REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2022 REVIEWS OF THE COMPULSORY THIRD PARTY INSURANCE AND LIFETIME CARE AND SUPPORT SCHEMES

CORRECTED

At Macquarie Room, Parliament House, Sydney on Friday 18 November 2022

The Committee met at 9.15 am

PRESENT

The Hon. Chris Rath (Chair)

The Hon. Greg Donnelly (Deputy Chair)
The Hon. Wes Fang
The Hon. Taylor Martin
The Hon. Rod Roberts

PRESENT VIA VIDEOCONFERENCE

The Hon. Lou Amato
The Hon. Anthony D'Adam

The CHAIR: Welcome to the public hearing for the 2022 reviews of the Compulsory Third Party Insurance and Lifetime Care and Support schemes. These reviews form part of the Committee's regular reviews of the two schemes in accordance with its oversight role under section 27 of the State Insurance and Care Governance Act 2015. 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 and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. Today we will be hearing from a number of stakeholders, including road user groups, legal representatives and representatives of the Insurance Council of Australia, icare, the Independent Review Office and the State Insurance Regulatory Authority. I thank everyone for making time to give evidence to this important inquiry.

Before we commence, I make some brief comments about the procedures for the hearing. Today's hearing is being broadcast live via the Parliament's website. The proceedings are also being recorded and a transcript will be placed on the Committee's website once it becomes available. In accordance with the broadcasting guidelines, the House has authorised the filming, broadcasting and photography of Committee proceedings by representatives of media organisations from any position in the room and by any member of the public from any position in the audience. Any person filming or photographing proceedings must take responsibility for the proper use of that material. This is detailed in the broadcasting resolution, a copy of which is available from the secretariat.

While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments they may 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 these issues in 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 a question on notice. Written answers to questions taken on notice are to be provided within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff.

In terms of the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphone. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

Mr MICHAEL TIMMS, Deputy Chair, Australasian College of Road Safety, NSW Chapter, sworn and examined

Mr BRIAN WOOD, Secretary, Motorcycle Council of NSW, affirmed and examined

Mr MARTIN ROGERS, Chief Executive Officer, NSW Taxi Council, sworn and examined

Mr NICK ABRAHIM, Deputy Chief Executive Officer, NSW Taxi Council, sworn and examined

Ms MICHELLE COHEN, Principal Solicitor, Public Interest Advocacy Centre, before the Committee via videoconference, affirmed and examined

Ms SHEETAL BALAKRISHNAN, Senior Solicitor, Public Interest Advocacy Centre, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our first witnesses. I invite each witness to make a short opening statement of no more than a couple of minutes.

MICHAEL TIMMS: Thank you, Mr Chair. The Australasian College of Road Safety is focused on saving lives and preventing serious injuries on our roads. The Committee's work in overseeing compulsory third party and Lifetime Care is vital for road safety. It's the target of national and State road safety strategies to reduce road crash injuries by 30 per cent by the end of 2030. To put that into perspective, in 2021 more than 10,000 people were hospitalised in New South Wales as a result of a crash, according to the latest data. Each one of those 10,000 represents a life changed and a potential demand for Lifetime Care. Sadly, in every year since 2013, more than 10,000 people have been hospitalised as a result of a crash. At the previous inquiry, ACRS argued the best way to sustain post-crash care and lower premiums is by reducing the burden on the scheme. Filling the Sydney Football Stadium with road crash victims every 4½ years is not sustainable.

It's no cause for celebration just yet, but the provisional hospitalisation figure for the March quarter of 2022 did fall by 29 per cent, compared to the same period last year. ACRS is pleased to read about SIRA's support for a range of road safety initiatives. We also note SIRA is monitoring electric scooter trials and automated vehicle policy. In our submission, ACRS calls upon the CTP sector to show leadership and innovation; help customers of all ages make better decisions when purchasing a new vehicle or protective motorcycle gear; eliminate economic inequality; and find ways of increasing the share of policies held for five-star vehicles. Finally, ACRS calls upon the CTP sector to formally adopt official road safety targets as corporate policy.

BRIAN WOOD: The Motorcycle Council still has concerns about the excess profit and loss mechanism in that the 10 per cent profit is for the whole of the scheme, not for individual vehicle classes.[1] There's still a possibility that motorcycles, in some of those categories, could be paying more than 8 per cent, but there is no way of knowing whether that is the case. There is class 10, which is the largest capacity motorcycle. In that one, the most expensive premiums are those in the country, whereas in all other capacity classes it is metro which is the highest. We've not had an explanation as to why that difference is, but it has been suggested that it may be because there have been some large claims in that class 10 (h)—country—which have put the premiums up. But if that's the case, perhaps it's the same thing happening with the profits—that the profits are not easily across those classifications because we have 25 classifications. In some of those, there are only about 1,000 vehicles. This compares with probably metro car where there might be something like one million. How do you deal with a scheme which in one class has got one million policies and in others only has about 1,000? How do you make it equitable across the whole scheme?

We still have concerns about what compensation you receive when you crash interstate. We have worked closely with SIRA and they've produced information, both in a pamphlet and also online, about what compensation you get if you do crash interstate. Our main concern is still Tasmania, because there, if it's a crash that doesn't involve a Tasmanian-registered vehicle, you get no compensation. While we put the information out to riders, it's probably not all that evident that people would be aware if they do crash in Tasmania, they could get no compensation at all. Victor Dominello, the Minister, did suggest you take out additional insurance to cover it, but it's also been suggested that you can't take out two insurance policies which cover the same risk. We are not really quite sure what type of policy you should take out so you don't fall foul, or when you need to rely on it find there's a technicality and that you were trying to cover the same risk with two different policies.

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[1] In correspondence to the committee received 29 November 2022, Mr Brian Wood, Secretary, Motorcycle Council of NSW, requested a correction to the evidence by replacing the number "10" with the number "8".

We have written to the Premier of Tasmania to ask him what he might suggest is the solution to this problem. We have also suggested to SIRA that perhaps the scheme should be like that in Victoria where TAC top up what you receive as compensation from another State—they top it up as if the crash occurred in Victoria. We would very much like to see that type of scheme introduced into New South Wales, but I think that probably would require a legislative change to permit that. We would really like to see calculations on what difference it might make to premiums if that sort of mechanism was introduced. We're still, I guess, concerned about crashes that are really the result of road defects that the road authority, who is responsible for that part of the road—if you crash as a result of gravel or a pothole or a slippery steel plate, that really should be the responsibility of the road authority to pay the compensation. The compensation shouldn't come out of the CTP scheme because that then just puts the premiums up, because we do have this scheme called Safe System. I note that it's called Safe System, not Safer System. The road network should be safe to use and it should be safe to use by all road user groups.

We do put in our submission a case that one of our delegates approached us with: He had, perhaps, not a very good experience—or his wife didn't have, perhaps, that good an experience—making a claim. There were a number of factors that happened there. One was that it occurred just before Christmas. Being able to engage with people after Christmas, getting medical appointments and specialists during that sort of holiday period, and also being self-employed—there were a number of factors that made it difficult for them to be able to put forward a claim. Whether there needs to be a mechanism by which some of these high risk factors are taken into consideration so that they get priority when trying to get their claims resolved—I'd also like to express appreciation to SIRA for the ongoing quarterly meetings that we have with them. They're able to provide us with quite a lot of information on how the scheme is progressing. We're really looking for trends as to where the scheme lands. COVID has somewhat upset that so that the trends—it's not quite clear yet just where we're going to land with premiums for motorcycles. Thank you for that opportunity.

The CHAIR: Excellent. Is there an opening statement from the Taxi Council? Thank you for joining us today. I know it's probably been a very busy couple of weeks for you.

MARTIN ROGERS: It has. Thank you for allowing us to attend this morning. The NSW Taxi Council welcomes the opportunity to review and respond to the terms of reference paper released by the New South Wales Legislative Council Standing Committee on Law and Justice for the review of the compulsory third party insurance scheme. The NSW Taxi Council acknowledges the current challenges in the competitive set within the point to point transport sector. Hence we are grateful for the ongoing collaboration and consultation between the NSW Taxi Council and the State Insurance Regulatory Authority, or SIRA, working towards addressing some of these challenges. We acknowledge the work being undertaken by SIRA towards reforming the framework for CTP. It is vital that this reform is completed ASAP to ensure delivery of a competitor-neutral scheme between rideshare, hire cars and taxis.

Whilst there have been some developments already made in the point to point sector in relation to CTP, more is required to achieve a true level playing field for all participants. The NSW Taxi Council, together with its members, strongly believes that a true levelling of the playing field will only be achieved if all point to point service providers, including taxis, were grouped into class 1 for CTP or in the same class. We have seen this evident in other States such as Queensland, where all personalised transport service providers have been put in the same class, ensuring competitor neutrality. We thank the Hon. Rod Roberts from One Nation for his recent efforts and the support of others, including Ms Abigail Boyd, who is also part of this Committee, in looking to find a resolution to this disparity that is yet to be adequately resolved for the taxi industry.

In addition to CTP inequities, there is also a significant issue in the disparity of workers compensation between taxis and rideshare. Taxi operators are mandated to take out workers compensation policies for any drivers they bail a taxi to. However, rideshare operators and the equivalent do not have the same requirement for any drivers they lease or provide a vehicle to. We have seen the rideshare model evolve over the recent years, from an individual choosing to drive part-time to earn some additional income to now seeing more full-time participants enter rideshare on a full-time basis. This has led to a large number of individuals operating fleets of vehicles and leasing out to drivers in the same manner a taxi operator bails a taxi to a driver. So why are taxi operators required to take out workers compensation and yet a rideshare operator is not? How are rideshare drivers being protected? We look forward to continuing to work with the State Insurance Regulatory Authority as we aim to achieve a more competitor-neutral scheme within the point to point transport sector, delivering better outcomes for the travelling public.

The CHAIR: Wonderful, thank you. PIAC, any opening statement?

MICHELLE COHEN: Thank you very much and thank you for the opportunity to address the Committee today. I will speak for a minute and then hand over to my colleague, Sheetal. The Public Interest Advocacy Centre is a social justice law and policy centre that works with people and communities who are experiencing

disadvantage to tackle injustice and inequality. We have a long history of working on the rights of people with disability. Earlier this year PIAC was approached by Disability Voices Tasmania, an advocacy organisation in the context of the current e-scooter trial in Tasmania, to support Disability Voices Tasmania's advocacy for better safety measures. DVT shared with us numerous examples of incidents resulting in injury involving people with disability that occurred in Tasmania. Through our work with DVT, we became aware of the ineffectiveness of insurance policies provided by the hire and ride e-scooter operators. We made our submission to this inquiry to bring this discrete issue to the Committee's attention to be considered in relation to any amendments to the scheme.

In making our submission and comments to the Committee today, we want to note that PIAC is not an expert on CTP insurance, nor does providing advice in relation to CTP cover fall within our legal practice areas. In addition to this issue being an issue that disproportionately affects people with disability, these issues are relevant to all members of the public as pedestrians or third parties in the event of an e-scooter-related incident. It's important to note as well that, as part of the current e-scooter trial in New South Wales, it's illegal to ride e-scooters on footpaths. However, there is a real likelihood and it is the case that e-scooter riders are breaching this requirement.

SHEETAL BALAKRISHNAN: The ineffectiveness of the insurance policies basically relates to—the e-scooter providers do provide insurance and that does include accidents involving a third party. However, the insurance policies contain various exclusions. For example, if the rider was not following the road rules such as that they were riding on the footpath, that would make the insurance policy void. If the insurance policy is void, the option for an injured third party could be to sue the negligent rider. However, the outcome of any negligence claim would depend on the cooperation of the negligent rider as well as the rider's means to compensate the third party. Without an insurer to claim from, the limitations associated with suing a negligent rider and there being no access to a CTP insurance scheme, a third party injured in an accident involving an e-scooter can be left with significant out-of-pocket expenses and no legal recourse.

As the use of e-scooters continues to increase, the risk they present to pedestrians in New South Wales also increases. Even though it's illegal to ride them on the footpaths in New South Wales, there is a real likelihood that riders will breach the rules and cause an injury to pedestrians. This has been reported in Victoria, another jurisdiction where it is illegal to ride them on the footpaths. This, we say, is a significant problem which requires a proper solution. Where the New South Wales Government regulates e-scooter use, the Government should ensure that members of the public are covered if they are injured from an e-scooter accident. An example of a solution would be to extend the CTP insurance scheme or establish a similar no-fault scheme to ensure that pedestrians injured in an accident involving an e-scooter can claim compensation. By learning from the lessons in the other jurisdictions, this is an opportunity for the Government to be proactive rather than reactive.

The CHAIR: I might start on e-scooters. How would you suggest that it works? At the moment, if you're in an accident with two motor vehicles, for instance, basically the two insurers talk to each other about making a claim. If it's a pedestrian or if it's someone using an e-scooter, currently they wouldn't have a CTP policy. Are you suggesting the pedestrian or the person using the e-scooter would claim on—who would they be putting the claim in with if there's no insurance currently to that section of the community?

MICHELLE COHEN: The way that it would currently work is what we can comment on best, which is that the injured person will need to sue the negligent rider and then the rider would need to sue on the CTP cover. But we've got concerns about that approach due to the difficulties that pedestrians may face in suing a negligent rider and, in fact, identifying that rider as well. If you're in an e-scooter accident, and particularly if you've got a disability and are injured, it is very difficult to even identify who is riding the scooter and to stop that person as well.

There are real difficulties. It does need to be something that the e-scooter companies take responsibility for, in our view. In terms of how that works technically, we're not the best qualified to do that, but we can comment on the fact that people with disability that we've been speaking to have been saying that it is extremely difficult in practice to identify who the rider of the scooter was, and that even the e-scooter companies themselves can't provide this information due to the nature of the device.

SHEETAL BALAKRISHNAN: I might just add to that. We understand that the Victorian Government has also been asked to consider a similar expansion of its no-fault accident scheme. If there is consideration of expanding the scheme to include accidents that involve e-scooters, it might be worth, as part of the Government's consultation, to also consider what other jurisdictions are doing in this space.

The CHAIR: Thank you for that. Obviously one of the options which, I think, would be quite onerous, would be to extend CTP to e-scooters. I think that is quite a significant barrier to people using e-scooters, if you said that every single person would have to have some form of CTP—it would just become unworkable. I don't know if you looked at that in any great detail.

MICHELLE COHEN: We haven't. The purpose of our submission was really to raise the issue with the Committee. But, yes, I think it really would need to be a matter for the e-scooter companies to see what they can do to step in to assist with that cover.

The CHAIR: I might just turn to road safety. I was wondering if you've looked at telematics at all, and the future of using telematics to reduce accidents on our roads. That could benefit the CTP scheme in terms of fewer accidents and potentially even reducing premiums as a result of people using telematics in the future.

MICHAEL TIMMS: Vehicles are increasingly sophisticated nowadays and they do provide a lot of evidence to crash investigators and allow insurance companies and other people to have a look at how their customers are driving the vehicles. On telematics, there was a trial run a couple of years ago through SIRA where they installed devices in the vehicles owned by young people. That monitors how they drive to make sure there is no harsh braking, harsh acceleration, loss of sideways traction and that then allows, in the long run, insurance companies to make a more informed assessment of risk as to whether this person is worth insuring.

The Australasian College of Road Safety New South Wales hosted a webinar in 2021 which is still online—I think I put a link to that webinar in our submission. The interesting thing at the time—it was highly acclaimed by a number of Ministers. The results of the trial were highly acclaimed. It was described as a game changer. That was back in 2019, and it has been crickets since then. We haven't heard anything about it. It would be very interesting, when you speak to SIRA later today, if you can find out what they intend doing about that trial, because their website still talks about how it is reviewing the findings. There's even a portal where you can give your email address and SIRA will provide you with an update, but when you try to access it, it bounces back saying it is an invalid email address. It would be very interesting to see what the future is there. That's just one type of incidence where technology can assist.

The CHAIR: Great. We might ask SIRA about that later today. I've got one question on taxis. At the moment, how would it work between the workers compensation scheme and the CTP scheme? This often comes up. If a taxidriver is in an accident, when would they put in a claim to the CTP scheme and when would they put in a claim to the workers compensation scheme? In ridesharing, I assume, every single accident would be done through the CTP scheme because, as you said, they aren't required to use workers compensation. Is it even necessary to have workers compensation for taxis, or are you suggesting that ridesharing needs workers compensation? Which way would you suggest? Is it removing workers compensation from taxis or putting workers compensation on to rideshare?

NICK ABRAHIM: Very good question. What we are calling for is a competitor-neutral approach to the issue that you raise. We are not asking for the requirement for taxidrivers to not have workers compensation, because that would be the irresponsible thing to do. We are calling on the responsible thing, and that is for rideshare drivers to be covered under workers compensation because, as we understand it, a driver, whether a driver who is an owner-driver or whether a driver who works under an operator, is not covered under workers compensation if there is no cover taken either by the operator or the driver themselves.

Just to explain that in a bit more context, from a taxi perspective, if you were an owner-driver yourself, you don't have any other drivers, you are required to take out your own—it's not a mandatory requirement, but an optional requirement and a sensible one for you to take out your own cover. However, under clause 10 of schedule 1 of the 1998 Workplace Injury Management and Workers Compensation Act, as soon as you bail the taxi to a driver, whether for one shift or many shifts, then you are required and it is mandatory to take out workers compensation for that driver. In relation to rideshare, they sit outside of any framework or under any legislative requirement.

The difference there, Mr Chair, is that under that legislation that I've just referred to there is reference to contract of bailment, which is what a taxi operates under; however, rideshares are excluded from that. Our major concern, while we talk about competitor neutrality, is around the safety of rideshare drivers, who we understand. We've seen quite a development in the operator space of multiple operators growing in the rideshare space, however, no change in regards to the workers compensation requirement. The modelling with rideshare is very much aligned with the taxis; however, you've got one requirement on one hand, but none on the other.

The Hon. ROD ROBERTS: Thank you, Mr Rogers. I thank you for acknowledging the work of myself and some of my colleagues yesterday in attempting to rectify some issues with the compulsory third party scheme for taxis. I don't have intricate knowledge, but I have knowledge. Unfortunately, my knowledge will not form evidence before this Committee. I'm going to put a proposition to you and you can answer it however you see fit. Is it a fair statement that, under the current legislation at the moment, taxis sit within class 7 compulsory third party insurance, and therefore pay an extreme premium in the metropolitan area—somewhere around $5,500 to $6,000?

Conversely, though, a rideshare operator operating in the same Sydney metropolitan area, to my understanding, operates under a class 1 third party insurance scheme, with a significant cost-saving factor to the rideshare operator. This week we've seen legislation passed to finally deregulate the industry and which is purported to create a level playing field. But, clearly, under this third-party arrangement, it is not a level playing field at all and taxis are at an extreme financial disadvantage. They are having to pay up thousands and thousands of dollars more before they even turn a wheel, so to speak. Could you comment on that and provide detail on that for us, please?

MARTIN ROGERS: I will give you a couple of different scenarios. You are correct in that there is a disparity in the CTP that is being paid between taxis and rideshare. One is the collection model. In the taxi industry, the operator or the owner of the vehicle is responsible for actually paying the whole premium; in the rideshare space, the owner of the vehicle only pays class 1. There is a variable model that comes into the rideshare business that has to remit a variable component, but that's not for all of the rideshare operators. There are 1,751 booking service providers currently authorised under the Point to Point Transport Commission. Only a handful of them would actually be paying the variable component. Any vehicle that is under those smaller BSPs are only paying class 1. That's a complete disparity between taxis of $5,000 and someone of $500 in terms of that component because the variable model isn't there.

When you look at where the indications of SIRA are moving to, it's to be bringing a variable model, but also having it limited to saying, "If you do under 100,000 trips, then you don't have to pay any variable premium." That means you only pay class 1 if you are a private vehicle. That will have a huge impact, particularly in regional New South Wales. If you opt out and you have to pay a premium under 100,000 trips in regional New South Wales for a taxi, you will be paying over $3,000. If you are a private vehicle, you will pay class 1. If you are a rideshare vehicle, you will pay class 1 of $500.

If I look at the risk factors that people talk about, like why are taxis in class 7 versus rideshare in class 1—let's just take an example of someone in regional New South Wales who is running a wheelchair-accessible taxi. The driver owns a vehicle, and they transport a passenger—the same three people, from point A to point B. They have a roof light that says they are a taxi. They pay $3,000. If they take that roof light off—same driver, same vehicle, same passenger—and go on the same trip from point A to point B, they pay $500. This policy direction will see a significant decrease in people registering wheelchair-accessible taxis and other vehicles in regional New South Wales. Same trip and same risks—why would I pay more, commercially, from a point of view of $3,000 versus $500? It's already happening now. Milton Ulladulla Taxis no longer has wheelchair-accessible taxis. One of the main reasons is because of the cost of CTP.

If we also look then at the other vehicles under the hire car scheme—hire cars, actually, I believe, sit in class 8. In the reforms of 2015-16, the hire car plates would be removed and go back to private vehicles. Currently, hire cars sit in class 8. They pay a premium above class 1 for their risk factor. When the new regulations roll through, hire car plates will no longer be available and they will revert back to class 1 standard plates. The hire car provider will still be delivering the same level of service and the same level of risk. They were paying a higher premium, but the new regulations will come in and they will automatically get a price discount doing the same types of service. Where we're heading is not in a direction where we're going to get neutrality; we're actually going to have more complexity, where taxis will be at a complete disadvantage. CTP will be a significant factor in determining whether a taxi is actually registered. I hope I have provided some clarity for you.

The Hon. ROD ROBERTS: I have just one further question, Chair, and then I will let it go. I have a very simple question: Would you describe the current system, as it is at the moment, as fair and equitable?

MARTIN ROGERS: We wouldn't describe the current system as fair and equitable.

The CHAIR: I have some questions, while we're on it. A vehicle that's used for Uber, for instance—is it always class 1?

MARTIN ROGERS: Yes. In the rideshare space, it's class 1 for the vehicle. The variable model is paid by Uber, which is currently 10c per fare-paying kilometre. Because there are over 100,000 trips per year, they still pay that variable amount. But we are moving into a scheme where they want to bring in some risk factors. We have some concerns about the variables that are being used—you mentioned telematics before. Those variables that are going to be looked at for that variable component that they may pay into the future have to be ensured that they don't bring in commercial advantage to those that are larger providers. It potentially puts at a disadvantage those that are smaller in nature. The CTP scheme as it moves forward actually looks like it's going to benefit those that are larger providers, not those that are smaller. We need to make sure we've got a scheme that captures all, not captures most.

The CHAIR: I'm interested in that. Say you own a private vehicle and you occasionally use it for, say, Uber on the weekends or something like that and it's not the primary use of your vehicle, that's very different to someone who uses their vehicle almost solely for the purpose of rideshare. Is that calculated as a risk factor at the moment—people who very rarely ever use it for rideshare versus those who use it almost as the sole purpose of their vehicle? Or is that not even looked at in terms of the number of trips, for instance?

MARTIN ROGERS: That's where the variable model comes in at the moment. What you have to make sure is that the person who has it as a private vehicle is actually registering it under the business term as opposed to private, so registering it correctly from a point of view of the rideshare space. Just remember from a taxi point of view, you have to pay the premium from the first kilometre and the first trip regardless of how much you use it for. Our view is that if you want to participate in the point to point transport sector, then be committed to the sector and come in and pay like taxis do. In the future model, if I'm in regional New South Wales and I want to offer one trip—just one trip—in a taxi, I will have to pay $3,000. In a rideshare space, I will pay $500. That is for one trip, one kilometre. There's no variable option in that space that protects the taxis.

NICK ABRAHIM: Mr Chair, can I just add to that? You made a very important point there: What about somebody who uses a rideshare, or who their own vehicle, seldomly? Even if you say someone who drives maybe two nights a week wouldn't be someone who would drive it regularly. When and how are they driving those two nights a week? They're driving generally on the Friday and Saturday nights during the peak and busiest times in the locations, particularly around the Sydney CBD, where the risk is at the highest and people are out and about. This is the problem. You're absolutely right. This is where we're seeing the highest volume of vehicles operating, particularly on those Friday and Saturday nights because they can pick and choose when they work, when it is at the highest risk when those people drive around. The data talks to that as well. When you look at the spike of accidents and incidents when they happen, it is during those Friday and Saturday nights and it is predominantly around the Sydney CBD. That is predominantly where a lot of those rideshare vehicles are congregating. I just wanted to say that.

The Hon. GREG DONNELLY: We have limited time, so I will share questions as best I can. Some will be helpfully responded to by us placing some questions on notice to give the time for a response. I thank all submitters and all organisations represented today. Starting with Ms Cohen and Ms Balakrishnan, I thank you very much for raising matters with respect to e-scooters. It raises a number of issues, and you said that you're seeking to place them on a table. We thank you for doing that. With respect to your recommendation on page 3 of your submission, you say in the first paragraph:

> Where the NSW Government allows and regulates e-scooter use, the NSW Government should ensure that members of the public are covered in the event they are injured because of an e-scooter accident.

I invite you to answer this question in summary: In terms of what you understand now is the formal regulation of e-scooters in this State by the New South Wales Government, what do you understand that regulation to be?

SHEETAL BALAKRISHNAN: The understanding of that regulation—framework, essentially—is that the New South Wales Government has introduced certain rules, for example, where e-scooters can be ridden, the different types of paths they can be ridden on, the different speed limits that apply to those different paths and other regulatory rules, including whether helmets are to be worn and what side of the path you ride on. I hope that answers your question.

The Hon. GREG DONNELLY: I'll just press you a little bit further. Are these regulations that have been formally put through the Parliament by the Government? In other words, has the Government passed formal regulations of the Parliament for these matters, or are these guidelines or expectations that have been put out in documents or what have you?

SHEETAL BALAKRISHNAN: I might have to take that question on notice. I haven't specifically located a particular regulation, but not from an inability to find it; I just haven't gone down that path yet. Certainly, it is on the Transport for NSW website as stating that these are the particular rules that need to be followed.

MICHELLE COHEN: What I can add to that is that we are aware that the e-scooters are currently being trialled in certain council locations. A number of councils have said that they are not prepared to trial the scooters because of the absence or the insufficiency of safety regulations. There are a number of councils that haven't taken that step.

The Hon. GREG DONNELLY: It is true, is it not, that e-scooters, whilst we're seeing more of them, have in fact been used on footpaths in New South Wales, particularly in the metropolitan areas, for some time? That is a true statement, isn't it?

SHEETAL BALAKRISHNAN: Sorry, could you repeat that?

The Hon. GREG DONNELLY: With respect to the use of e-scooters in New South Wales, particularly with respect to metropolitan areas, whilst we're seeing more and more of them, they have been out there for some time, haven't they? They're being used by individuals on footpaths and elsewhere. Is that correct?

SHEETAL BALAKRISHNAN: The trial has only commenced since July this year. The trial is only in relation to the shared scooter scheme, so the ones that are provided by operators. Private e-scooters are not legal in New South Wales. Again, that's not to say that people don't use private e-scooters, but they're not legal. Only the shared scheme operator ones are legal. While the regulatory framework says that they're not allowed on footpaths, the anecdotal reports indicate that people are seeing them on footpaths.

The Hon. GREG DONNELLY: I might leave that there for the moment. There are some further questions to come on notice. Thank you for that. Mr Timms, once again, thank you for the helpful submission. With respect to the SIRA trial that you referred to in your last contribution, can you just elucidate a bit on that? It was a rather good answer. It was short. I would just like you to elucidate a bit on it. What was the basis of the trial? Who initiated it? When did it start?

MICHAEL TIMMS: You're probably better off asking SIRA that because it was their trial, run with the Centre for Road Safety. It wasn't an ACRS trial. From memory, they recruited a number of younger drivers, which is one of the key demographics in terms of road trauma. They installed a device in the vehicle which measured, as I said, harsh braking, harsh acceleration, loss of traction and those type of events to try to generate a picture of what a safer driver looks like.

The Hon. GREG DONNELLY: Given the standing of your organisation, were you surprised that you weren't invited to participate in the trial?

MICHAEL TIMMS: I mean—

The Hon. GREG DONNELLY: Be frank.

