

# TRANSCRIPT

## LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

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

Melbourne – Tuesday 12 December 2023

#### **MEMBERS**

Georgie Purcell – Chair

David Davis – Deputy Chair

John Berger

Katherine Copsey

David Ettershank

Bev McArthur

Tom McIntosh

Evan Mulholland

Sonja Terpstra

#### **PARTICIPATING MEMBERS**

Gaelle Broad

Georgie Crozier

Michael Galea

Renee Heath

Sarah Mansfield

Rachel Payne

**WITNESSES**

Luke Hilakari, Secretary, and

Wilhelmina Stracke, Assistant Secretary, Victorian Trades Hall Council;

Karen Batt, Secretary, and

Geoff Lewin, WorkCover Services Officer (*via videoconference*), Community and Public Sector Union;

Paul Healey, State Secretary, Health and Community Services Union; and

Rachel Halse, Australian Nursing and Midwifery Federation.

**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 – that is going to kill me today. Please ensure that mobile phones have been switched to silent and that background noise is minimised.

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

To begin, I will get committee members to introduce themselves, starting down this end with Mr Galea.

**Michael GALEA:** Thank you. Michael Galea, South-Eastern Metropolitan Region.

**Katherine COPSEY:** Katherine Copsey, Southern Metropolitan Region.

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

**John BERGER:** John Berger, Southern Metro.

**Sonja TERPSTRA:** Sonja Terpstra, North-Eastern Metro.

**Tom McINTOSH:** Tom McIntosh, Eastern Victoria Region.

**Georgie PURCELL:** Georgie Purcell, Northern Victoria Region.

**Evan MULHOLLAND:** Evan Mulholland, Northern Metro.

**Bev McARTHUR:** Bev McArthur, Western Victoria Region.

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

**The CHAIR:** 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. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you please state your full names and the organisations you are appearing on behalf of, and for ease we might start with Ms Halse.

**Rachel HALSE:** Rachel Halse, representing the Australian Nursing and Midwifery Federation, Victoria branch.

**Paul HEALEY:** Paul Healey from the Health and Community Services Union, HSU2.

**Luke HILAKARI:** Luke Hilakari, Secretary, Trades Hall, representing Victorian workers.

**Karen BATT:** Karen Batt, the Secretary of the Community and Public Sector Union.

**Wilhelmina STRACKE:** Wil Stracke, Assistant Secretary of the Victorian Trades Hall Council.

**The CHAIR:** Beautiful.

**Geoff LEWIN:** Geoff Lewin, CPSU, WorkCover Services Officer.

**The CHAIR:** Beautiful, thank you. We now welcome your opening statements, but given that there are a number of witnesses from different organisations we just ask that collectively you keep it to 15 minutes.

**Luke HILAKARI:** Great. I might kick off. Thank you to the committee for having us here today; we appreciate your time. Let us say from the get-go: the Victorian union movement is strongly opposed to this Bill. This morning I want to try to move pretty quickly, and I want us to paint a bit of a picture about our issues, but what I want to get to is how did we get into this mess, what is the Bill attempting to fix and what is going to be the impact of this Bill on Victorian workers? To go all the way back to the beginning, prior to Federation the situation was that workers had to sue their bosses for negligence. That is what it was. In 1914 we see the first scheme get created in Victoria, and since then we have had a number of iterations through the Parliament where we have reached a scheme that would probably be regarded as one of the best schemes in the country. The Bill before the Parliament will make us one of the worst schemes in the country, and we need to talk about why.

We are in this mess because, largely, government wants to no longer pay for the financial situation that WorkCover and WorkSafe is in. I think you have heard previously that over the last three financial years you have contributed about \$1.3 billion to the scheme. That is not a small amount of money. Everyone, I think, can acknowledge that. This has happened because of three reasons: largely, premiums have not shifted in 20 years until the action that happened this year. In 2003–04, in that financial year, the premium was at 2.2 per cent. It was slowly ratcheted down until 2017–18, when that number was at 1.272 per cent, and it stayed there. That was one of the lowest premiums to be contributed by business – and we acknowledge the great contributions they make; they are an important part of this scheme – but it has stayed there as one of the lowest in the nation.

The second reason is that more people are wanting to get into the scheme specifically around mental health challenges. We think this is a good thing. We as a community and a society have spent some time saying that people who have a mental health injury or issue should stick their hand up. We have seen everything from the work of Beyond Blue to R U OK? days to the royal commission that this Parliament and this government undertook, and we think that is a great thing. The impact on the scheme is that 16 per cent of people in the scheme are presenting with mental health claims. We think that is on track to grow to a third of the scheme by about 2030. Mental health claims take longer to resolve, and they are more expensive. That is a reasonably large impact on the scheme.

The last impact on the scheme is that we have more injured workers in the long tail. To sum up the long tail, and most of you are probably aware of it already, 130 weeks, 2½ years – workers beyond that point are known as being in the long tail. In 2016 there were about 4500 workers there. That has gone up to 8500 workers. That is a cost on the scheme. So what is the government's solution to it? They have three solutions: one is to raise premiums, two is to stop workers going onto the scheme and three is to remove people from being on the scheme in the long tail. We think this is unsophisticated and anyone could have come up with this as a solution. It is the easiest solution for any government to reach. It is unsophisticated in its approach, and it is short term.

Raising premiums – well, we all know they have raised premiums to 1.8 per cent. That is a cost on business. The break-even point was 1.74 per cent, so they gave themselves a little bit of breathing room in that space. I am sure Paul Guerra and the team will have a lot to say about that, but we have some sympathy for the positions that they are putting forward.

Two, we are going to stop people coming onto the scheme, and they are doing that by treating physical and mental health injuries differently for the first time ever. The Bill inserts new section 40(1A), stating there is no entitlement to compensation if the injury is caused by work-related stress or burnout. Currently it is the situation

that if you have those issues, you should come forward and you can make a claim, just like most other jurisdictions. This is, to my recollection, the first time that this government is taking away a right from a person – I am shocked to see that this appears in the Bill – and in this case the right we are trying to take away from somebody is that of an injured worker. We should reflect on that.

