REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

FIRST REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

At Jubilee Room, Parliament House, Sydney on Friday, 17 June 2016

The Committee met at 8:55 am

CORRECTED PROOF

PRESENT

The Hon. S. Mallard (Chair)

The Hon. D. Clarke
The Hon. T. Khan
The Hon. D. Mookhey
Mr D. Shoebridge
The Hon. L. Voltz

WITNESSES

The CHAIR: Welcome to the first review of the current Compulsory Third Party Insurance Scheme. This review is being conducted according to section 27 of the State Insurance and Care Governance Act 2015, which designates the Committee to supervise the operation of insurance and compensation schemes established under the New South Wales workers compensation and motor accidents legislation. I begin by acknowledging that we are meeting here today on the land of the Gadigal people, who are the traditional custodians of this land. I pay my respect to elders past and present of the Eora nation and I also pay my respect to other Aboriginal and Torres Strait Islander people present today. The Committee will be hearing today from the New South Wales Bar Association, Insurance Council of Australia, Motorcycle Council of New South Wales, Unions NSW and the Royal Australasian College of Surgeons.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the parliamentary website. A transcript of the hearing will be placed on the Committee's website when it becomes available. In accordance with the Legislative Council's *Guidelines for the Broadcast of Proceedings*, only Committee members and witnesses may be filmed or recorded. While members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings.

It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing. I urge all witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines are available from the secretariat. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances witnesses are advised that they can take questions on notice and provide answers within 21 days. Witnesses are advised that any message should be delivered to Committee members through Committee staff.

ANDREW STONE, Barrister, New South Wales Bar Association, affirmed and examined

ELIZABETH WELSH, Barrister, New South Wales Bar Association, affirmed and examined

The CHAIR: Would either of you like to make a brief opening statement?

Mr STONE: Firstly, I commence by saying that we very much appreciate the opportunity of being here. Thank you for having us. I have been coming here for more than 10 years and Liz has been here on a number of occasions. We always find this an important opportunity to inform the Parliament about our experiences of the operation of the NSW Motor Accidents Scheme [MAS]. Secondly, for the better part of the past six months we have been engaged in extensive discussions with the State Insurance Regulatory Authority [SIRA]—the Committee will forgive me if I occasionally refer to them as the Motor Accidents Authority [MAA], it is an old habit—and the Government about the operation of the Compulsory Third Party [CTP] Scheme, both in relation to claims and fraud problems that are arising and in relation to scheme reform.

I acknowledge that that process has been done in a dramatically different way to the experience we had in 2013 when there was a much more crash-through approach. This has been very different and we would like to acknowledge the Minister's role in that. Things have been done frankly, openly, honestly and with a high degree of consultation. It is to the credit of the Minister that that is the way this has occurred and we very much appreciate it. Having said that, we think there is still further scope for improvement in the consultative process. I will say a little bit more about that in a moment.

Thirdly, we want to acknowledge what is working and what is not. It is important to bear in mind that the current Motor Accident Scheme is working, and working exceptionally well, at the medium and severe injury level. It is stable and predictable; it is a good scheme in delivering benefits to those with moderate and severe injury. The Committee should not lose sight of that in terms of everything else that will be heard today. On the other hand, we have to acknowledge that at the bottom end of the scheme there is a major problem with a blowout in claims numbers. I anticipate the Committee will ask us some questions about that. We have put up some concrete solutions to try and deal with that, in particular to try and remove the profit incentive for the claims harvesters—the rogue lawyers who are the problem behind this and the commercial organisations that are selling files to them. We believe they are problems that are flexible within the structures of the current scheme and that you do not need to destroy the current scheme to address those problems. Indeed, we have given the Committee very detailed submissions that address the issue.

Fourthly, as the Government embarks upon a reform process it is important to understand that reform involves choices. In a perfect world if you wanted to fully compensate everybody properly for all injuries that arose in motor vehicle accidents you could do it—you would need to charge a $1,500 premium but you could do it. The $1,500 premium is apparently off the table so that means there has to be rationing and choices. Within the current scheme we have forms of rationing and choices—for example, you have got to get over 10 per cent whole person impairment [WPI] to be compensated for pain and suffering; and you have to prove fault—that is a form of rationing. What is being talked about is changing the mix in terms of how we go about the rationing process. In order to try and cut out the conflict over fault it was said, "Let's pay people a defined benefit." To pay a defined benefit, to move to a no fault element of giving everybody something irrespective of fault for a period of time, is expensive. It brings in 7,000-plus new claims a year and the money for that has got to come from somewhere.

It will not come just out of efficiencies in the current scheme; you have to take benefits away from people who are currently receiving them to pay for it. That is our really big concern. That is what we are focused upon in our submissions because what we suspect will be the target for those who will lose benefits are those who come in under an arbitrary figure. If it was the Pearce model from a couple of years ago it would be 10 per cent whole person impairment and we would say, "Alright, we will cover everybody for lost wages for a year, 18 months or two years but after that unless you get over 10 per cent whole person impairment it is the Centrelink office for you." That is unfair and it is wrong. Injuries under 10 per cent whole person impairment are economically disabling for labourers, nurses and for people who rely upon their physical strength for their job. More than anything what we would hope to see come out of whatever reform process there is going to be is the protection of people's economic losses arising from injuries, especially those who are the innocent victims of accidents. We are happy to expand upon that because that more than anything is what concerns us about where there will be potential changes in this scheme.

If I can take one minute longer and then finish the introduction, I want to give the Committee one example and Liz can no doubt give you others. I act for a guy called Scott. He is 45 years old and lives down near Griffith. He is a welder/boilermaker by trade and for the last 10 years he has been self-employed building

hay sheds for country properties on his own. He can put up a shed the size of this room with him and a crane. He was out riding his mountain bike one weekend for exercise, gets knocked off it by a ute and he has a badly mangled leg. We are currently going through the MAS process. He might get to 11 per cent WPI, he might get to 9 per cent WPI and $200,000 in pain and suffering whether he is over that magic number or not. That is one capricious element of the current scheme. So be it. Nothing is going to change about that with anything I think the Government is considering. But if the answer to that is 9 per cent then he cannot build sheds anymore, because he cannot get up and down ladders, he cannot kneel and he cannot squat. He has lost that capacity to work. He has done the right thing—he has gone into building rainwater tanks as an alternative. But, again, he is struggling to keep that up. For a 45-year-old welder living on a bit of country land with a wife and two kids, I do not know where he goes next. To be frank, he does not know where he goes next with his economic loss.

The insurer is currently offering him, and I am probably not allowed to tell you this, somewhere upwards of $400,000 for his economic loss component. We are not taking that because we are waiting to find out what happens with the pain and suffering and the 10 per cent whole person impairment. But that is $400,000 that disappears off the table if he is at 9 per cent whole person impairment and you create a system that says that you have to get to 10 per cent whole person impairment to get loss of earnings after two years. The loss of that money means the loss of his home; it means the loss of the opportunity for his kids to have extra educational opportunities; and it means the loss of his chance to fund them to go away and study at university. It is the destruction of his family and their dreams—all because he got knocked off his mountain bike by a ute while out riding one weekend. That is real. We are talking about human beings; that is who this scheme is designed to protect and that is my really big concern with what we are about to change. It could be a nurse or a range of other people. That is really what motivates us in our concerns about the scheme.

Ms WELSH: I have two other examples of recent cases. In the first one, a 28-year-old man had a tree lopping business. He had all his certifications. He and his uncle set up in business together and invested over $200,000 in plant and equipment. He was driving along one day and someone came through on his right-hand side and collided with his car. Those side-on impacts are very serious and gave him a disc injury in his lumbar spine. It meant he could not climb trees any more, he could not wear the heavy gear and he could not function properly in the business. There was no medical issue in the case. The insurer accepted that that was the case, and the case was settled for a lot of money. He does not need surgery but he cannot operate that business anymore and he is 5 per cent whole person impaired. So his case would have been worth nothing for economic loss under what is proposed by the insurers at present. So that man, at the age of 28 and with a family, would have nothing to fall back on in circumstances where he lost a very profitable business.

The other case is that of a nurse. Similarly, she was driving along and she had a bad rear-end collision. She suffered an injury to her knee and one of her shoulders. She is 7 per cent whole person impaired. She cannot do normal nursing duties any more. She is on light nursing duties. She is middle-aged and she is very vulnerable in the workforce. Why should she lose her entitlement to get a lump sum for future economic loss just because she is not over 10 per cent?

Mr STONE: And she would be the one who would be missing out on overtime and all the extra shift allowances that come with being able to do the rest of the job.

Ms WELSH: That is right.

Mr STONE: So the challenge we ask the Government to respond to is this: whatever reform package the Government puts up ultimately it should at least have the integrity and the honesty to identify the losers. It should say, "This is the group of people who are paying for this. We are taking their money away." Sure we are giving others this new you-beaut benefit over here, but this is exactly how we are paying for it—by stripping the benefits from this group, this other group and that group and this is our moral justification for why it ought to happen. Because if the Government is not prepared to have at least that degree of honesty in the process then it is not playing fair.

The CHAIR: We will break the time for questions into approximately 15 minute each. I invite Mr David Shoebridge to begin.

The Hon. TREVOR KHAN: Just before we do that, this is an inquiry that is established pursuant to a legislative regime.

The CHAIR: Yes, that is correct.

The Hon. TREVOR KHAN: I just wonder if all members are mindful of what actually we are here to do.

The CHAIR: Would the Hon. Trevor Khan like me to read the terms of reference?

The Hon. TREVOR KHAN: Yes, I would like the Chair to read the section.

Mr DAVID SHOEBRIDGE: I have already read it. I do not know if we need it read again, given that we have limited time.

The CHAIR: I will quickly read the terms of reference just so it is clear to all. The terms of reference say:

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:

(a) Workers' Compensation Scheme

(b) Workers' Compensation (Dust Diseases) Scheme

(c) Motor Accidents Scheme

(d) Motor Accidents (Lifetime Care and Support) Scheme.

2. In exercising the supervisory function outlined in paragraph 1, the committee:

(a) does not have the authority to investigate a particular compensation claim, and

(b) must report to the House at least once every two years in relation to each scheme.

I understand that the Committee resolved, prior to my chairmanship, to look at the proposals from the Government as well.

The Hon. TREVOR KHAN: I simply make the point that this Committee is established for the purposes of reviewing the operation of the scheme. That is its charter. I do not want to be taking points of order all the time but it seems to me that that is our intent—to look into how the current scheme is operating, effectively or otherwise, and not looking, and I will be quite plain here, a range of proposals that are, as Mr Stone has already indicated, the subject of ongoing discussions with various parties. I know we are going to transgress there but I think it is not the central point of what we are doing here.

The CHAIR: Yes, it is the elephant in the room really. Amongst the submissions the Committee has received, the Committee has included all the submissions made to the Government's review as submissions to this inquiry. So I think we should focus on the problems of the scheme, if indeed there are problems at the moment, and how they can be rectified. We can touch on this, as witnesses have done—focusing heavily on one particular recommendation, I notice. But that is about the Government's policy, and we do not where the Government is up to with the policy. I think we can generally canvass options.

Mr DAVID SHOEBRIDGE: We resolved to bring this forward because he knew that this reform process was happening. But we cannot look at the current scheme rationally without looking at what the options are to deal with issues in it.

The Hon. LYNDA VOLTZ: Because the Government has already made a decision about how it thinks the scheme is operating.

The CHAIR: I am not aware of that.

Mr DAVID SHOEBRIDGE: Well, they have not; and that is why we are here to get some further evidence and to work out the pressure points of the current scheme.

The Hon. TREVOR KHAN: As Mr Stone has said, there is actually a credible process of discussion going on. I have made my point.

The CHAIR: The Hon. Trevor Khan has made his point and I am cognisant of it so I will try and focus on what we see as issues with the current scheme touching on proposals.

Mr DAVID SHOEBRIDGE: I thank both witness for the submission from the New South Wales Bar Association. Much of the critique of the current scheme deals with efficiency and the repeated claims that there is a very low efficiency return to injured persons under the motor accidents scheme. They repeatedly cite examples that there is a 45 per cent return to the scheme. But of course there are multiple elements to the New South Wales scheme—one is the motor accidents scheme and the other of course is Lifetime Care and Support [LTCS]. We note that we have been trying for a number of years to get an overall efficiency for the two schemes. But we now find out that there has been a review done of both the compulsory third party scheme and the LTCS scheme looking at the premium filings from 2007-08 to 2011-12. It shows that when you have a combined measure of efficiency of the New South Wales CTP scheme and LTCS it actually averages about 64.4 per cent. How does that compare to efficiencies of other schemes around the country?

Mr STONE: The figure of 64 per cent is very comparable to most other schemes around the country. It is about where they operate once we add lifetime care back in. I should in all fairness say that the efficiency has deteriorated over the period of time that we are talking about. It has in part deteriorated because of the blowout in the number of small claims, and small claims are by far the least efficient. We have a problem that, to be really blunt about this, and I will use ballpark figures, you might have 8,000 motor vehicle accident potential claims a year—in 2,000 of those people do not bring a claim at all; in 2,000 of those people bring a claim, do not use a lawyer and settle for next to nothing; and in 4,000 of those people bring a lawyer and get a more substantial settlement. What has changed in the last two years is this claims harvesting practice where almost everybody in New South Wales has now received a phone call saying, "Have you been involved in a motor accident?"

Mr DAVID SHOEBRIDGE: I am feeling neglected—I have not received those calls.

Mr STONE: Mr Shoebridge may have an unlisted number. If you get a listed number, you will get a phone call. Part of that is call centres in India following on from a United Kingdom model. Part of it is that when you sign a 12-page contract to get a replacement hire car tucked in there is that a lawyer will get in touch with you. What has that has done is to drag back into the scheme the 2,000 who were never going to make a claim—on the promise that, "We can get you $5,000 or $10,000," and run up some legal costs for lawyers in doing that. It has also meant that the 2,000 who previously acted for themselves without being represented are now much more likely to be represented, and with representation they get better value out of their claim. You cannot build a scheme around paying for 4,000 at a certain rate and then suddenly blow that out to 8,000 at a different rate. Efficiency has deteriorated but, yes, it is more efficient when you put lifetime care back in.

Mr DAVID SHOEBRIDGE: The Insurance Council of Australia recommends that the State Insurance Regulatory Authority [SIRA] have powers the equivalent of the Motor Accident Insurance Commission in Queensland to actively get out and investigate and prosecute fraud. Do you support that?

Mr STONE: Absolutely.

Ms WELSH : Yes.

Mr DAVID SHOEBRIDGE: Do you find it surprising that that power is not already there?

Ms WELSH : Well, yes. There is no reason why the regulator should not be able to exercise control over this situation. It is surprising that they have not.

Mr DAVID SHOEBRIDGE: Have you seen calls from SIRA themselves to have that power?

Mr STONE: To give them credit, they have been incredibly proactive in the last four months to six months in trying to get on top of the fraud issue. They set up a task force. Everybody has been invited to participate in it. There have been upwards of 10 meetings to which I have been invited between committees and subcommittees trying to deal with it. They are now very actively looking at it.

Mr DAVID SHOEBRIDGE: Is there a legislative provision somewhere around the rest of the country, or in a comparable jurisdiction, which actually outlaws this kind of claims farming or claims harvesting? If so, can you point us in the right direction?

Ms WELSH : There are, and we would have to take it on notice and we can send a note about that. There are some in Victoria.

Mr DAVID SHOEBRIDGE: Is there a social utility in having this claims farming and claims harvesting, or should it be something we look to just legislatively outlaw?

Mr STONE: That is a really difficult question because, of course, some of the people who are being called—

Mr DAVID SHOEBRIDGE: Have legitimate claims.

Mr STONE: —where it is, acting on specific information that came from a car hire company, have actually been in a motor accident, but they were not considering a claim because they were not all that injured. Given the amount of advertising that there is, I would have thought that most people with a legitimate claim learn about their rights and pursue it. What we are basically saying is everybody who is not all that hurt, would you go back into the woodwork and leave the system alone. That is really what you are trying to do when you ban the claims harvesting. You are stopping these small claims with disproportionate expense being dragged out of the woodwork.

Ms WELSH : There is no social utility in these small claims being turned into a commodity that someone can buy and sell, which is what is happening.

Mr STONE: Yes.

The Hon TREVOR KHAN: I am sorry; I was distracted.

Ms WELSH : These small claims have been turned into a commodity that is being traded and they are being traded with a fee involved. What we have tried to do is construct a model, which makes it practically impossible for a legal practice to buy a file because they will only recover restricted costs in the small case, and which makes it unviable. We are trying to change the behaviour, and that is what we can do. What government can do is really something that we can probably assist with but we cannot really answer.

Mr DAVID SHOEBRIDGE: In terms of regulated costs, which lawyers cannot contract out of and therefore take a chunk of at the settlement, where would you set the cap in terms of claims and legals?

Ms WELSH : We propose $50,000 as being the gross amount for the claim over which there would only be a scale fee recoverable. Something that became apparent during the course of our discussions with the other parties was that what was not immediately appreciated is that what we were intending was that that would be a base amount over which solicitor and client costs could never be charged, even if you settled for more than $50,000. By putting in a brake at that $50,000 point, and you can only charge solicitor and client costs over that figure, it really puts a brake on cases up to about $100,000 because it is simply not viable for a solicitor to do a lot of work on a case worth less than $100,000 when they can only contract out on the $50,000. It sort of breaks the economy of running a lot of small cases and the figures tell us that 42 per cent of those small cases are going in costs. The figures tell us that that is where the blowout in claims is. So the problem is concentrated in those small claims.

Mr DAVID SHOEBRIDGE: So let us target the reforms at that fraud section.

Mr STONE: Exactly. To illustrate Liz's point, if you set the target at $50,000, SIRA came to us with a concern but that just means that everybody beefs up their claim to $51,000, to which the answer is no. If you are restricted in costs up to $50,000, a contracting lawyer, contracting out, can take all of the first of $50,000. They cannot.

Mr DAVID SHOEBRIDGE: They can get a proportion of everything over 50.

Ms WELSH : That is right.

Mr STONE: They can get a proportion of over 50, but the first 50 is sacrosanct. You cannot touch that beyond the regulated fee.

Mr DAVID SHOEBRIDGE: They will not be spending the time and effort to get the extra $600 of everything over $50,000.

Ms WELSH : That is right.

Mr STONE: Exactly. In effect, there is a drag effect probably up to about 100 as a disincentive on small claims.

Mr DAVID SHOEBRIDGE: In terms of your concern going forward about a greater than 10 per cent whole person impairment [WPI] and it is under Australian Medical Association [AMA] 4, I think—is it?—for economic loss claims—

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: —has the Bar Association considered an alternative narrative test, such as you see in some Victorian legislation, for claims 10 per cent or below where the claimant was not at fault, or they can establish fault in a yes some third party, and they have lost, say, a third of their earning capacity or 40 per cent of their earning capacity, so that we actually pick up those nurses with ankle fusion who get 4 per cent, but have lost their earning capacity?

Mr STONE: In fairness to the Minister, every time we tell him the stories about, "This is what effect this is going to have", he has evidenced sympathy towards trying to address it.

Mr DAVID SHOEBRIDGE: Sympathy is good, but what is the solution?

Mr STONE: That is the difficulty—drafting a solution—because whatever test you set you will then get rough edges. We give the examples of the truck driver who loses overtime. Do they lose enough overtime? They might lose enough overtime to lose their home, but are they losing enough overtime to qualify for loss of earnings? Or the apprentice, who is on $400 a week while they are an apprentice, and if they are injured in the last year of their apprenticeship and they are about to hit the $1,200 a week in earnings, what do you do about that?

Mr DAVID SHOEBRIDGE: The common law deals with that anyhow, looking at their future losses.

Mr STONE: The common law deals with all of those because it does not have a test of saying you have to get to a number before we can look at your loss of earnings.

Mr DAVID SHOEBRIDGE: But what about a proportion of your earning capacity, which would then fit those?

Mr STONE: But that leaves me with the problem of the 35 to 36-year-old stay-at-home mum, who is a qualified hairdresser and who stopped work in order to look after the kids, and who is within a year or two of going back to work.

The Hon. TREVOR KHAN: Or the unemployed person.

Mr STONE: Give that mum a knee injury, and she cannot go back to hairdressing. That is all the difficulties that the common law deals with and that a number or even a narrative test is difficult; but, yes, a narrative test is better than a number.

Mr DAVID SHOEBRIDGE: If you had to pick a narrative test, would there be an example that you can say is working and that we can see is working in practice?

Ms WELSH : There is the serious injury test in Victoria, which is the alternative gateway to getting to an award of common law damages, but that definition is restrictive and would not necessarily suit our purposes. We have had discussions with the insurers about this, but we have not really been able to come to any kind of understanding, even, of mutual positions because the insurers are very fixed on having a defined benefit, a defined test. They want these very clear lines drawn. What is put back to us is that monetary thresholds do not hold, et cetera, et cetera. But in fact there are monetary thresholds that have been imposed just now in the United Kingdom. They have finally started to do something about the problem they have. It may appear to have unrestricted common law access up until now. They are imposing a monetary threshold. In Queensland, there are monetary thresholds which operate, and which appear to be holding.

There is no reason in principle why it could not simply be a monetary threshold. The beauty of that, we see, is that it accommodates all possible factual scenarios, so it should operate equally fairly for all people, depending on the need. Whether there should be something further restrictive on the entitlement to claim future economic loss if, for example, you have never worked or something like that, they are things that the common law does take into account. But that will probably be the subject of some further discussion.

Mr DAVID SHOEBRIDGE: I might put a question to you on notice about *G v K*, *Griffiths v Kerkemeyer*, and what the Bar Association's position is on that.

Mr STONE: If we can take it on notice?

The CHAIR: All right. I will go to Labor members of the Committee now.

The Hon. TREVOR KHAN: He has just got a couple of more questions.

The CHAIR: If there is time at the end, we can add that to it.

The Hon. LYNDA VOLTZ: If you want to finish off, that is okay.

Mr DAVID SHOEBRIDGE: Okay. Often there is a concern about *Griffiths v Kerkemeyer* and the six plus six threshold and it is being effectively not a real threshold now. What is the Bar Association's position on G v K claims?

Ms WELSH : It is a very firm threshold as far as judges are concerned. There is a very big difference between what happens in a court room and what happens on the books of an insurance company, which attributes proportions of settlements to various heads of damage. I find it almost impossible to get a client over the six hours and six months threshold up to the date of trial and continuing at a hearing. The Court of Appeal persistently throws greater and greater nuance into the test so that it really is quite hard. I think it is a bit of a furphy. It may be that it is a soft head of damage in the sense that it can be awarded in certain circumstances, but I do not find the courts to be all that soft on it.

Mr DAVID SHOEBRIDGE: Do you think that is a concern about the way the insurers are booking the claim internally, or is there actually an issue with G v K claims?

Mr STONE: I think that the insurers will be fair enough to acknowledge that part of what has created the current crisis is that they have had junior claims staff paying over-the-odds go-away money to get rid of small claims that has, in turn, fed into the culture of "Let's go and round up as many small claims as we can because we will get given enough go-away money for us to make a quid out of it and pay the person who has

referred the case to us". So there have got to be multiple attacks on that and, in fairness, the insurers are muscling up against those small claims and saying, "Nah, there's no longer a free thanks-for-coming prize".

Mr DAVID SHOEBRIDGE: So, in part, the main problem, at least from the insurer's perspective, about G v K claims will be dealt with by toughening up on those small claims anyhow if you put in regulated costs?

Mr STONE: Part of the problem will be, and we think the courts are taking care of another part of the problem.

Mr DAVID SHOEBRIDGE: Could I just put one other concern that has been raised with me about small claims? It is a motor accident where there are three or four young children, they get rear ended or the like and then a law firm will put on three or four separate psychological injury claims for the children and run them all as separate claims and get separate heads of costs for each claim. I have heard concern about this being a significant issue. Do you believe that if there are multiple members of the same family involved in the same accident running small claims that the regulated costs need to apply to the group, or some form of regulated costs to the group?

Mr STONE: We have put up a proposal to deal with it in relation to kids' cases. Yes that is happening; yes it is one or two law firms behind it; it is predominantly in south-western Sydney; SIRA do not like saying this but it is predominantly within one ethnic community—they have worked out that this is a money-spinner; and a number of measures need to be taken to tackle it. Some of it needs to be going after particular people for fraud, part of it is we have put up a cost provision that would deal with that. On the other hand, you do not want to have that as a broad cost provision because there are head-on crashes on Pacific Highway in which dad is killed, mum has got a fractured hip and two of the kids in the back seat are in lifetime care.

Mr DAVID SHOEBRIDGE: Again, it is about the quantum of the case.

Mr STONE: Where there are complex issues and multimillion-dollar claims arising out of one horrific accident. At the most extreme end you have got the parents not just deliberately reversing into a car to create this; they get out, have a look at the damage, get back in the car and reverse in again just to put a bigger ding in the car to try and make this persuasive. That ought to be gone after with every venom that can be brought to it.

Ms WELSH: And also, under the Civil Liability Act, you are not entitled to damages for pure psychological harm unless you have got a diagnosed psychiatric condition. It is difficult if the child has a whiplash, because that opens the gateway; but if the child has just got purely psychological harm, the insurers should be able to weed those out.

Mr DAVID SHOEBRIDGE: They should not be paying a cent.

The Hon. LYNDA VOLTZ: Going to that point again about the lower end. A lot of insurers are not actually contesting some small claims, are they; they are just paying out rather than contesting?

Mr STONE: I think you will find that has radically changed in the last three months.

The Hon. LYNDA VOLTZ: The other area I was interested in was whether you are seeing any change in the Nominal Defendant Fund where the costs for uninsured are spread across the scheme. I would have thought that now that the police have the new registration recognition on their motor vehicles, and we know that the fines have greatly increased in that area, that that is starting to have an impact on the scheme.

Mr STONE: I do not think there has ever been any particularly unstable cost to the scheme of people choosing not to buy CTP registration. I think, but you will have to ask SIRA about this, that the numbers of those who deliberately choose not to register their car has remained relatively stable. But that is a better question for SIRA.

The Hon. LYNDA VOLTZ: SIRA actually identified that under their leakage. But you are not seeing that as a great impact in the scheme?

Ms WELSH: I think the leakage is more of a problem with people not having to report accidents to the police anymore and people not attending hospital nearly as frequently. Look, I should not say that because there are figures that are about hospital attendance, but a lot of people do not go to hospital. So if the police do not attend and people do not go to hospital they can still make a claim, and I think there is this idea that if the police do not attend and an ambulance does not attend it is a minor accident, and it is not necessarily. But it just means that all of those statistics about police attending, hospital attendance et cetera do not assist in identifying whether a case is genuine or not, and there are a lot of cases that do not have any formal documentation behind them because there is no official involvement with health or police personnel.

Mr DAVID SHOEBRIDGE: It may have been a registered car but they cannot identify who it was and so the claim is against the nominal insurer.

Ms WELSH: That is right.

Mr STONE: It is the non-police-reporting that ties back into the problem Mr Shoebridge was talking about, which is if you are going to reverse into somebody in the McDonald's car park to create a nervous shock claim for the four kids in the car, previously you would at least have to go to a police officer and make a false statement about what occurred that was some deterrent. Now that you have no longer got to report that incident to police, you can do it by phone to somebody who is a civilian, it is that little bit less disincentive to do it.

The Hon. LYNDA VOLTZ: The other area I am interested in is with the journey claims. There has been a shift from workers compensation, to take journey claims out of workers compensation. Is there any way of ascertaining whether you are getting a greater number of journey claims through the CTP, although you would only get them at a certain level?

Mr STONE: It was mainly at the minor level where for those who had a few weeks off work and a few weeks of medical treatment, if it was paid by workers compensation they tended not to pursue a CTP claim. But you would then see the workers compensation insurer ask the CTP insurer for their money back. We certainly have seen an increase in numbers of CTP claims that previously might have been workers compensation claims. Whether that is a big net financial increase given that the workers compensation insurers have always got to ask for their money back anyway, that is better answered by the insurers and by SIRA.

The Hon. LYNDA VOLTZ: Workers compensation would be able to get their money back in a no-fault claim, obviously?

Mr STONE: No. They got their money back if somebody else was at fault in causing the injury to their worker. They paid the worker irrespective of whether or not the worker caused the accident. So they can claim back where somebody else has injured their worker; they cannot claim back where the worker, in effect, injured themselves. There are still some journey claims because, of course, there are some people whose jobs take them on the road between points of work, and those can still be multiple workers compensation and CTP claims; for example, interstate truck drivers, tradesmen going between points of delivery, delivery drivers, taxi drivers might all have those dual rights still.

The Hon. LYNDA VOLTZ: Another area that we are seeing is the growth of ride sharing. Given that there is a high incidence of accidents involving taxis, what is the legal standing now on ride sharing—the Ubers of the world?

Mr STONE: At the moment they are, in effect, being cross-subsidised. Taxis pay an extraordinarily high CTP premium. I know one of the things the Minister would like to do is bring down their CTP premium. I cannot speak for whether what they are paying is actually a genuine risk rating and in bringing it down what they are after as a cross-subsidy from everybody else or not—SIRA can answer that for you. But in as much as the risk rating of your vehicle, if you are going to be on the road much more frequently—in effect, using your vehicle as a commercial vehicle, but you can register it privately, you are taking a cross-subsidy for the amount of risk, the amount of time you are off the road, off everybody else as a Sydney metro passenger vehicle driver and you are escaping paying the commercial rate that you would have to pay if you were either a taxi, which might take you up to, I think, $6,000, or if you were a commercial van, which might take you up to something above the $600 that you are paying. So Uber drivers are being cross-subsidised by everybody else in as much as the increased time they are on the road increases their accident risk profile.

The Hon. DANIEL MOOKHEY: I just want to return to a point you made earlier in response to a question from Mr Shoebridge. You made the point about the practice of claims harvesting and a recent change in the behaviour of insurers in the last three months contesting it. Are you able to talk us through what is the change of behaviour that you are referring to, noting that in your submission that change is what you have called for in insurers taking a tougher line in these claims?

Mr STONE: They can no doubt answer that more directly but from having been to the fraud meetings and talked about what sort of steps we are taking they can identify particular law firms and, to be frank, they are mostly new entrants into the market who have suddenly grown rapidly in size. They can say in relation to these firms, "We are going to look at their cases. Are they using the same doctors and the same referring GPs? Are they cut and paste jobs on the medical reports. Are we no longer going to just pay them $10,000 or $20,000 immediately in go away money? Are we going to contest their cases or are we going to get more medicals to fight them? Are we going to run them through the CARS process? Are we going to stop offering them soft solutions and are we going to muscle up?"

That is a very short form way of describing what they are doing but they are basically saying, "These files that you have bought from whoever you have bought them from where you have offered $5,000 to $10,000 in free money to somebody to drag them into the system with a non-existent injury and we are going to settle this for 40 grant, we are going to keep 20 grand for the lawyers in fees, 10 grand will go back to paying Medicare and Centrelink and we will deliver the five to 10 grand in free money that we offered you". They are trying to break that economic model by saying, "Forty grand is no longer going to be there for you. We are going to make you earn it."

We have come at the problem from the opposite direction, which is to say, "Don't let them charge 20 grand in costs to do that." We have tried to remove the economic incentive coming at it from the other side. We would hope that the combination of the two approaches—coming from one side saying, "The easy money is no longer going to be there" and coming at it from the other side saying, "We are not going to let you make money out of the small claims" ought to fix that problem.

The Hon. DANIEL MOOKHEY: Is it an accurate summation of your position that in the absence of such strategies a legislative response in the form of a defined benefit scheme is disproportionate in that we should be trying all those strategies first before we consider an adjustment to the actual scheme design?

Mr STONE: We think the combination of those two things fixes the current crisis. Then when you move beyond that to say, "Do we want to rewrite the CTP scheme because we want it to be different in the following ways", that really then becomes a different debate about your priorities of early payments versus who you prioritise to get your money to and what the timing is. I think it is important to keep those two things a little bit separate but there are fixes to the current crisis and they are being worked upon and we have put up further fixes that we think will be very effective in removing economic incentives.

Beyond that there is then a separate question of, "All right, do we need to reshape our CTP scheme because we have the following priorities", which is we want to get more money earlier into people's hands, which is what a defined benefit will do. But to get more money earlier into people's hands you have got to say, "We are not going to pay anybody very much for very long" because you bring everybody in at the beginning and that is the price you pay for it. So it is weighing up those competing demands and being able to identify, "Here is where we are taking the money away from in order to be able to plug it in over there". That really is a separate debate to fix the current crisis.

Ms WELSH: Can I just add something to that answer? What we are proposing and what the insurers are doing is a part of the solution but we do not want people to think we are saying it is the whole answer to the problem because there is the review of insurer profits and structural aspects of the scheme which should also be contributing to making whatever savings can be achieved in order to preserve the best benefit package that we can for injured people. All we are doing is saying, "We think we can change this behaviour and that will bring about savings" but we are not saying that that of itself and the reduction in people's benefits should be the whole answer. It is only a part of the answer.

The Hon. LYNDA VOLTZ: I would like to pursue the profits section a bit further because the reality is that under the New South Wales scheme the long-term profits as a percentage have been much higher than more efficient schemes in other regimes.

Mr STONE: It has been the single biggest inefficiency in the scheme. If you want to ask why the scheme delivers 44¢ in the dollar to the claimant the biggest factor in that is not the lawyers; the biggest factor in that has been that it has delivered an average of 19 per cent profit to the insurers. If you are going to go the full hog and go a defined benefit, low benefit, not give anybody very much scheme, paying private insurers to run that risk does not make a lot of sense. If you are going to go the full tack model, private underwriting does not make a lot of sense but that is a whole separate debate for another day.

The Hon. DANIEL MOOKHEY: As a minor part of your submission you called for the scheme to be extended to cyclists?

Mr STONE: No, I think we said that in difficult times we were trying to sort everything out. Now is probably not the time.

The Hon. DANIEL MOOKHEY: But do you think there is a need?

Mr STONE: Yes, there are cyclists who are injured. If they are injured by cars then they are covered by the scheme if it is the fault of the car. As to the number of cyclists injured not through their fault, I just cannot answer that. That is a big question for another day, I am afraid.

Mr DAVID SHOEBRIDGE: And there is a tiny class of people injured by cyclists which are not covered by the scheme obviously?

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: Tiny, infinitesimal?

Mr STONE: Yes.

The Hon. LYNDA VOLTZ: I got knocked over by one the other day.

Mr STONE: And a very small number of those might have a household home and contents policy that has a public liability extension and some of them might not. I remember giving evidence two years ago about problems with grannies on scooters running people down. That is a separate issue because they are motorised and they do damage as well. There are all sorts of peripheral issues that are worthy of further study.

The Hon. LYNDA VOLTZ: Kids on skateboards.

Mr STONE: There are bigger problems that need addressing before we get to that, and I do not mean any disrespect by that answer.

The CHAIR: One of our submissions have suggested that some of the root of the problem of overservicing by law firms—the claims harvesting—is the deregulation of advertising around the legal profession. You represent the profession, what is your response to that?

Mr STONE: That came about through national changes in terms of an agreement we reached with Victoria in what was meant to be a national profession but turned out to be just us and Victoria and then to persuade everybody to join in. As barristers we are a little torn. We do not advertise anyway. The advertising regulation we had by the end was proving remarkably ineffective because it banned the use of certain words but everybody else found a whole lot of other words to use to tell people they could bring a claim. There is part of me that says, "Why are we afraid of telling people that they have the right to bring a claim if they are injured in a motor accident?" In some ways I would like to see better advertising. I would like to see advertising that says, "We will be more efficient. We will do it differently" rather than warm and fuzzy advertising.

Mr DAVID SHOEBRIDGE: Like we get in politics.

Mr STONE: I have struggled to justify why do we ban telling people about a right that they have in order to in effect force people who might have that right to not come and pursue that right. I have always struggled with that—and this is a personal comment not a Bar Association comment—at a personal level of how do we justify denying people information about the rights that they have.

