

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 Monday, 10 October 2022

The Committee met at 10:15.

PRESENT

The Hon. Chris Rath (Chair)

The Hon. Lou Amato
The Hon. Anthony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Wes Fang
The Hon. Scott Farlow
The Hon. Rod Roberts

PRESENT VIA VIDEOCONFERENCE

Ms Sue Higginson

The CHAIR: Welcome to the second hearing of the Standing Committee on Law and Justice's 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 2022 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 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 major stakeholders, including the NSW Teachers Federation, lawyers associations, SafeWork NSW, SIRA and icare. I thank everyone for making the time to give evidence to this important inquiry. Before we commence, I would like to make some brief comments about procedures. 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. Therefore, I urge witnesses to be careful about comments they make to the media or to others after they complete their evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018.

If witnesses are unable to answer a question today and want more time to respond, they can take the question on notice. Written answers to questions taken on notice are to be provided within 14 days. If witnesses wish to hand up documents, they should do so through the Committee staff. Regarding the audibility of the hearing today, I remind 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 tele-coil receivers. Finally, would everyone please turn their mobile phones to silent for the duration of the hearing.

Ms KELLY MARKS, Research/Industrial Officer, NSW Teachers Federation, affirmed and examined

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

The CHAIR: Thank you for joining us today. Would either of you like to start by making a short statement?

AMBER FLOHM: I will. I too would like to acknowledge the Gadigal people of the Eora nation, the traditional custodians of the land, and pay my respects to Elders past, present and emerging, and of course extend that respect to other Aboriginal people who may be present with us today. Thank you to the Committee for the opportunity to contribute to this review, to appear as a witness and for taking the time to read our submission.

Teachers, as professionals, take their work responsibilities and duty of care for their students extraordinarily seriously. In New South Wales the work health and safety conditions in their workplaces are such that thousands of teachers are so fatigued, overburdened and burnt out as a result of the abject conditions in their workplaces that their psychological health is significantly impacted by the ongoing pressures they face on a day-to-day basis. It is these very hazards, identified by SafeWork NSW's code of practice, which our members and their treating doctors cite as the reason for them leaving the teaching profession.

Workers compensation claims in relation to teachers' psychosocial health continue to be significantly under-reported. There are compounding reasons for this, which I'm happy to expand on. Our members' injuries are undoubtedly caused and exacerbated in many cases by their conditions at work and the current workers compensation processes that are causing further psychosocial injury. We are losing too many great teachers from our system because they are finally putting their own health and that of their families first. It should not and must not continue to be this way. We welcome the New South Wales Government's amendment to the Work Health and Safety Regulation 2017, which gives effect to changes regarding the psychosocial risks and sees the implementation of recommendation 2 of the Boland review of the model WHS laws and recommendation 35 of the Respect@Work report.

Effective on 1 October, the amendment regulation critically inserts new provisions on the management of psychosocial risks in the workplace and is central to this Committee's review of the workers compensation scheme and rightful focus on the increase in psychological claims. From 1 October 2022 the New South Wales regulation details the employers' duties to respond to, manage and prevent psychosocial risks in the workplace and makes it explicit that a person conducting a business or undertaking—the PCBU—must manage psychosocial risks in the same way that other risks to health and safety, that is, physical risks, are dealt with under the New South Wales legislation. The implementation of the New South Wales regulation on psychosocial risks is a warning for New South Wales employers to undergo a risk assessment and review their control measures in relation to psychosocial hazards. It is made clear that they must identify reasonable, foreseeable psychosocial hazards that could give rise to health and safety risks and they must introduce, maintain and review control measures to eliminate or minimise psychosocial risks to health and safety so far as reasonably practicable.

As outlined in the WHS Act and the department's policy, the department has the primary duty of care as PCBU and responsibilities are defined for both the secretary and the senior officers of the department in this regard. The same applies, of course, to TAFE NSW. Both TAFE and the Department of Education have failed to put systems, structures, policies and practices in place to date in relation to assessing and minimising harm of psychosocial injuries. The psychosocial injury rate in education, in both schools and TAFE, is an ongoing concern for the federation. The May 2021 SafeWork NSW code of practice, managing psychosocial hazards at work, identifies 16 common psychosocial hazards at work. While all of these apply to many of our members, there are five in particular which apply to all of our members in both schools and TAFE.

We cannot allow the practice of devolving responsibility for harm minimisation onto the schools and teachers themselves. The hierarchy of controls creates a systemic approach to managing safety for our members' workplaces by providing a structure to select the most effective control measures, to eliminate and to reduce the risk of specific hazards identified as being caused by the operations of schools and TAFE. This is the responsibility of the Department of Education and TAFE NSW in the first instance. The failure of government through the Department of Education to even acknowledge, let alone address, these foreseeable risks is consistently and increasingly resulting in psychological injuries for our members.

Today I proudly represent over 65,000 public education teachers across New South Wales. These are the very workers that our communities across New South Wales rightly rely upon to secure the educational and psychosocial outcomes for our children and young people to do all they can to ensure that these students have futures which are happy, fulfilling and contribute to the economic prosperity and social cohesion of our society. Thank you.

The CHAIR: I will start with some questions and then hand over to the other Committee members. I wanted to ask about the return-to-work outcomes. We have seen the return-to-work rates across so many parts of New South Wales deteriorate in recent years. Do you have any observations about what might be driving that reduction or deterioration in the return-to-work rates?

AMBER FLOHM: Certainly. In relation to the Department of Education and schools, it is actually that process that often causes the secondary injury for the worker. It is the responsibility, of course, of the department. The way in which the department interprets the process and applies that return-to-work process means that those who are injured workers and required to return—until they develop the capacity, of course, to return to work—they must go to their pre-injury duties. What happens in practice, unfortunately, is that often the cause of the injury is the actual workplace. So the member may well be given a temporary placement while they become better in terms of their health in another school. During that time, their health does improve, but it is the Department of Education's process that they will not affect a transfer or a change of the substantive position as a result of a workers compensation claim, that is, they will return that teacher to the very school site where the injury occurred, thus often resulting in a secondary injury. It is also the case that many of our members will return to work when they drop after 26 weeks to 80 per cent of their PLawe. They are not often well enough to return but need to do so financially. That, too, is a failure of that return-to-work and workers compensation process.

KELLY MARKS: I'd just add two things—that the rise in psychological injuries versus physical is also having an impact on return-to-work outcomes because it's often more challenging, I suppose, for the employer and the insurer to come up with reasonable adjustments in the workplace or, I might say, they perceive that it's more tricky. We believe that it's not, but that is definitely what is happening. The other major problem, which I think the Independent Review Office's submission goes really well to, is that there's a lot of conflict involved in those psychological injury claims, which means that often there is that secondary psychological injury and it affects very significantly their return-to-work outcome.

The CHAIR: Have you experienced any increase in bullying and harassment within the workplace? I see from SIRA's submission that they've said that's part of the increase in psychological claims—an increase in bullying and harassment in the workplace. Is that something that you can talk to? Have you noticed that at all?

AMBER FLOHM: What I would say to that is that that is symptomatic of the system in which schools and teachers are operating. When you have such significant hazards, such as the role overload and the other hazards as identified—if you manage those risks and minimise those risks, you would find inevitably that there would be less conflict because people are under less pressure. It is actually almost secondary to that issue. The problem, I guess, in relation to conflict in schools is that it is often incumbent by the department that the teacher resolve and the school resolve that conflict, ignoring, of course, the preconditions of those hazards in the environment and conditions in which they're working. If you better mitigated the risks in relation to those other psychosocial hazards, I am confident that we would see a lot less conflict in schools.

KELLY MARKS: I'd just make the point that SIRA does point out work-related harassment and bullying as one of the three mechanism types, but actually work pressure is the first one, which we would agree with.

The Hon. ANTHONY D'ADAM: You mentioned in your opening statement that there were five specific hazards. I wonder whether you could perhaps elaborate on what they are?

AMBER FLOHM: Certainly. To go to SafeWork NSW's code of practice, which outlines the common psychosocial hazards, there are five that relate to every member in schools and TAFE. Of course, the others will relate to some of our settings, noting the complexity of the school system, including settings such as juvenile justice centres, hospital schools, special schools and our schools that are the most isolated geographically. If we go to the hazard defined as "role overload", it defines this as too much to do in a set time or with insufficient workers. That goes to the heart of what is occurring in our public schools at the moment. Teachers are being consistently asked to do more with less. With the significant teacher shortage now upon us, which has grown over the past 10 years, they do not have sufficient resources.

Unfortunately, we do see a significant problem in relation to burnout and overload for our teachers, causing them, as I said in my opening, to leave the profession in very significant numbers. Those left are left scrambling, frankly. Every morning they are unaware of what their job or their role is—again, identified as a lack of role clarity and role conflict. They do not know anymore what their day will look like, they do not know if they will be covering additional classes and they do not know whether they will be able to teach their students the lesson they prepared the night before because they may well have to undertake minimal supervision. This is creating a significant hazard and, frankly, a further hazard, as identified by SafeWork NSW.

Within that role conflict and lack of role clarity, SafeWork NSW identifies tenure. That tenure goes to the significant numbers and rise of temporary and casual teachers—both classifications of casual employment in

New South Wales public schools. Not knowing whether or not you will have a job next term or next year is identified by SafeWork NSW as being a common psychosocial hazard. These are all integral to the work of teachers. Further, the conflict, as defined earlier, and the low job control are also matters that face our teaching members every day. The pace and nature of reform in New South Wales education means that people do not know what is coming next. There is no consultation with the worker. There is no assessment of what work will be taken away in order to accommodate the new priorities of the Government.

If I could go to one recent example around attendance, no-one would question the significant focus of the Government and the Department of Education on targets for attendance. I think we could all agree—teachers, parents and yourselves, I am sure—of the critical nature of increasing attendance for our students in schools. To give you an idea of what that sort of announcement or that sort of reform means to a classroom teacher and the way in which that responsibility is devolved, it looks like this: Where principals are required to lift their attendance targets, they will contact teachers, as we've been made aware. They have asked every teacher who has a student who has been absent for three days or more to contact that parent. Of course, it is the teacher who has the relationship with the student and, often, their parents.

But, while that is a very valid target to have, it is quite common in many of our settings for that teacher to have five, six and seven students in their class who may well fall into that category. That would be a 10- to 15-minute conversation with each parent about that, with no additional time. So, you see, you have a valid government reform but no accommodation in relation to the workload and the additional task that that requires for the teacher, and the time that it takes to do it.

The Hon. LOU AMATO: Who did it fall on before? Did it fall onto the administration of the school? Did they used to do that before?

AMBER FLOHM: Yes, sure. Previously, in the introduction of Local Schools, Local Decisions in 2012, which was a devolved model, that basically absolved the centre of responsibility and pushed it to the local school. That previously would have been done by central consultants and specialists who would undertake that work. That work now is being foisted onto schools and teachers, valid as it may be. But it is just a very small example of how reform actually reaches the classroom.

The Hon. LOU AMATO: Has there been any change? Now that a teacher contacts the parents of the students versus the administration process previously, what's the end result? For the benefit of the Committee, is there improvement or is there no improvement?

AMBER FLOHM: I absolutely understand that. As you would understand, the department has systems in place that monitor student attendance. Of course, we believe that centrally the Department of Education could undertake that work and that teachers do not have the time. Even though it is a very worthwhile activity, all of their activities are worthwhile. They just don't have the time to be able to incorporate that additional workload into the day, noting of course that teachers are doing between 50 and 60 hours of work per week. That is not only evidenced by the Gallop inquiry but also by AITSL's Australian Teacher Workforce Data, the Government's ITE review and of course New South Wales Government parliamentary processes themselves. There is no capacity to take on additional load without taking significant amounts of work away. That is exactly the hazard that has to be assessed, mitigated against and controlled. We're just not in a position, no matter how valid it is.

The Hon. LOU AMATO: I understand what you are saying. I understand about the workload. I am just trying to understand if there was any benefit. When the teachers contacted the parents of those students directly, was there a benefit of getting those students back into the classroom versus, say, when they used to go and see the principal in the old days? Is there a difference?

AMBER FLOHM: You would have to ask the Government about how its increases are tracked and the data they collect on the increase in attendance. I couldn't answer that.

The Hon. WES FANG: While we are addressing the question of the Hon. Lou Amato, in relation to what the Government is doing, it is actually putting in place a number processes, is it not, in order to relieve the workload on teachers through the administrative tasks? Is that not correct?

AMBER FLOHM: Thank you very much for going to that question.

The Hon. WES FANG: You are more than welcome.

AMBER FLOHM: I think the latest announcement that goes to additional release—in the Minister's own words "significant reform"—30-year curriculum reform. That is an additional load; I'm sure we would all agree with that. It is six minutes per day, if you are lucky, that you have been given for that enormous—in the Government's own words—greatest reform in 30 years. Six minutes. So, no, that will not lead to a reduction in workload. Another issue such as the Quality Time Action Plan, which may be in part what you are going to. I think

if you asked teachers whether some of the measures, including increasing the size of a teacher's inbox, assisted teachers in reducing their workload, it would be an emphatic no. None of the measures that have been put in place or have been slated to be put in place have actually saved teachers any time.

The Hon. WES FANG: When you say six minutes per day, it is not really six minutes per day, is it? In reality, with these things, you could break it down and say it is one minute per hour but, effectively, that is 30 minutes every week that is allocated. When you are talking about the collective—

The Hon. ANTHONY D'ADAM: Is there a question? Sorry.

The Hon. WES FANG: Thank you, Mr D'Adam. There will be. When you are talking about the collective, though, that you put the six minutes together over a week, that is half an hour. It is actually half an hour in the week, when you put it collectively together, to focus on a task. Now that is significant, is it not?

AMBER FLOHM: No, it's not—not when teachers are working between 50 and 60 hours per week. Just reminding, of course, the Committee that that is additional load. That does not take into consideration the 50 to 60 hours they're already doing. So no, that will not be felt by teachers. To understand what curriculum reform looks like for a teacher: it is collaboration, it is planning, it is new documentation, it is the new development of resources, it is talking with other stage colleagues. It is a very in-depth process. The greatest reform in 30 years requires significant investment in professional development for those teachers. No, half an hour will not do that. It will not even come close to the work that a new syllabus requires, particularly a syllabus that is a 30-year shake-up, as stated by the Government.

The Hon. ANTHONY D'ADAM: You mentioned the code. You also mentioned the change to the regulation. Both of those measures have clarified obligations that already existed, really. The PCBU already had those duties; this just gives clarity. Can you perhaps talk us through the approach that is taken in the department to assessing psychosocial risks in the workplace? Are there any processes that have been put in place that are effective?

AMBER FLOHM: There are not, unfortunately, any processes that have been formally put in place. If I make comparison with the Work Health and Safety Act in relation to physical injury, all employees of the department are well aware of their obligations in relation to that. And the reason why they are well aware is because there were very clear sets of time where teachers, within school hours, were provided with the training. There were very clear processes in relation to the system and its responsibilities in responding to that. What we have at the moment is a hodgepodge, I guess, of responses. Teachers have reported consistently to us that they have rung the incident hotline in relation to the department's work health, safety and wellbeing directorate and they have been told, "No, that's not an injury." So even those workers within the department are unaware of the psychosocial impacts.

Of course, we were given, if you could suggest that this might be support, in term 3, week nine of 2021, after what was a significant period of lockdown, everybody was at home, working and learning from home, particularly in relation to the LGAs—the department put online for teachers after hours a webinar: a webinar called *How to Struggle Better* for its employees. That is what we get from the Government and the Department of Education in relation to addressing teacher wellbeing. They don't recognise it, they don't address it and they certainly don't mitigate against it. In the SafeWork NSW's code of practice you will see that there is a scenario there that relates specifically to school and education, and they go quite clearly to the hazards and risks, the controls that are required and how to review and improve those. That has been available to the Government and the Department of Education since May 2021. Absolutely nothing has come forward in relation to that, despite the fact that the Government is well aware that teachers are leaving as a result of the significant pressure—the psychosocial harm that they are now experiencing every day.

KELLY MARKS: If I can just go to the code of practice, on page 15 there's a comprehensive risk-management process. I can pretty much safely say that for physical hazards, the department and TAFE do this process in the large majority of cases. Their staff, their employees, are well versed in those processes, which include identifying the hazard, controlling the hazard and then reviewing. I can't say the same for psychological hazards, and I agree with you that that's despite the fact that health in the Act has always been defined as physical and psychological health. But having the codes of practice—there have been codes of practice for physical hazards, asbestos, for specific things like that, which helps employers and workers to understand their obligations. But that's why we've been saying for a number of years, including in our submission to the Boland review of the model laws, that we believe that a psychological regulation would provide more clarity, more detail—just as those ones about, for example, election of HSRs that are also in the Work Health and Safety Regulation 2017, which provides more detail for employers.

We're very pleased that first there was the code of practice, which provides a lot of guidance for employers and also guidance for SafeWork NSW inspectors to come along and find out and inspect and inquire into what sorts of processes have the department and/or TAFE NSW put in place. I'll just go also to another page, which is page 17. This is really important because it's about systematically collecting and reviewing the available information and data. It includes things like absenteeism, turnover, exit interviews, sick leave data and workers compensation claims. That type of a process I do not believe has been occurring in a systematic way, but we hope that this regulation that came into effect on 1 October 2022 will instigate further. It will certainly be attempting to negotiate such.

The Hon. GREG DONNELLY: We could spend more time, and I'm sorry that we're going through this far too quickly. Thank you for your submission and your evidence today. The New South Wales Teachers Federation has membership in primary schools, high schools and TAFE. Thematically, I presume that some of the matters you've raised today run through each of those three cohorts of teachers—those who teach in primary school, those who teach in high school and those who teach in TAFE—so there would be some issues that I think would run through. But with respect to each of those cohorts, there may well be some different issues that impact on teachers from a psychosocial point of view. On notice, based on the data that's come into your workers compensation offices and related offices in the union, are you able to give a thematic breakdown of what are the ones that are consistent across the three and the ones that are particularly unique?

AMBER FLOHM: We could have a shot at that, yes.

The Hon. GREG DONNELLY: As best you can, yes. Thank you.

The Hon. WES FANG: Noting the criticisms today of the Government, I judge people on not only how they can provide criticism but also when they can acknowledge that things are going well. What does the Government do that is of benefit in this space? Are there a number of things that you believe the Government is doing well?

AMBER FLOHM: Certainly in my opening, I welcomed the New South Wales Government's amendment to the Work Health and Safety Regulation 2017. That was one of the first things I did. So, yes, we acknowledge that your Government were the ones who instigated this regulation. We look forward to seeing its effects in our workplaces to minimise the psychosocial damage that is occurring frequently for our members.

KELLY MARKS: And we look forward to the resourcing of the regulator to ensure that there is compliance with it.

The Hon. WES FANG: Perhaps on notice you might be able to provide to us any other programs that the Government has instigated that you believe are of assistance to teachers in this space.

AMBER FLOHM: It would be a short list.

The Hon. WES FANG: This is the point that I was trying to—

The CHAIR: We do need to wrap up. Thank you for attending this hearing. Committee members may have additional questions—because there were so many—for you after the hearing. The Committee has resolved that the answers to these questions, along with any answers to questions taken on notice today, be returned within 14 days. The secretariat will contact you in relation to those questions.

(The witnesses withdrew.)

Mr SHANE BUTCHER, Australian Lawyers Alliance, sworn and examined

Mr TIM CONCANNON, Chair, Injury Compensation Committee, Law Society of New South Wales, sworn and examined

Ms ELIZABETH WELSH, Deputy Chair, Common Law Committee, New South Wales Bar Association, affirmed and examined

The CHAIR: I welcome our next witnesses. Would any of you like to start with a short opening statement?

ELIZABETH WELSH: I would like to first of all make the apologies of Mr Robert Sheldon, SC, who can't be here with us today. He's in court this morning.

The CHAIR: No worries.

ELIZABETH WELSH: Thank you for the invitation to appear before you today on behalf of the New South Wales Bar Association, and for the opportunity to make an opening statement. The focus of this review is psychological injury. In our submission we make the point that psychological injury should be treated no differently for the purposes of receiving a lump sum for whole person impairment to a physical injury. We also welcome proposals to improve the claims experience of those who claim psychological injury at work. In relation to section 11A of the Workers Compensation Act, which is a defence which restricts the recovery of compensation when it relates to a reasonable action by an employer in relation to promotion, demotion or disciplinary action, we say that not enough has been done to identify when it's appropriate to deny a claim on that basis.

I would like to make some observations about how disputes are resolved. Once upon a time, every workers compensation claims file contained a report-of-injury form, signed by the worker, and an employer's report-of-injury form, signed on behalf of the employer. These documents no longer seem to exist. Those contemporaneous documents have always been regarded as important where a factual dispute has arisen between the parties about liability for a claim. Their absence creates a fundamental problem, should there be a dispute. To quote Her Majesty the Queen, "Recollections may vary". In those instances, documents such as signed reports of injury and incident reports carry significant weight. Where a member must decide who is telling the truth, being in the same room as all the participants in a hearing is absolutely necessary.

The digital age has provided an enormous benefit to society; however, in many aspects of life, the old way is the best way. A hearing in the Workers Compensation Division in the Personal Injury Commission will determine the question of whether an injury was caused by a particular event. There may then be a second dispute resolution process conducted by a medical assessor to determine the degree of an injured worker's whole person impairment. That two-stage process permits the issues in dispute to be identified at an early stage and for an adjudication of those precise areas of dispute. In the Motor Accidents Division, that first step does not take place. It is just the claimant and a doctor doing the best they can. We commend, in the future development of the Personal Injury Commission, a move to the workers compensation model for dispute resolution in motor accident cases.

Finally, it's noted that plans are underway to review and redraft the workers compensation Acts. It is quite a task. We look forward to assisting in that endeavour and would welcome the opportunity to review the bills when they are available. Given the breadth and complexity of the legislation, we are of the view that it should not be rushed, allowing the parties time to properly engage where necessary.

The CHAIR: No further opening statements?

TIM CONCANNON: I'd like to make a statement. Thank you for inviting the Law Society to give evidence at today's hearing. I'm representing the Law Society today in my capacity as Chair of the Injury Compensation Committee. The 2022 workers compensation inquiry takes as its focus psychological claims. The Law Society refers to the figures quoted in our submissions, which support the contention that over the last 12 to 18 months the number of psychological injury claims has actually decreased compared to the 2021 financial year. The figures quoted by the Government in answer to supplementary question 103 following the budget estimates hearing on 30 August 2022 supports this observation that the number of psychological claims have actually steadied of recent times. Accordingly, the Law Society does question the conclusion that there has been a significant increase in psychological injury claims in very recent times, but if one accepts that there has been a longer-term trend of an increase in such claims, then we suggest the Standing Committee consider the management of psychological injury claims.

We recognise the importance of effective case management to support injury recovery, particularly in respect of psychological injuries and in respect of return to work. In the experience of our members, where a worker has suffered a significant psychological injury, it can take upwards of one year for the worker to be referred to a specialist case manager. In our view, it is critical that significant investment be made in developing and

educating specialist case managers to deal with these types of claims. In addition to our discussion of psychological injury, the Law Society's submission emphasises the several longstanding aspects of the scheme that we consider demand the Standing Committee's attention.

Firstly, we draw attention to the need for comprehensive examination of the workers compensation scheme legislation. This was recognised in the icare and State Insurance and Care Governance Act 2015 independent review, known as the McDougall review, which recommended a suitable agency or body conduct a review and reconciliation of the Workers Compensation Act 1987, the Workplace Injury Management and Workers Compensation Act 1998, and the State Insurance and Care Governance Act 2015 into a single consolidated piece of legislation. We understand that preliminary discussions will be conducted around such a policy initiative and ask that the legal profession, which has a deep knowledge of the operation of the scheme, be consulted at the earliest opportunity.

