ENVIRONMENT, NATURAL RESOURCES AND REGIONAL DEVELOPMENT COMMITTEE

Inquiry into the CFA training college at Fiskville

Melbourne — 28 January 2016

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Mr Andrew Baker, senior associate, class actions, Slater and Gordon Lawyers.

The CHAIR — Thank you for coming in today, Mr Andrew Baker, senior associate of the class actions department of Slater and Gordon. I will just go through some of the quick formalities before we commence your evidence. I understand that you provided a submission to this inquiry and you have a brief presentation to go through in terms of the work you have been doing around the Fiskville training centre, and then we have a number of questions that we would like to ask you. But before we proceed, I will just go through the preliminaries.

First of all, welcome to the committee today and thank you for coming in to provide evidence. As you will be aware, all evidence at this hearing is taken by the committee under the provisions of the Parliamentary Committees Act 2003 and other relevant legislation and it attracts parliamentary privilege. Any comments made outside the hearing will not be afforded such privilege. It is an act of contempt of Parliament to provide false or misleading evidence to the inquiry. The committee may seek further information from you or ask you to reappear if we have any further questions at a later date. All evidence is being recorded, and you will receive a copy of the transcript prior to it becoming public, so you can check it for accuracy.

Mr Baker, if you would like to start with your presentation in respect of your submission to the inquiry and the work you have been doing.

Mr BAKER — I should clarify, I do not have a PowerPoint presentation, but there are a few points I might make supplementary to our submission.

The CHAIR — Sorry, we understood that you were going to.

Mr BAKER — I apologise. I think we might have been previously.

The CHAIR — We are more than happy. That is fine, but perhaps if you would like to make a few opening remarks.

Mr BAKER — Thank you. On behalf of Slater and Gordon I thank the committee for the invitation to attend today. Slater and Gordon have acted for and provided advice to a large group of people who have contacted us in relation to the Fiskville centre over the past several years since media reports started to emerge about incidents that have arisen there. It is fair to say that in our view Fiskville presents an unusual and possibly unique combination of factual and legal complexities that do present some challenges to victims attempting to seek redress through the ordinary legal challenges that exist. Those arise in the context of certainly incomplete and complex scientific evidence in relation to medical and causation issues, the fact that they are historical cases occurring over a span of a large period of time, and the fact that there are a variety of exposures and employment types and indeed injuries that have resulted as a result of people's presence at the centre.

It is fair to say, I think, that in cases where science is insufficient, or incomplete in some circumstances, to link particular injuries with particular patterns of exposure to a standard that the law requires but where the science is sufficient generally to assess that there are increased risks at a population level, in our view there is an argument to be made that the current legal standard in relation to assessing elements of causation for civil claims ought to be amended or adapted somewhat to the unique circumstances of this case. Certainly in the context of firefighting claims, where people have suffered injuries and suffered conditions that are quite debilitating and leading to significant harms and loss, and that work was occurring in settings where people were conducting work for the benefit of society and represented a much greater social worth, we think there is a strong moral and legal case to make particular amendments to certain legal aspects of the civil procedure that would facilitate claims being made in a more efficient and fair fashion.

The submission that we have made proposes three particular amendments or reforms that would be well suited to improving the process of running claims and achieving justice for victims. Our submission really addresses the final of the committee's terms of reference in relation to achieving justice for victims. In addition to achieving justice for victims, the other point that Slater and Gordon particularly wish to emphasise is that one thing any reform process should seek to achieve as well is also improving access to justice for victims. It is well and good in our view to amend certain provisions to bring Victoria's laws in line with perhaps the commonwealth legislation, as we propose, but in our view the process that victims have had to go through so far does serve as a disadvantage and in some senses a discouragement for claimants to pursue their claims. It can in some respects be unfairly adversarial and oppositional to the kinds of claims that people are bringing, and in

general serves as a disincentive for people in an often very difficult and painful and traumatising time of their lives to pursue their legal options.

So to that end, we have proposed three particular amendments that we suggest might improve the experience of victims in seeking redress. The first is the introduction of presumptive legislation that mirrors the commonwealth approach, essentially reversing the onus of proof so that in a legal claim there is a rebuttable presumption that where a person was exposed to certain carcinogens in the course of firefighting work over a particular qualifying period and suffers a particular form of cancer, that would be deemed where it cannot be proven otherwise by the defendant to have arisen as a result of that work.