The CHAIR: I think it is a matter of how it is presented. Interestingly, they are not there at the moment but if you drive down the M5 there are huge signs on the overhead bridges from law firms saying, "No payment no fee".

Mr STONE: I have no difficulty justifying no payment no fee. Nobody in this State could afford to bring a motor accident claim if we did not agree that we would wait until the end of the case to bring it. If I asked for the money upfront, just as a lawyer will ask you in almost any other form of activity, I take pride in the fact that we offer a no win no fee service because people would not be able to pursue their claims if we did not. We have no embarrassment about no win no fee whatsoever. It is a service.

The Hon. DAVID CLARKE: In your opening comments you referred to the buying of files, Ms Welsh?

Ms WELSH: Yes.

The Hon. DAVID CLARKE: Could you put briefly on the record for us how does this operate?

Ms WELSH: I have no direct experience in this. The only thing I can say is purely anecdotal but I know that solicitors receive emails from India, "I have 20 MVA files. Would you like to buy them?" I understand that files are bought from claims harvesters. That is all I can tell you. I cannot give you any hard evidence about it but we all know it is happening.

The Hon. DAVID CLARKE: Can you amplify on that issue, Mr Stone?

Mr STONE: That has been one of the big discussion points of the fraud task force. We can measure the output in that we see firms going from having no work to very large amounts of work and with no advertising that must be the only answer.

The Hon. DAVID CLARKE: So it is an assumption; you do not have hard evidence of it?

Mr STONE: SIRA is desperately short of hard evidence of exactly how it works. We know part of it is that call centres out of India based on United Kingdom experience and with, in effect, the banning of practices

in the UK they have now turned to this country for market opportunities. We know part of it is leaks coming out of car hire companies and possibly out of smash repairs, possibly even out of some insurers property departments and people are selling information to people who are then making phone calls, in effect rounding up the client and putting them in touch with a solicitor who is paying for the information and paying for the file.

The Hon. TREVOR KHAN: If the insurer were doing some of its work overseas there may almost be a trade of that information within the call centre overseas?

Ms WELSH: That is right.

Mr STONE: There is a variety of prospects for leaks given the number of calls. Some of the random calls out of India are bluff based, they ring and say, "We hear that somebody in the household has had an accident." If the answer is, "No, nobody does", they hang up and move on to the next one. Some of the calls are, "We hear somebody has had an accident at this location, at this time and place and we are calling to help". That is clear data leakage from somewhere. I understand that on some of the occasions where you get a replacement car tucked away in the small print at the back of the replacement car contract you are consenting to the passing on of information to a lawyer who can help you bring a claim. I am a little bit torn. I don't mind people with genuine injuries being told that they have a right to bring a claim and get the compensation they deserve. I do not have a lot of time for people who have not much wrong with them and a lawyer beating their claim up to $40,000 and an insurer paying $40,000 for it to go away, just so a lawyer can make 20 grand out of it.

The CHAIR: Quietly called exaggeration.

Mr STONE: And that, we have been very clear on trying to stomp down on by a variety of means?

Ms WELSH: Based on my understanding there are offshore companies in the United Kingdom, for example, which have access to data bases and who will on-sell the information for a fee.

The Hon. TREVOR KHAN: Can you expand on that?

Ms WELSH: There are businesses in America apparently that do this, they sell claims. This business model exists in the United Kingdom where some entity, a corporation, has access to a data base which has information about people who have been injured in accidents or accident data who extract from that sufficient information to approach someone tell them that they can make a claim and onsell that information.

The Hon. DAVID CLARKE: Would you like to take that question on notice and give us a fuller response?

Ms WELSH: Yes.

Mr STONE: I fear there is not much more we can tell you. I suspect the insurers have spent the last six months trying to get to the bottom of this and can probably tell you more, especially on a confidential basis. I suspect the State Insurance Regulatory Authority can tell you more. The difficulty is that you have two of the ones who do not act for those firms.

Mr DAVID SHOEBRIDGE: At the other end of the food chain.

Mr STONE: We are not at that end of the food chain.

The CHAIR: It is interesting you say that anecdotally, although there must be some evidence of it, that since the United Kingdom reformed its CTP or insurance system that the aggressive marketers are targeting Australia, or New South Wales.

Mr STONE: They have started in New South Wales and what I have heard informally from SIRA is that they are now starting to broaden out and New South Wales based firms who were nobody in New South Wales three years ago are now not only somebody in New South Wales but becoming somebody in Western Australia and Victoria.

Mr DAVID SHOEBRIDGE: In terms of getting the balance right socially it seems to me there is a compelling argument to outlaw this conduct, give SIRA fraud investigation powers so that when they see a spate of claims from a newly developed flourishing law firm, to get in there investigate, get the evidence, and if we have made it unlawful prosecute.

Mr STONE: Agreed, agreed, agreed.

The Hon. DANIEL MOOKHEY: Can you state succinctly what are the objections to tradability of files? That is a practice that happens across the legal industry, like the debt market, debt is traded, what's the objectionable aspect of the practice of trading them?

Mr STONE: It is the rounding up of them in order to beat them up into something that they never were to begin with to create a strain upon the system that it cannot carry.

The Hon. DANIEL MOOKHEY: If, for example, Slater and Gordon buy a firm in order to buy the case files, buy the books.

Mr STONE: I have no issue or problem with that, that is a take over.

Ms WELSH: No problem.

The Hon. DANIEL MOOKHEY: But the concept that you can trade the files without having to trade the entity, is what you object to?

Mr STONE: It is not so much that, it's that I am making phone calls to people who are otherwise not going to make claims, making extravagant promises to them about free money, rounding up 20 of those people and onselling their not very much claims to somebody who will go away and beat them up. I know it is a fine line.

The Hon. TREVOR KHAN: Not that fine a line. There is a remarkable difference between selling your firm and harvesting.

Mr STONE: They are all people who have actually been involved in an accident.

Ms WELSH: It is not like you are assigning a debt you are assigning something that is personal to the injured person and by double handling it you add to the expense of that person bringing a claim. If that person wanted to bring a claim they could would walk into any one of the law firms who are advertising or the local solicitor and have their claim looked after. They do not have to be sold to someone for a fee, which they are going to pay.

Mr STONE: In assigning the debt the debt has been incurred. This is about prodding with a stick people who were not going to bring a claim and who do not have much wrong with them into bringing a claim primarily so the lawyer can make money out of it rather than the injured person.

Mr DAVID SHOEBRIDGE: And the commodification of injured people.

Mr STONE: That is not why we are in this business.

The Hon. DANIEL MOOKHEY: Is that a function of claims harvesting or is that a function of trading, how do you draw that distinction?

Ms WELSH: Claims harvesting. It is the tail wagging the dog, it is the claims harvester driving a piece of litigation. They are going out and finding these people, they are persuading them that they have something which is of value and they are selling that to somebody else. It sounds wrong on every single level.

The CHAIR: If members have any other questions they can put them on notice. We have delved into the problems in this session. Thank you for your evidence and submission. We may have questions on notice—there was one.

The Hon. TREVOR KHAN: There may be more.

The CHAIR: You have 21 days to reply.

Mr STONE: We are happy to do that.

(The witnesses withdrew)

MARY LANGCAKE, New South Wales Trauma Chair, Royal Australiasion College of Surgeons, Director of Trauma, St George Hospital, affirmed and examined

The CHAIR: Would you like to make an opening statement?

Dr LANGCAKE: Yes. The college thanks you very much for the opportunity to have input into this process. As a body that cares for injured patients advocacy is one of the key roles we have in the college and being able to have input for the benefit of those folk that we treat who are the victims of road trauma is important. We support most of the stated objectives of the review. We feel that increasing the proportion of benefits that accrues to the most seriously injured road users should be one of the key outcomes here. We are concerned, as you all are, about the time it takes to settle claims, it is the highest in Australia. I know I am preaching to the choir here. This impacts on people's recovery.

We agree we should be looking for any opportunities to reduce exaggeration and fraudulent claims. We want to see a reduction in green slip premiums, it is an increasing issue. If we compare what we pay to Victoria we are paying on average $150 more per year. We want to make sure the injured patient is getting adequate cover. We heard that less than half of what we are paying for green slip fees actually makes its way to seriously injured patients and we support the efforts the Government is making to investigate the pattern of insurer's profits that is leading to the low percentage of moneys that are going to the injured patient to assist with their recovery. The wait times for finalisation of claims, particularly in terms of those most seriously injured, places an impact not just on the patient but the families. The impact is not just physical but financial and emotional and it impacts their ability to recover. We know that the earlier folk can access good rehabilitation the more likely they are to return to day-to-day activities, work activities and be functioning members of society.

We believe the Government should be looking at a no-fault scheme. We think the models that are currently working well in Victoria and New Zealand could be considered by New South Wales. It is a superior scheme in a number of ways and I have left some handouts for the Committee to look at afterwards that detail some of the very clear benefits of the scheme in New Zealand. We also feel that in order to keep CTP premiums low one of the key things ought to be prevention. We feel that prevention of road trauma is obviously going to be one of the ways of reducing what needs to be paid out, and to be able to look at strategies for prevention we obviously need good data. We have at the moment an Australasian Trauma Registry, which is based at the National Research Trauma Institute [NRTI] in Victoria but it is struggling for funds.

The recent Senate review into road trauma suggested very strongly that the Federal Government should be looking at providing $150,000 a year for the next three years to keep this vital work going. We feel what is already happening in New South Wales with the Institute of Trauma and Injury Management [ITIM], through its trauma registry, needs to be kept going. The suggestion is that we could hypothecate some of the fees that CTP garners towards supporting a trauma registry because without data to be able to look at patterns of road traffic incidents, black spots, et cetera and implement schemes that might reduce road trauma, and to see if they are working, then we are looking at increasing rates of injury. We know already that deaths in this State have gone up from road trauma, which is really disappointing, and we can extrapolate from that that as deaths have gone up so have serious injuries.

Documents tabled.

The CHAIR: Are the documents you have tabled public documents?

Dr LANGCAKE: Yes. They are readily available.

The Hon. DAVID CLARKE: You mentioned that more money is needed to look at this issue—for example, you talked about black spots. Is not information already being harvested about black spots? The Government is always looking for black spots on our roads, so what is going to be harvested that is not already being harvested?

Dr LANGCAKE: Black spots vary. They vary as building occurs in new districts. They vary according to conditions in particular weather spots—for instance, we know that in wet weather the Picton Road is a black spot.

The Hon. DAVID CLARKE: But the government departments looking at these issues would be well aware of the weather and so forth.

Dr LANGCAKE: Absolutely.

The Hon. DAVID CLARKE: What is going to be harvested out there that is not already being harvested?

Dr LANGCAKE: We certainly know that there are black spots and, as I said, as we expand in population we need to be constantly looking at that. We need to then know the types of road trauma that is occurring in those areas because that will then indicate the sorts of policies we need to bring in for prevention such as split roads. One of the problems with Federal Highway 1 is that when it goes to single lanes both ways that increases the risk of road trauma and collisions, particularly at night with fatigued drivers. As I mentioned, looking at black spots is only one aspect of gathering data. Being able to look at patterns of injury and severity of injury is also very important because clearly we know the more severe the injury the more likely people are to require ongoing support. In looking at prevention we need to look at a range of things.

We need to look at vehicle safety certainly—that is not necessarily something that a trauma registry will do but it can certainly look at the ages of people who are being injured. We know that young people are dramatically overrepresented. We know that trauma in general is the overall killer, the major number one killer of the first four decades of life regardless of whether you are in a developed nation or a third world country. The number one killer of teenagers in their early twenties in New Zealand is road trauma above anything else. So we know it is this younger group that is impacted. We need to be continuing to get that data so that we can address strategies to try and reduce those rates of harm and death.

The CHAIR: No doubt the insurance companies have that data but they are not sharing it with each other because it is commercially sensitive about risk and so forth. Would it also help to isolate and identify fraud or exaggeration?

Dr LANGCAKE: I think it would be less likely to do that. With respect to saying that the insurance companies have that data, the Australasian Trauma Registry only put out its first report three years ago. It took some time to get it together because it collected data from every single major trauma centre in the country. That was a huge achievement. Up until that time we did not have a national trauma registry. Certainly in New South Wales the trauma registry we have is one of the earlier ones that was brought in as a state-based trauma registry, and the insurance companies will get, if you like, a narrow view of trauma. For instance, they may not see someone who suffers a severe hand fracture but that can actually cause significant problems down the track—even once they have had their surgery et cetera. If that person is right-handed and is a carpenter then the injury severity score might not be high but the longer term effect on that individual can be devastating. Those are the sorts of data that we are currently collecting. At the moment what would have got is quantitative data but as we get more years of data underway we will be able to do a much deeper analysis. It is very important that we have the funds to be able to keep that registry going.

The Hon. LYNDA VOLTZ: This would not only impact on roads but also where medical services are provided. For example, there is a hospital somewhere between Parkes and Dubbo on the Newell Highway that serves those who travel in motor vehicles between Sydney and Brisbane. You could look at where the major accidents are happening and how long it is taking to get to medical facilities. Is that the kind of data you would pick up?

Dr LANGCAKE: That is an absolutely valid point. In New South Wales we have seven major trauma centres; Newcastle is the busiest because of its location and they certainly get the highest proportion of road traffic trauma. I must say that when we look at trauma in general, not just road injury, road traffic trauma represents around about 50 per cent of all the trauma that we deal with. So Newcastle gets a very high proportion. In Sydney there are six adult trauma centres, but then there are the regional trauma services that feed into the major centres and they provide a very important role. Being able to know where these injuries are occurring and how far away those facilities are can make a significant impact.

We are really slaves to distance in Australia. In the United States, for instance, they were astonished when I showed them the area that my major trauma centre gets as a catchment area—it actually covered about six states in the United States, which had something like 10 major trauma services. Because they are so close they can have their helicopters go out and pick people up; we cannot do that. We have often got to bring people in by fixed wing and that is not only a cost but you cannot just get a flight out there. So knowing where it is happening, being able to put facilities where they are needed and staff them appropriately is another reason why that data is important.

The Hon. LYNDA VOLTZ: There are six major trauma centres in Sydney and one in Newcastle.

Dr LANGCAKE: Major trauma centres, so what we call level 1. Then, as I have said, we have the regional centres—centres like Wagga Wagga, Orange, Dubbo Base Hospital, Lismore. To give you an idea, a level 1 trauma service has the availability 24 hours a day of any specialist service surgically that might be required to manage a trauma. They will have senior people within the emergency department and the availability of a dedicated trauma surgeon available in hours all the time and out of hours within a defined period. They are doing quality control, they receive trauma from catchment areas—to quote St George, we pick up trauma from

as far afield as Wagga Wagga, Griffith, Narrandera, Tumut and down towards the Victorian border, but because we are close to the airport it is not uncommon for me to get a call on the hotline from retrieval to say they have got an unstable patient coming in from Orange and they do not want to take them to Westmead, which would be their nearest referral. All of those centres play an important role. Many of them can handle a simple single system, as we say, perhaps a single orthopaedic injury.

Wagga Wagga has some very good orthopaedic surgeons and they can certainly manage an isolated fractured femur. But if somebody has a fractured femur, a brain injury, severe blunt chest trauma and maybe an abdominal injury then it is well known, and there is plenty of literature to support the fact, that those patients do much better when they are managed in a major trauma centre which has not only the front end, if you like, in terms of the emergency department and a dedicated trauma-admitting team—with all of the specialties available and interventional radiology—but also rehabilitation services, which are a really important part, and performs research and looks at quality improvement. Regional services will have a number of those roles available but they then might not have the ability to have the longer term rehab and the sorts of specialised care that a level one centre will have.

The Hon. DANIEL MOOKHEY: I want to go back to the part of your submission which flagged support for a no-fault scheme. Is the primary reason for that the timeliness of payments? Is it perhaps supporting that view in a sense that the prolonged time to finalise claims has an impact on or delays necessary medical treatment?

Dr LANGCAKE: I will take those as separate points. Yes, we think that a no-fault scheme will improve the timeliness of payments. As you are probably well aware, determining who is at fault can take a considerable period of time, particularly if the injured at fault driver is intubated in the intensive care unit and is not able to give testimony. Therefore that delays the other injured parties accessing very much-needed funds. I also feel that when we look at people who have caused accidents, yes, we know that there are those out there who are drink-driving and who are putting themselves and other people at risk. But, as I have said before, young people are very highly represented in road trauma. They are often highly represented in the at-fault drivers. We know for a fact that the brains of young people do not mature until they are in their late twenties, and sadly, gentlemen, it is even later for young men. They are impulsive.

The Hon. DANIEL MOOKHEY: And it is even later for politicians!

Dr LANGCAKE: I will allow the Hon. Daniel Mookhey to make that comment. They make impulsive decisions, which are often about impressing their mates. They may make one rash, foolhardy decision. It is our view that restricting the benefits that they can get to that initial $5,000 can impact them for the rest of their lives. If they are found to be at fault, it is likely that they will be dealt with through the legal system. They will end up paying a fine and possibly even serving a period in jail. But to impact their recovery when they really have the best years of their lives ahead of them we think is actually inequitable.

The Hon. TREVOR KHAN: If I could just jump in there, so essentially applying the fault system is an additional onerous burden that the person is suffering from what may have been just a foolish or negligent decision.

Dr LANGCAKE: Yes, that is exactly what I am saying. We can look at the New Zealand system. It does exclude where there has been clearly negligent behaviour, so where somebody has been drunk, they have been speeding or they have been making very poor decisions.

The Hon. TREVOR KHAN: That is the "furious driving" context.

Dr LANGCAKE: Yes, exactly. So it will exclude those people. But for those people who, as I say, may have made a stupid error, caused harm and themselves have suffered, this is an added burden. And it is not just a burden to them; as I have said before, it applies to their families as well. If they are unable to access care supported by third party insurance then quite often it is the families who end up providing that care at home. They therefore have to take time away from work to do that, and financially that is an added burden for a family that has not been at fault.

The Hon. DANIEL MOOKHEY: In respect of your submission I wanted to ask about rehabilitation costs, in particular a lump sum payment and the opportunity to review a lump sum. Is that reflective, be it either documented or anecdotal, of a sense that people do delay necessary treatment or do not access the full suite of rehabilitation services available on the basis of exhausting their funds too early?

Dr LANGCAKE: No, it is based on the fact that we know that the impact of an injury can be not only the acute impacts. So we may, for example, pay a lump sum based on the initial assessment, and we have mentioned a number of scores that can be used to look at injuries so we may base it on those. But effects can

deteriorate. An example I would give, which is not uncommon—I heard of this not that long ago from a colleague—is somebody who has suffered a severe limb injury with tissue loss and bone fractures. They may have had to be revascularised—in other words, the arteries have been reapplied to keep the leg and the foot alive. People may have seem those metal frames that are put onto the leg. People do not want to think of the idea of amputation, and nor do we want that as a primary thing unless the limb is clearly unsalvageable. So every effort is made to make that limb functional again; and, for the most part, there is good success with that.

But there are patients who are left with what we call a flail limb—it is there; it is insensate so they do not have a lot of feeling; and it is chronically painful. They put up with it for a period of time but it deteriorates, and that is often the pattern. There are cases where patients—after having chronic pain or after rehab that fails, which they may have had under that initial lump sum payment—are left in constant chronic pain. They are unable to return to work or whatever functions they were doing before. Down the track they may be offered a later amputation.

Many of them then say, "I wish I had done this before," because they then have a period of rehabilitation, they get a prosthetic fitted and they are actually given their lives back. But if they had accepted that initial lump sum payment then anything that happens after that comes under the aegis of the public hospital system. We know that the private rehab services can provide outstanding prostheses these days, but that is less available through the public system, obviously, because of cost. Private rehab can help amputees with stump care and a range of those sorts of things. But if they have exhausted their lump sum payment then it all has to come through the public system.

The CHAIR: Are you able to give us some figures around that? Is there some evidence of what percentage of motor vehicle trauma victims we are talking about? I am just wondering how big that cohort is.

Dr LANGCAKE: I will take that question on notice and see if I can get that data. With the amputation, that is an extreme example.

Mr DAVID SHOEBRIDGE: And very rare. The example you are giving where they have exhausted their lump sum benefit and later had an amputation would be extremely rare. We could not design a system around that.

Dr LANGCAKE: No, but it does happen so I am giving the Committee that as an extreme example. Stepping back from that, I have seen patients who have had traumatic chest injuries and have fractured a number of ribs. That is a very painful condition if they have had other injuries as well. I will see them one week and then some months down the track. Even years down the track a percentage of those patients will suffer significant chronic pain that can limit their return to work. They may have taken a lump sum payment. I know a woman who was a nurse who very nearly died from severe chest injuries.

Mr DAVID SHOEBRIDGE: But you are exhorting a defined benefit scheme that runs out after three or five years, and that is not going to fix that. That is what is on the table and that is what you are putting forward.

Dr LANGCAKE: No, that is not what I am exhorting; I am saying that, in the system in New Zealand, people believe that the system in New Zealand says there is no common law—that you get what is a defined benefit and that is it. That is not actually entirely correct. There is in fact a way in which an advocate can speak for the injured person and say, "This is the impact of their injury." There can then be adjustments for that. I am not sure if that is clear in that document, but when you read the true New Zealand scheme you see that that is available.

The Hon. TREVOR KHAN: Could Dr Langcake just finish giving her example about the patient with the chest injury.

Dr LANGCAKE: Yes, of course. So to give an example from my own experience, this woman basically had her chest cave in and her lung was herniating. She very nearly died. She has survived it but she is in chronic pain. She has not had a lump sum yet. Years down the track, she has not been able to return to work. Had she exhausted a lump sum with the sorts of rehab and treatment that she had had, and had things continued to deteriorate as they have, then again she does not have recourse to a review of that.

WorkCover, as I am sure the Committee would be aware true, through the State Insurance Regulatory Agency, in its recent review has put in that injured workers can in fact now have a re-review. So my view is that if it has been agreed that injured workers can have a re-review after having accepted a lump sum payment when there is a deterioration, they have been injured in the same way that road traffic victims have. So if SIRA has agreed that that is reasonable then I do not see why it is not reasonable to consider that folk who are injured in a motor vehicle collision or as a pedestrian should have that same right.

The Hon. DANIEL MOOKHEY: So, in terms of the right for that review, your view is that it should not be time limited from the point of injury but rather just a whole of life right?

Dr LANGCAKE: Yes, that is exactly right. The college has a lot of involvement with SIRA. We have been working with them in a number of their reviews, and what we have heard from them, and I think it is a very reasonable approach, is that above a whole percentage injury now of 25 per cent, and it was previously 30 per cent, those people are cared for for life. It is a whole-of-life approach. I think we could argue a similar sort of thing for seriously injured road trauma victims—that we should be looking at a whole of life approach. The reason for thinking about no fault is to say that that would allow us to start that process at a much earlier level. If I can give you an example, for instance, of brain injury rehabilitation. The costs of brain injury are mammoth. Throughout Australia they are in the billions of dollars. But we also know and I would be able to provide you with that data, should you wish—

The Hon. TREVOR KHAN: We do.

Dr LANGCAKE: Certainly. I will take that on notice. The earlier that folk with a severe brain injury are able to access brain injury rehab, the more likely they are to return to reasonable function; the more likely they are to be able to get back to work, and therefore be taxpayers and support the scheme that has supported them; and the benefits for an individual patient can be in the terms of millions of dollars a year, if you take somebody who has needed a high level of care and you can return them to their home, to being able to function at a reasonable level. But we are limited by the number of publicly available brain injury rehab beds. I can tell you that at my own hospital, from the time that we agree that somebody is ready to go—not necessarily from the time of injury, but particularly with young men—it is anywhere above six to eight weeks before we can get a bed for them to start that true dedicated brain injury rehab. For stroke victims, it can be six months.

The CHAIR: We are going to run out of time, but Mr Shoebridge has not had much time for questions.

Dr LANGCAKE: I am sorry.

Mr DAVID SHOEBRIDGE: Thank you, Dr Langcake, for attending. You say you sign on to one of the reform proposals, which is an increase in proportion of benefits going to seriously injured claimants. Of course, one of the principal ways that an increased proportion is going to go to seriously injured claimants under each of the models proposed by the Government is greatly reducing the amount that goes to less seriously injured people. You can leave the benefits going to those who are seriously injured at the same amount but reduce the amount going to less seriously injured people, and you have satisfied the scheme objectives that you are putting forward—of increasing the proportion of benefits going to seriously injured people. Is that what you are supporting?

Dr LANGCAKE: Not at all. We have not said that at all in our submission. What we have said is we want to see a greater proportion go to injured patients. I think that, looking at the fact that insurance companies are garnering 19 per cent profit from the compulsory third party insurance scheme—

Mr DAVID SHOEBRIDGE: That would be a good starting point.

Dr LANGCAKE: That would be the starting point.

Mr DAVID SHOEBRIDGE: You do not sign on to an Australian Medical Association [AMA] 4 threshold in your submission. You sign on instead to an injury severity score [ISS].

Dr LANGCAKE: Yes.

Mr DAVID SHOEBRIDGE: And then, with some modifications for functional independence measures and short form health surveys. I have to say that I have not seen that operating in any compensation scheme around the world. I am very interested to know how it is superior to the AMA 4, which has many faults?

Dr LANGCAKE: Okay. If I can explain injury severity score: That is a system-based score which takes into account the most severe injury in each system of the body times it by the page number—I do not do that; I have staff who do it for me—but it comes up with a number, which is more about prognosticating about survival of the patient. For instance, we know that somebody with an injury severity score above 12 classifies as a critically severe injury and therefore their risks of dying are much higher than somebody, say, who has a—

Mr DAVID SHOEBRIDGE: So at that stage it is not about functional capacity or economic loss or anything?

Dr LANGCAKE: Absolutely. Correct.

Mr DAVID SHOEBRIDGE: This is about whether they are going to live or die.

Dr LANGCAKE: Correct. This is about us being able to say, if we are looking at a no fault scheme, that this individual has had a severe injury and we can prognosticate about the likely progress through the hospital system, rehab, et cetera, which is based on that. Once a patient is being assessed for rehab and in rehab, then the two scores I have given you are very commonly used. They are used by Medicare as well. They look at functional scores of the individual. We are past that acute stage where the ISS is useful to be able to say to an insurance company, "This is where this patient is injured and currently we think they are going to need this many days in intensive care, this many surgeries, et cetera, et cetera, and then rehab down the track." That is where ISS is useful. It is a prognosticator. But these other scores, which are well known and are the key scores used by rehab physicians, look at what that patient is then capable of.

Mr DAVID SHOEBRIDGE: I would really appreciate, if you could, your providing some further details about the second elements, which seem to be much more focused on the kind of issues you want to be looking at in determining compensation.

Dr LANGCAKE: Yes. If I could take that on notice, I will provide you with that.

Mr DAVID SHOEBRIDGE: Because you have not adopted Australian Medical Association [AMA] 4. What are the limitations you see on AMA 4, from your clinical experience?

Dr LANGCAKE: Because I am not a rehab physician, I do not use AMA 4. I discussed the two scores that I do know that my head of rehab uses, which is why I have included those. But I am happy to take that question on notice and provide you with some more details about that.

Mr DAVID SHOEBRIDGE: I would appreciate that.

Dr LANGCAKE: I just point out that the second of those scores, the health one—

Mr DAVID SHOEBRIDGE: The short form health survey.

Dr LANGCAKE: The short form health one is a self-reporting score. There may be an impression that folk would self-report higher. That has actually not been proven. It is a very valid tool for people to say how they are progressing. It is about their ability to function in their day-to-day life and it is a very validated tool that is used by rehab physicians. But I am happy to provide more detail.

Mr DAVID SHOEBRIDGE: One of the probably most prominent reform options will see people with a whole person impairment [WPI] of 10 per cent or less under AMA 4 having their medical benefits terminated after a period of three to five years. In your clinical experience, do you see that causing hardship or medical issues in terms of addressing somebody's ongoing care?

Dr LANGCAKE: I think again when we look at minor injuries—and there has been a lot of discussion about that—yes, that may be the case that after a period of years the medical benefits would end. But then again I would suggest that if they have further deterioration—and even minor injuries; as I said, a hand injury or a neck injury can deteriorate down the track. We know, for instance, that joint problems can lead to arthritis, which are not going to be immediately evident and which can be very limiting, particularly with certain sorts of employment.

Mr DAVID SHOEBRIDGE: It almost certainly will not get you above a greater than 10 per cent whole person impairment.

Dr LANGCAKE: That does not mean that that they should not then have the right to be reviewed for something that is relevant and related to the initial injury, and this is where we are saying not necessarily a second lump sum payment but a review to say should a neck's range of treatment—because it has been related to that initial injury, even if it was considered minor at the time but has deteriorated—have written into it the fact that they also can be reviewed to see whether or not there is treatment that should be covered.

Mr DAVID SHOEBRIDGE: But they may have treatment need that has been continuing all the way through. It is not a question of deterioration. They have an ongoing need for treatment.

Dr LANGCAKE: Certainly.

Mr DAVID SHOEBRIDGE: Because they are 10 per cent WPI or below under the reformed scheme, it just cuts off. That is plainly not in the patient's interest.

Dr LANGCAKE: It is not in the patient's interest.

Mr DAVID SHOEBRIDGE: You would not endorse a scheme like that?

Dr LANGCAKE: No. Your colleague said, "Should we be looking at a whole of life scheme?" While from an economic viewpoint that is not my area, I believe that we should be looking at a whole of patient scheme, a whole of life scheme, and looking at a family scheme. If you may allow me just to make one point?

The CHAIR: Yes, but we have to wind up.

Dr LANGCAKE: Absolutely. The issue was raised earlier about children involved in minor motor collisions. I know that that is a point that has been made in the aspect of exaggeration and fraud. However, I would like to point out that there is very good evidence—and I can table some papers later—that children as young as six months old display signs of acute stress disorder and other issues such as those; that that they have those memories; and that this is co-morbid with post-traumatic stress disorder [PTSD] at a very early age. The studies have demonstrated that it is not necessarily related to the degree of injury. It can be quite a minor thing, and young children can actually suffer morbidity related to that down the track.

In fact, these days in psychiatry, borderline personality disorder has been reclassified as post-traumatic stress disorder from a range of things, but certainly childhood illness. We know about childhood trauma through abuse, et cetera, but we know that childhood illness—diagnoses of cancer—there is very good evidence now that within a few months of children being involved in even a relatively minor motor vehicle collision, many of them will be showing signs of PTSD. If we are wanting to exclude those that we believe are exaggerating, we must make sure we do not exclude children who, even in the non-verbal state, can benefit from forms of management to prevent that developing down the track. I am happy to table some papers.

The CHAIR: Thank you very much, Dr Langcake. You have been very informative to the inquiry today. You have taken quite a few questions on notice.

Dr LANGCAKE: I have.

The CHAIR: The secretariat will be in touch with you to remind you of those. You have 21 days to get that back to us to help us with our inquiry. Thank you for your time today. The Committee will now adjourn for 10 minutes.

(The witness withdrew)

(Short adjournment)

BRIAN WALTER WOOD, Secretary, Motorcycle Council of New South Wales, affirmed and examined

GUY JOHN STANFORD, Member, CTP Committee, Motorcycle Council of New South Wales, affirmed and examined

The CHAIR: Would you like to take a few minutes to make an opening statement?

Mr STANFORD: Essentially, what we see is that there is a bit of a problem with what we call asymmetric information in that I do not think that all of us are playing with all the pieces that are available to actually make good judgements as to where the pricing of CTP is going. Certainly there is a large proportion of profit going to insurers and an inadequate proportion going to the injured. The asymmetric information—it seems that each time there is a change in how relativities are calculated there is a lot of busyness that goes on there and SIRA tries to pull a lever but does not get quite the result that it was hoping. It certainly happened with motorcycles changing from three to five classes where the judgement that was made on how that would be done took considerable consultation done between the Motorcycle Council and MAA at the time and everybody was surprised, including the general manager of the MAA at the time as to how the premiums actually worked out—it was so different to the numbers on the page that we could see.

This asymmetric information goes further; it is not just that we as riders and our representatives are not getting that information, but we are not clear whether this committee is getting that information either. It goes a bit further, that there seems to be no correlation between crash data as recorded by the RMS and the injury data, as was mentioned by an earlier speaker, that being able to connect those two things enables us to provide better services either in terms of education, prevention as well as in fixing people up afterwards. That is about where we are.

The CHAIR: I was fascinated by your submission in that the cohort of motorcyclists is quite small compared to the general motoring public and yet the number of insurance schemes you can be involved with is quite surprising. Is that unique in New South Wales or is it similar around the country—those stratas of motorcycles and stratas of schemes?

Mr STANFORD: That is unique. Where we see the problem is that there is no overall yardstick to the system. Let us say that we started this business again from scratch and said right now let us have some essential perimeter to data on it that says how much money is being paid in through premiums and how much money is coming out from being paid to the injured, and then we have got to worry about what happens to that money in between, which I am sure you guys are very interested in, and so are we. If you look at the overall population and risk of any road user in New South Wales, that risk for any individual, when it is taken across the whole population, will give us a picture of what is going to be the maximum likely basis for calculating a premium.

The second thing you will need is what is the distribution of the amounts of money being paid out to the injured and from those—this is what actuaries do—they could work out what would be a nominal premium, a theoretical premium, for saying to cover this risk for all the population you would end up at this kind of money level for a premium for CTP and for LTCS separately. But then when you start breaking it up between different insurers you start getting volatility in the numbers and of course the actuaries are going to be much more conservative, which means the premiums will go up. As I say, our individual risk is higher, so you are going to have to multiply your risk, so we end up with a situation where the actual population risk for people in New South Wales appears to be vastly higher than it really is simply because you keep breaking it up into smaller and smaller divisions. The more divisions you break motorcycles up into—and at the moment, as you know, we have some 35-odd divisions—there is a multiplying effect that says we are being perceived as being a vastly higher risk than perhaps the actual risk really is and I think the same applies to other classes of vehicles as well.

We really need to look at being able to break up the available data to say of all the money coming in and of all the money going out, what is the population risk, what is the population risk by class, what is the distribution? How does that relate to the RMS crash data in terms of serious or less serious crashes in each region? Are we able to actually map where these crashes are occurring because forewarned is forearmed and if you can determine the types of crashes which are occurring that are resulting in higher injuries, then you can start targeting education and road safety campaigns much more accurately.

The Hon. DANIEL MOOKHEY: The thrust of your position in respect to that aspect is that the risk pools are too fragmented.

Mr STANFORD: Absolutely.

The Hon. DANIEL MOOKHEY: Therefore, there ought to be a simplification and I think you called for two classes.

Mr STANFORD: We proposed two classes. We need to open the discussion on the subject.

The Hon. DANIEL MOOKHEY: I will ask this not necessarily as a person who has this view but as someone who has heard this view: the thrust of insurance risk pools is that they are getting smaller and that is not necessarily limited to CTP. That is in response to a huge amount of data at the level of the individual, which means that the risk profiling and the risk assessment can happen in much more minute detail than it has previously. If we were to revert back to a larger risk pool, does that not run the risk that you would have to allow for a lot more cross-subsidisation of people in that pool?

Mr STANFORD: It depends on whether you are trying to look after the people of New South Wales or the profits of an insurer. I do not think the two are exclusive but I think that the emphasis could be shifted incorrectly here.

The Hon. DANIEL MOOKHEY: But from the perspective of premium price setting, for a person who is operating a motorcycle; for example, I ride a scooter that is not particularly powerful. I am told by everybody that my risk factor is therefore a lot lower; it is based on the engine size. Should I be put into a risk pool with a person who drives something with a much larger engine capacity? I have no views on this whatsoever but I hear the argument that if you start to pool people at a much larger level the cross-subsidisation and the price level is much higher?

Mr STANFORD: And are we doing that with cars at the moment? Are we going to do that with cars and start breaking up cars into more powerful, big capacity, small capacity?

