COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

Members present:

Mr PS Russo MP (Acting Chair)
Mr JP Kelly MP
Ms AM Leahy MP
Mr MF McArdle MP
Mr MJ McEachan MP

Staff present:

Mr K Holden (Research Director)
Ms L Manderson (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO A SUITABLE MODEL FOR THE IMPLEMENTATION OF THE NATIONAL INJURY INSURANCE SCHEME

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 5 FEBRUARY 2015

Brisbane

FRIDAY, 5 FEBRUARY 2016

Committee met at 1.32 pm

ACTING CHAIR: I declare open the Communities, Disability Services and Domestic and Family Violence Prevention Committee's public hearing in relation to its inquiry into a suitable mode for the implementation of the National Injury Insurance Scheme in Queensland. I am Peter Russo MP, acting committee chair and member for Sunnybank. With me today are: Mr Mark McArdle MP, deputy chair and member for Caloundra; Ms Ann Leahy MP, member for Warrego; Mr Matt McEachan MP, member for Redlands; and Mr Joe Kelly MP, member for Greenslopes.

We will today hear from representatives from the Lifetime Support Authority in South Australia, the Lifetime Care and Support Authority in New South Wales, the Insurance Commission of Western Australia and the Transport Accident Commission in Victoria. We are also fortunate to have with us today participants from the various schemes who can provide the committee with an insight into their experiences and views about the schemes. After that evidence, officers from the Queensland Treasury and Motor Accident Insurance Commission will be provided the opportunity to respond to any issues raised by witnesses and to answer questions from the committee.

The inquiry was referred to the committee on 11 November 2015 and the committee is required to report to the parliament by 7 March 2016. Submissions accepted by the committee are published on the committee's inquiry web page. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. Mobile phones or other electronic devices should now be turned off or switched to silent.

Hansard is making a transcript of the proceedings. The committee intends to publish the transcript of today's proceedings unless there is good reason not to. Those here today should note that these proceedings are being broadcast live on the parliament's website and the media might also be present so it is possible that you might be filmed or photographed. I ask witnesses to please identify themselves when they first speak and to speak clearly and at a reasonable pace.

I welcome Ms Lois Boswell, chief executive of the Lifetime Support Authority in South Australia. Ms Boswell is accompanied via teleconference by Mr John Walsh AM, the peer review actuary for the scheme and also the chair of the NIIS Advisory Group and Associate Commissioner, Productivity Commission Inquiry into Disability Care and Support; and Ms Tabatha Cox, a participant in the scheme. Ms Boswell, I invite you to make an opening statement of approximately 20 minutes. Please feel free to defer to Mr Walsh and Ms Cox during your opening statement.

BOSWELL, Ms Lois, Chief Executive, Lifetime Support Authority, South Australia

WALSH, Mr John AM, Peer Review Actuary, Lifetime Support Authority, South Australia and Associate Commissioner, Productivity Commission Inquiry into Disability Care and Support

COX, Ms Tabatha, Scheme participant

Ms Boswell: Thank you, Chair, my name is Lois Boswell. I have some slide packs here for the committee if that is of help. My plan is to talk to the slide pack fairly briefly at a very high level and then to ask Ms Tabatha Cox who is on the line in Adelaide at the moment and sitting with our manager of service planning in our office to speak a little bit about her experience in the scheme and then to ask Mr John Walsh to speak to a letter that I will provide to the committee about the actuarial considerations that the committee might like to take into account.

If I may, members, in the slide pack I am over onto the next page and I am going to talk a little bit about the background of the scheme in the first instance. In South Australia what occurred was that we undertook two reforms at the same time. The reforms, that were led by the Department of Treasury and Finance where I worked at the time advising the Treasurer at the time who took these

changes through the parliament, were changes to the Civil Liability Act which changed the damages arrangements in South Australia for motor vehicle accidents. In fact, one of the things we did was we picked up the Queensland ISV scales—injury severity scales—and they are now used as tables in South Australia and there were also some thresholds put upon damages for minor injuries in motor vehicles. At the time South Australia had a higher claims rate for motor vehicle accidents—significantly higher than Queensland. I understand it was more than double. Some of these changes were able to bring down the compulsory third-party premium which allowed South Australia to then also have a levy for the Lifetime Support Scheme which is the no-fault scheme which then started on 1 July 2014.

Over on the next page it talks about the arrangements in the scheme. The legislative framework is the Motor Vehicle Accidents (Lifetime Support Scheme) Act. It creates the Lifetime Support Authority which is an independent statutory authority, a public financial corporation, which is overseen by a board. The rules of the delegated legislation, the Lifetime Support Scheme rules, which are made by the Governor of South Australia on the recommendation of the authority, essentially spell out the conditions of benefits for the scheme. So it talks about eligibility as well as the outcomes. They form, in insurance terms, the policy. The Lifetime Support Scheme principles are that it be a financially responsible scheme that is sustainable into the future and that it operates from a person centred approach where the person with the disability is at the centre of how the organisation operates and how services are delivered.

I am over on the next page now. Participants in the scheme are the participants that are spelt out in the National Injury Insurance Scheme arrangements, the minimum benchmarks. Agreement to the minimum benchmarks was part of the NDIS agreement between our state and the Commonwealth. The participants are basically any form of spinal cord injury, moderate to severe acquired brain injuries, amputations that are multiple amputations or complete amputation of one limb—very high level amputations in the leg or the equivalent of those arrangements; so it may be that it is severe damage to one leg and a lower amputation falls into that—permanent blindness and severe burns across the body. The eligibility under the legislation requires that people have an accident within the boundaries of the state of South Australia. It does not matter where the vehicles are registered, and that is the case as I understand it for most of the other schemes now with the exception of Victoria which has a slightly different—a broader—arrangement. So if it occurs within the boundaries of the state, it involves a motor vehicle—and obviously the definition of motor vehicle is mainly the same as a motor vehicle on a road: motor vehicle for the purpose of CTP—and the injury needs to specify one of those types that I mentioned before. The exclusions to eligibility: if it satisfies all of that however it is also eligible for workers compensation it does not fall into this scheme because it is already covered by a no-fault scheme, or if the injuries are suffered in an official road race. That does not mean drag racing, that actually means a declared race such as our Clipsal 500. The benefits that the scheme pays are those that are specified in the minimum benchmarks I believe and it is essentially that there will be necessary and reasonable treatment, care and support on an as-needs basis. The list is there for your perusal later.

In terms of the interaction between this scheme and the compulsory third-party scheme, catastrophic injuries only at this stage fall into the Lifetime Support Scheme but, as I said, that definition is contained within the rules of the scheme and is open to review over time. The Lifetime Support Scheme pays treatment, care and support costs only, it does not pay economic losses or pain and suffering—non-economic loss—damages. If somebody has a fault based claim they can claim those other damages through the compulsory third-party scheme whilst also being a member of the Lifetime Support Scheme.

Our scheme was modelled by actuaries from PwC at the time and the South Australian government had used that modelling in developing this scheme, as did the Lifetime Support Authority Board when it was set up. That model has been guiding the scheme and I wanted to take you through how the scheme has been tracking against that model because it has been a very interesting experience to date. It was modelled as a break-even scheme. This is the longest tail form of insurance you can have because it pays for life and on a pay-as-needs basis. Annuity style payments is the closest other form of payments. It is also attendant care which is personal care in the home. Different names are used in different places, but personal care or attendant care is approximately 70 per cent of the cost of the model because that is the service that people with these kinds of injuries are likely to need most intensively for the rest of their lives. The average modelled cost from the start was $2.5 million per participant. That obviously goes much higher for very high level spinal cord injuries or extreme brain injuries and much lower for people with moderate brain injuries or with amputations, potentially.

The revenue is raised in South Australia through a levy, and that levy is on a basis of relativities across different classes of vehicles. The average levy is $102 at the moment. It is important to know that the CTP premium was reduced for moving the catastrophic injuries into the Lifetime Support Scheme. So that $100 was not on top of the CTP premium; there was an adjustment between the two. In the first instance, South Australia reduced its CTP premium by over $100 and that was part of the tort law reforms. When the Lifetime Support Scheme commenced, the premium went up about $65, but it was still lower than at the commencement. Approximately $140 million is raised and South Australia has a duty on that because there was also a duty on CTP and it was a transfer. The amount collected in each year is modelled in a way to cover the costs of the lifetime support for the group that are injured that year.

In terms of what has been happening, in South Australia the model was for 45 people being injured on South Australian roads, which is about one every 8.1 days. At the moment we have 67 participants in the scheme and five notifications, which remarkably is about one every 8.1 days. In the life of the scheme that has not varied very much. It has gone from 7.8 to 8.8 or something like that, but our model is almost spot on. The actuarial model also included a division of injury types: spinal cord injury being a bit over 20 per cent, brain injury being about three-quarters and the rest being less than five per cent. However, our current experience is that we have a few more amputations than that—and we are working with small numbers here—and some burns that occurred in motor vehicle accidents in our recent bushfires. With the exception of those things, that has also tracked incredibly close to the model.

Over the following page, people in our scheme who previously would have received nothing under the compulsory third-party scheme make up about 51 per cent of the scheme. The other 49 per cent—obviously many of those would have had discounted damages payments for contributory negligence. The age profile of participants is one of the things that is different to our model. It is actually older than the model was originally. I understand that New South Wales is experiencing an increase in age of participants over time, over the 10 years. There are many explanations for that, one of which may be that there are significant changes going on in the pattern of youth driving at the moment—where people drive. Our participants are older than expected. That, of course, has a positive impact on liabilities.

Over the next page, essentially we have levers to control our net position. Some of those levers are obviously very sensitive and are not easily operated. But the eligibility criteria and the entitlement, which is within the rules, are both able to be varied where need be under the legislation. The levy amount is set by an actuarial recommendation. The board of the authority makes a recommendation to the minister about how much money it needs to operate the scheme and they must do that on the advice of an independent actuary. The minister then determines what the levy regime will be for South Australia and may or may not take that advice.

In terms of levy sustainability, the levy projections models have always included health and superimposed inflation. It is modelled in a way that it is expected that whatever has been collected will last for the lifetime of participants. We are not an insurance scheme; so therefore we managed to attain an ATO ruling to not have GST. By not being an insurance scheme, we can also be a little bit more flexible in our discount rates. Our modelled levy is about $168 million, our current liabilities are about $144 million and we have a positive funding position of about $24 million. That is on a break-even net central estimate. That gives us a probability of sufficiency of about 75 per cent at this point in time.