Our submission also emphasises the importance of expanding access to commutations. Our view is that there should be no restrictions on the types of claims that are able to be commuted. We consider that any restrictions should not be based on the type of claim but rather on whether it is in the best interests of the injured worker to commute their compensation payments. Accordingly, we accept that the obtaining of independent legal advice and the approval of the Personal Injury Commission are appropriate safeguards to protect workers.

As regards the assessment of entitlements to weekly and medical expenses, the Law Society has expressed the view that linking eligibility for medical benefits to the degree of whole person impairment, in addition to the cessation of weekly payments, is problematic and results in many injured workers not being able to access the benefits they need to return to work or to recover. Consultation is required as soon as possible to develop a replacement threshold test for entitlement to weekly and medical benefits that more accurately considers the need for compensation.

On the issue of legal costs, the Law Society notes the regulated fees under schedule 6 to the regulation have not been reviewed or revised since October 2012. We consider it is fundamental for the regulation to reflect the commercial reality of costs incurred. We submit that, as a minimum, schedules 6 and 7 should provide for indexation in accordance with the CPI as occurs in the motor accident scheme. We thank you for the opportunity for the Law Society to give evidence today.

The CHAIR: Mr Butcher, any opening statement from you?

SHANE BUTCHER: Yes. The ALA thanks the Committee for the opportunity to appear at today's hearing. As an organisation that focuses on the rights of the injured, we can offer valuable insights to the Committee on the broader impact of policy decisions on injured workers. With respect to psychological injuries, there are two things I'd like to comment on that both arise out of information that has recently been published. The first is in respect to the increase in claim numbers. I'd like to draw your attention to the recently published answers to supplementary questions provided to budget estimates by Minister Dominello, in particular, the answer to question 103 that sets out the number of primary psychological injuries reported from July 2011 onwards. When you compare the first 12 months of that reported data, July 2011 to June 2012, to the corresponding months in the last year of reporting, there has been, by my math, only a 4.25 per cent increase in primary psychological injuries with the Nominal Insurer over 10 years. Self-insurers saw a decrease in claims lodged.

There has been an overall increase across the whole dataset, with the biggest increases with the TMF, which one might expect with the extra strain on hospitals, police and other emergency services that might come with managing a global pandemic. A quick google search will also reveal that, according to the Australian Bureau of Statistics, between the 2011 census and the 2021 census the Greater Sydney population grew by 14 per cent and the rest of the State grew by 8.6 per cent. The submission of the ALA was to the effect that this Committee should be examining closely the data of the growth in claims that has been provided to it. It seems to me that these answers to budget estimates reinforces that submission.

My second point is in relation to how psychological claims are managed. It is the ALA's firm belief that the manner in which claims are currently handled, the conduct of the investigations and the manner in which they are disputed all lead to unnecessary harm of the injured person. The ALA submits that there is much work to be done in the regulatory space by SIRA and in the operational space by the insurers, and in particular the Nominal Insurer. It was only two years ago that this Committee took a close look at the treatment of at least four individuals: three employees of Corrective Services, whose claims were managed by QBE; and the case of Chris McCann, a former employee of icare. These four cases were a shining example of how not to manage claims. I read the transcript from the first day of hearings of this review with interest and saw that there were a number of questions directed to witnesses to elicit a view on the manner in which psychological claims could be managed and improvements that could be made.

It appears that icare was listening too. On 6 October 2022 they made an announcement about the selection of six claims service providers to manage claims for the Nominal Insurer and laid out their plans for what appears to be a new, new claims model to managing psychological injuries. The ALA agrees that there should be a more specialised response to the management of psychological claims and that, if done correctly, it has the potential to provide real benefit to injured workers. However, I don't think it's unfair to say that both stakeholders and the public have been critical of icare in the past for the manner in which they have rolled out large projects. When they appear before the Committee today, I urge you to question them on why you should have faith that this new, new claims model will work. Finally, I urge you to continue to examine and probe SIRA and icare in relation to the deteriorating return-to-work rates and what's being done about it. Thank you.

The CHAIR: Thank you. I will start with a question and then I'll hand over to my colleagues. You are probably across a fair bit of the detail in the McDougall review. I'm just wondering if you think that they were good recommendations that were put forward in the McDougall review? I note that the Government is in the process of implementing them and rolling them out. Do you have any observations or thoughts on the McDougall recommendations that are slowly being implemented?

TIM CONCANNON: I think a lot of the recommendations are supported by the Law Society, if not all of them. The ones that we would particularly be concerned about are the ones to do with investigating the whole person impairment threshold and the extent to which that is fair or otherwise. We haven't heard, regrettably, very much on that aspect, so hopefully that will come up soon. Settlement of claims, I note that that be looked at as well; it was a key recommendation. We recognise that that was part of the legislation that was brought before Parliament earlier this year, but that was withdrawn because of the further need to consult with stakeholders, including the Law Society. You know from our submission that our argument is that there really shouldn't be any restrictions on commutations other than those associated with the wellbeing of the worker in terms of legal advice and obtaining approval of the commission. So that is certainly something that needs further work on and we reject any proposition that there should be further restrictions placed on commutation other than those two restrictions that the Law Society has already outlined.

The CHAIR: Any other thoughts?

ELIZABETH WELSH: We don't really see the need to interfere with any of the workers comp thresholds in terms of physical injuries, but we only recently—through the 2015 and 2018 amendments—had work with highest needs come down to 20 per cent. That was a recognition that that was too high. The 15 per cent whole-person-impairment threshold for a common law damages claim is well understood and seems to catch people on the right side, whether they be over or under that threshold, so we don't see any need for that to be revisited. Otherwise I think we are waiting to see a bill in relation to commutation. That, no doubt, will be implemented once the details have been sorted out.

SHANE BUTCHER: The ALA supports the McDougall review—in particular, recommendations 37, 38 and 40, which have been touched on by Mr Concannon. We say that they should be pursued as soon as possible to be implemented.

The Hon. WES FANG: Do you have a view as to why there is perhaps some discrepancy in the evidence that we heard around psychological claims and the evidence that's been put forward today about the number of claims? Do you have a view as to why there might be a view that is perhaps different to some of the evidence that you are able to provide now?

SHANE BUTCHER: I think there has to be some kind of differentiation between the number of claims increasing and the cost of claims increasing. Just because the costs may be increasing, that could be because of poor claims management, resulting in lower return-to-work rates; people being on the system longer, costing the scheme more money; or it could be a result of increasing benefits that have been implemented by legislation or through case law. Our submission that the ALA wrote was clear: Be careful about looking at this data because it seems to be coming inconsistently and on the heel of the hunt. We have been quite critical of return-to-work rates over the last number of years. And if they are contributing to this problem, then that should be addressed.

The Hon. WES FANG: Some of the, I'll say, employer advocacy—for example, we've just heard from the teachers union prior to the evidence you have just given now and they certainly have a view as to not only the cost but the number as well, which seems to not be supported by the evidence you've put forward now. That discrepancy, do you have a view as to—is it perhaps that there is more discussion about it and the prevalence and the fact that we are talking about it that makes people more open to it and therefore that discussion makes people feel as if it has a greater focus on it, or are there other factors? Are there perhaps less in other areas that means that the numbers are static—some areas are going up; some areas are going down?

ELIZABETH WELSH: We tried to come in and listen to the evidence of the previous witnesses. We didn't appreciate we could come in. I don't know what went wrong, so I don't know exactly what you are talking about in terms of what the submission was that they made. There are usually a number of factors involved in any of these particular numbers. I don't know whether it is a response to people feeling that they are stressed at work or that they are under pressure at work as opposed to actual claims, but those teachers' experience of what's happening at work, they may be feeling that things are worse than they used to be or they are under particular pressures. I don't know how that translates into the discussion about the claims per se.

The Hon. WES FANG: Sorry, I will put some more context and maybe you can provide some elucidation to that. What I am looking at is the discrepancy between the evidence—that employer groups are saying that they are seeing, feeling and observing this huge rise in mental health condition claims through workers comp. That is the evidence that has been given to us over a couple of days. However, the claim numbers, as you've said, are relatively stable. Is it that one group has actually got more claims where the other group has perhaps got fewer claims, or that they're being described as a mental health condition but are actually being claimed under other things? For example, they might have fallen off the ladder and hurt themselves; they feel that that stress has actually been a mental concern to them but they're being claimed under a physical injury. I'm just trying to get a picture as to when these cases are coming through legal avenues to a claims hearing or arbitration. Can you perhaps provide some elucidation to that?

ELIZABETH WELSH: Well, the purpose of my opening statements about the old-fashioned way of doing things was that you had some documents early on which nailed down the dispute. You could work from those to identify if there was a dispute. It's more stressful at the beginning for people for things to be investigated, but that should be done once and be done properly without being any more intrusive than it has to be for any of the people involved. Then it shouldn't be revisited again. Claims officers should not be asking people to tell them what happened to them when they're ringing up to check in on them, because that's just going to put that person right back where they were on the day they walked out of work, and it could put them back beyond square one in terms of forgetting about it.

What these people need to do is forget about it for a while, get their equilibrium back, recover from the injury enough to go back to work—and that's stressful for the employers as well. I mean, it's very disruptive in the workplace. And we've just had three years of a significant period where people couldn't even go to work because it was dangerous to go to work, so everyone's probably got heightened anxiety at the moment. Maybe it's not the best time to be looking at this question in terms of: Is there an explosion of psychological injury claims? Maybe that just needs to be left for a little while just to see how things land post COVID and try getting the claims officers to have a slightly different approach to things, give people that bit of space, and then have a look at it again in the next review.

TIM CONCANNON: I'd just also point out that a lot of the figures that we're seeing in terms of an increase in psychological injury claims stem from the period where EML was the sole insurer. There have, as you probably know, been significant criticisms made of that process, in the case of psychological injuries claims, that psychological injury claims haven't been scrutinised, perhaps, as well as they should have been. This is only my personal comment but I wonder whether or not that might be an explanation, partial or otherwise, for the surge in psychological injury claims during that earlier period, which would be consistent with the fact that there has been somewhat of a drop-off over the last 18 months, let's say, on my review of the figures and the number of psychological injury claims.

The Hon. GREG DONNELLY: Ms Welsh, in your opening statement, if I understood correctly your submission, you raised a question about employee- or worker-employer documentation around the incidents.

ELIZABETH WELSH: Yes.

The Hon. GREG DONNELLY: Specifically, it does not appear that that documentation exists—I think that might have even been your word—

ELIZABETH WELSH: It was.

The Hon. GREG DONNELLY: —or doesn't appear to exist. I'm wondering, could you elucidate on that? Because particularly with an injury like a psychological injury, not that it's any more or less significant than a physical injury, to actually not have that documentation which is taken in a comprehensive form at the commencement of the whole process seems to be an extraordinary situation.

ELIZABETH WELSH: Well, I first started looking at workers compensation files in about 1985. Right up until now—as a law clerk, as a solicitor, as a barrister, right up until now—as soon as I get a brief, if it's a work injury the first thing I go looking for is the claim form and the employer's report of injury. I've been finding that

I can't find them anymore. They don't exist—I've been told they don't exist. It's done on a very informal level. So a claim—

The Hon. GREG DONNELLY: Sorry, could I just press your further—I'm sorry to interrupt. When you say you've been told—

ELIZABETH WELSH: Yes.

The Hon. GREG DONNELLY: —or been informed they no longer exist—

ELIZABETH WELSH: Yes.

The Hon. GREG DONNELLY: —who has told you that?

ELIZABETH WELSH: My solicitors. There is no claim form. It was done by an electronic notification. So you haven't got anything. Then you start looking at medical records to see where there's a history, and they're not going to be very good either. There might be a record of a conversation on the file with a claims officer at some point, which is the claims officer writing down what's said in a telephone conversation, I guess, but not those initial documents, which—

The Hon. ANTHONY D'ADAM: There's no statutory or regulatory requirement for the format for a claim to be initiated?

ELIZABETH WELSH: I'm sure there is but it appears to be satisfied by an electronic notification process, as opposed to a document, as there is in the motor accidents scheme, where there's a claim form, you have to write down what your injuries are, you have to write down what happened to you, you have to sign it, you have to give it to the insurance company. I don't see them.

The Hon. GREG DONNELLY: Are you able to elucidate on what the electronic notification looks like, the detail contained within it, or is that not a level of detail you are familiar with?

ELIZABETH WELSH: It's not a level of detail I have and I'm not seeing something that looks like a standard document.

The Hon. GREG DONNELLY: I take it from your evidence before the Committee through your opening statement that you do agree with the proposition that that's potentially quite problematic—if at that early point there is not the collection of some, as best can be understood, accurate detail from both the employee and the employer's point of view around the matter of the cause or the factors associated with it?

ELIZABETH WELSH: I totally agree.

The Hon. ANTHONY D'ADAM: There is a lot of assumed knowledge when participants come before this Committee, and for the practitioners who are immersed in this stuff daily you've got a very good knowledge, the Committee perhaps not as strong a grasp. I wanted to ask about whole person impairment, particularly about the relevance of that system for assessing a psychological injury. I don't really understand what a 15 per cent whole person impairment looks like for someone who's got a psychological injury. What is it? What does that mean?

ELIZABETH WELSH: People are assessed for whole person impairment for psychological injury under something called the PIRS. It's an activities-based assessment that comes under six different categories, including—this won't be precise—concentration, persistence and pace, adaptation, self-care, ability to travel and there are two other headings.

TIM CONCANNON: I think employability is another one.

ELIZABETH WELSH: I think that—anyway, that's the framework of it. They're given a score under each category and there's an accumulation of the score, which produces a whole person impairment. It's meant to be a holistic approach that looks at how you're functioning in six different ways in which a person has to be able to function in life to produce this whole person impairment assessment.

TIM CONCANNON: You pick the three in the middle as the determinants.¹ You can have an outlier or two, which get disregarded in terms of that whole person impairment rating out of those six.

¹ In [correspondence](#) to the committee dated 8 November 2022, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, clarified his evidence by replacing the number "three" with the number "two".

The Hon. ANTHONY D'ADAM: There's a difference, isn't there, between physical injuries, the whole person impairment threshold and psychological? What's the difference between a 10 per cent and a 15 per cent whole person impairment?

ELIZABETH WELSH: There's a difference for a section 66 lump sum—which is the point that we pick up—but it's the same threshold, a 15 per cent whole person impairment, for a claim for damages. The distinction between physical and psychological at the moment is just for whether you get a smaller lump sum at workers compensation for your impairment, and you don't at workers compensation at the moment for psychological harm if it's 10 per cent or less.

The Hon. ANTHONY D'ADAM: Is it your submission, Mr Concannon, about reducing the threshold to 10 per cent for access to the common law?

ELIZABETH WELSH: Sorry, I said the wrong thing then.

TIM CONCANNON: That wasn't ours. I think that was the Bar's.

ELIZABETH WELSH: No, it's 15 per cent. Physical is 10 per cent for section 66 and 15 per cent for common law, whereas psychological is 15 per cent for both, at the moment.

The Hon. ANTHONY D'ADAM: I suppose what I'm trying to get to is how do we make an assessment about whether that's a good suggestion if we're not clear about the distinction between 10 per cent and 15 per cent?

TIM CONCANNON: Can I perhaps clarify in terms of the methodology. You asked a question about how they compare the physical and psychiatric methods of impairment assessment. Generally, the physical methods of assessment of impairment are based on so-called objective criteria—stuff like a loss of range of movement. There are certain diagnoses, if reached, that will give rise to an automatic whole person impairment rating. But in the case of the psychiatric impairment rating scale, there's a certain element of subjectivity associated to that assessment, I suppose, because the psychiatric condition is not capable of any precise and objective quantification. That's always been a problem, I think, with the use of the psychiatric impairment rating scale. Because it does have a greater level of subjectivity to it than the physical methodology.

The Hon. ANTHONY D'ADAM: Is it your view that that system is perhaps ill suited or is it something that you think—

TIM CONCANNON: It's one of the few that really is available as I understand it. There is an alternative methodology—adopted, I think, in Queensland—that adopts a somewhat different scale but, as I understand it, that's not wholeheartedly supported either. So I think it would be fair to say that even the psychiatric medical community do recognise that there are some weaknesses in the psychiatric impairment rating scale as it's applied in any objective sort of way.

SHANE BUTCHER: At the moment the question is about how do you calculate whole person impairment for the purposes of a lump sum claim. Of greater concern to the ALA and, I suspect, to the Law Society and the bar is the reliance upon that assessment for other purposes. That makes its way in the McDougall review—recommendation 37. We say that, however you do the assessment, the whole person impairment shouldn't be the basis upon accessing rights for weekly benefits, medical treatment and other things within the scheme—however you get to the figure.

TIM CONCANNON: Yes. Even the medical guys themselves say that they were never intended to be any guide to need for medical treatment or access to weekly incapacity payments.

The Hon. ANTHONY D'ADAM: I suppose there's obviously a higher level of disputation around psychological claims. Does that tend to be about the acceptance of the claim or is it also reflected in claims for lump sum benefits? Is that argument around the 15 per cent threshold an area of high disputation or is, I suppose, the methodology so settled that it's pretty clear one way or another whether someone is—

ELIZABETH WELSH: It is very settled and we would not ask this Committee to make any recommendation about changing anything. It would be a matter for recommending that the costing be done on making the change—I think as a first step. I don't think we could tell the Committee on the basis of our submission that you should act and recommend that a change be made to the legislation simply off our submission. There's a lot that's gone into this particular review concerning psychological injury, and you will be hearing and will have heard a lot of other evidence that's relevant to your consideration. But as a policy matter we don't see any reason why people with psychological injuries should be treated differently to people with physical injuries.

The Hon. ANTHONY D'ADAM: What would be the measure that you would recommend in reducing the level of disputation? If it's not in relation to the lump sum payments or the acceptance of claim, what's the—

ELIZABETH WELSH: I don't think we are saying there's a particular problem with the level of disputation at the legal end of things. I think that our approach is that, if these things are handled properly and the facts are identified early and the dispute is identified early, that of itself would reduce disputes. Because in the instance of section 11A, an employer may be annoyed that someone's gone off on stress leave after a promotion, demotion or disciplinary action. But, if the insurer had in place a system where they actually identified the facts and whether or not there was a process that was or wasn't followed, there's every chance that that 11A dispute would not be raised because the employer would not be able to prove it. Now that would get rid of a dispute. There's nothing better than actually digging around, working out what the facts are at the beginning and identifying what the problem is. That is the best way of dealing with disputes.

The Hon. ROD ROBERTS: Ms Welsh, that then basically, if I'm reading what you're saying correctly, ties back into the initial claim form that's not available now—

ELIZABETH WELSH: That's right.

The Hon. ROD ROBERTS: —which basically is a synopsis of the problem.

ELIZABETH WELSH: Yes.

The Hon. ANTHONY D'ADAM: I wanted to ask one other question. Could you elaborate on the issues around secondary injury and secondary psychological injury? What is the actual status or the capacity to get any kind of compensation for a secondary psychological injury?

SHANE BUTCHER: In terms of whole person impairment and a lump sum payout, you don't receive a lump sum payout for a secondary psychological injury.

The Hon. ANTHONY D'ADAM: Can it affect the 15 per cent? If you've got an initial psychological injury and then the management of the claim exacerbates that, can that push you into the 15 per cent threshold?

SHANE BUTCHER: Very unlikely. You'll have a primary physical injury and then a secondary psychological injury that flows from that. The physical assessment will get done on its own criteria, which usually has very little to do with how you're feeling and the impact the claim has had on you. For example, it might be a range-of-motion assessment or nerve conduction studies leading to a physical assessment. Secondary psychological injuries do impact on return to work and, therefore, weekly payments. The treatment that you need, you might need to see a psychologist, a counsellor or a psychiatrist for longer. It's more cost to the scheme and entrenches you into the workers' comp scheme for longer. It has this snowball effect.

The Hon. ANTHONY D'ADAM: They get picked up for benefits though. If you get a psychological injury arising from a physical injury, you get access to medical treatment for the psychological injury.

SHANE BUTCHER: Yes.

TIM CONCANNON: And you still get weekly benefits. There's no preclusion in terms of weekly benefits. The preclusion is in terms of using a secondary psychological injury to pass the threshold for a work injury damages claim.

SHANE BUTCHER: A worker could theoretically be physically fit to return from their injury, yet still no longer psychologically fit to return from the secondary psychological injury. They could be physically ready to return to work, but yet not cleared by their doctor.

The Hon. ANTHONY D'ADAM: That's with regard to it becoming a permanent impairment—

SHANE BUTCHER: It wouldn't happen.

ELIZABETH WELSH: You can't aggregate a physical injury.

The Hon. ANTHONY D'ADAM: You can't bring them together. Thank you.

The CHAIR: I refer to the WPI that we were talking about before. Not to labour the point too much, if you were to reduce it from 15 per cent to 10 per cent, for instance, I think you said that it would be good for the Government to do some costings around that. Do you think it would potentially significantly increase the cost to the scheme? The costs of the scheme at the moment are already increasing quite significantly.

ELIZABETH WELSH: I can only give you my own anecdotal answer to that. I've done a lot of psychological injury claims over my career, and I have seen a lot of whole person impairment assessments. In my experience, they come in at 8 per cent or 15 per cent. You rarely see one that's 11 per cent, so I don't think it's going to be big. It could possibly be the thing that causes someone to take their smaller lump sum and either go back to work or stay on their workers compensation benefits rather than go on to try to pursue a common law

claim. It might have that additional benefit. But it's really just an educated guess, from my point of view, to say anything about that.

The CHAIR: Would you say that, at the moment, the scheme is unnecessarily adversarial? This is to all three of you. What are some potential easy ways to reduce the combative nature of the scheme?

TIM CONCANNON: In the context of psychological injury claims, I think one of the big issues is that if there's any doubt about the psychological injury claim at all, the insurer engages an investigator. A lot of the fact-finding that the insurer would otherwise make themselves comes courtesy of the investigator. That investigator often speaks to fellow workmates and finds out whether there's any basis for a defence, let's say, under section 11A. I think that early involvement of the investigator, coupled with repeated IME examinations, or independent medical examinations, commissioned by the insurer does create at an early point in a lot of claims—the figures that I saw in answer to the questions proposed by SIRA and/or icare was that 63 per cent of psychological injury claims have an investigator appointed.

If you couple those things together, it does create, particularly in psychological injury claims, a highly adversarial nature. Section 11A, whilst it is true that the onus is on the employer, if you've got a work situation where the employer is able to say who can or can't give a statement and the worker who has left that employment has got little or no control, unless that worker has left that employment, the reasonableness or otherwise of the action relating to promotion, demotion or discipline—it is very difficult for the worker to get that evidence together, especially when faced with an investigator who might have obtained two or three written statements from a fellow worker. I think that is something that really entrenches the adversarial nature at a pretty early stage in the process.

SHANE BUTCHER: If I can pick up on that, we agree that it is adversarial in nature. The workers are constantly feeling like they have to prove themselves and tell their story over and over again. That plays in their mind. And then they feel like their health is binary—you are either better or you are not; you are either depressed or you are fine. They feel like insurers are going to have some big gotcha moment where they say, "Well, you can't be that bad. We have footage of you celebrating your birthday." These people need to be able to transition back and get life back to normal. But having that big brother mindset, "People are always watching me," I think, further entrenches that for the injured worker and they retreat into their shell.