MICHAEL TIMMS: There are certain things that we aren't involved in. We probably would've liked to have had some involvement with the e-scooter trial. We know that there have been a number of presentations and information days given, so we probably would've liked an invitation and an opportunity to come along and be more informed in that space as well. The 2026 Road Safety Action Plan also talks about research and the impact of telematics-based feedback, so it is part of the Transport for NSW road safety action plan as well. Unfortunately, it doesn't provide a delivery timetable or a schedule of future works in regard to telematics.

The Hon. GREG DONNELLY: With the SIRA trial that I've just asked you to elucidate on, what do you understand it was called?

MICHAEL TIMMS: It was called the Young Driver Telematics Trial. It was 2018 to 2019.

The Hon. GREG DONNELLY: Thank you for that. My colleague, the Hon. Anthony D'Adam, did you want to add anything to the questions?

The Hon. ANTHONY D'ADAM: Yes, I wanted to ask about the telematics technology. Is it expensive to install?

MICHAEL TIMMS: Again, we're not the providers of the technology, so you're probably better off trying to seek advice from SIRA. There are insurance companies worldwide where they either provide this type of technology or they can subsidise it. The theory is that having "Big Brother" in your vehicle helps people drive safer. Whether that happens all the time, we're not quite sure. There are naturalistic driving studies—they call them—held all the time, where cameras and other devices are fitted in vehicles. People do seem to forget that they're there over time and continue on some of their reckless ways. This is why we need to look further at these types of technologies. We do, as we said at the introduction, have the National Road Safety Strategy and the State road safety strategy. They want to reduce deaths by 50 per cent and serious injury by 30 per cent by the end of the decade. We need to start innovating, otherwise we will be sitting here in 2030 scratching our heads and wondering why there are still 10,000 people hospitalised as a result of road crashes.

The Hon. ANTHONY D'ADAM: Is it technology that provides real-time information to the driver or is it technology that just gathers data and is analysed at a later point in time?

MICHAEL TIMMS: It depends on the technology. In the heavy-vehicle space, there's considerable work providing real-time technology. There are a number of products in the heavy-vehicle space that offer live monitoring. Say, for argument, a truck driver drifts out of their lane. There are cameras at the front of the vehicle. They notice that the vehicle is drifting, and the driver can receive a warning—either a beep or the seat vibrates for the truck driver. That all alerts the truck driver that perhaps they are about to depart the road and they should

correct their vehicle. There are a number of products and a number of options that are available for a range of markets.

The Hon. ANTHONY D'ADAM: And this is technology that's available for post-manufacture installation as opposed to something that's embedded in the vehicle design and manufacture. Is that right?

MICHAEL TIMMS: Yes. Most of the products that I've encountered, or that I have knowledge of, are after-market devices. There's considerable commercial interest at stake in promoting these types of things. Whether they may eventuate into manufacturers—Ford, for example, has a MyKey product. If a young, novice driver is taking out your vehicle for the night, you give them the MyKey, as opposed to your key, and the MyKey regulates speed, it regulates volume controls on the radio and it can regulate a number of features of the motor vehicle. Manufacturers have gotten on board in this space as well.

The Hon. ANTHONY D'ADAM: Can you just elaborate on how that technology might integrate with the safety classification? In your submission, I think you talk about high safety-rated vehicles. This kind of technology seems to suggest that there are opportunities in terms of enhancing the safety of vehicles post-manufacture.

MICHAEL TIMMS: ANCAP, which is the Australasian New Car Assessment Program, continues to raise the bar in terms of technology. A vehicle won't get a five-star rating if it doesn't have autonomous braking, if it doesn't have traction control and if it doesn't have a range of features. I suspect that ANCAP is watching this space as well, and they will probably continue to raise the bar in regards to what features go towards vehicles. Autonomous braking is a great example. It detects vehicles, and it detects when your vehicle is about to have a crash or a pedestrian is about to jump out in front of you. It applies the maximum braking force at that time.

The latest research—we have a journal of road safety, which only just came out this week. It identifies that it certainly prevents these types of crashes, particularly in low-speed environments—we're talking about pedestrians and injury to bicyclists and motorcyclists. We're not going to hear about those types of incidents. They're not going to be reported to SIRA as injuries because they don't happen. Unfortunately, we continue to see the novice drivers being put into the least safe vehicles. And until we overcome that type of thinking, unfortunately, we're still going to be seeing some tragedies, which have been played out all too often on our roads in recent times.

The Hon. ANTHONY D'ADAM: My line of questioning is really directed to trying to understand whether, having identified that situation that you refer to where you've got younger drivers in older, more unsafe vehicles, there is a capacity to incentivise retrofitting this kind of technology in these older vehicles to bring them up to a higher safety standard. Is that technologically possible?

MICHAEL TIMMS: It is possible. We're not going to pretend that these things aren't without challenges. How do you ensure that a person, once the device is fitted and they leave the shop, continues to use it and that it continues to be monitored? Certainly these issues need to be looked at. But, as I said, we need some innovation. Now's the time.

The Hon. WES FANG: Mr Wood, I noted that during your opening statement you talked about the difficulties in having small groups and the way that the profit margin relates to those groups. I know you mentioned class 10 motorcycles where there was a low number of riders. Obviously it's more expensive in country areas than city areas, which is unusual given that the majority of motorcycle insurance is lower in regional areas. You also said that you've got some schemes where you've got a larger number of users—for example, for city-based cars you said there were about a million—whereas you have thousands in some of those other smaller ones. Is it not better, though, to have the system amortised over a scheme instead of classes? Because where you have a smaller class, the fluctuations, should you have a major incident, would be much higher given the lower number of users. By amortising those costs over a scheme, you don't have those fluctuations where you've got a small number of users where you might have no incidents and a lower cost, but then one incident that raises the cost for everybody because of the low number of people you can amortise that cost over.

BRIAN WOOD: Our main concern is with regard to the profit, and some of those groups may be paying higher levels than 8 per cent in the profit. We would really like to see it so that the scheme identifies if there are particular classes who are paying well above 8 per cent yet, for the scheme as a whole, it may only be 8 per cent.

The Hon. WES FANG: I accept that. The point I'm making is that one year, 8 per cent could be X, but then an incident in that class would put the costs dramatically higher if you've got a small number of people, creating a large fluctuation. Whereas if you're amortising it over a whole scheme and a much larger number of people, you get fewer fluctuations because you're amortising that cost over everybody. Isn't it better to have a profit viewed over a scheme as opposed to a class?

BRIAN WOOD: As I say, I think it's really that those people in those small classes are not being disadvantaged. They haven't, for some reason, ended up paying a rate of interest higher than that 8 per cent.

The Hon. WES FANG: Yes. While I accept that they might be higher in some years, if there is a major incident, then they haven't got those—anyway, I was just curious to see the methodology and whether you're perhaps open to looking at it in another way.

BRIAN WOOD: I think probably the first step is can we see some of the numbers? Can we actually see what each class is paying as a way of profit? Is it really an issue? We might be concerned about something that's not really an issue. But without seeing some data on it, we're not sure.

The Hon. WES FANG: Understood.

The Hon. GREG DONNELLY: Thank you for the submission and comments to the Hon. Wes Fang. On the matter of potholes, which is obviously a significant issue arising in recent times because of natural causes like rain and, indeed, flooding, can you please explain to the Committee—and, sorry, this might seem like a naive question—if a motorcyclist hits a pothole and has a bad spill, what normally happens? I'm talking about the injury, the damage to the motorcycle et cetera. That scenario of hitting a pothole—let's take it that it is a big one—and having a spill, how does it all play out in terms of the consequences?

BRIAN WOOD: They put in a CTP claim to cover their injuries. Now that it's a no-fault scheme, in the case of hitting a pothole, because it's a single-vehicle crash—

The Hon. GREG DONNELLY: That's what it's referred to as?

BRIAN WOOD: Yes. They're covered by their CTP in that case. In most cases, bikes would have comprehensive insurance, so the damage to the bike would be covered by that policy. But our point is more that, if the pothole is there as a result of negligence of the road authority, then rather than the CTP scheme picking up those—

The Hon. GREG DONNELLY: Sorry, can you say that last phrase? You were referring to the consequences or the circumstances, if it was what?

BRIAN WOOD: If it was a result of negligence of the road authority.

The Hon. GREG DONNELLY: Negligence of the road authority—that's formal legal language, is it?

BRIAN WOOD: I would imagine so.

The Hon. GREG DONNELLY: Sorry, I'm just checking. I thought that might relate to a piece of legislation.

BRIAN WOOD: But in the case where the road authority is aware that the pothole is there and they've done nothing about it—and I guess it's also prioritising repair of potholes. If a pothole is in a corner or somewhere where you need to brake, it's a higher risk to a motorcyclist. Yet when they prioritise going around fixing potholes, they are not saying that there is a road user class who this pothole is a higher risk for.

The Hon. GREG DONNELLY: Namely motorcyclists?

BRIAN WOOD: Yes. But the main point is that the cost of the injuries should go to the road authority rather than to the CTP scheme. Because when it goes to the CTP scheme, riders are paying for that in their premiums. Whereas if it was negligence on behalf of the road authority, then they should be paying.

The Hon. GREG DONNELLY: Thank you. That's helpful evidence.

The CHAIR: Unfortunately, we have run out of time. I thank all the witnesses for coming along today. Committee members may have additional questions for you after the hearing. The Committee has resolved that the answers to those, along with any answers to questions taken on notice, be returned within 21 days. The secretariat will contact you in relation to those questions. Thank you for your time today.

(The witnesses withdrew.)

Mr ANDREW STONE, SC, Australian Lawyers Alliance NSW, affirmed and examined

Mr JOHN TURNBULL, SC, New South Wales Bar Association, sworn and examined

Ms JNANA GUMBERT, New South Wales Bar Association, affirmed and examined

Mr LEIGH DAVIDSON, Deputy Chair of the Injury Compensation Committee, Law Society of New South Wales, sworn and examined

The CHAIR: I'd like to start by inviting each of the witnesses to make a short statement.

LEIGH DAVIDSON: Thank you for inviting the Law Society to give evidence at today's hearing. I'm representing today in my capacity as deputy chair of the injury compensation committee. The Standing Committee will be aware that the statutory review of the Motor Accident Injuries Act 2017 was conducted by consultants Clayton Utz and Deloitte and assessed the performance of the scheme over the first three years. The statutory review culminated in a report published in September 2021, which made many recommendations. The Law Society commends the Clayton Utz and Deloitte report to the Standing Committee as a comprehensive and balanced commentary of the major issues currently facing the CTP scheme.

While it is pleasing to see the progress, the Law Society emphasises that some of the important recommendations made from the Clayton Utz-Deloitte report were not included in the bill that subsequently passed overnight. In particular, we draw the Standing Committee's attention to the outstanding recommendations, particularly those referenced in our submission. For example, the Law Society has particular concerns around the minor injury framework, which, in its current form, we consider to be too restrictive and which results in claimants being cut off from statutory benefits prematurely.

We'd also like to take this opportunity to comment on the issues of the legal support in the CTP scheme and legal cost. As set out in our primary submission, the Law Society considers that the experience of injured persons in the CTP scheme will often benefit from early access to the services of a legal adviser and advocate. This much has been recognised in the Clayton Utz-Deloitte report and the Taylor Fry review of legal supports. The scheme is complex, and access to a lawyer can lead to better outcomes, including access to entitlements that may enhance the claimant's experience of the operation of the scheme.

For a long time the Law Society has pointed out the way in which the current level of regulated legal costs is insufficient to meet the actual costs of providing advice in motor accident matters. We consider the unsatisfactory way in which costs are provided for in the scheme has the potential to exacerbate barriers to justice, as lawyers will be disincentivised from working in motor accident cases and claimants will be expected to navigate complex legal issues in a procedural system at the Personal Injury Commission without professional advice and support. Thank you for extending the opportunity to the Law Society to give evidence today.

JOHN TURNBULL: Thank you for inviting the Bar Association along to address this Committee. The Bar Association's paper highlights four issues in what—I agree with my colleague Mr Davidson—is a very complex and often difficult-to-manage process, but the four issues we've highlighted are, firstly—members may be aware there is an issue about, if you're a minor injury, you don't get certain benefits. "Minor injury" is defined. One of those definitions is that a minor injury is where a doctor says you have a neck or back injury less than 10 per cent. That excludes, therefore, a lot of injured people in the 5 to 10 per cent range. It's our submission, the Bar's submission, that that should be reduced—the lower level—down to 5 per cent. Even then, you've still got disabled people. Certainly, between 5 and 10 per cent impairment in your neck or back is a significant disablement.

Second issue we highlight is the way that causation of injuries—that is, was an injury caused by a motor vehicle accident? How is that dealt with? It is dealt with at the moment by doctors, basically, sitting in a surgery, relying upon various codified rules. That is not, from the Bar Association's perspective, a very good way of dealing with it. These are complex issues, causation, whether an injury was caused by an accident or not. It's the Bar's view that issues of causation, what caused a particular injury, should be held in an open court or tribunal so that competing arguments can be put forward and decided by a legally qualified person.

The third issue the Bar points to is an increase in the legal costs allowed for statutory benefits. It's just been increased to $1,800 for a particular claim. That is to say, if you act as a lawyer for a claimant in a statutory benefits claim, which can involve a lot of work trying to convince an insurance company that you're entitled to these benefits, you get paid $1,800. It's not a lot of money in the scheme of things for what can be hours and hours of work. That means solicitors are unwilling to represent claimants. That's a problem because you're then going to have injured claimants—as, in fact, happens now—unrepresented, dealing with insurance companies, who may not use lawyers, but they use very experienced people to deal with you. That's a problem. You can't have unrepresented people just appearing against these insurance companies. It's unfair to them. They don't know what

their rights are. As Mr Davidson said and as I've said, this is a complex scheme. I'll come back to the costs in a moment.

But if you read paragraphs 55 and 56 of the Bar's paper, in May last year Ernst & Young estimated the total legal costs for all claims, not just statutory benefits, but for the claims that go to assessors and courts. They estimated the total legal cost for a year would be $274 million. In fact, in the previous 12 months, legal costs have been $95 million. So it was a vast overestimate by Ernst & Young. Of that $95 million, unsurprisingly, 60 per cent were insurers' legal costs. I say "unsurprisingly" because most of the statutory benefits claims do not have lawyers involved for the claimant. The insurance companies, of course, are entitled to have their own lawyers. You don't have people turning up with lawyers, appearing against insurance companies, because lawyers just aren't going to see it as being something that they're going to get properly paid for.

The fourth issue the Bar raises is that the Personal Injury Commission, the PIC, be empowered to hear reviews of treatment and care disputes. At the moment the only way to have a hearing about a review is to go to the Supreme Court and have administrative review. That's an incredibly expensive time. It would be far better, in the Bar's view, for the PIC to have a forum where these reviews, which are dealt with without the presence of the claimant or lawyers—have those decisions reviewed in the PIC rather than having to go off to the Supreme Court.

They're the four things that the Bar wishes to address, but can I just say one last thing. I want to talk about costs. I know you're looking at me and you're going, "Well, lawyers. Of course they're going to talk about cost. This is all in their interests." And it is, I guess. We all get paid for doing what we're doing. But where the fees that are allowed are low, such that lawyers don't see it in their financial interest, in their benefit, to take on the case, the claimants are unrepresented. So, in matters such as disputes over statutory benefits, reviews of decisions, claimants are not being represented and, in the end, tackling insurance companies on their own. I come back to it: It's unfair. That's the Bar's view, that it's unfair on the claimants in a scheme that is running, at the moment, way below the estimated legal costs. The scheme's not costing all that much. Partly it's going to remain that way whilst-ever claimants don't get representation. Thank you.

ANDREW STONE: I will try to limit myself to three things and be brief about them. The first is that it has been an extraordinarily busy 12 to 18 months in the motor accident sphere. There has been the statutory review of the scheme, and a lot of work went into that. There have been amending bills put before the Parliament in relation to both the PIC and the motor accident scheme. There have been amendments to the guidelines, and there is another iteration of amendments for the guidelines to come. There have been changes to the regulations. There have been consultations over authorised health practitioners and how they work. It has been an extraordinarily busy time. I wanted to acknowledge and thank SIRA for its consultative approach over that period.

On every single one of the things I have just mentioned, the legal community as a stakeholder and, in our case, the ALA as representative of the interests of the injured, have been consulted. We have been shown drafts of bills, we have been shown drafts of guidelines, we have been shown drafts of regulations and we have been consulted consistently throughout. Whilst we have not always agreed on where government policy ought to go, I cannot fault SIRA for its approach to consultation. But I think, in fairness, that reflects the attitude of the Minister. That has been outstanding and I want to thank Dr Petrina Casey and her staff for the extent to which they have been willing to listen and to consult. We would like to think that there have been some better policy outcomes as a consequence. But they have been exemplary in their attitude towards consultation over the vast majority of issues.

The second point is to reiterate the ALA's support for the totality of the Clayton Utz recommendations. The better part of half of them have been adopted either through guideline changes or the bill that I understand passed the Parliament last night. Again, we had some input in that process. I would like to think that the bill that eventually passed was a little the better for it. There remains work undone. There are categories of things that further work needs to be done on, and we have addressed some of those in our submissions to this Committee. We encourage this Committee to stay on the task of looking at "These things have been recommended, where is SIRA up to with them and why aren't they being further pursued?" Indeed, I think there were even two things—if you run through the SIRA submission—where it has given an update on where it is up to with various of them. I think there were two that they indicated were going to be in the bill that, in fact, ended up not being in the bill because they were more complex, and more time is being taken on them.

We very much encourage this Committee to stay on task of looking at how this bill can be further improved. The journey of injured people through the motor accident scheme can be made better, faster and fairer through the implementations of the Clayton Utz recommendations. The third thing I wanted to address was the PIC, and I do that with some degree of trepidation. We made a submission. We made passing mention of the obvious delays that are occurring within the system. We ventured the opinion that there is more than one cause for them in terms of it is more than the pandemic. That drew a response from the President of the PIC that ran to some 16 pages.

A copy of it was sent to Mr Dale, the New South Wales president of the ALA, but it was copied into this Committee and much more widely. I assume from that that it was intended that this Committee take it into account.

We have not responded directly to the president but, rather, given that the response was supplied to this Committee and given that we are before this Committee, we thought that the appropriate response was to respond to this Committee. In the space of a week and without the secretariat that the PIC has—we are a volunteer organisation—we have provided a response, and that was provided to the Committee last night. We have no issue with that response being published on the Committee's website. If I was in court, I would seek to tender the document. Before this collection, I am not sure if I simply ask leave to rely on the submission or simply say that you have it and we would like you to publish it, please. I will leave others to guide me as to the correct procedure for a late submission.

I am not necessarily sure that today is the day for this Committee to debate the relative merits of the arguments in those two pieces of correspondence. There clearly are delays. The cause of them—we have raised a whole lot more questions as to the whys to try to get a better understanding of the data and the causes. I think it could well be a topic for the first time this Committee meets on its next review in the next Parliament to have a more detailed look at that, perhaps with the opportunity for the PIC registrar or president to come forth and be heard on the subject, just as we would seek to be heard on the subject—preferably with a lot better understanding of some of the data issues that have arisen. We have, at all stages, sought to engage in good faith, both here and with the PIC. We attend PIC stakeholder meetings. We make our contribution at those. We seek a continuing, constructive role in trying to ensure that motor accident victims have a fair and fast trip through their journey. All we want is for the system to work and work efficiently. Those are my opening comments.

The CHAIR: The Committee will make a decision shortly about whether those items of correspondence are to be made public or whether they are to be handled as submissions. We will be in touch about that.

ANDREW STONE: Thank you.

The Hon. GREG DONNELLY: Can I return to the point that was just covered? It has been the basis of some reflection of the Committee today and will be later on. Still on that point, can I ask, Mr Davidson, with respect to the Law Society, I understand that Ms Joanne van der Plaat, the president, was provided with a copy of the correspondence that has been referred to. Are you aware that it's the case that she did receive that?

LEIGH DAVIDSON: Yes.

The Hon. GREG DONNELLY: Did she then forward that to you or provide that to you, knowing you would be a witness today?

LEIGH DAVIDSON: Yes.

The Hon. GREG DONNELLY: And you have read that piece of correspondence?

LEIGH DAVIDSON: Yes.

The Hon. GREG DONNELLY: In terms of that correspondence—and this is an open question—what do you believe the intention of that correspondence was?

LEIGH DAVIDSON: It's a bit difficult for me to comment on the intention of it, I am sorry. I think the idea behind it is potentially to provide some insights into what the PIC say the cause of the delays are.

The Hon. GREG DONNELLY: Is it usual for a judge to correspond directly with the Law Society with respect to expressing views about a particular matter which is currently before a parliamentary inquiry?

LEIGH DAVIDSON: Not to my knowledge, but I can take that on notice, if you'd like.

The Hon. GREG DONNELLY: Take that on notice. Does the Law Society intend to respond to the correspondence from the judge?

LEIGH DAVIDSON: Again, I think we were just copied in on it. I think it was more for our information, to be aware of it. To my knowledge it is not the intent to respond to it.

The Hon. GREG DONNELLY: We will ask you, on notice, to raise that with the president of the organisation.

LEIGH DAVIDSON: Yes.

The Hon. GREG DONNELLY: Mr Turnbull, the same to yourself. The Bar Association and specifically the president, Ms Gabrielle Bashir, SC, was cc'd into the correspondence. You are aware of that?

JOHN TURNBULL: That's my understanding, yes.

The Hon. GREG DONNELLY: Did she speak to you about that correspondence or provide you with a copy?

JOHN TURNBULL: She provided me with a copy. She did not speak with me.

The Hon. GREG DONNELLY: With the respect to the provision of that copy of correspondence, have you read that correspondence?

JOHN TURNBULL: I have.

The Hon. GREG DONNELLY: Would you like to express a view about that correspondence and if you believe there is a purpose behind that correspondence?

JOHN TURNBULL: I am not sure I can speak about the purpose behind it, although it seems tolerably plain that the author of the document, Judge Phillips, was seeking to answer criticisms made of the PIC—made, I think, by the ALA. That is my opinion, but I certainly haven't spoken to the author at all. Can I just make one comment, though? You asked Mr Davidson whether it was usual for a judge to correspond in that regard. I would think the answer is—

The Hon. GREG DONNELLY: That is directly with—

JOHN TURNBULL: Directly with the Law Society or perhaps you were going to ask me the same question about the Bar Association. The answer is that my understanding is, no, it is not usual, but on the other hand Judge Phillips is not actually acting as a judge; he is acting as the head of the PIC. As the head of such committees, to my knowledge, it is not unknown for them to contact various stakeholders.

The Hon. GREG DONNELLY: Pressing you further on that, this was a substantial contribution by his honour, the judge. He was acting, was he not, for and on behalf—with the correspondence—of the Personal Injury Commission in his capacity?

JOHN TURNBULL: That's correct.

The Hon. GREG DONNELLY: So he was speaking for the commission and that was the purpose of the correspondence, was it not?

JOHN TURNBULL: I assume so.

The Hon. GREG DONNELLY: What other examples can you provide the Committee whereby he or others in a similar position—not specifically a judge—corresponded in writing in such a way with the Bar Association in regards to a matter?

JOHN TURNBULL: I can't give you an example of corresponding in writing—I'm sure they exist—but, for example, the head—

The Hon. GREG DONNELLY: On notice, can you please—

JOHN TURNBULL: I can find that out. I can tell you, though, that the head of NCAT, for example—who I think is a Federal Court judge, from memory—does correspond with stakeholders in the capacity as the head of NCAT. The heads of those bodies tend to be judges but not be acting as judges, but acting as the head of the appropriate tribunal which they lead.

The Hon. GREG DONNELLY: Thank you. Mr Stone, the submission of the ALA is the centre of the correspondence in terms of its purpose, comment and reflection. Can you explain how the correspondence was brought to your attention?

ANDREW STONE: Yes, Mr Dale circulated it to the State committee of the ALA.

The Hon. GREG DONNELLY: The correspondence is dated 10 November. I presume that was distributed electronically—I've got the actual correspondence here—probably on or about that date?

ANDREW STONE: It was last Thursday or Friday.

The Hon. GREG DONNELLY: With respect to its distribution to the said group of people, the committee, was there any comment about it or was it just circulated for information?

ANDREW STONE: It was circulated with the then discussions within the ALA as to what we would do by way of response to it. We held a committee meeting on Monday night and had discussions as to what the response should be. Various people worked on the draft response that we got to you as quickly as we could—that was last night.

The Hon. GREG DONNELLY: With respect to the provision of the correspondence that was received and discussed at the committee—and you're welcome to comment on the considerations of the committee, if you wish to do so—did the committee form a view about what the purpose of this document was in terms of its distribution, not to just the ALA but, as you're well aware, to a whole range of other stakeholders?

ANDREW STONE: I don't know that it's either appropriate or constructive for me to speculate as to the PIC president's motives and whether they are singular or multiple. I think that's got to be a question for him. It can only be speculation on my part.

The Hon. GREG DONNELLY: Okay. I have more questions on that matter, but perhaps other colleagues might wish to—

The CHAIR: Mr Roberts?

The Hon. ROD ROBERTS: Thank you, Chair. Let's go to the elephant in the room, then, Mr Stone. Your submission, on page 4, paragraph 6—

ANDREW STONE: Our original or our supplementary submission?

The Hon. ROD ROBERTS: Sorry, your original submission.

ANDREW STONE: Yes, thank you.

The Hon. ROD ROBERTS: I will be honest and say I did receive your late submission last night, and I have skim read it this morning, but I haven't had time to absorb it completely because of our workload. But let's go back to the original one. I draw your attention to one particular sentence that I'd like you to comment and expand on—I think we'll all find that useful—and that is "The PIC is beset with delays".

ANDREW STONE: Yes.

The Hon. ROD ROBERTS: I'm unaware of that. I'm concerned that it's been brought to our attention. I give you the opportunity now to expand on it and take it a bit further.

ANDREW STONE: Okay. Let me, in fairness—because I think part of the criticism of our submission by the PIC president was miscommunication over an issue. The biggest challenge has been the pandemic. It's readily acknowledged that it, for a period of time, meant that there were no face-to-face medical assessments. Given that the system is so heavily dependent upon medical assessments, it, for periods of time, was catastrophically disrupted. Our question is this: Is that and train strikes and flu and floods and behaviour by plaintiffs' lawyers the sole cause of these difficulties or are there other structural issues which we have identified? And that's why we said that—and, in particular, the capacity question: Are there enough doctors willing to act in the system to meet the demand?

It's very difficult when you get, for example, a reduction in the number of psychiatrists, but the president says, "Yes, but these people have more capacity"—terrific. The president says, "We've added five new psychiatrists to the roster", but doesn't at the same time say, over the period of the five who were added, how many have dropped out. Now, if the answer is none, then, terrific, we're up five; if the answer is we've lost six over the corresponding period, then, major alarm. It's difficult when you are only given half the information to understand the nature and extent of the problem. But the best way I can illustrate the system, as we said, grinding to a halt is if you have in hard copy available the SIRA submission of 27 September 2022, or can access it. I will pause and people can tell me either to go on or I'll wait while you bring it in front of you. It contains a table as to dispute application and finalisation time frames.

The Hon. GREG DONNELLY: What page is that, please?

The Hon. ROD ROBERTS: Yes, would you have the page, Mr Stone? It will make it easier for us.

ANDREW STONE: It's page 25. I'm sorry, I didn't bring multiple copies of the page.

The Hon. ROD ROBERTS: We'll have it here. I certainly will and I know the Deputy Chair has.

The Hon. GREG DONNELLY: Yes, got it.

ANDREW STONE: SIRA submission, 27 September, page 25, contains a table—

The Hon. ROD ROBERTS: Yes.

The Hon. GREG DONNELLY: Yes, we've got it.

ANDREW STONE: You have it? Thank you. If I can take you down to the third set of boxes on that table, you will see that the number of dispute applications for medical assessments since 2020 has been in the

order of 2,000, 3,000 and 3,000 per year. You are then given the number of disputes being finalised, and that's increasing every year. But the final two columns is how long those disputes are taking to finalise, and it's the 26-week finalisation rate and the 52-week finalisation rate. So, in 2022, only 26 per cent of medical disputes were being resolved inside of six months. You can see how precipitously those numbers are dropping. In fact, they drop across every one of the dispute categories. Then, in relation to 52 weeks, you can see that there are still 36 per cent of people lodging a medical dispute who don't know the answer to that medical dispute within a year.