Lastly, we are going to kick people off the scheme at 130 weeks – not people that are currently receiving benefits but after this Bill comes in. We are introducing something called a Whole Person Impairment test. I will try to move through this quickly, but it is a bit complex. You have to have more than 20 per cent to reach a threshold to remain on that scheme. This threshold is made worse by – even though you might be injured in the one incident, you have to separate mental health from physical health. Despite it being a whole-person test, we are saying that if there is a mental health injury, you can either claim for that or you can claim for the physical injury. To give an example, if a nurse was assaulted in an emergency department, she will have trauma from the assault. She will also have a physical injury from the assault. You are asking that nurse to pick one or the other – ‘You can’t claim both, even though that injury happened to you as a whole person.’ I think this little bit with the 20 per cent is just such a nonsensical piece of the legislation. It is completely going backwards on all modern thinking about treatment and medicine.

It should be unacceptable to Parliament that at no stage has the government said how many people will be kicked off the scheme. There will be a noticeable impact across services all across Victoria because there will be people removed who will be looking for support somehow, but at no time have they told parliamentarians here how many people will be out and what that will cost. They must have those numbers, but to not come straight with Victorians on this I think is highly problematic.

The test they are relying on comes from an American Medical Association book. It is an AMA text. This was originally put together for Korean war vets to understand their disability. It says right at the start of this book, in the only paragraph in this whole book that is in bold, right at the beginning – you can table the book and you can keep the book:

It must be emphasised and clearly understood that impairment percentages derived according to this guide should not be used to make direct financial awards or estimates on disabilities.

It then goes on to say that when you do and if you do – you should not, but if you do – it should be made clear that personal factors must be taken into account. By that, a simple example would be if you had an injured worker – let us say a labourer who injured their shoulder who had to make a claim – and you have done the impairment test on it. A 22-year-old labourer who is living at home with their parents, even though they might have the same injuries as a 55-year-old worker who has a mortgage and kids, the injury has a completely different impact on their lives. This book says you must take account of it. Your Bill does not at all. The impact on a 55-year-old with kids and a mortgage – the decision of not hitting a 20 per cent impairment test – will probably cost that person their house and it will lead to a whole lot of other issues, as opposed to the 22-year-old kid still living at home with their folks. It is a huge problem with this Bill.

So what type of people are we talking about missing out? A recent good example would be of a 33-year-old emergency services worker – I will let you guess which emergency service they worked for – who had been employed by the service for 14 years, just doing service for the state. He had witnessed multiple traumatic events, and then one day he presented at a car accident. He saw that a kid had been decapitated and another kid had been crushed to death. That worker got diagnosed with severe PTSD, now regularly sees a psychiatrist, has suicidal thoughts, cannot leave the house, is on medication and his mum had to move back into the home to look after his kids. That worker, who gave his life to service and to the state, got a WPI of 15 per cent. That is the worker who is going to be kicked off the scheme at 130 weeks. That is the worker we are talking about. That person has no chance of getting Centrelink. They are not going out and applying for jobs; that is not happening. They are not going to be on the NDIS, and they are not going to get a disability pension. Even if they got Centrelink at \$375 a week, that is not paying for a mortgage. We are saying that that person, who served the state and did everything right, loses their house, is not worthy to get the support and treatment they need to get back to work. This is going to have a massive, massive impact.

The next part of it, which sort of makes it worse, is that we do not have enough people in this state who are qualified, independent medical examiners. These are largely doctors and surgeons that will go out of their way – they will do this, and they do not have to do this, but they make a contribution and we appreciate that – but we do not have enough people to test the people that will come up when they hit that 130 weeks. So what the

Bill does it says, 'Well, that's okay, we can find a way around that. We will give it to insurance agents to work it out.' Now, there might be a direct conflict. We cannot see those contracts between WorkSafe and the insurance, but there will be a conflict there about the financial payments they get for people remaining on the scheme and leaving the scheme. I would love for Parliament to be able to investigate what those contracts look like. We should have a sense of this. But also the Bill asks people who are non-qualified to look at medical reports and give an interpretation about that 20 per cent – 'Because you cannot find a doctor, we will get the insurance agent to be a doctor.' Many of these insurance agents are in their 20s and 30s and have spent two to three years in this job. That is the average in Victoria. They are making a medical opinion about someone's life. That is what this Bill enables us to do.

Finally, to sort of wrap up, I think this Bill has been extremely rushed. To start, there are not enough IMEs to get this job done even if we like. There are not enough mental health professionals out there to support people who are coming forward with their claims. There is no information apart from a two-page fact sheet on a website that talks about Return to Work Victoria. I think you will find that employers and the union movement have very similar views on this. We are concerned that this Bill will lead to a couple of things. It will lead to poverty for a number of workers. The government cannot tell us how many workers will end up in poverty. What you are essentially doing is you are cost shifting. You are moving a cost for an early intervention away from there, and these workers are going to present in other places. They are going to present in public housing. They are going to present with family separation leading to family violence, alcohol and drug addiction, gambling. You will have an increase in emergency health presentations, and you will have police having to respond. There is a cost here that has been un-costed by the state, that has been moved somewhere else. If you do not have a house and you have had a family fall apart, someone has to pick you up, and eventually it will be the state of Victoria.

So why aren't we just dealing with it right at the start? You guys have set up – and I think it is a great idea – an early intervention investment framework recently where you are putting money aside to cost out smart early interventions that help the whole system. It is a system-wide approach; I am glad Victoria is doing it. So on one hand we are doing that, on the other hand we are removing an early intervention that will put an additional uncosted burden on the system. It seems nonsensical.

To put it plainly, we think this is a dog of a Bill. It is a rushed mess. It targets some of the most vulnerable Victorians, being injured workers. It will not fix the problems that you are thinking it will fix, and it should be rightly rejected by the Parliament.

Karen?