The CHAIR: I think the difficulty for me to understand is that on the one hand we have heard from many witnesses and submissions that the scheme is adversarial and combative, and that insurers are often too willing to try to reject claims, but on the other hand we have a drastic increase in psychological claims. If it's too adversarial, why are the claims costs going up so significantly? There is probably merit in both, but how do you reconcile those two things existing at the same time?

ELIZABETH WELSH: If the system is too adversarial, people aren't going to be better, so you've got more claims and the system isn't helping them. That's going to make the claims more expensive. By "adversarial", I just don't want to be seen as saying that that's on the legal side of things; it's at the insurance company claims officer side of things.

TIM CONCANNON: I think the change of claims officers—which has been commented on by a number of persons giving evidence, at least in their submissions—is a really significant factor. I see numerous psychological injury claimants who feel very satisfied for a while with their position but then they get a new claims officer who is a hardnose and it becomes the worst thing in the world. I think consistency of claims managers would be very helpful, and experienced claims managers. I think management of workers compensation claims for psychological injuries is the key.

ELIZABETH WELSH: There is a big difference between cynicism and healthy cynicism. If you want to have a negative mindset about people who are making psychological injury claims, you can easily convince yourself that there's really not very much wrong with them. Healthy cynicism is that you need to be critical about what you are seeing but you need to respect their experience and you need to make them feel as though you do believe them. A lot of the problem with some people I have seen over the years in the system is that they have this absolute trauma from feeling that no-one believes them and it creates behaviour which is not conducive to going back to work.

The Hon. ANTHONY D'ADAM: Obviously in a lot of these claims you have a situation where a person effectively is never going to return to the workplace. You have a whole system designed to get them back into a workplace but the reality is that, because of the nature of the psychological claim and the psychological injury that they have sustained, they are never going to want to go back and they can't actually return to work. Do we need to look at another way of dealing with this? I come to the lump sum question because obviously they have to wait two years and then there is this whole question about permanent impairment. They are not necessarily

permanently impaired from doing other work and so then the system is trying to effectively knock out their claim on the basis that they are able to do alternative work and, therefore, they are not eligible. Do we actually need to look at some different system? Maybe commutation is a way of dealing with this, but the two-year waiting period and the 15 per cent threshold are impediments that present a unique set of challenges for psychological injuries that are quite distinct from physical injuries.

ELIZABETH WELSH: I know Tim wants to say something about this. But before you look at lump sum culture, I think you need to go back to give the better claims handling process and other things a go, before you say, "Well, there's this other answer." I mean, there's so much that needs to be done to improve the engagement, from what people in the system tell us—to improve their return-to-work rate. It's all about their return-to-work rate.

The Hon. ANTHONY D'ADAM: Surely, rather than persisting with trying to get someone back into a workplace that's never going to happen—the system is designed to keep forcing them and that's where the friction point is in the process. That can obviously compound the anxiety that is felt by the worker. That system is clearly a problem and, of course, it has obviously been contributing to poor return-to-work rates when it comes to psychological injuries, because the workers are reluctant and resistant to returning to a workplace that they know is fundamentally hazardous to them.

SHANE BUTCHER: Once we've done all we can as a scheme and there's nowhere else to go, then there should be proper mechanisms to exit the scheme, in my view.

TIM CONCANNON: I agree. The 15 per cent threshold for a commutation, quite apart from the other issues we have with the current restrictions on commutations, just doesn't work. Arguably, the ones that the scheme should be removing are those with smaller liabilities potentially available, so that just doesn't allow the opportunity for that to happen. And one also must take into account the positive psychological benefit. I think you often see with people who know that they're not going to be able to return to work, within your example, and see that they're no longer going to be beholden to the insurance company to provide certificates of capacity every month, as they're required to do—that they regain some independence that they haven't had since their injury, and the positive psychological and even physical benefit of that should not be underestimated.

SHANE BUTCHER: But at the moment, effectively, if you don't reach that 15 per cent threshold, there are no mechanisms to exit the scheme until your benefits run out. Or, if you do reach that threshold, you make an allegation of negligence and you bring a common law claim. But, other than that, you're within the system for as long as that ride takes you.

The Hon. ANTHONY D'ADAM: That's five years, really, isn't it?

ELIZABETH WELSH: Yes.

SHANE BUTCHER: And then potentially five more years for treatment after that.

The Hon. ANTHONY D'ADAM: Effectively, you've got someone on weekly benefits for all that period of time, and that's obviously going to affect the return-to-work rate. Surely there must be a better mechanism. What is the threshold that we need to look at?

ELIZABETH WELSH: I don't know about "threshold", but I don't know why the workers compensation system is always so reluctant to retrain people or pay for them to do a course—I mean, to recognise that there are those cases where this person can't go back into this job. What can we do to assist you to move yourself off into something that's going to give you some satisfaction? I mean, maybe that's something that could be considered.

TIM CONCANNON: I think the only threshold I would suggest is that it be in the best interests of the worker. That used to be the situation, as it was for what were called redemptions under the 1926 Act. It was a matter of whether it's in their best interest as assessed by what was then the Compensation Court, now the Personal Injury Commission. As well as obtaining legal advice, they're the only two preconditions that the Law Society would say are appropriate.

The Hon. ANTHONY D'ADAM: You would say no waiting period for that?

TIM CONCANNON: Well, there wasn't, traditionally, under the old legislation. I don't see any rational reason why there should be.

SHANE BUTCHER: You referenced "two years" earlier. That's not a waiting period to get a whole person impairment claim within the legislation. I'm not sure where that two years came from, but I suspect that's how long someone takes to get to maximum medical improvement, before they can do their assessment, before they can then access those benefits. But there's no—

The Hon. ANTHONY D'ADAM: There is no statutory requirement—

SHANE BUTCHER: If you're talking about a statutory period in order to get assessment of whole person impairment, if that's what you were referring to before—

ELIZABETH WELSH: Remember, when we did have commutations and, before that, redemptions, quite often the reason why the person would want to take the lump sum is to retrain themselves. That is something that accommodates that retraining option, gives someone some time to—they've got a bit of money, it's in the bank, they can do some training, they can work themselves into a slightly different career path. So that should be available. I don't know how early it could be—not too early, I wouldn't imagine.

The Hon. LOU AMATO: Talking about careers, is there a profession that has higher claims for psychological injury?

ELIZABETH WELSH: Oh, dear—you can't ask us that! I know the legal profession has got a pretty high rate, but I can't speak about anyone else.

The Hon. WES FANG: You should try politics.

The CHAIR: There's some data in SIRA.

TIM CONCANNON: I think, in my experience, that those with office-type jobs tend to be the most regular appearers before me as a claimant's solicitor, because the potential for bullying within that environment perhaps is somewhat more, or a public service-type job. But that's just anecdotal. I know that there are a lot of figures that you've seen before you, from both SIRA and icare, on that type of frequency within professions.

SHANE BUTCHER: Certainly emergency service workers have a high propensity to suffer psychological injuries, the Police Force in particular. You do see in the education space, as well, those employees often lodging claims. You'd imagine they're different types of claims, and I think there were some answers to questions by SIRA and icare that sort of try and break those cohorts of numbers down into those categories.

The Hon. LOU AMATO: The reason I asked the question was that if we can identify those particular areas or careers where there are more problems, then perhaps we can find ways to address those issues to stop it coming to court. I believe you mentioned in your submission, Mr Butcher, that you want to increase the fees?

SHANE BUTCHER: In the opening remarks, I think that was.

TIM CONCANNON: It might have been me, actually.

SHANE BUTCHER: In your opening remarks, yes.

The Hon. LOU AMATO: It might have been you. I understand the cost of everything goes up, and I ran a business for many years myself. But at the moment, is that having an impact on people putting their claims through?

TIM CONCANNON: I don't think so. You've got to understand the legal costs that we're talking about are schedule 6, which is largely not used by claimants' solicitors at the moment. What that's relevant to is those acting for claimants within the exempted worker space, so police and ambulance officers and whatnot, and those acting for insurers. For most workers who are represented by claimants, we're governed by the IRO—the scheme that IRO has called the ILARS scheme. That's different to schedule 6, and they operate completely separately. They may be informed by schedule 6, but it's not really a determinant of how much we get paid as a claimant's solicitor.

The Hon. LOU AMATO: I'm just trying to get a better understanding of ILARS and how it works. Thank you.

The Hon. SCOTT FARLOW: In our last hearing, we had some submissions that the workers compensation scheme wasn't necessarily fit for purpose when it came to psychological injuries. I think it's also been touched upon by Mr D'Adam in terms of where you get to 15 per cent whole person impairment and how that works. You've outlined how it works when it comes to psychological injuries, but do you see any benefit in having a separate scheme to assess psychological injuries in the workplace?

ELIZABETH WELSH: No.

TIM CONCANNON: I think the Law Society would have to take that question on notice, I must say. It's not something that I've ever considered, and nor has the society. I'd be pleased to have that opportunity.

ELIZABETH WELSH: I should say the same thing. That was really my personal thought, rather than having consulted with anyone.

SHANE BUTCHER: We'll all take it on notice.

The Hon. SCOTT FARLOW: Often the first response is the best.

The Hon. GREG DONNELLY: Sorry to return to this issue but, with respect to the matter of the claims managers and claims management in general, I take the point that was made by previous witnesses both in submissions and oral evidence about frustration associated with the way in which their claim is managed. They are being asked to repeat the experience. When the person who was managing the file leaves and a new person comes in, the temperament and disposition of the person coming in may be different from the one who has left. There are matters of, dare I say, young people without a whole lot of life experience not having certain sensitivities about managing and talking about issues et cetera.

I also get a sense from the evidence from individuals that the actual information that's being looked at by the claims manager, the detail of the person's claim, is often very general in its nature. Perhaps it's going back to the point that we were raising earlier. This is where I'm trying to work out the pieces. Ms Welsh, you raised an interesting point that the way it was once done, that is, a paper file—not that we're ever going to back to that—did have some advantage to it in terms of content and detail and what have you. We've got the regulator and icare in this afternoon.

Whilst these magnificent pieces of electronic hardware are in place, and they can do all sorts of things, there doesn't seem to be that sort of content established and then content flow with any continuity. That may be very simplistic on my part, but I get the sense that there is an issue there which means that as we progress through it, there is this sort of circling back and maybe back again. That then creates frustration obviously for the injured worker, but also a frustration for the system itself. I'm wondering if you have any comments about that.

SHANE BUTCHER: All of that is correct. Our experience is that, whether it's by design or by chance, there's no handover between case officers. There's no doubt going to be turnover of employment; we can't prevent that. History shows, I think, that there's been a high rate of turnover, at least in EML, some time ago. So there's going to be some change in personnel who's looking at the file. How you do that needs to be properly managed. We saw icare's recent announcement that they are going to be expanding the number of insurers. I don't know where they're going to get the staff from. There are going to be some new staff coming in running new claims. We don't know what kind of level of experience they're going to get. The market for quality case officers would have consolidated with EML in recent years and now, all of a sudden, are those people going to find new homes or are we going to train people up from the start? There are going to be ongoing problems in the next few years, I would imagine, in how we're going to manage these claims and then how do we build on from that? It's going to be an issue.

The Hon. GREG DONNELLY: I guess that's what I'm looking at. I'm looking at that and there don't seem to be too many roses in the garden looking forward.

SHANE BUTCHER: Correct. We don't work on that side of the fence. I don't know whether they have a summary that they read where they do a proper handover. I would imagine some people leave employment without giving a handover to their replacement, for whatever reason that may be. There are going to be some challenges, but the insurers need to find ways to deal with those.

TIM CONCANNON: I think the announcement that I saw the other day also suggested that there will be specialist psychiatric injury claims consultants. I would be suggesting that perhaps that wouldn't be the most sought after job within the insurance industry, solely dealing with psychiatric injury claims. So that would be a real concern that I would have. Ideally it should be the case that you're dealing with experienced claims officers, but I'm not sure that having those claims managers dealing solely with psychiatric injury claims is a great idea.

ELIZABETH WELSH: The struggle that the claims officers have is the same struggle that we all have with going back to a point in time and working out what happened. We all have to have a system for managing it. There's no reason why there can't be some resource on file that contains all of those early documents so that they can be readily found and that everyone knows what they are. You have to read all of that before you're allowed to ring the client up. You can't just ring the client up and say, "Hi, I'm your new claims manager. Tell me what happened to you."

The Hon. ANTHONY D'ADAM: Isn't it the case that in a lot of psych injuries the claim comes much later after the injury? The worker will be injured, they'll go off on sick leave and then the actual workers comp claim will be put in at a later stage once they've obtained some advice.

ELIZABETH WELSH: I've seen them on the day. No, I don't think you can really generalise about that. Sometimes people keep working until one day they can't take it anymore and then they're gone. Then they hand in a medical certificate and they never come back.

TIM CONCANNON: I think it depends on the genesis of the psychological injury in the first place. If it's a tragic accident, let's say, or a very specific event that's incredibly traumatic, I think you are likely to have a psychological injury pretty much straightaway. If it's a gradual bullying-type harassment claim, then it's going to be somewhat slower and probably more delayed I suspect.

The CHAIR: Any further questions from Committee members?

The Hon. ANTHONY D'ADAM: I might just ask, while I've got you there, I think the ALA's submission talks about 60AA. Perhaps you could elaborate on this issue around the restriction on injured workers accessing domestic assistance.

SHANE BUTCHER: Yes. The submission in relation to 60AA deals with the fact that you have to have been receiving the treatment and care at the time of the injury. If I could just grab my submission for a moment. I believe in the submission we gave a few examples of where this causes some trouble, so I'll try and stick to the same examples. The examples we gave was a young person living at home with his parents who had a serious injury would be forever precluded from receiving domestic assistance because they weren't doing those domestic chores at the time of the injury, and the second example was a female worker. It seems to me inherently unfair that someone who might be in need of that assistance can't obtain it because of the life circumstances they were in at the time of their injury forever being precluded. The legislation currently has no way for which us as practitioners can help them recover that treatment of care that they need.

The Hon. ANTHONY D'ADAM: Is this an oversight or is it something that has a specific intent behind it?

TIM CONCANNON: I think it was probably copied from the motor accident legislation and the prohibition there on care that wasn't being provided immediately prior to the work accident for whatever reason, and that was probably from the 1999 motor accident legislation. I think that might have come from there.

SHANE BUTCHER: I couldn't help at the moment off the top of my head where it came from. But it doesn't happen a lot, but when it does, it's a grave injustice I think to those people.

The Hon. ANTHONY D'ADAM: It's unlikely to have a significant cost.

SHANE BUTCHER: So rectifying that I can't imagine would have an enormous cost to the scheme but would right a wrong for a few people who are in desperate need for help.

ELIZABETH WELSH: Could I just say one thing? I just think I should say something to correct what I said about claims officers. I'm not suggesting that the claims officers have an easy job. It's very difficult dealing with those people on the phone, and I understand that when you meet a new person, it's ordinary to ask them something about themselves, and if you want to understand what has happened to someone, the best way of doing it is to ask them. I myself by reading documents don't get nearly as much out of them as I do by having a conversation with someone for five minutes. I acknowledge all of that, and so the answer there is consistency of claims officers, and that's a massive challenge it seems.

The CHAIR: Good point. Unless there are any further questions, thank you so much for coming today and for presenting us with your evidence. 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 14 days. The secretariat will contact you in relation to these questions. Thank you.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr JAMES KELLY, Director, Health and Safe Design, SafeWork NSW, affirmed and examined

Mr MATTHEW PRESS, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you so much for coming today. Would either of you like to start with a short opening statement?

MATTHEW PRESS: If we could, thank you, Chair. Thank you very much for the opportunity to appear amongst you all today. In Australia and across the world, I think there has been increasing acknowledgement that mental health is a key component of overall health and wellbeing. At the first hearing, this inquiry heard from many different stakeholders who described mental health as a global and very complex issue. It is so complex because it spreads across both personal lives, work lives, across both social and workplace settings, and from a public policy's perspective is both a workplace safety issue and a public health issue. In New South Wales, workers have the right to work safely without harm arising from physical or psychosocial risk and businesses have a responsibility to take all reasonable, practical steps to manage both physical and psychological hazards at work.

Now although there remains plenty to do, SafeWork has undertaken significant work to try to create mentally healthy workplaces in our State. While there is very much opportunity for improvement ahead, arguably, New South Wales is a national leader in this space. A centrepiece of SafeWork's approach has been the implementation of the Mentally Healthy Workplaces Strategy, which was launched in 2016 with the headline objective of ensuring that by 30 June this year we had 90,000 New South Wales businesses taking effective action to create mentally healthy workplaces.² The strategy was retuned and refreshed in May last year, considering the different ways of working that we experienced through COVID, and four focus areas were introduced: direct practical coaching, tailored support for regional and small businesses, and focused collaboration with high-risk industry sectors.

SafeWork has just started to evaluate the effectiveness of this strategy as part of building the next iteration for 2023 and beyond, and while we're very cautious to rely too heavily on preliminary results, the first round of survey analysis shows that things just might be pointing in the right direction. We seem to have achieved at least 92,000 businesses taking effective action, exceeding our target and representing a 37.5 per cent increase on the baseline results from 2017. We've also observed similarly positive signs from the workplace training programs, with 91 per cent of businesses reporting that they have invested in changes after completing the direct practical coaching and 78 per cent making changes after completing the training. Supporting this strategy has been the implementation of the recent regulatory changes, which have been discussed earlier this morning, and they've significantly enhanced the laws that we have to regulate and that businesses have to operate in.

Last year we became the first jurisdiction to introduce an industry-wide code of practice, which formally clarified the legal responsibilities businesses have in addressing psychosocial hazards at work. Having this code in place has been transformative for us because it has helpfully explained what compliance looks like, making it easier for us as the regulator to enforce but also, just as importantly, for businesses to understand and implement. We believe that by having this detail in place it will significantly help us advance the understanding and management of psychological hazards.

The second major regulatory change occurred via amendments to the Work Health and Safety Regulations. Last month New South Wales became the first jurisdiction to adopt the model provisions on psychosocial risks that were published by Safe Work Australia in June of this year. The amendments insert new requirements for businesses to manage psychosocial risks in the workplace, defining "psychosocial hazard" and "psychosocial risk" and clarifying the appropriate control measures that businesses are required to implement to manage those risks. Those new provisions in the regulations complement the code and, going forward, will also support SafeWork's focus on harmful workplace behaviours, as does the new Respect at Work Taskforce, which was announced by the Government in June.

In our view, the last three years have seen significant investment in education, training and new regulation. Coupled together, these changes now provide ourselves, the regulator and businesses with a much stronger platform to achieve resilient changes in workplace behaviour. Mental health, we must acknowledge, is a multidimensional harm, and we don't have all of the answers. As the regulator, we know that mental health in the

² In [correspondence](#) to the committee dated 4 November 2022, Mr Matthew Press, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, clarified his evidence by replacing the year "2016" with the year "2018".

workplace absolutely matters and that it can have serious impacts on the health, wellbeing and productivity of workers and society in general, but we're also conscious of the need to continually invest in research so that we can better understand the drivers and the relationships and, just as importantly, what are going to be the most effective regulatory controls in response.

Mental health is a harm that we can't resolve unilaterally. It requires ongoing focus across government, our colleagues in SIRA, icare and NSW Health to mention a few, as well as the support of employees, their employers and society more broadly. Regardless of these challenges, for us the mission is very clear: We want all workplaces across New South Wales to be treating mental health as a priority with the same focus and attention as physical harms and, just as importantly, to have it embedded in business cultures and processes through the actions of both business leaders and their workers. We know there's opportunity for further improvement, but from where we are today, we're confident that what has been implemented over the last three years is pushing in the right direction and will enhance the way that New South Wales businesses support mental health going forward. Thank you.

The CHAIR: You mentioned research to better understand the drivers behind mental health issues in our workplaces. Do you have any initial observations about what is driving the increase in psychological claims at the moment? We've seen quite a strong increase over the last few years. Do you have any insights about what you think might be the causes behind driving those claims?

JAMES KELLY: I think it was touched on in one of the submissions earlier today. We're seeing our society change. So I think more awareness in society of mental health issues collectively is certainly a driving factor. We are also well aware, over the last five years or so, that a mental health strategy has been around, and we've increased awareness of the obligations of employers and of the rights of workers to raise mental health concerns in the workplace. We see those as significant driving factors for why people are lodging workers compensation claims in relation to mental health but also seeking of support and assistance.

We actively encourage people to seek support and assistance as early as possible, because I think early intervention is a key step in terms of managing these issues. We want to empower employers with the opportunity to address the harm, and they can't do that if they're not aware of the harm. Raising awareness and then the general society are big drivers. The other more recent driver is obviously the impact of the pandemic and the economic challenges that businesses faced and workers have faced throughout the last three years. We know we've seen extraordinary challenges when it comes to natural disasters and also economic challenges for both businesses and workers throughout the last three or four years, and that certainly impacted on mental health generally in the community but also in the workplace.

The CHAIR: It's a good point about people coming forward early to seek assistance. Whilst we are very worried about the exponentially increasing psychological claims, the flip side would be that you also don't want people not feeling comfortable coming forward and not putting in a claim or not getting the assistance that they need. That might keep claims costs low, but it's obviously a terrible situation to be in if people aren't coming forward to get the assistance they need.

JAMES KELLY: I think traditionally we have seen an under-reporting of psychological harms in the workplace and that certainly has been a challenge for both workplaces and us as a regulator.

The Hon. GREG DONNELLY: Thank you, gentlemen, for coming along this afternoon. I appreciate the submission in the first instance to the inquiry, which provides some valuable background information. With respect to that submission, which I am sure you should be able to put your hands on, on the bottom of page No. 1—not the cover sheet—and going on to the next page is some commentary about the SafeWork NSW inspectors and the importance of inspectors in terms of the work that SafeWork does. Now, it is the case that, with respect to the inspectorate—is it just a single inspectorate, a group of individuals who are the inspectors? Is it a unit per se or is it split into different—

MATTHEW PRESS: In regards to psychosocial health specifically or just generally?

The Hon. GREG DONNELLY: No, total. Just give us the picture. Is the inspectorate a single group of individuals who make up the inspectorate?

MATTHEW PRESS: No, we have a number of directorates. We have two directorates that focus on the construction industry primarily—so a construction metro and a construction regional. We also similarly have another two directorates which focus on work health safety, apart from construction, in that metro and regional setting. Then we have the chemicals, explosives and specialist services directorate; and then we have Jim's health and safety design directorate.

The Hon. GREG DONNELLY: Sorry, what was that last one?

MATTHEW PRESS: Health and safety design.

The Hon. ANTHONY D'ADAM: That is an inspectorate, is it, Mr Kelly?

JAMES KELLY: Yes, I oversee about 70 staff. Roughly two-thirds of those are inspectors across the specialist areas.

The Hon. GREG DONNELLY: With respect to the health and safety design part of the organisation, is it within that group that the specialist psychological inspectors are embedded?

MATTHEW PRESS: Yes.

The Hon. GREG DONNELLY: What is the total number of full-time equivalent or headcount in the HSD? Did you say there were 70?

JAMES KELLY: Health and safety design includes a number of specialists, not just mental health, just to clarify. We have ergonomic specialists; we have work environment specialists.

The Hon. GREG DONNELLY: Did you say the total was 70?

JAMES KELLY: It's 70 in total, not all inspectors.

The Hon. GREG DONNELLY: I'm just trying to get the numbers right here. With respect to the subset within that number of 70 of specialist psychological inspectors, how many of those would there be?

JAMES KELLY: I have two teams that focus on mental health in particular. One team is psychological health inspectors who provide specialist advice to our generalist inspectors, of which there are about 342 across the business, and all respond to psychological incidents. Of the specialist team, our full complement is eight inspectors plus the manager.