One of the things that we did when we set up the scheme was talk a lot to the other schemes to learn what they had learnt and use that. We set up very much a case management model rather than a claims management model. We have done so very deliberately and we believe we are already seeing a lot of evidence that that has been incredibly successful. The allied health professionals that service our clients tell us—and this is anecdotal because bear in mind we are very new—that they believe that our clients suffer significantly less secondary psych injuries because they do not feel as though they are regularly being doubted. So they are not regularly being examined or assessed to see whether or not they have an injury. They are instead receiving rehabilitation and support. They are also not in that doctor push-pull that is involved in civil liability law. Our service planners are all allied health professionals. Their job is to get therapeutic services in as quickly as possible, and the aim is on independence and rehabilitation from day one. We are seeing some very good gains as opposed to what is a frequent common law story, which is that people have to prove for some years not only who was at fault but that they have an ongoing severe injury. We had very strong support from people who had been previously injured, and they came in two groups in motor vehicle accidents: those who had been in single-vehicle accidents, which are a big part of our cohort because they are country road drivers and they had got nothing under the old schemes, and also those who had got

lump sums under the old scheme when they were younger and those lump sums no longer exist, and there is fairly good evidence that lump sums disappear over time. People are not necessarily trained to manage large amounts of money and there were different pressures on people who have large amounts of money.

We believe that investing in early intervention dramatically reduces liabilities. The way this scheme works is quite different from a rationed disability scheme where you are dividing the pie amongst the number of people. Because each person in the scheme should be fully funded for their life, we can make decisions that increase independence very early in the piece. So we can decide to invest in high technology that increases independence and lowers the rates of attendant care. By doing so we pay less in the long run because wages over the lifetime of a person are more expensive than technology.

To finish, there are two clear case studies and then I will ask Tabatha to say something. These are a bit of a de-identified amalgam of some of our actual cases. I will put to you the case of an accident that had two parties involved but the person who is the quadriplegic in this circumstance was primarily, from all of the accident reports, at fault—there may, however, have been some minor fault on the part of the other driver. In this case, this quadriplegic needs 24-hour support. We started planning home modifications from when that person was in intensive care and we now have achieved having that person at home. In a different system, in a system that would pay out a lump sum, if that person was able to prove any form of fault on the part of the other party then I put it to people that what would occur is that there would be much more emphasis on a liability fight because we are talking about millions of dollars. Under the old scheme—

ACTING CHAIR: Excuse me, I do not mean to cut you off. I think the committee would like to hear from Mr Walsh and Ms Cox if they wish to add anything. I am conscious of time. Mr Walsh, would you like to make a comment or add anything to what has already been said?

Mr Walsh: Thank you. I will briefly go through the letter that I think has been provided to the committee.

Ms Boswell: Can I table that letter, please?

ACTING CHAIR: Mr Walsh, just before we go any further, Ms Boswell, could I ask you to seek leave of the committee to table the slide presentation, for want of a better description, and the letter dated 2 February?

Ms Boswell: I seek the committee's leave to table those two documents, please.

ACTING CHAIR: Leave is granted. Sorry to interrupt, Mr Walsh, if you would like to continue.

Mr Walsh: The context of my advice has been a request from Ms Boswell that I would make some comments on the proposals put forward by the Insurance Commission of Western Australian on their proposed solution to satisfying the requirements of the NDIS agreements. My understanding of those proposals is that any injured motorist who can prove the fault, fully or partly, of another person is entitled to full lifetime support costs and has the option of taking those in a lump sum. People who are fully at fault and cannot prove the fault of any other person would be managed by a new system within the ICWA, and the estimated additional cost of that scheme is about $100. The benefits of that proposal are that it is simpler for the insurer; it would be attractive to motorists—we know from experience that injured people prefer a lump sum, notwithstanding that it sometimes has poor outcomes—it would be popular for intermediaries in the litigation process; and there is perceived justice in attributing fault to someone else, notwithstanding that it is actually the insurer who pays for that money. In my view, these apparent benefits are heavily outweighed by a lot of disadvantages under three major headings: one is the relative benefits of a fault versus no fault approach; the second one is the overall total cost to the scheme; and the third is the actual adequacy of the lump sum provided. I do not want to go into the details. It is a series of arguments that have been extensively discussed over the last 30 years. In my view, the best summary appears in the Productivity Commission report of 2011 into Disability Care and Support. I have provided the summary of that in an attachment to my letter.

The main problem is the incentive to seek a lump sum and the need to do that through a litigation process. In my view, that is exacerbated to a very large extent in the WA proposals where a large lump sum for future care and support is offered to anyone who can prove any fault of another person. I believe that will cause a large behavioural impact to try to establish liability. That will both exacerbate and increase the litigation process, which it is found does damage to the injured person. It will also increase the cost of the scheme, both by increasing the number of people going through the litigation, but also by increasing the cost of the underlying scheme in terms of the number of people who are able to establish fault and also the full cost of future care and support.

Moving on to the overall cost of the scheme—this is now page 3 of my letter, and I will not go through the detail there either—the estimated additional cost of the Western Australian proposals is about $100 per vehicle. This compares to the estimated additional cost of the model adopted in New South Wales and South Australia, which is far lower than that. In New South Wales the estimated additional cost is somewhere around $20. The total cost of the New South Wales scheme is around $80, which is less than the proposed additional cost of the Western Australian scheme. In terms of total aggregate cost to the system, I believe the New South Wales and South Australian models offer a better solution to motorists. Thirdly, at the bottom of page 4 of my letter, the cost outcome of participants talks to the adequacy of the lump sum to participants. There is well researched evidence that the lump sum, by definition, must be either too high or too low and most likely will prove to be too low by virtue of a number of features not least of which is the statutory discount rate which seeks to allow within the statutory legislation for the discount applied to future care and support in settling the lump sum.

I believe that discount rate is five per cent per annum in Queensland at the moment, and on a large settlement that would have the impact of at least halving the amount available to the injured person. If that person then seeks to invest that money to achieve the recommended care and support, their money would run out before the intended lifetime on average. The injured person would then have no recourse but to fall back on the state system which, under the terms of the NDIS agreement, I believe would fall to the responsibility of the state. I think that underestimates the impact, because the money would be further diminished by gifts to relatives, the purchase of property—basically, use of the money other than to purchase support. So I think there is strong evidence that the model adopted in New South Wales and South Australia will prove a much more successful model both in terms of total cost, adequacy of a lump sum to people and also the health outcomes of injured persons. I am happy to take questions.

ACTING CHAIR: Ms Cox, would you like to make an opening statement before we go into questions?

Ms Cox: Yes. I was riding my motorcycle when a car turned right into my path, and she failed to give way and hit me. I was really lucky that I was wearing a brand new helmet that I had just purchased that week; however, I still sustained a severe brain injury, cranial nerve palsy and other fractures. This resulted in double vision, difficulty with my speech, memory and balance problems, fatigue and severe headaches with depression. Before the accident I was a personal trainer, a group fitness instructor and an international champion body-builder living quite happily with my fiancé and my daughter. After the accident I spent some time in hospital in a coma and then three weeks in the rehabilitation centre. I then commenced outpatient therapy which I continue to participate in today. I am now back at work as a personal trainer, however, I do need supervision. That means that another trainer always has to be at work, which I have never had to have before. Due fatigue and headaches I can only work three short periods of work a week.

Prior to LSA becoming involved my brain was all messed up and fuzzy, and I was just so overwhelmed that I did not feel like I was able to arrange any appointments for my health care, rehab or anything. Of course this added a lot of extra pressure on my family. Once LSA got involved, they took the pressure away from me and away from my family so that I could fully focus on my recovery and healing my body and my brain. I also have a CTP claim which I find a very stressful process in that it focuses on my difficulties rather than how I can get better. This constantly reminds me of the problems that I now have. If it were not for LSA I would have to deal with the insurer, all my rehabilitation and all my recovery needs by myself, which would have a huge impact on my future. For example, my eye surgery needs to be looked at again, and the eye surgeon is really hard to get hold of. But my LSA lady got hold of him so quickly, and I do not know how she did it. It was just amazing. I myself would not be able to get hold of him so quickly, so that was amazing.

As I said, my experience with LSA has been so positive and I have felt very supported throughout some very trying times. They have come to appointments with me, as my partner is a fly-in fly-out worker at Roxby Downs. Having the LSA there means that I can get all of the support and important information to me because I cannot remember what doctors and specialists say to me. If my family are not there and my partner and daughter are at work, I am on my own and I cannot remember what they say, or if I have to make a follow-up appointment or what I have to do with medication. But the LSA support people are there for me pretty much holding my hand, taking down notes, saying what I need to say, telling the doctor or specialist what I need them to say for me. It is just amazing. Thank you for listening.

ACTING CHAIR: Ms Cox, my first question is to you. You have just briefly touched on your experience with the scheme and you have touched on things that have gone well for you. Could I ask you if there is anything that you think the scheme could do better or could have done better for you?

Ms Cox: At this point I do not feel that there is anything they could do better than they are doing at the moment. As I said, they come to my appointments with me, they take notes, they talk for me if need be, and if I need anything, all I do is just get in contact with my support lady, Penny, and she pretty much does everything for me. I have not had anything negative at all from LSA. They have been completely amazing. Due to my eyesight I have not been able to drive, and that has been driving me nuts, so they have organised taxi vouchers for me whenever I need them. They have organised an account at the chemist for me so that if I want to get Panadol I do not have to keep buying it out of my own pocket and chasing them with receipts—I just go to the chemist and get my Panadol whenever I need it because I always get migraine headaches. I just feel really supported, so I have not found anything negative.

Mr McARDLE: Ms Boswell, I think you came to the bottom line, that the increase in the CTP by way of reduction of that and the imposition of the levy for the scheme is an increase of about $65 per vehicle. Is that every vehicle in the state, or are there classes of vehicles that are excluded?

Ms Boswell: That is the average levy for vehicles, but there are different charges for different types of vehicle. Country standard cars are less than that and taxis are more, so the relativity is according to the vehicle type. The CTP scheme in South Australia has 100 and something classes of vehicles; we only have 20 something.

Mr McARDLE: And on each of that class of vehicle is imposed some type of levy?

Ms Boswell: Yes.

Mr McARDLE: It may vary between type of vehicle, location of vehicle or use of vehicle, but there is an increase?

Ms Boswell: Yes, they all receive some type of levy. That levy relativity was based on the CTP relativities at the time because the government had a desire to not have big winners and losers comparatively.

Mr McARDLE: If we accept that it is a $65 average at this point in time, you made mention that there would be an increase at the discretion of the minister. You also know what the indicative costs are going to be of the scheme over the next, say, forward estimates period. What are the indicative increase costs in that levy that you would have to work on to maintain the balance between what you have invested and the potential outlays along the way?

Ms Boswell: Because it is an extremely long tail scheme, there are not large fluctualities over the course of a forward estimates period. We are obviously tracking very closely with our actuaries to work out how we are going against our model. In fact, what we are finding is that the model is quite conservative and we are not in danger of looking at any form of hike in the levy in the near future. Because I have not yet formally briefed the board or the minister I cannot take you through exactly what our current valuation proposal for the next levy is, but we are not looking at any form of superimposed inflation at the moment and I do not see that that is likely to happen because the scheme is tracking better than expected.

