

TRANSCRIPT

LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

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

Melbourne – Wednesday 13 December 2023

MEMBERS

Georgie Purcell – Chair

David Davis – Deputy Chair

John Berger

Katherine Copsey

David Ettershank

Bev McArthur

Tom McIntosh

Evan Mulholland

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Gaelle Broad

Georgie Crozier

Michael Galea

Renee Heath

Sarah Mansfield

Rachel Payne

WITNESS

Joe Gagliano.

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.

Before we commence I will just get committee members to introduce themselves. We will start down this end with Mr Ettershank, and then we will go through and up to the screen.

David ETTERS HANK: David Ettershank, Western Metro Region. Hi.

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

The CHAIR: Georgie Purcell, Chair and Member for Northern Victoria.

Tom McINTOSH: Tom McIntosh, Member for Eastern Victoria.

John BERGER: John Berger, Southern Metro.

Michael GALEA: Morning. Michael Galea, South-Eastern Metropolitan Region.

The CHAIR: And we will just start top left of screen, which is Sonja, Sarah and then Renee.

Sonja TERPSTRA: Hi, I am Sonja Terpstra. I am a Member for North-Eastern Metro.

Sarah MANSFIELD: Sarah Mansfield, Member for Western Victoria.

Renee HEATH: Renee Heath, Member for Eastern Victoria Region.

The CHAIR: Wonderful. Thanks, members.

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

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

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

Joe GAGLIANO: Joseph Gagliano, but known as Joe Gagliano. I am a psychologist in private practice.

The CHAIR: Beautiful. And this is Mr Davis, another committee member.

David DAVIS: Hello. Nice to meet you.

The CHAIR: We now welcome your opening comments but ask that you keep them to around 10 minutes to ensure that we have plenty of time for questions.

Joe GAGLIANO: Of course. Thank you, everyone, for making time to come along today. I really want to thank you for allowing me to present to you. The Governor-General has been quoted as saying the standard that we walk past is the standard that we accept. I believe the current standard is abysmal, but the changes mooted are so risky that the standard proposed is unacceptable.

The basic problems with WorkSafe are extremely obvious. Firstly, WorkSafe is the regulator and WorkSafe is the insurance company. Insurance agents do the work on behalf of WorkSafe Victoria, the trading name of the Victorian WorkCover Authority, so when insurance agents make mistakes on behalf of WorkSafe the insurance agent, will WorkSafe come in as the regulator and take action against the insurance company WorkSafe? It does not. So we have literally hundreds of instances where WorkSafe, despite having the authority, the power, to actually take action refuses to do so, and I will go into some of that in a while.

I have just realised that I am wearing this. I presented at the No 2 Bullying Conference 2016 about bullying in WorkCover and the compensable industry. Things have actually got worse since 2016, and this to me is reprehensible. I was a flight attendant with Ansett Australia for 18 years before I became a psychologist. I had an arm injury. I was under the old WorkCare system. I was suicidal, fortunately got through it and eventually decided to study psychology. I have a lot of clients who are currently suicidal, and I have to do extra work with them to make sure that they do not successfully attempt it.

Back in 2015 I went to WorkSafe and spoke with head of medicals. I know this is about the bullying of injured workers, but the problem is there is bullying at all levels – insurance companies, WorkSafe, regulator et cetera – so the injured worker is actually bullied at different levels. I went to WorkSafe to try and get some action taken, and I spoke with Kevin Sleight, who unfortunately has passed away. But I spent an hour with him, and I gave him 18 instances of cases of people who had been bullied. I also asked on what grounds psychiatrists could actually diagnose. It took him nine months to give me an answer, to say that they use their experience, nothing to do with DSM or anything like that – their experience. I can tell you now one of the problems that we have is that psychiatrists' opinions cannot be challenged. So no matter what they do, it is terrible and only factual or medical opinion can be challenged. Even when that is presented to WorkSafe, AHPRA, the Ombudsman, IBAC, nothing is actually done by these people. Sorry, I have just gone off on a tangent.

