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 – 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

Vivek Rajan, Senior Industrial Officer, Victorian Allied Health Professionals Association; and

Lisa Alcock, Secretary, Medical Scientists Association of 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 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 just get committee members to introduce themselves, starting down this end with Mr Galea.

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

David ETTERSHANK: Hi, David Ettershank, Western Metro Region.

John BERGER: John Berger, Southern Metro.

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.

Renee HEATH: Renee Heath, Eastern Victoria Region.

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

The CHAIR: Thank you very much for coming along today. 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 with a proof version of the transcript following the hearing, and transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you both please state your full name and the organisation that you are appearing on behalf of.

Vivek RAJAN: I am Vivek Rajan. I am appearing on behalf of the Victorian Allied Health Professionals Association.

Lisa ALCOCK: My name is Lisa Alcock. I am appearing on behalf of the Health Services Union no. 4 branch. It is also the Medical Scientists Association of Victoria.

The CHAIR: Beautiful. Thank you. We now welcome your opening comments but ask that they are collectively kept to around 10 minutes to ensure we have plenty of time for questions – a little bit over is fine.

Lisa ALCOCK: I wanted to share three pieces of feedback about the proposed changes. The first is about the messaging. The government has suggested that when WorkCover was created 30 years ago it was never

designed to incorporate mental injury claims. We would suggest this reflects societal attitudes at the time. As a union that represents psychologists, we are really concerned about what message this sends to our workplaces, to our communities and to WorkSafe. It is signalling that mental injury is not as serious as physical injury and that it is not real. Up until this announcement, it felt like we were trying to build a state that dealt with mental health better. This proposal feels completely out of step with community expectations in 2023.

The second is that our workers in public health are tired. We hear this feedback from across our professional membership. From scientists to psychologists and pharmacists, everyone in health is really burnt out. There are a couple of reasons. Obviously COVID has had an impact on workers in health which has not stopped. But moreover the demand for services in public health is increasing, and we have not seen a match in investment for new positions to meet that increase in service demand. That means that our workers are trying to do the best they can within existing staffing profiles.

A practical example of how this plays out: it is hard for workers to take leave in public health. A member from Monash Health told me last week that she applied for annual or long service leave from March next year, and she has had that leave request rejected. She applied in June this year, and she wanted to take the leave next year to go to a wedding. Now, why does that matter? Because workers cannot access leave to rest and recover. That impacts really directly on their capacity to maintain resilience, and it plays out in the statistics published in the VAGO report. Among other findings, the report says that one in four hospital workers are experiencing high and severe stress at work. Hospitals do not have effective processes to manage psychosocial hazards to protect workers, and this is the most shocking statistic: 21.8 per cent of workers reported feeling miserable at work, up from 13 per cent in 2019. Is now the time, on the back of COVID, to reduce access to WorkCover for healthcare workers?

The third is access to psychologists. As part of the royal commission into mental health, there was a lot of discussion about problems accessing mental health services, particularly in regional and rural communities. In response to some of these concerns, our union negotiated just over 400 new psychology positions in 2021. The new positions were designed to increase access to mental health services, create a pipeline for new psychology services and try and address the excessive workload and stress currently being experienced by psychologists in public health. The government announced $23 million for the new positions in 2022 in this document, but to date most of these positions have not been filled. Why? Because the government has not funded them, along with other positions that we bargained for, including pharmacists. Our union has spent the last 18 months trying to unclog these positions and trying to get them filled, but it has been a really shocking broken promise.

Why does this matter in terms of WorkCover? Because the government is proposing as part of these changes that we should focus more of our attention on investment in prevention and return-to-work initiatives. We agree more should be done to avoid workers being injured at work, and that includes mental health injuries, but we negotiated these positions to reduce workload burden being experienced by psychologists as a result of systematic understaffing, and in mental health there has been an incredible increase in the demand for psychology services. That demand requires additional positions. These positions have not been recruited because of government decisions – decisions of government as the employer. That in turn increases the risk of workload and stress placed on existing workers. Government has the tools to reduce mental health injuries. Adequate staffing is one of them. Removing mental health injury from WorkCover as policy maker while not addressing these issues as employer is shameful, and the secondary consequence of that is our community, particularly in rural and regional areas, have less access to psychology services, which increases their risk of injury.

The CHAIR: Thank you.

Lisa ALCOCK: I have information about that if you would like it.

The CHAIR: Yes, if you want to, we can collect it at the end and get it to committee members. Thank you.

Vivek RAJAN: Thanks for your time, everyone. I am appearing on behalf of the Victorian Allied Health Professionals Association. We represent allied health workers across the state of Victoria, and we have a membership base of around 5800 members. These are your physiotherapists, radiation therapists, medical imaging techs, occupational therapists and social workers, amongst other professions.

Essentially, we have noticed over the last few years that workload, shortages and under-resourcing in the health sector are predominant causes of workload pressures, and these not being compensable injuries under the proposed changes unfairly punishes the worker. With these claims not being compensable, there is no pressure on employers to adequately resource health services and put in place safe and sustainable workplace practices. The Victorian government promised to fund 438 positions, 300 of which are backfill reliever positions, which would work towards reducing systemic workload pressures on existing staff. We are still waiting for this to occur.

