

PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

Monday 1 September 2025

Examination of proposed expenditure for the portfolio area

INDUSTRIAL RELATIONS, WORK HEALTH AND SAFETY

CORRECTED

The Committee met at 9:15.

MEMBERS

The Hon. Jeremy Buckingham (Chair)

The Hon. Robert Borsak

Ms Abigail Boyd

The Hon. Susan Carter

The Hon. Dr Sarah Kaine

The Hon. Bob Nanva

The Hon. Emily Suvaal

The Hon. Damien Tudehope

PRESENT

The Hon. Sophie Cotsis, *Minister for Industrial Relations, and Minister for Work Health and Safety*

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000**

CORRECTED

The CHAIR: Good morning, everyone. Welcome to the fifth hearing of Portfolio Committee No. 1 - Premier and Finance for the inquiry into budget estimates 2025-2026. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Jeremy Buckingham, and I am the Chair of the Committee. I welcome Minister Cotsis and accompanying officials to the hearing.

Today the Committee will examine the proposed expenditure for the portfolios of Industrial Relations, and Work Health and Safety. 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. Welcome, and thank you for making the time to give evidence. All witnesses will be sworn prior to giving evidence. Minister, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. Mr Draper, Ms Dobbins and Ms Campbell, I remind you that you have already been sworn before this Committee during this inquiry and do not need to be sworn again.

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Mr SIMON DRAPER, PSM, Secretary, Premier's Department, on former affirmation

Ms SAMARA DOBBINS, Deputy Secretary, People and Workforce Group, Premier's Department, on former oath

Ms SONYA CAMPBELL, Deputy Secretary, Commercial, NSW Treasury, on former oath

Ms GENIERE APLIN, Chief Executive Officer, icare, sworn and examined

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

Mr GRAEME HEAD, AO, Secretary, Department of Customer Service, affirmed and examined

Ms JANET SCHORER, Commissioner, SafeWork NSW, sworn and examined

Ms LAUREN NAGEL, Executive Director, NSW Long Service Corporation, affirmed and examined

Ms MARINA RIZZO, Executive Director, Industrial Relations, Premier's Department, sworn and examined

Dr PETRINA CASEY, Executive Director, Strategic and Corporate Services, SafeWork NSW, affirmed and examined

The CHAIR: Today's hearing will be conducted from 9.15 a.m. to 5.30 p.m. We are joined by the Minister for the morning session from 9.15 a.m. to 1.00 p.m., with a 15-minute break at 11.00 a.m. In the afternoon we will hear from departmental witnesses from 2.00 p.m. to 5.30 p.m., with a 15-minute break. During these sessions, there will be questions from the Opposition and crossbench members only, and then 15 minutes allocated for Government questions at 10.45 a.m., 12.45 p.m. and 5.15 p.m. We will begin with questions from the Opposition.

The Hon. DAMIEN TUDEHOPE: Good morning, Minister.

Ms SOPHIE COTSIS: Good morning.

The Hon. DAMIEN TUDEHOPE: Good morning also to all the officials; it's a big array. It's a good omen this morning, Minister: I'll get it on *Hansard* already my daughter had a baby girl yesterday, and she called her Sophia.

Ms SOPHIE COTSIS: You know that in Greek that means wisdom.

The Hon. DAMIEN TUDEHOPE: I'm sure that's right. There ends the niceties.

Ms SOPHIE COTSIS: We're always nice.

The Hon. DAMIEN TUDEHOPE: Minister, are you proposing to amend section 140 of the Workers Compensation Act?

Ms SOPHIE COTSIS: Section 140 of the workers comp—sorry?

The Hon. DAMIEN TUDEHOPE: Are you proposing to amend section 140 of the Workers Compensation Act?

Ms SOPHIE COTSIS: What do you mean?

The Hon. DAMIEN TUDEHOPE: Let me give you some context, Minister. You'd be aware that in February 2025—this year—the workers compensation Nominal Insurer was successful in the New South Wales Court of Appeal in action against Mr Sako, who contracted silicosis while working as a stonemason for an uninsured employer. Have you been briefed in relation to that matter?

Ms SOPHIE COTSIS: Mr Tudehope, firstly, I do get briefed on a number of matters. With respect to the matter that you've brought to my attention, I'll need to get refreshed, but I want to hear what you have to say with respect to this particular matter. Please, go ahead.

The Hon. DAMIEN TUDEHOPE: It's a fairly significant matter, because the workers compensation Nominal Insurer was successful against Mr Sako because of a construction of section 140 of the Workers Compensation Act, which in fact found that the contraction of a dust disease was not covered by a workers compensation injury pursuant to section 140. I just wondered in those circumstances whether you have taken any steps to review section 140 of the Workers Compensation Act.

Ms SOPHIE COTSIS: As you are aware, Mr Tudehope, the law and justice committee has just recently completed a report with respect to dust diseases. The Government has received that report, with a list of

CORRECTED

recommendations. A number of those recommendations have already been fulfilled, with respect to making changes to the dust diseases Act, which is the 1942 dust diseases Act—

The Hon. DAMIEN TUDEHOPE: This is the Workers Compensation Act.

Ms SOPHIE COTSIS: I understand—

The Hon. DAMIEN TUDEHOPE: This is an uninsured employer.

Ms SOPHIE COTSIS: I understand. With uninsured employers, through the general lines, icare will work through that. But I'm happy—

The Hon. DAMIEN TUDEHOPE: Mr Wessling, have you provided a brief to the Minister in relation to that case?

TONY WESSLING: Not that I'm aware of, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Why not?

TONY WESSLING: I'm trying to get more information on it now.

The Hon. DAMIEN TUDEHOPE: Are you aware of the—

TONY WESSLING: No.

The Hon. DAMIEN TUDEHOPE: So an uninsured worker in circumstances where they are suffering a disease which is life-threatening can't bring an action because of a construction of section 140?

TONY WESSLING: I will have to get details, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Minister, in November 2023 you told the Committee in relation to expanding the list of cancers covered by schedule 4 to the Workers Compensation Act 1987:

I've sought advice from icare. We've sought options. I'll be working together with my colleagues who have responsibility in this area as well—Minister Dib, Minister Chanthivong and the Treasurer—in a coordinated and collaborative approach to make sure that we get this right and, of course, speaking to the stakeholders. Once we have some of that formal information, I'm happy to come and brief all of you.

That was two years ago, Minister, that you told us that. What options and advice have you received from icare?

Ms SOPHIE COTSIS: With respect to making changes about companies that are uninsured—

The Hon. DAMIEN TUDEHOPE: No, in relation to presumptive cancers.

Ms SOPHIE COTSIS: Mr Tudehope, let me say this. Your Government for 12 years—you did make changes, and I acknowledge those changes that you have made. With respect to presumptive cancers, the Government will consider anything to assist firefighters. Now, we know that firefighters—and I respect the firefighters in New South Wales. For me, the work that they do is not only meaningful but, as we can see—and I know, from my own firefighters in Campsie and Lakemba, they do incredible work. They take a lot of risk. They have an increased risk of various cancers, including prostate, skin and lung cancers, due to occupational exposure to carcinogens from combustion products, diesel and petrol, particularly when they have to deal with retardants and chemicals, and they are exposed through the work that they do. I know that all of us here are very concerned and the Government—

The Hon. DAMIEN TUDEHOPE: With respect, Minister, this was a very specific question. The Minister has been speaking now for the best part of 3½ minutes and has not addressed the question, which was: What options and advice have you received from icare?

Ms SOPHIE COTSIS: With respect to presumptive cancers?

The Hon. DAMIEN TUDEHOPE: Correct. You told us back in November 2023 that you were exploring the options with your fellow Ministers. What options have been put in front of you?

Ms SOPHIE COTSIS: Mr Tudehope, these are matters that the Government is considering. Absolutely, we have been on the record that we do need to expand the list. Absolutely.

The Hon. DAMIEN TUDEHOPE: So have there been options put in front of you?

Ms SOPHIE COTSIS: With respect to presumptive cancers?

The Hon. DAMIEN TUDEHOPE: Presumptive cancers.

Ms SOPHIE COTSIS: The Government is considering a number of options.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Have those options been put in front of you, Minister?

Ms SOPHIE COTSIS: Mr Tudehope, I don't know what you're getting at.

The Hon. DAMIEN TUDEHOPE: It's a very straightforward question.

Ms SOPHIE COTSIS: I've answered your question.

The Hon. DAMIEN TUDEHOPE: Are there a number of options you are considering?

Ms SOPHIE COTSIS: I've answered your questions, and I know that you've read a bill in the upper House. I understand that you're advocating—like all members of Parliament are advocating to the Government—and members of this Committee are advocating on behalf of firefighters. I know that firefighters do incredible work, and they are confronted with these risk-based issues. Absolutely, and I know that—

The Hon. DAMIEN TUDEHOPE: Minister, you were very passionate about this when you were in opposition, and you and I occasionally worked very collaboratively in relation to this issue. Two years ago you made that commitment to this Committee in relation to progressing the issues relating to presumptive cancers for firefighters. What options are you considering in relation to that?

Ms SOPHIE COTSIS: Mr Tudehope, I know that there are deep concerns, and the firefighters' union led by secretary Leighton Drury has spoken and advocated very strongly on behalf of its members to ensure that there's an expansion of these cancers in the schedule. I understand that, and the Government—

The Hon. DAMIEN TUDEHOPE: Minister, with due respect, it's a specific question. What are the options you are considering?

The Hon. EMILY SUVAAL: Point of order—

Ms SOPHIE COTSIS: The Government is considering—

The CHAIR: A point of order has been taken. Ms Suvaal on a point of order.

The Hon. EMILY SUVAAL: The question has now been asked several times and the Minister has answered. Mr Tudehope continues to interrupt the Minister in answering. I ask that you uphold paragraph 19 of the procedural fairness resolution as it relates to courtesy being provided to the witness. She has answered the question. I ask that you direct him to move on with his line of questioning.

The CHAIR: I won't uphold the point of order. I don't think Mr Tudehope is being discourteous, and he is at liberty to pursue this line of questions.

The Hon. DAMIEN TUDEHOPE: Minister, I just repeat the question, and I'd just like you to direct your attention to the options which may be available.

Ms SOPHIE COTSIS: Mr Tudehope, the Government is considering a number of scenarios.

The Hon. DAMIEN TUDEHOPE: So there is an options paper available?

Ms SOPHIE COTSIS: I know that you have sought documents through an SO 52, and there is already a release of one of those documents about baseline with respect to all cancers included and there's a costing. That information is out in the public arena, but I'm not sure what you're trying to—

The Hon. DAMIEN TUDEHOPE: Minister, you've made reference to the Standing Order 52 and a costings document which has been produced. There are many other documents which give rise to, in fact, that costing document. Why weren't those documents produced?

Ms SOPHIE COTSIS: Mr Tudehope, all my obligations have all been declared with respect to the SO 52. You asked me about the consideration. The Government is making considerations. I understand the frustration of the firefighters. I understand the frustration of members of Parliament and family members of the firefighters. We absolutely want to see more firefighters. We want to see more people entering fire and rescue, particularly women.

The Hon. DAMIEN TUDEHOPE: Three of the presumptive cancers which are referred to relate to presumptive cancers in circumstances where they are women-only diseases. Are you considering that as an option to include as the presumptive cancers?

Ms SOPHIE COTSIS: The Government hasn't yet made the policy decision. It's all Cabinet in confidence.

The Hon. DAMIEN TUDEHOPE: Thank you for the note, Ms Campbell. I'm sure the Minister appreciated getting that note. On what basis do you say it is Cabinet in confidence, Minister?

CORRECTED

Ms SOPHIE COTSIS: Mr Tudehope, the Government will consider all options to ensure that firefighters—

The Hon. DAMIEN TUDEHOPE: Has it been to Cabinet, has it?

Ms SOPHIE COTSIS: —are protected particularly when it comes to cancers. We're doing everything that we can. We are doing absolutely everything that we can to protect our firefighters because they protect our community. They are out there each and every day. They are dealing with some of the most toxic environments when they're going out to a fire, when they're dealing with road crashes, and it is—

The Hon. DAMIEN TUDEHOPE: Minister, these are very specific questions. Have you taken a bill to Cabinet in relation to this?

The Hon. BOB NANVA: Point of order: The Minister can only be asked a lawful question. The Minister has indicated this is a matter that's before Cabinet, which would in turn mean that it's not a lawful question. I ask that you rule it out of order.

The Hon. SUSAN CARTER: To the point of order: The taking of something to Cabinet is not whether or not something is before Cabinet, so it's entirely lawful to say "have you taken" where it may not be lawful to say "what is the content of the Cabinet discussions".

The CHAIR: It's a good point. I don't uphold the point of order. The question was "Has this been taken to Cabinet?" not "What has been taken to Cabinet?" I note the point of order, but I don't uphold it at the moment.

The Hon. DAMIEN TUDEHOPE: Minister?

Ms SOPHIE COTSIS: Yes, Mr Tudehope?

The Hon. DAMIEN TUDEHOPE: Have you taken a bill to Cabinet?

Ms SOPHIE COTSIS: Mr Tudehope, the Government will consider its options, and I've ventilated this over the past five or six minutes.

The Hon. DAMIEN TUDEHOPE: And on each occasion that you have ventilated this—and Mr Borsak has raised it also at a previous estimates hearing with you—nothing appears to have come forward, Minister. What options are you considering?

Ms SOPHIE COTSIS: Mr Tudehope, the Government is considering and the Government is taking its considerations very seriously with respect to presumptive cancers. For firefighters, we want to see more women in fire and rescue. We absolutely do and, as we have seen, we're doing some really important work in emergency services. I know that Minister Dib has been doing fantastic work. I'm sure he'll have a lot more to say.

The Hon. DAMIEN TUDEHOPE: You refer to Minister Dib and you refer to the collaborative and coordinated approach with your fellow Ministers. Have you been involved with discussions in relation to presumptive cancers with Minister Dib?

Ms SOPHIE COTSIS: Mr Tudehope, the reality is that we work collaboratively and we work together, and this issue has been strongly advocated by the firefighters. We know that it is the number one concern.

The Hon. DAMIEN TUDEHOPE: Is the Treasurer blocking you?

Ms SOPHIE COTSIS: The Treasurer is a fantastic Treasurer.

The Hon. DAMIEN TUDEHOPE: Is he blocking this legislation?

Ms SOPHIE COTSIS: Absolutely not. We work collaboratively.

The Hon. BOB NANVA: Point of order: It goes to paragraph 19 of the procedural fairness resolution and courtesy to the witness. Mr Tudehope was talking over the top of the witness as she was providing an answer to the question.

The CHAIR: I won't uphold the point of order. I don't think Mr Tudehope was being discourteous, but he was interjecting and not really giving the Minister a chance to answer.

The Hon. DAMIEN TUDEHOPE: Is the Treasurer blocking?

Ms SOPHIE COTSIS: The Treasurer is one of the best Treasurers in this State.

The Hon. DAMIEN TUDEHOPE: I didn't ask that.

Ms SOPHIE COTSIS: He is doing an extraordinary job.

CORRECTED

The CHAIR: I think he's the only Treasurer in this State.

Ms SOPHIE COTSIS: In the history of New South Wales, he's a brilliant Treasurer who is doing a great job and working through the mess that your former Government left behind.

The Hon. DAMIEN TUDEHOPE: Okay, Minister, let's cut to the—

Ms SOPHIE COTSIS: You don't like to hear the truth.

The Hon. DAMIEN TUDEHOPE: Let's cut to the chase. If you are actually serious about this, will you support the bill which I have introduced into the Parliament?

Ms SOPHIE COTSIS: Mr Tudehope, we are absolutely serious and our Government works in collaboration. We'll consider every bill like we consider every other member's bill, and we'll go through a process.

The Hon. DAMIEN TUDEHOPE: Have you reviewed the bill?

Ms SOPHIE COTSIS: I heard about your commentary.

The Hon. DAMIEN TUDEHOPE: You haven't reviewed the bill?

Ms SOPHIE COTSIS: Your bill?

The Hon. DAMIEN TUDEHOPE: Yes.

Ms SOPHIE COTSIS: I've had a look at your bill.

The Hon. DAMIEN TUDEHOPE: What's the advice that you've received? Is the advice that you could support the bill?

Ms SOPHIE COTSIS: Mr Tudehope, why didn't you do it in government? You had all that time.

The Hon. DAMIEN TUDEHOPE: There is a bill before the upper House at the moment in relation to exactly the matters which you undertook to bring to the Parliament and have not done. Will you support that bill?

Ms SOPHIE COTSIS: Mr Tudehope, you had 12 years in government and you didn't do any of this work.

The Hon. DAMIEN TUDEHOPE: Will you support this bill, Minister?

Ms SOPHIE COTSIS: We are cleaning up your mess.

The Hon. DAMIEN TUDEHOPE: Will you support this bill?

Ms SOPHIE COTSIS: The Government considers every member's bill according to the processes.

The Hon. DAMIEN TUDEHOPE: This is something you undertook to do. Will you undertake to support this bill?

Ms SOPHIE COTSIS: Mr Tudehope, I refer you to my previous responses.

The Hon. DAMIEN TUDEHOPE: So the answer is, no, you won't support it?

Ms SOPHIE COTSIS: Mr Tudehope—

The Hon. Dr SARAH KAINE: Point of order: The Minister has answered the question I think three, four or possibly five times and Mr Tudehope continues to ask the same question. I invoke paragraph 19 about courtesy. The question has been answered. A couple of goes is fair enough, but four or five is really pushing the boundary.

The Hon. DAMIEN TUDEHOPE: To the point of order: With respect, she hasn't answered the question I've asked on a number of occasions about whether she will support the bill.

The Hon. Dr SARAH KAINE: Because you don't want the answer.

The Hon. BOB NANVA: To the point of order—

The Hon. DAMIEN TUDEHOPE: She may not want to answer.

The CHAIR: Order! Mr Nanva on the point of order.

The Hon. BOB NANVA: Chair, asking the same question on a number of occasions is now on the verge of badgering the witness. That is discourteous to the witness under paragraph 19.

The CHAIR: I won't uphold the point of order. I don't think Mr Tudehope was being discourteous. I think the Minister's answers were just relevant. The member is free to continue to ask those questions, but I remind him to avoid interjecting and allow the Minister to give a full answer.

CORRECTED

The Hon. DAMIEN TUDEHOPE: One last time, Minister: Will you support the Workers Compensation Amendment (Firefighters' Diseases) Bill 2025, which is exactly what you campaigned for, which is currently before the Legislative Council? If not, why not?

Ms SOPHIE COTSIS: Mr Tudehope, our Government has overwhelming respect for the firefighters of New South Wales—absolute respect. We will assist. We will do what we can to support these hardworking men and women in Fire and Rescue.

The Hon. DAMIEN TUDEHOPE: No, you won't.

The CHAIR: Order!

Ms SOPHIE COTSIS: I thank them for their service. I thank them for everything they do. You can see that—I'm sure you've gone through the decision of the full bench of the commission—there's a lot of work that your Government did not undertake. There are a lot of lessons that you should learn there.

The Hon. DAMIEN TUDEHOPE: Minister, I asked you whether you would support a bill which you advocated for, and you won't give me a direct answer. I will move on in relation to it.

Ms SOPHIE COTSIS: Mr Tudehope, the Government will consider—

The Hon. DAMIEN TUDEHOPE: It makes a lie of the fact that you will do everything you can to support hardworking firefighters.

Ms SOPHIE COTSIS: I reject that.

The CHAIR: Order!

Ms SOPHIE COTSIS: Mr Tudehope, I reject being called a liar.

The CHAIR: Order! Mr Tudehope, let's keep things civil, avoid commentary and ask questions, please.

The Hon. DAMIEN TUDEHOPE: Minister, the threshold for bringing a work injury damages claim in relation to a workplace psychological injury, including psychological injury caused by workplace sexual assault caused by employer negligence, is 15 per cent of personal impairment. Are you aware of that?

Ms SOPHIE COTSIS: Yes.

The Hon. DAMIEN TUDEHOPE: Minister, schedule 1 [19] of the Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025 would lift the threshold to 31 per cent, a threshold seldom reached even by victims profoundly psychologically injured by that sexual assault. Are you aware of that?

Ms SOPHIE COTSIS: Keep going, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Minister, I just want to make sure that you are across the detail of this because it is important. Are you aware of that?

Ms SOPHIE COTSIS: I introduced the bill in the lower House.

The Hon. DAMIEN TUDEHOPE: So the answer is you are aware of it?

Ms SOPHIE COTSIS: I don't accept a lot of your premise but, anyway, go on.

The CHAIR: In fact, the time for Opposition questions has ended. It's now time for the crossbench.

Ms ABIGAIL BOYD: Good morning to you, Minister, and all of the officials here today. Can I just start with something a little technical? Looking at icare and the pressures on the system, in the June 2024 evaluation Affinity observed that the average weekly payments for proactive claims was higher than expected for most accident periods and increased faster than benefit indexation. That added about \$146 million to liabilities. In the December 2024 evaluation, they again found that average weekly payments continued to increase faster than benefit indexation, and explicitly quantified a \$236 million increase for that factor alone.

What this is getting at is the PIAWE remediation from 2022. The assumptions weren't correct, is my understanding, and the increase in indexation as a result of that original error has contributed almost \$400 million of the increase in liability evaluation faced by the Nominal Insurer in 2024. That's \$400 million of the pressure on the Nominal Insurer that's directly attributable not to claims, trends or performance in any way but directly attributable to icare's own mismanagement of the scheme. Have you been made aware of that significant driver of the liability?

Ms SOPHIE COTSIS: I have been aware of and briefed on a number of adjustments. But with respect to this one, I'm happy to take a further brief on that. Mr Wessling, if you're able to elaborate further?

CORRECTED

TONY WESSLING: We've had those periods where average weekly payments did increase above inflation, and the actuaries have been trying to understand what drove that. They haven't attributed the full amount to the various remediations that occurred, but the driver that they partially attributed to those remediation programs is that, as we went through the program and contacted injured workers, a number of claims reopened, in effect. There were additional payments made beyond the remediation payments on those claims. I would just state, though, that the actuarial analysis doesn't attribute that full cost over wage inflation just to those remediation activities.

Ms ABIGAIL BOYD: No, but it resulted in a re-baselining of the wages on which they were then paying the claims, and that's going forward.

TONY WESSLING: That's true, yes.

Ms ABIGAIL BOYD: I'm trying to think of a non-sweary way to say this, but the mess-up with the PIAWE remediation a few years back is still being felt in the system. My question to the Minister is when were you made aware that that \$400 million was coming from that previous icare mistake? That pressure on the Nominal Insurer is actually quite a significant amount.

Ms SOPHIE COTSIS: I want to give you correct advice, so I'm happy to take that on notice.

Ms ABIGAIL BOYD: Turning to another technical icare issue—and maybe I'll direct this directly to Mr Wessling first, then—when an employer first crosses into the "experienced" rated pool, is it the case that their first year of claims experience may be excluded or annualised depending on how the calendar month aligns with icare's calculations?

TONY WESSLING: Can I take that on notice and get you a technical answer?

Ms ABIGAIL BOYD: Yes. I think what we're looking at here, and what I've been hearing about particularly from small businesses, is that icare shortens the first policy period for some employers so it aligns with the end of the month.

TONY WESSLING: That's correct, yes.

Ms ABIGAIL BOYD: What is the official term that you use for that practice internally? Is it "date rationalisation"?

TONY WESSLING: I believe that's the case, yes, Ms Boyd.

Ms ABIGAIL BOYD: How many employers in the past three years had their first year of experience rating partially or wholly excluded because of date rationalisation?

TONY WESSLING: I will see if I can get that information for you.

Ms ABIGAIL BOYD: And if you could tell me how many employers have had their first policy period shortened in that way since icare assumed responsibility for the Nominal Insurer.

TONY WESSLING: Okay.

Ms ABIGAIL BOYD: On what legislative or regulatory authority does icare rely to shorten a 12-month statutory policy period?

TONY WESSLING: I will take that question on notice as well. But I can say all of our premium and underwriting processes are linked back to the Market Premium and Practice Guidelines, which is really a basis by which all of the premium activities are undertaken against.

Ms ABIGAIL BOYD: Did icare ever seek or obtain explicit approval from SIRA to implement the practice?

TONY WESSLING: I would have to take that on notice, Ms Boyd.

Ms ABIGAIL BOYD: Do you why the adjustment is not disclosed in policy documentation, premium guides or employer communications?

TONY WESSLING: I will have to take that on notice, Ms Boyd.

Ms ABIGAIL BOYD: If you could you tell me what proportion of employers transitioning from small to experience-rated status are affected by date rationalisation?

TONY WESSLING: Sorry, could you say that again?

CORRECTED

Ms ABIGAIL BOYD: What proportion of employers transitioning from small to experience-rated status are affected by date rationalisation?

TONY WESSLING: Okay.

Ms ABIGAIL BOYD: Coming to the crux of the issue, that shortening of the first policy period affects an employer's ability to carry forward their claims performance into future premium calculations, so it has the effect of keeping their premiums higher for longer. My understanding is that this practice breaches the Market Practice and Premium Guidelines principles and that SIRA initially determined that it had no legislative basis. Can you explain why icare continues to use this practice?

TONY WESSLING: I can't explain that, Ms Boyd.

Ms ABIGAIL BOYD: Minister, are you aware of the use of this practice, which is resulting in a lot of small businesses ending up paying higher premiums than they should be?

Ms SOPHIE COTSIS: I'm not aware. I'll take advice on that. But where we can support small businesses with respect to premiums, absolutely, we will do so. When we made the changes to icare recently, there were a number of objects that we included in the bill with respect to a sustainable financial scheme, but also having injured workers and premium holders at the centre. I will get back to you on that one.

Ms ABIGAIL BOYD: If it's found that this practice is continuing—which I believe it is—my understanding is it's also the case that some employers have had that date rationalisation reversed when they raised it with icare, while others have not. What criteria governed those decisions, Mr Wessling?

TONY WESSLING: Again, our decisions are governed back to the Market Premium and Practice Guidelines. I'm not aware of reversals. I will have to go and have a look at that.

Ms ABIGAIL BOYD: I understand if you have to take this on notice but perhaps you can come back this afternoon, because this is quite a serious issue. If this practice is occurring, and it does breach the Market Practice and Premium Guidelines, will you commit to retrospectively correcting premiums for all affected employers and prohibiting the practice going forward?

TONY WESSLING: I obviously will take that away and have a look at the details.

Ms ABIGAIL BOYD: Minister?

Ms SOPHIE COTSIS: I think that you've brought forward a very important issue. It was only a few weeks ago we were down in Nowra for a mobile engagement forum with the Shoalhaven Business Chamber and over 200 registered businesses, NGOs, manufacturing and a number of those organisations raised issues with us. Obviously, the icare team were making their operational inquiries. We will come back to you. I appreciate you bringing that forward to us today.

Ms ABIGAIL BOYD: Another issue in relation to premiums, for experience-rated employers, claims only affect premiums for three years, is my understanding, but for LPR employers for four years and after that any deterioration is no longer counted. Is that correct, Mr Wessling?

TONY WESSLING: That is correct. There is an adjustment made in the fourth year for further expected claims costs.

Ms ABIGAIL BOYD: Again, I appreciate you may need to take this on notice, but what's the total dollar value of claims costs that emerge after those cut-off points each year, and who pays for them once the employer is no longer accountable?

TONY WESSLING: I will take that on notice.

Ms ABIGAIL BOYD: From a structural perspective, though, if you've got these experience-rated employers—let's give a worked example—if you've got somebody, an employer, who has a worker who's suffered an injury in year one, after three years, basically, that gets wiped for that particular employer. But that person may still be requiring ongoing costs through icare. Is that ongoing cost then just dealt with by the pool, by icare? There's no sort of additional consequence on that employer after that time?

TONY WESSLING: That's correct. Each of our products—we only have four products—essentially, are pooled. There's an element of pooling in each of those. There's no product we offer that is self-insurance, so there is an element of pooling. With the experience-rated product that you just mentioned, there is an LPR, there is a portion of the cost of the claims that is borne by the employer, but not the full amount, because there's risk pooling in place.

Ms ABIGAIL BOYD: But if you're a small business, you would be impacted.

CORRECTED

TONY WESSLING: If you're a small business, there's no impact of your claim on your premium. The impacts are dealt with at an industry level. We price at an industry WIC code for the smallest employers.

Ms ABIGAIL BOYD: So whereas small employers are bearing the risk with their premium of an entire pool, if you're one of these larger businesses or an experience-rated employer you aren't subject to that same pooling of risk after a certain period of time?

TONY WESSLING: There are certain cappings in place, that's right. There's an element of pooling. It's just more directly risk rated for those larger employers, and the experience applies to the premiums paid more than they do for a small employer where there's no credibility against the claim.

Ms ABIGAIL BOYD: Is it correct that LPR employers only pay a deposit premium up-front rather than a full risk-based premium?

TONY WESSLING: That's right. The mechanism for the larger employers is that there's an estimate of the premium paid up-front and there's more at risk, depending on the performance of that employer. That's done through these true-ups that apply every year against actual claims cost at that employer level.