I have to just show you – and I will not give it to you unfortunately – a list here of my current clients. I have seen over 250 WorkCover clients, and I am currently seeing around 130 WorkCover clients. One of the reasons why I am seeing so many is that most psychologists will not take on WorkCover clients. A lot of GPs will not take on WorkCover clients because there is so much rigmarole and paperwork, and they are attacked constantly by the insurance agents or WorkSafe. A lot of psychiatrists will not do the work for people who are bullied at work, because, for example, one psychiatrist I know charges \$500 for a 45-minute appointment to treat somebody who is suicidal. An independent medical examiner who may examine for 20 minutes and write a report which is full of inaccuracies is able to charge over \$1700 for the privilege, and \$1700 at the moment is minimum. It can go up to \$3000 and \$4000. So why would anyone actually go in and actually try and sort of help people when they can actually make money writing inaccurate reports?

One of the biggest problems, I think, is that we have a no-fault system. As a no-fault system, WorkSafe, when somebody goes there, if they accept the claim through their insurance agent, says 'Okay, no fault, we have accepted the claim. We will pay for your treatment – maybe. We will delay treatment – maybe.' And then of course they just continue on and there is no investigation into the causes of bullying. This is one of the problems that I see already in this system. WorkSafe has the power, insurance agents have the power, the government have the power, to try and stop bullying under various legislations, and they do not do it. So, for example, I had one client who fell off a 1.5-metre platform whilst trying to fix a truck. He fell back, hit his back and his head. The employer refused to call an ambulance. They just put him in a car, took him to the local GP, which was supportive of the employer, and then expected him to go back to work later. He kept saying, 'This has to be investigated.' WorkSafe refused to investigate. He had been bullied for months before that by supervisors and whatever – no investigation. This is one of the biggest transport companies in Australia, and they get away with it.

So we then have this no-fault system and again no investigations. I have so many cases here, but one case to start with where a client of mine, she was bullied for about three years – she was pinched, punched, kicked by the CEO. She took it to the board, the owner of a private hospital, and no action was taken. At one point he lit her eyebrows and then said to other people, 'Come and smell what burning flesh smells like.' When my client

eventually submitted a WorkSafe claim, the insurance agent rejected it. WorkSafe stepped in the following day and demanded that the claim actually be accepted, and she was getting treatment, but the insurance agent continually created problems. Atrociously, eventually the hospital and the CEO who had actually done the bullying were charged, but before court the charges against the CEO who had actually done the bullying were dropped. So even though the unfortunate, and I apologise that I bring her name into this, Brodie Panlock, who committed suicide at Vamp cafe in Hawthorn all those years ago – there was legislation that was brought in under the *Crimes Act*, and yet the bullying and even physical attacks are accepted by employers, and WorkSafe refuses to investigate. This is part of the problem. We have actually got the legislation there and no-one does it.

Whilst I am here about legislation, when insurance agents, doctors, et cetera provide false statements – under sections 584 and 585 people making false statements can be charged for providing false statements, and the penalty points are 300 or 60 or whatever and potential imprisonment. I have sent probably about 15 examples with evidence to WorkSafe to investigate – not one investigation. So all these people who are doing the bullying then think, ‘Hey, I can do it with impunity. Who is going to chase me? Not my boss!’ et cetera. Interestingly, in the last two days there has been a councillor at Wyndham council who has been I think either sacked or silenced – she cannot attend meetings or whatever – because she bullied two staff at Wyndham council. Interestingly, there is a manager at Wyndham council who bullied many people. Eleven people have left Wyndham council from the one department because of this manager, four are on WorkCover, and guess what has actually been done to that manager – zip, niente, nada. So we have the legislation, we have everything there, nothing is being done. The interesting thing, that particular person that I was telling you about who had her eyebrows singed, she has stroke-like symptoms. She loses control of her bladder and bowels at the drop of a hat when she gets stressed and whatever. WorkSafe still did not investigate, and even though the hospital perjured themselves in court, no action was taken against that. So all these people with impunity, they continue bullying.

