

# **PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE**

**Friday 4 March 2022**

**Examination of proposed expenditure for the portfolio area**

## **FINANCE AND EMPLOYEE RELATIONS**

**The Committee met at 09:30.**

**CORRECTED**

### **MEMBERS**

The Hon. Tara Moriarty (Chair)

The Hon. Wes Fang

The Hon. Courtney Houssos

The Hon. Shayne Mallard

The Hon. Daniel Mookhey

The Hon. Adam Searle

The Hon. Penny Sharpe

Mr David Shoebridge

### **PRESENT**

**The Hon. Damien Tudehope, *Minister for Finance, and Minister for Employee Relations***

\* Please note:

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

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

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



## **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**



**The CHAIR:** Good morning, everybody. Welcome to the additional public hearing of Portfolio Committee No. 1 and its inquiry into budget estimates 2021-2022. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. I welcome Minister Damien Tudehope and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolios of Finance and Employee Relations. Before I commence I will make some brief comments about the procedures for today's hearing. Today's proceedings are being broadcast live from the Parliament's website. A transcript will be placed on the Committee's website once it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings.

All witnesses in budget estimates have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could answer only if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take questions on notice and provide an answer within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff. Minister, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Finally, everyone should please turn their phones to silent for the duration of today's hearing. All witnesses will be sworn in prior to giving evidence. Minister, I remind you that you do not have to be sworn as you have already sworn an oath to your office as a member of Parliament.

**Ms SAMARA DOBBINS**, Deputy Secretary, People and Operations, Department of Premier and Cabinet, sworn and examined

**Mr RICHARD HARDING**, CEO and Managing Director, Insurance and Care NSW, on former affirmation

**Mr PHILIP GARDNER**, Deputy Secretary, Commercial, Commissioning and Procurement, NSW Treasury, on former affirmation

**Mr MICHAEL COUTTS-TROTTER**, Secretary, Department of Premier and Cabinet, on former oath

**Mr SCOTT JOHNSTON**, Chief Commissioner of State Revenue, Revenue NSW, on former affirmation

**Mr CULLEN SMYTHE**, Commissioner of State Revenue, Revenue NSW, on former oath

**Mr CHARLIE HEUSTON**, Executive Director, Employee Relations, Department of Premier and Cabinet, before the Committee via videoconference, on former affirmation

**The CHAIR:** Today's hearing will be conducted from 9.30 a.m. to 12.45 p.m., with a 15-minute break at 11.00 a.m. We are joined by the Minister in the morning, and in the afternoon we will hear from departmental witnesses from 2.00 p.m. to 5.15 p.m., with a 15-minute break at 3.30 p.m. During these sessions there will be questions from the Opposition and crossbench members only. If required, an additional 15 minutes is allocated at the end of the morning and afternoon sessions for Government questions. Thank you, everyone, for your attendance today. We will begin with questions from the Opposition.

**The Hon. PENNY SHARPE:** Good morning, Minister.

**The Hon. DAMIEN TUDEHOPE:** Morning.

**The Hon. PENNY SHARPE:** Good morning to your officials as well. Minister, when did you first become aware that Revenue NSW was using machine technology to garnishee unpaid debts from people's bank accounts?

**The Hon. DAMIEN TUDEHOPE:** Thanks for that. There was a report by the Ombudsman in relation to an inquiry, which the NSW Ombudsman had done in respect of unpaid debts. I think it is probably wrong to characterise it as automated. There was a suggestion in that report that Revenue ought to obtain legal advice in respect of the manner in which they were collecting unpaid debt and the manner in which they were issuing garnishee orders. Revenue formed a view—and I stand to be corrected; you have Revenue here and I am sure they will correct me if I am wrong. But the general perception was that the Ombudsman obtained advice in relation to it and I think Revenue thought that the advice that the Ombudsman was taking was sufficient for the purposes of satisfying himself in relation to the legality of the manner in which Revenue were collecting or using garnishee orders.

**The Hon. PENNY SHARPE:** Minister, can I stop you there. Are you saying that you first became aware of it really when the Ombudsman's report came out?

**The Hon. DAMIEN TUDEHOPE:** Absolutely. I think it was raised at the time and there was some media in relation to it.

**The Hon. PENNY SHARPE:** The issue of the lawfulness of others, which you have just touched on—the Ombudsman suggested that it was unlawful.

**The Hon. DAMIEN TUDEHOPE:** I think it is wrong to characterise it as unlawful. He suggested that they ought to obtain legal advice. I do not think he suggested that it was unlawful, what was being done. He was suggesting that it should, in fact, be the subject of legal advice.

**The Hon. PENNY SHARPE:** Have you got legal advice?

**The Hon. DAMIEN TUDEHOPE:** I think the answer to that is yes. I will ask Mr Johnston to confirm that.

**The Hon. PENNY SHARPE:** And could you tell us when you got that legal advice as well?

**SCOTT JOHNSTON:** Thanks, Minister and Ms Sharpe. We received the advice that the Ombudsman provided in late 2020. Following the report that was released in December, we sought additional advice because we had made—

**The Hon. PENNY SHARPE:** That is 2021?

**SCOTT JOHNSTON:** Yes, that is right. I mean in early December 2021. We sought further advice from the Crown Solicitor's Office. That is nearing completion. The sense is that we are performing in a way that—whilst they have provided some suggestions for us to continue to improve our process and be very explicit about the interactions that humans have in the decision-making—which they always have—but we are resolving that advice in the coming weeks.

**The Hon. PENNY SHARPE:** Just to be clear, though, in terms of Revenue NSW deciding that it was going to use, essentially, artificial intelligence technology to take money out of people's bank accounts, no legal advice was sought?

**SCOTT JOHNSTON:** It is incorrect to say that we are using artificial intelligence to take out—

**The Hon. PENNY SHARPE:** Machine technology, would you prefer that terminology? What terminology do you use?

**SCOTT JOHNSTON:** I would use "automation" to characterise what we do, which is effectively answering fairly simple, generally binary questions of, "Is someone a minor? Yes or no," and progressing it through a pathway. We do use artificial intelligence, which is really important to speak of; that diverts people from the garnishee order process. About 12,000 to 15,000 people each year, through understanding the characteristics of people and identifying vulnerability—diverts them from that process, actually.

**The Hon. PENNY SHARPE:** When was that put in place?

**SCOTT JOHNSTON:** We have been using this and progressing it over the last two years. But that is not the punitive effort; that is the diversionary effort away from garnishee orders.

**The Hon. PENNY SHARPE:** So how is it possible, over that other period of time, that people basically have their bank accounts emptied to zero?

**SCOTT JOHNSTON:** That is incorrect.

**The Hon. DAMIEN TUDEHOPE:** That is just wrong to say that.

**The Hon. PENNY SHARPE:** You are saying that that is not the case? You are disputing the Ombudsman's case studies in relation to this?

**The Hon. DAMIEN TUDEHOPE:** Correct, because there was always a disposition by Revenue that it would leave sufficient in the account for the purpose of making sure that the accounts were not, in fact, reduced to zero. I think currently the position is that the nature of the garnishee order is only for sums above, I think, about \$540.

**The Hon. PENNY SHARPE:** It is \$523.10.

**The Hon. DAMIEN TUDEHOPE:** Okay.

**The Hon. PENNY SHARPE:** When was that put in place? My understanding is that it was put in place after the Ombudsman raised concerns, not before.

**SCOTT JOHNSTON:** No, that is not correct. The examples that we used of accounts effectively being emptied related back to 2016. The initial investigation working with the Ombudsman began in 2016, which several years later was closed and then restarted. But following that, Revenue NSW implemented a protected amount, which is currently at \$536.90.

**The Hon. PENNY SHARPE:** When was that put in place?

**SCOTT JOHNSTON:** It is several years, but I will take that on notice to come back with the dates.

**The Hon. PENNY SHARPE:** You can come back to me, that is fine. I am just trying to understand.

**The Hon. DAMIEN TUDEHOPE:** I was asked about this at last estimates, and it was certainly in place the last time I was asked about it.

**The Hon. PENNY SHARPE:** I am not suggesting it is not in place; I am asking questions about how we got to a position where people had their bank accounts emptied.

**The Hon. DAMIEN TUDEHOPE:** It might have been as far back—

**SCOTT JOHNSTON:** If I could also add, where we have identified a position where people have had their bank accounts emptied and where that was not appropriate, such as if they are on Centrelink benefits et cetera, we put the money back into the account and worked with the customer.

**The Hon. PENNY SHARPE:** How do you find that out? Does it require somebody to approach you?

**SCOTT JOHNSTON:** This is historic but, yes, that was the case that happened well before my time within Revenue. We had a process where if someone made a complaint or contacted us to say this, we would do that. And still, in fact—

**The Hon. PENNY SHARPE:** Obviously there has been this process. Given the Ombudsman's report, do you have any sense of how many people this could have happened to?

**SCOTT JOHNSTON:** I have asked the Ombudsman for details on any customers that—

**The Hon. PENNY SHARPE:** But that is an individual case study; we are talking about thousands.

**The Hon. WES FANG:** Point of order: Ms Sharpe is asking a number of questions of the witnesses, and they are responsive. For the benefit of Hansard I ask that we allow the witness to finish their response before Ms Sharpe interjects or asks a further question. It makes it easier for Hansard and for those people watching online.

**The CHAIR:** We need one person speaking at a time but I do not think that is the situation here. I do not think that Ms Sharpe is interjecting at all.

**The Hon. PENNY SHARPE:** I think Mr Johnston is doing quite well on his own.

**The Hon. WES FANG:** It is not about Mr Johnston; it is about Hansard.

**The CHAIR:** Mr Johnston, you can finish your answer. Ms Sharpe, you have the call.

**SCOTT JOHNSTON:** I think an important fact here is that the debt that is owed is not disputed. The point being—

**The Hon. PENNY SHARPE:** Sure, Mr Johnston, but what I am trying to understand is how many people—a system was put in place, and even if it was a few years ago, it impacted pretty significantly on individuals in terms of their ability to pay their rent and feed their families. I am trying to understand it. So it came to your attention that there was an issue. Has there been any work done to understand how many people—or is it up to anyone who has had this happen to them to come to Revenue NSW to say, "Hey, there was a problem here and I'd like some money back"?

**SCOTT JOHNSTON:** As I have previously said, this is a number of years ago when the practice was in place.

**The Hon. PENNY SHARPE:** Sure, but people were harmed during that process, whether it was one year ago or four years ago.

**SCOTT JOHNSTON:** What is also not disputed is that this is a genuine debt. Our legislation requires us to step through enforcement actions as they progress, and one of those is the garnishee order process. We try for about three months until we get to the point where we have had no contact and then we go down this path. We do require people to tell us if we have created an issue for them. I would encourage you, if you have examples, to reach out to us outside of this, because we are very happy to look at every case that there is an issue with. But we have not had significant complaints historically. I think the efforts that Revenue NSW does, particularly in the last couple of years, on supporting the vulnerable and diverting people away from using garnishee orders has made a remarkable difference to the wellbeing of people.

**The Hon. COURTNEY HOUSSOS:** Mr Johnston, can we go back? When was the policy changed? When was this amount introduced, the \$523 or the \$536?

**SCOTT JOHNSTON:** August 2016.

**The Hon. COURTNEY HOUSSOS:** That was the first date at which Revenue NSW would check that there was actually money in the bank account, is that correct? August 2016 was the first time that that was introduced?

**The Hon. PENNY SHARPE:** No, it was later than that.

**SCOTT JOHNSTON:** August 2016 was when there was effectively an amount put that we would always leave in the bank account.

**The Hon. COURTNEY HOUSSOS:** So prior to that there was no amount; you would simply take all the money?



**SCOTT JOHNSTON:** Not necessarily. It is important to know that the system prior to this time partly relied on banks. Where people were on Centrelink provisions, there was a requirement for the garnishee order effectively to fail in those settings. What we knew was that the system was very complex and did not work. While we were trying to do our best in managing that, garnishee orders require the data management of banks to be consistent across institutions. So we instituted this change because of the problems that the Ombudsman back in this time initiated.

**The Hon. COURTNEY HOUSSOS:** I understand. Mr Johnston, you said that you would back pay if people complained. How many complaints did you receive that garnishees—

**The Hon. DAMIEN TUDEHOPE:** I do not think he said he would back pay. He said he would be prepared to consider individual examples. I do not think there was any commitment to make back payments.

**The Hon. COURTNEY HOUSSOS:** You said that if there was a complaint then you would put the money back into the account—not back pay, put the money back in the account. How many complaints did you receive?

**SCOTT JOHNSTON:** I will take that on notice. I think the question also is how often would we have reimbursed or put their money back.

**The Hon. PENNY SHARPE:** If you can give us that too, that would be great. That would be helpful.

**SCOTT JOHNSTON:** I believe we could take that on notice.

**The Hon. DAMIEN TUDEHOPE:** I will make the observation that the evidence that you have just given is pre-2016.

**SCOTT JOHNSTON:** Yes, six years or so in the past.

**The Hon. DAMIEN TUDEHOPE:** So we are looking at six years ago for what was occurring.

**The Hon. COURTNEY HOUSSOS:** Yes, but this is a very serious issue, Minister. We are wanting to know what efforts were made at the time. The policy has said that if there was a complaint made then the money would go back. I am interested to know how many times it actually occurred.

**The Hon. DAMIEN TUDEHOPE:** I think that is a fair question.

**SCOTT JOHNSTON:** To the best of our ability we will respond to that in the time we have.

**The Hon. COURTNEY HOUSSOS:** Excellent. Minister, I want to be clear, you said the first time you were aware of this issue was when the Ombudsman report was tabled in Parliament. Is that correct?

**The Hon. DAMIEN TUDEHOPE:** I was aware that the Ombudsman was critical about the use of automation and, in fact, wanted to establish the legality of the process that was being used. I must say that I think there was an opportunity of potentially obtaining legal advice, but I am satisfied that the advice that has been obtained does legitimise what is occurring in relation to the collection of garnishees. We just have to remember that, in relation to this, garnishees are part of a very wide process of dealing with debtors of Revenue, including a whole range of activity which Revenue engages in. Certainly while I have been the Minister, there has been an absolute stepping up of interaction with debtors to make sure of their capacity to pay—whether it is payment programs, work and development orders, or a whole series of things that Revenue works with debtors of Revenue on to work through. Garnishees are often like the last resort that Revenue would use, having exhausted a whole series of other things, to try to resolve the debt.

**The Hon. PENNY SHARPE:** Do you know what the administrative cost is associated with issuing a garnishee order?

**The Hon. DAMIEN TUDEHOPE:** Again, that is an operational thing.

**SCOTT JOHNSTON:** I would have to take that on notice. The automation effort for us where, again, fairly simple questions are being answered through automation, has saved significant effort for us and enabled us to divert our resources and strengths to supporting people who are vulnerable. So the cost of this has reduced significantly.

**The Hon. PENNY SHARPE:** If you can tell us even this afternoon, that would be great.

**SCOTT JOHNSTON:** It may take longer than that because I think, thinking about this process in isolation is quite—

**The Hon. PENNY SHARPE:** It is okay, you will have 21 days. That is fine. The reason I am asking is that some information has been provided to the Opposition in relation to this where the garnishee orders have been actually executed for debts as low as 1c or as low as 20c. How many of those have you put out?

**The Hon. DAMIEN TUDEHOPE:** The commissioner has indicated that if there are specific examples you want to put to him, I think he is happy to consider them. But I agree with you that if we are using a legal process to recover 20c or 1c that would be an inappropriate use of resources.

**The Hon. PENNY SHARPE:** We have got information that was released under GIPAA that basically says in 2018-19 the lowest amount recovered was 1c. Clearly that is someone who has just put in the wrong information when they have gone and paid their fine online.

**The Hon. DAMIEN TUDEHOPE:** The amount in the bank account may have been 1c above the protected amount. That is why it would have returned 1c.

**SCOTT JOHNSTON:** That is correct, Minister. I will take that on notice. I suspect there is very—

**The Hon. PENNY SHARPE:** That is just the information we asked for: "What was the lowest amount remitted?" In 2018-19 the lowest amount was 1c; in 2019-20 it was \$7; but in 2021 it was 20c.

**SCOTT JOHNSTON:** Without having those numbers in front of me or the context, I believe that would be referring to—we have a cap, which currently is \$536.90. Someone may have a debt that would be more than 20c or 1c but we have put through the garnishee order, it goes to a bank and it is carried out to the point of the cap, which might create a point where it is of a very low value.

**The Hon. DAMIEN TUDEHOPE:** To be quite clear, Ms Sharpe, I do not think you are suggesting that we actually issued a garnishee order to recover—

**The Hon. PENNY SHARPE:** I would hope not. But I am trying to get an idea of how many—the basis of all of this is that there are very vulnerable people who get themselves into a lot of debt and there has been an extreme amount of work done over many years to actually find alternatives for people, such as the loss of licence.

**The Hon. DAMIEN TUDEHOPE:** I agree with that.

**The Hon. PENNY SHARPE:** There is a cascading effect. No-one is pretending that it is an easy issue, but it is very vulnerable people who are often really hard up against it in terms of where they are at with fines and debts. I am trying to understand how the system manages that vulnerability.

**SCOTT JOHNSTON:** I believe quite strongly that the caps that we have in place work because you see information like that where there is a small amount. We have had three months of trying to engage, communicate and get a response from people who have a fine or a debt with us and there is nothing. Actually, a 1c or 20c can help us start an engagement process where often there might be a pathway through other options, such as work development orders or other pathways, which have increased in use with the changes that were made around fairer fines in the past 18 months.

**The Hon. PENNY SHARPE:** Thank you. I have got different dates as well, so I will ask you just to confirm this. My understanding is that the base number—around the \$520 mark—did not come into place until September 2018. Are you saying that that is incorrect? I know you said 2016 but my information—I am testing; I am not making accusations. I am just asking.

**CULLEN SMYTHE:** The numbers do change. To leave a protected amount that may have been appropriate in 2016 for six years unchanged is—

**The Hon. PENNY SHARPE:** In that case, can you tell us what the protected amount was each year from 2016? You can take it on notice.

**CULLEN SMYTHE:** Yes.

**SCOTT JOHNSTON:** But we started the cap in 2016.

**CULLEN SMYTHE:** That is correct.

**SCOTT JOHNSTON:** August 2016.

**The Hon. COURTNEY HOUSSOS:** How are people identified? What were the criteria for you leaving that amount? Was everybody allowed to have that amount of money left in there?

**CULLEN SMYTHE:** Yes.

**SCOTT JOHNSTON:** Yes. Every person who a garnishee order is sent to will have a minimum of, currently, \$536.90 in their account. It is not means tested. It is consistent for everyone. If someone has more than this they are able to meet their debt, but it is really to put a catch for those who do not have sufficient funds in their account so they are left with—

**The Hon. COURTNEY HOUSSOS:** Is there any additional checking—for example, if someone is classed as a vulnerable person—that has been in place or is in place?

**SCOTT JOHNSTON:** Absolutely. There is some really wonderful work we do using artificial intelligence, which tries to identify vulnerability through the millions of interactions we have with customers so that we can find people who are really suffering. We divert them away from the garnishee order process. We do more contact and think about how we connect with them. In the past two years, 12,000 to 15,000 people each year have benefited from that process. We are doing our very best, using the information that we have and using AI, for an absolute positive outcome for the people that we are working with so that, for the ones that we go through to garnishee orders, we hope it is successful for us—because it is an important part of our function—but it does not leave people disadvantaged beyond their means.

**The Hon. PENNY SHARPE:** We will come back to this, I think, this afternoon. We will have some more answers about that. I note the bell, though I think we can keep going because we do not have our crossbench members.

**The CHAIR:** That is the end of Opposition time. We are in crossbench time, but there is no crossbench at the moment, so we will continue with the Opposition.

**The Hon. PENNY SHARPE:** That is okay. We have got plenty of questions. Minister, I wanted to ask you about the dust diseases board. You are now in charge of the dust diseases board? Let us just confirm that.

**The Hon. DAMIEN TUDEHOPE:** Yes, for my sins.

**The Hon. PENNY SHARPE:** Yes, you are. Obviously this is something that has taken the interest of the Parliament and many people over a long period of time. There was a 2018 Standing Committee on Law and Justice inquiry that made a recommendation in relation to updating the list of dust diseases contained in the Workers' Compensation (Dust Diseases) Act 1942 and SIRA has been asking questions about why that has not occurred. My understanding is that the amendments are with you. When are we going to see legislation that will update the dust diseases Act?

**The Hon. DAMIEN TUDEHOPE:** It is complex. There is a significant amount of amendments to be made in relation to the Workers' Compensation (Dust Diseases) Act 1942. They all arise out of both work that various committees of the Parliament have done and reports which have been provided. The McDougall report identified a whole series of reforms which needed to be made to workers compensation, including dust diseases and how icare manages those various responsibilities. There is engagement with SIRA and icare in respect of moving that legislation forward.

Specifically the legislation is within the province of the Minister responsible for SIRA. However, the progress of that legislation is something which needs to be negotiated with icare. That is happening and it is a process to make sure that we get the legislation right, at the end of the day, to make sure claims are handled properly and to have an emphasis on workers, and having empathy with workers, arising from that legislation. I understand the frustration potentially relating to the delay, but I also say that in respect of the manner in which we progress legislation it is important to get that legislation right. Speed is one thing; getting it right is another. I am very—

**The Hon. PENNY SHARPE:** Sure, Minister, but this was 2018. We were just talking about how long ago it was that you fixed the revenue and fines system. This is three years. Workers with these dust diseases cannot get workers compensation while ever this is outstanding. It is not a small matter.

**The Hon. DAMIEN TUDEHOPE:** What are you suggesting?

**The Hon. PENNY SHARPE:** I am suggesting that there needs to be a bit more urgency in relation to this. From your answer it sounds to me that you are looking—

**The Hon. DAMIEN TUDEHOPE:** Which workers are being deprived of—

**The Hon. PENNY SHARPE:** Workers who are currently outside the dust diseases legislation. They currently cannot get workers compensation for these matters.

**The Hon. DAMIEN TUDEHOPE:** Are you saying that they cannot get workers compensation or are not within the dust diseases—

**The Hon. PENNY SHARPE:** Within the dust diseases scheme. That is right.

**The Hon. DAMIEN TUDEHOPE:** But they can get workers compensation.

**The Hon. PENNY SHARPE:** Yes. But they cannot get the compensation until this occurs. This is not a small matter. These are diseases that are killing people. These are not just chronic diseases, as well. It is a serious—anyway, if you want to argue the toss. You are saying it is taking a while. Do we take from your answer then that you are waiting for a more wholesale review before the dust diseases matters will be dealt with?

**The Hon. DAMIEN TUDEHOPE:** I am saying to you that I recognise the urgency of what needs to occur and I will certainly be progressing that legislation. But it is a suite of legislation that will be coming forward.

**The Hon. ADAM SEARLE:** On that point, Minister, what is your time frame?

**The Hon. DAMIEN TUDEHOPE:** I am reluctant to actually commit—the workers compensation amendment legislation to implement the McDougall reforms is still the subject of negotiations. I think it would be wrong for me to make a specific commitment, except that I think my commitment is to make sure that we get it right. To the point that Ms Sharpe makes about workers being excluded from benefits because we have not amended the legislation to the extent that that exists and they were receiving no benefits, the point I was making was I think they are still entitled to a workers compensation benefit.

**The Hon. ADAM SEARLE:** Some of them are. I think for some of them it is less clear whether they are covered or not.

**The Hon. DAMIEN TUDEHOPE:** The silicosis?

**The Hon. ADAM SEARLE:** Yes. You have got the dust diseases regime. If it is not a specified disease, you do not have access to that special scheme with those additional supports. But I think at least one of the inquiries received some evidence that it was not clear that all of the sufferers were covered by the residual workers compensation scheme.

**The Hon. DAMIEN TUDEHOPE:** Then, Mr Searle, I agree with you and, arising from this hearing, I will work a bit harder to make sure that the dust diseases component is moved on more quickly.

**The Hon. ADAM SEARLE:** That is good. What about the registration scheme that was recommended by the law and justice inquiry? Victoria has got one; it is described by all the experts in the field as the gold standard. It is where employees would be registered, you would have an immediate ban on dry cutting and registration allows government to track both the workers as well as the employers for health screening purposes and other matters. It seems to be uncontroversial, but this has been dragging on for some four-plus years.

**The Hon. DAMIEN TUDEHOPE:** I recognise the force of what you say, and, again, let me come back to you in relation to where we are in terms of progressing that. I think that Mr Harding might have some more. Mr Harding quite correctly said that registration is a WorkSafe issue, but I am loath to pass that to anyone. I think it is a component of the dust diseases compensation scheme. To the extent that I have to work with another Minister, I am happy to do that to make sure that I progress it.

**The Hon. ADAM SEARLE:** That is good. In relation to the retraining of workers exposed to silica, there was also a recommendation that the Government consider TAFE subsidies or other forms of income support funded through icare. Icare is in your portfolio, is it not?

**The Hon. DAMIEN TUDEHOPE:** Yes. Mr Harding is here.

**The Hon. ADAM SEARLE:** That is good. I just want to make sure I am asking the right Minister.

**The Hon. DAMIEN TUDEHOPE:** Sure.

**The Hon. ADAM SEARLE:** The idea is that icare would fund these additional supports for workers affected by various dust diseases so that they can be properly vocationally retrained to do other work. Is that something else that you will bring forward as a matter of urgency?

**The Hon. DAMIEN TUDEHOPE:** I might just pass to Mr Harding to ascertain whether in fact there is any scheme set up in relation to dust diseases which allows for retraining of workers as part of the return to work process.

**The Hon. ADAM SEARLE:** For your assistance, Minister, it was a 2019 review of the dust diseases scheme I think by the law and justice committee that made the recommendation. I think it is recommendation 4.

**The Hon. DAMIEN TUDEHOPE:** What year?

**The Hon. ADAM SEARLE:** I think it was 2019.

**The Hon. DAMIEN TUDEHOPE:** Thank you. Mr Harding?

**RICHARD HARDING:** To come back to your previous question, there is a large number of dust diseases covered through the dust disease scheme, including asbestosis, asbestos-induced carcinoma, asbestos-related pleural diseases, bagassosis, berylliosis, byssinosis, coal dust pneumoconiosis, farmer's lung, hard metal pneumoconiosis, mesothelioma, silicosis, silico-tuberculosis, and talcosis. We will also cover other lung, pleura or peritoneum diseases, and anyone who is exposed to a dust disease through a course of work can obviously, as the Minister has been saying, make a claim under workers compensation. That is the full list. In respect to your question just then about the work with getting people back to work or into alternate roles in respect to people working in the manufactured stone industry, we have a program where we do lung screening onsite for all of the manufactured stone locations, and when we identify—

**The Hon. ADAM SEARLE:** Registration would assist with that, would it not?

**RICHARD HARDING:** Registration is an issue that I cannot pass a view on. We work with those injured workers. In most of those cases, those people are working in their core trained industry and they are very keen to maintain themselves in that industry, but we do seek to offer retraining. We seek to work with them to find ways for them to leave the manufactured stone industry so they do not continue to increase their exposure and/or have further impact by being in a silicosis-prone environment.

**The Hon. ADAM SEARLE:** Perhaps you can tell us what support is currently provided to victims of silica-related diseases who currently receive not very much support to retrain and upskill. What supports are there at the moment?

**RICHARD HARDING:** That will depend on the individual and the conversation we have with the individual about what their preferences are.

**The Hon. ADAM SEARLE:** Okay, so you might tailor a response for that individual based on their answers.

**RICHARD HARDING:** What I am also signalling is that the majority of the cases that we experience are that the individuals prefer to stay in their existing trained vocation, and we do not have many people who are seeking support to retrain. It is unfortunately the nature of the individuals. We have had instances of people moving interstate to continue their employment in a manufactured stone industry when we have recommended against it. These are individual decisions that people have to make. We try and provide support in various forms to encourage them around different career choices and retraining options, and that is a process we work through with each individual.

**The Hon. ADAM SEARLE:** You mentioned lung screening. How many sites do you conduct lung screening at?

**RICHARD HARDING:** We have the site here in the city and we have a mobile lung bus which goes around New South Wales on a continuous loop. If you are inquiring in respect of silicosis, we get to every manufactured stone site over the year so that we can encourage screening for all people in that exposure zone. In the past year, we have done 4,391 screenings for all types of lung disease or dust disease. About 1,100 of those have been done in the Pitt Street clinic; 3,190 have been done through the lung bus and its touring around the regions; and 35 have been done through external providers.

**The Hon. ADAM SEARLE:** How do people find these services? Do you promote them? Do you advertise?

**RICHARD HARDING:** Yes, we advertise; we promote. We obviously work with the employer groups and with the union groups to make people aware of when the lung buses will be in their locations and/or to ask people to come in for screenings. Through the lung bus, people are offered a chest X-ray, and in the case of silicosis we recommend and provide funding for a CT scan for every person who has worked, or works, in a manufactured stone site.

**The Hon. ADAM SEARLE:** How many manufactured stone workers are currently working in New South Wales?

**RICHARD HARDING:** I have not got the answer to that question, sorry.

**The Hon. ADAM SEARLE:** Registration would probably help with that too. You would not know what percentage have managed to obtain scans. Do you have a rough estimate?