The Hon. DANIEL MOOKHEY: We do that with respect to heavy vehicles. We do that with heavy vehicle sizes; we do that in respect of vehicle sizes and engine capacities.

Mr STANFORD: I am not saying we are looking for a free ride; I am just saying we do not seem to have the data here that says you are actually a lower risk than a lot of people who are riding larger capacity motorcycles.

The Hon. DANIEL MOOKHEY: One aspect of your argument is that the transparency of the data that is used for risk assessment—

Mr STANFORD: It is very poor.

The Hon. DANIEL MOOKHEY: And that is currently held by the insurers and not shared with anybody for the purpose of scrutiny?

Mr STANFORD: Absolutely right and I think from there that is the asymmetry in the data provision that we are addressing here.

The Hon. DANIEL MOOKHEY: So your view is that you cannot contest their model because you have no idea about it?

Mr STANFORD: No, we do not actually have a yardstick so any of these changes that are made, if we do not have some baseline point to use as a comparison, all we are doing is playing relativities while everything goes jumble jumble up. There is no reference to what the actual level should be. We are trying to balance a seesaw but how high is the seesaw going.

The Hon. DAVID CLARKE: From your opening comments you are basically saying that the insurers are receiving a particular amount in and to your mind there is not enough being paid back out?

Mr STANFORD: Correct.

The Hon. DAVID CLARKE: Following from that, you are saying that insurers are actually getting a lot more from premiums than was anticipated and that they have told us over the years they should be getting and they continue to get a high percentage?

Mr STANFORD: I think the figures in the reports bear that out. The question is only the methodology and how we can see where that is happening and what is going on. One of the clean mechanisms is the more you break it into smaller groups, then you can justify your higher volatility in each of those small groups and therefore push the premium up and all the mathematics works out beautifully for them.

The Hon. DAVID CLARKE: Are they mathematics that you are able to understand?

Mr STANFORD: They are complex mathematics. I am not an actuary. I am okay with the sums.

The Hon. DAVID CLARKE: You think there is an issue to be looked at there?

Mr WOOD: We have difficulty in getting the data that we can then establish that view on.

The Hon. TREVOR KHAN: Difficult or impossible?

Mr STANFORD: We have been trying for eight years now. We have been here before asking for these very figures.

The Hon. TREVOR KHAN: That ranks as impossibility.

Mr DAVID SHOEBRIDGE: This has a groundhog day feel to it?

Mr STANFORD: Absolutely.

Mr DAVID SHOEBRIDGE: You complained at the last Committee meeting—

Mr STANFORD: And the one before it.

Mr DAVID SHOEBRIDGE: —that you could not get the data out of it and it is the same situation; the name has changed to SIRA but the lack of information is the same?

Mr STANFORD: Yes, and we question at this stage when we are looking at this and saying, "Why is it so impossible? Perhaps this Committee and SIRA itself are actually suffering the same problem but there is so much data to be played with you can get lost in the soup. What we are saying is, "Let's just have a bit of an arm's-length view of this again and start with how much money is going in, how much money is coming out. Then, what is the overall population risk? What is the distribution of claims across that?" Let us start there because from that you could do some sums on probabilities and start down the path of calculating a nominal theoretical premium for that.

The Hon. DAVID CLARKE: But after eight years you have not been able to work it out yourselves as to what is happening?

Mr STANFORD: We cannot get the data on which to do that. We have been struggling with that. We have come up with our own theoreticals but every time we try to test the theoreticals, we need some hard data to pin it down, we cannot get it.

The CHAIR: It is something we might ask SIRA later today and I am sure they will have an answer.

Mr STANFORD: I was just going to say: it is the same thing again. We could go back to last year's.

Mr DAVID SHOEBRIDGE: In terms of CTP though we are talking about third party risk, are we not?

Mr STANFORD: Yes.

Mr DAVID SHOEBRIDGE: Everybody says that it is dangerous to do motorcycling but what you are paying on your green slip for a motorcycle is the damage you cause to third parties?

Mr STANFORD: Correct.

Mr DAVID SHOEBRIDGE: Have you had a persuasive case put to you that motorcyclists are out there causing a higher level of damage to third parties?

Mr STANFORD: According to the data, which we can all read, cars are vastly better at injuring passengers and other people than motorcycles are.

Mr DAVID SHOEBRIDGE: So why is it that the CTP costs for a motorcyclist, on the face of it, look significantly more than a motor vehicle because a motor vehicle can obviously cause more damage than a motorbike?

Mr WOOD: The explanation we are usually given is that a lot of the claims are from pillions so the pillion can always make a claim against the rider and it is whether the rider is at fault or not.

Mr DAVID SHOEBRIDGE: Sadly a proportion of pillion claims are going to be picked up by the Lifetime Care and Support Scheme?

Mr STANFORD: Yes.

Mr DAVID SHOEBRIDGE: Have you had a breakdown given to you of the claims that go into the Lifetime Care and Support Scheme and the claims that go into the Motor Accidents Compensation Scheme?

Mr STANFORD: This is one of the interesting areas of course because prior to LTCS all of those large long tail very heavy claims stayed within the CTP system and when the LTCS arrived long tail large claims were shifted into the LTCS so we anticipated that there was going to be a significant drop in the CTP claims but that does not appear to have happened and that is why we are saying, when we go looking for the data, "What's going on here?" and when we cannot get it, we begin to get a little bit twitchy about that.

The Hon. LYNDA VOLTZ: But you would have some natural increase anyway because of population growth and increased motorbike riders on the road?

Mr STANFORD: Yes, that is right and then you have to look at what has been the growth in serious crash claims versus the growth in the motorcycle population and across this period the motorcycle population has nearly doubled yet the overall crash risk at best is about 17 per cent up overall.

The Hon. TREVOR KHAN: Don't we get back to the point that the Chair raised before, that really rather than speculating we have to find out from State Insurance Regulatory Authority what the data is?.

Mr STANFORD: If we have a request to this Committee it is for that basic essential information.

Mr DAVID SHOEBRIDGE: If we get it, we will share it with you.

Mr STANFORD: That would be fabulous.

The Hon. LYNDA VOLTZ: We have asked before.

Mr DAVID SHOEBRIDGE: Yes, we have. Can I ask you about dirt bike riders. There has been an ongoing push from the MCC to get a recreational dirt bike registration and associated green slip product. Where have you got to on that?

Mr STANFORD: Not very far, it keeps going around in circles and being parked in various places.

Mr DAVID SHOEBRIDGE: Where is it currently parked?

Mr STANFORD: Unfortunately CJ could not be here, he had to fly to the US regarding software.

Mr DAVID SHOEBRIDGE: Would you like to get back to us on that?

Mr STANFORD: We would. One of the advantages is to bring dirt bike riders into the pool because at the moment their figures end up in all the columns and they make a bit of a problem for your responsible registered fully insured every day motorcycle rider.

Mr WOOD: The experience in Victoria is that those who used to ride unregistered or possibly unlicensed have now come into the scheme. Those who are more serious now say they will not ride with someone who is riding an unregistered bike.

Mr DAVID SHOEBRIDGE: It is changing the culture.

Mr WOOD: It has changed the culture, yes, in that if you are unregistered we will not ride with you. If you have recreational registration it creates problems in the areas where they can ride but they are willing to put up with those difficulties as compared to riding with someone unregistered.

The CHAIR: It is an issue how you assess the situation on a road that is not regulated by the Roads and Maritime Services?

The Hon. LYNDA VOLTZ: It is private property.

Mr STANFORD: A lot of problem occurs on remote roads. They are road related areas for the purposes of the Act.

Mr DAVID SHOEBRIDGE: It can be in State forests. There are a lot of dirt bike riders in State forests.

Mr STANFORD: Mining lease roads.

The Hon. LYNDA VOLTZ: If they are on those roads that are public roads they would be required to have registered vehicles.

Mr STANFORD: This is the point. They will be in and out of those areas, that is where the recreational registration scheme has an advantage. What it has done in Victoria is significantly dropped the number of unlicensed unregistered bikes that are appearing on public roads by a huge margin.

Mr DAVID SHOEBRIDGE: It is the more remote parts of the State which are poorly policed, so people take their dirt bikes there unregistered reasonably comfortable in the knowledge that they will not be pinged for riding an unregistered motorbike.

Mr STANFORD: Yes. As the enforcement of this proceeds it proceeds away from the major centres, it proceeds out into the areas where we have poorer medical services.

The Hon. TREVOR KHAN: If it is for recreational purposes, how would that cover farm bikes?

Mr STANFORD: Farm bikes, if they do not leave the property, would not need registration at all.

The Hon. TREVOR KHAN: I accept they do not need it.

Mr STANFORD: But, if that farm bike is going to be used to push sheep to an adjacent property down the road it will need registration, and at the moment a lot of them probably don't.

Mr DAVID SHOEBRIDGE: If you are going to take the farm bike off the farm five or six times a year for a short trip it can be cripplingly expensive to get the registration and the green slip and that is why many are unregistered and that's the benefit of the Victorian scheme, it brings them in.

The Hon. TREVOR KHAN: If you describe them as a recreational bike, they are not.

Mr WOOD: While it is called recreational registration it is actually conditional registration.

Mr DAVID SHOEBRIDGE: You cannot ride it more than a certain number of times on certain dirt roads?

Mr WOOD: It is more restrictions on where you can ride it, you cannot ride it in built up areas.

Mr STANFORD: You can't go down the highway.

The Hon. LYNDA VOLTZ: You can ride it for two or three kilometres outside the property but no further.

Mr STANFORD: Victoria went to the system of A, B, C roads before New South Wales did. It was designed in Victoria to be C roads and they were permitted on B roads in certain circumstances, but certainly no

A roads. You could not use recreational registration to hurtle down the Hume Highway from Sydney to Melbourne. You could not use it on a main back road.

Mr DAVID SHOEBRIDGE: If you could give us a further response on that and pick up what is happening in Victoria and how it would benefit the recreational bike riders and the occasional use of a farm bike off the property.

Mr STANFORD: We have material on that.

Mr DAVID SHOEBRIDGE: And where the road blocks are in Government.

Mr STANFORD: Sure.

Mr DAVID SHOEBRIDGE: You rightly point out the frustration that many people have felt about the stubbornly high level of insurer profits.

Mr STANFORD: Yes.

Mr DAVID SHOEBRIDGE: They are meant to be at 8 per cent but they have been running at more than double that throughout the scheme. What are your proposals to bring that down and what, if any, has been your interaction with SIRA and what they are doing in that regard?

Mr STANFORD: In terms of how to bring them down, we are not sitting here to instruct the insurance company how to run its affairs, but we would like to have illustrated just where the profits are arising from. That is the basic data we were talking about. Once we get a view of that the question of where the efficiencies lie can be much more readily found. You can say everything is nicely in balance but if the base premium has been pumped up then it all looks good. How do we know, what is the reference point for saying what is the right level for a premium?

Mr DAVID SHOEBRIDGE: That is where you want more information on the bonus malice and how that is operating?

Mr STANFORD: Let us not get too complicated, let us get the big blocks on the outside, which is how much is going in, how much is coming out, what is the distribution of the quantum of claims across the State and then let us start doing that by different groupings in the present scheme. Just look at it that way.

Mr DAVID SHOEBRIDGE: We will see if Mr Mookhey is paying his way.

The Hon. TREVOR KHAN: Can I draw everyone's attention to the time and who are the next witnesses.

The Hon. LYNDA VOLTZ: I can ask my question of the next witnesses.

Mr STANFORD: On notice is fine.

The Hon. LYNDA VOLTZ: It is complicated.

The CHAIR: We have time.

The Hon. LYNDA VOLTZ: I was going to go back to the Victorian scheme with the recreational bike licences—could you take this on notice—when you get the figures for Mr Shoebridge, given the scheme is a no fault scheme, I am not sure if you have those figures could you break down in the recreational area. I do not know if it is no fault or whether they differentiate.

Mr STANFORD: I will have to look at that, I am not sure they do.

The Hon. LYNDA VOLTZ: That was in the back of my mind.

Mr STANFORD: I get what you are after, I will do my best on that one.

The CHAIR: Are there any other pressing questions from members. I thank you for your presentation and submission to the inquiry. You took a few matters on notice, the secretariat will be in touch and you have 21 days to reply to those.

Mr STANFORD: Thank you for the opportunity.

(The witnesses withdrew)

VICKI MULLEN, General Manager Consumer Relations and Market Development, Insurance Council of Australia, affirmed and examined

ROBERT WHELAN, Executive Director and Chief Executive Officer, Insurance Council of Australia, sworn and examined

The CHAIR: Would either of you like to make a brief opening statement?

Mr WHELAN: Thank you for the opportunity to give evidence to the Committee. The Insurance Council of Australia is the representative body of the general insurance industry and our member companies include the four insurers that underwrite the NSW Motor Accidents Compensation Scheme under six licences. The Insurance Council recognises that the current NSW Compulsory Third Party Scheme is facing significant challenges and concerning trends, including increased instances of fraud and exaggerated claims, are placing upward pressure on CTP premiums. These trends are directly impacting the scheme's policy objectives of affordability, efficiency and sustainability. The Insurance Council supports a green slip scheme that supports the needs of motorists and injured people and for this reason it continues to work with the NSW Government, the State Insurance Regulatory Authority and other stakeholders to tackle challenges facing the scheme.

The Insurance Council and CTP insurers are members of the NSW Compulsory Third Party Fraud Taskforce. This task force will make recommendations to the New South Wales Government on strategies to deter, detect and respond to unmeritorious and fraudulent CTP claims, including using the Insurance Council's Insurance Fraud Bureau hotline to handle consumer reports of suspected CTP fraud. The Insurance Council will also be working closely with SIRA as it considers the recommendations of the independent review of insurer profit and implements adjustments to the premium framework for the scheme. The Insurance Council has prepared a substantial submission for the NSW Government's consultation on options for reforming green slip insurance in New South Wales.

As part of its response to the Government's options paper, the Insurance Council asked Finity Consulting to develop an actuarial analysis of a model for scheme reform. The analysis represents the industry's preferred option for reform. This is a hybrid scheme with defined benefits for treatment and loss of earnings for all those injured in a motor accident regardless of fault and payable for a set period of time; and common law rights for those with a serious injury caused by the negligence of another. The model has the potential to harness the benefits of a no-fault defined benefits scheme such as increased certainty and stability, while retaining the benefits of the common law for the most seriously injured. The Insurance Council considers it well placed to improve affordability and timeliness, while also increasing the proportion of benefits provided to the most seriously injured road users and limiting opportunities for CTP fraud and claims exaggeration. The insurance industry is prepared for significant change. It looks forward to working in partnership with stakeholders to deliver a more stable scheme that will provide better value to New South Wales motorists and fair and appropriate support for those injured on our roads. I am happy to answer your questions.

The CHAIR: Ms Mullen, would you like to add anything?

Ms MULLEN: No, thank you.

The CHAIR: Like any other consumer I pay for my green slip but it was not until I got involved in this inquiry that I became aware of the fraud issue and claims farming. Frankly, as a representative of the average member of the community I am shocked that I did not know about this type of fraud and its impact on the community. Is this a recent development? Why has it not been brought to the broader attention of the community sooner? Is it the situation that the insurance industry has been writing off these small claims much like banks write-off small credit card fraud?

Mr WHELAN: I will do my best to answer your question. It is the fact that over the past two years the incidence of small claims being represented in a legal sense has increased enormously—more than 100 per cent. In detecting how this is occurring the SIRA analysis, which no doubt the Committee has looked at, has identified it is almost on a semi-industrial scale. This is not unusual. This particular occurrence has happened in United Kingdom for a number of years. It has put their scheme under severe threat and it continues to this day. We have started to notice that this is happening. We have always had claims exaggeration and so on but at a relatively small level; that is not the case any longer. We are now seeing very exaggerated levels of claims, large numbers of people claiming soft tissue injury and so in relatively minor physical accidents. It has started to become a real issue. We are detecting it and SIRA has detected it. We are now doing the analysis to be able to provide much better data on how we can actually contain it and deal with it over time.

The CHAIR: Are you putting your finger on this specifically as a major reason for the blowout in the costs of CTP?

Mr WHELAN: It is one of them.

The CHAIR: What are the others?

Mr WHELAN: The other one is claims farming; in other words, encouraging people to put in claims who may not have in previous times.

Mr KHAN: What is the difference between the first and the second?

Mr WHELAN: The claim maybe absolutely fine but the others are not; in other words, there is no such injury.

The CHAIR: A fraud or exaggeration?

Mr WHELAN: The people are not actually injured or were not even in the car.

Mr DAVID SHOEBRIDGE: It was a concocted accident.

Mr WHELAN: A concocted accident, that is right. A staged accident.

The Hon. DANIEL MOOKHEY: Staged?

Mr WHELAN: Yes, they will literally stage them. They will set up a car and another car, usually somewhere late at night, and they will ram into each other. Then, all of a sudden, the car that is hit has a large number of people in it—often children.

The Hon. LYNDA VOLTZ: What is the percentage between farming and fraud?

Mr WHELAN: I am sorry I do not have that information.

Ms MULLEN: We do not actually know but a lot of work is being done, as has been previously mentioned, by SIRA. We also understand that SIRA is now working with the NSW Police Force on this. As you are probably aware, to determine whether something is in fact fraudulent or not really is ultimately a matter for the courts. One does not know whether something is in fact fraud until it has been proved as a criminal offence. Obviously we have got some markers, as Rob has already mentioned, to indicate that on the face of it there is fraudulent activity occurring where accidents are staged—for example, a minor accident might occur with just a driver in the car and the fraud is that three or four claims are made for children who were not there.

The Hon. LYNDA VOLTZ: Over what period do you say there has been an 100 per cent increase?

Mr WHELAN: Over two years.

The Hon. LYNDA VOLTZ: What percentage of those were fraudulent claims?

Ms MULLEN: We do not know is the answer. I go back to what I said a minute ago, whether something is in fact fraudulent or not is a matter of law before a court.

The Hon. LYNDA VOLTZ: How many were farming?

Ms MULLEN: I guess what we would say is that the data is telling us about the networked effect across the scheme. What we mean by that is that there are organisations out there that are doing either cold calling or, as the Bar Association mentioned this morning, there are organisations out there that are getting data about people who may have in fact had an accident and they are pooling all that data together.

Mr DAVID SHOEBRIDGE: That is not fraud, that is the harvesting or farming.

Ms MULLEN: That is right.

The Hon. LYNDA VOLTZ: For how long has farming been a phenomenon?

Ms MULLEN: Roughly we have been aware of this kind of activity in this jurisdiction for probably about two years. Can I just make the point that that may lead to a fraudulent outcome and that might be because someone who has had a minor accident might be farmed, so to speak, and that person might then realise that there is an opportunity to exaggerate that claim? That exaggeration may in fact turn into what could be decided to be a fraud. What we would say as well is that a material exaggeration of a claim actually is fraud; it actually constitutes fraud at law.

The Hon. LYNDA VOLTZ: Given that you have had a 100 per cent increase over the past two years and that farming has also become prominent in that time do you think there may be a link?

Ms MULLEN: Undoubtedly so. The increase in those minor claims that are legally represented would undoubtedly be inspired by claims farming behaviours. I go back to the point I made, if a claim has been farmed it is only a heartbeat away from that claim actually being exaggerated as well, which may actually constitute a fraud.

The Hon. LYNDA VOLTZ: Do you know how many are "only a heartbeat away" from that? Is there a figure that you have?

Ms MULLEN: What I was saying is that we do not actually have that data to hand. There is a lot of work being done in that space as we speak by the State Insurance Regulatory Authority.

The Hon. DAVID CLARKE: What about for fraudulent claims? The Hon. Lynda Voltz asked you earlier what percentage would you say are fraudulent claims and you did not have any idea. Did I hear that correctly? So you do not have any general idea what percentage of these claims are fraudulent? You are the people who should be in a position to know. You are handling these claims all the time and you should have some assessment as to what percentage of these soft tissue lower end of the range claims are fraudulent.

Ms MULLEN: I will go back to the answer I provided previously. We are aware of the kinds of behaviours that if they came before a court of law would quite likely be found to be fraud.

The Hon. DAVID CLARKE: What percentage are those?

Mr DAVID SHOEBRIDGE: In what proportion of cases?

The Hon. TREVOR KHAN: Let us all just slow down a bit here. There should be only one question at a time.

Mr WHELAN: We do not have the percentage, if that is what you are asking for. The whole process that we are going through now with the police, the fraud bureau and the task force is to try to get a handle on this because this is an anomaly in the scheme. It has occurred most particularly over the last couple of years. It has been an extraordinary increase, both in terms of what we believe may be fraudulent behaviour and what has been clearly farming of claims. Whether that is illegal or not, that is something for the police to determine. It is their responsibility not ours.

The Hon. LYNDA VOLTZ: That is fine. But you have just come before this Committee and said that the biggest problem is fraudulent claims. In fact I am getting the impression from the evidence that you are giving that the large increase is actually coming from farming. I am just trying to marry up the statements you made with what you are actually telling me.

Mr WHELAN: So it is nuanced because it is both. So you can have people who have a legitimate claim who have been injured but it might be a very low level injury. They are farmed and encouraged to take their claim to a much higher level of legal representation, which means that goes to the courts. That means the settlement might be double, triple or quadruple what it may have been otherwise, because of the way in which that claim is presented.

The Hon. LYNDA VOLTZ: Do you know how many claims that applies to?

Mr WHELAN: I do not know how many. But there has been a very large increase.

The Hon. LYNDA VOLTZ: You made the statement before the Committee that this is something that is happening. Other than the farming—the fact that we know people are ringing up and that is why there is an increase—I am trying to get to the crux of where the evidence and the data is that supports the statement that you are making.

Mr WHELAN: We have seen incidents where fraud has been proven. There have been cases on the news of late.

The Hon. LYNDA VOLTZ: So how many small claims a year are there?

Mr WHELAN: We do not know how many are actually fraudulent behaviour because that is a matter for the police to determine. We do not the investigative powers.

The CHAIR: I think you can appreciate the frustration here. The Committee would like to work on evidence, as well as anecdotal information, which I do accept. Perhaps you could go away and come back to the Committee with further information. When it comes to fraud in this area, does it require a police determination? Is it not the same as the case where you refuse insurance claims for a car, for example? There you have your own investigators, at least that is my understanding, who say, "No, that is a fraudulent claim for that car being

stolen," or whatever it is. Do you not have that ability with the CTP claims—that is, to investigate them privately?

Ms MULLEN: What I can say is that we are certainly aware, and we cannot speak to the details as that would be entirely inappropriate, that our member companies that underwrite the scheme, where they are detecting those behaviours that I pointed out before that could possibly constitute fraud as we understand it at law, will put together a brief of evidence. Where they think that that is a compelling brief they will actually take it to the police. This is a matter for the internal fraud teams of our member companies. So we understand that that is happening, and the industry has certainly been a lot more alive to these kinds of behaviours in recent times—there is no doubt about that at all.

The CHAIR: I think the Committee would appreciate it if you could take it on notice to see if you can get it some more facts around that. It sounds like that is not easy. But perhaps you could talk to your members and get us information about fraud and farming and define that.

Ms MULLEN: We certainly cannot commit to actually getting the Committee that data but we can certainly ask the question. I note from the hearing schedule that the State Insurance Regulatory Authority is appearing this afternoon. They have been working very closely with several actuarial consultants. As the Committee would appreciate, this is a very complex dataset. It has been gathered over the last 12 to 18 months in particular. We are really only now as an industry working with the regulator and becoming aware of exactly what the patterns are and the areas where these behaviours are happening in large numbers. So I would suggest that maybe the Committee would like to take up that line of questioning with SIRA as well.

The CHAIR: We will.

Ms MULLEN: We will certainly ask the question, absolutely.

The Hon. TREVOR KHAN: I think you were here when the New South Wales Bar Association gave evidence this morning, is that right?

Ms MULLEN: Yes, that is correct.

The Hon. TREVOR KHAN: Mr Stone indicated that, and I think these are his figures, some 8,000 motor vehicle accidents occur per annum. Did you hear him give this evidence?

Ms MULLEN: Yes.

The Hon. TREVOR KHAN: Of those, 2,000 have no claim, 2,000 are small claims dealt with without a lawyer and 4,000 bring in a lawyer. Did you hear that evidence?

Ms MULLEN: Yes, I was here for that evidence.

The Hon. TREVOR KHAN: What he referred to was essentially the farming relating to those two figures of 2,000—that is, the 2,000 where there was no claim are turning into claims and the small claims are turning into claims that end up with lawyers. So those of the sort of figures that we are talking about.

Ms MULLEN: We certainly cannot attest to those figures. Mr Stone, as the Committee would know, is extremely experienced in this but I cannot actually guarantee the figures that he is talking about. What I can say is that I think what Mr Stone is probably alluding to is that there would be many cases where someone is injured in a motor vehicle accident and that person in the normal course of things might be better within a week or two.

The Hon. TREVOR KHAN: With respect, I understand that. You cannot attest to the figures that Mr Stone has given us.

Ms MULLEN: No, I cannot attest to the figures. But Mr Stone is very experienced so I would imagine that those figures would be robust.

The Hon. TREVOR KHAN: I accept that I found some of his evidence credible, so that is fine. But you cannot even attest to those figures?

Ms MULLEN: No, we cannot.

The Hon. TREVOR KHAN: Okay. With regards to indicia of fraud or farming, what precisely are the indicia that lead you to the conclusions that you draw? Perhaps Mr Whelan can expand on this?

Mr WHELAN: What do you mean by indicia?

The Hon. TREVOR KHAN: Indicators that you say show there are fraudulent claims. Is there some geographic concentration of claims that previously did not exist, for instance?

Mr WHELAN: I refer you to SIRA and the analysis that it has done in this area, which does highlight that the claims that we are suspicious of are concentrated in certain areas with certain professionals, both medical and legal. The nature of the accidents are suspicious in the sense that the level of damage to the motor vehicle is very slight and the level of injury, that is casualty injury, is very high. There is also a high proportion of very young children, babies and so on, in the casualty lists.

The Hon. TREVOR KHAN: So, just in summary, the indicators are: geographic location, a commonality of lawyers, a commonality of medicos, the number of people in the motor vehicle, the nature of the injury and the extent of the damage to the motor vehicle. Are those the sort of factors we are talking about?

Mr WHELAN: Yes.

The Hon. TREVOR KHAN: Are there any others?

Mr WHELAN: That pretty much covers it.

Ms MULLEN: That pretty much covers it. There is actually a very good paper that has been published by SIRA on its website. I think it was published about a month ago. It actually does go through some of the trends for particular geographic areas within New South Wales. So I would strongly suggest that the Committee has a close look at that. It might answer some of your questions.

Mr DAVID SHOEBRIDGE: Of course we have spent a bit of time on fraud, and that is only right, but the single biggest external take-out from the scheme that is not going to injured claimants is the $1 in every $5 that your members have taken out of the scheme over its duration in profits—the great bulk of that being supernormal profits. What are your members doing to address that quite unconscionable level of profit that they have taken out of the scheme?

Ms MULLEN: I would dispute the use of the word "unconscionable".

Mr DAVID SHOEBRIDGE: We are talking about 19 per cent. Do you not think that that is unconscionable?

Ms MULLEN: I would dispute the use of the word "unconscionable".

Mr DAVID SHOEBRIDGE: It is $1 in every $5.

Ms MULLEN: The figures speak for themselves. That is the case. I would again refer Committee members to the very significant report that has been prepared by Mr Trevor Matthews, who is a very senior and highly regarded actuary, and the team at Deloitte Access Economics. They did a very extensive review into insurer profits and competition. I understand you would have that report to hand. Mr Matthews himself has very clearly identified I think what many members from our industry have been saying to this Committee for some years—that the factors behind those higher than anticipated profits are twofold: principally, an unanticipated decline in the number of claims since 1999 combined with an unanticipated benign superimposed inflation environment. Both of those trends were very genuinely unanticipated by the industry.

Mr DAVID SHOEBRIDGE: Unanticipated for 17 years in a row? That is where I think it sticks in the craw of everybody who is paying for their green slips. You can say it is unanticipated for one year or two years or five years, but it is not credible to say it is unanticipated effectively 17 years in a row, and when the lack of anticipation so materially benefits your members.

Ms MULLEN: And Mr Matthews does speak to that issue. Again, I would suggest that you might like to have a look—

Mr DAVID SHOEBRIDGE: I am asking about you, not Mr Matthews. What are your members doing to ensure that they do not take one dollar in five going into the future?

Mr WHELAN: That is why we have a scheme reform system in front of the Government right now. These schemes need reform. We have accepted that. We know that. All the stakeholders know that.

The Hon. TREVOR KHAN: Let him answer.

Mr DAVID SHOEBRIDGE: Your premium pricing needs reform.

Mr WHELAN: You are really going back into the past when really this is all about how do you get a scheme suitable and fit for purpose into the future. That is what we are here to talk about today because that is what is actually going to make a difference to New South Wales motorists, and that is what we have put forward. It is about making the scheme more efficient, more affordable, more effective and being able to provide better levels of compensation to those most seriously injured. That is what we are trying to do—and to reduce the propensity for fraud.

The CHAIR: Related to Mr Shoebridge's question is: How do we encourage more competition in the marketplace? When I first became involved with this I was surprised it was such a restricted group. I think one insurer has pulled out now since we started this inquiry. How do we encourage more competition, which obviously will push down prices?

Mr WHELAN: By making the scheme more sustainable and by making the scheme more predictable than it currently is. A large amount of capital has to be allocated by any insurer participating in this business. That is long-tail business; in other words, claims will not be known, in some cases, for years after the event. That is the nature of the business. You have to have capability to put aside that capital to be able to pay those claims and meet all the prudential requirements of the Australian Prudential Regulation Authority [APRA].

Mr DAVID SHOEBRIDGE: Or tax supernormal profits, or put a levy on supernormal profits that goes into a lifetime care and support scheme. That would be one way, would it not?

Mr WHELAN: That is your opinion, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I am asking you, Mr Whelan. You could put a levy on the supernormal profits.

Mr WHELAN: Yes. I do not have a view on that because I am really thinking about how to make the whole scheme work.

The CHAIR: Order! Allow Mr Whelan to answer his question.

The Hon. DANIEL MOOKHEY: Before I move on to my line of questioning, and just as an adjunct to the question asked by my colleague Mr Shoebridge, do you think that a test we should apply to any reform proposal—like the one you propose—is lower insurer profit, as of the tests the scheme is meant to produce? Is that an objective that your members would share?

Mr WHELAN: The model we have put forward—again, we would refer you to the very comprehensive work done by Mr Matthews.

The Hon. DANIEL MOOKHEY: I am just asking you: Is that an objective that your members would share—

Mr WHELAN: I am answering you.

The Hon. DANIEL MOOKHEY: —that one of the tests we ought to be applying is lower insurer profit—or a return, sorry, to the predicted rate?

The Hon. TREVOR KHAN: No. You have put a question. He is entitled to answer.

The Hon. DANIEL MOOKHEY: I am just clarifying the question, perhaps.

The Hon. TREVOR KHAN: Let him answer.

Mr WHELAN: These are very complex systems, all right? They are over very long periods of time. The model we put forward assumes a profit margin in the premium of 8 per cent. The Trevor Matthews analysis says that something in the order of 12 per cent is an appropriate level for insurer profits. That will give back to the providers of the capital a rough return of 15 per cent return on capital, which is what is required after tax to be able to dedicate that capital.

The Hon. DANIEL MOOKHEY: I get the concept of a 15 per cent. I get that. The line of questioning that I want to pursue is in relation to the operational response in the past two years to the emergence of the practice of claims harvesting, not the fraudulent aspect of it. We have had evidence from the Bar Association that there is a whole suite of strategies that could be employed by insurers that could combat this practice: Firstly, in the choice of claims that you can test, or the indicia that you laid out in response to a question by Mr Khan as being a signpost to things that ought to be contested by the insurers, and the ability for information pooling and sharing either through SIRA or through fraud investigators. I am wondering if you are able to explain what is the operational response, not necessarily the response you would like from government. What are insurers doing to keep claims lower?

Ms MULLEN: Sorry, it is a good question and I guess what we would suggest is that the Committee members might get a lot of benefit out of actually speaking to several of the insurers directly. These are operational matters for our members. We are not privy to those details, but we do know that there is a lot of activity happening.

The Hon. DANIEL MOOKHEY: So the insurance council is not privy to the details. Is that reflective of the fact that that information is not being shared through the peak body? You guys are not coordinating a response, or you are not facilitating the coordination of a collective response by the four insurers.

Mr WHELAN: No, we do not do that. That is not our responsibility. If that is to be done, it should be done by someone like the regulator.

The Hon. DANIEL MOOKHEY: In respect to the criteria that are used by the insurers to judge when a claim is worth contesting, it has been explained to me that there is a threshold where the costs of contesting outweigh the costs of settling. How rapidly are those criteria adjusted? Have they been adjusted? It strikes me that it perhaps would be in your long-term interests to start contesting more in the short term as a deterrent to this type of behaviour than it would be for us necessarily to have to redesign the scheme.

Mr WHELAN: Yes. You may very well be right, but at the end of the day that is a commercial decision on the part of the individual insurer. We do not dictate anything like that. That is really their responsibility to make those judgements. That is their capital. It is their customer. They have to make a decision as to how far they take that. It is really a commercial issue for them to determine.

The Hon. DANIEL MOOKHEY: But your view is that the sole basis by which that should be judged is on the commercial interests of the insurer and not necessarily to benefit the scheme, or would you be open to SIRA?

Ms MULLEN: If I could just make a comment there. I think what I would do is go back to the actual requirements of the governing Act itself. Under that Act—I am not aware of the actual precise details of the wording—there are two obligations on insurers. The first one is to pay reasonable claims in a timely fashion. The second one is to be cognisant of fraud and to monitor fraud. I think what I would say is that in the absence of data that shows that these trends have been occurring across the whole scheme, individual insurers just manage that balance between those competing obligations under the governing Act as they see fit in accordance with their own business model. What has happened in the last couple of years is, as we have already discussed, we have now got data to hand that indicates there is a scheme-wide trend of claims farming and possible fraudulent behaviour, which we understand is being driven by networked effects between some organisations.

Now that the regulator and the industry are aware of those trends, it is incumbent on us as an industry to work with the regulator to deal with this. The reason I say that is to answer your question. We, as an industry, take it very seriously that we need to work together with the regulator to try to address and deter this kind of behaviour. Now, individual insurance companies will still do what they need to do, but they are now very mindful—because we have got this networked data—of what is going on across the scheme and not just within their own business. That does raise that the bar in terms of what we all need to do to work together, and that is happening between our member companies and the regulator.

The Hon. DAVID CLARKE: Except that earlier you said that there is information that your members have that is not being shared with you. You are here representing them. Do we have to call the individual insurance companies here to get that information? Is that the consequence of what you are saying?

Ms MULLEN: That information is being shared with the regulator and in certain cases where our member companies believes there is sufficient evidence to put together an evidential brief around fraud, that information is being shared with the police.

The Hon. DANIEL MOOKHEY: At an operational level, is that your view that your member companies have exhausted all the reasonable operational responses they could employee to deter this behaviour? Therefore, because they have exhausted all of that, our legislative response is required?

Mr WHELAN: As far as I am aware, they have done everything they can within the realm of their commercial responsibilities in the scheme. I cannot answer it in detail because I am not privy to everything that they do. We are representative body of the industry, not individual insurers, and each individual insurer will make their own decisions. I cannot really specifically answer your question.

The Hon. DANIEL MOOKHEY: In respect of your proposed hybrid scheme in which there is, for want of a better word, a hierarchy, what is your proposed design mechanism to delineate the hierarchy? Is it on the basis of a threshold of claim, is it on the basis of a narrative test. What is precisely the proposed design?

Mr WHELAN: Threshold; so it is WPI, essentially—whole person injury—and at 10 per cent is the threshold where small claims versus larger claims. So we would see defined benefit with lower than 10 per cent WPI and common law representation of claims above 10 per cent WPI.

