REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE

INQUIRY INTO THE WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2025

UNCORRECTED

At Macquarie Room, Parliament House, Sydney, on Tuesday 17 June 2025

The Committee met at 9:00.

PRESENT

Ms Abigail Boyd (Chair)

The Hon. Mark Buttigieg
The Hon. Susan Carter (Deputy Chair)
The Hon. Mark Latham
The Hon. Taylor Martin
The Hon. Bob Nanva
The Hon. Peter Primrose
The Hon. Damien Tudehope

PRESENT VIA VIDEOCONFERENCE

The Hon. Emily Suvaal

The CHAIR: Welcome to the first hearing of the Public Accountability and Works Committee inquiry into the Workers Compensation Legislation Amendment Bill 2025. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we're 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 or watching online.

My name is Abigail Boyd, and I am Chair of this Committee. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing 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.

Given the circumstances in which this inquiry was established, the Committee has determined that its first priority and the focus of today's hearing will be to investigate the financial and other assumptions underpinning the proposed reforms set out in the bill. After today's hearing, the Committee will decide on the next steps for this inquiry, including in relation to submissions and whether to hold further hearings. The Committee's website will be updated with this information. Given the possibly short time frame for this inquiry, witnesses will be required to return answers to questions on notice within 24 hours from when the transcript is received, rather than the usual 21 days. The Committee will decide later today whether it will allow supplementary questions from members.

Mr DAI LIU, General Manager, Actuarial Services, Insurance and Care NSW, affirmed and examined

Mr TONY WESSLING, Group Executive, Workers Compensation, Insurance and Care NSW, affirmed and examined

Mr MICHAEL COUTTS-TROTTER, Secretary, NSW Treasury, sworn and examined

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

Ms AMANDA YOUNG, Chief Executive, State Insurance Regulatory Authority, affirmed and examined

Mr CHRISTIAN FANKER, Director, Scheme Design, Policy and Performance, Workers Compensation Regulation, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: I welcome our first set of witnesses. Thank you so much for making time to give evidence. I also thank many of you for making your time available to the Committee last week. Would you like to commence by making a short opening statement?

MICHAEL COUTTS-TROTTER: No.

The CHAIR: Excellent. No-one? Fabulous. In that case, we'll start with questions from the Opposition.

The Hon. DAMIEN TUDEHOPE: Mr Liu, have you been asked to do any modelling in relation to proposed amendments from the Opposition and Mr Latham in the last 48 hours?

DAI LIU: I've seen the amendments. We've started work looking at it, yes.

The Hon. DAMIEN TUDEHOPE: Where is that up to and when can we expect to see it?

DAI LIU: The next couple of days, I would say.

The Hon. DAMIEN TUDEHOPE: The next couple of days?

DAI LIU: We're working through it. It's complex modelling, but we are working through it.

The Hon. DAMIEN TUDEHOPE: Would you accept from me that each of those proposals that have been put would represent savings to the scheme?

DAI LIU: Sorry, I'm just trying to remember all the proposals. There were a number of proposals put together.

The Hon. DAMIEN TUDEHOPE: Yes, there were a number of amendments which have been put.

DAI LIU: Some of which are savings and some of which are costs, compared to the bill as it currently stands.

The Hon. DAMIEN TUDEHOPE: Which ones have you identified as being costs?

DAI LIU: The ones relating to threshold and how threshold is applied.

The Hon. DAMIEN TUDEHOPE: Certainly, I accept that. But do any of the other proposals which have been put represent anything but savings?

DAI LIU: Can I take that one on notice? I can't recall all of them perfectly. Nothing is coming to mind. Can I please take that one on notice, if you want a definitive answer?

The Hon. DAMIEN TUDEHOPE: Let me put a specific proposal to you. If there was a requirement that, even in respect of a cohort of workers within the 21 per cent to 31 per cent range who had a work capacity of 20 hours per week, those workers would not be entitled to continued claims, notwithstanding the reinstatement of section 39A, would you accept that that provision would constitute savings to the scheme?

DAI LIU: My memory is probably not eidetic or perfect, but if that was in conjunction with the threshold, no, that would increase the cost to the scheme compared to the bill as it stands. Was it a standalone?

The Hon. DAMIEN TUDEHOPE: I put it to you in this way that there would be a cohort who would go off benefits because they had a capacity to work. That would represent a saving to the scheme, would it not?

DAI LIU: Under those words, yes. I think we're looking through the data. Again, my vague understanding of the scheme is that that is not a significant change in terms of the 15 compared to the 20 hours of work capacity.

The Hon. DAMIEN TUDEHOPE: When you say "not a significant change", what do you mean by that?

DAI LIU: Again, we are doing the work on it, so please just take this with—

The Hon. DAMIEN TUDEHOPE: You formed a view that it is not significant. When you say that it is not significant, what do you mean by that?

DAI LIU: What I mean by it is that a lot of workers present with no work capacity, so whether it's 15 or 20 it doesn't make that big of a difference when it comes to the cohort that is impacted.

The Hon. DAMIEN TUDEHOPE: Mr Coutts-Trotter or potentially other members of the panel, there is a *NSW Government Return to Work Strategy 2025-28*. I take it you are very familiar with that document.

MICHAEL COUTTS-TROTTER: I am reasonably familiar with that document. I wrote a foreword to it with Mr Draper.

The Hon. DAMIEN TUDEHOPE: Indeed. Let me ask you, in relation to that document and the implementation of the strategy surrounding the return to work strategy, how is that going?

MICHAEL COUTTS-TROTTER: It's relatively early days. The strategy was released in April. The work at this point, led by Premiers and supported by Treasury, is focused on two things. One is working through how we better educate senior leaders and hold them to account for return to work performance within their agencies, including at the secretaries' board level. The second is looking at cohorts of workers in the two big agencies, education and health, and trying to work through some of the detail about how we might get more of those people who are assessed as having a capacity to work back to work as quickly as possible.

The Hon. DAMIEN TUDEHOPE: A key underpinning of the whole of this strategy is getting people back to work. When you say "holding secretaries to account", what does that mean?

MICHAEL COUTTS-TROTTER: It has got to be worked through with my colleague Simon Draper, who, in effect, represents the Premier as our employer. But it's really going to be identifying what is expected performance within agencies for return to work. If we don't deliver that performance, we are going to be held accountable for that.

The Hon. DAMIEN TUDEHOPE: If you are successful in implementing this strategy and there was a significant upturn in return to work rates as a result of the strategy, then in those circumstances a lot of the savings which are envisaged by this legislation may be made by the implementation of the strategy, would they not?

MICHAEL COUTTS-TROTTER: No. There were 3,500 people at the time of the strategy, across the public sector of 410,000, who were assessed as having a capacity to work but weren't working. For those individuals and their families, it's really important we give them the opportunity to heal through work and get back to work. The financial cost of that is around $60 million a year, so it's not insignificant. But compared to the multi-billion dollar challenges in the TMF and the Nominal Insurer, it's helpful but it's not a gamechanger.

The Hon. DAMIEN TUDEHOPE: It's counterintuitive, isn't it? If we're getting people back to work more quickly, then there will be savings to the scheme.

MICHAEL COUTTS-TROTTER: That's true, but these are people who are assessed as having a capacity to work. There'd be others within the scheme who don't currently have an assessment that they are capable of work. It's the right thing to do. It's an important thing to do. But as I say, Mr Tudehope, it's savings of around $60 million—or avoided costs. I should reframe that as avoided costs.

The Hon. DAMIEN TUDEHOPE: A lot of the commentary in relation to the savings which are to be made is because people are not returning to work, in circumstances where they are getting embedded in the system and shouldn't, and are resisting returning to work. Is that not the case?

MICHAEL COUTTS-TROTTER: I wouldn't describe it as resisting returning to work. I think the Government's view is that the scheme does not adequately prevent—it doesn't create the right sort of incentives to get people back to work quickly.

The Hon. DAMIEN TUDEHOPE: In relation to holding people to account in relation to the strategies developed by the scheme, how will that work, besides the secretaries being held to account? Will each department be required to establish its own criteria for implementing the strategy?

MICHAEL COUTTS-TROTTER: The aim is working with various stakeholders to identify from evidence the best models of return to work in a public sector context and ensuring that each agency has assessed its own practices and processes and leadership against what we know to be the gold standard, and that agencies move as rapidly as possible towards doing it as well as possible. That's going to involve a whole range of performance measures within agencies, and accountabilities that attach to those.

The Hon. DAMIEN TUDEHOPE: What are the consequences if they don't meet those requirements?

MICHAEL COUTTS-TROTTER: To be determined.

The Hon. DAMIEN TUDEHOPE: You haven't thought through, potentially down to line managers, if in fact—see, Education and Health—

MICHAEL COUTTS-TROTTER: Health has actually recently improved its return to work rates.

The Hon. DAMIEN TUDEHOPE: Right. Well, Education?

MICHAEL COUTTS-TROTTER: Okay. I'm not familiar with the current data.

The Hon. DAMIEN TUDEHOPE: So what is the consequence for not complying with the strategy?

MICHAEL COUTTS-TROTTER: That's, as I say, Mr Tudehope, to be determined. The performance of senior leaders is assessed against a range of objectives in the role. We've got a responsibility for the safety of our workforce. We've got a responsibility for the outputs of the agency. We need people to produce those outputs. We are going to be assessed on how well we make use of the talents and capabilities of our workforce, and if we've got 3,500 people who are capable of work across the sector but are not at work, that is a huge missed opportunity and a real cost to those individuals, and we need to do something about it.

The Hon. DAMIEN TUDEHOPE: Ms Young, there are schemes available for potentially assisting people to return to work: $5,000 for employees to look at other opportunities; a $10,400 grant to employers who take on new employees. What's the take-up rate in relation to those schemes which are available through SIRA for people returning to work?

AMANDA YOUNG: I think it's fair to say the take-up rate is lower than what we would like that to be. I'd have to get you the specific number; I don't have that to hand. However, I would say that we're actually doing an evaluation of our vocational programs at the moment. That's due back to us in August, and we're also working with Treasury and the Premier's Department to see if we can pilot a couple of versions of those programs once we get that evaluation into the TMF. So we're doing a range of work on the vocational programs at the moment.

The Hon. DAMIEN TUDEHOPE: Was modelling done in relation to those programs to establish the effectiveness of those programs?

AMANDA YOUNG: That's precisely what we're doing within the evaluation at the moment. We're looking at how those programs are functioning, the take-up rates, how effective they are. I would say that—I don't want to pre-empt the outcome of that evaluation—the indications are that people do return to work at much faster rates if they go through those programs.

The Hon. DAMIEN TUDEHOPE: Mr Liu, are you doing that modelling?

DAI LIU: No.

The Hon. DAMIEN TUDEHOPE: Who's doing the modelling?

AMANDA YOUNG: It's an independent piece of work. I think it's Urbis, but I will just come back to you to confirm.

The Hon. DAMIEN TUDEHOPE: Mr Liu, Mr Coutts-Trotter has just told us that the savings in relation to the return to work strategy would potentially save $60 million. Did you do that modelling?

DAI LIU: It did come from my team, yes.

The Hon. DAMIEN TUDEHOPE: Do you accept that the only savings to be made in relation to this return to work strategy would be $60 million?

DAI LIU: I should clarify, it is a central estimate based on all of the data and evidence we had at the time. How it will play out, really, we need to see how the program performs. That was our best estimate at the time.

The Hon. DAMIEN TUDEHOPE: Wouldn't you give this program a chance to operate before you actually embarked upon removing benefits?

DAI LIU: That's a matter for government.

The Hon. DAMIEN TUDEHOPE: Mr Coutts-Trotter?

MICHAEL COUTTS-TROTTER: That is a matter for government, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Indeed.

MICHAEL COUTTS-TROTTER: Just to give you a point of context or contrast, the upcoming budget will reveal that the workers compensation liability in the Treasury Managed Fund has deteriorated, or the liability has grown, by $2.6 billion over five years in the most recent actuarial revaluation between the half-yearly review and our upcoming budget. So you've got billions of dollars on one hand, a moral imperative, but relatively limited savings on the other. But there is a continuing problem with the sustainability of both the public and private scheme.

The Hon. DAMIEN TUDEHOPE: Can I just ask you about that. Mr Garling made reference, in the evidence which he had previously given to this Committee in respect of the exposure draft of this bill, that the modelling in relation to the potential exposure of the TMF is predicated upon all liabilities of the scheme not being satisfied within an earlier period of time and potentially going to the worst-case scenarios for the scheme. Would you accept that?

MICHAEL COUTTS-TROTTER: I think that's Mr Liu's expertise. It's his model.

The Hon. DAMIEN TUDEHOPE: Is that the manner in which you—

DAI LIU: That is not the manner in which the modelling was done.

The Hon. DAMIEN TUDEHOPE: Well, you tell me how that modelling is done for the $2.6 billion over a five-year period.

DAI LIU: That $2.6 billion over the five-year period is based on the December actuarial valuation of the TMF workers comp portfolio. The December '24 valuation looked at the data up to September end, in terms of all of the claims trends—how much the injured worker gets in terms of weekly benefits, medical benefits; how many of them go down the path of work injury damages; how long people stay on-scheme—and then use the actual experience to project that forwards. Where we see trends, there is actuarial judgement required to make a call around whether the trend would continue or whether the trend is noise, for example.

The Hon. DAMIEN TUDEHOPE: So it's not an exact science, then, in terms of the $2.6 billion, is it? It's predicated on, potentially, trends, which may be in fact impacted by the return to work strategy which you're currently adopting.

DAI LIU: It is the best estimate based on the information we had at the time.

The Hon. DAMIEN TUDEHOPE: Mr Wessling, one of the observations made in the return to work strategy was that the people do return to work more quickly in circumstances where they have had access to psychological help within 12 weeks of making a claim. How many people get to actually see a psychologist within that period of time?

TONY WESSLING: Mr Tudehope, I can tell you the average time it takes for an injured worker to get psychological help is about 70 days, and the median is about 40 days, from what we looked at. That's a result of, obviously, access to those types of services. We have made available emergency access to counselling services 24/7, which are available immediately to injured workers. But for some of those specialists consults—

The Hon. DAMIEN TUDEHOPE: Part of the strategy, as I understand it, in relation to psychological injuries involves making a psychologist or a psychiatrist available at an earlier point on the making of a claim.

TONY WESSLING: Are you talking in relation to the whole-of-government return to work strategy?

The Hon. DAMIEN TUDEHOPE: Yes.

TONY WESSLING: We are doing a broader set of activities to try and make psychological services available earlier for injured workers.

The Hon. DAMIEN TUDEHOPE: Tell me what the strategy is in relation to doing that.

TONY WESSLING: You're aware we have the specialist claims model that we've launched with a number of our CSPs. Some of that is about trying to fast-track access to services. We make available as many appointments as we can as soon as possible to injured workers. As I said, we've launched and we're expanding the access to on-demand 24/7 counselling and emergency psychological services. Those are part of the strategies that we're pursuing.

The Hon. DAMIEN TUDEHOPE: In terms of the early intervention of a psychologist and a psychiatrist, what's the KPI that you are setting for claims managers to have claimants in front of a psychologist or a psychiatrist?

TONY WESSLING: We don't have a specific KPI on that, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Why? It's a key factor in getting people back to work.

TONY WESSLING: I take that point.

The Hon. DAMIEN TUDEHOPE: And you have no KPIs for your claims managers to have workers in front of psychological help.

TONY WESSLING: We've commenced tracking how long it takes on average. But keep in mind the injured worker accesses these services via referral from their nominating treating doctor, often using a specialist that's best for them. So there's a range of factors that go into—we don't control how injured workers access those services. We can make additional services available over and above that. We're looking in the specialist claims model from the CSPs around things like having block bookings of psychological services to be available and things like that, but those are very early stage.

The Hon. DAMIEN TUDEHOPE: Mr Wessling, are you aware of any fraud which takes place in relation to this scheme in respect of psychological injuries?

TONY WESSLING: Throughout the year we'll receive a number of allegations of fraud against workers and against employers. We have a process. Our case managers obviously consider any allegations of fraud and assess the information they have available. We scan or we do additional investigations where we think there is fraud. In those circumstances we will refer those to SIRA.

The Hon. DAMIEN TUDEHOPE: Are you aware of any provision in this amending legislation which addresses issues relating to fraud?

TONY WESSLING: I'd probably have to pass that off to Andrée.

ANDRÉE WHEELER: There are a number of measures that are included that are targeted at improving the integrity of the scheme. I would not say that they are primarily directed towards fraud, per se, in a criminal conduct sense. But there are certainly measures, particularly in relation to SIRA's medical assessment panels and the powers that it will have with respect to performance, quality and monitoring that are intended to lift the quality, integrity and efficiency of services provided.

The CHAIR: If I could start with Ms Wheeler, when we spoke last week we were trying to get a grip on what that $2.6 billion figure for the TMF was about. I've heard now that it's $2.6 billion over five years as an estimate. Is that an estimate of what these particular reforms would save?

MICHAEL COUTTS-TROTTER: No, that is the scheme's performance absent any reform. This is just a deterioration in the workers compensation scheme. The TMF component of the scheme is adding $2.6 billion in employee expenses over five years.

The CHAIR: Over five years, okay.

MICHAEL COUTTS-TROTTER: Yes, so 2024-25 and the following four years.

The CHAIR: When we spoke about this last week, there was a suggestion that maybe that also included exempt workers in there. Is that correct? Can you tell me how much we're talking about?

MICHAEL COUTTS-TROTTER: I'm happy to take that on notice for you, Ms Boyd. It would. It would be—

The CHAIR: Sorry, it was taken on notice last week. If Ms Wheeler has the details—

DAI LIU: I can take that one.

MICHAEL COUTTS-TROTTER: You can take that one? Great.

DAI LIU: We've looked into that. For that 2.6, roughly about a third is due to exempt workers and two-thirds is due to non-exempt workers.

The CHAIR: So we're looking at about—what is that? Someone help me out. It is $2.6 billion divided by $520 million—

DAI LIU: If you just give me a moment.

The CHAIR: —with the exempt. And then per year and then without the exempt—you're talking about two-thirds of that? So we're looking at about a decline of around $300-and-something million per year. It sounds quite different when you put it like that to this sort of grand $2.6 billion f we're just looking at $300-and-something million per year. I'm not saying it's not a problem, but clearly—

MICHAEL COUTTS-TROTTER: No, that's true. But unfortunately there has been a relentless increase in this liability with every six monthly actuarial valuation certainly since I've been in this job. My job has been to go and deliver another round of bad news to the Treasurer about the deterioration of the TMF.

The CHAIR: No-one is saying that the costs aren't increasing. But when we look at icare's performance as a whole, are you familiar, Mr Coutts-Trotter, with the Auditor-General's work from April 2024 on claims management?

MICHAEL COUTTS-TROTTER: Only at the highest level.

The CHAIR: Two of the things that the Auditor-General pointed out at that time that were adding significant costs to the system for unidentified benefit at that point was the cost of the claims service providers. If I look at the difference in the last five years for how much remuneration those CSPs are being paid, we're looking at an increase of around $408 million in five years per year. It's costing icare over $400 million each year extra for claims service providers. Is that correct?

MICHAEL COUTTS-TROTTER: I'd need to pass to my colleagues in icare to confirm that, but that sounds about right. It was something that my colleague Ms Wheeler and the Treasury team looked at with our operational expenditure review. We did some high level benchmarking of the costs of the New South Wales scheme compared to comparable public—largely public but, in some cases, privately underwritten schemes.

The CHAIR: Again, a lot of percentages have been used in this discussion so far. We've heard the increase of 5 per cent to 7 per cent of psychological claims within the Nominal Insurer as being referred to as an explosion or some sort of catastrophe, in the news. But if we look at that increase in claims service providers, from 2019 it was around 48 per cent of icare's total costs and now it's at 71.2 per cent of icare's total costs—again, representing an extra $400 million per year. Was that not an area that you thought was worthy of looking at for savings before we punch down on injured workers?

MICHAEL COUTTS-TROTTER: We've looked at everything. The investment returns of the funds that back these two schemes—the investment objectives for both TMF, through one fund, and the Nominal Insurer, through decisions of the icare board in investment objectives, have been lifted, meaning that there is a preparedness to take a degree more short-term volatility in order to earn a more secure and better longer term result. We've looked at the operating expenses within icare and the organisation is delivering a set of savings. They've taken executive roles out. They've reorganised the organisation and made other savings. Obviously, the Government has made decisions in relation to the premium levels and the Nominal Insurer. We've really looked and done work on every aspect of this, including, of course, return to work in the public sector.

The CHAIR: On return to work, I understand that despite the Auditor-General saying that there was no identified benefit or even objective of introducing this claims service provider model—which has, as we've seen, seen an increase of over $400 million a year—it was then introduced into the TMF as well.

MICHAEL COUTTS-TROTTER: It is in the process of being introduced. Icare's forward numbers, Ms Boyd, assume an avoided cost from the claims management model of, on average, about $450 million a year.

ANDRÉE WHEELER: No, it's $4.5 billion over the 10 years avoided cost.

MICHAEL COUTTS-TROTTER: It is $4.5 billion over 10 years, so an average of $450 million a year.

The CHAIR: That's quite an assumption based on what we're seeing in terms of the deterioration in the amount of claims providers and what they're getting.

MICHAEL COUTTS-TROTTER: A professional framework for case managers, higher quality support earlier in the journey of a claim, trying to keep people connected to work and get them back to work more quickly—if that works, it will substantially avoid costs in the scheme.

The CHAIR: Well, if that works. On that, one of the other things the Auditor-General points out is that return to work, as we've heard from the Opposition, is obviously critical to the sustainability of the scheme. But as these claims service providers have been brought on and are increasing the costs for icare, we're also seeing return to work rates decrease. The Auditor-General comments that, as part of this, icare actually took away the incentives for return to work goals for these CSPs. Is that correct? Were there years in the past five years where there was no return to work incentive for these CSPs?

TONY WESSLING: Not that I'm aware of, Ms Boyd. We certainly have in the current contracts in the Nominal Insurer significant—I'm not sure of the proportion, but probably half of the outcome performance fees would be based on return to work outcomes. That was what the new model was predicated on when it was launched back in 2023.

The CHAIR: That's not what the Auditor-General says. Maybe you could take that on notice and I'll come back to it when I find the page.

TONY WESSLING: Okay.

The CHAIR: The other thing the Auditor-General said was that there's been hardly any work on fraud management, and he identified the huge amount of savings that could be made by SIRA, in particular, taking a bit more of a focus on weeding out fraud in the system. I understand that work has only just begun, but is there any kind of estimate for how much that's going to save the scheme?

AMANDA YOUNG: From the work that we've been doing on fraud—and we've been taking a really hard and close look at this over the last year, particularly—we haven't got estimates in terms of dollar values. We work through a range of processes. Some are referrals to us, some are tip-offs and some are other ways that we work through understanding what's coming through to us. Over the last year alone—so this year to date—we've referred more matters to our legal team for potential prosecution than over the four years previously. So we're really picking up in terms of how we do that work and what that looks like. We don't have modelling on the money in terms of what that might save, but certainly we are focusing on how we deal with fraud and getting more enforcement into place.

The CHAIR: Those two identified costs in the system would save far more than these reforms. At what point did Treasury decide not to go down the route of tidying up icare's largesse before it decided to go ahead with these reforms?

MICHAEL COUTTS-TROTTER: We would take the view that our operational review identified areas where icare can and should save money, and that the board and the management of the organisations responded. As I say, at a high level our benchmarking indicated that once you've delivered those savings, icare looked to be, at a high level, a relatively efficiently run organisation.

The Hon. MARK LATHAM: Mr Liu, what role did you play in modelling the cost of the amendments the Government accepted to this bill in the Legislative Assembly?

DAI LIU: We did have a look at the costing, yes.

The Hon. MARK LATHAM: What did they show for amendment No. 5 moved by Mr Greenwich—"existing claims for whole person impairment injuries"—on page 38, schedule 1.10, basically taking out retrospectivity?

DAI LIU: That's exactly what we provided in terms of advice. It takes out the retrospective elements, and the costings would need to reflect that. That is the advice.

The Hon. MARK LATHAM: And what did that cost?

DAI LIU: Can I take that on notice? I don't have that. The numbers have moved.

The Hon. MARK LATHAM: Why don't you have it available, given it's a major amendment to this bill against the original presentation of the bill agreed to by the Government in the Legislative Assembly?

DAI LIU: There are a number of moving parts to the costing, and I want to make sure I picked up the absolute correct one.

The Hon. MARK LATHAM: "Moving parts"—is that actuarial language for you don't know?

DAI LIU: No, it's actuarial language to say I don't want to give you the wrong number.

The Hon. MARK LATHAM: I'm asking why you haven't got the number. Who did you advise? Earlier on, you implied that your advice was that this clause 5, moved by the Independent member, was necessary. Were you advising Mr Greenwich? Who did you advise?

DAI LIU: I was requested by Government to look at the costings of the amendments.

The Hon. MARK LATHAM: What was that costing? Was it a positive or negative impact on the scheme?

DAI LIU: The specific one you speak of, Mr Latham, takes out the retrospective elements. So that reduces the avoided cost to the scheme.

The Hon. MARK LATHAM: It reduces the cost to the scheme?

DAI LIU: No, the avoided cost.

The Hon. MARK LATHAM: The avoided cost.

DAI LIU: So it costs more.

The Hon. MARK LATHAM: It adds to the overall impact on government funding—the TMF and icare funding as the Nominal Insurer?

DAI LIU: In short, yes.

The Hon. MARK LATHAM: By how much?

DAI LIU: As I said, can I please take that one on notice to give you—

The Hon. MARK LATHAM: You provided this advice to the Government for very important amendments to their legislation in the LA, and you're saying here you've got a memory fail and can't recall the figure.

The Hon. BOB NANVA: Point of order—

The Hon. MARK LATHAM: Is that what you're saying?

The CHAIR: Order! I'll hear the point of order.

The Hon. BOB NANVA: It's the procedural fairness resolution and courtesy to the witness. The witness is entitled to take the question on notice, as he has requested.

The CHAIR: Could we calm things down slightly and allow the witness to see if there is an answer he is able to provide?

The Hon. MARK LATHAM: Maybe I'm animated, Mr Liu, because in discussions with the Treasurer as to why he needed it to go to 31 per cent and knock off after 2½ years, I put to him the Victorian alternative of tighter definitions on the way in. His sole justification for this legislation was that there are so many claims and so many expenses in the pipeline that we need to retrospectively deal with those to maintain the financial sustainability of this scheme. Yet in the Legislative Assembly, seemingly without you being able to tell this Committee what the actual cost was, he has agreed to three different amendments by an Independent to remove the retrospectivity and add to the problem that the Parliament and the Government is facing. That was on amendment No. 5. Have you got any recall of amendment No. 6 "Lump sum compensation for psychological injuries", page 40, schedule 1.10? What happened there in terms of your advice to the Government as to the cost of that amendment in the LA?

DAI LIU: Is there more detail you could read out, Mr Latham?

The Hon. MARK LATHAM: They took out the retrospectivity for lump sum compensation for psychological injuries. Do you recall that?

DAI LIU: Those two items travel together, Mr Latham, in our modelling in terms of how it gets applied. Both items of retrospectivity were done together as a single item.

The Hon. MARK LATHAM: What date did you receive instructions to provide a costing on that?

DAI LIU: I can't recall. It would be when it was presented to me by the Government. I can't recall the date.

The Hon. MARK LATHAM: Was it 24 hours, 48 hours or a week prior to the bill being considered in the Legislative Assembly?

DAI LIU: All I can recall is we were still working on the costings while the bill was being considered in the Legislative Assembly, so work was ongoing.

The Hon. MARK LATHAM: You will take that on notice as to when you were first asked to provide this material?

DAI LIU: I'm happy to.

The Hon. MARK LATHAM: It sounds like you're saying that you were asked as the bill was being debated in the Legislative Assembly. Is that your recollection?

DAI LIU: Not asked, but we were still doing work on the costing of the amendments as the Assembly—

The Hon. MARK LATHAM: Someone asked you to do that, didn't they?

DAI LIU: I was asked—

The Hon. MARK LATHAM: You didn't volunteer and go up to Mr Mookhey, Ms Cotsis or Mr Greenwich and say, "Here are some costings for an amendment you haven't yet developed."

MICHAEL COUTTS-TROTTER: He's good, but he's not that good.

The Hon. MARK LATHAM: He's not so great on having a recollection of what's going on here, so that's what I'm seeking.

DAI LIU: The specific wording matters, and how it works matters. So part of the ongoing work is sometimes we receive requests asking, "What would this look like?" but then when further clarified, work needs to continue to make sure that we're addressing the amendments as presented.

The Hon. MARK LATHAM: Did you provide dollar costings, or just general concept costings?

DAI LIU: We provided a range, is my memory.

The Hon. MARK LATHAM: "A range" is your memory. The third one was "existing claims in relation to psychological injuries", which was amendment No. 7. You've taken the other two on notice. Have you got any recall of the costing for removing that retrospectivity in the original bill?

DAI LIU: Sorry, I really don't remember the items. Can you tell me what—

The Hon. MARK LATHAM: Okay, maybe you can take that on notice as well. Do you find it curious that the Treasurer would say to me, as a crossbench member in the upper House, the whole purpose of the bill is retrospectivity in the pipeline, and then he's accepted three Legislative Assembly amendments from their crossbench to gut the purpose of bill?

DAI LIU: That's a matter for the Treasurer, Mr Latham.

The Hon. MARK LATHAM: But you did provide advice as to the consequences of this gutting?

DAI LIU: We looked at the costings.

The Hon. MARK LATHAM: What now is the bill saving in terms of the pipeline impact? And is it true that we now have to wait 2½ years for any savings in the schemes, because that's where the cut-off applies? And nobody in the pipeline right now, for 2½ years, is impacted by the provisions?

DAI LIU: It's not true, because of the way the financials and actuarial valuations work. We essentially value and put on the accounts the full cost of the claim as the claim is incurred. We have to provide an estimate on that. As the legislative and regulatory environment changes, our costings need to reflect that. If it changes, you will see that play through in the financials as we do the actuarial valuation.

The Hon. MARK LATHAM: But you're confirming to this Committee that, because of these changes that you've looked at and costed in the Legislative Assembly amendments, nobody who goes into the scheme today is going to be impacted in any way for 2½ years?

DAI LIU: I don't believe that's how the amendment works, Mr Latham. I'm not an expert, but I don't think the amendments work in such a way that everyone won't be—

The Hon. MARK LATHAM: Ms Wheeler, what's your interpretation of how the amendments work?

ANDRÉE WHEELER: The amendments would affect people who already have a claim within the system but would mean that all new injury notifications would be subject to the new thresholds.

The Hon. MARK LATHAM: So nobody in the pipeline is being affected, and the Treasurer's stated purpose of this bill, which is to deal with the pipeline costs—which he says are enormous and growing quickly—was gutted by these amendments. Is that your interpretation of what happened—if you accept that was his purpose, because he put it to me that way?

ANDRÉE WHEELER: I would say that there are multiple aspects of the bill that have different impacts. Some of those are immediate and take effect quickly.

The Hon. MARK LATHAM: I'm interested in the pipeline argument that was put to me as the core purpose of the bill. Were you in involved in any consultation as to why these amendments should be supported?

ANDRÉE WHEELER: We provided technical advice around the drafting and the preparation and policy impact of those amendments to the Government.

The Hon. MARK LATHAM: What was your advice on the impact?

ANDRÉE WHEELER: In terms of impact, we provided advice around the impact on existing claims within the system.

The Hon. MARK LATHAM: Mr Liu, following the passage of these amendments, what is the net financial impact of this bill that's come to the Legislative Council?

DAI LIU: I believe that there were some costings provided to the Committee in the documents that were uploaded. Those would be the figures.

The Hon. MARK LATHAM: That was a private briefing. I'm trying to get that on record. Mr Coutts-Trotter has said it's $4½ billion over two years and rising exponentially.

DAI LIU: It's part of the public documents.

The Hon. MARK LATHAM: What's the impact of the bill after it's been amended in the LA?

DAI LIU: It was part of the published documents. I believe it was about $1.1 billion per annum for the Nominal Insurer and $500 million for the Treasury Managed Fund, per annum.

The Hon. MARK LATHAM: That's the impact of this bill? That's all? What is the point?

MICHAEL COUTTS-TROTTER: That is a very significant impact, Mr Latham.

The Hon. MARK LATHAM: Not compared to the numbers you've been quoting to us.

MICHAEL COUTTS-TROTTER: It is a $1.1 billion a year improvement in the Nominal Insurer. It would allow the Nominal Insurer to get back to—

The Hon. MARK LATHAM: No, you said $500 million for the Nominal Insurer.

DAI LIU: Five hundred for the TMF.

MICHAEL COUTTS-TROTTER: No, $500 million for the TMF. For the Nominal Insurer, it's $1.1 billion a year, which would mean no further premium increases and that the scheme would be 100 per cent by financial year 2029-30. It would recover the deficit within that period.

The Hon. MARK LATHAM: Not on the exponential rate of claims growth that you've been talking about.

The CHAIR: Order! It's time for Government questions.

MICHAEL COUTTS-TROTTER: That is the modelling.

The Hon. BOB NANVA: Just on Mr Latham's line of questioning, in terms of the retrospectivity aspect of this, is the intention largely to protect the current claims and status of claims of people who are currently in the workers compensation system, not the long tail of people looking to come in over the next five, six or seven years?

MICHAEL COUTTS-TROTTER: The intent of Mr Greenwich's amendment, Mr Nanva?

The Hon. BOB NANVA: Yes.

MICHAEL COUTTS-TROTTER: Yes. That was how it was expressed.

The Hon. BOB NANVA: Without labouring the point, just on some headline figures with respect to the scheme, could you provide the Committee with the most recent numbers with respect to the Nominal Insurer and the TMF with respect to the number of psychological claims and the cost of those claims from 2018? What has been the percentage increase?

MICHAEL COUTTS-TROTTER: That was a submission from my colleagues at icare, so I might turn to Mr Liu to give you an update. Since 2018, the number of psychological claims entering the Nominal Insurer each year has more than doubled. The number of claims within the scheme has increased fourfold. The number of psychological claims into the TMF has doubled. The number of psychological claims within the scheme has tripled in that period.

The Hon. BOB NANVA: Do you have the cost?

MICHAEL COUTTS-TROTTER: The Nominal Insurer has gone from a surplus of $4.4 billion in 2015 to a deficit of $4.9 billion as at December 2024, so a $9.9 billion deterioration over that period. With the 8 per cent premium increase and the final of those three 8 per cent premium increases, which will arrive in 2025-26, unfortunately we will have the highest workers compensation premiums of any Australian State. We are up to 48 per cent higher than other States. Compared to Queensland, their workers comp premiums for private sector

employers will be 48 per cent below ours. It's quite a significant issue for business, of course. The cost of the scheme is driven by the fact that we're not getting people back to work as quickly and as successfully as we should.

The Hon. BOB NANVA: What are those return to work rates for psychological injuries compared to physical injury?

MICHAEL COUTTS-TROTTER: It's high nineties for physical injuries at 52 weeks and about 41 per cent for psychological injuries at the same point in time.

The Hon. BOB NANVA: With respect to the deficit in both of those schemes, contributions have obviously been made by successive governments now into the TMF.

MICHAEL COUTTS-TROTTER: Into the Treasury Managed Fund. The Nominal Insurer is not part of the State's accounts. It is not a liability. There's the State's liability. It's the liability that exists in that scheme and is, in effect, an employer's liability.

The Hon. BOB NANVA: What have been the premium increases over the past five years with respect to the—

MICHAEL COUTTS-TROTTER: I shall turn to Mr Wessling or Mr Liu for that.

TONY WESSLING: Over the last two years and moving into the next year, it's three years of 8 per cent increases. Those are the increases that we've put in over the last three years.

The Hon. BOB NANVA: On the most recent valuation of the Nominal Insurer, what premium increases would you be looking at to get it to a 100 per cent ratio?

MICHAEL COUTTS-TROTTER: It would require the 8 per cent that's arriving in 2025-26, followed by two 12 per cent increases beyond that—so, compounding, a 36 per cent increase. That would take our premium rates to 2.5 per cent of wages compared to other States that are between 1.3 and 1.8 per cent of wages. We would be a really significant outlier in the cost of workers compensation to 340,000 businesses in New South Wales.

The Hon. BOB NANVA: I suppose the question I'm asking is that without significant structural reform, contributions of that magnitude by the Government into the TMF and premium increases with respect to the Nominal Insurer simply aren't sustainable, aren't they?

MICHAEL COUTTS-TROTTER: No.

The Hon. BOB NANVA: I'm interested in what the key drivers with respect to the deficit in the scheme are. Clearly there are more people entering the scheme and there are more people staying in the scheme longer, so you effectively have this double whammy. Obviously recognition of psychological injury is probably more widespread than it was five years ago. But given the doubling of those numbers in terms of people entering the scheme and those significant numbers of people remaining in the scheme, is that to suggest that workplaces are twice as safe as they once were and injuries are suddenly far more insurmountable than they once were for people to get back to work? What are the key drivers that are effectively meaning more people are coming in and more people are staying longer?

MICHAEL COUTTS-TROTTER: What the data show over the period 2018 to the present is the proportion of people assessed at higher levels of whole person impairment controlled for psychological claim numbers has increased fivefold in that period. You have more people coming into the scheme with a psychological injury and then they are staying in the scheme longer, and they are being assessed at much higher levels of impairment as a result. That is the primary driver of cost in the recent period.

The Hon. BOB NANVA: Issues like, I suppose, claims for sexual harassment, racial discrimination, workplace pressure, they are not significantly—

MICHAEL COUTTS-TROTTER: Workplace pressure, yes. There are only relatively small numbers of claims associated with sexual and racial harassment.

The Hon. BOB NANVA: Small numbers?

MICHAEL COUTTS-TROTTER: Small numbers. But the large numbers are interpersonal conflict, workplace pressure, bullying and harassment—general harassment rather than harassment on racial or sexual grounds.

