

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2023 REVIEW OF THE WORKERS COMPENSATION SCHEME

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At Macquarie Room, Parliament House, Sydney, on Friday 20 October 2023

The Committee met at 9:30.

PRESENT

The Hon. Greg Donnelly (Chair)
The Hon. Susan Carter
The Hon. Anthony D'Adam
Ms Abigail Boyd
The Hon. Stephen Lawrence
The Hon. Chris Rath (Deputy Chair)
The Hon. Rod Roberts

PRESENT VIA VIDEOCONFERENCE

The Hon. Bob Nanva

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The CHAIR: Good morning and welcome to the first hearing of the Standing Committee on Law and Justice's 2023 review of the workers compensation scheme. I commence by acknowledging 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 people 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 or Torres Strait Islander person joining us today, in the room or remotely.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence that they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing the provision of their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of those procedures.

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

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

The CHAIR: Welcome to our first witnesses. Thank you for making time available today to come along to provide evidence. I will invite opening statements. Before doing so, I will clarify the position with respect to submissions. The Committee has received what is effectively SIRA's third submission, and has been able to study it. You can be assured that is before us. With that in mind, I invite you to make an opening statement.

ADAM DENT: Good morning. I begin by acknowledging the traditional owners of the land on which we meet today, the Gadigal people of the Eora nation, and pay my respects to leaders past, present, and emerging, and extend that respect to any Aboriginal and Torres Strait Islander people in the room today. I thank the panel for the opportunity to update you on the current state of the New South Wales workers compensation scheme and for your commitment to the review of the scheme. At the outset, I'd like to point out that SIRA's addendum was resubmitted on 4 October after discovering some human errors in the transposing of data into the document. I'd like to thank you for your patience in that process.

Since SIRA's original submission in October 2022, the New South Wales workers compensation scheme has grown to cover 300,000 additional employees. This has been largely due to increased employment rates across New South Wales, SIRA's compliance and enforcement activities and icare's improvements to their policy renewal systems and policy data. These efforts have contributed to ensuring more workers are covered by the scheme. Since the period 2020-21 reported in SIRA's previous submission, the rate of claims has stabilised, including primary psychological injuries, which continue to account for 8 per cent of all claims across the scheme. Nonetheless, psychological injury is still an area of concern. The occurrence of secondary psychological injuries, in which a psychological distress results from or is secondary to a physical injury, is on the rise and particularly prevalent in claims handled by the Nominal Insurer.

Psychological injury claims continue to be overly represented within the New South Wales government sector, representing 49 per cent of all active primary psychological injury claims in the scheme. The Stronger Communities portfolio continues to bear a substantial portion of these claims. SIRA is reviewing this disproportionate representation with an integrated compliance audit and performance review of the Treasury Managed Fund, including a claims audit sample comprising 50 per cent psychological injury claims. The review will be released to key stakeholders next month for feedback.

Since SIRA's 2022 submission, there has been a significant increase in payments made for primary psychological claims in the areas of public administration and safety, education and training, and health care and social assistance. Return-to-work rates for all claims have declined across the scheme, once the impact of COVID has been removed, with eight out of 10 people returning to work within 13 weeks. Early evidence suggests that these rates are stabilising. This decline also affects people with a primary psychological injury, with only four out of 10 returning to work within 13 weeks.

We know that effective early intervention and high-quality injury, claims and return to work management practices are important in a person's successful recovery. SIRA has used a range of regulatory tools to improve insurers' early intervention practices in line with SIRA's standards of practice. They included reviewing insurer business plans, conducting audits and engaging insurers in a series of collaborative workshops to clarify expectations and build compliance. In addressing the practice of risk assessment for delayed recovery through insurer workshops, effective assessment of risk has increased from 25 per cent in June 2022 to 85 per cent in August 2023. SIRA continues to drive early intervention in the sector, with audits commencing this month to review insurer practices for compliance with those standards of practice. We are closely monitoring the implementation and performance of icare's new claims model, with the new model expected to improve claims management performance.

SIRA has developed a value-based healthcare strategy, which aims to implement person-centred initiatives to address issues impacting return to work for people with psychological injuries or physical injuries requiring psychological support. As a key component of the strategy, SIRA has undertaken data analysis to determine the key healthcare issues and challenges within the New South Wales workers compensation scheme for individuals with psychological injuries, identifying 30 data indicators. Further, SIRA will engage with individuals with lived experience and subject matter experts to develop and present recommendations for implementing a value-based healthcare approach that addresses the identified issues.

A key component of SIRA's value-based healthcare strategy is a focus on integrated care involving the workplace, employers, insurers and healthcare providers to improve outcomes. Last year our workplace facilitated

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discussion process, when used by workers with a psychological injury, increased the 13-week return-to-work rate from 39 per cent to 50 per cent. In response to the McDougall review and the Standing Committee on Law and Justice recommendations in 2022, SIRA has developed and continues to explore policy options for government consideration.

SIRA has also been provided the opportunity to consider icare's draft whole-of-government return-to-work strategy, and is committed to liaising with icare and NSW Treasury to refine the scope and content of the strategy as an active member of the New South Wales government return-to-work strategy steering committee. What we have learned through our research and three testing years of pandemic and recovery provides us the opportunity to design a new workers compensation scheme that is responsive to the changing workplace and changing workplace injuries. Once again, I'd like to thank you for the opportunity to address the Committee today. I look forward to assisting with your inquiry.

The Hon. CHRIS RATH: Thank you, Mr Dent and Mr Parker, for attending today and for your submission with all the data. There is a lot to get one's head around in this submission, so thank you for that. I was wondering if you could give us a bit of an update on where things are at with the TMF review?

ADAM DENT: The Treasury Managed Fund review was initiated by SIRA—and I will invite Mr Parker to contribute as he pleases—over a year ago, and is a comprehensive review of over 950 claim files across the New South Wales government portfolio. We initially started that review with a view of it being a claims audit, but we have taken a deeper look across a number of factors. We have looked across all data in the TMF scheme, so in addition to the 951 detailed claims reviews, we have looked at the data as a whole. We have also conducted 10 employer visits, and interviewed stakeholders including unions, claims management providers, icare, Treasury and a range of people who have been involved in the scheme in different ways. That has allowed us to put together a fairly comprehensive picture. My expectation is that the review will be provided to stakeholders within a couple of weeks for their feedback. We are nearing completion. We should find that review concluded by the end of this year and published.

At a top level, before I ask Mr Parker to provide some more detail—we have put a fairly deep focus into the responsibilities of employers as self-insurers within the New South Wales government sector. At a high level we have found there is a significant lack of compliance with some of the more basic obligations at the start of claims, which we think are very important to focus on and will look to address. We have also found data that reinforces what we have seen within our submission, which is a great number of the psychological injuries that made up 50 per cent of the claims reviewed are effectively from preventable workplace behaviours. The mechanism of injury wasn't primary trauma, as you might expect in some government employers. A good eight out of 10 in some cases were related to workplace behaviours, so either work stress, bullying or harassment. That remains a significant problem.

One of the other key factors in the review that we uncovered was the difficulty of getting employees back to work. Ultimately, for an employer that is the largest in the southern hemisphere, we think there is an opportunity for the New South Wales Government to consider far greater options around how return to work is handled across the sector. There should be opportunities, we think, to find alternative duties across a sector the size of New South Wales, even where it is difficult based on some occupations. We are doing work already with icare and Treasury on what that might look like, but it was a significant finding of the review. If you don't mind, I might ask Mr Parker to provide a little more detail on the review.

DARREN PARKER: The rationale and the background of this review is important. Over a number of years we focused our regulatory activities on the Nominal Insurer, and that is well socialised and documented through this Committee. Through that work and also the work of the tripartite group, which has representatives of the unions, employer groups and agencies, it was a good suggestion to say, "What about the Treasury Managed Fund? We've been focusing a lot on icare and the Nominal Insurer; we need to look at that to see what are the issues there as well." At the same time our data was showing that there is a deterioration in particular of psychological injury performance, as Mr Dent just talked through. In our submission we can go through the data that points to that.

We undertook a review of the Corrective Services organisation, and that has also been the subject of previous Law and Justice hearings. That found a small number of claims that were mismanaged. We had a look across 100 claims and found that those issues were not systemic, but we wanted to make sure that those same issues were not occurring right across the public service. That is the reason why we have leant in to this review. When we started the review, our focus was quite narrow, but as we got further into it, with the size of the public service, we thought that we needed to expand and broaden the scope.

As Mr Dent pointed out, we reviewed 951 claims across the public service, which is the largest review ever done in Australia. We looked at all the claims data that is available. We interviewed over 300 people—the

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lived experience of people that have suffered an injury—and we are putting all that together to make some findings around what is the current state of performance, where are the issues and what are the recommendations needed to fix this. We are due to publish or share that report with stakeholders next month.

The Hon. ANTHONY D'ADAM: Does that include this Committee? I'm assuming it does.

Ms ABIGAIL BOYD: Mr Dent, you mentioned work stress, bullying and harassment before when you were talking about preventable workplace behaviours. What do you mean by "work stress" as such?

ADAM DENT: To the extent that we have been able to quantify that to date, it really relates to potential workload factors. The volume of work that an employee might be expected to undertake on their own is often reported as a stress factor within the workplace. Generally it would be around workload. The bullying and harassment might also include difficult workplace relationships and those sorts of factors. Essentially the data recorded is reasonably minimal in terms of the qualitative for us—the mechanism of injury uses a particular code. But what we are seeing in a lot of cases is a sense of overwhelm or potentially burnout.

Ms ABIGAIL BOYD: I am interested because sometimes there are systemic factors we are looking at where there simply aren't enough employees, or the workload is because of systemic policy settings, versus a particular workplace having problematic individuals. Was there any sort of data that divides that up to look at how much falls into which category?

ADAM DENT: I don't think—Darren?

DARREN PARKER: We would have that data, and we have broken it down. If we compare the Nominal Insurer to those agencies in the Treasury Managed Fund, we know that the vast majority of psychological injury claims for the Nominal Insurer are related to harassment, bullying and workplace pressure. The claims that are coming from the TMF—yes, they have bullying, harassment and workload pressure, but they also have more responses about violence that they are facing. That is consistent with the type of work that they would do in policing and Corrective Services.

ADAM DENT: Ms Boyd, I don't think we could identify whether it was a systemic issue or a capacity issue, potentially. That wouldn't have come through in terms of the way it is recorded for insurance systems.

The Hon. ANTHONY D'ADAM: Can I take you to page 20 of your submission, table 12, which deals with work pressure in the education and training industry? It is quite clear that work pressure is the primary driver. I think this table is very illustrative of the intersection between a broader public policy question around teacher workload and teacher numbers. Here we see that phenomena translating into an increase in, or a high number of, psychological claims driven by work stress. This is data to 31 July 2023. Some 41 per cent of claims are assigned to work pressure. There is a clear nexus there, isn't there?

ADAM DENT: Absolutely. I think that is quite concerning. I think that then leans to a conversation around the structure of work in those environments. From our point of view, we would see those issues as being good ones for agencies like SafeWork to potentially then work with employers. But certainly the employers themselves will be able to take those matters into consideration. But that is a highly disproportionate number, absolutely.

The Hon. ANTHONY D'ADAM: That was going to be my next question, which is about the work that you're doing with SafeWork in terms of enforcement of the obligations of employers around safe work systems design. What work are you doing with SafeWork on that front?

DARREN PARKER: In terms of the WHS responsibilities, that sits firmly with SafeWork NSW. They will regulate that and they are working across all agencies. The work that we are doing is in the workers compensation space. We're making sure that the agencies from an employer perspective are adhering to their responsibilities. What I mean by that is that, if there's an injury, they are notifying those injuries in a timely way to their insurer so that they can get early intervention and support, and making sure that they've got a return-to-work program so that everyone in the organisation knows exactly what they can expect when a workplace injury occurs and what support needs to be offered. We have found through a Treasury Managed Fund audit that our compliance officers found that there are some gaps in compliance across a number of agencies. Where we have found gaps, we have taken action and issued improvement notices to those agencies. Even throughout this review and working towards the report that's going to be published next month, where we've seen issues and problems that need to be addressed, we've taken that action.

The Hon. ANTHONY D'ADAM: But your compliance officers are dealing with the problem after—

DARREN PARKER: That is right.

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ADAM DENT: You're quite right, Mr D'Adam. I think there's a huge opportunity that this data now provides for us to give information to SafeWork that would be far more useful for them targeting their efforts in those preventative and safe work design focuses. That ultimately is within their remit, not ours. But I can see there's a huge opportunity now that we have all of this in front of us, and with the detailed review we've done across the TMF, to be able to work with SafeWork to provide them greater insights into where their focus might be. We also hope that these insights will be of great use to the public sector itself and to those employers. It's probably no surprise to the education and training sector that they have those pressures. They would be seeing that on a day-to-day basis. But in terms of targeting SafeWork's efforts, we'd be absolutely looking to provide this information to them and support them in that work. Because, ultimately, from our point of view these modifiable issues would prevent the claims needing to be ones we would need to review. I think prevention is the best cure in a lot of cases here. That's fairly evident when you look at the scale.

The Hon. CHRIS RATH: I know the report or the review will come out in the next few weeks, but why are the psychological injury claims so much higher in the public sector versus the private sector? In your submission you've said that psychological injury claims at 47 per cent across the whole system fall within the public sector. You touched on it with the previous two questions, but what are the specific drivers behind that high number?

The CHAIR: Can you give us the page reference for that, for the record?

The Hon. CHRIS RATH: Page 13.

The Hon. ANTHONY D'ADAM: Can I clarify that that's 47 per cent of the total psychological claims?

The Hon. CHRIS RATH: Correct.

ADAM DENT: First of all, I think, as Mr Parker alluded to, one of the more obvious—and certainly first as we started looking into this—reasons would be the nature of the work across some of those sectors. The opportunity to be exposed to trauma in their workplace is certainly not to be unexpected in a number of the workplaces that public sector workers involve themselves in. I think the surprise—and perhaps the answer we need to do more looking at with SafeWork—is why those proportions of modifiable behaviours exist within psychological injury claims. It shouldn't be any surprise that police, health workers, teachers might be exposed to traumatic issues or occupational violence. As sad as that is, they are industries that are more predisposed to that. I think it has been quite staggering, as we've undertaken this work, to uncover the amount of it that is not related to those sorts of primary trauma type factors that might be reasonably expected to be seen more in those occupations than, say, some private sector occupations.

To the extent that we understand why we're seeing that in the sector, it clearly comes down, I think, to those key factors around workplace behaviours—work stress, as we've just discussed with Ms Boyd, but also those issues of harassment and bullying. The other issue is around the ability to get people back to work sooner. I think what we're seeing is that the difficulty structurally within the public sector is dragging out some of those claims—so the inability, because of how some parts of the sector are structured, to get, say, a teacher back to work reasonably quickly at school, or perhaps a police officer who requires particular physical or health requirements to be able to undertake their duties. There are some complexities in how that works that I think really need to be addressed.