Mr McARDLE: That is over the forward estimates over four years?

Ms Boswell: Yes, and potentially longer.

Mr McARDLE: Can you give me a breakdown of the staffing levels in the authority that operates the scheme at this point in time? There must also be a panel of experts engaged across a range of specialties plus also the appeals structure of any determination by the authority to either reject a claim or to reject a portion of a claim.

Ms Boswell: I can tell you that whilst we do have a panel of experts for review under the legislation and they can be paid sessional rates, we have never had a dispute and it does not look likely that we are about to have one in the near future, so there are no costs associated with the review process at the moment.

At the moment the medical professionals all provide us with their reports on our participants free of charge for that original assessment because it is done in the hospitals, and all of our allied health professionals have direct access to the hospitals and we work closely with the specialists. We do obviously pay for reports from allied health professionals, but that is part of the treatment, care and support that you would expect.

In terms of the staffing of our office, we have about 15 FTE at the moment and we have a case ratio of 15 to one allied health professional, which is considered about right for a very serious injury. All of our allied health professionals have experience in very severe injuries and they are occupational therapists, social workers and physiotherapists at the moment. They are mainly part-time workers in fact, and we have three finance staff.

Mr KELLY: You say that of these participants who are listed there nobody has ever been rejected from the scheme?

Ms Boswell: No, there were two applications that were not accepted: one was because he predated the legislation, so it was not possible to accept him; another one was because his brain injury was not at a level that was sufficient, but he was actually quite happy about that.

Mr KELLY: Are there dispute options for those people if they do not agree with the assessment?

Ms Boswell: Yes, there are.

Mr KELLY: But they have not exercised them in this case.

Ms Boswell: No, they did not exercise them and they were given information about them.

Mr KELLY: Mr Walsh, referring to page 5 of the letter that you wrote where you refer to strong evidence in the literature that the process of litigation and medicolegal assessment intrinsic to the common law process produces poor health outcomes to the injured person, I was hoping you could elaborate on that evidence. What is the form of the evidence? Is it one study? Is it a systematic review of several studies? Are the health outcomes poor in the short term or the long term?

Mr Walsh: I think I would refer you mainly to the Productivity Commission, chapters 17 and 18, in that they do an extensive literature review. It is mainly about the outcome of the injured person. I have been involved with a couple studies here in New South Wales where there is fairly strong evidence that faster support and rehabilitation produces better outcomes than the absence of that in the common law process; one was on whiplash associated disorder and the other on back injuries. Professor Mark Harris from Liverpool Hospital did a lot of work on the detrimental effects of common law compensation, so I think there is a body of literature that could be sourced on this topic.

It is mainly about the combination of delays in the process that are intrinsic to the common law litigation process and also the adversarial nature of medico-legal assessments where different doctors basically are the clients of different parties to litigation, which both subjects the injured person to multiple assessments and also assessments that are coming from different angles, so often cases they are contradictory. The other problem with looking at long-term outcomes is that the nature of the common law process means that once the person has their lump sum, they are no longer attached to any scheme, so it is very difficult to find and contact those people to do a long-term study. During the process of litigation, so when they are pre-settlement, people are encouraged by their legal advisers not to participate in such studies.

ACTING CHAIR: Do we have any further questions from the committee, because I am conscious of time? I have two questions for Ms Boswell; Ms Leahy, you go first.

Ms LEAHY: I have one quick question, probably to Ms Boswell. The participants of the Lifetime scheme were able to sue for damages under CTP. I am wondering if there are very many who actually do sue for pain and suffering? Do you have any figures about how many may?

Mr Boswell: The scheme is very new, but I would imagine that those who have a CTP claim, because their injuries are so severe, are in the top end of the scales on pain and suffering. Therefore, if they have lodged a CTP claim, it will take usually three years to get through the system—two to three years—and they will get some pain and suffering. I would imagine anyone who is able to establish fault who is a member of our scheme will get some form of pain and suffering payment.

Ms LEAHY: So the majority?

Ms Boswell: Fifty per cent do not have anyone to sue, so 50 per cent are out automatically. The other 50 per cent will get something and it may well be discounted for contributory negligence.

ACTING CHAIR: Ms Boswell, I have three questions. The first is this: are family members able to be paid to provide care to participants in the scheme?

Ms Boswell: We have a very specific rule that says that we do not pay family members except for in exceptional circumstances. The reason for that is that over the years, I think, disability schemes have learnt that you end up commodifying the person, so you create a relationship that is financial rather than familial. Therefore, we do not do it. However, there are some circumstances in which we

will make exceptions—extreme rural circumstances or cultural needs; those sorts of things. At the moment, we have an aunt who we paid to accompany someone back to India, but she does not care for him on a daily basis.

ACTING CHAIR: My second question is: do regional participants have to travel to, for example, the city of Adelaide to receive care or is the scheme able to provide participants with local services?

Ms Boswell: We try very hard to do that. South Australia is a very much more metropolitan focused population, so access to services can be difficult in terms of where the specialists are. However, we do fund travel for therapists to go out to regional areas. We also will pay the full travel for people to come and stay if we cannot arrange anything else. Our main aim is to provide care in the home. Where that fails because of the access to services, we pay for all the costs associated.

ACTING CHAIR: My third and last question relates to common law claims in South Australia: does the civil system provide for mediation?

Ms Boswell: The civil liability schemes in South Australia are run mainly through the Magistrates Court and there is pre-court settlement discussions in all of that. About 98 per cent of claims settle, but there may be mediators involved. It has not been a big part of the South Australian scheme, because until now it was very much driven as a plaintiff versus defendant scheme. The recent reforms put a cap on costs for lower level claims, so you may find there is more mediation, but I am not an expert on the current scenario.

ACTING CHAIR: Thank you, Mr Walsh, Ms Cox and Ms Boswell for your attendance here today. Safe travels, Ms Boswell.

Ms Boswell: Thank you.

ACTING CHAIR: We will move on to the next participants. I understand that technology requires us to adjourn for a short moment while we connect with the next person.

Proceedings suspended from 2.20 pm to 2.22 pm

FERGUSON, Mr Don, Executive General Manager, Lifetime Care and Support Authority New South Wales

HUME, Mr Stuart, Scheme Participant

LULHAM, Ms Suzanne, General Manager, Service Delivery, Lifetime Care and Support Authority New South Wales

WALSH, Mr John AM, Scheme Actuary, Lifetime Care and Support Authority New South Wales and Associate Commissioner, Productivity Commission Inquiry into Disability Care and Support

ACTING CHAIR: I welcome Mr Don Ferguson, the Executive General Manager of Lifetime Care and Support Authority of New South Wales. Mr Ferguson is accompanied by Mr John Walsh AM, the scheme actuary, Ms Susan Lulham who is the general manager of services delivery and Mr Stewart Hume, a participant in the scheme. Mr Ferguson—and I extend this invitation to the other participants—would you care to make an opening statement? Please note that I may have to interject if the statements go for too long, because we have some small time constraints. However, Mr Ferguson, would you please make an opening statement, if you so wish?

Mr Ferguson: Thank you, Mr Chairman. I will commence. Thank you very much for giving us the opportunity to share the New South Wales experience with your inquiry. The Lifetime Care and Support Scheme commenced in New South Wales in 2006 for children and in 2007 for adults. Now, nearly 10 years on, it is fair to say that there is no upward pressure on costs. The numbers from year to year have remained predictable. The scheme remains solvent. Satisfaction ratings from participants within the scheme remain high and the number of disputes is low. As at 30 June 2015, there are 1,036 people in the scheme with about two-thirds having a brain injury and one-third a spinal cord injury.

Over this time, the scheme has been reviewed five times by the New South Wales Upper House Standing Committee on Law and Justice. It has been an important accountability mechanism and also a valuable way of garnering feedback from a wide range of stakeholders. The early reviews highlighted high levels of satisfaction, but noted concerns from service providers around bureaucracy, which has not been a strong feature of later reviews of the scheme, mostly because Lifetime Care has endeavoured to work closely with the key providers to improve information flow and process efficiency, something that we need to always continue to work on. The most recent review highlighted a range of areas to continue to improve on, such as further rollout of self-directed care models, consulting with stakeholders in relation to our dispute mechanisms and also endorsing the initiatives that were being embarked on by the scheme, including vocational programs.

It is important to recognise that Lifetime Care does more than just manage claims. It also manages a scheme that includes a strong focus on sector capacity building, such as in the area of behaviour management, to better meet the needs of people with a brain injury in rural and remote areas of the state. We have also supported capacity building in the areas of pain management, vocational programs and research into rehabilitation and access to care. We also administer the scheme through providing accreditation and development of the market, with a particular focus on attendant care and case management as two pivotal areas for scheme participants.

The estimated extra cost to motorists of introducing the scheme in New South Wales was about $20 and this remains the case nearly 10 years on. Scale is also something important to consider and the scheme will become more efficient over time, with greater economies of scale. Lifetime Care has a strong focus on personalising services and supporting participants to have a choice and control over their services and in decision making. We have recently introduced the new planning process that entirely focuses on supporting participants to take an active role in goal setting and rehabilitation planning. Other examples include having online attendant care and case management provider lists so individual participants can elect their own provider, based on geography and their own personal wishes and needs. We strive to take a long-term view and consider services as an investment in the future, such as funding education and mental health support. We also recognise the importance of families and have a range of initiatives designed to improve family resilience and support them, particularly during the earlier phases of rehabilitation for the injured person.

In order to make best use of the experience and capability that has been developed within New South Wales, Lifetime Care is extending its services to provide support to workers in New South Wales and to people in the ACT who have suffered a serious injury as a result of a motor vehicle

accident via an intergovernmental agreement with the ACT. We will continue to learn and improve as we operate the scheme in New South Wales and look forward to collaborating with Queensland as you consider this important reform. I will leave it there.

ACTING CHAIR: Thank you. I invite Mr Hume to make any opening comments at this stage.

Mr Hume: I thank Don and yourself for having me here today to share my experiences. I have been in the scheme for five years after being in a motorcycle accident in 2009. I found the scheme quite helpful with getting back to full-time work and getting back to a normal function of life. I was back at work after 12 months and back to doing my recreational activities—skiing, mountain biking and generally living in the community like a normal person—within a year and a half. I have found the scheme quite flexible with my needs. I have subsequently not had a case manager for quite some time and I am self-managing directly with the coordinator here at Lifetime Care and Support with my needs. I am a minimal care client, which helps with that.

Other than that, I have been quite happy with the scheme and I look forward to working with it going forward. I am also a member of the participant reference group that meets about four times a year. We help with the management of new schemes and new plans going forward with the program. That is it.

ACTING CHAIR: Thank you, Mr Hume. I invite the other two participants to make an opening statement, if they wish. If not, we will move on to questions from the committee.