The Hon. DANIEL MOOKHEY: Do you support the concept of whole-of-life assessment?

Ms MULLEN: That is a complicated matter. What we have said in our submission, which I think the committee members have, is that we would contemplate the extension of reasonable medical and treatment amounts to be payable for life for those seriously injured claimants. We put forward a model which gives a reduction of the average premium of $155. The reason we did that was to give the Government a sense of what would need to be done to meet a specific affordability objective. Clearly, within any of these schemes adjustments can be made, tweaks can be made to allow higher or lower levels of benefits for certain cohorts of injured people—that is all doable. What we would say is that obviously wherever you increase the level of benefits flowing to certain cohorts, that will impact the affordability.

These are difficult questions for the Government to work through. What we have done in bringing forward this model with the actuarial analysis attaching to it and giving you a figure in terms of how it will improve the actual cost of the premium is to give everyone something to work with as a starting point, if you like. But we also do very much believe that this model does go a long way to meeting the very publicly stated objectives of the Government in the context of its reform program.

The Hon. DANIEL MOOKHEY: Before I hand to my colleague the Hon. Trevor Khan, I presume you heard the evidence of the Motorcycle Council?

Ms MULLEN: I did.

The Hon. DANIEL MOOKHEY: And their view about the relative opacity of the inputs into your actuarial models that result in the premium pricing aspect of it. Firstly, do you think that your inputs are, in fact, opaque? Secondly, do you think that there is merit in the idea that the data that your members have ought to be public or at least aspects of it should be protected for commercial imperatives and allowed publicly in addition to the publication process there to allow the crowd sourcing or the emergence of innovation around this aspect? Is there any merit in any of that?

Ms MULLEN: The regulator has extensive data collection powers under the governing Act. The regulator does, in fact, collect enormous amounts of data, including claims data, from our member companies who underwrite the scheme. Off the back of the data that is collected for the scheme, the scheme actuaries develop the relativities. I cannot speak to how that is actually done, but it is a very rigorous process done actuarially.

The Hon. DANIEL MOOKHEY: Do you think it is a good idea if the regulator was to make their data public? Would that be a proposition you would support?

Ms MULLEN: Given that the data is collected in an aggregated sense, I think there is an enormous amount of data about the scheme that already is published. So I guess you would need to be clear about what exactly is it that the members of the public would need that is not already being published by the regulator.

The Hon. TREVOR KHAN: I do not want to distract from all that has been asked before but can I just ask with regards to your members, essentially being four in this case, those four insurers have different business models, do they not?

Ms MULLEN: They do.

The Hon. TREVOR KHAN: The NRMA, for instance, has a large on-the-ground footprint in terms of offices spread throughout the State. Would that be right?

Mr WHELAN: Yes.

The Hon. TREVOR KHAN: And others have a much lighter footprint, a lot more being done through other mechanisms to attract customers. Would that be right?

Mr WHELAN: Yes.

The Hon. TREVOR KHAN: Have you got any concern as an organisation that some of your members may target low-risk customers or low-risk insured to the disadvantage of other insurers?

Mr WHELAN: No, I do not have any concerns about it because the insurers will always attempt to risk rate that was previously done, as in previous evidence given. It is increasingly the case that risk rating is more and more bespoke. So the ability of insurers to be able to select risks and be able to underwrite those risks at a price that is profitable and sustainable is really a commercial advantage. So if they can do it they should because that is about competition. Is not competition what we are all looking to enhance?

The Hon. TREVOR KHAN: We are dealing with a regulated market. We have got four operators in the market, so to talk in terms of free-market economics I think is perhaps cute.

Mr WHELAN: Okay. I would not have thought four was too low a number. I mean we would all like more but we do talk about a market that is not huge.

Mr DAVID SHOEBRIDGE: Normally it is described as an oligopolistic market.

Mr WHELAN: Most markets in Australia are either oligopolies or duopolies. So four in a market of this size is not unusual I would think.

The Hon. TREVOR KHAN: So if one of the insurers, for instance, aggressively targets new-car customers by bundling the markets with finance or the like, or offering free insurance for the first year and forcing, essentially, the used-car purchaser and the like into another insurer, you do not see any potential of, for instance, one of the insurers being forced out of the market because they are offering an unprofitable product?

Ms MULLEN: That is a very competitive model that you have just described. I cannot speak to what our members do individually, but that space is open for competition, as is any other cohort within the industry.

The CHAIR: You can go online with the data in it and get all the competitors up there.

Mr DAVID SHOEBRIDGE: But there is meant to be a community rating so that young males can afford to get their green slip cover; therefore, there is a relative subsidy of young males in the market, and women in their forties end up paying slightly more for their CTP so some money can be set aside for young males—that is called community rating, so everyone can get it. But your members' conduct undermines that community rating when they very aggressively just target the high-profit part of the market or the low-risk part of the market who are meant to be subsidising a common pool. If they are aggregated in just one or two insurers because they are bundling their other insurance products with them in order to attract the CTP, that undermines the community rating. You understand that, do you not?

Ms MULLEN: I think that business model is open to any insurer to compete in that space.

Mr DAVID SHOEBRIDGE: Well then do you not think there should be some limitations on the extent to which, if we are meant to be having a statutory product that has a community rating to it, bundling and other activities can happen that undermines community rating?

Ms MULLEN: Again I would refer the committee members to the report of Trevor Matthews. He does go into these issues. These issues are being worked through with the regulator and, as Rob has said, we would all like competition—competition is good; we support that absolutely. I would also turn the committee members to the premium guidelines and the market practice guidelines that SIRA issues. Those guidelines, if I recall correctly, have been recently revised and I think some of the issues that you are touching on were considered through the process of the revision of them, in particular the market practice guidelines.

Mr DAVID SHOEBRIDGE: Do you believe those guidelines are going to be effective?

Ms MULLEN: Well, I would hope so.

Mr DAVID SHOEBRIDGE: What elements of it do you think will change that behaviour so we can retain the community rating?

Ms MULLEN: I would have to take that question on notice and go back. But, again, it might be a line of questioning that you might like to take up with SIRA this afternoon.

Mr DAVID SHOEBRIDGE: But I am also happy for you to take it on notice, given you are looking at it not from a regulator's side but from the one who is going to be the subject of the guidelines.

Ms MULLEN: And all we can do as the Insurance Council is bring back information about the guidelines themselves; we cannot talk about what our individual members are doing in the context of those guidelines.

The CHAIR: The insurance submissions—I am not sure if yours includes this, but I am sure it does—talk about the benefits of a first party scheme in a reform process in terms of reducing the time for claims and improving efficiency and the relationship and that is, of course, strongly opposed by some of the Law Society's submission, saying that is not going to be the case. Could you outline your argument why that would improve the performance of CTP?

Ms MULLEN: Sure. The Insurance Council has not actually put forward a position on behalf of the industry as to whether the reform model that we brought forward should be delivered on a first party or a third party management basis.

The CHAIR: Some of your members have.

Ms MULLEN: That is a complex matter. Some of our members have expressed a specific view and I think everyone would acknowledge that there are advantages and disadvantages to both models. We are actually spending large numbers of hours at the moment working through this matter with our member companies so that we can assist the Government to do the final drafting that they would need to do for any reform bill that might come forward in the second half of this year. I cannot actually commit to one or the other.

The CHAIR: Would it be right to say that all members support first party—

Mr WHELAN: Some do; some do not.

The CHAIR: Some do, so do not?

Mr WHELAN: Yes, and some have a different view.

Mr DAVID SHOEBRIDGE: Some with a larger retailing network see first party as very attractive, I imagine?

Mr WHELAN: Some do, some do not.

The CHAIR: It has clarified that there is no uniform view on that.

Mr DAVID SHOEBRIDGE: You would have heard the Bar Association's package of reforms that it was proposing and you have probably read its submission?

Ms MULLEN: Yes.

Mr DAVID SHOEBRIDGE: Would your members support, for example, regulated costs for relatively modest injuries which cannot be contracted out of as a way of addressing fraud?

Ms MULLEN: We certainly acknowledge the very genuine submission made from the legal groups around that and we would acknowledge that that might go some way to addressing the affordability issue and to addressing the fraud issue. Again I go back to the reform model that we have brought forward which was specifically designed to go some way to meeting the stated objectives of the Government. We would certainly support any reforms to legal costs regulation which would go some way to meeting the objectives. Whether what the lawyers are bringing forward goes far enough to meeting the Government's objectives is a matter probably for others to comment on. We would just go back to our reform model and say that we have designed this in a way that we think goes a long way to meeting the objectives.

Mr DAVID SHOEBRIDGE: What do you say to the series of examples they gave of people who will be 10 per cent or less WPI—a nurse with an ankle fusion, a carpenter with a one level disc injury that has not gone to surgery but is nevertheless disabling, the gentleman in rural Australia who had the quite significant leg injury which may not get the 10 per cent whole person impairment [WPI] but his economic career is ruined? What would you say to that class of claimant who will be cut off after three to five years under your model from any economic loss or any medical assistance? What would you say, as an industry, to those claimants and how would you explain to them that it was fair that they did not get any?

Ms MULLEN: I think what we would say is we would acknowledge that the 10 per cent whole person impairment threshold does create a little bit of a cliff between those people who do have quite serious injuries but they do not quite meet that threshold. It is obvious that it does create a bit of a cliff effect. I guess through consultation ideas about how to help those people who are close to the margin might come forward.

Mr DAVID SHOEBRIDGE: But one of them—

The Hon. TREVOR KHAN: Let her finish.

Mr DAVID SHOEBRIDGE: One of them was at 4 per cent. You are misstating the question.

Ms MULLEN: No, I understand what you are saying. What I am saying is that through the process of further consultation some ideas about how to help those people at the margins might come forward. We would certainly be happy, as a process of consultation, to consider other ways of helping those people. What we would say—and again I go back to the point I made previously—is that where you water down the model that we put forward, that will impact the amount that can be saved on premiums. That may well be a decision that is made by government and if the New South Wales Government is happy to contemplate a reduction on average premiums of only $100 versus $155, that may well be part of the package of reforms. We would not say no to that. What we would just say simply is that it will impact the amount of money that you can take off the average premium.

Mr DAVID SHOEBRIDGE: I think in part that is what the Bar Association was asking for—some honesty about it; that there will be this quite significant class of claimants who will be quite seriously financially

disadvantaged by this scheme and are we willing as a society to say, "Well, we will take a $155 cut in CTP and these people will just have to go it alone after five years". That is a hard conversation, is it not?

Ms MULLEN: It is a very difficult issue. We absolutely understand what they are saying and they are absolutely within their rights to make those points.

Mr DAVID SHOEBRIDGE: Do you see an argument then to say if there are people with 10 per cent or less whole person impairment and they have obviously suffered quite a significant ongoing economic incapacity, that there should be an opening for those claimants to have access to ongoing benefits of at least that economic loss if they can prove a significant ongoing economic incapacity, even though they might be under 10 per cent?

Mr WHELAN: Is that not the trade-off the Government will have to make in assessing the various models because any scheme will have these sorts of issues that have to be dealt with and you have got to have the wisdom of Solomon to be able to make the call about where you make the delineation between benefits and every scheme has this issue. I mean, Transport Accident Commission [TAC] has the same issues and so on.

Mr DAVID SHOEBRIDGE: But you are championing a scheme which will see those people out in the cold after a certain number of weeks?

Mr WHELAN: We are suggesting a scheme model which can be adjusted depending on the priorities of government, and we have tried in the scheme structure we have put forward as a proposal that actually accommodates all the criteria and objectives that the Government made very clear to us at the outset of this process, so we have done that. Then it is up to government and other stakeholders to determine whether that scheme or others are actually appropriate and fit for purpose but we have made our points about why we think this scheme works, how it works and what it delivers. Then it is up to government to make decisions about what it wants to do with that.

The Hon. TREVOR KHAN: If there is no change in the current arrangements, what do you see as the impact of premiums over the next year or so?

Mr WHELAN: I think that is in the modelling.

Ms MULLEN: It is. In fact, a scheme performance report was recently released by SIRA that brings some of that information right up to date, only to about a month ago—it is on the SIRA website. I cannot remember the exact numbers but the projections are, if I remember correctly, that over the next 12 months there could be a significant increase in premiums again because of the behaviours that we are seeing with claims farming, claims exaggeration and possible fraud.

The Hon. TREVOR KHAN: If there is no change in the scheme, is that something you see continuing on, that is, is this trend of increased claims something that has plateaued?

Ms MULLEN: No, my understanding is it has not plateaued at all. In fact, what we have been hearing through the fraud taskforce is that the business model is actually replicating across the State and up into the northern suburbs of metropolitan Sydney, out into the eastern suburbs and possibly also into other jurisdictions as well, so it is not plateauing at all, sadly.

The Hon. TREVOR KHAN: I suppose this goes back to the indicia of what is going on; if we say this is starting—I will be politically correct and not identify areas—in a particular area, the increase in claims is now replicating into other areas of Sydney?

Ms MULLEN: Correct.

The Hon. TREVOR KHAN: Do I take it that it has not, at this stage, got into Wollongong and Newcastle?

Ms MULLEN: I would ask SIRA that question. My very general understanding is that the business model is replicating across the State but if you want to understand specifically geographic zones, perhaps again SIRA would have that information to hand.

Mr DAVID SHOEBRIDGE: So it is urgent to deal with the fraud issue?

Ms MULLEN: Absolutely.

Mr DAVID SHOEBRIDGE: It is genuinely urgent legislation this year?

Ms MULLEN: Yes, very much so.

Mr WHELAN: Yes.

The Hon. DANIEL MOOKHEY: My question arises in response to the line of questioning of Mr Shoebridge but also with reference to the presentation from the Royal College of Surgeons. Did you see that?

Ms MULLEN: Yes, I did.

The Hon. DANIEL MOOKHEY: The college suggested there be a whole of life impairment model but also a second claim right that arises after should the first source of funding be exhausted. They made that point relative to the lump sum aspect of it. In your proposed scheme would you support such a mechanism and would you also support that mechanism being applied to the defined benefits aspect of your scheme?

Ms MULLEN: Again, I go back to the point that we made in the reform model that we put forward where we do acknowledge that there would be a small number of the more seriously injured people who would have a very good case for ongoing life medical and treatment costs.

The Hon. DANIEL MOOKHEY: I want to ask specifically for not necessarily the seriously impaired; I am talking about the people who have an accident of which the effects at the time of trauma are relatively small but over time are magnified and can be traced relevantly and directly to the accident itself—that is the hand injuries?

Ms MULLEN: Yes, I understand. Look, we have not specifically contemplated that proposal so we would need to take that on notice. Again I would just say that if you were to do something like that it would have a cost impact. What I would also say is that the reform model that we have put forward is a defined benefits model for up to 18 months for those people who do not meet the 10 per cent whole person impairment threshold.

The Hon. DANIEL MOOKHEY: Eighteen months relevant to what?

Ms MULLEN: From the date of the accident?

The Hon. DANIEL MOOKHEY: For the purpose of assessing the injury or for the purpose of making a claim?

Mr DAVID SHOEBRIDGE: For the purpose of getting benefits?

Ms MULLEN: Yes, it is for the purpose of getting benefits. During that time, and I think the doctor mentioned that someone might, within a period of months after sustaining the initial impact injury, need further treatment through that period of time when someone would be making an assessment of whether they might meet the 10 per cent whole person impairment threshold. If they do think that they would our model says you have up to five years to keep getting your defined benefits for lost earnings, medical, rehab and treatment costs before you need to make a determination as to whether you are going to make a common law claim. The time limits within this model would give someone that time to determine how serious their injury was.

Mr DAVID SHOEBRIDGE: It would not allow them to access further treatment after they had resolved their claim? That is what Mr Mookhey was saying

The Hon. DANIEL MOOKHEY: That is what I am asking. In addition, I get the concept of a five-year period to see if there is a manifestation of injury, but what about for children? What about for people who suffer an accident at age three and the effects don't show up until age 12 or 15, which is common in child development?

Ms MULLEN: That is a complicated matter.

The Hon. DANIEL MOOKHEY: I accept that, but we have to write laws to answer that scenario. All the evidence points to the fact that particularly for people in the physical development and brain maturing phase of their life, if you do adopt a time-based scheme you run the risk that they will find themselves in the scenario that Mr Shoebridge pointed to, where they are out .

Mr WHELAN: That is true and the points made are entirely valid. That would mean an impact on the scheme affordability. The reflection of that capacity to be able to put capital aside, to be able to pay claims that may manifest in 10, 15, 20 years time is substantial and that would require the insurers to be able to price that into the system. We do not have an argument with that type of proposal, it simply has implications for how you afford that within the existing scheme. If you want to have those benefits you have to pay for them.

The Hon. DANIEL MOOKHEY: Are you able to furnish the Committee on notice what would be the relevant factors for an insurer to price that?

Mr WHELAN: We can seek to try and do that.

The CHAIR: We have asked the college to give us information about quantifying the group of trauma as well.

Mr DAVID SHOEBRIDGE: I have one question on current premiums.

Mr WHELAN: There may be indicators with other schemes around the country that would help.

Mr DAVID SHOEBRIDGE: I had a look at the cost of getting a green slip and I went on to the green slip calculator. I chose a four-year-old Corolla. I should have chosen a Prius. It is registered in the City of Sydney.

The Hon. TREVOR KHAN: You drive a Prius.

Mr DAVID SHOEBRIDGE: You would think I support a hybrid model, but I do not. What I found surprising was the premium ranged from $578 to $825. But three insurers, GIO, AAMI and Allianz, all put in a bundled additional extra driver cover and a series of lump sums and other additional insurance cover that I would be paying for out of my premium but is not required as part of the statutory model. Those additional first party covers seem to be a relatively recent addition and are almost certainly inflating the cost of green slips. Do you know to what extent, when we are paying for green slips, we are not paying for the statutory cover but for paying for the inflated costs that arise out of the first party cover that is already factored into those green slips?

Ms MULLEN: We would have to take that question on notice. I can say certainly that additional first party cover has been around for some time.

The Hon. TREVOR KHAN: With some of them.

Ms MULLEN: With some of them and in a general sense my understanding is that the cost of providing that cover is marginal, but we would have to get that information for you.

Mr DAVID SHOEBRIDGE: The problem is that it muddies all of the data that the Government has about comparing the cost of the third party cover with first party cover because for many motorists they are potentially paying a significant amount of money in their green slip premium for first party cover through these bundled products.

Ms MULLEN: I do not think the proportion of the premium that would go to that first party cover would be significant. We would have to come back to you.

The Hon. TREVOR KHAN: Is that 5 per cent or 10 per cent?

Ms MULLEN: I could not tell you. We would have to take that question on notice. Typically of that first party cover it is on the basis that you get a set sum for a specific kind of injury.

Mr DAVID SHOEBRIDGE: Some of it is tabled and some of it is not, but you are guessing at the moment as to the figure?

Ms MULLEN: I am giving a general response.

Mr DAVID SHOEBRIDGE: Some actual data would be good.

The Hon. DANIEL MOOKHEY: It is unrelated to anything we have discussed thus far but arises from an earlier question by my colleague. Can you take on notice and provide to us a statement as to how precise your members are responding to the emergence of ride sharing and how that has been priced and risked; the existence of policies or products of that type and any aspect of risk assessment about how ride sharing aligns with taxis in terms of identical or different risk factors?

Mr WHELAN: It is a current issue.

The CHAIR: There have been a number of questions on notice and the secretariat will be in touch with you with details and you have 21 days to submit the answers.

(The witnesses withdrew)

(Luncheon adjournment)

EMMA MAIDEN, Assistant Secretary, Unions NSW, affirmed and examined

SHAY DEGUARA, Industrial Officer, Unions NSW, affirmed and examined

The CHAIR: Would either of you like to make a brief opening statement?

Ms MAIDEN: The main concern of Unions NSW is that there are gaps in insurance that have the potential to destroy the financial security of working people who are injured in a motor vehicle accident. That is the main basis for a number of the recommendations we have made in our submission. We note that prior to June 2012 when the changes to workers compensation were made in New South Wales, we had a no-fault system that covered workers travelling to and from work not only in motor vehicles but also other forms of transport. After those changes were made in June 2012 the number of journey claims under the workers compensation system has completely plummeted. We have estimated that approximately 3,000 to 3,500 claims per year are now without effective insurance coverage in relation to injuries on the way to and from work. Therefore we are recommending that the CTP scheme be extended to all at-fault claims of workers driving to and from work.

Another consequence of the workers compensation changes in 2012 was the transfer of the no-fault vehicle journey claims to the Motor Accidents Scheme but what was not transferred was the protection in relation to the employment relationship for a worker injured in a motor vehicle accident. The consequences of that are numerous both for the individual and for the Motor Accident Scheme itself. Firstly, because we have not replicated in the Motor Accidents Scheme the inability to terminate someone injured in a motor vehicle accident up to a certain period of time, allowing that worker to be terminated inhibits their ability to return to work.

Secondly, by not providing those protections and removing that person from the workplace actually increases the costs to the Motor Accident Scheme for their current and future income loss. Another consequence of the transfer is the transfer of costs from employers under the workers compensation system to the general public of New South Wales through compulsory CTP premiums and increases there because those costs are no longer borne under workers compensation but more broadly. That leads to our recommendation that the Motor Accidents Compensation Act and the Industrial Relations Act be modified to protect all workers from termination for the same period as under the Workers Compensation Act if they are making a claim under the provisions of the Motor Accidents Compensation Act.

Our submission also provides some statistics and tables that show what we are concerned about in terms of the number of people falling between the gaps in that they are not being protected for at-fault claims. The tables are all there in our submission. Our very rough calculation, and obviously we are not actuaries—

The Hon. TREVOR KHAN: Nor are we.

Ms MAIDEN: Perhaps you might have access to better information than us. But our rough calculation estimates that by including the at-fault claims within the Motor Accident Scheme would increase the cost of a policy by about $7 and we think that is worth it to create peace of mind for the millions of workers who drive to work daily. We recommend that some further work be done in relation to that because, as we have said, we are not actuaries and we cannot be absolutely certain as to our maths there, but surely the Committee could inquire with the scheme actuary what it would cost to cover all workers on journeys to and from work and their home for at-fault coverage under the CTP.

We also recommend that the Committee inquire with the scheme actuary to identify the likely difference in premiums in relation to that extended coverage across the five million CTP policyholders. So that is the basis of our submission. We think if we could close these gaps there would be benefits to many working people within New South Wales and improved activity in terms of allowing people to maintain that connection in work, as well as some reduced costs to the scheme that have been transferred since the workers compensation changes.

The CHAIR: Mr Deguara, do you wish to add anything?

Mr DEGUARA: No.

The CHAIR: I am sorry to get you to go back over what you have just submitted but I am new to this inquiry. Except for the Hon. Daniel Mookhey I think the rest of the Committee members are old hands.

The Hon. TREVOR KHAN: Some of us are very old!

The CHAIR: It is like seeing a reunion of old friends with some of the witnesses today. For my benefit, could you please go back over what you were saying about protecting workers from termination and

what you meant by that in terms of comparing it to workers compensation as opposed to the compulsory third party scheme?

Ms MAIDEN: Sure. Before the 2012 workers compensation changes, journey coverage claims were included within the workers compensation scheme. There is a small provision there now but we can see from the statistics that it is completely ineffective at providing any coverage for journey claims for workers in New South Wales. So removing journey claims from that scheme means that any one of those that is a vehicle accident is not fully covered by the motor accidents scheme. What used to happen was that generally workers who were injured in a motor accident who could make a claim under workers comp would actually make it under the CTP scheme first and then that would later be refunded to the workers compensation scheme. The cost before the 2012 changes was about $70 million to the scheme, which is a very small amount. I am just saying that off the top of my head so I hope I have that right.

Mr DAVID SHOEBRIDGE: That was the cost to the workers comp scheme?

Ms MAIDEN: Yes, the cost to the workers comp scheme was about $70 million; and about half of that was recouped.

The Hon. TREVOR KHAN: Because there were at-fault drivers and journey claims that were covered by the workers comp but not covered by the CTP scheme.

Ms MAIDEN: Yes, that is right. Under the workers comp scheme if you are injured at work, but obviously not with a journey claim, then you cannot be terminated as a consequence of that injury for six months. So that is the provision that exist in the workers compensation scheme. But by moving all those journeys out into the CTP scheme and not providing a similar provision in relation to protection from dismissal you really leave that person at the mercy of their employer to do the right thing. In our experience it is so much better to actually give that person some protection and give them a chance to get back to work. We should not just risk their financial security.

The CHAIR: I understand now. So you are talking about a protection they had under the previous scheme that did not transfer across.

Ms MAIDEN: Yes.

The CHAIR: Are they a segmented, identified claims group in CTP? Or are they just amalgamated into CTP claims? That is probably a question for the State Insurance Regulatory Authority. But can they pull the figures out and say, "These are the people driving to work who have had a car accident"?

Ms MAIDEN: They were certainly identified before, because of the transfers that used to occur between the schemes. So I do not think it would be any additional administrative burden to identify those people, because previously they were always identified as to whether or not it was a journey to work so that the two schemes could transfer between themselves.

Mr DAVID SHOEBRIDGE: So your recommendation is for wherever a worker is injured and makes a claim under the provisions of the Motor Accidents Compensation Act. But I assume what you are talking about is where they are on a journey to or from work and they have made a claim under the motor accidents act. So where you have journeys to and from work is where they should be covered. Is that right?

Ms MAIDEN: Yes, that is right.

Mr DAVID SHOEBRIDGE: And we go back to the old formulation that it has to be a direct journey, that a significant break would reduce the coverage and those sorts of elements that used to be there under workers comp. You want that replicated so that workers will not be sacked—for example, a nurse driving home late on a country road who has a kangaroo jump out at her is not covered by workers comp. You want them to be covered by some form of employment protection?

Ms MAIDEN: Yes, that is right.

Mr DAVID SHOEBRIDGE: In actual fact in that case they would not have a motor accidents scheme claim.

The Hon. TREVOR KHAN: No.

Mr DAVID SHOEBRIDGE: So would you simply want them to say anybody who is injured on a journey to or from work is covered by employment protections?

Mr DEGUARA: We are actually asking that they also be covered under the motor accidents scheme if they are at fault as well.

The Hon. TREVOR KHAN: I am not having a shot but it would be illogical, would it not?, to create a class of driver, because that is what we are talking about, and say that there should be a scheme that provides at fault and exclude all other drivers from a no-fault scheme? What you are essentially asking for is a no-fault scheme, is it not?

Mr DEGUARA: Quite a significant amount of people's driving hours are spent driving to and from work.

The Hon. TREVOR KHAN: I get that. But you are not suggesting that the husband who is at home looking after the kids should have a different entitlement to the wife, the nurse, who is heading off to work and has a similar accident, are you?

Ms MAIDEN: We were seeking to replicate what existed previously.

The Hon. TREVOR KHAN: I understand that. But I am talking in terms of the design of this scheme.

Ms MAIDEN: If it is easier to broaden it to all drivers to ensure that no one is able to be terminated as a consequence of a claim under the CTP—

The Hon. TREVOR KHAN: Yes, but it is more than that—you are looking for a no-fault scheme for those people?

Ms MAIDEN: Yes, definitely.

Mr DAVID SHOEBRIDGE: There are two elements to what you are asking for. One is to return the benefits to workers travelling to and from work, that is your first ask.

Ms MAIDEN: Yes.

Mr DAVID SHOEBRIDGE: And if you cannot get it through the workers comp scheme then you would like it through the motor accident scheme regardless of fault. But the second element, which I think is the other element, is to say that where they have been injured on a journey to or from work they should be protected from termination. That second element though is focused on the nurse and not the partner. Is that right?

The Hon. TREVOR KHAN: I understand the proposition. Let me just pursue my line of questioning here. We will put that to one side. What I am inviting is how you design a motor accident scheme that segments a particular class of people—that is, a worker on the way to or from work—and provide them with a different level of cover to that of the spouse, partner, friend, auntie or uncle who might be doing a similar journey but is on a scheme that provides that it is a fault system.

Ms MAIDEN: You could certainly do it.

The Hon. TREVOR KHAN: It would be illogical though, would it not?

Mr DEGUARA: It is already in place for a lot of insurance policies, even in the area of car insurance. That is why there is the Australian Pensioners Insurance Agency [APIA] and all those different sorts of schemes that cater just to pensioners, for example.

The CHAIR: I think you have made your point. This leads to the proposals the Government has out, including no fault overall. That would pick up this issue for you. It would not pick up the six-month issue, which I was not aware of. It is an interesting point that you have raised. Generally would you be supportive of that broadening out? I think that picks up on what the Hon. Trevor Khan is saying—it would be difficult to justify segmenting out just the drivers going to or from work, and for them to be in a no-fault scheme, and for the rest of the drivers to have a fault situation.

Ms MAIDEN: No, I agree. Certainly I think the Victorian scheme is a no-fault scheme, and that applies broadly so I think it would be a good idea to make it as broad as possible. Obviously, if I am injured on a Saturday, not going to and from work, driving my car there are still going to be costs to me, costs to my employer and costs to society if I am not facilitated to return to my job. That argument does, I think, apply more broadly, but in terms of just our argument and trying to maintain what had existed under the workers compensation scheme, we have constructed the recommendation more narrowly; but we would the more than happy with the broader recommendation that gave more comfort to a wider cohort of people.

The Hon. DANIEL MOOKHEY: I was going to ask a question which arose in response to Mr Khan's line of questioning before I pivot to another line of questioning, but the form of protection that you would seek against people who suffer an adverse action or otherwise are a response from the employer are on the basis of a claim made under the scheme. Is it the case that there is a whole variety of different forms of protections and other forms of legislation that do not require you to actually have to segment, and that you can

simply have the principle reflected even through an adverse action type of clause that says a person cannot be—you know, akin to what existed before?

Ms MAIDEN: I am sorry, there is other protection in terms of anti-discrimination law or adverse action.

The Hon. DANIEL MOOKHEY: Yes, concepts in other laws that could be imported into this, which would avoid the need to do what Mr Khan is suggesting—which is to segment the drivers.

Ms MAIDEN: Yes. You are right. That would be a simple solution.

The Hon. DANIEL MOOKHEY: On notice, perhaps, are you able to provide us with a list of what those like concepts are in either discrimination law, workplace law or other forms of law that we could look at as models that would reflect the type of things that you would like?

Ms MAIDEN: Certainly, yes.

The Hon. DANIEL MOOKHEY: Wonderful. My line of questioning is that, if I understand your argument correctly, there is a tremendous nexus between workers compensation and compulsory third party [CTP] insurance. Should one scheme be adjusted, it is likely that effects will show up in other schemes. That is the first part of your argument?

Ms MAIDEN: That is correct.

Mr DEGUARA: That is what the figures show from Ernst and Young as well.

The Hon. DANIEL MOOKHEY: The other aspect of your argument is that in response to the 2012 changes to the workers compensation scheme, it has shown up that either there are claims presenting to CTP or people are not claiming at all and there is now a cohort of people who are essentially internalising that cost themselves.

Mr DEGUARA: That is right.

The Hon. DANIEL MOOKHEY: The other aspect of your contention is that, to the extent to which that cost is claimed to the CTP scheme whereas under the workers compensation scheme the cost would be covered by employers paying the premium, now the general population is picking up the cost that otherwise would be claimed.

Mr DEGUARA: Yes.

Ms MAIDEN: Yes.

Mr DEGUARA: That is correct.

The Hon. DANIEL MOOKHEY: The other aspect of your argument is that the cost mitigation aspects of workers compensation—the return to work plans, the insurer-led aspect—no such like provisions exist in the CTP to the same degree or otherwise; that is, this system was not designed to do that, and therefore a large part of the additional costs that have been borne could have been avoided if, firstly, you could pursue a workers compensation claim or, secondly, if you were to import the same principles across to the CTP as a cost mitigation aspect to CTP premiums. Is that right?

Mr DEGUARA: That is correct, yes. Under workers compensation, there is a duty of the employers to return people to work, to suitable duties, et cetera, and protections from termination. So you have the nexus to the workplace, the engagement of the workplace, and people can actually ring up their employer and say, "I'm going to be coming back next Monday", et cetera. That is the connection.

The Hon. DANIEL MOOKHEY: The point is that a large part of the upward pressure on premium prices is because people are having to come forward and claim from a scheme that was never really designed to have to cover them to do with work.

Mr DEGUARA: Yes.

The Hon. DANIEL MOOKHEY: And that there is no cost mitigation aspects of the CTP scheme that are putting countervailing downward pressure on prices that happens with the workers compensation scheme.

Ms MAIDEN: Yes.

The Hon. TREVOR KHAN: How do you know that?

The CHAIR: I was just going to say that it would be interesting if you could come up with the figures.

The Hon. TREVOR KHAN: How do you know that? The proposition he puts has perhaps not been put to anyone else yet.

The Hon. DANIEL MOOKHEY: They are the first people to advance this argument.

Mr DEGUARA: Sir, we look at workers compensation, and the things that we get told in workers compensation that put downward pressure is the length of the claim and the sort of degree of harm in the injury. A lot of these are the same sort of claims—back injuries, et cetera. If people are not being paid the whole of the income component, as they are under CTP at the moment, you would be able to put downward pressure on the scheme's costs as well because you are actually not paying over the 4,000, or whatever it is, per week. They might be back for 12 hours or 20 hours a week.

Ms MAIDEN: There certainly is workers compensation research which shows that the sooner you can return someone to the workplace after an injury, the greater is the reduced cost to the scheme in the long run.

The Hon. TREVOR KHAN: I absolutely accept that.

Ms MAIDEN: That research would apply whether the injury was work related or motor accident related in terms of the cost to the CTP scheme.

Mr DAVID SHOEBRIDGE: What you are saying is that it is both in the scheme's interest and in the worker's interest if there were return to work provisions similar to the Workers Compensation Act in the motor accidents scheme, or perhaps some arrangement that said when you are injured on a journey claim and you are covered by the motor accident scheme, the motor accident scheme has to implement the return to work arrangements that are contained in the workers compensation scheme. Is that right?

Mr DEGUARA: Yes—something similar to that, yes. The finesse will be up to the Parliament. There is also the medical side as well. If you can actually help someone with medical adjustments in your workplace, you can come back.

Mr DAVID SHOEBRIDGE: To your knowledge, does it happen at all under the motor accidents scheme, if somebody has been injured on a journey claim, or what previously would have been a journey claim, but they cannot establish the real and substantial collection to work, or whatever the bizarre tests are under the 2012 amendments are? Is there any interaction between the motor accident insurer and workplaces that is helping people to get back to work?

Ms MAIDEN: With regard to employer no. This is very anecdotal, but in our experience it really just comes down to the attitude of the employer. Some employers accommodate providing limited duties or have more contact with the worker while they are off work and maintain that connection with work, and give them a staged return over a number of weeks.

Mr DAVID SHOEBRIDGE: But there is no return to work plan or engagement with a rehabilitation provider that you get in workers compensation?

Ms MAIDEN: Occasionally you might have employers use similar methods, but it really is not very commonplace.

Mr DAVID SHOEBRIDGE: It requires a generous employer, who is funding it themselves, rather than access to a statutory scheme that assists.

Ms MAIDEN: That is right.

The Hon. DANIEL MOOKHEY: Arising out of that, can I ask you about the ability of a worker to pursue change to work arrangements to facilitate a staged return or an early return to work that exists under workers compensation, I presume that there is no like provision in the CTP scheme, so there is no capacity—in fact, there is no obligation at all—for the employer to do anything to facilitate a return to work plan under CTP or the motor accidents Act as far as you know?

Ms MAIDEN: No, that is right. Legally, an employee could make an argument under discrimination law that their disability, even if it was a short-term one, need to be accommodated within the workplace by the making of adjustments and so forth, but that is really not a very satisfactory path because you have to allege disability discrimination in the first place. There is very little case law. There are many exceptions, and so forth.

