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

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 17 APRIL 2025

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 9.03 am.

CHASE, MR ANTHONY JOHN, Sole Trader, Tony Chase and Associates

THE ACTING CHAIR (Ms Carrick): 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 today will be taking evidence from a range of stakeholders across the ACT community. Our last witness today will be the Minister for Business, Arts and Creative Industries, Mr Michael Pettersson MLA, and officials of the Chief Minister, Treasury and Economic Development Directorate.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. If you take a question on notice, it will 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 welcome Mr Anthony Chase, from Tony Chase and Associates. 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.

As we are not inviting opening statements, we will now proceed to questions.

Mr Chase: I understand; thank you.

THE ACTING CHAIR: My first question is: would you please give us a run-down of the context of your submission?

Mr Chase: As some of you may know, I spent almost 12 years as a workplace advocate for the chamber of commerce in the ACT. I was also a commonwealth arbitration inspector for five years, a qualified workplace investigator. My experience in this jurisdiction, in what you might loosely call workplace relations, goes from 1983 until last year, when I retired. I also spent six years with the Australian Medical Association as their senior workplace advocate in the ACT, so I know this jurisdiction pretty well.

When I saw that the Assembly was conducting this inquiry, I was motivated to put in this submission. During my almost 10 years with the chamber, I made submissions in respect of workers comp. I took the view, way back in 2015, that the system was flawed, and I have tried to convey that sense of defect in the opening preamble of my submission.

What I am really interested in is the extent to which the scheme, as it operates today, is fair to all parties. That is the focus of my submission.

THE ACTING CHAIR: Yesterday, we listened to business; they were saying how high the premiums are. How do you think it could be fairer to all parties?

Mr Chase: Fiona, if I may call you that, as I mentioned in my submission, what is unique about my submission, perhaps—I have not looked at all the others; certainly, I have looked at the chamber of commerce submission—is that I have been able to call on some historical material, going back to the early 2000s. What I think I have been able to demonstrate is that, over that period of time, costs have continued to increase, in terms of premiums. The reasons for that are that the parties to the scheme, the stakeholders in the scheme, have seen it as being in their interest not to look at premium costs as being a problem. They have tended to overlook, in my view, the issue of costs. Most committee members would see that, historically, the ACT has very high premiums compared to other comparable jurisdictions in Australia.

There is a reason for that, and what I have tried to do in my submission, albeit briefly, is to identify the reasons for why we have such a high-cost jurisdiction for workers compensation. That is my thesis.

When I was with the commonwealth department of industrial relations, I spent five years as an arbitration inspector, which was the forerunner to the Fair Work Ombudsman. I had a lot of experience doing workplace investigative work. When I was looking at the way this scheme operates and the role of WorkCover, which I have certainly raised in my submission, I took the view, and still take the view, that WorkCover's role has been unnecessarily curtailed in respect of what I consider to be the public interest that has to be part and parcel of this scheme.

In my submission, I am suggesting that WorkCover should play a more important role in the way that the scheme is administered. I am interested in the triaging of claims—how that actually happens in practice. Certainly, I spoke to a few people, when I was with the chamber of commerce, and they were telling me about their frustrations with dealing with a scheme where they did not have an opportunity to put their concerns about a particular claim; there was no avenue for them to be able to do that. My thesis is that the way that the scheme operates in practice is unfair.

That is why I introduced that preamble in my submission, because I think that proper administrative processes should be applied, and I do not believe that is the case here in the ACT with this scheme. That is my thesis.

THE ACTING CHAIR: I want to acknowledge that Mr Werner-Gibbings, the chair of the committee, has come in via video conferencing. I will hand over to Mr Emerson.

MR EMERSON: Mr Chase, just to be clear, is it your feeling that the scheme, as it is operating, falls too heavily in favour of claimants?

Mr Chase: Basically, that is true. The reason I mentioned my background as an inspector was that the primary role of a workplace inspector was to ensure that people were getting paid correctly. My job was to undertake workplace inspections of time and wage records and a whole range of benefits that are in the award system. I am trying to suggest to you that I am interested in fairness. That is my background. I am not necessarily trying to prosecute an employer-favourable scheme. I am interested in fairness to all parties, and that includes the employers.

MR EMERSON: What role do you see that "no win, no fee" legal services have in that imbalance?

Mr Chase: I was with the chamber of commerce until 2015, and I had already prepared a draft submission on the workers compensation scheme at that point. The submission did not go in, because I resigned from the chamber in 2015. A lot of the historic material that is in my submission comes from that earlier submission, where I was alerting the Assembly, or anyone that was conducting an inquiry, to some defects in the scheme.

The reason that I was motivated to come here today was that I do not believe those issues have been addressed in the 10 years since that submission was first drafted. We still have the same problems. I suggest that, quite often, with these systems, the devil is in the detail—how the claims are actually processed.

As I tried to suggest with the case study in my submission, if you do an inquiry into how claims are actually processed, you will see that, as an example, if you are a claimant and you make a false statement, there is no opportunity for the employer to contest the veracity of that statement; you just have to accept it. That is a defect in the current scheme in that virtually every other jurisdiction in Australia has a statutory penalty for making false claims.

The ACT effectively does not, in the sense that, if the employer believes that a false statement is being made to support a claim, the only recourse available to that employer is to take the matter to the Magistrates Court, in which case the proof requirements are criminal. Most employers are not in a position to go through what is essentially a highly risky and very expensive process. The tendency is to say, "I don't believe that is a correct statement, and I have some factual material which I'd like to put to someone to contest that claim." There is no avenue for doing that. That is a fundamental problem with the scheme as it currently operates.

That is the reason that I have mentioned WorkCover, because the WorkCover role essentially is a public interest role. WorkCover traditionally would undertake an assessment of the bona fides of a claim, interview the parties and look at the evidence, albeit in a preliminary manner, and make a recommendation or perhaps persuade one or other of the parties that it may not be in their interest to pursue a claim.

When I was with the chamber, over a period of almost 12 years, I did over 100 unfair dismissal claims, and quite often a few hearings. In that jurisdiction, as you would expect, claims go through a triage process. Quite often the commissioner or the registrar would assess the bona fides of that claim before it got to a point where you would have a hearing. I am suggesting that something similar for the ACT would be a good idea, and WorkCover could perform that role.

MR RATTENBURY: If WorkCover played that kind of role, where they are making an initial assessment of the claim, how does that sit with the role of the insurer?

Mr Chase: In most other jurisdictions, the ability to trigger a dispute is solely in the hands of the claimant. In some jurisdictions, it is open to the insurer to trigger that process. But, for the most part, it is only the claimant that can do that. What happens in the ACT is that most of the disputes that occur with respect to claims are around medical

expenses and associated peripheral matters, but not the actual claim itself. Of course, as we know, we are living in a no-fault jurisdiction, which is entirely appropriate for workers comp. No-one, sensibly, will contest that.

I have a concern with the way that claims are processed. In my role as an arbitration inspector, and in my many experiences in the Fair Work Commission, I would like to think that the ACT scheme would have some means of vetting those claims. There is no ability for the employer to challenge the process. That is my point.

MR RATTENBURY: In terms of your observation around the statutory offence of false claims, is it your assertion that it would be the role of WorkCover to be the prosecutor of those allegations?

Mr Chase: I should say that my involvement with this jurisdiction ended in 2015. I took the view then that there should be much more rigour around the assessment of a claim. As far as I know, virtually every other jurisdiction in Australia has a statutory provision which is quite serious, in that it is two years jail or a significant fine in the event that you make a false statement.

I will give you an example of one case where the claim was made, and it was expected that it would fall over the normal process. In this particular case, the line manager, the operational manager of the business, was strongly of the view that a false statement had been made and wanted some ability to challenge the bona fides of the original claim. That was not open for anyone. As a consequence of that, that line manager lodged a claim against the employer for psychological damage; that is, she could not cope with the fact that someone was making a false claim challenging her competence and her ability as a manager. That was a source of stress and anxiety for that person.

That does not happen very often, but the system that we have does open up that possibility. Of course, as committee members would be aware, New South Wales is coping with this significant avalanche of psychosocial claims, and it is a big issue for the administration of the scheme.

MR EMERSON: You mentioned that you have not really seen much change, any change, in the last 10 years, and perhaps prior. What is your assessment of the landscape in terms of vested interests? Who does not want to see change happen?

Mr Chase: I was going to mention this in relation to Mr Rattenbury's question. I forgot to finish answering the question; it relates to the point that you have asked about. When I was involved, I was appointed by the minister to participate in the workers comp monitoring committee, which was a beast that was operating for some years in the territory. My job was to attend quarterly meetings, look at trends within the scheme and see whether or not that committee could make recommendations to the Chief Minister's department in terms of amendments or tweaking the system.

After the Chief Minister's department was able to get their hands on a professional database, where all the data was becoming available, the terms of reference for that monitoring committee changed, and that coincided with my departure from the chamber. My point is that, until 2015, you had a monitoring committee whose job it was to look at how the scheme was operating. But when the new database came out,

the terms of reference for the successor committee changed. It went from "workers comp monitoring committee" to "Work Health and Safety Council"—a different emphasis and different terms of reference, which I can understand, given the industrial environment that we are living in.

When I looked at the terms of reference for the new committee, I could not see anything in respect of premium costs. Seemingly, it got lost in translation. To answer your question, that is why, in my submission, I have questioned the influence of the plaintiff law firms in respect of the way the scheme actually operates. I have concerns about that.

MR EMERSON: They have an interest in—

Mr Chase: They have a significant interest. That is entirely appropriate. But the way the scheme actually operates, and the way the data is collected now, means that it tends to cover up the costs of the common law claims in the system, and the extent to which the law firms are getting a significant income out of that process. I think that is an area that the committee would need to look at.

MR RATTENBURY: You have led nicely into what I wanted to ask you about—the workers compensation management system, and the database. You commented on the fact that there is now this trove of valuable data that is not being used. You started to touch on that.

Mr Chase: Yes.

MR RATTENBURY: Is there further commentary on the limitations regarding the use of that data, or perhaps guidance for the committee on how the data could be more usefully used?

Mr Chase: Yes, that is a really interesting question, because after the new database came in, the expectation of people sitting around the workers comp monitoring committee was, "Great, we've at last got some data and we can actually start to monitor the way the scheme operates, where the funds are going and so forth."

What actually happened was that the terms of reference changed; and, basically, the expectations of the employers at that point were not realised, in that the monitoring committee no longer operated, and the terms of reference for the safety committee had less emphasis on the costs and more emphasis, arguably appropriately, on safety and compliance. That is the direction that the government took.

I have made mention—somewhat mischievously, I think—of the fact that the current auditors of the scheme, Finity, did a terrific job after the hard data was available, from 2015 onwards. But in 2022, suddenly, the terms of reference under which Finity operated changed. I mentioned that in my submission. I would like the committee to find out how those terms of references were changed and to what end.

I noticed that, subsequent to those changes to the terms of reference, the data that would ordinarily be available through that wonderful new data collection service was aggregating to a point where you could not actually see where the money was going.

You could not see it. I am asking the question: why did they do that?

MR RATTENBURY: My colleagues will probably follow that up this afternoon.

Mr Chase: It is mentioned in my submission. The auditors, Finity, who are obviously a very professional organisation, mentioned it in their 2022 Finity report. They mentioned the terms of reference being changed, and they have actually made mention of it in their report. As for who is responsible for that, I do not know.

MR HANSON: You mentioned the law firms. What role do the unions have in all of this?

Mr Chase: I can only speak from my own experience, Mr Hanson. I do know that most of the unions have a triage service available for members, and members are put through one or two of the larger law firms, the plaintiff law firms. If you have a claim, as a CFMEU member, for example, all you need to do is go to the office and you will find yourself in the hands of one of the plaintiff lawyers, because they have these agreements in place.

From talking to people who have been through it, they tell me that there is no cost for the initial consultation. That is not unreasonable, obviously. The unions do have, as it were, an interest in making sure that those claims go through their preferred suppliers of services.

MR HANSON: Their particular lawyer.

Mr Chase: Yes.

MR HANSON: And there is a relationship between those law firms and the particular union?

Mr Chase: Yes, absolutely.

MR HANSON: They are somewhat affiliated, be it formally or informally?

Mr Chase: I do not know the nature of those relationships—whether they are formal agreements. I suspect that they would be—the contracts that they would enter into.

MR HANSON: So there is a nexus between the—

Mr Chase: Hard to avoid that.

MR HANSON: individual, through the union, through the law firm—

Mr Chase: Yes.

MR HANSON: There is a legal scheme, or a scheme that has been done by ministers who are all union members, to advantage, potentially, law firms affiliated with unions; and, progressively, over time, the legislation has been changed to shut down the visibility of that and make it nigh on impossible for an employer to fight an unlawful

claim.

Mr Chase: For all practical purposes, an employer in the ACT is not in a position to contest the claim effectively, as I have mentioned. I do not think that is—

MR HANSON: Someone is making a lot of money out of this.

Mr Chase: I would say that is a fair comment. I am not here to represent anybody but myself. Because of my experience, that is the reason I have offered my submission; it is for no other reason. I do not have any vested interest here.

MR WERNER-GIBBINGS: The submission noted that there was no penalty for making a false workers compensation claim in the ACT. Is that implicit advocacy for a penalty or a penalty that could or should be considered? There is a cascade of questions coming from that.

Mr Chase: Yes.

MR WERNER-GIBBINGS: Is there independent evidence that having a monetary penalty reduces the risk of a fraudulent claim or an uncontested claim? That is the nature of law; sometimes claims or cases are made that are not found.

Mr Chase: Yes.

MR WERNER-GIBBINGS: Does a penalty reduce that? Is there evidence of that?

Mr Chase: The absence of a statutory provision in the ACT legislation is really significant, because it is in every other jurisdiction of Australia, and it is there as a deterrent, to make sure—

MR WERNER-GIBBINGS: As a chilling effect on people who may or may not have a claim.

Mr Chase: Yes, to make sure that people—

MR WERNER-GIBBINGS: They are injured, but they may not have—

Mr Chase: There might be some contributory negligence on the part of the employee which they may wish to obscure or cover up. That is why I am saying that it would be sensible to have some sort of triage process. My experience with tribunals is that, as soon as people start to see the Australian crest on the wall, when you go into a tribunal, people get serious, and they realise that it is not to be trifled with, and that a serious process is being embarked upon.

I think that is a good piece of psychology that, as you say, has a chilling effect on anyone that is perhaps being a little cavalier. Of course, it should not be forgotten that if we had a provision of that kind in the ACT, it would be incumbent upon the legal adviser to advise the claimant accordingly, and say, "Fine, if you're running a claim, that's cool, but you need to tell us everything, including whether or not you have added or contributed to the event that has occurred." That does not happen at the moment. That

is the problem.

MR WERNER-GIBBINGS: Going back to the evidence that the penalty reduces the risk, is there any?

Mr Chase: Can I put it to you this way: it has the potential to reduce the incidence of doubtful claims because it is a deterrent that is in the legislation. Of course, as I mentioned, the lawyer handling the claim would be duty-bound to inform the applicant that, if they are not giving the full story, it is likely that they could find themselves in trouble later, down the track. The problem at the moment is that there is no avenue for an employer to contest the veracity of a claim. For all practical purposes, they cannot do it.

MR WERNER-GIBBINGS: You are advocating that WorkCover would make the decision about the doubtfulness of a claim?

Mr Chase: I will put it to you in this way: when I was doing investigative work, the first principle was balance of probability, and that is the only test that a tribunal in the triage process can apply. Is it reasonable, based on the evidence that you have before you, that this person has made a false claim or a claim of dubious integrity? That is the principle of law that WorkCover would operate under in the first instance. They would say—

MR WERNER-GIBBINGS: Those decisions would be reviewable, presumably, all the way up?

Mr Chase: Indeed; that is right. It is open to the claimant and the lawyer to continue to pursue that claim, and we have a no-fault jurisdiction, anyway. The difficulty we have here is that there is no constraint on the claim process. It is just open slather.

MR EMERSON: No risk.

Mr Chase: No risk.

MR RATTENBURY: You comment in your submission about the New South Wales scheme being under review, with changes to the definition of "psychosocial injury". Has there been any update on that since your submission? You talk about changes happening midyear. Is there anything on which you can update the committee?

Mr Chase: Last year I did some consultancy work for a volunteer organisation in the ACT. You probably know them—ACT Volunteers. I was helping them with their enterprise agreement. I did some papers for them, pointing out how vulnerable community organisations are to psychosocial claims. This is not just about the private sector; it is also about the community sector.

MR RATTENBURY: It is a big focus of this inquiry.

Mr Chase: Indeed. Of course, community organisations are, by their nature, vulnerable. They are operating on very small budgets, and that makes them particularly vulnerable. As I have intimated in my submission, the problem is that, with psychosocial claims,

there are likely to be sequels because the problems continue. It is a vastly complex area. What is happening in New South Wales is mind-boggling. I know that the Premier is determined that some kind of brake be put on it. Let us be honest: insurance companies are there to make money. There are a lot of allegations flying around New South Wales about how the system is so brutal and so unfair to claimants. I am sure some of that is true. Yes, that is a risk.

Can I finish by saying that I did a little bit of research, and you might be interested to know that Otto von Bismarck introduced workers comp back in the 1880s in Germany. That was the very first, and Bismarck's first principle was, "Politics is the art of the possible," so we should try and do something, but not overextend ourselves. Mr Rattenbury, I think what you are suggesting is that New South Wales is the big player, and what happens there, inevitably, will have an impact on the territory. I would be suggesting that, before you make big changes, if indeed you do, you have a look at what is going on in New South Wales, to make sure you do not get caught out. At the same time, some tweaking with the engineering of the claim process would be a good idea. You can do it.

THE ACTING CHAIR: Our time is up. On behalf of the committee, I thank you for your attendance today. No questions were taken on notice.

AMIEL, MS ELISABETH, Member Services, Owners Corporation Network (ACT)
BERRY, MS ASHLEE, ACT & Capital Region Executive Director, Property Council of Australia
PETHERBRIDGE, MR GARY, President, Owners Corporation Network (ACT)

THE ACTING CHAIR: We welcome representatives of the Owners Corporation Network (ACT) and the Property Council of Australia. I remind witnesses 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. If you would like, you could make a brief opening statement to the context of your submission.

Ms Berry: I have read the privilege statement and I agree to its contents. From the Property Council's perspective, our submission was very targeted. It was limited to the issues that we find the development community are facing, and that is around what is called latent defects insurance, or decennial liability. Those terms are often interchangeable. It is a relatively new product. We are hearing more and more talk about it. We are seeing it featured in government legislation with the Property Developers Act. We have concerns about the market, the sophistication of the market, and the impact it will have on housing affordability, when we know that we are currently in a housing affordability and housing choice crisis. We understand the benefits. There are a lot of benefits with the product, like defect liability insurance, and for us it is just weighing up those benefits with the costs. So that is the basis on which I appear today. We know that there is generally a feeling amongst ACT businesses that the cost of insurance is too high and that is concerning our members. It is concerning productivity and that is what we are here to talk about today.

Mr Petherbridge: Yes, just a brief thing from me. I think cost of living is also an emphasis for us. I was interested to watch one of the sessions yesterday that highlights just how much in sync we are with the ACTCOSS people and volunteers. So that is interesting because there is no doubt that insurance is a major cost of the cost of living for people living in strata, and in that sense it is as much as 30 per cent of the levies—20 to 30 per cent of the levies are added because of insurance costs. We have seen escalations of as much as 50 per cent increase in the last three years in those costs, so that is a significant thing. I would like Libby to take over from there for a couple of minutes if you would not mind. Certainly I am happy with the witness statement. My role is as president of the Owners Corporation Network, where I have been for something like 17 years, so my knowledge of the strata sector is fairly intensive at this point.

Ms Amiel: I have read the privilege statement and I agree with it. I am the membership services officer for OCN. I am combined agony aunt and explainer for members and non-members. Because we have no strata commissioner and Access Canberra has virtually vacated the field, there is no-one to go to to ask, "Am I having my leg pulled or is this right?"

Sometimes I am providing a 12-page answer saying, "This is all the legislation. This is what it means. This is what ACAT says about it. This is the experience of other owners.

Therefore, these questions appear to be open to you to ask of your strata manager, your executive committee," and so on. It is the role that we all hope a strata commissioner will fill with paid professional staff. I am doing this as a volunteer.

As Gary said, many of the issues that the welfare services area faces with insurance we face too. Owners corporations have to insure. Section 100 of the act that creates us as a way of owning property says we have to insure all the buildings, all the fixtures and fittings, all the improvements for a whole range of issues, some of which are about catastrophe and destruction, others of which are about ordinary ongoing acts of God. We are a captive market. There are very few providers, and there is little or no transparency for us. In most cases, the strata manager goes out and seeks the quotes through a broker. So we do not actually know what is in that quote. For example, many years ago as a new owner, I said, "What is machinery?" "Oh, that is your lifts and your air-conditioning," only we are a class B and we do not have any of them. "Okay, so the price would be different?" "Oh is our pool included in this?" "No." "Oh, cross out the new price and put back the old price."

I mean, the development was some 20 years old then, so they had been paying for things they did not have and were not being covered for things they did have. The product you get often—well, it could be a luxurious two weeks before the due date when you have to insure, but it might be 24 hours. The comment was made yesterday, "You have got to put a staff member offline to go through in detail and say, 'Yes, we were covered for this. It has slipped out. No, it is in a new place.'" We do not have the skills because an executive committee is a bunch of volunteers, and you have to do that quickly. We do not, as I said, know what is in or out of the quote quite often.

How does the insurer assess our risk? We do not know. There is one owners corporation here in town that is actually three buildings, and they have two insurers, two lots of contracts, two lots of all the commissions, two different lots of excesses because no individual company would take on three large buildings with 600-odd units. What was the risk? The real risks would mean that most of Civic was wiped out to wipe out those three buildings together.

We do not know the real cost of the insurance because there are commissions upon commissions attached to our insurance premium. My own OC has recently negotiated with our manager. The manager will forego $10,000 of their commissions, and they will charge us an additional $8,000 on what we pay directly to the manager, but the manager is still getting commission. We do not know what the actual premium is without those commissions, and we do not know what we are actually paying our manager because 30 per cent of a manager's income is insurance commission.

THE ACTING CHAIR: Thank you. We will move to questions now.

Ms Amiel: Yes, I was going to make some other points but—

THE ACTING CHAIR: If you want to make them pretty precisely so we can move to questions.

MR RATTENBURY: We probably need to move on.

Ms Amiel: Does mitigation lower premiums? We do not know. We do it but we do not know. We effectively are uninsured in some areas because of the size of the excess. That can now be as high as $50,000.

MR EMERSON: On the commissions, do you know if there is an increased commission if the strata manager changes insurers? Do you know if that is a variable in the calculation?

Ms Amiel: No, we do not know. There is some disclosure but what usually happens is when you change insurer there is a new assessment of your risk and your previous history. The fee usually goes up a bit and all of the commissions are a percentage of that new fee. So probably, but we cannot say definitely.

Mr Petherbridge: I mean, the classic example of what did happen during the cladding rectification process which kept going on for several years, was that in some instances, changing insurers was impossible because even the original insurer would not insure. So there has been major impacts there, but then there has been, all of a sudden, if it was not reinsured or if it was insured, sometimes those insurance premiums went up as much $500,000 to insure a property that was previously insured for a premium of $100,000. So the whole issue of moving from one strata manager to another has hardly been the issue. That has not really been an issue. The impact can just occur simply by the same strata manager being involved with the insurer and not really representing the owners corporation. They have that direct conflict of interest because in some instances they own the broker. They have a company that is associated with the broker so there are worse things than what I think you just described there in terms of moving from one strata manager to another and then changing the insurance. That really has not been something that we have been visible on.

MR EMERSON: Ms Berry, you might be able to help me. We have this concerning relationship, I suppose, between strata managers and insurers. When a new development is built, I assume developers have a relationship with the strata manager, but is there also a relationship between a developer and an insurer? Who takes out the initial insurance policy when we have a new development?

Ms Berry: So if a strata manager is engaged, then it would be with the strata manager but a developer would have insurance policies in place up to that extent. In my experience with members they would have a broker themselves that would often deal with all of their insurances. One of the issues I am seeing, and it is slightly outside of my remit but from experience, is that the issue is around disclosure. So it is that unknown from an owners corporation perspective. Most brokers charge some sort of brokerage fee and they do receive some sort of commission and that can be okay provided that there is adequate disclosure. I do not want to put words in Gary and Libby's mouth but I think that seems to be an issue, that they are not receiving that disclosure, so they cannot compare apples and apples because they are not getting that opportunity.

MR RATTENBURY: Ms Berry, I want to ask you about this latent defects insurance. I mean, it is an interesting issue you have raised. I guess I am unclear about where you think the issue should go. You obviously have seen the problems of defects and are unclear about where the rectification is going to come from and how it is going to be

paid for. So at one level this seems a positive but you are concerned about the cost of it. So can you just elaborate a little bit on perhaps what advice you might give to the committee on how we approach this issue if we were to make any recommendations?

Ms Berry: Absolutely. From the outset, it is a great product because it provides that level of consumer protection that at the moment does not exist. We have other things in the ACT like home warranty insurance but that is only up to three storeys, and so it is not providing—there is no product that provides insurance for homeowners above that. With a densification or a move to densification in the ACT we will have more and more buildings that are over three storeys. So we need to make sure that for homeowners, for the single biggest investment that they make, that there is some protection in case things do go wrong. I would prefer that we put things in place to make sure things do not go wrong in the first place, and I do not think there would be any disagreement with that, but we do need to have a stop gap because things can happen.

So we, from a Property Council perspective, support this idea of latent defects insurance. I know that some of my members already have it, especially if they are operating in New South Wales as well. The concern that we have is if this is mandated as part of the property developer licensing regime, when that kicks in, that it will—two things—firstly, it will add to the cost. That is about three to five per cent that we know, which could go up if everyone is trying to source a policy at the same time.

Secondly, the insurance market is just not sophisticated enough to withstand a whole lot of requests for that policy at the same time, and that has been our discussions with brokers and with the insurance providers. That will change over time and as the market gets more and more sophisticated, but what we get concerned about with things like this, especially in Canberra, is we are a small jurisdiction. So there are some good things about that because it means we can be really nimble with policies and we can make sure we are providing as much consumer protection as possible, but because we are small, it means we do not have that market power and that buying power to attract insurance providers.

We see that, to be fair, across the board with all sorts of insurance, which is why we are probably having this inquiry in the first place because there are just increased costs across every level of type of insurance. So for me, the balance is that this is a good product but we are just not quite there yet where it is mandated, and that was our concern, that there was a move to perhaps having this as a requirement. I think we will get there. I think the market will lead us there eventually but the product itself is not yet ready for that, and that is our concern, that we set people up to either not be able to get it and then not operate because there is just not something available, or the cost is too prohibitive.

Mr Petherbridge: Look, could I add to that? I mean, the other name for that insurance, as I understand it, is decennial insurance.

MR RATTENBURY: Is what insurance?

Mr Petherbridge: Decennial insurance, so the same term—that term applies.

MR EMERSON: It has been required in New South Wales, right?

Mr Petherbridge: Sorry?

MR EMERSON: That has been required in New South Wales?

Mr Petherbridge: Well, again, I am not sure that it is fully implemented.

Ms Berry: It is not mandatory but it is a way to not have to pay developer bonds. So if you have decennial liability insurance, 10-year insurance—it is not mandatory but it is a tool that is used.

Mr Petherbridge: Yes, and it is an insurance that is paid in advance so it does potentially contribute to building back the confidence in the strata sector which has been totally destroyed in my mind. When you consider the housing crisis that we are talking about right now and the emphasis that is being put on infill, whether it be in Canberra or elsewhere across the whole country, that counters the fact that we are building more and more and people are not going to buy more and more because they have lost confidence.

You have only got to go back to the Shergold Weir Report which was done several years ago by the Building Ministers' Forum across the country to see that, so that confidence is not there. I am really pleased to hear what Ashlee is saying because I think we are very much in sync with some of those issues as far as the direct owners are concerned, and the people who are affected, which is the renters as well. It is not just owners that are impacted by these costs; it is the renters down the line, of which 60 per cent of the strata sector in Canberra is probably rented, so it is a significant impact on the community generally.

Ms Amiel: If we add three to five per cent as an upfront cost to the purchase of the unit, with a security that you are not going to have to find hundreds of thousands of dollars in special levies for repairs and defect work later—you know, for example, the guys with the cladding, their insurance went from $100,000 to $500,000 and then they had to find millions to fix the cladding.