Ms ABIGAIL BOYD: I understand icare relies on TCorp investment returns and subsidised premiums and cover long-tail liabilities. If these LPR employers are only paying deposits, it's true then that icare has less investable cash and so it's forgoing years of compound returns at the same time as it's left holding long-tail liabilities in respect of those employers. Is that correct?

TONY WESSLING: That's sort of correct, but because we set the premiums for each of those products, the benefit of the investment that goes against the premiums held for small employers applies to those premiums. It's built into the premium calculations, the benefit of investments.

Ms ABIGAIL BOYD: Have you calculated how much investment income the scheme's lost because those deposits give you less investable cash than if the full premium had been received?

TONY WESSLING: I don't think we've lost any investment return because it's factored into the premium that's paid.

Ms ABIGAIL BOYD: But in terms of the amount that is sitting in the fund that's able to be invested and returns paid into the fund in the same way that, say, a small business's premium is used?

TONY WESSLING: The time value of money that is lost, I guess, in the case is factored into the premium calculation for the larger employers, so it's factored into the way premiums are collected.

Ms ABIGAIL BOYD: If large employers are not only able to externalise long-tail claims after four years but also denying icare the opportunity to use those funds—I understand what you're saying about you think that there's larger premiums, but they're not paying those premiums. They're sitting in their own bank accounts. Aren't we really—it's like a double subsidy paid for by the rest of the scheme to prop up these big employers?

TONY WESSLING: I don't believe that's the case, Ms Boyd. As I said, the premiums that we collect, we collect premiums every year to pay for the claims we expect to be incurred in that year. We set the premiums for those products in those product pools. So the premiums we set, relative to a break-even premium, are set for each of those pools. The way investments and claims factor into those is different, but we still collect the amount of premium we expect. Remember, in the case of LPR—

Ms ABIGAIL BOYD: But when you say "collect the premium", though, it's sitting in their own account. For these large employers, the actual fund—the amount—is with them. They're not paying the entire amount into icare in the same way that a small business pays their premium into icare, correct?

TONY WESSLING: But, in addition to the base premium we collect in the LPR product, we're also collecting costs against the claims that are being incurred and paid. So, yes, there is a timing of those cash flows, but, as I say, that's factored into the premium calculations.

Ms ABIGAIL BOYD: But the cash is still sitting with the employer for them to use however they like, whereas a small business has to take that cash and sacrifice it—put it into icare—which you then use within the Nominal Insurer to earn returns and spread the risk with everyone else, and all of the other things.

TONY WESSLING: With larger employers, though, we're collecting a premium for the base fee. We're also collecting a premium to cover claims from prior years and claims in the current year as well. So we're collecting premiums that cover the base premium plus claims all the time.

CORRECTED

Ms ABIGAIL BOYD: Yes, when there are claims, but the point is still that they're not paying their full premium. If there were no claims then they would just have that cash themselves. Whereas for a small business, they've had to put that premium in.

TONY WESSLING: I don't believe it's the case that it's unfair because, again—

Ms ABIGAIL BOYD: I didn't say it was unfair. You said it was unfair.

TONY WESSLING: We're factoring the time value of money into the premium calculations. I can assure you that we treat the LPR product as a pool. The actuaries calculate how much premium we need to collect to cover the cost of claims. The cash flows work out slightly differently to the way they do for a small employer, but it covers the cost, as outlined. So if we get less investment income, that essentially translates into a slightly higher premium being paid.

Ms ABIGAIL BOYD: Eighty-eight per cent of small employers haven't made a claim in the last five years, but they're still having to pay their premiums in full.

TONY WESSLING: That's right, yes.

Ms ABIGAIL BOYD: Whereas if you're part of this LPR product, you basically get to hold onto your cash until it's called on. Do you think that presents, as you've said, some unfairness for small businesses versus large businesses?

The Hon. EMILY SUVAAL: Point of order: I'm going to take a point of order in line with this particular line of questioning that Ms Boyd is taking, as it's directed towards a public servant. In particular, this question is seeking an opinion. The use of the words "don't you think this is unfair" would suggest to me that Ms Boyd is seeking an opinion from a public servant. I'd ask you to rule that out of order.

Ms ABIGAIL BOYD: I'm very happy to direct it to the Minister.

The CHAIR: I uphold the point of order. If you could direct it to the Minister, Ms Boyd, that would be very helpful.

Ms ABIGAIL BOYD: Minister, you can see where I'm going with this.

Ms SOPHIE COTSIS: Yes.

Ms ABIGAIL BOYD: The policy structure within icare is pretty complicated. But when you drill down into it, there are a number of factors that are not playing in favour of small business. Would you be concerned if the large businesses were effectively not contributing their fair share, putting the burden on small businesses with higher premiums?

Ms SOPHIE COTSIS: Mr Wessling and our officials are taking your questions on notice. They'll come back to you. With respect to my opinion in terms of a policy decision, we need to look at the evidence and look at the facts. I'm happy to look at the small businesses who have raised these issues with yourself. I'm happy to consider those. I will also let the Committee know that there have been a number of changes to icare over the last couple of years. I'll be issuing my statement of expectation for icare, and I'll have that tabled so that everyone can see the Government's expectation. Of course, we're working together with our agency, with the key stakeholders and with premium holders. Where there is concern, of course we will consider options. But I'm happy to talk to you and we can meet with our icare officials.

Ms ABIGAIL BOYD: I'd also be keen to get you on the record. Are you interested in ordering a review or doing something to get to the bottom of exactly what burden is being put on small businesses versus big businesses under the structure of the premium setting?

Ms SOPHIE COTSIS: Ms Boyd, I'm not going to make a "bull at a gate" policy decision on the run.

Ms ABIGAIL BOYD: It's worth a try.

Ms SOPHIE COTSIS: I'm a diligent person and I want to make sure we have all the facts and information. As you know, I'll tend to that and respond in a timely way. But I'm definitely happy for us, with our CEO and Mr Wessling, to meet and spend more time with our officials to work on this matter.

The Hon. DAMIEN TUDEHOPE: I want to clear up a few things first, Minister, before returning to your amendment Act. Earlier, when I was talking about *Workers Compensation Nominal Insurer v Sako*, you made reference to a review of the Workers Compensation Act. I think you indicated that you'd already implemented a number of recommendations contained in that review. Are you prepared to table that review document?

CORRECTED

Ms SOPHIE COTSIS: Is this the law and justice committee?

The Hon. DAMIEN TUDEHOPE: That's the only one you're referring to. Unless there's an internal review which you have done?

Ms SOPHIE COTSIS: Mr Tudehope, as you know, the law and justice committee recently completed—

The Hon. DAMIEN TUDEHOPE: But it didn't cover uninsurance, did it?

Ms SOPHIE COTSIS: No.

The Hon. DAMIEN TUDEHOPE: That case was specifically addressing uninsurance. So there will be nothing in that document which addresses the issue of uninsurance.

Ms SOPHIE COTSIS: No. To go back, the law and justice committee made a number of recommendations. They're in the public arena.

The Hon. DAMIEN TUDEHOPE: It's fine. You also made reference to a document which had been produced relating to the costing of some modelling that had been done. It was produced in confidential documents. Having made reference to that document today, are you prepared to table that costings document?

Ms SOPHIE COTSIS: What do you mean?

The Hon. DAMIEN TUDEHOPE: There is a modelling document with costings for presumptive cancers which has been prepared for you. Are you prepared to make that document public?

Ms SOPHIE COTSIS: Mr Tudehope, all my obligations and all the processes have been met. I have nothing further to add.

The Hon. DAMIEN TUDEHOPE: It's a specific question. You made reference to a modelling document which you'd received. Will you make that document public?

Ms SOPHIE COTSIS: We provided every document we had, Mr Tudehope, through the order and through the process.

The Hon. DAMIEN TUDEHOPE: Are you sure that's the case, Minister?

Ms SOPHIE COTSIS: We have fulfilled the obligations with respect to this order. There's a process and we've gone through that process.

The Hon. DAMIEN TUDEHOPE: At the risk of incurring Ms Suvaal's ire, I will ask you again. There is a document which has been produced. Having given the evidence which you gave earlier, are you prepared to have that document made public?

Ms SOPHIE COTSIS: Mr Tudehope, our obligations with respect to the document you have referenced have been met through the order. I have nothing further to add.

The Hon. DAMIEN TUDEHOPE: Are you aware of on what basis those documents were provided?

Ms SOPHIE COTSIS: Which documents are you talking about?

The Hon. DAMIEN TUDEHOPE: The documents you say have been provided to the House pursuant to the order.

Ms SOPHIE COTSIS: The SO 52?

The Hon. DAMIEN TUDEHOPE: Yes.

Ms SOPHIE COTSIS: What's your question?

The Hon. DAMIEN TUDEHOPE: Are you aware of on what basis they have been provided?

Ms SOPHIE COTSIS: We have followed the process.

The Hon. DAMIEN TUDEHOPE: You say that they are documents that have been produced in response to the order.

Ms SOPHIE COTSIS: We have fulfilled our obligation.

The Hon. DAMIEN TUDEHOPE: So on what basis do you say the documents have been produced to the House?

Ms SOPHIE COTSIS: What do you—sorry, you're going round in circles.

CORRECTED

The Hon. DAMIEN TUDEHOPE: No, I'm not.

Ms SOPHIE COTSIS: We've fulfilled our obligation. I can refer you to Ms Campbell.

SONYA CAMPBELL: Mr Tudehope, there were a number of releases under the Standing Order 52. The document that we're referring to was released under cover of letter from the Cabinet Office Secretary and was released on a confidential basis—you're correct.

The Hon. DAMIEN TUDEHOPE: Correct. So, Minister, having made disclosure of that document today, are you prepared for that document to be made public?

Ms SOPHIE COTSIS: Mr Tudehope, I'm going to seek Ms Campbell's assistance.

SONYA CAMPBELL: I think the Minister would seek advice on that at this stage, Mr Tudehope. Thank you.

The Hon. DAMIEN TUDEHOPE: I return to the workers compensation amendment Act. Minister, I was asking you about the threshold for a profoundly injured worker which arises as a result of a sexual assault having now to meet a threshold of 31 per cent for continuing damages, pursuant to the Act. You're aware that that's the case, I think you told me?

Ms SOPHIE COTSIS: Yes, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Why do you say that it is reform and modernisation of the workers compensation scheme to cut off access to workers' injury damages for victims of workplace sexual assault caused by employer negligence? Is that reform, is it?

Ms SOPHIE COTSIS: Mr Tudehope, have you read the amendment that you have introduced?

The Hon. DAMIEN TUDEHOPE: No, I'm asking—

Ms SOPHIE COTSIS: No, you can't target me on this when you have to look through the consequences of the amendment that you've introduced.

The Hon. DAMIEN TUDEHOPE: I'm happy to come back—

Ms SOPHIE COTSIS: No—

The Hon. DAMIEN TUDEHOPE: I'm asking the questions, Minister.

Ms SOPHIE COTSIS: No, because it's got to be—

The Hon. DAMIEN TUDEHOPE: Are you happy with that?

The Hon. EMILY SUVAAL: Point of order—

Ms SOPHIE COTSIS: No, on this, you've got to put it in context.

The CHAIR: Order!

The Hon. DAMIEN TUDEHOPE: It's not context.

Ms SOPHIE COTSIS: No, it is context.

The CHAIR: A point of order has been taken by Ms Suvaal.

Ms SOPHIE COTSIS: It is context.

The CHAIR: Order, Minister!

The Hon. EMILY SUVAAL: The Hon. Damien Tudehope asked a question to the Minister that was loaded with argument and imputation. It is only fair and procedurally courteous that the Minister be afforded the opportunity to answer that question in full, as she is doing. I would ask you to remind Damien Tudehope of his obligations under paragraph 19 of the procedural fairness resolution to afford courtesy to the witness, in what was a question that was loaded with imputation and argument.

The Hon. DAMIEN TUDEHOPE: It was a specific question about a provision of the Act which this Minister has introduced and whether that constitutes—

The CHAIR: Is this to the point of order?

The Hon. DAMIEN TUDEHOPE: Yes.

CORRECTED

The CHAIR: The member's question was not out of order, although we have to avoid imputations, according to the rules of the House. But if we were to rule out every question in this hearing that had argument in it then we wouldn't be doing anything at all. The hearing was not helped by the interjections of Mr Tudehope. The Minister was about 30 seconds into her answer. I don't think it was the answer Mr Tudehope was hoping for, as per usual, but he was beginning to interject. If he could avoid that and allow the Minister to answer in full, that would help us.

Ms SOPHIE COTSIS: Mr Tudehope—

The Hon. DAMIEN TUDEHOPE: Let me just clarify the question, Minister. I'm asking about sexual assault, which is contained within the bill you introduced, not about any amendments. This is about something which is before the Parliament at the moment which you have introduced. Is it your view that limiting damages for sexual assault caused by an employer's negligence is proper reform?

Ms SOPHIE COTSIS: Mr Tudehope, the Premier and the Treasurer answered these questions when you put this to them. Let me tell you that the Government has got a bill in your place that—I don't know why; there's no rhyme or reason, and you haven't explained to either workers or the business community what you're doing. You're holding it up for I don't know what the reasons are. But if you have a look at the amendment that you've introduced with respect to—

The Hon. DAMIEN TUDEHOPE: This is now no longer a response to—

Ms SOPHIE COTSIS: Your amendment is asking victims to basically prove that their perpetrator knew that they were sexually assaulting or sexually harassing them in the workplace.

The Hon. DAMIEN TUDEHOPE: Or reasonably to have known.

Ms SOPHIE COTSIS: No, no.

The Hon. DAMIEN TUDEHOPE: Yes, yes.

Ms SOPHIE COTSIS: You cannot get away with this. Is this the modern Liberal Party? Is this what the Liberal Party thinks—that women who are victims of sexual harassment in the workplace have to prove that their perpetrator—

The Hon. DAMIEN TUDEHOPE: Minister, quite frankly, if you want to get into that argument, this is the greatest disgrace I have ever seen, introducing the—

Ms SOPHIE COTSIS: Is this the modern Liberal Party, is it?

The CHAIR: Order!

The Hon. DAMIEN TUDEHOPE: This is the modern Labor Party, is it, Minister?

Ms SOPHIE COTSIS: Is this the modern Liberal Party?

The Hon. DAMIEN TUDEHOPE: Minister, when did you first learn that you were going to take away workers' rights who had a whole person impairment of up to 31 per cent? When did you first learn that?

Ms SOPHIE COTSIS: Mr Tudehope, the Government has introduced an important reform with respect to supporting workers who are impacted by psychological harm and risk in the workplace. We have introduced a holistic reform worth \$344 million. It's the first time in a very long time that a government is investing \$127 million in SafeWork. We've got a standalone agency, we've got our inaugural commissioner and we're investing an additional 50 inspectors. Twenty of those are psychosocial—

The Hon. DAMIEN TUDEHOPE: Was the 31 per cent your idea?

Ms SOPHIE COTSIS: Mr Tudehope, the Government has put forward its view. Alongside consultation with a range of stakeholders—including unions, business, academics and medicos—my colleagues have been instrumental in putting forward important—

The Hon. DAMIEN TUDEHOPE: I've asked a number of Ministers about this.

Ms SOPHIE COTSIS: —feedback in terms of changes from the original exposure to where we are now.

The Hon. DAMIEN TUDEHOPE: The 31 per cent hasn't changed.

Ms SOPHIE COTSIS: Let me tell you, when I inherited icare and looked into the books, you guys left a massive mess that we are having to clean up.

The Hon. DAMIEN TUDEHOPE: So your solution is to take away workers' rights.

CORRECTED

Ms SOPHIE COTSIS: No. Our solution—

The Hon. DAMIEN TUDEHOPE: No.

Ms SOPHIE COTSIS: Your solution—

The Hon. DAMIEN TUDEHOPE: Did you seek advice—

Ms SOPHIE COTSIS: —is increasing premiums for small business and allowing people to languish in a system—you've allowed workers to languish in a system. You have not done any work in triaging, or early intervention or prevention.

The Hon. DAMIEN TUDEHOPE: Does this bill do that, does it?

Ms SOPHIE COTSIS: Absolutely it does. You haven't read the detail.

The Hon. DAMIEN TUDEHOPE: Minister, did you seek any advice from the Injured Workers' Network or other stakeholders about the impact of this change on injured workers, or is it solely driven by icare's actuarial model? Because you've told us today this is all about saving dollars. Did you actually talk to injured workers?

Ms SOPHIE COTSIS: You're putting words in my mouth. This is a holistic approach.

The Hon. DAMIEN TUDEHOPE: I'm asking the question. Did you actually talk to—

Ms SOPHIE COTSIS: When we came into government, we saw a massive spike in the number of psychological injuries in both the NI and the TMF. The reality is that your Government left people to languish in a system—this chart shows the claims process—that these people have to endure, every single day. What we're trying to do is we're investing in the workplace. We are investing \$344 million. This is the first time in a very long time where icare, SafeWork—the agencies are working right at the beginning in workplaces. We are out in workplaces. We have made changes to the Industrial Relations Commission, expanding the anti-bullying and harassment jurisdiction. We have stop bullying orders. We have to get—

The Hon. DAMIEN TUDEHOPE: Whose idea was the 31 per cent, Minister?

The CHAIR: Order!

Ms SOPHIE COTSIS: The bosses of this State have to lift their game in improving the way they deal with bullying and harassment in the workplace. It starts from the workplace. We have SafeWork and our agencies working together in collaboration with the unions and with business. We've got a tripartite advisory council that is going to do exactly that. This is holistic, Mr Tudehope. But we can't have people—we've got people languishing in the system. They're getting secondary psychological injuries.

The Hon. DAMIEN TUDEHOPE: With respect, Chair, this is not responsive to my question.

The Hon. EMILY SUVAAL: You might not like it, but it's responding.

The Hon. DAMIEN TUDEHOPE: It is a speech.

Ms SOPHIE COTSIS: This is political.

The Hon. DAMIEN TUDEHOPE: It is political.

Ms SOPHIE COTSIS: No, this is because I'm passionate about this. Do you know why?

The Hon. DAMIEN TUDEHOPE: I'm more passionate.

Ms SOPHIE COTSIS: Because there are so many people that are languishing. They've had no early intervention. They've had no-one look after them and triage, because we've got 100-year-old system that's based on physical claim. This is all new to all of us, so we're working through a system. There are many checks and balances in this reform. Let me tell you, your constituency—

The Hon. DAMIEN TUDEHOPE: Minister, you are a disgrace giving this sort of evidence.

The CHAIR: Order! I call Mr Tudehope to order for the first time. Mr Tudehope, the procedural fairness resolution demands that witnesses at these hearings are treated with courtesy at all times.

The Hon. DAMIEN TUDEHOPE: Well, she should answer the questions.

The CHAIR: That was discourteous in the extreme, and I would ask you to consider withdrawing that comment and continue on, but do so in a civil manner.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Minister, I'll ask you again—it's a very simple question: Was it your idea to introduce the 31 per cent whole person impairment test?

Ms SOPHIE COTSIS: I'm part of the Minns Labor Government and I'm very proud of the work that we have done to support working-class people. I am very proud of the work that we have done—as opposed to your Government, who let people languish in a system and have secondary psychological injury claims. In order for us to have a sustainable scheme for working people who are injured in the workplace, we are making a holistic change and investing money in workplaces and in our agencies to be out there with workers.

The Hon. DAMIEN TUDEHOPE: Let me ask you about that because that's something that you want to give us a speech on. Have you been following the evidence given before the committee inquiring into this bill?

Ms SOPHIE COTSIS: From the upper House inquiry?

The Hon. DAMIEN TUDEHOPE: Yes. Have you been following the evidence?

Ms SOPHIE COTSIS: I've watched the inquiry, yes, of course.

The Hon. DAMIEN TUDEHOPE: Did you listen to the evidence of Dr Doug Andrews?

Ms SOPHIE COTSIS: I am familiar.

The Hon. DAMIEN TUDEHOPE: He was invited to give evidence to the inquiry in relation to your first bill at the suggestion of Government members. Mr Nanva will recall this evidence well, I'm sure. Dr Andrews said:

... I cannot recall an injured worker who rated higher than 21% WPI who had also been determined by me or another assessor as fit to work in any capacity.

Are you proud today of the fact that you're going to cut those workers off from any entitlements?

The Hon. BOB NANVA: Point of order—

The Hon. EMILY SUVAAL: Point of order—

The CHAIR: A point of order has been taken by Mr Nanva. I think he got in just before you, Ms Suvaal.

The Hon. EMILY SUVAAL: Pipped me at the post, there you go. It might be different to mine.

The Hon. BOB NANVA: This just goes to Standing Order 63 in relation to debating current proceedings before a committee. Mr Tudehope is referring to some evidence that was given before a committee before the committee has resolved to hand down a report on that evidence. You can't ask a question that relates to debating committee proceedings that are currently on foot.

Ms ABIGAIL BOYD: To the point of order: That doesn't apply here. That's a ridiculous point of order. I'm sorry, Mr Nanva; that is not a thing.

The CHAIR: I'll take some advice on that. I won't uphold the point of order at the moment. I'll just get some advice from the secretariat on that.

The Hon. EMILY SUVAAL: Chair, mine is a different point of order.

The Hon. DAMIEN TUDEHOPE: Can I just keep going, because—

The Hon. EMILY SUVAAL: No, I do have a different point of order.

The CHAIR: There's another point of order.

The Hon. EMILY SUVAAL: Mr Tudehope has disclosed what I would consider are confidential deliberations of a committee in this forum, in that he's suggested that the Government were to put forward a certain witness. I just suggest that perhaps, in your consideration of that, you consider whether or not that has occurred here.

Ms ABIGAIL BOYD: It's in the minutes.

The CHAIR: I don't know that. These are things I don't know. I'll take some advice on those, so I'll reserve my—

The Hon. SUSAN CARTER: To the point of order: I understand that you've reserved but, if it will assist you, Chair, as a member of that committee who heard that evidence given in public and who has seen that evidence repeated in public, I can say that it is very clearly in the public domain.

The CHAIR: That's noted. I will take some advice and will reserve my ruling on that. Mr Tudehope.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Minister, in light of that expert evidence, why did you include in the second bill—the Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025, which you introduced on 6 August 2025—provisions removing the current access to ongoing financial and medical supports for workers with a psychological injury and a whole person impairment of between 21 per cent and 30 per cent who are not fit to work in any capacity?

Ms SOPHIE COTSIS: You're asking me about an important view from a medical professional—

The Hon. DAMIEN TUDEHOPE: He's the Government's chief psychiatrist in the Personal Injury Commission.

Ms SOPHIE COTSIS: I listen to what the experts have got to say, but we also have to undertake a holistic approach when we're dealing with psychological harm and injury in the workplace. These matters, Mr Tudehope, are very new. They've come to workplaces between the last five to 10 years. Prior, there weren't that many psychological injury claims put through insurance companies.

The Hon. DAMIEN TUDEHOPE: How do you expect these workers to support themselves and to get medical treatment?

Ms SOPHIE COTSIS: Mr Tudehope, which industry are you talking about? You're asking me a one-size-fits-all question. Every single claim—

The Hon. DAMIEN TUDEHOPE: I'm asking you about this cohort of workers between 20 per cent and 30 per cent.

Ms SOPHIE COTSIS: No.

The Hon. DAMIEN TUDEHOPE: That's the cohort.

Ms SOPHIE COTSIS: No, if you really cared about this, you would put to me the industries, because there are different complex issues in every industry—in not-for-profit, in business, in small business, in private sector, in government sector. These claims—well, you can shake your head all you like. I talk to injured workers all the time and, as much as it's a robust discussion—

The Hon. DAMIEN TUDEHOPE: The bill isn't industry specific, Minister.

The CHAIR: Order!

Ms SOPHIE COTSIS: No, but you don't understand the claims process.

The Hon. DAMIEN TUDEHOPE: I do. You've sold out injured workers, Minister.

The CHAIR: Order!

The Hon. DAMIEN TUDEHOPE: You've sold them out and you can't even tell me whose idea it was.

The CHAIR: Mr Tudehope will come to order and desist from making comments.

The Hon. BOB NANVA: Point of order—

Ms SOPHIE COTSIS: I'm not going to be lectured to by you about workers' rights.

The CHAIR: Order! Minister, please come to order. Mr Nanva on a point of order.

The Hon. DAMIEN TUDEHOPE: Have a look at presumptive cancers, Minister.

The Hon. BOB NANVA: Chair, that is highly discourteous to the witness, and I ask you to call Mr Tudehope to order for the second time.

The CHAIR: I uphold the point of order. I won't call the Hon. Damien Tudehope to order for the second time but would ask him to refrain from making statements and commentary. I'll remind him that he has already been called to order once.

Ms ABIGAIL BOYD: I'm going to get really radical and talk about the budget. I know—it's wild. Minister, can you explain the more than 55 per cent reduction in distribution to the Workers Compensation (Dust Diseases) Authority in the most recent budget?

Ms SOPHIE COTSIS: Can I refer to one of my officials?

SONYA CAMPBELL: I don't have that information.

Ms SOPHIE COTSIS: We can take it on notice.

CORRECTED

Ms ABIGAIL BOYD: On 14 August you released the long-awaited silica worker register regulation. Can you confirm that the register will not be retrospective?

Ms SOPHIE COTSIS: I'll get a note on that for you, but can I add further to that, Ms Boyd, that the Government—as you are aware—very recently set up the tunnelling taskforce with a number of experts from both private sector, government agencies and occupational hygienists. I'm happy to brief the Committee on the work that—and, of course, Commissioner Schorer is chairing the taskforce. What we're trying to do is we've got different parts of this issue, in terms of silicosis. It's about how we coordinate and bring it together in terms of knowing who we have to screen, knowing the workplaces and making sure that we're monitoring and recording. We've set up the silica register, but I'm happy to refer to the commissioner, if you've got anything further to add with respect to the silica register.

JANET SCHORER: Confirming, yes, it's correct that it won't be retrospective, and it will be launched on 1 October this year.

Ms ABIGAIL BOYD: If it's not retrospective, then that means that workers exposed to silica dust in the processing of manufactured stone won't have their information recorded in the register because that's been banned now, so it will all be retrospective.

JANET SCHORER: That's correct.

Ms ABIGAIL BOYD: Was that a mistake?

JANET SCHORER: I think there's a point in time where you have to draw the line, but I think what we're trying to do through the taskforce, as well as through the tripartite working group, is to develop—particularly with icare, SIRA and Health—how do we gather that information, both from the workers' perspective, so that they can track their history over their lifetime, because these are health matters that might take time to emerge, but also for research and academic purposes.

Ms ABIGAIL BOYD: But putting tunnelling to one side, because that's an ongoing thing, if we look at the engineered stone issue—which, thankfully, we have now had a ban on—the entire point of why we established this register was to track workers who had been working with engineered stone. But the way that this regulation has been drafted is it won't apply to those people. Was that a mistake?

JANET SCHORER: I can't comment on the drafting of the regulation.

Ms ABIGAIL BOYD: Does that sound like a mistake, Minister?

Ms SOPHIE COTSIS: I will have to go back, because we introduced legislation a couple of years ago with respect to the register. Let's have a look at that. When engineered stone was banned, we expanded the number of inspectors going out to backyard installers, making sure that they are not doing this. There is obviously a residue, so to speak, in terms of people who are doing things illegally. We need to sort that out. I can get you a briefing on that. With respect to monitoring workers who have worked in these installation places, I know that SafeWork have done some work with respect to going out to these places before the ban came in, making sure that they were following processes. I know that there might be some information that we can get for you. But I know and you know that there will be an increase in the number of workers in the future who will be diagnosed with silicosis. I am very aware that this is at our doorstep as we speak.

Ms ABIGAIL BOYD: When that WHS amendment bill in 2023 was introduced, you said:

It is envisaged that the register will inform health screening; enable epidemiological research and research on the incidence, distribution and control of the disease; and track engineered stone workers who are exposed to respirable crystalline silica and workers in other high-risk industries.

The regulation doesn't uphold the intention of the register. Having now heard that, will you go and look at the regulation?

Ms SOPHIE COTSIS: We will definitely have a look at that, but it doesn't preclude workers who have worked in these engineered stone installation places—they can still access icare services, for example, even if they are not on the register. As you know, we have our lung bus that constantly travels across New South Wales. Obviously, people can make appointments and employers can also make appointments for their employees. We will have a look at that.

Ms ABIGAIL BOYD: I hope it's just an oversight and something we can fix fairly quickly. Can you explain the justification for the exclusion of coalminers from the register?

Ms SOPHIE COTSIS: I will refer you to our commissioner.

CORRECTED

JANET SCHORER: I think we would have to take that on notice. What I would say, though, is that there are other reporting systems. There is a national system for reporting as well as our register. Part of the future work is how do those various registers talk to one another to be able to track workers. But we are happy to look at that.

Ms SOPHIE COTSIS: I want to get the correct information. Coalminers have their own, as you know, resources regulator. They have their own comprehensive screening processes and systems. Prior to this, there was an engagement, as I understand, with the agencies. In the break or in the afternoon we will get you that information about the justification. When we did bring this forward, there were discussions with respect to coalminers. But they have their own very comprehensive process.

