LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Motor Accident Injuries Bill 2018 (Exposure draft))

Members:

MRS G JONES (Chair)
MS B CODY (Deputy Chair)
MR M PETTERSSON

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 19 NOVEMBER 2018

Secretary to the committee:
Mr A Snedden (Ph: 620 50199)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 2.01 pm.

FRANCIS, MR GARY

THE CHAIR: I declare open this second public hearing of the Standing Committee on Justice and Community Safety inquiry into the exposure draft of the Motor Accident Injuries Bill 2018, which was referred to the committee on 20 September 2018. The committee has to date received a total of 75 written submissions on the reference, all of which are published on the committee website. The terms of reference for this inquiry and today's program are on the table near the door.

Today the committee will be hearing from six witnesses: Mr Gary Francis, Pedal Power ACT, the Australian Lawyers Alliance, Maurice Blackburn Lawyers, the Law Society of the ACT and Suncorp. On behalf of the committee, I would like to thank all the witnesses for making time to appear today. The proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live.

We will now move to our first witness appearing today, Mr Gary Francis. Thank you for appearing today and for your written submission. I remind you of the protections and obligations afforded by parliamentary privilege, which are outlined on the pink privilege statement that is on the table. Could you please confirm for the record that you understand the implications of the statement?

Mr Francis: I do.

THE CHAIR: Thank you. Before we proceed to questions from the committee, would you like to make any brief opening statement, Mr Francis?

Mr Francis: Yes, and I would like to thank you all for your time today as well. My name is Gary Francis. I am just a member of the public but, unfortunately, I am a victim of a motor vehicle accident and I am still in recovery from that. Without further ado, I would like to get into my introductory piece and wait for questions afterwards.

My wife and I suffered a motor accident in 2014, motorcycle versus car. I am still in rehab and recovery from multiple surgeries today. Both my wife and I have permanent skeletal fusions as a result and our lives will never be the same. To make this personal, that is four years not to be able to do things we have enjoyed. It is quality time with family or friends. That is four years of being unable to work; years enduring all manner of medical procedures, testing, and invasive surgeries; being caught up trying to navigate our way through the existing CTP process which, before your accident, you really have no idea about; years of being on welfare trying to meet our financial obligations; years of receiving meals at the generous hands of our neighbours and friends; and finally watching the years of stresses and strains loaded on to family members break them emotionally before our eyes.

If it is okay with the committee, I would also like to show a photograph of our accident scene.

THE CHAIR: Perhaps you could table it if you would like to.

Mr Francis: Do I pass that over to you?

THE CHAIR: It will be collected, yes.

Mr Francis: Thank you. I wanted to submit that photograph to show that there are real live people suffering as a result of motor vehicle accidents today. My question about that photograph is: how do we get these people back to normal life as quickly and as effectively as possible? Having been on the sidelines, watching this bill go through the process for a long time, I think it is the first time that someone who has actually been in a motor vehicle accident and been years in the getting well process has been allowed to speak on the matter, surely at this most senior level. Why? It is because anyone who had a claim or was in a claim was originally denied the right to speak from the outset.

Yes, of course, written submission was allowed at certain junctures, but no-one was really allowed to explain what life was truly like having found yourself thrust into the existing CTP process. I cannot begin to tell you how incredibly sad that makes me, or the responsibility I also feel on my shoulders, and hopefully you will soon too, to drive this bill towards deriving the best outcome possible for victims without handing all the power and revenue to profit-making parties, a fact in itself I find incredible for all the wrong reasons.

If a car manufacturer planned on creating a new car, would it ever make sense to entirely disregard the knowledge learned in the experience of all the previous design teams? Would anyone who had had experience take a selection of good-minded individuals who had never designed a car before and counsel them through the design process? Would this not look like sheer madness to any normal person? No commercial business would ever do such a thing. Yet this is what has brought us to this place today. Then, at the end of it all, they can only choose from four pre-defined templates that existed before they were on the scene.

Further, to add injury to insult, they are not told critical information—notably in this example the whole of body impairment obligations—until almost the very end. When the implications were understood, as I hear it—and it is hearsay—one of the design team walked out in protest. It seems that how we arrived at this juncture today was via madness built on even more madness. With pre-defined models already in place and not all the information disclosed until absolutely necessary, what hope was there for a rightly-intended brand new inexperienced design team to achieve anything other than the outcome that had already been decided upon?

I want to make this very clear, please, to you all. I mean no ill towards any member of the citizens jury and the hours of their own time they invested with the best of possible intentions. However, for me—I might be the only one who thinks this, but I doubt that I am—the way we got here today seems to be, to me at least, fundamentally flawed from first principles.

It seems to me that we have forgotten the expectations of what I would suggest are all road users for this type of bill and the money they are being forced to pay. That is to

get well again, to get back to loved ones, and to get back to their normal lives as quickly as possible and as cost-effectively as possible. Surely there should be no other focus or reason for this type of bill to be drafted.

Yet upon thorough review, the only two aspects of this draft bill that I can identify that may have made my wife's journey and my journey through the four years of hell easier are the following: maintaining some degree of income during the recovery process and potentially, but only potentially at this stage, the motor accident injuries commission. I want to touch on that briefly at a later stage. Excuse me, I have jumped forward a page. I can see no other aspect that might be better than what is in place today, which is frankly and honestly just incredibly sad. It should, of itself, be enough justification for this bill not to come to pass in anything like its current state.

As a victim of a motor vehicle accident, you are thrust into a hurricane of change. The physical impacts are horrendous enough: the scans, the injections, the cocktails of medication, the stress on family members and friends. Additionally, you find yourself in the legal system, around which you really have no prior experience. I can tell you that more applications, more paperwork, more hurdles to jump through, more independent legal medical reviews for the sake of legal process only place more and more stress on already compromised and perhaps seriously ill individuals and their families.

What is well outlined in the proposed bill is the significant increase in the paperwork and process. Therefore, this potentially introduces even larger delays in the approvals and assistance required to get well. As alluded to by Mr Browne before you, there are significant flaws in the proposed scheme to change the ACT CTP insurance scheme. I will echo that, and add that they are not just significant. From my perspective, they are extremely serious in their impacts upon people who are just trying to live, get well and return to normal life.

The result of this bill in the current form in the long run will in no way assist victims of motor vehicle accidents, apart from two potential areas I have identified. I have heard in the past that there have been folk who have suicided through the current CTP process. I can see how, if this bill is passed in this current draft, the number of suicides will potentially increase. It is extremely serious and real. Getting this bill wrong has the most dire consequences for all victims of accidents.

We all need to be extremely concerned at the alarm signals from many aspects of the community. I have captured and published a few of those. I want to highlight a couple of comments that I have seen in the public domain. They are that the insurance companies are trying to rig the system; that we need the ACT Assembly to stand up to insurance company greed; that under the new proposed ACT Labor government legislation, you are about to be ripped off and have your rights taken away.

I have many other examples, but I would just like to focus on the ones that I have pulled out of the submissions made to the committee already. They are along the lines of: my blood boiled; disbelief; just not good enough; where is the justice; I fear dearly; I am totally outraged; it frightens me. These examples are from 60 submissions to the committee. For me, these are alarm signals of the most extreme. And what do we do to be heard?

Let me pause for just a moment and explain this process. We, the road users in this country—including you—are forced to pay for our CTP component of our registration. That money is handed over to the insurers via our single payment to the government. These insurance companies are profit-making entities beholden only to their shareholders. Currently, they do not have to fiscally report their profits in relation to the CTP payments. They do not have any service delivery report requirements placed on them. There is no continuous improvement obligation or any reporting tasks on them about how effectively they are helping people. They do not have to prove how cost effective they are in managing the cases and they have no time delivery requirements or obligations.

Furthermore, they have vast resources where delay of process can inflict massive additional strain on victims of accidents. In a nutshell, to me at least, they hold all the aces, and this new proposed bill hands even more power to them on a plate. For example, would I go to my doctor to process an insurance claim? Yet, as drafted today, the insurance companies will have the right to pass medical judgement over a person's wellbeing much more invasively than they do today. How could this possibly be correct?

We are turning profit-making entities around us, via this bill in its current form, into judge, jury and executioner. The WPI measurement, for example, is entirely up to them with, of course, the politically correct independent medical assessment backing up their position. From a profit perspective, this has massive advantage.

Often payments to treatment providers are so delayed that some refuse to take on CTP victims. Those that do often have two charging standards: the standard street rate and then an inflated insurance claims only rate. There are millions of dollars being wasted in this single aspect of the legal process inherent in the system today that are in no way being addressed by this bill.

If this government was brave enough to invite those who have suffered as a result of even the current CTP process, I am sure that I could, as could many others, consume hours highlighting these grave concerns and, perhaps most importantly, impart real firsthand experience into the refinement of such a proposed bill. The millions and millions of dollars, the payment of which is forced upon the community, is not trivial. Those seeking advantage from control do so at the peril of the very victims that are forced to pay for it.

Let me circle back quickly to the motor accident and injuries commission. If the legislation was truly about getting folks well again, would it not be logical to see this process, the information and the money being reported on, being made public? I am talking about financial information, process information, getting folks better and holding ourselves accountable for better outcomes. What would happen if the money that we were forced to pay was treated as a public fund, and was managed and reported on by the commission, not just directly handed over to profit-making entities, as is the model today? If the commission was then empowered, given real teeth to manage and report end to end on where the money is going and how effectively it is being applied to get folk well again quickly, would this not be perhaps worthy of serious consideration?

This could include responsibilities like measuring and reporting on the time frames of victims' recovery to understand how quickly these folks are getting better compared to the others outside of the CTP environment and then to improve the process from these learnings; how quickly the bills are being paid by the commission to practitioners, thus turning around the aspects where some refuse to treat CTP victims; running continuous improvement reviews to ensure that victims' medical, and possible financial, needs are addressed as quickly as possible and reported upon; engaging in proactive, really independent management of victims' claims, not biased by a profit-making aspect that is the lifeblood of the current process.

The motor accident injuries commission might be a real opportunity, if correctly and in detail empowered, to drive towards trying to return victims of accidents back to normal life professionally, without bias, and reporting upon the entire process end to end.

In conclusion, the CTP levy is forced upon us all. You and your families have no choice in the actual paying of it. I want to touch briefly on just how important it is that we get this right, for who can tell me when any of our families might be involved in a serious accident, how long they will be ripped away from their normal lives, how many might never be able to return to any degree of what used to be normal life?

Which of us can provide, even to themselves, any assurance that they will get home safely tonight? This can happen, as it did to my wife and me four years ago, at any moment. Frankly, as it apparently stands, I remain extremely concerned that the new draft bill, if implemented in anything like its current state, will make a bad situation worse.

When I scanned through the 342 pages from the victims' perspective, all I see is additional pain and suffering for the victims of accidents at the hands of profit-making interests. I see delay. It is a strong word to use, but I see deceit. I see barriers and impediments that already-compromised individuals and families will be expected to navigate and endure on top of what injuries they are trying to recover from.

To wrap up, Edmund Burke, a statesman from Ireland, said, "The only thing necessary for the triumph of evil is for good men to do nothing." Please do not give up for a second in trying to obtain the best possible outcomes for victims of these accidents on our roads, because the money that is compulsorily removed from us can do so much more than it is today, rather than handing over those funds, and the power to make life and death decisions, to profit-making entities who will do what it takes to make profit.

I really hope that at this time and in relation to this bill good men and women stand up to ensure the best possible outcome for victims of accidents on our roads, for the next victim might be your son, your daughter, your mother or perhaps even one of us in this room today.

THE CHAIR: Thank you for your introduction. Simply put, do you believe that the system, as it stands, is actually broken?

Mr Francis: There are a number of gaps in the existing process, yes.

THE CHAIR: And if you had to pinpoint them in three or four words, what would you say they were?

Mr Francis: In three or four words?

THE CHAIR: A couple of quick phrases.

Mr Francis: Yes. Transparency. Understanding that it is not just a process around money, that there are actually victims who are suffering. I have never seen an independent medical review, because those who do the reviews will write reports favourable for those paying. The gap, as I said in my introduction: the financial hardship of surviving effectively on welfare for four years. The degree of income protection I believe to be critical.

THE CHAIR: If you had to pick between the current system and the proposed system, which would you choose?

Mr Francis: I would stay with the current, without hesitation.

MS CODY: In your submission, there is a little box that continuously pops up. It says:

> Intervention quickly as possible
> Financial support
> Everything else can wait

Can you give me a bit more information as to why you think those three things are important?

Mr Francis: Why I think those three things are important? Most people, I think, genuinely just want to get well. If the process of jumping through legal hurdles and gates slows down a person's access to surgery or treatment, what are we doing? To me, the victims of motor vehicle accidents, or any accidents on the road, should be the paramount reason that these sort of bills should exist: let us get the people well. The legal process, the insurance process and the whole money process can wait. I should not need to be here, at the end of four years, still on the claim.

MR PETTERSSON: Do you think the current system provides for early medical intervention?

Mr Francis: Early medical intervention? Yes. If you are critically ill, you get taken away, as my wife and I did, by ambulance, and there is intervention provided because you are an injured party. Once you are released from the hospital, you are in a minefield of legal process. If I sought treatment from non-approved treatment providers, there is every chance that that was being risked on my dime rather than as part of a compensation claim that was to be made later. Yes, there is significant slowdown in the delivery of medical intervention to victims of motor vehicle accidents once they are out of hospital.

MR PETTERSSON: Is that a result of the current common-law at-fault system?

Mr Francis: That is what I am operating in today, so the only answer I can give you is: yes.

THE CHAIR: You mentioned that surviving on welfare or, for some people, a reduced income or a low income—

Mr Francis: There is no income.

THE CHAIR: In your case?

Mr Francis: Yes.

THE CHAIR: But in the case of other people, while they wait for things to be resolved, they are working sometimes at half capacity or something like that.

Mr Francis: Yes. Absolutely.

THE CHAIR: Again, if you had to choose between the new scheme, or something very similar to the new scheme, which offered perhaps a faster solution, you would still stick with the one we have got even though you have to wait for that money?

Mr Francis: The only aspect of the new legislation as proposed in the draft that I can see that would add value and take a tremendous amount of strain off people would be some modicum of income protection.

THE CHAIR: So insure against income loss?

Mr Francis: Yes. I was fortunate enough to hold income protection insurance myself, but that expired more than 24 months ago. Other people survive by begging and borrowing money from whoever will give it to them so that they can keep their bills being paid. If there was one element out of the current proposed bill that I think would significantly help in the current CTP legislation of 2008, it would be some modicum of income protection.

THE CHAIR: When do you expect your case to be resolved? Do you have an expectation?

Mr Francis: I have no idea.

THE CHAIR: Do you have any general advice?