**RICHARD HARDING:** Our program is targeted to get to all of the manufactured stone sites, including the ones that are not the actual manufacturer but people using the stone for implementation. I cannot give you an

answer that we are actually at 100 per cent, but that is our goal and that is my understanding of what we have achieved so far.

**The Hon. ADAM SEARLE:** Your evidence is that you think you are getting close to 100 per cent.

**RICHARD HARDING:** Absolutely, yes. I would be highly confident that we are getting to the vast majority of sites across Australia. All manufactured stone sites are visited and we do it in conjunction with SafeWork. There is SafeWork providing advice to the employer about site safety features, and we are actually doing a pilot program with SafeWork on a silica monitor that can be worn by people so that they can have advanced warning when the exposure rate gets above acceptable standards. We visit the sites with SafeWork, we do the lung screenings; SafeWork does the advice and discussions with the employer.

**The Hon. ADAM SEARLE:** Minister, would you consider making it mandatory for employers to organise regular screening, for example, annual screening of their workforce, similar to I think it is in the coal sector you have this mandatory screening of all the workforce every year?

**The Hon. DAMIEN TUDEHOPE:** It is a fair call. I think it is probably data driven. In the 2020-21 year, I think there were 37 workers with silicosis, which were identified, were detected by icare, and 17 of those were detected through the dust diseases screening unit, which icare operates. To the extent that the mandatory screening would be warranted because of data, I do not know if we are necessarily at that point yet, but data would inform that decision, I would say.

**The Hon. ADAM SEARLE:** Just noting Mr Harding's evidence about his level of confidence, how do you know where all the manufactured stone sites are in New South Wales if there is no process of mandatory registration?

**The Hon. DAMIEN TUDEHOPE:** I suppose the impact of that question is it is a bit hit and miss. I think Mr Harding's evidence was that they are confident that they have identified most of the stone manufacturing companies and they have gone through a process, I assume too—I should not assume—to identify the stone manufacturers for the purposes of making sure that they utilise the resources of the screening unit effectively. Mr Harding might be able to identify the process that they have gone through to identify where mobile screenings were sent and the like.

**RICHARD HARDING:** It is an ongoing process. It is not a once done and fixed; we do this every year. We obviously get notification from SafeWork about the sites that they are monitoring and that they are looking at from an employer perspective. Then we get input from the unions, I believe, to also understand where they have got concerns about various sites. It is a two-way process. It is not a—

**The Hon. ADAM SEARLE:** It is not set and forget.

**RICHARD HARDING:** It is not a set and forget. I just reassure you when I say we visit them, we visit them every year, and that list grows and changes every year with the nature of the industry.

**The Hon. ADAM SEARLE:** In the short time remaining to me, Minister—bearing in mind that I think previous reviews have identified at least five dust diseases that are not included in the scheme, and that is based on progress and medical understanding—will you give some consideration to maybe flipping the way the Act works so that it is more catch-all rather than having to opt in as new afflictions are located through tragic experience, to make sure that the legislation catches these?

**The Hon. DAMIEN TUDEHOPE:** I am happy to work with you in relation to that. If in fact it is an inefficient drafting of the legislation that you suggest—

**The Hon. ADAM SEARLE:** For historical purposes it is.

**The Hon. DAMIEN TUDEHOPE:** That it is an ever-expanding list and perhaps it ought to be flipped to an opt-in or opt-out approach to the way the legislation works. I think that is probably good governance.

**The Hon. ADAM SEARLE:** Not a bad idea.

**Mr DAVID SHOEBRIDGE:** Minister, have you kept track of the financial position of the Nominal Insurer?

**The Hon. DAMIEN TUDEHOPE:** That is a broad question. I am broadly aware of the position in relation to the Nominal Insurer.

**Mr DAVID SHOEBRIDGE:** What is its funding ratio sitting there today?

**The Hon. DAMIEN TUDEHOPE:** I could be corrected on that. I think it could be 102, was the last advice that I had. Mr Harding?

**RICHARD HARDING:** Minister, for the Nominal Insurer at the moment the insurance ratio is 115 per cent.

**The Hon. DAMIEN TUDEHOPE:** Sorry, I was referring to the—

**RICHARD HARDING:** That is at 31 December.

**Mr DAVID SHOEBRIDGE:** The last time you reported, Mr Harding, the funding ratio for the Nominal Insurer only a month ago was about 102 per cent. Are you saying it has now improved by 13 per cent?

**The Hon. DAMIEN TUDEHOPE:** You have just made the same mistake as me, I think.

**RICHARD HARDING:** I am not sure where the 102 has come from Mr Shoebridge. I think pre-receipt of our December liability valuation we were talking about an insurance ratio around about 120-odd—118 in fact—which obviously came down to 115 following the actuarial work on the liability valuation for December.

**Mr DAVID SHOEBRIDGE:** Have you got that actuarial report from December?

**RICHARD HARDING:** I have, Mr Shoebridge, yes.

**Mr DAVID SHOEBRIDGE:** Can you provide it to the Committee, Mr Harding?

**RICHARD HARDING:** I do not have the physical report with me Mr Shoebridge, but I am happy to tell you the outcomes, yes.

**Mr DAVID SHOEBRIDGE:** Will you email it to the secretariat, Mr Harding? We do not any more require you to print things out and bring them along. It is 2022.

**RICHARD HARDING:** I am happy to provide it or the executive summary of it on notice, yes, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** Could you provide it today to the Committee?

**RICHARD HARDING:** I am happy to provide it on notice, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** Why are you resisting providing it today, Mr Harding?

**The Hon. WES FANG:** Point of order: We have been very respectful, I think, for the last 40-odd minutes. Witnesses are entitled to take questions on notice. Mr Harding has obviously taken that question on notice. I do not believe it is in order for Mr Shoebridge to second judge and berate the witness for what is clearly a procedural fairness issue. The witness can take the question on notice.

**The CHAIR:** There is no point of order. There is no berating. There is no any of that. Witnesses can take questions on notice if they wish and Mr Shoebridge is entitled to ask follow-up questions. There is no point of order.

**Mr DAVID SHOEBRIDGE:** Mr Harding, why are you resisting the very simple task of asking your staff to just email it through to the secretariat? I do not understand.

**The Hon. DAMIEN TUDEHOPE:** I just make this point, Mr Shoebridge. Before providing it, he would need to potentially obtain advice in respect of tabling the report. There is a process for tabling the report. If he wants to take it on notice, I would be advising Mr Harding that that is the appropriate course that he should adopt.

**Mr DAVID SHOEBRIDGE:** Mr Harding, the 115 per cent valuation for the Nominal Insurer obviously takes into account the fact that there are deeming provisions to allow for the provision of workers compensation to frontline workers who get COVID. I am assuming the 115 per cent valuation takes that into account.

**RICHARD HARDING:** To the extent that we had experience up to the end of December, Mr Shoebridge. It does not take into account the experience we have had post December 31, because that is the nature of what it is, the balance date valuation of 31 December. The answer is yes, but to 31 December. It does not include January and February in terms of when the majority of our COVID claims—which is what I am assuming you are referring to—have been received.

**Mr DAVID SHOEBRIDGE:** Do you have any advice from the actuaries that would suggest the 115 per cent funding ratio of the Nominal Insurer has been negatively impacted by COVID claims in January and February?

**RICHARD HARDING:** Maybe if I simplify the answer to the question. Included in the strengthening to the provisions and the reserves for 31 December was \$170 million increase related to the COVID experience as to that date. As we progressed through the rest of the six months to June, the actuary will have further evidence upon which to base the valuation at that date, which will include January and February. But we have provided

you before in the hearing in respect to the presumptive, the number of claims that we have incurred in that period of time. I would highlight the number of claims relating to the presumptive clause actually are higher outside the Nominal Insurer than they are inside the Nominal Insurer.

**Mr DAVID SHOEBRIDGE:** Your best actuarial evidence is the evidence you have from two months ago at the end of December, is that right, Mr Harding, or do you have better actuarial evidence about the state of the scheme now?

**RICHARD HARDING:** The scheme has an actuarial valuation cycle for every six months, Mr Shoebridge, with the balance dates 31 December and 30 June. That is the most recent date upon which the liabilities have been reviewed.

**Mr DAVID SHOEBRIDGE:** Minister, are you aware of what the targeted funding ratio is for the Nominal Insurer?

**The Hon. DAMIEN TUDEHOPE:** For the Nominal Insurer it is about 120.

**Mr DAVID SHOEBRIDGE:** Well, there is a range, is there not?

**The Hon. DAMIEN TUDEHOPE:** Yes, there is a range.

**Mr DAVID SHOEBRIDGE:** What is the range, Mr Harding?

**RICHARD HARDING:** There are a number of ranges, Mr Shoebridge, in our capital management plan that help the board work through the different stages of, you know, changes in the funding regime. It is clear that right now we are not in our desired range, which we talked about before. The ultimate target ratio would be above 130 per cent but there is a range between 120 and 130, which the Minister is referring to, which is the middle range and then below 120, which is where we are today.

**Mr DAVID SHOEBRIDGE:** What is the range that the board has adopted? You say you have a target of 130 per cent. But what is the range which the board has adopted that is permissible for the fund to operate in? Is it between 110 and 130, or does the board permit you to have a funding ratio of less than 100 per cent? What is the range, Mr Harding?

**RICHARD HARDING:** Maybe if I perhaps just challenge around the word "permissible" because this is a policy that talks about the normal fluctuations of solvency up and down during a period. The board's target, as I have said—or the board's preferred range, ideal range if you like—is in excess of 130 per cent. But we look at that over a very long time period. The capital management policy, which I am sure you have seen on our website, talks to looking over a 10-year period at how we ensure the ongoing sustainability of the scheme. So when we look at 115 per cent, which I remind you, Mr Shoebridge, does not mean that the board is in difficulty, it means we are well able to cover our liabilities—the assets cover the liabilities including the extra income looking forward.

What it does mean is that there is some work for us to do over the next coming years to address that through the programs of work that we have got ongoing. And, yes, ultimately when we have addressed that we would like to be above 130 per cent. That is the board's preferred range. But we recognise that, for a number of different reasons—such as the introduction of COVID, changes to investment markets, changes to the nature of work and the increasing prevalence of psychological claims—there will be fluctuations up and down through those bands with relevant actions for management to take, depending on where we are in each of those band ranges.

**Mr DAVID SHOEBRIDGE:** You see, Mr Harding, the Nominal Insurer's funding ratio disclosed in icare's annual report for the last financial year had the funding ratio at that time at 97 per cent.

**RICHARD HARDING:** Mr Shoebridge, I think you are confusing the accounting ratio and the insurance funding ratio.

**Mr DAVID SHOEBRIDGE:** All right. So when I have been asking you about the funding ratio you have been telling me about the insurance ratio.

**RICHARD HARDING:** The insurance ratio is the ratio that we are using to measure the long-term sustainability of the scheme. That is—

**Mr DAVID SHOEBRIDGE:** Just to be clear—

**RICHARD HARDING:** —following Mr McDougall's advice.



**Mr DAVID SHOEBRIDGE:** No, Mr Harding. So for the last 10 minutes while I have been asking you about the funding ratio, which is as it is described in your annual report, you have actually been telling me about the insurance ratio. Is that right?

**RICHARD HARDING:** As I have said, Mr Shoebridge—and I believe we have had this conversation before—Mr McDougall recommended in his review that the appropriate measure for considering the long-term sustainability of the scheme and looking at the scheme's position is to consider the insurance funding ratio. The accounting ratio is a point-in-time measure that does not reflect the long-term sustainability of the scheme. It is a measure that is used for accounting purposes and that is why it is reported in the annual report. But we also report in the annual report the insurance ratio.

**Mr DAVID SHOEBRIDGE:** Well, then, why do we not revisit it? We will now have to revisit everything we have done and, to be clear, I am not asking you about the insurance ratio. I am asking you about the funding ratio, which could be described, in its simplest form, as the ratio of available assets to estimated liabilities. They are the questions I am asking you, Mr Harding. If you want to tell me about the insurance ratio, fine. What is the current funding ratio for the Nominal Insurer, being the ratio of available assets to estimated liabilities?

**RICHARD HARDING:** Mr Shoebridge, let's call it the accounting ratio so that everyone understands what we are talking about and then we will be clear.

**Mr DAVID SHOEBRIDGE:** I am reading your own annual report, Mr Harding.

**RICHARD HARDING:** The accounting ratio, Mr Shoebridge—

**Mr DAVID SHOEBRIDGE:** It calls it "funding ratio".

**The Hon. WES FANG:** Point of order, Chair—

**Mr DAVID SHOEBRIDGE:** I am reading icare's website that calls it the funding ratio.

**The Hon. WES FANG:** Point of order—

**Mr DAVID SHOEBRIDGE:** So I am going to keep calling it the funding ratio.

**The Hon. WES FANG:** For the benefit of Mr Shoebridge, who was not here when I took the earlier point of order, Hansard will have almost no ability to record two voices talking over each other at the same time. I ask that we ask a question of the witnesses and allow the witnesses to answer before we then ask for an elucidation or clarification. It is a very simple process.

**The CHAIR:** I am happy to rule.

**The Hon. WES FANG:** I think that witnesses deserve procedural fairness.

**The CHAIR:** As I said at the start, one person at a time, but that is not what is happening here. I think we are getting clarification about what is happening so that everyone can be clear about what we are talking about. I do not see any problem with that so I do not uphold the point of order.

**Mr DAVID SHOEBRIDGE:** Minister, we are going to start again.

**The Hon. DAMIEN TUDEHOPE:** You are welcome, David.

**Mr DAVID SHOEBRIDGE:** What is the current funding ratio? Whenever I say "funding ratio" I am talking about the ratio of available assets to estimated liabilities, as explained clearly on icare's own website. What is the current funding ratio for the Nominal Insurer?

**The Hon. DAMIEN TUDEHOPE:** In fact, Mr Shoebridge, I would adopt the position of Mr Harding in relation to that because the McDougall report said that that was the inappropriate way to assess the financial viability of icare. To the extent—

**Mr DAVID SHOEBRIDGE:** Just tell me what it is, though, Minister.

**The Hon. DAMIEN TUDEHOPE:** To the extent that Mr Harding was trying to elucidate why it is always important to use the insurance ratio, I adopt that because that is the recommendation about the financial sustainability of a scheme that you would use. To the extent that you wish to adopt a different ratio, I would be suggesting to you that that is inappropriate, and I would be supporting the position taken by Mr Harding.

**Mr DAVID SHOEBRIDGE:** You may not like telling us what the funding ratio is but I can tell you now in terms of understanding the historical health of the insurance scheme, tracking the funding ratio historically is the only way we can test the historical health. I am going to ask you again—

**The Hon. DAMIEN TUDEHOPE:** You may prefer to do that.

**Mr DAVID SHOEBRIDGE:** You may not want to tell us what the funding ratio is—

**The Hon. DAMIEN TUDEHOPE:** You may prefer to do that, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** —but tell me what the funding ratio is, please, Minister.

**The Hon. DAMIEN TUDEHOPE:** Mr Shoebridge, you may prefer to do that—

**Mr DAVID SHOEBRIDGE:** What is the funding ratio?

**The Hon. DAMIEN TUDEHOPE:** Mr Shoebridge, you may prefer to do that. I prefer to adopt the measure which is adopted by Mr McDougall in relation to—

**Mr DAVID SHOEBRIDGE:** What is the funding ratio?

**The Hon. DAMIEN TUDEHOPE:** This is an issue.

**The Hon. SHAYNE MALLARD:** Point of order, Madam Chair—

**The Hon. DAMIEN TUDEHOPE:** This was an issue that was ventilated—

**Mr DAVID SHOEBRIDGE:** What is the funding ratio?

**The Hon. SHAYNE MALLARD:** I have not taken a point of order today. I will just make it clear that the Minister is trying to answer the question. Mr Shoebridge is interjecting on the answer because it is not the answer he wants to hear. I think the Minister should be allowed to answer the question, articulate the issue around that definition and address it here, and then move on to another set of questions—or the same questions but politely rephrased.

**Mr DAVID SHOEBRIDGE:** To the point of order: I have asked what the funding ratio is and the Minister is explaining why he will not tell us what the funding ratio is. The Minister has to be directly relevant, not play interference.

**The CHAIR:** Yes. Look, let me say this: The Minister is entitled to answer the question and Mr Shoebridge, or any member of the Committee, is entitled to ask follow-up questions if they are not satisfied that they are getting an answer to the question that they have asked. The Minister is entitled to answer the question and I invite him to do so.

**Mr DAVID SHOEBRIDGE:** Minister, the funding ratio for the Nominal Insurer at the end of last financial year was 97 per cent. What is the current funding ratio for the Nominal Insurer?

**The Hon. DAMIEN TUDEHOPE:** The accounting ratio or the—

**Mr DAVID SHOEBRIDGE:** I will read to you from icare's website so you aware of what I am asking about, which will help you:

**What is a funding ratio?**

In its simplest form a funding ratio is the ratio of available assets to estimated liabilities. We use the funding ratio to monitor the long-term financial sustainability of our schemes. The assets are based on market value and the liabilities are estimated by actuarial valuation, which typically happens twice a year for the major icare schemes.

So, consistent with what icare says—that they use the funding ratio to monitor the long-term financial sustainability of your schemes—please just tell me the funding ratio.

**The Hon. DAMIEN TUDEHOPE:** I would be saying to you, Mr Shoebridge, that in relation to the extensive way that you have just explored that, that the appropriate way to assess the financial viability of the scheme is to use the economic funding ratio. They are both called funding ratios. So for the purposes of assessing the financial viability of the scheme, Mr McDougall considered this issue in-depth and formed the view that the appropriate ratio for the purposes of assessing the financial viability—

**Mr DAVID SHOEBRIDGE:** Is it that bad?

**The Hon. DAMIEN TUDEHOPE:** If you wish to continue to try and mislead either this—

**Mr DAVID SHOEBRIDGE:** Is it that bad?

**The Hon. DAMIEN TUDEHOPE:** It is not that bad. In fact, I have to say to you—

**Mr DAVID SHOEBRIDGE:** What is it?

**The Hon. DAMIEN TUDEHOPE:** I have to say to you that the funding ratio, being the economic funding ratio, was the one which was identified by Mr Harding earlier as 115.

**Mr DAVID SHOEBRIDGE:** I am not asking about the insurance ratio. I am asking about the funding ratio that was 97 per cent at the end of the last financial year, and you are being deliberately obstructive in not telling us. I am assuming that it is catastrophically bad.

**The Hon. DAMIEN TUDEHOPE:** No, you are being misleading.

**Mr DAVID SHOEBRIDGE:** What is the ratio? Mr Harding, you now know what the question is. What is the funding ratio for the Nominal Insurer?

**RICHARD HARDING:** The funding ratio—

**Mr DAVID SHOEBRIDGE:** Call it the accounting ratio, call it what you like, but the ratio that was at 97 per cent at the end of last financial year, where is it now?

**RICHARD HARDING:** The accounting ratio, Mr Shoebridge, which does not take account of the future investment income of the scheme, is at 93 per cent.

**Mr DAVID SHOEBRIDGE:** That is a near historic low, is it not, for the Nominal Insurer?

**RICHARD HARDING:** I would not be able to say, Mr Shoebridge. But I am well aware that the scheme has been much lower and I think schemes in other States are actually at lower rates than that. I think the more relevant point is, Mr Shoebridge, to assess the future viability of the scheme you need to take into account the investment returns over the future.

**The Hon. DAMIEN TUDEHOPE:** Correct.

**RICHARD HARDING:** That is why we hold \$20 billion worth of assets. Those investment returns go towards the payment of those future liabilities. That is the whole nature and structure of insurance. It is a fundamental part of the way the scheme works. So to assess it solely on the accounting ratio, which is a point-in-time measure for accounting purposes, is not a helpful way to understand the actual ongoing viability and the sustainability of the scheme. The scheme has adequate assets to pay its liabilities with investment income over the future years.

**Mr DAVID SHOEBRIDGE:** You know that the McDougall report critiqued icare for excessive reliance on financial returns and pointed out that that made icare extremely vulnerable to future shocks and future changes in valuation, particularly if there is a stock market downturn? You are aware of that, are you not, Mr Harding?

**RICHARD HARDING:** I believe we had this conversation in a session in December, Mr Shoebridge. At that point in time—and I can repeat the conversation. At that point in time, I talked to you about the fact that icare is pulling all four levers that we have in respect to improving the financial outcome for the scheme—that is, premiums, investment income, our own cost base, and the claims model and the effectiveness of the claims model within the scheme. All four levers are being managed and pulled. You cannot ignore investment income, Mr Shoebridge; it is built into the structure and the nature of how the scheme works. We not do include a profit margin in the price of premiums, but we do include an investment margin in the pricing of premiums. That means that we are always using the investment income to ensure that premiums are affordable for employers. But it also means that that investment income is 100 per cent part of the way that the scheme dynamically works. You cannot ignore it.

**Mr DAVID SHOEBRIDGE:** What has led to the funding ratio falling from in the high 90s at the end of last financial year to 93 per cent? What has led to that deterioration?

**RICHARD HARDING:** There are a number of factors that have been highlighted and I am very happy to take you through them. Three key factors have affected the outlook for the Nominal Insurer. We have already spoken about one of those, which is the impact of COVID-19. I mentioned earlier that we have an increase in our liabilities to an amount of \$170 million relating to COVID-19. Further, obviously, a key role of the scheme is to pay wages for injured people. The Reserve Bank of Australia has increased its forecast outlook for wage inflation to 3 per cent, and our actuaries adopt that assumption when managing and predicting liabilities. That is a \$415 million increase to the liabilities.

And lastly, I think, is probably the area where we really need to focus our attention, which is on the deterioration of psychological claims across workplaces in New South Wales. This is something that I have spoken before about at this Committee and others. Psychological claims in the Nominal Insurer, as we have spoken about before, have gone up 2.4 times since 2015 and we are continuing to see significant growth in psychological claims.

There was a \$153 million increase in provisions for psychological claims at the December valuation. That is a theme that I think we will probably come back to later. I am sure you will have other questions. But those are the three key factors that relate to the changes in the current outlook.

**Mr DAVID SHOEBRIDGE:** Yes, we will return to this work later.

**The Hon. ADAM SEARLE:** Minister, recently nurses in New South Wales took industrial action for the first time, I think, in over a decade. They did so in relation to, essentially, burnout, overwork, obviously there were concerns about pay, and there were concerns about adequate levels of staffing. They did so after the Industrial Relations Commission had indicated they should not. Is your Government considering taking dispute orders out against the union or its members?

**The Hon. DAMIEN TUDEHOPE:** I have not been notified that there is any proposal. I would say in relation to that, the point that you make about the pressure on nurses is not lost on me. I have to say that I know the Premier has met with members of the union and there are ongoing discussions in relation to understanding the impact on the frontline nursing situation—not that I think for one moment that anyone, really, is unaware of the impact on the nursing profession. In fact, I will give you this anecdote, if I may?

**The Hon. ADAM SEARLE:** Please, and I will give you one of mine.

**The Hon. DAMIEN TUDEHOPE:** Just before Christmas, I got appendicitis and I had to go to an emergency department of a public hospital. The pressure in that emergency department was bewildering in terms of the number of people who were there and the pressure on the staff there. So anyone who has had experience with an emergency department of a hospital in the last 18 months would absolutely appreciate the pressure which exists on nurses and on the frontline staff of hospitals generally—and there may be security officers involved in relation to managing those hospitals. I think the point that you make about understanding the workplace situation of nurses is important. The short answer to your question—are we considering industrial action in the Industrial Relations Commission—I have no instructions in relation to that and I am unaware of any proposal to do so.

**The Hon. ADAM SEARLE:** That is good news. You accept that there is a lot of pressure on the system. My daughter is now a nurse and she has reported that many of her—

**The Hon. DAMIEN TUDEHOPE:** Yes, I think in Broken Hill, didn't you tell me?

**The Hon. ADAM SEARLE:** That is correct, at Broken Hill. She has indicated to me that a number of her friends who have just completed their first year in nursing regularly worked far in excess of their rostered times, were not given any breaks on a regular basis, just due to the sheer pressure on the system. Given that the nurses and other health professionals are being pushed into taking industrial action, quite extraordinarily, what are you doing to perhaps alleviate the pressure and the workload on the system? Are you looking, for example, at some analysis of the workload right across the health system?

**The Hon. DAMIEN TUDEHOPE:** It is a broad-ranging question. I think the workload on frontline people always has to be the subject of analysis and, certainly, in circumstances where there is a pandemic and obviously there is a certain amount of anxiety in the community generally—which often translates itself into the emergency department of a hospital and from the emergency department to the wards where people are admitted—I think that anxiety needs to be taken into account in assessing that workplace. So in terms of what my involvement would be in relation to that, it would be to the extent that there are negotiations relating to new employment agreements, which are ongoing.

Primarily, they are the responsibility of the agency involved. Although, the bargaining parameters—as they are colloquially termed—relating to that are something that I do have an involvement in and I think that is an ongoing process which is educated by the working environment that nurses find themselves in. So I would expect that the health Minister would make a significant contribution to understanding the workplace that nurses are involved in in terms of working through what the bargaining parameters for new employment agreements ought to look like.

**The Hon. ADAM SEARLE:** But as the Minister for Employee Relations—or industrial relations, as we like to call it—what role are you playing? Are you meeting with the Nurses and Midwives' Association? Are you trying to immerse yourself in the situation to try and alleviate these very real concerns? You have agreed they are very real concerns.

**The Hon. DAMIEN TUDEHOPE:** You have got to be very careful about introducing—my chief role, as I see it, in terms of employee relations, is to ensure that, as much as possible, industrial harmony is maintained. To the extent that you are suggesting that I ought immerse myself into the negotiation, I am a bit reluctant to do that because I think that—

**The Hon. ADAM SEARLE:** Just more on the topic industrial harmony, in December the teachers, I think, took industrial action. Again, the issues of concern were not just pay. There were teacher shortages in schools and, I think, 2,000 vacancies between Bondi and Broken Hill. Again, they are talking about burnout, overwork, excessive hours and not enough new people entering the profession, which is exacerbated of course by the wages policy, the 2.5 per cent wages cap. Are you aware of that industrial action and those concerns that underpin it?

**The Hon. DAMIEN TUDEHOPE:** I am aware of that industrial action. They are a different set of circumstances.

**The Hon. ADAM SEARLE:** The common themes though are overwork, burnout being experienced and potentially inadequate staffing levels. There are some commonalities here with the nurses.

**The Hon. DAMIEN TUDEHOPE:** Certainly, I think that there is a theme of industrial action which is taking place at the moment.

**The Hon. ADAM SEARLE:** It is not isolated to there, is it? There are other parts of the public sector—I think there were some issues in the ambulance service last year, which was, again, staffing and other things.

**The Hon. DAMIEN TUDEHOPE:** I think recently there were also some issues in the transport service.

**The Hon. SHAYNE MALLARD:** Indeed.

**The Hon. ADAM SEARLE:** I am sure we will come to that in due course.

**The Hon. DAMIEN TUDEHOPE:** I am sure we will. However, what I would be suggesting to you is that the Minister for education was here and I am sure she is cognisant of making sure that there is industrial harmony. The last thing that any government wants is industrial disharmony. Keeping people happy at work and the environment that—

**The Hon. PENNY SHARPE:** It is not going very well, is it, Minister?

**The Hon. DAMIEN TUDEHOPE:** I am sorry?

**The Hon. PENNY SHARPE:** It is not going very well, is it, Minister?

**The Hon. WES FANG:** Point of order—

**The Hon. DAMIEN TUDEHOPE:** It takes two to negotiate and I would be saying—

**The CHAIR:** Mr Fang has a point of order, Minister.

**The Hon. PENNY SHARPE:** It is not going to be a point of order. Let us just move on.

**The Hon. WES FANG:** I just find those comments unhelpful.

**The Hon. PENNY SHARPE:** That is not a point of order, and now you have just interrupted.

**The Hon. ADAM SEARLE:** It is okay. The Minister and I have got this under control.

**The CHAIR:** It has been reported by Hansard. Continue, Minister.

**The Hon. WES FANG:** It was not your interjection, Mr Searle.

**The CHAIR:** The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** What I would say in response to both Mr Searle and Ms Sharpe is that first of all we have got to have a complete understanding about what the issues are that have got to be addressed. What I urge on everyone in this environment is that the Government certainly comes to any negotiation with its primary purpose to ensure that there is industrial harmony. It requires everyone involved in that process to act in good faith in relation to trying to reach that outcome. To have a preconceived idea, for example, whether it is true or not, that we are wanting to create industrial chaos, is not helpful. My perception is that with whatever industrial agreements we look at, we ought to be doing so in circumstances where everyone potentially walks away with an understanding and reaches an agreement. And once an agreement is reached, do not walk away from the terms of the agreement which were reached.

**The Hon. ADAM SEARLE:** On that subject, turning to our third matter, you would be aware that junior doctors have launched a fairly unprecedented Supreme Court action against the Government for tens of thousands of allegedly unpaid or non-paid overtime for junior doctors. Are you aware of that happening in November?

**The Hon. DAMIEN TUDEHOPE:** I am not aware of that.

**The Hon. ADAM SEARLE:** The nub of that is, again, overwork and excessive hours not paid for. That was launched by ASMOF, the doctors union. It is actually the second action of that kind launched against the Government; I think Maurice Blackburn have got a class action to the same effect on foot. Again, the common elements are excessive hours of overwork for those medical professionals, stress, burnout, overwork and inadequate staffing levels. Again, it is sounding very much like the nurses' concerns, the teachers' concerns and concerns that we have heard elsewhere in the public sector. So it is not limited to one ministry or one department; it seems to be an epidemic now, with common themes. What are you as Minister doing to address the systemic issues that are driving it?