One of the problems, as you probably know, one of the reasons why I believe WorkSafe is a problem at the moment, is in 2019 in the budget papers there was a proposal to access dividends from WorkSafe and TAC. At that time it was going to be \$2.87 billion for the following four years from TAC and \$700 million from WorkCover, so a total of \$3.57 billion over four years, so \$890 million per year was going to be taken out of TAC and WorkSafe. Because of COVID, that did not occur. However, even just a few months ago Danny Pearson attended a committee hearing, and he stated, ‘Yes, we’re going to take \$3 billion out of TAC.’ That is what we do, that is what both parties do. So when you have either political party that is going to take \$900 million or equivalent out of TAC or WorkCover, where do they get the money? Where does WorkSafe find the money? They have to cut services. They have to cut all the things.

I have a client. This particular client wrote eight pages. She cannot attend. She could not attend in person because it would be too devastating for her. She was bullied for a number of years at work, and even though she tried to take it to the board and the employer and whatever, they continually ignored it. The last straw was when a child – she was at a childcare centre – opened a gate, got out onto a main road. Fortunately nothing occurred. She was blamed for it, but even though there had been reports for the previous 12 months of faulty gates, the employer did nothing. WorkSafe did not investigate. This particular woman ended up having 50 shock treatments. She has had 60 rounds of transcranial magnetic stimulation. She has been in and out of psychiatric wards for about four years. Atrociously, nothing has been done to investigate, but even worse she has had IMEs who have been so awful that what they have done – the independent impairment assessor, the psychiatrist, he was assessing her on telehealth. His audio was not working, so he was holding up questions to the camera that he was handwriting, and she was crying. He had medical reports which were three years out of date. She informed him – no action. He assessed that she had no case to answer. She took it to AHPRA, to WorkSafe, to the Ombudsman for AHPRA and to the Ombudsman here – not one investigation.

The CHAIR: Did you want to share that note with the committee? We can have it collected.

Joe GAGLIANO: Yes.

The CHAIR: I might just ask – maybe just one more minute, just because we have to cap it at 11.

Joe GAGLIANO: Of course, yes. The other thing was one other case in particular. I have to state really clearly that there is a really good likelihood that WorkSafe will attack me. They have done it in the past because I criticised WorkSafe and I criticised the insurance agents. I am not being paranoid, because they have already

done it. They have tried to report me to AHPRA et cetera. I have to continue to do this because when the reports are all broken down and I find all the false information from the psychiatrists, I go to a lot of trouble with a lot of detail and WorkSafe does not investigate.

One case of a man who was bullied after a physical injury by his employer and by the insurance agent was a gentleman who attended a psychiatrist – a supposed independent medical psychiatrist. It was 10 minutes, the interview, and the psychiatrist said that he was going to get in touch with the GP. He never got in touch with the GP. We read the report. It was full of inaccuracies. We reported it to WorkSafe. WorkSafe took 150 days to reply, and they said, ‘Oh, because of COVID we couldn’t get to it earlier.’ That was in May last year.

This man subsequently attended a physical examination with a Hindi interpreter. Even though he has been here for 15 years, he attended with the interpreter. The specialist asked him, ‘How long have you been in Australia?’ He said, ‘Fifteen years.’ ‘Your English should be better,’ he said, and he turfed the interpreter out. Now, the client, the injured worker, needed the interpreter because even though his English is acceptable, when he gets stressed he goes into his own language and sometimes cannot understand or cannot express himself, and yet WorkSafe accepted it. The human rights commission accepted it. An interpreter was kicked out of a medical examination. How can you get accuracy if the person cannot understand?