**The CHAIR:** Ms Batt.

**Karen BATT:** Thank you, Chair. The CPSU was going to provide a detailed opening address – we could not do better than what Luke Hilakari has just presented. We do want to emphasise that the Bill has a historical context. We have had a right in Victoria to claim for mental injury since 1946 – this Bill will strip 70 years of rights away from injured workers. That needs to be taken very seriously by this Parliament. For the government to hide the fact that is stripping something that we have had for 70 years in the heading of the Bill – 'modernisation' – is we think just a little bit too cute by half.

We also think that the Bill goes in direct contrast to the initiatives and the recommendations of the royal commission into mental health – how we treat mental health, what supports and initiatives we do to deliver on a whole suite of things. To say that mental injuries arising from stress, anxiety and work overload are no longer compensable actually flies in the face of those very progressive recommendations that we believed the Victorian government had adopted.

One issue that Luke did not pick up on that we are very concerned about is the removal of arbitration. The Bill currently has the right to review a decision to reject a claim. This Bill proposes to restrict what disputes can go before the arbitration system for a genuine dispute certification by the Workplace Injury Commission. The excluded disputes pertain to the eligibility to claim, the injury status, the nature of the injury, the employment and injury connection and the worker's status. It is saying that you have to go to the court rather than through the arbitration system, and we believe that that opens employers up to a real potential for an increase in

litigation, as workers injured in a non-compensable category will still seek compensation in a court system, taking us back to pre-1946 adversarial judicial processes.

Similar to Luke, we think this Bill needs to be withdrawn. It is an appalling document. It was not seen in its entirety until it was tabled for the second reading in the lower house, and we would urge this committee to make recommendations for amendments to ameliorate the worst aspects of this Bill.

**The CHAIR:** Thanks, Ms Batt. Ms Halse.

**Rachel HALSE:** Committee members, the Victorian branch of the Australian Nursing and Midwifery Federation represents over 100,000 nurses, midwives and carers across Victoria in all aspects of health and aged care. We appreciate this opportunity to address you today. ANMF members provide care from cradle to grave to all Victorians. ANMF members have been at the coalface of the COVID-19 response, and ANMF members provide care in Victorians' homes, schools, hospitals and in all places in between. ANMF members need an appropriate workers compensation scheme that protects them adequately should they be injured or become ill at work and that appropriately supports them to recover and return to the vital work we need them to do to support our community, the Victorian community.

To be clear, our union is deeply concerned with the proposed WorkCover amendment Bill. It has the potential to significantly compromise the rights and wellbeing of Victorian workers and in turn the care that can be provided to Victorians. We are asked to accept a Bill that is about modernisation, but ANMF understands that this Bill is actually about rationalisation. As nurses, midwives and carers, our members were and are frequently acknowledged as the heroes of the COVID-19 crisis, going above and beyond what were their usually and typically expected duties. Yet as I sit here with my other union colleagues we now find ourselves confronted with a Bill that appears to undermine the labour movement's central tenet to promote fairness and ensure workplace safety.

Recent reports show 10,099 incidents of occupational violence and aggression at 14 metropolitan hospitals in the last financial year. The ANMF knows that this would be an under-reported number; it would be much higher - would be kicked, hit, spat at and verbally abused, among other things to be considered usual and typical.

There is more work to be done – urgent work. The ANMF notes that the new psychological health provisions in the OH&S regulations 2017 are soon to be implemented. Employer obligations and work in relation to risk prevention are critical, given the entitlements for workers compensation are being curtailed. These new and responsive regulations will mean at the very least that employers will be forced to take their obligations to prevent mental injury more seriously and implement appropriately robust controls to do so.

If the Bill is passed now, there is a real chance that WorkSafe Victoria could be investigating and/or prosecuting an employer for failures under the OH&S Act whilst the worker or workers who are injured as a result of these failures would not be entitled to workers compensation. As Luke touched on it, I will not go into our concerns on the whole-person impairment test of 20 per cent, except to say that this is not looking at a person holistically. This is an unacceptable outcome for Victorian workers.

This Bill is an extremely serious issue for the ANMF. In decades gone by injuries of the back and neck and soft tissues were the major source of pain and disability for our thousands of nurses, midwives and carers. We fought hard and against many employers to win government support for safe lifting programs and equipment and training in workplaces. These programs have been so successful that physical injuries are now a fraction of what they were 20 or 30 years ago.

On the other hand, over the last decade we have faced a surge in psychological injuries. This rise in burnout during COVID, occupational violence and aggression and fatigue because of increased acuity are just some of the factors that have resulted in psychological injuries. Many are short term but many longer, and these are just as real as physical injuries. To target psychological injuries to achieve cost cutting makes assumptions that they are less real and less damaging. This stands in complete contravention to the mental health royal commission's themes and recommendations. It plays into 20th century tropes of what is real work and what is not. It disrespects the tens of thousands of health professionals, teachers, public servants and others who do real jobs and suffer psychological injury in the process.

In the interest of safeguarding the rights of Victorian workers, we call upon the government to reassess the proposed Bill and explore alternative solutions to address current concerns without compromising fundamental principles of fairness for workers. If proper stakeholder consultation had occurred, the government would never have been in this position, attempting to stare down workers amid a legislative defeat. No worker should be forced to potentially mortgage their home to cover legal fees associated with a potential Federal Court application when seeking compensation to which they should rightfully be entitled. The ANMF opposes this Bill and calls on the government to reconsider the amendments proposed. Further, I invite the responsible minister, who has a strong reputation for being diligent and discerning, to meet with us, our officials and our members to understand these concerns better.