The Hon. BOB NANVA: I suppose given the sheer volume of people that are now entering the scheme and remaining in the scheme, just with respect to Ms Boyd's line of questioning around remuneration of claims management providers, those numbers in isolation—there is a significant increase. But would some of the

explanation be the sheer volume of cases that need to be managed and the volume of complex cases requiring more case managers?

TONY WESSLING: Yes, that's right. Over the time since 2018, the volume of claims lodged in the scheme but also being actively managed in the scheme has increased quite significantly. One of the areas we structure the remuneration model around is to make sure we maintain a reasonable caseload for the frontline claims managers. In fact, one of the changes we made in 2023 was to actively lower that further. That means we have more frontline claims managers having a smaller portfolio to get better outcomes for injured workers, and that has happened at the same time as the total number of claims lodged, the total number of open claims—they're more complex—and particularly those site claims in both the Nominal Insurer and the TMF have increased quite materially over that period.

The Hon. BOB NANVA: I'm interested in, I suppose, the structural elements of the proposed reforms. I understand the Victorian Government not too long ago undertook reforms of their workers compensation scheme and the advice to their Government—and I've taken this from their parliamentary inquiry—is that their consultants found that prevention and claims management initiatives were not alone sufficient to address the financial challenges that their scheme was facing and they needed to prosecute legislative reforms, as well as many of those non-legislative reforms such as improving return to work rates, improving claims management processes and improving prevention of injuries in the workplace. Is that the advice that you have provided and the assessment that you have with respect to the New South Wales scheme?

MICHAEL COUTTS-TROTTER: Yes, it is. The investment objective has been pushed to the furthest appropriate point. Risk-adjusted returns and premiums are, as we've discussed already, the highest among the States. The claims management model is assumed to deliver benefits of an average of $450 million a year in avoided costs, and icare's delivering savings in their own operations. We've got a return to work strategy for the whole of government, but there are no levers left to pull other than elements of scheme design.

The Hon. BOB NANVA: So we've looked at all the non-legislative levers that we can?

MICHAEL COUTTS-TROTTER: We've looked at all the non-legislative arrangements. You've got companion legislative reform in the industrial relations system and around SafeWork and then, of course, you've got the $344 million package associated with the reforms to fund better early intervention and support and more inspectors for SafeWork.

The Hon. BOB NANVA: Coming back to the headline figures that you referred to in my earlier line of questioning, I'm again interested in this issue around the sheer volume of people coming into the system and then staying in the system. Does the design of the incentives support and facilitate people returning to work and support and facilitate people not entering the scheme if they don't need to? I'm concerned that changes to benefits should only be considered if they create disincentives to people recovering or going back to work. Is it your view and the advice to government that there are some of those disincentives in the current scheme?

MICHAEL COUTTS-TROTTER: Yes, it has been the collective advice of various agencies to government that there are those adverse incentives in the scheme that prevent people from getting back to work or staying at work. One of the key elements of the package before the Parliament is to try to beat the so-called alternative model for providing a faster decision and therefore supports for people who may have experienced workplace bullying or harassment, or sexual or racial harassment. Taking a longer time frame and compressing it to decision-making within eight weeks is an attempt to provide quicker decision-making, which all of the evidence suggests is part and parcel of schemes that perform well. The package is in part attempting to deliver that faster decision-making and earlier supports.

The Hon. BOB NANVA: Is the provision of more access to commutations also part of that mechanism?

MICHAEL COUTTS-TROTTER: Yes, it is.

The Hon. PETER PRIMROSE: We spoke earlier about, and we've heard other questions in relation to, the pipeline. Now, I'll leave you guys to work out who the appropriate person is to respond to this question, but in relation to the retrospectivity changes, are they primarily designed to protect the claims or status of people currently within the workers compensation system, or are they designed to address possible future claimants?

MICHAEL COUTTS-TROTTER: Their impact is on people who are currently within the system. Prior to the amendment—I'll invite my colleagues to correct me if I get this wrong—if you were in the system but had not yet sought an assessment for whole person impairment, you would be affected by the new threshold changes. Initially it's 25 per cent for whole person impairment and later it's 31 per cent. Following the change, you won't be affected by those changes in thresholds if you are a current participant in the scheme. That's the effect of the amendment moved by Mr Greenwich in the lower House.

The Hon. PETER PRIMROSE: I note that the 2024 Auditor-General's report found that there was a lack of coordination between the research functions of SIRA and icare. Can you tell me how that has been addressed, please?

AMANDA YOUNG: Following that and the Law and Justice recommendations from 2023, our three executives from icare, SafeWork and SIRA have been meeting—we meet monthly at the moment—to work through a variety of issues where we need to collaborate a little more. One of those has been around research functions. We had a collective group who worked through what would that look like, what could that look like for us to be more collaborative on our research functions. We have come up with a proposal that we are putting forward to the Ministers in terms of that.

There are a range of pieces of work within that, but we are certainly much more collaborative. We have a group that oversees that and feeds into our executive leadership team, our executive committee, to work through that. We have taken really active steps in that. We have put a proposal forward so that we are very aware of what each other is funding and how that will operate, and then we are also looking at how we plan our potential joint research moving forward, which we are doing at the moment as well. There is a research project on the horizon that we are looking at doing collectively.

The Hon. PETER PRIMROSE: Will any of that have an effect in relation to fraud in the workers compensation system?

AMANDA YOUNG: I would have to come back to you in terms of if we are doing any direct research on fraud in relation to the workers compensation system. But, certainly, a lot of the work that we do—there is sometimes a little confusion between low value based health care and fraud. Low value based health care is what we call it when people are potentially overserviced or being provided more sessions than they need to be for good health outcomes. I think sometimes people may see that as fraud when, in fact, it is not technically fraud in terms of the legislation and the way that the Act operates. We do a range of research into low value based health care. We have done some more recent work on back pain and putting up a new model of how to deal with that. The answer to your question is, yes, we do it in that context rather than in fraud particularly. It is fraud-related activity, but it is not actually fraud.

The Hon. PETER PRIMROSE: If I can return to the issue of fraud, but more broadly, what measures have been put in place to better detect, deter and prosecute potential fraud? This is to anyone, not only to you, Ms Young.

AMANDA YOUNG: I can answer for SIRA if that's helpful to you. We have done a range of things over the last while. We have recently increased the work that we have done across SIRA and within SIRA. In the past 18 months we have had our investigations team really broaden their scope to include more complex, broad issues. That includes provider fraud, cases involving large businesses and the use of layered corporate structures, so we are getting into much more complex areas. We are looking at fraud in education programs and early dob-in intervention projects.

Since July 2020 we have basically tripled the amount of fraud tip-offs that are coming in, so that is moving forward. The types of fraud that we are identifying are claimants submitting false certificates of capacity while working and receiving compensation, and also some forged documents. They are the sorts of things that are coming through in that space. For healthcare providers, it's false billing, overcharging and potentially inflating injury severity. They are the pieces that are coming through. For employers, we have had a lot of under-reporting around workforce wages and securing lower premiums. That is where our focus has been. The true extent of what it is, as I touched on before, isn't really known because we don't know how much fraud is in the system. We continue to work through that as we build that capability within SIRA.

ANDRÉE WHEELER: Mr Primrose, if I may just add, because I didn't quite finish my earlier response, parts of the bill do deal with employer fraud with respect to underinsurance and non-insurance, in particular increasing penalties in that area. I highlight that as well.

AMANDA YOUNG: I think one of the key things in terms of that is that we have had a real increase in collaboration with insurers, including icare, and really working through with them around how we can better work together on fraud and identifying that, and then how we enhance our capability and our investigation process to deal with that.

CHRISTIAN FANKER: I might add to that as well in terms of that collaboration. Since February this year we have undertaken seven sessions with insurers to help them work towards identifying and being able to spot and report fraud. We also work closely with New South Wales police, the tax office, State Revenue and the NDIS, because often if there is fraud in workers comp it may be elsewhere as well.

The Hon. BOB NANVA: Which single element or driver is causing the greatest deterioration to the scheme, if you could specify one?

MICHAEL COUTTS-TROTTER: I would imagine it is the trend of ever-rising whole person impairment assessments, combined with the rising number of new psychological claims coming into the scheme.

DAI LIU: There's a compounding effect of the increase in the number of psychological claims coming into the scheme and the psychological claims then making it past the threshold and, therefore, greater entitlements and benefits for the injured worker. Those two factors compound, and that drives quite a huge increase to both schemes on costs.

The Hon. DAMIEN TUDEHOPE: Ms Young, who is responsible for carrying out work capacity assessments?

AMANDA YOUNG: Work capacity assessments are essentially done through the certificate of capacity.

The Hon. DAMIEN TUDEHOPE: Yes. Who does them?

AMANDA YOUNG: Primarily, that will be a GP.

The Hon. DAMIEN TUDEHOPE: How often would they be done?

AMANDA YOUNG: I would come back to you on the timing, but there are set time frames in which they need to be done.

The Hon. DAMIEN TUDEHOPE: So a GP, potentially in a 10-minute consultation, makes an assessment for the purposes of a person's capacity to return to work, do they?

AMANDA YOUNG: I think how they would do that and the time that it would take for that would be much longer. I'm just looking at my colleague over there, Mr Wessling.

TONY WESSLING: Yes, could I answer this, Mr Tudehope? Work capacity decisions and work capacity assessments are part of the case management process. Case managers ultimately make the determination on work capacity using inputs from the normal treating doctor or psychologist. Work capacity is obviously a core part of the current scheme. The scheme is built around building capacity for work and getting injured workers back to work. The legislation requires a work capacity decision to be made between the seventy-eighth week and the 130th week, so in that last year of the first 2½ half years it's mandated that a work capacity decision occurs, given that that's then the threshold for ongoing access to certain types of lump sum benefits and ongoing benefits. It is up to the case manager to complete those work capacity decisions. They can be done at any point in a claim but historically have been done in that 78-week to 130-week period.

The Hon. DAMIEN TUDEHOPE: So the claims manager would require the injured worker to attend on their GP and produce a certificate from that GP. Is that right?

TONY WESSLING: The information from the GP is one part of the input into the work capacity assessment.

The Hon. DAMIEN TUDEHOPE: Who else provides input?

TONY WESSLING: If there are other treating providers. I can come back on notice and give you all the sorts of inputs.

The Hon. DAMIEN TUDEHOPE: Would you accept from me that there will be some people who fit into the category of no capacity to return to work?

TONY WESSLING: That's right. There are basically three types of outputs: There's employed, which means there's capacity to work and the person is working; there's no capacity to work; or there's—

The Hon. DAMIEN TUDEHOPE: And there's somewhere in between.

TONY WESSLING: No, there's capacity to work but not working. Those are the three. Either you've got capacity and are working, you've got capacity and aren't working, or you don't have capacity to work.

The Hon. DAMIEN TUDEHOPE: What happens to that cohort who have no capacity to return to work?

TONY WESSLING: It can have an impact on the wage replacements that are paid.

The Hon. DAMIEN TUDEHOPE: But under this new legislation, what would happen to a person with no capacity to return to work?

TONY WESSLING: Sorry, with no capacity? I'd have to pass that—under the proposed legislation?

The Hon. DAMIEN TUDEHOPE: Yes.

TONY WESSLING: I might ask Ms Wheeler to answer that.

ANDRÉE WHEELER: Sorry, what was—

TONY WESSLING: I think it was in relation to the legislation for someone who has no capacity to return to work. What happens to them?

ANDRÉE WHEELER: At the end of 130 weeks?

The Hon. DAMIEN TUDEHOPE: Yes.

ANDRÉE WHEELER: Under the current legislation, they would cease weekly benefits and continue to receive medical entitlements and care for an additional 52 weeks.

The Hon. DAMIEN TUDEHOPE: So what happens to them?

ANDRÉE WHEELER: In terms of transition off scheme?

The Hon. DAMIEN TUDEHOPE: Yes. No capacity to return to work—what happens to them?

ANDRÉE WHEELER: That becomes—

TONY WESSLING: So under—

The Hon. DAMIEN TUDEHOPE: This is a policy decision that the Government is making for people who, on your assessment, have no capacity to return to work. What happens to that cohort of people?

MICHAEL COUTTS-TROTTER: Of course, the big development since the reforms to the scheme in 2012 is the creation of the National Disability Insurance Scheme.

The Hon. DAMIEN TUDEHOPE: So it's a cost shifting to the—

MICHAEL COUTTS-TROTTER: No, it's not a cost shifting. The whole design of the National Disability Insurance Scheme is to provide the best possible supports for people with a range of ongoing disabilities. I think there are around 19½ thousand people in New South Wales who are currently in the NDIS as a result of psychosocial disability. That is a pathway for some people that is available now that wasn't available back in the history of the scheme.

The Hon. DAMIEN TUDEHOPE: But how many of those people who are currently in the NDIS have had their injuries caused, or liability accepted, as a result of a workplace injury?

MICHAEL COUTTS-TROTTER: I don't have that data.

The Hon. DAMIEN TUDEHOPE: But it wouldn't be great, because they would be entitled to compensation, would they not? They have no capacity.

MICHAEL COUTTS-TROTTER: No, that's true. But I'm just making the point that there is a now increasingly well-developed pathway of support for people with psychosocial disability, which is what we're talking about if you are severely impaired as a result of a psychological injury at work.

The Hon. DAMIEN TUDEHOPE: Let me ask about that. In respect of the 21 to 31 per cent WPI, how many of those people do you say, Mr Wessling, have capacity to return to work, on the figures available to you?

TONY WESSLING: I wouldn't make a guess at that, Mr Tudehope. I'll take that on notice. But there are workers in that cohort that would have capacity to work.

The Hon. DAMIEN TUDEHOPE: There would be some.

TONY WESSLING: Yes. I don't have—

The Hon. DAMIEN TUDEHOPE: There'd be a significant number that would have no capacity to return to work, would there not?

TONY WESSLING: I'd have to come back to you on notice, sorry. I wouldn't want to guess that.

The Hon. DAMIEN TUDEHOPE: Do you know, Mr Liu?

DAI LIU: I don't have the data at hand.

The Hon. DAMIEN TUDEHOPE: Have you not been asked to do any modelling in relation to that?

DAI LIU: We've not looked into it. I don't have that at hand.

The Hon. DAMIEN TUDEHOPE: You've come up with a figure of only 27 that would in fact be able to continue under this model. Twenty-seven in the current scheme would be able to continue their claims. Why haven't you done any modelling in relation to that cohort between 21 and 31 per cent who have no capacity to return to work?

DAI LIU: We've been requested in terms of the different combinations of amendments, legislation and proposals, so when we do our costings, that's per the requests that come through. When there are requests around changes in thresholds and different rules, we cost those. That's what we've looked at.

The Hon. DAMIEN TUDEHOPE: I'm really perplexed by this issue, which Mr Latham has raised, that removing the retrospectivity from the scheme in fact removes a significant number of claims which are in the pipeline from the effect or the savings which are to be made by the scheme.

MICHAEL COUTTS-TROTTER: Yes.

The Hon. DAMIEN TUDEHOPE: And it appears that the only cohort which are now going to be the subject of savings under the current scheme is those where no WPI has already been made.

MICHAEL COUTTS-TROTTER: Subject to avoided costs, yes.

The Hon. DAMIEN TUDEHOPE: And there's no costing that you have available to you about the diminution of the savings which were previously expected to be made which are now not able to be made because of that amendment?

MICHAEL COUTTS-TROTTER: Mr Liu is going to get that for you. It is a one-off impact. It is an impact though.

The Hon. DAMIEN TUDEHOPE: Potentially there are long tails in relation—

MICHAEL COUTTS-TROTTER: And the actuarial revaluation of that has an impact in one financial year.

The CHAIR: Mr Wessling, has the number of claims in the system increased from 2019 to 2024—in those five years—by 260 per cent?

DAI LIU: Have increased?

The CHAIR: The number of total claims in the system between 2019 to 2024 financial years—what was the percentage increase?

MICHAEL COUTTS-TROTTER: Psychological and physical, or just psychological?

The CHAIR: The entire claims—everybody that is currently going through the TMF and the Nominal Insurer.

MICHAEL COUTTS-TROTTER: Okay. I don't know.

TONY WESSLING: I'm not sure we've got those numbers with us. We have the lodged claim numbers.

The CHAIR: On the published documents that were provided to the Committee last week it looks something like, I don't know, a 20 per cent increase or something like that. What would you say the increase was in total numbers of claims?

MICHAEL COUTTS-TROTTER: I don't know.

DAI LIU: We do have that but we just need to look that up, apologies

The CHAIR: You'd be surprised if it was 260 per cent, though—if it was 2.6 times as many in five years?

DAI LIU: For psychological injuries?

The CHAIR: For all injuries.

DAI LIU: No, it wouldn't be 260 per cent.

The CHAIR: No, that would be absurd. Sorry, the suggestion was made in a previous question that perhaps the increase of 260 per cent in the cost of claims service providers was somehow connected to this similar amount of increase in number of claims. But that's just not correct, is it?

TONY WESSLING: Sorry, I misunderstood your question. What I was trying to say is that the drivers of claims service provider costs have included the growth in claims volume. Just to clarify, whilst they might not have increased by 2.6 times, as you just put forward, I would say the psychological claims are there. We run a

lower case load on psychological claims. They have—and we heard before from Mr Coutts-Trotter—quadrupled and tripled in the NI and the TMF respectively. It's not the only driver of cost increase.

The CHAIR: We'd expect an increase in the cost, but not that amount.

TONY WESSLING: As I said before, we also lowered the case load for frontline workers in 2023, which will have contributed to some of that as well.

The CHAIR: In her report the Auditor-General made the statement:

> Reducing performance in return to work rates, even if only temporarily, can have a long-term impact on outcomes for affected workers and for scheme costs.

Would you agree with that?

TONY WESSLING: Yes.

The CHAIR: On the previous page, the point is made that the return to work rate targets for CSPs were lowered by icare in 2023 compared to 2022. Why would you lower the target work rates for CSPs in a year, given how important it is to incentivise return to work?

TONY WESSLING: Ms Boyd, I'd have to take the specific question related to 2023 on notice, but the targets we set for CSPs today increase year on year for return to work.

The CHAIR: But they didn't in that year. The impact of that on the scheme and the scheme costs, according to the Auditor-General, would be significant. Would you agree with that?

TONY WESSLING: I would have to go back and understand the reasons if there was a reduction in target.

The CHAIR: Mr Coutts-Trotter, the idea of the bill is that it's part of a focus on prevention. You are effectively saying this scheme is based on risk weightings, and certain premiums are put in order to compensate workers when they get injured at work. But for a particular cohort of workers that have a psychological injury, you will instead be shifting them off the system and putting them into, for example, the NDIS, Medicare or something else. What message do you think that sends to employers about their responsibility to keep workers safe from a psychological injury?

MICHAEL COUTTS-TROTTER: You've characterised the message that the reforms in total send, and I wouldn't agree with that. I think the reforms taken as a whole are all about trying to make faster and better decisions, to provide earlier support and incentives for people to return to work, and to impose an appropriate obligation on employers to work and cooperate with that scheme design. I would make the point that the Royal Australian College of General Practitioners do support the thrust of the reforms for that reason. They see them as a package in total.

The CHAIR: Sorry, just clarifying that because it's quite important. I believe you've verballed them there. They support the idea of prevention; they don't support this particular package.

MICHAEL COUTTS-TROTTER: I shouldn't speak on their behalf, but I've read the material that they've published quite closely. I think it's fairly described as broad support for the thrust of the reforms.

The CHAIR: For prevention, which is not actually what the reforms are.

The Hon. MARK LATHAM: Dai Liu, what assumptions have you got in your modelling for the number of new claims?

DAI LIU: We had a look at claims that currently presented as bullying, harassment, stress and burnout—sadly, that's how they're categorised—and then looked at the proportional reductions that will occur with this bill. It's broadly a third of reduction in terms of psychological claims that the schemes will receive.

The Hon. MARK LATHAM: Why have you made that assumption, given that there's no impact in the pipeline?

DAI LIU: I'm not sure that's related to pipeline. We're talking about future injuries and future claims reported into the scheme.

The Hon. MARK LATHAM: You're saying there will be a third reduction in new claims because of this bill. Is that coming from the definitions that now apply in the bill?

DAI LIU: Correct.

The Hon. MARK LATHAM: Even though these definitions at one level are a very low bar—I mean, bullying is your main issue and someone just needs to behave unreasonably in the eyes of the person who's being bullied. You're still going to get a lot of claims there, aren't you?

MICHAEL COUTTS-TROTTER: It is an objective test. It aims to be an objective test. So it's not just whether the person in receipt of the behaviour thinks it's bullying. There has to be an assessment of whether that's a reasonable view to have formed. There is an attempt to introduce objectivity, which has been a big problem in this scheme.

The Hon. MARK LATHAM: But building it into the assumptions is completely subjective, isn't it? This is a new definition. You've got really no idea what impact it has in real-world bullying claims. So the third reduction in new claims—you're saying that just comes from the definitions in the bill? Or is there a behavioural impact that new claimants would think, "I'm getting knocked off after 2½ years. I shouldn't claim right now. I should go straight to the NDIS"?

DAI LIU: We looked at the data in terms of the different categories that they are lodged. Based on the data, we then did our projections work based on that. For that piece there was no behavioural impact.

The Hon. MARK LATHAM: So you're relying on—

DAI LIU: The actual experience—

The Hon. MARK LATHAM: What then underpins your assumptions about the number of people lodging a bullying claim? How did you arrive at that assumption?

DAI LIU: Based on the data that we have. Based on the data where claims are presented as bullying or harassment, we looked at the trends and we looked at the actual underlying data and arrived at a reduction based on that.

The Hon. MARK LATHAM: But how did you do that? What's your methodology for saying these are past bullying claims? Here's this pretty low-bar definition of section 8A of the new meaning of bullying. Essentially, it's a guess, isn't it?

DAI LIU: There is a certain level of judgement required, but I wouldn't characterise that as a guess. It's based on the data that we have and the volume we have, and therefore the reductions—it would happen based on these definitions.

The Hon. MARK LATHAM: My belief of the definition is that anyone making up a claim and getting a site to verify it will still qualify under bullying, but you've arrived at a different optimistic conclusion, haven't you?

DAI LIU: I wouldn't characterise it as optimistic. I'm required by my professional standards to provide the central estimate.

The Hon. MARK LATHAM: Can you provide your methodology on notice as to how you've arrived at this one-third reduction in new claims which, I've got to say, to me looks completely fanciful? Also, could you give the Committee a handle, a guide on the impact of including the excessive work demands clause after the exposure draft? What's the impact of that? Mr Coutts-Trotter said excessive work demands are a big problem in the claims. Why have they been added in after the exposure draft and what's their impact?

DAI LIU: I might need to take the impact number on notice. It is an increase in the costs. My memory—it was not a large increase.

The Hon. MARK LATHAM: Memory is no good on that one either?

DAI LIU: Not the exact dollars, but it wasn't a large increase in costs. I just want to get you the exact dollars.

The Hon. MARK LATHAM: Mr Coutts-Trotter had a better memory. Unbelievable. What do these people do?

The Hon. BOB NANVA: If I could just come to the last question in the last session around the greatest deterioration to the scheme. I note your answer. Would it be fair to suggest that the greatest endeavour in a structural reform or legislative reform is to try to tilt the scheme towards those that have the most significant injuries to make it sustainable in the longer term?

MICHAEL COUTTS-TROTTER: Yes, exactly.

The Hon. BOB NANVA: Could you explain to the Committee where the long-tail savings will come from with respect to the proposed reforms?

MICHAEL COUTTS-TROTTER: Yes, sure. I might invite Mr Liu to comment from an actuarial perspective.

DAI LIU: On that long-tail perspective, it is that threshold change that makes by far the biggest difference. We have released the published financial impact for the Committee that highlights that as well in terms of the avoided costs for the threshold items.

The Hon. BOB NANVA: So, again, it's not from claims that are within the system that are being dealt with currently?

MICHAEL COUTTS-TROTTER: No.

The Hon. BOB NANVA: I will come to the line of questioning around return to work. Is it fair to say that for those that can't return to their place of work that have a higher WPI rating, commutations as part of the flexibility and the options being provided within this bill provide, I suppose, a soft landing of sorts?

MICHAEL COUTTS-TROTTER: The bill opens up more opportunities to provide commutations to people in those circumstances who otherwise would not get a lump sum.

The Hon. PETER PRIMROSE: I have a small one, probably for icare. Finding 11 of the 2019 Dore report stated:

> icare should address the staff turnover at EML as a matter of priority to ensure case management services are improved.

Are you aware if staff turnover at EML has been addressed since that report?

TONY WESSLING: I understand EML will be in here later, but I believe when that was written their staff turnover was 30 per cent or higher of case managers. That's now below 20 per cent. So it's been reduced significantly over recent years.

The Hon. PETER PRIMROSE: Has it been reduced enough?

TONY WESSLING: I think we accept the fact that there will always be turnover, and a number that's less than 20 per cent is a good number would be our view.

The Hon. BOB NANVA: The McDougall report cited a Cumpston Sarjeant review which identified the principal risks to the financial stability of the Nominal Insurer. It identified those as the claim costs of existing claims in the future underwriting and investment return on financial assets, but also the amount of premiums that will be collected. Is there any sort of modelling that has been done or assessment as to what will happen with respect to premiums if they keep escalating in the manner that's projected if there are no reforms? Is there a risk that people simply drop out of the scheme and more self-insurers come into the system? Given that's one risk factor, has there been some assessment of what the continuing trend with premium increases will result in?

MICHAEL COUTTS-TROTTER: I invite my colleagues to comment.

DAI LIU: As previously mentioned, if the current trends continue, one scenario of that is we will need the 8 per cent that is already filed and two further tranches of 12 per cent. I highlight that it is a scenario we will assess as the time comes. That will take the premium rate to 2.5 per cent of wages in the Nominal Insurer. That will increase employer costs and provide financial pressure on employers.

The Hon. BOB NANVA: What is it currently?

DAI LIU: It's 1.85. The next filing moves to 1.99.

The Hon. MARK BUTTIGIEG: Ms Young, do SIRA undertake any enforcement actions to make sure employers comply with their return to work obligations?

AMANDA YOUNG: Yes, we do. There's a combination of actions that are taken. Some are done by SafeWork and some by ourselves. We have an inspectorate which goes out to employers to look at their operations around return to work specifically. They are a return to work inspectorate and they're consistently taking those actions with all forms of employers.

The CHAIR: How many fines have you issued to employers in relation to return to work obligation breaches?

AMANDA YOUNG: I can get that for you.

The CHAIR: Thank you.

The Hon. DAMIEN TUDEHOPE: I have a question to you, Ms Young. You said that there are a number of prosecutions underway in relation to fraud. Can you give me a description of one of the prosecutions that is currently underway?

AMANDA YOUNG: I'd rather not give you a description of what's in front of us.

The Hon. DAMIEN TUDEHOPE: You don't have to give us the identity of the litigants.

AMANDA YOUNG: Some of the previous ones that we've had, for example, have gone around underinsurance with Crown.

The Hon. DAMIEN TUDEHOPE: Underinsurance?

AMANDA YOUNG: Underinsurance. Some of those have been underinsurance.

The Hon. DAMIEN TUDEHOPE: That's not the subject of this—

AMANDA YOUNG: We've got another where we have found that people have set up shell companies and put in place directors.

The Hon. DAMIEN TUDEHOPE: I'm talking about fraud.

AMANDA YOUNG: That's fraud. That's where they have actually set up shell companies and they—

The Hon. DAMIEN TUDEHOPE: To hide. I understand.

AMANDA YOUNG: To hide claimants. There are significant amounts of moneys coming through those. They're the sorts of fraud.

The Hon. DAMIEN TUDEHOPE: There's no prosecutions, for example, in circumstances where someone has lodged a false claim.

AMANDA YOUNG: There are circumstances of that.

The Hon. DAMIEN TUDEHOPE: Can you give me a description of that case?

AMANDA YOUNG: I would have to have a look at the detail.

The Hon. DAMIEN TUDEHOPE: My last question is to you, Mr Coutts-Trotter. You identified excessive work claims as being a significant component of new claims.

MICHAEL COUTTS-TROTTER: I talked about work pressure. I think there's a spectrum of work pressure and the—

The Hon. DAMIEN TUDEHOPE: But does it fit under the definition of "excessive work claims" which has now been introduced into the Act?

MICHAEL COUTTS-TROTTER: Some would, some wouldn't. From memory—I will let Mr Liu check the numbers—the introduction of the amendment around excessive work pressure had the effect of increasing liabilities against the Government's package by about $170 million over four years. To give you a sense of its impact, it's modest.

The Hon. DAMIEN TUDEHOPE: Who asked for that amendment?

MICHAEL COUTTS-TROTTER: That came from the Government's consultation with the union movement.

The Hon. DAMIEN TUDEHOPE: Between the exposure draft and the final bill?

MICHAEL COUTTS-TROTTER: Yes.

The CHAIR: It's not correct to say that the Government "bails out" the TMF, is it?

MICHAEL COUTTS-TROTTER: Well, it has. It has put $6 billion in since 2023.

The CHAIR: Are we talking about the payment it makes to cover its own liabilities for its employees and its own general insurance lines, or are we talking about some benevolent bailout?

MICHAEL COUTTS-TROTTER: No, we're talking about putting money into the scheme to ensure that its funding ratio is at least 100 per cent.

The CHAIR: To cover the Government's own liabilities for its own employees and its own insurance?

MICHAEL COUTTS-TROTTER: Yes, but it is $6 billion that we could otherwise have spent on other government services.

The CHAIR: Perhaps on notice you can tell us how much of that comes from historical claims and general lines, because we have run out of time.

MICHAEL COUTTS-TROTTER: I'm happy to.

The CHAIR: Unfortunately, we have run out of time. I think we could go all day. Thank you so much.

AMANDA YOUNG: Excuse me, Chair. I just wanted to correct the record on who is doing the vocational programs research evaluation. That's the Australian Council for Educational Research. As for the numbers, 2,000 people have gone through our return to work programs in the last year.

(The witnesses withdrew.)

(Short adjournment)

Ms REBECCA SAID, Acting General Manager, Government Services, Allianz, sworn and examined

Mr MARK PITTMAN, Acting Chief General Manager, Personal Injury, Allianz, sworn and examined

Mr MATTHEW VICKERS, General Manager, SME and Specialty Authorised Representative, Nominal Insurer, EML, sworn and examined

Mr DON FERGUSON, Chief Executive Officer, EML Management, EML, sworn and examined

Mrs LYNDA REEVES, Executive Manager, WICC Corporate Claims, GIO, sworn and examined

The CHAIR: I now welcome our next witnesses. Thank you very much for making yourselves available this morning. I will invite you to each make a short opening statement. Just before I do, I note that there are six claims providers in the icare system. We did invite all six but, given the time restraints, we weren't able to get everybody here, but we are incredibly grateful that the three organisations who appear today have appeared.

The Hon. DAMIEN TUDEHOPE: Can I just interrupt you there. Apparently there was a statement to the market this morning, or to be made at 11 o'clock today, in relation to—

The Hon. MARK LATHAM: Icare's making a statement to the market at 11?

The Hon. DAMIEN TUDEHOPE: —claims managers. I wonder if any of these witnesses knew anything about that before they came in? Anyway, maybe I should ask that when—

The CHAIR: Interesting. We did have a late apology from one of them. Sorry, let's get back to short opening statements, if you'd like to.

MARK PITTMAN: Good morning, Chair and members of the Committee. I'd like to thank you for the opportunity to give evidence to the Committee this morning. I'm the acting chief general manager for Allianz's personal injury division. With me is Rebecca Said, our general manger of government services. Allianz is one of Australia's largest workers compensation providers and, as the Chair pointed out, one of six claims service providers in New South Wales acting on behalf of icare.

Allianz has been in the workers compensation scheme in New South Wales for over 100 years. We strongly support a fair and financially sustainable workers compensation scheme that provides access to care and support for injured workers, recognising that all parties have a role to play in ensuring timely and sustainable return to work. Allianz takes its obligations as a claims service provider very seriously, including supporting employers for work health and safety practices and assisting them in fulfilling their workers compensation obligations. Allianz is supportive of legislation that is clear and unambiguous both in its intent and in its application, that provides support and care for injured workers and employers, and that provides a framework for financially sustainable workers compensation schemes in New South Wales. We'd be happy to assist the Committee as part of the inquiry.

DON FERGUSON: Thank you, Chair. I'll make a short opening statement on behalf of EML. I thank the Chair and Committee members for the invitation to appear today. EML has been operating in the New South Wales workers compensation system for over 115 years. We're a specialist business that's focused primarily on workers compensation and our purpose is clear: to help people get their lives back. As a claims service provider, our primary responsibility is to support injured workers to access treatment and services they need, while also helping employers to facilitate safe and sustainable return to work outcomes.

In New South Wales we deliver claims management services on behalf of icare. Nationally, we currently manage over 92,000 claims across 13 jurisdictions. Our role is grounded in intervention, fair decision-making and a strong commitment to delivering better outcomes for both workers and employers. We understand the profound impact that workplace injuries can have on not just health but families, livelihoods and workplaces. We take that responsibility seriously. We welcome this inquiry and are committed to assisting the Committee by providing open, transparent information about our role, performance and how we can contribute to a stronger, more effective workers compensation system in the future.

LYNDA REEVES: Chair, I don't have an opening statement.

The CHAIR: We will commence with questions from the Opposition.

The Hon. DAMIEN TUDEHOPE: Thank you very much for coming in today. It's the first opportunity we've had to talk to the people who are at the coalface of dealing with claims. Perhaps I'll put the questions to you, Mr Ferguson, and then if anyone else wants to contribute, they can. At what stage, do you say, should a person with a psychological injury be assessed by a psychiatrist or psychologist for the purposes of involving them in a back-to-work regime?

DON FERGUSON: Thank you for the question. It's very important to have access to appropriate specialists, assessment and care as part of the process. It's very important to make sure that people are assessed by individuals who have the right skills and qualifications in order to determine the needs and also the eligibility for access to the system, as well as support the return to work. Specifically in relation to the timing of that, I might pass to Mr Vickers to give you some further details.

MATTHEW VICKERS: I'd suggest, in terms of our approach being framed in early intervention, you would like them to be seeing psychologists or psychiatrists as soon as possible after a mental injury is identified.

The Hon. DAMIEN TUDEHOPE: When? Is that three weeks, five weeks or 10 weeks?

MATTHEW VICKERS: I would love within a week—

The Hon. DAMIEN TUDEHOPE: Within a week.

MATTHEW VICKERS: —a general practitioner making that referral, and then access to appropriate treatment and intervention as soon as possible.

The Hon. DAMIEN TUDEHOPE: Do you arrange treatment or access to psychologists?

MATTHEW VICKERS: Not directly, no.

The Hon. DAMIEN TUDEHOPE: So you work through GPs, do you, for the purposes of organising those referrals?

MATTHEW VICKERS: That's correct.

The Hon. DAMIEN TUDEHOPE: In your experience, how quickly are claimants actually getting to see a psychologist?

MATTHEW VICKERS: I'd need to take the question on notice. It depends a lot in terms of the region and location that the individual resides in.

The Hon. DAMIEN TUDEHOPE: You're very experienced in this. EML is the biggest provider. You have no current information about how quickly, on average, someone would get to see a psychologist or a psychiatrist?

MATTHEW VICKERS: Not on average. You can see it as early as a week or two weeks after a commencement of claim. Equally, there are examples that have been quoted in similar forums to this one of that access not being provided until eight to 12 weeks after report of claim.

The Hon. DAMIEN TUDEHOPE: Is that your experience, Mr Pittman?

MARK PITTMAN: It is, Mr Tudehope. We generally see in the metropolitan regions that there's faster access to treatment than in the regional areas of New South Wales. On average, we'd see probably an extra three to four weeks longer to get treatment in the regional areas compared to the metropolitan regions.

The Hon. DAMIEN TUDEHOPE: Is there a problem in getting in to actually see psychiatrists and psychologists for the purposes of assessments and working to get people back to work?

MARK PITTMAN: There is a lack of accredited psychologists and psychiatrists in the scheme.

The Hon. DAMIEN TUDEHOPE: If you were working on a scheme to get people back to work more quickly, you would be advocating, would you not, for more psychologists and psychiatrists to be available in the scheme?

MARK PITTMAN: I would be.

The Hon. DAMIEN TUDEHOPE: In terms of assessing people for a capacity to work, what's your involvement in that?

MARK PITTMAN: Our case managers will receive the claim. They will go through a process to assess whether it's work related and whether it's an injury or illness. We'll rely on the medical information that we receive, both for the worker and ourselves. Then we'll process through making the decision around both treatment and liability based on the independent evidence that we've received and the information from the worker.

The Hon. DAMIEN TUDEHOPE: In terms of capacity to work, how do you make—

MARK PITTMAN: We're relying on the GPs to—

The Hon. DAMIEN TUDEHOPE: The GP makes that assessment? Any other sources of information that you'd rely on?

MARK PITTMAN: Allied health will also play a part in that.

The Hon. DAMIEN TUDEHOPE: In your experience, how many injured workers with psychological injuries have injuries with a 21 per cent whole person impairment?

MARK PITTMAN: I'd have to get back to you, Mr Tudehope, on that. We do know that the bulk of WPI claims we see for psychological injuries are around about the 15 per cent to 29 per cent.

The Hon. DAMIEN TUDEHOPE: In respect of the 21 per cent to 31 per cent, you have no perspective on how many claims fit within that category?

MARK PITTMAN: I can get that information, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: What are the characteristics of someone with a whole person impairment above 21 per cent?

MARK PITTMAN: There's a scale that is used by the psychologists to assess their function, and there are different areas that they look at: the worker's ability to actually conduct themselves in a normal way, to look after themselves, look after their families, what's their employability and what's their medical status, both physically and mentally. There is a number of different cohorts that are looked at. It is people that are erring on the higher threshold where they're not able to conduct themselves either physically or mentally or socially in the same way that other people could that are in the higher category.