The Hon. GREG DONNELLY: So there are effectively eight individuals who are, if I can describe it this way, specifically devoted to specialist psychological inspectorate work?

JAMES KELLY: That's correct, and they are supported by a team of project staff of about 15.

The Hon. ANTHONY D'ADAM: Did you say they didn't do direct inspections themselves—they provided support to other inspectors?

JAMES KELLY: No, they do both. We essentially have a tiered scale. If you consider psychological claims in three tiers of complexity, tier 1 complaints would go to all inspectors. So any of the 300 in our generalist teams, which are based on geography—so metropolitan and regional New South Wales—might respond to what we would consider a tier 1 type complaint or request for service.³ For tier 2, generally speaking our specialist services would provide coaching support and mentoring to those generalist inspectors. Tier 3 might be the more complex and severe matters such as a suicide or a complex, multifaceted complaint where our specialist inspectors would take the lead.

The Hon. GREG DONNELLY: I appreciate that. What I am trying to get is some specificity around those individuals who have full-time responsibility. I understand they are called "specialist psychological inspectors". Is that the term that you use, or is it not the term that you use?

JAMES KELLY: They all have the same role description, but we have a specialised team, so we recruit both externally and internally to the specialised team.

The Hon. GREG DONNELLY: But that group within the 70 that does specialist work in the area of psychological injury, there is a total of eight of those. Is that a correct statement?

JAMES KELLY: Inspectors.

The Hon. GREG DONNELLY: Inspectors, yes. With respect to that total of eight, is there a division between metropolitan and regional in terms of their location?

JAMES KELLY: They're metropolitan-based but they provide statewide support.

The Hon. GREG DONNELLY: The eight are for the State of New South Wales. On notice, would you be able to provide us—obviously not now—with the number of these dedicated specialist psychological inspectors for the financial years '18-19, '19-20, '20-21?

³ In [correspondence](#) to the committee dated 4 November 2022, Mr James Kelly, Director, Health and Safe Design, SafeWork NSW, clarified his evidence by inserting the word "plus" after "So any of the 300".

JAMES KELLY: Certainly, we can take that on notice.

The Hon. GREG DONNELLY: And in '22, we've got the figure of eight, as I understand it.

JAMES KELLY: It does fluctuate, based on vacancies and movement, obviously.

The Hon. GREG DONNELLY: I appreciate that, which is my next question, actually. These are eight full-time equivalent people doing this work of specialist psychological inspecting. With respect to those, are those eight positions currently filled by individuals? There are no vacancies?

JAMES KELLY: We currently have two vacancies in addition to the eight substantive positions.

The Hon. GREG DONNELLY: So, there are actually six on the ground, if I could put it that way?

JAMES KELLY: No. Sorry, just to clarify, we have eight substantive positions that are occupied. We have two additional positions that were recently approved but not filled—

The Hon. GREG DONNELLY: Okay, sorry.

JAMES KELLY: —because we've had trouble attracting talent at that assistant State inspector level. We weren't able to get the talent we wanted at the last recruitment. We intend to go out in the very near future.

The Hon. GREG DONNELLY: So, fingers crossed, all things considered the eight will hopefully go through up to 10 in the not-too-distant future.

JAMES KELLY: That's the goal, absolutely.

The Hon. GREG DONNELLY: If it all goes to plan.

JAMES KELLY: And, can I just clarify? Of those eight, we currently have a couple that are on temporary movements across the business. So, not all eight—

The Hon. GREG DONNELLY: What does that mean?

JAMES KELLY: So, they may be, as part of our risk management to ensure that—to manage things like psychological burnout, the nature of the work we do is quite strenuous, as you'd imagine, dealing with complex work.

The Hon. GREG DONNELLY: Yes, sure.

JAMES KELLY: We do rotate staff in and out of the business from time to time. It's part of our proactive management to support our workforce.

The Hon. GREG DONNELLY: So, in effect, the two coming on are replacing the two that are out, which gets us back to eight.

JAMES KELLY: Wherever possible, but there are some temporary vacancies at present.

The Hon. GREG DONNELLY: So, effectively, we're sitting at eight. With respect to the work done by these individuals, what division of Better Regulation or the team do they actually work in? Can you, please, with some precision, tell us exactly where they work? Perhaps it has been answered by the first response which broke them down into those different areas.

MATTHEW PRESS: So, that's it. All of those specialist staff sit with Mr Kelly's team within the health and safety design directorate.

The Hon. GREG DONNELLY: Just a couple more before I pass, through the Chair, back to my colleague. With respect to the turnover of inspectors—in other words, people who have left the role and in other words have not been repositioned elsewhere within your organisations but have actually resigned—have there been any resignations over the last 12 months?

JAMES KELLY: From the psychological health inspectorate?

The Hon. GREG DONNELLY: Yes.

JAMES KELLY: I'm aware of one resignation that happened for a fairly new recruit within—I think it was six months of her appointment.

The Hon. GREG DONNELLY: Okay. To date there's been one resignation.

JAMES KELLY: Sorry, may I correct that? There have been two: one long-term employee, who has moved on, and one short-term employee of less than six months.

The Hon. GREG DONNELLY: What was the reason for the long-term employee moving on?

JAMES KELLY: I think she was ready for a change. She had been with us for an extensive period of time both in the psychological specialist team and other generalist inspector roles and has moved onto another appointment.

The Hon. ROD ROBERTS: Thank you, Mr Press and Mr Kelly. I'll address this to you, Mr Press, as the executive director. Has SafeWork undertaken any enforcement action at all against any PCBUs in relation to not providing a safe workplace as far as mental health issues are concerned?

MATTHEW PRESS: Mr Kelly can talk to specifics. He manages that area more closely than me.

The Hon. ROD ROBERTS: Fine. I don't care who answers it. It doesn't matter, as long as I get an answer.

JAMES KELLY: Yes. Thank you for the question. We certainly have. Most recently, I feel a significant outcome for us was an enforceable undertaking that we entered into following a violence matter within Sydney LHD. That enforceable undertaking was the greatest undertaking we've entered into for both physical and psychological matters, in excess of \$3 million, which essentially will drive significant improvements in terms of violence in the healthcare sector, particularly around hospitals for that particular matter. That had both physical and psychological implications for the workers involved. In addition to that, we do take a number of enforcement actions, primarily through improvement notices.

The Hon. ROD ROBERTS: Through what, sorry?

JAMES KELLY: Improvement notices.

The Hon. ROD ROBERTS: Yes.

JAMES KELLY: Across our request for service matters and our incidents that come to us.

The Hon. ROD ROBERTS: Perhaps on notice you might be able to take this and come back with some more specific details in relation to that—how many enforcement actions you've taken, what they were, whether they were improvement notices or escalated, and the results of those—so we can drill down on this a bit.

JAMES KELLY: Yes, certainly, I can take that on notice.

The Hon. ANTHONY D'ADAM: There has been some recent media attention around a suicide at Ernst & Young. I wanted to know whether SafeWork had been involved. Perhaps in a more general sense, where there are suicides that may have a nexus with the workplace, what does SafeWork do? How do you engage with that situation? Obviously there's a potential there that this is a work-related death and therefore requires a response from the regulator. How does SafeWork deal with that?

MATTHEW PRESS: Mr D'Adam, that is in that tier 3 category because of the complexity. I think, like you're alluding to, we've got to really understand the nexus between the controls and the role of the workplace and the role of other factors. That's a challenging process for us, as a regulator and investigator, to unpack that. That's essentially our approach: to unravel and see what might've been a driver on the workplace side and see what other things might've been possible to help prevent—

JAMES KELLY: I can add to that. I should acknowledge that matter remains under investigation, so I won't refer to that matter that you raised.

The Hon. ANTHONY D'ADAM: So SafeWork is investigating?

JAMES KELLY: I can confirm that, yes. But in relation to suicide matters in general—and tragically we do have nine people per day, on average, die by suicide in Australia, seven of those male and two female—we take that extremely seriously. As we all know, suicide is a very multifaceted, complex issue. It does not always arise out of the workplace or private life. It normally has a contributing factor for both in many cases. When a matter is referred to the regulator, as in SafeWork NSW, suggesting that work is a contributing factor, we do take a look at those matters.

The Hon. ANTHONY D'ADAM: How does it get referred? Do police suggest that there might be a workplace nexus? How do you actually get notified that this particular suicide may have a work-based nexus?

JAMES KELLY: It's a good question. It can come from any source, whether it be family members who believe or suggest the fact that work may be a contributing factor, work colleagues or even the workplace itself. Perhaps if the cause of death occurs at the workplace then that's often referral. Otherwise it's emergency services or others who may find evidence on the scene that may suggest work is a contributing factor—such as a note, for example.

The Hon. ANTHONY D'ADAM: What about where there's a workers compensation claim, perhaps liability has been accepted that it's a psychological injury, and then the worker suicides? Does SafeWork have a role in that circumstance?

JAMES KELLY: Again, we would rely heavily on referrals to draw that connection.

The Hon. ANTHONY D'ADAM: Do you have independent systems to be able to determine whether there's a role there for SafeWork? We can see in the statistics that there are, particularly in the public service where there are high levels of psychological injuries—clearly, something's happening. There are a lot of injuries occurring that are of a psychological nature. What systems do you have in place to draw your regulatory attention to those workplaces where it's clear that there are significant injuries occurring? I would cite, for example, the education sector, which, I think, has a very high number of psychological injuries. It's a major employer in the public sector. What regulatory attention have you provided to the Department of Education, for example, to satisfy yourself, as a regulator, that they've got safe systems of work in place that are protecting people from psychological injuries?

JAMES KELLY: I think that's a broader question than just suicides. But if we talk about government agencies, which we know are over-represented when we look at TMF data and claims data amongst the government agencies, we have a portfolio arrangement where a manager within our organisation—not necessarily the psychological health team but all teams would have a management portfolio that works very closely with the government departments. So there is a manager that's responsible for the Department of Education. They would meet on a regular basis, normally three or four monthly, to proactively manage claims, both physical and psychological, in those government departments and look at trend management, look at complaints and incidents that are coming through to us, and proactively have discussions around what are those government departments doing to manage those risks.

The Hon. ANTHONY D'ADAM: Have you issued any improvement notices? What kind of regulatory action are you taking in education, for example, where there is clearly an issue, in terms of psychological hazards?

JAMES KELLY: I would need to take that on notice. I am not the portfolio holder for the Department of Education; however, I am happy to take that on notice.

The Hon. ANTHONY D'ADAM: You have regulatory authority in relation to work health and safety and protecting workers from psychological hazards. You have to have an exemplary record as an organisation yourself. Are there issues in terms of psychological risks, psychological hazards in SafeWork that we should be concerned about?

JAMES KELLY: As I touched on before, we take health and safety of our workers very seriously. We are certainly by no means perfect and we don't claim to be. Managing mental health is a really challenging task for any organisation. As I mentioned in my own psychological health team, we have that proactive role of rotating staff in and out as a way of managing the risk to them because it is quite a challenging role, as you'd imagine. There are other hotspots across our agency and also the Department of Customer Service more broadly speaking. We work very closely with our people and culture team for the Department of Customer Service to ensure that they are proactively driving both physical and psychological prevention and adopting what we essentially preach as the regulator to other organisations and agencies. I believe the Department of Customer Service is performing quite competitively when you compare it to other departments.

MATTHEW PRESS: Another thing we are doing, Mr D'Adam, is trying to keep an eye on the data, and so the incidents. In about the last six months we noticed an uptick in threats of self-harm that our frontline staff are experiencing when they are engaging with the public. We introduced quite quickly some guidance tool that is available on every desktop to try to help lead staff through those interactions. As best as we can, we are trying to be aware of what is out there, listen to our staff and consult with them on how to manage as much as possible.

The Hon. ANTHONY D'ADAM: One of the key data sources would be the People Matter Employee Survey where they ask questions that give you a bit of an indication about the psychosocial environment in a workplace. Are you scrutinising that data to see whether there are specific areas within your organisation that have, perhaps, red flags or where there should be some further attention directed?

JAMES KELLY: As a regulator we deliberately keep a distance from our own organisation. If matters arise where there is a potential conflict then we would refer that to the Department of Primary Industries. However, we expect all departments, including our own, to regularly review the People Matter Employee Survey results as just one of many indicators they may rely upon to inform themselves of issues arising, particularly in relation to psychological health. That matter would be an obligation on our chief people officer, essentially.

The Hon. ANTHONY D'ADAM: During budget estimates hearings I asked either you, Mr Press, or perhaps Ms Hogan about providing specific People Matter data in relation to SafeWork. The department failed to provide that data. Do you have any explanation as to why that specific data can't be provided?

MATTHEW PRESS: I'm not aware, sorry. No.

The Hon. ANTHONY D'ADAM: Are you able to, on notice, provide the People Matter data for the directorate that you oversee?

The CHAIR: Do you want to take a question on notice about a question on notice?

The Hon. ANTHONY D'ADAM: If you would like to take on notice, my question is can you provide the Committee with the data for your directorate.

JAMES KELLY: Can I just seek clarification, if possible?

The Hon. GREG DONNELLY: Or will you provide the data?

JAMES KELLY: Can I just seek clarification, if possible? SafeWork as an agency doesn't exist any more. The brand certainly does but the agency belongs to part of the better regulation division. We can certainly provide People Matter results for the better regulation division and/or the CDR, the compliance and dispute resolution stream that Mr Press manages. But SafeWork itself is part of the better regulation division, just to clarify the question.

The Hon. ANTHONY D'ADAM: For Mr Press's specific stream of better regulation, could we have the People Matter data?

JAMES KELLY: This year's results are not quite available yet.

The Hon. GREG DONNELLY: And perhaps an organisational chart to help us understand it?

The Hon. ANTHONY D'ADAM: My colleague makes a very good point: Could you provide an organisational chart to help us have a better understanding of the internal—

The Hon. GREG DONNELLY: Just so it all fits together nicely.

JAMES KELLY: Yes. And this year's results are yet to be made available. I think they are about a month away, from memory.

The Hon. ANTHONY D'ADAM: In your opening statement you referred to the healthy workplaces—what's the name of the policy?

MATTHEW PRESS: The strategy?

The Hon. ANTHONY D'ADAM: The strategy, yes—the NSW Mentally Healthy Workplaces Strategy. You used some specific wording. You talked about businesses taking effective action. What constitutes effective action?

JAMES KELLY: I can take that question, if I may. Back in 2018 we worked together with some of the best academics in the country to identify a 42-question standard, I suppose, of what we expect employers to establish in order to be a mentally healthy workplace. We graded that on a five-tier scale, starting from basic awareness, where they have next to nothing in place; intention, where they have the right intention to create a mentally healthy workplace but not much more; limited action, so they might have an employee assistance program; they may react in a responsive way to issues when they arise but they're not doing much in terms of prevention; to effective action. We've defined effective action as businesses that are proactively managing mentally healthy workplaces; they have prevention strategies.

The Hon. ANTHONY D'ADAM: Isn't effective action that there are no injuries or that there are reduced injuries? Isn't that a better measure in terms of the efficacy of the strategy—that you actually see a decline in psychological injuries? Why isn't that part of the goal?

JAMES KELLY: The issue with that is that's a lag indicator. That happens after the event. These measures are measures that you can do prior to exposure or issues occurring. So these are measures that measure proactive action that we would like to see employers take in order to prevent illness and disease in the workplace.

The Hon. ANTHONY D'ADAM: Surely the purpose of the strategy is to prevent injury, and so the effectiveness of the strategy is to determine whether it did prevent injuries. Why are you assessing it on the basis of taking preventative actions rather than the actual goal that the strategy should have, which is reducing injury levels? Why isn't that the measure that you're using to determine whether the action is effective?

JAMES KELLY: The measure that was determined was this 42-question criteria that establishes what effective action is—that is, proactive action that we want businesses to take. Our measures of success, in engagement with the best academics in the country, was to proactively drive businesses to take action, which we know from the evidence that over time we will see results from.

The Hon. ANTHONY D'ADAM: But if there's no change in the number of psychological injuries, then even if they are taking a proactive—the strategy is not working, surely.

MATTHEW PRESS: I guess, Mr D'Adam, on the flip side there could actually be an increase in claims because we know there's a lag there as well. The priority for us was that people actually were taking steps to be proactive and create an environment where issues could be notified, getting that confidence to actually—

The Hon. ANTHONY D'ADAM: So you say the strategy would be effective if you saw an increase in the number of injuries? Is that what you're saying?

MATTHEW PRESS: No. So we need to make sure that workplaces create the right culture and then processes for people to raise a mental health issue when they have it, because that's the first starting point. And then when they have that confidence then we can look at making sure that later those claims don't arise. In the near term we might actually see an increase in complaints while action is taken because of the lag effect.

The Hon. ANTHONY D'ADAM: Have you done any modelling that might suggest that you'll see this bump—that as you raise awareness, you'll see an increased level of notification and reporting, workers comp claims and then it will taper off? Is there any modelling to support that that underpins the strategy?

JAMES KELLY: No, Mr D'Adam, we haven't done any modelling.

MATTHEW PRESS: I not aware there's a specific strategy but, as a regulator, that's a very common model that we would have. In other industries which I regulate—so building, for example. We know there that we're not getting—the complaints aren't equal to the amount of defective buildings out there, so we've got to increase the number of complaints and at the same time reduce the number getting in the system. So we have to have this two-pronged approach where we're not just focused on preventive and we're not just focused on claims—that we're keeping an eye to both.

JAMES KELLY: As we pointed out, I think in the opening question, there are a lot of contributing factors that lead to increased psychological claims. We obviously mentioned increased awareness as part of that, as Mr Press touched on, but also obviously the impact of the pandemic and economic strategies that impact on both workers and businesses. It was decided that the regulator can't take responsibility or necessarily measure our success based on claim numbers alone. What we can do is proactively drive action for employers and that's why we set this benchmark of 60,000 businesses taking effective action.⁴ We've delivered on that to our expectation and exceeded that to reach the 62,000 target based on our sampling survey of this year.⁵

MATTHEW PRESS: Further to your point, given we're at the end point of that strategy and we are thinking about "what next?", we may look to have something more claims orientated. Because we have, if the data is correct, increased that awareness and given that good foundation to think about something as a higher level objective.

The Hon. ANTHONY D'ADAM: Given that there is a much higher incidence of psychological injury in the public sector, why are you directing your regulatory focus in terms of mentally healthy workplaces to the private sector? It seems like there is a glaring and obvious problem that requires attention in the public sector, yet your focus is on the private sector where the problem is perhaps less acute.

JAMES KELLY: Our strategy looked at both public and private sector and provided support assistance to all employees, including the public service. We did, however, direct our funding and financial support to small and medium businesses because we feel they need the most support assistance to comply and to take action in relation to mentally healthy workplaces. Our free coaching service and free training services were dedicated towards small and medium businesses of up to 200 workers. However, our resources are just as applicable to large private sector and large government sector agencies. We also worked on things like the People at Work tool,

⁴ In [correspondence](#) to the committee dated 4 November 2022, Mr James Kelly, Director, Health and Safe Design, SafeWork NSW, clarified his evidence by replacing the number "60,000" with the number "90,000".

⁵ In [correspondence](#) to the committee dated 4 November 2022, Mr James Kelly, Director, Health and Safe Design, SafeWork NSW, clarified his evidence by replacing the number "62,000" with the number "92,000".

which was supported by all regulators across the country, which is very applicable to the government sector. We also have our regulatory responsibilities. Government agencies are large employers, and we expect government agencies to have the resources and the capability to manage their own health and safety risks. We use our regulatory tools to help drive that behaviour.

The Hon. ANTHONY D'ADAM: Clearly they are not managing it particularly effectively when it comes to psychological injury, don't you think?

JAMES KELLY: Certainly. When we establish evidence to take action, as we did with Sydney LHD in terms of the enforceable undertaking, we will take action.

The Hon. ANTHONY D'ADAM: But on a systemic basis there doesn't appear to be any strategy. Is there any work being done to develop a strategy that might deal specifically with the psychological injury problem in the public sector?

JAMES KELLY: At present, we are at the end of our SafeWork NSW road map. That completed this year. As part of that, we also had a government sector work health and safety plan, which held all secretaries to account to report against their performance, including a number of indicators in relation to mental health, violence and other factors. Those secretaries, at the secretaries board, would report back on their measure and their performance against that.

The Hon. ANTHONY D'ADAM: What work are you doing around the implementation of the code of conduct in the public sector? Is that something that you're proactively ensuring, that agencies are properly implementing the code of practice in relation to managing psychosocial hazards at work?

JAMES KELLY: The code of practice is now just over 12 months old and the regulations commenced on 1 October. With both of those, we've been through a phase of raising awareness, both with public and private employers. On the back of our awareness-raising phase, we will be increasing our regulatory activity. We see the regulations and the code of practice as a fantastic opportunity for us to clearly define what our expectations are, which we haven't had in the past, and it will enable us to take more assertive regulatory practice moving forward.

The Hon. ANTHONY D'ADAM: For example, coming back to the education sector, what work would you be doing to make sure that the education sector is actually applying the code of practice, doing the risk assessments and putting in place the hazard controls?

MATTHEW PRESS: We might speak to where we are trying to get more assertive, as Mr Kelly said. That's a good word in this government space because, as we've spoken to, the data shows it does have a higher incidence of claims. We have just recently launched a program working in the healthcare sector. We are visiting—Mr Kelly, is it 12 or so?

JAMES KELLY: Public and private hospitals?

MATTHEW PRESS: Yes, public and private hospitals. We're looking at violence in hospitals, particularly seeking evidence on their control strategies, speaking to staff managers and that sort of thing. That's the type of approach that I'd like to see more of going forward in other sectors, like education.

The Hon. ANTHONY D'ADAM: In the health sector, I think you mentioned an enforceable undertaking. Did you give any contemplation to pursuing the senior officers of the department? They have a specific exposure in terms of their responsibilities. Was there any consideration about going to the secretary and putting some enforcement action on the secretary for their failure to adhere to their duty of care?

JAMES KELLY: It would be based on evidence. The investigations team, which we don't manage, were responsible for consulting with legal counsel. It's routine practice to consider officers as part of the investigation process. Absolutely, I would expect that would have been considered. If there was evidence available to enable reasonable prospects, I would expect the legal counsel would have advised us to pursue those matters. On this occasion that wasn't pursued.

The Hon. SCOTT FARLOW: I'm interested in your inspectorate and how it works. I very much have a view, Mr Press, in terms of your construction division and how that would work in terms of sending inspectors in, having them assess the site and look for workplace health and safety issues. I'm interested in how it works when it comes to a psychological injury assessment in a workplace—in a presumption. Is it going through policies? A lot of the stories we've heard are about workplace bullying and the like. I imagine they are not things you get from walking through a site and having a visual inspection. I am just interested in terms of how that process works.

JAMES KELLY: There are many different types of psychosocial hazards, as you can see in our code of practice. The most common complaint would be a bullying complaint in an organisation. I will use that as an

example. We don't get involved in terms of the conflict itself. Playing a mediation and arbitration role is certainly not our role. The Fair Work Commission can play a role in terms of that, but that is certainly not ours. In the first instance, we do expect the worker to raise the concern in the organisation and give the organisation an opportunity to resolve the issue. That is one of the triaging questions we ask: Have you raised this with your employer? If they have and they have failed to get a suitable outcome or a reasonable outcome, then we would tend to start the investigation process. In order to do that, we would look at if they have a policy and procedure for investigating interpersonal conflict of bullying-type allegations in the organisation and if that has been followed.