**The CHAIR:** Thanks, Ms Halse. Mr Healey.

**Paul HEALEY:** Paul Healey, State Secretary. From HACSU's point of view, all our members work in mental health and disability, and from the mental health members we see a system that is already broken. Clearly the royal commission said the mental health system is broken. It has not been repaired yet; it has in many ways gone backwards. If this Bill gets through, you are going to send a lot more people into the mental health system. It is already an overcrowded, busy system with very junior staff now and very much struggling to keep up with the issues and the workforces. Those workers are the same people who will be looking to this scheme to actually support them when they get stressed and when they face violence and all the issues they face in work. We have seen so many workers get really damaged by the work they do now, and they are struggling to get new workforces. Here is a system where the safety net is not a safety net; it is full of holes, and it is not going to work. We see this Bill as not going to be workable. We see that the symptoms that they are talking about, stress and burnout, are not mental illnesses; they are just symptoms of mental illnesses. You cannot diagnose a person on stress and burnout. They are not real symptoms. So they are not going to catch people – what is going on. It does not make sense to me to have that in the Bill. It is not going to work.

The thing that I do want to point out, though, is that burnout – the physical, emotional and mental exhaustion, lack of motivation, lower performance and negative attitude – is what workers are feeling because of the drain they are getting. That leads into other mental illnesses, which are depression, anxiety and other things. It is not set up in a proper structure anyway. We think it is dangerous. It is going to a health system that is dangerously underfunded and under extreme pressures. It does not meet with the royal commission's recommendation, at 16 – establishing mentally healthy workplaces. You have got no support and no outcome at the back. Workers are just going to be left behind. Then the system – wherever there is a failure in any social policy, it ends up with people coming into mental health, and that is a system that is not going to cope.

**The CHAIR:** Thanks, everyone. Members and witnesses, we are quite short on time, so I am going to allow 3 minutes for questions each. If we can keep questions and responses as tight as possible so we can work through everyone, that will be fantastic. I will commence, and this is to anyone on the panel. To your understanding, how many workers will be kicked off the scheme at 130 weeks?

**Luke HILAKARI:** We do not have a number on that. The government have not provided one. Our lawyers tell us it is a very high threshold, at 20 per cent, especially if you cannot count both the mental and the physical injuries. We do not know. That should concern all of you that you do not know the answer to that question. I suspect they do have a number but they have not been upfront about that number. I am embarrassed about it, frankly, because we do not know what happens at the other end when those workers present for other services – homeless services, whatever else. It is a huge problem.

**The CHAIR:** Thank you. Something that came through to me as a crossbencher in considering this Bill was that there was a lack of consultation. Can you please explain from the union movement's perspective what consultation was like for you and also for business if you happen to be aware?

**Luke HILAKARI:** Yes. Look, there is consultation and there is consult-told. I feel this is more of the consult-told variety. It is the bit where they had reached a predetermined outcome – had dragged business and us in the room – and sort of said they had not, but they had. I think we have had probably zero impact, between business and us, about the development of the Bill and the outcome of the Bill. If we had, we would have had something better, because business and unions are highly aligned about what would fix this Bill or what would fix the problem.

**The CHAIR:** I guess not to generalise, but considering the kinds of workers that do claim for stress and burnout and also the occupations that Ms Halse listed off, do you believe that this proposed Bill disproportionately impacts women?

**Karen BATT:** I can say that we have looked at this statistic. We do believe it will, particularly in the public sector, where the majority of our workers are women – 56 per cent, I think, are women. A large number of claimants are in areas where they are support for frontline work. They are often ones that are not given the training to deal with what they are confronting, so an admin officer in a child protection office is constantly seeing the files and the reports of child abuse and child neglect. They are not exposed to the trauma, but they are developing PTSD symptoms. A large number of those people are putting claims in – our anecdotal evidence.

**Luke HILAKARI:** Wil, do you want to add to that?

**Rachel HALSE:** I was just going to say I support what Karen said, and also from our membership, it is predominantly women at the bedside with patients. What they experience – yes, definitely.

**Wilhelmina STRACKE:** I would understand that a gender equality impact assessment needs to be done. We would understand that that should be done before a Bill is passed so that you can ameliorate any unintended consequences that impact a particular gender. What I am told is that we will see that once the Bill is passed and they have got numbers to tell us whether or not it has impacted women, for instance, particularly. That is a nonsense of this particular legislation as well, because the whole point of doing a gender impact assessment is so that you can see in advance whether it will impact women in particular and you can do some things that might shift that. I mean, we know most stress claims come – the worst offender is the public sector, and we know that more public sector workers are women because that is the nature of care work. So it is highly likely that it is going to impact women in particular.

**The CHAIR:** Thank you. Just very quickly, to your understanding what is Return to Work Victoria?

**Luke HILAKARI:** That is a hard thing for us to answer. There is a two-page thing on a website. We were hopeful that it would address prevention, but it does not exist before this Bill comes into effect. Prevention is everything in this space to stop workers getting injured in the first place, to reduce premiums for employers. It is better for their families, it is better for businesses. Right now it does not exist, and I think business and I would be aligned in saying that we do not understand what this is going to be.

**The CHAIR:** Thank you. Ms Terpstra.

**Sonja TERPSTRA:** Thank you. You stole some of my best questions. Anyway, thanks, all, for coming along and presenting your opening remarks. Just for full disclosure, obviously I worked at the nurses union before I came into Parliament and I know Rachel, so I am just putting that out there. And I know many of you as well.

**The CHAIR:** I think I know everyone over there as well.

**Sonja TERPSTRA:** Yes, that is right. So I am just putting that out there. I agree with your comments, Luke. Obviously as a former union official of some 20-plus years, I agree with your comments about prevention, and this kind of aligns with, I guess, what Return to Work Victoria is meant to be doing. In your view, as leaders in your sectors, what sorts of things could be done better to prevent injury in that preventative space, because we know that prevention is worth an ounce of cure. We heard evidence from some of the department secretaries earlier about the difficulty with people actually accessing mental health support when they are making claims because there is just not a lot of people to go around. What sorts of things industrially could be done to prevent injuries in the first place?