The CHAIR — Just on that, as I understand it, in the early days the burning of the toxic chemicals and all that occurred because it was supposed to be real fire training and they were the same sorts of chemicals that firefighters would be exposed to in the real world. In terms of presumptive legislation, are you saying that the presumptive principles should apply also to people who trained at Fiskville?

Mr BAKER — Yes. In our view there is no sensible basis for distinguishing between volunteer firefighters and employee firefighters.

The CHAIR — I am not talking about volunteers, but people who were training versus those who were fighting real fires. They are both real fires, but training versus a fire that is not a training fire.

Mr BAKER — Once again, on a similar principle, the exposure, in our view and on the evidence we have seen, is the same. We do not see any basis for distinguishing training exposures as opposed to actual firefighting exposures.

The CHAIR — I am sorry; I interrupted you. I just wanted to — —

Mr BAKER — I understand. In the first instance the introduction of the presumptive legislation in our view remedies a legal situation that can be quite difficult in cases where there is some scientific uncertainty and a reliance on epidemiological data to essentially take an increased risk at a population level of the cancer arising and to bring that home to a person who is seeking to prove on a legal basis, on a balance of probabilities standard in a civil claim, that that risk actually affected them and was then more likely than not the cause of the cancer that they eventually developed.

The difficulty arises, in our view and in our experience, because those sorts of claims generally need to establish with scientific proof and expert evidence that there is a plausible case to say that without this exposure the cancer would not have occurred. In the setting of the scientific evidence that is available, that is, at a general level, a very difficult proposition to make out. In our experience there is always defendant evidence that will come through to say these people would have had other potential causes of these cancers.

Alternatively, in terms of epidemiological evidence and the other science available, the science typically operates at a standard of proof that is much more stringent than the legal standard requires, which is essentially 50 per cent plus 1 or a balance of probabilities. The epidemiological evidence requires proof to generally a 95 per cent confidence standard, so it is difficult in those circumstances to get epidemiological expert evidence to answer the question, 'Is it more likely than not that this cancer was caused by this exposure?'. It is a question that does not actually operate on the same kinds of inquiries that epidemiological data is generally directed to.

In our view, as a first principle, the introduction of the presumptive legislation essentially remedies that difficulty faced where cancer claimants need to prove essentially positively that their cancer would not have arisen had it not been for this exposure. It does not by any means guarantee a claimant needs to be successful; all the other elements of a cause of action are still in place. But it is does reverse that onus of proof in the case of firefighters, and in our view it is an appropriate reform to make where the commonwealth legislation, which operates essentially harmoniously with this, provides for that kind of guarantee for firefighters and people in related circumstances.

The second reform we proposed addresses the fact that there is a relatively large, as we understand it, historical caseload of people who have had claims rejected or have not been able to pursue claims previously because presumptive legislation such as that had not been in place. Slater and Gordon endorses the introduction of a targeted compensation scheme to essentially help finalise the rights of victims on an efficient and economic

basis and also to provide some certainty for the state and the CFA that the liability is not at large. We have had quite a bit of experience in the use of more informal settlement schemes, and we have found that those are quite effective ways of resolving claims without the need to put victims through the stress and often distress of large litigated proceedings. There are much more economical ways of distributing money, and they also ensure that claims can be dealt with on a relatively objective and transparent basis and certainly within much greater spans of time. The alternative obviously is protracted litigation, which benefits lawyers but perhaps nobody else.

Our argument in favour of that is that there is, as I said, a large historical caseload of people who have had claims rejected previously and who, depending on how presumptive legislation might or might not be introduced, may not get the benefit of any changes in the law that are made prospectively. In our view the claims of people who have been rejected but who now might have the benefit of evidence in relation to the Fiskville site in particular deserve an opportunity to be reconsidered, and also there is merit, in our view, in finding a basis for claims in relation to volunteers and family members who were present and exposed in certain circumstances to also be assessed and dealt with in the one setting.

Our argument in relation to that would be that a targeted compensation scheme should have relatively low threshold criteria for entry, if I can put it that way. It should not introduce requirements of attendances at a certain number of fire events, such as are included in certain other states' presumptive legislation schemes, but rather that the adjustments that might need to be made to any rights that people have can be made as a series of discounts or increases to values of claims that might be available by an independent assessor in a process that is transparent and fairly objective based on evidence so that people's claims can still be assessed in a way that takes account of the individual circumstances they face. But most importantly it is not an adversarial process. It is not designed to promote opposition amongst defendants and plaintiffs, but is rather designed to get to the truth of someone's circumstances and evidence in circumstances where the scientific evidence may not be perfect.