It'd be fair to say we're really only scratching the surface at this point in time in terms of understanding what's driving that, but the fact that it has come out as being such a significant factor in driving the size of that psychological injury component really warrants further investigation. The sort of 20 per cent is sad and not unreasonable. But the 80 per cent, where it's modifiable workplace behaviours, needs considerably greater focus. We will be turning our minds to that. We'll be directing recommendations in all likelihood at the conclusion of this report to the public sector to undertake considerably more work. There's no obvious explanation at this point in time that justifies why those behaviours—other than perhaps, as Ms Boyd reflects, some systemic or structural issues that are driving those.

The Hon. ANTHONY D'ADAM: There's stigma though, isn't there? That's one of the impediments in terms of redeploying workers within the public sector who've had a psychological injury, is that fair to say?

ADAM DENT: We've certainly had anecdotal examples in our conversations in particular with employee representatives that, once you're seen as being on claim, there is a view that you're obviously perhaps difficult or otherwise harder to get back into the workplace. One of the other things we also see that drives that is a detachment from the workplace. Where there isn't early supportive contact between the employer, the insurer and the worker, that worker becomes further and further disengaged, which then makes that process considerably harder. But I think it would be fair to say there are examples—and certainly in our conversations with unions and with workers who experience the system, there is a stigma around being on a psychological injury claim.

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The Hon. CHRIS RATH: I was wondering if you could also comment a bit on the secondary psychological injury factors. In particular on page 12 you talk about psychological distress related to the compensation process, the support of their workplace and personal factors such as a person's own expectations of recovery and ability to return to work. Do you have any observations on how the scheme could be improved to address some of those secondary psychological injury problems that we're seeing come to prominence?

ADAM DENT: Certainly. I think it's perhaps first really important to acknowledge that there isn't a formal diagnosis of secondary psychological injury that's captured in the data available to us. So we predicate this by, in our original submission, identifying that we consider secondary psychological injury to be a physical injury where there have been psychological payments made. It's a proxy at the moment in the absence of a clear diagnosis in the data that we're able to capture. Notwithstanding that, I think the prevalence of it makes it obvious that it's real and that it exists and it's not just an anomaly in the data.

These factors tend to arise from the case management experience and the experience of being in the workers compensation system. It's certainly fair to say there would be some injuries where the nature of pain and the experience of the primary injury would drive a psychological injury. Again, it's hard to delineate the two and it would be disingenuous to try to do so. Somebody with significant back pain, for example, may end up needing some psychological support to handle the long-term nature of their injury. That's not an unreasonable expectation at all. In fact, we know that it actually assists with their recovery.

However, we do see a considerable number of injuries where it would be unexpected to perhaps have seen those psychological payments. They're the ones that, from our point of view, we really focus on in terms of psychological injury. The factors we think would make a significant difference there are certainly around the claims management experience. The workers compensation system by its nature can become adversarial, but that can be ameliorated by a good claims management experience. Uplifting the capability of claims managers and ensuring that their conduct is in line with our standards of practice makes a huge difference.

Assessing risk early—I did note in my opening statement that there has been a significant uptake in appropriate risk assessment at the start of a claim. In earlier audits the use of tools to understand whether somebody was at risk of a psychological injury was around 22 per cent. We're now seeing up to around 85 per cent compliance with the use of those tools early in a claim. That's an indicator, then, that the right amount of care and support can be tailored. What we're not yet seeing is the appropriate degree of tailoring in injury management planning for those injured workers. The risk might be identified considerably better now, but we're still seeing a large degree of almost templated, if you will, injury management plans, rather than those tailored to and developed with the injured worker to the right degree. Those are things at the very start of a claim that can make a huge difference to the claims experience and potentially have an impact on the likelihood of a secondary psychological injury.

The next part then is around that detachment from the workplace. When we talk about detached workers, we're talking about those who've been out of the workplace for a considerable period of time and are, therefore, unlikely to return. At that point, where a worker doesn't have a connection back to their workplace, which for a lot of people is a key part of how they identify themselves and see themselves, that's an opportunity for that risk to emerge. Realistically, good, supportive, early contact, solid injury management planning and then quality, empathic case management throughout the early part of the claim is a really good way to ensure we've got the best chance of preventing psychological injuries as a secondary result of the claim. So we continue to focus on, through our standards of practice and through our audits, those early factors within a claim because they really are where the difference gets made. The first four weeks of a claim are fundamentally likely to determine the outcome.

The Hon. ANTHONY D'ADAM: Obviously, psych claims are—there's a high propensity for those to be disputed. From the evidence you're providing, you're saying early action, early acceptance, getting the claims management process underway is critical to reducing the overall cost. Yet the psych claims are the area where there's more likely to be disputation at the outset. That's going to delay that process, isn't it?

ADAM DENT: That's right, and that early sort of entry into an adversarial process, obviously, then has an impact. So there's the fact that we often see more factual investigations conducted early on psychological injury claims than we would others as a driving factor in that. One of the complicating factors that might be more difficult to challenge is that they are by nature more disputed.

The Hon. CHRIS RATH: You mentioned in your opening statement the McDougall review. It was obviously one of the most important comprehensive reviews into the workers compensation scheme of recent years. I was wondering if you could give an update on where the implementation of those recommendations were at and how much of what's left to do in implementing those recommendations is up to you and icare and how much is actually needed at our end to get some legislation through to fix the scheme, because, at the moment, it

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seems to me like we're putting pressure on the regulators to implement those recommendations, but there's certainly a legislative aspect of change that needs to be looked at as well. It can't all just be done through regulation.

ADAM DENT: That's a very good comment, Deputy Chair. We have continued to progress the matters that could be progressed by SIRA and icare. In fact, a good number of those are now nearing completion, if not complete. Certainly, through icare's Nominal Insurer Improvement Plan there's been considerable process, which I'm sure Mr Harding will speak to this morning. I think really the crux of it now, in terms of impact, is down to the legislative process. There are a number of recommendations that were provided to the previous Government that we would still now be providing advice to the current Government on. A number of those matters are the ones that really start to impact individuals on claims. Commutations, death benefits—there are all of those sort of elements that McDougall identified, that we can't progress without the support of the Parliament. A number of the recommendations around SIRA's powers and reach to be able to impact claim service providers, self-insurers to a lesser extent—all of those issues are not something we can progress without the Parliament.

So I think, without having the table in front of me at the minute, it would be reasonable to say that the lion's share of what's left would be with the Parliament to consider. SIRA continues to provide to the Government our policy advice for them to consider. We've provided all of that since the election. We now look to the Government to make a decision on which matters they wish to progress. Since then, of course, we've also learned a lot—since the McDougall review. Some of those recommendations are not as potentially relevant as perhaps they once were. So there are some that we've taken the spirit of and would look to. There have also been changes in the system since then that have addressed other, smaller elements of it. So I think, on balance, considerable progress has absolutely been made. But the lion's share, in fairness, would now be left to the Parliament to resolve.

The Hon. SUSAN CARTER: Thank you both for being here. If I can take you back, Mr Dent, to some comments you made earlier, when we were talking about psychological injury and talking workplace bullying. You also mentioned—I think it was difficult workplace relationships. I wonder whether there's any data, because we would've seen a period before COVID, during COVID, after COVID, of people working in very different places. Is there any data as to the effect of remote working and working in the office, in terms of those workplace relationship claims?

ADAM DENT: That's an incredibly interesting question. It's not something I think we would've collected data specifically on. Our insurer data requirements haven't changed dramatically over the last number of years, in terms of what we can collect from insurers, the points that we would look at. I think it certainly would warrant further exploration. Those changes in the nature of the workplace, I think, are really critical and worth understanding. The other element we have been turning our mind to, of a similar vein, is the gig economy and what that means and what work looks like more generally. There isn't considerable bodies of evidence, at the moment, on remote work and its impact. I'd almost take that as a suggestion, if you will, as something worth us exploring.

Year on year the data hasn't, I think, shown any significant anomalies—I'm looking at Mr Parker to correct me if I'm wrong—that would indicate, that stood out as being obvious. But I think it would be hard to imagine that the number of people potentially working from home now and not interacting the same way with their employers wouldn't have had some impact. I think, though, what's probably relevant is in large part the key elements within the Treasury Managed Fund, so the public sector. The workers who are the most exposed to psychological injury tend to be those workers who are least likely to have been able to work remotely. So I think it's probably reasonable to say there would be a moderate, if modest at all, impact for police, teachers, health workers et cetera. But I think more broadly, across the workers compensation system, we'd have to try to understand that. As a part of our general work in the gig economy and starting to explore what that looks like in the changing nature of work, that's certainly a branch of thinking that we should look at.

The Hon. SUSAN CARTER: I'd be grateful if you could. If we can just go back to the discussion in relation to table number 12, on page 20, so that I understand it properly, this is a table of workers in the education and training industry in the public sector, or across the whole sector?

ADAM DENT: It would be the whole sector. The way injuries are coded—they're coded against an industry code. So it's quite possible that a number of the workers represented there would not only be public sector. They might be in private education providers et cetera. So I think we couldn't look at this and say it was holistically public sector. However, I think that the large share of workers in New South Wales would be public sector workers. It would be representative, at best.

The Hon. SUSAN CARTER: I was just wondering whether there was different data for different sectors and whether that should also be compared as part of anything that's fed into preventative thinking.

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ADAM DENT: In preparing for this hearing and this addendum, we didn't have the opportunity to do that. But, again, I'd be happy to do so.

The Hon. ANTHONY D'ADAM: Perhaps on notice, Mr Dent, you might be able to provide that table broken down by insurer.

ADAM DENT: I think we can certainly do that, absolutely. Where it was an education and training industry employee in the Nominal Insurer, that would then imply, for example, they were in the private sector rather than the public. We would have data that would allow to us to do that analysis. I'd be happy to take on notice the opportunity to do that.

The Hon. SUSAN CARTER: I think that'd be very helpful, actually. If I can take you somewhere else, I'm interested in your peer support Here2Talk line. I notice, in the addendum, that you have extended the pilot. I'm wondering what the evaluation of the pilot was that led you to extend it and any insights you have from that evaluation.

ADAM DENT: That's an excellent question. Unless Mr Parker knows the answer, I might take that on notice, if you don't mind, Ms Carter. We certainly extended it. The results were looking promising at that point. I think it might have even been that the evaluation hadn't concluded and there was an issue of service provider continuity. So our aim would be, throughout the extension to the pilot, to finalise a full evaluation. Certainly the results were looking positive enough to justify continuing that contract until the evaluation concluded. But I might come back to you on notice with a more fulsome answer if that's okay.

The Hon. SUSAN CARTER: Thank you. I'd also be interested to know the thinking around peer to peer, rather than professional to client, and the differences that you're finding in that, and why the peer to peer is or is not successful.

ADAM DENT: Certainly. We'll add that to the response. There was a body of evidence that we considered that allowed us to look at that as a pilot, in addition. Because, as you'd be aware, there would be considerable EAP programs in most employers where there's professional support. This was another alternative that was to be explored. We will add that to the response.

The Hon. ROD ROBERTS: Thank you, gentlemen, for attending today. I have two lines of questioning. I'll go with this one first because it's relevant to what we've just been talking about. I, along with a number of other members of this Committee, have been on law and justice and, therefore, icare and SIRA for the past couple of years. We've constantly heard about the claims management process. It has been broken, perhaps contributing further to psychological injury. I think you've touched upon that, Mr Dent. Have you seen any significant improvement at all to the claims management process?

ADAM DENT: Mr Parker's team monitors that more closely. I'll invite him to answer in a moment. What we have seen is considerable progress in the implementation of the new claims management model. I'll start there. In fairness to icare, over the past two years they have progressed substantially the new claims model. In recent times, they have shown some really encouraging progress in onboarding the new providers. There will now be up to six claims service providers within icare's remit, particularly for the Nominal Insurer. The process through which that has been undertaken has been one of the more promising things we have seen, in my time at SIRA certainly.

First of all, in terms of the execution of the plan being one that has been carefully considered, as new providers have been brought on board there has been a fairly detailed process of onboarding that has allowed them to come on board gently. I think they were calling them dress rehearsals. There were essentially go/no-go points throughout the process that meant no worker was going to be transferred to a new provider before there was certainty that the new provider was onboarded well. From SIRA's point of view, this was a critical factor. We didn't want to see a large-scale movement of claims. We know that the change of claims manager is a considerable factor in somebody's experience. We were very nervous initially that the wholesale shift of claims to new providers would have been problematic. icare have undertaken a very careful process of how new policies are onboarded to the new claims service providers. Then, at a staged point in time, employees will get the opportunity of choice within certain categories to move their claims portfolios over to the new providers. That has been an absolutely encouraging part of the process.

Icare have also afforded us the opportunity to work directly with their assurance provider, Promontory. Over the past probably 18 months now, we've met with them on a quarterly basis to monitor progress. We still have had some challenge in getting visibility of Promontory's oversight of the Nominal Insurer Improvement Plan. That remains an ongoing conversation between SIRA and icare about how many of the elements of that plan are being monitored by Promontory and the assurance we have that they are being delivered. It would be, first of all, fair to say that there has been substantial progress, and that's not something I would have said lightly in this room

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if I hadn't believed it. I've certainly been far more critical historically of the lack of progress. So I think there has been substantial progress.

What still remains to be seen, though, is a shift in what the data is telling us about the return-to-work numbers. In the past two years, what we have seen when we take COVID claims out is still a deterioration of around 2 per cent at 13 weeks from 2020 to 2021. However, between last year and the current year's data—between 2021-22 and 2022-23—there does appear to be a stabilisation. It's not yet obvious enough and I don't think we've yet seen enough around what has caused that stabilisation, but it is promising to see. Numbers have stabilised at a low level, but in the context of your question about improvement, stabilisation is a good start—

The Hon. ROD ROBERTS: It is an improvement in itself, isn't it?

ADAM DENT: —and is an improvement in itself. That is a promising sign that across all of the interventions that have been undertaken over the past couple of years, they are starting to create some impact, or at least there's evidence that they might be. What we would be now looking for is some of the work icare are doing around professional standards and uplifting the capability of claims managers. That's something we're monitoring very closely. Because that claims management experience is such a critical factor, we would want to see that implemented. I believe the implementation of that is only starting to gain some traction now. Mr Harding, again, might be able to update you on that this morning. That for us is probably one of the critical factors we're looking forward to seeing. Higher quality claims managers and lower turnover across those claims service providers is where we're going to see the real rubber hit the road in terms of return-to-work rates. At the moment, stabilisation is a positive thing. What we'd now look to see and what I understand icare are predicting—Mr Parker might comment on that—is that we will expect to see an uplift in return to work over the coming years.

DARREN PARKER: As you know through the previous committees, the discussion around the need to improve basic claims management activities has been front and centre. Through the work that SIRA has done in highlighting those issues and influencing the creation of that improvement plan, icare has developed the improvement plan with the oversight of Promontory. We are closely monitoring its implementation. Promontory are saying there's significant progress in activities. To your point, have the return-to-work rates and outcomes improved? Not yet. But it does look like they're stabilising.

