T R A N S C R I P T

LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023

Melbourne – Wednesday 13 December 2023

MEMBERS

Georgie Purcell – Chair
David Davis – Deputy Chair
John Berger
Katherine Copsey
David Ettershank
Bev McArthur
Tom McIntosh
Evan Mulholland
Sonja Terpstra

PARTICIPATING MEMBERS

Gaelle Broad
Georgie Crozier
Michael Galea
Renee Heath
Sarah Mansfield
Rachel Payne

WITNESSES

Marcelle Mogg, Chief Executive Officer, and

Emma Greeney, Executive Director, Strategy, Policy and Advocacy, Mental Health Victoria.

The CHAIR: I declare open the Legislative Council Economy and Infrastructure Committee's public hearing for the Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023. Please ensure that mobile phones have been switched to silent and that background noise is minimised.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands we are gathered on today, and pay my respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee.

To begin we will get committee members to introduce themselves, and we will start down this end and go up to the screen, starting with Mrs Broad.

Gaelle BROAD: Hi, I am Gaelle Broad, Member for Northern Victoria.

David DAVIS: David Davis.

The CHAIR: Georgie Purcell, Member for Northern Victoria.

Michael GALEA: Hi there. Michael Galea, South-Eastern Metropolitan.

John BERGER: John Berger, Southern Metro.

The CHAIR: We will go to the screen, going Sarah, Sonja, Renee.

Sarah MANSFIELD: Sarah Mansfield, Western Victoria Region.

Sonja TERPSTRA: Hi, Sonja Terpstra, North-Eastern Metro Region.

Renee HEATH: Renee Heath, Eastern Victoria Region.

The CHAIR: All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following this hearing, and then transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record can you please state your full names and the organisation you are appearing on behalf of.

Marcelle MOGG: Good afternoon. Marcelle Mogg, CEO for Mental Health Victoria.

Emma GREENEY: Hello, I am Emma Greeney, the Executive Director for Strategy, Policy and Advocacy at Mental Health Victoria.

The CHAIR: Beautiful, thank you. We now welcome your opening comments but ask that they are kept to around 10 minutes to ensure there is plenty of time for questions.

Marcelle MOGG: Certainly. I have worked to keep my remarks to 5 minutes, so hopefully we can observe that.

The CHAIR: Love that.

Marcelle MOGG: Thank you, Chair. I also extend our acknowledgement on behalf of Mental Health Victoria to the traditional owners of the lands on which we gather and pay our respects to elders past and present.

Thank you, firstly, for the opportunity to meet with the committee. We are happy to present our comments with respect to the proposed changes to the WorkCover Bill. Just in terms of background and for those participating in today's committee, Mental Health Victoria is the peak body for mental health and wellbeing in the state. We specialise in public policy, workforce development and training and building the capacity and sustainability of the sector to support the needs of the Victorian community. Our vision is to drive system reform and to ensure that people have equitable access to a world-class mental health service. Our purpose is primarily to ensure that people living with a mental illness or psychological distress can access effective and appropriate treatment and community support to enable them to thrive in life.

Just in terms of a response to the Bill, there are some points that we wish to just draw to the attention of the committee, the first of which is the prevalence of mental health conditions that exist across the community, which we believe is an important consideration when looking at the proposed legislative changes. While recognising that this committee of course is focused on the workplace setting, it is important to understand the degree to which mental health vulnerability exists across the community, given that these of course are the same people who staff our Victorian workplaces. Mental health vulnerability is a common human experience, so we must expect that there are people in every workplace who have current or past experiences of mental health conditions, and we need to therefore adjust our assessment of risk and response accordingly.

Some statistics from the ABS figures released earlier this year: 42.9 per cent of Australians have experienced a mental health condition at some time in their life, with 21.5 per cent of all Australians experiencing a mental health condition in the last 12 months. Anxiety is the most common mental health issue reported, with 17.2 per cent of Australians affected; 38.8 per cent of young Australians, that is young people 16 to 24, have experienced a mental health condition in the last 12 months; and 17.4 per cent of Australians have seen a mental health professional for their mental health in the last 12 months. So given that community prevalence of mental health condition, we suggest that it is not feasible to exclude from any WorkCover legislation people with pre-existing mental health conditions, nor is any policy that may impede free and open disclosure of the same to be encouraged, in our view.

