



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON ECONOMICS, INDUSTRY
AND RECREATION**

(Reference: [Inquiry into insurance costs in the ACT](#))

Members:

MR T WERNER-GIBBINGS (Chair)
MS F CARRICK (Deputy Chair)
MR J HANSON
MS D MORRIS
MR S RATTENBURY
MR T EMERSON

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 16 APRIL 2025

This is a **PROOF TRANSCRIPT** that is subject to suggested corrections by members and witnesses. The **FINAL TRANSCRIPT** will replace this transcript within 20 working days from the hearing date, subject to the receipt of corrections from members and witnesses.

Secretary to the committee:
Ms S Milne (Ph: 620 50435)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

WITNESSES

ADAM, MR THOMAS , President, Phillip Business Community	1
BAKER, MR ADRIAN , President, Territory Taxi Association	60
BOURKE, MISS LEANNE , Senior Sector Development Officer, ACT Council of Social Service.....	77
BOWLES, DR DEVIN , Chief Executive Officer, ACT Council of Social Service ..	77
CAMERON, DR JAMES , Executive Director, Australian Construction Industry Forum	40
DOTTA, MR JOSHUA , Director, Jump Cut Group	1
FITT, MS HEATHER , Senior Manager, Policy and Advocacy, Volunteering ACT	77
FRANKLIN, MS CARMEL , Chief Executive Officer, Care	77
FRIEND, MR ANTHONY , Pacific Formwork & Precast Projects.....	1
GATFIELD, MR CHRISTOPHER , General Manager, Australian Hotels Association	60
GIESE, MS JEAN , Chief Executive Officer, Volunteering ACT	77
HOUSTON, MRS DANIELLE , Financial Controller, Supabarn Supermarkets	1
HUNT-SHARMAN, MR JONATHAN KIRKNESS , President, Canberra Services Club.....	60
JOHNS, MR KENT , Head, Government Relations and Regulatory Affairs, National Electrical and Communications Association	40
JOHNSON, MR LACHLAN , Acting Chief Executive Officer, Arts Capital Limited	50
McKAIL, MS BROOKE , Deputy Chief Executive Officer, Domestic Violence Crisis Service.....	29
MUHAMMAD, MR HAMZA , Managing Director, ACT Cabs	60
MUKAMURI, MR TAWANDA , Principal Solicitor, Care	77
RAO, MR MAURIZIO , Advisor, Alto Scaffolding	1
ROGERS, MS ELIZABETH , Chief Executive Officer, Canberra Glassworks	50
SANTOS, MR LUIS , Group Safety Manager, Pacific Formwork & Precast Projects	1
SPOUSE, MR DAVID EDWARD , Vice President, Canberra Services Club.....	60

The committee met at 9.03 am.

ADAM, MR THOMAS, President, Phillip Business Community

DOTTA, MR JOSHUA, Director, Jump Cut Group

FRIEND, MR ANTHONY, Pacific Formwork & Precast Projects

HOUSTON, MRS DANIELLE, Financial Controller, Supabarn Supermarkets

RAO, MR MAURIZIO, Advisor, Alto Scaffolding

SANTOS, MR LUIS, Group Safety Manager, Pacific Formwork & Precast Projects

THE ACTING CHAIR: Good morning and welcome to the public hearings of the Standing Committee on Economics, Industry and Recreation for its Inquiry into Insurance Costs in the ACT. The committee will today be taking evidence from a range of stakeholders across the ACT community. The committee wishes to acknowledge the traditional custodians of the lands we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses use these words, "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript. We will start with the questions. We are all ready. I would like to ask you generically just to tell us your concerns about workers' comp and public liability as it applies to your business.

Mr Santos: Yes, I can start.

THE ACTING CHAIR: First of all, we wish you to say that you acknowledge and understand the privilege statement before you start.

Mr Santos: Very good. I acknowledge and understand the privilege statement. As you guys could see from our submission, in our industry, the construction industry, we face many, many hurdles and workers' compensation and public liability are two of them that affect us very hard.

Our premiums have gone up massively over the past few years. We thought we were already paying too much and then every year it has gone up and up. Where we started it was probably \$800,000, about four or five years ago, and now it is close to 1.6 million, just on workers' comp. So as you can see, that is completely unbearable for companies like ours to keep our heads above water. Not just that, there is a sense in the industry, within our construction industry here in Canberra—we rely a lot on workforce from Sydney or Melbourne, and what we understand is a lot of the workforce come down to Canberra knowing perfectly well that they can rot the system, which is—

Mr Dotta: Price lower than you because their costs are lower, yes?

Mr Friend: No. A worker will come to Canberra with the intent to get injured because their payout will be significantly greater in the ACT.

Mr Santos: Yes. Under the workers' compensation scheme or by public liability, one or the other, they will get something. They always get something and that is the problem. As background, we employ 125 people and we intend to employ more. It definitely makes us think twice and probably refrain from hiring and just use labour hire, but then that still goes on our public liability. Yes, it is a very hard situation that we are in. As I said, we do the utmost for our workers. We do full investigations on incidents. We prove to our insurers that this injury was not sustained at work and there is medical evidence that the injury was not sustained at work—it could have been aggravated with work but it was not sustained at work—and the easiest route is a payout.

Mr Dotta: Because?

Mr Santos: Because if we keep proceeding for—

Mr Dotta: To fight it?

Mr Santos: Yes, to fight it.

Mr Dotta: The legal costs are—

Mr Santos: The legal costs are higher than the payout.

Mr Dotta: —than to pay out.

Mr Santos: So the insurers—with all the evidence that we—

Mr Dotta: —not fight it. It is more viable to pay it out.

Mr Santos: It is just, “Look, let us just do the payout.” We have all the evidence: we have footage; we have videos; we have everything that we supply to the insurers; and they say, “No, no, we cannot do anything. We do the payout.” In the meantime, we are getting charged higher premiums.

Mr Dotta: Do you mind me asking, what is your minimum excess now for workers' compensation?

THE ACTING CHAIR: Hang on a sec. We will just move to Tom now. This will all come out as we go but we have to move through so everybody gets a chance at a question.

Mr Adam: I have read, acknowledge and understand the privilege statement, as humorous as it is. Yes, look, I cannot talk for the construction industry but I can talk about a lot of the small businesses, the people that I have spoken to, and one of the frustrations that has been borne out generally about WorkCover is similar to what these guys said. It is easier and cheaper to set up a business across in Queanbeyan. There are connected matters with that to do with commercial rents and other things, but set up a business, pay lower costs across the border and then still supply the ACT with the same service, because of the insurance costs.

The lack of a territory-wide program means that every year I get four quotes for WorkCover that range between 1½ and 4½ per cent of my wage costs, and your wage costs go up every year, so therefore your insurance goes up. The other thing that is really not considered is the fact that because there is not a territory-run system, there is actually no assured compliance because there is no register of businesses. I know businesses that are not paying WorkCover. They just do not go through the process because you can just ignore it, and if you do not have a broker that reminds you every year, no-one is out there doing compliance. There are businesses without WorkCover that do not see it as a cost. Also we are paying for brokers. We are paying the brokerage fee that is a percentage on that. There are other things to consider in it, but the fact is that there are hidden costs in the lack of a territory-wide thing, and it feels like the government picks winners and losers when it comes to certain industries for business, and at the moment they are picking a winner.

Mr Dotta: I agree to this privilege statement. As you can see, I am from hospitality, and we have services, and we have construction. I am clearly making comments to Luis that also affect my industry, so it is not just industry based, it is across the board. While hospitality in Australia is stuffed when it comes to insurances because of the market and how it is, in Canberra it is tenfold.

Like he said, brokers say go—I cannot do that because in my primary business I have a brick and mortar in Canberra—but if you go across the road to Queanbeyan your insurance will be half if you are a construction company, et cetera. Like he said, there are loopholes there. You can set up over there, come here do your work, something happens, you are now under New South Wales insurance laws because your registered business is in New South Wales. Whether that means people coming in doing claims or even just out-pricing Canberra businesses because their costs are way—1.8 mil for 100 workers is ridiculous; 100 workers across the road for workers' comp would be at least half of that. That is a half a million dollars in a year that those guys do not have to worry about but they do. The competitive rate as well is—you are outpriced in Canberra, or the ACT, just off the bat.

If you look into my inquiry submission, it is unsustainable. It is easier to pay out. The insurers are literally paying them out because it is more cost effective than fighting it. I do not know if you guys have the stats but I think it is up there close to 99 per cent of payouts are to the claimant, not to the defendant in the ACT. That alone should say something. You look at the rates of payouts here, it is again massively higher than New South Wales. They have caps on injuries, et cetera, which is the same I think as the New Zealand system. In Queensland, you cannot offer, “if you do not win, you do not pay”—just removing that alone would get rid of a lot of bullshit claims—sorry for my wording but that is the only way I can say it. That will get rid of a lot of that because a lot of these people just go, “I can have a stab.” It does not matter whether they are wrong or right.

Then what happens, once we get the form that makes the claim, we have to send it off to our insurer because if we do not and then something—again with the system, if it comes back, it is going to bite you on the bum a lot worse than if you just submitted it. So we have to submit it, and then the insurers have to accept it because of the jurisdiction here. It is so open. It has run amok and again, if you—sorry, just one more comment. If you look at my submission, I literally say if nothing changes, the

hospitality sector in the ACT will be—it will diminish. I know that from other businesses. I already know that from the closure of businesses. Certain businesses cannot even get insurance now. We will diminish.

THE ACTING CHAIR: I want to be quick through this because everybody wants to ask you questions. So Danielle, can you just say where you are from and the privilege statement if you have it. I do not know what you do with online ones. Just briefly, so we can move through and ask questions.

Mrs Houston: Yes. So I do agree with the privilege statement. I am from Supabarn Supermarkets. We employ over 650 staff across both the ACT and New South Wales, so we are operating in both states. I totally agree with what has been said at the table so far. In my almost 20 years here, I would say the claims in the ACT are far outweighed, the claims and the settlement figures, with what we pay in New South Wales, and I can only assume that that is a reflection of the uncapped damages and the lawyer-driven litigation culture that the ACT is forced to work under.

New South Wales at least requires a minimum impairment level before common law would commence. Like what they are saying, I cannot think of one claim in my 20 years that has actually gone to court. We always end up commercially settling because the lawyers always argue that the risk is just too great in the ACT because with this uncapped amount you just do not know what the amount is going to be. I have had lawyers say to me before, even with no injury, the minimum a common law claim is going to be is \$50,000, “So let us just settle, let us just settle.”

We have a very big return-to-work culture. That is one of the things that we really strive to do well. We try to do that, and I mean in a way we make sure that—we are lucky in that we have a lot of duties we can use. We always make sure they try and come back in a meaningful way because we know from experience that if someone does not return to work in the six weeks post injury, chances are that it is not going to go well and it is going to be a long drawn out process in the ACT, potentially ending up with lawyers. I do not always believe that that is the best thing for our workers. I think that our litigation culture encourages that, whereas we should be focusing on a return to work structure instead where actually everyone is winning at the end.

THE ACTING CHAIR: Maurizio, we are just saying briefly what the issues are with your business and would you acknowledge the privilege statement which is beside you.

Mr Rao: I do acknowledge the privilege statement. I am from Alto Scaffolding. We are in the construction industry. Yet again, I reiterate pretty much what all these gentlemen and Danielle said at the table. Yet again, we feel like the insurance policies that are put in place that we have to sort of submit to have just gone too far and beyond the lawyers. This “no win no fee” drives us into this ridiculous position where there is not much we can do, and the insurance companies do exactly that. They reach a commercial decision rather than a logical decision because it is easier to settle for a financial amount for them, but in the process of doing that it is driving our premiums and our excesses through the roof and it becomes unsustainable. My premium in regard to a claim has gone up \$50,000/\$60,000 in the last 12 months per claim. The claims that have come in through the door are just ludicrous, but yet again, the insurance companies are making commercial decisions which then—you know, our hands are tied. There is not

much we can do regardless.

Mr Friend: I accept the privilege statement and understand it. The workers understand the system very well. They know that they can claim an injury, make a claim, lawyer up and get a payout. On more than probably three occasions, we have had payouts made to workers who are unable to work again or unable to do manual labour, whatever it is, and then they knock on the door within weeks of that payout, “Can I please have my job back?”

Mr Santos: This is the reality. It happened to us.

Mr Friend: One of the most recent ones was the guy said, “I needed a deposit for a house so the easiest way for me to get that was to make a workers’ comp claim and get a payout in excess of \$300,000.” Then he has had the audacity to come back to our operations manager and say, “Look, no hard feelings, I just needed money. Can I please have my job back?” Well, of course, there are very hard feelings. But the system is that easily manipulated and that is just one of probably three or four cases over the past five years where this has happened to us.

If we look at our statistics on workers’ comp, where the claims are legit, the payouts are small and more often than not there is no payout because it is managed and the worker ends up coming back to work. The payouts where there is a payout of two, three, five, even a million dollars, are illegitimate claims. You can get a doctor to say and prove that it is not a claim or not a real injury but they will have a doctor that says it is. Then it is doctor versus doctor and the insurers are too scared to go and actually fight that so they just say, “Okay, how much to settle?” It is very easy for the workers to get a huge cash settlement and that is why we are in this position that we are in. This does not happen in any other jurisdiction and it is killing business. Despite our claims reducing, our premiums increase year-on-year-on-year.

THE ACTING CHAIR: Okay, thank you. Can I move to Tom now so we can—these sessions go very quickly, the time, and it is just—

Mr Friend: Yes, that is fine. That is fine.

Mr Dotta: I just want to point out that these guys are probably very heavy on the workers’ comp with what they are saying. I am very heavy on the public liability.

Mr Adam: Yes, public liability.

Mr Dotta: Yes, it is the same across both workers’ and public liability. It is the same issues.

MR EMERSON: I was just going to have a quick follow-up on that for you, Mr Friend. So you said that each payout leads to a premium increase, in the subsequent year, I assume?

Mr Adam: Yes.

Mr Friend: Yes, yes.

MR EMERSON: Fifty-sixty thousand, was that the figure you—

Mr Friend: No, our premiums are \$1.8 million a year.

MR EMERSON: Yes. So if you had a claim this year, you would see a consequence in the next financial year of a premium increase?

Mr Santos: It will be reflected in the—yes.

Mr Friend: Correct.

Mr Adam: You will see an increase even if you do not have a claim.

MR EMERSON: You are going to get one anyway but—

Mr Santos: Four years ago was—

Mr Friend: Even last year we had no claims and we still had a premium increase because the industry performs badly.

Mr Dotta: In Canberra, in Canberra. The jurisdiction.

Mr Friend: Yes, in Canberra.

MR EMERSON: Despite no wage change, sure. That is—

Mr Santos: Yes. Four years ago—

Mr Friend: Well, wages go up and that is fine. I do not care about the actual dollar amount. It is the percentage of premium I pay. If I am paying an extra 10 million in wages and it goes up by the same percentage, that is fine. It is when the percentage of your wages premium goes up, that is where it has a real impact on the business.

Mr Dotta: Have all our excesses increased massively as well per claim for public liability excess?

Mr Friend: In the public liability space?

Mr Dotta: Yes.

Mr Friend: Very much so.

Mr Rao: Yes, mine increased by 60,000 last year.

Mr Dotta: My minimum excess for a bar, or any bar in Canberra, is 50K for any claim. Once you get that form you have to send it off. It does not matter. If you win or lose you are up for that 50K because for the insurers to fight it, just to tell them to go away, is going to cost that much, legality-wise.

MR EMERSON: Just from having made a claim.

Mr Dotta: So once you get that form it does not matter if you are wrong or right. If they accept it you are up for your minimum excess. My security contractor's excess is 250K per claim: \$250,000 per claim! That is ridiculous. That is how you just send a business straight under.

Mr Santos: Ours is the same.

Mr Friend: Our public liability excess is \$250,000 per claim.

Mr Santos: Yes, 250,000, that is it.

Mr Dotta: So they probably have to pay their legal costs up to the 250, and whatever gets paid out, if their legal costs are less than that, they pay the difference. So the insurer is not even paying legal costs at the start, I presume. You guys have to pay that, right?

Mr Rao: Well, across the board, what they are doing is they are roping everyone in the net. The insurance do not just get the person that the charge has been put against. They rope in two or three people that are there. So they get the builder, they get the contractor and they get anyone in the vicinity, and they hit all of them for the excess. So the insurance actually walks away scot-free.

Mr Dotta: Yes, so for my security contractors which are the main reason something has happened—and I have to have them as contractors. I am not allowed—even though they are the reason, and I pay them as a contractor and they have their own public liability, they still send it to you. It still goes against your case. Now, what they are saying, if you have a claim, your premiums go up. Whether they say you are 10 per cent liable for that case, they put that whole claim on your file as a payout of, say, half a mill. So that is affecting you for the three years, because it is a three-year process essentially, and that is sitting on your case. It is jacking your premiums up. Whether you are five per cent liable or 10 per cent or 100 per cent, they still put it on your file. The insurers have free rein of what they want to do and how they say they are going to sting people.

MR EMERSON: And your premiums will be elevated—

Mr Dotta: My premiums increase massively for that.

MR EMERSON: —regardless of whether or not the claim is successful?

Mr Dotta: Correct.

MR EMERSON: Now, you are saying it is almost always successful.

Mr Dotta: It is, always.

MR EMERSON: Let us suppose that, two years down the line, it is unsuccessful. You have still paid; I assume you do not get compensation back for the higher premiums?

Mr Dotta: Even if my contractor is the main reason, they will still put it on my file. I have a case now where, on the other side, the contractor has literally said, “We’re no longer liable; the case is closed,” and my insurer still will not take it off my file, because it just means they have higher premiums. They have free rein. They are the judge, juror and prosecutor, literally. They get to decide what they want, here in the ACT. They know how cooked this system is. My insurer says that insurance companies literally quote the ACT as one of the highest, if not the highest, risk jurisdictions in the world in which to insure a business. This is in a country where you require insurance. Unfortunately, we require it here for our leases—for everything. It is the law.

Mr Adam: I have sat in a couple of other industry forums, discussing the feedback that we were going to provide to this inquiry. In both of the forums that I sat in, we had solicitors who take cases trying to influence the comments of people for their submissions, particularly the ones at the Canberra Business Chamber. There was a lawyer there who was saying, “We can’t change the system.” I said to her, “Do you actually work for one of the insurance companies?” She said, “I work with the insurance companies.” The lawyers are doing really well out of it. They know that the system is going to—

Mr Santos: It is easy money.

Mr Adam: Yes. I am more concerned about the fact that there is no actual register of all the businesses out there. With respect to where you have contractors working for you, I have actually moved all of my employees from contractors to actual employees, to make sure that I know that they are insured. I had contractors, and I said, “Where’s your WorkCover?” and they had not paid it. I thought, “Are they going to turn around and sue me if something happens to them?” We have injuries every week, where I work. I run a martial arts school, for God’s sake. Nobody makes a claim, because we all know that it is part of it. We have public accident insurance and that sort of thing; but, every year, the insurance goes up, regardless. My wage costs have gone down, my costs have gone down, and my insurance has gone up.

MR EMERSON: Several of you have mentioned, including in your submissions, the “no win, no fee” advertising. This is a general question for everyone: if that was banned, what impact would that have? Would you expect a significant reduction in frivolous claims?

Mr Rao: Massively.

Mr Friend: Huge.

Mr Dotta: Massively.

Mr Santos: Huge. Pretty much all of—

Mr Dotta: For 90 per cent of the people that hear about “no win, no fee”, they would quiver at the thought of having to pay legal fees for something like this, so they would not even go to them. That shows you, realistically: are they so injured that this is a serious thing that they need to follow through, or do they just need a house deposit?

Mr Adam: Also, the lawyers will take into consideration the fact that they cannot ride out the process and get a payout, because they will have to wear the costs of loss as well. Not all claimants will be able to afford their legal costs, so they will try to take the simplest solution. They will still try to claim their way out of it and settle, but it may involve a shorter process.

Mr Santos: Rather than “no win, no fee”, there should be a body, an independent body, to encourage rehabilitation rather than compensation.

MR WERNER-GIBBINGS: Do you mean like a territory-wide—

Mr Santos: Yes.

MR WERNER-GIBBINGS: WorkCover organisation, like Queensland, New South Wales and Victoria have? I am sorry to be cynical.

Mr Santos: Something—

MR WERNER-GIBBINGS: They are massive states.

Mr Adam: Yes.

Mr Santos: Yes.

Mr Adam: We spend a lot of money here.

MR WERNER-GIBBINGS: Yes; a totally different set-up.

MS MORRIS: Are there any legal protections or safeguards in place that you could draw on in the event of any potential illegitimate claims?

Mr Rao: No. We do not have a leg to stand on.

Mr Adam: Even if you have a video showing them shooting themselves with a nail gun, they can still make a claim.

Mr Dotta: There is no negligence for the claimant.

Mr Santos: I said to my insurer, “I should have worked for you guys, because I do the hard yakka.” I do all of the work that I possibly could do, get all of the evidence—everything—and I can’t do anything. We think, “If we fight this, we will have to pay more. Let’s just pay now.”

Mr Dotta: I have three cases where, with respect to my claims, the person has emailed in or I have been notified from their side about the issues, and they want the footage. I cannot give out footage, for privacy reasons et cetera. They do not reply; then, after they know the footage is diminished, I get a claim from their lawyers. Someone emailed in, saying that they hurt themselves on this day. I saved all of the footage from that day, just in case. Three months later, I got a letter—the form that you do not want to see. The date she gave me was wrong by 30 days. She wrote “30th” instead of “3rd”. She

did not write “30rd”; she wrote “30th”. It was actually on the 3rd of the month.

My insurer said, “Unfortunately, she made a mistake; nothing we can do.” Now it is her word against mine. I have a statement regarding someone slipping over, but we do not know how she slipped over. I do my own investigation and find out that this person is crazy. It is, again, a bullshit claim, but there is no negligence on their behalf. They gave me the wrong date. I have done everything correctly on my side, yet they say, “They’ve made a mistake; sorry.”

Mr Santos: Just protect the—

Mr Dotta: There is no negligence on their behalf. We do so much, and it is still your word against them. Again, with the legal system, the lawyers know that, if you fight it, they are going to pay it out, because they do not want to pay ridiculous amounts of legal fees. There is no negligence on the customer’s behalf.

I saw another incident in a restaurant with a person who was wearing stiletto heels; they slipped over a tiny crack, and it is all on the business. She was sitting there and drinking cocktails all night. Where is there any responsibility on the person as well? If we walk through Garema Place right now and trip over some of those works, we can’t sue the government, because you guys have your own special laws around that stuff. It is not fair to small businesses.

Mr Rao: To answer your question, no, there is nothing we can do to protect ourselves at all. We are at the mercy—

MS MORRIS: Despite having evidence to the contrary?

Mr Adam: Yes, nothing.

Mr Dotta: Everything—we are doing everything.

Mr Rao: The insurance companies end up making a commercial decision. They just put a dollar value to it, which is a quick exit for them, rather than going down the road of massive litigation. Essentially, once all of the excesses are paid up, it falls into their pocket. They are better off making a commercial decision to pay the person out and get out of it quicker.

MR RATTENBURY: The observation there is that their commercial decision just gets passed through to you, with no say over that.

Mr Rao: That is right. We fall victims to it and, at the end of each year, when our insurance comes up, we are running out of insurance companies that we can go to. All of my insurance is overseas now. It is more international, because it is the only place I can go to. But even that net is getting smaller because, once you get a claim against you, it is a black mark against your name.

Mr Santos: One thing that is very disheartening is that the workers that are supposedly injured will say, “We cannot work in this industry anymore. That’s why my payout will be very substantial. I can’t do this; I can’t do that. I need to change work. I need to

change my profession.”