There are two significant things that icare are doing. One is there's a new claims model they're implementing and a claims service provider strategy. That's what Mr Dent just talked through—the increase in the number of claims service providers. That includes an addition of a specialist provider that provides services to people with psychological injuries. We haven't had that before. With the implementation and looking at the financial position, we know this year that the target premium rate is still below break even. So we expect the financial strength of the scheme to continue to deteriorate for the next 12 months. But from 2024 to 2025 icare are predicting that the scheme will start to turn around, and at the same time we can expect that there will be better return-to-work rates and better outcomes for workers. It's still going to take a number of years—until June 2030—for the financial position of the Nominal Insurer to meet the capital target zone. But at least now we have a target date of when we are likely to see those improvements.

ADAM DENT: Mr Roberts, before we move on, it's probably appropriate for me to say that in our view it's not all the responsibility of the insurer either, in terms of return to work. There are multiple domains that we identify needing improvement. While all of that work in the Nominal Insurer is so critical, because it represents such a large part of the workers compensation scheme, we've also been doing work around supporting workers more effectively. SIRA piloted a workers compensation assist program. This was to mirror essentially the type of support we were providing in the CTP scheme. Compulsory third party provides SIRA the role of making sure we contact injured motorists or people injured on the road, ensuring they understand their benefits and entitlements and working with them through their claim. We have piloted a version of that within the workers compensation system. The evaluation has pointed out there is some benefit to that. However, the data available to SIRA at the moment from insurers isn't rapid enough that we can have an early enough intervention there. So until that improves, the workers compensation assist program probably has a slightly different role going forward. We fund vocational programs which will continue to—

The Hon. ANTHONY D'ADAM: Mr Dent, could I ask if you could—

The CHAIR: Hold on, please. Let Mr Dent finish his—

The Hon. ANTHONY D'ADAM: I wanted to ask if he could, on notice, provide us with a copy of the evaluation report on that.

ADAM DENT: Yes, of course. To the point we've been identifying, particularly in the public sector, there is a significant responsibility for employers in delivering on their obligations as well. As a result of our thinking around this, we've updated our employer supervision framework within SIRA. It's a small team that focuses on

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the 350,000 employers in New South Wales. Each month we use predictive modelling to identify the 100 highest risk employers in New South Wales. That might be either because of factors around the nature of their industry or the types of claims we're seeing come through the data. We have launched a new inspectorate, and SIRA inspectors are now proactively visiting employers around New South Wales to ensure that they're complying with their obligations. We've been able to substantially increase the number of compliance activities that have occurred as a result of that.

I mentioned in my opening statement our workplace facilitated discussion service, which is around getting rehabilitation providers, the insurer, the employer and the employee together to discuss return-to-work options in a different way. We did see an improvement in return to work from 39 per cent to 50 per cent with workers who are involved in that. So all of those things might be contributing to that stabilisation. I think it would be bold to say that there's a really positive path forward just yet, but there are certainly early signs that some improvement is occurring, on the backdrop of the same problem continuing to exist nationally.

The Hon. ROD ROBERTS: Some improvement is improvement at least, and so is stabilisation at this stage. Can I say congratulations on your compliance in the field—sending inspectors out and actually dealing with the employers. I think that's a good thing and I think it's something that's been lacking in the past, from my understanding. I want to congratulate you on that. I will go down a different course of questioning. Unfortunately I don't have a copy for you, but Adele Ferguson wrote an article on 22 November 2022—so last year—just prior to us compiling our report from the last inquiry. She says:

Documents obtained by this masthead show that in February icare discovered a potential issue with underpayments – but delayed telling the workers' compensation watchdog State Insurance Regulatory Authority (SIRA) for seven months.

First of all, is that a fact?

ADAM DENT: Yes, in a sense. There would be the argument around that that we've been continuing—and we're in the process of finalising an investigation into that matter as we speak, Mr Roberts, so I will be cautious enough not to predict the outcome of that.

The Hon. ROD ROBERTS: I will look forward to the outcome of that.

ADAM DENT: The issue was indeed discovered. There is a discussion with icare around when it was, from their point of view, determined to be a significant matter that could be then reported to SIRA. So the delay in notification perhaps related to whether it was considered a significant matter by icare at that point in time.

The Hon. ROD ROBERTS: Can I rudely interrupt, Mr Dent?

ADAM DENT: Yes, of course.

The Hon. ROD ROBERTS: Do you consider it a serious matter?

ADAM DENT: Absolutely.

The Hon. ROD ROBERTS: When I say "you", does SIRA consider it a serious matter?

ADAM DENT: Any individual worker underpaid is a serious matter, absolutely. The quantum of workers underpaid in this case is absolutely serious. So icare have admitted that those underpayments had occurred, and they had been occurring since 2012—which, in fairness, predates both icare and SIRA but is largely irrelevant to the workers who were impacted. So that's absolutely the case. Mr Parker, I might ask you to elaborate on that. Your team have been looking into the matter.

The CHAIR: In the commencement to your answer to the question of the Hon. Rod Roberts you said "in a sense". That's a qualification, is it not?

ADAM DENT: SIRA has a significant matter policy that determines what threshold of something should be reported to SIRA. As a part of our current interactions with icare, we're working through whether we agree that we both had the same threshold at the same time, essentially. But, as I said, I'm trying to answer cautiously because we are in the process of finalising that matter and I don't want to prejudice the outcome. But, absolutely, at the point at which it was discovered by icare, there was a considerable delay before it was reported to SIRA, so that is absolutely true.

The Hon. ROD ROBERTS: Were you disappointed by that fact?

ADAM DENT: Of course, yes. From our point of view, we would like to know about matters as soon as they occur so that we can be a part of monitoring the remediation. That's essentially why we're currently undertaking this review.

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The Hon. ROD ROBERTS: Can I say for the record that I place no blame at the feet of SIRA for this. In my opinion—and I look forward to the conclusion of your report—clearly this falls fairly in the court of icare and their responsibilities of perhaps informing you as the regulator that they discovered this underpayment. Because, as we all agreed, this is not the first time that underpayments have been discovered. One would perhaps come to the conclusion, or the impression, that they just didn't want to tell you or tell anybody else. I don't expect you to comment on that. As I say, I look forward to the report, at the end of the day. It caused me great concern, and I think it caused concern to other Committee members and probably may have contributed to the fact that we didn't complete our report in the last term—because there were unanswered questions.

I certainly have questions for Mr Harding in this regard because I feel as though not only did they have an obligation to inform SIRA but one would have thought perhaps had an obligation to inform us, as the oversight Committee, as well in the numerous times they have appeared before the Committee under oath giving evidence. That's something we'll explore further, but that's caused us a great deal of concern. First of all, I wanted to find out that this report was factual. So it is, in fact, the case that they knew in February 2022 and they didn't tell you until September 2022.

ADAM DENT: SIRA, yes. It was 6 September.

The Hon. ROD ROBERTS: You say it was discovered. Was it discovered by SIRA or did icare come knocking on your door and say, "Listen, by the way, we'd better tell you this now"?

ADAM DENT: Mr Parker?

DARREN PARKER: Mr Roberts, you've mentioned about the previous underpayment issue. That was across tens of thousands of claims. Throughout that process we engaged KordaMentha to assist us to make sure that the methodology identifying who are the impacted workers was sound. That report was provided to SIRA's director of insurer supervision, with a comment in that report around whether indexation errors were a concern at that point. The director of insurer supervision had a discussion with icare. It may not have been at the appropriate level to provide authority for the response to the question, but the question was is indexation an issue? This was mid- to late 2021. The response was no, it's not. It was some months later, in February 2022, when icare discovered that there may be a potential significant matter here with the indexation errors. Then, from February through to September, icare went through a process of clarifying the extent of the problem—so the number and potential value of those claims. That then came to September and then we were alerted.

The Hon. ROD ROBERTS: I will take us further into that same article. Adele Ferguson says:

In a letter to SIRA on September 6 this year—

so we're talking September 2022—

icare's head of risk and governance described the underpayment issue as a "potentially significant matter", saying it was strictly confidential. "This information is not publicly available and should not be made publicly available," ...

Can I ask for your comments on that, Mr Dent? Why would this information need to be made confidential? Why should it not be made available to the public?

ADAM DENT: That's a matter for icare to answer, in fairness, Mr Roberts.

The Hon. ROD ROBERTS: Fine.

ADAM DENT: Perhaps a defence to that from icare's perspective would be—

The Hon. ROD ROBERTS: Sorry, Mr Dent. If I can, they did write to you saying this?

ADAM DENT: Yes.

The Hon. ROD ROBERTS: That's why I'm seeking comment from you. Again, this is no reflection on SIRA. I don't want to give that impression.

ADAM DENT: It is not unusual for SIRA to receive correspondence from insurers that claims privilege, partly because of commercially sensitive issues and, in this case, potentially because the issue, in their mind, wasn't fully understood. It is not unusual for us to have somebody ask us not to disclose information and to say that it shouldn't be available to the public. I think that's a decision that, as the regulator, we ought be able to make in the public interest. But that was certainly the assertion in that letter, that's true.

The Hon. BOB NANVA: Mr Parker, can I come back to an answer that you just provided to Mr Roberts? What advice did SIRA rely on from icare with respect to the indexation issue when it was first raised in, I believe—did you say in 2021?

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DARREN PARKER: Yes. In mid- to late 2021 we relied on a KordaMentha report. From memory, it was looking at the methodology for the earlier PIAWE remediation issues and then the dialogue between the director of insurer supervision and a manager at icare. The follow-up discussions that we had were reliant on the letter in September 2022 that was referred to us, and that was when we started to ask questions around when will you know how many people have been impacted, to what value and then what's the expected time frame for people to be remediated for those who have underpayments?

ADAM DENT: Mr Nanva, to summarise, essentially, between that initial concern being raised, no evidence had been presented beyond that KordaMentha report that had justified any further action. So we essentially relied on icare's response, that they didn't see it as an issue at that time. Given that beyond that initial concern we hadn't seen any evidence to support it, no further action was essentially taken on that matter. We had been involved in the substantial remediation program around the original PIAWE issue, where there had been underpayments made. So it was probably a reasonable assumption at the time that, given the amount of work being done on remediation, there was no reason to believe that there was a further problem. However, it did later emerge that that initial concern, essentially mentioned in a fairly light-touch way, if you will, by KordaMentha, had been justified.

The Hon. BOB NANVA: You just assume errors like this inadvertently arise along the way. This is a pretty significant issue. I am just wondering in hindsight, as the regulator, would you have done things differently when those concerns were originally flagged?

ADAM DENT: Hindsight is always a perfect thing to reflect upon and perhaps we could have pursued that more deeply at the time. As I said, the amount of remediation work underway gave us some confidence that a considerable focus had been on PIAWE. I think at that time indexation wasn't as obvious as being a problem in that, so this new issue relates to the change in indexation at the two points through the year. I think going forward now we would probably be more routinely looking at the end of each indexation period for evidence it had been effectively applied. It is fair to say that the indexation process is far more complex than it perhaps ought to sound, that on 1 October payments should go up, because that's not always the case. There are a number of reasons why they wouldn't be.

Previous systems relied on that being manually done, where there's now a degree of automation. We are now looking to ensure that that automation is also functioning appropriately going forward. In hindsight, absolutely we could have dug far deeper into it, but I still reflect on the fact the amount of remediation work going on, that no other real complaint had been made at that point. Given the number of workers impacted, it still actually possibly to some extent is surprising that no-one had raised a significant complaint about indexation not having happened, given the number of matters that get reviewed over time. It's both staggering that it occurred and I think fair to say staggering that it wasn't noticed, including perhaps, quite fairly, by us.

The Hon. BOB NANVA: In your opening statement, Mr Dent, you mentioned an issue in your headline observations about the audit that has taken place around the lack of compliance. Could you elucidate a little more deeply on what you mean by that?

ADAM DENT: What we are talking about there is compliance at an employer level, in particular, that has been uncovered through this review across the Treasury Managed Fund. Factors like an employer's responsibility to report an injury to their insurer within 48 hours are one of the things that we've seen a high degree of non-compliance with. There are employers in the public sector who are extraordinarily highly compliant with that and have systems in place that do it, which means, from our view, it's entirely possible to have been done adequately and accurately. That's one of those things—that early report of a claim to an insurer is significant. Mr Parker, did you want to elaborate on any other matters? I think it was fair to say the most obvious compliance issue was the simple responsibility of an employer to report an injury to their insurer and the degree to which we saw that. The other thing, return-to-work planning generally was misunderstood or not understood well by a number of employers. The basic obligation to have a return-to-work plan as an agency—there was a high degree of variability in individual employers' understandings of their obligations there that surfaced.

The Hon. ANTHONY D'ADAM: What is the consequence for an employer who doesn't comply?

ADAM DENT: There's quite possibly a really paltry fine.

DARREN PARKER: I think that's a good description. There's an improvement notice, but the fines haven't been updated for quite a long period of time. When you are dealing with quite large entities, I have to take on notice what the fines are but they're not significant.

The Hon. ANTHONY D'ADAM: How many have been issued would be interesting as well.

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ADAM DENT: Through the course of this investigation, at the 10 employers we issued a series of improvement notices and at least two penalty notices, from memory. I will take on notice and provide the detail of that.

The Hon. ANTHONY D'ADAM: Is there a separate penalty for discouraging employees from lodging a claim?

ADAM DENT: I don't know that there's a specific penalty for discouraging it, no. That would be a conduct issue which we would certainly be deeply concerned with and we would want to investigate. From a risk basis, what is also fair to say is while they weren't reported within 48 hours, some of them might have been within 72 hours, for example. The degree of harm caused by that noncompliance may not be substantial, but from our point of view what that is an indicator of is a real lack of understanding of the overall process of effectively managing workers compensation claims. We wouldn't seek to send inspectors out and issue 10,000 of those fines a month, for example. But as the indicator or that tip of the iceberg, that there's clearly an understanding issue around an employer's obligation, that's where that stood out most staggeringly for us—that if those fairly basic elements of starting the process of a claim, and even notifying the insurer so the insurer can provide early supportive contact, are not right, there's a system-wide issue there that needs addressing.

DARREN PARKER: On the employer compliance, we have a significant enforcement program underway at the moment identifying those employers across New South Wales that have not taken out workers compensation insurance. They're at the front end of not even complying with the mandatory requirements to take out a policy. We are matching data and we've got an improved process where we are making contact with those employers that we suspect do not have insurance and we are having quite a high success rate in early compliance after we've made contact, and we are making sure that the ones that don't respond and that don't take out policies quickly find themselves in a funnel where the regulatory approach tightens up with increased penalties.

Then those that are not complying, not only do they get a fine but they get a double enforcement of their premium as well. It costs them dearly. But it's those employers that are not taking out insurance and, even worse, some of those where workplace injuries are occurring, and that's where we will take more forceful action against those employers. We are working closely with the business groups on that. They acknowledge also that that's an issue that needs to be addressed. We've explained to them the process we've gone through and they've deemed that fair and reasonable, not that we need their judgment but it is important to get the assistance of the business groups to get that education out so we get high levels of cooperative compliance.

