REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2022 REVIEW OF THE WORKERS COMPENSATION SCHEME

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Thursday 8 September 2022

The Committee met at 11:15.

PRESENT

The Hon. Chris Rath (Chair)

The Hon. Anthony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Wes Fang
The Hon. Scott Farlow
Ms Sue Higginson
The Hon. Rod Roberts

* 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.

The CHAIR: Welcome to the first hearing of the Standing Committee on Law and Justice 2022 review of the workers compensation scheme. The inquiry forms part of the Committee's regular review of the workers compensation scheme, in accordance with its oversight role under section 27 of the State Insurance and Care Governance Act 2015. The current review has a particular focus on the rise in psychological claims. 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.

Today we will be hearing from a number of stakeholders including unions, industry representatives, mental health research advocacy organisations, business associations and the Independent Review Office. While we have many witnesses with us in person, some will be appearing via videoconference today. I thank everyone for making the time to give evidence to this important inquiry. Before we commence, I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available.

In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness in accordance with the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions taken on notice are to be provided within 21 days. If witnesses wish to hand up documents, they should do so through the committee staff. In terms of the audibility of this hearing, I remind both committee members and witnesses to speak into the microphones. As we have a number of witnesses in person and via videoconference, it may be helpful to identify who questions are directed to and who is speaking. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, would everyone please turn their mobile phones to silent for the duration of the hearing.

Mr ANGUS SKINNER, Research Manager, Police Association of NSW, affirmed and examined

Ms NICOLE JESS, President, Public Service Association of NSW and Chairperson, Prison Officers Vocational Branch, affirmed and examined

Ms NATASHA FLORES, Industrial Officer for Work Health and Safety and Workers Compensation, Unions NSW, affirmed and examined

Ms SHERRI HAYWARD, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, affirmed and examined

Mr DAVID ATKIN, Executive Officer, The Construction Industry Drug and Alcohol Foundation, sworn and examined

Mr ALAN MANSFIELD, Workers Compensation Health and Safety Officer NSW and ACT, Australian Manufacturing Workers' Union, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our first witnesses. I would now like to start by asking if any of the witnesses would like to make a short statement. Please keep it to no more than a couple of minutes each.

ANGUS SKINNER: I would first like to acknowledge the Gadigal of the Eora nation, the traditional custodians of this land, and pay my respects to their Elders past, present and emerging. The fundamental and confronting reason we are here today focusing on psychological injury is that psychological harm caused by work has increased over the past decade, yet we have not improved the outcomes of preventative, recovery or return-to-work efforts. We cannot obscure this trend by saying that this is just reflective of better mental health awareness or improvements regarding stigma and willingness to report psychological injury and seek help. This is not true. The most consistent and reliable longitudinal data regarding the mental health of workers shows the increase in psychological injuries and claims made in the workers compensation scheme is a genuine deterioration in the mental health of workers and the mental health impact caused by work, not a reporting phenomenon or an increased awareness.

We all like to think we are making society better for those who will come after us but, regarding mental health in our workplaces, we are actually passing on worse conditions to the next generation. Creating workplace cultures that prioritise psychosocial safety, that eliminate or control psychosocial risks, support injured workers and assist them to return to work should be the top priority of all employers, government, unions and other stakeholders. As this inquiry is well aware, the human, economic and budgetary costs of allowing the current trends of psychological harm to continue should be considered intolerable. Workplaces and policymakers can no longer sustain prioritising operational demands to the detriment of the health of the people we rely on to perform work. Thank you.

NATASHA FLORES: Unions NSW thanks the Committee for the opportunity to appear at today's hearing. In Australia, we apply a preventative approach to work health and safety. If this is done correctly and done well, we can avoid injuries from occurring, both physical and psychological. Our submission addresses what we believe to be failings in the work health and safety system. Any increase in injuries of any kind is always the result of a failure in risk management. We know hazards that cause psychological injuries. We know how to control the hazards. Psychosocial hazards need to be controlled in the same way physical hazards are controlled using the hierarchy of controls. The same risk management approach to eliminate or minimise hazards is applicable. Employers continue to blame individuals with mental health conditions for their failings. Mental health conditions are not relevant to the psychological injuries caused by poor risk management. Any person is vulnerable to injuries when hazards are not controlled. Low-level control measures continue to be applied.

We know how to prevent psychological injuries; we just need to do this. We need employers and governments to adequately staff workplaces, we need all workers to receive ongoing meaningful training to ensure all workers can undertake their work safely, we need workers to be treated with dignity and respect and we need workers to have some degree of control over the work they do, and professional judgement to be trusted. Where an injury has occurred, the workers compensation system will continue to cause further harm to workers if it remains brutally adversarial. The current system is the cause of many secondary psychological injuries. Applying a more caring approach to claimants could reduce secondary psychological injuries.

NICOLE JESS: The PSA would also like to thank you for giving us the opportunity to present today. The issue of psychological injury has long been ignored and misunderstood. However, psychological injury is now widely recognised as being as important as a visible physical injury in terms of impacting upon the ability of an individual to perform their role and functions. As a trade union representing 40,000 employees across the State, many of whom are on the front line, we are increasingly aware and concerned about both the long-term

unrecognised impact of psychological injury on our members and the wider implications of these on the population of the State. Work Safe Australia defines psychological injury as:

> … a range of cognitive, emotional and behavioural symptoms that interfere with a worker's life and can significantly affect how they feel, think, behave and interact with others.
>
> Psychological injury may include such disorders as depression, anxiety or post-traumatic stress disorder.
>
> Job stress is commonly used to describe physical and emotional symptoms which arise in response to work situations but it is not in itself a disorder or a psychological injury.

Given this definition, it is not difficult to grasp the range of environments and situations to which our members are expose which can and do give rise to the causation of psychological injury. In recent years our members have had to deal with a range of situations ranging from environmental disasters such as bushfires and major flooding, through to localised incidents such as individualised workplace bullying, job insecurity, shiftwork or individualised traumatic events, such as dealing with death in corrective custody. The well-recognised impact of psychological injury includes but is not limited to mental health, increased anxiety, depression, irritability, poor concentration and disturbed sleep. Any one of these can lead to lower productivity, an increased risk of accidents and disrupted relationships at home and at work.

Irrespective of the setting or circumstances, each and every occasion results in unseen psychological injury, whereas with other professions' roles the impact of psychological injury is taken as a given. With the majority of our members, their roles are not recognised as being exposed to the potential for psychological injury. It is well recognised that early diagnosis and intervention in dealing with the consequences of psychological injury is critical if the long-term outcomes and costs are to be minimised, both from a personal and organisational perspective. The costs are wideranging and far wider than simply financial. Unrecognised and untreated psychological injury can destroy careers. As an organisation, we are aware of unrecognised and untreated psychological injury leading to individuals taking their own lives. The cost of psychological injury in this context is incalculable.

We cannot stress enough how paramount it has become for psychological injury to be widely recognised across the wider State workforce and, therefore, be treated accordingly with the appropriate care. Given the nature of the roles undertaken by many of our members, unfortunately some suffer physical injuries in their workplace whilst performing their duties. The difficulties encountered by our members in having to navigate the cumbersome and bureaucratic nature of the workers comp system as it is today is in itself a stressful process. This can often lead to a secondary psychological injury, thus exacerbating the original physical one. This helps no-one—neither our members, their employee State organisation or the general population of New South Wales who our members seek to serve.

SHERRI HAYWARD: The CFMEU welcomes the opportunity to address the Committee this morning. We recognise the Committee's intention to focus on the increase in psychological workers compensation claims. However, that focus should not be solely on the workers compensation system. The focus should be on prevention and how we support our community to gain access to the necessary and dwindling mental health services. This is a safety and a public health issue that is not caused by the workers compensation system, although it does impact upon it. We acknowledge that the Government has developed the Mentally Healthy Workplaces Strategy and we recognise the good work, especially from my colleagues in the union movement, in creating the psychosocial code of practice.

However, neither of these initiatives have made their way into the construction industry. Strategies are meaningless without a regulator willing to implement and enforce them. We do not have a safety regulator willing to enforce the code of practice. Unfortunately, as with many hazards, SafeWork is an absent regulator in this field. Instead, the construction industry has taken on the initiative of providing prevention training, trauma counselling and general counselling in partnership with Foundation House, for which Mr Atkin is the executive officer. Foundation House administers the FOUNDOBLUE program that focuses on mental health wellness, suicide prevention and building confidence in supporting help-seeking behaviour from within the industry. Through its training, construction workers are taught how to recognise symptoms in their co-workers and how to talk to them in a constructive and supportive manner.

In addition to the training, FOUNDOBLUE also provides trauma counselling in the unfortunately all-too-common event of a fatality or a serious workplace incident. They are also on hand to provide general counselling, whether in a one-off capacity or more long-term. With the assistance of FOUNDOBLUE, the industry has been able to tackle mental health concerns before they become workers compensation claims. The industry has filled the void left by the lack of proactive prevention from the safety regulator. Of course, there is always more that can be done, and it is with sadness that I note the union found out this morning that in the last week we have lost two of our members to suicide. These were good men with families, who were unable to escape their

deteriorating mental health. This sad situation highlights the need for better access to mental health resources in this State.

Our focus should be on how we can support organisations like Foundation House, which runs extremely successful programs, and how we can utilise the research and the teachings that these organisations bring to the table. Mr Atkin is here to provide the Committee with any clarification that it needs as to how the program works and its success. Lastly, the CFMEU is concerned about the pace in which SIRA and the Government are seeking to introduce legislation to alter the workers compensation system. The excuse of "McDougall recommended" does not absolve the Government or SIRA of the need to conduct full consultation on serious issues that affect injured workers. By way of example, the commutation provisions, which have now been removed from the State Insurance and Care Governance Bill, were included with very little consultation with stakeholders.

In fact, if we look back at the submissions filed, it shows that the majority of stakeholders recommended a separate, full consultation on the matter. This is not the only incident of the Government trying to rush legislation. The McDougall recommendations cannot be read in isolation of each other. They recognise that changing the system is a big piece of work given the interconnectedness of the current provisions. This piecemeal approach is not useful and it can result in unintended consequences. We urge the Committee to recommend that the McDougall recommendations be looked at as a whole piece of work.

ALAN MANSFIELD: I would like to speak to our introduction to the submission and our conclusion. Thank you for the opportunity today to speak on behalf of the AMWU. I recognise the land on which I work from in Melbourne today. The AMWU represents many thousands of workers who perform work of a hazardous nature that exposes their physical health and psychological health to hazards and risks which impact their safety while working, commuting and travelling. The manufacturing industry remains overrepresented for interactions with the workers compensation scheme.

With regards to psychological health and safety, matters including injury, illness and disease, those that come to the AMWU's attention are the most complex and difficult to resolve, with employment capacity and income loss significant in nearly all circumstances. I will highlight that we have spoken to this matter and other matters in past submissions, beginning in May 2012. To outline the harms arising from psychological health-and-safety hazards and risks, the AMWU described the problem for workers in its submission to Safe Work Australia's consultation regulation impact statement 2008, pages 7 to 17. I don't intend to speak to that extract that I've highlighted, but I would recommend that, if time is available to the members of the Committee, they look at that submission.

To focus on the increase in psychological claims, as the Committee is doing, it is necessary to consider both prevention and reaction, the workers compensation domain and the work health and safety domain. The work health and safety—WHS—domain can prevent and/or mitigate injury, whether illness or disease. The workers compensation domain is focused upon injury management and return to work, along with other aspects of workers compensation. Clearly, though, in producing the objectives of the New South Wales legislation, the Parliament envisaged a workers compensation scheme, a scheme that contributed to prevention. See objectives (a), (b), and (c) below. I'll just read objective (a) from the Act:

> … to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury …

I'm just going to go to another part of our submission.

The workers compensation domain can contribute clearly to prevention. In doing so, though, it must be aligned with the work being done in work health and safety domain. If there is a desire and ambition to implement best practice that goes above, then that would be a worthwhile ambition for the workers compensation domain. However, it cannot do work that is contradictory or leads to confusion about what is required to ensure health and safety. It reads:

> (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by—
>
> (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant;
>
> …
>
> (2) In furthering subsection (1) (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant …

That is from the objects of the Work Health and Safety Act. I'll leave my opening there. Thank you.

The CHAIR: Thank you, everyone, for those opening statements and for coming along today. I'll start off with a couple of questions, and then I'll hand over to my colleagues. Obviously, the focus of this inquiry is

into the psychological claims that, of recent years, have been going up quite quickly, quite drastically, compared to where it was. If you look back at 2015, 2016—it was quite flat in terms of the growth of psychological claims. But of late, over the last few years, there has been a drastic increase in psychological claims. I was wondering, in your discussions with your members, what do you think is, potentially, driving that or leading to that significant increase in psychological claims compared to where it was a few years ago.

ANGUS SKINNER: It's fairly uncontroversial that the main drivers behind the bulk of psychological injuries, in particular the ones that are difficult to recover from and difficult to return to work, are driven by or at least exacerbated by factors which can be described as organisational factors, not necessarily related to the job content that workers are performing but the actual conditions that they find in their workplace—psychosocial risks, things like work intensification, the job demands placed on workers, lack of control over the manner in which they perform their work and complexity of work. I think a good starting point, if the Committee is looking for further evidence on that principle—I know Black Dog made a submission to the inquiry. They referenced one of their reports, which is the modern work report. It uses data, amongst other things, from the HILDA survey. That directly addresses the question of why organisational factors are more harmful today than they may have been 10 years ago.

NATASHA FLORES: I just agree entirely with what Angus has said. Certainly, organisational factors are, I think, the major contributing factor. I don't work directly with members of Unions NSW. I work with affiliates whom I'm surrounded with. But the stories that I hear are the story that Angus just told. Basically, people are expected to do more with less. I was at a conference where some of my colleagues were, and I came back last night. All I can say is my flight was chaotic. The staff were abused, sworn at, yelled at. We were hours late. They just didn't have enough staff. I witnessed what would've been an incredibly stressful moment for those people trying to, basically, get three airlines off the ground with one staff member. You couldn't even see the gate lines, the crowds were so intense and huge. That was a real-life example that I experienced, coming home last night from Melbourne. I felt extremely sorry for those staff, the few that were there.

SHERRI HAYWARD: I think we should also recognise that psychological claims are not necessarily lodged when the symptoms first appear. Most people seek treatment without the necessity of putting in a workers compensation claim. Unfortunately, we do have a dwindling resource in terms of access to mental health services, both for psychologists but also psychiatrists. If you've ever had the unfortunate pleasure of having a mental health plan, you might understand how difficult it is just to get an appointment—let alone ongoing assistance with your mental health condition. When we talk about it being also a public health issue, that's what we're talking about. Most people have taken on the responsibility themselves in the past. Now they don't have that. So they're exercising their right to make a workers comp claim.

NICOLE JESS: I'd like to add that the PSA represent a wide range of different government agencies. Our membership is a cross-section. After the floods, we've had many members that have not been able to return from police radio. We've had many members from SES that worked through difficult and dangerous situations and were taking phone calls. They'll never be able to return back to work again because of the stress that they'd endured in that first 48 hours of those floods and bushfires. We've got people in Corrective Services that are assaulted on a continual basis. There's no proper debriefs that happen. Access to Converge is hard—which is our EAPs providers. There's so many different things. The training, the processes that need to be put into place after critical incidents is proper debriefs, proper training for managers, proper training for staff to self-evaluate how they're feeling. That's not in the workplace. We don't have that. It's basically, "Just get back on the horse, and do the job again." We really need to put money into the front end to save the money at the back end.

The CHAIR: The last two years has been very difficult for so many workers because of COVID. It's changed the way we work for many, as well as placed additional pressure on people's jobs during lockdown that they might not have those jobs in the future. Do you have any evidence, anecdotal or otherwise, from your members about the additional stressors on their jobs that came over the last two years or even how, potentially, working from home has completely changed things?

ANGUS SKINNER: We don't need anecdotal evidence for emergency services. There certainly has been a formal study into that. The exact name of the report escapes me at the moment, but I can provide that on notice if it's of use.

The CHAIR: That would be great.

ANGUS SKINNER: That report surveyed emergency services—health workers, police and a lot of work types that were involved directly in responding to COVID—and it measured that the increase in stress that they faced was significant and it did translate to a perceivable trend in mental health and injury claims, which is probably reflected in the data submitted by SIRA. I would think that there is a measurable trend from COVID. But also we shouldn't underestimate that the increase in regards to psychological harm did pre-date COVID as

well. It can't be limited to an assumption that COVID is causing the trend or that the solution is only related to the impact of COVID.

The CHAIR: That's right. It seems like it was going up quite significantly even before 2020, so it wasn't just as a result of that. Although, it might be one factor.

NATASHA FLORES: Working from home has had some negative effects but also some positive effects for some people. I don't think we can just say that it's a bad thing, outright. It's given some people flexibility that they didn't have previously. But, as Angus said, the people who were on the front line—the health workers, the teachers, police et cetera—I think those are the industries and the study that Angus pointed to would be a vital tool in assessing the effect that COVID had.

The Hon. ANTHONY D'ADAM: Thank you all for your attendance today. I first place on the record that I worked with Ms Jess at the PSA for many years and I'm also a financial member of the CFMEU.

The Hon. WES FANG: I'm pretty sure you're a member of all unions, aren't you? And they fund your party, just saying.

The Hon. ANTHONY D'ADAM: Not all unions. A couple. Firstly, I just want to ask about the implementation of the code of practice around psychological hazards. It's been in place since May 2021. I note in the Unions NSW submission, Ms Flores, you make reference to the situation of a nurse tragically killed. It highlights an issue around some of the compliance measures that, I think, Ms Hayward referred to in terms of the approach of the regulator. I wonder, perhaps, if the panel can offer some comments about the approach that the regulator has taken to safe systems of work. I've asked SafeWork at estimates about their enforcement action around psychological hazards and around those kinds of approaches. Perhaps the panel might be able to offer some commentary around whether they think the regulator is appropriately dealing with that question of safe systems at work that seems to deal with those questions around how organisations might address the types of hazards that lead to psychological injuries.

SHERRI HAYWARD: My answer is pretty quick on this, and that is they don't, particularly not for construction. As I mentioned in my opening, we have not seen them at all dealing with psychological claims or how the systems of work on a construction site might increase the risk of psychological claims. Our workers work 60 to 70 hours a week, so work intensification is a real issue for them. There has been nothing from SafeWork.