The Hon. DAMIEN TUDEHOPE: And they would have limited capacity to return to work?

MARK PITTMAN: They can. It is quite a complex assessment, so it depends on which aspect of the assessment. If it's a significant mental stress that's preventing them from returning to work, that tends to be the bigger issue rather than the more physical side of the claim.

The Hon. DAMIEN TUDEHOPE: Does anyone else want to make a comment in relation to the characteristics of someone who falls within the 21 per cent to 31 per cent cohort?

MATTHEW VICKERS: Not specifically to the characteristics. I would agree with Mr Pittman in relation to the operation of the PIR scale and it being complex and not necessarily directly related to ability to return to work. Employability is just one of the six statements. It's a question around whether or not they're capable of returning to work in the next 12 months in the way that the PIRS framework is established. Three of the other areas of assessment are based on the testimony of the injured worker at the assessment point as opposed to there being strong clinical assessment.

The Hon. DAMIEN TUDEHOPE: Who makes the decision to accept or deny liability for a claim?

MARK PITTMAN: We do, based on the evidence that's received.

The Hon. DAMIEN TUDEHOPE: How often do you deny claims?

MARK PITTMAN: I don't have the exact percentage, but there's a reasonable declinature. The majority of our claims we'll accept.

The Hon. DAMIEN TUDEHOPE: Is that the case with the other insurers?

REBECCA SAID: Yes.

The Hon. DAMIEN TUDEHOPE: Do you ever get feedback from the employer that you shouldn't be accepting those claims?

MARK PITTMAN: We do.

The Hon. DAMIEN TUDEHOPE: And the response from the employers or your response to the employers?

MARK PITTMAN: We see our role as educating the employer about what they should be doing to assist a worker to return to their pre-injury status as much as possible, or at least to return to some form of work, and assist with their feelings of value and connection with the workplace and with society.

The Hon. DAMIEN TUDEHOPE: Maybe accepting liability, though, runs counter to the instructions that you're getting from the employer. Is that the case?

MARK PITTMAN: It can be.

The Hon. DAMIEN TUDEHOPE: And you still accept liability in any event?

MARK PITTMAN: Where we feel that the evidence justifies that worker having their claim upheld and that they require the treatment, and that we feel based on the medical evidence we've received and any other evidence that's required that that worker needs that support.

The Hon. DAMIEN TUDEHOPE: Let me understand how this process works. You have a claim being lodged with you. Do you take a statement from the employer?

MARK PITTMAN: There's an early contact process where we contact the worker, the employer and the treating doctor.

The Hon. DAMIEN TUDEHOPE: Do you take a statement?

MARK PITTMAN: It's a verbal. We receive a medical report from the doctor quite often.

The Hon. DAMIEN TUDEHOPE: Who are the medical reports generally from?

MARK PITTMAN: In the first case, it'll be a GP.

The Hon. DAMIEN TUDEHOPE: How extensive are the medical reports that you receive in relation to the condition of that worker?

MARK PITTMAN: They vary, depending on the doctor's time, knowledge and inclination.

The Hon. DAMIEN TUDEHOPE: Based on those two things, you will accept or reject liability?

MARK PITTMAN: No, that gives us the initial information about what we should be looking at. We'll follow up with further conversations with the employer. If we don't feel the medical evidence brings out all the information we need, we may request additional evidence or information from another specialist or from the GP if we feel that the report is incomplete.

The Hon. DAMIEN TUDEHOPE: A common proposition which is often raised in relation to claims under the Workers Compensation Act is that an employer who is engaged in a performance review of an employee then finds that the very next day the employee is off on stress leave and that liability is accepted for that claim. Are you aware of that scenario as being a common objection to the way that claims are being handled by claims service providers?

MARK PITTMAN: We are.

The Hon. DAMIEN TUDEHOPE: What do you say in answer to that suggestion?

MARK PITTMAN: There's a section of the legislation that references this in particular. It depends. What we'll find quite often is that an employer will have very good practices around performance management and discipline et cetera, but it can be poorly executed by the supervisor, the manager or the leader, and not be in line with what the employer's policies necessarily state, whether it's the way it's done, how it's done or where it's done. Those factors all contribute to whether we actually accept the claim and whether it's considered to be a fair assessment from the performance management perspective. There are other complicating factors rather than just the performance management process.

The Hon. DAMIEN TUDEHOPE: Do you explore those other complicating factors?

MARK PITTMAN: We do.

The Hon. DAMIEN TUDEHOPE: Are you the subject of performance indicators yourselves in relation to getting people back to work as part of your contract?

MARK PITTMAN: We are.

The Hon. DAMIEN TUDEHOPE: Are you meeting the benchmarks that have been set for you in relation to back to work for psychological injuries?

MARK PITTMAN: We are.

The Hon. DAMIEN TUDEHOPE: What's the benchmark that Allianz has?

MARK PITTMAN: They vary across the different CSPs.

The Hon. DAMIEN TUDEHOPE: Give us the variance at scale.

MARK PITTMAN: That's commercial in confidence. I'd rather have icare respond to that.

The Hon. DAMIEN TUDEHOPE: It's commercial in confidence, you're telling me, what your key performance indicator is for getting workers back to work?

MARK PITTMAN: At a broad level, there are certain cohorts that claims are divided into across the Nominal Insurer scheme and across the TMF scheme. They are categorised by a four-week cohort—so return to work within four weeks, 13 weeks, 26 weeks, 52 weeks and 78 weeks. Each of our portfolios are different. The targets are actually set based on our portfolios, whether it's a corporate SME or the type of industries that we look after. The targets are unique to each CSP.

The Hon. DAMIEN TUDEHOPE: What's your target in relation to return to work within 52 weeks?

MARK PITTMAN: One moment, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: I assume EML and GIO have similar targets?

LYNDA REEVES: That's correct.

The Hon. DAMIEN TUDEHOPE: What's GIO's target?

LYNDA REEVES: I believe 52 weeks is 92 per cent. That's a target, and then there's an entry point that we are required to also meet.

The Hon. DAMIEN TUDEHOPE: So only 42 per cent of workers with psychological injuries are returning to work within 52 weeks. Are you not meeting your targets?

LYNDA REEVES: We are just shy of our target in the corporate space. We are hitting entry, so we're above entry and we're just short of target.

The Hon. DAMIEN TUDEHOPE: And in the psychological injury space?

LYNDA REEVES: In the psychological space, GIO do particularly well, and we are significantly better than the scheme.

The Hon. DAMIEN TUDEHOPE: What's the return to work rate within 52 weeks for the psychological space?

LYNDA REEVES: They're not separated. They're not differentiated between psych and physical. That target that I gave you previously—

The Hon. DAMIEN TUDEHOPE: But icare's website differentiates.

LYNDA REEVES: Yes, it does. They've split it up.

The Hon. DAMIEN TUDEHOPE: So why don't you differentiate?

LYNDA REEVES: Internally, we measure it from the icare website but, overall, we look at the entry point and targets as a business for both physical and psychological claims.

The Hon. DAMIEN TUDEHOPE: And EML are the best performers because they have the biggest number.

LYNDA REEVES: The largest volume, that's correct.

The Hon. DAMIEN TUDEHOPE: What's the return to work rate for psychological claims for EML?

DON FERGUSON: Mr Vickers has just pulled it up on the screen, so I will hand to Matt to go through it for you.

MATTHEW VICKERS: The target is to set a proportion of claims across 40 different buckets, based on industry and psychological versus physical. We don't have access to the information to then put each claim into its own bucket to tell you what the psychological target rate would be.

The Hon. DAMIEN TUDEHOPE: How does the Government do the modelling in respect of return to work rates and the cost of the scheme in circumstances where you can't give us the figures relating to the various cohorts which are returning to work within 52 weeks or 78 weeks? How do they do the modelling?

MATTHEW VICKERS: I could sit here and tell you what the manufacturing psychological rate at a particular point in time is supposed to be, but when you're managing claims across the 12 different industry cohorts rolled into one, it's not possible to provide you that number. I defer to icare to explain at a total scheme level how then they roll that out when we have mixed adjusted portfolios.

DON FERGUSON: Mr Tudehope, we focus very heavily on looking at the return to work results across the different buckets as opposed to the targets per se. Our motivation is to continually improve, period on period. That becomes our focus, rather than concern particularly about the target. We are constantly focused on how we can improve our capability from our case management perspective and support people to return back to work. We

do follow both the icare and the SIRA public data that's presented in regards to results. We do look in detail about how we're performing and where we need to lift that performance, both in the psych and in the physical categories.

The Hon. DAMIEN TUDEHOPE: One of the issues that is commonly raised is workers who are being managed by different claims managers within your portfolio area at a particular time: if I'm potentially being managed by Mr Brown and I'm next week being managed by someone else and I've got to repeat my story over and over again. What's the turnover rate of claims managers within EML?

MATTHEW VICKERS: It's 18.46 per cent, rolling 12, at 30 April 2025.

The Hon. DAMIEN TUDEHOPE: Sorry?

MATTHEW VICKERS: It's 18.46 per cent, rolling 12.

The Hon. DAMIEN TUDEHOPE: You had that figure pretty handy.

MATTHEW VICKERS: If there's one thing about me, Mr Tudehope, I know numbers.

The Hon. DAMIEN TUDEHOPE: In terms of addressing that issue, how are you providing consistency of approach for workers to be able to have their claims managed within your system?

MATTHEW VICKERS: As best as possible we try to limit the need for a claim to move from case manager to case manager when there is a need for a claim to move, whether that's someone leaving the organisation, being promoted or undertaking a different role. We work heavily to understand and conduct a clear handover so that, as best as possible, when the next case manager makes their first phone call to a worker, they are across the background and history of the claim and they do not need to ask any questions that they should already know the answer to from reviewing the file.

The Hon. DAMIEN TUDEHOPE: Is that your experience also, Mr Pittman?

MARK PITTMAN: Yes, Mr Tudehope. I was going to say that I think the approach is fairly consistent. We will triage the claim when it first comes in, to see, based on what we understand of the claim, the duration of the claim and what the barriers might be to the person recovering and returning to work. We, as much as possible, try to limit the number of times that claim would move between case managers. If we identify that there are some triggers that this might become a significant or a longer duration claim because there might be a breakdown in the relationship with the workplace, there might be financial stressors or there might be psychosocial issues, then that will tend to be a longer claim and then we'll try to put it with that case manager in the first instance.

The Hon. DAMIEN TUDEHOPE: Let me ask you this: Is there a link between the fees that you charge to the Government and your KPIs relating to return to work for psychological injury?

MARK PITTMAN: There is, and it drives us to actually improve return to work performance. If we don't meet the performance metrics to improve return to work performance, that has a negative impact on our fees.

The Hon. DAMIEN TUDEHOPE: What is the negative impact?

MARK PITTMAN: There's a potential maximum amount of remuneration you can achieve based on different metrics and for different performance areas. As Mrs Reeves mentioned, there's an entry point and a maximum. The entry point is different for the different performance measures across the different CSPs. You have to achieve that minimum entry point to be eligible for any fees whatsoever. Then there's a graded step depending on the results you achieve.

The CHAIR: Just on that, in the last session we talked about how the cost of the agency fees for CSPs has increased by 260 per cent over the past five years. Given that the return to work rates have decreased, what is that increasing cost to government a result of? Do you know?

DON FERGUSON: I can answer that from an EML perspective, Ms Boyd. The EML performance has improved year on year. Just picking up on Mr Tudehope's point, there's a considerable relationship between the tenure of the staff and their ability to perform, which is a fairly logical-sounding explanation. Retaining staff means ensuring that they have a work environment that is constructive to being able to work effectively. That's largely driven by case loads. To be able to operate within this environment effectively requires having case loads of a manageable size. The remuneration that we receive allows an investment in case loads in order to make sure that we can support people with enough focus on direct contact, rather than having too many cases and not being able to get into the details of an individual case.

The competition that was introduced within the scheme in New South Wales over the last few years is important in terms of introducing competition, but it also does come at a cost. There's now administration across multiple organisations rather than just a single organisation. The fees that we've received individually within the

scheme have reduced year on year. Proportionate to our market, we've received less. But we've also retained enough to be able to invest in order to keep those case loads low and to see our performance increase year on year. That's largely based on how long we've been able to support that lower turnover that Mr Tudehope was talking about, in order to have experienced case managers and to be able to deliver effective outcomes.

The CHAIR: We've had reforms that were supposed to increase competition, which you would assume would have been good for the scheme, but have instead markedly increased the costs of CSPs to the scheme, while also not seeing any improvement in return to work rates. Do the CSPs bear any responsibility for that, or are you also laying the blame at the feet of injured workers with psychological injuries? Is that the problem here?

MARK PITTMAN: Could I just say, similar to what Mr Ferguson was saying, one of the cost drivers—and EML mentioned that they've seen a year-on-year improvement in return to work results. Allianz has seen the same situation, so we can only speak for our own organisation when it comes to return to work, particularly in the TMF scheme where there's a high proportion of psychological injuries coming through. We continue to see outperformance against the scheme there. But, to achieve that, you need to have an appropriate case load so that the case managers aren't just ticking a box; they're actually spending the time with the worker and the medical providers and employers to actually achieve an outcome. As Mr Ferguson also mentioned, we want to make sure that our case managers, because they're—we need to look after their wellbeing as well. We have a duty of care to our case managers. Once again, that factors into the case load that they carry. That has actually contributed to expense.

The CHAIR: So if your return to work rates have improved and GIO's have apparently improved, have EML's improved or have yours gone down? Someone in the system has to have had a decrease.

DON FERGUSON: I was speaking on behalf of EML in terms of our year-on-year improvement. As a long-term incumbent, we certainly had some challenging periods some four to five years ago. But since then we've been able to continually improve our performance through having greater investment and lower caseloads, and that's driven return to work. So we've got a slightly longer term perspective on that from our experience at EML.

The CHAIR: I might have to take that up with icare, as to why it's still apparently going down if everyone's improving. I get a huge number of injured workers writing to my office about their experience with claims managers, and I know there have been a huge number of complaints. Are you aware of the number of complaints against each of you as organisations and how that has tracked over time?

DON FERGUSON: We certainly track our complaints that we receive, as well as complaints that are directed via other mechanisms, such as the IRO, and we focus really heavily on responding to those proactively. We know, as a proportion of our overall claims that we manage, the numbers are not large, but that's not to in any way take away from the impact and the experience of those individuals who have a frustration with the scheme. And so, although I'll ask Mr Vickers if he has the numbers to hand—and he may not—I would note that sometimes the complaints relate to the experience of working with the claims service provider, and we always need to make sure that we're focused on hearing that and lifting our game, but sometimes it comes down to frustration around what they're eligible for within the scheme, and we need to make sure that we can articulate those entitlements effectively and support them through those processes.

The CHAIR: Just in the interests of time, I might ask you each to take that question on notice as to how many complaints you've had and what that looks like over the past few years. One of the main issues—and we've heard this a lot—is that the system is said to make people sicker, particularly when a person has a psychological injury, because of the hoops that they're made to jump through. One of the issues that keeps coming up from injured workers is the issue of surveillance. This is surveillance of people with an injury to, I guess, confirm the level of their injury. Is that something that your organisations do? Do you have surveillance of people, and how do you make the decision as to which people you surveil?

MATTHEW VICKERS: Any surveillance undertaken through either icare contract is approved by icare. If there is a need for—that that is something to be considered, it's referred to icare for a decision and approval under the decision rights framework.

The CHAIR: How much money do each of you spend on surveillance every year?

MATTHEW VICKERS: Extremely little, because the number of requests is relatively small and the number that are approved is an even smaller number still.

The CHAIR: Are you able to provide on notice how much you're spending per year and how many cases are subject to surveillance?

MATTHEW VICKERS: I will be able to provide the number that icare have approved. I won't be able to provide the amounts spent, because the payment classification table underpinning the workers compensation

scheme just uses a single investigation code, so factual investigations and surveillance are all paid through a single payment code.

The CHAIR: And that's something paid for by icare separately to your fees?

MATTHEW VICKERS: No, it's paid on the cost of the claim, but you're unable to separate the factual investigation or the surveillance.

The CHAIR: I understand. But it's not part of your agency fee?

MATTHEW VICKERS: No, it's not.

The CHAIR: I've heard of people having their family members subject to surveillance—for instance, an example of a man who was severely ill whose family members were basically being watched on social media to see if there was some example of him being better than the claim suggested. Is that something that your organisations regularly do, that sort of surveillance of people?

MARK PITTMAN: Not from our perspective, Chair. The intention is to make sure the focus is on the worker and the worker's ability to actually operate based on whatever injuries they might have. As Mr Vickers said, there are very, very few instances of surveillance that are conducted by our organisation.

The CHAIR: There was a review recently conducted by the Department of Customer Service in relation to quite a few people who had gone through the icare system and had complaints. I understand that review is yet to have its report released. From speaking with some of the complainants and from what has been reported in the news, it's clear that there have even been compensation payments made to people given their horrible experiences within icare. Are any of your organisations involved in any way and, if that's costing the Government money to compensate people after their experience through claims handling, does that come back to you in any way? Are you required to financially compensate the Government for that experience?

DON FERGUSON: I don't think I have experience of that.

LYNDA REEVES: I'm not aware either.

The CHAIR: Were you involved at all in that review, the Robertson review?

MARK PITTMAN: No, Chair.

The CHAIR: All right. When you decide to dispute a claim and when it goes to court, what is the decision-making around that? Do you keep a record of your success rate when you're disputing a claim versus what comes back from the—sorry, I've forgotten the commission.

DON FERGUSON: Personal Injury Commission.

The CHAIR: Thank you. Do you keep records of your success rate of disputing claims?

MARK PITTMAN: Chair, it would be anathema to our organisation to think that looking at a success rate for how many claims you've declined is a target you should be aiming for.

The CHAIR: Apologies, I didn't mean it like that. Just to reframe it, what I'm asking is basically what your, as an indication of whether or not you have validly declined a claim—

MARK PITTMAN: As a learning experience.

The CHAIR: As a learning experience, what is the percentage that you've got wrong, I guess?

MARK PITTMAN: I don't know what the percentage is, Chair. I'd have to take it on notice. But certainly if we've declined a claim, the claim has gone to the PIC and our decision is overturned, then we would investigate to find out, internally, what about our decision didn't hold up when it got to the PIC. That would actually inform our practices as well, internally.

The CHAIR: If you could each provide that on notice, that would be excellent, just with your figures.

The Hon. TAYLOR MARTIN: Mr Pittman, I just want to pick up on a few issues that were raised during Mr Tudehope's line of questioning. You mentioned earlier that there's a process in your organisation to assess whether an injury is work related or not. When it comes to psychological injuries, are you able to expand a bit more on how that process works?

MARK PITTMAN: That's reliance on the medical professionals. That involves the GP and a psychologist and then, depending on the severity, whether there's a psychiatrist involved as well.

The Hon. TAYLOR MARTIN: Is it fair to say it's more often than not the claimant's own GP, their family GP? Or is it somebody that they're referred to by your organisation?

MARK PITTMAN: There are criteria under the various DSMs as to what is considered to be a valid psychological condition and therefore is claimable.

The Hon. TAYLOR MARTIN: Sorry, I understand that. I'm just asking at the moment—the GP that they see, is it their family GP?

MARK PITTMAN: Often it is, yes.

The Hon. TAYLOR MARTIN: So that GP has the capacity to evaluate whether their patient could or should return to work within the next 12 months. Is that fair assessment?

MARK PITTMAN: The GP has the authority to make a decision on the certificate of capacity, yes.

The Hon. TAYLOR MARTIN: How often are those assessments challenged?

MARK PITTMAN: I don't have a percentage. We'd have to take that on notice.

The Hon. TAYLOR MARTIN: That would be interesting. It seems to me like there's a lot of subjectivity along the way here in this system, particularly regarding different medical professionals. People talked about doctor shopping and all sorts of things, but sometimes you might not even need to go doctor shopping if you've got a longstanding relationship with your family GP.

MARK PITTMAN: That is a challenge. There is a process with independent medical consultants that we can access. If we feel that the GP's assessment is not appropriate, valid, or there are further questions we need to ask, then we can refer to an independent medical consultant to challenge the doctor constructively, as one medical professional to another.

The Hon. TAYLOR MARTIN: How often does that happen?

MARK PITTMAN: It's fairly frequent.

The Hon. TAYLOR MARTIN: Can I ask an open question to all. What other steps might we take to tighten up the system to ensure genuine claimants are covered and those not so genuine are weeded out?

DON FERGUSON: One of the things that we've been doing in EML is—and this is relevant irrespective of the criteria for access to the workers compensation scheme. Interpersonal issues will happen in the workplace irrespective of what system is appropriate for those issues to be dealt with. We're trialling a more proactive way of supporting individuals with interpersonal conflict at work with trained mediators, and having some significant success with that. Being able to proactively work with an injured worker and the other parties with a trained individual supports addressing those issues quickly and diverts them from long term. This is irrespective of if they're in the system or not. Proactively supporting them to address those issues within the workplace is something that we've been focused on to try and improve outcomes.

MARK PITTMAN: Further to that, one of the things that we've looked at doing—because there is, as we mentioned before, a scarcity of qualified and accredited psychological practitioners in the scheme—is working with different providers to see what they can do to improve access and speedy access to treatment, which includes them bringing on more trained staff into their organisations. There is one organisation that we started using late last year. We're seeing, on average, that they're able to get treatment started within two weeks from the claim being submitted to us. They've seen something like a 94 per cent improvement in capacity for those claims that they've been looking after. That's a combination of face to face and telehealth.

The Hon. MARK LATHAM: Is there any data on how many GPs turn a would-be claimant away, saying, "You're okay. You're quite healthy"?

MARK PITTMAN: Not that I'm aware of.

The Hon. MARK LATHAM: How can that be?

MATTHEW VICKERS: We obviously only see a claim from the perspective of having received a medical certificate from a GP, so you don't have visibility of how many people an individual could have gone to before they get that certificate.

The Hon. MARK LATHAM: There's no medical research body or association that looks at this, so the figure may well be zero. What about those referred on to psychs? How many psychs will say, "You haven't got a psychological injury. You're okay. You're healthy"? What proportion?

MARK PITTMAN: We don't have that information to hand, Mr Latham. But we know how many referrals are made by our case managers to psychologists.

The Hon. MARK LATHAM: Have you ever been curious about that figure?

MARK PITTMAN: It comes into how effective the treatment has been. We'll look at how many referrals we've made to a psychologist and how many psychologists have upheld it or not found it to be a valid psychological injury. But I don't have those stats at a scheme level.

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

DON FERGUSON: Certainly, Mr Latham. We've cut it differently or thought about it a little differently, but we have considered the outcomes that are attained by different clinicians over time. It's not necessarily at a scientific level that—

The Hon. MARK LATHAM: What does that tell you? If you're a psych rejecting claims, people just go somewhere else, don't they? They'll find someone who'll attest to their anxiety disorder or whatever it is. The psych misses out on the counselling that would come up and, also, word gets out on the street that it's no good going to Billy Bloggs because he's not going to give you what you need.

DON FERGUSON: That is a risk and a challenge. What we've tried to focus on is how do we increase awareness of best practice across the clinical industry. We funded the development of PTSD guidelines, for example, through the Black Dog Institute, which was about trying to raise the standard across the industry. There is a significant number of tremendous clinicians out there that we are seeking to try and distribute best practice, so we have greater confidence that, wherever somebody ends up, they're more likely to receive appropriate clinical treatment. We've looked at it from raising awareness, raising capacity, articulation of standards, as opposed to looking at the more binary who has achieved greater outcomes in terms of diagnostic criteria and confirmation of illness.

The Hon. MARK LATHAM: To the panel in general, in looking at this bill, is there anything you see in the bill that is likely to reduce new claims by 33 per cent?

MARK PITTMAN: In my opening address, I made the comment—it depends on the regulations that are usually put in place to interpret the bill. The bill itself is one thing, but the operationalising of the bill through the regulations will determine how the actual legislation is executed in practice.

The Hon. MARK LATHAM: So you've got no confidence at this time of the 33 per cent reduction in new claims?

DON FERGUSON: We haven't been privy to the modelling that has resulted in those estimates, Mr Latham. We'd certainly be able to confirm that with stronger entry criteria it will follow that there will be a number of people—that there'll be less people on the scheme. But I don't have the modelling.

The Hon. MARK LATHAM: The modelling can only be based on the written definitions here in the bill. I'd be shocked if there's any worker anywhere in the State who can't, with appropriate training and reading the guidelines, perform in front of a GP and a psych to qualify with these very mild, low level definitions that are in the bill. Is that an unfair statement?

MATTHEW VICKERS: I'd categorise it as an unfair statement.

The Hon. MARK LATHAM: Excessive work demands—"They ask me to do too much. I've got anxiety." How hard is it to qualify for that?

MATTHEW VICKERS: I think if you look at the original intent of section 11A as entered by Parliament on 20 December 1995—just in case anyone wants to go and read it—what we've seen over the near enough to 30 years has been a change in terms of the statute as drafted at the time. There have been three significant common law decisions that have altered what is written in the statute. You've got *Heggie v Northern New South Wales Local Health Network*. You've got *Hamad v Q Catering Limited*. Then more recently you've got *McHughes v Brewarrina Local Aboriginal Land Council*.

They have then introduced this concept of perception, whether or not the injury was wholly related—removed the "wholly related" from the actions of the employer. You've seen a big change. When I sit there and compare the draft as is available and the original intent, I'd recommend—there is an article in precedent by Josh Dale, who is a partner at Carroll and O'Dea—comparing that article only written about 18 months ago. Compare how a psychological claim can now be made to that 1995 definition. I think what is now proposed goes some way to reinstating the 1995 Parliament intent of introducing that section.

DON FERGUSON: That's in regard to the reasonable persons test being able to not be just considering an individual's perception but to have a standard above that. It's really up to Parliament as to whether or not the standard is appropriate, but it's certainly a step towards a more impartial approach to determining, for example, what you refer to in terms of excessive work demands.

The Hon. BOB NANVA: For a layperson, with physical injuries—if you fall off a roof, you can isolate the injury—the recovery pathways are pretty self-evident. I suppose what confounds custodians of the scheme with respect to psychological injuries—it's far more invisible. The diagnosis is obviously more nuanced. What challenges people overseeing the scheme is how people at the coalface, like yourselves, can apply the personalised services in a consistent way in such a nuanced and invisible and complex area. What sorts of incentives and performance structures do you have in order to provide that sort of personalised service at scale in a way that's efficient and equitable for victims, or claimants?

MARK PITTMAN: This goes back a little bit to the caseload that our case managers carry, because you can't provide a tailored or personalised service with a caseload that's too high. So that's one thing we do. We do have a set of strategies and practices across our organisations looking at complexity of the type of injury, whether it's psychological or physical. There are initiatives that each of our organisations will put in place to try to drive better outcomes and better support for a worker through their recovery that are tailored to either the industry that the worker is working in, the nature of the injury that they've actually had and their connection to their employer. So there are a number of different factors that we've taken into consideration to make sure that that worker is being looked at as an individual.

The Hon. BOB NANVA: So, in a way, probably not as relevant to physical injury is the reduction in caseload, and the complexity of these matters would ultimately result in more costly case management for psychological injuries.

MARK PITTMAN: I'd say that there are a lot of complex physical injuries that have no psychological element to them that are quite significant where the worker still needs significant support to be able to return to their pre-injury duties or to some sort of work capacity. So it's not just the psychological injuries.

The Hon. BOB NANVA: Obviously the issues and the deficits that the scheme faces are a factor of what's happening in the current financial year but also what's been happening historically over several years. There have been a number of criticisms of claims management in the past, which is no doubt contributing to the current state of the scheme. McDougall specifically noted that the inadequacy in claims management has had adverse impacts on injured workers and on the financial position of the scheme, arising in part from declining return to work rates. What steps have been undertaken from the from the bad old days, if I can frame it that way?

DON FERGUSON: I'd like to start by acknowledging, as I mentioned a little earlier, that we are operating in a different environment. The significant drop in caseloads has been able to provide a good opportunity to improve support to people to get them back to work earlier. One of the substantial changes since—to use your phrase—the bad old days is definitely case management volumes. The other is the focus on investing in the skills and experience of those individuals as well. We've focused very heavily on developing capability frameworks and training programs that support people to continually build on their skills in order to progress through different levels of experience and seniority within the organisation. We have other initiatives that are specifically targeted at individual cohorts. As I mentioned before, early intervention for interpersonal issues would be another example, from our perspective.

LYNDA REEVES: I agree. We've also invested heavily in capability, so ensuring that our claims advisers are supported and have the right skill set to be able to do that role so that the customer obsession and the genuine empathy that is required with these psychological injuries is displayed. Caseloads—I agree that is particularly important to keep them as low as possible so that it sets the individual up for success, and ensure that the communication is the key component when talking to individuals who have suffered a psychological injury.

MARK PITTMAN: Further to that, we've also introduced—as I'm sure my colleagues have said—specialisation based on the type of claim, because you cannot treat every injury type the same way. You definitely can't treat a psychological injury in the same way as you can treat a physical injury. We do have different strategies and practices for physical versus psychological injuries. Particularly in our TMF business, we've got dedicated psychological case managers.

The Hon. BOB NANVA: With claims advisers and case managers, the one thing that still concerns me is—did I hear correctly that there is an 18.6 per cent turnover?

MATTHEW VICKERS: It is 18.46 per cent.

MARK PITTMAN: Not at Allianz—ours is 10.8 per cent.

The Hon. BOB NANVA: With respect to EML, what would be the explanation for that discrepancy in turnover rates of staff?

MATTHEW VICKERS: In part, we've seen a reduction in the portfolio under management, given the icare tender process in introducing competition. At our peak, we managed approximately 49,000 claims on behalf of the Nominal Insurer. As at today, it's just over 35,000 claims—a 26.5 per cent reduction. Competition has then seen a number of individuals move to other claims service providers for opportunities from there. I'd then comment that the 18.46 per cent is probably artificially inflated as a result of those movements with the reduction in portfolio under management. Our average tenure at present, for our 867 frontline case managers, is 2.9 years, with a median tenure of 2.4 years. That is a large shift from where it was when we presented to a different committee in 2020.

The Hon. BOB NANVA: Is there an industry average for turnover rates for claims managers or an accepted figure?

MATTHEW VICKERS: Not that I'm aware of.

LYNDA REEVES: I don't believe so. It's just individual.

MATTHEW VICKERS: We've provided information to icare in the recent past. I would assume that they would consolidate that information and be able to provide it.

The Hon. BOB NANVA: I've been advised previously that there's an accepted industry figure of around 10 per cent to 15 per cent turnover, but clearly that's news to you?

DON FERGUSON: I thought it was more like about 18 per cent, but I don't have it on good authority, so I'm happy to be challenged on that.

The Hon. BOB NANVA: Notwithstanding the turnover at EML, you're still confident that you can provide the skills and experience that are necessary to handle complex—

DON FERGUSON: Absolutely. To be clear, our turnover rate has reduced year on year. Commensurate with that has been our tenure rate. The more experienced our staff are, the more capable they are. Those two things need to be looked at together. With our reduction in market size from being very close to the sole operator in the market to having a much lower proportion, it's necessary that we have a smaller number of staff. That is very much one of the factors with regard to our turnover.

The Hon. BOB NANVA: For a layperson, it seems like the complexity of these matters is that you'll have claimants with their GPs, surgeons, physios, employers and family members. There are a lot of people to bring together when you're managing a psychological injury, and it's very complex. If you have a case manager who is ostensibly overseeing that who is suddenly turning over and moving on, there is someone completely new in the space who is trying to corral all these different moving pieces.

DON FERGUSON: It's complex, absolutely. In terms of providing the Committee assurance, the comparative performance of EML stands as testament in terms of how we're operating within the scheme. Irrespective of having a high turnover, we've come from a different position within the market to Allianz, for example. This is not meant to be a critical comment but in regard to your concern about turnover and capability, the performance that we can demonstrate in terms of our relative return to work rates within the scheme should provide some assurance around how we're managing internally with our performance.

The Hon. BOB NANVA: I take it you're not resting on your laurels at the 18.46 per cent?

DON FERGUSON: No. We continue to focus on retaining staff and investing in our people.

MARK PITTMAN: Can I take up Mr Ferguson's point? I support what he was saying. As you said, the market share has shifted around with that competition, which Mr Vickers referred to before as well. You have seen employers make a decision to move around between CSPs. Naturally, there's a combination of having staff move from EML to other CSPs, as well as bringing new people into the scheme. That would probably contribute to what Mr Ferguson is referring to. We certainly have seen some staff from EML come over to our business as well.

LYNDA REEVES: We've also experienced that. They're not leaving the scheme per se; they've chosen another CSP. We track internally around whether the person is leaving because they're going to another CSP, a better offer, a better role, better career path? Or are they getting out of the industry altogether? We track that internally, too. It's important.

The Hon. BOB NANVA: Does remuneration play a key role here?

LYNDA REEVES: Yes, definitely.

MARK PITTMAN: There is a reasonable element of burnout as well, given the nature of what our case managers do. They are personally threatened quite frequently. They have to deal with threats of self-harm from workers quite regularly. It's a challenging role to hold. The only reason you do it because you want to make a difference; you care about the people you're supporting. You won't always get it right. That also contributes to the attrition in the scheme.

The Hon. BOB NANVA: Thank you. That's been quite useful. I might change tack briefly. With respect to fraud and claims leakage, are you seeing a—for want of a better term—preponderance with the improper investigation or lack of investigation and assessment of claims or desire to avoid disputes at all costs? Is there a threat of that with your experience or not?

MARK PITTMAN: I can't say that we've seen any demonstrations of an avoidance of making a decision at all costs. We're not—

The Hon. BOB NANVA: But taking the easy path and just accepting a claim without—

MARK PITTMAN: Going back to Mr Tudehope's question before, one of the challenges we have at times is some employers. Most employers these days are fairly focused on supporting their workforce, but there are still some individuals within some employers that still need some support and education through what they can do to support their staff as they're recovering from a work-related injury or illness, in which case we'll provide the necessary education and support.

The Hon. BOB NANVA: So there's nothing obvious by way of unmeritorious claims or fraud throughout the system?

MARK PITTMAN: There is a very minute element of fraud that we see come through, but it's negligible.

The Hon. BOB NANVA: How about the unnecessary escalation of claim costs? By that I mean, are you aware of plaintiff lawyers, for example, who might offer explicit advice on how you inflate your WPI numbers?

MATTHEW VICKERS: You can have that one.

MARK PITTMAN: Thanks.

The Hon. BOB NANVA: Don't name them, but are you aware of that taking place?

MARK PITTMAN: One of the things that we flagged with icare, which icare was already aware of, is that ahead of the legislation being passed in whichever form it may be passed—if it is—we would expect to see an increase in psychological injuries come through the scheme to take the benefit of the current legislation that's in place compared to any new legislation that may be passed. Some of that will be driven by plaintiff lawyers.

MATTHEW VICKERS: Going further, I think the thing we haven't touched on—you focused on the psychological injury with that comment—the bill proposes the introduction of the joint assessment process. I'm acutely aware that the worker community doesn't appreciate the independent medical assessment process and being required to attend multiple medical assessments, so I think that that would be a good step that Parliament may wish to take. What we find is that—and we've tracked this data significantly—in relation to the whole of our Nominal Insurer portfolio for whole person impairment claims resolved since 1 July 2023, 39.31 per cent of them have resolved at least one threshold lower than the claim as made, so there is definitely something to be said in relation to whole person impairment as claimed and then whole person impairment as resolved through the process that's currently established.

The Hon. BOB NANVA: I will read to you one piece of advertising from a law firm, just to see whether or not this has been the experience that you have faced. It says, "If you have been unable to reach the 15 per cent WPI threshold, we also regularly assist injured workers in appeals and medical appeals panels in the PIC and judicial review applications in the Supreme Court of New South Wales relating to 15 per cent WPI threshold disputes." Are you seeing an escalation in litigation at all?

DON FERGUSON: I might just note that whilst ever the legislation has ambiguity around it in terms of subjectivity and assessment processes, it leaves open the door for individuals to be supported to get over a threshold. That is something that occurs within the scheme currently. The less clear that definitions and the process of assessment are, the more opportunity there is to be able to try to work through that for a particular outcome. What we don't want is to see a scheme that has financial incentives to keep people in the scheme longer. My apologies if I'm verballing you, Chair, but I think you talked about the scheme making people sick. I'm sorry if I got that wrong. I think that is a legitimate concern around getting into a system that then incentivises finding threshold-beating evidence in order to continue to receive some sort of financial outcome. The scheme has to be there for the people who need it most. We need to make sure that the assessment processes and criteria enable that as best as possible.

The Hon. BOB NANVA: Before I pass to my colleagues, the McDougall review cited a number of concerns with respect to medical costs and the cost of treatment, including overservicing payments for non-coverage, non-investigation of anomalous claims, overcharging weaknesses and payment management. Are they concerns today?

DON FERGUSON: It can be quite complex—the fee systems that are charged by different parts of the system and different providers. One particular example of that is the hospital system, which plays a critical role in supporting people to recover. We have introduced a technology that we call Surgery Sleuth, which provides a really efficient way to be able to ensure that the fees that are being charged actually align to the services that are being provided.

The Hon. BOB NANVA: Are you satisfied that the fees today do align to the treatments provided?

DON FERGUSON: That certainly helps to safeguard against a misaligning. There's no attribution of intention in terms of them being wrong; it's more that they're very complex systems. The more effectively we can make sure the scheme is only paying for what it's meant to pay for, it reduces what's known as medical leakage and overpayment.

MATTHEW VICKERS: If I could add, the "reasonably necessary" definition and the "reasonable and necessary" proposed in the bill aligning with CTP has the potential to alleviate some of what's being alluded to.

The Hon. BOB NANVA: The final question from me: With respect to the introduction or the broadening of the eligibility for commutations, do you welcome those in the reform package?

MATTHEW VICKERS: From my perspective, it's our role to implement the Act without fear or favour, as empathetically as possible.

The Hon. BOB NANVA: Do you see them playing a positive role?