That's people where the dispute might be "I need ongoing psychiatric treatment", and that's 12 months that they go without it, or "The insurers are asserting a minor injury and I've been cut off from wage support and treatment support, and I need a minor injury psychiatric dispute determined in order to access wages", or it's a hold-up in their damages claim because there's a debate about whether they're over the 10 per cent whole person impairment threshold and can access general damages. Again, I emphasise, there has been a pandemic. That has made it phenomenally difficult for everybody. But are there any other issues that could be addressed to try to get these numbers looking more healthy? For example, should the doctors in the system be paid more, to encourage more of them to come into it? Is there anything more that can be done to recruit them? What can we do to get back the people that the dud computer system drove out because they just didn't want to deal with it anymore? There is a variety of those questions.

The concern is that we still haven't cleared the backlog of 2021 filings, where people who filed in December 2021—if I understand the president correctly—may not have their medical dispute resolved for a year and three quarters, until the third quarter of next year, and we've cut off the definition of the backlog as being 31 December last year. Is there a new backlog emerging? Again, we just don't know. It might be that there isn't. It might be that they've kept up with filings in 2022, or it might be that there is a new backlog that we don't yet know the size of, where people could be waiting until 2024. These are some of the issues we've addressed. We don't have clear answers on all of this; we just know that we don't have data that lets us know that everything is under control.

The Hon. ROD ROBERTS: Further to that, then, I will put this proposition to you and you can either accept it or reject it: Would it be your assertion, then, that you want to get to the basis of it and not see the pandemic used as a masquerade to patch over, or used as an excuse for, faults in the system, if they exist? Because I've been critical of the ICAC using the pandemic as an excuse for dragging out the deliberation or final reporting of things. Would my assertion be correct, that you'd like to see the real reason and not just a wholesale answer of "We've had a pandemic and that covers everything"?

ANDREW STONE: I want to choose my words carefully.

The Hon. ROD ROBERTS: Certainly.

ANDREW STONE: The pandemic is a real reason. It is a very real reason. It may account for 100 per cent of the delay or it may account for 70 per cent of the delay and we're not looking at the other 30 per cent, or it may account for 50 per cent of the delay and we're not looking at the rest. It's hard to know without the additional data that we have identified in our the supplementary submission, that would drill down into exactly where the delays are. As we've suggested in that submission, it's not that hard to work out "Can you meet system capacity?" For example, in the field of psychiatry, which is one of the areas where there has been delay—although it should be one of the areas of least delay for one reason, which is that it doesn't require a physical examination; it can all be done by AVL.

On the other hand, because of the pandemic, there is great demand for psychiatrists. Between us, we can't get a medico-legal examination with a psychiatrist before June next year either. There are real demand problems. To come back to your question, yes, "Are there things beyond the pandemic?" is what we want the answer to. The way you do that is you say, "All right. On average, we get 100 requests for a psychiatric examination coming in per month. We know there will be a certain non-attendance difficulty rate. That means we, in fact, need 120 appointments to meet the demand. Have we got psychiatrists willing to make 120 appointments a month available to us?" That's basic time-and-motion study to make sure that you've got the capacity. Again, simply saying we've done 700 appointments this month doesn't answer that question for me because it doesn't say we needed 800, or, we needed 600 and we've got spare capacity. The simple assertion that there are 700 appointments this month doesn't get to the time-and-motion element.

We're really just trying to ask the questions to better understand the issue. We thought SIRA is doing a statutory review, but they are not going to get anywhere near that level of detail. To be blunt, that's not their skill set to do it, which is why our recommendation was for an external management consultant. To be blunt, if they are operating to maximum efficiency, if everything is working perfectly, then there should be no fear of having an external management consultant have a look at it and say, "Yes, you've got it nailed. It's perfect. You've got the capacity. You don't need to pay doctors more. You've got enough doctors coming in to cover the doctors

dropping out. You've got enough hours available to meet the appointments, and you've got a period of time where the backlog will be cleared, and here's the orderly way of going about it."

At the moment, we can't get an answer to the question of, "If I lodge an application today for a psychiatric assessment or in a variety of specialties, when will that be listed for determination and when will I have a certificate? What is the time frame for an application filed today? If I go into the back of the queue, when will I reach the front of the queue?" Disneyland can manage that. When you join the back of the queue, you get a sign, "I'm two hours away". If you walk into the RTA registry, they will tell you, "Here is your ticket number, and here is your ticket number. Here are the approximate processing times."

Of course what the PIC does is way more complex than those two things, I acknowledge that; that's unfair. But we just can't get an answer on, "I'm at the back of the queue. When do I reach the front of the queue?" There are a lot of questions, but in some ways there is a pile of other things I would like this Committee to be talking about, and I would like this to perhaps be the subject of a more detailed study—wishing you all well in forthcoming events—when we all come back.

The CHAIR: To move away from the PIC for a moment, if I can—and this is probably more for the Bar Association—I think you mentioned that the whole-person impairment currently is between 5 per cent and 10 per cent and that—

JOHN TURNBULL: No, no, sorry. That's not right. At the moment, if you have a neck or back injury, that is assessed below 10 per cent. It is nominated as a minor injury, and that greatly limits what you can get in terms of benefits. The Bar Association's position is that it should move from 10 per cent, the lower limit, down to 5 per cent so that those between 5 per cent and 10 per cent—who have an injury that is identified under the relevant American Medical Association guidelines between 5 per cent and 10 per cent—can access the greater level of benefits that those who are assessed over 10 per cent get.

The CHAIR: One issue that we saw with the previous scheme was that there were significant cost increases in the scheme and the scheme did become quite unaffordable towards the end in terms of premiums. Do you think that reducing the WPI down to 5 per cent would increase costs significantly to the scheme?

JOHN TURNBULL: There are two answers to that. Firstly, no, because it's only going to affect a relatively small number of people, but it's people with serious injuries. Can I just make this comment, though? Number two, one of the big differences between the previous scheme, the Motor Accidents Compensation Act, and the current Act, the Motor Accident Injuries Act, is that under the previous scheme you could get damages for care and damages for treatment. That's provided for now in a statutory benefits scheme, and all you can get in common law—in a court case—is damages for economic loss and non-economic loss—pain and suffering. That has been, as I understand it, a huge cost-saving to the scheme. To come back to your question, is lowering the threshold for neck and back injuries from 10 per cent down to 5 per cent going to dramatically increase the costs? No, it won't. Of course, I've already taken you to the figures to show that the costs are far less—about a third, in fact—of what they were predicted to be.

The CHAIR: What about moving from doctors currently making an assessment to the suggestion of, I think you said, a court or a tribunal? How do you think that would play out in terms of costs to the scheme? It would increase legal costs, I assume, but reduce medical costs. Any observations on that from a costs perspective?

JOHN TURNBULL: Yes, it may well increase costs. I wouldn't think dramatically. I mean, not every case is going to have—in fact, most cases will not have a causation argument, but there are a small minority of cases where doctors have to make, essentially, a legal decision and that is "Was this injury caused by the accident?" In any injury, there are going to be usually a number of factors at play. But, as I say, the majority of those matters are not contentious, so there won't be a hearing. The point is if a claimant wants to—and I suppose if an insurer wanted to—argue about it, these are standard arguments that are run in any court case involving personal injuries. Issues of causation are dealt with by a court or a judge after hearing argument. No, I don't think it would greatly increase it because there would not be—it's not in every case that that's going to occur. In fact, I would think it would be a small minority of cases.

The CHAIR: This is a question to all witnesses. Do you think that there is any benefit in moving from a third-party scheme to a first-party scheme?

ANDREW STONE: Can I perhaps add something to Mr Turnbull's last answer and then come back to that question?

The CHAIR: Sure.

ANDREW STONE: In terms of causation, to give you the extreme example, this week an ALA member alerted me to a case where a medical assessor had made a decision on causation. It had gone to a review panel.

I think that put the person over 10 per cent whole-person impairment. The insurer sought a judicial review application. They decided the review panel had not understood causation, set aside the review panel decision and sent the decision back to be made again. The second review panel made a decision contrary to the claimant's interests and said under 10 per cent. The claimant, dissatisfied with the reasons there on causation, went back to the Supreme Court. The Supreme Court set aside the second decision. It went back to what was by then the PIC now for its third round of panel deliberations on causation. The panel met in April, and six months later they are still waiting for the panel decision. We can't blame that six months on a pandemic.

That has taken three years and a vast amount of costs. I strongly suspect a lawyer addressing questions of causation through a relevant chain of appellate mechanisms would have resolved that issue remarkably faster. The PIC president, in his correspondence, supports causation being done in the workers compensation style legally rather than medically. He compliments the Bar Association on their submission and, impliedly or directly, criticises the ALA for not being on board with the Bar Association submission.

What the president overlooked, as we mentioned in our submissions, is that this is not a new issue. Back in 2010, all three groups at the bar table had recommended to this Committee, and this Committee had put forward a recommendation that SIRA explore having causation issues decided by a lawyer rather than a doctor. This is not a new issue. I am delighted to welcome the PIC to the party in terms of their view on it. The people they are going to have to persuade is SIRA because it's SIRA who, for the last decade, have been firmly of the view that causation has to be decided by doctors rather than lawyers. That's where the fault lines on the debate for that are.

If I can move forward to first-party versus third-party—and I may hold a different view from the other two—it's what you have to sacrifice to get to first-party. If you're going to pay first-party damages to everybody, then you have to double premiums. We're currently paying first-party statutory benefits, now up to 12 months, on the basis that the scheme can afford it. Everywhere you want to expand that, you have to find something else to pay for it or premiums go up. First party versus third party is ultimately a rationing mechanism. It's that we've got a certain amount of money in the CTP pot that we're prepared to put up with as the price of premiums to the public. Fault is a distribution mechanism. It says, "We preference this group ahead of that group". I think I've given exactly this evidence to this Committee before.

The more you expand first party, the more you have to reduce benefits elsewhere. We say, as a rationing mechanism, that those who are genuinely innocent victims of what has occurred should get prioritised, in terms of lump sums for their pain and suffering and a full compensation for their wage loss, over those who caused the accidents and were injured in causing an accident. But I fully accept that's a rationing mechanism from a finite pool of money, being what we deem people being prepared to pay.

JOHN TURNBULL: From the Bar Association's point of view, we do not support going to a first-party scheme. It's not something we're putting forward. I agree with Mr Stone that the fault scheme, if you like, does filter out a lot of cases. If you bring them in, it's going to be incredibly expensive. As Mr Stone says, if you want to have a first-party scheme, you're going to have green slips going through the roof, so it's the Bar Association's position that we do not support it.

JNANA GUMBERT: I might just add to that. My understanding is that in other parts of the world where there are effectively no-fault schemes, which is what you have with a first-party scheme, there's a raft of problems that come with it—in addition to reduced benefits for all, problems such as increased fraud and people making claims in those circumstances. So there are, I think, quite a lot of considerations with a first-party, no-fault scheme, in addition to the overall cost, that make it an undesirable model to move to.

The CHAIR: Mr Davidson, do you have any observations?

LEIGH DAVIDSON: The Law Society hasn't got a current position on it, to my knowledge. I am happy to take that on notice, but I will say this in my personal capacity: A first-party scheme comes with a host of problems, particularly from an uninsured liability perspective. People of lower socio-economic groups, even in a compulsory scheme, tend to be left uninsured in certain circumstances. You will see a rise, in a first-party scheme, of uninsured vehicles simply because in a third-party scheme you've got broader coverage. I think you just need to be alert to the fact that, whilst we have a nominal defendant scheme now, how that would operate in a first-party scheme could be quite challenging—just food for thought.

The Hon. ANTHONY D'ADAM: Last year SIRA clawed back $90 million using the TEPL. I want to ask the panellists what they thought this reflected in terms of how the scheme is operating. Is it operating as intended?

ANDREW STONE: I might go first because we specifically addressed that in our submission. We would dearly love you to ask SIRA this afternoon where the $91 million has come from. The short answer to that is insurer profits. But why? That is profit above the 10 per cent or so of the premium dollar that they're allowed to

keep as profits. It is what I, for the better part of a decade and a half before this Committee, have been calling "super-profits". That has come from somewhere. Effectively, the insurer has put in a premium filing that contains within it a budget of what they think they're going to have to meet. That budget has to, first of all, calculate the predicted number of accidents and then has to do a breakdown of costs: "For every premium dollar, we'll spend X amount on claims handling costs, our 10 per cent for profit, and we'll pay X in treatment, we'll pay Y for wage loss, we'll pay Z in damages, we'll pay plaintiffs' lawyers, we'll pay our contribution to the hospital scheme et cetera." There is, effectively, a budget of where the money goes.

If there's a spare $91 million, where has it come from? There will be more than 91. That's only their first clawback out of year one. I anticipate that they're into their next TEPL process and there will be further clawback out of year one. If it's that there were only 8,000 accidents rather than 10,000 accidents, then I've got no more questions. That's just "We got accident numbers wrong. That's led to excess profit." On the other hand, if it's that we got 9,000 accidents and half of it's due to the accident number but the other half is because we only paid half the amount that we anticipated on treatment expenses, then that raises a whole host of questions: Are people accessing the treatment expenses that you thought they would? Why has there been a dramatic drop-off in people accessing treatment expenses?

Or if, for example, it is because we budgeted for 5,000 first-party claims for statutory benefits, which was predominantly motorcyclists coming off their motorbikes, there wouldn't be a damages claim but first party. In fact, people aren't taking up their first-party entitlements because those motorcyclists don't want to have to report to police that they've been involved in an accident, which is one of the reporting requirements, or because they don't know that they've got first-party entitlements. So it is trying to find out which parts of the scheme did this money come from to understand, in effect, why has it not been spent where we thought it would be spent.

The Hon. WES FANG: Is it perhaps not just the case that you're better off, if you're one of the providers, to be overestimating than underestimating because it's always better to have the money in the bank and have to put it back as opposed to not? Is that perhaps not just a more simple and reasonable explanation as to where the money has come from?

ANDREW STONE: No. That would be saying that, in effect, they'd built the builder's 10 per cent for contingencies into the budget estimates and we're now clawing back the 10 per cent because in fact everything worked as anticipated. If that's the answer, then that can be the answer: We've overestimated everything. That may be one of the available answers, or it may be that accident numbers explain all of it or it may be that underclaiming explains part of it or it may be that we've made it so hard for people to access benefits that people aren't accessing the benefits that we intended.

The Hon. WES FANG: Or it's a little bit of everything.

ANDREW STONE: Most likely it will be a combination of all of those things. But you can understand why, from our perspective, we're deeply concerned if a part of the answer—and a sizeable dollar part of the answer—is people not accessing benefits to which they are entitled because they're either not aware of those benefits or we've made it too complex and painful for them to access those benefits.

The Hon. WES FANG: I'm not sure who was doing the questioning.

The CHAIR: It was Mr D'Adam.

The Hon. WES FANG: Apologies.

The Hon. ANTHONY D'ADAM: It's fine.

The Hon. WES FANG: Sorry, I get engrossed in these sorts of things. I find it fascinating.

ANDREW STONE: Join me in the nerd club.

The Hon. WES FANG: I am there with a hat and bells on. In relation to the view that it could be any number of those things and part of it is that perhaps people aren't claiming their statutory benefits, we've heard submissions from everybody at the table about the costs—I think you said $1,800—which are allowed under the scheme for legal representation. Last time we had this issue come before us as a Committee, I remember the point was made that part of the unclaimed money being returned out of the scheme could be rediverted to increasing that legal representation fee, which would then, in turn, address the point that Mr Turnbull made, that you don't actually have a significant enough figure there for a lawyer to want to take on the case because it's, in effect, a loss-making exercise for them.

ANDREW STONE: Agreed, and yes.

The Hon. WES FANG: I don't know any lawyer who is going to disagree with increasing the amount of money that's put toward legal costs.

ANDREW STONE: And I don't know any claimant that doesn't appreciate the assistance they get from their lawyers to bring their claim.

The Hon. WES FANG: Yes. That's one way to provide clients with the opportunity to further understand their rights and benefits. Would there be perhaps another way that would be just as beneficial to make the scheme simpler and easier so that a self-represented person could easily access and understand their rights and benefits so that they could then approach the scheme and the providers, and say, "This is X. Here is the evidence. This is what I'm entitled to"? I've heard much about how complex the scheme is. Maybe it's too complex.

ANDREW STONE: If you would like to try and make it simpler, I think we need six months of very smart people sitting down to do it. To give you some idea of the complexity, if you're a small business person who is injured in an accident, then in order to work out your weekly wage loss, which for many small business people is not an easy answer, the insurer has found that sufficiently complex that some insurers don't even try and work out the answer; they immediately bring in forensic accountants to go over the person's books to work out the answer. And, of course, whatever the insurer's forensic accountant comes up with as the answer, that person is likely to be disputing that issue on their own if they disagree with the forensic accountant's assessment, because for $1,800 we can't take on forensic accountants to assist them in responding. That is just how complex day-to-day issues in this scheme become and how quickly they become that complex.

LEIGH DAVIDSON: If I could add one thing, that is actually an unpaid dispute. It's not even $1,800.

ANDREW STONE: Sorry, that's not the $1,800. Yes, that's nothing.

LEIGH DAVIDSON: Lawyers actually do that pro bono effectively at the moment to help injured people out.

JOHN TURNBULL: Can I just address your question too, member? The answer to your question is yes, it would be great if the scheme was more simple. I go back, I'm sorry to say—I started at the bar in 1983 and I remember a much different scheme, and it was a simple scheme. People understood their rights and lawyers acted for parties. If they won, they got paid; if they didn't, they didn't get paid. The scheme now is incredibly complex. It requires all sorts of decisions to be made, not as in days of yore when a judge would make a decision but by doctors, by panels, by that sort of thing. That's the complexity in the scheme. If you could make that less complex, yes, of course, that would be a good thing for claimants because at the moment I can tell you lawyers find the scheme difficult to navigate and complex to navigate. Lord knows how a non-legal—a lay person—is going to do that. The simple answer is yes. But, as Mr Stone said, it is going to take a long time to redesign the scheme and make sure that it remains as cost effective as it currently is.

The Hon. WES FANG: I've deliberately put this question to the panel of lawyers, legal experts and people that have skin in the game because obviously there's circumstances that a percentage of the income that your members make will come out of this scheme. You've made the submission that, at the moment, the scheme doesn't allow enough for that to be a substantial part of the work and that one solution is to increase that. I'm looking at it as what I think should be and could be a much simpler, fairer scheme that might be achieved by making it less complex, less legal, and more focused on the person, enabling them to do a lot of this themselves to make the system equitable. If there's agreement from this panel that that that might be one way to look at it into the future, then I think that's perhaps an endorsement of at least looking at that.

ANDREW STONE: Of course. Can I respectfully say, if it was that simple we would have done it by now. Can I particularly take you up on simpler. It is not fairer. The way you make things simple is you are arbitrary. Fairness requires complexity. For example, that small business person I just talked about, in trying to calculate their weekly loss, the way you make that simpler is you say that everybody gets paid a living wage of $600 a week or $700 a week, and you eliminate looking at their individual circumstances. That's simpler but it is grossly unfair because that small business goes under and quite possibly that person loses their family home because they've built a life that doesn't live on $600 a week. Fairness comes at a price.

The Hon. WES FANG: Yes, but there is also a philosophical issue that where a scheme is too complex, fairness only comes through advocacy and legal representation and that will exclude other people, so that doesn't make it fair either. It's a philosophical argument. I'm curious as to whether we have perhaps made the scheme so complex, so technical, that that is the barrier to fairness, not the actual representation and making it even more legalistic and representative.

ANDREW STONE: Where we may be looking at different aspects of fairness is, there's fairness of process, and fairness of process comes at a cost, and fairness of outcome. To simplify process almost invariably involves more arbitrary outcomes.

The Hon. ROD ROBERTS: Mr Turnbull, in your submission, page 16, recommendation 4, in terms of merit review, I'm very interested in that. The Chair and I are on the ICAC Committee and we're currently looking at a merit review system for ICAC decisions. I won't take that any further because that's confidential at this point in time. However, we've heard evidence that to take a merit review of the ICAC, for example, leaves only one course open to you, and that is the Supreme Court, which is daunting for some and very expensive for all.

JOHN TURNBULL: Indeed.

The Hon. ROD ROBERTS: Can you talk to your recommendation 4 and why you say that perhaps PIC could do a merit review rather than the Supreme Court and what the benefit of that would be to claimants?

JOHN TURNBULL: The first thing is that PIC is a far less formal forum. That's going to make it easier for unrepresented litigants—and there are a lot of them in this scheme—to present their argument. Secondly, you would hope, but not necessarily, that it would be a quicker scheme, partly because it is less formalistic. Thirdly, it would be no doubt a much cheaper scheme, starting from you don't have to file a summons in the Supreme Court, which costs $2,000 or $3,000. You could have the scheme such that if the claimant loses, he or she is not going to pay the insurance company's legal costs.

Those are all risks in going to the Supreme Court in the Administrative Division. I've done it many times. There is no certainty of outcome. Claimants are very hesitant to do it and lawyers say to them, "If you lose, this is going to cost you $30,000, $40,000, $50,000." If you do it in the PIC, one would hope it would be like the way assessments are run. They take generally two or three hours. Assessments of damages or liability generally take two or three hours in a relatively informal setting but the plaintiff—the claimant—then gets to see his or her complaint put forward, argued and dealt with. It doesn't need to be the Supreme Court. That's the ideal, but the Supreme Court is expensive, there are time delays and the lot.

JNANA GUMBERT: Might I add to that, a significant problem is the lack of any knowledge of the availability of Supreme Court proceedings and if there was a process in place that was known to the participants of the scheme and readily accessible, then that would be a significant improvement on an available review that they don't even know about and can't access.

JOHN TURNBULL: Can I add one further thing? If you go to the Supreme Court, you can't argue the merits of the decision, you can only argue there's been legal error. That's, in my view, unsatisfactory. If you go to the PIC, the idea would be to have a review where you could actually attack the merits, potentially.

The CHAIR: Unfortunately we have run out of time. Committee members are very welcome to put supplementary questions on notice should you wish to respond to those, as well as any additional answers you have taken on notice. There may have been a couple. Those answers should be returned within 21 days. The secretariat will contact you about those questions. Thank you for joining us.

(The witnesses withdrew.)

(Short adjournment)

Mr CHRIS BUTEL, General Manager CTP, QBE Insurance, and Member Representative, Insurance Council of Australia, affirmed and examined

Ms ZOE WANG, Manager Health and Recovery CTP Claims, IAG, and Member Representative, Insurance Council of Australia

Ms ESTELLE PEARSON, Actuary, Principal Finity Consulting, supporting the Insurance Council of Australia, affirmed and examined

The CHAIR: I now welcome our next witnesses. I invite any of the witnesses to make a short opening statement.

CHRIS BUTEL: Thank you for inviting the Insurance Council of Australia—ICA—to appear at today's hearing. The ICA is the representative body for the general insurance industry and our members include the five insurance groups that underwrite the New South Wales CTP insurance scheme. My name is Chris Butel and I chair the Motor Accident Injuries Scheme committee at the ICA. Alongside me today is Zoe Wang, chair of the New South Wales claims managers committee and Estelle Pearson. The recent three-year statutory review of the scheme found that, overall, the scheme is meeting its policy objectives as outlined in the Motor Accident Injuries Act 2017. These objectives inform the design of the scheme pursuant to the 2017 reforms, which insurers operationalise to drive optimal health outcomes and recoveries for injured people in motor vehicle accidents in New South Wales.

As outlined in the ICA's submission to the standing committee and the review, the scheme has realised the objectives of early and ongoing financial support for injured people whilst delivering significant reductions in CTP premiums for the motoring public. We believe that the internal review process facilitates the achievement of several important customer service benefits within the scheme, including access to a simple, cost-effective and efficient process to review decisions without the need for legal representation or escalation to the Personal Injury Commission. We note that in the most recent financial year ending 30 June 2022, 80 per cent of internal review decisions had the initial claim decision affirmed. In its submission to the review, SIRA has put to the standing committee that the internal review process resolves nearly a quarter of disagreements between insurers and injured people, thereby removing the need for those injured persons to lodge a dispute in these matters.

We confirm our support for the position that ILARS should not be introduced into the scheme in its current form, which both the ICA and SIRA set out in our supplementary submissions to this review. We share SIRA's view that the introduction of ILARS would result in a significant departure from the original scheme design and pose a potentially high risk to the sustainability of the scheme overall. Insurers are committed to the continual improvement in performance and service delivery to ensure the scheme is implemented to meet the best needs of injured people. The ICA appreciates the opportunity to contribute to this 2022 review and we are happy to answer any questions the Committee may have.

The CHAIR: That opening statement is on behalf of everyone?

CHRIS BUTEL: Yes.

The CHAIR: Just to start on a few items raised by the lawyers in the previous panel—I'm not sure if you caught any of their evidence. One suggestion was that the WPI be reduced from 10 per cent down to 5 per cent, in particular for neck and back injuries. There was a question about potential costs to the scheme that might be added if that was the case. Any thoughts or comments on that particular suggestion from the lawyers?

ZOE WANG: There are two separate decisions that are made by insurers in relation to injury severity that do impact entitlements. One is a WPI assessment that provides access to a certain type of common law benefit. It's called non-economic loss, and there's a second decision which is a minor injury decision, which is a decision that impacts entitlement to statutory benefits. Minor injuries are designed to cover injuries which are expected to resolve within a shorter period of time. The original design of the Act was to have statutory benefits available to people with minor injuries for 26 weeks. That has been amended through the bill last night. We are supportive of the extension of statutory benefits for people with minor injuries up to 52 weeks, because we believe that this will provide coverage for the small proportion of people who don't recover from those injuries, such as soft tissue injuries, within that six-month period.

The CHAIR: One of the other issues raised, which was mentioned in the opening statement as well, was that the PIC be used more effectively, rather than going to the Supreme Court. I was wondering if you could make some comments on that as well. Are we using the PIC effectively at the moment, or should it be used in the future?

ZOE WANG: I don't think that we have a position on PIC versus the Supreme Court. We're supportive of the process that is in place for escalation of matters from the PIC. I think our opening statement was in relation

to internal reviews, which is a review of a decision within the insurer and provides an opportunity for quick resolution within 28 days at a maximum for the insurer to reconsider a decision that a claimant does not agree with.

The CHAIR: What about the suggestion that at the moment assessments are made between doctors? One of the proposals put forward by the lawyers was that potentially it would be better if it was done by a court or a tribunal, rather than the current scenario where doctors make the assessment.

ZOE WANG: At the moment my understanding is that medical assessors at the PIC are involved in decisions which require some degree of medical knowledge—so decisions in relation to treatment and care, minor injury assessments, et cetera—and that lawyers are involved in other types of decisions or arbitrates are involved in other types of decisions. We have no position at the present that that is not working or should be changed, but we do acknowledge that there has been difficulty with access to medical assessors, particularly due to the impact of the pandemic.

The CHAIR: The Clayton Utz review handed down, I think, 49 recommendations, some of which have been already implemented or are in the process of being implemented. I would appreciate your thoughts on those recommendations in a broad sense. Obviously, we don't have time to go through them one by one, but are there any things that you particularly welcome or are particularly opposed to that came out of that review?

CHRIS BUTEL: I think generally we're supportive of the outcomes of that review and the Government's response to the outcomes of that review, including what is included in SIRA's submission as to their response to various recommendations. We'll continue to work with SIRA and other stakeholders on the implementation of various aspects of that review.

The Hon. ANTHONY D'ADAM: I don't know whether you heard the earlier evidence in relation to Mr Stone's assessment of how TEPL is operating. I invite the panel to make comments about this perception that payments are being set too high—the invoking of TEPL and the clawback of super profits.

ESTELLE PEARSON: I think it is important to recognise that when premiums were set for the new scheme in 2017, it was an entirely new scheme. There was no experience to base premiums on. All the numbers of the premiums—about the numbers of claimants, what sorts of benefits they'd be entitled to, what their average benefit payments would be—were all estimates and based on quite a lot of actuarial judgements. It shouldn't really be anticipated that the actual costs being inconsistent or, in this case, lower than what was estimated—it isn't really a reflection of conservatism. It's a reflection of the uncertainties in those original estimates.