As a final point, the third proposal we have made is in terms of a more policy-based response. Slater and Gordon's experience in relation to the conduct of workers compensation claims in particular has been that there is an extremely high rate of claims being rejected on the basis I mentioned earlier in relation to presumptive legislation where it cannot be positively asserted that a cancer was caused by a particular exposure or a particular employment. But, nonetheless, we know at a population level that there was an increased risk and it has been accepted, certainly at the commonwealth level, that there is a presumption in place.

In our experience, those claims have been dealt with in a particularly adversarial way, and they lead to responses from insurers that have perhaps not been the most efficient way of resolving the kinds of claims that we have been dealing with. We suggest that a review of historical cases be completed to determine which claims have been rejected in the past on the basis of that sort of incompatibility between epidemiological and legal standards of proof, that those people be notified of any reforms so that they might have an opportunity to renew or pursue any claims where circumstances might have changed and, importantly, that the policies of such insurers and the WorkCover system generally be amended to take account of the fact that particularly in the context of firefighting claims, where we know people were exposed to these kinds of carcinogens and hazards in the course of work that was of great benefit to the community, those claims are not dealt with in the particularly adversarial and oppositional way that we have seen; they are rather dealt with in a spirit that is far more consistent with what we would like to see in place in terms of presumptive legislation.

Those are essentially the three points made by the Slater and Gordon submission. I am happy to answer any questions you might have.

The CHAIR — In terms of claims being rejected, I know you will not know all of them, but from your knowledge in terms of your legal company, has there been any claim or have there been many claims from people making claims against the CFA in respect of their training at Fiskville?

Mr BAKER — My understanding in relation to Fiskville and claims through the WorkCover system is relatively incomplete. We have data on the claims on an aggregate basis in relation to the MFB and CFA, and we have included those figures, a sample of those, in our submission. In relation to training and other volunteer claims, there are certainly claims that have gone through section 63 of the CFA act, which are not something we have great data on, unfortunately. We would be happy to put together what we have and submit that.

The CHAIR — Can you tell us a little bit about the CFA act in terms of that compensation provision?

Mr BAKER — Certainly. Section 63 of the CFA act is generally the provision that is relied upon to provide a mechanism for compensation to victims who were not necessarily going through the workers compensation system but might have been there in the context of a volunteer role or an auxiliary role, something along those lines. Essentially it provides a very broad discretion to the CFA. Subsection (5) of that act provides that the amounts of compensation and the processes for determining that compensation will be essentially determined by the authority, and there is no appeal arising from it. The section does indicate that the process should reflect wherever possible the processes incorporated under the workers compensation legislation in Victoria. As I mentioned earlier, we think there are some issues in relation to how that legislation operates in terms of causation.

Certainly the two issues we have found in relation to those claims are that, first of all, there is a lack of transparency, in our view, about how the process will operate, given that the provision provides essentially a fairly general authority for the CFA to respond how it deems appropriate, and, secondly, there are still those causation issues in relation to the way the workers compensation legislation operates.

The CHAIR — From your experience, have you have had any sort of dealings with representing people who have made claims through that provision?

Mr BAKER — I have not personally. The workers compensation department in Slater and Gordon has, and we have commented on that, I believe, in our submission. But, as I said, the issues we have found are — —

The CHAIR — This is more in terms of the way the organisation has dealt with this, as opposed to the legal barriers. Have you got any comments on that?

Mr BAKER — The comments we would make are consistent with what we have said in our submission in relation to litigated claims. I think the response of insurers in particular has relied very much on that scientific, I suppose — —

The CHAIR — Are you saying that the CFA as an organisation is really just allowing the insurers to run their claims; is it a bit of a hands-off approach, I guess? I am trying to understand that, rather than necessarily the legal thing.

Mr BAKER — I understand. I am hesitant to make more general comments than Slater and Gordon's experience, but certainly the experience of our workers compensation department has been that the claims are essentially dealt with by the insurers, and the insurers' approach, as you would expect from a defendant in a civil claim — that is their job — is to defend those claims. Our view is that that is perhaps not the right mindset to adopt when it comes to firefighter claims in particular. That is the experience we have had.

The CHAIR — And the clients who have gone through that process, have you got any information about them? Is it distressing, is it easy, are they happy or not happy? I guess this is in terms of the way that they are on a personal level themselves and the claim is handled, as opposed to the end result.