Mr Francis: I am under the advice of medical practitioners who are caring for me. They tell me that my condition, post surgery, will not stabilise until March next year. Nothing can legally start until my condition stabilises. Then I can be assessed by an independent medical legal counsel on the insurer side and on the legal side of my case. Your life is inherently out of your hands.

MS CODY: And you are being supported by a legal practitioner?

Mr Francis: Yes.

MR PETTERSSON: In your submission, you mention an interesting experience with a telemarketer. I was wondering if you could expand upon that.

Mr Francis: It is not uncommon. As you can imagine, I have been in many medical clinics, hydrotherapy and all over the place. Our experience of being rung from what I presumed was a Malaysian call centre asking us whether we had had an accident or were interested in being introduced to legal counsel caused me extreme concern. At that stage the only place my personal information would have been available was through the police from the actual accident scene itself, through the hospital system, or through my lawyers.

I rang the police in relation to that. Uninterested, obviously: from their side, it is not worth investigating. But it has not happened just to us in isolation. There are other people that I have been getting well with who have had the same experience. There is an information leak in the existing CTP process somewhere. And I put it to you that for my information, my mobile phone number and the fact that I had had an accident to end up in an offshore call centre causes me extreme concern.

THE CHAIR: Yes. I would only add to that that my knowledge of data harvesting is that it could be anything in that system or anything in online commentary about anything to do with—

Mr Francis: How did they get a mobile phone number?

THE CHAIR: Yes.

Mr Francis: The police are the only ones who had the record, my legal representation and Canberra Hospital.

MS CODY: And your insurer?

Mr Francis: At the time of that call, I would say yes, they would have had our information. Yes. So there were four parties, none of which were in the public domain. And we are not alone in that experience.

THE CHAIR: Your submission recommends early intervention and also briefings for victims or injured persons.

Mr Francis: Absolutely.

THE CHAIR: Do you want to expand on that a bit?

Mr Francis: Sure. There may be an expectation by those handling legislation that everyone knows about legislation.

THE CHAIR: No, not at all. Actually quite the opposite.

Mr Francis: In my case and in my wife's case, we were lying literally in hospital wards. We had been thrust into a legal system. It was very apparent that it was quite complex and was going to be an arduous thing. We were sitting there on pain medications, busted and broken. There is no function in the current CTP legislation for victims to be briefed on what their future might look like from a legal perspective. You almost need a law degree to read through your proposed new draft. To sit there and read through the 2008 legislation is not a heck of a lot better. And if you are doing that from a compromised perspective—with broken bones, internal injuries, impending surgeries—and you are on morphine and all sorts of IV pain medication, how does anyone in their right mind think that someone can be educating themselves on the depths and breadths of the legislation that they are currently being thrust into?

THE CHAIR: Indeed. I guess that is generally where our legal assistance comes in, is it not?

Mr Francis: Yes.

THE CHAIR: When you talked about early intervention, what did you mean that is not currently in the system?

Mr Francis: I mean that the focus for me, and I hope I am speaking well on behalf of many others, is that if you are an accident victim, for the most part, most of the population just wants to get well and get back to their normal lives as quickly as possible. If there are activities, hurdles, gates and approvals required to do and to seek out certain treatments, and some of those delays can be months in obtaining the approvals to go and see specialists, is that actually in the interests of victims who are trying to get well? I did the paperwork. We have kept thorough records. A delay in approval for my wife's surgery was in excess of 10 months.

THE CHAIR: Because of paperwork.

Mr Francis: Because of paperwork. Why can we not remove all the paperwork and let the dust settle until the people are well, back to a modicum of normal life, and then engage in the legal process and—

THE CHAIR: So you are still in favour of an early payment. Is that what you are saying?

Mr Francis: No. I am saying, "Let's get the people well quickly."

THE CHAIR: Separate to the insurance situation?

Mr Francis: Let the insurance situation happen after you get the people better.

THE CHAIR: So no early payments as far as you are concerned?

Mr Francis: I did not talk about payments. I talked about fixing injuries and going through surgeries that might be required.

THE CHAIR: I am just trying to understand exactly what you are proposing. If I understand correctly, the current system does not have the same access to early financial assistance as the proposed system. If we want the process to, as you say, continue until the person is better or stabilised, which I think is realistic, and the insurance process is not going during the same period of time, then will that not make it longer before the final payment is made?

Mr Francis: Let me turn it around the other way. Let the insurance process and legal process not delay any intervention for victims.

THE CHAIR: Okay, that makes more sense.

Mr Francis: Surely the priority should be getting injured people well again and back to a modicum of normal life. If that is delayed by legal process and by insurance process, what are we doing? I have been denied access to a surgeon simply because my insurer would not pay the travel fund that was required to get me to see the surgeon in Sydney. Is that in my best interests? Does that cause me additional strain and stress? Do I have to find a way of making my own way up there? Do I have to pay for that myself now, hoping that I get recompensed at the end of a legal claim? So there are two different aspects, perhaps. My focus point would be on getting people well and letting all of the other stuff happen but not delay the aspect of getting a person well.

MR PETTERSSON: You were the victim in your crash. Do you have any thoughts about the coverage for at-fault drivers?

Mr Francis: We were commenting before about that. I do not believe that anyone gets in their vehicle, gets on a motorcycle, gets on a pushbike or whatever wanting to go out there and cause an accident. There are some who do it in deceit, believe it or not, to enter themselves into the legal CTP process. But probably that is a very small percentage. I do not see a difference in getting people well and getting them back to normal life. If someone through their own negligence caused the accident, that is a legal matter, to my mind. Let us just get the people well. Get them back to normal life. Get them away from having to be on welfare and surviving on meals from neighbours et cetera. Let the legal process of determining who is at fault, who is going to pay what percentage and all those other aspects happen either after or in parallel with the focus of getting people well. If you entangle the two of them, all you are going to see is extended delay.

MS CODY: Do you believe that the current system needs to be reformed?

Mr Francis: I believe it could be significantly better. But to introduce something that is so life-changing in a rushed manner or without—this is the first time, to my knowledge from watching this whole process happen, that somebody who is actually a victim of a motor vehicle accident has been allowed to do what I am doing today. To speed through the process of getting a new change in, if it drives a negative outcome, which I believe this entire bill probably will—in fact, I can guarantee you it will—why are we doing that?

THE CHAIR: Certainly on this committee we are very interested in how we got to

this point and where exactly the momentum for change has come from.

Mr Francis: It is a mystery to me.

THE CHAIR: Indeed. There does not, to me, seem to be a huge push from the community, from average citizens, and certainly we are starting to learn about the different interests that are in play. We are aware of that, Mr Francis. I want to make it clear that we are aware of that. We will certainly continue to ask questions.

Mr Francis: That is why I included the aspect of car design. From the get-go, anyone with prior knowledge or prior experience was excluded.

MS CODY: Governments do things for a range of reasons. We will be interested to uncover why and what the best outcome could be. We certainly have an open mind here; we are not being driven to any specific end point.

Mr Francis: Good.

THE CHAIR: Thank you for your attendance.

Short suspension.

IBBOTSON, MR JEFF, Vice-President, Pedal Power ACT

THE CHAIR: We will now move to our second witness appearing today, Mr Jeff Ibbotson, of Pedal Power ACT. Thank you for appearing today and for your written submission to the inquiry. Can I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement on the table in front of you. Can you confirm for the record that you understand the privilege implications of the statement?

Mr Ibbotson: I do.

THE CHAIR: Before we proceed, would you like to make any brief opening statement, reminding you that we have just under half an hour?

Mr Ibbotson: I think our submission pretty well speaks for itself. There are just a few highlights that I would like to point out and remind the committee about. First of all, Pedal Power welcomes the no-fault aspect of the scheme. I think that that is a great move forward. However, we cannot support the reduction in benefits. We do not think that that is a sufficiently appropriate scheme for compensating people who have been injured in a car crash.

In relation to the committee's term of reference about this providing equitable cover, I think in a number of areas that has not been shown to be the case. Other submissions have pointed that out. I do not need to dwell on that but I will highlight a couple of points. We are not convinced that it provides good value for money. I think that the driving force behind the changes seemed to have been to save money actually, rather than to properly compensate victims.

I can see nothing at all in the other terms of reference about making safer driving. There may be something hidden away there in the background but it is a real disappointment that it has not been shining the bright lights that there is a role for improving safe driving, unlike the situation in Victoria with the Transport Accident Commission which has a mandate to improve safer driving. That is a huge disappointment.

On the equitable cover side of things, the reduced income benefits, the legal fraternity in particular have been pointing out how that is going to reduce the benefits that are payable to victims. Payments ceasing after five years, I think, is a real step backwards, and little things like income ceasing once somebody reaches pension age plus 26 weeks, I think, is a mean and penny-pinching measure. It just does not show how it is providing value for money for people who have been in a car crash.

We are all concerned about the seemingly wide discretion that is given to insurers in a number of areas and the unclear and not really well guaranteed way that they will be held to account for exercising their discretion. Pedal Power thinks in particular that there needs to be a well-resourced and active regulator. The lessons from the royal commission that is going on at the moment highlight that in lights. If there is a well-resourced regulator, an insurer that is spending more of its time and effort on handling claims, I cannot see where the value for money adds up as opposed to the

current scheme.

One of our particular concerns is the unjustified limitations on entitlement, the reduction of benefits in certain cases. In some ways it seems to me that, if you have been involved in a crash and you have committed some breach of the law, then your benefits are cut accordingly. That might sound as though it is fair, if you have contributed to it, but it is arbitrary. There is a fixed percentage reduction of benefits, unlike the existing commonwealth system where the court is able to assess contributing negligence and provide an appropriate reduction where that is appropriate. The arbitrary nature of that reduction is just plain unjust and unjustified.

One of the provisions we pointed out in particular in our submission is clause 49 which would reduce benefits by 25 per cent where there is absolutely no causation link at all. I hate to bring up the question of helmets—helmets is a pretty contentious issue—but if you are in a crash and you are not wearing a helmet, certain entitlements are reduced by 25 per cent, irrespective of whether the wearing of the helmet had anything to do with the crash or the injuries.

THE CHAIR: We have talked about a few aspects of the new legislation that are not necessarily justified clearly.

Mr Ibbotson: I have also had a look at some of the other submissions. I support two of the points in Mr Browne's submission. I have not been able to look in any great detail into his calculations about how cyclists seem to be very poorly done by in the translation from a fault-based system to a no-fault system. I think that that work needs to be done. As his recommendation says, there is a bit of a need to be getting some economic analysis of the effects of this scheme. It is an area where it has fallen down. I think there certainly needs to be some more detailed analysis of those calculations of benefits.

Another point in his submission, which I think we can endorse, is the limitation on profits of the insurers. His submission was calling for an eight per cent limit, which is one that applies in New South Wales, and that seems to be most appropriate. I think it will allay various concerns about profiteering. I would have thought that an ideal scheme would be something like a transport accident commission as in Victoria where it is a government-run system and it can operate a little without that profit motive.

I heard the last witness talking about the experiences under the at-fault scheme. That can work quite well. My wife was involved in a crash some years ago in New South Wales. Under the at-fault scheme, her claim went through very smoothly and simply. It had to go to court to be resolved. It was settled in an appropriate and reasonable way. There was no worry about medical expenses in the lead-up to that settlement. I think that the current scheme can be smoothed out, but retained, although we do still favour some elements of the no-fault aspect.

THE CHAIR: I will not presume the answer but if you had to choose between the current scheme and the proposed scheme what would you choose?

Mr Ibbotson: I want my cake and eat it, don't I? I would like the current scheme but with some no-fault aspects of it.

THE CHAIR: You can imagine that no-fault might potentially put up the cost of the scheme?

Mr Ibbotson: Yes.

THE CHAIR: Quite significantly?

Mr Ibbotson: That arithmetic should be done, and I do not think it has been done adequately.

THE CHAIR: I understand that. Obviously, as I have said before, we have arrived at a certain point where we now have to make some recommendations. If you had to choose between the current scheme and the proposed scheme?

Mr Ibbotson: I would stay with the current scheme until a better scheme can be formulated.

THE CHAIR: Nothing is set in concrete in this place.

Mr Ibbotson: But why change to something that we think is worse, I think is the point.

THE CHAIR: That is one of the really important questions that we are trying to get to the bottom of here. You mentioned a regulator. Would you like to explain a bit more about what you would hope to have in a regulator?

Mr Ibbotson: A regulator that is properly resourced, that can hold the insurers to account and that is not a timid regulator. I would not suggest that regulatory capture is a risk. I think that there are measures that can be put in place to prevent that. There needs to be full accountability from the insurer so that the regulator can investigate complaints thoroughly and not get brushed off, as we have seen happen with ASIC in the commonwealth sphere.

MS CODY: I want to bring you back to a couple of things you said in your opening statement and in your submission about clause 51 and clause 49. You talk about people found guilty of serious offences, as in clause 51; whereas in regard to clause 49 you have set out over the limit drink-driving as an offence that does have significant impacts on crashes. Are there any other things? We noted another witness said not wearing a seatbelt may not necessarily.

Mr Ibbotson: Indeed.

MS CODY: I was just wondering if you can expand a little on that.

Mr Ibbotson: Where it will become more difficult is the arbitrary nature of the discount, the 25 per cent. If there is a breach of the speed limit, for example, where the speed limit was, say, 100 and a person was booked doing 110; that may or may not have contributed to the extent of the injuries. But if the person had been driving at 150, I think that, in a common-law system, evidence should be able to be produced

from experts to say what the effect of injuries at various speeds is. I think that it is a sleeper that has not really been highlighted, certainly in the citizens jury process, as far as I am aware. But I think that that is a big issue that should be looked at further.

MS CODY: You said that you would not necessarily want to go to a new system if it was not a better system, but you would admit that there needs to be work done on the current system?

Mr Ibbotson: It does, yes. It needs to be extended, and I favour introducing some no-fault aspects of it.

MS CODY: And if that was to increase CTP payments?

Mr Ibbotson: Personally, I think you get the system you pay for. It is not something that Pedal Power would have a view on but, personally, I think that it would be worth paying for, because more people could be covered.

THE CHAIR: Just as a supplementary to that, in order to achieve your stated aim of more coverage for, I think, cyclists or the no-fault element, if a decision were taken to ask cyclists to pay CTP insurance, do you know what Pedal Power's view would be on that? At present the entire burden is carried by motor vehicle drivers—and I am not saying there is a complaint about that—but what if, in order to improve the system, the pool was enlarged. Do you want to take that on notice?

Mr Ibbotson: I think we will take that on notice. We have tossed that around a little over the years. I would not say it would be welcomed with open arms but it would be looked at, yes.

THE CHAIR: As you say, you get what you pay for.