NATASHA FLORES: The situation that I spoke about in the submission was a very distressing situation where a nurse who was visiting a psychiatric patient in his home was murdered in a very brutal manner. He was with a social worker, who couldn't find parking. This happened in Balmain so, obviously, parking is very difficult. She had said, "I'll try and find a park"—Well, he had said, "You find a park and I'll go in." It was only when he didn't turn up that she rang the psychiatric patient, who answered the phone and said, "This person is deceased." Obviously, her mental health would have suffered very detrimentally from that incident.

The problem that we have with that is that it was dealt with by the police and that's to be expected; however, SafeWork did not attend to that. The process or the safety of the workers who still go out and do that work hasn't changed. Nothing has changed. The police obviously have done what they had to do and that person is locked away, but the health department haven't changed their safety measures. They haven't done anything to make those nurses who still go out there and visit psychiatric patients any safer. That's the problem we have. That's the job of the regulator. The regulator certainly is not the police. The police have a place but they have a place beside the police, looking at the systems that broke down, what went wrong, why did this happen and how can we prevent this from happening again. They argued it was a police matter and that they couldn't go into a residential address.

NICOLE JESS: Can I just add that from some of the interactions that I've had, it's very difficult to get them into the workplaces. We've had a situation in a correctional centre where we had a female officer that was nearly sexually assaulted by an inmate and the department never got them in to have a look at the mechanisms and to check all the balances to see if everything was done properly to look at how we can fix the systems in that centre. It was us, the PSA, that had to push to get them in. But then, when we got them in, there are so many barriers to actually make change to make sure that that never happens again. Then we've had another situation in another centre where an officer brought them in because of bullying and harassment, and then it turned out that they were more on side of the department than what they were for the individual. A lot of our members don't have faith in SafeWork looking after their safety in the workplace.

ALAN MANSFIELD: I'll observe this from recent times and work back to the code of practice. SafeWork NSW has amended or updated their mental health page in recent weeks. I'm assuming it's recent weeks. As an HSR trainee, I was looking at the material and they've published 12 tip sheets and some material that is providing overarching information in addition to the code of practice. But I recall and have no record of any

attempt to consult with the tripartite members or government employers and unions in a collaborative manner to consider those tip sheets. I have highlighted them to people but I have not had the time to actually read those tip sheets to see if they actually supplement the code of practice significantly. They may be fine work, but they've emerged from nowhere. I will observe that I am glad that the two fact sheets that they first produced soon after the code of practice have taken a bit of a back seat because those two fact sheets dealt with only minor issues.

One was a fact sheet that was a list of 40 or 50 other organisations that you can contact instead of SafeWork NSW and the other one was about reasonable actions of employers, but there was no other information. I'm not even aware if those fact sheets are still published. The code of practice itself, I think, is a pretty good outcome in the end. We might, as unions, have wanted more, but I think it's a pretty sound document. It was produced for a collaboration and the little bit of work I have done with workers and health and safety representatives since it has been published has largely been around the non-definitive list of psychosocial hazards. That's on pages 7 and 8 of that.

It's a useful beginning point in working with HSRs and workers and organisers and others working for unions to think about what is the breadth of psychosocial hazards and risks for workers, and the scenarios with that. It's early days. I am concerned also that it's reported that SafeWork NSW has a three-part triage process for dealing with psychosocial mental health reports. But I am not aware of that being published anywhere, whether it was published to, let's call it industry players, the social partners, the tripartite members. So I have some concern about whether that might be the filtering process.

The Hon. WES FANG: Could I just ask, Mr Mansfield, in that case, where has that information come from? If it's not published anywhere, if it's not detailed anywhere, that sounds to me a bit like scuttlebutt.

ALAN MANSFIELD: It was reported anecdotally at Unions NSW workers compensation officers legal in the last four or five weeks.

The Hon. WES FANG: Did they provide any evidence or advice around that?

ALAN MANSFIELD: Well, we're waiting for more information. We are waiting for further information.

The Hon. WES FANG: Do you mind if I ask who raised it? I'm just curious as to—we often hear these stories of "we heard this, we've heard that". Then they inevitably—well, not inevitably—they don't actually eventuate. I'm just curious as to how much validity we can put on information such as this and where we could find some opportunity to actually validate it?

ALAN MANSFIELD: I acknowledge that it is my intention, along with normal workload et cetera, to circle back to that with SafeWork NSW.

The Hon. ANTHONY D'ADAM: Ms Hayward, in your introductory remarks you mention the Mentally Healthy Workplaces Strategy. It strikes me that that's barely touched the surface, that actually its implementation has been pretty sketchy. I'm interested in the lessons that we can draw from the experience in the construction industry and perhaps, Mr Atkin, you might be able to talk us through the kind of work that your organisation is doing in terms of addressing that, trying to deal with the preventative side of creating workplaces that are mentally healthy and safe from psychosocial hazards?

DAVID ATKIN: Thank you for the question. FOUNDOBLUE is about construction companies building capacity to manage someone who may be experiencing deteriorating mental health. There's a starting point that we have to establish; there's a baseline for employees across the whole site. We used what we knew from working within the industry at Drug and Alcohol for 20 years with the construction industry and the relationships that we have with other organisations in other States. We recognised that we needed to reduce the amount of numbers of people who were getting general awareness training on site, and everybody needed to get it. It needn't to go more than 45 minutes, but those class sizes need to be small enough so that we had two counsellors within the class that are able to engage with people and engage with that particular class. From those particular training sessions, mental health general awareness training, you are able to recruit people who have an interest within mental health.

Now, there's risk assessments that have to be done, because people have either had a family member that might have suicided or they may have themselves. A risk assessment needs to be done. But they're the people who are passionate about mental health. We also have touchpoints on site who are delegates or HSRs, and those passionate people go through a one-day workshop where we talk about the nature of trauma, collaborating with people, vulnerability, being courageous and vulnerable. They're two words that aren't used very often within the construction industry, but in order for us to engage with a male-dominated workplace we need to introduce these concepts and we need to be able to—and R U OK? Day is a great day to be able to do it—and being able to talk

to 800 men this morning about believing in their intuition when a work colleague isn't behaving in a manner that is normal to them, and being able to approach them.

But then there's the fear of what do I do if someone says, "I am. I am struggling. What do I do?" This is where our organisation comes in, because we would be able to provide professional support. Now, we can either go out on site or they can bring that person to Foundation House. We've been fortunate enough to get offices in Pitt Street. There are a number of places where people can come and they can get immediate face-to-face counselling. That's a little bit like going to the GP. You turn up to the GP, you don't get in straightaway. We make them welcome. What's really important about all of this is engagement, engagement with a workforce which hasn't got a high level of health literacy. That's the reality for construction. So we need to engage these employees, these workers, and we need to make them feel safe. We do that by authenticity—being genuine. Now, we do that by being out on site, by doing toolbox talks, by being at delegates' meetings.

We've been out at Multiplex at the airport for four days at 7.00 a.m. at staff meetings. There was an incident that was referred to; one of the employees out there had died by suicide. It was a major subcontractor, yet it's not the subcontractor that's contacting us, it's the principal builders where those subcontractors are working. So why is it? I'm not a big organisation, but I have to send people to three different locations to do critical incident training and workshops with the group of people because it didn't come from the employer itself. The principal builder, Multiplex, Roberts Co, CPB, have all contacted us to get people out for a particular group of people because an employee of this subcontractor had died by suicide. There's education on the side of constructional workers but just as much there's on the side of the employer. The employer needs educating.

It was suggested to me that instead of having FOUNDOBLUE on site, that one principal builder should have a chaplain. They prefer to have a chaplain. I'm not saying it's not a good idea to have a chaplain, but we need mental health professionals out there. That's what we need. And does a chaplain necessarily cover all denominations? This is where the regulator comes in. We need a regulator with teeth, because if the employer can get away with not introducing something of value, build capacity, then they're not going to do it. FOUNDOBLUE costs 44c a day per employee. I have been trying to get employers across all major sites to sign up for this and I have only had one. I have been at it since 2020. In the interim I've trained 205 delegates and HSRs out of the CFMEU and people who are interested at either the ETU or the PSA or the HSU. From that 205 people that we've trained, we've had over 2,800 face-to-face counselling sessions.

I don't need to tell you there's some need for this. I can only speak for construction. The relationships, the six days—men want to take their kids to soccer. That's what brings value to their life, not working every Saturday. They want to participate in this. And because they can't, they have the cognitive dissidence of "Do I go to work?" or "Do I stay at home and take the kids to"—all of a sudden I start developing relationship problems. Then I have divorce problems. Then I have custody problems. We need to do more. We need to build capacity and we understand that for construction we're coming from a long way back.

Ms SUE HIGGINSON: Mr Atkin, what's the view in terms of the regions and your work at the moment? I understand what you've just explained in terms of the capacity to uptake and that you've been going for two years. What's your view in terms of the regions?

DAVID ATKIN: No different to what it is for the view of metropolitan Sydney—there's a necessity for organisations to build capacity to be able to engage with counselling, social workers, psychotherapists, psychologists.

Ms SUE HIGGINSON: Sorry, I was talking more in terms of reach and what you're doing in your organisation.

DAVID ATKIN: If I get a call from Lendlease at Tweed Heads then, because there are some workers that are showing signs of distress because they've been involved with a clean-up for the floods, I fly counsellors up. I don't get any government funding. But I fly counsellors up to stay two days to hang around site, to do some education training groups and to see what comes from there. We've sent counsellors up twice to Tweed Heads. We'll meet the demand. We will not leave those workers without anybody to talk to. We won't do that. We say we've got their back; we mean we've got their back. But all I've got is 40 grand from build. That's it. But I'm out at Multiplex and I'm over at CPB and I'm out at Roberts Co and we do this because these are human beings and they deserve it. We have counsellors. We have social workers. We have psychologists and psychotherapists so we can—but we're stretched. We're really stretched. But we meet the demand because we say we're going to meet the demand.

The Hon. GREG DONNELLY: Thank you all for coming along and thanks to your organisations for making very helpful and valuable submissions but also for the work you do for and on behalf of, obviously, your members but workers across New South Wales. Because obviously the work done through the union movement

and led by Unions NSW raises the standards for all workers in this State, not just those in unions. I commence by just making a quick observation, as we were having an exchange of questions earlier particularly with respect to the construction industry. I just note that on 21 April 1856 some people in this room would be aware that stonemasons in Melbourne downed tools in regards to the commencement of the eight-hour day campaign which, in fact, was achieved directly resulting from that particular downing of tools in April 1856.

If you assume that the builders or stonemasons worked back then in 1856 after the campaign, 5½ days—in other words, Monday to Friday, Saturday morning—that'd be a 44-hour week and, if they worked six full days, it'd be a 48-hour week. I have to say I was just surprised by Ms Hayward's evidence earlier—this is 1856—the quoting that some of the members of her organisation are working between 60 and 70 hours a week in 2022. So it is pretty amazing when you think about that. We talk about work intensification. Mr Skinner spoke about that very well earlier, that here we are in 2022 thinking we're a whole lot better in so many respects but, if you think of the hours of work, it can be quite extraordinary.

On the matter of work intensification, can I just throw this one in for some discussion? Obviously any of the panel would be most welcome. It's a little bit specific but I want to raise it anyway because I'm very keen on your thoughts. With respect to what is now embedded and ongoing use of computer and information technology, we're certainly not going to be going backwards in terms of what's currently available, but obviously the expanded use in areas that we can't even imagine with respect to computers and information technology by employers to drive productivity—as employers define productivity.

I'm thinking particularly with respect to the use of algorithms that are presently used these days quite commonly by employers with respect to setting of work programs and work schedules. But looking forward to artificial intelligence, whereby artificial intelligence will be used to help map out what will be work done by workers, I'm just wondering if you'd care to share your thoughts about—if we just look at what's unfolding before us, that the whole intensification process just seems to be almost accelerating, that we really are pushing against something which is coming at us at what is a broader and increasing rate. I will perhaps leave it for questions or comments.

SHERRI HAYWARD: I mean, our intensification is really based on lack of tradies, to be honest—and deadlines. You've got weather. It creates unworkable deadlines for builders to complete their projects or face financial penalties. Who's the person that's going to be doing the work to meet that deadline? That's why they work the hours they work.

NICOLE JESS: I would say from a very large cross-section of membership, they are doing more with less and that's due to reforms over the years. We've had significant reduction in staffing in corrections. We've had significant reduction in staffing all across all of our different agencies. We've also got insecure work in our schools, in our school system. We've got people under duress because they don't know if they've got jobs the following year. There are a lot of factors that go into the intense work that people have to do. There is definitely an increase because they're doing more with less.

The Hon. GREG DONNELLY: It's sometimes referred to as a bit of hackneyed phrase or trite to say, "to do more with less", but that, in fact, is the reality, isn't it?

NICOLE JESS: It most definitely is. I mean, when I started in a job 34 years ago as a prison officer, we had far more staff. We've increased our population of inmates but we've reduced our staffing capabilities. You have a look at Service NSW. They would probably say the same thing—that going back 10 or 15 years they had more staff. They're doing more work with less staff now. I think that's across the board in most government agencies.

The Hon. GREG DONNELLY: Can I just make a comment briefly and the question can be shared? Ms Flores, thank you for your attendance today and the Unions NSW submission. I note on the top of the second page of Unions NSW's submission the paragraph that commences, "Other hazards include", and there's a quite a list of matters. It really is quite a confluence of factors, isn't it, contributing to this?

NATASHA FLORES: Absolutely, yes.

The Hon. GREG DONNELLY: I presume, without putting words in your mouth, that that wouldn't be a completely exhaustive list—

NATASHA FLORES: It is not.

The Hon. GREG DONNELLY: —but ones that obviously from affiliates have been reported to you at various meetings and forums, letting you know from their particular industry point of view some of the factors that are contributing to this?

NATASHA FLORES: I personally began my career as a teacher back in the early nineties. Pretty quickly into my career I realised that if I wanted to have a life, if I wanted to actually sleep, it would probably be a good idea to find a different career. I did that; I went and studied again and got out of teaching. My partner is still a teacher, and I will say the workloads are horrific, never-ending and impossible to ever meet the deadline. If you think about it, if you have a class of anywhere from 26 to 30 students and you do five activities a day, those activities need to be marked. That's five times 30 textbooks, essays or whatever it is that you've done with those students. Then factor in all the meetings you have to do, the requirements that you need to keep up with to keep your accreditation relevant and up to date—it's literally impossible. I saw as a young teacher, back when things were nothing like they are today, that other friends of mine who I'd graduated with—and I did an arts degree, so we all went off and did different things—were having a life. They were getting married, they were meeting their partners, they were enjoying themselves on the weekend; I was just working constantly, around the clock. Personally, I thought, "I can't sustain this for my life. This is not sustainable."

I then went and worked in the clothing trades union and worked with outworkers, then found myself in a union, the Independent Education Union, working with teachers in non-government schools. One of my members had done the reverse; she'd been a corporate lawyer and had decided to change her career to teaching. She actually said to me that she worked more as a teacher than she did as a corporate lawyer but earned half the amount and she was baffled. She loved teaching, she loved the students. But she was baffled as to why teaching was rated so lowly as a profession and why in the world of corporate law—and she'd worked in government as a lawyer—the standards were so different. She had to buy her own resources. Most of her weekends were spent marking. She spent hours and hours before and after school, because it's one of the few jobs where you actually have to go to work for a few hours before you start work to prepare for work, and then you work teaching from 9.00 a.m. until 3.00 p.m., and then you finish that and you prepare again for the next day.

The Hon. WES FANG: Point of order: As interesting as I find this—

NATASHA FLORES: I'm just trying to give you a bit of a picture of workload.

The Hon. WES FANG: I'm just taking a point of order, if you don't mind. Whilst I find the line of inquiry interesting, it really isn't related to the terms of reference of the inquiry. I would ask—

NATASHA FLORES: This is teachers; we have a shortage of teachers.

The Hon. WES FANG: I'm sorry, I'm speaking.

The CHAIR: Order!

The Hon. GREG DONNELLY: Excuse me. I don't know who you think you are, but you're not the Chair.

The Hon. WES FANG: Neither are you and I'm speaking. I won't be spoken over by a witness.

The CHAIR: Order!

The Hon. GREG DONNELLY: Listen, buster, that is no way to treat a witness.

The CHAIR: Order!

The Hon. WES FANG: You're not the Chair today.

The Hon. GREG DONNELLY: It is no way to treat a witness.

The Hon. SCOTT FARLOW: I didn't think you'd be standing today, Greg.

The CHAIR: Order! I'll hear the point of order and then we'll go back to the witness. Mr Fang.

The Hon. WES FANG: The point of order is that we need to be responsive to the terms of reference. The contribution that is being made about the requirement for members to be at work a little bit earlier or not is not related to the terms of reference, which is the workers compensation scheme. We need to come back to the terms of reference.

The Hon. ANTHONY D'ADAM: To the point of order: The witness is directly responding to a question about work intensification. She's giving relevant evidence in response to a question that was directed to her by Mr Donnelly around work intensification. It's perfectly within the terms of reference of this inquiry and the witness should be allowed to proceed.

The CHAIR: I will ask the witness to proceed and ensure that the comments are in line with the terms of reference.

NATASHA FLORES: I would just say that in my experience working in a union supporting these teachers, workers compensation psychological claims increased dramatically, and workload was directly related to that.

The Hon. GREG DONNELLY: Thank you for that answer, which was directly relevant to the question posed to you. Noting you are the convenor of monthly meetings by Unions NSW of all affiliates of Unions NSW dealing with occupation health and safety, you bring wide experience and knowledge to this inquiry. We're very grateful for your attendance. Can I take you to page 7 of the Unions NSW submission? The second paragraph from the top of page 7 commences, "Unions NSW is aware of many complaints that have gone unchecked." I move over to the next page because I will ask you to discuss both paragraphs concurrently in light of the time. The second paragraph from the top of the next page states, "Increasingly workers are becoming aware of SafeWork's failure to enforce the Work Health and Safety Act 2012." Given that we are moving towards the end of this session—and if you wish to take some of this on notice, you are welcome to do so—but I would like some preliminary comments in regard to the points you are making in both of those two paragraphs, Ms Flores.

NATASHA FLORES: Briefly, we were assisting the meat workers' union in one particular instance last year when the workers brought to their union's attention safety issues that were of concern to them, partly in relation to COVID and also in relation to the speeding up of machinery in the abattoir, which they were concerned caused them to have to stand very close to each other. This is a bit graphic, but they had to slaughter animals very quickly because the conveyor belt which these animals were on had been sped up.

The Hon. GREG DONNELLY: The chain, yes.

