

TRANSCRIPT

LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

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

Melbourne – Tuesday 12 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

Joe Calafiore, Interim Chief Executive Officer, and

Roger Arnold, Executive Director, Insurance, WorkSafe Victoria;

Chris Barrett, Secretary,

Kate O'Sullivan, Acting Deputy Secretary, Commercial, and

Bernard Gastin, Executive Director, Financial Assets and Liabilities, Department of Treasury and Finance; and

Jason Loos, Deputy Secretary, Economic Policy and State Productivity, Department of Premier and Cabinet.

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, I will get committee members to introduce themselves. We have a very full house today. I will start down this end with Mr Galea.

Michael GALEA: Thanks, Chair. I am Michael Galea, South-Eastern Metropolitan Region.

Katherine COPSEY: Katherine Copsey, Southern Metro Region.

David ETTERS HANK: David Ettershank, Western Metropolitan Region.

John BERGER: John Berger, Southern Metro Region.

Sonja TERPSTRA: Sonja Terpstra, North-Eastern Metropolitan Region

Tom McINTOSH: Tom McIntosh, Eastern Victoria Region.

The CHAIR: Georgie Purcell, Northern Victoria Region.

David DAVIS: David Davis.

Evan MULHOLLAND: Evan Mulholland, Northern Metropolitan Region.

Bev McARTHUR: Bev McArthur, Western Victoria Region.

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

The CHAIR: Beautiful. Thank you. 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 the 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 of a proof version of the transcript following this hearing. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, could you all please state your name and the organisation you are appearing on behalf of. For convenience, we might just start down this end.

Kate O’SULLIVAN: Good morning. Kate O’Sullivan, Department of Treasury and Finance.

Bernard GASTIN: Bernard Gastin, Department of Treasury and Finance.

Chris BARRETT: Chris Barrett, Department of Treasury and Finance.

Joe CALAFIORE: Joe Calafiore, WorkSafe Victoria.

Roger ARNOLD: Roger Arnold, WorkSafe Victoria.

Jason LOOS: Jason Loos, Department of Premier and Cabinet.

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

Joe CALAFIORE: Thank you very much, Chair. My name is Joe. I am the acting WorkSafe CEO. To my left is Roger Arnold, who is head of the Insurance business unit at WorkSafe. He is also the chief risk officer and chief finance officer at WorkSafe Victoria, a very respected member of the industry. And I am pleased to be joined here with my colleagues from Treasury and DPC. We are going to split 5 minutes each here, WorkSafe and Treasury, so I will move at a fairly quick clip to speak about the role of WorkSafe Victoria.

Unlike most of our Australian counterparts, our role is twofold: on the one hand we are Victoria’s workplace health and safety regulator, where our purpose is to prevent injuries, illness and fatalities, and on the other hand we are Victoria’s workplace injury insurer, where our purpose is to improve outcomes for injured workers. Right at the outset we would like to make it really clear that these schemes are about dealing with different people with different needs: no workers are the same, no injury recovery pathway is the same. In discussions such as this, when we speak about compensation legislation, we will speak about public and private splits and long tails and funding ratios and the like, but we never forget the fact that we are dealing with people with injuries and needs, and we have never met a worker who chooses to be injured at work. The reality is the vast, vast majority of employers are good people that do their very best to look after their workers, and for those that do not, as a regulator we are not shy in taking action.

To give you a brief sense of the size and scope of the scheme: in 2022–23 approximately 343,000 workplaces were covered; over 98,000 injured workers received support; 69 lives were lost in Victoria, more than one a week; over 32,000 new claims were received, and we saw a 17 per cent increase in mental injury claims and a 14 per cent increase in physical injury claims. So in short, more workers are entering this scheme than ever before and they are staying for longer.

Briefly, last financial year we returned more than 23,000 injured workers to work. A successful outcome can mean different things to different workers: for some workers it is a quick return to their same job, for other workers it is a return on modified duties, and for some it is a new career path entirely. For a different set of workers, those with perhaps more complexities, it could be something as simple as having the confidence to use public transport again or the confidence to go to the mailbox and get out of the house. With that in mind, we intend and we try to tailor our programs depending on a worker’s needs, but our aim is always to improve.

Earlier this year the government announced the establishment of Return to Work Victoria. This will be a division of WorkSafe in 2024 and represents a wonderful opportunity to work with stakeholders and experts in the community to bring in new ideas, to reimagine what supports can be provided, to build on what currently works and to also introduce some fresh thinking. While we are currently in the planning phase, we are having some very productive conversations with unions and employer groups: Trades Hall, the Community and Public Sector Union, VCCI, AIG and the like. There is a lot to do, and we look forward to progressing that in the new year.

As we all know, workers compensation schemes across the country are facing considerable challenges. When this scheme commenced, mental injuries made up less than 2 per cent of total claims. Today mental injury claims account for about 16 per cent of new claims, and our actuaries project growth of about 5.5 per cent year on year until 2030. In addition, returning to work after a mental injury is often more complicated and can take longer. Last year just over half of injured workers with a mental injury claimed return to work at that one-year mark, comparing to about 80 per cent of workers with a physical injury. Since 2010 WorkSafe’s claims

liabilities have tripled. That is a similar trajectory experienced by workers compensation schemes across all jurisdictions. That is simply unsustainable.

Lastly, just before I turn over to the Treasury Secretary, it is worth touching on premium levels briefly. Essentially, each year our external actuaries assess claims sufficiency, so are we collecting enough revenue to cover our claims expenditure. Prior to 2023–24 the scheme's average premium rate had not increased for over 20 years. In July 2023 the average premium rate increased from 1.27 per cent to 1.8 per cent, and I want to stress that word 'average' as the individual premium depends on all sorts of factors that we can discuss in today's hearing.