Mr Ibbotson: Yes. There might be some upsides of it. It would at least stop a few letters to the editor about why cyclists do not pay their share on the roads.

THE CHAIR: I am not suggesting that the kid driving to the shops should have to pay CTP.

Mr Ibbotson: No, and whether you should get a discount if you ride your bike to work or you ride your bike to the shops. It is huge area to talk about.

THE CHAIR: There is a lot that could be discussed there.

MR PETTERSSON: In your submission you talk about the age limit on income payments. Do you have any alternative proposals?

Mr Ibbotson: We have not put one in our proposal, but there are people who do work, and they can produce their tax returns. They can be working in paid employment; they can do contract employment. It would be a fairly simple mechanism, I would guess, if people can be asked to produce their—

MR PETTERSSON: Payslips.

Mr Ibbotson: payslips, their tax returns or their contract invoices.

THE CHAIR: You mentioned a limit on profits. Can you expand on—

Mr Ibbotson: I have not looked into—

THE CHAIR: From the perspective of Pedal Power, if that were introduced, would you still be in support preferably of the current system or the proposed system?

Mr Ibbotson: I do not think that would—unless that was somehow transferred into an increase in benefits.

MS CODY: With the development of this submission, how was that done? Did you contact members of Pedal Power and do a bit of a—

Mr Ibbotson: The time limits were pretty tight.

MS CODY: They were very tight, yes.

Mr Ibbotson: We did look at a members' survey, which we could have done; we just did not have time in the time limits that were available. But we tossed that around, as to whether we could get a feel for it. There was too little time and too little resources. We are a volunteer organisation, largely.

MS CODY: Fair call.

MR PETTERSSON: I note your example of a lone cyclist colliding with a kangaroo. What would a cyclist be entitled to under the current system, under the proposed system, and, in an ideal world, what system would you have in place for that occurrence?

THE CHAIR: The kangaroos would just stop doing what they do, I think, in an ideal world!

Mr Ibbotson: Zero and zero in the first two. If we are talking about a transport compensation scheme, and if we are moving to a New Zealand-type scheme—I do not think the ACT can do that on its own; it would have to be a national scheme—New Zealand has a scheme that would cover that sort of thing.

THE CHAIR: Is that charged through regos?

Mr Ibbotson: No. It is a universal scheme.

THE CHAIR: As part of government—

Mr Ibbotson: Yes.

MS CODY: Currently, if your example was to happen—and I know for a fact that it happens often; when I am out cycling, you often see friends hit kangaroos, or

kangaroos hit them, in many instances—cyclists are not able to receive any compensation?

Mr Ibbotson: Unless they are a member of Pedal Power. Our insurance will cover that.

MS CODY: I think my cycling group has insurance; yes, I see what you are saying.

THE CHAIR: With the payments ceasing, you mentioned that the new scheme has various cessations of payments in it, including upon reaching pension age and various other things. Would you like to expand on the problems that are in the proposal?

Mr Ibbotson: It is cutting people out of entitlements that they would have under a common-law scheme, so it is a step backwards.

THE CHAIR: And which they currently have, presumably.

Mr Ibbotson: If they can prove fault.

THE CHAIR: Indeed. At that point we will thank you. You will be provided with a copy of the proof transcript as soon as it is available, which will give you an opportunity to check it and suggest any corrections, if anything has been mistyped. On behalf of the committee, I thank you for appearing today. We will take a 10-minute break.

Hearing suspended from 2.50 to 3 pm.

BLUMER, MS NOOR, National President, Australian Lawyers Alliance
BURR, MS AMY, Australian Lawyers Alliance

THE CHAIR: We will now hear from Ms Noor Blumer and Ms Amy Burr, from the Australian Lawyers Alliance. Thank you for appearing today and for your written submission to the inquiry. Can I remind you of the protections and obligations afforded by parliamentary privilege, and draw your attention to the pink privilege statement that is before you on the table. Could you confirm for the record that you understand the privilege implications of the statement?

Ms Blumer: Yes.

Ms Burr: Yes.

THE CHAIR: Thank you. Before we proceed to questions, do you have a brief opening statement that you would like to make?

Ms Blumer: It will be about as brief as the other ones so far!

THE CHAIR: It is like asking a politician to make a brief opening remark!

Ms Blumer: Amy will be more involved in answering questions, and I will be making the statement. I am the National President of the Australian Lawyers Alliance, as well as being a director of Blumers Personal Injury Lawyers, as is Amy.

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and rights. That is all in our submission. We lead the advocacy in Australia on legal issues in many different areas, but particularly when it comes to individuals' rights. And this is one of those issues.

I am not going to go into the detail of our submission at all, because that is really complicated. It is set out very well in writing. The Law Society will be dealing with that further, after me. Those questions are all out there.

Our view, of course, is that we are very disturbed by the system proposed to be brought in. The query you made earlier—"Why is this happening?"—is actually the question I am asking here today as well, but putting perhaps some bones to it. I would have to say, having listened to the excellent people before me, I agree that the current system could certainly be improved, but the way it is heading is an absolute disaster. I think what we want is value, as Mr Ibbotson said.

In any event, back in the days before compulsory third-party insurance, if the driver of a motor vehicle caused damage to another person, that driver had to fully compensate the injured person for the loss of their property and their injuries. If the damage was worth, say, $30,000 and the person had insurance, the insurance would cover it. If they did not have $30,000 but they had a job and some assets and resources, arrangements would be made to pay the money, as is the case in any litigation today where you sue somebody. But what if they were impecunious and uninsured? If that is the case then you would never get your $30,000.

This compulsory insurance was imposed statutorily upon the people of Australia to protect from just that situation. It started well, but over the years those rights have been eroded from full compensation to something less than that.

As we know, insurance companies make profits from taking premiums to cover such adverse events. Gradually, governments around Australia have reduced the amount of money that insurance companies have to pay to injured people by lessening the entitlements of the injured persons. Traditionally, this has resulted in a short-term decrease in premiums, but within a couple of years the insurance companies have usually continued to increase the premiums while substantially increasing profits.

This has become rife to the extent that, for example, in New South Wales, while premiums have not reduced in any major way, the payouts are now so few and small that the profits of the insurance companies have risen out of all proportion, to the point of embarrassment. For most injured people in New South Wales, the scheme there is tantamount to junk insurance.

The appetite for governments to keep premiums low is to reduce the costs of running a vehicle and to protect governments, who often underwrite the CTP scheme. The ACT is the only jurisdiction that does not bear the burden of underwriting the scheme. Apart from providing a regulator, which is a minimal expense recouped by a small levy on the premiums, the ACT CTP costs the government nothing.

In 2012 this government attempted to introduce draconian limitations—or, can I say, not quite as bad as these ones—on entitlements, with the expressed aim of attracting new insurers into the market. They were only successful in bringing through some minimal changes. However, notwithstanding that, there are now four major insurers in the ACT market, so that was achieved. Let me read to you from the ACT treasury's own website, a document entitled, "CTP competition in the ACT". It might be helpful if I could table that.

THE CHAIR: Yes, sure. What is the document?

Ms Blumer: It is a printout from the treasury's website entitled, "CTP competition in the ACT". It says:

> One of the most significant events occurring in the ACT CTP insurance scheme has been the introduction of competition with multiple insurers in the market from 15 July 2013.
>
> Competition has delivered a greater choice in product offerings, better quality products such as at-fault driver cover and reduced premiums to motorists.
>
> Based on the latest … financial year data, the chart highlights the downward trend in premiums to 30 June 2017, as published in the Chief Minister, Treasury and Economic Development Directorate Annual Report 2016-17.

As you can see from the graph—graphs always do what they want to do—it definitely has a downward trend. The top figure on the left-hand side is around $598. As at 17 July, there seemed to be somebody going as low as $545.

It is difficult to exactly compare the premiums in the ACT to the rest of Australia. One reason is that other jurisdictions charge different premiums depending on factors such as your age and where you live and, as was said earlier, what colour your car is when you are insuring the vehicle itself. There are lots of different factors that are not taken into account in the ACT.

It is no secret that ACT premiums are on the higher side compared to other states and territories. A major reason for that is that the ACT has the highest per capita income in Australia. This means higher payouts are necessary to compensate for higher loss of income, and, of course, justifies a slightly higher premium in some circumstances. As Gary, I think, pointed out today, that is fine for people who earn more money, but the poorer people are paying for that as well.

THE CHAIR: Indeed, and across many aspects of ACT living.

Ms Blumer: Yes, that is right. With all of this, that treasury graph clearly shows reductions of up to $50 per annum, which is about a 10 per cent reduction. Yet, in the ACT, if you are the innocent victim in an accident, you actually get reasonable, fair and decent compensation. Compared to other jurisdictions, in the ACT it is not perfect. There are still problems. I think introducing income support during the life of the claim is an excellent idea, and I do not think it would cost anything to do that. In some cases where people have financial problems, we will ask for an advance from the insurer and they will often be forthcoming. In other states they also pay their premiums, which are not that much different to ours. The difference is they get little or nothing, and the insurance companies get richer. And I am not joking.

The existing scheme in the ACT has been able to maintain steadily decreasing premiums without submitting ACT people to draconian reductions in their entitlements. Unfortunately, the savings in premiums have been mostly gobbled up by government increases in registration fees.

THE CHAIR: Something else governments tend to do.

Ms Blumer: It is great! The other day I was asked by someone what to do, as he had been injured in an accident in New South Wales. I told him the bad news: "With that kind of injury, you're unlikely to get very much more than this, that and the other, and you'll have to go through these hoops; it probably won't be worth very much to you because you've got some sickness benefits and you've got some Medicare, and maybe some private health or something like that." He said, "But what about the damage to my car?" I said, "Your car's fine. Your car's rights have not been eroded. Your car's rights remain untouched." We seem to care more about cars than people.

Just as an example, in the corporate world, if you were to tell BHP or whoever, "By the way, we've changed the law and now, when you want to sue another company for a damage or a wrong they've done you, you're just not going to get all the money. Is that okay?" I do not think they are going to take it very well, but it seems to be okay for these vulnerable people. It should be the opposite. Because it is compulsory, it should be better, rather than the other way around. However, my question is: why?

The bill also attempts to exclude lawyers from the claims process. This will severely disadvantage the very people who need legal advocacy support in order to be fairly compensated. The role of lawyers is vital and bears some consideration. Firstly, left to themselves, it is clear that insurance companies are not in the business of paying out more than they have to; and, without lawyers on their side, I have seen many instances of persons acting for themselves getting nothing or only a fraction of their entitlements.

Only this morning, we received a call from a woman who had been in an accident. She had rung us because her friend told her to. The insurance company had offered her $1,400. She had been acting for herself, and she was inclined to accept it. When she told us the level of her injuries, it was immediately obvious that her claim would be worth between 10 and 20 times that amount of money. They are simply not going to offer you the full amount of money, and a lot of people do not understand that they can negotiate and provide evidence to get what they are entitled to.

It is an important part of a fair system that people have the ability to obtain competent legal advice for their claim, someone that can stand up to the massive resources of the insurance company. In fact the current system has in place a series of regulations that greatly limit what lawyers can charge in motor accident claims, particularly smaller claims. Basically, in a lot of matters lawyers are doing it for much less than the usual rate because they cannot claim it back, and because the law puts restrictions on it as well. So those are already well and truly in place.

A key observation from the CTP claimants deliberative democracy workshop, otherwise known as the alternative citizens jury, which included people who had actually been in accidents and were injured, as opposed to the other—was:

> This advocacy—

that of lawyers—

> is extremely important in helping victims to navigate the system and generally in taking account of the human dimension of road accidents and injuries. A CTP system needs a mechanism to deal with the complex case by case nature of vehicle accidents, and the human impacts, and to stand beside victims throughout the process.

Just to touch on the subject of advertising, I know that we talked before about claims harvesters. I can tell you that the Australian Lawyers Alliance takes a very dim view of claims harvesting, and is doing a lot of work in that area. We do not approve of it at all. However, ordinary people who are injured in accidents need to be aware of where they can go to get legal assistance, just as other businesses can advertise to sell a wide range of products and services, such as dentists, GP clinics, and do not forget insurance companies—"Lucky you're with AAMI," and "NRMADE easy". I can go on.

To reach ordinary people, advertising through the media is a known and accepted way of doing so. While insurers can advertise to get paid premiums, it is only fair that lawyers can advertise to help people get paid. It is an open and honest method of providing the public with access to justice.

Lawyers who act for corporations, insurers and governments use other means of finding clients. They go to the ballet, the opera—goodness knows where else. They have billboards at the airports. They have long lunches. That is not so in our case. This is the way we have to do it because we are the only ones who actually need ordinary people to know where we are.

It is easy for those wanting to change the system to accuse lawyers of self-interest, but those same lawyers—many of them are here today—actually know and understand the plight of those Canberrans whose lives are thrown into disarray and poverty from an injury that is not their fault.

The proposed bill seriously reduces entitlements for those not at fault. For those at fault, it throws a few crumbs, although probably not much more than the existing entitlements that Medicare and Centrelink already provide, and only for a short period of time. The known effect of this will be that there will be fewer claims, and the fewer the claims—and it has been shown in New South Wales that people just stop claiming—the greater the burden on the health system. At the moment, if there is a claim likely, the Canberra Hospital raises a bill that is paid by the insurance company. The fewer people who bother to claim because of the limits on entitlements, such as the proposed whole person impairment threshold, the fewer claims made and the less reimbursement to vital services such as the public health system. The insurers will be laughing all the way to the bank.

Insurers are there to attract premiums and reduce the amount they have to pay out. I am not criticising this; it is simply their duty to maximise profits. They do not pay out just to help people; they pay out because that is the cost of the benefit of receiving all of those premiums, premiums that are compulsory for owners of vehicles to pay, for the privilege of driving those dangerous weapons that regularly and inevitably cause injuries to Canberrans.

The current scheme allows for early treatment. When I say it allows for early treatment, they do not always get it, but it is technically there. But that is only up to $5,000. And it is actually there for no-fault as well, by the way, for drivers at fault. It is very rarely used or known about; in fact the insurance companies do not seem to like paying it very much, but it is there. It is just badly implemented. I think the comment about having a bit more regulation being a good idea is a good thing, because there is nowhere really to go to complain, unless it is really serious.

The current scheme provides limits on what can be claimed on legal expenses and has already showed the steady reduction in claims costs and therefore premiums. The people of Canberra pay their premiums and deserve to get something for it if the need arises, unlike in other jurisdictions, where they pay their premiums and get practically nothing, which is the direction we are heading in with this bill, as has been amply demonstrated in other jurisdictions.

THE CHAIR: Thank you, Ms Blumer. I am asking the same question of many people who appear. Just to be perfectly clear, if you had to choose between the current system and the proposed system, which would you choose?

Ms Blumer: Current system.