Mr Petherbridge: Probably the government should be motivated to do something about those sorts of things because in a lot of respects the government was partly responsible for the cladding issue because it gave the occupancy certificate saying these buildings were safe to occupy. Well, it did not turn out to be true.

MR HANSON: Specific to the ACT, I am just wondering where we sit compared to other jurisdictions. Are there some specific things, be it strata commissioner or something like that, if there is an absence in the ACT that you think, or there is a hole that needs to be plugged, or equally are we doing some things in the ACT that are either bad or burdensome because you guys would have visibility across jurisdictions. Should we be saying, look, they do this in New South Wales and we should follow that, or we are doing this in the ACT which is different from everywhere else and is causing a significant amount of problems? There might be a long list but just some highlights?

Ms Berry: So one of the issues I raised in our submission is the ACT does not have proportionate liability, and that essentially means that if you have three people that you

are making a claim against, then each one of those is essentially liable for 100 per cent. So they need to insure against that, and we see that approach come through in our building licensing and in our proposed property developer licensing where a builder or a developer is liable for everything 100 per cent.

Now, you could argue that is a really good outcome because it means that consumers can just lodge a claim against anyone and everyone and it is a matter for the parties to essentially fight out who is liable, but what it actually does in practice is it means that it is a race to who has an insurer who is willing to settle, and then they settle. So we have seen quite a few times in matters before the Magistrates Court and the Supreme Court where there is one party left standing who probably is not the main—I do not want to say culprit but the main proponent of the issues, and they are left with a significantly higher judgment percentage because they are the last one standing. So we are not taking into account everyone's role as part of the—

MR HANSON: Is that unique to the ACT?

Ms Berry: As far as I am aware, yes. It certainly is not the case like that in New South Wales where you need to argue contributions and liability. So it is something that means that when you are insuring—back to insurance costs—it means that you need to insure for everything. It means that at the end of the day you can be on the hook for absolutely everything and that is just increasing the price of insurance. We are starting to get to a point where people go it is too expensive and it is too hard to do business here in the ACT.

MR HANSON: Is that new or is that something that has been there forever?

Ms Berry: It is something that has been around for as long as I was aware, yes.

MR HANSON: Has it? All right.

Mr Petherbridge: In terms of your jurisdictions that have different approaches—I mean, relevant to the strata commissioner type-thing, Queensland and New South Wales have certainly got those things in place, so I think we could follow in behind them on that issue. There is going to be another inquiry on strata management, and I think we make a fairly strong case in that for the strata commissioner and not only us, I think 90 per cent of the submissions that I read—and I have just about read all of them now—support that strata commissioner.

MR HANSON: Do you know in those other jurisdictions if that is funded by the government or is it funded by the stratas' themselves?

Mr Petherbridge: Look, I think funding could happen here in a whole set of different ways to what anyone else does. We have a lot of resources, for example, in Access Canberra that could be directed towards a strata commissioner's office. There are assets or people assets in EPSDD and there are assets in JACS. So there is a variety of ways, and I think relative to that, at that next inquiry we would be quite happy to talk through the various ways that those can be funded.

MR HANSON: So in terms of different jurisdictions, the strata commissioner is the

main game?

Mr Petherbridge: Yes, I am not sure how they do it. Some of it may be funded by the government but I am not absolutely certain.

MR HANSON: There is nothing else, then, that you look to in other jurisdictions and say this is what is causing our increase of insurance relative to other jurisdictions?

Mr Petherbridge: Yes, I think we have the opportunity here to do something that may be slightly different, and others may follow. I think we are already on some of the stuff, and Ashlee's area may have been affected by this, but certainly the registration of developers and so on to try and minimise defects further down the track has been something that we did in Canberra in the previous term of government, that was innovative and probably worthwhile.

I think there is opportunity in Canberra to set the pace sometimes because we are a smaller jurisdiction and, therefore, the federal sphere could start to look at that and say, "Well, look, really this is something that is worthwhile doing." When we talk about the housing crisis, well, there is no point in building more and more and more high density stuff if it is unoccupiable because it is defective. There is a counter against building more and more if you build stuff that is not going to be used, so I think there is a serious problem there in terms of—I do not hear anything on the housing crisis talking about defects which has an impact on the amount of housing available, especially as it is going to be more and more of the infill, whether it be in Canberra or across the country.

MR EMERSON: I just wanted to ask on the proportionate liability whether that is exclusive to public liability or are we also talking about workers' compensation and other forms of liability?

Ms Berry: I am not quite sure. It has been a while since I have had a look at it. My understanding is that it is across the board of all civil actions in the ACT that we do not have it, but as I say, I have not looked at the legislation recently, but that is my understanding.

MR WERNER-GIBBINGS: It is a follow-up question from Mr Emerson's about proportionate liability. Could you provide the panel with a bit more information about where it works in other jurisdictions and how it is assigned? Who assigns proportionate responsibility and how does the insurance work for that sort of a scheme?

Ms Berry: Essentially it ends up being decided by the courts, that is how it is decided. So in a matter where there was negligence proved, and this is probably more from a common law negligence perspective, they will look at each person's contributions to the outcome. In a building matter, they would look at—if a court was determining it, in an ideal world you would look at the role that a developer played; you would look that at the role that a builder played; if there were waterproofing defects, you would look at the role of the water proofer; and of the certifier. Instead of saying that a developer and builder are left holding 100 per cent of that liability, they would look at what is their role and what percentage, and the courts go through a process. They take evidence. That is my understanding. It has been some time since I practised law but that was my understanding and that was how I ran them many years ago in New South Wales.

Whereas here in the ACT, that simply does not happen. So what it means in New South Wales is when you are getting insurance your risk would only be assessed based on what you disclose to your insurer as to what you are undertaking and probably they would look at—I am sure the actuaries would have a way of examining previous liabilities and come out with those calculations, but you would not be left being assumed to be 100 per cent responsible, which is what we see here.

MR WERNER-GIBBINGS: How would insurance work in that respect?

Ms Berry: It would need to change the way in which insurance is calculated here in the ACT for it to work, and so the insurance providers would need to look at their premiums. If this is a way that we are thinking—if we introduce proportionate liability and then our costs of insurance come down, there would need to be a real forensic analysis of what is everyone's role, what is their responsibility and what is their contribution to an issue.

Smarter actuaries than what I am can work that out, but it should be on the basis of what is my contribution to a risk, what is my contribution to an issue, and therefore I am insured for that. Rather than situations where you have, let us just say for ease of an example, we should not have a situation where an electrician is responsible for waterproofing. That is not a great outcome. So we just need to make sure that it is really clear what everyone's role is, and that everyone is not responsible for everything because I think that will result in a little bit more accountability actually being present, and if people have control and they can control what they are accountable for, then that is a really good outcome.

THE ACTING CHAIR: My question is: is there anybody that monitors or triages your sector's claims to check the bona fides before things progress?

Ms Amiel: In the strata sector or the developer sector?

THE ACTING CHAIR: Both.

Mr Petherbridge: In the strata sector, there is no-one monitoring that. That is another reason why we need something like a strata commissioner to bring forward those sort of things and to bring some cohesion across the whole sector. So, the answer is no.

Ms Berry: From the property industry, there is no-one monitoring the cost of insurance or how we get it. It would all be done through private brokers or private relationships. That is how it would be done.

THE ACTING CHAIR: So nobody is checking any data and monitoring premium costs or the types of claims that are going through?

Ms Berry: Certainly not from a Property Council perspective. Perhaps the Insurance Council may have that information but I do not have it, no.

Mr Petherbridge: OCN attempts to keep anecdotal evidence from various things like Libby described, as the person taking member inquiries and things. I did notice that

there were three submissions from individual owners corporations sent into you as well and I think there are some useful points there. We did not cover those off but some of them are consistent with our submission. They are worth looking at I think.

MR EMERSON: I did want to ask about the examples of tobacconists, tattoo parlours and so on, and the affect on insurance premiums. It seems like you are stuck between a rock and a hard place because you do not have a say in who comes in—not that we all need to be against those kinds of businesses, but has that meant some complexes are bordering on uninsurable or just having massive premiums?

Ms Amiel: Yes. If it is a mixed use development, the title gives a range of approved uses, and we have a long list of ACAT decisions saying, "If it is an approved use, it cannot be excluded." So the tobacconist and the tattoo parlour were approved uses, and the owner of that unit had full right to lease to those businesses, and then the insurer came in—and owners corporations get the feeling that risk is being looked for—the insurer came in and said, "The tobacconist is a risk because of the tobacco wars in Victoria; the tattoo parlour is a risk because of association with bikie gangs."

Mr Petherbridge: There could be an indirect way to solve that, and that is by retro applying the BMS, which is the building management system, which was put in place here in the last round of legislation changes to the UTMA. By putting that in, the people associated with those services or those operations could be stuck with the user-pays principle, part of the cost for insurance. That would be a major disincentive for those owners to be renting out to those places because they would be stuck with the incremental difference between what the insurance would have been versus what it is. So that would be an indirect way of addressing it, if you were to retro apply the BMS to all complexes rather than just new ones. So there is potentially a solution there which would solve it.

Ms Amiel: There are potential lease solutions in the planning process to exclude uses that are not compatible with residential use as another way of dealing with the problem, but yes, there are results.

MR RATTENBURY: I note the examples you provided about the increasing costs of insurance driven by climate impacts. You specifically talk about the examples arising from the hailstorm. I am interested to explore this view. You talk about other examples of rapidly rising insurance premiums despite most Canberra strata complexes facing low risk of natural disasters, such as flood and fire. Can you elaborate? I guess, I am not clear what point you are trying to make out of all of that.

Mr Petherbridge: Well, one thing, I think if we excluded some of the items from the current UTMA, for example, a lot of the claims are small and they are well below the excess which might be $50,000 or $100,000. Some of those small items like bursting, leaking, water-flowing, overflowing of boilers and stuff, are going to be paid for by the owners corporation anyway, not by the insurer, because they are below the excess. So if those things were removed out of the act, and then the owners corporation had more control over the negotiation with the insurer rather than going via a strata manager or a broker who potentially has a conflict of interest, then potentially you can bring the insurance down.

I mean, as a simple example, whenever I get an insurance for my car, I ring up and it saves me $100 just by making a phone call. So I think the people who know are the owners corporation. They know what their risk mitigation could be, and if you remove some of those things, maybe the insurance premium would come down in places. I think there is a whole raft of things that could happen even within the UTMA that could help by doing some of those things.

Ms Amiel: We are insuring for damage by horses or cattle.

MR EMERSON: You never know!

Ms Amiel: Yes, very high risk!

Mr Petherbridge: Could I just make one more point on environment? I mean, we are talking about EVs and things now and potentially insurers will use that as an excuse to increase the premiums. Even the Insurance Council will tell you that the risk of EV problems is "No, not there. It is no worse than ordinary ICE cars." However, there is the issue of other batteries.

MR RATTENBURY: You made that distinction well in your submission.

Mr Petherbridge: Yes, so I think that really needs to be considered and recognised by the inquiry.

Ms Amiel: There is an issue of the 2020 hailstorm. There are buildings—well, Gary's building—their claims were accepted immediately but that repair work is still in train and has not completed. I discovered the other day that a building across the road from Gary's, their damage claim for that same hailstorm was not accepted, and they are being offered a minimal payout, I gather. I am not quite sure of the issue, but a whole lot of buildings that have had damage from that hailstorm have been repaired with no ongoing problems and their premiums have increased markedly because they just happened to be in the way of the course of that storm.

THE ACTING CHAIR: It is time. On behalf of the committee, I thank you for your attendance today. I do not think anyone took anything on notice, did they? No. Thank you very much for coming along.

Short suspension.

EMELEUS, MR TOM, Chairperson, Apprentice Employment Network NSW & ACT
WHITESIDE, MR JIM, Treasurer, Apprentice Employment Network NSW & ACT

THE ACTING CHAIR: We welcome representatives of the Apprentice Employment Network. I remind witnesses 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.

Mr Emeleus: I understand the privilege statement and I am happy to comply with the conditions. Thank you for the opportunity to speak.

THE CHAIR: Thank you.

Mr Whiteside: I am Treasurer of the Apprentice Employment Network. I am also the CEO of a group training company called the Australian Training Company. I understand and am happy to comply with the privilege statement.

THE CHAIR: Thank you. To start, would you like to briefly tell us the context of your submissions and then we will move to questions?

Mr Emeleus: Yes; thank you for the opportunity. The Apprentice Employment Network represents 30 non-profit group training organisations who employ collectively a bit over 450 apprentices and trainees in the ACT. My own business is one of those. We have about 120 and my colleague Jim Whiteside looks after an apprentice training company and has a similar number. So we are reasonably large employers in the territory and we also operate in other jurisdictions.

Our main concern with workers compensation insurance is the relative cost in the ACT compared to other states, and we are doing exactly the same service. By way of example, our apprentices in Victoria essentially are free. So they completely subsidise the cost to encourage apprentices. For my business in New South Wales, it is also effectively zero. In Queensland, we are paying about 40c per $100 of wages and in the ACT it is $3.76. Compared to New South Wales, where I have the majority of my apprentices, it is thousands of times more expensive per apprentice. That then translates into an often prohibitive cost for employers—or, in our case, host employers—to take on an apprentice for exactly the same role in Queanbeyan. Here, we have to charge a dollar an hour more just for the workers comp premium.

That issue and another issue unrelated to this inquiry, the change in the training fund board here, now have our GTO and a number of GTOs in the ACT threatened with continuing. In fact, coming out of my board meeting yesterday, if we did not have interstate branches, it would be questioning the viability of the ACT branch, and we are a significant employer—in my case, completely in the electrical industry, when as a nation we are facing a 32,000 shortfall within the next decade. So it is a critical issue.

The next point I would address is the fact that the cost of fighting what you might describe as dubious claims in the ACT count towards your premiums, and I believe this

is the only jurisdiction where this is the case. So there is a commercial disincentive to fight dubious claims by the insurer and then we, as the employer, will pay for that for multiple years in higher premiums. Whereas, in Queensland, for example, the insurers are actually incentivised to reject a percentage of claims, simply recognising that sometimes there will be some claims that do not have a lot of merit.
We have experienced that ourselves, where we have had a dubious claim which ended up with the insurer settling to make it go away and then we have to pay higher premiums indefinitely.

THE CHAIR: Thank you. Mr Whiteside, would you like to make a brief statement?

Mr Whiteside: I might just add one comment in terms of group training companies and how they operate. There is a distinction between a specialist group training company and others. For example, Tom deals with electricians and apprentice electricians and my organisation is a generalist, and we offer opportunities across a whole range of qualifications. That makes it particularly difficult for the insurers to risk profile you accurately. That tends to mean that occupations which you would think would have a very low risk profile end up being more expensive, because the insurer gravitates the cost to those most likely to have an accident. That is obviously a disincentive in terms of getting young people into training opportunities.

THE CHAIR: Thank you. We will go to Mr Emerson to start questions.

MR EMERSON: You mentioned the training rebates. Is that the halving of rebates that was announced recently?

Mr Emeleus: Yes.

MR EMERSON: It is not relevant to the inquiry, but I was just wondering.

Mr Emeleus: Halving might be the overall picture, but the impact on group training is a lot more significant. It has almost gone completely within this financial year.

MR EMERSON: Are there GTOs that have closed in the ACT or have not set up because of the cost of premiums for apprentices especially?

Mr Emeleus: Yes. Master Builders were running a GTO in the ACT. There were a number of reasons why they closed, but one of them was the workers comp premium—so the cost of doing business here. That put over a hundred construction apprentices out of work. I imagine that they were taken up by other employers to some extent, but it certainly has an impact. It is an impact on growing the business. It is also an impact on direct employment, in that it is a more significant cost of taking on an apprentice. So there is a greater reluctance to do that in the territory. I believe you heard from one of my colleagues yesterday from NECA. We have had members that have moved their offices out of the jurisdiction because of the cost of doing business, in part being the workers comp premium.

MR EMERSON: You have recommended that the ACT follow the frameworks in South Australia, WA and Victoria. I suppose my question is: who is doing it best? What is best practice from your perspective?

Mr Emeleus: From a workers comp perspective, New South Wales has its own challenges too. I guess the circumstances have meant that it is okay for me but not for Jim's business. Victoria, in trying to encourage employers to take apprentices, fully rebates the cost of workers comp premiums. So there is no cost for workers comp to take on an apprentice. So that is the ideal, and other jurisdictions are similar or much lower than here.

Mr Whiteside: Queensland has a model where they put you in one of three groups based on a risk profile. Then you know the known cost of employing that cohort. The Victorian model subsidises it fully. The disincentive in the New South Wales model is that, if you breach a threshold and you are labelled a large employer—and seven per cent of employers in New South Wales are large employers—there is actually a penalty system that applies. So, for every accident that you have, every lost hour that you incur, there is a percentage increase applied year on year until such time as you cannot afford the premium.

Mr Emeleus: Going back to the earlier question, one of our other colleagues, who runs a reasonable sized GTO here in the ACT, has said that she is looking at the ongoing viability of it. Her workers comp premium is two and a half times the rate that we are paying. So we can see why that would be prohibitive.

MR RATTENBURY: Just for clarification, you sort of outlined the different costs per jurisdiction. When you said $3.76 per $1,000—

Mr Whiteside: Per $100.

MR RATTENBURY: Per $100; sorry. In the ACT, is that purely just workers compensation premiums?

Mr Emeleus: Yes.

MR RATTENBURY: What is your view on why it is so much higher in the ACT?

Mr Emeleus: I have been in this role for about 10 years. When I came in, our premium was about a third of what it is now. We had one dubious claim—I will not go into the details of it, but it would not pass the pub test, anyway—and the result of that was the tripling of the premium. We were told at the time that would probably be for a couple of years—and nine years later it is still the same.

MR EMERSON: Was that shown to be a dubious claim or was it settled before being litigated?

Mr Emeleus: It was settled because of the cost of challenging it. It was a pragmatic decision by the insurer.

MR EMERSON: That is what we have heard yesterday as well.

MR RATTENBURY: You said in your submission:

> GTOs have encountered cases where workers' compensation claims initially rejected by insurers are later pursued as civil litigation matters, resulting in significant premium increases. The unpredictability of such costs creates further financial instability.

Can you describe what you mean by that? How is that played out?

Mr Whiteside: The comment is about where it has been determined in the initial assessment that there is no injury and the workers comp insurer has declined to accept liability and it has later accepted a further liability, which has been pursued under a public liability provision and settled.

MR RATTENBURY: Okay; so not workers compensation but they have sort of changed track, essentially?

Mr Whiteside: Yes. That is done where they see that it is financially advantageous to them to do so.

MR RATTENBURY: Do you see a role around the no-win, no-fee lawyer model in the ACT as driving some of those claims?

Mr Whiteside: I think we all have some examples where it has driven those claims.

Mr Emeleus: Yes, certainly. The one that caused us a lot of harm a number of years ago came through that pathway as well. It was settled on pretty good terms—as in the departure of the apprentice and the injury was not related to work and so on—and then a year later one of the billboard type law firms that specialises in this turned up and we ended up where we did.

MR RATTENBURY: Thank you.

MR HANSON: A lot of these law firms, or some of these law firms, will have unions that have a law firm on a retainer. So, if you have a claim, the union has the law firm ready to go to make all these claims, and then the employer seems to be in a very difficult position if it is a dubious claim. So someone is making a lot of money out of this scheme, aren't they?

Mr Emeleus: I do not have personal experience with the union relationship there. It is quite possible.

Mr Whiteside: We are in a unique position because we employ young people. Most of them are not members of the union.

MR HANSON: If we were to change the scheme, do you think that it would eventually lead to an increase in apprentices? If it were an easier or more reasonable jurisdiction to operate in, would we see an increase in the uptake of apprenticeships?

Mr Emeleus: Yes, absolutely. With group training, we are all non-profits, and so we are running on very tight margins. Our main competitor is not each other, but direct employment. When we are talking to prospective hosts, the biggest focus for them is

cost, and an extra five or six per cent increase is material.

THE ACTING CHAIR: We heard this morning about employers not having the ability to challenge claims. Do you find yourself in that situation where, when claims come through, the employer does not have the ability to challenge them?

Mr Whiteside: Absolutely.

THE CHAIR: And that is a problem?

Mr Whiteside: It is obviously a problem in terms of cost. If the claims that we think have little merit for people that we could find suitable work duties for quickly and we are denied that right, then the cost of the claim spirals. The insurer, at some point, draws a line around an economic model and says, "We are prepared to pay out up to this point." Quite often, we will argue that there is no merit in paying anything, but they are not prepared to take the risk to challenge that.

THE ACTING CHAIR: We also heard that there is no statutory penalty for false statements. Do you think that—

Mr Whiteside: I do not know the answer to that.

Mr Emeleus: I should have noted that our executive officer, Jason Sultana, was also due to appear and he sends his apologies. His wife had a bad car accident last night and so he had to return to Sydney. He had that part of the submission.

MR HANSON: I hope they are insured.

MR EMERSON: Hopefully, they were insured, yes.

Mr Emeleus: And his wife is okay, too.

MR EMERSON: That is good.

THE CHAIR: That is good. This may be his thing, too, but I wanted to ask about having a mechanism to assess the bona fides of a claim.

Mr Emeleus: The Queensland model appears to be pretty good in that regard. We get calls from the jurisdictions I run, and we are often surprised by the different upfront approach by the insurer. With a Queensland claim, they might say, "That sounds like one we definitely need to do a factual investigation on;" whereas that does not happen here.

MR RATTENBURY: Why do you think that difference is the case?

Mr Emeleus: I am told that the Queensland model has an incentive in there for the insurers to reject some claims—in other words, to test the veracity of claims—and, as a result, any that sound like they might not have merit are investigated. In New South Wales and the ACT there seems to be a quicker rush straight into "What is it going to cost in processing the claim?"

MR EMERSON: Would you support the introduction of caps on the scale of claims? I understand the ACT is perhaps the only place where claims are uncapped. Is that something that you would support?

Mr Emeleus: Yes.

MR EMERSON: Would you also support a ban on these no-win, no-fee legal services?

Mr Whiteside: Our interest is in looking at whatever medical assistance the injured worker requires to return them to their pre-injury state. So we think the workers comp system should be about fixing the workplace injury and getting the person back on the job. That would negate all of these add-ons that you are referring to.

Mr Emeleus: Just for context, as non-profits, we are not trying to balance employer costs against profit or something. We exist simply to recruit, train and support the next generation of quality tradies and vet they are qualified people. Part of that is, as Jim said, trying to get people back onto the job as soon as possible. That is really the only outcome; get them the qualification and start their career.

MR EMERSON: We had some evidence yesterday from employers in the construction industry about a difference in behaviour in that, when what seems like a potentially spurious claim, it seems to be that the lawyers get involved immediately, there is a settlement and that person does not come back to work, but their experience was that, in a case where there is a legitimate claim, usually it is more collaboratively resolved without lawyers and then that person returns to work with the same employer. You are nodding. Is that something that you have observed as well?

Mr Whiteside: That would be our view.

Mr Emeleus: Yes; anecdotally, definitely.

Mr Whiteside: Workplace injuries that are treated as medical issues are normally fairly straightforward: there is a plan of remediation and there is a return to work strategy put in place. Where there are issues around potential financial windfall, the medical issues become secondary.

MR EMERSON: In that first scenario, is a claim ultimately made or is it often the case that the employer will actually set up a plan with the employee and fund their rehabilitation directly? I am just curious; I am not sure.

Mr Emeleus: We certainly do not do that. If they are injured at work and it meets the threshold for reporting, then we would report it in all cases.

MR EMERSON: So it ends up with a claim?

Mr Emeleus: That, at least, notifies it as a claim. It might end up being a very low- or even zero-cost claim because it is dealt with quickly. But we do not try and manage them outside the compensation scheme.

Mr Whiteside: But it can happen. We are dealing with lots of young people. An example might be a minor eye injury that has occurred at the workplace. Someone saying, "I have an irritated eye," will take themselves to a medical centre and have that looked at outside of the workers comp system. We would still pick up the bills and report that, when it was actually reported to us.

MR EMERSON: Sure. It might just mean that your insurer does not need to get involved because you have resolved the issue.

Mr Emeleus: Yes, and especially if it is not clear that it occurred at work. In that case, we would be trying to support them, because, if they drop out for any reason, we all lose. So we may support them anyway. That would be outside the workers comp. But, once it is clear that it is a workplace injury, it has to be reported and managed through the scheme.

MR EMERSON: Okay; thank you.

MR RATTENBURY: Mr Whiteside, you have, I think twice now, touched on an issue which came up yesterday, which is the issue of lump sum payments versus ongoing benefits or support. Am I correct in picking up that you see that the lump sum payments are a motivational problem?

Mr Whiteside: Yes. We do have a history of that in the ACT.

MR RATTENBURY: I think the suggestion put to us yesterday was that lump sum payments invite settlements and they perhaps invite claims that do not have as much merit; whereas, if somebody is paid on an ongoing basis for their medical care and loss of income, it is a different response.

Mr Whiteside: Yes; that is correct.

THE ACTING CHAIR: In what circumstances would a lump sum be appropriate, as compared to ongoing payments over time?

Mr Whiteside: In the instances where we have been involved in a lump sum payment, it has generally been where the individual is choosing a different career path. So, while they may physically have been able to continue on the original trajectory, post-injury they decide on a different career path, and then they seek financial payment for that change of career.

Mr Emeleus: Another fairly obvious one would be that, if someone had a clear permanent disablement or impairment as a result of a workers comp injury, it would be appropriate to have a lump sum payment.

Mr Whiteside: We have not had that arise.

Mr Emeleus: No; we have not—touch wood.

MR RATTENBURY: That was the question I was looking for. I just needed the word. So thanks for the rescue.

Mr Whiteside: Some of this comes back to a content worker. If people feel happy and feel valued in the pathway, in their learning environment, there is less likely to be an issue. Some jurisdictions, through their workers comp processes, offer some assistance around that.

MR HANSON: What do you mean by that?

Mr Whiteside: Some of the insurers offer programs where we look at workplace conduct, communication and identify a potential hazard in workplaces, and we might go in there with a strategy about how people relate and talk to each other and the like. That, potentially, is an aid in assisting against further workplace injuries.

MR HANSON: Do you have a sliding scale on insurance premiums depending on age? You have a lot of younger people, I presume. Does that attract a higher penalty or a higher insurance cost than the more experienced workers, or is that not a relevant consideration?

Mr Emeleus: We probably do not have visibility of that because almost all our employees are young. So we do not really have a comparison there to see how it would impact them if they were older.

MR HANSON: Okay.

Mr Emeleus: We do know that younger people are more likely to have a minor workplace injury than an experienced worker.

MR HANSON: If you look at car premiums or things like that, there is certainly an impost if you are younger—right?

Mr Emeleus: Yes.

Mr Whiteside: Yes.

MR RATTENBURY: Can I just clarify what you mean by "a younger person is more likely to have a minor injury"?

Mr Whiteside: Yes.

MR RATTENBURY: Does that mean an older person is more likely to have a major injury? Or are you saying that young people just have more injuries?

Mr Whiteside: In the jurisdictions where there is more transparency around cost, an older worker is less likely to have an injury but the costs associated with that injury are likely to be much higher. A young person is likely to have a minor injury with lower cost, but the frequency will be greater.

MR EMERSON: Robust systems can heal quickly.

Mr Whiteside: They are more likely to be a little bit riskier in behaviour and they are

more likely to push the boundaries a little bit. So when I say "minor injury", I am talking about minor cuts, bruises and strains. There is probably a slightly different expectation around what a younger worker can physically perform.

Mr Emeleus: Yes, and they will heal faster.

MR EMERSON: Yes.

Mr Emeleus: If they are young and maybe sprained a shoulder or something like that at work, they will come back much faster than someone my age. Things like back injuries that tend to become large claims and drag out or even cause changes of career are less likely with our young workers.

THE ACTING CHAIR: I want to ask about psychosocial claims. Do you find that they are increasing?

Mr Whiteside: Yes.

Mr Emeleus: Yes.

THE ACTING CHAIR: Can you elaborate?

Mr Emeleus: I will give one quick example—it is not from ACT; it is from the New South Wales jurisdiction: a physical claim that did not have a lot of merit, then became a psychosocial one. They are much harder to defend.