Mr BAKER — Sure. Are you referring to the CFA act specifically?

The CHAIR — Yes.

Mr BAKER — I do not have great information personally. Again, we can provide that to the committee if needed. I understand at a general level, it is dealt with.

The CHAIR — If you could. On the questions that we ask, if you cannot answer them, it would be good if we could get further information.

Mr BAKER — Absolutely.

Mr TILLEY — I am just curious — and Andrew you may not be able to answer this question — I have not taken the opportunity to read it because I wanted to hear directly from you At a tab here I have a submission to the environment and natural resources committee, a 32-page document, and also behind it I then have a

secretariat summary. Significant amounts of the submission have been redacted, and I would like to know what conversations may or may not have occurred with the secretariat of this committee.

Mr BAKER — I apologise. There was an unredacted copy submitted to the committee initially. We advised the secretariat, as I understand it, that certain aspects of our submission do relate to aspects of legal advice and legal claims that are currently being provided and currently being considered on behalf of our actual clients. As I understood it, the public version of the submission that was released had those redactions, but I understood that the committee had an unredacted copy. If you do not, I apologise and would certainly be happy to send it through.

The CHAIR — We do, yes.

Mr TILLEY — Was that explained to us at any stage?

The CHAIR — I actually think that we did discuss it at one of our committee meetings.

Mr TILLEY — I will have a look at the minutes. It ain't good enough.

The CHAIR — If you do not come to the meetings, that is a problem.

Are you also familiar with the occupational health and safety legislation? Because I guess in terms of the Fiskville situation there is the workers compensation type, or compensation and legislation around that, and then there is the occupational health and safety aspects as well. Have you got any views in terms of the operation of the health and safety legislation at the training facility?

Mr BAKER — I should say that is not particularly an area of our expertise. We would be generally brought in after the fact once the incidents have arisen, so it is not something that our submission goes to. I do not think there is anything I can usefully add on the occupational health and safety side, I am sorry.

The CHAIR — The Lloyds — were you involved in anything in respect of the Lloyds' claim?

Mr BAKER — I am familiar with the case. One of my colleagues is representing them at the moment.

The CHAIR — I will let Simon ask some questions, and then I will come back to that later, or you can ask something.

Mr RAMSAY — I was interested in the answer myself, but he is not willing to respond to it.

The CHAIR — Which one, sorry?

Mr RAMSAY — In relation to the Lloyds' case.

The CHAIR — No, he is.

Mr RAMSAY — Oh, are you? I understood that you were not.

The CHAIR — Only to a point.

Mr BAKER — I do not act for them myself, but one of my colleagues does. I am aware of the case. I cannot say I am intimately familiar with it.

The CHAIR — So we can still ask the questions, and either you can answer them if you can or you will provide information.

Mr RAMSAY — I am happy to hear now.

Mr BAKER — I am happy to answer what I can, but like I said, I do not personally represent them.

The CHAIR — Yes, of course.

Mr RAMSAY — I am listening.

Mr BAKER — I am sorry, is there — —

The CHAIR — Are you going to ask a question? I have not asked — —

Mr RAMSAY — No, I thought he was going to respond to the current status of the issue with the Lloyds. You are representing them. You are not able to answer because a colleague is doing that work, is that what your response is?

Mr BAKER — No; I am not able to answer because I do not personally represent them. I do not know where the case is up to at the moment, for example. I certainly follow various issues in the case from time to time, but I could not say where it is up to at the moment or what is going on generally.

The CHAIR — One of the issues that has been raised is there is discussion about a mediation process. Originally there was an offer of some monetary amount to the Lloyds, that was then stopped. Then we have heard evidence from Mr Michael Bourke that there was an offer or an arrangement to have mediation between the CFA legal representatives and the Lloyds, and according to his evidence the mediation did not go ahead because I think the Lloyds' lawyers, Slater and Gordon, did not follow through. Then we have had other evidence to say that that may not be the case. Could you shed any light on that?

Mr BAKER — I am not privy to those communications, I am afraid. I know it is a complex matter and there has been a lot of work going on on both sides, but I could not say the particular reason for any of that happening, I am sorry.