THE CHAIR: I will play devil's advocate for a moment. Where we sit, sometimes we feel somewhat sandwiched between various professions. That is fine. But we could play devil's advocate and say that presumably lawyers would prefer a system that involves more lawyer work. You have already mentioned a bit about that in your opening remarks, but do you want to address that? Obviously, insurers will represent what they believe to be in their interests and you will represent also what you believe to be in your interests, but—

Ms Blumer: Let me give you a little example. In the workers compensation system, a worker is not allowed to settle his or her claim without getting advice from a lawyer, which is paid for by the insurer. Unfortunately we do not have that in the motor accident system but it would be a very helpful thing to have. We do not want more than what is involved now, but we do want enough legal representation that they get fair treatment and that they are getting a good deal, because it is really all about people getting fair benefits.

Ms Burr: With the dispute resolution mechanisms, while they are unknown to us because there are no guidelines or regs, the suggestion is that we will end up in either ACAT or the Magistrates Court for disputes arising out of this bill. If people are self-represented, the court system or whatever tribunal system is created will pretty much grind to a halt, I predict, because we see it in matters now in civil litigation, or criminal litigation for that matter. Courts obviously need to take more time with people who are self-represented, because they have to navigate through all the bits and pieces of legislation, whereas someone who knows the 300-page bill that is in front of us would be able to assist the court straightaway cut through all the questions and get to the issues at hand. Leaving lawyers out of the process, in our submission, is going to cost the territory more, and society generally because of the stress imposed on self-represented people as well.

MR PETTERSSON: If this legislation were to pass and a dispute resolution system were put in place as is being envisioned, is there any way to provide just and equal access to legal representation in a dispute resolution system like the one we are talking about?

Ms Burr: I am not sure.

Ms Blumer: Perhaps you could get the insurance company to provide lawyers.

Ms Burr: The insurer can pay for its legal representation obviously.

Ms Blumer: It has got to be a fair playing field. We are up against this all the time. We are up against insurance companies, whether it is a work claim or some other claim, and the power of those; they will throw everything at it. Until they stop having the ability to do that, then the plaintiffs need to have access to people who are at least willing to do it. That has got to be evened up as much as it can be. But we will never meet the might of what the insurance companies can—

Ms Burr: They fund surveillance; they fund people to trawl through everybody's

social media accounts; they fund an awful lot of stuff. We probably do not even know the extent of it. Our clients certainly do not have the funds for that. They do not even have the funds, a lot of the time, to buy a medical report. Solicitors put their hands in their pockets to get that evidence so that clients can get on with their case.

MR PETTERSSON: Are there any ways that a bill could incorporate funding for legal representation or the system could be shaped in such a way that—

Ms Blumer: The system is shaped that way now. This bill actively keeps lawyers out of it, so—

Ms Burr: The Legal Profession Act already requires solicitors to give cost disclosure and cost agreements and have their clients aware of what costs are going to be incurred. There is a court scale of costs that you can recover if you are going through litigation. There are cost caps built into the current road transport insurance act. There are cost caps in the Civil Law (Wrongs) Act. If you are referring to something along the lines of event-based fees, which you can find in other jurisdictions, that has the effect of just shutting lawyers out, because they cannot do it; they cannot survive—

Ms Blumer: I used to do a lot of New South Wales statutory workers compensation work. I simply cannot afford to do it now. I would go broke. And a lot of firms have had to take that, because we have to stay in business as well. It has got to be a balance. But, as Amy was saying, you should see the pages of the current act devoted to making it virtually impossible to go ahead with a smaller claim to a hearing because the cost penalties of losing are so severe. So it is in there. One of the reasons why we have this graph with the funding thing here is that it has controlled things to an extent. So, yes, there are ways of controlling things and there is a way of funding it, but the way to do it is probably to do something like they have done now. You do not need to introduce something; you need to just not stop it.

Ms Burr: And if we, as plaintiff lawyers, are going to be asked to get paid only for piecemeal work, bits and pieces, the insurers should be having the same impositions.

THE CHAIR: You mentioned earlier that the plaintiff should have access to the same or a similar or reasonable level of representation. I believe that sometimes these thoughts are built into our legal processes, but from a legal theory perspective is there some concept behind that that we try to build into our systems when we write laws and when you deal with laws. Are you aware of any—

Ms Burr: Natural justice and those kind of things?

THE CHAIR: Yes.

Ms Burr: The Law Society's paper might touch on some of that, or their submissions will.

Ms Blumer: To give you an example, if there were not lawyers willing to do these on a no win, no fee basis, people could still go to legal aid. Of course legal aid funding is just not sufficient to deal with criminal matters, let alone matters like these, whereas lawyers are happy, if they know what they are doing, to take them on on what we call

a speculative basis. The other thing plaintiff lawyers are doing is a great service. For every 10 calls we take, and we take many calls in a week, we are probably giving free advice to a lot of those people. We are telling a lot of those people, "I'm really sorry; I don't think you've got a claim," or "We don't think you need a lawyer." We are taking them to the next step. There are a lot of things along that process. And we are saving the Law Society from a hell of a lot of calls as well. It is like a forest floor environment with all sorts of things that are happening. It is not simple.

MS CODY: We heard evidence earlier today that under the current common-law system an injured person has to wait until their injury is stabilised before they can then—

THE CHAIR: Advance.

MS CODY: Yes, take on the legal proceedings. That can often take a number of years and people are left with nothing.

Ms Blumer: In the meantime.

MS CODY: Is there a way the proposed new system could provide up-front funds to people?

Ms Blumer: I think—and I agree with Gary—the best thing about the new system is those up-front payments of income. As you said, some people might have their own policy. Some people might have sickness benefits that will cover it. It is the poor people who are going to really suffer or people who do not have any sick leave or do not have any insurance.

MS CODY: Or those who care for people? They do not work in paid employment but they still have to care for people?

Ms Blumer: Care for people, that is right. I know. Coming back to your question, which is can we do better there, I think that is a better part of it and, as I said before, I think that can be done for nothing. It will not cost the insurers.

Ms Burr: The workers comp scheme, we have already got.

Ms Blumer: That is right. A lot of people who are injured on their way to work might be able to be getting some payments as well. That is an excellent thing.

I do not know what the answer to this early treatment thing is. When the government tried to bring in the bill in 2012 they said it was all about early treatment. Early treatment was not mentioned once in the bill. But, leaving that aside, early treatment has always been a feature of the legislation for as long as I have been here, which is about 20 years. It has technically been there. Under this existing act, it is very much there.

THE CHAIR: The $5,000?

Ms Blumer: But that is only up to $5,000. As Gary said, once you have been taken by

ambulance to hospital, that $5,000 is gone pretty quickly. Also, the insurers, once they have assessed the claim and they think that they are going to be liable, are supposed to start paying the treatment expenses. That would be good, except they just often make life hell for people, as we have heard about today.

"No, we're not paying for that physio"—the one that happens to be around the corner from you and you have known before—"that is $5 too much per hour. We're not paying that." "No, we won't pay for you to go to Sydney for surgery even though the surgeon there is better, and you will have a better outcome." All those arguments along the way are costing a lot of money.

I had a case recently—it must be two years since the accident—where the insurance company still was not paying for surgery to take, I think it was, plates and screws out of the leg of a 13-year-old girl. Seriously! All the doctors said it.

Yes, there are delays but a lot of those stabilisation issues cannot happen until after surgery has occurred; and at least six months or maybe more. That does hold it up. But sometimes the insurance companies do give an advance but it is usually $10,000 or $20,000, something like that. That helps. If we had, perhaps, more of a system of that in place whereby it gets taken into account at the end, I think that would be worth while. Have you got any other ideas, Amy?

Ms Burr: No.

MS CODY: Obviously there are faults with the proposed system. Are there faults with the current system? Are there things that we need to be looking at to reform the current system?

Ms Burr: Yes. They discriminate against stay-at-home mothers, people out of work, unemployed, retired people, because the biggest part of their claim is normally pain and suffering, which is hived off from the—

THE CHAIR: Income loss?

Ms Burr: The assessment, yes. It is hived off from the assessment of a claim going forward through the processes Noor was referring to where it is really complicated. There are mandatory final offers and compulsory conferences and all sorts of things. A lot of the people who are claiming mostly for pain and suffering or general damages are already discriminated against. A lot of submissions were made about that at the time that legislation came in 10 years ago.

THE CHAIR: In 2012.

Ms Burr: In 2008, the first raft, yes. That is one area.

Ms Blumer: That is just one. I do think it would be good if some of that little levy went to paying somebody who can perhaps act more as a go-between between the insurers and the injured people, whether through their lawyers or not, just to sort out those little issues. At the moment they are like, "They won't pay, and we can't make them."

Ms Burr: It is costly to have the argument.

Ms Blumer: And it is costly to have the argument and all those things. It is just hard.

THE CHAIR: Just briefly, before we wind up, from your earlier remarks it occurred to me that perhaps to some extent governments around the country are now sandwiched, in a way. If they are not underwriting the schemes then they are totally reliant on insurance companies for the scheme to be viable and therefore discussions about cost and the future of a scheme become a little uneven, if you know what I mean. At least we have got some competition here now.

Ms Blumer: Yes, we have got some competition in some insurance.

THE CHAIR: I wonder if you have any thoughts on that situation, given that you have more of a historic perspective and more of a perspective of what is happening around the country.

Ms Blumer: For instance, in New South Wales there were times when they had to do something because they did not have enough money. I do not know why that was and what caused that, but I do not think they ran it very well. I think it is better off not having governments involved because the insurers have their own commercial imperatives. They are either here or they are not here. In effect, for them, it does not really matter so much. They might prefer a higher premium and a higher payout, because it might work out commercially better for them than the lower premium and lower payouts—their profits. I do not know. We do not know what is going on in their heads.

THE CHAIR: I was going to say that it is a bit of a mystery to me, I can say personally, where this push has come from.

Ms Blumer: Exactly, and I do not think it has come from the insurers, that I am aware of, although of course they will support things and they have got a duty to their shareholders and so forth. It certainly has not come from the lawyers. It certainly has not come from the victims. It certainly has not come from the cyclists. It has come, as I said, from—

THE CHAIR: Fashion?

Ms Blumer: It does not even have to be fashion. In fact in some places they are actually reinstating rights, because they have gone too far. New South Wales brought in legislation that came into effect on 1 December. They must be regretting it like mad, because it is an absolute disaster. It is a complete mess.

I do not know the simple answer. The other states and territories are so bound into their schemes financially that they have got a vested interest. But here we have such an opportunity. When people say, "Why is your scheme so much better in the ACT," we can say, "Because it is insurer run," even though we have some little problems with that.

At the same time there are commercial forces. It is a healthy scheme. We know that because they are still here. And it seems to be working. By jeez, if we pay a little more than we could otherwise pay—

Ms Burr: You get what you pay for.

Ms Blumer: You get what you pay for.

THE CHAIR: Thank you both very much for appearing today.

Ms Blumer: Thank you.

Ms Burr: Thank you.

THE CHAIR: A transcript of what has been said will be forwarded to you for you to correct if there is anything mistyped. We will now move to the next witnesses appearing today, representatives of the ACT Law Society.

DONOHUE, MR CHRIS, President, Law Society of the ACT
BLUMER, MR FELIX, Law Society of the ACT
O'HARA, MS DIANNE, Chief Executive Officer, Law Society of the ACT

THE CHAIR: I welcome the representatives of the Law Society for the ACT. Thank you for appearing today. I remind you of the protections and obligations afforded by parliamentary privilege and I draw your attention to the pink privilege statement on the table. When you have looked at it, please confirm for the record that you understand the privilege implications of this statement.

Mr Blumer: I understand.

Mr Donohue: Yes, sure, I understand that.

Ms O'Hara: Yes, that is all good.

THE CHAIR: That is a yes from all three. Before we start asking all our intense questions, do you have something to start with for a minute or two?

Mr Donohue: I have more than a minute or two, but not much more than 10.

THE CHAIR: I do not want to put you in an unfair situation.

Mr Donohue: Not much more than 10.

THE CHAIR: Please, go ahead, yes.

Mr Donohue: I thank the committee for this opportunity to present our views on the exposure draft. The legal profession, the society itself, strongly opposes the MAI bill in its current form. I think it is important to consider the context of the bill. The premiums we pay presently are to cover our own legal liability as drivers if we cause injury to another person through our own negligent or careless driving. The insured person is not the injured person. The insured person is the driver. It is important to keep this context in mind when considering what we consider radical and draconian changes proposed by this draft bill.

To illustrate, we as car owners have the choice of taking out property damage insurance for our own vehicle and/or property damage insurance for any other person's property that we may damage by our negligent or careless driving. The latter is called third-party property damage insurance. So if we drive our car in a way that causes damage to another person's property, our insurance company will pay for the damage, that is, us as the driver, whether it be to write-off a Volkswagen, a Mercedes, a bicycle, a truckload of eggs or even a house. One premium is paid and, no matter what damage is done, all the damage is paid for.

This is exactly the same with the current third-party personal injuries insurance, except that the personal injuries apply to damage to persons and the insurance is compulsory. The proposed MAI scheme is inequitable, punitive and unfair. It would have all Mercedes owners compensated by being given a Volkswagen when their

Mercedes was destroyed through no fault of their own. If that were the case, how many people would buy a Mercedes? I do not have an answer to that. It is just out there.

MR PETTERSSON: I think I would get one.

Mr Donohue: Make sure we do not have similar—

THE CHAIR: It is, though, comparing our bodies to a Mercedes.

Mr Donohue: Make sure you do not get similar changes to the property damage laws.

THE CHAIR: Go ahead.

Mr Donohue: The proposed scheme will result in severe and adverse compensation outcomes for many Canberrans. It will see the compensation of about 90 per cent of people injured by the negligence of others arbitrarily cut. They will no longer be compensated for the full extent of their injuries and damage and so at some stage of their recovery they will be forced to rely on family, friends and the social security system for support.

There is a distressing lack of social justice in a scheme that is structured to deliberately undercompensate innocent injured road accident victims. What is the purpose of the scheme? Why does the Chief Minister want to do it? I do not know the answers to that.

THE CHAIR: I do not think any of us know the answer.

Mr Donohue: The basic dignity of injured people to have their personal circumstances thoroughly considered and their individual circumstances assessed will be removed. We end up with one size fits all, but that just does not work for personal injuries. We are not all the same size and we do not have the same injuries.

Rather, private insurance companies will be given an unprecedented opportunity to manage and deny claims by being allowed to deal directly with injured people, even if the injured people want to deal via their own legal representative. The proposed scheme is infested with triggers for dispute between injured people and the relevant insurer.