In order to determine that, we would look at the procedures and the policy and we would interview the worker if they are happy to go on the record and not remain anonymous. It is quite challenging for us to take anonymous complaints, but we can do so to some extent. We would also consult with the health and safety representative to get feedback on if there are other bullying-type issues across the organisation. We would also consult with the employer representatives to look at their evidence to show that they have followed that policy and procedure to reach a suitable outcome. Where we see failures in terms of inaccurate and inadequate policies and procedures, we may issue an improvement notice. Where the policy and procedure hasn't been followed as determined by the organisation, we may issue an improvement notice as well to review their system of work to make sure it is followed moving forward.

The Hon. SCOTT FARLOW: What about in a proactive sense in terms of actually going onto worksites and looking for potential issues into the future? Do you undertake that by going through and looking at the policies that they have in place or the education programs that they have in place with staff? How is that undertaken?

JAMES KELLY: We certainly do. We tend to do it more in the high-risk areas, not so much—

The Hon. SCOTT FARLOW: What do you deem to be the high-risk areas? I think Mr Amato asked our last witnesses about sectors and whether there were any sectors that they found to be high risk. While answering that question, can you outline what you see as the high-risk sectors when it comes to psychosocial injuries?

JAMES KELLY: As Mr Press pointed out, violence in the healthcare sector at present is certainly top of mind for us. We have had a number of instances in the healthcare sector both in public and private hospitals, probably more so in the public hospital system. That certainly is a high priority area for us. We are proactively visiting workplaces now to look at the systems of work they have in place to prevent and manage violent acts or behaviour in the hospital system.

The Hon. SCOTT FARLOW: I will go back to the proactive approach that you take and how that is undertaken in terms of looking at the policies that might be in place and the education. How does that work?

JAMES KELLY: Again, it's tailored to hazards. In the case of violence, we would have a checklist that we would use to coach and mentor our inspectors, not just our specialist inspectors but our generalist inspectors would be supported in doing a proactive visit to a healthcare facility, in this case, addressing a number of factors that we would think would be compliant with the code of practice and the regulations around managing the risk of violence. The same would apply if it was to do with higher job demands, for example. In the example that was raised earlier, we know certain organisations like professional services, for example, are not managing higher job demands proactively, and we would expect them to do so. We would have a system in place to proactively go out to businesses that we think are at risk of higher job demands or excessive stress on the workers to see how they are managing those workloads.

The CHAIR: Taking some points from Mr Farlow and Mr D'Adam before, do you think that mental health issues are more underreported in small businesses than in the public sector or large businesses?

JAMES KELLY: I think it's difficult to comment, to be honest. I think it's across the board, I would expect. Personally, I would expect the government sector to be better at eliciting reports of psychological hazards and harm, and having better systems in place than what small and medium businesses would. But we haven't researched or tested that theory.

The CHAIR: Fair enough. In the June 2021 strategy there are references made to direct practical coaching and also tailored support for small businesses. Can you talk a bit to those two initiatives?

JAMES KELLY: Yes, certainly. The direct practical coaching is delivered by a third party vendor of ours. It is essentially a team of organisational psychologists that can provide tailored support and assistance to small and medium businesses, regardless of the nature of the mental health issue they may come to. We have learnt from experience that we need to meet the customer at the state of where they are at. That could be they're ready to implement an action plan to create a mentally healthy workplace or simply they're dealing with a person who has disclosed a mental health issue in the workplace and they're not sure what to do with it.

The coaching service is anything from a 15-minute consult to four hours over a period of weeks where they can consult with an organisational psychologist and get coaching and mentoring and support to manage the mental health challenges that they face in the organisation. It could be to deal with the pandemic and the economic challenges they're facing or it could be to deal with an individual who has disclosed mental health and they want to support that individual in the workplace.

The CHAIR: The strategy also looked at regional New South Wales as well. What do you think are some of the key differences between workplaces in metropolitan Sydney versus those in regional New South Wales?

JAMES KELLY: I think one of the key differences is the challenges they're faced with in regional New South Wales from a natural disaster perspective, as we all know, but also from the economic challenges of lockdowns and the pandemic itself. Accessibility, both to mental health services—clinical services—as well as even access to GPs and doctors can be quite challenging. When an employee discloses mental health to an employer, the employers really don't have a lot of support or assistance to manage those issues, and that is where the coaching service comes in handy.

I should also mention our training service, which we engaged the Black Dog Institute to provide training for small and medium businesses, has been really well received and reached some substantial numbers as well. That empowers employers and employees to have those conversations around mental health in the workplace, which certainly helps to raise awareness but also to support early intervention, which we know reduces the cost and duration of claims when they do choose to lodge a claim.

The Hon. GREG DONNELLY: To return to this area for clarification's sake—maybe I just haven't quite picked it up. In terms of SafeWork, in your earlier answer to my question you went through and usefully and helpfully divided it up. There was two construction, two Work Health & Safety other, one explosives and one HSD. When you add that up, that fatality, is that called the regulation division, that is, what we know as a regulation division?

MATTHEW PRESS: No, that forms a part of this sort of organisation called the Better Regulation Division.

The Hon. GREG DONNELLY: Right. Let me ask it another way. Is there actually something called the Regulation Division or is that regulation division in fact the Better Regulation Division?

MATTHEW PRESS: I think that—

The Hon. GREG DONNELLY: That is probably the answer to that? Okay.

MATTHEW PRESS: In the staff that I look after, that is essentially all of the SafeWork inspectorate, plus the Fair Trading building inspectorate, in one function.

The Hon. GREG DONNELLY: Okay.

JAMES KELLY: Can I add, the investigation stream also does have SafeWork inspectors operating in an investigations capacity.

The Hon. GREG DONNELLY: Okay. With respect to the earlier point we were making about the People Matter survey, on notice, are you able to provide that survey? That is an annual survey, is it not?

MATTHEW PRESS: Correct.

The Hon. GREG DONNELLY: There obviously would be a 2019-2020—do you operate on financial years or calendar years?

JAMES KELLY: The surveys are generally run in October.

The Hon. GREG DONNELLY: If you could provide October 2019, October 2020, October 2021—the current one is presumably under preparation—that would be helpful.

JAMES KELLY: Can I correct the record? I think it is running in August. The results are made available in late October—just for clarity.

The Hon. GREG DONNELLY: Fine. Certainly 2019, 2020 and 2021, and maybe, if luck is running our way, we might have 2022. On this matter of the arm, described as the sort of hands-off approach if there are internal complaints to deal with—I think you indicated that if there is an internal matter, there is another department. Was it regional—

MATTHEW PRESS: The Resources Regulator.

The Hon. GREG DONNELLY: This is just a case study example. Could you help me understand the resolution of it?

Look at the document on New South Wales Government letterhead that is headed "SafeWork NSW Improvement Notice". The reference number on the right-hand side is 7-387097. That improvement notice was issued to the Department of Customer Service by SafeWork. If you look down the bottom, 26 November 2020 was when the inspector actually prepared the paperwork. If you look further up, the inspection appears to have taken place on the previous day, which was 25 November 2020. At the bottom of the page it states, "This contravention must be remedied before: 26/2/21". In the body of the document, the first sentence of the brief description states:

Workers may be exposed to the risk of the health and safety as there is an inadequate system to investigate reported issues of bullying in the workplace.

The next box, which is a little bit bigger, it states, "Directions as to the measures to be taken to remedy" et cetera. How can we be sure that a matter like that was duly followed up? Who would have done that, particularly with respect to the remediation required to have been done? If you have any direct knowledge of that particular matter, I'm happy for you to acknowledge that.

JAMES KELLY: I'm vaguely familiar with this matter. I haven't refreshed my memory, but the inspector was one of our specialist inspectors at the time—specialist psychosocial inspectors. This matter was not in the Better Regulation division, so we deemed it as something that we could investigate and not refer to the Department of Primary Industries. This was part of the Department of Customer Service but not part of our division, so we felt we were far enough removed in order to investigate the matter. I don't recall exactly what division it was within, unfortunately. The notice was issued, obviously, by my inspector to the executive director in the department.

The Hon. GREG DONNELLY: Sorry to interrupt, but in your explanation earlier in the session, you didn't in any way qualify the arms-length dealing with complaints.

JAMES KELLY: I did say "where there's a conflict that's identified".

The Hon. GREG DONNELLY: How would you explain that there wasn't a conflict in this case, given that he was directly employed by you or directly accountable to you?

The CHAIR: Sorry to jump in, but you are free to take something that specific on notice. I don't know how familiar you are with that particular issue. Sorry, Greg, I just didn't want to spring it on them.

The Hon. GREG DONNELLY: No, but the gentleman obviously—

JAMES KELLY: And I'm happy to take it on notice, if necessary. This inspector was employed by myself; the worker who raised the complaint was not, and was not a member of our division.

The Hon. GREG DONNELLY: Sorry, I didn't quite get that.

MATTHEW PRESS: I think, Mr Donnelly, the separation that Mr Kelly is trying to point to is SafeWork is within the Department of Customer Service, a large cluster department. This complaint or this matter was not within our part of the organisation—so was not within the SafeWork Inspectorate or this Better Regulation division, which combines Fair Trading and SafeWork. I'm not sure where they were within the Department of Customer Service, but Mr Kelly is saying that there was an assessment that because it wasn't within our division, if you like—it was another part of the entity—there was sufficient separation. Does that help?

The Hon. GREG DONNELLY: I'm struggling with the demarcation line in my mind, because it's all within the Department of Customer Service. In any event, you were explaining about the matter.

JAMES KELLY: There are 14,000 workers in the Department of Customer Service, so we don't refer all matters to the primary industries regulator as part of our memorandum of understanding. It would be unreasonable for them to take on those matters; they're the mining regulator, first and foremost. What we do determine, based on an assessment of conflict, would be whether or not we can manage it ourselves. In this particular example it was a routine bullying allegation. We did look at that; the information was made available on the intranet, as it refers to. Indeed, there was room for improvement, and we issued an improvement notice to the executive director for People and Culture. Based on the response to that improvement notice, we deemed that they complied with the improvement notice and the matter was closed.

The Hon. GREG DONNELLY: Who determined that the matter was satisfactory resolved, to be clear?

JAMES KELLY: Inspector *redacted*⁶.

The Hon. GREG DONNELLY: I'm sorry?

JAMES KELLY: *redacted*⁷ was the inspector for this improvement notice.

The Hon. GREG DONNELLY: So she made a determination that the matter was resolved?

JAMES KELLY: She did, yes. She was satisfied that the improvement notice for that had been complied with.

The Hon. GREG DONNELLY: On the matter of the People Matter survey, our understanding is that in 2019-20 the results show that 16 per cent of SafeWork's operational staff said that they had been bullied or been subject to bullying at work. Does that figure register to yourselves? I mean, 2019-20 wasn't that far back. A 16 per cent figure is a pretty high figure. It's pushing towards one in five. Does that figure ring a bell?

JAMES KELLY: I've been concerned about the reports of bullying and witnessing bullying for a number of years. The figures have been similar today as for a number of years, so I'm certainly conscious of that.

The Hon. GREG DONNELLY: One in five, or close to, you would concede is a not insignificant figure, isn't it? It's 20 per cent almost, you would acknowledge that. In terms of the statement that you just made that it's been like that for some years, quoting back to you your words, how long has it been like that for, to the best of your knowledge?

JAMES KELLY: I think across the public service it has been concerning—

The Hon. GREG DONNELLY: No, I'm talking about the area that you have responsibility for.

JAMES KELLY: I don't have responsibility for the Department of Customer Service.

The Hon. GREG DONNELLY: We have a People Matter survey and you say that survey does not apply to you?

JAMES KELLY: That survey applies to my 70 staff that I mentioned in my stream.

The Hon. GREG DONNELLY: Correct.

JAMES KELLY: I don't believe that my results would reflect that.

The Hon. GREG DONNELLY: Sorry, I'm not being cute here, but you're contesting the 16 per cent figure for the year 2019-20?

JAMES KELLY: No, sorry. I'm responsible for the Health and Safe Design directorate, of which 70 staff belong to. We would not have had a 16 per cent report of bullying. The Department of Customer Service may do, which is a question for the secretary in terms of what she is doing to manage that.

The Hon. GREG DONNELLY: With respect to the area that you have responsibility for, is there a bullying figure available for that that's produced?

JAMES KELLY: There would be. I would have to take that on notice.

The Hon. GREG DONNELLY: And for the same period, if you can look at 2019, 2020, 2021 and 2022, that would be appreciated.

JAMES KELLY: Yes, certainly.

The CHAIR: We're almost at an end, unless there is any final question in the last minute.

The Hon. ANTHONY D'ADAM: I have been looking at the answers returned by Tony Williams, who I think maybe was your predecessor. Is that right, Mr Press? In an answer returned in estimates that goes to the question that I think Mr Roberts asked about psychological hazards and enforcement action, there was a data table provided on the number of improvement notices, penalty notices and prohibition notices. On notice, might you provide a breakdown of those figures? If you've got 2022 figures, include those. How many were public sector and how many were private sector, so that we can get a sense of where the emphasis is in terms of the enforcement action that's been taken around psychological hazards?

⁶ Name of inspector redacted in accordance with committee resolution on 10 October 2022.

⁷ As above.

JAMES KELLY: Yes, I can take that on notice.

The Hon. ANTHONY D'ADAM: I will give you the reference. It's on page 19 of the answers provided to questions taken on notice on Friday 11 March by the then Minister for Fair Trading and Minister for Small Business, Ms Petinos.

The CHAIR: 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 14 days. The secretariat will contact you in relation to those questions.

(The witnesses withdrew.)

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

Mr DARREN PARKER, Executive Director, Workers and Home Building Compensation Regulation, State Insurance Regulatory Authority, sworn and examined

The CHAIR: I now welcome our next witnesses. Would either of you like to start with a short opening statement?

ADAM DENT: Yes, thank you, Chair. I begin by acknowledging the traditional owners of the land on which we meet today, the Gadigal people of the Eora nation, and pay my respects to leaders past, present and emerging and extend that respect to any Aboriginal and Torres Strait Islander people in the room today. I'm pleased the Committee has focused the 2022 review on psychological injury. I thank you for the opportunity to be able to add to the discussion on this very important issue. Today around 8 per cent of all New South Wales workers compensation claims relate to a psychological injury, compared with about 5 per cent a decade ago. People that suffer psychological injury are less likely to return to work and more likely to experience an adversarial claims journey. While much of the public discourse has focused on the growth in these claims, the interface between the workers compensation system and mental health is far more complex than that. In fact, the group that experience the worst outcomes are those with a physical injury that require psychological services as part of their recovery.

People with a physical injury claim lose on average six weeks of work. For psychological claims, the average lost time is 20 weeks. Somewhat alarmingly, people who access psychological services after a physical injury are off work for an average of 31 weeks. The reality is that poor mental health is more prevalent among the workers compensation cohort than the broader working population. A recent Australian Council of Social Service report showed that one in 10 wage-earners in Australia report high or very high levels of psychological distress. SIRA's own research shows that one in five workers compensation claimants have a probable mental health illness based on the Kessler 6 scale. Making a claim in any compensation scheme can lead to worse health outcomes. Factors such as high case manager turnover, low workforce capability, investigations, delays in making decisions and accessing treatment can all contribute to psychological distress.

In designing a new workers compensation scheme we have the opportunity to respond to the changing nature of workplace injuries and add to the elements of the system that can cause or exacerbate mental health conditions. In the meantime, people suffering mental ill health must be better supported by the current workers compensation system. There is a wealth of evidence that shows us how to do that. In simple terms, high-quality case management delivers better outcomes for all injured workers and is particularly important where mental health is a factor. There is also plenty that insurers can and should be doing. For example, they can screen for the risk of delayed return to work and psychological distress and they can develop tailored pathways and hyper-care arrangements where those risks exist. Insurers can minimise exposure to friction points by focusing on the right things early in the claim, and they can make attracting, training and retaining capable case managers a top priority. In fact, SIRA is actively considering credentialing case managers to lift the standards across the industry.

We've provided evidenced-based advice and set expectations through guidance notes through our standards of practice on managing psychological injury claims and return to work and early intervention. We're building the capability of health providers, targeting employers through a range of advisory, compliance and enforcement efforts. SIRA is also piloting our outbound assistance service in the workers compensation scheme, similar to what already operates very effectively in CTP. We're partnering with a number of insurers that agreed to participate, and the early indication is that workers are valuing the contact and feel more confident about managing and navigating their claim as a result. Getting good outcomes for workers suffering mental ill health is challenging for many reasons, but it is the core role of the system I regulate to help people recover and return to work regardless of the nature of their injury. At a minimum, my expectation is that all insurers follow the evidence and lean into this issue. Thank you again for the opportunity to address the Committee today.

The CHAIR: Excellent. Thank you for the opening statement and for your very detailed and balanced submission. I wanted to start by asking about the McDougall review. What are your views on the progress being made on the implementation of the McDougall recommendations?

ADAM DENT: That's an excellent question. Thank you for asking. At the moment the bill is still before the Parliament at this point in time. As far as we're concerned, there's a draft bill that reaches in and addresses the majority of the issues considered by Mr McDougall in his report. I'm waiting somewhat anxiously for that bill to make its way through the Parliament. I think it will actually address most of the issues. There are other areas that we're still looking at, nonetheless. There are a number of benefits issues that we're following up and doing more work with stakeholders on presently. We're also in the process of looking at essentially the restructure of the Act and the rewrite of the legislation in the bigger sense. Recommendation 34 was targeted at how we look at

consolidating the legislation. SIRA is working on all of those. But, realistically, it's the second reading speech in the Legislative Council we're waiting for.

The CHAIR: Obviously, one concern is the claims costs within the scheme. In particular you have, quite concerning, the insurance ratio, which is 123 per cent in May 2021 and 105 per cent in May 2022 in your submission. Is that of concern to SIRA and what are some of the drivers behind that insurance ratio?

ADAM DENT: It remains a significant concern. The fact that it's dropped from 120 to 105—and, I think, Mr Parker, it's currently sitting at 102?

DARREN PARKER: That's right.

ADAM DENT: So it continues to decline. We were deeply concerned at the point of the McDougall review, and we've had a continued decline since then. That remains one of the most significant issues in the scheme. There are a number of factors that drive that. Claims management is one of them. Another has been the investment performance. That's obviously a consideration that needs to be taken into account. Also premiums make the difference too. At the moment icare is under-collecting on their premiums. It will take an incredibly long time, I think, to turn around that insurance ratio at this point in time, so we remain considerably concerned about that.

The CHAIR: Nobody wants to push up premiums either, so that's obviously a problem. Any observations about the Government's announcement on Friday about the new claims service providers? I know it was a long time coming, moving from one to, what is it, five now? Any thoughts on how that might improve the scheme?

ADAM DENT: It certainly has the opportunity to. Our concern is making sure the implementation of that change now happens effectively. We've been monitoring and working with icare to understand their process. I am encouraged about the level of detail that icare have entered into in terms of making sure that process works well. The onboarding of insurers over the next 12 months will be critical. Getting the technology right is going to be critical. They are essentially unravelling where they took the technology for a single claims provider. I think any degree of competition is worth looking at in that space. What concerns me is how quickly new entrants will be able to build capability. That's why we're considering credentialing around case managers. We do know that an experienced case manager can get a 20 per cent better outcome in terms of return to work on average than somebody who is inexperienced. New entrants into the scheme will hopefully have people who have experience, but it's hard to see how that will work easily. From our point of view, we'll be watching it very, very carefully, making sure that the risks are mitigated along the way. My view is that we cannot experience any further declines, so we'll be looking to make sure that's the case.

The CHAIR: I have a few more questions, but I might hand over to some of my colleagues and come back later.

The Hon. SCOTT FARLOW: I might jump in with one quick one on this. We heard from the Law Society, the barristers' association and Australian Lawyers Alliance earlier disputing, in a sense, the rise in psychosocial injuries and claims in the workers compensation scheme. Looking at the data you've presented and, as you outlined, a 5 per cent to 8 per cent increase earlier, the data from icare effectively backs that up as well. I am interested in your perspective on that evidence we heard earlier today.

ADAM DENT: Having not had the advantage of being able to listen to it at that point, I think the facts speak for themselves. An increase from 5 per cent to 8 per cent is nearly double, so there certainly has been significant growth. That said, if it's stabilising, that's possibly a good thing. But I don't think we've seen any evidence that would suggest that, and certainly not in a systematic way. The rise is really quite important. And the fact it is double, while it's still only 8 per cent, given the cost of those claims, I think we've got reason to be concerned. I invite Mr Parker to make any observations.

The Hon. SCOTT FARLOW: I think the time you talked about as well in terms of somebody who has psychosocial injuries, that they're off work longer. If that's coupled with a physical injury as well, that's an even longer period for return to work, which is a concern.

ADAM DENT: An average that's over six months is definitely not a good story for either the claimant or the scheme and its sustainability.

The Hon. SCOTT FARLOW: Mr Parker, did you have any observations?

DARREN PARKER: I might draw you to our submission. It talks to the very point that you're raising. The two data points I will draw your attention to. The first one is on page 21 of our submission that talks to the number of new claims. From 2019-20 to 2020-21 there is an increase in claims from 7,532 to 8,311. You will also note that this is talking about new reportable claims for the Nominal Insurer the same year it's increased from

3,807 to 3,906. So at the front end there's an increase of new claims by about 100. Then if I draw your attention to the next page, which is page 22 of our submission—

The Hon. ANTHONY D'ADAM: As a proportion it's not.

DARREN PARKER: I'll get to the proportion as well. It talks about the total number of active claims for the same years. If you look at 2019-20 to 2020-21 of active claims, the increase in total has gone from 7,814 to 20,603.⁸ Then for the Nominal Insurer, at the front end we saw for the same year an increase of 99 claims, but the number of active claims has gone from 7,623 to 9,131. So at the front end you've got a shift of about 99, then the active claims in the same period have gone up 1,500 or so.

The Hon. LOU AMATO: So it actually went up during the COVID period.

ADAM DENT: That was that time, yes.

The Hon. LOU AMATO: Yes, during that time. Do you know whether it's related to COVID, the psychological injuries? Obviously, people were under a lot of stress.

ADAM DENT: I am happy to take that on notice, although anecdotally I would suggest that the majority of the COVID claims were actually reasonably short and inexpensive, and mostly related to time off work for illness. I don't think there's evidence that COVID significantly contributed to changing the overall balance of mental health claims.

The Hon. LOU AMATO: If you could take that on notice. It would be interesting to know, that's all.

ADAM DENT: We'll get the breakdown.

The Hon. ANTHONY D'ADAM: The active claims metric really could be reflective of worse claims management processes, though, surely. It's not indicative of an actual rise in the number of psychosocial claims. It just means that you might have claims that are taking longer to resolve.

ADAM DENT: That's correct.

The Hon. ANTHONY D'ADAM: Therefore, there's growth.

The Hon. WES FANG: Is there a question?

The Hon. ANTHONY D'ADAM: I'm asking whether it's the case that the active claims figures is a result of increase in overall claims or is it a result of poorer claims management?

ADAM DENT: I would suggest that it would be a combination of both of those things. As Mr Parker indicated, there was a small increase in the number of new claims, about 99. But, broadly, the total number of active claims continues to grow, which means they're people who have not exited the scheme, for one reason or another. It could be case management—it is highly likely to have been case management as one of the contributors—but also the nature of the injury that the person suffered.

The Hon. ANTHONY D'ADAM: Because the proportionality does decline, doesn't it, Mr Parker, between 2019-20 and 2021-22? You've got 7,532 over 94 versus 8,000 on 99. So the overall proportion is declining, isn't it?