The Hon. ANTHONY D'ADAM: What about understating your numbers? A similar kind of approach?

ADAM DENT: So, underinsurance? Yes, absolutely. There's the two elements of focus on that. First of all there's non-insurance, and then where there's examples of underinsurance we'll take regulatory action on those as well, absolutely. That's where the matching of data from the ATO is so helpful to us. Being able to now bring those datasets together and see if you've declared wages to the ATO through the single touch payroll of X but your premiums are only calculated on Y, that would be a trigger for us to take further action.

The Hon. ANTHONY D'ADAM: On notice, could you perhaps provide us with five years' worth of data on the regulatory actions that have been taken in relation to underinsurance?

ADAM DENT: Yes, of course. And just as an anecdote in advance of us providing that formally to you on notice, there was a 12-month period in which \$110 million worth of additional wages were covered. That generated millions of dollars in additional premiums coming in to the Nominal Insurer and thousands of workers now being covered that previously weren't. It is a really positive action we are taking with employers and the more we sophisticate our data processes, the more action we're able to take, the better the predictive modelling is. But we would be happy to provide information on that on notice.

The Hon. ROD ROBERTS: It may well be anecdotal at this stage but do you think that this avoidance of paying premiums is either ignorance or deliberate? It's a combination of both, I assume you will say, but what is the more likely driver?

ADAM DENT: I think certainly—and Mr Parker will probably have a harder line on this—there is a balance of both, absolutely. Certainly, there was a period of time where all of the disputes of fines were, for reasons best only known to somebody else, provided to me to sign off on. In making the decisions on those disputed fines, I read time and time again about the mum-and-dad newsagent-type business who relied on their accountant, and their accountant had told them everything was fine, so they assumed that when they paid their public liability insurance that covered things. At the very small business end of town I think there is a degree of innocence in not understanding your obligations. My view is the ATO wouldn't still decide to be nice to you because you didn't understand.

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The Hon. ROD ROBERTS: Most certainly not.

ADAM DENT: Nor necessarily are we, and where you've had an obligation and you haven't met that obligation blaming your accountant isn't enough. But I think part of the cause with the smaller businesses is absolutely a lack of their understanding of those obligations in the myriad of all their obligations. We also see company structures that therefore in our view would have been established to potentially avoid or to minimise the number of workers. We have seen examples where in an industry that uses a lot of either contingent labour or otherwise they may insure for a particular number of employees but in real terms we find out there were considerably more employees that should have been covered based on who a deemed worker is in the scheme. I would count those as being far more nefarious, and they certainly are matters that exist.

But I would say most of what I have seen—and perhaps they dispute their fines less so that's why I haven't seen them when they finally get caught—is the number of businesses in New South Wales that are small businesses is quite extraordinary. And to that end their ability to understand, when you wanted to run a newsagent or a small cafe, what those obligations are is certainly limited. Part of our work around employer supervision is also looking at where we target certain industries to help uplift their understanding of their obligations.

The Hon. ROD ROBERTS: So education?

ADAM DENT: Education, absolutely. The work we're doing with Business NSW, as an example, is really about helping their members, who are often smaller businesses, to understand their obligations. Business NSW, as Mr Parker alluded to before, is very keen to support working with us on those things. We would certainly rather educate somebody and help them do the right thing than necessarily take punitive regulatory action. One is far more expensive. One is far more effective. Driving compliance is one element, but we certainly won't be shy when we're seeing those fines coming through. The increased activity we have with inspectors out in the field is helping us to do that.

We also continue to partner with SafeWork NSW on insurance checks. So when SafeWork is arriving at a site, one of the things it does is seek confirmation that that employer has workers compensation policies in place. A number of the referrals we get across New South Wales, particularly in the building and construction industry, are from SafeWork who has shown up on site and said, "Now show us your insurance." Where they haven't been able to do that, that comes through to us. There's a fairly broad web of that, and that's where I think working with SafeWork has been particularly helpful. Our inspectors are now taking that next step, I guess, in terms of enforcing the obligations, we understand, far more greatly.

The Hon. BOB NANVA: Just a very quick one, and it's following up from Ms Carter's question around hybrid models of work. But I suppose I just wanted to ask, noting that hybrid models of work won't lend themselves well to a number of sectors, is there any sort of research or audit that you're aware of around the opportunities that hybrid models of work might provide with respect to lowering psychological claims or improving psychological claims management and return-to-work rates? I note the threats that it poses, but is there a sort of look at the opportunities that it might afford return-to-work rates?

ADAM DENT: I'm not aware of any specific bodies of evidence just yet, Mr Nanva, and I think it's certainly something we've been interested in as we start to explore the gig economy more broadly and start informing policy options for government around that area because I know it's a significant interest and has been for some time. I'm not aware of any particular bodies of evidence, but I certainly think it's something we would be looking for, and if in the absence of any evidence, we would be certainly open to funding research to better understand that. But I'm certainly not aware of anything specific at the moment that's tangible.

The Hon. BOB NANVA: Is there an opportunity to fund some research perhaps with icare jointly?

ADAM DENT: Certainly, and both icare and SIRA have research programs. So whether it be jointly or conducted with academia, there's certainly an opportunity to do that, so I'd take that as a potential suggestion that's worth, first of all, exploring whether there is more evidence that perhaps hasn't surfaced yet or is developing. But I think if the Committee were minded to suggest that that be something we do, I'd be very agreeable.

The CHAIR: Can I invite both of you to be, as we use the phrase, brutally frank. I don't want this question answered in general terms—we all know what a general answer is—but to be very frank and precise as best you're able to be. With the return-to-work rates, we know that they seem to be generally better for self-insured and specialised insurers. How can we improve that improved performance being incorporated into the Nominal Insurer? Can I just say obviously you've been in your positions for a while, you probably think about this and talk about this a great deal and have reflected on it, and there are probably multiple reasons you may have in your mind, but I invite you to identify amongst those reasons those that, at least in your own mind, stand out as the reasons.

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ADAM DENT: Absolutely. Without doubt, and we have said in this room in various forms numerous times, high-quality claims management is a substantial determinant of better return-to-work outcomes. Lifting the capability of claims managers and claims services providers, complying with those early intervention standards that SIRA have, all is met by evidence that says this works and will make a difference. From our point of view, if a claims service provider within the Nominal Insurer had high-quality claims managers employed that were experienced, they reduce turnover and retain their staff for longer so they could be better experienced, they follow our customer conduct standards around empathy, they take those early actions in the first four weeks of a claim—all of those things work.

As I pointed out earlier, we're seeing a higher uptake of our risk assessment requirements, but what we're not seeing yet is the higher uptake of individually tailored, properly developed injury management plans for injured workers. We know, and the evidence continues to support it, that that will make a considerable difference, and if that were to occur, then we'd see a huge shift. I think that's the absolute fundamental first point of view: that high-quality claims management is a key determinant.

I had a second thing that I was about to go straight into it, and it has escaped my mind immediately, because fundamentally it really does come down to the claims management experience and the standard of the person handling that individual's claim. It's just such an important determinant of return to work. The options then in terms of ongoing supportive contact and the proactive nature of an employer in working with the employee and their case manager to get somebody back into a workplace in alternative duties is also fundamentally critical. That's the point we're making, particularly in the Treasury Managed Fund review, is that across the public sector, an employer of 430,000 people in New South Wales, there has to be greater opportunities to redeploy staff into alternative duties when they can't go back to their primary role.

You may not be able to go back to your direct role where you have a health or physical requirement to undertake that role, but surely in the breadth of employment in the Crown there would be somewhere that person could be engaged in meaningful work that would support their recovery because we know recovery outcomes are considerably better when they're at work. The health benefits of good work, there are bodies and bodies of evidence to support that. First of all, a decent high-quality claims management experience and an active engagement in getting someone back into the workplace as early as possible into some form of suitable duties so they can recover at work—we know that changes the game.

The Hon. ANTHONY D'ADAM: Can I just ask about that proposition? The previous Government dismantled the machinery that was in place around redeployment of displaced employees as a result of redundancies. There's no effective machinery in place across the sector to identify vacancies. How do you envision that process working if we were to embrace a sort of sector-wide redeployment strategy for workers? I know, particularly in cases where you had bullying and harassment, redeployment is the better option in terms of getting a better outcome.

ADAM DENT: Than trying to reintegrate into a workplace where you've had those relationships become irreparable? First of all, I think the mechanism in my mind exists in New South Wales. The Government Sector Employment Act provides for at-grade mobility without needing to go through full recruitment processes. So somebody who is a clerk 7/8—

The CHAIR: Sorry to interrupt, just for the purposes of Hansard, did you say at-grade mobility?

ADAM DENT: At-grade, and this is typical public servant language. You might be a clerk 7/8, which is your pay grade within the public service. You are employed at that grade and assigned to a role under the Government Sector Employment Act. The legislative infrastructure exists for you to then be redeployed into another role that is a clerk 7/8 where the fundamental capabilities are the same without having to effectively resign and be re-recruited through a whole process. I think we actually do have some of that. From a legislative and employment point of view, that infrastructure exists. What's missing, I think to your point, is then perhaps what you'd call the mechanism or the process for that to occur.

I'm really quite pleased that while it was going to be a very clever finding of our review that something be done about this, we are already working with icare and Treasury on what a process might look like across New South Wales Government, possibly because it's obvious that there should be better opportunities. Icare have developed, and I mentioned in my earlier remarks, a draft return-to-work strategy for the New South Wales public sector. We're looking to provide some considerable input in that, particularly with some contemporary evidence around what might be used to develop those redeployment models and options. We're working with Treasury and icare on a piece of work now that I think will be starting to answer that.

It will require a great deal of systems thinking as well around how somebody is noticed over here that might need to then be employed over there, so there's a whole lot that would need to be worked through to make

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it work, but I think the promising thing I'm seeing at the moment is there is a substantial body of work being undertaken. The group we're involved in is led by Treasury working with icare. The Public Service Commission and the Public Sector Industrial Relations are involved so I think there's a really, in my mind, promising opportunity for us to tackle this. The legislative infrastructure to my mind is there. There shouldn't be an impediment from that point of view that needs dealing with. It's now about a strategy and a process and starting to think about how do you match skills from someone who might be in a particular occupation that's quite niche—how does a firefighter, perhaps, end up in a completely different part of the public sector? How do you match skills?

There are examples, I think, in New South Wales of where that has been done very well before. The Veterans Employment Program—I'm not even sure if it's still active—but a number of years ago matched people coming out of the armed forces with what their skills, capabilities and grades might be into the public sector. My view is there's some thinking out there that could be adopted and we're trying to work really constructively with Treasury and icare on how some of those ideas might come together to build a way in which we could find opportunities, surface those and see them rather than somebody perhaps having to apply for a job to get out of their current role. I think that's really promising. I think there's a huge opportunity for us to tackle that. There'll be people who are obviously injured in such a way that a return to work is not going to be easy, but I do think, particularly when you talk about issues where it might have been workplace issues that have driven some of those, there are extraordinary opportunities in an employer the size of the New South Wales Government to make that work.

The Hon. ANTHONY D'ADAM: Have you done any modelling about the potential cost savings that might arise from a more efficient way?

ADAM DENT: Not the cost savings, as yet. I think once we have a view of what this plan would look like, that will become fairly evident and we could model that. At the moment, what we have looked at and working with icare, we understand there's at least at any given point in time, I think the number was 1,400 workers in New South Wales who have capacity to return to work but don't have somewhere to return to at this point in time. We could then, for example, quantify that then model an earlier return to work and what the cost of that claim would be. That will become evident. But, I think, without even putting a tiny element of data science into this, it would be obvious that the cost savings would be substantial, not to mention the benefit to those individual workers who would otherwise have been detached and their recovery and their ability to start progressing their career again after an injury.

The CHAIR: I'm just conscious of the time. I'm thinking of what my final question is—and, once again, while you're being absolutely frank and fearless with your comments—the TMF psychological claims remain approximately 25 per cent of claims compared to roughly or thereabouts 7 per cent for self-insurance and specialist insurers. What's your judgement about why that is so?

ADAM DENT: Certainly, and that was a point I was about to go to and I thank you for reminding me, Chair. One of the things that is different about self-insurers and specialised insurers, first of all is the type of risk they take on. So if we take TMF for a moment just to perhaps look at the system more broadly, a self-insurer has a self-interest to begin with. They also own the workplace that they're in in order to get somebody back, so I think there is a difference in their capacity to understand, manage work, look for alternate duties because it's all within their own remit and they have more likely a particular exposure to a range of injuries that they'd be more expert at managing. Specialised insurers are potentially similar. The nature of risk relates to their industries whereas the Nominal Insurer, for example, would have every other business in New South Wales across every risk category and they tend to be far smaller businesses.

I think the opportunity to get somebody back to work in an organisation like a multinational—a Woolworths, a Coles, or somebody to that extent—like the public sector they have far more opportunities because they're a bigger organisation than, say, the three- or four-person company or construction team that might be insured through the Nominal Insurer. I think that is a factor. The TMF—again, the principal issue of the type of work that some of our workers do in New South Wales in the public sector is inherently difficult and dangerous and more likely to be exposed, but I come back to that eight out of 10 where it's actually a modifiable workplace behaviour. I don't think there's really a good enough excuse for that and that there should be answers that are able to be sought around dealing with bullying, harassment in the workplace, addressing some of those potentially systemic issues around how work is structured that might be causing work pressure.

I think for the TMF that disproportionate amount would only be justifiable if it was trauma directly related to the job itself. It would be horrible nonetheless, but at least could be explainable by if you are occupationally exposed to walking into a building that is coming down. The fact that it's the relationship you might have with

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your supervisor or your colleagues that could be creating this I don't think is acceptable. It presents an extraordinary opportunity for employers to do something different.

Ms ABIGAIL BOYD: I ask a question about the Workers Compensation Operational Fund. I understand that SIRA is responsible, effectively, for that fund and for making payments out of the fund. One of the submissions we received was basically pointing out that SafeWork NSW and IRO are sort of at your mercy or at SIRA's mercy in some way in terms of the funding that they get paid out of that fund. Can you clarify that, please?

ADAM DENT: Sorry, Ms Boyd, I'm smiling because I think that would be an extraordinarily generous statement about how the Workers Compensation Operating Fund works. SIRA is responsible for administering payments from the workers comp operating fund. Those payments are essentially defined by the legislation, so I have little to no control whatsoever about whether I think they're legitimate payments and whether they should be made. Our only assessment essentially is, for example, say, the IRO. Is what the IRO requesting this year reasonable in accordance with the Act, which says we need to fund—I think it's something along the lines of the salaries, office accommodation and operating expenses of that office as it relates to their function? If that entity says, "This is what our functions are and this is our budget requirement", we have very little opportunity to challenge that. So SafeWork is quite similar. If the money needs to be spent, and to the extent that Treasury has a say in what all of our budget control limits are, I'm required to make that payment.

Ms ABIGAIL BOYD: Have there been any circumstances where SafeWork NSW has asked for a particular budget allocation that's not been received out of that fund?