Lawyers will have to be involved whether or not they are paid; they will have to be involved. The draft bill makes the naive and incredible assumption that insurers will act reasonably in their conduct towards injured persons. The insurer and the claimant have diametrically opposed commercial interests over the claim. Well, the insurer is commercial. For the claimants, usually it is a private expenditure, but it is commercial in the sense that it involves money.

What is the incentive for insurers to be reasonable? There is none in my opinion. The incentive is to be the opposite. Do we really want the fox to be in charge of the chicken house? It is absolutely no surprise at all that the current review of the CTP insurance scheme in New South Wales has shown insurers refusing to engage in

any communications with legal representatives, insurers providing claimants with misstatements as to the nature of the applicable cost regulations, and insurers providing claimants with correspondence containing clear legal errors.

It would be a gross failure and an act of bad faith—sorry to put it that way—by the Legislative Assembly members to cast their injured constituents unwillingly into the jaws and clutches of large insurance companies without having the benefit of professional independent advice as to their rights and entitlements. It would be wrong.

It is of serious concern to the society that not only is the prevalence of disputes likely to increase under the MAI scheme but also the mechanisms in place to manage disputes have been seriously compromised. It is quite amazing that what we are considering here today is not even a complete picture.

How are external disputes to be resolved? What court or tribunal is to consider them? This is still to be decided and declared at a later date by the Attorney-General. Internal reviews, that is, within the insurance company will be conducted by the insurer and without any requirement that the reviewer be completely independent of the original decision.

The draft bill seeks to severely limit the access by injured persons to any proper review of decisions that affect their rights. In Australia, we have something called natural justice and procedural fairness. It is widely known. It is a guarantee of a proper hearing and proper representation to persons in a dispute.

Many elements of the review mechanisms operate contrary to these established principles. For example, it is utterly unacceptable that an internal review can be performed by a person involved in the initial decision, that external review is excluded for some decisions, and that insurers will have a legislated right to speak directly with an injured person even where the injured person has chosen to be legally represented.

The society believes that it is possible to achieve the principles identified by the pilot citizens jury but in a manner that is fair and equitable. For example, we would support the extension of coverage to include drivers who have caused the accident. However, we most strongly reject the proposition that it is efficient or fair to provide the extended coverage by cutting the compensation of innocent injured victims.

Why was this the only mechanism considered as the enablement of extended coverage? In relation to early treatment, the pilot citizens jury emphasised the need for early treatment and care. The society supports this sentiment but believes that the draft bill fails to bring this about. The draft bill relies on the good will and cooperation of the insurers to achieve the goals of early treatment and care. As noted earlier, recent experience in New South Wales has clearly demonstrated that giving the insurers more power will remove any guarantee of fair and timely processing of insurance claims.

As already mentioned, we are not even now considering a complete picture. There are numerous references to undisclosed MAI guidelines, whole person impairment assessment guidelines and other guidelines throughout the exposure draft. Some

60 separate powers and functions are to be produced at some undetermined time in the future. I ask: how can anyone fully and sensibly comment on all aspects of the draft bill given the substantial amounts that are invisible?

In summary, the proposal affects everyone in Canberra. Anyone at all who is injured after the commencement of the MAI act will be subject to its provisions. Most people who are going to be injured do not know that they are going to be injured; so they have not bothered to read the bill and therefore they are not here to comment on it.

The proposed MAI scheme is a regressive change to a crucial compulsory scheme of insurance that presently protects people. The scheme would take away that protection to a significant degree. It will be a gross unfairness on the community, causing unnecessary anxiety, loss and misery. The only winners are likely to be the insurers and their supporters. The society says that the draft bill must not proceed in its present form. I have more to say, but I will stop there.

THE CHAIR: Thank you, Mr Donohue; I appreciate it. First of all, I would like to go to the reduction in compensation available, which your executive summary says is to 90 per cent of people injured. Can you please set out for the committee how that is going to occur if the new scheme is—

Mr Donohue: I will refer to Dianne, who is closer to it.

Ms O'Hara: That figure comes from the E&Y costing report. The reference is at pages 20 and 70, from memory. They talk about 900 claims. These are for not-at-fault people. Ninety per cent of innocently injured road accident victims will have their full entitlement to common-law damages reduced.

THE CHAIR: We do not have any figures on by how much, do we?

Ms O'Hara: By about 90 per cent, so you have 900 claims, and that will reduce down to about a hundred, according to Ernst & Young.

THE CHAIR: Of actual claims; yes, I see. As I have asked everybody else, if you had to choose between the current scheme and the proposed scheme, which would you choose?

Mr Donohue: I heard that question earlier. The proposed scheme, as amended and made fair and reasonable, and giving people proper compensation—

THE CHAIR: Yes, but how?

Mr Blumer: That is a great question.

THE CHAIR: I mean that genuinely. There are many things that this committee could recommend.

Mr Donohue: Yes, I understand that. Some people might say that the current scheme is not perfect, but it is way up there near the ceiling compared to what is in this bill.

THE CHAIR: The reason I asked for a simple answer to that question is that it will make it very clear—

Mr Donohue: The current.

THE CHAIR: You want to stay with the current?

Mr Donohue: The current is better than what is proposed in the draft bill.

THE CHAIR: Vastly or a bit?

Mr Donohue: Vastly.

THE CHAIR: You also went to the assumption that insurers would treat people properly. I do not run an insurance company but I can certainly understand that there are motivations to run a great business as well as obviously fulfil the law. If we were stuck with the current proposal, if that was going ahead, what could be changed to put a third party in there? How could that be done? Have you had any thoughts about that?

Mr Donohue: Keep the lawyers involved, for a start. At least they will be qualified, they will understand the bill and they will be able to speak for the claimant.

Mr Blumer: The problem is that with representation, as was touched upon in the ALA's submission, the business model of representing claimants when the quantum of the claim, the amount of the claim, is so tiny, is untenable.

THE CHAIR: Because if it is a fee that comes out of the payment or something then it is—

Mr Blumer: Exactly. We often reduce our fees for many motor vehicle accident claims already, and the premiums have been reduced. Basically, there have been less costs payable in these sorts of claims over the years. We are happy to do this for people, but if it becomes absolutely untenable, we will be leaving the most vulnerable people in our society under the insurers' control.

THE CHAIR: Or, indeed, a greater workload for Legal Aid, which is already under a great deal of pressure.

Mr Blumer: Legal Aid, which is already underfunded, yes.

THE CHAIR: We hear about that a lot on this committee.

MR PETTERSSON: What would happen to the legal industry in Canberra if this legislation were to pass?

Mr Donohue: The legal industry?

MR PETTERSSON: The profession.

Mr Donohue: Do you mean private practitioners?

MR PETTERSSON: Yes. I do not want to say "the profession" because that almost refers to the professional tradecraft. I want to talk about how many legal firms, how many lawyers—the legal industry.

Mr Blumer: If you look at who works in the legal industry, it is not just the lawyers; it is the receptionists, it is the admin staff, it is the paralegals who learn valuable knowledge under law firms and then go on to practise in many different areas. It is the insurance staff. Basically, there are hundreds if not thousands of workers who are involved in this scheme who work towards giving people what they should be entitled to.

Mr Donohue: It will not make a scrap of difference to my practice because I do not do personal injuries claims, and that will be the same for every other practice that does not do it or does only a very small part of personal injuries claims.

MR PETTERSSON: Being more specific, what will happen to personal injuries firms in Canberra? Will many close up shop?

Mr Donohue: I cannot answer that.

Mr Blumer: It is highly possible. It is hard to say what everyone's business model is; that is all commercial information that is not put out there. Basically, yes, I do envisage that.

Ms O'Hara: This issue has arisen so many times before that most of the firms involved in this area would have looked at that exact issue many times over. They would have contingency plans or other plans in place. The important issue is that the disputes will not go away, the claimants will still be there and you are essentially going to be leaving them alone and unrepresented, to try to deal with their situation as best they can.

THE CHAIR: If this scheme were to go ahead as planned—and we play our role but we do not have the only role in this process—do you have any experience or view of the WPI of 10?

Mr Blumer: In our experience, from dealing with the New South Wales system—

THE CHAIR: Do they use the 10?

Mr Blumer: a 10 per cent whole person impairment threshold is almost impossible to reach. For example, one of my clients worked as a plumber. He will never be able to work again as a plumber. He has back injuries which necessitated him taking very strong pain medication, and depression, which led to an attempted suicide and ongoing severe pain and depression. That person is unlikely to meet even five per cent whole person impairment.

THE CHAIR: Because mental response does not weight very highly or—

Mr Blumer: Even the physical injuries, which are very debilitating, would not meet—I have doubts about whether or not he would meet the threshold, even if the two percentages were added to one another.

THE CHAIR: It is hard to say, but do we know what the balance of WPI percentages are for those who are going through the current scheme?

Mr Blumer: No, we do not, and the reason is because we are not under that draconian scheme yet. I am sure that if the bill passes we would be able to tell you in five years, and we would be in a very bad position. I hope that we never know the answer to that question.

Ms O'Hara: I think there is a perception that WPI is a score out of 100, so 10 cannot be that bad, whereas in actual fact it is very bad. It does not take into account your individual circumstances. You have to meet that threshold. It does not take into account your pre-injury—

THE CHAIR: If you were someone who worked with your hands and now you have not got any hands—

Ms O'Hara: Yes. It does not take into account your pre-injury occupation, it does not take into account pain and it does not take into account your future medical requirements. It is a very arbitrary and quite blunt instrument. The whole issue of the threshold is that it is aimed at cutting people off their full compensation. Again, you get back to that question: on what basis are we proposing to say to people who we know should be fully compensated that we are putting in this arbitrary threshold to prevent that from happening?

MR PETTERSSON: It was mentioned earlier that legal fees for smaller claims were often smaller or limited. Is that due to any mechanism or is that due to the goodwill of lawyers?

Mr Blumer: That is due to the current act and also the Civil Law (Wrongs) Act. Some lawyers cut their fees as well to make sure that there is more in the hands of their clients.

Ms O'Hara: In addition to that, in the legal industry it is important, as the ALA pointed out, that there are cost disclosures and cost agreements that have to be in place under our Legal Profession Act so that people are aware of the cost and there is also redress if there is something untoward about—

THE CHAIR: The fees they are being charged.

Ms O'Hara: Yes.

Mr Blumer: I am also glad that in the current scheme we are able to offer a legal service that many of the most vulnerable in our society do not have to pay for up front and—

THE CHAIR: Because of no win, no pay or because of—

Mr Blumer: That is right. Because we know that we can represent these people and will eventually get paid, we will take all the risk in the meantime. That is an extremely valuable service that you do not see in many places.

THE CHAIR: No. In fact I mentioned in our previous hearing today that, coming from interstate originally, I had never heard advertising for such a service in my life before moving to the ACT. That is not a scientific study, but—

MR PETTERSSON: There was talk before about how conflicts with insurers would be resolved. That is still up in the air. Do you have any suggested models?

Mr Donohue: We have not worked out a model but it would seem that obviously it has to be a judicially decided tribunal of some kind. You could look at specialist tribunals, probably preferably the Magistrates Court, but I think you would need to talk to the Magistrates Court registrars and the chief magistrate to see how they are going to be able to manage the potentially very large number of self-represented litigants who will come in there and take up court time while they try to work out the process. They may be arguing about only a small amount of money but it will be a big impost on the Magistrates Court and on any other tribunal.

Ms O'Hara: With the dispute resolution generally, you have to find the balance. I suppose the insurers are experienced in this; it is their daily occupation. You often have one-time claimants who are trying to work their way through the system. So it is about trying to find the balance of advice at the right point in time, because under any system the disputes are not going to go away. In fact we think that under the proposed system the number of disputes will rise. You need those one-time claimants to have access to timely, sensible, solid advice that they can then use. It helps in their recovery as well, because they can concentrate on getting better and the admin is taken care of for them.

Mr Donohue: Clearly the number of disputes can be reduced by the insurers acting reasonably, making better offers and earlier offers. Then there is not the same amount of dispute.

THE CHAIR: Were you involved in the process for the citizens jury and the—

Mr Donohue: Personally, no.

THE CHAIR: But was your organisation?

Ms O'Hara: The Law Society had a representative on the SRG, as did the bar. There were two insurers, two lawyers and a couple of ACT government people. So we felt very much in a minority. We, the bar and the Law Society, put a raft of information into that process. From our point of view it resulted in very little change. I think there were certain witnesses denoted as experts who got a much fuller hearing than perhaps the legal representatives. Did we think it was a satisfactory process from the SRG point of view? No, we did not.

THE CHAIR: Indeed. We talked in our last hearing about who was being paid, who

was voluntary and what the balance of opinions was on that group, and it certainly does not seem to have weighed in favour of the citizen.

Ms O'Hara: The legal reps were essentially the volunteers, as I understand, on that process. We, the legal practitioners, also pushed very hard to try to get people who had gone through or were involved in the system before the jury. The eventual outcome of that was that you had a couple of people who had been involved in the system address not the jury but one or two jury members, who then relayed it. So they were taken a step back. Some people were able to address the whole jury and could deliver their message as one, but the injured people spoke to somebody who then spoke to somebody else who then told everybody else.

THE CHAIR: Would you like to take on notice the question of what could have been done more satisfactorily in that process and, if there were more changes you would have recommended through that process that you wanted taken more seriously, what they would be?

Ms O'Hara: Yes.

Mr Donohue: I ask the committee to bear in mind that plaintiff lawyers are the people who are best qualified to comment about the impact this legislation might have on their clients, because they are uniquely the ones who deal on a very regular basis, face to face, with the injured person.

THE CHAIR: Indeed. Thank you very much for appearing today. You will be sent a copy of the *Hansard* transcript. If there is anything you want to change, please do. There will be a time frame for responding to the questions on notice. Thank you.

HAWKINS, MR WALTER, Maurice Blackburn Lawyers

THE CHAIR: Thank you, Mr Hawkins, for appearing today and for your written submission to the inquiry. I remind you of the protections and obligations afforded by parliamentary privilege, as set out on the pink privilege statement in front of you. Are you able to confirm for the record, once you have had a look at that, that you understand the privilege implications of the statement?

Mr Hawkins: Yes, I do.

THE CHAIR: Would you like to make a brief opening statement?

Mr Hawkins: Thank you, and I think it is brief.

THE CHAIR: I think you heard my commentary.

Mr Hawkins: Thank you for the opportunity to address the committee this afternoon. Maurice Blackburn has concerns with the bill, the compensation scheme it represents and the process used to develop it. Specifically, it is the wrong option and creates the wrong outcomes for injured Canberrans. Insurers benefit at the expense of injured people.

Surviving a road accident can be a traumatic experience when there is significant injury involved, whether it be physical or psychological or both, impacting the injured's capacity to work or function in activities of daily life or both. The trauma associated with the experience is heightened. The scheme chosen will exacerbate that trauma.