Just to sort of highlight to you the problem that, I consider, is WorkSafe, if I show you this table and you look at the last page of the actual table, this is a time line. From the time that we submitted the complaint to yesterday, it is 721 days that WorkSafe has not taken action, 481 business days from 21 December 2021 and 363 business days from the time that I submitted the GP letter to say that he had never been contacted, even though the psychiatrist said that he had contacted the practice. So even though he provided false information, when I told WorkSafe and I submitted it, they said, ‘We are closing this. We are not going to discuss it any further.’ And that is the regulator. Sorry, Georgie.

The CHAIR: Thank you. No, it is completely fine. I appreciate your passion on the topic. Members, we have 31 minutes for questions –

Joe GAGLIANO: Sorry.

The CHAIR: No, it is completely fine. I might just ask if members can try and keep it to one question and then if we have time we will go around again. I will begin. I guess you have shared with us a lot of your concerns and problems with the current scheme. If you were in charge of this Bill that we considering, what changes would you make – as succinctly as possible?

Joe GAGLIANO: Look, I do not think the new Bill is actually required. I think the existing elements need to be sort of investigated and looked at. If WorkSafe did proper investigations, if there was individual responsibility of managers and supervisors and employers – you know, I have people from government departments. Two I have got currently were bullied by the same manager. She has actually been given a promotion. So if there is no individual responsibility and it is then the department or the employer or whoever that is actually going to pay for it, when will people actually stop bullying, unless there are individuals who can take responsibility? And remember this is a no-fault scheme. If we continue to keep it as a no-fault scheme without individual responsibility for the people who are actually doing the bullying, we have got no hope.

The CHAIR: Thank you. Mr McIntosh.

Tom McINTOSH: Thanks, Joe. Thanks for coming. Obviously we can hear your passion for supporting workers, so thanks for being here.

Joe GAGLIANO: Thank you.

Tom McINTOSH: You talked about a number of people you have helped and sometimes the time it can take. Could you just expand a little bit more on the outcomes of those workers the longer that they are in this process, as opposed to getting back to work or getting fit, getting healthy?

Joe GAGLIANO: Thank you. The longer they go, the more entrenched and distressed and disappointed and the higher the consideration of self-harm – that increases. I think one of the things that we have to be really careful about is that a lot of people who get injured are fearful of saying they are on WorkCover because there

is a really negative image of somebody on WorkCover. There are supposedly a lot of rotters – there are not. I actually stopped treating one person after one session because I knew he was not genuine. But every other person that I have had is genuine, and they want to get back to work. The woman who I presented just before wants to be a teacher. She wants to be a childcare worker. She wants to look after little kids. She loses control, when she goes to supermarkets, of her bodily functions as well – that is the second one. The other lady who had been at the hospital, her case from Wyndham private clinic got into a couple of small media stories last year. She worked her way up to being a brilliant administrative person – absolutely brilliant. She cannot even find an email sometimes. She just wants to go back to work. I have one lady who is in her late 30s, a mother of three daughters, 15, 13 and 11, who was sexually harassed and bullied by somebody at school. Her case is going through court, so I cannot elaborate too much. The education department is spending hundreds of thousands of dollars fighting her and supporting the principal. All she wants to do is go back to work, yet at the moment she slurs speech.

Tom McINTOSH: Yes, so we have got to get people back to work.

Joe GAGLIANO: As soon as possible. But the really crucial thing is that if we have a machine that causes an injury in a factory and somebody loses the use of their arm or their arm gets crushed and they get rehabilitated and whatever and after 18 months they go back to work and the machine has not been fixed and there is a sign there that says, ‘Beware of the machine’ – what is the point? And this is the same thing. It is good to get people back to work, but if the cause, the actual bottom line, the people that are doing the bullying – if they are not held to account, if no action is taken against them, it is of no use.

Tom McINTOSH: Thanks, Joe.

Joe GAGLIANO: It is a pleasure.

The CHAIR: Thanks, Mr McIntosh. Mrs Broad.

Gaelle BROAD: Thank you very much for coming in. You mentioned a number of issues, but it seems to have taken a very long time for the government to take any action at all in this space. What are your thoughts on how long it has taken?