**Luke HILAKARI:** Thank you for the question. I think your question actually leads out a bit to a whole-scheme solution as well. We think prevention is the number one thing we need to get done. Prevention sits neatly with early intervention, which is just critical. So the faster we get to a worker to get them to have a health treatment, the faster they return back to work, the cheaper it is for the scheme. For mental health, that is extremely difficult because we do not have the workforce that sits behind it – so psychiatrists, psychologists. To get a booking there, that is three to six months. It does not matter that we have got a 13-week entitlement, you



will not be able to spend that money to see someone, so we need to think about alternative workforces – nurse practitioners, counselling, mental health staff. There is an alternative workforce so we should be more creative about who these workers can see and how they see them in a fast way. In terms of prevention, we have psych regs. Victoria was the first place to come out and say we are going to do psych regs. That was, I think, in March or May 2021 –

**Sonja TERPSTRA:** Around psychosocial risk – is that what you are saying?

**Karen BATT:** Yes, psychosocial risks.

**Luke HILAKARI:** Yes. Every other state has achieved putting these regs out. We have not yet. I suspect we have not because we have been waiting on this piece of reform – well, I do not call it reform, but this Bill. Those psych regs coming out would make a huge difference. As noted by Wil and Karen, places in departments like education, police, health services, they are the biggest claimants on the scheme and there is not a level of accountability within a department, unlike a business. If a business has a claim, they will see that financially on the books. I do not know how department secretaries are held to the same level of account as you would be on your own personal business. There are some simple solutions in places like teaching. For example, if you are a teacher at my primary school – let us say Eltham Primary – and you are harassed by parents – usually it is the parents; at high school it might be students – and you have gone on some type of stress leave, and it was not a simple harassment, it was bordering at times on assault, they might be on WorkCover, they will go on WorkCover, but they will want to get back and teach. But the system says, ‘No, no, no. You are attached to Eltham Primary, you cannot go a kilometre down the road to Eltham North Primary.’ This system would rather pay you 80 per cent of your wage to stay at home while we have a teacher shortage rather than going a kilometre up the road where that teacher wants to work. I think there is a whole lot of simple stuff that we can –

**Sonja TERPSTRA:** So it is an industrial kind of thing that gets in the way there? An arrangement about someone being attached to a particular school?

**Luke HILAKARI:** Yes. We have a systems problem that looks like it could be easily fixed. But again, if we were going to do this as a proper job, we would start from the beginning: everything from prevention, to the form you fill out when you get injured, to the workforce that sits behind you to help you get back to work quicker. That is what we would do.

**Sonja TERPSTRA:** Yes. All right. We are running short of time.

**Luke HILAKARI:** Sorry. It is a complicated area.

**The CHAIR:** Thanks, Ms Terpstra. Mrs McArthur.

**Bev McARTHUR:** Thank you, Chair. Mr Hilakari, you have painted a very drastic picture of the situation. Is the Labor Party no longer the worker’s friend?

**The CHAIR:** Sorry, that is completely outside the terms of reference.

**Bev McARTHUR:** Mr Hilakari has painted a drastic picture of the relationship between this government and the workforce here, so –

**The CHAIR:** Mrs McArthur, can you please make your question in line with the Bill inquiry?

**Bev McARTHUR:** Is the Labor Party the worker’s friend?

**Sonja TERPSTRA:** Sorry, that question is not in line with the terms of reference, Chair. I do not know that the witnesses need to answer that question.

**Bev McARTHUR:** Mr Hilakari is desperate to answer.

**Sonja TERPSTRA:** I do not know that the witnesses need to answer that question. It is not in line with the terms of reference.

**The CHAIR:** Mrs McArthur, I repeat again: can you please ask your questioning in line with the Bill that we are inquiring into?

**Bev McARTHUR:** Are workers being let down by this bill?

**Luke HILAKARI:** Yes, that is a great question.

**Bev McARTHUR:** Thank you.

**Luke HILAKARI:** I think workers, unions in Victoria should be rightly concerned about this Bill. This Bill is not what I would consider within my Labor values. We need a scheme that is functional, and we need a scheme that provides, but to say, 'This group of workers is who we're going to cut, and this group of workers we ain't going to bring on,' because you need to make a financial saving because of choices that lots of governments have made to either not raise premiums or not actually do the hard work, which is prevention, I think is a cheap cop-out that will unfairly target some of the most vulnerable Victorians. And in doing so you are not actually going to save a penny; what you are going to do is cost shift to services that are already under some stress.

**Bev McARTHUR:** So workers are clearly being let down by this government, this Bill?

**Luke HILAKARI:** On this Bill, we are all disappointed by it.

**Bev McARTHUR:** So the public sector workers make up 34 per cent of mental health injury claims to WorkCover despite the public sector making up just 10 per cent of the state's labour force. Is the public sector not a good employer?

**The CHAIR:** Mrs McArthur, once again I ask that you ask your questions –

**Bev McARTHUR:** It is totally related to the legislation.

**The CHAIR:** in line with the Bill we are inquiring into.

**Sonja TERPSTRA:** Chair, I do not know that that is related –

**Bev McARTHUR:** Ms Terpstra, stop running a protection racket for the government.

**The CHAIR:** Order! Mrs McArthur!

**Bev McARTHUR:** Witnesses are here to answer our questions.

**The CHAIR:** Mrs McArthur, you have 30 seconds left. You can ask your question if it is in line with the Bill that we are inquiring into.

**Bev McARTHUR:** Is the public sector employer the best employer for the workers given the increase in mental health claims?

**The CHAIR:** I do not think that relates – I think that is out of order. We will move onto Mr Ettershank.

**David ETTERS HANK:** Thank you, Chair. Thank you for your presentation today. It has been really informative. Mr Hilakari, you referred to a level of consensus, I think, between the union movement and employers with regard to changes that could be made to this Bill. I am wondering if you could sort of provide the committee with what you see as the priorities that there is agreement on?