Mr Whiteside: They are combative claims. They are always about who said what and when, the context of it and the tone that was used. The assessment is really subjective and the medical treatment for it is generally fairly vague. Those workers are highly unlikely to ever return.

Mr Emeleus: I was told just recently that New South Wales has enacted legislation to stop the rapid growth of psychosocial claims. We would have to check it, but I believe you have to first establish the claim through the industrial relation system and, if it is found that there is case to answer there, it can then be pursued as a workers comp as well. That is a reasonably high bar to stop people just making a psychosocial claim. Given the conversations in society around mental health and so on, it is important to have some checks and, wherever possible from a pragmatic level, that we can understand what is a psychosocial claim and what is just part of life, I guess.

MS CARRICK: Is there enough education around it for employers?

Mr Emeleus: We spend a lot of time and effort doing that as a group training business, because we do not control the individual work site. So we work directly with our hosts and employers. If we see some of them are more likely to have that issue, absolutely, we are working with them. But, as an industry association as well we would support our members to make it a safe and respectful for psychosocial claims. It is the right thing to do by your employees but it is also a pragmatic way to approach it commercially.

MR HANSON: Have New South Wales brought that in or they are bringing it in or making those—

Mr Whiteside: It has been drafted; it has not passed.

MR HANSON: Okay. But you support the intent of what they are doing, though?

Mr Whiteside: Yes, absolutely.

THE ACTING CHAIR: I think that brings us to the end of our time. On behalf of the committee, I thank you for your attendance today. Thank you very much for coming along to inform the committee.

Mr Emeleus: Grateful for the opportunity.

Mr Whiteside: Thank you for your time.

Short suspension.

BURR, MS AMY, ACT Committee Member, Australian Lawyers Alliance
CARRICK, MR MARTIN, Senior Practice Leader, Slater and Gordon Lawyers
JOWSEY, MS GAIBRIELLE, Lawyer, Slater and Gordon Lawyers
QUILTY, MS LISA, Vice-President, ACT Law Society
WANG, MS AMBER, Director, Australian Lawyers Alliance

THE ACTING CHAIR: I would like to start by declaring that Martin Carrick is my brother. I have spoken to the committee, and the committee has agreed that I will chair the meeting, ask the witnesses to briefly state the context of their submissions and then not ask any further questions.

We welcome representatives of the Australian Lawyers Alliance, Slater and Gordon, and the ACT Law Society. I remind witnesses 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. As we are not inviting opening statements, I will now ask you to provide a brief summary of the context of your submission. Who would like to start?

Ms Wang: I can start, if you would like. I acknowledge and accept the privilege statement.

THE ACTING CHAIR: Thank you. Would you like to briefly state the context of your submission? After doing that, we will move to questions.

Ms Wang: Certainly. The ALA is a national association of lawyers dedicated to protecting and promoting access to justice and equality before the law. Our particular focus in this inquiry has been workers compensation and public liability insurance, which is something our members have direct experience in across the country and in the ACT.

THE ACTING CHAIR: Would anybody else like to say something briefly before we move to substantive questions?

Ms Jowsey: I have read and acknowledge the statement. I am appearing as a lawyer at Slater and Gordon. My colleague Mr Carrick is our Senior Practice Leader. We are a leading plaintiff law firm and we work closely with injured people who are subject to the ACT workers compensation scheme. Martin and I in particular also have experience in working in the New South Wales scheme.

THE ACTING CHAIR: Thank you.

Ms Quilty: I also agree, acknowledge and understand the privilege statement that has been provided to us. In addition to my role as Vice-President of the Law Society, I work very closely in the workers compensation scheme, predominantly acting for insurers and defendant clients.

THE ACTING CHAIR: Thank you. We will move to questions. Mr Emerson, do you have a substantive question?

MR EMERSON: Yes; thank you. My question is about caps on claims. It could be helpful to hear from you, given you have experience in both jurisdictions. What caps are in place in New South Wales when it comes to, say, public liability, workers compensation and even medical liability claims?

Mr Carrick: I will take that question. I have read the privilege statement and accept it. You say "caps on claims". First of all, I do not have experience in New South Wales in public liability, so I can put that aside. We will be talking about workers compensation. The New South Wales system is complex. Perhaps you are talking about the need to cross the thresholds of whole person impairment to access various rights.

MR EMERSON: In the case of workers compensation, yes, given that public liability is separate.

Mr Carrick: Yes. I am not addressing public liability. In the New South Wales workers compensation system, injured workers can be pushed out of the system after five years—in fact, often after 2½ years. To have any opportunity to stay in the system, they have to reach a level of whole person impairment. I would not describe that as a cap on claims, so I am not quite sure whether I understand what you are asking when you say "caps on claims".

MR EMERSON: Throughout the inquiry, we have been discussing the uncapped nature of various forms of liability claims in the ACT compared to other jurisdictions. I am happy for you to interpret the question.

Mr Carrick: I think I understand. In the ACT, there is a right to run a common law claim—for instance, if you can prove negligence without reaching a threshold. In the New South Wales' system, you have to be assessed as having a 15 per cent whole person impairment before you can run a common law claim. That has very significant effects on people. My own view is that it creates unfairness. In particular, reaching the 15 per cent threshold is very arbitrary. That threshold is determined by a medical specialist, but different doctors have different views. You can have two clients with very similar circumstances, with one crossing the threshold and having access to common law and the other not. So there is an arbitrary aspect to it which can be really unfair.

The other thing is that reaching a 15 per cent threshold is very onerous. People would think that 15 per cent is not much of 100 per cent, but, to get to 15 per cent, people have a very significant injury. Using the example of a lower back injury, which is common in construction workers and so on—and I am talking about a genuine injury—one of the big problems is that the tables that are used to assess the injury do not have anything between about 15 per cent and 20 per cent. A lot of people are assessed and, even though they have chronic ongoing pain—and it is accepted by everyone that they are incapacitated for the job they used to do—some of them do not reach that 15 per cent threshold; they come in at 14 per cent or 12 per cent, and that denies them access to common law, even in circumstances where the injury is caused by a really egregious breach of an employer's duty of care. Some really serious things happen and people are badly injured but do not reach that threshold, and that right is taken from them.

I am perhaps over-labouring it, but it does create real unfairness in a lot of situations where people do not get to that threshold when they have serious ongoing chronic problems and incapacity. I say that not just from an applicant or a plaintiff point of view; you also see it in numerous circumstances where the insurer, the employer and everyone agrees that the person is incapacitated for their job and they cannot go back to that work, and often they are unskilled in anything else, but they do not reach the threshold. It is bad luck. They stay in the system for an amount of time, whether it is 2½ or five years, and then they are thrown out of the system and are on social security, even though they have an accepted real injury that stops them from doing the work they used to do.

MR EMERSON: Does anyone else have comments regarding jurisdictional differences?

Ms Wang: I want to expand on what Martin said. The impact of an injury at a certain threshold is often dependent on the type of work you do. I could lose a finger and still do my job, whereas, if you are in a certain trade or industry, that might mean you can no longer work in that trade or industry. So thresholds have a lot of challenges and difficulties for injured people.

Ms Burr: I could speak to other jurisdictions briefly. I have read and accept the privilege statement. I am speaking on behalf of the Lawyers Alliance. At this point, I am an ordinary branch committee member. Tasmania is another jurisdiction of a relatively similar size to ours. Their workers compensation scheme has whole person impairment thresholds in statutory claims and to get over the line to perhaps sue for negligence in common law as well. It is a 20 per cent threshold there for common law—to open the door on it, let's say—but there are other lower thresholds in place just to get what is called a lump sum for permanent impairment.

The premiums in Tasmania are higher than they are here. So, as a way of potentially reducing premiums and so on, I do not think it works. It is a really onerous and draconian model. The tables were never written with these things in mind. The guides were written by the American Medical Association. It says at the start of the book, "Don't use these to assess work injuries," but they are being used in that way, which is disastrous, really, for workers. It affects people in other types of schemes too, such as the motor accident scheme, which the ACT has adopted in recent years, much to our dismay. I could defer to Amber, if you want to hear more about that.

MR RATTENBURY: I might pick up on that because, as Mr Carrick was talking, I was reflecting on the fact that many of the points were made at the time of the MAI changes. Do you have any reflections, now that we are five years down the track—

Ms Burr: We have plenty.

MR RATTENBURY: of the MAI scheme, that might be relevant to this conversation?

Ms Wang: The latest the MAI report was published in December 2024. Nearly 2,000 claims have been lodged, and you can see that the number of people who have been assessed at 10 per cent—which is the threshold if they were not at fault for the accident, unless they qualify as a child or have a significant occupational impact—is really quite

low, and we are five years into that scheme. There have been 39 common law claims lodged and only 14 were finalised as at December 2024, based on this data.

Ms Burr: Our submission urges the territory not to make the same mistake again, as has been made in the motor accident space.

Mr Carrick: One of the aims of that legislation was to cut lawyers out of it. Some people have a certain view of lawyers doing this sort of work. So be it. It cuts lawyers out of it, so I now talk to people who have the problem of being quite unsophisticated and had to deal with an insurance claims officer directly without any help from a lawyer. Some people just fall through the cracks. I have spoken to numerous people who say, "They said I had to give this information." An older bloke who works in his own maintenance business—it is just him doing his job with his ute—was asked for all the technical information. He did not understand what was going on and just gave up. He gets no make-up pay, even though he cannot do the job he used to do, because he could not satisfy the insurer's need for all of that particular documentation. He had no help.

Ms Wang: Martin said that lawyers were cut out of the scheme in the initial defined benefits phase—that is, the lawyers representing injured people. The insurers still have inhouse lawyers and still have external panels, so there is a big power imbalance between the injured person and the insurer in that situation.

Ms Burr: It is the same in workers compensation.

Ms Wang: They are the people that firms largely have to turn away at the moment.

MR EMERSON: You mentioned that Tasmania's premiums are higher. Is that across all industries?

Ms Burr: I got that data from the most recent comparison report from Safe Work Australia. I think Amber has a full copy of it. I have printed the one-page summary. That is a 2023 report. All of us in the Finity space are looking at reports that are two or three years old; we are not looking at current data, and that is a problem. Their standard average premium rate—and I think that is across all industries—was 1.92 per cent of payroll as at 2021-22. As a comparison, here in the ACT it was 1.62 per cent. I cannot give you anything more recent than that.

MR EMERSON: I am looking at the same report. It looks like they are ahead of the ACT in only three of 19 industries. In all the others, the ACT is more expensive. **I** just wanted to check that we are using the same source. It looks like there is a significant disparity in a couple of industries that might bump up the average. For instance, if we use construction as an example and losing a finger, premiums in the ACT are 4.32 per cent. In Tasmania, they are 2.45 per cent. Are you able to shed any light on why there would be differences within sectors?

Ms Burr: That is probably more a question for the insurers. Why are they pitching premiums? Everybody seems to say they are, so why?

MR HANSON: One of the claims that have been made by people appearing before us is that the issue of dubious claims in other jurisdictions is treated differently. The

assertion is that, if a dubious claim is made in the ACT, it is very difficult for that to be contested. Do you have a view on that?

Ms Burr: Maybe Lisa could speak to that.

Ms Quilty: I can perhaps address you on that, Jeremy. May I please just reinforce that, in the work that I have done for insurers in a defendant capacity, claims are investigated very fulsomely prior to being referred to legal providers. There are two aspects that we investigate. One is the factual investigation. I believe it was alluded to by my panel members that there is the statutory scheme, workers compensation, where we are dealing with issues of incapacity, treatment expenses and potentially a permanent impairment lump sum compensation that might be available. I can speak to that in a minute. We also have the common law. We have an unfettered jurisdiction in the ACT. There are no thresholds. You can lodge that claim. There is no sliding scale in relation to GDs, which makes us quite unique to other jurisdictions.

In terms of the investigation piece, I had the benefit of listening to some of the evidence that was provided yesterday by a number of parties. There was a level of suspicion that perhaps those investigations were not taking place. I can assure the committee that those investigations do take place. At the point of lodgement, appreciating that the workers compensation scheme is no fault—it is a statutory scheme—investigations take place to determine whether an injured worker ought to receive benefits under the statutory scheme that is built for them. If it is determined that the claim ought to be declined based on those initial investigations, often they involve factual investigators, or it may be that there is no contest—in relation to the incident perhaps having occurred, but there is a question around it falling within the incapacity provisions. That goes to a medical professional, who will ask, "Are you incapacitated or is there is dispute around treatment?"

If the claim is declined, there is scope under the act for that declinature, or the rejection of that claim, to be challenged. It then falls within the Industrial Court, which sits under the Magistrate's Court, for an application for arbitration. At that point, the matter is generally, in my experience, referred to a lawyer—a panel firm. If I received that brief, we would immediately investigate. I am sure—

Ms Burr: The plaintiff lawyers are doing the same before it gets to—

Ms Quilty: Correct.

Ms Burr: the later stages. I could say that, for all our members, it is happening every day.

Mr Carrick: I reckon it is rare that someone absolutely fabricates a work injury. It is really unusual. What happens for a person with a genuine work injury is that, as their claim progresses, there is a difference of medical opinion. I think that some employers are told by the insurer that, perhaps, that is partially going on. Employers hear, "Our medical evidence is that this person doesn't have an injury." That is a medical opinion. There are other opinions. That is not a fraudulent claim or a spurious claim. That is a proper claim where there is a difference of medical opinion that has to be worked out. I just do not accept the odd notion that there is all this—

MR HANSON: As I understand it, there is no penalty for making a spurious claim in the ACT, whereas there is in other jurisdictions. Is that right?

Ms Burr: The Workers Compensation Act refers to the Criminal Code near the start of the act. If you are completing a false claim form, it would be referred to the AFP or ACT Policing if necessary. There are a number of spots where they could intercept—

MR HANSON: Sure. But, in other jurisdictions, that is within the relevant act, whereas here you have to make an entirely separate criminal case against the individual. Is that the—

Ms Burr: I do not think we would oppose legislative reform that brings in some penalties, in specific terms of—

MR HANSON: Okay.

Ms Burr: We are not encouraging that sort of behaviour at all, of course.

MR HANSON: No—but it has been put to us that that is a factor and that the difference here in the ACT, compared to other jurisdictions, is that it is a lot harder to litigate or argue a dubious claim, because of the way the legislation is bolted together. You have to call in the police rather than deal with it through the Workers Compensation Act. You would be quite happy to see similar provisions as in other jurisdictions?

Ms Burr: I think we would say yes to that.

Mr Carrick: It depends on what those provisions say.

MR HANSON: Sure, but philosophically.

Mr Carrick: The criminal prosecution of someone who has made a false claim could happen here. As Amy said before, by signing a declaration that is untrue—

MR HANSON: Sure.

Mr Carrick: But regarding criminal prosecution in the circumstances that I was talking about before, where there is an injury but there is a difference of opinion regarding medical evidence, criminal law has no place in that.

MR HANSON: I do not think that is what has been presented to us.

Mr Carrick: So you are going back to the notion that people are willy-nilly completely fabricating claims, and that is—

MR HANSON: What I am going to is the evidence that we have been provided.

Mr Carrick: The anecdotes that have been provided. I wonder about pinning down exactly what the real facts were in one of those anecdotes.

MR HANSON: The difference in the legislative framework between here and other jurisdictions is, I believe, evidence, not an anecdote.

Mr Carrick: Is there evidence that, in those other jurisdictions, no-one makes a false claim because there are some criminal provisions?

MR HANSON: No—but we are trying to establish it, aren't we? We are trying to work out whether that is something, because, at the moment, the premiums are higher in the ACT and we are trying to understand why that is. And that is one piece of anecdote, evidence or fact—whichever way you want to characterise it—that has been presented to us, and we are trying to understand what your view of that is.

Ms Jowsey: Having had the opportunity to hear the evidence that was presented to this inquiry yesterday, the degree of concern that has been shown about fraudulent claims is something that, as lawyers who represent the injured workers, we would categorically deny—that there is such a large volume of fraudulent claims that it would have an impact on the premiums. The data that is presented by the Finity reports does not differentiate fraudulent claims or make note of them in any substantial way. So, if that is of such grave concern—that it could be impacting premiums—perhaps the next Finity report ought to address that separately.

MR EMERSON: The evidence we received—and you watched it as well—was that, basically, there is no way to reach the point where it is clear that something was a spurious claim, because so many of these cases are settled before being litigated.

Ms Jowsey: We, as lawyers, investigate our own plaintiffs before they make any steps towards settling a claim. By virtue of our fee arrangements, it is incumbent upon us to be cautious about the claims that we run. We would end up footing the bill for any claim that was unsuccessful on the basis of fraud. By virtue of that, those claims are weeded out, if they are present at all, in our own investigative processes, and—

MR EMERSON: Would your level of caution change if there were statutory penalties, as Mr Hanson has asked about, in the ACT, as there are in other jurisdictions?

Ms Jowsey: Fundamentally no, because we are agents of the court.

MR EMERSON: But you are supportive of that potential reform?

Ms Burr: We are already officers of the court. We cannot do our job without doing it honestly and truthfully. In the case of a common law claim, if we are commencing that sort of action, we have to sign a certificate as to reasonable prospects of success. There are disciplinary consequences for us personally if we sign those untruthfully. We take it very seriously.

MR HANSON: Regarding your fee schedule—no win, no fee—how do you calculate it? Is there a fixed fee or a percentage, or is it—

Ms Burr: No. That is not lawful in the ACT. That was misinformation given to you yesterday in this inquiry.

MR HANSON: How does it bolt together, then? Do you look at the individual case and then come up with a negotiated fee, or—

Mr Carrick: The insurer pays our fees. By the way, those fees are capped at two-thirds of the Supreme Court scale. We are paid a modest amount at two-thirds of the Supreme Court scale for workers compensation matters. We are not charging our clients; we are not taking a percentage. I distinguish that from common law matters. That is a different arrangement.

MR HANSON: So, if there is a payout, do you get a fixed fee or a per-hour fee or do you get a percentage?

Mr Carrick: No.

Ms Burr: No. We usually charge an hourly rate. We have never come up with a better system.

MR HANSON: In six-minute increments, isn't it?

Ms Burr: Yes; indeed. If you come up with a better idea, let us know. Proportionality has to be applied. Fees cannot outweigh the settlement itself and the client must recover the bulk of the pool of funds. And we have to provide a costs disclosure upfront and our signed costs agreement, which a client can accept or not accept at the start of a matter. They can shop around if they want to.

MR EMERSON: Sorry to jump in. There are no percentage arrangements in any of these kinds of claims—workers compensation or public liability?

Ms Burr: Not in the ACT. Absolutely not.

MR HANSON: But in common law, if there is a payout, you take a percentage of that as opposed to—

Ms Burr: No.

Mr Carrick: No. We usually charge for the work we do. We keep a record of the work we do. It may be that there is a big case where the fee is relatively low because the case went in a very straightforward way and settled, as it should, at an early time, and there may be a case of lesser damages value, but it has twists and turns and difficulties that mean that our fee is higher. But we only charge for the work we do. We keep a record of what we do.

MR HANSON: I am speculating here. If a matter settles, there is less money in it for you—and that is probably the wrong term—but, if it goes to court and it goes on for weeks—essentially, the more cases settle, the less they make—

Mr Carrick: The longer it goes, the more risk for us and our client. We are very happy to settle cases properly as early as we can.

MR HANSON: I see. So there is a risk-reward element to it?

Ms Burr: Yes. The gap gets bigger the longer it goes on, so it is—

Mr Carrick: The plaintiff's lawyer will want to settle the case, as long as it is a fair settlement for their client, as soon as it can be done.

MR HANSON: From your point of view, premiums in the ACT seem to be higher. Why is that? Is it because of profiteering by the insurance companies? What are the factors?

Ms Wang: I think that everything in Canberra tends to be slightly more expensive than the national average. You can look at the fact that we have higher wages in the ACT, and our medical costs are higher. There has been a lot of talk in the news media recently about these things. We are also a smaller jurisdiction. It is a product, I believe, of those issues.

Mr Carrick: We also have a better system.

Ms Wang: We do; we look after—

Ms Burr: We do not want to be racing to the bottom. We want to be leaders with respect to how injured people can recover after they have been put through something that is life-changing.

MR HANSON: We would all agree with that, but there is a balance between that and the premium paid, because of the effect of the premium on business. We have heard evidence of apprenticeships and other matters being closed down because of high insurance premiums—GTOs going interstate and that sort of thing. Certainly, we want a good scheme—that is what we are here for—but we also want to make sure that it is not an impediment and that people then take their business to other jurisdictions where those premiums may be less, particularly if they have the ability to do that, and some companies do.

Ms Jowsey: I know that New South Wales has been used as an example in a large volume of submissions in this inquiry. I refer to our submission, which notes the recent changes in relation to premiums. They have been kept artificially low in New South Wales for a substantial amount of time, and the scheme led by the Nominal Insurer there has effectively haemorrhaged money. That has required bailouts from the government. There is a high possibility that, after the capped premium period passes in three years time, at which point premiums, on average, could be up to 22 per cent, they will go up even further, because 22 per cent was the break-even point that was presented by icare to the New South Wales government. That is not a profit, and there is nothing to say that there will not be a higher break-even point in three years time, given the way the economy is trending. As a comparison, the data that we have at the moment is not current.

Mr Carrick: That is a 22 per cent increase on the premium, not 22 per cent of payroll premium.

Ms Jowsey: Twenty-two per cent on average of payroll premium.

MR RATTENBURY: In your submission you made quite a point around the availability of the Finity report. I can assure you that the inquiry submissions closed on 14 March by coincidence.

Ms Burr: It is late. Finity get paid quite well and we would like to see their report.

MR RATTENBURY: When someone asked, you said that, normally, it is due to be published by 31 March each year. Have you seen it yet?

Ms Burr: No. I have checked the website every day and it is not there. We pay $800,000 a year, or whatever it is, for that report. As taxpayers, we would like to see it.

MR RATTENBURY: In previous years has it tended to come out on time?

Ms Burr: I cannot answer that; I do not know.

MR RATTENBURY: That is fine. I am trying to work out whether there is a reason that it is not on time this year.

Ms Wang: That is all probably a matter of public record. They are all published on the website, anyway, so that will be identifiable. I think it is important that that report is to hand, because part of the terms of reference here is to look at current trends in insurance. If we do not have current data—you are hearing a lot of anecdotal evidence, but we need hard evidence. When there are independent actuaries that are providing these reports for the government, and have been doing so for some time, it is important that that material is in front of you, so that you can base your considerations on data and facts as well.

MR RATTENBURY: As you observe, that data has been available for some time. Given your focus on the availability for the last 12 months, are you expecting a significant change in the last 12 months, or can we draw a reasonable conclusion from the long-term dataset?

Ms Burr: This would be anecdotal evidence, but I—

MR RATTENBURY: I am asking for your opinion on the datasets.

Ms Burr: My opinion, from my work, and not really while wearing my Lawyers Alliance hat, is that I have not seen any major changes in the work we are doing, at least in workers compensation.

MR RATTENBURY: With respect to any questions that we want to ask about the data, even without the availability of this year's Finity report, we could draw reasonable conclusions. It would be ideal to have the report—do not get me wrong—but you seem to be very focused on the immediate report. That is why I want to understand whether you think it will make a material difference to our consideration.

Ms Wang: I am not sure how the inquiry can consider current trends without current data. If you would like us to comment on that report, if the report could be provided to

us, we could answer that question on notice.

MR RATTENBURY: We will ask the government this afternoon where the report is.

Ms Wang: Thank you.

MR RATTENBURY: We will find out why it has not yet been published.

MR EMERSON: I want to come back to the point that you were making, Ms Jowsey, about the artificial suppression of premiums in New South Wales. Ms Burr, you were also talking about the workers compensation scheme. Do we have the most generous workers compensation scheme? How would you describe it? You were saying that there should not be a race to the bottom, which I think we all agree with.

Ms Burr: I think there are limitations in our scheme in other ways that are just as relevant as if you were looking at other schemes.

MR EMERSON: But compared to other jurisdictions—

Mr Carrick: It is hard to compare things. It is not apples and oranges, in a way. It is hard to compare one scheme with another. In one scheme there are some good aspects and bad aspects, and likewise in another.

Ms Burr: The Safe Work report has a helpful "who does what, where" table which might be useful for you to pore over at a later time.

MR EMERSON: In terms of workers' rights, we might be in the middle of the pack, not at the top of the heap?

Ms Wang: It is not the worst scheme in Australia.

Ms Burr: Yes.

MR EMERSON: Is it the best? Is it the second-best?

Ms Burr: I do not—

Ms Wang: We do not—

MR EMERSON: Is there a better one? Whose is the best, if it is not ours?

Ms Wang: You are not comparing the same things.

Ms Burr: We do not work in all the other jurisdictions. It is hard to answer.

MR EMERSON: We did start with that comparison. You were saying that there are these limitations in New South Wales. You mentioned that Tasmania has limitations. We are happy that we do not have them—

Mr Carrick: We know about those ones, but I do not know anything about South

Australia, Western Australia or Queensland.

Ms Quilty: I think we are pretty close to WA. WA and Tasmania would be the most comparable, I would think.

Ms Burr: I do not know about WA.

Ms Quilty: WA is quite similar.

Ms Wang: I would like to make the point that, even if we change our scheme, workers are still getting injured. The injuries are still happening, whether or not you change the rights that they have to obtain compensation. We think workers have a right to be safe at work, and they have entitlements there. It is important to understand that if rights under the workers compensation scheme are dialled back, where do those people turn to for support for their health care? We already know that there is significant strain on our healthcare system. In particular, Canberra Hospital has been in the news a lot.

We know that when injured people need treatment and they are not funded by the insurers, they turn to the public healthcare system, and they might be more reliant on Centrelink or NDIS—schemes like that. For every right that is removed, you have to think, "What will the outcome be for that person, psychologically and financially?" What will be the outcome for the territory and the community as a whole? Who will bear that cost?

Ms Jowsey: I will address what you were raising in respect of the two schemes that I practise in. In the ACT we have the availability of the person who is physically injured having treatment and assistance in respect of a psychological injury as well, which is essential. Most people, as humans, can recognise that a physical injury will have a detrimental impact on your psychological wellbeing.

In New South Wales, when you have a singular injury that is physical, and if there is a psychological component to that claim, at the time of reaching the threshold where you might have a permanent impairment claim, you have to elect to pursue either your psychological or physical injury. Generally speaking, for a psychological injury, it is much harder to reach the thresholds. In respect of those thresholds, a physical injury threshold is 11 per cent; a psychological injury threshold is 15 per cent. I think that the ACT scheme as a whole has a more holistic sense of the entirety of a person being impacted by an injury.

Ms Burr: In the ACT there is no lump sum for psychological injuries at all, so in that sense we are down at the bottom of the line on comparisons in that regard.

Ms Jowsey: But treatment-wise, it is so much more beneficial.

Ms Burr: You can seek and receive treatment, yes.

MR EMERSON: I have had a look at the submissions, but were any recommendations made by any of the witnesses about improvements to our workers compensation scheme that would make it more generous?

Ms Burr: A question on notice?

Ms Wang: Yes, I think we would take that one as a question on notice because we were looking more at the terms of reference and the concern about costs.

MR EMERSON: Which would be best, on the generosity of the scheme?

Ms Wang: I think—

MR EMERSON: Can you see the point I am making? We have had evidence that maybe there is a tenuous link between the cost of premiums and how generous a scheme is. At the same time it is being said that the scheme is so generous that we really should not change it. I am not saying one thing or the other; I am just trying to understand the evidence.

Ms Quilty: The PI aspect of the workers comp scheme does not feel that it aligns with other jurisdictions. We still have a schedule of maims. I believe it is under schedule 3 of the Workers Compensation Act—or is it schedule 2?

Ms Burr: Schedule 1.

Ms Quilty: My apologies. But it is quite cumbersome. Certainly, when I brief doctors and ask for a PI assessment, they say to me, "Lisa, how do I assess this? Is it under AMA?" "This is the guide; it is schedule 1. Make an assessment." That ties into what Amy mentioned earlier. There is no scope under that schedule to provide for a potential PI lump sum comp for psych. That is missing, unless we can point to a brain injury or something like that.

Ms Burr: True, yes.

Ms Quilty: I think that schedule needs to be looked at, whilst we are on that topic.

Ms Burr: There are a lot of other missing body parts, too, in the list.

Ms Wang: In that list, yes.

Ms Quilty: Yes, and you probably know about it better than I do. Certainly, when I am engaging with experts, they say, "How can I provide you with an assessment?"