Joe GAGLIANO: Disgusted, absolutely disgusted. As Mr McIntosh just said, the quicker something is done, the quicker people get back to work. As I said to you, in 2016 I was at the bullying conference. I have been arguing with WorkSafe since 2015, and WorkSafe is the government authority. They have the ear of government. They know what is there, and they have not taken any action. In fact they are threatening people to not have an outlet to go and put in a bullying complaint. And let me tell you, no matter if I am a good or bad psychologist, I am not going to sort somebody out in 13 weeks. I cannot do it in 13 weeks. It is impossible. And that is what the legislation is suggesting – 13 weeks of psychology. Are you kidding? Sorry.

The CHAIR: Thanks, Mrs Broad. Dr Mansfield.

Sarah MANSFIELD: Thank you. Thanks for appearing today. We heard some evidence yesterday that it can be the case in some situations that the scheme itself can cause, I guess, stress and, like, a secondary injury to people, just the process of going through it. In your view how do you think the proposed changes will affect that experience of people? Do you think it will reduce, increase or cause no change to that risk of secondary injury from the process and the scheme itself?

Joe GAGLIANO: I forgot to mention, these are the lists of my current clients. I have 53 who are primary injuries of bullying and harassment out of a total of 85, where the others are secondary injuries of bullying and harassment. I also have past ones.

In answer to that question, if the physical injuries are going to be sorted out really quickly and treatment is done really quickly and effectively and whatever, then there may be a chance that we may not get, necessarily, a secondary injury of bullying and harassment. But when you have employers, insurance agents and whatever who delay treatment and do not provide equipment, do not provide services and do not provide medication, that bullying and harassment this legislation will be thoroughly undermining. Just to give you an idea, that lady who was at the childcare centre had to go to a Magistrates’ Court – and it is in the document that I handed out. She won the case for medicals to be paid for, but every time she submitted her invoices, the insurance company

said, 'We don't have them.' So for 3½ years she did not get reimbursed her \$42,000 that she had paid out of her own pocket. She rang a talkback lawyer on radio earlier this year, and he said it was contempt of court. Within 10 days she had got her \$42,000. What I am trying to say is that if all goes well, and it has not for the last 15 or 20 years, bullying and harassment may decrease. But as I said with my secondary, I treat secondary injuries, and they are even worse when people are not actually supplied equipment et cetera. A man with a spinal injury in August – the insurance agent was supposed to send an OT. In November the OT had not gone. He could not stand, lie down, recline or whatever, and that was three months after surgery. He is so distressed.

I have just got to say – my apologies – I have lost two clients: one to suicide because of the extended time and the abysmal behaviour by the insurance agent after bullying in the justice system, and another one died on a physio table. When he was a prison officer one of those compactus units crushed him – both of his shoulders and both of his knees. It was 21 months before the first surgery on his knees occurred – 21 months. It should have been within three weeks, but he waited 21 months. He had to sell his house in Darley, which is near Bacchus Marsh, because it was a two-storey house. He was not allowed to drive because of all the medication that he was on waiting for surgery. He had to go to Geelong – and I found out that he had died because of one of our receptionists at a practice that I contract to; her mother worked at the physio clinic – and he died on the physio table. For his family, his wife who was reliant on him, the whole claim died with him. Remember, that was 21 months after, so his mental state was incredibly stressed.

The CHAIR: Thanks, Dr Mansfield. Ms Terpstra.

Sonja TERPSTRA: Thanks, Chair. Thanks, Joe, for your presentation, and I just want to say we need more psychologists and less lawyers. Look, I am going to try and summarise back what I am hearing from you because we have got very limited time, so I might also submit some questions on notice to you.

Joe GAGLIANO: Yes, of course.

Sonja TERPSTRA: I have been listening carefully. What you seem to be saying is there is a bit of a conflict of interest between the claims agent and WorkSafe in terms of the regulator also overseeing those claims.