**Luke HILAKARI:** I think the guts of the agreement between sort of the union movement and employers is really that prevention space. Return to Work Victoria could be a great thing. It could be a space where workers can get fast assistance; they get fast referrals; maybe there is a workforce that is employed and stands behind it so workers do not have to sort of hunt for it. So there is some agreement around that. I think employers would also understand the importance of psych regs. I think that would have a big difference, especially when we are thinking about departments, and Karen might want to comment on that. I think as the two biggest stakeholders in this scheme – being the workers and the people who are employers and paying the premiums – I think we would want to pause and have a look at the whole of the system. So when it comes to everything from

enforcement and filling out forms at doctors, the whole lot, I think we want to have a rethink. If we can do this properly – it will not be a quick financial fix for the government, it will not be a sugar hit, but it will be a long-term solution to making sure that workers do not get injured in the first place, which we are totally aligned with employers on.

**David ETTERS SHANK:** Thank you. I think we share your frustration in terms of trying to get a straight answer to the question of how many people are going to get cut off the scheme. We asked a number of questions, and it was unclear whether that was cabinet in confidence or whether it was actually that they do not know. Assuming there will nevertheless be a lot of people who will be cut off as a result of these changes, could you perhaps elaborate on what you see is there for support for those workers who have hit the 130 weeks and, for mental health reasons, are cut off?

**Luke HILAKARI:** I think those workers are in a lot of trouble. After 2½ years of trying to get support and trying to get back to work, you have not managed to do it. So someone has given you a whole-person impairment test, whether it is a medical professional or whether it is an insurance agent in their 20s. They have done that job. You have been removed from the scheme. At that point if you have significant financial obligations, I do not know how you meet any of them, because with Centrelink you have got to hit 100 points a month: that is five points for a job application; that is 20 job applications a month. A bunch of these people are not fit to work, so they will not be able to achieve that. They will not get a \$375 payment a week. That is not enough to pay a mortgage anyway. So at that point people are going to dip into their super. If they have an insurance product that sits behind them, well, good luck to them, but most workers do not have that type of insurance so their super will be eaten up. At that point if they did lose their house – the financial pressure that puts onto a family will see families broken, but we know this.

We have seen people that are currently getting rejected from the scheme who have taken more harsh measures. Karen could talk about two workers who committed suicide by being rejected at this point. Well, put this type of burden on a population of we do not know how many. People will be homeless. They will be lining up in charities. We are going to be relying more on child protection. We are going to have lower education outcomes from children when they do not have a house – like, this could be a nightmare for people. This will be a nightmare for people. But the fact that we do not know how many people I think is a huge problem, because there must be a financial calculation that has been made on this, right?

**David ETTERS SHANK:** Absolutely.

**The CHAIR:** Just one more quick one, Mr Ettershank.

**David ETTERS SHANK:** Okay. In terms of your discussions with government, have they put up anything at all that would indicate that they recognise this problem of what is going to happen to workers who have hit the 130-week mark?

**Luke HILAKARI:** Nothing that will satisfy those workers. We have suggested that there be a number of amendments. Those amendments have not been looked at, and frankly, you know, we would rather the Bill be rejected, but we are unsure about what the political parties are going to do. You know, if a group of crossbenchers or a group of the coalition chooses to pass the Bill like this, I think we would rather try to make this Bill better than what it currently is. But ideally the Bill would be withdrawn. Employers and unions would spend some time working through it and come back to you all with a solution that is a long-term solution. This sugar hit will help the budget for a moment in time, until these workers start presenting, and then you are going to have financial costs all over the place.

**David ETTERS SHANK:** Thank you.

**The CHAIR:** Thanks, Mr Ettershank. Mr Berger.

**John BERGER:** Thank you, Chair. And just in the interests of transparency, I know all of the witnesses, and I equally have three immediate family in the nursing profession – so I understand the issues that are there. Prevention has been a big focus of things in my previous life and all of the people now presenting with mental health challenges. It was spoken about this morning – about some of the workplace conflicts that are now arising that are causing the mental health issues. Are any of them more prevalent than others, and how do you see a system that might work through those issues?

**Karen BATT:** Thanks for the question, John. The issue for us is certainly in the space of excessive workloads, internal work conflict and some toxic workplace cultures. The current budget settings are a problem in terms of reducing the numbers of staff to deal with the growing demands in Victoria for a number of the services that we are delivering. We have got a large number of vacancies in jobs like child protection, for example – cannot fill them – and yet the notifications of child abuse and child neglect were 188,000 last year, but we still have 600 vacancies in that program alone. So we have a number of issues that are starting to hit the wall. Denying those workers a right to claim compensation because their issue is stemming from excessive workloads, toxic culture, unreasonable management demands associated with workloads, creates a problem for them, as if – I think as my colleague from the nurses said – their injuries are second class to physical injuries. And yet the impact is as significant for them as an individual as someone breaking a leg.

**John BERGER:** That is all.

**The CHAIR:** Thanks, Mr Berger. Thank you so much for keeping in time. Mr Mulholland.

**Evan MULHOLLAND:** Thank you. Ms Batt, in March 2023 you said this Bill:

... will go down in political history as the dumbest fight you'd ever want to pick.

You also said that:

I have no problem sitting back in my corner and brightening this spotlight on the Andrews government's exploitative practices as an employer ...

What are the examples of exploitative practices you foresee as a result of this Bill possibly passing?

**Karen BATT:** As a result of this Bill?

**Evan MULHOLLAND:** Yes.

**Karen BATT:** Are you sure those comments were not in relation to the state budget?

**Evan MULHOLLAND:** No, the scheme.

**Karen BATT:** Okay. The exploitative practices we see are the growing demands of government departments to require a reduction in staff to continue to deliver services at a level that the community demands. Our population has grown. The demands on the services we deliver have grown, and yet we have not properly resourced a number of those program areas. That is a problem for the delivery of services, and we are talking about people that deliver those services, not some esoteric external press-a-button thing. These are people one-on-one dealing with the community, and as Luke has said, they might be in public housing, they might be in community corrections – in the corrections system itself – the courts. These are all public servants, and the pressures on them are excessive, and it has been exacerbated probably since the changes that we have had to confront since COVID.

**Evan MULHOLLAND:** And has the number of your members on WorkCover for mental health injuries increased or decreased over the past three years?