DARREN PARKER: The proportion—sorry?

The Hon. ANTHONY D'ADAM: The proportion of psychological claims to overall claims is declining in that respect.

DARREN PARKER: Over the last few years there's been a stabilisation of the number of total claims. If there's been an increase in the percentage of new claims, that could be contributing also to the reduction in non-psychological claims as the denominator.

The Hon. SCOTT FARLOW: When we look at the areas where this is most prevalent, while they have all doubled, the quantum in terms of the Treasury Managed Fund—that 27 per cent—of active claims are for psychological claims. What do you attribute that to?

⁸ In [correspondence](#) to the committee dated 3 November 2022, Mr Darren Parker, Executive Director, Workers and Home Building Compensation Regulation, State Insurance Regulatory Authority, clarified his evidence by replacing the number "7,814" with the number "17,814".

ADAM DENT: Certainly, the nature of the work that the Treasury Managed Fund insures contributes considerably. The highest rate is within the Stronger Communities cluster, which includes the New South Wales police and the Corrective Services. You've then got Health and Education. So it's not unexpected that more TMF claims would exist for psychological, given the nature of the work. It is a stark difference, though, I think it's fair to say.

The Hon. SCOTT FARLOW: Do you do a breakdown in terms of those claims as to what they're attributed to—for instance, bullying claims or the like? In a sense, the pool of psychological claims itself might be a little bit too broad to tell us where some of the challenges might be.

ADAM DENT: That's right. We do have a little bit more detail.

DARREN PARKER: Mr Farlow, broadly, four out of five are related to harassment, bullying and excessive workloads. The one in five is more related to response to a traumatic event.

ADAM DENT: So arguably preventable.

The Hon. SCOTT FARLOW: Sorry?

ADAM DENT: Arguably, four out of five would be in the preventable category.

The Hon. SCOTT FARLOW: Yes.

ADAM DENT: It's not a direct trauma.

The Hon. SCOTT FARLOW: That leads me, in a sense, to being even more concerned when it comes to the Treasury Managed Fund than the 27 per cent. I can understand that one in five, so to speak, and why there would be an uptick there, but then the four out of five and what sort of practices may exist there that are leading to higher claims of psychological injuries is a concern.

ADAM DENT: I agree.

The Hon. GREG DONNELLY: We had some representatives in this morning from, broadly speaking, the legal field—barristers, solicitors and peak bodies. We had an exchange about how things have changed from—I'll use the term—the "good old days", the old paper files. In those when a workers compensation claim was made, there was a workers compensation claim form that the injured employee would get from the employer. There would be the completion of that. There would also be a record kept by the employer and a collection of quite significant detailed information. Even if those who were asked to put it together weren't aware of it, they were actually putting down quite detailed information at the time, or normally around, when the actual injury took place. The effect was that that was a collection point that was pretty much at the start, or pretty close there to, and that then followed the whole matter through. It became a key source of information which would inform all people who had an intermediary involvement or participation in the process.

It was explained to us this morning—and, I have to confess, I wasn't aware of this—that these days that's not done per se. In fact, it was described to us that what's called an electronic notification of a claim is made, which sounds to be almost like almost a perfunctory exercise of alerting that the claim was being made. As we went through the evidence this morning, the point was made and remade about how that lack of collection at the early stages—and this is my word and not theirs—acts as somewhat of a handicap, to a degree, in that there could be, because of lack of information through this system, the electronic notification system, a re-asking of the injured worker. I think you know what I'm getting at. I'm wondering, have you had this brought to your attention or has it been raised before—if you have to take it on notice, take it on notice—that with respect to this system—and, obviously, we've moved towards utilisation of information technology; we're not going back—whether there is some argument about this electronic notification system that we've got to be refined to hopefully improve on that up-front collection of information?

ADAM DENT: I think it's a really important issue that you've raised. The legislation doesn't require a claim form, and I think it sounds like such a simple thing. The employee is required to make a notification of injury and then the employer is required to notify the insurer by whichever means they choose. You're absolutely right that that, therefore, leaves a considerable gap. There are some circumstances where certainly SIRA prescribes minimum amounts of information that should be collected nonetheless, no matter how it's done. We've got guidelines on those around the notification of injury and claims. There are times when a claim form is required. An insurer must require a worker to fill out a claim form when a reasonable excuse notice has been issued, the worker is seeking payments of compensation and a reasonable excuse is still relevant—that's one of the circumstances—or where the compensation is likely to be claimed beyond the provisional liability limits. Essentially, there is an opportunity for that, but it's not a requirement all the time.

Listening to the evidence this morning, it struck me that that does feel like an obvious area for improvement. From my point of view, it's precisely to the claimant's experience, the issue that you've discussed. The process of having to tell and retell your story is not a good one for anybody. I think in SIRA's work to try to look at where we've friction points—they're the words we're using to describe it—that would be one of those. I think it could be solved not necessarily by going back to paper forms, but a digital claims form of some sort that did capture that minimum information that could then follow the claimant through is an excellent idea, and certainly something we'll now look at.

The Hon. GREG DONNELLY: I wasn't suggesting that we go back to the way it was once done. In another life I was involved in managing injured worker claims. Invariably, when you sat down you would take detailed notes. Of course, that became a mine of information which could then follow the claim, and, where appropriate and as necessary, we would share the information that would help move things along. To the extent that there is only very modest collection up-front, that would even seem to make it challenging for anyone getting involved at almost any point of trying to establish, with some level of sophistication, the details around the claim, be it a physical claim or a psychosocial claim.

ADAM DENT: I'd also expect that one of the things the insurers and claims managers should be doing is keeping good records so that even if it isn't collected up-front, which I agree is probably a problem, one would hope that, as information is collected through the claim journey, it is kept in a way that is more accessible when there's a change of claims manager or a handover to another professional. I think there's an opportunity certainly for insurers to do that well, but starting with the claims form that collects the right information up-front is definitely worthy of our time.

The Hon. ANTHONY D'ADAM: As the regulator, don't you have capacity to make sure that the insurers are collecting the correct information and keeping it all?

ADAM DENT: Yes, and we've issued guidelines to that effect. We absolutely make that part of our audit manual. I think what's important is around when that information is collected. To the point, it probably could be done better up-front than it apparently is right now. But, certainly, our guidelines do stipulate what should be collected and when, just not the form.

The Hon. ANTHONY D'ADAM: I think the key in terms of that observation was really about trying to ensure that the information about likely disputed claims in the context of psychological injuries, that those contemporaneous observations were critical in trying to avoid a situation where there's some contestation about whether the claim arose from a work-based incident. In terms of that, I wanted to ask about what you think are the measures that could be taken to minimise the level of disputation about the acceptance of psychological claims. What do you think is the pathway forward? There's clearly a higher incidence of disputation when it comes to psychological claims. What can be done to improve the system at that point so that the worker journey is much smoother?

ADAM DENT: To the first part of your question, I think it's difficult to see a psychological injury in the way that you can a physical injury. The inherent nature of the injury type means there are going to be more questions to ask, and, therefore, that creates the opportunity for the dispute to arise. As unfortunate as that is, a broken arm is a broken arm, and it's very hard to dispute that, to some extent, whereas with a psychological injury, there becomes an opportunity for more subjective views, and that's where that would come from. So that would be difficult to necessarily change. My view is that there is the opportunity to make sure that the conduct of the caseworker, the case manager, is effective, and that they understand how to approach the injured worker more effectively. Our standards around managing psychological injury claims, our standards around those early weeks of a claim, are an important instrument that I think we have to drive that.

We're focusing on compliance on those issues now more than ever before. The rolling audits that we'll be undertaking over the Nominal Insurer over the next 12 months will focus on issues like that. Those first four to eight weeks of the claim are really critical for getting that right. So we'll be looking at the conduct of insurers in relation to how they're handling that early stage of the claim. That's probably where the opportunity is for it to go the most wrong. The use of investigation and IMEs is also something we're concerned with and keep an eye on. But I think there are a lot of opportunities where it could go wrong, so there's not really a simple answer to how we reduce that other than absolutely every effort should be made to do so.

The Hon. ANTHONY D'ADAM: I'm curious, because it's not really an insurance situation, is it? The claims managers don't actually have any skin in the game; they're just managing the claims process. The actual insurance side—that liability is with someone else. There must be something in the incentive system that SIRA has put in place that incentivises a higher level of contestation around psychological claims. Do you want to offer some comments about that?

The CHAIR: That is because the scheme is government underwritten.

ADAM DENT: My first response would be that I think it would be unfair to say that a caseworker does not have any skin in the game. I know what you mean, but I think it's unfair to necessarily say that.

The Hon. ANTHONY D'ADAM: They've got a contractual relationship with the Nominal Insurer, or the like. The actual claims manager—EML, or whoever it is—don't have any liability; they just have to deliver on their contractual arrangements. There must be something in the contractual arrangements, which clearly is within your authority to regulate, around what goes into those contracts and what kind of incentives are put in place around the claims management process.

ADAM DENT: That's not actually something we have an authority over. The way those contracts are constructed is a matter for icare and its board. I would suggest that Mr Harding this afternoon may have some better answers for you on that.

The Hon. ANTHONY D'ADAM: So you've got no regulatory capacity to influence the—

ADAM DENT: On how icare procures and contracts with the case management agent? No.

The Hon. ANTHONY D'ADAM: In your submission you talk about the data that's collected by SIRA giving you a good oversight of the system. We had SafeWork in earlier. Obviously, they have a role in terms of the preventative side. The data that you collect on claims obviously would provide some guidance to them. Could you elaborate on the approach to data sharing that exists between SIRA and SafeWork as the safety regulator?

ADAM DENT: I will answer the first part and I will ask Mr Parker to talk about how we make that work operationally. All of our data is available on our open data portal for anyone to see. That same data is available to SafeWork as well. We're probably the more transparent jurisdiction in Australia around data around claims. I think it's fair to say we share as much as is possible, and SafeWork would have access to that. Operationally, we do partner with SafeWork on a range of issues. Mr Parker, I might ask you to speak to how we do that.

DARREN PARKER: Sure. The data analytics that we've done are to assist SafeWork to identify what the priority industries are that they want to focus on for the year. We had Mr Kelly and Mr Press talk about that today. That's the annual report that they focus on with their inspectors going out to those locations. In addition to that, Mr Dent has identified return to work as a priority for this year and has created a new inspectorate for SIRA. What SIRA is using are the same data analytics—whether it's tip-offs, whether it's complaints—for SIRA inspectors to go out to employers that are at higher risk of having people who are injured. There might be some difficulty in predicting that they will have difficulty getting back to work. Our inspectors will go out to those sites, have a discussion with those employers and, if necessary, either educate or use the enforcement powers.

The Hon. ANTHONY D'ADAM: In terms of the TMF, clearly there's a much higher prevalence of psychological injuries. Why isn't its regulatory focus being placed on the public sector to improve its performance in relation to psychological injuries? It's clearly a problem and it doesn't seem to be getting the requisite attention, and it's having an impact on the operation of the workers compensation scheme.

ADAM DENT: The Government has invested significantly in the mental health at work strategies for government. The current strategy runs until the end of this year. I think it's fair to say that it clearly hasn't done the job that we need it to do.

The Hon. ANTHONY D'ADAM: It's not working.

ADAM DENT: But I don't think it has not had attention by any stretch of the imagination. There's been considerable time, effort and energy put into that space. We've responded by changing and issuing new standards of practice that would then apply to the TMF as much as they do any other employer. Our current set of audits is looking right across the TMF. So we're now auditing all 10 clusters across New South Wales to look at how their claims are managed, and a focus of them will be psychological injury. It's such a significant draw on the TMF that it has our attention, absolutely.

The Hon. ANTHONY D'ADAM: Did you hear the evidence earlier from the various members of the legal fraternity?

ADAM DENT: I was only able to see part of that.

The Hon. ANTHONY D'ADAM: There was a discussion about lump sum settlements and psychological claims. I wonder if you might offer some comments about that. It seems like the system is structured in a way that means that psychological claims that often—it's highly improbable that the worker will return to work. They sit in this situation where they're on weekly benefits for a long period of time with no prospect of returning to work,

and that's obviously contributing to an adverse impact on return-to-work rates. Is there a better way of trying to facilitate easier exit from the scheme for workers with psychological injuries?

ADAM DENT: One of the areas in the McDougall reforms is around expanding the access to commutations, which are currently reasonably limited. We have not yet finalised that into the bill. That was removed before it made it into the lower House earlier on. We're continuing to work with stakeholders, including the legal profession, on how we can expand access to commutation. The reality is that in most cases somebody getting out of the scheme is a better outcome than them staying in it. I think it's an area that we will hopefully see over the next 12 months some significant movement on. That piece around commutations is probably the answer, and giving people the opportunity to have their independence earlier, where it's appropriate, and upon having got the right advice—both legally and financially. It certainly is an opportunity for us to expand that.

The Hon. ANTHONY D'ADAM: The representative from the Bar Association also made an observation about the lack of success, or lack of emphasis, on retraining and redeployment assistance. Perhaps you might offer some comments about where we're up to on that form of assistance being provided through the system.

ADAM DENT: That's a really important observation, and I would agree with it. As we start to look at how we redesign the scheme into next year, these are areas that need to be written into the legislation. We need to consider how these responses can be made. When you particularly think about the challenge, particularly with psychological injury in small business, there's nowhere for somebody to go back to work. So retraining and redeployment is going to be a better outcome. You may ask Mr Harding this afternoon on some of the work icare does in that space. I'm not overly familiar with it, but there is some. But there is absolutely an opportunity to do that differently.

I was talking about this with somebody recently. The former Commonwealth Employment Service was somewhere you used to go even if you had a job and you wanted another job. There was a system that was far better at helping people find work when they needed it. That doesn't really exist today in the way that it used to. My view is that as we start looking at the next generation of what workers compensation looks like through the reforms that will hopefully take place over the course of the next couple of years, that's an area that needs focus. It's clearly underdone.

The CHAIR: Do you have any comments on early intervention in the workers comp scheme? I've seen your submission. I didn't know this before but there already exists a legislative framework for eight treatments without preapproval for three months, medical expenses of up to \$10,000, which seems very good—that workers can get preapproval for psychological support. We've also heard from a lot of witnesses about the importance of early intervention as an important way of getting people back to work as quickly as possible. Do you have any comments on early intervention?

ADAM DENT: Other than to completely agree with you, our standards around early intervention really drive home the importance of getting the claim right early. In 2015, nine out of 10 people returned to work within 13 weeks. That's now eight. So that has declined over the last five years. We know it leads to better outcomes and it's measurable, and the evidence all support that. Our work on new standard of practice 34 is really focused on driving that with insurers to make sure that they are doing more early. While there are definitely benefits available, partly that comes down to: does the injured worker fully understand and know? Have they been told what's available to them? If they're accessing that then that's going to get a better outcome. From our point of view it's absolutely critical. Those first weeks make all the difference in terms of the claim.

The CHAIR: And it's obviously cheaper to the taxpayer too. We were talking before about the increase in claims costs. It's not just, as Mr D'Adam said, about the number of claims going up, but it's the expense of each claim. Getting people to work as quickly as possible can reduce the cost per claim. The shorter period of time—

ADAM DENT: That's right. We want them to get well and get back to work, not just get back to work. Ideally, the claim will be managed so well that that happens. So that's absolutely true. The cost of those claims, when they drag out to over 31 weeks on average, is so clearly different. There was a graph in the submission that I think really starkly showed how if early intervention happens, the cost of those claims is considerably lower. The bar then almost didn't look like it would fit on the page is where early intervention doesn't occur in terms of access to psychological support. It makes a huge difference in terms of what premium would need to be collected. The scheme would be more sustainable, employers would be on the hook for lower premiums and, more importantly, injured workers would be well and back to work. There's so much evidence to support the early intervention approach, and we will continue to focus on that.

The CHAIR: And, I suppose, they are more likely to have a secondary psychological injury the longer the claim goes on as well.

ADAM DENT: Because at that point you're possibly in a more adversarial part of the system and you've probably had multiple claims managers. All those factors that we know impact someone's likely recovery start to play out when you're in the system for that long. The secondary psychological injury claims are the ones that drive up the costs quite substantially.

The Hon. GREG DONNELLY: I will go to your supplementary submission, or the document that updates your first submission. Specifically, could I take you to page 19 of the submission? The previous page explained psychological injuries. On page 19 in the right-hand column it's got "targeting employers". Do you see that?

ADAM DENT: Yes.

The Hon. GREG DONNELLY: I won't read through that, but I'd like to ask you a couple of questions, if I could. I will let you spend a moment having a look at it.

ADAM DENT: Sure.

The Hon. GREG DONNELLY: There is a reference to inspectors running down under the heading. These are SafeWork inspectors—is that what you're referring to? Or are there other inspectors?

ADAM DENT: There are now other inspectors. One of the 10 actions SIRA undertook before Christmas as part of our 10-point return-to-work improvement plan was to engage our own inspectors. We work with SafeWork quite closely. SafeWork inspectors do visits on SIRA's behalf to employers. Historically, that analytics work that is referred to in the third paragraph informed how SafeWork did that from us. We now have a small team of inspectors at SIRA who are doing this work specifically, using our greater level of knowledge, if you will, and focus on return to work, rather than the broader range of things that a SafeWork inspector would be spending their time on. It's a small team at the moment. It's five. It's essentially part of a pilot to determine whether we can get better outcomes by having that team of inspectors being part of SIRA.

The Hon. GREG DONNELLY: With respect to SafeWork and its inspectorate, which has component parts, but within those component parts there are inspectors, do you have any knowledge or information that's been collected by yourselves, by SIRA, about the amount of work that's done by the inspectors with respect to dealing with psychological injuries? Have you been able to garner an independent assessment of, dare I say, the amount of inspecting work at SafeWork is doing in regard to these types of injuries, as opposed to physical injuries?

ADAM DENT: I am looking at Mr Parker to see if he knows more than I do. The short answer is no, I don't have a great degree of visibility over that at all in terms the work that SafeWork is undertaking. But I can happily take that on notice and come back to you.

The Hon. GREG DONNELLY: Going back to this fourth paragraph of yours about the inspectors. With respect to those inspectors that you now employ, there's no confusion between the inspecting work that they're doing that I think you said is associated with return to work and the inspectors who SafeWork have, who would probably have a broader remit?

ADAM DENT: Confusion, no, unless I misunderstand your question. Given that we work closely with, and provide the data to, SafeWork to drive where their inspectors visit for return to work, the SafeWork return-to-work team, that group of inspectors, will be doing that on the basis of the active conversations we have. That's every month. We don't really have visibility on what they might have done. But there's no evidence of confusion about who it is.

The Hon. GREG DONNELLY: That's okay.

ADAM DENT: The inspector arrives—

The Hon. ANTHONY D'ADAM: Could I jump in on this? Is it correct that SafeWork is funded through the scheme? Is that right? Or a proportion of the funding?

ADAM DENT: That's correct, yes.

The Hon. ANTHONY D'ADAM: Wholly funded?

ADAM DENT: I would have to take the detail on notice, but I believe SafeWork's operations are fully funded through the scheme, yes.

The Hon. ANTHONY D'ADAM: It seems from evidence that's been provided in estimates that SafeWork as an entity doesn't really exist. Its inspectors are dispersed across a range of functions, including Fair Trading

and compliance work. How do you make sure that the expenditure on SafeWork is dedicated to a primary emphasis on health and safety and meeting the needs of reducing injuries in New South Wales?

ADAM DENT: We don't really have a power to determine what SafeWork does, effectively, with the money that we're required by the legislation to provide them. We have our numerous occasions worked with SafeWork to fully understand the spending. Each year the conversation around the budget is a detailed one when we determine what funding will be provided. So I have no reason to believe the money isn't being spent on SafeWork activity. SafeWork is a part of the Department of Customer Service and is in the same division as Fair Trading and other regulators. So you're quite right: There are people who would have multiple roles but there are also some really quite focused employees in that group. I don't have any evidence to support that it's not being spent appropriately.

The Hon. ANTHONY D'ADAM: There's no transparency there, though, is there?

ADAM DENT: I don't have visibility of that, that's right.

The Hon. ANTHONY D'ADAM: When WorkCover was broken up into the three entities, do you think that's something that perhaps should be revisited? Given that you started to create your own inspectorate, it seems like there's a level of duplication that's been creeping back into the system that kind of suggests that that original idea of separating the two regulatory components into two separate entities needs to be revisited. Do you think that's a fair observation?

ADAM DENT: I think it's reasonable to say that we obviously need to never engage in investing in duplication. That's not a good outcome at all. The SafeWork inspectors do have such a broad remit and bigger role. This pilot for me was about saying, "Can we get a better outcome if we're doing it in a focused way at SIRA on return to work?" SafeWork has the prevention responsibility as well. So their work would be directed at making sure that workplaces are safe generally. We're quite specifically focused on whether employers are meeting their obligations around return to work. That's what our inspectors would focus on. If that works, if that pilot is effective, it would potentially be a conversation around where the rest of that return-to-work work is done, whether that all got brought into SIRA or whether there would be lessons we would learn around how we would ask SafeWork to do their work differently based on this pilot. We're not committed to continuing this arrangement as it is, but it's certainly worth looking at.

The Hon. ANTHONY D'ADAM: What's the enforcement mechanism that these inspectors use? What's the source of their power? Do they have some mechanism to issue notices?

ADAM DENT: Yes. There are a series of offences that a penalty notice can be issued for, then we can take further enforcement action, if required, through courts—the Local Court, generally. Some of the fines would range from five or so penalty units up to 100.

The Hon. ANTHONY D'ADAM: So the Act actually envisages you having inspectors, does it?

ADAM DENT: Correct.

The Hon. GREG DONNELLY: Do you have any information—and if you need to take it on notice, please feel free to do so—about what we understand are delays to psychological assessments in the Personal Injury Commission?

ADAM DENT: I don't.

The Hon. GREG DONNELLY: That's okay.

ADAM DENT: Unfortunately, the work that the judge does there is not something that I would have access to.

The Hon. GREG DONNELLY: Take that on notice. This is related—perhaps this may be the same answer, perhaps different—to a question about why is there what appears to be a shortage of doctors to assess claims in the Personal Injury Commission?

ADAM DENT: I would have to take that on notice.

The Hon. GREG DONNELLY: That's fine.

ADAM DENT: They are matters for the judge.

The CHAIR: Thank you so much for your time 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 14 days. The secretariat will contact you in relation to these questions.

(The witnesses withdrew.)

(Short adjournment)

Ms RASHI BANSAL, Group Executive, Insurance for NSW and HBCF, Insurance and Care NSW, sworn and examined

Mr RICHARD HARDING, Chief Executive Officer and Managing Director, Insurance and Care NSW, affirmed and examined

Ms MARY MAINI, Group Executive, Workers Compensation, Insurance and Care NSW, sworn and examined

The CHAIR: I welcome our next witnesses. Thank you so much for coming today. Would you like to start with a short opening statement, Mr Harding?

RICHARD HARDING: I would, yes. Icare welcomes the opportunity to contribute to the Standing Committee on Law and Justice's 2022 review of the workers compensation scheme. I thank the Committee for inviting us to appear today. Workers compensation serves as a critical safety net to protect the welfare, productivity and prosperity of workers and businesses across our State. While the Nominal Insurer is the largest of more than 70 insurers, with around about 67 per cent market share, icare principally covers small- to medium-sized businesses, making up over 280,000 of the 330,000 employers insured. As a result, we do not represent the entire scheme. Around 17 per cent of the market is covered by self and specialised insurers, mostly consisting of larger businesses. We would welcome further input from the self and specialised insurers, which also play an important role in this space, at future hearings to ensure that the Committee gains a view of the whole scheme.

