

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

**PROPOSED CHANGES TO LIABILITY AND ENTITLEMENTS FOR
PSYCHOLOGICAL INJURY IN NEW SOUTH WALES**

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Friday 16 May 2025

The Committee met at 8:40.

PRESENT

The Hon. Greg Donnelly (Chair)

Ms Abigail Boyd (Deputy Chair)

The Hon. Susan Carter

The Hon. Anthony D'Adam

The Hon. Damien Tudehope

The Hon. Mark Latham

The Hon. Stephen Lawrence

The Hon. Bob Nanva

* Please note:

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

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

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

The CHAIR: Welcome everyone to the hearing of this one-day inquiry of the Standing Committee on Law and Justice into proposed changes to the liability and entitlements for psychological injury in New South Wales. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders, past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Greg Donnelly and I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent, if you have not done so already. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside the hearing. I urge witnesses to be careful about making comments to the media or to others after completing 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 these procedures.

Due to the time frame of the inquiry, I advise witnesses that the Committee has resolved that, with respect to any questions taken on notice today, the return of answers to the secretariat will be by close of business—that is, 5.00 p.m.—next Wednesday 21 May. Members of the Committee, witnesses over the course of the day and the public at large should also note that there will be no provision for supplementary questions to witnesses after the hearing that otherwise would be normally provided through the Committee secretariat from members of the Committee.

The Hon. DANIEL MOOKHEY, Treasurer, before the Committee

The Hon. SOPHIE COTSIS, Minister for Industrial Relations, and Minister for Work Health and Safety, before the Committee

The CHAIR: Good morning, Treasurer and Minister Cotsis. Welcome, and thank you for being available as our first witnesses today. I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. Just so we are clear for our witnesses and other witnesses today and the public at large, we are, in effect, starting 15 minutes late today and I do apologise for that to our first witnesses and the consequential knock-on effect for all the witnesses for the rest of the day. That will simply push everything forward 15 minutes. I want to make that very clear. That is the effect of the delay that we have and, once again, through no fault of any of the witnesses but some work that needed to be done through deliberation by the Committee before we formally started. With that introduction, I think there is no more to say at this stage. I make the point for anyone watching that there are representatives on this Committee from the Government, the Opposition and the crossbench who will be participating today. Treasurer and Minister, would you like to start by making a short statement?

The Hon. DANIEL MOOKHEY: Thank you, Chair, and thank you to the Law and Justice Committee for permitting our appearance today. The exposure draft this Committee is inquiring into arises from the failure of our existing workplace health and safety laws, industrial relation laws and our workers compensation system to prevent psychological injuries and return those with psychological injuries to their health and to their work. I set out the reasons why in my statement to the House in March. But since March there have been some further developments—namely, the finalisation of the December valuations, and I want to brief the Committee on those changes.

At the June 2024 valuation, the Nominal Insurer held 85¢ for every dollar it expected to pay in compensation. Since then, the scheme has plunged further into deficit. I regret to inform you that, as of 31 December, the scheme is only holding 82¢ in assets for every dollar it expects in future claims. Absent reform, I expect the scheme to plunge further into deficit when the scheme is revalued in six weeks' time. Vast deterioration has real implications for the sustainability of the scheme. Workers get less; businesses pay more. Put simply, you can have the best workers compensation scheme in the world on paper. If it has no money, it's not helping anyone.

Turning to the TMF—the Government's self-insurer—I regret to inform the Committee that, as a result of the December valuation, absent reform, the forthcoming budget will report another \$2.6 billion writedown, just six months since the half-year review. With reform, that cost might be avoided. By way of context, the half-year review reported a \$204 million writedown. The 2024 budget recorded a \$2.4 billion writedown. The 2023 half-year report reported a \$170 million writedown. My first budget recorded a \$1.3 billion writedown. In fact, the State budget has recorded a cumulative \$4.1 billion in writedowns arising from the TMF in my two-year tenure as Treasurer.

As the TMF continues to deteriorate, the pressure for cash injections grows. Since I became Treasurer, the Government has authorised an additional \$1.2 billion in cash injections to keep the public insurer funded. Treasurers Perrottet and Kean authorised an earlier \$4.9 billion. Since 2018, governments have borrowed \$6.1 billion, so the TMF's assets equal its liabilities. I will not be authorising any further injections—not until Parliament decides its collective response to a scheme that most acknowledge is failing and not when that money is coming at the expense of schools, hospitals or kids in need of out-of-home care. That choice is clear for me.

Turning to the state of the system, as I said in my ministerial statement in March, claims for psychological injury have doubled in just six years. While 91 per cent of physical injury claims resolve within 13 weeks, 50 per cent of psychological claims are not resolved after a year. The average cost for a psychological claim has also massively increased from \$146,000 in 2019 to \$288,542 in 2024. Those costs have increased premiums for businesses by 8 per cent annually for three years. Without reform, claim-free businesses will see a 36 per cent rise in premiums by 2027-28. Those costs are, in turn, having very real consequences, of course, in the viability of those businesses as well as our broader economy. But, beyond that cost, the system is disrupting workplaces by sidelining trained staff and worsening conflict. The impact on injured workers is no better. These facts demand reform.

The exposure draft of the Workers Compensation Legislation Amendment Bill takes the first step. It is important for us to say it's not the Government's final position. Your deliberation and our consultations with the New South Wales trade union movement, employers and members of Parliament will shape the bill the Government intends to introduce shortly. The bill aims to stabilise the scheme, but ultimately more reform will be needed. New South Wales needs to break the habit of set and forget when it comes to WHS laws, IR law and

workers compensation scheme design. The State needs to make a decisive shift towards fostering a culture of prevention. Us parliamentarians need to lead it. Ultimately, the best workers compensation scheme is one no-one ever needs to use. Until that is possible, I urge Parliament to act to save the scheme we have and fight to stop people from being injured in the first place.

Ms SOPHIE COTSIS: Chair, it is clear to everyone—injured workers, unions, business and the Government—that the current New South Wales workers compensation system is failing, especially for psychological injuries. A change in volume of claims impacts revenues. There is no doubt mental health is a societal issue, but the increase in psychological claims would indicate that the system has become a place where industrial relations and general health issues are being managed through a system that was designed to support those injured at work to recover and to return to work.

The Minns Labor Government is committed to reforms that ensure these type of injuries are prevented from occurring in the first place. We have restored SafeWork NSW as a standalone regulator, with more inspectors. We will have a new commissioner at its head. We are investing in stronger enforcement of psychological-risk regulations, and we have launched the 2024-2026 Psychological Health and Safety Strategy, shifting focus from education to compliance. We have also implemented the Government's whole-of-government return to work strategy, to find suitable job pathways for injured public sector workers with a capacity and desire to work. Last year, Mr Chair, we identified over 3,068 New South Wales public sector workers on workers compensation who have claims in this position. This is unacceptable because these public sector workers have capacity to work but the system has these artificial barriers that doesn't allow them to get back into the system. What we are doing is implementing this strategy, backed by \$1.2 million, that is led by a team in the Premier's Department.

The Government has also been clear that icare needs to get better with both governance and claims management after the errors of the last 10 years. Since coming to office, the Government has established statutory objectives for icare, mandated that an employee and employer representative must be on the board of icare, put a Treasury official on the board of icare and required that icare must table a statement of business intent to Parliament each year. Icare has also now implemented professional standards for claims managers across the Nominal Insurer and the Treasury Managed Fund for the first time and is also now looking at ways to expand its test-and-learn model into the broader scheme. Claims managers are at the front line of our workers compensation system, and it is critical that they have the skills to support injured workers recover. These professional standards are an important step in that direction. Mr Chair, we want to build a system that both respects and treats injured workers and gives confidence to New South Wales' businesses that the premiums they pay are fair and are being used in the best possible way to return workers back to work.

The CHAIR: Thank you, Minister Cotsis. We will move to questions from Committee members. It's been previously resolved that we will divide the time between the three groups represented at the table here in the order of Opposition, crossbench and Government.

The Hon. DAMIEN TUDEHOPE: Minister Cotsis, if I can start with you. This is an inquiry into the exposure bill, so I am not going to ask you questions about the statement you have just made. It is an inquiry into the bill which you put before us. Just in relation to that bill, Minister, the Fair Work Commission says that its aim is to resolve most bullying and sexual harassment cases within 16 weeks. Are you aware of that?

Ms SOPHIE COTSIS: The Fair Work Commission does have a bullying jurisdiction. That's right.

The Hon. DAMIEN TUDEHOPE: And it tries to resolve those within 16 weeks? You are aware of that?

Ms SOPHIE COTSIS: Yes.

The Hon. DAMIEN TUDEHOPE: What is the likely time frame that you perceive for resolving such applications under your proposed new industrial relations jurisdiction? Can you confirm that no weekly payments will be made or medical treatment will be able to be claimed for workers compensation during those weeks or months while the commission is hearing the application?

Ms SOPHIE COTSIS: Mr Tudehope, this is an exposure draft. It is a pathway to reform, because what we have seen, particularly over the last five to 10 years—as the Treasurer noted, we have seen a doubling of psychological claims—

The Hon. DAMIEN TUDEHOPE: I am just asking you about—Minister, I have got very limited time this morning, and this is a very quick inquiry.

Ms SOPHIE COTSIS: I've got limited time as well, and this is very important. I want to explain.

The Hon. DAMIEN TUDEHOPE: Chair, I have to say this is a very direct question in relation to the new proposed Industrial Relations Commission jurisdiction. Will people making a claim under that jurisdiction have no access to workers compensation payments or medical payments pending the outcome of that inquiry?

Ms SOPHIE COTSIS: Mr Tudehope, this is a proposal in the exposure draft. The Government has committed to expanding the industrial relations remit—

The Hon. DAMIEN TUDEHOPE: Is it in the exposure draft? Is that the submission?

Ms SOPHIE COTSIS: Mr Tudehope, we are expanding the bullying and harassment jurisdiction in the New South Wales industrial commission, unlike you. You stripped the Industrial Court. What we are going to do in this process is to have a stop bullying, stop sexual harassment order with damages. This is a road map to reform. We are listening to what everybody is saying about this process. And I hear what—

The Hon. DAMIEN TUDEHOPE: Minister, I am aware of what you are submitting to me. In the circumstances and under the exposure draft which you have submitted, a sexual harassment claimant who is suffering from a psychiatric disorder caused by sexual harassment would either have to keep attending work or take leave, if available, and pay for their own medical treatment. Is that what is provided under the exposure draft?

The Hon. DANIEL MOOKHEY: Can I just—

The Hon. DAMIEN TUDEHOPE: No, I am asking the Minister, Treasurer.

The Hon. DANIEL MOOKHEY: I can provide you information.

The Hon. DAMIEN TUDEHOPE: I'm asking the Minister. Is that the case?

Ms SOPHIE COTSIS: I am happy for the Treasurer to respond to that.

The Hon. DANIEL MOOKHEY: Your point, Mr Tudehope, is taken. You are quite right to say that, in the absence of a determination by a tribunal, the concept of being able to access what is currently termed provisional liability is affected. But I just take one step back. You are referring to cases which are complex. The current system isn't resolving them quickly. The cases you are pointing to, which are valid points, under the existing status quo are not being resolved. Second point—

The Hon. DAMIEN TUDEHOPE: But the payments are being made, aren't they, Treasurer?

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: Yes. And I do take your point. And I make the point to you, Mr Tudehope: The point you're making is something we're seriously considering, about how you consider the application of a concept like provisional liability in such a scheme. Part of the reasons why, I think, we issued the exposure draft is to tease out these issues and to bring them to the fore and to allow us to respond to them.

The Hon. DAMIEN TUDEHOPE: Thank you, Treasurer. When you sat in this chair, you had very limited time.

The Hon. DANIEL MOOKHEY: I know.

The Hon. DAMIEN TUDEHOPE: And you have given us very limited time in relation to this inquiry. If you'd bear with me in relation to these questions, I can get through them. Back to you, Minister Cotsis. Under the Work Health and Safety Regulation, employers are required to address psychosocial hazards in the workplace, which, according to Safe Work Australia, can include conflict or poor workplace relationships and interactions; job demands such as sustained high mental, physical or emotional effort required to do the job; and shifts that do not allow adequate time for sleep or recovery. Can you confirm that the draft bill will remove the existing right for workers to claim common-law damages if an employer's negligence in addressing such psychosocial hazards causes a permanent psychological injury?

Ms SOPHIE COTSIS: Mr Tudehope, as you know, and as the Treasurer stated, this is an exposure draft. We're—

The Hon. DAMIEN TUDEHOPE: Again, Treasurer, can you say that this is a—

The Hon. DANIEL MOOKHEY: Yes, I can talk to you about this. Actually, the answer in accordance to the exposure draft is that the requirement I think you are referring to is under the provision that affects work injury damages. The work injury damages provision at the existing status quo requires the establishment of negligence. Under the exposure draft provisions, that wouldn't change, but the level of impairment required would change. That is the way, technically, the exposure draft works. I just stress again that the concept of work injury damages obviously is very important, because it is there to stand in the place of common-law rights. But the

requirement to prove negligence is unaffected by the exposure draft. That remains. What is changing is the threshold of impairment under the exposure draft.

Ms SOPHIE COTSIS: Can I also—

The Hon. DAMIEN TUDEHOPE: Let me just ask you then—

Ms SOPHIE COTSIS: Sorry, can I just respond?

The Hon. DAMIEN TUDEHOPE: No. I just want to take up the—just so we have some clarity on this, has this exposure draft been to Cabinet or caucus?

The Hon. DANIEL MOOKHEY: Yes. I won't comment on Cabinet deliberations but, yes, we have obviously published the exposure draft. Yes, we have referred it to our caucus. Yes, we've referred it to you. Yes, we've referred it to all members of the Parliament and, yes, we are inviting feedback from our caucus, from you, from this Committee and from members of the crossbench.

The Hon. DAMIEN TUDEHOPE: Has the exposure draft been approved by Cabinet?

The Hon. DANIEL MOOKHEY: Again, I won't comment on Cabinet deliberations other than to say that of course the decision to publish the exposure draft was authorised.

The Hon. DAMIEN TUDEHOPE: So, Minister Cotsis, do you agree with the provisions contained in this exposure draft?

Ms SOPHIE COTSIS: As the Treasurer said, a decision has been made to release the exposure draft for the simple fact that we're here today to listen to what stakeholders have to say, and we have been listening particularly over the last couple of years—as you know, Mr Tudehope—that there has been a rise in psychological claims.

The Hon. DAMIEN TUDEHOPE: I was probably aware of that before you were, Minister.

The CHAIR: Order!

Ms SOPHIE COTSIS: There are responsibilities that employers have in the Work Health and Safety Act. We do need to tighten those, because we have to go back to the cause. This is looking at everything holistically. This is looking at what is the cause, what are the things that we need to be doing, what are the things that employers need to be doing—

The Hon. DAMIEN TUDEHOPE: This bill represents your considered view of what we should be doing?

Ms SOPHIE COTSIS: There are a number of things that the Government—

The Hon. DAMIEN TUDEHOPE: Is this your considered view of what we should be doing?

Ms SOPHIE COTSIS: Mr Tudehope, this is a road map to fixing a broken system that was left by your Government. What we are trying to do here is we are trying to—

The Hon. DAMIEN TUDEHOPE: We dealt with exactly the same problem.

Ms SOPHIE COTSIS: We are investing in preventative programs. We are doing a lot of work at the front end. One of the things that the Government has achieved is we have been working with public sector agencies, with public sector unions, to establish a whole-of-government return to work. What I see is that there are 3,068 public sector workers who—

The Hon. DAMIEN TUDEHOPE: Let me ask you about that. Let me ask you about your consultation, Minister, because the Public Service Association says this:

These proposed changes will not improve workers health but will instead exacerbate their injuries and cause further harm.

As Minister for Work Health and Safety, do you agree with the PSA?

Ms SOPHIE COTSIS: With respect to the whole-of-government return to work?

The Hon. DAMIEN TUDEHOPE: Yes.

Ms SOPHIE COTSIS: The actual strategy that we've established—

The Hon. DAMIEN TUDEHOPE: With this exposure draft—

Ms SOPHIE COTSIS: No, I'm talking about the strategy. I'm talking about—

The Hon. DAMIEN TUDEHOPE: The exposure draft, Minister, suggests that—and this is what they say in their submission:

These proposed changes will not improve workers health but will instead exacerbate their injuries and cause further harm.

Is that improvement to work health and safety?

Ms SOPHIE COTSIS: Mr Tudehope, we are expanding the bullying and harassment jurisdiction of the Industrial Relations Court. We have established the whole-of-government return to work strategy. There are over 3,000 public sector workers today that have capacity to work, and there are artificial barriers that your Government didn't take on the challenge to fix. And we have spent—

The Hon. DAMIEN TUDEHOPE: Let me just ask you about that.

The CHAIR: Order! The Minister is answering the question.

The Hon. DAMIEN TUDEHOPE: Well, Chair, I have limited time. This is not helpful in terms of getting through the question.

The CHAIR: I am not interrupting you. I'm just asking you to come to order, to get on with it.

The Hon. DAMIEN TUDEHOPE: Minister, let me just ask you this: There is another bill, is there not, in relation to the amendment of the Industrial Relations Act?

Ms SOPHIE COTSIS: A proposal will come to—

The Hon. DAMIEN TUDEHOPE: Why haven't we seen that?

Ms SOPHIE COTSIS: What do you mean?

The Hon. DAMIEN TUDEHOPE: Why isn't there an exposure draft of the—

Ms SOPHIE COTSIS: I don't work on your timetable.

The Hon. DAMIEN TUDEHOPE: Well, Treasurer, can you tell us—

The Hon. DANIEL MOOKHEY: Mr Tudehope, when this bill—obviously it is an exposure draft. As I said at the outset of my ministerial statement, it is not the Government's final position. In fact, whilst I well and truly accept the view that exposure drafts are simply that, we think it is a good thing we've released it to allow people to see the detail, in time, before we present it to Parliament. You are also right to say that, accompanying such changes, the Government intends to introduce the biggest shake-up to WHS laws in New South Wales to help us shift towards a culture of prevention. That will establish a bullying and harassment jurisdiction as effectively the third wave of the work that this Government has done in two years. We obviously restored the independence of the umpire by removing the wage cap. We've then, in the last Parliament, expanded the system in respect to gig economy workers.

The third component of what we wish to do, amongst other changes, is to establish a bullying and harassment jurisdiction. Because a person who works for the public sector should have the same right as a person who is in the private sector. Equally, you're quite right to say that the exposure draft contemplates a system in which the two systems often work in parallel. The reason why that's important is because no workers compensation scheme could order any employer to change anything—nothing. And part of the reasons why having a modern industrial tribunal that is capable of concurrently exercising power on WHS law at the same time as it is making workers compensation determinations is to remove psychological hazard. I think, Mr Tudehope, what you and I agree on is that we want to prevent people from being injured, and we actually want the legal edifice to reflect that.

The Hon. DAMIEN TUDEHOPE: Is it your belief that this solves a financial problem, or does it solve workers getting injured, Treasurer?

The Hon. DANIEL MOOKHEY: Well, both. And I would just say—

The Hon. DAMIEN TUDEHOPE: But the exposure draft you have given us, and your opening statement today, is not about preventing injuries. It is about your bottom line, isn't it, Treasurer?

The Hon. DANIEL MOOKHEY: No, Mr Tudehope, because—I go back to the same point, which is it is not like these resources are being expended particularly well. It is not like this is a system that is working and we are taking money out of a system that is succeeding. What is happening here is that a system that was built predominantly to treat physical injury is now having to respond to psychological. Yes, it's going to need to adapt. Yes, it is going to need to modernise. But I think we have to all acknowledge the existing system is doing a terrible job, and that is failing businesses—

The Hon. DAMIEN TUDEHOPE: And this bill is the solution, is it, Treasurer?

The Hon. DANIEL MOOKHEY: Well, it is certainly part of it, Mr Tudehope, is what I would put forward. And I would simply reflect on this: Other States have had to modernise their systems too. They did it from a position that is far more financially precarious than our system is, albeit our system is very financially precarious. The reason why, even under these changes, this will remain the only system in the nation that is prepared to offer lifetime income support for injured workers is because we are responding at a time where the finances permit us to think about it as a task of modernisation and not as a pure task of crisis intervention. When other States, including other Labor States, have had to reform this—in places like Victoria, South Australia and Queensland—when you find yourself in a situation in which the finances deteriorate even further, you end up with a scenario in which the changes need to be more dramatic.

We accept the fact that these are hard changes that are involved. But I am here to say to the Parliament that doing nothing is not an option. Doing nothing is to lock in a system we know is failing. Doing nothing is to condemn even more workers to a system that is not succeeding and to ask businesses to pay more and more, knowing full well that those resources are not being well expended. That is the reason why we say, yes, these changes are hard, but the broader change that New South Wales needs to make is to break this set-and-forget mentality which means that we ignore these problems for 10 years, we find a system that is under pressure and then we have to change it rapidly. I would prefer a scenario in which we are regularly making adjustments to reflect the conditions that are emerging at the time. That can't be achieved in any one set of reforms. But I say that, right now, in the absence of reform, we are running the risk of an entire system collapse, and I don't think that is acceptable.

Ms ABIGAIL BOYD: Good morning, Treasurer. Good morning, Minister. Treasurer, you have said a number of times already that you are open to changing from what you've presented in this draft.

The Hon. DANIEL MOOKHEY: Indeed.

Ms ABIGAIL BOYD: But you've come here this morning and given quite a brazen ultimatum as well, where you've said to us—as reported in the SMH as well—that if we don't pass reforms, you aren't going to pay what is owed by your Government into the TMF for the next year. Is that correct? How do those two things—

The Hon. DANIEL MOOKHEY: I said I won't be putting cash injections. Just to be clear, that doesn't affect claims. What it does mean is that, over time, liabilities exceed assets. I would simply say that I've also made it clear that reform is needed. I didn't say these reforms, I said reform. I simply make the point that we are open to change but we are absolutely up-front about the fact that continually having to borrow money to put into a system is getting more expensive, it's not sustainable, and we cannot continue to borrow money and cash inject, because it absolutely is crowding out our capacity to respond to so many of the State's other pressing needs.

Ms ABIGAIL BOYD: Can we just come back to that, though? Because you've shown your hand this morning, where we finally have heard that this is about the TMF and not the Nominal Insurer, which is what we had suspected all along, and what is borne out by the Nominal Insurer liability valuations that were finally released.

The Hon. DANIEL MOOKHEY: I don't agree with that premise, Ms Boyd. The Nominal Insurer is in equal distress, it's just that that distress doesn't belong to the State.

Ms ABIGAIL BOYD: Let's just talk about the TMF, then, because the TMF is effectively where you put in premiums to cover the workers compensation for public sector workers.

The Hon. DANIEL MOOKHEY: Yes.

Ms ABIGAIL BOYD: You're basically saying this morning, then, that, just like we had the discussion with so many other stakeholders who don't want to pay their bills, like the private health insurers last year, you don't want to pay what—

The Hon. DANIEL MOOKHEY: No, that's an incorrect rendering of the way it works, Ms Boyd. Bear in mind, the budget position of the TMF is affected by three dimensions. The first is premiums. The second is the liability record, which impacts the operating result. The third is the cash position. Just to be very clear here, the premiums aren't affected by any position I made this morning. In fact, my expectation is that premiums have got to go up for ever public sector agency year on year on year, and that absolutely is going to crowd out the other forms of spending. As it is, if you simply pick up the annual report of every agency in the New South Wales Government over the last five years, you will see the biggest increase in employee expenses is not wages, it's premiums. That's going to continue. There is absolutely no doubt that's going up. The view that's been put forward that somehow the premiums are not going to be paid, that's not correct.

Ms ABIGAIL BOYD: Okay, but as the employer—

The Hon. DANIEL MOOKHEY: The second dimension is the \$2.6 billion dollars liability will be booked in the budget and that will be booked on the operating result. The third part is the cash position of the TMF. That is the money that is required to keep assets equal to liabilities in cash terms. That, absolutely is crowding out our capacity to invest in schools, to invest in hospitals, and to meet the State's other pressing needs, because when we borrow money—

Ms ABIGAIL BOYD: Let me just stop you there, because my time is limited. How exactly are we going to have well-functioning hospitals, and schools, and everything else, if we have public sector workers with psychological injuries that aren't supported by the State under its workers compensation system?

The Hon. DANIEL MOOKHEY: It's a great question. That's why we have to have a culture of prevention. But right now, not one dollar that I'm injecting into TMF, not one, is going to any preventative measure in the public sector.

Ms ABIGAIL BOYD: Do you think that these workers—

The Hon. DANIEL MOOKHEY: Sorry, Ms Boyd—

The CHAIR: Order! The Treasurer is answering the question.

The Hon. DANIEL MOOKHEY: Not one dollar. In fact, because we're having to put so much money into the TMF, it's stalling our ability to fund preventative measures in the broader public sector. I made this point in March. I would much prefer to put the money up front and invest earlier in the prevention cycle. That is not happening when every six months we're booking a \$2.6 billion deterioration. That is just the reality of it.

Ms ABIGAIL BOYD: Can I just ask the Minister, then, there have been so many great initiatives that have been initiated under your department, in relation to improving prevention measures. All of those things that you have set in train, do you expect them to actually have an impact on reducing psychological injuries?

Ms SOPHIE COTSIS: Ms Boyd, it's a good question, and I think that you need to look at this holistically. What is the cause? As I said in my opening statement, we've seen a large volume of psychological claims. The issue is that a lot of these claims unfortunately are interwork relationships, they're industrial relations matters and we don't have a system to deal with those.

Ms ABIGAIL BOYD: But the question was, "Do you think your prevention measures are going to work?" Is that why you've put them in place?

Ms SOPHIE COTSIS: I believe so. We're working with the Black Dog Institute.

Ms ABIGAIL BOYD: Yes, exactly.

Ms SOPHIE COTSIS: We're working with renowned organisations that are helping the Government and helping support agencies. We're also investing in our strategy—

Ms ABIGAIL BOYD: Apologies for interrupting. My time is so limited.

Ms SOPHIE COTSIS: No, I understand.

Ms ABIGAIL BOYD: Treasurer, given that all of these things have now been put in place, why on earth wouldn't you let those prevention measures play out before cutting people out of the system and making them sicker?

The Hon. DANIEL MOOKHEY: Ms Boyd, I well and truly understand the point you're making. I absolutely would like to say to you and to the Committee that, should we find ourselves in a situation in which the parallel reform had the prospects of working, we absolutely would have. We had been doing it for two years.

Ms ABIGAIL BOYD: Can I ask—

The Hon. DANIEL MOOKHEY: Sorry, Ms Boyd, I need to finish. You asked a very good question. I'd simply say that the rate of improvement as a result of the preventative ideally should have started in 2018. That's when the claim numbers went from 5,000 to 6,000 to 12,000. Had that investment taken place in 2018, we would have been in a very different scenario today, but the rate of improvement that the Minister's excellent initiatives are engendering have a reasonable prospect of working, but not at the rate in which it's deteriorating. That's the issue.

Ms ABIGAIL BOYD: It's almost like this isn't about prevention then, isn't it?

The Hon. DANIEL MOOKHEY: Ms Boyd, I accept the point that it's a hard reform. I accept the fact that it's hard, but that is the answer.

The Hon. MARK LATHAM: Thanks, Chair, and thank you to the two Ministers who have attended. Treasurer, you've given us a 43-page exposure draft to analyse in one day of hearings, and I've got a big pile of submissions that have lobbed on my desk as the hearing began. They're from serious organisations. I think it would help the Committee in the various elements of the exposure draft, have you got costings of their net benefit and impact on both the TMF and the Nominal Insurer?

The Hon. DANIEL MOOKHEY: Yes, I do. Do you wish to ask about any specific component?

The Hon. MARK LATHAM: You've got them tabulated, have you?

The Hon. DANIEL MOOKHEY: I do.

The Hon. MARK LATHAM: Perhaps for saving time, if you could table those for the benefit of the Committee.

The Hon. DANIEL MOOKHEY: I might be able to provide—

The Hon. MARK LATHAM: I don't think they've been otherwise available.

The Hon. DANIEL MOOKHEY: Yes, we can provide you some information today.

The Hon. MARK LATHAM: No, all information about the cost impact and savings of each of the elements of the bill.

The Hon. DANIEL MOOKHEY: Yes, I think we can provide you some of that further information.

The Hon. MARK LATHAM: Following from that, Treasurer, is it possible, given your emphasis on this as an exposure draft, that this is in some way an ambit claim, in the lingo of the union movement, that you're going to find out what you can get through in terms of union consultation, the caucus, this Committee, and then trim it back to what you need to do in the aggregate of those savings? Or do you need it all? Can you tell the Committee you need it all?

The Hon. DANIEL MOOKHEY: I would simply point out, the reform as contemplated in the exposure draft will only return the scheme to solvent. It will not return the scheme to surplus. There is no margin being put into this.

The Hon. MARK LATHAM: Return it to "solvent", is that the word you used? Not to surplus?

The Hon. DANIEL MOOKHEY: Solvent. Not to surplus.

The Hon. MARK LATHAM: Okay, so you need it all. It is not an ambit claim.

The Hon. DANIEL MOOKHEY: Yes, but I would just simply say, to be very up-front, we are getting very good suggestions from the trade union movement, we're getting very good suggestions from the business community, we're getting very good suggestions from members of Parliament about ways in which the same problem could be solved through alternative remedies. We're contemplating that. But I would say that certainly the exposure draft would put us back to a position of stability. I want to be very clear here, the need for reform will have to continue. One of the points that has been made to me and the Minister, certainly by the business community and by the trade union, but especially by the trade union movement, is that, again, more reform is going to be needed if we're serious about engendering a change to prevention. We're taking those suggestions very seriously.

The Hon. MARK LATHAM: Thank you for clarifying the rules of financial engagement that we get out of this bill. Congratulations on your ballsy approach of threatening the Parliament not to top up the TMF unless we pass your reforms, but do you think your credibility in that area is absolutely shattered by the fact that the Government in other areas is contemplating and indeed encouraging the most lavish, opulent public outlays you could possibly imagine and, indeed, it's an insult to the injured workers of New South Wales that you make that threat while entertaining those other outlays that are off the radar in terms of their lack of public interest and dimension of spending?

The Hon. DANIEL MOOKHEY: I will leave it to others to judge my credibility, but I don't know which initiatives you're referring to as being lavish.

The Hon. MARK LATHAM: Your Premier, through his Labor colleague Steve McMahon, is actively facilitating a gross expenditure to buy a racetrack of \$8 billion to \$9 billion—\$5 billion net. In that context, to buy a racetrack, including a hundred million dollar subsidy—\$8,000 for the high-income earners of the ATC—I think

it absolutely shatters your credibility in making this threat to the Parliament and the Committee today. If you can rule it out on the TMF, you're not going to put any more money in, don't you think your credibility would restore if you ruled out other areas that are off the radar, opulent and lavish, including the \$8,000 subsidy to ATC members—people living in mansions, millionaires, getting an \$8,000 subsidy from a Labor Government—when you say you can't put more money in for injured workers in the public sector.

The Hon. DANIEL MOOKHEY: Mr Latham, I'd simply respond to that by saying that the Government is not, at this point, in a position to make a decision on that, because no proposal has come forward. But I take your point about the need, obviously, for us to be very careful in every dollar we're spending, and I take your point that you certainly will reflect on my credibility depending on or according to the position we take.

The Hon. MARK LATHAM: What about your Premier?

The Hon. DANIEL MOOKHEY: Again, I would simply refer you to what the Premier has said, which is that the Government, when it comes to the matter of the ATC and Rosehill submission, should there be a submission that is made, in the first instance the ATC membership needs to decide whether or not they are interested in making a proposal.

The Hon. MARK LATHAM: Well, he said more than that. He said he's entertaining and he's quite encouraged by the proposal. Anyway, we'll set that aside. Treasurer, overall, isn't this a case of chickens coming home to roost in that, for a generation, left-of-centre politics has encouraged a snowflake society of hurt feelings, worrying too much—things like trigger warnings and microaggression. Now, isn't this just the quantification, in money terms, of what all that nonsense means?

The Hon. DANIEL MOOKHEY: Mr Latham, I think workers are psychologically capable of being injured at work. And, psychologically, I do believe that workers are entitled to a system that can respond to them. Whether you wish to attribute it to broader changes in culture and whether you wish to attribute it to one side of politics over another, I can't comment on. I can only deal with the situation that's in front of me, and I would simply say that we want a workers compensation system that is responsive to this modern workforce.

The Hon. MARK LATHAM: But, essentially, the snowflake society has gone too far. You or your office have briefed *The Daily Telegraph* today on a case of a fellow claiming up to \$1 million because he was targeted and micromanaged at work. Isn't this indicative of the thing that I'm talking about?

The Hon. DANIEL MOOKHEY: My office hasn't briefed anyone like that. We don't do that.

The Hon. MARK LATHAM: Well, where do you think the Telegraph got that case study from? I mean, old poisoned dwarf could barely spell his name, let alone do his research.

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: Mr Latham, the only point I would observe is that I'm hearing and meeting lots of workers, and there are lots of case studies of workers coming forward who've had terrible experiences with the workers compensation scheme. I'm also hearing lots of businesses that are coming forward with terrible experiences of the workers compensation scheme.

The Hon. MARK LATHAM: Well, why are you doing this reform?

The CHAIR: Order!

The Hon. MARK LATHAM: If it's all terrible, why are you doing this?

The Hon. DANIEL MOOKHEY: Because I'm making the point that it's failing—

The CHAIR: After this answer, the questioning moves to Government members.

The Hon. DANIEL MOOKHEY: Just on why we're doing it, my other point is, when you have businesses coming forward with case studies and you have unions coming forward with case studies of workers being terribly treated, it just shows the point I'm making, which is that the system is failing workers, it's failing businesses and it's failing the State.

The Hon. BOB NANVA: Treasurer and Minister, thank you for your time today. You have both indicated your concerns about the poor underwriting position of the scheme and the risks to the solvency and the sustainability of the scheme without reform. Do you have any indicative figures of the deterioration that might be attributable to the scheme without the reforms being proposed through the exposure draft?

The Hon. DANIEL MOOKHEY: Yes. The best way of me being able to answer that is to simply say, when it comes to the Nominal Insurer—I will just go back. The Nominal Insurer is the predominant insurer. It is covering 3.6 million workers, and roughly 340,000 businesses pay into it. By way of reference, there are only

52,000-ish businesses that pay payroll tax. In the absence of reform on the NI, we expect at the next valuation for its liabilities to exceed its assets by more than 20¢. That is, we expect the funding ratio to be dropping below 80. Of course the final determination needs to be made, but that's what our expectation is. I previously said to the Parliament that the consequence of that is that businesses will certainly face premium increases of 12 per cent if they have no claims, but it's entirely possible it may well be more in the event that the scheme deteriorates further. There are other experts that are coming today from icare and from Treasury. They will be able to provide you with some more information on that.

The Hon. BOB NANVA: Presumably the premiums are currently set at levels that will cover the cost of the scheme?

The Hon. DANIEL MOOKHEY: No, currently the premiums are—the technical term is "the break-even premium". The break-even premium is what's required for claims that are coming in today and the cost of those claims. Currently premiums have to meet the cost of expected future claims but, in effect, have to collect the previous claims that weren't funded. Actually it's likely to be higher. The break-even premium is going to be required to effectively mean that anyone who joins the scheme today, their claim can be funded. But we still have this backlog of underfunding in the scheme, and that is still going to remain.

The Hon. BOB NANVA: The funding ratio of the scheme is obviously a mixture of what's happening in the current financial year and what has been happening over the long term to the scheme. What are the other financial risks that have been posed to the sustainability of the scheme? Obviously the increase in psychological injury is one component of the risk to financial sustainability. What are the other components of pressures that are faced by the Nominal Insurer?

The Hon. DANIEL MOOKHEY: Fraud is definitely one. The second is of course the investment performance obviously does affect the financial sustainability of the scheme. Taking one step back, because the investment performance has been good, it has actually has bought us more time, not less. But it's really at max capacity in terms of its ability to function. Then of course the third dimension is that the cost of the scheme itself is another risk that the Minister has already been acting in terms of reforming and lowering its cost. The final component of that is, really, it all turns on how quickly we get people back to work.

Ultimately, though, I would just stress again, on financial sustainability, the best thing we can do to protect the financial sustainability of the scheme is to prevent people from being injured. The big macro change we need to do is to engender a change in the culture towards prevention. I'm not going to sit here and say there is any one scheme structure that you can put up that will permanently protect the workers compensation scheme. Actually the WHS laws and our capacity to use our workplace health and safety laws to stop people being injured is the long-term solution, medium-term solution and short-term solution to a lot of these problems.

The Hon. BOB NANVA: In terms of the principal risks to the financial sustainability of the scheme, so if you just sort of run through them in descending order of financial significance, what are they?

The Hon. DANIEL MOOKHEY: In macro terms, it's definitely return to work rates. We have to get people back faster. Right now we're asking a workers compensation system that was really determined there for physical injury to now make very complex decisions around psychological injury. Taking one step back, a workers compensation scheme has to do two things: It has to determine whether you're injured but it also has to determine whether your injury was caused by work. That causal element is—the first part is actually the least contentious, as to whether you're injured. The second part is the most: It's whether or not you've been injured by work. What we are seeing is, of course, when it comes to physical injury, that's just a clearer cut fact pattern in general.

Trips and falls are still the most common form of injury that the system deals with. If you trip at work and sprain your ankle, or if you cut yourself, they are easy to determine, frankly, that you are injured and the injury was caused by work. That is what the system was designed to determine. Obviously when it comes to issues like psychological, it's just more complex. In terms of the category of psychological injury claims, we are, in the exposure draft, drawing special attention to the fact of bullying and harassment. Bullying and harassment is—interpersonal workplace conflict is the other way it has been described. Obviously, in order for a claim to be established for bullying and harassment, someone has to be deemed to effectively have been the bully. Often that's another worker. Often that's what leads to contest. That's often what is slowing down the system from making any liability determination whatsoever.

That is a large part of why psychological injury is half the rate of return to work of physical, because, frankly, the system has to respond to a set of questions it wasn't built to answer fast. That is part of the reasons why we want to use expertise in the industrial relations system to help with that task. The IR system has been built more to help answer that question than the workers compensation system. But, ultimately, I would just remind the Committee it's an insurance scheme. It's designed to determine whether or not care should be provided through

this scheme, which requires the causal element to be met. That is what often creates the conflict when it comes to psychological injury, and which delays treatment.

The Hon. BOB NANVA: If we're to assume these reforms do pass through the Parliament, how long would you expect for the impacts to flow through to the system with respect to securing the financial sustainability of the scheme?

The Hon. DANIEL MOOKHEY: Again, as I said to Mr Latham, these changes would respectively restore solvency is my expectation. That would be clear from the point of next valuation. That's why there's an urgency to the matter. The next valuation is in six week's time and that will determine the extent of its technical insolvency, and the further it falls into insolvency, then the more changes the Parliament will need to contemplate to restore it. Part of the reasons why I am making a case for why change is needed now is not because of things to do with the budget—albeit, I am not going to lie, avoiding the cost will be reflected in the budget—actually, it is the valuation cycle, which then determines the premium cycle, which then determines the state of the scheme's finances and the state of the scheme's sustainability.

Right now, our issue is, in large part—it is actually not that the system is poorly defined, it is that the system contains no definitions whatsoever. This is why I say it is a task of modernisation. Other States have had to put down the basic ground rules of what is a psychological injury, what treatment do you get, how is the system going to assess it. Our system does not do that. That is why I say in respect to Mr Latham and to Ms Boyd's questions, which we are pretty clear about—and to Mr Tudehope's—which is the exposure draft is designed to show us meeting that first task of, actually, the rules need to be written in law. Yes, we should contest what the rules should be. Yes, we should contest whether they are the right forms of rules. Yes, that is why we are here. But at this point, the New South Wales system provides no guidance to this, which is why there is so much litigation, which then creates further psychological injury.

Again, as I think most of this Committee would already know, the biggest cause of psychological injury that the workers compensation system treats is the workers compensation system. It creates more injury, secondary psychological injury. That is why we want less people in it and that is why we want to shift towards prevention. But that is also why we are saying that the need to act is urgent and the need to act prior to July 1 frankly means that we are making these decisions with a better set of finances than we would be on July 2.

The Hon. BOB NANVA: Just a final question from me. Again, assuming these reforms pass through the Parliament, has the Government given some consideration to some specific services that may be rolled out to workers who may drop off the scheme as a result of the reforms?

The Hon. DANIEL MOOKHEY: Yes, we are contemplating that. I think it is a very fair point that people have raised, which is, "If care cannot be provided through the workers compensation system, where can care be provided?" We would absolutely be looking to see what we can do on that question, as well. We would be open to it, as well. The other point I should just make is that we are also mindful of the fact that when it comes to the law—the earlier question you asked was, "When do we expect impact?" There are two dimensions to that: there is the financial, but then there is the practical.

On the practical aspects, we are very eager to hear feedback from this Committee, from the witnesses to this Committee today and from all the other consultations about what is the right time to activate each part of the system. Certainly, this system would have to commence, various changes have to commence at different points in time. We do want to hear from the experts to make sure that is being calibrated correctly and built appropriately because we are wanting to understand, as well, that the system, obviously, is dealing with real people. We take that very seriously, so we are certainly open to feedback on that question, too.

The CHAIR: Can I just jump in—we have got one minute and 33 seconds. Treasurer and Minister, are there any final comments you would like to make before the bell goes?

The Hon. DANIEL MOOKHEY: Other than we are very grateful to the Committee, we are very grateful for the questions and very eager to continue working with you in this forum and elsewhere in the Parliament to see if we can resolve a solution to these problems.

The Hon. MARK LATHAM: Chair, have those costings been tabled so we can access them?

The Hon. DANIEL MOOKHEY: I will get a version sent to you. Probably on notice, I suspect. I just have to double-check that—we will provide the information, but we are looking to provide more information.

The Hon. DAMIEN TUDEHOPE: Treasurer, can I ask when you expect a bill to be available?

The Hon. DANIEL MOOKHEY: We will respect, obviously, this process, but yes, I expect the bill to be available actually after we hear from this Committee, the witnesses today, further consultation, but my expectation is that the bill will be available when Parliament resumes.

The Hon. DAMIEN TUDEHOPE: So, by the time we get back to Parliament in two weeks time, a bill should be available for consultation?

The Hon. DANIEL MOOKHEY: Well, the Government will make a decision as to whether or not we are introducing the bill at that point in time.

The Hon. DAMIEN TUDEHOPE: In respect of the NI, of course—

The CHAIR: Order! I sought to give the two witnesses an opportunity to make any final comments so we could keep things on track today. I was not intending to open up again for a round. I was trying to give deference to the Treasurer and the Minister just to make concluding comments. That was my intention.