MATTHEW VICKERS: I can identify a number of workers or cases in my time where the ability to relieve individuals from the red tape of the system by handing them complete control would be beneficial to them as an individual and, hopefully, to them getting back to life and health.

The Hon. DAMIEN TUDEHOPE: Currently, how long do you have to accept or deny liability for a claim?

MATTHEW VICKERS: We'd like to think it was a simple question. In terms of provisional liability, there's a 12-week time frame. You then go into a whole host of other various nuances, where it's three weeks from date claim made from there.

The Hon. DAMIEN TUDEHOPE: Were you consulted in relation to a change in the Act to reduce that to six weeks?

MATTHEW VICKERS: EML was not consulted at all in terms of the bill as drafted.

The Hon. DAMIEN TUDEHOPE: Was anyone consulted in respect of reducing—

MARK PITTMAN: No.

REBECCA SAID: No.

The Hon. DAMIEN TUDEHOPE: Have you seen the current provision in the bill relating to disputing liability?

MATTHEW VICKERS: Yes, I have.

The Hon. DAMIEN TUDEHOPE: New section 280AC?

MATTHEW VICKERS: Yes.

The Hon. DAMIEN TUDEHOPE: Within 42 days after a claim is made?

MATTHEW VICKERS: Yes.

The Hon. DAMIEN TUDEHOPE: Do you think that that is sufficient time to be able to do those things which are necessarily required for the purposes of making assessments in respect of a claim?

MATTHEW VICKERS: If the assessments and information that are required to be obtained meet the same requirements as present, no, I do not.

The Hon. DAMIEN TUDEHOPE: I take it that's say one, say all?

MARK PITTMAN: Correct.

The Hon. DAMIEN TUDEHOPE: Then, in those circumstances, would you be advocating that the current period for accepting or rejecting of claims be maintained? So 12 weeks—that is a reasonable period of time?

DON FERGUSON: What I'd like to see is broader consideration of the reasons for the amount of time it takes currently, and a focus on trying to improve access to what's required in terms of medical assessment and so on in the first instance would be really helpful.

The Hon. DAMIEN TUDEHOPE: For the sake of clarity, I should be clear that the six-week reduction is in respect of bullying, harassment and excessive work claims.

MATTHEW VICKERS: Going back to if it is the same requirement, on read, that then becomes a pure factual discussion. If you go back to pre-*Hamad v Q Catering*, it was purely factual. *Hamad v Q Catering* then introduced this need to further explore the medical evidence. If it's purely a factual-based assessment, six weeks should be sufficient. If we end up with a judge-made law that changes what's proposed in the same way as what has occurred over the past 30 years to needing a medical assessment, no, six weeks is not enough.

The Hon. DAMIEN TUDEHOPE: If it's just factual, there is still the requirement that you have to also make an assessment of the injury.

MATTHEW VICKERS: The order in which things need to waterfall through your decision-making process would change if it was purely factual. You'd have a medical certificate to make a claim. On my reading—and it could have changed in the time since the draft has been made available—if you've determined that it was resultant from an interpersonal conflict that didn't meet the definitions that are allowed, you don't need to go further in terms of exploring the medical condition.

The Hon. DAMIEN TUDEHOPE: Do you accept that when you accept a claim for liability, there is an automatic passing on of costs to the employer in relation to their workers compensation premiums?

MATTHEW VICKERS: Absolutely.

The Hon. DAMIEN TUDEHOPE: At that point when you accept liability, the increase in premiums, which you're passing on to the employer, in circumstances where you're accepting the majority of claims which are being made, there is then a significant impact on their premiums.

MATTHEW VICKERS: Yes.

The Hon. DAMIEN TUDEHOPE: If you were going to reduce premiums, potentially, one of the things that you would actually interrogate more closely is the extent to which the employer understands the acceptance of liability by the claims manager on their behalf. Do you go through a process with them so that they understand exactly what the impact on their premiums is going to be?

MARK PITTMAN: We explain to the employer what the impact on their claims costs can be. Icare is responsible for premium and policy management, so we can't have a direct correlation with premium. But we can certainly talk about the impact on claim cost.

The Hon. DAMIEN TUDEHOPE: As a matter of principle, though—

MARK PITTMAN: If your claims cost goes up, your premium's going to go up. But on each claim, if we're going to decline a claim or make a decision that a claim may not be entered into—it might be around the treatment or the appropriateness of the treatment—we will explain to the employer what we're doing, why we're doing it, and what the impact will be, positive or negative.

The Hon. DAMIEN TUDEHOPE: If there were tougher standards in terms of access to the scheme at all, that would have an impact on premiums, would it not?

MARK PITTMAN: It would. You would assume so, yes.

The Hon. DAMIEN TUDEHOPE: So getting the definitions right and making sure that the categories of medical assessments were clearly defined would potentially have the have the best impact on premiums, because there would be less claims.

MARK PITTMAN: Correct. It comes down to how the legislation is framed, but the most black and white and straightforward it can be then, yes, that would make it easier to manage.

MATTHEW VICKERS: What I'd add to that is if you make a decision, workers compensation is solely driven by trust between worker and employer, and claims service provider and insurer from there. If you make a

decision and you get that wrong and it is then overturned six or nine months later, you've significantly impacted on any ability to restore that trust. You've got to get that decision right from there. We have a common-law setting at the moment that allows perception—eggshell skull, or taking the individual as they come. Both parties wish to be believed, and we're at the centre of trying to determine which is the correct version of events.

DON FERGUSON: Apologies if it doesn't need saying, but we would never want our staff to be concerned about impact on premiums in making the right decisions under the legislation in terms of injury or access to treatment.

The Hon. DAMIEN TUDEHOPE: Sorry, help me understand that again.

DON FERGUSON: So we would not be seeking to make decisions based on impact on liability with regard to eligibility for the scheme or access to treatment. The focus is on the needs and the tests in regard to whether it be reasonably necessary or reasonable and necessary, and the definitions for access to the scheme. We don't want case managers sitting there going, "Gee, this is going to cost that employer more money, so I will deny it." That's not appropriate.

The Hon. DAMIEN TUDEHOPE: I think the reasonable and necessary point is well made.

The CHAIR: From a practical perspective, as a claims manager, to what extent are you helping an injured worker get the treatment they need? Just from a very practical perspective, if somebody is saying, "This is my injury and liability has been accepted", and we're trying to get that person back to work, but they're saying that they're not sure how to navigate the medical system or they don't know who to go to, is that a service that you provide for those people in trying to assist them into treatment?

MARK PITTMAN: Yes. As far as we're concerned, the role of the case manager is to navigate. The case manager does have access to other specialists within our business, whether it's an injury management specialist or a technical specialist who can also support them on how to navigate, because it isn't a straightforward system.

The CHAIR: That's what I thought. What I'm thinking about is that we've heard a lot about the potential for these proposed reforms to have a gendered impact because of the types of industries that a lot of psychological injuries are arising out of. But one of the things that you mentioned earlier was in relation to the regional impact of a lack of access to the treatment that you need in the regions. If people were unable to use the workers compensation system to get psychological support for a workplace injury in the regions in particular, would that mean that they were less likely to be able to receive support because they don't have the benefit of a claims manager? Would that be a fair thing to say?

MARK PITTMAN: They would receive treatment and they would receive support. Historically, they may not have been able to get in to see a psychologist as quickly as if they were in a metropolitan region. I know that, from an Allianz perspective—and I think across the scheme more broadly—we do use telehealth to try to close that gap. There is, as I said before, a shortage of qualified practitioners.

The CHAIR: If these reforms go through, we heard from the secretary earlier that they will have access to other health systems or other health services outside of workers compensation, but they'll lose the benefit, won't they, of having a claims manager to help them navigate and get the support that they need?

DON FERGUSON: Could I just note that, unfortunately, there are practitioners who elect not to provide services to people within the workers comp system because they see it as too complex, too cumbersome and you wait too long to get your pay. I don't know that it necessarily follows that people outside of the system are going to have more difficulty in accessing treatment than those within the system. I've had a personal experience recently with somebody who needed access to psychological care that was nothing to do with the workplace whatsoever. The GP was tremendously helpful. I drove them there within two hours. They were able to get an appointment the week after. I'm not sure that the workers comp system necessarily opens doors in terms of treatment. It does provide some funding associated with it, but so does a mental health plan provided through your GP in terms of access to psychological treatment under Medicare as well.

The CHAIR: My time is done, unfortunately, but you've raised a very interesting point there about the obstacles people are facing to provide a treatment under workers compensation. Could you just elaborate what you mean? Why would someone be less wanting to give support to somebody within workers comp?

DON FERGUSON: I think the simplicity of being able to take payment on the spot, rather than deal with any system that requires submission, review, approval, pre-approval and those sorts of things. It's just added administrative burden for a clinician that would otherwise be able to tap and receive payment on the spot.

The Hon. MARK LATHAM: Given your market dominance as claims managers, you would be regarded as an oligopoly. On 7 March icare announced they were opening up new entrants and competition, which in principle you would welcome. How has that been going?

DON FERGUSON: From the perspective of competition, we absolutely welcome competition. We stand by our record in terms of our performance. We're pleased that performance is made public by icare. There are performance metrics provided by icare as well as SIRA, so employers have an opportunity to choose based on their understanding of performance as well as other things they might seek in terms of alignment with values or household name versus not. From our perspective, we are welcoming of competition. We recognise that it means we have a reduced market share, but we focus very heavily on supporting all the employers we have.

The Hon. MARK LATHAM: Within a few months under Ms Aplin, who for many years up until February ran EML—hasn't the competition only lasted a couple of months? It has now been knocked off because of some problem with Guidewire and a company like DXC has been told there are no new entrants.

LYNDA REEVES: Is that in relation to the Treasury Managed Fund, Mark?

The Hon. MARK LATHAM: Yes.

LYNDA REEVES: I'm not familiar with that news.

The Hon. MARK LATHAM: This cartel has got limited competition, hasn't it, and limited desire to open up and address fraud and welcome new entrants? Icare has knocked it off now, haven't they? Can anyone explain how Ms Aplin ever became the head of icare? I suppose that's a question for the Treasurer later on.

DON FERGUSON: To start at the beginning, Mr Latham, we at EML are welcoming of competition. I think you have heard from this panel that there is competition that is active within the schemes.

The Hon. MARK LATHAM: New entrants haven't come in, have they? Icare has reversed that 7 March decision under Ms Aplin. Is that news to you?

LYNDA REEVES: It's news to me.

MATTHEW VICKERS: What time did this occur?

The Hon. MARK LATHAM: I'm told in the last couple of weeks they sat down with new entrants and told them the earlier 7 March edict has been reversed because of a problem with a thing called Guidewire and the system can't handle new entrants. Is that your understanding?

DON FERGUSON: I think the decision in regard to who provides the competition with the scheme is not one that we take any role in. We provide the services that we are allocated to provide and compete accordingly with the other providers within the market.

The Hon. MARK LATHAM: But Ms Aplin ran EML, didn't she, for seven years?

DON FERGUSON: She was not—

The Hon. MARK LATHAM: She jumped straight over to then running icare.

DON FERGUSON: No. In fact, Ms Aplin ran an entirely separate part of EML.

The Hon. MARK LATHAM: What part was that?

DON FERGUSON: So I, in partnership, provided the services in regard to the large government contracts, which included the New South Wales TMF and Nominal Insurer, and Ms Aplin was operating a very different set of services that sat under a different company within the group.

The Hon. PETER PRIMROSE: I have one question. There has obviously been some social media this morning about this hearing. I note one comment is that your "sector is riddled by industrial-scale medical, legal and claims fraud". I was wondering if you'd like to comment on that, please.

MARK PITTMAN: Certainly from an Allianz perspective, we don't see the system being riddled with fraud. As I mentioned earlier, we take fraud very seriously—both internal and external fraud—and we don't see that situation. It depends on the interpretation of whoever's making that report, of their definition of fraud.

The Hon. MARK LATHAM: How many psychs or GPs have been deregistered because of fraud? No-one will tell me because there are none.

The Hon. PETER PRIMROSE: Put it on notice, Mark. You're taking up—

The Hon. MARK LATHAM: Well, you're quoting me without mentioning me.

The Hon. PETER PRIMROSE: I wouldn't do that to you, Mark. I wouldn't dob you in.

The Hon. MARK LATHAM: I don't want you to yell at me as you normally do, but the answer is none.

DON FERGUSON: Could I note that that's possibly a question for the regulator in terms of registration?

The Hon. MARK BUTTIGIEG: I think there's general agreement that the system should be predisposed to return to work. In terms of the psychologists and the practitioners making the assessment on the return to work, do we have a sense of the quality of those reports and how good they are and how consistent they are across the board, or does it vary dramatically between the practitioners?

MARK PITTMAN: There is variance across practitioners. I think most of us have done quite some work to partner with some of the practitioners to also improve their knowledge and what their expectations are because, at the end of the day, the reporting is there to support us having a factual set of information to make a decision on, and to inform our decision making. Where the claim has been accepted, then we obviously expect that to support us in helping the worker through their recovery. But there is variance.

MATTHEW VICKERS: In terms of the treatment planning, SIRA recently updated from AHRR to AHTR and undertook some changes to what was required to be developed in terms of the plan from a treatment perspective. So you'd like to think that they've improved the standard of what's being provided by those treatment professionals.

The Hon. MARK BUTTIGIEG: What's your overall impression of the degree to which that is dysfunctional in terms of that predisposition to return to work that I referred to in terms of that being the overwhelming KPI, if you like, for psychologists? Is it a chronic problem?

DON FERGUSON: I wouldn't say it's a chronic problem. I think it's variegated. I think you end up with some providers who are very adept at providing high-quality clinical care for particular conditions, and they would achieve better outcomes than others that aren't. I feel like I'm stating the obvious there but I don't know, at a systemic level, that I would call it chronic. I would say there's always opportunity to raise the standard in any profession, and we applaud organisations like the Black Dog Institute for providing leadership in those types of areas for specific treatment to others.

The Hon. MARK BUTTIGIEG: Is there any formalised process of screening to make sure that standard lifts?

MATTHEW VICKERS: SIRA accredits each psychologist that operates within the workers compensation system.

The Hon. MARK BUTTIGIEG: Is that enough?

MATTHEW VICKERS: I suggest that it's a question for SIRA as to what steps, training and continuous improvement they seek from those who provide the service.

The CHAIR: Thank you so much for appearing. We really appreciate you coming at such short notice. To the extent that there were questions taken on notice, the Committee secretariat will be in touch.

(The witnesses withdrew.)

Dr DOUG ANDREWS, Senior Medical Assessor (Psychiatry), Personal Injury Commission, before the Committee via videoconference, affirmed and examined

The CHAIR: I now welcome our next witness. Do you have a short opening statement that you would like to make?

DOUG ANDREWS: Yes, a very brief one. First of all, I'd like to thank the Committee for the opportunity to appear before it. I'm a senior medical assessor with the PIC. I have extensive experience assessing claimants and sitting on appeals panels. The role is one of resolving dispute, primarily about permanent impairment, and of course we must approach each claim without bias. Late last week I was approached by the PIC, asking if I would make myself available to the Committee. In doing so, I am not representing the views or positions of the PIC. I am offering my personal views within my area of expertise, and I'm happy to take questions from the Committee. Just for your information, I have contributed to the submission made by the RANZCP to the previous Committee.

The CHAIR: Thank you. Can I just clarify, before we go to questions, you say you were approached by the PIC to make yourself available. By whom?

DOUG ANDREWS: Marianne Christmann.

The CHAIR: Thank you.

The Hon. BOB NANVA: Could you step us through the process that you're particularly involved in with respect to the provision of claims in the system?

DOUG ANDREWS: Yes, of course. When I receive a referral, it comes from the legal members of the commission. They make a determination that an injury has occurred in the workplace and they refer them specifically to the determination of permanent impairment, whether the claimant has reached maximum medical improvement and any previous contributing or subsequent contributing illnesses. I receive a brief of documents, which is typically several hundred pages long. Sometimes it runs into the thousands of pages. It contains statements—invariably, statements from the claimant, but other statements as well. Clinical records are provided from general practitioners, psychiatrists, psychologists, and any independent reports that are being relied on by either party from previous assessing psychiatrists. Sometimes there are surveillance reports or bank statements and things of that nature that I need to go through. And that's the process of how I receive when I'm doing an assessment. Appeal panels are slightly different.

The Hon. BOB NANVA: Obviously, this Committee is looking into concerns with respect to the growing deficit both with the Nominal Insurer and the TMF.

DOUG ANDREWS: Yes, I understand.

The Hon. BOB NANVA: One area that can be explored, obviously, that's a non-legislative fix is a preponderance of fraud or claims leakage. Are you seeing any of that in your line of work?

DOUG ANDREWS: That's an interesting question. I think any system that's set up for compensation or for reward is likely to be gamed by somebody. Occasionally I will see people that I feel are not authentic. Often that comes out in the large number of documents that we're able to see how they have presented over an extended period of time. They've often been in this system for several years before they get to me. They've said things to their psychologist, to their GPs, to their psychiatrists which allow me to corroborate. My feeling is that the vast majority of people who come to me are sincere. They're not committing fraud in the sense of trying to present an entirely false image. I think, like anybody presenting for an assessment, they're trying to put their best foot forward and to make their case. But I don't see fraud as something that I'm detecting a lot of. I'm not saying that people never get it past me; I'm sure they do. I don't know how prevalent it is. I couldn't put a figure on it. But I think it's a minor problem.

The Hon. BOB NANVA: But from your personal experience, there isn't a significant increase or incidence of unmeritorious claims or fraud that you're aware of.

DOUG ANDREWS: I'm sorry, would you repeat that, please?

The Hon. BOB NANVA: Just from your firsthand experience, there isn't a significant number of unmeritorious claims or cases of fraud that you're aware of.

DOUG ANDREWS: No, I certainly wouldn't use the word "significant". I would say that there is a small number, from my personal experience. The vast majority of people are sincere and fairly honest with me when I assess them. I spend typically 75 to 90 minutes with them. I get to ask my questions in a variety of different ways. For my 45 years in medicine, I think I'm reasonably good at telling when people are being fair with me.

The Hon. BOB NANVA: Are you aware of plaintiff lawyers that offer explicit advice on potentially inflating their WPI ratings?

DOUG ANDREWS: I don't know that that happens. That would be outside of my expertise to know that. I am aware that people increasingly over time are aware of the criteria that are used within the PIRS categories. When a claimant comes before me, they've already had two, at least, assessments with other psychiatrists to determine impairment. They've read those assessments and they're aware of what the criteria are. I don't think that there's necessarily coaching going on or people fraudulently trying to inflate, but I think that people are aware of what the criteria are and what they might say.

The Hon. BOB NANVA: I suppose I've got a similar question with respect to medical costs and treatment. The McDougall review report noted that there were degrees of overservicing payments for non-coverage, non-investigation of anomalous claims, over-charging, and weaknesses in payment management. Is that still a factor that you are aware of?

DOUG ANDREWS: I couldn't really answer that. That's entirely outside of my area of expertise. I don't know.

The Hon. BOB NANVA: Coming back to the deficit in the scheme, again from your firsthand experience, what are the main trigger points for the sheer volume of people that are coming into the scheme and staying in the scheme through lower return to work rates?

DOUG ANDREWS: From my perspective, I see an ever-increasing volume of work coming my way. Why is that occurring? I'm not sure. I'm sure that there's increasing awareness in the community of the opportunity to make claims when they're unwell, but I don't know why those claims are increasing in a manner which seems to be almost exponential.

The Hon. BOB NANVA: With respect to the use of the WPI to determine thresholds, from your experience is it an appropriate indicator of capacity for work? It is an appropriate indicator of the need that the benefits in the workers compensation system is designed to address?

DOUG ANDREWS: There is always a degree of uncertainty and ambiguity in psychiatry, whether we're looking at diagnosis or whether we're looking at impairment. It's the best measure that I'm aware of. If we accept that people get injured in the workplace—and I do accept that people get injured in the workplace—then there needs to be a way to try to assess them. It's an imperfect system. I know that other people claim that it's an objective measure; I don't accept that's entirely true. It requires subjectivity. It requires the application of experience and expertise. By their very nature, experience and expertise are subjective.

The Hon. BOB NANVA: Are you aware of any other assessment model that would be more accurate? The Victorians use a different measure of impairment.

DOUG ANDREWS: I don't know. I'm aware that other jurisdictions use different measures. I don't have enough information to give you an answer to that.

The Hon. DAMIEN TUDEHOPE: There is a work capacity assessment as opposed to a WPI assessment, isn't there?

DOUG ANDREWS: Yes, there is.

The Hon. DAMIEN TUDEHOPE: In respect of a person with a WPI of 21 per cent or more, how would you characterise that person in terms of their functionality to be able to return to work?

DOUG ANDREWS: If someone had impairment of 21 per cent or more, they are likely to be severely unwell. They are likely to have no capacity.

The Hon. DAMIEN TUDEHOPE: If you cut off benefits to those people in those circumstances, they would have to go on benefits somewhere else, wouldn't they?

DOUG ANDREWS: Unless they have independent wealth, yes; indeed, they would.

The Hon. DAMIEN TUDEHOPE: The current number of people within the system who have 21 per cent or more who would have some work capacity would be very limited. But if they did have some work capacity—say they could work in some occupation of, say, 20 hours per week—that would be—

DOUG ANDREWS: Senator, I've been doing this for many years. I've done many hundreds of assessments. I can't recall anybody who had more than 21 per cent impairment who was able to work.

The Hon. DAMIEN TUDEHOPE: I've got no further questions.

The CHAIR: It's fairly compelling.

The Hon. MARK LATHAM: In your time with those many hundreds of patients you've had, to how many of them have you said, "You're fine. You should go back to work tomorrow"?

DOUG ANDREWS: Remember, these are not patients of mine; they're people who I'm assessing, and they've mostly been in the system for several years. Some of them are working. Occasionally, we will see somebody who is working full-time; that's rare. Often they're working 10 hours a week or 20 hours a week, and often not in the role that they might have left. They might have left a reasonably high-level job or a professional job, and they're working in something less demanding. But many, not most, people are working in some role.

The Hon. MARK LATHAM: But how many have you sent straight back to the workplace?

DOUG ANDREWS: I don't send anybody back to the workplace; that's not my role. I'm not working as a clinician. Their clinicians are their general practitioners and their psychiatrists. Those are the people who write their certificates of capacity that we receive and have to make judgement on. All I do is write out an assessment of impairment. If I think that they are fit to go back to work, then I will say that they are unimpaired—class 1—and that goes back to the PIC. That gets taken into consideration in the totality of their assessment, in terms of their total WPI. That goes back to the insurer. That goes back to their own lawyers and the insurer. The findings of the PIC are binding unless they are appealed or go to the Supreme Court. If I say that someone is fit to go back to work, then they probably are scoring below 15 per cent WPI.

The Hon. MARK LATHAM: One of the criticisms in this space is that while we have X-rays for a snapped spinal cord, we don't have an X-ray of the human mind; it's all imprecise. And some people just go and read the guidelines of what you need to say to get your impairment level certified, and there's no checking process that follows. If I came to see you and said that I can't sleep at night, I worry a lot, I can't go to the supermarket, I feel incapacitated, and anxiety disorder has overwhelmed my life, what would you do to check whether or not that's true?

DOUG ANDREWS: I assume you're asking it from my perspective as an assessor, not as a clinician. You're asking two questions: One is about diagnosis and one is about impairment. They're not the same thing. They don't even correlate very well. If I had somebody come to me telling me that sort of story, I'd take a detailed history of their symptoms, I'd ask open-ended questions and I'd try to understand. By the time they arrive at the commission, two years after their injury or five years after their injury, it is very likely that they have a DSM-5 condition. The DSM-5 is an imperfect tool. It's subjective and there's a lot of overlap. If you see five different psychiatrists, there's likely to be more than one diagnosis that you finally see.

If you reach a DSM-5 diagnosis and it's been agreed between the parties that you have an injury, then it's my job to assess impairment. What I do is, I look through all the documents available to me and I take notes from them so that I'm aware of what I might ask the person. I interview them at length, and I ask them extensively about their activities of daily living. I don't ask them whether they think they can travel or whether they can look after themselves. I ask them what they can do. I ask them what they do over the course of a day, a week and a year. What holidays have they gone on? Where have they travelled outside of their home? Why did they travel? Who did they travel with? This allows me to build up a picture. It's an imperfect picture, but it's probably the best I can do.

The Hon. MARK LATHAM: Is that all you do? You just ask them questions.

DOUG ANDREWS: No, I said I have a brief of documents which sometimes extends into hundreds or thousands of pages. I go through that in detail. I go through their statements, and I interview them as a psychiatrist, as I'm trained to do. My interview might last an hour and a half.

The Hon. MARK LATHAM: After all of that, why did you say earlier on that you don't know why these psychological injuries are increasing exponentially? You must have some feel for what's generating this huge problem.

DOUG ANDREWS: That's a very complex question that has to do with culture, our society, changing expectations, and people's sense of, within the workplace, powerlessness perhaps. People, for example, feel that they've been treated poorly in the workplace. Whether they have or not is another question, but they feel that they've been treated poorly. They feel humiliated. They want justice. They feel that they've lost their role. They feel that they've lost their reputation, their place in society. Whether and why that is happening more in 2024 and 2025 than in 2016 or in 1995, you're as expert in that as I am.

The Hon. MARK LATHAM: In the Legislative Council, we feel all those things every day, of course, in our mistreatment by the Premier.

DOUG ANDREWS: Exactly.

The Hon. MARK LATHAM: Earlier, Michael Coutts-Trotter made the claim that people are getting higher WPIs all the time. Is there any guide as to why that's happening?

DOUG ANDREWS: I'm sorry, who made that claim?

The Hon. MARK LATHAM: Michael Coutts-Trotter, who is the head of Treasury.

DOUG ANDREWS: I do not see that. That's not my experience as an assessor over the last decade. That's not my experience, as somebody sitting on appeals panels, that things are getting higher all the time. That is information that could be discerned from a proper study. I haven't seen that study, so I don't know the answer to that.

The CHAIR: Thank you—your evidence has been very useful. We had a short inquiry on a different committee into a proposed version of the bill that we're now looking at. There were submissions to that inquiry that were talking about the work that's been done over the last few decades to reduce stigma around psychological injury and expressing concerns that some of that work might be undone by these reforms. I guess, seeking workers compensation for a psychological claim requires a level of involvement of other people that it wouldn't do if you were just going and getting help yourself. If I felt that I needed to see somebody in order to deal with my mental health, that would be a matter for me and my GP, and my psychologist or psychiatrist, but once you involve somebody from a workers compensation perspective, you're necessarily talking to more people than that.

DOUG ANDREWS: Indeed.

The CHAIR: Do you think that it's possible that some of the supposed increase—well, there has been an increase—in psychological claims is as a result of people feeling that it's more socially acceptable, I guess, to be able to talk more openly about mental health issues? Is it a reduction in stigma, do you think?

DOUG ANDREWS: Look, that's an interesting perspective. It makes sense. I don't know if it's true, but it certainly could be the case. And I guess when you're bringing a claim in workers compensation you're making an allegation that you have been harmed in the workplace and this isn't something that's going to be kept private. That's very challenging for people.

The CHAIR: Thank you. That's really interesting. As I say, I think it does sort of accord with some of the anecdotal evidence. For instance, since these reforms were proposed, many of us have received emails from injured workers who have been setting out their stories. Again, it's only anecdotal, but I've had information from people saying that 30 or 40 years ago, they suffered, for instance, armed hold-ups or other things in their jobs that they didn't at the time think they had any cause for compensation in relation to. It was just something that happened to them at work that resulted in them having a psychological injury from that. Those people wouldn't have thought to go through workers compensation then, but if that happens now it's one of the avenues you have in order to get the help you need. It sort of makes sense, I guess, that there's a sort of opening up of the conversation around mental health that could lead to this increase in psychological injuries. Would you agree?

DOUG ANDREWS: Yes, I think I do agree with that. For many years, I worked as a general practitioner in a rural area, so I worked with a lot of farmers. These farmers would have never come to me and said they were suffering from mental health problems. They might eventually shoot themselves, but they wouldn't tell me that they had mental health problems. There was stigma associated with it. It was harmful stigma. There was a tremendous sense of shame of admitting that there were problems that you had. It was more acceptable to turn to alcohol. I'm sure there was domestic violence in some of the families as people unravelled. But they weren't putting up their hands and they weren't admitting to mental health problems. There has been de-stigmatisation. I suppose, with that, people are going to be more willing to come forward and say, "This has happened to me," and make a claim. I'm not going to say that that's the entire reason. I think it's much more complex. I'm not even pretending that I understand the complexity of why the increase is happening.

The CHAIR: If you look at something like the construction industry, which we know has high rates of suicide and is also primarily men in that industry, the message that mental health advocates have been trying to get across is, if you're suffering an injury and you are otherwise taking to alcohol or domestic violence or making yourself sicker, it would be better to take control of your mental health issues and actually get it sorted. One of those options at the moment is admitting that you've been injured at work and getting that help. Do you worry that these proposed reforms will leave people feeling that they won't get the support they need to feed themselves and their family at the time when they're taking that step of getting help, whereas at the moment they might feel that, with the cover offered by workers compensation, they would take those steps?

DOUG ANDREWS: The reforms that are proposed aren't simple. There are many, many strands to them. On one level, I think that the barrier and the very high threshold which has been proposed is going to shut down

mental health claims, frankly. I can probably think of two or three people who have gone above 31 per cent during my career. That's a tremendous barrier. I think that what must happen. if it can happen, is more rapid resolution. I think this process which drags on for two, three, four or five years is entrenching the problems. I have very little hope for somebody who has been seriously ill for three years, four years that they're going to recover. It's too late.

I think some aspects of the reforms are important. We do have to balance the costs. I think when people are claiming bullying, harassment within the workplace, it's good if they have a way where that claim is tested. One of the questions that I always ask people is—at the end of my interview I ask them if we've covered everything we should and if there's anything else they would like to say. What they invariably—not invariably, but most people will say—the most common comment is how damaging the process of seeking workers compensation has been for them.

The Hon. TAYLOR MARTIN: In regard to psychological injuries, how often does medication help get a person back to work where they definitely might not otherwise, without medication?

DOUG ANDREWS: From the perspective of a clinician—and I'm not doing so much clinical work now. But when I was, and I was working extensively with police officers and other emergency service personnel, I ran a program in a private hospital for some of those people. If we got those people early, we often got them back to work. They didn't get into the system. They were coming to us while they were still employed. They were coming to us and getting restricted duties and going back to work. Medication has a role to play. I don't pretend medication is perfect. But it has a role to play and it does help people get back to work. By the time they come to the Personal Injury Commission, they've had so many medications that haven't been effective for them and they're so entrenched in their illness and their symptoms, and in their impairment, that I fear that many of the medications that are being used then are useless.

The Hon. TAYLOR MARTIN: If I can follow up, as an assessor is that a big part of your assessment, all the different medications that have been tried and the history?

DOUG ANDREWS: Yes, indeed. I take a comprehensive psychiatric history, which is canvassing all of the treatment that they've had and, of course, anything that might have happened to them before the work injury occurred as well. So in a standard way I take the psychiatric history I was trained to do decades ago.

The CHAIR: Thank you so much. That's been incredibly useful and also so important to bring it back to the focus on injured workers as individuals. It's been a very useful session.

(The witness withdrew.)

(Luncheon adjournment)

MICK FRANCO, Honorary Solicitor, NSW Workers Compensation Self Insurers Association, affirmed and examined

REBECCA SEKULOVSKI, Chairperson, NSW Workers Compensation Self Insurers Association, sworn and examined

The CHAIR: Welcome. I'd like to invite you to make a short opening statement, if you care to.

REBECCA SEKULOVSKI: Yes, thank you. I will do that. I have been the chairperson of the NSW Workers Compensation Self Insurers Association since June '24. I was the acting chair and then nominated on 1 November to the full role of chair. As part of that association, we represent multiple self-insurers across New South Wales. We are a not-for-profit organisation representing licensed self-insurers, who manage their own risk. The association was established in 1979. The association now has 98 full members. Thirteen of those are associate members, 21 are affiliate and the remaining are self-insurers.

The current number of self-insurers in New South Wales, according to the SIRA website, is 71. We were approached by SIRA in September last year to start to work with them on the improvement of case management, so at that time we started collecting feedback on a general scope from our members. As part of that, we have been working very closely with SIRA on case management improvements. We've been able to collect some feedback, which we're here today to present on behalf of those members. Otherwise, I will hand over to Mick Franco to provide a full overview of that.

MICK FRANCO: I am also a partner at the law firm Bartier Perry. I won't take up the Committee's time by reading all of my notes. I'll just skip through the topics and, if you want me to address you on some of these topics in more detail, I can. I'd just like to preface the remarks that we are about to make, or the evidence that we're about to give, to say that our members absolutely want to support injured workers, they want to prevent injury, and they want to positively contribute to early return to work and recovery of work. But today I think we're largely dealing with psychological injury.

Our evidence today will endeavour to showcase some of the obstacles or barriers that our members face in achieving those positive outcomes. I'd also like to advise the Committee that the association does not collect data or statistics. However, every member who is a self-insurer is obliged to provide data to the regulator. I'm sure that the Committee can extract, from the regulator, data relating to the performance of self-insurers when it comes to claims, claims frequency, claims duration, return to work and cost of claims.

What we're about to say to you today is based on anecdotal information that is given to the association by members at various gatherings and forums. That's the best we can do, unlike some of the predecessors who gave evidence today who could speak on the basis of hard data. Psychological injury is the topic for discussion. The association accepts that there is an urgent need for reform in this area. The association members view psychological injury in two broad categories: injury born out of traumatic exposure or trauma, such as violence, and injury born out of workplace conflict or performance conduct issues where often there are two competing narratives—a narrative of unfairness by the worker and an alternative narrative by the employer dealing with managing the workplace issues. It's this second category of psychological injury that is proving troublesome for the members of the association to navigate and manage.

I can talk to you about some of the difficulties that members have in talking to workers, particularly if they're legally represented. They have significant difficulties in talking to treating doctors, and all of that contributes to an inability to find common ground. I can also talk to you about other problems that members have in managing the situation. There are co-workers, for example, who are remaining at work who have to take on the work of the absent injured worker, who may even be the subject of complaints of bullying directed to them by the injured worker. I can also talk to you about the SIRA standards of practice. You may or may not be aware that there are two standards of practice, 33 and 34, that govern the management of psychological injury by insurers—in our case, self-insurers—and some difficulties posed there.

I can also talk to you today about the proposed bill. I can say to you that the association broadly supports the bill, but it has some difficulty with the proposed version of section 11A and the use of the word "predominantly". I can go into some detail about that if you like. I can tell you also that the members of the association are opposed to the single assessment of permanent impairment, and I can give you some reasons. But I also wanted to leave you with some other food for thought and some areas of possible reform that the bill does not deal with at all. I'm open to go through all of those, but I realise that this is an opportunity for you to question us.

The CHAIR: I will say that we did get a submission from yourselves for the previous inquiry.

MICK FRANCO: That's right.

The CHAIR: That was on Law and Justice, obviously in relation to a different version of these reforms, but similar, and that has been very useful.

MICK FRANCO: It canvasses a lot of ground that the current reforms also canvass.

The CHAIR: Yes. We'll start with questions from the Opposition and then, if we don't cover everything that you've mentioned just now, we can come back at the end and give you a chance to state some of those things.

MICK FRANCO: I'd like to talk about the things that aren't in the bill if I have a chance.

The CHAIR: Yes. Let's start with questions from the Opposition and we'll see how we go.

The Hon. DAMIEN TUDEHOPE: Mr Franco, thank you for coming this afternoon, and Ms Sekulovski.

MICK FRANCO: Thank you for the opportunity.

The Hon. DAMIEN TUDEHOPE: Let's start with 11A and the use of the word "predominantly". What do you say is the issue relating to 11A, because effectively that is a provision which allows an employer to, I suppose, challenge a claim being brought by a—

MICK FRANCO: The current version of 11A uses the causation formula of "wholly or predominantly", and our experience tells us that employers rarely succeed in having the statutory defence upheld with that causation formula. The injury narrative of the worker claiming psychological injury in this second category that I defined at the beginning usually involves a cessation of work in the context of some employer-management action with respect to performance or conduct issues. That narrative, in our experience—in the experience of members of the association—tends to evolve and change over time to bring in other potential causative events. For instance, if a worker notifies an injury and makes a claim in the context of being asked to participate in a performance improvement plan, that could well and truly come within the domain of section 11A, and that points to the application of section 11A.

But what tends to happen is that the story of the injury changes over time to bring in other factors that fall outside of 11A, such as allegations of excessive workload or conflict issues with other employees, co-workers or superiors. When that happens, it makes it virtually impossible for the employer to succeed in arguing that the predominant cause was the performance improvement plan. So if the worker's narrative is accepted, ultimately, the 11A defence fails, and what the use of the word "predominant" does in the proposed version of 11A—it leaves us in the same place as we are now with the current version.

The Hon. DAMIEN TUDEHOPE: You have been involved in this industry for a long time. How many applications under section 11A have been successful, in your experience?

MICK FRANCO: In my personal experience, in matters that I've handled—and I've been doing this work for 38 years, although 11A hasn't been with us for 38 years—I would say less than a dozen, in my experience.

The Hon. DAMIEN TUDEHOPE: We heard previously from claims managers who are managing claims, and they say that they accept liability in relation to most claims brought because their experience is that most claims generally would be accepted in circumstances where they are litigated.

MICK FRANCO: Yes. I don't think you can say that for self-insurers. I think they look at every claim on the merits, and if there is a challenge that is appropriately made to the claim and it fits into 11A, or if there's no injury at all, then they'll look to challenge it.

The Hon. DAMIEN TUDEHOPE: Take me through the process. When a claim is made on a self-insurer in respect of a psychological work injury, what's the process that the self-insurer goes through, and how do they handle psychological injuries—if they do—differently from, say, physical injuries?