Mental Health Victoria would suggest that where workers are encouraged and supported to disclose any pre-existing mental health condition there is an opportunity for employers and employees together to determine appropriate workplace strategies to mitigate risk in the same way that pre-existing physical injury may be managed with appropriate support. Further, any policy or legislation that discourages people from disclosing either a mental health condition or previous experience of the same runs the risk of perpetuating stigma and discrimination in the workplace and therefore across the community. Conversely, open and supported disclosure together with the provision of resources and incentives for employers to further develop psychologically safe workplaces will hopefully result in fewer rates of injury and/or exacerbation of existing vulnerability, thereby reducing harm and claim rates over the longer term. Mental Health Victoria would hope that the same commitment to prevention, early intervention, access to care and support to return to work is available to any person experiencing a workplace-related injury, be it physical or psychological.

The final point that we wanted to make is the changing nature of work that we see across the Victorian and indeed Australian community. We need to recognise that the nature and types of work most often undertaken in Victoria are not the same in 2023 as they were 10 or 20 years ago. With an increasing number of people working in knowledge-based and professional services settings, we need a WorkCover system that can adjust to the changing nature of injuries that might result. This is not to say that workplaces that predominantly involve physical work are not at risk from mental health injury. But we do need to recognise that increasing numbers of Victorians are working in workplaces that involve complex work in high-demand environments, often with low job control, lack of role clarity and a high degree of interpersonal exchange, all of which, the research tells us, are risks that may lead to and/or exacerbate harm and lead to mental health injury. To that end I refer to Safe Work Australia, which cites a psychosocial hazard as anything that could cause psychological harm. Amongst other factors, that list includes job with high demand, low job control, poor workplace support, lack of role

clarity, poor organisational change management, remote or isolated work together with the usual things that we might anticipate around violence, bullying, aggression and harassment.

We know that psychosocial hazards can create stress and that these can cause psychological and indeed even physical harm. Safe Work Australia concludes that some hazards may not create psychosocial risks on their own but may do so if combined with other hazards. For example, when workloads are high, the risks may increase if workers cannot take breaks or there is no-one around to help. So for these reasons Mental Health Victoria would hope that any amendments to WorkCover legislation recognise the pre-existing risks that are inherent across the population and the opportunity before us all to raise the bar in creating more psychologically safe workplaces in the way that we have to a significant degree created more physically safe workplaces, particularly here in Victoria. That concludes our opening remarks. Thank you, Chair.

The CHAIR: Wonderful. Thank you so much. We will now move to questions. We have got plenty of time for members. I will kick off. We speak a lot about psychosocial hazards, and the government has not delivered the updated psychosocial hazard regs yet. Does it concern you that they have moved to do this Bill before the regs, and should they have come first?

Marcelle MOGG: Look, that is probably beyond my scope. Not knowing sort of what those regulations might entail, it is probably beyond my scope to comment in terms of the sequencing that should have come forward. I apologise.

The CHAIR: Obviously under the WorkCover scheme there is often a requirement to have an assessment by a psychiatrist, and we are hearing that it is extraordinarily hard to get in with one and therefore you cannot meet your requirements. What can the government do to address that?

Marcelle MOGG: Sure. If I can talk to some of the changes that the government is working on as a consequence of the royal commission into mental health system reform and trying to promote better access to mental health care broadly, whether that is with a psychiatrist or psychologist or other practitioner, certainly that is a critical work in progress. The government is making changes to that effect, and the establishment, for example, of the mental health local services would be one step in that direction. However, subsequent to the royal commission concluding its work in early 2021, we have seen of course sustained and increased demand for services post COVID. We have also seen an erosion and diminishment in numbers of workforce available to deliver mental health support and care across the Victorian and indeed Australian community, again relating to some of those COVID-related outcomes and people stepping away from human-facing settings. There is a limitation in terms of the current system to respond to existing demand let alone to pick up additional demand that might arise subsequent to restrictions of access in other settings.

The CHAIR: Just speaking to your comments about stigma, obviously we are working to overcome the stigma that comes with mental illnesses in Victoria. What impact do you think this Bill in its current form would have if it was passed when it comes to invisible injuries?

Marcelle MOGG: Sure. Look, we would resist and we would push back on any sort of change that runs the risk of creating a two-tiered classification or system of personal injury. To say that physical injury is real and mental injury is not real or less impactful, we would not support anything that might create that sort of understanding or outcome. We do not feel that that is reflective either of experience – it is certainly not what our sector tells us, it is not borne out by the evidence and it certainly is not what the royal commission found. The royal commission focused on looking at supports that people require rather than focusing on diagnoses or classifications of illness, and we think that that is the right approach, whether we are talking about workplaces or other community-based settings. So we would not look at anything that perpetuated an understanding that there was qualitative difference in terms of injury or experience of injury in that respect.