There is no emphasis on prevention in the proposed changes. There needs to be pressure on employers to take proactive steps to prevent these injuries arising in the first place. We have seen inappropriate practices become normalised within the sector. These include working long hours and clinicians carrying very heavy case loads. This was highlighted in the survey on workplace climate and wellbeing of the Victorian Allied Health Professionals Association report, conducted by researchers from Swinburne and RMIT universities in October 2022. The report highlighted, significantly, that 84 per cent of respondents indicated that they often have to do more work than they can do well, which has not changed since 2021. Nearly two-thirds – so this is approximately 65 per cent of respondents – identified that this occurred on a daily basis. The study found a majority of respondents found work exhausting, with a significant portion, that being 89 per cent, indicating that they were emotionally exhausted. Of these, over half – 58 per cent – then felt burnt out due to their work. The study concluded that concerns were raised with increased workloads and mental health issues, with a decline reported from the previous study, which was conducted in 2021, reiterating and reinforcing that there needs to be a long-term focus on the health and wellbeing of the allied health workforce. We believe that these findings were reinforced in the VAGO report, which concluded that the Department of Health and the audited hospitals did not effectively support hospital workers' mental health and wellbeing in the workplace. The collated data shows that worker mental health and wellbeing has deteriorated since 2019, there are gaps in hospitals' processes to identify and control psychosocial hazards and the Department of Health does not effectively oversee hospitals to make sure they protect staff.

These proposed changes to the WorkCover legislation have the effect of shifting the burden of risk onto the worker rather than the employer, with whom the responsibility should lie. The worker will have to use their own leave entitlements to fund a workplace injury, and then navigate a return-to-work process that is often not fit for purpose, and then face the risk of having their employment terminated due to incapacity. This creates a false economy of forcing highly qualified and trained healthcare workers out of an already understaffed sector. Inadequate return-to-work processes shift the burden to the welfare system when workers lose their jobs due to incapacity to resume their pre-injury duties. There needs to be more flexibility in allowing workers to undertake suitable duties with their injury employer.

We have often faced difficulty in getting mental injury claims approved under the current system, so we are very alarmed that the scheme will be further restricted. Now, we have noticed that especially cases related to workload stress and burnout are often the most difficult claims to get approved. Workers often do not want to make these sorts of claims due to concerns about the stigma involved and the effect it might have on their future employment prospects – having to declare the injury to future employers. The WorkCover scheme in its current form is not fit for purpose, as it has not seen significant updates since it was implemented and maintains a focus on physical injuries, and it needs to adapt to the challenges that workers are facing today.

We should be looking into the root cause of why these injuries occur and implement preventative and early intervention measures to ensure that workplaces do not place workers in positions that will result in a workplace injury. There needs to be greater education on workplace health and safety for employers, and greater consultation with unions, professional associations and health and safety representatives to monitor and prevent risks to the health and safety of workers. There also needs to be stricter enforcement of occupational health and safety laws. The longer-term goal should be to adequately staff the healthcare sector, which can include incentives to join the sector by increasing student and training places and by providing scholarships and subsidies. This should have the effect of improving outcomes for injured workers while reducing the number of claims, thereby reducing the financial pressures on the system. Thank you.

The CHAIR: Great. Thank you very much. We have about 45 minutes for questions, so I will allow members about 4 minutes each, and we can keep it tight. I will kick off. I just wanted to pick up on what you said at the end there about consultation. Did the government consult with you at all on this Bill before it was put to Parliament?

Vivek RAJAN: My understanding is that they consulted with Victorian Trades Hall Council, so the individual unions had the opportunity to make submissions to Trades Hall, and then these were fed back to the government.

Lisa ALCOCK: I also feel that it is better to describe the process as being 'consult-told' that these changes were being made.

The CHAIR: You are the second person to say that today.

Lisa ALCOCK: Well, it feels like there is a lot of consult-told happening at the moment. While we were part of a process, no real feedback was really adopted.

The CHAIR: Obviously cutting out stress and burnout in such a blunt way is going to have a significant impact on a number of workers. What, in your opinion, can employers do as a prevention tool to avoid stress and burnout to help us counteract this change?

Vivek RAJAN: I think safe, sustainable workloads – and again, we have seen successes with the nurses getting nurse-to-patient ratios. We have nothing like that for the broader workforce, and I think that that would actually really help, actually having safe and enforceable workloads across the sector.

Lisa ALCOCK: Similarly, we would love to see something like – in pharmacy there is a ratio called the SHPA ratios for pharmacy. There are similar things across the allied spectrum that we would love to see embedded. In the absence of something like ratios that the nurses have, it is really hard for our industries – for pharmacy, for medical scientists, for psychologists – to push back when those ratios are unsafe and for us to say, 'We don't have the capacity to continue providing these services, but it's unsafe for our workers.'

The CHAIR: Okay. And just broadly – we had some witnesses earlier today expressing concern about the introduction of a whole-person impairment test. What are both of your views on the implementation of that?

Vivek RAJAN: I am very concerned about that because I believe the threshold is already very high. For psychological injury it is already 30 per cent whole-person impairment. And we have looked at multiple case studies of people who are severely injured and have no real prospect of being able to find gainful employment after being on WorkCover beyond 130 weeks still somehow not meeting those thresholds for the lump sums or to continue on in the scheme.