Mr RAMSAY — I was actually interested in the presumptive legislation, because as you would be aware, I think, there is a general consensus amongst us all that we want to progress this legislation in Victoria. You referred to the commonwealth legislation specifically, and I know many states have different models. Your firm's view, of course, is that it is probably best not tied to hours worked but at a training facility or in real-life for volunteers particularly, and that volunteers and professionals — or career firefighters — should be treated equally and equitably in relation to any compensation.

Mr BAKER — Yes.

Mr RAMSAY — The difference legally between association and causation, I guess, is the grey area, and also in respect of proof as to whether potentially the workplace as against the training facility was the primary cause of maybe a cancer illness. I am just wondering in your model of presumptive legislation how you get over the hurdle of the association issue as against the causation and what sort of legal benchmarks you have for that.

Mr BAKER — Our approach is that the presumptive legislation is designed effectively to neutralise that point. So the association versus the finding of causation issue essentially relates to the level of proof you have got or the certainty you have around whether or not a particular cancer can be established to be linked to a particular exposure or a particular employment as the case may be. Effectively the level of proof you need to get to a legal finding of causation, like I said, is on a balance of probabilities, but the scientific evidence does not quite work that way. By reversing the onus of proof under the presumptive legislation we sort of reverse that model so that instead of having to establish positively the finding of causation — —

Mr RAMSAY — Yes, I understand presumptive legislation and how that works. I am just trying to work out the difference between workplace and training. Say like Fiskville, where trained and trainees believe because of past work practice or a lack of a stringent sort of control in occupational health and safety that maybe they have contracted cancer because of that and then go through the presumptive legislation process as against a sort of workplace association.

Mr BAKER — Do you mean in terms of actual live firefighting experience versus training?

Mr RAMSAY — It is the determination, I guess. I know you have talked about the onus of proof, but — —

Mr BAKER — No, I understand. Certainly from our perspective we do not see a great basis for distinguishing between the two in the case of firefighters. Relying on I suppose you might call them 'technical distinctions' between whether exposures that are often going to be very difficult to quantify and assess in a historical context occurred in the course of training at Fiskville versus the fighting of live fires is the kind of

problem that we say certainly should not be having to arise in these sorts of cases. So by essentially reversing that causation point and applying the principles of this presumptive legislation to firefighting in this, I suppose, more general definition, including training work, we think is the simplest and the most efficient way of ensuring that appropriate workers compensation rights can be afforded to firefighters without having claims derailed by perhaps more technical arguments that again might benefit the lawyers involved but do not particularly lead to any greater justice as a result.

Mr RAMSAY — I might leave my colleagues to flesh out that more if they wish. Just one quick last question: is your firm currently involved in a class action with the community members of Ballan in relation to the Fiskville training centre?

Mr BAKER — We are not involved in any current class action litigation. We have been conducting investigations and advising people generally who attended the site and who developed cancers or other injuries there. There is no decision as to whether that would result in a class action or any other form of action yet, but it is related to people who have been injured rather than just the general community or anything like that.

The CHAIR — Just in terms of the compensation area, we have heard evidence not just about cancer but also other illnesses — autoimmune illness, various rashes and other irritations. You were talking about cancer before and presumptive legislative in that context. Do you think it is possible to or should it include any sort of compensation scheme that also includes things that are not cancer, and are there any things that are not cancer that can be put in the box to the same level of weighted evidence?

Mr BAKER — Certainly we do act for a number of people who have developed autoimmune diseases and skin conditions, for example, that do have some medical evidence — reports from doctors, things like that — backing up their claims to say that they were caused or contributed to by exposure to various hazards at Fiskville or in the course of firefighting work. I think the position we would promote in terms of any compensation structure or presumptive legislation is that it should be driven by the evidence.

In terms of a targeted compensation scheme that we reference, part of the benefit of having a sort of a lower threshold to entry is that you do not eliminate as many claims from the outset just because they may not tick off one of the few boxes in the presumptive legislation table, for example, that have been definitively shown to have a strong association. It might therefore be possible to provide a more tailored approach to compensation by increasing or discounting any values of claims based on the strength of the association so that it is relevant to the amounts that someone might be entitled to rather than being a sort of threshold binary discourse or decision which lets someone make a claim or not. If there is a more informal compensation structure proposed, having a greater degree of flexibility about the types of injuries that can be compensated, obviously where there is medical evidence supporting them, provides a fairer outcome than having a pretty simple yes or no decision at the outset of the claim.