Joe GAGLIANO: Yes.

Sonja TERPSTRA: And what you are saying also seems to align with what WorkSafe and other witnesses said yesterday, which is that most people who find themselves in the system find it adversarial and often end up with a psychological injury after having gone through the system.

Joe GAGLIANO: Yes.

Sonja TERPSTRA: So what would be your top three? You have got an opportunity to tell us in regard to this Bill. I know you said you think the Bill is not needed. Obviously this is not possible with physical injuries; we try and prevent them as much as possible. But with psychological injuries – and you talk a lot about bullying – I have seen bullying occur in the workplace, as someone who has been a trade union official. I have seen it top down, where a manager bullies, but I have also seen it bottom up, where people weaponise bullying processes to attack and undermine their managers or senior people. Would you agree that perhaps workplaces do not manage interpersonal conflict early in the workplace, and could things be done better as an early intervention strategy? Because what we are also hearing is being out of the system is better for people rather than getting into it and then trying to fight their way through it. So what would be your top three in regard to, say, mental injuries?

Joe GAGLIANO: Okay. Crucially, people have to be held responsible. The people doing the bullying have to be held responsible, and if necessary – remember section 21A of the *Crimes Act* is Brodie's law. Now, if people are bullying, within a really short period of time that has to be investigated. The problem is HR refuses to investigate and a lot of managers do not take it further up the chain; they block, they threaten people with their position et cetera. So there has to be somewhere for these people to go.

Number two: WorkSafe has to be split. The insurance agent cannot be the regulator; it is as simple as that. Unfortunately, what I have also seen from the TAC over the last several years is atrocious behaviour. And the previous CEO of the TAC is now the CEO of WorkCover, Mr Calafiore. We had a lady who was involved in a car accident, where she was hit and the car rolled four times, and TAC said, 'Oh, no, your knee injury couldn't

have been caused by that.' She is an Indigenous person who went from single mother at 16 to project manager at the Department of Defence. She has lost her career because she has been denied treatment. So the TAC as one unit – as the regulator and the insurance agent – it cannot work.

Sonja TERPSTRA: It is an adversarial system.

Joe GAGLIANO: Very much so. One client, who was a pedestrian, was hit by a car whilst crossing with the green light. TAC have spent over \$350,000 in legal fees fighting him. How much treatment could that have been?

Sonja TERPSTRA: You have given me two. Have you got a third one, just quickly?

Joe GAGLIANO: Sorry. There has to be –

Sonja TERPSTRA: You can take it on notice if you have not got enough time.

Joe GAGLIANO: There has to be timely intervention. There has to be almost like a time limit and penalties on the regulator or anyone else if they do not start investigating within, you know, 14 business days or whatever.

Sonja TERPSTRA: Excellent. Thanks so much, Joe.

The CHAIR: Thanks, Ms Terpstra. Mr Davis.

David DAVIS: Joe, thank you for your evidence. According to Safe Work Australia, Victoria has the highest proportion of mental stress claims –

Joe GAGLIANO: Yes.

David DAVIS: 11.4 per cent, out of all jurisdictions. Why do you think that is?

Joe GAGLIANO: Again, I am not sure it is the same source, but a lot of government departments have a higher proportion of claims in WorkCover and mental health. The problem is we have got a lot of people who are doing too much work in too little time. There has been a cut in the workforce for a lot of people. I have one client who was doing the equivalent of three people's work. She burnt out; she is done for. So when you have so many government departments or even private companies that reduce their workforce, you are in trouble. It is limited. Could you imagine if this committee was halved in terms of numbers and you still had to come up with the same outcome et cetera?

A member: We may be more efficient.

David DAVIS: So that is probably not the right example.

The CHAIR: Thanks, Mr Davis. We will come back to you if we can. Mr Ettershank.