ADAM DENT: Not by SIRA's discretion. I'm being careful because I don't know what's Cabinet and what's not in that process. But during a budget process a number of bids are always made by all agencies and Treasury says yes or no to certain things throughout the course of that process.

Ms ABIGAIL BOYD: Yes, but in terms of that allocation under the Act, the one that you're responsible for, does that request come explicitly to SIRA and SIRA then says, "This is either reasonable or not under the Act"?

ADAM DENT: No, so we don't effectively have the opportunity to say yes or no as they go. What we would say is, "SafeWork, the budget we're being told we need to pay you from Treasury is X." We would intervene if we felt that money was being paid that was not for a legitimate function under the Act. So to perhaps be a bit more direct, in the entire time I've been at SIRA we've not been able to decline a single request because there really are no grounds for SIRA to do so. How an agency's budget is determined and what they are allowed to do from a policy perspective that therefore generates those costs is not for SIRA to determine. But once that is determined we would pay it. I think a good example might be expenditure against the ILARS fund for IRO is increasing quite substantially and, in my mind, quite concerningly. There's no secret about that.

But, ultimately, it is a legitimate function of that office and if the bill comes in, SIRA has to pay the bill. It's not for us to say, "You're only getting this much this year. Spend less." The fact is we would like them to stick to what's in the budget because that's what we've predicted, that's what we've put in the forward estimates, that's what we're asking icare to pay to us, that's what icare set premiums on the basis of. There's a sort of chain that happens but, ultimately, at the end of last financial year the IRO was overbudget on their ILARS expenditure and SIRA had to pay the addition into their account, and we've been doing that already this year.

Ms ABIGAIL BOYD: Just so I understand it, if, for example, SafeWork was to decide that it wanted to do some preventative action in relation to particular hotspots for workplaces that were causing psychological injuries or where there was a cluster and it wanted to put together a particular program, would that come in the form of a request as part of its operational budget to SIRA?

ADAM DENT: Not in the sense of a direct request, no. SafeWork would obviously work through a process with their Minister in government to agree on that policy proposal. At that point in time, there would be a funding amount attached to that. That would, in my understanding, go to the Expenditure Review Committee of Cabinet. If that was all approved, Treasury would update SafeWork's budget, and then there'd be a proportionate update to SIRA's. We would need to then draw down the revenue to pay that. We don't have the ability to have a view and then deny that. As I said, if I fundamentally formed a view that they were spending money on something that wasn't a SafeWork function, I would then take action to resolve that. Under any other circumstances, we don't have the ability to do so.

The CHAIR: It is 11.00 a.m. That completes what has been an hour and a half of very good questioning and frank answers to the questions. Gentlemen, we thank you for that. I confirm that there's a 14-day turnaround period for what are some questions on notice. I don't think there's been a number, but some questions have been taken on notice. I'm sure you'll be able to meet that 14-day deadline from after we've sent a transcript.

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ADAM DENT: Chair, if I may, I think some of the things I said yes to might be large bodies of work. We will give you everything we can within 14 days, mindful that we don't want to submit something to you too quickly and have to provide you with updates and edits.

The CHAIR: Once bitten, twice shy; I understand. I think Committee members accept that. There may be some supplementary questions as well. Once again, thank you, both, for coming along and for the good work you're doing.

(The witnesses withdrew.)

(Short adjournment)

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

Mr TONY WESSLING, Interim Group Executive, Workers Compensation (Nominal Insurer and TMF), icare, affirmed and examined

The CHAIR: Thank you, gentlemen, for coming along this morning to provide evidence to the inquiry. This may be Mr Wessling's first appearance before the Committee. Mr Harding has been before us on a number of occasions. I welcome you both. I acknowledge the receipt of icare's submissions. They can be taken as read. I commence by inviting you to make an opening statement.

RICHARD HARDING: I thank the Committee for the invitation to appear today as part of the 2023 review of the workers compensation scheme. Icare welcomes the Committee's resolution to carry forward evidence from the 2022 inquiry, ensuring that the unique challenges of psychological injury remain at the fore of public policy discussion as it relates to workers compensation. Research by Professor John Buchanan and his team at the University of Sydney Business School has shown that the employment trends in Australia have been changing. They have shifted away from manufacturing and into the services sector. It means that work is no longer defined by physical effort but rather by the knowledge, care, interpersonal skills and workplace relationships that an individual brings—that is, the "mental effort".

This is translating to a decline in physical injuries across Australia and other developed economies as the physical and mental demands experienced by workers change. As we have previously testified, physical injuries typically have shorter and more defined paths to recovery than psychological injuries, which presents challenges for workers, employers and our schemes. Almost half of all Australians will experience a mental illness in their lifetime. Recent ABS data found that in 2020-21, 15 per cent of Australians aged between 16 and 85 experienced high or very high levels of psychological distress. Work pressure, harassment and bullying are the key causal mechanisms in at least half of the psychological injury claims across both the Nominal Insurer and the Treasury Managed Fund, which tells us there needs to be a greater focus on cultivating psychologically safe workplaces where mental health prevention initiatives receive as much attention as physical safety initiatives.

In 2023 primary psychological claims in the Nominal Insurer represent around 6 per cent of all claims and account for around 17 per cent of claim costs. Within the Treasury Managed Fund, the figures are higher, with psychological claims representing around 17 per cent of all claims and 57 per cent of claim costs. Psychological injury claims also have a significant impact on return-to-work performance. Almost 90 per cent of injured workers in the Nominal Insurer with physical injuries are back at work within six months. However, only 48 per cent of workers with psychological injuries return to work within the same time frame. In the Treasury Managed Fund, 95 per cent of workers with physical injuries return to work within six months, compared to the same figure, 48 per cent, for psychological injuries.

These trends are consistent across Australia. While there is no silver bullet, icare remains focused on pursuing initiatives across claims management, early intervention and social research to improve return-to-work outcomes and implement the best possible support mechanisms for injured workers. Challenges also remain in relation to the legislative and regulatory environment in which we operate. The status quo sees us operating with adversarial legislation and a regulatory framework that promotes a process-centric, prescriptive and task-driven culture, rather than being human-centred and facilitating a trusting relationship between an injured worker and their case manager to support their recovery and return to work. Icare considers that the reduction of prescription and the promotion of principle-based regulation with appropriate guardrails would enable insurers to deploy innovative case-by-case solutions for the management of claims that is empathy led and outcome driven.

In the same vein, icare is investing to identify practices that will improve experience and outcomes for those we serve. Our "test and learn" team based in Wollongong is currently testing new approaches to improve the management of mental health claims. Early indications indicate that tailored case management is essential, yet case managers are currently over-involved in compliance. We have also identified that case managers require additional training and support to better manage psychological claims, which we are addressing through the implementation of a professional standards framework that establishes the practices, skills, knowledge and behaviours that are critical for claims management and arriving at positive outcomes for injured workers.

A significant update since last year's inquiry is the implementation of our claims model in the Nominal Insurer, which includes several initiatives to improve outcomes for injured workers, including moving from a single claims service provider to a network of many, with icare monitoring case loads and publishing data on performance; changing the way we manage CSP performance, including performance-based incentives; providing more choice for employers in order to improve scheme performance by harnessing a competitive market across the panel of providers; and four of the six claim service providers have a model where psychologically injured workers are managed with an approach that is distinct and differentiated from general claims management, which

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may include separation of resources and support structure, and must include dedicated case managers with appropriate experience.

Supporting these improvements is a range of initiatives across both the public and private sectors, including training programs on early intervention; the Mobile Engagement Team, with a focus on supporting employers in remote and regional areas; respect and resilience training for retail workers to help them de-escalate situations where customers are abusive or aggressive; and Front of Mind, which is a significant research program led by frontline agencies like Fire and Rescue and research bodies such as the Black Dog Institute. I thank the Committee again for giving icare the opportunity to contribute to this very welcome review. I look forward to taking your questions.

The CHAIR: Thank you very much. That is a very comprehensive opening statement.

The Hon. CHRIS RATH: Thank you, Mr Harding and Mr Wessling, for appearing today and for your submission. I will ask a couple of questions that I asked SIRA earlier this morning as well. What are the drivers behind the psych claims being so much higher in the public sector as opposed to the private sector? Do you have any observations on the drivers behind that?

RICHARD HARDING: Yes. I will let Mr Wessling talk about some of the detail because he is far more across that than I am. But obviously the public sector has very different exposure than the private sector. Within the New South Wales government we ensure the emergency services sector of the community—so police, fire and ambulance are obviously key in that area, and they are significant areas where psychological claims growth has occurred in the last five to 10 years. I might let Mr Wessling talk to some of the details, Mr Rath, if that is alright.

TONY WESSLING: Thanks for the question, Mr Rath. What we see in the agency, the TMF workers comp book is dominated by the very large agencies. We have over 100,000 health workers that we provide cover to, over 100,000 education staff—teachers et cetera—we have the frontline emergency service areas of police—almost 20,000 frontline police. The nature of the roles that most of these employees experience will no doubt include exposure to trauma as well as exposure to work stresses that are quite different to non-frontline staff. So we have seen, as Mr Harding mentioned, quite a significant growth in both the frequency as well as the severity of psychological injuries, particularly to our frontline employees across government agencies over the recent years. We can see there has been a significant growth, particularly in areas like work stresses, bullying and harassment. Those type of claims have grown even faster than the trauma-based claims.

The Hon. CHRIS RATH: What role do you think both the private sector and public sector have on secondary psychological injuries in the scheme, and is it in part because of the adversarial nature of the scheme?

TONY WESSLING: Firstly, we don't have a good mechanism to be definitive about the incidents of secondary psych. There is no claims coding for that. It is an area that we need to work on getting a better understanding of where an injured worker has a physical injury that becomes a psychological injury. What we can see, though—and I think SIRA had some of these numbers in its submission—is that you can look at indicators like the prevalence of certain treatments that are more akin to a psychological injury, and you can see that obviously they are a large proportion of our claims, particularly when they get to longer duration—over two or three years—where the psychological impact of not being able to get back to work starts to have an impact on the mental wellbeing of the injured workers.

To your question around the adversarial nature of the scheme, there is no doubt an adversarial element that is built into the legislation. That is a fundamental part of the scheme. We try to limit, as much as possible, that "adversarialness" between us and our claim service providers with injured workers, but there are certain points in a claim where there will be some degree of "adversarialness" at certain points in a claim.

RICHARD HARDING: There is quite a lot of academic research that has been done that shows that, generally, compensation systems around the world are quite good at managing economic compensation, but the wellness elements tend to be things that they underperform in. That directly relates to the points that Mr Wessling has made about the fact that injured workers become dependent in the process because we take away a lot of their ability to make decisions about the process for themselves. That is at different decision points along the way, where the liability element of the adversarial nature of the claim needs to be determined—whether it can go forward or not.

I think that is where that secondary psychological stress is caused, where people feel that fundamental treatment decisions are not in their own hands. As Mr Wessling said, we are working—and some of the things we are trialling in Wollongong with our "test and learn" is how we still comply with the legislation but change the approach to the injured worker such that we reduce that. And that is by bringing them into the decision-making—a much more collaborative engagement, rather than it being a classic claims management approach, which you

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would have seen in your old employer, where it is very much protective of the scheme, if you like, rather than in the interests of the injured worker.

The Hon. CHRIS RATH: Would you say that some of the regulation that does govern the scheme is overly prescriptive? How does that impact the claims management process?

RICHARD HARDING: As I mentioned earlier in my opening, this is an area that we have been doing a lot of work on and we have been coming to understand a lot better. The regulatory environment is very complex. I think Mr McDougall, in his review, talked about a Byzantine level of complexity, and that is certainly the case. I will give you one example of that. Within the process of the first contact with an injured worker, a case manager has, I think, between about four and eight legislative requirements that they need to meet. In addition to that, there are over 30 guidance notes, practices and regulatory requirements that they need to comply with in that first call.

That can change that first call from an empathetic, understanding call about, "Help me understand what your needs are", to a call about, "I must do these things to complete my compliance checklist." It changes the relationship; it moves the relationship very differently. That is just one example at that very first contact. It only get worse when you come to things like liability decisions, where the number of regulatory guidance notes, practice notes, regulatory standards and so forth just get more and more complex.

So a case manager—who, remember, is a person who is probably earning \$80,000 a year, perhaps—is expected to deal with that complexity and at the same time create a solid, trusting relationship with the injured worker. I think that is an area where we would love to do more work with the regulator to try to work out how we can change that environment so that case managers can focus on the relationship and how injured workers get well, rather than the process side of things, of ticking boxes.

The Hon. CHRIS RATH: You mentioned the McDougall review just then in your answer. I asked SIRA about this as well, about where the implementation of those recommendations is at. Obviously it was a very important review—probably the most important one of recent years. It seems like SIRA and icare have gone about their end of implementing as many of the recommendations as possible, but there comes a time when the onus will shift to us as legislators to carry out implementing the next lot of those recommendations. Could you provide an update on where that is at in terms of implementing those recommendations, and what we could be doing better when it comes to us to actually implement the rest from the legislative perspective?

RICHARD HARDING: Yes, of course. In terms of implementation of the recommendations, there were 107 recommendations that arose from a combination of the McDougall review and the culture and accountability review that was done at the same time. We've made very strong progress on that, and we report on that through the independent assurance of Promontory, which is the same company that places like Westpac and CBA used when they were reporting to APRA on their own similar recovery programs. So we have made very strong progress. We developed two major streams of work. One was an enterprise improvement program, which was largely focussed on the governance accountability frameworks going across the organisation. That is, I am going to say, largely finished.

We have made significant progress there, and by the end of this calendar year we will be closing that stream of work out. Board renewal processes, improvement in risk and governance processes, the focus on the customer, a change in the culture—those sorts of things have all been significantly well progressed through that program of work. The second stream of work was then the Nominal Insurer Improvement Program. Interestingly, that had less specific recommendations from Mr McDougall in it but some probably bigger ones. Again, we are well progressed on that. I mentioned in the opening statement about the claims model being implemented, work on early intervention and work with how we think about the performance measurement of the CSPs. All of those things are a part of those recommendations.

In fact, to the point about prescription, Janet Dore's review is a subset of the McDougall conversation, and Janet Dore did the very early review for SIRA that generated us both the McDougall review. In the review she talks to the primacy of the case manager in the relationship with an injured worker, and the fact that focusing on uplifting that capability was a key outcome. That's partly what we've been doing, and the professional standards again I've talked about in the opening. It is well progressed. The Nominal Insurer will take longer to implement. We're looking towards June or July next year, when that will be closed, but that doesn't mean we've stopped. That just means we've met the obligations within the report, and we can now continue to enhance the scheme and enhance the way we go about working on it.

To your subsequent question about legislation—and I'm happy to take more detail on the improvement program if you'd like, Mr Rath, or anyone else. The legislation is highly complex, as I've pointed out. McDougall recommended an end-to-end review that said all four Acts should come together and be unified into one less confusing, more streamlined Act. That in itself is always going to be quite a challenging thing. It's a bit like the

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tax Act: No-one really wants to open up and try and make sense of the interconnectedness of those things. It is something that is worth doing, but it would be a very long-term program of work. The challenge is on us to work out how to break that down into some digestible parts.