NATASHA FLORES: It was a very distressing situation. The meat workers' union tried to go into that workplace and were not allowed to enter. They went to SafeWork to ask for assistance, and SafeWork didn't provide assistance. We had numerous meetings with SafeWork ourselves, the meat workers' union, and they were simply telling the meat workers' union they would have to go to the Industrial Relations Commission to enforce their right of entry. SafeWork themselves wouldn't go into the abattoir in question. What they did say was that they would do inspections of all abattoirs. The meat workers' union said, "We don't need you to do that because we have faith that all the other abattoirs are safe and we have easy access into those abattoirs." We didn't actually ever resolve that. One worker who had made the complaint was dismissed, and the union then had to focus on that particular incident and obviously go down the path of the Fair Work Commission to try to reinstate that person.

The Hon. GREG DONNELLY: Pursue a reinstatement application, yes.

NATASHA FLORES: To this day, we still don't know what's going on and whether the concerns were fixed. One of the concerns was so simple. It was basically that the female toilets didn't have any attachment to the wall to put the toilet rolls on and so the toilet rolls were placed on the sanitary napkin bins. I'm sorry, this is a bit graphic again, but they're often overflowing and not particularly hygienic. That, again, we don't know. It was a very simple fix, I would imagine, and a cheap fix, but we don't know if it was fixed. That caused great anxiety for the workers.

The Hon. GREG DONNELLY: Thank you for your insightful and detailed evidence.

The Hon. ANTHONY D'ADAM: Ms Jess, a number of the individual submissions were from correctional officers.

NICOLE JESS: Yes.

The Hon. ANTHONY D'ADAM: We know that there's a disproportionately high number of psychological claims within the TMF from public sector workers. It has struck me that there's clearly something going wrong in the way Corrective Services are dealing with psychological claims and I wondered whether you might be able to offer some comments in response to that.

NICOLE JESS: I'm not sure everyone would be aware of what happened with regard to staff at MRRC that put in psychological claims. That was a massive payout that happened from that. What I'm finding with Corrective Services is that there is definitely an increase in psychological claims. That's due to various different factors, whether it's the incidents that we have to deal with, which are deaths in custody, assaults—assaults are on the increase—we're seeing inmates self-harm on a regular basis and we're seeing stuff most individuals would not see, on a daily basis. But what we're not getting is the backup from the department in regards to how we are managed. We don't have proper training. In regards to resilience, the managers aren't trained to give proper debriefs. Most of the time after critical incidents, it's the debriefs that will actually assist people and can stop people from having prolonged PTSD or psychological injury. Those things aren't happening in our workplace to a level of acceptance at all.

We don't have the support mechanisms in our injury management. You really need to have, I believe, proper trained injury management staff who can deal with psychological injuries. What we're finding is we're having a lot of people—it's exacerbated and increased. When they're off on PTSD, the treatment that they're getting from either the insurer or the injury management person is not acceptable. They're not having enough contact. Because of their workload as well, they just can't contact anyone. They can't have that personal relationship with the person to try and improve them and try to get them back to work. We have problems getting people back to work—other areas for them to work at. We have problems with people getting retrained. It's just a whole systematic failure that's happening.

The Hon. ROD ROBERTS: Mr Skinner, I might address this to you. I know to the other members this is unique to policing, but there may be some flow-on from it. Page 70 of your submission is the graph in terms of claims. It's not disputed that claims are out of control in terms of the increase in number. But I want to put this to you: Policing has always been a stressful and traumatic occupation. That is without dispute. There have always been traumatic incidents—the Granville train disaster, Luna Park, the Milperra massacre, North Coast bus crashes et cetera. My concern is why are we seeing an increase in claims now. Police have always seen bad things and always had to deal with bad people. Again, that's just the nature of the job. I've seen this increase over the last couple of years and I'm asking myself why. You know my background, of course, and the fact that I've been heavily involved in it.

Is there an obligation, do you think, upon the employer—and this is where it may stream to other industries—of resilience training? Ms Jess and, in fact, Ms Hayward, in her opening statement, talked about prevention. Mr Mansfield brought up the objectives of the Act, including prevention of injuries. Ms Jess just talked about a debrief after incidents. Let's forget about after incidents. Should there be an obligation on the employer in terms of resilience training before incidents even happen, particularly unique to the Police Force? You're never going to be able to provide a safe workplace in terms of traumatic and stressful incidents. They're going to see things. You can provide a safe workplace in terms of providing equipment et cetera, but what you are going to see and be subjected to you can't stop. Let's touch upon the Buxton car crash the other night. You can't prepare officers, whether they be ambulance, firies or police, from going to those scenes. Do the employers need to build resilience into their employees?

ANGUS SKINNER: There are a number of concepts that have been raised in that question. Firstly, will police inherently see traumatic things? Yes. Will police inherently be harmed and suffer injury from that? That concept must be unacceptable. It cannot be acceptable that because police will deal with traumatic content they will inevitably be injured. Anyone who thinks that needs to stop thinking that now. As I said earlier, in most cases—in most psychological injuries—it is not the traumatic content that is the primary contributor to the injury. It is the workplace conditions that they face in interacting with their experience of trauma. I can't stress strongly enough that, yes, police will inherently deal with difficult and traumatic content. They will face violence, they will be unsafe physically and they will experience stress from the danger that they put themselves in. But that does not mean that they should be and will always be harmed. If the NSW Police Force manages psychosocial risks correctly, they will be able to go to those incidents that are inherently traumatic but continue to work as police officers, not be psychological injured, and stay mentally healthy.

The second part of the question was in regards to resilience training for police officers. I would be perfectly happy—in fact, thrilled—if police officers had greater access to resilience training. And to the extent that they want to use the learnings from that to make themselves more healthy, I hope that they do. I hope that it works and that they get to lead healthy, happy lives. Whether that should be a core pillar of the NSW Police Force response to psychosocial safety, I again cannot stress strongly enough that the answer is no, because that is an obligation on the worker to keep themselves healthy in a workplace that is inherently damaging. And that, again, is not acceptable.

So I would like police officers to be able to receive resilience training, but the fundamental core response that the NSW Police Force employs to keep its officers safe must be that the Police Force controls risks. They don't seek to upskill their workers to keep themselves healthy and the obligation falls on police officers to stay healthy. They should train and upskill their managers. Anyone with responsibility for supervising police officers should be expert in managing police workplaces and dealing with psychosocial safety risks. If that training is delivered and if the business as usual, day-to-day tasks of managers and supervisors throughout the Police Force is to keep their workers healthy and safe, and they have the ability and the expectations to achieve that—if that is achieved then, yes, I would be thrilled if police officers received resilience training. But there are a number of things that have to be a much higher priority, and that is for the Police Force to implement, not to sit on the obligation of workers to look after themselves.

The CHAIR: Unfortunately, we have run out of time. But I would like to thank all of you for attending this hearing. Committee members may have additional questions for you after the hearing. The Committee has

resolved that the answers to these, along with any answers to questions taken on notice, be returned within 21 days. The secretariat will contact you in relation to these questions. Thank you for your attendance today.

(The witnesses withdrew.)

Mr MATTHEW BUXTON, Operations Manager, Workers Health Centre, affirmed and examined

Mr PETER REMFREY, Chief Executive Officer, Workers Health Centre, affirmed and examined

Ms KAREN CASTLEDINE, New South Wales President, Australian Rehabilitation Providers Association, affirmed and examined

Mr NATHAN CLARKE, National Chief Executive Officer, Australian Rehabilitation Providers Association, affirmed and examined

Mr BILL PARDY, Risk and Strategy Consultant, Rehab Options Injury Management, affirmed and examined

Mr STEVE STEPHENS, Managing Director, Rehab Options Injury Management, sworn and affirmed

The CHAIR: I would like to welcome our next witnesses. Thank you all for attending today. Would you like to start by making a short statement? I ask each of you making a short statement to keep it to no more than a couple of minutes each.

PETER REMFREY: Thank you, Chair. I would like to thank the Committee for giving the Workers Health Centre the opportunity to make a submission today. I will take it that the submission has been read but I will call out some highlights from that submission. There are four issues that we raised in our submission: early intervention, legal rights, return-to-work coordinator training and the work capacity process. Early intervention, in our view, be it for psychological or for physical injuries, is arguably the most important issue to assist workers to recover as quickly as possible and to facilitate a safe and durable return to work. These processes, in our view, can be done concurrently, and, in most cases, should be.

To recover at work is, in our view, the optimal strategy. Arguably, the most important issue with return to work is in respect to psych claims, to have early intervention to reduce workplace conflict and to minimise the incidence of some employers using the system as a de facto discipline system to exit employees rather than use the proper disciplinary processes, which we see all too often, particularly in large employers and especially in the public sector. I know my colleague Angus Skinner was here earlier talking about police. It's evident to us in corrections, health, education in our experience that these things occurred. Early intervention involving rehab providers who can provide assistance to all the parties to focus on the main aim of the scheme—that is, to get someone to recover and to return them to a safe and durable workplace—is critically important in our view, and is something that, in many respects, is being missed at the moment.

There's a reluctance to involve workplace rehab at an early stage in the process. I think that's an error. The evidence is that when we do have professional, independent and worker-focused rehabilitation assisting people to get back to work, but also liaising with the nominated treating doctor, the employer, the insurer and the other stakeholders within the system, but advocating on behalf of the injured worker, knowing that the most financially advantageous outcome for that injured worker is to get them back into the workplace as quickly as possible in a safe and durable way is going to provide the best possible outcomes, and encouraging everyone from the get-go to think about getting someone back into work, whatever that looks like. The impediments to that all too often are a failure to provide suitable duties and in the large employers, in the public sector in particular, a failure to allow someone to transfer to another area where the exposure to that psychological danger, and particularly, but not necessarily or exclusively, aspects relating to workplace conflict—bullying and harassment et cetera. There seems to be a reluctance in many respects to provide suitable duties and to allow people to shift to another environment where they can thrive in a safe way.

The second issue that we raise today is in respect to individuals' legal rights pursuant to the scheme. A right that is unknown is no right at all. The scheme provides injured workers—and I think most people would understand this—to nominate their own treating doctor, for example. Some employers try to get people to go to a doctor of the company's choice. Most people I think now understand that that's not something that they have to do. It's not always the case in respect to workplace rehabilitation providers, however. The scheme does not discriminate between workplace rehab and other providers. Yet all too often people are allocated to a workplace rehab provider by the employer or the insurer without being told that they have a legal right to nominate their own. It's critically important, in our view, for an injured worker to have some confidence in the person who's advocating on their behalf, or the company. But, inevitably, it's an individual who is helping a worker. Certainly, I think from our perspective, and I only speak for my own organisation, I have continuity with the individual allied health professional who's assisting that person get back to work, and there is a rapport and they understand that they're acting in their best interests.

Unless someone is provided with information around their capacity to be able to nominate the injury management provider of their choice, there are perceived—I will put it no higher—conflicts of interest in that

situation. And, ultimately—and all too often from our perspective—we pick up a referral where it hasn't worked and the relationship has broken down. The individual goes to their union and the union says, "Well, you have a choice." It's the first time they've been told that. Then we pick them up and try to fix the problems that have been created by that relationship. At the outset I think that there certainly should be a requirement under the Act for the Nominal Insurer, or the insurer that they're allocated to under the claim, to advise people that they have that legal right.

The other two issues relate to return-to-work coordinator training in those companies that have their own internal return-to-work coordinators. Again, in large government agencies that's typically what happens. We're not satisfied that the return-to-work coordinator training is sufficient. The online training scheme is suboptimal. We would request that there be a review done of that scheme. The last issue relates to the work capacity assessment process. It's been a problem that we've identified for some time that the use of vocational assessments aimed at identifying vocational options are being used for work capacity decisions. They ought not be. They're being produced for a different reason. It's not appropriate in our view, and it's leading to opportunities for employers to go down the path of a work capacity assessment using the wrong information, creating problems for return-to-work outcomes. All of these are contributing, in our view, to worsening claims experiences, particularly in psychological injuries, which are the basis of the inquiry today, but also on the physical side. Thanks for that opportunity. We're happy to take questions.

NATHAN CLARKE: Along with Karen Castledine, the ARPA New South Wales President, I would like to take this opportunity to thank the New South Wales Law and Justice Committee for inviting us both here today. ARPA New South Wales is the industry voice for the workplace rehabilitation industry, representing approximately 70 per cent of all SIRA-approved rehabilitation providers. Our 60-plus New South Wales member organisations currently employ over 1,000 individuals who work as workplace rehabilitation consultants, which we estimate covers nearly 90 per cent of the entire New South Wales industry. ARPA, its members and the workplace rehabilitation consultants that they employ work within a variety of service delivery systems in order to achieve the best possible outcomes for their clients, including those who may be suffering from a mental health illness or episode in the workplace.

As you would have noted in our submission, ARPA has been very pleased with the release of the 2021 publication, commissioned by SIRA, to investigate the impact of receiving workplace rehabilitation services on return-to-work outcomes, which showed that in New South Wales: (1) the timely appointment of a workplace rehabilitation provider can improve return-to-work rates by up to 5 per cent for physical injuries and a staggering 20 per cent for psychological injuries; and (2) appointing a workplace rehabilitation provider early in the claims process can result in total claims costs savings of up to 9 per cent.

Taking into account this ground-breaking research, ARPA is pleased to advise that although there has been an increase in referrals to workplace rehabilitation in the New South Wales scheme over the last couple of years and the level of consultation and collaboration between all stakeholders has significantly increased, the speed at which the changes are being made within the scheme to see earlier referral to a workplace rehabilitation provider has not been fast enough and that there should be mandatory referral to workplace rehabilitation for workers not anticipated to return to work within four weeks. Furthermore, taking into account the SIRA research that stated that the timely appointment of a provider can improve return-to-work rates for psychological injuries by 20 per cent, all mental health claims should be referred to workplace rehabilitation services as soon as practicable.

BILL PARDY: Committee Chair, honourable members, thank you for the opportunity to appear before you today. I am employed by Rehab Options Injury Management. Our organisation offers a range of services to employers and their employees, including predominantly injury management and return-to-work coordination. Our organisation is also represented today by our principal, Mr Steve Stephens, my boss.

Collectively, as an organisation, our senior staff have a combined total of in excess of 100 years of experience in managing claims in the New South Wales workers compensation scheme. My boss has been running the business for 34 years, but I am a relative newcomer, having joined the organisation in January this year. My previous background in workers compensation matters involves having spent over 20 years as a solicitor engaged in representing insurers and employers in defending workers compensation claims. I have been asked in this introduction to highlight a few key ideas, themes or messages, so these are the things that I wanted to put to you briefly.

The legislation must be allowed to do its work. There is no point in having a section which allows employers to raise a defence to psychological injury claims—under section 11A of the Workers Compensation Act 1987—if there is neither the will nor the desire on the part of those who manage the scheme to enable such defences to be properly prepared, raised and maintained. The second point is that injured workers should be

supported from the outset of all claims, but, at the same time, claims should be properly investigated as to whether they are, indeed, compensable.

The third point is, as part of the support for workers, proper treatment must be prioritised. That means identifying the specific psychological condition, or conditions, that the worker suffers from so that the treatment can be most effective. Fourthly, as a lawyer, I concede—certainly, in my experience—that engaging in litigation is usually one of the worst available options to resolve any kind of dispute, let alone a psychological injury claim. Litigation in these claims is often difficult, time consuming and expensive.

However, sometimes, opposing views of what has gone on are so hard to reconcile that there is little alternative but to engage in a contest between those views. If the scheme were in a position to provide more flexible dispute resolution opportunities by way of compromised settlements between the parties, especially in relation to psychological injury claims, then the benefits for all scheme stakeholders would be significant, in my view. I look forward to contributing further to the Committee's deliberations today.

The CHAIR: Thank you all for those opening statements. I will kick off with a few questions, and then I will hand over to my colleagues. I will probably just start with you, Mr Clarke. I found your submission very interesting and, in particular, the fact that the Government could be saving up to $330 million a year from within the New South Wales workers compensation scheme—a scheme that costs us about $3.7 billion a year—if there is an appointment of a workplace rehabilitation provider early on in the process; I think you have said that within the first eight weeks. At the moment, how long does it take for a workplace rehabilitation provider to be appointed? What's the average time?

NATHAN CLARKE: We don't have, obviously, up-to-date statistics on that. We don't know that. But the last one we've heard—and you would have to confirm this with icare and/or SIRA—we believe it's in the hundreds of days.

The CHAIR: Similar to your evidence as well, Mr Pardy—you have said one of your recommendations is that injuries should be properly identified or diagnosed before or very shortly after a claim is made. That's sort of similar evidence—that it's more the speed in which injured workers are being properly diagnosed or assessed. Are you saying it just takes far too long? Would you agree that potentially if a workplace rehabilitation provider was earlier in the process, that would definitely help?

BILL PARDY: Independent intervention to drive the process would certainly improve the outcome, but one of the key limitations, in my experience, is actually just access to treatment. It's all very well for an injured worker to have a referral from the GP, but the question of then finding someone available who is prepared to take on a claim that is a compensation matter is always an issue, whether the injury be physical or psychological. So, increasingly, just access to treatment is a threshold question. All the while, from a legal perspective, the time frames are running in relation to how claims are dealt with and treated beyond the initial phase.

The CHAIR: Basically, I think you're also saying that the scheme is far too adversarial; going to court is often the worst option but an option far too often undertaken—or legal action, generally. What we've heard from—and I don't disagree at all—some of the evidence that we've received is that psychological claims are going up, icare's costs are significantly rising. Yet, on the other hand, there's evidence about claims being too heavy-handedly denied or the scheme being too adversarial. This is probably a question to everyone and definitely will be a question to icare and to SIRA. It almost doesn't stack up. How can it be, on one hand, that claims are being denied so regularly and the scheme is so adversarial and there are so many delays, but also we've got costs—in particular, psychological claims—spiralling out of control? It doesn't really make much sense because if we're paying a lot more claims, then those costs would go up even more.

BILL PARDY: I understand your point, Chair. I think the way I would characterise what I have said is not that the current position is too adversarial.

The Hon. ANTHONY D'ADAM: It's quite the opposite, isn't it? I think your submission seems to suggest that there should be more conflict.

BILL PARDY: I think there's a need for initial support, clearly, but there's also a need for the scheme to operate in the way that it's intended from a legislative perspective, which is that there is a defence that exists. The success of those defences, when they are run, when the point is taken, is very low currently. Either people should stop running those defences or they should be properly investigated and resourced so that if there is a genuine issue to be raised, under the terms of the legislation, then that is properly ventilated.

You'll see in the annexure to my submission that a snapshot of the cases decided in the PIC ran at about five or six to one in favour of employees when they challenged an insurer's decision to decline a claim relying on that particular section. The reason for that, in my view, is not because the scheme is making incorrect decisions

or lawyers are giving poor advice; it is because there is not enough focus on the preparation of evidence required to successfully defend claims, even though there might be a proper basis, factually, to do so.