Ms ABIGAIL BOYD: They have their own compulsory testing regime, but in terms of having a database of workers in order to track the exposure—

Ms SOPHIE COTSIS: We are looking at the way that the coalminers do it. They have done a good job, where you have your tripartite—they are all working together. You have your companies and the union very much invested in the health of their workforce. For us, this is something that is particularly for regulators across the world. People weren't getting diagnosed with silicosis. It was more asbestos or mesothelioma. Now we are going to see a rise. I don't have those figures, but I will look at that.

Ms ABIGAIL BOYD: Ms Schorer, you just talked about the national register. My understanding is that that is for confirmed cases, whereas this register is for exposure and health screening. Can you explain the justification of the exclusion of interjurisdictional information sharing? I understand there was a draft regulation that did have interjurisdictional health screening but it didn't make its way into the final regulation.

Ms SOPHIE COTSIS: Having other interstate workers being part of this—

Ms ABIGAIL BOYD: Just the information sharing, where a worker has worked across multiple jurisdictions.

Ms SOPHIE COTSIS: I'm happy to have a look at that. There is probably a reasoning for it. But, absolutely, where we have had workers working in New South Wales, we want to monitor even once they have moved interstate. Let me get that information for you.

Ms ABIGAIL BOYD: Can you explain why it doesn't require employers to notify SafeWork of the outcome of the dust diseases health test?

Ms SOPHIE COTSIS: I'll refer you to the commissioner.

JANET SCHORER: One of the areas of work that we are looking at, obviously, has a focus through the tunnelling taskforce but it does broaden out, I think, as you are alluding to, Ms Boyd, around other dust diseases and how we expand and have a different data repository. That is a further iteration that we are starting to contemplate now.

Ms ABIGAIL BOYD: Turning to something different, Minister, Queensland firefighter Izzy Nash was killed on duty during a factory fire in 2023. The Queensland work health and safety prosecutor has now launched court proceedings against the Queensland fire brigade for failing to comply with their safety duties. In New South Wales I understand that Fire and Rescue NSW are seeking to reduce minimum safe and effective crewing at an incident from four to two firefighters in 10 regional centres. Given the dangerous nature of firefighting, do you have any concerns that this initiative may lead Fire and Rescue NSW and the New South Wales Government vulnerable to court action?

Ms SOPHIE COTSIS: With respect to the specific details, I will refer that to Fire and Rescue, unless our officials have anything further to add.

Ms ABIGAIL BOYD: From a SafeWork perspective?

Ms SOPHIE COTSIS: I would have to take that on notice. I want to get you a comprehensive response.

Ms ABIGAIL BOYD: In previous estimates we have discussed the legal case between the Rural Fire Service, aviation provider Coulson and the widows of US pilots killed during the large air tanker crash of 2020. According to recent media, the 10-day hearing has been set down for June next year. What cost to date has the Government provided for legal costs via the Treasury Managed Fund?

Ms SOPHIE COTSIS: I don't have that with me, but I am happy to take that on notice.

Ms ABIGAIL BOYD: If negligence on the part of the RFS and/or the aviation provider is demonstrated, what impacts would that case likely have on our international procurement arrangements?

Ms SOPHIE COTSIS: I will have to get that on notice.

CORRECTED

Ms ABIGAIL BOYD: Is there anyone that can speak to any of that in the meantime, particularly the legal fees?

TONY WESSLING: We will take that on notice.

Ms ABIGAIL BOYD: Minister, I go back to that date rationalisation conversation we were having in the last round. Mr Wessling confirmed that icare has a practice of date rationalisation, which is shortening policy periods, to suit icare's reporting and billing preferences and that that can have an impact on the real premiums paid by employers. Are you aware that section 155A of the Workers Compensation Act requires policies to run for 12 months? If so, are you concerned that icare may be acting illegally in this regard?

Ms SOPHIE COTSIS: In terms of making that statement, that's a big statement to make. I have full confidence in our officials. They are governed by their legal obligations, and they deal with some very important, comprehensive decisions. I don't accept that word, but, like we said earlier, we're happy to take that and come back to you.

Ms ABIGAIL BOYD: Okay, Just coming back on that 55 per cent reduction in the budget to the dust diseases authority, has anyone been able to look that up in the meantime as to why?

Ms SOPHIE COTSIS: Are you saying the Dust Diseases Board?

Ms ABIGAIL BOYD: There has been more than a 55 per cent reduction in distribution to the Workers Compensation (Dust Diseases) Authority in the recent budget. On the face of it, are we expecting less claims? Why has less been put into the dust diseases authority?

GENIERE APLIN: Ms Boyd, I'll have to come back to you on that. I'm just waiting for some further information.

Ms ABIGAIL BOYD: Thank you. That was my one that was actually about the budget.

Ms SOPHIE COTSIS: Sorry, Ms Boyd. I don't want to waste your time, but are you talking about the Dust Diseases Board? The dust diseases scheme is managed by icare, where we have people—

Ms ABIGAIL BOYD: My understanding was it was to the scheme. For my sins, I haven't brought the actual budget with me, which is a disaster.

Ms SOPHIE COTSIS: That's all right. We will try to get you something for the afternoon—because that's run as a specific scheme under the dust diseases Act. You've got a nominated number of employers, who pay into the scheme. But let's get the information for you.

Ms ABIGAIL BOYD: Thank you. It could be government contributions for the levy. I'm not sure what it is.

Ms SOPHIE COTSIS: Okay.

Ms ABIGAIL BOYD: Sorry, the budget is not particularly transparent, on its face. Coming back to the welcome investment in SafeWork in an attempt to bring down psychosocial injuries, are you able to tell me how many dedicated psychosocial inspectors that currently are in SafeWork?

Ms SOPHIE COTSIS: I'll get you that figure, but I can report to the Committee and to the people of New South Wales that the New South Wales Government will meet its ILO obligations, with respect to one inspector for every 10,000 workers. That is something that I know that injured workers, the advocates, the union movement and even the business community have been calling for. With the recent injection of an historic amount into SafeWork and with some reorganising a number of years ago, we have increased the number of our inspectors and their capability, in particular, and particularly in meeting our regulatory priorities with respect to falls from height, psychosocial harms, farm safety, and chemical and hazard risks. Particularly with the rise in psychosocial hazard and harm, one of the things is making sure that we have capability within SafeWork. With respect to the operations, Commissioner Schorer will be able to elaborate further.

We will have 20 psychosocial inspectors, who've got the capability, who've got the background and who understand these types of matters. I'm really pleased about that, and I know that all our inspectors go through thorough training; I'll leave that for the commissioner. We also will invest in a psychosocial advisory call centre. We're expecting about 25,000 workers a year who will be calling in and seeking either referral or support. We're working through the details of that advisory scheme. As you know, Ms Boyd, we also have the Respect at Work unit and program within SafeWork NSW. It did start under the previous Government. We have expanded it, and we've obviously kept it going. It's very important. We've got an advisory council that Minister Harrison and I sit on with a number of academics, unions and businesses. We are really investing in the prevention in terms of psychosocial harms in the workplace.

CORRECTED

Icare have also got a really good program. It did start under the former Government, and some really good work is happening with respect to co-design in the community care sector in health as well. Something that I'm looking at more intently and working with key organisations and stakeholders—because, as you know, in the care sector it's not nine-to-five. We've got home care workers who are attending to people with very demanding, complex needs, and it can cause distress in some cases. We have incredible professionals who work in the care sector and in health, but we need to provide the support right in their workplace. We're doing a lot of work in that preventative and early intervention space.

Ms ABIGAIL BOYD: You'd expect all of that great investment in prevention to reduce the percentage of claims, going forward?

Ms SOPHIE COTSIS: I believe that this hasn't happened. This is what has been put to the Government. This is what was put to me in opposition—that we need to have early intervention strategies. We need to stop bullying in the workplace. That's what we're doing. We're also reviewing work within public service with respect to these policies, but this is why we've expanded the jurisdiction around bullying and harassment in the IRC.

Ms ABIGAIL BOYD: So just back to the question, then, you said that there will be 20 dedicated psychosocial inspectors. How many are there currently?

Ms SOPHIE COTSIS: How many inspectors in total?

Ms ABIGAIL BOYD: No, dedicated psychosocial inspectors.

Ms SOPHIE COTSIS: Twenty.

Ms ABIGAIL BOYD: Twenty at the moment?

Ms SOPHIE COTSIS: There will be.

Ms ABIGAIL BOYD: What are there at the moment?

JANET SCHORER: We currently have eight specialist psychosocial inspectors. I guess what I would say, though, is that our inspector workforce, whether they're construction specialists or healthcare specialists, undertake psychosocial risk assessments because of the volume of the sector. All inspectors are equipped with the right tools to undertake those sorts of risk assessments, but there are other specialists who are provide that additional support.

The Hon. DAMIEN TUDEHOPE: In your earlier evidence, Minister, you mentioned that you meet with injured workers? Do you recall saying that?

Ms SOPHIE COTSIS: Yes.

The Hon. DAMIEN TUDEHOPE: In relation to those injured workers, how many of those injured workers have expressed their support for the lifting of the threshold to 31 per cent?

Ms SOPHIE COTSIS: Mr Tudehope, you know very well and people know very well that injured workers have concerns about the current bill.

The Hon. DAMIEN TUDEHOPE: Have any indicated their support for increasing the whole of person impairment to 31 per cent for continuing claims?

Ms SOPHIE COTSIS: Mr Tudehope, I've had a lot more experience with injured workers than you have. This shouldn't be—

The Hon. DAMIEN TUDEHOPE: I would be surprised.

Ms SOPHIE COTSIS: You don't have a monopoly on injured workers, okay? I've spent my entire adult life representing injured workers. So I'm not going to be—

The Hon. DAMIEN TUDEHOPE: This is very straightforward: How many have expressed an opinion that they want to—

Ms SOPHIE COTSIS: I'm sorry, Johnny-come-lately. Now, why don't you listen to your constituency and your base, who are telling us they're not happy with the modern Liberal Party. What do you support?

Ms ABIGAIL BOYD: Icare has claimed that the new remuneration structure for claims service providers is expected to drive a \$4½ billion claims valuation benefit to the scheme over the next 10 years. Does that remain icare's expected impact?

Ms SOPHIE COTSIS: Ms Aplin or Mr Wessling?

CORRECTED

GENIERE APLIN: Yes.

TONY WESSLING: Yes, it does. But it's not just the remuneration model attributing that benefit to. It's all the changes we're making to case management, the claims model. The remuneration is part of that.

Ms ABIGAIL BOYD: Has that assumption been incorporated into the scheme's liability estimates?

TONY WESSLING: I think, as we've said before, it's factored into our forward capital and business plans. Those benefits will be factored into the liability estimates as the actuaries recognise those benefits coming through.

Ms ABIGAIL BOYD: So the answer is no?

TONY WESSLING: The answer is it's not in the liabilities today; it's factored into how we calculate premiums, though, going forward.

The CHAIR: Thank you, Mr Wessling. Thank you, everyone. The time being 10.45 a.m. and in the absence of any Government questions, we will now have a half-hour recess for morning tea and reconvene at 11.15 a.m.

(Short adjournment)

The CHAIR: Thank you, everyone, for coming back. The time being 11:15, we will recommence the hearing. But before I do, I would just like to provide my ruling in the matter that I reserved, which was the point of order taken by Mr Nanva. I think Mr Nanva raised the issue of SO 63 but in actual fact, on advice from the secretariat, it's actually SO 65 (3) (b).

The Hon. ROBERT BORSAK: He got it wrong anyway.

The CHAIR: He was wrong, but the point remains the same. The issue was the disclosure or inference of how a witness was invited to give evidence before the Public Accountability and Works Committee, and this exchange did disclose private Committee deliberations that have not been published by the House. The member, Mr Tudehope, is reminded to be mindful of what is being said and not to disclose information that is not on the public record.

The Hon. DAMIEN TUDEHOPE: There's no suggestion that I've done that, is there?

The CHAIR: No. Well—

The Hon. EMILY SUVAAL: There is because you said that this is a Government witness. We'll go back and check the transcript.

The CHAIR: There was an inference that referred to how the person came before the Committee. That's the key thing, and that had not been published by the House. With that, I uphold the point of order.

The Hon. DAMIEN TUDEHOPE: I think it had been published by the way.

The Hon. EMILY SUVAAL: The secretariat has checked.

The CHAIR: The secretariat has informed me that it has not been published and that is not recorded in the minutes that have been published in the House.

The Hon. DAMIEN TUDEHOPE: I will check that.

The CHAIR: You can take that on notice, Mr Tudehope. We are eating into your time. It's time now for your questions.

The Hon. DAMIEN TUDEHOPE: Minister, the industrial secretary is answerable to you, is he not?

Ms SOPHIE COTSIS: To myself and the Premier. You're the Industrial Relations Secretary, Mr Secretary?

SIMON DRAPER: Correct, under the GSE Act.

The Hon. DAMIEN TUDEHOPE: In relation to the determination in respect of *Fire Brigade Employees' Union v Industrial Relations Secretary*, when the secretary contended that the commission should award 9 per cent wage and wage-related increase over three years in the form of 3 per cent increases effective from 26 February of each year, that was your position, was it not?

Ms SOPHIE COTSIS: Are you asking—

CORRECTED

The CHAIR: Sorry, who's the question to, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: To the Minister.

The CHAIR: To the Minister. Minister?

Ms SOPHIE COTSIS: As you know, the Government made an offer to public sector workers in May of last year, and we have made changes to the Industrial Relations Commission. We've removed the wages cap and got a new bargaining process. Fire and Rescue—I'm not the employer. The secretary—

The Hon. DAMIEN TUDEHOPE: Minister, the secretary contended at paragraph 39 of the judgement:

The Secretary contends—

that's someone answerable to you—

Ms SOPHIE COTSIS: That's right.

The Hon. DAMIEN TUDEHOPE: It continues:

... that the Commission should award a 9% wage and wage-related increase over three years, in the form of 3% increases effective from 26 February of each year

That was the position of the Government and the industrial secretary's position, was it not?

Ms SOPHIE COTSIS: Mr Tudehope, the Government's offer was a baseline offer and it was open to the agencies and unions to bargain for increases above that. In respect of Fire and Rescue, the parties did in fact engage in bargaining. However, at the end of the day, they were just too far apart to reach an agreement, and so the Industrial Relations Commission was then asked to arbitrate, not just on the salaries but on a whole range of other award matters.

The Hon. DAMIEN TUDEHOPE: Are you reading from a document, Minister?

Ms SOPHIE COTSIS: I'm reading from a note.

The Hon. DAMIEN TUDEHOPE: Are you prepared to table that note?

Ms SOPHIE COTSIS: It's a response note. It's my note.

The Hon. DAMIEN TUDEHOPE: Have you got the decision in front of you?

Ms SOPHIE COTSIS: I have the decision in front of me.

The Hon. DAMIEN TUDEHOPE: That's excellent.

Ms SOPHIE COTSIS: The Government has welcomed the decision.

The Hon. DAMIEN TUDEHOPE: Did you review the reports of Ms Livingstone, Mr Houston and Ms Wilkie that, according to the commission, the secretary relied upon impressing no more than 3 per cent per year?

Ms SOPHIE COTSIS: Mr Tudehope, the Government makes the policy, which we did.

The Hon. DAMIEN TUDEHOPE: Did you review—

Ms SOPHIE COTSIS: I'm not the employer.

The Hon. DAMIEN TUDEHOPE: This is my question. It's a simple question.

The CHAIR: Order!

Ms SOPHIE COTSIS: I'm trying to answer the question.

The CHAIR: Mr Tudehope, let the Minister answer. The Minister was about seven seconds into her answer. Please allow the Minister some time to answer, Mr Tudehope.

Ms SOPHIE COTSIS: Mr Tudehope, the Government came into office with a number of commitments with respect to industrial relations. We've made those changes. I'm not the employer. The agency secretary of the relevant agency, in this case Fire and Rescue, and through our secretary are the employers. They've filed their evidence, and the Government made an offer to public sector unions. Fire and Rescue and FBEU have gone through a process of mutual gains bargaining. They were too far apart. They've gone to the commission.

The Hon. DAMIEN TUDEHOPE: Chair, this is not responsive to the question.

Ms SOPHIE COTSIS: I'm giving you the background.

CORRECTED

The Hon. DAMIEN TUDEHOPE: I just wanted to know whether you reviewed their evidence before it was filed.

Ms SOPHIE COTSIS: Mr Tudehope, you know very well that, as the Minister, I set the policy framework.

The Hon. DAMIEN TUDEHOPE: So you didn't?

Ms SOPHIE COTSIS: I don't interfere in operational processes. Our officials have responsibility with respect to their duties. In this case, the employer filed their evidence and they've put forward the expert evidence.

The Hon. DAMIEN TUDEHOPE: This is not being tricky. I just asked whether you reviewed it. If you didn't review it, just say you didn't review it.

SIMON DRAPER: But just to be clear, Mr Tudehope, the evidence is evidence of officials. They're providing evidence to the commission. They certainly should not be asking the Minister to review or approve their evidence.

The Hon. DAMIEN TUDEHOPE: I'm not asking to approve it, but I wonder if she reviewed it.

SIMON DRAPER: I'm just providing context that you wouldn't expect that the Minister would review it.

Ms SOPHIE COTSIS: My job is not to interfere in the process.

The Hon. DAMIEN TUDEHOPE: I'm not asking you to change it.

Ms SOPHIE COTSIS: No, you have.

The Hon. DAMIEN TUDEHOPE: Do you accept the proposition in the submission of Ms Wilkie that the real remuneration for a permanent qualified firefighter increased by 3.2 per cent over the period from September quarter 2011 to 2023? Do you accept that proposition contained in her evidence?

Ms SOPHIE COTSIS: Sorry, I'm just trying to understand. You're taking me through a decision and you want me to explain—

The Hon. DAMIEN TUDEHOPE: It was a contention made by Ms Wilkie that the real remuneration for a permanent qualified firefighter increased by 3.2 per cent over the period from September quarter 2011 to 2023.

Ms SOPHIE COTSIS: Mr Tudehope, if you're trying to pick at an excerpt—

The Hon. DAMIEN TUDEHOPE: I'm not.

Ms SOPHIE COTSIS: —to try and justify the former Coalition Government's wages cap—

The Hon. DAMIEN TUDEHOPE: I'm not. I'm just asking you, do you accept that proposition?

Ms SOPHIE COTSIS: I'm not interfering in a process.

The Hon. DAMIEN TUDEHOPE: Do you accept the proposition?

Ms SOPHIE COTSIS: What do you mean "Do I accept the proposition"?

The Hon. DAMIEN TUDEHOPE: That was what she submitted. Do you accept that that is correct?

Ms SOPHIE COTSIS: That's a witness statement. We have made changes to the framework that these people—

The Hon. DAMIEN TUDEHOPE: I'm not asking about the framework.

Ms SOPHIE COTSIS: Did you have an arbitration in the last 12 years?

The Hon. DAMIEN TUDEHOPE: I'm not asking about the framework. I'm asking you about a proposition put forward by Ms Wilkie in her evidence. Do you accept that that proposition is correct?

Ms SOPHIE COTSIS: Mr Tudehope, your Government kept wages at 2.5 per cent.

The Hon. DAMIEN TUDEHOPE: I'm not asking you that.

The Hon. EMILY SUVAAL: Point of order—

Ms SOPHIE COTSIS: And then in 2020 you had a zero per cent—

The CHAIR: A point of order has been taken by Ms Suvaal.

CORRECTED

The Hon. EMILY SUVAAL: It's just around paragraph 19 of the procedural fairness resolution and the lack of courtesy that is being afforded to the witness here. The Minister has been asked the same question in various ways probably five or six times now, and she is continuously interrupted as she's part way through answering. I just ask you to remind the Hon. Damien Tudehope about the need to provide witnesses with courtesy.

The Hon. DAMIEN TUDEHOPE: To the point of order: It was a fairly direct question. Did she accept the proposition?

The CHAIR: It is a direct question. I don't uphold the point of order. The Minister was being relevant to the question that was asked. Proceedings are not helped when there are questions put from the witness back to the member. If we could have questions and then some time for an answer without questions back to Committee members, that would be helpful as well. Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Minister, I'm not asking you a trick question. It was a proposition put by Ms Wilkie. Do you accept that that is correct? Yes or no.

Ms SOPHIE COTSIS: Mr Tudehope, you've got to understand this in context. This is the first arbitration for a very long time, as you know. You didn't have these arbitrations under your Government. After 12 years of a wages cap, a decision of the industrial relations full bench has been handed down with respect to firefighters. You're asking me to make a comment about one of the experts, but in what context? I'm not here to justify—

The Hon. DAMIEN TUDEHOPE: Minister, I'll move on.

Ms SOPHIE COTSIS: But I'm not here to justify—

The Hon. DAMIEN TUDEHOPE: I'm asking you direct questions.

Ms SOPHIE COTSIS: Do you still support a wages cap?

The Hon. DAMIEN TUDEHOPE: If you can't answer direct questions, then that's fine.

Ms SOPHIE COTSIS: Do you still support a wages cap?

The CHAIR: Order! Minister, as I just previously guided you, it does not help proceedings for you to be asking questions of the honourable member.

Ms SOPHIE COTSIS: I apologise, Chair.

The CHAIR: If we could avoid that. We're going to have questions from the Committee members and answers from yourself.

Ms SOPHIE COTSIS: I apologise.

The Hon. DAMIEN TUDEHOPE: Minister, could I take you to paragraph (89) of the judgement, which you have in front of you?

Ms SOPHIE COTSIS: Yes.

The Hon. DAMIEN TUDEHOPE: You'll see there it states:

The Secretary responded by contending that, were the Commission to go back in time to a datum point before 2023, it should go further back than 2020, and have regard to the period since 2011, when the wages cap was introduced, or indeed back to 2008, when the two awards were last reviewed on work value grounds. That is because there were sustained periods of real wage growth before 2020, which offset the fall in real wages in the period 2021-22.

Do you see that there?

Ms SOPHIE COTSIS: Yes.

The Hon. DAMIEN TUDEHOPE: Did you raise any objection to the secretary making this contention, or does it reflect the view of the Government that real wages for firefighters have increased since 2011?

Ms SOPHIE COTSIS: Mr Tudehope, we welcome the decision from the full bench of the commission. We welcome the decision. It was your Government that kept wages low. You didn't have a bargaining framework, and you legislated the wages cap. It was very difficult for the Industrial Relations Commission to do its work unfettered. There is now a process. They have gone through a process, and we welcome the decision.

The Hon. DAMIEN TUDEHOPE: Minister, if you go to paragraphs (19) and (20) of the decision, the commission was very critical of the secretary for pressing about 30 claims for textual changes to the award without making any submission on any of those claims. It stated that this approach by the secretary:

CORRECTED

... is to be deprecated. It would have been much better if the parties had taken a more forensic and discerning approach to their claims, reducing what needed to be determined. Had that occurred our decision would have been considerably shorter and handed down much earlier.

This is a serious criticism that I'm putting to you, Minister. Why did you allow the secretary to press claims without any supporting submissions, thereby creating unnecessary work for the commission to do and delaying not just the decision but the ongoing work of the commission?

Ms SOPHIE COTSIS: Mr Tudehope, you're cherry-picking parts of the decision that you have to look at holistically.

The Hon. DAMIEN TUDEHOPE: These are the only two paragraphs which dealt with this issue.

Ms SOPHIE COTSIS: But you have to look at this holistically. Under your Government, you kept a wages cap and you didn't negotiate with the workforce. This is why we were left in a situation where there were 80 or so claims that were put forward by the FBEU and a series that were put forward by the Government. If you read the decision and what the FBEU were putting forward, for a very long time we know that their work has changed. We know that the demand on firefighting has changed. This Government has taken what they have said very, very seriously. There are a number of investments that have been made. But with respect to their wages, the Government, as you know—this has been said in the public domain. I do acknowledge Fire and Rescue and the FBEU for the considered work they did. I acknowledge the FBEU's work. It was very thorough, very considered. But this is work that your Government didn't do. This is a lot of work that was left behind for us to look at. If you read the—

The Hon. DAMIEN TUDEHOPE: I just pointed out to you, Minister—

Ms SOPHIE COTSIS: You've pointed out something, but you're trying to make a point. I'm saying to you that there's a lot of work that needed to be done over the last decade. Work practices have changed in this area, and this has been acknowledged in this decision.

SIMON DRAPER: I should clarify that we don't, and we didn't, seek the Minister's approval for the submissions that we make in this regard. We act independently in that respect. I also just want to comment that what you've characterised as a criticism of the industrial relations secretary was actually a commentary by the commission on both parties, the FBEU and the Government, having the potential to have done more to reconcile some of those positions before coming to arbitrations.

The Hon. DAMIEN TUDEHOPE: Mr Draper, with respect, I think that's your opinion.

SIMON DRAPER: No, it's quite clear.

The Hon. DAMIEN TUDEHOPE: I think most people reasonably reading that—

SIMON DRAPER: Any plain reading of those paragraphs above the ones you pointed out make that very clear.

The Hon. DAMIEN TUDEHOPE: Mr Draper, I'll refer you to a conclusion that he reached at the conclusion of his judgement which, in fact, sheets home the criticism to the secretary.

SIMON DRAPER: I'm just referring to the ones that you've pointed out to us, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: You will recall that we passed the Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025 earlier this year. When will that Act be proclaimed, Minister?

Ms SOPHIE COTSIS: Mr Tudehope, I appreciate that question. That's a very important question. As you know, there were a number of changes that have been introduced with respect to the Industrial Relations Act, and particularly the Industrial Relations Commission. If I can take you to setting up the anti-bullying and anti-sexual harassment jurisdiction, because these are new in the commission they have obviously had to do work around practice notes and forms. It has been brought to my attention that it's not as easy—for example, when you go and file an unfair dismissal application, you've got your application there. It's very simple, very black and white. With respect to filing an application with respect to a stop bullying order—

The Hon. DAMIEN TUDEHOPE: I'm aware of what the Act contains. I've just asked you when it was going to be proclaimed.

Ms SOPHIE COTSIS: Mr Tudehope, I'm saying this to you and to the Committee, I don't have a date for you.

CORRECTED

The Hon. DAMIEN TUDEHOPE: The Act contains, as an important provision, an object to empower the commission to eliminate gender-based undervaluation of work. Do you recall that that has been included?

Ms SOPHIE COTSIS: That's right, Mr Tudehope. Of course.

The Hon. DAMIEN TUDEHOPE: Will that provision be in place in time for the commission to eliminate gender-based undervaluation of work in determining the new nurses' and midwives' claim?

Ms SOPHIE COTSIS: Mr Tudehope, terrific question. With respect to a date, I don't have a date, but I know that officials are working feverishly to make sure that we get this right. I want to explain that there are some privacy aspects here with respect to the anti-bullying application, so put that aside. With respect to the objects that you've raised, they will be proclaimed at pretty much the same time. With respect to the nurses' case, they're running through the current award-making principles. With respect to gender undervaluation—

The Hon. DAMIEN TUDEHOPE: Would you be making the same submission in relation to the nurses' claim as you've made in relation to the Fire Brigade Employees Union claim, that the increase should only be 3 per cent?

Ms SOPHIE COTSIS: Mr Tudehope, I don't want to be sarcastic about this, but it's quite interesting that you're standing up for working people in opposition. It's a shame you didn't do it when you were in government. We had to support—

The Hon. DAMIEN TUDEHOPE: Just answer my question.

Ms SOPHIE COTSIS: No. We had to support over 1,200 nurses who weren't going to be—

The Hon. DAMIEN TUDEHOPE: Just answer my question.

The CHAIR: Order! Mr Tudehope.

Ms SOPHIE COTSIS: They were COVID nurses. You didn't have money in the budget. With respect to evidence, I don't interfere in that process. That's the health secretary.

The Hon. DAMIEN TUDEHOPE: Let me ask you this: The Premier and the Minister for Health have repeatedly insisted that safe staffing levels have been put in place and, in those circumstances, the nurses and midwives union should not expect a pay rise higher than 3 per cent per year. Is that your position?

Ms SOPHIE COTSIS: I refer you to the statement of the Premier and the Minister for Health. We have worked very hard, and the Minister for Health has worked very hard with the Nurses and Midwives' Association with respect to safe staffing levels. These are policies that your Government didn't undertake. We've had enormous vacancies, and it was your Government that left us with supporting the 1,200 or so nurses—

The Hon. DAMIEN TUDEHOPE: Do you understand the question I just asked you?

The CHAIR: Order!

Ms SOPHIE COTSIS: There is an arbitration that is going to start at the end of September, and I have nothing further to add. I'm not going to prejudice this case. With respect to—

The Hon. DAMIEN TUDEHOPE: One of the—

The CHAIR: Order! Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: She's finished.

The CHAIR: No, I don't think the Minister had finished. Minister, if you could please continue to finalise your answer. Thank you.

The Hon. DAMIEN TUDEHOPE: Minister, one of the provisions that the commission relied on in the Fire Brigade Employees Union case was, in fact, that, because of the decision made by the Industrial Relations Commission, there had been a reliance on a prediction in relation to inflation which was in error. For that reason, they awarded the Fire Brigade Employees Union an additional 2 per cent increase in relation to that award. Will you be including that additional 2 per cent which has now been found by the Industrial Relations Commission in the offer being made to the nurses and midwives?