The Minister's office is working on addressing some of the outstanding recommendations from McDougall around the objectives for icare, which have been recently presented to Parliament through a bill, and further follow that up with improved understanding of the objectives for SIRA. Those things will help reduce the confusion and perhaps overlap between ourselves and SIRA to date that create some of areas of the duplication and mismatch. The point about the prescription is that is all non-legislative. That is in the hands of the regulator, to think differently about how it engages. We'd love to do more work on that with SIRA, to say how else we could achieve the regulatory outcomes without, effectively, regulating the day-to-day activities of a case manager and enabling that case manager to focus on the injured worker. I'm sorry. I've taken a long path to answer your question.

The Hon. CHRIS RATH: No, that's all very helpful. In your opening statement you mentioned the move towards multiple scheme agents. I was wondering if you could give an update on how that's gone, moving from one to multiple, and where we think that will lead to improvements in the scheme overall.

RICHARD HARDING: I talked before in the Committee about the long-term nature of that change. We now have all six providers on. EML is still the main provider, by nature of the outstanding claims that sit there, but we now have GIO, QBE and Allianz. DXC and Gallagher Bassett are the two new additional players in there. We are reallocating share, if you like, or the policies to those providers, and as those policies have claims they start to build their capacity. We have a very strict process in terms of bringing those guys online, which had a set of gates in it to ensure that they had the right capability, the right system and processes in place and that we could have confidence that, when they went live and started taking claims, we knew that they could deal with them. That's worked well.

The next six months are really to bed that in and get those non-EML claims operators to a level of capacity or scale where they are delivering at a normal rate—like a ramp-up process. In June or July next year we will then open up the market for employers to have much greater choice. At the moment the choice is still limited to large employers. In July next year we would look to bring that down to smaller and medium-sized employers. Obviously, with the very small employers we'll continue to allocate on a random basis. It has gone well, but the proof is in the pudding. The benefits of seeing improvements in return-to-work outcomes is a long-term benefit. We have seen improvements in return to work over the last two years.

We have seen improvements actuarially come through that give us great confidence we're heading in the right direction. Over the last two years, and I'm just using rough numbers, but we're talking in the order of \$680 million of releases from liability—reductions in the liabilities actuarially resulting from the activity in what we call the front business, new claims. Unfortunately, we live in a world of inflation and interest changes that sometimes masks the whole of that when you look at our financial statements. But actuarially we can see the improvement, and we can see it in the return-to-work data. But it will be long and slow. It's not a magic bullet by any means. We want it to be long and slow because we don't want to create the sort of disruption that we saw in the scheme in 2018.

Ms ABIGAIL BOYD: Just on that, I have two questions. The first question is basically where that choice to expand to the six came from. When did that project start and who decided it? Was it a policy decision of previous Government or was it an icare decision?

RICHARD HARDING: No, that decision was taken—around about the same time I arrived, the McDougall review report arrived, which was early in 2021. At that time, the board and I undertook a review with the executive team of icare of what the strategy going forward should be. One of the recommendations from Mr McDougall was to reduce the reliance on a single entity case manager. He didn't prescribe how or why. But when we looked at it strategically, we looked at the needs. The things that we were hearing from employers was about a desire to be able to choose, to be able to move to a better performing insurer or a claims manager, and to be able to have more control over their own destiny. A lot of them felt stuck with EML at the time, going back earlier in the process. That was one driver.

The other driver was trying to create competition that drove performance. In November we're about to, for the first time, publish individual CSP statistics that show not just return-to-work outcomes but the quality of their workforce, the standards of the quality of the work they do—some of these compliance statistics that I've talked about before that are indicators of the quality of work that they do. That in itself will drive competition and a desire. The other change that's inherent in this model is that pre-2020, that single claims model with EML was a cost-plus model. They had no incentive or benefit to perform. In fact, you could argue that in some ways a cost-plus model means the higher you make the cost, the more money you make. I am not suggesting that's what they did, but that's simply the dynamic you create with that model.

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We now have a very robust incentive model where people get paid more for the better outcomes that they produce. Those outcomes are directly referrable return-to-work improvements, as well as other quality and satisfaction improvements from a customer—or a CSAT point of view—and the level of investment that they are making in their case managers through the professional standards. Those sorts of things start to drive competition and start to drive behaviour that we think will sustain improvements in performance. It came from conversations with our board, from a strategic point of view, about how do we move from here to somewhere that's far more—

Ms ABIGAIL BOYD: Thank you for that, it's really useful. From the perspective of someone who's making a claim, are they only aware that this is icare that they are doing their complaint through?

RICHARD HARDING: No.

Ms ABIGAIL BOYD: What happens when they have a complaint about the process? Who are they going to, and what level of transparency is there for them?

RICHARD HARDING: I might get Tony to help me, but that's again yet another change. In the previous version of the world, it was all icare, very clearly. Now we have a place where it's very transparent to injured workers who their insurer or claims manager is. The initial complaint, if they have an initial complaint, is directly dealt with by that insurer, and then the process is escalated to us if there is no resolution through that. And then obviously, ultimately, there is the escalation outside icare through either the IRO or the PIC, if they have a specific issue that they need to address.

Ms ABIGAIL BOYD: As you know, our office—and David Shoebridge's office before us—send a lot of reps in relation to people who feel that they have not had a good experience through icare.

RICHARD HARDING: Yes.

Ms ABIGAIL BOYD: Does this then create an extra kind of level of accountability in terms of if someone feels that they are not getting a good service, they are first complaining to the particular claims management provider, then going to icare, and then it gets escalated to the Minister? What efforts are going to be—

RICHARD HARDING: I can hear Tony wants to say something, but I just want to jump in before he does. There is an absolute additional level of accountability, because up until literally a few months ago icare had no mechanism for tracking complaints. We didn't have a record of the number of complaints that were being dealt with at that very front line. CSPs didn't record that in a process that was trackable in a way that we could identify and say, "There is clearly an issue over here. We are starting to see an escalation in complaints. There's some problem in X, Y, Z, or a problem with this part of the process." That level of transparency hasn't existed before, and that's a new level of transparency that we will get through the changes that we've made.

The CHAIR: So that's from September this year or thereabouts? Two months ago, roughly?

TONY WESSLING: As part of our new contract, it's a requirement for all of our claims service providers to record complaints. We have a common definition of complaints, which is an expression of discontent that requires a follow-up. It doesn't have to be, "I am lodging a complaint." It's an expression of discontent. So we have a common definition. They are recorded into a common system, which we are still in the process of rolling out and training with the CSPs, but in essence, it's in place. That's for what we call the level one complaints. In a lot of cases, those sorts of expressions of discontent can be dealt with and resolved quickly by the CSPs. In addition to that, we have the escalated complaints that come to icare. We call them the level two complaints, and we have a team at icare that deals with those.

With the system that Richard spoke about, we've got greater visibility now of those complaints, and we've got a common basis that ensures that we're looking at the same type of expression of discontent across six claims service providers. This was part of the improvement program. There was a whole stream around complaints. This has been part of our improvement activities. Where we will start to see the benefits of that in terms of better reporting around complaints, we will be able to see common themes of complaints. Also, complaints are part of our service levels with claims service providers, so we can hold the claims service providers accountable for how they deal with complaints. We have rolled out empathy training as well to ensure that complaints are dealt with empathetically rather than legalistically. But that is part of the contract we've put in place. We would expect to really see an uplift there in terms of the experience for injured workers navigating a system of lodging disputes or complaints, first of all, with the CSPs and then with us. If it goes beyond that, then the other channels are available, like the PIC, ministerial—

Ms ABIGAIL BOYD: What is the way in which people are informed about that track of complaint mechanism?

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RICHARD HARDING: This is an area where we have been talking more recently. Our guide on our website is not as straightforward as we would like it to be, and that's an area where we're currently working to get the communication about, "Here is an escalation process that you can follow", and to be very clear about how that works. That's work in progress, I would say, Ms Boyd. It's not an area where we've currently got a great communication happening through our webpages.

Ms ABIGAIL BOYD: You can imagine, particularly in circumstances where someone has a psychological injury, the extra frustrations of not knowing what your recourse is and how to go about it.

RICHARD HARDING: Yes, 100 per cent understand. It's a priority as part of, as Tony mentioned, the complaints work stream within the McDougall work that we're doing. It's one of the ones that will run longer through to July next year, and part of that is all of these issues of communicating and getting a transparent escalation process through, getting more consistency across icare schemes as well—what I am talking about is not just an issue for the Nominal Insurer; this is a broader icare program of work—and then how we actually action the information once we can actually start to see it. From the next few months we will start to see reports coming in that really give us a much better sense of the hot spots that we know about and how that starts to unfold. That gives us a lot more actionable information that we can use to drive better outcomes. So 100 per cent agree with you that the current communication process is not satisfactory.

The Hon. ANTHONY D'ADAM: I want to come back to this question about secondary psychological injuries and the absence of data. I want to clarify that secondary psychological injuries are compensable. Is that correct?

TONY WESSLING: That's correct, yes.

The Hon. ANTHONY D'ADAM: But they are not considered a separate claim. Is that correct?

RICHARD HARDING: That's correct.

TONY WESSLING: That's correct, yes.

The Hon. ANTHONY D'ADAM: Why is that?

RICHARD HARDING: The codes are determined through SIRA, the way that the claim coding is done, and there's no separate coding process for a secondary psychological claim.

TONY WESSLING: If there was a separate injury, Mr D'Adam, that was unrelated to the original claim of physical—

The Hon. ANTHONY D'ADAM: How do you determine? If a worker suffers a fall, has a back injury, is unable to work for a long period of time and then develops depression as a result of that, they need to access the psychological services. The claims manager will make a recommendation around that. Surely at that point there's some mechanism that triggers, "Okay, this is a further injury"? It's not really an aggravation of the original physical injury, is it? It's something quite discrete.

TONY WESSLING: That is not the way it works, in how we manage those claims.

RICHARD HARDING: Maybe take a step back. We will treat that secondary injury through that initial claim, in just the same way, to make sure that injured person gets well, and we will try to look to support them as much as we can within the legislative framework. In not a dissimilar manner to the conversation we've just had about complaints, because the coding is determined through SIRA, we don't have the discretion to say, "Add a label to that that says, 'Here is another injury type in addition for this claim.'" It becomes very different for us to track. We couldn't tell you exactly. As I think Mr Dent said this morning and Mr Wessling talked about, we have an indication because we can see those psychological treatments coming through and the costs for those, but we can't specifically track that for you and say, "There are this many people in the scheme with that injury."

The Hon. ANTHONY D'ADAM: It is possible that a worker might have sustained a physical injury and be physically able to return to work but, because of the secondary psychological injury, they aren't able to return to work?

TONY WESSLING: Yes.

RICHARD HARDING: Very true.

The Hon. ANTHONY D'ADAM: Obviously, the scheme has a series of time frames, and certainly the benchmarks around return-to-work metrics are all premised on the first injury when you've actually got a secondary. Do you think there's some inequity there that the Committee perhaps should be focusing on?

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TONY WESSLING: Yes, maybe it's something worth looking at, Mr D'Adam. I am not sure the extent of that issue. Our claims managers will certainly ensure that if an injured worker who has started with a physical injury has a psychological injury that they get access to all the treatment that's required, and we do that consistently with the legislation. I would have to come back to you about what options there might be to open up a second claim.

RICHARD HARDING: I think what Mr Wessling is trying to say is that we don't reduce or change the way we deal with the injured worker. We will treat them on the basis of the symptoms that they are having, and we will make sure that they get the care and the support they need for that psychologically, as well as their physical injury. So we don't limit the amount of time they can have off work or the benefits that they can receive if they need them. That's not the way we do it.

The Hon. ANTHONY D'ADAM: But they are limited, aren't they? It's the 26 weeks, and the benefits actually are time dependent.

RICHARD HARDING: They're time dependent for all psychological claims.

The Hon. ANTHONY D'ADAM: If you start the clock at one point and then another injury occurs, surely the clock should start again.

RICHARD HARDING: But that's the same for all psychological injuries. Those conditions across the legislation aren't differentiated based on injury type, which is, again, another interesting question because we have a scheme where the original Act was written and most of the regulatory changes were made before these psychological injuries were a problem. I see your point that perhaps we should recognise that this is a new injury. Again, it's probably a matter to take up with SIRA. We'd be very happy to. There's no real impact to us to say that this is a new claim and we treat it, because we're treating it anyway. In terms of the cost to the scheme and the way we interact with the injured worker, we aren't changing that.

The Hon. ANTHONY D'ADAM: But it clearly has consequences in terms of the return-to-work rates, doesn't it?

RICHARD HARDING: Absolutely.

The Hon. ANTHONY D'ADAM: If you sustain a secondary psychological injury, it will make the time away from the workplace more protracted.

RICHARD HARDING: Absolutely.

The Hon. ANTHONY D'ADAM: So having clean data in terms of when the assistance is, so that there's a flag there, in terms of triggering a more nuanced response to the changed circumstances—

RICHARD HARDING: I think we would all agree with you that having more information and data on the actual incidence and nature of these claims would help treat and manage them, absolutely.

The Hon. CHRIS RATH: Related to that, could it also potentially not be as good for the person making the claim if they had to start the process from the very beginning again on a second claim?

RICHARD HARDING: I think it needs to be designed by people with a very strong understanding of the ability to re-traumatise people with psychological injury. One of the number one issues we face is the current legislative process. I talked about that first contact and the 30 different guidance notes that a case manager needs to complete. That, for a lot of people with a psychological injury—whether it's primary or secondary—is a process of re-traumatisation, and that's a real challenge.

In Wollongong, in the test and learn centre there, we obviously need to comply with those regulatory instruments. But we're trying different ways to do that by putting those processes in the hands of the injured worker, rather than it be an invasive phone call at an unknown time that could take significant time, where the injured worker isn't necessarily prepared to have that conversation. If you think about psychological injury, we now want to go end to end through all of your case. That's a re-traumatisation process, and that's not something that we think works well for psychological injuries.

In Wollongong they've tried different models of breaking it down into chunks so that the injured worker doesn't experience it all as one heavy inquisitive process. We try and seek data from other sources—the treating doctor—instead of us re-asking questions that have been asked before. Employers play an important role in that. So we're trying to work within the framework we've got, to reduce the impact on injured workers. But I agree with your point, Mr D'Adam, that data is helpful, because this is all new data. We're doing this test and learn so that we can see what actually is working. But you've got to be careful about the design—that you don't create additional points of entry where further trauma is created.

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The Hon. ANTHONY D'ADAM: Is a liability assessment being made when you approve a psychological service? You're making another assessment; how is that decision made?

TONY WESSLING: The case manager has discretion on a physical claim if additional services that might be psychological-type services—to pay those. The case managers will tend to take the recommendations of the treating doctors and pay those claims, so no further liability decisioning is required.

The Hon. ANTHONY D'ADAM: So it's just accepted that the treating doctor will say that this person has depression as a result of this injury, and we need to make—

TONY WESSLING: And if the treatment's reasonably necessary then it will be paid.