The CHAIR: Great. Thank you. Mr Berger.

John BERGER: Thank you, Chair, and thank you for your appearance this afternoon. We have heard a lot of evidence through witnesses in the last day or so regarding prevention and early intervention. I just wonder if you think a Return to Work Victoria could play an important role in destigmatising mental health and supporting injured workers to remain connected to their workplace and get back.

Marcelle MOGG: Absolutely. We would really hope that any WorkCover system has a key emphasis on prevention and early intervention. Particularly when we look, as I mentioned earlier, at some of the inroads that have been made over the years with respect to physical injuries that are identified or consequent to work, we would hope that there is a similar approach adopted to psychological or mental health injury. As I understand it – I am yet to see the detail around Return to Work Victoria – on the face of it I think that would be a very welcome initiative, and anything that can help identify ways of preventing harm arising or injury arising is to be welcomed, because I think it is in everybody's interests that people remain engaged with their workplace, with their employer and participating in the workforce. We know that active participation in things like work has a positive effect on people's mental health and wellbeing in the main, so anything that is conducive to that is an initiative that we would support.

John BERGER: Okay. Thank you.

Marcelle MOGG: Thank you.

The CHAIR: Thanks, Mr Berger. Dr Heath.

Renee HEATH: Thank you so much for your presentation. I just wanted to know – did the Victorian government speak with you, meet with you or consult in regard to the changes in this Bill?

Marcelle MOGG: I had a meeting with Minister Pearson in very early April, which was consequent to this issue arising in the media, and at that time the minister and I were keen to speak and respond to the issues as had been reported in the media at that time.

Renee HEATH: Okay. Thank you so much. The government has refused to outline how many people will be shifted off the scheme due to the changes in this Bill. What would be the impact on an individual's mental health if they were kicked off WorkCover?

Marcelle MOGG: Look, I am not a clinician, and I could not speak to the impact on any one person or even a cohort of people. At Mental Health Victoria we seek and are informed by the research that is available and by the opinions of clinical experts in this field. So in order to answer that question we would refer to the views of clinicians with respect to that, so I would certainly encourage the committee to seek the opinions of suitably qualified people. As I say, we are a peak advocacy body. We could not speak to clinical risk that might arise.

Renee HEATH: Okay. This one might be similar as well, but yesterday a number of unions spoke to the committee and stated that people could be at risk of suicide if they were kicked off WorkCover due to the changes in this Bill. Is that a concern for Mental Health Victoria?

Marcelle MOGG: Mental Health Victoria is certainly concerned about any risk of suicide or evidence of suicidality, and it is an issue that we approach with great respect and care. Our position on suicide risk and prevention is informed by the research evidence that is available nationally and internationally. We also look to the clinical expertise available to us through our network of associates. We look to authorities such as the Coroners Court of Victoria and their recommendations and findings, as well as agencies like the Office of the Chief Psychiatrist in the Victorian Department of Health. We also look at national suicide prevention specialists and other professional reviews to inform our policy provisions and positions. I am not aware of any such evidence as was cited being provided in relation to this Bill or any changes the WorkCover system, so I am probably not in a position to provide further comment with respect to specific risk, I am afraid.

Renee HEATH: Thanks so much.

Marcelle MOGG: Thank you.

The CHAIR: Thanks, Dr Heath. Dr Mansfield.

Sarah MANSFIELD: Thank you. And thanks for appearing today. We heard from some injured workers this morning just about the challenges in accessing care and how long it took them to really be in a position to even engage with treatment. Do you think 13 weeks is a reasonable time frame for an injured worker to be treated for a mental injury?

Marcelle MOGG: Look, we certainly on the face of it welcome the 13 weeks of provisional payments that are outlined in the proposed legislation, but we would suggest that it is not sufficient to facilitate access to appropriate treatment and there are some limiting factors within the design as it currently stands. We know that waitlists for appointments and support services currently are often months long and even longer in areas such as regional and remote and rural settings – some of you here could probably speak to that quite clearly. The provisional payment plan means of course too that in some cases people will not get to their first appointment for support within those 13 weeks, let alone access or complete a course of treatment or ongoing support. Further, the provisions as drafted will mean that people are required to pay their expenses up-front and then be reimbursed, and there is not confirmation that those expenses will be fully reimbursed either.