Mr Adam: The retraining and that sort of thing, yes.

Mr Santos: This is the fact: the next day, they are with our competition, another formwork business, asking for work.

Mr Adam: After their payout.

Mr Santos: After the payout, when they have said blatantly that they cannot do that job anymore.

Mr Friend: Half the time, they have not even got the money; there is just an agreed payout.

MS MORRIS: Do you have any right to require your insurer to progress a matter to court if you have compelling evidence? You do not have any right to do that?

Mr Santos: No. I have raised all of these questions with my insurer: how is this possible? How are we letting this happen? Unfortunately, it is more expensive and—

Mr Rao: You are talking about an insurance company that has a care factor.

Mr Dotta: No; there is no follow-up.

Mr Rao: Insurance companies have a care factor of zero, until the point that the claim is dealt with; then they move on.

Mr Dotta: There is no follow-up. If someone makes a claim that is clearly bullshit and they are getting a \$1 million payout, and the next day, once they get their payout, they are working for someone else, what are the ramifications for them? Do we get our money back, because they have clearly lied for the whole three years?

Mr Santos: We should do here in ACT what some other states do. They prosecute the workers. If you make a fraudulent compensation claim, you should be prosecuted, and some other jurisdictions do that.

Mr Adam: If the insurance companies agree to an annuity, which is an ongoing payment year after year, sure as heck they would watch them. But if it is a single payout, they are done and dusted. You will probably find that, in the agreements they are signing, there is no actual legal ramification for them if they continue to work.

Mr Friend: No-one is accepting any liability. It is just a commercial decision—

Mr Adam: But there is nothing in the agreement—

Mr Friend: and, in the payout agreement, no-one is accepting that there was an actual injury; it is just a settlement.

MR EMERSON: It is a settlement.

Mr Dotta: Yes, it is the wording.

Mr Adam: There is no clause in the agreement that says, “You will not ever do this again.”

MS MORRIS: How are your companies currently absorbing the costs?

Mr Dotta: We are not.

MS MORRIS: Is it being passed on to consumers?

Mr Adam: You cannot pass on all costs.

Mr Friend: Diminished margins.

Mr Dotta: We cannot.

Mr Adam: For a lot of the businesses in our area—

Mr Dotta: We are wearing it.

Mr Adam: Big businesses—internationals like Apple, and big businesses like Bunnings and Woolworths—can pass on the cost straightaway. When you are a small organisation, your customers tend to be a lot more price sensitive. I have customers asking for discounts at the moment. We have not put our prices up for three years, and they are asking for discounts. Everyone is quite price sensitive. I cannot turn around and say, “My insurance costs have gone up by one per cent over my baseline costs for the entire year. That’s an extra 30 grand, so everybody is going to pay an extra three per cent for the year.”

No-one is going to take a sudden increase like that. We have to negotiate. We have to do it slowly. We have to think about it. The costs are borne up-front. That is not to mention that a lot of small businesses take out finance to pay for their insurance, because they want to pay it monthly, and insurance companies do not do that for businesses. So there are insurance costs on top of that, with the brokerage fees. There are a whole lot of hidden costs in it as well, and we cannot absorb it straightaway. These guys have locked-in contracts, or whatever it is.

Mr Dotta: I have locked-in leases.

Mr Adam: Yes, exactly right.

Mr Dotta: In the ACT, if you sign a lease, you have to have insurance to have that lease.

Mr Rao: It is starting to choke us out.

Mr Dotta: It is. I know it has already choked out a lot of hospitality businesses. It is the reason why—

Mr Rao: That is why we have seen so many closures in the ACT, and it is across the board in the construction industry as well.

Mr Adam: Insurance is the main—

Mr Rao: It has slowly choked us out because we cannot pass those costs on. We are just absorbing it and, in the process of absorbing it, we are slowly running out of air.

Mr Friend: Apart from wages, insurance is our biggest cost.

MR RATTENBURY: Tom, if I can pick up on something that you said, you were suggesting that one way to approach this would be to eliminate lump sum payments and, instead, go on to some sort of ongoing—

Mr Adam: The payouts? If you are claiming that you have a TPD—total permanent disability—and you have an inability to continue working in that profession, there should be some kind of recognition of that in your future endeavours. You should not be making a payout of \$1 million; it should be a payout over time. That is what your life insurance would do. They would give you a lump sum and a payout as you do it—total permanent disability.

Sure as heck, if you are getting an annuity, that insurance company will be checking on you. Where are the *A Current Affair* programs from the 90s? They used to catch people throwing bags of garbage over their shoulders and they would say, “This guy can’t even walk.” There is no recompense for businesses. Even from month to month, with what is going on with a lot of businesses, insurance is a sudden price increase for a lot of people.

One thing people forget is that it is like when you rent a house. When you rent or buy a house, all of the costs come at the same time—electricity, water, rates and all of those things, because it is all signed up for. For a lot of people, when you have a business and sign a lease, everything comes up and increases at the same time. Your lease goes up, your insurance goes up, your electricity goes up, your phone goes up—everything goes up at the same time. It is a really big in-cost, if it is suddenly jumping up. As I said in my submission, it has gone up from an average of 1.6 per cent of our total bottom-line costs to 2.7 per cent of our bottom-line costs in the last three years. I have not made a claim, my wage costs have gone down and my revenue has stayed flat.

Mr Dotta: My turnover has halved in the last three years and my insurance has gone up 400 per cent.

MR RATTENBURY: Can I come back to another question? You may recall that, a number of years ago, the ACT changed its motor accident insurance scheme. One of the anecdotes that has come out since then is that lawyers have looked for other places to make business. Have any of you been around for long enough to observe whether there has been a change in practice since the ACT’s motor accident scheme changed? Is that something that you see as a trend?

Mr Adam: Yes. Rather than getting four quotes, my brokers—because I have seven

different insurances that I have to manage as a business—do not give me the list of all the insurers with the different prices. They just tend to show me what they think is the best one. You have to turn around and say, “Can you please show me the quotes from the other organisations?” I do not know whether there is a reduction in the number of insurance providers, whether they have some kind of kickback arrangement or what is going on there. I have to actively say, “No, please provide me with the quotes for all of those organisations.”

MS CARRICK: Shane, can you tell us briefly what the change in the motor accident insurance scheme was?

MR RATTENBURY: I do not know that I am an expert in describing it. Essentially, it moved to a different system, which I think a number of your submissions are describing, with an ability for people to—

Mr Adam: It was capped as type of injury, percentage of body part and things like that.

MR RATTENBURY: Yes, and there is also—

Mr Adam: That is how New South Wales—

MR RATTENBURY: You also get immediate payments to deal with your medical costs, whilst sorting out the longer term questions.

Mr Santos: I have written down in mine: introduce a liability cap, set a payout for different types of injuries—

Mr Adam: That is what New South Wales does.

Mr Santos: Minor injuries like sprains, for example, would be capped at \$25,000; moderate injuries like fractures would be capped at \$100,000, and so on. It is not what is happening.

In regard to the insurance, I think there is a bit of a lobby here with insurers. For example, in our business and, I believe, in construction, there are not many insurers for us to choose from, because they refuse.

Mr Dotta: I have one insurer. My industry has one insurer.

Mr Santos: We only have one; that is it.

Mr Adam: We have three for—

Mr Rao: That is because we are such high risk.

Mr Dotta: Yes, exactly.

Mr Adam: I have three different insurers for martial arts; all three of them are overseas and they have a local broker in Australia who does all of the work. We have to have an association collective. We have a Martial Arts Industry Association, and we all

purchase from that collectively to reduce the rates. If I go out individually, it is four times the price, because they say, “Your business is inherently risky,” and that is with no claims in 18 years. My business is risky, but I have had no claims in 18 years. With nearly every single accident that we have had in our business, we all have cameras, and the person has said afterwards that it was their fault, and they have never made a claim against us—touch wood. But every year it goes up.

MR RATTENBURY: Mr Dotta, can I ask you a specific question? In your submission, you talked about mandating transparency in risk calculations and ensuring that climate change risks only apply when relevant. How do you know when climate change is or is not relevant? It is a very interesting and specific point that you have made.

Mr Dotta: I have been told that we are absorbing a lot of the costs. For example, with cars, and with the hail damage in Canberra, that has made the premiums for insuring vehicles quite high. I have been told that, because of a lot of things that are going on in the world, the insurance companies need to prop up theirs as well, and they cannot put it onto the everyday person. You can see how much car insurance has gone up. If they did the same for that as they did for businesses like ours, no-one would be driving cars.

MR RATTENBURY: You are asserting, essentially, that climate change costs are being cross-subsidised because of—

Mr Dotta: They are, for us. I have been told that by my brokers, because no-one would be driving cars. If they did the same for the average person on, say, their houses, no-one would have home insurance; no-one would have car insurance. If your car was subject to what we in business have been subjected to, no-one would be driving cars in the ACT, or the people who were would be you guys and the wealthy ones.

Mr Adam: Wait until you have a teenager, mate. They put the insurance up if you have a teenager.

Mr Dotta: I have been told that as well, about climate issues.

MR WERNER-GIBBINGS: Mr Dotta, your submission suggests that the ACT government should intervene in the insurance market to encourage competition. What interventions were you thinking about?

Mr Dotta: When I get a quote, I have to go through my broker. It then goes to an underwriter; it then goes to an insurer. Generally, the underwriter is owned by the insurer. Lloyd’s of London owns the majority share in one underwriting. They are the only ones that insure hospitality businesses. I cannot get multiple brokers. I have tried that, and they said, “You can’t do that.” I asked, “Why is that?” They say that we all have to go to the same insurers, essentially, or underwriters. If I submit something slightly different to them, they will throw them all in the bin.

Mr Rao: They have a policy, with the insurance brokers, that is at fault there, but that is the way they operate. Once you appoint a broker, that broker has the right to stand for you. No other broker can stand for you. No insurance company will give another broker a price if they do not have written permission from the person they are representing. You can only go with the one broker; you cannot actually compete,

because if you talk to someone else, he cannot represent you because you have signed up with that one broker.

Mr Dotta: If I get a quote for a deck, I can get three quotes. I then judge having regard to price versus feedback, or whatever. In the insurance market, you have to believe what they say, and that is it. If you assign a broker, you have to believe them. It also makes it more difficult. I get told that it is horses for courses, but if you keep jumping brokers because you feel that you are not getting the best thing, it is a whole new ballgame. Especially with the claim, with everything that you have told your previous broker, it is like that has just gone out of the window. Your new broker has to relay everything.

With the amount of stuff that I have been asked for again and again by my new brokers on claims that they have already got on the other side, the other side know, “It’s a new broker; let’s just ask for it all again and rack the costs up.” We cannot get multiple quotes; we cannot go to multiple brokers. We are left to deal with one person and believe what they say, and they are making kickbacks from the insurers, and who knows what.

Mr Rao: We could sit here all day and talk about insurance and how it operates. Correct me if you think I am incorrect or you do not agree with me; essentially, the whole problem with this industry at the moment is that we have this “no win, no fee”. That is destroying everything because it is costing the plaintiff nothing at all to stand up and say, “I’m going to go with this claim because if it ends up somewhere, I’m going to end up \$2 richer and it’s not going to cost me a dollar.”

Mr Dotta: Do not forget that, if we win the claim or we end up defending it, which is never the case, we still pay our legal fees. They do not pay it.

Mr Santos: They do not pay the legal fees.

Mr Dotta: They do not pay. If they win, we pay our fees and their fees.

Mr Santos: Yes, it is excluded.

Mr Dotta: That is why, if you do not win, you do not pay, because they know they are going to win the majority of the time, and we end up paying their fees.

Mr Adam: Adding to that comment, and regarding how, particularly, we can make WorkCover more competitive within the ACT, I have heard anecdotally from members of the Legislative Assembly, “It’s too difficult, it’s too hard, it’s too costly.” They have done it with car insurance. It can be done again with WorkCover. It does not have to be a selection, such as where they have the insurance with four different companies. It can be a collective thing that the ACT government negotiate; they can find an insurance provider that will do it collectively for all businesses within the ACT. The ACT government could be the broker and take the fee; so there is a revenue draw, potentially, from that. The ACT government do have the capacity, regarding the negotiation skills that they have within other areas of the ACT government. I believe that there is a possibility to look at reducing the cost.

The problem is that, with WorkCover, they are including all of the public servant wages

in the average wage cost. That is where they drive it up, with WorkCover. That is what they have told us—that the average wage cost in the ACT is 20 per cent higher, or \$22,000 higher; therefore WorkCover is higher. That is why it is 45 per cent cheaper across the boundary, the invisible line, with Queanbeyan. If we are negotiating together, there is some power and clout that the ACT government could put together and say, “We’re negotiating on behalf of everyone.” With most of the claims, the federal government are covered under their own WorkCover arrangement. Why are their average—

Mrs Houston: With the “no fee, no win”, if we did not have these unpacked dangers which are so out there, with the “no fee, no win”, they might be more selective on which cases they take.

Mr Adam: Absolutely, yes.

Mr Rao: 100 per cent.

Mr Santos: That is what it is, yes.

Mr Dotta: I reckon that, with 80 per cent of the claims I have, if that “no win, no fee” was not here, they would not have gone through with it.

Mr Rao: That is the case with 99 per cent of the claims that I have.

Mr Dotta: There you go.

Mr Santos: I would say that, in our case, it is 99 per cent.

MR RATTENBURY: I was actually about to say that we should see whether Mrs Houston wants to join in.

Mr Dotta: Yes. She obviously agrees with everything we say. The fact that she is from Supabarn and she says that, across the border, they do not have anywhere near as many issues as the ACT has speaks volumes.

Mrs Houston: There has to be a minimum level of impairment before a common law claim can even be looked at.

Mr Dotta: In the ACT, if someone hurts themselves and they say, “We might not get enough from the physical injury,” they then go down the mental capacity road—PTSD—

Mrs Houston: The psych claim.

Mr Adam: A mechanic down the road, a young fellow, did not wear his steel-cap shoes and deliberately dropped a pneumatic drill on his foot. In the footage you can see him hold it out and drop it onto his foot; he then made a claim. Where is the liability for the youth who is not wearing his steel-cap shoes to work?

Mr Dotta: It would fall on the business not doing their due diligence to make sure he

was wearing his—

Mr Adam: Do you go in there and check his feet every day?

Mr Dotta: That is what I am saying. There is no negligence on the claimant's behalf, ever.

THE ACTING CHAIR: I read in one of the submissions that mental health was something that was becoming more prevalent. Can you explain your experience with mental health claims?

Mr Santos: I have, for example, a worker that was supposedly injured. There was that injury and then some other injuries. He actually had three compensation claims. The same worker had three compensation claims. The last one was because I was supposedly too harsh on him and he was psychologically—

Mr Friend: Mentally, he could no longer work for our business.

Mr Santos: Yes. The same worker said, "I needed the money for the house. No bad feelings," and then—

Mr Adam: Then came back to the job.

Mr Santos: It is just very easy for them to keep lodging compensation claims. It is easy. I used to say that, if more workers out there know how easy things are for them, we had better close the doors because it is so—

Mr Rao: That is the position we are getting to.

Mr Santos: When you lodge a compensation claim, you get eight weeks pay straightaway, until it is decided if it is valid or not. Then, even if it is rejected, they have another eight weeks of pay. It is just—

Mr Dotta: We have a common practice at the moment where, if someone hurts themselves or we hear some sort of bullshit, we actually follow them up and offer them money before they even think about making a claim. Commercially, for us, if you give them money upfront instead of them going through the process, it is more beneficial for us. Even if it is like a nothing thing, we know that, if someone emails in with some sort of claim, we have to quickly see if we can offer them our own settlement, because I know that it is going to cost me a thousand per cent more through the actual jurisdiction.

I employ someone that actually follows up with people that send in something and does her own due diligence. She worked for insurance companies for 20 years as a "tick a box" in the back end. She moved here to the ACT purely because she saw how messed up this jurisdiction is around insurance. She now contracts to businesses, following up people that send in an e-mail, as a private contractor to us, to try to make settlements with them before they send that form off saying—

Mr Rao: I employ the same person.

Mr Dotta: We are jumping through hoops. I have to send off—

Mr Adam: Pre-litigate it.

Mr Dotta: Yes, we have our own processes to try to sort it out before it goes into the system, because that is how crook the system is.

Ms Houston: I would perhaps add another concern for us. We had a person that allegedly hurt their back at work. He then went and saw his legal people and then all of a sudden he had a sore shoulder. He had been off work, but he still said that this sore shoulder was part of this work claim. We record everything. There had been no record of injury and there had been no comments to staff members about his shoulder—nothing. Then, all of a sudden they go, “It is easier just to put that plan in with the back.” Then he added a psych claim into that as well. When he got his payout, he received a substantial amount of money because he was “incapacitated for life” and would never be able to work again. I saw him three weeks ago, in a work uniform walking around, very healthy.

Mr Adam: Can I answer the question about the mental health stuff?

THE ACTING CHAIR: Yes; if you are seeing increasing claims in that respect.

Mr Adam: Yes, again, anecdotally—because a lot of people want to talk off the record, which is hard—the claims are coming through. But the one thing that is not being addressed here is that, as a business owner, if you have any mental health issues yourself from the stresses of running a business, if you mention that to your insurance provider, your own insurance fees go up every year and you become uninsurable for life insurance.

As a business owner, most of the time, we cannot go to the bank and negotiate the same fees as people on a fortnightly wage. Right now, I am paying 7.1 per cent on my mortgage. I cannot go to a traditional bank because I have to go through the process of paying myself like a normal employee, and then they still want your books and all this stuff and then they still determine whether you are making money or not. So we have all this loaded on top of us.

I heard it said by the Chief Minister—who was then and still is the Chief Minister—that “profit” is a dirty word. Profit is our wage. These insurance costs are going through the roof as are the costs of our own personal insurance. Our mortgages are higher, our fees and everything like that are higher. The mental health impacts on the business owners are absolutely huge. We cannot go and make these claims against ourselves.

Mr Rao: Yes; who compensates us?

Mr Adam: I had a breakdown in 2018, and there was no way in hell that I was going to go and tell my insurance companies that I had a breakdown—a depressive episode—in 2018. I spoke to my broker about it, just off the record, because I have known him for years, and he said, “. know him. I have known him for years. And he is like, “Don’t say it; it will ruin everything. Your fees will go up 20 per cent across the board for Economics—16-04-25

P19

Mr T Adam, Mr J Dotta,
Mr A Friend, Mrs D Houston,
Mr M Rao and Mr L Santos

everything that you do.”

Mr Friend: But you are required to insure for your own salary.

Mr Adam: Hundred per cent.

Mr Friend: Or potential salary, as a director, even if you will not make money in the next year.

Mr Adam: Yes, and guess what? Even if you insure your potential salary, they will still look back at what you actually paid yourself and only insure that—even if you are paying a higher premium. So you are better off just insuring whatever you are actually paying yourself—and then you are screwed later on.

MR EMERSON: We have touched on the types of perverse outcomes—and it is coming up more in each of the questions—in terms of behaviour change within your businesses. How are you reorganising things, whether it is structurally or you have someone who is going out before someone makes a claim? That is one. Are there other things that you are doing in the way that you run your businesses that you would not do if insurance premiums were not a factor? It would be helpful if you have examples where they are not just negative for you but are also a bad outcome for the client or customer. I would love to hear those examples as well.

Mr Rao: Last year I went out and contracted an assessor to come. This assessor was advised by the insurance company that I was going with to come in to be more proactive in relation to what we do. This assessor came in at the cost of, I think, \$15,000 to advise us how to be more proactive and to operate in a safer manner to work towards bringing our insurance premiums down. He spent a two-month period overlooking everything we did and then gave us all the recommendations. We put everything in place, only to get like a two per cent reduction in the total premium on our insurance.

So it does not really matter to what lengths you go, the insurance company still has the upper hand. With that net becoming smaller and smaller, I am forced at the moment to go between two insurers—that is it—around the whole world. There are two insurers that will insure me. I have a company that has been operating for 10 years. We have the safest record out of everyone in our industry in Canberra. Yet I am down to only two insurers, and next year it will probably be one. What happens then, if you have a monopoly on you?

Mr Dotta: I had a risk assessment done on behalf of the insurer as well. They said, “We will go halves with you”—though, I do not know if that was them being nice or not. So this risk assessor came in. Everything was meticulous in my bar, let us say, but they came back and said, “It is still a high risk. I suggest that you tell people they are not allowed to stand with a drink in their hand.” That is how far it is going. In my bar, you cannot stand with a drink in your hand. This reminds me of when, during COVID, we used to make people sit down with drinks but you could stand at the bar. What is now being put on us to try and mitigate risk is—

Mr Rao: Unrealistic.

Mr Dotta: It does not make sense. How are you meant to not stand with a drink in your hand, for goodness sake, you know? It is getting to the point where it is now just unrealistic stuff. Also, it is mainly in the ACT. If I went across the border, they would not be giving those recommendations. Like I said, my broker said, “It would be half of what you are paying now.”

These massive extra costs have resulted in me having to sack extra stuff. I am running less people, and we are a lot more picky with who we employ now. People are not able to just come and get jobs now. We are working harder; we have to, because we are absorbing the cost as well.

Mr Santos: The fact is that we are afraid to hire.

Mr Dotta: We are afraid to hire as well.

Mr Santos: We are afraid to hire. We do not know what is on the other side. We ring everyone around to get good references and using that. We are just very afraid.

Mr Dotta: I have had zero workers comp claims; mine are all public liability. That is how much my increases have gone up as well. Touch wood; I am glad I have a good team. But, when people walk through our doors, it does not matter. If they sneeze and hurt their neck in the venue, we will have a video of that and they will still get a massive payout.

Mr Rao: Yes; the plaintiff has the upper hand—100 per cent.

Mr Dotta: Massive.

Mr Rao: I will give you a prime example of one of the situations that occurred in our company. We are a scaffolding company; we erect and dismantle scaffolds. All my scaffolders are subcontractors. They have their own insurance and I have my insurance. The scaffolders are on site. There is a building company that we have a contract with. The scaffolders come on site and are scaffolding over one side. The roof truss company has delivered roof trusses and placed them next to the construction site because they are going to be craned up on the roof. There is an exclusion zone put around the roof trusses that have been placed on the ground; so no-one is to go there. During the break, one of the scaffolders chooses to go over the roof trusses because it is a shorter way to get to his lunch break. So he goes through the exclusion zone and over the roof trusses, trips, hurts himself and puts in a claim.

The builder is pulled in on the claim, the subcontractor is pulled in on the claim, the roof trusses company is pulled in on the claim and our company is pulled in on the claim. Everyone is pulled in on the claim. The scaffolder himself has done an injustice to himself by being stupid and going across the exclusion zone. We all paid an excess. His payout was \$150,000.

Mr Dotta: Where is his negligence?

Mr Rao: That is right—where is his negligence? But, yet again, the insurance—

Mr Adam: This is every day on construction sites.

Mr Rao: Yet, again, the insurance company has made a commercial decision to pay it out rather than litigate it because it makes more financial sense for them.

Mr Adam: How much did they take up in excess? How much did they pull out of the companies in excess?

Mr Rao: Mine was \$50,000 for that one.

Mr Adam: So if there are four companies paying \$50,000—

Mr Dotta: They actually made money off it.

MS MORRIS: Just following on from what you have regarding insurers make a commercial decision to do an offline payout, Ms Houston, you have said in your submission that the court has demonstrated leniency to claimants and unreasonably high awards. Tomorrow, we will have the legal fraternity before us; so I just want to gather whatever evidence that you have to put to these claims that there is a broader issue within the legal system that is driving those commercial interests of insurers to do offline payouts.

Mr Adam: They get a percentage of the fee, don't they?