Client numbers are growing. In our briefing from the Victorian Funds Management Corporation, the VFMC, investment markets are more bearish than bullish, and there is significant pressure on the common-law part of the scheme. Our insurance-to-funding ratio provides an indication of our financial health and the sustainability of the scheme, which is really just comparing assets over liabilities. Under our prudential insurance standard it stipulates that WorkSafe is to operate between 100 and 140 per cent, and as at 30 June 2023 it was 105 per cent, so there is a real risk that we will be dropping below 100 per cent within this financial year. If that funding ratio falls outside of the preferred range, WorkSafe will be required to submit a capital management plan to government proposing a strategy to bring us back to the midpoint of 120 per cent within a five-year period. In practice that would mean, in the absence of significant structural reforms to the scheme, we would be looking at average premium rates in the vicinity of 2.4 or 2.5 per cent of remuneration for next year.

In closing, WorkSafe's sustainability is under threat. We need to think deeply about how we return the scheme to a sustainable position so workers and employers can have the confidence to rely on support for years to come.

Chris BARRETT: Thank you very much, Chair and members, for the invitation to address the committee today. I am conscious not to take up too much of your time, so I will just give a 5-minute overview of the scheme and rationale for the Bill following my colleague Mr Calafiore's more detailed overview. The WorkCover scheme is under increasing financial pressure, as you have heard, and the scheme's claims liability has tripled since 2010. Despite government contributions totalling \$1.3 billion over the last three years, WorkSafe's insurance funding ratio has declined from 123 per cent to 105 per cent, and without these contributions would have fallen below 100 per cent. Contributions of this magnitude from the budget are not sustainable, and the WorkCover scheme needs to be self-sustaining to remain viable.

The deterioration in the scheme's financial position is mainly due to an increase in WorkSafe's liabilities due to the increased cost of weekly income support, more workers staying on the scheme for longer and an increase in the number of mental injury claims. Some key statistics underline this point. In 2015, 8 per cent of claims reached 130 weeks, whereas 18 per cent of claims are expected to continue to receive benefits beyond 130 weeks in 2023, an increase of 133 per cent. Mental injury claims now represent 16 per cent of new claims, which was never envisaged when the scheme was originally designed. In 2022–23, 80 per cent of workers with a physical injury returned to work after 52 weeks, compared to just over half of injured workers with mental injury claims.

As outlined by my colleague Mr Calafiore, WorkSafe has developed and implemented many non-legislative reforms designed to improve claims decision-making and support injured workers to rehabilitate and return to work. However, as WorkSafe's independent consultant found, prevention and claims management initiatives are not sufficient to address the financial challenges the scheme is facing. Therefore, as a first step in restoring financial sustainability, in 2023–24 the government increased the average premium rate from 1.272 per cent of remuneration to 1.8 per cent – the first premium increase in over 20 years. Given claims trends and the associated costs, this premium increase alone will not ensure the scheme's long-term financial sustainability. Consequently, on 31 October 2023 the government introduced the WorkCover scheme modernisation Bill. The Bill will do five things: it will introduce new eligibility requirements for mental injury claims to strengthen the link between employment and the injury; it will introduce a whole-person impairment threshold, alongside the capacity test, for income support to continue beyond 2½ years, to provide a more consistent and objective basis to assess ongoing eligibility; it will amend the matters that can be determined through arbitration; it will mandate a statutory review of the changes made to the scheme, with this to commence in the 2027 calendar year; and it will allow for the sharing of collected information within WorkSafe Victoria's business units. Notwithstanding these changes, all workers who make a mental injury claim will continue to be eligible to

receive 13 weeks of provisional payments to fund early treatment. Furthermore, to support workers impacted by scheme modernisation, Return to Work Victoria will be established to help workers who are injured at work get the support they need to rehabilitate and return to work. If the scheme is not modernised as WorkSafe has advised, based on current data and assumptions the average premium rate would need to increase to 2.4 per cent of remuneration to support the scheme's financial sustainability.

To conclude, I wanted also to provide a brief overview of the consultation my department engaged in around these reforms. A consultation steering committee was formed to support government's consideration of the options available to address the scheme's financial sustainability challenges. This committee consisted of representatives of the Australian Industry Group, the Australian Lawyers Alliance, the Victorian Chamber of Commerce and Industry and Victorian Trades Hall Council. This consultation process was designed to help stakeholders understand the problem and proposed solutions, and to assist the government to understand how their proposals may be received by stakeholders, and through them the wider community. Stakeholders' concerns about worker impacts of changes to the scheme resulted in refinements to the initial scheme and redesign options that were considered. Following approval in principle of the legislative amendments, cabinet-in-confidence discussions were undertaken with the consultation steering committee and their affiliates. This engagement was designed to identify any unintended consequences and resulted in further changes to the wording and operation of various aspects of the Bill. WorkSafe also undertook confidential engagement with agents, medical panels, the Workplace Injury Commission and the Self Insurers Association of Victoria to support the implementation process and facilitate resource planning. Chair, I will leave my opening remarks there, and my colleagues and I look forward to your questions.

The CHAIR: Wonderful. Thank you very much. We have about 45 minutes, so I think it is going to be around 4 minutes each for members' questions. I will kick off. I do not know who is the most suitable person to answer this question, so feel free to pass it around.

Chris BARRETT: If you ask, we will direct it.

The CHAIR: Do you have any information or understanding of what percentage of people who reach the 130 weeks of payments will satisfy the over 20 per cent whole-person impairment test to continue to receive payments after that?

Chris BARRETT: I might allow my WorkSafe colleagues to answer that one.

Roger ARNOLD: The actual detailed modelling of that is supporting the legislation and is therefore cabinet-in-confidence. What we recognise is that there are a series of high and low scenarios, and it is actually quite a difficult thing to model. The impairment test has not been applied to workers in those circumstances in past times, so we do not have a hard fixed number. But as part of, if you like, the modelling of the outcomes of the Bill, estimates have been made around that but also the effect at the front end in terms of what number of workers with a mental injury will not be able to sustain their claim under the new process. Collectively we have remodelled the scheme with, if you like, some scenarios for that at the top and the bottom. I do not have a hard number that I can put on the table today.