People are also required under the current design to source and arrange appointments for themselves without embedded support to help navigate and access the system, and we know from the royal commission's findings that navigating the mental health system in Victoria is highly problematic. All of this of course requires agreement between the worker and their workplace, so there is no provision, for example, that workers are likely to be required to use their leave entitlements or indeed take leave without pay. So while the principle of early intervention support and that 13-week provisional payment system is welcome, in practice we would suggest that the approach is flawed and that the amendments were not drafted recognising the current limitations within Victoria's mental health system.

Sarah MANSFIELD: Thank you. The proposed legislation also changes the definition of mental injury and leans more into the DSM-5 way of framing mental illness and injury. Do you believe that the DSM-5 is a sufficiently nuanced tool for this, and if not, what other tools or approaches would you suggest?

Marcelle MOGG: Sure. We would suggest that the definition of mental injury is not consistent with how the mental health and wellbeing sector regards people impacted by mental health vulnerability or with mental health conditions, or how they understand mental health. The DSM is an illness diagnostic tool; it is not designed for nor intended for use as an injury classification or assessment tool, and certainly our associates advise us that it is not an appropriate tool to be used in this manner. The DSM-V – indeed its predecessor versions – is not a holistic measure of a person's experience and physical injuries, so it really is inappropriate and not really of assistance I think for a model such as WorkCover.

Sarah MANSFIELD: What would you suggest is used in its place?

Marcelle MOGG: Look, I do not have an alternate solution. I would also want to point out – sorry, just further to that – that within the mental health system we are increasingly involving and looking to people with lived and living experience of mental health vulnerability to help us understand the experiences of living and responding to mental health conditions, and that is a community would certainly say that the DSM-V is not a holistic tool. It fails to recognise the diversity of mental health experience and/or set people up for recovery in many instances. It is beyond our capacity perhaps to suggest an alternate, but we would suggest that that is not the appropriate place to start.

Emma GREENEY: If I could just add one more observation – I think the comparison with physical health is really important. To my understanding we do not use medical diagnostic tools in the assessment of physical injury – there are in fact bespoke assessment tools created, fit for purpose, to understand the nature of physical injury that might present in the workplace. So again, I am not a clinician either and I am in no position to recommend how that should be assessed by clinical experts, but I would draw the committee's attention to that difference, and the choice to use the DSM-V, which does exist purely as a medical diagnostic tool, seems to forget that in other circumstances you have recourse to different, more fit-for-purpose instruments.

Sarah MANSFIELD: Great. Thank you.

The CHAIR: Thanks, Dr Mansfield. Ms Broad, yes.

Gaelle BROAD: You were not sure? That is fine.

The CHAIR: I was not sure whether it was going to be Evan or you, but you go first.

Gaelle BROAD: That is fine. Thank you very much for your contribution today. I am just interested, what are your feelings about the Bill? How does it align with the aspirations of the royal commission and mental health?

Marcelle MOGG: Certainly. Well, certainly the royal commission took a very comprehensive view not only of Victoria's mental health system but the experience of mental health vulnerability and living with that challenge. I think that that notion that I flagged earlier that the recommendations are responsive to people rather than diagnoses is one that I would not want to be lost – it is not just a passing comment – because it recognises that and refers back to some of those statistics that I stated at the opening, that this is a common human experience. I think that, noting of course that our workplaces are populated by people who reflect that very human experience, we have to have a system that is responsive to people's strengths and vulnerabilities as they come to work.

I think the royal commission outlined some views that the committee might find helpful in terms of understanding that challenge across the life cycle, some of the challenges that people have had historically in accessing care and support, some of the experiences of discrimination and a reluctance of people to disclose a history of mental health challenge, and they are important considerations in informing any response to people with a mental health condition, whether it be in a workplace or any other setting, I would argue. So I think that the framing and some of the key findings and observations of the royal commission may be a helpful source.

I think with regard to specific recommendations of the royal commission, recommendation 16 calls on the Victorian government, particularly the Department of Premier and Cabinet, to exercise specific obligations in terms of ensuring that Victoria has established mentally healthy workplaces. We feel that a whole-of-government approach is warranted as a consequence in responding to the royal commission and see that as a vital part of the reform, and we would hope that any legislation introduced by the government would promote help-seeking behaviours, open and transparent disclosure and destigmatisation of mental health vulnerability.

Gaelle BROAD: Do you feel the current Bill is a bit of a backward step then by the government in trying to meet their –

Marcelle MOGG: It would seem to be at odds with some of those clear recommendations that the government has endorsed and committed to and is working to institute.