David ETTERS HANK: Thank you. Thank you, Joe. Joe, I want to concentrate on a specific provision of this proposed change. Under the proposed Bill, when a worker reaches two years they will be evaluated on a 20 per cent threshold for either the AMA guidelines for permanent impairment or the *Guide to the Evaluation of Psychiatric Impairment for Clinicians*. There are two parts to my question. One, I think we have heard previously – I would be interested in your thoughts as to whether or not that 20 per cent threshold for psychiatric is a viable measure. And the second one would be: the Bill also proposes that you cannot combine the physical and the mental to produce a 20 per cent threshold, so your comments on that would be great.

Joe GAGLIANO: Okay. Firstly, I have many psychiatrists who use the GEPIC now, and they use it incorrectly. So if we are going to rely on assessments, who is going to do them? Is it the same people who are doing it now? We are done for. So this legislation can be that piece of excrement wrapped up in gold leaf – it is going to be the same piece of excrement because the assessors, the medical examiners, are going to be doing the same work for the same. We need more people, a variety of people, doing these assessments if that is actually going to occur. Twenty per cent – it is really hard. You know, even when we look at the GEPIC and we have a look at the sections, it is really hard to actually identify what is 15 per cent compared to 13 per cent.

And the absolute irony is that at the moment we have people doing 30 per cent and yet sometimes they get a 28 per cent impairment; they do not reach the threshold. So what is to stop the assessors saying, 'Ooh, it's a 19 per cent impairment – no.' So I think putting a figure on it alone is difficult. If it is done properly, it is potentially okay, but not the way that it is going to be implemented, because if it is the same regulator doing exactly the same behaviour, we are just reducing 30 per cent to 20 per cent.

Physical and psychiatric cannot be separated. If somebody who has four children injured his back carrying 150 kilo carcasses on his first night at work and has had spinal surgery and pain management programs – that is the other thing, where WorkSafe is now mandating pain management programs. This man has been going to the pain management program, and in 12 months the two physios have not touched his back once. They have told him that pain is all in the head.

David ETTERS HANK: Stay focused, Joe. Stay focused.

Joe GAGLIANO: Yes, my apologies. You cannot separate the psychiatric and physical.

David ETTERS HANK: Thank you. I appreciate that.

The CHAIR: Thanks, Mr Ettershank. Mr Berger.

John BERGER: Thank you, Chair. And thank you, Joe, for your appearance this morning. I too share some experiences with Ansett as a former employee, and I think I recognise you.

Joe GAGLIANO: Which department – because remember I worked at Reach Out for that program.

John BERGER: Yes, well, I did that program as well.

Joe GAGLIANO: Which department were you in?

John BERGER: I was on the ramp.

Joe GAGLIANO: On the ramp.

John BERGER: Yes. We heard yesterday a lot of evidence about prevention and early intervention. I am listening to your submission this morning, and there is a lot of experience about workplace harassment and bullying.

Joe GAGLIANO: Oh, yes.

John BERGER: In terms of early intervention, what are some of the other things that you are seeing that may present themselves as a workplace conflict but then turn themselves into the issues that you are dealing with, and how can they be prevented?

Joe GAGLIANO: I think one of the things that all of us have to understand is that sometimes it is about perception. So if somebody perceives they are being bullied, then we have got to be very careful about what the perception is. But when it is absolutely obvious, it has to be challenged immediately. And that is the problem – there is no place to go to, in most organisations, where there is somebody objective that will have the early intervention. So if an employee complains that so-and-so has been doing this for months or whatever, there is no action taken.