MICK FRANCO: The process is, on notification of injury, within seven days they have to make a decision on provisional liability. There's a thing called a "reasonable excuse" that prevents the commencement of provisional weekly payments. They are limited and they are defined by SIRA guidelines. Usually, but not always, provisional liability is accepted, and that triggers the payment of weekly compensation and medical expenses. There is focus on return to work, but the claim is still investigated. There may be a factual investigation. There may be the collection of clinical material from treating medical providers. It is not automatic to go to an IME, because there are SIRA guidelines that prevent going to an IME.

The Hon. DAMIEN TUDEHOPE: IME being, for the purpose of the record?

MICK FRANCO: It's an independent medical examination—a consultant psychiatrist. You're only entitled to go automatically to a consultant psychiatrist if it's a permanent impairment claim or a work injury

damages claim. Other than that, you have to interrogate the treating doctor to get the information that you wish, and it's only when the information is not provided at all, or inconsistent or unresponsive information is provided, that you're allowed to go to an IME. What happens in that provisional liability period of usually 12 weeks is the self-insurer builds up factual and medical evidence and then is able to make a claim liability decision at some stage. Often it doesn't have enough evidence to make the liability decision at 12 weeks so that forces the self-insurer to accept liability.

The Hon. DAMIEN TUDEHOPE: At what point in that process is an assessment made in relation to whole person impairment?

MICK FRANCO: It's not done at that early stage of provisional liability. It can be anywhere from between six to 12 to 18 months after the notification of injury, probably closer to the 18-month mark.

The Hon. DAMIEN TUDEHOPE: In relation to the manner in which those claims are being handled by the insurer, what percentage of those claims are resolved within that period?

MICK FRANCO: That's hard to say because the association doesn't collect statistics data. But I can say—and this is anecdotally—if an early return to work can be achieved, even on a part-time basis in suitable duties, that is a good indicator of recovery and ultimately resolution of the claim. The longer they stay off, the chances are they won't come back.

The Hon. DAMIEN TUDEHOPE: Is it your experience that self-insurers have a better return to work rate than icare in relation to return to work for psychologically injured employees?

MICK FRANCO: I don't think I can answer the question with regard to psychological injury—and I can't speak for the icare segment—but the feedback that we get from SIRA, the regulator, is that the return to work rates of self and specialised insurers are better.

The Hon. DAMIEN TUDEHOPE: Why is that?

MICK FRANCO: I don't think I've got a conclusive answer to that, but I can say that because the self-insurer is the insurer and the employer, and is indivisible, you can envisage the left hand knowing what the right hand is doing. The insurer and the employer are one. The self-insurance unit has direct contact with the business unit, if you like, so there's no delay in orchestrating opportunities for return to work.

The Hon. DAMIEN TUDEHOPE: You may not be able to answer this either, but what is your experience of the characteristics of a person who is classified as having a whole person impairment above 21 per cent?

MICK FRANCO: If it's a non-psychological injury—I think I know what you're—

The Hon. DAMIEN TUDEHOPE: A psychological injury.

MICK FRANCO: You're talking about a psychological injury only. There's the PIRS rating scale and one of the items on the scale, always, is employability. At 21 per cent, usually the worker is rated as a five, which means "totally unfit". That's what it means, but I've got some concerns about how the PIRS scale is applied in practice.

The Hon. DAMIEN TUDEHOPE: I don't know if—

MICK FRANCO: There was some evidence this morning about that, but there's a comment that I'd like to make about that that was not canvassed.

The Hon. DAMIEN TUDEHOPE: Okay, go ahead.

MICK FRANCO: The difficulty with how the PIRS scale is operated in practice is that it relies on the presentation of the worker on the day of assessment. If the worker is aware of what that scale provides, the worker can present in a particular way.

The Hon. DAMIEN TUDEHOPE: Sometimes coached?

MICK FRANCO: I don't know about that. I've heard that said, but I don't have any examples of that. What I would say is that the assessment should not be limited to the presentation on the day but should have regard to evidence that exists in the file, before the doctor, of functional ability previously. There may be other medical reports, there may be rehabilitation reports, and sometimes there is surveillance evidence that shows a higher level of functional ability than what the presentation on the day indicates.

The Hon. DAMIEN TUDEHOPE: If you go to the PIC and there is a doctor who has all that information in front of them, in terms of the history, the observations and the statements, would that doctor or that assessor be

the best person to make that assessment in relation to their ability to resume work, given all the requirements of the PIRS?

MICK FRANCO: They have to make that assessment at that time.

The Hon. DAMIEN TUDEHOPE: But they have more information available to—

MICK FRANCO: They do have more information available, and they should look at that information. If it's contrary to the presentation, that should be canvassed with the worker and it should be tested, in my opinion.

The CHAIR: Although you don't keep data yourself, the data that has been provided by Treasury and by icare shows that there are some aspects of self-insurers that seem to be operating more effectively than some other parts of the system, particularly in relation to return to work rates. Obviously, the same legislation applies to self-insurers as applies to the Nominal Insurer, but you run your own funds, effectively, outside of the Nominal Insurer. What do you put that down to? Do you think this concept of the insurer and employer as one leads to that greater return to work rate?

MICK FRANCO: I think so. It's the ability to identify what the real issues are that are creating the workplace problem in a quicker time frame and to act on what you find out.

The CHAIR: If I can put that into a practical example, if I'm Woolworths, which has its own self-insurance, I believe—

MICK FRANCO: They're one of the members.

The CHAIR: If they've got someone who is injured, whether it's psychological or physical, it's in their interest to deal with that claim as quickly as possible and get that worker back to work.

MICK FRANCO: Absolutely.

The CHAIR: What have you heard of that may be a different culture within that claims management process to what you would get coming out of the Nominal Insurer?

MICK FRANCO: I can't speak for the Nominal Insurer, but self-insurers can get more up-to-date and relevant information about what's going on in the business unit where the worker is working. They can talk to management about what the issues may be. They could look at ways of resolving those issues, such as transferring people within the business unit to remove the aggravation that might be causing the alleged injury.

The CHAIR: What are the things not in the bill that you would put in the bill?

MICK FRANCO: I touched on one: the PIRS scale. Don't limit the assessment to how the presentation of the worker manifests on the day of assessment. That really means having regard to previous evidence that shows a higher level of function. One of the issues is the employer communicating its narrative of not only how the injury occurred but what it has to offer in terms of suitable employment to the nominated treating doctor. It just can't get its viewpoint across. Often, our members are confronted with a nominated treating doctor perhaps being the advocate of the injured worker and only having that narrative. I think we've reached the stage where the Legislature should look at training and accreditation of NTDs.

The Hon. DAMIEN TUDEHOPE: NTD being?

MICK FRANCO: The nominated treating doctor—the GP or even allied health providers that are involved in the treatment of the worker. We should have that accreditation to enable participation in workers compensation, improve their knowledge of the legislation and the regulatory framework, improve content and quality of medical reports, and consider both the worker's narrative and the employer's narrative—both perspectives—to help drive the return to work and understand what the benefits are of return to work and recovery of work.

If you want to take that one step further, if there's a disagreement about fitness for work, consider introducing a return to work medical assessment process in the Personal Injury Commission where disputes can be determined on capacity for work. We already have that for permanent impairment. There is no reason to prevent it for incapacity disputes. That process can also contribute to better structuring suitable duty possibilities. Currently, we've got an injury management dispute process in the Personal Injury Commission which is governed by part 5, division 3 of the 1998 Act. The disputes are dealt with by a delegate of the president, but there's no power to make any determination. The delegate can only make a recommendation.

The final thing is reform of chapter 3, which governs all of injury management, and that includes return to work. At the moment, it lacks a mutuality of obligation. Most of the obligation is on the employer and the insurer. The worker is not without obligation. Section 48 of the 1998 Act deals with that. Noncompliance by the injured

worker is meant to be dealt with by section 48A, but that involves a convoluted process of warning upon warning, and it takes a long time to get to a position where, for instance, payments can be suspended. It's hard to work through. It's hardly ever used. Those are the things that I would advocate are worthy of consideration for reforms.

The Hon. MARK LATHAM: Can I get your opinion on looking at the definitions that have been placed in the bill before the Committee and what impact you think they will have on new claims?

MICK FRANCO: I haven't studied them closely lately, but I think some of them are a good idea. The definition around psychological injury makes it clear, or clearer. The definition of reasonable management action, except for the use of the word "predominantly", will probably have an impact on a reduction of claims.

The Hon. MARK LATHAM: What about the provision for excessive work demands?

MICK FRANCO: I'd like to take that on notice, if I may, because I haven't brushed up on that today.

The Hon. DAMIEN TUDEHOPE: But would you agree that that would potentially increase the exposure?

MICK FRANCO: Potentially, yes.

The Hon. MARK LATHAM: And the bullying definition—that all you need is someone behaving unreasonably towards a worker to qualify as bullying—shouldn't it include the real purpose of bullying, and that is to intimidate someone, with the intent of intimidation?

MICK FRANCO: Again, I'd like to take that on notice but, by way of brief response, I think the bullying definition should align with other definitions of bullying, say, in the Fair Work jurisdiction.

The Hon. MARK LATHAM: That's a different Parliament.

MICK FRANCO: Well, then, in the IRC for State Government employees.

The Hon. MARK LATHAM: Even on the definition of psychological injury that you cited, the Victorians have added the word "significant". Theirs reads "causes significant behavioural, cognitive or psychological dysfunction". Wouldn't that be stronger?

MICK FRANCO: That would be stronger.

The Hon. MARK LATHAM: Any level of dysfunction is pretty low level.

MICK FRANCO: That's right.

The Hon. MARK LATHAM: It needs to be significant, doesn't it? Like impairing your capacity to function.

MICK FRANCO: I'd agree with that.

The Hon. MARK LATHAM: Have you looked at the definition of racial harassment?

MICK FRANCO: Not in the last couple of weeks.

The Hon. MARK LATHAM: This goes to one place in Canberra with the inclusion of "offend and insult". It's a very, very low bar, and it repeats the mistakes of section 18C. Wouldn't you think that that's going to be an easy one for claims qualifying?

MICK FRANCO: Potentially.

The Hon. MARK LATHAM: Sexual harassment goes to an unwelcome sexual advance in the eyes of the victim. That could mean anything, couldn't it, in the workplace rules that now govern that particular issue?

MICK FRANCO: Potentially.

The Hon. MARK LATHAM: Have you looked at the definition and inclusion of vicarious trauma?

MICK FRANCO: I'd like to take that one on notice.

The Hon. MARK LATHAM: But, in principle, say you're working in a fire station—not that they'd be self-insured, but something similar—why do you get to have a psychological injury when people come back and tell you about their experience in the workplace? You haven't actually seen it or been directly affected, but you're just hearing repeated exposure to the traumatic experiences of others. That's going to open up a very broad jurisdiction, isn't it?

MICK FRANCO: That's potentially an expansion, yes, but it's an emerging area in medical science.

The Hon. MARK LATHAM: This whole thing is an emerging area of lots and lots of psychological injury claims that defy Australian traditions of resilience and getting on with the job. We've become a snowflake society that has all these problems, and they're now costed in terms of workers compensation. Can you believe with these definitions we're going to have a 33 per cent reduction in new claims?

MICK FRANCO: I don't think you can make that assessment until you see cases come through the system.

The Hon. MARK LATHAM: Well, that's right. This is hypothetical, isn't it, because none of these definitions have governed the system previously.

MICK FRANCO: No.

The Hon. MARK LATHAM: So how can you really know, other than a subjective judgement of the wording? Would you agree that the wording can be strengthened in a lot of areas, and that would protect employers and premium levels?

MICK FRANCO: Yes. With my comments in relation to the amendment to the proposed 11A with the use of the word "predominant", it just takes us back to where we are now, so it weakens what was proposed in the first place.

The Hon. MARK LATHAM: So the Self Insurers Association isn't part of the Business Sydney cheer squad for this type of legislation, where you get invited out to the box at the SCG and automatically cheer for any old rubbish that comes before the Parliament.

MICK FRANCO: I never accept those invitations. I've got my own membership.

The Hon. MARK LATHAM: No, I don't get them anymore, so you and me both.

The Hon. BOB NANVA: Thank you for your evidence today. You mentioned in your opening statement that you had some reservations around the SIRA guidelines or standards of practice.

MICK FRANCO: Yes. Let me just preface my evidence on that point. The association in the last year or so has been working very closely with SIRA on a whole range of issues, but guidelines and the standards of practice in some areas continue to be a problem. Guidelines 33 and 34 that specifically deal with psychological injury focus the insurer on completely understanding the perspective of the injured worker, which is not a bad thing, but they also invite the insurer to go into the domain of the worker's private life. There's a line there that perhaps shouldn't be crossed. If you look at the guideline, you'll probably see what I mean. What it lacks is inviting the insurer to also understand the perspective of the employer and the difficulty that the employer encounters with dealing with the worker, the injury and the return to work.

The Hon. BOB NANVA: With respect to your membership base or your stakeholder base, how would you describe them? Are they small businesses, small to medium enterprises, large?

MICK FRANCO: No, it's across the board. It's a whole range. We have small self-insurers with small operations, but we also have large publicly listed companies. There's a list on the SIRA website of all of the current licensed self-insurers. I counted them this morning; there are 71. There are big companies, like the Chair mentioned—Woolworths, BlueScope Steel, Qantas. They're on the larger side, but then there are small and large local government authorities. There is a range of industries covered. There's no standard self-insurer.

The Hon. BOB NANVA: Just anecdotally, are the return to work rates fairly similar between smaller members and your larger publicly listed members, or do they vary?

MICK FRANCO: We don't have statistics on that but, intuitively, if you're a large self-insurer, it would be open to accept that there are more opportunities for return to work.

The Hon. BOB NANVA: By virtue of redeploying people outside of the place that's causing them injury.

MICK FRANCO: Yes, and other vacancies, even for a short term—just having someone come back to work, to be accustomed to going to work every day and building themselves up and recovering in that way, with a view to returning to their appointed role.

The Hon. BOB NANVA: Would your view be that we should be careful to not extrapolate too much between the varying return to work rates amongst the self-insured and the nominal insured schemes?

MICK FRANCO: I'm not a data expert, but all data has got to be viewed with caution.

The Hon. BOB NANVA: Have you surveyed your members at all with respect to why they left the Nominal Insurer? Were there issues with claims management?

MICK FRANCO: Some members were never with the Nominal Insurer to start with. For example, one of our members, Unilever, I think was awarded the first licence for self-insurance in 1926. So we've got members from inception and we've got members who have transitioned from the scheme to self-insurance, but we have not surveyed them.

The Hon. BOB NANVA: Have you got any feedback from those members that have transitioned as to why they transitioned to the self-insured scheme?

MICK FRANCO: No, not to my knowledge.

The Hon. BOB NANVA: With respect to fraud or claims leakage, are you aware of plaintiff lawyers that offer explicit advice with regard to how they might inflate their WPI?

MICK FRANCO: I don't have direct evidence of that. It's been said. I heard it said this morning in some of the evidence, but not direct knowledge. In my work, in my practice, I deal with the same lawyers often and I believe they have integrity, and I don't think they would do that. But I don't deal with all lawyers in the system.

The Hon. BOB NANVA: The only other question I have is with respect to your views on what impact more self-insurers might have on the Nominal Insurer. You may not be able to answer this question.

MICK FRANCO: I don't think that's a fair question for us to answer. How could we answer that?

The Hon. BOB NANVA: Would you accept that if you have larger companies with good WHS practices that have the funds, obviously, for good governance to reduce their risks in a risk-based industry, which is what this is, you effectively make the Nominal Insurer the insurer of last resort?

MICK FRANCO: I don't think I can answer that question. I just don't have the information to be able to answer that question.

The CHAIR: Just a follow-up to that question. Obviously, SIRA needs to approve you as a self-insurer. You don't just get self-insurance because you've asked for it.

MICK FRANCO: That's right.

The CHAIR: And there is a provision in the legislation that says that to the extent that it would undermine the financial independence of the Nominal Insurer then SIRA wouldn't be approving that. Do you see that there is going to be some big rush of additional self-insurers on the back of legislative change?

MICK FRANCO: If the bill as currently framed goes through, I think there's a potential significant reduction in claims, and that might be a contraindicator to moving to self-insurance. I can tell you that in the last four or five years there have been more applicants who have obtained a self-insurance licence than there have been in the past. I don't know how many applicants are in the pipeline. That's something that you could ask the regulator. You could ask them how the incidence of self-insurance has changed over time. We don't have that information.

The Hon. DAMIEN TUDEHOPE: One of the provisions which has been introduced by the Government into this bill which wasn't previously there is that in respect of bullying, sexual harassment and excessive work claims the period for the acceptance of liability has been reduced from 12 weeks to six weeks. Were you aware of that?

MICK FRANCO: Look, I'm aware of those time frames, but I don't think that's quite right. As I said at the beginning, the provisional liability regime requires an insurer to make an initial decision on liability within seven days.

The Hon. DAMIEN TUDEHOPE: That's provisional acceptance.

MICK FRANCO: Yes.

The Hon. DAMIEN TUDEHOPE: If you go to section 280AC of the amending bill, page 45 over to 46—you gave evidence earlier about collecting all the evidence. Is that time frame—

MICK FRANCO: I heard you ask that question to one of the previous witnesses. In a psychological injury case where there are competing narratives and where there is a long story as to how the injury happened or didn't happen, I don't think six weeks is enough time to collect the evidence.

The CHAIR: One of the things I didn't see in the submission that was made to the law and justice inquiry was the Self Insurers' position on the 31 per cent threshold increase.

MICK FRANCO: I think I said at the beginning that the association broadly supports the amending bill with those two exceptions: the single assessment of permanent impairment and the use of the word "predominant".

The CHAIR: Has there been any assessment that you know of by each of the self-insurers, then, as to how much in cost savings they would make from these reforms?

MICK FRANCO: I don't think so, no.

The Hon. DAMIEN TUDEHOPE: So just to be clear on that, there's no assessment or modelling that you've done or any of the self-insurers have done about—

MICK FRANCO: Individual self-insurers may have done so. But, as I said, the association doesn't collect data and doesn't engage in that sort of exercise.

The Hon. DAMIEN TUDEHOPE: One of the provisions in the amending bill provides for the removal of benefits for people in the range of 21 to 31 per cent WPI. The evidence is—and I think you've agreed with that evidence, subject to your reservations about the PIRS scale—that no-one would have a capacity to return to work in that range.

MICK FRANCO: What I said was that in that range the rating on employability under the PIRS will be a five and, by definition, that's totally—

The Hon. DAMIEN TUDEHOPE: So what would happen to those workers?

MICK FRANCO: They would fall under the Commonwealth schemes.

The CHAIR: Thanks very much. That has been incredibly useful. To the extent that there were questions taken on notice, the Committee secretariat will be in touch.

MICK FRANCO: Thank you for having us.

(The witnesses withdrew.)

Mr KIM GARLING, Solicitor, sworn and examined

The CHAIR: I welcome our next witness, Mr Garling. Thank you again for making yourself available. In addition to being a solicitor, you are the previous IRO. Is that correct?

KIM GARLING: I was the inaugural WIRO, as it was then called, in September 2012 until December 2019.

The CHAIR: We have the submission you made to the inquiry that was held by the law and justice committee. We have the benefit of the testimony you gave there as well. Do you have a short opening statement you'd like to make?

KIM GARLING: It's easier if I answer questions. If something comes up in the course of that, I can refer to something that would help explain. It might be more valuable for me to do that.

The Hon. DAMIEN TUDEHOPE: Thanks for coming back, Mr Garling. Part of your earlier evidence was that you'd like to buy up the liabilities of icare and market those because you think you'd potentially become a very rich man because the liabilities never materialise in the manner in which an actuary may view the same liabilities. Do you want to expand on that proposition? We're hearing that this fund is in dire need of reform and is technically insolvent.

KIM GARLING: I suppose it was my Donald Trump moment. Leaving that to one side, as I understand the actuarial evidence given generally and also today, the estimates are front-end loaded. If there's X injury—it doesn't matter whether it's mental health or physical health—the long-term cost of that is estimated and put into the reserve. Firstly you set the reserve on existing injuries, existing claims, up to that point. Then that reaches a figure, so you keep that figure in. It may or may not be correct, because it's a mathematical exercise; it's not an exercise based on the actual claim. It's based on looking at the types of claims and a broader mathematical approach. It's very clever—I'm not denying that—but it's not necessarily done on the examination of every claim, carefully. It's done on a mathematical basis.

Secondly, having done that, you then have to estimate when the money is going to be paid. If someone is seriously injured, a person of highest needs, and they're 20 or 30, that could be 40 years before the money has to be paid. So it's a much more complex exercise, and I suppose I was being cheeky a little bit, but I don't think you can say that—or looking in a different way, are the actuaries really telling us that we've got it so wrong up to now? As at 30 June 2024 when we did the accounts, we got it so wrong—and we got it wrong the year before and the year before that—that we have to fix it now? Because there's been no hint of any disaster coming.

There's no hint of any explosion at all, as I understand it from the published accounts. Surely if there is a major disaster ahead of us, that is because of the failure in the actuarial calculations. The two can't stand. You can't say at 30 June 2024—as confirmed by the signatories to those accounts—that everything was fine and no hint of any problem in the future, then six months later in December say, "We got this completely wrong. There's a complete disaster on the way." I'm not trying to be an expert actuary. I'm just making the point that the two don't stand together. If you were a public company, you'd be in serious difficulty if you suddenly found in December, three months after you signed the accounts, that in fact you were insolvent. You'd have some difficulties explaining that.

The Hon. DAMIEN TUDEHOPE: One of the things that has been put to us about the dire need for reform is increasing premiums. Again, I think this is something you addressed in your previous evidence. The Treasury is advising the Treasurer, I assume, that premiums will need to increase by 8 per cent, 12 per cent and 12 per cent to reach a position whereby the ratio for the Nominal Insurer reaches 100 per cent. Do you agree with that analysis?

KIM GARLING: I can't agree or disagree. I can say this: An 8 per cent increase over $1,500, according to my calculation, is 50¢ a day. I'm not sure it's going to break the bank of any employer. Secondly, I don't know how you can calculate into the future until you see whether these reforms are successful or not. Thirdly, if what you're saying is that the actuaries and the management of icare and SIRA failed to correctly assess premiums for the past three years, then maybe they should tell us.

The Hon. DAMIEN TUDEHOPE: SIRA effectively set the premiums, but potentially government overrides a provision or a premium filing by icare. In fact, I'll make this admission here and now: When I was the Minister, I overrode a premium filing by SIRA during COVID because businesses were not operating and I thought it was an impost in relation to it. But I think my question goes to the goal of actually getting to 100 per cent of assets to liabilities. In the case of the NI, it is premiums collected to potential liabilities.

KIM GARLING: It's an interesting question because it raises some other issues—as you've said, business practicality on the day, COVID or some other issue. That is sensible. But there have been studies. It might be appropriate to introduce this. There is an international forum for workers compensation, which I won't try and tell you the name, but it's referred to as the IAIABC. That has been around for 100 years. They produce a wealth of information and data across the States, particularly, and Canada. They've addressed all of these questions in depth over many, many years and they produce an enormous amount of paper.

Leaving that to one side, isn't the question rather what is reasonable to get us back to a reasonable funding stage, given that we have no shareholders and we have no underwriters? Unlike an insurance company, which has to do the accounts on 30 June and then account to the underwriters for their share of profit, account for the dividends to the shareholders and all of that, we don't do any of that. The workers compensation insurance fund is just a continuing lot of money. It may be wise—it's a philosophical issue. Do you want more money? Should you go up to 110 per cent so that you know your future costs are all going to be maintained, or do you go to 90 per cent knowing that probably that'll be enough? I don't think it's an easy question to answer.

The Hon. DAMIEN TUDEHOPE: In the previous inquiry you made the observation that the legislation is quite clear that an injured worker with any work capacity is obliged to return to work or not get compensation. Then you went on to observe:

> We've dropped that practice or procedure, in my humble opinion, which would address a lot of the comments that have been made.

Do you want to elaborate on that?

KIM GARLING: Yes. The 2012 reforms were landmark reforms. They might not have been popular in some areas, but the landmark part of those reforms was to change everything from "fitness to work" to "capacity for work". Now, they may seem cute little terms, but they're very important, because what happened was the bricklayer whose back went at 55, not unreasonably, was able to get permanent pension because he was ruled to be unfit for work as a bricklayer. We had in 2012—I think the figures are right—some 60,000 workers on pensions. They were reassessed or liable to be reassessed and, remarkably, most of them went and found something else to do. So the idea was not what you cannot do; it was what you can do.

I confess—and some people might remember it—making a statement somewhere that really meant if you weren't in a coma, you had capacity to work. Now we've dropped that. We just don't seem to fuss about that anymore. The concept was that you would have a work capacity decision every 28 days. That would enable a claims manager to look at what's happening and work out why you're not back at work, because you have to go back to the doctor and get another certificate for the next 28 days. Those work capacity decisions are crucial. The WorkCover authority decided they weren't going to do that. They did very few work capacity decisions and it slowly dissipated. So there are not the number of work capacity decisions you would expect. If there are 70,000 new claims, you would expect at least 70,000 new work capacity decisions. I think you'll find that it will be minimal because the insurers don't believe in doing that, and that is a very important check and balance as to how the injured worker is progressing.

The Hon. DAMIEN TUDEHOPE: Taking that further in relation to psychological injuries and the work capacity tests you would make in relation to that, generally I think it is accepted that the return to work for psychological injury is almost like part of the recovery process from that psychological injury. I wonder whether you see anything in this piece of amending legislation which embraces that principle of return to work to positively encourage recovery?

KIM GARLING: Without the detail, if I can reflect on the statements that were made on behalf of the Government, I thought they were pretty blunt in saying that they didn't want to have any psychological claim. They were more interested in prevention than compensation. They were relaxed about the fact that someone would not get compensated, and therefore return to work really wasn't a factor in that decision. If you can't get compensated because your injury is not a compensable injury, then return to work is irrelevant. Again, going back to 2012, another fundamental principle there was return to health. I've always personally struggled with the return to work concept because the first thing you have to do is get the injured worker back to health. When you get back to health, then the next step is return to work.

Again, referring back to the IAIABC experience, one of the provinces in Canada looked at this and went, "Look, we're not interested in how the injury occurred. Someone puts in a claim; our aim is to get them back to health and work." If they employed 200 extra workers in their comparative icare system, they said they are only interested in getting those 200 or 300 back to work. They're not interested in the claim, in the injury or in the health. They were just, "Here you go. Here's X. You've got to get him back to work." It cut the rate of not getting back to work significantly, by 30 or 40 per cent within a year, because they were concentrating on nothing else.

In our system, to be fair to the claims manager, you often have someone that's quite young, who has come out of university and is in this area for the first time. They're worrying about the claim. Is it technically right? Is it health? What about this? There's a lot of talk about whether you should have this operation or that operation. They have no concept of getting people back to work. It's not their focus. If I could make just one suggestion, it would be to concentrate on return to work as a function. So, "Yes, you're better. You can go back to work now. We are going to find you work," rather than leaving it to a claims manager who's worrying about everything else and who hasn't any skill in returning to work.

The Hon. DAMIEN TUDEHOPE: You probably haven't had an opportunity of reviewing this, but there is a document from April this year where the Government has adopted a New South Wales Government return to work strategy.

KIM GARLING: Yes.

The Hon. DAMIEN TUDEHOPE: Wouldn't you suggest if, in fact, it is embraced, that strategy, according to the evidence you've just given, would be the best tool for getting people back to work and reducing the cost to the scheme?

KIM GARLING: Absolutely. But bear in mind that also, under the employment rules that operate in the public sector, if I advertise in my agency, anyone can apply for that job. I had a character, whom I complimented, who was from the ferry. He used to say, "Mind the gap." He came in and wanted a management role at WIRO. He was entitled to, and I thought it was a terrific step by him. So that already exists: the opportunity to move between agencies. It's only a matter of implementing a program to make sure that happens. I don't understand why it isn't embraced.

The CHAIR: When we were talking before about the Nominal Insurer, we were talking about the funding ratio. Can you explain to us what the difference is between the funding ratio and the insurance ratio, what that means and why we have two different—I've got those right, haven't I? It's funding and insurance ratio? I keep getting the names mixed up.

KIM GARLING: There are all sorts of mathematical assessments for different purposes, and I don't think I can easily explain the difference. It comes back to this is a compensation scheme; it is not an insurance scheme. It is not a fund that has to generate profit, nor is it a fund that has to pay anyone else. There's no underwriting, there are no shareholder dividends and there's no money going into the government. It's a separate, independent fund. It's managed by icare at the moment, but it's also held by icare on trust. So, to the extent that there's concern about the funding ratios of any part of it, then maybe one answer is to separate the trustee role from the management role. That would enable a further overview of the performance. I'm not suggesting that as a serious answer, but it's something to contemplate.

The CHAIR: So, if it's a compensation fund, then it's a bit more like a bank account. If employers are putting in money, there's an estimate as to how much the fund will pay out over time. And, because you don't want to go to employers in one particular year and say, "Actually, things have been a lot worse than we anticipated, so this year you're going to have to pay 50 per cent more," what we do instead is try to spread that input out from employers over time. So, when the Government's saying, "Without reform, we need 8 per cent, then 12 per cent, then 12 per cent on top of our premiums for the next three years," how are they deciding that? Why is there not a suggestion, for instance, that we'll increase it by 2 per cent a year over the next ten years—or over the next 20 years? Why is it that we're saying it has to be eight, 12 and 12 within three years and then we're back to 100 per cent—and that, apparently, that's a desirable place to be? Who makes those decisions and on what basis?

KIM GARLING: I can't answer that except to point to the regulator and to the actuaries, who are the experts in that field. But the question, really, that underlies what you're asking is this: that history is important and it often gets forgotten. The reason we have a compensation fund is because, at the time in the 1920s, it was going to be impossible for an employer to get liability coverage for the injuries caused to workers for which they were liable. The social contract that was done—that really arose from the 1880s in Germany—was, "We will relieve you, the employer, of any liability, for any money and for any reason, to an injured worker. Therefore, quid pro quo, we will set up a compensation fund and you will make annual contributions to that fund to ensure that the injured workers are paid, and therefore you'll continue to be relieved of liability for injuries." And that's the situation we have now.

The CHAIR: So we've replaced common law liability—

KIM GARLING: With a compensation fund.

The CHAIR: —with a compensation fund. For example, an article came out last night saying, "The Government's revealed that the Nominal Insurer has gone from a $4 billion to a $14 billion deficit." I think it

originally said "debt" but now it says "deficit". That implies that, somehow, the fund owes somebody something or that it's in some sort of dire trouble. What do you make of that? How would you reframe that into a slightly less catastrophic framing?

KIM GARLING: It puzzles me as to how that can arise in what was effectively 90 days. But putting that to one side, the answer is that the premiums paid in previous years were underpaid, so the employers had the benefit of less contributions in previous years and now face more contributions, depending upon your philosophy of how funded you want it to be. It's as simple as that. As to the size of the deficit, it's a mathematical calculation, and if you go back to 2011—and I'm sure some of the members here will recall—the Government of the day after the election suggested that the deficit was over $4 billion and it was a disaster. The disaster didn't happen even though there were reforms to cut the potential deficit—same argument.

You can have a deficit however you want to calculate it, and I'm not being cute like that. Statistics can always be managed. But if that's the case, then the employers have to kick in the extra. The answer I have is you're not being sued personally, so it's a balance for you. It's a lot less than the premium you'd pay for liability insurance. There is starting in the insurance game to be claims lodged for bullying that would normally be workers compensation claims. They're precautionary. They're notified on the basis of "Look, we don't know what's going to happen, but here's the claim made for bullying by Mr X and he's insured by us for liability purposes." That's just shifting from one pocket to another if in fact we exclude mental health injuries altogether. I'm not saying that's wildfire but, once it starts, it will gather momentum.

The CHAIR: Does the possibility then still exist outside of this scheme that if you're an injured worker who is not covered because of reforms excluding you but you've been injured at work and you can show that in a court of law, you could still take an employer to court for compensation? Or has that been excluded?

KIM GARLING: One of the interesting things about looking at workers compensation and the reforms is the unintended consequences and then what actually happens. If you go back to 2012 again, there was a dispute about a particular section. It ended up in the High Court. The High Court made a ruling which was not consistent with what was believed to be the case and was inconsistent with what the Government thought when they brought in the legislation, and that affected every worker. Those that followed course A got benefits; those that followed course B didn't, and it was all interpretation. The question you're asking is that it will depend upon the facts and what actions are taken. Yes, one option is you don't have an injury, therefore you're not excluded from suing your employer; therefore, you have the right to sue your employer at common law.

The CHAIR: To which they won't be insured against necessarily.

KIM GARLING: One of the questions then arises is if under the employment practices policy it excludes bodily or mental injury. It's a very complex issue. I'm not trying to give you no answer, but my point being that we can't be too definite about what the various sections will do, because there'll be a different interpretation.

The Hon. MARK LATHAM: Thanks, Mr Garling, for your evidence and, in particular, mention of international experience. Is it true to say that in economies comparable to ours, other nations are grappling with this issue of rising workers comp costs with psychological injuries?

KIM GARLING: Taking the 50 States of America as a starting point, they're all different, and they're extraordinarily different. In some states they don't compensate psychological injuries at all. In other states they do, but to a different extent. It's almost impossible to give you a complete answer on that, but this may assist you. There was a study done by the London School of Economics about five years ago where they looked at whether we need workers compensation. They were doing it specifically in relation to Austria, where they said that Austria's got a very healthy medicare system and it's got a very healthy social security system, so why do we need workers compensation?

The end outcome of that was very academic and it didn't flow through because it was probably going to be unpopular and all of that. One of the really well-run compensation schemes is Russia. We had exposure, by going to those meetings, to Asia, to Europe, to Russia—to a whole range of international information. The 50 States' information is overwhelming because they're all different. They're all very conscious of all of those things. The icare experiment back in 2015 was regarded very closely by the members of the IABC to see whether it was successful.

The Hon. MARK LATHAM: For a jurisdiction that's introduced an attempt to contain psychological injury costs, who'd be regarded as best practice? What was the level of their success?

KIM GARLING: I couldn't answer that, because I don't know that I specifically went through every 50 States.

The Hon. MARK LATHAM: No, outside of the United States. You mentioned Austria and Russia.

KIM GARLING: I think Austria was one. I think that a number of the other jurisdictions were looking at it. Certainly, a lot of the jurisdictions don't compensate for psychological injuries.

The Hon. MARK LATHAM: Comparing us to Victoria, what's been the Victorian experience in reducing the number of new claims with their definitional exclusionary approach?

KIM GARLING: I have difficulty in comparing States and their performances because they're different systems. Victoria's system is not the same as ours—it differs substantially—so it's not comparing apples with apples. It's comparing two different aspects. What you're talking about, which is valid, is what difference does the definition make, and I can't personally answer that.

The Hon. MARK LATHAM: If we're an apple, who else is an apple?

KIM GARLING: The Nominal Insurer is the biggest compensation scheme in Australia by a long way, and one of the biggest in the world. So there are not too many comparable apples, for a number of reasons. For example, in the State of Texas, they have 250 insurers insuring workers compensation, so if you like competition, you can go to any insurer you like.

The Hon. MARK LATHAM: A bit more than our oligopoly.

KIM GARLING: Slightly.

The Hon. MARK LATHAM: Earlier on—sage words—you said, "I don't see how you can predict the future until you see the impact of these reforms." Is there any actuarial basis on which you can say that these pretty soft definitions are going to reduce new claims by 33 per cent?

KIM GARLING: They must. These reforms, if they are in the current method, are going to have a significant impact on injured workers being compensated because you can't get through the gate to get to the compensation level. If you're going to be forced to go to another jurisdiction to get a ruling on whether you're actually injured, at your own expense, then I have no doubt that it will reduce the numbers claiming.

The Hon. MARK LATHAM: I think that gateway's optional now, isn't it? It's not an enforced—

KIM GARLING: We haven't finalised the legislation yet. I expect—the other question of the threshold—it will make a difference but we're not talking about thousands of people in that gap between 20 and 30, or 21 and 31. It'll have a huge impact on them personally, and it may well save some money, but I don't think you can talk about that in the broader scheme. There's one other thing I noticed no-one's mentioned, and that is another puzzle. Whole person impairment has nothing to do with capacity for work. There are plenty of people who can work who have very significant whole person impairment ratings. There was an example given at a conference in Melbourne of a tetraplegic who was working. They rigged up some computer stuff so that she could move her head and make phone calls. She wasn't being paid necessarily, but she was working.

The Hon. MARK LATHAM: What's tetraplegic? Like Stephen Hawking?

KIM GARLING: You can move your head.

The Hon. MARK LATHAM: That's it?

KIM GARLING: That's it. When you talk about capacity for work, that has nothing to do with impairment. We have plenty of impaired people with high ratings of impairment who could work but choose not to. That is a bigger issue that overrides these reforms. No-one wants to really deal with that, because it's convenient to say, "You're 23 per cent; therefore, you don't have to work. You don't have the capacity." The further problem that arises from that in claims management is that if you are 22 per cent and deemed to have no capacity, no-one follows you up. They don't ring you up and say, "Are you working? Can you work? Do you want to work?" You're just crossed off and it's not followed up at all. There's a terrific example of one particular character, if I can use that word, who taunts icare in his Facebook posts because he's fixed for life. He tells you. He's having a great time.

The Hon. BOB NANVA: Thank you for your evidence, Mr Garling. I'm going to go to actual numbers, not projected figures, which are inherently unreliable because they're based on models and assumptions that may not be accurate. Since the 2012 reforms, we have received evidence that the funding ratio—and I'll just focus on the Nominal Insurer—has dropped to 82 per cent in 2025 from 130 per cent in 2015. The net asset position of the Nominal Insurer was $4.4 billion in 2015. It's now negative $4.9 billion in 2025. We've heard evidence that the number and cost of psychological claims has doubled or trebled over a not too dissimilar period of time. Firstly, do you have reasons to dispute those numbers, as opposed to projections?