**The Hon. SHAYNE MALLARD:** A year from the election.

**The Hon. DAMIEN TUDEHOPE:** I think I indicated too early that my role in relation to this is to, in fact, prevent industrial action reaching circumstances where people withdraw their labour or alternatively—

**The Hon. PENNY SHARPE:** How do you do that, Minister?

**The Hon. DAMIEN TUDEHOPE:** How do I do it?

**The Hon. PENNY SHARPE:** Yes. Tell us how you do it. If that is your role, how are you doing that?

**The Hon. DAMIEN TUDEHOPE:** One way I would do it, if you look at a recent example, is that I would potentially take action in the Fair Work Commission to make sure the trains were kept running.

**The Hon. ADAM SEARLE:** That did not work out so well for you, did it?

**The Hon. DAMIEN TUDEHOPE:** Only because—and it is the point that I would come back to—good faith agreements which were reached were not adhered to. But I am sure we will explore that. What I would say to you is that there are opportunities to discuss workplace conditions with each agency Minister because primarily the responsibility for nurses, teachers and doctors rests with a responsible Minister. To the extent that there are suggestions that doctors are being underpaid, I would suggest that it is appropriate for the agency Minister to answer those questions. However, if it led to circumstances where hospitals were being understaffed and there were bans potentially wanting to be put in place, that may be escalated to something that I would have a look at.

**The Hon. ADAM SEARLE:** Minister, the industrial action and some of these issues that we have been talking about are very much the end product of the systemic drivers that I have drawn your attention to. We know that individual Ministers with their individual budgets have primary responsibility, but one of the benefits of having a Minister such as yourself supported by DPC as a central agency is that you can be an, if you like, honest broker or disinterested party to address these systemic issues, which just seem to be everywhere in the public sector at the moment.

**The Hon. DAMIEN TUDEHOPE:** A point well made is that I think that there is a need to have a very focused industrial relations Minister in circumstances where you have identified numerous claims have been made. One you did not mention was in fact Corrective Services officers.

**The Hon. ADAM SEARLE:** I had not got to those yet.

**The Hon. DAMIEN TUDEHOPE:** I think that the Government is very aware of increasing unrest in relation to work circumstances. Generally, the Premier's attitude and the Government's attitude is that where that reaches a circumstance where there are conditions and no agreement appears to be able to be reached, then it has got to be escalated to the department of employee relations so that some work can be done to try and make sure that it does not reach the next step.

**The Hon. ADAM SEARLE:** Now we have reached the nub of the point, Minister. Given these difficulties which are spreading like lantana right across the industrial landscape, what are you doing to address the root causes?

**The Hon. SHAYNE MALLARD:** A year from the election.

**The Hon. PENNY SHARPE:** That is because the agreement has actually expired.

**Mr DAVID SHOEBRIDGE:** I would not have had the agreements expiring before the election.

**The Hon. PENNY SHARPE:** That is why there is a discussion. There is no conspiracy here.

**The Hon. DAMIEN TUDEHOPE:** I do not think that there is necessarily one answer to that question. I think every individual workplace has its own potential solution. You have identified difficulties that nurses have, difficulties that teachers have and difficulties that doctors have and ambulances—

**The Hon. ADAM SEARLE:** I think there was something in the ambulance service last year. Paramedics have got concerns.

**The Hon. DAMIEN TUDEHOPE:** If you look at the general framework we are operating in at the moment, there are some 80 employment agreements which are coming up for renewal between—

**The Hon. PENNY SHARPE:** There you go.

**The Hon. SHAYNE MALLARD:** It could be a strategy.

**Mr DAVID SHOEBRIDGE:** It takes two to agree.

**The Hon. DAMIEN TUDEHOPE:** —now and the end of June. Clearly there is a bit more of a focus on the terms and conditions relating to those employment agreements. I would expect that, given that increased focus, there would potentially be a larger range of negotiations that take place.

**The Hon. ADAM SEARLE:** Minister, you are being very smooth here, but you are not addressing the question I have posed—

**The Hon. WES FANG:** He is indeed.

**The Hon. SHAYNE MALLARD:** Be respectful.

**The Hon. ADAM SEARLE:** —which is, What are you doing as the Minister, supported by the Department of Premier and Cabinet, to address the root causes? I accept there may not be a one-size-fits-all approach. What are the different approaches that you are putting in place as Minister to address the root causes?

**The Hon. DAMIEN TUDEHOPE:** Again, I would say to you there is no specific overarching policy except—and I am sure you are getting to this—wages policy.

**The Hon. ADAM SEARLE:** I was actually going to ask a different question, which is are you considering, for example—you are the Minister for industrial relations. You can do a reference to the IRC to look at the workloads and distribution of workload across the health system for all the health professionals, which would do a root analysis of whether the concerns of these various professions are made out and how that might be addressed. That is something you could do as Minister.

**The Hon. DAMIEN TUDEHOPE:** In many respects, I would expect that an agency faced with the renegotiation of an employment agreement—

**The Hon. ADAM SEARLE:** It might actually help inform that process, might it not?

**The Hon. DAMIEN TUDEHOPE:** —would in fact have awareness of the necessity of doing that. I think embarking on that strategy is not necessarily one which should be a first option that you would consider. Let us see how the 80 employment agreements play out in terms of the industrial muscle and might that those representing various unions seek to expose the Government to. I give you this assurance—

**The Hon. ADAM SEARLE:** Is that your first port of call?

**The Hon. DAMIEN TUDEHOPE:** I give you this assurance—

**The Hon. ADAM SEARLE:** You want industrial disputation as the first port of call?

**The Hon. DAMIEN TUDEHOPE:** Well, I hope it is not the first port. I hope industrial—

**The Hon. ADAM SEARLE:** But that is what you are flagging. You are flagging, "Let's see how the industrial might does."

**The Hon. DAMIEN TUDEHOPE:** No, I am saying Mr Morey is flagging that. Mr Morey is flagging that.

**The Hon. ADAM SEARLE:** Shouldn't we be trying to address the root causes here?

**The Hon. DAMIEN TUDEHOPE:** I will give you this assurance. If you come to me—I am a lover, not a hater. I have to say to you, I would rather use employee—

**The Hon. PENNY SHARPE:** Where is the song?

**The Hon. DAMIEN TUDEHOPE:** I would use employee relations to try and seek outcomes, not to cause chaos. I think the problem is—let us cut to the chase on this. The intervention of Mr Morey in relation to the chaos which he foresees enveloping the political scene for the next 12 months is unhelpful.

**The Hon. COURTNEY HOUSSOS:** Let's just wait a minute there, Minister. You were the one that just said for the 80 industrial—

**The Hon. DAMIEN TUDEHOPE:** Agreements.

**The Hon. COURTNEY HOUSSOS:** —agreements, that we will just wait and see what the industrial might or muscle plays out. Let us not lay the blame at Mr Morey's feet.

**The Hon. DAMIEN TUDEHOPE:** He is the one who said it, Ms Houssos, not me.

**The Hon. ADAM SEARLE:** Well, you just said it.

**The Hon. COURTNEY HOUSSOS:** Minister, would you consider doing—

**The Hon. DAMIEN TUDEHOPE:** You would prefer that he did not say it, I am sure.

**The Hon. COURTNEY HOUSSOS:** Minister, you do not need to tell me what I think about Mr Morey's imputations.

**The Hon. DAMIEN TUDEHOPE:** You should. You should have a view.

**The Hon. COURTNEY HOUSSOS:** Minister, this is the opportunity for us to ask you questions about very important matters, including whether you would consider making a similar referral to what my colleague just talked about around workload for teachers. The Teachers Federation recently undertook a long and engaged process to create the Gallop report, which is something that would have usually—or previously—gone through the Industrial Relations Commission. Will you, as Minister, consider making a similar referral?

**The Hon. DAMIEN TUDEHOPE:** If in fact advice was provided to me that that was an appropriate course of action that we ought be adopting to reach an outcome, I would of course consider it. But what you are putting to me is that we embark on that process now. I have to say let's have a look at each individual employment agreement as they arise, and I would be urging on those who are engaged in that process not to use the process of the renegotiation of expiring employment agreements to precipitate industrial reaction but to seek proper outcomes and to work in circumstances where everyone works in good faith. I have to say that the suggestion that we work in good faith is undermined by Unions NSW coming out and saying, "We want to create industrial chaos."

**The Hon. ADAM SEARLE:** Minister, you are putting the cart before the horse.

**The Hon. DAMIEN TUDEHOPE:** Now you might not like that.

**The Hon. ADAM SEARLE:** These matters are all being driven—

**The Hon. SHAYNE MALLARD:** Point of order—

**The Hon. DAMIEN TUDEHOPE:** You may not like that.

**The Hon. ADAM SEARLE:** Minister, these things are being driven by workplace concerns about overwork, about—

**The CHAIR:** Mr Mallard on a point of order. Sorry, Mr Searle, I am going to hear the point of order. Excuse me.

**The Hon. SHAYNE MALLARD:** You might not be getting the answer you like, but the Minister was giving an answer relating to the questions asked by the Hon. Courtney Houssos. I think you should allow the Minister to finish and then you can ask some more questions. So allow the Minister to answer the questions.

**The Hon. ADAM SEARLE:** I think the Minister can look after himself.

**The CHAIR:** Indeed. Minister, had you finished? That was my impression.

**The Hon. SHAYNE MALLARD:** Two Labor members yelling at him is not a fair process.

**The Hon. COURTNEY HOUSSOS:** We are not yelling at him.

**The Hon. DAMIEN TUDEHOPE:** It is robust. What I would be saying to you is you have a view in relation to that. I have to say it is unhelpful. If in fact it is predicated on the basis that we are going to engage in industrial chaos, that seems to mitigate against trying to reach outcomes.

**The Hon. COURTNEY HOUSSOS:** Minister, that was not what I was asking you. I was asking you whether you would consider referring a workload case, which has been conducted previously.

**The Hon. DAMIEN TUDEHOPE:** I think I answered that. I think I answered that in circumstances that if advice was provided to me which said that that would facilitate—



**The Hon. ADAM SEARLE:** It is more that we are proposing these as ways forward that you might address the reasonable concerns by these public sector workforces and thereby avert future dispute. Surely this is a good tool in your toolbox to use.

**The Hon. DAMIEN TUDEHOPE:** Every tool in the toolbox is worthwhile considering for the purposes of making sure we have industrial harmony, Mr Searle.

**Mr DAVID SHOEBRIDGE:** As long as one of those tools is not Minister Elliott.

**The CHAIR:** It is crossbench time.

**Mr DAVID SHOEBRIDGE:** Minister, can you on notice provide a list of the 80 agreements that are due to expire, including the dates?

**The Hon. DAMIEN TUDEHOPE:** Yes, I am sure I can do that.

**Mr DAVID SHOEBRIDGE:** Minister, these agreements include those in relation to paramedics, teachers and nurses, the people who have really had an extraordinary workload in the last two years. Would you agree with that?

**The Hon. DAMIEN TUDEHOPE:** Absolutely.

**Mr DAVID SHOEBRIDGE:** And your position is there cannot be a one-size-fits-all solution to all of these renegotiations. Is that right?

**The Hon. DAMIEN TUDEHOPE:** You would agree with me, I am sure, that each workplace has its own anomalies and gives rise to its own workplace expectations.

**Mr DAVID SHOEBRIDGE:** Their own pressures, their own workplace challenges. If you think for the moment, say, nurses and the extraordinary pressure they have been under working in PPE, sometimes 16 hours a day—quite distinct pressures there for nurses, do you agree?

**The Hon. DAMIEN TUDEHOPE:** Absolutely. I have made no secret in relation to that. I do not think there would be any member of the Government who would downplay the role that nurses have played during the pandemic.

**Mr DAVID SHOEBRIDGE:** But the problem is, Minister, you do have a one-size-fits-all solution to it, don't you? That is the problem your Government has in negotiating these 80 agreements. You come to it with a one-size-fits-all solution. That is your problem.

**The Hon. DAMIEN TUDEHOPE:** That is just plain wrong.

**Mr DAVID SHOEBRIDGE:** Well, you know you are coming to each of these negotiations and saying, "We have a wages policy. We're not going to even pay you a pay rise that matches inflation. Now we're happy to talk to you." That is how you start all the chats, isn't it?

**The Hon. DAMIEN TUDEHOPE:** What a fundamental misunderstanding of workplace relations that exhibits. So I solve a problem relating to ratios, for example, by a wages agreement? Quite frankly, to understand every single employment agreement, you say the only solution and problem with that workplace agreement is our wages cap.

**Mr DAVID SHOEBRIDGE:** No.

**The Hon. DAMIEN TUDEHOPE:** If I was asking—

**The Hon. ADAM SEARLE:** Or workload.

**The Hon. DAMIEN TUDEHOPE:** Well, if I was asking teachers, they say there are all sorts of different pressures which apply to them. To say that and to have a view that every workplace agreement is prejudiced because of a wages cap, it seems to ignore the whole range of issues which may exist.

**Mr DAVID SHOEBRIDGE:** Minister, every one of those negotiations you come into and say you cannot raise wages above inflation because of the wage policy. That is your consistent position for every single agreement.

**The Hon. DAMIEN TUDEHOPE:** Correct.

**Mr DAVID SHOEBRIDGE:** How do you expect to get a good faith negotiation with nurses, who have been doing this extraordinary amount of work in extraordinary conditions, if you start the negotiation by saying, "Your pay rise is going to be less than inflation"? How do you expect good faith negotiations to start?

**The Hon. DAMIEN TUDEHOPE:** Therein lies the difficulty, Mr Shoebridge—

**Mr DAVID SHOEBRIDGE:** Indeed.

**The Hon. DAMIEN TUDEHOPE:** —and where you fail to understand what wage policy really is about, because there are a whole range of things which you may do to address inflationary pressures on wages and they may involve circumstances where you take into consideration whether a particular employee has opportunities to be promoted, because guess what? A person who is promoted gets a pay rise. Now I have to tell you one of the things that is—

**Mr DAVID SHOEBRIDGE:** Your answer is you are going to promote every nurse? How are you going to promote every nurse?

**The Hon. ADAM SEARLE:** I think his answer is, "Get a job."

**The Hon. DAMIEN TUDEHOPE:** No, but 75 per cent of the public sector workforce in any year get a promotion. Any wage negotiation is subject to also taking into consideration opportunities for promotion. That is the full context of which you have got to—

**Mr DAVID SHOEBRIDGE:** So that is your position: At the end of this next agreement with nurses, your answer is you are going to be having relatively more senior nurses than junior nurses at the end? Is that the position you are taking to the nurses?

**The Hon. DAMIEN TUDEHOPE:** Do not put words in my mouth about what I am saying.

**Mr DAVID SHOEBRIDGE:** I am trying to understand your words. You say they are going to promote their way out of wage deflation.

**The Hon. WES FANG:** Point of order: Chair, I am loath to take a point of order this close to the break. However, talking over the witness is disrespectful.

**The Hon. PENNY SHARPE:** He doesn't need your help, Wes.

**The CHAIR:** It is not what is happening. It is robust conversation between the two of them. This is wasting time.

**The Hon. DAMIEN TUDEHOPE:** Thank you, and I thank Mr Fang. What I would say is it is emblematic that you do not treat an enterprise agreement, or an employment agreement, just in relation to the single issue of wage cap. It is absolutely the only perspective that is often brought to bear by you, Mr Shoebridge, in relation to these things, that that is the only thing to take into account. That is really a naive approach.

**Mr DAVID SHOEBRIDGE:** I am not going to apologise for being keen to give nurses, teachers and paramedics a wage rise. I am surprised that you take that off the table. You have taken it off the table, haven't you, from the outset?

**The Hon. DAMIEN TUDEHOPE:** No. I have considered no bargaining parameters yet in relation to negotiations with nurses.

**Mr DAVID SHOEBRIDGE:** Are you saying that wage policy does not apply to the nurses?

**The Hon. DAMIEN TUDEHOPE:** There will be consideration of wage policy.

**Mr DAVID SHOEBRIDGE:** Consideration of wage policy?

**The Hon. DAMIEN TUDEHOPE:** Mr Shoebridge, the wages policy—

**Mr DAVID SHOEBRIDGE:** Minister, I am happy for a good news story here.

**The Hon. DAMIEN TUDEHOPE:** The wages policy is set out in legislation.

**Mr DAVID SHOEBRIDGE:** I am happy for a good news story here. Are you saying that there is a prospect that the wages policy will be put aside for nurses?

**The Hon. DAMIEN TUDEHOPE:** I am saying that the health Minister will be seeking to obtain from me in my capacity as employee relations Minister a set of bargaining parameters which he will take to the nurses union in respect of the negotiation of a new agreement. What that involves, how he expresses that and how the Government approaches it in circumstances where we have a wages policy in place will be something that the Government needs to consider.

**The CHAIR:** It is now time for a break. We will return at 11.15 a.m.

**(Short adjournment)**

**The CHAIR:** We will continue with questions from the crossbench.

**Mr DAVID SHOEBRIDGE:** Minister, so that there is no ambiguity on the transcript, does the wages policy apply to the negotiations that the Government will be having with the nurses over a new enterprise agreement?

**The Hon. DAMIEN TUDEHOPE:** Absolutely, the wages policy applies. But—and you would be aware of this, I am sure, Mr Shoebridge—to the extent that there is a wages policy, that includes opportunities to work around productivity, savings and all sorts of things which employee groups can demonstrate as to why they should be outside the wages cap. I am sure that is the—

**Mr DAVID SHOEBRIDGE:** I understand the wages policy, so I do not need that explained to me, Minister. But I am aware of it.

**The Hon. DAMIEN TUDEHOPE:** That is why it is important to make sure that the wages policy is explained properly, because if you leave out productivity and savings opportunities then you do not explain properly the wages policy. What I might say is in terms of this—

**Mr DAVID SHOEBRIDGE:** Nurses want more nurses, not less nurses, though.

**The Hon. DAMIEN TUDEHOPE:** Let me just finish this. In terms of wages policy in relation to nurses, I made the point before that that generally is negotiated by the Minister responsible for that and the agency. My role in relation to it is to make sure that generally across government there is consistency in respect to the way that we administer industrial policy and employment agreements. Every agency on behalf of the workforce that it is involved with will enter into bargaining agreements, and it will seek a consistent position across government in relation to that. I will have an oversight role in relation to that to make sure that there is a consistent policy which plays out across government.

**Mr DAVID SHOEBRIDGE:** Minister, have you had it explained to you why the four-week return to work rate continues to deteriorate for the Nominal Insurer? Has that been explained to you?

**The Hon. DAMIEN TUDEHOPE:** Yes. And, in fact, I thought that in an earlier answer to you Mr Harding gave a very clear reference in relation to some of the issues which impact on return to work rates. In my discussions with the icare board, and with Mr Harding generally in the meetings that I have had with him, the return to work rate is always a focus of improving the outcomes for injured workers.

**Mr DAVID SHOEBRIDGE:** Has Mr Harding explained to you why the four-week return to work rate has dropped from 68 per cent in March of 2020 down to what I think may be a new record low of 62.6 per cent in December 2021? Has Mr Harding explained to you why that is going so badly?

**The Hon. DAMIEN TUDEHOPE:** I think he has explained it to you, probably, on numerous occasions, because the explanation which he gave earlier about the impact on every insurance scheme at the moment, either through COVID, psychological injuries and the nature of workplaces—

**Mr DAVID SHOEBRIDGE:** None of it is icare's fault?

**The Hon. DAMIEN TUDEHOPE:** Well—

**Mr DAVID SHOEBRIDGE:** It is all external factors. It is not the mess which is EML, it is not the disastrous claims management policies; it is all external factors. Is that your evidence?

**The Hon. DAMIEN TUDEHOPE:** If you were asking me a question, do not give a commentary. But I have to say that there are a variety of things, and if you suggest that in fact we need to review the manner in which we engage in case management of injured workers—

**Mr DAVID SHOEBRIDGE:** I am not suggesting it. Everybody who has looked at the scheme has said it.

**The Hon. DAMIEN TUDEHOPE:** Rightly you raise that issue. Rightly Mr Harding has been addressing that issue. Rightly the Government is addressing the issue of expanding the opportunities for more case managers. You would agree with me, I am sure, that there are different sets of injury scenarios which are playing out in the workplace which do impact on return to work rates. I am sure you would agree with me that one of the ways that we potentially deal with those new and evolving circumstances is to be looking for more specialised case management teams.

**Mr DAVID SHOEBRIDGE:** Mr Harding, is that 62.6 per cent the worst that the four-week return to work rate has been with icare in the last decade?

**RICHARD HARDING:** I do not have it going back that far, Mr Shoebridge, but I can take that on notice and come back to you.

**Mr DAVID SHOEBRIDGE:** Well, to the extent of the figures in front of you?

**RICHARD HARDING:** The figures that I have go back to 2017, which is largely what you are quoting, so the answer is, yes, it is the lowest. At this point in time the issues that we face are numerous, as the Minister has been pointing out. Clearly, to acknowledge your point, the historical changes that were made in 2017 to the claims model have made some contribution and we are addressing those. I will come to that shortly. But I think it is important to note, in respect to the more recent changes and the fall in the four-week return to work rate, that it is an industry-wide issue that has been happening. In fact, it is an issue that is actually happening across Australia. There are a lot of factors that are changing that mean that continuing to look in the rear-view mirror as we try to drive forward is not the answer. We have an environment, as I mentioned earlier, where we have a significant increase in psychological claims across the Nominal Insurer. The ABS came out in 2020 with an analysis that said one in five Australians between the ages of 18 and 34 will experience some form of mental health. Some 15 per cent of Australians between the ages of 18 and 85 will experience some form of mental health. When you have that level—

**Mr DAVID SHOEBRIDGE:** Mr Harding, do you have any evidence—

**RICHARD HARDING:** Can I finish, Mr Shoebridge?

**Mr DAVID SHOEBRIDGE:** Do you have any evidence that links that deterioration in the four-week return to work rate to an increase in psychological claims, in which case what evidence do you have linking those two together—not the general assertions about the mental health of Australia, but linking the four-week return to work rate?

**RICHARD HARDING:** I would like to finish, if I could?

**Mr DAVID SHOEBRIDGE:** Provided you are being generally relevant, at least directly relevant.

**RICHARD HARDING:** I believe it is incredibly relevant because it is one of the largest issues impacting the scheme, not just the New South Wales scheme but Australia-wide. Let us keep going if I can, Mr Shoebridge—

**Mr DAVID SHOEBRIDGE:** Mr Harding, I do not want, and it is not useful—

**The Hon. WES FANG:** Point of order—

**Mr DAVID SHOEBRIDGE:** —for you to give us a discussion about the broad mental health of Australia.

**The CHAIR:** I do not need to hear the point of order. We are getting clarification. But fine, Mr Fang, take your point of order.

**The Hon. SHAYNE MALLARD:** He is entitled to.

**The CHAIR:** He is.

**The Hon. WES FANG:** Mr Shoebridge has asked a question of the witness. The witness is answering the question. If Mr Shoebridge wishes to raise a point of order about the answering of the question then he should do so as a point of order. His continual interjections while Mr Harding is trying to answer are not helpful. I ask that if Mr Shoebridge is not happy with the answer he raises a point of order and it is addressed through that manner. I do not believe the way it is currently being addressed is procedurally fair to Mr Harding.

**The CHAIR:** I will make a couple of points; I do not want to waste the small amount of time Mr Shoebridge has left. He cannot take a point of order in relation to the answer given by a witness. The witness can answer however he chooses to answer. What I see Mr Shoebridge doing at the moment is clarifying an answer and there is a discussion going on, and that is appropriate. The witness is entitled to finish his answer and we will allow him to do that, but Mr Shoebridge is also entitled to clarify.

**Mr DAVID SHOEBRIDGE:** Mr Harding, do you have any evidence linking that deterioration in the return to work rate at four weeks to an expansion or an increase in psychological claims, in which case what is the evidence you have linking the two?

**RICHARD HARDING:** Mr Shoebridge, I can very simply give you this as a piece of evidence: The return to work rate in the four-week for psychological claims has fallen from over 20 per cent to close to 16 per cent. The number of psychological claims coming into the scheme, as I said to you earlier, is increasing at a vast rate. When you change the mix of claims coming into the scheme you will see a change in the return to

work rate, especially when those claims are, by nature, longer in term and more complex. I think the point that is important here, Mr Shoebridge, is that we need to come to grips as a community with mental health. As I said, it is one in five Australians. When you have that in the community—

**Mr DAVID SHOEBRIDGE:** Point of order—

**RICHARD HARDING:** —it will be in the workplace, and when it is in the workplace—

**Mr DAVID SHOEBRIDGE:** Chair, this is not directly relevant to the question. Mr Harding is not here as—

**RICHARD HARDING:** You may not want to hear the answer, Mr Shoebridge, but it is fact.

**Mr DAVID SHOEBRIDGE:** —an expert on Australia's mental health. It is not helpful and not related to the question.

**The Hon. WES FANG:** To the point of order—

**The CHAIR:** I am happy to rule on this. I will go back to what I said before. Mr Harding is entitled to answer how he sees fit. However, Mr Harding, we do need to be generally relevant to the questions that are being asked.

**Mr DAVID SHOEBRIDGE:** Directly relevant.

**RICHARD HARDING:** I apologise for my frustration, but this issue is the largest issue that this scheme will face for the next five years. It is directly relevant. You have an issue of mental health in the community. That is not separable from the workplace. We need to help employers understand how to better manage vulnerable people coming into the workplace so they do not get mental health injury at the workplace. At the moment we are seeing that increase significantly. It is one of the impacts that is driving the return to work rate.

The other impact, Mr Shoebridge, that we have spoken about before is COVID-19. The small business return to work rate fell 1.2 per cent in January because small businesses struggled during the COVID recovery to find places to bring people back into their business. Large businesses have the flexibility to do workarounds to find gaps for people, to have people do administrative duties—all of those sorts of things. But injured people in the small business sector do not get that opportunity as often, especially in the circumstances around COVID-19. There are a number of factors. I could go on about there being a general change in the nature of work. We have seen, as a result of COVID, a shift—

**Mr DAVID SHOEBRIDGE:** Point of order: We are not here to get a philosophical reflection on the nature of work from Mr Harding. It is about the operation of the icare scheme and this is so far from helpful.

**The Hon. WES FANG:** To the point of order: Mr Shoebridge's question was directly related to the factors that are impacting the return to work rates. Mr Harding is being directly relevant to the factors which are affecting the return to work rates—

**Mr DAVID SHOEBRIDGE:** It is my time and I would like to move on, Chair—and not hear from Wes Fang either.

**The CHAIR:** I will rule on this. Mr Harding, you do need to answer the questions that are being asked of you.

**RICHARD HARDING:** I believe I am answering the question because these are the factors that are affecting the return to work.

**Mr DAVID SHOEBRIDGE:** Minister, do you know how much was paid to EML by the Nominal Insurer for its claim management work in the last calendar year?

**The Hon. DAMIEN TUDEHOPE:** The short answer is no. I think I have it. I may have been told, but, as you ask me now, does that readily come to mind? I do not have it.

**Mr DAVID SHOEBRIDGE:** Mr Harding, how much did the Nominal Insurer pay to EML last calendar year?

**RICHARD HARDING:** Mr Shoebridge, I do not have that exact number in front of me, I am afraid, so I am happy to take that on notice.

**Mr DAVID SHOEBRIDGE:** When does EML's contract with icare expire?

**The Hon. DAMIEN TUDEHOPE:** Are you asking me or Mr Harding?

**Mr DAVID SHOEBRIDGE:** If you know, Minister, feel free to tell us. I will go to you first, Minister, because you volunteered yourself. When does it expire, Minister?

**The Hon. DAMIEN TUDEHOPE:** Mr Harding?

**RICHARD HARDING:** Are you happy for me to answer, Mr Shoebridge? It is 31 December this year.

**Mr DAVID SHOEBRIDGE:** Alright. Between now and 31 December, it would be fair to say the relations with EML are somewhat strained because you have determined to terminate their relationship with you as the primary or near sole claims manager. Would it be fair to say that the relations are somewhat strained?

**RICHARD HARDING:** I do not believe they are and I would be fascinated to understand where you might be getting that from. We have a strong relationship with EML. We work very closely with them literally on a day-to-day basis.

**Mr DAVID SHOEBRIDGE:** You would be surprised to know how many people in icare are very unhappy at the moment, Mr Harding, or maybe you would not be surprised to know how many people.

**The Hon. DAMIEN TUDEHOPE:** That is not a question.

**Mr DAVID SHOEBRIDGE:** You are asking me where I get information from. Icare is a very unhappy ship at the moment, is it not?

**RICHARD HARDING:** I do not accept that assertion, Mr Shoebridge. We have a high degree of employee engagement. My point, perhaps more relevantly, is that the relationship with EML is quite strong and we have not determined to remove them from the scheme. What we are doing is we have gone to market with an open RFP to which everybody who is interested in that can apply and place an application. EML may choose to do that or they may not. I am not aware of their decision-making process. On a day-to-day basis we work with them very closely and they are very cooperative and very engaged in the management of the scheme and in attempts to improve the management of the scheme.