Ms SOPHIE COTSIS: Chair, can I just make a final comment?

The CHAIR: Yes, that was my intention.

Ms SOPHIE COTSIS: I just wanted to let the Committee know, as well, that one of the other things is that when people do go on a psychological claim, they have to wait, on average, 76 days to see a psychologist. So, just to make that point that where we are trying to help people, at the same time, the system is making them worse. Because as we know from research, if you are not—if there is no intervention in the first four weeks while you are on workers compensation, and if there is no intervention, no contact, you are going through a system that—you are being retraumatised, because you keep retelling the same story, but nobody is assisting you. By the time you reach that 76 days to see a psychologist, you are at a point of no return, and this is what we are trying to avoid. And this is why the Government is putting in serious and—actively doing everything it possibly can at the front end, and this is why we are looking at this holistically.

The CHAIR: On behalf of the Committee, thank you, Treasurer, and thank you, Minister.

(The witnesses withdrew.)

Mr MARK MOREY, Secretary, Unions NSW, affirmed and examined

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

The CHAIR: We welcome our next panel of witnesses. Thank you very much for your submission to this inquiry. Would you like to make an opening statement?

MARK MOREY: Throughout its history, the union movement has campaigned to preserve basic rights to compensation for injured workers, ensuring that workplaces are safe and that work is meaningful and can support financially the needs of workers. In my time in the movement, this is the third time we have had to stand up to attempts to slash support for injured workers when a Treasurer has looked at the budget and decided that cuts must be made ahead of a broadly unspecific pending financial crisis. But what is different this time is, it is happening at a time when we are all just beginning to understand and accept that injuries to our mental health wellbeing require equal standing to an injury of a leg or an arm. Psychological injury is not a new phenomenon. We just know now, for the sake of our society, it should not be ignored as it was in the past.

It is in this new context, recognising the link between mental health and work, that we must do more, not less, to support workers injured at work. There is ample room for reform if we all work together to achieve this. But what this Government is proposing is not reform. It is dragging us back to a time where we ignored psychological injury and mental health wellbeing. In March this year, the Treasurer delivered a ministerial statement calling for reform to the system, with a new focus on prevention, interstate alignment and ensuring financial viability. Last week, the Government released its exposure bill—a hastily pulled-together bill—and an inquiry.

It is our view the bill is in direct opposition to the very principles outlined by the Treasurer. The new requirement to use either the Federal or yet-to-be legislated New South Wales bullying and harassment jurisdiction, will only create a culture of litigation amongst workers and employers and undermine doctor-led care. We are turning the system into an adversarial lawyer's picnic. The proposed definitions of psychological injury and reasonable management actions will undermine existing work to prevent injuries and deny thousands of legitimate claimants from receiving the support and care they deserve.

The proposition to align the whole person impairment threshold for psychological injury with that of South Australia is a myth. We have been repeatedly advised by practitioners that due to the different diagnostic guidelines underpinning the system, our WPIs are effectively already aligned—that is, if New South Wales was to increase its WPI to 30 per cent, for the equivalency to remain in South Australia, they would have to increase theirs to 60 per cent. We are not, as they say, comparing apples with apples. Beyond that, the bill is riddled with legal loopholes to prevent workers receiving care and support. It is both a lawyer's picnic and a roadblock to workers getting the help they so desperately need. Most workers will struggle to get through the door of this new system. When they do, if that is even possible, they will enter a world of barriers, hurdles and further trauma. It seems this bill is less about preventing injuries and more about preventing claims.

The New South Wales workers compensation system is broken. There is no doubt about that. It fails workers and employers through poor claims management, needless bureaucracy and falling return to work rates. But the blunt instrument approach taken with this exposure bill will only create further cracks for injured workers to fall through, repeating the mistakes of previous Labor governments and the Coalition in 2012. Now, in 2025, we are advocating for a new approach. Please delay this bill, establish a real review to consider all the options on the table, bring in the experts, hear directly from workers and employers and give the range of the currently underway processes for prevention and whole-of-government return to work programs a chance to have an impact. When we run our campaigns, we usually have workers speak out. Unfortunately, many of the workers who wish to speak out cannot. We released a report today of 10,000 responses from workers. I want to read one of the comments that came through that I think typifies why this system is so important. The person said:

The workers compensation system is the only reason I am still alive. I had suicide attempts as a result of my workplace culture and psychological injury. Without being able to access essential mental health services and receiving diagnosis, treatment, education and support to begin my recovery, I would have certainly taken my own life. My whole person impairment is 24 per cent, which is a very significant injury. If the threshold was increased to 30 per cent and that affected me by taking away my entitlements again, I would be destitute and would have no hope of survival or recovery.

In the Treasurer's submission and public statements, he has failed to focus on one person and that is the injured person. That is the problem with this system. Thank you.

The Hon. DAMIEN TUDEHOPE: Mr Morey, you sit on the board of icare, don't you?

MARK MOREY: I do, but I have taken a leave of absence.

The Hon. DAMIEN TUDEHOPE: I accept that. I am not suggesting that you are acting inappropriately. In that capacity, has icare considered partnering with other organisations for prevention activities in relation to psychological injuries?

MARK MOREY: My understanding is that there are partnerships going on and projects going on in relation to that.

The Hon. DAMIEN TUDEHOPE: And there is research being done in conjunction with icare in relation to that?

MARK MOREY: That is my understanding, yes.

The Hon. DAMIEN TUDEHOPE: Is the Black Dog Institute involved in providing some of that?

MARK MOREY: I am not completely sure, but I know a number of institutions are involved.

The Hon. DAMIEN TUDEHOPE: When is icare's funding for research by the Black Dog Institute due to finish?

MARK MOREY: Soon I think, but I am not across that detail.

The Hon. STEPHEN LAWRENCE: Point of order: These questions are my appropriately directed to icare, which is appearing later today.

The Hon. DAMIEN TUDEHOPE: He's a director of icare. He's on the board of icare.

The Hon. STEPHEN LAWRENCE: In terms of operational questions, I think icare are more appropriate.

The CHAIR: I will not rule against the questions for the moment. We know this is an inquiry into the exposure draft.

MARK MOREY: I am saying I don't know. I am here as the Unions NSW secretary, not as an icare board director.

The Hon. DAMIEN TUDEHOPE: Let me ask you this: Are you aware of any injured workers who have been assessed for a psychological injury with a whole person impairment of 31 per cent or more?

MARK MOREY: I am not directly aware of any workers over 31 per cent, but we have spoken to a number of experts—a couple of them are appearing here today. There are a few that are over 31 per cent, but it is a very small amount—minute. The vast majority are between 15 per cent and 20 per cent. Some of the most severe ones that I have heard of are 24 per cent or 25 per cent. They are very, very—workers have been both physically and psychologically injured terribly. So no, with that threshold of 31 per cent, my understanding from talking with doctors and psychiatrists is that 99 per cent of claims will never get over that threshold.

The Hon. DAMIEN TUDEHOPE: What are your observations about the provisions contained in the exposure draft that require a finding by a court—being the Industrial Relations Commission or a tribunal—before an initial notification of a workplace psychological injury relating to bullying and harassment can be made for an injured worker?

MARK MOREY: Firstly, our position is that we are opposed to that proposed jurisdiction. Secondly, that proposal will only retraumatise workers who have to appear. Thirdly, it actually says to those workers "we don't believe you and you have to jump additional hurdles." We think that jurisdiction will become a lawyer's picnic and it will reintroduce lawyers to the system. As we know, lawyers are paid by the hour and not the outcome. We think this will become a very litigious area and very problematic for injured workers. Finally, the claims have to be dealt with within eight weeks under this proposal. Firstly, we don't think the commission has got the resources to do it within eight weeks. Secondly, for workers to be without support or payment for that eight-week period only compounds their psychological injury.

The Hon. DAMIEN TUDEHOPE: Was there any consultation done with you prior to this exposure draft?

MARK MOREY: We have been meeting with the Government in relation to broad topics based on the Treasurer's statement. We have put a series of proposals to the Government on the problems we see with what they had articulated to us. Nothing has really moved since then.

The Hon. DAMIEN TUDEHOPE: Have you identified improvements to prevention measures that the Government could be looking at as the correct model for dealing with these sorts of claims?

MARK MOREY: Yes, we have.

The Hon. DAMIEN TUDEHOPE: On the face of the exposure draft, there is nothing that addresses that issue.

MARK MOREY: That has been one of our greatest concerns—that these reforms will go through. We haven't seen any articulation of funding provided to preventative programs. There are programs that are being initiated in education—they are in their infancy. The police service are doing a similar thing around wellbeing and keeping people at work. But, for example, an institution like NSW Health has no programs in place that we believe are effective.

The Hon. DAMIEN TUDEHOPE: That could all be addressed by a different model than this one?

MARK MOREY: Our preferred position is that we should be looking at a preventative approach, that the Government should articulate and fund a preventative approach over the next couple of years. We are happy for there to be an expert panel that is picked that oversees those as trials to see what happens. The Treasurer talks about cases staying in the system. A preventative approach would assist in ensuring that people don't enter the system at all. If you finish a shift in the health system and you've had people dying on you during that shift, there is no-one at the end of the shift to say, "How are you going? Are you all right? Just checking in." That's true in education if you have been threatened in the classroom and those sorts of things. There is no process to debrief people and support them to continue to do their jobs. In some jobs—and some of the unions will be on after me—such as child protection workers, there is a 20 per cent shortage of staff. They are overworked. They are removing children from their parents, sobbing and crying. That is not an easy job. It's not a job I would want to do. I don't think there are appropriate support mechanisms in place for those workers.

The Hon. DAMIEN TUDEHOPE: Prior to the election, did the Treasurer, the Premier or the Minister for Industrial Relations ever suggest to Unions NSW or the Injured Workers Campaign Network that their pledge of support for injured workers excluded workers with psychological injuries?

MARK MOREY: No, and I think you would have seen the story in *The Sydney Morning Herald* last week where we had photos of 20 of the 22 current Ministers signing the pledge. A number of backbenchers have also signed the pledge.

The Hon. DAMIEN TUDEHOPE: What commitments were given to you at that meeting on 14 March 2023? Were there actual commitments that there would be no change?

MARK MOREY: No, there were commitments that they were going to work to improve the system. They signed on to look at the provisions that cut people off their payments after five years and out their medical two years later. There was a commitment to look at the system and try to improve return to work rates. There were commitments to make it a better system that wasn't simply about cutting benefits and cutting people off the system.

The Hon. DAMIEN TUDEHOPE: Is it your assessment of this exposure draft that it is completely contrary to the pledge which they made?

MARK MOREY: I think the ad that I'm currently running on television and radio is a testament to answer that as yes.

The Hon. DAMIEN TUDEHOPE: In respect of the bullying and harassment division of the IRC, do you expect that that will have the effect of deterring people from actually making claims in circumstances where they have a legitimate claim?

MARK MOREY: I think it will be a deterrent. It legalises a process that should be dealt with medically. I note the comment yesterday by Ian Hickie, who will be appearing today. He said he was concerned that this reform was being dealt with by a treasurer from a financial perspective, not from a health perspective. It is a significant issue that that process will re-traumatise workers and, as a result of that, it will be a deterrent to workers coming forward and making claims.

The Hon. DAMIEN TUDEHOPE: You're a board member of icare. The Treasurer's told us today that icare would be insolvent in circumstances where this legislation, or a variation of it, was not adopted in terms of dealing with psychological injury. Is that your understanding?

MARK MOREY: My understanding is that there has been an ongoing problem with the financial sustainability of the system. For us, there's a number of problems. They include return to work rates and getting people to get the help they need when they are injured. As the Minister for Industrial Relations says, there's a massive wait to get in to see a psychologist or a psychiatrist. People sit at home. There's problems there. There are also problems with the medical profession, and the way in which they talk about, when you're actually performing an operation or dealing with it, you can charge up to a certain amount. The full amount is always charged. I think there's a number of providers who are supposed to manage claims and return people to work who

are not doing that effectively. I think there is a lot of waste and inefficiency in the system itself. It doesn't return workers to work, and it's problematic. I think we need to reform the system to ensure that it is solvent and it is delivering not just for workers and unions, but also for employers.

The Hon. DAMIEN TUDEHOPE: The Treasurer also made reference to the fact that part of the sustainability of icare is also impacted by fraud. Is that your understanding?

MARK MOREY: Yes, I believe there is fraud. I don't believe it's just injured workers. The medical profession, there is fraud going on there. I believe there is fraud going on with the way in which claims are dealt with. And one of the big frustrations in this bill, although it catches on large businesses and small business underinsuring for the number of workers they have, many of the large corporations—

The Hon. DAMIEN TUDEHOPE: But that impacts the NI, not the TMF.

MARK MOREY: Yes, but it's still the scheme. That is a drag on the system as well. When people say "fraud," people always jump to the injured worker. There are a lot of other people in the system who are perpetrating fraud. They underinsure. They put it in as a cost of doing business because the fine is so minimal that what do they care? That is, I would say, a great example of if you find an employer doing that, then you will find an employer that doesn't have safe work practices in its organisation, and that is what is contributing to injured workers, and that's why these workers are in the scheme.

The Hon. DAMIEN TUDEHOPE: Would you summarise this exposure draft as a betrayal of what was put to you prior to the election by the Treasurer and the Minister in relation to amendment of this Act?

MARK MOREY: I think it's a poorly drafted piece of proposed legislation. I am angry, disappointed and very frustrated with commitments that were given about protecting injured workers and about the process this Government has taken, given the commitments it had given prior to the last election.

Ms ABIGAIL BOYD: Good morning to both of you. This is not the first time that you have appeared before an inquiry in relation to workers compensation. You have contributed on many occasions to reports or inquiries of this Committee, but also of a number of other inquiries that have been conducted. Given all the recommendations that have been made over the body of all that work over all of those years, were you surprised to see these recommendations being put forward by the Government?

MARK MOREY: Yes, I was.

Ms ABIGAIL BOYD: Given that these reforms don't appear to be based on any sort of evidence or prior reviews, do you think that they are primarily driven by the Government's budget bottom line and not by the interests of workers of the State?

MARK MOREY: Yes, I do. I would also say that there have been a number of reports done, probably enough to keep my front door open forever. McDougall, except for one recommendation we disagree with, has a series of recommendations on how to fix this. Recommendations in relation to the WPI shouldn't be used to assess the psychological health or injuries of workers. It's not a good diagnostic tool. We have been here so many times, as you say, with recommendations of how to make the system better to return workers to work. The fundamental question remains: How do you get a worker back to work quickly? We know once they get back to work quickly, they're more likely to stay in the job and continue to be there. There are some areas where I think we need to do more work to make the workplace suitable for workers returning to work.

There needs to be more support. I'll even say there needs to be more support for small business to enable them to be able to do this and manage this. That's where the preventative stuff comes in. That's where we reduce the number of people on the system, and that's where we return the system to solvency. But just simply cutting workers off—I've seen this three times over the last 20-odd years, they keep cutting workers off and they keep cutting premiums, yet the scheme remains in deficit. There is a fundamental problem with the scheme and the way in which this system operates. The Government needs to address that as the underlying cause, not cutting people off the system.

Ms ABIGAIL BOYD: The previous recommendations have looked at things like the problems with claims processing and the adversarial nature of the system, but it's made clear recommendations that psychological injury is injury, in the same way as physical injury, and that they should be treated the same on that basis.

MARK MOREY: Yes.

Ms ABIGAIL BOYD: Also they've talked about the problems with delaying the response to psychological injury and the extra costs that has on the system over time. Given that you've seen this before—and in your submission you talk about the impacts that these sort of changes have had, like the ones in 2012—are you

concerned about the unintended consequences of untested non-evidence-based reforms like this leading to even further damage to people who are already on the scheme?

MARK MOREY: I think one of the reforms that's in there is around provisional liability and people not getting that. The reason that provisional liability is in the scheme is that no matter who you are, when you make a claim, that claim should be assessed quickly, and you should be given the assistance you need at that point. Removing that means that, again, people will have to go into an adversarial process to get a claim recognised. The provisional liability is important because the vast majority of people are not trying to rip the system off. They need that support.

I would say where there are problems with people trying to get money out of the system not for real injury, that should be dealt with harshly because that's making it worse for everyone else who's there. But the system doesn't do that. The system just lets people through, and there aren't those accountabilities for those areas. I'm not saying that's a massive problem, but certainly using that as a basis to remove the provisional liability will disadvantage hundreds of workers who are coming into this system—if this legislation is passed—who will not get any treatment and who will end up destitute. It is not a way to address mental health problems in a modern society.

Ms ABIGAIL BOYD: There's obviously a difference in reducing the numbers of people coming into the scheme by preventing them getting injured in the first place versus just saying, "No, you can't come into the scheme." What will happen to people who are left out of the scheme who have suffered a genuine psychological injury? Where will those people go? What will happen?

MARK MOREY: I've spoken to my counterpart in Victoria, where similar sort of legislation was proposed and implemented. They are now seeing people who are unable to hold down a job. It often leads to family breakup. It then leads to people taking out their superannuation and spending that, losing their houses, becoming destitute and on the streets. What this Government is doing in New South Wales is shifting the problem from being a New South Wales Government problem to being a Federal Government problem to push people on to the Federal health system, to push people on to the welfare system and not deal with the fundamental problem, which is this system isn't working and the system needs to be changed.

The Hon. MARK LATHAM: Thank you and good morning to the two witnesses. What we're looking at here in the exposure draft is a fairly long and complex proposed bill, probably with about 20 different aspects to it, initiatives?

MARK MOREY: Yes.

The Hon. MARK LATHAM: Are there any of those that you support?

NATASHA FLORES: A couple.

The Hon. MARK LATHAM: What are they, Natasha, if I can ask please?

NATASHA FLORES: There is one provision in here around the right to privacy in medical examinations, and we support that. That is a right anyway that exists, but it's been abused over time. I think the information about death benefits, that's sort of okay, and the PIAWE provisions are okay.

The Hon. DAMIEN TUDEHOPE: The indexation.

The Hon. MARK LATHAM: What are those other two? The indexation provisions and what was the second?

NATASHA FLORES: PIAWE and death benefits.

The Hon. MARK LATHAM: Mr Morey, you're running these ads and it's a fairly stark demonstration of what appears to be a significant broken promise—the 20 Ministers with the pledge held up for theatrical effect. Do you think there's any excuse for the breach of promise, broken promise, because of changed circumstances over the past two years?

MARK MOREY: I take the approach that workers compensation is not a sexy industrial issue. It's never going to get on the front page. It's not about changing workplace rights. It's an issue where the union movement is fundamentally obliged to advocate for these workers because, if we don't do it, nobody will.

The Hon. MARK LATHAM: Yes, sure, but that's not what I'm asking. I'm asking, over the past two years, are there changed circumstances which, in your eyes, justify this sort of legislation in defiance of what was promised at election time?

MARK MOREY: As I've said before, this is the third time I've gone through this. This is the third time I've heard the same arguments. They're tired old arguments about the system being in deficit and workers are the ones who lose out. I don't think there's any justification for cutting injured workers off the workers compensation system.

The Hon. MARK LATHAM: Okay, I'll take that as a no. You mentioned earlier, in your opening statement, fraud within the medical profession. Can you elaborate on that, please, as to what that involves in detail?

MARK MOREY: We believe that there is doctor-shopping that goes on with different companies. These are the things that we hear from our injured workers—their experiences. Where one doctor doesn't give the right diagnosis, the person is sent to another doctor. They go around and around in circles seeing doctors. That is additional cost upon additional cost.

NATASHA FLORES: I can provide a bit of an example, if you'd like?

MARK MOREY: Yes.

NATASHA FLORES: Something that sometimes happens is companies will send people, or injured people, to a preferred doctor, people—injured workers—not realising that they can choose their own doctor. There has been, in some cases, a history of poor outcomes in that experience where perhaps someone, I'm referring to a physical injury here, but workers were not diagnosed correctly and sent straight back to work. When that occurred, the injury worsened over time. Eventually they got back to their own doctor only to find that there had been a broken bone et cetera and that had worsened in the two weeks that they'd been back at work. That's a physical example, so it doesn't necessarily help here, but there are problems in the scheme.

The Hon. MARK LATHAM: Yes, thank you. Obviously, we need to get those doctors out of the system because just because you've got a medical degree doesn't mean you're not money hungry and open to this sort of abuse. In the second sentence of your conclusion, Mr Morey, in your submission, you state:

The first step the New South Wales Government should take is to focus on preventing injuries before they occur.

But in one of the morning newspapers you give the example—I don't know if it's hypothetical or not—of students corraling a young, presumably female, teacher in the school education system and barking at her Andrew Tate quotes—which is what you've said.

MARK MOREY: Yes.

The Hon. MARK LATHAM: Isn't that an example, though, of something that shouldn't be happening in any workplace? There are schools, of course, in New South Wales where it doesn't happen—they have very strong evidence-based behavioural standards and practices that ensure that there are no disciplinary problems—whereas other schools are a jungle. Isn't the onus on the Government to stop this from happening, even if you accept the proposition that anyone talks about Andrew Tate anymore?

MARK MOREY: This occurs in public and private sector schools. Both the unions have said that to us. One of the reasons that young female teachers are leaving the profession is because of this sort of behaviour in the classroom.

The Hon. MARK LATHAM: But isn't it easily preventable? There are schools where this doesn't happen.

MARK MOREY: Yes.

The Hon. MARK LATHAM: Why don't we employ their policies to ensure that your sort of example is just not feasible. The thing about school education is it's being studied all around the world. There's no argument, left or right; we know what works and we know what doesn't. Why don't we just have the behavioural standards and practices that ensure we don't have psychological injuries for teachers in these circumstances, that it's a controlled, orderly, well-behaved school environment?

NATASHA FLORES: Speaking as an ex-teacher myself and having a partner who is currently a teacher who has actually experienced what you've just commented on, it's not necessarily that simple. You're dealing with parents who don't want to necessarily do what they need to do, and that's a problem in schools. You can be as harsh as you like with pupils, but if you've got very difficult parents—and, unfortunately, we're living in a society which is very customer-focused and at the moment schools behave very much in that way. The parents are the customers and we want to make them happy.

The Hon. MARK LATHAM: That's your choice to make them happy.

The Hon. ANTHONY D'ADAM: I think earlier you said in your evidence that there was one recommendation of McDougall that you disagreed with.

NATASHA FLORES: "Reasonable and necessary", the inclusion of the "and".

The Hon. ANTHONY D'ADAM: Can you perhaps elaborate on why?

NATASHA FLORES: The inclusion of "and" creates a higher barrier to getting the services and treatment that you might need. As I said, we don't necessarily agree with all of McDougall's findings in everything that was done over the time that it was done. Reasonable and necessary could—for example, the case of, I think, *Goode v New South Wales Racing*. You've got a jockey who's been injured. He's a paraplegic. In that case it was determined that it was reasonably necessary to provide the payment for him to go home to England, where his family was, as part of his compensation and other things that were necessary for him on that flight medically to make it comfortable for him as a paraplegic. That could maybe not occur under this example where reasonable and necessary creates a higher barrier and you're looking at what is a lower—you know, "We're only giving you the basics here; we're not going to look at things like your comfort on a flight", which is a long, prolonged thing, as a person with that sort of injury.

There was also an injured worker that we dealt with many, many years ago, who was undergoing a specific sort of therapy for his psychological injury, which was a water-type therapy. I'm not an expert on these things but he was a worker that came out and spoke on *Four Corners* about his experience—with the Treasurer, who supported him at that time—and he spoke about this therapy being very beneficial for his psychological injury, which was quite severe. It was an unusual therapy but in this circumstance it might not be covered. But that was helping him.

The Hon. ANTHONY D'ADAM: Ostensibly, is it correct to say that this change enhances or detracts from the principle of an injured worker's care being directed by their treating doctor?

NATASHA FLORES: I would say it detracts from that.

The Hon. ANTHONY D'ADAM: Can I ask about the underinsuring issue? I think the proposed section 173 AA only applies to large employers.

MARK MOREY: Yes.

The Hon. ANTHONY D'ADAM: Can you explain?

NATASHA FLORES: That is very unusual because you would expect that large employers would probably be more likely to do the right thing, or they would also be outsourcing a lot of their business so they might only have a small number of employees on the books, but a large number because there is a supply chain, so to speak, so I don't know why you would only go after large employers when there's very likely middle-sized—and I'm not picking on small business here, but, you know, they should be wearing the cost as well if they're not doing the right thing.

MARK MOREY: The other problem with that is the regulators don't regulate. There's just no regulation going on.

The Hon. ANTHONY D'ADAM: I have got one more question. Then I will hand to my colleague, Mr Nanva. One of the issues, obviously, with psychological injuries is the poor return to work rates. Can you talk about the elements in the proposed bill that will improve the return to work rates?

NATASHA FLORES: Nothing.

MARK MOREY: We don't think there is anything in there. As I said before, one of the biggest problems is getting access to psychologists or psychiatrists. I think the Minister said there was 76 days wait to get in. One of the biggest problems is that people, when they are identified as having injury, are not getting treatment at that point. They're having to wait. They're having to wait at home. It compounds the injury, and it frustrates them being able to get back to work.

NATASHA FLORES: Section 8A here defines a psychological injury. From my understanding, that needs a diagnosis from a psychiatrist. The injury also has to be a significant behavioural, cognitive or psychological dysfunction. This is suggesting that, before you even get through the door to get a diagnosis you have to be extremely impaired. Someone who's at the beginning of breaking—for lack of a better word—is not included in this bill. This delays treatment significantly and then at that point too it requires a diagnosis from a psychiatrist. Treatment is not covered for that. So the worker, I would assume, has to cover that cost themselves. So, at the outset, there's a big "closed" sign on the door of psychological injuries—closed for business; no access. You as a worker have to fund that diagnosis yourself. That's not an easy thing.

Then, to be allowed through the door, you need to be extremely significantly behaviourally, cognitively and psychologically dysfunctional. By the time you even get through the door, you have got to be in a really bad state. I don't see what that does for prevention, return to work. That's actually very—at this stage, you're not going to get someone back to work. It's just preventing compensation for psychological injuries. That's where I see this bill. It just stops you walking through the door, at the very outset. If you do get through that door, the hurdles are enormous. The hazards are defined. In a bizarre situation where we've got a piece of legislation here that says, "Only these hazards apply"—it is like saying, "If you trip over a chair and break your arm, we'll compensate that. But, if you trip over the carpet and break your arm, we're not going to compensate that." It's quite strange.

The Hon. BOB NANVA: Just in the time left, Mr Morey, I'm just interested in your public comments that icare is the insurer of last resort. Obviously, the sustainability of any insurance product or scheme is predicated on the ability to spread risk across the class insured. What impact does the rise of self-insurance have on the sustainability, do you think, of the Nominal Insurer?

MARK MOREY: We believe it has a dramatic effect because what you're doing is—self-insurers are taking the best bits of the scheme out, the most profitable parts of the scheme out, and the businesses, as well, that are self-insurers are the ones that actually provide safe workplaces. So what you're actually doing is no longer spreading risk evenly across everyone; you're concentrating all the risk in icare. That's why it's constantly under financial pressure. We think self-insurers should be gotten rid of. Everyone should be brought back into the scheme so that the risk is spread across all groups, all employers. Having said that, there were changes in 2012 where employers previously got incentives and their premiums were reduced where they weren't making claims. We think that is something that should be brought back in, because we should be rewarding good employers who provide safe workplaces as part of the scheme. But taking out all the good bits—you're basically setting up a Fannie Mae sort of scheme where all the risk is concentrated in one place, and it just can't continue to maintain that risk, and that's why we see the scheme collapsing.

The CHAIR: Thank you, Mr Morey and Ms Flores. Thank you for what's been a very rapid response, if I can describe it that way, for your submission and also making available today. It's much appreciated. Thank you very much.

(The witnesses withdrew.)

Mr BERNIE SMITH, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch, sworn and examined

Ms AMBER FLOHM, Deputy President, NSW Teachers Federation, affirmed and examined

Mr MICHAEL WHAITES, Acting General Secretary, NSW Nurses and Midwives' Association, affirmed and examined

Mr GERARD HAYES, Secretary, Health Services Union NSW, ACT and QLD Branch, sworn and examined

Mr JACK AYOUB, NSW Organiser, Australian Workers' Union NSW Branch, sworn and examined

Mr ANGUS McFARLAND, Branch Secretary, Australian Services Union NSW & ACT (Services) Branch, affirmed and examined

Mr TROY WRIGHT, Acting General Secretary, Public Service Association of NSW, affirmed and examined

The CHAIR: Welcome. First of all, I sincerely thank you all very much for making yourselves available at what is, I accept, short notice with respect to this inquiry. Can I also, at the same time, thank you for what's been an equally rapid response, if we could use that phrase, to put together what are very comprehensive submissions that have been received to the inquiry and are, indeed, obviously, written evidence to the inquiry. I just make those opening remarks if I could, please.

I might also say, just so we're clear up-front, there was a delay—first of all, the Committee was 15 minutes late in starting. We've lost some further time as witness have progressed this morning, through no fault of anyone. I don't intend to crimp the time of the organisations represented here at the table, so I will be proposing, when we get through the rest of the formalities, whether or not—and you can consider this; it's in very much your hands—that, with respect to your opening statements, if let to read them all, would, obviously, in aggregate, cut into the time significantly. So my proposition is for you to consider—and you can answer it collectively in a moment, if you wish, if you think about it—is that you table those opening statements. If they're not typed, they can be typed after and got to us.

They will be received as evidence, as aggregate evidence of your opening statements, which, obviously, would be helpful and provide then more time, effectively, the better part of the time allocated to you, to be able to deal with questions and answers from the Committee members. Does that make sense? If people want to make an opening statement, obviously, you're entitled to do so, but I'm trying to maximise the time. Think about that as I go through the rest of the formalities of swearing the witnesses in. Just going back to the point I raised just before that formality, as I said, your opening statements, through the mechanism I described or the avenue, will be fully incorporated as evidence to the inquiry in its totality. Is there a consensus that that is a way to proceed? Or does anyone particularly like to make an opening statement? Thank you for that. We will move to questions from the Opposition.

The Hon. DAMIEN TUDEHOPE: You will excuse me. There are a lot of you. Some of these questions may refer to all of you or some of you. If I don't ask you specifically and you want to contribute, feel free to contribute.

The CHAIR: We have, including the Hon. Damien Tudehope, all your submissions in front of us, if that helps. You have got your submissions. We have all got the submissions, in case there is reference.

The Hon. DAMIEN TUDEHOPE: Mr Whaites, since you are in the middle, I will start with you. When did you first get a copy of the exposure draft?

MICHAEL WHAITES: We received that at some stage last week.

The Hon. DAMIEN TUDEHOPE: Have you made an assessment of the exposure draft in general terms?

MICHAEL WHAITES: The team at the association has had an assessment of that, yes.

The Hon. DAMIEN TUDEHOPE: From your perspective—and this can be contributed to by others—in respect of the proposals which are contained in the exposure draft and the impact in relation to psychological injury, do you anticipate that would have an imbalance in relation to gender, in terms of that cohort which are impacted mostly by the proposals contained in this exposure draft?

MICHAEL WHAITES: Our understanding is, yes, 85 per cent of people who suffer a psychological injury at work are women. We see the proposed changes as, quite frankly, abhorrent. There are systems of work within health, whether it is NSW Health or other healthcare providers, that are injuring nurses, midwives and carers, who are predominantly women. This proposed legislation will exclude them from compensation.

The Hon. DAMIEN TUDEHOPE: I take it you agree with that, Ms Flohm?

AMBER FLOHM: Perhaps, yes. If I could almost supplement—with a workforce 80 per cent also who are women, we see this as a significantly gendered issue for our membership. If I may outline just a couple of case studies that relate specifically to the matters of sexual harassment and sexual assault and how these examples highlight the risks that are before us all should this proposed draft bill proceed, two recent and ongoing cases that we have—and unfortunately there are many—actually illustrate the concerns of the federation and the impacts that that's going to have on our members.

Both of these teachers that I will refer to work in schools that already have unfilled vacancies for their staffing entitlement. The first is a teacher in her thirties who was repeatedly sexually harassed at work and has an accepted workers compensation claim for a psychological injury. She continues to access treatment and engage with mental health professionals but is significantly injured and currently has no capacity to work. The other teacher that I will refer to is in her forties. She was sexually assaulted at work. Her accepted workers compensation claim enabled her to access urgent—and I repeat, urgent—and immediate psychological services. Her injury, however, is very severe. It is unlikely that she will ever return to the teaching profession. Without ongoing support, she may never return to any type of work at all.

Both of these teachers really illustrate the need to access financial support and medical treatment while they engage in that recovery process, with the consistent aim, I think, of all parties, which is to return the teacher to work when they are well. They also would not have been able to use the Government's proposed bullying and harassment jurisdiction to resolve these matters, because they are just not well enough. We will not drag members like that through the courts to get an assessment of their injury.

The Hon. DAMIEN TUDEHOPE: Mr Smith, I think you've made a submission or case studies along similar lines in relation to your members. I think you have also, have you not, Mr Whaites?

BERNIE SMITH: Yes.

MICHAEL WHAITES: Yes.

The Hon. DAMIEN TUDEHOPE: One of the principles you raised, Mr Whaites, is in relation to psychological injuries caused by excessive workloads. Would you like to comment on what this would particularly mean for nurses?

MICHAEL WHAITES: We provided NSW Health a copy of a report that we had commissioned in 2023 out of South Australia. It showed that, of the participants in that survey, 15 per cent had indications of PTSD. A significant other amount had indications of burnout. This was related, in the post-COVID setting, to workloads: workloads generated by being short-staffed, poor skill mix and increasing activity through those hospitals and aged-care facilities. We provided that to government. Health representatives dismissed it out of hand. We prosecuted, or attempted to prosecute, NSW Health for chronic understaffing at the Central Coast LHD. Rather than accept that, they argued a creative line that said they didn't have to provide staffing on the day, they just had to roster it, so it didn't matter what turned up. They won on that technicality.

We know that the thing that will fix the workload issues for our members is restoration from the wage suppression that they've experienced over the last 10 years, and more nurses and midwives on the floor. But we see through the Government's actions that they don't actually value nurses and midwives, because they are fighting that pay rise that will fix the issue. With the changes to this legislation, we see they just don't care. Those workloads are injuring our members. They will not be compensable injuries under the proposed legislation. They will just be left to the social security services and no longer work. It's appalling.

The Hon. DAMIEN TUDEHOPE: Both the Treasurer and the Minister have indicated that this is a complete package and they want to talk about preventive measures. What discussions have you had—and this is to all to either take on notice and potentially provide a response to—in addition to what you just outlined, about preventive measures for psychological injuries? Has the Government actually engaged with you about a system of preventive measures to reduce the number of psychological injuries?

MICHAEL WHAITES: The Government has agreed to introduce the safe staffing levels. That will go some way, once it is implemented, but the rollout of that has been hampered by a lack of accountability in the proposed clauses that will go with that. We see the healthcare system occasionally try to address the wellbeing of our members. Post-COVID we saw one significantly large hospital in New South Wales offer staff to come down and listen to some jazz and have some pizza during lunchbreak. Nurses and midwives don't get a lunchbreak. So sometimes the attempts at addressing wellbeing may be well intended but appear to me to be tone-deaf.

BERNIE SMITH: In terms of the issue of workload, people might not appreciate it but the retail industry is an industry under extreme pressure at the moment, both labour shortages and also what we call the

ALDI/Amazon effect, where both of those international global players are squeezing our industry and leading to chronic understaffing and chronic workload depression inside workplaces. Just this March, I caught up with a bloke I have known for 15 years up on the Mid North Coast, Dwayne. I would have normally described him as relaxed, even laconic, and a person who enjoyed his life. I saw him in March this year. He is off work at the moment because of extreme workload pressures in his particular workplace.

I would describe him—the man I saw in March was a man who was heavily medicated, unresponsive and couldn't get out of the house to enjoy life. That's the impact these things have on people, and so we do need preventive measures. In our submission we call for the Industrial Relations Commission to be empowered, like in other States, to actually deal with some of these issues to prevent the systematic understaffing of stores so that we can avoid people like Wayne ending up in that situation and we can return him—he doesn't get injured in the first place. But if he is injured, we need a system that looks after him in the long term.

JACK AYOUB: Mr Tudehope, if I may, we heard lot of language this morning from the Treasurer about cultural change and all these things. Yes, that has to take place, but we've also got to acknowledge—particularly as it concerns our members—that there are some psychological injuries that aren't preventable, that will occur. I've got many case studies here, but our members, more often than not, are dealing with dead bodies and body parts in tragic incidences, work that is not often acknowledged because there are not red-and-blue lights. The Government saw fit to make our members first responder status, and then they turn around in a sort of dark alley abacus stabbing with this bill that really has the moral integrity of a Kings Cross rubbish bin and expect us to cop it. I mean, our members will not be covered for psychological injury.

The Hon. DAMIEN TUDEHOPE: It won't be a relevant event.

JACK AYOUB: It won't be a relevant event. They won't have a close personal connection to someone who's committed suicide in the national park. They won't witness the multi-car accident that happened near their worksite that they were the first responders to. So, really, section 8 is trash. That is the underlying point. But we've got to acknowledge that we can't prevent all psychological injury.

The Hon. DAMIEN TUDEHOPE: Have you, though, in terms of with your members, engaged in putting together a submission about not so much limiting their ability to make claims but to in fact change workplaces?

JACK AYOUB: We have actively in workplaces tried to get those supports in place. That was part of why we pursued the first responder status. We have been doing that for a decade. It took us a decade to get there. So we have taken those active steps. We've also taken active steps—and I can tell you what, you get a hell of a lot of resistance from bureaucracy if it just takes changing a shift to get someone out of a difficult bullying situation. They would much rather have them out of their hair. But we have taken active steps. What hasn't occurred—and I think it's to great insult to the heavy people we got in this Committee—is this hasn't gone through a proper process. That's why it's the dark alley abacus stabbing, because we've just had this coughed on us in the last few days. We're expected to turn up and have a reasonable contribution, when we are starting from a point of consensus that we want to make the system sustainable.

The Hon. DAMIEN TUDEHOPE: Mr Wright, you made an observation which I put to the Minister, that these proposed changes will not improve workers' health but instead exacerbate their injuries and cause further harm. Would you like to elaborate on that?

TROY WRIGHT: I would, thank you. I would go to your first question, though, as well, and add that whilst the Treasurer may talk specifically about return to work programs and putting a greater onus on getting people back to work, we have, to the Government's credit, worked closely with them around a mobility process where displaced workers through redundancy are able to find jobs in other departments. We have advocated for years that that be extended to the return to work system, that people who are injured in one department and cannot return to that organisation are found a like job in another department.

The Hon. DAMIEN TUDEHOPE: That was a recommendation, if I recall.

TROY WRIGHT: Correct. That's yet to materialise. It's still in discussions. The Treasurer may well wish that such a program is rolled out in the private sector and responsibilities are placed on private sector employees, but if they cannot organise that in their own departments then what hope is there for that to occur? In respect to further injuring workers, I think our union's experience with our members is similar to everyone else here at the table, that it is a system where the delays, the poor case management, the poor resourcing of treatment, lead an injured worker often to feel worse for having been exposed to the system than had they not gone into it in the first place. We agree with the Treasurer's remarks in that respect, but we do not believe that the solution to that problem is locking people out of the system; it's improving the system.

The Hon. MARK LATHAM: Mr Hayes, you haven't said anything yet and you work in the health services space. Have we got an issue here in the whole nature of medical science and its understanding of the human brain? I think it's broadly acknowledged medical science is a wonderful thing, and so many breakthroughs of use to humanity, but it knows less about the brain than any other part of the human body, or indeed the natural world. It's often said about mental illness we know everything about it except two things: what causes it and how to solve it. Have we got an issue there, particularly with doctor fraud or diagnosis fraud in this space, that it's such a poorly formed area of medical science as to what is actually a psychological injury?

GERARD HAYES: Absolutely. I think we're in a situation at the moment where we're working with a system which really is designed for physical injury and we're trying to deal with psychological injury. Psychological injury can be manifest in a whole range of matters, whether it's a personal matter or it's a professional matter. We are trying to do the best with what we have. What we have is just not enough. Recently, over the last 18 months, there's been the special commission of inquiry into health expenditure. That's taken 18 months and it's dissected to see where wastage is. We're going so fast at this at the moment. My point is the system needs to change. There is no doubt about that.

My concern, very seriously, is that people who are seriously affected, who have major problems, who become suicidal, what we do at the moment is we take them from work, we let them go and sit in their home by themselves and percolate further and further. At a point in time, we may try to get them to return to work. That is an incredibly frustrating process in itself. You may try to see a psychiatrist, which will take you at least three to four months. There will be people defrauding the system. Where there's a pot of money, there will be a lot of people who want to get into it. I don't see going so fast at the moment resolving this system the way we need to have it resolved. I do not want to see many of our members—and I think the nurses and the teachers have said very correctly it's 70 per cent of their members, something equivalent with us, or it's a gender issue.

We need to be able to engage and get this right, because it's not going to stop now. Society has changed. I think that was raised previously. The way teachers are treated—your point is right, there should well be a way of accepting, acceptable behaviour. Unfortunately, you go out in the street today, that doesn't happen anymore. We are in a changed culture and we need to come to terms with that culture. At the front face of that culture is, whether it's teachers, nurses, certainly paramedics, the whole range of our health workers, allied health professionals, all these people are confronting it and they're taking the load home with them. My concern here at the moment is if we go too fast on this, yes, we'll tick a few boxes, but we're going to kick this problem down and in the next five or 10 years it's going to get worse.

The Hon. MARK LATHAM: I agree. It needs a lot more analysis and thought put into it, and certainly parliamentary deliberation, what we're dealing with. But do you think, Mr Hayes, there's been an evolution of what is a psychological injury? I think it's established in medical science that some conditions are debilitating and severe—for clinical depression, schizophrenia and those sorts of conditions it's pretty well established—but we seem to have dropped down into what I would probably think of as social injuries: hurt feelings, worrying too much, a breakdown in resilience, "I'm feeling tired from the workload." That, obviously, once it's included in these schemes, is massively expensive. Don't you think there's an argument here about thinking about a tighter, more realistic definition of what's a psychological injury in the workplace?

GERARD HAYES: I think it's difficult to get to that point, because what you say is correct: There is a whole range of different levels. How many layers to this onion are there? Going back to your first point, we don't understand the brain as much as we could. So this is a rapidly evolving area. If you go back into the '60s and the '70s, this wasn't even spoken about. This has really come in over the past 10 to 15 years, so we are rapidly trying to catch up with it. You are absolutely correct: Some of these injuries could be facilitated elsewhere, but they manifest in the workplace. I'm certainly not a professional who is going to be able to deal with that. Sadly, given that post-COVID and the resourcing issues of health professionals, there's not enough of them out there to be able to actually get ahead of this at the moment.