The Hon. ANTHONY D'ADAM: Isn't it fair to say that the commission has effectively ruled that those exemptions should be only used in a very narrow range of circumstances? Ultimately, that's how jurisdiction evolves, isn't it?

BILL PARDY: The case law develops.

The Hon. ANTHONY D'ADAM: The case law develops. The opportunities to prosecute an argument in relation to that section are narrowing and should only be used in very limited circumstances. That's where the jurisdiction is headed.

BILL PARDY: I wouldn't agree that they're narrowing; I would say that they are evolving. The terms of the legislation itself provides for a range of matters where there is no question that a worker has suffered an injury. That is not the point. The point is whether the scheme should bear the cost of that injury in the circumstances.

PETER REMFREY: With respect, Chair, I think we're missing the point here, aren't we? If someone's suffered an injury, we need to make them well. That's the first instance in the scheme—not whether or not someone's to blame, which is the whole purpose of contingent liability, but to see if we can get people back to work. It has been my experience, in 38 years of representing police officers, that whether or not they're ill because of non-compensable or a compensable injury, they are still not available to do the work that's required. The scheme was designed specifically to get early treatment and get people back into the workplace. We can worry about the liability issues later. If we focus up-front on liability, we're just going to exacerbate the injury, whether it's work-related or not work-related.

STEVE STEPHENS: Again, my company, for 34 years—I'm an outsourced, engaged return-to-work coordinator. I was on the first ever WorkCover course after participating in a pilot to become a return-to-work coordinator. I 100 per cent agree. What my team does and what we focus on is—something has happened. We're not the ones that are going to make the determination on who is at fault or not. Because we're the engaged coordinator for the company that has had the workplace injury and they take their responsibility and duty of care seriously, we're available day one. As soon as an injury occurs, we know about it, we engage with the worker, we find out who their family is, who's available to pick them up at the hospital, whether the family needs to get accommodation at the hospital if they've had a serious injury—all that sort of thing. What happens to their tools if they're on a construction site? Who's going to look after them? All things to make them feel comfortable. We look after the injury.

Then what we do is an examination of the facts. We then work with the workers compensation insurer to provide them that information. We do an incident report, or an investigation report, and we provide them with the details of what happened and if it's all cut and dry, as it usually is in a physical injury—not always, but usually. Otherwise, if it's a psychological injury, we again say, "This is what happened. We've spoken with this person, this person and this person initially. For your factual investigation, it might be worth speaking to this person and that person." There is absolutely a real focus on looking after the person to make sure they get all of the correct care and nothing is delayed, but then also have a look at the big picture. No way is treatment ever—all of our clients and their workers are treated like first-grade footballers. In the background, what we need is a proper prognosis and diagnosis, as you would in a physical injury. It's the same with psychological.

As I said, it's a lot of years that I've been doing this, and we do a lot of clients nationally. A lot of experiences—if asked, I could explain where things have gone on, there has been no diagnosis and there has been no affirmative action. Otherwise, insurers have not looked at the available information or, as in Bill—I was lucky to have him working with me in his second supplementary submission—insurers are running out of time to make decisions because they haven't made affirmative steps at the start and been provided with certain details. Then they find themselves timing out. I've seen so many instances where they'll ring up a firm, providing them some advice, and they'll say, "I have to have this back by this afternoon or tomorrow." Some junior person has provided some advice, and we've had to go, after it has come back, "I understand. Thank you for providing the advice, but did you read the supplementary report? Did you read the statement from such and such?" That doesn't help anybody.

People need to understand that (1) they're being looked after but (2) it's reasonable that you look at the circumstances and, again, provide the correct care. We have got doctors that are giving scattergun approaches. They're doing antidepressants, they're doing this and they're doing that because they haven't actually worked out exactly what they are treating. Are they treating depression? Are they treating anxiety? Again, I absolutely focus

on treating the injury, making them well and supporting them, but intelligent decisions need to be made and a prognosis and diagnosis as early as possible.

The CHAIR: This is to everyone, really: The insurance industry is very worried about fraud and exaggerated claims in the system. It costs tens of millions of dollars a year. Is that something that concerns you? Do you think it's of particular concern to SIRA, icare and the insurers? Do you think that's why some of the requirements are quite onerous?

BILL PARDY: No, the incidence of fraudulent claims is exceedingly low. That's not a concern. That's not my experience. No, the distinction I'm trying to make—and I hope I'm making myself clear—is that there's a difference between support for someone's mental health or whatever they're going through and the question of whether that's a compensable injury under the scheme. The legislation exists and should be applied. If the legislation needs amendment, that's a matter for Parliament. At present, in my view, the legislation isn't being applied as written. In practical terms, if there are claims which relate to someone's view about how they've been treated in the workplace, from their subjective perspective, but the employer has, on an objective view, acted reasonably, those claims, according to the legislation, should not be compensable.

The Hon. ANTHONY D'ADAM: I found, Mr Pardy, your submission to be very at odds with the balance of the submissions to this inquiry. You make comments like "Doctors are encouraging the medicalisation of emotion." You say that "workers compensation claims should be for injuries and not just stressful life events", as if to suggest that the balance of psychological claims are somehow illegitimate. That's the reading that I get from your submission. Earlier today we heard from a range of individual workers who had gone through the system. My question to you is about balancing the opportunity to test whether a claim is compensable against the damage that process does to workers who have a legitimate claim. How do we reconcile those two competing views, in your view?

BILL PARDY: There are a number of issues that I've raised in the supplementary submissions, which I hope the Committee has received. Could I just ask that question of the Chair?

The CHAIR: Yes, we do. Thank you.

BILL PARDY: My answer to that question is simply this: Proper treatment, as soon as possible, to identify what is wrong with the injured worker will then lead to an assessment of whether that injury is compensable. The first step is support for the worker. I have advocated for, in my submissions quite clearly, the continuation of the provisional liability provisions and I have, in fact, commented that I strongly disagree with the Business NSW submission that provisional liability should not apply where the employer believes there's an 11A defence. I'm at odds with them on that issue. I think there is a clear rationale for, as my friend at the end of the table said, support but not unconditional or unquestioning support on the basis that there are two separate issues. One is, what does someone need to get healthy? And the second is, should the scheme be paying for it?

The Hon. ANTHONY D'ADAM: You mentioned in your opening statement about compromised settlements. Can you just elaborate on, for psychological injuries, what you had in mind in terms of that proposition?

BILL PARDY: There are probably two or three areas and I won't go into them in detail. There's a submission that's before you from the Bar Association which talks about the prospect of an 11 per cent threshold for claims for permanent injury for psychological injuries. That's the same threshold as applies for physical injuries. In my submission you have seen there's no justification for a different threshold in 2022. If 11 per cent is a sufficient injury from a physical perspective for permanent impairment compensation to be paid, then that should be paid for a psychological injury. The relevance of that particular submission is that it creates a small but probably, in my view, highly relevant window between 11 per cent and 14 per cent where someone would be entitled to a lump-sum settlement for their injury and its effects on them but without having the ability to sue their employer for work injury damages.

At the moment, as you've seen in my submission, it's all or nothing. It's either you get nothing as a worker or you get both a lump sum and the ability to sue your employer. I'll set that aside. That's one. The second one is the field of commutation. Parliament looked again at the question of commutation a couple of years ago. I'm not sure why it was backed away from as an idea, but it's a mechanism that has existed historically. Currently it's highly inaccessible because it's at the same threshold as is necessary to make a work injury damages claim anyway, so you might as well maximise your payout by making a damages claim rather than simply making a commutation claim. There's also financial incentives for making a damages claim as opposed to a commutation application on the legal costs side. That's another thing that can be looked at.

The other aspect is, in my view, there's quite often a nexus or indeed an overlap between industrial issues and a compensation claim. One person's reasonable performance management action is another's bullying and

harassment. One of the ways in which we could resolve those inextricable differences of view about how someone feels they've been treated is to say that you can have an industrial settlement which also covers your workers compensation entitlements, and you can have a deed of release which acknowledges that you have suffered an injury in the course of your work. You may make other allegations in relation to industrial matters but there is the opportunity, should an employer wish to do so, to say, "We don't agree with you. We think we've done the right thing, but we acknowledge that you don't agree with us. But we are nevertheless prepared to make a settlement to you to conclude the matter." So long as the parties were to agree to that approach, and obviously workers would need appropriate independent advice, that would be an avenue to resolve both any industrial matters and any compensation matters by virtue of the application of section 151A of the 1987 Act which talks about someone's entitlement to compensation ceasing at the time they have a damages settlement.

They're the three kinds of areas where I believe there could be focus in terms of resolving these issues more quickly. It is certainly more cheaper from the scheme's perspective, which is clearly one of the concerns about the current position and, at the end of the day, without putting an injured worker through the trauma of the kinds of processes they are engaged in in terms of having to justify your extent of your incapacity or disability by virtue of the initial assessment of you when you make a claim and then a further assessment of you to make a section 66 lump-sum compensation claim, and then any further assessments of you that might be made in the context of a common law damages claim. Why would you put yourself through that? The answer is, in most cases, the advice you're given as to the best result from where you are at the time. That advice might change if there were different options available.

The Hon. GREG DONNELLY: I did have some questions, but in light of the line of questioning that's just taken place, I could put my questions on notice and perhaps invite, if they wish to do so, Mr Remfrey or Mr Buxton to respond to what's just been put, not to create a contest but at least a critique of the proposition. You have the opportunity now to do that. If you prefer not to and perhaps respond in more detail on notice, that's fine and I can revert back to my questions. I will leave it up to you how you would like to handle it.

PETER REMFREY: Thanks, Mr Donnelly. We've been focusing our submission, as you've probably noticed, largely not on the compensation side of the coin but on the role of the rehab providers and getting people back to work as the preferred option. The legal issues that our colleagues at the end of the table have been raising is not something we've really put our minds to. I prefer the early intervention consistent with what's been said, early assistance in terms of medical treatment, proper diagnosis and trying to get the individual back into the workplace. We believe that is consistent with our colleagues here from ARPA that the early engagement of a rehab provider can assist in that process rather than getting down the path of litigation et cetera.

The Hon. GREG DONNELLY: That leads into what was going to be my first question to you, Mr Remfrey, and that is in your submission in the second paragraph, specifically the last sentence in the second paragraph under the heading "Early Intervention"—and obviously this is lengthy experience because the Workers Health Centre has operated for a very long period of time and both yourselves at the table here have got extensive experience— it states"

> In our experience there is too often a reluctance to approve the provision of workplace rehabilitation services in the early stages of a claim to assist in the development of the Injury Management and Return to Work Plans.

I note that, with respect to Mr Clarke, you made that point as well. In terms of perhaps an explanation for us about your judgment and views about why there is a reluctance presently, can I invite you to sort of put the cards on the table? What do you see is the primary cause or causes of the reluctance?

PETER REMFREY: I'm going to ask Mr Buxton to respond to that. He's got 25 years' experience as a rehab provider so he comes with a lot of background.

The Hon. GREG DONNELLY: That would be great.

MATTHEW BUXTON: Might I just maybe inform the conversation by having disclosed that there was a time when I commenced working in the industry, which was in 1997, that the features of prominence at that point in time was that the scheme was adverse. The first consideration that was made at that point in time was who was at fault. That was a very genuine problem because what it created was a delay. I disclose that I used to report to Mr Greg McCarthy who was later the head of the WorkCover authority and I further disclose that I directly reported to Dr Martin Raftery who was also the medical director on the board of WorkCover NSW.

It was through my understanding and observation, and it was through their analysis of the problems in the scheme, that subsequently the provisions of the 1998 legislation were made and that the 1998 legislation clearly focused on early intervention, very clearly focused on not disputing who was right and wrong. It was more important to actually assist people in the process of getting better in order that they can get back to work. I regret to inform that in my current observations those fundamental understandings as enshrined in the legislation appear

in my opinion to have been departed from fundamentally. It was commonly the case that if there was a problem identified—any problem that was identified—that was a barrier to the recovery or return to work, that it was immediately identified. There was an immediate referral to a work place rehab provider within a period of four weeks.

Effectively, we had an industry of people that dragged their sorry bag of bones out of bed in the morning to go and serve the Act, to serve the scheme and to be of assistance to people, so that when the person had a need, the need was met. I found that the departure from those very fundamental principles, demonstrated by actions, is something that has led largely to the significant cost blowout that we observe. I work with people that have been injured. On the point with regard to whether a person would fraudulently make a claim, I cannot recount any single person having ever said to me, "Do you know what, Matthew? I actually planned the whole thing." I find no evidence of that. Nobody has ever disclosed those details to me, not ever. Nobody gets out of bed in the morning and, effectively, participates in some form of activity or are exposed to a certain set of behaviours that would so severely incapacitate them from not being able to work. There is no evidence that supports that. I think that the scheme needs fundamental—we need to go back to the future. We need to go back to prioritising the welfare of people—the welfare of people when they've had injuries. That's what I submit.

NATHAN CLARKE: Would you like us to comment on that?

The CHAIR: Sure. Yes, very briefly.

NATHAN CLARKE: I might hand over to my colleague.

KAREN CASTLEDINE: We've been chomping at the bit.

The CHAIR: We have run out of time, but, yes, very briefly, if you want to make a very quick comment.

KAREN CASTLEDINE: In terms of delay to referral, it has improved. I think some of it is structural in terms of—there is not really a proper triage process to identify those people who are at risk of being off work. The evidence would show that what is happening at four weeks is the best predictor of what's going to be happening in the future, hence why the early intervention data shows that the best time to impact return to work is between four and 13 weeks. And that, as Nathan advised, is hundreds of days until referral. I guess our focus is on once the claim has come in, it's at that point that they should be triaged, very specifically, looking at those risk factors that will identify them as being long-term off work. From 20 days that return-to-work prospect starts dropping off, and dramatically. After 52 weeks, someone who is job detached has a 6 per cent chance of getting back to work. So it's about the right intervention early on in the piece.

NATHAN CLARKE: Workplace rehab providers, due to that delay, often get the hardest cases when the claims agents don't know what to do with them, in our members' experience. Whether or not those claims agents initially think that they can do it all, which could have been some of the reasons—we are speculating here why they don't refer earlier—they try to do a lot of that stuff inhouse and then we get the harder ones, and that makes it very difficult to get them back to work. As Karen said, the stats show after being off work for a long period of time, their chances of getting back to work are reduced dramatically.

STEVE STEPHENS: Again we're talking about being engaged with return-to-work coordinators. One of our largest clients is a national cleaning company. Their return-to-work rates are a matter of record. We could have under $30,000 cost of claims for our clients for three years for a company that's got $100 million in wages. That's because, straightaway, we're engaging with the people, we're finding and identifying suitable duties in communications with our clients. I 100 per cent agree: If it gets to the stage that there could be issues with the workplace, meaning that there is a breakdown for a HR or IR where it crosses over with injury management and then it's not logical to try to keep them in the workplace, where they can be in another location for another employer, if there's that context, then the rehab providers grab them on board, get them to do it, and otherwise try to get the insurers to make the correct decisions but have them, in their inexperience—I have been doing this for 34 years. In their inexperience they're not making those hard decisions to either make the right decisions and/or refer soon enough to the point where they get clogged.

We inherit them as well. Clients will ring me up who aren't my clients and they'll have a matter that's been going on for far too long. We get it and we're going, "What's been going on? What's been going on?" Just in relation to the earlier point, at times I deal with 176 construction companies, I deal with concrete pumping companies and I deal with labour hire companies. I can run off a list of people that have—after we've engaged with them and said, "Listen, tell me about what has happened?" and we've had what used to be called in the old days "compo castles" that have been sold because people have received money and then they haven't done it.

It's rare, but certainly, in my experience, there are people that have come up and said, "Steve, yeah, listen, I didn't do it there. I did it here. What have I got to do? I've got to support my family. I've got to do this." Or they

have just been so unhappy with their employer, for whatever reason, that they're prepared to do this, or otherwise they're going to lose their job for non-performance or noncompliance, or whatever it's going to be, or misconduct, and they're prepared to do and say almost anything to create a—I had a call yesterday: "Steve, what am I going to do?" The circumstances proved the gentleman made some admissions and he said, "Well, what do I do now? What do I do now? I don't know where my next pay cheque is going to come from. I don't know this." I'm happy I'm going to speak with him later again today and provide him some support, but it never was a workers compensation claim. I'm dealing right from day one when an injury occurs all the way through to when the insurer makes a decision, whereas rehab providers—again, excellent, fantastic people; I love working with them. But no-one is involved right from the day an injury occurs.

I get it on my system, my staff—we go out, we look at the injury, we make sure from an OH&S purpose that that injury isn't going to happen again. What can we do to prevent it? We do the safe work method statements to make sure that now it's covered so that same injury won't occur again. That gives the worker some great feeling, the fact that somehow what's happened to them is going to help someone else—not happen to them. And people feel relieved, if they have kept up this facade—again, it's all on a cooperative basis—they say, "Okay, well, thanks, we're on the right track", and we even say, "You can access this or you can access that, and thank you for finally working with us and understanding that this was never a—this is the wrong forum for this".

So you have to sometimes work out what's going on, but compassionately and, again, look after them. We always look at the injury management side and the compassion there. Often we wouldn't even suggest to the employers to go down the HR or IR and disciplinary protocols; that's just going to drive a wedge. "Let's just fix this, do that and then we'll have to put that on hold", because otherwise the relationship's not there. But I do believe, from my experience, that all of the information that's in Bill's submission is hands-on, face to face, from the start to the end of every matter that I have handled over 34 years. Mary Hawkins, I used to go—she used to get me in once a month, the previous director of WorkCover, and we used to talk about, "Steve, what are you doing in the labour hire industry? How are you resolving? The construction industry—how are you keeping your stats so low?"

The CHAIR: We have completely run out of time, unfortunately.

STEVE STEPHENS: Sorry. Thank you.

The CHAIR: Thank you so much to everyone for coming today. Committee members may have additional questions for you after the hearing. The Committee has resolved that the answers to these, along with any answers to questions taken on notice today, be returned within 21 days. The secretariat will contact you in relation to these questions. Thanks, all, for coming.

(The witnesses withdrew.)

(Luncheon adjournment)

Professor JOHN BUCHANAN, Mental Wealth Initiative, University of Sydney, sworn and examined

Professor SAMUEL HARVEY, Executive Director and Chief Scientist, Black Dog Institute, affirmed and examined

Mr BRAD PARKER, Chief Executive Officer, MATES in Construction NSW, sworn and examined

Mr NIGEL CARPENTER, National Industry Partnership Manager, MATES in Construction NSW, affirmed and examined

The CHAIR: We will get started for the afternoon session. I now welcome our next witnesses. Thank you all for joining us today. Would you like to start by making a short statement of no more than a couple of minutes? Professor Buchanan?