Imposition of ridiculously high injury thresholds that an injured person must satisfy before being able to exercise their common-law rights is a poor decision for the people of Canberra. The outcome came about as it appears that the process in deciding the outcome was infiltrated by the insurance industry, who, as I said, benefit from the outcome. The deliberative democracy model, being the citizens jury, from formation to decision, was flawed and the capacity for it to make an informed decision was severely diminished by the process.

There are three principal points that I wish to make. Firstly, the government purposely recruited the citizens jury and excluded anyone who had lived experience with the current compensation system. None of the jurors had direct, lived experience with the current scheme. As a result the government missed the opportunity of understanding the impacts of the changes under consideration.

I cannot identify another broad-scale inquiry process which set out deliberately to not source the lived experience of citizens. One only needs to look at the federal Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which not only interrogated the actions of institutions but dedicated a significant portion of its limited time to hear from those who suffered as a result of corporate misconduct. As a result the citizens jury were left to make decisions trusting that the reports that they were given of the human impact of poor policy were accurate

and thorough.

Secondly, the whole person impairment regime proposed is an unfair and blunt instrument. The scheme chosen will simply not provide equitable cover for all injured people. It will provide worse outcomes for those suffering the worst injuries on the roads.

Introducing a 10 per cent threshold will mean that about 90 per cent of injured people who are now able to claim will lose that right. Our submission referred to the case of Tracey Dodimead, a hairdresser who was assessed at one per cent whole person impairment but whose career as a hairdresser was ruined. What about the young building site worker who might have a five per cent whole person impairment but is now unable to do any heavy lifting without back pain? What about the child or teenager who does not meet 10 per cent and now has limited career options and their life ahead of them?

Each of these injured people would not be able to make a common-law claim and their compensation would be capped at five years. What are they and their families to do? The model might superficially appear cheaper, which has not been conclusively established, but it removes people's rights to common law so that when you are in a time of greatest need, you have almost no chance of accessing the support you require.

Thirdly, it ignores the significance of mental health consequences of accidents. The submission at page 6 refers to a recent joint study by the John Walsh Centre for Rehabilitation Research, the Kolling Institute of Medical Research, Sydney Medical School (Northern) and the University of Sydney. They found that the psychological distress associated with motor vehicle accidents is substantial and prevalent.

It did not matter whether the psychological distress was primary or secondary. The psychological distress can regularly remain elevated for at least three years after an accident. They also found that where a person has experienced a physical injury as well as a psychological injury, the cost of the claim can double. This bill requires people to choose between the physical effects or the psychological effects, rather than being able to combine them. This does not benefit those injured; it is callous and it is beneficial to the insurers.

There are a number of areas in which insurers gain significant power: power over treatment, power over the dispute process. That gifting of power to the insurers which this bill does will add to the mental distress of injured people. This submission recommends that the draft legislation be abandoned.

THE CHAIR: Thank you, Mr Hawkins. Thank you for your opening remarks. First of all, we will go to my standard question: if you had to choose between the current system and the proposed system, which would you choose?

Mr Hawkins: I would choose the current system, without a doubt.

THE CHAIR: Also, you have been quite directly critical of the process that got us to here. What is your view on why we are here? Do you have any view on why we are here, with this proposed legislation? Given the process that has gone on, what could

have been done better or should be done now, given the situation we have?

Mr Hawkins: I might have to ask you to repeat certain parts of that question. As to why we are here, the submission dealt with it in some ways. There have been attempts before, and it would appear to be unfinished business of our Chief Minister, to change the motor vehicle compensation scheme. We have a scheme that is fully funded; it is successful. In my view it is the envy of the other schemes around Australia. What is proposed by this exposure draft is to gut that scheme and have a race to the bottom. We have heard evidence about the New South Wales scheme, but there is also the South Australian scheme. We do not want a race to the bottom. I think the people of Canberra deserve much better than what is being proposed.

THE CHAIR: Indeed. The citizens jury process has now taken its course and has reported but we have continually had presented to us matters associated with that process. Can the process be redeemed? Can we go back now, in your view, or do we need to start from scratch?

Mr Hawkins: The bill as it is presented has to be abandoned. There are certain aspects or recommendations of the jury that can be implemented. We can have coverage for all people injured in car accidents. However, that coverage for those people who are at fault should not be at the expense of those people who are not at fault. There are a number of ways in which there can be savings made in the existing scheme, but it is not about gutting the rights and compensation of those people who are injured, those people who need that compensation; those people who need to be able to get their life back on track.

MS CODY: Thank you, Mr Hawkins, for coming today. You have said in your submission that Maurice Blackburn strongly supports initiatives which enable early access to treatment and support for injured people.

Mr Hawkins: Yes.

MS CODY: The current system does not necessarily provide that.

Mr Hawkins: We have heard some evidence this afternoon that the present scheme allows for up to $5,000 for up to six months. We have also had a situation now in the ACT that a number of the insurers, as part of taking out your CTP coverage, actually extend coverage. They are defined benefits that may be set out in that policy, but those people who take out coverage with those particular insurance companies are covered, up to the extent of those particular policies.

THE CHAIR: There are some early claimants in some of the insurance policies; is that what you are saying?

Mr Hawkins: No. I am saying that the present scheme allows for up to six months, for up to $5,000. I am also saying that, as part of the competitive market, some of the insurers will also extend coverage as part of the policy to those people who are at fault, but the benefits will be defined in accordance with the particular policy.

MS CODY: You also mentioned other jurisdictions; do they have schemes like the

proposed scheme or schemes like we have currently?

Mr Hawkins: The scheme that is proposed most closely mirrors the New South Wales scheme and the South Australian scheme. The particular stripping of those schemes over the past two years was championed for lowering the particular premiums. What you find historically is that those premiums have now readjusted and people are largely paying the same amount of premium as they did before, but they have vastly inferior rights.

MS CODY: We have a system in place that offers compensation to those not at fault and that does have provision for some early treatments. Are there things we could do to improve the current system?

Mr Hawkins: One of the ways in which it could be drastically improved is to have, similarly to the workers compensation scheme, the provision to be able to have some income replacement, so that it is taken off, if you like, the ultimate end result, but that person has an income to get by, and with their family, for that period of time in which their claim is being processed and working its way through the system. That would not add any additional cost to what we have now. It would not add to the overall cost of the payout at the end. It would, if you like, be an advance payment; in the same way now that if treatment is afforded past that six months, there is a credit or a benefit afforded to the insurance company with regard to that treatment.

MS CODY: How would that differ? The proposed scheme states that there would be income benefits of, I think, 80 per cent.

Mr Hawkins: The proposed scheme has percentages of income, but for most people it will all stop after five years. So even for those people who are injured through the fault of others, if they do not crack this 10 per cent—this mythical bar that people are going to struggle to reach—it will stop after five years. Their bills are not going to stop; their mortgage payments are not going to stop; their rent payments are not going to stop; everything else is not going to stop. All that this will do is shift those people potentially to the welfare scheme. It is a cost-shifting exercise. That is not fair.

MS CODY: I am going to ask a question that may or may not be able to be answered, but I will give it a shot. What is the average percentage of a CTP claim that goes towards legal fees now?

Mr Hawkins: If you look at those claims that resolve for $50,000 or less, there is a built-in cap within the legislation, and that is set at 20 per cent. As to what the legal fees would be overall in the matter, it is impossible to say at the moment. Certainly, there would be numbers in relation to the figures that are paid by insurers for what are called the party costs, and those numbers are available. But it is impossible to indicate otherwise what those fees would be.

Equally, when one looks at the other costs that are built into the system, what are the insurance companies' costs? What are the insurance companies including in those costs? Are they counting their investigations? Are they counting the hire of surveillance people as part of treatment, rehabilitation or anything else? How are all of these expenses categorised?

MR PETTERSSON: In your submission you say that the bill regularly refers to regulations and guidelines that are not yet publicly available.

Mr Hawkins: Correct.

MR PETTERSSON: What should be in statute that is potentially hidden away in these not yet available guidelines and regulations?

Mr Hawkins: Traditionally, regulations are treated as subordinate legislation. It is classified as subordinate legislation for a reason. It hangs off the principal piece of legislation, which is the act. With this piece of legislation—I think this may have been mentioned by others—around 15 per cent of the different sections in this particular piece of legislation are to be filled in later with something. That is before one even gets to the guidelines.

I struggle to see how the committee, I struggle to see how the Assembly, can even deal with a piece of legislation when you have these substantial bits of the legislation and how it is going to operate just not even there, not able to be commented upon, not able to be debated in the Assembly.

THE CHAIR: Could comment on your experience of WPI or your understanding of WPI? We have heard it stated a number of times that the 10 per cent is difficult to get to.

Mr Hawkins: Absolutely.

THE CHAIR: Would you like to expand with some more examples or give your thoughts?

Mr Hawkins: I refer to the example of Tracey Dodimead. If you are using the example of whole person impairment, it does not take account of that particular person's circumstances and/or their careers. We talk about whole person impairment. It all comes back to the American Medical Association and generally the fifth edition, which is a book, a tome, about five centimetres thick.

Different schemes modify those tables, but those tables themselves carry quite a clear and specific warning: do not use these as a way of assessing damages for people. Do not use these to assess someone's income loss. You need to look at the person's particular circumstances.

THE CHAIR: Mr Hawkins, are you able to find that reference?

Mr Hawkins: To the AMA5?

THE CHAIR: The reference that says, "Do not use these to assess."

Mr Hawkins: Certainly. Would you bear with me?

THE CHAIR: You can take that on notice or you can find it now, thank you.

Mr Hawkins: I may be able to find it now but continue with your questioning. I will hand it to you.

THE CHAIR: Otherwise on notice is fine.

Mr Hawkins: Thank you.

MR PETTERSSON: Are there any alternatives to WPI?

Mr Hawkins: Certainly, you cannot have 10 per cent. You cannot say, "What about eight per cent; what about five per cent; what about one?" because it still excludes people. If you think about the numbers of different injuries, by the very nature of having a permanent impairment, you are ruling out those people who suffer the effects of their injuries for a number of years, and then luckily heal. As to any other suitable way to have that, that needs to be a proper inquiry. That needs to be a proper examination. But the legislation as it is is just unworkable and it is just manifestly unfair.

MS CODY: Mr Hawkins, under the current system, if a person is unable to return to normal functions and for all intents and purposes cannot work, they cannot care for themselves without assistance, they are compensated for that; is that correct?

Mr Hawkins: Yes, at the moment if one is assessing the person's damage or loss, our system tries to put them in the position they would have been had it not occurred. They will receive some compensation for their pain and suffering, their non-economic loss, the impact upon their relationships, all those sorts of things. They would recover their treatment expenses, both for the past and for the future, a wage loss for the past and for the future and even, generally, superannuation contributions.

But the other thing that it would also compensate is what is called home help and assistance. Presently our system allows for people to be able to claim damages for that assistance provided, fortuitously, ordinarily by family members and friends. This new system that is proposed gets rid of that. It will only look at paid care. So that is gutted straight away in this exposure bill. At the present time, the system wants to try to compensate that person as best as we can to try to put their life back together again.

MS CODY: If a person is injured in the proposed scheme and needs full-time care and assistance and does not go back to work, how does that five-year cap—

Mr Hawkins: It is only going to be paid care; so the assistance that someone's loved one might provide—so many hours a day, so many hours a week doing certain things—would not be compensated at all.

MS CODY: But the person—

Mr Hawkins: If we are talking about people who are, perhaps, catastrophically injured, they will ordinarily go into the life-time care and support scheme, which is a different category again, which is external to this piece of legislation.

MS CODY: That is correct. But I am just talking about someone who was a hairdresser or a construction worker who may end up in a wheelchair. They cannot go back to their job. They may have suffered some form of mental incapacitation as well, not catastrophic, but some form. So work is more difficult. Do they get the full compensation that you have just talked about in the—

Mr Hawkins: That is what the system is designed to do. So it looks at that person and tries to look at their working life, however long it may ordinarily have been, and even will look at things like career progression and opportunity.

THE CHAIR: The current system?

Mr Hawkins: Correct.

THE CHAIR: Right.

Mr Hawkins: And that will be factored into it. It does not peg you at what you are now.

MS CODY: But the proposed system, does it pick up those things as well?

Mr Hawkins: No.

MS CODY: Okay.

MR PETTERSSON: Are there time frames for people to decide between CTP and potentially suitable workers compensation?

Mr Hawkins: There has been discussion about that. Firstly, why should people choose between the workers compensation scheme and a proposed CTP scheme? At the moment, those two schemes exist. They operate well together. There are benefits that accrue from that. Having people elect, particularly very early on, is unfair.

THE CHAIR: Before they know what they are entitled to.

Mr Hawkins: You do not know. Why turn it into a quiz show? "Do you want the money or the box?" If one is potentially a larger sum of money that might seem larger at the moment, as distinct from a workers compensation scheme which will continue to pay incapacity payments, ordinarily until retirement age, people may well choose the wrong thing. That is going to be to their detriment, it is going be to their family's detriment, and it can be to the Canberra community's detriment as well.

MR PETTERSSON: Under this legislation, would there be anyone able to assist them in making that decision?

Mr Hawkins: Part of the problem is people potentially not being able to get legal advice or possibly shuffling it on to legal aid—we have heard about the funding resources—or the community legal centres who are in the same position.

MS CODY: Mr Hawkins, at page 12 of your submission, you make reference to "a

system that strengthens integrity and reduces fraudulent behaviour." You say that Maurice Blackburn strongly supports that. But then you state:

> … there is nothing in Option D that could not be covered equally in Option A.

Can you expand on that a little?

Mr Hawkins: Correct. Fraudulent behaviour has not been identified as a major or really significant problem within the ACT. Certainly in other jurisdictions there has been significant comment about that. So if one is going to have legislation that deals with those sorts of issues, and/or we have also heard about claims harvesting, that can equally be introduced in model A as what it is in model B. It does not affect the other bits and pieces of the particular legislation.

THE CHAIR: What kind of mechanism can be used for that?

Mr Hawkins: Fraudulent behaviour is something that is already now going to be addressed under the criminal system. There are statements and affirmations, if you like, that are done in the forms.

THE CHAIR: The insurance company can go to the criminal system now; is that what you are saying?

Mr Hawkins: I am saying that if there is a particular problem and there is an allegation of fraud, it would be investigated. It would ultimately be a matter for the DPP and the police. But I do not think that fraud has necessarily been identified as a problem, but if it is something there, then let us deal with it.

THE CHAIR: We will leave it there. Mr Hawkins, if you can find that reference before you leave, we can certainly record it here. Otherwise you can take it on notice.

Mr Hawkins: Thank you so much.