Lisa ALCOCK: The system was designed so that there is a safety net. When workers have been injured at work at no fault of their own, we have a system of fairness so that people are captured and they are supported and they are not kicked out. Ultimately, government will end up paying somehow. It is just not fair.

The CHAIR: Okay. Thank you. I will go to Mr McIntosh.

Tom McINTOSH: Thanks. Lisa, would you mind just speaking to your membership, who that consists of, again, please?

Lisa ALCOCK: We are three associations: the Association of Hospital Pharmacists, the medical scientists association and the Victorian Psychologists Association. So we represent psychologists and hospital pharmacists, and our medical scientists association covers scientists, dietitians, medical physicists and clinical perfusionists in hospitals.

Tom McINTOSH: Sure. Thanks for that. And, Vivek, I got your list earlier. So as far as – I am not sure how much you have to do with other states. I would imagine you both have similar –

Vivek RAJAN: So we have got the HSU national structure.

Tom McINTOSH: Yes. So as far as other states, how would you consider Victoria's system versus other states, and historically how that has worked and comparatively where we are here in Victoria now to where other states are at the moment with their systems and structures for their various worker compensation schemes?

Vivek RAJAN: To the extent of my knowledge I think we have had a fairly robust scheme in Victoria with the eligibility, finding a right balance. You have got higher bars in other states for certain types of injuries, and I think that we struck the right balance here, because the goal is at the end of the day to get the worker back to work. No-one wants to be on WorkCover. We just want to give people a reasonable opportunity to focus on their recovery, have a graduated return to work or even find other suitable employment or duties so they can get back to where they need to be. So I think further restricting the eligibility is going to have a detrimental impact and drive workers away from the workforce.

Tom McINTOSH: Yes, okay. And would you see that putting us closer to or further away from other states as far as where their systems are?

Vivek RAJAN: If these amendments went ahead –

Tom McINTOSH: Yes – as we are or if the amendments went ahead, yes. I mean, how would you compare where we are currently with other states, for example?

Vivek RAJAN: Again, I am not an expert on the schemes in the other states, I am only familiar with the Victorian legislation, but again I think we are striking a better balance than other states. If we start adopting language from their legislation, replacing 'significant contributing factor' with, say, 'predominantly' and things like that, I think it is going to be detrimental to Victorian workers.

Tom McINTOSH: Thank you, Chair.

The CHAIR: Thanks, Mr McIntosh. Mr Davis.

David DAVIS: A couple of questions for you, Ms Alcock first – the Medical Scientists Association of Victoria called on its members to complete the 2023 Work Shouldn't Hurt survey. What were the results from this survey, and what were the results in 2021 and 2022?

Lisa ALCOCK: I am afraid you have asked a question that I am not familiar with.

David DAVIS: You might have to make it on notice.

Lisa ALCOCK: I have to take it on notice. Thank you.

David DAVIS: Okay. And I will ask Mr Rajan the same question. Did you encourage them to take that survey, and if so, what were the results?

Vivek RAJAN: Yes. Certainly. So we did have the Swinburne and RMIT survey into workplace health and safety, and we found that there was a deterioration between 2021 and when the survey was last conducted in October 2022, on all major metrics.

David DAVIS: You might want to leave that detail of that witness, if that is –

Vivek RAJAN: Yes. I will have to provide that. I do not have the full report, just some carve-outs.

David DAVIS: You can take it on notice. What is the understanding for both of you about Return to Work and its functions? How will it encourage Victorians to return to work?

Vivek RAJAN: Absolutely.

David DAVIS: What does it do and where is it and who is employed by it?

Vivek RAJAN: Essentially the return-to-work function lies with the employer. So the major public sector hospitals will have a return-to-work or injury management team, and there is a return-to-work coordinator that will usually meet with the injured employee and sometimes with their union representative. So I routinely attend these –

David DAVIS: This is separate from Return to Work Victoria, though, is it?

Vivek RAJAN: Ah, yes. Yes. This is at the local –

David DAVIS: It is nothing to do with that. That is just in the individual employers –

Vivek RAJAN: Oh, sorry, you are asking about –

David DAVIS: I am asking about that, but I am interested in what you are saying in any event.

Vivek RAJAN: Okay. Sure. Well, with Return to Work Victoria, I have not had any direct dealings with them, but in my capacity as an industrial –

David DAVIS: But they exist?

Vivek RAJAN: Sorry?

David DAVIS: Do they exist?

Vivek RAJAN: I would assume so. And then also through the WorkCover scheme, when a member gets their claim accepted they have to choose an occupational rehabilitation provider. They usually get three options. And then you will have usually an occupational therapist or a different rehabilitation consultant liaising between the employer and their treating medical professionals. So for all intents and purposes – I have been in this role for just shy of three years – I have had nothing meaningful to do with Return to Work Victoria. I have been dealing with the injury management teams at each workplace –

David DAVIS: At individual hospitals.

Vivek RAJAN: At individual hospitals, and they all have a very different approach. And then –

David DAVIS: Is there one that you would point to that has a particularly effective approach?

Vivek RAJAN: Unfortunately, I cannot really identify any single one.

David DAVIS: And I should then ask you: what parts of the Bill – specifically on the Bill – do you have most objection to? How could they be fixed?