Ms Lulham: There is no opening statement from me.

Mr Walsh: In the previous evidence I referred to Professor Mark Harris as the doctor who had done work on the effects of compensation on people. It is, of course, Professor Ian Harris. I would just like to make that correction.

ACTING CHAIR: Thanks for that, Mr Walsh. Stuart, I know that you have said that you are quite satisfied with the way your participation in the scheme has gone. Do you have any suggestions for the committee as to how the scheme could have perhaps done things better for you?

Mr Hume: I found as the scheme has progressed through the years that the delivery of information and supply has improved. Early on in the piece it was not as clear as it could have been about what you are able to get through the scheme. It took a bit of sifting through to find out what exactly you are able to claim and what you were not. But that has improved over time substantially. I did not have that many issues. I do know that other people who I was with in hospital were not as clear on what they could get out of the scheme and were at times quite disgruntled. I have seen some of the promotional material that they are putting out, and the website has changed recently. As Don said, they now have an online service provider list. That access to information has greatly improved. One of the strongest parts is to having key access to up-to-date, precise information.

ACTING CHAIR: I open it to other members of the committee to ask questions.

Ms LEAHY: You mentioned that New South Wales has an intergovernmental agreement with the ACT. Is there any particular reason, given you have cities like Albury and Wodonga, that you do not have an intergovernmental agreement with Victoria?

Ms Lulham: The ACT has mirrored the legislation in New South Wales. The agreement is that once an ACT participant becomes an ACT lifetime participant the management of that participant is identical to the management of a New South Wales participant, so they get the same services and things like that. So they have actually mirrored our legislation and our guidelines. That mirroring does not happen across New South Wales and Victoria. They are quite different schemes. New South Wales has a fault based CTP scheme with a no-fault lifetime care scheme. Victoria has a no-fault transport scheme, CTP scheme. So they are quite different arrangements and schemes. In saying that, I will make the comment that the services, particularly on the Victorian border, are quite well developed because of the good interplay with TAC over the years. TAC have been around that area for a long time and have made Lifetime Care's advent into that area a bit easier.

Mr KELLY: As a rehab nurse, it is music to my ears to hear people talking about setting goals and even better to hear people getting back on their mountain bike and going skiing. That is a great. I have a couple of general questions about the scheme. You mentioned that there is case management. At what point after an injury or an accident does that occur? Does that start in the in-patient rehabilitation setting or does a participant have to be discharged into the community before your organisation gets involved?

Mr Ferguson: Case management is something that is available from very early on pre-discharge for a person with an injury within the scheme and is made available to somebody for as long as they require that additional level of support. It would follow with them typically as they are discharged into the community, but there may also be a hand over of that case management from the rehabilitation unit to a community case manager at a point in time.

Mr KELLY: The period of time from someone, say, being injured to receiving services from your organisation is short. Is that correct?

Ms Ferguson: That is correct. The scheme is responsible for funding the services that are provided within the rehab in-patient service system as well as in the community, and we have active engagement from a very early stage in that injury-recovery journey. We have also supported the introduction of vocational rehab workers into those rehab units to support people to focus on their long-term goals in getting back to work and life. So it is very early on in that journey. I think Stuart was going to share something of his own personal experience in relation to case management.

Mr Hume: I had a case manager, as I mentioned, very early on in the piece that looked after a lot of my care-providing services early on, as I was very new to it and being in a wheelchair—obviously I needed it. But I was then able to tailor that case management and eventually remove the need for a case manager altogether once I became accustomed to what care and services I needed. Now I work directly with my coordinator, as I mentioned before. Having that flexibility to take control of your own care was a big thing for myself to get back to being a normal person and not just a patient with a case manager or coordinator. Having that facility was a huge benefit.

Mr KELLY: My last question revolves around the choice of care. I anticipate, particularly when the NDIS comes online, that there will be a whole range of providers coming into the market. Are there any ever any disputes around the type of care provided and, if so, how do you resolve those disputes? I would also be interested in how you deal with participants that are requesting the use of therapies that have not been scientifically proven or tested or accepted by evidence based healthcare professionals?

Ms Lulham: I will start with the types of care. We do have some disputes. The numbers are very low. The dispute is not normally so much around the type of care; it is more around perhaps the hours of care and how that would get resolved. I do not have the figures on hand, but it is only a handful a year. Our disputes about treatment and care get referred to an expert in that area. So, if it were a dispute about care, it would go to someone who assesses care needs. They would assess the person. They would talk to the family. They might go and have a look at their home. They would report back and write a report about what the care requirements are, and that decision is binding on all parties. That decision is reviewable by a panel of three experts on procedural fairness grounds. Does that answer the question about care?

Mr KELLY: Yes, that part of it.

Ms Lulham: The other one was around alternative therapies. I guess it depends what you call alternative. We do have a position paper at this stage that we do not fund stem cell therapy. We do have a number of participants who have journeyed over to India and a few places like that for some stem cell therapy. While we will continue to provide their care and other therapies, we do not actually fund the stem cell therapy. We do fund acupuncture. I am not sure whether you call that an alternative therapy. But certainly we do fund acupuncture. There is a reasonable evidence base around that these days. That is usually for more around pain and spasm. We are a little bit reluctant to fund acupuncture where they say it is going to cure the spinal cord injury. For other therapies, it is very much on a case-by-case basis. We do require usually some evidence base to our funding. If there is not much evidence then what we would usually require is the setting of some sort of outcome measure so that the goal of the therapy is to achieve some outcome and then we evaluate whether the outcome has been achieved. I guess it just depends on the type of therapy. Massage is one that we do provide some funding for if it is around pain, but we do not do it on an everlasting basis. It would be for a period of time.

Mr McARDLE: Can you tell me at the moment what the fund balance is and what the liabilities are?

Mr Ferguson: The liabilities are approximately $2.6 billion and the fund is in the vicinity of $4 billion. In terms of the way in which we calculate solvency, there is no risk margin that is built into the calculation of our solvency. It is important, given the prematurity of the scheme, to ensure that we have sufficient margin there to not have to be concerned about raising levies into the future to ensure that we can provide adequate levels of support to people over the rest of their life.

Mr McARDLE: With the levy and the $4 billion, I take it those moneys are purely for the benefit and treatment of the scheme participants. They are not used to meet the costs of the scheme, wages and the like.

Mr Ferguson: The fund pays for every dimension of operating the scheme, so there is no other revenue source other than investment income. The fund pays for the administration of the scheme as well as the services to participants within it.

Mr McARDLE: Can you, if you can, cast your mind back to 2006—10 years ago; if you were there, Mr Ferguson—to indicate what the growth in staffing levels had been from that point to the current time? I will call it administration and management.

Mr Ferguson: The scheme was not retrospective when it was introduced, so there was nobody in the scheme when it commenced. The numbers, I believe, in the first year were as low as three. Then it has grown incrementally over the period of that near 10 years at a reasonably predictable rate of about 180 people each year. Under the New South Wales scheme, people's eligibility is reviewed at a two-year period to ensure that they continue to require the services of the scheme.

Mr McARDLE: Sorry, my question was actually about staffing levels, not people in the scheme.

Mr Ferguson: I am sorry. I thought you were talking about participants.

Mr McARDLE: No, staffing levels.

Ms Lulham: The staffing levels started at about three. I am not sure now but they are perhaps around 100. We work staffing levels out as a proportion of the number of participants in the scheme. For instance, with our coordinators, who are the main people who contact the participants and help with services, we work on a ratio of around 25 participants to one coordinator. With our complaints and disputes, we usually work on a ratio of about 400 participants to one worker. So we work on ratios, I guess. Staffing levels increase as participant numbers increase.

Mr McARDLE: I think you said earlier you had just over 1,000 people in the scheme now—two-thirds ABI and one-third spinal?

Ms Lulham: Yes; two-thirds brain injury and one-third spinal—a quarter spinal and three-quarters brain injury, probably.

Mr McARDLE: Congratulations on the $19 per annum from year one. That has been a consistent figure, I think you made comment Mr Ferguson in in your commentary. South Australia have a scheme where they are charging $65 as the net. Does the difference simply come down to vehicle numbers?

Mr Ferguson: I might pass to John Walsh to talk about the funding from that perspective for you.

Mr Walsh: I do not think the two numbers are directly comparable—$65 and $19. As Lois Boswell talked about in her evidence, the South Australian scheme went through a major review that cut the cost of the scheme by more than $100 prior to the introduction of Lifetime Support and Lifetime Support then came in with an overall increase of $65 per vehicle.

What happened in New South Wales was that there was no parallel change to the CTP scheme. The Lifetime Care head of damage was taken out and cost savings were made within the CTP scheme that offset the first year cost of the new scheme. The first year cost of Lifetime Care was $66 per vehicle. Of that $66, a bit over $40—$45 or so—came from savings in the continuing CTP scheme. The two processes were a bit different.

The actual cost at this point of Lifetime Care in New South Wales per vehicle is around $80 to $85 per vehicle which compares to $100 per vehicle in South Australia. The schemes are in different stages of development. As Lois Boswell stated, the South Australian scheme is early in its development and it remains to be seen whether that $100 might decrease over time. Does that answer the question?

Mr McARDLE: Yes, it does. Thank you very much.

ACTING CHAIR: I have a question about the allocation of one complaints officer per 400 participants. What are the types of complaints that the scheme has been receiving from the participants?

Ms Lulham: We are just referring to our annual report. The complaints from participants can be a delay in the arrival of a piece of equipment, perhaps we took too long to make a decision or we did not communicate properly with the person.

Mr Ferguson: It may also be a complaint in relation to a service provider that we will field as well. It could be something in relation to how they feel they have been supported or treated by or communicated with by a service provider.

ACTING CHAIR: Obviously for people who are injured and are in the catastrophic category their conditions may deteriorate over time. How does the scheme deal with that type of situation?

Mr Ferguson: There are two dimensions to that. One would be in relation to considering the future costs of providing the support to that individual. The other part of it would be the responsiveness of the system to meeting the changing needs of the individual, I would suggest.

On the first part, the actuarial analysis that is used for the annual valuation, which is based on broader benchmarking as well as scheme experience which is developing, contemplates changing needs over time. There are weightings within that for things such as injury severity, age and other such factors.

In relation to a response to people's changing needs, Lifetime Care regularly reviews the service and support needs of individuals and will adjust, based on individual requests as well as a self-assessed need, the level of support that is provided to meet those changing needs. One of the important parts and facets of the scheme is that decisions are not made today for the rest of somebody's life in terms of what they are able to receive access to. They continue to be able to work collaboratively with us, as Mr Hume mentioned, in relation to any subsequent needs that may emerge over their lifetime.