**Mr DAVID SHOEBRIDGE:** We are in a lot of trouble, aren't we? Yes.

**The Hon. ADAM SEARLE:** Minister, a little while ago we were discussing whether or not you would insert yourself into the difficulties being experienced by the workforces in the health sector, possibly the education sector, possibly other areas, and you said that you were reluctant to insert yourself into these things. I think I recall that your evidence was at too early a stage. At what point do you as Minister become involved in these matters? Is there a formal process or is it more the feel of the thing?

**The Hon. PENNY SHARPE:** It is the vibe.

**The Hon. ADAM SEARLE:** The vibe, yes.

**The Hon. DAMIEN TUDEHOPE:** It is both a formal and an informal process. I think there is an aspect of keeping the office of Employee Relations up to date in relation to what is occurring in relation to potential disputes. But, primarily—and I think we have canvassed this—there is an expectation that an agency would engage itself with bargaining parameters relating to the claims of particular workplaces, which they would be making. I would have a role to play in ensuring the consistency and fairness of those bargaining parameters across the public sector and workplace environment. To the extent that there is a formal process to go through, the formal process would be a sign-off by the Minister for Employee Relations in respect of the bargaining parameters which would apply in a particular agency. To make sure that they are consistent and to the extent that they are also required to be fair across the system and in accordance with Government policy, that is a process that I would be involved in.

**The Hon. ADAM SEARLE:** Let us assume there are discussions, they are not going well, they are going off the rails, at what point do you as Minister become involved, even though the primary responsibility rests with the portfolio Minister? At what point do you as a representative of the central Government play a role?

**The Hon. DAMIEN TUDEHOPE:** On a formal level, obviously I would be involved if an application needed to be made to a tribunal or commission in relation to—

**The Hon. ADAM SEARLE:** Employee Relations is the clearing house for all of that across government.

**The Hon. DAMIEN TUDEHOPE:** Across government. A recent example that you may be aware of is an application which I made to the Fair Work Commission in relation to a strike by the RTBU. That came to my office and I lodged that application with the Fair Work Commission. But, having said that, I do not think that it should ever get to that stage before the Minister for Employee Relations has any eyes on a particular issue.

**The Hon. ADAM SEARLE:** You think that you should become involved much earlier.

**The Hon. DAMIEN TUDEHOPE:** Much earlier to the extent that, if there are issues which may potentially trigger Treasury concerns, for example, in terms of outcomes, I think it is appropriate that those workplace negotiations would also be filtered through my office and in turn by my office through Treasury.

**The Hon. ADAM SEARLE:** I am just interested to sort of understand what the point is at which the portfolio agency and Minister ceases to have sole management of a matter and when you get to have eyes on.

**The Hon. DAMIEN TUDEHOPE:** I do not think there is ever a point where an agency would not have some responsibility. I think in terms of—

**The Hon. ADAM SEARLE:** I said sole responsibility.

**The Hon. DAMIEN TUDEHOPE:** My office would never have just sole responsibility. I would have to be informed by individual agencies in relation to the negotiation process and what particular work bans potentially are being put in place or suggested. But, more importantly—rather than always being involved in conflict—is to have conflict avoidance strategies, and I think that there is a role for Employee Relations to identify potential triggers for conflict and engage agencies with a view to how you are proposing to ensure that those conflicts are avoided potentially going forward.

**The Hon. ADAM SEARLE:** This is in reference to your earlier evidence that you are a lover not a fighter, is that right?

**The Hon. DAMIEN TUDEHOPE:** I think that if you can avoid a fight by some other strategy—and maybe Mr Putin can take some example from me.

**The Hon. ADAM SEARLE:** Indeed. Your evidence is that is your approach.

**Mr DAVID SHOEBRIDGE:** I would not go down that comparison too far, Minister. That is not going to work for you.

**The Hon. ADAM SEARLE:** Your evidence is you and Employee Relations and you as Minister search for solutions. You do not antagonise. You do not sit in your trenches. You do not exacerbate things.

**The Hon. DAMIEN TUDEHOPE:** I would prefer that that does not exist. However, it should not be construed that the Government will just adopt a weak position in respect of its bargaining parameters. Once the bargaining parameters are set in place, I think the Minister for Employee Relations is charged with defending them.

**The Hon. ADAM SEARLE:** Your job is to make sure that these things are strictly adhered to by agencies' Ministers.

**The Hon. DAMIEN TUDEHOPE:** Unless and until there is general agreement across government to move away from them, I would be saying that there is a responsibility on the Minister to make sure that the negotiations are carried out in accordance with the bargaining parameters. If that gives rise to a circumstance where we would have to seek recourse and the advice provided to me is that the only solution to this is to seek recourse to the Fair Work Commission or the Industrial Relations Commission, then clearly I would be negligent not to accept that advice. At the time that you get that advice, I think you have got to ask the question: Have we explored every opportunity for resolving this before we get here?

**The Hon. ADAM SEARLE:** Turning back to some of the underlying problems across the public sector, in previous estimates I asked your predecessor and Mr Coutts-Trotter's predecessor about the gender pay gap across the public sector, and evidence was given that this was very much front of mind and that Ministers and the head of DPC were working on closing the gap. But it seems to me that over the past three years, 2019, 2020 and now 2021, the gender pay gap has increased each year—the most recent year that we have got records for—by over 4 per cent up to a gap of nearly \$4,000. Given the gender segmentation of much of the public sector workforce, particularly in Health and Education and other areas as well, this is doing huge damage to the women workers of New South Wales. What are you and indeed Mr Coutts-Trotter going to do to reverse this blowout of the gender pay gap?

**The Hon. DAMIEN TUDEHOPE:** In fact, I think that is a legitimate concern.

**The Hon. ADAM SEARLE:** It is.

**The Hon. DAMIEN TUDEHOPE:** It is one that the Treasurer also shares, because I think the consultative committee that he has put forward in relation to engaging the female workforce more readily will, in fact, have to take into account the issue of gender pay gap in not only the public sector but, to an extent that we provide an example to the private sector, there are flow-on effects if we cannot do it properly. But there are some positive things that we do, by no means probably enough. In terms of considering board appointments, to the

extent that they come to me, there is an opportunity to make sure that the balance of boards and the like do in fact improve. I notice Mr Mookhey has arrived, which is a concern. To finish that answer, I would be saying to you Mr Searle—and I am sure Mr Coutts-Trotter could potentially add to this—it is being directly addressed by Treasury in the way that they are engaging in a consultative process in relation to that. I think that generally across the board we need to have a focus on how do we improve that.

**MICHAEL COUTTS-TROTTER:** There is the issue of the gender segmentation of different occupations. That is the larger issue and in some ways the more difficult issue to tackle. Then there are the things that each employer and leadership team can do to try and identify and remove the kind of impediments for women in their career advancement within the public sector.

**The Hon. ADAM SEARLE:** Just on that point, your predecessor gave some evidence that when people outside the award bands are appointed, it is often the case that male SES go to the top of the scale.

**MICHAEL COUTTS-TROTTER:** Yes.

**The Hon. ADAM SEARLE:** Women workers go to the bottom, maybe the middle if they are very assertive.

**MICHAEL COUTTS-TROTTER:** Yes.

**The Hon. ADAM SEARLE:** I have been getting reports in the latest MoG changes that have occurred on the reshuffle that some of this has been exacerbated.

**MICHAEL COUTTS-TROTTER:** I have not heard that, but the issue that Mr Reardon was identifying, absolutely it is evidenced that there is a pattern that sees women in executive roles appointed to a lower point in the available pay band than male appointments. Each secretary, each senior management group has that data to hand and I know is very closely managing that issue to try and ensure that there is not a level of thoughtless bias operating there and that they are more thoughtful about where women start in those roles.

**The Hon. DANIEL MOOKHEY:** Greetings, Minister, good to see you.

**The Hon. DAMIEN TUDEHOPE:** It is great to see you, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** And greetings to all the officials as well and thank you for your attendance. Minister, can I ask you, when were you first told that your Government had decided to shut down the train network in response to notified actions by the Rail Tram, and Bus Union?

**The Hon. DAMIEN TUDEHOPE:** That is a completely false premise which you raise in relation to that. The shutdown was in fact properly characterised as a strike by the RTBU and I have to say that if you couch your questions in terms of a shutdown, I will consistently reject them.

**The Hon. DANIEL MOOKHEY:** I appreciate that that is your position, Minister. In terms of the decision to close the network in response to industrial action being taken by the Rail, Tram, and Bus Union, the RTBU, when were you first notified that the Government had made that decision?

**The Hon. DAMIEN TUDEHOPE:** I was obviously aware of the potential for a strike when I lodged an application in the Fair Work Commission. That action was predicated on notices given by the RTBU that they would in fact be taking industrial bans and the cumulative effect would be that trains would not be able to operate for a two-week period, commencing on 21 February. So to the extent that I was first notified of a potential strike by the RTBU, a set of industrial or work bans being put in place, I was first made aware of that, I think, on the Thursday before I lodged the application—

**The Hon. DANIEL MOOKHEY:** I appreciate that, Minister.

**The Hon. DAMIEN TUDEHOPE:** —and I was taken through the application.

**The Hon. DANIEL MOOKHEY:** And I appreciate that. But I have just learnt from the other room that the decision to close the network was made by Transport for NSW executive on Sunday night, sometime between 9.30 and 10 o'clock. That was their evidence. They did that after the conciliation that was being done in your name and not resultant—just let me finish—so, I know that this decision was made then. Were you told that evening that the network was going to shut?

**The Hon. DAMIEN TUDEHOPE:** I am not going to engage in a commentary on what evidence was given in another place, and you know that that is procedurally unfair to put to me evidence which was given in another place and ask me to comment on it.

**The Hon. DANIEL MOOKHEY:** Minister, it is not a trick question.



**The Hon. PENNY SHARPE:** He is perfectly entitled to ask you the question that he is asking you.

**The Hon. DANIEL MOOKHEY:** It is not a trick question, Minister.

**The Hon. DAMIEN TUDEHOPE:** To the extent the question says, Were you aware of a decision made by Sydney Trains at between—what were the times that you indicated to me?

**The Hon. DANIEL MOOKHEY:** It was 9.30 onwards from the Sunday night.

**The Hon. DAMIEN TUDEHOPE:** Between 9.30 and 10.00.

**The Hon. DANIEL MOOKHEY:** The decision was made between 9.30 and 10.00. Any time after that were you told?

**The Hon. DAMIEN TUDEHOPE:** No, is the short answer. I was not told.

**The Hon. DANIEL MOOKHEY:** Fair enough. I presume you therefore, like the rest of us, found out about that specific decision in the morning thereafter?

**The Hon. DAMIEN TUDEHOPE:** If you characterise the morning as being 2.30 a.m., that is when I found out.

**The Hon. DANIEL MOOKHEY:** To be fair, as the father of young children, I would agree with you 2.30 is the morning. Can I say that we have learnt that Mr Coutts-Trotter was notified at 11.50. Through you Minister to Mr Coutts-Trotter, Mr Coutts-Trotter, you received a text message at 11.50 from Mr Sharp advising you that the network was going to shut, did you not?

**MICHAEL COUTTS-TROTTER:** Yes, that is correct.

**The Hon. DANIEL MOOKHEY:** Did you make any attempts to contact any Minister thereafter?

**MICHAEL COUTTS-TROTTER:** I was asleep unfortunately.

**The Hon. DANIEL MOOKHEY:** I had to put it to you.

**MICHAEL COUTTS-TROTTER:** No, I was deeply asleep after a busy day.

**The Hon. DANIEL MOOKHEY:** I appreciate that. Minister, can I ask you, you were provided specific briefings before you lodged the application, were you not?

**The Hon. DAMIEN TUDEHOPE:** Yes, in fact I was briefed by the Crown Solicitor and counsel relating to the application and I was provided with copies of all the evidence which was lodged and which has been selectively used in these proceedings for the purposes of trying to—

**The Hon. DANIEL MOOKHEY:** Do you recall being provided the specific risk assessment, safety risk assessment that Transport have relied upon?

**The Hon. DAMIEN TUDEHOPE:** I was provided with a statement by Mr Jasbir Tumber, which to the best of my knowledge, has never been relied upon by any questioner in this forum in relation to the evidence which was—

**The Hon. DANIEL MOOKHEY:** Well—

**The Hon. DAMIEN TUDEHOPE:** It is important that you hear me out on this.

**The Hon. DANIEL MOOKHEY:** Minister, I just asked you a direct question. Just before you go too far—

**The Hon. DAMIEN TUDEHOPE:** It is an answer to your question. I was provided with a substantial briefing, which included a statement, which in fact summarised the issues and the safety concerns which Sydney Trains had in connection with the bans which had been introduced by the RTBU.

**The Hon. DANIEL MOOKHEY:** Do you just recall—

**The Hon. DAMIEN TUDEHOPE:** That evidence is crucial to understanding the position that Sydney Trains had, both before they lodged the proceedings in the application and in terms of the negotiations which they were engaged in on both Saturday and Sunday. They reached an agreement, which allegedly addressed those concerns, on Saturday—

**The Hon. DANIEL MOOKHEY:** I appreciate that Minister.

**The Hon. DAMIEN TUDEHOPE:** —which was in fact subverted by the union on Sunday.

**The Hon. DANIEL MOOKHEY:** Minister, I just wanted to ask you, do you recall specifically when you got that briefing. Was it on Thursday?

**The Hon. DAMIEN TUDEHOPE:** Thursday, to the best of my recollection, I had that briefing.

**The Hon. DANIEL MOOKHEY:** Thank you very much. Was the secretary present with you at that briefing?

**The Hon. DAMIEN TUDEHOPE:** Yes, I think he—

**MICHAEL COUTTS-TROTTER:** No.

**The Hon. DAMIEN TUDEHOPE:** No, it was done on Microsoft Teams, as I recall.

**The Hon. DANIEL MOOKHEY:** That is good to know. In that briefing, were you advised about any scenario planning which would have involved the shutdown extending beyond one day?

**The Hon. DAMIEN TUDEHOPE:** In fact, the statement of Mr Tumber—and, in fact, the work ban notices which are attached to the application in fact foreshadow a shutdown of two weeks, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** Could I just give you specific—

**The Hon. DAMIEN TUDEHOPE:** You have asked me about whether it was one day. The action being taken and upon which Mr Walters, for example, was asked to give advice was for a two-week strike period. The cumulative effect is specifically outlined in the—

**The Hon. DANIEL MOOKHEY:** I have read it.

**The Hon. DAMIEN TUDEHOPE:** Why have you never asked a question in relation to that statement?

**The Hon. DANIEL MOOKHEY:** Be careful what you wish for, Minister.

**The Hon. DAMIEN TUDEHOPE:** I am happy to look at it.

**The Hon. DANIEL MOOKHEY:** Minister, I just want to ask you very specifically, and please listen carefully: In the briefing that you were given on the Thursday, was your view ever solicited, or your office's view ever solicited, about keeping the network shut down until Wednesday in order to facilitate Fair Work being able to undertake a full hearing into your application rather than just simply an interim hearing?

**The Hon. DAMIEN TUDEHOPE:** That scenario was never canvassed with my office.

**The Hon. DANIEL MOOKHEY:** Or you?

**The Hon. DAMIEN TUDEHOPE:** What was canvassed with me was that we needed to keep the trains running on Monday.

**The Hon. PENNY SHARPE:** You shut down the network.

**The Hon. DAMIEN TUDEHOPE:** The application which was lodged with the Fair Work Commission was designed to prevent a strike.

**The Hon. DANIEL MOOKHEY:** I appreciate that.

**The Hon. DAMIEN TUDEHOPE:** And the strike eventuated.

**The Hon. DANIEL MOOKHEY:** Thank you, Minister. Can I just please have the tendered documents given to the Minister? Minister, I am going to read you a text exchange which takes place between the head of HR at Transport for NSW and Mr Sharp. This has been produced to the upper House. I think you would know this document as tendered document—I think it might be—001002, but it is entirely possible that I have mislabelled it. So I might just read it and then give you my version, because that just might be simpler.

**The Hon. DAMIEN TUDEHOPE:** Hang on, before we get to that you have just said that this was tendered in another place?

**The Hon. DANIEL MOOKHEY:** No. I just tendered it here.

**The Hon. SHAYNE MALLARD:** It is a Standing Order 52, though, isn't it?

**The Hon. DANIEL MOOKHEY:** Yes, it is. It has been produced to the upper House. Can I just say that this is a text message—

**The Hon. DAMIEN TUDEHOPE:** What page are we looking at?

**The Hon. DANIEL MOOKHEY:** Let me just read it to you because I am just not sure that you and I have the exact same versions. So I am going to read it from my version and provide it to you, Minister, as well, but I think it might be there.

**The Hon. WES FANG:** Point of order: Mr Mookhey, did you tender the documents that you have handed to the Minister?

**The Hon. DANIEL MOOKHEY:** Yes, I just did it.

**The Hon. WES FANG:** Then how are you unsure that you have the same version?

**Mr DAVID SHOEBRIDGE:** It might be best, Daniel, just to double-check, because time is about to run out, rather than go through this in an untidy fashion. Maybe just double-check the documents over the next 20 minutes.

**The Hon. DANIEL MOOKHEY:** Sure, I am happy to do that.

**Mr DAVID SHOEBRIDGE:** Minister, while we are on the matter of the trains ceasing to operate at the Government's direction on Monday—

**The Hon. DAMIEN TUDEHOPE:** I am not going to accept that.

**Mr DAVID SHOEBRIDGE:** It was a Government decision, was it not, to not operate the trains?

**The Hon. DAMIEN TUDEHOPE:** No, it was a union decision not to work in accordance with a roster which had been provided by Sydney Trains.

**Mr DAVID SHOEBRIDGE:** So union members were ready to turn up to work and run the trains and they were told—

**The Hon. DAMIEN TUDEHOPE:** No, they were prepared to turn up and work a different roster.

**Mr DAVID SHOEBRIDGE:** Let me finish, Minister. I let you finish. The union members were prepared to turn up and run the trains to a reduced roster and management said, "Don't turn up. We're shutting the train system down." That is what happened, is it not?

**The Hon. DAMIEN TUDEHOPE:** Mr Shoebridge, that is a complete mischaracterisation of what occurred. The union in fact reached an agreement to work a roster which had been set by Sydney Trains. They turned up to work at a roster which they decided that they would work to. Now, on any view of it, that is a withdrawal of labour.

**Mr DAVID SHOEBRIDGE:** And then on Tuesday, that roster worked.

**The Hon. DAMIEN TUDEHOPE:** Just let me finish.

**Mr DAVID SHOEBRIDGE:** On Tuesday that roster worked and the trains worked safely.

**The Hon. PENNY SHARPE:** After the Premier intervened.

**The Hon. DAMIEN TUDEHOPE:** In fact, Sydney Trains formed the view that it could not work. Unilaterally the union cannot decide the roster on which the trains will work. The roster is set by Sydney Trains and it is a roster which in fact the unions refuse to work to.

**Mr DAVID SHOEBRIDGE:** And then on Tuesday, the very roster they were willing to work to on Monday magically worked, safely—

**The Hon. DAMIEN TUDEHOPE:** Well—

**Mr DAVID SHOEBRIDGE:** Let me finish—effectively and people got around the city. So it was safe on Tuesday, but not safe on Monday. Is that your evidence?

**The Hon. DAMIEN TUDEHOPE:** That is a complete misunderstanding of how a roster is set and works. You cannot—

**Mr DAVID SHOEBRIDGE:** It was safe on Tuesday but not on Monday.

**The Hon. SHAYNE MALLARD:** Point of order—

**The Hon. DAMIEN TUDEHOPE:** You cannot just change a roster like that and in fact put to me a circumstance that the roster which was being put on Sunday afternoon was the one that they worked to on Tuesday. That is a complete misunderstanding of how rosters work.

**Mr DAVID SHOEBRIDGE:** I think—

**The Hon. DAMIEN TUDEHOPE:** You might have a view on it but on any view of it Sydney Trains are entitled to set the roster. The union is not entitled to set the roster and say "This is the one we will work to." That, in any view of it, can be characterised as a withdrawal of labour.

**Mr DAVID SHOEBRIDGE:** So that is what it came down to, didn't it—management muscling up and saying to the union, "How dare you come up with an alternate roster. It is our job to do the roster and we're going to try to embarrass you by shutting the train system down"?

**The Hon. DAMIEN TUDEHOPE:** Well, again—

**Mr DAVID SHOEBRIDGE:** That is what happened, isn't? It was this kind of muscled up management saying to the union, "How dare you?"

**The Hon. DAMIEN TUDEHOPE:** Again, that is a fundamental misunderstanding of how rosters work. Let me just quote from Mr Tumber's evidence, which was available to the union and available to everyone involved, including everyone on this Committee. In paragraph 11 he says, "In preparing this statement I have considered the complex nature of Sydney Trains multiple functions, the broad scope of the industrial action proposed in the notices and the wideranging impact that industrial action might have, including by way of serious and total disruption of the rail network." He goes on, "Based on my knowledge and experience with Sydney Trains it is my opinion that Sydney Trains would not be able to run any metropolitan services for the period of the industrial action if all the industrial action proposed in the notices was taken."

**Mr DAVID SHOEBRIDGE:** I am going to invite you—

**The Hon. DAMIEN TUDEHOPE:** "As I detail below in this statement, Sydney Trains has assessed the risks associated with the industrial action and concluded that the rail network cannot be operated for the two-week period commencing on 21 February." That is the evidence.

**Mr DAVID SHOEBRIDGE:** When did you have that, Minister?

**The Hon. DAMIEN TUDEHOPE:** I had that in support of the application, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** When did you have that in front of you? When did you first read that and realise that, on the evidence of Sydney Trains, they were looking at a two-week shutdown? When did you first read that?

**The Hon. DAMIEN TUDEHOPE:** On the evidence of Sydney Trains, they had before them notices which had been lodged by the RTBU, setting out what the totality of the bans was going to be.

**Mr DAVID SHOEBRIDGE:** RTBU.

**The Hon. DAMIEN TUDEHOPE:** That is the starting point, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** No, it is a simple question, Minister.

**The Hon. DAMIEN TUDEHOPE:** You might not like it but the starting point—

**Mr DAVID SHOEBRIDGE:** When did you first read or have available to you the affidavit you just read on which had that Sydney Trains looking to a two-week shutdown? When did you first have that to hand?

**The Hon. DAMIEN TUDEHOPE:** The two-week shutdown was foreshadowed by the RTBU.

**Mr DAVID SHOEBRIDGE:** When? When did you first have that to hand, Minister?

**The Hon. DAMIEN TUDEHOPE:** I had this document to hand at the time that I lodged the application.

**Mr DAVID SHOEBRIDGE:** When was that?

**The Hon. DAMIEN TUDEHOPE:** On the Thursday before.

**Mr DAVID SHOEBRIDGE:** So you knew on the Thursday before—

**The Hon. DAMIEN TUDEHOPE:** And this is what we were trying to prevent.

**Mr DAVID SHOEBRIDGE:** —that the management of Sydney Trains were looking at a two-week shutdown and you did nothing.

**The Hon. DAMIEN TUDEHOPE:** Mr Shoebridge, you fail to accept that the RTBU—

**Mr DAVID SHOEBRIDGE:** RTBU.

**The Hon. DAMIEN TUDEHOPE:** RTBU, yes, I beg your pardon—were putting in place workplace bans which they had notified to Sydney Trains. That is the starting point. Now, this witness—

**Mr DAVID SHOEBRIDGE:** And under which you failed to acknowledge, Minister—

**The Hon. DAMIEN TUDEHOPE:** This witness gives evidence.

**The Hon. WES FANG:** Point of order: The Minister is clearly trying to address the points and questions of Mr Shoebridge. Mr Shoebridge continues to try to talk over the Minister while he is addressing those. It is disorderly. I ask you to either ask Mr Shoebridge to stop or call him to order, or allow the Minister to answer unimpeded.

**The CHAIR:** I am not going to do that. What I am going to do is say that we do need to have one person speaking at a time for Hansard, but I am happy for clarification from both sides to occur while we undergo these questions and answers.

**The Hon. DAMIEN TUDEHOPE:** The planning for the two-week strike was not Sydney Trains; it was the RTBU. Now, that is the starting point. Have a look at the notices. Do not walk away from producing those notices. When you do, this is what Sydney Trains was reacting to and in respect of which they put on a witness statement to say that the cumulative impact of those work bans is that if we do not get an order—and guess what, Mr Shoebridge? We reached an agreement on Saturday afternoon which would allow the trains to run on Monday, and that was walked away from by the union on Sunday.

**Mr DAVID SHOEBRIDGE:** Minister, I am now going to invite you to table the affidavit just so that we have a clear record, including any annexures.

**The Hon. DAMIEN TUDEHOPE:** Absolutely.

**Mr DAVID SHOEBRIDGE:** Again I put to you your position on safety and Sydney Trains' position on safety flies in the face of what actually happened where, with the bans still in place, the train system operated safely on the Tuesday.

**The Hon. DAMIEN TUDEHOPE:** At 25 per cent capacity.

**Mr DAVID SHOEBRIDGE:** Why do you refuse to accept that reality and why will you not accept responsibility for the chaos your Government created on Monday?

**The Hon. DAMIEN TUDEHOPE:** Again, that is an absolute complete mischaracterisation of what occurred.

**Mr DAVID SHOEBRIDGE:** You have to speak into the microphone.

**The Hon. DAMIEN TUDEHOPE:** That is a complete mischaracterisation of what occurred. Because the negotiating process that was engaged in by the Government on Saturday reached an agreement to run the Sydney Trains roster on Monday. Now—

**Mr DAVID SHOEBRIDGE:** Just to get back to what happened on the—

**The Hon. DAMIEN TUDEHOPE:** No, you might not like this—I am answering the question, Mr Shoebridge. And the reason why we got to a position on Tuesday where we could run the trains: we ran them at 25 per cent of capacity. Now, again, I have to say to you, that addresses safety concerns. First and foremost in the eyes of Sydney Trains, as I understood it, was the concept of ensuring the safety of the commuters of this State.

**Mr DAVID SHOEBRIDGE:** Minister, did you have any discussions with Minister Elliott over the weekend about the trains?

**The Hon. DAMIEN TUDEHOPE:** No.

**Mr DAVID SHOEBRIDGE:** In the weekend leading up to the Monday disruption?

**The Hon. DAMIEN TUDEHOPE:** The discussions I had over the weekend involved satisfying myself that an agreement had been reached on Saturday and that—

**Mr DAVID SHOEBRIDGE:** No, Minister, I am asking you a very specific question.

**The Hon. DAMIEN TUDEHOPE:** —negotiations were conducted in good faith—

**Mr DAVID SHOEBRIDGE:** Minister, I am asking you a specific question and you are refusing to answer it.

**The Hon. DAMIEN TUDEHOPE:** —and that the union walked away from those agreements—

**The Hon. DANIEL MOOKHEY:** Point of order: The Minister was asked a direct question and this is not a relevant answer. It was a direct question that should get a direct response.

**Mr DAVID SHOEBRIDGE:** Did you have any discussions, Minister, with Minister Elliott?

**The Hon. SHAYNE MALLARD:** To the point of order: The Chair has not ruled on it. The Minister is outlining his conversations regarding that weekend and going in—

**Mr DAVID SHOEBRIDGE:** No, he is not.

**The Hon. PENNY SHARPE:** Not very directly.

**The Hon. SHAYNE MALLARD:** You can add to the point of order when you are ready to, Ms Sharpe. But he is answering that question, which was: Did you have discussions with Minister Elliott around the industrial action? The Minister is outlining the discussions he had and it covers the industrial action.

**The CHAIR:** I think, to be fair, we have let the Minister go, but now there is a direct question in relation to a conversation. Minister, you will need to answer that question.

**Mr DAVID SHOEBRIDGE:** Minister, did you have—

**The Hon. DAMIEN TUDEHOPE:** If you are asking me—

**Mr DAVID SHOEBRIDGE:** I will restate it so there is perfect clarity.

**The Hon. DAMIEN TUDEHOPE:** And I will answer your question.

**Mr DAVID SHOEBRIDGE:** Over the weekend leading up to the trains ceasing to operate on Monday, did you have any discussions with Minister Elliott about the trains?

**The Hon. DAMIEN TUDEHOPE:** Leading up to the strike on Monday, I had no discussions with Mr Elliott.

**Mr DAVID SHOEBRIDGE:** Mr Elliott was transport Minister that weekend. He had been transport Minister for some 63 days, by Monday. Were you aware that he had not once met with the transport secretary in those 63 days?

**The Hon. DAMIEN TUDEHOPE:** There had been media speculation in relation to the relationship between Mr Elliott and the transport secretary, but I am unaware as to how that plays out. I know in the relationships I have with the secretaries that I have a relationship with, I have regular communications with all of them.

**Mr DAVID SHOEBRIDGE:** Yes. You do not go two months without meeting with the secretaries, do you? That would be awkward, would it not?

**The Hon. DANIEL MOOKHEY:** Negligent.

**The Hon. DAMIEN TUDEHOPE:** You can form your own view in relation to that. That is not something—

**Mr DAVID SHOEBRIDGE:** Minister, can I say, just for the record, I do not believe that that is how you undertake your ministerial responsibilities and I never have thought that. But I am asking you—

**The Hon. DAMIEN TUDEHOPE:** I am not going to comment on another Minister.

**Mr DAVID SHOEBRIDGE:** Did Mr Elliott speak to you, at any time in those first 63 days, about his relationship with the secretary and why he would not meet with him?