Mr RICHARDSON — Thank you, Andrew, for coming in and your time today. Going to that point, one particular report that has driven our inquiry is the Monash Health study and the risk rating categories. One thing that I think was a complexity in the discussion about presumptive legislation is its finding of barely a link for practices there and volunteers, which personally I find problematic. I want to get your thoughts on that and particularly the working backwards principle and the discounting. In that study there was a range of illnesses that showed linkages, but there was a focus particularly on cancers, but how would such an arrangement or scheme be in place? Say, for example, a person has served as a volunteer for 30 years on and off, but then you have got a career firefighter who has served one or two years but may have had similar intensities of exposures over their time. What are some of the ways that Slater and Gordon is proposing that you get around that?

Mr BAKER — The model we have looked at generally is driven by the way we see redress schemes or often class action settlement schemes devised, which is there is an assessment of the factors that would be relevant to the strength of a legal claim. Those assessments would be given a different amount of weight depending on how much it might be thought that they strengthen or weaken a claim, and those sorts of discounts or uplifts are applied to any values of compensation that are available.

In the context of a long-term volunteer versus perhaps a more short-term but heavily exposed career firefighter, if I could put it that way, that would largely, I imagine, be driven by the medical evidence that is available. I am not an epidemiologist and I could not tell you specifically if there is a stronger association between a 30-year

volunteer who had had intermittent but regular exposures over that period compared to someone who was heavily exposed over a shorter period, but we would certainly advocate for that sort of arrangement in any scheme that is put in place being driven by the epidemiological evidence that is available.

Mr RICHARDSON — Because the thing that sticks out for me is the toxicity of the Hazelwood mine fire. There were 7000 firefighters who served in that time, but then how you contrast that to, say, training practices at Fiskville for a PAD operator or a part-time PAD operator, or how that then applies beyond people who are not career or volunteer firefighters, so people who worked alongside in hospitality, gardening et cetera or the people who were adjacent at the Fiskville Primary School up until 1993. Is there a thinking from Slater and Gordon about those people who are beyond those parameters as well?

Mr BAKER — We have certainly encouraged that those sorts of people should be included in a scheme where they have been affected by Fiskville, whatever medical case to say they have been affected by the Fiskville site I should say, on the basis that we think both in the state's insurers' perspectives and claimants' perspectives it is of benefit to have one consistent approach to compensation rather than a more piecemeal approach where there are various options available for various different categories of people. It is inevitably a difficult process to design a scheme where there is that level of complexity and variance amongst the classes, and I think it is fair to say it is also an imperfect structure. There is no magical formula I suspect you can come up with that adequately deals with every case.

One of the principles we espouse when recommending this structure in our submission is that it should be designed to provide appropriate balance between a fair result and an efficient result in circumstances where the scientific evidence is not perfect and it may never be perfect. We certainly would not suggest this be a mandated approach for everyone wishing to pursue legal rights. There would be, under our model, an election to be made about whether someone wishes to pursue common-law rights or would prefer to finalise their rights in a more efficient manner, but the trade-off for doing that would be that there is a little bit less in terms of, I suppose, scientific certainty surrounding how those discounts would apply. You would have your claim value increased or decreased in a slightly less robust manner to allow it to fit in that framework.

Mr RICHARDSON — Was the Monash Health study a good approach to the risk categories? What is Slater and Gordon's view?

Mr BAKER — We had some difficulties, I think, that we mentioned in the submission with the Monash study just because, as it was noted, the level of individualised data was a bit lacking in that regard, and certainly the collection of data was noted in relation to volunteers as not being perhaps as comprehensive as might be the case for career firefighters. I certainly think there is more work to be done in terms of coming up with a model that appropriately reflects the kinds of exposures and risks that volunteers have faced. But, as we have noted in the submission, we have no issues with the approach the Monash study has taken, and we think it is a good approach to assess these kind of epidemiological risks overall.

The CHAIR — In terms of volunteers then, when you talk about insufficient data, it is that the inquiries have not been made, not that there are less inquiries into it to gather the evidence?

Mr BAKER — Certainly as we understood it, there has been a focus on employed firefighters particularly. In addition, I think the data is probably less easily able to be achieved just because there are presumably less exposures in a numerical sense for someone who is volunteering on perhaps an intermittent basis compared to someone who is employed and working as a firefighter day in and day out. There are difficulties with that data, but it is certainly not something that we suggest cannot be overcome. Once again, in any compensation structure the idea is not perfection in terms of the numbers; the idea is finding a scheme that provides that appropriate balance.