Ms SOPHIE COTSIS: Mr Tudehope, every case is based on the principles and is based on the legal framework. Every case—the firefighters' case, the nurses' and midwives' case—is very different. I have nothing further to add than those cases—

CORRECTED

The Hon. DAMIEN TUDEHOPE: You're now aware of what the commission has found. Perhaps I ought to put this to you, Ms Rizzo. Will you be including that material as part of the submission to be made in relation to the nurses and midwives?

MARINA RIZZO: Mr Tudehope, what material? Just to clarify your question, do you mean the 2 per cent increase?

The Hon. DAMIEN TUDEHOPE: Correct.

MARINA RIZZO: That's not a decision for me to make. It has the potential to be a precedent risk, but it would not be good practice to simply apply all outcomes of the Industrial Relations Commission decision to any arbitration that is pending. It just doesn't work that way.

The Hon. DAMIEN TUDEHOPE: Certainly the precedent risk, as you identify, exists and it's a fairly forceable argument to be made out that that 2 per cent would apply

The Hon. EMILY SUVAAL: Point of order: The honourable member is now asking questions that stray into a very hypothetical nature. Questions to public servants—I can't remember the standing order off the top of my head—should be factual in nature. I think it's procedural fairness resolution paragraph 10. Questions should be factual in nature and should not ask public servants to express opinions on the merits of the policies of the government of the day.

The Hon. SUSAN CARTER: To the point of order: The member's question was directly based on seeking elucidation of something given in evidence by the person to whom the question was addressed.

The Hon. EMILY SUVAAL: Further to the point of order: The preamble to the question was "would that", which suggests that the Hon. Damien Tudehope is seeking an expression of an opinion on a hypothetical matter from a public servant, which I think is out of order. You can put it to a Minister, but not to a senior public servant.

The Hon. DAMIEN TUDEHOPE: To the point of order: The witness identified the precedent risk is relied upon, which underpins the question.

The CHAIR: Yes. I uphold the point of order. It was framed in the context of a hypothetical, which we are to avoid when we're asking questions of our public officials. Now it's time for questions from the crossbench.

Ms ABIGAIL BOYD: Minister, as a general rule, would you agree that workers should be on an award or an agreement of some sort?

Ms SOPHIE COTSIS: Of course. Yes.

Ms ABIGAIL BOYD: Has the PSA written to you about the MOPS Act and union members' request to be covered by an award or an agreement?

Ms SOPHIE COTSIS: I am familiar with their advocacy.

Ms ABIGAIL BOYD: Have they written to you?

Ms SOPHIE COTSIS: I'll get back to you on that, but I am aware of union members' advocacy with respect to the MOPS.

Ms ABIGAIL BOYD: Is this something that you have been considering in your position as industrial relations Minister?

Ms SOPHIE COTSIS: I look at every matter. More importantly—and this is a matter of importance—under Premier Minns and our Government, we are close to 90 per cent of achieving agreements with our public sector workforce. That's a major achievement. This is multi-year agreements, and this is working through our new bargaining framework. Even just recently, we saw health workers get 8.5 per cent. Cleaners, security guards—

Ms ABIGAIL BOYD: None of that's comforting, though, if you're a member of Parliament's staff. When it comes to members of Parliament's staff, at the moment, they're subjected to what some would say was a worker-unfriendly bit of legislation. They—or at least some—are asking for the MOPS Act to either be modified or scrapped to allow them to also have an award or an agreement so that they can bargain for better pay and conditions. Is that something you support?

Ms SOPHIE COTSIS: I have enormous respect for parliamentary staff and staffers. They do extraordinary work in keeping our Parliament—in doing the work that they do, they keep our democracy robust and, of course, accessible to the people. I have enormous respect for parliamentary staff and, like many things that

CORRECTED

are put forward to me, I consider it on its merit and through a process. I understand that parliamentary staff have been advocating. I know that, so I am happy to meet with them.

Ms ABIGAIL BOYD: Are you aware that the New South Wales position in relation to members of Parliament's staff is quite different to the other States and Territories and the Commonwealth?

Ms SOPHIE COTSIS: If you say that. I'm focused on the people of New South Wales.

Ms ABIGAIL BOYD: Yes, including people who work in our Parliament.

Ms SOPHIE COTSIS: Absolutely.

Ms ABIGAIL BOYD: On 29 May this year, there was a landmark case that ruled against the State of New South Wales. *Ashton v State of New South Wales*, a full bench of the Industrial Relations Commission confirmed that employees under the MOPS Act can bring proceedings for relief from victimisation under section 213 of the Industrial Relations Act. Although they don't have the full suite of rights that other public servants do, under this full bench ruling it was determined that staff can at least bring proceedings for relief from victimisation under section 213 of the IR Act. The State is appealing that, though. Why is your Government appealing that case and that ruling?

Ms SOPHIE COTSIS: Ms Boyd, as the matter is before the court, I will refer you to Ms Rizzo or Ms Dobbins.

SAMARA DOBBINS: We haven't had a chance to read the judgement, Ms Boyd, but I understand the Court of Appeal has overturned the full bench's decision this morning.

Ms ABIGAIL BOYD: This morning?

SAMARA DOBBINS: That's the only information I had, I'm sorry, because I'm in here, but that's my understanding, yes.

Ms ABIGAIL BOYD: It would be interesting to know why the Government thought fit to seek that relief in the first place, though.

SAMARA DOBBINS: I think that is a question for the Minister and the Government, but I'm just saying, factually, the Court of Appeal has overturned the full bench decision.

Ms ABIGAIL BOYD: Perhaps, Minister, that underlines the reason why members of Parliament's staff need more rights than they currently have. Can I leave it with you to actually investigate further?

Ms SOPHIE COTSIS: Absolutely. Of course, Ms Boyd. As Ms Dobbins indicated, that decision has been made. We will look at that decision, of course. My door is open and I'm happy to speak to the delegates. I speak to the PSA all the time, and we'll be looking at that decision.

Ms ABIGAIL BOYD: Do you think members of Parliament's staff should have some form of protection from victimisation and unfair dismissal?

Ms SOPHIE COTSIS: Ms Boyd, if you're referring to a particular matter—

Ms ABIGAIL BOYD: In general. They don't have it under the MOPS Act. I haven't read this judgement either, but it appears they don't have it under the IR Act either. Is that really a position that should stand, given that in New South Wales we have woefully inadequate protection for our staff compared to other jurisdictions? Is this something your Government would seek to modernise?

Ms SOPHIE COTSIS: Ms Boyd, I will take advice. Obviously, this decision has been handed down just a little while ago. I will take that on notice. But, of course, we absolutely value the parliamentary staff and the important work they do. I hear what you and others have raised with me with respect to Parliament staff.

Ms ABIGAIL BOYD: I will go back to the questions I had before about the psychosocial inspectors. I understand that there was previously a dedicated team of psychosocial inspectors in SafeWork a few years ago, but that team was disbanded following a restructure. Do we know the reasons for why that was the case?

JANET SCHORER: I couldn't speak to the historical reasons, Ms Boyd, but I would say that that is certainly a function that is being rebuilt with this iteration of SafeWork, both in terms of having dedicated psychosocial expertise across our inspectorate, dedicated inspectors, as well as, as the Minister has said before, the advisory service, which is a broader support program for businesses to get advice. So something is being rebuilt, but I couldn't speak to the history of why it was not continued.

Ms ABIGAIL BOYD: I understand that there was a dedicated team that then got absorbed into the general inspectorate team. Is the new proposal now that they're going to sit separately as a distinct team again?

CORRECTED

JANET SCHORER: There will be some distinct team. But, as I think I mentioned before, once we have the full recruitment of our new inspectors, there will be about 470 inspectors. To get the breadth of reach around this particular harm, we want all of our inspectors to have the skills and capacity to recognise, even at a very basic level, where there might be psychosocial harms that we need to do some further work on. That might then be when you bring in someone who's got particular expertise as an inspector or you get a particular bit of advice about how to handle it. So we are definitely trying to broaden out what we do with psychosocial harms.

Ms ABIGAIL BOYD: So 20 dedicated inspectors out of 470, but you say that you're trying to expand the level of expertise around psychosocial safety generally.

JANET SCHORER: That's correct.

Ms ABIGAIL BOYD: How is that being achieved?

JANET SCHORER: Part of that goes to some of the tools and programs internally. For example, an inspector who goes out to a construction site might have particular expertise around that sort of industry, but they need to also be able to have a conversation and have the skills to be able to have what can be tricky conversations about sexual harassment or bullying—those sorts of things—with the relevant PCBU. So it's partly how we give our inspectors the tools, as well as enhancements in training and support that will come both from in-house but also from the enhanced function that we are building within SafeWork.

Ms ABIGAIL BOYD: Minister, Ms Schorer raises an important issue—I think we've spoken about it in the past as well—that within the construction industry, there is quite a pronounced risk of psychosocial harm.

Ms SOPHIE COTSIS: Yes.

Ms ABIGAIL BOYD: What is your Government doing specifically? I note that this is obviously in the context of the issues we've had around the CFMEU going into administration and the concerns we've had that the safety concerns were not being raised in the same way that they used to be, and all of that. What has your Government done to actively increase psychosocial safety in the construction industry?

Ms SOPHIE COTSIS: You raise a very important question. I can report to you and to the Committee that we'll be organising a round table with construction and building industry heads; the building trade unions, including the CFMEU administration; experts with respect to psychosocial harms in the workplace; and two organisations, Foundo House and MATES in Construction, and others. We'll be holding a round table because I'm very concerned about the increase in psychosocial risk in construction for construction workers. I am also very concerned about the high number of falls from heights, with respect to young workers in particular. From the reports that come in, I see seriously injured young workers who are working in either T3 or T4 small mum-and-dad operations. You've got a father-and-son operation, where, unfortunately—and we've had a few of these cases in the last few years—a young apprentice or a young labourer is killed or seriously injured. I'm very concerned about that. I know we are all concerned about that. We are holding that round table. It's been brought to my attention, the concern of some of the bosses around the mental health of their workers. They want to work together.

This is something we all agree we need to do more work on, and the Government will organise that. I'm happy to let all of you know when we're going to set that up. I'd like this to be ongoing. But you're absolutely right. This is something that has been concerning me, and I know others as well, for a while. As the commissioner said earlier, with respect to inspectors going out onto worksites and working together with organisers from the CFMEU administration, that is happening. That will continue to happen, where government can provide additional resources and attend sites through request-for-service processes. I know that recently there have been a number of incidents of both the Government and organisers working together. So that will continue to happen, but I am very concerned about the psychosocial concerns you have for the construction industry.

Ms ABIGAIL BOYD: Do you know how many work-related deaths have been recorded in New South Wales in 2024 and so far in 2025, and how that compares with previous years?

Ms SOPHIE COTSIS: I'll get the correct number, but I understand that there has been an increase.

JANET SCHORER: There have been 52 work-related deaths so far this year.

Ms ABIGAIL BOYD: What was last year?

JANET SCHORER: Sixty.

Ms ABIGAIL BOYD: Do you have a breakdown of how they sit across industries?

JANET SCHORER: I can provide that for you on notice.

Ms ABIGAIL BOYD: Thank you. What was the 2023 number? That 52 is quite concerning.

CORRECTED

JANET SCHORER: I would have to take that on notice to be reliable.

Ms ABIGAIL BOYD: Thank you. How many psychosocial prosecutions has SafeWork brought in the three years since the positive psychosocial duty was introduced in 2022?

JANET SCHORER: I'm happy to provide that for you on notice, Ms Boyd.

Ms ABIGAIL BOYD: Maybe you could come back this afternoon on that.

JANET SCHORER: If we can, we will.

Ms ABIGAIL BOYD: How many prosecutions has SafeWork brought against NSW Health in the last 10 years?

JANET SCHORER: I will definitely have to take that on notice.

Ms ABIGAIL BOYD: Are you able to tell me some more recent data for now?

JANET SCHORER: I'll need to find my notes. I'm happy to come back to it this afternoon, if you'd like.

Ms ABIGAIL BOYD: Do we have any visibility over work-related suicides?

JANET SCHORER: Not as a unique dataset, I don't think, but I'm happy to see what we can find for this afternoon.

Ms ABIGAIL BOYD: I understand that under the way that we capture workplace deaths, we're not capturing—

JANET SCHORER: Suicides in particular, yes.

Ms ABIGAIL BOYD: —suicides quite expressly. I think it's interesting. We often get questions about the interaction with the new industrial manslaughter laws, how they apply where something could be traced back to a particular psychosocial injury, and how that then plays out. How do we capture that information, or do we not capture it at all?

JANET SCHORER: I'll have to come back to you with our data on whether suicide, in particular, is recorded as a workplace death.

Ms ABIGAIL BOYD: Just a random one, can you provide an organisation chart for the new independent SafeWork and what that looks like?

JANET SCHORER: I'm sure we can on notice, yes.

Ms ABIGAIL BOYD: Has SafeWork conducted any proactive audits of seasonal worker housing and living conditions? That's another one that we get a lot of questions to my office about.

JANET SCHORER: Yes, we have.

Ms ABIGAIL BOYD: How many audits have you done this year?

JANET SCHORER: I'll have to get the number for you, but I'm happy to provide that on notice.

Ms ABIGAIL BOYD: Have any prosecutions or anything arisen out of those audits?

JANET SCHORER: I can't recall any prosecutions for this year, but we'll come back to you.

Ms ABIGAIL BOYD: Thank you—or whether there are any other enforcement actions coming out of that? That would be useful to see.

JANET SCHORER: Yes, we can come back to you.

Ms SOPHIE COTSIS: Sorry, with that information that you've sought around the statistics, we're also making changes through the—when we brought the legislation to the Parliament about the standalone agency, we have included a number of provisions about the openness/transparency and accountability with respect to stats and that information. I'm just letting you know.

Ms ABIGAIL BOYD: Thank you. You're going to take this on notice but I'll ask anyway: How many SafeWork inspections were conducted in warehouses, fulfilment centres or distribution hubs in the last year?

JANET SCHORER: Yes, I will take that on notice.

Ms ABIGAIL BOYD: Are there any reviews underway in SafeWork in relation to where the inspectorate sits or anything else? Are any general reviews underway at the moment in SafeWork?

CORRECTED

JANET SCHORER: We do have a review being undertaken, which is really an internal review to identify what is the best utilisation of the additional investment that government has made. So there was the work done before 1 July to establish us as a standalone organisation. Then the next piece of work is quite a quick piece of work particularly, as you've asked about before, in terms of the psychosocial investment, to what is the best way for us to make the best use of that within our new structure. That is really a bit of internal business process review, but that's the only review that I'm aware of being undertaken currently.

Ms ABIGAIL BOYD: Are you able to give us the terms of reference for that review?

JANET SCHORER: Yes, I'll take that on notice. When I say "review" it's a small consultancy firm that's doing that, so it's not a review as you would say. But, in the interests of transparency, we have someone who's doing work with us to review our business processes.

Ms ABIGAIL BOYD: Does it cover the potential for job cuts?

JANET SCHORER: No. That is certainly not the point of the review. We're in what I would say is the blessed state of having to expand. What's the best way to expand is really the question that we're asking ourselves.

Ms ABIGAIL BOYD: Not total job cuts but in terms of cuts to particular—

JANET SCHORER: It's more about is the role doing the right thing in the right way, rather than cutting jobs. So there might be some "we need you to go over there" sort of thing, rather than us looking at cuts jobs.

Ms ABIGAIL BOYD: But not letting people go?

JANET SCHORER: That's not the intention, no.

Ms ABIGAIL BOYD: Do you expect certain specialist areas to be reduced from that review?

JANET SCHORER: That's not the first intention, no. It's really "Are they in the right part of the structure? Do they have the right business system processes to deliver what's been asked of us as an independent agency?"

The Hon. DAMIEN TUDEHOPE: Minister, are you aware of a fire drill that occurred at the SafeWork office on the Central Coast in August this year?

Ms SOPHIE COTSIS: I'll refer it to the commissioner.

JANET SCHORER: I'm not aware of that, no.

The Hon. DAMIEN TUDEHOPE: In that case, you're probably unable to tell me whether it was a success. But would it be a concern to you, Commissioner, that you conducted a fire drill at a SafeWork office and in the course of that fire drill the employees couldn't leave the building because the door leading from the building was stuck and made the building inaccessible?

JANET SCHORER: Yes, that would concern me, but I don't know any more detail about it. I'll need to look at and further into that incident.

The Hon. SUSAN CARTER: Minister, if women were regularly experiencing sexual harassment or discrimination based on their sex at their place of work, would that be an appropriate matter for a SafeWork investigation?

Ms SOPHIE COTSIS: Without getting into the details—because, in terms of particular matters, I know that there's kind of a rule around the privacy—of course the SafeWork inspectors will get a request for service and they'll make an assessment. I'm happy to refer you to the commissioner with respect to an operational matter.

The Hon. SUSAN CARTER: No, I can ask further questions in the afternoon. If these same women were regularly experiencing discrimination on the basis of their race at their place of work, would that be an appropriate matter for a SafeWork investigation?

Ms SOPHIE COTSIS: Are you referring to the Sydney university matter?

The Hon. SUSAN CARTER: We'll come to that, but I'm referring to the general principle.

Ms SOPHIE COTSIS: Don't pepper me with questions. This is a very serious matter, so you get straight to the—

The Hon. SUSAN CARTER: I agree, it's a very—

Ms SOPHIE COTSIS: It is a very serious matter, so get to the point.

The Hon. SUSAN CARTER: I have, Minister.

CORRECTED

The CHAIR: Minister, the honourable member is entitled to ask the questions which she sees fit. Mrs Carter, you're free to do so.

The Hon. SUSAN CARTER: Minister, I don't think it's a difficult or a tricky question. If women were experiencing harassment at work based on their race, should they be able to bring that matter to SafeWork, especially if that is creating a psychosocial hazard in their workplace?

Ms SOPHIE COTSIS: Ms Carter, the Government has zero tolerance for any bullying or harassment in any workplace in New South Wales. Any worker has an absolute right to get in contact with SafeWork to raise those issues. At the same time, every single boss in this State is covered by the Work Health and Safety Act. They have an obligation, they have duties under section 19, to make sure that they follow the duties. We, as a regulator, regulate. We will do what we have to do and work in—whether we have to issue penalties or whether we go to court. But those are operational matters that the commissioner can ventilate further. But, no, I do not tolerate—there is no tolerance for—bullying or harassment in the workplace.

The Hon. SUSAN CARTER: So you would not support the proposal from SafeWork NSW that psychosocial hazards created by racial discrimination not be investigated by them but referred instead to the Australian Human Rights Commission? Is that the case, Minister?

Ms SOPHIE COTSIS: My understanding—and I want to be absolutely correct. I understand that this matter has been investigated.

The Hon. SUSAN CARTER: Minister, with respect, we're talking about matters flowing from that investigation at the University of Sydney. One of the matters flowing from that is that there has been a recommendation in an inspector's practice note that psychosocial hazards created by racial discrimination will not be investigated by SafeWork but, rather, be referred to the Australian Human Rights Commission. Do you agree with that proposal?

Ms SOPHIE COTSIS: Ms Carter, I know what you're referring to. There is absolutely no tolerance for bullying and harassment in the workplace. I understand where you're getting to. With respect to the operational matters, there is a process. I will refer you to that process.

The Hon. SUSAN CARTER: As a matter of policy, Minister, do you believe that racial discrimination that creates a psychosocial hazard should be treated differently than sexual discrimination that creates a psychosocial hazard?

Ms SOPHIE COTSIS: When you're talking about racial discrimination, let me take you back to the amendments that you're putting up that are going to impact workers with respect to workers compensation.

The Hon. SUSAN CARTER: Minister, I'm asking you not about what the law might be, but about what the law is now.

Ms SOPHIE COTSIS: I know what you're trying to do here. This is a very serious matter—

The Hon. SUSAN CARTER: I agree.

Ms SOPHIE COTSIS: —that you have brought to the Committee. I take this very seriously, and there is no place—

The Hon. SUSAN CARTER: Minister, I would appreciate a serious answer to the important question I have asked you.

Ms SOPHIE COTSIS: I will refer you to the regulator with respect to the operational matter and the decision-making that they got to. With respect to a policy matter, nobody should be discriminated in the workplace for race, sex or other matters—absolutely not. However, the workplace has a responsibility to keep workers safe. It is the bosses' responsibility to keep workers safe in the workplace. It is the regulator to make sure that that is happening. Now, the workers have gone to SafeWork and they've put forward a request for service—

The Hon. SUSAN CARTER: Can I you a question about that? I entirely agree; it is the bosses' responsibility to keep workers safe.

Ms SOPHIE COTSIS: Absolutely.

The Hon. SUSAN CARTER: Therefore, should workers who feel that they are unsafe because their bosses have not made a safe place of work—should workers who feel they are unsafe because of repeated and consistent acts of, as in the example of the University of Sydney, 11 months daily experience of antisemitism—should those workers have a right, if that happened today, to go to SafeWork NSW?

CORRECTED

Ms SOPHIE COTSIS: Ms Carter, the Government and all of us agree there is zero tolerance for antisemitism, absolutely zero tolerance. I understand that this matter has been brought forward to SafeWork and there has been work that has been done between SafeWork and the University of Sydney. With respect to the specifics, I will refer you to the commissioner.

The Hon. SUSAN CARTER: Minister, are you aware of the inspector's practice note flowing from that investigation at the University of Sydney which seeks a change of policy that psychosocial hazards created by racial discrimination go to the Australian Human Rights Commission rather than SafeWork? Do you agree with that policy?

Ms SOPHIE COTSIS: Mrs Carter, I will take my advice from the commissioner, and I refer you to the commissioner. Ms Schorer, can you please assist?

The Hon. SUSAN CARTER: Do you agree that psychosocial hazards created by racial discrimination should be created differently to psychosocial hazards created by sexual discrimination?

JANET SCHORER: I would say that all harms that relate to psychosocial injury should be assessed by SafeWork, whether that—as you were pointing out—is sexual harassment, racial et cetera. What I would say in terms of the file note is that these are contemporaneous notes that our inspectors take at the time.

The Hon. SUSAN CARTER: Excuse me, we're not talking about the workbook or the file note. We're talking an inspector's practice note and a request to change policy. I would just like a really clear answer: A racial discrimination complaint made today—is that investigated by SafeWork or is it flicked off to the Human Rights Commission?

JANET SCHORER: That would be investigated by SafeWork.

The Hon. EMILY SUVAAL: Point of order—

The Hon. SUSAN CARTER: So it will be investigated by—

JANET SCHORER: Absolutely.

The CHAIR: A point of order has been taken by Ms Suvaal.

The Hon. EMILY SUVAAL: In relation to this line of questioning, as Mrs Carter has identified, the line of questioning is in relation to a potential or hypothetical change in Government policy. That being the case, the questions should either be to the Minister or perhaps reframed so that they fall within the ambit of the procedural fairness resolution paragraph 10, which requires that public servants be not asked to express opinions on a matter of public policy.

The CHAIR: I'm not going to uphold the point of order because I don't think it was a hypothetical. I think Mrs Carter was referring to a practice note that sought a change. I'm relying on her integrity there that that is actually what has happened. She did put the question to the Minister and was referred to the commissioner. I don't think it was a hypothetical, so I don't uphold the point of order.

The Hon. SUSAN CARTER: Minister, with respect to the inspector's report of the events that occurred at the University of Sydney, that inspector is reported as requesting a full investigation, with the likelihood that criminal matters may lie as a result of a further investigation. The independent decision-making panel, however, is reported as having declined to accept that recommendation without giving reasons. Have you implemented the changes recommended by the McDougall review in respect of independent decision-making panels?

Ms SOPHIE COTSIS: Ms Carter, with respect to the IDMP—and I know that in opposition, when I was the shadow Minister, I had grave concerns about the IDMP. You've got to remember that SafeWork is a standalone regulator now. Lots of changes have been made—

The Hon. SUSAN CARTER: Minister, with respect, I'm asking about a time before it was a standalone regulator while it was under your responsibility.

Ms SOPHIE COTSIS: The IDMP—there have been changes made and the Government, through SafeWork, have fulfilled close to 22 or 23 of McDougall's recommendations, of the 46. One of those is the change with respect to the IDMP. I agree that we now have a lawyer and there has been a change of the make-up of that panel. I'll leave it at that. But that recommendation has been implemented.

The Hon. SUSAN CARTER: This was a very significant investigation over a psychosocial hazard that existed over a period of 11 months, yet no reasons were given for the IDMP's decision not to proceed. Are you happy that for very significant matters like that no reasons are given?

CORRECTED

Ms SOPHIE COTSIS: Mrs Carter, this is a very serious matter. This is a panel that existed under the former Government. McDougall made a number of recommendations—

The Hon. SUSAN CARTER: Minister, I'm asking you about a decision made while it was on your watch.

Ms SOPHIE COTSIS: McDougall made a number of recommendations. We have implemented McDougall's recommendations with respect to SafeWork. That is that they should give consideration to establishing a policy that, wherever possible, the IDMP—the membership, that panel, has changed in terms of at least one legal practitioner with relevant experience in the area of workplace health and safety law in prosecutions for breach of obligations under that law.

The Hon. SUSAN CARTER: If I could take you to something specific: the SafeWork investigation University of Sydney recommendation for investigation and prosecution. That recommendation was declined without any reasons given, yet, in the inspector's practice note, which is seeking a change, it points to the fact that investigations involving racial discrimination are resource intensive. Does SafeWork, or did SafeWork at the time this was happening, have sufficient resources to be able to follow through for the safety of those workers at the University of Sydney?

Ms SOPHIE COTSIS: With respect to the operational and assessment process, I'll refer you to Dr Casey and the commissioner. With respect to that process and what has happened after, because—

The Hon. SUSAN CARTER: It's not a process question, Minister; it's a resources question.

Ms SOPHIE COTSIS: We've resourced—

The Hon. SUSAN CARTER: At the time of that complaint being made, was lack of resources the reason that that did not proceed to a full investigation?

Ms SOPHIE COTSIS: This is a really serious matter. It's our Government that's invested \$127 million in resourcing SafeWork NSW, whereas SafeWork under your Government was part of a regulatory unit and it was shackled. With respect to this, what you've brought forward is very serious. I am very aware, and I have put forward my statement. Commissioner, if you have anything further—

The Hon. SUSAN CARTER: Minister, I'll come back this afternoon, if that's okay. Can we go to recommendation 15 of the McDougall review? How many inspectors have now had specific psychosocial training and what further training is scheduled for this year?

Ms SOPHIE COTSIS: I'll refer you to the commissioner.

The Hon. SUSAN CARTER: Okay, I'll pick that up this afternoon. Minister, how much money has been spent on the initial rollout of body-worn cameras for inspectors before enabling legislation was in place?

Ms SOPHIE COTSIS: We announced that inspectors will have their body-worn cameras. We announced that a few months ago there was a trial. What are you asking for? The cost?

The Hon. SUSAN CARTER: Yes.

Ms SOPHIE COTSIS: I don't have that. I'll get it for you.

The Hon. SUSAN CARTER: Perhaps, while that is happening, we can talk about SafeWork targets. What outcomes is SafeWork targeting in 2025-26 to judge their effectiveness as a standalone regulator?

Ms SOPHIE COTSIS: Excuse me, Ms Carter, can you repeat that?

The Hon. SUSAN CARTER: Sure. What outcomes are SafeWork targeting in 2025-26 to judge its effectiveness as a standalone regulator?

Ms SOPHIE COTSIS: We've got a new Act.

The Hon. SUSAN CARTER: And how are we going to judge the effectiveness, Minister?

Ms SOPHIE COTSIS: We're going to make sure that, particularly with the additional resources that this Government has provided with the additional inspectors working through our taskforce and working through our advisory council, there will be what I'd like to see as improvements, particularly in those regulatory priorities. With respect to targets or performance measures, is that what you are—

The Hon. SUSAN CARTER: I'm asking, Minister, how we are going to measure the effectiveness of SafeWork. For example, what measurements have been taken since 1 July so that we can get some early indication of how SafeWork is functioning as a standalone regulator?

Ms SOPHIE COTSIS: I'm happy to refer to the commissioner on that.

CORRECTED

The Hon. SUSAN CARTER: With respect, Minister, I'm asking how you as the Minister are looking at the effectiveness of SafeWork. I'm not asking SafeWork how they self-assess; I'm asking what work is being done to check how the independent regulator is working. For example, is there faster first contact? Are there more prosecutions? Are there fewer repeat offenders? That is perhaps a bit early to tell. Are there any indicators to demonstrate the effectiveness of this change?

Ms SOPHIE COTSIS: From 1 July to 4 July, we had a massive blitz across New South Wales where all our inspectors were out there. This is the first time in over a decade where we saw a massive blitz. I understand there were over 500 penalties issued, Commissioner?

JANET SCHORER: Yes, that's correct.

Ms SOPHIE COTSIS: And it wasn't just construction; it was making sure that we attended worksites and that requests for service had been made and that repeat offenders, as you said—that was the largest blitz in over a decade. That gives you an early indication that, number one, you have still got businesses doing the wrong thing and also that we will continue to do that work.