The TEPL was put in place, I guess, to ensure that, should the estimates prove to be too conservative, insurer profits would be capped at 10 per cent, and that is how that is operating. I think it is more important when looking at the scheme and how the scheme is performing to ask is it meeting its objectives in terms of is it affordable, is it efficient, are injured people getting treatment and care and weekly benefits in a prompt fashion?

The Hon. ANTHONY D'ADAM: Is it fair to say that, as the scheme matures, you expect that the clawback will be less and less?

ESTELLE PEARSON: The clawback each year will be impacted by specifically what occurs for that year. What I can say is that, as the experience has matured, the premiums now reflect more the actual experience of the scheme. However, we have been hit with things like lockdowns, which have reduced the number of vehicles on the road, so things like that will happen and impact outcomes as well.

The Hon. GREG DONNELLY: Thank you for your submissions. With respect to SIRA's submission to the inquiry—you may or may not have access to it. Sorry, I had no notice I was going to ask you this question. On page 25, table 9 contains various headings. I take you down the left-hand column to "Medical assessment". The third column across is headed "% of finalised disputes finalised within 26 weeks since application" and the next column is "% of finalised disputes finalised within 52 weeks since application". In the 26 weeks column, if we take 2018 as the baseline start year, we see the figures dropping precipitously from 100 per cent down to 26 per cent. The next column has what I would also argue is quite a precipitous decline from the baseline 100 per cent down to 64 per cent.

This obviously ties directly back to one of the comments that you made earlier about processing efficiently and taking in all relevant considerations for the determination of a matter. Can you respond to those two columns and give us insights into why you believe those percentages are what they are and, perhaps more importantly, your thoughts about how they could be significantly improved, and quickly?

CHRIS BUTEL: The disputes in that table relate to disputes that either the DRS or now the Personal Injury Commission—they're not referring to the internal reviews that are undertaken by insurers. I draw your attention to page 27 of SIRA's submission where they talk about internal review timeliness, which insurers have

control over. If you look at the fourth row from the bottom, 98.3 per cent of disputes are completed within time frames by insurers in the 12 months to 30 June this year. Those time lines are different by dispute type, but are 14, 21 or 28 days—so quite timely disputes, with 98 per cent of them done within time frame.

The Hon. GREG DONNELLY: Just jumping back to table 9, your submission is that they're not really relevant to our consideration?

CHRIS BUTEL: I'm not saying they're not relevant. I'm saying that we understand that the Personal Injury Commission has been impacted by the COVID lockdowns, unable to do face-to-face medical assessments, and that is what has driven that decline in dispute time frames that are done through the Personal Injury Commission.

The Hon. GREG DONNELLY: In terms of the impact on the individuals affected, which results obviously from the delay, you surely would have to acknowledge that has significant implications for those individuals?

CHRIS BUTEL: It is certainly not ideal that individuals have to wait that long for their dispute to get resolved.

The Hon. GREG DONNELLY: Let me be even more blunt and challenge you to say that "less than ideal" is a little bit qualifying, is it not? These delays are quite serious. Being frank about it, is that not the case for the individuals affected and looking at the scheme meeting our expectations?

CHRIS BUTEL: I agree it's not a great outcome for the individuals involved but, as you're aware, with the COVID lockdowns, unfortunately, things did get delayed through the Personal Injury Commission.

The Hon. GREG DONNELLY: To the extent that you attribute those results to COVID, would it be reasonable to say that there could be other factors attributed to the—

ZOE WANG: I think there are a number of reasons for the delays.

The Hon. GREG DONNELLY: Would you like to elucidate?

ZOE WANG: The Personal Injury Commission has provided us with updates to talk through the strategies that they're using to work through the backlog. We believe that they have made some progress with working through the backlog and we would support and participate in any initiatives that the PIC has to work through that backlog more quickly.

The Hon. GREG DONNELLY: What update are you specifically referring to? You just mentioned that update from the PIC.

ZOE WANG: The Personal Injury Commission has met with us to assure us that they are working through the backlog and that the backlog is coming down.

The Hon. GREG DONNELLY: When did they do that?

ZOE WANG: I would have to take that question on notice in terms of the precise date.

The Hon. GREG DONNELLY: On notice, can you provide the Committee with a copy of those guidelines?

ZOE WANG: This was a verbal update that was provided by Judge Phillips. I don't have any written guidelines, I'm afraid.

The Hon. GREG DONNELLY: In fact, there were no guidelines provided? This was your assessment—that what he was saying was a guide to how they're managing better. Is that the case?

ZOE WANG: Yes.

The Hon. GREG DONNELLY: So there were no guidelines provided?

ZOE WANG: I would have to take that question on notice.

The Hon. GREG DONNELLY: Were you actually at that meeting with the president?

ZOE WANG: I was in attendance at a meeting online. I haven't been in attendance at all meetings with the Personal Injury Commission.

The Hon. GREG DONNELLY: No, that wasn't my question. At the meeting where in the first instance you said the guidelines, which we now think may not be guidelines—in the discussions with the president, were you present at that meeting?

ZOE WANG: I have been present at a meeting where the judge has provided us with information that he is attempting to work through the backlog at the Personal Injury Commission.

The Hon. GREG DONNELLY: Is that information notated somewhere? Were notes taken of that meeting?

ZOE WANG: I would have to take that on notice. There were no notes taken by me.

The Hon. GREG DONNELLY: On notice, can you discover whether notes were taken and provide them to the Committee? With respect to what got delivered as reflections or comments or suggestions or an overview or information—however you might like to form it—by the president to the organisation, was there a request or a suggestion that this explanation of his should be circulated more widely, or was this directed to yourselves as the big organisation?

ZOE WANG: Sorry, can you repeat the question?

The Hon. GREG DONNELLY: Did the judge intend for this discussion to be with yourselves directly or as something that you would then communicate more broadly to your membership?

ZOE WANG: This was a discussion with insurers; it was not a discussion specifically with me. My understanding is that Judge Phillips does engage with stakeholders within the industry, including insurers.

The Hon. GREG DONNELLY: I'm talking about this meeting that you attended that you just described, when the president gave you the information and what have you. Were any other individual insurers in attendance?

ZOE WANG: I believe so, yes.

The Hon. GREG DONNELLY: On notice, if you can provide us with a list of those insurers. Was this a meeting that you sought to convene or that the president sought to convene?

ZOE WANG: I believe it was convened by Judge Phillips.

The Hon. GREG DONNELLY: When did this take place, approximately? This year?

ZOE WANG: Yes, it was this year.

The Hon. GREG DONNELLY: Can you give us an approximate month?

ZOE WANG: I would have to take that question on notice.

The Hon. WES FANG: My question is probably not as narrow a focus; it is probably a wider focus. I don't know if you caught some of the earlier sessions when we questioned the other panels. I put to the legal panel that was just prior to your appearance that, where they have indicated that the scheme is complex, the complexity is largely legal and that applicants would benefit from more legal representation, particularly in the initial stages, and that the sum available for legal representation isn't sufficient to significantly motivate enough legal representatives to take on those cases because it is, in effect, a zero-sum game or some cases are lost, they said, given the amount of work that is required. Is that your experience with the cases that you have had some sight on? Do you have a view as to the complexity and the early legal representation for claims, and what those costs should perhaps be?

ZOE WANG: We believe that the scheme is working as intended at the moment. There is no doubt that some aspects of the scheme are complex. We would welcome any consultation in terms of streamlining or simplifying the scheme, without impacting the fairness of the scheme. Over 96 per cent of claims are accepted in terms of the first liability decision. That means that people have access to treatment and care and income support from the time that the claim is lodged. We support the principles that SIRA is using to review legal costs in the scheme, and we support any implementation of changes that come through that review of legal representation.

ESTELLE PEARSON: I might just add to that—and I think it was in SIRA's submission—that it's quite a high proportion, maybe in the 70 per cent of people, who actually start receiving treatment and care before they've even lodged a claim. I think it's up to 95 per cent within four weeks. So the scheme by its design was intended not to have early legal representation because, for the vast majority of claims, there shouldn't be that complexity. People should be able to navigate the scheme and get access to benefits early et cetera. The statistics that come out show that that is actually occurring in the vast majority of cases.

The Hon. WES FANG: In a way, I was playing devil's advocate with the question, which is why I was trying to frame it in a certain way. I would advocate for a simpler system. I know, Ms Wang, that's exactly what you alluded to—that you would be happy to engage in seeking to streamline and simplify the scheme. There is a divergent path from this point. Legal representatives are saying that they need a higher rate or a greater lump sum in order to provide legal advice earlier. Again, playing devil's advocate, that is what they are going to say; that's

their bread and butter. On the flip side of that is whether somebody who has suffered an injury should be able to navigate it themselves, for the most part. You have said that 96 per cent of claims are accepted initially. The point that they have made is that there is quite a large sum of money that is being—the super profits, to use the ALA's term, are coming back because they are not being spent.

In that instance, the legal panel prior to you said that that is an indicator that people aren't receiving the benefits that they are entitled to. Where it is the case that 96 per cent of people are accepted in the first instance—and I understand that not all costs are the same and the 4 per cent that aren't initially accepted are probably the really complex ones that are probably also really expensive. If there are 96 per cent of people being accepted into the scheme but there is still money that is coming back that is not covered by the profit calculations within the scheme, are people who are initially accepted not accessing their full entitlements and, if so, why not? I can only see that that is the outcome of these two divergent paths. If there are 96 per cent of people being initially accepted, but there is a lot of money coming back, they are not accessing everything.

ESTELLE PEARSON: Maybe I'll try and put a couple of answers to that. As I said at the outset, the original premiums were set. There were estimates. There was no experience to base them on how much entitlements people would have under the scheme. But the fact is that all the claimants who are accepted have almost immediate access to reasonable treatment and care. We see that a lot of them get access to that very quickly and to weekly benefits. But everything was always just an estimate, based on an old scheme that was entirely different to the current scheme. The fact that the numbers are different to what was estimated I don't think is—you can't assert from that that people aren't getting what they're entitled to.

The 96 per cent of people who are accepted in the scheme should be getting what they're entitled to under the scheme, in terms of treatment and care and weeklies. There are several different processes where they can raise concerns. There is the internal review process and, I think, about 20 per cent of internal reviews are overturned in favour of the disputing party, whether they are legally represented or not. That is an indication that there's a process that works for people without representation and then, obviously, if they are still not satisfied, they move on to the external dispute resolution process.

I did also want to make a comment about the numbers in the Bar Association's submission about comparing the annual legal cost with the legal costs spent in a year. I'm not sure that it's quite an apples-with-apples comparison. It might be a question best put to SIRA, because it was their actuaries who came up with the total. But the important thing to know is that about 35 per cent of all statutory benefit claims have legal representation, about 65 per cent of non-minor claims do and 90 per cent of damages claims do. Even in the first year of the scheme, less than half of the total damages claims have been paid out. Therefore, the annual cost of legals will keep going up as the scheme matures. I think that comparison that the Bar Association did was not quite apples with apples and maybe isn't a full explanation, or a proper explanation, of where the $91 million comes from.

The Hon. WES FANG: Again, playing devil's advocate, I put to them that perhaps it was the case that the overs that are coming back to the scheme are in fact—if you're going to provide an estimate, you would typically overestimate than underestimate. I think that was potentially one of those factors, but also, in the case where—I think they said it was about $90 million of legal fees, where the statutory review said $270-odd million. So it was about three times as much as what was estimated. It's the fact that the cases aren't mature yet, so they're not actually seeing the full legal impact of the scheme under a standard load as we progress into the future.

ESTELLE PEARSON: I would agree. One other thing that I can also let the Committee know is that we have seen, on statutory benefits, a year-on-year increase in the average amount of statutory benefit payments. We see that is due to a greater proportion of claimants utilising treatment and care benefits every year that are available under the scheme. We see some increase also in the utilisation of weekly benefits. It may also be the case that, as people get more used to the scheme, people will utilise more of the benefits that are available. In the meantime, the TEPL provides a guarantee to the extent that if they don't utilise all of the benefits that they can, that money doesn't go to insurers' profits; it gets returned to motorists.

The CHAIR: I have a broad question. How would you rate the performance of the current scheme? How would you compare it to the previous scheme from before the reforms came in prior to 2017?

CHRIS BUTEL: I think we've already touched on some of these points earlier, but the new scheme is getting benefits to injured people far quicker than the old scheme. We're seeing the timeliness of both treatment and care and weekly income benefits greatly quicker in the new scheme. We didn't have internal review in the old scheme. Where there is a decision that has been made by an insurer that our claimant disagrees with, there is that fast avenue to seek resolution where there is a disagreement.

ESTELLE PEARSON: One of the concerns with the previous scheme was the efficiency—so the amount of the premium dollar going to the injured person. I believe that in SIRA's submission they have identified their

current measure for the first year of the scheme is 59 cents in the dollar compared with 44 cents in the dollar in the previous scheme. I don't know exactly what makes up the other part; that would be a question for SIRA. But there has been a strong improvement in efficiency. Of course, the other thing that we were seeing in the previous scheme was a big escalation in the number of claims every year, despite a falling number of road accidents, leading to the ultimate conclusion that there was fraud and unmeritorious claims in the system.

The CHAIR: Do you have any observations, or maybe you could provide a few comments, on the ILARS aspect of the review as well? I know you have put some of that in your submission, but maybe you wanted to talk to that? That's the other part of the review that the Committee needs to look at.

ZOE WANG: As we said in our submission, the ICA does not support the extension of ILARS to CTP claims dispute resolution, as it could result in more complex, adversarial and drawn-out processes as proceedings become more formal and legalistic, which we believe is contrary to the purpose of the reforms and the objects of the Motor Accident Insurance Act.

The Hon. GREG DONNELLY: Effectively, we've got two organisations represented here. We've got the ICA and Finity Consulting. Is that right? There are two separate organisations? Finity sort of consults directly with the ICA?

CHRIS BUTEL: We are appearing here as the insurance council today.

The Hon. GREG DONNELLY: That's fine. On 10 November this year, a piece of correspondence under the name of the President of the Personal Injury Commission was circulated. It's quite a lengthy piece of correspondence. It was seeking to address some matters that had been raised by a submitter to the inquiry, addressing and seeking to explain or respond to some of the items that had been raised. As I said, it was issued under the name of the President of the Personal Injury Commission. First of all, did you actually receive that piece of correspondence, electronically or otherwise, that you're aware of?

CHRIS BUTEL: No, we haven't seen that piece of correspondence.

The Hon. GREG DONNELLY: You haven't seen that piece of correspondence. On notice, can you check to see whether the ICA received a copy of that correspondence—perhaps the CEO—and provide detail of the date upon which that was responded to, and also whether or not there was any response given by the ICA to the president of the commission? Take that on notice.

CHRIS BUTEL: We'd certainly be happy to take that on notice.

The CHAIR: Any further questions? We're pretty much right on time. If not, thank you so much for appearing today and for 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, be returned within 21 days. The secretariat will contact you in relation to those questions. Thanks for your attendance today.

(The witnesses withdrew.)

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

Dr NICK ALLSOP, Group Executive Lifetime Schemes, icare, affirmed and examined

The CHAIR: I now welcome our next witnesses. Would you like to make a short opening statement, Mr Harding?

RICHARD HARDING: We would, if that's alright—just a nice short one. I thank the Committee for the opportunity to appear today. Icare welcomes the chance to offer our observations to help ensure that the Lifetime Care and Support Scheme remains fit for purpose and comprehensively supports those who unfortunately find themselves as participants in the scheme. Lifetime Care is performing well and provides important quality of life outcomes for around 1,740 people across New South Wales. The scheme has continued to grow, largely as expected, and throughout that growth, we have focused on continuity of service, financial sustainability and remaining agile and responsive to people's requirements and needs.

This is a complex space. Participants come to us after challenging and life-changing journeys. They require a range of services and support, including equipment and living modifications, physical and psychotherapy, vocational and education assistance, exercise therapy and, of course, most significantly, attendant care. With this in mind, we strive to ensure that the complexities of the scheme are simplified such that obtaining support is not another hurdle for people to overcome. As a service provider for the Lifetime Care and Support Scheme, icare understands the importance of our role in providing empathetic, inclusive and accessible individualised support. We ensure every participant has an individual point of contact to help them design a tailored program based on their specific life goals. We are proud of the fact that respondents of the most recent Lifetime Care participant survey observed how the assistance they had received through the scheme contributes so significantly to their quality of life.

From a financial perspective the scheme is sound; however, we continue to manage inflationary and market pressures consistent with similar schemes around the country. Attendant care costs, which account for about 70 per cent of the scheme's expenditure, as well as competitive tension in the care provider workforce, are matters we are watching closely. Icare is also pleased that the Compulsory Third Party—or CTP—Care program will commence in December. The open and collaborative approach between the State Insurance Regulatory Authority, CTP insurers and ourselves should lead to a smooth transfer process for participants from the existing private sector CTP scheme to the new CTP Care program. However, we note the risks borne of the scheme's infancy and the associated uncertainty around cost base. Levy collection is the sole revenue source for the program, having received no seed funding at its establishment. For that reason, it will be critical to quickly develop a comprehensive dataset around the type of injuries, complexity, duration and number of clients, to ensure the future sustainability and success of the scheme. I again thank the Committee and look forward to taking your questions.

The CHAIR: I have a question about the relationship between CTP and Lifetime Care. Are there any issues or tension between when someone moves from the CTP Scheme to the Lifetime Care and Support Scheme? Or what threshold would someone need to reach in terms of the severity of the injury to move between CTP and Lifetime Care?

NICK ALLSOP: If I may? Great question, thank you. The short answer would be there is generally not a lot of tension in that. I'm not saying it doesn't happen. But, in the main, the nature of the injuries that are required to get into Lifetime Care are fairly well defined and well specified. A majority of the participants that enter the scheme do so after passing through one of the brain or spinal units around New South Wales. It's fairly clear the nature of the injury and the lifelong impact of that injury on that participant when they are transitioning out of that institution into the support of Lifetime Care. There are cases where there is some question around whether or not the participant meets the threshold for inclusion in Lifetime Care. These tend to be the moderate brain injury side of the spectrum. But they are usually well resolved with appropriate clinical guidance and don't generally result in conflict.

There is a two-year period in which people entering the Lifetime Care and Support Scheme are treated as interim participants, because it can take a number of months or even years for injuries to stabilise. During that interim period people are assessed, and when they reach the end of that two years, a lifetime eligibility decision is then made. Then they either remain in the scheme in perpetuity from that point or would transition back to the CTP Care insurer. One of the great things with the advent of CTP Care is that for those people who will have a lifelong treatment and care need, but may not meet the eligibility criteria to stay in Lifetime Care, is that they now have the opportunity through an early agreement arrangement that we have with CTP insurers to remain under the guidance, supervision and support of icare through the CTP Care scheme, to avoid them having that experience of being part of Lifetime Care, then bouncing back to their CTP insurer and then coming back into CTP Care at

the five-year point. This provides greater continuity of support for these people and a more seamless experience in terms of not having those multiple transitions.

The CHAIR: It's sort of something in between. It's not really Lifetime Care and it's not really CTP. It fits in between the two schemes in many ways.

NICK ALLSOP: It picks up that cohort of people whose injuries are severe enough to warrant ongoing treatment and care after five years but are not severe enough to end up in Lifetime Care. It's a great initiative in terms of providing people that support in terms of their ongoing health-related needs beyond that five-year point and, in some cases, where it's agreed earlier than that, rather than the old CTP scheme where a lump sum was provided and people were essentially left to fend for themselves through the health system to try and understand their needs, obviously in conjunction with their GP, but without that sort of expertise that CTP Care can provide to support them in accessing those services.

The CHAIR: The other issue I was interested in was the relationship between workers compensation and CTP/Lifetime Care. It is probably more for the Committee's benefit. Could you explain how it works in terms of someone who is in a vehicle for work. Do they fit with the workers compensation scheme? Do they sit with the CTP scheme? I know there are times when one scheme is viewed to be more generous than the other, and there is a bit of a tension between an injury at work versus an injury in a vehicle. For some more background or context for the Committee, could you provide some thoughts on that?

NICK ALLSOP: From a Lifetime Care perspective, it's usually fairly self-evident how the injury has arisen. One of the other great initiatives that icare has put in place is what we call the Workers Care Program. This is where somebody sustains a workplace injury that is of a similar nature to the injuries that get someone into Lifetime Care. They are provided support in a similar structure, obviously allowing for the slight differences in the legislation. But the same sort of case management approach and the same support structures that we offer people in Lifetime Care are offered to those catastrophically injured in the workplace as well. From a treatment and care perspective, people are offered that same level of support regardless of whether the injury was a road injury or a workplace injury. Richard, did you want to add anything?

RICHARD HARDING: No.

The CHAIR: Questions from Committee members?

The Hon. ROD ROBERTS: I'll go first. I see my colleague scribbling notes there, so I'll give him a chance to catch up. Thank you both for attending. Drawing your attention to your submission, probably, pages 5 and 6 would be the pertinent parts. I have questions about the funding ratio for the Lifetime Care scheme. What's the current position at the moment?

NICK ALLSOP: As at 30 June the economic funding ratio was 110 per cent, from memory.

The Hon. ROD ROBERTS: If I'm reading that right, Dr Allsop, we're now into what you classify as Zone B.

NICK ALLSOP: The capital management policy is based on the insurance ratio, rather than the economic funding ratio, to take out some of that volatility that arises and that you see in those graphs in our submission. That comes purely from interest rate movements. The insurance ratio is the basis of our capital management policy and our target there is 140 per cent. We are sitting below that at the moment. The latest information I have is that we're at about 133 per cent, which is below where we'd like to be but not so far below that it's a risk to the financial security of the scheme. But it's obviously something that we do want to address over time to ensure that we are in Zone A of our capital management policy.

The Hon. ROD ROBERTS: To that further, again your submission states:

> Management action plans to return the insurance ratio to Zone A are in place.

What are those plans?

NICK ALLSOP: The thing about Lifetime Care is that it is set up to provide treatment and support for people with lifelong injuries. What we don't want to do ever is compromise that in any way. That removes the ability or the option of changing benefits or reducing services to people in terms of ensuring the financial sustainability of the scheme. We also invest the levy income and assets of the scheme to ensure a robust return over a long period of time to make sure that, again, the burden on road users of the State is minimised through that investment income. So we have a fairly aggressive investment approach there. We do target returns over the long term because we believe that is in the best interests of motorists and the scheme in general. So there's not an option to change investment strategy materially to address that gap, relative to the target in the capital management policy. So that really leaves expenses and levies as the two options that we can look at.

As an organisation, icare is constantly reviewing its expenses and looking for ways to provide services more efficiently and more effectively. So we are keeping those as lean as possible. But, in the short term, our option really is to move the levy to address that gap in the capital management policy and the associated insurance ratio. We don't want to do that aggressively. We want to take a long-term approach to doing that. So we have put a sustainability margin into the latest levy request that we have filed with SIRA. The intent of that is to address that funding gap or that gap between the current insurance ratio and the target position in the capital management plan over a period of 10 years. As I say, we're not looking to do this as a shock impact onto motorists. We're looking to do it gradually over a period of time, while we monitor investment markets as well, because we may see returns improve, and that may give us some comfort that we will get back above that 140 per cent target faster than we anticipate. We review those levies on at least an annual basis, and we're in the process of committing to SIRA to go back to them every six months with updates on how we're tracking relative to the capital management plan as well.

The Hon. ROD ROBERTS: You say—I'll just put this in layman's terms because none of us here are insurance actuaries—we need to move the levy. I'm assuming the levy is the money you receive from CTP premiums?

NICK ALLSOP: Correct. The levy is added to the cost of CTP premiums, yes.

The Hon. ROD ROBERTS: So the management action plan that you have is to increase the levy?

NICK ALLSOP: To ensure services to injured participants in the scheme are not compromised. Yes, that's correct.

The Hon. ROD ROBERTS: What other strategies have you got, other than bump up the levy?

NICK ALLSOP: The challenge with the Lifetime Care scheme is that, although it only has 1,700 participants in it, it's very expensive to support those people.

The Hon. ROD ROBERTS: We understand that, Mr Allsop. That is not in dispute. I take that you said that you don't want to reduce services either. No-one wants that. So the only strategy that you're telling me at the moment, though, to balance the books, if you'll have it, is to increase the levy?

RICHARD HARDING: Perhaps I can help, Mr Roberts.

The Hon. ROD ROBERTS: Please, Mr Harding, because we really need some help to understand this. Let's be honest, going forward, we talk about we're going to watch our investment returns. As far as I can see, there's no sun on the horizon for investment returns for the next year or two, at least.

RICHARD HARDING: Exactly, which is to Dr Allsop's point about the fact that we take a very long-term view of the scheme. Participants in this scheme are there for life, for the rest of their life. A lot of them come in quite young. We collect a premium up-front. The premium accounts for about—let's call it roughly 20 per cent of what their needs are, and the rest is earnt over the period through that investment return. So the investment return is fundamental to the sustainability of the scheme but also the provision of the services. What Dr Allsop was trying to say—in other forums, I've talked about there being four basic levers for us to pull on any scheme. We can manage claims, so reduce benefits or tighten up availability of benefits or get more effective at managing claims. We can change investment returns or change investment exposure; we just talked about that. We can manage our own costs, which in this case account for quite a small portion of the overall pie. But, as Dr Allsop said, we are always focused on managing our own costs and keeping those as low as possible. And the last—

The Hon. ROD ROBERTS: I assume that doesn't include building imaginariums, though?

RICHARD HARDING: Absolutely. It's a slight distraction from your question, but—

The Hon. ROD ROBERTS: Not really.

RICHARD HARDING: —one example I can give you—

The Hon. ROD ROBERTS: Not really at all.

RICHARD HARDING: —the imaginarium is being replaced with a screening facility for dust disease.

The Hon. ROD ROBERTS: A much better spending of people's money.

RICHARD HARDING: Exactly. In doing that, we're saving the cost of close to $3 million of rent that we were paying down in Pitt Street. We are focused on those sorts of costs and finding better ways to do that.

The Hon. ROD ROBERTS: Probably, perhaps, because this Committee has raised that in the past.

RICHARD HARDING: I think it's about our focus as a management team. We always—

The Hon. ROD ROBERTS: There was no focus before.

RICHARD HARDING: We always appreciate the input from the Committee, Mr Roberts. I don't dispute that. We are always looking for ideas and help to think about how we can improve what we do.

The Hon. WES FANG: With that comment, Mr Mookhey will come bounding through the door shortly.

The Hon. TAYLOR MARTIN: I'm surprised he is not here.

RICHARD HARDING: But the fundamental focus is to keep our costs as low as we can without impacting services because, as Dr Allsop's pointed out, the fundamental thing here is we want to get those services to the injured people. That largely leaves the last lever, which is premiums. Lifetime Care premiums, from 2011 to 2023, have gone from $82 to $87, roughly. We can round up the cents. In that time, it's quite a small increase that we've talked about over those 13, 14 years or 12 years. That is the current option we've got to address what is a shortfall in the funding ratio, driven by, as you've pointed out, short-term economic impacts to the scheme. We're hopeful that the economic impacts will recover over time. As that does recover, we will review the need for the premium sustainability margin. That's the goal. We'll always review our cost base and we're always working to make sure we get the services to injured people in the best form we can. I hope that creates a bit more clarity.

The Hon. ROD ROBERTS: Not really. Let me just put this to you, then. In your own document, you say:

> Management action plans to return the insurance ratio to Zone A are in place.

RICHARD HARDING: Yes.

The Hon. ROD ROBERTS: You have told me, basically—I'll use my words, and correct me if I'm wrong—that you've trimmed the fat out of your system?

RICHARD HARDING: Yes.

The Hon. ROD ROBERTS: You don't want to reduce services to the end user, understandably so, because bearing in mind that's your role. So then the management action plan that's in place—the only management action plan that's in place—is to perhaps increase levies.

RICHARD HARDING: That's pretty much the options. There are four parts to this that we can—

The Hon. ROD ROBERTS: I know. Let's just stop there. Why, then, do you tell us, "We have management action plans in place"? Why don't you just specify in your document and be up-front and say, "The only way that we can do that is to increase levies"?

RICHARD HARDING: I think we have later in that document, Mr Roberts.

