T R A N S C R I P T

LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

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

Melbourne – Wednesday 13 December 2023

MEMBERS

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David Davis – Deputy Chair
John Berger
Katherine Copsey
David Ettershank
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Gaelle Broad
Georgie Crozier
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Sarah Mansfield
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WITNESSES

Shaun Marcus, National President, and

Lachlan Fitch, Committee President, Victoria Branch, Australian Lawyers Alliance.

The DEPUTY CHAIR: Mr Marcus and Mr Fitch, I welcome you here. You are obviously representing your organisation, the Australian Lawyers Association.

Materials that you say here are protected by parliamentary privilege. Materials or things that you might say outside are not protected by parliamentary privilege.

I should just run around the table and indicate that there are a number of my colleagues here, who will introduce themselves. I will start on this end, and we will work up to the screen.

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

David ETTERSHANK: David Ettershank, Western Metropolitan Region.

The DEPUTY CHAIR: David Davis.

Tom McINTOSH: Tom McIntosh, Eastern Victoria Region.

John BERGER: John Berger, Southern Metro.

Sarah MANSFIELD: Sarah Mansfield, Western Victoria Region.

The DEPUTY CHAIR: What I would ask you to do is to very briefly, in about 10 minutes or less, give us an understanding of your views on the legislation and related matters, and then we will follow with some questions.

Shaun MARCUS: Thank you, Deputy Chair. I thank the committee for inviting the Australian Lawyers Alliance to appear at today's hearing. I would also like to acknowledge the traditional owners of the lands on which we meet today, and I pay my respects to their elders past and present.

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice. I am the National President of the ALA and also a partner of Arnold Dallas McPherson lawyers in Melbourne. I have over 17 years of experience in representing injured workers in Victoria. In Victoria currently the ALA has over 400 members, the vast majority of whom practise in personal injury law, including clients injured in the workplace. Our members have extensive expertise in representing injured workers, from the claims assessment stage through to pursuing lump sum compensation rights.

The Victorian workers compensation system is designed to ensure that appropriate compensation is paid to injured workers in the most socially and economically appropriate manner and as efficiently as possible. The ALA supports a financially sound workers compensation system that adequately provides for those injured at work, including those suffering lifelong injuries who need extensive support. The Bill we have to discuss today seeks to substantially reduce rights of injured workers. The stated need for this reform from government is the current financial pressures on our workers compensation system. We accept that there is strain on the system, but the ALA is yet to receive any financial modelling or data to justify the extent of these amendments.

First of all, in relation to the proposed mental injury amendments, the ALA has a number of concerns with the Bill. We say that the Bill as currently worded is unworkable and will result in significant and complicated litigation to clarify new clauses. The proposed amendments are multifaceted. The first amendment is to add a new definition to mental injury; we are concerned with the proposed extent of injury test that the new definition requires. The Bill requires an injured worker to suffer a diagnosable mental health condition which causes the worker significant behavioural, cognitive or psychological dysfunction in order to potentially have an entitlement to compensation. This test will place a significant burden on workers to prove they are sick enough in order to qualify for a claim. The ALA members see practical difficulties with this level of dysfunction test. We foresee that, if the Bill was passed in its current form, there would be a number of test cases required to be

heard in superior courts in this state to ascertain what level of behavioural, cognitive or psychological dysfunction is required to meet this definition. This will make the task of medical practitioners difficult and require medical practitioners to provide detailed evidence to the courts as to the level of symptoms they observed in consultation if a WorkCover insurer disputes that a worker is suffering the requisite level of injury. This has the potential to further discourage medical practitioners from assisting injured workers.

Secondly, the Bill adds further restrictions than already exist to workers who suffer mental injury if an injury is predominantly caused by usual or typical events at work. Once again we foresee further litigation to understand the meanings of these clauses. It will be a very uncertain few years if this Bill is enacted.