JOHN BUCHANAN: Sure. My name is Professor John Buchanan. I would like to make a correction on coverage that I got this morning in the media about this matter. I was portrayed as a labour market historian but I'm actually a labour market researcher. My core degree is in history, but I have subsequent degrees in law, economics and industrial relations. The expertise I bring to bear is as a labour market researcher. I have been—and a group of us at Sydney university have been—commissioned to do scoping work for icare. The report that I shared with the Committee is a first account of our initial findings. I'd just like to get my status clarified and the status of the research clarified.

The CHAIR: Professor Harvey, do you have an opening statement at all?

SAMUEL HARVEY: Yes, thank you. As I mentioned, I'm the executive director of the Black Dog Institute. The Black Dog Institute is a medical research institute based here in New South Wales, focused on investigating mental health and suicide prevention. We have a number of streams of research. The research that I have led there over the last 10 years has been focused on the link between work and mental health. It's in that capacity that I'm here giving evidence. That program of research looks to answer three questions: firstly, understanding how work and workplace factors can be a risk factor or a protective factor for mental health; secondly, thinking about how we can create more mentally healthy workplaces, developing and testing interventions in the workplace; and, thirdly, thinking about how, when a worker suffers from mental health, be it a psychological injury or otherwise, we can improve their treatment and recovery.

I think the review you are doing is very timely. I'm sure you have already had other people provide you with evidence around the rising cost of psychological injury and the workers compensation scheme. In October last year we produced a report called *Modern work*, which looked at the trajectories of mental health symptoms in the Australian workforce over the last two decades. That told a very clear picture that over the last 10 years there has been an increase in mental health symptoms amongst Australian workers, particularly younger workers under 44 years of age and, even more strikingly, amongst those in their early 20s. As concerning as the situation is at the moment regarding the cost of psychological injury, I think there are reasons to think that it could get worse without further intervention and actions.

As outlined in my written submission, I would make three broad recommendations for your Committee to consider. One is that the Productivity Commission and others have written extensively about the problems that the current system has regarding the burden that there is on workers to prove the link between work and their symptoms early on, which can get in the way of early treatment. We would support the Productivity Commission's recommendation around workers compensation schemes needing to look at ways to reduce barriers for workers to be able to get good treatment early. Having said that, I mentioned that I'm a psychiatrist and I do still see a lot of patients who have—there have been significant delays in them getting good evidence-based treatment for their psychological injury. I think we see that particularly with some of the complex mental health problems that particular industry groups like emergency service workers have with complex cases of PTSD and the difficulty that there can be linking them in with good quality treatment.

Thirdly, we now know how workplaces can be made more mentally healthy and the type of things that workplaces can be doing to try and reduce the risk of psychological injury. I think it would be great if the workers compensation scheme could do more to incentivise workplaces to do the right things and to do evidence-based things. There is an awful lot happening in workplaces in the name of mental health which we now have good evidence probably isn't helping at all. Fourthly, even though we know answers to those key questions, there are some really big unanswered questions we don't know in this space.

I'm sure the data that your Committee has seen has highlighted that this is a massive public health issue in terms of the rising burden of mental health amongst New South Wales workers, particularly young workers. There is only a tiny amount of money that goes towards researching and finding answers to these key questions,

when you compare them to other disorders and other groups. I would make a submission that if New South Wales wants to get answers to some of these key questions, there is a role for funding research to do that. The New South Wales Government has done that with some sectors, such as the work that they funded to be done focused on emergency service workers. That has produced some great results in New South Wales. Based on the data, there is an argument that we need to be doing that with the broader workforce in New South Wales. Thank you.

The CHAIR: Would either of you like to make a statement, Mr Carpenter or Mr Parker?

BRAD PARKER: I'll just do a quick introduction. First of all, you have our submission, so I thought I would use the opportunity to talk about what MATES is, who we are and what we do. I know there are some people here who may not know. I'll read from my written statement. Essentially, MATES is an independent charity established in Queensland in 2008 to reduce the high level of suicide among Australian construction workers. MATES in Construction NSW was established in 2013. MATES provides suicide prevention through community development programs on sites and by supporting workers in need, through case management and a 24/7 helpline available to industry workers and their families. The MATES program also works across mining and energy industries. We are also currently conducting a pilot in New South Wales for the manufacturing industry.

MATES was established in response to a major report on suicide—the AISRAP report; the Australian Institute for Suicide Research and Prevention—within the Queensland commercial building and construction industry. The report found that suicide rates in the industry were higher than the Australian average for men and that youth suicide within the industry could be as much as 2.38 times more common than among other young Australian men. The MATES program is based on the simple idea that suicide is everyone's business. The program sets out to create a network of carers within the workplace to effectively improve the mental health and wellbeing of workers and reduce suicide. It cannot be left to the mental health professionals alone; everyone in the industry must play their part.

The program is delivered across the industries, regardless of employer or union affiliation. The program raises awareness of suicide as a preventable problem, builds a stronger and more resilient workforce, connects workers to the best available help and support, and is evidence based to measure effectiveness and regularly evaluate the MATES Program. MATES partner with researchers to inform the industry to effect positive change. One example of this is *The Australian Building and Construction Industry Blueprint for Better Mental Health and Suicide Prevention*. The blueprint assists mainly medium to small businesses to benchmark against real outcomes, not just a tick and flick, and helps create a wellbeing policy development. Finally, in June 2021, MATES was acknowledged by the World Health Organization as an example of world's best practice in the WHO *Live Life: an Implementation Guide for Suicide Prevention in Countries*. I'll leave it at that. Thank you.

The CHAIR: Thank you for those opening statements. I will kick off with a couple of questions and then hand over to my colleagues. Probably to you, Professor Harvey, to start with. What we've seen in the workers compensation system in New South Wales is psychological claims going up quite significantly over the last six or seven years. That means that more money or funding needs to be given to icare to cover the cost. But we've also heard some evidence of people's claims being denied as well. I suppose what I really want to ask about is what are the drivers, do you think, behind these significant increases in psychological injuries compared to where we were in 2014-15 before the exponential increase in that growth?

SAMUEL HARVEY: I'd make a couple of points. The growth that you describe is not unique to New South Wales. We've seen that as an international trend and, of course, each country has very different systems but certainly most developed countries there has been a stark shift over the last 20 years where the health reasons for people leaving the workforce, either permanently or for a period of time, for other than short-term sickness absence, has shifted from musculoskeletal being the number one cause to psychological injury or mental health being the number one cause. There is an international shift there.

In terms of the drivers of that, I think part of it is around recognition and labelling. A lot of people who leave, who have a period of time out of the workforce through injury, it's often through a combination of factors and I think we as a society have got more comfortable labelling mental health when it's present rather than putting it through under other labels. I think that's part of it. I don't think it's the entire answer, though. As I pointed out from our *Modern work* report, what we are seeing very clearly is even when you strip away those changes in diagnostic practices, and GPs being better at picking up depression and anxiety, when you just ask about the symptoms that people are experiencing, we're seeing workers reporting more symptoms now than they used to. I think it is being partly driven by the broader changes in society of the rising burden of mental ill health.

Then, of course, the question becomes: What is driving that? Our report suggests that workplace factors and modern work is part of the explanation. We know that lower levels of job security, more lower levels of control in the workplace, sometimes higher demand, those factors can all contribute to rates of mental ill health amongst workers. But it's almost certainly non-work factors as well. We know that adolescents are leaving our

education system with a higher burden of mental health than they did in previous generations. There is a question to be asked around what's going on in our society to cause that to happen. I can speculate about my views about it, but I think the honest answer is there's not a consensus about that. It's probably a combination of increasing inequality in society, the rise of the internet and social media, and really unfiltered information getting to young people while their emotions are still developing.

There is a theory, and I should say an unproven theory, but I think a theory that I suspect might be correct, that the way in which we talk about mental health in society and the sort of advent of mental health awareness being everywhere, that there's a risk that that has had a negative impact on children. Even if it might be a good thing for adults, that we, without realising it, have changed the way that children think about symptoms and distress and the way they handle it and that might have longer term consequences through into their adult life. These are theories at the moment. So the short answer is we don't quite know what's causing the rising burden of mental health, but we need to find an answer for it because it's predicted to be the number one cause of disability in Australia going forward. It's a major problem. We don't have a clear answer to that question.

JOHN BUCHANAN: Can I add to that?

The CHAIR: Yes, absolutely.

JOHN BUCHANAN: I'd support what Sam is saying in his area of expertise; I'd just underline that. I've been studying the transformation of workplaces for the last 35 years and the fundamental common thread through that has been rising work intensification—the expectation of people to do more with less. In some consulting firms it used to be called "management by stress". They would just cut the staffing levels till they see how far they could go. I've given you some evidence on page 19 of my submission. I've picked this up mainly through many years of study of skill formation. The reason skill formation is relevant to this is that skill formation is looking at workers at the point of entry into the workplace. When you're looking at workers compensation you're looking at points of re-entry. There are similar sorts of issues. What are the structures of support as people try and go back? In this case of workers comp going back in, in the case of skilled formation, it's about actually entry.

That data on page 19 is pretty damning. You look at the data on to what extent workers are reporting they're getting on-the-job training and it's in freefall, basically. Within the skill formation literature there is a nice dichotomy or framing. They say if you're looking at workplaces which are good at developing human capability, they are expansive workplaces, they have strong structures of social support. More and more workplaces, however, are becoming constrictive. I support everything that Sam said. In fact, he is more expert on the psychiatry side of things than me. But just very tangibly, structures of social support have been run down and we've heard a lot of talk about the productivity miracle of the eighties and nineties. When you go back—I did my PhD on this—that wasn't a miraculous breakthrough in magical productivity, that was workers doing more with less. I documented that absolutely comprehensively.

The CHAIR: And technology as well, I assume.

JOHN BUCHANAN: Yes. Then they're wondering, "Oh, productivity has plateaued." Well, you can get a one-off sugar hit. You can get utilisation of labour being more fully deployed, say, over a 10-year period, but you can't keep on getting blood out of a stone. I find it ironic that businesses are now wandering around saying we have these massive skills shortages. They've been squeezing out the capacity for coherent skill formation and you're picking that up on the return-to-work data too. We are seeing this. You look at the data we report at the back of our report. Where employers are engaged with their workers and provide support, they've got a 25—not 25 per cent improvement, 25 percentage points better return-to-work rate.

I think this issue is something that when we're talking about workers comp you've got to look at what's going on in the workplaces themselves. I think that is, in a funny sense, poor old workers comp picks it up. When you're looking at problems of skills and you're looking at problems of wages, looking at problems of working time, families absorb that shock. It's in the workers comp system you've got an integrated ecosystem where the costs of this are picked up. I think that's why workers comp is seeing this more starkly than just about any other area of workforce management.

The CHAIR: We've heard a lot recently through this process on early intervention, early recovery, getting people back to work as quickly as possible, that nobody likes the scenario of people being without treatment and out of work for a very long period of time. The implication is that the system might be a bit too rigid or that there might be too many delays, that it might not be exactly fit for purpose. Any comments about what's wrong with the current system in terms of that early recovery and early back to work, and what could be done to change that? From anyone?

SAMUEL HARVEY: I'll have a go first. I think there are multiple layers of problems with the current system in terms of what we optimally want when a worker has mental health symptoms. Mental health is different

to a number of physical injuries in that sometimes the ease of which you can describe what proportion of somebody's illness is due to workplace factors as opposed to non-workplace factors, it is more complicated. If somebody trips over and breaks their ankle, it's very clear that that was at work. But if someone is depressed and there are things going on in the workplace but also things in their home, trying to pick that apart can take time. After the 10-week period we have here in New South Wales around that sort of presumptive liability—provisional liability, while the level of work involvement in a psychological injury is problematic, number one, for the delays but also problematic for the entrenching of positions in terms of the worker and their clinicians having to increasingly make the argument that the workplace was a toxic influence, and that then makes the return to work harder once you've got to the end of that debate, quite apart from the delays.

Beyond that, I would say there are also problems with the way in which patients are managed within the workers compensation system once they get linked in with clinicians. I mentioned that for some psychological conditions it can be a complicated system to try and find a provider that has got the right expertise for you. Sometimes there's a long delay in workers getting evidence-based treatment. That's partly because of the complexities in the mental health care system. It's also because an increasing number of mental health care providers explicitly say they won't see people who are coming through on workers compensation because they don't want to be sitting around waiting for decisions to be made around liability and whether their bills get paid or not, dependent on that.

Thirdly, I think increasingly what we're finding with mental health conditions is we know what treatments help in terms of reducing symptoms. There often has to be a second line of interventions in order to facilitate the functional recovery of people to be able to get them back to work. Within our system and, indeed, within our training of clinicians, I think there's more that we could do to try and upskill the clinicians to know about how to get people back to work.

I did six years at medical school and then another six years' training in psychiatry. Throughout all of that 12 years of training, I don't recall anybody ever teaching me about how to assess someone's capacity for work, what sort of interventions we need to get people back to work, in spite of the fact that survey after survey has told us that what patients care about is getting back their function or recovery, getting back to work, socialising and doing all the things they want to do with their life more than symptom recovery. So I think there are problems within the treatment that's provided under workers compensation that we don't get that vocational recovery right either. There are a range of perverse incentives that operate once a workers compensation claim has been made that can get in the way of somebody recovering.

The CHAIR: Professor Buchanan, you were nodding a lot through that. Was there anything you wanted to—

JOHN BUCHANAN: I just want to let you know Sam and I haven't caucused on this stuff, but I'd just like to underline what he has said. I teach a course on the business of health. I have been looking at health reform for quite some time. The hot topic is integrated care. It's more talked about than practised. What's interesting, looking at workers comp, is that you need integrated care. What you actually get with the workers comp system, though, is visibility of happens when you don't have integrated care and you've got underperforming aspects of the health system being documented. If you have a mental health problem in the community at large, the family sees the problem, and then it's just lost visibility. If something gets registered as a mental health problem in the workers comp system, it's there for everyone to see. When we're thinking about the challenges of workers comp, let's not single out the workers comp system that's failing in some way. What you're getting are deeper problems in the health system as well as the labour market being manifested in a way that researchers and families see but, by and large, aren't visible to policymakers.

The Hon. ANTHONY D'ADAM: I listened earlier. The panellists talked about work intensification, inequality, job control, skill formation and the erosion of structures of social support. It sounds like neoliberalism is driving the mental health problem. Do you think that's a fair assessment, Professor Buchanan?

The CHAIR: Let's not make it too ideological, Mr D'Adam.

Ms SUE HIGGINSON: It's what it sounded like to me.

JOHN BUCHANAN: Look, I've looked at this for many—these problems predate the ascendency of neoliberalism. I'm one of these people who thinks that neoliberalism is beaten up a bit too much. These are deeper—and can I say I'm not a neoliberal. Can I get that on the record?

The Hon. ANTHONY D'ADAM: I'm sure our Chair is.

JOHN BUCHANAN: But there are deeper ways in which a market economy works, and these started to become very seriously manifested in the late seventies, early eighties—way before neoliberalism—and even

good employers are pressured by market disciplines. I think what we've seen is the capacity of employers who want to do the right thing increasingly limited by the increasing problems of competition. We're only at a preliminary stage, but I've studied the labour market for a very long time. What you have in the labour market now are very weak systems of coordination and capturing the benefits of collaboration, and that's kind of what we've got to be looking at.

You could say you're not adopting a neoliberal policy. A lot of people who say they are opposed to neoliberalism are still thinking in terms of market design and things like that. That's not a very helpful frame of reference. I would actually say where are the pressures coming from? It's the increasing competitive pressures, which predate neoliberalism, and we've got to think about ways in which we manage those pressures. I'm a great supporter of William Beveridge on this point: Markets are good servants and bad masters. We've got to think about how do we structure our affairs that we get the best out of markets. At the moment, that's not happening.

The Hon. ANTHONY D'ADAM: I'm not sure our remit goes beyond the workers comp system. Some of those structural issues are obviously something to think about in the broader public debate. I suppose everyone on this panel is in some way focused on preventative measures in terms of establishing healthier workplaces. Perhaps, maybe across the panel, what do we need to do in terms of establishing healthier workplaces? I would also perhaps ask you to make some comment about the Government's healthier workplaces strategy. My sense is it's not particularly effective. What do we need to do to make it more effective? What kind of interventions would be appropriate to recommend for a public policy response?

BRAD PARKER: MATES in Construction is not the be-all and end-all. We're also politically independent, so I will stress that. We are "prevention"—essentially, we're looking at stopping it before it occurs. We were talking earlier about people who present within the workforce, who already have pre-existing mental health conditions. What we have found—this is anecdotally—is that when we train them on site, when we run through our workshops on site, they end up championing the cause because we normalise what we're talking about with them. They get it, and we're normalising it for them amongst their peers. They end up coming to us and wanting to talk to do the next bit of training, which is the connector training after general awareness. That is somebody who can keep someone safe while connecting them on to support. That's one beautiful thing about the MATES program and how it works collectively amongst the workforce.

There was some stuff that we were talking about earlier around job insecurity. What came out of that AISRAP report was that the construction industry is quite unique, apart from being male dominated, but there are some issues around job insecurity and the life of the project is as good as the life of the job. They're always thinking, "Have I got a job to go to?" It is the only industry that I know of that they work themselves so hard to work themselves out of a job. So it's quite unique there. Other stuff that came through with that report was talking about high incidence of alcohol and drug use. There was some other stuff that came out but a lot of stuff around relationships issues outside of work but then coming to work and not feeling as though it's comfortable to talk amongst their peers about their emotional issues.

There's plenty of research around to say that blokes aren't really good at doing that either—women are much better at doing that—but we don't make them feel comfortable. That's what we try to address. So demystifying mental health and suicide, and then giving them the tools that they can spot the problem because we say they spend more time at work than they do with their loved ones—family or friends—that we think they're best placed to pick up these signs, as long as we give them the tools. Give them the tools and then connect them on to support. We don't seek to be the mental health professionals. We don't seek to be Professor Harvey. We don't seek to be the psychologists or the psychiatrists. We just need to get them there.

One of the big things that came out of the AISRAP report was 93 per cent of construction workers who had suicided in the past never sought professional help. They either didn't know where to find it, they didn't want to or the big one was they weren't encouraged to. It's about help offering, help seeking, but certainly about the offering more than the seeking. It is about getting them to come together. I often say mental health and suicide can be complex issues but maybe, just looking at our research where we've had a reduction of suicides within the Queensland construction industry by nearly 8 per cent, the answer may lie within the most important commodity we have within our industry—it's our people. I might leave it at that.