Gaelle BROAD: There is a specific mention in the Bill – the Bill provides that mental injuries predominantly caused by work-related stress or burnout will not be compensable unless the duties are routinely traumatic. Is there reason to offer less support for stress and burnout other than mental injuries if both types –

Marcelle MOGG: We would not support the exclusion of typical stress and burnout, particularly in tandem with the predominant cause provision. People with mental health vulnerability have different risk profiles; it is important to note that. Workers with physical injuries, disabilities and health conditions expect to be supported through reasonable accommodations so that they can participate in the workplace. We would say that mental health vulnerability is no different – that reasonable accommodations and support should be made available and in place to support people continuing to participate in the workplace. It is important to note people with mental health vulnerability are not the exception, they are a significant proportion of our current and future workplace, so we do not support any decision to exclude any type of mental injury, including stress and burnout. We believe that there is an opportunity to examine barriers to re-entry into the workforce as people are recovering and seeking to return to work. As we noted earlier, participation in the workplace is a protective and supportive factor in people's mental health and wellbeing. We would always support people who experience an injury to have ready access to the care that they need to be well and continue to participate fully in society and in the community. Yes, so I might pause there.

Gaelle BROAD: Yes. Mental health service supports: it seems to be a huge workforce shortage and really long wait times – I have heard up to 12 months. Do you see that as being worse in regional areas? I am from northern Victoria. So, yes, what are your thoughts on the experience of the workforce issues?

Marcelle MOGG: I could not definitively say 'worse', but I can say that consistently across the state there are often long wait times for people to access mental health care and support, be that based in the community or acute presentations for care. As you say, the current workforce limitations are significant, and they are not readily remediated. We know that we are in a national and international competition for talent, and people

having stepped away from workforces universally post COVID has only exacerbated that, together with the increased and sustained demand that we have seen post COVID. It is a bit of a perfect storm in terms of increased demand, fewer workforce and wait times for care.

Gaelle BROAD: I have got one other question, quite brief.

The CHAIR: Yes, we have got time.

Gaelle BROAD: We have got time? Okay, sorry, we have had very short time. The Bill refers to an independent review in 2027, which is after the next state election. I would be interested in your thoughts on any proposed change. Would an annual review be needed – you know, earlier than 2027? What are your thoughts?

Marcelle MOGG: To be honest, I have not considered that. I suppose the only parallel example that I could draw on is looking at the *Mental Health and Wellbeing Act* itself, which has an in-built provision for review after five years, I think it is, within the commencement of that legislation, which I imagine was determined because it was seen to be sufficient time to embed change, monitor the impact of that change, gather the data and then develop responses to that. While I do not have a specific recommendation with respect to time frames, I think any in-built provision for review is probably a very sensible idea.

Gaelle BROAD: Thank you.

The CHAIR: Thanks, Mrs Broad. Ms Terpstra.

Sonja TERPSTRA: Thanks, Chair, and thanks, Marcelle and Emma, for your presentation. It has been really interesting to hear your insights. I just want to clarify, in terms of the Bill: a number of people have spoken about people getting kicked off the scheme, and that is actually not the case. What the Bill is proposing is that people who are actually in the long tail will stay in the scheme. It is only that the changes that the Bill is proposing would mean that people who might suffer an injury from the point of the changes coming in may be treated in a different way to somebody who was under the previous Bill. So I just want to clarify that, because I think there has been some concern raised about that. And of course the new Bill is proposing that people with new mental health injuries get treated in a different way.

I just want to focus on – we had some evidence from one of the employers yesterday, I think it was, where they were trying to delineate or talk about the fact that some people may come to work with a mental injury, and I think Mrs McArthur then elaborated on that, saying, 'What happens if somebody has a gambling addiction or some other problem?' Almost I think what they were trying to say is they think that some of these injuries are not as a consequence of what might be happening in the workplace. How do you view those comments? Is that helpful or not helpful, and is there any point in distinguishing? Because obviously people do not put bring their emotions to work and put them in a bag and leave them at the door, so then are we getting into looking at obviously what happens at the workplace might exacerbate those problems that people bring? Can you unpack that little bit for me and perhaps be helpful in how we might look at that?