The Hon. SUSAN CARTER: And how much did it cost to set up SafeWork as the standalone regulator?

Ms SOPHIE COTSIS: I'll get that for you.

The Hon. SUSAN CARTER: Were any consultants engaged in the process?

Ms SOPHIE COTSIS: I'll get that for you.

The Hon. SUSAN CARTER: And, if you could, how many engagements and what the total spend on that was.

Ms SOPHIE COTSIS: Yes, of course.

The Hon. SUSAN CARTER: Are there any gaps in SafeWork NSW regional inspector coverage?

Ms SOPHIE COTSIS: That's a good question. I'm sure that the commissioner will be able to provide that additional information. I am very grateful to our regional inspectors, who have to travel vast lengths to get to sites. I also want to acknowledge the work that they have been doing, particularly around farm safety. In the last couple of years we have held a farm safety round table—one in Griffith and one in Orange. As you know, through the famers and through the Country Women's Association—

The Hon. SUSAN CARTER: These are very important areas.

Ms SOPHIE COTSIS: It's really important. There is a lot of work that is going on. My expectation is that I want to see tangible and I want to see bespoke solutions for that sector because it's not one size fits all.

The Hon. SUSAN CARTER: How many complaints have been made against SafeWork NSW regarding violence and aggression towards inspectors in the last two years, and how were they handled?

Ms SOPHIE COTSIS: In terms of violence against our inspectors?

The Hon. SUSAN CARTER: Yes.

Ms SOPHIE COTSIS: I am familiar with a number of those. The commissioner will be able to provide you with that additional information, but any violence or aggressive behaviour against SafeWork inspectors, of course, Ms Carter, is not tolerated. There are measures in place. This is why we introduced the body-worn cameras—for that very specific reason. Unfortunately, you have some cowboys out there that don't want inspectors to come onsite. But we will do what we can to ensure that our inspectors are protected.

Ms ABIGAIL BOYD: How many SafeWork employees are currently claiming workers compensation? Are you able to tell me?

JANET SCHORER: I'll get the note up. I think it's 24 but I'll clarify that for you.

Ms ABIGAIL BOYD: And how this compares to previous periods as well.

JANET SCHORER: That I'll have to take on notice.

Ms ABIGAIL BOYD: You said before, Ms Schorer, that there were 140 inspectors—or was it 147? I can't remember. How many inspectors do we currently have?

JANET SCHORER: We have just under 400.

Ms ABIGAIL BOYD: Sorry, not 140.

CORRECTED

JANET SCHORER: Once we complete the recruitment process that we are currently going through to expand the inspectorate, it will be 469.

Ms ABIGAIL BOYD: How many of them are actually going out in workplaces versus how many have more of an administrative function?

JANET SCHORER: The inspectorate is people who go out.

Ms ABIGAIL BOYD: So they all are?

JANET SCHORER: That's largely their role, yes. They obviously have administration tasks to do but, effectively, those are people who are out in the field.

Ms ABIGAIL BOYD: Sorry, excuse my ignorance, but are there different levels of inspectors? Are there field inspectors and managers? What does that look like?

JANET SCHORER: Yes, there is seniority of inspectors. There are State inspectors. That helps with some of the triaging of requests as they come in. A more senior inspector, if you like, might take on more complex matters or in particular instances where there is someone in training and you need someone to go or those sorts of situations.

Ms ABIGAIL BOYD: I think we spoke last time about SafeWork doing some work around having a trauma-informed approach particularly when it's going out to community services that are, for example, dealing with domestic and family violence and other things. There was some suggestion that there would be work done with the Women's Safety Commissioner and others to try and put some training in place or something else. Has anything happened in relation to that?

JANET SCHORER: I might ask Dr Casey.

PETRINA CASEY: We have done some work in that area, Ms Boyd, and we are about to go to market to procure a trainer. The course has been developed in consultation with those agencies that you mentioned. A really important component of bringing on new psychosocial focused inspectors is ensuring that we've got that broad trauma-informed training rolled out across SafeWork. We have a new training package that's about to be rolled out. I should add that, over the last couple of months, we've also had about 70 face-to-face psychosocial training sessions. That includes some of those vicarious trauma components rolled out to the existing inspectors. That's certainly a focus for us.

Ms ABIGAIL BOYD: I will come back to you, Minister. Before when we were talking about this date rationalisation issue and I was pointing out the seriousness of if this is not compliant with the law, is that an issue that you were made aware of previously?

Ms SOPHIE COTSIS: You brought it up to the Committee, so I said that I would get further information.

Ms ABIGAIL BOYD: But were you aware personally of this prior to this Committee hearing?

Ms SOPHIE COTSIS: No.

Ms ABIGAIL BOYD: You have never come across that issue? No-one has raised that with you?

Ms SOPHIE COTSIS: With respect to small businesses paying more than the large—

Ms ABIGAIL BOYD: No, this is the date rationalisation issue. This is where icare, basically, is—the result is that the premiums for small business increase because of the way that the period of time which the discount is applied takes effect.

Ms SOPHIE COTSIS: Yes.

Ms ABIGAIL BOYD: You can be paying from the beginning of the financial year—or you can have your policy running from the beginning of the financial year, for example, but if you're a month in before you actually even pay your first premium payment, then icare treats it as though you've not done a full year. I understand that's unlawful.

Ms SOPHIE COTSIS: I'll refer you to Mr Wessling.

TONY WESSLING: I could give an update.

Ms ABIGAIL BOYD: Yes, please.

TONY WESSLING: Date rationalisation was a policy change made in 2013 to make the renewal process and the declaration of wages easier for small businesses. What it means is that the policy is set to the last day of the month. So in the first year of a policy, the policy may be less than 12 months unless the policy is set up on the

CORRECTED

last day of the year. That is a practice that has been in place, as I say, since 2013 as part of the reduction in red tape. It's aligned with the market premium practice guidelines, and it's part of the submission on premiums that we make to SIRA each year. So, yes, that's a practice that has been in place for a long time.

I think where you're getting to is that there are very unique cases where if a small employer moves to the experience rate, that they might grow and become an experience-rated employer, their very first year of being—the year of claims experienced prior to that, if they make that move a year after incepting a policy, changes the way that first year is treated from a claims perspective. There are about 500 cases each year where a small employer moves into the experience-rated category that have done that within the first year of inception. There's a small number of situations in that circumstance where if an employer had a different experience in the first year, because it's less than a year, we treat all first-year claims experience the same across all employers moving into the experience-rated category. There are circumstances where that will impact the claims experience that an employer has, but—

Ms ABIGAIL BOYD: Are they the ones that you've been refunding?

TONY WESSLING: What I could find out in the break is that there was one circumstance over the course of time where there was a refund made inadvertently for an adjustment for that, but that is not our practice. I could find one example.

Ms ABIGAIL BOYD: So your position is that this practice of shortening the policy period to align with icare's billing is permitted?

TONY WESSLING: Yes. I've got—

Ms ABIGAIL BOYD: Is it also your evidence, then, that SIRA has not raised an issue with this in the past?

TONY WESSLING: Yes, I have got no—in the time since you asked the question, there are no issues that we can find that have been raised by SIRA. As I say, this practice is part of our premium filing each year.

Ms ABIGAIL BOYD: Can you tell me where exactly in the MPPG it says that this is permitted?

TONY WESSLING: I'll have to find that, Ms Boyd. But it's part of our premium filing to SIRA, which we make every year.

Ms ABIGAIL BOYD: Can you also tell me how it interacts with section 155A, that particular section of the MPPG?

TONY WESSLING: What I'm advised is that section 155A says:

A policy of insurance issued after the commencement ... must be issued for a period of 12 months, unless the Authority otherwise approves in a particular case or class of cases.

Section 168 allows for the making of guidelines by the authority. We rely upon those guidelines in making our annual premium filings to SIRA. We include the need for date rationalisations in the timings, and, in not rejecting the final filing, SIRA essentially accepts the date rationalisation practice, which, as I say, has been in place since 2013.

Ms ABIGAIL BOYD: SIRA initially found that it had no legal basis. I understand that it later reversed its position. I will have to maybe take that up with SIRA as well, but I will come back to you in the afternoon with some more on that. Minister, this particular issue I've just been discussing, has that been raised with you previously?

Ms SOPHIE COTSIS: I've just sought advice from my office. I understand that there has been a representation that has come through our office just recently, so I will get that info for you, and I will be seeking further advice.

Ms ABIGAIL BOYD: Great. Thank you. Let me just check if I've got anything further. I just wanted to talk to you, Minister, about this issue around surveillance of people as part of investigations when they're first making a workers comp claim. We've heard a lot of evidence in previous inquiries around the psychological harm that surveillance can cause, particularly for someone with a psychosocial injury. Would it concern you to hear if a New South Wales government agency would have a policy requiring the use of investigators for all psychological injury claims or any broad rule that mandated surveillance of a certain type?

Ms SOPHIE COTSIS: So you're saying that government agencies use surveillance?

Ms ABIGAIL BOYD: Government agencies routinely use surveillance when people are coming forward with workers comp claims, and when you look at the data—

CORRECTED

Ms SOPHIE COTSIS: The agency or the insurer?

Ms ABIGAIL BOYD: The agency has an understanding with the insurer, and it's the agency that is the one that sets the policy for the insurers to follow. That is my understanding. If you look at something like NSW Health, the degree of surveillance that they do of workers coming forward with psychosocial injury is far higher than, for example, the Department of Education. That's based on an overall policy setting from the agency to their particular insurer.

Ms SOPHIE COTSIS: I'll take advice from Mr Wessling on that. But I just want to make it very clear that I have had meetings with injured workers who have had a level of surveillance that is concerning. I understand that there will be times when there is a necessity with respect to particular matters, in terms of seeking advice or seeking evidence and information within the bounds of the law, but with respect to some of the matters that I've heard in private, I've raised those with icare. I do have concerns about the use, in general. However, I understand it's a necessity for all sides—for under-insurance purposes, for employers. I'll refer to Mr Wessling.

TONY WESSLING: Yes, if I could add that the decision about whether to conduct surveillance or investigations sits solely with the case manager and therefore the insurer—so our claims service providers, on behalf of icare. I think you're alluding to an allegation that there was a policy that required mandated surveillance.

Ms ABIGAIL BOYD: Let's just take a step back. There's a requirement for icare to sign off on the use of surveillance. That's my understanding. Is that your understanding?

TONY WESSLING: All covert surveillance comes to icare, yes.

Ms ABIGAIL BOYD: If we then look at, for example, 60 per cent of Health psychosocial claims being subject to an investigation, what percentage of them are coming to you for sign-off?

TONY WESSLING: To be clear, our case managers will conduct an investigation where there's conflicting evidence between an employer and an injured worker. An investigation, though, is not the same as surveillance.

Ms ABIGAIL BOYD: No.

TONY WESSLING: An investigation could just be further inquiries being made. From time to time, surveillance is necessary and required, and icare does provide—it requires us to approve that.

Ms ABIGAIL BOYD: How do you define surveillance then?

TONY WESSLING: I'll come back to you with the definition, but our definition of surveillance is optical surveillance, so this is optically surveilling someone.

Ms ABIGAIL BOYD: What we're told by the injured workers that come to my office is that they're being subjected to social media surveillance for instance and really shocking cases of even a person's family having their social media surveilled to work out if their parent is fit enough. It's quite extreme and quite damaging. You wouldn't view that then as surveillance for icare's purposes?

TONY WESSLING: We don't approve desktop investigations that look at public social media sites, no. But you're correct, though, that does occur as part of investigations. They're governed by a broader standard of practice set by SIRA around how and when they need to be conducted, and we are at the moment looking at our processes and procedures around specifically desktop surveillance in relation to social media.

Ms ABIGAIL BOYD: My understanding is that it's not actually legal to pass the investigation reports for that sort of thing across to the IME for the purposes of a dispute. What's the point of that level of investigation?

TONY WESSLING: As I said earlier, the case manager making a decision on a claim will often get conflicting pieces of information from an employer and an injured worker to help make a decision around a claim and will commence investigations. It's a normal part of a claim, particularly in psychological claims and workplace-type claims where there is often conflict in the evidence being provided.

Ms ABIGAIL BOYD: I think we can agree that factual investigations are an important part of workers compensation, but they need to be used judiciously otherwise you can really erode the trust of workers in the system.

TONY WESSLING: Yes.

Ms ABIGAIL BOYD: When you're looking at, for example, 60 per cent of those Health psychosocial claims being subject to an investigation versus other departments not doing that, are you saying that that can only occur because Health has contested that number?

CORRECTED

TONY WESSLING: I don't know the exact stats you're referencing, Ms Boyd, and I can take that on notice and look at that. But, again, "investigations" is a broad term that incorporates many different activities on a claim.

Ms ABIGAIL BOYD: Minister, do you think that there should be tighter regulation around the use of this sort of desktop surveillance?

Ms SOPHIE COTSIS: Yes.

Ms ABIGAIL BOYD: It's kind of an old-fashioned idea that icare has around what surveillance is.

Ms SOPHIE COTSIS: Having spoken to probably the same injured workers that you have and we all have, I think that this is something that definitely—let me make this clear: Families and children should be off limits. It is as simple as that. If you're going to conduct an investigation, doing a social media search or desktop—I'm not an expert, I'm not a claims assessor. Common sense but also is it within the bounds of the law. With respect to surveillance, we have to be very mindful. What Mr Wessling indicated, that, yes, there'll be a conflict between reports et cetera, there is a whole claims process that puts people through a very difficult situation as we know with what we're trying to do with workers comp reform. But in terms of this type of surveillance, I'm very concerned. Families and children are off limits. It's something I'll review and I'll take back and report to you and to the Parliament. I do have concerns.

Ms ABIGAIL BOYD: Given that we know the quicker claims are accepted and processed, particularly for psychological injury, the quicker someone returns to work statistically, does it concern you that there are certain departments that are effectively applying more scrutiny and holding out on claims than others?

Ms SOPHIE COTSIS: This is something that we're currently working through, as you know, and you've been very actively involved in the workers comp reform and the bill and have been asking many, many, many questions about this. The insurers have a process. With respect to the work that we're doing, we're trying to triage, particularly people who are putting forward a psychosocial claim, to get in there and triage and try and work through and support those workers. We're doing that. At the moment, Ms Boyd, when a person puts in a psychosocial claim, it takes about eight to nine weeks for them to see a psychologist.

We all know through peer review and through research that is a very long time for somebody to be allowed to languish in a system that is really not good for them. We want to support them right at the beginning of their claim process, support them in every way, and that's why we're investing additional funds and icare will have a wraparound process in terms of triaging these workers. We have to do a better job at returning workers back to work.

The Hon. DAMIEN TUDEHOPE: Minister, the HSU health workers were offered 4 per cent additional pay. You're still only offering the nurses 3 per cent. What part of the new fair pay policy justified the extra 1 per cent?

Ms SOPHIE COTSIS: Mr Tudehope, with respect to the HSU, its members have accepted the Government's offer to increase wages, which will deliver benefit to 50,000 health workers, including hospital cleaners, security, scientists and dentists. This is the prime example of how the Government's wages policy works, with the union and the employer negotiating an outcome of mutual benefit. I'll give you the details of the agreement. The agreement is 8.5 per cent over two years, so it's comprising 4 per cent, plus 0.5 per cent in super, backdated to 1 July 2025.

The Hon. DAMIEN TUDEHOPE: But this is a press release that you're reading from.

Ms SOPHIE COTSIS: No, I'm giving you the—

The Hon. DAMIEN TUDEHOPE: What part of the fair pay policy is the difference between what you're offering to the HSU and nurses?

Ms SOPHIE COTSIS: I'm coming to it now, but you're comparing two different sectors. The nurses and midwives are about to start an arbitration on 30 September.

The Hon. DAMIEN TUDEHOPE: You offered the HSU 4 per cent. Why don't you offer nurses and midwives 4 per cent?

Ms SOPHIE COTSIS: Because every union, through its membership, has examined the Government's offer that we made in 2024.

The Hon. DAMIEN TUDEHOPE: Why did you offer the HSU 4 per cent and the nurses 3 per cent?

CORRECTED

Ms SOPHIE COTSIS: Because there was a bargaining process, and that will continue, with respect to modernising their awards and their classifications. I'm happy to outline the mutual gain for the Government, the people of New South Wales and the workers. I'm happy to outline how we came to that 4 per cent. There was a bargaining process, Mr Tudehope. This is our new system.

Ms ABIGAIL BOYD: Just back on that surveillance point, we got answers to questions on notice from our inquiry into the workers compensation bill in June from EML that said:

From 31 August 2017 the Surveillance and Desktop Investigation Guidelines for icare Agents decreed:

- icare and icare Agents must make an application to ... icare ..., and
- Approval is at the discretion of icare, including the duration, scope, method of surveillance and the proposed investigator.

Does that mean you're not asked to approve desktop and social media surveillance?

TONY WESSLING: The part that we don't approve is desktop and social media investigation surveillance, that's right.

Ms ABIGAIL BOYD: Can you provide us with a copy of the *Surveillance and Desktop Investigation Guidelines for icare Agents*?

TONY WESSLING: Yes.

Ms ABIGAIL BOYD: EML also said in that answer:

icare has advised EML that it has responded to the Committee on this question at Scheme level.

But icare never did. Are you able to provide us that?

TONY WESSLING: On what topic?

Ms ABIGAIL BOYD: On the use of surveillance.

TONY WESSLING: I'll take that on notice, Ms Boyd.

The Hon. SUSAN CARTER: Minister, if I could just ask you in relation to the McDougall review, what has changed in triage and the investigation decision-making panel since the McDougall review?

Ms SOPHIE COTSIS: I'm not trying to be difficult or anything, but with respect to the IDMP, there were recommendations 6, 7 and 8, and—

The Hon. SUSAN CARTER: What I'm asking is what have the practical outcomes of those recommendations been?

The Hon. EMILY SUVAAL: Point of order: It's Government time.

The CHAIR: Thank you. Mrs Carter, I very much appreciate your energy, but we've run out of time. We are now into time allocated for Government questions. In the absence of Government questions, that means we have now concluded the morning session. Minister, thank you very much for attending. We are finished with your questioning. We will be back at 2.00 p.m. to continue the hearing with questions to our officials.

(The Minister withdrew.)

(Luncheon adjournment)

The CHAIR: We are back. We're live. Hansard is ready to go. Welcome back everyone. I hope everyone's refreshed, reinvigorated. We will now turn to questions from the Opposition. Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Ms Carter, I think.

The CHAIR: I'm sorry, Ms Carter. Apologies.

The Hon. SUSAN CARTER: No, not at all. Ms Schorer, I think these questions are probably for you, or perhaps for Dr Casey. Since March 2025, has the psychosocial complaints form that SafeWork NSW used been adjusted on the question of whether the matter relates to race discrimination or not?

JANET SCHORER: Thank you for the question. Dr Casey might provide some context but, no, I'm not aware that the form has been changed at all.

The Hon. SUSAN CARTER: Could you take that on notice just to check that it hasn't been changed?

JANET SCHORER: Confirm, yes. Absolutely.

CORRECTED

The Hon. SUSAN CARTER: Thank you. Are you aware of any proposals for that change to be made?

JANET SCHORER: No.

The Hon. SUSAN CARTER: Any change to the triage process?

JANET SCHORER: We have made changes to the triage process, as you asked earlier in follow-up to the McDougall review. The triage process was changed from 1 July this year primarily to enable us to triage where we want to have an inspector response, and to better utilise some of our other regulatory responses that we have, for example, to make inquiries with a PCBU where you don't necessarily need an inspector to go out. It better utilises our inspector foot power, if you like, to be able to prioritise. As you know, we have a number of categories of response where we need inspector effort for responses in those first three categories. So it enables us to better utilise inspector time and—as we want to be—to be seen and felt as much as we can with our soon-to-be 469 inspectors out in workplaces.

The Hon. SUSAN CARTER: Great. Can you help me with the process? Once an inspector practice note request has been approved, are there further steps for the implementation of that, or is that the end of the chain?

JANET SCHORER: I might ask Dr Casey to respond to that.

PETRINA CASEY: Thank you, Commissioner. Yes, there are. We have an inspector practice panel. So a group of inspectors and other people within SafeWork who come together and, indeed, if a practice needs to change, they agree on that practice. Then our training and development team incorporate that into the training of both existing inspectors, as well as making sure that it's part of our new training inspector program.

The Hon. SUSAN CARTER: Would you be able, on notice, to provide the Committee with documents in relation to an inspector's practice note that was approved on 27 March 2025 that approved psychosocial complaints form and triaging process to be adjusted in relation to race discrimination and what further decisions may have been made in relation to that?

PETRINA CASEY: Absolutely.

The Hon. SUSAN CARTER: Thank you very much. If we could turn to the McDougall report, I don't know whether you're able to assist, Ms Schorer. Of the 46 recommendations from the report, are you able to identify the Government's priorities for this year?

JANET SCHORER: Thank you for the question. We have completed about half of the McDougall recommendations so far. We expect the remaining half to be completed by the end of the year. To your earlier question, a large number of those go to the training and support for our inspectorate as we expand the inspector workforce. Part of the reason that we're tackling that in the second half of the year is because, in becoming a standalone agency, we've had to stand up our people and culture and our internal training resource as well. We need that in house before we can actually then enhance the training program, so we're well on track to have the body of those McDougall recommendations completed by the end of this calendar year.

The Hon. SUSAN CARTER: Okay, great. And the follow-up review of SafeWork's complaints and grievance handling procedures that was called for within nine to 12 months, has that occurred?

JANET SCHORER: That's underway at the moment and will be completed by the end of the year.

The Hon. SUSAN CARTER: When do you anticipate that it will be completed?

JANET SCHORER: We'll complete that by the end of this calendar year as well.

The Hon. SUSAN CARTER: Will the results of that be made public?

JANET SCHORER: As much as we can. Absolutely.

The Hon. SUSAN CARTER: Great. Thank you very much. What changes, if any, are currently being considered to strengthen psychological safety and the management of traumatic workplace incidents?

JANET SCHORER: In general terms around our psychosocial—?

The Hon. SUSAN CARTER: Yes.

JANET SCHORER: I might get Dr Casey to start. One of her responsibilities is our staff inspector training, so I'll get Dr Casey to start.

PETRINA CASEY: Thanks, Commissioner. In its broadest sense, we talked a little bit about, in the previous session, some of the training and supports both internally across our inspectorate. So ensuring we've got vicarious trauma, we've got trauma support for those as they're carrying out those duties and then that extends, in

CORRECTED

terms of our regulatory footprint through our psychosocial strategy, which is a current strategy. We've got a respect at work strategy and then we've got psychosocial, which is also an annual regulatory priority. So in all those areas strengthening both our compliance approach as well as making sure that we've got the right tools, checklists and other things to support PCBUs.

In our recent compliance activity that we undertook across July to coincide with us becoming a standalone, a key output of that activity was a psychosocial activity across PCBUs in relation to enhancing awareness around their duties, their responsibilities in the psychosocial space. The breadth and extent of our regulatory approach is from education awareness right through to compliance and then a real focus internally, making sure we're well equipped. We talked earlier today in relation to the psychosocial uplift program. A significant focus for us over the next period will be ensuring that we're attracting a diverse cohort of people into SafeWork. We want to make sure that we've got diversity of inspectors because it's a complex task, and then really focusing in, as the Commissioner said, on our training and our capability.

The Hon. SUSAN CARTER: Specific training around handling traumatic incidents?

PETRINA CASEY: Absolutely. That currently exists, so it's not to say that it doesn't. But we certainly want to amplify that, particularly as we bring new people into the workforce and a broader diversity of inspectors, for example, making sure that we have that training that's fit for purpose.

The Hon. SUSAN CARTER: In relation to your inspectors—and understanding that the risk of violence, aggression, intimidation against SafeWork inspectors could be high—when one of your inspectors or other workers wishes to lodge a complaint internally against SafeWork NSW for an unsafe workplace or, for example, PPE or adequate training that hasn't been provided, who does SafeWork NSW send the complaint to?

PETRINA CASEY: Currently, we're working through—so from 1 July we've separated from the Department of Customer Service. The reason I make that distinction is that some of our complaints handling is still handled by the Department of Customer Service, particularly to ensure that we don't have conflicts of interest.

The Hon. SUSAN CARTER: Who now do those complaints go to?

PETRINA CASEY: Now they would go through to our internal people and culture team but if there's a—

The Hon. SUSAN CARTER: Sorry, why isn't that a conflict if it's going to your internal team?

PETRINA CASEY: I might just expand on that if I may, Ms Carter. In relation to if somebody wants to report something from a work health and safety perspective, so it's a hazard, we would want our workers to follow normal workplace health and safety reporting systems. They would lodge a hazard in the my safety system, which would then go through to the people and culture team, and the system responds to it. If, however, they want to report something on an anonymous basis, or they feel that there might be reprisal or something else, that then goes through to the professional conduct team within the Department of Customer Service. Then if we want to take that further, we've got a reciprocal agreement with the Resources Regulator—because obviously we can't regulate ourselves. So the Department of Customer Service and SafeWork have a memorandum of understanding where people can access the Resources Regulator, who carry out that function.

The Hon. SUSAN CARTER: That memorandum of understanding, is that available to and publicised to the entire workforce?

PETRINA CASEY: It is. I'd have to check exactly where. We're currently in the process of revising that memorandum of understanding. That also is because we're now that standalone agency looking at all those sorts of procedures, making sure that we've got them in order. So we're currently having discussions with the Resources Regulator about revising those.

The Hon. SUSAN CARTER: Sorry, I don't understand how discussions about a renewed memorandum impact on the awareness and the education of staff, that that is where they are able to make complaints.

PETRINA CASEY: Absolutely, it is advertised. All our staff are, hopefully, aware of those. Sorry, I was speaking specifically around the memorandum of understanding. It's not a secret document, but I just don't know where exactly it's publicised. We have a protocol that underpins how that works, and that is absolutely available to all staff.

The Hon. SUSAN CARTER: How many internal complaints have gone to the Resources Regulator and have been accepted or investigated?

CORRECTED

PETRINA CASEY: I'd have to check the exact number, but over I think about the past 10 years we've had about 40, which is across SafeWork and DCS. Obviously, I don't want to speak for DCS, but I can say that we currently have no active matters with the Resources Regulator.

The Hon. SUSAN CARTER: If you could take that on notice, that would be great.

PETRINA CASEY: I will.

The Hon. SUSAN CARTER: What happens to complaints that are rejected by the Resources Regulator? How are they dealt with?

PETRINA CASEY: They're dealt with in the same way that SafeWork would deal with a matter. If it decided not to investigate or not to proceed with a matter, it's referred back to the requester and then the onus is back on the PCBU—which, in this case, is SafeWork or DCS—to follow up and action whatever is the subject of the complaint.

The Hon. SUSAN CARTER: So the Resources Regulator has capacity to independently examine these complaints, or are they referred on to somewhere else?

PETRINA CASEY: They currently have capacity themselves.

The Hon. SUSAN CARTER: Because I've been given information that they're often referred back to SafeWork NSW.

PETRINA CASEY: I'd have to take that on notice in relation to what exactly that might mean. But certainly, in terms of the process, they may be referred back, depending on whether they have chosen to action the matter. But it would be for the PCBU to then follow up, not for the regulator.

The Hon. SUSAN CARTER: If you could take that on notice, that'd be great.

PETRINA CASEY: I will.

The Hon. SUSAN CARTER: Thank you. What support is provided to inspectors who have suffered serious mental health injuries in the line of duty?

PETRINA CASEY: We have a couple of support structures in place. We now have our in-house people and culture team. We've also got a new wellbeing and safety manager. We're recruiting an organisational psychologist to be on staff. But the main way that they're supported is we have a contract with an organisation called Thinkahead, which is a psychology-based service, for any inspector that has had exposure to an incident of a traumatic nature, which, of course, in their line of duty is quite a few. It's mandatory for them to have a follow-up with a psychologist. And then we make a psychologist generally available not just for inspectorate staff, but also, for example, for people who are taking phone calls and other things that may be of a traumatic nature.

The Hon. SUSAN CARTER: The body-worn video cameras, how much has been spent on the implementation of that program?

PETRINA CASEY: Bear with me. I did get that in the break.

JANET SCHORER: The up-front contract cost for the body-worn cameras was just over \$1.1 million. That was a three-year contract, which was extended for a further two years until 30 June 2027.

The Hon. SUSAN CARTER: What was the cost of the contract extension?

JANET SCHORER: It was \$417,000.

The Hon. SUSAN CARTER: Did that include software, batteries?

JANET SCHORER: That includes the hardware and a management service.

The Hon. SUSAN CARTER: What was the cost of any necessary software?

JANET SCHORER: I'm happy to take that on notice, but I'm assuming that was built into the overall cost.

The Hon. SUSAN CARTER: And batteries and other—

JANET SCHORER: Upgrades and things? Yes.

The Hon. SUSAN CARTER: Thank you. Is it correct that the large majority of body-worn cameras purchased in 2022 were left in cupboards and not maintained, and that when the program was recommenced, SafeWork NSW was required to purchase new batteries and had the cameras shipped to the provider for the new batteries to be fitted?