Ms WARD — I understand that Slater and Gordon is preparing for a class action of just under 200 people regarding their experiences at Fiskville or their exposure to things going on at Fiskville, so I am not going to ask you to give away your game plans.

Mr BAKER — Thank you.

Ms WARD — I am happy if you say you cannot go any further. But are you able to broadly outline, though, what the challenges are that you see in regard to establishing a consistent narrative regarding the practices at Fiskville?

Mr BAKER — Yes, I can certainly say at a general level, and I should preface this by saying there are a lot of legal decisions involved in whether a case proceeds at all or as a class action or as an individual claim or something in between, so I would not want to be taken as saying we are taking any particular approach in that.

Ms WARD — No, you are preparing.

Mr BAKER — At a general level we have found so far that there are a number of areas where the facts in relation to Fiskville are more than a little unclear, unfortunately. We certainly have, in my view, good data in relation to population level risks, like I said, and we have good histories from people who have been there and who can tell their story quite well in terms of what they saw and what they were exposed to. In terms of the organisational documents, obviously we have at this point what is available through freedom of information, and we have I imagine much less than the committee has seen so far, so we have a process of work to go on for some time to investigate that fully.

The CHAIR — Has there been cooperation in that, in getting documents?

Mr BAKER — Certainly some requests are easier than others. I think it is always a challenge to tailor your requests in a way that provides an appropriately specific series of material you are after without it being responded to by the organisation saying, 'It is too burdensome', or asking the organisation to search for documents rather than just give us documents we identify. I think part of the benefit of having the Professor Joy process go on was that there was some greater indexing of documents achieved through that process, so that did make it easier to, I suppose, conduct that investigation.

In any event, it is always a difficult process in these kinds of cases to piece together a historical narrative, particularly in cases where the events occurred over the span of several decades, so at a general level, the more documents that are available, the better. I suppose that is one reason why a civil claim generally is a bit of a different beast than what I am calling a no-fault workers compensation scheme, because in those sorts of civil claims we do actually need to establish negligence if there was a breach of a duty of care and that the conduct at the time did not comply with the standards that were expected at the time. That is heavily dependent on evidence from the time. If workers compensation legislation is possible to be amended to allow these sorts of claims to go through, the no-fault benefits certainly do not have that hurdle.

Ms WARD — That leads me to my interest in Slater and Gordon's recommendation that:

> The state of Victoria, CFA and their insurers should conduct a detailed review of historical WorkCover claims relating to cancers and the Fiskville site.

Mr BAKER — Yes.

Ms WARD — Given that we have heard that there has been consistent under-reporting of injuries and so on at Fiskville and an inconsistent history regarding people's exposure to various things or injuries or so on at Fiskville, how much of a challenge do you think that would be, to go through that historical process?

Mr BAKER — I do not have a great deal of insight into what records have been kept. I think there are a couple of benefits that that process would achieve beyond just the fact of the review. First of all, a big part of what we propose in that recommendation is that the policies and attitudes that exist in relation to these sorts of claims, particularly in relation to firefighters given the kind of work that is done, in our view do need to shift. We think a big part of that should be that there should be a reflection on the way that these kinds of claims have been handled in the past.

Secondly, that kind of review and the communication, I suppose, of any new options or avenues for claims to victims who have been rejected previously, in our experience does have a sort of knock-on effect. Once word starts to get out to a relatively tight-knit, affected group, it does sort of spread outwards from there. So we think that also is a way that can help remedy the under-reporting, if I can put it that way, by making sure people know there are options available that will hopefully encourage claimants who do have a legitimate claim to come forward.

The CHAIR — Are there any further questions? No. Are there any further comments that you would like to make? Thank you for coming in.

Mr BAKER — No problem.

The CHAIR — We have the submission. We had not heard as much on the justice to victims, which is what we were asking you about, so you have given us food for thought, so that is good.

Mr BAKER — Thank you for your time then.

The CHAIR — Is there anything else you would like to maybe comment on before we close?

Mr BAKER — No, I think the only overall point I would make is that our experience is that claimants, particularly in cases where there have been cancer diagnoses or serious injuries like that, do find the litigation process particularly difficult and stressful. We think it is certainly in the state's interest and the victims interests to find a means of achieving justice in these cases that does not require that kind of arduous process. I think that would be the overriding concern that we communicate to the committee.

The CHAIR — Okay. Thank you very much for your time today.

Mr BAKER — Thank you for your time.

Witness withdrew.