The Bill proposes to restrict certain types of disputes from the arbitration process also, including the two matters I have just spoken to. This would seem to the ALA to be appropriate. If the Bill were to pass in the current form, the courts ought to play the leading role in understanding the meaning of these provisions. Arbitration of such matters would not allow this to take place. There remains a role for arbitration in small disputes, such as whether a medical expense is reasonable and appropriate, but this Bill does not seek to interfere with that role of arbitration.

I will now pass over to Lachlan Fitch, who will provide a short opening statement also.

Lachlan FITCH: Good afternoon. Thank you for having us. I am the President of the Victorian Branch of the Australian Lawyers Alliance. I am also a Principal Lawyer at Maurice Blackburn, and similar to Shaun I have got about 15 years of experience acting for injured workers and helping them with their WorkCover claims. I am going to be addressing the Bill in respect of the introduction of an impairment test at 130 weeks.

To receive payments after 130 weeks currently, an injured worker has to show that they have got no current work capacity that is likely to continue indefinitely. The Bill introduces an additional requirement that an injured worker be suffering an impairment of greater than 20 per cent in accordance with the AMA Guides 4th edition. It is the Lawyers Alliance view that the proposed amendments will result in very few injured workers being entitled to weekly payments beyond 130 weeks. We estimate that only 10 per cent of injured workers will have an impairment of greater than 20 per cent. We have not been given data from WorkSafe or government about the impact of these amendments; however, WorkSafe information that we have previously seen shows about 3000 workplace injury common-law actions are commenced each year in Victoria, of which about 6 per cent are by workers who have a 30 per cent or more impairment.

We are well placed to give advice to this committee about the introduction of the impairment test. Our members advise injured workers every day about the AMA Guides as they relate to lump-sum claims that are available under the Act, and it is rare to see impairments greater than 20 per cent. Very often the level of impairment assessed under the AMA Guides does not reflect the level of dysfunction, disability or loss of earning capacity a worker is suffering. The guides do not consider a worker's age, transferable skills or if they live in a remote area. The AMA Guides themselves specifically discourage the use of the guides for such purposes, and the guides say:

> It must be emphasised and clearly understood that impairment percentages derived according to the Guide's criteria should not be used to make direct financial awards or direct estimates of disabilities.

We believe the Bill will substantially decrease the rights of our most severely injured workers in Victoria, and I just wanted to share one example of a client of one of our members, a labourer for a gardening business who sustained a severe cut to his wrist when he was using a chainsaw. There has been nerve damage, and he has needed several operations. He has been unable to return to work. He has only ever worked in manual jobs. He is dyslexic. He struggles to read or write and has no computer skills. He left school at 15 and he has no formal qualifications or certificates; he was assessed at 5 per cent impairment, and he would have no ongoing entitlement to weekly payments under these new laws.

The ALA has a number of concerns about the procedural requirements that implement the new impairment threshold. We will address these in more detail in our written submissions, but broadly, we say the physical and mental impairments should be able to be combined because they both impact someone's work capacity. We say that there should be the ability for a further impairment assessment if there is a material change to the worker's condition after 130 weeks, rather than just if there has been surgery after that time.

Workers are rarely able to finalise their lump sum compensation rights before the end of the 130-week period. The WorkCover legislation prohibits you from commencing a common-law action until at least 18 months from the date of the injury have passed, and that restriction does not exist in comparable legislation like the TAC legislation. We believe the Bill will add financial insecurity and stress to injured workers who lose their WorkCover benefits after 130 weeks but have not yet been able to resolve their lump sum compensation claims. We very much welcome your questions, and if we are unable to answer any today, we are happy to take them on notice.

The DEPUTY CHAIR: All right. Can I thank both of you for your commentary just now. I thought I might start with the news release that your organisation issued on 2 November 2023. It said that the Bill would:

> … strip too many rights from injured workers.

Do you want to just elaborate on that point?