CORRECTED

JANET SCHORER: I don't know the history of the body-worn cameras, to be honest. I'm happy to provide some of that on notice.

The Hon. SUSAN CARTER: Can you take that on notice?

JANET SCHORER: Yes.

The Hon. SUSAN CARTER: That would be great. When you're doing that, can you also have a look at how much it cost the taxpayer for that to occur? Did the 1 July deadline create any sourcing problems or any rush to get all the body-worn cameras in place?

JANET SCHORER: Dr Casey?

PETRINA CASEY: Not that I'm aware of—nothing specific from the 1 July date.

The Hon. SUSAN CARTER: What was the time period between body-worn video cameras being issued to SafeWork NSW inspectors and the surveillance Act legislation being implemented to enable operational use by SafeWork NSW inspectors?

PETRINA CASEY: I might take that on notice. I know that there was a period of time. The regulation changed, I think, on 29 May. And, as the commissioner has said, the contract was in place on an up-front basis.

The Hon. SUSAN CARTER: During the period between when the body-worn video cameras were initially issued to the re-rollout, how many SafeWork NSW inspectors were exposed to violence, intimidation and aggression, which the body-worn video cameras could have potentially prevented the occurrence of?

JANET SCHORER: I'd have to take that on notice.

The Hon. SUSAN CARTER: If you could, that'd be great. Have costs been accrued for workers compensation, investigations or legal due to no body-worn video cameras being able to be used during this time?

JANET SCHORER: I'd also have to take that on notice. I'm sorry.

The Hon. SUSAN CARTER: If you could. I have a question about exposure to hazardous substances and regulatory priorities. Can you tell us how many improvement notices regarding environmental tobacco smoke have been withdrawn by SafeWork NSW?

JANET SCHORER: The majority of what we've received—we have about 22. I don't think I have with me how many have been withdrawn. I can take that on notice for you.

The Hon. SUSAN CARTER: The inspector practice note relating to environmental tobacco smoke, what's the status of that?

JANET SCHORER: We're currently doing a review of our position on environmental tobacco smoke, so I anticipate that will be updated again before the end of the calendar year.

The Hon. SUSAN CARTER: Is the practice note currently in place, or has that been withdrawn as well?

JANET SCHORER: As far as I'm aware, it's currently in place. We might confirm that on notice, but we're certainly in the process of reviewing it.

The Hon. SUSAN CARTER: You said that you're updating it. What's the driver for updating and what's currently being done in relation to environmental tobacco smoke?

JANET SCHORER: Part of the reason for updating it is to better articulate what our role is and what the role of Health is in relation to its obligations to Liquor and Gaming so that we're very clear for our inspectors what constitutes a work health and safety risk for workers in those particular environments and what a proportionate response is from our regulatory position.

The Hon. SUSAN CARTER: If you're in the middle of updating, what currently happens if there's a request for service in relation to environmental tobacco smoke?

JANET SCHORER: We would absolutely take that request for service and prioritise it as appropriate. But it's certainly an environment where there would be a conversation, as happens a lot in our work, with another regulator or another body that has an involvement. We would demarcate what our particular role is and what is our response, along with if Health has been involved or with Liquor and Gaming.

The Hon. SUSAN CARTER: Sorry, it's just not very clear to me when you say "prioritise as appropriate" and "there's a demarcation line between Health". If a worker rings up today and says, "I'm exposed to environmental tobacco smoke," what happens today?

CORRECTED

JANET SCHORER: We would triage that, as we would any other request for service, and prioritise it against our framework.

The Hon. SUSAN CARTER: What would the framework tell you? What would be the result of that triage process in relation to environmental tobacco smoke?

JANET SCHORER: Dr Casey can jump in if there's anything I'm not articulating, but we would triage that as a request for service and decide whether it needed an inspector response or whether we use another regulatory approach, which would be contacting the PCBU, asking for more information and scheduling a site visit down the track. But we would make inquiries as to whether other regulators had active efforts with that particular PCBU.

The Hon. SUSAN CARTER: If another regulator had active efforts, what would that mean for SafeWork?

JANET SCHORER: That might be an effort in gathering more intelligence that they are able to share with us, but it wouldn't mean we don't respond. If there was a need for us around work health and safety, we would still execute our regulatory responsibilities, absolutely.

The Hon. SUSAN CARTER: Because I'm receiving information that no action has been taken in relation to requests for service for environmental tobacco smoke.

JANET SCHORER: I can't comment on that. But I guess what I would say is for the tens of thousands of requests for service that we get each year, there is a triage process that prioritises what is an inspector response and what might utilise other regulatory responses.

The Hon. SUSAN CARTER: Perhaps you could take on notice how many requests for service in relation to environmental tobacco smoke you've responded to in the calendar year.

JANET SCHORER: Yes, we can take that on notice.

The Hon. SUSAN CARTER: I have a question in relation to back pay due to misinterpretation of the award provisions, specifically allowances including single day meal claims and laundry allowance, and how much SafeWork NSW has had to provide in relation to misinterpretation of the award. Given that SafeWork NSW has been found to be lacking in the application and provision of worker entitlements to their own employees, why should we be confident that you're able to protect other employees?

JANET SCHORER: Dr Casey might be able to talk to the retrospective issue. I'm certainly aware of this issue for our workforce. It is something that we're actively looking to clarify and address. Obviously our workforce are out in the field a lot and require the financial support to do their job to the best of their ability. Dr Casey might be able to talk to some of the retrospective issues.

PETRINA CASEY: Ms Carter, there's probably a couple of things there. There's been a significant piece of work—and I would just say at the outset that as of 1 July we are a standalone agency. We still adopt the DCS policies. Prior to 1 July we were part of DCS. There has been a significant piece of work around laundry allowances. I'm not sure if that's particularly what you're referring to.

The Hon. SUSAN CARTER: It's one of the things.

PETRINA CASEY: My understanding is that any entitlement—there was an entitlement from an ongoing perspective, and then there was also a retrospective component that went back for a statutory period of six years. There's been a process that we've worked through with all the inspectors, and those entitlements have now been paid. So that was a period that we've worked through. That just finalised May/June time, so that's quite current. There are also some concerns that have been brought to our attention very recently around section 26 and section 29, around some of the allowances. We're currently working through that. We've had recent conversations with the PSA and others around having a look at that. That's a very current discussion at the moment.

Ms ABIGAIL BOYD: Just a quick one to start with: Mr Wessling, what does the 2024-25 financial year spend on consultants looking like?

TONY WESSLING: These are unaudited numbers: \$3.423 million—or \$3,423,000—is the spend on consultants this year. Sorry, that is—

Ms ABIGAIL BOYD: That is non-actuarial?

TONY WESSLING: Non-actuarial, and then actuarial is \$5.374 million of actuarial consulting. Those are our two consultant rows.

Ms ABIGAIL BOYD: That's a lot less than previously.

CORRECTED

TONY WESSLING: That is less than prior years, yes.

Ms ABIGAIL BOYD: Good. That's what we like to see. I might go to Ms Schorer. I understand there's a thing called Trolex, which is like a dust monitor technology, and that the New South Wales chief scientist was providing advice on its efficacy. Has SafeWork NSW got that advice back?

JANET SCHORER: No, we haven't yet.

Ms ABIGAIL BOYD: When was it referred?

JANET SCHORER: I think it was referred at the beginning of last year.

Ms ABIGAIL BOYD: When are we expecting the report to be available?

JANET SCHORER: I expect it's in the next couple of months.

Ms ABIGAIL BOYD: Do you know how many Trolex devices are currently being used by businesses in New South Wales?

JANET SCHORER: No, I don't know that.

Ms ABIGAIL BOYD: Do you have any oversight of how many workers are potentially utilising it and maybe thinking that they're relying on it?

JANET SCHORER: I don't know how many. I know that workers in those—where they've that sort of exposure, there are a number of techniques that companies use. I couldn't tell you how many are using that particular device.

Ms ABIGAIL BOYD: Prior to the restructure that was implemented in November last year, was there a specialist directorate of Health and Safe Design?

JANET SCHORER: Dr Casey?

PETRINA CASEY: Yes, there was.

Ms ABIGAIL BOYD: What was their function?

PETRINA CASEY: I'm afraid, Ms Boyd, that was before my time joining SafeWork as well. But it was, as you said, a specialist directorate, so it had the psychosocial focus on good work design. Yes, it was a specialist directorate focused on that. It also had some return to work functions as well.

Ms ABIGAIL BOYD: Do you recall what some of the specialist teams were within—

PETRINA CASEY: I'd have to take that on notice. I joined SafeWork at the output of the new operating model, which commenced in November last year, which already that directorate no longer existed through the reorganisation of SafeWork through that period.

Ms ABIGAIL BOYD: That directorate was disbanded. Where did the specialist inspectors go from that?

PETRINA CASEY: We currently have a directorate that has all the psychosocial specialists, the return to work specialists, and a really important focus around capability and engagement. Our respective work taskforce is also in that specialist directorate. So while that directorate that you've talked about no longer exists, it's not to say that any of the functions that were sitting in that directorate are not housed somewhere else within SafeWork. SafeWork was reorganised around efficiency and looking at good organisational design. Really importantly, within the funding envelope at the time, it created an extra 40—I think it was 40-something—inspectors. It was really important that we reduce some of the enabling functions, if you like, so that we could have some more inspectors. It's not to say none of the functions were not carried over into the new structure.

Ms ABIGAIL BOYD: On that, then, I understand that there was a team that was doing ergonomics and working environment stuff. Where did they go? Do we still currently have some specialists in that area?

PETRINA CASEY: Yes, we do. They sit in another directorate. You're going to test my naming convention here, but absolutely. We do have ergonomists on staff. We've got hygienists. SafeWork is now structured, and we've got an operational footprint. We've got a specialist footprint where all those specialist functions are spread across four directorates. So those functions still exist within SafeWork.

Ms ABIGAIL BOYD: Are they called ergonomists?

PETRINA CASEY: Ergonomists.

Ms ABIGAIL BOYD: How many of those ergonomists are there?

CORRECTED

PETRINA CASEY: I'd have to take the number on notice, if that's okay.

Ms ABIGAIL BOYD: I understand that the workers compensation bill is growing for those manual handling injuries. It's gone from \$2 billion in 2021-22 to around \$2.6 billion in 2023-24. I'm quite keen to see what's happening in terms of specialist inspectors in that area.

PETRINA CASEY: SafeWork absolutely has a focus on musculoskeletal disorders generally and has a strategy. While that bill, as you said, is growing, I think musculoskeletal disorders are typically anywhere between 40 per cent and 47 per cent of injuries in the workers compensation scheme. So SafeWork continues to have that as a focus, both in a specialist sense but also in our general inspectorate as well.

Ms ABIGAIL BOYD: Are there any plans on foot to increase the overall size or allocation of that team, or is that subject to the review?

JANET SCHORER: Not at this stage but, yes, the review might highlight that is a need we have, absolutely.

Ms ABIGAIL BOYD: Turning to something quite different—and I'm not sure whether this is a question for Treasury or not—with the workers compensation amendment bill that was put forward, there is this change around the reasonable and necessary test for medical claims. I was wondering if any work was done on identifying the AMA payment codes for which medical procedures would likely fail the new test.

SONYA CAMPBELL: I'm not aware of any of that work, Ms Boyd—unless my icare colleagues are?

TONY WESSLING: Ms Boyd, we'll take that on notice. I think we have done some work on that, but we'll take it on notice.

Ms ABIGAIL BOYD: Thank you. That would be very handy. I will come back to that. That might be it for now, but please come back to me in the next round, if that's okay.

The CHAIR: Certainly.

The Hon. SUSAN CARTER: Perhaps if we can keep going, I believe we're talking about clause 26 of the award. Has there been a calculation done of how much back pay needs to be paid to workers within SafeWork to meet the requirements of clause 26?

PETRINA CASEY: Not to my knowledge, Mrs Carter. As I said, we're currently looking at that.

The Hon. SUSAN CARTER: I understand that other government agencies don't require provision of receipts—the allowance is triggered by the worker being required to travel—but you have different requirements for that provision?

PETRINA CASEY: I'd have to check whether we've got different provisions. As I said, we've got a policy that we follow. I haven't compared it to other agencies.

The Hon. SUSAN CARTER: If you could take all that on notice, I'd be very interested.

JANET SCHORER: I guess what we're following is the DCS policy. That's one of the areas where we've continued payment of travel costs on an actual basis. I think the question inspectors have is to be paid an allowance rather than actuals. I think that's what we're trying to get a position on.

The Hon. SUSAN CARTER: I think the issue is we want to make sure that everybody is paid fairly and that everybody approaching SafeWork has confidence that SafeWork can not only regulate their workplaces but they internally are well regulated as well.

JANET SCHORER: Correct.

The Hon. SUSAN CARTER: I think you told us you've recently increased to 449 inspectors. Is that right? Did I remember that figure correctly?

JANET SCHORER: Once we've finished the current recruitment from the 1 July investment, it'll be 469 inspectors. But we're in the midst of recruiting.

The Hon. SUSAN CARTER: I understand that as part of this restructure and recruitment, there are additional supervisory positions, known as team coordinators. Is that right?

JANET SCHORER: That's correct.

The Hon. SUSAN CARTER: And that they are authorised inspectors?

JANET SCHORER: That's correct, yes.

CORRECTED

The Hon. SUSAN CARTER: How many team coordinators are actively involved in what we might call inspector work?

JANET SCHORER: I'd have to give you some advice on that. But, as I said before, part of our structure is that certain matters or certain types of work would go to different levels of seniority of inspector, whether that's a State inspector or team coordinator. That's where you'd see that sort of matter come forward for those roles.

The Hon. SUSAN CARTER: Are team coordinators administrative or inspectorial in their role?

PETRINA CASEY: They're under the inspector award.

The Hon. SUSAN CARTER: No, what's the work they're doing? On any given day, would their work look more like administrative, or are they out in the field actually visiting sites and fulfilling service requests?

PETRINA CASEY: It could be a bit of both.

The Hon. SUSAN CARTER: So the typical team coordinator, 20 per cent admin, 40 per cent, 60 per cent, 80 per cent?

JANET SCHORER: I couldn't tell you the typical day off the top of my head.

The Hon. SUSAN CARTER: Okay, but surely you must have some idea of what the role of a team coordinator is and how much admin would be there.

JANET SCHORER: They would take on a level of admin, obviously. It might be sort of fifty-fifty, but it's not going to be a formula.

The Hon. SUSAN CARTER: What would the job requirements and expectations of them be? How much admin and how much out in the field?

JANET SCHORER: I'd have to provide that information for you on notice.

The Hon. SUSAN CARTER: Yes, if you could. The other thing that would be very interesting to have is: What percentage of their jobs are they actually fulfilling the tasks of an inspector? If we are counting them as inspectors, are we actually overstating the workforce of inspectors that SafeWork NSW has at their disposal? Thank you. I understand that within SafeWork you have a system of on-call managers—on-call after hour to receive calls—and those managers, quite understandably, receive overtime for that night work. Is it true then that those managers are often fatigued due to the number of calls overnight that they've taken, and they then take a day of leave to recover and report back on call the following night?

JANET SCHORER: I am not aware of that situation. Dr Casey—

The Hon. SUSAN CARTER: That's information I've received.

PETRINA CASEY: I'm not specifically aware of that, but I am aware that we have recently looked at that from a workload or a work design perspective in relation to concerns that the work could be designed in a better way. That's an activity that's just recently been completed.

The Hon. SUSAN CARTER: Are you able to take on notice how many times over the past six months an on-call manager has taken leave the following day?

JANET SCHORER: Yes, we can take that on notice.

The Hon. SUSAN CARTER: That would be good.

The Hon. DAMIEN TUDEHOPE: Mr Wessling, were you responsible for the suggestion of 31 per cent whole person impairment for limiting claims under the workers compensation amendment Act?

TONY WESSLING: No, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Were you, Ms Aplin?

GENIERE APLIN: No, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Were you, Ms Campbell?

SONYA CAMPBELL: Treasury provided advice on a range of scenarios, but the decision is a Government decision, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: So who in Treasury landed on the 31 per cent figure?

CORRECTED

SONYA CAMPBELL: As I said, Mr Tudehope, we modelled a range of scenarios and received data from icare. The position put forward in the bill is a position of government.

The Hon. DAMIEN TUDEHOPE: Was there a model produced which identified 31 per cent as the model which made the greatest amount of savings for the Government?

SONYA CAMPBELL: There was modelling on a range of percentages, Mr Tudehope, and, as I said, the position on 31 per cent is a position by government.

The Hon. DAMIEN TUDEHOPE: So the modelling included potentially 25 per cent, did it?

SONYA CAMPBELL: The modelling included a range of percentages, yes.

The Hon. DAMIEN TUDEHOPE: Did it include 25 per cent?

SONYA CAMPBELL: I can't be specific about that, but we have proactively, as you know, Mr Tudehope, released a range of information on the Treasury website which would show you what has been modelled.

The Hon. DAMIEN TUDEHOPE: There is a concept which floats around which has some merit, called threshold creep, in relation to one of the concerns that Treasury raised in relation to landing on a particular model. You're aware of that?

SONYA CAMPBELL: Yes, I am aware of that.

The Hon. DAMIEN TUDEHOPE: And you're aware of that modelling to potentially limit threshold creep?

SONYA CAMPBELL: The threshold creep is in relation to the classes within the PIRS scale, as you would be aware. The 30 per cent threshold represents the difference between a class 3 and a class 4 impairment rating under the PIRS scale, which is used to calculate the WPI. Whilst it's difficult to move from class 3 to class 4—so class 4 is 31 and above—it's much easier to then move within the class 3. That is where this concept of erosion within the threshold comes from.

The Hon. DAMIEN TUDEHOPE: Where is that document to be found in relation to the advice that you are reading from at the moment?

SONYA CAMPBELL: That is a note that's been prepared for the purposes of budget estimates. As to whether it relates to information that is on the Treasury website, I would take that on notice.

The Hon. DAMIEN TUDEHOPE: Are there any other alternatives for dealing with threshold creep—other than landing on what I would suggest is the crude figure of 31 per cent—which would eliminate threshold creep?

SONYA CAMPBELL: I don't have specifics on alternatives, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Were they ever considered?

SONYA CAMPBELL: I would have to take that on notice.

The Hon. DAMIEN TUDEHOPE: Again, this is possibly to you, Ms Campbell. Moving on to modelling in relation to presumptive cancers, if a firefighter contracts mesothelioma, under what conditions does he or she have access to financial and medical support under the Workers' Compensation (Dust Diseases) Act 1942?

SONYA CAMPBELL: I would need to take that on notice, Mr Tudehope.

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

TONY WESSLING: I would need to take that on notice.

The Hon. DAMIEN TUDEHOPE: Anyone else at the table, feel free to contribute. On that basis, have you had an opportunity of reviewing the proposed presumptive cancers legislation, which is currently before the Parliament?

SONYA CAMPBELL: I'm aware of the legislation, Mr Tudehope. I have not read it myself.

The Hon. DAMIEN TUDEHOPE: Has anyone in Treasury read it?

SONYA CAMPBELL: Yes, my team have read the bill.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Have they provided advice as to whether, if mesothelioma was added to schedule 4 of the Workers Compensation Act and firefighters were given access under this provision, they would have better support or access arising from the inclusion of that condition in schedule 4?

SONYA CAMPBELL: I'm not aware of the specific advice, but obviously the inclusion of additional cancers into the legislation would thereby entitle claimants to the benefits under that scheme.

The Hon. DAMIEN TUDEHOPE: In the modelling you have done on presumptive cancers—and I think we've heard the Minister say that that modelling is available—how was mesothelioma treated for the purposes of that modelling?

SONYA CAMPBELL: I would have to take that on notice, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: In terms of the costings that you have done on expanding the list of presumptive cancers in schedule 4, what is the estimated initial cost and then the estimated annual cost?

SONYA CAMPBELL: I think that would depend on the position taken by Government, Mr Tudehope, of what is included.

The Hon. DAMIEN TUDEHOPE: The modelling must have assumed what the total cost to government would be or the scheme would be in the event that the presumptive cancers were included in schedule 4.

The CHAIR: As part of your bill, Mr Tudehope?

SONYA CAMPBELL: Yes, that's my question. I don't think we've done modelling in respect of your bill, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Yes, you have.

SONYA CAMPBELL: The modelling that was voluntarily released related to previous considerations of government. I'm not aware that it is specific to the nature of your bill.

The Hon. DAMIEN TUDEHOPE: The document that you are referring to appears to deal with each of the cancers that are raised in relation to the bill. Do you say that the modelling would be different now?

SONYA CAMPBELL: I would have to take that on notice as to the specifics of the modelling.

The Hon. DAMIEN TUDEHOPE: In relation to that modelling, was any consideration given to retrospectivity in relation to the various conditions? Did you apply that as one of the assumptions?

SONYA CAMPBELL: I would have to check that to give you an accurate answer, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Have you had an opportunity of reviewing the Sako decision, which I referred to this morning?

SONYA CAMPBELL: I am not familiar with that, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Have you had an opportunity, Mr Wessling?

TONY WESSLING: Yes.

The Hon. DAMIEN TUDEHOPE: In light of that decision, have you provided any advice or costings on introducing provisions to amend section 140?

TONY WESSLING: We have not.

The Hon. DAMIEN TUDEHOPE: As it currently stands, people in Mr Sako's circumstances would remain unable to claim against an uninsured employer.

TONY WESSLING: For a work injury damages claim, that's right.

The Hon. DAMIEN TUDEHOPE: I go now, Ms Campbell, to the various iterations of the Workers Compensation Act—the first print, the second print and the third print. One of the issues relating to the costings of the impact of the scheme is the amendment to section 11A. In the first iteration of the bill, of course, the reference was to "significant contribution" and it is now "predominant". Has modelling been done as to the impact of that change?

SONYA CAMPBELL: Let me just check that for you, Mr Tudehope. The modelling work, as you know, is largely done by icare and provided to Treasury.

The Hon. DAMIEN TUDEHOPE: Does Mr Wessling know?

CORRECTED

TONY WESSLING: I'm trying to get the answer for you, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Have you got a note on this, do you, Ms Campbell?

SONYA CAMPBELL: I recall reading somewhere, Mr Tudehope, about the modelling differences between the two pieces of legislation, which I'm going to try and find for you.

The Hon. DAMIEN TUDEHOPE: The current situation, of course, is that, under the current provisions which retain the use of the word "predominant", very few defences raised by employers are successful. Is that your understanding?

SONYA CAMPBELL: Could you ask the question again, please?

The Hon. DAMIEN TUDEHOPE: If the test is "predominant", relating to the cause of the injury, is it your understanding that very few defences raised by employers are successful?

SONYA CAMPBELL: I don't think I can answer that question. I can answer the question on the modelling and that we have not undertaken modelling on the difference between "predominant" and "significant".

The Hon. DAMIEN TUDEHOPE: Are you sure about that?

SONYA CAMPBELL: That's the advice, yes.

The Hon. DAMIEN TUDEHOPE: The modelling was done in relation to the amendments.

SONYA CAMPBELL: Correct. I think it's a highly complex matter that's going to be impacted by judicial interpretation, which makes it quite difficult to model the nuance in the language, unless my icare colleagues know.

The Hon. DAMIEN TUDEHOPE: Mr Wessling?

TONY WESSLING: I'm still trying to find out, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Is it also your understanding, Mr Wessling, that very few defences are successful by employers who rely on section 11A?

TONY WESSLING: Yes, that is a common issue raised by employers.

The Hon. DAMIEN TUDEHOPE: Why is that?

The Hon. Dr SARAH KAINE: Point of order: This line of questioning has veered very much into legal peculiarities and interpretations. I'm not trying to be difficult, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: These are the administrators of icare. They administer this Act.

The CHAIR: I don't uphold the point of order because the member has a penchant for legal peculiarity. It's one of his favourite topics. We will let him go, as long as the witnesses have the opportunity to answer fully.

TONY WESSLING: Can I answer your first question?

The Hon. DAMIEN TUDEHOPE: Yes.

TONY WESSLING: No specific modelling on the wording change has been done by our actuaries. To answer your second question, the section 11A "reasonable management action" defence has been tested since it was introduced numerous times through the PIC. Obviously, there's a generally accepted level at which that defence is successful or not successful. The outcome currently is that that section 11A defence is not reliable in very many circumstances.

The Hon. DAMIEN TUDEHOPE: If employers, in terms of wanting to establish a reasonable management action, were seeking to rely on the current section 11A, that would be, even in view of the position taken by your service managers—they would be advising their clients that that would be unlikely that their defence would be successful.

TONY WESSLING: That's often the case, yes.

The Hon. DAMIEN TUDEHOPE: Can I ask you, in relation to the last iteration of the bill and the introduction of the new schedule 4, which is the schedule relating to the duties of conducting businesses or undertaking involving digital work systems, Ms Campbell, whose idea was it to introduce this particular provision into this new Act?

SONYA CAMPBELL: The introduction of that provision was a decision taken by the Government, Mr Tudehope.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Was there advice as to the necessity of introducing it into a workers compensation Act?

SONYA CAMPBELL: My colleagues at SafeWork might have some views on this, because this obviously relates to how safety in the workplace, in a digital workplace, is managed.

The Hon. DAMIEN TUDEHOPE: I have some sympathy for the issue. I just wondered why it was appropriate to drop it into a workers compensation Act, rather than an amendment to the SafeWork Act or some other standalone Act. Why was it necessary—

The Hon. Dr SARAH KAINE: Point of order: I think that Ms Campbell has already rightly identified that that was an issue for the Government to decide. In fact, that's for the Government to answer, not Ms Campbell.

The CHAIR: I uphold the point of order.

The Hon. DAMIEN TUDEHOPE: Can I ask you, Ms Schorer? How many of your inspectors have expertise in relation to digital work systems, including coding algorithms and the like, relating to the digital workspace?

JANET SCHORER: I couldn't tell you how many have that particular expertise, but they would certainly be, as part of their regular work, looking at systems of work allocation, which could extend from a piece of paper at sign-in through to a digital system. If that's relevant to the particular request for service that we're looking at, then they'd want to look at the systems that allocate work. It's just part of our regular work.

The Hon. DAMIEN TUDEHOPE: Let's just get real on the ground here. You've got the SafeWork officer who attends on premises. In circumstances where potentially surveillance equipment is being used or artificial intelligence is being used by the employer, how is it that you say that the SafeWork inspector will have the relevant expertise to be able to examine the software system, potentially, or the digital workspace of the employer for establishing potential breaches of the Work Health and Safety Act?

JANET SCHORER: Firstly, it has got to be relevant to the harm that we're particularly there to investigate. I would say across all of the industries that we regulate, there is changing technology all the time. So whether that's in construction or in health care and how businesses operate, our inspectors are constantly being re-equipped to understand how does a business work and how does this particular industry do its business. That's an important part of why we have the relationship with individual sectors and why we have that investment so that we can partly keep our inspectors up to speed with what is going on in technology across industries.

The Hon. DAMIEN TUDEHOPE: This includes coding, does it?

JANET SCHORER: It includes systems of business, which I think that goes to.

The Hon. DAMIEN TUDEHOPE: There are multiplicity of software programs. Some of them are potentially purchase-off-the-shelf software systems, and some of them are industry specific. Some concerns relating to this legislation involve potential access to data and privacy concerns. Did you have any consultative role in relation to the addition of this provision?

JANET SCHORER: We provide advice, as agencies do—in our case, through the Department of Customer Service—to government on these sorts of matters. Anything that we do has to sit in as part of our regulatory framework and our regulatory practice.

The Hon. DAMIEN TUDEHOPE: I understand that to assess various risks, which are spelled out in the relevant provision. But I just wonder, in terms of the issues which arise in respect of the use of this new opportunity for regulating that, whether you had the level of expertise and whether there was sufficient consultation done in respect of potential privacy issues or IP issues—that material which potentially is a concern to industry.

JANET SCHORER: I can't speak to the consultation and what industry might have raised, but all I can say is, from our perspective, business systems or systems of allocating work—anything that might be relevant to the harm and the risk that we are there to investigate—is what we would examine. It's part of our ongoing work to upskill our inspectorate to understand what systems businesses are using, whether that's in their particular industry or whether it's for the management of their business.

The Hon. DAMIEN TUDEHOPE: Ms Campbell, are you aware of the consultation which took place in relation to the inclusion of this particular provision in the amendment Act?

SONYA CAMPBELL: I can't speak for what consultation the Government carried out—only that we provide advice, as an agency does, upon request of our Minister.

CORRECTED

Ms ABIGAIL BOYD: Going back to a couple of things I was raising earlier, I understand that we just got distributed the answers to questions or supplementary questions from our last workers comp hearing. To that question I asked about the reasonable and necessary—so when we're going from this reasonably necessary test to a reasonable and necessary test, going through the particular AMA payment codes, icare has now provided information saying, notably, that one of the treatments that will no longer be included is medicinal cannabis. Is that correct?

TONY WESSLING: I think the interpretation is that the test—medicinal cannabis or the other AMA codes may not always be deemed reasonable and necessary where they were deemed reasonably necessary previously.

Ms ABIGAIL BOYD: And massage therapy is not considered to be reasonable and necessary?