THE CHAIR: Thank you for appearing today. A proof transcript will be forwarded to you to correct if there is anything you think has not been recorded correctly.

Mr Hawkins: Thank you.

THE CHAIR: On behalf of the committee, I thank you very much for appearing today. We will now move on to the final witnesses who are representing Suncorp insurance.

RAHMAN, MR SURAYEZ, Executive Manager, ACT CTP, Suncorp Group
GILL, MR ANDREW, Scheme Integrity Consultant, Forensic Data Analysis, Suncorp Group
KAYROOZ, MR MATTHEW, Head of Accident and Trauma, Personal Injury Portfolio and Products Suncorp Group

THE CHAIR: Thank you for appearing today. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement on the table before you. Could you confirm, for the record, that you understand the privilege implications of the statement?

Mr Rahman: I do.

Mr Gill: Yes.

Mr Kayrooz: Yes.

THE CHAIR: Would you like to make any brief opening remarks?

Mr Rahman: I am the local CTP manager for Suncorp. I would like to thank the committee for allowing Suncorp to appear at today's hearing. With me today we have Matthew Kayrooz, Suncorp's national CTP and workers compensation manager. We have also got Andrew Gill, formerly with the New South police. He ran the investigation into the fraud in the New South Wales CTP scheme and now acts as an independent scheme integrity consultant.

Suncorp provides CTP insurance in the ACT under the GIO, AAMI and APIA brands, with around 115,000 customers. We are proud ACT residents with claim staff and senior leadership based in our Woden office. We see ourselves as part of the Canberra community and have partnerships with the Canberra Hospital Foundation and the GIO Stadium Canberra.

As Australia's largest private CTP insurer and only insurer operating in every underwritten private scheme in Australia, Suncorp has consistently advocated for injured people on our roads to be provided with statutory benefits on a no-fault basis, with common-law damages available to those who are seriously injured. The model selected by the citizens jury will do that. It will: ensure that everyone injured is adequately covered by CTP insurance; provide early treatment, care and income support as required by injured people; maximise the proportion of premiums going to claimants and minimise exaggerated claims and fraud; address the issue of profit levels of insurers, lawyers and medical and legal professionals; and keep premiums affordable for motorists.

If this legislation is passed, we believe, the ACT will have the best CTP scheme in Australia. Crucially around 600 injured motorists a year will receive support for what the current scheme considers at-fault accidents, such as hitting a kangaroo or a momentary lapse in judgment. This has been an important social reform that will change the lives of hundreds of families for the better.

Also, more of the premium dollar will go to those who are seriously injured, not the

fraudsters who drive up premiums for everyone in the scheme. Outrageously, the ACT has some of the best roads in the country yet the claims rates in the ACT are astronomical. Andrew can discuss some of that today. Premiums will be approximately $130 cheaper under the proposed new scheme due to the introduction of defined benefits and the reduction of fraud and exaggerated claims.

Finally, the profit levels of insurers and lawyers will decline through the introduction of defined benefits. The question has been raised in the media and the committee hearings, as to why we, as an insurer, would support a scheme that reduces our revenue and profit. The reason is that the scheme based on common law and lump sum compensation is volatile and unsustainable in the long term. If in a particular year we end up making over the expected profit, that is not in line with community or government expectations. Equally it means that we can also make a substantial loss, a result that is not acceptable by any insurer, either private or public. This inherent volatility undermines the integrity and sustainability of the scheme. That is what happens in common-law schemes. Any actuary will validate that.

We want to be here in the long term, serving an important role as a trusted part of the community. That is why we support a model that reduces potential for higher profits but also reduces potential for unexpected loss and provides greater certainty for everyone.

I was involved in the citizens jury myself. What it demonstrated, consistent with our own customer research over many years, is that people expect a CTP scheme to help everyone who is injured on our roads, with a focus on recovery, without wasting money on an expensive, unfair and adversarial process. These reforms will meet those expectations. What is more, it will set us up for the future and set the ACT up for new and exciting technologies, such as automated vehicles. Andrew will talk through some of the work he has done on the ACT scheme.

Mr Gill: As Surayez said, I am a former New South Wales police officer. I am currently employed as a consultant for Suncorp. I look at fraud and scheme integrity. While a police officer, I was a witness for the citizens jury process as well.

THE CHAIR: Here?

Mr Gill: Here in the ACT.

THE CHAIR: Before being employed by Suncorp?

Mr Gill: That is correct. I gave them an insight into the levels of fraud that were occurring in New South Wales, how we identified them, how we stopped them, and the result of that on the New South Wales scheme. We were presented with a number of conundrums in terms of fraud that was allegedly occurring in New South Wales. A number of statements were made about what that fraud looked like and the impact it was having on the cost of the scheme in New South Wales.

I have listened to people today talk about increasing premiums. My personal premium for my vehicle in New South Wales went over $900 last year. I do not know that that is something that would be acceptable to most people in the ACT, although I think

that is probably a political consideration. My policy this year was under $500, so there has been a significant decrease. That is just my personal circumstances in New South Wales for my vehicle.

What I first and foremost did in that jurisdiction to identify where the fraud was was to break up New South Wales—and I have done the same work with Queensland—into a number of regions. I looked at two very simple metrics. This is what I encouraged the citizens jury to do as well. "A number of people are going to make a number of statements," is exactly what I said to them. "Look through the self-interest of the statements that people are making"—and that is not saying that they were saying bad things or wrong things—"and look at the data." That is what I implored the jury to do. And that is precisely what I have done with the ACT claims rates, and then compared them against New South Wales and Queensland and, perhaps importantly, Queanbeyan as well.

The first important metric I will take you to is a very simple metric: the number of claims as opposed to the number of injuries that are recorded. As a simple proposition, you should not have more claims for injuries than there are records of injuries. In New South Wales we got into a system where for every injury recorded, 85 per cent had a claim lodged. In the worst year in New South Wales we got to the ridiculous proposition where there were 102 per cent claims per injury. So we were getting more claims than there were injuries.

That is when the New South Wales government introduced the CTP task force. We looked at the specific regions that we were told about in New South Wales where problems were and we targeted our efforts there. We arrested a number of people, including lawyers, physiotherapists and allied health professionals. We arrested over 20 people. Most importantly, almost 6,000 claims disappeared from the system as a result of what we were doing. It was introducing consequences for actions.

THE CHAIR: I have a quick question on that as you are going ahead with your statistics. Have we got evidence of what occurs in the ACT at all?

Mr Gill: Yes, and I will get to that.

THE CHAIR: Can you get to that now, please.

MR PETTERSSON: I have one quick one. How do you measure an injury getting recorded?

Mr Gill: Injury getting recorded is off the ACT government database. There are all the datasets you have got there. What are they called? I was very impressed by them. The ACT government open data portal has got a wealth of information, including how many people are injured in collisions in a given year, where they were injured—

THE CHAIR: Have you got that statistic on the number of claims versus the number of injuries here?

Mr Gill: Yes, we do. As I said, the worst New South Wales got was 102 per cent. In Queensland the average is 79 per cent. In the ACT you sit at 147 per cent over the

past four years that Suncorp has been involved here. I will break that down on a year-by-year basis. Of course this data will be available to anyone to double-check as well. This is weighted, I should add just as a caveat here, although statistically it would be very accurate. What I have done is: I have got the Suncorp data and I have got the ACT data. I have weighted the Suncorp data as if it were 100 per cent of the market. If that makes sense to you I could—

THE CHAIR: Not necessarily but you can probably give us more detail on notice.

Mr Gill: I certainly can. In 2014 we saw a claims rate of 676 recorded injuries on ACT roads. You had a claims rate of 967 claims lodged. That is 142 per cent. In 2015 it got slightly better—still worse than any region in New South Wales or Queensland—at 130 per cent.

THE CHAIR: Do we know if any of those claims have been found to, in fact, be interstate or anything like that?

Mr Gill: About 10 per cent of them are interstate.

THE CHAIR: We are an island in New South Wales of course.

Mr Gill: Yes, of course. Actually it was something I was very cognisant of when I started going through and looking at individual claims to test my assumptions: what percentage of them are scammers from New South Wales, where I recognised the lawyers and—

THE CHAIR: Or in fact someone who has misunderstood what they are allowed to do. Yes, go ahead.

Mr Gill: Quite possibly, of course. 2016 was the worst, when it went to 173 per cent. Then it decreased again in 2017 to 142 per cent. But the average is 147 per cent over those four years.

THE CHAIR: But once those claims are made are we paying out at more than 100 per cent or are we determining it at more than 100 per cent?

Mr Gill: From 2014, with long-tail claims—a lot of them are still going, a lot of them are still live.

THE CHAIR: It is difficult to know.

Mr Gill: It is.

THE CHAIR: If we could start our questioning, you mentioned that you were involved in the citizens jury process here.

Mr Gill: That is right.

THE CHAIR: As a witness, was it?

Mr Gill: That is right.

THE CHAIR: Was Suncorp involved in any way at all in the selection of people to be involved in any way in the citizens jury process?

Mr Rahman: No, that was an independent process that was run.

THE CHAIR: You are fully aware what might be going on with the national company but you are based here in the ACT?

Mr Rahman: Yes.

THE CHAIR: What is your decision-making role here?

Mr Rahman: I look after the policy and premium setting guidelines for the ACT.

THE CHAIR: What was your involvement in the citizens jury process?

Mr Rahman: As an independent expert through the citizens jury and also as part of the stakeholder reference group.

Mr Kayrooz: As was mentioned before, the stakeholder reference group was a balanced number of two lawyer representatives, two insurer reps, two independent medical experts, two government officials and two expert actuarial people as a reference group for the citizens to actually question. It was very well balanced across the range of key stakeholders.

THE CHAIR: Did you have any involvement in the set-up of that, advising on the set-up of that process?

Mr Kayrooz: Not of the citizens jury. I think Suncorp's initial approach was a bit of cynicism, saying, "Yes, a citizens jury. What is it going to do?" But it worked remarkably well, as a reflection of what we have talked to individuals, and through our research across the states, as to what is expected; that everyone is covered in an accident; quick access to injuries damage; and seriously injured people looked after. It was reflected in the outcome of the citizens jury.

THE CHAIR: The question that we are going to is whether indeed seriously injured people are as well looked after under the new scheme as under the old scheme. I also just need to clarify: you mentioned, Mr Gill, you are currently employed by Suncorp as a consultant?

Mr Gill: Yes, I am consultant to Suncorp, that is right.

THE CHAIR: And when did that take place?

Mr Gill: May this year.

THE CHAIR: Were you still involved in the jury process at any way at that time?

Mr Gill: Absolutely not.

THE CHAIR: When did your discussions with Suncorp begin?

Mr Gill: That was not until—

THE CHAIR: What was your first contact with them?

Mr Gill: Early this year. This year.

THE CHAIR: That was after the conclusion of the—

Mr Gill: It was well after that.

Mr Kayrooz: And part of that was through the New South Wales SIRA, where they were presenting information from New South Wales Task Force Raven back to insurers, where we got to see the results put forward by Andrew and Detective David Christy.

THE CHAIR: Excellent, thank you. In your initial statement, Mr Rahman, you mentioned that this will set us up for driverless cars. In what way does this set us up for driverless cars?

Mr Rahman: If and when automated vehicles come on the road, ultimately the question of fault is going to be a challenge. Because ultimately who is at fault? Is it the manufacturer? The driver? Having a no-fault scheme—

THE CHAIR: Makes it a bit easier.

Mr Rahman: Makes it a lot easier and sets you up for the future.

THE CHAIR: Just to make it absolutely clear, if you could choose between the current scheme and the proposed scheme, which would you choose?

Mr Rahman: The proposed scheme.

THE CHAIR: Is the proposed scheme easier for you to administer than the current scheme?

Mr Rahman: Ultimately the new scheme will require a lot more interaction with the claimants. And in New South Wales we are now seeing some positive results where claimants are getting paid—

THE CHAIR: It is not the question I asked, Mr Rahman. I asked whether the scheme is easier for you to administer. Or is that a question for Mr Kayrooz? I do not know who has more of a role in the administration of the scheme.

Mr Kayrooz: It depends on the regulations set up—

THE CHAIR: So even you do not really know, because you have not seen the

regulations yet, whether this scheme will be easier to administer?

Mr Kayrooz: All I can say is that it will be a much more customer-focused scheme. As a large insurer where we are the direct insurer, we have great experience in dealing with customers. So, in the end, leveraging the direct claims ability we have across motor and home—dealing with people in those circumstances—we are well placed to have an efficient process for that scheme.

THE CHAIR: If the status quo remained, would you remain in the ACT as a provider?

Mr Kayrooz: At the moment, yes.

THE CHAIR: In the long term?

Mr Kayrooz: We would have to see where premiums go. Under the current scheme, with competition moving into the scheme you have seen premiums come down. In a monopoly scheme, whether it is government or private—

THE CHAIR: Or another provider.

Mr Kayrooz: People mention the TAC. They have worse benefits than the New South Wales scheme but their rates have never gone down. In Canberra the issue was that we got to the peak where the pressure was going up, at $680. It has come back down to $650. But over the current time in the scheme as set up there is potential for models between lawyers and medicos to keep leveraging small claims into the system. And it is not all lawyers; there are lots of good lawyers out there. When seriously injured, it is critical that people do have legal representation. But on these smaller claims, small impact and very small physical injury, people just should be in there getting better—

THE CHAIR: Would you consider less than 10 per cent WPI a very small injury? Is the definition of what you were just talking about then when you said—

Mr Kayrooz: The injuries I am talking about are the majority of injuries at the moment in the former New South Wales scheme and currently. The majority of claims are around zero whole body impairment and they are very low impact. Soft tissue, where a lot of people do not have treatment until they go to see lawyers—

THE CHAIR: Do you have those statistics to offer?

Mr Kayrooz: No, it is just the example we have utilised. We are now in the process of looking at the ACT scheme. But we have examined the New South Wales scheme, we are looking at Queensland, and there is a pattern that is very evident—

THE CHAIR: Are you able to take on notice what percentage, what WPI, in your claims system—

Mr Kayrooz: I do not know if we can for Canberra. In New South Wales over the past 15 years, people getting WPI of 10 per cent are roughly 12, 13 or 14 per cent of

people getting through. I do not think it is a mountain to climb, as has been mentioned before, where it is an impossible dream. Around 13 to 14 per cent of claims are getting that. And that is of a very expanded number of claims where it has been inflated by the small claims—

THE CHAIR: Thank you, Mr Kayrooz.

MS CODY: How do you report on your profits from CTPI?

Mr Rahman: We file eight to 10 per cent every time we have to do a filing. The filings are administered and monitored by the regulator. Ultimately we will have to disclose that as part of our annual filing submission through to the regulator.

THE CHAIR: Are they publicly available?