Mr Dotta: They do. They get their fee for doing the work and then, generally, with the no win, no fee, they negotiate with the claimant that they also get 30 per cent of their final payout.

Mr Rao: Yes; 30 or 40 per cent.

Mr Dotta: So, generally, if there is \$200,000 for a claim, the claimant is probably going to get less than \$100,000 and the legal team will get more. That is why the cost to litigate here is so high.

Mr Adam: It is a standard practice within the fraternity. If you do that, you are going to go for a percentage of the claim anyway—but having a no-claim cap on it but also no liability clauses for the claimant as well. If the claimant is proved to have actually caused the situation, the claim can still go through. That is just absurd. If I drive a car and I smash into the back of somebody else, the insurance company will say, “You caused that accident.” Why does that not happen with work cover?

Mr Dotta: In Canberra, if you did that, they would end up going to the car manufacturer and saying, “It is your fault he crashed.” That is what is happening to us.

Mr Adam: That is right. The auto-braking did not work.

Mr Dotta: If you looked at the stats on how many cases there have been in the last five years and who has won, you will see that it would be up there—99 per cent. The claimants are winning every time. That, to me, shows that there is an injustice and there is something wrong with the system

Mr Adam: It is not that all employers are bad and the—

MS MORRIS: What does that say about judicial discretion?

Mr Dotta: Sorry?

MS MORRIS: Does that say anything to you guys about the judicial discretion that is being applied in these cases?

Mr Dotta: Yes.

Mr Adam: Is it a comparison of—

Mr Friend: There is no judicial discretion. The lawyers just fight for their insurers and fight for the injured worker. There is no actual legal case; it is just a negotiation as to how much money they can get at and how much we are prepared to pay.

Mr Rao: It does not matter how much evidence we provide that the plaintiff is in the wrong, we still have to bear the cost.

Mr Dotta: They know that, if it is over \$200,000 it then goes to the Supreme Court or whatever. That requires barristers and every day in court it is 50 grand for barristers.

THE ACTING CHAIR: So sometimes there would be legitimate claims, but it is these more frivolous ones that are the problem.

Mr Friend: In the majority.

THE ACTING CHAIR: Is it about raising the bar on what claims can come forward, so that you still get the legitimate claims coming forward?

Mr Dotta: I think the no-win, no-fee will stop that.

Mr Friend: Generally, the legitimately injured workers do not engage lawyers. The business works with everyone until such time as a lawyer is engaged. Then it is like, well, hands off.

Mr Dotta: I have a case where I am actually saying, “Yes, this is kind of fair. I understand this.” Compared to other ones I have that just blow my mind, I am like, “This is fair. Tell the other side that we get it, figure it out and pay it out.” But, no, the other side do not want that. They are sending lawyers out multiple times to do investigative stuff to rack up their costs because it is easy money for them. So, even when we do say, “Yes, we agree with this,” the other side go, “No, we do not actually agree. We want to do more investigations to rack up more costs.”

Mr Rao: Excuse my ignorance, but can I ask a question? Is the ACT the only state in Australia that has the no-win, no-fee?

Mr Dotta: Yes, I think so.

Mr Rao: Why is that?

Mr Adam: And the untapped common law.

Mr Friend: I do not know. Maybe it is the unions.

Mr Adam: I am pretty sure there are other states.

Mr Dotta: Sorry; in Queensland I think there are no-win, no-fee laws, but you cannot advertise it.

Mr Adam: But they also have a cap.

Mr Dotta: And caps as well. But I think the ACT is the only one where you can advertise it.

Mr Santos: That is where the problems arises.

Mr Dotta: Well, that is one of them.

Mr Santos: The legit ones are easy to deal with. They are the easiest thing to deal with.

Mr Dotta: Yes, they are, actually.

Mr Santos: It is very straightforward. It works very good. They want to work with you. They have a couple of weeks off or they always want to come to work—like, “I do not want to be sitting around; I want to work.” You can see that. But the other ones, no. You can see from the get-go. I am pretty good at it. I can feel it straightaway when they are not engaging with me in the eye, it is like, “Okay; this is done.”

Mr Friend: And GPs

Mr Santos: And GPs are so easy too.

Mr Friend: Yes, they are easily manipulated.

Mr Dotta: I have heard someone say, “You can make as many claims as you want over time with different businesses; you just get less money each time because it is on file.” I had to deal with this person once and I had someone call me and they were like, “Yes, we are well aware of this guy.” After he did something like seven claims across Canberra with businesses, the insurance company finally investigated him and said, “We are not paying him out.” That took seven claims—and ruining small businesses.

THE ACTING CHAIR: What per cent of claims would be these frivolous one? Out of the whole lot, what percent would be legit?

MR RATTENBURY: Who determines what is legitimate?

Mr Dotta: The insurance company.

Mr Santos: In our business, 90 per cent of the claims that we have are—

Mr Rao: There has been a massive increase in the last three or four years.

Mr Dotta: Since COVID.

Mr Adam: I was just going to make a comment on that question on what percentage are frivolous claims.

THE ACTING CHAIR: From your point of view, and not any legal or—

Mr Adam: To answer that question more accurately, there is currently no system within the ACT that assesses work cover claims for validity. Anecdotally, from what the guys have seen, the problem is that a lot of these claims are like—what do they say in Australia?—everybody talks about the bad things nine times and the good things four. It may help if there were some way that work cover claims could be assessed for veracity and validity before being forwarded through this process. That is why I keep raising that issue. We have public liability and there is the same issue. If someone trips down a set of stairs and makes a claim, you have a camera on it and you can see that they just tripped over. That is different to an actual workplace incident where someone is claiming that they were injured by a tool, a weapon or whatever it is.

You have to have some kind of state and territory-wide system that manages all the insurance and they go through an independent process that is not just a doctor—anybody can go and talk to a doctor and get a note to take a couple of days off, saying, “I just need a couple of days off, Doctor,” and they will give it to you—but an independent assessor that determines whether that is valid to go through the process. Then the lawyers can negotiate if they want to settle or go to the courts if it is needed.

MR RATTENBURY: Would the independent assessor be a doctor?

Mr Adam: Whatever the territory determines is the appropriate solution. You would have to have something that—

MR RATTENBURY: Probably a doctor?

Mr Adam: Yes, it would have to be a medical person. You would not have an accountant or a lawyer making those decisions, for sure.

Mr Friend: I have also had comments from people saying that they have noticed that there have been more claims since the cost of living has been a big factor for people. As a lot of people run out of money, the claims seem to pick up as well.

MR RATTENBURY: Are there numbers on that we can have a look at—something evidentiary?

Mr Friend: You can probably look at the last—

Mr Adam: It is stuff that brokers say to you. It is so difficult. They never put it in writing, or they call you on your personal mobile to have a chat about stuff.

MR RATTENBURY: We are going to get a lot of stuff that people say from a lot of different groups. That is why it is hard to—

Mr Adam: Yes, that is why I answered that question like that.

Mr Friend: That is just what I have been told. We have got construction, we have got martial arts services, we have got hospitality and we have got supermarkets that are based in New South Wales and the ACT. We are all making the same points. We are all voicing the same concerns. That shows that this jurisdiction is a free-for-all for insurers and for the legal representation of the claimants. They know it is easy money. They are waking up today going, “I am going to get paid.” That is the biggest problem. We have no standing. Right now, as small business owners and business owners in the ACT, we are left last. Someone said ‘profits’ is a naughty word. At the moment, with most businesses in ACT, if you are making profits, you are laughing, but other than that, they are not in this.

Mr Adam: To Ms Morris’s question, the legal profession will have exact statistics on which cases are being negotiated and which cases are being settled before going to court. I would definitely be asking them about what the percentage is of cases that are being brought and are being settled or negotiated or going to court, because they will give you the proper statistics. We can only give you the anecdotal side of it.

These guys can tell you how many claims they have had this year and how many they have not. I can speak to all the businesses around us, and most of them will talk about the exhausting situations they have gone through with the process. They talk about, “I have a staff member who broke their elbow. They talked to us and they went through the process. We paid for all their medical stuff. We did all that stuff. They did not go to work cover.” The only attempt to claim I have had is when someone came to me and it was on a day that we were closed—and quickly shut it down.

Mr Friend: I think the question you asked is the wrong question. It is not the number of claims; it is the payout of claims—the legitimate claims versus the lawyered claims. It is actually assisting your injured worker from an injury, through to rehabilitation and back into the workforce as a cost versus a settlement cost. The cost is very small in getting your injured worker back to work versus the payout. Payouts in our industry—

Ms Houston: Exactly what you are saying. We had a worker fall over and break his arm. It was a legitimate claim. He then had some complication and ended up with regional pain syndrome. He was genuinely injured. He has been with us over six years on a return-to-work program the whole time, with permanently modified duties. We had to get a lawyer sign off on that claim because there was an impairment level that needed to be signed off on. That was worth a certain amount of money for that claim.

His lawyer instantly went, “If you go common law on that, mate, you will get much more than this.” But he likes working for us. I know the gentleman. He has been with us for years. He loves working for us. He was like, “I do not want to put a common law claim in; I just want what I am entitled to.” He went ahead and got a payout, but he still

works for us to this day. He is happy. He is rehabilitated into the workplace, and he is happy. If he had taken a common law claim, he might have got a big payout but it does not mean that he is necessarily mentally well or happy in his life.

MR RATTENBURY: Mr Friend, did you want to finish the point you were making?

Mr Friend: What I was saying is that every payout of a big one, once they are lawyered up, starts at \$200,000 plus the defence costs and all that sort of stuff. That is where we need to look at the numbers. It is not the number of claims; it is the dollar value of claims.

There is another thing that I did not get to mention. You asked what we had looked at in our business to try and mitigate these costs. We have a precast business and our percentage of premium is 22 per cent on our workforce. We have looked at abandoning a \$10 million factory that we have built here in the ACT to move to New South Wales. We are looking at Goulburn and we are looking at Yass. We are looking at anywhere regional where we can easily transport product into Canberra but not pay the exorbitant costs of doing business here in Canberra. I will abandon that factory, lease it or whatever and build another one somewhere else, if I can find the right location.

As I said earlier, we are paying \$1.8 million in premiums a year on workers comp. We have looked at whether we can self-insure. I 100 per cent believe that I can do it better than the insurers and pocket extra money. There are all these things that businesses are trying to do, but it is very hard. We are very fortunate. We have had a business that has been around for 28 years. The shareholders of the business have left money in the business. So we can look at all these things.

MR RATTENBURY: What do you mean by self-insured—just so we are clear on that?

Mr Adam: You cover your own insurance. I cannot self-insure, because I do not own my—

MR RATTENBURY: Just so it is on the record.

Mr Friend: We have looked at whether we can cover our own self-insurance. It is a huge policy to run and it is a huge program to run. You have to apply for an insurance licence through the ACT and all that sort of stuff. But it is a program that we have looked at. Are we going to do it? I do not know, but it is something we are looking at. We believe we will save \$500,000 to \$800,000 a year on our workers comp insurance.

MR EMERSON: On that 22 per cent figure, do you know what it is in New South Wales? Have you got to that point yet?

Mr Friend: It is around somewhere between four and five per cent.

MR EMERSON: So it is a pretty strong incentive, at least.

Mr Friend: It is huge.

Mr Adam: The Canberra Business Chamber have said that, on the stats they have, it Economics—16-04-25

is, at minimum, 45 per cent cheaper across the border.

Mr Friend: If you add on to that cheaper rates, land tax and all that sort of stuff, there is a huge incentive. Can we get enough workforce in some of these regional areas to produce what we want to do? That is the other part of it. We do not want to leave the ACT. The business was founded in the ACT. The shareholders are based in the ACT. They want to keep servicing the Canberra region.

THE ACTING CHAIR: We have come to the end of our session. On behalf of the committee, I thank you for your attendance today.

Short suspension.

McKAIL, MS BROOKE, Deputy Chief Executive Officer, Domestic Violence Crisis Service

THE CHAIR: We welcome Brooke McKail from the Domestic Violence Crisis Service. I remind you of the protections and obligations afforded by parliamentary privilege. I draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. When you first speak, please confirm that you understand the implications of the privilege statement and that you agree to comply with it. You can make an opening statement and then we will move to questions. Do you want to go straight to questions or do you want to first say a bit about what you are doing?

Ms McKail: I might say a little bit about us, if that is fine.

THE CHAIR: Sure. Thank you.

Ms McKail: I understand the privilege statement and accept it. Thank you for having me here today. I am sure you all know that we are a specialist domestic and family violence service that, among many other things, provides a 24/7 crisis line for people experiencing domestic or family violence in the ACT and region. I want to start by acknowledging that I am in no way an insurance expert, so I probably will not be able to answer any technical questions that you might have.

MR EMERSON: You are in good company, so do not worry!

Ms McKail: We are all learning as we go along.

THE CHAIR: Hear, hear!

Ms McKail: That is probably common to organisations like DVCS. We are small- and medium-sized organisations and have to navigate an increasingly complex and expensive insurance environment without having in-house legal advice, insurance experts or even much corporate or administrative capacity. All our focus is on frontline service provision. What I thought might be helpful for you today is to try to give a bit of understanding of what the increase in the cost of insurance means for organisations like ours and, therefore, what it means for the community that needs our services.

I will briefly speak to our submission. Our funding and financial situation means that we do not have room to respond to changing prices and complexities around insurance. We also have limitations on how we can respond because of the nature of our government funding. In general, we are limited to about 15 per cent of any funding that we get being spent on administration and overheads, and the indexation that we get on our funding is generally around two to three per cent per annum. That has varied a little bit when inflation has been high, but it is generally around that level, which means we cannot respond to the increases that we are seeing in insurance costs.

We indicated in our submission that, in particular, workers compensation has increased four- to five-fold since COVID for us, and our wage budget has increased around 40 to 42 per cent—so that is 400 per cent and 42 per cent. The response that we have to make

to that is around decisions about what we insure. We have had to make decisions like not insuring the laptops and mobile phones that our staff have. Also, the reality is that the majority of our budget goes to salaries, so we have had to make cuts to staffing. We need to leave positions vacant or we need to take them out of the service model entirely. In the last year we have removed two management roles and three positions from the crisis intervention frontline team in response to our financial situation. The impacts of that are on clients. Calls are not answered immediately and people have to wait longer for call-backs. We triage the urgency and the risk. For lower risk matters, it will take longer for someone to get back to them. It means less case management capacity and it means fewer men's behaviour change groups running for men who use violence.

It is also felt by the staff because, when we take people off the roster, it increases the stress and burden on existing staff. When we talk about workers compensation, there is quite an irony in that it is actually increasing the risk of burnout, because we are pulling people off to afford costs like rising insurance.

That is probably all from me for now. Like I said, we are not experts, but we are really keen to explore options, including territory-backed insurance options that would help make the insurance system more sustainable for organisations like ours.

THE CHAIR: Thank you very much. I have just one question. It is slightly complicated. I firstly commend the work that you and your organisation are doing in an inherently dangerous or sensitive field. Your submission noted that insurance companies do not take into account risk mitigation strategies that you are pursuing to protect your workers. I had a conversation with Scouts ACT, who run some dangerous activities but put a lot of effort into training and mitigating those risks, not taking into account insurance. I note you are coming from a position of non-expertise. I am aware and that is why I am asking. Have people in your position spoken about how the ACT government could encourage insurers to consider risk mitigation strategies in relation to setting premiums?

Ms McKail: There are a couple of things to that. There absolutely should be some recognition of the work that we do. We invest heavily in our staff's wellbeing. We provided some examples of that in our submission, around clinical supervision, external supervision, internal supervision, group debriefing opportunities and critical incident responses. We provide opportunities for them to do work that is not on the front line. It may be in community education. There is a range of ways in which we invest quite heavily. We do not provide that information to the insurance provider. That is not part of the negotiation with them and it does not seem to come into consideration when matters proceed with regard to workers compensation or other things. There could be some work with insurance providers on the model around recognising the measures that are in place to reduce harm for us, particularly psychosocial harm, but there are other types of risk and harm across the board.

ACTCOSS made some recommendations in their submission that I am sure they will speak to later around some recognition of the costs of those kinds of mitigation measures in our funding models, so that we do not have to trade them off against the cost of increasing insurance. One of the reasons we are supportive of a territory-backed scheme is that it would enable an understanding of the kind of work that we do and the kinds of mitigation measures that we put in place to manage risk and support our staff's

wellbeing. When we are working with commercial insurance providers, they do not have that. They do not know what we are doing and they do not really have any incentive to understand it.

THE CHAIR: In perhaps speaking to colleagues in other states or in other jurisdictions, or even internationally, are you aware that insurers are required to make adjustments to their premiums due to risk mitigation?

Ms McKail: I do not know. I understand work has been done in other states and territories regarding government frontline responders. We would consider our staff to be frontline responders to family violence crisis. Frontline or emergency responders are generally considered firefighters, police and SES. I understand work has been done, particularly with government industries, around how to assess that kind of mitigation of risk. That might be something that we could take from other states and territories.

THE CHAIR: Thank you very much.

MS CARRICK: Do you know what is driving the increase in your premiums?

Ms McKail: Some of it. It is not just workers' compensation. The professional indemnity business package has increased. It has about doubled since COVID. Part of it is that we are considered a high-risk organisation by insurance providers, particularly in the workers compensation space. That impacts our premiums and the rates that are applied to our wage budget. I imagine that, since COVID, there has been a significant increase in our understanding, at a community level, of the psychosocial safety of workers. At a community level, we also have seen increases in mental illness and stress related to work like we do. I would imagine that has driven it. In terms of clear communication from our insurance provider, I cannot draw on the exact reasons it would have increased to that degree.

MS CARRICK: Thank you.

MR EMERSON: With respect to the ACT Insurance Authority, I suppose your suggestion is to expand their scope to capture the community sector. How would you imagine that working? You mentioned there is something similar happening in Victoria. Would it be only for NFPs that have government funding? Is that what you are imagining?

Ms McKail: Again, there would need to be significant work done around it. That is my understanding, from working in Victoria, of how the Victorian model works. Funded agencies have access to the state-backed insurance scheme. I cannot speak to how it might be possible for non-funded services. We would be in scope as a funded service. One of the benefits of that for us is that we are effectively performing a public service and government shares in the risk of what we are doing. If we have to reduce services because of the cost of insurance, that has an impact across the community and at a government level as well. It would be one way to recognise that some of that risk is outsourced to us but that it is actually a shared risk with government—insurance and the wellbeing of our service and the sustainability of our service.

MR EMERSON: What proportion of your funding—it might be an estimate—comes

from the ACT government?

Ms McKail: Eighty per cent.

MR EMERSON: Versus commonwealth or—

Ms McKail: Yes—commonwealth and self-generated, in terms of fundraising and those kinds of things. We cannot really ask donors to pay our insurance bills.

MR EMERSON: No. Your government contracts are indexed according to the CPI?

Ms McKail: Yes. A formula applies. The majority of that is actually the wage price index, but—

MR EMERSON: It is about the nature of work and the cost of wages.

Ms McKail: Exactly—recognising that wages constitute the majority of the budget of most community service organisations. We are relational services, so the formula takes that into account. It usually moves reasonably close to things like the minimum wage increase and the wage price index.

MR EMERSON: Does the government have any visibility over your insurance costs? You mentioned there is a requirement to keep admin at a certain level, which of course is understandable, but do they even know?

Ms McKail: Yes, in the sense that we are required to provide funding reports. They can see that in our audited financial statements. We have ongoing conversations with contract managers about changes in costs. Insurance is not the only thing that is impacting our financial situation and sustainability, so that is an ongoing conversation with our funding managers. I would say they do, but obviously not to the level of detail of individual contracts signed with insurance providers.

MR EMERSON: Could one solution be for any increasing costs above the year in which the original contract was signed to be covered in a contract? This happens with commercial leases, for instance. If the landlord's costs go up—they are called outgoings—the increase above the base year is passed on to the tenant. Potentially, there could be scope for the ACT government contracts to operate in the same way.

Ms McKail: Yes. It would certainly be really interesting to explore that, where costs go above that sort of indexation level—what mechanisms there could be for government to work with us on that.

MS CARRICK: From reading the submissions, I noticed that there is a bit of a theme in working for the government or government contracts—that the requirement in the government contracts is to have high public liability. It could be \$10 million or \$20 million of public liability. Some of the submissions said it is very difficult to work with the government when there are such high requirements. Even the insurance industry raised that—why have such requirements that are potentially not necessary? Does your contract with the government or your funding from them require very high public liability?

Ms McKail: There are requirements around the level of insurance coverage that we have and there are also requirements that our board has around the level of insurance coverage that we have. That is an issue. To be honest, the most recent issue we have had in that space has been with the commonwealth government. For one reasonably small contract, they required us to increase our professional indemnity insurance quite significantly, far above what the ACT government and other parts of the commonwealth do. Sometimes there are those kinds of tensions and challenges, where we suddenly have to find additional money and we cannot go outside of 15 per cent on admin for whatever the contract is. That is not going to cover the increased level of insurance that we need that is only required for one contract. So there is inconsistency at different levels of government, even for funding programs and different contracts that we have. Does that answer your question?

MS CARRICK: Yes. Thank you.

MS MORRIS: You previously indicated that there is not a great deal of transparency around increases to premiums. Would you say that your premiums are stable at the moment or are you concerned that they could increase in the near future?

Ms McKail: Certainly our workers compensation premiums keep increasing. We had a 42 per cent increase. We will have claims during a year and that can impact on what our premiums will be the next year. I do not know what our next increase will be, but we expect it to increase again. We have had significant increases of that kind of level to our workers compensation premium in recent years. They have not been that high for some of the other types of insurance, but they have certainly been above the indexation level of two or three per cent.

MS MORRIS: Are you given adequate notification of impending increases?

Ms McKail: Most of them are paid in instalments. There are no long notice periods before we are advised of what it will be for the next year. We pay in instalments across the year. The challenge for us is that we do not have a lot of capability to change our income.

MS MORRIS: To respond.

Ms McKail: Yes. Other than reducing staffing hours, there is not a lot that we can do—

MS MORRIS: That is your response mechanism?

Ms McKail: to generate significant amounts of additional revenue to pay for those increased costs.

MS MORRIS: That is very sobering. Being a high-risk organisation, as you said before, have you encountered any difficulties in finding insurance providers?

Ms McKail: Not really. That has not been our experience. I know that is the experience for some particular types of insurance, but we have not had that challenge, as far as I am aware. Our bigger challenge is making some of the processes work. One of the other

experiences that we have is that the workers compensation process in particular is hard, stressful and challenging, including for the employees involved. We are paying significant premiums, but there is the capability of the insurance providers to support employees back into the workforce, if that is the appropriate path for them, or to resolve matters quickly, so we have changed providers at least once in recent times for a better response and better capability by provider. The reality is that it is a system that is hard for everyone, including the employees who are involved in it. It is quite frustrating when we are paying really significant premiums and it is not a good experience for anyone.

MS MORRIS: Thank you.

MR RATTENBURY: In your submission you talk about the premium increases having resulted in cutting the number of staff, despite being an essential service. Are you able to put a quantity on that for the committee?

Ms McKail: The staffing numbers that we have reduced are as a result of an overall budgetary deficit. As I said in the submission, we have reduced our service model by two management staff and three frontline crisis positions. We cannot solely attribute that to the increased cost of insurance, but, like I said—

MR RATTENBURY: It is a contributing factor.

Ms McKail: Yes. In 2018-19, we were paying less than \$100,000 and we are now paying more than half a million dollars in workers compensation insurance. That is three or more positions.

MR RATTENBURY: I was interested that you particularly pointed to the premium increases. You compared it to pre COVID. Is there a reason you used that point in time? Have you seen a particular spike? I am interested in why you made that observation or used that data point.