**The Hon. DAMIEN TUDEHOPE:** It is unfair to me, in this forum, to have a commentary on another Minister and in respect of the relationship. But, to the best of my recollection, there were no discussions I ever had with him about his relationship with Mr Sharp, other than I was aware of some media speculation in respect of that relationship.

**Mr DAVID SHOEBRIDGE:** It is no longer media speculation. Just so as to be clear, that matter was confirmed on the record in the other estimates hearing this morning.

**The Hon. DAMIEN TUDEHOPE:** Again, I am not going to give a commentary on what occurred in another forum.

**The Hon. PENNY SHARPE:** Your staff are watching though, Minister. I am sure your staff are watching.

**Mr DAVID SHOEBRIDGE:** Minister, the floods across the State will have caused significant damage to government property and to government assets.

**The Hon. DAMIEN TUDEHOPE:** Correct.

**Mr DAVID SHOEBRIDGE:** Have you had an initial brief about what the expected costs will be to Insurance for NSW of the flood damage?

**The Hon. DAMIEN TUDEHOPE:** No, is the short answer. But I am really very conscious of the potential impact of the floods on, certainly, government assets and, certainly, on personal assets. Mr Shoebridge, I do not know if you are—I have to say that insurance is one of the major issues which I think confronts government, both Federal and State governments, in terms of how we—

**Mr DAVID SHOEBRIDGE:** Flood and fire.

**The Hon. DAMIEN TUDEHOPE:** Flood and fire. In fact, I raised this issue in respect of bushfires when it arose—

**Mr DAVID SHOEBRIDGE:** Indeed, so did I.

**The Hon. DAMIEN TUDEHOPE:** —because of the number of people who were either uninsured or underinsured. I think the problem which we are consistently being faced with is that there is an increasing reliance on government to bail people out. We need to have a different insurance solution for business and homeowners.

**Mr DAVID SHOEBRIDGE:** Have you looked at the example in New Zealand, where they have a similar uninsurable risk in the form of earthquake cover and they have a national insurance scheme funded by a levy on insurance premiums to cover their uninsurable risk? Have you looked at that?

**The Hon. DAMIEN TUDEHOPE:** I would suggest that probably to the extent that it is a national scheme it would be a national issue. But I think there is some force in—

**Mr DAVID SHOEBRIDGE:** New Zealand is a bit smaller than New South Wales, so they comparable.

**The Hon. DAMIEN TUDEHOPE:** Yes, but it is a national scheme. I know the Federal Small Business Ombudsman, Mr Billson, has an inquiry currently which he is conducting in relation to insurance insofar as it impacts on small business. But generally, federally, I know that this is a big issue in terms of the exposure of governments to, I suppose, emergency circumstances.

**Mr DAVID SHOEBRIDGE:** Do you have any advice or have you sought any advice on the proportion of residents in, say, Lismore, who did not have flood insurance?

**The Hon. DAMIEN TUDEHOPE:** No, I have not received that advice. I do not think it necessarily falls within my portfolio. I would anticipate that in my capacity as Minister for the insurer I have—

**Mr DAVID SHOEBRIDGE:** In that capacity then, let us speak about your capacity as the Minister responsible for Insurance for NSW, do you know how much—

**The Hon. DAMIEN TUDEHOPE:** I do not think I am the Minister for Insurance for NSW.

**The Hon. PENNY SHARPE:** Have you got your list? I have got your allocation of Acts.

**The Hon. DANIEL MOOKHEY:** No, you are responsible—my version is, you are not responsible for the TMF.

**The Hon. DAMIEN TUDEHOPE:** Correct.

**The Hon. DANIEL MOOKHEY:** But you are responsible for the client service provided by icare to the TMF.

**Mr DAVID SHOEBRIDGE:** Correct.

**The Hon. DAMIEN TUDEHOPE:** Okay, but it is the TMF assets.

**Mr DAVID SHOEBRIDGE:** I will go to Mr Harding.

**The Hon. DAMIEN TUDEHOPE:** It is the TMF assets.

**Mr DAVID SHOEBRIDGE:** Mr Harding, what steps is icare undertaking to speak with government agencies to understand the scale of the cost that will have to be met following this most recent flood?

**RICHARD HARDING:** Thank you, Mr Shoebridge. We have a very close relationship with agencies. It is very early days to be trying to get an estimate of cost. We have only really had a small number of claim

notifications from agencies at this point in time and we do not have a valuation of what we think the projected cost would be. It is very, very early days. People are not yet getting back into buildings to be able to make assessments. So we are talking with agencies, the relevant agencies across government, on a regular basis. But it is not something I can give you a number on today; it is way too early in the process and there will be further events over the weekend and into next week, I am sure.

**The Hon. DAMIEN TUDEHOPE:** I think that is the short answer, Mr Shoebridge, is that it is too early to say.

**Mr DAVID SHOEBRIDGE:** Do we know how much Insurance for NSW, through icare, paid out for flood damage and flood repairs last calendar year?

**RICHARD HARDING:** I do not have that specific number. I can tell you that between the floods and the bushfires in that particular area it was approximately \$800 million and I believe—and I am just talking off the top of my head, so I might give you this on notice as a more accurate answer—approximately, let us use those words, \$600 million of it was related to bushfire and let us call it \$200-something-million related to floods.

**Mr DAVID SHOEBRIDGE:** When we say last year, do you mean the last financial year ending on 30 June or do you mean the last calendar year?

**RICHARD HARDING:** I am actually probably talking about 2020, we had the bushfires—

**The Hon. DANIEL MOOKHEY:** In 2019-20.

**RICHARD HARDING:** —and 2021, where the bushfires were relevant.

**Mr DAVID SHOEBRIDGE:** So that combination of fire and flood that we saw at the end of 2019 and the beginning of 2020 and the floods in that period.

**RICHARD HARDING:** Exactly. It is probably better, rather than me talking off the top of my head, Mr Shoebridge, which I do not like to do, that I bring you this on notice so you get an accurate answer.

**Mr DAVID SHOEBRIDGE:** If you could take on notice, for that period from 2019-20 onwards, what the cumulative cost to the State of New South Wales has been for flood and fire.

**RICHARD HARDING:** Absolutely. No problem at all.

**Mr DAVID SHOEBRIDGE:** It would be fair to say though that the ballpark figure of \$800 million was a tragically high record amount paid out for flood and fire for the scheme.

**RICHARD HARDING:** I believe the amount for bushfire might be close to being a record but, again, I would prefer to come back to you. What I would say is that this is the normal function of the TMF. This is what it is here for—to provide for unexpected outcomes when the Government is trying to deliver its services.

**Mr DAVID SHOEBRIDGE:** Has icare undertaken any work to understand the nature of that risk going forward, given the impacts of climate change? What was once a one-in-100-year flood now seems to be happening once every 12 months, and what was once a catastrophic once-in-a-century fire is happening once every 10 years. Have you undertaken an analysis to work out what the risk exposure is going forward, as a result of climate?

**RICHARD HARDING:** We take advice from our reinsurance broker, Guy Carpenter, who provides us with modelling on this. We also work with Mr Gardner through the Treasury ALCO and the Government's whole-of-government climate change committee—I cannot remember what the name of that committee is, sorry—where we have a representative on the Committee. So we are looking at that on a continuous basis. It is part of our regular analysis.

**Mr DAVID SHOEBRIDGE:** What does that modelling show, Mr Harding, in terms of the financial risk exposure of the State of New South Wales to those increasing disasters, both in occurrence and severity, due to climate change?

**RICHARD HARDING:** I do not know that this answer will surprise you a great deal, Mr Shoebridge. It is very difficult to separate the increasing impact of climate change—if that is the word you want to use—from the Government's growing asset base and normal weather cyclical patterns. What we try and do is use the advice that we get to the best of our endeavours.

**Mr DAVID SHOEBRIDGE:** Mr Harding, I cannot understand your difficulty with using the term "climate change".

**RICHARD HARDING:** I do not have a difficulty with using it. I am just pulling it apart in terms of the shifting risk that is being experienced and the exposure of TMF—it changes for a number of reasons.



**Mr DAVID SHOEBRIDGE:** Mr Gardner, what has Treasury done in terms of reviewing that increased risk going forward—and I am going to use the phrase—as a result of climate change?

**PHILIP GARDNER:** My particular role in it is with respect to the Asset-Liability Committee, Mr Shoebridge. We have had icare and Treasury representatives on whole-of-government initiatives around climate readiness present to the Asset-Liability Committee on this topic as to how we should think about the insurance profile and the vulnerability of the State's balance sheet and the property assets and the like. There is a lot of detail in that modelling, but we are certainly—there are a lot of initiatives within Treasury, particularly under the new Treasurer, to make sure we are strengthening as much of that as we possibly can.

**The CHAIR:** We are now in the final portion of this morning's proceedings. We are just working out how to split the time. There will be about 16 minutes for each, starting with the Opposition.

**The Hon. DAMIEN TUDEHOPE:** There will be 16 minutes, Daniel. There you go.

**The Hon. DANIEL MOOKHEY:** I will do my best, Minister. Let us see how much we can get done.

**The Hon. DAMIEN TUDEHOPE:** You shorten your questions and I will shorten my answers.

**Mr DAVID SHOEBRIDGE:** You can be Tavaré and just play a straight bat.

**The Hon. DANIEL MOOKHEY:** Let us resume where we were before. I asked you—

**The Hon. DAMIEN TUDEHOPE:** Am I looking at a particular document?

**The Hon. DANIEL MOOKHEY:** You will be shortly. Minister, I asked you before about whether or not in the Thursday briefing that you got in the presence of the secretary—

**The Hon. DAMIEN TUDEHOPE:** No, I said that is was not in the presence of the secretary.

**The Hon. DANIEL MOOKHEY:** Sorry, I may have misheard—the briefing that you got on Thursday, whether your views or your officer's views were solicited about whether or not any planning was underway for a shutdown that would extend beyond the Monday in the event that the interim application was not successful and Fair Work had decided to go to a full hearing. I think you said that you had no recollection and that was never put to you. Is that the evidence that I heard correctly?

**The Hon. DAMIEN TUDEHOPE:** I think you are really asking me: What was Sydney Trains' position if in fact the application on the Saturday failed?

**The Hon. DANIEL MOOKHEY:** If the application for interim relief failed, yes.

**The Hon. DAMIEN TUDEHOPE:** So if that failed, what was Sydney Trains going to do? I think the evidence of Mr Tumber would be—

**The Hon. DANIEL MOOKHEY:** No, it is a slightly separate question, Minister.

**The Hon. DAMIEN TUDEHOPE:** No. The evidence of Mr Tumber would be that Sydney Trains could not operate—

**The Hon. DANIEL MOOKHEY:** It is a slightly separate question. Please listen carefully. The question is specifically: In the event that you could not obtain interim relief, did anybody ever ask you whether you would support keeping the network closed until Fair Work had time to have a full application and a full hearing?

**The Hon. DAMIEN TUDEHOPE:** It is a proper question to be asked of Sydney Trains.

**The Hon. DANIEL MOOKHEY:** I am asking you. It is specific. Was your view ever solicited on keeping the network closed until the Wednesday to permit Fair Work to undertake a full hearing into your application?

**The Hon. DAMIEN TUDEHOPE:** I think the evidence which was provided to me was that if the work bans remained in place, that is what the impact of the failure of the interim orders would be.

**The Hon. DANIEL MOOKHEY:** Got it.

**The Hon. DAMIEN TUDEHOPE:** The failure of those orders would have given rise to the fact that the work bans would have remained in place. The evidence available to me was that the Sydney Trains could not operate that service.

**The Hon. DANIEL MOOKHEY:** Can we now ask for the documents to be given to the Minister, please? I will formally table them, and I have confirmed our versions are aligned, which is very good to hear.

**The Hon. DAMIEN TUDEHOPE:** Which page do you want me to look at?

**The Hon. DANIEL MOOKHEY:** We will go through them, Minister. This is a text exchange that takes place between the Chief People Officer of Transport for NSW and the Secretary of Transport for NSW.

**The Hon. DAMIEN TUDEHOPE:** Tracey is whom?

**The Hon. DANIEL MOOKHEY:** She is the chief—I am being careful not to use names to respect privacy.

**The Hon. DAMIEN TUDEHOPE:** I am sorry. I did not know that.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Minister. This particular text message is from the Chief People Officer of Transport for NSW and it is going to the Secretary of Transport for NSW. You can see that it is a text chain that begins at 10.23 p.m. on the Sunday night.

**The Hon. DAMIEN TUDEHOPE:** Mine is an exchange which starts at 3.55.

**The Hon. DANIEL MOOKHEY:** Just go down and look at the message, not the time the screen shot was taken. It says Sunday 20 February at 10.23.

**The Hon. DAMIEN TUDEHOPE:** Yes. Got that.

**The Hon. DANIEL MOOKHEY:** This is a text message that takes place an hour after the application for interim relief had effectively, for whatever reason, not been successful.

**The Hon. DAMIEN TUDEHOPE:** No.

**The Hon. DANIEL MOOKHEY:** I am just going to read it to you, Minister, and then you can respond. You can see here that it says:

There is a concern to go for termination as the disruption could play out for a few days before we would get a decision. We cannot get interim orders if Commission hears matter within five days which they are saying they can and the unions have agreed they could respond in a few days.

Turn to page 3 now. Mr Sharp replies:

Can you please expand. I don't understand the play offs you are referencing?

You can see here, it says:

Group is concerned on Ministers view of potentially having a numbers of days of disruption or full stoppages whilst we are in the hearing on potential termination and/or suspension. So we want to consider all options eg—

if you turn the page, you can see that what she is talking about is—

conciliation, doing a deal, making application to argue agreement should be upheld, etc.

**The Hon. DAMIEN TUDEHOPE:** Hang on.

**The Hon. DANIEL MOOKHEY:** Take your time.

**The Hon. DAMIEN TUDEHOPE:** Going down to the bottom?

**The Hon. DANIEL MOOKHEY:** Yes.

**The Hon. DAMIEN TUDEHOPE:** So you did not read the full text message.

**The Hon. DANIEL MOOKHEY:** I did, because you can see if you go to page—

**The Hon. DAMIEN TUDEHOPE:** Where it says, "Group is concerned on Ministers view of potentially having a number of days—

**The Hon. DANIEL MOOKHEY:** Just turn to page 3.

**The Hon. DAMIEN TUDEHOPE:** Got it.

**The Hon. DANIEL MOOKHEY:** The full text message exchange, which I did read, is contained in full on that page and partially on the earlier page. But then you can see at the bottom of page 3 Mr Sharp replies, "Thanks." And then you can turn over to page 4 where it says, "Can we grab you for a call with Meg and Matt?" which is referring to two deputy secretaries of Transport for NSW. Mr Sharp goes onto that call. We have heard from the other room that this option and others were canvassed. But this is what Mr Sharp is told by his chief people officer. She says:

I understand there is tension in this decision however I want to stress we may not get this opportunity again especially with support of Minister of ER.

That is the Minister for Employee Relations. Clearly, you actually had provided a view in support of a shutdown that would extend to Wednesday to facilitate a full Fair Work hearing—

**The Hon. DAMIEN TUDEHOPE:** That is an outrageous proposition.

**The Hon. DANIEL MOOKHEY:** Let me finish. Your other Ministers disagreed. You were the hardline person driving this dispute. That Sunday night, somehow, the chief people officer—

**The Hon. SHAYNE MALLARD:** Point of order—

**The Hon. DANIEL MOOKHEY:** Let me finish the question.

**The Hon. PENNY SHARPE:** Let him finish.

**The Hon. DANIEL MOOKHEY:** Somehow, the chief people officer is telling—

**The Hon. SHAYNE MALLARD:** No. Is there a question or is it a rant?

**The Hon. DANIEL MOOKHEY:** —the Secretary of Transport that you support a shutdown.

**The CHAIR:** I am happy to rule but I am waiting for the question.

**The Hon. DANIEL MOOKHEY:** What I want to understand is: Why is the chief people officer providing advice about your support of continuing the shutdown until Fair Work could have a full hearing by Wednesday?

**The Hon. DAMIEN TUDEHOPE:** I have never heard such rubbish in all my life—

**The Hon. DANIEL MOOKHEY:** So she is wrong?

**The Hon. DAMIEN TUDEHOPE:** —as what you have just put to me.

**The Hon. DANIEL MOOKHEY:** You have to lean forward, Minister.

**The Hon. DAMIEN TUDEHOPE:** Where is there one piece of evidence that you have provided to me—

**The Hon. DANIEL MOOKHEY:** I just read it to you. Minister, lean forward. I cannot hear you.

**The Hon. WES FANG:** Point of order—

**The Hon. PENNY SHARPE:** He is answering the question. Stop interrupting.

**The Hon. WES FANG:** No, no. He is answering the question. Mr Mookhey—

**The CHAIR:** He is asking him to put the microphone to his mouth.

**The Hon. DANIEL MOOKHEY:** I cannot hear you. Minister, you are covering your mouth as well.

**The CHAIR:** Minister, sit close to the microphone.

**The Hon. DANIEL MOOKHEY:** Do you mind—if you are going to give it back to me, please do it into the microphone on record.

**The CHAIR:** The Minister has the call.

**The Hon. DAMIEN TUDEHOPE:** What I would suggest to you is that is utter rubbish. In fact, I would like to see one piece of evidence that you can rely on which justifies that claim other than an assertion by a person in a text message, a person whom I have never met in my life and in respect of whom I have never had an opportunity of cross-examining and in respect of evidence I was never party to, and you are asserting that that gives rise to a view which I communicated to someone. I have never heard of such abject rubbish in my life.

**The Hon. DANIEL MOOKHEY:** I will take that as a denial. Minister, have you ever been briefed on what is called the circuit-breaker strategy?

**The Hon. DAMIEN TUDEHOPE:** Well, I can understand intuitively what it would potentially mean.

**The Hon. DANIEL MOOKHEY:** No, that is not my question. Have you been specifically briefed on what is called a circuit-breaker strategy?

**The Hon. DAMIEN TUDEHOPE:** No.

**The Hon. DANIEL MOOKHEY:** Secretary, have you ever been briefed on what is called the circuit-breaker strategy?

**MICHAEL COUTTS-TROTTER:** I do not think so, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** Are you sure?

**MICHAEL COUTTS-TROTTER:** You may correct me, but I do not think so.

**The Hon. DANIEL MOOKHEY:** Are you absolutely sure?

**MICHAEL COUTTS-TROTTER:** As I say, I do not think so.

**The Hon. DANIEL MOOKHEY:** I am going to read to you this exchange, and I am going to then ask you, Secretary, what exactly you think it means—

**MICHAEL COUTTS-TROTTER:** Okay.

**The Hon. DANIEL MOOKHEY:** —and of course what the Minister's knowledge of the matter is as well, if you do not mind.

**MICHAEL COUTTS-TROTTER:** Sure.

**The Hon. DANIEL MOOKHEY:** It is this. Secretary, do you recall receiving a text message from the Secretary of Transport on Tuesday at 10.26 a.m.?

**MICHAEL COUTTS-TROTTER:** Sorry, which date, Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Last Tuesday at 10.26 a.m. Do you recall getting a text message from the secretary?

**MICHAEL COUTTS-TROTTER:** I will have to check, and I can check now if you like.

**The Hon. DANIEL MOOKHEY:** Could you?

**MICHAEL COUTTS-TROTTER:** But anyway, please, read away.

**The Hon. DANIEL MOOKHEY:** This is an exchange that has been produced to the upper House, and I will just read it to you.

**MICHAEL COUTTS-TROTTER:** Sure.

**The Hon. DANIEL MOOKHEY:** This is from Mr Sharp:

MCT. I have an update on the FWC. No termination option available for the action. We don't meet the hurdle with some services operating. The actions negotiated and agreed on Saturday have however enabled a return of services which was the original agreement and focus. The next step is to engage with the RTBU next week as agreed.

Then it says this:

The circuit breaker strategy remains. Go to a vote in NSW Trains and look for mechanisms to get to FWC on ST. This isn't an easy step. Happy to discuss. Thanks Rob

**MICHAEL COUTTS-TROTTER:** Yes.

**The Hon. DANIEL MOOKHEY:** To be very clear, before I get to the secretary, Minister, you still have no knowledge of this particular strategy of going to a vote in NSW Trains and looking for a mechanism to get to the Fair Work Commission?

**The Hon. DAMIEN TUDEHOPE:** Absolutely, no. No-one has ever briefed me in relation to this.

**The Hon. DANIEL MOOKHEY:** The reason I am asking you, Minister, is because this is a stunning admission of bad faith negotiating under the Fair Work Act. Can I just say, the same day that Mr Coutts-Trotter is being told by Mr Sharp that the plan is go to a vote in NSW Trains and look to repeat the same application that you just withdrew, was the same day that the Minister for Transport was publicly saying, "As a gesture of good faith, we're going to withdraw the application"?

**The Hon. DAMIEN TUDEHOPE:** Can I just answer that?

**The Hon. DANIEL MOOKHEY:** No, let me just finish.

**The Hon. DAMIEN TUDEHOPE:** Well, let me—

**The Hon. DANIEL MOOKHEY:** And you will get your chance. It is stunning for this reason. At the same time that the Minister is telling the public that the Government is withdrawing the action, the secretary who is responsible for employment relations is being told, "Actually, the Government is preparing to repeat the same dispute and run the exact same application to Fair Work."

**MICHAEL COUTTS-TROTTER:** No, I do not think that is what I was being told at all.

**The Hon. DANIEL MOOKHEY:** I am putting it to the Minister first.

**MICHAEL COUTTS-TROTTER:** Can I—

**The Hon. DANIEL MOOKHEY:** Let me put it to the Minister first, and then I am sure I will be happy to hear from you, Secretary.

**MICHAEL COUTTS-TROTTER:** Sure.

**The Hon. DANIEL MOOKHEY:** Minister, that looks like the Government was telling the public one thing and telling and planning for something else, and it seems like this took place all while you, as the Minister responsible, were ignorant. Why is that—how is that possible that your Government can do this?

**The Hon. DAMIEN TUDEHOPE:** Well, I think the date of the notice by the RTBU to Sydney Trains is dated 9 February.

**The Hon. DANIEL MOOKHEY:** Minister, I am asking you—

**The Hon. DAMIEN TUDEHOPE:** That is the date—no, no.

**The Hon. DANIEL MOOKHEY:** I am going to ask you to be relevant.

**The Hon. DAMIEN TUDEHOPE:** And the answer to your question is, the strategy being adopted in relation to shutting down the trains by the unions was started on 9 February. That is when the notice was given. If you look at the statement of Mr Tumber and the application, the notices by the union are attached to that notice. So the strategy to shut down the train system was initiated by the unions on 9 February. So start with 9 February—

**The Hon. DANIEL MOOKHEY:** Minister, I just would ask you to directly come to—

**The Hon. WES FANG:** Point of order—

**The Hon. DANIEL MOOKHEY:** I am asking you to come directly to the question.

**The CHAIR:** Mr Fang on a point of order.

**The Hon. DANIEL MOOKHEY:** I am asking you to come directly to the question. I am asking you about a text exchange that took place last Tuesday.

**The Hon. WES FANG:** Mr Mookhey, I am taking a point of order now.

**The Hon. DANIEL MOOKHEY:** I am not asking you about what happened two weeks prior.

**The CHAIR:** Sorry, Mr Mookhey, I have to take the point of order.

**The Hon. DANIEL MOOKHEY:** I am asking you, as Minister, how is it possible that your Government could be telling the public one thing and planning another?

**The CHAIR:** Point of order by Mr Fang.

**The Hon. WES FANG:** I think it is a bit unfortunate that a member of your own party is talking over you, Chair.

**The CHAIR:** Get on with it. What is your point of order?

**The Hon. WES FANG:** Chair, I think that Mr Mookhey is very practised at asking long questions, and then when—

**The Hon. PENNY SHARPE:** Which he is allowed to do.

**The CHAIR:** There is no point of order.

**The Hon. WES FANG:** No, no.

**The Hon. DANIEL MOOKHEY:** Sorry, the Chair has ruled.

**The Hon. SHAYNE MALLARD:** Don't bully the witness.

**The Hon. WES FANG:** No, no. This is a procedural issue.

**The Hon. PENNY SHARPE:** I do not think he needs this intervention, but you can take the time. You do that. I am sure the Minister is very appreciative.

**The Hon. WES FANG:** Mr Mookhey asks very long articulate questions, but then when the Minister tries to provide a long answer to address them, he gets talked over. Mr Mookhey needs to allow the witness to actually answer the question.

**The CHAIR:** No, I am sorry, I am happy to rule. This is using time. I am sorry. We have limited time. I do not uphold the point of order.

**The Hon. DAMIEN TUDEHOPE:** What I would be saying to you, Mr Mookhey, is you can have your own opinion based on text messages produced here; I would rather rely on what the facts are. The facts are that the RTBU on 9 February issued a notice to Sydney Trains the cumulative effect would be to stop trains running in Sydney from 21 February to 7 March. That is the impact of those notices. So how Sydney Trains reacts to a shutdown which is imposed upon them by the union is actually factually started on 9 February.

**The Hon. DANIEL MOOKHEY:** Minister, I am not surprised—

**The Hon. DAMIEN TUDEHOPE:** A text message exchange which I have never seen, on which you are asking me to comment, I am not going to comment. What I will do is—

**The Hon. DANIEL MOOKHEY:** Okay. Well, then maybe what I can do, Minister—

**The Hon. DAMIEN TUDEHOPE:** —when I lodged the application to the Fair Work Commission, I rely on this.

**The Hon. DANIEL MOOKHEY:** Minister, I am now going to move on because the secretary wants to be heard on this. Secretary, I think you wanted to be heard. I am sorry for interrupting you before.

**MICHAEL COUTTS-TROTTER:** That is quite okay, Mr Mookhey. The background to this is me saying to my colleague Rob Sharp, "How long has this been going on?" And it has been going on for more than a year—in other words, I think there have been more than 300 claims from the union that were put on the table a year ago.

**The Hon. DAMIEN TUDEHOPE:** Correct.

**MICHAEL COUTTS-TROTTER:** None have been amended, none have been withdrawn, and there have been at least four additional offers from the Government as part of that negotiation. So my question to my colleague was, "It does not seem like negotiation is going to land this. Can we get an independent umpire involved in trying to help with the decision?" That is the no-more, no-less—the detail. It is really just reflecting this does not appear to be going anywhere constructive.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Mr Secretary. Minister, the problem I have with that explanation is that we just heard from the Transport department that they briefed the Transport ministry in early February about this circuit-breaker strategy. They were quite clear—there is written advice apparently that has been tabled—that this is a circuit-breaker strategy. To be very clear here as well, that was not an attempt to conciliate. This is quite clear in terms of what this secretary is told. Just pause, Minister. I am not sure you are understanding—

**The Hon. DAMIEN TUDEHOPE:** I am understanding.

**The Hon. DANIEL MOOKHEY:** Just pause here. This is quite clear what the strategy is. It is to go to a vote in NSW Trains, and to be fair to the Secretary of Transport, he has effectively confirmed that that remains the option. There is nothing illegitimate about that from an employer to do it—

**MICHAEL COUTTS-TROTTER:** No.

**The Hon. DANIEL MOOKHEY:** —and then look for a mechanism to get to Fair Work on Sydney Trains. This has been communicated to the Government on the same day that the other Minister is telling the public something differently.

**The Hon. DAMIEN TUDEHOPE:** You can give a commentary, Daniel.

**The Hon. DANIEL MOOKHEY:** Minister—

**The Hon. DAMIEN TUDEHOPE:** You are giving the commentary; I will answer the question.

**The Hon. DANIEL MOOKHEY:** Minister, are you currently contemplating re-filing an application to terminate bargaining?

**The Hon. DAMIEN TUDEHOPE:** I have no instructions to do that, but I have to say that the starting point—

**The Hon. DANIEL MOOKHEY:** Thank you. You have answered my question.

**The Hon. DAMIEN TUDEHOPE:** No, no. The starting point is this though, Mr Mookhey, in answer to your question. If in fact the cumulative effect of work bans foreshadowed by the RTBU in support of a whole series of claims as just outlined, then in those circumstances to ensure that the trains continued to run I would be obliged, if instructed or requested to do so, for the purposes of (a) ensuring safety, (b) ensuring the convenience of the people of New South Wales to lodge an application to prevent the work.

**The Hon. DANIEL MOOKHEY:** Minister, can I just ask you this—

**The Hon. DAMIEN TUDEHOPE:** That is what the application was about, remains about—

**The Hon. DANIEL MOOKHEY:** I appreciate that. Minister, can I just ask—

**The Hon. DAMIEN TUDEHOPE:** —and you would have to say this: The decision to shut down the trains was started by the union on 9 February.

**The Hon. DANIEL MOOKHEY:** Minister, you have answered the question.

**The Hon. DAMIEN TUDEHOPE:** On 9 February.

**The Hon. DANIEL MOOKHEY:** I want to ask you the next question.

**The Hon. WES FANG:** Chair, I am going to have to ask you—

**The Hon. DANIEL MOOKHEY:** Minister, the question is can you rule out making an application to terminate the enterprise agreement?