**Karen BATT:** I might pass to my WorkCover officer, if that is okay. Geoff?

**Geoff LEWIN:** There has been a slight increase, and that slight increase has been reflected right across all industries. It has gone up about 2 per cent, I think, in total.

**The CHAIR:** One more quick question.

**Evan MULHOLLAND:** No worries. Minister Pearson – this is for Mr Hilakari – said to Parliament that 'We started consulting with unions in February of this year.' When were you advised of the specific content of the Bill, or did you see that in the Bill itself when it was tabled?

**Luke HILAKARI:** Minister Pearson was right. We were engaged in conversation probably in February. We had a series of meetings and saw bits and pieces of the legislation as it was natted out. I think there is a difference between consultation and participating in the creation of something and having an impact on that. I

think employers and us would have probably a similar view that we have had, probably, little impact on how that Bill looks or was shaped. I think it would look very different, really, if we had a pen.

**Evan MULHOLLAND:** Thank you.

**The CHAIR:** Thanks, Mr Mulholland. Ms Copsey.

**Katherine COPSEY:** Thank you. There was some discussion from the minister around ‘workers duties that are usually or typically traumatic and the prevalence of mental injury in relation to those duties’. I think the minister has said that where injuries are caused by work-related stress or burnout as a result of traumatic events experienced by a worker, they will remain compensable. By talking about ‘events’, or event singular, what is your understanding of the changes around that definition that the Bill presents?

**Karen BATT:** I will let Geoff answer technical questions.

**Katherine COPSEY:** And what is that going to mean for workers in those industries, I am interested in.

**Geoff LEWIN:** Well, I think what it means is that in the legislation there is that section 39(2A), the new section, it is plural – it is ‘traumatic events’. So effectively if you can get past the definition, the new definition of ‘mental injury’ in section 3 – that is a problem in itself – but if you actually get past that, you have got to experience traumatic events that would reasonably be expected to occur in the course of your employment. Now it is not one event, so I do not believe if there is a singular traumatic event – if you see an accident – that you would fit into that category, and I would suspect the agents would reject the claim and that will lead to disputes through the process, effectively. It is a little bit unclear, but I think it only applies to people who have traumatic events and experience those on an ongoing basis. They would get their claim accepted if they get past the new definition of ‘mental injury’, which is very harsh. You have got to have a DSM-5 rating, it has got to be significant and effectively it has got to cause significant behavioural, cognitive and psychological dysfunction. So that is a pretty hard test. There is minor; then you get to middle range and then maximum. And that is going to cut a lot of people out that think, ‘I’m in emergency services. I’m facing traumatic events all the time. My claim will get up.’ It may not. It may indeed be rejected.

**Katherine COPSEY:** Yes. You spoke then about emergency services. Are there other categories of worker that you consider are likely to be more impacted by this change in the test?

**Geoff LEWIN:** I think it is all police, emergency services workers, ambos, prison officers – and effectively I think the intent was to try and include those and have different classes of employees, but it will not be seen that way. The definition of mental injury creates major problems for a lot of workers getting past that part of the – that will cut out a significant number of people claiming. It will knock them out in the first step, so you will not get to 39(2A) or 40(1A) of the Act.

I think it will make solicitors a lot of money over the next couple of years if it is introduced the way it is. I do not think it will cost less for government, I think it is going to cost far more.

**The CHAIR:** Thanks, Ms Copsey. I think Ms Copsey probably has more questions. Are you happy to receive questions on notice?

**Rachel HALSE:** Can I just add to that that trauma is very individualised, and one person’s experience of trauma might not be another’s. We see that in our members all the time. They experience the same event in the workplace, but because of someone’s lived experience it may impact them more. So we do have concerns around that language as well.

**Katherine COPSEY:** Great. Thank you.

**The CHAIR:** Thanks, Ms Copsey. There are further questions on notice.

**Katherine COPSEY:** Yes, all good.

**The CHAIR:** Thank you. Mr McIntosh.

**Tom McINTOSH:** Thank you all for coming. I did want to go through the history in this state and other states, because I do not think any other organisation has the experience in advocacy and the huge history that Trades Hall has. So thanks for coming and talking. You did talk about premiums on hold, and you talked about other governments, so could you perhaps give us some context, the Australian context of other states – the history? I will not ask another question. I will leave it at that – the history and where we currently are.

**Luke HILAKARI:** Yes. You would say at this stage Victoria is probably one of the best states. Other states have caps in place. So in Queensland and New South Wales if you hit sort of five years you will be then removed from the scheme unless there are some other circumstances. We are a bit similar to the ACT scheme; we are better than South Australia, probably not by a small margin. Tassie has a whole-person impairment test that is scaled up and down. But you know, despite there being problems with the scheme and things that we can reform to make WorkSafe and workers comp better, if you were going to get injured anywhere, you would get injured here, because this scheme is designed to make sure that we give you as much support as you need to get you back to work. And that is the beauty of it – like, when you have all as a Parliament made reforms to get to this point, I do not know why you would want to reverse any of that. This is supposed to be a safety net. It means that workers did not end up in poverty and that we did not end up having to sue individual employers, but that was the beauty of this insurance scheme. But yes, this unravels that.

**Tom McINTOSH:** Right. Thank you, Chair.

**The CHAIR:** Great. Thanks, Mr McIntosh. Mr Davis.

**David DAVIS:** Thank you for providing evidence, all of you. I wanted to start with Ms Batt. You said in March 2023 the government had known of these problems since 2021 and arguably actually knew at least when the Finity report was there in 2020. Why did they fail to act?

**Karen BATT:** That is a question for the government, Mr Davis. I do not know.

**David DAVIS:** You have no insight into that?

**Karen BATT:** Well, they did not talk to me about the Bill, so they are not going to talk to me about the financial strategies.