As workplaces and society at large experience unprecedented change, workers compensation needs to change with it. Several submissions to this review have highlighted a significant upsurge in mental health cases. This is presenting unique challenges for compensation care schemes across Australia and internationally. Recent reporting on mental health by the ABS tells us that eight million Australians have experienced a mental health condition, and around 2.2 million were reported last year alone. Analysis of long-term data by Professor John Buchanan and his team at Sydney university's school of business suggests that over the past 10 years the increased focus on physical workplace safety has seen a decline in physical injuries, which typically have shorter and more defined paths to recovery. The scheme has largely been successful in its desired outcome of supporting these workers to recovery and return to work. The increase in psychological claims, which—by their nature, are far more complex in response, treatment and recovery—means that we need to shift the focus, identify the key issues and address the genesis of the problem rather than simply react.

As the CEO of icare, I offer a few observations. The growth in claims and the challenges we are experiencing in return-to-work rates reflect the complex factors underpinning mental health issues. There are external elements stemming from changing labour markets and industry structures that play a role. As participants in the scheme, we can become overly focused on short-term issues and fixes. However, it is important to keep a clear eye on longer-term environmental factors that will allow us to improve the scheme based on contemporary and data-driven outcomes. Importantly, return to work needs to be viewed as a recovery ecosystem. Insurers, employees, employers and the regulator—every relevant stakeholder has an important role to play. It's important we work closely and collaboratively towards better outcomes for all injured workers.

Limitations within the worker compensation system itself, which is inherently modelled for physical and not psychological injuries, continue to present challenges for insurers. So too does the natural adversarial approach and the prescriptive nature of the legislation. We will continue to engage with all stakeholders to support legislative and regulatory reform that might improve this approach and mitigate inflexibilities that ultimately impair outcomes for injured workers. In relation to the impact on our delivery of services, the additional recovery time for psychological injuries is stark. Under the Nominal Insurer, 42 per cent of psychological claims reach 12 months' duration compared to 72 per cent for physical injury claims. In the TMF, 40 per cent reach 12 months' duration compared to 15 per cent for physical injuries. This additional time is reflected in claims costs, which, on average, are four to five times higher for psychological injury claims, exceeding \$137,000 per claim in the Nominal Insurer and over \$200,000 per claim in the TMF.

While it is important to understand the challenges, there are opportunities for positive change. The workplace is often seen as a space that creates mental health pressures, but it should also be considered a space where support, prevention and early intervention can mitigate mental health injury risks. The workers compensation system clearly has a role to play here, which is why, in collaboration with organisations such as Black Dog Institute, other government agencies and leading mental health experts, we offer a range of initiatives in early intervention, education and prevention. Those programs are outlined in our submission.

We are also looking at making changes to our business to improve the way we work with employers and workers. We're developing a new workers compensation claims model for the Nominal Insurer, moving from a

single service provider to a network of many. A key element of this new model will be to provide more specialist support for injured workers with a psychological injury. Further, icare has developed a set of professional standards for case managers, with a view to drive improvement in both the capability and capacity of the industry in New South Wales. These professional standards create career pathways and professionalise the industry, and will help case managers gain greater skills to be able to work with injured workers, including those suffering from psychological injuries return to health and return to work faster.

While a number of key stakeholders have shared responsibility for positive change in this space, icare is committed to being a leading force for continuous improvement, ultimately delivering the best possible outcome for the people of New South Wales. We welcome this review and I thank the Committee again for giving icare the opportunity to contribute. I look forward to taking your questions.

The CHAIR: Thank you so much for appearing today, for your very detailed submission and also for the answers to pre-hearing questions. They were helpful in us understanding the scheme in more detail. I will start by asking where things are at with implementing the McDougall review, any challenges you see or how you think the scheme will improve once those recommendations are implemented?

RICHARD HARDING: We're well progressed in addressing the McDougall review and the many recommendations. There are over 107 recommendations that we're tackling across both Mr McDougall's review and the governance, accountability and culture review that was undertaken by PwC at the same time, which supported his review. Early on in the process we established two major pieces of work across the organisation, one which we call the enterprise improvement program, which deals with governance, risk and accountability; and the other being the Nominal Insurer improvement program, which deals specifically with the issues of how do we lift the performance of the Nominal Insurer? In both we're well progressed. We provide regular reports through Promontory, which is our independent assurance partner, on our website on a quarterly basis. We are well progressed, especially in regard to matters such as the governance and risk management side of things, the improvement in our culture and the development of increased capability across icare.

With respect to the Nominal Insurer improvement program, again, a lot of progress has been made. There are six work streams that are relevant to the conversation today. All of them have some element that relates back to psychological injury. The first is around return to work. That is, if you like, our short-term focus on how do we work with incumbent claim service providers to help improve return-to-work processes and to lift return-to-work outcomes? I am comforted to say that we're seeing what we would call "green shoots" in that area. Lifting return to work in a scheme such as this is a long-term endeavour. It's not something that's going to happen through a silver bullet overnight. We are seeing improvements in both the four-week, the 13-week and the 26-week measures at this stage, and that's encouraging to the work that's happening in that work stream.

The remainder of the work streams are all about larger structural to the scheme, primarily about the changes that we announced last week in respect to claim service providers. We are looking to move the scheme from one single service provider, being EML, to six. In doing that we're also embedding a structure that also targets introducing specialised claim support for psychological claims. Four of the six providers we announced last week will target both generalist and specialist approaches to psychological claims. We're also talking with one further provider, which will aim to create a specialist capability on its own. That process involves a significant, highly compliant New South Wales government procurement process. As I said, we announced the outcomes of that last week. The effort now falls to transitioning and implementing that in a way that results in the minimum amount of disruption and the maximum amount of benefit to the participants in the scheme, and primarily to injured workers.

We're doing a lot of planning with the new CSPs to make that come to life. The biggest focus we had there is to not replicate what happened in 2017 and 2018, and to make it into a slow, deliberate and phased progression. We aren't seeing a big bang on 1 January. In fact, we will look to probably only start moving new claims from the middle of the March period and introduce one claim service provider at a time so that the shifts in the claims portfolio, if you like, are not dramatic and don't have the sorts of impacts that we saw in prior processes. That work is ongoing. There is an enormous amount of planning and work to be done there.

The other work stream that is important to mention is what I mentioned in our opening statement around professional standards. If you look at the reports from both Mr McDougall and Janet Dore, who SIRA commissioned a report from prior to McDougall's review, case managers are the key to return to work, irrespective of the type of injury. The relationship that they create and the effectiveness they have working with the injured worker is key to getting people back to work. Our goal is to establish a set of industry-wide professional standards that help lift that capability.

One of the impacts that happened in 2017 was a lot of capability exited market, and was redirected by insurers and others to other products and services that they offer. Our goal is to lift that capability, create more capacity and create pathways for people to join the workers compensation scheme and system, and see a career

path to growth and fulfilment in that, which we think will be a very big impact on the scheme. It also enables us to monitor and manage claim service providers to ensure that they are meeting those service standards. We will publish that on our website as part of their performance criteria in terms of the development of their people and how they're attracting and retaining key talent. That can't be understated as a key part of the model that we're bringing forward in the change process. There's a lot of activity going on across icare, from changes to the board right through down to the level of case managers, which I just talked about. I would be happy to talk longer but I'm conscious that I've probably rabbit on too long.

The Hon. WES FANG: Never.

RICHARD HARDING: But thank you for the question.

The CHAIR: That was a very helpful overview to address the insurance ratio that I think came up in estimates, but it would be good to address that as part of this hearing as well: 123 per cent in May 2021 down to 105 per cent in May 2022. I welcome your comments about the challenges in addressing that.

RICHARD HARDING: Yes, certainly. It's clear that the Nominal Insurer in particular is in a place where we would like to see an improved outcome across the board. I think the message that I was trying to give at budget estimates is that that's something that is going to take some time to realise. Of the result that we saw at 30 June that generated the insurance ratios that you're talking about, the negative result was around about \$993 million in terms of the overall result for the Nominal Insurer. Of that, \$892 million was investment losses driven by investment market volatility. We take a very long-term view on investments, because that is the nature of the scheme. The average duration of a claim is in excess of eight years, and we manage our investments to that similar sort of duration. The 10-year return for the Workers Compensation Insurance Fund is around about 5.9 per cent. That exceeds our benchmark by more than 0.1 per cent over the same period. We are comfortable that the investment return, whilst volatile given the nature of investment markets at moment, is doing the right job that it's supposed to do across the scheme.

We also saw over \$1 billion of adverse movement from increases in inflation. Primarily this is about wage inflation. I'm sure that everyone would be aware that one of the biggest things we do is pay wages for injured workers. The assumptions that drive the valuation for claims—liabilities, from an actuarial perspective—previously had an estimate of around 2 per cent to 2.5 per cent. Wage inflation was lifted by the actuaries to between 3 per cent and 3.5 per cent, driven by current market activities. That's over \$1 billion of impact. The other movement which is of interest is about \$153 million of psychological claims increases. That obviously relates directly to the outcomes that we're talking about here today: longer claims, more complex claims and, obviously, higher cost, and there being more of them.

From a point of view of addressing the current position of the Nominal Insurer, we have a plan where we are attacking all four levers across the scheme. Obviously, premiums are one element of that. I have always said that we need to address premiums. There have been eight years prior to me joining the organisation where premiums have been held flat. That's been a great boon for New South Wales businesses, but there is a need now to address the gap between the current premium level and the break-even premium level, which is around about 18 per cent. We also need to address our own cost base. I've had a program in place to address that through identifying over \$100 million worth of costs, which we have achieved in the last two years. That is also part of an effort to build in a focus within the organisation on continually thinking about costs and how we can manage and better improve our own cost base.

The last part is obviously claims management. I've talked before about the work that Mary's team has been doing on the changes to the claims model—improvement in case management, the focus on return to work and all of those elements of how we are attacking that. The final piece of the puzzle is what I mentioned earlier, the investment returns. Our strategy and approach is to attack all of those levers. But, as I said at the beginning, this is a long-term game. There is no turnaround that we're going to see in a short period here. We have to be persistent and consistent in our approach and really seek to see the scheme recover and become far more sustainable over the long term.

The Hon. ANTHONY D'ADAM: I will kick off with a question about a suggestion in the Rehabilitation Providers Association submission about mandating the appointment of a rehab provider where the return to work is not expected within four weeks. I invite some comment from icare about that proposition.

MARY MAINI: I'm happy to answer that, Mr D'Adam. We've got some pilots running at the moment in relation to rehab providers. We believe that workplace rehab providers have a necessary role, especially in facilitating return to work. In terms of mandating on all matters, we've currently got a pilot running where a rehab provider has been engaged, looking at machine learning. They are trying to identify which matters should be referred early. Based on those referrals as well, they're not suggesting that every matter should be referred. I'm

happy to present that material and present the outcomes of those pilots once they're completed. But I would say that in terms of should it be mandated, there are probably certain circumstances where mandating workplace rehab providers on every single matter is probably not the most effective way to focus on early intervention.

The Hon. ANTHONY D'ADAM: What's the downside?

MARY MAINI: The downside would be that in some cases they're not ready to be appointed. We might have injuries where people are having surgery and there's a delay in treatment or intervention because of their injuries and nature of the injury. Mandating workplace rehab on every single matter may not be appropriate. The other point to note is that a lot of our claims actually do go back to work without workplace rehab provision.

The Hon. ANTHONY D'ADAM: Without it, did you say?

MARY MAINI: Without it, because there's facilitation with the injured worker and the nominated treating doctor. They'll work together to actually facilitate that return-to-work outcome. In those cases, it would be adding another intervention that may not be required.

RICHARD HARDING: Mr D'Adam, one of our premises that I talked about in the opening is that the prescriptive nature of the scheme at the moment sometimes restricts the case manager from doing their job. Our goal is to lift the case manager up, get them educated and having a career, and get them to build a set of capabilities so that they can make the best decisions in partnership with the injured worker, the doctor and the employer.

The Hon. ANTHONY D'ADAM: From the worker's perspective, the case manager is not necessarily on their side.

RICHARD HARDING: Part of our goal is to get the human skills into the case manager so that that can be much more the case. They are there doing a facilitative job across a tripartite. The issue there is at what point is a rehab provider needed or not needed? That can be a conversation between the treating doctor, the injured worker and the case manager and have the best outcome. When we prescribe things and mandate things, we generally end up with a worse outcome because you lose flexibility and you lose the ability for judgement to be made by those people in that conversation.

The Hon. ANTHONY D'ADAM: How is a rehab provider going to provide a worse outcome? What kind of intervention that would be undertaken by a rehab provider could lead to a deleterious result? Do you have any examples?

RICHARD HARDING: If we work on the premise that, at the moment, the majority of injured workers get back to work without the need for a rehab provider, that would suggest that there is an unnecessary intervention being made that is not necessarily going to add value. You've got to look at it in the context of current results.

The Hon. ANTHONY D'ADAM: You've got predictive analytics, so perhaps maybe not the four-week threshold that's been suggested by the Rehabilitation Providers Association. Perhaps there's some other metric that could be applied in terms of when a rehab provider should be engaged in a case.

RICHARD HARDING: I think the point that Ms Maini was making before is that it is more often likely to be about the type of injury or the individual who is participating—the injured worker—their current state of mind and, certainly, their relationship with their employer. It's not necessarily a time period; it is about the type. That's why I'm suggesting to you that case managers need to be able to apply their judgement in supporting the conversation between the doctor, the rehab provider and the injured worker to make that happen, rather than it being a mandatory case. You've got to go with that flexibility, otherwise you're just creating a one-size-fits-all process that doesn't actually enable the tailoring of outcomes to injured persons' needs.

The Hon. ANTHONY D'ADAM: What about in the context of psychological injuries? You've obviously indicated that the return-to-work rate for psychological injuries is much, much worse than for physical injuries. What's the trigger for engaging a rehab provider for a psych injury?

RICHARD HARDING: Again, one of the things that we would like to emphasise is the complexity of psych injuries. You've heard evidence, I understand, from a number of different bodies throughout the process that would support this statement. They are highly complex, not just in the injury itself but in the nature of the relationship between the employer and the injured worker, and in the nature of the relationship between the employer and the scheme. That is driven partly by the design of the scheme but also by other participants. I think we have to be careful, again, about mandating anything that creates a one-size-fits-all approach. We need to be able to create a model where—

The Hon. ANTHONY D'ADAM: My question was what was the trigger? What would be the trigger for you to engage a rehab provider for a psych injury? What's the threshold that you currently apply?

MARY MAINI: I can answer that one. Sorry to interrupt you. The trigger would be—it is dependent on each case. It may well be that the nominated treating doctor might be having problems in terms of finding alternate treatment or supporting the injured worker in their treatment. It may well be that the employer also needs that support. There are a number of triggers. The most important thing is that, as Mr Harding said, we don't take a one-size-fits-all approach and we really focus on what is the best treatment and support for that injured worker and then how do we actually facilitate early engagement, early return to work and return to health as quickly as possible. But I wouldn't be able to say, "Here are all the triggers." There are a number of triggers. The important thing to note is that we don't prevent anyone from seeing a rehab provider. It is more a case of we will refer, and the injured worker can also refer to a rehab provider themselves, but we would refer on a case-by-case basis and on a needs basis.

The Hon. ANTHONY D'ADAM: Can I ask about the issue around retraining and redeployment? There was an exchange earlier on with a representative of the Bar Association who suggested that there didn't appear to be much of an emphasis on retraining and redeployment. Obviously, in some circumstances with psychological injuries, return to the workplace is actually impractical and unlikely to ever occur. In those circumstances re-employment becomes the obvious alternative option. What kind of services and support are provided in terms of retraining and redeployment?

MARY MAINI: I apologise. I wasn't able to listen in to the earlier evidence provided. For the work that we do in terms of retraining and offering alternate suitable duties, it is really problematic with the Nominal Insurer. The reason for that is, if we look at our profile of employers, we have 280,000 employers that have less than 10 employees on their payroll. Offering suitable alternate duties for a small business is very difficult, but we are running a pilot on helping career transition, trying to find any other—we have a career transition pilot that is running at the moment. We are also looking at talking to the employer to see what they can provide in terms of suitable alternate duties and we will continue to work with employers on that. But, again, I can't say to you that I have the panacea or the answer to every question.

The Hon. ANTHONY D'ADAM: But, clearly, in a lot of psych injury cases return to the workplace—obviously for physical injuries there is a different approach that has been taken, but for psych injuries clearly there is a need to find alternative employment in a lot of cases. Otherwise you are just not going to get them to return to work, so they will sit on weekly benefits. Surely there is a need that icare should be addressing in terms of having some structured approach, particularly in psych cases, for active labour market work, retraining and re-employing in alternative work. What are you doing?

RICHARD HARDING: I think there is clearly a need for that. That is where the role of a rehab provider can play a valuable part. One of the things that I think we would also like to see is a lot more work done by employers to reduce the stigma of mental health injury in the workplace. That does enable people to go back to work. One of the biggest issues is that there is massive stigma around mental health in workplaces. It is diminishing in the community, but within the workplace it still seems to be a concern. We would like to see the development of work around how employers can create a culture where people can take a break for mental health, whether that is a workplace injury break or whether that is just a mental health break, and still come back to work without that stigma. I think that is a real answer to the solution of return for work for injured people, as much as perhaps the retraining exercise, because I don't think you can retrain everybody.

There are some psychological claims that won't end up being able to be retrained. But I do think that there's a combination of things here. Again, in our opening statement, we talked about the fact that this really requires collaboration. Psychological injuries are complex. It requires a change in the nature of how employers view the injury itself and how employers manage those injuries. We need to change our processes, absolutely; there is no doubt about that. We're looking at that from the point of view of trying to find specialist models. We probably need to do more in other ways, across different stakeholder groups. But I think it's a combination of these things, not one in isolation, that's going to get us through to a place where we get better outcomes for psychologically injured people.

The Hon. ANTHONY D'ADAM: I'm looking at your submission. On page 15 there's a table with the 2020 and the 2021 causes of mental health claims. Harassment and bullying was 34 per cent of mental health claims in 2020 and 26 per cent—if you're harassed and bullied in your workplace, you're hardly going to be returning to that workplace. There's going to be a natural reluctance from that worker. It seems like there doesn't seem to be an answer coming from icare about how you handle those cases when return to work at the original workplace is impractical.

RICHARD HARDING: Maybe if I can just try and come back to what I was saying. We now have a scenario. Employers are used to thinking of the idea that they have a mentally healthy workforce, that people walk in the door, healthy. We have to get employers thinking of the fact that one in five Australians in any one year has

a mental health concern of some kind. It is not very difficult in that scenario for someone who is already vulnerable to receive normal workplace feedback and that to then trigger into a case of potential bullying and harassment. This is what I'm talking about when I say there needs to be a tripartite, a three-way conversation. Employers need to get to the mindset of thinking that 20 per cent of their workforce is walking in, vulnerable.

The ways we manage our people, the culture that we create in the environments that we work in, needs to take account of that. It needs to change to reflect that. We need to remove the stigma of saying the things that get said around the water cooler when somebody's off work because they've had a stress issue or whatever it might be and have a much more adult conversation about it and really try and create a culture and environment where those things are seen in the same way that a physical injury is seen, where someone's accepted that that's a natural course and we actually work with them, but it's not going to be solved—

The Hon. ANTHONY D'ADAM: I hear what you're saying, Mr Harding.

RICHARD HARDING: I take your points on board, Mr D'Adam. It's not going to be solved by one thing alone. The retraining exercise is probably part of it. Yes, we probably need to do more in that space. I think that's a good thing for us to take away.

The Hon. ANTHONY D'ADAM: Perhaps on notice you might be able to provide us with some statistics about psychological claims that have been redeployed to alternative employment for each of the last, say, five years. How many of those cases have successfully resulted in a worker being redeployed with a different employer or to a different workplace?

RICHARD HARDING: I am happy to do that and bring it back for you on notice. No problem.

MARY MAINI: Can I add to that, Mr D'Adam? In our submission, we also talk about our—we've got career transition services that we've piloted. I can also provide the outcomes of those. We're looking at how do we provide career support for those that won't stay at that employer and transition somewhere else and also bring that into the material that we provide to you.

The Hon. GREG DONNELLY: Thank you all for coming along. I appreciate the opportunity to ask you some questions in regards to your detailed submission. You've answered some questions that we placed on notice. Mr Harding, in your opening statement, you indicated that, as the Nominal Insurer—I just wrote these words down—icare is not where it wants to be. You then helpfully went through and identified some elemental parts that, in your mind, need some specific addressing. Then in your concluding comments to your opening statement you said that icare needs to become far more sustainable over the long term. Is that something that we should be alarmed about, to actually hear the phrase "far more sustainable" coming from the CEO about the state of affairs that icare is in at this present point in time?

RICHARD HARDING: I think "alarmed" isn't a word that I would use. I think we are obviously all concerned and working towards improving the outcomes across icare in all respects across the four different levers that I spoke about in that conversation. It's clear that the funding ratio is below our targets and below where we want them to be. There are a number of factors that have got us there. Some of them are about declining return-to-work rates. A lot of them are to do with changes to the scheme, changes to the environment that is going on around us, the shifting nature of work, as well as, more currently, investment markets, COVID and other impacts. So that's why I think it's not simple to look at it and say there is one problem to solve here.

It's also the nature of the beast that turning around and improving the financial performance, if we're just focused on financial performance as a measure of sustainability—but improving that in these schemes is always a long-term process. If you go back through history, you'll see the evidence of cycles of schemes reform being undertaken, schemes having surplus because the reforms have generated benefits or, more likely, a reduction in benefits to the injured worker. That then slowly gets eroded over time as governments decide to further expand benefits back again. Then there's further reform needed at the end. That cycle is pretty much repetitive around Australia and around the world in the nature of how workers comp schemes work.

To me that isn't a necessary cycle if we have a long-term perspective on how we think about building sustainability. It is about getting the four levers across the scheme working in tandem together and working collectively, rather than an individual focus on one or the other. Workers comp is by its nature unique in the insurance world in that there are some very interested stakeholder groups who have a lot of engagement in the scheme, and they have somewhat diverging interests in some ways. We need to get a greater balance of that and a more collaborative approach to working to solve the problems of the scheme to get us to move forward. I don't know if I've answered your question, Mr Donnelly. But I'm not alarmed. I am concerned, as you would want your CEO to be when he's sitting here with a funding ratio below his target, but I'm not alarmed.

The Hon. GREG DONNELLY: Just following on from that, you've identified in your opening statement—and you reconfirmed this—the "four levers", using your phrase. From your point of view that is an identification of what you have at your disposal—essentially those four levers? It's not three, five or six?

RICHARD HARDING: The only other lever would then be legislative reform and that sits with SIRA as the policy unit. We obviously provide as much feedback and input as we can into that process. But that really sits outside of my level of control. That's something for the Government and SIRA to advise the Government on. But that's the only other lever there is. So we can increase premiums—unlike Victoria. If you look at where the funding ratio is today for New South Wales, I can tell you that in Victoria the Victorian Government has contributed over \$800 million to the Victorian scheme in the last two years and they still have a funding ratio not dissimilar to ours because of the strains on the scheme from psychological injuries, from COVID, from all of the changes that we've talked—this is not an icare or a New South Wales specific issue. This is actually nationwide and global. If you think about mental health, it's a global thing. In the UK, one in two claims today are mental health claims. We want to avoid getting there. We want to try and—how do we improve the way that we get there?

The Hon. GREG DONNELLY: But, having said that, without wishing to discount or talk down the figure in any way, shape or form, in terms of your four points that you made in your opening statement, as I understand it, you said that the psychological injuries are up by \$150 million.