Mr McARDLE: Mr Ferguson, I think you mentioned a sum of $4 billion is held by way of a fund balance and liabilities total $2.6 billion. How are the moneys used? I would not have thought at any one time there would be a claim or claims totalling $2.6 billion. Are the funds held in some form of government secured guarantee or are they invested in infrastructure, returning a return to the fund? How are they invested?

Mr Ferguson: The key mechanics of the funding of the scheme is a reliance on investment return. The outgoings are spread over such a long period of time that it enables the amount that we collect in any one year to only account for about 20 per cent of the amount that it will cost to provide the services to the people injured in that year.

There is a strong focus on investing that fund. We have a board and an investment committee that is responsible for the governance of the investment of the fund. That is done via a strategic asset allocation with assets in a range of different classes according to the advice of our fund managers.

Mr McARDLE: When you make that comment I take it that we are not talking about the share market here, are we? We are talking about what sort of assets by way of investment?

Mr Ferguson: Some of it is in equities and some is in infrastructure. We always retain some in cash. Some of it is also in overseas equities. In terms of risk management, there is also a significant amount that is retained in bonds.

Mr McARDLE: So I take it that the fund is government guaranteed?

Mr Ferguson: Yes.

Mr McARDLE: You said earlier that the total cost of operating the fund, including the salaries, wages and the like of staff members together with those who are part of the scheme and their costs and ongoing treatment, is borne by the total fund. Can you advise the portion per year of moneys expended by the fund that go to meeting employees' costs and associated outlays and the portion that is used to meet the ongoing needs of participants?

Mr Ferguson: I will start by answering it slightly differently, and I am happy to come to that.

Mr McARDLE: Sure.

Mr Ferguson: In terms of the stage of growth of the scheme still being early, the amount that is spent on salaries is higher than it would be in the long term. The valuation of the scheme includes an amount of approximately 9½ per cent for the administrative component of the scheme to be provisioned for over the long term. Of the moneys collected approximately 9.4 per cent are identified for overheads, which includes personnel services. Personnel services in the previous financial year was in the order of $9 million. Funds paid directly to services for scheme participants was in the order of $93 million.

Mr McARDLE: So of a fund of $4 billion, am I correct in saying that $93 million in a given year is what is used to meet the needs of participants or did I mishear you?

Mr Ferguson: That is correct. The amount that is collected in revenue via levies is in the order of $410 million. Of that, approximately $100 million is used within the current year and the balance of that is invested to meet the needs of those individuals for, on average, the next 25 years.

Mr McARDLE: As we age our health needs increase and the cost of treatment increases as time goes by?

Mr Ferguson: Yes.

Ms Lulham: Yes, taken account of in the valuations is an assumption that costs increase as people age.

Mr Walsh: As part of the annual actuarial valuation there is a projection into the future of both the liabilities of the scheme—so the balance sheet of the scheme—and also the future cash flow of the scheme. Because of the average life expectancy of participants who are on average young people it will be at least 50 years before the cash flow plateaus in current values. There is a need to build up the reserves of the schemes for a very long time before it will be stable in a cash flow position.

ACTING CHAIR: My question relates to what happened I guess 10 years ago to try to get some historical perspective on this. Were there any other models prior to implementation of the no-fault Lifetime Care and Support Scheme in New South Wales?

Mr Walsh: I will have first go at that. Suzanne was also around. I think that every possible scheme that is currently being considered was also considered at that time—everything from privately underwritten to continuing with the common law lump sum scheme. On balance of the arguments around at the time, it was decided to go with the Lifetime Care and Support Scheme.

Prior to the New South Wales scheme being introduced there had been a committee formed called the Insurance Issues Working Group. It was a committee of Heads of Treasuries and Finance Departments responding to the blowout in common law schemes in the late 1990s leading to the bankruptcy of HIH and the near bankruptcy of UMP, the large medical indemnity insurer.

Each of the states had to review their civil liability legislation. Part of that review was the recommendation for a national long-term care scheme, which eventually has become the National Injury Insurance Scheme. New South Wales was the first state to respond to that review by bringing in the Lifetime Care and Support Scheme. There was a lot of resistance at the time. As the scheme has been successful over the last decade that resistance has pretty much evaporated, I would say.

ACTING CHAIR: Did you look at any overseas models?

Mr Walsh: Yes, absolutely. The New Zealand ACC scheme is a similar sort of model to the TAC. There are no-fault, compulsory long-term schemes in some jurisdictions, mainly in the aged care and disability area. Ontario in Canada has a blended scheme. All of those schemes were considered at the time. The research was very extensive before the model was actually adopted.

ACTING CHAIR: I have a further question in relation to the assessment process. How is an injured person assessed for entry into the scheme?

Ms Lulham: How are they assessed?

ACTING CHAIR: Yes.

Ms Lulham: With regard to the majority of our participants, we are usually notified by the trauma hospital or, if they get missed, by the brain or spinal units within probably a few weeks of the accident. While they are in hospital as part of the management there they will usually have the relevant assessments done. So if it is for a spinal cord injury they will be regularly having their spinal levels and ASIA scores assessed. If it is a brain injury, to enter into a brain injury unit you have a FIM taken at that point in time. The evidence around the actual head injury, around PTA and things like that, is usually taken out of medical records. Is that what you mean? Is that what you are asking?

ACTING CHAIR: Yes; thank you. That does answer my question. I am conscious of time, so if there are no further questions from committee members, I thank you again for your participation in the committee's hearing this afternoon.

WHITHEAR, Mr Rod, Chief Executive and Managing Director, Insurance Commission of Western Australia

ACTING CHAIR: The committee will now hear from Mr Whithear via teleconference. Mr Whithear, welcome. I invite you to make an opening statement if you wish and then I will invite members of the committee to ask you some questions.

Mr Whithear: Thank you. I think you have the slide pack that I have provided.

ACTING CHAIR: Yes.

Mr Whithear: I do not have any particular opening statement to make other than I could take you through the slide pack.

ACTING CHAIR: Perhaps we could ask you to do that, but before you do that you need to seek leave of the committee to tender this document.

Mr Whithear: Okay. Would the committee grant leave for me to tender that document?

ACTING CHAIR: Yes, we will.

Mr Whithear: Thank you. If it suits the committee, I can just walk through these slides and you can ask me questions along the way if you would like.

ACTING CHAIR: I believe that would work if the committee is happy with that.

Mr Whithear: The background slide is probably nothing new to you. The Productivity Commission recommended states pick up catastrophic injury claims. It is probably not something that people are aware of, but the NDIS does not appear to be going to cover catastrophic injury caused disabilities and they will be left with state governments. The second slide is something I think you are also familiar with in that WA and Queensland are the two states remaining that do not have a no-fault catastrophic injuries scheme. We are talking initially—we in WA and you in Queensland—about motor vehicle injury insurance. One reason it is easier to implement is that the insurance schemes or regimes have been in place for a very long time. There is a clear funding mechanism and the premium rates can be tailored to reflect the financial results of the claims from particular vehicle classes. That is quite different than the medical injury and the general accident themes that others are seeking to expand the National Injury Insurance Scheme to cater for.

Just some background on Western Australia, the Insurance Commission of Western Australia that I lead manages a CTP scheme that insures 2.8 million vehicles. We only have about 1.8 million drivers for personal injury from car accidents. It is an at-fault scheme currently where another party causes the injury to somebody and that injured person is compensated. But, as you are aware, that does not cover single vehicle accidents and other accidents that may not be attributed to another party. In terms of numbers, I see Queensland estimates it might be 136-odd people per annum catastrophically injured and Western Australia, with a reasonably smaller population, estimates about 92 people each year. Out of that 92, 44 will not be covered by our existing CTP insurance scheme and they will fall back to other public health disability sectors, their own insurances and the community to provide care for them. As you are doing now, in 2014 we and the Western Australian government undertook a public consultation process. We issued a green paper asking for community feedback on the introduction of no-fault insurance and a few different models of doing so. We have tried to summarise what we see as the bottom line result, and that is that there is qualified support for motorists to ensure that cover is provided but, as we have said over the page on 5-7, that support is quite price sensitive. The consultation process also reinforced that very few in the community actually understand what their compulsory third-party insurance covers. There is a bit of controversy about providing cover to people who might be doing the wrong thing and there is pretty direct lobbying by different groups with differing financial interests.

Just going into those interest groups, there are service providers that obviously see a government run lifetime care scheme as growing their industry and their capacity to participate in that industry and earn revenue. The revenue has been flagged at around $2 billion nationally. Over on page 9 private insurers also see advantage in government picking up catastrophic injuries. It allows them to transfer high-cost, long-tail insurance claims to governments in various forms. Private insurers participating in some markets can carve out catastrophic injury cover and that positions them to look after the more lucrative short-tail insurance. Over on page 10 many interest groups also argue that some common law rights should be taken away from people and the government should look after those people rather than offering the opportunity for people to be compensated and then manage their own affairs without having to have recourse to government entities. The WA government last

year announced that it would implement a regime that would not remove common law rights from individuals; they will continue to be able to claim compensation if somebody else has caused damage to them.

Slide 11 touches on an issue I am sure you have already explored, and that is the different types of schemes. Really there is, as we see it, two different ways to split responsibility between CTP and other claims that are not currently covered by CTP. The first one is to have your current CTP scheme and remove catastrophic injuries from that scheme and put it in a catastrophic injuries scheme, which is broadly what New South Wales and South Australia have, and that will cover a mix of both no-fault claims and those that would have been covered by CTP. The other option is one that Western Australia is pursuing which is to retain its CTP scheme and add a new no-fault catastrophic injury insurance scheme. Both options involve having two schemes. Victoria, for example, has a scheme that has one, but the models that New South Wales and South Australia have and what looks to be the model that both Western Australia and Queensland have means there will be two schemes. It is just up for debate in Queensland as to which model you adopt.

The first model requires roughly 50 per cent, as I think your accident data shows—that is, roughly 50 per cent can claim under CTP and 50 per cent cannot. For the 50 per cent that can claim under CTP if model 1 is adopted, that person will need to make two different claims to two different schemes. One claim would be to the lifetime cover government fund and one to the CTP insurer. Option 1 also removes the common law right to be able to obtain a lump sum and manage your own affairs. The second option involves a separate scheme to cover the people that are not covered which, as we will point out later, is what we think the policy objective was—that is, to cover people that miss out under the current CTP regimes that have been in use in Australia.

On slide 12 we give you some very round numbers. We have tried to do that to make it very straightforward to analyse. Looking at the 2014 year for the Western Australia CTP fund, we incurred about $500 million worth of new claims in that year. We also paid out about $500 million in payments for past claims. Coincidentally, for that year it just happened to match the estimate of future claims that we think we will get for catastrophic injuries in the no-fault fund. One per cent of those claims—44—cost $261 million or, in very rough terms, around 50 per cent of our total claims payment. The break-up is that the average was $5.9 million. The average lifetime care and support cost is $4 million and those people were also entitled to an average—and there is quite a bit of fluctuation around the average—of $1.9 million for economic loss and pain and suffering. I guess a caveat on that is the costs are escalating, and I will talk a bit more about why those costs are growing.