KIM GARLING: Yes, I do.

The Hon. BOB NANVA: Why is that?

KIM GARLING: It's very simple. It's mathematics. You're talking about net numbers. If you look at the figures in 2024, there were 5,411 psychological claims lodged with icare. We're not told how many were successful. We're only told about the number of claims lodged. Secondly, that is 7 per cent of the total claims lodged in that year, so 93 per cent of the claims are non-mental-health claims; they're physical. If you go to the year before, it was 5 per cent of total claims. If you go back to 2014 or 2015, it was 6 per cent, so it dropped from 6 per cent to 5 per cent to 5 per cent to 7 per cent. There's just no basis for those statements. What you're talking about—

The Hon. BOB NANVA: The actual numbers with respect to the net asset position and the funding ratio.

KIM GARLING: I'll move on to that. You're talking, firstly, about the number of claims. They're factual. They're in the icare annual report—the numbers of claims and the percentage. Let's not get carried away. Secondly, you say that the assets are minus, whereas they were $4 billion in positive in 2015. In 2015 there was a period of enormous change. A lot was put on hold because there was a transfer between the WorkCover Authority and icare. One of the problems in that year was that the WorkCover Authority was not prepared to hand over all the information to icare, until the Minister stepped in and said, "You will provide the information." There were quite a lot of background issues there. When you talk about it being $4 billion in deficit, it's not $4 billion in deficit. There's no suggestion of it being $4 billion in deficit as at 30 June 2024. If you project ahead and say, "If all of this happens, you will be $4 billion in deficit," I accept that.

The Hon. BOB NANVA: In your view, what would be the best indication of the financial health and sustainability of the scheme?

KIM GARLING: I'm not an actuary.

The Hon. BOB NANVA: It's not as crude as assets over liabilities.

KIM GARLING: I'm not an accountant, but the question is what's the ratio between premiums and the fund's potential liabilities. It goes back to what I said earlier: The premiums have been underfunded for three or four years. If this is the case, when you look back, you go, "We should have had more. To get to the 82 per cent, premiums should have been higher three years ago, then we'd be at 100 per cent." A decision was made to make the premiums less than they should have been. We're now paying for that.

The Hon. BOB NANVA: Can I take you up on that point?

KIM GARLING: Yes.

The Hon. BOB NANVA: During your time as the IRO from 2012 to 2019, did you see aspects of a deterioration in the financial sustainability of the scheme? Did you make recommendations with respect to that? If you did, what was the result of that? Was underpayment of premium increases one of those concerns?

KIM GARLING: Not for the WIRO, but I can tell you an incident. I had the external actuary come and see me early on—probably in 2013—and we had a discussion about the WIRO statistics, which are extensive and really haven't played a role in this inquiry. They're of much more assistance than any other statistics. We had a discussion; he was talking about his recommendations. He said, "The good thing is, hearing loss claims are going to almost disappear. There's going to come a rapid decline in hearing loss claims." We said, "That's interesting because our figures show a rapid increase in hearing loss claims." It's a question of what figures you use and how you massage them into the system. You should be able to find significant data on psychological claims in the IRO figures because you don't get a psychological claim, going beyond the weeklies, unless the person is legally funded. That will give you a real indication of how the system is operating. They should also be able to tell you the outcomes, because the outcomes are all recorded.

The Hon. BOB NANVA: The concerns that I have—and I'm not an actuary or a financial expert, but I'll take the advice that's provided to me by regulators and Treasury—are that the funding ratio provides an indication of the financial health and sustainability of the scheme long-term, that significantly increasing premiums in the context of the Nominal Insurer and continually injecting funds with respect to the TMF is simply not sustainable, and that these schemes ultimately have to become self-sustaining to remain viable. Is that a view that you share or don't share?

KIM GARLING: I think it's more a view to comment on. Would the employers prefer to move back to the common law system where they obtain their own insurance rather than participate in the compensation fund? I can guarantee you to 100 per cent that they would not want that. The sustainability of the scheme is relative to what your alternative is. Yes, it may be expensive and premiums might have to go up because they've been underfunded, but would you rather go to a common law system where you obtain your own insurance in the

current market? It might not be very pleasant to learn what the insurance premiums would be. It's a comparative. Should we be somewhere around 90 per cent or whatever the figure is? Obviously. But it's not a matter of sustainability. As to the second part of the TMF comment—

The Hon. BOB NANVA: Mr Garling, sorry, but for that hold true, wouldn't it have to be the case then that one of the central objects of a compensation fund like this, as you put it, is to provide confidence to employers and confidence to workers that short-term and long-term injuries can be fully funded under a scheme like this? If you can't provide that confidence, then your proposition wouldn't hold true, would it?

KIM GARLING: I don't think there's anything relevant to confidence. The fact is you have two choices as an employer—

The Hon. BOB NANVA: Can you take confidence if assets don't exceed liabilities, if your funding ratio was 82¢ in the dollar?

KIM GARLING: You simply need to increase premiums. It's been in deficit for most of the time it's been in existence. I don't recall very often when the fund has been in surplus, and I would hope it's never in surplus, because it's a non-profit fund, so you would always operate below the level of 100 per cent. I would have thought—logic tells you—if 82 is too low, put some more money in. It's certainly cheaper than getting a common law policy with Lloyd's, if you're an employer. So you're getting a good deal. The premiums—$1,500 a year, it's not going to break the bank on an average premium per worker. If you go up to $3,000, it may have some impact somewhere. That's the average. Now obviously there are people who pay more and people who pay less. That's the best answer I can give you. I don't agree with these comments about sustainability. I think they're misplaced completely. The answer is, "Hello"—if that is the financial position—"your premiums have to go up." No-one likes to do that.

The Hon. BOB NANVA: Did you make that recommendation in your prior role?

KIM GARLING: I never had the opportunity to make that recommendation, because it wasn't part of my function at that stage, as I recall. And, as I recall, it was a pretty stable period, subject to the fund being up and down over that period for different reasons. Unfortunately, it's a political issue as to what premiums should be, so it really didn't matter what I thought.

The Hon. BOB NANVA: I'm interested in your thoughts on an observation in the McDougall report regarding threats to the scheme. Apologies, I've lost my notes, but it referred to the Cumpston Sarjeant review regarding threats ranging from premiums to the underwriting position of current and future claims, to the returns on investment. Are any of those relevant, from your perspective, to the sustainability of the fund?

KIM GARLING: I can only come back to that it's not the sustainability of the fund. The fund will be sustainable. It's there for the next 40 years because contributions have been put in to cover current injured workers, some of whom are in their twenties. They won't retire, or they may go through retirement age, so it has to be there for 50 years. The question for the employers, not the Government, is how much do we need to pay to keep it sustainable in the future? Otherwise, if it's not sustainable, we're in difficulty. It really doesn't matter how much you increase the premium, in one argument, because it will be less than what the employer would have to pay to get alternative coverage. It's a very simple exercise. It's more a question of whether the Government wants to put that in play. At the moment they would rather cut the benefits, which is one way of reducing the contributions made by employers, and a valid way, or increasing premiums. That's a political decision.

The Hon. BOB NANVA: Would your proposition be to support premium increases of 32 per cent over three years?

KIM GARLING: Well, 32 per cent over three years is 8 or 9 per cent a year. I don't think that's significant. Your energy prices are going up. Every other price is going up significantly. I don't see why the insurance premium's not going up. Medical costs have gone up. Treatment costs have gone up. We can't avoid increasing costs. I don't think any employer is going to baulk at an 8 per cent increase, even for the next four years, because it's cheaper than the alternative. Ask them what's the alternative. How much are you going to pay Lloyd's for your policy to cover injured workers? You'll find it'll be a multiple in the zeros.

The CHAIR: I think we're just about out of time, unless there's a final question.

The Hon. MARK LATHAM: But that's your forecast, an 8 per cent per annum increase?

KIM GARLING: That's what we're told. Can I make one just very quick—I know we're over time.

The CHAIR: Please.

KIM GARLING: Can I make a plea? Can you look carefully at the IRO funding of workers' legal costs? There is an interpretation—and I use that deliberately—that a result of the reform proposal will be that workers will not be funded for their legal costs. You've got to understand, that has to be compared to the employer, who is totally funded. I come back to unintended consequence. I'm not sure that was an intended consequence, but it sits there—

The Hon. DAMIEN TUDEHOPE: Of this bill, the amending bill?

KIM GARLING: Of this bill, yes, It is down the end, about 45, 46.

The Hon. DAMIEN TUDEHOPE: Okay, I'll have a look.

KIM GARLING: It's there, and it's a question of interpretation. Sorry, Chair.

The CHAIR: No, thank you. Again, thank you for making yourself available to us at such short notice. Your evidence has been very, very useful.

(The witness withdrew.)

(Short adjournment)

Associate Professor MICHAEL ROBERTSON, Consultant Occupational and Forensic Psychiatrist, affirmed and examined

Dr MICHAEL EPSTEIN, Consultant Psychiatrist, before the Committee via videoconference, sworn and examined

The CHAIR: I now welcome our next witnesses. Thank you to both of you for making yourselves available at such short notice. I'm sure your evidence will be very useful for the Committee. Did either of you want to make a short opening statement?

MICHAEL ROBERTSON: Distinguished members, thank you for the opportunity to speak to the Committee. I'm a consultant psychiatrist working primarily in occupational mental health and civil forensic assessment. I have concurrent roles as an associate professor at the School of Public Health at the University of Sydney and I am the chief psychiatrist for the MedHealth group. I seek to emphasise that the views I express in my advice to this Committee are my own and do not reflect the views or policies of the university or MedHealth.

I've worked in psychiatry for more than 30 years. My areas of expertise are in psychological trauma, ethics in psychiatry, the philosophy of medicine and occupational mental health. Until recently, I provided instruction and training in the assessment of whole person permanent impairment on behalf of the then State Insurance Regulatory Authority. This, in combination with my extensive experience in conducting assessments of permanent impairment related to psychological injury in multiple jurisdictions over decades of practice, qualifies me to provide evidence to this Committee on the specific issue of assessment of injured workers.

There are two substantive issues I see as pertinent to this inquiry. The first is the validity of the current process of assessment of permanent impairment in injured workers. The second is what I consider to be the main sleeper issue in this debate: How to best assist injured workers at the milder end of the severity spectrum of work-related psychological injury? As this Committee would have heard, for the last quarter-century the assessment of permanent impairment emerging from psychological injury has been conducted using the Psychiatric Impairment Rating Scale, or PIRS for brevity. I think it reasonable to state that this instrument is deeply flawed and much unloved within the medico-legal profession. The main concern held within my professional group is that the PIRS measures disability as against impairment. This is akin to diagnosing a fractured femur by asking a patient to run 100 metres.

Compared to the AMA fourth edition guides, the PIRS routinely under-scores psychosocial disability at the milder end of the severity spectrum. This appears to indicate that a PIRS score of 15, the current threshold, is much higher when measured by other methods. An injured worker assessed at 15 per cent WPI using the PIRS has an array of problems, but well conducted intervention can—and does—yield a greater measure of success in terms of clinical improvement and return to economic participation. In contrast, an injured worker assessed at 22 per cent WPI is a situation of a severe and debilitating psychiatric disorder. This is typically seen in first responders. The proposed threshold of 31 per cent per the PIRS depicts an injured worker that I have seldom encountered in 30 years of psychiatric practice.

This brings me to my second point: What is the optimal approach to the care of an injured worker with a mild to moderate level of psychological injury? Occupational psychiatry focuses on the diagnostic assessment of an injured worker and providing advice about treatment and, ultimately, redeployment to the workforce. This is one of several components of sound occupational mental health. Return to work outcomes are greatest in the first four to six weeks after injury. By six months, successful return to work is minimal. This indicates that there exists a window of opportunity in the six- to 12-week time frame to affect successful intervention for mild to moderate psychological injury. For me, the most gratifying scenario as an occupational psychiatrist is to avoid unnecessary medicalisation and the deleterious effects of prolonged litigation on a worker's condition. Effective early intervention in this setting in New South Wales should be routine, and addressing this is a golden opportunity for meaningful reform. With that, I yield to the Committee.

MICHAEL EPSTEIN: Distinguished members, it's a great privilege for me to be able to talk to you. I might say that I agree entirely with what Professor Robertson had said. I thought I'd give you some idea of my background so you understand where I'm coming from. I've been involved in psychiatry for a little more than Professor Robertson, and I also have a particular interest in stress-related disorders. I've worked with children, adolescents and adults. I've worked in prisons. I've worked in hospitals. I started Melbourne's first crisis service. For some years I've been extensively doing medico-legal assessments of people who've had workers compensation claims and have been involved in transport accidents and also personal injuries.

It was in that context that in 1985 a new WorkCover Act was introduced in Victoria, and this brought into being the use of the American Medical Association guides. This was then the second edition. The second edition,

chapter 12, had significant problems—this is the one that deals with mental and behavioural disorders. It had eight measures to be looked at, two of which were to do with disability. One of those was "potential" and the other was the term "ability"—in other words, disability. There was also no method of combining the impairment. As a result, myself and two others got together and developed something we then called the user's manual. This had the immediate effect of bringing different assessors much closer in their assessments of the same individual.

Subsequently, AMA4 was developed and published in 1993 and came into use in Victoria in the mid-1990s. We looked at chapter 14 of this and we thought—as Professor Robertson had said—that this was an instrument that mainly measured disability. There are four matters there: activities of daily living, social functioning, concentration and adaptation. Only one of those, concentration, is to do with mental status—is to do with impairment. We decided not to try and make it—there were two other problems with it. One is that it did not provide any percentages and the reason for not doing so was laughable. The reason for not doing so is it might cause arguments in jurisdictional settings. For that reason they didn't do so. That meant that everybody who used AMA4 and, then following, AMA5 had to develop their own means of making this workable. There was also no method of combining the scores.

For these reasons, when New South Wales decided to move to using AMA5, I was asked to come to New South Wales and talk to a reference group that I suggested be established about the problems with AMA4 and AMA5, and suggest some possible solutions. Basically I was suggesting that they might want to continue using what we were doing, which seemed to be quite effective. Anyway, they decided to go ahead with what they wanted to do and so they put percentages on the various levels. They added descriptors and they added a method of combining. This has had some unfortunate effects. They've had a combining table and the odd thing about it is that, for example, class 2, which ranges from 4 per cent to 10 per cent—if somebody scores in all six areas in class 2, the maximum score they can get is 7 per cent, which seems to me a bit odd. The PIRS was then developed by these particular psychiatrists who, I might say, had never done an impairment assessment before, but so it goes.

This instrument has now been used in Queensland, Tasmania and Western Australia and for workers compensation in the Northern Territory. In the meantime, in Victoria we refined the impairment guide and now we have something called the GEPIC, the Guide to the Evaluation of Psychiatric Impairment for Clinicians. In 2013 this was adopted in South Australia. Over the years I've trained at least 400 psychiatrists in the use of the GEPIC, both in Victoria and in South Australia. Oddly enough, I also at one time was asked to run a training program for the PIRS, which I did. It's interesting when one looks at the difference between the measures used in New South Wales. Class 1 in New South Wales is 0 to 3 per cent, class 2 is 4 to 10 per cent, class 3 is 11 to 30 per cent and class 4 is 31 to 60 per cent. I make that point because in New Zealand they also use AMA5. They've put in different percentages so that class 1 in New Zealand is 0 to 9 per cent, class 2 is 10 to 35 per cent and class 3 is 36 to 60 per cent. You can see that every jurisdiction has modified AMA4 and AMA5 to try and make them workable internally. In New Zealand they haven't even put together a method of combining the scores, but the PIRS has certainly done that.

Regarding the point that Professor Robertson made about a person being in class 4, or 31 to 60 per cent, which is what the Government is suggesting as the minimum threshold, I might say that, in my experience, you have to bear in mind that we're not looking at whole person impairment. What we're looking at is impairment that's not secondary to physical injury. Somebody who's injured at work and may have, for example, a degloving injury of their arm will possibly have post-traumatic stress disorder and probably also have a chronic adjustment disorder with depressed mood. The impairment from the chronic adjustment disorder with depressed mood does not count. The only impairment that counts is from the post-traumatic stress disorder. In my experience, and certainly it sounds like in the experience of Professor Robertson, for somebody with a primary psychiatric impairment to reach the level of 31 per cent—I can't remember seeing somebody in that situation. It just doesn't happen. I think it's going to be extremely few people that ever get to that threshold. That's all I have to say.

The Hon. DAMIEN TUDEHOPE: Professor Robertson, I think the starting position you adopt is that a proper approach to return to work scenarios is early intervention rather than cutting off benefits.

MICHAEL ROBERTSON: Yes.

The Hon. DAMIEN TUDEHOPE: And the early intervention which you embrace is in that up to six-week opportunity, where you would see a worker getting in front of a relevant psychological assessment team with a view to assessing them and potentially mapping out an opportunity to return to work.

MICHAEL ROBERTSON: Yes. This is an approach that dates back to the First World War and shell shock: proximity, immediacy and expectancy. In the circumstances of the shell-shocked soldier, it's treatment delivered at the front straightaway with the expectation they'll go back on the line. Fortunately, we don't do that to our soldiers anymore. However, to apply it to the approach that I would advocate for for early intervention is to get the problem assessed quickly, get whatever intervention is appropriate to the situation and

implement it straightaway, independent of compensation and litigation and the like, with the expectation that this process will return the injured worker either to their pre-injury duties or to appropriately modified duties. People will go into that process with the expectation that there will be improvement in their mental state, with the ultimate outcome being return to some form of employment or economic participation.

The Hon. DAMIEN TUDEHOPE: Does New South Wales currently have the capacity to deliver that early intervention model?

MICHAEL ROBERTSON: It's sporadic. It's essentially clinicians like myself or others working in a particular setting. But occupational mental health or occupational psychiatry is an idea that hasn't quite found its expression. One of the great opportunities about reform would be to establish a process at scale within the scheme to have early intervention. I've had attempts at this with various employers. I won't disclose them due to commercial in confidence, but I've seen this attempted in various settings and the initial outcome is good. If you can essentially remove the litigation and compensation and the so-called nocebo effect, which is the opposite of the placebo effect, you'll get a better outcome, because it's not about a piece of the pie or getting square with the employer or any of these other kinds of peripheral issues. It's about what's going on with this person, how do we help them and how do we get them back on their feet and back into the workforce or whatever participation is needed?

The Hon. DAMIEN TUDEHOPE: I think you identify that cohort as being up to 15 per cent using the PIRS model of whole person impairment.

MICHAEL ROBERTSON: I've tolerated the PIRS for 25 years; what's another few minutes?

The Hon. DAMIEN TUDEHOPE: It might be a bit longer.

MICHAEL ROBERTSON: The point I sought to make in the opening statement was that this isn't a uniform cohort. There is a group of very, very injured workers. Mainly who I see are police officers and first responders of other stripes. You will see them in other aspects of the workforce—disability care workers, for example, and some healthcare workers. That north of 22 per cent category, the rehabilitation prospects are much less. I've had a few successes with some patients who've found work in other fields or in a far diminished role, but that has been three or four years down the track.

The group that are in that 0 per cent to 15 per cent, there is significant salvageability if you can get in early and sort the problem out. If you're talking, for example, about an interpersonal conflict in the workplace or some sort of setback or adversity or affront, if you don't medicalise that—identify what the problem is, have it sorted out by the appropriate HR process or whatever and then essentially solve the problem at source and have the person go back to work with the expectation of a psychologically safe workplace, the outcome is going to be much better.

The tricky issue is you will have people who have vulnerabilities to psychiatric disorder because of genetics or developmental trauma. It is knowing which of those workers are going to be the at-risk mental state where a seemingly benign workplace problem switches on the epigenetics or whatever it is that creates a much more severe problem that is, in a sense, more constitutional. That's really where someone like me, who sees the most severe—5 per cent of the problem—comes in. I would need to be able to pick who is going to get into trouble and why, and how do we mitigate that versus whose problem is best solved by therapeutic common sense, if you will.

The Hon. DAMIEN TUDEHOPE: Potentially one of the overlaps is this work capacity assessment.

MICHAEL ROBERTSON: Yes.

The Hon. DAMIEN TUDEHOPE: Are there models for work capacity that you use?

MICHAEL ROBERTSON: I've developed my own but it suffers the same lack of verification as Dr Epstein says of the PIRS. I do what I call the IKEA test. Basically it's a thought experiment that gives me some qualitative data. A visit to IKEA is a universally unpleasant experience that most people identify with, and essentially getting through the test, being, identifying a piece of furniture, finding it, dealing with a busy shop floor, finding a park—a whole array of interpersonal and cognitive tests to get through this thing—will identify someone where their interpersonal functioning is the main barrier. It might identify people where their emotional regulation is a problem or their cognitive function.

You might have people say, "If you deliver me the thing, I can build it at home," which will tell me that person may have some capacity to work at home, and then I can relate that in the context of that qualitative data so that any reader says, "Oh, yes, I get that." But if you talk about things like vocational assessments, I often struggle to see they're actually talking about the same patient. They're just sort of theoretical constructs of what

this person might be able to do. For example, I saw a man who actually was a civilian, if you will, 40 per cent WPI, former police officer—

The Hon. DAMIEN TUDEHOPE: Forty per cent?

MICHAEL ROBERTSON: Yes, a former police officer who then got into trouble with some morally injurious problems in an Aboriginal health corporation. This man lay in urine-soaked sheets all day and had to be brought food and the like. He was probably the unicorn sort of 31 per cent. I saw a vocational assessment that said he could return to work as a university lecturer. There are very few university colleagues of mine that would probably fulfil that descriptor. Sometimes the process of vocational assessment is done almost de-contextual to the patient, and they'll say, "These might be the ideal outcomes; however, his clinical state is that he's not there yet," and then the whole thing just dies.

The Hon. DAMIEN TUDEHOPE: In the 21 per cent to 31 per cent cohort, using the imperfect PIR scale, what's your assessment of the capacity of that cohort?

MICHAEL ROBERTSON: The north of 22 per cent?

The Hon. DAMIEN TUDEHOPE: The north of 22 per cent.

MICHAEL ROBERTSON: I think the majority would not be capable of more than one or two days per week of sustained economic participation over the long term. There will be those who, through their own efforts or resilience, might find some place at a slightly higher level of participation. But that is a very damaged group, who have often had a very long pathway into their psychological injury, and it's more a challenge of care rather than cure. Where I think the opportunity exists is that group where these are otherwise resilient, well put together people with fairly normative life journeys who encounter some misfortune in the workplace, where inappropriate medicalisation and litigation makes a bad situation much worse. That's where I think—

The Hon. DAMIEN TUDEHOPE: So that's where the savings to this scheme would be if, in fact, you were going to make savings—not in relation to the 21 to 31 per cent WPI, but in the 0 to 20 per cent where there are real expectations, with early interventions and a proper return to work strategy.

MICHAEL ROBERTSON: I don't make comments about savings, Mr Tudehope. I just treat the patient. But you would think that—

The Hon. DAMIEN TUDEHOPE: If they got back to work earlier, you would think that that would intuitively mean that there would be savings in terms of continuing payments.

MICHAEL ROBERTSON: Yes, and I think also less morbidity in someone's life. A minor incident needn't become a major affront in one's life journey.

The Hon. DAMIEN TUDEHOPE: Dr Epstein, in relation to the comparison of the two scales, where does 21 per cent on the PIRS scale fit with the GEPIC scale? Am I pronouncing it correctly?

MICHAEL EPSTEIN: The 21 per cent on the PIRS as opposed to where that would fit on the GEPIC—is that what you're referring to?

The Hon. DAMIEN TUDEHOPE: Yes.

MICHAEL EPSTEIN: You'll notice that that's about mid-range in class 3—between 11 to 30 per cent—and class 3 in the GEPIC is 25 to 50 per cent. We'd probably be looking at something like 35 per cent or thereabouts in the GEPIC—the one we use in Victoria. That would be roughly equivalent. If I could just make this point: The problem we have is that since the GEPIC refers to disability, comparing these two scores is impossible, in a sense, because the GEPIC is focused on a person's mental status.

Let me give you an example of that. One of the items that's looked at in the PIRS is travel. Workability is one of the matters that's looked at. Somebody who's had a post-traumatic stress disorder may not be able to go back to work as an Uber driver, but if they're working from home doing, for example, bookkeeping, it would be no problem for them at all to do that. The person's got the same level of problems from the PTSD that couldn't work in one area but could work perfectly well in another environment. That's the difference between disability and impairment. The classic example, of course, is the person who's lost their little finger. That doesn't matter to a labourer, but it matters to a concert pianist. That's the difference between impairment and disability, and it's very important, I think. That's why the GEPIC is intended to be a measure of impairment rather than a measure of disability, and that's why it's difficult to compare the two.

The Hon. DAMIEN TUDEHOPE: Did you have any role in assisting the Victorian Government with the design of their scheme?

MICHAEL EPSTEIN: Yes, I was one of the three co-authors of the GEPIC.

The Hon. DAMIEN TUDEHOPE: But in terms of the overall scheme, did you have any role to play in that?

MICHAEL EPSTEIN: No.

The Hon. DAMIEN TUDEHOPE: And the actual gateway events which would lead to the relevant event for the purposes of being entitled to compensation?

MICHAEL EPSTEIN: Perhaps it's fair to say I've had some input inasmuch as wearing a different hat. I'm a member of the American Medical Association subcommittee on workers compensation. In that context I have dialogue with people from WorkCover in Victoria and talk about these issues. You raised a point about people who may be mildly impaired and, because of the delays in getting treatment and so forth, it becomes more and more impossible for them to go back to work. We're very much of the view that there should be not only much earlier medical intervention or psychological intervention but also some contact with the employer to assist them in arranging for appropriate pathways for that person to return to work.

I can give you an example. I saw somebody who had a psychotic illness in a factory making various products. He worked in a team. He was hallucinating, delusional and sometimes saying very odd things. The HR person spent a lot of time getting him back to work and did a terrific job in lots of ways, but nobody had ever talked to his team. When he came back, he was still a bit vague, unusual and odd, and they didn't know what to do with him. They didn't know how to deal with him. Because they tended to ignore him and ostracise him, he ceased work soon afterwards, whereas if they were brought into the whole process, it's likely he would've stayed there.

The Hon. DAMIEN TUDEHOPE: If, in fact, there was a comparison between the scale adopted in, say, South Australia and Victoria for the purpose of assessing compensatable claims, would you say it would be a mistake to compare the PIRS with the GEPIC?

MICHAEL EPSTEIN: Yes, I would.

The CHAIR: I might take off from that point. Treasury documents that were provided to us last week and that have now been published online acknowledge that there are differences between the scales used—the GEPIC and the PIRS. The GEPIC is used in South Australia and Victoria, and New South Wales uses the PIRS. From the evidence you just gave, Dr Epstein, you say that a GEPIC of 25 to 50 per cent would be a class 3.

MICHAEL EPSTEIN: That's correct.

The CHAIR: And you're saying that's roughly equivalent, with all of the riders that you've given, to that 21 to30 per cent in New South Wales. Was that the evidence that you were giving? We're looking at potentially almost double—

MICHAEL EPSTEIN: Yes. What we're looking at with class 3, in a sense, is that moderate level of impairment. Class 3 in the PIRS is also regarded as a moderate level of impairment, but the percentages are very different. Class 3 is 25 to 50 per cent in the GEPIC. In the PIRS, it's 11 to 30 per cent. When it was first developed, the impression I got was that people were squeezed below the threshold of which they could make a claim.

The CHAIR: The 31 per cent, then, in New South Wales, using the PIRS, would take it up to a class 4. A class 4 under the GEPIC would be 50 per cent-plus.

MICHAEL EPSTEIN: It's 55 per cent.

The CHAIR: That is a significant difference. When we've had members of the Government saying here that this 31 per cent threshold for WPI is effectively the same as in South Australia, that's just not correct.

MICHAEL EPSTEIN: Absolutely, it's not correct.

The CHAIR: Would it be fair to say that would make us the harshest of the States when it comes to the threshold at which people would be cut off?

MICHAEL EPSTEIN: Yes. About three or four years ago, I looked at all the jurisdictions in Australia and New Zealand to see how they compared physical injury and mental and behavioural disorders. Every jurisdiction discriminated against people with mental and behavioural disorders by having much higher thresholds. South Australia would top the list at 30 per cent, but now New South Wales is going to take the crown.

The CHAIR: By being almost double if we allow those reforms to go through. That's incredibly useful. The other part of the reforms, particularly in South Australia—and I'd be interested to know from both of you what your experience might be with what's occurred in Victoria as well—is that I understood the reforms were

undertaken around claims management. As we know, claims management and a person's experience within the workers compensation system can have quite an impact on their ability to get better and return to work. Have you seen any reforms in the other States that have improved claims management? Has that had any impact on managing claims of a psychological injury?

MICHAEL EPSTEIN: I've been involved in this whole system since at least 1985. That's quite some time. During this time, periodically measures are brought in to try to improve the return to work rate, because it's not great. But for many years the percentage of mental health claims was only 6 per cent of all claims. In the last five or six years it's crept up to about 11 per cent to 15 per cent of all claims, for reasons that are unclear. But I might also add one interesting bit of statistic, which is that 15 years ago the number of police officers making a WorkCover claim dropped by 50 per cent in one year. The reason was because the superannuation scheme became much more liberal.

People were exiting the police force through the workers compensation scheme, but when the superannuation scheme became better, then they exited the work through the superannuation scheme. One of the issues, of course, that we've noticed more recently is that there have been many more claims with regard to bullying. There have been many more claims that are with regard to people feeling that they haven't been dealt with properly in terms of promotions or bonuses and those sorts of issues—although, in fact, there's a part of the legislation that says you can't make a claim on the basis of that.

The CHAIR: Mr Robertson?

MICHAEL ROBERTSON: I have nothing to add.

The CHAIR: Just in terms of this concept about the difference between whole person impairment and capacity to work and the conversation before about how it's contextual, are you able to give us any additional insight into what we could do in New South Wales to improve the ability of people to be contextually put back into a place of work that is more appropriate for their particular level of impairment? I'm not sure that question makes much sense, but please go ahead.

MICHAEL EPSTEIN: There are two aspects to that, in my view. One is that, with small employers, they often don't have the capacity to provide modified duties and reduced hours because it's not possible for them to do that unless they get some support elsewhere. With larger employers, they often have that capacity. But it's often not done, if you like, on the shop floor; it's done through the HR department, and the HR department's often working for the employer, not working for the employee. In my view, that causes problems, because people feel like they're being badgered to come back to work when they're not ready. They tend to come into an oppositional situation where, if they are in a situation where they are told, "You can only come back to work if you've got a letter from your medical practitioner saying you're fit to return to pre-injury duties," they sometimes get that because they're desperate to get back to work, but they're not fit, and it doesn't work.

The CHAIR: Anecdotally, I've had people contact my office saying that they're stuck in a cycle where they're unable to provide a certificate of capacity—and I get this terminology wrong, so correct me if that's not right—to work or to return to work, but their employer is yet to provide them with a particular role that is appropriate for them. They get stuck, where they don't have a role that they can go into because they don't have a certificate saying that they can work, but they can't get a certificate saying they can work because no-one has been able to identify what the role is that they're going back into. Is that something that exists in the other States as well?

MICHAEL EPSTEIN: Yes, it does. The problem, often, is that many employers are sceptical about people making mental health claims. They regard them as rorting the system, which is really a problem. Certainly, in some environments like in the police force, ambulance service and so forth, the ethos is still "suck it up". That also causes problems because people often then keep going until they reach a point where they break down, whereas if they had earlier intervention and an earlier opportunity to have a break, they would be able to last much longer and be able to recalibrate, if you like, and get back into what they were doing before.

The Hon. MARK LATHAM: To either of the witnesses, in terms of the extent of the problem with psychological injuries, in New South Wales 30 per cent of our corrections officers are on workers compensation with a psychological injury. This is not just a question of cost containment within the schemes; it goes to the capacity of the New South Wales Government to provide frontline services—policing, corrections officers, paramedics, nurses and the like. In your experience, how did we ever get to a situation where 30 per cent of our corrections officers are on PI workers comp?

MICHAEL ROBERTSON: I'll start, Dr Epstein. I can work from the courtroom backwards in terms of, say, a work injury damages claim for a police officer, and I think the comments can generalise to the frontline workers you're talking about. What we don't do well, in any jurisdiction, is secondary prevention of psychological

injury. The analogy I use is an NRL or AFL player. There's an assumed risk when you play a collision sport that you might get whacked in the head. The duty of care of the code is to make sure that they've got procedures to minimise the effect of the injury—so, the 11-day standdown rule and all those sorts of things that we now see. In several of our first responder organisations and corrections, we don't do things like trauma-preparedness training when they come in. We don't monitor their mental health throughout their service and have processes in place by which we can identify signs of emergent psychological injury and that early intervention I was talking about.

We then inappropriately legalise and medicalise their injuries when they do emerge. They get litigated, often in an adversarial way—the sorts of comments that Dr Epstein made about the culture within various organisations, which I suppose, with the NSW Police Force, goes back to the Rum Corps days. We then exit them with fairly modest payouts and that's sort of it; they're either on Centrelink or finding their way elsewhere. So I think the opportunity for a flourishing of occupational mental health—part of that would be that secondary prevention of psychological injuries, so that we don't get to a point where we have a lot of severely injured or psychologically injured prison officers, ambulance officers, paramedics, schoolteachers and the like. That's, I think, what is missing in this conversation.

The Hon. MARK LATHAM: You mentioned training at the point of recruitment. What about screening and testing for resilience? Undoubtedly, as a police officer it's not very pleasant cutting people down from the rafters who've hung themselves, or for a paramedic pulling dead kids out of a car; or, for a corrections officer, a prison guard, having faeces thrown at them through the bars and threats made to their mother, cat, dog and everything else. Self-evidently, these are socially necessary functions, but also self-evidently, they require a certain level of personal resilience. Are we screening for that?

MICHAEL EPSTEIN: Perhaps if I could comment on that, Mr Latham. In Victoria, the very issues you've mentioned have been thought about. What's been developed, both in the police force and the Victorian ambulance service, has been peer mentors who receive training in looking to their colleagues to see the early warnings that people aren't coping. They can intervene at a colleague-to-colleague level without it being tainted by being regarded as psychological or psychiatric or whatever. My experience has been, talking to people both in the police force and in the ambulance service—and Fire Rescue, because they do some of that work themselves—that that's been of benefit. But you would have known that you hear of a police officer who's seen just one too many deaths and that was it.

One of the issues that I'm very concerned about and very interested in is that many people come to me saying they've had a breakdown, and yet I've looked through the medical literature and the term "breakdown" is virtually not there. It's very clear that people reach a point where their capacity for coping becomes damaged. We give them all sorts of labels—PTSD, major depressive disorder, adjustment disorder with mixed anxiety and depression, a whole variety of labels. But what we often miss in that is that this person's capacity for coping has been damaged. It's like somebody who has had their leg shot off: They're not going to walk again like they used to. They're permanently damaged. Our job then is to try and help them to live the best possible life they can, including finding some work for them, helping them to—

The Hon. MARK LATHAM: That's commendable, but why don't we screen for resilience at the point of recruitment?

MICHAEL ROBERTSON: We do pre-employment screenings in some aspects, but resilience is not a static phenomenon. It's something that you help to build. The Canadians have been quite successful in building resilience in their training. It's an area of, again, occupational mental health that is underdone and I think it would go a long way to mitigating these injuries. We can't prevent police officers or prison officers from encountering the things that you've described. What we can do is identify their injuries earlier and intervene appropriately so that when they do end up exiting the police force, there's more salvageability to their work capacity. That's always been the kind of taut issue that these services struggle against.

The Hon. MARK LATHAM: Dr Epstein, the Victorian reforms have been in place for 15 months now. What impact have they had on the number of claims? I saw some lawyers in the papers there complaining that people have been kicked off the scheme.

MICHAEL EPSTEIN: Yes, that's right. At the end of 130 weeks, in the past, people had to be regarded as not fit to be able to return to work. Now what's happened is that they also have to reach a threshold of 20 per cent to retain benefits. They have to reach that threshold of 20 per cent for impairment that's not secondary to physical injury, and I emphasise that. Sorting that out can be quite tricky. But that's the point of it. For example, a police officer who is shot at but not wounded may be in a worse situation than a police officer who's wounded and also has PTSD because they have both of them manifest. The threshold for somebody with a physical injury is only 10 per cent.

The Hon. MARK LATHAM: What about the number of new claims for psychological injury?

MICHAEL EPSTEIN: It hasn't changed a lot.

The Hon. MARK LATHAM: And their definitions are tougher than the proposals in this bill.

MICHAEL EPSTEIN: Sorry, I missed that.

The Hon. MARK LATHAM: The definitions used in Victoria about psychological injury and entry to the scheme effectively are a lot tougher than the ones proposed in this New South Wales bill.

MICHAEL EPSTEIN: That's not my understanding.

The Hon. MARK LATHAM: What is your understanding?

MICHAEL EPSTEIN: My understanding is that people have to be certified by their GP as having a DSM-5 diagnosis, which is not hard to get.

The Hon. MARK LATHAM: No. It is not hard to get here either. Thank you.

The Hon. BOB NANVA: In light of the reservations that have been expressed around the psychiatric impairment rating scale, given it's been used in a compensation context for many years for thousands of workers, has there been much research on the scale at all that you are aware of?

MICHAEL EPSTEIN: No, there's been none.

MICHAEL ROBERTSON: One paper published in 2012 by Gordon Davies that tried to compare it to a couple of gold standards found that it was routinely underscoring people on the first three scores and it just performed poorly. It is one of those instruments that lacks any robust validation of its validity or reliability. It's just something that's been there long enough to essentially just become the norm, even though it is a much unloved and ugly instrument.

The Hon. BOB NANVA: Apologies if I've misunderstood or if you've answered this, in terms of using that scale with respect to the number of claims, the costs of claims, the management of claims, what downstream impacts does the use of that scale have, or what are your criticisms of it?