The Hon. MARK LATHAM: There's sort of a dark joke on the streets that if you don't plead mental illness in the courts, or schools, or a doctor, or in the workplace, you're the one that's mentally ill. It's sort of like Yossarian in *Catch-22*. In terms of the medical profession, how do we weed out the doctors who are taking advantage of these loose definitions and opportunities to diagnose people as having a psychological injury when that's not the case? They do it for financial reasons, with our open-ended health system, in terms of their own charging practices. How do we identify them and get them out and make sure that the real resources go to the workers who need it most?

GERARD HAYES: Compliance is just so important. Compliance with teeth is really important. There would be a whole range of issues that could occur at the moment. Nobody does anything about it. The more you walk past it, the more you accept it. I think that is what has got to take effect here. There could well be the situation,

which I argued in the SCOI—the money is there. It is being spent inappropriately. Redistribute that to where it needs to be spent and maybe you don't need to talk about 30 per cent, or 25 per cent, or even 20 per cent WPI. It's making sure the money that is spent is spent appropriately as opposed to inappropriately.

Ms ABIGAIL BOYD: We've talked a lot this morning about prevention, and the need for prevention. We heard from the Government about changing workplace culture. But of course when it comes to public sector employees, the employer is the Government itself. If I could start with you, Mr Whaites. The Beasley Special Commission of Inquiry into Healthcare Funding made very damning comments about the failure of the Government to justly compensate workers within the health system for labour and services, and also focused on this concept of burnout for workers in the medical profession, due to a bunch of different things, and actually made the comment, "Some might regard this as a work topic. It is not. Workforce stress, fatigue and burnout are serious issues, and particularly so in a public health system." What does it say to your workers that they have an employer who is not only not going to pay them properly, and is not going to take actions required to attract and retain workers, but is now going to turn their backs on them when the result of that is burnout?

MICHAEL WHAITES: As I said earlier, the only summation we can make is that, through both the previous Government and the current Government, their actions demonstrate that they don't value nurses and midwives. If the draft legislation goes through as it is now written, it will prove that they don't care. The injuries that our members suffer—I take umbrage with Mr Latham's approach to the questioning there. Our members watch people die every day. They deal with extreme circumstances every day. But they also know, every day, they could be providing a better level of care than they are. They know that the person in that bed should be getting attention straightaway when the buzzer goes, but they are with this patient here. That is a moral injury. This is not someone feeling tired at work. This is a workforce that is burnt out and crying out for help. This proposal simply takes away the safety net.

Ms ABIGAIL BOYD: If the Government were serious about prevention, would they just instead fund properly the workers in the health system to begin with?

MICHAEL WHAITES: More funding for more staff, more funding for better-paid staff—but also within Health we don't have the safety and support services around us that other public sector workers do. So there is a paucity within Health that is contributing to this. There is a lot that can and should be done in the preventive way. What must not happen is take away the safety net before those preventive measures are put in place and able to work.

Ms ABIGAIL BOYD: Mr Smith, this Parliament has in recent times taken action to better support retail workers when they are facing abuse from customers, for instance. We know that retail can be an incredibly hostile environment, as you have laid out. What is your view on where these changes would leave workers in retail?

BERNIE SMITH: Well, the concern we have is multifaceted. We had a member, for example, in April this year who came across the body of someone who suicided at Westfield Parramatta, jumping off the fifth floor of the shopping centre there. They probably fall outside the event requirements of this Act. We have members every day facing abuse and violence in the workplace. Sometimes they would be covered, because it is an indictable offence. But if I was a worker—I went out to Bondi Junction the day we reopened the centre out there. A lot of our members who had finished their shift before the event occurred were just as deeply affected as everybody else. They would fall outside the definition of the event, because the people who sadly died on that day were not their work colleagues. They are deeply affected. Some of them can't go back to work at that workplace. Some of them are likely to return to other workplaces, but it has deeply affected people.

Again, people don't often think of what our members see every day. We welcomed the Government's changes in relation to the offences, and we have seen some impact of those, but there is more to be done. In our submissions we have called for more measures again to be preventive measures, to prevent that happening in the first place. Things like workplace protection orders that we have seen effective in the ACT at the moment. But how do we prevent these things in the first place? We are all up for that. We are up for things that prevent injuries rather than prevent claims.

Ms ABIGAIL BOYD: Mr Ayoub, it is not necessarily well known across society but construction workers have some of the highest rates of suicide in Australia and in the State. What do you think these changes will mean for workers getting the help they need before they suicide?

JACK AYOUB: Well, not only construction workers—I mean, our members across National Parks, Roads and Transport and Forestry Corp. Just about every organiser you talk to has a member who has attempted suicide or who has committed suicide. These people are being dropped by helicopter into fires. They are not captured. We had an incident on the Sturt Highway, I think last week or the week before, where our members were sealing a road. They were about 500 metres away from where a rear of queue crash happens, multiple

fatalities. One of our members is holding the driver of a truck who is hanging out the front of a truck, severely lacerated. I mean, you can imagine the scene. He is not captured. He didn't witness it; he is just the first to arrive.

Our National Parks workers are often responsible for search and rescue in concert with Emergency Services. They often find people who have jumped off cliffs, who have fallen, who have committed suicide. I have had many members break down in tears when you just give them that safe space—to use that language—and say to them, "Are you okay?" One of our members in Transport, 83 bodies. I repeat, 83 bodies. None of those instances are captured under this trashy, trashy bill.

The CHAIR: The case studies that have been presented this morning, which are either picked up in your respective submissions or additional, are very powerful and significant in framing thinking around the proposed legislation. But in terms of taking an example, Mr Smith, can I take you to page 8 of your organisation's submission, about Case Study 1 - CW? There are two parts to the question: One is that in light of some of the questions already responded to, and particularly by Mr Hayes, about the cultural issue and attitudes of the population at large, tragically and sadly, with respect to respect for people, particularly where they are dealing face to face with the public at large, could you elucidate on Mr Hayes's point that he made, if you would be prepared to do so? And perhaps, if you are able to do so, could you make some specific comments about this individual case study—of course de-identified—and its implications on the new legislation as proposed under the exposure draft, and how that would affect this person, or not, as the case may be?

BERNIE SMITH: Yes. Sadly, these are everyday events. This person was in regional New South Wales. I could take you to outer suburbs, I could take you to inner suburbs, I could take you everywhere across this State and these are everyday occurrences that happen to our members. This case study probably illustrates two things: Firstly, this was effectively the straw that broke the camel's back for this worker, in this particular instance, where she had been abused in the workplace by a heavily-tattooed individual. She comes from a small community. She's known in the community. This person knows who she is. So she has got nowhere to go in relation to it. The person was not banned from the workplace. They kept coming back to the workplace and they kept abusing her in the workplace.

But it may not have got to the level where you would say this is an indictable offence against this particular individual. The person started abusing her on Facebook but then identified who the person was and kept abusing her online. And again, that may not have reached the level of being an indictable offence, so she may not reach the first hurdle of the relevant event for a psychological injury. But let's say she does make it to that first hurdle, she has been off work for four years now. The extent of damage—she rarely leaves home. She has to leave home with a member of the family or with a carer when she does, if it is outside her immediate area. Her personal hygiene and personal care are severely compromised.

She has been assessed by an independent medical examiner. Our assister who dealt with this matter made the point that this was a truly independent medical examiner, and she comes up at 19 per cent whole person impairment. Under the proposed exposure draft she would have lost income support 18 months ago and she would have lost her medical support six months ago. She still needs those things. It just means that we further stretch other public resources to try to look after her, or she gets more damaged in the process. And the assister who does a lot of our work in regional New South Wales gave us this example: I asked him to review all of his cases for the last 20 years, and he came up with one case that got over the 30 per cent threshold—one case in 20 years, and he specialises solely in workers compensation across many industries. That particular case was not in our industry, as well.

The CHAIR: Does this case study also provide some insight into what may be, as a result of either neglect, indifference, systemic failure or organisational failure, or whatever the case may be, of employers, with respect to dealing with matters and intervening in a timely fashion to, dare I say, get on top of them and protect an employee, in this case?

BERNIE SMITH: Yes, it does, on two levels. Firstly, the person should not be back in the store, for one thing, and they haven't taken the steps to protect them by preventing them from being in the store. But can I say that the traditional methods available in New South Wales of a banning notice have no effect. I use the example again of the ACT. The first person who had a workplace protection order issued against them in the ACT had previously had seven traditional banning notices issued against them. They had breached every one of them. They put a security guard in hospital and received a \$50 fine. They had no effect whatsoever. So we need to have reform to prevent these things. Once the workplace protection order was put in place, yes, that person is no longer in the workplace.

But it is not just that. It is the staffing levels and the intensity of work that we see. We need a means to properly address this. Traditionally staffing levels have been seen as an industrial matter—sorry, a managerial prerogative matter. If you go to the industrial tribunal, they say, "We can't deal with this. It's a matter of managerial

prerogative." But it is not. It is a health and safety issue. That is why we need to empower the Industrial Relations Commission to properly deal with these sorts of disputes. Because if you have got enough people on the floor, you minimise this sort of behaviour as well. Sometimes the "heroes" in our shops who abuse our members wouldn't do it if there were more people around.

The Hon. STEPHEN LAWRENCE: Mr Hayes, the Treasurer this morning talked about the workers compensation system being one originally designed for physical injury and now being used for psychological injury, and you said something similar. It seems that the bill, and particularly section 8E in its definition of "relevant event", seeks to respond to that issue by basically excluding certain people from the scheme. I'm interested in what alternatives you see—and not so much in terms of prevention, because we've heard evidence on that. I'm wondering what alternatives you see to dealing with that issue apart from simply excluding people from the scheme. I've been thinking about things like is there a case for maybe a higher standard of proof in respect of psychological injury or is there a case for maybe a lower payment for psychological injury? Are they more appropriate ways of, in a more fair way, responding to this quite complex issue about causation and also what actually contributes to the injury? Is it exclusively the workplace or is it a range of factors more inherent to the person?

GERARD HAYES: I think one of the concerns I've got here is we talk about dollars all the time. The dollars aren't going to resolve this matter. There's plenty of people in my experience and my history that have been subject to these matters. You can get half a million dollars, you become an alcoholic or a drug addict, we put you in isolation and we don't care about you anymore. It is not so much the process of being proactive, which is really important, but looking at when you are injured, what are we doing? And what we are doing is sending you home. And if you're not covered by it, we're barely doing anything at all then.

But the reality is, if we actively intervene, actively have, for want of a better idea, a commission of rehabilitation as opposed to compensation just as it is, then we go some way to actually resolving the problem. Whereas it's the easiest thing in the world—albeit the Government says they don't have the money—to say, "We'll just throw money at this. We'll move you on," and that's the way it settles. But my view is that an injured worker should be rehabilitated and money should be going into the rehabilitation to ensure that they have a life after that injury, whether it be at the same workplace or any other workplace, but we rehabilitate them. I think that goes somewhat to the holistic approach to what we're talking about, as opposed to a somewhat punitive approach to say that you're in, and you're out.

And as Jack indicated, many of our members, who are virtually exempt from the paramedic sphere, we can see that a tragedy can occur where they deal with every day—Jack's people do the same thing, maybe not every day and so what's the difference there? And I think it's really important: I never want to get into career elitism or anything along those lines, but everybody has a focus in terms of what they are confronted with and how they deal with that. Some people are more resilient than others. But we can't let the others fall through the gaps. My view is that a longer review of what we're doing, a holistic review of what we're doing—rehabilitation has to be front of mind. Compensation is there, but if we're just focusing on compensation, people will fall through the cracks.

The Hon. STEPHEN LAWRENCE: In terms of the definition of "relevant event" and this requirement that a person actually witness an event, I'm specifically interested in—Mr Whaites, Mr Hayes and Mr Ayoub—your thoughts about how that particular part, the proposed section 8E, could be amended. And I'm particularly concerned about this idea that people witness death, and they might witness death on a regular basis, but it doesn't fall within those terms in 8E. Is there a way to broaden that definition that includes people who, according to a certain percentage of them, are probably invariably going to suffer illnesses as a consequence of certain work?

MICHAEL WHAITES: I don't have an immediate answer for you today. The rush with which this legislation is being proposed, the rush of this inquiry—yes, there has to be alternatives to that. When our members are on a shift and there is an adverse event, that affects the whole shift: everyone contributes, because of the teamwork approach. So these things have to be taken into consideration. I think one of the risks with the draft legislation is that it proposes to try and define what is a psychological injury. There are trained healthcare professionals who do that, there is evidence-based literature that does that, not a piece of legislation that says whether or not a nurse, a paramedic, a shoppie or a teacher is suffering an injury because of their workloads. That's for the realms of the healthcare professionals.

The Hon. STEPHEN LAWRENCE: Have you got any thoughts on that, Mr Hayes?

GERARD HAYES: I'll take that on notice, if you don't mind.

The Hon. STEPHEN LAWRENCE: Sure.

GERARD HAYES: I think it's a very serious question, and I'd like to give it a little bit more thought.

The Hon. STEPHEN LAWRENCE: Sure. Have you got any thoughts on that, Mr Ayoub?

JACK AYOUB: I think, just broadly, a bit of context on it, the Hunter bus crash was widely publicised. Mr Hayes' and my members were both there. Our members were responsible for the aftermath. They had to roll the bus back up, get rid of it, and clean off intestine and blood from guard railings. They didn't witness the event, they didn't have a close personal connection, nor did the ambos who arrived there. There's no way that is workable. As for another set of words, it just goes to the point that we've not actually had from the officialdom the honour and decency to consider this thing properly. That's really what's hamstringing us here. There's a starting point of consensus, which is we all want the system to work better, all of us collectively—business, everyone—but that's been blown up by this exposure draft coming out, which we were never consulted on, for example. The only way forward, I think, is for members of the Legislature, and certainly this Committee, to ask themselves, can you seriously lay your conscience on this draft bill, that has no policy rationale, no moral integrity and no heart?

The Hon. STEPHEN LAWRENCE: Just to be clear, your contention is that the words in 8E (c) that a person must "witness an incident that leads to death or serious injury" wouldn't bring within it a person, for example, who turns up in the aftermath and is responsible for removing corpses?

JACK AYOUB: There are people better on interpretation than me, but I think, as a fair reading, the emergency services who respond and our members who respond after that, they're not witnessing the event. They're not going to be captured by that. But even if they do witness the event, how do they fall within 8H (2), because they don't have a close work connection? How are these things interacting? I don't know.

The Hon. ANTHONY D'ADAM: Point of order: Mr McFarland has been invited to this Committee to give evidence. He hasn't been given a question. He wasn't afforded an opportunity to make an opening statement. I think we should give him at least some opportunity to say something.

The Hon. DAMIEN TUDEHOPE: I did foreshadow that if any of the questions applied to him, they could be assumed to take them on notice.

The CHAIR: I'm in the hands of the Committee.

The Hon. ANTHONY D'ADAM: It's appropriate and courteous to our witness.

The CHAIR: Indeed. I just want to point out, I don't think that's intentional, Mr McFarland. Mr McFarland is a highly regarded union official in this State of some standing. I was going to, in fact, make a comment at the end about any omission in terms of an opportunity, so I think we need to make that point. It's not deliberate, and nor would it ever be deliberate.

ANGUS MCFARLAND: I just wanted to say two things. I think 8H is another example of this bill being rushed and not—the advice I've sought from experts in vicarious trauma in family domestic violence services is that that definition is going to cause more harm. In summary on behalf of, I think, everyone here, I can say that that gets to the crux of this: This reform will cause more harm. This reform will leave people behind. This is not about prevention; it's about punishment. This is about lawyers making decisions about people's health, not doctors. That's why we urge you to not support this legislation and take, I think, as we've all said, the time to get reform right. We are all up for reform. We are not saying the current system is perfect. But we want to be part of a proper conversation so no-one is left behind.

The CHAIR: That was very comprehensive. Thank you very much, Angus. With respect to the return of answers to questions taken on notice, we have the time set at 5.00 p.m. Wednesday 21 May 2025. This is currently the case. It may or may not change over the course of the day. If it changes, you will be told, but that is the date and time of cut-off with respect to submitting answers to questions taken on notice. As for your opening statements, if you have it in typed form I invite you to hand it over to one of the members of the secretariat staff before you leave. If you don't have it in a form that you're completely happy with—and I don't mean changing the words, but if it hasn't been typed up for whatever reason—get that done and then email your opening statement to the Committee secretariat. That will help in facilitating the development of the report.

Finally, as I said at the start, thank you to all around the table. I might say there are other union officials who I'm sure would have dearly loved to have joined this panel, because it does affect all workers covered by the trade union movement in the State, in all industries. We could not practically invite everyone for obvious reasons, but we have amongst the most senior trade union officials in the State, at least the general secretary level. Thank you all very much. Your evidence has been most helpful.

(The witnesses withdrew.)

(Short adjournment)

Mr DANIEL HUNTER, Chief Executive Officer, Business NSW, sworn and examined

Mr SAM MORETON, General Manager, Government and Corporate Affairs, Business NSW, sworn and examined

The CHAIR: I welcome our next witnesses. You now have the opportunity to make an opening statement. Once that's done, we'll move to questioning by Committee members.

DANIEL HUNTER: New South Wales has always been the engine room of the Australian economy, and it is businesses that drive that economy. When we talk about business, we're talking about people and communities right across New South Wales. We know that for businesses to thrive they need employees who are healthy, motivated and engaged. That's why Business NSW—the peak business organisation for 199 years—fully supports workers' rights to care, rehabilitation and fair compensation for workplace injuries. In fact, we were instrumental in establishing the State's workers compensation scheme over a century ago.

We also support a reasonable mechanism to hold managers to account when they are not doing the right thing by legitimately injured workers. However, we have a workers compensation scheme in New South Wales that is broken. It is broken because not-for-profit disability providers are seeing their premiums go up by over 400 per cent in five years. It is broken because 50 per cent of our members tell us that once a person goes off on a psychological injury claim, they never return—this is 50 per cent. And 90 per cent of businesses we surveyed last week also said that the system needs urgent reform. It's broken because legitimate performance management issues are being wrongly turned into workers compensation claims. It's broken because it is not sustainable.

For the private sector workers compensation scheme, the Nominal Insurer, current premiums are already rising by 8 per cent each year, while the funding ratio falls by about 5 per cent per year. So, in dollar terms, the scheme went backwards by \$1.8 billion last year, all while premiums went up by more than double CPI. To bring the scheme funding ratio back to what is considered a healthy level of 110 per cent—it's currently, I believe, as of this morning, at 82 per cent—would require huge premium increases under the settings of the current system. We fear the increases required to achieve this are actually far higher than the 36 per cent over three years already quoted.

Adding to the problem is that the degradation of the scheme is getting exponentially worse each year. It has gone down 3 per cent in the last six months. If we do nothing, then the scheme costs will send some businesses bankrupt. There is also a human cost to this. Ironically, it is the pressure and stress it places on business owners struggling to survive. New South Wales has a once-in-a-generation opportunity to reform the workers compensation system and ensure that genuinely injured workers get the help they need, and that businesses can survive and ensure a safe workplace for their employees. Without significant changes, the weight of the scheme will crush businesses, leaving workers and the communities they serve for good. Thank you, Chair.

The Hon. DAMIEN TUDEHOPE: Thank you for being here today. I just want to start with urgency. Why is this urgent? When did you first see this exposure draft of this bill? Why is it so urgent that we actually implement it this year?

DANIEL HUNTER: I think it's the speed the scheme is degrading by. We heard from the Treasurer this morning around the TMF. That's still up over 100 per cent, and he's not going to tip in any more money into saving that public sector scheme. The scheme is degrading by 3 per cent.

The Hon. DAMIEN TUDEHOPE: Is it important, though, to get it right?

DANIEL HUNTER: Yes, it is important to get it right.

The Hon. DAMIEN TUDEHOPE: Is this the right model for getting it right?

DANIEL HUNTER: I think that this model picks up on a lot of things that have been done successfully in other States, particularly in South Australia. South Australia at the moment is considered the business-friendly State. New South Wales has always been the State that has attracted investment to Australia. As I said in my opening statement, it is the engine room. We need investment. We need successful businesses, and we are losing them. Business defaults are higher than they have been year on year. I can get you stats on that if you need to. But, in short, in answer to your question, Rome is burning. The degradation of the scheme is really problematic. It will likely be, by the end of this financial year, under 80 per cent.

The Hon. DAMIEN TUDEHOPE: Just in relation to South Australia, part of the evidence we also heard this morning was that the diagnostic tools in relation to psychological injury and the determination of a 30 per cent cut-off was, if you applied the same test in South Australia as you are applying in New South Wales, effectively, their test is 60 per cent and not 30 per cent. So it is not really comparing apples with apples, is it?

DANIEL HUNTER: I would like to see the facts behind that before commenting on it. I think, though, to go to your point about getting those medical assessments right, that is needed, and the detail is needed on that for the WPI threshold to raise to 30 per cent. We need very clear assessment protocols and medical assessments on that. I don't purport to know what those assessments are. I wouldn't comment on whether it is 30 per cent in one State equals 60 per cent in another, because I haven't seen any facts behind that.

The Hon. DAMIEN TUDEHOPE: I'm just putting to you the submission. If that was true though, that would make this a very draconian scheme because it would eliminate most people who have psychological injury from making claims. Whereas if the South Australian model was being applied, you wouldn't have the same number excluded from making claims—if that is true.

DANIEL HUNTER: What you have at the moment, though, is that you have a very low threshold and you have psychological injury claims that have doubled in cost and have gone up by 65 per cent in terms of volume in the last two years. So something needs to be done. I agree there is work to be done on the detail of this. I totally acknowledge that consultation needs to happen. I actually wouldn't put a time frame on it. I am saying "urgent" because it is a really big problem, and it is dragging our State down in terms of competition.

The Hon. DAMIEN TUDEHOPE: Premium increases have been fixed for next year, haven't they, at 8 per cent?

DANIEL HUNTER: Yes, they have.

The Hon. DAMIEN TUDEHOPE: So it's not urgent in terms of a pending premium increase?

DANIEL HUNTER: But that funding ratio—every day that goes past, that scheme goes backwards by 5 per cent, and that is with 8 per cent premium increases.

The Hon. DAMIEN TUDEHOPE: Let me ask you about that. One of the things which was put to us this morning is the problem of the self-insurer. Would the NI be under as much pressure if in fact the safer—potentially—workplaces were not able to opt out and become the self-insurers?

DANIEL HUNTER: I don't know the answer to that question, because I have never seen any analysis done on it.

The Hon. DAMIEN TUDEHOPE: Should you?

DANIEL HUNTER: I don't know that that would be the case. Businesses need the right to choose. They should be able to choose. I think that that self-insurance question needs to be looked at a bit more carefully before we can comment on it.

The Hon. DAMIEN TUDEHOPE: If in fact this draft bill became law, what would you say would be the saving available in premiums for small business?

DANIEL HUNTER: Again, we are unable to model that at the moment, because we would need to see actuarial calculations. I am not here to purport to be an insurance actuary. But the scheme, as I understand it, would be revalued, and the future liabilities would be revalued. We could see a pretty immediate uplift on funding ratio, which should put downward pressure on premiums. More to the point, it should help to fix the problem of illegitimate psychological claims going through the system.

The Hon. DAMIEN TUDEHOPE: What do you say are the illegitimate claims that are going through at the moment?

DANIEL HUNTER: There are a few. There is one here where a worker claims a psychological injury after a heat stroke incident. That person had a history of psychiatric illness and substance abuse. The Personal Injury Commission found a whole-of-person impairment of 23 per cent, and they only applied a 10 per cent deduction due to pre-existing conditions. This person had pre-existing psychiatric illness conditions and substance abuse conditions. At 23 per cent, they qualified for a WPI under the current system. In that example, that has equated to around \$250,000 so far. What is happening in this case is a great example of some societal issues being lumped in together and becoming the responsibility of the workers compensation system.

The Hon. DAMIEN TUDEHOPE: How would you resolve that? If that was the case study and Business NSW was involved in a preventative regime, what would be the tools for resolving that?

DANIEL HUNTER: I think you have got to prevent them in the first place. I am a firm believer—and there were some interesting examples given just earlier, which I support, and the definition of trauma will still be in there and things like that. I think it was the Hunter Valley bus crash incident that was used—

The Hon. DAMIEN TUDEHOPE: Yes, but if it doesn't get to 30 per cent?

DANIEL HUNTER: You need prevention programs, which are contemplated in these reforms. You need prevention programs and training, and you need workplace disputes that are solved quickly, and you need a mechanism for that. Because what is happening at the moment is there are workplace disputes by default just being accepted into a workers compensation system that it is not designed for. I'll go back to that example, if you will indulge me. I used to sit, in a previous life, on the board of NSW Ambulance and I've got a pretty good understanding of those traumatic events and the PTSD associated with them. When you talk to well-credentialed people, the people who run those organisations and have been at that frontline, the answer is training and resilience, and then, when things like that happen, getting around people so they don't create issues.

The other point I would add is when people are off work and funnelled through this workers compensation system, it makes the problem exponentially worse. People need meaning in their life; I think we can all probably agree on that. People need to go to work and need to feel valued. What we're doing at the moment, as Mr Hayes said in his previous evidence, is we are sending people home. I don't think that's a good outcome.

SAM MORETON: To the point of urgency we were mentioning earlier, Mr Hunter mentioned some figures. I'll give them to you now. Businesses don't need certainty just for the next 12 months but, as Mr Tudehope would be aware, it can be two, three, four years for their planning and solvency. In March alone, we had 575 businesses enter administration in New South Wales, up from 478 in the equivalent period a year ago; year on year, 4,236, up from 3,292. So yes, it would not necessarily be solved by—

The Hon. DAMIEN TUDEHOPE: You are not suggesting, though, that they're all caused by—you're not suggesting for one moment, are you?

SAM MORETON: No, I'm not drawing a causation line directly to that. But the broader business environment we're talking about, with the sector that employs six out of seven workers in the State, or close to 86 per cent—figures we're obviously very familiar with—is in the private sector and doing it tough at the moment. That's the context.

The Hon. DAMIEN TUDEHOPE: But there is a range of cost of doing business measures, which I am sure you are very aware of, which impact on their ability to remain solvent.

SAM MORETON: That's true. Absolutely, yes. And insurance is at the top of that list.

The Hon. DAMIEN TUDEHOPE: Insurance is a big one. I want to put this to you. COSBOA in their submission stated:

COSBOA supports the objectives of preventing workplace psychological injuries and ensuring appropriate compensation for affected workers. However, we are concerned that the proposed amendments in their current form will disproportionately impact small businesses through increased costs, compliance burdens, and complexity.

What do you say in relation to that?

DANIEL HUNTER: Sam, you might jump in here. I think what COSBOA is referring to there—and I spoke to a couple of other business organisations yesterday, and it is something that concerns us as well—is the detail around the new IRC jurisdiction.

The Hon. DAMIEN TUDEHOPE: But where's that? Have you seen that?

DANIEL HUNTER: No, we want to see it. Don't mistake my need for urgency as a way of not consulting and getting into the detail. I fully agree with you that we need to get into the detail of this and we need to take some time to go through that detail. What I don't want to do is be sitting here in a year's time without workers compensation reforms, with pricing about to be handed down and a scheme funding ratio that's in the 70 per cent range, or late 70 per cents, that's targeting to get back to a healthy level of 110 per cent, because those bill increases are not going to be 36 per cent over three years. They're going to be higher because it's spiralling. It's getting exponentially worse.

The Hon. DAMIEN TUDEHOPE: Which industries do you say will be impacted the most?

DANIEL HUNTER: By the price increases?

The Hon. DAMIEN TUDEHOPE: Yes.

DANIEL HUNTER: It's pretty well documented, but I'd say a lot of family businesses, a lot of small to medium businesses, so the 50 to 100 range. Manufacturing is a great example. Any industry that we're trying to hold on to here in Australia. Great example, manufacturing. We were up in the Hunter Region recently visiting some members up there. At Tomago there is still quite a lot of Australian manufacturing going on—high-end stuff, vehicle fit-outs, all those sorts of things. They're in high-risk areas, so they have some claims experience. Some of them are multi-generational businesses. If your workers compensation bill is already a pretty big chunk

of your P and L and it's going to double in the next three years, that could put you pretty close to the edge or help you make a decision to move offshore or anything.

The Hon. DAMIEN TUDEHOPE: Therefore, prevention should be a bigger—you're on the board of icare and the CEO of Business NSW.

DANIEL HUNTER: Yes.

The Hon. DAMIEN TUDEHOPE: What preventative programs are you promoting, in either capacity, for in fact getting people back to work or reducing psychological injury in the workplaces?

DANIEL HUNTER: Icare, I've only had one board meeting, so I'm just getting my head around that stuff. The preventative programs that we run are mainly training prevention-type programs—how to have an appropriate performance management conversation, things like that. We need to do more of that. It's a bit like the health system in general: The more effort you put into prevention and up-front, the more dividends it pays at the backend and you avoid these situations. I think that's one thing. The other one is having a very quick mechanism to solve these sorts of disputes, or bullying-harassment claims, in a fast and efficient way so people can stay in the workplace. Our ultimate goal here is not to deny people claims that they're due; it's to keep people at work and keep businesses humming. Do you have anything to add to that?

SAM MORETON: Yes. Chair, in a knowledge-based workforce, in particular, these are key issues for employers and particularly challenging for the smaller end of employers. You asked about what we do at Business NSW. It's a matter of record that we work with a number of providers, in particular EML, on better ways to get injured workers back to work. The general principles there are really around, as has been said by both sides today—well, not sides, unions and employers—that work improves health and recovery, that delays of returning to work can worsen mental health. We know that early return to work improves outcomes—depending on, obviously, the environment in particular which you're in—and that good work is better than no work.

These are well-known principles in the space that we're talking about. These are the general principles we work towards with practical programs on how to—we want to avoid these injuries in the first place. It's not just about large corporations. It's also about the vast majority of firms in this State who are SMEs, who are often family businesses where the person running the business is also effectively labour in the business and working in the business. The more we can get from the broad principles down to the practical day-to-day support for owners and managers of enterprises across New South Wales, that's where we seek to go, and to avoid people being off on psychological injury when they could be better cared for or better looked after through the reforms that are proposed.

Ms ABIGAIL BOYD: Thank you both for coming along today. I just want to pick up on that comment about small business and the submission we've received from COSBOA. We've also received a submission from the NSW Self Insurers Association. Both of them talk about the increased costs that some of these reforms would have. To what extent are you here representing the whole of business as opposed to the larger businesses that have the HR function that maybe can afford to go through this system a bit easier?

DANIEL HUNTER: We're a very broad church at Business NSW. We have 50,000 members that we represent across the State, from microbusinesses and one-person businesses right up to larger businesses here in the CBD. We run under our brand Business Sydney, Business Western Sydney, Business Hunter and Business Illawarra. They represent medium to larger businesses, and then we have grassroots membership as well. We represent all regions. We have regional offices right across New South Wales.

Ms ABIGAIL BOYD: So in forming your opinion on this set of proposed reforms, did you consult with small business, the self-insurers, all the rest of them? What was the process then within Business NSW?

DANIEL HUNTER: We consult mainly via a business conditions survey and by talking to our members. We run around 300 events a year, where we engage with our members. We run business condition surveys quarterly, where we ask our members what they think of particular workers compensations. Last week, for example, we ran a survey where 90 per cent of businesses told us that it needed urgent reform. That is where we mainly get our information from.

SAM MORETON: To further answer that question, we've just kicked off an extensive three-year program. It's very much targeted at businesses that, like you said, don't necessarily have fully fledged legal or HR departments. We are kicking off that project—that's the EML project—to provide a kind of information loop and also practical workshops and information.

Ms ABIGAIL BOYD: There is widespread agreement across everyone who has made a submission that there are serious problems with the workers compensation system and that a lot of aspects of it are actually making workers sicker when they go through that process. The disagreement is around how we reform the system. Your

submission—and I apologise, we have only just received it—appears to be broadly in favour of the reforms. How did you get informed that this was something that would benefit most businesses?

DANIEL HUNTER: Again, I would go back to the detail part. We see that there are more benefits in this than downsides. We do see some downsides. We are concerned about the new IRC jurisdiction, as has been written up by others, and about the layering in of more red tape and cost. However, we do support a mechanism and a need to examine bullying and harassment disputes in the workplace outside of the workers compensation system. I would say that in that respect most business groups are driving at the cost associated with that new IRC jurisdiction. In that respect, we would need to see the detail of that. We have given feedback that we would like a system that is vast, where urgent claims can be expedited—that is to look after injured workers as well—and where there is an appeal mechanism. But we would need to see the detail on that before we can form a view. We do see some downsides and risks in what is proposed here.

Ms ABIGAIL BOYD: Have you done any independent modelling or seen any actual modelling to identify what the impact of these reforms would be on future premiums or are you relying very much on what is being said to you by the Government?

DANIEL HUNTER: We haven't seen modelling on it. We would like to see modelling.

Ms ABIGAIL BOYD: We all would.

DANIEL HUNTER: I think everyone would. Anecdotally, there is enough evidence on the reforms to show that they would put downward pressure on premiums.

Ms ABIGAIL BOYD: When you look at, for example, the Nominal Insurer statements that came out from icare just this week, they do talk about a small increase coming from psychological injuries for the Nominal Insurer. But they also talk about huge increases from things like inflation and wages increases. There is a much larger rise in dollar terms when it comes to physical injury claims. Are you convinced that the way to make the scheme more viable is to pick just one aspect of the system—psychological claims—and then say, "That's the one we're going to deal with and exclude"?

DANIEL HUNTER: I think that's a really good question. There is no silver bullet to solve this issue. In answer to your question, this is a step forward. But I think we would all agree that claims management needs to be continually looked at and be part of a continuous improvement program. But my point would be that you're not going to fix a funding ratio that is going backwards at more than 5 per cent per year by just addressing claims management and efficiency. At the moment, the settings of the system are such that you cannot get ahead.

Ms ABIGAIL BOYD: Given that these reforms could have significant unintended consequences that could lead to more people going without the help they need and a less productive workforce, and also could lead to significant increased costs for small businesses that far outweigh any premium gains, do you acknowledge that rushing this legislation through in the next month is perhaps not the best way forward?

DANIEL HUNTER: I think we need more detail. I'm not going to comment or put a time frame around it because, again, we need to take as long as we need to take to get this right. I don't think it would put increased costs on small business from what they're experiencing now. I think the overall outcome of these reforms will put overall downward pressure on costs for small and medium businesses. Again, I would go back to the urgency. We need to take the time that we need to get this right, but it needs to be done urgently. We can't be sitting here in 12 months with a scheme that has the same funding ratio. Every day that passes is a day that we need to recover. You cannot have funded liabilities at 75 per cent. The scheme also has to recover. If it was at 100 per cent and we had time then sure. But we simply don't have the time. The scheme needs to recover.

Ms ABIGAIL BOYD: I presume you have background knowledge in business and finance and other things—I have some background, but I am by no means an expert. I am looking at some reforms that have just come through in relation to the Australian Accounting Standards Board rule 17. I don't know if you are aware of the rule, but it talks about the valuation of premiums and liabilities within publicly run insurance and compensation schemes. Back in 2022—I am not sure if you were on the board of icare at that point?

DANIEL HUNTER: No, I've only just joined.

Ms ABIGAIL BOYD: Back in June 2022, the icare board made a submission to the Australian Accounting Standards Board that said that if the changes went through, which they will, from the beginning of the next financial year, it would result in a \$3.64 billion hit to both sides—the TMF and the Nominal Insurer. I think it was roughly half and half, from memory. They went on to say that obviously that \$3.64 billion could be used for essential services instead of complying with an accounting standard. Are you aware of what has happened to that accounting standard and is any of this accounting revaluation, in your view, leading to the supposed pressure on the scheme?

DANIEL HUNTER: I would next to take the accounting standard question on notice. I am an accountant but I don't really practice anymore, so I am not reading a lot of accounting standards at the moment. It will be around valuations of liabilities and the provision mechanisms around that. They can have an impact because those accounting standard changes need to be funded properly. I think that submission is probably accurate. What I know about publicly funded schemes—and again, in my former life, I worked in government—is that government spending is about choice. If you're having to top up a TMF scheme on a regular basis, you don't have that money to spend somewhere else. Knowing the current budget position for the State Government, there are some pretty hard decisions to be made. Anything that pushes up any sort of top up that the Treasurer needs to make is money that can't be spent elsewhere.

Ms ABIGAIL BOYD: If you are taking that question on notice, could you also come back with what the impact would be on the accounting standards and the treatment if the Government wholeheartedly supported and backed the scheme, compared to when it does not? I understand that there is a difference between States and Territories on the treatment under this standard based on how much of a guarantee the government is giving behind the scheme, just in light of the ultimatum the Treasurer gave this morning.

DANIEL HUNTER: We can have a look at that. I think the organisation—and I know you have them this afternoon—probably best placed to answer that and that has a deep expertise inicare themselves. They will have that expertise around those accounting standards and the actuarial assessments.

The Hon. MARK LATHAM: I am sorry I wasn't here for your opening statement due to a prior commitment. I just had one question in the galaxy of material, and this hefty bill we are analysing in just one day. Obviously, they're setting up a new jurisdiction through the industrial relations system via this gateway process. There seems to be also, in the material, an assumption if the gateway system makes a ruling against the business that you're guilty of having created this psychological injury, the business will now pay the compensation rather than the schemes. Is that your understanding? Or pay directly in a civil liability payout?

DANIEL HUNTER: I would need to see the detail on that.

SAM MORETON: We've engaged in good faith around things like public accountability for employers. I'm not sure that premise is one that we have gone into the details of.

The Hon. MARK LATHAM: What would your reaction be to that, that through your own insurance business would have to pay, rather than the schemes?

DANIEL HUNTER: We'd have to have a good look at the detail on that. That, in my mind, should become an insurable event, if that is the case, and go through the workers compensation system.

The Hon. MARK LATHAM: Will you take that on notice and provide any information?

SAM MORETON: Yes, I think we can. I mean, there's obviously a lot of interplay between employment law and the scheme as it stands at the moment.

Ms ABIGAIL BOYD: We talk about this having a disproportionate impact on women, but also the data shows that there is actually a far greater percentage of regional workers with psychological injuries than metropolitan. How do you think that sort of rate of injury, if left untreated, would then impact on regional businesses and the ability to get more employees in?

DANIEL HUNTER: I'm not sure of the gender weighting and the basis for that. I presume that's an industry analysis of some sort and female-dominated industries that have high psychological claims; I'm not sure. In terms of the regions, I think what would be driving that is access to specialists, to be honest. And again, knowing what I know about health systems, it's very challenging to find psychiatrists and allied health professionals once you get out of the metropolitan regions. I would say that is what is more driving that. That is of concern, because it impacts—when we talk about business, we can often sit here in a room like this in suits and ties and imagine we're talking about large, tall buildings with glass down the road. We're actually talking about, often, people's life work, multi-generational family businesses. They are businesses that support their community and employ people. I think we're all almost on the same team here when we talk about that. I think that the regions do need to be looked at and have the appropriate support in place to keep people in the workplace.

The Hon. BOB NANVA: Thank you, Mr Hunter and Mr Moreton, for your evidence this morning. I am going to take you to a quote from the last time this reform was pursued in a similar nature, with respect to the eligibility of the claims and the quantum of claims. It was Minister Dominello who said:

... we have a system now that is sustainable. You have to remember that we inherited a scheme that was fundamentally broken. It was \$4 billion in deficit. We were having suboptimal return to work rates. The premiums were going to go up by about 28 per cent. It was simply unsustainable.

Here we are seven years later, having the same debate and tackling the same nature of reform. What confidence do you have that, this time around, in tackling the eligibility of workers to make claims, and the quantum of those claims, we are going to finally resolve this issue without making more structural changes?

DANIEL HUNTER: I'm an optimist. I think it will be addressed, because I think there is broad agreement, in a room like this, that we have to do something. It might surprise you, but Business NSW do work in a tripartite way. We have ongoing conversations with business and unions, and we're on several tripartite committees. The best example of that which was mentioned is the board of icare, where myself and Business NSW now both occupy a seat on that. I think that is the way through this. The way through this is collaboration from both Government and Opposition and Independents and all parties in order to recognise the problem and make some changes. I think that is the job of good government, and I look forward to the outcome.

The Hon. BOB NANVA: I suppose I asked that question because the McDougall review into icare and the State Insurance and Care Governance Act stated:

... the principal risks to the financial stability of the NI as being, in decreasing order of significance:

- a) the amount of premiums that will be collected;
- b) the investment return on financial assets;
- c) claims costs (of both existing claims and future underwriting); and
- d) other expenses of the NI.

Noting that "claim costs" was further down, but descending order of financial significance. I suppose I am wondering, in terms of pursuing reform, wouldn't it be worthwhile looking at the impacts of self-insurance, the impacts of psychological claims, return to work rates, medical interventions and treatments and other costs—looking at those things and what impact they have on the capital adequacy of the fund before embarking on a reform of this nature?

DANIEL HUNTER: I think with some of the stats that we have got coming through at the moment on volume of claims and cost of claims, we can see quite plainly that there's a problem with the settings of the system, if you like. So, going back to my earlier comments, we could and should always look to improve claims management, how we handle that, and get return to work rates and all those sorts of things. Fundamentally, we have to stop what's happening upstream through prevention and through the right legislative settings. So we need to get that right. In answer to your question on the self-insurance, that's, I think, a matter that needs to be looked at, but I'm not convinced that is the answer, either. Because, again, you are forcing people down a certain path if you make changes to that system. We don't want to penalise anyone in current settings either, I don't think.

SAM MORETON: The quote from McDougall and the hierarchy of needs, if you like, in insurance, just a general observation that it's a pretty standard hierarchy of inputs for insurance categories, globally. I think often people underestimate the importance of the investment structures behind it for sustaining insurance. Then, of course, claims handling and so on is a key lever that people can actually pull.

The Hon. BOB NANVA: Before I hand over to my colleague, McDougall's report stated:

Changes to benefits should only be considered if they are seen to create perverse disincentives to recovery, or if, even if properly controlled, they are placing an unmanageable burden on the scheme.

We have received a number of submissions to suggest that we should perhaps look at reform to improving return to work rates, improving claims management, going through a first phase of reforms in that space before we pursue reforms for the eligibility of workers to seek claims. Do you agree with that assessment?

DANIEL HUNTER: I think you need to do both. I think it has gotten so dire that, unfortunately, benefits need to be looked at, and access to those. It happens fairly regularly in a workers compensation system that these things need to be relooked at and modernised. It's not just about costs; it's about human costs. We've got examples of individuals in their twenties that are never to work again because of psych injuries. That may or may not be legitimate, but when you have a lot of those coming through, that can't be good for society. It can't be good for the individual.