The CHAIR: Despite not having a hard number, do you have any estimation about how many people will be impacted?

Roger ARNOLD: We expect that of people with a mental injury quite a large number of those people will still sustain the test due to the complexity of their mental injury, and it is more likely to affect people with a physical injury. I do not have a hard number I can put on the table for you, I am sorry.

The CHAIR: If an injured worker fails that test and is unable to receive payments, what is the proposal for how they will receive an income?

Roger ARNOLD: They will no longer be able to achieve an income via the WorkCover scheme. Prior to that happening we have a service we call transition services where we will be looking – because of the impairment test, we should be able to establish well before that 130th week what their likely outcome is. We have a service running today called transition services, where we work with that injured worker and we really try to work with them either to transition to a new job or to other government supports. That service was built in the last couple of years, and we are getting some really strong outcomes, where workers understand that they

need to move somewhere else. That service will start to kick in around the 75-week mark. I cannot tell you where those injured workers will go for their support after they come off the scheme.

The CHAIR: Just finally, has there been any consideration or looking into, if a worker cannot receive an income, the pressure that it will put on other services, such as public housing or emergency presentations or child protection and all the things that not receiving an income also impacts?

Roger ARNOLD: I could not comment on that.

Joe CALAFIORE: In terms of the specific building of this Bill I would say no, but broadly speaking whenever there are changes such as this to any compensation scheme WorkSafe is involved in all sorts of committees with the health department, justice and even the transport department. So in a broad sense, yes, but not specifically as part of the modelling.

The CHAIR: Okay. Thank you. Mr McIntosh.

Tom McINTOSH: I will do the same. I will put it to all of you. Initially, hearing you talk about the percentage of injuries physical versus mental, could you just flesh that out a bit more perhaps since the scheme or schemes in this form has developed since the 80s: how has it changed over time, and then also what are the risks to all sets of workers if we do not have reform in the scheme?

Chris BARRETT: Yes, thanks, Mr McIntosh. I might just say a couple of things about that off the bat but then pass over to my WorkSafe colleagues. I think it is really important in this to recognise that, as your question implies, Victoria is not facing this issue alone. All schemes around Australia are having to grapple with this issue of the rising cost of mental health claims. One of the key points there is the early intervention. To the point worrying about people falling off the back of the scheme is also how we can intervene earlier to address people coming into the scheme and get that early intervention that gives people the help that they need when they need it, which means that they do not end up on the scheme for a long period of time. But I might just pass to my WorkSafe colleagues to expand on that.

Joe CALAFIORE: Thank you, Secretary. As the Secretary indicated, what these schemes are experiencing is significant growth, vastly beyond the projections. If anyone has been following the recent debate about the NDIA, about what their initial projections were about the scheme and what we are seeing, you are seeing some similar themes here. If I just look in the last financial year, between 1 July 2022 and 30 June 2023, 32,780 claims were received compared to 28,600 the year before. So we are actually seeing a really significant increase in the growth of claims in terms of injuries, and one of the great challenges these schemes are facing is the mental injuries side of things. Physical injuries are often quite visible. You have fallen off a roof or you have been lifting boxes in a warehouse for 20 years, and it is degenerative; you can see it and isolate it, and the recovery pathways are quite well known. If you think for a moment in terms of the complexity of a mental injury, we both might be working in the same police station, and we might receive a claim for high job demands or unreasonably high job demands or unreasonably low job demands. So it is often quite more invisible, and often the diagnosis is a lot more nuanced. What these schemes are facing is the challenge as to how we can apply personalised services but yet be consistent and consistently apply it across tens of thousands of workers. But the growth in our claims book, to use that sort of jargony term, is real, and not only does it have an immediate challenge in terms of the return to work space, it is diluted. To return to my opening remarks, that pool results in a larger common-law pool which will flow through in about two, three, four years time. There are quite a number of significant headwinds that these schemes are facing in terms of ensuring their sustainability.

Tom McINTOSH: Just very briefly on that point you raised, in which industries are you seeing that growth that you are talking about?

Joe CALAFIORE: Well, I suppose in terms of physical claims, we tend to see them in areas such as manufacturing, construction, agriculture, health and community services, and in terms of mental injury claims across the board. But there is no doubt, given the nature of the work that is performed in the public sector, that is where you are seeing increases in those types of claims at a higher proportion compared to the private sector.

The CHAIR: Thanks, Mr McIntosh. Mr Davis.

David DAVIS: I just want to pick up a couple of points. First of all, the 33,780 to 28,600 – what time period was that?

Joe CALAFIORE: That was from 1 July 2022 to 30 June 2023: 32,780 claims compared to 28,632 for the full year 2021–22.

David DAVIS: That is 5100, an 18-odd per cent increase. That is a surge really, isn't it?

Roger ARNOLD: Correct.

David DAVIS: I just want to pick up the point that you made about the \$1.3 billion that has been put in. Clearly the scheme has been underperforming for a long period. When was Minister Pearson first advised about that?

Chris BARRETT: I think, Mr Davis, those contributions were over, if I understand correctly –

David DAVIS: Three years?

Chris BARRETT: three years and relatively recent, and for the 20 years before that there has not been any premium increase. The recommendations happen in a particular way, which is that the recommendation comes from the board of WorkSafe and it comes into government, and then we provide advice over the top of that recommendation on the premium increase.

David DAVIS: For example, when Minister Stitt was minister she was advised that WorkSafe required an increase in premium, and that was refused by the expenditure review committee.

Chris BARRETT: I could not go to whether it was the expenditure review committee specifically. Perhaps my colleague Mr Gustin –

David DAVIS: Or the government –

Chris BARRETT: Or government in any case –

David DAVIS: said no. This is a long sequence. I guess my question is: when did Minister Pearson become clearly aware of this?

Chris BARRETT: Minister Pearson only became the responsible minister in December 2022 – is that correct, Bernard?

Bernard GASTIN: Yes.

David DAVIS: So he was briefed at that point about the problems?