Ms Wang: Yes, that is right. Often, we are dealing with things like chronic pain as well.

Ms Quilty: Yes, which is not contemplated under that schedule.

Ms Wang: It is just not part of that.

MR RATTENBURY: The committee has received, through the last day and a half, quite a number of people critiquing the "no win, no fee" model.

Ms Burr: Yes, we have heard that.

MR RATTENBURY: I suspect you might have. They have talked about the way it is regulated in other jurisdictions. Do you want to comment on any of those observations? Given you have heard them, I will not bother repeating them. Do you have any reflections on what has been told to the committee so far?

Ms Burr: In New South Wales there is no restriction on it, and we keep looking to New South Wales for other examples. In some other jurisdictions there may be pieces of legislation which make it difficult for a lawyer to advertise and say, "If you have a claim, call me." They can say that. They can say, "If you have a claim, call me," but they cannot encourage the making of a claim. The Lawyers Alliance also operates under that same policy. We do not chase ambulances. We do not encourage our members to do that sort of thing.

Ms Wang: In most instances the claim has been lodged before we are even approached. Often, we are approached because something has gone wrong; there is a power imbalance and they do not know what to do. "No win, no fee" is there to enable injured workers to deal with their claims, and that is exactly as it should be, due to that power imbalance between injured workers, their employer and insurers. Insurers have lawyers, too; so should injured people. Most lawyers in the personal injury space across Australia do work on that basis.

Unexpected legal costs, when you have been injured, are not something that people would generally budget for. They did not expect to be injured in the first place, and to have to pay up-front, monthly or weekly to their lawyer to bring a claim, when they are already suffering from a loss, would be significant.

Ms Burr: We have talked about medical reports and doctors who have been asked to assess injured workers. Those reports cost thousands of dollars at a time, so firms who offer that "no win, no fee" usually also offer a funding model to gather that evidence; otherwise people just could not afford it.

MR RATTENBURY: The firm is holding the costs of those reports?

Ms Burr: Absolutely—for years and years at a time, in some cases.

Ms Wang: Whether the claim is successful or not; that is right.

Mr Carrick: I am perhaps repeating what has been said a little bit, but many people would not be able to access the workers comp system without that system. If we were to bill our clients, as we said, after they have been injured and are unable to work, they have no income. What do people do then, if their lawyers are saying, "Put 5,000 bucks in our trust account and we'll talk to you"? They just will not get access. It is about access to justice.

MR RATTENBURY: There is a counter argument, and we discussed costs yesterday afternoon, and it is an access to justice question as well.

Mr Carrick: Exactly.

MR RATTENBURY: Do you have any estimates, or is there any data, on what

percentage of workers compensation matters—to try and put a parameter on it—would be done as "no win, no fee"? Does anyone have data on that?

Ms Wang: The vast majority of them.

MR RATTENBURY: The vast majority?

Ms Wang: Unless they are a Comcare claim.

Mr Carrick: In the ACT system, all of them, I would say.

MR HANSON: Of those cases, how many are successful? Do you keep—

Ms Wang: That would probably be a question for the insurers, more than for us.

MR HANSON: Before you take a case on, there will be those cases where—

Mr Carrick: Most of our cases settle, so most are successful. As to the percentage, I could not tell you; clearly, it is most. That is because we are careful regarding what we take on. We do not encourage people with weak claims to run them, because that does not help us or them. We settle most of the cases because they are proper cases and people have proper entitlements. The insurers see that in the cases that we take on, and they talk to us about settlement, because they know our clients have a proper claim to run.

MR HANSON: What is the percentage that settle as opposed to going to litigation, going to court?

Ms Burr: About 98 per cent, I would guess. If all the matters that were started in the courts finished in the courts with a trial and a verdict, we would be waiting for 10 years for a judgement each time, I would imagine.

Mr Carrick: The vast majority settle—I am saying the same thing as before—because they are legitimate, proper claims where the person has a proper entitlement, and the insurer sensibly talks to us about settling those cases, and the vast majority settle.

Ms Jowsey: It is worth noting that, with the vast majority of the matters that do end up in a court hearing, we are dealing with legal grey areas. With the ones that are quite straightforward, for the most part there is sense on both sides. The plaintiff lawyers are aware that dragging an injured person through a costly, lengthy court process, essentially, is to their detriment. The insurers, for the most part, are cognisant that the law is made out and is clear in many aspects of this area of law, and there is not necessarily a need to battle it out in court.

MR HANSON: Which sectors create the most amount of claims? Is it construction or—

Mr Carrick: We would have to see some statistics.

MR HANSON: What about anecdotally?

MR EMERSON: For your firm?

Mr Carrick: People doing physical work are more often physically injured than people doing white-collar work; that stands to reason, and that is the case. Higher risk occupations, at least in my experience, have more injuries. With people working in construction, in steel fixing and scaffolding, there are more injuries in those areas, I think. I do not have any statistics to back that up.

MR HANSON: Anecdotally, it makes sense.

Mr Carrick: That makes sense. If you go down that path, you have employers that are upset because there are more injuries in their employment—people working in construction. The question then is, "Why are people getting injured in your employment?" There is no point just blaming the injured worker, and blaming the insurance company for putting premiums up, if you are not running your construction business in a way that protects your employees.

MR HANSON: In construction, how many of those claims would come up through the union to you as opposed to going direct, because you have, I presume, a retainer with the union?

Mr Carrick: I could not speak to—

Ms Jowsey: It is fair to say that it would be very difficult to tell. Plenty of injured workers are union members, but that is not relevant to our initial inquiries.

Mr Carrick: I just do not know.

Ms Burr: Mr Hanson, the WorkSafe material might have some information about what industries are producing the most claims.

Ms Wang: The Finity report might assist you with that.

MR RATTENBURY: Ms Quilty, given that you have worked with insurance companies, I will ask you this: a number of the concerns put to us—picking up on your point, Mr Carrick—are about where businesses are making an effort to run a safer workplace, and that not being reflected in their premium. To your knowledge, is there any difference for those workplaces that do invest in decent safety protocols—any differential in their premiums? Do you have any insight into that?

Ms Quilty: I do not believe that is a factor, Mr Rattenbury, at the point at which a premium is assessed. I have had some very frustrating conversations between employers and my insurer clients, when I am representing them, where they say, "We have SWMS and safe work practice policies." The issue is that, because we have this quite unfettered common law scheme, notwithstanding that you might have had all of those policies and procedures in place, it may not get you across the line, from a defence perspective, to defend a claim.

If claims are brought in negligence, generally, there will be a breach of stat duty tacked

on, which means that, if that is successful, there cannot be a "contrib neg" argument raised. These are the sort of things that are then factored into advice that is provided to insurers, and in putting a value on a claim.

I would echo the sentiments of my counterparts today, and I was going to expand a little further. Mr Hanson, you asked about where we are seeing more claims raised. I think that psych injuries are becoming more prevalent. There is a complexity there because we cannot just send that person for an X-ray, an MRI or a CT. Particularly under the statutory scheme, it is a perception piece.

There is case law. If you are bringing a workers comp claim for bullying or harassment, for example, we do not look at normal fortitude or reasonable foreseeability. If you perceive that you have been bullied or harassed in the workplace, you will succeed. Amy might—

Ms Burr: I might object to that.

MR RATTENBURY: Why don't you finish the point; then we will let Ms Burr jump in?

Ms Quilty: Would you like to jump in?

Ms Burr: We work on the opposite sides of the same coin, so Lisa and I will not always agree on everything, I suppose.

Ms Quilty: Of course.

Ms Burr: But there is scope for insurers and employers to reject psychological injury claims—

Ms Quilty: Yes, there is.

Ms Burr: based on a list of things set out in the act.

Mr Carrick: Reasonable action taken for discipline or—

Ms Burr: Performance review et cetera.

Mr Carrick: performance appraisal, transfer, demotion.

Ms Burr: We all, at this end of the table, see a lot of claims rejected on that basis. Another point to make is that there may not be more psychological injuries happening in the workforce. I think there are more claims being made because people are talking about it more. There is more awareness of it; it is destigmatised. R U OK? Day, Black Dog Institute and Movember: there is so much more awareness of how we feel as human beings, and people talk to their doctor about it and think, "It's actually work that has caused me to feel like this," and they will make a claim.

MR HANSON: On these injuries, we have heard that New South Wales are making some amendments and that they have some draft laws.

Ms Burr: Yes, supposedly.

MR HANSON: Have you seen the draft or not?

Ms Burr: We have not seen them yet, I do not think.

Mr Carrick: I have not seen the bill.

Ms Wang: We are awaiting the bill.

Mr Carrick: We have heard that this is proposed but I have not seen the bill.

Ms Burr: The way it was presented in the media by the Premier was quite disappointing; he blamed it on young people—"snowflakes"—and victim blaming, yet again. We find that abhorrent, basically, but especially when young people are blamed for pursuing their rights.

MR RATTENBURY: Did the Premier actually use the word "snowflakes"?

Ms Burr: I will not be quoted on that, but I have read it somewhere.

Ms Wang: And this is in the context—

MR HANSON: Normally, it is me, as the old white man, that gets the blame for everything!

MR RATTENBURY: Ms Wang?

Ms Wang: It is important to note that it is in the context of the ACT government having only recently introduced additional workplace health and safety rules to require employers to take measures to protect injured workers in their workplaces, and that was a national initiative. People are aware of psychological injuries, and that is part of that right to be safe at work.

There has been a lot of quite emotive language that has been presented, during some of these appearances, about claims. I would like to make the point that the injury process is not easy on injured workers. There is a large body of evidence that is gathered by both sides. It can be quite intrusive. For example, they might have surveillance on them. Their social media might be reviewed. Their medical records dating back a couple of years might be obtained. They might have their bank records subpoenaed. It is quite an invasive process, so it is not an easy process.

That is particularly the case when it is a psychological injury claim. I think it is important for the committee to be aware that it is not a matter of people winning a war, as we have heard talked about; it is a case of getting compensation, whether that is statutory compensation or common law compensation, which are calculated differently and in accordance with evidence, the legislation and case law. It is the same process in common law that a court would follow when making a decision. We follow court precedence as well. There are a lot of moving parts that need to be considered.

Ms Jowsey: The fundamental tenet of the workers compensation scheme is to put people back in the position that they would have been in if they had not been injured. I know there is a lot of talk about uncapped liability. Fundamentally, when we make these claims, they are calculated based upon the position that the person was in prior to their injury. We are not taking somebody who was earning $800 a week and claiming millions of dollars in prospective future income; that is not the way these calculations are completed.

MR EMERSON: From your own experience, how many cases that come to you do you reject? Can you give us the proportion of the calls you get in a day or in a week or a month?

Mr Carrick: I do not keep statistics or have statistics in my head about that. I could not say. We would take on more than we reject, but I could not give you the—

MR EMERSON: Even a ballpark? I am not trying to trick you to answer. It is just—

Mr Carrick: I would just be guessing.

MR EMERSON: How many of those that you do take on would end up being unsuccessful?

Mr Carrick: Very few, because we are careful what we take on.

MR EMERSON: That first question is important. So, if very few are unsuccessful, it may be less than 10 per cent. Your business model would be—

Mr Carrick: Unsuccessful would, I think, be in that range, yes.

MR EMERSON: Okay. So, back to the no-win no-fee, why not just do no upfront fees if you are pretty confident of a win when you take a case on? What is the benefit of this no-win no-fee arrangement as opposed to just no upfront fees?

Mr Carrick: In workers comp, again, we are being paid by the insurer. So it is sort of irrelevant in a way. We are not taking any money from our client in a workers compensation matter. So I cannot see the difference there. In a common law matter, our client is paying us later.

Ms Wang: The only difference is, of course, that, if they are not successful, they then do not have to pay our bill.

Ms Jowsey: This is perhaps not necessarily an answer in a business sense, but we are dealing with people who are in the most vulnerable position that they have perhaps been in ever. We are their lawyers and that is our fundamental duty, but we also need to be able to build a sense of trust with people, and receiving a bill from a lawyer certainly does not help that relationship and that rapport.

Ms Burr: Lisa might vouch me on this. In another role I have in the Law Society in the regulatory space, a lot of complaints between clients and the society's members arise

out of cost disputes or cost problems, let's say. Those are typically not personal injury matters; they would be family law and commercial matters, where clients are being billed along the way and things start to maybe get a bit fractured at some point or another—the relationship there. The no-win no-fee model does not create that problem, and that is a good thing for our people who are already injured and are struggling.

Ms Jowsey: Because we deal with proportionality, at the point that the claim settles, our fees at times are adjusted to reflect what that person is likely to receive.

MR RATTENBURY: Just on that, what do you mean by "adjusting"? The earlier conversation was, "We only bill people for the work we have done." So what is a proportional adjustment?

Ms Jowsey: If, for example, somebody was receiving a lump sum at a settlement event and it was looking like they were not going to achieve an outcome that was going to be overly favourable—perhaps they might be off work for a further period of years and whatever amount they are receiving only just barely covers what they might need to get by in that period of time--plenty of times our fees are—

Ms Burr: Reduced.

MR EMERSON: So it is a proportion of what would be your normal billable rate—maybe a per cent of what you would normally do per hour or whatever?

Ms Burr: My firm does not apply a percentage on it at all but we look at what is—

MR EMERSON: Sorry; I do not mean on the payout. I mean that, if normally your rate is X and they do not get as great a result, you might do 60 per cent of your normal rate or whatever.

Mr Carrick: Or something like that.

MR EMERSON: I am trying to understand.

Ms Burr: Yes, that is pretty good.

Ms Wang: I think one of the advantages in the ACT is that, when we do negotiate costs with the insurer—and Lisa will be able to speak to this—there are usually two negotiations. There is the negotiation about the compensation amount and then the legal costs, which is a separate negotiation often or a separate amount, a delineated amount, for party-to-party legal costs. Often, for example, in New South Wales, it will be all an inclusive one large amount. But there is greater transparency when they are negotiated as two amounts, which is the standard way for us to negotiate in the ACT.

Ms Quilty: I think that is right, Amber. Particularly under the current scheme for workers comp, we cannot negotiate an amount for settlement that is inclusive of costs. If we are commuting a worker's claim, it has to be excluding costs. Then I would go into a secondary negotiation with some of the panellists here today to talk about what those costs might look like. It is quite prescribed under the workers comp act. Under the common law regime, there is scope to do an inclusive of costs settlement. But, again,

unless there is a public liability insurer, if it is a straight workers comp employment injury, we would still tend to separate those two issues out. So the injured worker has had the benefit of their settlement, and then I take negotiations offline with their lawyer to work out what costs might look like.

MR RATTENBURY: One of the concerns put to us through evidence at various points yesterday was the distinction between lump sum payments and an ongoing payment of support, and perhaps the motivations that sit behind those different approaches. Do you have any observations on why lump sums are important and whether one approach is better?

Ms Jowsey: My initial thought would be that lump sums provide finality and allow an injured worker to walk away from what has been a very difficult time in their life and move on, which is essential in many senses. But, in addition to that, speculatively, in New South Wales, claims are long tail. There is more involvement by insurers longer term. It would be hard to imagine that that would not in any way contribute to premiums—

MR RATTENBURY: Because there is an ongoing sort of supervision and engagement?

Ms Jowsey: That is correct.

Ms Wang: It is similar in the Comcare scheme in that they might be on this scheme for many years, and every six months, every year or every month they have to go to the doctor and get an assessment and there will be another independent specialist that they have to tell their whole story and their medical history to again. So long tail schemes can be quite traumatising for people who would just like to be able to close and move on as best that they can.

Ms Quilty: I would agree with Amber and Gabby. From the data that we have received and the anecdotal evidence that we have received, the sooner that we can bring some finality—not wishing to shortchange an injured worker who is navigating their way through the compensation space—means that they are not going back to the doctor having to get a medical certificate every two weeks and they do not have a rehab provider. Certainly the advice that I give my clients is, "Let's step through," and I work with my counterparts in relation to that.

Ms Wang: This is why we negotiate rather than litigate on most occasions. You have to understand the cost and the toll on the injured worker but also reputational damage for an injured worker and potentially the business as well.

Ms Burr: And the cost to the employer of showing up to be a witness in court and all those things, which is taking them away from their productive work. All those things come into the decisions we need to settle.

Ms Quilty: Correct. There was another thing that I had listed—I cannot recall who touched on it—was the availability of medical experts. In the ACT there is quite a shortage. I am not just talking about in a medico-legal sense. When we are trying to book in workers to see even a treater, that can take time too. That is obviously a matter

that is outside the remit of the committee, today but there are all these factors that can add to the time that is required to progress a claim.

THE ACTING CHAIR: On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice—and I think there was one—please provide your answers to the committee secretariat within five business days of receiving the uncorrected proof *Hansard*. Thank you very much for coming along today and informing the committee.

Hearing suspended from 12.02 to 1.02 pm.

HARFORD, MR GREG, Chief Executive, Canberra Business Chamber

THE ACTING CHAIR: We welcome Mr Greg Harford, from the Canberra Business Chamber. 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. Would you please do that, and then maybe just give us a brief outline of the context of your submission?

Mr Harford: Absolutely. I have read and understand the privilege statement. Thank you very much for the opportunity to be here today to speak to you. Most importantly, I thank the committee for undertaking the inquiry in the first place.

Insurance is a massive issue for members of the Canberra business community, and it is something we hear a lot about at the Business Chamber. We consulted our members as we prepared our submission, and there is almost universal agreement that the current system of insurance, particularly for workers compensation, is broken. Business cannot operate without insurance. The availability and affordability of it is critical to everyone here in the territory. Our view is that the market is not working as well as it needs to. Prices are escalating rapidly and are simply becoming unaffordable. There are issues nationally in the insurance market, but we think that there are particular problems here in the ACT.

Our research with members suggests that, on average, across the board—not just in relation to workers compensation—premium rates are increasing by more than 10 per cent a year. That does not sound like much, but it is an average. Some of our members are reporting insurance bills that are skyrocketing by even up to 100 per cent year on year. These are big costs that businesses need to deal with. It has two implications. Firstly, businesses need to put up their prices in order to recover those costs. But there is a real limit to what customers are able and willing to pay. Secondly, it has a chilling effect on the business and community sectors, potentially leading to a situation where businesses are unable to operate. This is really significant for the businesses concerned, obviously, but it is actually a really big issue for Canberra, because Canberrans expect and deserve to be able to access a full range of services from the business sector.

There are some particular challenges for small businesses about having the capacity to understand what they need to do to be fully insured and having all the information they need. Brokers are out there doing their best to have conversations. But, from the conversations we are having with members, there seems to be relatively low awareness about cybersecurity insurance, in particular, and the steps needed to access it.

I really want to focus my main brief remarks here on workers compensation. This, we think, is the biggest pain point for businesses, and it is not working as it needs to. I want to stress that the Business Chamber completely agrees that workers who are injured in the workplace need to be looked after. There is no argument about that from us. But the costs of the system we have here in the territory are astronomical and increasing rapidly and we are out of line with other jurisdictions. We have a number of members who

operate across border—they operate here in the ACT and they operate in New South Wales—and they are telling us that, on average, they are paying 47 per cent more for workers compensation premiums than they are in New South Wales. That is inside the same business, doing the same thing. Some members are telling us that they pay twice as much here as they do in New South Wales.

We think costs here are much higher than they are across the border, and there are a few factors that drive that. First, we are a small market. It is important to understand that the public sector is not covered by the private sector workers compensation scheme—which makes a small market even smaller from an insurance point of view—and there is a very small group of insurers in the market. The small size of that market acts as a barrier to entry.

Also, the workers compensation regime here in the ACT is different to that in other places. It has elements that drive substantial risk to insurers and therefore cost. These include more generous coverage than you might have elsewhere. Journey claims are included here but are not in other states, for example. There is effectively no time limit for lodging claims here. While there is a three-year window set out in statute, that is not a hard deadline. We are aware of claims being lodged and settled for events that happened up to 15 years previously. So it is kind of ancient history by the time claims are being lodged. That drives cost and, again, compares to a much more rigorous regimes in other states. We have six or 12 months to lodge a claim typically.

Finally, we have relatively low settlement caps and no caps on common law actions, which means that claimants are incentivised to go to court. Ultimately, insurers want to avoid the costs of court battles, so they are incentivised to settle out of court. The employer is not typically involved in those conversations, yet it is flowing through into higher premiums. One of the real problems here is we have a no-fault workers compensation regime, but it is the employer that pays all the costs associated with that, and ultimately claims are settled between insurers and injured parties.

We do not necessarily have all the solutions from the Business Chamber, but we do think there needs to be some steps taken to encourage more competition to address some of the features that drive cost in the ACT and fundamentally align or integrate with other schemes. Perhaps New South Wales is the most obvious one geographically.

THE ACTING CHAIR: Thank you. We will go to Mr Emerson to start questions.

MR EMERSON: Thank you. Mr Harford, we have heard from some businesses during the inquiry who have reported their concerns with not being able to contest the validity of particularly workers compensation claims but also public liability claims. Is that something that you hear about frequently as well?

Mr Harford: It absolutely is. We often hear of situations where a claim has been lodged and the insurer has been negotiating with the worker's lawyers to come to a settlement. The employer is not usually involved in those negotiations or those discussions, and the employer fundamentally has no right to be across the discussions that are being had. Ultimately, that is a problem because, if an insurer settles for a sum of money that the employer thinks is completely out of whack with a commonsense approach, that gets rolled up into higher premiums for that employer in particular but also across the

business sector.

THE ACTING CHAIR: So the lawyer represents the injured worker and the insurance company is somewhat associated with the employer. So there are conversations between the injured workers and lawyer. Should there be more conversations between the employer and the insurer—because the employer is paying the insurer?

Mr Harford: Quite possibly. The employer is effectively outsourcing its risk to the insurer. So there is a quite legitimate expectation that the insurer needs to manage those responsibilities and take them on and pay any costs that are due. But we do need to make sure that there is some good understanding and good discussions going on, I think, in some cases.

MR EMERSON: Along similar lines, would you support the introduction of a mechanism to provide an independent assessment of claims, to which an employer could give their evidence?

Mr Harford: Yes. I think a mechanism for that would add real value. We often hear from our members about claims which do not necessarily pass the pub test in terms of what might be considered reasonable—things that are very dated or are aggravated or where you have issue on issue, often stemming from perhaps an employment situation that might have been there in the first place. We are concerned about the validity of some of the claims that are lodged, and we think some means of assessing that would be good.

MR RATTENBURY: I have a few questions. I was interested that, in your submission, you highlighted issues of journey to work claims being included in the ACT. No-one else has actually brought that up as we have gone along. How much of a component of workers compensation do you think it is in the ACT? Do you have any data on that?

Mr Harford: We do not have good data on that, but we think it does obviously increase the potential risk associated with insurance here.

MR RATTENBURY: I know you said you wanted to focus on workers compensation, but we have also heard that public liability insurance is becoming an increasing problem, particularly for hospitality venues. Do you have any comments on public liability?

Mr Harford: We certainly hear from members about the costs of public liability insurance. We have members in both the hospitality sector and in the community sector. We have community organisations as a part of the chamber. The message we get pretty consistently is that cost increases are a real problem and that they do bring the viability of some operations into question.

MR RATTENBURY: Are there particular sectors that you think are faring worse in this space? We have just touched on a few but, across both public liability and workers compensation, are there particular pressure points that you see?

Mr Harford: Again, I do not necessarily have perfect data on that. But my sense, from talking to businesses is that an office environment is relatively safe and tends to have

lower premiums. But when you have workers who are engaging with children and with aged care, operating in the community space or with members of the public, that is where we are typically hearing about the biggest issues.

MR RATTENBURY: The other one we have heard about is the physical working environment, in construction and those kinds of things.

Mr Harford: Yes, absolutely. There are significant injuries that happen in the construction sector. Some of those can certainly be very serious, and that drives up the cost.

MR RATTENBURY: Of course, yes. One of the questions we have been trying to draw out and asking witnesses is: is there a jurisdiction that has a model that the ACT should aspire to be—for want of a better expression—more like? You particularly referenced New South Wales, because of the geographical proximity. It has been put to us that New South Wales has its own set of problems and they are looking at amendments and the like and that there are question marks about the financial viability of the New South Wales scheme. In encouraging us towards New South Wales, do you want to just elaborate on that a bit?

Mr Harford: It is certainly true that there is no perfect jurisdiction for workers compensation. Everywhere has pros and cons. I guess we have kind of looked to New South Wales because of the fact that businesses often work cross border here and that is the logical place to go. I appreciate there are some challenges there. I have heard that there are some issues around costings and that some of their costs may be going up. But it is a different system, and it does deal with some of the more litigious elements.

MR RATTENBURY: Nobody has pointed to any system as being ideal. We are just trying to look for perhaps the best elements in the various jurisdictions. The last thing I was going to quickly ask was about sectors. You made reference to the white-collar workplaces having a lower risk. Are you seeing any observations or trends around psychosocial injuries? How is that starting to play out from a business sector point of view?

Mr Harford: We definitely are hearing about an increase in psychosocial claims. We are hearing that that is starting to drive cost. We do not necessarily have good time series information on that, but I think the trend is very clear, both here and in other jurisdictions, that is an increasing issue. Part of the challenge from an employer's point of view is that often it is not necessarily the workplace's responsibility 100 per cent that something has happened that has triggered a problem. So they are quite nebulous and quite hard to work through and manage.

Again, part of the challenge we have got, I think, with the system here is that it is a no-fault workplace accident scheme but the employer pays the costs. Therefore, if you have baggage or difficulties that you are bringing from your homelife or something that happened on the weekend into the workplace, that can quite easily be perceived as a workplace issue when actually there are much deeper causes to that. It is hard to identify those and pinpoint them.

MR RATTENBURY: Thank you.

MR HANSON: Do you think that this is causing businesses to either leave the ACT or not start up in the ACT? We heard this morning from businesses in the Apprentice Employment Network that the GTO type businesses are folding here and going to New South Wales because it is just prohibitive. Are you hearing that sort of stuff—anecdotally, at least?

Mr Harford: Anecdotally, at the margins, we are hearing that the cost of doing business here in the ACT more generally—and workers compensation is a key component of that—is causing businesses to look to cross the border or set up operations in Queanbeyan. There is a whole range of factors that go into that—for example, ease of doing business and general sort of compliance requirements—but workers comp is undoubtedly a component.

MR HANSON: With workers comp, are we seeing more claims in the ACT than you would proportionally in New South Wales?

Mr Harford: I do have some numbers on that which I just do not quite recall off the top of my head. I could come back to you on that.

MR HANSON: Yes; I would be interested to see what the comparison is and if you have got it broken down by sector and so on. We have things like the Secure Local Jobs Code here that I guess push people towards a union model, which might then perhaps have an impact. I am not sure. So it is not just the nature of the scheme but then the volume of claims that get made.

Mr Harford: Yes. That information certainly exists, and I will see what I can find out.

MR HANSON: Thanks. We have noted that you are taking that on notice.

THE ACTING CHAIR: My question is about equity and the no-win no-pay model. Business might say that that allows spurious claims to go through. The other side of the argument could be that it allows for equity, so that people can access support. What is your view on that balance and the whole equity of access?

Mr Harford: That is a good question. I think across our membership there are different views on that. We have a number of law firms in our membership who would be arguing very firmly that that provides access to services. On the flipside of that, we have members who will be looking at that and thinking, "This incentivises people to lodge claims that, on the face of it, might not necessarily pass that pub test." Anecdotally, we hear of stories where workers are keen to take claims—multiple claims, in some cases over time—because they think that they are going to get good pay outs.

THE CHAIR: Thank you.

MR EMERSON: I have a question on medical liability claims. We have not had any representations about it, but my understanding is there is a similar issue. In New South Wales, for instance, there is a cap on public liability and medical liability claims and so on. Is this something that any of your members have raised as an issue in terms of insurance costs for medical—for example, GP practices?

Mr Harford: We have had some feedback on the costs of medical liability insurance. It is not something I have delved into in detail with our members, and we do not have huge numbers of members operating in that space. But the feedback I have had really is that costs are higher here than they are elsewhere and are escalating rapidly.

MR EMERSON: So, in that respect—and I think it is pretty much in your submission—would you be supportive of introducing a cap on the value of these common law cases, whether it is workers compensation, public liability or medical liability claims?

Mr Harford: I think generally, yes. That cap should be reasonable and it needs to reflect the actual losses that are incurred. The uncapped nature of claims in principle creates scope for a significant and ongoing upwards creep that drives cost.