Ms McKail: That is a good question. We certainly have seen a more rapid increase. I am looking at the numbers between 2019-20 and now. That is when we have seen the bigger percentage increases year on year, and there has not been a commensurate change in our funding levels or wage budget. It is also possible that we absorbed some of the conversation, that there has been an overall trend in insurance price changes since COVID, so we are probably responding to that as well. I cannot speak to that. We may have just heard that conversation.

MR RATTENBURY: We are just trying to pick out trends and understand why things have gone a particular way. It is not meant to be a difficult question; it is just—

Ms McKail: I was just thinking, “Why did we pick that?” I certainly can see from the numbers that 2020-21 to 2021-22 is where those really significant increases became obvious.

MR RATTENBURY: Thank you.

THE CHAIR: We can now move to more general questions. My first general question

is: do you feel confident in speaking on behalf of a broader group of people in your role as a frontline organisation? Our last panel spoke almost entirely anecdotally. You are able to provide anecdotal information and information quite specific to your experience and your role, which is very helpful. Are you able to expand it and not speak on behalf of others but provide what you have heard? Do you think your experiences are repeated?

Ms McKail: Yes. I can only speak anecdotally to that. We are not a peak body and we are not a membership based organisation, but we obviously have conversations—

THE CHAIR: That is what I am interested in.

Ms McKail: particularly with other family violence services around the country. It is fair to say that we are not alone in our experience. Other organisations have similar experiences in the family violence space and are having to make similar kinds of choices around what that means, in terms of decisions about managing the budget with cuts to frontline services or the kinds of supports they have for staff—whatever that looks like. Lots of organisations are having that kind of conversation and that kind of thinking. In terms of the ACT, I would probably defer to ACTCOSS and their conversation this afternoon.

THE CHAIR: Fair enough. Thank you.

MR RATTENBURY: In our previous panel, people talked about the ACT being more expensive than other jurisdictions. Is that a comparison you are able to share with us? You spoke about services in other places. Do you find the ACT is more expensive than other jurisdictions?

Ms McKail: We only operate in the ACT, so it is challenging for us to comment on that. I know there is data that says that the ACT premiums, particularly for workers compensation, are higher than in most other states and territories, but I have not looked at the data. If it is useful to you, I am happy to have a conversation with some of our colleagues, but I could not speak to that without doing so.

MR RATTENBURY: What I am trying to explore is: for like-minded services in other jurisdictions, do you see material differences?

MS MORRIS: Are you at a disadvantage?

Ms McKail: I am happy to take that on notice and have a chat. Everybody has their own experience, so they will talk about the challenges that they are having. Without getting some numbers from them, I could not really tell you if we are better off or worse off than they are, but I am happy to see what I can find.

MR RATTENBURY: We appreciate that you are extremely busy, but, if you are able to provide us with anything later, that would be very helpful.

Ms McKail: Sure.

MS CARRICK: In our previous session, there was a lot of anecdotal evidence about the cases that come through their organisations. They were talking about no win, no pay

and uncapped claims. Do you have any evidence of those sorts of issues being problematic for you?

Ms McKail: Not specifically. We recognise that the work that our staff does is difficult. The things that they can be exposed to can be really challenging and the advocacy that they do every day on behalf of clients is hard, so the risk of burnout, vicarious trauma and PTSD is genuine and significant, despite them being an incredibly skilled and resilient workforce. I do not think our concerns are as much about that as they are about the process and the fact that the work that we do to support staff through those things and the mechanisms that we put in place to manage that are not recognised in our premiums and the experiences we have with insurance providers. I do not think I can specifically speak to no win, no pay.

MS CARRICK: Do your premiums acknowledge or consider your mitigation measures?

Ms McKail: Not to my understanding. We cannot see where they do that. When claims are made, that is often also not part of the process. We want staff to be supported in the way that is appropriate, but, in general, the kind of work that we do to support wellbeing and put those risk mitigations in place does not seem to have an impact at any real point of the system.

MR EMERSON: Do you know how many claims have been made in the organisation in, say, the last five years?

Ms McKail: I can provide that information on notice, if that is helpful to you.

MR EMERSON: Obviously it is not zero. Have you seen an increase in premiums if there are a number of claims within a year?

Ms McKail: Yes.

MR EMERSON: The next year's premiums go up?

Ms McKail: Yes.

MR EMERSON: Do you know whether there is any correlation? Mr Rattenbury asked about when things really started increasing. There might not be a correlation—that claims started coming in after that. I imagine that, in your sector during and post COVID, there was a lot of burnout and psychological damage.

Ms McKail: Yes.

MR EMERSON: What I am getting at is whether there might be a correlation or whether they have been varying independently. Do you have a sense of that?

Ms McKail: I do not have a sense in that I do not know how many claims were made pre COVID. I would need to get that data, which I am happy to do. Obviously we have a small workforce, so we want to make sure that we protect the confidentiality of the workforce. I can look at that data and share it, in terms of maybe five years pre COVID

and five years since COVID, regarding workers' compensation.

MR EMERSON: I think it would be great if we had the number of claims and also the scale of changes.

Ms McKail: Sure.

MR EMERSON: You can work it up in whichever way you think the data is most useful.

Ms McKail: Absolutely.

MR EMERSON: Thank you.

MS MORRIS: If risk mitigation measures are not recognised by insurers—or, at least, if there is no transparency around that—do you think that could be a disincentive for some organisations to put those safety measures in place in the first place, considering that it will probably cost them quite a bit of money to do so and that a lot of these organisations do not have much money to spare?

Ms McKail: Yes, I do. We have made an active decision to invest in our staff wellbeing, but, as I said, that means we have to make decisions elsewhere about where we find that additional money. That will impact on staff wellbeing, and burnout as well. At some point organisations like ours have to make decisions about whether to reduce somewhere else, and that could be in some of the risk mitigation or the things that I talked about—clinical supervision, debriefing and those sorts of things, which are not cheap.

MS MORRIS: They would be on the front line of the loss—to make up for those rising costs, potentially?

Ms McKail: Yes. It could actually be—

MS MORRIS: Adverse.

Ms McKail: It feels a bit like a cycle; when we have to respond to increasing premiums by making changes, some of them will have detrimental impacts on staff wellbeing, so it is about how we stop that cycle.

MR EMERSON: Looking at your submission, I read that, in July last year, there was a budget deficit of \$980,000. That is if you were fully staffed; you mentioned that you have reduced staff. What is the reduction? I am sorry if we have already covered that. If you had made that reduction, you would be out of reserves in July this year, if your figures are exactly right.

Ms McKail: Yes.

MR EMERSON: By how much have you actually reduced staffing?

Ms McKail: We have removed several positions; also, we have not filled vacant shifts

or we have held vacancies for longer. We expect that we will have clawed back most of that deficit in this financial year, so we will come out with only a small deficit at the end of the financial year. But that is on the basis of those kinds of things that increase pressure and reduce services. When shifts are not filled, no-one answers the phone.

Some of it has been structural. Our board has said that we cannot present another deficit budget for the coming financial year, so we have removed positions, which has reduced that deficit for next year—we are in the process of doing that—by upwards of \$600,000 of it. Yes, that has impacts.

MR EMERSON: Effectively, with any increase in premiums that you have mentioned—public liability, professional indemnity, business insurance and the whole package, including workers comp—it is just money out of the DV Crisis Service provision in the ACT.

Ms McKail: Exactly.

MS MORRIS: In your submission you said that, over a two-year period, you have seen the number of clients grow from 850 per month to 1,100. Do you expect that to continue to rise, in that trajectory? If we are seeing a reduction in staff, how do you manage that?

Ms McKail: That is a good question. It is hard to say whether we would expect an increase in that trajectory. Certainly, in some parts of the service, that trajectory is increasing at a similar rate. In our criminal justice advocacy, which supports victims where a matter is going through the criminal justice process, we are seeing a very rapid increase in client numbers and demand. With respect to how we manage that, we continue to triage. In terms of increases in phone calls, we respond to the most urgent. Our staff are constantly assessing where the risk is. Of course, that is not ideal. We want people to keep calling us, and we will always prioritise those that are highest need and highest risk. Obviously, we want to be able to answer every person when they have picked up the phone to make a call.

We do expect that there will continue to be increases in demand. As a 24/7 service, with additional services and investment that come into this space, that often increases demand on those services that are operating in those out-of-business hours—things like our crisis line. I also think that the really great work we have done as a community to increase the profile of family violence means that more people across the community are reaching out for help, which is really important. As you say, we really cannot respond.

MS MORRIS: Yes, it is a very a difficult situation that you are in, with an increase in clients and a decrease in staffing, which increases the risk of burnout, and therefore increases the risk of workers compensation premiums rising.

MR EMERSON: A vicious cycle.

Ms McKail: Yes.

MS MORRIS: I suppose our recommendations will go to how we solve these issues.

Ms McKail: You have just articulated in 10 seconds what I have been trying to say for half an hour.

MS CARRICK: I want to ask about the excess. When workers comp claims come through, do you have an excess that you have to pay?

Ms McKail: I do not know the answer to that. We certainly have an excess that we have to pay on other insurance products, and that varies by the type of claim. Workers compensation is a bit different because sometimes you are sharing the costs of the wages, and it varies over the period of time, so it is not an excess, so much. I would need to clarify the exact language around that.

MS CARRICK: With any insurance that you have, if you do have claims and there are costs to you, how would your funding bucket deal with any of those costs? You have to deal with the cost of the premium, but there are additional costs when claims go through.

Ms McKail: Yes. Obviously, we have to manage that within the funding and the financial environment that we have. It is very similar to increased premium costs. We have to balance that. As I said, we have to make decisions about what we insure. Our staff are out and about in the community a lot. They use fleet cars. Those fleet cars get damaged pretty regularly. We are constantly making those kinds of decisions around when and how to pay those excesses and make those repairs. It is about looking at what that means for other lines in the budget, and at where we have room to move.

THE CHAIR: Thank you very much. That was excellent. On behalf of the committee, thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary, as far as you are able to, within five business days of receiving the uncorrected proof *Hansard*.

Short suspension.

CAMERON, DR JAMES, Executive Director, Australian Construction Industry Forum

JOHNS, MR KENT, Head, Government Relations and Regulatory Affairs, National Electrical and Communications Association

THE CHAIR: I welcome Dr James Cameron. Hopefully, the representative of the National Electrical and Communications Association will join us later. Dr Cameron, I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Do you have a copy of the privilege statement, or have you seen it?

Dr Cameron: Yes, I have been provided with a copy. I cannot say that I have read it in detail, to be honest, but I am happy to be briefed on it.

THE CHAIR: Okay. I will read it out for you, so that you can acknowledge it. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. When you first speak, please confirm that you understand the implications of the statement and that you agree to comply with it.

This is the privilege statement: the Assembly has authorised the recording, broadcasting and rebroadcasting of these proceedings. All witnesses making submissions or giving evidence to committees of this Legislative Assembly for the ACT are protected by parliamentary privilege. “Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively and enable those involved in committee processes to do so without obstruction or fear of prosecution.

Witnesses must tell the truth, as I said before. While the committee prefers to hear all evidence in public, it may take evidence in camera; that is, we will close the doors and make it private, if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee, at a later date, to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting the person who gave the evidence.

That is the privilege statement. Do you understand its implications, and do you agree to comply with it?

Dr Cameron: Yes, I understand the implications, and I agree to comply.

THE CHAIR: Thank you very much. Generally, we do not invite opening statements when there is a big panel, but you have three or four minutes, if you would like to provide an opening statement outlining where your organisation is coming from, regarding this inquiry; then we will go to questions.

Dr Cameron: I am the Executive Director of the Australian Construction Industry Forum, and Master Electricians Australia is one of our member associations. I agreed to take part today because neither Kate Raymond, their CEO, nor Georgia Holmes, their policy manager, could take part today. I am taking part on behalf of Master Electricians Australia. I presume Master Electricians have provided a submission for this inquiry.

Maybe you have had a chance to look at that—

THE CHAIR: Yes.

Dr Cameron: and be briefed on that. In the lead-up to this meeting, Georgia Holmes, the Master Electricians policy manager, communicated to me that the focus of Master Electricians is on small business support, to help drive down the underlying factors contributing to high insurance premiums.

In particular, Master Electricians Australia is seeking greater support for small businesses to help cover the cost of work health and safety compliance, which is investing in safety compliance systems, training and other necessary resources. Master Electricians believe that this will address a core issue contributing to high-premium workplace cover insurance rates, which is a consequence of uncapped premiums for workplace cover insurance. Dealing with this will also address tackling the serious underlying issue of workplace safety. That is an overview of the Master Electricians position.

THE CHAIR: I will lead off with questions. This is a bit long, so you are allowed to take notes while I go through it. The Master Electricians submission called for greater government support for small to medium enterprises to help cover the cost of compliance, such as investing in safety and compliance systems, training and other necessary resources. The submission also noted that businesses that successfully provide safe working environments are being grouped with industry failures, unfairly penalising them.

Are you able to talk us through how these two elements work, or could work, together? On the one hand there is a suggestion for advocacy for government support to improve safety. On the other hand it is noted that insurers do not take into account risk mitigation actions by small businesses. Is there a synchronicity in these two requests or elements that have been raised?

Dr Cameron: One is a request for government and another is more of a request for insurance companies, rather than for government. The second one speaks to the fact that there should be more differentiation for businesses if they have good safety practices in place. I would say that the two are part of the submission on how to drive down insurance costs for businesses in the ACT, but one speaks to government and the other speaks to insurance companies.

THE CHAIR: Driving down, or is that reducing the increase? Are there any jurisdictions or sectors where insurance costs are reducing? It might be an effort to reduce an increase, as opposed to actually driving down an increase.

Dr Cameron: That is correct. I cannot speak to the rises across the country. As you will read on the second page of the submission, it says:

The electricity, gas, water, and waste services industries in the ACT recorded significantly higher standardised premium rates than any other jurisdiction, with a 20% increase in the ACT's premium rates. Similarly, the ACT's construction industry reported the highest premium rates by a considerable margin.

You are correct; it is probably not talking about a reduction in premiums, but there is a lot around the increase.

MS CARRICK: My question is about risk-averse behaviour. Your submission talks about employers who may engage in risky behaviours, such as choosing not to insure themselves, in an attempt to manage overall costs. Can you tell me what other risk-averse behaviour electrical firms might engage in, because of their high premiums?

Dr Cameron: You are saying that they do not take out insurance? Is that what you mentioned?

MS CARRICK: Yes, that is what it says. They are choosing not to insure at all, for certain policies.

Dr Cameron: With respect to other behaviours that they may be engaged in, they may not insure to the full amount that they should insure to. They may underinsure. If there is an excess, they may increase the size of the excess to lower the insurance premium and then be stung if they do make a claim. They may only insure certain parts of their business activities, not all of their business activities. They would be some of the means by which electrical businesses would engage in that behaviour to lower premiums.

MS CARRICK: It also talks about not challenging claims.

THE CHAIR: Deputy Chair, before you start that question, we have been joined by Kent Johns, from the National Electrical and Communications Association. Dr Cameron is answering a question. I will come back to you to make sure that you have read the privilege statement, that you acknowledge it and that you understand what we are doing. We will then ask questions of you as well.

MS CARRICK: I was asking about the impact of challenging claims on the premium.

Dr Cameron: The impact of challenging claims?

MS CARRICK: Yes. We heard earlier that, if you challenge claims, potentially the premiums go up. Therefore they are just settling, because that is a cheaper way to go about things than going to court.

Dr Cameron: When you take out the insurance, you do not have the excess as high as it could be. There could be a lack of challenging claims for that reason—paying the higher excess. I do not believe it is mentioned in the submission—challenging claims. I do not know whether Ken can speak to that.

THE CHAIR: We will go to Mr Johns. Mr Johns, I will read a little bit about the privilege statement, which I would like you to acknowledge. I suggest to committee members that we will ask questions, we will get Dr Cameron to answer first and then we will go to Mr Johns.

Mr Johns, I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the

truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. When you first speak, please confirm that you understand the implications of the statement and that you agree to comply with it.

Ms Carrick, could you please repeat your question for Mr Johns?

MS CARRICK: Mr Johns, my question was about challenging claims and the potential for premiums to be increased from doing that. The impact of that is that sometimes people do not challenge it; they settle. How is that reflected in your industry?

Mr Johns: I acknowledge the witness statement and the obligations that I am under. I thank the member for the question. The dilemma that we find is reflected both within our group training organisations and our subcontractors. We need to represent electrical and communications subcontractors across the ACT. Primarily, that involves what you would call electrical contractors or electricians.

What we have noticed, in regard to your question, is that litigation and claims handling have become quite a significant issue. We are encountering cases where workers compensation claims that are initially rejected by insurers are later pursued as civil litigation matters. That results in significant premium increases, no matter what the outcome of the case is. The unpredictability of these costs is leading to financial instability within our industry and, particularly, it is making it difficult to hire apprentices in group training organisations in the ACT.

We have a real concern with the fact that, even if a case is not proven, we are finding that, for workers compensation, the premium is increased by the cost of the claim or the cost of litigating or defending the claim. That is primarily what we believe is occurring.

MR EMERSON: Along the same lines, we heard earlier from other witnesses running small businesses about the “no win, no fee” legal services. Do you have concerns with respect to those legal services? Do you think they are contributing to the number of claims that are made? Obviously, potentially, the number of spurious claims is of concern.

Mr Johns: Absolutely. I will be quite careful in how I say this. We know that there are spurious claims out there. We know that the “no win, no fee” goes in there. A lot of the time, these spurious claims are lost, but it still impacts the premiums that are being paid. We are talking about premiums for small businesses being lifted from \$35,000 to \$65,000 per year, which, for a small business, has quite a massive impact.

With these “no win, no fee” claims, while everyone has the right to go to court, we have seen where the claim is totally rejected, but that still impacts our members. When people’s claims are not processed or are rejected, it is assumed that that is what you do. It is becoming a sport in the ACT, rather than genuine litigation.

MR EMERSON: Another element that we have been discussing is the capping and not capping of claims. Either of you may be able to speak to this based on what you can see across different jurisdictions. To what extent do you understand that it contributes to the high relative cost of premiums in the ACT?

Mr Johns: If we look across jurisdictions, let us focus on apprentices first, without

necessarily going into caps on claims. The cost for an apprentice in the ACT versus New South Wales is about 8,000 times more expensive. I know that is a dramatic number, and I am using that because that number reflects the real cost disparity between jurisdictions and why we have real problems in obtaining apprenticeship electricians and communications contractors.

We find that the ACT is the most expensive jurisdiction for apprentices to get workers compensation, and that is proving to be a real disincentive. We fully support your net-zero aspirations, but it will be difficult if you have no apprentice electricians coming through because they cannot be trained.

With caps on limits, I do not think I am qualified to say what the cap should be on an outcome there. I think you should go to the insurance companies to determine viability there. We would strongly recommend that we look at the New South Wales form of workers compensation, and we would probably recommend a move to that type of system, unless you have a better one to offer.

Dr Cameron: I also run a small association in the ACT called the Association of Commercial Air Conditioning Contractors. Some of the member companies of that are so-called mech-elec companies that deliver electrical services to the mechanical contracting industry. The feedback that I have received from those members recently is that they do not have a problem with bringing onboard new electrical apprentices. In the past they may have struggled to get apprentices. The members that I have spoken to recently have said that they have had quite a number of applications for electrical apprenticeships, so that is heartening. They have mentioned a number of other business challenges. Insurance costs are not one of the top priority business challenges that they have mentioned.

MR EMERSON: Do you have any views on capping? I think there are two elements here—the capping of claims in the ACT, the lack of a cap, and the lack of a cap on premium increases. Do you have any views on those two variables, compared with other jurisdictions?

Dr Cameron: I would probably be interested in getting Kent’s view on that. As was mentioned in the Master Electricians submission, capping premiums are a bit of the way to go. It says that Master Electricians “seeks a regulatory amendment to cap the WCI premium increases businesses can face”. Master Electricians “propose adopting the NSW’s WCI framework, which limits premium price increases to a maximum variance of 30 per cent”.

Mr Johns: If I can add to that, I will give you an example of how it is currently working in the ACT. We have one member where it went to a “no win, no fee” lawyer. They pursued the claim. It resulted in a settlement of \$150,000, which was negotiated down to \$60,000, which still had to be paid. Following that claim, the business’s insurance premium increased from \$42,000 to \$95,000, which essentially threatened the viability of that business.

I can give you numerous examples that our members have given us. I refer, for example, to a contractor with over 20 years of operational experience and without a single claim. A worker made a claim for a pre-existing condition and, despite the contractor

providing medical evidence to challenge the claim, the insurer accepted the claim, following a doctor's certificate. The employer's workers compensation premiums subsequently doubled. That is the type of thing that we are seeing out there.

We have a real issue with the fact that claims are not being litigated passionately by the insurers to ensure that these fraudulent claims are not found out for what they are. When there are legitimate workers compensations claims, we fully support them. Some that have previous RSI injuries that have been proven are just not being challenged. Our members are expected to then pick up the differential, win or lose, in a doubling of their premiums.

MR EMERSON: With a business of that size, and for that level of premiums, you might be talking about five or six employees. That is not a big business. It sounds like a small business.

Mr Johns: Without identifying the company, the company had 14 employees.

MS MORRIS: Mr Johns, following on from that, in your view, are the issues that you have just raised unique to the ACT? I am reflecting on a table that was in the submission of Master Electricians Australia. It showed that the number of workers compensation claims per million hours worked is significantly higher in the ACT than the national average or other jurisdictions.

Mr Johns: I agree with their submission. I do not want to generalise, but, from discussions with those in New South Wales—and James may be able to assist with this—and across the country, insurance is the biggest issue to our members in the ACT. While our concern is across all the states, it seems that the ACT is the easiest to get a workers compensation payment.

MS MORRIS: Dr Cameron, do you want to weigh in on that?

Mr Johns: We just want greater scrutiny and independent assessment of workers compensation claims. That is a must-have. Where it is fair, it is fair, and, where it is unfair, it is unfair, but that scrutiny is just not there in the ACT at the current time. James, would you agree with that?

Dr Cameron: I cannot speak to how the ACT stacks up against other jurisdictions and I do not want to speak on the fly. I would need to take that on notice and get back to you, I am afraid. Hopefully it is not considered to be off the record, but I just looked at the priority policies of the other association I run: the Association of Commercial Air Conditioning Contractors. As I said, it is a small ACT based association. It actually has the line: "Companies in the industry are sometimes subject to workers compensation claims which are onerous for companies, in terms of paperwork and staff time in dealing with claims." It does not mention the effect on premiums, but it says it is an issue for businesses. As I said, the members include mech-elec businesses. They make up a large proportion of businesses. So it is definitely an issue.

MS MORRIS: Are either of you aware of any of your members considering or choosing to register their businesses in Queanbeyan, across the border, to avoid some of the costs associated with insurance in the ACT?

Mr Johns: There are a number of factors. We have had members move from the ACT to Queanbeyan to register their companies. There would be multiple factors; it would not be insurance alone. Multiple factors occur in our sector.

Dr Cameron: I would need to take that on notice in terms of Master Electricians members. Most members in the small association I deal with are based in Fyshwick. There is one based in the industrial area of Mitchell. Sorry—they are pretty much all based in Queanbeyan. None have moved in the nine years that I have been in the role. As Ken said, if they did move, I do not think insurance would have played a big part in that. Queanbeyan is a popular area to base businesses because of the large industrial areas. Also, there are quite a number in Fyshwick. But I do not think insurance costs would come into moving. There would be many other factors at play.

MS MORRIS: Thank you. One of the issues that has been put to the committee is the lack of competition amongst insurance providers in the ACT. Are you aware of any insurance providers in New South Wales where a 30 per cent cap might have impacted competitiveness? Hopefully that makes sense.