We've got examples here of people who are clearly—like one case, a worker was doing half the workload of others, a measurable workload. They got a performance management conversation and they put in a psych claim. They logged off and put in a psych claim for bullying and stress. That's cost half a million dollars so far. So I think access to claims has become too easy. It's become a soft entry point for workplace disputes, essentially, the workers compensation system, and it's not designed for that. It was originally designed for physical injuries. I think these things need to be revisited from time to time. Again, I think, with the numbers we see in front of us, the number of psych claims going up, the cost of those psych claims going up, the degradation of the scheme by the day, I think it's an "and", not an "or".

The Hon. ANTHONY D'ADAM: There's a quote in the icare submission. They say that:

Scheme sustainability requires incentives for employers that reflect risk ...

Do you agree with that proposition?

DANIEL HUNTER: I don't really follow the context of that, I've got to say. I haven't read the submission.

The Hon. ANTHONY D'ADAM: The proposition is that the scheme has to be structured in a way so that employers mitigate their risks.

DANIEL HUNTER: Yes.

The Hon. ANTHONY D'ADAM: That's the incentives.

DANIEL HUNTER: Yes.

The Hon. ANTHONY D'ADAM: And premiums are supposed to encompass the risk in the scheme. That's correct?

DANIEL HUNTER: Yes.

The Hon. ANTHONY D'ADAM: So irrespective of what happens, workers are going to continue to be injured, right?

DANIEL HUNTER: Yes.

The Hon. ANTHONY D'ADAM: Those injuries incur costs.

DANIEL HUNTER: Yes.

The Hon. ANTHONY D'ADAM: At the moment, those costs are being incurred through the scheme. Shouldn't employers pay for that risk? Those injuries are occurring through work. Isn't the responsibility ultimately for employers to bear that risk? Or do you think that employers should be able to shift that risk to other sectors of society?

DANIEL HUNTER: I think what we're seeing now—and I haven't heard anyone disagree with this—is that we are seeing a lot of illegitimate claims coming through that system, a system that is unsustainable. What's happening at the moment—and there are victims in this, right? So you're seeing sometimes societal issues, sometimes illegitimate claims going through the workers compensation system, and the cost of that getting passed back to businesses. That can put pressure on businesses, can send them bankrupt et cetera—all the things we've talked about. Ultimately, they pass on that cost as well.

So if we're wondering why we're going to be paying seven bucks for a cup of coffee in the next 18 months—I know that's a long bow to draw—these are the things that are adding to that. And there's other mechanisms in Australia, lots of good mechanisms, in the wonderful country we live in, to look after people, and to look after those societal issues that are happening, around psych and things like that, and mental health. Those are real, I don't debate that they are, but I don't know that the burden for that should be going through a workers compensation system.

The Hon. ANTHONY D'ADAM: I'll give you an example. So the proposition is to effectively eliminate occupational stress as a compensable injury. Doesn't that create a perverse incentive? Effectively, employers can then ignore the factors that are contributing to occupational stress. And, obviously, that cost is then borne by society. If those workers are injured as a consequence of that, employers aren't incentivised to address occupational stress, then ultimately that's a cost shift to somewhere else. The business really should be paying.

DANIEL HUNTER: I don't quite agree with the logic, because I don't think any business or business owner wants to put stress on their employees. I think there's a natural stress in life that we all have—I'm sure everyone in this room has pretty stressful days—but I think the premise that businesses are going to use this to put more stress on their employees is wrong. We have one of the lowest unemployment rates in history.

The Hon. ANTHONY D'ADAM: That's not exactly what I'm saying. I'm saying that currently, because occupational stress can give rise to a workers compensation claim, businesses are incentivised to avoid those kinds of claims by addressing the hazards in the workplace that are causing the injuries. If you take that compensable incentive out, then they'll perhaps have less of an incentive to address those drivers.

DANIEL HUNTER: My point would be that they are still incentivised to provide a safe and happy workplace and a good workplace, for so many other reasons. If you look at the best-performing businesses, they do the right thing because it's good for business. They don't do it because they want to avoid workers compensation bills.

The Hon. ANTHONY D'ADAM: One of the major issues in terms of the cost to the scheme around psychological injuries is weekly benefits and the poor return to work rates for psych injuries. What do you say we can do in the private sector to improve those return to work rates?

SAM MORETON: I just have a point of clarification, Chair. It is generally a good discussion that you're raising, but poorly managing or not managing workplace stress is still something that has to be dealt with under WHS law.

DANIEL HUNTER: It's an offence. It's still a WHS offence.

The Hon. ANTHONY D'ADAM: But the prosecution, the enforcement regime is equipped to actually enforce that across systems—

SAM MORETON: Sorry to jump in. In the context of the draft exposure bill before us today—I'm not sure if you're heading into the discussion of what we do with 11A, what we might call 11B if we had a chance to redraft. The intent, broadly speaking—and we've had broad discussions—is to maintain protections for workers but to shift, as people have said previously, the emphasis towards prevention. So it's not an either/or in quite the way it's just been described. There is more nuance there. Yes, there will need to be very clear definitional discussions. I think from observing the Committee's hearing earlier today, people are even asking questions about the very first definitions in 8A, so these are legitimate questions and discussions to be had. We'd certainly like to work through those details with our own best take on how to prevent these issues in the first place. We're now getting into stress as just being in life. Obviously, if it's not managed properly in the workplace, particularly in a knowledge-based workplace, then these are genuine issues.

The Hon. ANTHONY D'ADAM: Can I just clarify, did you want to take that second question of mine, about return to work—

DANIEL HUNTER: I can take it now. So the question is around how to improve return to work rates?

The Hon. ANTHONY D'ADAM: For psych injuries in the private system, yes.

DANIEL HUNTER: So return to work rates on psych injuries are really challenging, because it's hard to see a medical professional in the required time frame. It's hard to get a diagnosis. And psychological injuries are much harder to see than a physical injury, for example. So I think that the return to work needs probably focused programs, like they're doing in claims management. As I've continually said, claims management for the psych claims needs to be continually improved and continually looked at to help that return to work, yes.

SAM MORETON: The same issue phrased another way is "time away from work", which is just a huge concern and hugely costly to employers, particularly in smaller firms. So, yes, it is definitely an issue of key concern—time away from work.

The CHAIR: I'm sure if we had time, there would be many more questions today. Your expertise is greatly appreciated. Mr Hunter and Mr Moreton, thank you so much for coming along. I think there may have been some questions on notice, I'm not sure how many, but the Committee secretariat will liaise with you about what is a more rapid return than normally with respect to those.

(The witnesses withdrew.)

Ms ANDRÉE WHEELER, Executive Director, State Insurance Schemes, NSW Treasury, affirmed and examined

Ms SONYA CAMPBELL, Deputy Secretary, Commercial, NSW Treasury, sworn and examined

Mr DAI LIU, General Manager, Actuarial Services, icare, affirmed and examined

Mr TONY WESSLING, Group Executive, Workers Compensation, icare, affirmed and examined

The CHAIR: Welcome to you all, and good afternoon. I thank you all for coming along this afternoon and making yourselves available to provide evidence to this important inquiry. We're grateful for the receipt of the submission that stands in the name of Insurance and Care NSW, icare, which is submission No. 36 to this inquiry. It's been processed and uploaded onto the inquiry website, and it is considered evidence to this inquiry. The opportunity that is provided this morning is for members across the Opposition, Government and the crossbench to ask you questions in regard to this matter before the Committee and its terms of reference. You can take your submission as read by all Committee members. How many opening statements are there—is it just the one?

SONYA CAMPBELL: And Treasury as well.

The CHAIR: I don't know how long they are. I invite you both to keep it nice and tight. Obviously, I'm not forcing you to do this, but please keep it nice and tight so we can have sufficient time for Committee members to ask you questions.

TONY WESSLING: Good afternoon to the Committee. Thank you for the opportunity to contribute to the Committee's proceedings today. My name is Tony Wessling, and I'm privileged to lead the workers compensation team at icare. Icare's role is to administer the workers compensation scheme to the legislation that is in place. We do that alongside policymakers and regulators, including the likes of SIRA. I lead a team that are on the front line of serving the injured workers and employers who rely on the schemes we operate. Like my team at icare, I joined icare to fulfil the purpose of supporting injured workers to return to health and work. We all have a genuine commitment and passion to prevent injuries and support workers and employers in the recovery process when an injury occurs. Icare has been in the spotlight over recent years. It's clear that we don't always get things right, but I can assure you that is our goal.

As icare has expressed in the submission that you have, the workers compensation system, as it was first introduced a hundred years ago, was designed to support people with work-related injuries, at that time predominantly resulting from manual labour. The establishment of workers comp in the early 1900s made insurance compulsory for all employers. It widened the definition of worker, increased benefits, set premium rates and legislated a more secure way of life for those unfortunately incapacitated due to work. The workers comp system has been periodically reformed to respond to changing workplace risk and practices. We've seen many iterations of the legislation since that time, emphasising prevention of accidents, rehabilitation of workers and fair compensation. The legislative framework that's currently in place and our operations need to reflect the current nature of work and workplace injuries. We know that we need to further modernise ourselves.

For both psychological and physical injuries, a greater proportion of injured workers are now being assessed with higher whole-person impairments, and the number of psychological injuries does continue to increase. These factors are greatly impacting the scheme we operate within. That includes the increasing cost of injuries, the poorer return to work outcomes that we're seeing and the greater demands on our frontline claims managers. Ultimately, all of this is impacting the scheme's financial sustainability for the generations to come. As evidence of this, the funding ratio for the NI has been declining over several years. As you heard this morning, at December of last year, the Nominal Insurer had a funding ratio of 82 per cent.

Increases in psych injury are not unique to New South Wales, nor isolated to a particular injury. Psychological claims are complex, which can result in people needing longer periods off work and higher cost per claim, covering both the medical requirements as well as weekly benefits. On top of this, we know there are increasing challenges in finding early treatment options with mental health service providers. We all agree that returning to work soon as safely as possible is good for health and wellbeing, and research has consistently found a correlation between early return to work and improved health outcomes. Early return to work also improves the opportunity for financial independence and social inclusion. The challenges of returning to work can be even greater for those who have experienced psychological injuries and for those unable to return to their pre-injury role.

Icare would agree that the issues associated with increasing psychological claims numbers will persist in the absence of both reforms and actions to modernise the scheme. The changed work environment of increasingly

demanding work and declining community mental health is going to require employers to make similar mindset shifts, similar to what occurred in the 1970s and 1980s in relation to reducing physical injuries in the workplace. These issues require a holistic response. Icare continues to play our role, working with a range of stakeholders across government and the private sector. In response to recommendations from this Committee and other inquiries, icare is continuing to work on improvements to the claims model to emphasise specialised psychological claims management and enhanced case manager capability, and raise professional standards. We're focused on improving return to work and other claims outcomes.

We are also reviewing pathways to expand suitable work opportunities across government agencies and are looking at opportunities for injury prevention through the reduction of workplace risk and staff engagement as part of our work with the New South Wales Government's whole-of-government return to work strategy. Despite all the extensive work underway today, the issues associated with increasing psychological claim numbers will persist in the absence of both further conservative management action and reform. Icare stands ready to help. A sustainable workers comp scheme is one that is affordable, focuses on prevention, provides best support for those injured at work and enables support to those that may be injured well into the future. Today we will do our best to provide full responses to help inform your work and to respond to any further questions you have.

SONYA CAMPBELL: Chair and Committee members, thank you for the opportunity to contribute to the Committee's inquiry today. I'm going to provide an overview and some context of Treasury's evolving role in managing the State's workers compensation schemes. As a system steward of the State's insurance scheme, Treasury has an eye to maintaining community confidence in the Nominal Insurer to protect workers now and in the future, reducing disruption to essential services and businesses—our workforce is the State's most valuable asset—and, most importantly, alleviating the personal costs to a worker when they suffer an injury. The financial consequences of not properly achieving these outcomes have been summarised by Mr Wessling.

From the outset, the Government has sought to lift return to work outcomes and put the system on notice that it would be verifying premiums were being spent wisely. Treasury has been on a journey to identify and understand the underlying risks in workers compensation schemes and the challenges of how to pivot a large, complex system to effectively respond to new and emerging risks. In July 2023, we met with this Standing Committee ahead of the finalisation of the Committee's 2023 review of the workers compensation scheme. At that time, our focus was on governance arrangements in place for the Nominal Insurer and the Treasury Managed Fund workers compensation schemes.

This was in step with the Government's immediate priorities early on in its term, which were to establish statutory objectives for icare, change the composition of the icare board to include employer and employee representation, establish a whole-of-government plan to improve return to work outcomes for New South Wales public sector workers and to scrutinise icare's operational expenditure and performance. Through developing the whole-of-government return to work strategy, many stakeholders were consulted, including workers with lived experience of workplace injury, return to work officers across government, claims managers, agency representatives and public sector unions. A recurring theme was the importance of return to work in promoting a worker's recovery. Workers who kept in touch and connected to work recovered quicker and experienced improved health outcomes in the longer term. This operational experience is consistent with research published by experts.

Return to work rates are lower amongst those with psychological injury claims. Return to work rates for psychological injury are 50 per cent within a year compared to physical injury, which is 95 per cent who return to work within a year. This suggests we are not as effective as we could be in providing return to work pathways for workers with psychological injury claims. Other emerging themes include how the complexity of existing scheme settings can impede return to work. We've now completed our operational expenditure review of icare and that review highlighted that operational efficiency and non-legislative reforms to support workers to rehabilitate and return to work are likely insufficient to address the financial challenges of the schemes.

There is an opportunity for a sharper focus on the growth in the State's insurance liabilities and financial sustainability and the performance of the Nominal Insurer. The complexity of our workers compensation system and the difficulty of measuring and holding the system accountable for outcomes effecting change across the entire system will require a sustained concerted effort across government. As this was all happening, the Committee's review of the workers compensation scheme and the Auditor-General's report into the workers compensation claims management were released. The reports made findings for stronger New South Wales Government involvement and Treasury involvement to improve workers compensation scheme outcomes. The Government committed to action in its formal response to the Committee's report, which was tabled in March 2024.

The Committee's review has deeply influenced how we in Treasury view the financial sustainability challenges of our workers compensation schemes. In particular, workers compensation has difficulty helping those with psychological injuries. The legislative framework treats psychological injury like a physical injury and the financially sustainable workers compensation system is focused on workers' recovery and safe return to work. We're hesitant to tell any person who is injured that the system has no expectation that they will recover. We acknowledge there is a small cohort of workers who are profoundly injured, such that they may struggle to socially connect with and participate in their community.

The Government's proposed reforms preserve protections for those workers. All other workers should be encouraged and supported to recover and return to work. At a system level, workers and employers need greater certainty on their obligations and what is reasonable behaviour. We need to set the right incentives for the system to promote the right behaviours, recovery and connection to work. A key part in providing early intervention that gives people the right help at the right time to shift the trajectory of their recovery. The best outcome for workers does not equate to more time on the scheme, but a safe and supported exit.

Reform is urgently needed to stabilise the scheme costs. At the June 2024 valuation, the Nominal Insurer only had 85¢ to every dollar it expected to pay in compensation and, as you've heard, at December the scheme now holds 82¢ in assets for every dollar. Premiums follow scheme costs. If growth in scheme costs does not stabilise, employing people in New South Wales will increasingly become less affordable. Getting people back to work faster after an injury is not just about premiums and the sustainability of the schemes, but about the impact on real people. Positioning the State's workplace systems to prevent and better respond to new and emerging risks of modern ways of working requires a multi-pronged approach. The draft bill under consideration by this Committee is part of a broader package of interventions to shift workplace health and safety laws and workers compensation law towards prevention against psychosocial harm.

The Hon. DAMIEN TUDEHOPE: Ms Campbell, thank you for being here. You might be able to answer this question, or alternatively Ms Wheeler might be able to answer it. I take it an amount of modelling has been done in relation to the proposal which we are now considering?

SONYA CAMPBELL: That's correct.

The Hon. DAMIEN TUDEHOPE: If in fact the claims model of 30 per cent whole of body impairment was imposed, how many claims does that modelling show for psychological injury would be maintainable?

SONYA CAMPBELL: I might refer that question to either Ms Wheeler or Mr Liu.

DAI LIU: Based on the current data we have we believe it is 27 injured workers who will make it past the WPI threshold.

The Hon. DAMIEN TUDEHOPE: Did you say 70?

DAI LIU: It's 27.

The Hon. DAMIEN TUDEHOPE: You agree with that, do you, Ms Campbell?

SONYA CAMPBELL: Yes, that's the modelling that we have been provided from icare.

The Hon. DAMIEN TUDEHOPE: How many claims are there at the moment?

DAI LIU: In terms of claims, there are about 350 odd claims—psychological claims—that get a WPI threshold of 21-plus. For the team of non-emergency services, there are around—these are all per annum numbers—200 psychological claims per annum that get WPI assessments about 21 and above.

The Hon. DAMIEN TUDEHOPE: So all those people who would currently have claims would not be covered by this new 30 per cent model, except for the 27?

DAI LIU: It's not that straightforward, I must admit. Part of it is there will be behavioural changes as the bars change. There will be behavioural changes in that, so these are the data I can provide that we know of. How it will play out—there's a bit more complexity to that, especially around the behavioural changes.

The Hon. DAMIEN TUDEHOPE: But the modelling must indicate to you the reduction in claims on the scheme if this was put in place?

DAI LIU: It does.

The Hon. DAMIEN TUDEHOPE: You say that will be reduced by what percentage?

DAI LIU: Those are the numbers I've just talked through. I've got the numbers. I don't have the percentages. I can calculate them, if you'd like.

SONYA CAMPBELL: Mr Tudehope, I believe the Treasurer agreed this morning that we would provide modelling to this Committee and I think that's being worked on currently to provide—

The Hon. MARK LATHAM: Costings.

SONYA CAMPBELL: Yes, the costings.

The Hon. MARK LATHAM: He had them in front of him, but you're working on them separately.

SONYA CAMPBELL: No, the costings—

The Hon. DAMIEN TUDEHOPE: It's the sanitised model we're going to get, is it?

SONYA CAMPBELL: That's not what I've said.

The CHAIR: Order! I think we should deal with one witness at a time, firstly.

The Hon. DAMIEN TUDEHOPE: Yes, thank you.

The CHAIR: Secondly, there is an opportunity to put the question in very clear terms and an answer is to be returned. That's the way we do it and that's the way we've always done it.

The Hon. DAMIEN TUDEHOPE: Has the modelling been done in relation to premiums—premium reductions or premium increases if, in fact, this model was put in place?

TONY WESSLING: Maybe I can take that question, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: For the NI, I'm obviously talking about.

TONY WESSLING: For the NI, as you are aware we go through a premium review process every year. The challenge we have at the moment is that our current premiums are below the break-even rate for the scheme. At this stage, our view is that—and there's a deficit that needs to be recouped, so we would go through a process to look at the needs of the scheme, both in terms of operational break-even rate as well as the deficit that exists. That work would have to happen through our regular annual premium setting process. What these reforms would help contribute to is further deterioration in that operational break-even premium rate.

The Hon. DAMIEN TUDEHOPE: So there may be no reduction in premiums. Is that what you're telling me?

TONY WESSLING: We'd have to go through a process for it.

The Hon. DAMIEN TUDEHOPE: That modelling has not been done?

TONY WESSLING: Our current premiums are set upon a journey over the next several years to close that deficit. At the moment, with the funding ratio of 82 per cent, our target funding ratio sits at 130 per cent. We will need to charge premiums to get back to that target ratio. These reforms help to address the ongoing deterioration of that operational break-even premium, but it will still take many years to close the deficit that exists.

The Hon. DAMIEN TUDEHOPE: If we adopted a more preventive approach in relation to claims, we could, in fact, achieve the same result, could we not?

TONY WESSLING: If you look at what's proposed in the exposure draft, it talks a lot to modernising the scheme, both in terms of the benefits but also greater prevention activities. So, yes, you're right.

The Hon. DAMIEN TUDEHOPE: What we've heard is that, in fact, at 30 per cent, WPI is going to reduce the number of psychological claims down to 27.

TONY WESSLING: I think the modelling that Mr Liu has done in that regard is in relation to looking at existing whole person impairment thresholds. The behaviours will change as the scheme changes. In the exposure draft, there are a number of different measures that will change the number of injuries through greater prevention activities that work through the system.

The Hon. DAMIEN TUDEHOPE: What behavioural changes do you anticipate?

TONY WESSLING: From prior experience, we've seen that the way the scheme is set up will change the behaviour of the scheme as it progresses.

The Hon. DAMIEN TUDEHOPE: But what does that mean?

TONY WESSLING: Since the reforms were introduced in 2012, we've seen the number of claims reaching higher whole person impairments at much greater rates than when the legislation was introduced back in 2012, by example.

DAI LIU: Can I clarify an earlier answer, please? The numbers given are for ongoing benefits past the entitlement period, not the total number of psychological injury claim numbers. The other thing to note in terms of behavioural impacts around thresholds is we often observe that wherever you set thresholds, you have a bulk of injured workers who just pass the threshold when that is reasonable, because once past that point, your entitlements aren't the same. If you set new thresholds, we think some of these assessments and how they turn out would be different because, all of a sudden, the bar is higher. People would do more to obtain the higher WPI assessments.

The Hon. DAMIEN TUDEHOPE: Ms Campbell, the Treasurer threatened this morning to make no further contributions to the TMF. What would be the impact of that?

SONYA CAMPBELL: Mr Tudehope, as you know, the NAHLP policy is no longer in place—

The Hon. DAMIEN TUDEHOPE: Yes, I was going to come to that.

SONYA CAMPBELL: —and the new contributions and transfer framework is operating. We are continuing to monitor the liability valuations for the TMF, together with investment returns, to provide advice around whether contributions would be required. But as the Treasurer said this morning, he is not proposing to make a cash injection into the TMF until the reforms are considered before Parliament.

The Hon. DAMIEN TUDEHOPE: What will be the impact on the TMF be if he in fact does that?

SONYA CAMPBELL: At the moment, Mr Tudehope, the ratio is in excess of 100 per cent, in terms of assets to liabilities. There are various factors that will influence that, and that would be a decision for the Treasurer, under the new framework, as to whether new contributions would be made.

The Hon. DAMIEN TUDEHOPE: But what's the impact of not making any further contributions?

SONYA CAMPBELL: At the moment, there is no impact because icare has sufficient assets to meet its liabilities under the ratio.

The Hon. DAMIEN TUDEHOPE: What you're saying is, then, that the threat this morning was an idle threat. Is that what you're telling me?

SONYA CAMPBELL: That's—

The CHAIR: Can I just intervene here. This is for the benefit of the witness. The language being used is "threat", and that's okay. I understand the language you're using. But I don't think it's fair on the witnesses, who are not politicians, to be led into answers where the word "threat" is placed. The Treasurer was here today. He explained and announced the position. I simply make the point that the witness just ought not be presumed to have accepted that word you're using. That's the only point I make.

SONYA CAMPBELL: Thank you, Chair. Obviously I can't speak to opinions of the Treasurer, Mr Tudehope. But the position I'm stating is around the short term, and what we're looking at—or what they're talking about as part of the reforms is the long-term sustainability.

The Hon. DAMIEN TUDEHOPE: But the TMF is a self-insurer, is it not?

SONYA CAMPBELL: Yes.

The Hon. DAMIEN TUDEHOPE: So it insures government workplaces?

SONYA CAMPBELL: Correct.

The Hon. DAMIEN TUDEHOPE: In those circumstances, there would be no reduction in the ability to make claims on the TMF.

SONYA CAMPBELL: I'm not sure I understand the question that you're asking.

The Hon. DAMIEN TUDEHOPE: The current claims model remains in place, and you'd be able to continue to make claims on the TMF, and the self-insurer would be responsible for those claims, would they not?

SONYA CAMPBELL: Correct.

The Hon. DAMIEN TUDEHOPE: So the decision—if that was the Treasurer's decision—not to make the payment in accordance with the current guidelines relating to the net asset holding policy, in effect, would not have any impact in relation to the ability to make claims.

SONYA CAMPBELL: Yes, I think that's correct, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: And the liability of the government for those claims would remain the same?

SONYA CAMPBELL: That's correct.

The Hon. DAMIEN TUDEHOPE: It would just be a different manner in which you enter that potential liability on your balance sheet.

SONYA CAMPBELL: Well, the liability valuations are reflected in the budget and the balance sheet on an annual basis.

The Hon. DAMIEN TUDEHOPE: Yes, but the scheme at the moment requires the Government to, in fact, transfer money to the TMF to make sure that it reaches a particular percentage relating to the net asset holding policy, does it not?

SONYA CAMPBELL: No, the net asset holding policy no longer applies. The contribution and transfer framework has taken its place, and there are various principles in there that will determine whether a contribution should be made in the context of the whole one fund.

The Hon. DAMIEN TUDEHOPE: So what you have indicated is that there is a new contribution and transfer policy?

SONYA CAMPBELL: Correct.

The Hon. DAMIEN TUDEHOPE: Is that in a document?

SONYA CAMPBELL: It is in a document.

The Hon. DAMIEN TUDEHOPE: Can we have a copy of that document?

SONYA CAMPBELL: It's not published. It's a Treasury internal document. I'd have take that on notice and come back to you, Mr Tudehope.

The Hon. MARK LATHAM: Thank you to the witnesses. Just following up there, Ms Campbell, what would be the medium-term impact if the Treasurer's quasi threat was carried out?

SONYA CAMPBELL: I can't speak for the Treasurer, Mr Latham.

The CHAIR: I think that's slightly cavilling with what I said earlier.

The Hon. MARK LATHAM: We can use plain English here, can't we? What are we, the PC society?

SONYA CAMPBELL: Our job in Treasury is to provide advice. We will monitor the asset to liability ratios, and the Treasurer will make decisions on whether contributions would be made.

The Hon. MARK LATHAM: But what's your projected impact of no further contributions to the top-ups?

SONYA CAMPBELL: I can't speak to that.

The Hon. MARK LATHAM: Why can't you speak to that?

SONYA CAMPBELL: There are a range of varying factors, Mr Latham, that would make that determination.

The Hon. MARK LATHAM: Has Treasury got any forecasts that it has provided to the Treasurer?

SONYA CAMPBELL: We receive the liability valuations from icare. In relation to the TMF, we also monitor the investment returns, and there's a combination of those that determines the position of the TMF at any particular point in time.

The Hon. MARK LATHAM: What do those forecasts show three years from now if there's no top-up?

SONYA CAMPBELL: I don't have those numbers, Mr Latham.

The Hon. MARK LATHAM: Can you take that on notice?

SONYA CAMPBELL: I can, yes.

The Hon. MARK LATHAM: The Treasurer painted in his evidence quite a dire picture of the position of the TMF. He said that there's been a \$2.6 billion writedown to be reported in the next State budget, which is next month. Sans reform, that is 2.6 down, and that's just six months after the last writedown. Is that a correct assessment of the writedowns?

SONYA CAMPBELL: The budget will be released next month and those numbers I don't think have been finalised, but that's the advice that has been given to the Treasurer, based off the valuations from icare.

The Hon. MARK LATHAM: Okay. They're your numbers that he has repeated today about the valuation, the writedown.

SONYA CAMPBELL: Based off the valuations from icare.

The Hon. MARK LATHAM: Right, and is it six months after the last writedown?

SONYA CAMPBELL: Well, icare undertake their liability valuations on a six-monthly basis.

The Hon. MARK LATHAM: Mr Liu, is that right?

DAI LIU: That is correct.

The Hon. MARK LATHAM: What was the previous writedown amount six months ago? You can take that on notice.

DAI LIU: Can I please take that on notice?

The Hon. MARK LATHAM: Maybe give us the writedowns for the last couple of years, and any projections you've got for the future forecast.

SONYA CAMPBELL: We'll have that information, Mr Latham. Just give us a moment.

The Hon. MARK LATHAM: Just take it on notice. We're not going to solve the problems of the world here today, or this bill. If you can just provide it at your convenience, that would be helpful. Ms Campbell, what are the origins of this exposure draft? To the best of your knowledge, where did the process start and what was the input of Treasury?

SONYA CAMPBELL: I might actually hand to my colleague Ms Wheeler if you'd like to answer that.

The Hon. MARK LATHAM: Ms Wheeler, please.

ANDRÉE WHEELER: Certainly, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: No, I'm better looking than him, come on.

The Hon. MARK LATHAM: Don't tell me that.

ANDRÉE WHEELER: Sorry, Mr Latham. My apologies.

The Hon. MARK LATHAM: I've got a psychological injury now. I'm buggered.

ANDRÉE WHEELER: The exposure draft is the result of a series of advice that has been provided to government with Treasury working in collaboration with the Department of Customer Service, SIRA and icare and a taskforce that was formed from 10 March this year.

The Hon. MARK LATHAM: What are the origins of the taskforce that was to deal with this looming financial crisis?

ANDRÉE WHEELER: There has been proceeding advice provided to government both from ourselves as well as from icare and SIRA in relation to the financial positions of each of the schemes and the growing trends in relation to psychological injury.

The Hon. MARK LATHAM: Could you take on notice the membership of the taskforce for the benefit of the Committee, please?

ANDRÉE WHEELER: Certainly.

The Hon. MARK LATHAM: Who set up the taskforce?

SONYA CAMPBELL: I believe I did, Mr Latham, at the request of the Treasurer.

The Hon. MARK LATHAM: At the request of the Treasurer?

SONYA CAMPBELL: At the request of the Treasurer.

The Hon. MARK LATHAM: What was the nature of that request?

SONYA CAMPBELL: I think there are various different agencies and Ministers across government that have responsibility for aspects of the scheme. The taskforce was a request to co-locate everybody in one place so that we could have a focus on developing the options and advice to government that have informed the bill.

The Hon. MARK LATHAM: Right. Mr Liu or Ms Wessling, is the first you heard of the development of this legislation when they put you on the taskforce?

TONY WESSLING: Since this Government came to power, we've had ongoing, frequent discussions with Ministers' offices, with SIRA, with Treasury around the challenges that we are facing. We've been working with those same parties around areas like whole-of-government return to work. We've been discussing for over two years the need for some sort of reform, so it's been a very long, ongoing discussion.

The Hon. MARK LATHAM: Right, so ongoing and as soon as the Treasurer came into office, knowing how much he's loved and taken an interest in icare over the years, you briefed him on the financial difficulty and the needs for these kinds of reforms.

TONY WESSLING: We've been providing regular briefings to the Minister's office, yes.

The Hon. MARK LATHAM: Did you suggest at any time in this process the type of reforms that are in the bill?

TONY WESSLING: That's not a role for icare. We've been providing advice on the experience we're seeing in the scheme.

The Hon. MARK LATHAM: Just on those, to the Treasury representatives, have you been involved in the drafting of the bill as such? The different provisions. Section 8E is particularly contentious, meaning a "relevant event". Some of these things contradict each other or are open-ended defined. Who actually put these provisions together?

SONYA CAMPBELL: I would say it's a combination of the taskforce—

The Hon. MARK LATHAM: The taskforce did?

SONYA CAMPBELL: The Department of Customer Service led on the drafting instructions, but the taskforce together debated different aspects of the policy positions to give advice to government and, ultimately, government direction has informed the bill.

Ms ABIGAIL BOYD: When you say you have done modelling to work out the impact of this, have you done modelling based on every single aspect of this discussion paper that's been given to us today, or just on the obvious things like the WPI and those things? As in, have you looked and gone each claim, if it was to jump through all the hoops, how many would be excluded?

DAI LIU: I should probably explain the actual nature of actuarial work.

Ms ABIGAIL BOYD: Don't take very long, though, please.

DAI LIU: I will try to be short.

The CHAIR: You can answer the question as required, okay.

DAI LIU: We look at how the claims will go through the various entitlements and thresholds and barriers. We then actually look at it at a portfolio level. It's not an assessment of every individual, but at a portfolio level cut up to the dimensions required depending on what we're looking at. We provide a lot of actuarial advice to government regularly on things that impact the scheme.

Ms ABIGAIL BOYD: Apologies, if it's okay with you, if I could just interrupt you there because I have a very short period of time. If I could just ask instead, if I can go to Mr Wessling, the impact of AASB 17, which takes effect from the beginning of the next financial year—so in just a month and a bit. What is the impact on the bottom line for icare, and would that change if the Treasurer didn't put money in as he's threatening to do?

TONY WESSLING: Ms Boyd, I might ask Mr Liu to give you the proper answer to that.

DAI LIU: I'll be quick. The AASB 17 does not apply to the TMF. The TMF is a self-insurance scheme so that accounting standard does not apply. The accounting standard does apply for the Nominal Insurer as it issues insurance policies. It is a brand-new insurance reporting standard. There are two larger financial pieces. One is around the concept of risk adjustment.

Ms ABIGAIL BOYD: Sorry to interrupt again. In icare's submission in June 2022 in relation to the TMF, it talked about a \$3.68 billion hit to icare. Would the accounting treatment you're talking about where it's not applying apply if the Treasurer did not put in the money required to run the scheme?

DAI LIU: No, it won't apply. We've done more work since AASB 17 won't apply to the TMF.

Ms ABIGAIL BOYD: Can you provide on notice perhaps the analysis of how that works?

DAI LIU: Of course.

Ms ABIGAIL BOYD: Thank you. I just want to move on. Does icare still collect data on the number of injured workers who suicided as a result of section 39 and section 59A?

TONY WESSLING: Thank you for your question, Ms Boyd. At the last budget estimates you asked me that question. We had stopped reporting to SIRA through the midpoint of last year. We do continue to collect information on injured workers who self-harm and suicide, yes.

Ms ABIGAIL BOYD: I've spoken to a lot of people. My office comes into contact with a lot of injured workers. I have spoken now to multiple injured workers who have psychological injuries above the 20 per cent threshold who tell me that if they were to have been cut off at 2½ years, for instance, because they wouldn't have met this new threshold of 31 per cent, that would have been just at the point where they were particularly at risk of suicide, or that they would have been needing to sell their house, for example. Have you modelled the potential number of suicides that these reforms would likely result in?

TONY WESSLING: No, we haven't.

Ms ABIGAIL BOYD: Is that a concern for you?

TONY WESSLING: Clearly, we take self-harm and suicide very seriously. Over the last years we've set up a team to deal with that. We've set up programs and processes to help manage, with the introduction of section 39, the exit of injured workers off the scheme. That is very central to us. We, obviously, maintain the statistics around that. We have a team who is continuing to focus on ensuring the wellbeing of those injured workers.

Ms ABIGAIL BOYD: Given the evidence that the performance of the claims managers has been responsible for some of the return to work problems—I am talking about the inquiries we've had before where we have talked at length about the involvement of lawyers and people surveilling workers and all of these other issues that have led people to not only delay their payments and actually getting to the point of being given compensation, but then the high rates of when those claims actually make it through the system to have actually been found to be valid all along. What work has icare done to actually hold those claims managers to account for their involvement in stopping people getting better and getting back to work?

TONY WESSLING: Perhaps I will just outline that. Since I have been in this role, we have had a significant focus on lifting the empathy and the way in which claims managers work with injured workers. As you are aware, we have rolled out professional standards, which do deal with that as well. We've rolled out guidelines in areas around managing sensitive claims. In regards to claims service providers, our contract has a minimum standard of service. There are quality measures that we track. As you know, we've introduced our complaints process over the last few years. We have a standard complaints system and a standard way of tracking complaints and escalating complaints.

Ms ABIGAIL BOYD: I apologise for interrupting, but could you please take on notice the number of workers in the NI and workers in the TMF who have a WPI of more than 15 per cent, more than 20 per cent and more than 30 per cent? That would be very useful. Thank you.

The Hon. BOB NANVA: I want to follow up on one of Ms Boyd's questions from a little bit earlier about the projections for the number of workers who might be affected by the reforms. I will quote from a submission that the Committee received from Ms Roshana May. She states:

If the exempt workers are not affected by the Bill then the numbers of workers with psychological injury claims within the public sector (Government/TMF) to whom the bill is addressed is significantly reduced due to the fact that the largest number of psychological injury claims arise in 'Public Administration and Safety' ...

Do you agree with that observation?

TONY WESSLING: I haven't read the submission that you're referencing but my understanding of the exposure draft is that a lot of the psychological injury claims that we see in the TMF today—and a large part of that is the emergency services exempt portfolio—would not be subject to these reforms. So, yes.

The Hon. BOB NANVA: I might move on very briefly to the report of the Cumpston Sarjeant independent review of icare's financial sustainability, which was published a few years ago. It identified the principal risks to the financial sustainability of the Nominal Insurer as follows, in decreasing order of financial significance:

- (a) the amount of premiums that will be collected;
- (b) the investment return on financial assets;
- (c) claims costs ... and

(d) other expenses ...

Has there been an assessment of the deterioration made to the scheme that is attributable to each of those principal risks and the significant changes to them?

TONY WESSLING: I don't believe I can pull something for you right now on that over time. But I probably would add that of the four things that you just called out, premiums are obviously extremely important. We collect premiums to pay for claims for the lifetime of the claims. We have clearly been under pricing premiums over a long period of time. We are in the process of closing that. A large chunk of the deficit has been a result of the under collection of premiums against the break-even premium that I spoke about. The second one you mentioned is claims. Through the valuation, you can see the deterioration over time of claims, which, in large part, is to do with the volume of psychological claims and the number of claims reaching higher whole person impairment thresholds.

There are many other drivers, but they are certainly two big drivers. That has been a very big driver of the funding ratio decline over time. The third is investments. Generally, our investments portfolio has worked quite well. There is a volatility at the moment, but that has generally met the targets that we set. The forth one, the operational expenses, makes up a very small proportion of the costs of the scheme. It is really the first two—the premium deficit and the claims experience over time.

The Hon. BOB NANVA: Do you agree with the conclusion from that report that the principal risks to the financial stability of the Nominal Insurer are those risks, in that order?

TONY WESSLING: Yes.

The Hon. BOB NANVA: Has an assessment been made with respect to the deterioration of the scheme with respect to the rising number of self-insurers and the reduced return to work rates over time?

TONY WESSLING: That would be a matter for SIRA, which regulates the scheme at that level. You would probably see in the Cumpston Sarjeant report a reference to the nature of that risk to the Nominal Insurer. I think that's a question for SIRA.

The Hon. BOB NANVA: I will turn to "other expenses". If my numbers are right, approximately 67 per cent of benefits paid under workers compensation are paid directly to workers and approximately 30 per cent are direct benefits paid to rehabilitation services and medical specialists. If that is the case, can we be sure that we are getting value for money for the 30-odd per cent that is spent on rehabilitation and medical expenses, particularly with medical fees?

TONY WESSLING: That's something that we have work to do on over time to make sure that we do get the best outcomes for the services that are provided to injured workers, whether they are medical services or rehabilitation services.

The Hon. BOB NANVA: It's not a insignificant amount of money and it's not an insignificant impost on the scheme. Obviously, one way of ensuring the sustainability and solvency of the scheme is through access to benefits and the quantum of benefits, but, surely, a significant 30 per cent impost on the scheme warrants a fair bit of attention, doesn't it?

TONY WESSLING: It does. Through our day-to-day management action, we are looking at the effectiveness of that spend. We are looking at reducing leakage. You have heard about fraud. We are looking at managing, where we can, the quality of the services for injured workers.

The Hon. BOB NANVA: Have the costs been tracked over time and benchmarked against other schemes in other jurisdictions?

TONY WESSLING: We certainly track all of those expenses over time. Maybe we can ask Mr Liu?

DAI LIU: One of the primary purposes of the workers compensation scheme is to support injured workers in their recovery to work. Medical treatments are a very key part of that.

The Hon. BOB NANVA: I suppose I am talking about the cost and the schedule fees of the medical treatments.

DAI LIU: I understand. I just want to say that a huge cut to medical treatments may look good but it could actually potentially increase the cost of the scheme.

The Hon. BOB NANVA: I am certainly not talking about a cut in medical treatments. I am talking specifically to the specific fees.

DAI LIU: Yes, the medical costs are tracked. In recent years, they have been reasonably stable. Quite a time period back, we had a period where medical costs increased quite significantly, but that has since stabilised for the last three years or so. We monitor it pretty much every quarter. In the most recent quarters there have been some increases in medical costs that we have seen. We are analysing that and trying to work out what is actually happening. We are providing feedback to the business and responding to that appropriately.

SONYA CAMPBELL: If I may add, SIRA has a regulatory function in respect of this. You may wish to ask those questions when they appear this afternoon.

The Hon. BOB NANVA: I may change tack very briefly before I pass to my colleague. In terms of return to work rates for non-physical injuries, there seems to be a significant differential between return to work rates for psychological injuries with the Nominal Insurer compared with self insurers. Do you have any observations on why there might be such a difference in the return to work rates? In the numbers I have for February 2025, at four weeks the return to work rate for the Nominal Insurer was 19 per cent, versus 33 per cent for self-insurers. At 26 weeks, it was 47 per cent versus 65 per cent. At 52 weeks, it was 57 per cent versus 68 per cent. Is there an obvious explanation for that?

TONY WESSLING: I might start and then Mr Liu might jump in as well. There are approximately 70 self-insurers. They tend to be the very large organisations, which have a greater scope for the provision of suitable duties to return injured workers to the workplace. For the Nominal Insurer, the vast majority of the employers are small employers. They're structurally quite different in terms of the opportunities to return to work. If you overlay that with psychological injuries, we have heard that the growth of psychological injuries has been around work conflict-type claims, and the larger organisations and corporations have a greater opportunity to move people around and find suitable duties than small businesses that might only have a handful of people working for them. That's the primary explanation for that quite substantial difference that you see. In the Nominal Insurer, we can see differences in return to work between our smallest businesses and largest businesses that reflect that, as well.

The Hon. BOB NANVA: Whatever the merits of the situation, doesn't that mere fact alone suggest that the rise of self-insurers and the inability of the Nominal Insurer to spread risk do have a substantial impact on the sustainability of the Nominal Insurer scheme?

TONY WESSLING: That would be a consideration for SIRA.

The Hon. ANTHONY D'ADAM: Can I just take you to your submission on page 6. There is a graph there of the TMF claims indicating an increase from 18 per cent in 2022-23 to 21 per cent, and then it gives the raw numbers. Of that 4,555 in 2023-24, how many of those would be emergency services employees that are not covered by these reforms?

TONY WESSLING: Mr D'Adam, we'll just see if we've got that.

DAI LIU: We don't readily have it. We might just take that on notice. It is roughly half—

The Hon. ANTHONY D'ADAM: Roughly half?

DAI LIU: —but maybe we'll come back with the actual numbers.

The Hon. ANTHONY D'ADAM: So we are talking about maybe in the order of 150 more claims than the previous, in terms of the ones that would be affected by these reforms. Is that correct?

TONY WESSLING: Can you outline your maths again for me?

The Hon. ANTHONY D'ADAM: Well, because you were saying that half the difference between 443 to 550—sorry, 250 of those would be claims that are covered by the reform proposal.

TONY WESSLING: Perhaps we could come back to you on notice to answer your question.