MR HANSON: Sorry to interrupt, but I presume then that the settlement gets higher.

Mr Harford: That is right.

MR HANSON: So a lot of insurance companies settle out of court knowing that, if they go to court, they might be up for significant amounts, which means that the amount that you have settled for is higher than it would be in other jurisdictions where there is a cap.

Mr Harford: That is definitely the message I am hearing.

MR HANSON: So, even though people say that not many go to court, it does not matter because it is putting the upward pressure because of the threat of court.

Mr Harford: That is exactly right.

MR EMERSON: If you were running an insurance business, you would say, "There has never been a $5 million payout, but there could be one, so we'd better have a contingency," so you would have to insure at a higher—

MR HANSON: So they are paying to make it all go away?

Mr Harford: Yes; that is right. Some of the feedback we have had has been around the number of insurers in the market. One of the potential risks to an insurer coming in is that large numbers of customers here do not have strong revenue streams but could be hit with some big claims, so it actually acts as a deterrent to entry into the market, which is not good.

MR EMERSON: I note that your submission mentioned the insurance requirements of government contracts. Do you have any members who actually deliver services for government where insurance is a requirement? I suppose it is all in procurement?

Mr Harford: Yes; it is all in procurement. Many of our members deliver services to government. I have had quite a few members raise this issue with me. I am hearing that it is particularly an issue with the commonwealth, but, at the margins, with the ACT as

well, where the level of liability insurance that is required is set at a level that is probably great if you have a hundred-million-dollar contract, but often contracts are worth $20,000 or $50,000, and the cost of those premiums makes it prohibitive to take out the insurance.

MR EMERSON: Okay.

MR RATTENBURY: One of the pieces of evidence we have heard so far is around the complexity of business insurance. Businesses tell us that they might have to have seven or even eight different policies—that kind of thing. Can you elaborate on your experience of that? Also, does the chamber have any resources or support to help business understand their insurance requirements or improve their insurance literacy, for want of a better term?

Mr Harford: It is something that I would be keen to do more on. I have worked in other organisations where we had some good material. The complexity of insurance for small businesses cannot be overstated. Often you are talking about sole traders or people who employ a couple of workers. They do not have the corporate capacity sitting behind them to understand everything or get across it. I think the insurance brokers work pretty hard to try to educate their customers. It is certainly complicated from the perspective of a small business owner who is dealing with multiple compliance issues—dealing with tax on one side, perhaps licensing on another, and insurance on another—and then tries to serve customers. There is just not enough time in the day for many small business owners.

MR RATTENBURY: Yes. Thanks. The issue of brokers is interesting. We have had various reports coming through about the conflict of interest that exists for brokers—around them operating on a commission basis and therefore having no incentive to try to reduce the premium. If the premium is higher, they get a better percentage or a better cut. Is that something the chamber has given any consideration to?

Mr Harford: I do not know whether that is entirely fair. My sense is that the brokers work pretty hard on behalf of their clients. Yes, they are being paid a clip of the ticket on the way through, but they are incentivised to keep their clients happy. I do not know how significant that issue is.

MR RATTENBURY: It has come up a couple of times. That is part of our job: we are trying to pick through people's take on these things. Another frustration we have heard, perhaps in a similar vein, is that, where a business puts the effort into actually reducing risk, which in itself can have a cost attached to it—safety programs, training and the like—that effort is not being rewarded in premiums at the other side.

Mr Harford: That is exactly right, in terms of what I am hearing. Often a business will take steps to do a whole lot of things that are quite costly to keep their people safe, but it does not necessarily flow through to lower premiums. The sense I get is that insurance companies are keen to increase premiums to take account of where there has been a claim, but they are not necessarily good at bringing them down on a targeted basis to take account of specific risk reduction programs that businesses have put in place.

MR RATTENBURY: It is an interesting question for which, perhaps, nobody has

provided a solution yet. It is one that seems problematic. We have also heard evidence of situations where people are rolling over their policy—they are paying them again and keeping them going—but there are changes to the terms or conditions of the agreement of insurance. Have you seen or heard any evidence of that?

Mr Harford: That is not something that has been raised with me, as we put in our submission.

MR RATTENBURY: Thank you.

MR HANSON: Regarding the issue of harmonisation with New South Wales, you are saying that one of the issues is that there are not that many insurers, because the ACT is unique. I presume that, if we were to be, as an example, harmonised with New South Wales, then the border would disappear to an extent and you would have a greater number of people getting that insurance, because it is essentially the same scheme. Is that right?

Mr Harford: Potentially. There are different ways of cutting that. In New South Wales, it is run through icare, so there is a single provider, as I understand it. There are a couple of things you could do. You could integrate us into a scheme there. Comcare might be another option. Potentially, you could even look at another jurisdiction. Or you could just look at aligning the various caps limits, rights and responsibilities.

MR HANSON: It is a broader question, but it prompts me to think about the various pieces of legislation that are unique to the ACT—maybe planning legislation, insurance, and so on. Do you have a list of these things? I imagine a lot of businesses strive between New South Wales and the ACT or they want to open up here. This is just one of them—right?

Mr Harford: That is right.

MR HANSON: I imagine there are a few other things about which you have to get across a whole bunch of regulations and laws, and the economies of scale are such that it just does not make sense; it is not worth it. Whereas, if it were harmonised with New South Wales, you would see more cross-border type—

Mr Harford: I think that is right. There have been some steps taken around mutual recognition of some occupational licences and responsible service of alcohol certificates, for example, where a New South Wales one is acceptable here. That is good. We would generally encourage more alignment and integration. It does not make sense for a small territory to replicate things in a slightly different way.

MR HANSON: It creates a whole bunch of extra burden.

Mr Harford: That is right.

MR HANSON: That either leads to cost or people just do not set up businesses and—

Mr Harford: That is right. There are also a number of things in the ACT that have been well intentioned but potentially drive cost onto the insurance market. I think about

things like the Urban Forest Act, which was well intentioned but effectively stops people from trimming trees that potentially create a risk to homes or buildings, on the basis that insurance will cover it. Well, yes, it will, but that ultimately drives additional cost as well.

MR HANSON: What is the expression: perfection is the enemy of good? It is something like that. It might be too much for you on notice, but, if you do give it some thought, what are these things? We are busy legislating in the Assembly, thinking that we are doing good. Each one individually is probably a great idea, but the effect of it all—insurance, planning and whatever it is—gets to a point where you make it so difficult to do business, because of the differences with other jurisdictions.

Mr Harford: That is right. We asked members in our recent quarterly survey about how they found doing business here compared with other jurisdictions. About a third of them said it was harder here in the ACT than elsewhere. This is obviously only those who are doing business cross-border. About 60 per cent said it was the same, but, as I said, 31 per cent said it was more difficult, which I think is an issue. Some of the complexity arises from the fact that things are different, not necessarily harder.

MR HANSON: Yes—it is not better or worse; you have to duplicate.

Mr Harford: That is right.

THE ACTING CHAIR: I am wondering about data and transparency. Where do you get your data from? Is there adequate data to be able to make informed decisions about what is going on in the ACT?

Mr Harford: We do not think there is necessarily enough data available. There is some data that the ACT government produces around average premium rates in relation to workers compensation and it makes some comparisons across the board. It is called the Finity report. We think that does not necessarily capture the highs and lows that you might see, and it is a little bit behind the current time lines, in terms of what is happening now. It is a bit dated by the time the information gets out. In terms of the insurance market more generally, I do not think we necessarily have good comparative data.

THE ACTING CHAIR: Thank you.

MR EMERSON: I am wondering about perverse incentives related to insurance premiums in the ACT. We have heard about businesses moving across the border. You mention in your submission businesses structuring themselves in strange ways in order to not have all their employees covered by the high premiums of the industry they are in. Are there any other things that you are aware of—for instance, people based in Canberra setting up companies elsewhere or employing people elsewhere, if they are working remotely, and that sort of thing?

Mr Harford: There is again a range of situations. In relation to insurance, we have certainly heard about some firms that establish themselves as two companies in order to have different sets of rates for admin staff versus operational staff—in the construction sector, for example. We have heard about businesses—anecdotally and at the margins—seeking to upscale their operations in Queanbeyan or move their

operations there because that helps them. The same is true across payroll tax as well. That is the big thing.

MR EMERSON: These things compound. Does anything else comes to mind where you think, "That would not have happened if it weren't for these premiums"?

Mr Harford: The big things we hear about are insurance and payroll tax. There are things that are, again, at the margins, like portable long service leave in some sectors, where it applies here but not across the border. All of those things make businesses stop and think about where they locate their people.

MR EMERSON: I assume you get feedback from your members saying, "We're having to sell goods and services at a much higher rate than we would like to because of all these costs."

Mr Harford: Absolutely. It is easy to say, "It's all right to put costs on business, because they can afford it." In fact, most of them cannot. Most businesses, particularly small businesses, operate on very slim net margins. There is not a lot of profit in it, and that profit is ultimately the wage of the business owner—the person who is taking the risk. It is certainly clear that there is an extra cost of doing business here in Canberra that flows through to prices being paid by consumers at the end of the day. Someone mentioned to me the other day that you see signs on the road saying, "We'll come and repair your roof," or what have you. It costs $2,000 to get that done here in Canberra; in Sydney it costs $1,000. Canberra is definitely a high-cost place to do business.

MR EMERSON: Thank you.

THE ACTING CHAIR: Mr Rattenbury, would you like to ask anything further? We have about five minutes.

MR RATTENBURY: Mr Harford, is there anything we have not asked you about that you wanted to touch on?

Mr Harford: No. I think we have covered the key points in relation to insurance. The big issues from a business point of view are cost and the implications of that cost. That is across public liability insurance and workers compensation insurance in particular. From our point of view, the question is: how do we standardise, align and get those costs down?

THE ACTING CHAIR: We have heard people talk about having someone monitoring the scheme.

MR EMERSON: That would be useful.

THE ACTING CHAIR: Yes; that would be useful. Do you have any views on that?

Mr Harford: A bit of oversight is always good. There is some oversight provided in WorkSafe, I believe, and in the ACT government. There is a question that we touched on in our submission—whether some additional information disclosure around costs and profitability of schemes operating here might shed a little more light on how the

market is working.

THE ACTING CHAIR: Thank you. On behalf of the committee, thank you for your attendance today. I believe you took one item on notice, or was it two?

Mr Harford: Yes—one. I will come back to you on the question around—

MR HANSON: The issues which cause complexity and duplication cross-border.

Mr Harford: That is right. And claims by sector.

MR HANSON: Yes.

THE ACTING CHAIR: Please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

Mr Harford: Thank you very much.

THE CHAIR: Thank you very much for coming to inform the committee.

Short suspension.

HEXTELL, MS ALLYSSA, Head of Policy and Advocacy, National Insurance Brokers Association
HORDERN, MS ALEXANDRA, General Manager, Regulatory and Consumer Policy, Insurance Council of Australia
KLIPIN, MR RICHARD, Chief Executive Officer, National Insurance Brokers Association
PEARCE, MS ALIX, General Manager, Climate and Social Policy and International Engagement, Insurance Council of Australia

THE ACTING CHAIR: We welcome representatives of the Insurance Council of Australia and the National Insurance Brokers Association. I remind witnesses 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. Would you like to briefly outline the main points or context of your submissions?

Ms Hordern: I have a brief opening statement. I confirm that I understand and agree with the statement. Thank you for the opportunity to appear before the committee today. I am joined by my colleague Alix Pearce. We are both joining you here today because the inquiry covers a broad range of factors behind the increasing insurance costs in the ACT. Alix and her team manage climate related factors that are behind some of the pressures on insurance costs, whereas I have responsibility for public liability, workers compensation and other areas that impact insurance premiums paid by businesses.

By way of background, the Insurance Council is the national body of the general insurance industry in Australia and represents about 90 per cent of private sector general insurers. Australia's general insurance sector provides protection to some 41 million homes, buildings and vehicles against unexpected events. It is estimated that approximately 74 per cent of small to medium businesses hold some form of general insurance. At the Insurance Council, we are aware that in recent years some sectors of the economy have been affected by increases in insurance premiums and reduced local capacity in some product lines. Product lines that have been particularly affected include public liability for tourism, leisure and some other business sectors, and professional indemnity for several professions, including building industry professionals.

Since 2019, Australia has experienced a hard public liability market characterised by rising premiums, higher excesses for policyholders and less capacity in the market, especially for businesses that present high underwriting risks for insurers. The ICA is aware that some businesses and not-for-profits have struggled to access and maintain appropriate public liability insurance cover, threatening their ongoing viability. A key factor behind these market trends has been increasing claims costs driven by higher claimant demands and increasing legal and medical costs.

The professional indemnity insurance market in Australia has also experienced hard market conditions until recently. Some sectors, such as design engineers and other building professionals, continue to face challenges, particularly in relation to sourcing professional indemnity insurance—the key drivers being the underlying risks

associated with the nature of the activities that they undertake. Another challenge experienced by engineering and construction sector professionals, particularly when they are engaging in government infrastructure work, is that they are often subject to onerous and unnecessary professional indemnity insurance requirements contained in government contracts.

Insurance availability and affordability can be particularly challenging for businesses and not-for-profit organisations in the ACT, given the jurisdictional features of the civil liability and workers compensation settings. Civil liability settings in the ACT include no threshold requirements to bring a common law claim, and no caps or limits on heads for damages like economic or non-economic loss. Features of the workers compensation scheme in the ACT include unlimited and uncapped access to common law damages, uncapped legal costs and the availability of journey claims. These factors are behind the higher insurance premiums in the ACT when compared to other jurisdictions.

We have provided several recommendations for the ACT government in our submission, including reviewing tort law reform settings, better aligning the ACT workers compensation scheme with those in other jurisdictions, reviewing government procurement and contracting arrangements to ensure insurance requirements are reasonable and appropriate, and ceasing the use of contractual indemnities that transfer risk onto third-party businesses. I will hand over to Alix to talk about climate risk.

Ms Pearce: I will keep it brief, noting the time.

THE ACTING CHAIR: Yes, because we want to move on to questions.

Ms Pearce: Absolutely. I will touch briefly on how climate intersects—

THE ACTING CHAIR: Sorry—could you acknowledge the privilege statement?

Ms Pearce: Sorry—I acknowledge the privilege statement.

THE ACTING CHAIR: Thank you.

Ms Pearce: Touching on the climate side of things, climate change, as we know, is intensifying both the frequency and the severity of extreme weather events around the country, and that includes in the ACT. Think fire; think floods. At the same time, we are seeing Australia's population expanding and growing in these areas too. So the risk is increasing, and the number of people who live in those risky areas is increasing. Our data shows that about 1.36 million properties are at risk of flooding and more than 5.6 million homes are at risk of some level of bushfire risk. These factors create a bit of a perfect storm when you couple them with growing asset values in high-risk areas, ageing building stock, higher inflation and rising reinsurance costs. All of this is putting upward pressure on insurance premiums. Increasingly, we are seeing a widening of the gap between those who can afford insurance in these high-risk areas and those who cannot.

The other thing that is important to note in this context is that these challenges are impacting vulnerable Australians the hardest. We know that, for example, about

35 per cent of Australians who are exposed to the highest risk flood areas in the country live below the poverty line. That is a really important piece of the puzzle to understand when thinking about the solutions. We are also seeing a challenge with under-insurance. For example, of the 225,000 properties up and down the east coast of Australia that are at risk of flood, only about 23 per cent have flood cover, compared to about 60 per cent nationwide.

I will end on this final point, and then I will hand over so you have plenty of rich time for questions. Through our data, we know that extreme weather events are costing homeowners in Australia about $4 billion a year. By 2050, the cost of rebuilding and repairing homes and replacing contents, and the cost of the displacement of people from these homes, if added together, comes to about $8.7 billion a year, which is substantive, and that is a conservative estimate. We know it is a challenge now with premium affordability and availability. The challenge is going to get bigger.

In a nutshell, we are proposing that, to try to tackle this challenge and keep providing coverage at an affordable price, we need to strengthen the resilience of our homes and businesses in our communities. We need to shift our approach to what we build and where we build it. We also need to see Australia's economy transition to net zero. More detail sits under that, but I will pause and hand back to you for questions.

THE ACTING CHAIR: Thank you. On the Webex, would you like to briefly outline your submission and acknowledge the privilege statement? Then we will move to questions.

Mr Klipin: Thank you, Chair. Good afternoon, everyone. I totally acknowledge the statement. Thank you for the opportunity to discuss the key important issues with you. I will give you a very short statement. NIBA is the peak body representing the general insurance brokering profession. We represent about 450 members and over 15,000 individual brokers who operate across the country, in the ACT, on the high streets, in the big city offices, and so on.

Insurance brokers play a really important role in supporting households, businesses and communities to navigate insurance markets, secure the right kind of coverage and confidently manage any of the challenges that may arise from the insurable events that have been touched on previously. Insurance brokers are not merely intermediaries; they often serve as trusted risk advisors who act on behalf of their clients to protect their most important assets. Many business owners, while experts in their own fields, may not have the necessary expertise to fully evaluate, manage the risk and choose the right risk offsets. Insurance brokers play that role and bridge that gap.

In the ACT, workers compensation is a significant factor driving insurance costs, particularly for small businesses. The ACT workers compensation framework differs from other jurisdictions, particularly in its approach to common law and premium regulations. The absence of key cost containment measures has contributed to rising premiums, marketing instability and challenges for both insurers and businesses. These are structural issues and have made workers compensation in the ACT one of the most expensive in Australia, placing significant financial pressure on employers and limiting competition in the market. This obviously disproportionately burdens small and medium sized businesses, which are more likely to be price sensitive.

NIBA welcomes the opportunity to work with the ACT government to develop practical and balanced policy solutions that ensure ongoing affordability and accessibility. We look forward to discussing these points further with you. Thank you very much.

THE ACTING CHAIR: Thank you. Does the increasing pressure from the environment flow across and impact the increase in premiums across all sectors, including business?

Ms Pearce: Yes, absolutely. It is important to know that the growing extreme weather risk affects both homes and businesses around the country. It is not exclusive to homes, for example. If you have commercial lines, they would also be affected.

A good example of that is when you think about flood risk. We know that about 225,000 residential homes are at risk and have a two or five per cent chance of flooding each year. Insurance prices risk and, when that risk increases, so does the premium. If you add businesses into that number, it is just below 300,000, so they are grappling with the same challenges. Peril pricing, as we call it, makes up a component of that premium, so it would flow through to affect their costs.

THE ACTING CHAIR: What I am referring to is flowing across geographic boundaries. We have had some floods, but we are not prone to floods like some areas of New South Wales are. Would the increase that is happening in other jurisdictions flow across borders to areas where we are not so prone to the type of floods that you get around Lismore et cetera?

Ms Pearce: It is a great question. It goes to the fundamental design of insurance. We can tell that you have been listening over the last few days regarding this challenge. Risk is pooled collectively across the economy, and there is the idea that everyone puts in a little bit to then carry the higher risk parts of the country.

When we think about the affordability challenge holistically, these are the common levers that flow across boundaries, as you put it. There is the challenge of high inflation, and no-one is immune to that. Especially in construction, we are seeing increasing costs of repairing or building homes across the board. There is the cost and availability of labour. Again, that is not just limited to a single state or a single location that is affected by a flood. That is a full, holistic challenge that is increasing costs. The growing asset values and urban development challenges are, again, state-wide or across the country.

Importantly, there is the challenge of global reinsurance. Reinsurance, effectively, is insurance that insurers take out, and that is a really important risk backstop for the broader economy. We know that the global reinsurance industry has been stressed, with reinsurers failing to earn their cost of capital in five of the last six years.

In response, the reinsurers have increased prices and reduced capacity, and that pushed global reinsurance costs to 20-year highs last year. What that means for Australian insurers operating across the market is that they have faced cost increases of up to 30 per cent. Whilst we might see some softening of it this year, the global market also then affects the cost of insurance, and you have to pay to play in the Australian market, too.

Hopefully, that helps to answer your question. It is a systemic challenge that does not limit itself to particular territory or state boundaries.

MR RATTENBURY: On that climate issue, can you talk to us about how you are creating transparency about the way that climate change risks are impacting on insurance costs and premiums?

Ms Pearce: A really important message that insurers have been talking about for a long time is that you need to reduce the underlying risk. By reducing the underlying risk that, in turn, should flow through to your insurance premium. We know that peril risk—bushfire risk et cetera—is part of that premium.

To address this challenge, there are two key things to think about. The first is that the Australian insurance industry has a world-leading partnership with the federal government. It is called the Hazards Insurance Partnership, and it goes to that transparency point that you raised. Collectively, between the federal government and insurers, we have come together in this partnership to say, "How do we build a collective understanding of where the higher risk areas of the country are, and how do we then agree on targeting resilient solutions to drive down that risk, to help with insurance affordability?"

When you think about it, you need to have that consistent view of risk and that transparency, because it is not just about what insurers do; it is about where we decide as a territory where we want to build new homes, for example, where there might be areas of lower risk. It helps us to decide what stronger building codes and standards we might need in areas of higher risk or medium risk. Having that transparent, agreed, national hazard baseline is really critical, and that is the kind of high-level answer to your question. That is the kind of big stuff.

Let us take it right down to the household level. Increasingly, we are seeing Australians wanting to do things to their homes to make them more resilient, including in the ACT. We have partnered with the Resilient Building Council and have developed an app. I do not know whether you have heard about it; it is called the resilient bushfire app. Effectively, it puts this app—it is free—in the hands of consumers. You can then use that app to assess the resilience of your home. You say what your roofing is, your guttering et cetera. You put all of that in and it gives you a rating out of five stars regarding your current household resilience. It then makes recommendations about how to improve the resilience of your home. Consumers go and do that, and insurers are partnered to reward that. Once you take those measures and improve the resilience star rating of your property, you then see discounted insurance premiums.

We have done that with bushfire, and we have had consumers receive up to 60 per cent off the bushfire component of their premium after using the app. We are now working with them to say, "How do we scale this up?" Often, for a single property—I am sure many of your homes are like this in Canberra—bushfire is only one of your risks. You probably also have some risks from intense rainfall, flash flooding or from hail. How do we build up the app so that it works for multiple hazards, so that we can continue to have that transparency at the household level and say, "This is your risk. Here's how you improve it, and here's what you can do to reduce the premium"?

THE ACTING CHAIR: Is there any report that would show where the pressures are on resilience, such as where the great flooding is in New South Wales, how that is impacting the increasing costs, and how that might then flow through to other sectors—for example, business in the ACT? Is there that level of transparency?

Ms Pearce: There is lots of different literature. I am trying to think exactly what is at the heart of your question.

THE CHAIR: It is more about reporting, not literature—a report that says, "This is where the pressures are, this is driving increases in premiums," and how that might impact on sectors in other jurisdictions. Is there any report that might—

Ms Pearce: There are two pieces that might be useful. The first is that every year we produce our catastrophe report. The insurance industry can declare a catastrophe when there is a major event, which requires insurers to respond in an elevated fashion to ensure that claims are processed and handled appropriately. We then compile all of that data around each year or season of catastrophes, and that is a publicly available report that provides data regarding the event, the number of claims, the pressure, the impacts, the costs et cetera. That is a very good kind of bible to give an indication of catastrophes and their impact each year.

In addition to that, we also produce an industry snapshot every year. That industry snapshot provides some clear data points around exactly what we have talked to you about today: what are the supply chain costs and challenges? What are the rising reinsurance costs? What are the extreme weather events that we have experienced and how does that flow into the premium pricing? We are very happy to provide those two as supplementary reports.

THE ACTING CHAIR: Okay, thank you.

Ms Pearce: Yes. I will add that.

MR EMERSON: I want to ask about what is unique to the ACT. We have heard about there being no threshold for bringing a common law claim, not having caps on sizes of claims, not having time limits for making claims, and uncapped legal cost claims when someone brings a workers compensation matter to settlement. Can you explain the decisions that are made by insurers as a consequence of the uncapped nature of our schemes here?

Ms Hordern: Going to Alix's point that insurers price risk, something that insurers love is certainty, and they really do not like uncertainty. If you are looking at a risk and you are thinking to yourself, "There's a 30 per cent chance that this particular injury will occur in any given scenario," and we know that there are costs capped for legal claims—for example, we are not going to have to pay more than $200,000 on this, or there is a cap in place for the amount that we pay out for a particular type of injury—they can calculate with much more accuracy what a particular claim is likely to cost them.

With an entirely uncapped jurisdiction, it is a very grey area. It makes it much harder for their actuaries to determine what they think that a claim will cost. The risk presents

as much larger to them because it could be anywhere between, say, $200,000 and $2 million. You are just not quite sure where it will land.

That lack of certainty for insurers does result in them being less able accurately to price the risk, so they will often need to increase premiums to take account of what they are perceiving as a potentially uncapped risk. It also means that when accidents do happen, which they do, often the payouts are much more significant. When you add in escalating legal costs that are often as large as the payout themselves, that adds costs into the system, which they then have to price for or recoup in future years.

MR EMERSON: I am not sure whether you would have the data, but one of the questions that I have is around New South Wales having these kinds of caps; $761,500 is what I am seeing for things like public liability and medical liability claims. As to whether we are ever hitting those caps in the ACT, it would be a really interesting data point to figure out whether we are doing that. Is that the kind of thing that you could access? One of the challenges we have is that so much of it is settled outside court.

Ms Hordern: I do not have that data to hand. I can certainly take it on notice and see whether there is something that members can provide. It may be that they do not have that data readily to hand, but we can certainly ask the question and see.

MR EMERSON: Yes, and what the biggest claim is.

Ms Hordern: Yes. Of course, the biggest claim will often depend on the nature of the injury. The really big claims, thankfully, do not happen very often. They may happen once every few years. When we are looking at the biggest claim, it may be from a number of years ago.

It is also important to recognise that the size of the claims is increasing quite rapidly at the moment, and that is because there is what we call societal inflation; people's expectations around payouts have grown significantly. The incidence of mental health claims has risen significantly as well. Physical injury claims are easier to deal with. They are more containable. But the mental injury claims often arise quite a while after the initial physical injury and, because they are harder to manage, not least for the injured party, they can be much more expensive and take much longer to resolve. We are seeing an increase in those mental health claims, which is also pushing up costs and creating greater uncertainty.

MR EMERSON: Does all of that create a necessary financial incentive for an insurer to try to settle?

Ms Hordern: It is a tricky question. Objectively, as with any business, if you are looking at a claim and thinking to yourself, "This could cost me $2 million to fight; I'm not sure if this is a claim that I want to settle, but it could cost me $2 million to fight, or I could pay $200,000 and be absolutely certain that it's done tomorrow," the smart money is on paying the $200,000.

I think that is incredibly frustrating for business owners, for example, and I have certainly seen some of the testimony that you have heard where business owners have expressed frustration regarding insurers settling when the business owner feels that it is

a very clear-cut case. But when an insurer is looking at the ongoing costs of defending a claim—the time that it takes, the man hours and the legal costs—those mount up very quickly. Even if the business owner considers it to be a clear-cut case, unfortunately, several months and lots of expensive lawyers mean it is a very expensive claim.

MR EMERSON: Would you say that in the ACT that is a more common reality? What we have heard from other witnesses is that there is not really an opportunity to take something to court.

Ms Hordern: Our members do reflect that, given the nature of the system in the ACT, there is greater risk in them pursuing action or fighting a claim.

THE ACTING CHAIR: They also say that, when there is a claim, whether it is settled or not, their premiums increase significantly. Is that your understanding, too?

Ms Hordern: I would not be able to comment on individual cases. Where the risk goes up, premiums will go up, because the insurers need to price the risk. There may not be a direct correlation between a claim being made one year and that particular business's premium going up next year. For example, if a small claim of $5,000 was made and the premium went up significantly, it may be more that that industry has had a number of claims in that particular year, or there have been a couple of very large settlements across that industry.

It is perhaps, again, frustrating to business owners, but the fact is that insurers pool the risk that they are looking at. In any business sector, you will have absolute, top of the pops players and you will have the people who have less rigorous risk management controls and processes in place. That is just the nature of doing business; not everyone can be right at the top of the industry. The insurers do have to look across that entire pool and, if they are challenged in terms of profitability in any pool, the premiums will go up across the board.

If, as a result of a claim, the insurers are looking at a particular business and can see that the risk mitigants in place were not adequate, they may need to re-look at what they are charging in terms of premium for that business. Again, I could not comment on individual cases; it is more in generality that that is what they would be looking at.