The Hon. DANIEL MOOKHEY: In the absence of any requirement for an employer to involve themselves, that results in, essentially, the economic loss internalised by a worker to be greater. That is right?

Mr DEGUARA: Yes.

Ms MAIDEN: That is correct.

The Hon. DANIEL MOOKHEY: Therefore, that is also recouped through the litigation process, should a worker pursue it under motor accidents compensation.

Mr DEGUARA: Economic loss, yes.

Ms MAIDEN: Yes, correct.

The Hon. DANIEL MOOKHEY: Higher economic loss, and that therefore costs the scheme more.

Ms MAIDEN: That is right. That is our contention.

The Hon. LYNDA VOLTZ: You may have answered this already. The 2015 scheme's performance report by the Motor Accidents Scheme shows the correlation from 2013 to 2015 in a graph in which workers compensation recoveries significantly dropped. But have you looked at the correlation between the drop in workers compensation recoveries and the increase in minor severity represented claims, which have significantly increased as workers compensation recoveries have dropped. Is there some correlation there?

Mr DEGUARA: We are not the ones who wrote the Ernst and Young report. Is that the one you are referring to?

The Hon. LYNDA VOLTZ: Yes. That was done for the MAA—SIRA.

Mr DEGUARA: It looks like there is a rise in those minor ones. There will probably be a rise in the more severe ones and also the minor ones.

The Hon. LYNDA VOLTZ: There is a rise in those, but there is also, as you can see from the graph, a significant decrease in the workers compensation after 2012 when, obviously, journey claims were taken out.

Mr DEGUARA: I think we have circled that in our submission as well. There has been a big decline.

The Hon. LYNDA VOLTZ: Do you know if that is correlation or is that just—

The Hon. TREVOR KHAN: It could be an entire coincidence.

The Hon. LYNDA VOLTZ: It could be an entire coincidence; I am just wondering. That is why I am asking the question.

Mr DEGUARA: The workers compensation has been reduced because of the change to the workers compensation legislation, whereas the other one we are not party to the actuary parts of that. I think Mr Playford is the actuary for the workers compensation one, who works for PricewaterhouseCoopers, and he has said in reports to this Parliament that there has been a significant reduction of about 7,000 or 8,000 a year down to about 30-odd a year in workers compensation.

The Hon. LYNDA VOLTZ: In workers compensation recoveries?

Mr DAVID SHOEBRIDGE: They are journey claims.

The Hon. LYNDA VOLTZ: But we do not know if any of that was shifted into minor representative claims.

Mr DEGUARA: I would say there would be a big proportion depending on whatever the injury profile is of the scheme.

The Hon. LYNDA VOLTZ: Just give me the figures on the reduction again?

Mr DEGUARA: It was around about 7,000 or 8,000 journey claims. About half of those were recouped through the other scheme because they were not at fault or whatever.

The Hon. LYNDA VOLTZ: And it has gone to 30, has it?

Mr DEGUARA: It went down to about 30. It has slightly blown up again because at first the insurance companies were not paying other journey claims as well, which were still covered by legislation. They have now reversed that. But it is still only about 80 or—

Ms MAIDEN: It is tiny compared to what it was.

The Hon. LYNDA VOLTZ: So it may have increased to 80. But it is a significant difference between the 7,000 and 8,000 that were the journey claims before.

Mr DAVID SHOEBRIDGE: One per cent.

Ms MAIDEN: It is tiny by comparison.

Mr DAVID SHOEBRIDGE: Unions New South Wales says that it would endorse a no-fault scheme if that picked up injured workers. Are you aware of the fact that the no-fault scheme that is on the table will have a very clear limitation on the period for which an injured worker in a motor accident would receive weekly benefits and medical expenses and would be cut off in many cases after, potentially, 18 months, sometimes after five years? Is that the kind of no-fault scheme that you are saying you support?

Ms MAIDEN: No. We are concerned about any moves towards a scheme that replicates the kind of caps and limitations that exist in the Workers Compensation Scheme post 2012. We think the evidence in terms of the effectiveness of that scheme to deliver the Government's so-called objectives has shown it to be a complete failure and that actually putting caps and limitations on injured workers has just dramatically had terrible financial and emotional consequences for those workers with no improving in the rate of return to work, no reduction in their injury rate or any of the actual changes that could reduce the cost of the scheme over the medium to longer term. So we would be concerned that if the CTP scheme mirrors those changes to the workers compensation we would not support them.

Mr DAVID SHOEBRIDGE: We are not here to revisit the Workers Compensation Scheme, but, broadly, the Workers Compensation Scheme is the kind of hybrid model where there is access to some limited modified common law damages for some very seriously injured workers, but workers who fall under a certain WPI threshold have only a defined statutory benefit. From your experience in the Workers Compensation Scheme, is that kind of hybrid scheme actually delivering fair outcomes for injured workers?

Ms MAIDEN: No, it is not. It is actually being used to basically throw injured workers on the scrap heap.

Mr DAVID SHOEBRIDGE: Rather than talking the broader politics of it, could I ask you to focus on individual examples who fall through the cracks, where they are not able to access the common law damages because they are not deemed to have a sufficiently severe injury, but where their statutory benefits run out because they are time limited? What stories are we talking about?

Ms MAIDEN: I cannot give specifics, but the kind of examples we would be talking about would be somebody who is injured, whose injuries are about 12 per cent whole person impairment, so it does not meet the serious injury threshold and yet they have a serious ongoing injury and pain and medical problems. Their employer terminates them and they are in a situation where no other employer is willing to give them a go even though they do have some limited work capacity. They are then put into a situation where a year after they have been cut off the weekly payments their medical payments are cut off—although I know that has increased to two years now—and that they are then in a situation where nobody will hire them, they cannot access Centrelink payments because of their spouse or they have assets of a limited amount that still will not allow them to access that kind of government support and they are just in this terribly dire situation. We also have examples under that scheme where workers are cut off well before the limits, the caps that are in the scheme.

The Hon. TREVOR KHAN: Can I just raise this, Chair, at this stage that we are now starting to move on to essentially a recitation about the Workers Compensation Scheme. I understand the first point, but we are now starting to talk about how the Workers Compensation Scheme is operating and we are going beyond the remit of this inquiry.

The CHAIR: I think that is fair. We understand the illustration you have given us in terms of comparison. We will move on if we can.

Mr DEGUARA: What we can do to park that conversation for another day is that we have done some research from Macquarie University into that long-tail and short-tail scheme and we can provide that—

The CHAIR: In regards to CTP or in regards to—

Mr DEGUARA: Regarding the workers compensation and the strategies for the long-tail and the short-tail.

The CHAIR: You can provide that to us; it might help us.

Mr DAVID SHOEBRIDGE: If it illustrates the gaps in the hybrid scheme that would be useful.

Mr DEGUARA: And it has case studies in there like Mr Shoebridge has asked for as well.

The Hon. DAVID CLARKE: Ms Maiden, you said earlier, unless I am wrong, that to reintroduce the work coverage work journeys would be $7 for each premium.

Ms MAIDEN: That was our very rough calculation, our estimate that it would cost, that is correct, to introduce.

The Hon. DAVID CLARKE: Can you take this on notice: Can you provide us some detail of how you got to that figure?

Ms MAIDEN: It is actually our recommendation to the committee.

The Hon. DAVID CLARKE: Can you provide us the maths that you used.

The Hon. DANIEL MOOKHEY: It is in the submission.

Mr DEGUARA: It was based on the submission from the ALA to the workers compensation inquiry, which said that it was $35 million cost to the Workers Compensation Scheme, and then it is 5 million policies under CTP. So it is 35 divided by five, which is seven.

Ms MAIDEN: That is the maths.

Mr DEGUARA: It is very simple, and we acknowledge that.

Ms MAIDEN: We recognise that. That is why we think it is worthy of further investigation by the committee to those that have that information at their fingertips.

The CHAIR: It goes back to the Hon. Trevor Khan's point about further complicating the system as opposed to trying to reduce the complications.

The Hon. DANIEL MOOKHEY: Various people this morning advanced various principles that should guide us in the design phase of a hybrid scheme or no change or in the assessment of the improvements that could be made to the existing scheme. Whole of life impairment, whole of life assessment, has been the key to determining claims. Is that a concept that you would welcome or do you think that that should be the basis on which the scheme is designed?

Ms MAIDEN: We would express some caution in relation to the whole person impairment test, if that is what you are referring to.

The Hon. DANIEL MOOKHEY: No, sorry, whole of life from the time of the trauma incident as being a period of time in which people are able to be judged on the basis of the claim but also the extent to when they can make a claim, if you follow. I have not explained that particularly well.

Ms MAIDEN: I am not sure. I might need to take that on notice. I am sorry, I am not familiar with that.

The Hon. DANIEL MOOKHEY: In respect to the objections to the design of a hybrid scheme, for example, the cap aspect, if such a scheme were designed, should it be reflective of damage caps or should it be based on a narrative test; that is, rather than saying only claims that are less than $50,000 should be made through a defined benefit scheme and anything above can be dealt with through at fault and through common law should it be on the basis of serious injury rather than a cap scheme? Is that a better design for the way forward, in your experience?

Ms MAIDEN: Yes; I mean, it does not allow it to be simple but it does allow it to actually look at the nature of the injury itself. Obviously schemes that provide more rights to those who are more seriously injured and some compensation to those who are less seriously injured is the way to go and that is more to do with the nature of the injury and the consequences for that individual; it is more of an individualised kind of test rather than arbitrary caps.

The Hon. DANIEL MOOKHEY: So, we should be designing to allow individual circumstances to be the guiding principle as opposed to putting people into cohorts or having to match them to an impairment level in order to assess their rights, is that the way forward?

Ms MAIDEN: That would be our view, I would think. We have not considered the construct of the CTP scheme in that level of detail so perhaps we could take that on notice.

Mr DAVID SHOEBRIDGE: One thing you were asking of us is to get the figures. If we could ask from SIRA, who is the regulator: Can you provide us with an estimate of what the cost would be to reinstate coverage for journey claims? Are you also asking us to, if we can, see if more broadly the motor accidents scheme could provide improved services for return to work, whether or not the injury happens at work; but that should actually also be a part of a motor accidents scheme like it is with the workers compensation scheme.

Ms MAIDEN: Yes, I think that would be ideal.

The CHAIR: Thank you for your submission and your time this afternoon in presenting to the inquiry. You have taken a few questions on notice. The secretariat will be in touch with you to follow those up. Responses to those questions are required within 21 days. Thank you very much.

(The witnesses withdrew)

ANDREW MORRISON, Senior Counsel and spokesperson, Australian Lawyers Alliance [ALA], affirmed and examined

Dr MORRISON: It might be worth noting that I happen to be also Chair of the Bar Association common law committee, though I do not appear in that capacity and as a consequence I was party to the Bar Association's submissions as well as the ALA submissions in the sense that I had to sign off on them as well. To that extent I certainly would adopt what was said by Mr Stone and Ms Welsh earlier and I hope not to repeat those matters.

There are a few points that have arisen out of the evidence today. The first point is that we need to be very careful when we talk about scheme efficiency. We already have a hybrid scheme so when scheme efficiency is said to be 45 per cent, that fails to take into account multiple no fault elements; specifically, lifetime care, blameless accidents, special provision for children and the ANF, that is, the first $5,000 is no fault. Those are the things which take the scheme to 64.4 per cent scheme efficiency and as my learned friend Mr Stone said earlier this morning that is comparable with other scheme or indeed better than most. But in addition to that, as Mr Shoebridge pointed out earlier, referring to three of the insurers, they have first party schemes. In fact, from personal experience, I can say having read the documents, the fourth of the insurers, the NRMA, also has a first party scheme as well and provides some level of cover for drivers at fault.

There are, to my knowledge, no statistics on what that is worth but it would be an interesting question for the insurance industry to cost that and, indeed, it should be taken into account in looking at scheme efficiency because if the comparison is being made with a scheme such as Queensland, Queensland is purely a fault-based scheme; Queensland is not National Disability Insurance Scheme compatible and the premium payers of the third party scheme in Queensland are going to have a very ugly shock in the near future when their scheme has to become NDIS compatible in the way our scheme already is.

The second matter is excess profits. It has been pointed out in a number of the submissions that what was the Motor Accidents Authority [MAA] and now SIRA has failed to control those profits in approving the estimated 8 per cent year after year. There is much to be said for a surcharge on excessive profits in the future but we are aware from discussions with the Minister that he is very well aware of this issue and it has been a major cost to the scheme. Now we cannot get back the amounts because premiums are set for the future not for the past but we should take into account the fact that in any major changes to the scheme, actuaries will always factor in a significant allowance for uncertainty so if there are major changes made to this scheme it has to be anticipated that although in theory you might be saving $150 in premiums by taking the drastic measures the insurers have suggested, in fact the actuaries, because of the uncertainty of how any changes will work out, will reduce that saving very significantly.

Mr DAVID SHOEBRIDGE: Actuaries are a conservative bunch?

Dr MORRISON: Yes and almost every major firm of actuaries in New South Wales is very much already tied to the insurers. There are no major firms of independent actuaries left in New South Wales for us to consult. We have had to go interstate on occasions for that reason. The next matter that I would just refer to is discount rates. This Committee has accepted in the past and has recommended to government without it being accepted by government that the 5 per cent discount rate is excessive and is a burden on the most seriously injured. This Committee should continue to recommend that the 3 per cent discount rate recommended by the High Court, and progressively abandoned except in a very small number of cases by the New South Wales Government over many decades, is the proper rate, having regard to the fact that the expectation is that a lump sum invested has to return an amount after tax and inflation by way of conservative investments and anyone who can produce 5 per cent in the present climate, conservatively invested after tax and inflation, should get a medal.

The Hon. DANIEL MOOKHEY: Or my retirement savings.

Dr MORRISON: The threshold has taken some discussion earlier in the day; 10 per cent plus WPI, because 10 per cent does not get you there, or serious injury in Victoria, produce much the same result. Only about 10 per cent of those injured get through that hurdle. If 10 per cent is the measure of entitlement beyond 18 months, three years or five years then it produces the very unjust, arbitrary and unfair results which the Committee's attention has been drawn to. All of us have had experience of cases where at the Medical Assessment Service [MAS] one doctor, looking at the same patient, produces 9 per cent and another produces 15 per cent on exactly the same evidence. There are manifest injustices. On the other hand, and in favour of the WPI, it has been highly resistant to bracket creep. There has been virtually no bracket creep in it.

There does seem to be a gross injustice in having one measure of threshold for motor accident victims and another for the victims of negligence generally in the community under the Civil Liability Act. We have great difficulty in understanding the justice of not using the 15 per cent threshold for the beginnings of pain and suffering with a progressive downgrading and reduction until you get to 32 per cent. We now know that despite the outcry which led to the change to the Motor Accidents Act, which used that threshold system, there was in fact, with retrospective information, no need for that change. The old threshold was, in fact, working and it is the same threshold as applies in all other civil liability cases in New South Wales, apart from intentional injury.

The concern about the insurance model and the cutting off of economic loss is very serious. We know from the Transport Accident Commission [TAC] scheme in Victoria that the effect has been a cost shifting between the Victorian Government scheme and the Commonwealth. In effect, in Victoria after 18 months people are thrown on to Centrelink benefits. Heaven help them if they have a mortgage. Heaven help them if they have other responsibilities for family. It is an appalling state of affairs. I would hate to see that brought in in New South Wales.

The insurers referred in their submissions to first party insurance. What they mean by that of course is that anyone who gets into a motor vehicle should have their own insurance. That is not just adults, that is children as well. A child may not be earning any money now, but if their capacity to earn in the future is adversely affected by an injury, which does not get them over the threshold, then they are going to need private insurance. Many people will not be able to get insurance. Many others will not be able to afford it.

Mr DAVID SHOEBRIDGE: How would that work in practice under a defined benefit scheme? If somebody had a maximum of 18 months or three years economic or medical expenses cover but they are injured when they are five or six or seven years old?

The Hon. TREVOR KHAN: Are we doing a submission or question time?

The Hon. LYNDA VOLTZ: Stop interrupting people.

The CHAIR: Mr Morrison is making his opening submission.

Dr MORRISON: I am. I can respond briefly and directly to that. There are schemes of insurance. For example, the bar has a scheme of insurance whereby you have one form of insurance for the first 12 months and another if your economic loss lasts after that period. You can have a deferred form of insurance. I can tell you from personal experience that economic loss insurance is extremely expensive, you are talking thousands of dollars per person per year, not hundreds. The Committee could be the better judge of the political consequences of imposing that rather than me.

The CHAIR: You are coming close to your conclusion?

Dr MORRISON: I am. I only had one other matter to refer to. In the Law Society submissions there is reference to the virtues of increasing the accident notification form [ANF], one of the no fault benefits. There is some force in that submission. Although increasing the no fault element is an initial cost there are offsetting savings in respect of eliminating legal costs for those who get on to the ANF and it takes business away from the claims harvesters. There is a point at which increasing the ANF is beneficial and is still a viable part of a hybrid no fault and fault scheme. We see some real benefit in that. The appropriate cut off point is a matter for the actuaries but that seemed to us to be a sensible suggestion coming from the Law Society.

The CHAIR: You have been here all day or most of the day?

Dr MORRISON: I have been here the whole day.

The CHAIR: You have heard the discussion around the claims farming and exaggeration of claims and the sale of data to law firms. Do you have a comment on that from your aspect of the profession about that problem and is it a problem that you identify? The Bar Association has agreed there is a problem.

Dr MORRISON: Yes, all three legal organisations, the bar, Law Society and Australian Lawyers Alliance are in full agreement that it is a serious threat to the scheme. There has been no blowout in serious and medium level claims. There has been a serious blowout in the low level claims. That is partly claims harvesting and partly exaggeration of claims. You are always going to get exaggeration of claims. I am old enough, perhaps unlike anyone else here, to have practised under all of the schemes in New South Wales, including the 1942 scheme which remained until 1984. We had a blowout in claims then which led to the 1984 amendments, a blowout then which led to the 1987 Transcover disaster, then the Motor Accidents Act. In each of them there are threats of this sort.

The legal profession's proposals, which are intended to take business away from lawyers pushing small claims and to take business away from the claims harvesters, seem to us to be one of the best ways to go and, in

addition, although the Law Council of Australia was rather vague about it, there is a significant change in attitude by the insurers. We are told, from the meetings which have been going on, that in relatively recent months they have clamped down heavily on simply paying money to get rid of claims and reduce the number of files. That, in turn, may have a initial administrative cost to them, but in the long-term it is likely to effect claims behaviour, which is more important and useful. We see the insurers and the legal profession coming at the same problem from both ends and we think that is likely to have a significant effect on those sorts of claims. I would add to that that the change in the accident notification form would help as well. That was a constructive solution coming from the Law Society.

Mr DAVID SHOEBRIDGE: Is there any reason to believe that you will not get exaggerated claims in a no-fault scheme?

Dr MORRISON: None at all. All experience over the years has suggested that you are always going to get a level of exaggerated claims but what you need is a disincentive for essentially bringing claims that otherwise would never have been brought. They are the ones that you can do something about. Removing the financial incentive for bringing those claims has been the thrust of most of the changes since the 1984 amendments.

Mr DAVID SHOEBRIDGE: One of the other key checks on exaggerated claims is getting claims brought reasonably promptly before a competent tribunal which can actually test them.

Dr MORRISON: Yes. The Claims Assessment and Resolution Service [CARS] has in fact been a fairly efficient system and generally speaking the legal profession is reasonably content with CARS. On the other hand, the Medical Assessment Service has been highly inefficient. It makes determinations in relation to the 10 per cent plus whole of person impairment [WPI]. CARS has been efficient and MAS has led to great delays but unless we change our threshold system and revert to the same system as the Civil Liberty Act, which was also for the Motor Accidents Act, we are going to be stuck with it. It has been the major source of delay in the bringing of claims, not least because if either party is unhappy with the finding they can go back multiple times seeking review—and insurers have been known to go back as many as half a dozen times with applications to review at CARS.

Mr DAVID SHOEBRIDGE: I was asking you about a rapid resolution system being a key way of dealing with exaggerated claims. Of course, one of the complaints about the New South Wales scheme is the delay. Many practitioners make an application but they can be stuck in the MAS appeal system for months, and sometimes years, on an argument about whether an injury is stabilised or whether certain elements of the clinical presentation are appropriated picked up in a WPI assessment, and they can have four, five, six, seven appeals from the insurance company, which substantially causes delay.

The Hon. TREVOR KHAN: Is this a question or a dissertation?

Mr DAVID SHOEBRIDGE: If you stopped interrupting it would be much quicker.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: You have done it not only to me but also to every single person.

The Hon. TREVOR KHAN: I am sure Dr Morrison has a lot to say; you are not the witness.

The CHAIR: Order! The question will be heard in silence.

Mr DAVID SHOEBRIDGE: What if any responsibility does SIRA take for the delays in MAS and what recommendations do you think should be taken on board by SIRA to fix up those delays in MAS?

Dr MORRISON: The problem with MAS is that unless you remove appeals from MAS decisions—

Mr DAVID SHOEBRIDGE: Or limit appeals.

Dr MORRISON: —or limit appeals, the appeals are largely on the basis of fresh evidence, which might be a further medical report, so it is very hard to see a way of reducing the delay. It is largely the availability of medical practitioners of significant seniority and experience to deal with the matter and the panel is challenging. The review panel of three takes time, and quite often fresh medical examinations are called for. MAS inherently is a delaying factor. It is one of the reasons why increasing the ANF, which does not require a MAS decision and allows people to get their money early, helps to meet one of the Minister's criteria for improving the system.

Mr DAVID SHOEBRIDGE: Is there potential in considering a limit on the number of appeals that an insurance company can make to MAS in order to more rapidly resolve claims and reduce the argument of the insurers that they are having to hang on to money for a long period of time and pump up the premium claims?

Dr MORRISON: What worries me about that is unless you restrict both sides on the number of appeals there would be a cry of injustice from the insurers, and maybe with some justification. If, on the other hand, further material comes to light to an injured person whose claim has not yet been resolved, why should they not be able to go back? For example, there might be a fresh medical diagnosis—a leg injury can give rise to subsequent back complaints. These things happen relatively often, so one can understand why there is a need to go back. The problem really is the choice of the threshold; that is the fundamental cause of the delay. If you have MAS, delays are inevitable.

The Hon. DANIEL MOOKHEY: The threshold is the 10 per cent?

Mr DAVID SHOEBRIDGE: Greater than.

Dr MORRISON: The 10 per cent plus whole person impairment threshold. It is very hard to devise a fair MAS system that does not involve reviews. I would be very hesitant to—

The Hon. DANIEL MOOKHEY: But the point of contest in the MAS appellant process is essentially whether or not that threshold has been met?

Dr MORRISON: Yes, but the medical reports outlining the findings are also of use and importance in the CARS assessment that follows. There can be no CARS assessment until MAS is complete and all appeals are complete. Now there is provision for review but there has to be either an error on the part of the MAS assessment or fresh evidence.

The Hon. DANIEL MOOKHEY: In respect to that particular threshold, do you have a suggested amendment to the threshold, to either lower it or increase it, that would otherwise resolve a lot of that litigation and would mean that the parties no longer have to use that system? In addition to that, are there any other suggested amendments to the life cycle of the claims assessment process that you think would speed up the timeliness of it, even if it is not necessarily to the MAS component?

Dr MORRISON: Dealing with those two issues, first of all if we have to have a threshold it seems to make sense that we use the same threshold for the Civil Liberty Act as we use for motor accidents.

The Hon. DANIEL MOOKHEY: That is 15 per cent.

Dr MORRISON: The threshold that the Civil Liberty Act brings in is 15 per cent of a most extreme case as determined by a court. There is then a progressive reduction to 32 per cent, at which stage you get whatever the percentage is of the half million dollars—the maximum allowable in New South Wales for pain and suffering for a most extreme case. That threshold would have considerable more merit; it is more flexible. You could take into account those whose injury may presently not be as serious but who suffer from much greater effect than others—the example of the nurse who suffers an ankle fusion that does not meet the 10 per cent plus WPI but which clearly disables them from employment. That person should be entitled to pain and suffering damages. Now the second part of your question was what other savings could improve the scheme.

The Hon. DANIEL MOOKHEY: Time savings.

Dr MORRISON: In the submissions there are a number of suggestions made—the period of six months in which to lodge a claim. There have been some improvements in relation to that but it is not long enough. Why? Because an awful lot of people do not realise that what they were involved in was a motor accident and litigation over whether or not something falls within the definition of a "motor accident" and justifies an extension of time is simply a waste of everyone's money. The overwhelming bulk of claims for an extension of time are granted but they cost time, they cost money and they cost the insurers. That would be an area of simplification that would be well justified. Why could there be confusion about it because they had a workers compensation claim? Sitting as an acting judge in the District Court I have had the experience of an insurer coming along and saying, "Well, this case was coming on for hearing tomorrow. But we take the point that this is actually a motor accident not an employment claim. That being the case, you've got to strike it out; and they've got to start again and they've got to apply for an extension of time in which to bring it."

I have to say that I dealt fairly shortly with that submission by striking it out—there was no choice in the matter—granting leave to bring the claim under the motor accidents act the next day, extending time for that purpose and ordering the insurer to pay the costs of doing so. But I am not sure that all judges would take quite as rigorous a view as that. It happened to be the same insurer that was taking the point under the Workers Compensation Act and under the Motor Accidents Act as it then was.

The Hon. DANIEL MOOKHEY: Just as an adjunct to that, just because it has arisen, would you agree with the earlier contention that there is a great nexus between the workers compensation scheme and the compulsory third party scheme?

Dr MORRISON: They are very different schemes.

The Hon. DANIEL MOOKHEY: But as a recovery mechanism for a person injured in a car accident?

Mr DAVID SHOEBRIDGE: Much less so now.

Dr MORRISON: Yes, I would agree with those comments.

Mr DAVID SHOEBRIDGE: Dr Morrison, one of the reasons that I was asking about the delay in the Medical Assessment Service [MAS] assessment was that the Government's proposed hybrid model will have that greater than 10 per cent threshold as, if you like, a preliminary argument about whether you fall under a statutory scheme with time-limited benefits or whether you have access to modified common law. But the delays that are inherent in the MAS scheme may well mean that that is not a quick and rapid resolution. There may well still be quite substantial delays and we might be kidding ourselves that the hybrid scheme will produce this rapid payment of the statutory benefits.

Dr MORRISON: Which is why there would be considerable merit in an ANF increase, which would allow someone to be able to continue to pay their mortgage until such time as MAS had done what it has to do. So if we are going to keep MAS and keep the whole person impairment threshold as it is then an increase in the ANF, and including economic loss in the ANF, would seem to meet some of the criteria in relation to quicker benefits and allowing people to survive until these matters can be determined.

Mr DAVID SHOEBRIDGE: How would an increased ANF work?

Dr MORRISON: It is no fault. There would be an obligation to pay in respect of claims up to a certain level if a person is injured on a no-fault basis in a motor accident.

Mr DAVID SHOEBRIDGE: And that is currently $5,000 at the moment?

Dr MORRISON: Yes, it is $5,000 at the moment. The Law Society of New South Wales has suggested that it be $25,000. Others have suggested that it should be up to $50,000, which may or may not be actuarially correct. The actuaries have to determine the point at which the benefits of an ANF start to be an excessive expense upon the insurers. But at the lower levels, maybe $25,000 or maybe even a bit more, clearly there are major savings to be made which offset the no-fault element.

Mr DAVID SHOEBRIDGE: If you accepted an ANF above, say, $20,000 or $25,000 then there may be an election involved where, if you choose to have the upfront ANF payment, on advice you elect to have foregone any other claim under the scheme.

Dr MORRISON: We would not support that, for some reason.

Mr DAVID SHOEBRIDGE: I am talking about election at the hands of the claimant after legal advice.

Dr MORRISON: The problem with that is what happens if, as often happens, after six months or a year they find out they are much more badly injured than they first thought. In those circumstances, with the best of legal advice, they may have lost their rights and their ability to look after themselves and their family.

The Hon. TREVOR KHAN: There would be a professional indemnity claim following fast on behind.

Dr MORRISON: As long as the legal advice was given upon a proper medical basis and after proper exploration, the fact the advice is wrong in retrospect does not mean that it was negligent. The problem with that is that there is then no remedy. The ANF should be simply no fault and without prejudice to any other remedy, because at the end of the day unless the remedy at common law is going to much greater than the $25,000, $30,000 or $35,000 that is being paid it is not going to be economic to sue for it. So the reality is that leaving it open is not going to be a threat to the scheme.

The Hon. TREVOR KHAN: Just going back to where you were talking about continual reviews under MAS, were you suggesting that there should be a limit on the number of times you could seek a review?

Dr MORRISON: No, I am very troubled about that.

The Hon. TREVOR KHAN: I was not trying to put words in your mouth; I was just checking.

Dr MORRISON: I have seen cases in which insurers have gone back half a dozen times, and I have seen cases in which plaintiffs have gone back two or three times, to MAS for review. The proper officer has to certify whether or not it meets the criteria—that being either fresh evidence or an error on the part of the MAS

assessor. That is reviewable in the Supreme Court for error of law. So there are remedies in relation to that. But my experience has been that most of the applications for review are made by insurers. Most of the time that is simply because they did not like the outcome they got the first, second, third or fourth times. They keep trying until they find a doctor who will give them what they want.

The Hon. TREVOR KHAN: Let us assume that I accept that all of that is right, I think there are two points that you have raised. The first one is that there is an argument about reciprocity—that is, if you are going to limit the rights of one side then necessarily you have to limit the rights of others.

Dr MORRISON: Yes.

The Hon. TREVOR KHAN: If you see that the opportunity for continual or repeated reviews is a problem of the system would it not therefore be appropriate to settle upon having one or two reviews only to try to uncomplicate or unclog the system?

Dr MORRISON: I think it would be better simply to have financial penalties for applications for review which lack merit, because I think confining it to a couple reviews in a complex medical case is difficult. For example, a person might through physical injury end up with psychiatric injuries which they did not know about for the first 12 months. There are complexities in those areas which we have all experienced but which suggest that both sides should have multiple opportunities. Perhaps having financial penalties for applications which cause delay and which are shown to be unmeritorious might be a better way to go.

The Hon. TREVOR KHAN: I accept that, but we are looking at an uneven economic balance between the two sides. If the insurer is going to be bloody minded then they can afford to do that whereas the worker and/or his lawyer probably cannot, at least not to the same extent.

Dr MORRISON: Which is why almost all of the applications to the Supreme Court for administrative review of CARS and MAS decisions are made by insurers. Some 90-plus per cent are made by insurers, because they have the money to do it.

The Hon. TREVOR KHAN: Does that not demonstrate that a financial penalty in and of itself may not be the cure for this problem?

Dr MORRISON: That is because an ordinary order for costs, first of all, does not pay the true costs of the other party or even go close to it and, secondly, is no penalty for an insurer.

The Hon. TREVOR KHAN: I think we are in agreement there.

Dr MORRISON: We are; we are in furious agreement. The sort of penalty I am talking about would have to be a significant penalty over and above that if we are going to deter that sort of behaviour.

Mr DAVID SHOEBRIDGE: But there is an uneven economic playing field which requires some levelling out by some form of legislative intervention, I would have thought.

Dr MORRISON: Yes.

Mr DAVID SHOEBRIDGE: You say that is not shutting the door to further reviews, but it is some of the more refined mechanism that discourages unmeritorious reviews.

Dr MORRISON: Yes.

The Hon. TREVOR KHAN: Should there be a temporal limitation—that is, you cannot bring a review within a particular period of time of a previous assessment?

Dr MORRISON: Again, for the reasons I pointed out earlier, it might be six months or a year or longer that new symptoms and new problems arise, previously unrecognised and undiagnosed. If the case has not been finalised by then, why should not, whichever party first recognises it, be entitled to have a review on that basis?

The Hon. DANIEL MOOKHEY: But that is slightly different. I mean, that also could be addressed by introducing a mechanism for an additional medical report to be submitted. I think your question was about previous reports that are appealed, essentially.

The Hon. TREVOR KHAN: Yes.

The Hon. DANIEL MOOKHEY: My point is that you are right in saying that you can present a first medical report that reports on the first recognised forms of injury, and then other forms of injury will manifest themselves which are not treated in the first report. You can actually split that up and you can allow the

reinitiation procedure to exist on the basis of additional evidence or new evidence, but limit the appeal rights of the first report.

Dr MORRISON: That already exists. That is exactly the situation now. There has to be either an error by the assessor—and it has to be a material error, not a trivial matter—or there has to be fresh evidence for the proper officer to certify that the matter should be reviewed. But we see those applications made all the time by insurers. Mostly, they just did not like the outcome.

Mr DAVID SHOEBRIDGE: What is the outcome of those reviews? Does the Motor Accidents Scheme keep a record and say the extent to which those applications are successful? Do you know? Should we ask SIRA that?

Dr MORRISON: That would be a very good question for SIRA. I can only speak from personal experience and from talking to those around the Bar. I do my best to read all the administrative decisions on this matter from the Supreme Court, but that said, SIRA should have good statistics—better than my giving you a guess.

Mr DAVID SHOEBRIDGE: But some sort of indemnity cost standard basis might actually be a more refined response to that than a prohibition.

Dr MORRISON: Yes. It might even have to be a loading on costs because indemnity costs may be an insufficient deterrent in practice. Paying 100 per cent of costs instead of 60 per cent of costs is unlikely to deter an insurer that wants to be bloody-minded.

Mr DAVID SHOEBRIDGE: Some type of penalty for delay, which goes to the worker who has been delayed.

Dr MORRISON: Yes.

The Hon. TREVOR KHAN: Firstly, you were here for Mr Stone's evidence, or for the Bar Association's evidence?

Dr MORRISON: Yes, I was.

The Hon. TREVOR KHAN: Was there anything that the Bar Association, using that term in a more general sense, said in the evidence today with which you disagree?

Dr MORRISON: No, and I might say Mr Stone, I think, would have the most expertise in this area of anyone at the Bar in New South Wales—probably anyone in the legal profession New South Wales. He has been the Bar representative to the then Motor Accidents Authority, now SIRA, for a long time and has appeared in many of these cases. He has been very much involved in the discussions on the fraud issue. I would certainly defer to his expertise in these matters.

The Hon. TREVOR KHAN: He indicated in his evidence that there has been, without gilding the lily too much, good communications between the Bar Association and the Minister and the Minister's office in terms of proposals for reform and the like. Have you been involved in those discussions, or are you reliant—

Dr MORRISON: No. I have been to those discussions as a Bar representative, not in my Australian Lawyers Alliance capacity; and, yes, those discussions have been helpful, frank and open—and, I must say, a refreshing change from what happened with Mr Pearce on a previous occasion.

The Hon. TREVOR KHAN: Funnily enough, he might have ended up here today. That would have been interesting.

The CHAIR: That is probably why he is not here.

Dr MORRISON: No, the Minister has been very open and helpful and has listened and engaged with us. We have really appreciated that. It has been, as I say, refreshing.

The Hon. LYNDA VOLTZ: In relation to those discussions, you are talking about reform. Are you getting empirical data to back where the reforms should be?

Dr MORRISON: There has been some information provided in terms of statistics—increase in cases. SIRA has provided us with actuarial estimates of those matters. For our part, I know the Law Society has engaged its own actuary, but we have not done so on this occasion for two reasons: One is because all the major firms of actuaries are already tied to SIRA in New South Wales; and, secondly, because we cannot get the base data to make our own actuarial estimates.

The Hon. LYNDA VOLTZ: That is the question because we are talking about fraud reform with the Minister and how to deal with fraud. They talk about the minor cases where there is legal representation. You see a big increase in legal representation after 2008, in particular a big jump since 2012 into 2015. An increase in legal representation could be related to a number of different issues. We have already discussed one, of course—workers compensation; we have talked about farming; you see the growth of lawyers running question and answer sessions with major newspapers where they will take up your legal case for you. It is obviously a very competitive market. Is there any evidence to show how this increase in minor claims has been broken down among different players within the community and why fraud is something that has been talked about in particular? The Minister announced today the 11.3 per cent increase somehow being related to the fraud mechanism. Is there any empirical data that goes with that?