NICK ALLSOP: On the questions asked in advanced, we have provided that clarification. But when we submitted the original submission we were still in the process of discussing the levy impact and response with SIRA, so we didn't want to provide information that perhaps was inaccurate due to the ongoing nature of those discussions.

RICHARD HARDING: I think the key message that we'd like for you to take away is that this isn't a kneejerk—the investment markets have gone down so therefore we're hiking up levies. We are very conscious of not putting additional pressure into the CTP premium pool. That is about us taking a long-term view and making sure that those sustainability margins reflect that and that we continually review it. The management action plan is actually our focus on our own costs, our focus on the investment markets and how the returns from TCorp are travelling and what we can do there to continue to improve those or drive better outcomes from those, how we can work with SIRA to manage the levy impacts—and that means, in the short term, a small increase to that. It is spread over the 10 years to create a sustainable outcome. Our goal here is to balance those things together. This is not an either/or. We cannot have our cake and eat it too. We want to try to make sure we are balancing across all four of the elements that we are trying to manage to get the best outcome for the injured person. We've got to keep the premiums affordable, we've got to keep the benefits realistic and achievable, and how we manage the money in between to achieve those things is the key outcome.

The Hon. ROD ROBERTS: It's critical.

RICHARD HARDING: Critical.

The Hon. ROD ROBERTS: I will leave it at that point.

The CHAIR: But on a similar point, the main driver behind the levy needing to be increased surely is the increasing costs to catastrophically injured people, I would assume?

RICHARD HARDING: Yes.

The CHAIR: We've seen the NDIS costs, for instance, spiralling out of control. The levy has gone up by about $6 or something in the last five years. But I assume the driver is mainly the increase in health costs or care that would need to be provided?

RICHARD HARDING: Absolutely. As I stated in the opening remarks—and Dr Allsop can talk to this in more detail—over 70 per cent of the costs of the scheme are the attendant care costs: the costs of having an individual look after somebody, help them do their activities of daily living, help them achieve their life goals in a very personal way. They are a personal carer. Those costs have gone up, as you pointed out, Chair, resulting from the NDIS and its pressures in the system. The NDIS is the main acquirer in the marketplace of attendant care services, but it is also impacted by the recent changes around aged care and the proposals from government around aged care because they are all similar capabilities and resources that go to service the aged care services, disability services and attendant carers. In my opening remarks, I made the point that we were watching that because it is 70 per cent of the cost base. We normally budget for around about a 4 per cent increase in the cost of that, year to year. In the last year I think—Dr Allsop, was it 9 per cent roughly? That's where the pressure absolutely is coming from.

The Hon. GREG DONNELLY: Thank you, gentlemen, for coming along today. As you are aware, the inquiries we conduct have a broad remit in terms of their responsibilities and in terms of the supervision of the operation of the insurance and compensation schemes in New South Wales. Accordingly, I'd like to go down this line of questioning—and I'm doing so, just to be very clear, to get some absolute clarity and certainty about a particular issue that received some ventilation in the Parliament this week: specifically, Mr Harding, the matter of your remuneration increase.

The Hon. WES FANG: Point of order: I seek to refer members to the terms of reference and note that it's not within the terms of reference. I have the terms of reference here in front of me. They state:

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
   - (a) Workers' Compensation Scheme,
   - (b) Workers' Compensation (Dust Diseases) Scheme,
   - (c) Motor Accidents Scheme, and
   - (d) Motor Accidents (Lifetime Care and Support) Scheme.
2. In exercising the supervisory function outlined in paragraph 1, the committee:
   - (a) does not have the authority to investigate a particular compensation claim, and
   - (b) must report to the House at least once every two years in relation to each scheme.

Those are the terms of reference.

The Hon. GREG DONNELLY: Correct.

The Hon. WES FANG: In relation to remuneration of members, I would argue—

The Hon. GREG DONNELLY: Not members.

The CHAIR: Executive of—

The Hon. GREG DONNELLY: Yes, but not members. For clarity, we are not talking about members; we are talking about executive officers.

The Hon. WES FANG: Sorry, yes, the members appearing before us on this panel, for clarity.

The Hon. GREG DONNELLY: The CEO.

The Hon. WES FANG: Yes. I would argue that, whilst salacious, perhaps, it is not a function of the terms of reference for this inquiry and therefore the question should be ruled out of order.

The Hon. ANTHONY D'ADAM: To the point of order: It is quite clear that the CEO and their salary is a component of the administration of the scheme. If we'd accepted the member's logic, then the whole inquiry around our last workers compensation inquiry—where we delved into the administration of icare—would have

been outside the terms of reference, and clearly it wasn't. It was clearly appropriate because that is part of the scheme's administration.

The Hon. ROD ROBERTS: To the point of order: I know Mr Donnelly is big and ugly enough to look after himself, but this fits clearly within the terms of reference. We've just heard from the witness saying that the scheme is doing everything it can to reduce costs. Mr Donnelly is alluding to an increase in costs and I think it is well within the terms of reference when we are looking at the operation of the scheme. The operation of the scheme comes from internal costs inside icare.

The Hon. GREG DONNELLY: To the point of order: Let's be very clear. The honourable member, the Hon. Wes Fang, has quoted the terms of reference. That's exactly what I referred to when I commenced my comments as a preamble. The remit of this Committee, in respect of the inquiry, is for the Legislative Council committee to "supervise the operation of the insurance and compensation schemes established under New South Wales" et cetera. The question is perfectly within order. This is to do with the supervision of the scheme and it cannot be reasonably argued, in my submission, that questions over remuneration fall outside matters to do with the supervision of the scheme. We are talking about nothing short of the chief executive officer, who ultimately is at the pointy end, the top end, of the supervision of the scheme.

The CHAIR: Based on the previous line of questioning—administration costs or the drivers behind the costs of the scheme—the question is in order, as executive REM is a component of the costs to the scheme, albeit a very minor part, I would assume, of the cost to the scheme—that is, as in Lifetime Care, not CTP. So the question is in order, but I refer the member to the terms of reference.

The Hon. GREG DONNELLY: I am grateful. Mr Harding, to be clear—I do not want to be misunderstood—this is to get clarity over something that has been ventilated both inside the Parliament and outside the Parliament over the course of the week. You are well familiar with the attention it has received. I would presume that that is the case. You are aware of the way in which the matter of—let me put it this way—your increase has been explained by the Minister?

RICHARD HARDING: Not in gross detail.

The Hon. GREG DONNELLY: I am referring to one of the answers given by the Minister on Tuesday this week in question time in the Legislative Council. I will quote directly from it, so you are clear about what the Minister said. This was a multiple-part question and he dealt with it sequentially and in parts. He said, "In relation to the first part of the question, the board advised me that the package"—that is, the package for yourself and the others who received an increase, but specifically this is focused on yourself—"available to the CEO was"—and this is the language he used—"a recalibration of the remuneration framework" for yourself and the executives. The term "recalibration" was not further explained by the Minister. We were left to, dare I say, draw our own conclusions about what "recalibration" means.

But presumably—if I'm wrong, please correct me—your package and, indeed, that of others at the executive level, involved a fixed component part—let's call it your salary—and a bonus component. We understand that the recalibration meant that there was a notional amount of money—obviously, the increase was $247,000 or thereabouts—that access to that amount in the bonus was, presumably, removed for you and added to your salary. That is the way I understand "recalibration". It was an ability for you to access more in salary by recalibrating available bonuses payable to you. Is that a fair explanation of what the word "recalibration" would mean to a reasonable person or, if that's not the case, can you explain what did happen with the configuration of your package, which involved salary and bonus?

RICHARD HARDING: Whether I would use the word "recalibration" or not, I think, is irrelevant. The Minister has made an attempt during question time to explain the changes to the overall remuneration structure for executives at icare, not just for myself.

The Hon. GREG DONNELLY: Indeed.

RICHARD HARDING: The gist of what you're saying is largely correct. What I would just highlight for you is that perhaps what the Minister is getting at, though, is the total available through the incentive program was significantly more—almost double—than what was then attributed to our fixed salaries as the change in outcome. The board looked at this in a very detailed way. They took independent advice. It's an appropriate thing for the board to do, and it was one of the recommendations from the McDougall review that the board should consider the remuneration structure for icare executives.

McDougall found that the remuneration structures for icare executives at that time were not inconsistent and were, in fact, below those of similar public sector—and, certainly, far below private sector—executives running similar size and complexity of businesses. The work that we do at icare is, as we've just talked about with

Mr Roberts, fundamentally important. It is not just a nominal insurer issue—Lifetime Care looking after 1,740 critically injured people and making sure we get their services. The investment of over $8 billion worth of Lifetime Care money, yet, there is a—

The Hon. GREG DONNELLY: I don't want to interrupt, but the Minister went through all of that last Tuesday in the House.

RICHARD HARDING: Yes. I think it just goes to over 80 per cent of the workforce that we're talking about here—the executive workforce—comes from the private sector. We want to attract the best people to do those jobs and we need to have competitive remuneration. The board has taken advice and the board has made the decision to balance that out with the notion that icare is a government agency and that we have a different approach to that than the private sector, removed some of the bonus and attributed the remainder to our fixed salaries so that we no longer have access to the incentive program that was there before, and, as a result, the base salaries have increased.

The Hon. GREG DONNELLY: Just to be clear, the bonus arrangement that existed, that we're talking about in the first instance, has now been completely separated and it's not available to yourself and executives—

RICHARD HARDING: It's not available to anyone at icare. There is no executive who will be earning a bonus, and no executive earned a bonus for the last three years.

The Hon. GREG DONNELLY: With respect to the bonus scheme, what was that bonus scheme?

RICHARD HARDING: It was different for different levels of the executive.

The Hon. GREG DONNELLY: What was yours?

RICHARD HARDING: Mine was up to 50 per cent of my fixed remuneration.

The CHAIR: Which is about comparable with other major insurers?

RICHARD HARDING: It is very similar. Perhaps, if I share with you, for the benefit of Mr Donnelly, some of the challenges of retaining staff and competing in this marketplace, an example of an executive who recently left—

The Hon. GREG DONNELLY: I've got limited time, sir. What I'm doing is, I'm being very precise. I do understand that this is not an easy line of questioning. I appreciate that, for obvious reasons. But I'm trying to get—

The Hon. WES FANG: Point of order: Mr Harding is seeking to clarify some of the evidence that he is providing. I understand there is limited time. However, in the circumstances that we are not, I would say, addressing the wider issue of how we are going to manage CTP and Lifetime Care, and we're focused on the man's salary, he should at least be given the opportunity to clarify that evidence, given that he has come here to provide evidence around, like I said, Lifetime Care and CTP. We're asking him about what bonuses he has received—

The Hon. GREG DONNELLY: It's all been ruled on. This has already been ruled on.

The Hon. ROD ROBERTS: There is no point of order here, Chair. Let's move on. We're on the clock.

The Hon. GREG DONNELLY: You are just trying to waste time.

The CHAIR: Mr Donnelly, I will let you continue with your line of questioning. To Mr Fang's point, if other members of the Committee want to ask different questions regarding the Lifetime Care and Support Scheme, let me know and I will give you the call.

The Hon. WES FANG: I thought that was the focus of why we're here today and not Mr Harding's salary. But, I mean, if that's what members wish to use their—

The CHAIR: We haven't agreed on fixed time for each member; we're having a free-flowing approach. At the moment, Mr Donnelly is questioning about salary and bonuses, which I will hand back to him on. But, Mr Fang, if you wanted to, given the limited time—

The Hon. WES FANG: I would like to focus on the things that are important to the people of New South Wales, which is how the scheme is operating and what we're going to do in the future.

The Hon. ANTHONY D'ADAM: You'll get your time to ask questions, Wes.

The CHAIR: I will hand to you next, Mr Fang. Mr Donnelly, if you've got another question or two, then, just to spread it around, I will hand over to Mr Fang.

The Hon. GREG DONNELLY: I just lost about five minutes, which was the purpose of all that. With respect to the removal of the bonus available to yourself and executives, how was the figure of $246,000 or $247,000 calculated as an amount? Presumably what we are dealing with—and I thought it was a removal of an element of notional value from the bonus across into dollars to be paid to yourself and other executive members, and a figure was determined. Thank you, you've clarified that bonuses are no longer available, but it still begs the question, how did the figure of $247,000 get created?

RICHARD HARDING: Mr Donnelly, I mentioned earlier, the board—and, really, this is a conversation that I would recommend you have with the chairman of the board because I think that's where the decisions are made, for this conversation.

The Hon. GREG DONNELLY: I do understand that, yes.

RICHARD HARDING: The board took advice, and I've explained earlier that this is about balancing our ability to compete in the marketplace for highly skilled capability to manage a very complex business. It does important work for the New South Wales community.

The Hon. GREG DONNELLY: We understand that.

RICHARD HARDING: We service over three million workers—

The Hon. ANTHONY D'ADAM: Mr Harding, the question was directed to how the figure was arrived at, not the context of the consideration of the board.

RICHARD HARDING: I will get there, Mr D'Adam.

The Hon. ANTHONY D'ADAM: It's basically a matter of fact that we're seeking to elucidate here, so if you could perhaps direct your answer to the—

RICHARD HARDING: I will get there, Mr D'Adam, if you let me finish.

The Hon. GREG DONNELLY: Please continue.

RICHARD HARDING: My point was the work that we do and the work that we do servicing the people of New South Wales is important, but it is also complex in nature.

The Hon. GREG DONNELLY: We understand that.

RICHARD HARDING: We're talking about actuaries, accountants, underwriters, lawyers, doctors.

The Hon. GREG DONNELLY: We understand that.

RICHARD HARDING: We're not talking about clerks. The board took advice, and this is about balancing up the need to compete in the marketplace to attract and retain that highly skilled capability and to meet the expectations from a public sector point of view and of the community of New South Wales. That is how the board, I believe, has made that decision. If you want more detail—I wasn't there at the time when the board made the decision to strike the conversion rate, and you'll need to talk to the chairman to get to the bottom of that.

The Hon. GREG DONNELLY: So you, as the CEO, have no idea about how that dollar figure was struck? Is that your answer?

RICHARD HARDING: The basis of it, Mr Donnelly, I have communicated to you, the board sought advice about achieving a balance and that—

The Hon. GREG DONNELLY: I'm asking you the question.

RICHARD HARDING: —is a decision that the board made. I wasn't in the room.

The Hon. GREG DONNELLY: You've already said that, yes. I know, yes.

The Hon. ANTHONY D'ADAM: But you must know, Mr Harding, where the figure came from?

The Hon. GREG DONNELLY: But the question I'm asking you, very directly, is—

The Hon. WES FANG: Point of order: There are two people talking; Hansard can't record that. I ask one member to have the call, and one member to put a question to the witness. It is not fair to have this tag-teaming.

The CHAIR: Mr Donnelly is currently questioning the witnesses, and we will soon move on to Mr Fang and Mr D'Adam, who haven't contributed yet.

The Hon. WES FANG: You mean move on to the things that are important to the people of New South Wales.

The CHAIR: They will have their turn. We are running out of time. Mr Donnelly, maybe this is your last question.

The Hon. GREG DONNELLY: I will ask it again. It is a very direct question to you, Mr Harding—and I think you would understand how direct I am being—with respect to the figure of $246,000 or $247,000, whatever it is, that you do not know, or were not told or informed about. Number one, first of all, the figure that was going to come your way, if I could use that vernacular—were you not aware of that in advance of the board making its final decision? Number two, do you not know how that figure was struck? So there are two parts to the question.

RICHARD HARDING: I can say in respect to your first question: absolutely not. The chairman and the committee that reviewed this process and made recommendations to the board excluded me from that process quite early on. I did provide some advice to the board at a very early stage, and then we decided that there was a clear conflict of interest in that conversation. So I was asked to abstain out of the room, and the board made its own deliberations, with advice from the external provider. What that conversation was, to part B of your question, about reaching the decision to get to a particular level of conversion from the gross entitlement of the bonus to the net increase in the fixed remuneration—I don't have that information. That's information you would have to talk to the chair about in terms of the deliberations that the board went through. I'm not sure what exactly it is you're looking for, Mr Donnelly. Are you looking for the conversion rate? I can tell you the conversion rate—

The Hon. GREG DONNELLY: Yes, please do.

RICHARD HARDING: —but that's irrelevant without their context.

The Hon. GREG DONNELLY: The conversion rate, as I understand it, is that the essential expunging of what was the then payable bonus to zero, or the reduction of it to zero, to dispense with it had a notional figure attached to value, which got converted to an increase for yourself and the other executive.

RICHARD HARDING: Yes.

The Hon. GREG DONNELLY: With respect to this value figure that was struck of $246,000 or $247,000, I'm trying to establish how that got calculated and what the basis of that was as a conversion of the bonus.

RICHARD HARDING: I can tell you—I think we've actually provided it in our media statement on our website—that the increase equated to 60 per cent of someone's entitlement under their performance incentive plan. How that was determined by the board is a question for the board; I wasn't in the room at the time, and it was totally appropriate that I wasn't in the room at the time. The basis of it, as I said to you, was that the board took advice from an external party, Guerdon, who provided them with a significant assessment of market rates relative to different roles across the organisation. The board took advice and made that decision. That's about as much as I can tell you.

The Hon. GREG DONNELLY: I conclude on this as an observation or as a question. For a person of your experience and background, I would have thought the actual idea of—as I understood your earlier answer—you presenting at an initial meeting of the board a document, a proposition, a statement or an explanation about conversion or the increase that you would receive and that discussion which was at that first preliminary meeting is quite an extraordinary thing to happen; that at a board level, a CEO puts presumably a document—correct me if I'm not right—on the table that is laying out a proposition with respect to the calculation of what their salary increase would be.

RICHARD HARDING: That wasn't the proposition I was putting forward.

The Hon. GREG DONNELLY: So that didn't happen at the first meeting?

RICHARD HARDING: As I said to you, I attended the first meeting, and I provided the board with advice about the strategic issues that I saw of retaining people and driving the performance of the organisation. Icare—as we know from history, Mr Roberts raised the issue of the McDougall review. I've talked about the McDougall review in respect to this issue. We know that there is an improvement to be done here, and we have a very large transformation program going on across the organisation. The ability for us to execute that transformation program is heavily reliant on our ability to attract the right people and to get the best people to icare. That was my advice to the board. In that conversation, we talked about the relative strategic value of incentives versus fixed remuneration. It wasn't in a conversation of X per cent or Y per cent. It was the broader conversation. That's why when the board moved to have those conversations, I was logically excluded from those, which is entirely appropriate. Maybe I've mischaracterised it in my earlier comments, but that's the nature of that engagement.

The Hon. GREG DONNELLY: It has been clarified, yes.

The CHAIR: Maybe what would be useful, given we look at the CTP and the Lifetime Care and Support Scheme in this inquiry, is that we have a table of the different insurers—whether it's IAG, Suncorp, QBE, Alliance—and then icare, which looks after the Lifetime Care and Support Scheme. In that table, we categorise the base salary and the bonuses of each of the different CEOs so you can see the comparison.

The Hon. ROD ROBERTS: I don't think that that's a fair comparison, Chair. Let me put this to you, Mr Harding. Incentives are not a good thing to have at icare because nobody ever meets the targets. The KPIs are never met. The return-to-work things, all these targets that icare have are never met. They're financially going down a black hole into a gurgle. It's just an abyss that you are standing on the edge looking of. That's why nobody wants incentives—you never meet them. Tell me this. You brought up, "We compete against the private sector." If you are the CEO of a private sector insurance company answerable to shareholders—

RICHARD HARDING: Which I have been in the past, Mr Roberts.

The Hon. ROD ROBERTS: Yes, you have been in the past, no doubt. We are the shareholders; we act on behalf of the shareholders in New South Wales. If you didn't meet your KPIs in a private enterprise and it was going backwards on a financial basis, how long would you be the CEO for?

The CHAIR: That's a very hypothetical question.

RICHARD HARDING: I reject the characterisations you have made about the current state of play, whether it's the Nominal Insurer or whether it's Lifetime Care. What I would say and what I earlier said to Mr Donnelly is that there is work to do at icare. We've been on a program of change—

The Hon. ROD ROBERTS: You can see why we are concerned, though, bearing in mind the history of icare.

RICHARD HARDING: Can I finish my answer, maybe? There is work to do. I'm not suggesting to you there isn't work to do. There is a reform program that we have in place. We have 157 recommendations from Mr McDougall that we are midstream implementing. That is a three- to four-year program of work, and we're into it about 18 months. There is a lot of work going on at icare to improve outcomes, but none of these schemes are short term in nature. To fix a motor insurance scheme in a private insurer is around about a 12- to 18-month period of time because it is a short-tail business. To fix a long-tail business like workers compensation or Lifetime Care, you have to take a long-term view. The average duration of these claims is four to eight years. It isn't going to turn around in one year.

I've had that conversation with Mr Mookhey a number of times. This has to be viewed as—the worst outcome that I could provide to you and to the community of New South Wales is to make a whole bunch of knee-jerk reactions in year one, increase rates and premiums, reduce the amount of claims benefits that people are receiving and then say to you it's all alright, because that isn't what the job is. The job is about balancing the needs of the people of New South Wales to be there to provide them with the services that they crucially need. People who are injured in workplaces or injured in motor vehicle accidents, as Dr Allsop's team look after, are vulnerable people who need help and all the people at icare are there to do that work. We have to improve how we do it and we have to make that more effective, but to make knee-jerk changes in that environment will not serve the people of New South Wales. We have to take a long-term perspective of this change process and recognise that it will take us time to get there. Your conversation about whether I should or shouldn't be paid—

The Hon. ROD ROBERTS: I didn't ask whether you should or shouldn't be paid. I never brought that up.

RICHARD HARDING: —is a conversation to be had with the board. No-one at icare has received a bonus for the last three years; no-one at icare will receive a bonus going forward. However, you do want the board, as they have done, to make a very strategic decision about structuring the ongoing and forward remuneration of the organisation to make sure we keep the best people there and that we attract people who want to help deliver those valuable and extraordinarily important services to the vulnerable people in our community. I think that is what's being missed at the moment. The purpose here is fundamental.

The CHAIR: I'm going to hand to Mr Fang, who has been incredibly patient.

The Hon. WES FANG: I'm renowned for my patience, Chair. Just before I go to some questions, I will provide you the opportunity to clarify two things. Mr Harding, could you advise who the chair of the board is?

RICHARD HARDING: I think everybody knows, Mr Fang, that the chair of the board is Mr John Robertson.

The Hon. WES FANG: He is a well-associated member of the Liberal-National Party. Is that right?

RICHARD HARDING: I think, Mr Fang, you well know he's a former member of the Labor Party.

The Hon. WES FANG: He was a leader of the State Labor Party. Is that right?

RICHARD HARDING: The reality is I would recommend that if the Committee wants to understand this issue in more detail, the best person to talk to is the chairman of the board because that's where the decision is made and that is the entirely appropriate place for the decision to be made.

The Hon. WES FANG: What I'm alluding to is that this isn't a political decision, is it? The person that made the decision around your salary is a former leader of the Labor Party.

RICHARD HARDING: I 100 per cent agree with you, Mr Fang. It's not a political decision. As I was just trying to relay to Mr Roberts, this is about ensuring icare has the best people available ongoing in the future to continue the transformation that we've got underway and to ensure it's successful. All of us want the same thing ultimately—the people sitting in this room and the people of New South Wales. We want a set of schemes, whether it's the Nominal Insurer, whether it's the Lifetime Care scheme, the dust diseases care scheme or the other eight schemes that icare operates on behalf of the New South Wales Government—we want all of those schemes to be operating well and delivering valuable services to people who need them day in and day out in their lives.

The Hon. WES FANG: Having provided you the opportunity to clarify those points, let's move to the substance of why we're here today, which, in your instance, would be the Lifetime Care scheme.

The Hon. GREG DONNELLY: Point of order: The reference to "political decision", which was in the member's exchange—

The Hon. WES FANG: A couple of minutes ago.

The Hon. GREG DONNELLY: Yes, a couple of minutes ago. I don't believe that that's understood by the witness. He was led through a series of questions and the phrase "political decision" was dropped in. It was never explained what "political decision" meant. We have a real prospect before us that the witness was responding to a question where the underpinning point about "political decision" was never explained or it was left to his own—

The Hon. WES FANG: You're going to have to explain to me what I meant by "political decision", given that you're putting so much emphasis on it.

The Hon. GREG DONNELLY: No, I haven't finished taking my point of order. The issues in my questions were nothing to do with political decision. They were matters of fact.

The Hon. WES FANG: Of course.

The Hon. GREG DONNELLY: To impugn there was dropping into the line of questioning "political decision" as part of the prosecution of my questions is highly problematic. The witness has been led down the merry path about a "political decision" when, in fact, the questions were matters of fact.

The Hon. WES FANG: To the point of order: The very nature of the fact that I said it is "not a political decision" indicates that I'm saying it was not political. Whatever Mr Donnelly is seeking to imply by using the term "political decision ", what I am saying is that my indication that it was not a political decision—that it was an independent decision devoid of politics—would render Mr Donnelly's point of order moot.

The CHAIR: I don't think any of you were saying that it was a political decision. I think you were asserting that it was not a political decision.

The Hon. WES FANG: That's exactly what I'm saying.

The CHAIR: Mr Harding agreed that it was not a political decision.

The Hon. WES FANG: Which is exactly what I'm saying.

The CHAIR: Mr Donnelly never said it was a political decision. So you are all in fierce agreement with each other. I don't think there's any point—

The Hon. WES FANG: Which is why I don't understand why my time has been wasted in the way that it has.

The CHAIR: There is no point of order. Mr Fang, continue with your line of questioning.

The Hon. WES FANG: Gentlemen, I go back to the Lifetime Care scheme. Obviously we've spoken about some of the challenges that exist in a long-tail scheme. In previous hearings we heard about some of those challenges and that perhaps the Nominal Insurer, who had taken on the Nominal Insurer cases, wasn't best geared

to take on some of those long-tail cases. Could you provide some insight into how, moving forward, long-tail schemes will be managed, what you see as the future of those Lifetime Care cases that will be before icare into the future and perhaps how those costs can be amortised without leading to large premium increases in the short term?

NICK ALLSOP: Thank you for the question. It's great to be able to talk about the future of the scheme because you're absolutely right: Lifetime Care, being a long-term scheme, will continue to grow for at least another decade before it even begins to hit a steady state. While we have 1,700 participants in the scheme at the moment, that number will double or potentially even triple before it gets to a stable position. So it's absolutely critical that we look at how those services are provided. At the moment what we deliver is a very bespoke service. We do have a lot of individual one-on-one planning with participants of the scheme to make sure we understand their life goals, what their situation and circumstances are like and how much support they have around them so that we can provide the right levels of assistance to achieve maximum quality of life for them and improve their rehabilitation prospects post-injury.

What we need to do is make sure that we're set up to do that in a scalable and sustainable way going forward as the scheme continues to grow. To that end, we are examining technology and how that's emerging. For example, we've seen some great work that Royal Rehab is doing around assistive technology and we're looking at how we potentially leverage some of that for our participants, how we trial it in our participant groups, so that we are providing more personal empowerment and reducing that reliance on support workers or attendant care potentially in the future, especially given the constraints that we're facing in that market.

We're looking at the attendant care market itself—how we better support providers in that market. We know it's demanding work. We know it attracts a certain cohort of people who are prepared to do the work, but they struggle to remain in that workforce because of the pressures of it. It can be difficult to deal with people who have challenging behaviours as a result of their injuries. What support can we provide for the employees of these attendant care organisations from a mental health perspective, from a wellbeing and resilience perspective, that will hopefully allow them to remain in the workforce longer, doing the work that they're passionate about and find so rewarding?

Alongside that, it's how we encourage people into that career path. Are there different training or accreditation opportunities that can be pursued? Are people even aware of it as a career path? As the nature of work changes and we move more toward personal services being the career growth opportunities, how do we make people aware of the rewards of providing support work and encourage them into those occupations? Sorry, I've interrupted.

The Hon. WES FANG: No, I was just listening to your answer. There would have to be some level of modelling or assumptions made that the scheme, as it currently is presented to us, will improve as it goes on. What are those assumptions? What is it that you're relying on for that scheme to improve its financial position into the future? Is it the scalability? Is it the ability to amortise costs over a greater number of participants? Is it that there will be efficiency dividends that will be found in the future? There must be some of those assumptions. What are those assumptions, and what are the risks to those assumptions? Because—let's be honest—in the long time that I've been dealing with insurance issues with this Committee, I've come to the conclusion that sometimes the assumptions are exactly that and that they have large variabilities. What are your assumptions? What are the risks to those assumptions?