TONY WESSLING: Our best guess is that a higher threshold test of reasonable and necessary, by looking across to similar treatment in CTP, would impact that AMA code. It doesn't mean there would be no payments against that code.

Ms ABIGAIL BOYD: Cortisone injections as well. I mean, these things seem like fairly standard types of accepted therapies for injury. It's interesting, though, that that has actually been analysed and the difference between the reasonably necessary test and the reasonable and necessary test.

TONY WESSLING: We had our medical team have a look at what sorts of AMA codes may be impacted by reasonably necessary, as opposed to reasonable and necessary.

Ms ABIGAIL BOYD: Interesting. Back to the 11A defence that Mr Tudehope was talking about, I'm just having a look at the table that shows us—I think this was perhaps provided on notice, again, as part of the data that we received from icare. My understanding is that in relation to psychological claims, the section 11A defence was raised in about 13 per cent of them as of last year and that the success rate of a section 11A defence is 83.7 per cent as of last year. Is that your understanding, and is it still tracking in that way for 2025?

TONY WESSLING: I would have to look at the data for 2025, but we only use the defence if we think there's a reasonable chance of it being successful.

Ms ABIGAIL BOYD: But that's quite a significant increase, then. There were only 172 claims based on 11A in 2019 and then, in the five years since, it has gone up to 804 claims. As a percentage, that has gone from 5.7 per cent of all psych claims to 13 per cent of all psych claims. Is there a reason why section 11A is actually increasing as a defence?

TONY WESSLING: I'll take on notice a detailed answer, Ms Boyd. Over that time, there has been the significant growth of work conflict-based psychological claims, as we've explored previously. But I'll come back to you with an answer on that.

Ms ABIGAIL BOYD: Are you able to tell me what the average premium in the Nominal Insurer is for 2025-26?

TONY WESSLING: The average premium rate in 2025-26 will be 1.99.

Ms ABIGAIL BOYD: Does that include or exclude GST?

TONY WESSLING: I will take that question on notice. I'm not sure.

Ms ABIGAIL BOYD: Do you know what the Victorian premium is and the South Australian premium?

TONY WESSLING: I do, if you just give me a moment.

Ms ABIGAIL BOYD: What was the New South Wales one?

The Hon. DAMIEN TUDEHOPE: It was 1.99.

TONY WESSLING: The 2025 premium rate for New South Wales is 1.99. I have the 2024-25 data. I don't have the '25 and '26 for the other States and Territories, but the average is 1.8 across all of Australia. What were the States you were particularly interested in?

Ms ABIGAIL BOYD: Victoria and South Australia.

TONY WESSLING: Victoria was 1.8. South Australia was 1.85.

Ms ABIGAIL BOYD: Are you aware that they report without GST?

TONY WESSLING: I'll have to check that. Ours excludes GST, though, I have just confirmed. The comparison I have, I would assume it's excluding GST because it's a comparison across States.

CORRECTED

Ms ABIGAIL BOYD: So you're saying that we don't report our premiums inclusive of GST. That 1.99 is exclusive of GST?

TONY WESSLING: I'm told it excludes GST, yes.

Ms ABIGAIL BOYD: Could you maybe just double-check?

TONY WESSLING: I will double-check that.

Ms ABIGAIL BOYD: I'm just going to go back, if I can. We were talking before about the LPR. We were talking about how LPR employers only pay a deposit premium up-front rather than a full risk-based premium. I think you were perhaps, Mr Wessling, putting forward a different position in relation to that. Can you explain in as simple terms as possible what it is that happens with an LPR?

TONY WESSLING: I've asked my team to give me the simple explanation, so let me shoot. For our LPR product, the employer pays a deposit premium and then adjustments in years two, three and four. The adjustment factors are calibrated by our actuaries to cover the estimated full cost of claims incurred by the employer, including future benefit payments and the equivalent of the investment income—time cost of money—as if the premium had been collected at the beginning of the policy. The final adjustment applies a one-off adjustment factor essentially as an estimate of cost of claims post that point. Does that answer your question?

Ms ABIGAIL BOYD: Not really. My understanding is that they only pay a deposit and then if there aren't any claims that they would otherwise be needing to pay in that year, that they don't pay any more, and that amount only gets drawn on if there are actually claims.

TONY WESSLING: Yes, that's correct, but keep in mind these are the very largest of organisations. They all have many claims. As I say, I think the important point is, the adjustments made at years two, three and four essentially cover the same costs that would be incurred had the premium been collected up-front.

Ms ABIGAIL BOYD: How many actually pay a deposit and how many are just giving bank guarantees?

TONY WESSLING: I don't understand the question but I'll investigate with the team and come back to you on notice.

Ms ABIGAIL BOYD: I understand some of them don't pay anything to begin with; they just have a bank guarantee.

TONY WESSLING: I'll take that on notice. I'd be surprised. I'm not aware of that.

Ms ABIGAIL BOYD: Can we talk about the scheme performance measure. Are you able to explain in as plain language as possible how the scheme performance measure is calculated?

TONY WESSLING: Which scheme performance measure?

Ms ABIGAIL BOYD: I understand that there is a thing called the SPM benchmark.

TONY WESSLING: Okay. For our experience-rated products, there's a benchmark essentially that employers' claims experience is assessed against. As we were discussing earlier, in the small employers, there's no impact of the claim on their premium. They pay a pooled rate. It's pooled insurance at an industry level. For small employers, claims don't impact individually their premium, it impacts the pool. As employers get larger, there are experience factors that are taken into consideration. In our experience, rated employers—essentially there's a scheme performance factor which is used to determine their performance against, in effect.

Ms ABIGAIL BOYD: How does that benchmark get calculated? How do you decide what that is in a particular year?

TONY WESSLING: Our actuaries will calculate that.

Ms ABIGAIL BOYD: Do you know what they base it on?

TONY WESSLING: I could give you a better explanation on notice.

Ms ABIGAIL BOYD: That benchmark doesn't get published, so employers aren't able to see what they're measured against. Is there a reason why it doesn't get published?

TONY WESSLING: I don't know the answer to the question, Ms Boyd. I'll take that on notice.

Ms ABIGAIL BOYD: My understanding is that an employer can have a stable claims performance but still see their premium rise because the scheme average has deteriorated rather than their particular experience or their particular performance having deteriorated. Is that correct?

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TONY WESSLING: Premiums across all products are still estimated on the basis of an expected level of claims performance, which is generally assessed against an industry average. If the industry is performing poorly, the base of the premium will increase.

Ms ABIGAIL BOYD: I understand that in a number of reviews there has been this recommendation to have greater transparency over exactly how premiums are calculated because it is so complex, and to be honest trying to work this out from the information we've been given that's public is really difficult. Have there been moves by icare to try to explain to people why their premium may have gone up in a particular year in this sort of very clear way where we can understand?

TONY WESSLING: I think we explain to employers through our premium notices the drivers of increases. Many larger employers have a broker, which will also help to explain that. We make premium calculators available online for employers to use to estimate their premium. I understand that we typically haven't published the full detail of the premium model because we do compete against specialised insurers from a premium perspective, so we don't publish our full premium model.

Ms ABIGAIL BOYD: That's interesting. Some of the arguments that have been put forward for why we, as I see it, seem to be subsidising some of the larger employers is because they might otherwise go off to a specialised insurer or a self-insurer model. How much does that play into the decisions around setting premiums?

TONY WESSLING: We price on the basis of a technical pricing model. We don't price to retain business.

Ms ABIGAIL BOYD: In terms of the development of the products, though, if LPR appears to be developed as a product that is very favourable to the large employers versus the small employers, was that because we were concerned that otherwise they might try and leave the scheme?

TONY WESSLING: I think that the LPR product was launched to meet the needs of larger employers who want to have more better outcomes if they deliver better safety and better performance. I think one thing to add to that is that, as I said earlier, the premiums are set to achieve that overall, on average, 1.99 per cent. We price to a break-even premium. We look at that for each of our products. There's not inherent cross-subsidisation towards larger employers.

Ms ABIGAIL BOYD: It's true, there has been an increase in premiums for a lot of small businesses, and we talked about that in our other inquiry as well; we've had this 8 per cent, 8 per cent, 8 per cent. I don't expect you to comment on this, but there has been this narrative that somehow the costs of the scheme are out of control and everyone's freaking out about their premiums going up. But when you look at the LPR premiums, in the 2025-26 premium filing, you've actually lowered their premiums. How can it be that we've got increasing premiums for small business and then we have people in the LPR product getting premiums being lowered year on year?

TONY WESSLING: I'll have to check the point on lower premiums, but for each of the products, the premiums are set on the basis of the performance of the participants in that product.

Ms ABIGAIL BOYD: Right, but if they weren't part of that product, then the risk pool that exists for the small businesses would be bigger, wouldn't it? If you had all of the people currently on LPR, if they weren't on LPR and they were instead on the same product that the small business was on, then presumably everyone would get the benefit of a reduced premium or that amount would sort of even out and perhaps help small businesses to not have to pay as much.

TONY WESSLING: At the moment—and we've been unwinding this over time—there's more of a cross-subsidy in the benefit of small employers than large employers.

Ms ABIGAIL BOYD: In what way?

TONY WESSLING: The technical pricing. The performance of small employers is worse than larger employers. There are lower return to work rates and there's generally poorer performance, so there are higher claims costs.

Ms ABIGAIL BOYD: I'm just looking at the data. In 2024 there were 233 of the very largest employers with more than 21 workers compensation claims each, with reportable wages over \$50 million, and 83 of them had 11 to 20 claims. These appear to be quite large figures. Perhaps you could provide, on notice, the modelling that shows that the large providers are somehow subsidising the lower, particularly in the context of those that have moved on to LPR?

TONY WESSLING: I will take that on notice.

CORRECTED

Ms ABIGAIL BOYD: I also understand there's now a new product, which is even sweeter for large companies, called LPR Plus. What's LPR Plus?

TONY WESSLING: LPR Plus is a slightly different version of the LPR product for the very largest employers in New South Wales. I think we have less than 20 employers on that product. Yes, it's a variation of LPR targeted to the largest employers with the greatest sophistication. Employers apply to go into that product because obviously the impact of claims is over a longer period of time. There needs to be some sophistication to accept those employers onto those products.

Ms ABIGAIL BOYD: What is LPR Plus, though? What's the benefit for those larger employers?

TONY WESSLING: It's got different settings for the way the up-front premium is calculated and the time frame and the way claims are treated on the back end.

Ms ABIGAIL BOYD: Are they paying even less into the overall icare funds that then get used for investment?

TONY WESSLING: Again, the calculation of the premium works out, on the actuarial models, to cover the cost of the claims in that pool.

Ms ABIGAIL BOYD: But they're not paying that premium in the same way that a small business is. They're only paying a deposit and then they're keeping the rest for their own investment income.

TONY WESSLING: Maybe I can take the question on notice and show, in the response, how that product works and the cashflows over time.

The Hon. DAMIEN TUDEHOPE: Mr Wessling, just continuing there, the real reason that small businesses are potentially a greater risk than big businesses is they have less resources for managing return to work rates.

TONY WESSLING: They have less resources?

The Hon. DAMIEN TUDEHOPE: Yes, to managing return to work. They don't have HR departments.

TONY WESSLING: That's right. They don't have HR departments, injury management teams or return to work coordinators.

The Hon. DAMIEN TUDEHOPE: That's potentially why. Is there a system to put in place which could assist small business in a better manner to be able to deal with those issues which are available to big business but are not available to small business?

TONY WESSLING: Yes. One of the challenges we have is getting the right support to small employers to help manage the return to work process.

The Hon. DAMIEN TUDEHOPE: What does that look like? What do those resources look like?

TONY WESSLING: We're working on different options. Part of it's educating small employers on their obligations and options for finding suitable duties, for example. The claim service providers play an important part in that in terms of working directly with the employer.

The Hon. DAMIEN TUDEHOPE: On average, how quick is that intervention between the claims manager and the business for the purposes of working out that process?

TONY WESSLING: Our case managers have to speak to the employer within three days of a claim being lodged, and then there's ongoing engagement with an employer through the life of a claim. A lot of that needs to be around how you work with the small employer. We've tried things like providing very simple information cards with "Here's what a typical claim looks like", "Here are the obligations of an employer" and "Here are the sorts of things to consider in terms of providing suitable duties" if you're in a very small business. Those are the sorts of things that case managers are working with employers on to get a better understanding. Most small employers might have a claim every 10 years or even longer. Small employers aren't skilled up to understand what is a complex system to work through a claim. That's why we're working with small employers to get better information, better support through the life of a claim. Digital tools is one area we're working on—self-service type tools—and provision of information.

The Hon. DAMIEN TUDEHOPE: To the extent that small businesses become proactive in adopting safe work systems for their employees, do they get any benefit from doing that?

TONY WESSLING: Small employers today have access to the Safe Employer Reward discount. It's a 7.5 per cent discount which applies to employers who haven't had a claim for three years. It's a bit like a no-claim

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discount. That's really the extent of safety incentives for small employers in today's model. We'd like to look at other incentives.

The Hon. DAMIEN TUDEHOPE: Like some sort of safe harbour type schemes?

TONY WESSLING: I'm not sure what that is.

The Hon. DAMIEN TUDEHOPE: In other jurisdictions, it is acknowledging the work that people do in their own business to ensure that they're running a safe business.

TONY WESSLING: Yes. The outworking of that would be obviously fewer claims, so the more you can link that directly to a small employer—

The Hon. DAMIEN TUDEHOPE: They might proactively have a system for dealing with psychosocial injuries.

TONY WESSLING: Yes, and there's no link of that to our premium model today.

The Hon. DAMIEN TUDEHOPE: Why not?

TONY WESSLING: There just isn't. We're intending to look at ways we can more closely link risk—

The Hon. DAMIEN TUDEHOPE: But wouldn't that be a way of driving down premiums?

TONY WESSLING: I think we have to keep in mind as well that very small businesses will have, forever, fewer opportunities for suitable duties, for example. I think there will always be a difference in performance between smaller employers and larger employers.

The Hon. DAMIEN TUDEHOPE: Ms Aplin, I'm going to put some questions to you so that you are given an opportunity of answering these questions because they've been raised in this forum, not by me, but by others. I think you should have an opportunity of providing an explanation, and that is in respect of the contract with DXC that was terminated by icare. Are you aware of the suggestion which has been made that DXC has had their contract terminated?

GENIERE APLIN: I am, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: There is a suggestion that the contract was terminated because, in fact, a client of EML, who you were previously employed by, took their business to DXC. Are you aware of that allegation?

GENIERE APLIN: I am aware of that, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Do you want to respond to that?

GENIERE APLIN: Firstly, I think, in relation to my conflict, I declared my conflict through recruitment. I also have an active conflict that is being managed in terms of EML. That goes for another month or so, and that excluded me from that decision. I was excluded from that decision which was taken by the board.

The Hon. DAMIEN TUDEHOPE: Just explain to me in detail how you manage that conflict.

GENIERE APLIN: We have a conflicts of interest policy that aligns up with Treasury, and also the guidance that was given by ICAC in terms of that New South Wales guidance. All employees and directors are required to declare that conflict. Through the recruitment, I was employed, obviously, by EML but running part of their business called EML Solutions, which had no accountability for the NI or the TMF contracts. Through recruitment, that was considered, Mr Tudehope. When I was put into the role, the chair and I talked about that conflict. It was recorded within Riskconnect. The chair spoke with the board as well as general counsel, and then I was excluded from all decisions and discussions in relation to anything that could impact EML in terms of increased market share. Therefore, the DXC decision was one that I was clearly excluded from.

The Hon. DAMIEN TUDEHOPE: Can you tell us the reason why that contract was terminated?

GENIERE APLIN: I'd have to refer to Mr Wessling in relation to that question.

TONY WESSLING: We undertook a range of discussions with the board on the Nominal Insurer, how the new panel was operating. This was commenced last year. It was coming up to the two-year anniversary of the new panel. It had new providers in place for a year at that stage. A series of discussions with the board led to a decision in June of this year that it was in the long-term best interests of the scheme to have a smaller panel, so the decision was made.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Potentially, there were 4½ thousand claims which were being handled at that time by DXC which, in fact, had to then be redistributed, or will have to be redistributed. Is that not the case?

TONY WESSLING: You're correct that DXC has in the order of 4,300 or 4,400 open claims. DXC was the smallest provider in terms of number of claims. The other thing I would add is that DXC disengagement is not like an overnight disengagement. Many of those claims will be managed to completion and there will be claims that will be transitioned to other panel members as we move through the disengagement process with DXC.

Ms ABIGAIL BOYD: I'm going to have another go at trying to do a worked example of what I'm talking about with the difference between a small business premium and a large business. Say I'm a small business and I've been paying \$50,000 over seven years of running my business for my workers compensation premiums. Then maybe at the end of the seventh year, one of my employees has an injury and they're off work for a week and it costs \$5,000. I've still put \$50,000 in and, yes, there's been that benefit of \$5,000 but icare has had the \$45,000, and I don't get that back. Whereas, if I'm a large employer, my understanding is that the way that LPR product works is that I'll only ever pay the maximum amount of the claims amount that has been incurred in relation to my employees in that year. It's not the same in that I'm not contributing then to the risk pool in the same way that the small businesses are.

TONY WESSLING: I guess the difference, Ms Boyd, is the premium amount for a small employer is paid up-front but in that calculation is a benefit of the investment returns that follow that pool of money. Whereas for the larger employers, the premium is paid more in stages across four-year increments, and that doesn't attract the same extent of benefit on that investment return.

Ms ABIGAIL BOYD: But if the industry as a whole has a certain risk weighting, and that goes into a small business within that industry having a certain premium, but then you've got a big business that's in that industry that sits outside of it, it's not contributing to the overall pool of funds that icare has in order to go out and get investment return on it. You've got this situation where, even though they're part of the same industry, they're not spreading the risk equally because those large employers are still only ever having to pay what claims have actually been incurred, as opposed to the small business that has paid all of those premiums and they didn't have any claims but they still—

TONY WESSLING: I think I understand what you're asking. There's a greater risk and reward on the table for larger employers, so the better performing larger employers will pay less based on their—but the worst performing large employers will pay significantly more.

Ms ABIGAIL BOYD: It seems like it's not the same form of insurance product with a large employer. Whereas a small employer, it's a bit like if I pay my contents insurance every year and I don't make a claim, I've still paid it. That's the cost of insurance, and that's what small businesses are doing. But when it comes to these large businesses, they're being able to run on the riskiness of their own business. It's almost like they're just putting to one side a certain amount of money should they have a claim, which is not really what insurance is for everybody else.

TONY WESSLING: It's not exactly like that. This isn't self-insurance, as I said before, but it is a closer resemblance to a more risk-reward premium model for larger employers that seek that.

Ms ABIGAIL BOYD: Has there been any modelling done that would show what the impact on the pool of funds as a whole would be for the Nominal Insurer if that LPR product didn't exist and all of those large companies were required to put in and pay premiums in the same way as the small business?

TONY WESSLING: I don't recall any modelling being done to that extent. I'll take that on notice. I would say, though, that the risk that would present to the scheme is a large number of high-performing larger employers exiting the scheme, which would leave more burden on the rest of the scheme.

Ms ABIGAIL BOYD: Because we would allow them to become a self-insurer. To be a self-insurer, you have to get SIRA approval.

TONY WESSLING: That's right.

Ms ABIGAIL BOYD: And SIRA approval can only be given in circumstances where it wouldn't put the rest of the scheme under—I can't remember what the exact wording is in the Act—something along the lines of undue performance pressure or something, basically.

TONY WESSLING: You're right, yes.

Ms ABIGAIL BOYD: So we could stop them leaving.

CORRECTED

TONY WESSLING: If the regulation and legislation were changed, yes.

Ms ABIGAIL BOYD: Or if we decided that it was going to otherwise harm the scheme.

TONY WESSLING: Yes.

The Hon. DAMIEN TUDEHOPE: Do you recall the reason why the DXC contract was terminated?

TONY WESSLING: Do I recall the reason?

The Hon. DAMIEN TUDEHOPE: The reason given to DXC.

TONY WESSLING: We advised DXC that in the best interests of the scheme we were making the decision to terminate their contract.

The Hon. DAMIEN TUDEHOPE: And the relevant provision you relied on was?

TONY WESSLING: There's a termination for convenience provision written into our contracts.

The Hon. DAMIEN TUDEHOPE: How often is that sort of provision relied upon, the "by convenience" provision?

TONY WESSLING: I don't know how often.

The Hon. DAMIEN TUDEHOPE: Ms Campbell, are you aware?

SONYA CAMPBELL: That's a very broad question, Mr Tudehope. It's typical for government contracts—

The Hon. DAMIEN TUDEHOPE: In your experience, is it a provision relied upon by government to terminate contracts by convenience?

SONYA CAMPBELL: I would say it's a provision that governments have, in the past, relied upon to terminate contracts. But as to the quantum—

The Hon. DAMIEN TUDEHOPE: How often has it been relied upon?

SONYA CAMPBELL: I would never be able to hazard a guess, I don't think, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: I would invite you to take it on notice, if you would.

SONYA CAMPBELL: I'm not sure that we could quantify that across government. There would have to be some parameters around the question you're asking.

The Hon. DAMIEN TUDEHOPE: Would you agree with the proposition that terminating contracts "by convenience" presents a sovereign risk when dealing with government?

SONYA CAMPBELL: I would say that parties enter into contracts in the full knowledge that those clauses are there and can be used by a client.

The Hon. DAMIEN TUDEHOPE: But I'm asking you a bit more specifically than that. Relying on a "by convenience" effectively allows one party to terminate the contract.

SONYA CAMPBELL: Mr Tudehope, that may be the mechanism that was used in this circumstance. It's not necessarily the rationale for the decision that had been taken by icare in the current circumstances.

The Hon. DAMIEN TUDEHOPE: Do you mean they didn't tell the truth when they used the—

SONYA CAMPBELL: No. The question you asked Mr Wessling was how, and the answer he gave was the mechanism in the contract. My understanding—and the Treasury secretary sits on the icare board now, as you know—is that the board balanced a decision between having enough providers to create adequate competition and not having too many providers for icare to be able to drive the improved proper performance, which we all—

The Hon. DAMIEN TUDEHOPE: Why was DXC chosen? Was it on a last-off, first-on basis?

SONYA CAMPBELL: As Mr Wessling said, it was the smallest market share amongst the providers in the NI and it had not yet commenced in the TMF.

The Hon. DAMIEN TUDEHOPE: They were the last on, effectively, were they not?

TONY WESSLING: We looked at a range of factors, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Like what?

CORRECTED

TONY WESSLING: We looked at size, scale, opportunities to scale up, performance—all sorts of dimensions.

The Hon. DAMIEN TUDEHOPE: Did they have any specific expertise, in your understanding, in relation to mental injury support?

TONY WESSLING: DXC, along with the panel of six providers on the NI contract, were selected as one of the best providers at the time. So there were a number of strengths that DXC brought.

The CHAIR: The time being 3.30 p.m., we will now break for 15 minutes for afternoon refreshments and reconvene at 3.45 p.m.

(Short adjournment)

The CHAIR: Welcome back, everyone. Thank you for reconvening. We will recommence with some questions from the Opposition.

The Hon. DAMIEN TUDEHOPE: Mr Wessling, going back to the issue in relation to DXC, the 2023-24 annual report from icare talked about the increased competition in relation to claims managers and suggested that was a good thing for the organisation to be able to have more claims managers. Something happened between the 2023-24 annual report and now which suggests that you needed to rationalise that number.

TONY WESSLING: We still are of the view that competition is a good thing. We've rationalised the number by one provider. That was on the basis of the review of how that scheme more broadly was performing, whether we were achieving the scale required in providers to be successful over the long term and—

The Hon. DAMIEN TUDEHOPE: The scale for the providers to be successful was like a critical mass of claims which a provider needed to handle to make the employment ratio right for the business model of the actual claims manager. Is that what you're tell me?

TONY WESSLING: And the trade-off of—the more providers you have, perhaps the more competition there is, but the lesser scale there is in the providers on the panel, also the more complicated it is to manage a large panel like that. So we undertook a number of discussions with the board, given the performance of the scheme, and made the determination that in the long term—

The Hon. DAMIEN TUDEHOPE: I think I asked you this, but I don't remember the answer. Why did you select DXC as the one or why was that recommendation made to the board? Was it the case that DXC should be the one that was cut as a service provider?

TONY WESSLING: As I said before, we looked at a range of different drivers. Amongst them, scale and size, confidence of being able to scale up to a sufficient capability level—amongst other things.

The Hon. DAMIEN TUDEHOPE: Did DXC manage workers compensation claims in any other jurisdiction?

TONY WESSLING: In Australia DXC managed claims in Victoria.

The Hon. DAMIEN TUDEHOPE: How do they perform in Victoria? Are you aware?

TONY WESSLING: As part of the procurement process that we did, we looked at their performance in Victoria. There are four providers in Victoria. They appeared to perform fine.

The Hon. DAMIEN TUDEHOPE: Were they well ranked in terms of their ability to provide services?

TONY WESSLING: I'd have to take that on notice, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: The New South Wales procurement framework provides this in relation to relying on by-convenience terminations:

You may require the right to terminate for convenience but should provide for suppliers to be compensated for out-of-pocket costs reasonably incurred prior to receiving the notice of termination, in the expectation that the agreement or project would continue.

Are you aware of that particular guideline contained in the New South Wales procurement framework?

TONY WESSLING: I'm sure our lawyers are, but our contracts include elements like that as well.

The Hon. DAMIEN TUDEHOPE: Has any compensation been offered to DXC in relation to the termination of this contract?

TONY WESSLING: It's a live discussion with DXC, and not at this point.

CORRECTED

The Hon. DAMIEN TUDEHOPE: The Minister gave evidence that in relation to psychosocial injuries, generally workers got to see a psychiatrist within eight weeks. Is that right?

TONY WESSLING: I think we provided evidence previously that the median time to get a psychologist service is 46 days, I think it was, on average. I think we provided that to you before. The average is about 70 days.

The Hon. DAMIEN TUDEHOPE: That's about 10 weeks to see a psychologist.

TONY WESSLING: Yes.

The Hon. DAMIEN TUDEHOPE: In terms of the average, would it be your expectation that with the increased funding, which the Government is potentially offering in relation to the workers compensation package, that opportunity to see a psychologist would improve?

TONY WESSLING: We've already taken steps to get access to psychological services sooner in a claim. We've expanded our panel of access to phone-based counselling psychological services. We've expanded that panel recently in an attempt to get psychological services to injured workers who need it sooner. I would add to that, though, in most circumstances the treatment pathway for an injured worker to access a psychologist is through their nominal treating doctor to a recommended psychologist. That's where we find there's a general shortage in psychologist services.

The Hon. DAMIEN TUDEHOPE: Isn't that the major problem we have? I think the Minister gave this evidence, as did others: that the greatest impediment to getting people back to work is, potentially, the speed with which they're seen and, potentially, trying to resolve the issue involved.

TONY WESSLING: Which is why we're trying to make more psychological services available sooner to injured workers, to the best that we can within the things that we can control.

The Hon. DAMIEN TUDEHOPE: There is a dearth of those suitably qualified people available, is there not?

TONY WESSLING: That's what we understand is the major issue behind the long time it takes to get those initial consultations with a referred psychologist.

The Hon. DAMIEN TUDEHOPE: Does the same apply in relation, potentially, to accessing HR-type services for small businesses and the like?

TONY WESSLING: We make EAP-style services available to injured workers, which is some of the HR services. But if you're referring to other services like return to work support—

The Hon. DAMIEN TUDEHOPE: Return to work strategies and that.

TONY WESSLING: As I was saying earlier, we've launched an online hub for small businesses to provide additional information to support them through the claim services. We've launched processes with case managers to provide more information to small employers with injured workers on claim to help, as best we can, replicate the elements of large employers that have those HR teams.

The Hon. DAMIEN TUDEHOPE: I've probably asked you this in previous hearings, but I'll ask it again. Do you impose KPIs on your claims providers in relation to return to work strategies and the like as part of their contract conditions?

TONY WESSLING: Our contract conditions have a set of KPIs that are impacting remuneration—things like return to work. There are also quality measures around dimensions like injury management plans and injury management plan qualities, which is all about—it's not just about the time frame to develop an injury management plan with an employer and the injured worker, but also the quality of that plan. So, yes, those are all metrics that I think point to what you're looking for, certainly from an outcome perspective as well as some of the inputs where we do measure quality and timeliness of case management elements like injury management planning.

The Hon. DAMIEN TUDEHOPE: What are the consequences for the case managers for failure to meet the key metrics?

TONY WESSLING: There's a range of consequences. A number of those metrics can be directly remuneration impacting. For metrics that are non-remuneration impacting but are quality metrics, we will develop action plans with CSPs to address if there are areas that aren't performing well enough. If those actions aren't taken, we will go down—the contract enables performance management pathways to be pursued.

The Hon. DAMIEN TUDEHOPE: Ms Rizzo, I knew you were waiting for me to ask you some questions.

MARINA RIZZO: All the time. At the ready.

CORRECTED

The Hon. DAMIEN TUDEHOPE: But before I ask you this question—Mr Draper, have you had an opportunity of reading the balance of the judgement?