Bernard GASTIN: Yes, he was briefed on the scheme at that point.

David DAVIS: So a year ago?

Bernard GASTIN: Yes.

David DAVIS: Thank you. What was Minister Pearson's direction once he became aware of the issue? What did he do?

Chris BARRETT: I think you have seen what he has done in terms of the Bill and the response.

David DAVIS: That is now.

Chris BARRETT: I forget the exact timing, but I think the legislation was proposed in October of this year – is that correct, Bernard?

Bernard GASTIN: Yes, that is correct.

Chris BARRETT: That is effectively from his becoming minister in December 2022, the legislation being –

David DAVIS: It is almost a year. Thank you. I just come back to the head of WorkCover. To understand this time period, this 13 weeks, that is part of the claims coming forward – so a new claim comes forward. It seems to me there is not intervention early enough, is that correct, and we need earlier intervention to manage the claims and to assist workers?

Joe CALAFIORE: There is no doubt – there is really strong evidence, really strong literature – that early intervention is one of the strongest and most powerful cards you have in terms of return to work. I would describe as an enhancement of the Victorian scheme, which you will not see in most schemes around the world, the ability to access provisional payments. It is rare to see schemes where while your claim is still being assessed you are provided access to support. That is not a feature of most schemes around the world.

David DAVIS: I am talking about the actual early intervention to treat, to manage, to rehabilitate. That is a secret, isn't it?

Joe CALAFIORE: Secret? It is probably the most powerful policy lever that you have. I will pass on to Roger in a moment, who heads up this area at WorkSafe. I am just trying to think. The education sector is probably a really good example. We know if you have a school where one worker goes off, say, with a mental injury, that you have to intervene not only individually with that worker really quickly – is it stress, is it interpersonal conflict; what is going on, what can we do? – we also then have to think systemically about what is happening at that workplace in that sector.

The CHAIR: We will get Mr Arnold to comment, and then we will just need to move on.

Roger ARNOLD: Quickly, under the workers compensation scheme, when a worker lodges a claim we have got 28 days to make a decision on it. Many claims will be assessed before then, but from the point the claim is assessed that worker will get support from a caseworker, one of our agents. I think the key point around early interventions, particularly for mental injury, which is where we have this 13-week provisional payment, is we do not wait to accept the claim: we say you can have treatment right now. But within the 13-week period in Victoria only 25 per cent of the people who get that entitlement are able to see a mental health professional, and those people who have seen a mental health professional in the main have only had one appointment. One appointment is not going to cut it for making that person better. Early intervention is an immediate support from case managers and employers, and you will also have seen a campaign we ran recently which is about the massive difference it makes if the employer speaks to the injured worker within 48 hours of the injury. It has a material impact on their recovery outcomes.

The CHAIR: Thank you. Thanks, Mr Davis. Ms Copsey.

Katherine COPSEY: Thank you. Thanks for joining us this morning. I just want to touch again on a question for Mr Calafiore. You may have answered this in response to Ms Purcell's question earlier. How many workers are going to be impacted by these changes, which are proposed in the Bill, to mental injury?

Joe CALAFIORE: As Mr Arnold indicated, what we routinely do as part of any legislative change or policy change is undertake modelling. The modelling really works on a whole bunch of assumptions and scenarios, so we do not really have a hard number that we can table today. It is actually a very difficult exercise to model. But in saying that, there is no doubt that when you look at the impact of the changes – the entire intent of the changes at the front end and the back end – it is to try and tilt the scheme towards those with the more significant injuries. So it is a fair comment to say that workers will be impacted by these changes, but we do not have any specific number that I can table today.

Katherine COPSEY: Not a range, not a percentage – or do you have any insight into the financial impact of the changes, to give a guide?

Joe CALAFIORE: I mean, the vast majority of workers are not impacted by it, and the reason I say that is we currently have 98,000 injured clients on our books, to use that phrase. It is a very large scheme. You are speaking of over \$20 billion of assets and liabilities. In terms of the part of our modelling that we would have provided to Treasury and the government, it would have been part of cabinet deliberations on this Bill. So it certainly does strengthen the sustainability of the scheme, but I do not have a specific number I can table today.

Katherine COPSEY: Thank you. We will hear from injured worker representatives throughout this committee hearing as well, and some reports so far have said that the system as it stands is adversarial. Injured workers feel it is weighted in favour of employers and insurance companies. What do you think could be done to ensure that injured workers are better supported throughout the claims process?

Joe CALAFIORE: I personally think that is one of the \$64 million questions that we wrestle with within this space. I would say a couple of things, briefly. For many workers, roughly around 70 per cent of workers with a physical injury, the system works as intended – injury, claim accepted, supports received and back at work within six months. That is the system working as desired. However, it is absolutely fair to say once we start getting into workers that are on the scheme, say, for more than six months and who exhibit more complexities, often workers find it adversarial and bureaucratic. While I am sure you will hear from some experts that say sometimes the impact of the compensation system can actually be just as damaging as the injury itself, there is no one silver bullet. I think the way we are trying to envisage Return to Work Victoria, as opposed to WorkSafe being very prescriptive, our work plan and the way we go is to work with experts and industry stakeholders as to where we can do some pilots and some programs on the prevention side of things. The very best thing for not only the sustainability of the scheme but for injured workers and for employers is not having these injuries – that is the best thing. However, once we do have an injury, the second-best thing is what Mr Davis alluded to, which is early intervention that is effective and doing what we can either to return people to work or alternatively to help them explore future career options.

Katherine COPSEY: Thank you. That is a good segue. I might now ask the department representatives: I would like to understand, given the apparent issues that we have been facing with WorkCover and rising premiums and that the government has known for some time that this problem was developing, why there have not been any reforms such as prevention and rehabilitation put in place? Why instead are we seeing a Bill introduced in the last couple of weeks of the Parliament?