Lachlan FITCH: Yes, our main concern and what sits behind that statement is around the requirement in the Bill that there be an impairment assessment greater than 20 per cent. For the reasons we have just set out, we think that will impact a large number of injured workers. The AMA guides are a very blunt instrument for assessing someone's level of disability and someone's level of incapacity for work. To give you some examples, Deputy Chair, if I may, someone with a back injury would not reach the greater than 20 per cent impairment level if they had multiple-level spinal fractures or significant signs of radiculopathy in their legs with loss of reflexes or muscle wasting or disc bulges of the lumbar spine. They would only be assessed at greater than 20 per cent if they had loss of structural integrity of the spine or multilevel spinal fractures plus neurologic or motor compromise. That would assess them at 25 per cent impairment.

The DEPUTY CHAIR: And the Bill introduces, your release says:

> … novel terms about defining a mental injury which will create significant uncertainty for years to come.

What is that uncertainty, and why?

Shaun MARCUS: As I addressed in my opening, this new definition of mental injury has us very concerned. The level of dysfunction, if we consider the wording of the Bill, as lawyers we are uncertain as to what that means. Can somebody have a significant dysfunction in a short window, or does 'significant' by its nature mean it must be a long window? I think that the symptoms must continue for an injury whilst there is and remains the provisional payment for 13 weeks in the legislation. There will be great uncertainty as to what these terms mean, and we cannot think of similar terms in our jurisdiction –

The DEPUTY CHAIR: In other jurisdictions?

Shaun MARCUS: Well, definitely in our jurisdiction, which the courts can quickly go to to get some help as to –

The DEPUTY CHAIR: So it will have to wait till it gets to the Supreme Court for some clarity on what the words mean?

Shaun MARCUS: Precisely, yes.

The DEPUTY CHAIR: Mr Ettershank.

David ETTERSHANK: Thank you, Chair. How long have we got?

The DEPUTY CHAIR: We have got about 40 minutes in total, so that is 2, 4, 5. So you have got a reasonable amount of time.

David ETTERSHANK: Wonderful. Thank you. Thank you for your presentation. It was very informative; I really appreciate that. Right at the end of your submission you talked about access to lump sum compensation after 18 months and how that is not consistent with TAC. What is consistent, and what would you prefer to see as an ability to access those lump sums?

Lachlan FITCH: Sure. The TAC currently does not have a minimum amount of time before someone can pursue a lump sum claim for common law damages, and because of that, that really reduces or removes any

gap between when someone's weekly payments will stop and when they can then access that lump sum to help them move on with their lives. That in turn reduces the financial strain and social strain – the strain we see families come under when there is that gap between finalisation of weekly payments and being able to resolve a lump sum claim.

David ETTERSHANK: Thank you.

Shaun MARCUS: Can I just add to that quickly. Acting for people who have suffered serious injuries, the last thing they want to be is on a scheme. They want resolution of their rights, and the quicker that can happen – we have experiences under the *Wrongs Act* and the *Transport Accident Act* where the experiences are quicker than what our injured workers presently have for reasons which are unclear to me as the legislation has been in place for over 20 years. But with many more workers leaving the scheme under this current Bill, after 2½ years – 130 weeks – there will be significant disadvantage and financial stress and emotional stress whilst we wait for these claims to finish in that window.

David ETTERSHANK: Okay. Thank you. The proposal under the Bill, after two years, and the two tests that are proposed being greater than 20 per cent for mental or physical with respective guides – as I understand it they cannot be added together and they cannot be longitudinally added. I am wondering if you would like to inform the committee of your thoughts or elaborate on your thoughts on those two elements.

Lachlan FITCH: Yes. The current test is: does a worker have no current work capacity that is likely to continue indefinitely? That test allows decision-makers to look at the individual circumstances of that worker and look at all of their injuries, both physical and psychological. It is a fairer way to assess an injured worker's capacity for work or their retained capacity for work and their realistic capacity to get back to some work. We say that introducing an impairment test that artificially separates out physical and psychological impairment does not allow the decision-maker to consider the impacts of the injury on the worker as a whole.