Marcelle MOGG: To be honest, I really do wish I had a very definitive response to that. I think what I can say is point to those statistics that we presented earlier in that mental health vulnerability can take many shapes and forms and is common across both the human life experience and as such across the community. I think to look to exclude people who have by definition some sort of mental health vulnerability is, frankly, just perhaps not possible, nor is it desirable, because I think in any workplace you would hope for open and transparent disclosure so that you can ensure that you have got the appropriate supports in place in partnership with your employee to support their wellbeing, to support great work outcomes and to support them in terms of delivering the role for which they are engaged. I think that anything that looks to exclude or suggest people not be forthcoming with those sorts of experiences is not helpful. I also just wonder about what sorts of things might fall under that definition, to be honest. For example, for somebody who might have a situational or depression consequent to an experience of grief or loss – the death of a partner or a child, for example, or somebody who has had postnatal depression – it may or may not be a factor in a future experience of a mental health vulnerability consequent to a workplace situation. I would suggest that it is going to be incredibly hard to define or determine what role an earlier experience of mental health vulnerability does or does not play in terms of a subsequent experience in a workplace. To the same degree that not every person is aware of physical vulnerabilities that may give rise to a subsequent workplace injury in later years, I might not know that I have an existing risk factor associated with my physical wellbeing until such time as I might sustain an injury and

then look back. I do not know that we can apply different criteria to psychological harm or mental health injury than we would apply to physical.

Sonja TERPSTRA: So is it about that early intervention and support then when things do become apparent as kind of the better approach? I am just going to paraphrase this, but you are saying the DSM-5 is too blunt an instrument to use for these purposes, for mental injury. Is that kind of what you are saying?

Marcelle MOGG: It is inappropriate because it is actually looking at mental illness rather than mental injury or mental health injury, so it is not a fit-for-purpose instrument, if I can frame it like that.

Sonja TERPSTRA: Sure. We have heard some evidence from people who have worked in the public service. What we are seeing is there is a spike in mental injury claims in, say, teaching and policing, for different reasons, and we have heard from some public servants today. I think part of the difficulty is that people are concerned that talking about mental injury in the workplace, particularly if they are managers, might make it worse. Whilst we are good at identifying some things in regard to how compensable injuries are managed, I still think there is a bit of a gap in how we do that early intervention. Obviously Return to Work Victoria will be focusing on getting people back to work, but the prevention side seems to be equally important. This Bill does not really talk about prevention, of course. It is talking about, once someone is injured, getting them back to work. There has also been discussion around the psychosocial regs that were talked about. What could we do perhaps within the scope of this Bill? Could we be doing more around early identification, and how can we equip workplaces to be in that early identification space? How can we be as helpful as possible?

Marcelle MOGG: Certainly I am not a legislator, so I do not know whether this belongs in legislation or in other guidance. But I think both resourcing and opportunity for all workplaces to look at how to prevent injury and harm arising – in the same way as we have done for physical injury, with regard to identifying psychosocial hazard and managing that proactively – are going to lead to better outcomes for everybody. I think we should take courage in the fact that we have been able to face these challenges in other parts of workplace relations, be it physical injury or other sorts of stresses or risks that arise.

Sonja TERPSTRA: Conflict management in the workplace, interpersonal conflict, those sorts of things?

Marcelle MOGG: Absolutely. Certainly at Mental Health Victoria we are looking to partner with other providers in terms of offering workplace training around creating a psychologically healthy and safe workplace. But we are one of many people who are looking to provide that and offer it, and I have to say there is a lot of interest from employers out there – small, medium and large – in creating safe places for their workforce, which is wonderful and to be encouraged. So whether or not that is within the legislation I leave to you, but certainly I think any opportunity to promote that as a strategy is most welcome.

Sonja TERPSTRA: Great. Thanks very much for that. Thanks, Chair.

The CHAIR: Thanks, Ms Terpstra. Mr Davis.

David DAVIS: Thank you, Ms Mogg and Ms Greeney, for your evidence today. There are a couple of things I want to do first as a preliminary. I have just looked at your organisation's annual report. You have got a turnover of about $2.7 million. About $2.29 million of that comes from grants – state government grants principally.

Marcelle MOGG: That is right. Correct.

David DAVIS: Yes. It is the largest, by far, chunk of your income. I just wanted to understand that. I just want to go back to Ms Heath's question. You consulted in some form in March with Mr Pearson. Is that –

Marcelle MOGG: In early April.

David DAVIS: April – early April.

Marcelle MOGG: That is right.

David DAVIS: But not on the specifics of this Bill, as I understand it. Is that correct?

Marcelle MOGG: No. There was not a Bill at that time.

David DAVIS: There was not a Bill. So you actually hadn't seen the Bill until it popped out in the Parliament. Is that correct, or did you see it before?

Marcelle MOGG: No, we saw it when it was released in Parliament.

David DAVIS: When it popped out in Parliament?