Chris BARRETT: Thanks, Ms Copsey. I am happy to take that, but I probably will refer it to my WorkSafe colleagues because there actually have been a number of initiatives in that space, so this Bill is not the entire picture. I think that Mr Calafiore or Mr Arnold might speak to some of the things that have been undertaken, because obviously we have been watching this rise in mental health claims taking shape.

Roger ARNOLD: I think the program that we would regard as probably the predecessor to Return to Work Victoria started in June 2020, and we call it return to work and recovery. What we have realised is that there is a very small proportion of workers you can identify as going to be stuck on the scheme and having slow recovery and a poor return to work. So using our analytics and intelligence, we case manage a process where we identify those workers, we identify what the barrier they have to return to work is and then we provide a specific – I call it intervention, because it is designed to change the course of their recovery. We have identified in that period and worked with 14,000 injured workers who we believe to be at the most risk. We have applied 17,000 different interventions – and I will talk to what some of those are in a second – and we have got over 5000 of those injured workers back at work, and that is a much higher rate of return to work for those people who feel like they are in trouble on the scheme than would otherwise be the case. There are some interventions we use in that space. For example, we have a service called ‘new employment services’ – a worker has got an injury and cannot go back to their existing employment, perhaps because that employer has gone bust or perhaps because they have had such a bad dispute they can never face that place again, so we take people through a new job-finding service. We have another service for workers who have a dispute with a work member that is the cause of their injury – we call that ‘facilitated discussion with a negotiator’. That thinking has helped us to start to pull the return-to-work rates – which hit rock bottom in 2020 – off the floor. It is like turning an oil tanker, but we have got slow but steady progress with physical injury return to work and we have just started to see mental injury turn, including, I would also say, in some of the biggest public sector departments with the most difficult outcomes for them – police and education. In education, their performance and mental injury return to work has really started to improve, and they deserve a lot of kudos. And in the last two months we have seen the first two improvements in VicPol.

The CHAIR: Cool. Thank you. Thanks, Ms Copsey. Ms Terpstra.

Sonja TERPSTRA: Thanks, Chair. Good morning, everyone, and thanks for providing your opening remarks this morning. Of course everyone is going to ask similar questions because there are finite themes in the Bill, but just on the premiums, for example, what will it mean if we do not increase premiums? What would

that actually mean to the scheme and workers who are in the scheme and rely on those weekly payments? What would that actually mean if we do nothing?

Joe CALAFIORE: Perhaps if I begin. I return to those earlier comments there. One of the actual objectives in the Act is a statutory objective to have a fully funded scheme, so I think the immediate reflection I would have is that we would be operating outside of the statutory remit. One of the things that I think is really important with these types of schemes is we want employers to have confidence, we want workers to have confidence. We want everyone to have confidence that in the event that an injury does happen, there is a system that is efficient and effective and that is there that can support workers either for a short time or perhaps for a very long period of time. Your premium sufficiency, as the Secretary has indicated, is something that is an annual process, but it is a really key lever in terms of the financial sustainability of the scheme.

Sonja TERPSTRA: And you were all talking earlier about Return to Work Victoria and identifying that obviously the scheme was developed many years ago and was designed around primarily physical injuries. Things evolve – they do not stay static over time – so it is really good to see that there is a really key focus on return to work. But are you seeing any trends in terms of barriers to people being able to return to work? I think you touched on some of them when you were talking about how there might be disputes in the workplaces, but are there any other sort of trends that are emerging as barriers?

Roger ARNOLD: Absolutely. For the people who are in a position which we call complex, quite often for those people they might have their GP, a surgeon, a physio, their employer, family and a whole bunch of people in there and their recovery becomes really complex, trying to get all of those people on the same page, if you have got the physio pushing in one direction and the case manager pushing in another. One of the things around those increasingly more complex cases is that the recovery is a team game, so we have now a service which we call multidisciplinary recovery where we pull these people together in groups. Some other things that have been actually positive are the strong Victorian economy and the shortage of workers has been really terrific. We have been able to find roles for people who want to go back, and we are actually seeing that employees are open to giving injured workers who have had a workers compensation injury a go, which has not always been the case. I think if there is a slowing down in the economy, on the other hand, or a slowing down of particular sectors, then all of a sudden you see workers who are a little bit stuck.

Sonja TERPSTRA: Yes. I was just reading some of the notes in terms of stress and burnout claims – that is where the changes under the Bill are being proposed so there needs to be an element of traumatic injury. As I understand it, the changes will not affect people who are already in the scheme, it will be from whenever this Bill commences. You have talked about education and policing as part of where people are in those long-tail claims. What are some of the trends in those particular areas, teaching and policing – what are you seeing there?

Roger ARNOLD: I think in areas like policing, other emergency services, but I would also say other people who deal with traumatic material – you do not need to be what you call a frontline worker to get traumatic material; you might be a lawyer who is reviewing the case notes for family cases – certainly trauma is a genuine issue, particularly for workers who spend a long while in the same role and cannot get away from it. However, the thing that might perhaps surprise people around the room is that the biggest causes of mental injury in the scheme are bullying, harassment and workplace disputes. We call that collectively workplace conflict. Even in a number of those emergency services areas or for teachers, it is workplace conflict with students, parents, colleagues.

Sonja TERPSTRA: Yes.

The CHAIR: Thanks, Ms Terpstra. Mr Mulholland.

Evan MULHOLLAND: Thank you. The 2020 Finito report, which was only actually released to the public after a long FOI process, suggested either increasing premiums or legislative reform. We have known since then of the financial pressures of the scheme. Why didn't the government develop a Bill in 2020 to address this, instead choosing to invest \$1.3 billion to prop up the scheme? Was that your advice?

Chris BARRETT: Well, Mr Mulholland, those are really questions for ministers. We obviously do provide advice to ministers, but I am not going to go into the nature of the advice that we provide ministers.

Evan MULHOLLAND: Can you confirm – it might be a question for Joe – whether WorkSafe is building in a premium rate above 2 per cent into your forecasts no matter what the policy setting is?