The Hon. ANTHONY D'ADAM: I suppose I wanted to come back to this question around the long-term trajectory of the schemes, both Nominal Insurer and the TMF. We had an inquiry by this Committee in 2022. Icare appeared, and there was no warning of catastrophic collapse of the scheme back then. The increases don't seem like huge numbers in relation to TMF. Certainly, Nominal Insurer, similar—the numbers don't seem huge. Is it being over-egged that this is an impending crisis? The Treasurer was talking about insolvency earlier today. How long has the Nominal Insurer got before it is insolvent?

TONY WESSLING: As we shared today, the funding ratio is 82 per cent. That means there is a deficit of funding in the Nominal Insurer, and that has grown over time. That funding ratio has been reducing for the best part of—for many, many years. That funding ratio has gradually declined, so, as that deficit grows, that burden

needs to be borne by future premium payers. The issue is if we don't stem the ongoing growth of that deficit, the future generations of employers will have to pay a much higher—

The Hon. ANTHONY D'ADAM: Insolvency, is that?

TONY WESSLING: Every year we publish our accounts and the Audit Office reviews those accounts. We have no issue paying claims over the short term. We've got assets to cover the cost of claims for years to come. This is about the long-term sustainability of the scheme and the ability to continue to pay claims well into the future and for the next generations.

Ms ABIGAIL BOYD: So not insolvency.

The CHAIR: I am just conscious of the time. That gets us to 12.59 p.m. I thank you all very much for coming along to provide answers to questions, both technical and more broad. We appreciate that very much. For questions taken on notice, the secretariat will liaise with you.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr SHANE BUTCHER, Member, Injury Compensation Committee, Law Society of New South Wales, affirmed and examined

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

Mr DOMINIC TOOMEY, SC, Senior Vice-President, New South Wales Bar Association, affirmed and examined

Mr TONY BOWEN, Member of the New South Wales Bar Association's Common Law Committee, sworn and examined

The CHAIR: I confirm that the submissions of both organisations have been received, and we're grateful for that. The New South Wales Bar Association's submission, No. 41, has been processed, uploaded to the inquiry's webpage and, stands as evidence to this inquiry. With respect to the Law Society, your submission, No. 34, has been formally processed, uploaded to the webpage, and stands as evidence to the inquiry. We now have the chance to hear oral evidence from yourselves. We have Committee members from Government, crossbench and Opposition. We share out equally with the time available, but we'll first invite both organisations, if you wish to do so, to make an opening statement.

DOMINIC TOOMEY: I'm happy to commence. Mr Chair, we would like to make some very brief opening remarks. The Bar Association thanks the Committee for the opportunity to address it. At the outset, we wish to say that the consultation in respect of these undoubtedly wide-ranging proposed changes—potentially affecting millions of workers and their families—has, in the association's view, been unduly rushed; meaning, among other things, that the association has been denied the ability to offer all the assistance it would otherwise have wished to, particularly if we had been granted access to the latest financial data and actuarial modelling. It is, with respect, unsatisfactory that we should be asked to address this important inquiry blindfolded and that this Committee should be asked to report perhaps from a similarly disadvantaged position.

That said, we can address the effect of the proposed changes on workers who suffer mental health disorders which have arisen out of, or in the course of, their employment. The impact on many would be quite devastating. At the most fundamental level, there will be workers who have an undisputed, ongoing and very serious psychological injury who will be denied access to both medical treatment and income-replacement compensation. Moreover, the requirement that there be a "relevant event", as defined in proposed section 8E, before any compensation will be payable represents a very significant narrowing of eligibility for compensation. It removes, for one, the right to recover for workers who have suffered psychological injury by reasonably inherent pressures and stresses of their work. For many, those pressures are real and the psychological effect debilitating.

The fig leaf offered to workers with a work-pressure disorder, in the form of the payment of medical expenses, is quite inadequate and unfairly places the obligation on employers personally to pay those expenses, even though they have taken out compulsory insurance. Even more concerning is that section 8E would, on one reading—indeed, perhaps on a plain reading—not even afford compensation to those who witness the immediate aftermath of catastrophic accidents, either in their workplace or, in the case of frontline workers, in the community which they serve. The definition refers only to:

- (c) witnessing an incident that leads to death or serious injury, or the threat of death or serious injury, ...

If that is the intended effect, it is radical. I wish to make one correction to our written submission. Paragraph 70 in our submission is in error, and we, with respect, withdraw it.

The CHAIR: Thank you. That is noted and will be done.

DOMINIC TOOMEY: Thank you. The requirement in respect of cases involving workplace bullying and harassment that a finding be obtained, presumably from an IRC with expanded jurisdiction, before a claim can even be notified flies in the face of the accepted wisdom that the earlier a person receives treatment for their condition, the more likely they are to recover and to return to work. The combined effect of proposed section 8E (e) to (g), 8F and the existing section 254 (1) of the WIM Act will be to deny genuinely injured workers the compensation they are entitled to, even under the more stringent injury definition proposed, perhaps for many months, and to subject vulnerable workers to the additional stress of adversarial proceedings. In many cases, that will effectively kill any prospect of an early recovery and return to work and in the long term add to, rather than contain, the cost to the scheme. Such an outcome is not only self-evidently anathema to the most fundamental objectives of a functioning workers compensation scheme but is indeed contrary to the stated objectives of these amendments.

I will briefly address the proposed 31 per cent whole-person-impairment requirement. The threshold of 31 per cent affects numerous entitlements. It is a threshold which will be met in a mere handful of cases. I understand that the Committee has already heard evidence today as to those numbers, and to use the term "handful", based upon my understanding of the evidence that has been given, is apposite. Many of our members—that is, members of the Bar Association; indeed, an overwhelming majority—have never seen a case involving such a high assessment. An assessment of that magnitude would necessarily involve profound occupational and domestic dysfunction and almost certainly hospitalisation, perhaps for multiple and extended periods. Assessments below 21 per cent, let alone 31 per cent, will almost inevitably involve incapacity for work, often for a prolonged period, and the requirement for medical treatment, again, often for extended periods, many as inpatients.

The proposed change in the threshold operates against injured employees in three respects. First, it removes the entitlement to lump sum compensation for all but the most extreme cases. Secondly, it caps at 2.5 years the entitlement to any income replacement payments, and thirdly, it prevents a claim for damages even where there is plain negligence on the employer's part and the worker is profoundly and chronically debilitated by psychiatric injury. We are asked to comment on all these proposed changes and more. The driver for these changes is said to be an increase in the number of claims for psychological injury and a corresponding increase in the cost to the scheme.

As I said earlier, we do not have the most recent financial data or access to any of the actuarial modelling. Though there is publicly available data on the SIRA and icare websites, that data concerns the 2023-24 financial years. An analysis of that data has helpfully been undertaken by Mr Kim Garling in his submission. Given the time constraints, we would simply commend Mr Garling's submission to this Committee. He has debunked some of the hyperbolic language and unfounded assertions that have been made from some quarters. Mr Garling's analysis of the data calls into question the assertion that there has in fact been a dramatic increase in psychological injury claims.

So far as actuarial modelling is concerned, there will be undoubted savings to the scheme in the proposed amendments to the provisions concerning the commutation of entitlements and the ability to resolve by compromise those death claims where there is a dispute as to liability. They are both changes that have been supported by the Bar Association for some time. Without access to the modelling concerning the savings that will inevitably be made from those sensible amendments, we are being asked to comment on other radical changes to workers' rights. The Bar Association wishes to urge the Government to hasten slowly. Savings can undoubtedly be achieved without drastic effects on the rights of the psychologically injured. We have suggested some ways in which that can occur in our written submission. A sober analysis of the data and projections is called for. All stakeholders, workers and employers alike, are entitled to expect it.

Just two further matters, if I may. There are no proposed transitional provisions in the exposure draft. It is presently unclear when such changes as are proposed to be made will take effect and whether they will affect workers who have already sustained psychological injury in the workplace. The final but by no means unimportant matter which we wish to emphasise in the time available is the extensive reliance in the draft bill on regulations or delegated legislation. This is, as we have said in our written submission, to be strongly discouraged. It makes it difficult, if not impossible in some respects, to address the true effect of the proposals. A prime example is in the resort to delegated legislation in the critical definition of the term "relevant event", which affects the question of the entitlement to compensation in every primary psychological injury case. I thank you again for the opportunity to appear, and we hope to assist this Committee as much as possible in the circumstances.

The CHAIR: Thank you, Mr Toomey. That is a very helpful and valuable opening statement. I appreciate it.

TIM CONCANNON: Thank you for inviting the Law Society to give evidence at today's hearing. I am here in my capacity as chair of the Law Society's Injury Compensation Committee. I am joined by Shane Butcher, a member of the Law Society's Injury Compensation Committee. The draft bill proposes significant changes to liability and the ability of workers to commence claims to be awarded compensation for psychological injuries. Our members, who represent claimants, insurers and employers, agree that reform of the New South Wales workers compensation system is overdue and appreciate the importance of a scheme that is financially viable and not open to abuse. We are disappointed, however, with the limited consultation process for these reforms, which will have a marked impact on the existing scheme.

As set out in the Law Society's submission, the proposed changes, in particular the 31 per cent WPI threshold, will mean that almost all claimants who experience psychological injury in New South Wales will be precluded from making a claim. We suggest, in the interests of compromise, and noting the Government's clearly stated intention to enact immediate savings to the scheme, that changing the WPI threshold to 21 percent would

ensure that some workers generally recognised by community standards as being severely impacted by mental health would be able to make a claim, while easing upward pressure on workers compensation insurance premiums.

We draw the Committee's attention to the way in which the combined effect of section 8E and 8G means that no compensation is payable for a primary psychological injury outside of a relevant event or events as set out in section 8E. This would preclude injuries caused by overwork, for example, nurses and doctors subject to continuous un-rostered overtime; verbal aggression from customers or clients of a business, for example, a person who is abused in the course of their work in the hospitality industry; exposure to emotionally distressing material in a high-stress work environment, for example, persons working in child protection and with victim-survivors of domestic violence; a single act of bullying or discrimination on the basis of religion, gender, sexual preference or marital status and other attributes that fails to be protected by this legislation; or attending the aftermath or treating the victims of a motor accident, natural disaster, fire or other accident, given that, arguably, this does not fall within the definition of "witnessing the incident or accident".

We are concerned that some of the proposals will not promote psychological safety in the workplace nor return to work objectives but result in compensation costs shifting to other sectors, including longer term health care and social security. In particular, we draw the Committee's attention to our comments on the operation of the special provisions for primary psychological injuries caused by sexual or racial harassment or bullying. Our submissions have also focused on changes which are not limited to psychological injury claims but will impact the scheme as a whole, such as the new assessment process, which, we suggest, will increase disputes and discourage settlement. It is in the interests of transparency, accountability and sound law reform and policymaking that the Government provide statistical data on psychological claims which may assist in providing a more nuanced understanding of the pressures facing the scheme. We suggest further discussion with stakeholders about the design of the scheme to ensure it achieves an appropriate balance.

The Hon. DAMIEN TUDEHOPE: I probably don't have a lot to add, I must say. Thanks to all of you for being here at such short notice, given the exposure draft and the short time frame. Mr Toomey, is it paragraph (7) that you have withdrawn?

DOMINIC TOOMEY: No, it was 70. The submission has unduly confined to the effect of the provision to which it is referring and is therefore invalid for that reason.

The Hon. DAMIEN TUDEHOPE: I suppose this arises by virtue of the fact that you have not seen any exposure draft of amendments to the Industrial Relations Act about the new system of having to obtain a certificate from this forum in relation to being able to commence proceedings for bullying and harassment allegations. Do you want to expand on, potentially, the defects of adding this new jurisdiction and what the impact of this process would be on litigants with psychological injuries relating to those particular events, whether it is serious bullying or sexual harassment or racial harassment, as I understand it?

DOMINIC TOOMEY: Yes, I'm very happy to and I thank you for the question. One of the matters I should have mentioned in my opening remarks is that it's entirely unclear to us at this stage whether there would be the provision for paid legal representation, for example, for someone who finds themselves in the position of having to seek such a certificate. We would also observe that the person who is being required to seek the certificate is already, by definition, vulnerable by reason of the reasons for their having to do so. We would expect that without legal representation they would be greatly disadvantaged in that process, which we expect would be an adversarial process because there would be another—at least one other—interested party in the outcome.

It is possibly also conservative, what I said in my opening, that it might delay by a matter of months the making of a notification of injury. It could go for many months. We don't know whether there would also be provision for an appeal from any such decision. The combined effect of the proposed provisions and the existing section 254 of the workplace injury management Act is that a notification of the injury cannot even be given until that process has been undertaken. We, with respect, think that this is a misguided reform.

The Hon. DAMIEN TUDEHOPE: If the proposal was that there were no benefits payable until such time as that certificate had been issued, in those circumstances the complainant would be required to rely on their own resources.

DOMINIC TOOMEY: Indeed. And I might add it's not only that no benefits are payable. All those things have to occur even before notification of the injury can be given, which sets the claim process in train. Once that happens, of course, there may well be some contest about any medical condition, its extent, the extent to which it causes incapacity et cetera.

The Hon. DAMIEN TUDEHOPE: Can I ask you to comment on section 11A and the manner in which that operates? The evidence that is often provided is that employers are never successful under the existing section 11A. Is that your experience?

DOMINIC TOOMEY: I think I might defer to Mr Bowen on that matter, if I may.

TONY BOWEN: I'm happy to take that. I think there is truth to the basis of your question, but it's not unheard of. It's actually addressed in our submission whereby the resources deployed at that stage of a claim and how it's undertaken—in a sense, that it may not be world's best practice, but I don't think it would be fair to say that it's a defence that's never made out.

The Hon. DAMIEN TUDEHOPE: Is there a case for strengthening?

TONY BOWEN: I think there's a case for discussion about it. I suppose, to give a balanced position, you would have to say that there would be some case for that, particularly in the context of the types of claims that we're discussing, of psychological injury, but I don't see it as a major part of the problem or that would need to be addressed or what is sought to be addressed by these amendments.

The Hon. DAMIEN TUDEHOPE: The evidence often is that an employee gets placed under a performance review and, as soon as they get a performance review, they're off on stress leave and the employer, in those circumstances, even seeking to rely on 11A, is rarely successful.

DOMINIC TOOMEY: I would only say, if I may, that section 11A covers precisely that situation and it's really a question of the evidence that is marshalled to make out the defence, as we've said in our written submission. Having said that, we would not die in a ditch over the extension of section 11A.

The Hon. DAMIEN TUDEHOPE: It wasn't one of the sections you identified as being supportable. The replacement 11A wasn't what you identified as one of the potential sections which you would support.

DOMINIC TOOMEY: It's not, that's true, but it's only on the basis that we consider that 11A is sufficient in its present terms and that it's really a question of the evidence that's been marshalled to make out the defence.

The Hon. DAMIEN TUDEHOPE: Some other evidence we've also heard is that part of the justification for some of these changes relates to fraud.

DOMINIC TOOMEY: Yes.

The Hon. DAMIEN TUDEHOPE: Often when the word "fraud" is used in the context of workers compensation everyone thinks that it's the worker who is in fact defrauding the system, but in fact some of the evidence is that it's lawyers and doctors—there's a plethora of people potentially gaming the system. What do you say in answer to that allegation?

DOMINIC TOOMEY: Quite plainly, we would decry any instances of fraud on anyone's part. We have not approached this Committee or these reforms as addressing the question of fraud. Fraud, if it exists, should always be weeded out.

The Hon. DAMIEN TUDEHOPE: To the extent that there is potential doctor-shopping or the like, does this legislation potentially address some of that issue relating to fraudulent claims?

DOMINIC TOOMEY: I don't see how, with respect, but I would be happy to be taken to specific provisions.

The Hon. DAMIEN TUDEHOPE: Mr Concannon, do you get complaints in relation to the manner in which the workers compensation scheme currently works in terms of potential fraudulent use or fraudulent claims? And I use the word "fraudulent" liberally.

TIM CONCANNON: I think this is the same problem you had in the CTP scheme leading up to the 2017 amendments. It's a question of how you define fraud. Fraud can be someone who decides to see one doctor rather than another. That's not fraud. It may be advantaging the system to the person's benefit, but I don't see that as being fraud. I act for workers solely. I don't act for employers. I don't think I've ever seen a worker that's come to my table who I can say is clearly a fraud, and I've been practising for over 30 years, and frequently in this area of workers compensation. There are certainly claimants who sometimes exaggerate their symptoms, absolutely. There may be a number of reasons why they do so, consciously or subconsciously.

Ms ABIGAIL BOYD: Good afternoon to all of you. Thank you very much for your submissions and turning it around in such a short period of time. There's a lot that we could talk about, but can I just ask you about the definition of psychological injury. It's been put to us by some people that we needed to have a definition around psychological injury in order—actually, I don't know. I think the argument is perhaps to only capture

so-called genuine psychological injury. I'm really not sure where that has come from and what that means. But from your perspective, if we were to have a definition of psychological injury, would it look like this? If not, what could it look like instead? And should we have one?

TIM CONCANNON: Personally, I don't see the need for it. There's a guide called DSM-5 that psychiatrists apply when assessing psychological injury, and there's plenty of evidence there from specialists as to what is and what is not a psychological injury. To require there to be a significant behavioural, cognitive or psychological dysfunction, in my view, places an extra burden on those looking to establish a psychological injury. For the most part, the workers compensation legislation doesn't talk about psychological injury or physical injury; they just talk about injury or disease. So this reference to psychological injury, really, for the most part, I don't think is required. The only references to psychological injury that I can recall in the legislation are those that restrict lump sum impairment compensation, let's say unless you get to a threshold of 15 per cent, and those associated with that part of the legislation. This is certainly a higher bar to jump over, to require there to be significant behavioural, cognitive or psychological dysfunction.

Ms ABIGAIL BOYD: How does that work? If you've got a diagnosis of a psychological injury and you can show that it was work related—that you incurred it at work—but, under this legislation, you also have to show that it is causing significant impairment et cetera, unlike you would for a physical injury, how does that then—

TIM CONCANNON: It's a higher bar, and it's one—for instance, in the motor accident legislation there is no such requirement for there to be a significant psychological injury. There just needs to be a recognised psychiatric disorder within the meaning of DSM-5. This is an extra burden on top of that.

Ms ABIGAIL BOYD: Would this leave it then so that when it comes to a physical injury, we trust a doctor to tell us whether or not someone has a physical injury, but when it comes to a psychological injury, we are putting a legal definition in rather than relying on a medical opinion? Is that the effect?

TIM CONCANNON: I think I would say yes to that. But I have to say I don't know whether this psychological injury definition has borrowed from somewhere else, given that we've had only three days to review it. It may come somewhere in DSM-5, but I am not sure.

DOMINIC TOOMEY: If we can return to basics, the way the Act operates presently is first to ask whether there has been an injury. That injury will then sound in compensation if it causes incapacity. So, to some extent, the proposed definition of psychological injury is redundant because, unless there is some impairment in earning capacity by reason of the injury, no compensation flows in any event. In respect of medical expenses, unless the injury has given rise to a reasonable need for medical treatment, then medical treatment will not be paid for. I'm wary too of being invited to engage in a drafting process on the run.

Ms ABIGAIL BOYD: Would it be fair to say, though, that this is just going to result in more litigation? These are more points then for someone to have to go to litigate these additional hurdles to prove that they have got this psychological injury in the first place?

DOMINIC TOOMEY: That is the position that we have advanced in our written submission and I believe that it is a sustainable submission. As I understand it, also, there's some reservation amongst the medical practitioners as to how such a definition would be addressed.

Ms ABIGAIL BOYD: There has been some suggestion that certain types of workers would be excluded as they currently are exempt from some of this scheme. Unfortunately my knowledge is patchy on what happened back in 2012, but I understand there are exemptions provided for certain types of workers. It is unclear to me whether those exemptions will continue or not—I am not sure if you picked it up from the draft—but to the extent they do continue in some form, how does that then interact when you've got a multi-contributor claim? You've got different WPIs, for instance, for different employers, or for someone who has had multiple roles—in one exempt role and one non-exempt role—and then you've got this multi-contributor claim. Has that been something that you've thought through at all?

SHANE BUTCHER: This is something that has caused great confusion for everyone. We are running multiple different schemes in New South Wales for different workers. We have got coalminers as well. You were referring to emergency service workers. We are creating different classes of workers with different classes of rights. It's challenging, it's complex, and I don't know how an injured worker can easily navigate what they are entitled to if it requires navigation of complex legislation.

Ms ABIGAIL BOYD: So, for instance, if you were an RFS worker—which I understand is not exempt—and also you were doing that on a voluntary basis but then you were also in the police, and there were multiple issues that led to your injury—

TIM CONCANNON: That's the inequity of the situation. You can have the same rescue scene, let's say, and certain people will be subject to the restrictions of this Act. Those who are not paramedics might be associated with the rescue performance—nurses and the like—yet some will be subject to this legislation and some will be exempted, from what we understand, although I didn't see anything in this draft to confirm that those exempted under the 2012 amendments are also exempted here. The police, the paramedics and firefighters are the most obvious, and coalminers have always been exempted since 1987.

Ms ABIGAIL BOYD: Right. Just in the time I've got left, there's been some assertions—and it comes back to what I said about the additional litigation if we've got lots of different hurdles—that that will lead to, effectively, a cost shifting from the scheme onto individuals, particularly businesses having to then bear the cost of defending themselves in front of the bullying and harassment jurisdiction or whatever. Do you have a view, as lawyers—sorry, this is a bit of an ill-formed question—what will happen when we lose a lot of that sort of background precedent for the existing scheme and move to a whole set of new things? Sorry, I've asked two questions there: the impact of that litigation risk on individuals falling outside the system, because of these changes, but then also the change away from established precedent around definitions et cetera to something else. What is the impact in terms of cost?

TIM CONCANNON: Those that are forced to mount their argument initially in the Industrial Relations Commission will probably not see a workers compensation lawyer at all in many instances, which is a real concern because the area is a distinct area of practice from industrial relations, in my experience. These people will just be trying to navigate a system without appropriate legal advice, and that is a real concern—quite apart from the health risk associated with the fact that they're going to remain untreated for at least six months whilst their industrial relations dispute is determined by the commission.

The Hon. STEPHEN LAWRENCE: Thanks to all the witnesses for coming along. It is much appreciated. Maybe a question for the Law Society reps firstly. In terms of this new jurisdiction in the IRC to determine bullying and certain types of harassment complaints, could you give us a sense of how an average worker would navigate that process: What sort of applications and paperwork would they have to do? If they were to retain a lawyer, how much would it cost them? It's obviously going to depend on the type of claim but, as an approximate starting point, could you give us a sense—

SHANE BUTCHER: I think that is really challenging to answer when we haven't seen the bill that goes along with the provisions. There is so much we don't know about what we can expect in that jurisdiction. We don't know whether there will be representation. We don't know whether evidence will be given orally or on papers. We don't know whether there will be right of cross-examination. We don't know whether people are accusing someone of racially harassing them will be cross-examined by the same person. If a worker is accusing their employer of sexually harassing them, we don't know whether they can be cross-examined by the same person. The legal process is complex, and the emotional toll is going to be another layer for the injured worker. It's going to be extremely difficult.

TIM CONCANNON: I think it would be fair to say, though—we practise in the work. As I said in answer to the last question, I think you will generally find that workers compensation practitioners are different from employment law practitioners. I don't think either myself or Shane has a lot of experience in the Industrial Relations Commission. There are practitioners on my committee, though, that do have some experience of such matters. We can take that question on notice and see what we can do to find out a more accurate answer to the question you've posed, if that's acceptable to you.

The Hon. STEPHEN LAWRENCE: Sure. If you were talking about a discrimination tribunal type of action, which I think is one of the tribunals that are meant to operate informally to some degree, you would certainly be talking about written applications and the cross-examination of witnesses, wouldn't you, in order to substantiate that sort of claim, which has a degree of seriousness to it.

TIM CONCANNON: My limited understanding is that you're dealing with two organisations: the equal opportunity tribunal in New South Wales and the Human Rights Commission in the Commonwealth area. As I understand it, a majority of cases exclude legal involvement, but there can be lawyers with leave. Other than that, I must say, I would have to defer to those on my committee with a bit more experience of such matters.

The Hon. STEPHEN LAWRENCE: Mr Toomey, we heard some evidence from the Treasurer this morning to the effect that the workers compensation system was designed for physical injuries and is obviously now being used for psychological injuries. In summary, he said that there are quite complex questions in terms of assessing psychological injuries, particularly when assessing their connection to work, as opposed to contributions by virtue of the person's inherent make-up or other problems that they might have outside of the workforce. I think it could be said that the bill—particularly section 8E and the meaning of "relevant event"—is an attempt to engage with that by excluding certain people from the scheme. Do you have any thoughts about alternatives? Accepting

the premise that there is a certain type of crisis in the scheme and accepting the premise that some form of limitation might be needed to address that, is there a way to address the issue that is more fair than the exposure draft? For example, are there issues with the standard of proof? Is that something that could be looked at? Is there a case to limit payments overall in psychological cases, as opposed to other cases? Is there some other way, apart from the wholesale exclusion of access to the scheme?

DOMINIC TOOMEY: What immediately springs to mind is that there could be further expansion on what constitutes bullying. It has to be accepted that in workplaces around the State, there are, undoubtedly, tense interpersonal relationships between workers, and between workers and employers et cetera. I think that those claims could be further confined by proper definition. That is what immediately springs to mind. I don't have all of the statistics available to me, but going from the 2023-24 annual report from icare, in respect of the claims that fall to be indemnified by the Nominal Insurer, it is said in that report that the drivers for psychological claims are 70 per cent in respect of harassment and work pressure. That is one obvious point where further definition could achieve confinement in the scheme if it be necessary. I would like to take the question on notice, if it is of any assistance to you, because it's an interesting question and one that we, perhaps, ought to have foreseen.

The Hon. STEPHEN LAWRENCE: In terms of standard of proof, do you think there is an issue here in the sense that the scheme depends on doctors and psychologists to render opinions? They are normally people who have a therapeutic role. Do you think that the fact that they normally have a therapeutic role means they are not, perhaps, ideally equipped in terms of objective assessments and might tend to favour the patient, in some sense? Is that a dynamic that can be addressed through legislation, do you think?

DOMINIC TOOMEY: I might defer to Mr Bowen.

The Hon. STEPHEN LAWRENCE: I accept they all have professional obligations. I assume they sign certificates and have codes of conduct and what not. But I wonder whether there is an inherent tension between those two roles. Is that something legislation can engage with?

TONY BOWEN: Speaking from my experience—and I have been involved for 20-plus years—I haven't really encountered that. There may be an impression that a particular doctor might be seen as a bit more favourable one way or the other, for the worker or the employer. But it is a fairly independent process. All the assessors have to be appointed, effectively, by SIRA. I don't get the impression—having acted on both sides of the equation—that it is a particular problem, that there is a bedside manner, if you will, that is coming into play. I think, as it is, the system is robust in the sense of the independence of the medical opinions that are being deployed into these disputes. That would be my experience. As you touched upon, they are bound by their own professional obligations of independence. I don't see that as a major issue.

DOMINIC TOOMEY: I should add that in the case of—as has been touched on by Mr Bowen—disputes about whole person impairment, there is provision for the referral to a panel, which is appointed by the commission.

The CHAIR: I need to draw this session to a conclusion. Thank you all very much for coming along today at relatively short notice. The Law and Justice Committee always enormously appreciates submissions and appearances from the two peak law bodies in this State. It has always been important for us to have that high level of professional and detailed legal knowledge brought before any inquiry. Certainly, this is an important inquiry. I thank both organisations very much. The turnaround time for questions taken on notice is relatively quick. Answers to those questions are due at 5.00 p.m. next Wednesday 21 May. Once again, on behalf of the Committee, thank you all very much.

(The witnesses withdrew.)

Mr IVAN SIMIC, Solicitor, Taylor and Scott Lawyers, sworn and examined

Ms MICHELLE MEIGAN, Solicitor, Taylor and Scott Lawyers, sworn and examined

Mr SCOTT DOUGALL, Partner, Carroll and O'Dea Lawyers, sworn and examined

Mrs RAMINA DIMITRI, Head of Work and Road, NSW, ACT and WA, Slater and Gordon Lawyers, sworn and examined

Ms LARISSA ATKINSON, Legal Counsel, Slater and Gordon Lawyers, affirmed and examined

Ms RITA YOUSEF, Senior Member, NSW Branch Workers Compensation Subcommittee, Australian Lawyers Alliance, affirmed and examined

Mr DAVID JONES, Partner, Carroll and O'Dea Lawyers, before the Committee via teleconference, sworn and examined

The CHAIR: We put it to a group of witnesses this morning the possibility that, with respect to your opening statements—and I expect each organisation represented, at least, and maybe each person here giving evidence will have an opening statement. If everyone makes their opening statement, that will significantly depreciate the amount of time left for our members to ask questions. But if you're prepared to provide us with your opening statements, they will be tabled and incorporated as evidence to the inquiry. If anyone particularly wants to make an opening statement, I am obviously not pressuring you otherwise, but it would expedite the next session and enable the maximum amount of time for questioning, which may be of particular value to members.

I am sorry there was no notice about that consideration I've just raised with you, but if there is no objection to that course of action, I am very grateful for that. Thank you. The Committee secretariat will organise to collect your opening statements, and we'd also like you to email them when back in your offices, if you could. On that basis, expediting that, could I just say that the submissions have been received, processed and those that have made them and others may be on the way, stand as evidence to this inquiry. We are grateful for that. This is obviously an opportunity to provide some oral evidence and some additional evidence.

The Hon. DAMIEN TUDEHOPE: I take it you were all in the room while the Bar Association and the Law Society were giving their evidence. Does anyone at the table quibble with any of the submissions made by the Bar Association or the Law Society? Is silence no?

SCOTT DOUGALL: Perhaps on one point. With respect to section 11A, I can understand the rationale behind those amendments to some extent, but I think it's otiose. There is no practical benefit to that provision at all. Section 8E (1) defines what is a claimable circumstance, and that does not include action by management. On that basis, there is no reason you would have a defence that the management action was reasonable if you cannot even bring a claim for a management action. So that section is now almost meaningless. That is the only comment I would make with respect to that.

The Hon. DAMIEN TUDEHOPE: In summary of that position, your position is that 11A, as it currently stands, is perfectly well functioning and, in fact, the amendment doesn't add or subtract anything from the current position which is adopted by the section?

SCOTT DOUGALL: Not quite, no. I would concede that the current provision may benefit from some modification. My point is that if this new section 8E is the law, and that precludes you making a claim because of management action, then there is no need to have a defence that the management action was reasonable, because there just isn't a claim made on management action. It's not available under section 8E.

The Hon. DAMIEN TUDEHOPE: Does anyone have any cases where the WPI is more than 30 per cent?

RITA YOUSEF: No.

IVAN SIMIC: No, not in my over 25 years of experience.

RITA YOUSEF: Never.

SCOTT DOUGALL: I've had one.

The Hon. DAMIEN TUDEHOPE: One? So, effectively, in your experience, if collectively on the table this provision adopted by this new scheme would be to eliminate just about every claim for psychological injury?

IVAN SIMIC: Yes. In fact, one of my main concerns is that it pretends to make a carve out for people who have been involved in serious trauma, first responders and things like that—say, a train driver who has the

bad luck to have somebody throw themselves in front of the tracks. They're just going to be excluded from the Act.

The Hon. DAMIEN TUDEHOPE: If it was, say, 20 per cent or 21 per cent, what then? Is the current level, if it was to be increased from 15 per cent to 21 per cent, what impact would that have on your respective practices?

RAMINA DIMITRI: It would still exclude a high number of claims, because the majority of the claims do fall within 15 to 20 per cent.

The Hon. DAMIEN TUDEHOPE: There is a number under the proposed scheme—a definition or a number of listed relevant events. Do you have any observations in relation to the manner in which the draft, or the exposure bill seeks to define "relevant events"?

SCOTT DOUGALL: I certainly do. I think what is most noticeable about section 8E (1) is just how much is excluded—

The Hon. DAMIEN TUDEHOPE: This is back to Simic's point, I assume?

SCOTT DOUGALL: Yes. That involves any number of forms of discrimination, which could be based on gender, age, disability, family responsibilities, pregnancy, breastfeeding. It would exclude any adverse comment or act to make someone uncomfortable with respect to their competence, their intelligence, their appearance, their education, their command of English, their political and social views, from the categories where you could make a claim. And I think the majority of what's excluded would be inconsistent with most employers' codes of conduct, and it's certainly inconsistent with Federal and State laws with respect to discrimination. So there's a whole range of categories that would be discrimination that do not give you a right to make a claim under this proposed section.

The Hon. DAMIEN TUDEHOPE: Does anyone else want to comment in relation to "relevant events"?

RITA YOUSEF: It also excludes examples like overwork—nurses, teachers, doctors, they'd be excluded—and events that are not quite violence or criminal conduct but are still abuse that lead to a psychological injury, as well as, for example, retail workers suffering abuse day in, day out. That's not necessarily violence or criminal conduct, and they'd be excluded.

The Hon. DAMIEN TUDEHOPE: There appears to be, amongst a lot of the witnesses that we've heard from, including the union movement, a necessity to amend or have some sort of re-look at the manner in which workers compensation works in relation to psychological injury. If you were doing this and you were in the Government's shoes, what would you be doing in relation to psychological injury? The Treasurer argues that psychological injuries are making the scheme unworkable. Is that your experience? What would you be saying in terms of giving advice in respect of what the Government should be doing to fix this scheme, if it needs fixing? Or is it your view that it doesn't need fixing?

SCOTT DOUGALL: I'm happy to answer that if no-one else is. I think there is scope to certainly make some changes. There's a concept of provisional liability, which is a claim being accepted without any real rigour or process to investigate the merits of that claim. That can cover an injured worker for up to 13 weeks. It may well be that for a psychological injury, that period is too long. It would be nice if there was a mechanism—and this might involve the IRC or another tribunal—where if there is an issue of bullying or harassment, there's a fast track to somehow get that issue to be fundamentally addressed so that the root problem and the root cause of that circumstance leading to injury can be addressed. That, to me, would be a proactive way to get people back to work quicker, to reduce any incentive to remain on workers compensation for a longer period of time and to fix the underlying cause of the injury.

The Hon. DAMIEN TUDEHOPE: But it could have an adverse consequence that if in fact you've potentially fixed the problem, you may still have an injured worker who has no further entitlement to compensation.

SCOTT DOUGALL: That's certainly possible, but—I don't mean to change topic on you—when you have a definition of "bullying" which requires there to be a significant injury, it means that if somebody's unwell and would actually benefit from treatment and the opportunity to resolve the underlying concern with the employer, if they don't have a basis to bring a claim, they've effectively got to wait until they break down and it becomes significant before either their health or the cause of the injuries is dealt with. I'm all for early intervention, but it needs, I think, a two-pronged approach. It can't just be a stick to take away people's entitlements. There needs to be some mechanism to allow the fundamental underlying cause of the injury to be addressed.

The Hon. DAMIEN TUDEHOPE: Could I ask you, the solicitor from Slater and Gordon—in your submission, you state:

Access to common law damages serves a broader public purpose and holds negligent employers accountable and incentivises safer workplace practices. Raising the threshold to 31% WPI would severely undermine this deterrent, removing any real consequence for employer negligence in the majority of psychological injury cases.

Do you want to expand on that?

RAMINA DIMITRI: I do, because I want to differentiate the no-fault scheme, where people are lodging psychological claims, from the 15 per cent work injury damages threshold that allows people to bring common law claims in negligence. That's a distinction that's not currently made in this exposure draft. So, your traditional person is injured, they claim bullying and harassment, they will lodge a claim, provisional liability will be accepted, and then they either return to work in a gradual way or they access their medical entitlements, they get better and it's all over—the claim is closed. Not all of your people accessing the no-fault scheme will actually move on to be assessed at 15 per cent or over. Those are the people that potentially would have common law claims in negligence against their employer, and there are two gateways to open that.

The first is a percentage of 15 per cent whole-person impairment, and that's a medical diagnosis. Then there is an assessment of the facts and circumstances that have actually given rise to the bullying and harassment—either the frank incident or the nature and conditions that have actually culminated in that injury. There are sufficient safeguards in the existing legislation, and the differentiation between no-fault statutory benefits—which are access to your medicals for psychological treatment, focus on a return to work strategy and then, on top of that, weekly benefits while a person is incapacitated and receiving medical certificates—is to be distinguished from a common law claim where someone achieves 15 per cent. We say that that's quite a high bar as is. Not all people will have that. Even if they do get assessed at 15 per cent, the facts and circumstances aren't necessarily negligent so they're not culminating in those common law claims.

The Hon. DAMIEN TUDEHOPE: I just want to lastly in this process touch on the process by which we're asking bullying complaints to be handled by getting a certificate from the Industrial Relations Commission. You heard the Law Society give evidence that they have a lot of concerns in relation to how that would work. Do you have any observations or any concerns about requiring workers to obtain a certificate before they're entitled to lodge a claim for workers compensation in relation to bullying and harassment claims?

SCOTT DOUGALL: I've got one further comment. Depending on which tribunal you go to, there is the risk of an adverse costs order against you.

The Hon. DAMIEN TUDEHOPE: That's presuming it's a cost jurisdiction.

SCOTT DOUGALL: Correct, but some of them are. That would depend which tribunal we're talking about. There's also the risk that there's a finding that the behaviour was obscene, inappropriate, but didn't meet the "bullying" definition so that person's left without any remedy at all.

IVAN SIMIC: I'd just like to make a few comments about that. The Industrial Relations Court of New South Wales has only been recently reinvigorated. We're being put in the ridiculous situation to try to do law reform and we haven't even seen what the other major Act is, that is, the amendments to the Industrial Relations Act. Having a bit of experience in that jurisdiction, no lawyer's going to go down there for nothing. The worker will have to pay for it. It will be a not inexpensive process—it will cost some substantial money unless they have the backing of a union who's willing to fund it—to get that finding. It's such a high benchmark, it's almost ridiculous. In our submission there's a good example of a young shop assistant from country New South Wales and what her experience was under the present system. If you can imagine these new laws applying to her situation—it's case study A—you'll see that it's just ridiculous, particularly for people that have suffered severe harassment or acts of violence in the workplace.

The CHAIR: Before I pass to the Deputy Chair, Mr Jones had his hand up.

DAVID JONES: One further point in relation to that. If people have to go off to another jurisdiction to get their certificate, that very process of delay can delay their recovery. It may well, as a consequence of that delay, cause the condition to be worsened such that there won't be a reasonable return to work outcome. The other thing is this: Many people who are affected by psychological injury will find the process overwhelming, and the thought of having to go somewhere else for the purpose of getting a certificate for the purpose of accessing benefits will be so overwhelming that they won't even go through that process. That's my additional comment.

Ms ABIGAIL BOYD: Thank you all for coming along this afternoon. I want to pick up on a couple of points that have already been mentioned. In relation to the section 11A expansion, it's my read that it's still possible for that to come into play, even though it's not included in "relevant event". For instance, if you have an injury

caused by one of those relevant events that is not a reasonable management action, but then a reasonable management action was a significant but not the main or predominant cause of the overall injury, you could still get excluded because of that section 11A defence. Is that your understanding as well?

SCOTT DOUGALL: Yes, that's correct. If there was an act of violence between two workers and they are both stood down, there could be a contest as to what's causing the incapacity, what's causing the injury—was it the management action or the act of violence? It would have some application in that kind of situation.

Ms ABIGAIL BOYD: It seems difficult to meet the definition of vicarious trauma at the moment, but could you also have a situation, for instance, where somebody suffers some sort of vicariously traumatic event, but then the management actions also escalate that—for instance, by not allowing time off, not allowing time to debrief or not having policies in place to allow vicarious trauma debriefing, whatever that happens to be? Could you imagine a case where the reasonable management action was then part of the picture and could be seen as significant?

SCOTT DOUGALL: I think that's a good example. That's where it would have some application, yes.

Ms ABIGAIL BOYD: Regarding the 30 per cent WPI—I think it's actually 31 per cent, isn't it; it's more than 30—we talked about how that would knock out a huge number of people, not from the scheme as a whole but from certain aspects of the scheme. We are talking about going from five years to 2½ years before you're effectively chucked off the scheme or getting a lump payment at that 31 per cent. In your experience, what would be the impact on people who are currently above, say, 15 per cent but not meeting the 31 per cent, who get chucked off? In your experience, would that cover a significant number of people at the 2½ year mark? Does anyone have anything to say about what the impacts will be?

LARISSA ATKINSON: It would effectively mean that there is a large group of people who are without benefits because to meet even the 15 per cent threshold, we have effectively usually got a worker who has never returned to work. We often can't even get workers assessed because they don't meet the criteria to be medically stable to be assessed within 2½ years. It's most often the case that it is coming up on the five-year mark or perhaps beyond that before we can even establish that we can have the assessment performed—let alone resolve any dispute that arises about the percentage—and have that confirmed so that the worker can then access the benefits that come along with being over 20 per cent, which is the payments past five years. If we increase the threshold further, we will have people who have to wait longer because they will need to reach a higher threshold to even have a chance of getting there. That means they are going to have to solidify the level of their dysfunction before they can even make an application.

Ms ABIGAIL BOYD: I have met people who say that they were assessed at about 22 per cent or 24 per cent WPI when they were effectively suicidal. If you got chucked off at the 2½-year mark and then that lack of support led you to, for example, lose your house or have a family breakdown—whatever it happens to be—and you then get worse and got over the 31 per cent at a separate diagnosis, do you get to go back on the scheme?

IVAN SIMIC: You've raised a very good question there. This proposed legislation has got some absolutely draconian provisions that will affect not just people with psychiatric claims but also people with serious, serious physical injuries. Let's just talk about a really serious physical injury—somebody with severe burns. Let's forget about the psych, just for a moment. You may have to go through a long process of medical treatment and multiple medical procedures possibly going over five years. Your condition may not be able to be assessed for a long, long time in terms of WPI—whatever that means. That person will get kicked off the scheme. Later on, they may get assessed at 21 per cent or 30 per cent, but they won't be allowed to get the arrears of weekly compensation whilst they've been kicked off. That is extraordinary. That is for all injuries.

These draft proposals are actually quite—there is almost a sleight of hand with some of the stuff that has been put in. If you go to section 153N, again this affects people with physical injuries as well. You may have a young apprentice who has lost part of his toe and part of his foot who doesn't get over 15 per cent. He makes his best effort to get back to work. Medicine is complicated. I don't pretend to understand it. But this legislation is certainly bereft of any understanding of the human condition or medicine. That apprentice may have further medical treatment and may eventually get over that threshold. But section 153N says it's not enough to get over 15 per cent; you've got to get an extra 20 per cent. I don't know whether the Government has thought about that. It is embarrassing. It's not just psychiatric injuries. It will affect physical injuries as well—people with severe injuries from the worst sort of trauma you can think of. It's extraordinary.