Lisa ALCOCK: Removal of the mental health injury is the most concerning for me. Obviously any consideration of changes to the whole-person test is concerning. Picking up on my colleague's response about Return to Work Victoria, being a new proposal, I do not think there is anything wrong with trying to consider more engagement and investment about returning workers to work. That is a good thing, but it should not come at the expense of workers and compensating them when they have been injured.

David DAVIS: Right. And my final question is on early intervention; you alluded to it. Is there any model that you can point to in the system that is working?

Lisa ALCOCK: I think the Hunter scheme that is in building seems to be very effective, but in health there seems to be nothing. There are no schemes when a worker is injured that public hospitals come out proactively and support workers. There is nothing like that in a public hospital.

David DAVIS: A damning indictment.

The CHAIR: Thanks, Mr Davis. Mr Ettershank.

David ETTERSHANK: Thank you. Thank you for your presentation. You have got members across the public and private sectors?

Lisa ALCOCK: Yes, and in private pathology and private hospitals and private IVF.

David ETTERSHANK: So looking at that – comparing the private sector workplaces and public sector workplaces, do you have observations with regard to workers compensation and how workers are treated? Have you formed a view? I mean, is the public sector a worse employer in that regard?

Lisa ALCOCK: I think that we have a workforce that finds it uniquely hard across all sectors to make claims for WorkCover at the moment. Any suggestion of making that harder, as my colleague alluded to, is

concerning to us, because it already feels quite hard to make a WorkCover claim, which means that with any change that is proposed we are a bit reticent already. Comparing to other states, I think that we are striking the right balance, but I think people already find it quite hard to make claims because of the approach that insurers take. I think that particularly through COVID there was an initial response by insurers to reject claims and then work through the process of disputing those claims.

David ETTERSHANK: Do you want to –

Vivek RAJAN: Yes. Absolutely. Our members are spread across the public sector, the community health sector, private practice and some work for themselves as well. I think that all of these sectors are affected by workload stress for different reasons. Community health is also under-resourced, and they try to provide a more holistic range of services to people who otherwise would not be able to access those services. That places an additional workload burden on our members. For example, you could have an occupational therapist that is seeing someone about an issue that relates to rehabilitation also doing up a referral for a dental assessment and other things like that. So this could be 13 pages of paperwork per client, and they are often booked back to back. And then if we look at the private sector, private radiology, again, if you are paying for the scans, the employers are wanting the employees to be scanning people all the time. And if you look at, for example, sonographers, if they are doing certain types of scans, like pelvic scans, they have to keep their arm and shoulder in a very particular position for extended periods of time. If there are not, for example, safe workloads imposed and they are doing that all day, I have seen many members develop conditions such as bursitis and things like that, or RSI injuries, because they have not really been capped, because there is a lot of money in the private industry.

David ETTERSHANK: Okay. Thank you. Obviously Return to Work Victoria is being proposed but is not in place. I am wondering if you could just share with us a sense of the feeling amongst your members with regard to these changes which are being flagged under prevention and such like when in fact the arm that is going to deliver a lot of that return-to-work type stuff is not in place. Have you got a view on that?

Lisa ALCOCK: I think for us we have not had a lot of detail about what is actually being proposed. It does not exist yet, and at the same time there is a proposal to remove existing entitlements. Alternatively, I think it would be preferred that we implement that proposed change, see how it works, reduce that burden on the system and work through those changes at the same time. There is no need to remove that entitlement while we work through the prevention. That is a frustrating element for us, particularly while we are investing so many resources into their prevention for us, which is increasing the number of positions in public health, which is a preventative element for us in terms of workload.

David ETTERSHANK: Yes. Right.

The CHAIR: Thanks, Mr Ettershank. That is all we have got time for.

David ETTERSHANK: Okay.

The CHAIR: Ms Terpstra on the screen.

Sonja TERPSTRA: Thanks, Chair. I just want to thank you from VAHPA for coming in and providing evidence. I was just reading your submission while you were giving your opening remarks, and helpfully, or maybe not, I was just reading that there has been a study released now about the effects of early intervention and return-to-work programs for healthcare workers as New South Wales also reviews its WorkCover scheme. I was just reading that they were talking about the benefits of early intervention and return-to-work programs, and of course one of the features of this Bill talks about Return to Work Victoria. I am also just wondering about your experience as a union representing workers in this sector. I am assuming in the public hospital system some of your members would have access to schemes like EAP – they could contact a counsellor or psychologist through the EAP provider – and that would align with the research that is saying that early intervention and early access to this kind of assistance can shorten the amount of time that someone is away from work. Are your members accessing EAP programs when they are in the public or private system? And also then, the second part of my question goes to: when you are saying that workers are feeling under pressure because they are having to do a lot of work, are people putting in incident reports through their health and safety committees reporting that the workload is over the top? That is an industrial question, not quite a return-

to-work question, but the two are kind of linked. Sorry, it is a bit of big question, but if you could unpack that for me, that would be great.

Vivek RAJAN: Yes, certainly. So just with respect to the first part of the question, our members have certainly been availing themselves of EAP, but often the feedback that I receive from most members that I have individually supported has been quite poor with the EAP service. Usually they only get four sessions, and in some situations they can request more, but normally our members who are on the brink of potentially making a WorkCover claim are often incredibly distressed. We represent counsellor advocates – the people that are the first responders to people who have been sexually assaulted – and there is a lot of vicarious trauma in those roles. Getting four sessions of speaking to someone over the phone for 30 minutes at a time is unfortunately just not going to cut it.