THE ACTING CHAIR: A number of businesses said they had put mitigation measures in place, but that was not recognised by the insurers.

Ms Hordern: Yes, that is another complicated one. Some mitigants can be very effective; others, less so. It will depend on the particular business type and the type of mitigants that they put in place to try and address defined risks. There is also a question about how well those risk mitigants are being communicated back to the insurers. That is where our colleagues from NIBA are so critical, because brokers play an absolutely critical role in the insurance supply chain and the relationship between a business and their insurer.

The vast majority of business lines are intermediated, so they would usually be sold through a broker. It is quite unusual to buy business lines of insurance direct from an insurer or an underwriter. Making sure that the business has the right broker, who

deeply understands their business, the market that they are operating in and the broader insurance market, is very important.

Often, when we hear of businesses that are having challenges with accessing insurance, we encourage them to engage with their industry association, whichever that may be, because often they will be able to access best practice guidance from the industry association. That association will usually know who the brokers are that are doing really good work in that space and will be able to direct those businesses to those brokers; they will be able to offer support on the risk management side of things and help with making sure that you have the right broker there. We also find the team at NIBA very helpful in terms of directing businesses to appropriate brokers when we have challenges, and we work very closely with the team at NIBA on that.

THE ACTING CHAIR: NIBA, would you like to comment on what we have been discussing, before I pass to Mr Rattenbury?

Mr Klipin: Yes, thanks for the opportunity; and, Alexandra, thanks for the shout-out. The role of broker is very much the strategic risk adviser when a business is looking to both identify risks, understand their risks, and determine how much risk to carry versus how much risk to offset. That is really the advice process, right up-front when a broker is engaged.

That conversation takes place annually. Businesses morph, evolve and change, so you tend to find that brokers will be at the right or left arm of the board, the CEO, the chief risk officer and the CFO, as businesses evolve, change, grow and so on, and face challenges. That is kind of the role that they play.

The other piece in this affordability conversation—and I think the ICA team beautifully set out the global and macro scene—is that our members tend to find, at different stages of the cycle, that different insurers will have an appetite that is greater or lesser. The role of broker—hence the name "broker"—is to go and find the appropriate cover. Sometimes that means changing cover from company A, who wants to leave that sector or price at a different level, and they will go and put a package together. That is how it really operates in practice.

The final part, of course, is that, at claim time, brokers are really there. I hear this anecdotally all the time: they are often one of the very first calls that come when a business owner is standing in their flooded business, there is a fire that has taken hold, or whatever the insurable event is. Obviously, in the case of workers comp, it is the same story.

They are very effective at claims management, navigating not only the requirements and the legalities under the contract, but also working with ICA members and insurers to ensure that the process is as smooth and seamless as possible. I will leave my comments there. Allyssa, is there anything that you want to add?

Ms Hextell: A number of our members have workers compensation specific teams. It is not just for placement; it is to provide assistance in the workplace to support the employer with return to work, with what they can do to guide the employer, who will benefit, quite often. They will also guide the employee through the workers

compensation process, especially where the ultimate goal is return to work. In addition to the broker role, they have extra capacity in the advice role, especially for workers compensation.

MR EMERSON: I want to go back to the cost of premiums and the arrangements here, and how we are settling quite quickly. What would be the likely impact on premiums if there was a mechanism for an independent assessment of, say, workers compensation claims, where an employer could put in their side of the argument and contest a claim, potentially? If there were statutory penalties for demonstrably spurious claims, would you expect a reduction in premiums in the ACT, if such a system was there?

Ms Hordern: It is not something we have looked into in any depth. My instinct would be that if there are penalties in place for spurious claims, it would remove some of those from the system. Again, anecdotally, we do hear about claims that, certainly, business owners and insurers consider perhaps to have less validity than they would like to see.

I would caution against a process that adds time into the system. Where someone has been injured in a workplace or other accident, the support for that person is the most important thing, to make sure that they get the support that they need to get better and get back to work, if that is the appropriate outcome. One of the challenges that we see, particularly with mental health claims, is that the longer people are out of the workforce or unwell, the harder it is to get them into a position to go back into the workforce.

The really lengthy litigation processes often produce very poor outcomes for injured people and can exacerbate mental health claims. A system that allows the business to tell their side of the story and perhaps deals with some of those claims that are less valid would be helpful, provided it does not unnecessarily prolong the process for people.

MR RATTENBURY: One of the themes that has come through the hearings is the complexity of insurance, whether that is for households or businesses. Between you, do you have any particular resources that are designed to improve people's insurance literacy, for want of a better term?

Ms Hordern: It is a really tricky one. Insurance is a complicated product. It has always been a complicated product, but it is getting increasingly complicated, particularly given the complexity of the risks that are being covered. In terms of resources, we have fact sheets and explainers on our website, but we recognise that that requires people to engage with them, to go looking for them and to seek to understand insurance products.

For businesses, in particular, that is, again, where that broker role is really critical. In a previous life I worked in small business policy. Certainly, we would hear from small business owners that they are the HR manager, they are the bookkeeper, they are the front-of-house person, and they are often trying to grapple with their insurance products at 11 o'clock at night after a really bad day, and that is challenging for anyone. That is where that trusted relationship with their broker is really critical, in making sure that they have that broker to explain the products that they are purchasing, their coverage, and what they might need to do to ensure that they are able to make a claim.

In terms of home and contents, and those more personal lines of insurance, again, there are explainers and fact sheets on the website, but we recognise that it is challenging for

consumers. There is absolutely a need to lift financial literacy across the entire Australian economy, and insurance would be a key part of that.

Ms Pearce: I might add something on the home and contents side. There is also something around risk literacy here—how the risk flows into the premium pricing and how to reduce that risk. We touched earlier on an app. The Resilient Building Council app is a really good example of distilling very complex information in a way that is very easily understood; consumers are then empowered to take actions to reduce their premium. That is a white whale that we have been trying to land for a while. It is a good example that we would want to see scaled up, as part of the *Moby Dick* analogy.

We find that literacy also varies in specific communities. Through our work with First Nations communities and our Indigenous advisory committee, we have partnered with the First Nations Foundation to develop fact sheets around insurance and what it means for First Nations Australians, and communicate it in a way that can be easily understood and disseminated by those communities. We are also conscious that the audience and the cohort are very important when it comes to tailoring that information.

Ms Hordern: When we are dealing with vulnerable consumers, that can be a particular challenge, and particularly when it comes to claims time. We work quite closely with a group of consumer advocates—the Financial Rights Legal Centre, the Consumer Action Law Centre and other legal aid organisations—that provide invaluable support to consumers, particularly when they are struggling with an insurance claim. I would commend those services to you because they do some amazing work with some very vulnerable consumers, in helping them to navigate insurance and other financial services products.

Mr Klipin: With respect to the financial literacy conversation, as Alexandra said, it is an Australia-wide piece and it is about managing and understanding risk. We have just come through Trump's tariffs, and you have seen the ASX fall. You therefore see redemptions and people calling their fund managers, for example.

On this side of the fence, to give you an example, NIBA runs a service called "need a broker". This is a service for consumers to be able to find a broker when they need to. When Cyclone Alfred was approaching the east coast of Queensland and northern New South Wales, the call levels in the few days prior to that absolutely spiked from somewhere between 70 and 100 a day up to 500 and 600 a day, at the very time when there was going to be an insurable event. Of course, you cannot get insurance if you know there is going to be an insurable event. That literacy piece is something that we all steer into, whether you are making policy, whether you are in the sector or whether you are a broker.

Again, going to Alexandra's point, the first line of education for brokers is their client, to help them understand what the risks are, to try and quantify that and then have a fairly evolved conversation about the cost to manage and offset that risk, how to strengthen your systems and controls, and how to do better around preventing and identifying some of these risks. That all goes into the insurance equation and the cost. The broader issue around consumer literacy and capability is a big one, and one that we all steer into every day.

Ms Pearce: On Richard's point around TC Alfred, I think there is a question here as well around proactivity from the industry—to understand that it is an issue and to lean in to try and help to solve it. When Cyclone Alfred was bearing down on Brisbane, we had insurers mobilise and make over a quarter of a million phone calls to customers to communicate to them the risks, how to reduce the risk and how to prepare. I think it is a good example of the industry increasingly uplifting, in a proactive way, their response. That is an example that is specific to a major event, but that is quite important, too, during those times to protect Australians and their businesses.

MR RATTENBURY: Just quickly on another matter, many of the things people argued about for changes to workers compensation in the ACT bear similar attributes to the changes made through the Motor Accident Insurance Scheme changes the ACT made five years ago. Does the industry have reflections on how MAI has played out in the territory?

Ms Hordern: Not specific reflections, but I can certainly take that on notice and ask the members to provide some for you.

MR RATTENBURY: That would be welcome. Thank you.

MR HANSON: Thanks very much for attending today, particularly on the eve of Easter, and also for your submissions. They are very good. As you outlined, with workers comp and civil liability, some of the unique nature of our laws here add risk and complexity—be it thresholds, caps, the statute of limitations and so on. There is also, I suppose, the fact that we are a small jurisdiction and we do it all differently, so it limits the number of insurers that might want to engage, as I understand. So, if we were to harmonise with another jurisdiction, be it New South Wales, the one side is that you then have issues like caps and the statute of limitations addressed. But, equally, you have one market rather than a completely small, segmented market. It might be a bit speculative, but do you think that would make it something where we would see a reduction in premiums as a result?

MR WERNER-GIBBINGS: A reduction in premiums or a reduction in the growth of premiums?

MR HANSON: A reduction in the cost of premiums. It seems that insurance costs are more here—for which there is a whole bunch of specific reasons, but there is also the fact that we are a small market with a completely different set of laws to everybody else. So, if we were to harmonise, it is speculative, but do you think that is going to help premiums or not?

Ms Hordern: It would be hard to speculate on the impact on premiums of harmonising with another market without seeing exactly what that would look like. Our submission, obviously, focuses on the things that could be done to reduce risk in the current scheme, and we would consider that that would be the first place to start. It does seem to be a reasonably healthy scheme in the ACT. There is reasonable competition in the scheme, and we support healthy competition. But, in a small market, if you have a number of players in it, that would tell you that it is an effectively operating and healthy scheme.

We also understand that premiums are stabilising in the ACT or have recently stabilised,

compared to what we are seeing in other jurisdictions. So joining with another jurisdiction may not actually reduce premiums, but we would need to see exactly what that looks like.

MR HANSON: When you say that they are stabilising, what data do you have that shows that?

Ms Hordern: I have this somewhere. If you go to another question, I will just dig it out.

MR HANSON: Is that in your submission?

Ms Hordern: It could be in the submission. The suggested reasonable premium rate in the ACT has decreased from 2.1 per cent of wages in 2023 to two per cent in 2024-25. So it was a small reduction. In Victoria and New South Wales, we are seeing increasing premiums. Victoria's average premium rate remained steady at 1.8 per cent in 2023-24 and 2024-25, but that followed a 42 per cent increase from a rate of 1.27 per cent in 2022-23.

MR HANSON: But they are still lower.

Ms Hordern: They are lower but they are increasing. In New South Wales, the average premium rate increased by eight per cent, from 1.6 per cent in 2023-24 to 1.73 per cent in 2024-25. So they are going up. But, in the ACT, they seem to be stabilising.

MR HANSON: On the issue of psychosocial, we have been made aware that there is a review or there is a draft legislation in New South Wales. Are you across that?

Ms Hordern: Not immediately. I would need to check in on that one.

MR HANSON: They are making some changes, I think, because of the growth there. We are not quite sure what it is, but I was just wondering if you had any—

Ms Hordern: There was a move in Victoria to remove some of the mental health claims from the scheme in an attempt to control the increases in premiums. Again, I will double-check on what is going on in New South Wales and come back to you. But that is one thing that some jurisdictions do try to do to manage that increase in premiums.

MR HANSON: Okay; thanks.

THE ACTING CHAIR: Thank you, Mr Hanson. Mr Werner-Gibbings?

MR WERNER-GIBBINGS: Thank you, Deputy Chair, for your work today. I have two questions: one for the Insurance Council and then the second one for National Insurance Brokers Association. They are separate. I will start with the Insurance Council. Pardon me, but in my reading of your submission I read an argument for changing the workers compensation scheme to align with other jurisdictions. Is that inaccurate?

Ms Hordern: Whether or not it aligns with other jurisdictions, we think there are

elements of other jurisdiction schemes that would benefit consideration in the ACT.

MR WERNER-GIBBINGS: Fair enough. In your organisation's view, how would those alignments benefit people in the ACT—or how would picking best practice alignment benefit people in the ACT?

Ms Hordern: I think it depends on which elements you are looking at. One of the major cost drivers is the uncapped nature of legal fees in the ACT.

MR WERNER-GIBBINGS: Did you said uncapped nature of the legal fees?

Ms Hordern: Yes, and the really significant legal fees that we see in the ACT. Obviously, lawyers need to run a business and make money—and that is absolutely fine—but, when we are seeing legal fees that equal or are in excess of the amount paid to injured people, and often very significant payments to lawyers, that would seem to be out of step with, we believe, community expectation. So caps on those fees may be an appropriate way to ensure that costs are moderated but that the injured party is still able to access appropriate compensation when required. That is just one example.

MR RATTENBURY: Just on the lawyers' fees, do you have data that is publicly available on that? We had lawyers in earlier who swore black-and-blue it was not the case.

Ms Hordern: So we have—

MR EMERSON: They are almost losing money now, aren't they?

MR WERNER-GIBBINGS: They are a business, right? Is there any business here that said things are great?

Ms Hordern: As I said, they are entitled to make a living, and I do not criticise them for that. We have what I would call a lot of anecdata—so anecdote as data—and a lot of individual examples of where we are seeing very significant payments to lawyers. They are individual examples. So I would need to go back to the members and see if they can provide a more comprehensive overview of what they are seeing.

MR RATTENBURY: Anything you could provide to the committee in that space without breaching people's privacy and all those obvious things would be very welcome. Thank you.

Ms Hordern: I will see what we can find, yes, yes.

MR EMERSON: We had that question on notice about largest claims, and largest legal fee claims could be part of that.

Ms Hordern: Yes, I will add it to that. Easter homework, Mr Emerson.

MR EMERSON: Yes; sorry about that.

MR RATTENBURY: You can wait till Tuesday. That is fine.

MR WERNER-GIBBINGS: You have five business days; so do not worry about that. I am just going to take down "anecdata" as a—

Ms Hordern: Okay, thank you.

Ms Pearce: "Anecdata" is a great one, yes.

Ms Hordern: I think you trademarked that one.

MR WERNER-GIBBINGS: Maybe you could take on notice any useful areas for alignment. As you have suggested, it does not have to be all one—all Victoria or all New South Wales—but areas that are best practice in your opinion or your view.

Ms Hordern: The journey claims are another quite challenging aspect in the workers compensation scheme here. We do see cases that our members would consider quite egregious—examples being where someone leaves their normal place of employment, does not take their usual route home but instead goes to a shopping centre or another area for a couple of hours and then travels home after that stop or break in their journey and has an accident on the way home, and that is still covered under the workers compensation scheme. For most people on the street they would probably consider that they are no longer in their work journey, either to or from work, because they have broken their journey and it is not their usual journey. Removing those journey claims from the workers compensation scheme may have an impact there. Whether or not they then sit under the CTP scheme and are managed differently through that scheme would be a matter for the ACT government. But that would be another one that we would point to that does cause an increase in premiums in the workers comp scheme.

THE ACTING CHAIR: Thank you.

MR WERNER-GIBBINGS: Can you come to one more?

THE ACTING CHAIR: Sure.

MR WERNER-GIBBINGS: The National Insurance Brokers Association submission mentioned the role of government in climate adaptation and risk mitigation for insurance. I am wondering if you have views on practical levers that the ACT government could pull or has available to influence climate adaptation.

Ms Hextell: What we are looking at, especially because the ACT has already taken action to remove insurance-based taxes, unlike a few other states, is mitigation. Obviously the ACT is not as high risk as some other states. The Climate Council will have a map that will show climate risk under different emissions scenarios in 2030 and 2025 and I think it goes up to 2060 now. For the ACT, for some electorates, you are looking at two per cent of properties being at high risk.

As part of our policy priorities leading into the federal election, we have been encouraging the federal government to invest more in household mitigation. There is community level mitigation, which is currently funded through the Disaster Ready Fund, but there are certain risks that litigation works better for. So we have been

encouraging the federal government, as part of a co-funded scheme, to invest to allow businesses and home owners to undertake that work on their property.

If you are renting or if you are a commercial tenant quite often you do not really have control over what happens to the property that you are leasing. We think there is merit in a program whereby people can access funds to enable them to undertake this mitigation work. That is where the app that the ICS developed around bushfire is so critical. It is great to hear that they are looking at expanding that. Getting that information in the hands of people to understand what they can do and then to have a pool of money that they can access to enable them to undertake that mitigation work is really what we perceive as the role of government.

Ms Pearce: I might add a little bit more to that. If we have some Easter homework, we would love to add a little bit more to—

THE ACTING CHAIR: Okay. We have around nine minutes left and I want to ask about community organisations and strata.

Ms Pearce: I will make it super short, I promise. I think it is three things. It is what we do about the homes that are already at risk in the ACT that are standing right now and it is what we do to stop baking in risk to the system in the future. Right now, it is the resilient stuff that we just heard about to make your homes and businesses more resilient to the risks we are experiencing today. But there are two things the ACT can lean in on to make a difference to the future risk. The first is land use planning reform. Stop building in high-risk areas of the territory where we know the premiums are going to be higher. That is a really critical piece of the puzzle. The second thing is the National Construction Code. The ACT has a seat at the table of those discussions. We have long been calling for resilience to be baked into the National Construction Code so that we build our homes to last a lifetime and so they can withstand the current and future extreme weather events. If we could tick those three off the wish list it would make a substantive difference in the territory to kind of take—

MR WERNER-GIBBINGS: Is using the word "baked" a tacit callout to sort of global warming, or that is just one or two—

Ms Pearce: You can certainly make that analysis, yes.

MR WERNER-GIBBINGS: Okay; thank you very much.

THE ACTING CHAIR: I would like to ask about community organisations. We have had a number of them in here talking about how high their premiums are, how difficult it is for them and they are volunteers. Can you shed some light on why premiums for small community organisations are so high?

Ms Hordern: It goes back to the risk, ultimately. Often community organisations are doing work that involves vulnerable people and often it involves children. The risk with those groups is quite significant, particularly the long-term risks were an injury to occur. With children, for example, the cost to manage an injury potentially over their lifetime is really, really significant. So insurers are considering those potential lifetime risks when they are looking at community organisations.

I think it is also important to recognise that often community organisations do not have very large budgets. We absolutely recognise that. So the insurance portion of their budget is probably larger than what they would like it to be. That is a feature of them, but it does not mean that their risk is lower just because they have a smaller budget.

The other thing is that often they are operating on government-owned land, and governments of all stripes require businesses to have certain levels of insurance. Often those levels of insurance are sitting at the $20 million amount. We see that quite often, and often it is a set-and-forget for government. There will be a contracting department that says that $20 million sounds about right and they are not looking at the individual risk for the individual event or whatever it is that that community organisation is trying to do. If you are running quite a large school fete with a lot of children on a bouncing castle, you probably want your $20 million coverage. If you are running a knitting circle at the local church hall, $20 million is probably not necessary in most situations. So proportionate and appropriate requirements for insurance for use of government-owned land or resources is important.

THE CHAIR: If they were able to assess the risk within government and set the liability lower for, say, knitting circles, what sort of impact would that make on the premium?

Ms Hordern: If a business is not looking for $20 million and they are looking for $1 million of coverage, the insurer's risk comes down and, logically, you would assume that the price of the premium comes down. All of the insurers price risk differently, so I cannot provide a definitive answer.

THE CHAIR: I was just wondering how much of a percentage of the risk would be—

Ms Hordern: It is hard to say exactly what the percentage of the risk would be, but you would anticipate it would have some impact on the premium. Again, if you are looking at $20 million versus $1 million, that is quite a different risk that you are looking at. It might also increase the number of insurers willing to cover the risk and so there may be more availability in the market. It may be that those organisations, if they do not need the $20 million, may be prepared to have a higher excess to cover a potential loss or at least the first part of a potential loss, which again may bring down their premium.

THE CHAIR: Okay; thank you.

MR RATTENBURY: Just on that, I take your point around risk but we have an example that has been submitted to the committee from the Field Naturalists Association of Canberra, who have not had a claim in their 45 years of operation, and yet their premiums more than doubled in the last few years, they have advised the committee. I do not expect you to be able to answer an individual example, but these are the sorts of stories we are getting back from the community, and they cannot understand that sort of scenario. These people have literally never claimed.

Ms Hordern: Yes, and it is very frustrating.

MR RATTENBURY: They are getting a risk punishment that does not reflect their

activities.

Ms Hordern: I can understand how frustrating that is for those organisations. We look—

MR RATTENBURY: And for us as a parliament. Our community organisations are struggling to stay afloat.

Ms Hordern: We look at these too, and we see them and we do get frustrated by them. Often it is because of the broader sectoral risk. That business or that organisation being in that particular sector means that the prices are going to go up, plus all of the other costs that are going up across the entire insurance sector. I realise that that is a very unsatisfying answer for those community organisations. It is very frustrating. I hope that they have a really good broker that they are working with. If there is something we can do to help, if you want to put them in touch, we are happy to see if we could assist them—or we can funnel them through to NIBA.

MR RATTENBURY: Thank you.

THE ACTING CHAIR: With the community, is it pooled as well? Is it pooled with the whole broader insurance ecosystem that we have been talking about?

Ms Hordern: The entire insurance ecosystem in Australia is pooled. There is a finite amount of capital that is available globally, and then necessarily there is a finite amount of capital that is available in Australia. Each insurer will have an amount of capital that they are able to deploy into the market in any given year, any given day, and the insurer will determine which amounts of capital they will put against which risks. It is not an exact science, and a very detailed explanation of that probably will not be helpful. Certainly an insurer, if they are writing home and contents and motor and public liability, will allocate different buckets to those different lines, and they will need to make a profit across those lines as well to enable them to keep operating. So, if you see enormous losses in one part of the market in any given year, they will need to balance the rest of the market to remain solvent and viable.

THE ACTING CHAIR: We have a couple of minutes left, and I would like to ask Mr Klipin about strata brokerage. We hear from the strata community that they have increasing premiums as well. Can you shed any light on what is driving that?

Mr Klipin: Obviously, it has been a fairly public debate for the last eight or nine months, watching ABC and so on, and a bunch of work has been taking place certainly within the New South Wales government. There are a couple of things at play. Prices are driven, as the ICA has said, based on the risk. As the risk goes up, the price goes up. But there is another piece in the strata broking marketplace. Let's just take, for example, retirees who are living in a strata community who elect a board to the owners corp, who then goes and finds an organisation who can help them manage their property, including their insurance. That is the strata manager role. The insurance broker role is to then work with the strata manager and the owners corp to figure out the right and the appropriate kind of risk that is in there.

The public debate that has been in the market is around what the role is of all of those

three parts of the value chain. There are lots of other parts of the value chain as well. But, suffice to say, the role of broker is to advise the owners corp about the right and the appropriate type of cover and to broke that and, where they have a close relation to the strata manager, to obviously work with them and to be very transparent around how those arrangements work and certainly around how the remuneration piece works. That piece of work is still a bit of a work in progress. We are working closely with the New South Wales government and Fair Trading, as is the ICA and many others in the marketplace. Hopefully that gives you a bit of a lens on it but it is still a work in progress.

Ms Hordern: If I can, I would just to add to Richard's comments on some of the things that are driving costs in the strata space—because, of course, general insurance covers strata insurance as well. To some of Ms Pearce's points on the quality of buildings and the maintenance that is being done or, critically, not being done to buildings across the strata space, we are seeing a number of buildings that are aging and have not been adequately maintained.

I am not sure if you are aware of flexi hoses, but they are the slightly softer plumbing hoses that can get into small spaces and around small corners. Most people are not aware that they have a five- to seven-year shelf life before they start cracking and leaking. So they need to be checked very frequently. But, unfortunately, that often does not happen unless you have got a very active strata manager.

There is also a challenge with owners corporations being volunteers, obviously. Often they are very busy people who are struggling to get across all of the detail of what is a very complex building, often with commercial and residential and often with competing interests between those commercial and residential units. The point about the building standards is absolutely critical in making sure that owners corporation members aware of their obligations and are undertaking regular and appropriate maintenance to make sure that the building is not seeing that degradation and damage. Those are all going to be really important in terms of managing the costs in strata.

THE ACTING CHAIR: Thank you.

MR EMERSON: I want to very quickly ask about the commission arrangements and strata managers. Is it that the broker pays a commission to the strata manager and then there is a separate commission between the broker and the insurer? Would you have any concerns if that were not permitted—that commission between the broker and the strata manager?

Mr Klipin: The remuneration flow heads from the insurer to the broker, and that is where it lays. It really depends on any arrangements that the strata manager may or may not have with brokers and it will be case by case. That has been part of the area of scrutiny, clearly, that has been played out through the work that we do with the New South Wales government.

MR EMERSON: Okay.

THE ACTING CHAIR: On behalf of the committee, I thank you for your attendance today. You have taken questions on notice. I have quite a list, actually, about hitting

caps, reports, MAI, mental health in New South Wales and Victoria, evidence of legal fees and areas of best practice. That might not be comprehensive but—

Ms Pearce: We have a list.

Ms Hordern: We have a list too.

THE ACTING CHAIR: Okay. Please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you very much for informing the committee.

Short suspension.

MARSHALL, MR SEAN, Work Health and Safety Officer, Australian Manufacturing Workers Union, NSW-ACT branch
MULLER, MR ANDREW ROSS SC, Representative, Shop Distributive and Allied Employees Association

THE CHAIR: We welcome the representative of the Shop Distributive and Allied Employees Association, Mr Andrew Muller SC. I remind you of the protections and obligations afforded to you 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. You are welcome to make a short opening statement, if you would like, or we can go straight to questions.

Mr Muller: I would be happy to make a short statement, if I may.

THE CHAIR: Yes; two or three minutes to set the scene. That would be useful.

Mr Muller: I am here on behalf of the Shop Distributive and Allied Employees Association. I have read the privilege statement, and I am comfortable to proceed on the basis of acknowledgement of that statement.

THE CHAIR: Thank you.

Mr Muller: I will start by making the observation that this inquiry is ambitiously broad in terms of the scope of the terms of reference. I have some speaking notes that I might leave with you, Mr Chair, at the end of the session. My input concerns the workers compensation aspects of the insurance costs inquiry that you are undertaking, and I am mindful that a substantial portion of the submissions you have received focus on that particular area of insurance.

The starting point for me is to observe that decisions about a compulsory insurance scheme like the workers compensation scheme, which is fundamentally beneficial legislation, are decisions that need to incur on a considered basis. Whilst anecdotal evidence is not to be dismissed and is significant, because it gives this committee some understanding of people's perceptions about the scheme and their sense of how it impacts upon them, decisions about scheme reform ought necessarily to be based on close analysis of actual evidence, not anecdotal evidence.

What I endeavour to convince you of in the paper I have prepared is that the starting point for any analysis of a beneficial scheme like a workers compensation scheme is: what are the purposes for which the government has the scheme in place? There is much that has been written over the years about the function of workers compensation legislation, but having identified those purposes, it is about then looking at the actual evidence of how the scheme is performing against the identified goals of the establishment of the scheme; and then, and only then, are you in a good position to make informed decisions about scheme reform.

The other thing I would say, by way of introduction, is that workers compensation legislation is complex legislation; it is inherently complex. When scheme reform

occurs—and I am relying on actuarial evidence from the US in making this observation—actuarial data suggests that, typically, significant scheme reform takes about seven years to filter through to a point where you can actually see what its impact is. That, of itself, is a good reason for taking care in undertaking scheme reform.

I have also referred in the paper, with that seven-year time frame in mind, to a very useful study that was done in New South Wales in about 2019, after major scheme reform that was introduced in that jurisdiction in 2012. That study demonstrated that, in terms of improving the sustainability of the scheme costs, those changes had been very effective, but they had a number of unintended consequences.

There was a significant increase in the time frame for decision-making on claims. There was a significant increase in the duration of certain types of claims and a significant deterioration in mental health outcomes in relation to the claims process. What the study really demonstrates is that there is a need for real care in making adjustments to these sorts of schemes. You can have a particular goal in mind, you can achieve that goal, but you can have a whole bunch of unintended consequences along the way.