Marcelle MOGG: Yes, that is right.

David DAVIS: That is what I wanted to get to. I would have thought that with the state government funding the organisation in large measure they might have consulted before they popped it out, but anyway. I also want to get to your point, which I thought was well made, in effect about the epidemiology or the presence of mental health issues and their various types in the broad community. Picking up some of the other points that have been made by other members of the committee and also by other witnesses: you are saying 21.5 per cent of people would have had, in the last 12 months, some mental health issue of some type?

Marcelle MOGG: Yes.

David DAVIS: Maybe not a serious one – maybe a mild anxiety or something like that. So there clearly is an overlap and a challenge in the sense that you have got effectively a scheme that is then picking up declared work injuries, when it might be that the work is maybe 5 per cent of the aetiology of the condition. It might be 20 per cent, it might be 50 per cent – quite a range. So there is a shandy of conditions, if I can put it that way, of people who have got a range of issues, some of which are pre-existing, some of which might be exacerbated in the workplace and some of which might be triggered in the workplace. This would be true of physical injuries, as you have indicated too, but it does seem a very high percentage. The question that I suspect that I am trying to get to here is: are these conditions best managed and best treated, in terms of best outcomes for the person, in a workplace setting, when in many cases the principal aetiology might be elsewhere?

Marcelle MOGG: I absolutely take and respect the suggestion of the development of some sort of instrument to measure the degree of influence. That is certainly beyond my scope to be able to comment on that, but I recognise that that is a likely reality. I think, with respect though, that when it comes to the appropriate place, the position that we take is that people need access to care and to early intervention and prevention, and often that is most effectively delivered at the point at which it is identified. Often it seems to be in the workplace that people are presenting or reporting, or it becomes evident that people are struggling with an issue. So I think that our view would be that any legislation that means that some people's access to care and support and early intervention is curtailed is going to mean that people are then presenting to a system that is already stretched and struggling to meet demand. So we would not want to see any curtailing of access to care and support.

David DAVIS: But it might be important to get access earlier elsewhere, rather than waiting until something is worsened, exacerbated or triggered – whatever word you want to put – in a workplace.

Marcelle MOGG: I think as a general point, yes. As soon as somebody is presenting with issues or struggles, you would hope that they have the opportunity to access care and support.

Emma GREENEY: With respect, I think that the same can be said for physical health, because if a person is injured in a minor way with a recurring injury and they can see a physiotherapist alongside attending work with some accommodations, then of course that is a better outcome than simply being off work. But if a person's injury is such that the only real recovery that can occur is if they are off work for a period of time in rehabilitation, we would say that there may be some occasions in mental injury where the analogy holds, which is if an injury is such that it does need time away to fully recover and return to work, MHV's position is that there should not be a distinction for mental injury.

David DAVIS: I am even looking further back down the track. Should there be some earlier intervention to pick up these things before they become an issue at work, where they may be more serious? Because the system is, as we have heard, a very big, cumbersome one, it may actually lead to a whole series of other issues that might not be so well dealt with. I am nearly done, am I?

The CHAIR: We have got to move on just for time, so we will go to Mr Galea.

Michael GALEA: Thank you, Chair. Thanks, Ms Mogg and Ms Greeney for joining us today. I would just like to explore this a little bit more in terms of the discussion around psychological impacts of return to work and that return-to-work process. Apologies, I had to leave the room briefly, but I believe my colleague Mr Berger touched on some of this as well. From my experience as well in supporting people through these sorts of situations – quite a few of us here are actually former union officials, as has come up quite a few times in these last couple of days.

The CHAIR: Half the room, I think.

Michael GALEA: Half the room, I think, yes. I note that in the WorkCover system there are various different capacity responses that can be implemented for return to work, but in non-WorkCover situations there is often a much more clear distinction between fit to work and not fit to work, which meant that in a lot of circumstances where people who otherwise in the WorkCover setting would have been able to return on some duties, they were not able to return at all if it was not a work-related injury for a much longer period. We see the direct mental health impacts it had on people in those situations, but we are here talking about WorkCover today. In terms of the role that the system has in providing people that opportunity to come back in an incremental way – and it does not always work perfectly in every case of course, but no system does – what is the best way of ensuring that that return-to-work process is not leading to further psychological harms or worse mental health outcomes, whether it is a mental health related claim or not?

Marcelle MOGG: Just so that I am clear, if I may, what you are talking about is a graduated return to work, perhaps in adjacent roles?