NICK ALLSOP: We're very cautious about the assumptions we make, especially around Lifetime Care. Because the scheme is deeply committed to providing the services that people who are participants of the scheme need, we're conscious of not assuming that we're going to be able to reduce those services at any point in the future. In fact, if anything, they potentially expand. Where we are making assumptions is around how much digitisation of our own work processes we can do, how much we can strip out the manual support that goes behind the providing of those services, thereby enabling people to provide that face-to-face support that the participants of the scheme need and get value from.

The Hon. WES FANG: Can I jump in there though? That didn't work well last time you tried automating some of the systems.

NICK ALLSOP: We're very cognisant of the need to do this in a way that will work for the participants of the scheme. When you are dealing with people who potentially have cognitive challenges as a result of brain injury, providing them with an app to better manage their time or their appointments and things like that may not be the best option. We're looking at how we can provide self-management services or self-service options that will work for our participants in the scheme. But some of our back office processes we know we can improve. Some of it is just about the actual process itself, it doesn't need to be systems- or technology-based, but we can

continue to make improvements there and we're absolutely looking to do that and we make those into our forward-looking budgets as assumptions.

The Hon. WES FANG: What would be the fallback position if you are not able to achieve those efficiency dividends that you're banking on? Is there a plan B?

NICK ALLSOP: There's always a plan B, absolutely. It's a person-based plan B. If we can't achieve those efficiencies, then it will require more people to support the injured participants in the scheme. Because again, the last thing we will ever do is compromise the service provided. If we need more people, we will get more people.

The Hon. WES FANG: The question I was asking was if you're not able to find the efficiencies, which will have a flow-on effect to the costs, what's plan B in relation to managing the costs of the scheme into the future if you are not able to rely on the assumptions that you've made in order to bring the scheme into line in the future? Is there a plan B for that aspect of it?

NICK ALLSOP: The first and foremost, as I said, is ensuring that we provide those services to injured people. Once we've worked out the cost of that, then the cost of delivery of that will be a function of our ability to do that efficiently and effectively, but ultimately all of that cost has to be funded through the levies. Should the need arise—

RICHARD HARDING: Perhaps if I can jump in?

The Hon. WES FANG: Yes.

RICHARD HARDING: These are the sorts of questions that we had a conversation with our board about during our planning processes and trying to understand. From a management perspective, our goal is—we set ourselves assumptions, as you pointed out, or targets around improvements in the outcomes, whether that's cost outcomes or outcomes for individuals, participants in the scheme. Naturally as the world evolves through time, because we are—I made the point these are long-term schemes. We also see technology evolve and we also see application of technology through the health sector increasing.

One of the examples that I think is relevant is the monitoring capabilities now. Most people now have an Apple Watch that can tell them about their heart rate et cetera. For a lot of the people in the Lifetime schemes, we can look to the technology of the future to help support them with their needs, helping create ways that they can be more independent. Monitoring services and devices are actually critical in that for a lot of these people in terms of thinking about timing for medication, standards of blood pressure and so forth, and other issues.

I think the outcome here is that we're always looking for ways that we can use technology better, whether it's in our back office to remove manual processes and automate that. You've made a reference to the history of icare in terms of our ability to automate. I can tell you that we are already automating it. We have just done an incredible amount of work to launch and to make the CTP Care capability available and that was done on time and on budget by Dr Allsop's team. It's a real role model for us internally as to how we want to run programs to enable us to make sure we do deliver on those changes. I think there is an ongoing process here—that's what I'm trying to get at—of continually refining what we do to meet those assumptions. It is not about giving up on those assumptions; it is about refining the options that we've got in front of us every time we look at it.

The Hon. WES FANG: I am going to a point the Hon. Rod Roberts made during his questioning. You talk about management options looking forward into the cost for the scheme, but also, in effect, when you're looking at this scheme—I'm a simple bloke, and I see this as a simple operation. If costs are going up, there are only two ways you can really manage that: Put the premiums up or reduce the costs to the scheme, to make everything in equilibrium. You talked about assumptions that are going to help improve the bottom line moving forward. Have you made assumptions around costs increasing for certain things?

For example, given that it is a long-tail scheme with a long period of operation where participants are obviously involved for years, decades et cetera, where there are advances in medicine—in the same way you have spoken about technology advancing the opportunity to provide cost savings—the technology improvements it will see in medicine will no doubt ultimately result in participants living longer, participants accessing the scheme for longer and, therefore, increasing the cost, but also those technologies will cost more to keep those people alive. It's a double impact. What assumptions have you made around the increasing cost of the scheme? How do you factor those in?

NICK ALLSOP: You asked a question before about risk, so I will touch on that as well. But you are absolutely right: People are living longer, which is a wonderful thing, and people with catastrophic injuries are also living longer, which is also a wonderful thing. That is allowed for by our actuaries in their modelling of the scheme. They do make an allowance for life expectancy, because the modelling is done at an almost individual level because of the bespoke nature of the injuries and the support required. That is factored in. You asked about

whether or not we allow for medical advancements and technology and things like that. Unfortunately, that's incredibly difficult to do, so the answer is no. It is not allowed for explicitly until we see evidence that it's having effect. But it can go both ways as well. You mentioned the cost of some of that technology. Absolutely it could be very expensive when it first rolls out. But if the impact is that it reduces people's reliance on, say, attendant care support—and that's 70 per cent of the cost of the scheme currently—we may actually see a cost benefit from it.

But what's most important is that people get the right support and they get the right quality-of-life outcomes aligned with their goals and things like that. If we have a participant who is particularly keen on testing out equipment and things like that, we look for ways to do that under the legislation. If we can find a way, we will certainly help them to do that. One of those key risks that I think needs to be called out is the attendant care cost pressure. We are 2 per cent of that market but it's 70 per cent of our cost base. We don't set the price there. All those pressures that Mr Harding talked about in terms of the rising rates paid to workers in the aged-care sector that may lure people out of the disability sector; the challenges with not having as many overseas students come in, who used to fill a lot of those roles—so we've got a real supply side punch happening—the expanding reach of NDIS; and their need for workers for the participants of their scheme all creates a risk point for us and it is something that we are closely monitoring and that provides sleepless nights for myself.

The Hon. TAYLOR MARTIN: You just mentioned, Mr Allsop, about the NDIS and the struggles with Lifetime Care. Do you mind expanding a bit more on the relationship between the NDIS and Lifetime Care, and the struggles as you started to touch on?

NICK ALLSOP: I wouldn't characterise it as a struggle between us. They are a large consumer of resources in the same market that we operate in. There is that natural challenge that we face in terms of making sure that we get the support workers we need and the engagement that we need for our participants, but we do collaborate with the NDIS. We have almost 140 participants that are in both our scheme and the NDIS, so we talk about those individual participants on a regular basis to make sure that they're getting the right support from each of the two schemes. In the main, they get most of their support from the Lifetime Care and Support Scheme but the NDIS does help them with recreational travel and other aspects that aren't covered under the Lifetime Care scheme. We are in regular discussion around that. We also collaborate around things like the attendant care market and the challenges that we're facing there. We are having ongoing discussions about what we can each do to improve the number of workers and the quality of the workforce there.

The Hon. ANTHONY D'ADAM: Mr Harding, did you receive the letter sent by Judge Phillips from the Personal Injury Commission in response to the ALA's submission to this inquiry?

RICHARD HARDING: I did, Mr D'Adam. But I, unfortunately, don't have it with me. Let's try to—

The Hon. ANTHONY D'ADAM: That's alright. Did you read it?

RICHARD HARDING: Yes.

The Hon. ANTHONY D'ADAM: That's good. What was your understanding of why you were cc'ed into it?

RICHARD HARDING: I believe the judge wanted to make sure we were aware of his points of view in respect to the issues that had been raised by the ALA.

The Hon. ANTHONY D'ADAM: Do you have a view about the ALA's contentions around delays in the dispute resolution side of the PIC's work?

RICHARD HARDING: We have found that the PIC has operated very effectively in what has been a very challenging environment for them in terms of their COVID issues that prevail there. There's been a lot of work that they've done to deal with that backlog. My understanding is they've largely addressed that. There is some outstanding work to be done. We generally find that the processes that work there, from a workers compensation point of view, work extremely well and people get their outcomes in a very constructive way. I don't really have much more to say on the ALA's point of view.

The Hon. ANTHONY D'ADAM: I might quickly ask about the attendant care issue. I understand the contracts for the panel of attendant care providers is up for renewal. How many providers are currently there on the panel?

RICHARD HARDING: I'll let Dr Allsop answer.

NICK ALLSOP: I think we have—and don't quote me on the exact number—around 80 members of the existing panel. But you're absolutely right. We're going through a tender process to engage a new panel of providers and the level of interest has been above that current provider number.

The Hon. ANTHONY D'ADAM: Just in terms of the spread, how many workers are engaged by those 80 providers? What are we talking about in terms of the numbers of workers?

NICK ALLSOP: I'd have to take the exact number on notice. To tell the truth, I'm not sure we actually have that. But we've got some very large providers in there, the likes of Southern Cross, and some very small providers on the panel as well. It ranges in terms of the number of support workers in each of their organisations. I can have a look and see if we have the figure but we may not have an exact number.

The Hon. ANTHONY D'ADAM: Is it fair to say that the five largest providers represent, perhaps, 80 per cent or so of the attendant care workers? Or is it more distributed than that?

NICK ALLSOP: It's a little bit difficult to quote an exact figure and it will depend on whether you're looking at—

The Hon. ANTHONY D'ADAM: On notice, if you could provide the data, that'd be useful, just in terms of the spread.

NICK ALLSOP: Yes, certainly. In perspective from our—

The Hon. ANTHONY D'ADAM: In your submission, you cite the issues around the increases in the Social, Community, Home Care and Disability Services Industry Award as being a factor that is placing pressure on other providers of attendant care. You make a qualification that, because your funding model is different, that's not as much of a concern for the Lifetime Care scheme. Why is that?

NICK ALLSOP: I think the reference we're making there is the minimum hours of support and the split shift requirements in the award. Some of the changes to the award recently have required that people, where they're providing a single hour of attendant care, bill that essentially as two hours. Because most of our programs, or a lot of our programs, are quite large in terms of the support provided, that's less of an issue for us than it might be, say, for the NDIS, where they may have a broader spectrum of people with different injuries who may require different levels of support. They may have more of those short blocks of time than we do in our programs.

The other component was around the split shifts. Where you've got a worker that comes in in the morning to support somebody with the start of their day and then comes back in the evening and supports them again at the end of their day, that's now structured differently, almost to the point where some of the workers have to be employed by different agencies to be able to provide both of those shifts without incurring significant additional cost. Again for us, because we are set up to fund people based on their needs, that's exactly what we'll do. The difference, I guess, between us and the NDIS is many of the participants of the NDIS receive a package of funding and then have to source their own workers. This is creating additional complexity for them and a challenge in terms of how far that package of funding goes whereas we don't have those same challenges.

The Hon. ANTHONY D'ADAM: In terms of the participants of the scheme, they don't get to decide which attendant care provider they access? Is that the case—they don't actually get to decide that?

NICK ALLSOP: Absolutely wherever we can, we provide people with choice, because it is a very personal service. We are really dedicated to trying to support people to access workers that work for them, that fit into their family life, that they get on well with. That's not always possible, unfortunately, especially if people are living in regional and remote areas. The choice may not be there but, wherever we can, we work with our participants to ensure that the support workers they have engaged fit into their family life and provide that quality of care that they're seeking.

The Hon. ANTHONY D'ADAM: Can I just ask one more question on notice—

The CHAIR: Very quick.

The Hon. ANTHONY D'ADAM: I just wanted to ask if you could provide us with some details about how you ensure these attendant care providers are meeting their industrial relations requirements. How does Lifetime Care satisfy itself that these providers are actually paying award rates of pay and meeting their industrial—

The Hon. WES FANG: How does that relate to the terms of reference?

The Hon. GREG DONNELLY: You're wasting time, Wes.

The Hon. ANTHONY D'ADAM: It's on notice.

NICK ALLSOP: Yes, we're happy to take that on notice.

The Hon. ANTHONY D'ADAM: It's about the administration of the scheme. I think it's quite clear that there's an issue there.

The CHAIR: The witnesses have taken that on notice. Thank you so much for attending today. Apologies, we've run out of time and any questions on notice, like the last one, as well as any additional questions that Committee members may have—if you could provide them within 21 days. The secretariat will be in contact. Thanks so much for attending.

(The witnesses withdrew.)

(Luncheon adjournment)

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

The CHAIR: Mr Cohen, thank you for joining us today. Would you like to make a short opening statement?

SIMON COHEN: Thank you for inviting me to appear today. The Independent Review Office is in our second year of dealing with complaints by persons injured in motor accidents about CTP insurers. Since 1 March we have received some 1,500 complaints, most commonly about injured persons' access to weekly payments and treatments. These complaints often allege delays, wrong decisions and poor case management by insurers. Our complaints work can solve many of these matters quickly. Almost 50 per cent of the complaints were solved with the injured person receiving a benefit or the insurer taking an action, and over 90 per cent were finalised within 15 days. A key reason for this is that insurers take IRO complaints seriously. They have experienced case managers who deal with our complaints. They respond promptly and, for the most part, thoughtfully and constructively. Without this, we could not effectively perform our role.

Our submission reflects on common issues for these complaints, and we believe there are opportunities to improve the CTP scheme to ensure claimants are properly informed about insurer decisions and their rights, to better specify time frames for making key decisions and to allow claimants to progress claims where insurers do not make timely decisions. Our submission also seeks to inform the Committee's review of legal assistance for claimants in CTP matters. Current arrangements that largely exclude paid legal assistance until a dispute is lodged with the Personal Injury Commission are not striking the right balance and are disadvantaging injured persons. Conversely, if legal assistance is available earlier, injured persons are likely to benefit, with the right decisions being made sooner and a reduced need for costly and time-consuming dispute processes.

One option to address this is to have a modified Independent Legal Assistance and Review Service, or ILARS. Our submission notes that, with appropriate modification, ILARS is a model that can address unmet legal needs in an effective manner. There are very recent submissions to the Committee that also address this issue, including the Bar Association and Law Society submissions that are supportive of a modified ILARS in CTP, and the ICA and SIRA submissions that are not. Given they have only been recently published, I am limited as to the comments I can make. However, there are a number of matters in the SIRA submission that concern me. Given time constraints, I will make brief comment on a few of these.

The executive summary states that SIRA agrees ILARS should not be expanded into the CTP scheme. One reason given is that premium prices would be impacted and risk scheme viability. This appears to be based in part on an actuarial assessment that has not been released and is subject to a range of uncertainties. It also appears based in part on a work value assessment that is incomplete, based on a small sample of files, and that has not been released. It is therefore difficult to provide any informed comment on this reason. A second reason given is that implementation of options that enable end-to-end support for injured people is underway and will be the subject of public consultation. Information in the submission suggests the model is an enhanced SIRA CTP Assist and increased SIRA regulation. It is unclear what additional legal supports are proposed.

As the statutory review of MAIA noted, CTP Assist cannot replace the role of a lawyer who can both advocate for the injured person and provide advice about their individual circumstances. While active regulation is positive, it also cannot replace the role of a lawyer. A further reason provided by SIRA is that ILARS has not been tested through an independent review process. The submission notes two external assessments of ILARS conducted in the past two years, one by Nous Group and the second by a review committee of experts independent of the IRO. These reviews have been largely positive about ILARS. In addition, though, there are the regular reviews of the personal injury compensation system, including the role of IRO and ILARS, conducted by this Committee, and there are now financial audits, internal audits, and user experience surveying, all conducted independently of the IRO.

There are a number of inaccuracies, omissions and misstatements in the submission. As just one example, there is an overstatement of the increased costs of ILARS since 2015—which has increased by 75 per cent, not 175 per cent as stated. The submission provides no context to this increased cost and the drivers for it. The SIRA submission also states that there is a conflict of interest in the IRO providing legal services and setting legal costs. This statement fundamentally misunderstands ILARS. IRO does not provide legal services; we only fund these services. Independent private lawyers provide the service.

Perhaps the matter of most concern, however, is that before consulting on the outcomes of the legal support review and making available the evidence for stakeholders to consider and comment upon, SIRA states that ILARS should not be expanded into the motor accidents scheme. If that view has been formed without the opportunity to complete evidence gathering about the various options, and to engage and consult with stakeholders and properly deliberate, then it does not reflect the careful consideration recommended in the statutory review and

may call into question the outcomes of the SIRA legal supports review, which, in my view, would be regrettable. I welcome the opportunity to discuss these and other matters with the Committee.

The CHAIR: Thank you for your opening statement. On the issue of ILARS, have you taken a look at the Insurance Council's submission?

SIMON COHEN: I have.

The CHAIR: I will read part of it and then get you to respond with your view, which I assume will be a counterview. It states:

> The introduction of the ILARS into the Scheme would increase administration and legal fees, paid for through higher CTP policy levies, and could introduce a more complex, adversarial and drawn out process as proceedings become more formal and legalistic, contrary to the purpose of reform and objects of the MAI Act.

I know you addressed some of this in your opening statement, but could you respond to that paragraph from their submission as well?

SIMON COHEN: Of course. Perhaps if I could address the last element first? The statutory review of MAIA considered this issue and, I think, concluded that simply enabling increased access to legal assistance for people who are injured in motor accidents does not, of itself, therefore result in an adversarial system between people injured in accidents and insurers. I don't agree that there's a corollary between enabling people to have access to expert advice and a consequent increase in the adversarial nature of the system.

In fact, conversely, where injured people have the opportunity to be properly advised—to be assisted in the investigation of their matter to see whether they have got an appropriate matter that can be taken forward, and to assist them, for example, in making an appropriate internal review request with all the relevant evidence that may be persuasive for an insurer—it may, in fact, reduce levels of disputation and result in matters being finalised before they need to be referred, for example, to the Personal Injury Commission.

I point to the example in the workers comp system, where most of the matters that are finalised by way of a final agreement or a decision of the Personal Injury Commission are actually able to be finalised before they land at the commission. A key contributor to that is because the lawyer has been able to properly investigate the matter and been able to provide a compelling case to the insurer that enabled them to make an informed decision in relation to it. I suppose those would be my comments.

In terms of cost, I suppose, in part, it depends on exactly how the scheme is designed. I think it's acknowledged that whatever form of additional legal assistance might be put in place, and however it is provided, it really depends then on when that access will be provided as to what the ultimate costs of that might be. There may be an approach that is different in CTP to workers compensation. That would need to be the subject of detailed and appropriate consultation.

The CHAIR: Do you have any views or thoughts about the performance of PIC?

SIMON COHEN: Certainly the Personal Injury Commission has been up-front about the challenges it's had in terms of working its way through matters, particularly where medical assessments are required during the pandemic. I would observe that one of the things that they have sought to do regularly is to give information to the various parties about whether there might need to be cancellations or delays or different ways of providing those and how that might impact on the availability of those services. But there's no question that those matters, particularly the movement restrictions and the public health restrictions, have had an impact on the ability of PIC to be able to get through those medical assessment matters. I certainly am aware that there's an active program of work to try and increase the velocity of matters through the Personal Injury Commission. My understanding is that it's much more likely to affect CTP matters than it is workers' compensation matters, where there's much less of a queue or backlog of matters.

The Hon. GREG DONNELLY: Thank you, Mr Cohen, for your submission and coming along today. I have a relatively small number of questions to go through, given the time, so I will need to move quickly. They are in no particular order. The first one has come up in the context of some questioning earlier today of some witnesses that you may or may not—because of time commitments—have had a chance to become aware of. There was a piece of correspondence dated 10 November 2022 on the letterhead of the president of the Personal Injury Commission—quite a lengthy piece of correspondence—dealing with some matters that he saw and believed are of concern with respect to a submission made to this inquiry by the Australian Lawyers Association—the ALA. We are aware that you were cc'ed into that piece of correspondence. Is it correct that you received that?

SIMON COHEN: I did receive that correspondence.

The Hon. GREG DONNELLY: I presume you had a chance to read and review it?

SIMON COHEN: Certainly. I read the correspondence in the context also of reading the ALA submission and preparing myself to appear before the Committee today.

The Hon. GREG DONNELLY: With respect to the judge's correspondence to yourself, what did you understand it was trying to do? It was sent to you—cc'ed, carbon copied. What did you believe the intention of that was, directed to you?

SIMON COHEN: I can't speak for the judge or the president—

The Hon. GREG DONNELLY: No, but you received it and you are obviously the Independent Review Officer. It was sent to you in your capacity. What was its effect on you?

SIMON COHEN: My understanding was that it sought to respond to some matters that had been raised in the ALA's submission to the Committee and to put on the record steps being taken by the commission to effectively manage the cases that it was dealing with before it, and to do that in a way that was open in the context of being made available, not only to the Committee but to a range of other stakeholders in the personal injury compensation space, for want of a better way of putting it.

The Hon. GREG DONNELLY: So your sense is this—and I am sorry for going through this, but it has been a basis of some discussion today—it was received by you as something in the form of a piece of correspondence trying to inform people about views and to place them on the record.

SIMON COHEN: That was my understanding.

The Hon. GREG DONNELLY: That was the way you understood it.

SIMON COHEN: That's right.

The Hon. GREG DONNELLY: Are you aware that his correspondence was cc'ed to a number of other people, including yourself?

SIMON COHEN: When I received the correspondence, I saw that I was at the back of the correspondence on the list of a number of people who had received the correspondence.

The Hon. GREG DONNELLY: On notice, I'm wondering if you would be able to provide the Committee with that part of the email or that email sheet or cover sheet that has the complete list of who was cc'ed into it.

SIMON COHEN: Of course.

The Hon. GREG DONNELLY: Having read the piece of correspondence and after forming your view that you just described and explained helpfully about the purpose of it, what did you do with it? Did you do anything in response to it? Did you write back and say thank you? Did you speak to anyone about if they had received it as well and what their views were? How did you deal with it?

SIMON COHEN: At the time of receiving it, I was contacted by the judge to let me know that he was forwarding it to me for my information.

The Hon. GREG DONNELLY: Was that before or after you received it, to the best of your recollection?

SIMON COHEN: To the best of my recollection, it was on the day. Whether it was before or after, I can't say.

The Hon. GREG DONNELLY: That's fine. What did he say to you?

SIMON COHEN: The conversation was to let me know that he had written to me about it, but he also wanted to speak to me about a proposal that the commission was looking at to limit the number of pages of evidence that might be permitted to be lodged by parties in proceedings before it. That was the primary purpose of our conversation—to discuss that proposal.

The Hon. GREG DONNELLY: Sorry to keep going down this rabbit hole, but the conversation had more than one element to it? It was to let you know or to confirm that a piece of correspondence was to be emailed to you. Did he explain to you what was going to be in that correspondence, to the best of your recollection?

SIMON COHEN: The best of my recollection is that it was responding to matters raised in the ALA's submission to the Committee.

The Hon. GREG DONNELLY: What did you say in response to that? Did you comment about what he put to you about the purpose of the letter, or did you say you had to wait and see? How did you handle it?

SIMON COHEN: I said I would review the correspondence.

The Hon. GREG DONNELLY: Did you indicate to him that you would get back to him with your response to his correspondence?

SIMON COHEN: No.

The Hon. GREG DONNELLY: With respect to the second part of the telephone conversation that you have referred to, did that tie back into the first part of the conversation about the correspondence or was it treated as a separate discrete point that he wanted to discuss with you?

SIMON COHEN: It was a separate and discrete point.

The Hon. GREG DONNELLY: Could you just repeat for the purposes of our clarity that particular point that he raised with you in that conversation?

SIMON COHEN: Yes. It concerned a proposal that I understand the commission is exploring about whether to limit the number of pages of evidence that a party might lodge with an application to resolve a dispute with the commission—to limit the number of pages to 500 pages as a measure to increase the efficiency of the commission and its dealing with matters.

The Hon. GREG DONNELLY: If I could use this phrase, it was a conversation and after dealing with the first matter and moving on to the second, he was just sounding you out or asking you perhaps to think about it and come back to him?

SIMON COHEN: More, really, informing me about it being a matter that the commission was considering through its rules committee and the reasons why the commission was exploring that. Also, in that context, I asked some questions about trying to understand the number of matters that might be impacted upon it and whether that was a practice that was used in other jurisdictions, to inform my understanding of the proposal.

The Hon. GREG DONNELLY: Did he invite you or provide you with the opportunity to give some further thought and reflection to it at this part of the discussion and come back to him? Or was it just a back and forth on the phone to give you a bit of a heads-up?

SIMON COHEN: I think it was more the latter: to give me a heads-up about the commission actively considering the matter.

The Hon. GREG DONNELLY: Did he indicate to you that this was something that he was broadly canvassing with others?

SIMON COHEN: He indicated it was something that was going to be considered by the rules committee. The commission has a rules committee, and that includes a range of stakeholders. It was in that context.

The Hon. GREG DONNELLY: And as far as you could understand from the conversation, this was something that was imminent? It was moving towards some settled position, and this was a case of just discussing it with you?

SIMON COHEN: My understanding was that it was something that was going to be considered by the rules committee this year.

The Hon. GREG DONNELLY: I do have some more questions, but I'm going through a bit here. The Hon. Rod Roberts? I have got plenty more, but—

The Hon. ROD ROBERTS: If I can continue on that line of questioning for a moment. First of all, thanks, Mr Cohen, for coming along today and for providing your detailed submission. This is the first time I've heard of this. I'm a little bit perplexed as to why a commission of any type, or any tribunal, would want to limit the amount of evidence that was placed before it when making a determination on something. In your experience, could it be necessary, in some cases—in more serious and complicated matters—to provide more than 500 pages of evidence to accurately outline a position?

SIMON COHEN: I'm not across the details of the proposal. My understanding is that it would allow for exceptions or circumstances where that might be necessary. One of the key issues it's seeking to address is where large amounts of information that might not be necessary for the commission to deal with are being placed before it—large volumes of clinical notes and repeated copies of reports. One party might lodge a report, and then another party lodges the same report—those types of matters. That's my understanding. It's something where there would be permitted to be exceptions to it, but it was thought to be something that would remove information that might not be necessary for the commission to consider in arriving at its determination.

The Hon. ROD ROBERTS: I'll change the course of questioning now. You said earlier—it may have been in your opening statement—that, since March, there have been approximately 1,500 complaints.

SIMON COHEN: Since March 2021.

The Hon. ROD ROBERTS: I want to get to the basis of this. Simply because somebody lodges a complaint—sometimes there's no substance to the complaint.

SIMON COHEN: That's true.

The Hon. ROD ROBERTS: On average, what sort of percentage is frivolous? Or do we have 1,500 legitimate, definite complaints?

SIMON COHEN: When we deal with complaints, one of the first questions we ask is: Is it a complaint that's within our authority to deal with? Some of those complaints weren't within our authority to deal with. A common example of that is if someone said that they had property damage rather than a personal injury.

The Hon. ROD ROBERTS: I'm glad you've said that. I looked at one of the charts you provided, and it says that 198 complaints are about property damage. I was sitting here scratching my head, when I was reading your submission, over how could CTP have anything to do with property damage.

SIMON COHEN: They don't.

The Hon. ROD ROBERTS: That addresses some of that.

SIMON COHEN: We have actually taken steps, going into this new financial year, to reclassify those as inquiries, rather than complaints, to be much clearer about that. More generally, there might be complaints where we say to someone, "If you haven't raised them with the insurer, you need to do that first." We will reject those complaints. Most of the complaints that we deal with do have a legitimacy to them. Fifty per cent of the complaints we were able to solve, and the insurer paid a benefit and took an action. That might've been changing a case manager, assisting the person with a different medical examination or whatever it might be. Sometimes it's just a matter of providing information. The injured person hasn't got all of the information they need to be able to understand the decision that has been made.

The Hon. ROD ROBERTS: Further to that, going back to something you said previously—and I've taken handwritten notes here, so it's probably not exactly what you said. You said something along the lines of, "We need to inform potential complainants more about their rights or provisions." How should we do that?