The Hon. MARK LATHAM: I thank the panel for your attendance and input today. Coming to the two Slater and Gordon representatives, Mrs Dimitri and Ms Atkinson, your submission takes particular objection to the new section 8A, meaning of "psychological injury". It goes to what does appear to be an omission in the

exposure draft in that "significant" is left undefined. Is it that hard to define the meaning of "significant" in the context of "significant behavioural, cognitive or psychological dysfunction", and what would you suggest?

LARISSA ATKINSON: It will be difficult to define what that is. It will take many litigated claims to decide what that is. It is not currently, as I understand matters—and, once again, I echo the submissions made on behalf of the Law Society and the Bar Association that we haven't had enough time to go through and find if there is a source for this particular wording—the definitions of psychiatric injury are well established and have been since the early 1990s. They have been tested many times. All of the practitioners practising in the area, the independent medical experts and the decision-makers are across what is a psychiatric injury and what is not. I echo the submission made by Mr Toomey, SC, that changing the definition adds nothing. It won't change anything about what is a successful claim and what is an unsuccessful claim. It's simply adding extra administrative cost and appears to ask for a higher threshold to be achieved than presently, in circumstances where, in our experience, we can't see that there is a problem with things that are not injuries—that are something less than psychiatric injuries—getting through as successful claims.

The Hon. MARK LATHAM: Hasn't the definition of psychological injury evolved, particularly in recent times? I looked at this a while back. I think it's factual to say that the term anxiety/depression in Australia was first invented by Jeff Kennett, the former politician, as the head of Beyond Blue, and the rise of these sort of quasi-medical outfits in the mental health space has been striking. But once invented and used by the head of Beyond Blue, it becomes embedded in the various sectors and industries that, for want of a better term, can make money out of it. So it has evolved pretty quickly, hasn't it, into areas that weren't necessarily based in medical science.

RAMINA DIMITRI: If I could provide some comment to that. Ultimately, a psychological injury is a medical diagnosis. We have diagnostic criteria that is utilised by experts to assess whether a claimant is psychiatrically impaired. So I feel like these changes actually add a legal definition to something that is quite well established in a medical sense. If we are asking a clinician to make a diagnosis of medical injury, psychiatric in this sense, or a physical, why are we trying to interpret that in a legal sense?

The Hon. MARK LATHAM: We've heard evidence that these clinicians aren't necessarily genuine. There's a lot of fraud out there and, quite frankly, it's no secret in the suburbs—you can find a whole range of doctors that will tell you that you're mentally ill and get you off work—so this is what the Parliament is grappling with. But for the whole panel, can I come to a—

The Hon. DAMIEN TUDEHOPE: Do you want to agree with that or not?

RAMINA DIMITRI: I can't comment on that, and I suppose the medical experts can unravel that mystery for us.

The Hon. MARK LATHAM: Well, the Treasurer probably is onto it. The exposure draft deals in large part with the changing nature of definitions around mental health. But should it also be dealing with the changing nature of work itself? What's your experience with the rise, and what looks like the permanent rise now, of work from home, and claims to that effect? Doesn't that change the whole question of the basis of evidence about an injury? Are you guys getting experience? You must be getting work-from-home claims. The Treasurer said if someone cuts themselves, it's a physical injury; everyone knows the evidence for that. Well how do we know they cut themselves in the kitchen or they cut themselves in the exercise of work from home?

RAMINA DIMITRI: Very few. I haven't seen—

The Hon. MARK LATHAM: Is this becoming an issue? No? No work-from-home claims have come through at any of your practices??

RAMINA DIMITRI: No.

The Hon. MARK LATHAM: That's pretty good. How do we convert that to the real workplace? Then we wouldn't be here. Slater and Gordon, are there any other definitional issues that you have got problems with? Contentious 8E, meaning a "relevant event". In the mother Act, are there clear definitions about the meaning of "threat of violence"? Because it seems to me that can be across a whole spectrum of possibility. A big difference between saying to a workmate, "I'd wring your neck over that," compared to, "Mate, I want to kill you." Have we got an established definition about "threat of violence"? Because it's used in 8E, but then for some reason it drops out under "Vicarious Trauma" in 8H; it's not a factor at all. Anyone?

RAMINA DIMITRI: I haven't looked at that in detail, no.

The Hon. MARK LATHAM: Do you get cases where people have been traumatised by a threat of violence? How is it currently defined?

SCOTT DOUGALL: We need to establish they've had an injury.

The Hon. MARK LATHAM: If there's a psychological injury?

SCOTT DOUGALL: Yes.

The Hon. MARK LATHAM: If someone threatened you?

RAMINA DIMITRI: And then that comes back to a medical assessment.

The Hon. MARK LATHAM: Or you just go—

SCOTT DOUGALL: That would also require it to be in the course of their employment.

The Hon. MARK LATHAM: Yes, sure. I'll take that up with the Treasurer on notice. Thank you, Chair.

The CHAIR: Mr Jones, I'm sorry, you did have your hand up, probably now about 10 minutes ago. It's my fault; I didn't see that raised. You may well have even forgotten by now, and this is no fault if you forget what, in fact, you were going to speak to. If you do recall, can I invite you to speak? If not, I apologise for not identifying you quickly enough.

DAVID JONES: Chairman, I don't recall what I—

The CHAIR: I do apologise.

DAVID JONES: That's okay. But just in relation to the member's comment in respect of doctor shopping and fraud, is that there are within this scheme already processes and procedures which deal with fraud, and people can be subject to criminal charges and sanctions in respect of that. Where a case is considered not to be legitimate, an insurer can take action to investigate a claim and then put on a notice to discontinue benefits. Just in relation to that, I now recall what I was going to talk about. Where the previous member talked about being chucked off benefits after 2½ years and the effect of that and, in particular, by reference to the increasing of the threshold, the scheme, as it current stands, is if you were assessed between 0 and 10 per cent permanent impairment, you are entitled to medical treatment expenses for two years from when your weekly payments cease.

If you are between 11 and 20 per cent, you have five years of medical treatment from when your weekly payments cease. And if you're 21 per cent and above, you'll have medical treatment expenses for life, provided they're reasonably necessary. I think all of my colleagues will tell you that in the case of psychological injuries, we see medical treatment extending well beyond 3½ years from the date of injury. So what is proposed will have a significant impact upon the injured workers.

The CHAIR: Thank you very much, Mr Jones. I'm glad I did circle back; that was valuable evidence.

The Hon. ANTHONY D'ADAM: I'd like to ask about the proposed part 6, which relates to a change in the mechanism for assessing permanent impairment. I wonder if there's anyone who has some comments on whether that's a positive change or a negative change and what the implications might be in relation to SIRA appointing permanent impairment assessors.

The Hon. MARK LATHAM: Which page is that, sorry?

The Hon. DAMIEN TUDEHOPE: Of the exposure draft?

The Hon. ANTHONY D'ADAM: Yes, page 21, part 6, "Determination of degree of permanent impairment".

SCOTT DOUGALL: My friend Ivan did talk about section 153N and the requirement for a further 20 per cent for a further principal assessment. That seems to be an excessively high threshold. I would have thought the more logical principle would be that if your additional impairment is going to see you reach a higher threshold—for example, if you went from 18 per cent to 21 per cent, that's significant. Whether it's only 3 per cent or not, it's a significant improvement to your rights. But the idea of a further 20 per cent, that's very unlikely that anyone's ever going to be able to do that.

The CHAIR: Mr Jones, would you like to respond to that?

DAVID JONES: Just in relation to the regulator having involvement in respect to the assessment of permanent impairment, it's not something that the regulator should involve itself in. There is already a process and procedure for the determination of permanent impairment to take place. That is, a worker can obtain their assessment, make a claim, the insurer can respond to their claim by obtaining their own assessment, and if there continues to be a dispute, there's a mechanism within the Personal Injury Commission that an independent medical assessor can go on and assess impairment. That impairment can then be the subject of a medical assessment certificate, and there are appeal rights which arise as a consequence of the issue of the certificate. So this is an

unnecessary duplication. It's likely that some workers may not be legally represented, won't know what matters are to be assessed. The items to be assessed may not be agreed upon between the parties. So it's a furphy for this process to be introduced within the Act.

The Hon. ANTHONY D'ADAM: An observation that's made in the CFMEU submission around potential constitutional issues associated with the proposal for the work stress payments, I think they're called—

DAVID JONES: I can indicate that I haven't had the benefit of reading that submission, but I assume it says that Fair Work has a certain jurisdiction in respect of New South Wales workers for some of the things that are expected being the subject of certificates before they will be entitled to benefits. But, as I say, I haven't had the benefit of reading the submission.

The Hon. ANTHONY D'ADAM: The contention is that effectively this is an impost on employers outside the insurance scheme, therefore it's potentially an industrial question affected by the cover-the-field provisions of the Fair Work Act, and therefore would be excluded. I wonder whether you've got any observations about this schema that's being proposed around work pressure that effectively places an obligation on employers outside of the system of the insurance question.

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

The Hon. ANTHONY D'ADAM: Yes, it's a jurisdictional issue.

IVAN SIMIC: We've only had a very short time to consider these reforms. I can certainly see this being a very fertile ground for litigation. As you know, most people are actually covered by Federal legislation in New South Wales, so how this is going to work with the New South Wales Industrial Court, I am not sure. But it is a very good and valid point that has been raised by the CFMEU. It's going to be a fertile ground for litigation, and you could be waiting for a finding for a long, long time.

The Hon. DAMIEN TUDEHOPE: You could find yourself in the High Court, mate.

The Hon. STEPHEN LAWRENCE: Mr Dougall, we have had some things drawn to our attention this morning in relation to the definition of "relevant event" in proposed section 8E and the fact that it requires a worker to have witnessed an incident that leads to death or serious injury. We've had witnesses talk about people who might, for example, deal with the aftermath of a road tragedy, be involved in removing corpses perhaps on multiple occasions and they wouldn't have witnessed an incident, even though they've obviously been exposed to trauma. I am just curious. Do you see any anomaly between that restriction in section 8E and the vicarious trauma provisions that follow in 8G?

SCOTT DOUGALL: To answer the first part of your question, if you don't witness the incident itself—if you see the aftermath—I don't think you're covered by 8E (1) (c). I don't think you're covered by that. There was reference before to a train accident. The train driver might feel a bump, he's not sure what it is, he stops, it's a dead animal or potentially a dead person. He hasn't witnessed that. He's dealing with the aftermath, as is the cleaner, so I don't think they're covered by—it would be my view that they're not covered by that section.

The Hon. STEPHEN LAWRENCE: I was curious how you think that sits then with 8H, which seems to recognise liability when something happens to a work colleague, and you hear about it, so, therefore, you experience vicarious trauma.

SCOTT DOUGALL: Yes.

The Hon. STEPHEN LAWRENCE: They are obviously different issues, but do you see that on a policy basis as anomalous—that one would be recognised and the other wouldn't?

SCOTT DOUGALL: I think so. What sprung to mind was the death at the Bondi Junction shopping centre where a guard was killed. If a fellow guard had an adverse reaction to that event but didn't actually know that person, would he have a close work connection? I don't know. Again, it's coming back to you really either have to know the person for 8H, or you have to have witnessed the event for 8E. That leaves a very large grey area where people will have exposure to trauma but not be covered.

The Hon. STEPHEN LAWRENCE: My further question is quite a general one. We heard evidence this morning that the workers compensation system was designed for physical injury, and now it's obviously being applied to psychological injury and claims of psychological injury. Is there something about the system that is able to be reformed that is inapposite to psychological injury? Is there something about the nature of psychological injury and the fact that it is an internal thing, by and large? Obviously you can have objective evidence of stressors and so forth, but it's ultimately an internal assessment about what's going on inside someone. Is there something about the nature of it that means that the standard of proof we're applying, the procedures we're applying, are not apposite and we're basically opening the door for a class of claims that we keep hearing about? We heard some

evidence this morning from businesspeople talking about people subject to performance management and whatnot putting in stress claims and that costing the system half a million so far et cetera. Is there something inherent in this type of claim that we just haven't got the system right yet, and do you have any ideas about how to address that?

RAMINA DIMITRI: That specific example you gave about management action I think is adequately covered in 11A.

The Hon. STEPHEN LAWRENCE: By 8E and all that, yes.

RAMINA DIMITRI: Correct. There is so much jurisprudence about that and interpretation, and, if anything, that could be tightened. But 11A, ultimately, the burden of proof is on the employer. I don't know whether those reforms or those proposed reforms are so bad, in that they do provide further clarity. Perhaps that should be the focus as well as return to work strategies. At the moment, though, there is really no data to say what the drivers of this reform are. Is it the people on statutory benefits for a long time who don't get to the 15 per cent or is it people over 15 per cent? Is it people in the 20 per cent to 25 per cent cohort? Absent that information, there is really nothing that we can say that will inform the Government's position on what should be tweaked to fix this problem.

SCOTT DOUGALL: I have just one further point. The idea that the scheme has to remain static and that it cannot evolve I think does not serve workers in the twenty-first century. We've had dust diseases evolve and we're able to incorporate that. We've had skin cancers and hearing loss. These things evolved. To say it was just designed for physical injury and, therefore, everything else should be excluded, seems overly simplistic.

The Hon. STEPHEN LAWRENCE: I wasn't suggesting that everything else should be excluded; I suppose I was just pondering. The path that the exposure draft takes is to limit certain classes from the scheme in order to deal with this explosion in claims, if you like, and the threat to the financial viability. Is there some other way of doing it—whether to reduce payments to impose a higher standard of proof—that might not arguably be so unfair in terms of just excluding categories of people?

IVAN SIMIC: We had the benefit of hearing from Mr Toomey from the Bar Association in the previous session, and I thought he actually addressed this question very, very well. I think it's worth revisiting that evidence. One of the problems with this whole law reform process is that really the lawyers haven't been consulted or asked, "How do we fix it?", and we've just had this thrown at us at very short notice. I would encourage the Committee to go back to the evidence of Mr Toomey and some of the ideas he suggested there about how you might reform the area to address the issues you're concerned about.

RITA YOUSEF: One point is also if the WPI percentage has to change—we don't necessarily think it should change, but if it has to—perhaps a consideration of 21 per cent. Also, coming back to the point about common-law claims and the current percentage being at least 15 per cent, if a person, especially with a psychological injury that's been going on for years, can get to a point where they close a common-law claim and they are out of the system, that can have instrumental impacts on their life, and for the system and the employer—arguably more so than someone who is suffering a physical injury only. We see day to day in our jobs people who experience that kind of relief when the common-law claim is done. They don't have to deal with the insurer anymore, they get a lump sum, and they don't have to go back to the insurer for approvals of treatment or anything else. It does make a big difference to close off a claim. So that's part of why that percentage really needs a lot more consideration. The 31 per cent is just not adequate.

The CHAIR: Mr Jones, would you like to jump in? I believe you had your hand up first, so I think you want to make a contribution?

DAVID JONES: Thank you, Mr Chair—just one comment in relation to amendment of the scheme. One of the issues will be: How will it deal with existing claimants? The exposure draft provides no information as to how existing claimants are to be dealt with. The transitional provisions are silent. I did hear some evidence from the earlier part of the proceedings where there were questions in respect to first responders. First responders were exempted from the 2012 amendments and are subject currently to the 15 per cent whole person impairment threshold. If those first responders are not exempted from these proposed amendments, you will simply not have police officers, ambulance officers, paramedics and firefighters in the State of New South Wales because they won't be willing to go to work where they're subjected to a 31 per cent impairment threshold and these types of reforms. So they're matters which will need to be considered in the drafting of any proposal to amend the scheme.

The CHAIR: Mr Dougall, I think you may have had a final contribution you wanted to make?

SCOTT DOUGALL: To answer the earlier question, I think the problem is that the rates of people getting back to work are falling away. The incentives aren't there for an employer to provide suitable duties. The model

in place with rehab providers is not working. Their costs are going up and yet the rates of people getting back to work are going down, and that's not being considered in this process at all. I think there are some significant savings to be made there.

The CHAIR: Before I conclude, I have a point of clarification. Damien, going back to your first question, you put a broad question to the panel asking whether any of them have any anything to say about or disagree with anything that was said by the peak law bodies. In the exchange, the only person who responded was Mr Dougall and then we moved on to another line of questioning. I want to make it clear that I'm not sure whether silence meant consent or not in that case. Are there any other parties at the table here or on the videoconference who want to demur from what the consensus position that was arrived at, subject to Mr Dougall's comments? Or do we take it as consent to the positions reflected in the two peak law bodies contributions, both through submissions and orally today?

DAVID JONES: I was in the waiting room for the last 15 minutes of the evidence so without the benefit of viewing the transcript, I can't indicate if I agree with the propositions which were made.

The CHAIR: That's a completely reasonable answer. Perhaps you might wish to take that on notice. That might be the way of dealing with it. I sincerely thank you, on behalf of the Committee, for what's been a very quick and, dare I say, rapid response—if I could use that phrase—to what's now before us. I appreciate deeply the expertise, experience and insights that firms represented here today were able to bring to a very important—more than a discussion—and serious debate about workers compensation reform in this State. That information, through your submissions, is very detailed, and well supplemented by your contributions today. On behalf of the Committee, thank you very much. Some have taken some questions on notice. The return time and date for those is 5 o'clock next Wednesday, for any questions that you may have taken on notice. The Committee secretariat will liaise with you, if that's the case. Once again, thank you very much.

(The witnesses withdrew.)

Ms ROSHANA MAY, Individual, affirmed and examined

Mr KIM GARLING, Individual, sworn and examined

The CHAIR: Would either of you like to make an opening statement? Please bear in mind that the longer your opening statement, there'll be a compression of time for questions. I'll leave it in your hands.

KIM GARLING: I don't have an opening statement. I might mention that, having been cautioned by the office about my submission, I did suggest it might have been confidential. To the extent that I thought it should've been confidential, I don't need it to be confidential anymore.

The CHAIR: That's your position?

KIM GARLING: Yes, it was absolute caution, and I can waive that.

The CHAIR: Members, who I believe would have a copy of Mr Garling's submission, it stands in the form he has said he would like it to be in. Ms May, do you have an opening statement you'd like to make?

ROSHANA MAY: I'd prefer to receive the questions.

The CHAIR: And, indeed, I think the Committee members want me to shut up and do just that—allow the questions to flow. We will start with the Hon. Damien Tudehope.

The Hon. DAMIEN TUDEHOPE: Mr Garling, you did make an opening statement. You had an article published in the *Newcastle Herald* or *The Sydney Morning Herald* yesterday that was an appraisal of what you perceive this exposure draft to encapsulate. Do you want to go through what you observed in relation to that editorial piece that you wrote?

KIM GARLING: You're ahead of me. I haven't seen it, but I think I know the gist.

The Hon. DAMIEN TUDEHOPE: Would you like me to give you a copy?

The CHAIR: I don't think it can be taken officially as an opening statement.

KIM GARLING: No, I think I know the gist of it.

The Hon. MARK LATHAM: Are you saying he wrote it?

KIM GARLING: I certainly played a large part in it. The essence of what I was saying there was that there were a large number of comments by various different commentators about the fact that the scheme protects workers. I was trying to make the point that that's not the case. It never has been the case with workers comp; workers comp protects the employer. In the course of protecting the employer, there's a fund established, to which the employer contributes, which pays the compensation to the worker arising out of a workplace injury. So we're not talking about protecting four million workers; we are talking about protecting some employers, and they're saving being sued at common law. Now they only have to contribute to a fund which picks up the liability they previously had. So it's a huge benefit for the employers; it's not necessarily for the workers. That was the gist of the first part of that article. The second part of that article was questioning the statements about financial sustainability. They're difficult to convey in an article such as that, but that was my attempt to cover that area, as best as I can recall.

The Hon. DAMIEN TUDEHOPE: We've heard a lot of evidence that this is an unsustainable scheme because of the blowout in relation to psychological injury claims. This scheme, or the exposure draft, is an attempt to deal with non-physical injuries to the extent that they are now a major component of the manner in which both the TMF and the NI need to deal with workers compensation. The corollary is that, certainly in the NI, premiums are going to blow out to unaffordable levels.

KIM GARLING: I find those statements that have been made—and I'm not an actuary—rather startling because, as I think I said in my submission, in the icare annual report it talks about claims increasing year on year when the fact is they haven't. There has been a lot of talk about an explosion of claims, and the fact is they haven't. The simple answer is—we're talking in the NI scheme—an increase from 5 per cent of the total to 7 per cent of the total. Looking at individual claims numbers is helpful, but it's got to be seen in the context of the whole number of claims. Claims dropped significantly after the 2012 reforms. I think they probably dropped by 25 per cent, and they've slowly come back up, but so have the numbers of workers, so have the number of employers and so have the wages covered in this scheme, so one would expect it to have a different impact. But it's simply not correct, in my humble opinion, to say that there has been an explosion of claims, because the fact is there hasn't.

The Hon. DAMIEN TUDEHOPE: However, there is a difference in the nature of those claims in that often, because it's a psychological claim, they're a lot harder to resolve. Would you accept that as a proposition?

KIM GARLING: I think the difficulty is that psychological injuries are difficult to manage medically and, for many of the employers, present an issue which they're not capable of dealing with or understanding. If you take a toxic workplace, and there are examples of those where the worker has an emotional—if I can use a neutral term—difficulty with returning to work, that is a real barrier to them coming back. But the 2012 amendments were supposed to deal with that. We've been through that extensively.

The 2012 amendments said you either have capacity for work—and I think I made a famous statement back in 2012, which is going to haunt me, that you don't have capacity only if you're in a coma. That was a bit of a stretch, but the fact is most people have capacity. The next part is they're obliged to return to work or not get compensation. We've dropped that practice or procedure, in my humble opinion, which would address a lot of the comments that have been made. The legislation is quite clear. It's a matter of process, in my humble opinion. But coming back to the claims issue, I'm talking only about psychological claims when I say it's 5 per cent to 7 per cent of the total. So the 93 per cent of payments and claims are unrelated altogether to psychological injuries.

The Hon. DAMIEN TUDEHOPE: If I'm reading your position, you say that the current scheme is working perfectly well—it might not be perfect, but it is working well—and the amendments foreshadowed here, which reduce claims and entitlements, are unnecessary within the current scheme?

KIM GARLING: Having been involved in looking at the workers compensation system since 1985, when I was closely involved in the 1985, '86 and '87 reforms by the then Wran-Unsworth Government, there can never be a position where a scheme such as this is in terrific shape. I don't have the precise figures, but if you look back at the Workers Compensation Insurance Fund over the last 20 or 30 years, you'll find it's almost always been in deficit. There's a good reason for that, because we don't want to over-fund it particularly; we want to keep it on a balance. A slight deficit or a slight surplus is good. If it shifts either way, you'd want to think about it, but there are a large number of factors that affect that.

If I can add to that—I'm not sure I mentioned it—if there's \$16 billion in claims reserved at the moment, which is out of the last report, it is not payable in one year; it's payable over 20 or 30 years. It's not really difficult in the next five or six years. I challenge anyone who would have the wealth to take over that \$16 billion worth of estimated claims, because they might end up being extremely wealthy at the end of the day. They're only guesstimates—I'm not being critical—but that's the only way the actuaries can do it, and they do it very skilfully, but it's over a long period. The philosophy is, do we fund everything up-front with 100 per cent plus knowing that that will end up in a surplus down the track, or do we measure it according to current conditions, workplace conditions and costs? To look at it, a \$1,500 a year average premium is not excessive. That's what, in the NI, you pay. It is an average of \$1,500. I acknowledge there are all sorts of other mathematical issues.

The Hon. DAMIEN TUDEHOPE: There are more dangerous industries.

KIM GARLING: But, roughly, that's not a big impost, so I don't understand the urgency. I can see the argument that maybe in a year or two or three we might have to increase premiums. Maybe the test is to do a three-year rolling valuation and view rather than do it as at 30 June one year. We are not an insurance scheme. This is a compensation scheme. It's totally different.

The Hon. DAMIEN TUDEHOPE: Can I take you to some specifics of the scheme? There is a proposal to amend section 11A in relation to the defence available to an employer in relation to various claims. Do you think the current section 11A is fit for purpose?

KIM GARLING: I'd pose the question the other way. How does someone obtain or have a psychological injury as a result of being told that they're no longer working at work? I find it extraordinary that someone would have a psychological injury as a result of that type of definition and that type of workplace incident. However, in the current system they do. Under the new definition of psychological injury they won't. I see it as irrelevant at the moment because, to get through the gate, you've got to be seriously psychologically injured, and have all the evidence to support it, and then succeed in proving the case. Lawyers, in practice, often have to deal with pub tests. The number of clients you have who come in and say, "This is what my colleague did. I was talking to him in the pub last night and he got \$5 million worth of workers compensation benefits." You go, "I don't think so."

When you actually look at the case, he lost the case. With all the examples that we've been given, I would encourage each of those people who have suggested those to refer them to Geniere Aplin at icare and ask her to investigate them as to whether they're true. You might find a totally different story. That's not to say there aren't claims that go through that are unjustified. You've also got to remember that, in litigation, there are two sides. The system we have ends up in a dispute resolution place called the Personal Injury Commission, where both sides go to argue their cases. One wins and one loses. Often the case is that they both lose, because the person who was

expecting the \$5 million doesn't get it, and the person who was expecting to win didn't want to lose, anyway. You've got to balance those stories and just look at the fundamental principle. Workers comp is there to compensate workers with an injury. If you want to take out psychiatric injuries, that's a matter for the Government. It may be better to think about how we define the psychiatric injury a little bit more kindly than at the moment.

The Hon. DAMIEN TUDEHOPE: Could I take you back to the previous observation you were making about the current viability of the scheme? The Premier has said that this is an insolvent scheme. The Treasurer this morning was saying he's not going to fund it anymore if we don't amend this legislation. What I'm hearing from you is: What is the matrix that they use for saying it's insolvent, and that matrix is probably wrong if they are wanting to fund it of assets in excess of liabilities, because that's the wrong way of looking at the financial viability of the scheme. Is that a fair call?

KIM GARLING: As I've mentioned, the scheme is not one scheme in the sense that you're talking about with funding. There are two separate funds. They're completely different and they're not related.

The Hon. DAMIEN TUDEHOPE: One funded by premiums and—

KIM GARLING: The NI is funded by business premiums. The TMF is a bit of a myth, because the Government is the defendant. Whether the TMF has enough funds is interesting, but the Government has to have enough funds because they're the defendant. The fact that the TMF helps fund it is very wise. It's very sensible to put aside some money. But it's not the end of the story. If the Treasurer doesn't want to put any more money into the TMF, which is quite well funded at the moment, that's a matter for him. But if the claims go up, the Government's going to have to foot the bill anyway.

The Hon. DAMIEN TUDEHOPE: They're a self-insurer at the end of the day.

KIM GARLING: Self-insurer.

The Hon. DAMIEN TUDEHOPE: Can I ask you about one further issue in respect of a specific proposal? I'm sorry I haven't got to you, Roshana.

ROSHANA MAY: It's fine with me.

The Hon. DAMIEN TUDEHOPE: There is a proposal to require claimants in relation to bullying and harassment claims to go through a process with the Industrial Relations Commission to get a certificate. In relation to the Government, you'd expect a circumstance potentially where the Government is defending a claim against itself from a claimant in its own workplace. Do you see any issue in relation to that?

KIM GARLING: The Government has been a defendant in multiple cases for 100 years. I don't think the fact that they're a defendant is going to be a problem. How it works is something we're still to see. I observed yesterday that two of my former colleagues were appointed as commissioners to the Industrial Court, presumably to deal with these. I'm sure they'll be particularly clever and very capable.

The Hon. DAMIEN TUDEHOPE: Do you have any observations on that?

KIM GARLING: We just don't know.

The Hon. DAMIEN TUDEHOPE: We haven't seen a bill.

KIM GARLING: No.

ROSHANA MAY: I don't particularly see a problem with the IRC having a jurisdiction—whatever they want to call it—in relation to harassment and bullying, similar to the Fair Work Act provisions which seemingly apply to the private sector employees in New South Wales. I think the Government needs to be held to account for its own workplaces. That's a simple observation, but tying it to workers compensation is an irrelevant consideration.

The Hon. MARK LATHAM: As we're falling behind time, I'll cede my time to help us out. I forfeit my six minutes.

The Hon. ANTHONY D'ADAM: As in we'll just cut it short by six minutes?

The CHAIR: Is that agreeable?

The Hon. MARK LATHAM: We're behind time yet again.

The CHAIR: I understand that. We are doing our very best. Thank you, the Hon. Mark Latham. We'll go to the Deputy Chair.

Ms ABIGAIL BOYD: Good afternoon to both of you. I'll start with you, Mr Garling. You have an incredible way of myth-busting in what is a very complex area. Just to recap, from what I'm hearing you say, there is no great urgency when it comes to fixing the solvency of the TMF or the NI. Is that correct?

KIM GARLING: The TMF is the Government, so there is no issue about solvency.

Ms ABIGAIL BOYD: Because it's always going to be—

KIM GARLING: It's always going to be the Government.

Ms ABIGAIL BOYD: —effectively a self-insurance scheme.

KIM GARLING: The NI is not going to go broke tomorrow. But I don't oppose reform and working through some of these issues. I think everyone is concerned about how we deal with psychological claims, whether they're minor or major. That's a really difficult issue that needs some further inquiry. This Committee has already looked at that sort of issue before. Maybe we need to refresh that and look at that separately. How do we treat it? How do we deal with it?

Ms ABIGAIL BOYD: I agree, but it's not urgent. Take the urgency out of it, though.

KIM GARLING: There's no reason to stop moving at all.

Ms ABIGAIL BOYD: When we come to the Nominal Insurer, if we are looking at psychological claims going from 5 per cent of total claims to 7 per cent of total claims, just imagine that this entire package of reforms goes through unamended and a huge number of these psychological claims get excluded. From what you were saying before about the NI effectively being a scheme that ensures employers as opposed to employees, if there's no cover for an employer, does that mean that a worker could go to court then to claim against their employer to get some compensation?

KIM GARLING: It's an interesting question. I'm told more by gossip than anything else that there are a number of barristers sharpening their pencils at the moment on that very point. One of the questions that needs to be considered is that the definition for injury is such that if you're not determined to have a psychological injury as defined, then you have no injury and you have no right to submit a notification to the insurer under the Workers Compensation Act. If that be the case, then the question arises as to whether you then have full common law rights outside the scheme. But I'm not offering an opinion on that. I'm not qualified. I know that there is some sharpening of pencils going on about whether that's possible.

Ms ABIGAIL BOYD: So it's feasible to think that even if there was to be some relief from premiums for a business through these changes, you may then also be faced with needing to cover yourself somehow for liability that then arises from all of the claims that are no longer under your workers comp?

KIM GARLING: I think that most significant employers, whether small or large, would already have management liability insurance. There's a question of whether the employment practices section of that management liability policy would cover you. At the moment, most of those policies exclude bodily injury, but the question then arises as to what else they exclude.

Ms ABIGAIL BOYD: So these reforms are then gutting not only compensation entitlements for workers but potentially coverage for employers.

KIM GARLING: Correct. Possibly. I'm not expressing an opinion.

Ms ABIGAIL BOYD: Of course not. I think that answers it for me. Ms May, it's proposed that SIRA will have primary responsibility for appointing an assessor for WPI assessments. Can you see any difficulties with that proposal?

ROSHANA MAY: Yes.

Ms ABIGAIL BOYD: Can you explain that to us?

ROSHANA MAY: I think I've tried to explain it in my submission. If we go back to 2014, when the WorkCover Authority was all things to all people, there was an inquiry of this Committee that said that there were many conflicts of interest in them being the insurer, judge, jury and executioner, as I think it was explained by some person. Opinions have been expressed since then, before then and even post-2015 that the regulator should regulate and have no part in claims management.

I think that SIRA removing the ability of workers and insurers to obtain their own medical opinion as to the position of the workers assessment or capacity, or anything, is very dangerous. The process within SIRA would be more costly than it is now. There are impacts to freedom of choice, access to justice and the ability to resolve matters which often happen between a worker and an insurer by a single assessment. I understand the

purpose of potentially trying to confine parties to one assessment, but I don't think this is the way to do it. I would prefer to keep the status quo.

Ms ABIGAIL BOYD: Can you tell us what the impact of changing the reasonably necessary test to the reasonable and necessary test would mean?

ROSHANA MAY: The changes would mean that there has to be a greater level of necessity for treatment. When we talk about the objectives of the system being access to prompt treatment and early return to work, "reasonably necessary" means someone can front up and say, potentially with any injury, "I might need some acupuncture or some medication or some form of treatment." That will allow them either to remain at work—to prevent deterioration of their current condition so they can remain at work—or improve with surgery or anything else. The reasonable and necessary test requires both those limbs to be satisfied, which means there will be more challenges to the offers of treatment. The principles behind "reasonably necessary" will be lost. They were to facilitate, effectively, early return to work.

They are captured, remarkably, in section 297 of the 1998 Act. It actually captures the principles which were espoused in the case of *Rose v Health Commission* in getting an interim payment direction, which is something that a worker would get within the early confines of their claim to facilitate them getting access to treatment. It says that, despite liability, if you've got an injury management plan that says you need a treatment we will consider the four limbs—whether or not it either heals or cures—but maintain a certain status quo so a person can continue to work and it does not worsen the condition. That's much easier to satisfy than "reasonable and necessary".

The CHAIR: Before I pass to Government members, the next tranche of witnesses kicks off at 3.45 p.m. If we take our full allotted time, it will effectively get us to 3.45 p.m. In light of that, because I think that members need to stretch their legs, could we keep the questions nice and tight?

The Hon. BOB NANVA: I will just ask one question, perhaps to you, Ms May. I hope you'll forgive me if I refer to an article which you co-authored in 2014, *Principles of an effective workers' compensation scheme*, which I found fascinating. You talk about the compensation effect on health and wellbeing—

The Hon. MARK LATHAM: And you found it yourself?

The Hon. BOB NANVA: I did, actually.

The Hon. MARK LATHAM: Good on you.

The Hon. BOB NANVA: With the compensation effect on health and wellbeing, you look at the two broad categories of secondary gain and secondary victimisation. You conclude:

Taking this evidence together, effort is required to minimise system-generated stressors and to improve scheme design so that people are supported to exit the schemes as quickly as possible.

With that lens, what are your reflections on the scheme as it exists and the reforms proposed? If you had your hands on the levers, what would you do with that in mind?

ROSHANA MAY: I had my hands on the levers, basically, in the Parkes inquiry, which is where I was contracted to WIRO with Mr Garling to direct an inquiry into the mechanical and operational difficulties with the Act. There are lots of things I could do. You asked a three-limb question, and my brain is so fried from having written a submission that is about 32 pages long and has about 60 pages of annexes.

The CHAIR: I don't want to interrupt, but I will for this reason—you are entitled to take parts on notice to enable you that scope to fully deal with it. I don't wish to cut you off. You might want to put the difference on notice.

ROSHANA MAY: Thank you, Chair.

The Hon. BOB NANVA: You can answer any part of it that you wish.

ROSHANA MAY: You'll have to repeat the question. I will take it on notice, and I'd be happy to answer it.

The CHAIR: I apologise to Mr Nanva. I don't want to cut you off, but I also don't want to short-change your opportunity by having you think you've got to deal with it now.

ROSHANA MAY: Thank you.

The Hon. ANTHONY D'ADAM: I'll just ask one question because we're short on time. In his evidence, the Treasurer made great store about getting to break-even premiums. Is that something that we need to prioritise?

KIM GARLING: I haven't carefully looked at the last 20 years. My recollection, when I did look at it carefully, is that we have always operated in deficit or close to it. I'm not sure we've ever had break-even premiums. In my submission, I pointed out that last year the premiums received in cash and the claims paid in cash resulted in a \$600 million surplus. Going to the actual basics—if I was running my household—I've got \$4 billion or more in cash and I spent \$3.5 billion or \$3.6 billion. That's not the answer, because there's a lot of other issues, but it reflects on break-even. At the moment, that's a significant issue.

I'm conscious of the shortness of time, and I wanted to raise one other quick thing if I could, because I think it might answer some of the earlier questions. As a matter of interest, there is this difference between doctors' opinions. It's very hard to deal with, because some doctors say, "I don't know why you can't walk just because you don't have two legs," and the other doctors say, "You've got a slight cut on your ankle, so you can't walk." We did an exercise at WIRO which was very interesting, but I don't think we published it. We dealt with hearing loss. I invited the top six medico-legal hearing loss reporters in, and they turned up. We sat around the table and said, "Do you realise, individually, I can tell you how you do your reports? I can tell you the outcomes. I can tell you over there, Dr X, when you're acting for the insurer you go 3 per cent to one side of the norm, and when you're acting for the worker you go 3 per cent to the other side of the norm. We're tracking you." We track every report because that's the information I was obtaining from the applications. Six months later, we had them in again for a cup of coffee, and it was extraordinary. They were all about the same.

There are issues like that which, with a bit of left-wing thinking, you might just be able to improve the position. The WIRO has every medical report and every circumstance. It's simply a matter of collecting the data. There is one answer, if you're looking for alternatives to try and bring the scheme back together, but it's not easy. I think it's important that this Committee deals with the alternatives that exist, and you're not going to be able to do that in five minutes. Thank you very much to all of you for inviting me in the first place and for listening. I'd be happy to help anytime and give you my thoughts, right or wrong. I'm sure there are others who will have the suggestion that they know better, and I'm sure they do.

The CHAIR: I might take the Chair's option to ask the final question, which I'm sure we'll all support. On notice, would you be able to tell us what brand of coffee you served the representatives when you sat down with them? On that note, we'll break for afternoon tea.

The Hon. ANTHONY D'ADAM: I like the left-wing thinking, and I'm sure Damien does too.

The CHAIR: We'll take a short break until 3.45 p.m.

(The witnesses withdrew.)

(Short adjournment)

Dr JULIAN PARMEGIANI, Retired Psychiatrist and Assessor, sworn and examined

Dr ANTHONY DINNEN, Consultant Psychiatrist and Assessor, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome back. We have our two witnesses who are experts in the area of psychiatry and related fields.

JULIAN PARMEGIANI: Thank you for inviting me. I am a retired psychiatrist and the principal architect of the psychiatric impairment rating scale. I was also one of the most senior psychiatrists within the Workers Compensation Commission system, or the Personal Injury Commission, for over 20 years. I am now here in my personal capacity because I have been invited by this Committee to attend.

The CHAIR: We are grateful to you for making your time available.

ANTHONY DINNEN: I am a clinical psychiatrist in private practice. My background is I went into private practice after being in charge of the neuropsychiatric unit and being a research psychiatrist. I have been in private practice on my own for well over 50 years. My earlier special interest has always been in military veterans and post-traumatic stress, as it became known from the 1980s onwards. I have been giving evidence in court over many years for claims that have been disputed in veteran affairs or workers compensation. For many years I have been assessing for one particular law firm in relation to war pensions and also nurses who have got work-related claims.

The CHAIR: I don't mean to cut you off. That is a very helpful background. There may be some questions arising that will be directed to you on that, but I don't believe qualifications are being contested. Sorry to cut you off. It will just mean that we'll have less time to ask you questions. We'll now commence by giving you the opportunity to make opening statements.

JULIAN PARMEGIANI: First of all, I would like to thank you for inviting me because I called a number of senior colleagues still working within the Personal Injury Commission and they have told me they've all been gagged and directed not to make a submission to this Committee and not to give evidence unless invited, which to me was very disappointing, given the importance of this Committee.

The CHAIR: Can I just commence, and you may or may not be in a position to answer now. You used the word "gag"—your word, not mine. With these individuals who you say have been gagged, this Committee would like to know more detail about that. I will leave that general statement with you. I believe I speak on behalf of the Committee when I say we would like to know more details about that.

JULIAN PARMEGIANI: Of course. You may at any time request from the Personal Injury Commission whether they have sent an email to the medical assessors in the last few days to that extent. I'd be happy with that.

The CHAIR: That was your statement, so I thought I would respond immediately. We have limited opportunity in the time available in this inquiry to follow that up, but I'll leave that with you.

JULIAN PARMEGIANI: Yes, thank you. My opening statement is this Committee really needs to ask *cui bono*: Who benefits from the current workers compensation system? It is clearly not the employers, who are paying increasing premiums, which they're finding unaffordable; it is clearly not the State Government because of the cost of the scheme; and it is clearly not the worker who finds themselves stripped of their dignity, their income, their privacy and ultimately their mental health. My understanding and my observation is that there is only one organisation, or an alliance of organisations, that actually benefits from this scheme, and that is SIRA, the workers compensation insurers as agents and the medico-legal industry, of which I was part. Looking through that prism, I am happy to answer any questions about the harmful effects of the scheme, which I have tried to change over many years but of course was precluded from doing so. I found that ultimately it was easier for me to leave the scheme because I saw it as being so harmful and toxic as to be perhaps the future equivalent of asbestos exposure.

ANTHONY DINNEN: I would like to address the Committee about the concern that has been raised about the increased level of impairment from 15 to 30 per cent as the threshold for a person receiving compensation. My background is that I have been clinically involved, as I say, in a range of compensable causes and have treated many patients in both State and Federal compensation schemes. I am aware of the difficulties my patients have encountered always in negotiating the systems to enable them to get the full benefit of their entitlements. But my focus has always been on trying to help them as well as I can under the circumstances. I am involved in addressing this Committee, I believe, because I was asked by the law firm that I have been providing assessments for in treating patients on federation law to give an opinion about that increased threshold. I have sent them a report or an opinion about that matter.

That led to me being invited to attend a meeting at Parliament House last Thursday with the unions that were dealing with some members of Parliament, to give them background as to what was their concern. That led to me being asked to address this Committee. I can only give my assistance to the Committee from the viewpoint of a clinical psychiatrist. I have not ever worked as a member of the system as Dr Parmegiani has indicated that he has. My role has always been as a clinician treating someone and from time to time giving advice and helping them to deal with the systems. But I know, from my patients and my clinical experience over many years, because I've been in practice for many years, that an increase in threshold from 15 to 30 per cent would eliminate virtually every patient I've ever seen, except for maybe one or two, from being eligible for the scheme.

The CHAIR: Thank you both for the very helpful opening statements, which I know will stimulate some questions from Committee members.

The Hon. DAMIEN TUDEHOPE: Thank you both for making yourself available for the Committee. Dr Parmegiani, we have heard a lot of evidence today—we've had a lot of people come forward. One of the themes has been that psychological injuries are really very hard to assess. You're the author of the psychiatric injury—what is it?

JULIAN PARMEGIANI: Psychiatric impairment rating scale, PIRS.

The Hon. DAMIEN TUDEHOPE: Is it your view that assessing psychological injuries is so difficult that it requires its own scheme for determining liability for employers relating to assessing those injuries?