We have had a rough think about Queensland. If you move the 50 per cent of claims that might be covered under the existing CTP scheme into a government scheme and it has to wear half of those costs, that may mean that your CTP premium rate in Queensland should drop by probably not half but perhaps something approaching that so that you can fully fund the cost of the catastrophic injuries.

Slide 13 talks a bit more about the Western Australian scheme. The government has approved the extension of it to cater for those extra 44 people. Again, that is obviously an estimate and an estimate for this coming financial year rather than subsequent years. Legislation will go before the parliament soon. One simple thing that we think is attractive for the consumer or the injured party here is that they will only have to make one claim against one scheme. If there is another party at fault it will be a CTP claim. If there is no other party at fault, it will be a claim under the new scheme for lifetime care to look after people with catastrophic injuries. Again, the core policy intent of trying to pick up those people who are not covered by CTP is to be achieved.

Slide 14 points out again that we estimate this lifetime care being at a cost of around $4 million per person, consistent with the numbers I have already read out to you. We have claims that can cost up to $15 million. The ability to cater for somebody for their lifetime—and life expectancy is increasing—is great and care costs are not low. So our estimate and the fee to be charged from 1 July 2016, subject to the passage of the legislation, will be $99 per car.

Slide 15 goes back to when the Productivity Commission released its NDIS and NIIS report. It suggested in WA that care could be added for $37. As I said previously, it is $99. At that rate it is very sensitive to our future performance in our investment of the funds accumulated from the premium payment. Every one per cent that we might miss a six per cent investment target will cause a 23 per cent increase in premium rates. These are high-risk schemes. The prospect of having them underfunded is very real and they will need to be managed very carefully. For the South Australian scheme the Productivity Commission report estimated that it would be an extra $28; it is $110. I note you were talking to some people earlier about it being an extra $60 for South Australia. They managed to save a lot of money by introducing caps and thresholds to their scheme and then they were able to put the price back up to $110.

We have had a brief look at some of the material that the committee has been examining. It talks about a net cost forecast for Queensland of $60 or $76 for option B. Simplistically we thought there is a clear intent or understanding that this will cost $350 million per annum. Divide that by 3.9 million vehicles that exist in Queensland and that looks like $90. The big variable there from what I can see is what might be taken off the private sector insurers to fund the catastrophic injuries. At $350 million a year, it is a $1.4 billion decision over the forward estimates. In WA, it is a $1.1 billion decision over the forward estimates. I would assume your Treasury is advising the government to make sure that that is fully funded and that the government is not left with any great liability to carry those numbers, bearing in mind that those numbers are subject to the risks I mentioned before about having to achieve the six per cent investment return.

Slide 16 ties the Productivity Commission report back to the data in a PWC report dated March 2005, and it was based on 2003 data. Therefore, it is not surprising that the actual cost of the implementation of these schemes—the premium rate—is much higher than what that original report suggested. That was operating on the basis of a lifetime care cost of $1 million to $2 million. As we have said, actual costs in WA are about $4 million on average. Life expectancy has thankfully increased by a few years. Nurses' salaries have doubled in that period. We are in a different environment in terms of risk-free rates of investment returns.

We have just tried to do a quick comparison on slide 17 between South Australia, Western Australia and potential Queensland numbers. You can see the difference in the volume of registered vehicles. You can see that the premium in South Australia is $110. It is flagged at $99 in Western Australia. We are not quite sure where you will wind up in Queensland. The total revenue looks interesting. In South Australia it looks like the combined schemes would be about $600 million and in WA it will be about $800. In Queensland, in total it would be heading towards $1.8 billion.

We have noticed that the actuary's report for the Queensland government does not propose an insurance scheme and does not propose the addition of risk margins. There is a risk margin in our pricing. There is a difference in the cost of care between a compulsory third party at $1.5 million, a long-term scheme at $2.5 million and then an NDIS claim at $3.8 million. It is a large range for what presumably should be the same accidents and same conditions. The assumption that the NDIS will recover $200 million of costs from the Queensland government is a very interesting one. It may suggest that the scope of the CTP cover should be examined. As the numbers there show, if we are paying out $4 million but your CTP scheme regime is paying out $1.5 million, that may reasonably and simply answer the question of does CTP cover the cost of lifetime care or not? It is suggested that $4 million will and $1.5 million may not. With premium reductions, some of the math looked a bit funny to us. I have already made the point about the NDIS recovery.

The last couple of slides show our view of premium rates around the country. We know ours will lift from $300 to just over $400. We will watch with interest to see where Queensland settles.

ACTING CHAIR: Thanks, Mr Whithear. One of the concerns that has come through in some of the submissions is that with the common law claims where people are getting lump sums and there is a risk of those people running out of their lump sum when they still need help. Is there any evidence that you could give us in relation to that type of problem?

Mr Whithear: It is the subject of some debate. Over the last couple of years I have sought to find evidence of people, having been given a lump sum, running out. The evidence is scarce and anecdotal. I do not think anyone would be silly enough to say it does not happen, because it must. I suggest it would be more likely to happen if you were given an award of $1.5 million to look after your lifetime care versus being given $4 million. We are aware it is a risk. It has always been one. But I presume in Queensland there is a Public Trustee. I know nationally there is an industry of people that can provide trustee services and who do a good job of it. There is a risk that somebody could misinvest. This is where it becomes a policy trade-off for people in your position as members of parliament as to whether the removal of any such risk is worth taking away the common law rights for everyone.

ACTING CHAIR: Say, for example, there was a person who had used up their lump sum whether through misadventure or just simply that the lump sum was not enough to cover the cost of care for their injury, would they be eligible under your scheme to receive assistance?

Mr Whithear: There is a fair bit of debate about tort law reform as to whether people should be able to come back. We would favour a once and for all scheme and, rather than perhaps taking the common law rights away, we would favour putting more effort into a trustee-guardian regime. We will also be altering the management of our CTP scheme going forward. As we have established this lifetime care management capability, where we see that parties are unlikely to have and their families

do not have the capacity to manage that money, we will utilise a legislative power we already have in the CTP scheme to manage those people's care by periodic payments. Those periodic payments will be given to the care provider, if you like, so that the care is provided and paid for monthly or quarterly—whatever suits. That would aim to almost eliminate the risk of a lump sum running out.

ACTING CHAIR: Mr Whithear, one of the criticisms of the common law claims is that legal representatives receive payment for their fees. Is there any evidence in Western Australia about the level of fees from legal practitioners eating into the lump sums?

Mr Whithear: There is no evidence of dramatic cost imposition there. I do not think any of us are fans of deadweight loss in systems by intermediaries including lawyers. I also compare the cost of having bureaucrats running people's lives for 30 or 40 years, coordinating care and so on, versus perhaps the transactional cost of having lawyers to try to settle a claim.

This is one of those things where we are no fans of paying legal fees and we do not like our clients paying legal fees either, but we have to recognise that, at best, the cost of these lifetime care schemes will be nine to 10 per cent per annum—and that is at best. That is nine to 10 per cent every year, so I think it would be quite easy to do the maths to say that spending $100,000 on a lawyer to manage somebody's navigation of a catastrophic injury claim under a CTP scheme, depending on their life expectancy, can easily be offset and outweighed by the cost of us employing public servants to manage the care of that person for the rest of their life.

ACTING CHAIR: Mr Whithear, I will try to make this my last question: in relation to the hybrid scheme, if I could call it that, that will be implemented over there, obviously there will be a cost in relation to the part of the scheme that the NIIS will deal with for people who cannot make a common law claim. You just mentioned some of the percentages that could be paid to public servants to administer the scheme. Have you drilled down into the numbers, for example, to work out what the scheme initially will cost Western Australia in dollar figures?

Mr Whithear: Were you asking just on administration costs or the aggregate annual cost?

ACTING CHAIR: No, just on the administration costs of running the scheme.

Mr Whithear: We think we can do the administration costs pretty cheaply in the near term, but even then we are looking at $5 million or $6 million, and that will not be across a large number of claims, of course. Some of that has been some IT implementation works, so I should not say that that is all staff costs by any means. We will need to do communication mail-outs to people and so on. I am sure it will reduce, but as the number of claimants come into the scheme it will grow. We and many other insurers run at a cost of premium revenue, if you like, as a proportion of between eight and 10 per cent. I would not see this being any lower than that. It could wind up being higher, as the amount of work that we need to do to settle a claim—and a serious claim may take five to seven years to settle as a person's catastrophic injury settles down, but five to seven years is a lot shorter than 30 or 40.

ACTING CHAIR: Thank you, Mr Whithear. It might be time for some of the other committee members.

Mr McARDLE: Mr Whithear, you mentioned that it is a hybrid scheme. If a person can indicate fault by another driver, must that person go through CTP or can they opt into the scheme directly?

Mr Whithear: We are trying to tackle this in a way that makes it quite seamless for the injured party. I touched earlier on the fact that, as we are building this capability to manage this lifetime care, if somebody is catastrophically injured and they are in the trauma ward and their family or the hospital lets us know, we aim to try to treat them the same. We will then carry that forward for a period of months or, potentially, years. At some point, this can be as simple as a decision for us between which fund does the care cost come out of and, if it is clear that there is another party at fault and liability can be established, it would come out of our CTP fund. If the circumstances are the person was in a single vehicle accident driving on their own, it will be quite clear that that will come out of the no-fault catastrophic fund.

Mr McARDLE: Are you saying that the option rests with the fund and not the individual, as to which way they go?

Mr Whithear: What we are saying is that, really, if you were catastrophically injured and you did not choose to make a claim, we could look after that person from the no-fault catastrophic fund. If that person thought they could prove fault, they could make a claim to the CTP and pursue economic loss and pain and suffering costs. If you look at the 2014 numbers earlier in my slide pack, you will

see that there is another $1.9 million, on average, that is available to that person if they can prove fault. We think that the default position can be, well, care and support will be provided, but if a person has a valid CTP claim they would not be acting in their own rationale financial interests if they did not pursue that extra $1.9 million or wherever they sat around the average.

Mr McARDLE: They can pursue in both arenas; is that right?

Mr Whithear: Sorry, I did not hear that.

Mr McARDLE: Just say you get a situation where there is a 70/30 split in regard to negligence.

Mr Whithear: Yes. We have had to remove the contributory negligence provision. This has not occurred because the legislation has not passed, but our objective is to remove the contributory negligence component from the legislation, because if we did not do that we would be in a position where somebody who was entirely at fault themselves—they may have been drink-driving and ran into a post—would have 100 per cent of their care provided for, whereas somebody else who may have been in an accident that was caused by somebody else but they were not wearing a seatbelt, which we have traditionally deducted 25 per cent for, would be materially worse off. We are having to, I guess, lift the bar there so that all people catastrophically injured will be treated the same and contributory negligence deductions will not be applied.