SIMON DRAPER: While we're sitting here today, you mean?

The Hon. DAMIEN TUDEHOPE: No, not while we're sitting here today. Well, maybe you have. You're probably a better speed reader than I.

SIMON DRAPER: No, I haven't read it all. I've certainly been through it.

The Hon. DAMIEN TUDEHOPE: Have you got it in front of you?

SIMON DRAPER: I have.

The Hon. DAMIEN TUDEHOPE: You drew issue with me earlier for quoting two particular paragraphs at the very commencement of the judgement relating to the manner in which a significant number of claims which were relied upon by the union were pressed by the union at the commencement of the proceedings. It came in for some criticism from the president in his judgement, specifically at paragraphs 18 and 19. Correctly, you say it applied to both sides because the FBEU also pressed their claims. But if you go down to paragraph 356, I think it is, where these issues were required to be determined by the commission in circumstances where I think the commission took a very dim view—it's potentially 359 and 360. The president points the finger a bit at the secretary in relation to the responsibility of the commission to have to wade through large amounts of evidence in an attempt to find relevant evidence to identify if it established a case for the change in the text. I think he does that against a background—and I put this to you—where no submissions, or very feeble submissions, were being made by the secretary against the submission which was being made by the FBEU. Do you agree with that?

SIMON DRAPER: I think the way you've characterised it this afternoon probably more reflects what's in the decision back at 18, 19, 20—those paragraphs back there that the commission, I think not unreasonably, was saying that both parties had some matters they could have put more effort into agreeing up-front and narrowing the range of the arbitration. That's quite a reasonable point. I think they're repeating that same point at the paragraphs you've just alluded to, that some of those matters—I think they're really repeating the same point.

The Hon. DAMIEN TUDEHOPE: In circumstances where the secretary doesn't even offer a significant amount of evidence as to why the FBEU submission should not be accepted, I think there was—it comes through to me, at any rate—a bit of irritation by the president that "Why am I having to make this determination in circumstances where the secretary is not offering up any evidence about why I shouldn't accept it and I have to wade through the FBEU's argument?" This was a waste of the resources of the commission to have to wade through every claim which was being pressed in this manner.

SIMON DRAPER: Yes. It's hard to draw out the tone of the president in the written decision, but I think he's making the point that it would be more efficient for the commission if the parties, if they had claims, were able to do more work on those themselves and, in a lot of cases, resolve them between the parties. That would be much more efficient. I don't think there's any question that that's what he's saying.

The Hon. DAMIEN TUDEHOPE: In fact, the question really arises: Why did the secretary press the submission?

SIMON DRAPER: I guess the point is there was a lot of evidence and content to be brought forward to the commission. Some of these matters, there was less material presented to the commission on them. I accept that point. But there was a lot of other points. We had to present a lot of material evidence and submissions, and they were the focus of our submissions.

The Hon. DAMIEN TUDEHOPE: Other than the economic evidence, it doesn't appear that the evidence being called by the secretary, who relied principally on Ms Wilkie, Ms Livingstone and Mr Houston—that there was not a lot of other evidence. Mr Baldi, I think it is, also provided some evidence for the secretary in respect of some of them, but not a lot of other evidence contravening. In any event, what I would just say is that in terms of an arbitration which was supposedly preceded by mutual gains bargaining, to have got to the commission in these circumstances appears to have wasted a lot of time of the commission in having to write a 140-page judgement in circumstances where it could have been more easily handled.

SIMON DRAPER: I take your point.

The Hon. DAMIEN TUDEHOPE: I'm sorry I've made that speech, but you can take that as a comment. Ms Rizzo, do you agree with that as a proposition, that it would be much better if the issues to be determined by the commission were resolved significantly in advance?

MARINA RIZZO: Most definitely.

CORRECTED

The Hon. DAMIEN TUDEHOPE: You've got a number of other matters which are currently on your plate, I suppose, in respect of wage determinations by the commission?

MARINA RIZZO: There are two big ones, yes.

The Hon. DAMIEN TUDEHOPE: The ASMOF one?

MARINA RIZZO: Yes.

The Hon. DAMIEN TUDEHOPE: And the nurses and midwives?

MARINA RIZZO: Correct.

The Hon. DAMIEN TUDEHOPE: Where is the evidence up to in relation to the nurses and midwives?

MARINA RIZZO: The evidence is closed. I think perhaps—and I may stand corrected—that the nurses association might have a right of reply, but I'll just confirm that.

The Hon. DAMIEN TUDEHOPE: Sorry, what was that answer?

MARINA RIZZO: I believe that the nurses association is due to file its evidence in reply, but I'm not certain.

The Hon. DAMIEN TUDEHOPE: So the Government's filed its evidence?

MARINA RIZZO: Yes.

The Hon. DAMIEN TUDEHOPE: Who's filed the evidence on behalf of the Government? Which witnesses has the Government sought to rely on?

MARINA RIZZO: There are numerous. I will take that on notice. I couldn't list them all, but there are numerous.

The Hon. DAMIEN TUDEHOPE: Is Ms Livingstone one of the people who—

MARINA RIZZO: I believe she may be.

The Hon. DAMIEN TUDEHOPE: To the best of your recollection, has she made a submission in relation to the appropriate wage increase which should be offered to nurses?

SIMON DRAPER: I don't think she's made the submissions.

The Hon. DAMIEN TUDEHOPE: She's given evidence?

MARINA RIZZO: She's prepared evidence or prepared a report as an expert witness, and it would involve costing. As Ms Livingstone has explained in her evidence before this Committee before, she doesn't put forward a position, but she costs and models different propositions.

The Hon. DAMIEN TUDEHOPE: Is the secretary's position that the increase should be 3 per cent?

MARINA RIZZO: It's the health secretary. Yes, that is the case, so 9 per cent over three years.

The Hon. DAMIEN TUDEHOPE: Does it address the issue which the president identified in his judgement in the Fire Brigade Employees Union decision in respect of the 2 per cent increase which he afforded by virtue of the fact of the error made by the commission in 2020-21 relating to the COVID decision, where there was an incorrect estimate of the inflation rate?

MARINA RIZZO: Not specifically, because the decision postdated the filing of the evidence is my recollection.

The Hon. DAMIEN TUDEHOPE: Is it proposed to file any further evidence in relation to addressing that issue?

MARINA RIZZO: I wouldn't want to traverse legal professional privilege information. It's a legal question, and I'm not at liberty to disclose that information; it's privileged.

The Hon. DAMIEN TUDEHOPE: It won't be privileged when you file it.

MARINA RIZZO: That's correct, but it is now.

The Hon. DAMIEN TUDEHOPE: I don't know on what basis you say it is privileged.

MARINA RIZZO: Because it's a matter for legal advice.

CORRECTED

The Hon. DAMIEN TUDEHOPE: The legal advice is privileged but—

MARINA RIZZO: It's still in the process of—

The Hon. DAMIEN TUDEHOPE: In terms of you advising the Government in respect of the terms contained in the Fire Brigade Employees Union, will you be advising them that it is necessary to file an answer or evidence relating to the manner in which the 2 per cent issue should be dealt with?

MARINA RIZZO: Mr Tudehope, that is a legal question, and we would rely on legal advice to answer that.

The Hon. DAMIEN TUDEHOPE: Are you not the lawyer involved?

MARINA RIZZO: I am a solicitor, but I'm not acting in the proceedings.

The Hon. DAMIEN TUDEHOPE: Who is?

MARINA RIZZO: The Crown Solicitor.

The Hon. DAMIEN TUDEHOPE: For the additional claims which are being made by the nurses union in relation to their claim, one of which involved staffing ratios, is it the Government's position that staffing ratios provide a monetary-type benefit to nurses, which is something to be taken into account by the commission in determining the appropriate wage rise for nurses?

The Hon. EMILY SUVAAL: Point of order: I take a point of order in relation to this question specifically but also more broadly with the line of questioning. The question was prefaced by "is it the Government's position" and I volunteer that that is a question that would have been better put to the Minister in terms of asking what the Government position is. It is requesting an expression of opinion on policy. The second matter in terms of this line of questioning and this point of order is that it is canvassing matters that are currently before arbitration. I know that the Minister, when asked questions to these specifics, also considered that in her answers. I ask the member to be mindful of this line of questioning and of not jeopardising future proceedings.

The Hon. DAMIEN TUDEHOPE: To the point of order: I fail to see how it jeopardises future proceedings.

The CHAIR: I won't uphold the second part of that because I don't think that that is a point of order and I think that the member is entitled to ask those questions. The other part was clearly seeking an opinion. Time is up. Ms Boyd?

Ms ABIGAIL BOYD: I think this one is for you as well, Mr Wessling. In SIRA's icare workers compensation supervision plan 2025, it says:

icare has commenced the transition of all claims onto a centralised claims management system with a target of completion in 2026. SIRA has been engaged by icare on this project with the following sub-projects to be progressed through 2025—

One of those subprojects is:

- Finalisation of the 65,000 plus claims missing from the 266 data previously transitioned to TMF agencies.

Did icare lose 65,000 claims? What's that about?

TONY WESSLING: I'll take that one on notice, Ms Boyd.

Ms ABIGAIL BOYD: Did you find them again, do you know?

TONY WESSLING: I presume they are not lost; they will just be coming under the system.

Ms ABIGAIL BOYD: If you could come back on notice to let us know what that is and whether that actually meant that you had incomplete data when, for example, TMF premiums were being calculated. Could you also tell me if the Audit Office or the Scheme Actuary identified or commented on the omission of those \$65,000 claims?

TONY WESSLING: Yes.

Ms ABIGAIL BOYD: And if it will require any retrospective corrections to the TMF premiums. Ms Schorer, who is conducting the internal review that you were talking about before?

JANET SCHORER: We've engaged a consultant—Hofmeyr Group.

Ms ABIGAIL BOYD: How much did that cost?

JANET SCHORER: Dr Casey might know. We will have to take it on notice, if she doesn't know.

CORRECTED

PETRINA CASEY: It's about \$200,000 or less. We will take on notice the exact amount of small engagement.

Ms ABIGAIL BOYD: When did it start?

PETRINA CASEY: Approximately 2½ to three months ago.

Ms ABIGAIL BOYD: Obviously, in a period of change like SafeWork has been going through, there can be tensions and things. Have any complaints been made about bullying, harassment or other psychologically unsafe behaviour by senior executive or management?

JANET SCHORER: There is none that I'm aware of in the short time that I've been in the role.

The Hon. DAMIEN TUDEHOPE: I again wanted to take up the position about the evidence which has already been filed in support of the Government's position in relation to the wages claim by the nurses and midwives. Leaving the 2 per cent issue to one side, what other factors does the evidence relied upon by the Government seek to address in relation to leaving the rate at 3 per cent?

MARINA RIZZO: Again, these are legal questions. I wouldn't want to anticipate or presuppose what the legal submissions would be.

The Hon. DAMIEN TUDEHOPE: This is material contained in the evidence which has been filed.

MARINA RIZZO: Yes, but the totality of the submissions would need to take into account the nurses' case and their latest evidence. It potentially would be misleading of me to seek to articulate the health secretary's submissions. Firstly, it's a legal question and one would want to assess all the evidence in its entirety and the jurisprudence, and then the submissions would be settled—

The Hon. DAMIEN TUDEHOPE: Mr Draper, are you prepared to make the submissions available?

SIMON DRAPER: No, not at this stage.

The Hon. DAMIEN TUDEHOPE: Why not?

SIMON DRAPER: It's a matter ongoing, as Ms Rizzo said.

The Hon. DAMIEN TUDEHOPE: Why would government submissions to a court not be available?

SIMON DRAPER: They will be made available by the court itself, so I think it's out of respect for the court and its own processes.

The Hon. DAMIEN TUDEHOPE: So you have no objection to the court making them available?

SIMON DRAPER: If the court considers it proper to do so and at the time they consider it proper to do so, then I have no objection at all.

The Hon. DAMIEN TUDEHOPE: Is there any reason that you are aware of why the court would not think that they are appropriate to release?

SIMON DRAPER: I have no insight into their thinking on this, no. That's a matter for the IRC to make that decision.

The Hon. DAMIEN TUDEHOPE: Why wouldn't it be a matter for the Government to publicly make available its submission to the Industrial Relations Commission in response to a wages claim by the nurses and midwives?

SIMON DRAPER: Out of courtesy to the court.

The Hon. EMILY SUVAAL: Point of order: It's the same point of order around questioning our wonderful public servants in the afternoon about opinions on Government policy. These are questions that should have been put in the morning session to the Minister.

The Hon. DAMIEN TUDEHOPE: I wasn't seeking an opinion.

The CHAIR: I uphold the point of order. The question was framed "Why wouldn't the Government". Maybe you can rephrase the question.

The Hon. DAMIEN TUDEHOPE: In your experience, is there any reason that the submissions being made by the Government would not be made available?

The Hon. EMILY SUVAAL: Point of order: The question is now hypothetical in nature.

CORRECTED

The Hon. DAMIEN TUDEHOPE: It's based on his experience.

The Hon. EMILY SUVAAL: Paragraph 10 of the procedural fairness resolution states:

Public officials will not be asked to give opinions on matters of policy, and will be given reasonable opportunity to refer questions to more senior officials or to a minister.

The question is not factual in nature and therefore I ask you to rule it out of order.

The Hon. SUSAN CARTER: To the point of order: It is not hypothetical to ask an experienced public servant to draw on that experience to assist the understanding of the Committee.

The CHAIR: I don't uphold the point of order. It is a point well made, Mrs Carter. Mr Tudehope did say "in your experience".

SIMON DRAPER: In my experience, Mr Tudehope, the court will likely make those materials available publicly at a time of its choosing when it considers that all the parties have had a fair opportunity to make their submissions and responses, as Ms Rizzo was saying.

The Hon. DAMIEN TUDEHOPE: Generally, if you file affidavits in proceedings they are immediately made available on court websites.

SIMON DRAPER: But that is a matter for the court to do that, isn't it?

The Hon. DAMIEN TUDEHOPE: In any event, we will make our own application to the IRC, since you say that it is a matter for them to do that. In respect of the ASMOF proceedings, where are those proceedings up to?

MARINA RIZZO: I'll have to consult my notes. I won't be a moment.

The CHAIR: For Hansard, what was that?

The Hon. DAMIEN TUDEHOPE: It was ASMOF.

The Hon. SUSAN CARTER: The Australian Salaried Medical Officers Federation.

The CHAIR: There's a union for everyone.

The Hon. EMILY SUVAAL: There is.

The Hon. SUSAN CARTER: There is.

MARINA RIZZO: The matter has been listed for hearing during the course of November and December.

The Hon. DAMIEN TUDEHOPE: What evidence to date has been filed in relation to those proceedings?

MARINA RIZZO: Evidence has been filed by the health secretary. I am unable to, with any certainty, outline all of the evidence.

The Hon. DAMIEN TUDEHOPE: Can you recall who in fact has filed those statements in support of the health secretary?

MARINA RIZZO: I'm afraid I am unable to.

The Hon. DAMIEN TUDEHOPE: Why? You don't know or—

MARINA RIZZO: I simply can't recall.

The Hon. DAMIEN TUDEHOPE: You can't recall? Can you take it on notice?

MARINA RIZZO: Yes. But, again, until such time that the hearing occurs and until such time that they are made public exhibits—

The Hon. DAMIEN TUDEHOPE: What you're telling me today is the identity of the person making a submission on behalf of the Government cannot be disclosed?

MARINA RIZZO: The witnesses?

The Hon. DAMIEN TUDEHOPE: Yes.

MARINA RIZZO: I beg your pardon. That wouldn't be confidential.

The Hon. DAMIEN TUDEHOPE: Correct. Similarly, can you provide me with the names of the witnesses who are making submissions on behalf of the health secretary in the nurses and midwives?

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MARINA RIZZO: I don't believe that's confidential.

SIMON DRAPER: When you say submissions, do you mean the evidence provided by the witnesses or do you mean submissions made by the health secretary?

The Hon. DAMIEN TUDEHOPE: Both. There might be—

SIMON DRAPER: No, it's just to clarify.

The Hon. DAMIEN TUDEHOPE: I don't know how you would seek to distinguish between what their evidence is. Their evidence is either as a witness or an expert witness.

SIMON DRAPER: There's just a difference in status of the—anyway, that's fine. We've taken it on notice, I think, haven't we?

MARINA RIZZO: We'll take that on notice.

The Hon. DAMIEN TUDEHOPE: Can you provide me with the names of the witnesses/expert witnesses who have provided evidence on behalf of the health secretary in both the nurses and midwives case and in the ASMOF case ?

MARINA RIZZO: I'd have to take that on notice.

The Hon. DAMIEN TUDEHOPE: Just to reiterate, what's the date do you say that the nurses and midwives is due for hearing?

MARINA RIZZO: The end of September, and I can give you those precise dates. It's a five-week hearing commencing on 30 September.

The Hon. DAMIEN TUDEHOPE: In terms of the claims being made by the union, are all those claims being pressed by the health secretary?

MARINA RIZZO: Sorry, could you repeat that question?

The Hon. DAMIEN TUDEHOPE: Do you recall the line of questioning that I had with Mr Draper earlier, where the secretary pressed the claims in relation to the Fire Brigade Employees Union.

MARINA RIZZO: Disputed them?

The Hon. DAMIEN TUDEHOPE: Disputed them or pressed the Government's position in relation to each of those claims.

MARINA RIZZO: Yes, I believe that's the case.

The Hon. DAMIEN TUDEHOPE: Even in circumstances where the evidence was reasonably flimsy. Is it the case that every claim which has been made by the nurses and midwives is being disputed by the health secretary?

MARINA RIZZO: Again, the arbitration is yet to commence. I would be hesitant to provide evidence in this regard, because it may be a matter that our legal representative may want to express views about before the commencement of the hearing, and I would not want to prejudice the running of that case in any way.

The Hon. DAMIEN TUDEHOPE: In relation to the claim for a wage rise by the nurses and midwives, the Government's position is that the claim is capped at 3 per cent.

MARINA RIZZO: Per year, yes.

The Hon. DAMIEN TUDEHOPE: I'll move on to the Workers Compensation Act again—if I can go back to you, Ms Campbell. In respect of those persons who are assessed as being between 21 and 31 per cent whole of person impaired, in terms of the modelling which has been done and continuing medical treatment, what is the Government's position in relation to that continuing medical treatment? Where will it come from?

SONYA CAMPBELL: I'm not sure that I can speak to the Government's position on medical treatment. Is your question, Mr Tudehope, around what support injured workers would receive coming off the scheme?

The Hon. DAMIEN TUDEHOPE: Correct.

SONYA CAMPBELL: There are a range of supports that are currently in place and some that are being proposed. Just give me a moment. When a worker's legislated entitlement to workers compensation benefits is ending, icare provides services to support them with their transition from the scheme and their return to work. There are a range of programs, which I think icare will be better to speak to, some in partnership with SIRA, and transition programs delivered with other third parties, including not for profits, that would help workers navigate

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social services, access community support and rebuild their lives after a workplace injury, as well as helping to address mental health concerns to reduce the impact of the crisis and connect workers with relevant support options.

The Hon. DAMIEN TUDEHOPE: Mr Wessling, do you want to add to that?

TONY WESSLING: I'll just add under the reforms, even when weekly benefits cease, there's still access to medical and other vocational services.

The Hon. DAMIEN TUDEHOPE: For a period of time?

TONY WESSLING: For a period of time.

GENIERE APLIN: For 12 months.

The Hon. DAMIEN TUDEHOPE: The first 12 months? So after that?

TONY WESSLING: I think Ms Campbell was alluding to—because we deal today with injured workers who reach those exit points. We do have programs to support injured workers who are wrapping up either weekly benefits or medical supports, transitioning to other services. Those other services could be access to housing or access to other health services et cetera. We provide a service to help connect injured workers exiting the scheme to the other supports that are available.

The Hon. DAMIEN TUDEHOPE: The explanation you gave me, Ms Campbell, in fact seemed to suggest that there was a return to work strategy for this cohort of workers.

SONYA CAMPBELL: There is certainly a return to work strategy for the public sector.

The Hon. DAMIEN TUDEHOPE: And for the NI?

TONY WESSLING: I think specifically relating to injured workers exiting the scheme, there's access to ongoing vocational services for that extended period.

The Hon. DAMIEN TUDEHOPE: I hate to harp on this, but has anyone read the evidence of Dr Andrews?

SONYA CAMPBELL: I'm aware of the evidence of Dr Andrews.

The Hon. DAMIEN TUDEHOPE: "No capacity to work."

SONYA CAMPBELL: I think that is his opinion based on his experience.

The Hon. DAMIEN TUDEHOPE: Of handlings thousands of cases.

SONYA CAMPBELL: My understanding is that there was other evidence presented at the hearings which would indicate that there are cases and evidence of capacity to work from the 21 to 30 per cent WPI thresholds.

The Hon. DAMIEN TUDEHOPE: On notice, can you identify that evidence?

GENIERE APLIN: Professor Glozier noted the WPI rating can fluctuate over time, and it's not permanent. We can take it on notice and specifically provide the evidence.

SONYA CAMPBELL: I can also point you to other evidence from the EML transcript of the 29 July hearing on pages 18 to 19, which provided evidence of people with the WPI of 21 to 30 per cent finding employment upon leaving the scheme.

The Hon. DAMIEN TUDEHOPE: How many?

SONYA CAMPBELL: I may have to take that on notice. There is certainly evidence in that transcript of the survey that was undertaken and the number of participants in that survey. It stated:

... 73 agreed to participate in the survey ... Of those 73, 22 had already returned to work, 24 indicated a desire in finding work or returning to work at some point in time thereafter, and 27 of the 73 expressed no intention or desire to return to work.

The Hon. DAMIEN TUDEHOPE: You probably can't answer that, but perhaps Mr Wessling can answer that. Who in fact authorised that survey and where was the ethics committee authorisation to approach those workers in the manner to conduct that survey? Are you aware of that, Mr Wessling?

TONY WESSLING: I'm not aware of it.

The Hon. DAMIEN TUDEHOPE: By EML?

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TONY WESSLING: I'm not aware of that process by EML.

The Hon. DAMIEN TUDEHOPE: Was there any committee permission sought in relation to conducting a survey of injured workers in that manner?

TONY WESSLING: I'm not sure, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Are you aware, Ms Aplin?

GENIERE APLIN: No, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Should it have been sought?

TONY WESSLING: We survey injured workers quite frequently, on a day-to-day basis.

The Hon. DAMIEN TUDEHOPE: In respect of an ongoing claim?

TONY WESSLING: These were all injured workers who had had a claim and had left the scheme.

The Hon. SUSAN CARTER: Could I just jump in? Ms Aplin, in relation to Professor Glozier's evidence, are you able, on notice, to point to exactly which part of his evidence supports the claim that somebody with a 31 per cent total impairment would be able to be in the workforce?

The Hon. DAMIEN TUDEHOPE: Twenty to 30 per cent.

The Hon. SUSAN CARTER: Or 20 per cent to 30 per cent.

GENIERE APLIN: I will take that on notice. But the comment that I made was that he noted that it fluctuates over time.

The Hon. SUSAN CARTER: I accept that, but I think that was in relation to a request to provide evidence that somebody with a 20 per cent to 31 per cent total impairment would be able to join the workforce. I didn't understand Professor Glozier's evidence to support that assertion.

GENIERE APLIN: I will take that on notice. But I think in terms of the comment that I made, it was about that that can fluctuate over time.

The Hon. DAMIEN TUDEHOPE: Ms Campbell, are you aware about who asked for that survey conducted by EML?

SONYA CAMPBELL: No, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Are you aware, Mr Wessling, about who asked for that survey?

TONY WESSLING: I'm not aware, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: I just return to you, Ms Rizzo, for one moment in relation to the nurses and midwives. One of the issues that has been raised is in respect of gender undervaluation of work. Has any evidence been offered by the Government in support of how the commission ought treat gender undervaluation of work?

MARINA RIZZO: Mr Tudehope, before I answer that question, could I just clarify some of my earlier evidence please? I think I said that the arbitration was listed for a five-week hearing; it's actually a six-week hearing. And I think I might've said that the Nurses and Midwives' Association was yet to file its evidence in reply. In fact, the Nurses and Midwives' Association has filed its evidence in reply last week.

The Hon. DAMIEN TUDEHOPE: Has the issue of undervaluation of gender-based work been treated as part of the Government's evidence?

MARINA RIZZO: To answer that accurately, I would have to take that on notice. I'm not familiar with every aspect of the evidence filed.

The Hon. DAMIEN TUDEHOPE: To the best of your knowledge, was it?

MARINA RIZZO: I couldn't answer.

The Hon. DAMIEN TUDEHOPE: Do you recall, Mr Draper?

SIMON DRAPER: No. We'll have to take it on notice.

The Hon. DAMIEN TUDEHOPE: The Minister doesn't see any of these submissions before they go to the commission—I think that was your evidence. Who does see it?

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MARINA RIZZO: Mr Tudehope, we provide support to NSW Health, to the Ministry of Health, but they do run and instruct their legal counsel on the day-to-day preparation of the case. We provide support, but Health do instruct the legal representatives.

The Hon. DAMIEN TUDEHOPE: But does anyone on behalf of the Government review the material before it is actually filed?

MARINA RIZZO: My team is involved in supporting their counterparts in Health. So, yes, they would in that role.

The Hon. DAMIEN TUDEHOPE: So you review the work?

MARINA RIZZO: My team would.

The Hon. DAMIEN TUDEHOPE: Do you make an assessment about whether the evidence is consistent with Government policy?

MARINA RIZZO: Yes, but in doing that I will not necessarily read every statement.

The Hon. DAMIEN TUDEHOPE: You'll accept from me that one of the objects of the Industrial Relations Act is to require the commission to address undervaluation of gender-based work. Do you accept that?

MARINA RIZZO: Yes.

The Hon. DAMIEN TUDEHOPE: Do you accept that some of that evidence would be required in this case?

MARINA RIZZO: Yes, it's part of the nurses association's claim.

The Hon. DAMIEN TUDEHOPE: To that extent, it should be part of the Government's position that they would address that issue?

MARINA RIZZO: I would expect that the Government's case or that the health secretary's case would absolutely address that issue. That's what I would expect, but I haven't—

The Hon. DAMIEN TUDEHOPE: You don't recall having seen that evidence?

MARINA RIZZO: I'm not in a position today to detail that, because I have not seen it.

The Hon. DAMIEN TUDEHOPE: So it's filed material that you haven't seen?

MARINA RIZZO: I haven't seen or haven't read or cannot recall every statement filed.

SIMON DRAPER: I think we've clarified that we're not running the case. The case is being run by the health secretary and they have legal representatives who are running the case for them. They're the ones who would evaluate what evidence is required and what submissions should be made.

MARINA RIZZO: I don't want to provide a misleading response.

The Hon. DAMIEN TUDEHOPE: I think, Mr Draper, though, that Ms Rizzo has in fact also confirmed that she has a role to play. The role that she does play is to ensure that the evidence that's filed is consistent with Government policy.

MARINA RIZZO: A response would be misleading, because I cannot recall every aspect of the evidence filed.

The Hon. DAMIEN TUDEHOPE: Do you recall who in fact provided that evidence?

MARINA RIZZO: No, I don't.

The Hon. DAMIEN TUDEHOPE: You will on notice provide me with that detail?

MARINA RIZZO: I'll take that on notice.

The Hon. DAMIEN TUDEHOPE: I have nothing further.

The CHAIR: No questions from the Government?

The Hon. EMILY SUVAAL: Happily, I have no questions either.

The Hon. DAMIEN TUDEHOPE: Sorry, I have just one more. Ms Campbell, there were various questions asked on notice in relation to the costing of the inclusion in schedule 4 of various primary site cancers. Do you recall those questions being asked on notice?

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SONYA CAMPBELL: I believe so, yes.

The Hon. DAMIEN TUDEHOPE: A fairly detailed answer has been provided.

SONYA CAMPBELL: Well, that's wonderful, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: I'm just surprised that in the evidence—

SONYA CAMPBELL: Has that come from a Treasury question on notice?

The Hon. DAMIEN TUDEHOPE: Correct.

SONYA CAMPBELL: Which I think—

The CHAIR: Is there a question, Mr Tudehope?

The Hon. DAMIEN TUDEHOPE: The question is it appears that in relation to—

SONYA CAMPBELL: I have acquitted my obligation to provide you with answers on notice.

The Hon. DAMIEN TUDEHOPE: For the purposes of the record, to the question I asked about retrospectivity, if each of the cancers was retrospectively modelled back to 2018, the costing you have provided is \$211 million.

SONYA CAMPBELL: Yes. You asked me whether that modelling had been done. I was unsure at the time. I'd since received advice that we had done the modelling, and I'm very pleased to know that we have provided you with the answers.

The CHAIR: That is a great way to finish this hearing, with the questions and answers all in one. Thank you very much to all our officials for the work you do for the people of New South Wales and for coming here today to answer questions. There were a few things taken on notice. The secretariat will be in contact with you in due course to get some answers there. Thank you very much again.

(The witnesses withdrew.)

The Committee proceeded to deliberate.