Mr Johns: Could I take that on notice? For example, NECA runs its own insurance. I would have to take that on notice. I am not the expert in our organisation.

MS MORRIS: Thank you.

Dr Cameron: It is the same for me. I would have to take that question on notice.

MS MORRIS: Thank you.

MR RATTENBURY: My question is to Mr Johns. There are a couple of things in your submission that I want to ask you about. You referenced the New Zealand Accident Compensation Corporation model as a potential framework. We have heard witnesses talk about other jurisdictions in Australia. Is there a particular reason why you emphasise that the New Zealand model is attractive or that the committee should take it on board?

Mr Johns: No. The reason that I referenced that in our submission is that two members of NECA in the ACT, who are quite passionate about this issue, gave me that reference. As they are senior members of NECA, I provided that in the submission as another reference that the company can take on. I am no expert on the New Zealand model, but our members emphasised that they believe the model over there is a better model. Whether that is correct, I cannot be sure. My understanding is that it is part of a generalised insurance pool as opposed to a direct workers compensation system.

MR RATTENBURY: Thank you. We can look at it. I was just keen to draw out any views you have. Also in your submission you made reference to issues with public liability. I am interested in understanding what those claims look like in your sector. It did not strike me as an obvious area of problems for electricians and the like.

Mr Johns: For electricians, in the public liability insurance that is required to take on government contracts, there is the cost and the issues that normally arise. When we met

with our members to understand real-life experiences, they merely stated that this was an issue for them that impacted their costs and their trading terms.

MR RATTENBURY: The issue is not necessarily one of claims in the area but the necessity of having insurance?

Mr Johns: And the cost of obtaining that insurance. Those costs impact on the ACT government, in that, with your infrastructure programs, those costs are passed on.

MR RATTENBURY: Yes; of course. Thank you.

THE CHAIR: Mr Johns, a suggestion that has been repeated in a number of other submissions as well is that the ACT government should encourage more insurers to enter the market. Are you aware of suggestions on how this could be achieved in practical terms?

Mr Johns: Regarding the insurance organisations that I have spoken to and also the insurances that NECA provides, that is a conversation we would like to have with the ACT government—how we can assist. As I said, I am not an insurer and I do not confess to be an expert, but I am happy to have those conversations with staff and levels of your government to see how we can raise competition in the ACT.

THE CHAIR: This question is slightly different on insurance. You might want to take this on notice if you have not done any thinking about it. In the panel of small businesses, one suggestion was that the ACT government operate basically as a broker, with one insurer or a preferred insurer, and have system-wide coverage. I guess that would be the opposite of encouraging more competition, but it means the government would take the lead in providing insurance. Would that be a possibility that your organisation would be interested in or could discuss?

Mr Johns: Yes. The MEA might want to assist here. We would definitely look at that and would also encourage an industry mutual insurance scheme, similar to those used by industry based associations. There is a model that we could work through that may be of assistance to the government.

THE CHAIR: Thank you. Dr Cameron, would you like to comment on that?

Dr Cameron: I would need to get back to you on that. I will take that on notice. That is a quite specific question that deserves a well thought-out answer. It is not dealt with in the Master Electricians submission, so I will need to get back to you on that. What would be the benefit of a single insurer backed by the government? It would seem that greater competition would be preferable. That deserves more in-depth investigation and a more nuanced answer than I can give.

THE CHAIR: Understood. Does anyone have any more questions?

MR EMERSON: I have one for Mr Johns regarding insurance arrangements, based on NECA's submission. We touched on apprenticeships earlier. My question is whether group training organisations are either closing down, leaving the ACT or not setting up in the ACT solely or primarily because of insurance costs here?

Mr Johns: We have a real concern. What we would like in the ACT for apprentices is to perhaps look at the South Australian, Western Australian or Victorian models. The average cost per apprentice, per \$100, is \$3.76, compared to 0.0005 cents in New South Wales. We can also see that in the ACT, just on workers compensation alone, it makes it difficult for GTOs to justify apprenticeships. We have heard anecdotally of at least one GTO that closed due to the cost of workers compensation insurance. It is a major concern for NECA, which is based in Fyshwick, where we train electrical apprentices, and we also have group training organisations. It is a larger cost now. I could get back to you. Let me correct it and take it on notice, but I think it adds five per cent to the cost of an apprentice in ACT versus New South Wales.

Host employers—who we have found have a 92 per cent retention rate, as opposed to non-industry-led RTOs—have excellent retention rates, but we have the additional burden of five per cent just for workers compensation. The ACT makes it extremely difficult. We would respectfully request that you look to Victorian, South Australian or Western Australian models for apprenticeship workers compensation regulations and programs.

MS CARRICK: You mention premium rebates in your submission as an incentive to employers.

Mr Johns: Yes.

MS CARRICK: As an option to deal with this one?

Mr Johns: It could be an option as well. The ACT is not immune. In fact, the ACT needs a significant number of electricians and apprentice electricians. We are looking at needing 35,000 new electricians in the Australian industry by 2030. To achieve that, we have to both increase our apprenticeship intake and increase our apprenticeship retention rate. Having a barrier such as this to apprenticeships is not assisting.

MR EMERSON: You said earlier, regarding differentials, that there was an 8,000 per cent cost increase here compared to New South Wales overall for an apprentice?

Mr Johns: That is a massive exaggeration. I will see if I can grab the figure so I can put it to you accurately. In the ACT, the premium rate for an apprentice wage is \$3.76 per \$100, compared to New South Wales, which is 0.0005 cents. That is the difference between the premium rates for apprentice electricians.

MR EMERSON: What is the behavioural impact of that—if you do not take on apprentices but someone needs the work? What would a business that is operating in the ACT do other than just not take on an apprentice?

Mr Johns: Essentially, the first option is not to take on an apprentice. The second one is to base your organisation in New South Wales and not undertake work in the ACT. Let's be quite frank: it is a cost that any electrical contracting company in the ACT has to wear and it transfers those costs on. When we look at the cost of housing and the cost of infrastructure, those costs are merely added onto the actual work involved. Electricians, for any major infrastructure work, cost between 15 and 25 per cent of the

PROOF

construction cost. The cost is passed on in the higher infrastructure cost and higher housing cost.

MR EMERSON: Thank you.

THE CHAIR: We will have to wrap it up, gentleman. Thank you very much. On behalf of the committee, I thank you both for your attendance today, on the side of the road or otherwise!

Mr Johns: Thanks very much.

THE CHAIR: If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. I wish you both a good afternoon.

Short suspension.

JOHNSON, MR LACHLAN, Acting Chief Executive Officer, Arts Capital Limited
ROGERS, MS ELIZABETH, Chief Executive Officer, Canberra Glassworks

THE CHAIR: Welcome, Ms Elizabeth Rogers, Chief Executive Officer of Canberra Glassworks, representing ACT multi-year funded arts organisations and ACT arts centres, and Mr Lachlan Johnson, Acting Chief Executive Officer of Arts Capital Limited. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. When you first speak, please confirm that you understand the implications of the statement and that you agree to comply with it. We will not invite opening statements as we have a full panel, so we will proceed straight to questions, if that is all right with you both. I guess you could weave bits of statements in answers if you want to.

Ms Rogers, I appreciate very much the work of you and your organisation. In the submission, there was a call for the ACT government to reduce workers compensation premiums. Given that the ACT government is not an insurer, do you have practical suggestions or experience from other jurisdictions or an understanding of how the government might influence insurers when they set premiums in order to support arts in the ACT?

Ms Rogers: That is an interesting question. In relation to this submission, the four major arts centres, including that of my colleague here, have an informal arrangement where we communicate with the rest of the ACT multi-year funded organisations.

THE CHAIR: What are those four arts centres?

Ms Rogers: Canberra Glassworks—and what do you call yourselves?

Mr Johnson: The Ainslie and Gorman Arts Centres.

Ms Rogers: And the Belconnen Arts Centre and the Tuggeranong Arts Centre. They are ACT government facilities and are designated as arts centres. For the purpose of this submission, I am representing those four arts centres, plus the larger number of 29 multi-year funded arts organisations in the ACT, in a voluntary role.

THE CHAIR: Thank you. What are practical suggestions on how the government could influence insurers when they set premiums?

Ms Rogers: My understanding of workers compensation is not in depth, but it certainly is a cost that is impacting on the organisations that run from quite sophisticated companies limited by guarantee down to those with one or 1.2 staff members. The ACT premiums are not competitive with those in New South Wales. My understanding is that the ACT does not have an upper limit or a time frame on when workers compensation can be claimed. The premiums are higher as a reflection that claims can be made at any time. There is no time frame. My experience in New South Wales was that the New South Wales workers compensation system did not cover journey insurance for the trip from the office to the residence and back again. I understand that

is actually covered in the ACT. The workers compensation insurance premiums were definitely lower in my previous role in New South Wales.

THE CHAIR: Lachlan, do you have suggestions on lowering insurance premiums?

Mr Johnson: I have read and understood the privilege statement. To clarify the question, is it in terms of lowering insurance premiums generally speaking or specifically to do with workers compensation?

THE CHAIR: The first.

Mr Johnson: As detailed in our submission, which was additional to the group submission, it is really around public liability insurance costs. There have been substantial increases for our organisation. The most practical means of lowering those is by addressing built fabric issues at the heritage listed sites. The reason that they have been raised includes that we had a number of claims relating to slips, trips or falls, which all had to do with built fabric. These are issues that we have identified with the ACT government. They are outside of our role to fix as the funded organisation to manage the centres. It is maintenance that is required to be undertaken by the ACT government as owners of the property, especially because it is heritage listed. Work has been done and work is being done. We are very grateful for the significant contribution to the Gorman Arts Centre. We really hope to see the changes being made to help lower that risk.

Certainly, there is no commitment to do any work at Ainslie, and that is where we have a significant number of issues. We do not currently have a footpath leading to the main front at Ainslie; it is just a shared traffic zone with cars and pedestrians. We have a lot of children on site in the afternoons, so it is quite a concern to us. It is quite high risk. We have speed bumps, we have signs and we have yellow paint to try to indicate the risk, but the risk is there. The claims that have been arising are driving our cost increase.

THE CHAIR: I was sorry to read about the problems the Ainslie Arts Centre has had with correcting the identified public liability risks and the delays in getting them mitigated. For the utility of the report, what are your practical suggestions about how the ACT government can or should address the quite unique heritage concerns and the nexus between those and public safety? Are there mechanisms that you think could be tried that have been tried elsewhere, or have not been tried but should be tried in the ACT?

Mr Johnson: I do not know about mechanisms elsewhere, but certainly something that would benefit us greatly is a clearer avenue to specifically address the issues with heritage. In our context regarding reporting, we have notified artsACT of issues and concerns and then they have redirected those to the ACT Heritage Council and previously the ACT Property Group, but that is currently shifting. It is now iCBR, I believe, in terms of actually delivering maintenance. We are very much removed from that. We do not have any clear information or updates. Something that we struggle with quite a bit is getting clarity on where the conversations are up to and whether they are being had. From our perspective, giving us some more visibility and direct conversation with Heritage to understand what can and cannot be done and why not would certainly help us to find alternative short-term arrangements.

MS MORRIS: Does being heritage listed impact whether you are a higher risk organisation or not with the insurer?

Mr Johnson: Not to my understanding. It is really just the number of claims that have raised our risk from the insurer's perspective.

MR RATTENBURY: So you are basically saying there is a series of physical issues that because you are not the premise owner you are not able to fix but they are insurance risk issues? That is the sum of it, isn't it?

Mr Johnson: Definitely. Some of them are quite small things, such as the height of the hedges out the front of Ainslie Arts Centre. We identified that as a risk that was blocking exiting vehicles from seeing pedestrians. But they were part of the heritage listing and protected as, you know, the original heritage height. So we were not able to go and trim below a certain height. It took about a year and a half to get approval from Heritage to trim and relocate a section of the hedge to improve visibility. In that time, we had at least one claim, which is currently before the courts, which relates specifically to that issue.

MS MORRIS: Did the government assist with the management of that claim, given its relation to the heritage?

Mr Johnson: From my understanding, there are three parties and it is currently before the courts to determine who is responsible. It is still before the courts, and we are waiting from an update from our insurers on that.

MS CARRICK: My question is about doing work for the ACT government. Do you have contracts with the ACT government where they have requirements for public liability in the contracts that—

Mr Johnson: Yes.

MS CARRICK: Is that commensurate with your needs for public liability?

Mr Johnson: Under our head license, which is what we operate the centres on, there is a requirement for public liability insurance with coverage up to \$20 million for all activity that happens on site. The amount is not a concern or an issue to us. The concern is more for some of the community groups who use our premises. That is a significant administrative burden for them. Other funded arts organisations are quite familiar with insurance and they have it in place. But very small community groups are often surprised to learn about that and find it difficult to navigate. It has been a turnoff. They have gone to doing things at homes and in people's backyards rather than using community facilities, which is a real shame to see.

MR RATTENBURY: Is that because you require the individual hirer to get their own public liability insurance to rent a space at one of your facilities?

Mr Johnson: Yes.

MR RATTENBURY: Why do you not cover that as part of the hire fee?

Mr Johnson: It is something that we are looking at. But, given our already high costs, it is a question of whether or not we can afford to underwrite, essentially, the activity that happens.

MR RATTENBURY: Because you would not have any control over the activity that took place but you would potentially be liable?

Mr Johnson: Exactly. Certainly for activity that happens during our business hours, our office hours, we do cover that and we have staff onsite who are aware and across it. But it is mainly activity that happens after hours, in the evenings and on the weekends, which is when a lot of the community groups want to—

Ms Rogers: The same applies to hirers at the Canberra Glassworks. All the independent artists have to have their own public liability insurance. I have done quite a bit of negotiation and had conversations with the various brokers, that everybody has to have their own, because when an incident happens, the insurance companies get all the insured parties together into court and then they work out whose liability it actually is.

Again, independent hirers using the facilities are not under our supervision nor under our instruction. They have a code of conduct and various work, health and safety regulations to which they have to agree to abide by. But everyone has to be responsible for the actual public liability insurance. If they leave equipment standing around and a general public person falls over, that is their responsibility and our responsibility. The way the insurance works is that they go to court, and everybody has a little bit of an argument as to actually who is the responsible person for the incident.

MR RATTENBURY: In the event of an incident—and I do not know if you have any practical examples—would the result then be that you would have to pay an excess and the hirer may also pay the excess?

Ms Rogers: Yes, our premiums are very much predicated on previous claims.

MS CARRICK: Do you get many claims?

Ms Rogers: We have the strictest work, health and safety regulations, I think, of even major building sites. We are very, very careful. Our insurance packages have gone up, but that is because insurance across the country has gone up—and we have no control over that—and not because it is claims based.

MS CARRICK: You mentioned Ainslie and children onsite. Is it like art lessons where somebody comes in and delivers art lessons and so it is a commercial thing as opposed to volunteer run activities?

Mr Johnson: It is a mixture. Ainslie is a music-focused centre. We have a number of organisations, like Music for Canberra, who are a funded arts organisation from the ACT government. They run music lessons, children's choirs and things like that that happen fairly regularly on site. We also have a number of community groups who just use the spaces for their get-togethers. It is much less commercial and much more

community oriented. That can include community arts groups, like the UROC, the Ukulele Republic of Canberra, who have a very small volunteer base and are very passion driven. They are certainly not commercial. They are not looking to make any money. Outside of the arts scope we do open for other community use. Whether it is a group meeting on a political issue or it is fundraising for a local charity, we do allow those groups to use the spaces if they are not already been used for arts. So it is primarily arts but also broader to the community more generally.

MS CARRICK: My experience in running events, as a volunteer organisation, is that we could use our experience to cover people that came and volunteered their services. But, where there was a commercial activity and it was the arts, because they sold their goods, we could not cover them and they all had to come to the event with their own insurance.

Ms Rogers: It is pretty much universal across all the jurisdictions I have worked at that the umbrella organisation can carry volunteers insurance, which we do, to cover the volunteers that are actually working directly for our organisation. But anybody else that is participating in the event, if it is a market or it is an arts festival or whatever, has to have to have their own PLI. That is not specific to the ACT.

MR EMERSON: Going to the general point that we have been talking about, can you see potential scope for the ACT government to hold insurance, whether it is for the centres themselves or for the users? Is that something that would be worth exploring?

Ms Rogers: I actually do not think insurance underwriting is a government role. We are independent organisations and private sector organisations essentially, even though we are in the not-for-profit sector and even though that we do rely on a mix of revenue generation from core funding from the ACT government—in a whole mishmash of grants, philanthropy and sponsorship and our own revenue. It is quite complex how we actually manage to make money. I do not see that is a role but there could be a role if the ACT government can have any influence on insurance claims across the territory. My understanding of the ACT government is that the one place where you can make a difference is around the terms of workers compensation. The other is just out there in the global market, and we have to suck it up.

MR EMERSON: Like the capping of the claims that you mentioned earlier?

Ms Rogers: Yes. It is the workers compensation one which is governed by each jurisdiction. I think it would be a great opportunity for the ACT government to take a big breath and go and have a look at all the other states and territories and pull out the best of theirs and have the world's best workers compensation that actually looks after the people who are making claims but then they do stop that whole issue of vexatious claims that just seem to get ticked off here but which would be investigated more strongly in another jurisdiction.

MR EMERSON: On those lines, do either of you, whether at Glassworks or in the Arts Centre group more broadly, or Ainslie and Gorman Arts Centre, have direct experience of or heard of experiences of what look like vexatious and spurious claims that have been made?

Ms Rogers: I have only been back in the ACT for the last three years. As far as I am concerned, I am not aware of any in my own organisation. But there is anecdotal evidence of claims that have been made in 10 or 14 years down the track. It is something that we all are very careful to avoid and try and deal with any issues immediately as they occur. At the Glassworks we have a very stringent method of incident reporting. Obviously, we are in an area that is quite likely to have the odd accident. In the last three years since I have been there, it has been minor cuts and abrasions—actually more cuts and abrasions than, much to people’s surprise, burns.

Mr Johnson: I am certainly now aware of any spurious claims. In my understanding, all of the ones we have faced have been very, unfortunately, legitimate. Going on what has been said around focus on work, health and safety and the structures that we put in place to manage these risks, that is something I think the ACT government could assist the sector in. We are all individually having to undertake the same work to develop our own policies and frameworks. I know that Arts Capital are working with an organisation, Commercial Safety Assurance, who are also doing the same work with the Street Theatre. We are both essentially paying them to do the same body of work and create the same kind of reporting templates. We have explored with artsACT whether or not there is a role for artsACT to step in and help get the entire sector working under a similar framework, rather than us all doing the work separately. That is something I could see tangibly assisting in helping us minimise the costs.

Ms Rogers: The arts sector is not a one-size-fits-all. From the 28 multi-year funded organisations that we surveyed, what came out really clearly in the survey was the different scales of operation of the organisations. What would necessarily perhaps work at the art centre level would not necessarily work for other organisations, and it also depends on the art form practice. Some are specialists, like glassworks, music specialists, visual arts specialists and some just run studios. It is very diverse in both the arts practice and in the scale of the operation.

I found it really hard pulling out the workers compensation figures, because there were such a variety across the organisations that responded to our really simple survey. That reflects the number of employees you have. Obviously, the more employees you have, the higher your workers compensation premiums are going to be. So, although there is a model that could be used for organisations that are presenting theatre or presenting music, it might be different for visual arts organisations or the multipurpose organisations like Tuggeranong and Belconnen that work in community arts and work across all art forms.

MS MORRIS: I think in the Arts Capital submission it was documented that there was an extraordinary increase in insurance costs—that over a two-year period there was a tenfold increase.

Mr Johnson: Yes.

MS MORRIS: Is there much transparency over those increases and explaining them? What do you put those increases down to?

Mr Johnson: It is largely just our public liability insurance costs. That was off the back of the number of claims we had—which, again, were slips, trips and falls. From my

understanding—it was slightly before I joined the organisation, as I have been here since the start of 2020—in 2019, the organisation got to a point where it was within hours of shutting its doors because it could not find an insurer who was willing to cover the risk given the number of claims that were pending. We did manage to find someone. Since then, we have done a lot of work on our work health and safety systems to bring that risk down. We have not had as many claims. So our insurance costs have lowered. But it has been a significant issue for the organisation.

MS MORRIS: And we have heard a bit that the lack of competition in the ACT for insurance providers is not helping the situation.

MR RATTENBURY: In the context of those significant increases, can you just talk us through, so the committee is really clear, the practical impact of that? Does it see you having to cut back programs, cut back staffing numbers, limit performance opportunities or whatever? What is the practical consequence of these increases?

Mr Johnson: The immediate impact, particularly in 2019 and 2020, when we saw those first two increases, was to drastically cut back the program we were doing. We cut back our programming budget and we have had to really shift how we focused as an organisation. Instead of doing a lot of creative public programming that was about bring audiences in, we shifted to supporting artistic development. It was a great result, but it drastically shifted how we had to operate as an organisation.

MR RATTENBURY: Mr Rogers, did you want to add anything on that?

Ms Rogers: Yes. Speaking with the Glassworks hat on now, we were impacted by all sorts of rising costs. For us, rising utilities costs are very significant, as are the rising costs for raw materials, because most of them are imported. And who knows what is going to happen in the immediate future with the change of government in the United States, where quite a lot of our products come from. There are also rising shipping costs. There are all these escalating costs that came out since COVID.

In the last financial year, although we increased our earned revenue and we focused really clearly in our current strategic plan of increasing our earned revenue and increasing different sources of revenue, project funding et cetera, we increased our revenue last year by \$200,000 but we still produced a \$70,000 deficit. It is just one part of a mix of escalating costs that are unavoidable for us as an arts organisation that are impacting.

At the moment, we have good reserves, and the board is committed to continuing our growth strategy, because the Glassworks is unique to the ACT—there is no facility like this on the east coast of Australia—and we are the best equipped studio glass facility in the Southern Hemisphere. So we are a point of difference, particularly to the visitor economy but also with the people who come to the national institutions. We had over 100,000 visitors through our doors last year. We have been working really hard on developing our increased visitation revenue. Obviously that is going to depend on the economic conditions at the time. But we are battling these increased costs, of which insurance happens to be one of them.

MR RATTENBURY: Mr Johnson, you were talking about reducing your public

program. So that basically means you have fewer people coming to shows and events.

Mr Johnson: Yes; definitely less opportunity for the public to engage with the centres and fewer events for them to go on site and enjoy. It was much more focused on one-on-one development with individual artists or with small organisations.

As to some other impacts, in 2023, we went through a major restructure—with a significant loss of staff. We have about halved the size of our team since the start of 2023. There were a number of factors for that; it was not just insurance.

MR RATTENBURY: Sure.

Mr Johnson: But, as Elizabeth said, it is just one of the additional rising costs that we are having to navigate.

MR RATTENBURY: On the flipside of that, what conversations are you having with government as, I guess, one of your significant funders about how those costs are being reflected in your funding grants and the like?

Mr Johnson: We have certainly been having a number of conversations with artsACT. We were lucky enough to get an increase of our funding in the last round of funding applications, which we were very grateful for. That has certainly helped. There have been a lot of conversations around what the next period of funding is going to look like. We will find out soon when applications are going to be due for the next five-year funding.

Ms Rogers: I congratulate the ACT government on what they did. Coming from another jurisdiction, having an arts policy that was actually deliverable was amazing. Both the previous minister and the new minister's ambition to keep that going is really good. That enabled us to put a five-year strategic plan in place, which we obviously had to do for our funding. It also gave us security for five years, which allows us to do a lot more long-term planning, because some of the artists that we bring out for residencies and exhibitions are working two years in advance. So for us to be able to have that surety is important.