Mr McARDLE: The other states have a one-tier system, as you know. They have looked at the CTP component, reduced that by removal of those who qualify for the scheme and then added a component by way of levy to compensate for the scheme.

Mr Whithear: Yes.

Mr McARDLE: You have reduced the CTP component only in part for those who qualify for the scheme and end up with a higher levy, I would have thought, on a net basis than, say, South Australia or New South Wales; would that be right?

Mr Whithear: On a net basis, I am not sure. What we have done, I guess, is added a little to the CTP cost to pay for the removal of those contributory negligence deductions. That is only for care. I would not say it was net higher, because it should not matter materially whether they are in the CTP fund or the lifetime care fund, ignoring administration costs, because both should be genuine estimates of the cost of care for the person for the rest of their life and both should come to something around that average of $4 million.

Mr McARDLE: Put it this way: if it was simply a no-fault scheme for those who are qualifying and there is removal of the common law right to seek damages, what would have been the levy increase? It would not have been $100; would it? It would have been something less than that?

Mr Whithear: No. Our actuary's numbers said—the same actuary that the Queensland government has used—our initial costings for the path we are going down was to be $101 and if we were to take the catastrophic injuries out of the CTP scheme and put them in the no-fault scheme the cost was going to be $109. The difference is the increased administration cost because you have to manage those people for the rest of their lives, rather than managing their care for a number of years until the injury settles and then settling the claim and letting them determine their own futures.

Mr McARDLE: So you would say that maintaining the common law right in WA—

Mr Whithear: Yes, in super.

Mr McARDLE:— has no bearing on what the additional levy would be of registration costs?

Mr Whithear: It is cheaper. It is one of the reasons we have done it.

Mr McARDLE: Finally, you mentioned the $100 increase, roughly speaking, contains a risk factor. What is the loading for the risk factor?

Mr Whithear: It is heading towards 15 per cent, because we do not have complete confidence or experience, so our existing CTP scheme has a risk factor in it anyway of about seven or eight per cent, so the new scheme will have about seven or eight per cent higher risk margin to cater for the uncertainty of it being a brand-new scheme catering for an area of insurance that we traditionally have not catered for.

If I might add to that, there are other risks that, I guess, all of us around the country are going to have to grapple with. If the claims by the NDIA are that they are going to employ another 100,000 carers nationally and the rest of us have to compete in that market, we see inflation costs of carers, which have accelerated materially, and medical costs, which always seem to run at about eight to 10 per cent per annum, as being quite significant. This risk margin is trying to cater for some of those. Also, you might hark back to the comment I made about a one per cent error on our investment return makes for a 23 per cent premium increase.

Mr McARDLE: One very quick question before I pass over: the acting chair asked a couple of questions in relation to a lump sum dissipating or no longer being there. Am I right in thinking that if that was the case that person would qualify for the NDIS, potentially?

Mr Whithear: I think that is subject to some debate. If a person has those funds, they should be looking after their own care. With the NDIS, whether somebody chooses to allow entry into that scheme when they have perhaps disposed of their funds, that will be an interesting question.

Mr KELLY: My question relates to how the person has who has been catastrophically injured makes the decision about which direction they go in. Is it right that, in the hybrid scheme, the default position is that they go into the NIIS version and then have the option of exercising their common law rights if they choose to? Does the individual receive some sort of support or advocacy from the scheme in terms of being able to make a sound decision or do they simply rely on the advice from a legal practitioner, who will subsequently assist them with the common law claim?

Mr Whithear: As I mentioned before, we are trying to implement a regime where we treat people the same, either way. There will be a path that individuals are made to go on, whether it is a step down from a hospital trauma facility to a rehab facility or perhaps going home or to some other accommodation. On the determination of whether there is likely to be fault, they will go into the no-fault scheme because they have not identified a claim against the CTP scheme. But if the circumstances of the accident are that somebody else ran a red light and put them in hospital, it may be that that person or their family comes to the insurance commission and says, 'What can I do?' They may seek advice from the legal fraternity. Really, we are not intending to dictate to anyone as to where they get advice from, but we are expecting that, if somebody has a claim against another party and we are the insurer of that other party and that claim has potentially $1 million or a couple of million dollars in economic loss to pay for the lost wages that person may have earned in the future, it may be that some people never claim that. But rationally, that is potentially not very likely. If they do not want to take a lump sum, we do have provision, as I touched on earlier, to continue to pay for the care on a periodic basis for the rest of their lives.

ACTING CHAIR: Thank you, Mr Whithear. I am conscious of time. I thank you for your time this afternoon. I close this part of the session. Thank you, Mr Whithear.

Mr Whithear: Thank you and good luck.

Proceedings suspended from 3.46 pm to 4.02 pm

CALAFIORE, Mr Joe, Chief Executive Officer, Transport Accident Commission Victoria, via teleconference

ACTING CHAIR: Welcome back to the committee's public hearing in relation to its inquiry into a suitable model for the implementation of the National Injury Insurance Scheme in Queensland. I welcome Mr Joe Calafiore, Chief Executive at the Transport Accident Commission in Victoria, who is joining us via teleconference. I invite you to make an opening statement, if you wish, and then I will open it up to the committee to ask some questions. Would you like to make an opening statement?

Mr Calafiore: Yes. Thank you, chair. I thought what I might do is just provide a high-level snapshot of numbers and a brief statement and I am more than happy to take questions. The TAC—the Transport Accident Commission—commenced operations in Victoria on 1 January 1987. We are obviously the third-party personal insurance scheme in Victoria. We have both elements: the no-fault element of the scheme and the at-fault common law component of our scheme.

In terms of some high-level numbers, we collect just under $1.6 billion in premium revenue each year. The actual TAC charge—the component of the vehicle registration—is currently $494 for your standard Melbourne metropolitan vehicle. We pay out in claims costs each year just over $1.1 billion. I think the committee may be interested that, in terms of client cohorts, what we call our independence clients—those people who have suffered the more catastrophic injuries—we currently have 2,731 active clients in our independence branch. In terms of annual costs of the independence branch, that is 28 per cent of our total costs, in the order of $248 million. That is $248 million for the annual independence cost. In terms of liability, that represents just under a $1 billion. The last number that I thought I would mention in terms of the trends and the growth is that we unfortunately receive approximately 150 new clients each year into the independence branch. That is a very short and sharp overview, but I am more than happy to take questions.

ACTING CHAIR: Thank you. Could you outline to the committee what steps have been taken to ensure that the costs of the scheme are affordable to motorists?

Mr Calafiore: I think if I heard the question, acting chair, it was relating to the affordability to motorists of the premium? Was that the question?

ACTING CHAIR: Yes. What steps have you taken to make sure that the costs of the scheme are affordable to motorists?

Mr Calafiore: That is a very good question. At first blush premium sufficiency—from a TAC scheme perspective as opposed to the broader government consideration—is always our first objective. So are we collecting enough to effectively and efficiently run the scheme? However, in practice it is something that we are mindful of. The decision about the appropriateness and the level of premium is something that we really discuss with our Treasury and government. History has shown in Victoria that it pretty much has tended to be CPI pretty much every year since inception minus one or two exceptions on the way through. So my first comment would be is that it is something that we are mindful of and we discuss with Treasury and the government.

The other comment that may be of relevance is that at present in Victoria consumers—customers—have to pay the charge in a lump sum. Options are not given to pay, like other bills, on a six-monthly or other basis. That is something that I know has been debated in a policy sense for some time. So it is probably a broader government issue is the way that I would respond to that

ACTING CHAIR: Thank you. Do any of the other committee members have questions, please?

Ms LEAHY: Thank you. I understand the transport accident charge depends on the type of vehicle and the location of where the vehicle is usually kept. Queensland is a very large decentralised state. So I am just interested in how that varies in Victoria.

Mr Calafiore: Yes, it is a good question and, to be honest, it is an area that really has not received a lot of change and a lot of attention over the decade. There are some differences, obviously, in terms of location, in terms of metropolitan versus country. There are also some differences in terms of vehicle categorisation and the like. We have higher-risk zone postcodes and medium-risk zone postcodes and there are some slight differences in terms of the actual charges.

The comment that I would make is that they largely reflect the determinations that were made really at the inception of the scheme in the late 1980s. This topic was subject to quite a detailed inquiry by Victoria's Essential Services Commission about two or three years ago that just posed the question of whether it was timely for Victoria to have a look at the appropriateness of what constituted regional versus metropolitan many years ago in terms of population growth and urban sprawl and the like.

So it is probably a bit similar to the very first question. From a narrow TAC perspective alone, we are principally focused on premium sufficiency but it would be, once again, a broader policy issue. Should the government wish to explore further information or changes in that area, we would have a look.

Ms LEAHY: Can you give me some examples? For instance, in Victoria, is there a different charge in metropolitan Melbourne from what there would be Wangaratta or country Victoria outside Wangaratta or something like that?

Mr Calafiore: I am just trying to think of what the cleanest example would be. Obviously, it is where the bulk of the population would be. So maybe a standard motorist in a metropolitan suburb of Melbourne may be living in a slightly higher risk postcode than someone out there in a regional area. The price differential though—I do not want to use the word 'marginal', but certainly we might be speaking of a $10 or $20 difference. I would not want to speculate on the numbers, but obviously we are more than happy to supply the detailed information to the committee.

So what would be another example? I suppose vehicle category. For example, motorcycles, unfortunately, while a relatively small proportion of the vehicle fleet in Victoria, motorbike riders represent a higher proportion of our serious injuries. So that would be an example of vehicle choice. So those with motorcycles pay a slightly higher premium. Unlike the WorkCover system in Victoria, premiums are set on principles of sufficiency and equity. So while there are some small cross subsidies in the system, the policy settings are not risk rated models throughout the premiums, if I could put it that way.

Ms LEAHY: How do you determine a high-risk postcode? Is that where the vehicle is garaged or where the accident occurs?

Mr Calafiore: No, where the vehicle is garaged.

Ms LEAHY: Okay. Thank you.

Mr McARDLE: The scheme in Victoria has been running since 1987. You mentioned that there is a no-fault and at-fault scheme running in tandem; is that right?

Mr Calafiore: Yes, that is correct.

Mr McARDLE: Can you explain the distinction in relation to the TAC and how a claim is made for no-fault and at-fault injuries?

Mr Calafiore: Yes, a pleasure. I should just clarify that it is obviously one scheme. Internally, we refer to two different types of benefit. It is obviously all administered under the same TAC fund. In the simplest sense, right from the claim's eligibility process, right from the start of when a claim is accepted, the accident circumstances will determine whether there will be a potential common law liability on the way through. The vast majority of TAC clients do not have a common law claim and we try to identify early where there would be potential for a common law claim. Sometimes that is something that we will point out to clients proactively, depending on the nature of the accident's circumstances, and the client themselves, via directly or via representation from the plaintiff community, will lodge their common law claim and we have processes in place to deal with those claims too.