David ETTERSHANK: It is almost an oxymoron, isn't it, in terms of the concept of a whole-person injury and then you separate the mental from the physical?

Lachlan FITCH: That is right.

David ETTERSHANK: Is that a reasonable description?

Lachlan FITCH: It is fair, yes.

David ETTERSHANK: Thanks. The test of predominance in clause 39, 'arising out of or in the course of employment', what challenges does that change pose?

Lachlan FITCH: It is a concept that is not foreign in the existing WorkCover legislation. In section 40 of the WorkCover legislation it talks about if someone has suffered a psychological injury as a result of a reasonable management action. If that has been wholly or predominantly the cause of that psychological injury, then that WorkCover claim will be rejected. So that concept of 'predominantly' has been considered by the courts and is fairly clearly understood. It is new to be introducing it to a concept of connection to employment, but the term itself has been considered.

David ETTERSHANK: Thank you. I guess the last question: there are some new provisions in 40(2A) which strikes to limit claims for recurrence of an injury. Is it a common thing that there is recurrence of an injury, and what will this change mean in practical terms for claimants?

Shaun MARCUS: I can take that. The legislation currently has provisions requiring a significant aggravation of a pre-existing condition, whether it be physical or psychological, so that does not of itself concern us. One thing in 40(1A), the amendment, whilst we touch upon it, is the notion of 'typical and reasonably expected to occur in the course of a worker's duties'. The explanatory memo states that it is to be taken with its ordinary meaning – so a matter for the superior courts again. It seems certainly very harsh if something quite uncommon happens in somebody's work that causes a traumatic injury. You can think of all sorts of circumstances where that might arise – something that would not normally happen to a bank teller or something of that nature. Those words, again, will require significant judicial interpretation.

David ETTERSHANK: Excellent for billables but very bad for workers.

Shaun MARCUS: Not really. We like to be able to tell clients what the law might be with some certainty.

David ETTERSHANK: Fair enough. Thank you.

The DEPUTY CHAIR: Mr McIntosh.

Tom McINTOSH: Thanks for being here today. I am just hoping to ask a few questions. First of all, at what point would a client meet with one of your members? Obviously it is going to be across a spectrum, but for the majority is it upon the point of injury or once they are getting to a point where it is looking unlikely they are going to be able to return to work?

Lachlan FITCH: The vast majority of injured workers never need to engage with a lawyer. Some will see you very early on in the piece for help with filling in a WorkCover claim form if they find that quite intimidating, but most of the time people are able to put that in themselves. It is accepted, they receive WorkCover payments and medical expenses for a limited period of time and then they are back to work and eventually back to full health and they never need to see us. But for those who have been left with a permanent injury, maybe close to a year after they have been injured most will realise, 'Well, hang on, I'm not getting better. I'd better explore what my rights are,' and they will then come and see a lawyer.

Tom McINTOSH: Yes. Just in the previous session Mrs Broad asked a question around the various states and where the better system is. It was interesting. I believe it was flagged that it is not apples for apples, so it is difficult to compare, but perhaps Queensland had the least beneficial system. But then I also noted in some reading that in a review you have done of WorkCover Queensland the submission from you had it as the best and fairest despite it having shorter tails and that sort of stuff. I am just wondering if you can talk to how you see the states comparing, given your experience across the country.

Shaun MARCUS: Can I talk up Victoria – up until recent times? We have historically been the best state to adequately compensate – and I say this to clients – the most seriously injured people we see. You would know the types of injuries we would see – catastrophic injuries. This state does it better than anyone else by some distance. Where we see that feeling of acknowledgement for something that is life changing is a WorkCover authority going out of their way to resolve their rights, and the Transport Accident Commission is equally good at that and better at that than any other state. Can I say I did hear some of the comments. The Western Australian scheme is not good at looking after the catastrophically injured, so it depends what lens you have. Yes, they are good at redemptions and better than anyone else, and yes, it is not unusual for someone to be able to negotiate with that privately owned insurer and finalise their rights relatively quickly. That efficiency of resolution is certainly a key role for our clients, but it is particularly hard to compare when we have such a sensible common-law scheme in this state. They are very, very different. Do you want to add to that?