RICHARD HARDING: That's in this year. That doesn't account for the last 10 years of continued growth in psychological claims.

The Hon. GREG DONNELLY: On that point, then, what's your prediction for the future, as best you can look into the future? Obviously this is long term, as you've described. You've indicated some matters that are within your direct remit to try to start to address. What are the forecasts that icare is using about the next, say, two, three, four or five years on matters to do with psychological injuries?

RICHARD HARDING: I have been on record before as saying that, to me, the growing nature of psychological claims and the changing nature of the scheme is probably the most significant threat to the long-term sustainability of the scheme. What I was trying to say in that opening statement is that if you go back to the seventies and eighties, there is a huge push around physical safety in the workplace. We have seen that be successful to the extent that a lot of the smaller physical injuries no longer become claims because they are not happening. What that means for the scheme is that whereas we used to have short-duration physical claims that would quickly go off and not have a high cost, we now have a bulk of claims that is far more complex than the ones that we would have dealt with before.

They are more complex because the injuries are complex, in terms of the psychological injuries, but even the physical injuries are more complex. This is something that the research from John Buchanan at the University of Sydney has been helping us get a line of sight on so we can really understand the drivers that are affecting the scheme. The changing nature of work, as we see the highest growth employment categories in New South Wales and across Australia—again, it's not a New South Wales-specific thing—across the Australian economy at the moment are health care, community services and aged care, education, and then professional services. What are the highest areas for mental illness claims? Health care, community services, education and, to some degree, professional services.

We're moving from an economy of manufacturing, where physical work was the nature of what people did, to an economy where it is about caring, it's about emotion, it's about using your mind to look after somebody and not your body, and therefore the injuries are different. They are far more complex. In that context, we've got a changing world happening upon us that is driving huge shifts in the nature of the injuries that we're seeing. We have a scheme that was written in the 1980s that is largely focused on physical injuries and that has a highly prescriptive nature to its outlook.

The Hon. GREG DONNELLY: Just on that prescriptive nature, with respect to the work being done to reinvigorate and reform the claims system, what do you think is perhaps the most significant—I will use the word in inverted commas—"problem" or "issue" associated with the operation of the current claims system we have? Be bold—you can obviously have a wide perspective from where you sit on looking at this.

RICHARD HARDING: I might ask either of Ms Maini or Ms Bansal to add to my comments because I think it's a very difficult question to answer and I'm going to divert from it, so forgive me. The prescriptive nature of the scheme means that there are so many bottleneck points in the system to point at that I think any one of those we could choose as the problem. But let me try and lift it up a bit to that broad perspective. There's a reason that we're investing in case manager capability, and the reason is my answers to Mr D'Adam's question. That capability, to me, is fundamental in making sure that we help people get back to work. Far more than in any

situation with a physical injury, a broken arm—this is going to generalise and it's probably going to upset people, but a broken arm is a broken arm.

There's a well-trodden path for recovery and for treatment, and it is clear. That's not the case with a psychological injury. Having a trained and well-developed case manager will make an enormous difference in the treatment and engagement that a psychologically injured person receives, and the injury-management planning and the work with their treating physicians, psychologists and others in terms of getting that person back to health, because that's the first step before they can return to work. That's why we are investing in that case management capability: because it is central to getting the right outcomes and getting the best process. But as I said in my opening statement, we can get sucked into the minutiae of the scheme because of its prescriptive nature and get focused on the little bottlenecks, rather than trying to keep it at that bigger picture. What's happening in the environment around us and what's happening in the bigger picture is where we're trying to come from.

MARY MAINI: I would just reinforce in terms of the significance and the importance of case management and how important it is that we have case managers who are experienced and empathetic and understand the needs and the support that an injured worker requires, and also help to facilitate that tripartite engagement with the employer to really focus on early return to work and better health outcomes. That's the reason we're investing so much in uplifting the capability and creating those professional standards.

The professional standards for us—the aim is to move away from creating a vocation to professionalising the case management industry. I think in the past we had very high turnover in terms of case managers; we still have high turnover. What we want to do is create a framework where people see this as a career and case management is accepted as a profession. That actually reduces the turnover and creates and allows the strengthening and support for insurers to invest in attracting and retaining key staff, so that then injured workers and employers get better outcomes. I'm happy to talk more about professional standards in terms of what we've done.

The Hon. ANTHONY D'ADAM: What kind of studies have you undertaken on the factors that drive caseworker turnover?

MARY MAINI: That's a great question.

The Hon. ANTHONY D'ADAM: Is there any analysis looking at the experience of the caseworker, why they are finding the job difficult or why they are exiting the profession?

MARY MAINI: Yes, we've invested a lot in terms of case management recently through the standards, and I'll answer that in a moment, Mr D'Adam. One of the things that we're pleased with in terms of seeing the shift in the scheme is that several years ago the turnover rate was high, but we now have a scheme where over 48 per cent of the staff have got more than 2½ years' tenure in case management. But has there been any empirical or independent analysis done on turnover of case managers? No, I don't think there's anything available.

I can tell you from my own experience in leading organisations that had staff that with case management, the reasons why they move are what Mr Harding was talking about—the prescriptive nature of things. If you have an environment where case managers are prescribed every step of the way—can't exercise critical judgment, can't help injured workers find innovative solutions—that actually, I believe, contributes to turnover. The other key piece is not investing in case management training and upskilling. As we were saying before, if we move away from what we have now, which is an environment where it's seen as a vocation, to a profession then I think we'll see more case managers stay in the industry, which is what we want.

The Hon. ANTHONY D'ADAM: You've made an announcement about trying to create specialist case managers for psychological claims, and there was an observation from an earlier participant in the inquiry that that might be setting people up to fail because those cases are particularly challenging. We've had some evidence from a roundtable of workers who had pretty poor experience of the system and are obviously frustrated and angry and felt that the system wasn't actually there to serve them. I wanted to ask about the issue around disputes on liability and the role of case managers in that process. The data suggest that psychological injuries have a higher level of disputation, so there's more contention there. What's driving that? What's driving the higher levels of disputation? I suppose my secondary question is why are the case managers there driving a disputatious culture when it comes to psychological injuries? What's incentivising that?

RICHARD HARDING: I'll try and give you a high-level answer, then I might pass to Ms Maini to add more detail. And just to address it, I know that you've met with a round table. We're always keen to hear from people who've had bad experiences with the scheme to try to understand what's driving it. Since I've started, we've tried to reach out to people like that. We've spoken to the Injured Workers Campaign Network on several occasions through Unions NSW and we have our own processes for trying to hear and listen to injured workers. At the moment, we have a customer satisfaction level of around about 71 per cent overall, but it is hearing from those

minority groups about their experiences, I think, that is important so that we understand the extreme outcomes that the scheme can generate and how we can better address those. So there are clearly ways that we can do better in that context.

To your broader question in respect to disputation, I mentioned before the complex nature of psychological claims. I would say that, unfortunately, at the moment determining our liability on a psychological claim is quite a complex and difficult matter. We see a higher referral rate to IMEs in those cases because the case manager doesn't have the skills to be able to make that determination or review or assessment because of the complexity of it. The situation itself is complex. Normally, by the time the claim is lodged, unfortunately, the relationship between the employer and the injured worker has broken down quite a lot—to your point earlier, the point about people returning to work—and that can create difficulty in that you've got necessarily different views coming from the employer and the injured worker about the causal impact. The nature of the scheme is one where that liability determination is, by its nature, somewhat adversarial because of the need to create that causal connection with the workplace. That can be something where people have different points of view. So that complexity can be difficult for an under-developed case manager to work through and they can tend to rely on IMEs or other experts to try and help them.

That doesn't help in the case of a psychologically injured worker because the more often you ask them to repeat their injury and to repeat the conversation of their injury, you're actually incurring more anxiety and more stress and they feel that they're not being believed, which creates or feeds on other elements of their mental health claim. So it is complex and difficult for an under-developed case manager to manage that situation. I don't have a more specific answer than that. I don't know if Ms Maini has something about specific disputes arising from liability, but that, I think, is the broad answer I can give you.

The Hon. ANTHONY D'ADAM: What's incentivising the case managers to—I mean, yes, they're more complex. Presumably, icare provides guidance to the claims managers about in what circumstances do you query the liability or, you know—

RICHARD HARDING: We have a psychological checklist—

The Hon. ANTHONY D'ADAM: So, surely, doesn't that need to be looked at—

RICHARD HARDING: —to try and help support the case manager. Absolutely.

The Hon. ANTHONY D'ADAM: —to calibrate it so that there's less conflict, more of a presumption in favour of the worker in those circumstances? Isn't that the solution, Mr Harding?

RICHARD HARDING: At the end of the day the liability decision is one structured around the causal connection with the workplace. That's the way the legislation works. So that creates that, if you like, incentive for the case manager—

The Hon. ANTHONY D'ADAM: What's the evidentiary threshold that the case manager has to reach to conclude that there's a work—

RICHARD HARDING: It's more often than not the conflicting different points of view that are being provided into that conversation that create the challenge.

The Hon. ANTHONY D'ADAM: But at some stage someone has to make a call.

RICHARD HARDING: Absolutely.

The Hon. ANTHONY D'ADAM: They could have a presumption in favour of the worker or they could have a presumption in favour of the employer's account of the situation.

RICHARD HARDING: And, more often than not, it leans towards the benefit of the worker. We try to move to provisional liability as quickly as we can so that the injured worker can get treatment straightaway. It's not a case of holding back treatment or funding whilst this discussion is going on. We move to provisional liability; that's the greatest use of it.

The Hon. ANTHONY D'ADAM: Isn't it a problem, Mr Harding, that, yes, psychological claims are more complex and it's more difficult, but the net result of that is workers who are injured and have psychological injuries get worse treatment than someone who has a physical injury. They have to fight harder to actually get compensation. That's not fair, is it?

RICHARD HARDING: We 100 per cent agree with you. That's why we're trying to develop a new model with a specialisation to create a different capability set and a different approach to dealing with psych claims. At the moment we have one sausage machine that all sausages go through. The specialist model that we're trying to create—with each of the four claim service providers, they will have different approaches to what that

specialisation means, and we will learn from each of those as that goes through. We also intend to work with another partner, which we can't talk about yet because they haven't finished the probity processes, which hopefully can bring in a lot of IP that can help us build, test and learn different approaches to case management to lift that case manager capability but also change the way the process works.

We would love to come back to the Committee and to SIRA with recommendations from those processes about how to change the scheme to make it a psychologically safe scheme. But today it's a physical scheme attempting to deal with psychological claims. Case managers have a complex process to work through. They don't necessarily have the skills and they're not necessarily set up to do that. We're not disagreeing with your underlying premise at all; we are trying to work out ways to develop models to improve the outcome.

The Hon. ANTHONY D'ADAM: We had some evidence from the round table about workers having to fight with their case managers around appropriate treatment. Shouldn't the worker's opinion be the decisive opinion in terms of the type of treatment that they receive?

RICHARD HARDING: The best guide for the treatment should be the treating doctor and their recommendations. That should be the key process that the case manager is going through, working with the treating doctors—and there may be more than one in the case of a psychological injury—and agreeing that process with the injured worker. That's the best approach and that's our preferred approach. Do you have any point of view on that? Do you want to add anything?

MARY MAINI: No. I support in terms of I think the best approach is relying on the treating doctor, because they actually know the injured worker and they know what they need. I want to let Committee know that we have established, since 2017, a medical support panel, because we do actually have treating doctors who might also need support in terms of recommending. We get referrals for new and novel treatment and introducing new treatment that some people aren't aware of. We have an independent panel that we've established of 11 specialists. They're occupational physicians and psychiatrists, and all the claim service providers can refer to the medical support panel for an opinion.

Over the past several years they have reviewed, I think, 21,487 claims that have been referred for that intervention, and 53 per cent of those resulted in a resolution and didn't move on to an independent medical examination. We're actually doing things in terms of looking at ways where we can get that early support, minimise the need for an independent medical examination but really focus on the advice and the recommendations that are also coming through from the treating doctors, recognising that sometimes treating doctors are also saying that they need that support as well. So we've got some programs in place to support them.

The Hon. GREG DONNELLY: The Chair has been very generous, and the Opposition appreciates that, but can I just jump in with a follow up?

The Hon. WES FANG: We are generous, mate.

The Hon. GREG DONNELLY: Well, the Chair is, as I said. With respect to this point about not getting down into the weeds, Mr Harding—I understand as a CEO getting down into the weeds is something that you might have to do from time to time but prefer to deal with the macro issues. Can I use this one particular example—and hopefully in terms of the new claims model this is being addressed? In our evidence we heard today—and it's been reported back formally and informally in other evidence—with respect to the making of a workers compensation claim these days, I'll use the phrase the "old school approach" was to complete a workers compensation claim form as the employee who is wanting to make a claim, and the employer would then complete the paperwork associated with the pending claim or the claim to be made.

The effect of that was at that very early point there quite comprehensive detail captured quite close to the event or thereabouts about the matter. Now I'm not suggesting we return to the days of pen and paper because the world has moved on. But the system as we understand it today under the legislation does not mandate or require a workers compensation claim form to be completed by the employee, and more specifics around the employer in terms of what they need to complete, the result of which is that it has morphed into what is a protocol of lodging an electronic notification of a claim. I'm not referring to you personally here, but one doesn't need to be surprised if I said that it seems to be extraordinary that people who are going to manage a claim at various intervals over the life of a claim do not start with a rich source of information about the claim itself and are left trying to fill gaps and then get into terrible scenarios whereby the case may be so large that they have to circle back and circle back.

That seems to me to be so bleeding obvious—yes, sure, it's not a macro issue but through legislation—that the critical information for the processing of this claim from the employee's point of view, employer's point of view and, indeed, icare's point of view is to have some pretty great, rich information upfront at the start. There is a massive gap there. My question is with respect to what's been in the vernacular referred to as the "new new claims model", if you don't mind me describing it that way because others have, is this being addressed?

RICHARD HARDING: I'm not sure what the "new new" means, Mr Donnelly. The thing I'd say about it, and I'll pass to Ms Maini because she's far more aware of the detail here than I am, is that I'm not aware there is that sort of issue that you've raised. I wasn't participating in the earlier evidence—I was occupied with other things—so I don't know the context of the conversation that you've had. Anything where we have built an online portal to enable ease of capture of information for employers and injured workers has followed the SIRA guidelines in respect to the information to be captured at the time of claim. That is then followed up through the case managers with conversations with the relevant parties. I'm not sure of the context but I'll ask Ms Maini if she has any other detail that she wants to add.

MARY MAINI: Mr Donnelly, I wasn't privy to that conversation either but what I'd like to do is just highlight that in terms of what we ask when we've got the notification process is the name and contact details of the worker, the name and contact details of the employer, the name and contact details of the worker's medical practitioner—I'm just reading through in terms of what we've got—the name and contact details of witnesses, were any other witnesses known to the worker if the incident was witnessed, a description of the injury and how it happened, and information to support medical expenses and other losses. I'm at a loss to try to understand what the nature of the question was earlier or the issue. We do have an online portal, where we're trying to capture minimal information quickly. The important thing for us, and for any insurer, is for an injured worker and an employer to notify as quickly as possible so that we can trigger the provisional liability requirements and help those injured workers. If there's a barrier, I'm happy to take that on notice and provide more information.

The Hon. GREG DONNELLY: Perhaps you could do that on notice. But the issue is minimal information. I think you've probably nailed it on the head. This is the point: There is minimal information being captured.

RICHARD HARDING: There is some conversation about gaps. I don't know what the gaps are. We have information that's necessary for us to process and initiate the claim, which is the key. Then the conversations can happen with the stakeholders in that claim so that we can capture the rest of the information in a much more rich way than on a form. Perhaps you were talking to the lawyers' association, who like a lot of forms. Otherwise, unfortunately, we don't have the context or the background. Maybe you can email me and I can give you a bit more detail and we can have a look.

The Hon. ANTHONY D'ADAM: You could review the transcript and perhaps on notice provide a response.

The Hon. GREG DONNELLY: We can deal with that on notice.

MARY MAINI: Absolutely.

The Hon. GREG DONNELLY: It was the lawyers, but they're not the only people or stakeholder group that has raised this. It's not just a case of paper for paper's sake; it's capturing information as richly as possible as close to, or thereabouts, to the actual injury.

RICHARD HARDING: Yes. I think we all agree with the desire to capture that in a timely and valuable way. Again, our efforts have been focused on both ends of that, which is how to make it easier and simpler for injured people to report and lodge a claim, as well as trying to get the balance in the information that we capture at that time. We're doing all of that while balancing that within what SIRA's guidelines are. Again, we have legislative restrictions and we have SIRA's guidelines.

The Hon. GREG DONNELLY: I understand that.

RICHARD HARDING: All of those things are constraints upon what we do and don't do. But I'm happy to take it away.

The Hon. GREG DONNELLY: That's fine.

RICHARD HARDING: We get the point that's being made, so we can take that away and look at it as part of the next phase of work.

The Hon. GREG DONNELLY: Finally, the claims model that's being developed, worked up—is that essentially a completed project or is it a work in progress?

RICHARD HARDING: I think our view would be that it's always going to be a work in progress because we don't want to see it stop and stagnate. We want it to continue to evolve. But the current phase of it is very much a work in progress. We have now appointed the six CSPs that we announced last week. We moved to implementation of that in 2023 to get those people on board and start to have them allocated capability. The specialisation around the psychological claims is very much a test-and-learn kind of approach, where we want to see different methods being used by the claim service providers to try to create, as Ms Maini said, a more

empathetic, robust approach to working with psychologically injured people and what works to actually return them to work in the fastest and best possible way. We will iterate that through a test-and-learn process until we can find the right combination of changes and roll that through the rest of the system as quickly as we can.

Rather than perhaps what you saw in 2017, and I assume this is what your "new new" conversation is about—rather than a big-bang, one-size-fits-all approach that happened back then, our goal is to learn and test and try new things. When we identify what is making the biggest impact, then we will share that across the providers and have them improve the performance of the scheme overall. That's why I keep saying it's going to take time. I don't see big bangs these days as things that work. We need to trial and understand that some things will work and some things won't work. We do that in a way that's not damaging to the scheme or to people. Then when we find one that does work, we implement it across the scheme and have a performance improvement. I don't know whether I'm answering your question and making any sense.

The Hon. GREG DONNELLY: No, I understand what you're saying.

RICHARD HARDING: You're looking through your eyebrows at me.

The CHAIR: Thank you for your frankness on everything so far. In particular, regarding the scheme, whilst being very good at dealing with physical health problems, might not necessarily be completely perfect in terms of psychological claims. Thank you for not sugar-coating it and for being frank. I very much appreciate all the work you're doing in improving the scheme as much as possible. But I suppose there comes a point where there's only so much that you can do at icare within the existing legislation and regulations, and eventually there's going to have to be reform of the scheme from here in this place because there is only so much that you can do yourselves—in particular, regarding psychological claims.

RICHARD HARDING: Agreed. I'm assuming you want an answer, but in the context of the broader environmental changes that are going around us and the shifting nature of work that's happening—and that's just one shift that's happening in the labour market and in the economy. Flexible working in professional services—if you take icare, for example, or any other office-based service kind of organisation, I think globally attendance in the office now is running at sort of between 30 and 40 per cent maximum—and that's generally Tuesday to Thursday because no-one is in the office on Mondays and Fridays. But you've now got a different scenario where people in those workplaces are either isolated at home, and there is a different whole layer to that that we haven't seen play out in the workers compensation system in terms of how that will impact the nature of work and how people's injuries unfold. So I think we would support legislative reform to support psychological claims, and we're very happy to contribute in whatever way we can to that and work with SIRA and yourselves to try to work through that. We recognise that would be a complex and challenging process.

The Hon. ANTHONY D'ADAM: I want to ask about the customer satisfaction measure. When do you actually take the feedback? When does a worker submit to that process in terms of giving that feedback about customer satisfaction? At what stage do you take those assessments in a claims process?

RICHARD HARDING: I might need to take that on notice for you. I can generically say to you—and I'm happy to come back with specific detail on it—that we take soundings on a regular basis. So monthly—Ms Bansal might actually know the answers.

RASHI BANSAL: Yes, monthly. We do it at different stages. That's my understanding.

The Hon. ANTHONY D'ADAM: Perhaps on notice you could provide some detail about the stages at which points in the worker journey through the claims process that those measures are taken.

RASHI BANSAL: Sure.

The Hon. ANTHONY D'ADAM: I wonder if you could also on notice provide the detail of the customer satisfaction level for psychological claims for the last two years and then the customer satisfaction level for all other claims for the last two years.

RICHARD HARDING: We're happy to. Historically, we haven't measured satisfaction. We've had—

MARY MAINI: NPS.

RASHI BANSAL: NPS.

RICHARD HARDING: —NPS, which is not a particularly wonderful measure. But we can provide you what we've got.

The Hon. ANTHONY D'ADAM: So you've changed the measure, have you?

RICHARD HARDING: We've improved the measure, yes. Historically—

The Hon. ANTHONY D'ADAM: But you've moved to a different measure, so you have no historical reference point?

RICHARD HARDING: We've got enough historical to give you a good context, and we've got an ability to align the two so you can see changes. But our ability to get deep into understanding what affected the NPS in the past is a lot less than what we can do today in helping to understand the drivers of the satisfaction.

The Hon. ANTHONY D'ADAM: The second thing I wanted to ask was about when you talked about the average claim cost, what categories—can you break that down into what proportion of an average claim is weekly benefits, medical costs, administration, disputation?

RICHARD HARDING: Absolutely.

MARY MAINI: We can do that.

The Hon. ANTHONY D'ADAM: I was wondering if you could provide that detail, the average claim costs for psychological claims and then for all other claims for the last, I don't know, four years if that is possible.

RICHARD HARDING: Yes.

The Hon. ANTHONY D'ADAM: Thank you.

RICHARD HARDING: That's not hard at all.

The Hon. GREG DONNELLY: Given the identification of the significant issue of bullying and harassments, in particular—which is dealt with helpfully in the first page of your pre-hearing questions; there's a histogram there—could you please on notice provide us with, I presume, what could be broadly described as a specific strategy document or approach document that you've prepared and presented to the Government to tackle this?

RICHARD HARDING: I think that's a question that you should refer to SIRA. We don't provide policy recommendations to the Government.

The Hon. GREG DONNELLY: Are you, essentially, silent to government on this issue?

RICHARD HARDING: We provide feedback to SIRA and they provide policy recommendations to the Government.

The Hon. GREG DONNELLY: I will say it again. Given the dimension of this—

RICHARD HARDING: We don't provide policy recommendations to the Government.

The Hon. GREG DONNELLY: Yes, I do understand that. But yourself, given the size of this issue, and it's not insignificant, you have no discussion—it's all up to SIRA to deal with the Government? You have not, in any way, engaged with anyone inside the Government on this matter?

The Hon. LOU AMATO: He's answered this question, Chair.

RICHARD HARDING: Not in respect of policy-level issues, no.

The Hon. GREG DONNELLY: Okay.

RICHARD HARDING: We deal with it in terms of—

The Hon. ANTHONY D'ADAM: But, surely, Mr Harding—

The CHAIR: We have gone over time, so I will cut it off there. Thank you so much for attending this hearing. Committee members may have additional questions for you after the hearing—I'm sure they will. The Committee has resolved that answers to those, along with any answers to questions taken on notice today be returned within 14 days. The secretariat will contact you in relation to those questions. Thanks so much for attending. That concludes our second day of hearings.

(The witnesses withdrew.)

The Committee adjourned at 16:46.