By way of introduction, they were the things that I wished to say.

THE CHAIR: Thank you very much. I notice that Mr Sean Marshall is here, from the Australian Manufacturing Workers Union. Thank you very much, Mr Marshall, for joining us online. I remind you 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.

We have just had a short opening framework statement from Mr Muller. Would you like to do the same in two or three minutes, or are you happy to launch into questions?

Mr Marshall: I acknowledge that I will act in compliance with the witness statement. All I wanted to do was to pick up on an issue which, clearly, is outside the terms of reference for this committee. It is that, for future reference, you should consider having an inquiry into the effect that step-downs have on injured workers. In New South Wales, the union movement is currently calling for the end of step-downs, in the context of some reforms that the New South Wales government wants to make, and I am making the same call here.

It seems to me really unjust that some of the most vulnerable in our community are called on to live on less than the amount that they would get for being at work. We often hear the rhetoric that it is so important that workers stay connected to their workplace. The most important way in which you can connect a worker to their workplace is to keep them on the same rate of pay that they used to be on, when they were at the workplace, and to which, hopefully, they will eventually return.

THE CHAIR: I will lead off with a question to you, Mr Marshall. Thank you for your submission. I found it full of useful data and I thought that the sources were reliable. In the submission, you argued that small to medium enterprises—SMEs—are failing

financially due to late payments by other businesses, not from workers compensation insurance premiums. Can you please tell us more about that?

Mr Marshall: I do not pretend to be an expert on the subject of insolvencies and the causes of insolvencies. In fact, it is an area of research that I have never had cause to look at before. In the data that I have found from CreditorWatch that was reported, both in some industry blogs and in the *Sydney Morning Herald*, there certainly seemed to be a very clear correlation between payment defaults and entering insolvency.

Whether that is causation, I do not know. I am not an actuary or an economist, but those graphs seem to be tracking each other pretty clearly. The issue of insurance premiums going up just did not seem to arise in those contexts.

MS CARRICK: My question is to both of you. Over the last two days, there has been a lot of talk about adopting or integrating New South Wales workers compensation attributes. I am not quite sure what the difference between integrating and adopting is; maybe you can explain the difference between integrating and adopting. What are the differences, and would it benefit the ACT?

Mr Muller: The New South Wales scheme is fundamentally different to the one that operates in the ACT, in that it is what is described as a long-tail scheme, and it is a statutory-funded scheme. Across Australia, there are three or four jurisdictions who have workers compensation schemes that are privately underwritten by insurance companies, as we see in the ACT. In the other jurisdictions, the government establishes a fund and claims are paid out of that fund. Premiums are set relative to the needs of maintaining that fund.

MS CARRICK: I did note that it was the big jurisdictions like New South Wales, Victoria and Queensland that had the government-backed workers compensation schemes, and it was the smaller ones that tended to have the—

Mr Muller: The privately underwritten ones.

MS CARRICK: Yes.

Mr Muller: The obvious reason for that is that these funds are massive funds. In a larger jurisdiction, there is probably better scope to establish that kind of system. Historically, in Australia, all workers compensation schemes were privately underwritten, but the larger jurisdictions have moved to this statutory fund model.

MS CARRICK: Why do you think they moved to their own statutory-backed—

Mr Muller: That is a good question and one that I am not sure I know the answer to. It all happened a long time ago. In New South Wales, it was in 1987 that they moved to a statutory-funded scheme. In terms of making comparisons between the two, it is challenging because of those fundamental differences in the way the schemes operate. Generally speaking, in what we call the long-tail workers compensation scheme design, there is no opportunity for people to get out of the scheme by virtue of a lump sum payment, whereas, with a short-tail scheme, the opportunity exists to purchase a continuing right to compensation and take a lump sum. I addressed this in the paper that

I have prepared. It is difficult to make direct comparisons because of those fundamental scheme differences.

In answer to the second part of your question, which is the idea of the ACT adopting a similar scheme, an immediate challenge would be: how do you fund it, if it is a New South Wales type scheme? Will the government look at creating a statutory fund? Will the government turn to the insurance industry and say, "We want you to establish a fund"? I am not aware of a situation where the insurance industry has provided the funding for a statutory fund scheme.

MS CARRICK: Would the ACT be able to just pick the good bits out of it and—

Mr Muller: Historically, when you look at ACT scheme reform in workers compensation, that is often what has happened in the past. If I take, for example, the provisions that were introduced here to deal with psychological injury claims and the circumstances in which they would not be compensable—and these are changes that were made some years ago—the ACT very much modelled that particular discrete change on one that had been introduced in New South Wales.

I think it has not been unusual for governments in the ACT, over the time since self-government, to take a little bit of that shopping list approach to legislative reform, for the simple reason that sometimes the funds required to embark upon a whole-of-scheme design process are enormous. For a small jurisdiction, it would be a massive undertaking.

A short answer to your question is that, yes, I am sure there are opportunities to look at discrete aspects of schemes operating in other jurisdictions, and to say that, yes, that could fit as part of our model.

THE CHAIR: Mr Marshall, do you have anything to add to that?

Mr Marshall: Again, going to the issue of step-downs, if we go to the New South Wales model, you lose five per cent immediately; after 26 weeks, you lose 12 per cent; then there is what happens after 52 weeks. The step-down starts sooner underneath the New South Wales scheme. For that reason alone, we would say, "Please don't, no."

As far as the New South Wales union movement is concerned, our workers comp scheme is one that we would very much like to see made fair and just for injured workers. We do not see that, at the moment, it acts in that manner. Going to one aspect of the scheme, injured and diseased workers can be subject to work capacity decisions, which let employers and insurers conjure up suitable employment in non-existent jobs with non-existent employers. If this ghost job pays more than they used to earn, that results in the injured worker being paid nothing. The "suitable duties" definition under the Workers Comp Act allows that to happen.

For that reason, under step-downs alone, please do not adopt the New South Wales model. The New South Wales model, as I made clear earlier, is about to undergo some major reform. I cannot say quite yet where things are up to. We are waiting to hear back from the government, but it may be that this scheme becomes worse, so we definitely would not be asking you to model anything that you would be doing on the New South

Wales scheme.

MR EMERSON: I missed the beginning of the evidence; I was too slow to come here. Mr Muller, in what capacity are you appearing? I was looking at the union submission and it said, "Make sure you speak to Andrew."

Mr Muller: I am here on behalf of the Shop Distributive and Allied Employees Association, but I am not a member of the union. I am a barrister.

MR EMERSON: Have they engaged you in the past for their members or—

Mr Muller: No, they asked me to come along and make a presentation on their behalf because of my background in the workers compensation area.

MR EMERSON: In terms of your practice, are you predominantly representing insurers or people making claims?

Mr Muller: Very much both. I would probably be very close to fifty-fifty, in terms of my practice.

MR EMERSON: One of the themes that has come out in the hearing is around some of the settlement behaviour. Things seem to be settled quite early, potentially pre-emptively, including in what might be potentially spurious claims. Insurers might say, "Let's just get out in front of this and settle." Do you have any observations around that, especially with respect to what might be unique to our arrangements in the ACT compared to other jurisdictions?

Mr Muller: It is not unique. The ACT's scheme creates the opportunity for lump sum settlements. It is a feature of the scheme here. Insurers—and I do not say this critically—are organisations set up with a view to profit. It is in their interests to minimise the cost of claims. I do see circumstances where insurers move to resolve a claim early rather than face the risk of a long-term dispute. When I see them do that, they do it on a well-informed basis, as professional litigants, which is what they really are. I do not see them doing it for anything other than well-informed reasons, in that they think it is in their best interests to minimise the claim cost.

THE CHAIR: It is often described as a commercial decision.

Mr Muller: Of course.

THE CHAIR: Which is a business decision?

Mr Muller: Of course. I think it is fair to make this observation: for an insurance business, uncertainty is a big negative in the management of their risk. Bear in mind that insurance companies are somewhat unique in commercial organisations in that they declare a profit on the basis of an estimate of their liabilities. In a particular year, they declare a profit on the basis not of actual expenses but of anticipated expenses in that claim year, based on estimates.

Uncertainty is a real problem for insurance. They are very much more content where

there is a stable environment, where they can, at an early stage, accurately estimate their claims exposure, because if they get that wrong, it is very bad for business. Yes, insurers do engage in behaviour where they will seek to settle a claim early, where they see the risk of that claim going forward being worse for them than the certainty of an early settlement.

The frustration for employers often is that, from their perspective, they see a claim where they consider there to be a question over the veracity of the claims that are being made. It is certainly true that, in some of those cases, an insurer will purchase the risk. They will compromise the claim to get certainty of outcome and offer a lesser sum than the full value of the claim so that they do not have the risk of having to pay the full value down the track. That is the way insurance business—

MR HANSON: But if that full value was reduced because you had a cap on it—

Mr Muller: Of course.

MR HANSON: then you will see that happen either less frequently or at a lesser amount; is that right?

Mr Muller: Yes. From the other side, when you are representing an injured worker where there is risk in the process going forward, risk of an adverse outcome for the injured worker, and when you are giving them advice, your advice might be, "You could be successful in this action or you could fail," and if you are being offered a compromise that gives you certainty about the outcome, that might be attractive to you.

MR EMERSON: We have had evidence through the hearings about the lack of a penalty for spurious claims. Is that something that you think would change behaviour in that dynamic, that interaction? In some ways it is not clear who that reality serves. As Mr Werner-Gibbings said, it is just a kind of commercial reality, which makes sense to me—how that happens.

Mr Muller: Yes.

MR EMERSON: Would you see that being a problem or a benefit, if it were introduced?

Mr Muller: There are already some penalties. In the workers compensation legislation, there are penalties if people are found to have made a spurious claim. There are separate legal penalties outside the workers compensation scheme that exist—for example, where someone perjures themselves in court.

MR EMERSON: If you lose your case then that is a spurious claim. That is your penalty.

Mr Muller: True. There are already some measures in place in that regard. There are probably opportunities to look at other measures. Of course, the cases have to proceed to a conclusion before that kind of false claim is established.

MR HANSON: It has to go all the way through to court action before any sort of action

could be taken to say, "That's a false claim"?

Mr Muller: In the case of perjury, someone has to give evidence and be found to have perjured themselves before they would be exposed to any action in that regard. Under the workers compensation scheme itself, the Workers Compensation Act has some provisions where, again, if someone is found to have been dishonest in the claim-making process, there are various penalties that can apply to them.

MR EMERSON: Is it your sense that current arrangements in the ACT reduce the risk of someone potentially making a spurious claim to a greater extent? Is that an issue that needs addressing? This is something that we have heard throughout the hearing and we are trying to get to the bottom of it. It is not saying that the ACT should not compensate workers—I do not think that is on the table as a recommendation from the inquiry—but it is about getting the balance right and disincentivising spurious claims.

Mr Muller: I am sure that there is scope to look at some other mechanisms that would strengthen penalties in relation to spurious claims. I am sure that is an option.

MR EMERSON: Thank you.

MR WERNER-GIBBINGS: Mr Marshall, do you have anything to add around that?

Mr Marshall: The only point I would make is that Safe Work Australia data—and I could not give you the reference off the top of my head—shows that only 30 per cent of incidents that happen at work are reported as workers compensation claims. So 70 per cent of the time, it is either dealt with legitimately via the application of first aid or the employee just decides it is not worth it—"It's not worth the future discrimination I might go through in a job interview if I'm illegally asked whether I've had a worker's comp claim made before." I always say at this point that no-one is looking at that 70 per cent and looking at the good policy reasons it is such a large figure. That would be all I would say on that point.

MR WERNER-GIBBINGS: Thank you very much.

MR RATTENBURY: I would like to test a couple of other issues that have come up in the course of the hearings. One thing that has been identified is that the ACT allows for journey claims, which no other jurisdiction does. From a union perspective, do you have any views on that question?

Mr Muller: For my part, historically, most jurisdictions provided for journey claims. I could not tell you why the ACT has hung onto a journey claim provision. There has been some modification to it in recent years, such that it is now limited to the boundary of the property. The criticism that is often raised in the context of journey claims is that, in most circumstances, from the time the worker leaves their place of work and embarks on their journey home, the employer has little or no control over that part of their life. There have been some aspects in submissions made to this inquiry, and I am certainly familiar with submissions made by the Insurance Council previously about the importance of tying a workers compensation scheme closely to occupational health and safety responsibilities. I think there is real merit in there being a connection between those two things. One of the best ways to improve workers compensation outcomes is

to reduce the incidents of injury. If those two schemes are working well together, we would get fewer incidents of injury.

The flipside to that is to say, "If the employer cannot control what happens once we leave work and are on our journey home, that is different to the rest of the protected period of employment, where the worker has some control." That is a basis for perhaps looking at journey claims being treated differently and not being treated as compensable claims.

MR RATTENBURY: Thanks. Mr Marshall, do you want to comment on that?

Mr Marshall: Journey claims have been lost in New South Wales and it is one of the aspects that the union in New South Wales wants to get back. It is interesting linking it to the OHS responsibilities of the employer. In my view, not having journey claims goes to the issue of fatigue at work and fatigue on the way home from work. It is something that the employer has some control over. At the moment, they are off the hook. If they work their workers until they are fatigued and they have a crash on the way home because of that fatigue, then they are not covered for workers compensation, or indeed on the way back if the break between shifts is so short that they have not had a decent sleep. You can look at it from the other way around and say that having journey claims makes the employer's health and safety management system look at the issue of fatigue and makes sure that workers are healthy and safe to drive home when they finish their shift.

MR RATTENBURY: Outside of fatigue, are there other grounds on which the employer should be deemed responsible for the journey component of a person's trip?

Mr Marshall: I am no barrister and I am not a legal expert, but I understand that it was previously like a but-for test—"But for going to work, I would have been at home. But, because I have a job, I have to make my way there somehow." Arising from the whole process of work is the journey. Obviously, a lot of people work from home now, so, in a way, it arises less often, but I would say it is just as necessary as a form of a social safety net for workers, in my view.

MR RATTENBURY: Thank you. The other topic that has been a little controversial in our hearings is the role of no-win, no-fee models that many legal firms or lawyers operate. Again, I welcome you making any comments on your views on the merits of that. Is it a positive? Is it a negative? Is it an access to justice question? Is it providing the wrong motive for people to have a go because there is no risk for them? These are the sorts of perspectives that have been put to us over the last couple of days.

Mr Muller: The ACT is not an island in having no-win, no-fee legal services. That is a facility that exists in, I think, every jurisdiction in Australia. There have been some submissions to the effect that lawyers take a percentage. Unlike the United States, contingency fees are illegal in Australia. So, if lawyers are operating on a percentage basis, they are doing so unlawfully.

MR RATTENBURY: They swore to us earlier today that they are not.

Mr Muller: They would get in a lot of trouble if they were. Certainly in the context of

the workers compensation space, the industrial accident space, many of the people who suffer injury are injured in circumstances where they are performing physical work. Many of them, having suffered injury and have had a claim denied, are without a source of income. For those people to seek to challenge a decision to refuse their claim, or even for those who are on compensation—as Sean made the point—after a period, their compensation drops down to a percentage of their wage. These are people who are very often struggling financially and struggling to meet the medical costs of their claim.

To create a situation where those people then have to fund access to legal services themselves—and bear in mind that, with these sorts of claims, funding access to legal services is not just about paying a lawyer; it is also about paying a doctor to provide a report and sometimes a range of medical service providers to provide supporting evidence for your claim. It is an expensive process. I fear that, if a restriction were imposed on access to legal services on a no-win, no-fee basis, the people who would be most punished would be the people who can least afford access to legal services in our society. On top of that, people who are ill-able to afford the services and are suffering and injured have to deal with medical bills.

MR RATTENBURY: Thank you.

MR HANSON: It might be a bit anecdotal, but, of the matters that you deal with and the claims, how many actually end up in court and how many are settled?

Mr Muller: It is certainly going to be anecdotal because I do not keep statistics of those things. My sense of it is that, of those that I am asked to advise on or have some involvement in relative to those that go all the way to a contested hearing in court, the ones that end up in court would be in the order of 10 per cent.

MR HANSON: And what is the balance of success with those? Is it 50-50 or is it that most that go to court are successful?

Mr Muller: No; there are certainly some that are unsuccessful. **I** would be hard pressed to give you a percentage—

MR HANSON: I just wanted the "vibe" of it, to quote a legal expert! Regarding workers compensation, you have warned us not to make too many adjustments that might have unintended consequences, but, as someone who has seen this act from both sides—you are in a unique position, in a sense—do you have any thoughts about the act and insurance for workers compensation, where you might see gaps or improvements that could be made that could reduce premiums or increase the speed of matters being dealt with, or whatever it might be?

Mr Muller: Yes; I can think of a number of areas where there could be efficiency improvements in the management of claims. Any measures directed at encouraging parties, where there is a dispute, to get to an early resolution are good measures. The legal process is an expensive process. If it can be brought to a head more quickly, that is helpful. There are measures that can be put in place, and we see this in some jurisdictions that strongly incentivise parties to, instead of taking an adversarial approach to the dispute, take an approach where everyone is working towards getting to what is actually a fair solution at an early stage. There are ways of penalising parties

who do not do that and prolong the process.

MR HANSON: Can you cite a particular jurisdiction that does that?

Mr Muller: The ACT does it to some extent through rules about offers and penalties that apply. There are a few models in different jurisdictions, including overseas jurisdictions, that play around with a formula to provide that incentive. Case management is an area where there is room for improvement in this sense. There are schemes that utilise intervention at a quite specialised level through the compensation claim process to assist parties to get to a negotiated outcome. I can see room for improvement in the ACT in that regard. Again, we are a small jurisdiction. There are some limitations. In larger jurisdictions, they have specialised judicial officers dealing with this process and specialised conciliators dealing with the process along the way.

MR HANSON: From memory, didn't the ACT set up an IR court?

Mr Muller: We have an Industrial Court that sits as part of the Magistrates Court.

MR HANSON: Does it not do that?

Mr Muller: We have a magistrate who is appointed from time to time to be the industrial magistrate. I am probably talking more about management of the process before it gets as far as a hearing before a magistrate .

MR HANSON: Is there some sort of arbitration? Rather than just having lawyers at 20 paces, is there some sort of independent umpire that you can have early in the process before it actually goes to court?

Mr Muller: In some areas of insurance claims, there is quite extensive use of alternative dispute resolution. In the matters that go to the Supreme Court, the court now mandates the use of an alternative dispute resolution process, so that everything goes to mediation. That is a very successful process. That is part of the reason a lot of these claims are resolved before they get there. It is mediation; it is not arbitration, where there is a decision maker who can impose an outcome, although there are systems that use that sort of process as well—

MR HANSON: There is scope for that?

Mr Muller: An example is the motor vehicle system in New South Wales that has a system called CARS. That involves parties making their submissions to an appointed assessor. That assessor may hear some evidence from the parties or may just deal with it on the papers, but the assessor gives a decision at a much earlier stage than a court decision could be given. In certain circumstances, the parties have rights to appeal that decision, so that it still goes to a court, but then they are penalised if the court comes up with the same decision. That has been a very effective system in New South Wales.

MR HANSON: And that could potentially—

Mr Muller: You could introduce something like that here. That would be one of the levers you could pull to improve—

MR HANSON: Speed it up and make it less adversarial perhaps.

Mr Muller: Efficiencies—yes.

MR EMERSON: For workers compensation?

Mr Muller: Yes.

MR EMERSON: You could do it for any?

Mr Muller: For any personal injury claim. It is broader than just workers compensation.

MR EMERSON: Public liability as well?

Mr Muller: Yes.

MR HANSON: The CARS model—

Mr Muller: It is the CARS model under the Motor Accident Scheme in New South Wales.

MR HANSON: Thank you.

MR WERNER-GIBBINGS: Mr Marshall, do you have anything that you would like to add?

Mr Marshall: Regarding what has just been talked about—any system that can be put in place to head off disputes and get early settlement of claims, to give both sides certainty. It is well known that the longer people stay on the scheme the more chance that they will pick up a psychological injury as well. That is definitely something that should be considered.

I just want to say something about case management. I do not know how it goes in the ACT, because I am mainly New South Wales based. In New South Wales, the case manager role has been downgraded. An injured worker will have case manager after case manager after case manager, because it is seen as a stepping stone role. We are asking for proper professional standards for case managers and an increase in their remuneration and status, so you do not get the constant turnover of case managers. Claims can be managed better that way too, because it is a huge administrative burden on both sides when you have to come to terms with new loads of case files. On the other side, the worker says, "I have to go through it again." There is sometimes the trauma of explaining what happened to them in the first place and what has happened since.

THE CHAIR: Mr Muller, yesterday we heard a lot from employers about spurious claims and being at the mercy of claimants. In the ACT is all the power in this sort of situation with the workers, or do you have anecdata—a word we heard an hour ago—on whether there are instances of employers pushing back when they should not be, failing to provide appropriate OH&S or not working on their obligations within the

compensation scheme?

Mr Muller: Absolutely. Unfortunately, I have seen many examples of attempts to manipulate the scheme that are not consistent with the spirit of the scheme or consistent with the obligations that employers have in relation to supporting a rehabilitation process and supporting a durable return to work. Regrettably, there is—and I qualify this comment by saying it is probably a small sector of the employing community in the ACT—a small sector that actively seek to avoid their responsibilities—

THE CHAIR: We heard testimony yesterday from an employer who said that, if someone was injured, they would seek to provide a payment to them just sort of ex-gratia, effectively, to prevent a claim—

Mr Muller: I did pick up on that. I found that extraordinary, because one of the things you cannot do in workers compensation, under the Workers Compensation Act, is entice someone to contract out of their entitlements under the legislation. So I was surprised by that.

I will give you an example of a problem that the government here sought to address a few years back. There was a significant issue with the use of labour hire organisations, of employers trying to avoid their liability for workers compensation arising from direct employment of people and entering into arrangements of labour hire organisations, so that they cease to employ these individuals. We saw a shift from people being direct employees to a significant component of our workforce being independent contractors, who were then not covered by workers compensation legislation.

The union movement had a lot to say about that at the time, and the government responded by making an adjustment to our legislation so that, regardless of the way your employment is structured in the ACT, whether you are a direct employee or an independent contractor, and the arrangement is such that you regularly and systematically work for a particular entity, you still have access to workers compensation benefits.

THE CHAIR: Thank you. Mr Marshall, do you have anything to add?

Mr Marshall: On the issue of spurious claims, I would like to bring something in from the other perspective. Often when a worker is injured, an employer will make their spurious claim that they will only accept the worker back to the workplace if they present no risk of ever getting injured again. That presents an impossible test for workers to overcome. In fact, what employers are doing in that case is they are ignoring the duties that workers rightfully have under section 28 of the WHS Act, which is to be able to take reasonable care for themselves and reasonable care that their acts and omissions do not adversely affect others.

I think that spurious claim really needs to be hammered home. It is just not fair that employers suddenly become so concerned about there being no risks, when they should have been concerned in the first place about reducing the risk in the workplace that led to the injuries happening. It is not fair putting that sort of legal bar on people in that if they do not understand the law then they will quite often just cop it, particularly if they are not union members. It makes it very difficult for them to then engage in proper

return to work activities, and when the opportunity arises to have them terminated because they cannot do the inherent duties that is what happens.

THE CHAIR: Not a lot of power in the relationship.

MS CARRICK: We are seeking to have a fair scheme, but there are incentives that will be built into any scheme, I guess. Yesterday, business was saying that no-win no-fee encouraged people to come forward to get lump sums because the insurers want to settle, and they do not have a say in it—

THE CHAIR: Business does not have a say in the settlement.

MS CARRICK: Yes, business did not have a say, because the insurers wanted to settle. But then we hear that no-win no-pay is good for equity in people being able to access it and that having the lump sums is good for certainty for people, so they are not dragging on for the mental health. Where do you think that the balance is in this?

Mr Muller: You have identified the challenge for the government, really. It is a balancing exercise inevitably. I think the starting point is to have a clear idea of what you are trying to achieve through the workers compensation legislation, which is inherently beneficial legislation, and then, with those purposes of the scheme in mind, what is affordable. It is inherently a balancing exercise. I do not know that I can add much more.

THE CHAIR: Mr Marshall?

Mr Marshall: If I had one last thing to say, I would go to the points I made about the compliance and enforcement generally with respect to work health and safety and with respect to WorkSafe ACT. As everyone knows, WorkSafe ACT have just come out of their disastrous location in Access Canberra. They seem to be starting to take a bit more of an active role in compliance and enforcement. But as you can see from the figures I have presented, and the size of the fines being $367,000 from two prosecutions, if I were a smart employer out there, I am going to say, "There is not much chance of me getting caught." So it would be good if you could make some recommendations along the lines that WorkSafe ACT really needs to lift its game in terms of compliance and enforcement to drive down injury and illness, which is fundamentally what unions, employers and insurance companies want. We want healthy and safe workplaces that are productive. But it does not happen without a proper regulator that is ensuring a specific and general deterrent. I still do not think it is there yet. It is on the road, but more needs to be done.

THE CHAIR: Thank you both very much for your attendance this afternoon. I wish you well for the rest of the day and Easter.

Short suspension.

PETTERSSON, MR MICHAEL, Minister for Business, Arts and Creative Industries, Minister for Children, Youth and Families, Minister for Multicultural Affairs and Minister for Skills, Training and Industrial Relations
LUKINS, MS ELLEN, Executive Branch Manager, Policy, Work Safety Group, Office of the Industrial Relations Strategy, Chief Minister, Treasury and Economic Development Directorate, CMTEDD
SHIELDS, MS PENNY, General Manager, ACT Insurance Authority, Treasury, Chief Minister, Treasury and Economic Development Directorate, CMTEDD
YOUNG, MR MICHAEL, Executive Group Manager, Work Safety Group, Office of Industrial Relations and Workplace Strategy, Chief Minister, Treasury and Economic Development Directorate, CMTEDD

THE CHAIR: Welcome to today's final session of the public hearings so far for this inquiry. We welcome the Minister for Business, Arts and Creative Industries, Mr Michael Pettersson MLA, and officials from the Chief Minister, Treasury and Economic Development Directorate. Just in case none of you have been through this process before, when you first speak please confirm that you understand the implications of the privilege statement and that you agree to abide by it. There are protections and obligations afforded by parliamentary privilege, and they are noted in the 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. Minister, are you happy to go to straight to questions?

Mr Pettersson: We are happy to go straight into it.

THE CHAIR: Brilliant. I will begin. There was a comment from the Insurance Council earlier this afternoon about workers compensation premium trends. How are those premiums trending in the ACT, and what trends are we seeing in other jurisdictions? The witness noted that some were going up and that the ACT is apparently stabilising. Is that what you are seeing? Do you have further information?

Mr Pettersson: Mr Young?

Mr Young: Thank you, Minister. I acknowledge and agree to comply with the privilege statement. In answering that question, I will begin by noting that Safe Work Australia collects information from all workers compensation jurisdictions and provides a series of comparative data, including standardised average premium rates over time. So, in answering that question, I will in part refer to that data—and I believe a link to the Safe Work Australia site was provided as part of the submission.

In the ACT private sector scheme we have seen a relatively stable premium rate when you consider the average rate for the entire scheme. There is some variability once you dive down into individual employers and industry class, but I will perhaps leave that for another question. The average rate in the ACT has been around two per cent of wages for an extended period of time. Historically, that is one—

THE CHAIR: How extended?

Mr Young: I would say about 10 years. I can look up that number in a moment.

THE CHAIR: Thanks.

Mr Young: Historically the ACT scheme is relatively more expensive than most other Australian jurisdictions—with Tasmania being the most expensive and the ACT private sitting around the same rate as South Australia, once you sort of standardise for those key differences in scheme design. However, we have seen over the last seven years significant increases in the average cost of claims in other jurisdictions. That appears to be being driven primarily by the underperformance of public sector workforces as part of those schemes, where they have been sensitive to claims for psychological injury. The ACT private sector scheme does not cover the public sector. So, to some extent, it has been insulated from those national headwinds, and, in part, that has attributed to its stability.

Most frequently the ACT scheme is compared to the New South Wales and Victorian schemes, for reasons of geography. What we have seen there is the Victorian scheme actually legislating to reduce the average cost of workers compensation benefits in order to achieve control a reduction in increasing premium costs. The New South Wales scheme has increased premiums year on year for, I believe, the last two years. Recently, the New South Wales Treasurer announced that, if legislation was not introduced to reduce the cost of those claims, the New South Wales scheme as a whole would need to increase rates by around 37 per cent.