SIMON COHEN: One of the things that we think could contribute to that is when an insurer is making a decision—for example, to deny liability or to refuse a particular claim for treatment—to actually provide proper reasons about why they're doing that. There's a model in section 78 of the Workplace Injury Management and Workers Compensation Act that really outlines in more detail about concise statement—explaining exactly why you've made a decision—and also providing the evidence that's relied upon to make that decision. That's one example that we had.

The Hon. ROD ROBERTS: Could I rudely interrupt?

SIMON COHEN: Of course.

The Hon. ROD ROBERTS: You say that is in the workers compensation Act?

SIMON COHEN: That's right.

The Hon. ROD ROBERTS: It's not in the CTP Act then? We should call it the Motor Accidents Act, sorry.

SIMON COHEN: The provisions for CTP aren't as detailed as they are. There are some good provisions around what needs to be given. We think they can be made better. We think that there's a good model in workers compensation that could be drawn upon for that.

The Hon. ROD ROBERTS: I know this is probably an overly simplistic view—again, you can stop me if I'm wrong—but are you suggesting and recommending that we look at transferring that component of the workers compensation Act and taking it over into the Motor Accidents Act in terms of what the insurer has to provide in terms of concise information backed up by some evidence? That may alleviate some of the complaints that you receive.

SIMON COHEN: You're absolutely right. With some of the complaints we deal with, an injured person comes to us and says, "I don't know why this treatment has been refused." There was an example of that in one of our case studies. When we looked at the insurer's notice to say why it had been, it was literally a couple of lines. It wasn't comprehensive and didn't legitimately explain why the treatment had been refused. When they were taken on internal review, much more detailed reasoning was included. For the injured person, there were some treatments that they were successful in having and some that they were not, but they were happy just to get on

with their recovery after that. I think that shows the value of people understanding the decisions that are being made that affect them.

The Hon. ROD ROBERTS: I think we'd all agree that the provision of information certainly helps you in your decision-making process and where you go from that. Can I ask you this then? Is there one insurance company more than the other that is—I'm putting you in a position, I know, but you are on oath to give evidence. I'm not suggesting that you're not doing otherwise, but we need to find out. The idea behind these committees is to inquire into the system. Is there one that's more rogue than the other, perhaps?

SIMON COHEN: What I'd say is that we publish detailed information about our complaints in our annual report. I'm happy to provide what information I can to the Committee about the nature and types of complaints that we receive against insurers. SIRA also publishes detailed complaints information, including contextualising that against the number of claims that insurers have received. You can see which insurers are getting more complaints to IRO—

The Hon. ROD ROBERTS: But they might have a bigger volume of the market share or claims to start with.

SIMON COHEN: SIRA does the job of actually adjusting for that. You can see the number of complaints per 100 active claims, and there is a difference between some of the insurers. There's no question that some do better, but what I would say in addition to that is that our experience of CTP insurers, when we're dealing with them about complaints, has been pretty positive. They've adapted to our processes, they've been responsive to our complaints and, by and large, they've been constructive in looking freshly at matters. That is reflected in the high solution rates we've been achieving in those complaints as well.

The Hon. ROD ROBERTS: That's great. In asking that question, it wasn't to pillar a particular insurance company. What I'd like to say is that if there was one that perhaps wasn't performing to the standard of the others, it is not about attacking them; it is about raising their standards up and saying, "If these others can do it, perhaps you need to look at that." Chair, I'm aware I've held the floor for quite some time, and I accede to some of my other members to ask questions.

The Hon. GREG DONNELLY: Mr Cohen, you very helpfully provided quite a detailed opening statement. Did you have a copy of that opening statement there?

SIMON COHEN: I do.

The Hon. GREG DONNELLY: I'm wondering if that could be handed up through the Chair to the secretariat and circulated to members. It will help Hansard for the purposes of the record.

SIMON COHEN: I'm hoping there's no acronyms or short cuts in there that can't be read.

The Hon. GREG DONNELLY: No. It was very accurate.

The Hon. ROD ROBERTS: We live in a world of acronyms and short cuts.

The Hon. GREG DONNELLY: We got our heads around the IRO, SIRA and a couple of others, but after that it gets a bit murky. It was very clear and that's why I'm asking for it. It's useful for us and Hansard, I'm sure. In that opening statement—and this is what I want to get to—there were a few points that you did raise. I'm running off my notes now, as opposed to what is word for word in your opening statement. There were some elements in it that I suppose were couched in terms of some concerns or criticisms of SIRA. First of all, on the issue of what appears to be strong, clear opposition by SIRA to the proposition for ILARS, do you have a sense of why that is so—their strong position? Through your reading of their material and submissions, have you formed a view about why they are so firm in their position in regards to opposition?

SIMON COHEN: My understanding from the submission to the Committee is that the bases include that the cost of it would be a threat to scheme viability; that their support of legal assistance supports for claimants is suggesting other ways in which that support can be provided; that the ILARS scheme hasn't been the subject of an independent review; and I think the fourth basis is that it's inconsistent with the original scheme design of the 2017 legislation. They're included in the executive summary of the SIRA submission to the Committee.

The Hon. GREG DONNELLY: In regards to those points, have you formed your own view on each of those? In your role as the Independent Review Officer, have you formed a view that acts as a counterpoint to those—either firm counterpoints or some question marks over their analysis in regard to those points? Further on in your opening statement—I haven't been able to read it—I do appreciate that you contested quite specifically some of the factual elements of part of the SIRA submission. I'm just wondering, have you got a counterpoint to these that you would like to share with us?

SIMON COHEN: The point I was really seeking to make to the Committee is that, firstly, it is important that a review of legal supports has taken, and is taking, place. So I strongly support that. I think there is strong evidence before the Committee—and it has been before the statutory review by Clayton Utz and also the review by Taylor Fry—to indicate that there is a need for more legal supports than what are presently in place. The question is what's the right way to provide that, and the Taylor Fry review outlines eight possible options that might be put in place.

The next step, as I understand it, is to consider those options in a considered way and then to make the best decision about what's going to strike the right balance of competing pressures. Some of the information around that is not information that we're privy to at the moment. There's an actuarial assessment that has apparently been done that suggests a very high cost to introducing an ILARS-style scheme. But we have not seen that actuarial assessment. We don't know the assumptions that inform the assessment. We don't know what sensitivity analysis has been done around different options that might be provided.

We also understand there has been an assessment of the legal costs from a review of particular CTP cases. That's not as yet complete. It's examining, as I understand it from the submission, a small number of cases and has some preliminary indication conclusions. But, again, it's not complete and we've not been privy to that information either. If I use that as an example and reflect back, our understanding was that a legal supports review would include strong engagement and consultation with people who might be able to add to it, to give their views, to review the evidence and to provide submissions that then might inform the preferred approach. To arrive at a conclusion, before that has been gone through, that ILARS isn't the right model suggests to us that that has been closed off before the completion of the review. That's the part that I have concerns about.

I have a number of concerns about the submission and some of the information in it. I haven't really had sufficient opportunity to be able to complete those considerations. But more generally, if there is an open mind about what the best way is to address this need, then to have formed views about that before all of the evidence is collected and you've had an opportunity to speak to key stakeholders seems to be may be jumping the gun a bit. It does then call into question whether a genuinely independent mind is going to be brought to the conclusions of the review, once all that evidence is assembled and able to be considered.

The Hon. GREG DONNELLY: Thank you for your frankness in the responses. It's much appreciated. With respect to the review and with respect to the informing, if I could use that word, of SIRA of relevant information, knowledge and expertise to formulate a considered response in regard to ILARS, was there ever any expectation that that would be something that would be, dare I say, put out there for stakeholders to contribute to? Was there any expectation about that? Or is what SIRA's doing essentially what they're entitled to do—as they see fit, consult and then formulate a position?

SIMON COHEN: From my perspective, as an agency involved in CTP—dealing with complaints and having a role to inquire into aspects of the personal injury compensation legislation, including motor accident legislation—and also being the expert in ILARS, with ten years of experience in dealing with it and understanding a whole range of the issues that come with the day-to-day administration of that type of scheme, I did have an expectation that, as the evidence was being assembled and views were being formed about the preferred way forward, we would be deeply engaged in consultation as part of that. That might be an unrealistic expectation on my part. But certainly before a specific option that had been recommended for consideration by the Clayton Utz statutory review, and where it had been recommended that there be considerable additional examination of a modified ILARS scheme through the Taylor Fry review—and it had some reservations about ILARS, albeit I have some significant reservations about its analysis of the scheme. So our expectations may not be aligned. But certainly, that had been my expectation.

The Hon. GREG DONNELLY: I will finish on this point: It's fair to say for an objective observer, based on what you've said and understanding your role as currently provided for, you've got a little bit more than a tiny bit of skin in the game here, haven't you? More than almost anyone else, other than those important existing contributors to the information to help inform SIRA's consideration, you ought to be considered as being quite up the totem pole as someone that you would engage with to find out your thoughts.

SIMON COHEN: Yes. In many matters, SIRA engaged with us very well. I don't want to, in any way, be suggesting that's not the case.

The Hon. GREG DONNELLY: No. We're specifically looking at this issue.

SIMON COHEN: Just specifically about this issue, I've raised my concerns, but it is such an important review because there is a significant unmet need. And it is actually impacting upon injured people and their access to their entitlements—be they treatment entitlements, be they weekly benefit entitlements—and that's having a real impact on them and their recovery, and their families. So it's an area that, to be honest, we're pretty passionate

about. We think it's a really important review. Whether it is ILARS or something else, what's really critical is that injured people have access to more support than they are receiving today.

The CHAIR: In your capacities with regard to both the CTP scheme and the workers compensation scheme, how would you compare the two schemes? What would you say is the good things or the bad things about each of the schemes? Is one more adversarial? Or are there more complaints that come your way from one or the other? How would you compare the two different schemes? Not that we're doing workers comp today, but we had you here recently in that capacity as well. So it would be of interest to Committee members.

SIMON COHEN: I guess the beginning point would be, for us, the workers comp scheme is a much larger scheme in terms of complaints. We receive eight or nine times more workers comp complaints than we receive motor accident injury complaints. Part of that could relate to the newness of our role. Part of it could relate to the CTP Assist in the CTP space; there's only just the startup of something similar in the workers comp space. Some of it, we think, unquestionably relates to there being a strong familiarity of us in workers compensation—if I can caveat my views with that.

But if I was to go and speak to the team that actually deal with both CTP and workers compensation matters, my solutions team, probably what they would say is the biggest difference is that, where we can't solve complaints, the options that we have for people injured at work as to those injured in motor accidents are very different. For people who are injured at work, we can often give a pretty seamless hand-off in the context of referring them to information about ILARS so that they know that they can confidently go and see an expert, an independent lawyer and get advice about their matter at no cost to them. Whereas in the CTP space, it's a much less certain hand-off.

We might need to, for example, send them to the New South Wales Law Society website to see whether they might be able to find someone who can assist them, and we can't provide them any assurance about the expertise of that person as we can in the workers compensation space. Their reflections to me as a team is that that's probably the biggest difference in terms of how they deal with complaints. I think the other thing that I'd reflect upon is that the element of fault in motor accident matters does give them a different complexion to many of the workers compensation matters that we deal with. That's something that is one of the unique elements of the CTP scheme as against the workers comp scheme.

The CHAIR: In that it's a no-fault scheme?

SIMON COHEN: That's exactly right. Yes.

The CHAIR: Unfortunately, we've run out of time. Thank you for your evidence today. The secretariat will be in touch regarding questions that have been taken on notice as well as any additional questions that Committee members might have. Thank you for joining us.

SIMON COHEN: Thank you, Chair.

(The witness withdrew.)

(Short adjournment)

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

Dr PETRINA CASEY, Executive Director at Motor Accidents Insurance Regulation Division, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: I welcome our final witnesses. Would 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, the Gadigal people of the Eora nation, and pay my respects to Elders past, present and emerging. I extend that respect to any Aboriginal or Torres Strait Islander people here today. Thank you for the opportunity to address the Committee today. The CTP scheme today is very different to what it was five years ago. People injured in motor vehicle accidents have fast access to income support, treatment and care. This includes statutory benefits for those who are wholly or mostly at fault. The scheme also supports people to achieve optimum health and recovery outcomes.

It is more affordable and more efficient as a result of the 2017 reforms. On average, New South Wales motorists are saving $153 on their annual green slip. Importantly, 59 per cent of the premium dollar is being returned to injured people, as compared with 44 per cent under the 1999 scheme. Towards the end of last year, approximately $91 million in excess insurer profit from the first accident year was recovered from insurers. The ability to claw back profits greater than 10 per cent is a unique feature of the 2017 scheme. I will shortly make a final decision on a further assessment of profits covering the first three accident years of the scheme.

In December 2021 the statutory review of the Motor Accident Injuries Act 2017 was completed. It considered whether the design and terms of the Act, regulation and guidelines continued to meet policy objectives. The review also considered recommendations made by this Committee. The Motor Accident Injuries Amendment Bill 2022 passed last night in Parliament. I thank the members who were involved.

The CHAIR: We were all there.

ADAM DENT: The bill introduces a number of important changes including extending and allowing speedier access to benefits and damages claims, increased access and availability of rehabilitation and trauma supports, as well as other changes to improve the operation of the scheme. We will prioritise the implementation of these changes and will remain focused on progressing the other recommendations, many of which are already well underway. Many recommendations didn't require legislation change and could be handled by SIRA administratively or through guidelines.

SIRA was pleased to provide the Committee with a supplementary submission regarding ILARS. The submission was informed by the findings of the legal supports review, which was finalised in September 2021, the statutory review and initial actuarial assessments. SIRA doesn't agree, at this point, to extend the current ILARS model into the CTP scheme. Our submission outlined SIRA's commitment in ensuring that all people with a CTP insurance claim have access to appropriate legal and other supports, while maintaining scheme sustainability, premium affordability and scheme efficiency. SIRA will conduct a public consultation on the proposed model for legal support in 2023.

Another key legislative milestone commences on 1 December, with people who need ongoing treatment and care transferring to CTP care managed by the Lifetime Care and Support Scheme authority. To summarise briefly, the scheme is performing as intended, premiums are lower, benefits and supports are being extended and improved and more profits are being clawed back. There is always going to be more to do as our scheme matures, but the 2017 scheme is meeting its objectives. Dr Casey and I thank you again for the opportunity to appear today. We look forward to assisting with your inquiry.

The CHAIR: I was wondering if you could talk more to ILARS? I saw that you were here for the previous witness. You've got a difference of opinion based on your submission. Maybe you could talk more about potential additional costs that you believe might be added to the scheme if ILARS was extended to CTP?

ADAM DENT: Certainly. If I can first acknowledge that Mr Cohen was in fact correct about a typographical error in our submission. The figure of 175 per cent was incorrect. The increase is 75 per cent, or the value has increased to 175 per cent, but not by 175 per cent. I apologise for that. In terms of the additional costs that we are concerned about, at this stage we are working with initial actuarial assumptions, which will be part of the overall process and in our consultation. The premium impact at this stage, if we were to introduce ILARS in its current form to the CTP scheme, would be around $16 to $28 per policy, per accident year. That's a reasonably significant increase and cause for concern about whether that model, in fact, would work. That ongoing increase of ILARS fees in the workers compensation scheme year on year also gives pause for thought around whether

that model is appropriate in terms of the impact it would have on premiums. I'm happy to invite Dr Casey to make any further comments too.

PETRINA CASEY: I'll add a couple of things. I think the fundamental difference with the model and its application in the workers compensation system is that it's a front-loaded model. So it's not that there aren't aspects of the ILARS model that might be appropriate in terms of how it provides legal support. We would consider that and it would be part of the public consultation. But the 2017 scheme changes—one of the fundamental approaches was that people are getting earlier access to care and statutory benefits, so the need for that front-loaded legal representation is at odds with the scheme design in the motor accident scheme. So they are very inherently different in terms of their application. I think that that's really important to add to the issues that Mr Dent said around costing. I think that that's the main point that I would say about the differences in the models.

ADAM DENT: I think it's perhaps important to acknowledge that in the brief amount of time we had to make a submission on this topic to the Committee, we thought it would be inappropriate not to have a view at all. To that end, on the basis of consultation that we intend to undertake over the course of 2023, a view of a modified version of ILARS or a range of supports would certainly be on the table. We are absolutely committed to making sure the appropriate level of legal support is brought into the scheme, while balancing that tension of affordability. But in the time we had to make a submission, we couldn't agree on whether the terms of reference was about the current ILARS model to support that.

The CHAIR: So you'd be happy with the recommendation of SIRA to conduct a review of the appropriateness or effectiveness of ILARS within 2023, as an example?

ADAM DENT: We would in the sense that that is the work that we are intending to do. We would welcome that recommendation because we intend to be able to meet it. We are looking at it from an end-to-end point of view. There are a range of points in the claimant journey that we would want to look at improving—starting, first of all, with minimising the reasons for complaints and disputes to arise in the first place. Then we move into—when they do arise—through CTP Assist, can we help claimants understand their rights and the benefits available to them? Then you have the option of the resolutions team at the IRO, and I commend it for the incredible work it does do in resolving complaints very quickly before they turn into disputes. Then at that point there is an opportunity for legal support. As the regulator across this scheme and others, we need to take an end-to-end view. Ideally we'd like to reduce complaints and disputes by a reasonably significant amount in the first place, rather than just addressing it with one piece of the journey.

The CHAIR: In terms of the TEPL, there is not really any incentive for insurers to attempt to make super profits given that anything above 10 per cent has to be "clawed back", to use your term from before.

ADAM DENT: That's correct.

The CHAIR: I think you may have mentioned it, but how much money has been clawed back so far through the TEPL process?

ADAM DENT: It was around $91 million. Last year was the first year we had the confidence to be able to claw back an amount. Each year we run two assessment processes to determine whether there is sufficient information that would allow us to make a decision with a probability of accuracy. Last year was the first year we reached our threshold of between 80 per cent and 85 per cent for the 2018 accident year. This year the investigation is about to be completed. I suspect we will again return some funds for the 2018 accident year and start to look at the 2019 accident year.

The Hon. ANTHONY D'ADAM: Can I just clarify that the $91 million was for the 2018 accident year and it wasn't for 2021?

ADAM DENT: That's correct. It was for the 2018 accident year. One of the important things we have to consider is, of course, that at the present time there is a 20-month delay for lodging damages claims, for example. That means that in the year when the accident occurs, we are not going to see those matters dealt with. It takes a couple of years for us to be able to look at that accident year and say that all of the appropriate claims and benefits have likely been paid from that year. We did that work in 2021, but it was for the 2018 accident year, not the 2021 accident year.

The CHAIR: That is because of the long-tail nature of the scheme. Insurers probably would not need to know how much money they would need to reserve or put aside, basically, for future injuries, which I assume you wouldn't be able to know on 1 January or 1 July each year based on the previous year.

ADAM DENT: Correct, particularly given the 20-month waiting period that exists. It would take two years before there was any probability that those damages claims would even start to materialise. It then takes a number of years for those to be settled. So looking back at 2018 from 2021, we had a degree of confidence that

there would be at least $91 million in profit and we brought that back. This year, with further claims maturation, we were able to look again at 2018 and say that we think there is actually still some more that we have now got sufficient confidence is profit and we will potentially draw that back too. But we are now starting to see the maturity in the 2019 accident year, where we have a degree of certainty that there is a small amount that we can also claw back from 2019. Perhaps next year, when the confidence increases again, there would be a further drawback from 2019.

The Hon. ANTHONY D'ADAM: So you have inferred—or is it the insurance council?—that the utilisation of TEPL will taper off as the scheme matures and the estimates are able to be more accurate in terms of the premium setting?

ADAM DENT: Yes, absolutely, Mr D'Adam. I think that it's appropriate that they made the point that in 2017, when the scheme was to be formed—that first accident year—there were a number of assumptions that had to be made given the lack of experience, and some of them were considerably higher than reality has played out. As a consequence, insurers priced based on the best evidence available to them. What we have now seen is that the pricing is shifting. I think—without trying to speak in detail because it is way too early—we are seeing the very early data from further accident years are indicating that pricing is becoming closer to reality, so eventually the TEPL mechanism probably won't have a lot to claw back, as insurers' experience allows them to price their premiums more closely.

PETRINA CASEY: If I can just add—

The Hon. ANTHONY D'ADAM: What was the estimate? Just following on with this line of questioning, then I will yield, but what was the driver of that $91 million? What was the estimate that was wrong and meant that that figure was so high?

ADAM DENT: I think it's a combination of factors—and then I will invite Dr Casey to contribute because it's her area. One of the things we certainly saw in that accident year was an unseasonably low number of casualties and subsequent claims. I think that impacted that year, first and foremost. We also saw the number of predicted disputes, which had to be based on previous experience of a very different scheme. That hasn't materialised to be the case in the new scheme given the shift to statutory benefits. Fundamentally, a lower number of claims has been a part of the driver and the disputes that have arisen in those claims has certainly been part of it. I invite Dr Casey to speak.

PETRINA CASEY: I was just going to make the point as well that every year the premium guidance that SIRA gives the insurers updates the experience. That will also contribute to a more realistic pricing and contribute to the fact that there will be less profits in the scheme as the experience develops, so the pricing is more reflective of the actual experience. That's recalibrated on an annual basis, which is a really important part of the pricing and premium guidance that SIRA gives the insurers, and then they have to follow that when they file on an annual basis.

The CHAIR: I suppose actuaries sometimes get it wrong as well. I mean, they get pretty close, and they do a good job most of the time. But there is never 100 per cent accuracy with pricing an insurance product that they're going to get it completely correct, especially, I would assume, in a new scheme that hasn't had time to run its course, which is what you said before?

ADAM DENT: Absolutely, and I think when we get to the five- to seven-year mark, you would start seeing considerably more accurate estimates, because that level of experience is what is needed to see how things play out, to see what behaviours emerge in the scheme in terms of the types of things that happen.

The CHAIR: Maybe some commentary would be useful about pre-TEPL, the old scheme. My understanding is that under the old scheme—whether the actuaries got it wrong or the scheme was overpriced—there were those "super profits", to use some of the language that existed in the old scheme that doesn't exist today, which was more of a function of reserve releases, in that perhaps they didn't price the risk properly and that, in future years—basically insurers over-reserved and then that money went back in profit, essentially. That is what a reserve release is, basically. But you're not seeing that quantum—I don't know what the figure was—of reserve releases under this scheme that you would have seen in the old scheme. I assume that's largely not a factor now or would be a very small part of it?

PETRINA CASEY: Well, it's not really part of the structure of the scheme anymore. That's exactly what TEPL does. Insurers have to collect premiums in an accident year for costs that will be incurred over the life of that claim that happened in that accident year. These are long-tail claims, so it can be seven, eight, nine, 10 years before all payments related to that accident year happen. Under the old scheme, there was no structure to claw back those profits, so they remained with the insurers—as you said—through releases. In this scheme, that can't happen. When there is enough certainty and enough experience, as the accident years mature, the TEPL

mechanism allows SIRA to make that decision and then that money goes back to the policyholders. It's important that we try and make the decision as close to the accident years as we can. So now that we've done one and the assessment for—this third assessment that is underway means that the money that's clawed back goes back to the policyholders that were more likely to be paying the premiums when it was collected.

The Hon. ANTHONY D'ADAM: I want to ask about the logic behind the 10 per cent threshold in terms of profits. I'm assuming that's statutory, is it?

ADAM DENT: The SIRA board makes a determination about what they think is a reasonable profit level. I confess that I wasn't at SIRA when that was settled, and nor was Dr Casey in the role. We could take on notice the detail of how that was arrived at, but it is a decision the SIRA board would make around what they think is reasonable, given the market considerations et cetera.

The Hon. ANTHONY D'ADAM: Yes. My follow-up question is whether that threshold is going to be reviewed in light of the much higher inflationary situation that might impact on the overall return on investments that the insurers are likely to get?

The CHAIR: Are you suggesting an increase in the profit amount, Mr D'Adam? It's quite uncharacteristic of you.

The Hon. ROD ROBERTS: That's unlike Anthony.

The Hon. ANTHONY D'ADAM: I'm not suggesting it. I'm trying to work out whether that's on the cards.

ADAM DENT: Well, I mean, it is about profit. If those costs increased, that would be taken into account. If a claim was costing more to resolve, there would be less profit assumed by the actuaries. But I think the short answer is, if it did, somehow, actually cross over and start to impact and that threshold was no longer reasonable, then of course we would review that. But it is an assessment of the profit, so that is after those increased costs would have been paid by the insurer. The other side of TEPL, which is also probably important and has not been necessary to this point in time, is it also deals with excess losses. So where an insurer makes a profit of less than 3 per cent, which is where you're starting to get into the business not being worthwhile for them, then there is an opportunity to recover excess losses. We would look at that. But that's certainly not an issue any time soon.

PETRINA CASEY: I might just add to Mr D'Adam's point. There are other avenues to deal with insurer costs. We have claims handling expenses. Currently we cap that. If there are pressures—because we obviously want the insurers to have enough resources and attention in relation to how they manage claims—there are avenues for us to increase the amount, or the allowance, that the insurers can spend in terms of claims handling costs and that then gets factored into the premium. There is an ability to be able to adjust that, so it doesn't necessarily have to flow through in terms of how much profit they can take out. There are mechanisms in the scheme to allow us to adjust that up or down depending on some of those cost pressures that you mentioned.

The Hon. ROD ROBERTS: You heard the evidence from Mr Cohen, I think it was. You were in the room. We were talking about—what's the terminology? We were talking about transferring a provision in the Workers Compensation Act over to—

The CHAIR: ILARS?

The Hon. ROD ROBERTS: No, not ILARS. It was about the provision of information in determining claims.

ADAM DENT: Mr Roberts, I think you're referring to the letters in workers compensation around when a decision is made—the level of detail. I think Mr Cohen was referring to that.

The Hon. ROD ROBERTS: That's exactly what I'm referring to, Mr Dent. Thank you for helping me out. So you heard his proposition to a question of mine that it might be useful, perhaps, to transfer those sorts of provisions that are contained in that Act over to the Act that we're dealing with now, the motor accidents Act. Do you have any comments on that?

ADAM DENT: Only that it is a good idea and I wish I had heard it from Mr Cohen before we got to a Law and Justice committee hearing.

The Hon. ROD ROBERTS: That's because you didn't question him like I did, Mr Dent.

ADAM DENT: I don't know that it would be well received if I tried. I think that's useful insight. Five per cent of the motor accident active claims in New South Wales generate complaints from which Mr Cohen can generate insights. So while it's only a very small subsection of the number of active claims, the IRO does get the opportunity to understand what's going on and where the pressure points are. SIRA does—as I think, at some

point, Mr Cohen did attempt to say—work well together with the IRO, in the main. The resolutions team share their data now, through an MOU, with SIRA on their complaints each month.

We have access to understand those issues now in a way we haven't before. But certainly where the IRO forms a view around some systemic issues or possible solutions like that, we're very open to them, because from our regulatory role we wouldn't necessarily see that day to day. But we can now take those sorts of matters up with insurers. It's not necessarily even a legislature change, perhaps. Dr Casey has the opportunity to very strongly encourage insurers, through our independent supervision process with them, to be better on that. I think that's a very useful suggestion we would take away from here and engage with insurers.

The Hon. ROD ROBERTS: Good. I'm glad we've come out with something today. It is my concern that—I will use the term—an "unsophisticated" claimant doesn't have access to that sort of information. If they're provided with it, it certainly makes the process easier and smoother for all. At the end of the day, I think that's what we all want, isn't it, to make it more user-friendly?

ADAM DENT: Yes, absolutely. There are a number of things we do to try to help that, and then sometimes you hear it doesn't cut through. For example, an insurer is required to tell a claimant about the existence of the IRO. If that message isn't cutting through, that's useful information to know. Similarly, our CTP Assist outbound service contacts every claimant. We don't always get them calling us back, so there's another opportunity where we could help around rights and benefits but they're not being taken up. This sounds like a simple and pragmatic way to add another arrow in that bow, if you will, to help with that problem.

The Hon. ROD ROBERTS: That was no criticism of SIRA. It was just something that we teased out talking to Mr Cohen about something.

ADAM DENT: No, and very, very helpful.