Dr MORRISON: I think the answer to your question is yes. There is a very good evidence gathered by the insurers and by SIRA in relation to where the increase in caseload has come from. We are talking about thousands of extra cases in the last couple of years. They are all at the bottom end. There has been no increase in claims for serious injuries, and no increase in claims for moderate injuries. The statistics are absolutely clear on that.

The Hon. DANIEL MOOKHEY: But do those statistics show a delineation between people who have legitimate claims but did not know about their rights and therefore are coming forward, or are they actually fraud?

Dr MORRISON: That is a reasonable proposition. As was said earlier today, we are torn in the matter between saying people should be entitled to know of their rights and entitled to be represented, and hence we oppose any ban on advertising; and, on the other hand, we do not want to encourage people to bring claims for things which really do not justify it and which would ordinarily have been forgotten about, and probably are better forgotten about.

The Hon. LYNDA VOLTZ: But can we look at it this way: For example, we know that workers compensation had thousands of claims because there was a mechanism by which we could measure it before the changes in 2012. We have now just heard evidence that it has gone down to 30 and perhaps up to 80, so that is a difference in thousands of claims. Is the increase in the minor claims co-related with those thousands that may now be picked up as minor legally represented claims, or is that increase specifically only about fraud? Where are you making the correlation between where these claims are coming from and the increases?

Dr MORRISON: As Mr Stone saying earlier today, the evidence is very clear that the initial blowout in claims was in certain of the southern suburbs in Sydney, in particular in one ethnic group related to two or three firms of solicitors and some particular medical practitioners, general practitioners [GPs] and specialists.

The Hon. LYNDA VOLTZ: How many were those claims? What figures are we talking about—thousands, hundreds, twenties?

Dr MORRISON: I cannot give you that information, but SIRA can. The information with which I was provided in writing did not ascend to that level of particularity, but they have that information and, as I understand it, would be able to give you that evidence very specifically.

Mr DAVID SHOEBRIDGE: And you thought it was credible?

Dr MORRISON: Absolutely credible, and very different from the evidence that, for example, we were giving in 2013 when we did not see a need for change, and I do not think there was a need for change. This time round the legal profession accepts that there is a real problem and a genuine issue that needs to be addressed, but we have very different approach from the insurers as to how it should be addressed. We think our approach does much more justice, ultimately, to the victims of motor accidents.

The Hon. DANIEL MOOKHEY: As a self-regulating profession, what actions have you taken in respect to the lawyers who are doing this? Can I also ask: is the behaviour to which you are referring contrary to the rules of the Lawyers Alliance?

Dr MORRISON: The answer is it depends. Without having the specific details of the firms—and I do not have that—or knowing how they obtained their clients or what they said to them or how they dealt with the medical practitioners, it is very hard to know. There may be professional improprieties involved, and do not forget there is external regulation in relation to complaints against lawyers. The Law Society and the Bar Association are not the be all and end all in terms of—

The Hon. DANIEL MOOKHEY: But every person who wishes to become a solicitor does extensive education into the codes that are supported by both the Bar Association and the Law Society. Have those codes changed? What is the enforcement strategy? We asked the same questions of the insurers about what is the

operational response from the insurers to the emergence of this claims harvesting. What is the operational response from the legal profession?

The Hon. TREVOR KHAN: This is a member of the Bar. This is the problem with lawyers, as in my sort of tin-pot lawyer—that is, traffic court—not him. Speak to Tim Concannon, who is going to give evidence next.

The Hon. DANIEL MOOKHEY: But this is the Australian Lawyers Alliance, is it not?

Dr MORRISON: I think that point is well made. Mr Concannon can tell you quite precisely how the Law Society deals with it, and I will shovel it furiously onto him.

The Hon. TREVOR KHAN: It is the Law Society that is the relevant one to ask.

The Hon. DANIEL MOOKHEY: I will ask them too. I accept the point that you may not have formal regulation, but I would be very surprised if your organisation does not have an attitude to this.

Dr MORRISON: We do not like it; we abhor it. The ALA does not like it, the Bar does not like it. The Law Society can speak for itself, but the Law Society at the end of the day is the body that would need to initiate action against its members. You need to ask whether there is evidence, but the problem would be gathering the evidence and it would not be that easy to do. But, again, Mr Concannon can deal with that much more effectively than I can.

The CHAIR: That is where we started. The first question established that there was a problem and you agreed that there was a problem. Your observations are interesting, certainly around ethnic groups—and it makes me a bit nervous about that—but we have had evidence today that it is spreading into other areas of Sydney and is being imported from the UK model through telemarketing and so on. So it is bigger than the one group that you point to.

Dr MORRISON: Indeed, but all that has happened very recently. If one traces it back two years we can say it was confined to a particular area, particular firms. Because they seem to be getting away with it it is clearly spreading, but at least you can trace the origins and it also tells you, I think, what the remedy is.

The CHAIR: Thank you for your valuable time and your advice to us. You took a few questions on notice. The secretariat staff will get in touch with you to follow those up. We need the answers within 21 days. Thank you for your submission and your time.

Dr MORRISON: Thank you for hearing from us.

(**The witness withdrew**)

TIM CONCANNON, Member, Injury Compensation Committee, Law Society of New South Wales, sworn and examined

The CHAIR: Would you like to make an opening statement?

Mr CONCANNON: Yes, I would, thanks. On behalf of the Law Society of New South Wales and, more specifically, the Injury Compensation Committee of the Law Society, I thank you for the opportunity of giving evidence today. The society, as I am sure you are aware, represents all lawyers in New South Wales including those who act for injured persons and those who act for insurance companies. I am a member of the Injury Compensation Committee and I am also an accredited personal injury specialist. I am a practitioner with about 27 years of private practice experience in the area of motor accidents, primarily acting on behalf of plaintiffs. I have been a claims assessor of the Claims Assessment and Resolution Service for about the last 12 years; however, the capacity in which I am giving evidence today is as a private practitioner invited to do so by the Law Society of New South Wales and on behalf of the Injury Compensation Committee.

I commend to you the written submissions the society has provided, dated 12 May this year. I readily acknowledge that these submissions do little more than attach the submissions that we previously provided to the State Insurance Regulatory Authority on 6 May in respect of the current reform process. However, the broad terminology of the terms of reference is such that the society thought it appropriate to also keep submissions in broad terms. I would be happy to answer any specific questions regarding those submissions.

At the outset, the society wishes to say that it supports the Government in the four objectives which have been outlined in the options paper, and I will not repeat them because I am sure they are well-known to you today. The society also wishes to express its appreciation for the open and collaborative approach the Government has adopted in respect of the reform process. It is certainly a refreshing change from what transpired during the failed reform process in 2013. To put it in a nutshell, the Law Society's approach to the current reform process is that all of the objectives set out in the options paper can be achieved by modifying what is fundamentally a fair and sound system rather than embarking on a wholesale redesign of third party insurance with all the risk that that entails.

All the evidence the society has seen to date supports the contention that the current third party scheme has proven stable and predictable with regard to moderate and severe injuries. It is only those minor injuries with increased levels of legal representation that have proven to be problematic. The recent surge in small claims can, the society submits, be remedied by reducing or removing the ability to claim legal costs in these small matters and otherwise by removing the incentives for so-called claims harvesters to elicit such claims. I am sure you have seen already the joint proposal that was put forward by the various legal groups in March of this year to Government.

The society does accept that there are efficiencies that can be improved within the current dispute resolution system, and the changes suggested in the submissions aim to improve these efficiencies by reducing legal costs and improving the time limits for the delivery of benefits. The society also supports some expansion of the current no-fault coverage in order to provide a safety net of sorts for the vast majority of persons injured in motor vehicle accidents, regardless of fault. The society even recognises that there is a finite amount that the public is prepared to pay for green slip premiums in the modern day and age. Accordingly, some reduction in benefits may well be appropriate, particularly in respect of domestic care damages, which have risen sharply in terms of the proportionate cost of the green slip over the past six or seven years.

However, the society says the curtailment of benefits should not be the first port of call with regards to third party reform. The primary focus on such reform should be to reduce the frequency of exaggerated and/or fraudulent claims and to reduce the cost of legal involvement in smaller claims, as well as attempting to reduce the inflated level of insurer profits. What the society says is entirely inappropriate is any attempt to limit access to common law benefits only to those who have sustained an impairment rating of more than 10 per cent, as I note is proposed in the Insurance Council submission that you have received. This effectively excludes, we say, subjective considerations in the assessment of access to common law in very many cases. Even the AMA guides themselves acknowledge that they are not intended to measure loss of earning capacity.

Experience teaches us that many workers with a modest impairment rating may well have their earning capacity destroyed by injuries, particularly in circumstances where physical labour is an integral part of the job. To confine such persons to a limited defined benefit scheme for a fixed period of limited weekly payments would be manifestly unfair and will belittle the significant damage many of these persons have suffered to their earning capacity. That is about all I wish to say. I probably went a bit beyond my two or three minutes but I am happy to take any questions.

The CHAIR: Your ears were burning during that last session, I imagine, so we will start with that line of questioning. I think Mr Mookhey was pursuing that so he might want to pick that up.

The Hon. DANIEL MOOKHEY: You had the opportunity to hear the earlier line of questioning and the preceding factors that led to it about the emergence of claims harvesting?

Mr CONCANNON: Yes.

The Hon. DANIEL MOOKHEY: As well as the evidence that this is geographically concentrated in a certain part of the city at first instance but is now spreading?

Mr CONCANNON: Yes.

The Hon. DANIEL MOOKHEY: And that it may or may not be concentrated amongst various culturally and linguistically diverse groups?

Mr CONCANNON: Yes.

The Hon. DANIEL MOOKHEY: What exactly is the Law Society doing to police the behaviour of its members in this regard?

Mr CONCANNON: You have to remember that the Law Society is no longer self-regulating and has not been for, I think, at least 10 or 15 years now. The Office of the Legal Services Commissioner is now the body responsible for disciplining lawyers so to a great extent it is beyond our capacity, as the Law Society, to regulate those things.

The Hon. DANIEL MOOKHEY: Is it your evidence that the Law Society cannot influence the behaviour of its members—I am not asking about disciplining?

Mr CONCANNON: Of course, but you have got to remember that we are dealing with a situation where much of this information is not directly in our hands. The persons with the knowledge of these things are potentially the practitioners themselves and the insurance companies that settle the cases with these practitioners.

The Hon. DANIEL MOOKHEY: Do you think claims harvesting is a legitimate business model?

Mr CONCANNON: I personally do not. However, there have been arguments raised that perhaps it is an alternative to advertising. There have been some who have justified claims harvesting on that basis; persons who are not perhaps reached by advertising and who do not perhaps have the financial clout to use advertising as the means by which to attract clients.

The Hon. DANIEL MOOKHEY: Do you think the tradability of casebooks is something which is—

Mr CONCANNON: The what, sorry?

The Hon. DANIEL MOOKHEY: The tradability of case files?

Mr CONCANNON: Sorry, I was not here for that.

The Hon. DANIEL MOOKHEY: We heard evidence this morning from the Bar Association that a practice has emerged whereby claims are aggregated, either by a firm or by a harvester of some form, and then sold to lawyers, who then pursue it, akin to the trading of debt. Do you think that is legitimate?

Mr CONCANNON: It is totally inappropriate, I would have thought, and in fact I think it is in breach of the Motor Accidents Compensation Regulation with regard to legal costs that commenced in the middle of last year.

The Hon. DANIEL MOOKHEY: In your experience either through the Committee or anecdotally do you think this practice is widespread or is it growing?

Mr CONCANNON: No—well, I do not think so within the legal firms I have a direct knowledge of. I think at the moment at least it is confined to a small number of firms.

Mr DAVID SHOEBRIDGE: But they are doing it aggressively, which is why we see the numbers?

Mr CONCANNON: I agree. I accept that, and it is consistent with the United Kingdom [UK] experience that I have heard about. The problem over there is significant. They are much further advanced with this problem than we are. The word "advanced" is perhaps the wrong terminology but they have got more of a problem there, as I understand it, and they have decided over the years to regulate these organisations, these claims harvesters—I think they call them CMCs or claims management companies over there—rather than outlawing them. They have effectively regulated them. Perhaps that is the way to go, and that is certainly one of

the suggestions. I was on the fraud task force legislative and regulation working party and that was one of the suggestions we were looking at with regard to drawing on the UK experience.

The Hon. DANIEL MOOKHEY: What about the exaggerated claims. We have heard a lot of evidence that suggests that is a massive causal factor in the rise of premium prices and in terms of the behaviour that insurers are engaging in. Is any of that actionable under any code of conduct that the Law Society has in place?

Mr CONCANNON: It depends. You talk about scales of exaggeration, I suppose. There is a point, I suppose, at which exaggeration becomes fraud. I do not think there are really any guidelines that the Law Society institutes that apply to that sort of behaviour.

The Hon. DANIEL MOOKHEY: I am not sure whether you had the opportunity to hear the evidence but would you think that exaggerated claims is a massive—

The Hon. TREVOR KHAN: He only came in just before he gave evidence.

Mr CONCANNON: Yes, I was here about five minutes beforehand.

The Hon. DANIEL MOOKHEY: Do you think exaggerated claims is a massive factor in the spike of small claims in the last two years or has it been overstated by others?

Mr CONCANNON: It is a bit difficult for me to comment because I do not see these cases; I only go on what others have told me about the nature of the problem. I understand the problem is a combination of both fraud and exaggerated claims and there is a fine line between the two.

The Hon. LYNDA VOLTZ: There is fraud, there is exaggerated claims and there is aggressive behaviour by lawyers who are farming?

Mr CONCANNON: Yes.

The Hon. LYNDA VOLTZ: Of the increases that we have seen in minor claims, legally represented, how many are fraud and how many are just farming?

Mr CONCANNON: I really could not say. You would have to ask the regulator about that and the persons integrally involved with the task force.

The Hon. LYNDA VOLTZ: You say these are what are driving up premiums?

Mr CONCANNON: I think it is multifactorial. I do not think they are the only factors. I think unfortunately they have tended to focus on that to the exclusion of some other issues.

The Hon. LYNDA VOLTZ: Because in 2014-15 insurance companies actually paid out less than they paid out the previous year to people who had been injured in accidents?

Mr CONCANNON: Yes.

The Hon. LYNDA VOLTZ: So while you are getting this spike, less is being paid out in claims, is that right?

Mr CONCANNON: Yes. That is consistent with what Dr Morrison said about the fact that there is fundamental stability of moderate and severe claims.

The Hon. LYNDA VOLTZ: And then you had the impact on premiums of interest rates?

Mr CONCANNON: Absolutely.

The Hon. LYNDA VOLTZ: And that would be adding about 4 per cent a year in premium claims?

Mr CONCANNON: Certainly with bonds being down around 2 per cent, yes, that would have a significant downturn.

The Hon. LYNDA VOLTZ: With an increase being predicted for Sydney passenger vehicles from 1 July 2016 with expected increased of 11.3 per cent or $70, that would not be related to fraud—we will have to ask SIRA the figures—but to the other factors in the market such as superimposed inflation figures?

Mr CONCANNON: I do not think there is any evidence, on what I have seen of the various reports, particularly the profits review report, of superimposed inflation yet being a factor. I do think one factor that does not seem to be acknowledged is the abolition of journey injuries in workers compensation claims in 2012. If you look at the figures in the key performance indicator report in November last year, I think it said that recovery

claims, that is, recovery claims by a workers compensation insurer against a third party insurer, went down 82 per cent, which is a couple of thousand claims, I think.

The Hon. LYNDA VOLTZ: Because you are no longer getting the workers compensation journeys, do you think some of those claims are shifting into the minor—

Mr CONCANNON: Absolutely. Particularly they would focus on the minor injury claims, logic would suggest, because people who might have otherwise had small workers compensation claims probably would not have bothered lodging a third party claim before but now they have got no alternative, even in circumstances where there might be some potential issue about fault.

The Hon. LYNDA VOLTZ: So we are getting a mix of things in the premiums; we are getting pockets of lawyers that are growing—

Mr CONCANNON: Yes.

The Hon. LYNDA VOLTZ: —where they have been farming and being aggressive; we are getting the journey claims coming back in; we are the other impacts into the market from the market conditions because it is a long tail insurance scheme—

Mr CONCANNON: Yes.

The Hon. LYNDA VOLTZ: And they are all playing together to increase premiums?

Mr CONCANNON: And there are also other factors as well. There is also the blameless accident extension that has happened through the courts over the last two or three years; it has played a role. People who would not have otherwise thought about making a claim are making a claim, particularly pedestrians. There are the ANFs, the expansion to a no fault basis in 2010, I think, is still playing an ongoing role. They went from $500 to $5,000 in 2008 and then fault based to no-fault based in 2010. I think that even the authority itself acknowledges that it has had a role in increasing claimant expectation by bringing them into the system in the first place when perhaps they would not have bothered previously.

The Hon. LYNDA VOLTZ: When you have a bar at 500 it is only going to have a minimal impact.

The CHAIR: Can you explain the blameless accident concept?

Mr CONCANNON: It was legislation that commenced in 2006 or 2007 roughly. It came about as a result of the Sophie Delezio case where a driver was about to run a defence based on having a heart attack and driving into a day care centre and she sustained horrific injuries as a result. It was thought abhorrent that a defence of inevitable accident effectively could have been run in a scenario such as that. As a result the Government legislated that if the accident is the fault of no-one—and drivers are excluded from that process as drivers cannot ordinarily rely on the blameless accident provisions—then the legislation deems a vehicle involved with the collision to be the person responsible. The normal benefits under the Act result from that.

The Hon. **TREVOR KHAN:** That was quite a reasonable outcome, was it not?

Mr CONCANNON: Absolutely. It removed the inevitable accident, the heart attack cases, a lot of the animal cases such as cows in the middle of the road—that is still a cause of significant case law at the moment—and mechanical accident type scenarios. It is entirely reasonable. It probably has extended much more than anyone thought it would. People are putting in claims when I would not ordinarily have expected them to do so based on the original concept of blameless accident.

The CHAIR: Is that contributing significantly?

Mr CONCANNON: No, I think it is a relatively modest factor. It is multifactorial. It is simplifying things to say that fraud is the primary issue to driving this deficit for the higher premiums. It is a factor and we acknowledge that and wish to address that to the extent we are able. There are other factors at play here.

The Hon. **TREVOR KHAN:** Can I be nice for a change.

Mr CONCANNON: You are always nice, Mr Kahn.

The Hon. **TREVOR KHAN:** That is not true. The line of questioning by Mr Mookhey related to the Law Society's involvement. The arrangement is that essentially action taken against lawyers or solicitors is taken as a result of complaint lodged by somebody.

Mr CONCANNON: Yes. Anyone can make a complaint.

The Hon. **TREVOR KHAN:** That will go through the Legal Services Commissioner and in due course perhaps be investigated by the Law Society.

Mr CONCANNON: The only direct role the Law Society has in the process would be in the process of auditing trust accounts.

The Hon. TREVOR KHAN: It is wholly done within the Office of the Legal Services Commissioner?

Mr CONCANNON: It is done within the Office of the Legal Services Commissioner.

Mr DAVID SHOEBRIDGE: It normally only takes three or four years to work its way through.

The Hon. TREVOR KHAN: If you are lucky. In the exercises described by Mr Mookhey it would rely upon a complaint made by the insurers?

Mr CONCANNON: They would be the most likely, I would have thought.

The Hon. TREVOR KHAN: It is unlikely to be the client who has benefited out of the exaggerated claim.

Mr CONCANNON: Unless they are overcharged.

The Hon. TREVOR KHAN: That is a different fraud. Essentially, if the insurers do not have enough evidence or there is not enough evidence it cannot be pursued against the lawyer?

Mr CONCANNON: It would be difficult, I would have thought.

The Hon. TREVOR KHAN: In terms of the context of the exaggerated claim, that is a question where the client is saying I have X wrong with me where it might be less than that?

Mr CONCANNON: There is a valid claim but it is increased to nth degree, not necessarily wrongly, but it does have an impact on premiums.

The Hon. TREVOR KHAN: The difficulty for the lawyer is if they have a client sitting before them saying "I am close to death", it is not the position of the lawyer to determine the credibility of their own client in respect of the claim?

Mr CONCANNON: Exactly, it is a problem we face as plaintiff lawyers reasonably regularly.

The Hon. TREVOR KHAN: It is difficult to look oneself in the mirror sometimes and wonder whether one has done the right thing.

Mr CONCANNON: Clearly if I knew that a client was lying and did not have an injury I would not be prepared to act any longer, that is an ethical obligation on lawyers. Further than that it is difficult to be too definitive about the scenario in which you could not act for an exaggerating client.

The Hon. TREVOR KHAN: If the proposition were put that this falls to the regulation of lawyers it is not going to resolve the problem because it is not within the gift of the lawyer to personally weed out shonky clients, not within their capacity?

Mr CONCANNON: That's right. If that behaviour is going on we would encourage the Legal Services Commissioner to take whatever action is appropriate. My understanding is it is beyond my role, in terms of my position on the Injury Compensation Committee, but we would encourage the Legal Services Commissioner to take action if there is evidence of such behaviour.

Mr DAVID SHOEBRIDGE: The really malign behaviour is from a small number of firms who are getting claims, encouraging an exaggerated set of damages, sending them to a well-known panel of doctors who are renowned for giving extraordinarily generous assessments, packaging it all up, bunging a claim on and then settling it for costs.

Mr CONCANNON: That is one aspect of it. I think there is another aspect that some doctors refer cases exclusively to one law firm.

Mr DAVID SHOEBRIDGE: Then they get paid for the reports?

Mr CONCANNON: Yes.

Mr DAVID SHOEBRIDGE: A quite generous payment for the report?

Mr CONCANNON: Yes. There are obvious conflicts of interest.

The Hon. TREVOR KHAN: In terms of the claims farming exercise, are the organisations that are commencing that operation legal firms or something else?

Mr CONCANNON: I do not know precisely who they are. I have heard rumours, as I am sure you have, about who they are. It is my understanding that they are not lawyers. That is another problem with regulating them, which is why I raised the issue of the CMC situation in the United Kingdom.

Mr DAVID SHOEBRIDGE: They are operating offshore.

Mr CONCANNON: Precisely, yes.

Mr DAVID SHOEBRIDGE: It is hard to regulate something happening on another continent.

Mr CONCANNON: Precisely.

The Hon. **TREVOR KHAN:** One of the problems in dealing with this is that the normal methods or the past methods of regulation essentially are not going to work with these organisations?

Mr CONCANNON: Exactly. You may or may not be aware that there was a new provision included in the motor accidents cost regulation last year that outlawed referrals to lawyers who accept a client for a sum of money for referring the claimant to the solicitor. That is considered to be a breach of the duty of the solicitor if you accept a referral from one of these claim harvesters. That does not get the claim harvesters and the terminology of that regulation is such that I would have thought it is difficult for the Legal Services Commissioner to enforce.

The Hon. **TREVOR KHAN:** How would the Legal Services Commissioner find out? Does the lawyer have to come forward and say, "I did the wrong thing"?

Mr CONCANNON: There would have to be a complaint made and the obvious one is the insurer.

Mr DAVID SHOEBRIDGE: Is not the obvious point that we should be beefing up the powers of the State Insurance Regulatory Authority so that where they see a pattern developing in a law firm they are able to do an unannounced audit to review where the cases are coming from, if necessary toughen up the regulation, and hold that lawyer to account if they are in breach of the regulation. That seems to be a sensible starting point to fix it.

Mr CONCANNON: Possibly. My concern is that there is already a power in the Legal Services Commissioner to do that.

Mr DAVID SHOEBRIDGE: They do not have access to the data, they are waiting for something to come from the insurance company. We need someone to be proactive. The only one that has access to the data is SIRA.

Mr CONCANNON: Theoretically the way it works under that regulation is that SIRA should be referring it on to the Legal Services Commissioner. It is a two-step process.

Mr DAVID SHOEBRIDGE: Then it disappears into an 18 month, two-year black hole which we never get out of. We need something promptly happening.

The Hon. LYNDA VOLTZ: Why could not SIRA audit them?

Mr CONCANNON: There is no reason why not.

The Hon. DANIEL MOOKHEY: In the scenario of claims harvesting, which is an economic model the Bar Association told us is planned around the idea of people who have legitimate claims but do not know their rights—

The Hon. TREVOR KHAN: May

The Hon. DANIEL MOOKHEY: People who have legitimate claims but may not know their rights, being encouraged to come forward, what is SIRA auditing for? What is the breach?

Mr CONCANNON: You would have to ask SIRA about that. I do not think there is any. I think really what SIRA could be looking at would be the fraud issue rather than exaggeration.

Mr DAVID SHOEBRIDGE: You said there was a regulation in place, imperfectly worded, that made it unlawful to pay for a referred claim.

Mr CONCANNON: Yes.

Mr DAVID SHOEBRIDGE: Do we just beef up that regulation to make it work and then that is what they audit?

The Hon. LYNDA VOLTZ: I keep getting phone calls from somebody about car accidents and I hang up on them; it is now clear to me why they are ringing. They would obviously keep records that they had rung someone and they would get a payment. There would be some record of the fact that they had—

Mr CONCANNON: You would certainly hope so. I would thoroughly support it being audited by someone—whether that be the Legal Services Commissioner or SIRA, I don't think it much matters.

The Hon. LYNDA VOLTZ: I have been wondering about the phone calls that I occasionally get.

The CHAIR: The telemarketers are doing the cold-calling, aggregating the data and then selling it to law firms.

The Hon. LYNDA VOLTZ: But you would have a record of that transaction.

The CHAIR: If they buy it, that is correct.

Mr DAVID SHOEBRIDGE: Perhaps you could also consider that question on notice and provide a response about whether it is SIRA or both SIRA and the Legal Services Commissioner.

Mr CONCANNON: Sure.

Mr DAVID SHOEBRIDGE: Noting that we actually would like it to be a timely response, understanding the record of the Legal Services Commissioner as to timeliness.

Mr CONCANNON: Sure.

The Hon. TREVOR KHAN: As Mr Mookhey identified some small claims may have some basis for claim, but is the problem that the inflation of small claims places a huge administrative cost on the scheme for relatively little return to the claimant?

Mr CONCANNON: Absolutely.

The Hon. TREVOR KHAN: So it is a structural problem that is being created—

Mr CONCANNON: The same level of work is required for a small claim as for a million dollar claim—in fact, sometimes it is more.

The Hon. TREVOR KHAN: So the problem for the scheme and therefore the people who pay for it—that is, the public—is that the large administrative load is increasing the cost of the scheme but producing relatively little return to the punters?

Mr CONCANNON: Correct, in those small claims you are talking about.

Mr DAVID SHOEBRIDGE: Which is why you and the Bar Association have that joint recommendation about regulated fees so they cannot contract out of for those small claims to address it?

Mr CONCANNON: Yes.

The Hon. LYNDA VOLTZ: But how would you differentiate between the workers compensation claims that have been cost-shifted across? You would not be able to.

Mr CONCANNON: Unfortunately, I do not think you could. I see the union suggested earlier that perhaps they receive some sort of preferential treatment for those cases. I am not sure how that would practically work.

Mr DAVID SHOEBRIDGE: You do it on size of claim, not nature of claim.

Mr CONCANNON: Yes.

Mr DAVID SHOEBRIDGE: That is what your recommendation is?

Mr CONCANNON: It would be on the size of claim.

Mr DAVID SHOEBRIDGE: There is no reason to think that journey claims from workers are necessarily going to be smaller or larger and they will fall across the spectrum?

Mr CONCANNON: That is probably right.

The Hon. DANIEL MOOKHEY: But the strategy has got to be based on destroying the economic incentives for claim harvesters?

Mr CONCANNON: Absolutely.

The Hon. DANIEL MOOKHEY: That is the core of it.

Mr CONCANNON: And that is what we aimed our proposal towards.

The Hon. DANIEL MOOKHEY: In my first question as to whether or not you think claims harvesting is a legitimate business model, we would have to take a view on that?

Mr CONCANNON: Yes.

Mr DAVID SHOEBRIDGE: It could be done pretty much straight away through regulation.

Mr CONCANNON: Yes, but you have to look at it from a philosophical standpoint: Do you want to demonise them and have these claims harvesters or CMCs, whatever you want to call them, out there doing these things in a dark cloak and dagger sort of way, or do you want to regulate them? I suppose as politicians you have to make that decision.

The Hon. DANIEL MOOKHEY: Are you acquainted with the United Kingdom model of regulation on this?

Mr CONCANNON: To a certain extent. I have been involved with the fraud task force regulatory and legislative reform subgroup and there have been some proposals that emanated from that where that issue became the subject of focused discussion, yes.

The Hon. DANIEL MOOKHEY: It would be great if you could provide on notice any views you might have on the United Kingdom scheme as a regulatory model.

Mr CONCANNON: I do not have any direct views myself; I am only sending on information that I have got from others. I am happy to try to do as best I can.

Mr DAVID SHOEBRIDGE: You would have seen the proposal from the Insurance Council of Australia, which is sort of an option C hybrid model, where those who are greater than 10 per cent have access to modified common law damages and those who are 10 per cent or less have a statutory scheme for most injured claimants being chopped off after, say, 18 months. What do you make of that proposal?

Mr CONCANNON: I do not like it at all.

Mr DAVID SHOEBRIDGE: What elements of it in particular do you not like?

Mr CONCANNON: I particularly do not like the impairment assessment as the means by which to assess whether someone has a minor, moderate or severe injury. It was never intended to do that. It has got nothing to do with earning capacity so why should it be used as such?

Mr DAVID SHOEBRIDGE: If you had to have a rationing model which reduced benefits, could you think of something that is more refined than the greater 10 per cent WPI?

Mr CONCANNON: I and many others have been trying to think of one. There are some that come to mind, perhaps an excess—if you get an award of $100,000, the first $20,000 comes off or something like that. It might be somewhat fairer. I would have thought it would be fairer than asking a labourer who might get 5 per cent WPI to deprive him or her of common law entitlements. The problem you have got is that the actuaries who asses these things require objective assessments of whether someone gets over a threshold or not and narrative tests do not get much favour with the actuarial analysts on that basis.

Mr DAVID SHOEBRIDGE: But there are narrative tests in other jurisdictions?

Mr CONCANNON: There are, yes.

Mr DAVID SHOEBRIDGE: Could we not rely upon those as some tried and true models? The Victorian narrative test comes to mind or the civil liberty narrative?

Mr CONCANNON: Yes, that is 15 per cent of a most extreme case. That has worked over a 13- or 14-year period now. That is one option.

Mr DAVID SHOEBRIDGE: The Bar Association gave a series of examples from their experience of individuals who had 10 per cent or less WPI where there would be obvious unfairness if they were limited to only 18 months or five years of benefits. They gave an example of a nurse with an ankle fusion, which was 4 per cent WPI. They gave an example of a gentlemen who was installing sheds in the regions and was oscillating somewhere between 9 per cent and 11 per cent WPI. If they are excluded from economic loss claims their economic future is bleak. From your personal experience can you think of examples that would illustrate the problem to us?

Mr CONCANNON: I had one the other day—namely, a person who was primarily a professional entertainer, a guitarist, who had a significant finger injury. His employability was significantly affected in not

being able to do anywhere near the same number of shows and not being able to lift the road cases, yet he would be 1 per cent or 2 per cent perhaps on a WPI model. But if he is deprived of one or two fingers there is no way you can—

Mr DAVID SHOEBRIDGE: What about somebody with a lower WPI who does more physical work?

Mr CONCANNON: Absolutely. Any builder, shearer or anyone along those lines even with a mild soft tissue back and neck injury—you have got to remember we are not always dealing with a back and neck injury in isolation. I often see people who also develop adjustment disorders, which is a secondary psychological disorder that complicates the whole process, and they work together to create a pain condition. There is no doubt it happens. Whilst they might only get a maximum of 5 per cent WPI they can be very grossly inhibited.

Mr DAVID SHOEBRIDGE: Many people would be in traditional working class jobs doing manual work and the like. They are the group in society who will be paying for the premium cuts for everybody else if we go down that path.

Mr CONCANNON: Absolutely.

The Hon. TREVOR KHAN: All this is about rationing a scarce resource though, is it not?

Mr CONCANNON: Yes.

The Hon. TREVOR KHAN: So let me take the example of the nurse who we keep hearing about. If she is using her mobile phone in the car and that results in a motor vehicle accident where she is left severely impaired then fault is a significant issue and there will be no payout. Is it fair that she is rationed out of the system because she was using her mobile phone in the car?

Mr CONCANNON: It depends. I suppose we have to deal with this scenario from what happens if, for instance, she injured someone else. Theoretically, yes, we would like to include everyone in the scheme but, as I say, it is a matter of comparing the scenario of that person with that of someone who has been injured as a result of the negligent act of a third party. We say that that is the best system that I can certainly think of—the question of fault while still providing somewhat of a security blanket in terms of treatment and a base rate of weekly benefits for a majority of everyone else. Obviously there are still going to be exclusions—even the ANFs at the moment do have some exclusions for serious offences that involve criminal penalties of six months or more.

The Hon. TREVOR KHAN: Let me put this to you. You have practised, including in Tamworth, for many years.

Mr CONCANNON: I did not practise in Tamworth for many years.

The Hon. LYNDA VOLTZ: That was the Hon. Trevor Khan.

The Hon. TREVOR KHAN: It was a different firm. You practised in the area of workers compensation.

Mr CONCANNON: Correct.

The Hon. TREVOR KHAN: Of course, we took as a fundamental concept—although not I; I was just in the traffic court—of workers comp that it was a no-fault system for a whole variety of reasons. That was an underlying component of the scheme—it was a no-fault system.

Mr CONCANNON: Yes. But you have to remember that no fault does not necessarily mean that it is going to be straightforward. Anyone who has ever practised in the Workers Compensation Commission jurisdiction would know that there are still numerous issues that arise during the course of a standard case.

The Hon. TREVOR KHAN: I am not suggesting otherwise. But on a philosophical basis one of the rationing concepts that applied in terms of workers compensation was that fault was not going to be the determinant of payout, is that not right?

Mr CONCANNON: Yes, that is correct.

The Hon. TREVOR KHAN: And that was always accepted across the industrial movement as the way to go.

Mr CONCANNON: Yes.

The Hon. TREVOR KHAN: What I am trying to wonder is if a rationing process in workers comp—

The Hon. LYNDA VOLTZ: Are we going to workers comp now, are we?

The Hon. TREVOR KHAN: —was not to use false as a mechanism to determine who gets what why then is it necessarily appropriate in the CTP area to use fault as the rationing criteria? What is the difference?

Mr CONCANNON: I think with workers compensation we are dealing with a particularly vulnerable part of the community, particularly the working class members of the community who really do need some sort of safety net. Yes, sure there are many in the motor accidents sphere.

The Hon. TREVOR KHAN: But is the nurse who is using her mobile phone in some way not in the same class?

Mr CONCANNON: Who was to know whether she would even qualify under a no-fault scheme because using a phone I would have thought is potentially a criminal offence if she causes an injury.

The Hon. TREVOR KHAN: You know the point I am getting at. There are many people who are negligent in their driving who will be disentitled but you cannot attribute to them a high degree of moral culpability.

Mr CONCANNON: There are some; yes, I accept that.

Mr DAVID SHOEBRIDGE: But it is the relationship between employer and employee that distinguishes a workers comp scheme and there is the servant-master relationship that that implies, which is why you have no fault in compensation.

Mr CONCANNON: Exactly, there is a vulnerability there that we do not necessarily have in a motor accident context.

The Hon. DANIEL MOOKHEY: You said in response to a question asked by Mr Khan that in your view fault is the best rationing mechanism. Perhaps another way of asking the question is: Can you spell out all the advantages? Firstly, how do you judge best and, secondly, can you list all the advantages as a rationing device attached to the concept of fault?