Joe CALAFIORE: I am just trying to think. The process that we undertake, so where we are at right now, our external actuaries are influenced by our end-of-year valuation. It is a little bit tricky. Our end-of-year valuation does not flow through until February–March because they need all of the 30 December numbers. In one respect they tend to go off the actuals in terms of what they are seeing, so at the moment the fact would be you do not have legislative change, so they would be going on the actuals. The absence of legislative reform is what they would be modelling, and as I think was indicated earlier, that sort of process then flows through from a WorkSafe board recommendation at the end of March in to government for final decision.

Evan MULHOLLAND: Will the policy settings in the Bill get premiums under 2 per cent?

Joe CALAFIORE: I actually do not have any specific knowledge in terms of sort of other scenarios that are being explored.

Evan MULHOLLAND: Minister Pearson said to Parliament:

We do not want to see workers languishing on WorkCover for years.

How many Victorians have been on WorkCover for more than 12 months or more than 24 months?

Roger ARNOLD: What we usually cite for what we call languishing is beyond 130 weeks, and that is about 8000 people over 130 weeks.

The CHAIR: This is your last question.

Evan MULHOLLAND: Yes, no worries. I assume some actuarial advice was relied upon to develop the changes proposed in the Bill. Has advice been commissioned from more than one source about the future of the scheme?

Joe CALAFIORE: Broadly speaking, we have both internal and external actuaries, so that would in a sense be the major area. But these schemes often have policy natures to them too, so broadly speaking we take in sources of expert advice where required.

Evan MULHOLLAND: Who is that?

Joe CALAFIORE: It would tend to be internally from sort of our internal policy development areas. We work closely with the Treasury.

The CHAIR: Thanks, Mr Mulholland. Mr Ettershank.

David ETTERS HANK: Thank you, Chair. Thank you for your presentation today. I am interested in the number of workers that have been affected. I think you said there are over 8000 or around 8000 that have been there for more than 130 weeks. What percentage of those are mental injury related clients?

Roger ARNOLD: I am going to have to answer this in two ways. Those who have had what we call a primary mental injury, which is the reason that they went off work in the first place – I have not got the hard number here, but it is going to be around 25 per cent. The really important thing is what we find when people have been off work for 130 weeks. Quite often their barrier to going back to work is no longer the initial physical injury. We call that a secondary mental injury. They become depressed, stressed, unable to return to work because of the secondary depression, and quite often with those injured workers, what we are doing as WorkSafe is we are now trying to work with them to treat that issue. And so probably eight in 10 of those injured workers who have been there for 130 weeks have got a mental health issue of some sort.

David ETTERS HANK: Okay. But that was not necessarily why they put in their claim in the first place.

Roger ARNOLD: That was not why they went off in the first instance.

David ETTERS HANK: So there is obviously this strong interrelationship between physical and mental health in terms of the client. In that context can I understand why the legislation proposes then that you cannot

count both the physical and mental injury in making an assessment? You could have both mental and physical at 15 per cent and they are not going to be eligible under the legislation, as I understand it.

Roger ARNOLD: I have to pass that one across.

Joe CALAFIORE: I do not have anything specific on that issue per se, other than to say with every single aspect of this Bill in a sense there is what I would call a threshold question. The higher the threshold, the more the impact. Similarly, if you were to dilute the threshold, you would have a diluted impact.

David ETTERS HANK: I do not understand your logic there. You are saying on the one hand that mental and physical injuries are intertwined. Why would you then in assessing a person's eligibility pretend that you cannot combine the two for the purposes of a cumulative injury? What is the logic there? I do not get it.

Joe CALAFIORE: It is tricky. If I look at the intent of the Bill, the intent of the Bill is attempting to really codify the significant mental injuries in terms of the eligibility of access to the scheme. The effect of combining, in terms of the whole-person impairment, would be in one respect – what was the logic – to dilute and to counter the impact here, which is the legislative intent here, which is to try and make it more towards the significant mental injuries as diagnosed by the SMD.

David ETTERS HANK: Okay. A couple of quickies: if this legislation goes through in its proposed form, can you say with any confidence that there will not be an increase in the WorkCover levy?

Roger ARNOLD: I think if you look at those projections of mental injury, if we continue to see a 16 per cent year-on-year mental injury growth coming into the scheme – and I know we have got a strong economy here, so the economy is growing – in really simple terms if the level of injuries that have occurred in workplaces rises much faster than the growth in the workplaces, there can only be one outcome.

The CHAIR: One more quick one, Mr Ettershank.

David ETTERS HANK: Could you possibly just answer that question, though? In terms of taking on board the assumptions that underpin this Bill, can you give any confidence to the committee that if the Bill is passed in its current form, there will not be an increase in the WorkCover levy?

Roger ARNOLD: If we take aside next year, in the longer term if the rate of mental and physical injury growth continues as is, I think it is inevitable that there would need to be growth in the premium. If we can address that rate of injuries coming in, that would change.

The CHAIR: Thanks, Mr Ettershank. I just wanted to inform you, before we move on, that we are going to go slightly over time. Is that okay with all of you? Beautiful. Thank you. Mr Berger.

John BERGER: Thank you, Chair. And thank you for your presentations this morning. We have heard a lot of talk this morning about prevention, and I think the two questions I have revolve around the return-to-work program and when and where it would be stood up. Do you have any indications as to when and where it would be stood up?

Joe CALAFIORE: Yes. We are obviously closely following the passage or otherwise of the Bill. We are really planning for the first half of next year. As I mentioned earlier, we are deep in the planning phase, and we are very determined to make sure that we are doing this with the sector as opposed to it being a WorkSafe-only exercise. We also have industrial obligations under our enterprise bargaining agreement. As this is going to be a division of WorkSafe, when we create new divisions we have obligations to consult with our workforce and with the CPSU. So we will come up with a proposal I would have thought in the first quarter of next year and undertake a consultative exercise with our workforce and our union with a view to having it stood up in the first half of next year.

John BERGER: What will be their role?