One public servant that I was talking to had a person who came in every day and would swear at her, swear at the office et cetera. She tried to keep it in but eventually after 18 months went to HR. There was an investigation and lots of other things, but they said, 'Oh, the claim was partially substantiated.' So she had been swearing, but that particular day it was because she had had a bad thing happen at home, you know, a personal issue, and so she was very upset and that is why she was swearing. But the other year and a half of swearing at my client was not investigated or taken into account. So where could my client go, without fearing for her job, when HR do that type of investigation? I kept saying to her, 'Please take this outside, take this further.' She goes, 'I can't.' Because one thing that we all forget is that people who are psychologically injured cannot often do a lot of what is absolutely needed. Insurance companies have people who are ex-lawyers or who are paid per hour, and it is not about them, and they do not do their work. The injured worker has to take up the limited

emotional and psychological energy that they have got to write something down. I give them tables to write to say, 'Keep a chronology, because you need these as facts.' A lot of the time they cannot even open the table in the email that I have sent. That document that I provided before, I had to check on that lady yesterday because it took a massive amount of energy, and this is the one who had 50 shock therapies that was not actually recognised in the GEPIC by the psychiatrist.

John BERGER: Thank you.

The CHAIR: Thanks, Mr Berger. Dr Heath.

Renee HEATH: Thank you so much for your presentation, Joe. On a specific of the Bill, the Bill provides that mental injuries predominantly caused by work-related stress or burnout will not be compensable unless the duties are routinely traumatic. What impact do you think that will have on workers?

Joe GAGLIANO: If we had a look at how trauma is defined according to the DSM manual and whatever – and we all know that these days people say, 'James Hird, all the issues to do with the medication and all the stuff to do with his coaching, he had PTSD.' No he did not – he did not have PTSD. He was stressed. Trauma is really narrowly defined, so bullying and stress cannot really be considered, necessarily, trauma. It can be distress and severe distress, but depending on the events, some could be trauma but not all of it. If we are going to say, 'Only if you're traumatised will you have a psychological injury', unfortunately I will have to say – and I hate saying this because this is the most awful thing to say – we will have a lot more suicides, and that is what will occur with this new legislation.

The CHAIR: Thanks, Dr Heath. Mr Galea.

Michael GALEA: Thank you, Chair, and thank you, Mr Gagliano, for attending today. It has been very, very interesting. I have actually got way too many questions, so I will try and just ask one.

Joe GAGLIANO: I am happy to hang around if you want.

Michael GALEA: Thank you; I will catch you on the lunch break. You have talked about the no-fault claims system and how in your view that is a barrier to addressing some of the root causes of a lot of WorkCover claims, whether physical and mental. If we were to remove the no-fault system, though, surely that would mean it would be much harder to get claims accepted if there is resistance to actually admitting fault. Would that not be an issue?

Joe GAGLIANO: When I say that it should not be a no-fault claim, if the no-fault claim is accepted – let us say, for example, like TAC, when it was at its best, where if there was an accident, claim accepted. If we have a no-fault claim, that is fine, but we then also have to investigate where the injuries are coming from. If TAC, for example, has a road which is causing quite a number of accidents, they go in and investigate. WorkSafe has four claims from one department, one council, and they do not investigate. Individuals and government departments and companies need to be held responsible, and not after five years.

Michael GALEA: So there is a role within the current framework is what you are saying.

Joe GAGLIANO: Yes.

Michael GALEA: Thank you.

The CHAIR: Thanks, Mr Galea. Because of time, we will not be able to go around again, but are you comfortable if members submit questions on notice to you to answer if they have any further ones?

Joe GAGLIANO: Yes, I am very happy to.

The CHAIR: That would be great. Sorry there was not enough time to go through multiple questions, but your opening remarks were very, very useful, so it was a good use of time.

Joe GAGLIANO: Thank you. Thank you very much.

The CHAIR: So thanks for coming along today.

David DAVIS: Can I just ask one – that dossier that you had, that list of cases, do you have a copy of that? Is that something –

Joe GAGLIANO: If you do not mind – I know this is privileged, but I am also extremely wary about my ethics. If it is possible, can I de-identify?

David DAVIS: Yes.

The CHAIR: I think that would be the most appropriate measure, and you can provide it to the committee staff.

David DAVIS: Yes, that would be helpful. I agree with that.

The CHAIR: But thanks for coming along today, especially at such short notice.

Witness withdrew.