**The Hon. DAMIEN TUDEHOPE:** What I would say is this: As the Minister I would say that we are prepared to act in good faith. I thought we had reached an agreement on Saturday afternoon to allow the trains to run on Monday morning. One party to that agreement, the unions, walked away from an agreement to run the trains in accordance with the roster which had been set by Sydney Trains. In circumstances like that I would be saying to the parties, "I expect you to act in good faith, and that means that the Government should act in good faith but the unions must act in good faith."

**The Hon. DANIEL MOOKHEY:** Your counterpart in the other room ruled out taking—

**The Hon. SHAYNE MALLARD:** Point of order: That is time.

**The CHAIR:** It is time. It is crossbench time.

**The Hon. DANIEL MOOKHEY:** With the indulgence of the Chair?

**The Hon. DAMIEN TUDEHOPE:** I have not ruled it in.

**The CHAIR:** It is up to the crossbench.

**Mr DAVID SHOEBRIDGE:** This final question and you can try and get an answer.

**The Hon. DANIEL MOOKHEY:** Thank you. Your counterpart in the other room has ruled out making an application to terminate the agreement.

**Mr DAVID SHOEBRIDGE:** He did not know how.

**The Hon. DANIEL MOOKHEY:** To be fair, that is true. But he made the commitment, and he says he that he communicated this to the union too. He has ruled out making an application to terminate the agreement. But, of course, you have that power too, which is why I am asking you to make the same commitment that the transport Minister made in the other room just half an hour ago.

**The Hon. DAMIEN TUDEHOPE:** You were not here when—

**The Hon. WES FANG:** Chair, I am going to raise an issue of procedural fairness.

**The Hon. DANIEL MOOKHEY:** Can you rule out making an application to terminate the agreement?

**The Hon. DAMIEN TUDEHOPE:** You were not here when I was asked various questions relating to my involvement as employee relations Minister. Always my disposition is not to have to engage in proceedings before tribunals and commissions to sort out disputes. But if the transport Minister has ruled it out, that is a matter for him. But I rely on instructions that I receive through an agency in terms of where it sits. I have to say to you, Mr Mookhey, that if the agency formed the view that the safety of the people of New South Wales or the running of the service was impacted by the issuing of work bans and the like, and that they could not be avoided, I would be surprised. I would be surprised if an agency did not request some intervention by either the Fair Work

Commission or the Industrial Relations Commission. It would be something that you would need to do to protect the safety and the convenience of the commuters in New South Wales. That was what the action in the Fair Work Commission was predicated upon, that was why the action was taken and that is why we should all be disappointed here today that the unions did not honour the agreement that they reached on Saturday afternoon.

**Mr DAVID SHOEBRIDGE:** Mr Gardner, you said that you have a role in providing advice to the Government about the impacts of climate change, but, to be honest, I did not quite understand what the nature of your role was.

**PHILIP GARDNER:** Mr Shoebridge, my role as Chair of the Asset and Liability Committee within NSW Treasury is to provide advice to the secretary on matters relating to a range of balance sheet strategies and risks. The specifics around climate change are not specific risks that the ALCO provides advice on, but we have asked that Treasury, DPIE and icare provide increased reporting to the ALCO on the risks to the State's assets from climate change. Those groups are working together to increase the level of modelling. You will understand the complexity of that, given the scale and distribution of the State's assets. But we are increasingly looking at that as something that we need to be building.

**Mr DAVID SHOEBRIDGE:** Was this in part triggered by the \$800 million that was paid for fire and flood in the last two years?

**PHILIP GARDNER:** Not in the slightest, Mr Shoebridge. It is part of the work that we have been designated and are seeking to run through the ALCO process.

**Mr DAVID SHOEBRIDGE:** Is it your evidence, as I understand it, that before this most recent reference, the Asset and Liability Committee had not been looking specifically at the risk associated with climate change?

**PHILIP GARDNER:** DPIE, Treasury and a group of other whole-of-government agencies have a range of different approaches to the ALCO.

**Mr DAVID SHOEBRIDGE:** I am asking you about the Asset and Liability Committee, Mr Gardner.

**PHILIP GARDNER:** I do not have specific recollections as to when we started to manage that on the agenda, Mr Shoebridge. I will have to take it on notice.

**Mr DAVID SHOEBRIDGE:** You were speaking about a more recent reference to the committee to address climate change. When did that come?

**PHILIP GARDNER:** The last time we had a substantive paper on this topic was in December last year.

**Mr DAVID SHOEBRIDGE:** Has that paper been provided to the Treasurer, did you say?

**PHILIP GARDNER:** No, it was a paper for the committee's consideration.

**Mr DAVID SHOEBRIDGE:** Has the paper been published?

**PHILIP GARDNER:** It has not been published; it is just an internal government—

**Mr DAVID SHOEBRIDGE:** What were the conclusions of the paper of the climate risk and the impact on the State's assets and liabilities?

**PHILIP GARDNER:** It is not a definitive number; it just talks about the parameters of the risk. You have a lot of different asset types: You have water, power and energy, transport assets and education assets. It talks about the breadth and distribution of the asset base, and then it talks about the potential sources of risk that come from climate: obviously flooding, bushfires, wind and coastal inundation. It starts to set some parameters for us to start then having the various relevant departments of government and agencies start to map those things in a more granular and strategic fashion.

**Mr DAVID SHOEBRIDGE:** It basically describes the last two years then: flood, fire, coastal inundation. It basically describes what we have gone through in the last two years, Mr Gardner. Is that right?

**PHILIP GARDNER:** We have had occurrences of floods and bushfires in the last two years; I accept that, yes.

**Mr DAVID SHOEBRIDGE:** At extraordinary levels. You are not trying to pretend otherwise?

**PHILIP GARDNER:** No, I am not trying to pretend in any way. Obviously the experience that we are going through right now is of an extraordinary order of magnitude.

**Mr DAVID SHOEBRIDGE:** Will you provide a copy of that paper to the Committee?



**PHILIP GARDNER:** I will take it on notice.

**Mr DAVID SHOEBRIDGE:** Mr Harding, the dust diseases scheme's liabilities have been adversely impacted by an increase in the expected claims handling expenses. What has been the increase in the claims handling expenses for the dust diseases scheme?

**RICHARD HARDING:** If I can, before I answer that question I will give you a bit more accuracy on the numbers that I gave you earlier. I was only out by a little bit. The bushfires were \$650 million and the floods were \$150 million. So it is the same numbers just slightly differently split.

**Mr DAVID SHOEBRIDGE:** Thanks, Mr Harding, I appreciate that. Why is it costing more to handle dust diseases claims?

**RICHARD HARDING:** Mr Shoebridge, one of the recommendations from the Auditor-General before my arrival was for icare to undertake a review of its expense allocation between the schemes. The increase in the cost for the dust diseases scheme is a reflection of the allocation of costs to the dust diseases scheme through that allocation methodology as a result of the review that we undertook and the process of confirming that review, which has all been signed off by the Auditor-General. It is not an increase in costs; it is a correction as to where the costs have been allocated.

**Mr DAVID SHOEBRIDGE:** This was another example of the Nominal Insurer bearing costs that it should not bear, isn't it? That was what was happening here: The expenses were being inappropriately put in the Nominal Insurer's category, weren't they?

**RICHARD HARDING:** That is a different characterisation. I would suggest to you that all companies and all large organisations go through cost allocation models, and those cost allocation models get refined over time. We have refined it and it has affected the allocation to different schemes. That, to me as a CEO, is a normal business practice.

**Mr DAVID SHOEBRIDGE:** Mr Harding, I asked you specifically about the Nominal Insurer. It was like so much that had been happening in icare over the last few years. It just took another drink out of the Nominal Insurer. And it has been reversed now to an extent. Is that right?

**RICHARD HARDING:** Mr Shoebridge, your allegation implies some form of intent—

**Mr DAVID SHOEBRIDGE:** Indeed it does.

**RICHARD HARDING:** —whereas what I am trying to explain is that this is a very normal process around how people manage costs across large organisations.

**Mr DAVID SHOEBRIDGE:** Did you reverse the allowance, and what was previously being met by the Nominal Insurer is now being met by the dust diseases scheme? It is a pretty simple question, Mr Harding.

**RICHARD HARDING:** It is not just the Nominal Insurer; it is across icare. We reviewed the whole cost allocation across all the schemes, and there have been changes across different schemes. It is a normal business practice. I think the issue here is that we now have a correct cost allocation to go forward with, which is agreed with and approved by the Auditor-General.

**Mr DAVID SHOEBRIDGE:** What is the additional cost to the scheme?

**RICHARD HARDING:** I do not have the exact number in front of me for that reallocation.

**Mr DAVID SHOEBRIDGE:** Will you provide it on notice?

**RICHARD HARDING:** I am very happy to.

**Mr DAVID SHOEBRIDGE:** There is also a higher than expected number of claims that have hit the dust diseases scheme. Are they silicosis claims? Are they asbestos claims? What are the higher than expected claims?

**RICHARD HARDING:** There is a slight increase in the number of claims coming through. Some of it is related to the silicosis claims. I spoke earlier in this Committee to Mr Searle about the work we do going out and visiting manufactured stone sites where we do screening. That has generated a high awareness and an increase in the claims coming through. In 2018-19 we had 40 silicosis claims lodged; in 2019-20 we had 107. In 2020-21, probably as a result of the slowdown in our screening processes due to COVID lockdowns and difficulties getting screening out in COVID, we have had 37 back again. We have a large number of new claims being brought forward as a result of the screening activity we have been undertaking as it goes through.

**Mr DAVID SHOEBRIDGE:** The end result of having to correct historic errors on expense handling, the increased number of claims and the allowance for remediating past underpayments is that the funding ratio for that scheme is now only at 59 per cent. That is right, is it not? Or is it less than that now?

**RICHARD HARDING:** Considering the funding ratio in respect to this scheme is relatively irrelevant, in that the scheme is not designed to have any assets, the scheme has actually been very lucky in that it has built up a store of assets over its 100-year history. But in reality, the scheme's design and the way the legislation works is it is a pay-as-you-go scheme. The premiums for each year are determined based on the cost and expected outflows for that year, both administration charges and claims—

**Mr DAVID SHOEBRIDGE:** That is not historically how it has worked. It has been a mix of—

**RICHARD HARDING:** Well, it is. It is exactly how it has worked. It is what the legislation says.

**Mr DAVID SHOEBRIDGE:** That may be how the legislation operates, but sitting there, Mr Harding, you know as well as do I that historically the scheme has been in large part funded by accrued assets, and at the end of last financial year the funding ratio for the scheme was at 59 per cent. I do not want another definitional argument with you. I want to know what the funding ratio is now.

**RICHARD HARDING:** I do not even know if I have got it, Mr Shoebridge, because it is not—

**Mr DAVID SHOEBRIDGE:** What was it at the end of last financial year? What was it at the end of last calendar year?

**RICHARD HARDING:** I just come back to the fact that it is not relevant.

**Mr DAVID SHOEBRIDGE:** What was it—

**RICHARD HARDING:** Can I just answer your—

**Mr DAVID SHOEBRIDGE:** — at the end of last calendar year? I do not want this definitional fight with you again, Mr Harding. Just a simple figure—

**RICHARD HARDING:** I am not having a definitional fight with you, Mr Shoebridge.

**The Hon. WES FANG:** Chair—

**The CHAIR:** Do you have a point of order?

**The Hon. WES FANG:** I have a point of order. I am just waiting for an ability to actually jump in. Procedural fairness means that Mr Harding should be allowed to address the question. He is trying to do so while Mr Shoebridge is trying to talk over him. I would ask that Mr Shoebridge allow him to address the question and then he can raise an elucidation or a clarification afterwards.

**Mr DAVID SHOEBRIDGE:** To the point of order: Put simply, Mr Harding is debating the question, not answering the question.

**The CHAIR:** Correct.

**Mr DAVID SHOEBRIDGE:** That is not his role of a witness.

**The Hon. DANIEL MOOKHEY:** To the point of order: Mr Shoebridge has put the question three times in the manner in which Mr Fang has asked for. The witness is not entitled to debate the question or decide whether or not the question is relevant. He has to answer the question and he should.

**The CHAIR:** Specifically, just before the point of order was taken I heard the witness say that the question was not relevant. Mr Harding, you have to answer the question. The point of order is not upheld.

**Mr DAVID SHOEBRIDGE:** What was the funding ratio on 31 December for the dust diseases scheme? It was 59 per cent on 30 June. What was it on 31 December?

**RICHARD HARDING:** I am going to take it on notice, Mr Shoebridge. We would record it as 100 per cent because it is a pay-as-you-go scheme.

**Mr DAVID SHOEBRIDGE:** Well, that is funny, because your annual report has it at 59 per cent. That is plainly false, Mr Harding. I have got your annual report in front of me.

**RICHARD HARDING:** I am happy to take it on notice to give you a funding ratio.

**Mr DAVID SHOEBRIDGE:** Give me the funding ratio.

**RICHARD HARDING:** Can I finish my answer, please, Mr Shoebridge? My point here is we continue to operate the scheme. The scheme has \$1.2 billion of assets that have been accrued over its more than 100-year history. We use those assets to subsidise—

**Mr DAVID SHOEBRIDGE:** And you are winding them down rapidly, which is the point of this questioning. That accumulated set of savings is being wound down rapidly because the handling costs have gone up, claims have gone up, and there is a major liability because icare stuffed up and you have to pay back past underpayments. You are eating into a century of savings.

**RICHARD HARDING:** I would suggest to you, Mr Shoebridge, that the funding ratio has gone down because liabilities have gone up, not because the assets have gone down. We use the investment income from the assets, not the capital base of the assets, to support the premiums being paid by employers. The premiums being paid by employers have been held at around approximately \$70 million for the last two years and that has resulted in over \$118 million contributed from those investment returns to keep those premiums at that level. That is how the investment assets are being used, not for any other purpose. The liabilities are increasing, as we talked about before, as silicosis comes through the scheme, as more asbestos—in fact, one of the drivers of the liabilities is that people on the scheme today are living longer than expected, which is a good thing for those people.

**Mr DAVID SHOEBRIDGE:** Mr Harding—

**RICHARD HARDING:** But that does increase the liabilities of the scheme.

**Mr DAVID SHOEBRIDGE:** The annual report indicates that there will need to be an increase in future levies for the dust diseases scheme. Are you in the process of determining what the increase will be and, if so, by how much?

**RICHARD HARDING:** We are in the process of determining that but we have yet to finalise that. I have the number for you, Mr Shoebridge: It is 56.3 per cent at January. But the correct way to interpret that is that it is actually 100 per cent because, as I said before, it is always a pay-as-you-go scheme.

**Mr DAVID SHOEBRIDGE:** As with the Nominal Insurer, Mr Harding, I put to you that the correct way of determining it is, again, that things have got significantly worse, with a deterioration from a 59 per cent funding ratio at the end of the financial year down now to 56.3 per cent by the end of the calendar year. It seems to me you do not think that is a problem, and I am troubled by that.

**RICHARD HARDING:** You are confusing—I think all of these—

**The Hon. WES FANG:** Chair, I did not detect a question in any of that.

**Mr DAVID SHOEBRIDGE:** Mr Harding is able to respond—

**The CHAIR:** I do not detect a point of order in that. Continue, Mr Harding.

**RICHARD HARDING:** I am happy to answer. Mr Shoebridge, I think perhaps you are confusing my determination to give you an accurate answer with a lack of concern. I am very concerned about both the Nominal Insurer and the dust diseases scheme and we are taking a lot of action to address the issues that are in there. But similarly to the Nominal Insurer, where I explained to you what was driving the liability increases, they are factors that are actually about us meeting the obligations of the scheme: increases in liabilities, the number of claims, the growth in expectations of those, or the length of period of time that people are on the scheme because they are living longer. Those are the factors impacting the liabilities. Our job is to use the assets of the scheme effectively to manage the scheme and we are doing that.

**The CHAIR:** Government questions?

**The Hon. WES FANG:** Chair, as tempted as I am, I think the Minister and the other members of the Committee have acquitted themselves very well and I have got no questions for them.

**The CHAIR:** I thank the Minister for his time this morning. Thank you to all of the officials. For those of you who are back this afternoon, we will see you after lunch.

**(The Minister, Philip Gardner and Richard Harding withdrew.)**

**(Luncheon adjournment)**

**The CHAIR:** Welcome back to the afternoon session of the budget estimates hearing into Finance and Employee Relations.

**The Hon. PENNY SHARPE:** Thanks for coming back. I suspect these are for you, Mr Johnston, but we will see. I was looking for an update on the figures of the invoices issued in relation to hotel quarantine fees.

**SCOTT JOHNSTON:** Yes, I should be able to help you in part for that.

**The Hon. PENNY SHARPE:** The last figures I have are from November last year—so whether there are more from there.

**SCOTT JOHNSTON:** Yes, I will have more current information than that.

**The Hon. PENNY SHARPE:** Terrific. Thank you.

**SCOTT JOHNSTON:** As at 31 January 2022, Revenue issued invoices to the value of \$317.7 million, with \$242 million of that resolved either through paid or waived or withdrawn.

**The Hon. PENNY SHARPE:** You might not be able to give us all of this today, but can you provide the breakdown in terms of paid? What did you say? Paid, waived, withdrawn?

**SCOTT JOHNSTON:** Paid, \$202 million, and waived or withdrawn, \$40 million. Some of this relates to pre-12 July 2020. If people had bought tickets prior to that, their quarantine fee was waived.

**The Hon. PENNY SHARPE:** They got waived because they were not paying on the way through. That is good. Is there still the outstanding issue with the other States? There is about \$105 million outstanding. Is that right?

**SCOTT JOHNSTON:** The issues with the States is a Treasury question because Revenue NSW's function here is people who stay in a health or a police hotel. That information is provided to us and we have then invoiced accordingly. Treasury is part of a group that we have worked together on in understanding the volumes that we have had, and then the recoupment costs from State to State has been managed through Treasury, so I could not speak to that. But there is not a direct one-for-one cost to that. If someone came through Sydney and stayed in a hotel within Sydney but their home is in another part of Australia, we are still pursuing that debt with them.

**The Hon. PENNY SHARPE:** That is your responsibility—that part.

**SCOTT JOHNSTON:** That is right.

**The Hon. COURTNEY HOUSSOS:** Of the \$202 million that has been paid, how much of that has been paid by other State governments?

**SCOTT JOHNSTON:** This is a separate—

**The Hon. PENNY SHARPE:** It is a different amount.

**SCOTT JOHNSTON:** Correct.

**The Hon. PENNY SHARPE:** Are you saying to us you cannot tell us what that is?

**SCOTT JOHNSTON:** Yes. I have no involvement in the collection from other governments. It is the citizens who have come through New South Wales and then gone to other States that we would—

**The Hon. COURTNEY HOUSSOS:** Just to be clear, the \$317 million is invoices issued to individuals and not invoices issued to other State governments.

**SCOTT JOHNSTON:** That is right.

**The Hon. COURTNEY HOUSSOS:** That amount would be totally separate to these figures that you provided to us.

**SCOTT JOHNSTON:** They would be separate. They are obviously related because it is about volumes, but it is a separate question.

**The Hon. PENNY SHARPE:** Are you able to tell us how many invoices the \$317 million equates to, and the \$212 million?

**SCOTT JOHNSTON:** One of the challenges with this was because of people travelling in families—individuals versus invoices. I am just trying to give myself a little bit of time there while I say that.

**The Hon. PENNY SHARPE:** It is okay, we can wait. We have a lot of time this afternoon, Mr Johnston, so that is fine. Do not feel under pressure.

**SCOTT JOHNSTON:** I will relax a little bit. If I could come back to that—

**The Hon. PENNY SHARPE:** That is fine. While you are looking, we can keep going.

**SCOTT JOHNSTON:** It will be handy, but for some reason it is not jumping at me in my data.

**The Hon. PENNY SHARPE:** That is fine. Going back to some of the questions earlier this morning, are you able to tell us whether there are any garnishee orders being executed in relation to these outstanding amounts?

**SCOTT JOHNSTON:** Currently, no. We paused garnishee orders when we sought legal advice in December.

**The Hon. PENNY SHARPE:** Why did you seek legal advice in December?

**SCOTT JOHNSTON:** The Ombudsman's report that we discussed this morning?

**The Hon. PENNY SHARPE:** Yes.

**SCOTT JOHNSTON:** We had made a number of changes since the legal advice that the Ombudsman had sought had happened, but then I decided to get further advice just to check the additional things we had done and whether there was—

**The Hon. PENNY SHARPE:** Sorry, to be clear, are you saying that there are now no garnishee orders on any fines recovery as a result of the Ombudsman's report? That is not what you told us this morning.

**SCOTT JOHNSTON:** We have paused whilst getting this advice and we will restart in the near future, and quarantine fees will be part of that.

**The Hon. PENNY SHARPE:** Yes, but to be clear—sorry, I had missed this when you said this this morning—the Ombudsman's report came out in November last year, but essentially there are no garnishee orders currently. Since then, there has been a pause all together on garnishees.

**SCOTT JOHNSTON:** There has, and it was not completely in relation to the Ombudsman's report. We have turned it on and off over the past two years because of COVID and understanding the pressures, and through December and January we tried to take an empathetic approach to that. The answer is, correct, there are none currently but the intention will be to—

**The Hon. COURTNEY HOUSSOS:** You said that you have turned it on and off over the past two years. When were the periods that you turned it on and off?

**SCOTT JOHNSTON:** Just a moment. They related to times where there were lockdowns et cetera, but I can give the—I will come back to you, sorry.

**The Hon. COURTNEY HOUSSOS:** If you want to ask someone who is watching to provide you with that information and then come back to us this afternoon, that would be helpful, and tell us the periods that were paused. I think it is an excellent idea that you did pause them. Did you pause them because of a ministerial direction or was that something that Revenue NSW decided?

**SCOTT JOHNSTON:** No, it was my decision in consultation with my team. I advised the Minister that we were doing this as was my responsibility within—

**The Hon. COURTNEY HOUSSOS:** I think it is an excellent initiative. You obviously paused them in December and January and then you will get the previous periods that you paused them.

**SCOTT JOHNSTON:** It was effectively the time that parts of New South Wales were locked down. I will get the right dates for you.

**The Hon. COURTNEY HOUSSOS:** No, I understand.

**SCOTT JOHNSTON:** July to October, say, we then restarted, then paused again. The previous year there was a period of time where we did the same.

**The Hon. COURTNEY HOUSSOS:** When you paused them, does that mean that you paused the issuing of new orders or was it also the enforcement of existing orders?

**SCOTT JOHNSTON:** We continue to enforce fines. There is a range of steps that we do when fines are enforced. One of the last steps that we take is around garnishee orders. So we continued on with our work, but obviously, over the past couple of years, we have been really mindful of the situations people are going through in how we best support them. But we continued with our work.

**The Hon. PENNY SHARPE:** The timing of the legal advice off the back of the Ombudsman's report—it has been finalised or is close to being finalised?

**SCOTT JOHNSTON:** Close to being finalised. We have received advice back, which in essence from my perspective, was very supportive of what we are doing and its lawfulness, but we could strengthen up some of the actions from effectively someone who is reviewing the automated process.

**The Hon. PENNY SHARPE:** The challenge is where the discretion lies, is it not—whether it is human or machines that make the decision? Is that the nub of the issue?

**SCOTT JOHNSTON:** Essentially, and is a human making a decision about that progressing forward. That is right. Then it becomes a question of how do you show that it is sufficient.

**The Hon. PENNY SHARPE:** That is when you are getting into the battles of legal advice.

**SCOTT JOHNSTON:** It is not simple enough to just tick a box that someone has said, "I've done this." We have bolstered the advice that our staff are responding to, to then initiate that garnishee order around the checks that they have made that it is appropriate.

**The Hon. PENNY SHARPE:** You are looking at hundreds of thousands of orders potentially a year.

**SCOTT JOHNSTON:** Yes.

**The Hon. PENNY SHARPE:** Obviously they are not all going through human hands. What proportion of decisions are actually automated and what proportion actually go to a human to have a decision made?

**SCOTT JOHNSTON:** All decisions are human made. What the automation process does is make—

**The Hon. PENNY SHARPE:** All 400-something thousand?

**SCOTT JOHNSTON:** There is a way that our staff review the—

**The Hon. PENNY SHARPE:** Can you tell me how that works?

**CULLEN SMYTHE:** Can I jump in? Forgive me if I go into a bit too much detail. I have been criticised for doing this in the past.

**The Hon. PENNY SHARPE:** That is okay.

**CULLEN SMYTHE:** It is probably best to start at the beginning. A penalty notice is issued and then, as the Chief Commissioner mentioned, over the space of 90 days, there is a number of attempts of reminder notice and enforcement notice. Once we get to a certain period though, around 90 days, the Fines Act requires that we do something. There are basically three options that are open to Revenue. Of course, at any time that someone reaches out to us, we can discuss a payment plan, a WDO, and that pretty much stops the process. So this really is the very last resort.

**The Hon. WES FANG:** WDO, just for Hansard?

**SCOTT JOHNSTON:** Work development orders.

**CULLEN SMYTHE:** Just for completeness, that is an alternative pathway where people with fines' obligations can undertake all sorts of different activities to basically work it off.

**The Hon. PENNY SHARPE:** The idea is to stop people going to jail or losing their licence.

**SCOTT JOHNSTON:** Yes.

**CULLEN SMYTHE:** Yes. So the three options that are given to us under the Act are a garnishee order, a property seizure order—which is quite drastic—or taking the debt and if the person has land, we can look to charge the land.

**The Hon. PENNY SHARPE:** You can take this on notice. I would be very interested to know how many times you actually did that in the last financial year.

**SCOTT JOHNSTON:** It is a very small number, but we will respond. It is not our practice. I will let Mr Smythe finish, but the garnishee order is the most practical part and way and that is why we have invested heavily on identifying vulnerability through the people that follow through that path, which I touched on this morning.

**The Hon. COURTNEY HOUSSOS:** Can we ask for the last three financial years, a breakdown of those three options over the last three financial year, how many of those have been provided.

**SCOTT JOHNSTON:** Yes, we can.

**The Hon. COURTNEY HOUSSOS:** It is a significant step-up from a garnishee to a property order. Do they have only human oversight or is any of that done automatically?

**SCOTT JOHNSTON:** For the last three years on property seizure, it is zero, I can tell you that. I have remembered that number.

**The Hon. PENNY SHARPE:** I think you would remember if you were doing it because it is a significant thing to do.

**SCOTT JOHNSTON:** Yes. But in terms of human decision-making, I think close to three million customers receive a fine in some way across New South Wales each year. Some 78 per cent of them resolve their fine within the time before it being enforced. We would estimate potentially 10 per cent of the remaining would be some element of vulnerability—I am not trying to generalise these terms. Then about 12 per cent can pay but choose not to, which is the group that garnishee orders are actually quite effective for us. The decisions that our automation go through consider a range of factors about the people they are pursuing through this, such as are you a minor or not. There is factual information that we have about someone that helps us through that process. There is a range of rules that follow through that. Those rules are continually governed and managed by the team that leads all this work with the analysts and the people that build the automation, so that we make sure that we are not getting perverse outcomes from it. What the people are doing, our Revenue NSW staff, is looking at the outputs of this. There are audits of some, as we progress through.

**The Hon. PENNY SHARPE:** Is it kind of a random sample?

**SCOTT JOHNSTON:** It is in part. But there is sufficient information that we have about people that answer these questions. As Mr Smythe was saying, they have gone through three months of attempted connection with them, so with the decisions of the automation, the only point of predictability is whether someone might be vulnerable to take them out of it. I feel very, very comfortable that the way that we process that actually removes a lot of bias. Previous to this we had in the vicinity of 40 people working through garnishee orders—able to do much fewer—but I could imagine the bias and the errors that would come when fairly maybe simple questions are being asked—

**The Hon. PENNY SHARPE:** This is really the heart of it, Mr Johnston: the issue of how much of it is automated. I can understand why you would be keen to have far fewer staff having to deal with that and dealing with what could be considered subjective matters, but it is the degree to how much of that is now fully automated and where is there any subjectivity. Is this not the heart of the issue around the legal issues?

**CULLEN SMYTHE:** I might just jump in there. The question around the decision is not whether an enforcement action must be made or is to be taken. So one of those three. That is mandated under the legislation. The question is: Is a garnishee order the most appropriate way of enforcing this fine? Really, if it is not, we are sort of thrown back into the question of should it be a property seizure order or a charge on their land, assuming some people have land.

**The Hon. PENNY SHARPE:** I am assuming that a lot of the people that find themselves in this situation would not have any land or any property, even if you wanted to pursue them for it. Not that I am suggesting that you do.

**SCOTT JOHNSTON:** Quite possibly, and we are not. We are not engaging in that unless in extreme circumstances.

**CULLEN SMYTHE:** But that goes to the point—

**The Hon. PENNY SHARPE:** I am happy for you to take it on notice. From the figures that we have got from the GIPAA, that just talks about the breakdown, the number of garnishee orders. It dropped significantly. Obviously this must be your pause coming into effect.

**SCOTT JOHNSTON:** I have those dates too.

**The Hon. PENNY SHARPE:** If you look at 2018-19, there was about 32,000; in 2019-20 there is about 22,000 and we are now heading into the last two years, which have just been a general disaster for everybody. So last year it looks like you only had about 3,000. That would reflect, I assume, the pausing of issuing those orders, not just a massive drop. But, again, I am trying to understand the proportion of those garnishee orders. If we just look at 2019-20, there is 22,335 from information I have been given. I am not questioning you. It is my understanding it is out of a GIPAA that you have provided to the Opposition. To get to that 22,335, where is the tick from the human that says that it is going to that person?