Mr CONCANNON: There is some suggestion that there is a deterrent value to do with that—it is an encouragement to drive more safely. There are different views on but. That would be one aspect of it.

The Hon. LYNDA VOLTZ: Particularly around young men.

Mr CONCANNON: Yes. I think there is a useful social question of personal responsibility. We have to encourage that. That is certainly what the Civil Liability Act was based on. People have to be responsible fundamentally for their own actions. I think the problem is fault inevitably results in most cases in a large lump-sum payout and, whilst that might not be something that is attractive to a lot of actuaries or accountants, it is certainly something in my experience that provides a significant amount of autonomy to people who are otherwise denied it by a drip feed of defined benefits type compensation, such as has been the case for a long time in the workers compensation system. So I think for all those reasons fault is perhaps the best way of rationing what is, we accept, a finite resource.

Mr DAVID SHOEBRIDGE: But of course we have lifetime care and support so the most severely injured are protected regardless of fault, and at the other end we have ANFs so that many very modest claims get some benefits.

Mr CONCANNON: We also have a no-fault payment for children under 16. So I think we are doing a lot more than what anyone else in Australia is doing within a fault-based environment for the at-fault injured person.

The CHAIR: Thank you. Thank you for your submission today. You have taken a few questions on notice so the secretariat will be in touch with you about that. You will have 21 days to get those back to us.

(The witness withdrew)

(Short adjournment)

ANTHONY LEAN, Chief Executive, State Insurance Regulatory Authority, Deputy Secretary, Better Regulation, affirmed and examined

ANDREW NICHOLLS, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority, sworn and examined

The CHAIR: I welcome those present to the first review of the compulsory third party insurance scheme, particularly this afternoon's last witnesses, whose arrival has been greatly anticipated. Would either or both of you like to make a brief statement prior to going to questions?

Mr LEAN: I will make an opening statement on behalf of both of us. Thank you for the opportunity to make a statement as the chief executive of the State Insurance Regulatory Authority. I thank the Committee for its important oversight role, which supports the operation of the compulsory third party scheme. As you know, we regulate not only the CTP scheme but also the workers compensation and home building compensation schemes. SIRA was established last year as a single risk-based regulator for all compulsory insurance schemes. Under this new structure we consolidate our strengths and build even greater capability in areas such as injury management, compliance, data, and business intelligence. Over our first 10 months you will have seen in practice the way we intend to operate, which is in an open and transparent manner, and by being genuinely engaged in consultation.

Shortly we will be releasing a formal stakeholder engagement strategy, which outlines how we will continue to engage with our stakeholders across the schemes we regulate. Key priorities going forward for us are to build our fraud and compliance capabilities and our data analytics capabilities. Key to our mission is the effective overall management and sustainability of the insurance schemes we regulate. We will be active to ensure that claimants receive their entitlements quickly and that premiums are fair and affordable. In the area of motor accidents insurance regulation, over the last 10 months SIRA has developed and implemented a claims integrity strategy to address the unusual increase in CTP claims, established the multi-agency CTP fraud task force, and the hot line to tackle CTP fraud and exaggerated claims. We also have begun implementation of the independent review of insurer profit and competition, which was a recommendation of this Committee. As part of that, we have commenced a full review of the premium system, which is informed by those recommendations.

We are in the process of implementing changes to the market practice and premium determination guidelines to improve transparency of green slip pricing. Shortly we will be finalising our claims handling guidelines, which have been developed through extensive consultation with stakeholders. We have implemented changes to regulatory costs to require legal practitioners to disclose information to SIRA about the costs that are deducted from awards to plaintiffs. We have convened the taxi roundtable and commenced a review of CTP insurance for point-to-point transport vehicles. As you would be aware, the Government's major review of the CTP scheme is also well underway. A key issue in that review is addressing the issue of fraud. The Government is undertaking considerable consultation with key stakeholders and the community through separate roundtables and direct engagement with the community. The Government is expected to report back shortly with the preferred reform option. In conclusion, we look forward to continuing to progress these initiatives. I am happy to provide more detailed information for the Committee.

The CHAIR: Committee members may correct me if I am wrong, but I think generally it was unanimous from the submitters today that there is a need for some change to the current system — that the costs are blowing out and there are problems there. They have different approaches to that, but one of the things that came regularly was the reference to fraud, claims farming and exaggeration. The Committee is attempting to get a grip on numbers and empirical evidence of that. Some people took it on notice but no-one could really give us a firm answer on how they have identified that clearly. Because you collect the data, will you give us whatever empirical information you have on this area?

Mr LEAN: Certainly. We have prepared a document that was released publicly at the commencement of the CTP fraud task force. I think it is available on our website. We are certainly able to table copies of that today as well, if that would assist.

The CHAIR: That would be good.

Document tabled.

Mr LEAN: I will hand over to Andrew Nicholls, who will run through some of the details of the numbers.

Mr NICHOLLS: Thank you. The challenge of fraud in the scheme is set out in the document we have just tabled.

The Hon. LYNDA VOLTZ: Is this this document that I have been provided with?

Mr NICHOLLS: It is titled "Deterring Fraudulent and Exaggerated Claims".

Mr DAVID SHOEBRIDGE: When is it dated?

Mr NICHOLLS: I do not think it has a date on the front cover but it was published in or around March this year. We have just tabled that and it is on our website. That document outlines in quite a great deal of detail the trends in claims. In particular it identifies that from around mid-2014 there has been a very considerable increase in the growth of minor severity legally represented claims in the system. Across that 2014-15 period we saw a 27 per cent increase in the number of claims, which is a quarter of those claims and which represents 1,705 additional claims in the system compared to the previous year.

The report highlights that a significant increase in claims is occurring in particular regions of Sydney. The report highlights that there has been a challenge of increasing claims, particularly in south-west Sydney. The report also highlights that in the last 12 to 18 months that trend now seems to be spreading to other parts of Sydney. In recent months, the rate of growth that in those smaller legally represented claims was actually going up faster in other regions of Sydney. The report also sets out that there are a number of concerning trends involving particular service providers, legal companies and medical providers, and certainly also some common trends in relation to the types of injuries that are being reported, in particular, injuries that are difficult to establish, such as soft tissue injury and some level of stress and an over-proportion of children and unemployed people in the figures.

The Hon. LYNDA VOLTZ: Could you just give us the breakdown of those, the ones that are fraudulent, the ones that are farming from that 1,700?

Mr NICHOLLS: We do not have all of those numbers here. I am happy to take that on notice.

The Hon. LYNDA VOLTZ: Do you have any figures in regards to the number of fraudulent claims?

Mr NICHOLLS: We have figures in relation to the number of claims where there are particular trends that indicate certain behaviours. But obviously fraud is not a fraud until it has gone through all of the appropriate reviews by investigative agencies—the police et cetera.

Mr DAVID SHOEBRIDGE: Why do we say questionable claims or suspected fraud? Whatever category you are using to pull out the numbers, let us agree on language. What is it?

The Hon. LYNDA VOLTZ: You must have a percentage figure.

Mr LEAN: In that document we go through and explain quite clearly what we mean by reference to fraud—distinctions between hard fraud and soft fraud, but there are also issues like claims exaggeration as well.

The Hon. LYNDA VOLTZ: Can we have a percentage figure on hard fraud and a percentage figure on soft hard?

Mr LEAN: I do not know that it is possible to actually break it down to that level of detail given the point that Andrew just made about hard fraud. Until it has gone through a full process you would not necessarily be able to capture that sort of data. But there are a number of markers.

The Hon. LYNDA VOLTZ: The Minister today said that fraud contributes about $75 to the green slip price. Where does that $75 figure come from and what is the percentage of the green slip price therefore that working on the fraud contributes to?

The Hon. TREVOR KHAN: About 15 per cent on $75.

Mr NICHOLLS: The estimate is based on that broad definition that Mr Lean is referring to in relation to that significant upswing, and that equates to about $75 or around $400 million—

The Hon. LYNDA VOLTZ: So you are saying of those 1,700 additional minor legally represented, 15 per cent of that are fraudulent claims?

Mr NICHOLLS: No.

The Hon. LYNDA VOLTZ: You are saying the whole 1,700?

Mr NICHOLLS: I am not saying that all of those are, no, but I am happy to take on notice the specifics that you are seeking.

The Hon. LYNDA VOLTZ: You just said $75 is based on that figure.

Mr NICHOLLS: No, I do not think I said that.

The Hon. LYNDA VOLTZ: So what is the $75 figure based on?

Mr NICHOLLS: The $75 figure is based on the estimates of the increase from the analysis that we have undertaken that is set out in this document.

The Hon. LYNDA VOLTZ: Can you give us that figure then?

Mr NICHOLLS: That is what I am saying I will take on notice.

The Hon. LYNDA VOLTZ: But have you not got it in that document in front of you?

Mr NICHOLLS: This is a public document—

The Hon. LYNDA VOLTZ: I had a look at your website at lunchtime and I did not see it. So if you have got the figure in front of you it would be nice to—

Mr NICHOLLS: I do not have the figure in front of me, no.

The Hon. LYNDA VOLTZ: But you have got the document there.

The Hon. TREVOR KHAN: He has tabled the document.

Mr NICHOLLS: I have said that I will take the question on notice. I have indicated that the document has not got the figure you are looking for.

Mr DAVID SHOEBRIDGE: Did you say the document has not got the figure?

Mr NICHOLLS: The document has got the $75 figure. I think the question that I am being asked is how does that break up.

The Hon. LYNDA VOLTZ: No. Where does it come from? We are saying there is a 1,700 increase in minor legally represented. How many of them might be, say, workers compensation previous journey claims that are now included?

Mr NICHOLLS: That is what I am saying I will take on notice. That is the question you asked me: how does that 1,700 break up. That is not in this figure. I am happy to take that on notice.

The CHAIR: We were exploring the issue of hard figures on fraud versus claims farming and so forth. Have you concluded giving that information? You were cut off a bit.

Mr NICHOLLS: We are happy to provide the information that we have. I think what Mr Lean is saying is that the line between hard and soft fraud is a difficult one to draw and until you have prosecutions fraud is an allegation; it is not actually something that has occurred.

The Hon. DANIEL MOOKHEY: But any form of intelligence-based enforcement is based on the concept that there are some indicia which cause you to want to divert your attention to a certain geography, a certain practice, a certain network, so be it. What are the criteria that have been developed internally in SIRA as, for want of a better term, the warning system that you guys would then divert your enforcement resources to or otherwise your investigatory resources to?

Mr DAVID SHOEBRIDGE: And you might have heard the evidence from the Insurance Council of Australia about this.

The Hon. DANIEL MOOKHEY: Do you have criteria like that, firstly?

Mr LEAN: Certainly what we did in 2014 when we started to see an upward increase in the numbers of claims we started to have a closer look at what could potentially be driving that. I think it is important to point out that just because there is an increase in minor severity claims it does not necessarily mean that there is potentially fraud or a significant exaggeration going on within the system. I think the other point to make there is that one quarter does not make a trend, so it does take time for these particular trends to evolve. So certainly that is when the first up-tick started to happen, and at that point in time, as I understand it, the Motor Accidents Authority met with insurers towards the end of 2014 to gather some information around what was going on.

Certainly the practice of claims farming was identified as a potential issue of concern. One of the responses that happened in response to that was a proposal to government to amend the motor accidents regulation to prohibit referral fees, and that commenced, I think, around April 2015. We also began through 2015 undertaking a more detailed data analytics exercise and we effectively created a new database that we

could analyse to work out what sorts of things were going on in the scheme. At that point we did not have claims data at a sufficiently granular level to identify particular patterns or trends between particular practitioners, whether they be health or legal practitioners. So through that exercise that is where we started to identify concerning trends and patterns. Some of the things that were identified were single-vehicle accidents where there was only one car involved and someone was claiming an injury. Other things included claims involving children and also we identified certain patterns between certain legal practitioners and also medical practitioners as well.

The Hon. DANIEL MOOKHEY: So is it right to conclude from that that SIRA is in the very early phases of its operational response to this?

Mr LEAN: No, I do not think that is correct at all. As I mentioned before, there was the recommendation to government to prohibit claims farming as well as building the database throughout 2015. We also commissioned I think Finity to assist with us in developing a claims integrity strategy and that, I think, was finalised around September. One of the outcomes of that was that we shared data back with the insurers so that we could start to show them what were the patterns that they needed to be looking for in terms of aberrant claim patterns. At the same time as well we also required insurers to produce business plans which would set out to the regulator how they would respond to the issues that were emerging in the scheme.

Towards quarter four of 2015 we briefed government in quite a bit of detail about what we observed that was going on and, as a result of that, we got the agreement to set up the CTP fraud task force as well. The other point that I would make is that during that period as well we were also consulting with other regulators including the Health Care Complaints Commission and the Legal Services Commissioner. That was towards the end of 2015. Obviously then we have had the task force, which has been running since March. A number of matters have been referred to police.

The Hon. DANIEL MOOKHEY: Perhaps another way of putting the question is you have not exhausted all the operational responses that are available to you. In fact, you are in the midst of executing a strategy that you just described?

Mr LEAN: That's correct, yes.

The Hon. DANIEL MOOKHEY: In addition, the forthcoming operational responses or the continued application of these operational responses, I presume you are doing them with the intent that they would reduce the categories of fraud and the categories you have described as being a problem?

Mr LEAN: Yes.

The Hon. DANIEL MOOKHEY: What is the timetable for those strategies to complete and, more importantly, be assessed?

Mr NICHOLLS: The task force is finalising the report on that topic right now. The task force will report back through the chief executive to the Minister setting out the timetable and also setting out the key performance indicators [KPIs] that the task force will be agreeing to and setting some time frames over the course of the coming months to consider the responses and for the task force then to have the metrics that it needs to consider whether the measures are working and whether there are new measures that need to be looked at. At the same time a new ongoing database will be built so that we get the business intelligence we need on an ongoing basis and that business intelligence will inform the KPIs that will be in that reporting.

The Hon. DANIEL MOOKHEY: Earlier—I am not sure whether you were present or you had representatives present to observe the evidence of the Insurance Council of Australia but it put a proposition to us that said all operational responses that could reasonably be entered into by themselves and I think complicitly by you guys have indeed been exhausted. You would disagree with that? They said that with respect to themselves so I ask you this: do you think there is more that insurers can be doing as part of the strategy that they are not currently doing under the existing regulatory framework, including the use of that regulation you referred to in 2015?

Mr LEAN: Just to clarify the question, are you specifically talking about claims farming or are you talking about the broader issue around claims integrity?

The Hon. DANIEL MOOKHEY: Both?

Mr LEAN: My response to that would be I do not think the avenues are ever exhausted. There is always something else you could look at doing. We have had a number of initiatives and strategies underway for six to nine months. Certainly insurers have been part of that in terms of providing their business plans, changing practices, referring matters to police, so we need to see how those go as well. But we are continuing to look at

other strategies we might be able to deploy to respond to the problem and that is very much what the fraud task force is looking at.

The Hon. DANIEL MOOKHEY: Just a final question in this line of questioning: a whole bunch of suggestions were advanced by the Bar Association as to additional things insurers could be doing—a lot of that was based on an intelligence-led response to the emergence of these practices, be it geographic or amongst networks. In your view does that have merit and, in addition to that, is it something that SIRA is prepared to facilitate and, if so, would that give insurers more options to respond operationally to this than they currently have?

The Hon. TREVOR KHAN: They did not hear the Bar Association's evidence so you are asking them to respond to something they did not hear.

Mr DAVID SHOEBRIDGE: Which is a pity that he did not sit hear and hear the other key evidence in an inquiry that relates so intimately to your work. Why weren't you sitting here hearing the evidence?

The Hon. TREVOR KHAN: Because they are not required to.

The Hon. LYNDA VOLTZ: Thank you, Trevor, for your contribution to the Committee.

Mr NICHOLLS: Can I answer?

The CHAIR: It was a good question and he can take it on notice.

The Hon. DANIEL MOOKHEY: For the purposes of you being able to facilitate an answer to us now, I will take you through the elements of what the Bar Association—

Mr DAVID SHOEBRIDGE: He has already said he is happy to answer the question.

Mr NICHOLLS: The task force has established five working groups that sit under it. One of those working groups is focused on data. It is looking at data opportunities and the opportunity to get better and smarter with our data; sharing data better. One of the things that the task force did was invite David Hertzell, who has been the chair of the United Kingdom Insurance Fraud Taskforce. He visited us about three weeks ago. He certainly highlighted a number of further strategies that we could consider in terms of the building of intelligence and the sharing of information across and between insurers. That is something we are looking at very closely and seriously as part of the working group in the task force.

Mr DAVID SHOEBRIDGE: So there is a task force and five subcommittees, but I suppose really the question is: What actually has changed on the ground?

Mr LEAN: I think, as I said before, one of the first actions that we took—and I think this process commenced in about September last year—was that we ask the insurers to come up with business plans to outline the strategies that they would be undertaking.

Mr DAVID SHOEBRIDGE: So we have a task force, subcommittees, business plans and strategies but I am asking what is actually changed? What activities have changed?

Mr LEAN: The business plans included various actions that the insurers would undertake to respond to the issues they were facing.

Mr DAVID SHOEBRIDGE: Have they done that and what are they doing—concrete? I do not want to hear about a planned, a subcommittee or a guideline. I want to hear about what has actually changed?

Mr NICHOLLS: Staff in insurance companies have been trained in identifying fraud and gross exaggeration. External investigators have been engaged by insurers as part of their business plan to augment their internal resources. As Mr Lean mentioned, there has been engagement with the Health Care Complaints Commission and the Office of the Legal Services Commission, which has resulted in a referral to those and a number of briefs are being developed. A number of those have also been referred to the police for further investigation.

Mr DAVID SHOEBRIDGE: They have been developed or referred?

Mr NICHOLLS: They have been referred; I said referred. We have developed inside the insurers policies indicators and flags within their claims management systems, as a way of establishing processes for isolating and identifying the unmeritorious claims and ensuring that the claims that are meritorious continue to be handled effectively. We have established a new tracking system for identified claims within insurers. We have established evidence-based quality systems that will allow the insurers to report more effectively on performance. Some insurers have adopted specialist team skills and tools and have even included some international teams that they have brought in to help them in that task.

We have required each insurer to establish an investigation strategy. Some of those are doing those to varying and lesser degrees depending on some of their internal capabilities. We have required each insurer to develop a strategy so that when they are looking at each matter and deciding whether to make an offer of settlement they will have a view in regard to the pattern of the various service providers and the particular pattern of injuries. We have put in place an intelligence-gathering system across each of the insurers to provide reports back to us.

Mr DAVID SHOEBRIDGE: That has been implemented in the last six months or so?

Mr NICHOLLS: Correct.

Mr DAVID SHOEBRIDGE: Do you still expect, despite that, that premiums will have to rise by $75 to deal with fraud, as you had anticipated before you put all those actions in place? So in other words, are they going to make a difference?

Mr LEAN: I think there is always a lag with these sorts of things. Some of the other things that have been done as well as the publicity campaign, which commenced around March using the fraud hotline with the Insurance Council—

Mr DAVID SHOEBRIDGE: But these will all be in place for the next financial year for which premiums have been written, so is it going to have an impact and is it going to reduce the otherwise anticipated $75 increase in CTPs?

Mr LEAN: I think, with respect, you might be mixing up two things. I think the $75 number is the estimate that is being provided around the component of premiums at the moment that is attributable to fraud, whether hard or soft.

The Hon. LYNDA VOLTZ: He means the 11.3 per cent or $70.

Mr LEAN: Yes.

Mr DAVID SHOEBRIDGE: I am not confused. So is that going to go down as a result of all these actions that you have put in place to deal with fraudulent and other claims?

Mr LEAN: There are a range of factors—

Mr DAVID SHOEBRIDGE: I assume that is why you did it?

Mr LEAN: Yes—no, exactly and we would certainly hope that there will be a downturn in the number of dubious claims coming into the system.

Mr DAVID SHOEBRIDGE: I have asked you a very specific question about your estimate on the $75 figures. Is all of the stuff you have done actually going to make the difference that I think motorists want, which is why you are employed, which is why you exist, in this regard to reduce the green slip premium as a result of reducing fraud? Is it going to work?

Mr LEAN: That is the intention of the strategies and we will continue to monitor it in the hope that we do see some of the upward pressure caused by this particular issue coming down on premiums.

Mr DAVID SHOEBRIDGE: Is it going to be more successful than, for example, the last six years of efforts that I have watched of the regulator failing to rein in the excessive insurers profits because repeatedly we had the previous MAA come and say that they were taking steps to rein in insurers profits yet we now see them still at 19 per cent. Can we have any confidence that these actions are actually going to work?

Mr LEAN: I will respond to the point about insurer profits. The point to be made there is that it is too early to tell if the actions that have been taken by SIRA over the last couple of years will start to flow through in terms of actual profit taken out of the system by insurers. Some of the early signs we are seeing in that particular area are good. We have been driving insurers very hard on the issue of superimposed inflation. The previous rate claimed of 3.4 per cent is now considerably lower than that. We estimate that has probably saved motorists about $40 in terms of the premium. It is difficult to isolate particular factors because there are a range of things going on in the scheme at the moment. That is why the Government has kicked off the broader reform of compulsory third party. It is not just fraud that is an issue in the scheme. There are other pressures within the scheme that have resulted in the need for that broader review.

The Hon. DANIEL MOOKHEY: Can you explain your understanding of the meaning of superimposed inflation? How do you understand that term?

Mr LEAN: My understanding of the concept is the increase above inflation that insurers are not able to predict effectively through increased claims cost. It is often caused by things such as judgements that might change the law in a way that was not anticipated by insurers.

Mr DAVID SHOEBRIDGE: Fresh heads of damages that were not previously considered.

Mr LEAN: Essentially, yes.

The Hon. DANIEL MOOKHEY: That is input in the actuarial models factored into the pricing?

Mr LEAN: Yes.

The Hon. DANIEL MOOKHEY: And should that be over estimated it results in the excessive profit being captured by the insurer?

Mr LEAN: That's correct.

The Hon. DANIEL MOOKHEY: Do you think there is merit in recovery models for the scheme?

Mr NICHOLLS: With the review of CTP and the profit review, which were both released at the same time. The profit review identifies a number of recommendations to look at the way profit can be dealt with. It highlights a number of systemic or structural changes that could be made. Not specifically profit adjustments but certainly it makes recommendations for things like risk pooling as other structural measures that we can look at in relation to addressing the question of profit taking. That is something we are looking at closely.

The Hon. DANIEL MOOKHEY: Do you think regulating profit taking should be an objective of CTP reform or is 14 years of excessive insurer profit a clue that perhaps the design of the scheme and public policy objectives indicate we should be looking at in a regulated market with a mandated product?

Mr LEAN: The recommendations made by the profit review, which we are currently in the process of implementing, will enable us to regulate profit more effectively and specifically. It will stop the super profits emerging in the scheme that have occurred over previous years.

Mr DAVID SHOEBRIDGE: There are 21 recommendations and you have had since the middle of October last year. How many have been implemented?

Mr LEAN: Off the top of my head, I think ten have commenced implementation. There are a couple that require legislation, so they will be looked at in the broader CTP reform process. There are around six being looked at as part of the redesign of the premium system we are currently undertaking.

Mr DAVID SHOEBRIDGE: Could you give me a detailed break down of those you have partially implemented and to what extent; those you are not in a position to implement because they require legislative changes; and those that have not been commenced?

Mr LEAN: We will take that on notice.

The Hon. DANIEL MOOKHEY: What is the ratio between super profits and fraud in terms of cost to the system? If $19 out of every $100 that comes into the scheme is taken by insurers in profit, as opposed to the percentage of the $100 that go to fraud, what is the ratio?

Mr LEAN: I would have to take that on notice.

The Hon. DANIEL MOOKHEY: In terms of what the higher cost is to the scheme, is it the gap in terms of the super profits, does that cost the scheme more than fraud?

Mr NICHOLLS: I would have to take that on notice.

Mr DAVID SHOEBRIDGE: What I find frustrating is that for six years we have had the issue of superimposed inflation raised and it has been a slow glacial progression. As soon as fraud is raised there is a flurry of activity, subcommittees, and a whole lot of action within six months. When the subject of the action is a claimant your response can be very quick, but when the subject of the complaint is the insurers your response is glacial, how do you explain that?

Mr LEAN: Obviously, I would not agree with that assessment. There have been a range of actions taken over the last couple of years to start to deal with the issue of insurer profit, including issuing the new premium guidelines in 2014. I would not agree that the pace of change in that area has been glacial.

Mr DAVID SHOEBRIDGE: The outcomes have been zero. We are still at extraordinarily high levels of insurer profits, well above the 8 per cent which is meant to be your target.

Mr LEAN: As I said in my previous answer, the actions taken by the authority over recent years is still too early to tell what impact they are having on profits at the moment. As I have said, we estimate that in the case of superimposed inflation we have avoided $40 in premium cost for motorists through the action we have taken.

The CHAIR: Would you comment on what is a reasonable profit in this regulated environment? The insurance industry seems to have a figure. If there are super profits—I accept there are—why are there not more entries into the market place? Why has it contracted? What can we do to encourage more competition and see the market try and push the prices down?

Mr NICHOLLS: The recommendation of this Committee at the last inquiry was to look at both profit and competition. The report released in March this year and provided to the Committee examined both of those questions. That report identified that what is effectively happening in the system is that the incumbents are gaining a lot of the best risks in the system and it is through that some of the super profits have been achieved. If an insurer can get a large number of very good risks but not carry a lot of poor risks then they are getting the benefit from having the additional risks and that is driving some, not all, of the profits. The profit and competition review concluded that we need to look at reforming the premium system so that it removes those opportunities. That is why there are recommendations around risk pooling. They are things we are actively considering in the premium review at the moment.

The CHAIR: How are they risk shopping?

Mr NICHOLLS: The way the premium system works better risks in the market effectively pay a little more than they should be and higher risks are paying a little less than they should be in order to have an affordable system. Effectively it is a cross subsidy from better risks to higher risks, so under 25-year-olds and people with older vehicles are not facing premiums that are excessive. Because we are in competitive market place insurers will engage in pricing, marketing and acquisition strategies quite naturally aimed at trying to get the maximum number of good risks that they can get on their books. That is normal market behaviour. The profit and competition review found if an insurer is particularly successful at gaining an over proportion of better risks then that extra money they are collecting is not going to offset the higher risks, it is in the form of profit.

The Hon. TREVOR KHAN: If an insurer is targeting the new car market offering free CTP for a year if you buy a new car wrapped up in an insurance product, what they are requiring is a good risk and avoiding the bad risks, that is, the under 25-year-old buying a second-hand car?

Mr NICHOLLS: Correct.

The Hon. TREVOR KHAN: So if you have four players in the market and one or two of them are capable of effectively farming that area of the market then that may make it unprofitable for the other two operators?

Mr NICHOLLS: That is right.

The Hon. TREVOR KHAN: So if one of the operators has a large physical footprint on the ground and has walk-ins off the road of under 25s they will pick up a disproportionate amount of the bad risk, is that correct?

Mr NICHOLLS: That is one of the findings of the profit and competition review.

The Hon. TREVOR KHAN: And even though we talk about this as being the nature of the market, it is far from a perfect market, is it not?

Mr NICHOLLS: The effect of intervening in the marketplace in order to drive affordability, which is a good objective to have, creates a distortion in the way the market operates so that insurers are incentivised to behave in a particular way. So coming to the question, it gives incumbents enormous knowledge and information about which markets to be in and how to market to those markets. It is one of the key factors that the review identified as a reason to reform the premium system so that new entrants would look at this market and not see that they would effectively get all the poor risks and not all the good risks.

Mr DAVID SHOEBRIDGE: But that runs the risk of having 18-year-old men finding it almost impossible to get affordable CTP because they are in a smaller pool and we are having less of the burden shared across the community, does it not?

Mr LEAN: What the profit review recommended was that you would need mechanisms to deal with that situation.

Mr DAVID SHOEBRIDGE: But that is the direction it goes in when you break it up into smaller pools?

Mr LEAN: Although the profit review was recommending that you would create a risk pool that would provide for the risks that you put into that pool to be shared across all insurers or across a large section of customers as well.

Mr DAVID SHOEBRIDGE: So a proportion of all premiums goes into a central pool that is then farmed around?

Mr LEAN: Yes.

Mr DAVID SHOEBRIDGE: Where are you up to in implementing that?

Mr LEAN: At the moment the premium review is underway. We are expecting to get a final report in the second half of this year as to the preferred option to try and better balance community rating and the issue of risk.

The Hon. TREVOR KHAN: Is that the second half of the calendar year?

Mr LEAN: Yes, that is correct.

The Hon. TREVOR KHAN: So that is between July and the end of December. Are you in a position to give us a slightly more accurate time assessment than six months?

Mr NICHOLLS: The building of a risk pool is not a straightforward and simple task. Most of the states in the United States which have similar-type schemes have risk pools. It is a fairly normal feature in schemes around the world but there are examples of many of those pools that have not worked so we really need to get the design right. The other factor is that government, as you would be aware, is considering options around reforming the scheme in total. At this point we are also being mindful of timeframes for the rollout of any changes to premiums to align with whatever government may be doing there.

Mr DAVID SHOEBRIDGE: So can you give us a better estimate of the date, which was the question?

Mr NICHOLLS: This was a decision of the SIRA board. We have already presented a number of models to the board and we will be working over the next few months to have that finalised and approved by the board; it is not my decision.

Mr LEAN: We obviously have to engage and consult on this particular proposal as well. I think realistically it is towards the end of this year, not July but I would expect there will be something out for consultation around July or August.

The Hon. LYNDA VOLTZ: You said earlier that you had savings of $40 per year. In what period was that?

Mr LEAN: The point I was making on the $40 per year was that it was effectively an avoided cost—that is, as a result of us pushing down the assumptions being made around superimposed inflation we would have avoided an additional $40 on premiums at the moment.

Mr DAVID SHOEBRIDGE: The Hon. Lynda Voltz asked you what period you were referring to. It was a very simple question.

Mr LEAN: She was actually asking around what was the actual saving.

The Hon. LYNDA VOLTZ: You talked about the further pricing to take effect on 1 July 2016 and it being expected that those prices will be increased to 11.3 per cent.

Mr LEAN: Yes.

The Hon. LYNDA VOLTZ: Will we see that $40 saving within the $70 that is projected in the 11.3 per cent?

Mr LEAN: It is very difficult to talk in specifics on particular components. The point I would make on this is that what we see from the insurer filings is that we would estimate that premiums, as a result of claims costs going up by 30 per cent, should be going up more than what they are and insurers, through other measures that we are taking like the superimposed inflation issue that I have raised, that price increase is being contained to around 11.7 per cent.

The Hon. LYNDA VOLTZ: So it is actually higher than what you have projected, which was 11.3 per cent?

Mr LEAN: Sorry, 11.3 per cent.

The Hon. LYNDA VOLTZ: In 2012 the workers compensation scheme was changed. What has been the drop in workers compensation recoveries or the number of claims under the scheme?

Mr NICHOLLS: The advice that I have been given is that there are 270 few recoveries on a quarterly basis.

The Hon. LYNDA VOLTZ: That is more than 1,000 per year?

Mr NICHOLLS: Approximately.

The Hon. LYNDA VOLTZ: Are any of those claims now appearing as minor severity represented claims?

Mr NICHOLLS: It is likely that some people who previously would have been eligible would be making some claims as part of that increase in claims.

The Hon. LYNDA VOLTZ: So part of that 1,700 may include some?

Mr NICHOLLS: But the purpose of your journey is not a relevant consideration in CTP.

The Hon. LYNDA VOLTZ: I am not asking that.

Mr NICHOLLS: We do not get records around that specifically.

The Hon. LYNDA VOLTZ: But within that 1,700 there may be a shift from the workers compensation recoveries?

Mr NICHOLLS: I expect that there would be a small number but we cannot put a figure on it.

The Hon. LYNDA VOLTZ: We had 1,000 a year before. We are not saying they are going across but certainly there would be people within that number who had been involved in accidents.

Mr NICHOLLS: I would expect so.

The Hon. LYNDA VOLTZ: Because they have previously claimed under accidents.

Mr NICHOLLS: Yes, I would expect so.

The Hon. LYNDA VOLTZ: I assume there would be no reason to expect that they would not be able to?

Mr NICHOLLS: No, if they are not at fault in the car crash.

The Hon. LYNDA VOLTZ: Earlier you identified the 1,700 as minor severity that are forcing up the claims. How much might the workers compensation shift be forcing up the claims?

Mr NICHOLLS: The advice of our actuaries is that they believe it is not a particularly significant impact. If you look at the drop-off of claims in workers compensation there does not appear to have been the offset in CTP, but because—

The Hon. LYNDA VOLTZ: You are saying when compensation—

The Hon. TREVOR KHAN: Let the witness finish his answer.

The Hon. LYNDA VOLTZ: I want a clarification. You said that with the drop-off in workers compensation there has been no comparative increase in CTP claims.

Mr NICHOLLS: There has been a broad increase but that increase in claims is clearly coming from beyond journey to work claims. So children coming into the system, for example, would not have previously claimed under workers compensation, unemployed people making claims—

The Hon. LYNDA VOLTZ: That is good. So can you—

The Hon. TREVOR KHAN: Can you just let him finish his answer.

The Hon. LYNDA VOLTZ: Will you please stop interrupting?

The Hon. TREVOR KHAN: Point of order: The witness is entitled to answer. The Hon. Lynda Voltz is cutting the witness off. The witness should be entitled to complete his answer.

The Hon. LYNDA VOLTZ: I again ask the Chair to remind the Hon. Trevor Khan not to interrupt members asking questions.

The Hon. TREVOR KHAN: I am entitled to take a point of order.

The Hon. LYNDA VOLTZ: You are interrupting again.

The CHAIR: It has been a long day. I ask all members to be generous to the witnesses who have come to give evidence before this Committee. I do not want to rule on points of order but please bear that in mind.

The Hon. LYNDA VOLTZ: From 2012 to the present time what has the increase been in the number of children?

Mr NICHOLLS: I will take that question on notice.

The Hon. DANIEL MOOKHEY: I want go back to a question which was actually asked of you by the Hon. Shayne Mallard but which I am not sure we got an answer to. Does the State Insurance Regulatory Authority have a view as to what precisely should be the profit margin benchmark for compulsory third party premiums?

Mr LEAN: That issue was obviously covered within the report.

The Hon. DANIEL MOOKHEY: Yes, I am well and truly aware of that. I am asking: have you formulated a view in response to the independent report you received in March?

Mr LEAN: No, that is an issue we are currently working through at the moment.

The Hon. DANIEL MOOKHEY: Is the 8 per cent target that existed at the Motor Accidents Authority [MAA] a continuing target? Has that changed? Because that is the default target.

Mr NICHOLLS: Eight per cent has never been a formal target. There has never been a target written down anywhere or spoken about by the regulator in relation to 8 per cent. If you look at our annual reports, you will see that profit margins vary from as low as 1 per cent or 2 per cent to as high as 10 per cent or 11 per cent; and we publish those ranges in our annual report.

Mr DAVID SHOEBRIDGE: As high as 10 per cent or 11 per cent?

The Hon. DANIEL MOOKHEY: As high as 10 per cent or 11 per cent. Is it not 19 per cent?

Mr NICHOLLS: The 8 per cent is the average over a period of time, and that has been the average that the industry has gravitated around.

The Hon. DANIEL MOOKHEY: So the 8 per cent has been an average over time?

Mr NICHOLLS: Yes, so the point is—

Mr DAVID SHOEBRIDGE: Are you saying 8 per cent? That is not true. Mr Nicholls, your evidence is not true.

Mr NICHOLLS: I am sorry but I object to that. I am speaking under oath.

Mr DAVID SHOEBRIDGE: Eight per cent has not been their profits; they have been 19 per cent.

Mr NICHOLLS: I object to Mr Shoebridge saying that I am lying in my evidence. I am under oath.