The Hon. ANTHONY D'ADAM: In your opening statement you talked about putting greater emphasis on psychosocial safety in the workplace. I'm interested in how you do that at scale. If you accept that one of the drivers is psychosocial hazards in workplaces, are the interventions that you're proposing focused on the bottom end of the harm management pyramid—that is, looking at personal protection and a sort of resilience approach to making your workers more resilient—or further up in terms of the harm elimination kinds of options that might be available? That's a bit of a broad, big-picture question. But with hundreds of thousands of employers out there, what kinds of intervention are we talking about that might be able to shift the dial on psychosocial safety in the workplace?

RICHARD HARDING: Your question is very relevant, and it's very difficult. Of course, icare plays only a small role. SafeWork is the main driver of preventive activity or how employers are regulated with respect to safer workplaces. We can share data and information and work with people. But your point is very relevant. The Nominal Insurer is a set of 380,000 businesses across New South Wales, of which 300,000 would have fewer than 10 employees. In those cases where they're sitting there with fewer than 10 employees, they don't have the sorts of infrastructure that larger organisations like the ones in the TMF have in place in terms of injury management teams, large HR and work health and safety teams—those sorts of things.

You're generally talking about small family businesses or businesses with limited infrastructure to be able to make that change. That's where the scaling is challenging—trying to work out how you help a small business understand how to create a psychologically safe workplace. We start with an even more challenging proposition, which is that the ABS statistics reflect that one in five Australians in any one year are going to have a mental health concern. We have vulnerable people in the community who are all going to work, and I think one of the mindset changes that we need to try and work through is how employers start to think that those vulnerable people are going to be more susceptible to workplace stress, anxiety, pressure and so forth, and how do we change the management processes that we have to avoid creating that and to create management teams that are more conscious of that need for psychological safety. It is a real challenge.

I don't pretend to have an answer other than greater awareness and more discussions like this. As I talked about in the opening—and Mr Wessling might like to talk about some of them more—we've done a number of programs. The Front of Mind program with the Fire and Rescue team has been a significant success around how we help think about reducing psychological incidents there. You look at the contrast between Fire and Rescue and the New South Wales police and you can see quite a significant difference in injury behaviour there.

The other one we've done is Connect and Care, and the frontline one about retail staff, helping them de-escalate abusive customers. That also is something that we could deploy into, for example, education spaces, where there is the need for teachers and others to be able to de-escalate engagements with frustrated parents or other participants in the process. And then the one that we are also very interested in is work in the health sector, where we're doing—which is called, Tony?

TONY WESSLING: Design for Care.

RICHARD HARDING: Design for Care, thank you, which is all about job design and changing job design. These research projects help us get informed about that stuff. The one in the health sector is thinking about how you change the nature of someone's job so that you can reduce the stress points.

The Hon. ANTHONY D'ADAM: Is that program in progress or is that completed?

RICHARD HARDING: It's actually in progress, yes. It's mid-term, I think. Mr Wessling, have you any detail about that?

The Hon. SUSAN CARTER: Referring to your primary submission, pages 9 and 10, I want to understand your argument in relation to psychological injury. It's not clear to me whether you're arguing that the costs of underlying mental health issues are being shifted to the workers compensation system or whether you're arguing that the increase in underlying mental health issues makes the workforce more vulnerable to psychological injury.

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RICHARD HARDING: The latter. The real challenge to Mr D'Adam's question is, if you go back to the 1970s when we were all much younger, there was a real push around physical safety in the workplace, especially in industrial businesses. You had a lot of "safety first" mindset. I can remember my boards at the time moving work health and safety to the first agenda item on the list to create that emphasis of "we're focused on safety". That was very successful as a process and as a thing, but it took 10 to 15 years to get to that point where physical safety was a thing.

We now have to have the same conversation with the business community about, "One in five people in your workforce have walked into that office vulnerable because of natural community stressors. How are you thinking about them when you're thinking about demands for certain deliverables, how you engage with them, the job designs that get created?" Part of the challenge here is that people don't necessarily want to identify because the stigma is so significant. Not all employers know that they've got someone who's vulnerable. That's a real challenge. This is not an easy problem. But 100 per cent it is the latter point of there are vulnerable people already in the workplace that then get exacerbated because the workplace hasn't understood that, and then they get triggered and they get injured.

The Hon. SUSAN CARTER: In light of that, with programs like HeadCoach, which seem to have been very successful, have you looked at the workforce impact on managers who were involved in those programs? I wonder whether what we're doing is imposing an additional mental health burden on managers who are now being asked to manage the mental health stressors of their employees?

TONY WESSLING: I might answer. One of the programs we're running is called Front of Mind. We're working with organisations like Black Dog around pick-up on a range of different interventions, one of which is around how you screen for perhaps a likelihood of psychological injury across the workforce. There is a portion of that which is about leadership training for, I don't know, command managers or frontline leaders who are dealing with teams of people and how they think about mental health, which has either been brought into the workplace and exacerbated or is originating in the workplace. But we're also looking at, as Mr Harding mentioned, the design of workplaces as well. Yes, this probably adds some additional burden onto workplaces, but with the prevalence of mental health issues in society, that's a very necessary thing. We can see a correlation if we look at engagement scores or PMES scores with injury rates, for example. There's a correlation.

The Hon. SUSAN CARTER: Perhaps my question wasn't clear enough. My concern is that a lot of this redesign is actually imposing an obligation on managers to actively manage the mental health of their employees. If one in five employees walk into a workplace with mental health issues, one in five managers are also walking in. Are we actually increasing stressors on a different part of the workforce and how are we proactively managing that?

TONY WESSLING: Design for Care, as an example, looks at how we think about the leadership and how leaders work with each other to deal with these issues. But you're absolutely right.

The Hon. SUSAN CARTER: I'm not convinced that actually answers the question. I think it's an issue that we—

RICHARD HARDING: But I think there is no answer to your question. What you're saying is right; I don't think anyone's disagreeing with you. One in five workers, one in five managers, one in five CEOs, one in five board members—

The Hon. SUSAN CARTER: Because if we're redesigning, we don't want to shift. We want to actually address rather than just shift and increase burdens in other places.

RICHARD HARDING: Yes.

The Hon. STEPHEN LAWRENCE: In terms of the psychological claims cohort, there is obviously a lot of contention that is healthy in the clinical community about what works, particularly in respect of particular disorders, trauma et cetera. Is that something that icare has insight into, in terms of research and data that you do, in terms of what actually works in particular interventions for particular issues and conditions? Or is it more that you obviously encourage best practice and research but what happens in the clinical space happens in the clinical space, and you can't really assess trends in terms of what works and might correlate to particular contentions in the clinical community?

RICHARD HARDING: The answer is we don't get involved in the clinical—we don't have that capability. That's not our strength. There are plenty of groups that do have that capability and, as you say, are already looking at it. What we can do is provide data. For example, with the work with Sydney University, we've been providing a lot of data. But we don't actually get into which treatment should work or not work. That's the

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treating doctor's decision about the relationship they have with their individual patient. And then within the colleges, the right treatment methodology in the broader health system is where that conversation should be had.

The Hon. STEPHEN LAWRENCE: I was more curious about the feedback of data. Is there feedback of data, in a general sense and potentially in a de-identified way, about what treatments were utilised? For example, that could then form data that starts to suggest a trend about what actually works. Is there feedback of that nature? Or is it more "that's clinical and that stays in that box"?

TONY WESSLING: I would have to take that question on notice, Mr Lawrence. I would say, though, that what we spend most of our time focusing on when we see an impact in the efficiency or the efficacy of helping injured workers with psychological injuries is the speed with which they get a treatment, whatever that treatment may be as defined by the treating doctor. Right at the start, access to basic psychological services is the challenge. But to answer your question, I'd have to take that on notice. We would have that information; I'm not sure whether we've programmatically used that.

The Hon. ROD ROBERTS: I go back to a question asked by Mr D'Adam. I wasn't able to comprehend the answer properly, which may be my fault, but perhaps I could get some clarity. I will use myself as an example. I suffer a back injury in the workplace; liability is accepted and it's not an issue. As a result of that back injury, some 12 or 13 weeks later I suffer depression as a result of lack of quality of life, inability to return to the workforce et cetera directly related to my primary injury. I understand you say you don't start a new file; I understand why—we don't want to re-traumatise myself for having to relive all this stuff again. But statistically, am I recorded as a back injury? Is my psychological injury recorded anywhere? What I'm alluding to is—I understand why and I heard you out, and it all makes perfect sense. But are there more psychological injuries out there than is actually recorded because I am recorded primarily as a back injury?.

RICHARD HARDING: Just to be clear—I will let Tony answer the detail of the question—we don't control the coding process. That is a SIRA-defined set of codes.

The Hon. ROD ROBERTS: Yes, I understand that.

RICHARD HARDING: We would be very happy to have a code that said "secondary psych". In terms of recording it, that's something that we can't—that's a conversation for SIRA.

The Hon. ROD ROBERTS: Yes. I'm not apportioning blame here. This is not a blame exercise; this is an exercise in data. We all talk about the importance of data. The data has me, Rod Roberts, recorded as a back injury. Although I'm suffering a secondary psychological injury, that's not captured in any data anywhere?

TONY WESSLING: That's correct.

RICHARD HARDING: It would be in the file notes that the case manager is using.

The Hon. ROD ROBERTS: It is certainly in the file notes, yes.

RICHARD HARDING: That is accessible. We can do some data scanning, but that is very rough.

The Hon. ROD ROBERTS: Sure. I understand. As you say, perhaps this is a matter for icare to discuss with SIRA in terms of coding.

RICHARD HARDING: Yes.

The Hon. ROD ROBERTS: Back injuries are code A, but with a psychological injury attached, is it a 1A perhaps?

RICHARD HARDING: Yes.

The Hon. ROD ROBERTS: I do not think we are actually capturing the data of the extent of injuries and illnesses out there.

RICHARD HARDING: We would agree with you on that.

The Hon. ROD ROBERTS: I am assuming you have watched, remotely, the evidence from SIRA this morning.

RICHARD HARDING: No, I haven't.

The Hon. ROD ROBERTS: I want to take you to an article and a discussion I had with SIRA this morning. Adele Ferguson wrote an article in *The Sydney Morning Herald* on 22 November 2022 in relation to the underpayment of workers. Her article says:

Documents obtained by this masthead show that in February—

CORRECTED

we are talking about February 2022—

icare discovered a potential issue with underpayments – but delayed telling the workers' compensation watchdog State Insurance Regulatory Authority (SIRA) for seven months.

So that is until September 2022. Is that correct?

RICHARD HARDING: Partially. SIRA has—and we all operate under—a significant matters notification policy, and icare complies with that policy and we comply with that policy in respect to this issue. The challenge that we find—and it's the same challenge that we had with PIAWE and with other issues that we have identified and resolved—is actually understanding and getting firm detail of the scale and nature of the issue. The issue that we're talking about at the moment is the underpayment of indexation or the mis-indexation of claims between 2012 and 2019, a period in which the data for those claims sits on four previous CSPs' data sets—icare didn't have a system—pre-icare's centralised system. And the nature of the process at that time, apart from the fact that the legislation changed part-way through, was very much one where there was a subjective process that was dependent on the case manager. So being able to identify whether this was a small matter of a number of claims in one CSP or a broader systemic problem across the system is a complex thing that is not easy to do.

And we are very conscious that we don't want to start—I will come back a step. We communicate to SIRA regularly when we identify issues. But determining that it's a significant matter that has a systemic, system-wide issue is the thing that takes time. That is what the seven months is about. We got the data. We had to get the data from the CSPs. We had to understand their processes at the time, go back and look at those, look at the files and, literally, do file-by-file work. This is not simple systems work. This is file-by-file analysis. We then sought assistance from Deloitte. As you will know, we have used their wage remediation experts before, and we've used them again this time to help us (a) just confirm is this really the sort of issue that we think it is and (b) how we resolve that. What's the best avenue to create remediation for these people? That's why we end up with a lag like that, because we want to be certain we're actually dealing with facts rather than just a one-off set of issues.

The Hon. ROD ROBERTS: I understand your thing about significant matters, and we may come back to that shortly. Do you think that you have some sort of moral duty or obligation to, in fact, inform SIRA and say, "Listen—

RICHARD HARDING: Well, this is—

The Hon. ROD ROBERTS: I am still talking. "We haven't quantified the issue yet. But we think we should tell you, in terms of transparency, bearing in mind we have had a case history of underpaying workers a number of times for a number of years—tens of thousands of workers. So listen, we just want to tip you off that we have an issue we're working on at the moment, and the moment we quantify this we will let you know."

RICHARD HARDING: That is exactly the conversation we had with SIRA.

The Hon. ROD ROBERTS: I do not know if that is what SIRA thinks.

RICHARD HARDING: I can guarantee that's exactly the conversation we had and that's how they know it was February that we identified it, because we started a conversation: "We don't understand this problem yet, but it's a problem and we need to do work to find out." And SIRA, I can tell you—

The Hon. ROD ROBERTS: We will have a look at the transcripts of what SIRA said this morning.

RICHARD HARDING: —engaged with us very frequently, through those sorts of processes, and are pushing us regularly to make a determination whether this is a matter or not to disclose.

The Hon. ROD ROBERTS: Can I take you a step further then? You yourself, Mr Harding, and predecessors, regularly appear before this Committee.

RICHARD HARDING: Yes.

The Hon. ROD ROBERTS: This Committee has an oversight role. Don't you think you have some obligation to us along the same lines? You could have said, "Listen, we're aware we have an issue at the moment. We don't know how big it is, but we believe we have we have an issue with some underpayments. We are yet to quantify it. It may well only be indexation. It may be bigger. We don't know. We don't know how many workers it affects, but it does affect some degree of workers. We think we should have some sort of obligation to tell you, and the moment we have some facts we will come back and report to it you."

RICHARD HARDING: Mr Roberts, the moment that we have certainty that we understand the issue and we are in a place to understand how we're going to remediate it and what it looks like—as we did with this case—we put a statement on our website, and we provide a media statement.

The Hon. ROD ROBERTS: Did you send the link to our Committee at all?

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RICHARD HARDING: I don't really know whether we did or not. I can give you that on notice, if you like.

The Hon. ROD ROBERTS: I do not think you did, because we have not got it.

RICHARD HARDING: We're disclosing it publicly to the people that matter: the injured people who have been underpaid. Our key here is to make sure we can be very certain, for those people, what the issue is. A general conversation is something we have with SIRA—between us and SIRA—whilst we try and work out what the issue is, and we don't want to create uncertainty or concern and anxiety for people until we actually have a definitive issue that we're dealing with.

The Hon. ROD ROBERTS: Going to that, then, when you appear before us, you have not decided to tell us. You are now saying it is a matter of privacy, perhaps. You don't want to create concern. You did not say to the Chair, "We have got some stuff we want to tell you."

RICHARD HARDING: That's not what I said, Mr Roberts.

The Hon. ROD ROBERTS: Well, it is along those lines.