But when it all boiled down to the actual dollar amount—and I know that it was all rationalised; it is such a complex business running these organisations with buckets of money coming in from everywhere—we have estimated that we were about \$200,000 short a year to carry us through for the five years. We put in a submission last year—or it may have been at the end of the year before—on behalf of the whole arts centres about the CPI increase for arts, and there was a one-off payment for that. We are going to face another short fall this year. We have already got a budgeted deficit.

As I said, three years through our strategic plan, we want to keep the growth mechanism happening that we have been doing for these three years. It was an ambitious program. We were able to do that because we had security of funding. But costs have risen in a way that was totally unpredictable when we set out those original budgets back in 2022, over that five-year period. We adjust them every year and we look at each year on the previous year and we resubmit budgets each year before we get our various instalments from the ACT government. But rising costs are out of our control rising costs. One of

the reasons that we did the sector survey for insurance was that we felt that the arts sector should be represented as another business in this area.

MR RATTENBURY: Absolutely.

Ms Rogers: There is no point us just talking to ourselves and complaining. We understand that artsACT are not responsible for every decision that the government makes. Hence, we have put this very simple, one-page submission in for the inquiry and, obviously, we have made a submission for the budget as well.

MR RATTENBURY: Thank you.

MR EMERSON: I asked an earlier witness, who works in the community sector space, whether the government contracts could actually capture increases in insurance above a base year. For example, I used a commercial tenancy arrangement, as that is standard. We know that, if there is an increase above the base year, you are on the hook if you are the tenant. Would you be supportive of some arrangement like that within government contracts? In your case, you just could not anticipate those rising costs, no matter how good your forward planning is. Tenfold increases are not usually part of the plan.

Mr Johnson: No.

Ms Rogers: No.

MR EMERSON: Is that something you would be supportive of as a potential solution?

Mr Johnson: Yes.

Ms Rogers: We are open to all suggestions as to any way that we can continue delivering what we think are really exciting and amazing arts projects, without constantly having a begging bowl out and trying to make the budgets balance by the end of the year over things that we cannot control.

MS MORRIS: I have a follow-up on a comment, Mr Johnson, that you made before. What would your obligations be if you were not able to find an insurance provider, given the situation that you said that you were in before?

Mr Johnson: If we got to the point where we were not able to secure public liability insurance, that would be a breach of our head licence. So we would have to forfeit the head licence and close the centres. I would assume, based on that, that it would also be a breach of the grants. So we would look at losing the deed of grant—so losing our funding.

MS MORRIS: And you came pretty close to being in that situation?

Mr Johnson: From my understanding. It was slightly before I started in the organisation, but the former CEO described it as being within hours.

MS MORRIS: Right.

Ms Rogers: Every business has to have public liability insurance, whether you are a non-profit private sector arts organisation or whether you are running a motor repair station. We all come under the same regulations.

THE CHAIR: On behalf of the committee, thank you very much. We really appreciate you both coming along and giving us your insights.

Hearing suspended from 12.21 until 1.30 pm.

BAKER, MR ADRIAN, President, Territory Taxi Association

GATFIELD, MR CHRISTOPHER, General Manager, Australian Hotels Association

HUNT-SHARMAN, MR JONATHAN KIRKNESS, President, Canberra Services Club

MUHAMMAD, MR HAMZA, Managing Director, ACT Cabs

SPOUSE, MR DAVID EDWARD, Vice President, Canberra Services Club

THE CHAIR: We welcome the Australian Hotels Association, the Territory Taxi Association and the Canberra Services Club to the hearing. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. When you first speak, please confirm that you understand the implications of the statement and that you agree to comply with it. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

Because we have a big panel and we are not inviting opening statements, we will now proceed to questions. My first question is for the Australian Hotels Association. With the recommendation around alternative dispute resolution mechanisms to resolve claims more efficiently and cost effectively, could you be more specific about what you have in mind and what mechanisms you would recommend?

Mr Gatfield: I have read the privilege statement and I agree to be bound by it. In terms of alternative dispute resolution mechanisms, you have probably heard via evidence this morning that the ACT's dispute resolution mechanism is a highly litigious one, particularly compared to other jurisdictions.

If you look at regulation, particularly in New South Wales and Victoria, there is an overriding onus with those disputes on making the parties come together and try to find some sort of resolution, rather than litigating their claims directly through lawyers. I am more than happy to take that on notice and provide a holistic framework for all other states and territories.

THE CHAIR: Maybe you would not have to go to that extent, but certainly what you would recommend or have in mind—more information on that, and your suggestions.

Mr Gatfield: Yes, sure. At the risk of offending any lawyers in the room, it is about taking the lawyers out of it, effectively. Realistically, the more litigious the dispute resolution mechanism, the more costly it is. That drives up premiums, purely from the insurer's point of view. The more you can create an alternative that involves mediation and direct contact between, in my case, the hotel and the claimant, the better.

There are different models across different jurisdictions. There are positives and negatives with some of them. Again, if you remove some of the legal tape from those processes, that is one way to drive premiums down. In terms of the overall litigious nature of the ACT insurance market, but particularly in relation to workers compensation insurance, that is part of the reason why—for my industry, at least—the average premium for workers compensation is higher than in any other state or territory, because of the involvement of lawyers; also, because of the uncapped nature of claims.

As I said, I am more than happy to provide a little bit more information on what we

think would be a best practice model, because I realise that we did not put that in our submission, noting that it is probably a matter for the committee and government.

MS CARRICK: On that issue, it is interesting to look at other states; sometimes, if you look at one element of it, we might be different, but there might be another element in the whole process where there are differences—for example, where you might have consultation or mediation in some jurisdictions on other issues, as opposed to the legal side of it. The difference relates to the legal side of it. If you have anything that shows the processes and the differences in the jurisdictions, that would be handy.

Mr Gatfield: I am more than happy to provide that, and I believe that there was an external report that specifically looked at that. That was published a couple of years ago. If it would benefit the committee, I am happy to source that and provide it as a supplementary submission.

MS CARRICK: Yes. You do not have to do a lot of work to source that?

Mr Gatfield: No.

MS CARRICK: With claims, when you say “taking the lawyers out of it”, are you talking about “no win, no pay”, capped things—those sorts of things?

Mr Gatfield: Yes, to both. We do not have perfect information on the number of claims, mainly because the workers compensation scheme in the ACT is wholly privatised, which is a pretty unusual arrangement, to be honest, when you look at other jurisdictions. In New South Wales, for example, icare obviously plays a fairly significant role in that market, which gives a lot of statistics and a lot of information that is publicly available—not so here.

It is a small market. I think there are only five insurers that participate in workers comp in the ACT. Getting that information, making it more transparent and providing industry benchmarking would not be a huge impost on those five companies. It would give my members, as well as the general public and yourselves, something to work with in terms of data. I think we made a recommendation around that in our submission.

Going to the second point in your question, in terms of taking the lawyers out of it, yes. It is because of the uncapped nature of claims, the preponderance of personal injury lawyer advertising—which, again, is probably unique in the ACT, in terms of the sheer scale of it—and potential claim-farming practices, which may or may not be occurring, but which were substantiated enough in New South Wales for the government to recently legislate against them. All of those things are separate issues, but they are related, and they do drive up the cost, purely from a legal perspective.

MR EMERSON: Could you walk us through that claim-farming concept, and how it might relate, if at all, to the “no win, no fee” issue that we hear about?

Mr Gatfield: Claim farming refers to the practice of procuring information about potential claimants, and persuading them to make a civil claim, effectively, against a pub or a club. Usually, claim farmers will pay third parties maybe 50 or 100 bucks, and they will sell those potential new claimants on to a legal firm for anywhere between

\$80 and \$10,000, depending on what the claim is and what the likely benefit might be, should it be successful.

The lawyers pass those costs on, in the case of a “no win, no fee”, to claimants. Generally, claimants are unaware that those costs are being passed on. That is usually done through the settlement process without their knowledge. It is, in my view, unethical, predatory and exploitative. As I mentioned, in New South Wales, just over the last couple of weeks, it has been outlawed.

MR EMERSON: These are third parties; it is not the lawyer or the insurer?

Mr Gatfield: No, it is not the lawyer; it is not the insurer.

MR EMERSON: It is some other entity?

Mr Gatfield: It is the communication between those third parties and the lawyers. I think that attracts a \$55,000 penalty, which, hopefully, is enough to stop that practice. It is a highly lucrative market.

With respect to how that relates to “no win, no fee”, in the absence of specific regulation in terms of “no win, no fee”, and in the absence of regulation around the marketing of legal services, again, in a highly litigious regulatory framework, it does encourage people to encourage claimants to make claims. Because of the uncapped nature, generally, if one of my members has someone who approaches them with a claim, if the potential payment is completely uncapped, economically, it makes sense for them to settle that claim as soon as humanly possible, rather than push back or challenge its validity at all.

MR EMERSON: I might extend that question to the other witnesses, around this “no win, no fee” practice that is going on. Do you have concerns about that practice? Is that something that you would like to see dealt with, if you are across it and if it is a concern for you?

Mr Hunt-Sharman: I agree with and accept the privilege statement. I do not know the details. We are all volunteers, as directors of the Canberra Services Club. It is a voluntary club and community group. Certainly, from a layman’s point of view, there is a strong argument that, with this system of “no win, no fee” for no success, it does encourage people to make claims. We have been in the fortunate situation of having only one claim in possibly 85 years. The unfortunate situation is that we have had one claim in 85 years.

I cannot add more on that, but I can see that it would encourage people to follow up on the claims. I did not know about this kickback going across to legal firms, which I think is very unfair and unethical.

Mr Spouse: I agree with the privilege statement. In discussions, we found that, with the one claim, and with the fallout from having a claim, the impact on the club and the potential insurance costs, that would only be exacerbated by an ongoing situation where you are hoping to have lots of people at a venue, and things can happen, but that would just cause us further problems in terms of trying to manage the business, in terms of

being a community club with, necessarily, a small budget.

MR EMERSON: Does the Taxi Association have a view on this matter?

Mr Baker: I think we are a little bit different. Our insurances are regulated, so we do not have that “no win, no fee”—personal injury accidents. We are different in that sense.

MS MORRIS: We have heard quite a bit about the lack of competition amongst insurance providers in the ACT. I would like to know whether that is something that impacts your operations. Based on your submission, it sounds like the Canberra Services Club is at risk of not being able to find a provider.

Mr Hunt-Sharman: Yes, that is correct. We use an insurance broker, who has told us that he has looked at 20 insurance companies, or agents of insurance companies. It came down to three possibles; that then dropped down to one. Some of those were international insurance companies. It appears to be broader than just the ACT; but, either way, it puts small community clubs and any small charitable group at risk, if we cannot resolve this issue of public liability in some form.

As I say, to our knowledge, we have only had one claim in 85 years. That claim occurred in 2021, and we are nearly up to the imaginary five-year point where we can seek insurance again in a reasonable manner. We are not there yet, so this is a pretty serious issue. Hearing that there is no limit on these civil claims makes us a little bit more nervous, I have to say.

Mr Spouse: That is despite, as Jon covered in our submission, us taking action, with some help from the ACT government through the diversification program, to make sure that we have taken all of the remediation steps that were recommended—and more, I think it is true to say. But you are still faced with this situation where, potentially, you cannot get public liability insurance.

MS MORRIS: Where does that leave you, if you cannot get it?

Mr Spouse: In a difficult situation. As I understand it, and I am happy to be contradicted, you can go ahead without public liability insurance; but, clearly, you are at risk. There is then directors insurance and those sorts of things. We are literally a services club. We have lots of defence organisations, police, Disaster Relief Australia et cetera—a community-based club. Our whole operation is about people, so there are ramifications if you cannot have people in the place because you cannot get insured. We are pushing ahead because I think we are pragmatic optimists. When you have done the right thing basically for 85 years and you have had insurance; then you have one claim and the industry—I think Jon covered this in the submission—wants to take you from \$1,500 to \$30,000—

Mr Hunt-Sharman: Yes, \$30,000-plus.

Mr Spouse: for a club with a total revenue of about \$600,000 a year, you can see the situation that we face.

Mr Hunt-Sharman: We are trying to provide a live example of a club that is now really at risk of going under and folding. That means all of the charitable groups that we support will be at risk as well. Since COVID, we have been running at a financial loss since that time. We are trying to turn the club around and we are slowly getting there, but this is almost the nail in the coffin. If we had to pay \$30,000—plus there were other restrictions there; we had to pay another \$25,000 if there was a claim, and there were details about more money they would take from you—it would be a really worrying situation for us.

I am quite annoyed that the insurance company kept taking our payments, after that claim in 2021 until the end of the term of the contract, without warning us that they were not going to renew the insurance contract. It did not give us a chance to see whether there were others out there that we could get to insure us. I am not quite sure whether it is in the submission, but there is apparently a cap that insurance companies also have, so that if there is a settlement over a certain amount, this five-year “black banning”, as I call it, comes into play. The figure is, I believe, either \$120,000 or \$150,000. You might be able to get that from the insurance companies.

The interesting thing there is that we were not involved in the settlement with the insurance company, with the person that was injured. Obviously, we were very supportive of the person that was injured. They worked out a settlement and they worked out the amount. If we had known that they would be a few thousand dollars over this cap, we should have been given the opportunity, by way of procedural fairness, to have offered to pay that amount ourselves—

Mr Spouse: We would have been better off.

Mr Hunt-Sharman: so that we were not in this “black-banned” situation for five years.

Mr Spouse: The increase—that is what is mind-boggling—is about a 1,300 per cent increase in our premium.

MS CARRICK: The cost on a business becomes so high that it is no longer viable and businesses close. Does anybody know of businesses closing because they cannot get insurance?

Mr Gatfield: Yes.

MS CARRICK: We have heard about risk of closure.

Mr Gatfield: I am not aware of any business that would have closed solely because they cannot get insurance. You can struggle on without certain insurances. You do not necessarily have to have building and contents insurance for business; you do not have to have public liability insurance if you are a business, although, if you have outdoor dining in Canberra, you do.

However, it is probably safe to say that, with some of the more high-profile recent business closures, it was not the sole factor; it was a factor. The more live entertainment that you put on, generally, the less affordable insurance is, because public liability premiums go through the roof. That forces you to make a decision regarding continuing

to have live entertainment, which, fundamentally, is the difference between having a beer at the pub and having a beer at the bottle shop. There is ancillary entertainment at my member venues. Once you start removing those ancillary reasons for people to leave their house, your patronage dries up.

Personally, I am not aware of anyone who literally closed their doors because insurance premiums were too high or they could not get insurance, but it has been a contributing factor.

Mr Baker: Can I speak to that as well?

THE CHAIR: Have you read the privilege statement?

Mr Baker: I have, and I concur with it. I acknowledge it. We are in the on-demand transport industry—point-to-point transport, if you like. There are three different business options within the ACT—hire car, ride share and taxis. For taxis, we are an individual insurance class underneath that umbrella, and our premiums are 10 times that of our competitors, so it has a direct impact on our cost effectiveness back to the customer, specifically due to the high insurance premiums.

MS MORRIS: Should insurers be required to recognise your history or the company's history, in terms of workers compensation claims or public liability claims, as well as any risk mitigation measures that the organisation might have implemented? Should the insurers be required to consider that when determining premiums?

Mr Hunt-Sharman: I definitely think that they should, especially when we put everything in place, and more, as a result of our insurance company at the time saying, "You should have had this," or "You should have had that." We did all of that during our insurance contract period. We put all of that in place, and more. As far as I am concerned, no-one has taken any of that into account.

It is in the submission, so I will not repeat it too much, but there is a failure of procedural fairness in a lot of this. They will say, "It's in the fine print on page 106 of the insurance policy." Certainly, when you have a claim, I think that the implications of, for example, going over this capped amount that they then put in place for five years should be explained to you.

I do not know where any of this is written down. That is the other thing about it. Is this a policy amongst themselves, as insurance companies? Does it come from the insurance oversight group? I do not know where it comes from, because it is like having these unwritten rules, as far as I am concerned. As a company that is insuring, you would think that there is an obligation to tell you about this five-year cap, and an obligation to tell you if it goes over a certain amount of dollars in a civil matter.

We could have challenged it, and the poor fellow that was injured may well have accepted less if he knew it was going to impact our club. There are those factors, all because they have failed to be open and transparent in their process. I agree with what Chris was saying earlier; there is no data out there to be able to look at this.

You can think of how much money must be being paid—we can use the hotel and club

industries as examples—just for public liability, how many claims in the ACT have actually occurred and how much it cost. I would imagine that it would be fractional—really fractional. But they are still willing to reject any future insurance.

Mr Spouse: What Jon is referring to is the General Insurance Code of Practice.

Mr Hunt-Sharman: Yes.

Mr Spouse: You would think that, if that is a code of practice, a best practice model, as a customer, you are aware that these things are possibilities; or the best practice is that they do not tell you that they are not going to renew, which is—

Mr Hunt-Sharman: Or, even further, not be allowed to reject you under this five-year period. As I say, where does that point come from? Out of the blue, I am sure, they have picked a five-year mark. There might be some analysis; I do not know. Five years is a long time to go without insurance, all because you have had one claim.

MR RATTENBURY: I want to come to the Taxi Association. You touched briefly, and I would like to get a bit more detail, on the differential insurance costs that you face compared to your competitors. Can you talk us through that a little bit more?

Mr Baker: Can I expand on the previous discussion as well—

MR RATTENBURY: Sure.

Mr Baker: regarding transparency and how the premiums are calculated? For us, we have been doing this since 2018. I have put in requests for information to get detail on why our premiums are high—frequency of claims, cost of claims, and requests through the AFP, Access Canberra and the MAI Commission—without being able to get any understanding of the cost of claims or frequencies of accidents or injury within the industry.

With determining the last five years for the calculation of premiums, for us, we can take in external factors. With vehicle safety now, there is automatic braking in our cars, there is fatigue management for lane changing—things like that which would make you assume were related to a reduction in accidents and cause of injury.

We have had COVID for two years within the last five years. During that time, you would think there would be a mass reduction. There are various other external factors that we would expect to see in that calculation for the cost of the premium. But in the last five years, our premiums have gone up 20 per cent.

MR RATTENBURY: Is it the MAI premium?

Mr Baker: This is the MAI premium, specifically. On average, we pay, say, close to \$10,000, if you factor in tax and things—about \$9,500, maybe. Across other jurisdictions, New South Wales is the second highest. On average, they have a cost per paid kilometre premium calculation. They go from, say, \$500 to \$3½ thousand per year. In all other states across Australia, it is pretty much equivalent to passenger vehicle costs for their claims. For us, again, going to that \$9½ thousand, rideshare, which is our

biggest competitor, pay just \$1,200.

MR RATTENBURY: As a regular vehicle?

Mr Baker: As a regular vehicle. Looking at the statistics, I am not sure that the frequency of accidents for taxis is getting measured, let alone across other jurisdictions, our competitors and where these risk factors and premiums come from. If you look at that, it is per car, per operator. That is 10 to 15 per cent off their gross income straightaway, as an insurance premium. As I alluded to before, that is a direct pass-on to the passenger and our competitiveness in the market.

MR RATTENBURY: In terms of those questions you have been asking, have you been given any explanation about why your MAI has gone up in a period when other motorists have seen it go down?

Mr Baker: Not at all. No, I have not. We engaged for probably 12 months with the MAI insurers. They gave us a report, a deep dive. A lot of the information that they had was commercial-in-confidence, so they could not give us any detail. Also, we did not get any business intelligence across the top, either. A lot of that information was for other jurisdictions, like New South Wales. They did compare us to passenger vehicles and, as a result of that, I think we were 20 times the frequency.

MR RATTENBURY: Of claims?

Mr Baker: Of claims. Again, it is political because we have 200 taxis in the ACT, whereas passenger vehicles are measured per thousand. If we have one accident then that is already five times how it is measured on the graph. As a result of that, we did a deep-diving strategy. The concept behind it was data driven. They got an expert to identify risks within the industry. I was hoping for black spots, time of day and information like that, but it just came down to risk strategies for fatigue management and certain things that the transport sector would face; I do not think I would consider it to be data specific.

MR RATTENBURY: Overall, have you had an increasing or decreasing number of claims in the taxi sector?

Mr Baker: That is it; we do not have that information.

MR RATTENBURY: You do not have it?

Mr Baker: No.

MR RATTENBURY: Do the government or the MAI have it?

Mr Baker: I have put in a request for information over the last five years to Suncorp, AFP, Access Canberra and the MAI Commission.

MR RATTENBURY: The committee might ask about that in the upcoming hearings and see whether we can get the data for you.

Mr Baker: We have no vision of it.

MR RATTENBURY: Thank you for that. Are there any other comments that you want to make in that space, Mr Muhammad?

Mr Muhammad: I agree to be bound by the privilege statement. Even if we compare it cross-border-wise, in the ACT, on a high-level analysis, it is roughly 4.8 times higher than in New South Wales and 32 times higher than in South Australia.

MR RATTENBURY: Just for taxis?

Mr Muhammad: Taxi injury insurance premiums. That is just comparing across taxis. When we come to rideshare, which is ideally who we are actually competing against here in the ACT, it is much higher. We want to be in a position so that, for example, during lower times, we can offer lower pricing and things like that, to be able to service the community better. But we are also bound by these restrictions, and the costs are so high that it is very hard to do anything, really.

MR RATTENBURY: Thank you. In the submission from the Hotels Association was a recommendation to consider a government-backed insurance scheme for public liability insurance, but there was not the same recommendation for workers compensation insurance. I am interested in why you drew that different conclusion, or have I misunderstood what you were saying?

Mr Gatfield: No; I do not think you have misunderstood. In relation to public liability, we have exhausted a number of options for how you might go about trying to fix that market—everything from forming a mutual to doing something at a territory level and looking at whether there are other models around the world. Frankly, the issue with public liabilities that relates to the hospitality industry is that every global underwriter, bar one, has pulled out of that market, so you are basically in the hands of Lloyd's of London. That is your only option, which is part of the reason premiums are so high. In the absence of trying to encourage another insurer to enter a market that they do not view as viable, which I think is highly unlikely, our view is that the only other option would be some form of government involvement. Whether that is appropriate at a state or territory level or at a federal level is potentially something for national cabinet.

In relation to workers compensation, there is a fully privatised market in the ACT. We understand that. We view that as a deliberate policy decision by the ACT government. Another of our recommendations is incentives for more competition in that market. We make a number of recommendations in terms of trying to drive the cost of running a workers compensation policy down in the ACT—again trying to remove some of the heavy legal elements of the scheme. Across the border, in New South Wales they have icare. There are good elements to icare. There are also some not so great elements to icare. We would not recommend going down the route of replicating icare, because even the now Treasurer of New South Wales identified that it is in need of serious reform.

If there are ways we can incentivise more competition in the market, which would also drive down premiums while maintaining really good return-to-work rates and outcomes for workers—because they are one of our biggest assets—that would be a preferable

model, in our view. If the government were to take the view that they would play a more active role within that market, by all means, we would be happy to support that as well.

MR RATTENBURY: Thank you. I have more questions, but I will come back later, Chair.

THE CHAIR: Okay. Thank you. On ACT taxis again, there is an interesting point about the difference in insurance premiums. There was a suggestion, amongst others, that a per-kilometre pricing model for personal injury insurance premiums be implemented for all point-to-point passenger transport providers, including taxis and rideshare services. Could you please expand on that? Do you think that taxis and rideshare services have the same level of risk per kilometre or is one higher than the other, in your view? I would be grateful for a bit more information about that suggestion.