Joe CALAFIORE: When I think of the statutory obligations that the authority has today, there are a long list, but there are preventative obligations to reduce the incidence of workplace injuries. I think there has got to be a prevention component in this. We have statutory obligations about improving suitable return-to-work opportunities for workers. I think that has to be a key component. We cannot take our eye off the statutory

obligation of the authority to minimise the cost burden for Victorian businesses. I think we cannot forget that. The phrase internally is, 'We're not going to try and be all things to all people on every issue.' We have a broad landscape to deal with, and it is really working with some key stakeholders about where we could pilot things – for example, in the prison system and the youth justice system. So where can we do some small, targeted initiatives? What works, let us scale it up pretty quickly, and what does not work we throw out and start again. I understand from the witness list, working with people such as Dr Mary Wyatt – there are some incredible experts in this industry that have some great ideas, and a new division sort of sends that signal that the authority is open to new ways of offering supports to workers and businesses.

John BERGER: Thank you.

The CHAIR: Thanks, Mr Berger. Mrs McArthur.

Bev McARTHUR: Thank you, Chair. Thank you, gentlemen. Just for the record, given that we will do the report in January, could we ask for the end-of-year actuals to be submitted on notice to the committee for the period ending 30th of the 12th, 2023?

Joe CALAFIORE: Yes, we can. It is just our end-of-year actuals actually flow through in February–March, so we can provide what we have at that end of year.

Bev McARTHUR: That would be terrific. Thank you so much. Is it not the case that the WorkCover premiums and the whole situation have blown out because of the increase in claims in the public service versus the private sector?

Chris BARRETT: I might just respond to that if I may and then colleagues can expand, Mrs McArthur, because I have seen that that has been out there as a matter of some debate. I would say a few things on that. Firstly, the public sector is actually only 20 per cent of the premium pool, and I am advised that in the last five years public sector premiums have actually been above the private sector premiums. That is not surprising when you think of, in particular, the burden of mental injury in the workplace for some of those frontline workforces that we were talking about earlier – police, nurses, teachers – and I know there has been some discussion about how if you separated the scheme out into a private and a public scheme you would get lower premiums in the private sector. I think that that misunderstands actually how the premiums are set. They are set on a risk weighting. That is how they are currently set at the moment, and that is why those public sector organisations, a great number of public sector organisations, pay significantly more in terms of the premiums. Given that that risk weighting is already in there, which is what that separation would be aiming to achieve, I do not know that that separation would achieve that.

Bev McARTHUR: In PAEC – and I am a member of PAEC – we asked for some data and we received some. But it was not complete, so maybe you would like to take this on notice: can you provide the breakdown of the total mental injury claims for the years 2019–23 by industry sector, for statutory authorities and broken down by age and sex?

Chris BARRETT: We will take that on notice.

Bev McARTHUR: Thank you, great. Also, how many mental injury claims were made by employees of some departments? I will list them: Department of Premier and Cabinet in the periods 2021–22 to 2022–23 – you can take this on notice as well – Department of Parliamentary Services, Department of Jobs, Skills, Industry and Regions, Department of Education and the mental health branch of the Department of Health – all those departments.

Joe CALAFIORE: I will take that on notice.

Bev McARTHUR: Thank you, great. How many mental injury claims were made by – you might want to take this on notice too – sworn employees of the Victorian police force between 2021–22 and 2022–23 and paramedics employed by ambulance services in the same period 2021–22 and 2022–23?

Joe CALAFIORE: We will take that on notice.

Bev McARTHUR: Great. So is the public sector a good employer?

The CHAIR: Mrs McArthur, I do not think that is in line with the terms of reference.

Bev McARTHUR: Oh, I thought they might like to wax lyrical about how good they are.

Chris BARRETT: Certainly speaking from personal experience, it is a very good employer. I think I would refer back to the point that I made earlier, Ms McArthur, which is that with a lot of these tasks or jobs in the public sector – if you think of what police face, if you think of what nurses face, if you think of what paramedics face, my experience in the public sector pales in comparison to what they experience, and I would not want to speak for them.

Bev McARTHUR: So should the private sector be picking up the bill for the public sector to the extent that it is?

Chris BARRETT: I would just refer you to my first answer, Ms McArthur, where I would dispute that that is the case.

The CHAIR: Thanks, Mrs McArthur. That is all we have time for. Mr Galea.

Michael GALEA: Thank you, Chair. Secretary, I might start with you, but again, for all these questions please direct them as appropriate. I just wanted to round up a couple of things that we have spoken about this morning. Mr Mulholland asked you about premium increases irrespective of the change, but from my understanding this Bill is designed to prevent significant premium changes. If this Bill does not go through, if we do not have these reforms, what sort of premium increase will you be forced to recommend to the minister?

Chris BARRETT: Well, yes, I think it is more in the nature of the modelling that I might have mentioned in my opening remarks, which is that our collective estimate is that if these reforms do not pass, then it would require a 2.4 per cent premium. I would make the point that the premium is one thing, and we do not for a moment underestimate the impact of the premium on businesses, but the other thing is that there are some real elements of this Bill that are designed to help people in a real way and get them back to work faster. I think everyone accepts that getting people back to work faster after an injury is the goal that we are all aiming for, so I would emphasise not just the premium but also the impact on real people.

Michael GALEA: Thank you. Mr Calafiore, in response to one of Mr McIntosh's questions you discussed that Victoria is not the only state having these sorts of issues. Can you talk to me about how we compare with other states and what sorts of issues other states in the nation are having with their WorkCover systems?

Joe CALAFIORE: If I take the question broadly, social insurance schemes, at my old place at the TAC you see in terms of the big increase in fatalities. We are seeing that in Victoria this year. That is a trend that you are seeing across the country. If you observe the debate about the NDIA in terms of the projections as to how many, say, young children we thought were going to have an autism diagnosis versus what is actually happening in the community – I think it is a collective challenge about how we provide personalised support, remembering that no two responses are the same, so we have got to provide personalised support at scale in an efficient and equitable way. One of the earlier questions referred to many clients actually do find these schemes adversarial and they find them quite bureaucratic. That is, I think, at the heart of it: there is a legislative process and then there is a not insignificant operational process to put systems and processes in place. The last thing we want to actually do is add to someone's injury, physical or mental, via going through these schemes.