Sonja TERPSTRA: But that might help bridge the gap, though, in between when they – because the Bill allows for trauma-related injuries to be accepted; there is no change to that, so I am just thinking about that period in between when someone might be accessing care under something else, but they have got that early intervention.

Vivek RAJAN: Yes. So in my experience members do not even think or want to talk about WorkCover until they have exhausted everything. Normally with members that I have supported, they will have accessed EAP. They would have seen their GP, gotten a mental health plan, started seeing a psychologist. Then if it was recommended that they spend some time away from work, they would have exhausted, potentially, their personal leave and other leave entitlements and then returned to work, and then found themselves with absolutely no room to move. It is usually at that point that they are comfortable even having a discussion about WorkCover. So it is certainly not a scheme that anyone is quick to jump at, I have to say.

With the second question, the more industrial one – sorry, would you mind just repeating the last part of that again?

Sonja TERPSTRA: Yes. Because you were mentioning that people are feeling stressed and burnt out as a result of workload pressure, so are people reporting that, because that is a health and safety concern? And then that also allows your organisation to address those concerns, so it is kind of like a two-way street there.

Vivek RAJAN: Yes, absolutely. People do certainly raise it with us, and oftentimes they only approach us after they have had these discussions unsuccessfully with their employer. Again if it is something significant, they might lodge a VHIMS – or an incident report – if there was, but again, with workload stress it is usually the straw that breaks the camel's back. Members do not really realise until they are burnt out or it is too late. Oftentimes when they do raise these concerns with the employer, it gets put back on them. I have seen many members who have been put on performance management plans and been asked, 'Well, are you using your time as effectively as you could be?'

Sonja TERPSTRA: Well, that might be an adverse action then, mightn't it, if someone is being put on a PIP because they are actually accessing a workplace right. That is very interesting, but not what we are here to discuss today. I think from my recollection, having worked in that sector as well, there was a reluctance, I found, for people to actually put in an incident report, or a VHIMS, and it would be frustrating as well. As a former trade unionist in that sector we would say to people, 'Please, make sure you report these things', but you could see the linkages, though, in not reporting and then not getting that early intervention. That is all I have, Chair. I will pass to the next person. Thanks.

The CHAIR: Thank you.

David DAVIS: Vivek might just explain what VHIMS is.

Vivek RAJAN: Oh, yes. There is a hospital incident reporting system, so when a worker makes a report internally it goes directly to the Department of Health. I am unsure what the Department of Health does with that, but it is logged somewhere.

The CHAIR: Thank you. Thanks, Ms Terpstra. Mr Mulholland.

Evan MULHOLLAND: Thank you. To both of you: how many of your members are on WorkCover right now, as a percentage or number?

Vivek RAJAN: It would be a very small percentage. I would not know off the top of my head, and again, people will be at various stages. With the vast majority of members that I have supported, most of them come off WorkCover. They will be on it for as long as they need, and then they will get a clearance certificate from their GP and usually return to work, if they are able to slot back into their pre-injury employment.

Evan MULHOLLAND: And of that – you might want to take it on notice – I am just wondering the proportion of mental health claims that come from those employed in the public sector versus the private sector.

Vivek RAJAN: Yes, I will definitely need to take that on notice. Thank you.

Evan MULHOLLAND: No worries. And just a direct question: would your members ever accept less coverage for workers struggling with mental injuries like stress or burnout?

Vivek RAJAN: I do not think they would, because just since COVID workload pressures are probably the most common type of complaint that we are getting from workers that are having a hard time in the workplace.

Lisa ALCOCK: That is also borne out in the VAGO report that said one in four hospital workers are experiencing high to severe stress at work.

Evan MULHOLLAND: Yes. Minister Pearson actually said in Parliament that:

> Every Victorian worker deserves the dignity of safe and rewarding work.

As the Bill currently stands, will Victorians be safe at work if this is passed?

Lisa ALCOCK: I think it is costing the health and safety of workers.

Vivek RAJAN: Absolutely. I think it will be detrimental to workers in Victoria, and in addition to that I think it is a false economy. You are going to be losing workers in an already understaffed area, and that is going to increase the workload pressures on the existing staff. Again, these are not professions that you can slot into; there is a lot of education and training involved to become a psychologist or to become a medical imaging technologist or physiotherapist or sonographer or radiation therapist. These are not replaceable workers. Training is long and expensive, and it is expertise that will be lost if there is not a safety net.

Evan MULHOLLAND: Yes, that is fair enough. What is your understanding of Return to Work Victoria? Have you received any consultation on it? What is your current understanding of it and how it will apply or work and function?

Lisa ALCOCK: No. We have very little information. I know that it is proposed, and that is kind of all we really know about it. I know the announceable, and that is it.

Evan MULHOLLAND: Same.

Vivek RAJAN: And then that is the extent of my knowledge. I am aware that this has been proposed, but that is about it.

Evan MULHOLLAND: Cool. Thanks, Chair.

The CHAIR: Great. Thanks, Mr Mulholland. Dr Mansfield, on the screen, if you are there.