Michael GALEA: Perhaps in adjacent roles, perhaps in similar roles – are there any particular aspects that you see need particular attention on how that reform can be done in a way? And as we do look towards establishing that separate agency, Return to Work Victoria, is there anything in particular with that too which that can support?

Marcelle MOGG: Not being clinicians ourselves, we are probably limited in terms of our ability to respond to that comprehensively, but certainly as a principle I think any system that offers somebody the opportunity to return to work in a graduated system and recover and re-establish their confidence and their wellbeing in a workplace is certainly one that we would welcome. But certainly I think Mental Health Victoria and our network of associates and supporters I am sure would be very happy to work with the relevant body in terms of any design or considerations to that effect with Return to Work Victoria.

Michael GALEA: From your experience, would you say that you have observed the severe outcomes as result of people being required to be off work for a long period of time due to a WorkCover claim?

Marcelle MOGG: Certainly as we understand it, the long tail of experience does not serve people in terms of setting them up to return to work or to resume life prior to a mental health injury. I think that is why we are so keen to see a system that is oriented towards prevention and early intervention where possible, and early support and comprehensive support to ensure people's safe return to work is to be welcomed.

Michael GALEA: Thank you. Thank you, Chair.

The CHAIR: Thanks, Mr Galea. Mr Mulholland.

Evan MULHOLLAND: Thank you. Thanks for your testimony here today; we certainly appreciate it. Mr Davis touched on your consultation with Minister Pearson in regard to the Bill. Were you told about or were you aware of plans for Return to Work Victoria?

Marcelle MOGG: No, I was not, and if I might clarify, at that stage the discussion was really centred around the issues as they had been reported in the media, so there was not specific reference to what would or would not be in a future Bill.

Evan MULHOLLAND: Yes. Since the Bill has been tabled and you are aware of your issues with the Bill, has there been any further consultation with Minister Pearson or the government?

Marcelle MOGG: No, there has not. We have not had a further meeting subsequently.

Evan MULHOLLAND: No worries. I want to ask, and Ms Broad kind of touched on it – as she mentioned, the changes actually exclude stress or burnout that has arisen from events that may be considered usual or typical and reasonably expected to occur in the course of the worker's duties. Is it reasonable to accept that stress and burnout are a normal part of a workplace?

Marcelle MOGG: I do not know that I would support that. I think there are a number of terms in the legislation as it is drafted that are problematic because they are not defined – there is not clear definition. I think talking about typical stress and burnout together with phrases such as 'predominant cause' is problematic in terms of getting the necessary specificity, particularly when we then talk about workers with pre-existing mental health vulnerability, because of course 'typical stress' may be unsafe for people with a pre-existing mental health vulnerability in the absence of specific workplace adjustments to support that person. What might be appropriate for me might not be appropriate or might be quite harmful for the next person, or vice versa. So I do not know that – I certainly know that I am not in a position to talk about 'typical stress' or 'typical burnout', and I would not suggest that they should be part of a workplace.

Evan MULHOLLAND: That is right; that is kind of what I was getting at. It seemed quite peculiar to accept that as a normal workplace condition. A number of witnesses have described the Bill as a short-term sugar hit in terms of its financial impact on the budget bottom line, but they have also suggested that the changes will result in a higher financial cross in the medium to long term across the rest of the support systems across government. Would you agree with that assessment?

Marcelle MOGG: Look, I am not in a position to comment on the economic impacts. That is beyond my remit and beyond our scope of resource to investigate, and without that detail I could not comment. But again I would just go back to history of other WorkCover and workplace initiatives where it has required an investment in order to then drive down both premiums and costs associated through early intervention, support and prevention. I would just point to what we have learned from parallel processes and try and apply those same principles to the consideration before us today.

Evan MULHOLLAND: Yes. Are there are any last recommendations overall on the Bill or even minor that you would like to put forward to us?

Marcelle MOGG: No, I do not think further to the comments that I made earlier, other than, as I said, to say we really do believe in creating environments across the community where people are encouraged to seek help, and that goes to open disclosure, transparency and destigmatisation as important considerations. We would want to see those principles promoted across the community, whether it is workplace or any other setting.

Evan MULHOLLAND: Excellent. Thank you.

The CHAIR: Thanks, Mr Mulholland. We do not quite have enough time to go around the room again, so if members have more questions for you, are you happy to receive them on notice?

Marcelle MOGG: Certainly, yes.

The CHAIR: Fantastic. All right, thank you so much for coming along today and for your presentation, and especially thank you for coming so last minute; we know you did not have a whole lot of time to prepare.

Witnesses withdrew.