MICHAEL ROBERTSON: The introduction of the scale, by my recollection, was in the context of the CTP scheme. It was estimated that about 50 per cent of claims wouldn't reach the threshold with the new scale. That was from one of the authors of the scale, who made that statement at a college of psychiatrists meeting. Essentially it does what it was designed to do: It pushes a lot of people out of the threshold, particularly at the lower end.

The CHAIR: You've answered all of our questions very well, thank you very much. Again, thank you for your attendance at such short notice.

(The witnesses withdrew.)

(Short adjournment)

The Hon. DANIEL MOOKHEY, Treasurer, before the Committee

The CHAIR: Welcome back. We're now joined by the Treasurer. You are able to give a short opening statement should you choose to.

The Hon. DANIEL MOOKHEY: Chair and members of the Committee, thank you for the opportunity to appear before this inquiry into the workers compensation system in New South Wales. To support the Committee's work, the Government has voluntarily provided hundreds of pages of documentation in response to requests from the inquiry. This material covers scheme performance, financial data, governance arrangements and other key areas of concern. All of them collectively describe the failure of our existing WHS laws, industrial relations laws and our workers compensation systems to prevent psychological injuries and return those with psychological injuries to their health and to their work.

Today, I can provide the Committee with some further information. It is about the Nominal Insurer's financial sustainability. I can report that icare has advised me that the scheme deficit is expected to rise from $4.9 billion at 31 December 2024 to nearly $6 billion in the absence of reform by 1 July. The Nominal Insurer is likely to hold 78¢ in assets for every dollar of future liability, meaning it is plunging further into insolvency at a faster rate. Or, to put it even more simply, the scheme is no longer going backwards by $5 million per day; it is going backwards by more than $6 million every day.

As I said to the law and justice committee, you can have the best workers compensation scheme in the world on paper; if it has no money, it helps no-one. The Government's reform package makes a decisive shift towards fostering a culture of prevention. Ultimately, the best workers compensation scheme is one no-one ever needs to use. Until that is possible, I again urge Parliament to act to save the scheme we have and fight to stop people from being injured in the first place. I look forward to answering your questions.

The Hon. DAMIEN TUDEHOPE: Treasurer, you've had the benefit of amending provisions which have been submitted to you in relation to changes to the Act, which has been submitted to the Parliament.

The Hon. DANIEL MOOKHEY: Which amendments are you referring to?

The Hon. DAMIEN TUDEHOPE: The ones that I have submitted to you.

The Hon. DANIEL MOOKHEY: You and?

The Hon. DAMIEN TUDEHOPE: Mr Latham.

The Hon. DANIEL MOOKHEY: Do you have a copy of those amendments?

The Hon. DAMIEN TUDEHOPE: Do you have a copy?

The Hon. DANIEL MOOKHEY: Not with me, no.

The Hon. DAMIEN TUDEHOPE: Do you recall receiving them?

The Hon. DANIEL MOOKHEY: I do.

The Hon. DAMIEN TUDEHOPE: Have you costed them?

The Hon. DANIEL MOOKHEY: They are in the process of being modelled.

The Hon. DAMIEN TUDEHOPE: When will that happen?

The Hon. DANIEL MOOKHEY: I'm advised as soon as possible. We have certainly encouraged icare to undertake the modelling of your proposed late amendments, which I believe are proposed with Mr Latham, as soon as possible.

The Hon. DAMIEN TUDEHOPE: In the circumstances, do you accept that the majority of the changes which have been submitted to you by way of amending the bill, which is currently before the Parliament, provide savings to the scheme, except for the provision relating to the 21 to 31 per cent incapacity?

The Hon. DANIEL MOOKHEY: Do you wish to itemise the particular amendments that you're talking about so I can respond?

The Hon. DAMIEN TUDEHOPE: No. Do you accept that the—

The Hon. DANIEL MOOKHEY: Mr Tudehope, you're asking me to accept—

The Hon. DAMIEN TUDEHOPE: It's a yes or no proposition. Do you accept that they provide savings to the scheme or not?

The Hon. DANIEL MOOKHEY: I'm sorry, Mr Tudehope, I can't—

The Hon. DAMIEN TUDEHOPE: Do you recall receiving a request for particulars in respect of various items from this Committee relating to the manner in which the scheme currently operates? There were 15 specific questions which have been raised.

The Hon. DANIEL MOOKHEY: Sorry, Mr Tudehope, I would like the opportunity to answer the first question that you didn't give me the opportunity to answer, if you don't mind.

The Hon. DAMIEN TUDEHOPE: I put to you a proposition that it was either they provide savings or not.

The Hon. DANIEL MOOKHEY: You need to give me the opportunity to respond.

The CHAIR: Order! There have been two sets of questions now asked—if we could have a response on the first set and then we can talk about the second set.

The Hon. DANIEL MOOKHEY: Mr Tudehope, in respect to your first question, which is about the amendments that you've proposed to me with, I believe, Mr Latham's support, I said—and I've indicated at all points—we are costing them. You asked me whether or not they are going to deliver savings to the scheme. I'm saying that it would be premature for me to answer that in the absence of advice. Can I also say the actual nature of the changes that you and Mr Latham have proposed resemble, I believe, a Victorian-style approach. But I would simply point out, let the work happen. We will provide the information to you and Mr Latham and to the other Committee members as well, if the Committee members are interested in the amendments that you are pursuing. At this point, I can't answer your question because, in fairness to me, you provided me these amendments on Sunday.

The Hon. DAMIEN TUDEHOPE: Correct.

The Hon. DANIEL MOOKHEY: It's now Tuesday. We have been spending our time on Monday making sure that we're in a position to assist this inquiry. We intend to, and very much would like to be able to, have a fact-based response to your question. But I think to be fair to Treasury, to be fair to icare, to be fair to SIRA and all the others who are involved in providing you and me with expert advice on those questions, it's pretty reasonable that we give them more than 24 hours.

The Hon. DAMIEN TUDEHOPE: Thank you, Treasurer. In respect of the supplementary questions which were asked of you in relation to the bill which arose as a result of the briefing last week—

The Hon. DANIEL MOOKHEY: When you say "supplementary questions", what are you referring to?

The Hon. DAMIEN TUDEHOPE: Supplementary questions for the Treasurer arising from the briefing given on Thursday 12 June. Have you seen that document?

The Hon. DANIEL MOOKHEY: Yes, I am aware that a request has come forward, and I believe a response is coming forward too.

The Hon. DAMIEN TUDEHOPE: When?

The Hon. DANIEL MOOKHEY: I believe probably this afternoon, I suspect.

The Hon. DAMIEN TUDEHOPE: But it was ready last night, wasn't it, Treasurer?

The Hon. DANIEL MOOKHEY: Was it ready last night?

The Hon. DAMIEN TUDEHOPE: Yes, Treasurer.

The Hon. DANIEL MOOKHEY: Sorry, Mr Tudehope, the answers were provided to my office last night. My capacity to then assess them and provide them to you was likely to happen today. I think, again, that's pretty reasonable.

The Hon. DAMIEN TUDEHOPE: It would have assisted this hearing today, would it not, if the answers were made available—as you undertook to provide in an expeditious manner—to the Committee before we actually started the hearing?

The Hon. DANIEL MOOKHEY: Mr Tudehope, we've provided this Committee with hundreds of pages of documentation. We've responded to your modelling request. We've responded to the requests of other members. I think it's pretty fair that the Government is cooperating with this inquiry. I think it's fair for me to also be sure that if I'm providing the answers to you directly under my name, I think it's pretty reasonable that I have the opportunity to inspect the answers because they are answers to Parliament.

The Hon. DAMIEN TUDEHOPE: You wouldn't want to be accused of—

The Hon. DANIEL MOOKHEY: Sorry, Mr Tudehope, just let me finish. They are answers to Parliament. I take it seriously. We are providing it to you in an expeditious manner.

The Hon. DAMIEN TUDEHOPE: And it would have been helpful, do you accept at least, if we had those answers today?

The Hon. DANIEL MOOKHEY: I'll leave it to you to judge what's helpful or not.

The Hon. DAMIEN TUDEHOPE: Do you accept from me then, in the same way as you are doing your duty, it would be helpful for me to do my job if you had provided those answers either—

The Hon. DANIEL MOOKHEY: Mr Tudehope, I can't speak for you.

The Hon. DAMIEN TUDEHOPE: In the circumstances, as a proposition, do you accept it would have been helpful?

The Hon. DANIEL MOOKHEY: Mr Tudehope, I can't speak for you.

The Hon. DAMIEN TUDEHOPE: I asked you as a proposition, Treasurer.

The Hon. DANIEL MOOKHEY: Mr Tudehope, I'm sure that you would prefer the information—

The Hon. DAMIEN TUDEHOPE: Treasurer, we've heard evidence today that the cohort of people who have a psychiatric injury who are assessed on the PIR scale as being between 21 per cent and 31 per cent have no capacity to return to work. Have you been advised of that evidence?

The Hon. DANIEL MOOKHEY: I saw bits of it, but to be fair, Mr Tudehope, a proper rendering of that evidence—the parts that I heard as well—is I don't think you're providing a complete summary of all the evidence. I certainly heard the evidence that amongst some that that's their conclusion. I've also heard the same people say a conclusion that those people have work capacity. I also just point out that this particular question was also at the core of what has informed the Royal Australian College of General Practitioners. I would refer you to what the president of the Royal Australian College of General Practitioners has said. Dr Hoffman has said that RACGP-endorsed clinical guidelines for the diagnosis and management of work-related mental health conditions in general practice reflect that an earlier return to work can lead to an earlier recovery. Dr Hoffman said that this includes patients with severe symptoms but with less than 30 points of impairment.

The Hon. DAMIEN TUDEHOPE: Dr Hoffman hasn't given evidence here today.

The Hon. DANIEL MOOKHEY: But I'm also making the point—

The Hon. DAMIEN TUDEHOPE: Treasurer—

The Hon. BOB NANVA: Point of order—

The Hon. DAMIEN TUDEHOPE: —I was asking you about the evidence which was provided here today.

The CHAIR: Order! I need to hear the point of order.

The Hon. BOB NANVA: Chair, I just ask that under the procedural fairness resolution the Treasurer be permitted to complete his answer. He hadn't completed his answer.

The Hon. DAMIEN TUDEHOPE: To the point of order: The Treasurer is trying to introduce into evidence someone who is not available to be cross-examined or at least answer questions in relation to that evidence. What I am asking the Treasurer about is evidence which has been given to this Committee.

The CHAIR: As always, it is within the Treasurer's right to try and answer the question. However, it is also within the member's right to redirect if they feel that the Treasurer is not being relevant to the question. If we could have a bit more give and take for Hansard, that would be very good.

The Hon. DANIEL MOOKHEY: As I was saying, Chair—

The Hon. DAMIEN TUDEHOPE: No, I was redirecting you to the evidence which was given to this Committee today, which you are suggesting was not complete evidence. I refer you to the evidence of Dr Doug Andrews, who was a witness called at the instigation of a Government member, who gave evidence that the capacity to return to work for a person in the range of 21 to 31 per cent was zero.

The Hon. DANIEL MOOKHEY: Firstly, personally I'm not sure that I would agree that that's the inference that I would draw. The second point I'd make, Mr Tudehope, is I think Dr Andrews and other doctors

have made the point—which, to be fair, so have you—that impairment is different from work capacity. Right now the way in which the two are treated is almost as though they're the same. Part of the evidence that we heard before this inquiry—literally in the sessions we were hearing before—is that disentangling impairment from work capacity is a complex task about which medical professionals disagree. So whilst I accept your point, Mr Tudehope, that you might not weight the evidence of people like the RACGP—

The Hon. DAMIEN TUDEHOPE: I haven't heard from them.

The Hon. DANIEL MOOKHEY: —I would simply make the point to you that quite clearly medical professionals disagree, so how are you expecting a workers compensation system to have unanimity on that question?

The Hon. DAMIEN TUDEHOPE: Let me put this to you, Treasurer. If there are people who have no capacity to return to work in the 21 to 31 per cent category, which we have heard today and about which you suggest there might be disagreement, what do you expect to happen to those people?

The Hon. DANIEL MOOKHEY: Can I say, firstly, you're talking about 21 to 30. Under the PIRS scale, that is classified as moderate. Under the PIRS scale that is assumed that people have work capacity. The irony is that under the PIRS scale, at 30 and above is when people are deemed to have no work capacity. That's part of the reason—

The Hon. DAMIEN TUDEHOPE: That's not the evidence we received.

The Hon. DANIEL MOOKHEY: No, it's not the evidence you've accepted. There's a difference.

The Hon. DAMIEN TUDEHOPE: It's the evidence we heard.

The Hon. DANIEL MOOKHEY: Again, I'm referring to the documents we've provided to this Committee as well. This is the point—and I accept where you're coming from, Mr Tudehope. Amongst that category of injured people, it's complex, and I accept completely that there is complexity. But your point is that if you're saying that the scale says a person from 20 to 30 has no work capacity, you are not correct. The scale says a person from 20 to 30 under the New South Wales system has got work capacity. But you're quite right to say the manner in which the system currently distinguishes between impairment and work capacity is complex and hard to predict. That is even more so when it comes to psychological injury, which is the point that I've been making consistently in arguing for this reform.

The Hon. DAMIEN TUDEHOPE: No, you haven't, Treasurer. Let me go back to my original question to you.

The Hon. DANIEL MOOKHEY: Can I finish, Mr Tudehope? Can I complete—

The Hon. DAMIEN TUDEHOPE: No, Treasurer. There is limited time here.

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: Yes, and we're waiving Government time to give you more time, Mr Tudehope, so if you'll allow me to complete—

The Hon. DAMIEN TUDEHOPE: That hasn't been the case today.

The Hon. DANIEL MOOKHEY: We are now.

The Hon. MARK BUTTIGIEG: I think you just heard from the Treasurer that we will.

The Hon. DANIEL MOOKHEY: We're waiving time to give the Opposition and the crossbench more time, so if you could allow me to complete on this point. The other point which, Mr Tudehope, you may wish to recognise, is the fact that even over the last 10 years, the number of people who have qualified as above 15 per cent has tripled. It's the same scale, same tests, and you are seeing that people who are entering the scheme today are far more likely to be scored at a higher level than they were even yesterday or last year or the year before or the year before that.

The Hon. DAMIEN TUDEHOPE: What do you put that down to?

The Hon. DANIEL MOOKHEY: That is an interesting question, which I—

The Hon. DAMIEN TUDEHOPE: Well, answer it.

The Hon. DANIEL MOOKHEY: Yes, but I'm simply pointing out the facts. I'm pointing out to you that there has been a continuous increase in the proportion of workers with psychological injuries that reach the

15 per cent threshold across both the NI and the Treasury Managed Fund. Incidentally, over the last eight years, there is triple the number of workers who have qualified as above that threshold.

The Hon. DAMIEN TUDEHOPE: Thanks for the speech, Treasurer, but come back to the question about that cohort of people who have no capacity to return to work. What's your view in relation to—

The Hon. DANIEL MOOKHEY: What definition are you applying to that?

The Hon. DAMIEN TUDEHOPE: What is your proposal in relation to those people?

The Hon. DANIEL MOOKHEY: Mr Tudehope, the bill—

The Hon. DAMIEN TUDEHOPE: No, just answer the question, Treasurer.

The Hon. DANIEL MOOKHEY: I'm trying to, Mr Tudehope. The reason why the bill sets the threshold at 31 is because, under the scale, that is where people are decided to have no work capacity.

The Hon. DAMIEN TUDEHOPE: That's not the evidence we've heard. In the event that there are people in that 21 to 31 per cent category who have no capacity to return to work, what do you expect to happen to them?

The Hon. DANIEL MOOKHEY: At first instance, under this proposal, particularly with the reintroduction of commutations, we are wanting to change the incentives to return to work earlier. In response to your question, the big change that I would nominate between the exposure draft and the bill is that we absolutely accept that there is a need for there to be commutations put into the system. What that's likely to do is encourage a person to get a WPI earlier. That actually means that they're more likely to access treatment earlier. They're also more likely to be on a path to return to work earlier. Ultimately, should they then find themselves in a position in which they choose to want to leave the scheme, they have that right. I also make the point—as has been made by the RACGP and everybody else, including today—that contact with the scheme itself is more likely to compound psychological injury. Often what you are seeing—

The Hon. DAMIEN TUDEHOPE: Will you answer my question?

The Hon. DANIEL MOOKHEY: I am answering your question. What you are seeing now—

The Hon. DAMIEN TUDEHOPE: It is fairly clear what you expect to happen to them. Your Treasury Secretary today said that those people will move on to Commonwealth benefits. Do you agree with him or not?

The Hon. DANIEL MOOKHEY: I think people have access to Commonwealth benefits.

The CHAIR: Treasurer, we have heard from psychiatrists that there are different scales on which a level of impairment gets assessed and that that is different to capacity to work. We heard from the previous witnesses, whom I understand you were listening to, that it often depends on context and other things but that those scales are not necessarily fit for purpose, particularly the PIRS. Given the evidence from the previous witnesses that a 31 per cent PIRS score under your proposals would be equivalent to almost twice the 30 per cent that they have in South Australia, do you rethink or have any kind of regret about suggesting the 31 per cent in the first place?

The Hon. DANIEL MOOKHEY: Firstly, I should say that I didn't hear all of the evidence. I heard parts of it. I make that point. Secondly, do I have regrets? No. The third issue, when it comes to South Australia—to be fair to you, we have covered this elsewhere, in the House and in the other inquiry—is there are two dimensions about the South Australian experience that are worth pointing out.

The CHAIR: Sorry, Treasurer, I don't want to interrupt you, but I have limited time. I want to talk just about the WPI, not about the entire South Australian experience.

The Hon. DANIEL MOOKHEY: I am talking specifically about your point. I accept the point that you're making, which is that they use a different scale. But I also make the point that they adopt a tighter definition around what's caused by work. If you look at the scale in conjunction with the second component, the scale tests impairment and the definition tests causation. You have to look at both together. That's the first point I'd make. The second point I'd make when it comes to the distinction between the scales is that they use a whole bunch of different guidelines and a whole bunch of different assessments. They are dealing with a different cohort of work too. I don't necessarily accept the point that the previous experts were making that the schemes are strictly comparable. In fact, some of the earlier evidence I heard throughout the day from claims managers makes it very clear that you can't simply apply the same scales between systems.

The CHAIR: Let me help you out, because that's not what they said. You said you didn't hear the previous witnesses.

The Hon. DANIEL MOOKHEY: I also would like to complete the answer. The point that I am well and truly aware of with the South Australian and Victorian use of GEPIC, firstly, is that Victoria's use of GEPIC

cannot be ignored by the fact that they adopt a very different definition of who can get in the scheme. Very few people get into the scheme. As a result, very few people even—

The CHAIR: Sorry, Treasurer, you are now going off what my question is about. Can we be very specific? You have proposed that somebody needs a WPI of 31 per cent before they're entitled to certain entitlements under the scheme, raising it from what we currently have. There have been attempts in the press and in the Parliament to say that this is somehow similar to the 30 per cent that South Australia has. In the documents you provided to this Committee last week, there was a briefing paper that set out very clearly that they are not like for like, and we have now heard evidence today from psychiatrists who work in the field that an equivalent in South Australia to 31 per cent in New South Wales is about 55 per cent and would make us the harshest jurisdiction in Australia and one of the harshest in the world. Did you know that when you first proposed this?

The Hon. DANIEL MOOKHEY: Firstly, Chair, I don't accept your characterisation, and nor do I—

The CHAIR: Are you a psychiatrist, Treasurer? How do you not accept the categorisation when a psychiatrist—

The Hon. DANIEL MOOKHEY: Again, I'd like to complete the answer. Firstly, I don't accept your characterisation. Secondly, you refer to the documents that we provided you. I'm referring to those documents right now—literally, from these documents. We've provided your Committee with a whole bunch of evidence that makes the same point that I'm making to you now, which is that you're looking at the scale without looking at the way in which South Australia applies it. If you're being fair to the record, you need to look at the complete application of the system. The second issue is, to the extent to which you are making political comments about whether or not I regret it, I don't, for the very simple point that what we are doing here in New South Wales is defining the threshold for people who can't work. How each State resolves who can work and who cannot work is inherently complex, and to be fair to the previous witnesses, that's the point they made. That's just not the point you're making to me. The other point I'd simply make, Chair—

The CHAIR: We can disagree on that.

The Hon. DANIEL MOOKHEY: We are disagreeing; clearly, we are. But the other point I would simply make is that if you're looking at impairment separate from work capacity, what you're describing—I'm reading from the documents that we provided you—is that each scale is assessed using a class structure. Class 5 is what's considered to be totally impaired. Each State does that differently; fair enough. But equally, if you're fair to the proposal in front of us, we've also accepted the point that people need to look at whether the PIRS scale is fit for purpose going forward. In fact, the review mechanism that—frankly, your insistence and other assistance makes it clear that New South Wales does need to look at whether or not these scales are fit for purpose. But this scale has been used since 2002.

The CHAIR: But that's not part of your proposal.

The Hon. DANIEL MOOKHEY: It's been used since 2002 in New South Wales. I think you're right: We should, 23 years later, see whether it remains fit for purpose. Should we find ourselves in a position where GEPIC and others are useful to the State in making these decisions—and the Government's totally open from it. No-one is proposing that we use the GEPIC scale in New South Wales.

The CHAIR: No. Yet you've proposed a 31 per cent WPI, which we know is going to cut off 90-something per cent of people who are currently entitled.

The Hon. DANIEL MOOKHEY: That's wrong, Chair. You're now absolutely distorting the data deliberately. You know as well as I do that, at 130 weeks, 88 per cent of people are back to work with psychological injury.

The CHAIR: No, I'm talking about the people who are currently—you've told the previous committee there will be 27 people left.

The Hon. DANIEL MOOKHEY: No, I didn't say that at all. Again, Chair, a proper rendering of the record makes it clear that, at 130 weeks, 88 per cent of people with psychological injury are already back to work. They're not affected by the test. As we've repeatedly made clear to this Committee in the documents that we provided you, to the other Committee and publicly, when it comes to the assessment of people in numeric terms, with the NI, it's roughly 400 people per year out of 76,000 claims, and, in the TMF, it is about the same on a smaller cohort. For you to continue to persist in this argument that it's 90 per cent, Chair, you are deliberately misleading.

The CHAIR: Order! I take objection to that. At no point have I attempted to mislead anybody. I'm talking about the actual statistics that you gave us. I'm not talking about everybody in the scheme; that was never what I said either.

The Hon. DANIEL MOOKHEY: But, Chair, when you use terms like that, glibly—

The CHAIR: You are wasting my time in answer to my questions. I would like to ask you one more question before I pass over to Mr Latham. You signed the pledge for injured workers saying that you would actually remove the threshold entirely, during the State election. What happened between now and then that you have instead decided to introduce the harshest threshold in the jurisdictions?

The Hon. DANIEL MOOKHEY: I don't accept the manner in which you've characterised it, and I accept the fact that you and I just disagree on this issue.

The CHAIR: We do, because people will die.

The Hon. MARK LATHAM: Thanks, Treasurer, for coming along. If I can dial things down, as I tend to do, can I just point out that on the weekend, in a moment of insomnia, I was clicking around Foxtel and I came across the appearance of you and the Premier at the Business Sydney breakfast.

The Hon. DANIEL MOOKHEY: Yes.

The Hon. MARK LATHAM: It was a beautiful heartwarming moment of kumbaya on this particular issue because you and the Premier said you'd love to have consensus about these reforms, find bipartisanship with the Opposition, and arrive at a position that's good for the economy, good for business, and you're happy to share credit with the Opposition to that effect. Is that still your position?

The Hon. DANIEL MOOKHEY: Ideally.

The Hon. MARK LATHAM: So what response do you make in general, sans modelling data, to the proposals that have been put forward for that kumbaya consensus?

The Hon. DANIEL MOOKHEY: Do you wish to spell out the particular proposals you'd like a response to, Mr Latham?

The Hon. MARK LATHAM: Yes. Objects of the Act, number one.

The Hon. DANIEL MOOKHEY: Again, we'll consider it. But in terms of the objects of the Act, I do think that it's important that we clarify what the objects of the Act are. Whether these are the right ones is an interesting debate to have in the Parliament.

The Hon. MARK LATHAM: Well, that doesn't sound like kumbaya to me. Moving on to excessive work demands. You didn't have them in the exposure draft, and it must help in cost containment to take them out now?

The Hon. DANIEL MOOKHEY: To be fair, Mr Latham, on that point we responded specifically to the feedback of that committee—the representations of the Opposition, incidentally, in that process—but fundamentally to the concerns that have been raised by the nurses and the teachers that we would be extinguishing all forms of redress for people who were exposed to excessive work pressures over time rather than in an acute sense, so I would make the point that I think that we got the balance right in our bill.

The Hon. MARK LATHAM: You're saying there's a cost saving there, but in terms of fairness you'd rather cut people off at the 31 per cent.

The Hon. DANIEL MOOKHEY: I would simply make the point that I think we got the balance right in our bill, but I accept the point that people are putting forward different suggestions.

The Hon. MARK LATHAM: At the briefing we had, your official said it was helpful to go to the *Diagnostic and Statistical Manual of Mental Disorders.* This is in number seven, meaning of psychological injury. What's your response there?

The Hon. DANIEL MOOKHEY: Again, I don't necessarily accept that is what the official said, but I take the point that we are examining that proposal and we'll take a view on it. On the face of it, again, I think a pure application of a manual that is used in other States as a pure transportation into our system may not necessarily achieve the purposes for which it's being put forward.

The Hon. MARK LATHAM: Well, I sat two away from him and he definitely said it'd be helpful—but anyway. Items 14, 15 and 16—you didn't have these in the bill. Why did you accept the Greenwich amendments to remove the retrospectivity in the pipeline, which you had said to me and others was the guts of the—

The Hon. DANIEL MOOKHEY: Sorry. Firstly, I'm looking at your amendments, No. 8.

The Hon. MARK LATHAM: No, 14, 15 and 16 which, in the LA, were Greenwich amendments Nos 5, 6 and 7.

The Hon. DANIEL MOOKHEY: You don't want to ask me about your suggestions around changing the meanings of "racial harassment", the meaning of "reasonable management action", the vicarious trauma suggestions that you've made, the meaning around changing the definition of "sexual harassment"?

The Hon. MARK LATHAM: No. As much as I love you, I'm going to ask the questions, not you.

The Hon. DANIEL MOOKHEY: Sure. I'm sorry, I'm just going down the list.

The Hon. MARK LATHAM: I'm taking you to the ones that I see in order of priority from my questions.

The Hon. DANIEL MOOKHEY: In terms of the particular, as you describe them—

The Hon. MARK LATHAM: Fourteen, 15 and 16—I'm seeking kumbaya, as per your statements at that breakfast. Whatever they gave you to drink at the breakfast, we need more of it. Fourteen, 15 and 16 were the Greenwich amendments Nos 5, 6 and 7. Why did you agree to those when you had said to me and the Hon. Rod Roberts that lowering costs in the pipeline was the core purpose of the bill?

The Hon. DANIEL MOOKHEY: I didn't say that to you, firstly. Secondly, I made it clear in the previous inquiry, when I was asked by Mr Tudehope, I believe—Mr Tudehope asked me directly whether or not we intended this to have retrospective effect. I said at the time it's not intended to have retrospective effect, and what these amendments get to is the complicated class of people which are in the system now but are yet to have a WPI assessment. That is the complicated part of the savings and transitional model. In so far as the suggestions that were put forward by Mr Greenwich on behalf of the crossbench, this was to provide, effectively, clarity for the cohort of people who are in the system now but are yet to have a WPI.

The Hon. MARK LATHAM: What proportion is that in the pipeline?

The Hon. DANIEL MOOKHEY: Again, it depends. We can get you the exact numbers of the people who are likely to be affected by it.

The Hon. MARK LATHAM: They rough number's good. It's a lot, isn't it?

The Hon. DANIEL MOOKHEY: Well—but it goes back to the principle here, which is we didn't intend this to have retrospective effect, and we weren't planning for it to have retrospective effect. This is to clarify the savings and transitional parts of the bill. You make the point that this wasn't in the exposure draft. To be fair, it's because, in the exposure draft, it didn't contain the savings and transitional provisions that would be required. These particular amendments were put in place at the suggestion of the crossbench and were acceptable to the Government because they provided further clarity around how the system would work. In effect, what these amendments do is they say for a person who is currently in the system that you have, in effect, 12 months to get a WPI, which I think is reasonable in the circumstances.

The Hon. MARK LATHAM: They weren't in the first print of the bill as it went to the LA—that's the point I was making. What was the costing that was provided on that?

The Hon. DANIEL MOOKHEY: Again, the costings on that—to be fair, as I think you heard from the actuary this morning, a range was provided. Bear in mind, this goes—

The Hon. MARK LATHAM: No, he didn't say that. He couldn't remember. He didn't say there was a range; he said he couldn't remember, which I found remarkable. What was the range?

The Hon. DANIEL MOOKHEY: I'll come back to you on that. I'd just take one step back. The particular point this is getting to is effectively a point-in-time assessment of cost. This is effectively a one-off cost benefit or disbenefit, depending on your perspective. It's not a recurrent part, so it doesn't go into the recurrent—for want of a better term—avoided cost. This is simply a transition cost for which the range that was provided to me around that figure was that it was roughly in the range of somewhere between $80 million to $150 million, from memory.

The Hon. MARK LATHAM: Coming back to those other ones you mentioned, strengthening the definition on sexual harassment—because obviously it's got to be a prior knowledge of the person who is doing the harassment, otherwise, under the Broderick-type rules, it brings in everything.

The Hon. DANIEL MOOKHEY: On the face of it, Mr Tudehope's and your proposal around sexual harassment, my preliminary assessment of it, particularly when you read it in conjunction with your suggested amendment 12—that is, what you're suggesting, Mr Latham, when it comes to sexual harassment is, in essence,

that it will become the responsibility of a person who is alleging sexual harassment to prove that it was the intent of their perpetrator to do so.

The Hon. MARK LATHAM: Knowledge, knowledge, knowledge.

The Hon. DANIEL MOOKHEY: No, to be fair, you're suggesting—

The Hon. MARK LATHAM: And intent—knowledge and intent.

The Hon. DANIEL MOOKHEY: You're suggesting that in this Act, sexual harassment in relation—and so is Mr Tudehope:

> In this Act, sexual harassment, in relation to a worker, means an act that a person knows, or should reasonably know is:
>
> a) an unwelcome sexual advance to the worker,
>
> b) an unwelcome request for the worker to engage in sexual activity, or
>
> c) any other unwelcome conduct of a sexual nature in relation to the worker.

You and Mr Tudehope then propose your amendment No. 12:

> … in relation to sexual harassment, racial harassment or bullying, the alleged perpetrator's knowledge and intent is the primary factor in determining whether a relevant event has occurred.

What you are suggesting, the way I read that, Mr Tudehope, is that it's the responsibility of a person who is sexually harassed or racially harassed to prove that it was the intent of the person to do so. I, on the face of it, see that as, in essence, you're extinguishing those categories as compensable events, which effectively means, for a layperson, that sexual harassment and racial harassment under your proposals would not be compensable.

The Hon. MARK LATHAM: No, that's not right.

The Hon. DANIEL MOOKHEY: That's how I looked at it and—

The Hon. DAMIEN TUDEHOPE: Would you be prepared to clarify it?

The Hon. MARK LATHAM: What about with bullying? Hasn't bullying got to have—

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: Again, when it comes to bullying, you and Mr Tudehope are suggesting:

> … bullying in relation to a worker, means an individual or a group of individuals repeatedly acting with the deliberate intent of harming or intimidating a worker or a group of workers of which the worker is a member.

In our view, again, that seeks to extinguish bullying and harassment completely from the scheme. I accept the fact that you and Mr Tudehope—particularly Mr Tudehope—are critical of us in respect to the WPI change. But, under this model, the WPI change wouldn't matter because no-one would get through. That's the point, which is you're adopting a different approach.

The Hon. MARK LATHAM: That's not right. Isn't bullying an act of intimidation? Isn't that the whole essence of bullying?

The CHAIR: Order! FYI, this is now the Opposition's time.

The Hon. DAMIEN TUDEHOPE: I'm happy for—until he finishes this line.

The CHAIR: I just want you to know that this is the Opposition's time. You sort it out.

The Hon. MARK LATHAM: But isn't bullying an act of intimidation? You're trying to control someone else in the workplace by bullying them to the point where they're intimidated and they effectively do what you want or they're passive—under your control.

The Hon. DANIEL MOOKHEY: One question I perhaps have for you, Mr Latham—although I accept your point that I'm not here to ask questions; I'm here to answer them—

The Hon. MARK LATHAM: Fire away. I'd love to answer.

The Hon. DANIEL MOOKHEY: I take the point that I don't know where you sourced this definition of bullying from. I can't see it in any other law that defines it this way. I'd be interested if either you or Mr Tudehope can clarify where precisely did you get this definition of bullying from.

The Hon. MARK LATHAM: Real life, in that bullying is an act of intimidation. Your low-bar definition means that basically anyone could qualify by saying, "They behaved to me in the workplace in an unreasonable

way. I found it unreasonable. Therefore, I have a bullying claim." For someone who came into this breaking an election promise, cutting off at 31 per cent and 2½ years, it is incumbent upon you to find other realistic, fair savings with realistic definitions of what something like bullying is. Bullying is not being unreasonable in the workplace. It's an act of intimidation. That's my answer.

The Hon. DANIEL MOOKHEY: I'd respond to that in two respects, Mr Latham. The first is I don't accept the way in which you've characterised the bill. Secondly, I would also make the point that if you're putting this forward with an intent that this is to provide a saving, compared to the Government's proposal, we can respond to that from a modelling perspective as to whether it does or does not. The other point I'd just make in respect to the suggestion about adoption of a definition of bullying is that the need for there to be an aligned definition of bullying between WHS law, workers comp law and IR law is strong.

That's where the Government has sourced its approach. But I would also make the point that I'd invite perhaps you and Mr Tudehope, if you can suggest to me—if it is a fact that perhaps the two of you have defined bullying this way, then that's fair enough. You are lawmakers. You're entitled to come and say, "We, as legislators, have come up with a definition ourselves." But from what I'm looking, when I look at the suggestion that you've provided, it would, effectively, render bullying completely non-compensable. Also, it would shift—

The Hon. MARK LATHAM: No, that's not true at all. If you intimidate another worker, of course that qualifies, but it has got to be intimidation, not just something that was unreasonable.

The Hon. DANIEL MOOKHEY: But I think the key point of yours, Mr Latham, that you've put in is "deliberate intent".

The Hon. MARK LATHAM: Yes, that's what bullying is.

The Hon. DANIEL MOOKHEY: And so you would be requiring establishment—a worker to prove that it was the deliberate intent of someone else. I would simply say that I think our proposal gets the balance right.

The Hon. MARK LATHAM: Well, I see your definitions as a very low bar. What precedent have you got anywhere in the world that these low-bar definitions will reduce claims by 33 per cent?

The Hon. DANIEL MOOKHEY: I would simply refer you to the advice of the actuaries who were here this morning. I accept you may not accept their advice, but that is the advice that we've received. The other point I would simply—

The Hon. MARK LATHAM: That's not my question. My question is, based on the hypothetical—because you really don't know how it's going to apply—what other jurisdictions have used your low-bar definitions and produced a 33 per cent reduction in new claims?

The Hon. DANIEL MOOKHEY: I would simply say to that, Mr Latham, you compare it to the status quo under New South Wales, and I would simply make the point that the definition that has been proposed in the bill is one component of how the bill works. The second component of how the bill works is the speed in which the claims are resolved for bullying and harassment. I just take one step back. When it comes to the bullying and harassment issue, there are two issues. Firstly, there's the perception issue, which is dealt with under our bill. That perception question—I heard the evidence that was given on that respect this morning, and that is unique to New South Wales. I think you heard from the claims managers directly that that's because the way New South Wales law has been interpreted means we're the only State that currently uses perceptions. To the extent to which you ask me for interstate comparators or other jurisdictions, the reality is that no other jurisdiction has the same problem that we have.

The second issue that I would say when it comes to bullying and harassment is that the issue, equally with interpersonal work conflict, is they're just harder to resolve because people aren't coming forward with evidence. That is why we responded to the concerns that were in the original proposal that we would have, effectively, extinguished it by requiring people to go to a tribunal first, and we replaced it with a system that is a definition and an objective standard but also allows for presumptions to be made. When you look at the totality of those as a solution, those are the reasons why the actuaries have concluded that under our system claims are likely to reduce by 33 per cent, compared to the New South Wales status quo.

The Hon. DAMIEN TUDEHOPE: Can I just ask—

The Hon. MARK LATHAM: Well, I totally have no faith in that guesstimate, nor the work that was presented earlier in the day by the actuarial expert, so-called. But I'm using Mr Tudehope's time, and he has got a point.

The Hon. DAMIEN TUDEHOPE: You've told us earlier that there is a difference between the WPI and a capacity to return to work—yes?

The Hon. DANIEL MOOKHEY: Yes.

The Hon. DAMIEN TUDEHOPE: In circumstances where there is no capacity to return to work, what happens in relation to those people who have no capacity to return to work?

The Hon. DANIEL MOOKHEY: Under this scheme, they stay on it. It is just defined at 31, and they qualify for lifetime income benefits and medical benefits.

The Hon. DAMIEN TUDEHOPE: If there is a person between 21 per cent and 31 per cent who has no capacity to return to work, what do you say happens to that person?

The Hon. DANIEL MOOKHEY: Again, Mr Tudehope, it comes down to when do you define a person as having no capacity to work.

The Hon. DAMIEN TUDEHOPE: Correct. But if there is a finding that there is no capacity to return to work for a person—

The Hon. DANIEL MOOKHEY: Then I would assume that they would be classified as above 31 per cent.

The Hon. DAMIEN TUDEHOPE: That's not the evidence, Treasurer.

The Hon. DANIEL MOOKHEY: But to be fair, Mr Tudehope, a fair rendering of the evidence is that, when you're applying these judgements for psychological injury, it's inherently difficult to assess.