The Hon. ROD ROBERTS: I'm nodding to the Chair to ensure that perhaps we might consider that in our final report. If I may, I will take you to another subject. I'm assuming you watched the bill go through the House last night.

ADAM DENT: Absolutely.

The Hon. ROD ROBERTS: So you know where I'm coming from now, then, in relation to my amendment and my concern over the unfair and unjust treatment of taxis in the CTP scheme as it exists at present. Could you talk to us about that at all? You would have seen the amendment I moved.

ADAM DENT: Yes, of course.

The Hon. ROD ROBERTS: I'm assuming you know my motivation. I don't hold any shares in any taxi co-ops or anything. What I'm concerned about—and very similar to what I just talked about there—is that it is fair and just for end users. Can you talk to me about the discrepancy between what taxis pay and what other rideshare operators pay?

ADAM DENT: Absolutely. I can certainly acknowledge I've never watched 36 hours of Parliament in a row, hoping to see the bill come through. So I was very pleased when we did see you stand up and the bill passed. I think the first thing to acknowledge is that over the last five years the cost of CTP premium for a taxi has already reduced by around $5,000. The numbers have already dropped considerably. I think it's really important to acknowledge that, to the extent possible, some considerable work has already been done to bring some equity.

Really importantly, by the next week or so, I expect Dr Casey to provide me with the next round of our motor accident guidelines, which include the taxi hire and vehicle guidelines for me to sign off. We're looking in those new guidelines to have a non-prescriptive premium-setting framework. What that will enable is for us to set the minimum premium for taxis to be equivalent to a class 1. To address almost directly the concern you had yesterday, that will be the starting point for taxis. Most of the CTP premium will be paid by passengers when it comes to taxis and vehicles, and insurers will have the flexibility to tailor their premiums in line with the different needs and risks.

Those guidelines are going to let authorised service providers who expect to carry out more than 100,000 fare pay trips collect from the riding passenger and then pay the insurer the point-to-point component of those premiums. Those new guidelines will go an incredibly long way, I think, to provide pricing equivalence, which was what you were certainly seeking, if I understand correctly.

The Hon. ROD ROBERTS: Mr Dent, and obviously Dr Casey, you've nearly finished those guidelines, but the push is just to have—if you're in a point to point industry, regardless of whether you're Uber, DiDi or a taxi, you're all doing the same job—you're conveying a passenger from one place to another. Surely, then, your

insurances should be aligned? One shouldn't be paying more than the other simply because one is a called a taxi and one is not. That's where the issue comes from.

ADAM DENT: That principle, Mr Roberts, is absolutely right. But insurers also need to factor in the general risk that exists. And the risks are often different by nature of the fact that a taxi might be driving all of the time whereas a rideshare driver might be doing that work much less of a time. You're right, absolutely, and the power we now have in the bill that passed in June 2022—which took some time to pass; it was with the Parliament for considerably longer than we might have all hoped—gave us the power to start this work on creating price equivalence. I think your principle is absolutely right that a vehicle doing the same thing with the same degree of risk should have the same pricing. Then where the risk is different, based on the amount of trips, the amount of time on the road and all of those factors, there is no reason that that shouldn't be equivalent. That's what we are absolutely aiming for.

The Hon. ROD ROBERTS: I don't want to take too much more time, but I have one wrap-up question from that. I'm assuming you listened in to the evidence from the Taxi Council this morning.

ADAM DENT: As much of it as we could this morning, yes.

The Hon. ROD ROBERTS: No doubt you will read the transcripts at a later date. To your point that taxis are perhaps a higher risk et cetera, going further, as we know, Uber drivers or rideshare drivers provide a service at a peak time normally when they can make more money. Traditionally, Friday and Saturday nights are their busiest time. But the risk to road users also increases on a Friday and Saturday night too. To simply say one is in the industry more than the other doesn't necessarily correlate to the risk factor. If I only drive two nights a week but they're Friday and Saturday night, my risk level is fairly high. If I drive seven days a week, it doesn't really change that much.

ADAM DENT: I will invite Dr Casey to speak, but my first point on that would be we're not actuaries and we don't do the risk assessments. That's what insurers are very good at doing. Dr Casey?

PETRINA CASEY: There is some evidence—well, more than some. We have been collecting data from 2018. The reason I say "from 2018", prior to that we always talked about the risk of taxidrivers. They're on the road more, so their risk of having a claim against the policy was higher than class 1 vehicles. We now have information that allows us to know that a T-plate taxi is nine times more likely to have a claim raised against it compared to a class 1 vehicle, whereas a rideshare vehicle has two times the likelihood of having a claim raised against it. There is definitely a risk profile to both the taxis and the rideshare drivers that need to be factored into the premium.

The Hon. ROD ROBERTS: But can I just suggest, the industry has now been deregulated.

PETRINA CASEY: Yes.

The Hon. ROD ROBERTS: So there will be now more rideshare vehicles on the road, point to point vehicles coming into that marketplace. Surely that risk of two times more is going to be much higher because they are going to be actively involved. That's old data that that's based off.

PETRINA CASEY: I agree, and we will continue to monitor it. The deregulation also allows the taxi industry on a more competitive footing, so some of the deregulation allows them not to have some of the overheads and other things that they have. The model that Adam just talked to—that starting point that the rideshare and the taxis pay starts at class 1, and then it goes up in terms of their individual risk—will give that pricing equivalence.

ADAM DENT: Equally, to your point about old data, it's current in the sense—

PETRINA CASEY: It's current, but—

ADAM DENT: —we've been collecting from 2018 to now. We will continue to collect the data.

The Hon. ROD ROBERTS: You know what I mean, though, Mr Dent. I don't want to play semantics with you.

ADAM DENT: No.

The Hon. ROD ROBERTS: Once the industry changes, though, all those assumptions from back in 2018-19 will change.

ADAM DENT: Absolutely, Mr Roberts. I agree with you. We're still looking at those in 2022. In 2023, as that risk profile changes, that data will be available and that will be able to be made use of in premium calculations. It's a rolling and ongoing process, absolutely.

The Hon. TAYLOR MARTIN: That was going to be my question, that it will be continually monitored and reported on.

ADAM DENT: Yes, of course.

PETRINA CASEY: The Taxi Council acknowledged that we meet with them quarterly. We share the information. That annual premium process that I explained in relation to the TEPL, that also allows all that new information to come into the experience. The model is never stagnant. You're always using the same information. So we'll be using a new set of numbers. The insurers will have a new set of numbers in terms of the risk from deregulation and from the new model going forward.

ADAM DENT: It's possibly worth noting, Mr Martin—I've got the note here in front of me that says, "We also now have the power to ensure the information needed to determine premiums is provided, and failure to do so actually carries quite significant penalties." Our access to data will continue to improve over time as well.

The Hon. TAYLOR MARTIN: Beautiful. Thank you.

The Hon. GREG DONNELLY: Thank you for coming along and providing us the opportunity to ask you some questions in addition to the helpful evidence in the two submissions. Can I start, Mr Dent, by confirming with you that on or about 10 November this year you were cc'ed into a piece of correspondence from the president of the Personal Injury Commission?

ADAM DENT: I would have to take your word for the date, but I think I now know the correspondence you are talking to, so I will say yes.

The Hon. GREG DONNELLY: Quite specifically, it was quite a lengthy piece of correspondence. If you don't have it, I don't expect that you would have brought it along anticipating this line of questioning. It was cc'ing of a piece of correspondence that the president of the PIC had sent to Mr Joshua Dale, the NSW President of the Australian Lawyers Alliance.

ADAM DENT: I do have that in front of me now.

The Hon. GREG DONNELLY: Thank you. With respect to that correspondence, did you read that correspondence or the correspondence you had been cc'ed into?

ADAM DENT: It was cc'ed to me. I have read it. It was voluminous, so I confess I didn't read it with the intent to be able to recall from it.

The Hon. GREG DONNELLY: No, that's okay. I'm not going to interrogate you in detail about the content. It was cc'ed to you. Were you aware that it was cc'ed to a number of other people?

ADAM DENT: At the point I received it, yes, because the list of cc's was on the document.

The Hon. GREG DONNELLY: Because the list was there, yes. On notice, could you provide the Committee with that list? That would be good because we're looking to get a definitive set of those who received it.

ADAM DENT: Sure. I have no reason to believe it wasn't the same as what the list said. I could provide the document, absolutely.

The Hon. GREG DONNELLY: If you could do that, that would be good. Accepting that you're a very busy person and you probably skimmed and worked through the document pretty quickly and drew from it what you thought was most important, what did you find when you got to the end of the document? What was your reflection?

ADAM DENT: I understood this to be Judge Phillips' response, essentially, to feedback that was in some way critical of the commission and its work. By reading it—

The Hon. GREG DONNELLY: Sorry, when you say "feedback", feedback specifically from the ALA?

ADAM DENT: From the ALA. I believe it related directly to the submission the ALA made to this Committee.

The Hon. GREG DONNELLY: Yes.

ADAM DENT: Sorry, if not this Committee, the previous inquiry. I understood it was the judge's opportunity to provide some clarification on the matters that the ALA had raised. Certainly my read of it would indicate that.

The Hon. GREG DONNELLY: Did the judge have cause to ring you up and tell you this was on the way?

ADAM DENT: Yes, but let me clarify quite clearly. The judge spoke to me in relation to a particular section that he intended to include in the document. We had a conversation—

The Hon. GREG DONNELLY: What was that?

ADAM DENT: It was around the piece around IT procurement, because he indicated to me that he would be including in this correspondence a section essentially refuting that the procurement had occurred by the Personal Injury Commission. Given that that procurement—

The Hon. GREG DONNELLY: Sorry, I thought that he may have contacted you around the time of this being sent?

ADAM DENT: Yes, correct. He called me to advise me that this letter would include content on that matter.

The Hon. GREG DONNELLY: So he was anticipating some correspondence to you and indicating that there would be at least one element that he wants to specifically touch on in this, and he told you about the—

ADAM DENT: Yes. The judge essentially called to say, "I'm going to have to say in this letter I'm writing that there will be a section in relation to the IT procurement." The system to which he was referring was procured by what was then known as the "dispute resolution service", which was a part of SIRA. Out of courtesy, given that he would be referring to matters that were essentially now part of my history, he was calling me to advise that he would be saying in a piece of correspondence he was writing that the Personal Injury Commission had not undertaken the procurement, and he indicated to me that he would therefore have to say that that procurement to which the ALA referred was a matter for SIRA.

The Hon. GREG DONNELLY: What did you say in response to that?

ADAM DENT: I said he was absolutely right. He couldn't take account for a procurement that occurred in 2015 or 2017. I'll be corrected—

The Hon. GREG DONNELLY: No, that's clear enough from your testimony. Did he discuss anything else with you about this letter that he was anticipating would be sent in the relatively near future?

ADAM DENT: Not in any detail other than he indicated it was in response to the submission to the inquiry and that there were matters that concerned him and he would be responding.

The Hon. GREG DONNELLY: Did he indicate to you—because this, of course, was before you'd received the correspondence—that he was going to be communicating these concerns to others as well?

ADAM DENT: No, we didn't have that level of conversation.

The Hon. GREG DONNELLY: After receiving it, having had a chance to look at, read and absorb it, what did you do next in regard to the correspondence?

ADAM DENT: For me, there's nothing in my mind. It was copied to me. It was a "for information". I have read the document, and I've taken no further action other than to read specifically the section that referred to the IT procurement to ensure I was satisfied that I'd been represented.

The Hon. GREG DONNELLY: You didn't make contact with the president following the receipt of this?

ADAM DENT: Not in relation to this letter, no. I don't even know that my office would've sent an acknowledgement of receiving it.

The Hon. GREG DONNELLY: He hasn't made contact with you to follow up this matter?

ADAM DENT: No. Actually, in my recollection, I don't think I've spoken to the judge since then about any topic.

The Hon. GREG DONNELLY: I move on to the issue—

ADAM DENT: Sorry, Mr Donnelly, would it be useful if I tendered this physical copy that I have here now so you have the list? Is that helpful?

The CHAIR: Is that with the cc list?

ADAM DENT: The cc list.

The CHAIR: Yes, thank you.

The Hon. GREG DONNELLY: Yes, thank you. We had before us this morning the Australasian College of Road Safety providing some evidence, which was helpfully supplementing their submission, which was submission No. 2. They made reference to a trial that I understand was called the Young Drivers Telematics Trial—a trial that you would be familiar with?

ADAM DENT: Yes.

The Hon. GREG DONNELLY: I understand that this is a trial that commenced—forgive me if I have the dates wrong. It started a little while ago in maybe 2018 or 2019.

ADAM DENT: It was 15 July 2018, if that assists.

The Hon. GREG DONNELLY: That's perfect, thank you. That's very good. The testimony was—I'm bowling this up for you to answer because it will probably turn up in a supplementary question anyway—that it's now appeared to have moved into and been in a period of stasis for a while. It's like you go to the website, this is what the evidence was, you click on whatever and it takes you nowhere. It's a little bit unclear from their evidence that anything is happening in regard to this. It's like it has sort of hit pause. Can you elucidate on that trial and where it's up to and features around it? Has it stopped? If not, why not? Can you take us through it?

ADAM DENT: Sure. I'll make some initial remarks and then ask Dr Casey, who is far better versed in this than I am. Yes, it was a short-term trial. SIRA is committed to funding a range of trials and research to prove new models and ways to improve both driver safety and the CTP scheme. Certainly in workers compensation we do similar things to improve injury management. For us to run a trial is not at all unusual or exceptional in the sense that we try to prove an idea to build an evidence base. On this particular case, the trial revealed some really useful information. We had 30,000 hours of driving data covering 4.1 million kilometres. We saw a range of things that came from that trial.

One of the things that was interesting about that trial also, though, was that around 50 per cent of the participants stopped using the telematics device at a point during the trial. One might assume that a young person probably doesn't like the idea that someone's really watching their driving. So there is a range of factors why that trial was both useful and also not necessarily perfect. Before I ask Dr Casey to comment, I understand that a number of insurers are already using telematics products that are different to the one trialled and making decisions around incentives for young drivers on the basis of that. The trial was to prove that telematics had an impact on driver safety, and insurers now have that information at their freedom to introduce those sorts of programs. But I will ask Dr Casey to make any further comment.

PETRINA CASEY: I'm not sure there's much I'd add to that, Adam.

The Hon. GREG DONNELLY: May I ask then, in terms of the trial—trials are trials, and trials can sometimes produce valuable information and insights—was all of what you've said actually published in a report with respect to the trial?

PETRINA CASEY: Yes.

ADAM DENT: Yes.

The Hon. GREG DONNELLY: On notice, could you provide that?

ADAM DENT: Yes, of course.

The Hon. GREG DONNELLY: A little hint from the Australasian College of Road Safety: They would be mightily interested to be invited to participate in a similar or like trial on these sorts of matters in the future. I think they were a little bit disappointed, perhaps, that the opportunity to participate wasn't handballed their way. I will leave it at that.

ADAM DENT: I'd certainly be shocked if the opportunity was never available.

The Hon. GREG DONNELLY: In regard to this trial.

ADAM DENT: But, of course, being the New South Wales regulator, we do an extraordinary amount of our work through the Transport for NSW Centre for Road Safety. We commit over $3 million a year worth of funding to that centre. We are actively engaged and involved. It's unfortunate to hear they feel they didn't have the opportunity.

The Hon. GREG DONNELLY: But an invitation by email would've cost you nothing. Moving on, with respect to the evidence from Mr Cohen, which I think you heard at least some if not all of—he was our previous witness. In fairness, Mr Cohen strikes me as someone who's very considered with how he puts things and explains things.

ADAM DENT: I'd agree.

The Hon. GREG DONNELLY: You'd be aware of that. I was probably quite bullish in pushing him to provide perhaps some firmer language than he otherwise uses, which is what we do sometimes. Specifically, the issue of the ILARS formed at least a reasonable part of his evidence. I'm quoting from his opening statement, which I've got the benefit of having in front of me and you don't. I will read a paragraph to you slowly and, if you don't mind, ask you a question about it.

ADAM DENT: Sure thing.

The Hon. GREG DONNELLY: He says the following—and this is the matter of the potential, as he sees it, of the utility of having ILARS, in some form, operating. This is on page 6 of his opening statement:

> Perhaps the matter of most concern, however, is that before consulting on the outcomes of the legal support review and making available the evidence for stakeholders to consider and comment upon, SIRA states that ILARS should not be expanded into the motor accidents scheme.

So it's a very definitive statement that he makes. The legal support review, that's the review that was prepared by Clayton Utz. Is that right?

ADAM DENT: No.

The Hon. GREG DONNELLY: Sorry, I'm getting confused there. I apologise.

ADAM DENT: Taylor Fry did a report for SIRA that was the commencement of the work that we're now doing. So the legal support review that he refers to would probably be the Taylor Fry document.

The Hon. GREG DONNELLY: Just for my edification, the Clayton Utz report—could you just confirm what that is for?

ADAM DENT: The Clayton Utz report was one of two components of the statutory review of the Motor Accidents Injuries Act, so it was Clayton Utz and Deloitte that did that piece of work quite separately.

The Hon. GREG DONNELLY: I appreciate the honourable Chair has got more knowledge about this than I do myself. With respect then to his statement that I've just read out to you, "SIRA states that ILARS should not be expanded into the motor accidents scheme", that's the view that he has formed. Can you tell me how this concluded position would square with what you have said about the future in terms of the consultation—I use that term generically—in 2023? Because I have to say, without sort of sugar-coating it, he was a bit disappointed that perhaps the phone call wasn't put through about "Would you like to, perhaps, provide us with a bit of input into this matter at this stage?"

Now he may not have known about the general proposition about participation in a prospective review and consultation next year. That may be the case, and I don't discount that. But he's got some pretty serious skin in the game, if I can put it that way, in regards to ILARS. It is quite thoughtful and, clearly, it acts as a counterpoint to what is, essentially, what I describe as the orthodoxy of SIRA, at the moment, in regards to this. What do you say about this and squaring it with the future, and why didn't you reach out and seek his participation at this earlier stage?

ADAM DENT: I'll start and again invite Dr Casey as she pleases. So, first of all, yes, SIRA absolutely did, in response to the question in the terms of reference about expanding ILARS into the CTP scheme, say we don't support that. ILARS in its current form, as it operates in workers compensation, is not the appropriate solution for CTP. The question put to us, because of the terms of reference of this Committee and that point in the Motor Accident Injuries Act, was about expanding ILARS. Were the question to be about a modified form of legal support that might look and borrow some of the elements of ILARS, that's a very different conversation. So I didn't, in the time we had, feel it was appropriate to explore a range of things that we had not yet consulted on in our response. The question put was around ILARS being expanded in the CTP, and SIRA does not support that. Now, Mr Cohen will be involved, absolutely, and it's unfortunate that he's formed that view, and I assure you there will be a coffee and a conversation in the immediate future where I attempt to redress that with him.

First of all, the legal support review was conducted by Taylor Fry. Mr Cohen was involved in that. He actually raised some issues with Taylor Fry's views that they had formed in that view, which were quite reasonable for him to raise. He provided those to us. The review was being undertaken independently, so it was not for us to rewrite. We provided those concerns to Taylor Fry and the report still was what it was. We have, at that time, said to Mr Cohen that we would absolutely take his views into account as the work progressed. In the meantime, there are a couple of other elements that are being undertaken. First of all, actuarial costings on the options provided by the Taylor Fry review were an important step. Some time ago we had some actuarial costings done on this, and it was before my time, if I recall, when Mr Shoebridge had first raised the prospect of extending ILARS in this

place, and we saw that it was an expensive option. Subsequently, the Taylor Fry review did not recommend ILARS in its current form. They provided a number of other recommendations which we have now gone and started the work to cost.

So the actuarial assumptions that we're working with that have not been released—which is absolutely correct by Mr Cohen to say that—are very recent, and that work is being undertaken on the basis of the review recommendations we have before us. We've also started a piece of work around the legal costs and work value that is incomplete. That piece of work has taken a frustratingly long amount of time to conclude. Firstly, it took a little while to find somebody capable and competent to do the work as a cost assessor. Once we did, it then took an even longer period of time to get files from lawyers to use as part of that assessment, but it continues, nonetheless. So, by early next year, we anticipate that we'll have something to construct a useful conversation about the potential options, and we will consult publicly and widely. But it is absolutely fair to say that Mr Cohen would be somebody who would have considerable input to that review, and we would certainly seek that.

The Hon. GREG DONNELLY: With respect to that consultation next year, you would appreciate that, with respect to those who may seek to participate in that consultation, if they are provided with at least a lion's share of that key material that you've relied on to formulate your position, it's a bit like then contributing with an arm tied behind their back because they will need to have—

ADAM DENT: I absolutely agree. Mr Donnelly, if I may, they absolutely will be. And most stakeholders today commented on the extent to which SIRA deeply consults with them. In fact, sometimes we consult for so long and so deeply, I feel like we might never get somewhere, which is a frustration for somebody of my kind. So we absolutely will, and that information will be published and made available to people. It's not all complete, as Mr Cohen appropriately pointed out. The work value assessment is incomplete. That's correct, so there's nothing to publish on that front, for example. So, when Dr Casey's team starts the consultation process, it will be full, frank, open and transparent, as we always are.

The Hon. GREG DONNELLY: With respect to the $91 million, colloquially called the clawback—we've touched on earlier today—on notice, are you able to provide an explanation, with some specificity if you can because clearly you can, of the methodology used to come up with that figure? It obviously wasn't just plucked out of the air. In fact, knowing the organisation and the competence and the professionalism, there was obviously a lot of work done to come up with that figure. We're very keen, or certainly, on behalf of the Committee, I'm asking the question—we'd like to know the methodology for coming up with that figure.

ADAM DENT: We can certainly provide you a document called our TEPL guidelines. I invite Dr Casey to talk in more detail about those, which basically sets out the methodology and the process that our team and the actuaries spent months and months and months working through.

PETRINA CASEY: It's a very transparent guideline that's available on the website. We'll make a copy available to the Committee. The scheme actuary also has a process where we have a peer review actuarial assessment as well. There is an industry assessment that is undertaken and there's individual insurer assessments that undergo. We've got a premium committee which is a subcommittee of the board that are very involved in terms of ensuring adherence to the guidelines. So there's quite a transparent process that we go through. In fact, our regulatory publishing policy that we recently released also sees us release when we start the process and when we've got to the different stages in the process as well.

The Hon. ANTHONY D'ADAM: I just wanted to ask something arising out of the evidence from the Motorcycle Council this morning. They again raised the issue around interstate accidents. I'm assuming this applies not just to the motorcycles but also to other vehicles as well. There seemed to be some suggestion around an inability for motorists to acquire additional insurance that would overlap with the CTP policy that would give them coverage for accidents outside of New South Wales. What work has SIRA done in relation to this? Is there consideration being given to some kind of top-up arrangement that would address this problem that seems to be primarily a Tasmanian problem, but it's a problem nonetheless, for those who are taking out CTP and not actually having an equitable or equivalent form of coverage if they go interstate?

PETRINA CASEY: I'll take some of it on notice, but it is a challenging area. And you're right, it is not just confined to motorcycles. We have worked closely with the Motorcycle Council to provide clarity for their members so that they know, at least when they're going interstate, what's covered and what's not. We also meet regularly as regulators, and one of the things that we do discuss is that sort of disparity and how we can provide more information so that it's clear to people what's covered and what's not. That is something that we'll continue to work through. I don't know, in New South Wales, if there is anything we want to do in relation to the Tasmanian situation, but the approach we have taken with the Motorcycle Council is to ensure that they've got all the information for their members, including videos and other information that we've given them.

The Hon. ANTHONY D'ADAM: The issue is not information; it is about the coverage. You take out a policy, you've got a registered vehicle in New South Wales and you are able to drive it interstate. A policy should cover you and should have a consistent level of benefits, irrespective of where the accident happens, if you're using that vehicle. Is there no mechanism that's within SIRA's power? I'm assuming it is going to take legislative change.

ADAM DENT: Not presently, Mr D'Adam, and I might humbly suggest that could be a recommendation—for us to examine the feasibility and what might need to happen to address that issue. That might be something you could put to us to look into.

The Hon. ANTHONY D'ADAM: Have you done work in terms of the options that are available, and are you able to provide that work that has been done to the Committee so that we can have a bit more of a look?

PETRINA CASEY: I would have to take that on notice. We've certainly done work in terms of understanding all the different gaps but, to the extent to which we have looked at options, I would have to take that on notice.

ADAM DENT: I would expect the current answer is that there probably isn't much in the way of options, which is why we've taken the path we have. So that's certainly something that we could take on.

The CHAIR: I think it's quite interesting given the nature of the Federation. You are basically dealing with, I assume, probably eight different schemes, because I know the ACT has got its own scheme. I assume the Northern Territory does too. So you have basically got eight different CTP schemes that all need to interact with each other. So you would have someone from New South Wales driving a New South Wales vehicle going interstate—I have no idea how the backend of all that would work if they're in an accident with someone from Victoria or Queensland.

ADAM DENT: And all with different benefits as well.

The Hon. GREG DONNELLY: And what if it's by scooter? Do they take that to Tasmania?

ADAM DENT: I was hoping you wouldn't ask that.

The CHAIR: The CTP Care announcement a few days ago from Minister Tudehope—it seems that it's going to fit somewhere in between, in many ways, the CTP scheme and the Lifetime Care scheme. Will it be sitting with you or with icare? In terms of the funding, is it going to come from the SIRA side of things or the icare side of things?

ADAM DENT: The short answer is that it is funded through levies that icare's board will determine each year that SIRA then undertakes to collect in the way we normally do. So the product sits with icare. SIRA regulates CTP Care as the relevant insurer. Given that Dr Casey has just spent the last 12 months of her role focusing on this, I might get her to answer that.

PETRINA CASEY: I'm not sure what else I can add. That's exactly the roles, as Adam has said. We've worked very closely with icare to ensure that the transition is smooth. That happens on 1 December. We anticipate about 70 injured people will transition on that date, and yes, as Adam said, the levy is how it's funded. The icare board are responsible for the levy and SIRA will regulate CTP Care as a relevant insurer. So slightly different to the private insurers that are in the market, and their role is different as well. So they have a role in treatment and care, but, obviously, they are not collecting premiums and they are not doing other things that the private insurers are doing. So we will have an appropriate regulation and supervision of their role. We just issued, a few weeks ago, the CTP Care guidelines, which are the guidelines that icare must follow when they're managing claims from people within that scheme.

The CHAIR: So it's a bit more like workers compensation. They sort of run it and you sort of regulate it, in that regard.

PETRINA CASEY: Yes.

The Hon. ANTHONY D'ADAM: The other thing that was raised by the Motorcycle Council which I think is interesting and worthy of putting to you, Mr Dent, is this question about road system liability. I think Mr Donnelly asked some questions about potholes and road maintenance as, obviously, contributing in some circumstances to single-vehicle accidents involving motorcycles, but I'm sure there are other scenarios we could imagine. The question is around whether the liability for that injury should be borne by those paying premiums when, clearly, the negligence or failure is actually with the road system and its maintenance, and what capacity there is, if any, for SIRA to recoup those costs from the entities that are responsible for the system for the maintenance, whether it's Federal, State or local roads.

ADAM DENT: I'll ask Dr Casey to take that if you don't mind, Mr D'Adam.

PETRINA CASEY: There is a mechanism to seek recoveries for third parties that have played a role in the accident. That is the role of the insurers, and we set that expectation in the guidelines. I can tell you that we have, as a scheme, recovered over $30.84 million in recoveries. Those are recoveries from various schemes and other responsible entities for their role in the accident. So there is a mechanism to recover. There is a mechanism for us to ensure that insurers are doing that, and we are doing that, assuring that those recoveries do happen within the scheme so they're not being paid for by the CTP scheme when there is another place that should bear that cost.

The Hon. ANTHONY D'ADAM: On notice are you able to provide a breakdown in terms of whether it's local government or where the recoveries have been drawn from?

PETRINA CASEY: I'm certainly happy to take on notice whatever we've got. It might not be as granular as that, but I'll certainly provide what we can of that breakdown of that $30.8 million, yes.

The CHAIR: Excellent. Thank you so much for joining us as our final witnesses for 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, be returned within 21 days. The secretariat will contact you in relation to these questions. Thank you for your time today.

(The witnesses withdrew.)

The Committee adjourned at 16:11.