Mr Baker: We would provide the same level of service across the industry, and it translates to risk. The only difference with taxis is that it is a full-time model, and rideshare can be a full-time model or a part-time model, or in and out. The only external factor to measure would be, I suppose, fatigue. We do a lot of work on fatigue management, the duration of shifts and things like food, diet and exercise, as well as strategies for our operators. Other than that, we provide the same service, which, to me, would translate to the same level of risk. The risk is that there is a paying passenger, so a claim of injury whenever there is an incident would probably be more frequent than when it is a normal passenger vehicle. That is where our risk comes from.

THE CHAIR: Have you seen that model work? Is it in operation anywhere else?

Mr Muhammad: In New South Wales.

Mr Baker: It is only in New South Wales.

THE CHAIR: Only New South Wales uses per-kilometre pricing?

Mr Baker: Yes. Across the states, there are about three different models. As I understand it from a while back, Tasmania, South Australia and Western Australia are all subsidised by the government for taxis, as a regulated industry. Queensland is the same as the ACT with no-fault claim—MAI insurance versus CTP insurance. Their costs for taxi premiums are about \$700, whereas here it costs 9½ thousand dollars.

THE CHAIR: Why? What is the difference?

Mr Baker: I think there are more crashes in Brisbane than Canberra. I am not sure.

THE CHAIR: It might be scale or something else.

Mr Baker: Yes. It is the only factor that I can point to. New South Wales has the cost per kilometre. I think it is through Taxicare or icare. As to whether it works, I am not sure. They are not in favour of it. I think there is an administration overhang to it. For us, across all business options, it is a more level playing field, so to us it makes sense.

Victoria is a completely different market. They treat it like a passenger car.

MS CARRICK: The per-kilometre pricing would make the premium more even for you and your competitor?

Mr Baker: Yes. I do not see how it would not work, even for hire cars that do weddings et cetera. It is about the time that the passenger is in the vehicle. That is where our premiums are calculated. Whether it is full time, part time, destination or point to point, it equates across the whole transport industry. From our point of view, I do not see why it would not work.

MS CARRICK: Do you have any contracts with the ACT government? Does it impact on you having to have public liability for any work with the ACT government?

Mr Gatfield: For hotels?

MS CARRICK: Yes. That might not impact on you.

Mr Gatfield: There would be a requirement. I think I mentioned that, if you have any sort of outdoor dining which is not on your property, you are required to have, I believe, \$5 million worth of public liability insurance. It does not matter whether you are King O'Malley's, with quite large beer garden near Garema Place, or if you just have two little tables and chairs at the side of your cafe on a public street or footpath. It is, *carte blanche*, a \$5 million policy. In terms of contracts with the ACT government—and maybe I should take this on notice rather than giving you an opinion—I have heard that there are requirements built into government contracts that you have a certain level of insurance. I do not know what those levels are, but I am happy to take that on notice and come back to you.

MS CARRICK: Okay. I think some of them are policies for \$10 million or \$20 million. Do other jurisdictions have that? Presumably, they would have public liability for alfresco dining.

Mr Gatfield: Yes. It is probably dependent on who owns the land. I am not talking for my colleagues in the club industry, but, in some instances, clubs are on crown land, so that public liability policy decision, if it is a decision—it is probably not—would rest with the club. For government-owned land, particularly on streets and roads, yes, but it is regulated at the local council level because those authorisations are usually done under a roads act or something similar to that.

MS CARRICK: Thank you.

MR EMERSON: I have a question about perverse consequences or incentives, even in high insurance premiums. We have touched on some already—whether you can actually afford to continue operating. I do not know whether you are looking at your pricing structure as part of those considerations, given the increase in premiums. Some have already said that you are bound to not be able to reduce prices at the times you would like to, because of how high the premiums are. This is a question for anyone: what are the sorts of behaviours that you might be engaging in or seeing that you would rather not, but they have to because of the costs and availability of premiums?

Mr Gatfield: I am happy to take that one. Under insurance, licensed hospitality businesses are highly regulated, and it has been so since the Code of Hammurabi in Babylon in 1700 BC. That is for the history buffs on the committee.

THE CHAIR: I like it. It is good.

Mr Gatfield: Thank you. But you—

MR EMERSON: Roll that into the findings!

THE CHAIR: I have read the code. I saw it at the British Museum. I did not see insurance, but I will go back and look.

Mr Gatfield: A research project. Again, I can take that one on notice!

THE CHAIR: A trip for the committee!

Mr Gatfield: You need a multitude of insurance products in order to operate and have full coverage of a hospitality business. It is not just public liability and workers compensation; you have business interruption, money, portable items, and plate and glass insurance, which I have only just learned is a thing. If you do not have the correct insurances in place, that leads to issues related to access to finance from banks. One of the issues that you will see if the cost of all of those policies continues to rise, and they are rising, by and large, is underinsurance, which places financial strain on the business because it impedes their ability to access finance from a bank. So you have a lack of investment going into the business which then has cascading effects on its profitability, because generally people will go to the newest and shiniest thing. It is a real problem, and, obviously, it has a distortive effect on the insurance market more broadly.

MS CARRICK: Do you see claims going through that some people might consider to be frivolous? In our first session this morning, we had people from the hospitality industry, and there appeared to be claims that were settled because it was the simplest thing to do.

Mr Gatfield: Yes. That is often the advice that you get. By way of example, there is an accommodation hotel that had a workers compensation claim made against them. I believe it was last year. They have never had a claim against them. It turns out that it was fairly vexatious. It was a former employee being encouraged by—and I am going to use this term in a derogative sense—ambulance-chasing lawyers. They pushed back against the claim, which was not the advice they were given, and it was found to be totally spurious. There was no love lost—“That’s okay. We’ll all move on”—except that, despite the fact that it was withdrawn, their workers compensation insurance premiums went up by 68 per cent the following year, because of the threat or the perceived risk of one of those claims.

MS CARRICK: What about public liability?

Mr Gatfield: There is probably no good data on the number of public liability claims that may be a bit in the grey area, mainly because a lot of them are settled because of the risk of what happens if you do not settle. More transparency around basically

everything to do with public liability insurance and probably workers compensation would be very welcome, because at the moment we are operating with not even incomplete data; in many circumstances, there is no data.

MS CARRICK: Thank you.

Mr Hunt-Sharman: Through the chair, I would like to support those comments. We have probably missed this part. There are a lot of other insurances that we have to pay for. We have about six or eight of them.

Mr Spouse: Yes.

Mr Hunt-Sharman: Public liability is another one on top of that. So, when we are saying there is an increase of \$30,000, all the others are still going up, as we have talked about, and they are going up in that percentage—20 per cent. But we have had a massive jump, purely because of that one claim relating to public liability insurance. Can you recover it through charging patrons more? The problem is that everyone is struggling. Fewer people are going to clubs, hotels et cetera. The money is not there. As I said before, this is almost like the nail in the coffin. Thank you, Chair.

THE CHAIR: Thank you.

MR EMERSON: One of the witnesses earlier mentioned being advised to not allow people to stand up while holding a drink in their venue as a way of mitigating risk. They were advised by their insurer. I would describe that as perverse outcome! I have heard about people carpeting venues that really should not be carpeted, so that people cannot make slip claims. There is that sort of thing.

Mr Hunt-Sharman: We were knocked back by one of the insurance companies on the basis that we have stairs.

Mr Spouse: It is a two-storey building.

MR EMERSON: You will need to get rid of those. That is obvious. Get one of those firemen poles!

MS MORRIS: I have a quick one. We have talked about your businesses and organisations being at a competitive disadvantage. Can you tell me what the future outlook for your businesses would be under the current insurance framework if no intervention were applied?

Mr Baker: For us, it is a slow bleed. We have rideshare as our biggest competitor in a global market. It is a gig economy, or however you want to describe it. There is disparity within the insurance. It has a direct effect on costs and pricing. It is just another reason for our client base to move. It has a direct impact on business.

Mr Muhammad: It is a slow impact, but over the years we are certainly seeing people who, for example, used to be owner-operators moving more towards rideshares, simply because it is a lot more affordable for them to run, and less towards taxis. Exactly as Adrian said: it is a slow bleed. We are realising this over the years.

Mr Hunt-Sharman: We seem to have had our jugular cut. It is a fast bleed.

Mr Spouse: And, with another claim without having public liability insurance means that, despite the fact that we have director insurances and all the others, we have to wind up. If you take it to the extreme, we would have to sell the building to pay somebody who has had an accident at the place—in theory, in the worst-case scenario.

MR RATTENBURY: Because you are effectively self-insured at the moment.

Mr Spouse: You would be—yes.

Mr Hunt-Sharman: We are still in negotiations. That is why our recommendation No 6, a more stopgap measure, was looking at the ACT government having a reinsurance arrangement of some type—as was mentioned by Chris before, having some type of structure to help protect community clubs and community groups. I was going to try to add an extra recommendation. Again through the chair, I might see this through later. There is an ACT Legislative Assembly inquiry into the future of the club industry, as I understand it.

MR RATTENBURY: No; it is going to be a government-led inquiry. It is not an Assembly committee. There are no terms of reference for it yet and no reviewer has been appointed. We do not know the time frame on it. It is being led by the minister—

MR EMERSON: But it is a thing.

MR RATTENBURY: Yes. It is going to happen. It is just not clear yet.

Mr Hunt-Sharman: I was thinking of the sustainability of a support fund—that kind of structure and how that works, and then the funds that go into it. It may be that some portion of that could be used almost like an excess amount or some type of way that it could sit there for the industry to then have the argument that the fees from insurance companies could be lower—so there is a safety net sitting there. I was going to suggest that the committee consider referring it to the other committee, but there is no another committee. But it might be something that could be looked at.

MR EMERSON: Almost like collateral held by the government on behalf of the industry.

Mr Hunt-Sharman: Yes. And it is collected by our funds anyway. I think just over a million dollars per annum has been going in there. I think the target was about \$65 million from gaming machines, whether we like them or not, so there is an opportunity for some of those funds, I would suggest.

MS MORRIS: Would you like to weigh in on that as well?

Mr Gatfield: Very briefly. I would probably mirror exactly what everyone else has said. You would probably see underinsured venues, difficult access to financing as a result of it, less investment in those venues, less live music in fewer venues, and a Canberra without nightclubs, and a Canberra without Mooseheads is not a Canberra I want to be in.

MS MORRIS: Are we seeing costs being passed on to consumers at all?

Mr Gatfield: Absolutely. Yes.

MS MORRIS: So it has an impact on the cost of living too.

Mr Gatfield: I think that is unavoidable.

MS CARRICK: Do some of these things come back to the size of the club or the entity? The smaller clubs are struggling, but I am not sure some of the bigger ones are struggling, because they are developing.

Mr Hunt-Sharman: That is a very good point. Again, that is why I was thinking of the diversification fund. It has a structure already in it. Depending on how big a club or venue is, it impacts on the revenue. That model might be something to look at.

Mr Spouse: Maybe it is capped to a certain size of club and the purpose of the club. We are fundamentally community based, not for profit, and have no intentions to ever try to be a megaclub. Therefore, our scale of operation makes what seems to be very small hits to a larger-scale operation absolutely critical. But we have a membership that is a little unique and communities of interest. In the bigger picture, it would be a real shame to lose that sort of immunity, simply because you are not on that larger scale.

MS CARRICK: Yes. Losing the smaller ones. The bigger ones are getting bigger and the smaller ones are falling out of the bottom—

Mr Spouse: Yes; potentially.

Mr Hunt-Sharman: We have the last services club in Canberra. Unfortunately, the RSLs that were here have gone. We have the last one standing.

MR RATTENBURY: I would like to come back to the AHA. Chris, am I correct in understanding that you were saying there is actually only one insurance provider globally for the hospitality sector for public liability?

Mr Gatfield: Yes—one backer, one reinsurer, effectively. It is Lloyd's of London. Because of their structure, they are happier to take on what they view is a riskier industry. That is not necessarily just nightclubs; it is pubs, clubs—basically anywhere where you have alcohol being served and dancing, or people having fun might happen. They are unique in that they continue to back our industry, but it puts them in a position where they have absolute market pricing power.

MR RATTENBURY: Of course.

Mr Gatfield: There is obviously a range of reasons why insurance costs are going up all over the world for every type of business, and some of them are well and truly out of the control of a lot of governments, to be honest. But, in terms of the hospitality industry, that is a prime reason we are not in control of, basically, an unavoidable cost without some form of government intervention in what I view as a failing market.

MR RATTENBURY: Thank you. In a comment a moment ago, you specifically mentioned live music being at risk. Why did you particularly touch on that? Is there an element of the discussion that particularly relates to live music or is it just rated as somehow riskier?

Mr Gatfield: It is rated as riskier. If you have live music or are programming live entertainment of any kind, generally your premiums will ratchet up quite significantly, by hundreds of percentages. That is because people are, again, dancing and having fun. Alcohol is invariably involved in my member venues, and that puts them at a different level of risk in the eyes of the insurance industry.

MR RATTENBURY: There is a real threat, then, to opportunities for live performers to get bookings.

Mr Gatfield: Yes. If a venue had to make a decision between continuing to have insurance, which their bank will invariably insist on, and programming live music, unfortunately that is a decision that I think would usually—at least in the vast majority of cases—come down on, “Let’s reduce the amount of live music that we have,” or “Let’s remove it altogether.” It is purely economic. Live music does not bring in a huge amount of money for venues—for most venues, at least—but it does attract people. As I said before, it is a point of difference between our industry and going to Uncle Dan’s, buying a beer and sitting on the couch at home. It also provides a lot of employment in the ACT for not just musos but crew—all sorts of people who are involved in the live entertainment industry.

To the government’s credit, they are doing a good job of trying to incentivise my members to put on more live music and more live entertainment. I think it is great, but, if the choice is between having something that is absolutely mandatory from your access-to-finance point of view or having that ancillary service, I think the choice is going to be pretty obvious for a lot of operators.

MR RATTENBURY: I will quickly ask the Taxi Association a question. You have not spoken at all about workers compensation in your industry. Is that because it is not an issue or are you more focused on other issues?

Mr Muhammad: It is the same for us, as well. I agree with what is being said regarding workers compensation. Regarding owner-operators who get this insurance, what is being discussed here today is very similar to what we hear from them as well.

MR RATTENBURY: Thank you.

THE CHAIR: With it being 2.30 pm, this session is over and dusted. Thank you very much for making yourselves available and providing your insights. That was really helpful. On behalf of the committee, thank you for your attendance today. A few questions were taken on notice. Please provide your answers to the committee secretary within five business days. As quickly as you can would be acceptable at this stage. We have another hearing tomorrow. Thank you very much, gentlemen.

Hearing suspended from 2.30 to 3.31 pm.

BOWLES, DR DEVIN, Chief Executive Officer, ACT Council of Social Service
BOURKE, MISS LEANNE, Senior Sector Development Officer, ACT Council of Social Service

GIESE, MS JEAN, Chief Executive Officer, Volunteering ACT

FITT, MS HEATHER, Senior Manager, Policy and Advocacy, Volunteering ACT

FRANKLIN, MS CARMEL, Chief Executive Officer, Care

MUKAMURI, MR TAWANDA, Principal Solicitor, Care

THE CHAIR: Welcome, everyone, to this session of our inquiry into insurance costs. Welcome to ACTCOSS, Volunteering ACT and Care. I remind you of the protections and obligations afforded by parliamentary privilege. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. When you first speak, could you please confirm that you understand the implications of the privilege statement and that you agree to comply with it?

We will not be having opening statements; we will go straight to questions. I have one for ACTCOSS and Volunteering ACT. I do not mind who takes it first. “Advocating for the ACT government to introduce regulatory interventions to ensure fairness in insurance pricing” is a strong idea. I am keen to hear your views on what sorts of regulatory interventions you had in mind to ensure fairness in insurance prices and how those mechanisms work.

Dr Bowles: I understand and agree to the statement. There are two things that came out of our survey. The first is that many community organisations would be very enthusiastic about government acting as a provider of insurance. That, obviously, is a rather significant regulatory step and significant intervention in the market. However, it would accomplish a number of positive things.

To frame this, I want to take a bit of a step back, if I may, and note that the community sector and ACT government form a similar or an identical service delivery system. We have virtually the same goals and, for most of the community sector, the ACT government is the major or only funder. The relationship that the community sector has with government is, in many ways, based on risk. Many of the things that the community sector can do more efficiently or effectively than government relate to how we can engage, in some ways, more creatively or nimbly with risk.

To put a slightly more cynical view on it, I have had some members say that the government uses the community sector to outsource risk. But I think the different approaches to risk are really evident in service delivery. Many community sector organisations engage in activities that insurance companies deem to be high risk. That is largely because of the people to whom we are providing services—people who are at points of extreme vulnerability in their lives and extreme hardship. What that means is that there is a tendency in some governments to manage risk in a very command and control way. But, for engaging with people in high risk situations who are structurally disadvantaged, that is not actually the best way to interact with them in terms of helping them to improve their own lives. This is where the community sector’s different approach to risk is really effective.

I note all this to say that, as a unified service delivery system, the relationship between Economics—16-04-25

the community sector and government is based, in large part, around risk, and insurance is a mechanism of managing risk. Our submission indicates that the community sector is having a great deal of difficulty dealing with insurance right now as more things become uninsurable and more things become uninsurable at a price that the community sector can afford. This means that the range of services that the unified service delivery system of government and the community sector is shrinking because of the insurance problem.

The insurance problem, we feel, is very much affecting government's overall approach to risk. Given that we are part of a unified service delivery system, the ACT government could take the approach of taking a sort of self-insurance approach, with self-insurance encompassing the community sector organisations which it funds. Looked at another way, the community sector is funded by the ACT government, and an increasing level of that funding is going into the coffers of insurance companies so that we can deliver the services the government wants us to. There is, we think, the potential for cost savings if government said, "Actually, why don't we just get rid of that?"

It is also the case—and this is another answer to that point—that many of our members feel that their engagements with insurance companies do not sufficiently reflect risk mitigation strategies that they have put in place. One way that regulation could help would be to require insurance companies to engage more closely with the organisations that they are insuring to assess risk in a more fine-grained way and not punish organisations that are really proactively dealing with risk for the organisations that have not, perhaps in other jurisdictions or other countries.

Ms Giese: I have read and understand the statement. Just to add some flavour to what Devin is describing, we also have a couple of thousand unfunded organisations in Canberra who are delivering critical services for the community, whether that be mental health providers or local social groups who are enacting amazing programs to make sure that people are connected. There are thousands of examples we can provide to give flavour to that. Those grassroots organisations, for want of a better term of grouping them together, have no funding and most of them have no paid staff members—meaning that there is in some way a great responsibility on those providers to ensure that they have the right level of insurance to be able to cater to their activities.

As you know—and you have spoken to lots of people over the day—there are lots and lots of layers of insurance and there is lots of nuance in those layers that we spend a lot of time trying to educate our members about. But it is a very complex system. If you take an organisation that is entirely volunteer led and run, they are not covered by workers compensation, which is a problem because it means that they do not have those types of protections. They can be covered by volunteer personal accident insurance, but that is optional. An organisation has to both know about that and then choose to take that up. They then need to ensure that they have directors and offer liability insurance which protects any volunteer, board members or committee members who are doing a job that is different from at the coalface, so to speak, because their liability is obviously different in terms of running an organisation. Whether or not they are volunteers, they still carry that same liability. Then, on top of that, you still have the usual public liability, professional indemnity, building and contents insurance, motor vehicle insurance and so on.

It is a complex, complex system that we are asking small organisations, doing good things for our community, to try and navigate on top of all of the other compliance pieces that they are trying to navigate. So, for us, it is about finding a solution where we can simplify and translate some of this environment into bite-sized chunks that make sense for people and actually directs them to the information that they need. That is where, ideally, we would like to see things move to. We do not have all of the answers. I think it is just that there are a number of different solutions that can work for both small and large not-for-profit organisations.

THE CHAIR: On a government-backed insurance scheme or a government self-insurance scheme, I can think of Medicare but, otherwise, it would be a unique situation and probably would be the bare minimum. Presumably, it would not be all the benefits of an insurance scheme; it would be the lowest common denominator, because the government has to provide value for money—let alone re-insurance and that sort of stuff.

Dr Bowles: I think the ANU is self-insures. I am not sure how widespread that is across the university sector. I think the idea is that, when an institution is sufficiently large that, basically, it can manage risk by virtue of its size, self-insurance is often seen as making sense. Another time I think that self-insurance makes sense is when insurance for a particular activity becomes effectively unavailable. In some jurisdictions some activities have become virtually impossible to insure—those activities particularly involve working with vulnerable people—because of lawsuits for past bad practice, resulting in really large payouts. So insurance companies just do not do it. It is similar to insurance companies saying, “We are not going to insure houses that are in locations where flood risk is becoming greater because of climate change.” The difference, though, is that some of those activities are absolutely essential to the community. So finding a way to enable them to persist is in everyone’s interest.

MS CARRICK: Can I give you an example and just ask you if this is the sort of thing that you are talking about? It is just a simple one. When I first started, the ACT government paid the insurance bill on behalf of all of the community councils and then we chipped in for our bits. So, assumably, they got the appropriate cover and at a good price, because they did it holistically. That is not self-insuring, but it is just enabling us.

Dr Bowles: That could be another very practical way forward.

Ms Giese: I think it would give smaller organisations permission to keep going. What we hear, particularly from small not-for-profit organisations, is that they are either taking a risk and not insuring themselves, which is understandable considering the costs of that, or they are passing the costs onto volunteers. We hear that quite often where the cost of the insurance is divvied up between the volunteers and they are actually asked to pay for it as part of them giving back their own time, and they are maybe not aware of the risks. They are not actually aware of the full suite of different insurances that they may or may not need. We have done quite a bit of work on understanding when things tip from one type of insurance to another. That is very complex and, if you do not know it, you do not know it. Or they are doing a blend of the above.

So I think some of this is about trying to navigate what is the minimum requirement to give organisations permission to keep doing what they are doing and keep the focus on where they are. Then perhaps if there is nuance around that, that is where organisations have to come to the party. Again, that is not a perfect model. But, to draw a parallel to what you are saying, Taimus, about the Medicare model, it is about what the things are that are minimum requirements, and then perhaps there could be something that is illustrative of things that are nuanced to an organisation. I do not know.

THE CHAIR: I have just read that the ACT government is a self-insured licensee under the Safety Rehabilitation and Compensation Act 1988. But it is for ACT government employees, which it is obviously directly responsible for and it has commitments. But I will pass to the Deputy Chair.

MS CARRICK: I want to ask about a smaller or community organisation that has a contract with the ACT government or they get a grant—just some relationship with the ACT government, even if it is hiring their sports halls. In that contract, there will be an amount of public liability insurance that you have to have—\$10 million of \$20 million. What are your views about that? Could that be somehow built into what you were talking about before? Even an insurance company says that that is just over-insuring; that it does not need to be that high. What are your views about that relationship where the ACT government sets the amount of insurance that you have to have?

Dr Bowles: It is actually a really clever point to raise because it highlights the fact that community services are intimately related to what the government is doing. Government feels at liberty to make that requirement, and indeed does, because it understands that we are all part of the same service delivery eco-system. What I would note is that one hopes that the cost of that insurance is factored into the grant, although I do not think that is always the case, particularly as insurance costs are rising much faster than the indexation that community organisations receive. What it shows is that there is, on some level, great inefficiency with each community sector organisation having to navigate that insurance minefield on its own, often with people who are volunteers or not experts in insurance. That gets replicated across hundreds of community organisations each year, and there is a real possibility that standardising and bringing things into government would result in a system efficiency.

MS CARRICK: I note that it happens that, where small groups, a group of volunteers, want to do a nature in the city grant, they cannot because they are not an incorporated body and they do not have insurance—half a dozen people wanting to do a landcare project. Then they have to find somebody to auspice them, and that can be difficult too. As a volunteer group in the community councils we started auspicings these small groups to be able to get grants. But the volunteer community councils do not know much about insurance either, and they are ending up with these groups that they are providing insurance for. Anyway, I think it is a bit problematic and could be streamlined.