SAMUEL HARVEY: As I mentioned, the research program I've been running over the last 10 years has really been seeking to answer that question: How do you create more mentally healthy workplaces? If I could make four comments around that. The first would be things that seem like a good idea don't always work. The biggest example we've had of that in workplaces has been debriefing, where there was this idea that after a traumatic incident we should get people together, we should do debriefing, to talk is to do good, and that seemed like a good idea. It was rolled out en masse. Then when the research caught up, we found not only was it not

helpful but there was evidence that it was harmful, and it increased the rates of things like post-traumatic stress disorder because it got in the way of people's ways of coping.

One of the reasons that I'm motivated to be researching in this area is because I see a lot of good intention and money being wasted in workplaces on things that don't work or might be harmful. We've done research showing that mental health awareness in the workplace by itself doesn't really do anything. I've mentioned there are psychological things we know are hazards in the workplace for mental health, be it bullying, job insecurity and imbalance of demands and controls. If they can be identified and reduced, that has a preventative impact. Secondly, training managers and leaders in the workplace around mental health does make a difference. We did a study here in New South Wales with the firefighters in New South Wales and showed that when you train the managers just how to have the skills and the confidence to be able to spot people who are struggling and speak to them, we had a reduction in workers compensation-related injury within those managers' teams.

Once you've done those two things, there is some stuff you can do with individual workers about sort of improving their coping skills and that sort of notion of resilience training, but it comes third after those other two. New South Wales is now one of the world leaders around thinking about how to create mentally healthy workplaces. The World Health Organization is going to be releasing their first ever guidance on what workplaces should be doing around mental health at the start of Mental Health Month. Myself and other academics in New South Wales co-wrote parts of that. So there's guidance out there about what workplaces should be doing. I think at the moment workplaces sometimes struggle to know which of the many voices they should be listening to and so it's very hard for them to be coordinating their actions.

Ms SUE HIGGINSON: Really interestingly, we heard some evidence earlier that debrief is still this thing that we should be doing, that it's really important and it can avoid—so how long is this research that's suggesting otherwise? The second part of the question is how prevalent is that knowledge in the places that we need to have that knowledge at this point in time?

SAMUEL HARVEY: Well, the key review that brought together the evidence to show that debriefing wasn't helpful after an incident was published in 2002. So it's now 20 years ago. All of the major guidance that's provided—for example, the Australian guidance on preventing post-traumatic stress disorder, which is updated regularly—has been very clear on it, regularly. But I think it's a classic example of where that translation between what the science tells us works and what happens in workplaces has been far too slow.

BRAD PARKER: We have a postvention where we get asked to come out when a workplace has been impacted by a suicide. The very first point we say to them, "We need to leave it for a few days. We need everybody to get over the initial shock." Then when we come in, we're very cognisant about not impacting on people or triggering people about the language that we're using and ensuring that we have our case management with them and ensuring that we have counselling services available as well. When a builder will ring us and say, "We've just had a suicide on the site. We need your backside here right now," we say, "No, sorry, we actually need to let it sit for a little while. Let them get over the initial shock, and then we come in and do our postvention."

Ms SUE HIGGINSON: Interesting. Can I ask another very different question, perhaps to the professors? In relation to the field of climate change and what that is presenting in terms of—I heard some evidence recently about the profession dealing with underlying mental health causes from the Northern Rivers and the experience that had just happened up there. We heard some evidence earlier about workers who are now so traumatised they will not be able to return back to their workplace because of dealing with that extreme weather event et cetera. Anybody who's reading anything with their eyes open right now knows that we are going to be experiencing this more and more. Is this something that the current scheme, in terms of mental health and workplaces, needs to be really more cognisant of? Is there work happening in that space? Are we prepared?

SAMUEL HARVEY: There is no doubt that there is a link between cumulative adversity and mental health. There's quite a lot of research happening in New South Wales around the mental health impacts of the various natural disasters and we know from the Ash Wednesday bushfires in the eighties that you can still see the mental health consequences of that in the children 20 years later. We are concerned that there are certainly some areas that have been hit by drought, then bushfires, then COVID—

Ms SUE HIGGINSON: Flood.

SAMUEL HARVEY: —then floods, and we know it's those sort of successive hits that can really chip away at people's resilience. So I think it goes back to my earlier point that when you look at the figures coming through the New South Wales workers compensation scheme, part of that is about what's happening within workplaces, part of it is about what's happening more broadly in society if we have people being exposed to those cumulative events. I think sometimes we can we underestimate people's resilience and that's part of the problem with debriefing—we get in the way of people's coping. People can be resilient to single events, but when it's

multiple events, one after another, that's when we start to really worry about the mental health consequences. Certainly we and others are looking very closely at those regions to try and map what's happening.

JOHN BUCHANAN: The other thing that's important about your question and something I was going to add to Sam's earlier argument—I think Sam outlined the things you could do at enterprise level, but I'm a big supporter of John Donne's *No Man is an Island.* No workplace is an island. By you raising that question about something that's across workplaces, that's where something like a workers comp scheme can get the economies of scale and get the benefits of coordination. We're only in the early stages of our scoping report, but that's the thing that's just hitting me as a labour market researcher. There's a massive coordination phase in the labour market generally, but it's particularly stark in the area of climate change. That's not a problem of any one employer. There's the classic expression: "smart for one, dumb for all". It's smart for one employer not to do anything about it, but it's dumb when none of them do anything. So this is where you can't expect any one employer in this area to handle those kind of shocks, and that's the beauty of a workers comp scheme.

Workers comp schemes are one of the earliest forms of labour market [audio malfunction] and we should be proud of that. I think we should be thinking about what do they look like, moving forward? It's not "How do we make them more efficient financial enterprises?" How do they actually manage these changing forms of claims for support? Like I say, it's early days for us, but I think you've got to think about what the scheme can do to help overcome coordination problems. It's not just about how we make it more efficient or how we get the liabilities down. It's "No, what are the opportunities we've got with this infrastructure that we really haven't been fully reaping?" It's getting that positive vision moving forward that I think you should be thinking about. But, like I said, these are early days. I don't have the final report on this; I don't have the scenarios for you. But I think your question is getting to that issue. Always remember that no workplace is an island, because we've kind of lost that vision.

The Hon. SCOTT FARLOW: Professors Buchanan and Harvey, on that point about the future, you've talked about the model of a healthy workplace. A lot of that is support, which is what MATES do, in a sense, and making sure that there is a support network there as well. As we've got more people working from home, are you seeing sort of a rise in terms of isolation and mental health presentations as a result of that and people not being able to either pick up the signs in terms of other employees and what's going on, or to know those networks to interact with?

SAMUEL HARVEY: It's a difficult question to answer at the moment. Certainly, during COVID and during the lockdowns, we saw an increased number of people reporting mental health symptoms, and we saw an increase in people using the Black Dog Institute website or using Lifeline to get support. What we didn't and still are yet to see is an increase in rates of suicide internationally as a result of COVID or subsequent to COVID. Anecdotally, though, what we're beginning to observe is that the impact of COVID is not spread evenly across the workforce. I think there are some people who've been able to bounce back from it and some types of work that work really well with that hybrid, blended model of "some at home" whereas others don't, and I think we are seeing some people who are struggling to make that transition back into the workplace. I mentioned earlier that I think making sure managers are trained about how to spot people who are struggling and to intervene is one of the most effective things that workplaces can do. How do you that when you're seeing somebody over a screen? You can do it, but it's a different skill set. It will take a while for us to really see the lessons of that flow through.

The Hon. SCOTT FARLOW: Did you want to add anything, Professor Buchanan?

JOHN BUCHANAN: You've got to remember throughout most of human history people have worked from home. It's only in the last couple of hundred years that we've had this idea that there's a deep separation. What we're going to be witnessing is a reconfiguring of the relationship between work at home and work in designated workplaces. I think that's something that's going to have to be thought about for the workers comp scheme, because the workers comp scheme was one of the defining institutions for work as a place away from home. If you go back to the early legislation, it was about protecting workmen as opposed to servants. Throughout most of history, there has been a bucketload of servants who were working at home; it was working men's compensation in that role.

It's too early to tell, but I think COVID is actually making us rethink that relationship between work and home, and that's something that's going to have to be thought through. Sam's right: I'm not a doctor, but diagnosing someone over Zoom is going to be quite different to having them in your office, but we're going to have to think about what other social structures of support we have around people at home. That's not unprecedented. Family day care, for instance, often has network of family day carers. They're home-based workers, but they do get kind of structures of support. The other thing to keep in mind is you've got to remember a lot of people look to home as a protection from the problems at work. A lot of mental health problems come from bullying. If you're working from home, you can often take yourself out of the toxic environment. Now, I'm not saying that's going to fully

offset the problems of lack of social support, but there's going to be causality running in both directions on this one.

The Hon. SCOTT FARLOW: There are also some people who look for work as the refuge from home as well.

JOHN BUCHANAN: Absolutely. Arlie Hochschild—I'm a big supporter of that.

The CHAIR: Unfortunately, we have run out of time. Thank you for attending this hearing. Committee members may have additional questions for you after the hearing. The Committee has resolved that the answers to these, along with any answers to questions taken on notice today, be returned within—

The Hon. ANTHONY D'ADAM: Chair, I think Mr Parker just wants to table a document.

The CHAIR: Sure.

BRAD PARKER: I just wanted to table quickly a document, *The Impact of a Suicide Prevention Strategy on Reducing the Economic Cost of Suicide in the New South Wales Construction Industry*. I will leave that with you.

The CHAIR: Absolutely.

BRAD PARKER: It's a study done by no less than Christopher Doran. I'll leave that with you.

The CHAIR: Thank you. If there's any further information you wanted to provide to us via the Committee staff, we'd absolutely be happy to take a look at that. Thank you so much for coming today.

(The witnesses withdrew.)

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

Ms ELIZABETH GREENWOOD, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, sworn and examined

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

The CHAIR: I now welcome our next witnesses. I would ask each of the witnesses if they would like to start by making a short opening statement. Please keep it to no more than a couple of minutes each. Ms Browne?

TRACEY BROWNE: As a national employer association, AI Group has visibility of issues across most of the Australian workers compensation schemes. Most of the schemes are facing the same issues as New South Wales in relation to increasing psychological injury claims and difficulties with return to work. We see any opportunity to contribute to ways that these outcomes can be improved as very important. All employers want to see their workplaces functioning effectively, and having people on workers compensation and not successfully returning to work is not a good outcome for anybody.

So we see a great opportunity to be part of this review, looking at it both from the workers compensation perspective but also from health and safety. AI Group is a member of Safe Work Australia, and we've been actively involved over recent years in the development of the National Return to Work Strategy and also the extensive work that has been done over recent times in psychological injury prevention work as well.

DAVID HARDING: Business NSW welcomes the opportunity today on R U OK? Day to make a submission to the New South Wales Legislative Council's Standing Committee on Law and Justice's 2022 Review of the Workers Compensation scheme, which is focusing on, of course, mental health issues. As New South Wales' peak business organisation, Business NSW has more than 40,000 member businesses across New South Wales. We work with businesses spanning across all the industry sectors, including small, medium and large enterprises. We operate through a network in metropolitan and regional New South Wales, and we represent the needs of businesses at a local, State and Federal government level. Sydney Business Chamber—or Sydney's Chamber of Commerce, as it was originally known—is Australia's second-oldest company. In 1912 we set up an insurance company, which was instrumental in establishing the New South Wales workers compensation scheme. Therefore, we have DNA and we have retained a keen and supportive interest in the progress of New South Wales workers compensation ever since.

As we know, the focus of this review is on the increase in psychological claims within the scheme. Although the differences between physical injuries and psychological injuries are many and varied and it is a topic best suited to those within the medical professions, we can probably all agree that, given the differences in attributes between two types of injuries, it is clear that the current scheme's one size fits all, both in relation to how claims are managed and how risk is shared between the scheme and larger employers, may be flawed. The next question is, therefore, can these flaws be overcome by making changes to the current design of the scheme, or does New South Wales need a new, tailored approach to better managing psychological illnesses within our workplaces?

Business NSW's submission contains recommendations relating to both aspects of this question, and we look forward to assisting the Committee in finding solutions. Chair, if you will, I'd like to correct a typographical error on the record on page 10 of our submission. We would like to correct it to "increasing the likelihood of workers with a psychological injury retaining at least partial work capacity", rather than "reducing", as it states in our report.

The CHAIR: That's absolutely fine. I'll make sure that that's corrected. I'll start off with a couple of questions, and then I'll hand over to my colleagues. With the current scheme, we've heard that it's probably a bit too rigid. I think you said that it's very much trying to have a one size fits all, which doesn't really work; it's not very tailored. What would you say are the biggest problems with the current scheme in terms of it might not be conducive to getting people back to work as quickly as possible?

DAVID HARDING: I'll start on that one, and then maybe pass to my colleagues. Look, I think it's very true to state that what we heard from previous witnesses is that physical injury is very attributable to the workplace and is easily attributable to a time, a place and then a fact of that injury. But the much wider reasons behind psychological injury point to shared responsibility rather than one point of responsibility or a very narrow point of responsibility within that workplace—especially as, today as we've just been hearing, that workplace can be blurred between the home and a different place of employment. So we would talk to the actual methodology probably being not fit for purpose for dealing with much more complex causes behind psychological injury.

Also, the premise that we're starting to see in the process being applied that the injury was indeed the fault of the place of employment is probably an assumption that needs to be questioned, given the complexity of issues behind many of these claims. We are also seeing a very practical application of process which is excluding employers from their voice in the first 10 to 13 weeks or thereabouts of investigation, which means that employers are quite often really out of the process of understanding what happened to their employee and, therefore, only hear about it when effectively it becomes their responsibility. I might stop there and pass to my right.

ELIZABETH GREENWOOD: I would just add that, in our experience, a lot of the psych injuries—because the major mechanisms are to do with bullying, harassment and then stress at work—are often related to the relationship breakdown. That's something where a WHS perspective and focusing on good relationships at work is an important factor because if there's that good relationship at work, then that will increase the chances of a successful return to work. Another issue that exacerbates the lack of return to work—there are two. One is where we've got anecdotal evidence from members who say that the nominated treating doctors are saying to the injured worker, "You don't have to go back to that workplace, regardless of what the legislation says." They actually tell the injured worker, "You don't have to go back to that workplace," despite there being suitable duties.

Then the final point is, in relation to that relationship breakdown, what we're finding is with the provisional liability, as opposed to the liability decision at the end of the 13 weeks—the whole provisional liability provisions are not being explained properly either to the employer or to the injured worker. When the injured worker is receiving the weekly benefits and medical treatment on a provisional basis, they don't understand it is on a provisional basis. They feel vindicated, and then they think, "Yes, I am in the right. The employer is in the wrong." Then, ultimately, if it does get declined, that relationship breakdown is beyond repair, and then they're left—they're lost. They don't understand, and it probably exacerbates their injury.

So we're very strongly of the view that the relationships are key; the WHS approach of the shared responsibility is very much the right one to take. Our policy committee is very strongly of the view that if those injured workers don't have a compensable injury, there's a lack of support outside of workers comp. Workers comp is there for a particular reason, and if liability is declined, where do those people go?

TRACEY BROWNE: I agree with everything that has been said so far. I think one of the things that really creates significant difficulties when we're looking at psychological injuries is the lack of early intervention. If a worker falls over and breaks their arm at work, the supervisor is going to be very comfortable about having a conversation with them. If the claim has arisen out of either real or perceived conflict in the workplace, sometimes there are doctor certificates which say there can't be any contact with the workplace.

But even outside of that, supervisors and managers are often uncomfortable about how they initiate a conversation about early intervention. They're worried that they might make the injury worse. Talking to somebody about a broken arm is not going to make their broken arm worse. Talking to someone about a psychological injury, people will often feel that that will make it worse and lots of discomfort. Particularly, if there's conflict between the supervisor and the worker, all of those normal recovery processes just don't occur.

I think there's a much stronger need—for a psychological injury—for an earlier intervention initiated by the claims agent, particularly for smaller employers who don't have the HR manager or the safety manager who can be the buffer between the worker and where the conflict has occurred, and getting that earlier third party who can come in and potentially be part of the conflict resolution through either a rehabilitation service, mediation or a service which has been referred to as facilitated discussions in some of the schemes to try and deal with the interpersonal conflict so that those return to work can occur.

The CHAIR: Almost every witness has spoken about early intervention, early recovery and return to work. To clear something up, is there any reason why an employer wouldn't want an employee to come back to work? We've heard that, potentially, some employers might want certain claims denied or delayed. I don't think that's the case, but I'll put it to you to clarify or respond to that. I can understand why, maybe, insurers might want that, but I'm not certain as to why an employer wouldn't want workers to get back to work as quickly as possible.

DAVID HARDING: I think it would be very dependent on the case—case by case. As a structural flaw that we have in the system, if the employer is excluded from that initial 13 weeks, as we've spoken about, they feel themselves to be isolated from the process. Perhaps, as Elizabeth spoke to a couple of minutes ago, it starts to bake in a sense of transactional fault and responsibility onto the employer, who may, particularly if they're a small employer, be confused, worried and, frankly, upset by the whole situation that they find themselves in. Within New South Wales, as compared to somewhere like Germany or Austria, we have a prevalence of small businesses. We don't have a very strong medium-sized business community, which makes us, perhaps, more vulnerable and less resilient to what our members call a pandemic sweeping through us at the moment. A lot of our businesses are small and don't have access to the normal not only lack of governance but also lack of HR and

so on within their organisation. It's a passing comment, but I think we are a little more vulnerable as a business community here.

TRACEY BROWNE: I think, also, if there has been conflict in the workplace, it can often be very difficult, particularly in smaller businesses, to be able to have an environment in which that person who has put in the claim can come back to work in a safe and supported manner. Anything that can be done to deal with the conflict early would make it easier for employers to be comfortable with a person returning to work. We do have the specific group of psychological injury claims which are probably the most problematic, and that's the management action, where a business has been going through genuine, needed disciplinary action. Maybe, in a situation where there is about to be a termination of employment, a claim is lodged and the employer feels often that the claim has been lodged to avoid the termination. They would be the sorts of claims where you are likely to have that scenario of, "Well, the person was almost out of the business. We don't want to manage their return to work back into the business."

In those circumstances, it's really important for the scheme to recognise that it may not be in the interests of either the employer or the injured worker to drive down that path of saying that the return to work has to be in this workplace. Identifying early in the claim, by the agent, that maybe in this situation the best thing for everybody is to be looking for alternate employment for that worker rather than putting the worker in a position where they're in limbo for a number of months. They don't want to go back to the workplace and the employer doesn't want them back in the workplace, but they're not being supported to look for other options.