RICHARD HARDING: No. I said we want to make sure that we understand the problem, we understand exactly how big or small it is and that we really know what we're talking about.

The Hon. ROD ROBERTS: Well, why don't we tell people earlier? Because we don't want to create concern?

RICHARD HARDING: Exactly.

The Hon. ROD ROBERTS: Well, when you appear before us, why don't you say to the Chair, "We have information we feel as though we are obliged to tell you. We want to do that in camera, so the evidence does not go out to the public and create concern. We want to avail ourselves of that mechanism because we think it is the appropriate and proper thing to do."

RICHARD HARDING: If the Committee would like that, we can do that. Obviously, the Committee doesn't meet on a very frequent basis. We do have a board, Mr Roberts, that we report to, and we provide all this information very transparently to them. I can guarantee you they knew the moment that we knew, and they were part of that journey of discovery with us to understand whether it was or wasn't an issue. They ultimately approved and signed off on the remediation program we'd implemented. We also have a Minister, Mr Roberts, that we report to, and we will communicate at the right time to the Minister when those issues arise and how we are dealing with it. We are actually quite transparent. We are not hiding things. I reject that allegation. If the Committee would like us to turn up here every time there is a problem—and I can tell you, this is a very complex system that is also very old.

Identifying these issues is part of our job and fixing them is part of our job. That's our mindset. It's not about, "Oh, there's a problem. Let's hide it." This is our job. I was appointed to clean up the mess of icare, and that goes back to whatever date that it started, and these things were pre-icare—the ones we are talking about now. So we're not shirking or trying to hide things. What we don't want to do is create concern and pain for individual workers. But we're not shy of being transparent to our board or to SIRA when we identify things. But we are very careful on making sure we know exactly what we're talking about, we've got the right data and we've got the right understanding of what the problem is, and we actually then have a plan for how we are going to deal with it. The shortest distance between people knowing and then understanding the plan to do it is how we create certainty and comfort for those people. And it's the injured workers who have been underpaid that we are most concerned about.

The Hon. ROD ROBERTS: I take you further into the same article:

In a letter to SIRA on September 6 this year—

we are talking 2022—

icare's head of risk and governance described the underpayment issue as a "potentially significant matter"—

and we have discussed significant matters—

saying it was strictly confidential. "This information is not publicly available, nor should it be made publicly available," it said.

Why is that, bearing in mind that it impacts members of the public?

RICHARD HARDING: I think the language there is probably overblown in terms of the way that the chief risk officer has chosen to express it. But the point is no different to the—

CORRECTED

The Hon. ROD ROBERTS: Can we unpack that, then? How is that? The chief risk officer has written a letter to SIRA, the regulative body, and you are telling me the chief risk officer has overblown it, perhaps.

RICHARD HARDING: The intent there is no different to the intent that I've just explained to you. We want to make sure that we have the ability to research and get to the detail of understanding. There's an example. We flagged it with SIRA, "Here is a potential significant matter." We have not yet determined that it is, because we've got more work to do.

The Hon. ROD ROBERTS: You flagged it seven months later.

RICHARD HARDING: As a significant matter, because by then we had determined that it was actually meeting the criteria of a significant matter. And within the significant matter policy that SIRA operates under, we have complied with that policy. We are operating in a regulatory environment and we are complying with that regulatory environment. We are not not complying with the regulatory environment. We are complying with the regulatory environment. We notified them, within their framework of their significant matter policy, once we had determined it was a significant matter. That's what the policy requires.

There is a lot of work that gets done between us identifying a problem and then actually getting to that point, because this data is not just something we can put through a simple check and go, "Is that person being underpaid or not?" This is data that goes back to 2012. It was previously held on GIO QBE's databases. Extracting the file notes from there so that we can actually see what was the decision process that the CSP's case manager at that point in time went through, how many years did that indexation—that claim might have run for multiple years. How many years of indexation were missed? Was it systemic or was this a simple mistake—operational error—in the normal course of business that you would expect? Those are the processes that we have to go through.

This is not a simple database search, "Did it match this particular thing?" And I have to tell you, SIRA have made that mistake increasingly that things can be simply identified through a simple data match. These things are complex, especially the older they are. If you go back to those sorts of forms of indexation that were in place after 2012, before reforms in 2018, that process required a whole lot of work by the case manager and a whole lot of subjectivity by the case manager, and that's not something that's contained on a computer. Getting the data, getting it in a way that we can use it, doing the file-by-file review, understanding significant statistically relevant samples—is this one CSP or is it multiple CSPs? How big do we think this is? Is it big enough that it is actually a significant matter? That's what takes time.

Working with people like Deloitte's wage remediation people to then get it to the point where we have a plan, understand how we're going to deal with it and then bring that forward, that's our process. That complies with their significant matter notification policy. We have argued with SIRA that the significant matter policy should be changed, for two years, but that's the way their policy currently works. It is highly different to the significant matter policy that exists in an ASIC environment, for example. But we comply with it, and we do what we do to understand the details of each of those issues so that we can accurately and confidently address it.

The Hon. ROD ROBERTS: In your significant matter notification to SIRA in September 2022, how many workers are we talking about?

RICHARD HARDING: I will have to throw to Mr Wessling for that.

TONY WESSLING: I don't know what was in that September notification, but I can tell you the estimates at the moment, because we're running the remediation program. We expect to remediate in the order of 17,500 workers. Like we did with PIAWE, we are working with Service NSW on a proactive payment program, as well as with the CSPs where we're dealing with open claims to have those errors paid and fixed.

The Hon. BOB NANVA: Upon red-flagging the potential indexation issue with SIRA in 2021, and then ultimately advising them that it was a significant matter, was any advice provided along the way to SIRA to give them comfort about the issue? What sort of advice was provided by icare along the way to SIRA until you finally concluded that it was a significant matter?

RICHARD HARDING: Mr Nanva, that is a great question. We have regular meetings with SIRA. In fact, each month there are 15 meetings between SIRA and icare. One of those is a principals meeting at which the senior executives join together. I'm pretty certain, if we go back to the minutes for those meetings, each month you would have had this matter on that agenda and we would have provided them with an update. The conversation is not, "We will wait until the end of it and then inform them." It's certainly one where—as evidenced by the letter that Mr Roberts was talking about. We are talking to them pretty much continuously. SIRA are inside icare on a very continuous basis.

CORRECTED

The Hon. BOB NANVA: Earlier you mentioned concerns you had around the range of guidelines and the prescription that's given by SIRA that is post case management. Has icare relayed those concerns to SIRA? What has been the response to the concerns you have raised around the quality of care you can provide by virtue of the fact that you have got a lot of prescribed guidelines to follow?

RICHARD HARDING: Yes, we have had conversations with SIRA. They are ongoing conversations. We have formally written to them about it just recently, and we'd love to engage with them further on it. The more work we do in our test and learn centre in Wollongong, the more we can sort of bring examples to life that really show where some of those challenges are for case managers. We think it is a real opportunity to change up how the experience and outcomes get achieved for injured workers.

The Hon. BOB NANVA: You have documented the work that icare has done with respect to CSPs and the improvements there. I suppose what I'm really interested in is more the case service managers themselves. What visibility does icare have over their capability, the amount of turnover that's going on at the manager level—I suppose the appropriateness of the programs that they are offering, how tailored they are? What sort of supervision framework does icare have at that level of case management?

RICHARD HARDING: I will ask Mr Wessling to answer.

TONY WESSLING: As part of our Nominal Insurer Improvement Program, we have done a number of things, but amongst those was rolling out the professional standards framework. This is a framework that defines, I guess, the minimum standards for a frontline claims manager as well as creating, in essence, a development pathway, a continuous—it is creating a profession, really, out of claims and managers. We launched that earlier this year. We're in the process. We have finished a baselining exercise with our CSPs and we're going to, at some point in the near future, commence reporting on the skills on the front line. That will become a point of competitive difference between claim service providers as they look to build that workforce of case managers, which we saw from the McDougall Review and the Dore Review is so essential to getting the best outcomes for injured workers.

The professional standards framework is the first framework like this nationally for workers compensation claims. That's in the process of being rolled out. In addition, we do also measure and report on other dimensions like case loads. We know case loads are incredibly important to how much attention a frontline claims manager can spend with injured workers. We measure that on a regular basis now with our claim service provider, and that will be part of what we publish come November when we start to publish performance of our claims service providers. We also look at other dimensions like tenure, as you mentioned. As we've rolled out the new contract and the Nominal Insurer Improvement Program, the quality, the skills, the tenure of claims managers and the case loads that they have to work within are an important part of driving the improvement in outcomes for the injured worker.

The Hon. BOB NANVA: Is there a routine auditing of their performance on the front line?

TONY WESSLING: We have a quality assurance program that reviews claims by claim service providers on a regular basis. Then that will look at dimensions like compliance with legislative requirements. So we've got a requirement to determine liability and make payments within seven days. It looks at those sorts of dimensions. It looks at the quality of the injury management plan and the quality of those basic dimensions of case management as well. As part of the new contract that we launched earlier this year, those sorts of quality measures are assessed regularly. They're actually part of both the core service levels that are required, and are therefore a gateway to certain components of claim service provider payments that we make to them. But also they're part of the incentive program that we've got in place for claim service providers—those quality dimensions which we measure through our quality assurance program.

The CHAIR: The figure of 17,500—just to clarify, that's currently the identified number of individuals for which there either definitely is, or possibly is, an indexation claim. That's what that figure means. Is that correct?

TONY WESSLING: Yes. The work that we undertook with Deloitte to look at claims between 2012 and 2019 identified a number of at-risk claims that sort of looked like there may be an indexation issue. We used a similar approach to what we did with PIAWE to at-scale look at those injured workers. We have a remediation program that's underway at the moment, which has roughly 17,500 injured workers that we've identified that we think require remediation. That's across the TMF and the Nominal Insurer scheme. This is where we've identified a potential error that's above \$100 that would require remediation. That's the program that we're undertaking right now.

The CHAIR: What's the level of confidence that that 17,500 is in fact, give or take, the figure or the number you're looking at and that there's not the scope for that to blow out to something large because something at this point has not been considered?

CORRECTED

TONY WESSLING: Well, we believe this is actually the upper limit. We've split the cohort into essentially two parts. One is for where our sort of at-scale analysis would suggest that the impact of the indexation, which may have been over a number of years—where we estimate that's over \$5,000, those are all being manually reviewed and processed by the claim service providers. Where that number is under \$5,000, we've engaged with Service NSW to undertake the payments. Like we did with PIAWE, it's a proactive payment process that essentially makes it as straightforward and easy for injured workers. Remember, these issues date back—claims that are now up to 10 years old. So we're using that same process that was so successful with PIAWE in remediating injured workers as quickly as possible through a proactive approach, utilising the services of Services NSW.

RICHARD HARDING: Can I just—

The CHAIR: Please, yes.

RICHARD HARDING: Now I've completely forgotten what I was going to say. I'm sorry, Mr Donnelly. Go on.

The CHAIR: That's okay. It may return in a moment.

RICHARD HARDING: It'll come back, yes.

The CHAIR: Whilst you're reflecting on what it might be, I have two quick questions. I am conscious of the time. Perhaps, without any disrespect to Mr Wessling, I put it directly to you, Mr Harding. With a request to identify the most significant as opposed to the range of possibilities that could inform the answer to this question in your mind—from your observations and experience dealing with the role that you have had now for a period of time with icare, with respect to return-to-work rates and that they are generally better off for self-insured and specialised insurers, how can there be improved performance in this area? How could that be incorporated into the Nominal Insurer/TMF? As I said, there could be multiple possible answers, but is there anything that you've reflected on that really stands out?

RICHARD HARDING: Can I just clarify to make sure I've got the right question? How do we close the gap between the return-to-work rates that self and specialised—

The CHAIR: Yes. What's your sage advice, so to speak?

RICHARD HARDING: There's quite a lot in that. Look, the reality is that is as much about the relationship with the employer and the nature of the employer. A self-insurer has a very clear relationship directly with the injured worker and has much more contact with that person, remembering that in the Nominal Insurer 300,000-odd of the 380,000 are very small employers who don't have that capacity. A self-insurer and a specialised insurer tend to be much more having contact with the employer relative to the Nominal Insurer, where there's a small employer involved who doesn't have that level of sophistication or capability. I'll just use an anecdotal kind of expression, if you like, or an example—but if you think about a coffee shop owner who has a barista that gets burnt or perhaps even is psychologically ill because of some other interaction with a customer, whatever it might be, that coffee shop owner's priority is to fill the role and move on. It's unfortunate that they're not so interested in the injured worker. I'm just being very blunt.

That's very different in a self-insurance environment, where it's a much larger enterprise. You have a team of people working to help return that person to work from the employer's end as well as from our end. To translate that to the government agency side, we're doing work through whole of government at the moment to identify whole-of-government return-to-work opportunities, because a lot of the time people don't want to return, especially with psychological injury, to the same workplace. How can we find movement across government, instead of just agencies? Education is one where this is a very big opportunity—to see if people can be used more broadly across government agencies rather than not being used in an education environment. Maybe they're some of the thoughts I'd leave you with.

The CHAIR: Thank you. Mr Wessling, sorry, I wasn't meaning to exclude you. It was just the time available. Please make a contribution.

TONY WESSLING: No, I've got nothing to add.

The CHAIR: I will squeeze in one final question along the same lines of the most significant observation as opposed to a potential range of possibilities. In some respects you've partially answered this. The TMF psychological claims remain at around a 25 per cent figure or thereabouts of claims compared to a much lower figure for self-insured or specialised insurers. Do you have any particular insights about why that might be the case?

CORRECTED

RICHARD HARDING: I think we've already talked a little bit about it. It really comes down to the emergency services. Perhaps again if I'm a bit more blunt in my answer this time—

The CHAIR: Please be blunt.

RICHARD HARDING: The New South Wales police now account for 50 per cent of the TMF workers compensation scheme. Ninety per cent of the people who go on medical discharges are as a result of psychological injury. That's not suggesting they aren't psychologically injured, but it is the nature of the scheme that that is a very, very big contributor to the overall whole-of-government position. And how we think about that segment of the workforce, a very important segment of the workforce in terms of the role that they play—how we think about them and how we deal with that challenge, I think, is a real one that is open for government to attack.

The CHAIR: Or to think deeply about. Thank you very much, gentlemen. I appreciate you coming along. I know you both have much on your plates and you're both very busy. I appreciate you making the hour and a half. It's been a good opportunity for the Committee members to—I won't say interrogate but perhaps prosecute questions. We appreciate the frankness of the answers that you've provided. Some questions have been taken on notice—I think a relatively limited number. We've resolved on a 14-day period after receipt of the transcript to return those answers to questions on notice. There may well be some supplementary questions arising from members, having the opportunity also to read the transcript.

RICHARD HARDING: We appreciate the time and the opportunity to contribute.

The CHAIR: That concludes the inquiry hearing today. I thank those who've joined us today in the public audience—very much appreciated you coming along. To those who joined us on the internet, thank you very much.

(The witnesses withdrew.)

The Committee adjourned at 12:45.