**SCOTT JOHNSTON:** So throughout the process of three months, there is complete human interaction of trying to engage with the people. Then it moves to a position where we—

**The Hon. PENNY SHARPE:** So you feel like you have got enough information through that three-month process, but the final—what I am understanding you are saying to me is that it means that really by the time we have got to the three months and for a range of reasons people are not interacting and basically avoiding what is going on or they moved house or they have prepaid phones, at that point it is a pretty automated process. You feel as though you have reached—it is through the three-month period rather than decision yes or no.

**SCOTT JOHNSTON:** We gained limited information from the people over three months to get us to that point. If they engaged with us, we have talked about a payment plan, a work development order or—

**The Hon. PENNY SHARPE:** If they have not engaged with you?

**SCOTT JOHNSTON:** If they have not had any engagement over this period, we would work through a set of criteria that, when confirmed, we will—an automation does it.

**The Hon. PENNY SHARPE:** Who does that or is that automated?

**SCOTT JOHNSTON:** It is automated partly because of volume.

**The Hon. PENNY SHARPE:** Yes, because there are 32,000 of them.

**SCOTT JOHNSTON:** We then have an officer review the outputs of this. They do not go in and check every single case that is not clear. They look at the summary information across and then provide—

**The Hon. PENNY SHARPE:** So, again, are you able to tell us that there is no individual oversight. It is sort of sampling and auditing.

**SCOTT JOHNSTON:** No, that is incorrect. There is a view of the output of all the cases that come through to us that someone, a person that works for Revenue NSW, looks at, and then they provide a confirmation that they have done such, and these are some of the changes that we bolstered about that they have properly reviewed this, and then it progresses through the garnishee order process, into the engagement with banks, et cetera, so—

**CULLEN SMYTHE:** Could I just make a point? Those numbers, they look rather high. So if we were to choose—I think you mentioned for one period maybe there was approximately 3,000.

**The Hon. PENNY SHARPE:** That is 2021.

**CULLEN SMYTHE:** Yes. So just using that number as an example, that does not mean that there are 3,000 customers. We need to issue 3,000 orders to the various financial institutions because we do not know which financial institution they may or may not have.

**The Hon. PENNY SHARPE:** That is good to know, okay.

**SCOTT JOHNSTON:** To that end, the number of orders is—most do not succeed. There is a small number too because we do not know where people bank or—

**The Hon. PENNY SHARPE:** Okay, thank you.

**SCOTT JOHNSTON:** If I could tell you those dates?

**The Hon. PENNY SHARPE:** Yes.

**SCOTT JOHNSTON:** We actually put it on hold for longer than I intimated earlier: April 2020 and we did not resume until June 2021. Now, we did have some particularly related to public health orders. We did issue a small number and they were done manually so that we had eyes on them and with quarantine fees as well in some cases. We then ceased again in August 2021. We did maintain a small number of related particular cases around public health order infringements, but then we ceased again in December, as I said. We have not recommenced, but my expectation would be in the—

**The Hon. COURTNEY HOUSSOS:** Sorry, it was August 2021 until—

**SCOTT JOHNSTON:** That did not come back in my message. It would have been end of lockdown or a little bit after the lockdown period, so probably November.

**The Hon. COURTNEY HOUSSOS:** Talking generally August to October and then December and January. Is that right?

**SCOTT JOHNSTON:** Yes, that is right.

**The Hon. COURTNEY HOUSSOS:** Okay.

**SCOTT JOHNSTON:** And February.



**The Hon. COURTNEY HOUSSOS:** And February, sorry.

**SCOTT JOHNSTON:** Yes, because we have not quite resolved that.

**Mr DAVID SHOEBRIDGE:** Through you, Mr Coutts-Trotter, you are centred in the right spot in the right direction. In the middle of 2020 the Government finally stacked up the changes to collection of fines from vulnerable persons and rolled out the new policy for the 50 per cent reduction. Who is responsible?

**MICHAEL COUTTS-TROTTER:** That would be Mr Johnston.

**Mr DAVID SHOEBRIDGE:** That came into effect from 1 July 2020.

**SCOTT JOHNSTON:** That is correct.

**Mr DAVID SHOEBRIDGE:** I want to indicate on behalf of my party, The Greens, that we think it is a very positive initiative; indeed, it is a matter we have been raising for some time, ensuring there is some kind of equity between fines and income. It came into effect on 1 July. How many applications have been made under that scheme, first of all, for the 50 per cent reduction? Do you know, Mr Johnston?

**SCOTT JOHNSTON:** I do. If I could, I will give you the full financial year and then the year to date.

**Mr DAVID SHOEBRIDGE:** Yes.

**SCOTT JOHNSTON:** I have not got a total—I could work it out quickly. The penalty amount reduction, where someone has received a 50 per cent reduction, in the first financial year of this, 2020-21, there were 586 instances. In the second year, so far to this point, at the end of January, 167.

**Mr DAVID SHOEBRIDGE:** All right. In the context of fine numbers, can you indicate how many fines were issued in 2021, which potentially were the subject of one of these applications? So it is 586 of how many fines?

**SCOTT JOHNSTON:** Well, there would have been in the vicinity of over two million fines were issued in the year, so it is a very small proportion. There are a number of other strengths to that change that, you would agree. The guidelines for that 50 per cent discount were—there was much debate about what offences would be open to this.

**Mr DAVID SHOEBRIDGE:** It excluded a fine issued by a court, a voting-related fine, a jury duty related fine and thankfully a fine issued to a body corp.

**SCOTT JOHNSTON:** It also excluded serious offences, such as road offences, or considered serious road offences such as driving, speeding through a school zone and speeding.

**Mr DAVID SHOEBRIDGE:** I think they were added after the policy was established at the discretion of the commissioner.

**SCOTT JOHNSTON:** No, sorry. That was the Minister's guidelines were established in the first instance.

**Mr DAVID SHOEBRIDGE:** It is just the media release that you issued at the time said:

To ensure the integrity of the fines system and to align with community expectations, the Commissioner of Fines Administration reserves the right to exclude any serious or significant offences from eligibility for a 50 per cent reduction.

Did it change from being the commissioner to the Minister at some point?

**SCOTT JOHNSTON:** No, no. That is true. In my role, my function, I have the review of what offences are part of that, but there was quite—when you look at the volume of offences that we have, a large proportion of them are out of scope of that, including the serious road offences, of which there are many, many thousands.

**Mr DAVID SHOEBRIDGE:** Sorry. So there are serious road offences that are excluded. Are you saying there is a long list of offences excluded from the 50 per cent reduction, Mr Johnston?

**SCOTT JOHNSTON:** Whether it is long I do not know.

**Mr DAVID SHOEBRIDGE:** I say "long". You tell me how many: if it is the bulk of offences, half the offences, a quarter of the offences, the most common offences. That is what I am trying to explore with you, Mr Johnston.

**SCOTT JOHNSTON:** Some of these would be quite common offences. But I could provide on notice some more details to you on which of the offences are not available to get this discount, if that is helpful.

**Mr DAVID SHOEBRIDGE:** Well, I mean, just for the moment, 586 out of two million or so seems to be a scheme that is, at best, boutique and not actually addressing any kind of fundamental fairness issues.

**SCOTT JOHNSTON:** So the other part of the requirement is that people should be receiving benefits of some form to be eligible for the discount, which again reduces the number of people potentially that could find this. We have had significant increases in payment plans created. This legislation in one part had—and it got the most attention—the 50 per cent discount. In fact, it created an opportunity for us to engage with people to help them resolve their fines in a number of ways, rather than stepping through enforcement or creating a greater problem for them down the track. Hundreds of thousands of people—180,000 people had a payment plan created. Before this you could only do that after it was enforced. That creates a chance for us to be quite supportive to their circumstance.

**Mr DAVID SHOEBRIDGE:** So 180,000 people had a payment plan done in 2021?

**SCOTT JOHNSTON:** Yep, and just under 94,000 at 31 January for this last year as well.

**Mr DAVID SHOEBRIDGE:** But only 586 actual reductions in fines.

**SCOTT JOHNSTON:** That is right.

**Mr DAVID SHOEBRIDGE:** And 167. So the 180,000 people who are paying the full fine, just over a longer period of time.

**SCOTT JOHNSTON:** That is correct.

**Mr DAVID SHOEBRIDGE:** How does that compare to the year before? You say that that is an increase and that is a good thing from the outcomes. How many people had payment plans in 2019-20?

**SCOTT JOHNSTON:** Well, zero had them. They were not enforced. So this is the 180,000 people who created a payment plan before then.

**Mr DAVID SHOEBRIDGE:** Before enforcement action?

**SCOTT JOHNSTON:** That is right.

**Mr DAVID SHOEBRIDGE:** Materially, what difference did that make to them?

**SCOTT JOHNSTON:** So a \$65 enforcement fee and it also helped create a discussion with people that gets away from the firmer actions that happen when you avoid engaging with us, such as garnishee orders or other things. It has meant people can explain their circumstances and we work through that, or diverting them into work development orders, which continue to do very well.

**Mr DAVID SHOEBRIDGE:** When people receive a fine, are they given information about in what circumstances they can seek a 50 per cent reduction? Is that detailed in the fine notices that go to people?

**SCOTT JOHNSTON:** There is detail on the notice to contact us for ways to support. It does not speak specifically to the 50 per cent discount.

**Mr DAVID SHOEBRIDGE:** So, nobody knows. How would you find out?

**SCOTT JOHNSTON:** We share information on our website—

**Mr DAVID SHOEBRIDGE:** So if a single mum in western Sydney gets a fine in the afternoon on the way home from the shops, there is an expectation that she will go onto the website and find out how to get a 50 per cent reduction?

**SCOTT JOHNSTON:** No, that is—

**Mr DAVID SHOEBRIDGE:** Well, how does she find out?

**SCOTT JOHNSTON:** If she was to make contact with Revenue NSW to talk about her circumstance, her fine, we would triage that discussion into a point where we would consider—and we would consider everyone, yes.

**Mr DAVID SHOEBRIDGE:** At some point she might be told?

**SCOTT JOHNSTON:** Pardon?

**Mr DAVID SHOEBRIDGE:** At some point in that conversation she might be told about the possibility of a 50 per cent reduction?

**SCOTT JOHNSTON:** It is not just chance, Mr Shoebridge. Where people identify vulnerability, our staff are trained to look at this as an option that we can explore.

**Mr DAVID SHOEBRIDGE:** There were two million fines. How many phone inquiries did your office deal with from members of the public?

**SCOTT JOHNSTON:** I would have to take that on notice.

**Mr DAVID SHOEBRIDGE:** It is nowhere like two million, is it, Mr Johnston?

**SCOTT JOHNSTON:** No, it would be much less.

**Mr DAVID SHOEBRIDGE:** It is not even a noticeable fraction of two million. That is not a way of getting the information out, is it? If you are expecting someone to come home, research that your office even exists—which, you know, I know it is important to us and we all know the important work you are doing; I am not minimising it, but 99 people in 100 do not even know your office exists. They research, they find out your office exists, they go onto the website, they hunt it down and they find something in a sort of subdirectory on the website or they call you—that is not a way of informing people about their rights, is it? Well, not a good way.

**SCOTT JOHNSTON:** I appreciate that feedback. I think we can continue to do a lot more in communicating and sharing our message about the options of support. But we do—

**Mr DAVID SHOEBRIDGE:** Why don't you tell people when they get the fine? That is often the only communication they are going to see. They get the fine, but you do not tell them at the time that they have—a large number of people have—a valuable right. People who really need it, people in significant financial hardship—you do not even tell them.

**SCOTT JOHNSTON:** We make it very clear on our notices that we can support you—and I have not got a notice in front of me to give you the exact language, but I am very happy to share it. That shows that we are here to support you if you need help in making this payment.

**Mr DAVID SHOEBRIDGE:** Can I tell you, most people do not take the person giving you the fine as the "happy help agency". That is just not how most people think. They do not think, "Hey, these nice people have given me a \$586 fine and they want to help me."

**SCOTT JOHNSTON:** Well, this is the advice—

**Mr DAVID SHOEBRIDGE:** Most people do not go through that thought process, Mr Johnston, which probably explains why people do not contact you. Do you agree?

**SCOTT JOHNSTON:** Many people do, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** How many?

**SCOTT JOHNSTON:** I will come back to you with the number of calls we have had. I have not got that in front of me. But I think it is a misrepresentation of the efforts that we are doing in supporting vulnerable people by making a point of the letter—the words that we have on our advices to people. We try to get a response from someone, a positive response from someone, to engage with us when we send them that advice, and we send multiple advices over a period of time.

**Mr DAVID SHOEBRIDGE:** But none of it includes some black-and-white statement that if you are on a government pension, if you are on social security, there is a good chance you could have your fine cut in half, and here is how you apply.

**SCOTT JOHNSTON:** I am very happy to continue to—I will return to the office and reflect on our advices how we can communicate that better. I agree the sharing of the message that you owe money is a difficult one for us to get engagement with. It has been a challenge for our office, I think, for a long time.

**Mr DAVID SHOEBRIDGE:** It is not a happy time.

**SCOTT JOHNSTON:** No.

**Mr DAVID SHOEBRIDGE:** I have received communications from your office at different times over my 30 years of adulthood and it has not been a happy time. That is my personal experience.

**MICHAEL COUTTS-TROTTER:** Specifics?

**Mr DAVID SHOEBRIDGE:** For later, on notice.

**SCOTT JOHNSTON:** We can continue to be better in our messaging, and we are doing work about thinking around behavioural science, behavioural nudges, to get people to respond to us. Whether to say, "Here is

a 50 per cent discount" to everyone, when it is only for a cohort of people that it is going to be available to, we have to work through it the right way.

**Mr DAVID SHOEBRIDGE:** Yes. So, on notice, could you provide details of all of the offences that have now been excluded from the system, and could you provide an example of any notice that you give to people about it?

**SCOTT JOHNSTON:** Yes, I would be happy to.

**Mr DAVID SHOEBRIDGE:** But I come back to this point: If you do not put it in the communication in a clear and digestible way when a person gets their fine, it is highly unlikely that anything other than a tiny fraction are going to be calling your office for help in the situation. There has to be another way of getting that information to people. Do you accept that?

**SCOTT JOHNSTON:** I think that makes the assumption that the 50 per cent discount is the only reason someone would contact us, where I think we can—we provide a range of options that will suit everyone. If someone calls us to say, "Could I get a 50 per cent discount?" and we say no, that is not necessarily the most helpful point. But we can talk to them about how, with this fine, with other debt they have, how we can best support them. So, I agree, absolutely we can do more and probably should do more to share the message of this great effort—the availability that we have.

**Mr DAVID SHOEBRIDGE:** Well, 167—I am trying to work out what it is as a percentage of, say, a million fines. I am not sure if it is three zeros after the decimal point or if it is four zeros after the decimal point, but it is not making a meaningful difference, on any view of it, is it, Mr Johnston? And that policy, announced with great fanfare on 21 June 2020, has just not been followed through, has it?

**SCOTT JOHNSTON:** So that aspect of the legislation, I agree, has not reached the numbers that we anticipated, but it still has made a fundamental difference to the way that people have engaged with us. Some people do know—you would be surprised, but some people have called us and asked about this.

**Mr DAVID SHOEBRIDGE:** Yes, just under 700 people in two years.

**SCOTT JOHNSTON:** Have received it, but they have either been then diverted—

**Mr DAVID SHOEBRIDGE:** That is one person a day.

**The Hon. WES FANG:** It made a difference to that person's life.

**SCOTT JOHNSTON:** I am not—

**Mr DAVID SHOEBRIDGE:** Mr Johnston, I understand that each time something happens that is good, right?

**SCOTT JOHNSTON:** Yes.

**Mr DAVID SHOEBRIDGE:** And diverting people onto a payment plan rather than whacking them with a court fine, putting enforcement proceedings and then garnishing their wages—that is all good. I am not trying to minimise that work. But it has failed in a major and significant way to live up to the promise that was made about the 50 per cent reduction for people in significant financial hardship. That is what I am putting to you. You can either agree or disagree.

**SCOTT JOHNSTON:** I do not think it is for people like yourself to judge whether that has failed in a significant way, rather than myself. I think this has not reached its potential, and that is clear. But it is a valuable tool for us that we can keep building on.

**Mr DAVID SHOEBRIDGE:** I will finish on this: If nobody knows, nobody applies, and I cannot work out how on earth 99 people out of 100 would ever find out about this. But you have undertaken to go back and look at the notification processes and see if they can be improved?

**SCOTT JOHNSTON:** Yes, and we are looking—we have been, over a period of time, looking at our advices, and I will get an update specifically on that opportunity for a discount.

**The CHAIR:** A number of fines—tens of thousands, in fact—were issued for COVID breaches. I know this has been a topic the Minister has commented on in the last week. You can correct me on this, but it is roughly around 60,000-odd fines.

**SCOTT JOHNSTON:** It is very close to 60,000.

**The CHAIR:** Just short of 3,000 were issued to children, in fact. I know you do not issue the fines, but you are part of the process.

**SCOTT JOHNSTON:** Yes.

**The CHAIR:** I am particularly focused on disadvantaged communities. We have seen the stats from your organisation about the fact that they seem to have been quite heavily targeted with these fines. Can you talk to us about what work you are doing to support people who might be in very difficult circumstances in terms of paying these fines? Are you providing any support to them? I know applications have been made, but only about 300 of them have been considered or overturned by Revenue NSW. That is not huge, given that, like I said, just short of 3,000 are children.

**SCOTT JOHNSTON:** The process is important, I think, in how I best answer this. If someone requests a review to their fine, we engage the issuing authority, which in I think 99 per cent of COVID fines is NSW Police. They go through a process of review, consider the circumstances and either, on occasion, withdraw or advise us that the penalty is to stand. I then have the ability to further consider and caution or withdraw fines. On a relatively small number, I have done that. From a perspective of numbers that have been withdrawn, it is a reasonably low number but it is not necessarily inconsistent with other fines. I think the important thing in Revenue NSW's approach to supporting communities with these fines is trying to provide good information about people's choice. We have, in the latter months of last year, initiated a working group with the various legal services across New South Wales and other parts of the public service to understand the issues that were coming through, not so much the legality or the issuing of the fines, even though those issues were absolutely there, but how could we better connect and work with communities?

**The CHAIR:** So what kind of work are you doing on that? I am particularly talking about the already disproportionately disadvantaged communities. A lot of the fines were handed out in Walgett, Brewarrina and Wilcannia. Have you reached out or is your organisation doing any work with people who are affected in those communities?

**SCOTT JOHNSTON:** Yes. Through this group and identifying the best ways to engage with communities, which is not necessarily a Revenue NSW officer—through police in some areas, Legal Aid, others, to share the information that people have: "This is how you make a request for review." If people have not got access to technology or to do it online, that is quite limiting, so we have created the opportunity for people to do that more. We have, through this working group and the legal services groups, understood the types of issues that are coming forward and asked, "Can we look at alternative ways for people to meet their debts?" particularly work development orders, and had some success in communities in that. Again, we are trying to get early engagement with people to have a discussion, because in many cases they are large fines, and working through that process.

**The CHAIR:** Who is involved in the working group? Some of these issues are being raised directly by, for example, the Aboriginal Legal Service—

**SCOTT JOHNSTON:** Yes, they are part of this.

**The CHAIR:** —who are making the point that people have made applications to Revenue NSW when, in their view, these fines should have been dealt with in a different way, but they were not. So are they involved in the working group or how are you engaging with them?

**SCOTT JOHNSTON:** Yes, they are. I am aware of the criticism that they have shared, which is typically to the lawfulness of the fine rather than—and I welcome a contrary view—how Revenue NSW is engaging with people. For these fines, we are working closely with police and working within the system and knowing that the public health orders were very important to keep us healthy and safe and trying to be consistent through that process.

**Mr DAVID SHOEBRIDGE:** Have they also been excluded from the 50 per cent reduction?

**SCOTT JOHNSTON:** COVID fines are not part of the 50 per cent reduction. That is right.

**Mr DAVID SHOEBRIDGE:** Was that a conscious decision to exclude them?

**SCOTT JOHNSTON:** Because of the seriousness of the offences, they were excluded.

**The CHAIR:** The seriousness of COVID breaches in Wilcannia?

**SCOTT JOHNSTON:** The public health orders were there to keep the State safe.

**The CHAIR:** I accept that you do not issue the fines. I am not arguing with that. That is a matter for police and other authorities. But essentially there are a huge chunk of people who are already very disadvantaged and if you are not going to review their fines, which these legal groups are saying is not happening, their only other option is to go to court. This is not really a great position for people to be in. Is there other work that you can do or that you are considering where this will be looked at?

**SCOTT JOHNSTON:** With all respect, Chair, we are reviewing their fines. It is the outcome of that review that is the issue, where it is standing.

**Mr DAVID SHOEBRIDGE:** There is no review to reduce the fines or to waive the fines. The review is just how they go about paying it off over a period of time.

**SCOTT JOHNSTON:** No, sorry, Mr Shoebridge, the review is where someone challenges or questions the issuing of the fine. That is the basis of a request for review.

**Mr DAVID SHOEBRIDGE:** So it is only about lawfulness. There may some legal defect in the fine. If there is a legal defect then they can have a review. But this is not a merits review about—

**SCOTT JOHNSTON:** No, their personal circumstance is also part of that discussion or deliberation. There have been examples where people might have been exercising—the exercising was being able to be out—and maybe they were sitting down at a time when they were issued a fine, understanding the context of health and other things to provide other colour, which in cases allowed some of these to be—

**Mr DAVID SHOEBRIDGE:** That is not about them not having the financial capacity to pay the fine or the crippling impact of the fine. It is about whether or not the fine should have been issued in the first place because of maybe a defect in the process or failing to establish one of the grounds of the offence. Unless you tell me otherwise, in which case please tell me, how many fines have been waived for COVID because of the dire financial circumstances of the person who had the fine?

**SCOTT JOHNSTON:** My apologies if I was answering a question about people asking for their fine to be reviewed. That is why I was talking about the legality of it, to the Chair's question. There are a range of reasons where fines have been withdrawn, and some of them do relate to their personal circumstance and their ability to pay.

**Mr DAVID SHOEBRIDGE:** Firstly, how many of the COVID fines have been withdrawn? Secondly, of that, how many of them have been withdrawn because the people simply cannot afford to pay them?

**SCOTT JOHNSTON:** To the latter, I would have to take that on notice around the specifics.

**Mr DAVID SHOEBRIDGE:** And the former? How many have been withdrawn?

**SCOTT JOHNSTON:** I will come back to you with the exact number. But as at 31 January we are in the vicinity of 1,150 or closer to 1,200.

**Mr DAVID SHOEBRIDGE:** Out of?

**SCOTT JOHNSTON:** Out of 60,000. And some of these were cautions. Sorry, I was looking at areas where they were either cautioned or other parts. I can give this breakdown to you on notice, if that is helpful.

**Mr DAVID SHOEBRIDGE:** That would be really helpful. In fact, if you have just got it there in black and white we can get a copy made of it and shared, if that is the easiest way.

**SCOTT JOHNSTON:** That is fine.

**The CHAIR:** How many of these applications are currently in place and what is the timetable for their consideration? My figures would be out of date because you have just given 31 January but, as I understand it, in December there were roughly about 7,000 applications made and there were still about 3,200 outstanding.

**SCOTT JOHNSTON:** We have had 10,310 requests for review that have been processed, which related to 8,327 penalty notices. We had some multiples because customers can submit multiple requests for a single fine. There are a further 543 requests for review that are yet to be processed for 348 penalty notices. So 4 per cent are outstanding.

**Mr DAVID SHOEBRIDGE:** So about one in seven succeed on those numbers. You said about 1,200 have been withdrawn.

**SCOTT JOHNSTON:** Roughly, yes.

**Mr DAVID SHOEBRIDGE:** About one in seven?

**SCOTT JOHNSTON:** Yes.

**Mr DAVID SHOEBRIDGE:** What is the youngest age that somebody was hit with a COVID fine?

**SCOTT JOHNSTON:** I will take that on notice but I will come back you to today. I believe I know the answer but I do not—

**Mr DAVID SHOEBRIDGE:** If a child is issued with a fine, what are the processes you go through, first of all, to notify the child of the fine and then, secondly, to enforce it?

**SCOTT JOHNSTON:** It is a different process to an adult, such as we do not—I cannot find my specific notes to that question. Generally the person is aware of the fine being issued because they had an interaction in 99 per cent of the instances with police, so there is something provided. We follow a similar process because we only have the contact details of the person—in this case, a minor—that we would email; sorry, we would post an advice. We would—

**Mr DAVID SHOEBRIDGE:** Do you post it to the minor?

**SCOTT JOHNSTON:** If they provided an address, because we cannot—we have not got authority in this instance to speak to or engage with their parent and do not know their circumstances at home. And there is a low—it is a very difficult area for us to get connection and response to unless typically—but a lot of the minors that have received fines are 17-year-olds. So there are different challenges we face depending on the age of people.

**Mr DAVID SHOEBRIDGE:** But you are literally sending letters to 13-year-old kids saying, "Here's your \$2,000 fine. Here's your \$1,000 fine."

**SCOTT JOHNSTON:** Well, we have to advise them of the fine. They would have received something when they were—off the police officer, presuming that was how the fine was given. We do not go through—there gets to a point where we do not continue to pursue that fine. What occurs is when they reach 18 or they try to get a driver licence, there will be a record that that has not been resolved, which often provides a trigger for them to engage with us. So many fines for minors do not get resolved by minors, but we can—

**Mr DAVID SHOEBRIDGE:** Until they want a licence.

**SCOTT JOHNSTON:** But they can still do work development orders, for instance. It got some really great success with minors working with doing work development orders through TAFE courses, et cetera, to try to meet that debt across a whole range of things, not just specifically COVID fines.

**Mr DAVID SHOEBRIDGE:** So some of the most vulnerable kids in the State accrue these bunch of fines, and then that ends up becoming a multi-thousand dollar problem before they can get their driver licence. That is the system you administer, Mr Johnston. I am not saying you created it, but that is the system: Some of the most vulnerable kids in the State accrue a bunch of fines, maybe one or two or more, and then what that actually means is in reality they have a multiple-thousand dollar barrier in addition before they can get a driver licence.

**SCOTT JOHNSTON:** Which is a terrible outcome. What we are trying to do in this space is—so we are administering the laws that are given to us.

**Mr DAVID SHOEBRIDGE:** I am not blaming you for the system, Mr Johnston.

**SCOTT JOHNSTON:** I know you are not questioning that. But what we can do and where we can provide a difference is through education; diversionary strategies such as doing pilots around helmets, fines for kids not wearing helmets, et cetera. How can we, instead of fining, find a different solution that either provides them with a helmet or provides another outcome so that they are not getting a fine. It is working with Transport around transport fines as well and where people receive fines for not paying for a ticket, et cetera. How do we—it might be for safety reasons or others that they are riding the trains—find a solution that does not penalise them. We are looking for behavioural change in our system and not penalty, not financial penalty. The more that we can do and the freedom that we actually can engage with—communities have our very effective Aboriginal community outreach team that has good connection over many years in communities to try to help and support people.

We also have a hardship—sorry, not a hardship—a First Nations hotline where someone, an Aboriginal person, if they have got a fine they can speak to someone. They have the choice of speaking to an Aboriginal person if they would like, and if they do not that is fine. But we have helped—or at least that service has been taken up by about 1,500 people in the last year. There are many things that we can do that avoid that point where someone hits 18 and they have a fine debt. What our job is to continue to try and engage with them in different ways and, where we can be creative, work with schools and with others to try to get to that point where you are not having that situation that causes a cycle of disadvantage.

**Mr DAVID SHOEBRIDGE:** I will stop you here. On notice, can you give us how many people did hit 18 with that fine debt last financial year and this financial year to date?

**SCOTT JOHNSTON:** I will take that on notice.

**The Hon. SHAYNE MALLARD:** I think in balance to also give the diversionary figure too. To have the two would be good.

**Mr DAVID SHOEBRIDGE:** Mr Johnston, I am not going to limit how you respond to that question. If you want to put some context in it with some other data, by all means do.

**SCOTT JOHNSTON:** Okay.

**The CHAIR:** I am going to ask for some other data, and you can take this on notice, of course. I might be out by a number or two, but my understanding is that 56 children were issued COVID breach fines between \$3,000 and \$5,000 each—that is 56 of them—which is blowing my mind because I would imagine that all 56 of those children are already in other kinds of circumstances. You can either answer this now or otherwise take it on notice: With those 56 children, has any action or, alternatively, support been provided so that they are not stuck with these \$5,000 fines for breaching COVID rules?

**SCOTT JOHNSTON:** To give the fullest answer, I will come back on notice if that is okay.

**The CHAIR:** Understood. I know you did not issue them, but—

**The Hon. SHAYNE MALLARD:** I would be surprised if he could answer it here.

**The CHAIR:** Sure.

**SCOTT JOHNSTON:** But I will say we—and in parts engaging with the legal services who we continue to meet with regularly as a group, we take their feedback. We take their criticism and think about actually what we can do to get the best possible outcome. Our space is not to question whether it was \$5,000 or \$3,000 in the fine or whatever that level was.