**David DAVIS:** All right. And Mr Hilakari, you said that there are clever ways to intervene early to get injured workers back to work. What are the early intervention methods that you could –

**Luke HILAKARI:** Yes. So this is the bit we are most excited about. There is a nice –

**David DAVIS:** It is not in the Bill, though.

**Luke HILAKARI:** It is not in the Bill which is, you know –

**David DAVIS:** It is just a thing on a website. Perhaps I should not have asked the question.

**Luke HILAKARI:** Yes. It is a couple of pages on a website that say we should do a triage service. I think the triage service is a pretty great idea. Like going to a hospital – you know, you call someone, you can say ‘I’ve got this issue at work.’ It might be stress, it might be overwork – ‘Maybe I can counsel you on that.’ Maybe they have a counselling conversation about how you have that chat with your boss so it does not get out of control. Then maybe you have something far more serious, in which case we should be able to simply refer you to a workforce that sits behind us. Maybe it is not, you know, all psychologists and psychiatrists; maybe it is an alternative workforce. So I think there is some smart stuff that employers and us are aligned on. We do think there needs to be more training for employers. I think unions and bosses are aligned on that too. The psychosocial regs I think are going to be super important, especially for departments to have some accountability and to put real plans in place where they see risk in the workplace and hierarchy of controls. I think that is an important bit. There is heaps that can be done, but this Bill does not do any of that. The real goal for us is prevention. Both bosses and unions are aligned on it. The better we can do that, the better it will be for workers and employers.

**David DAVIS:** And on the return to work, is there somewhere in Australia or perhaps overseas that you can point to that is the best model of this return to work?

**Luke HILAKARI:** I do not have a model that I can think of that I think would be best practice, but I am happy to come back to you.

**David DAVIS:** Good.

**The CHAIR:** Thanks, Mr Davis. Mrs Broad.

**Gaelle BROAD:** Thank you very much for appearing today. Luke, you referred to pausing this Bill, and I guess the government has been very strong on how any pause will see a significant rise in premiums in the future. Can you just respond to that?

**Luke HILAKARI:** Yes. I think they have put that out there to put pressure on employers to put pressure on the Liberal Party to pass this Bill. My personal view is, I think there will already be a premium rise that government will consider, regardless of if the Bill was passed in the last sitting of Parliament this year, or if it is going to be passed somewhere in the middle of next. That was politics, in my view.

**Gaelle BROAD:** Right. Thank you. Now, claims are soaring. I guess we have heard about mental health going up by 16 per cent, and that is 50 per cent of the cost of the actual scheme. Would you accept any roll back of mental health support?

**Luke HILAKARI:** I am not sure that I would accept a roll back. What I would think about is how we can make that support different so people can get support faster. That is what I think we should be thinking about. Like, what is that mental health workforce that sits behind you? If you cannot get into a psychologist or a psychiatrist, then how do we get you faster support? That should be the focus. If we did that right, then people would get back to work faster and they would get the treatment they need. It is better for families and better for bosses. So that is where our heads are at.

**Gaelle BROAD:** Now, the Bill talks about a review in 2027, which is after, conveniently, the next state election. I guess it is a significant issue. If this Bill does pass, would you like to see it reviewed earlier than 2027?

**Luke HILAKARI:** Yes. We would like it to be constantly reviewed, I would say. I think you will find workers who do not get on the scheme in the first place through stress or overwork – which is just terrible because they are going to start presenting with worse injuries, so we would miss that early intervention – and then those who have been thrown off the scheme at 130 weeks. You know, Victorians should know what their lives have become since that moment, not wait many years to find out about that disaster and then try to fix it up for them.

**The CHAIR:** Thanks, Mrs Broad. We will finish with Mr Galea.

**Michael GALEA:** Thanks, Chair. Thank you for all your evidence today. I also want to acknowledge that unions are the first and last line often for people, especially when they go through a traumatic workplace injury, and acknowledge the work that your respective unions and you, Luke, through the union movement, do for workers. We have spoken a bit about Return to Work Victoria and ideas around early intervention and prevention. For workers who are in that situation, going through the WorkCover process, what specific things should this new agency be doing to reduce the bureaucratic burden and to reduce the additional stress that can sometimes be placed on workers who are going through legitimate WorkCover claims?

**Luke HILAKARI:** Geoff, you might have a couple to start with and then I might finish off.

**Geoff LEWIN:** Yes. All right. I think what is needed if Return to Work Victoria is set up is that they have got to look at mental injury individually – each person has an individual story, and effectively it needs to be dealt with on that basis. You cannot have a process driven through a thing where they go, ‘A, B and C.’ I think it has got to be looked at on an individual basis. The services have got to commence immediately. With a claim, the provisional payment scheme does not work, and Luke has indicated the reasons. There needs to be a process whereby people can get in to get the services they need from day one. Effectively, there need to be people looking at how they can help people actually get back to work and overcome the issues that stop them from returning from day one, not after 28 days or 38 days when the claim is determined. That is probably a start.

**Luke HILAKARI:** I would add to that that there should be a specialty about this that is more substantial in WorkSafe for dealing with people with mental health claims. When it comes to provisional payments, it is much harder to come forward and not have a wage that sits behind you for those 13 weeks. Those workers should have a wage, because they are coming forward with a stress claim and then they have no longer got an income on top of it. That compounds the stress on a level that is unbelievable. We should be looking at everything from the doctor's forms, when they write out that they have got an incapacity to work, we would benefit from some more details about what that person actually could do. Right from the beginning we should be getting that right and then be thinking about, 'Well, if they have a capacity to work, maybe there is some better thinking about how we place people into jobs that they might want to do with the capacity that they have.' And maybe there should be a better incentive that we give employers to take them. If we have to pay anyway, employers picking up these people for free might be an idea that we can come at, where they can get work experience and then keep moving on, but not in the case in which that would impact their recovery.

**Michael GALEA:** Thank you. You actually touched perfectly on my next question, which was about capacity, so I will leave it there. Thank you.

**The CHAIR:** Beautiful. Thanks, Mr Galea. That is all we have time for today. Thank you very much, witnesses, for coming along, especially at such short notice and before the holidays. We really value your contribution today.

**Witnesses withdrew.**