JULIAN PARMEGIANI: No, the assessment has changed from diagnoses, which are difficult to make, to function. The PIRS, or psychiatric impairment rating scale, is an assessment of function—that is, the impact of the psychological illness. You are looking at areas of function like relationships, capacity to enjoy recreational activities, capacity to work and travel, and capacity to concentrate. Those are all of the effects of a psychological injury. They're observable by a third party. They're not subjective, like a symptom might be.

The Hon. DAMIEN TUDEHOPE: Then perhaps I'm concentrating on the wrong thing. I should be looking at the *Diagnostic and Statistical Manual of Mental Disorders*.

JULIAN PARMEGIANI: A diagnosis under DSM is required, but it has very little relationship with the level of impairment as measured by function.

The Hon. DAMIEN TUDEHOPE: Are we really saying that there is a problem in terms of the way that psychological injuries are assessed?

JULIAN PARMEGIANI: No, I don't think there is a problem there. I think the problem is with the system, and I am happy to expand. The problem is that there is an event, as defined, in the workplace. There is a psychological reaction to that event, which may be a perfectly normal psychological response to, perhaps, bullying or disciplining, and it upsets people. Once you embark on a system which requires you to lodge a claim and then go through the assessment process—and this is an assessment process which stretches over months if not years, if you include disputes and appeals—you have a person who has gone from having a dispute and a range of perfectly normal symptoms and responses, to having a conflict which is then stretched over months and years. There is sleeplessness, loss of identity and basically loss of dignity because you are now a workers compensation case.

By the end of that trajectory, which has taken long time, the injury becomes real and people have lost sleep over it. People have committed themselves. If you go to a no-win, no-fee firm, you sign your rights away and you can't withdraw from it. If you withdraw, you are liable for all costs associated with the case. Basically, you lose your house. You are committed. You've signed a contract which makes it mandatory for you to be in this state of paralysis for 18 months, two years or sometimes even longer. Then you get all the anxiety arising from disputes between assessors and your lack of capacity to generate any money to feed your children or pay the mortgage. By the end of it, you have created a mentally crippled person.

The Hon. DAMIEN TUDEHOPE: There is a whole lot of issues that arise from what you've said there. The same set of facts and circumstances in a work environment, for example, Mr Latham might take very easily and with no worries. You can't bully him. I might be much more sensitive and, for me, it's a bullying event. How does an employer deal with that?

JULIAN PARMEGIANI: That situation needs to be addressed as quickly as possible, perhaps independently or perhaps by a government organisation. Someone needs to go there and make a judgement, a little bit like the unfair dismissal claims, where you resolve it and let people move on with their lives and look for another job without necessarily labelling them as mentally ill. If the assessor under these reforms, whether or not they be a tribunal—and I'm scared to think how long it would take to arrange a hearing under such circumstances—finds that the employer is liable, then you have to be psychiatrically assessed. Then the insurer will get a

psychiatric assessment. If the other side doesn't like it, they will get their own assessment. Then it will be a dispute, which goes to the Personal Injury Commission. If they don't like that, it will go on forever.

The Hon. DAMIEN TUDEHOPE: The model which the exposure draft seems to indicate is that for that scenario, where there is an allegation that I was bullied in the workplace, you have to get a certificate from the Industrial Relations Commission. Do you see that as the right model for quickly resolving whether a bullying event may or may not have occurred in relation to the environment in which it has been suggested?

JULIAN PARMEGIANI: The devil is in the detail. Superficially, it sounds great—a very attractive proposition. The issue is the time that it takes to get that certificate and what happens after that certificate. What happens is not, "You have suffered an injury. Here is a certain amount of money. Take it or we can go through the courts." That is how it used to happen in the nineteenth century with injury cases. Now it is, "You have an injury. You have to be assessed. Now you will embark on this long path which will strip you of your mental health."

The Hon. DAMIEN TUDEHOPE: There is an equally problematic part of that process—that the person making the allegation would potentially be the subject of an extensive cross-examination process and be retraumatised in respect of the circumstances. This may involve sexual harassment, racial bullying or workplace bullying.

JULIAN PARMEGIANI: You do need to find the facts. An investigator—someone who is properly qualified—needs to go to the workplace as quickly as possible, find out what has happened and, if the employer is liable, quickly bring the case to its conclusion and not let it stretch on indefinitely.

The Hon. DAMIEN TUDEHOPE: You've identified the nature of the system that people then get involved in. After they get their certificate, they have to continue it.

JULIAN PARMEGIANI: Yes.

The Hon. DAMIEN TUDEHOPE: Is there a problem in the system which exists because we now need to adapt our persona to being a continuing litigant in that system?

JULIAN PARMEGIANI: Absolutely, because the more you enter that role, the more you become that person. You are the injured worker who has been damaged and you will hear "permanent impairment" and "permanent damage". You start to think and behave like a you are permanently damaged. You don't look for other work because that is going to reduce your chance of getting any compensation. Lawyers and others will advise you, "You embarked on this path. Stop trying to go back to normal. Stop trying to get a job because then you have no case." That in itself is stripping the person of their role within society.

The Hon. DAMIEN TUDEHOPE: Effectively, what you are saying is that lawyers or doctors at that point will coach you about how you have got to behave to reach the 25 per cent or, as is suggested by this exposure draft, the 30 per cent level of whole-person incapacity to be able to continue your claim.

JULIAN PARMEGIANI: I don't think lawyers or doctors coach claimants. They just help them understand the criteria by which they are going to be assessed. If those are the criteria, that's how they prove that a great injustice has occurred. They have got to be compensated because they are angry. This is before they actually develop a mental illness, while they are still angry. They lose sleep over it; they lose their appetite. They become grumpy and irritable. Their relationship suffers. Before you know it, the relationship has broken down. Their friends have avoided them. They look like they've got a mental illness, and they do.

The Hon. DAMIEN TUDEHOPE: In terms of getting to a scheme which deals with that in a much more compassionate way, or a way which doesn't exacerbate the injury, this needs a lot more potential thought than exists in this exposure draft.

JULIAN PARMEGIANI: Yes. First of all, I see the current Act and the exposure draft as being basically written by lawyers. The claim-handling process goes as fast as a car designed by lawyers. It does not have any input by people with knowledge. On the icare board, there is no occupational psychiatrist and they are overseeing the whole system. As an expert within the system, basically we couldn't do anything because we were always told what to do, where to turn up and where not to turn up.

The Hon. DAMIEN TUDEHOPE: I suppose the length of time that it takes for a claim to be resolved would impact on the person. Can I ask you this: I think you started your position by suggesting that, in your experience, no-one would reach the 30 per cent whole-of-body impairment. Is that right?

JULIAN PARMEGIANI: Very rarely. I can see, over 22 years, perhaps a handful of people. I could count on one hand the people who have reached 31 per cent.

The Hon. DAMIEN TUDEHOPE: This scheme certainly allows the claimant 2½ years to make a claim and allows them medical expenses for 12 months after that date but then cuts off their entitlements for any further claims and any lump sum claims after that date if they are below the 31 per cent.

JULIAN PARMEGIANI: Yes, but the 31 per cent, or any percentage of permanent impairment, does not kick in until the person is assessed as being permanently impaired and therefore let go. That process is the damage—the two years or 18 months that it takes for the system to say, "This is your permanent impairment rating." By that stage, you have already damaged the person.

The Hon. DAMIEN TUDEHOPE: But Ms Boyd made the point earlier on: At what point do you make that assessment? A person at the commencement of the process might be 20, 22 per cent, but by the time they get to 2½ years and one day they might be 30 per cent. Would that person be required to start again? They have gone through this process; you have cut them off.

JULIAN PARMEGIANI: When you look at the criteria, if you read the PIRS, to get to 31 per cent, basically you are not working, your relationships have broken down and you are unable to look after yourself. Basically, after that time if you cut them off the system, you might as well give them a cardboard box and they can move into the street because they have got no agency left.

The Hon. DAMIEN TUDEHOPE: You have had an opportunity of looking at the exposure draft.

JULIAN PARMEGIANI: Yes.

The Hon. DAMIEN TUDEHOPE: Are there any aspects of it which you would embrace in terms of, "This looks like a good initiative"?

JULIAN PARMEGIANI: I'm sure the exposure draft is paved with good intentions. But, because of the further delays that are built in or suggested in the claims-handling system and the process, I fear that it is going to be causing more harm because you are now going to stretch the process by another few months while you get the—I don't know if it is going to be the IRC or Fair Work Australia—to assess whether they have had a workplace injury or not. So I take into account the harm caused by further delays, and I think it will more than counteract any good intentions of the draft reforms.

The CHAIR: Before I pass to the Deputy Chair, Dr Dinnen, if you have got any contribution you'd like to make as the questions progress, could you just put your hand up, please? That's the signal for me to throw to you.

ANTHONY DINNEN: Mr Chair, I didn't want to interrupt Dr Parmegiani, but I must endorse everything he said. The other thing that occurs to me is that when we are talking about assessment, we are talking about a way of calibrating the number that we would give on the scale that Dr Parmegiani developed 20-odd years ago. That, I think, can be confused with what we psychiatrists normally regard as assessment, which is when you see a patient and you examine them and you come to an opinion as to what's wrong with them. That's really a medical-type assessment. So I wasn't sure whether that was part of what was being asked. If it is, then clearly—I don't think there is any difficulty in making diagnoses, but I agree with Dr Parmegiani. Even if there are some patients where it is not that straightforward, what's involved in the compensation process is looking at how much impairment there is. That really doesn't depend on the diagnosis; it depends on the clinical features that you are dealing with.

The CHAIR: Thank you, Doctor. That is very helpful.

Ms ABIGAIL BOYD: Good afternoon to both of you. Dr Dinnen, a lot of people have made the point that there is a need to distinguish between physical and psychological injury claims when it comes to a lot of aspects of the workers compensation system, particularly the management of those claims, but that when it comes to the assessment process for an impairment, an injury is an injury and that's the spot where psychological and physical injuries should really be treated the same. Would you agree with that statement?

ANTHONY DINNEN: Yes, I do. The only other thing I would say is that psychiatry is starting to evolve in a way that we have been hoping to see for a long time. It's starting to move towards a biological basis to understand psychiatric illness, which has been lacking until now. There is a lot of research being carried on around the world at the moment into genetics of psychiatric disorders. We know now increasingly a lot more about the neurobiology of psychiatric disorders.

The distinction you are making between physical and psychological makes sense, except that a lot of the patients that I deal with, the way I manage is to tell them, "If you haven't got a psychological injury where you can be talked out of it or you can talk yourself out of it or you may be reacting psychologically, what you have got, essentially, is a brain injury." I think that's increasingly an understanding of where psychiatry is going

nowadays. If you're with people who have been traumatised, as Dr Parmegiani has described, once they get to that point where they really feel incapacitated, it is not a question of psychological therapy getting them better. Their illness is going to persist—the impairment is going to persist—and the long-term consequences often lead to permanent disability, and that is often poorly understood. That happens in physical injury, but it is also very relevant to psychological.

Ms ABIGAIL BOYD: The workers compensation scheme is designed around the principle that you are compensated because you are injured, not that you are compensated because your employer did something wrong. It has been pointed out by other witnesses that if you injure your leg because you trip over a chair, that's not treated any differently to if you injure your leg because you tripped over a couch or anything else, for that matter. Whereas these reforms are looking at psychological injury and saying, "Yes, you are injured, but unless it is because of a particular reason, we are not going to cover you." Dr Dinnen, does that make you question whether the designers of this proposal understand that psychological injury is just as valuable or just as valid as a physical injury?

ANTHONY DINNEN: It's a very important question you ask. If it's true that, with a psychological injury in the workplace, you have to look at the events and categorise them—is it bullying and harassment? Is it overwork? Is it unsuitable working conditions? Is it being subjected to assaults or something which could be seen as an injury physically that gives rise to a psychological injury—someone who works in a mine and gets injured and develops a secondary psychological injury, for example? I agree with you. To try and compartmentalise as far as the elements—and if it's going to apply in psychology, it should also apply with regard to physical injury.

It seems to me this whole issue really is an unclear approach to the management of psychological injury. That was my initial reaction when I got told that the threshold has been raised to 31 per cent—or 30 per cent, I was told—for psychological injury, but that doesn't apply to any other injury in the workplace. If there are increasing claims, which apparently is the problem for psychological injury, the problem is not then to say, "Therefore we won't pay those because we will make it more difficult." The problem is to find out why and what is going on here. One of the things that I have seen already from this brief involvement with this critical process is that it's not well understood as to how this is all coming about when a psychological injury is essentially, in my experience, a medical issue in the same way that a physical injury would be a medical issue.

Ms ABIGAIL BOYD: Dr Parmegiani, there has been discussion about the similarities or not between the 30 per cent test under the South Australian legislation and the proposed 31 per cent test here, in terms of that threshold being based on a different scale. Obviously, you are the person to ask about this. Would you agree that there is a difference between the two?

JULIAN PARMEGIANI: I'm not familiar with what scale South Australia has introduced, so I can't really comment on that. But if I could just clarify, a very important point made by Dr Dinnen is that we are now converging physical and—psychiatric injuries seem to be also physical because of the stress hormones like cortisol and the lack of sleep. What happens is you get real changes on MRIs. Parts of the limbic system, which is a part of the brain, start shrinking because neurons die. Then you remove the stress and the person remains broken. That is a physical injury in the brain. You can cause psychiatric injury. If it was just a reaction, you remove the stressor and the person within days or weeks goes back to normal, which is probably what would happen in the initial phases of an incident, unless you just keep stressing that person.

The Hon. MARK LATHAM: Thank you to the two doctors. To both of you, you've been around a while and seen the emergence of new trends and patterns in this space. How do you explain the rise of psychological injuries? I think reasonably you can say workplaces themselves over the last 20 or 30 years haven't become more dangerous and damaging to people. We've got a multitude of DEI programs, identity programs, all sorts of consideration and compassion for people in the workplace that wouldn't have been there, say, 30 years ago. For goodness sake, you can even work from home; you don't even have to turn up in many categories. What has been the trend in that environment that has led to this increase in the injuries that we are dealing with in this draft exposure bill?

JULIAN PARMEGIANI: Clearly, the culture has changed, as you pointed out. Had you been born 150 years ago you would have lost various brothers and sisters and family members either through war or diseases that can now be treated. So you are not exposed to stressors and that, in a way, does not forge you into a stronger individual. We're not as used to—we're not learning how to cope with stress early in life because we're all being very well looked after. You probably wouldn't have it any other way these days. You wouldn't go and brutalise children just to make them tougher. But, yes, we are a little bit more prone to getting upset and getting angry, but then again, I don't think that's something that should necessarily lead to a psychiatric injury or claim, unless something else comes on top of it and makes your life hell.

The Hon. MARK LATHAM: What's the something else that's changed? I agree with what you're saying about the general outlook on resilience. You don't have to be brutalised as a child to toughen up.

JULIAN PARMEGIANI: Toughen them up.

The Hon. MARK LATHAM: You can grow up in a tough area and in tough financial circumstances. Anyway, be that as it may, what are the other things that have changed that you have just mentioned there?

JULIAN PARMEGIANI: As I said, there is a culture of being a victim and feeling hard done by. All those things certainly do apply. But I think for our purposes you may argue that we have some less resilient individuals, so we don't need a system that basically makes them into more grist for the mill—a sort of sausage machine of compensation—because that really breaks people.

The Hon. MARK LATHAM: So, too, in the finances of these schemes—if we've now got a culture of victimology, that doesn't mean people have got real injuries.

JULIAN PARMEGIANI: People feel it; they believe it.

The Hon. MARK LATHAM: They believe it? Okay.

JULIAN PARMEGIANI: They feel they are the victim of an injustice. They lose sleep over it.

The Hon. MARK LATHAM: It's like the Costanza principle. If you feel like you are injured, then you are.

JULIAN PARMEGIANI: Certainly you can talk yourself into it.

The Hon. MARK LATHAM: You can talk yourself into it?

JULIAN PARMEGIANI: Yes. It's current culture, but that doesn't make it any less suffering.

The Hon. MARK LATHAM: Dr Dinnen, what say you?

ANTHONY DINNEN: If I could come in, the notion that people are facing psychiatric injury is an easy one to [inaudible] but in reality I don't think it's an issue. What is an issue is that if there has been a very big increase in psychological injuries in the workplace, you have to understand what's caused it. Dr Parmegiani has given some reasons. To give you an illustration, I have patients who have developed PTSD and get medically retired from the Police Force after 30 years of frontline service. That makes sense. If you know what happens on general duties in the Police Force, I wouldn't want to do a day's work. But those 30-year police retiring on medical grounds from PTSD are now becoming very uncommon. What is common is young policemen with five or 10 years service are also not able to continue any further and are being medically retired from the police. I ask my police patients what's going on. I say, "How long can you last as a young person coming into the Police Force nowadays?", and I'm told five to seven years.

I asked ambulance officers that I encountered when I had an unfortunate incident and was in an ambulance. I said to them, "It's very nice to see you. How long have you been an ambo?" "Ten years." I said, "That's impressive. How long can people expect to be in the ambulance service today when they join up?", and they said, "Five years." There is something going on. Maybe it's because benefits are accessible and maybe that allows people to say, "Well, I am sick." I don't want to push it any further. Dr Parmegiani, I'm sure, would agree with me that the earlier you identify yourself as having mental health problems and get attention for that and get out of the situation that caused it—whether it's a bad marriage, a bad workplace, a home environment, whatever—the sooner you get out of it and get back to something alternative, the more than likely it is that you're going to get a reasonable level of recovery. I think there are a lot of answers to the question, but it's an important issue.

The Hon. MARK LATHAM: To both of you on this trend, just away from the workplace, is there a comparable rise in non-workplace psychological injuries, and what does that tell us about the workplace environment?

JULIAN PARMEGIANI: I think there are various areas where people do come to compensation, whether it's medical negligence or public liability. I haven't been around for 100 years, but I suspect that people are probably more vulnerable these days. Being told that they've been injured or they're the victim of an injustice and there is a system to compensate them to bring this justice, some people take advantage of that and will pursue that path.

The Hon. MARK LATHAM: Is there a rise in the non-workplace psychological injuries, or is Dr Dinnen's point valid, that it's happening in the workplace because benefits are available?

ANTHONY DINNEN: I would say there is a very good answer to that, which is that the model that has been used now for the past years since the Government started to fund psychological services—a person would go to the doctor and say, "I'm stressed and anxious because my nephew died," or "The workplace is difficult," or "I've had an illness." And the doctor will say—because you've only got six minutes—"Well, I'll send you to a

psychologist." When this scheme started to fund psychologists, there were about 5,000 or 6,000 in the Commonwealth. I think that is now above 30,000, so they are looking for work. They very rarely would ask the psychiatrist, "What do you think the diagnosis and management should be?" They are not medically qualified. They are in need of patients. They are in need of clients. They want to keep working. They're not going to send people away. I think that is part of the problem.

The Hon. MARK LATHAM: In economics we call that Say's law—supply creating its own demand.

JULIAN PARMEGIANI: Just to follow up with that question, I did see a study, which was interesting, looking at the cause of post-traumatic stress disorder in the community. One of the highest causes was watching a relative die in a hospital. This is something that used to occur commonly throughout the history of mankind, but now it is the biggest cause of post-traumatic stress disorder, or one of the biggest ones.

The Hon. MARK LATHAM: Watching a relative die in a hospital?

JULIAN PARMEGIANI: Yes.

The CHAIR: They used to die at home.

JULIAN PARMEGIANI: You shouldn't see it; you shouldn't watch it because this is so upsetting. You've never seen a dead body before.

The Hon. MARK LATHAM: Yes, they'd be killed at work accidents.

The Hon. ANTHONY D'ADAM: I want to take both members of the panel to proposed section 8A, which is the meaning of "psychological injury". Presumably, if this is legislated, there will be a judicial consideration. What is a mental or psychiatric disorder?

JULIAN PARMEGIANI: Clinically, we use the DSM—the *Diagnostic and Statistical Manual of Mental Disorders*—which is an American classification system with criteria that we mostly agree with, talking to each other. That's what we use. I'm not sure whether there's a legal definition that they want to work in there.

The Hon. ANTHONY D'ADAM: How would you assess, because under the definition it causes—you've seen the definition, I'm assuming?

JULIAN PARMEGIANI: Let me bring it up again.

The Hon. ANTHONY D'ADAM: Under the definition it causes "significant behavioural, cognitive or psychological dysfunction". How would we determine what "significant" is?

JULIAN PARMEGIANI: Again, that is subjective. I think what is significant—

The Hon. ANTHONY D'ADAM: Presumably the court is going to ask someone like yourself for an explanation of that. What are you going to say?

JULIAN PARMEGIANI: Yes. We, as in treating psychiatrists and assessors, have an experience of what is a normal reaction to a stressful event and what is abnormal. Clearly, they are a continuum, and somewhere you have to draw the line and say, "This is definitely abnormal. This is pathological. This is a psychiatric disease or injury." But it is subjective and that's why sometimes you find a difference in opinion in diagnoses between psychiatrists. Someone will think, "Oh, no, that cognitive response or that behavioural response to me seems to be within the normal range," and someone might say, "No, I think that's outside the normal range."

The Hon. ANTHONY D'ADAM: Can it be a temporary thing?

JULIAN PARMEGIANI: Of course. My point is that most reactions to stress, even major stressors, are temporary.

The Hon. ANTHONY D'ADAM: So how do you distinguish between something that's temporary and a permanent disorder? At what point do you make the assessment that it's no longer a temporary thing?

JULIAN PARMEGIANI: Generally they put a limit of about four weeks. If you're still suffering symptoms after four weeks, then perhaps you've got something diagnosable. Most people are still resilient enough, Mr Latham, to come good eventually, but there is something else going on here with this compensation system.

The Hon. ANTHONY D'ADAM: So you can have a psychiatric disorder that's temporary, where the symptoms, for want of a better description, have disappeared before you've had a diagnosis?

JULIAN PARMEGIANI: Then you don't have a diagnosis; they've gone. It's a normal psychological response.

The Hon. ANTHONY D'ADAM: Surely you've still sustained an injury under this definition?

JULIAN PARMEGIANI: Legally, you've had something unhappy at work. It's an event. If the employer was negligent in what they did, the lawyers will say, "Yes, that's an injury." But when you're speaking medically, if there are no symptoms, if there are no consequences or no problems in everyday life, then you don't have a disease or a diagnosis.

The Hon. ANTHONY D'ADAM: But surely you could imagine a situation where someone experiences a psychiatrically traumatic event and has behavioural or cognitive psychological dysfunction as a result of that event—

JULIAN PARMEGIANI: Yes, which goes away.

The Hon. ANTHONY D'ADAM: —and then they recover. They need time off from work in that period but it won't be diagnosed. It'll never be able to be diagnosed. How does that work in terms of the compensation system?

JULIAN PARMEGIANI: What I'd like to stress is that that is a normal psychological reaction. We don't live in an emotional vacuum. Things that happen upset us and we lose sleep over it. We might become irritable and we might even go off our food for a little while and not want to socialise. That's a normal response to an unhappy event or incident, but that's part of the human condition. That's how we function.

The Hon. ANTHONY D'ADAM: Can I ask about causality? How do you assess that a relevant event has caused a psychological injury? Presumably psychiatrists are involved in that assessment, I would say?

JULIAN PARMEGIANI: The issue of liability is not for the psychiatrist. Clearly someone has to determine—

The Hon. ANTHONY D'ADAM: Causality.

JULIAN PARMEGIANI: —the facts in the workplace. If it did, and there's a close temporal relationship with an incident and the development of symptoms and there are no other explanations for that person developing that set of symptoms, such as other incidents—relationship breakdowns, drug or alcohol problems, pathological gambling—so you have event A leading to condition B, then you can be confident, because of the temporal relationship, that A caused B.

The Hon. ANTHONY D'ADAM: What if it's not as clear as that? How do you—

JULIAN PARMEGIANI: Then what caused it? It just comes out of the blue?

The Hon. ANTHONY D'ADAM: It could be there are other factors that are exterior to the workplace but there is obviously some strong countervailing evidence that suggests that it was—how do you draw that line of distinction?

JULIAN PARMEGIANI: Then you have to apportion how much is causing what. Then you try to, in your mind, work out that, in the normal person, event A would cause these symptoms and event B would have caused greater symptoms or lesser symptoms. It's not uncommon for people to have a number of incidents occurring. For me to be asked in the past to apportion the causality, I would say, "60 per cent is due to A, 10 per cent is due to B, 5 per cent is due to C," and so on. We try to put it together; that's why we're called experts. We've got clinical experience in assessing the psychological response to incidents and their magnitude.

The Hon. ANTHONY D'ADAM: In an earlier answer you referred to the process of doing the whole person impairment assessment looking at functional capacity. Presumably that's also how you assess work capacity. Can you talk a little bit about the intersection between the process of how you look at someone's functional capacity and how you might make an assessment of whether they're capable of working one or two or three days a week?

JULIAN PARMEGIANI: Clearly all of those areas of functions are intertwined. If you can travel to your workplace, if you can relate normally to other people, if you can concentrate and you're carrying out activities which require a degree of concentration, such as doing a university course, clearly your concentration is fine. If you are able to look after yourself, all those things can translate into work capacity. We assess what people do. Clearly they're not at work, otherwise they wouldn't be seeing you, but you take a screenshot of their lives and what they're doing. If that translates into being able to function at work—concentrate and get there and relate to others—then they've got work capacity.

The Hon. ANTHONY D'ADAM: Are psychiatrists involved in work capacity assessments?

JULIAN PARMEGIANI: I think they are. They have been asked, but it depends on psychiatric injuries. We are often asked to assess work capacity.

The CHAIR: If there is any opportunity to bring the Government questioning to a conclusion at this point, that would help us get to the next witnesses on time—without being disrespectful to Government members.

The Hon. ANTHONY D'ADAM: I have no further questions.

The Hon. STEPHEN LAWRENCE: I've got no questions, Chair.

The CHAIR: On that basis, that brings us to the allotted time. Doctors, thank you very much to both of you for making yourself available. We know you are very busy. We respect your training and experience and capacity to bring some real expert knowledge before the Committee this afternoon.

(The witnesses withdrew.)

Mr CHRIS GAMBIAN, Executive Director, Australians for Mental Health, sworn and examined

Professor PAT McGORRY, AO, Founder, Australians for Mental Health, before the Committee via videoconference, sworn and examined

The CHAIR: Thank you for making yourself available on a Friday afternoon. Would either of you like to make an opening statement?

CHRIS GAMBIAN: Thanks for the opportunity to say a few words today. The workplace mental health system is in urgent need of reform. On that much, at least, we and the Government are in heated agreement. Workers in New South Wales need jobs that support mental wellbeing and, when things go wrong, quick access to quality mental health care and support. The draft legislation will not achieve that. Changes that make it harder for workers to get help through the workers compensation system for psychological injury will push thousands of injured employees straight into a public mental health system that is already at breaking point. To force workers who are experiencing what is likely to be the worst moment of their lives to commence and win legal action before being able to get support for a mental health issue is to punch down on some of the most vulnerable people in New South Wales.

Everyone knows someone who has struggled with their mental health. Mental health issues affect every family in New South Wales. Our research tells us time and time again that work is one of the leading causes of mental distress, but this draft law is built around the idea that workers are faking it. I wonder if the drafters of this law would be willing to look a firefighter or a nurse or a paramedic or a social worker in the eye and tell them they are faking their mental distress. Would they sit in the waiting room of a mental health service or the emergency department of a New South Wales public hospital on any night of the week and tell the people who are struggling with mental ill health that they are faking it? People who work in the construction industry make up about 9 per cent of the workforce but 21 per cent of the deaths by suicide. Are these people faking their mental distress?

Change is needed, to be sure. But this is change designed by lawyers, accountants and politicians for a fundamental question of health, wellbeing and workplace design. There is a better way. Slow down. Make this reform count, to improve workplaces and improve lives. Bring mental health experts together with workers and employers to do the things that reduce harm in the first place. As a start, we could design jobs to meet workers' wellbeing needs, including those with pre-existing conditions; hold employers accountable for maintaining psychologically safe workplaces; resolve workplace relationship issues quickly and focus on rebuilding trust rather than litigating; provide adequate interim supports so distressed workers can focus on recovery; and ensure that long-term care is available for those who need it. Let's design a system that improves human outcomes. Doing that will save even more money and get workers back to work and healthy much faster.

The CHAIR: Thank you, Mr Gambian. That was a very concise but very helpful and thorough opening statement. Professor McGorry, do you wish to add to that opening statement of Mr Gambian?

PAT McGORRY: I don't think so, but I'm very happy to answer any questions in relation to what Chris has said and any other questions that the inquiry might have.

The Hon. DAMIEN TUDEHOPE: Thanks, Chris, for coming along. In your submission you warn that the bill, if it were to pass, would push thousands straight into a public health system that is already at breaking point, overwhelming services and leaving many people without care. What are the elements of the bill that lead you to that conclusion?

CHRIS GAMBIAN: First and foremost, when a person is injured—when their mental health has been injured in any context, work or otherwise—they need to go and seek out supports. There are already massive shortages of those supports. I think that's been traversed pretty thoroughly. Getting in to see psychologists, psychiatrists, counsellors—it's all under a lot of pressure. The benefit we have with the workers compensation system is that people who are able to access insurance are able to access a range of services that a person whose means might not extend to private psychiatrists or private psychology are unable to access. That's the first thing.

The second thing is just the fact of being able to take some time off work. One of the points that I think we made in the submission but has been canvassed more publicly in the last couple of days is that the quicker a person can get assistance, the less severe their conditions are going to be. If we're saying to somebody, "You can't even have time off work that is covered by workers comp", then what possible hope do they have of being able to recover from their injuries? It does force people into the more publicly available options for mental health care, like the public system, like emergency wards and things like that. If people aren't getting care through the workers comp system, the problem doesn't go away; it just changes who's responsible for it. Right now, the supports that we've got in place for people who need mental health care in New South Wales are woefully inadequate.

The Hon. DAMIEN TUDEHOPE: One of the proposals is to amend section 39 to require 30 per cent or 31 per cent WPI before you can continue claims after 2½ years and continue to get access to medical treatment for a further 12 months. Some of the evidence we've heard says that would, in fact, just about include everyone and there would be no-one else. Is that your experience?

CHRIS GAMBIAN: Look, I'm not going to claim expertise adequate to answer that question, Mr Tudehope. As people on the Committee would know, I'm relatively new to this space. But certainly the briefings that we've had and the information that we've had from some of our experts that support us is that there are two problems. One is, if you get a person who doesn't meet the criteria for 30 per cent—which, yes, we've heard is very, very, very few people—those injuries don't go away, so then what? Who's looking after them at that point? It is already—

The Hon. DAMIEN TUDEHOPE: It might be forcing them onto social security.

CHRIS GAMBIAN: You might be forcing them onto social security. I'm sure the life insurance industry would say you'd be forcing them into claims for permanent disability through the superannuation system. Certainly the need for care doesn't go away just because the Government decides it's not workers comp, and I think that's a pretty fundamental problem.

The Hon. DAMIEN TUDEHOPE: Dr McGorry, what's your assessment? Would a 30 per cent WPI exclude most claimants?

PAT MCGORRY: I think so. I think it's lifting the bar too high. As Chris is saying, what's the alternative pathway for people that are in between that 15 per cent and 30 per cent? There's a whole swathe of people whose longer term care would be severely compromised, with very few other options for them, I would say, based on the initial statements that Chris just made.

The Hon. DAMIEN TUDEHOPE: Some of the anecdotal evidence that people always put up in relation to the workers compensation system is that, anecdotally, someone is put under a pressure situation at work and their response is to go away on stress leave or some sort of other leave because of the stress situation they've been exposed to. We also heard evidence just prior to yourselves that there are mental reactions or emotional reactions to just about everything in life. We either like it, don't like it or react to it in some other way. How do you differentiate between a mental health issue in response to a workplace issue and one which is just a normal human reaction to a potential stress situation?

PAT MCGORRY: That is such a great question. I've been addressing that in my career more widely for a long time, and also even just recently in the media, because there is an issue with the boundaries of mental illness. There is an issue about that. We know in Australia from the national mental health survey that the prevalence of mental illness is going up dramatically, in a genuine sense, because the national mental health survey has got a very tough and rigorous methodology. It measures things very accurately using objective diagnostic criteria, so it is going up in a genuine sense.

On the other hand, there's another layer on top of that of people who are in distress or where the boundaries of diagnosis have softened. Two examples of that would be ADHD and ASD, where we're seeing a huge increase of diagnosis of people that probably don't necessarily have a need for care. That is the issue that needs to be decided in these cases: Is it something that's just part of life and will be transient and not have a need for professional health, and it will resolve with support in a short time frame, or is it something that needs care? That is a skilled decision that has to be made by an expert, not by lawyers or accountants or people seeking to constrain government expenditure or insurance expenditures in different ways.

It's been a battle over things like back pain and all sorts of other things in this domain for many, many years. I've seen many cases where that decision in a physical health sense is called into question. But there's no doubt that workplace stress and things that happen in the workplace—unsafe environments, whether they're physical or mental, can contribute to a need for health care generally, and also mental health care. It's a little bit more difficult to define that, in some ways, in mental health, but it has to be defined. What is the accurate level of need for care amongst these workers? That is a decision that should be made by clinicians, not by accountants and lawyers.

The Hon. MARK LATHAM: Thank you to the two witnesses. Dr McGorry, in your submission, there's an expression used that we haven't see in any other part of the day, to my knowledge: psychosocial injury. What exactly is meant by that?

PAT MCGORRY: It's where the causes of the onset of an episode of mental ill health are psychological or environmental. That's probably the best way to explain it. Obviously, there are causes of mental illness that are fairly intrinsic to the brain, genes or biological vulnerability, but we know that risk factors that transform that

vulnerability into manifest disease or need for care are very often psychological stress of various kinds or social environmental factors. Workplace stress would be one. Even stressors like unemployment or housing difficulties can tip people over from a healthy state into a state of acute depression, psychosis or other forms of mental illness. The onset of mental illness is often a complex interplay of these things. That term "psychosocial" is used to capture the external triggers or risk factors. Does that make sense?

The Hon. MARK LATHAM: It makes perfect sense. On page 3 of your submission, in the second last paragraph, you write about the impact of clause 8H in the exposure bill, where, if a paramedic who attended a crime scene where a child had died had experienced vicarious trauma in the workplace, lawyers and the legal system would judge that, rather than mental health practitioners. You say it's plainly absurd. You can only imagine how bad that circumstance in that job is, but we live in a society where, for a range of reasons, we need people who do that kind of work.

Doing that work, no matter the human tragedy and difficulties that must confront a lot of those paramedics on a daily basis, it does help a lot of other people to have them on the job. It doesn't necessarily follow, does it, that every paramedic will suffer vicarious trauma by virtue of being in that job? In terms of prevention, are we doing enough in the selection of people in those occupations to ensure that they're of a mental framework, an outlook or a life experience where they're less susceptible to the type of trauma that we're talking about? I think that selection process, as opposed to strictly equal employment opportunity, is actually good for the workers, isn't it? If you throw people in who aren't able to confront these problems, you've got twice the problems, haven't you?

PAT McGORRY: That's a good question and a good area to discuss. I think you're right to say that there are certain personality characteristics or strengths that should be valued when you're recruiting people for these types of jobs. That's a very good point. Some people are more vulnerable than others to the exposure to trauma. I have treated and seen a lot of first responders over my career, including police, paramedics, firefighters and other people, who do a fantastic job for the community, as you pointed out. They are often not well enough supported by their organisation. I've got a friend in Sydney who was a fantastic paramedic on the helicopters for many years. He performed heroic acts and was highly respected by all of his colleagues. When he reached the tipping point of too much exposure to these very traumatic experiences, he was not well supported by his organisation.

No matter how strong and resilient the person is—and we see this with military personnel. For example, in the First World War, when you were in those trenches on the Western Front, very large numbers of very strong men had major nervous breakdowns and there were psychiatric casualties as a result of exposure to extreme, overwhelming trauma. If you think about the police, for example, who are exposed to dozens of hideous and traumatic car accidents over a period of time, the cumulative effect of trauma will probably overwhelm most people if they experience enough of it. It's a complex interplay of how vulnerable you are in the first place, as you pointed out, and then what they actually get exposed to. To say that, because they don't have a personal relationship with the person who's affected, it rules out vicarious trauma, goes against all the research and evidence. Vicarious trauma can happen to anyone.

The Hon. MARK LATHAM: The biggest thing the police talk about is that it's horrific having to cut down people who have hung themselves.

PAT McGORRY: Exactly. I couldn't agree with you more.

The Hon. MARK LATHAM: It goes also to leave conditions, pay and support, as you say. I would've thought leave conditions need to be reassessed to give people a break from these sorts of jobs.

PAT McGORRY: There are a lot of factors involved there. Thank you very much for bringing up that point.

Ms ABIGAIL BOYD: Thank you to both of you for coming along today. I'm going to start with Mr Gambian. We know that there are a lot of different rising costs within both sides of the system. A very good example is silicosis. We ended up with an increase in rates of silicosis. It's only to do with part of the scheme, but the Government's response to that was as you would expect: to take very serious preventative action and also to give better support to workers who were suffering from that. What does it tell you about this Government that they have taken psychological injury and decided that that's the one they're going to turn their backs on and exclude? What does that mean in terms of stigma around mental health?

CHRIS GAMBIAN: As I said in both the submission and my earlier remarks, the whole construct of this piece of so-called reform seems to be that we have a financial problem—I don't know enough about the financial problem to tell you whether or not there is a financial problem; I take it on faith that there is—and we have growing prevalence, so it follows that the solution to the financial problem is to deny the prevalence. One hundred years ago, there were no claims for psychosocial injury, I wouldn't have thought, because we didn't accept that it was an injury. I don't think that's because there was no psychosocial injury; I think that is because we didn't accept that

there was an injury. It is a terrible both missed opportunity and shame that an area that needs attention—and we're not arguing that workplace mental health is not in need of some attention—is getting that attention through what I would say is a quick, hasty process, designed for financial outcomes and not for better mental health outcomes.

The problem with that, apart from the obvious problems and all of the rhetoric that's going around, is that if we were to get this right, if we were to change how we looked at workplace mental health—because I don't argue for a second that the current system works. As somebody who was a trade union official for 16 years, I've supported numerous workers with very extreme mental health problems at work. I was an official with the Finance Sector Union. Twenty to 25 years ago, in the finance industry and the banking industry in New South Wales, there was, on average, an armed robbery once a week. That is to say that once a week, in metropolitan Sydney, a worker, usually a woman, would have a gun pointed at her in the context of an armed robbery.

The PTSD injuries that arose from that kind of crime prevalence were absolutely devastating for any number of people. There's famous examples of times when workers who had been injured multiple times couldn't work anymore. Their employer's response was to hire a private investigator to prove that they were lying rather than give them the support they need to get back to work. That's where we've been at in the past. The solution came from the banking industry when we started getting serious about reducing armed robberies. Today there are no armed robberies in metropolitan Sydney. That is psychosocial injury that has been prevented. That is literally hundreds, if not thousands, of people who are not needlessly suffering.

It is fundamentally cheaper for the insurance system as well. If we were to take this seriously, and if Parliament was to say this shouldn't be a financial exercise—we've absolutely accepted that there is a financial dimension to this, and I'm not trying to argue otherwise. If we started to say, "What is it going to take to make the workplaces in New South Wales safe for the mental health and wellbeing of workers," we will end up with less pressure on the insurance system, more productive and more profitable workplaces, more effective public services and less harm done to both the workers themselves and their families and communities.

The Hon. BOB NANVA: This Committee is looking into measures to improve the financial sustainability of the workers compensation system. One way of doing that is to improve return to work rates. That's not just about financial sustainability, though. Would you agree that improving our return to work rates would also improve the health and wellbeing of individuals that do suffer from a psychological injury at work?

CHRIS GAMBIAN: Absolutely. I couldn't agree more. I will let Professor McGorry say a few words on this, because he is certainly the clinical expert. From a practical standpoint, let's talk about the fabled case—and, as an employer, I've experienced this—where a person feels like they're under a bit of pressure at work and they decide to take some so-called stress leave. What does it take in those circumstances to remedy that situation? You've got, probably, some sort of breakdown in communication between at least two people. You've got a person who is probably feeling quite distressed and not necessarily able to work, and an employer who might, quite reasonably, be trying to get an employee to work in a particular way or to change their behaviour or do something different. What is the remedy in that situation? I'll tell you what it's not—it's not to say to that worker, "The only way you're going to get any support in this situation is to start a legal action and start with litigation."

Let's use another realm. Could you imagine a situation where we said we're going to have people go to the Family Court and try to get back together? Is that the time you're going to get back together—when you've started litigation? Could we have a system that recognised some of these fundamental relationship issues and provided support at an early level, intervened quickly, assessed for genuine psychological injuries quickly with clinicians, and then said what it is going to take to either fix the situation, so this person can go back to work really fast, or recognise that this ain't ever going to work and move that person somewhere else. That is, in my view, a far better outcome for both employer and employee, and a cheaper outcome for the insurance system.

PAT MCGORRY: I also very much agree with the premise of the question. In fact, we've carried out research here at Orygen showing that if you provide—this is to young people who have dropped out of employment or education because of their mental ill health—what's called an IPS, or individual placement and support worker, which is almost like a coach alongside the clinical care, you get return to work rates which jump from between 30 to 40 per cent to between 80 to 90 per cent. That actually saves on welfare and other clinical costs. It also rescues the person from a life of disadvantage and poverty in the welfare system. We definitely want to do that with people with mental ill health and mental illness.

Even with severe forms of mental illness it's quite possible. That workforce has not been properly developed by State governments in their mental health services, and only to a limited extent in headspace centres by the Federal Government. There is a very big, missed opportunity by governments here across the whole mental health spectrum, and even beyond workplace injury, in terms of helping people with mental illness get back into mainstream work and education. We've been advocating with governments for many years to invest in this

workforce and this component of mental health care that helps people recover functionally and socially and not just symptomatically.

The Hon. BOB NANVA: The anecdotal view is that the longer someone takes to return to work, the chances are they may never return to work. The longer they are off work, the more they are at home passively sliding into depression. The downstream effect of that is that the medical costs intuitively then increase with respect to the claim. That's the anecdotal evidence, but that's the clinical view as well, is it?

PAT MCGORRY: It's not just the clinical view. It is the evidence-based, research-backed view which we've spent years developing an evidence base for. Sadly, governments are very slow to respond to—if it was a cancer treatment, it would be delivered tomorrow. There are many other examples of that in mental health care where things that we've worked hard to create—new treatments and new ways of working—are not implemented by health departments and by governments.

The Hon. BOB NANVA: There was criticism today that the scheme operates reasonably well with respect to physical injuries, but its ability to cater for those that suffer from non-physical injuries obviously leaves a lot to be desired. The return to work rates for non-physical injuries have remained stubbornly low, both in the public and private sectors. Is there a secret sauce that you're aware of in other jurisdictions that we should be looking at but haven't previously explored in New South Wales?