**The CHAIR:** No, but if you are pursuing them—

**SCOTT JOHNSTON:** Yes, yes, we are but we can do it with empathy and understanding to them, but we need to have engagement with people who have got fines. This is where the legal services are a great advocate and support, actually. We need their connection where people are coming to them looking for help, even though we welcome their robust feedback about what they are not happy with and that as well. But to the specifics of that group, I could not answer off hand, but I will come back.

**Mr DAVID SHOEBRIDGE:** It is a unique challenge, is it not?

**SCOTT JOHNSTON:** It is very much so.

**Mr DAVID SHOEBRIDGE:** There are no other circumstances that I am aware of where kids are getting \$5,000 fines, which you are administering. This is kind of unique.

**SCOTT JOHNSTON:** These fines are bigger than we would normally administer, I agree. So I would say that is right. I do not have with me the numbers of people in that or the circumstances that they were given. There is an assumption that you have made that they are vulnerable, and they quite possibly are, and quite possibly we are working really closely with—

**Mr DAVID SHOEBRIDGE:** But this sounds like just another 56 people who are just going to have another insuperable barrier, many of them, to getting a driver licence.

**SCOTT JOHNSTON:** Well, that is the—

**Mr DAVID SHOEBRIDGE:** Then they will maybe be fined for driving unlicensed, then they will get some additional fines and the whole thing will just keep going. They cannot get a job. That is the path.

**SCOTT JOHNSTON:** Mr Shoebridge, that is a real challenge for us, but we are leaning into it to try to get the best outcome.

**Mr DAVID SHOEBRIDGE:** One thing you could do straightaway—

**SCOTT JOHNSTON:** I am absolutely not saying that we are ignoring these people. There is an unprecedented situation where there are 60,000 fines for offences that did not exist two years ago. We are working through with different community groups, with different parts of the State, and people are suffering and struggling in different ways. Then there are others who can pay as well, so we have to be really smart as to how we engage with people and get the right outcome.

**Mr DAVID SHOEBRIDGE:** But one thing you could do straightaway is you could actually extend the 50 per cent reduction to those fines where the fine was issued to a minor. You could do that this afternoon. You



could halve the problem for those kids. Why won't you do that? For the 56 kids who are facing \$5,000 fines or so, you could do that this afternoon.

**SCOTT JOHNSTON:** I firstly would like to reflect on the data of the 56 of 5,000 because I do not know that circumstance. I think the 50 per cent discount is very clear in its framing around the types of offences and the really robust debates that went on around what types of things should be included or not and the seriousness of public health orders.

**Mr DAVID SHOEBRIDGE:** Whatever the past discussion was, it should not get in the way of you in your role as chief commissioner trying to deliver a more balanced measure of justice wherever you can. You can do it here, but you have not and I do not understand why.

**SCOTT JOHNSTON:** My best response would be—

**Mr DAVID SHOEBRIDGE:** "I will take it on notice."

**SCOTT JOHNSTON:** —not satisfactory to you, I am sure. There are a number of things we can do to try to work through people's debts in this space. Did you know we worked with the Kimberwalli education centre in Mount Druitt to promote and encourage the use of work development orders for people who were coming, having a medical consultation and getting vaccinated for COVID? We withdrew \$1,000 per person from their fine through that work development order. I think the criticism that you are levelling, I will reflect on and think how we can continue to be better, but we are absolutely trying to be as supportive and creative as possible to people in the circumstances.

**Mr DAVID SHOEBRIDGE:** The bulk of this is you administering laws and rules that are given to you by the Parliament.

**SCOTT JOHNSTON:** That is right.

**Mr DAVID SHOEBRIDGE:** I am not holding you responsible for that. But in the areas where you have a scope in your discretion as chief commissioner to deliver a measure of justice, it seems to me on the 50 per cent reduction you have taken a very robust approach to excluding offences. For me, you have a discretion to exclude COVID offences and could probably limit it to COVID offences when there are minors in place. It does not seem to me that it has popped to the front of your mind despite this really significant impact on kids. A \$5,000 fine for a 16-year-old kid—who has that? There is a chance for you to do something here.

**SCOTT JOHNSTON:** We have had discussions again with the working group that extended beyond government, public service, about what our options were in this space. I feel there is a range of alternatives that can get a good outcome, and there are instances where we can withdraw a fine due to significant vulnerability. If someone is unable to pay it and engages with us and has that discussion, there are things we can do to support those people. As I said—and I genuinely will take this feedback on—I am going to look at if it is 56 or if it is some other number and think about how we best support them individually. But I think the Fairer Fines 50 per cent discount is not necessarily the mechanism.

**The Hon. PENNY SHARPE:** We have been talking a little bit on the public health orders. Do you have the up-to-date numbers in terms of how many and worth how much?

**SCOTT JOHNSTON:** The fines?

**The Hon. PENNY SHARPE:** Yes, for public health orders. Are you able to give us those?

**SCOTT JOHNSTON:** That was a number just shy of 60,000.

**The Hon. PENNY SHARPE:** Can you tell us what date that is?

**SCOTT JOHNSTON:** So 59,958 as of 31 January.

**The Hon. PENNY SHARPE:** Do you know how much they are worth?

**SCOTT JOHNSTON:** It is \$55.33 million.

**The Hon. COURTNEY HOUSSOS:** Do you know how many of them were issued to people under the age of 18 years old?

**SCOTT JOHNSTON:** Some 3,563.

**The Hon. COURTNEY HOUSSOS:** And the value of those?

**SCOTT JOHNSTON:** It is \$2.33 million.

**The Hon. COURTNEY HOUSSOS:** Do you know how many individuals they were issued to?

**SCOTT JOHNSTON:** I will take that on notice. I will probably be able to come back to you shortly. I would like to say it is the same number, but I do not think it probably is.

**The Hon. PENNY SHARPE:** Just to be clear, that is the total number of orders that were issued throughout the entire—what period does that cover? Is that just this financial year?

**SCOTT JOHNSTON:** That is the total number of fines issued for COVID.

**The Hon. PENNY SHARPE:** Altogether for COVID.

**SCOTT JOHNSTON:** For the past two years. There is a relatively small proportion in the previous financial year.

**Mr DAVID SHOEBRIDGE:** Mr Johnston, it was 59,958 and it was \$55 million?

**The Hon. PENNY SHARPE:** Yes.

**SCOTT JOHNSTON:** Correct.

**The Hon. PENNY SHARPE:** I assume this is probably a little bit difficult, but what is the breakdown of those that are overdue and recovery action is being pursued, separate from just getting the fine?

**SCOTT JOHNSTON:** So 25,265 are overdue.

**The Hon. PENNY SHARPE:** That sounds like you might be able to tell me how much that is worth, too.

**SCOTT JOHNSTON:** That is worth \$22.93 million.

**The Hon. PENNY SHARPE:** Does that mean that, basically, recovery action is underway?

**SCOTT JOHNSTON:** Yes. There would be a \$65 enforcement fee and we would continue to try to engage and make contact.

**The Hon. PENNY SHARPE:** That is on top of the fine? So they have to pay an extra \$65 on top of the fine?

**SCOTT JOHNSTON:** That is right, which from the outset is identified. Several months after—it is two months after it is initiated roughly that that happens.

**Mr DAVID SHOEBRIDGE:** They have all come from New South Wales police?

**SCOTT JOHNSTON:** So 99 per cent are from New South Wales police.

**The Hon. PENNY SHARPE:** To go back to the garnishee order, they have been paused but it does not mean that they have gone away. Once you have the legal advice—assuming you clear any legal hurdles and you are comfortable—really it is then just press "go"? There have only been 3,000 in 2021, then all of a sudden the missing 20,000 that there normally are will be on top of what happens in 2021-22?

**SCOTT JOHNSTON:** We are not catching up. It is not an effort to catch up. When we have turned it off previously during COVID, we eased the process back in. I think the people who are overdue in their fines, including COVID fines, could potentially progress through to the point where a garnishee order is issued for their amount. So I do not think it is, "Here is a flood of—"

**The Hon. PENNY SHARPE:** I am really just talking about all of them. I am really just going back to the decision that they are paused at the moment.

**SCOTT JOHNSTON:** Yes, that is right.

**The Hon. PENNY SHARPE:** Yes, it will capture some of the people under the public health orders, but it is really everyone who is potentially going to have a garnishee order, it is paused at the moment, but once you have cleared your legal concerns or reassured yourself, they just are straight back in?

**SCOTT JOHNSTON:** Our strategy to recommence it would be gradually, progressively reinstated. But it is part of the function that we have to, as Mr Smythe spoke to earlier, pursue in our role.

**The Hon. PENNY SHARPE:** I want to ask you about something slightly different, still COVID-related though. Did your agency establish a separate COVID cost centre to receive support?

**SCOTT JOHNSTON:** We have supported the State in numerous ways in Revenue NSW for COVID stimulus efforts and—

**Mr DAVID SHOEBRIDGE:** Mr Johnston, this is whether or not you had the black credit card to do whatever you liked out of the slush fund.

**SCOTT JOHNSTON:** If the question is—

**The Hon. PENNY SHARPE:** The question is did you have a cost centre in Revenue NSW to allocate costs required by your agency to deal with COVID matters?

**SCOTT JOHNSTON:** Yes. For the efforts that related to COVID, we established reporting and a cost centre to—we understood what we were spending on COVID stimulus efforts and ensured that they were spent on COVID stimulus efforts.

**The Hon. PENNY SHARPE:** Can you tell us how much you spent on COVID stimulus efforts?

**SCOTT JOHNSTON:** Could I come back to you?

**The Hon. PENNY SHARPE:** Yes, that is fine. I am very happy for you to come back to us. Obviously I am also interested in a breakdown of how much was spent but also what it was spent on.

**SCOTT JOHNSTON:** Yes. We have helped in a number of ways: land tax relief, payroll tax assistance.

**The Hon. PENNY SHARPE:** That is not what I am talking about. What I am talking about is my understanding is that Treasury provided some agencies—and maybe your agency was not one of them, which is why I am asking about whether your agency specifically was given supplementary funding to deal with COVID measures. Mr Coutts-Trotter looks like he wants to answer this question. I am going to ask him in a minute about what DPC did.

**MICHAEL COUTTS-TROTTER:** I am going to deliver a *Media Watch* judgement on this one.

**The Hon. PENNY SHARPE:** I am wanting to understand whether Revenue NSW had additional funding to deal with its own COVID-related matters. You may not have.

**SCOTT JOHNSTON:** No. I was answering a question that I thought related to the important work that we—

**The Hon. PENNY SHARPE:** No, we will come back to those things.

**The Hon. COURTNEY HOUSSOS:** No black credit card for you.

**SCOTT JOHNSTON:** No.

**The Hon. PENNY SHARPE:** No.

**Mr DAVID SHOEBRIDGE:** How did you miss out, Mr Johnston?

**The Hon. PENNY SHARPE:** Mr Coutts-Trotter might be able to tell me what DPC did.

**MICHAEL COUTTS-TROTTER:** I cannot really answer for DPC. But, of course, the story in the Sunday paper from unnamed whistleblowers with unspecific allegations did say that the Department of Communities and Justice was at the front of this appalling behaviour. First up, if there are specific allegations, they have to be dealt with properly. But, secondly, there were not any, and DCJ would have hundreds of cost centres at any given time, and all the various COVID initiatives—everything from additional rental subsidies to additional temporary accommodation to grants through the Red Cross to CALD communities—would all have cost centres, as would using rapid antigen tests for every prison officer or Youth Justice worker arriving on site every day.

So it is not surprising that cost centres would be established and expenditure coded to them, but all of that happens within an appropriation to the agency from the Parliament and/or the Treasurer. That is the ultimate control. The notion that there is some means by which public sector agencies can go off and spend unlimited amounts of moneys is completely nonsensical and wrong. There could be some specific allegations that something that should have gone to cost centre A was put to cost centre B. They have not yet emerged but the general picture, to reassure people, is that there are really tight financial controls in place for all this stuff.

**The Hon. PENNY SHARPE:** I do not really want to get into the DCJ, this is not the estimates for that. We could have had a long conversation about that in—

**MICHAEL COUTTS-TROTTER:** I would have to time travel.

**The Hon. PENNY SHARPE:** Yes, in another time perhaps we would be having a long conversation about that. But the allegations are serious. While you are making the point that you could just have—if it is just this cost allocation and this other cost allocation, that does have real ramifications.

**MICHAEL COUTTS-TROTTER:** Have you read *The Crucible*?

**The Hon. PENNY SHARPE:** If one of the allegations was that people got their carpet replaced in their office and it was supposed to be taken out of the COVID money, I think that is a problem.

**MICHAEL COUTTS-TROTTER:** I would agree.

**The Hon. PENNY SHARPE:** I am trying to understand. For example, I asked National Parks earlier this week, and they were able to tell me that they got \$1.1 million and they were able to give me a breakdown of that. Basically that was used for extra cleaning of their offices and dealing with visitor centres. I am perfectly relaxed about that answer. What I am trying to elicit today is, well, it does not sound like Revenue NSW—and, to be honest, I was not really expecting Revenue NSW to have it. It is not a frontline agency, it is doing its work and it was able to move online—all those things—and people worked from home. It is more the frontline agencies, where there are people in the field who have got to keep working, where I assume this money went to.

**MICHAEL COUTTS-TROTTER:** Sure.

**The Hon. PENNY SHARPE:** But the concern is—there are some pretty cluey people who understand how they manage their budgets and whether that was an appropriate place for money to be used, and the whistleblowers are serious about it. Whether or not you are annoyed about the way in which it has come out, that is, they have gone to the media rather than go to the [disorder], that is fine. But the issue is—

**MICHAEL COUTTS-TROTTER:** No, but unnamed whistleblowers—and when the journalist was pressed for specifics, they would not provide them. If we get specifics, we can act on them—happy to do it. But a lot of people are working really hard. Coding expenditure between hundreds of cost centres is necessary but it is a lot of work for finance teams and frontline managers to do. It is appropriate, you need to be accountable for the dough, but to have a pretty significant concern raised without any specifics at all I think is a bit unfair to all those people who do good work.

**Mr DAVID SHOEBRIDGE:** But the long and the short of it for today's hearing is that there was no COVID additional payment to you, Mr Johnston.

**MICHAEL COUTTS-TROTTER:** Yes, sorry.

**SCOTT JOHNSTON:** That is right.

**The Hon. PENNY SHARPE:** Mr Johnston did not get any. Did DPC?

**Mr DAVID SHOEBRIDGE:** There is no imaginarium in the chief commissioner's office, and we can move on.

**SCOTT JOHNSTON:** No, that is right.

**The Hon. PENNY SHARPE:** That was my question.

**The Hon. WES FANG:** I was going to raise the point that there has not been much of a question asked of late, but it was an interesting discussion nonetheless.

**The Hon. PENNY SHARPE:** How about I ask a more specific question? Of the \$310 million that was allocated late last year for the Summer Holiday Stock Guarantee, are you able to tell me how much is expended?

**MICHAEL COUTTS-TROTTER:** This was a COVID stimulus measure, an economic support measure, for businesses.

**The Hon. PENNY SHARPE:** For hospitality and retail businesses. This is for late October, the shadow lockdown happens, everyone stops—

**MICHAEL COUTTS-TROTTER:** DCS probably.

**SCOTT JOHNSTON:** That is not a grant or a support that Revenue administered.

**The Hon. PENNY SHARPE:** That is not going to be you? It is not one of yours? That is okay. We will go to yours then.

**SCOTT JOHNSTON:** There have been a few.

**The Hon. PENNY SHARPE:** There have been a lot.

**The Hon. COURTNEY HOUSSOS:** This may not be the right place, but do you know how many part-time workers in the Department of Regional NSW applied for the special leave to assist the harvesting season in regional New South Wales?

**MICHAEL COUTTS-TROTTER:** I saw the call-out go out. I do not, but we can try to get an answer for you on record.

**The Hon. COURTNEY HOUSSOS:** That would be great.

**MICHAEL COUTTS-TROTTER:** I thought that was a really creative response to a significant problem.

**The Hon. COURTNEY HOUSSOS:** We are interested in how many full-time workers in the Department of Regional NSW took it and then how many casual workers applied for special leave and if any leave alternatives were made available to casual workers at the department who sought to assist farmers during this period.

**MICHAEL COUTTS-TROTTER:** Okay. I will refer this to my colleague Gary Barnes and Regional NSW because they would hold the information.

**The Hon. COURTNEY HOUSSOS:** We are interested in the capacity of the Minister for Employee Relations.

**MICHAEL COUTTS-TROTTER:** To enable that special leave to happen?

**The Hon. COURTNEY HOUSSOS:** That is right.

**MICHAEL COUTTS-TROTTER:** Yes, okay.

**The Hon. PENNY SHARPE:** I think Mr Johnston can help me with this: land tax numbers.

**SCOTT JOHNSTON:** Okay.

**The Hon. PENNY SHARPE:** This one you can definitely do.

**SCOTT JOHNSTON:** Yes, that is us.

**The Hon. PENNY SHARPE:** Very good. I am wanting an update on the figures. I think you provided some to us in October.

**SCOTT JOHNSTON:** Related to the relief?

**The Hon. PENNY SHARPE:** Yes, waiver for commercial sector.

**SCOTT JOHNSTON:** Would you like this in total, because there have been four—

**The Hon. PENNY SHARPE:** Because you have then broken down as well. If you can provide it to me in the way that is easiest for me to understand, Mr Johnston.

**SCOTT JOHNSTON:** There are a lot of numbers. The easiest way would be in total, I would suggest.

**The Hon. PENNY SHARPE:** Yes, okay.

**SCOTT JOHNSTON:** But we have further detail, if helpful. There is commercial and residential planned tax relief.

**The Hon. PENNY SHARPE:** Correct.

**SCOTT JOHNSTON:** On the commercial side, 26,595 claims have been paid to a value of—which I presume you are looking for—

**The Hon. PENNY SHARPE:** Yes, that is what I would like.

**SCOTT JOHNSTON:** It is \$385,186,488. On residential, 10,058 for \$21,833,791, which is a total of—

**The Hon. COURTNEY HOUSSOS:** Sorry, can you give me a figure not for the commercial, for the residential?

**SCOTT JOHNSTON:** It was 10,058 for a value of \$21,833,791, which in total—to put them together—is 36,653 claims paid for a value of \$407,020,279.

**The Hon. PENNY SHARPE:** That is to which date?

**SCOTT JOHNSTON:** This is current to now.

**The Hon. PENNY SHARPE:** So today. Let us say 1 March.

**SCOTT JOHNSTON:** Yes. It does not close until the end of March, and we will still receive more applications. We have got 3,048 clients with claims not yet processed.

**The Hon. PENNY SHARPE:** The total that the Government allocated for this was \$440 million. Is that right?

**SCOTT JOHNSTON:** I believe so, yes.

**The Hon. PENNY SHARPE:** That sounds like you are basically on track to get to that.

**SCOTT JOHNSTON:** I would expect it would be very close or a bit under.

**The Hon. PENNY SHARPE:** But it closes 31 March?

**SCOTT JOHNSTON:** Yes, we extended it. It was to be at the end of the last calendar year but we—

**The Hon. PENNY SHARPE:** Yes, that is what I thought.

**SCOTT JOHNSTON:** We had some feedback about people having some difficulty getting applications in at times, so we pushed it out a bit longer.

**The Hon. PENNY SHARPE:** Okay, that is good.

**The Hon. COURTNEY HOUSSOS:** Sorry, I am just going to check that figure again. It was \$21 million for the residential?

**SCOTT JOHNSTON:** It was \$21,833,791.

**The Hon. PENNY SHARPE:** I am not sure whether this is a question for you, Mr Johnston: grants for the small commercial landlords.

**SCOTT JOHNSTON:** That one is not actually us.

**The Hon. PENNY SHARPE:** I am just looking at this document. Mr Gadiel—oh no. Is that for you?

**The Hon. COURTNEY HOUSSOS:** Do we need to ask Fair Trading?

**SCOTT JOHNSTON:** Let me give you the right response.

**The Hon. PENNY SHARPE:** It might not be you. Let us do one that I know is definitely you.

**SCOTT JOHNSTON:** It is not, yes.

**The Hon. PENNY SHARPE:** How about land tax relief period? At the end of October you indicated how many people have applied for land tax relief.

**SCOTT JOHNSTON:** These were the numbers I previously gave you.

**The Hon. PENNY SHARPE:** That is what you have just given me?

**SCOTT JOHNSTON:** If I could just answer the question before that I looked blankly at you on: The Commercial Landlord Hardship Fund is being administered by Service NSW.

**The Hon. PENNY SHARPE:** Yes, sorry.

**SCOTT JOHNSTON:** We support them with some data and eligibility et cetera, but not—

**The Hon. PENNY SHARPE:** I have to say, some of the changes in the reshuffle and the machinery of government have been a little bit confusing for some of us to work through. That is okay; we will keep going with that. I wanted to ask you about the NSW Industrial Relations publication *Managing Complaints of Non-Compliance Policy*. Ms Dobbins, is this one for you?

**SAMARA DOBBINS:** No, Department of Communities and Justice look after the Industrial Relations Commission.

**The Hon. COURTNEY HOUSSOS:** Sorry, they do not report through you to the Minister for Employee Relations?

**MICHAEL COUTTS-TROTTER:** They are housed in DCJ along with courts and tribunals.

**The Hon. COURTNEY HOUSSOS:** Do they report, though, to the Minister for Employee Relations? Or they report to which Minister?

**The Hon. PENNY SHARPE:** Or do they just report to the Attorney General?

**SAMARA DOBBINS:** I might ask Mr Heuston if he knows the answer to that.

**CHARLIE HEUSTON:** I am not exactly sure of the document you are referring to but we do have a procedure for managing complaints that have been made to our inspectors in the compliance team, where there are allegations of underpayment of long service leave payments or the like.

**The Hon. COURTNEY HOUSSOS:** Sorry, Mr Heuston, we were also interested just to know which Minister is actually responsible for the Industrial Relations Commission.

**CHARLIE HEUSTON:** There are two parts to that. In terms of the appointments to the commission, it is a joint responsibility of the Attorney General and the Minister for Employee Relations. The employees within the registry who operate the backbone of the commission are employees of the Department of Communities and Justice. That courts and tribunals area falls within the responsibility of the Attorney General.

**The Hon. COURTNEY HOUSSOS:** Thanks, Mr Heuston. That was very helpful. I am glad that someone knows the reporting structure in government.

**The Hon. PENNY SHARPE:** Basically there is no reporting to the Minister for Employee Relations?

**CHARLIE HEUSTON:** Staff in the registry report to the principal registrar of the Supreme Court, ultimately, who does not report to the Minister for Employee Relations.

**MICHAEL COUTTS-TROTTER:** And who is an employee of the Department of Communities and Justice.

**The Hon. COURTNEY HOUSSOS:** So if we were to ask the question about where is the annual report for the Industrial Relations Commission, we need to ask that of the Attorney General, not the Minister for Employee Relations?

**MICHAEL COUTTS-TROTTER:** Yes.

**CHARLIE HEUSTON:** That is correct.

**The Hon. PENNY SHARPE:** I will turn to the wages policy. Has the department sought or done any economic modelling in relation to changes to the wages policy?

**MICHAEL COUTTS-TROTTER:** The wages policy is considered from time to time by a committee of Cabinet.

**The Hon. PENNY SHARPE:** Are you able to tell us which committee?

**MICHAEL COUTTS-TROTTER:** Usually the Expenditure Review Committee. I cannot go into the specifics of what is on the agenda for the Expenditure Review Committee, but the wages policy is considered from time to time given changes in economic circumstances, if nothing else.

**The Hon. PENNY SHARPE:** Given the evidence that we had from the Minister this morning that there are obviously 80 agreements that are coming up in the next 12 months, the wages policy is pretty important in terms of how they are going to be resolved.

**MICHAEL COUTTS-TROTTER:** Yes.

**The Hon. PENNY SHARPE:** Has there been economic modelling done and, if so, by whom? Or how is that considered? I accept that there is a committee, but who is briefing the committee and what work is being—

**MICHAEL COUTTS-TROTTER:** The committee would be briefed through our Minister but it would draw on input from the Treasury and from the Treasury economics team.

**The Hon. PENNY SHARPE:** Okay. The Industrial Relations Advisory Council: I think that is your Minister?

**MICHAEL COUTTS-TROTTER:** Unless Mr Heuston indicates otherwise, I will accept that.

**CHARLIE HEUSTON:** Yes, it is. I have not heard that term for a while but, yes, that is right.

**The Hon. PENNY SHARPE:** It exists. There are 19 members of it, I believe. Is that correct?

**CHARLIE HEUSTON:** I will have to take that on notice—

**The Hon. PENNY SHARPE:** I have just got the Minister's list of Acts in front of me. He has definitely got that. You are not able to tell me the last time this advisory council met?

**CHARLIE HEUSTON:** I will take that on notice. But what I can say, if it is of assistance, is that there is a regular consultative committee with public sector unions which meets on a monthly basis. That is attended by, generally, Unions NSW and up to 20-odd representatives from various unions. That is probably one of our key forums for engagement with unions.

**The Hon. PENNY SHARPE:** But, Mr Heuston, there is actually an Act. There is the Industrial Relations Advisory Council Act 2010. That consultative committee is not operating under that Act. Is that right?

**CHARLIE HEUSTON:** I think what you said is correct, yes.

**The Hon. PENNY SHARPE:** Someone will be able to tell me when and if the Industrial Relations Advisory Council has met and the last time that occurred?

**CHARLIE HEUSTON:** It has been some time, but I will take that on notice.

**The Hon. PENNY SHARPE:** Would you also be able to tell us if all of the positions are filled? It is quite a big group. I think it is 19 people.

**CHARLIE HEUSTON:** Yes, I will take that on notice if I can.

**The Hon. PENNY SHARPE:** Are you able to tell us also the last time the chairperson, which is the Minister—it might have been this Minister; by the sound of it, it could have been several Ministers before—the last time the Minister had a meeting with the council?

**CHARLIE HEUSTON:** I will also have to take that on notice.

**The Hon. PENNY SHARPE:** Yes, that is okay. I am happy for you to take all of these on notice if you do not know. It seems to me that this is not an active group. Would you be able to provide on notice to us the number of times the council has met since 2011 and the number of times the Minister for Employee Relations or equivalent was present at that meeting?

**CHARLIE HEUSTON:** Certainly. I will take that on notice. But I think you are right: it has been some time.

**The Hon. PENNY SHARPE:** Yes, I think that is right. The other thing I would be interested in then—really I am looking for the whole history of what has happened since 2011 in relation to this council, such as how many times it has met. Part of the other things I am looking for is how many times did it try to meet and did not meet quorum. The other point I make is that I understand that under the Act it is supposed to meet twice a year. I want to know whether it has ever actually complied with that.

**MICHAEL COUTTS-TROTTER:** We will take that on notice.

**The Hon. PENNY SHARPE:** I am happy for you to take all of those on notice. Again, I am not certain that this is actually the right estimates for this so I will ask because I am sure you will tell me. The People Matter Employee Survey I assume really sits with DPC. Is that right?

**MICHAEL COUTTS-TROTTER:** Yes.

**The Hon. PENNY SHARPE:** There is no role for Minister Tudehope in any of that?

**MICHAEL COUTTS-TROTTER:** No, it is administered, as you know, through the Public Service Commission and responsible to the Minister—well, statutory role, but the relevant Minister is the Premier.

**The Hon. PENNY SHARPE:** Yes, I thought that was right. So I have this correct, the People Matter all goes through the Public Service Commissioner. Managing the outcome of that is really done through DPC with the line agencies individually; that is the way that would be dealt with. Is that right?

**MICHAEL COUTTS-TROTTER:** Yes.

**The Hon. COURTNEY HOUSSOS:** Mr Heuston, we had a long discussion about paid parental leave in a previous estimates. I wanted to check whether the standard arrangements for father parental leave is still two weeks?

**CHARLIE HEUSTON:** No, that is now 14 weeks.

**MICHAEL COUTTS-TROTTER:** Yes.

**The Hon. COURTNEY HOUSSOS:** That is across the public service?

**MICHAEL COUTTS-TROTTER:** Yes.



**CHARLIE HEUSTON:** Yes. It is two weeks concurrently with the other parent on the birth of the child, then a further 12 weeks within 12 months of the birth or custody of the child.

**The Hon. COURTNEY HOUSSOS:** When you say that it has to be 12 weeks within 12 months of the birth, does that require the mother to go back to work in order to access that or can they take the 14 weeks at the beginning?

**CHARLIE HEUSTON:** They need to be the primary carer while they are taking the leave.

**The Hon. COURTNEY HOUSSOS:** The situation is that if you have both parents off work, you are only entitled to the two weeks, but if you are the primary carer, you can have a further 12 weeks in order to allow the primary carer to go back to work?

**MICHAEL COUTTS-TROTTER:** Yes.

**SCOTT JOHNSTON:** Can I provide a point of clarification on something I said earlier around the land tax relief? We closed on 28 February, not 28 March. I apologise for that. The number outstanding is what we are processing.

**The CHAIR:** A number of questions were taken on notice. You have 21 days to respond to those. The secretariat will be in touch with all of you regarding that. Thank you very much for your attendance.

**(The witnesses withdrew.)**

**The Committee proceeded to deliberate.**