Lachlan FITCH: I would just say, and I think your question kind of alluded to this as well, that it is difficult to just take parts of some schemes and consider planting them on to other schemes. They are all quite unified and whole. Queensland has got a focus on common law and early access to common law. Victoria has been able to find a hybrid where both rights can exist and those who have not been injured in negligent circumstances have the cover of being able to remain on weekly payments whilst they are trying to explore return-to-work options. So pulling on the thread of part of the scheme can kind of have impacts elsewhere that are not easy to predict sometimes.

Tom McINTOSH: Yes. Thanks, Chair.

The DEPUTY CHAIR: Dr Mansfield.

Sarah MANSFIELD: Thank you, and thanks for appearing today. I was interested in understanding a bit more about your views on the changes to arbitration proposed in the Bill and what impact you think that is going to have.

Shaun MARCUS: It is the ALA's view that the courts are the best place to decide these notions, particularly new notions, to give clarity as to what the terms mean and how they are to be applied to certain factual situations. Arbitration does not allow that. There will not be recorded outcomes unless the matters go on appeal. So we see no issue with these very important terms being heard by the courts.

Sarah MANSFIELD: And so what changes, if any, would you suggest need to be made to the existing processes?

Shaun MARCUS: With respect to arbitration?

Sarah MANSFIELD: Yes.

Shaun MARCUS: We would suggest that these key findings around our relationship to work and the like are matters for a court and smaller matters are for arbitration to avoid the court system.

Sarah MANSFIELD: Okay. What do you think will be the consequences, for example, on injured workers of the changes that are proposed to arbitration?

Shaun MARCUS: Arbitration is not a service which is being greatly utilised at this time, from my understanding, so I doubt there will be any change.

Sarah MANSFIELD: Do you think there would be any increase in litigation?

Shaun MARCUS: Around these terms there will be, absolutely. There will be opportunistic behaviour of insurers to try and make sure claims are not accepted. There will be rejected claims straightaway.

Sarah MANSFIELD: Yes. Okay. In terms of the 13-week provisional payments that are being introduced, I guess we have heard a lot from other stakeholders today about the impact that is going to have. But from your experience, what are your views on that?

Shaun MARCUS: It is a sensible provision. In my experience – I am sure Lachlan will agree – it is a very big step to lodge a psychologically related injury claim against your employer. It is not something done lightly. It is when someone is usually very symptomatic, and it gives some financial comfort whilst the claims process is going. Obviously prior to that, the provisional payment provisions, there was a 28-day window where you were not being paid, and if a claim were rejected, then it would be off to a conciliation process where there are no payments and no treatment and there is a lot of fracture to the employment relationship by that stage. So I hope that it helps get better return-to-work outcomes or somebody is able to be paid and get some treatment whilst they go through that claims process.

Sarah MANSFIELD: I think what we have heard from various groups today is that for those who have been injured as a result of stress and burnout, they will not actually be able to go on to make a compensable claim. They will only be entitled to access those 13 weeks of provisional payments. So do you have any views on, I guess, that change there?

Shaun MARCUS: Yes. It is very harsh, is my view. As we said in our opening, we have been engaged with meetings under the guise of stakeholder consultation, but it has not been real. We have not seen data. It depends what means you are trying to fix, but yes, this will clearly save the scheme money if workers are not entitled to payments beyond 13 weeks. It will have very harsh outcomes in certain situations.

Sarah MANSFIELD: In your experience, putting aside the proposed amendments to the legislation, are there other changes to the scheme that you feel are necessary to improve the outcomes of injured workers?