PAT MCGORRY: Without getting too much off track here, the mental health system in Australia is in crisis. It's actually good to see the Federal Government starting to invest more strongly in it with the election commitments. We saw deinstitutionalisation happen about 30 years ago in all States. What's happened since then is a complete failure to develop public mental health services capable of responding to filling that hole. That is why you're seeing, in New South Wales at the moment, 200 psychiatrists resigning from the public sector because it's falling apart. We had a royal commission in Victoria because the Premier, Daniel Andrews, admitted that the system was broken and had steadily fallen apart since deinstitutionalisation. He held a royal commission into broadening the levy to fund the rebuilding of the system. That is underway. It's been slow as well.

On the Federal side, we spent \$4 billion a year federally in mental health care for the whole country. As you're probably aware, we're spending \$40 billion a year for a relatively small number of people funded through the NDIS. The asymmetry of funding and the neglect of funding of the mental health system, both Federal and State, is the reason you're not seeing any improvement in these recovery rates, not just in relation to people injured at work but also in relation to anyone with a mental illness. The return on investment with recovery rates could be dramatically better if we flipped around or at least rebalanced the investment on the NDIS versus mental illness. It's actually not happening at a State nor a Federal level.

The CHAIR: There are many more questions that we'd like to ask, but the time has come. On behalf of the Committee, thank you very much, Mr Gambian and Professor McGorry. As usual, it is quality evidence that will be taken into account by the Committee. Thank you very much for appearing today.

(The witnesses withdrew.)

Ms SAMANTHA TAYLOR, PSM, Independent Review Officer, Independent Review Office, affirmed and examined

Mr TRENT CURTIN, Acting Deputy Secretary, SafeWork NSW, affirmed and examined

Ms MANDY YOUNG, Chief Executive, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: Good afternoon. Thank you for making yourselves available late on a Friday afternoon, going into the evening. Are there any opening statements?

TRENT CURTIN: I've got a short statement, Chair, if you'd like me to read it.

MANDY YOUNG: I do as well.

SAMANTHA TAYLOR: No, Chair. I am happy to just take questions.

The CHAIR: You can imagine that Committee members are keen to engage and ask questions. With that in mind, please proceed with your opening statements.

TRENT CURTIN: Thank you for the opportunity to appear before the Committee today. I would like to give a quick overview of SafeWork's framework for regulating psychological health and safety. This framework is important for guiding our actions to enable workplaces to develop a culture of psychological injury prevention. The SafeWork NSW strategic plan outlines our purpose, our objectives, the outcomes we want to achieve and how we're going to measure that. It is underpinned by an annual regulatory statement that focuses on five high-priority areas.

One of the areas is managing psychosocial risks at work, including the risk of sexual harassment. The *Psychological Health and Safety Strategy 2024–2026* further guides our work in this area. It has a strong focus on compliance by supporting New South Wales businesses to manage psychosocial risks and use good work design to prevent psychological harm. This has guided key initiatives for us, such as statewide inspection programs, psychological WHS checks and mental health training programs for small businesses. All these initiatives will continue to ensure that businesses meet their obligations under work health and safety laws to identify psychosocial hazards and put in place appropriate control measures.

The SafeWork NSW respect at work strategy also reflects our focus on preventing sexual harassment at work. Since 2023 we've conducted statewide awareness-raising campaigns, released a code of practice for sexual and gender-based harassment, and published a suite of resources to help businesses take proactive action to address this harm. On the new horizon, SafeWork NSW is being established as a standalone agency from 1 July. A key part of this change is the establishment of the SafeWork Advisory Council. I am confident that the advisory council tripartite membership will play a vital role in guiding SafeWork NSW towards making a greater impact in all areas of workplace safety, but especially in addressing psychosocial hazards in workplaces across New South Wales, which remains a regular priority for SafeWork NSW.

MANDY YOUNG: Thank you for the opportunity to appear before you. As the independent regulator of the New South Wales workers compensation system, SIRA plays a vital role in ensuring that the system operates in the public interest, supporting workers, employers and the broader community. Our role is set out in the legislation to implement and uphold Government policy, advise Government based on data and evidence, and ensure the scheme's affordability, sustainability and fairness. For clarity, SIRA is the regulator, not an insurer, and we do not manage claims. SIRA's focus is to ensure that people injured at work receive timely access to the treatment, support and services they need to recover and, where possible, return to safe and suitable work.

We know that effective early intervention and high-quality injury claims management and return to work management practices are important factors for a person's successful recovery. We recognise the need for reform and have contributed to many key reviews, included the McDougall review, the Treasury Managed Fund review, as well as the various inquiries undertaken by this Committee. These reviews are essential to improving system performance, return to work outcomes and financial sustainability. Our independence is a critical feature of our regulatory role. While we operate within the policy framework set by Government, we are not subject to direction on how we exercise our regulatory functions. That allows us to uphold integrity, accountability and oversight of the system.

Today I wanted to address two key areas. One is improving return to work outcomes, which is a system priority. While most people with physical injuries return to work within 13 weeks, return to work rates for people with psychological injuries remain significantly lower. Only four in 10 return in that time frame. These injuries are also more complex and costly, and disproportionately affect certain sectors including the New South Wales Government sector. To address this, we have implemented a range of initiatives, including regulatory audits,

insurer workshops and improvements in risk assessment practices. Our focus is on early intervention, person-centred care and ensuring that insurers meet standards of practice. We are currently evaluating our funded programs to determine whether they're fit-for-purpose and identify opportunities to expand and develop new programs to better meet the needs of workers and employers. Our value-based healthcare strategy is the cornerstone of this work. It prioritises integrated person-centred care for people with psychological injuries or complex physical injuries, based on data insights and lived experience.

The second key area is ensuring accountability and scheme performance. Since the last committee review, SIRA has undertaken significant compliance and performance review of the Nominal Insurer, including a targeted audit of psychological injury claims. I am sure the Committee is aware we also completed a detailed review of the Treasury Managed Fund, with a focus on psychological injury trends across the public sector. These reviews will inform ongoing system improvements and support Government decisions-making. We remain committed to supporting Government through evidence-based policy advice and regulation that improves system performance and better outcomes for workers and employers. The challenges we face—rising psychological claims, post-pandemic pressures and a changing workplace—also present an opportunity to evolve the scheme to be more responsive, integrated and sustainable.

I am pleased to appear today alongside my colleagues at SafeWork and the Independent Review Office. Together we're working in close partnership to improve the return to work outcomes through strengthened prevention, early intervention and enhanced employer supervision. This coordinated whole-of-system approach is essential to delivering better outcomes for workers and ensuring long-term effectiveness of the workers compensation system in New South Wales. Thanks again for this opportunity. I'm looking forward to assisting in the inquiry.

The CHAIR: Thank you for those very good opening statements, which set a nice context now for questions from Committee members.

The Hon. DAMIEN TUDEHOPE: Thank you for being here this afternoon. I don't know how much of the evidence today you've watched, but it has been a very full day. Ms Young, did you lodge a submission?

MANDY YOUNG: No, we did not.

The Hon. MARK LATHAM: Why not?

The Hon. DAMIEN TUDEHOPE: I'll ask the question. You were consulted in relation to a working group which Treasury asked you about the framework for what we now have as an exposure draft of a bill, yet you didn't lodge a submission in respect of this inquiry today.

MANDY YOUNG: We have been providing advice to Treasury, to the Treasurer and the taskforce that he has set up to do that piece of work. We didn't provide a submission, primarily because most of what we would say is in the public, generally. Additionally, we've been putting inputs into that work as well and figured that, to be honest, you would ask whatever it was that you would need from this space if it's not already in the open public domain.

The Hon. DAMIEN TUDEHOPE: Who else was involved in the taskforce?

MANDY YOUNG: I think Treasury may have answered this question this morning. The taskforce includes Treasury, the Department of Customer Service, icare and ourselves provide input to that.

The Hon. DAMIEN TUDEHOPE: You were involved in a review of the Treasury Managed Fund in relation to psychological injuries?

MANDY YOUNG: I personally was not, but SIRA undertook the review.

The Hon. DAMIEN TUDEHOPE: Given the nature of this legislation and given that SIRA had conducted a review into the Treasury Managed Fund, don't you think it would have been helpful to have had some insight into the pressures on the Treasury Managed Fund arising from psychological claims?

MANDY YOUNG: The information that we would have provided would have been what was in the report of the TMF.

The Hon. DAMIEN TUDEHOPE: Has the Government responded to that report?

MANDY YOUNG: As I understand it, work has been undertaken on that. I would need to check whether the Government has formally responded. I can come back to you.

The Hon. DAMIEN TUDEHOPE: I don't have the report in front of me. Is it public?

MANDY YOUNG: The report into the Treasury Managed Fund? Yes, it is.

The Hon. DAMIEN TUDEHOPE: Do you recall what the recommendations were?

MANDY YOUNG: There is a range of recommendations within that. I don't want to miss them all. There is a range of recommendations in the report.

The CHAIR: Could you, for the record, specify the name of the report that you are referring to, please?

MANDY YOUNG: It's the *Treasury Managed Fund Review Report*.

The CHAIR: What is the date of that, please?

MANDY YOUNG: April 2024. There are a range of recommendations in that. Some are around governance; some are around return to work and particularly psychological injury. We provided a range of recommendations to the New South Wales Government to review their claims process and undertake some work in that space, to review the process for engagement with the government employers and looking at some of the rising costs. We looked at considering how that continued and the entitlements that sat in that space. There is a significant number of recommendations that sit within that report.

The Hon. DAMIEN TUDEHOPE: Is this exposure draft a response to that report?

MANDY YOUNG: That would be a matter for the Government, but it is my understanding that it would be a component part to how they manage the scheme more broadly. But it's a decision for Government.

The Hon. DAMIEN TUDEHOPE: Did SIRA form the view at the time that the Treasury Managed Fund was unable to continue in a solvent state in terms of assets to liabilities?

MANDY YOUNG: The Treasury Managed Fund is, in itself, like a self-insured model. We don't look at solvency or the financials of the Treasury-managed funds, and we don't have oversight over that.

The Hon. DAMIEN TUDEHOPE: There was no recommendation, was there, for legislation of this sort as a result of that review?

MANDY YOUNG: No, there wasn't—not as far as I'm aware.

The Hon. DAMIEN TUDEHOPE: When would you say that any of the changes that are recommended as part of this exposure draft would have an effect on the Nominal Insurer?

MANDY YOUNG: It would be dependent on when they were introduced and begun.

The Hon. DAMIEN TUDEHOPE: Take the premiums payable in respect of workers compensation by those who are insured with the Nominal Insurer. If this exposure draft was adopted by 1 July, would you expect to see changes to the premiums payable for the Nominal Insurer?

MANDY YOUNG: We wouldn't expect to see premiums change in the next financial year. The filings would have already been completed for this financial year, so we wouldn't see it in that. We would expect to see it in following years.

The Hon. DAMIEN TUDEHOPE: You would expect it the following year?

MANDY YOUNG: In the following years I would expect that we would see some change.

The Hon. DAMIEN TUDEHOPE: Would you expect that they would be reduced?

MANDY YOUNG: I think that's a matter for icare, who set those premiums.

The Hon. DAMIEN TUDEHOPE: But you have to approve—

MANDY YOUNG: We can reject a premium but we don't actually approve a premium filing. We have the option to object it, based on its reasonableness. Dependent on what they put in front of us, it's essentially a reasonable test and we can reject.

The Hon. DAMIEN TUDEHOPE: One of the things that the report suggests is that government employers are not meeting their current legislative requirements, and that is incurring the likelihood of an impact on positive outcomes for injured workers. That was contained in the report, wasn't it?

MANDY YOUNG: Yes.

The Hon. DAMIEN TUDEHOPE: So it was the Government not complying as a self-insurer, as you have described them, that are contributing to their own difficulties in relation to the management of the Treasury Managed Fund, because they are not meeting their own obligations.

MANDY YOUNG: As an employer, they should improve their processes.

The Hon. DAMIEN TUDEHOPE: How would you say that they should improve their workplace arrangements?

MANDY YOUNG: Some of the things we talked about were consistent and timely injury notification, compliant return to work programs, enhancing their internal audit and risk-management policies and processes, and a range of work around how they manage the claims and what that looks like.

The Hon. DAMIEN TUDEHOPE: It would be your recommendation, would it not, that those things ought to be engaged in before you would start think about reducing workers entitlements?

MANDY YOUNG: I think that's a matter for—

The CHAIR: I don't want to interrupt the flow of questions, but there is an issue in terms of policy and what the Government policy may be, and the person who works in the public service being expected to, perhaps, reflect on policy matters. I am simply making the point that we are getting near the line and noting the ability for people to take a question on notice if they are not completely sure.

The Hon. DAMIEN TUDEHOPE: You are the regulator and have produced a report in relation to this workplace. Would you expect that those things would be looked at before you were seeking to reduce entitlements to workers?

MANDY YOUNG: To the Chair's point, that would be a matter for the Government in terms of how they want to manage that policy.

The Hon. DAMIEN TUDEHOPE: Was there any recommendation by you in that report that workers' entitlements be reduced for the financial benefit of the fund?

MANDY YOUNG: No, there was no recommendation.

The Hon. DAMIEN TUDEHOPE: There was no recommendation, was there, to increase to 30 per cent the WPI for psychological injuries?

MANDY YOUNG: Not in this report, no.

The Hon. DAMIEN TUDEHOPE: Was there any recommendation to set up a new bullying tribunal and harassment tribunal, and for certificates to be obtained?

MANDY YOUNG: Not in these reports.

The Hon. DAMIEN TUDEHOPE: Have you actually read the exposure draft of the legislation?

MANDY YOUNG: Yes, I have.

The Hon. DAMIEN TUDEHOPE: Is it something which you would say, as a result of the consultation you were involved in, is a reflection of the sustainability of the scheme?

MANDY YOUNG: It's not a matter for my opinion. We simply provide inputs and advice to the Government, and they make that decision.

Ms ABIGAIL BOYD: Thank you for coming along this afternoon. I want to take you to the evidence that you presented to this Committee as part of our inquiry into psychological claims. Specifically, there was a submission that SIRA made in that inquiry that set out really nicely for us what the impact was of the first psychological payment for a claim being made within the first two months. In that, there's a lovely table that says, effectively, there is about one-sixth of median payments if you get the first psychological payment within two months. The total payments to a person end up being somewhere around 1/19 to 1/20 of the total if you wait until after two months. Importantly, it says that return to work goes from being 49 per cent to 73 per cent if you get those payments to a person in the first two months. You then say, in the report that has just been referred to—the great work you have done looking into the TMF—that the per cent of workers covered by the workers compensation insurance in New South Wales by the TMF is about 8 per cent but that active psychological injury claims on the TMF represent 48 per cent of all active psychological claims. You then go on to say:

The review identified a significant lack of compliance with legislative requirements and conformance to SIRA's Standards of Practice in what are the basic obligations at the start of the claim, and in the provision of injury management planning, an essential in supporting injured workers in their return to work ...

Given the evidence you have given—that the sooner you get a person their payments, the cheaper it is for the system, and that the Government itself is not following practices that it should be in order to get those payments out to people quickly—would you still be recommending that the Government work on reducing its obstacles to claims management and improving its claims management as a way to reduce overall scheme costs?

MANDY YOUNG: To clarify, in that I was not in this role for those two previous reports, I am more familiar with the TMF report; I am not clear on the first report that you are referring to, so it would be helpful to understand that. But I would say that we would always be asking government and any employer to continue to improve their claims management and their compliance with legislation.

Ms ABIGAIL BOYD: You say in this TMF review that 90 per cent of government agencies failed to have a compliant return to work program and that 50 per cent of agencies failed to notify all injuries within the required time frame or at all. That is pretty damning on the government agencies when it comes to their responsibility for returning workers to work after they have had a psychological injury. Again, wouldn't you expect the Government to actually improve its own processes as an employer and prevent these injuries getting worse rather than simply cutting off these workers?

MANDY YOUNG: I do understand that the Government is working on that, whether the formal response is out there or not yet, but they have been working on a whole-of-government return to work strategy. We've been working with them on a return to work best practice framework. We've been providing data and expertise to them to help them to uplift, and we are doing a claims management review of the TMF, a further one, and developing some vocational support programs. There is a range of work that is happening in response to that work and to improving the outcomes that they have in this space.

Ms ABIGAIL BOYD: If we look at the Nominal Insurer now, your audit report from July '23 stated that for psychological injuries audited by SIRA, in only 42.5 per cent the employer had actually notified the insurer of the injury within the time frame as required by the legislation. Is that correct?

MANDY YOUNG: Again I wasn't in the role. I would need to take that on notice, check that and come back to you.

Ms ABIGAIL BOYD: Okay. Similarly, in that report, from what I can see, it says that, for psychological claims audited by SIRA, 40 per cent of claims within the NI failed to have a subsequent liability decision made within the legislative time frames.

MANDY YOUNG: I am sure if the report says that then it is true.

Ms ABIGAIL BOYD: This pattern of not managing claims in an appropriate time frame in both the NI and the TMF indicates quite a severe failing on the parts of claims management and claims managers. What is SIRA doing to ensure that the claims management process is up to scratch?

MANDY YOUNG: There's a range of things that we have been working on, particularly—as I say, I have not been in the role for very long, almost a year now. But, since coming into the role—and I asked similar questions, I suppose, coming into the role, as would be expected—we have established a nominal insurance performance framework that we are setting up. That's some key performance metrics for the Nominal Insurer and the TMF. What we have set out is a 12-month supervision plan to start to look at that uplift and what that can be. That will include some further claims management reviews. We will continue to look at—various areas in which we are doing that are their policy and underwriting, a claims management focus, some real oversight of their information technology processes, looking at where they are and how they are delivering on their recommendations and commitments through the various reports and inquiries, and understanding that. We have actually started to set that plan in place and done that with icare so that it is very clear that these are the things that we are going to focus on to uplift the performance of the NI and the TMF.

The Hon. MARK LATHAM: Just to follow up, Ms Young, having a look at this report, which is quite stunning and perhaps could have been lodged as some form of submission to inform the Committee, it says here:

SIRA found that the TMF, which represents approximately eight per cent of workers covered by workers compensation insurance in NSW, was responsible for 20 per cent of claims in the 2021/22 financial year. Significantly, the review has confirmed that in the same period, active psychological injury claims in the TMF represent 48 per cent of all active psychological injury claims in the system—

I assume that is in the TMF; the State average is 37, so, again, massively over-represented—

and of those 48 per cent, Stronger Communities represented over half.

What is going on in Stronger Communities that has led to this outcome? Is it really that stressful and devastating to make a community stronger?

MANDY YOUNG: The statistics only really tell part of the story in that.

The Hon. MARK LATHAM: Tell us more.

MANDY YOUNG: The public sector has some unique roles that are very high risk, from a workers compensation perspective, that is not generally seen in the private sector. They're police officers; firefighters;

ambulance officers; correction officers; hospital emergency departments' doctors, nurses; child protection caseworkers. Those roles face a different set of issues and a different set of things that come through with that. So I don't think it is unreasonable that, given in those roles and those caring roles people would have and be seeing quite traumatic things, it often would result in those particular results.

The Hon. MARK LATHAM: But it goes to the heart of the financial stress on the system and the reason for this initiative by the Treasurer. Most importantly, you say in the very next sentence:

Eight out of ten psychological injury claims are from preventable workplace behaviours like work stress, bullying and harassment, and other mental stress factors.

What is being done to actually have prevention? If eight out of 10 could be prevented, we've certainly got no need for this legislation, have we?

MANDY YOUNG: I think that that statistic is true—so the eight out of 10 is workplace stresses and other issues. I think that's where we work very closely with our SafeWork colleagues on how do we actually get employers to do more in that space, because, if we can prevent these issues, that is all the better for everyone involved.

The Hon. MARK LATHAM: SafeWork has got its own set of challenges and changes that we have examined at budget estimates. But can I come to your statement. Did you say earlier on there were no recommendations out of this report?

MANDY YOUNG: Which report?

The Hon. MARK LATHAM: The TMF review report.

MANDY YOUNG: No. There were multiple recommendations.

The Hon. MARK LATHAM: Yes. There were 15 suggested courses of action, mainly reviews. Perhaps on notice can you give us some detail about what has happened over the past 13 months in these reviews and suggested courses of actions—a pseudonym for "recommendations"? I would have thought—if action had been taken, why is this bill necessary?

MANDY YOUNG: I can get that to you on notice. We track the—

The Hon. MARK LATHAM: And we would like a lot of detail as to the 15 courses of action, a lot of reviews: What have these reviews resulted in and what progress has been made in dealing with these horrendous statistics, which embed and demonstrate the particular problem that the TMF is under? Could you do that?

MANDY YOUNG: Yes.

The Hon. MARK LATHAM: It would be in lieu of making a submission to inform the Committee. Then I would come to Mr Curtin and ask what improvements are you making at SafeWork, particularly in getting ahead of the curve with prevention. I don't want to be rude about it, but your Minister did point to systemic failures in the institution. I think across the Parliament there's a lot of disappointment about the past performance of SafeWork. And you are, obviously, crucial in dealing with these types of issues by way of prevention.

TRENT CURTIN: Yes. SafeWork NSW inspectors have a really important role to play in providing advice and guidance and support for businesses and also for undertaking compliance activities to ensure compliance with our laws. Our current Psychological Health and Safety Strategy lays out a number of actions for us. Some of that is undertaking training with small and medium businesses. Some of it is having direct one-to-one coaching with psychologists with small businesses to help them lay out their risk assessments and to set their safe systems work up, and that's progressing extremely well. Then SafeWork inspectors are also taking a stronger compliance focus for large and well-resourced organisations. Our inspectors who attend businesses with more than 200 employees will always undertake a check in relation to psychological health and safety.

The Hon. MARK LATHAM: Can we get from both SafeWork and SIRA some breakdown of the industries that have a high prevalence of these psychological injuries? We've obviously got the Stronger Communities department that you've mentioned, but it would be good to get a breakdown, sector by sector, as to where the problems are, again to inform the Committee and give us a handle on the nature of the challenge by way of prevention. Is that okay on notice?

TRENT CURTIN: Yes. I've got something. We can take it on notice if you want.

The Hon. ANTHONY D'ADAM: Mr Curtin, is it fair to say that SafeWork's priority is actually in the private sector? In terms of the public sector, it tends not to devote a lot of resources to compliance work, given there's an expectation. There's also a principle around Crown shield and the Crown not prosecuting itself,

effectively. Can you perhaps comment on what the rough balance is in terms of the resource allocation towards public sector compliance versus compliance in the private sector around psychosocial aspects?

TRENT CURTIN: We've been increasing our focus on government departments in relation to psychological health and safety. We've been doing that over the last 12 and 18 months with a new Psychological Health and Safety Strategy. The recommendations from the Committee on Law and Justice as well set out for us to work closely with SIRA, icare and some of the government departments to do more to increase the health and safety for workers in those departments. We have undertaken a number of specifically targeted psychological health and safety compliance campaigns. We've looked into occupational violence in emergency departments in the health department.

We've been looking at occupational violence and psychological health and safety in the education department, undertaking a range of visits across the State to confirm compliance to do two things—to help those schools get more advice and to become more compliant with our legislation, but also to provide advice back to the education department to see where those systemic changes might be, where they could continue to do more to help those schools. We have also undertaken compliance programs in relation to the hospitality industry and looking at sexual harassment there, so we've been learning a bit about that so that we can scale that across other organisations and see where we're seeing some of the failure points and where we can see opportunities for improvement across both government departments and private industry.

The Hon. ANTHONY D'ADAM: How does your record stand in terms of prosecutions around psychosocial hazards?

TRENT CURTIN: We've had very little prosecutions in the psychosocial space. It's a new and emerging area. New South Wales was the first State to adopt the national model code of practice for psychological health and safety. We do have investigations underway. We have initiated prosecutions. We have had a successful prosecution, but we are continuing to increase the number of prosecutions we're doing at the moment.

The Hon. ANTHONY D'ADAM: Can I ask about underinsuring? The main enforcement responsibility sits with SafeWork. You've got the inspectorate, I'm assuming, in terms of actually enforcing underinsuring, the primary load is borne by SafeWork? Is that fair to say?

TRENT CURTIN: We do that under delegation from SIRA but, yes, our inspectors have the power to go and check that.

The Hon. ANTHONY D'ADAM: How many prosecutions have you done around underinsurance in, say, the last five years?

TRENT CURTIN: My understanding is we have not prosecuted for underinsurance.

The Hon. ANTHONY D'ADAM: None?

TRENT CURTIN: That's my understanding, yes.

The Hon. ANTHONY D'ADAM: Can I ask about some earlier evidence, Ms Young, that we heard from Dr Parmegiani? A set of circumstances which I found alarming around the nexus between no-win, no-fee law firms taking on workers with psychological injuries and effectively the set of circumstances that you described seem to positively disincentivise return to work for workers who have sustained psychological injury. Did you hear the evidence?

MANDY YOUNG: No, I don't think I heard that part of it, sorry.

The Hon. ANTHONY D'ADAM: Perhaps on notice you might want to review the transcript on that. I wondered whether this is something that is on the radar for SIRA because, as the steward of the workers comp system, it seems to be something that clearly is working against improving the rates of return to work for psychological injuries, and it looks like something that perhaps needs to be addressed, if it's not currently being addressed. If it is being addressed, my question is what are you doing about it? If it's not being addressed, what do you propose to do about it?

MANDY YOUNG: The workers compensation legal supports are primarily run through the ILARS scheme through the IRO. It's a fee-based service where the fees are set. I'll have a look at the transcript and come back to you on what the particular issue might be, unless Samantha is aware of anything else.

The Hon. ANTHONY D'ADAM: Ms Taylor, the exposure draft bill envisages the situation where, effectively, a tribunal is the gateway before an application. Is ILARS resourced to support injured workers going through that gateway process? How would that process impact on the obligations currently for ILARS?

SAMANTHA TAYLOR: Thank you for that dream question for a bureaucrat—to ask about resourcing. I appreciate it. For the Committee's reference, we in IRO deal with the back end of the process where there is a dispute or disagreement between a worker and their insurer under workers compensation laws. We address those issues in three ways—one through our solutions function where we seek to broker a change in the position of the insurer, and that is a very successful function. It is a very small function. I have 15 expert people who manage that and negotiate with insurers on behalf of injured workers to get good outcomes. We then have an inquiry power which can assist in getting the insights from that particular function, and also what we do in the grants line, which I'll talk to in a moment, to make recommendations or to make observations about what is happening in the system more broadly and the impact on injured workers arising from those experiences and what might need to change.

I am three months into the job and I'm already looking at how we can use that inquiry power to influence some of those behaviours of insurers and their case managers more positively. Then we have the grants line, which is effectively the assistance that's provided to injured workers through lawyers for legal representation. My assessment is that if the inclusion of a provision for a representation at the IRC is part of the workers compensation framework and Acts, then it would be covered by ILARS. At present, ILARS costs are determined through a demand and forecast arrangement and on recommendation or a request from me to SIRA around our share of the workers compensation fund. We would need to assess, depending on what the outcome of the bill is and its ultimate passage, what the demand and forecast projections would be in that context depending on that design. It's not a straightforward volume issue; there are a number of considerations that we would need to take into account in making that request.

I have initiated a project around redesigning our demand and forecast model for ILARS. At the moment, it's a relatively naive and flat model of projection which is based on the experience within the grants program itself, with little reference to the policy environment within which that fund operates. It's important that we have an actuarial view of the demand and, therefore, forecasted costs for ILARS. Basically, we're looking to see as a result of whatever might pass through the Parliament what the implications would be, have a model ready that enables us to build that in so we can have a conversation with government about what a reasonable level of resource would be so that workers have access to legal representation to secure their rights under workers compensation law.

The Hon. ANTHONY D'ADAM: Ms Young, is that element factored in, in terms of consideration of the taskforce, when providing advice to government?

MANDY YOUNG: That would be a matter for the taskforce lead. We provide inputs; the decisions that are taken are done through the Treasury process and through the Treasurer, so we would've provided advice. We would not have yet provided advice on this because it depends on how the bill ends up.

The Hon. ANTHONY D'ADAM: Surely, in terms of the advice around the proposal, you would've had some idea about whether it would involve additional funding to resource workers to be represented in this additional stage that's required in order to access workers compensation?

MANDY YOUNG: They certainly would've provided advice that would need to be considered, depending on what model they came out with.

SAMANTHA TAYLOR: If I can add that whilst there may be the need for people to have representation—if they need to go through a process which is confronting, legalistic, and they're not prepared to represent themselves and all the things, it's important that happens. But depending on what the Parliament determines around this, there may be other adjustments to IRO's costs down the track with things that we are currently handling and they may no longer be part of the infrastructure of workers comp. So it is important that we understand what all the changes look like, and then anticipate, based on what we've seen both through the program and through the Personal Injury Commission's experience and so forth, what the actual impacts would be in terms of legal representation costs.

The CHAIR: That brings this session to conclusion. Thank you very much for the great work you do for the Government through your respective agencies. It's very important and we appreciate it. We also appreciate you coming along this afternoon and providing some very helpful evidence to the inquiry. Some questions taken on notice. You will receive them from the secretariat. Please respond by 5.00 p.m. next Wednesday 21 May.

(The witnesses withdrew.)

Ms CARA VARIAN, Chief Executive Officer, NSW Council of Social Service, affirmed and examined

Mr BEN McALPINE, Director, Policy and Advocacy, NSW Council of Social Service, affirmed and examined

The CHAIR: First of all, thank you both of you for your forbearance with respect to the time slot provided to you to participate in this inquiry. The second thing I want to say is please do not think that the time slot reflects in any way a disregard or disrespect for the most important work that NCOSS does. Would either of you like to make an opening statement?

CARA VARIAN: As you know, we are from the NSW Council of Social Service. We advocate for the needs of individuals and communities experiencing disadvantage in New South Wales and represent the community services sector. They're a dedicated group of people who provide essential services to support the people, families and communities of New South Wales. We welcome our invitation to participate in this Committee today. Community service work is deeply rewarding. It's profoundly personal work, and there can be a toll supporting people experiencing poverty, violence and trauma.

Our sector faces critical challenges. Service demand is increasing without commensurate resources to meet that demand, and this is causing ballooning workloads, burnout and job insecurity, amid rising living costs. Simultaneously, provider organisations struggle with escalating operational expenses including sharp increases in workers compensation premiums. Given these pressures, getting this reform right is crucial. It will be important that the right balance is struck between effectively supporting the psychological welfare of workers, supporting employers and managing scheme sustainability.

In this recently released exposure draft, there are a number of issues that require further clarity. The success of the reforms will depend on achieving that clarity with the input of experts and people with lived experience, balancing the needs of workers, employers and scheme sustainability and ensuring transition arrangements support the people and the organisations with the knowledge to move into these new arrangements. We welcome the proposed preventive measures that have been flagged by the Government and request that these measures are extended to support the social services sector. We advocate for reforms that balance the scheme's financial sustainability with ensuring the wellbeing of essential workers and the organisations who fulfil the Government's social policy objectives. Without protecting these organisations, the broader social policy goals are compromised.

The Hon. DAMIEN TUDEHOPE: I'm sorry it's so late. What reforms contained in the exposure draft do you say are worth embracing and would benefit the social services sector?

CARA VARIAN: Certainly, we acknowledge that reform is required. The premiums at the moment are putting an enormous amount of pressure on community service organisations. We also support that there will be stronger definitions around psychosocial injuries. The intent to address unsustainable insurance costs is important but, given the amount of time that we've had, I would say our main message is that greater clarity is required.

The Hon. DAMIEN TUDEHOPE: Would you agree that there will be a lot less people able to make claims for psychological injury at work as a result of this exposure draft?

CARA VARIAN: Yes.

The Hon. DAMIEN TUDEHOPE: And that's part of the intent of the bill, or the exposure draft?

CARA VARIAN: I wouldn't want to comment on the intent of the Government's bill, but there is a balance here between making sure that workers are safe in their workplace and also ensuring that organisations have sustainability. It's a tension that we need to acknowledge. We want to make sure that what reforms do happen will support both the workers and the employers.

The Hon. DAMIEN TUDEHOPE: Have you been able to identify any provisions in the legislation which would impact on workers in a way that is detrimental to workers and which may impact in terms of the services you would be required to provide?

CARA VARIAN: I refer back to my previous comment. I think the issue here is that we need some greater clarity. Our submission included a number of items within the exposure draft that we request additional clarity on. I have a further list from our members of things that require greater clarity. Of course there will be impacts but, at the moment, there is an onus on the Government to provide a bit more detail.

The Hon. DAMIEN TUDEHOPE: Part of the potential here is that if you increase the WPI in relation to workers to 30 per cent, a lot of workers who currently have psychological injury claims will not be able to continue making those claims after 2½ years and a lot more potential services will need to be provided by the organisations that you represent.

CARA VARIAN: That's true. We do have concerns that if the right thresholds are not met, then the people who don't get support through this scheme will end up with the community service organisations, which are already stretched. That is a concern.

The Hon. DAMIEN TUDEHOPE: That would be a significant drain on the resources of your member organisations. On the one hand, they're seeking to ensure their liability by a reduction in workers compensation and insurance premiums, which is obviously an expense that they have to bear. But on the other hand, the resources would be impacted potentially by a cohort of people who would be making further claims.

CARA VARIAN: It's complex reform. I would say that with what information we have now, we don't have enough clarity to know whether the thresholds are—

The Hon. DAMIEN TUDEHOPE: So you would support, would you, further work being done in relation to making sure that we've got the balance right?

CARA VARIAN: I think that is important.

The Hon. DAMIEN TUDEHOPE: And the short time frame for some inquiry in relation to this legislation hasn't been all that helpful.

CARA VARIAN: It has been a tricky week.

The Hon. DAMIEN TUDEHOPE: Who prepares the submission? Mr McAlpine, do you prepare the submission?

BEN McALPINE: I led the work, yes.

The Hon. DAMIEN TUDEHOPE: When was the first time you saw the bill?

BEN McALPINE: I believe it was when the exposure draft was released. I think it was last Friday.

The Hon. DAMIEN TUDEHOPE: You saw it last Friday?

BEN McALPINE: We were invited on Monday to provide a submission by midday on Thursday.

The Hon. DAMIEN TUDEHOPE: Were you given much time to consult with your membership?

BEN McALPINE: I think it's safe to say that 3½ days is a small window in which to do detailed consultation.

The Hon. DAMIEN TUDEHOPE: If the stated object is that potentially the TMF or, alternatively, the NI are financially unsustainable in circumstances where we didn't pass this legislation, would you say that is the correct lens through which to be looking at withdrawing benefits for injured workers?

BEN McALPINE: Sorry, Mr Tudehope, I think I may have lost the train of that question a bit.

The Hon. DAMIEN TUDEHOPE: If the motivation for this legislation was the solvency of the NI and the TMF, and that was achieved by withdrawing benefits from injured workers, would you be supporting that legislation, if that was the purpose driving this exposure draft?

BEN McALPINE: Our focus would be ensuring that workers are getting the coverage and support that they need and that our members—the frontline, essential community service organisations—are getting the sustainable premiums and the support that they need. That would be where our focus would be.

The Hon. DAMIEN TUDEHOPE: Where's the balance?

BEN McALPINE: That is, I suspect, exactly the challenge for this Committee and the Government.

The Hon. DAMIEN TUDEHOPE: I have no further questions.

Ms ABIGAIL BOYD: Thank you very much for appearing today and within the very short time frame. Your members know better than anyone, whether they're working in homelessness, mental health services, DV services or anything else, that early intervention is key in terms of saving society and the Government money in the long run. That's correct, right?

CARA VARIAN: As a principle, preventative care efforts are very important to NCOSS and the community services sector.

Ms ABIGAIL BOYD: You are in a very difficult position, if I may say so, because you are, as you say, not only looking at the long-term prospect of people not getting the help they need and then putting more pressure on your services, but you also have the immediate pressure right now of needing some sort of assurance from the Government that your premiums aren't going to go up as well. This is all in the context of a government that is

under-resourcing community services. Would it be better, in an ideal world, if the grant funding and the ongoing frontline service funding for services like the ones that you are here representing actually took into account things like increasing premiums? If your baseline funding for a service increased over time, if there was an increase in something like workers compensation, wouldn't that be a fairer situation to be in and put you in a less difficult situation today?

CARA VARIAN: I think you would have seen in our submission that we raised the issue about making sure that the funding arrangements are sustainable for community service organisations. It does cause stress and an impact on community service organisations and their ability to deliver those services to the New South Wales community. Most recently, the Government has announced the secure jobs funding framework. It's a great plan, but it's not the delivery of longer term contracts yet. And it's not a delivery of recognising the real cost of service. That's what I would hope to be the next step. It is urgently required.

Ms ABIGAIL BOYD: We all hope to see that. We all hope to see procurement at all levels take into account the real cost of labour and move with it when it's government money that is being spent. When it comes to your own members, in my portfolio responsibility for domestic and family violence and gender violence I speak to a lot of services that point to the lack of government funding as itself creating psychological stress and moral injury within their services. Where are those employees going to turn in such terrible times if we also take away their cover under the workers compensation scheme?

CARA VARIAN: As per our submission, we have made this exact point. Not only is workers compensation scheme reform required—it's a complex and difficult balance to make that reform—but so are funding models for community service organisations. They are entwined. Environmental circumstances will contribute to injury in the workplace as well.

The Hon. MARK LATHAM: Thank you to the witnesses. I can understand, having had the exposure draft for just a week, why your submission basically calls for clarity, but aren't there some things that are particularly objectionable? I support some of the things in the bill. I think it needs some extra measures. The one that seems very problematic is section 8F, the so-called gateway. For the people you represent across the community, if you are genuinely traumatised, mentally ill and psychologically injured out of this process, it's going to be particularly horrendous, isn't it, to have to jump through two hoops to get your workers compensation? Imagine having to go to the police and wait while they investigate. Then you might have lawyers involved to go to a tribunal, commission or court to prove your finding of harassment or bullying to then be eligible for workers compensation. Isn't this something that, instead of calling for more detail, we should just rule out straightaway as unsatisfactory?

CARA VARIAN: I agree that it's problematic. It's one of the reasons why we wanted to get more information. It would not be a bad thing if we could find a different mechanism to ensure that people can get the support that they need. Again, we did this quickly. We wanted to make sure that—

The Hon. MARK LATHAM: I'm not against gateways or triaging your way through to a more cost-effective system, but I just don't think this is it.

CARA VARIAN: I think it's problematic.

The Hon. MARK LATHAM: Given the time of day, I'll leave my questions there. I thank the witnesses for their patience in appearing here when it's dark outside and the footy has started on a Friday afternoon.

The CHAIR: I appreciate that there is 10 minutes left for Government questions, but I won't press you really hard with 10 full minutes of questions.

The Hon. ANTHONY D'ADAM: I have just one question. One of the issues that has been identified is the impact of single claims in terms of the penalty premium when you have a psychological injury in a small business. For example, where a worker goes off, and they are off for a very long duration and are unlikely to return to work. It's a high-value claim, and there is a consequential penalty increase in premiums for that business. Do you have a view about how that element of the system's premium settings should be reformed? Obviously the bigger the business, the easier it is to absorb those kinds of costs. For a small business, it could be the difference between them staying—I am using a small business, but most in the community sector would fall into that category in terms of the number of employees. The impact, particularly for funded services, is quite dramatic if they've got a big hike in their premiums arising out of a single claim. Can you provide some comments on that?

CARA VARIAN: I can confidently tell you that members have raised this with me as something that is very challenging for them to manage. We talk about the importance of place-based organisations, and as you rightly point out, there are many very small community-service organisations where a single incident like this would jeopardise the viability of their organisation. I don't think I'm the best-placed person to give you a

suggestion on exactly how that should be reformed because I'm not a workers compensation expert. I am a community service advocate. I think it is a problem that is tricky and it is worth spending time on how to resolve it better.

BEN McALPINE: I think this links back to Ms Boyd's commentary around the general underinvestment in the sector. Some of these issues have been brought up in the last week, and certainly for many years before. What would actually support frontline service organisations prevent psychological injury happening in the first place, and therefore avoid the ramp-ups in these premiums, would be investment in learning and development, professional supervision and getting the manager to work a ratio to be at a better level. All of these things create an environment where it can increase risk of psychological injury. If you are then to introduce additional costs that are adding more financial burden to organisations that are already struggling to meet community need, then I think that could be problematic and create a very difficult cycle for a lot of organisations in our sector.

The Hon. ANTHONY D'ADAM: The whole purpose of a workers compensation system is to spread the risk around, but clearly the risk impact is actually greater in those smaller businesses and smaller entities. Perhaps we need to spread the risk in a different way.

CARA VARIAN: Yes. I think spreading risk would be a good idea. I think the other part of it is that, inherently, there is great risk in community service organisations because of the trauma-based work that they do. It looms large in the eyes of all of our members. They're very concerned about how this is going to move forward.

The Hon. BOB NANVA: There's just one question from me. I'm conscious of the difficulty of your position, and I certainly won't ask you anything about the fraught nature of workers compensation reform and the specific nature of it. Just as a general proposition, would you agree that changes to workers' benefits should only be considered if they're seen to create this sort of perverse disincentive to returning to work or if they are putting an unmanageable burden on the scheme? Would you agree with that as a general proposition?

CARA VARIAN: They should only be put in place if they're creating an unreasonable burden?

The Hon. BOB NANVA: An unreasonable burden or an unsustainable burden on the scheme, or if it is a disincentive to an individual's return to work.

CARA VARIAN: You should only reform the scheme if it is going to cause—

The Hon. BOB NANVA: Make significant changes to workers' benefits, specifically.

The CHAIR: Can I say, with no disrespect, if you wish to take it on notice—

The Hon. BOB NANVA: You can take it on notice.

The CHAIR: The question has some complexity to it, and it has been asked to other witnesses during the day. I know it's hard to drop that one on you at the end of the day. If you'd like to, you can take it on notice so you can have it in front of you and respond.

CARA VARIAN: Maybe I should do that so that I can give you a sensible answer.

The CHAIR: I'm sure you'll give a sensible answer. Perhaps having more time to read the full question might be a bit easier for you.

The Hon. BOB NANVA: It would help if I'd asked a sensible question.

CARA VARIAN: I'm sorry for my blank stare. I would like to answer that question properly. I will take it on notice.

The CHAIR: That's what I was thinking you might want to do. On that note, I conclude by thanking both witnesses for coming along this afternoon. The submission is very helpful. I appreciate the six recommendations, which are carefully thought through, and particularly part B of the submission, which gives us a particular focus on sections in the exposure draft that you wish to draw to our attention. I appreciate the effort that has gone into that. Once again, I apologise for the lateness of the day. Thank you very much for coming along and for the work that you do. This brings today's hearing to a conclusion.

(The witnesses withdrew.)

The Committee adjourned at 18:15.