The CHAIR: Just a final one from me, and then I'll hand over to colleagues. If psychological claims costs continue to rise exponentially, it could potentially lead to an increase in premiums to employers. If you don't know, maybe you could take it on notice, but at the moment, how onerous or costly are the premiums to your members? I have heard anecdotally that it can be quite a significant cost of doing business at times.

DAVID HARDING: I might start more generally around insurance burden on New South Wales businesses. We know that the cost of insurance is, more generally, across the umbrella, rising at upwards of four times the rate of inflation. It is really significant and, in some cases, the largest cost burden on a small business. If you add to that the potential significant rise in workers' compensation, this becomes a very significant, real and present danger. I'll pass to Elizabeth.

ELIZABETH GREENWOOD: The particular issue with the premiums and the costs for psychological injuries relates to the larger employers—the ones who have to pay what's known as a claims performance adjustment. That's the sharing of the risk between the scheme and the larger employers. They have an extra component on their premium. That formula—we don't know what it is, since the 2015 changes because it's a confidential filing. Then once it's approved, it's confidential, so employers now—no-one knows what the formula is. They just know what comes in their notice. What we do know is that there's a multiplier that's used for the claims performance adjustment that is extraordinarily volatile. What we also know is the costs that go into that multiplier are the weekly benefits, so they're the premium impacting costs.

The longer an injured worker is in receipt of weekly benefits, the bigger that amount is that goes into the very volatile formula. A lot of the time, the employers—theoretically, that's supposed to be because the employers can manage return to work. With psychological claims, that's not necessarily the case. With the latest formula, I've actually had members ringing me. The worst one I heard was he had one psychological injury claim for 12 months. The weeklies came to $100,000. Claims performance adjustment impacts them for three years. Instead of being an extra amount, that $100,000 has been passed through directly, so he has to pay, on top of his premium, an extra $100,000 for year one. He will have to pay that extra $100,000 for year two and year three. That's just this first 12 months, so it is a direct pass-through. It's a massive problem because (a) we don't understand what the formula is—we don't understand why they're doing it—and (b) it's just so unsustainable. It's ridiculous. It's having a massive impact on redundancies, the economy and the ability for employers to keep trading.

The Hon. ANTHONY D'ADAM: Thanks for your attendance today. I want to put a couple of proposals that have come from other submissions and get your feedback on them. There are two proposals from the Australian Rehabilitation Providers Association. One is in relation to where a return to work is not anticipated within four weeks, to have a rehabilitation provider appointed and mandated. The other is that for all psychological injuries, you would have a rehab provider appointed. What's the position of the business community on—

ELIZABETH GREENWOOD: I think that's an excellent idea. In fact, SIRA's currently having a trial where rehab providers are acting as a mediator. I think that rehab providers, especially for small businesses—they're invaluable. They help small business manage their claims. In 2016, when there was a transfer from scheme agents to the in-house claim agents, the rehab providers stepped up and actually did the claims management for the employers. Without rehab providers, you wouldn't have had return-to-work rates as good as they were, even though they were declining. I think that's an excellent idea.

TRACEY BROWNE: I think it goes to the point I was making before as well that, particularly for small employers, if there's a psychological injury claim, they're not going to know what to do with it. They need a third party who can come in and assist them and not be the agent, because the problem with it being the agent—because psychological injury claims take some time to be determined, it gets confusing then about whether the agent is there to help them or if the agent is the person that they have to prove that they are unwell to. That independent rehabilitation provider who can support the injured workers but also be part of identifying what are the conflicts that we need to deal wit, how can we overcome them, how can we get this person back to work maybe before the claim's even been determined—that's going to give us really good outcomes. I think rehab providers are essential in doing that. Whether it needs to be four weeks for all claims might be a little debatable depending on the types of claims. But for psychological injury claims, the sooner the better.

The Hon. ANTHONY D'ADAM: The other proposition I wanted to put to you was the one that has been suggested by Black Dog Institute. The Productivity Commission Inquiry into Mental Health has recommended that, irrespective of liability, there be six months' support for mental health treatment for psychological claims. What would be your view on that proposal?

ELIZABETH GREENWOOD: I'd like to know who's going to pay for it.

TRACEY BROWNE: And I think that was my point as well. Providing that support might be incredibly valuable from a community mental health support—

The Hon. ANTHONY D'ADAM: It might pay for itself. Isn't that the possibility?

TRACEY BROWNE: But if an individual employer is having to pay for the costs of a claim which has not been accepted as their liability, then they will be taking, particularly for a large employer with this sort of example that Elizabeth just used, an extra burden for a claim that is not their liability, and that would seem to be an unfair burden to put on an individual employer.

ELIZABETH GREENWOOD: Workers comp is a trust; it's a statutory trust. Employers pay premiums so that their workers who are injured at the workplace get the proper treatment and, if it's appropriate, they return to work or recover at work. Employers don't mind paying premiums if it's their responsibility and it's fair. As I said earlier, there needs to be another bucket of money. If a claim is not compensable under the workers comp scheme, there still needs to be a bucket of money. I agree that there needs to be support, but to lump it all in the workers comp scheme when liability has been declined, especially with the volatility in premiums, especially with larger employers, that's a pretty difficult pill to swallow, especially when employers are effectively being shut out of the scheme.

The Hon. ANTHONY D'ADAM: I suppose the follow-up question is that, given that we've heard from injured workers the process of disputed liability and that once they get caught into that systemic adversarial process, that has a deleterious effect on their mental health and ultimately impacts their likelihood of returning to work, that actually that kind of intervention may actually pay for itself if they're getting early treatment, there's no argument about the treatment, if it's six months to be able to access the treatment. Do you accept that in that circumstance it might actually lead to a benefit for the system and therefore a saving for employers?

ELIZABETH GREENWOOD: That's why there's provisional liability in the first place. We did say that 11A should come back as a reasonable excuse. If I could just clarify on that, reasonable management action—you need to follow certain procedures. You need to have a paper trail. It should be obvious whether an employer has taken reasonable management action in the proper way. If there's no paperwork, if there's nothing to prove that there's been reasonable management action, then clearly there's no reasonable excuse. But workers compensation is necessarily adversarial to a certain extent, and it's just unfortunate that those processes can exacerbate psychological injuries, but you've got to understand that there are hoops. You have to prove necessarily that nexus with the workplace, and that's very difficult to show within the workers comp scheme, which is why part B of our submission is asking the question: Is it fit for purpose? Because in trying to prove that nexus, no-one is winning when it comes to psychological injury.

The Hon. ANTHONY D'ADAM: I might just ask one further question. The balance of psychological injuries is quite different in TMF to the Nominal Insurer. You represent private industry. Why do you think it is that there's such a divergence between the number of psychological injuries in the public sector as opposed to the private sector?

ELIZABETH GREENWOOD: I can only answer to the anecdotal stories I've been told. I was in the working group for the code of practice for preventing psychological injury, and you had employers, you had professors, you had unions, and we all came to the table and it took a long time to get the result but we all agreed that it was a good result. The code that came out the other end was a good document. However, during that process, I was shocked by the stories that were coming out of the public sector and appalled and, quite frankly, I said at

the time that that would never hold up in the private sector, and my experience in the private sector is very much the SME side of things and it's been predominantly residential construction. That's my experience. And I actually suggested at the time, perhaps they should segment the code and have a different approach for SMEs, large business and the public sector because the experiences are so different and the dynamics are so different. But in terms of why the TMF is so bad, I've never worked in the public service so I can't speak to that, but there are differences.

The Hon. ANTHONY D'ADAM: So it's more that you think that there's something the public sector is doing wrong rather than something the private sector is doing right.

ELIZABETH GREENWOOD: I wouldn't say that. The very smaller businesses, in my experience, especially micro and small end of town, they look upon their workers as family. But that may not necessarily be the case in other businesses.

TRACEY BROWNE: Certainly small businesses do have that approach of—it is family. You're probably not recruiting on normal selection criteria that you have in the public sector. You're recruiting because it's someone you like or it's the brother of someone you know, so it's very much a family-type approach and I think that gives a different perspective. But also I think there are parts of the public sector who obviously are exposed to much more significant stressors in their day-to-day work than in the private sector. To look at the TMF, I think it would be important to actually break that up further and say: What is it, or how many of these claims are actually coming from the stressors of the day-to-day work that might be involved with being a police officer or a correctional services officer compared to what are the things that are coming from the culture and the workplace? Because I think that would be more telling in relation to the TMF scenario.

The Hon. ANTHONY D'ADAM: You think it might be a factor of the public sector having a higher concentration of, say, knowledge work or human service-type work and that there might be something in that in terms of the driver of higher psychological injuries?

DAVID HARDING: I might make a comment. I had also written down here the importance of work families in big, medium and small businesses and indeed the public sector. I think we've seen, particularly within the professional services in the large offices, moving to active working where people don't have a place that they call home at work, surrounded by people that they're familiar with and who they have long-term relationships with in a working environment—has potentially been damaging. That way of working has been embraced across the public service over the last few years. I don't know whether it has any impact. I'm not an expert in this.

But we do know that small cells of people working together closely and consistently over periods of time is a healthy place for people to work. Of course, the public service employs hundreds of thousands of people in large groups. Perhaps, also, they were more affected by COVID. Perhaps they were more affected by working in isolation. Perhaps the last few years have been particularly stressful for the public service given droughts, fires and pandemics. But that's all speculation. We have no data on that.

The Hon. SCOTT FARLOW: I just want to tease out, Mr Harding, your suggestion in terms of a different scheme, potentially. We've heard today from your perspective—we've heard it from other witnesses as well—that it's much harder to diagnose that something occurred at work when it's a mental health condition. We heard from one witness this morning that talked about, from their perspective, the flow-on effect in terms of the causation—like when you have a relationship breakdown which is caused because of, as they put it, a "toxic" work culture. That then leads on to a family breakdown. That then leads on to all these other issues. That's hard to prove from their perspective. But in the same sense, from what you're outlining as well, it can be hard to prove from an employer's perspective that something is not because of a work environment. How would you see that separate stream effectively running if we were to put workplace mental health injuries into a different category or a different scheme?

DAVID HARDING: I think you've hit the nail on the head, as it were, with the fact that physical injuries at work are a lot easier to place in terms of time and place, and often the causation is easily investigated. But the principle we would like to see within a different scheme that manages the much more complex areas of psychological claims is shared responsibility—so, the acknowledgment that there is more than one causal factor in many cases. That is a complex area. It's a complex thing. But, nonetheless, if we embrace that principle, that would be a bedrock, I think, of having much less of a transactional or adversarial approach to what are complex human issues here.

How that might develop into a separate stream of the scheme or a separate scheme altogether, our policy team is working that through. We're not complete in that study yet, but I think the real principle here is that we're suggesting that the present scheme—which was very much built, of course, around physical injury—is, frankly, just not fit for purpose at all, because the causal factors and the return-to-work processes and so on around

psychological illness or injury are quite, quite different. That needs to be accepted, and whether or not the causation is societal or whether it's family or whether it's work or whether it's a combination of all of those things, whatever scheme we develop needs to have that at the core of its principles.

The Hon. SCOTT FARLOW: I just want to pick up, as well. It sort of leads on from the Chair's opening questions in terms of the labour market at the moment. We are looking at—I heard the Reserve Bank Governor in our brief break before—unemployment at more than 50-year lows. We are looking at a very, very tight labour market at the moment. We need as many hands on deck to be able to help in terms of the labour force. What are you seeing when it comes to workers who have a psychological injury and their return-to-work rates compared to those that exist for those with physical injuries?

DAVID HARDING: Well, we know that there's a significant and statistical difference. So we know that the return-to-work rate, of course, of physical injury is generally high because employers and employees and the health professionals involved understand the process and they understand the alternatives for people who have incurred a physical injury. Alternate duties, return-to-work schemes and so on have been around for a long time and they're well understood. The process is understood, the culture is understood, the players involved understand how to deal with the issue and how to come to a successful outcome together. I think these elements are all largely absent or misplaced within the management of psychological injury in that there is a lack of understanding, there is a lack of process, there is a lack of understanding and communication between the parties which, therefore, leads to this unacceptably high rate of unsuccessful return to work, and particularly return to work where they've come from. I mean, for people to not only have a difficult period in their life because of psychological injury but also have to change jobs is not a successful outcome. But, unfortunately, it's all too common.

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

TRACEY BROWNE: I think a number of physical injuries will resolve quickly. So if we're talking about a broken arm or a broken leg, a sprained ankle, we know we're going to get a quick resolution and we will get people back to work. Even where we don't have that quick resolution, if it's a back injury and the person needs modified duties the restrictions are usually fairly clear—the person can't lift anything greater than 20 kilograms or they need to be able to sit and stand et cetera. When we talk about psychological injuries, if there has been interpersonal conflict, part of the return-to-work restriction may be that the person can't work with their boss. And so, depending on the size of the business, the opportunities to actually provide alternate duties that can deal with that restriction are a lot more difficult. But in other situations, as well, you will have the situation where because of the psychological injury the person can't face coming to the workplace, whatever the duties might be, so you don't get that clear medical assessment of what the person might be able to do. Usually, the first certificate for psychological injury will be time off work—not necessarily with the treatment associated with it, just time off work, whereas we don't get as many of those for a physical injury.

ELIZABETH GREENWOOD: If I could just add, as well, that you've got—for example, with bullying and harassment, coming back to the workplace tends to be not with that particular individual, so they're moved to a different part of the workplace. But then the injured worker—a common reaction is "Well, why am I being punished? They're the one who was a toxic supervisor and I'm the one being discriminated against, being put into that area." So it's sort of layer upon layer of difficulties.

The Hon. SCOTT FARLOW: Thank you.

DAVID HARDING: I think we would welcome that the World Health Organization is starting to put some guidelines around this and perhaps move away from the multiple different guidelines or behaviours and patterns of behaviour, or people, frankly, making it up as they go along because they don't have anything better to do. I think this is very important, that we have some clear guidelines for employees, for employers and for clinicians which we all understand, which has common language within it, so that we can move forward with a bit more confidence and a little less trepidation around what is, obviously, a difficult issue for both the employer and the employee.

TRACEY BROWNE: Sorry, can I just add to that, as well?

The Hon. SCOTT FARLOW: Indeed, Ms Browne.

TRACEY BROWNE: Going back to Sam Harvey's comment earlier that in all of his time in medical training there wasn't a focus on how do you help someone get back to work, part of our base level issue is we have medical practitioners who don't know how to help people get back to work. We've got employers who don't know how to help people get back to work. It's a major flaw.

ELIZABETH GREENWOOD: And employers are scared of making the injury worse. If it's anxiety and depression and the injured person says it's from the workplace then the natural reaction of the employer is

"Well, I'll just give them the space they need to get better." But the theory with return to work is you need that open line of communication and checking in constantly. So that's a tension there, as well.

DAVID HARDING: I think the phrase "demystifying" was used by an earlier witness, and I think that's very important. For smaller employers, these processes and periods of dealing with an employee who has a psychological injury, of course, can also be very, very stressful.

The Hon. SCOTT FARLOW: Thank you.

The CHAIR: Unfortunately, we are out of time. Thank you so much for coming today and for presenting your evidence to this Committee. Committee members may have additional questions for you after the hearing. The Committee has resolved that the answers to these, along with any answers to questions taken on notice today, be returned within 21 days. The secretariat will contact you in relation to these questions. Thanks so much for coming.

(The witnesses withdrew.)

(Short adjournment)

Mr SIMON COHEN, Independent Review Officer, Independent Review Office, affirmed and examined

The CHAIR: I welcome our next witness. Do you have an opening statement you would like to share with us?

SIMON COHEN: I do, Chair. Firstly, thank you for inviting me to appear before you today. Earlier this year when deciding the theme of our annual Independent Review Officer seminar, we assessed the mega trends in the New South Wales workers compensation scheme. A clear standout was psychological injury claims. We knew that there were increased incidents of mental ill health across the community and increased psychological injury claims in New South Wales, and that, for many of these claims, they were more serious, with injured people having more time off work and with more workers with significant and permanent impairments.

The Independent Review Office's work falls into two primary areas: solving complaints where injured workers cannot sort out their concern with the insurer; and providing funding through the Independent Legal Assistance and Review Service for expert lawyers to advise and act for injured workers. Each of these areas is impacted by an increase in psychological injuries. More applications for ILARS funding as a result of psychological injuries have been seen—trebling in the last five years—with a consequent tripling in the expenditure required so that these workers can obtain appropriate legal assistance, and more hard-to-solve complaints which are often ongoing for extended periods and where the outcomes are less likely to be satisfactory from the worker's perspective.

Our submission focuses on the issues we have seen in our roles and seeks to bring forward the voice of injured workers and their experiences. The workers we deal with are the ones where the claim has not proceeded smoothly; where liability, including provisional liability, is disputed from the outset and the matter is contested at each step; and where there are issues in the handling of the claim itself, including delayed decisions, multiple medical examinations and inflexible case management. The consequences for workers where their psychological injury claim is not well managed can include that treatment may be delayed, that they suffer financial hardship and an exacerbation of their injury occurs, impacting upon their return to work and, importantly, their overall wellbeing.

Across the workers compensation system, there are responses to the challenges these claims present, including clearer regulatory guidance, better case management and more research, which are some examples in the submissions before the Committee. Our view, though, is that more could be considered to reduce the disputes and the impact of claims on workers, and enhance their recovery. Areas we've highlighted in our submission that may warrant consideration include funding treatment for workers' mental health conditions without the need to establish liability, reducing the number of medical assessments for workers, improving return-to-work opportunities, ensuring the most skilled case managers deal with workers with psychological injuries and increasing the monitoring of decision-making in these cases. Our view is that there is an urgency to improving how the workers compensation system responds to psychological injuries. I welcome the opportunity to discuss these matters with you today.

The CHAIR: Wonderful, thank you. I'll start with a couple of questions and then I'll hand over to my colleagues. We have this almost unique set of circumstances where psychological claims are increasing at quite a significant rate year on year, but we've also heard evidence of injured workers feeling like their claims have been unnecessarily delayed or denied. You wouldn't normally have those two things happening simultaneously. You'd think that if a lot of claims were being delayed or denied, you probably wouldn't have psychological claims increasing at such an exponential rate. Do you have any views on why those two things might be coinciding at the same time or what has led to that position?

SIMON COHEN: I suppose my view, really informed by our role and place in the system, is that the increase that we're seeing in psychological injury claims—the SIRA data I think increases in the last five years by around 3,000, from around 5,000 to 8,000—is being reflected and perhaps even amplified, in particular in terms of when workers need to seek legal assistance in those matters from expert lawyers. We fund those lawyers to provide that assistance. When we receive applications for funding from lawyers on behalf of those workers, we see that the applications are coming at an earlier point—much more frequently within three months or within 12 months of the injury—than for other injuries and that the nature of the disputes goes to issues around liability but also treatment and weekly benefits. So it seems that the areas of disputation fall across all of the key areas of claims management.