Mr DAVID SHOEBRIDGE: I did not say you are lying; I said it was not true.

The CHAIR: Order! The Committee will come to order.

The Hon. TREVOR KHAN: Point of order: The Hon. Daniel Mookhey is asking questions. The witness is attempting to answer them, and Mr Shoebridge is jumping down the throat of the witness. Mr Shoebridge should be quiet and allow the witness to answer. I think a degree of civility is required.

The CHAIR: I agree with the point of order. We do need to have a degree of civility with our witnesses

Mr DAVID SHOEBRIDGE: Point taken; I withdraw it.

The CHAIR: Thank you. It has been withdrawn.

The Hon. DANIEL MOOKHEY: To go back to what Mr Nicholls just said, over what period of time has the average been 8 per cent?

Mr NICHOLLS: The point I am making is about the use of the word "target". As the regulator we have not published a target—

The Hon. DANIEL MOOKHEY: I am sorry to interrupt but—

The CHAIR: Does the Hon. Daniel Mookhey wish to clarify his question?

The Hon. DANIEL MOOKHEY: No, I do not want to clarify it; I will restate it, because it was just a simple, straightforward question. Mr Nicholls made a point earlier that it has gravitated to an average of 8 per cent.

Mr NICHOLLS: In filings, yes, that is correct.

The Hon. DANIEL MOOKHEY: And over what period of time is that 8 per cent average taken?

Mr NICHOLLS: Over most of the period of the scheme in its current form.

The Hon. DANIEL MOOKHEY: Thank you. So the independent report you are referring to from March which recommends as an interim measure a profit margin benchmark for CTP premiums of 12 per cent would be a 4 per cent increase of the average?

Mr LEAN: I think what the insurer profit review said was that there are a range of other things that we need to undertake in order to—

The Hon. DANIEL MOOKHEY: Can I read the recommendation directly from the report?

Mr LEAN: I think you need to read the whole thing in context. I think what the report is saying is that there are a range of factors that are contributing to super profits within the scheme and there are a number of actions that we should take. Part of the reason that there is some of this activity going on in the scheme where insurers are trying to extract higher profits is probably that there is not a sufficient return compared to other lines of business. Obviously if they are not making a sufficient return compared to other parts of their business—

The Hon. DANIEL MOOKHEY: Yes, I have read the report. I understand the concept of return on capital. I understand the concept of internal rate of return. I am not asking you about whether or not this recommendation is meritorious. I am not asking you to advance a policy argument in favour of it or against it. I am simply asking, should this recommendation be implemented, would it constitute a 4 per cent increase in allowable profit margin to CTP providers over the historic average?

Mr LEAN: Yes, that is correct. But where I was going—

The Hon. DANIEL MOOKHEY: Thank you for answering the question.

Mr LEAN: Would I be able to finish my answer?

The Hon. DANIEL MOOKHEY: Sorry, but we have limited time—

The CHAIR: The witness will be allowed to finish his answer.

Mr LEAN: Where I was going with my answer was that essentially what the report was saying was that, all other things being equal, if you deal with all of the other things that are contributing to super profits within the scheme a 12 per cent rate would likely be more appropriate. It did also say that we need to consult on that, and that is certainly the issue that the SIRA board is looking at at the moment.

The Hon. DANIEL MOOKHEY: Yes, I understand. And in reading the rest of the report I understand that the argument that was also made in respect of why that figure has to go up was that, in terms of the cost of capital that an insurer needs in order to keep the capital for the long tail, in order to earn returns over that period of time there needs to be that higher figure. Is that right? Have we interpreted that aspect of the recommendations correctly?

Mr LEAN: Yes.

Mr NICHOLLS: Assuming that the other measures are addressed. I think the point that the profit review is making is that insurers over time have effectively garnered an excessive profit. But the point that the profit review is making is that, if the other measures are successful to bring those profits under control, a long-term rate may be higher.

The Hon. DANIEL MOOKHEY: But am I right in saying that the independent report suggests that the return on capital that should be available to an insurer is 15 per cent?

Mr NICHOLLS: Well, the report has put that as a proposition and has really said that we need to consult with the insurers and others on that.

The Hon. DANIEL MOOKHEY: I have checked the 30-year bond rate. Is it not the case that it is a multiple of the 30-year bond rate of roughly seven to one—given that the bond rate is 2.5, if it allowable at 15, and maybe my maths is wrong, but that is well and truly above the risk-free rate of capital.

Mr NICHOLLS: This was an independent report, not our report, so that is the recommendation and that is the figure that they have put.

The Hon. DANIEL MOOKHEY: I am not asking you to own outcomes; I am just asking if that is correct? For us to endorse or otherwise have faith in this scheme we have to accept a ratio of internal rate of return to the risk-free rate of roughly five.

Mr NICHOLLS: Insurers when they are making capital investment decisions are not doing that against the risk-free rate; they doing that against the opportunity cost effectively of deploying their capital for other purposes.

The Hon. DANIEL MOOKHEY: That is the risk-free rate.

Mr NICHOLLS: Well, no, it is not, because you can deploy—

The Hon. DANIEL MOOKHEY: Would you like to use the bank bill swap rate instead? Which rate do you want to use?

Mr NICHOLLS: The point that the profit review is making is that insurers have their capital and they need to make a decision about where to deploy their capital. That capital could be deployed on other lines of business, like motor insurance, home insurance or whatever. The insurer will make an assessment about the rate of return that they will get from that capital if they deploy it on less risky activities.

The Hon. DANIEL MOOKHEY: But surely this is the only product that we mandate that consumers buy. That is the big difference between the allocation of capital to this purpose and to others, because in respect of all the other products that you just referred to there is no application of the coercive power of the State to a consumer to buy them. The point of differentiation here, and the reason why these questions become very relevant, is that if we are compelling people under the force of law to buy this product then we have a principle that says profits ought not to be excessive.

Mr LEAN: I think that is precisely why there is a need to conduct further consultation on that particular recommendation. People have noted that the fact it is a compulsory product means there is less risk associated with that product. It is a fair point. We need to consult further on it.

Mr DAVID SHOEBRIDGE: But part of what the Hon. Daniel Mookhey is saying is that the world is awash with capital that can be obtained at 2 per cent, 3 per cent or sometimes 0 per cent. What are you doing internally to check the rationality of the recommendation that is saying that insurers need to have a 15 per cent return on their capital—when they can access capital on the global markets for 2 per cent, 1 per cent or less? What are you doing? Or have you just read the recommendation and said, "Well, those are not our skills. We cannot do anything with it. We just have to pass it on"? What are you doing?

Mr LEAN: No, we are looking at that particular recommendation in the context of the premium system review that we are doing at the moment. As I said before, we will be consulting more broadly on that. The board is overseeing that particular process. We will be providing advice to them and we will be consulting later in the year.

Mr DAVID SHOEBRIDGE: I went online to have a look at what the cost of a green slip would be for a four-year-old Corolla registered in the city to a 30-plus-year-old driver. The various premium costs ranged from $578 with GIO through to about $825 with CIC. But when you look more deeply at what you are actually paying for when you get your compulsory statutory cover for your motor vehicle, you realise that with GIO you are also paying for a whole series of extra benefits—at-fault driver cover with a series of schedules of benefits. It is the same with NRMA and with Allianz. To what extent do those add-ons add to the cost of CTP green slips?

Mr LEAN: Certainly our advice is that those first-party add-ons probably only add between $1 and $2 per CTP policy. The Act does not prevent, and nor do the guidelines, insurers from providing those additional first-party at-fault products. Many insurers in fact do that as a marketing exercise to attract new policyholders. I think it is important to point out that the benefits that are provided under those particular policies are quite limited; hence the conclusion that we estimate it is between $1 and $2 per policy.

Mr DAVID SHOEBRIDGE: On what basis do you estimate it is between $1 and $2 per policy?

Mr NICHOLLS: Insurers are required under the premium determination guidelines that, if they engage in one of those types of marketing activities, they need to disclose the cost and information to us about that. We assess that as an acquisition expense— in other words, a marketing expense. We obviously do not regulate the products themselves, which is why the insurers are going to make judgements about what particular benefits they want to offer, et cetera. We look at it to ensure that the cost of that product is not contributing to an excessive premium.

Mr DAVID SHOEBRIDGE: If they are costing only $1 or $2 but they are being sold so prominently—and I can tell you that they are being sold very prominently by the insurers—are you concerned that motorists who are buying their green slips are being misled as to the quality of that first party cover that they are getting? If it is costing $1 or $2 per premium, it must be a pretty rotten product.

Mr LEAN: Our role is to regulate the compulsory third party product.

Mr DAVID SHOEBRIDGE: But that is what you pay for. I cannot choose not to get that and to have a reduced premium from the NRMA or the GIO. It is just rolled in with the cover. That is what you are regulating.

Mr LEAN: The issue for us is around the cost of those products and whether they result in a significant acquisition cost, which then impacts on the price of the premium. Issues around the cover more generally are probably more appropriately matters for other regulators.

The CHAIR: I have a question around bundling, which I think is a valid question. Some of the witnesses today spoke about data and access to data to understand their risks and so forth. We touched on this before. Your organisation collects data, more recently—in the last two years, I think—from changes to legislation and aggregates it to understand what is going on in the marketplace. How publicly available is that? Are you sharing that? I mention it is commercially confidential between the insurers, who probably do not share with each other, but are you able to inform the industry better? How openly accessible is that data?

Mr LEAN: We release a range of documents which describe what is going on in the scheme. Is it the quality performance report that we provide to the Committee, or the annual performance report, I should say?

Mr NICHOLLS: That is right.

The Hon. DANIEL MOOKHEY: What about the actuarial models?

Mr NICHOLLS: Whose actuarial models? Which actuarial models?

The Hon. DANIEL MOOKHEY: Yours, the ones you monitor from the insurers.

Mr NICHOLLS: The information that is provided by insurers to us is protected information under our legislation. Any information we provide in the public domain is aggregated or de-identified because it is regarded as commercially obtained.

The Hon. DANIEL MOOKHEY: Do you think that that protection should be retained? An argument that was advanced to the Committee today was that transparency of inputs in the actuarial model, or the design of the actuarial model, is the extent to which the risk pools are assessed and defined. Essentially the argument is that there is a massive information asymmetry between the providers of the product and the consumers of the product and that it is actually a very free market for there to be equality of information between the two. Perhaps these models or to be public in order to facilitate greater competition and great assessments on the part of would-be market entrants. As a means by which to bring more people into the market, do you think there is any merit in any of that?

Mr LEAN: I am not precisely sure what you are suggesting. We obviously run the green slip calculator online, which gives consumers what they need in terms of working out where they can get the best price. I am not sure they need access to actuarial models.

The Hon. DANIEL MOOKHEY: Take for example the Independent Pricing and Regulatory Tribunal [IPART].

Mr LEAN: Right.

The Hon. DANIEL MOOKHEY: IPART, when it is doing its work of estimating price increases for electricity or when it is doing its work with respect to setting public transport fares, puts up wonderful spreadsheets that allow you to go through in real detail precisely every aspect of the input. Another example with which you might have some familiarity is the national heavy vehicle road pricing access regime in which the entire model is put out for industry consultation to essentially solve the collecting action problem and allow great transparency about how those products are being priced. The key difference between this product and

other products is that this is a mandated consumer purchase product and it is subject to price regulation which, for example, does not exist in other markets.

Mr LEAN: I may not precisely understand the other schemes that you are talking about; but certainly when you are talking about IPART and its role, it generally regulates monopoly providers so there is a capacity to probably put more information into the public domain. We are obviously dealing with a competitive market.

Mr DAVID SHOEBRIDGE: An oligarchy.

Mr LEAN: I am sorry?

The Hon. DANIEL MOOKHEY: An oligopoly. You are dealing with an oligopoly for providers.

Mr LEAN: Well, it is a competitive market, and much of the detailed information that is provided to us as part of insurer filings, et cetera, would be commercially sensitive to the providers.

Mr DAVID SHOEBRIDGE: But IPART does electricity and that is a very similar oligopolistic market to what you have, yet they can have transparency on electricity pricing.

Mr NICHOLLS: I think the point is well made in terms of trying to get the balance between transparency and providing commercial protection for information that is commercial-in-confidence. The origin of those provisions goes back to the view that, as the regulator, you are more likely to get disclosure in a situation in which the insurer has some level of confidence that that information is not then going to be immediately published on a website somewhere and that they have commercial data. For example, a number of insurers invest quite heavily in what they call their rating engine. The rating engine is their pricing structure. If their competitors could get hold of their pricing structure and could pull it apart, they can very quickly work out how an insurer is targeting the market.

The Hon. DANIEL MOOKHEY: Yes, but why is protecting their interest an objective of public policy? That is what I am trying to get at. I get your point in respect to non-mandated insurance products so for income protection your case is very well made—we do not mandate that people buy it. But we are mandating that people buy this product. Why should not the consumer's need for price competition outweigh the provider's need for commercial protection?

Mr LEAN: I think the consumer need for price competition is met through the green slip calculator. This is what I am struggling with. I am not entirely sure why your average consumer in the streets needs to see the actuarial models that underpin—

The Hon. DANIEL MOOKHEY: Generally because they would like to have it. It is not necessarily the consumer; dare I say, I am a consumer who would love to see an actuarial model, because I am a nerd!

The CHAIR: That is confirmed!

The Hon. DANIEL MOOKHEY: But other than that, I would say that consumers would love to see exactly how they are being priced, how they are being risked, and how all this is being worked. If it is the case that they are paying higher premiums, I think they would appreciate the idea of contestable pricing far more in this marketplace than in others. The point I make is that I understand your point, but I am saying that there have been innovations in many other markets and it looks like this one has not caught up to them.

Mr NICHOLLS: Through the calculator, we publish all of those risk factors. You can see the risk factors and you can see what that does for prices and the sort of prices that Mr Shoebridge cited—ranging from a Corolla that is four years old to whatever. You can absolutely see how that plays out in terms of the different price choices that you have. One of the big messages that we promote all the time is shopping around because you may get a quote or a renewal from an insurer and you can go online and look at those risk factors, enter your own risk factors, and determine whether you can get a lower price. For example, we have a number of people who ring our help line and to whom we provide help. About 75 per cent of those people find a lower price when they ring our help line. It is absolutely right from a consumer point of view that they should be encouraged to access that information. At the moment we get nearly three million hits a year on the green slip calculator, which puts it in the top five to 10 of New South Wales Government websites. People are going online to find the best price.

The Hon. DANIEL MOOKHEY: So there is demand for more information.

Mr NICHOLLS: Absolutely. We have been improving that system over time.

The Hon. DANIEL MOOKHEY: This is my last question in this line of questioning. Are there any additional initiatives that SIRA is currently considering to foster greater price competition?

Mr LEAN: Certainly one of the things that we are actually looking at is whether there is a way to get better linkages between the green slip calculator and the actual purchase of the insurance products. At the moment you go onto the green slip calculator but then you have to separately go to the website of the insurer. There may be a way to perhaps get a better product where you can actually do it at the point of registration. That would certainly be something that would probably assist with competition.

Mr DAVID SHOEBRIDGE: It is not so much providing the data to consumers that might improve competition; it is getting a pool of data from new entrants and providing the data to new entrants, which would be the most significant benefit for competition. Could I ask you to take that on notice?

Mr NICHOLLS: Absolutely. We have a statutory obligation to provide de-identified claims and premium data to insurers, to market analysts, and we do provide that on a quarterly basis. What we do not do is publish individual commercial in-confidence—

Mr DAVID SHOEBRIDGE: I would rather you just provided on notice what you do in that regard in order to encourage competition. I would like the detail on that on notice. Mr Nicholls, when I heard your evidence earlier, I think we may have been talking about insurers' profits. You said historically they have been at 8 per cent, to which I took issue. I am going to give you the opportunity now to clarify your evidence. Were you talking about filings as opposed to actual profits, and could you clarify the difference please?

Mr NICHOLLS: I was talking about the filings.

Mr DAVID SHOEBRIDGE: So historically insurers have been filing, with their actuarial assumptions behind them, proposals for premiums that are, on average, saying that they would get 8 per cent profit. Is that right?

Mr NICHOLLS: Eight per cent profit on the filed premium, that is correct.

Mr DAVID SHOEBRIDGE: That is what they said, that is what their actuarial models backed up, that is what you ticked off on. Is that right?

Mr NICHOLLS: That is right.

Mr DAVID SHOEBRIDGE: What happened?

Mr NICHOLLS: The profit review commissioned by SIRA following the recommendations of this committee effectively identified that there were excessive profits that were extracted by insurers when you go and see the actual performance of the system. The profit review identified two main reasons for that, and I have elaborated on that in previous answers so I will not elaborate at this point, but, in summary, it identified scheme design, which I believe has been raised previously as a factor—there is uncertainty in the design, it is resulting in more capital that is required, and that uncertainty has been flowing on in terms of the conservativeness in price setting; it is leading to things like historic superimposed inflation margins, which we have now pushed down from the 3.4 per cent average that they previously filed to just over 1 per cent. So that was half of it.

The other half that was identified by the profit review is the other matter that I alluded to earlier, which is in relation to competition in the marketplace and the ability of some insurers to take what is meant to be the cross-subsidy for other vehicle owners and they have been able to use ways of extracting that and using that as profit, and the other companies that then end up with those poorer risks have no option but to put their prices up in order to fund them. So the effect of that is, effectively, an additional cost that is coming out of the system. So the profit review makes a number of recommendations in relation to that.

Mr DAVID SHOEBRIDGE: So, on average, historically the filings were saying that insurers would be expected to get 8 per cent return on their capital or 8 per cent profit out of the scheme. What figure did they get historically?

Mr NICHOLLS: The figure over the life of the scheme is 19 per cent.

Mr DAVID SHOEBRIDGE: So that 11 per cent over the life of the scheme, what does that mean in dollar terms?

Mr NICHOLLS: I would have to take that on notice.

Mr DAVID SHOEBRIDGE: Do you know a ballpark? Surely you know a ballpark?

Mr NICHOLLS: I do not know a ballpark, I am sorry.

Mr DAVID SHOEBRIDGE: $1.1 billion? $2 billion? $3 billion? $4 billion? $5 billion?

The CHAIR: He has said he will take it on notice, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Do you accept though that when insurers have been saying to you, and you have been accepting, filings on the basis of 8 per cent historically but in actual fact historically they have got 19 per cent, that you as the regulator have had a longstanding historic failure?

Mr LEAN: As I said in my earlier answer, this issue has been addressed by the regulator since before 2014, I think, and certainly we are confident with some of the things that we are seeing in the scheme at the moment that in the future we will not be seeing the same sort of super profits extracted from the scheme. I mentioned the issue before around superimposed inflation and what we are actually seeing in terms of driving those rates down. I think the other point to be made there is that we are actually seeing an increase in price competition, which we would expect will also reduce the level of superimposed inflation in more recent years. But it is too early to tell with the actions that have been taken in recent years because, obviously, with a long-tail business like personal injury it takes some time for the profit margin to fully mature. But it is certainly something that we have been giving a lot of attention to over recent years.

Mr DAVID SHOEBRIDGE: So what do you think the profits are for the 2014 year then? What is their estimate now?

Mr LEAN: It is too early to tell.

Mr DAVID SHOEBRIDGE: You have progressive estimates of what the profits are—I have seen them. If you cannot give them to me orally you can give them on notice, the 2014 and 2015 filing years.

Mr LEAN: It would be too early to tell for those years because it is too early in the underwriting year. I can take it on notice but the answer would be it is too early to tell.

Mr DAVID SHOEBRIDGE: But you will have your initial assessments, because I have seen them before in your annual filings—they are in your annual reports, you know that.

The CHAIR: Mr Lean has taken it on notice and we will accept that.

The Hon. TREVOR KHAN: The document that you have tabled, "Deterring fraudulent and exaggerated claims in the NSW CTP insurance scheme", it was suggested earlier that this was not on your website. Are you able to check as to whether it is on your website?

Mr NICHOLLS: It is absolutely on our website, yes.

The Hon. DANIEL MOOKHEY: Can we clarify that?

The Hon. TREVOR KHAN: The assertion was made; he is entitled to answer it.

Mr NICHOLLS: I am reasonably certain it is there. I did not check it today; if it is not there for some reason I am very happy to correct that.

The Hon. TREVOR KHAN: On pages 10 and 11 of the report, particularly on page 11, you do an analysis of CTP scheme trends. If you look at south-western Sydney, page 11, and particularly central western Sydney, which is number one, since 2008 it has had a 355 per cent increase in claims and yet that compares to the Central Coast increase of 85 per cent. I am not going to go through every figure but are you able to identify, for instance, what the increase has been in country New South Wales? It does not appear to be there.

Mr NICHOLLS: I can give the exact figure on notice, but it has been fairly flat. Once you move outside of the regions shown on this map it moves to a fairly flat, normal claims experience.

The Hon. TREVOR KHAN: So am I entitled to draw the conclusion from that that because the country premiums are linked to the city premiums by some form of percentage calculation, essentially the country premiums are being dragged up by this increase in city premiums, or am I wrong?

Mr NICHOLLS: No, that is not correct. We have five geographic zones in New South Wales. The country is a separate geographic zone, the city of Sydney is a zone, outer metropolitan city is a zone, and Newcastle and Wollongong, making five. Each of those geographic areas pay their own way and every vehicle class within each of those geographic zones also pay their own way. So, effectively, the cross-subsidies that occur are within those but not across them.

Mr DAVID SHOEBRIDGE: I have just found this report on your website.

Mr NICHOLLS: It is there? Great.

The Hon. LYNDA VOLTZ: I just want to ask for the stats. Within those zones could you give us a breakdown of vehicles and zones and with motorbikes in particular per zone and what they are?

Mr NICHOLLS: I am happy to take that on notice.

The Hon. LYNDA VOLTZ: Someone has asked us for them and it would be helpful if we could give them to them.

Mr NICHOLLS: I am happy to take that on notice.

The Hon. TREVOR KHAN: With regard to these zones and the increase, are you able to identify what the increase in claims has been in such areas as Newcastle and Wollongong as well?

Mr NICHOLLS: Yes. I am happy to take that on notice as well.

The Hon. TREVOR KHAN: This is for the period 2008 to 2015. Some of the evidence that we have received, including from yourselves, the Bar Association and others, obviously as a result of information that you have given, is that there is now a trending up in terms of claims in areas that were otherwise not infected by what was going on. Are you able to provide some form of statistics that show that adjustment, as to where it is trending and why?

Mr NICHOLLS: Yes, we are happy to take it on notice. We can absolutely break these figures up into a year-by-year assessment by region and you can see those trends.

The Hon. TREVOR KHAN: In terms of the year, are you able to give the 2016 figures to date?

Mr NICHOLLS: We have initial claims figures for 2016 but I will need to consider how robust they are because they are so new this year.

Mr DAVID SHOEBRIDGE: Can you give us your estimate of what the reforms to date will do in terms of that trend of the upward curve, which is what you are really seeing in some of these graphs because you would not be expecting as a result of your successful implementation of recommendations that upward trend to occur, I assume?

Mr LEAN: We can certainly take that on notice and have a look at it. I think, though, the point we need to make about this is that not all of this is attributable to fraud. Also probably underlying this is a general increase in the number of claims being made. That is not necessarily a bad thing but that is part of the reason why the Government has kicked off the broader reform process to look at these other issues in the scheme because it is having an impact on affordability as well.

Mr DAVID SHOEBRIDGE: Can you give us a numerical breakdown of those other drivers?

Mr LEAN: To the extent that we have it we will look at giving it to you.

The Hon. TREVOR KHAN: Also on page 17 you are involved in making essentially a comparison of south-western Sydney with the rest of New South Wales with regards to essentially who the claimants are. That is what I understand that to be, is that right?

Mr NICHOLLS: Yes, that is right.

The Hon. TREVOR KHAN: I find it a bit difficult to look at a bar graph or whatever they are called?

Mr NICHOLLS: A column.

The Hon. TREVOR KHAN: It is a long time since I was at school. Are you able to give that in another way that is easier for me to understand?

Mr NICHOLLS: Sure; certainly.

Mr DAVID SHOEBRIDGE: Easier than a bar graph?

Mr NICHOLLS: I think what you are asking is that you would like a numeric breakdown?

The Hon. TREVOR KHAN: Yes?

Mr NICHOLLS: Yes, I am happy to provide that.

The Hon. TREVOR KHAN: Also, you give a figure for the rest of New South Wales. Are you able to provide figures that relate to the Sydney metropolitan area and perhaps the five regions?

Mr NICHOLLS: Yes.

The Hon. TREVOR KHAN: And also with regards country New South Wales so we can see if there is anything going on there?

Mr NICHOLLS: Yes, I am very happy to provide that.

The Hon. TREVOR KHAN: And if there is any trend data—again I confess I have only looked at this today—that demonstrate there has been a change in that mix of claimants in whatever form is reasonably available, I would appreciate that to again get some material that underpins a lot of the oral evidence that has been given to date with regard to what is going on?

Mr NICHOLLS: Yes.

Mr LEAN: We will certainly provide that.

The CHAIR: It was remiss of us not to ask you to respond to the Motorcycle Council's submission earlier today. You might want to take this on notice; you have probably read the submission that has been made. I think it is a perennial submission, am I right in saying that.

Mr DAVID SHOEBRIDGE: It is. I have the list of what they want. This is what they say they have repeatedly asked for and never got, and they have said it pretty much every year. They want to know the total premiums paid into the scheme by motorcyclists and the compensation paid out of the scheme to motorcyclists; they want to know what the insurers' profits on the motorcycle portion of the scheme are; they want to know what the efficiency of the motorcycle portion of the scheme is and they were hoping for some supporting documentation to test the figures. They said that they had been asking for this repeatedly and have not got it. I am not suggesting that you have it all to hand.

The CHAIR: They also raised the complexity of the different types of categories compared to Victoria.

Mr LEAN: I certainly wrote to the Motorcycle Council earlier this week because we were aware that they had raised a similar concern in another forum. We believe that we have provided most of the data that they want so I have offered to meet with them to sit down to work out exactly where the gap is from their perspective.

Mr DAVID SHOEBRIDGE: You can consider all those questions having been asked on notice and we will provide it to the Motorcycle Council of New South Wales when you give it to us so there is no ambiguity about it.

The CHAIR: It might inform our recommendations.

Mr DAVID SHOEBRIDGE: You give it to us and we will give it to them.

Mr LEAN: I do want to place on the record, though, the point that we have in fact provide extensive data to the Motorcycle Council. We believe we have actually met the request. We will have another look at it to see if there is anything in that list you have just read out that we have not provided and then make an assessment.

The Hon. LYNDA VOLTZ: Perhaps if you could provide it to us as well.

Mr DAVID SHOEBRIDGE: I just want to be clear that is the information that I was hoping we would get as the Committee rather than another assurance from you that you have provided it to the Motorcycle Council. Just give us the stuff and we will all be happy.

The Hon. DANIEL MOOKHEY: We are also interested in it.

The CHAIR: They are indicating that they are not happy with the performance of the scheme compared to other jurisdictions.

Mr NICHOLLS: We can check other documents. I have brought today some of the documents that we provided to the Motorcycle Council previously. I am happy to table them and you can look at them at your leisure but if we can also take it on notice because there may be other information we can provide.

Mr DAVID SHOEBRIDGE: Why don't you do it in one go? Take it on notice and give it to us in a coherent way?

Mr NICHOLLS: Certainly. Following the last hearings we provided some substantial spreadsheets and we are very happy to provide that to you. We would like to meet with the Motorcycle Council because we had understood we had met that request. They did not come back to us and say that they felt it was deficient and it was a little bit surprising to find that they believed we had not provided it to them as we have taken a very open approach.

The CHAIR: Thank you. If we accept their submission, they are arguing that the New South Wales CTP system for motor bikes is unnecessarily complex and strataed.

Mr NICHOLLS: Yes, that is probably part of the challenge.

The CHAIR: That may relate to risk management by the insurers in trying to avoid the risk. Then they had an argument about what sort of risk is there. They said that apparently passengers on motorbikes is the issue, so if you could take that on notice. My second question is on two wheels as well. There has been a lot of commentary in regards to cyclists supposedly not having CTP for bicycles and people not being able to claim for injuries if they are hit by a cyclist on a pedestrian crossing. I have CTP on my household contents insurance for my bicycle and also as a member of Bicycle New South Wales so there is insurance out there and it is very low cost. There was some discussion around whether we should include is bicycles, skateboards and other non-motorised vehicles that use the road in the scheme. Do you have information around the number of CTP claims from bicycle injuries to third parties?

Mr DAVID SHOEBRIDGE: Or more likely injuries; they may not be claims because they are not insured.

The CHAIR: Some of them are, that is the point.

Mr NICHOLLS: These may not answer all the queries you have raised but if I can start with where pedestrians are injured by bicycles, you will appreciate that at the moment, because bicycles are not in the scheme, we have had to estimate the impact based on hospitalisations and other data. We do not actually have claims data but our actuaries estimated that of serious injuries involving a pedestrian in the period 2005 to 2013, which is the most recent data we have got, there were 123 serious injuries involving a pedestrian injured by a bicycle. Of those, seven were what you might regard as a decamping by the bicyclist, effectively a hit-and-run. If you converted that in terms of pedestrian injuries in the scheme at the moment, that is probably about 1.2 per cent, the equivalent of all pedestrian injuries that currently are in the system.

In terms of claims by people who are on bicycles who are injured by other vehicles, it is averaging at around 350 claims per annum where a bicyclist or a cyclist has been hit by a car or some other vehicle on the road. The other figure that I have at hand is that using the same analysis of pedestrians injured by bicycles, in that same period 2005 to 2013 there were about 350 serious injuries where a bicycle rider injured another bicycle rider. For context, this analysis was undertaken—

Mr DAVID SHOEBRIDGE: How many was that last count?

Mr NICHOLLS: It was 350—I beg your pardon; 446 claims in the period 2005-2013 by a bicycle hitting another bicycle and 350 per annum where it is a vehicle hitting a bicyclist.

Mr DAVID SHOEBRIDGE: So about 15 pedestrians and about 20 or 30—

Mr NICHOLLS: Per annum.

Mr DAVID SHOEBRIDGE: —cyclists on cyclists; it is tiny; it is a flea bite?

Mr NICHOLLS: It is a relatively small number; it is a small number, yes.

The CHAIR: It is indeed. So it is 446 between 2005-13 for serious injuries bicycle to bicycle?

Mr NICHOLLS: Yes.

The CHAIR: That probably includes pelotons and things like that, I imagine?

Mr NICHOLLS: I imagine.

The CHAIR: Where there is more risk. And 350 per annum is pedestrians with cars?

Mr NICHOLLS: No, that is cycle riders injured by cars. I do not have with me pedestrians injured by cars. I will take that on notice.

Mr DAVID SHOEBRIDGE: You said the number was about 1 per cent?

Mr NICHOLLS: Yes, they are less severe, 1.2 per cent of all pedestrian injuries.

The CHAIR: I would like that figure.

Mr NICHOLLS: For context, last year there was a working party commissioned by the Minister for Roads that SIRA chaired where the question was initially raised where we have people injured on the roads by vehicles that fall outside of the system and, in particular, considering bicycles, which has been a focus of the bicycle round table that the Government had last year that led to a number of reforms and one of the questions arising is in instances where bicycles are injuring other people should consideration be given for these injured people to be covered by the system, even though the bike rider may not be contributing.

Mr DAVID SHOEBRIDGE: Could you provide the comparison with motor vehicles and the comparison of severity of injury?

Mr NICHOLLS: To the extent that we have that, I am happy to take that on notice. I am happy to provide you with the papers that we provided to the working party.

Mr DAVID SHOEBRIDGE: You did not conclude that it is a major issue that you needed to attend, given the numbers?

Mr NICHOLLS: It is a very small number. It is a policy question for Government as to whether it wishes to do this. It has only a marginal impact on premium, probably a dollar.

The Hon. LYNDA VOLTZ: They can bundle it.

Mr NICHOLLS: The working party report has published that. I am happy to provide that information.

The CHAIR: It must be low risk because it is given to you, allegedly free, but for a dollar with membership with bicycle New South Wales.

Mr DAVID SHOEBRIDGE: Which is $20.

The CHAIR: Is it that low. If it is a big area of claims it would not be for free.

Mr NICHOLLS: I should point out the dollar is in addition to what people may be claiming on other insurance lines. We estimated if we had some safety net system where you picked up people who were not otherwise covered by insurance then that would be the approximate cost.

The Hon. LYNDA VOLTZ: How many people are employed on the fraud hotline?

Mr NICHOLLS: The fraud hotline is contracted out through the insurance council. They provide a broader service across all fraud and I would have to take that on notice.

The Hon. LYNDA VOLTZ: How it is advertised?

Mr NICHOLLS: It is advertised through local newspapers and Facebook.

The Hon. LYNDA VOLTZ: Is that by you or through the insurance council?

Mr NICHOLLS: We do that. It is branded through SIRA and the advertising is SIRA advertising. It is effectively contracted to a provider who has the infrastructure in place.

The CHAIR: In terms of reform, discussion and submissions we have received that including bicycles and other non-motorised or even motorised wheelchairs and scooters and other vehicles like that what is your thinking on that? You suggested it would be a dollar if we included bicycles in the compulsory scheme, possibly a dollar for CTP.

Mr NICHOLLS: It would vary by different types of vehicles that are not currently in the system.

The Hon. TREVOR KHAN: Are you going rogue at this time, Chair?

The CHAIR: No, it is part of the public discussion.

The Hon. LYNDA VOLTZ: It is Government policy.

The Hon. TREVOR KHAN: I understand, Chair.

The Hon. LYNDA VOLTZ: So have lots of things.

The CHAIR: We will return to talking about country injuries.

Mr DAVID SHOEBRIDGE: There was a regulation passed, on your, which dealt with some element of farming claims, is that right? Can you provide us with a copy of that reference to what that regulation is and your advice as to whether it has been effective or could be improved?

Mr LEAN: Certainly.

Mr DAVID SHOEBRIDGE: Tim Concannon suggested that the manner of its drafting meant that it was effectively next to impossible to enforce. I invite you to look at Mr Concannon's evidence in that regard.

Mr LEAN: There are significant challenges with claims farming generally because some of the activity is occurring offshore. We are talking to Fair Trading about whether there may be other strategies we could deploy under the Australian consumer law but I will provide you with a copy of the regulation.

Mr DAVID SHOEBRIDGE: If this activity and farming is happening offshore you are going to have to regulate and direct the offence at what is happening onshore, so the purchaser rather than the seller, I assume it is directed more at the lawyers?

Mr LEAN: That is correct at the moment.

Mr DAVID SHOEBRIDGE: Could you provide us with the regulation and an update on whether or not you think it is effective and your considered view as to whether you think as a matter of urgency we should be toughening up that regulation and providing your organisation with express authority to audit and police it and if necessary prosecute for breaches? For me, if we want to stop fraud, as much as I have some concerns about giving this power to your authority, I do not see anyone else who could potentially do it.

Mr LEAN: We will look at the transcript of Mr Concannon's evidence and take it on notice to respond. It is considered as part of the fraud task force.

Mr DAVID SHOEBRIDGE: And respond to whether you would, as an organisation, have the capacity to undertake audits and pull together the briefs to get the prosecution if the law goes in that direction?

Mr NICHOLLS: We will take that on notice. I should point out that we have developed a protocol with the Office of the Legal Services Commissioner as part of the rollout of that regulation. There are other regulators that do have a role. I am happy to give consideration to your suggestion.

The CHAIR: Thank you for coming in this afternoon. I do not know if you have a choice, but it is bold or brave to come at the end of all the other witnesses. Members have other questions and you are reminded that you can put in a written question for up to 48 hours after receipt of the transcript to any of the witnesses. You took a lot of questions on notice and the secretariat will be in touch with you. You have 21 days to respond, but the sooner the better. I thank the public gallery for their attendance today.

(The witnesses withdrew)

(The Committee adjourned at 17:07)