Hon. PENNY SHARPE: Sorry, this may be an obvious question, but is the program time limited? You say there are 22,000 of the 25,000 left.

SCOTT JOHNSTON: Yes.

The Hon. PENNY SHARPE: Is that over a period of time, or does the program just exist until we get to the 22,000?

SCOTT JOHNSTON: I will confirm. My understanding is it was the first 25,000 that took access to it, and once that was exhausted, the program ended.

The Hon. PENNY SHARPE: In that case, what is an anticipated time frame for getting to the 25,000?

SCOTT JOHNSTON: Okay, I'll take that on notice and come back to you.

The Hon. PENNY SHARPE: That's fine, thank you. I asked you about the stamp duty exemption. Can I just ask you similar questions in relation to the actual rebate? How many applications for the rebate have been made? I assume it's the same as for the stamp duty, is it?

SCOTT JOHNSTON: No, we've had 3,275 applications for the rebates, with 2,810 paid. I think I said that this morning.

The Hon. PENNY SHARPE: Yes, you did.

SCOTT JOHNSTON: The duty exemptions is different; I'll just say those numbers as well.

The Hon. PENNY SHARPE: Okay, I think we've been at cross-purposes. I thought I was asking about the stamp duty. Whichever one I was asking, can you give me the figures for the other one. That would be great.

SCOTT JOHNSTON: I spoke of the rebate previously. The duty exemption—we've had 4,295 applications for EV exemption refunds, with 3,902 paid.

The Hon. PENNY SHARPE: Okay, thank you. I think I had those reversed, so that's fine.

SCOTT JOHNSTON: I think so.

The Hon. PENNY SHARPE: I thought I was asking about the stamp duty this morning. Anyway, that's alright. It may be that you have to take these questions on notice. I wanted to get some idea about the difficulty with payment issues that people are having in the context of increased cost of living and when things are difficult. I assume you do the figures by financial year rather than calendar year?

SCOTT JOHNSTON: Yes. Typically, yes.

The Hon. PENNY SHARPE: I basically want to understand the breakdown of the figures, and ideally perhaps over the past three years. How many applications for difficulty with payment have there been? How many people have been put on a payment plan and how many on a work development order? How many have had a fine reduction? How many have had a debt write-off? I accept that you're probably not able to actually give those to me straightaway.

SCOTT JOHNSTON: No, but I can provide that on notice.

The CHAIR: Mr Harding, you can take this on notice if you need to. Does icare regularly meet with SafeWork?

RICHARD HARDING: Yes, we do.

The CHAIR: How often would those meetings occur? Are they scheduled? How many have happened over the course of, say, the past year?

RICHARD HARDING: I used to attend them myself, but priorities have gotten in the way. We meet fairly regularly; I'm going say quarterly at least, but I can come back to you with a more definitive answer.

The CHAIR: Yes, that's fine. Are they scheduled?

RICHARD HARDING: They are scheduled, and normally the deputy secretary and I attend when we can.

The CHAIR: Thank you. Are they just regularly scheduled—quarterly, say, if that's what it is—in general terms, or would they have particular topics?

RICHARD HARDING: No, we have a standard agenda that covers pretty much everything from most of the things we've talked about this morning, including dust disease and HBCF, through to workers compensation schemes.

The CHAIR: You say you sometimes attend. Who are the other attendees for both your organisation and SafeWork?

RICHARD HARDING: From my organisation, it will be the general manager of workers compensation; the group executive for workers compensation; our group executive for the office of the CO, which looks after our corporate affairs, so all of the government relations side of things; myself, if I'm there; and also the group executive for the TMF, including the HBCF. We all generally try and get there, and on the other side is generally the relevant executive directors and so forth for different parts of SafeWork.

The CHAIR: Can you be a bit more specific about that? You can take it on notice.

RICHARD HARDING: I can take it on notice, yes.

The CHAIR: Does the Government have any other questions?

The Hon. TAYLOR MARTIN: I might just ask if anything has been raised today, whether in this morning's session or this afternoon's session, that you'd like to revisit, elucidate upon or clarify. Nothing? All good. Thank you for your time.

SCOTT JOHNSTON: Thank you.

The CHAIR: Thank you, everybody, for your time. A number of questions were taken on notice today. The secretariat will be in touch to give you the timetable for responses, but they are due in 21 days. Thank you all very much for your attendance.

(The witnesses withdrew.)

The Committee proceeded to deliberate.