One of the things that I know many witnesses have reflected on, both in submissions and today, is there is something fundamentally different about a psychological injury from a physical injury. That includes the mechanism of injury itself. It includes the questions around whether the workplace is responsible for that injury. It also includes the response of the workplace to an injured worker, both in terms of being able to return the worker

to the workplace but also in terms of how the workplace can actually make adjustments itself—if the cause is stress caused by overwork or the like, how quickly workplaces can respond to that, as against a trip hazard or something along those lines. Our view is that what we see in these matters, I suppose, reflects the unique nature of them and does lead to the question, firstly, how fit for purpose is the current system to deal with some of those issues and what are the types of reforms that might be considered; but, secondly, if we're working within the existing rubric, what are the opportunities to improve, in particular, the way those cases are managed so as to reduce some of the friction that exists in them at the moment.

The CHAIR: I know you said you deal with the more difficult disputes that arise. Do you often deal with disputes between whether it was a psychological injury at work compared to whether it's at home in their personal life? Does that often come up as grounds for dispute that you have to deal with?

SIMON COHEN: Our role isn't to decide disputes. We have two particular roles if somebody's got a complaint. Usually, when a claim is already on foot, we will deal with that matter. Then, once a worker is in need of legal assistance, we provide funding for those matters. I suppose where we see disputation in those matters, it often goes to the question of whether work was the cause of it or something happening outside of the workplace —so, as you say, whether it was something that happened at home—but also, if in fact it did occur in the workplace, whether there's a defence to that—in particular, whether the injury was the result of some reasonable management action taken by the employer. That's an area of frequent disputation, and it's an area where there are a number of matters that we see funded and go through to the Personal Injury Commission.

The CHAIR: What about the whole person impairment—the WPI—at 15 per cent? Is that something that you think is problematic? I would just assume that a WPI at 14 per cent versus a WPI at 15 per cent is probably very difficult to—you've got to draw the line somewhere, but it would be quite difficult determining that and could be grounds for creating disputes between workers and insurers, for instance.

SIMON COHEN: I suppose our view about whole person impairment really goes to the use of it as a method to determine whether somebody should or shouldn't be entitled to weekly benefits or treatment. It perhaps doesn't go so much to the percentage, whether it's 14 or 15 or whatever, but whether a score that has been designed to assess impairment for the purpose of a monetary compensation is the appropriate tool to actually make a decision about whether someone is unable to work and therefore should receive weekly benefits or continues to suffer from the effects of the injury and therefore continues to need treatment. From our perspective, the recommendations from the McDougall review, reflected in our own views about that, is that that's something that does need to be looked at closely. It clearly drives disputation because it's such a critical element, particularly at the point in time where a worker may have their benefits cease, to be able to establish whether in fact they do or don't meet those thresholds. But I think the question that comes before that is whether they're the appropriate mechanism to throttle access to benefits.

The CHAIR: You're comfortable with the McDougall review and happy to see them being implemented?

SIMON COHEN: I think in terms of the need to review the whole of the legislation, we absolutely agree with that. We think there is a need to have a look at the question around whether whole person impairment is the right test to determine whether people have access to weekly benefits and treatment. We've been a strong advocate for increased access to commutations. Indeed, if there was that increased access, appropriately framed through access to appropriate legal advice and oversight, for example, by the Personal Injury Commission—subject to those matters, it would give people an avenue out of the workers compensation system that they don't have at the moment, and we think that's something that is worthy of progressing.

The CHAIR: Just a final one from me—liability. You spoke about before that it's a significant problem determining liability. But we heard from Business NSW and the Australian Industry Group just before that if you didn't have to determine liability—so, basically, everyone was covered—then who would have to bear the cost? Obviously if you're a small business, you'd prefer not to have to pick up that additional cost in premiums, which is a fair point. I don't know if you wanted to comment on that? But also, if you remove the need to determine liability then there's also a lot less transactional cost arrangements or disputes between insurer and worker. I assume that's a large degree of how acrimonious the system might be. A large part of it would come down to that.

SIMON COHEN: I suppose one of the key elements that a range of research that I understand is before the Committee points to is the importance of access to early treatment. One of our observations would be that workers who feel strongly and well supported are less likely to need to access our services, because they're not going to have disputes. When you have a look at some of the recommendations and some of the legislative changes that have happened in other jurisdictions, they've really focused on that front end about whether you need to make a liability decision at all during the first 13 weeks. I think that's the Victorian model. The Productivity Commission

is particularly focused on treatment in the first six months and whether you need to establish liability or not in order to be able to access that treatment. I think that would be my first reflection. It might not be an "if" but a "when" question of when liability may or may not need to be determined. My second reflection would be then, depending on what the policy setting was that was preferred, you would look at what's the appropriate way in which that would be funded. That's not a matter that I've given any thought to and I guess would be something that would be developed up if those sorts of policy options were put forward.

The Hon. ANTHONY D'ADAM: We got a pretty lukewarm response from the employers representatives earlier on that proposition. They clearly don't want to fund it through the existing system of premiums.

SIMON COHEN: I guess I would just reflect that that would be one of the policy issues that would need to be worked through if there was a decision made to remove the question of liability at an early stage of the claim.

The Hon. ANTHONY D'ADAM: I wanted to clarify in terms of the driver of disputes on liability. Can you explain to me the relationship of the employer in terms of the liability decision versus the insurer?

SIMON COHEN: Our understanding is that that decision is the insurer's decision. I understand they consult with the employer in relation to at least aspects of those decisions. Our role specifically focuses on the relationship between the worker and the insurer, both in our complaints handling function and in relation to the work that we've done through the ILARS scheme.

The Hon. ANTHONY D'ADAM: When you say "the insurer", are you talking about the claims manager, not the Nominal Insurer? It's not made by icare. It's made by EML or whoever is—

SIMON COHEN: Depending on the nature of the claim, if it's a self or specialised insurer, they would be made by those insurers directly. In some matters it's the claims manager. In some circumstances icare has an ability to make those decisions directly itself, depending on the nature and the level at which those decisions are made.

The Hon. ANTHONY D'ADAM: Do you have any visibility of where those decisions are being made, or is that something that's on the public record? I'm not sure.

SIMON COHEN: I could take that on notice. Certainly on a case-by-case basis in complaints, we see who makes those decisions. It may be a question that's better put to icare than to us, though.

The Hon. ANTHONY D'ADAM: What incentivises—say, in the case of the Nominal Insurer—either the claims manager or the Nominal Insurer itself to dispute liability? Is there something that you understand in terms of the incentive structure that operates between the Nominal Insurer and the claims manager that might incentivise a more aggressive approach in terms of disputing liability?

SIMON COHEN: That's not a question I could answer. I've got no visibility about those matters.

The Hon. ANTHONY D'ADAM: There was a proposition put in an earlier session—perhaps not on the public record; I think we had an earlier closed session with an number of injured workers—that, in terms of independent medical examinations, medical practitioners should be appointed by the PIC as opposed to a nominee of the insurers or claims managers. What's your view about that?

SIMON COHEN: I would firstly reflect that a common cause of complaint to us is the number of medical examinations that injured workers need to attend. Of the IME complaints that we receive, around a third of those are from injured workers, so it's a much higher proportion than the general claims numbers.[1] What we know, both through what injured workers tell us and also a range of other research, is that attending those IME appointments can be quite distressing. They have to retell their story on a number of occasions about what has happened to them, the impact it has had on them and the like. Our view is that exploring if there are opportunities to reduce the number of IMEs that an injured worker needs to undertake is something that would contribute to reducing the distress and the impact of the claims process on the injured worker.

My predecessor, Kim Garling, led the Parkes Projectthat looked at a range of issues in the workers compensation system. One of the recommendations arising out of that was to look at whether a single IME might be able to be undertaken with the agreement of both the worker and the insurer. From our perspective, there's

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[1] In correspondence to the committee dated 6 October 2022, Mr Simon Cohen, Independent Review Officer, Independent Review Office, clarified his evidence with the phrase "with psychological injuries" inserted after "around a third of those are from injured workers."

value in looking at and deciding on the best mechanism to achieve that, but there's certainly value in terms of what we see is the impact on injured workers from continued requirements to attend those appointments.

The Hon. ANTHONY D'ADAM: Just clarify for me—the IMEs can be used for determining liability but also in terms of suitability of treatment. Do you have an understanding of what the breakdown is in terms of what proportion of independent medical assessments are done for liability purposes versus questions around appropriateness of treatment?

SIMON COHEN: Yes, if I can perhaps reflect. IMEs can occur at the request of the—the injured worker's lawyer may request an IME, so on their behalf, at the request of the insurer, and then medical assessments can occur before the Personal Injury Commission, which then results in a medical assessment certificate that is binding on the parties, subject to whether it is appealed or not. They can be used at many and varied points in the claim, whether it is from the decision around initial liability through to the appropriate treatment that the worker may receive and, critically, in the context of thresholds for access to ongoing benefits and work injury damage claims, whether the worker actually has a percentage impairment that enables them to meet those thresholds. They are the most common areas where we see those medical examinations made.

I don't have a sense of the proportion at each step of those. I guess what I would reflect is that injured workers often report that they are required to undergo multiple medical examinations for each of those steps, and that is part of what causes the distress for them. One of our case studies points to an example where a worker had an independent medical examination for a claims and treatment purpose, made a whole person impairment claim and then was requested to go and undertake a further assessment in relation to that. We were able to solve that complaint through our complaints process, but I think it is a really good example of the potential impact of those and the potential requirement to undergo multiple examinations.

Ms SUE HIGGINSON: One of your case studies says that that was the cause of someone feeling like they didn't want to live anymore—it is that severe. Sorry, Mr D'Adam.

SIMON COHEN: That was what the worker reported to us, and that they had been requested to undergo repeated medical examinations and that had been the impact. It did point, in our view, to an opportunity to improve the existing system in the context of consulting with the nominated treating doctor before requiring a worker to undergo an IME to see what special arrangements might be put in place to support them, which we think is something that could be done within the existing system.

The CHAIR: The interesting thing, which I don't think we would be able to get access to, would be what the cost of the secondary psychological injuries would be as a result of dealing with the scheme, but I think it would be very hard to get any figures on the numbers of workers, or the dollar cost would be very hard, I assume. You would not have that?

SIMON COHEN: I guess what I would reflect is that SIRA has done some work around proxies for that in terms of workers with physical injuries who then require psychological appointments. I am happy to take that on notice and see what we might be able to find about—

The CHAIR: That would be great.

SIMON COHEN: —secondary psych injuries. But I will be up-front: I'm not sure whether there is a lot more light I will be able to put on it.

The CHAIR: We will ask SIRA and icare as well when they appear.

SIMON COHEN: Of course.

The CHAIR: The other thing to ask was, on workplace rehabilitation providers, if a workplace rehabilitation provider was appointed earlier on in the process—so within the first eight weeks—instead of leaving it all to the case managers in that early time period, do you think that that would be beneficial in terms of taking some of the heat out of the system, getting people back to work more quickly?

SIMON COHEN: It is an indirect answer to the question, if you would excuse me, because I am not an expert on knowing—

The CHAIR: No, sure.

SIMON COHEN: —the contribution that they might make, but I guess I would have two reflections about that. One is that where the relationship between the rehabilitation provider and the worker isn't working effectively, that does impact upon their recovery. Often we will receive complaints from injured workers where an issue arises around the rehab provider and we inform the worker of their right to actually choose their own rehab provider, which is something that they can then take steps in relation to. I think the second is the focus upon

understanding how the evidence establishes the effectiveness of each of the proposed interventions, including rehab providers, is really the critical question. So if that evidence established the value of that, then you would think it would be something that would be closely examined. I think that is much of the intention that sits behind SIRA's Standard of Practice 33. That really encourages employers to have a look at workers who may be at risk of not returning to work and looking at evidence-based solutions, including rehabilitation providers.

The Hon. ANTHONY D'ADAM: Can I just ask about the standard of practice? Is that actually in operation? I couldn't find a final version, only a draft consultation version.

SIMON COHEN: It is in operation and, if it assists the Committee, I am happy for us to make available a link to the Committee to that after today, if that is of some assistance.

The Hon. ANTHONY D'ADAM: That would be useful. I have one further question. In our first session with some injured workers, one of the issues that was raised was the inability of the Independent Review Office to make binding determinations. Do you have any comment about that?

SIMON COHEN: I suppose my view about that is that at the moment that is not our role. What we are charged with doing is seeing if we can resolve complaints. We bring to that an expertise and also strong relationships with insurers so that we are able to, often, put before them persuasive information which demonstrates that they might not have acted fairly and reasonably and which causes them to change those decisions really quickly and properly. I think there is a real value to those systems and processes. Where we are unable to resolve those complaints, one of the things that I think works well in our overarching approach is that we can then connect that injured worker to an expert independent lawyer who can give them advice and assistance, investigate their claim and either reach a solution with the insurer or, in appropriate circumstances, take the matter to the Personal Injury Commission.

We do have a number of threshold tests that we have around whether we would provide funding, which ensures that cases that don't have a prospect of success don't proceed, but it equally ensures that those that do are properly dealt with by the commission. I think there is value in having role clarity in these types of systems. If lots of people are doing the same thing, I think it can become quite confusing. I think a lot of work based on the recommendations of this Committee previously around being clear around who does what with a single dispute resolution tribunal, a single complaints handling body, a funder of legal services and a single regulator in this space—I think there is value in having that role clarity through the system.[2] If there are particular types of matters where people think we might have an increased role, we are certainly happy to look at those and give a view.

We think, for example, that there is more that we can do with some matters that might otherwise land at the Personal Injury Commission where we might be able to use our solutions approach to see if we can get a quick outcome. We do that quite frequently at the moment, for example, where an insurer hasn't responded to a claim and, as a result, the worker is entitled to take the matter to the Personal Injury Commission. When the funding application comes to us, we make quick contact with the insurer and say, "Where is the response?" Often that response will actually be "We actually agree with that claim; we just haven't got the answer to them," or "We are just in the process of sending it to them." That saves time, reduces disputes, reduces cost and the impact on the worker, and we think there is value in exploring whether there are more opportunities to do that.

The Hon. ANTHONY D'ADAM: Do your recommendations have any standing with the Personal Injury Commission? Do they take them into account in terms of their determinations, or do they just start to know the—

SIMON COHEN: We don't make submissions, or our recommendations don't come before the commission. What we do have is an ability to investigate complaints, and we have recently refined our investigative approach so that where we don't think a response is fair and reasonable, we undertake a much more forensic investigation of it, and we have indicated to insurers that if, at the end of an investigation, we still don't think they have put a fair response on the table, we would make public our view and their response in relation to that. I think that has got a really strong effect in terms of insurers closely looking at their views and giving them an opportunity, importantly, to remediate the matter where they can. What I'm pleased to say is that, through that process, we have actually seen insurers look really closely at decisions and that they have actually come to solutions that I think are more creative than you might reach through a litigated process and that have been to the benefit of the injured worker. I think that's really positive.

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[2] In correspondence to the committee dated 6 October 2022, Mr Simon Cohen, Independent Review Officer, Independent Review Office, clarified his evidence with the word "single" inserted before "funder of legal services".

The Hon. ROD ROBERTS: Thanks, first of all, for your attendance this afternoon and, secondly, for your detailed submission—which I'd like to say I enjoyed reading, but "enjoyment" is not the word. I was perplexed when I finished it. That relates to the 14 case studies you put in there. I congratulate you and your office on the practical, fair and commonsense solutions you found to these issues that have happened to workers, which leads me to two parts. You say you investigated and you've come up with these solutions to what appear to me to be very simple and easily fixed problems. Do you need a bigger stick in terms of enforcement? How do we stop these very simple issues from happening again? Because these issues that have been detailed and outlined here are causing further aggravation to the injured worker. How do we stop that from happening, going forward?

SIMON COHEN: It's a very good question. I suppose my first reflection would be that many of those matters that we've highlighted go to pretty basic case management issues, and so there is an urgent need to improve the quality of case management for injured workers. I think that's been acknowledged. It's been acknowledged by icare; it's been identified by a range of reviews. Our view is that that's certainly the case. Our submission suggests that where those improvements come on track, prioritising them for workers with psychological injury, we think, could be of considerable value. I think the second is that the need to make sure that the system is responding in a joined-up way is really critical. One of the things that we've really been working on since we've become an independent agency has been to better exchange information with SIRA, as the regulator, and also with icare, as the major insurer.

Firstly, where we're seeing systemic issues, to be highlighting those and seeing whether we can find solutions to them, but also to be providing much more comprehensive data and flagging significant matters with SIRA so that they can use their extensive range of regulatory powers to have a look at those matters closely. In that context of having role clarity, where we see things that are going wrong, I think we've got a real obligation to call them out, you know—to blow the whistle, as it were. And then to really hand it over to the insurers and the regulator to actually look at the fixes or the solutions to those matters. My view is that we've gotten better at that, but there's continued improvements that we can make. I think the prospect that we can make public things that we see where we don't think responses are appropriate is a significant tool that we have at our disposal. It's one that, I think, does lead to good solutions in certain matters.

The Hon. ROD ROBERTS: Further to that then, can you see any utility or merit in the insurers having specialist case managers that specialise in psychological injuries because, as we know, they're unique compared to a broken leg? Much more empathy is needed, different people skills, et cetera—communication skills, such as the letters we've seen sent out that are false and/or threatening and intimidating. Do you think there is a merit in having specialised case managers for these types of injuries?

SIMON COHEN: I think our view is that expert case managers who are experienced in dealing with these matters is critical. I think, in addition to that, the systems and processes that are in place to oversight the key decisions that are made in matters is also critical. Whether provisional liability is disputed, whether liability is accepted, whether there's a treatment dispute that's on foot, whether weekly payments are going to cease, whether there's a concern about the impairment which may impact upon benefits—they're all the critical areas where we see, in complaints that we receive, heightened distress from workers because they may no longer be able to access the psychological treatment that they've been relying on, or they may find themselves at risk of financial distress, and, as a consequence, that can exacerbate their psychological injury. I think expert case managers, but also a system that identifies those key points and then really drills in to make sure the best decisions are being made.

The CHAIR: Thank you so much for coming and presenting your evidence to the Committee. Committee members may have additional questions for you after the hearing. The Committee has resolved that the answers to these, along with the questions that you took on notice, be returned within 21 days, and the secretariat will contact you in relation to these questions.

(The witness withdrew.)

The Committee adjourned at 16:22.