Mr Rahman: That would be a question for the regulator. I do not believe they are.

THE CHAIR: Are you willing to report to us your profits for the past four years in the ACT?

Mr Rahman: As Matthew touched on earlier, we entered the scheme about four years ago, so our profits that we have filed are hard to measure against because we still have not paid out all of those claims.

THE CHAIR: But are you able, nonetheless, to report—

Mr Kayrooz: With the other schemes, regulators are quite openly saying, "We want to measure scheme profitability." It is evidence in New South Wales and Queensland. We are happy for the regulator to do that across the board with both our competitors and ourselves. We have been in the scheme for about three to four years. So at the moment in the common-law scheme we are only just seeing where the first year's profit is starting to head, because most of those claims are only now being settled.

THE CHAIR: So we do not yet know whether the current set-up is long-term, profitable?

Mr Kayrooz: At the moment the indications are that we are meeting our profitability. We have some indications but we do not know where the profit goes. And under a common-law scheme, certain court decisions may impact a lot of the outstanding claims, particularly the seriously injured. The last 20 per cent of claims usually account for about 60 or 70 per cent of the cost that is coming through.

MS CODY: How long have you been in operation in the ACT for CTP?

Mr Kayrooz: Since 2013. It is almost five years.

MS CODY: So a lot of your payouts for CTP have not necessarily hit your books yet?

Mr Kayrooz: For the first year, a lot of them have gone through and we are starting to settle the larger ones. That is one years pattern. The second year is starting to

develop further. Then the third year—

MS CODY: Okay.

Mr Kayrooz: But in the schemes we operate, as I said, we are happy for the regulators to do it. And it is out there in the marketplace.

MS CODY: In your submission you talk about the proposed scheme promoting broader knowledge of the scheme and safer driving practices. Can you expand on how that would promote safer driving practices?

Mr Rahman: Ultimately I think it is understanding the benefits that people are entitled to. One of the key areas lacking at the moment is that people who are injured and are at fault do not really realise what they are entitled to and what they are not. As has been called out, people have access to $5,000 within the first six months. But the reality is that if the proposed scheme comes into play, the regulators, insurers and all parties will have a part to play in ensuring that people understand when they can claim. Ultimately that would, in effect, promote awareness of when those claims are made and effectively drive a linkage to road safety. I guess that is what we were referring to: saying there will be a broader awareness of claims entitlements and benefits through the new scheme which will effectively raise awareness and potentially—

MS CODY: Has that happened in New South Wales?

Mr Kayrooz: In New South Wales we just launched about two months ago, so the proof will be in the pudding. New South Wales has a large non-English-speaking background community. The regulator has not put information out in those communities. GIO, one of our companies, has now advertised in community papers in their languages about the new CTP scheme in New South Wales, what it covers and how to lodge a claim with us.

MS CODY: But has it increased safer driving practices?

Mr Gill: One way to answer that is that the rate of injuries from collisions in the ACT has dropped almost identically to that in to New South Wales. Last year the number of injuries was at 85 per cent of what it was four years earlier. It has decreased by 15 per cent, so people are driving more safely. Whether that has anything to do with the insurance product, I certainly would not offer a view on. But I can tell you that the rate of injures has decreased in both New South Wales and the ACT.

Mr Kayrooz: But we certainly encourage the road safety fund to continue and the hard work there. Similarly, we work with several groups, the national road safety one with fatality-free Friday, pushing those efforts to raise awareness of the claim stats. The other thing on the stats is that we now get stats on people injured from not at fault, and they tend to disappear because they are not recorded. The claim is refused, and most people do not claim. So all of a sudden we now get more accurate information as to who is actually claiming in an injured vehicle rather than those reported.

MR PETTERSSON: Does going to a no-fault fund benefit system lead to less fraud?

Mr Gill: Yes.

MR PETTERSSON: Why?

Mr Gill: It is very simple: because you are not getting money. If there is nothing wrong with you, what is the point of putting a claim in and getting medical treatment that you do not need if there is no pot of gold at the end of the rainbow? And that pot of gold is not millions of dollars. This is the exact type of claim that I am talking about: small, with no visible injury, no bruise, no bump, no cut, no scratch. They are being settled, for commercial reasons, for relatively small amounts of money. They are in fact small lottery wins; that is how I classify them.

MR PETTERSSON: Why are they getting money out of the current system if you are saying that there is no claim whatsoever?

Mr Gill: That is my view, that there is no claim where there is no injury. But to fight that and to prove otherwise, with a non-tactile injury, particularly—say, if it is a psychological injury—there is always the risk that you are going to lose. And the cost that is involved in fighting that claim is significant. Even if the insurer wins the claim, they lose, because they often do not get any money back anyway and they wear their own costs. It is an imperfect system, in my submission, but they are making commercial decisions to settle claims.

MR PETTERSSON: Isn't that a result of your commercial decisions: that you have set up a system in which people know you will settle these claims? If you stopped settling these small, false—as you are saying—claims, people would stop making them.

Mr Kayrooz: Not if they get taken to court with duelling medical opinions. As I said, there are independent medical opinions, particularly in New South Wales, where we have a very structured MAS decision with independent medical assessors. It is just matched by regular—

MR PETTERSSON: It does not—

Mr Kayrooz: Certain plaintiff forms use the same medico-legals. We have to pay for all of them because they come back to us. It is just then a matter of going to an adversarial system and the judge picks one or the other. And they win, so you pay.

MR PETTERSSON: In that situation doesn't that mean they have a legitimate claim?

Mr Gill: If the judge says that?

MR PETTERSSON: Yes.

Mr Gill: That is right. That is exactly what the judge is saying.

THE CHAIR: Then they are not defrauding the system.

Mr Gill: If that is the finding that has been come up with. I can tell you a great example of this. When I was a police officer, I was arresting people for putting claims in where there was no injury. But the actual process to prove a negative is an incredibly difficult thing. It is very difficult. And I was doing it with full police powers, which the insurers do not have. It is a very difficult thing to prove.

If someone puts in a claim—there has been a collision, and there are literally thousands of these in other jurisdictions and many in the ACT; I could not put a figure on it in the ACT because I have not looked in detail at every claim here as I have—

MS CODY: But you believe that there are fraudulent claims in the ACT?

Mr Gill: Of the type that I am talking about. They exaggerate. It is people who have transitory discomfort.

THE CHAIR: How do you know if you have not looked at the cases?

Mr Gill: I have looked at some of them. I have not looked at all of them. I could not put a figure on what percentage of claims in the ACT are of that type, because I would need to look at all of them, and I have not looked at all of them.

THE CHAIR: Can you take that on notice and give us some idea of what you think?

Mr Gill: I can.

Mr Kayrooz: The first indicator is the number of reported injuries compared to similar schemes and the rest of Australia. Canberra has 50 per cent more claims than reported injuries.

THE CHAIR: Canberra also has a very highly educated population.

MR PETTERSSON: This is where I wanted to go with this question: how does that differ under the proposed system? If someone claims in this proposed system that they have a sore back—that is the cliche—how is this system going to weed them out that the previous system was not going to?

THE CHAIR: It just limits how much they can get.

Mr Gill: They are not going to get paid. There is no incentive.

Mr Kayrooz: So for small injury, you get better, and I suppose from a societal point of view that is where we are moving to assist—

MR PETTERSSON: But what mechanism? They go to a doctor; they say they have a sore back—

THE CHAIR: From a car accident.

MR PETTERSSON: from a car accident. How, in your system, are you weeding them out as being fake?

Mr Gill: What I am saying is that in my submission, and what I observed and what I witnessed—again, this is a great example of this: so 6,500 claims disappeared out of the system in New South Wales but the number of claims for seriously injured people and moderately injured people, people with real injuries that you could see, feel, that were diagnosable and witnessable, did not change one bit. They stayed exactly the same. So people with legitimate—

THE CHAIR: Yes, but you still have not explained how in the new system those people will be not eligible to the initial payment—

Mr Gill: What I am saying is that there—

THE CHAIR: that everyone else will be eligible for.

Mr Gill: is no financial incentive for them to exaggerate a transitory discomfort arising from a motor vehicle collision—

THE CHAIR: So the—

Mr Gill: A minor motor vehicle collision.

Mr Kayrooz: So they will go in and they will get treatment. They have a bit of a sore back; they will have four, five physio treatments.

THE CHAIR: Yes.

Mr Kayrooz: We will then have an MRI; no damage.

THE CHAIR: Right.

Mr Kayrooz: No physical damage when you came in. At the accident you did not go to the hospital. There was no report of any major injury. You now have an injury afterwards. You then have four, five treatments and it comes up to the reasonable and necessary. Currently, under the old scheme in New South Wales it was, "I do not have to go and get the treatment. I will say I go to the physio for 30 or 40. I do not have to." We go through and it is all aimed at building up a settlement of a lump sum of money.

THE CHAIR: But do you not have to prove that you have been to the physio in the process?

Mr Kayrooz: Yes, I would like to think you have been to the physio, yes.

THE CHAIR: No, I am saying—

Mr Kayrooz: Yes, they go to the physio, yes.

THE CHAIR: that in the current process, do you not have to produce—

Mr Kayrooz: But the physios do multiple physio treatments; so it is inherent on the insurers now saying, "Yes, you have had four or five; there is no injury."

Mr Gill: Or sometimes they do.

Mr Kayrooz: Yes, or you might need another four. But if it is not working after eight treatments with the sore back, you may need to have an MRI. If there are no signs showing, yes, we have to look at what is causing it. But having physio is not going to help.

MR PETTERSSON: So going—

Mr Kayrooz: But there is no incentive to build it up and keep being injured, because there is no lump sum that would be coming—

THE CHAIR: At the end.

MR PETTERSSON: So is that the crux of the argument?

THE CHAIR: For the change.

MR PETTERSSON: Because there are no lump sum payments, people do not make fraudulent claims?

Mr Kayrooz: For small injuries, the focus should be on getting better, not building up a lump sum.

MR PETTERSSON: But is the crux of the argument that people do not make these fraudulent claims for these small bumps from car crashes because there is no lump sum payment?

Mr Gill: There is no financial reason to do it; that is right.

MR PETTERSSON: So is that not inherently a reduction in benefits for someone that has legitimately injured their back?

Mr Gill: They would still be able to get treatment and potentially with the WPI—if someone has got a legitimate injury, then they would still be treated.

THE CHAIR: So the definition of "legitimate injury" is WPI of 10.

Mr Gill: No; well, I think that is for a serious injury in the ACT, as opposed to any injury. But what I am saying is that if someone has actually been injured, the focus here is getting them better.

MR PETTERSSON: I am not—

Mr Kayrooz: And if they are off work, they get paid straight away.

MR PETTERSSON: I think that is great.

Mr Kayrooz: Statutory benefit.

THE CHAIR: We accept that. It is just—

MR PETTERSSON: It is a very straightforward logical conclusion I am trying to come to. There is inherently a reduction in benefits, which is why people are making these fraudulent claims. Inherently, people who are legitimately injured, who have been diagnosed with the same injury, would have a reduction in benefits.

Mr Gill: I guess what I can see is that you are getting hundreds of claims a year for injuries that there is absolutely no record of.

THE CHAIR: But you say that you have not actually carefully gone through that and that you cannot be certain—

Mr Gill: No, I am still looking at the gross figures; so in respect of the recorded injuries from the ACT government's open data source compared to the number of claims put in, there are hundreds more claims than there are actual injuries.

Mr Kayrooz: I think it is really important that you look at your question. It is actually a change to the type of benefit. For smaller injuries, which are under 10 per cent, people still get access to every medical treatment they need and to all income they need. That is not changing. What is changing is their ability to get a lump sum for that. That is a call in respect of that lump sum, particularly for a lot of the injuries where there is zero whole body impairment and, as I said, very low impact.

I suppose something down the line is psych injuries. We really believe that, looking at psych injuries, there should be an impact collision test. When you look at some collisions you can say, "If I was in that car and that accident, then it is a strong possibility I would have some psych injuries from being in that car." But when we have a scratch on the back bumper bar and that person is saying they have over 10 per cent whole body psych injury, yes, there needs to be consideration of both.

So, yes, it is the type of benefit that we give to those people. We are not dropping their ability to get treatment and income replacement. What we are stopping—and it is a reduction—what we are taking away from you is the ability to build up a lump sum.

THE CHAIR: Build up a request for a lump sum.

Mr Kayrooz: Yes, or—

THE CHAIR: A claim.

Mr Kayrooz: there is a temptation to build up the model. Contracting out was mentioned before. As I said, there is a need for lawyers for seriously injured; no ifs or buts. Just talking through that, our profits, we openly see them. But we would really encourage that the profits of other players in the market be looked at. So what is the full amount going to lawyers; what is the full amount going to medicos, independent

medico-legals, because that is the crux of what Surayez was saying in our submission: how much of the premium dollar at the end is going to the claimant?

MR PETTERSSON: What dispute resolution mechanism would you envisage in this system?

Mr Kayrooz: We have a fundamental principle that, again, for a majority of claims there should be a non-adversarial—

THE CHAIR: In-house?

Mr Kayrooz: Or a non-adversarial process that is fair and easily accessible, which is free, transparent, and, as I said, non-adversarial. Throughout we have been advocating change. We have had policy papers out since 2013 on the design of these schemes. Fundamentally, we believe that a statutory ombudsman to handle personal injury claims is a really good step forward. If it is a medical issue between workers and CTP, why do we not have a statutory ombudsman-style thing that looks at those?

Then for each scheme there is a process that, again, is fair, open and transparent. For those complex ones, of course, you have access to the courts. We are not denying that. But for the majority, it should be very quick, particularly on treatment ones. For quick treatment ones, there should be an independent review very quickly by an independent body like an ombudsman that works very quickly to make quick, fair decision.

THE CHAIR: Thank you.

Mr Kayrooz: And internal reviews have come up. Again, it is a two-step one. There is a quick, internal review by our claims people. But then we insist there is a separate department, different from what people say here, an internal department that reviews that dispute, if people want it, that is not part of the CTP or claims process.

THE CHAIR: But is an employee of the insurance agency.

Mr Kayrooz: Yes, it is an independent review of the process that is according to the Australian complaints standard and the disputes standards that we follow.

THE CHAIR: Indeed. Thank you, Mr Kayrooz, Mr Rahman and Mr Gill.

Mr Kayrooz: Thank you.

THE CHAIR: On behalf of the committee, I thank you for appearing today. That concludes our questions. When available, a proof transcript will be forwarded to you to provide an opportunity to check the evidence and to suggest any corrections. If witnesses undertook to provide further information or took questions on notice during the course of this hearing, whilst the committee has not set a deadline we would like to have them within two weeks of the date of this hearing as we have quite short deadlines ourselves. I now close this hearing.

The committee adjourned at 5.06 pm.