The other thing, if I could just very briefly say, is in Victoria we have really got two schemes that run sort of side by side. We have got a no-fault scheme, which is really what we are discussing in this Bill today, and side by side with that we have got a lump sum of what we call the common-law damages part of the scheme. That is what we referred to – the modelling can be a little bit tricky here because what we know about this scheme is when you make one change to one portion of the scheme, you then have to model out what some of the consequences, intended or unintended, might be. But the simple fact is because we have large claims year on year, and we have seen that in the past three, four, five years, there is a much higher common-law pool that we are going to see in the next five to 10 years. There are a lot of similar challenges, and it is quite a collegiate industry. Roger and I often deal with our counterparts and try to pick each other's brains.

Michael GALEA: Thank you. Just on that, you talked about some of the 'bureaucratic' – I think that was the word you chose – challenges that injured workers can face in the system, and I can attest to that as someone

who represented workers through WorkCover for over 10 years prior to coming to this place. Is that where Return to Work Victoria is going to play an important role too, in changing the way that workers deal with the WorkCover system?

Joe CALAFIORE: Yes, I think absolutely. We want people who are injured to get all of the support so it is transparent, so it is clear and we can have, as Roger said, all of the levers pulling in the same direction. To be really brief, we know from our research we are not the most important factor in someone's recovery; it is the client, their family, their treater et cetera. We want to be part of an ecosystem where everyone is pulling in the same direction.

Michael GALEA: Thank you very much.

The CHAIR: Thanks, Mr Galea. Ms Broad.

Gaelle BROAD: Thank you very much for coming today. The Bill talks about a review of the scheme in 2027. Now, I am concerned – I guess that seems to push it out after the next state election. So just for transparency, this seems to be a major issue that we have right now with over \$1 billion put in by the government to prop the scheme up. Do you think we should be having a review of that and any changes a lot earlier than 2027?

Chris BARRETT: That would be a matter for the minister.

Gaelle BROAD: Okay. Well –

Bev McARTHUR: Would you be recommending it?

Gaelle BROAD: Yes. Is that your recommendation?

Chris BARRETT: I would not speak about my advice to ministers.

Gaelle BROAD: Okay. Now, I have been speaking to local businesses that have been impacted. You know, for local butchers it is a \$6500 increase on what they are already paying – \$11,000 a year, year on year and never had to put in a claim. There have certainly been news reports that executives had a pay rise of \$42,000 at WorkCover, taking salaries up to \$310,000. I guess I am just interested in the KPIs. You know, it is not working well at the moment, so is that set up for success?

Joe CALAFIORE: Sorry, could you just clarify: is that set up for success?

Gaelle BROAD: Yes. What are your KPIs?

The CHAIR: I think this might be slightly outside of the terms of reference. If you can relate the questioning to the Bill that we are inquiring into.

Gaelle BROAD: Well, I guess the changes are being made to the Bill because the system is not working. So if the executives are working in an organisation that is returning a huge loss, I guess I am interested in – and I think businesses would want to know – what are the KPIs internally and are you meeting those KPIs, and why hasn't action been taken earlier to fix the system?

Sonja TERPSTRA: Point of order, Chair. I am not sure that is relevant to the Bill. KPIs are not part of this Bill, and I do not think that question is relevant.

The CHAIR: I think if Ms Broad can relate the question about KPIs to the Bill we are inquiring into.

Gaelle BROAD: Well, the purpose of the Bill is directly related to the performance of the scheme, so I think that KPIs would be relevant.

Joe CALAFIORE: Perhaps if I could say broadly, I am acutely conscious and the exec are acutely conscious that one of our statutory objectives is to ensure costs are contained so as to minimise the burden on Victorian businesses. So from an administrative point of view we are acutely conscious of the fact that every single dollar that we spend is a dollar that has been earned by a business through their workers. Just as a general

principle, ensuring that the authority runs as efficiently as possible is not only an objective of the Act, it is obviously a key focus for me as the Interim Chief Executive.

Gaelle BROAD: Now, it seems that premiums are a huge focus, and there is kind of a threat almost – ‘If you don’t pass this’. It has been a problem for years, and it came to the final sitting weeks of Parliament to try and push it through. I am interested too in your internal process and review and fraud. What is the process for claims? Because you have had them triple since 2010. Can you speak to fraud and what you are seeing?

The CHAIR: One more question after this.

Joe CALAFIORE: I will try and be really brief. Fraud is a really important component of these schemes. It is just unfortunately a fact that we will have elements of fraud in any type of compensation or NDIA scheme. We focus on fraud via all sorts of tools and mechanisms, via our internal analytics and via tip-offs we get from the community. Another topic: fraud is also closely connected to a topic that gets less attention, called claims leakage. So there is fraud illegality, and where we see it we go after people and if we can we prosecute, and there is also that concept of claims leakage. So if a GP thinks you should have five physios, then it should be five physios, not 10 and 15 and 20. So I would say fraud prevention, detection and that broader topic of claims leakage is something that we regularly discuss at the senior levels of the organisation.

Gaelle BROAD: Thank you. And thank you, Chair; you mentioned a last question. Return to Work Victoria: you mentioned that that has already started. So is it going to be funded separately, or is this just the same staff with a catchy new name?

Joe CALAFIORE: No, we do not see it as a catchy new name. The funding and the operational concepts we are still working through. We really view it through the lens of – for many, many people this system is simply not working optimally. It is not helping. So that is why it will be a new division, and in terms of the budgets and the operational requirements, we are still just working through the planning process. It is an opportunity to do things differently is how we view it.

The CHAIR: Thanks, Ms Broad. Thank you very much, witnesses, for coming along today and for coming at such short notice. I know it was really not a lot of time to prepare. That concludes the evidence.

Witnesses withdrew.