Shaun MARCUS: As Lachlan alluded to before, the vast majority of people who lodge a workers compensation claim and the claim is accepted never require a lawyer. They do not come into our lives. The people we see are very, very injured normally. The one thing I would strongly recommend is efficiently disposing of justice as quickly as possible to allow people to get back on with their lives with their injuries, but it has the leading role in return to work in alternative employment options. So the statutorily mandated 18-month restriction on bringing common-law claims should change – allow people to get their actions started and finished quicker to get on with life.

Sarah MANSFIELD: I think that is all for now, Chair.

The DEPUTY CHAIR: Thank you. Mr Berger.

John BERGER: Thanks, Chair. Thank you for your appearance today. And, Chair, just in the interests of transparency, I have known Lachlan for some years through his association with Maurice Blackburn and mine through TWU, so I just want to make that clear.

Just on people pursuing litigation through common-law damages, how can that affect them in the long term of being able to go back to work under the circumstances that they are in? Do you think that inhibits their opportunities to do that?

Lachlan FITCH: I think it is probably the opposite, where an injured worker is able to put a line under their experience of having suffered a very bad injury and is able to then move on with their life. That would be my experience. Do you share that view?

Shaun MARCUS: Yes. And invest in their future.

John BERGER: I was just interested in the common law side of it, because I have seen examples of where people have not – you know, when you say to draw a line then go back to it, sometimes they do not. They draw the line in it and stay in it and never return to work in a meaningful capacity.

Lachlan FITCH: And that might reflect the fact that those who are bringing common-law claims are the very badly injured and it is harder for them to return to work. I can see that link there, certainly.

John BERGER: Thanks, Chair.

The DEPUTY CHAIR: Mrs Broad.

Gaelle BROAD: Thank you very much. I really appreciate your thoughts. I guess I am interested in your existing views of the WorkCover scheme. You have kind of mentioned that it is good in some ways, but then you are dealing with a certain aspect of it. But a Victorian government spokesperson said in March just this year:

> The WorkCover scheme is fundamentally broken. The scheme is no longer fit for purpose and does not meet the modern needs of those it was originally designed to assist more than 30 years ago.

Do you agree with that characterisation of the scheme? What are your thoughts on how it is working?

Lachlan FITCH: It was hard to avoid that quote. I certainly heard that as well. I have also seen the reporting about the increase in psychological injury claims over the period of the life of the scheme. I mean, where we see the scheme as needing some reform and help is in its ability to prevent those psychological injuries from happening and improving the return-to-work outcomes of all injured workers. But if we hear from WorkSafe that it is those with psychological injuries who struggle to return to work predominantly, then reform it to help those workers be able to get back to work in a sustainable way, whether that is removing barriers that exist between, for example, psychologically injured teachers being able to move between schools if it is difficult for them to return to work in a classroom or workplace where they had an interpersonal conflict with someone. Removing those barriers I think would go a long way. So in that sense I think reform to modernise the scheme would be of benefit, but that is probably where my agreement with the characterisation ends.

Gaelle BROAD: Okay. I guess there are tiers at the moment, aren't there, where they have got to prioritise. But you are sort of saying removing some of those barriers within the system itself would help.

Lachlan FITCH: Yes.

Gaelle BROAD: Okay. Return to Work Victoria has been talked about a bit. What is your understanding of what has been proposed at this point?

Lachlan FITCH: The same as everyone else's. We would love to see more detail about that, and as a concept broadly I think it plays an important role in addressing those return-to-work issues that we were talking about. It is, I would hope, a good opportunity.

Gaelle BROAD: So what do you think its functions should be?

Lachlan FITCH: Look, our expertise is really in litigation and advising injured workers about their rights. You might hear from experts in return to work and occupational rehabilitation who would have greater expertise than Shaun and I do on this topic – but some ability to really identify the workers most at risk of struggling to return to work quickly and maximising the services that you are offering to that worker in whatever the experts deem to be the key period of time that allows for recovery but then quickly gets workers back focused on a sustainable return to work.