Sarah MANSFIELD: Thank you. Thank you for appearing today. I just want to go back to something that I think, Mr Rajan, you said earlier about the removal of stress and burnout potentially actually leading to a reduction in the, I guess, incentive – I think what you were trying to say was that it would reduce the incentive to implement preventative measures because it is no longer a compensable injury. Can you elaborate on that?

Vivek RAJAN: Yes, certainly. Essentially, looking at the OH&S Act, an employer has a duty to ensure that workers are provided with a safe workplace, so the burden should lie with employers. Now, if the employers are not taking proactive steps to prevent these injuries occurring and they can terminate an employee who is not

protected under the WorkCover scheme and does not have the protection of the 12-month obligation period that the scheme provides, they can be terminated just after three months of incapacity for work. Looking at the Fair Work regulation 3.01, if a worker is absent from their workplace for in excess of three months in a calendar year or consecutively, the employer can initiate a fitness-for-work process and say, 'Well, look, we don't think you're medically fit to perform the inherent requirements of your role,' and their employment will be terminated. So they can continue to churn through employees without taking any proactive steps of addressing those concerns that led that worker to become injured in the same place, and it can just lead to a cycle of this happening to multiple people in the same workplace.

Sarah MANSFIELD: And just in practical terms, under the proposed changes with these 13 weeks of leave and assistance being provided for stress and burnout, how practical is that do you think from your experience with workers in your sector, and how likely is it do you think that that will mean that the worker is ready to return to work at the end of that period?

Vivek RAJAN: I think, again, the burnout is a symptom of an unsafe workplace and of a workplace where unsustainable workloads have become the norm. If the worker is able to access support or potentially be able to remove themselves from the workplace for just a little over three months, when they return they will be returning to an unsafe workplace if nothing has changed. That will just put them back in the position that they were in prior to seeking that assistance, so there really need to be solid incentives or penalties imposed on employers to actually ensure that their workers are provided with safe and sustainable workloads.

Sarah MANSFIELD: In my experience within health care accessing, say, a psychologist and having some sort of treatment program, getting all of that done within a 13-week period is not generally something that happens very easily. Do you think that is a long enough period for people to – do you think that is adequate?

Vivek RAJAN: I do not think so. I can tell you that I have supported one member who was waiting six months for a referral to a psychiatrist in regional Victoria. Again, if they are having to wait that long and they are waiting approximately three weeks for a GP appointment, or they are on a waiting list for a psychologist because there are not enough psychology services where they are, then I do not think it is going to be enough time. So I think we really need to be looking at the root cause of what is causing these injuries and how we can prevent them.

Sarah MANSFIELD: Yes. We heard from an employer group this morning and they stated that, in their view, the vast majority of mental injuries were actually acquired outside of the workplace but then brought into the workplace, and because of the no-fault scheme, basically, they have become a compensable injury but they were not actually the result of the workplace. I am just interested in your views on that.

Vivek RAJAN: I think that that is a ridiculous assertion honestly. With the scheme as it stands, work has to be a significant contributing factor to your injury, and it either needs to be a fresh injury or an exacerbation or aggravation of a pre-existing injury. Again, there is a report sought from that person, from the applicant's treating medical provider, and then under the scheme there is also an independent medical examiner, so you have a third-party psychiatrist engaged by the insurance company who is incentivised to reject the claim, generating a report. If they are corroborating what the applicant's treating medical practitioner is saying, are we saying that this is a conspiracy that both sides of the medical spectrum are involved in? If not, then I would say that those types of cases would be weeded out and rejected.

The CHAIR: Thanks, Dr Mansfield. We might need to move on. Mr Berger.

John BERGER: Thank you, Chair. And thank you for your appearance today. Again, in the interests of transparency, I come from a union background. I have also got an extended family with three members who are radiographers. In terms of some of the evidence today, we have heard a lot about prevention and early intervention for people with mental health challenges. I am interested to know a little bit more about some of the workplace conflicts that might lead to this, in particular in your areas, in some detail.

Vivek RAJAN: Sure. I will start. In terms of workplace conflict, I am assuming situations like workplace bullying?

John BERGER: Yes.

Vivek RAJAN: Yes. There have certainly been a number of cases where that has been a factor, but I think with the proposed amendments, my understanding is that it is really narrowing the scope of what is or is not a compensable injury. My view is it does not matter what precipitates an injury. If there is an injury and work was a significant contributing factor, then it should not have occurred. Because again, psychosocial safety is just as important as physical safety in the workplace. If employers are not ensuring that their staff are psychologically safe in the workplace, I think that that is certainly something that the scheme needs to include and something that employers need to proactively address.