The Hon. DAMIEN TUDEHOPE: That's the problem, Treasurer. That is the problem. You have, in fact, said—

The Hon. DANIEL MOOKHEY: Sorry, Mr Tudehope—

The Hon. DAMIEN TUDEHOPE: —that a whole cohort between 21 per cent and 31 per cent have capacity to return to work. The experts say that that is not the case.

The Hon. DANIEL MOOKHEY: Mr Tudehope, you're saying—

The Hon. DAMIEN TUDEHOPE: You're saying!

The Hon. DANIEL MOOKHEY: Mr Tudehope, you're saying a person who has no capacity to work. The scale defines that—

The Hon. DAMIEN TUDEHOPE: No, I'm not. That's wrong, Treasurer.

The CHAIR: Yes, that's wrong.

The Hon. PETER PRIMROSE: Is there any chance we could actually hear an answer here, instead of you talking over him all the time?

The Hon. DAMIEN TUDEHOPE: But he just verballed me to say that I am saying that. I am saying that's what the experts we heard from today said.

The Hon. DANIEL MOOKHEY: No, what you heard today from the experts, as I heard, was that the scale is difficult to apply. But the question you put to me was that if a person has no work capacity, the inference—

The Hon. SUSAN CARTER: That's not what they said.

The Hon. DAMIEN TUDEHOPE: That's not what we heard.

The Hon. DANIEL MOOKHEY: Chair, equally, the point is, under the PIRS scale, a person with no work capacity is defined as at 31 per cent. In the event that a person is assumed to have no work capacity—that is, they are totally impaired and cannot work—I expect them to stay on the scheme.

The Hon. DAMIEN TUDEHOPE: Even if they are under 31 per cent?

The Hon. DANIEL MOOKHEY: I think you're asking me what some would describe as a tautology, Mr Tudehope, which is that, if they are under 30 per cent, by definition they have capacity to work.

The Hon. DAMIEN TUDEHOPE: That is now your interpretation of the PIRS scale—that anyone under 31 per cent has capacity to return to work, which is contrary to what we have heard today.

The CHAIR: I encourage you to read about the PIRS scale.

The Hon. DANIEL MOOKHEY: But, to be fair, what you've heard today is quite a lot of dispute amongst the medical profession as to whether the PIRS scale is fit for purpose.

The CHAIR: Treasurer, what we heard today I would sum up in three ways. There are three main things we've got out today. The $2.5 billion figure that you've been bandying about is actually around $343 million per annum.

The Hon. DANIEL MOOKHEY: Which—

The CHAIR: Sorry, let me finish. We've heard that there is no imminent danger of scheme collapse, despite what has been seen as some hysterical comments in the media. The third thing we have heard is that, as suspected, the 31 per cent WPI is actually unbearably cruel and would be almost double what they have in South Australia. Given those three main findings, why do you feel that this is a bill that should be brought back to Parliament before the end of—

The Hon. DANIEL MOOKHEY: But, Chair, I disagree completely with your question.

The CHAIR: I'm sure you do.

The Hon. DAMIEN TUDEHOPE: I'd also make the point that you're entitled to vote against the legislation, so vote against the legislation. I accept the point, Chair, that you don't support the legislation. Fair enough. Parliament should vote.

The CHAIR: But each of the statements you have made to support the bill have not been made out. That's why we are having this inquiry. They have not been made out. The $2.5 billion—

The Hon. DANIEL MOOKHEY: Chair, you haven't accepted it. That's different from whether it has been made out.

The CHAIR: That's why we have the evidence. That's why we have the people—

The Hon. DANIEL MOOKHEY: You're entitled to reach your conclusion and make a vote.

The CHAIR: Maybe if you look back on the transcript, particularly around the PIRS, I think that would be quite illustrative.

The Hon. DANIEL MOOKHEY: And also to the first part of your question, which was around the $2.5 billion, I don't know what you're referring to.

The CHAIR: The $2.5 billion, apparently that's over five years, and the bit that isn't exempt workers is around $343 million.

The Hon. DANIEL MOOKHEY: For what scheme?

The CHAIR: This is the TMF. We're looking at $343 million per annum as the amount that you keep saying you have to put in if these reforms don't go through.

The Hon. DANIEL MOOKHEY: Again, Chair, I think that reflects the fact that—I'm sorry to say this—I don't necessarily accept that you're interpreting that correctly.

The CHAIR: That's what they said this morning.

The Hon. DANIEL MOOKHEY: I would simply make the point that when the budget is released in a week, you will see and the budget will report a $2.6 billion deterioration in the last six months to the TMF caused by workers comp.

The CHAIR: Caused by workers comp?

The Hon. DANIEL MOOKHEY: Yes.

The CHAIR: By not putting enough into workers comp to cover your own liabilities for your own employees?

The Hon. DANIEL MOOKHEY: No, Chair. I'm sorry, Chair. I'm sorry to say this, but you just aren't understanding the way in which the—

The CHAIR: Do you understand? You've referred to it as a bailout. How do you bail out workers comp?

The Hon. DANIEL MOOKHEY: Chair, you're confusing the cash side of the budget with the accrual side of the budget.

The CHAIR: No, in the documents you gave us, you talk about "bailing out" the TMF, which isn't a thing.

The Hon. DANIEL MOOKHEY: Yes, they're separate questions, Chair.

The CHAIR: That's not a thing that can occur.

The Hon. DANIEL MOOKHEY: Chair, do you have, by any chance, the icare annual reports with you?

The CHAIR: I probably do, actually.

The Hon. DANIEL MOOKHEY: Let me get them for you. This is relatively straightforward. If you were to look at—

The CHAIR: You say it's relatively straightforward, but then in your Treasury documents you talk about "bailing out" the TMF, which is not a thing that happens.

The Hon. DANIEL MOOKHEY: Chair, again, if you were to turn to the scheme, if you have, by any chance, the report—and I'm speaking specifically of the Insurance for NSW annual report—

The CHAIR: What is the point you want to make, Treasurer?

The Hon. DANIEL MOOKHEY: —you will see that what you're referring to is what's referred to as a grant from the Crown. It's on page 115.

The CHAIR: No, I'm actually referring to your documents—

The Hon. DANIEL MOOKHEY: That is separate from the $2.5 billion line that will be reported on the Act on the accrual side of the budget. They are two separate concepts.

The CHAIR: I do fully understand how that works, as I'm sure you understand.

The Hon. DANIEL MOOKHEY: So to the extent to which you confuse them, you're either—

The CHAIR: No, I'm not confusing it.

The Hon. DANIEL MOOKHEY: If you say that you fully understand it, Chair, the logical inference is that you are, therefore, deliberately doing so.

The Hon. DAMIEN TUDEHOPE: Point of order—

The CHAIR: No. I'm not confusing it. I'm talking about what you have—

The Hon. DANIEL MOOKHEY: I would simply say, Chair, that you are incorrect.

The CHAIR: Oh my goodness.

The Hon. DANIEL MOOKHEY: You are incorrect.

[*Interruption*]

The Hon. MARK BUTTIGIEG: Chair, I ask that you call the audience to order.

The CHAIR: Order! There will be no interjections. "The Treasury Managed Fund would also be in trouble if it was not getting bailed out"—this is your document.

The Hon. DANIEL MOOKHEY: Yes, but you're confusing that with the 2.5 billion.

The CHAIR: No, no, I'm asking—

The Hon. DANIEL MOOKHEY: I'm sorry, but they are separate concepts.

The CHAIR: As a separate question, I was talking about this concept of you "bailing out". What is this "bailing out"?

The Hon. DANIEL MOOKHEY: No, that wasn't the concept you were referring to. The concept you were referring to was the 343 per annum—

The CHAIR: Are you going to answer the question? You referred in your documents to "bailing out".

The Hon. DANIEL MOOKHEY: Which particular document are you referring to there, Chair?

The CHAIR: This is the presentation that you gave us last week.

The Hon. DANIEL MOOKHEY: Which page? Of the Treasury fund?

The CHAIR: You refer, in there, misleadingly, to "bailing out" the Treasury Managed Fund. You've just tried to give me a lecture on what happens within icare.

The Hon. DANIEL MOOKHEY: Sorry, which—Chair, if you can give me five seconds, I'll find the document and respond to you directly.

The CHAIR: Yes, "bailed out".

The Hon. DANIEL MOOKHEY: The Treasury slides. And what page number are you specifically referring to on that doc?

The CHAIR: This one is page 6. It's just one example of the misleading language that's being used by your Government when it comes to the way it talks about the TMF.

The Hon. DANIEL MOOKHEY: Page 6, "The Treasury Managed Fund would also be in trouble if it wasn't being bailed out."

The CHAIR: "Bailed out". What do you mean there?

The Hon. DANIEL MOOKHEY: "The Government has provided $6.1 billion in top-up payments over the six years to 2023-24 to keep the TMF funding ratio above 105"—that's correct.

The CHAIR: What is that, "bailed out"?

The Hon. DANIEL MOOKHEY: That is the injections that have been required.

The CHAIR: From?

The Hon. DANIEL MOOKHEY: And that's not the $2.5 billion figure you're referring to.

The CHAIR: No. What is it?

The Hon. DANIEL MOOKHEY: What do you mean, Chair?

The CHAIR: What is the "bailed out" amount? What are you talking about? Are you talking about amounts to cover your own liabilities?

The Hon. DANIEL MOOKHEY: No, that is under the policy that I inherited from Mr Tudehope's Government, which was the—

The CHAIR: So that's the amount that tops it up—

The Hon. DANIEL MOOKHEY: Sorry, Chair, if you could—

The CHAIR: —to get over the 105?

The Hon. BOB NANVA: Point of order: On behalf of Hansard—

The CHAIR: You are correct. I uphold the point of order.

The Hon. DANIEL MOOKHEY: Under the previous net asset holding policy, in order to maintain a funding ratio of 105 per cent, this is the amount that's been required.

The CHAIR: Okay. That amount, as you know, covers workers comp and general lines.

The Hon. DANIEL MOOKHEY: Yes.

The CHAIR: Again, how is it a bailout when you are just paying for your own liabilities as a government to your workers and under your insurance policies?

The Hon. DANIEL MOOKHEY: If you refer to the icare annual report—

The CHAIR: Was it a mistake to say "bailed out"?

The Hon. DANIEL MOOKHEY: No, it wasn't. And can I just refer you to the icare annual financial statements? I'm referring you specifically to the financial statements at 30 June 2024, and I'm referring specifically to pages 123 and 122.

The CHAIR: Do they use the word "bailout"?

The Hon. DANIEL MOOKHEY: Chair, you will see that the general lines gross claims rose in the 12 months prior, from 2023 to 2024, on an undiscounted basis, by approximately $115-ish million. In fact, even that might be—yes, that's about right. If you go to the earlier page, you will see that the same aspect with the TMF for workers comp rose by 500.

The CHAIR: How is that related to "bailout"?

The Hon. DANIEL MOOKHEY: I would simply make the point, Chair, that to the extent to which you try to ascribe, persistently, that the issues with the TMF are caused by the general lines—

The CHAIR: No, that is not what I said. You've just decided that's what I've said. I'm asking you a question here. You keep throwing figures around—it's all very Chicken Little—about how disastrous things are going to be after 1 July unless we pass your reforms. You continue to conflate the TMF and the NI, you continue to conflate the general lines and the workers comp side, in all of the media, in all of the presentations. You've now used the word "bailout" in something you've given to this Committee, which you know full well is not a thing the Government does. I'm asking you just to admit that you got it wrong.

The Hon. DANIEL MOOKHEY: No.

The CHAIR: Okay.

The Hon. DANIEL MOOKHEY: I'm sorry, Chair, but on this point I'd also make the point that the opportunity cost of continually bailing out the TMF is huge.

The CHAIR: "Bailing out". You would not have said that three years ago.

The Hon. DANIEL MOOKHEY: It is absolutely huge. And, Chair, the point that I would encourage the Committee to consider is—

The CHAIR: The Government paying its premiums is not a bailout.

The Hon. DANIEL MOOKHEY: Having to bail out the TMF every time—

The CHAIR: Pay its premiums.

The Hon. DANIEL MOOKHEY: —comes at a huge opportunity cost but, equally, it's not effective. The issue that I also have with the TMF and I have with the NI scheme is that they're not returning people to work. And I would simply say, Chair—

The CHAIR: When I pay my insurance premiums, I'm not bailing out the insurance company.

The Hon. DANIEL MOOKHEY: Sorry, if you can let me finish, Chair, I would also make the point that it's not a good use of public money. I also make the point that there are lots of other, better uses of public money when it comes to this as well.

The Hon. DAMIEN TUDEHOPE: Treasurer, your position fundamentally is that if you cut off people's benefits, they go back to work. Isn't that the case?

The Hon. DANIEL MOOKHEY: No. My fundamental position is the entire system needs to be built around returning people to work.

The Hon. DAMIEN TUDEHOPE: But a component of this scheme is—

The CHAIR: Like cutting off and killing workers.

The Hon. DAMIEN TUDEHOPE: —predicated on the idea that if we cut off the benefits, they will go back to work.

The Hon. DANIEL MOOKHEY: No. I would make the point that the entire part of the package is to incentivise prevention. The part that is contracting controversy is different from the entire package. The part that is not attracting controversy—and, to be fair, Mr Tudehope, it's because we agree—is that we do need to shift to prevention. The fact that I've accompanied these reforms, as the Government has, with a $343 million investment in prevention and the fact that, equally on that, Parliament has—

The Hon. DAMIEN TUDEHOPE: Please don't make a speech, Treasurer.

The Hon. DANIEL MOOKHEY: —the opportunity to also establish a bullying and harassment jurisdiction would help.

The Hon. DAMIEN TUDEHOPE: Treasurer, have you ever said that part of the strategy around this bill is that if you get people off benefits, they go back to work? Have you ever said that?

The Hon. DANIEL MOOKHEY: I'm responding—sorry, Mr Tudehope—

The Hon. DAMIEN TUDEHOPE: Have you ever said that as a proposition?

The Hon. DANIEL MOOKHEY: I've been speaking about this reform for more than six months now—

The Hon. DAMIEN TUDEHOPE: Have you ever—

The Hon. BOB NANVA: Point of order: Firstly, courtesy to the witness under the procedural fairness resolution. Secondly, the Government has ceded its time with respect to questioning. Thirdly, the Treasurer is here longer than he was anticipating to be here. I think there has been ample time for members to ask questions.

The Hon. DANIEL MOOKHEY: Yes, I actually have to go, believe it or not.

The Hon. MARK LATHAM: Just finally, do you think the Premier still believes in kumbaya with us and wants to commune and get a consensus? Or are you the only one fired up?

The Hon. DANIEL MOOKHEY: No, I think that the Government would always like to see this problem solved.

The Hon. DAMIEN TUDEHOPE: Can I just ask one too? There's a provision in the bill which in fact delivers or requires the insurer to accept liability or reject liability within six weeks. Was that ever canvassed with the business community?

The Hon. DANIEL MOOKHEY: I believe it was. I believe the business community has some concerns about that as to whether or not that period is too short as well. I think it's an interesting question as to see whether or not we got the balance right on that one.

The CHAIR: I think we all need a bit of Valium and a lie down or something now. Thank you very much for your attendance. To the extent that there were questions taken on notice, the secretariat will be in touch.

The Hon. DANIEL MOOKHEY: Thank you, Chair.

(The witness withdrew.)

Ms REBECCA WILSON, Vice-President, National Insurance Brokers Association, affirmed and examined

Mr RICHARD KLIPIN, Chief Executive Officer, National Insurance Brokers Association, affirmed and examined

Mr TIM WEDLOCK, Executive Chairman, AEI Insurance Broking Group, affirmed and examined

The CHAIR: We now turn to what I hope will be a calmer session. Thank you very much to our next witnesses.

TIM WEDLOCK: I would like to add that I am representing NIBA today.

The CHAIR: Thank you for making yourselves available at such short notice. Insurance brokers are not a part of the scheme we hear from very much, so it's very useful to have you here today. Would you like to begin with a short opening statement?

RICHARD KLIPIN: For sure. A big thank you to the Committee for inviting us. It's a really important topic. I'll just share with you a brief opening statement, Chair. We appear before you today on behalf of NIBA, the peak body for general insurance brokers. NIBA represents approximately 420 firms with about 15,000 individual brokers, including large multinational organisations, national broker networks and small to medium businesses operating in metropolitan and regional communities across the country. Joining me today, as you've heard, are Rebecca Wilson as vice-president and Tim Wedlock, a former national president. Both are highly experienced insurance professionals. They are successful business owners, and they have over 65 years of combined experience supporting clients in the insurance sector, including in workers comp. Their work assisting clients through the complexities of the New South Wales workers compensation scheme will provide a real-world insight into this inquiry.

NIBA welcomes this inquiry and commends the Government and the Committee for their willingness to engage with these complex yet crucial issues. As trusted advisers to employers across the broad range of industries in New South Wales, insurance brokers have direct insight into how the scheme actually works, and support injured workers, employers and the broader economy. NIBA shares the Government's concern about the current financial and operational challenges facing the scheme. The scheme's financial position has deteriorated sharply, raising concerns about the long-term stability of the scheme and its ability to meet future obligations. At the same time, employers are experiencing substantive and substantial premium increases. Whilst the average annual increase is approximately 8 per cent, some sectors have been affected far more significantly. These increases place pressure on organisations providing essential community services, and have broader economic implications.

We acknowledge that the bill before Parliament aims to address the rising incidence of psych injuries and claims, and we support measures that strengthen early intervention and support for injured workers. However, we believe the proposed legislative changes are unlikely to resolve the broader financial and structural pressures facing the scheme. Return to work outcomes are a critical area of concern. Despite various initiatives to improve results, the scheme's performance in this area is trending in the wrong direction. These trends highlight the need for a renewed focus on early intervention, care coordination and effective case management.

We also note concerns within the business community about the management of claims that might not have a clear causal connection to the workplace. This is a very complex area and one that requires balanced oversight to ensure fairness, consistency and sustainability. In light of those challenges, NIBA encourages the New South Wales Government to consider further reforms to strengthen the governance and oversight of the scheme. This should include a review of the regulatory framework with a focus on transparency, accountability and improved outcomes for injured workers. We share the Committee's commitment to a sustainable, fair and effective workers compensation scheme. We welcome the opportunity to contribute to this important discussion. Thank you for your time. We look forward to your questions.

The Hon. DAMIEN TUDEHOPE: When was NIBA—or was NIBA ever consulted in relation to input in respect of proposed amendments to the workers compensation scheme?

REBECCA WILSON: No is the short answer to that. If I can add, with Mr Wedlock and I, we've been involved with icare for the last 10 years. As NIBA, we have caught up with icare and SIRA on a regular basis for at least the past eight years combined. We're always giving feedback to both organisations, albeit the meetings have always been separate, which we have—we would prefer to have a SIRA-NIBA-icare meeting so that all information is in the same room. Unfortunately, we haven't been able to achieve that but, as far as this legislative change has come about, we were actually in a meeting with SIRA two days beforehand and they then advised us that there were changes but didn't give us a lot of information. Hence we did put in a submission, albeit it was late. It was in the time frame, but it was at the very death of the time frame that we got that in.

The Hon. DAMIEN TUDEHOPE: Given what's occurred in relation to this bill, are there things that you would have preferred to have seen in this bill which would have improved the outcome for workers and potentially reduced costs to the scheme?

REBECCA WILSON: I think if we take a step back to the eight years of communication that we've had with both SIRA and icare, there is not just changes within the bill; there is changes within the performance of the scheme. These are actual, tangible changes, not just "It'd be nice to do this". At the moment my personal view is we're talking a lot about the budget and we're talking a lot about the financial consequence. However, the real consequence is how the scheme truly operates.

The Hon. DAMIEN TUDEHOPE: Take us through some of the practical things that you would say could have been adopted and which would, in fact, have improved potentially preventative measures available in relation to the scheme and potentially improved the cost impact on the scheme.

REBECCA WILSON: I think, to begin with, certainly the acceptance of claims—the culture within each organisation is that the scheme is a no-fault scheme. That is said on a regular basis. Well, at times injury and psychological injury are at fault or maybe have not existed at all. But because it has been no fault, my observations are that it's a culture that we support any claim that is actually received by icare or one of its agents. The second part is the CSP performance of having autonomy and accountability and authority to actually apply section 11A. It's seen firsthand by myself where agents are in front of a client—so an employer—and have said, "There is no point in us applying section 11A. It will never get passed."

The Hon. DAMIEN TUDEHOPE: Even in circumstances where there is a potential serious factual issue relating to the circumstances of the claim?

REBECCA WILSON: Absolutely.

The Hon. DAMIEN TUDEHOPE: Is that a regular event which your clients identify to you, where there are factual issues relating to the claim, but they don't bother pursuing them because they are just never successful?

REBECCA WILSON: I think there's two points to this. We're here obviously as insurance brokers. And, Tim, it was something that you raised with me before. If you look at the employers that are in the scheme, approximately 50 per cent of employers—and don't quote me; I will take on notice this number—are with brokers and approximately 50 per cent are without brokers. The ones without a broker probably don't even know that 11A exists. That's an assumption on my part. And those that do have a broker—the brokers are going in representing 11A, but we haven't had a lot of success.

The Hon. DAMIEN TUDEHOPE: One of the things that we have been dealing with today is the manner in which claims managers handle these claims. What suggestions would you make in relation to the relationship between claims managers and employers—and employees, potentially—in respect of how claims are being managed?

REBECCA WILSON: Do you want to take that, Tim?

TIM WEDLOCK: Certainly. That's a very difficult one to answer because a lot of the claims management has been left to the those insurers allocated to manage the claims, and a lot of the people that they've allocated the control of that claims management to are very young or inexperienced because, when the change happened to icare and then all the changes that they've since made to try and improve the scheme haven't worked, a lot of the major insurers like CGU that were involved, QBE which was still involved—a lot of those employees left.

The people that have been left in charge of managing the case management on behalf of the scheme directly with employers are out of their depth, and then they're relying on icare to come back and help them and they're scared to make decisions that might be the right decision for the injured employee or the company to mitigate and to support those that need the scheme. That's my take on it. There's not the people out there to be managing these claims the right way. I think the other thing as a result of that is that claims are being pushed through very easily without any denial whatsoever, and they're just feeding off each other.

The Hon. DAMIEN TUDEHOPE: Do brokers have much of a relationship with claims managers on behalf of the clients that you look after or the employer clients that you look after?

TIM WEDLOCK: For those of us that are heavily involved in workers compensation, part of the fundamental point of difference we try to add is value, and that is to try and align ourselves with case managers that work for the various service providers to make sure we can help them. As Rebecca said, if you look at the larger employers that are using a broker to help them, the reason they want to do that is because they're very focused on risk management, injury prevention—everything they can potentially do to make a safer work environment.

It doesn't just sit on workers comp. That could be to do with the general running of their business as well to keep costs down. When it comes to the case managers, you could find a good one, but then they can only do so much before they're overloaded, and so then the claims service providers have to split that work up and try to find other people. Some will not allocate one person to one employer, so one employer might end up having three or four different case managers trying to run their workers comp program, getting three or four different opinions every time there's an incident.

The Hon. DAMIEN TUDEHOPE: That's an administrative matter which potentially icare should fix. Let me ask you this, in respect of circumstances which are not covered by compensation or workers compensation, it may expose, potentially, directors or employers to circumstances where they would be exposed to PI claims, might they not?

REBECCA WILSON: Potentially more so directors' and officers' claims. Yes, we could potentially see employers that may have an employment practice claim due to—let's use bullying and harassment as a pure example. I feel—and I say this as a feeling only and a view only—if that was to occur, the directors' and officers' insurers would withdraw cover like they did with WHS harmonisation. It could very well be that employers will be left without any protections.

The Hon. DAMIEN TUDEHOPE: We heard from Mr Garling earlier today that there are already in the in the system, outside of the workers compensation scheme, claims being made for negligence relating to the performance or the creation of workplace environments. In those circumstances, are those clients, potentially clients of yours, exposed to additional insurance risks, either for which they are insured or aren't insured at the moment?

REBECCA WILSON: Potentially, yes.

The Hon. DAMIEN TUDEHOPE: And what would be the cost, potentially, of one of those insurance policies?

REBECCA WILSON: That would be a question for the lawyers because it would either depend on whether the insurer chooses to settle to save on costs—so a lot of the times you see employment practice claims, and the biggest cost in employment practice claims is usually the defence costs.

The Hon. DAMIEN TUDEHOPE: Which costs?

REBECCA WILSON: Defence costs, so engaging lawyers. A lot of the time it's commercially settled. But it doesn't remove the problem that we have here. The problem that we have in the workers comp system is that if you put in a claim, it's generally taking up to 13 weeks for any determination to be made. Then for the first six months, an injured worker is paid 95 per cent of their pay. After six months, for a period of up to 2½ or five years, they get 80 per cent of their pay.

We talk about return to work; icare and its agents talk about recovery at work. From day one, they're saying, "We need to get you to recover at work." From day one, they're saying, "Something's wrong that requires recovery." It should be a return to work. If you have a psychological injury—and I'm saying this for those that may not fit in the category of a true serious psychological injury but one where you're not feeling great—and you're getting paid 80 per cent of your pay to sit at home for five years without your cost of transport, without your cost of lunch and all the expenses that go with going to work, why wouldn't you?

The CHAIR: You've had experience in this system in New South Wales for many years. What is your opinion of the way in which the claims managers have been appointed by icare and how that's working? Is there competition? Did it create some sort of great competition between these different claims managers? Has it had a better impact?

TIM WEDLOCK: Chair, as I said before, I don't think there's been a great deal of improvement, which is a really sad thing to say. They've all got the right intention and, if you speak to them, they're under their own duress as well. If you speak to the claims service managers and you speak to the people in management positions about how they're trying to find staff and how their staff are dealing with the ongoing frustrations of brokers or direct clients dealing with them because they're frustrated they're not getting the right results—they're under just as much pressure, I think you will find, as we are, acting on behalf of people trying to get a right outcome. What is the solution to that? That's the million dollar question.

I think it all comes back to the management of the scheme, through my eyes. I'm glad we're sitting here talking about it. The psych component is, again, just a piece. The whole scheme, through my eyes, is absolutely going the wrong way. If it continues going the way it is, there'll be more than what was discussed in the previous session to bail it out. It's not healthy because a lot of employers are shutting their doors because they can't afford to stay in business either. It's not healthy for those genuine people that get injured and are looking for a scheme

that's actually meant to be there for them versus those who—and not just the employees I'm talking about; it's unfortunately doctors, psychologists, everyone else—are on the gravy train clipping the ticket because the scheme allows them to do so unfairly.

The CHAIR: Another part of the scheme that we hear tangentially about—and, I must admit, I'm not as familiar with—is the rehabilitation people who are brought in. Is that what they're called? Rehabilitation managers? What's their role? I understand they're mostly private entities as well. Are there problems with the way that they are operating in the system?

REBECCA WILSON: Chair, I would say they have a lot of referrals. I think true referrals, where it's required, are very beneficial, but my instinct and my observations of what I've seen is there are potentially more referrals that are going that may not need to go to rehab providers. Obviously rehab providers will play a part in that recovery/return to work. We couldn't do it without them and the scheme couldn't do it without them, but I do think, again, re-looking at the scheme, there could be other solutions—going straight back to what I said before—around autonomy and authority.

Case managers are terrified of declining a claim, so they'll pass that on to a rehab provider to say, "What do you think?" I heard in evidence this morning talk about independent medical consultants. Independent medical consultants can give their view on the treatment, but they can't give their view on liability. The IMEs—the independent medical examiners—can, but the consultants can't. The rehabs can tell the insurers what their thoughts are on the injured worker, but the buck really stops with the agent as to who and when they accept a claim. Most claims will go to the death of 12 to 13 weeks. We very rarely see a decision within the first seven days. Even with this new bill going, "We're going to reduce the 13 weeks to eight weeks," they can't even get it done in 13 weeks, so I don't quite understand how that can potentially work.

TIM WEDLOCK: Chair, can I also add to that. New South Wales is a fair-sized State, so the other challenge that we find is, are these claims regionally based or are they metropolitan based. There's a lot of great rehab providers out there, but sometimes the one that an employer might use metropolitan-wise may not be the right ones for regional areas, where there's better people suited for them. There's a lot of consideration there that we have to look for to give the people the support.

The CHAIR: Is there some sort of—maybe not conflict of interest—problem with those rehab providers being employed by the insurer or acting for the insurer? Again, I'm going off of anecdotal evidence. People have contacted my office saying that they've had real problems with these rehab providers, which appear to be almost keeping an eye on them or surveilling them as opposed to helping them to get back to work. Is that a product of them being employed by the insurer? Is there an alternative where we could look at the scheme—

TIM WEDLOCK: I reckon you could say yes and no, depending on who they are. It's the same for the doctors. Why is it that when you have a claim for somebody falling down some stairs, genuinely injuring their leg and they've got to be off work until that's fixed, then before they go to work, a doctor refers them to a psychologist to make sure that everything's okay before they go to work? Then they find out that they can stay at home for another length of time because they've got to wait for the psychologist. In a perfect world, that just wouldn't happen. It's the same as the rehab providers. If they're genuine and working with the right spirit in what we're trying to achieve, you just wouldn't have a problem with them because everyone would be working together.

A lot of large employers will actually employ the rehab provider themselves and ask the claims service provider or icare if they will allow—because that's another thing they changed without consultation: legal panels. A lot of people have their own solicitors. All of a sudden, a new panel was thrown out there without any consultation whatsoever, which upset people. These solicitors were on their side trying to get the best outcome for them and their own employees. There are so many fundamental flaws from what we've seen over our journey that could've been fixed, which we've expressed, and could still be fixed to make it a better scheme.

REBECCA WILSON: Chair, if I could add, the messaging that we really wanted to deliver to you today is that this is not just about psychological claims; this is about case management. I'm happy to share some information that we have here. We put together, between Tim's business and my business, five claims. I think three were physical and two were psychological. They were all claims that should not have been accepted. I'm very clear on saying I know which ones should be accepted and shouldn't be accepted. Those five claims alone cost the scheme $1 million—just five.

The Hon. MARK LATHAM: Why shouldn't the two psychological injury ones have been accepted?

TIM WEDLOCK: I'll give you one example. We had a truck driver. He had a genuine accident where he ran into the back of the car in front of him and the steering wheel hit him in the stomach area. As a result of that, he had to have some medical treatment done. Under a normal course of a workers compensation claim, that would've been six, seven or maybe eight weeks to get himself sorted out and then that was it. When they went in

to do the operation, they discovered that this employee had cancer. As a result of the cancer, that was going to prolong treatment, so they had to put a colostomy bag on the person to help work out what they were going to do. Then there was some discussion that, as a result of the truck accident, he has now got psychological nightmares and he'll never be able to return to work again. Three years later, the claim is still going. It should've been six or seven weeks. If the cancer wasn't diagnosed, if he hadn't had the accident, this fellow would be dead from his cancer. The workers comp actually saved his life. But as a result of that determination, he is now fleecing the system, I'm sorry to say, in our eyes, because that should've been shut down and treated as a separate issue altogether. That's just an example.

The Hon. MARK LATHAM: A normal person would've said, "The silver lining is that if I didn't have the accident, I wouldn't have found out about the cancer. I'd be dead."

TIM WEDLOCK: Correct.

The Hon. MARK LATHAM: I think this is the issue for employers. From the contact that I've had with ClubsNSW and other employers, the thing that really gets their goat—and you've just given one example—are the joke claims, the ones that defy common sense and practical reality. ClubsNSW said there was a woman working for a club on the Mid North Coast who couldn't get to the training day and claimed that it was a deliberate act by the club to bully her and put the training day on when she couldn't attend. She got a WPI of 24 per cent and a $400,000 payout because she said that it was unreasonable and it constituted bullying. My question is don't we have to have some realistic definitions at entry point as to what is a psychological injury? Things like anxiety are properly defined and screened out as much as possible, and things like bullying and harassment need a realistic, real-life definition, not what—sorry to introduce politics, but over the last 20 years the woke definitions of everyone being a victim of everything has led to this particular problem. Don't we need some definitions that match up to real life, like the example you just gave?

REBECCA WILSON: We absolutely do. If you look in the Comcare system, psychological claims or serious psychological claims need to have a psychometric test to back it up. There is also technology out there to back up psychological illness. And when did it occur? Because I could have a psychological illness from when I was 12, and if my boss tells me I'm not doing a great job at 47, is that because I've had anxiety all my life or because I'm doing a crappy job? You've got to look at the proximate cause of injury. That's what we need to look at. I would rather see true injured workers and true psychological injuries managed properly and with a lot of care, regardless of what percentage it is, how it impacts an injured worker's life, and ask for forgiveness if the case manager gets it wrong with the others. But at the moment it is the other way around.

The Hon. MARK LATHAM: I couldn't agree more. The joke claims and in particular the medical fraud are damaging genuine psychological injury claims. We'll get to the point eventually where it starts to hurt physical injury claims that are verifiable. So what do we do about the medical profession? I had a matter yesterday—and sometimes you just think you're on another planet listening to this stuff—where there's a psych who has testified a member of this Parliament is like a hermit, psychologically damaged, can't do any of—the member, in fact, is more active and has more meetings with the Premier than Mrs Minns. There's a total disconnect between the psych assessment and this guy's real life. The fraud from these psychologists is off the radar on the basis of—I'm sure this psych, if she says, "No, you're okay. Wake up to yourself", she loses the counselling income from her diagnosis and—even worse for them—word is out on the street. "She's no good for getting certification. I'd better go to someone else." That's what happens. Haven't we got to clean out the medical fraud as a first step?

TIM WEDLOCK: Absolutely. This was a proposal I believe icare looked to try and introduce about four or five years ago. They were going to do a computer system back end that would help manage a lot of the claims process which identified all of the practitioners—doctors, psychs, you name it—involved. It would have been a lot easier for them to then internally track trends. Because what's the first question on a medical certificate when you go to see—is this workers compensation? You're right. If you had an answer to that, or if icare could come up with an answer to that, rather than increasing the limit on just psych, I think everyone would be in a better position.

The Hon. MARK LATHAM: Have you got submissions on this? We're probably going to have a longer inquiry and take some submissions. You've got written material?

REBECCA WILSON: Yes, we do.

The Hon. MARK LATHAM: I'd like to look at that. I think what you had to say here is probably the best thing I've heard all day, albeit when it's dark outside and people are going home. Sorry it's late in the day, but it's been refreshing, what you've had to say, and very, very useful. Thank you.

REBECCA WILSON: Thank you. I appreciate it.

The Hon. BOB NANVA: I've probably only got one question in addition to what has already been asked. With respect to the Nominal Insurer, it clearly doesn't hold sufficient capital to meet the estimated present value of its future obligations. Treasury has projected that the premiums would need to increase by 32 per cent over the next few years in order to have sufficient capital to meet those future liabilities. We've heard evidence today that an increase of that nature should be, and can be, absorbed by business. Is that a view you share?

TIM WEDLOCK: At the moment you talk about an average 8 per cent increase. You'll see more businesses go out of business because of the way the—I don't know if you're aware of how the actual New South Wales scheme is or how the mechanics of the premium calculations work. Firstly, if you have employment wages versus whatever the WIC code is and the base premium is less than $30,000—so it might be only six or eight employees—there is no capping or no restriction on the amount of workers compensation claims that that business can put in, because it will not impact their premium; it will still be $30,000.

If I was doing an internal review, the first thing I'd be wanting to know is how many of the claims that are lodged within the scheme fall within that band of non-premium-impacting component, because if a lot of it is in there, then there should be a big review on what that minimum premium should be or how that's looked at. If you then look at all of the claims-managed premiums, there is a scheme performance measure, which is very low. They want the scheme to run at 4.3 per cent. If you flip it, that's a business running at 95 per cent return. And if it doesn't, the way that the rates penalise business at the moment for just the smallest of claims is massive.

The Hon. DAMIEN TUDEHOPE: Correct.

TIM WEDLOCK: If you were to turn around and try to recoup that over the next number of years, you'll see more and more businesses going out of business, or businesses trying other ways to try to prevent claims going into the system, because it's just not working.

REBECCA WILSON: May I add to that, please. Just in relation to what Tim said, there's absolutely an issue with employers not being able to afford the premium and going out the door. But there is a second issue that the scheme may have or is having at the moment, and that's the loss prevention recovery model, which is known as LPR. LPR is more of a self-insured model, where an employer has to put up a bond, and if they perform well, then they will save on premium. To put it as an example, I have a client in Tamworth, a not-for-profit organisation that cares for people with disability services. We put them in the LPR model.

We said, "You're going to have to make a huge investment to make sure that your case management and your return to work is right. You need to invest in having return to work coordinators. At the moment, you've got two; you need six." They said, "Okay. Well, what will we need to do to do that?" And he said—sorry, I beg your pardon—"What will we save to do that?" I said, "Your premium will go from $9 million to $1.5 million." Of course, I'm going to invest in six recovery coordinators. But the point being here, you'll have good performers that will go into LPR because they'll save $7.5 million. Why wouldn't you? You'll have employers that will go out of business, and then you'll have a scheme that's left with the rest, and, regardless of whether that premium goes up, the problem is case management.

TIM WEDLOCK: That's the acceptance of claims back to the whole range of who's involved. That is going to be more important than trying to put premiums up every year. That will not fix the problem.

The CHAIR: I think I might get a T-shirt, "The problem is case management." Thank you for that.

REBECCA WILSON: You could have "I Love NIBA", if you wanted.

TIM WEDLOCK: When we say case management, let's be clear to the case managers out there: It's also the fact that they are scared sometimes to make decisions that icare may not support. And then, if that happens, they may no longer be on their panel. The whole thing needs a proper review for the right reasons.

The CHAIR: Thank you, it has been very useful. I've learnt a little bit more about the system today. I hadn't picked up on the insurance broker bit before, so thank you very much for coming along at short notice. That concludes our hearing for today.

(The witnesses withdrew.)

The Committee adjourned at 18:00.