Shaun MARCUS: Just touching upon the last speakers – and I do not want to place words in their mouth – around encouraging workers to increase their certification of duties: that is fine. We see so many examples of employers who play no active role in assisting somebody in going back to work, particularly around the fifty-two-week obligation period and beyond. There is no real appetite. We know it is happening. We know it is coming to our client, the dreaded letter, no matter how many times you tell a client that it is coming. There is one employer that we know of who does it on Christmas Eve, which I will not name here. There might be 16 letters that go out. The only thing different is the name. That employer has not played any active role in assisting people in getting back to work. It is a holistic approach – portability of employment options. There will not be one certain thing.

Gaelle BROAD: In your experience have there been a number of repeat cases from the same employers?

Shaun MARCUS: I can see some nodding in the back from my colleagues, but yes, we know the employers. Everyone has to play a role under the Act – but real, meaningful return to work, as probably the person in the best position, with the power imbalance, to go and say, 'Right, we are going to use the skills you currently have, whether it's now on a part-time basis if, due to injury, it can't be on a full-time basis.' Active engagement is what we do not see a heap of.

Gaelle BROAD: Okay. We have heard from other witnesses that, yes, there are workplaces where the same thing is happening, but there does not seem to be any follow up of that. Is that your experience as well – that the employers are not held accountable?

Shaun MARCUS: Yes, that is our experience, particularly as time goes beyond the injury date.

The DEPUTY CHAIR: You have got one more.

Gaelle BROAD: Okay, thank you. That is great. Look, a number of witnesses we have had have described this Bill as a short-term sugar hit to the budget's bottom line and that the changes in the Bill will result in higher financial costs over the medium to long term. What are your thoughts on that assessment?

Lachlan FITCH: We could only repeat that we think a lot of workers will struggle to show that they have an impairment of greater than 20 per cent, and that will impact an awful lot of injured workers.

Gaelle BROAD: So you think it is just sort of shifting the problem elsewhere potentially too?

Shaun MARCUS: Likely. Some people will have other insurances which they may already have, but if you have got no other entitlements, you will explore what else you can get.

Gaelle BROAD: Thank you. Thank you, Chair.

The DEPUTY CHAIR: I think we have one more question from Mr Ettershank.

David ETTERSHANK: Just a brief one. Thank you for you contribution. It has been really valuable. The committee has heard a lot about the long tail and growth in mental health related injuries. In terms of your work litigiously have you also had a significant proportional increase in mental health related claims as opposed to physical claims over the last couple of years?

Lachlan FITCH: Certainly an increase in inquiries from people wanting to know what their rights are, but not an increase in litigation or common-law claims for that category of worker, because there are many barriers in place to their being able to pursue those rights that exist currently. For example, someone with a physical injury needs to show that they have a serious injury before they can bring a common-law claim. Someone with a psychological injury needs to show they have a permanent, severe mental disturbance or disorder before they can bring a common law damages claim.

David ETTERSHANK: So they really are in the worst possible space.

Lachlan FITCH: Yes. That is right.

David ETTERSHANK: Okay. Thank you.

The DEPUTY CHAIR: I think we are done. I just have one further point to clarify: you did not see the Bill before it was released, and you were not consulted on the detail of the Bill?

Lachlan FITCH: No. Government spoke to us about what was going to be in the Bill, along with other stakeholders. I think they met with the legal stakeholders as a group, but we had not seen the Bill.

The DEPUTY CHAIR: When was that?

Lachlan FITCH: I think a week prior to –

The DEPUTY CHAIR: The release of the Bill.

Lachlan FITCH: Yes.

The DEPUTY CHAIR: Not in the lead-up or something like that?

Lachlan FITCH: Yes.

The DEPUTY CHAIR: All right. That is what I wanted to know.

I thank you for your evidence today. It has been, as you have said, very valuable, and we look forward to some follow-up questions that people might bring forward and we will pass on to you. Thank you very much. I thank the committee staff, the recording staff and indeed committee members today.

Committee adjourned.