Lisa ALCOCK: I am trying to think of specific examples to be able to give you. For instance, the new Victorian Heart Hospital opened up recently and a progressive expansion model was proposed to stage the labs and pharmacies. So it was not proposed that you would have the immediate staffing model, it was kind of a 20–50–80 per cent staffing. It never got to 100 per cent, though. I think we are currently at about 75 per cent staffing, notwithstanding that we have constantly been pressing upon Monash that we need to have adequate staffing even though all the beds are open. That place is a really incredible pressure on staffing on those workers. That testing volume for pathology is being redirected to other hospitals – other hospitals that are also picking up overflow testing from all of the new COVID clinics that opened up. When those COVID clinics opened up, there was no increased pathology testing considered. There was obviously increased staffing expected for nurses and other professionals, but not for back-end staffing – for pathology and for pharmacy – so all of those additional workloads increased. I am thinking about the increased proposals for IVF testing in public – we have not had any increased staffing proposals for pathology for that – and the example that I gave about annual leave in hospitals. One hospital has a very strict model that unless there is an available slot for annual leave, then your leave will not be approved. There are only three available slots and there are 300 workers. So if there is no available slot, your leave cannot be approved – that means that people apply for leave a year in advance – regardless of if your kids have an event or you have a wedding. It has a really detrimental impact on the morale of those workers, and it is creating these statistics. That is why people are feeling miserable working in these environments. So those are some really practical examples.

John BERGER: Thank you.

David DAVIS: Where is that?

Lisa ALCOCK: Monash.

Vivek RAJAN: And I have had a similar case at Monash also.

The CHAIR: Thanks, Mr Berger. Ms Broad?

Gaelle BROAD: Thank you. Thank you very much for attending today. I am just interested – both of you mentioned it was very hard applying for WorkCover, and you also said it is not a scheme that people jump at applying for. I guess we are looking at huge premium increases and a big cost to businesses across the state, and you have got to balance that with the cost of running the program. Have you got any comment from your workers that have participated in it or put in claims? How is it working now? Is there any room for improvement in the current system in the end-to-end processing?

Vivek RAJAN: Absolutely. With respect to the premiums: VAHPA is also an employer – I am an employee of VAHPA – and we as an organisation also pay these premiums. Again, the responsibility should sit with the employer, and again, if their premiums are going up and there are more claims, then they should feel the financial pain of that. It would incentivise them, I would think, to implement better OH&S strategies and preventative measures on the ground.

In terms of the return-to-work processes: again, there is just no consistency because even within the public sector each hospital will have their own return-to-work coordinators or injury management teams that will take their own approaches to these things. Sometimes there is a great deal of flexibility. For example, I have had a member that worked in medical imaging that was able to work in the health information service doing data entry and other people that have been able to perform other admin and light duties, like working in the mailroom, just to slowly rebuild their ability to keep that routine and return to the workplace. Then there are other places where essentially they say, 'If you aren't coming back to your pre-injury employment at full capacity, we don't want to hear about it.' That has been really challenging to navigate.

Theoretically, the occupational rehabilitation provider should be bridging that gap, because again, they are the ones that are engaged by the insurance company to get the worker back to work. If they are able to return to work at a greater capacity, that reduces the financial liability on the insurer because the employer is paying them their wages. But oftentimes you notice that with some of the occupational rehab providers – and there are so many different private companies; there is no consistency – they just act like a liaison. They will speak to the GP, they will sit in on the psychologist appointment, they will loop that back to the employer and then nothing gets done. I have had members that have been begging to increase their hours or come back to work at a greater capacity, and they just do not want to hear it, because they are saying, 'No, you either come back to your full role or otherwise we will just advertise your position and get someone else in.'

Gaelle BROAD: Okay. So you feel that there are blockages in the system that are contributing to the cost blowouts?

Vivek RAJAN: Absolutely, yes.

Gaelle BROAD: And the failure of people to return to work?

Vivek RAJAN: Well, I mean, I think people are doing their very best – certainly the members that I have been supporting – but it just those systemic barriers, either at the employer level or even just with the way that the return-to-work processes are administered with the occupational rehabilitation providers, just because there is a lack of consistency. You have got a number of private companies that are doing these occ rehab services, like Nabenet, Work Able Consulting and a number of private companies, and then they are liaising with separate injury management teams, even within the public sector. So it is often a very difficult process to navigate for the employee at the best of times, and even as someone that does this daily, I just do not understand why every public hospital feels the need to reinvent the wheel with these things. So I think just a more centralised approach might even be useful.

Gaelle BROAD: Thank you. And I guess I am interested in just the number of people that are experiencing mental health injuries. Victoria was the most locked-down part of the world for a time, so do you feel that this is a kind of a tidal wave from COVID that has seen an increase in these claims? What impact has that had?

Vivek RAJAN: I am not sure if I could draw a nexus between COVID and an increase in these claims and separate that out, because again COVID brought with it other challenges; COVID brought increased workload challenges – needing to work in full PPE, dealing with often angry and disgruntled patients not wanting to wear a mask and whatnot. I think that there have been a lot of issues that are COVID-adjacent that have added to these workload pressures. I am sure there might be some people who experienced mental health challenges during COVID and that might have decreased their resilience for work, but I think for the vast majority of people it is really just the stresses that they are being presented with at the workplace today.

The CHAIR: We need to move on, Ms Broad, to Mr Galea.

Michael GALEA: Thank you, Chair. Thank you both for your evidence today. Mr Rajan, in your opening statement you referred to the fact that for a lot of your members it is exceptionally difficult to get mental health related WorkCover claims accepted. We heard evidence from business groups this morning to say that it was perhaps not guaranteed but a lot more readily available and taken up. I would like to just dig deeper in terms of the experience of your members – what those challenges and barriers have been towards getting a mental health related WorkCover claim accepted.