Ms Giese: There is potentially some really interesting data that will come out of the federal volunteer grant space. That grant happens annually through the offices of the MPs. Organisations apply and then the MP endorses them, and they go through to this process. It is a small grants round but it is really critical to the sector because it is one of the only opportunities that those sorts of micro-small organisations have to apply for

something, and insurance was added in as an eligible activity. So I think there would be some really interesting reflections. After insurance was added in and there was perhaps some movement from people applying for other, what we would call, core business, capability building services, within their organisations, we saw a huge shift with people just applying for insurance. I do not have all the answers, but I think it would be an interesting reflection to look at how much of that investment actually went straight to insurance companies.

MS CARRICK: Thank you.

MR EMERSON: Along the same lines, we heard from DVCS, Domestic Violence Crisis Service, who mentioned earlier today that there are other jurisdictions—I cannot remember whether it was Victoria or New South Wales—where they do insure—

MS CARRICK: Victoria.

MS MORRIS: It was Victoria, yes.

MR EMERSON: Victoria. So they are insuring government-funded not-for profits. I guess there is a potential tension point. Some of these small organisations do not get government funding and so they would be excluded from that program. But it might still be a good program. Do you see that tension? Do you think that is a concern? We are going to have recommendations out of this inquiry. Should one be that the ACT Insurance Authority should expand its remit to government-funded community sector organisations?

Dr Bowles: Among organisations that are funded by government, there is a lot of appetite for that. The results from the survey indicated that something like 84 per cent were in favour of that, none were opposed and the rest needed to think about it more. So I think that would be a really good step. But there is, I guess, an additional problem that we still need a solution for.

Ms Giese: Yes, I would agree with that.

MR EMERSON: On another idea that we have been discussing today, obviously in your contracts things are adjusted for inflation, but insurance costs are rising at a higher rate than inflation is. So you are naturally at a deficit every time insurance goes up. Would it be of benefit—and I am sure it would be—if government contracts were actually just pegged to your cost increases when it comes to insurance? It is not an impossible thing to do. The government might say it is, but, in the example I have been using, that is exactly what the arrangement is on a commercial lease, generally speaking. You would be paying your proportion of the increase in outgoings that your landlord passes onto you, based on a base year. So you cannot sort it, because you have got your base here. It is a sensible amount of insurance. Insurance goes up 40 per cent and, therefore, the government is on the hook for that 40 per cent, rather than you being on the hook for 35 per cent because they only cover that.

Dr Bowles: I think there would be a lot of enthusiasm among community sector organisations for adjusting the indexation formula to do what you have just outlined.

Ms Giese: Yes. I would just say that the cost of insurance continues to increase, and that continues to hit the bottom line of organisations. There is a secondary cost that I suppose is inherent in what we are talking about, in that the amount of time and resources that organisations are spending mitigating risk—the number of people you have to take offline every time there is a new piece of legislation or any time that something shifts to say, “Let’s look into this; let’s work out how this looks for our organisation.” So we are getting stung twice, if you will, and one is not offsetting the other. So, in ideal world, the insurance companies say, “Look at all these mitigations that you have put in place as an organisation. Isn’t that wonderful. Therefore, we will bring down your premium.” Those two costs could offset each other. But, at the moment, we are experiencing both. We have to, because the risk is too great otherwise.

MS MORRIS: Do you have much transparency over those cost increases?

Ms Giese: With insurance companies?

MS MORRIS: Yes.

Ms Giese: Very little—certainly in our experience. I do not think any of our members described that there was great transparency. The other thing that there seems to be very little transparency over is the change in the insurance policy. So you are not getting a like for like. You actually have to sit a human being down with last year’s policy and this year’s policy and the fine print, to work out what might have slipped out. That seems to be something about which lots of people have said, “All of a sudden, this is missing or that is missing.” Lots of people reflected that there is a shift and, all of a sudden, you are not covered for something that you think you are covered for, but the insurance rolls over. You as an organisation could just take that at face value and say, “Well, of course, we are getting like for like,” but that is not necessarily what is happening. The things that are the highest risk sometimes are slipping—

MS MORRIS: So you may not be aware of—

Ms Giese: Correct.

Dr Bowles: Yes.

Ms Giese: You have to sit someone down every time your insurance premiums come in and say, “Compare and contrast these two documents.”

Dr Bowles: And even then, because it is so technical, even when you have invested that time, there is still a bit of a question mark, I will say. It may be that there is some very subtle change in wording like, “You are insured against flooring,” to ‘excluding riverine flooding’ or something like that. Circling back to the first question, which was on what particular regulatory interventions could occur, it would be a requirement that each time insurance is rolled over, a clear statement of what has changed is provided—ideally, a plain English one, not like, “Here are the two policies; spot the difference” kind of thing.

MS MORRIS: Would you find that, when those changes are applied, you are often being charged more for less?

Ms Giese: Yes.

MR EMERSON: Usually they are not adding in extra cover.

Ms Giese: It is rare. I do not think I have seen any of that.

MR EMERSON: They are certainly not telling you about it.

Ms Giese: Then there is a that nuance. Some of the details are really important. There was an organisation that identified an example where they were running community events. They thought they were fully covered for running a community event and then there was one community event where they had a busker—which is something that can be pretty common in a community event down at the local shops—and it had slipped into being classed as a commercial event as opposed to a community event, and all of a sudden they were not actually covered for the full suite of what they needed to be for running a public event where people carry criminal liability. I am sorry but I have forgotten the name of that organisation. I can send it through afterwards. But it is a pretty normal example where people are, for example, thinking, “A busker can be at a community event.” Well, no, they actually cannot.

MS CARRICK: No; they cannot. They have to have their own insurance.

Ms Giese: Yes.

MS CARRICK: Anybody that is commercial in the arts who might sell what they have made need their own insurance.

MS MORRIS: Does anyone want to weigh in on that at all?

Ms Franklin: Yes. I understand and agree to the privilege statement. Although we focused actually on the impact on our service of people in the community who are under-insured, I do want to weigh in on it because one of the things that we find is that there are more and more insurances that you have to have and the coverage does change. We have had workers comp for a long time, for example, and then found out recently that that actually does not cover our volunteers and that you now need to have volunteer insurance.

The number of questions that we have had to answer in order to get that has been quite excessive. So there is time about it, cyber insurance. Can you ever cover for that? So you spend a lot of time doing risk mitigation against that, but you also take out your insurance. So you are spending money trying to mitigate but you are also spending more and more money on your insurance as well. For something like that, hackers are also going to be one step ahead of you anyway. So you are sort of feeling like you are running but not getting very far.

To the point that was made before in terms of indexation, for us, we have had to increase Economics—16-04-25

some of our insurance policies. They went up by 25 per cent in the last 12 months, but indexation was around the five per cent. So it does not anywhere near cover it nor cover the time that it does take to actually try to understand what it is. I am speaking about that from an organisation point of view. I think there is an opportunity to just think about what that is like for somebody who is not part of an organisation and is experiencing trauma or vulnerability.

MR RATTENBURY: Dr Bowles, you spoke right at the beginning about the notion of essentially the ACT government potentially partnering with the community sector, recognising that joined-up service delivery, to self-insure. I think one of the questions that would be put in that context would be: where does the motivation then sit to ensure that people are undertaking sufficient risk management if you have got a self-insurance model? I think there are answers to that, but I would be interested in your take on it, please.

Dr Bowles: I guess the first thing that I would say is that the current model also does not incentivise that very well. Our members report that their insurance costs do not seem to reflect or bare any relationship to what risk mitigation activities they have undertaken. So we are starting from a very low base. If government were providing insurance, then risk mitigation could be the subject of, frankly, more thorough scrutiny from government funders than it is from insurance companies that do not understand us at all.

The ACT government already has, or should have, a pretty good idea of much of the work of the community sector because it funds it, and part of a government's routine work is managing those contracts and making sure that we are reporting the activities that we are undertaking and that we doing what we said we would do. So it seems to me that there is a much better leverage point for ensuring or encouraging good practice with what I would describe as a much stronger relationship between government and the community sector than there is between insurance and the community sector.

MR RATTENBURY: And, presumably, more opportunity for the organisations that do do it well to then get some sort of, I guess, reward, reduced premium or something. We have certainly had a lot of evidence that people who are putting the effort in are not seeing that reflected in a lower premium.

Dr Bowles: Yes.

MR EMERSON: It is in the government interests, right—the government's interest for you to be paying less, especially if your contracts are tied to an insurance company?

Ms Franklin: Yes.

MR RATTENBURY: Earlier, you made a reference to more things becoming uninsurable. Can you give the committee examples of things that are becoming uninsurable?

Dr Bowles: For certain activities to do with children, particularly in residential care. My understanding is that, across the country, the number of insurers is rapidly

dwindling and that there is widespread acceptance that this is a point of pretty extreme risk for the continuation of that sort of service delivery.

MR RATTENBURY: Okay.

Ms Fitt: Could I add something?

MR RATTENBURY: Please do.

Ms Fitt: I have read the privilege statement and agree. In our consultation, other activities that we heard from one of our members was water play with children or trampolines with children—that, for playgroups, they are considered risky activities, even if they have been held in the past and there are risk mitigation strategies around them. Organisations have decided that they will not run those sorts of activities for their playgroups, because they are not insured.

MR RATTENBURY: Ms Franklin, if I can turn to Care's submission, you alluded to this in your last comments: a lot of what you have spoken about is the impact on households of insurance costs. Are you able to elaborate for the committee on what you are seeing in the community?

Ms Franklin: Yes, absolutely. I will hand over to our principal solicitor to give some examples. We are working with people who are financially distressed. Most are on fairly low or moderate incomes. As Devin mentioned before, it is about navigating the insurance minefield. A lot of the people that we see are un- or underinsured. If, for example, you get your quarterly electricity bill, and at the same time you get your car insurance bill or maybe your home building insurance bill, probably heating and lights being kept on will be a priority over something that may or may not happen down the track. Insurance is one of those bills that people tend to have as a lower priority.

As a result of that, we regularly see people who end up with massive debt. If you have a car accident and you are uninsured, there is a huge debt. If you experience theft and you do not have contents insurance, you end up losing a lot. Strangely, we also have people who are over-insured, because they have not understood what they are getting. There are a lot of examples, not necessarily just in the ACT but nationally, about funeral insurance, and people taking out insurance and paying well beyond what is the cost of an ordinary funeral. Pet insurance is another example where people might pay huge amounts of money because they love their pets, but they have not really thought about how much they are paying over the year compared to what it might otherwise cost.

We have either people who are under or uninsured, or people who have insurance that is not fit for purpose. Unravelling that for people, or dealing with the debt that falls out of that, can be an enormous amount of work. If it is okay, I will hand over to Towanda to give one or two examples of that.

Mr Mukamuri: I have read the privilege statement and I agree to it. As the community legal centre under Care, we also assist clients with insurance law matters. Over the last year, we have seen a significant increase in clients who are seeking assistance, especially in relation to debts as a result of motor accidents, where they are at fault. In

some cases it is assumed that they have already been referred to debt collectors or it is too late, and insurers are suing them for debts.

We are a very small community legal centre. We are already responding to high demands due to cost-of-living pressure. We have clients at risk of losing their homes, due to default on their mortgages. Now, because of rising insurance costs, and many motorists are going without insurance, it means that, when they are involved in motor vehicle accidents and they are at fault, they end up being sued for debts, which can range from maybe \$1,000 up to \$50,000, depending on the type of accident or the damage. As a result of that, we are having to divert significant resources to assist people in those situations.

Basically, where appropriate, we negotiate with insurers on behalf of their clients, sometimes seeking a waiver on compassionate grounds, pursuant to the hardship provisions of the General Insurance Code of Practice. Dealing with insurers also takes up quite a lot of time. To run those matters, we need to gather lots of supporting evidence, such as getting a statement of the financial position from financial counsellors. Sometimes we need to get medical reports; sometimes we need to get Centrelink statements. All of that takes time.

Sometimes, from the time we lodge the hardship application to the insurer to the time that the insurer makes a decision, it can range from one month to six months. We have solicitors working on those kinds of matters. Already, we have high demand in other areas. This is mainly as a result of cost-of-living pressure and high insurance premiums, and clients then have to make a choice sometimes to go without insurance, or try to cut insurance, and risk getting into accidents where they are at fault and getting sued by insurers. That is part of the work that we are doing.

In terms of home insurance, we are also seeing clients who are either underinsured or have no insurance. In most cases, where a client cannot pay their home loan, it means that they are unable to have insurance, which is, again, another default in terms of their credit contract. If they do not have insurance and their house sustains damage, they have to bear the cost of repairs because they do not have insurance. Even with motor vehicles, where the vehicle is sometimes written off, it means they cannot replace those vehicles, or they do not have enough money for repairs.

This rise in insurance cost is also putting a lot of pressure on community organisations in terms of our ability to assist the vulnerable and the disadvantaged, which also means long waiting times for clients. Normally, we endeavour to respond to clients or to book clients within a few days, but sometimes it takes weeks for clients to be able to see a solicitor.

It is also affecting the types of services that we give to clients. Sometimes, if the clients meet our eligibility criteria, we endeavour to give extra support, such as representation. But sometimes, because of limited capacity, we just give one offer of advice, without extra support, so it is also impacting on service delivery.

THE CHAIR: On the issue of insurance costs on low-income earners, there was a call in your submission to subsidise, or to look at ways of subsidising, insurance. This is Economics—16-04-25

partly related to the issue that you are bringing up; it is that sort of call?

Ms Franklin: That is correct. The other point I want to make is that often people on low incomes are renters, and they cannot necessarily choose where they are renting, but the amount that you pay in insurance is risk based. If you are in a suburb where there has been more theft of vehicles or house break-ins, you will pay more for your insurance, but you are the people who are least able to do it.

We feel that there needs to be, in the same way that we are talking about it for the community organisations, some sort of subsidised, basic level of insurance for people who are unable to make those decisions, so that they have some form of cover. It might not cover everything, but it might prevent a \$50,000 debt as a result of it. It could really mitigate that.

THE CHAIR: A house and contents Medicare?

Ms Franklin: Yes, that is right—some sort of subsidised scheme. There was a submission put in about 15 years ago by Good Shepherd, or possibly by Brotherhood of St Laurence, talking about needing some sort of subsidised scheme for people who need a level of insurance. They may not have a lot of property, so they do not need a high level, but they need a basic level of insurance. We think that is something that needs to be looked at as well.

MR RATTENBURY: Coming back to what you were saying before, I was interested in the issue of over-insurance as well as underinsurance, and perhaps the basic lack of understanding of insurance policies. Are you aware of any resources that essentially provide insurance literacy?

Ms Franklin: In New South Wales there is an insurance law service that does that, although they are mainly seeing people when it is too late.

MR RATTENBURY: Is there a website that you can go to which shows you what insurance you need and what the different types of insurance cover are?

Ms Franklin: No. Our view is that you do need something like that—a place to go, where you can navigate what it is that you might need. It is hard to know whether that is a website or whether people need to talk to someone. You could start by having information on a site.

Again, some of the examples we have are where people did not know what they had. I can give an example of someone who was in hospital and very unwell, and who had some life insurance but could not remember who his insurer was. He rang an insurer and said, “Is it you that I’m insured with?” “No, it’s not, but we’ll give you an insurance policy.” He took that out, because he could not remember who his insurer was. So there were two—

THE CHAIR: Reverse tele-marketing.

Ms Franklin: Yes. Now he has two; he cannot remember where one of them was. There

are examples like that, where people need support to understand what they need and what they have. Briefly, yes, I think there is value in that.

Mr Mukamuri: I can give an example. With Care Consumer Law, we run the defined benefits information service for the Motor Accident Injuries Commission. It is a service that assists people who have been involved in motor vehicle accidents. The feedback we receive from clients is that the service is very helpful. We could have a service like that for insurance. The insurance law service that is run by the Financial Rights Legal Centre in New South Wales is a nationwide service, and sometimes getting through to their phone lines, in order to get advice, can be difficult. If we could have something in the ACT that is similar to the defined benefits information service, I believe that would be helpful for clients.

MS CARRICK: There is an insurance organisation, the ACT Insurance Authority, that covers ACT government departments. Potentially, could there be a role for them in overseeing and managing some self-insurance or targeted groups in the ACT? Could they have a role or are they not appropriate?

Dr Bowles: I do not have detailed knowledge of that body. On the face of it, it seems like that could work very well.

MS CARRICK: The ACT Insurance Authority deals with ACT government departments.

MR EMERSON: They insure all directorates and statutory offices.

Dr Bowles: Yes.

MS CARRICK: I will move on to explore strategies regarding harmonisation of insurance regulations, particularly with the New South Wales government. In respect of what sort of things could the ACT harmonise with New South Wales?

Ms Giese: To digress, I think that same conversation applies in so many other compliance spaces.

Dr Bowles: Some of our concern arose from feedback from our members that, when they had operations that crossed state borders, or even staff that crossed state borders on a regular basis, their insurance premiums went up in ways that were not at all understandable to them. It is like there is an insurance penalty that you pay at the border. Looking at ways to not have that occur would be really helpful.

Miss Bourke: I agree to the privilege statement. Just building on what Devin was saying, a lot of our consultation highlighted that, while the price of insurance premiums was significant, the managers also had to specify numbers of days per week that staff had to work outside the ACT, which is a little bit hard to know, particularly for client-facing roles, where sometimes they just have to travel across borders, according to need. That can make cross-border operations really difficult for them to sustain.

Dr Bowles: There is also a concern that, if they do have a claim, and if their best guess as to how often that person was interstate turns about to be demonstrably wrong, are they then insured?

MR RATTENBURY: Or whether they have voided their insurance policy through inaccurate data.

Dr Bowles: Yes.

MR EMERSON: Or not even knowing, if they overestimate it, whether that is the right thing to do.

Dr Bowles: Exactly.

MR EMERSON: Or is that making it cheaper or more expensive?

Dr Bowles: Yes.

MR EMERSON: I am asking everyone about diverse outcomes, and what you are seeing in the community sector generally in terms of behaviours that are coming out of insurance costs. It could be about cross-subsidisation of programs. The Domestic Violence Crisis Service earlier today said they had three fewer staff because they had to cut their costs. There are these sorts of things. The committee would like to fully understand the implications of high premiums.

Ms Giese: I think there are a number of consequences. We have already covered some of them. There are organisations that are just rolling the dice and taking the gamble, which is not something for which we would advocate at all, but if you have no cash coming into the bank and you have to pay out of pocket to cover your directors and volunteers, you can understand how that is not happening.

Others are asking volunteers to pay; therefore they are actually changing that relationship entirely, and driving people away from volunteering. Volunteers are already out of pocket enough, without asking them to pay for an insurance premium for themselves in order to give their own free time. You can see how it just does not make sense.

One of the other unintended consequences with the complexity of all these layers of insurance is that people are just not aware of the sheer risk that they are putting in front of themselves. The other obvious example, which I think was perfectly illustrated this morning, is that people are paying for the insurance that they need, they are investing in significant insurances to mitigate the risk of an insurance event happening; therefore they are pulling away from the core service.

It is pretty devastating to see an organisation like that, which is doing critical work for the community, at the coalface, pulling staff off the floor to pay for insurance, when we desperately need more people supporting those experiencing all sorts of horrible things in our community. That is just one picture of what we are experiencing here.

Dr Bowles: Perhaps I can add a couple of other perverse outcomes. One of the main insurance costs is workers' liability. One of the great risks in our sector and others comes from understaffing. If insurance costs mean that positions cannot be filled and organisations need to be restructured, the outcome will either be that the staffing is less adequate for the task, and therefore the risk behind workers comp will go up, or that fewer services will be delivered.

At a really macro level, we are seeing less community engagement overall. That is driven by a number of social trends. I do not want to be seen to suggest that insurance is the primary one, but I think it is not a completely insignificant one. As insurance becomes a greater and greater impost on the community sector, and as the community sector is pulling back on what it is offering—therefore so is the whole service delivery ecosystem—it is creating a broader social environment in which more of the community is socially isolated and in need of community services.

MR EMERSON: There is circularity there, too.

Ms Franklin: One other point about that has to do with workers comp. A lot of us are working with clients who are at that end of vulnerability. It means that our workers experience vicarious trauma. We work with a lot of people who have experienced domestic and family violence and a lot of people with mental health issues.

We have staff who experience vicarious trauma, and it may be triggered because of things in their own life. They may then want to make a workers comp claim. As an employer, to support that person, you would support that claim because you want them to still be able to be paid and to take the break that they need. But the perverse outcome is that your insurance policy then goes through the ceiling, by doing so.

We have certainly had a recent experience where the insurer said, "You should have said no." It would feel to us that we were not looking after our staff and protecting the staff member, but at the same time we have to pay a cost for what we believe is trying to protect people so that, in the longer term, they can continue to do that work.

MR EMERSON: It is probably less the case from the community sector, but we have heard from businesses concerns about spurious claims. Is that something that has come up across the sector? No.

THE CHAIR: Different employees, perhaps, or a different attitude, maybe.

MR EMERSON: Or different volunteers, yes.

MS MORRIS: Are you aware of any examples within your member organisations of them being unfairly classified—their risk levels?

Ms Giese: I suspect the answer to that question is that they do not know what they do not know. People get the insurance that they think is right for them. If your question is: are they overinsured? I do not expect that some of them would know.

MS MORRIS: Or whether high-risk classifications have been put on any of the community organisations. Are you aware of any examples where that has been an unfair judgement that has been placed on them?

Ms Giese: Nothing in particular.

Mr Mukamuri: For us, one challenge we have had is because we have a community legal centre and a financial counselling service. For one insurer, there were issues as to whether we could get combined insurance for the community legal centre and the financial counselling service. There were questions about the community legal centre being high risk. The community legal centre had to get its own insurance policy, and the financial counselling service gets its own insurance policy. Again, for the same organisation, we have two different policies.

Dr Bowles: There is so little visibility in the community sector of what the classification scheme is, which means the fact that we cannot provide any examples is not a reflection of the fact that sometimes unfair classifications do not happen. I think the community sector is at a point of having no expectation that it would have any understanding of how that works.

MR RATTENBURY: We have heard quite a bit from a range of corporate witnesses today who expressed significant concern about the “no win, no fee” model offered by a lot of law firms in the territory for people to access particularly workers compensation. This is possibly directed mostly to Care. Generally, do you have any views on the appropriateness of “no win, no fee” models? Do you have any concerns about an equity issue in people being allowed to access them or not? If you want to think about that and come back to us later, that would be fine.

The context I am coming from is that a lot of people said to us that this is driving up the cost. People are just going for a case because there is no risk for them. From your different perspective, I am wondering whether you have equity concerns about people’s access to justice if they are not able to access a “no win, no fee” model.

Dr Bowles: On the face of it, we would have that concern. I also note that, according to the statistics, in our submission, our sense is that insurance fees are rising more quickly for the community sector than for business generally. We are a sector that, on some level, would be more worried about that, but that has certainly not been a concern that our members have put forward.

Ms Franklin: The only other comment I would make about it is that access to justice is incredibly important, obviously, for our service. With some of the “no win, no fee”, if you do not win, you do not have a fee, but if you do win, the fee is astronomical.

MR RATTENBURY: Yes, we have heard that as well.

MR EMERSON: We will be asking them about that.

PROOF

Ms Franklin: I think there is a concern at that level as well.

THE CHAIR: There were no questions taken on notice. On behalf of the committee, I thank all of you for making the effort to come along this afternoon and give us your insights. It was really helpful. The committee is now adjourned.

The committee adjourned at 4.29 pm.