So we are seeing increases in other jurisdictions, particularly managed fund schemes, incrementally catching up to the cost of the ACT schemes. It is a little bit difficult to get the exact details of the New South Wales and Victorian schemes. But I estimate that, for the forthcoming policy year, the reasonable rate that needs to be collected by ACT employers to cover the cost of claims would only be fractionally more than the equivalent rate in New South Wales.

One of the defining differences between the ACT scheme and New South Wales and Victorian schemes is that those are managed fund schemes. So, essentially, they have a government entity that is doing the underwriting, and they have insurer scheme agents providing claim administration services under contract. That means the government can make decisions about price setting and cross-subsidisation between industry classes. I think, in practice, what has happened there is prices have been held lower than the premium experience would require, the deficit position has built up over time and governments need to respond, either with very significant price increases or legislative change. Because the ACT scheme is privately underwritten, it is a requirement on our insurers to apply the pricing rules and to set premiums appropriately on a year-on-year basis to cover the necessary costs.

THE CHAIR: This is more of a speculative question, but we have had a lot of speculation and opinions. Do you have a view or an insight into future trends on premium rates? Do we expect the ACT to stay around 2.1 per cent of the wages?

Mr Young: If you look at what is driving those trends in other jurisdictions, one is the increase in the number and cost of psychological injury claims, particularly in public sector schemes, and another is the pressure on a number of legislated thresholds designed into those schemes. If we look at the New South Wales and Victorian schemes, for example, there are legislated barriers that limit the number of claims that cross into

your more expensive categories and there is pressure on those thresholds over time and there is deterioration of those. Those two things seem to be contributing to those cost increases.

The ACT scheme does not have either of those things. When you look at its experience of psychological injury, there has been an increase. If we look at historic levels of primary psychological injury experience in the ACT scheme, if we go back about 10 years, they were probably around five per cent of claims. That number is higher now, but it remains less than 10 per cent; whereas, it is typical for public sector schemes to be experiencing around 30 per cent. That is certainly the experience of the ACT public sector.

MR HANSON: What is the story there? Why is it so high in the public sector?

Mr Young: To speculate, based on the risk profiles and the industrial environment. It is probably a much longer conversation. But that increase is clear from all Australian public sector schemes, as reported by Safe Work Australia. Partly there has been a reduction in physical injuries. So it is not just that there is more psychological claims coming through. As a proportion of the total scheme, they are just becoming a greater proportion. However, we know that they cost far more, primarily because it is more difficult to return somebody to work with a psychological injury than a physical one. Those claims can cost up to three times more than a physical injury. As a greater proportion of liability sits against those psychological injury claims, a relatively small proportion of claims start to account for a much greater percentage of claims.

MR HANSON: Can I just clarify that, because the New South Wales system does public and private, the increases in the psychosocial, which is in the public, are causing premium increases across the board?

Mr Young: That appears—

MR HANSON: As the ACT scheme does not have those pressures, because we do not have the public sector as part of it and we do not have that increase, why then are we the most expensive in Australia?

Mr Young: That comes down to, I would argue, two things. If you compare the ACT scheme design to other Australian states, it varies in a number of significant ways, which means the number and cost of claims on a like-for-like basis are higher. One is the coverage is broader. The ACT scheme covers people who are injured in the course of travelling between home and work, which most other schemes do not. Queensland has some limited cover in that respect, but the majority do not. That is an additional sort of cohort of claims that are covered by the ACT scheme and trigger costs, of course. The other is where a claim is made and accepted, the benefits available tend to be higher where the claim is more severe.

What I am referring to there is the access that is provided to common law damages where there is negligence or breach of contract can be demonstrated, or lump sum compensations. These are deliberate scheme design features intended to compensate all injured workers but are particularly at that severe category. If you look at other schemes, there are limitations on the proportion of claims that are able to access common law

damages and also caps on the amount of those damages. So we can look at the experience of the ACT scheme and see that, from memory, around 20 per cent of claims go through to one of those short tail lump sum pathways. They account for more than half of the overall claims.

We commission an independent actuary to review the performance of the scheme and publish a range of information, including key metrics, which show the number, proportion and cost of those common law claims. Those are published on the CMTEDD website. I expect that the next iteration of that will be published before the end of April; so it should be available for the committee's deliberation.

MR HANSON: Thanks.

THE CHAIR: Another term I heard this afternoon from the ICA was "suggested reasonable premium rates of insurance" for insurers. What is the suggested reasonable premium rate, and what is the relationship between that and the rate that an insurer charges a business? I am thinking that the RBA sets interest rates; banks decide whether or not they will pass on the interest rate cut or increase. Is it the same sort of principle?

Mr Young: The schedule of reasonable premium rates is something that is produced by an independent actuary as part of that annual review process that I described.

THE CHAIR: We will expect some more at the end of the month.

Mr Young: The historic set of schedules is already published, and a new version will be published shortly. Based on information that is collected from the licensed insurers each year by the government and passed on to the actuary, they will look at the number and the ultimate cost of claims by specific industry classes. They use a system called ANZSIC, the Australian and New Zealand Standard Industrial Classification scheme. They assign, amongst other things, an estimate of what a reasonable premium rate for the forthcoming year would be.

The reason we do that is that the ACT scheme, as you have established, is privately underwritten, so licensed insurers do the underwriting and determine the premium rate that would be quoted. The ACT government does not intervene and set those premium prices. However, it is a competitive market and our insurance brokers are active. We produce and publish that schedule and make it available to insurers, industry stakeholders and brokers, trusting that that will be used for the purposes of premium setting.

THE CHAIR: They will make a commercial decision as to whether or not they will use that?

Mr Young: We do monitor, as part of that annual reporting, the alignment between the rates actually charged to industry classes compared to that reasonable premium rate. We have seen over time a convergence there. That ANZSIC system that I was talking about exists at multiple levels. At the higher level, where there are wrapped-up classes of employer, larger wages, we see a very close correlation remain. However, when you dive down into far more granular industry classes, you do see some variability.

In the main, though, if we look at experience over the last 10 years, and compare the ultimate rate that insurers take in premiums with that reasonable premium rate, it is either fairly close or, in fact, less. There have been a number of years where, in a competitive market, the rates that the insurers are actually charging are less than that estimated reasonable rate, at the aggregate.

MS CARRICK: We heard that early resolution of claims is a good thing. One suggestion was for a dispute resolution—mediation or case management. Do we have that sort of service here in the ACT?

Mr Young: We do. The legislation sets out the matters that can be subject to conciliation and arbitration. There is a mechanism where, with the agreement of the parties, formal conciliation can occur. Our legislation approves conciliators. There is also a court process, as a slightly escalated point at that arbitration stage. The ACT workers compensation scheme does have a cascading level of appeal that goes through conciliation, arbitration hearing, through to the Magistrates Court. Ms Lukins, would you like to elaborate on the conciliators?

Ms Lukins: I acknowledge that I have read the privilege statement. In terms of the conciliation mechanisms, they are set out in the workers compensation legislation. They specify when conciliation must occur before a matter goes through to arbitration within the court context. There are certain mechanisms, with all matters pretty much having to go through them. Where there is that agreement, and conciliators are available, conciliators are appointed through the court to act in that role.

Mr Young: Going to your original point, absolutely, there is compelling Australian and international evidence that shows the faster any dispute can be resolved, the higher likelihood that an effective return to work can be achieved.

MS CARRICK: With an insurance claim, will they just come in and settle because it is a commercial decision for them to settle?

Mr Young: The ACT private scheme is what we call a hybrid scheme, so it does have a schedule of periodic benefits that are available. A claim is assessed and determined; where liability is accepted, a series of payments are immediately made for loss of income, medical rehabilitation costs et cetera. But there are mechanisms whereby, usually at the election of the worker, a lump sum could be pursued. There are mechanisms to do that either by commuting those statutory benefits into a lump sum or by pursuing common law damages, where there has been negligence or breach of contract.

When I say that there are mechanisms available for long-term periodic benefits, and we do see that, there is a significant proportion of workers in the scheme that continue to receive those benefits for years. Where the parties decide that they would prefer to end the claim with a lump sum, those mechanisms are available.

MR EMERSON: I have a question about the comparison between jurisdictions, based on the data that you mentioned earlier, where Tasmania has the highest premiums and we have the second highest. But when you dig into it, in 14 of 19 industries, the ACT has the highest. Do you know why that is the case? Why is there that differential within

industries?

Mr Young: I should say that the comparison I was giving was the Safe Work Australia standardised premium rates. They make some adjustments there for differences in scheme design.

MR EMERSON: These are then standardised average rates by industry. In that same document, if you then look at the level of detail, in 14 of 19 industries, they are the most. We always hear people say, "We have the highest premiums in the country." If you look at the first dataset, we have the second highest, but they are probably in one of those 14 out of 19 industries.

Mr Young: It does raise questions. When you see those comparisons, what is it about construction in the ACT compared to construction in New South Wales? Is it inherently more unsafe, and that is contributing to an increase in claims, or is it something else? Where we have examined those questions, what we see is that, even in the lower risk sectors, some of those differences do occur.

We could speculate as to reasons why, but the prevailing view amongst the Australian policy regulator type groups, of which I am a member, is that differences in scheme design do have a behavioural impact. Where a scheme is more accessible, where workers are more able to make a claim, where the benefits might be more generous, the likelihood of making a claim increases, where claims are destigmatised and where there is a strong regulator in place to ensure administrative fairness.

Another factor, potentially, as I mentioned, is that the ACT scheme covers a broader range of injuries. Depending on which table you are looking at, for instance, if you look at the Victorian scheme, they have a longer excess period, and claims that result in relatively low cost or limited absence from the workplace do not make their way into the workers compensation system, whereas in the ACT scheme and others they would. The ACT scheme covers journey claims. From past experience, between five and 10 per cent of the claims that come through the ACT scheme are for commuting injuries, which would not result in a claim in those other jurisdictions.

There are a number of tables that do those comparisons, without knowing exactly which one is being looked at. At heart, differences in scheme design, more generous compensation benefits, wider coverage and more accessible schemes are all factors. Ultimately, it is difficult to identify one in particular.

MR EMERSON: We were reflecting earlier on the government underwritten schemes in other jurisdictions, I am trying to understand what you were saying, in that, effectively, their premiums are artificially low because they have been underwritten by the government.

Mr Young: The government underwritten schemes have more flexibility around how they set price. With privately underwritten schemes, the insurers are subject to APRA regulation and licensing rules, and are required, under legislation, to set a premium rate based on the actual expected number and cost of claims. Based on the comments of the New South Wales Treasurer recently, it would appear that the New South Wales prices have been suppressed, compared to the cost of operating the scheme. But the effect of

that, if it is done over an extended period, is that deficits and cost pressures build up, and the government needs to choose either to carry a significant and growing deficit on their books or to adjust price or scheme design.

MR EMERSON: Along similar lines, has consideration been given to expanding the remit of the ACT Insurance Authority? We heard from community organisations yesterday who deliver government services, effectively; they are paid to do so but they are not captured by that scheme. They have to seek out their own insurance, and no-one wants to do that. Is that something that is being considered?

Mr Young: To clarify, are you considering scenarios where government steps in, in order to set a price, to underwrite or to adjust degrees across subsidisation between industry sectors?

MR EMERSON: My understanding—and we are learning a lot through this inquiry—is that the ACT government self-insures its own directorates. Would it consider insuring some of these providers, who are essentially delivering government services through government contracts but who do not sit within government? Is that a concept that is being considered?

Mr Young: The ACT public sector receives its workers compensation insurance as per commonwealth legislation. That is an artefact of longstanding practice. Essentially, it is the commonwealth legislation that sets the rules around who is and who is not a worker, and who would be covered.

MR EMERSON: I am referring to public liability insurance in this case.

Ms Shields: That is probably a question for me. I have read and acknowledge the privilege statement. Is your question: does the government provide cover to those parties providing services to the territory?

MR EMERSON: Would the government consider doing so, or has the government considered doing so?

Ms Shields: Currently, we do that for out-of-home care providers, for physical or sexual abuse. We set up a scheme probably 18 months ago, or slightly longer, that provides cover to those organisations, specifically for the services that they are providing under contract to the territory. That is done via a deed of indemnity.

The ACT Insurance Authority, despite our name, are not an insurance company in our own right. We do not have a financial services licence, so we cannot provide an insurance product to a third party. We are not set up to do so. We are certainly not part of the regulatory arrangements for those commercial organisations. Currently, we do that for some organisations in some very extreme cases. In that particular circumstance, it was to ensure the ongoing support of vulnerable people in the community.

I think that a balance needs to be found between true market failure and unaffordable insurance; it is about where that line sits. It is open to the territory to provide indemnity through contract, through a deed of indemnity or via contract, as it currently stands. Obviously, it does occur, and it has occurred in the past.

MS CARRICK: I have a question about the potential for the ACT to cover community organisations. Potentially, there is a market failure because we learnt today that premium costs are pooled. Where you have floods and fires in that part of the sector, and the cost increases and it goes through to the premiums, in all sectors premiums are lifted to cover those higher costs. That is flowing through to our small community organisations. There is somewhat of a market failure, in that they are paying very high premiums to cover these pooled costs.

Ms Shields: Yes, I understand that. The territory is not immune to that in the insurance that we purchase ourselves. We are also impacted. Although we do not have floods or cyclones, generally, in the ACT, we are purchasing insurance in a market where we are affected by what is happening in northern Queensland and other parts of the country, and, indeed, globally as well. It is not just isolated to what is happening in Australia; it tends to be a global impact.

Certainly, with the way that it currently stands, the ACT Insurance Authority is established to cover government risk. That is within our legislation. That is what we were established to do, and that is what we do. It would be a significant decision for government to make a decision to cover additional organisations outside what we were established to do and what our legislation enables us to do.

The other point is that, although it is very expensive—I understand that—in the market at the moment, particularly, for example, in the public liability space, those risks that those organisations are currently being assessed on by those commercial insurers are the same risks that will apply if we were to cover them as a government. The same potential cost exists. We would undertake a very similar actuarial assessment. It could not really be a like for like without government subsidising to some extent. That would be a significant fiscal decision that government would need to consider.

MR RATTENBURY: At a policy level, these organisations are saying, "We're getting premium increases of 20 or 30 per cent, but the indexation that we receive for government funding is two or three percent, or, in more recent times, closer to five per cent." What is the government's policy response to that significant gap that is opening up for organisations that are essentially delivering government services at slightly arms-length?

Mr Pettersson: It is a good question. It goes to contract management. The government contracts these organisations to provide a service. There are a range of ways in which the remuneration for that may be determined. Largely, you are right; there is a fixed cost and then indexation of it. That can be challenging for any organisation when they have bills that come in, particularly compulsory bills, that far exceed their budget.

That is a real pressure. I acknowledge that it exists. The solution probably lies somewhere within the budgeting process and contract renegotiations. But if the committee has some smart ideas in this space, I would be happy to hear them.

MR RATTENBURY: One issue that has come up is that organisations have said to us that the government, in signing various agreements, mandates a minimum requirement of, say, $20 million for public liability insurance. Obviously, the higher the level of

required insurance, the higher the premium. How does the decision get taken on what that level should be? Someone suggested, "We don't need $20 million; $10 million might do it." How is that worked out? Is there an ability for government to reconsider those figures to help reduce premiums?

Ms Shields: The advice that the ACT Insurance Authority provides to government agencies, directorates and work areas who are formulating these agreements and contracts, in consultation with Procurement ACT—and there has been recent advice provided to all ACT government directorates and agencies—is that there is no mandated level required. What should be happening on a case-by-case basis is a risk assessment to determine what appropriate level of cover is required of the organisation. It is not a like for like. If you are undertaking a significant construction contract versus providing some consulting advice, that is, potentially, a substantially different risk—

MR RATTENBURY: A fair point.

Ms Shields: and a substantially different maximum potential loss, if you like, should something go horribly wrong. We have recommended—as I said, it has been provided to directorates and government agencies—that, for each contract that is considering being entered into, it is not a mandated amount. Certainly, ACTIA do not mandate an amount that is required. It is on a risk-assessed basis. We can assist them to do that risk assessment. Ultimately, it comes down to the services being provided and the potential loss that might occur should something go wrong.

I should say that it is not a requirement that they have that at tender. It is a requirement that they commit to being able to obtain that insurance should they be successful. As an organisation, you do not tend to buy insurance for one contract. You buy it for a 12-month policy period. For some organisations who enter into contracts with multiple different organisations—and the territory might be just one—or different types of engagements where the risks might be different, they will need to purchase a policy that will provide them with the greatest amount of cover that they will need during the course of that policy year, or renegotiate that during a policy year should they enter into a contract that requires a different amount.

While we say that on a contract basis from a territory perspective, for an organisation, when they purchase their next 12 months of insurance, it might not be that particular contract that is governing the limit that they need to purchase.

MS CARRICK: A lot of community organisations have to get $20 million worth of public liability; they might be a small Landcare group. It is not necessarily about getting a contract with the ACT government. I refer to the community councils, for example. There is a range of them. In order to just exist, they have to have this public liability insurance. To apply for a grant, a Nature in the City grant, or something like that, you have to have public liability insurance. A lot of these small organisations do not have it, so they have to find somebody to auspice them. For these volunteer places, the insurance for the $20 million liability is high. A lot of people are asking whether that can be reviewed and be made more commensurate with the risk of the small entity.

Ms Shields: I cannot comment on specific grant requirements, but I would say, again, without knowing the exact requirements and why they have been put in place for a

grant, for example, regarding any control that the government has in that space, we are certainly recommending that it is on a risk-assessed basis. You need to understand what you are asking for, what the deliverables are and what potentially could go wrong. That is how you work out what the potential limit should be set at.

MR RATTENBURY: On that previous one, Ms Shields, I totally accept your explanation. I think the concern I would have, and the rest of the community might have, is both the line agencies are not expert in working out that risk and they will tend to take up the most risk adverse position because that is the easiest thing for them to do. So the organisations end up with a $20 million requirement. That is the highest one they have and that is the level they have to insure at. I think that is the dilemma we are seeing, and it is the evidence we have seen in the last couple of days, and that is just an observation that you can—

Ms Shields: I take your point, not everybody enjoys insurance as a topic to get to know.

MR RATTENBURY: We are all fascinated now after two days of it, yes.

Ms Shields: As fascinating as I think it is some days.

MS CARRICK: I think we have learnt a lot.

Ms Shields: I appreciate that it is quite a niche area. So we do provide—and we have worked with Procurement ACT—to provide some tools to assist line areas in undertaking that risk assessment. They have been recently released. Also the ACT Insurance Authority's risk management provides some other additional tools and resources that can support agencies and directorates through that risk assessment process. We also operate as an open door for those line areas to come and seek that advice. We are not across every single contract that gets entered into across the territory on any given day but there is certainly support available to those components of the territory to help them through what can be quite a technical process.

MR RATTENBURY: Mr Young, earlier you referred to the Finity report, which is the actuary report you receive. We had representations from the Australian Lawyers Alliance this report is due out publicly by 31 March under the contract?

Mr Young: I do not believe that is accurate. The annual publication of the actuarial report is actually one of the KPIs attached to the budget output class for our work area. It has been there for a number of years and it commits to an April date. I think that reference may be to a clause in the contract that requires Finity to have a draft report to the directorate by approximately that date. However, our process is to receive the draft report, do quality assurance, et cetera. So I think April is the standard period. I have received the draft. We are about to finalise it, so I expect we will meet that timetable.

MR RATTENBURY: Have you provided any advice to government in the last five years about suggested reforms to the Workers Compensation Act?

Mr Young: We have, and there have been some reforms. Actually the Finity report includes a chapter on the history of reform to the scheme. I believe the most recent was that we determined that the compensation available for a person who dies as a result at

work had fallen out of step with national standards. So there was a change to increase that. Likewise, legislation recently introduced includes change to ensure adequate compensation for people suffering from silicosis. So there is ongoing monitoring of that legislation compared to national trends in safety and workers' compensation, and where appropriate recommendations are made. Safe Work Australia also has a role in educating and improving national approaches to workers' compensation which occasionally produces recommendations that government receives and responds to.

MR HANSON: Good afternoon minister and officials and thank you for coming out on your eve of Easter. We have heard evidence that there are a number of unique attributes to the ACT workers' compensation scheme that push up premiums. There is two that I want to go to. One is that there are no caps on claims that end up in common law and claims in the court. A few years ago we got rid of the caps for third-party motor vehicle. Is that right? Am I right? Sorry, we capped it. So there were not caps, same as the workers' comp, and then we have imposed caps on the third-party motor vehicle scheme. Why the inconsistency?

Mr Young: I do not have policy responsibility for the motor accidents insurance. So probably best not to comment on the reasons why but I think those changes were part of a wider series of reforms to introduce elements of periodic benefit to those motor schemes. I guess they started from very different base events—

MR HANSON: Sure, but the argument presented predominantly was about cost and about reducing the cost of those scheme, which I think it has done. I do not know how much, but it has. We have heard evidence that there is a concern about premiums, and I think the stats you presented was that it was 20 per cent of the claims but 50 per cent of the cost of those sorts of big lump sum payments. There is no look at that to say, well, how did it play out with third-party motor vehicle insurance? Would it be appropriate to make a similar change for workers' comp, if the arguments are not a million miles apart?

Mr Pettersson: I am pleased you are undertaking this work as part of this inquiry, Mr Hanson.

MR HANSON: No, I am just wondering if you have looked at that, if the government has looked at that and discounted it previously? If you have not, that is fine. It is, you know, I am—

Mr Pettersson: It is not currently a piece of work underway within government.

MR HANSON: Okay.

Mr Pettersson: But we are keenly awaiting this report.

MR HANSON: Great. The other one is that we have heard evidence that it is either there are no penalties, or it is difficult to impose penalties, on people who make fake vexatious claims, which in other jurisdictions, as part of their acts, they have more and simpler mechanisms. Essentially to do it in the ACT you have to call in the police. I do not know whether you heard that evidence and whether you have any commentary on that: whether that is the case, or did you hear anything about that? Have you got any

comment?

Mr Young: We have regular engagement with the licensed insurers and discuss claims trends with them and I must say I have not had that issue.

MR HANSON: Okay. It was presented as evidence to us by a number of people that it is—there is either no mechanism or a difficult mechanism to—if someone is making a vexatious claim, there is no penalties. Now we have heard contradictory evidence, to be honest, since we heard those initial bits of evidence. No comment on that?

Mr Young: No.

MR HANSON: No?

Mr Young: There are no explicit penalties in the workers' compensation legislation. The power is available to ensure a claim is adequately investigated and to deny liability where they do not believe the case is made.

MR HANSON: Yes, I guess in other jurisdictions it is a deterrent because you know that you are going to—essentially what has been put is that you can roll the dice, make a claim, knowing it is false, because there is no penalty if it does not go anywhere. In other jurisdictions making a false claim can result in penalties.

Mr Young: I am not familiar with those provisions—

MR HANSON: So that does stop a bunch of vexatious claims that may or may not go all the way through. We will leave it there. I just wondered if you had a comment. I am not asking for anything beyond that.

Mr Young: I am not familiar with those provisions, and I guess, by extension, have not been able to monitor their effectiveness in those other jurisdictions.

MS CARRICK: It was brought up by one of the witnesses that WorkSafe ACT compliance could be improved, that there were only two—I am not sure about the stats, but the point was compliance on work sites, to ensure they are implementing WHS on the sites. What are your views about compliance on sites?

Mr Young: I would note that Safe Work Australia has, as part of their comparative data set, the number of field-active inspectors, the amount of workplace intervention activity and they do some comparisons adjusting for size of the workforce. What that shows is that the ACT is one of the more heavily resourced inspectorates on a per capita basis and is very active in visits, compliance and enforcement by comparison with other jurisdictions. I would also note that the long-term trend of work-related injuries in the ACT is downwards. It has been trending downwards steadily for around 10 years now. So in that sense, setting aside the COVID-affected years, the likelihood of somebody being injured at work in the ACT is less now than it was previously.

MR EMERSON: We were informed earlier by the Insurance Council that the ACT is the only jurisdiction with no statutory limits on plaintiff legal fees and workers' compensation claims and they gave evidence that leads to higher legal fees related to

those claims in the ACT. Is that a deliberate design feature of our scheme?

Mr Young: Some schemes actually have cost schedules for a whole range of expenses from medical rehabilitation through to legal. The ACT scheme does not do that. As to the question of whether it has been considered: not specifically in respect of the legal costs, to my recollection.

MR EMERSON: Ms Shields, I wanted to ask on the back of your question before about this kind of blanket, over-insuring really, the over-insuring requirement. I assume the fact that you are giving recommendations is because you are not seeing much behaviour change. Is that the case? What led to the recent release of those guidelines that you mentioned?

Ms Shields: So I cannot talk for Procurement ACT, but off the back of some of the reform work that occurred in that space in the last 12 months we engaged very closely with Procurement ACT to provide advice around insurance because it is an area where they do receive a lot of questions from various government agencies. It was partly to stop the blanket rule—the misconception that there was a blanket rule that should be applied, or a default position that should be applied.

We, at ACTIA ourselves, were being asked what limit they should be putting on, which we cannot answer because it should absolutely be on a case-by-case basis in our view. I do not think it is necessarily a behavioural issue, I think it is an education issue where we might have some business areas who do not enter into contracts very often, who do not procure services or things very often, and so they need assistance and support to go through that process. There are other areas of government that are very familiar with the procurement processes and negotiating contracts and do not need that same level of support.

MR RATTENBURY: I want to ask about journey claims. You spoke of that earlier briefly, and it has been put to us over the last few days that the ACT is one of the few jurisdictions that retained it. I think you made the same point in your observations. What is the policy rationale for retaining it, or where other jurisdictions have removed it, why has the ACT not removed it?

Mr Young: I think probably an important distinction to make is the workers' compensation scheme covers injuries incurred travelling between home and work. While that includes motor vehicle, it also includes others, so falling on sidewalks, et cetera, et cetera. I think occasionally the suggestion is put that since the benefits available under the third-party motor schemes have improved, that perhaps the case is made to reduce the journey cover. Significantly, that journey cover has been in place at a time when there really was no periodic benefit scheme available in motor. So historically there was a significant reduction in support and services if it was to be removed. I think that remains the case when you consider potentially the types of injury that might occur that would not be covered by those motor schemes, and potentially the type of benefits available are not the same. So I think one is not a straight substitute for the other, and the history of the ACTs journey coverage predates those changes to the motor schemes.

MR RATTENBURY: So the policy rationale for retaining it is that there are potential

scenarios in which people would not be covered if it was not there?

Mr Young: Indeed.

MR RATTENBURY: I do not want to put words in your mouth, but is that a fair reflection back of what you just said?

Mr Young: I think the effect would be to reduce—at the moment, a worker who has essentially choice of scheme, has a choice of scheme. So they are able to understand the relative benefits available if they were to pursue a motor versus a workers' and make an informed choice about what suits them best. A potential removal of the journey coverage from the workers' scheme, I guess, reduces that choice and potentially reduces the scope and the type and quality of benefits available. I would suggest that where a person is injured and unable to work as the result of an injury, the workers' compensation schemes are better positioned to support a return to work because there is that direct relationship with employers, which is absent in the motor schemes. So I think yes, there is still some quite significant differences. I am not aware of deliberate consideration or government asking for advice on that matter, but if it were to be asked, those would be factors that would be considered.

MS CARRICK: We have heard a lot about capped and uncapped schemes, like the payout. So if there is an ideal world and the payout was appropriate at a particular level, is it the case that we are too generous, or is there the potential that in other jurisdictions where they cap it that some people do not get what they deserve for their ongoing livelihood?

Mr Young: I think the effect of capping the maximum amount would be to reduce the amount of compensation available to the most severely injured workers in the scheme.

MR EMERSON: If claims are above the caps that are in place, in New South Wales for instance—do you have data that shows we are getting claims that are exceeding our best jurisdictions' caps?

Mr Young: I think the actuarial report that will be available to you gives the breakup of all those lump sum claims, the proportion that settled for amounts of more than a million, between $500,000 and $1,000,000, so you will have the ability to see proportionately where they sit and the size of each.

THE CHAIR: On behalf of the committee, I would like to thank our witnesses, who have assisted the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible, no later than five business days from today; halfway through next week considering. This meeting is now adjourned. Thank you everyone. Have a lovely Easter.

The committee adjourned at 5.01 pm.