Vivek RAJAN: Yes, absolutely. There are a number of challenges. First of all, you need to have a compensable injury, right? So if your GP writes a certificate of capacity saying you have got acute stress reaction or workplace stress, that is not necessarily a diagnosis that you will find under the DSM so it might not be compensable. You would need something like anxiety, depression, post-traumatic stress disorder, something more robust. So that is already an issue. Again, you have got people having to visit GPs who are reluctant or afraid of the system. I have talked a member through the WorkCover scheme who went to their GP and their GP said, 'Oh, no, I cannot sign that, it is a legal document. I will need to get legal advice,' or, 'We don't do that here.' So I think that there are challenges there because the system is not well understood, even by GPs sometimes. And secondly, just because you do need a compensable injury, again one GP might just write down you have got workplace stress, and that is probably going to get rejected if it does not meet the threshold for anxiety or depression.

I think the other challenge is also there is always a spectre under the current scheme of so-called reasonable management action. So under section 40, subsection 1 of the WIRC Act, if your injury arose out of so-called reasonable management actions – so those management actions carried out in a reasonable manner – it is not compensable. So often you have very subversive bullying or people being targeted or treated differently, and it just wears them down over time; or people being given more work than others. And then you have always got the circumstance investigator engaged by the insurer, speaking to the employer, and the employer just saying, 'Oh, well, we are just allocating workload. That is my prerogative as manager. Of course we rejected their leave request – we have too many people away. It wasn't targeted in any way' – when we know that other people applied for leave afterwards and were told that, 'It's fine, we've still got slots open.' I think those are the main types of challenges that we would be seeing.

Michael GALEA: Thank you. Ms Alcock, would you agree with that assessment?

Lisa ALCOCK: I think, because of those reasons, it echoes the comment that my colleague made previously, which is why –

WorkCover applications are not the first step; in our experience people are pretty reluctant to make a WorkCover claim. When we talk to people about the industrial options, their health and safety options and their WorkCover options, it is always the last option people take. They are really reluctant to have that conversation, that, 'Well, this is your entitlement. You can make a claim.' People invariably do not want to. They do not really want to engage in that conversation because of the issues that Vivek has raised.

Michael GALEA: Yes. Thank you. You also talked about – if I have time for one more question? You also discussed, I believe with Dr Mansfield, in relation to full capacity and the different interpretations that different employers will apply to the return-to-work process. As with a few others in this room, I am a former union official too, although not in the health space, and I have got firsthand experience of that too. But I am wondering, taking that, how we sort of fix that. Is that something where you can see this new Return to Work Victoria agency setting some more clear parameters, support for businesses and workers so that people are not unreasonably denied return to work?

Lisa ALCOCK: I think there is a huge opportunity in this space. I think they are incredibly poorly understood, the *Equal Opportunity Act* responsibilities. I think there is an expectation that when someone hits their 52 weeks, then there is no longer any obligation to keep them in work and there is a rush to kind of terminate their employment because 'We don't have to keep them employed anymore', whereas the *Equal Opportunity Act* says that if you have someone with a disability in front of you, then you need to engage in reasonable adjustments to accommodate their work moving forward and you should keep them employed.

But with most employers, when we start that conversation with them as unionists representing people, the legislation is poorly understood, they do not engage with us in that conversation and there is a quick movement to terminate their employment – and it is hard to unscramble that egg. So I think there absolutely is a space for a Return to Work Victoria to engage in and support those conversations. It should not come at the expense of compensating workers, though, and reducing access to WorkCover.

The CHAIR: Thanks, Mr Galea. Dr Heath.

Renee HEATH: Thank you. And thank you so much for your presentation today. Following on from something you were both talking about before, why do you believe public sector managers are less willing to accept flexible working arrangements for injured workers who are linked to the WorkCover scheme?

Vivek RAJAN: I think it probably just speaks to the acute workload pressures in the public system. Even taking WorkCover out of the equation, employees across Victoria are able to apply for a flexible working arrangement under section 65 of the *Fair Work Act*, and you can only be refused on so-called reasonable business grounds, and that could be operational reasons or because 'we are understaffed or under-resourced'. I noticed something similar occurs when we have those return-to-work discussions with employers, because they will say, 'Well, look, actually we can't make those accommodations for you because that's going to place a disproportionate burden on your colleagues.' For example, if the restriction was no overtime or no on-call or no night shifts, they would say 'Because you will have less support and other people to rely on, we cannot do that because that means someone else is going to have to do double the number of night shifts, and that's unfair to them, that's inequitable and that places a greater strain on them.' Again, if the sector was adequately resourced,

if VAHPA got the backfill relief positions that we were promised, then I think there would be greater flexibility for employees to have those arrangements in place and seek that support as part of a graduated return to work. But I think the short answer is that they are understaffed and under-resourced.

Renee HEATH: Thank you. Probably all I have got time for.

The CHAIR: You have got time for one more.

Renee HEATH: If this Bill were to pass, would it negatively impact the government's commitment to delivering on the recommendations of the royal commission into mental health?

The CHAIR: You can take that on notice if you would like. Yes?

Vivek RAJAN: Yes. I think we will take it on notice.

The CHAIR: Okay. Thank you. Wonderful. That is all we have time for today. Thank you both very much for coming along, especially at such short notice and before the holiday break.

Witnesses withdrew.