If I may touch on the point of common law, from a TAC perspective, it is a right and it is a benefit. The area that we try to focus is on what we call our prelitigation protocols. I think there is furious agreement amongst ourselves in the plaintiff community that the quicker common law matters can be resolved it is in the best interests of the health outcome of the client. Quite a lot of work is put in with the plaintiff community and the TAC so that once a common law claim is made what we are trying to avoid is protracted adversarial processes that drag on and that have the client in the middle. I am trying to see if I can pull up some numbers here. We receive over 1,000 common law claims each year but less than 100 of those would go to court. The vast majority of these matters are settled.

Mr McARDLE: Are you saying you have a scheme that is akin to a hybrid scheme in that if I have an injury that is deemed to be catastrophic I still have a right to pursue a common law claim and not go through the no fault compensation scheme?

Mr Calafiore: If I understood the question correctly, yes. One, in effect, does not cancel out the other. All clients are entitled to no fault benefits. At a really broad level I would say that we have three client groups in aggregate. We have—

A loss of audio having occurred due to a technical difficulty with the teleconferencing system—

Mr McARDLE: We were discussing the issue of common law claims still existing in Victoria and people who are catastrophically injured having the right to pursue common law claims.

Mr Calafiore: My apologies to committee members; the line just dropped out. Sorry, I missed the question.

Mr McARDLE: We were confirming that in Victoria if a person has an injury that is catastrophic in nature they still have the right to pursue a common law claim.

Mr Calafiore: Yes, indeed. In one respect, without saying those who have suffered a catastrophic injury are easier to deal with, in the vast majority of cases between ourselves, the client or the client's representatives, the injuries are obvious and they are at the serious end, so between the parties we attempt to reach a resolution and tend to resolve those matters quite quickly. The challenge in common law claims is that the growth in common law claims over the past decade has not so much been at the catastrophic end; it is at the less severe end of injury. In terms of those who are catastrophically injured in a common law sense, as you said, because the injuries tend to be pretty apparent, we certainly do everything in our power to resolve those matters as quickly as we can in the interests of the client.

Mr McARDLE: I think you commented earlier that a common law claim can drag on for a lengthy period of time with legal precedents and God knows what else happening along the way. Given that is the case, why do you persist with a common law claim in Victoria if it could be dealt with more quickly under the no fault provisions? What is the rationale behind that?

Mr Calafiore: Is the question: what is the rationale behind having a separate process?

Mr McARDLE: No, you maintain common law claims for injuries that are catastrophic. New South Wales does not have that. South Australia does not have that. Why have you maintained that given it can take a lengthy period of time, it can be drawn out and it can be psychologically damaging to a claimant?

Mr Calafiore: I understand the question. In short, it is a legislative provision. It is a right under the act. When the TAC was established and we had the debate in the parliament in 1986, this very point was hotly debated. I understand the question, but in short it is a benefit that exists under the act. From a TAC perspective it is a right that clients have. The client accesses that and we administer our policies in accordance. It is not my attempt at ducking the question, but in short it is a right that exists.

Mr McARDLE: Does that then increase the transport accident charge that is paid each year? I would have thought the major claims would actually bump up—

Mr Calafiore: By definition, in the absence of it, that is right. We obviously have to have a charge that we have to collect sufficient premium so, by definition, the premium that we collect covers the legislative arrangements that we have. What I would not know off the top of my head is what amount in the charge is covering the lump sum component, but I am sure that is some information that we could provide to the committee should that be requested.

Mr McARDLE: If I could ask you to do that, that would be great. Wouldn't it also be the case that maintaining the common law claim for injuries that are catastrophic increases the transport accident charge in any event?

Mr Calafiore: I would have to seek some advice. I would refer to my earlier answer. We get advice from our actuaries in terms of what premium sufficiency would be to cover the scheme. To be honest, I would be happy to take it on notice and seek some advice on it.

Mr McEACHAN: I would like to get an idea of the 2014-15 liabilities of $1.1 billion supplied in services and support. I think you indicated that roughly that would increase at CPI. What kind of reserve does TAC run and what has happened with that reserve over the 30-year lifetime of this system?

Mr Calafiore: I think I understood most of that. Apologies to the committee members for the line, but I understand it is a question about our assets, liabilities and reserves?

Mr McEACHAN: Yes.

Mr Calafiore: For 2014-15, $12.2 billion is the total assets of the TAC. $12.4 billion are the liabilities of the TAC. The scheme is not considered mature, and the advice from our actuaries is that it is still some way away from reaching maturity. We would certainly be expecting that there will be growth in assets and liabilities over the years to come. I did not catch the second part of the question.

Mr McEACHAN: I think that answered the question.

Mr Calafiore: Thank you.

Ms LEAHY: In relation to what the scheme holds, how do you invest some of that money or manage that money? Is it in infrastructure? I am interested in that.

Mr Calafiore: When it comes to investments there are really two components that I think would be worth bearing out. In terms of our assets, in Victoria the Victorian Funds Management Corporation invests on behalf of the agency—so ourselves, WorkCover and the DTS statutory insurers. In effect, we set the objectives and the expected returns, but the actual investment itself is an outsourced function by the Victorian Funds Management Corporation. That is a central government process that we adhere to. The other point that is important to point out when you speak about the TAC scheme is that our assets are provided to VFMC. As a long-term scheme, our objectives and the way we set our expected returns are very much over the long term, as you would expect.

What we also do at the TAC under our legislation is that we have the preventative component. The TAC has a statutory obligation not only to compensate and rehabilitate but we also have the accident prevention function. To give you an idea, we will invest—and I deliberately use the word 'invest'—in the vicinity of $150 million this financial year in accident prevention which is not a feature of all types of social insurance schemes. The vast majority of that goes to our state's road agency called VicRoads. That is about $110 million in this financial year. From a TAC perspective, they are claims avoided and liabilities avoided for the future, and the remainder would be a raft of initiatives such as enforcement for police, public education activities et cetera. I often get asked about investments. There is the VFMC component investment of the scheme but there is also a business decision to invest in accident prevention.

ACTING CHAIR: Thank you, Mr Calafiore, for your time this afternoon.

Mr Calafiore: It was a pleasure.

CANNON, Mr Wayne, State Actuary, Queensland Treasury

SINGLETON, Mr Neil, Insurance Commissioner, Motor Accident Insurance Commission

WAITE, Mr Geoff, Assistant Under Treasurer, Corporate Group, Queensland Treasury

ACTING CHAIR: I welcome representatives from Queensland Treasury and the Motor Accident Insurance Commission. We have asked officials from Treasury and the Motor Accident Insurance Commission to assist the committee by commenting on issues raised in the evidence today and any submissions received by the committee so far. I invite each of you to make an opening statement. If you do not think it is necessary, we can go straight into questions. It probably would help the committee if you could give us an overview of some of the things that you have heard this afternoon.

Mr Waite: Thank, Mr Acting Chair, for the opportunity to appear. As you mentioned, the focus of this afternoon is on us being able to clarify any issues. In just a moment I will pass over to my colleagues to do that in greater detail. We have also been pleased to be able to provide a submission to the committee. This past week we have sought to identify some of the key issues that emerged from the submissions that you have received from the public consultation. Our objective this afternoon is purely to work with the committee to provide any points of clarification that we possibly can to the best of our ability. Thank you for the opportunity. I would ask Mr Singleton and Mr Cannon to make any comments on what they have heard this afternoon.

Mr Singleton: Thank you, Acting Chair. Listening to the four different scheme presentations I think showed one of the dynamics of the federated scheme is that each state has a slightly different variation in terms of how their CTP and National Injury Insurance Scheme or equivalent is structured.

Without being privy to some of the presentations that were being tabled, from a distance it was hard to understand some of the comments that were being made or the comparisons that were being made. Perhaps we might need to take a question on notice or a comment on notice with regard to the fact that some of the quanta or dollar differences that were being talked about did not seem to accord with our understanding of the scheme's experience. We are happy to assist in terms of any review of the presentations that were made to perhaps clarify some comments that you were bit unclear about in terms of where they were going.

I think the process that Queensland has been on in terms of exploring its NIIS, both at a federated level and on a state-by-state basis, means that we are very close to the four jurisdictions that you spoke to today in understanding their experience and their different maturity points in, if you like, dealing with catastrophic injury claims and helping to inform government consideration around the NIIS.

The committee's terms of reference around what is called option A or option B—a full no-fault NIIS or a hybrid NIIS—has come through in the conversation today in terms of how the different schemes are structured. My feel from the conversation was around the focus of the NIIS being very much person centred and focused on the lifetime care and support of the injured person rather than a common law focus on determining a lump sum as a once-and-for-all settlement and the person then being left to their own devices as to how their care and support is administered from that point on.

Beyond that, there is the analysis we provided to the committee through Mr Murphy the Under Treasurer. I think there were 25 submissions made to the committee from a broad range of stakeholder groups—the general community, legal, rehabilitation, insurer and medical groups. These gave a very good representation of the feel around the issues to do with the NIIS. We gave a very comprehensive analysis of those submissions. We are happy to go through that process both now and later. There were quite a lot of significant and, in some cases, complex issues raised in those submissions.

Mr Waite: Acting Chair, I just wonder if I could ask Mr Cannon to touch on one issue that came up in the last conversation with the Victorian TAC around common law and whether it is in or out of a hybrid model. There are some subtleties around common law claims that I might ask Mr Cannon to just explain.

Mr Cannon: This actually goes to a more general theme that I observed during some of the discussions today as well as some of the submissions about the understanding of the hybrid nature of virtually every one of these schemes. Every scheme, so even option A that is before the committee, the long-term care scheme—New South Wales, South Australian, Victorian schemes—in varying

circumstances all allow common law access for certain heads of damage. So option A that is before the committee has economic loss and general damages in a common law regime exactly as it has been in the past. There is no change to that. The only change—and the change that has actually occurred in New South Wales and now in South Australia as well—is that the care and support head of damage, so the payments that are made to look after the injured party, are provided in a different manner. They are provided not through the common law negotiation process, you might call it, or the adversarial process and the legal discussions but for the lifetime of the individual it is reasonable and necessary support.

That is the key difference. It is important to recognise that there is not a long-term care scheme and a common law scheme, not in Australia at the least. The ACC in New Zealand is a little different. Within the Australian schemes they are all hybrids.

One of the points we made in our earlier discussion was the term 'hybrid' is a difficult one because it can have a lot of different interpretations. You could argue that our option A—even though option B is called the hybrid—is a hybrid in a sense as well. It is more about the different treatments of care and support payments.

My understanding of the TAC—and you asked questions of Mr Calafiore to get some of those details—is that common law access is available. Mostly in TAC it is no fault, but there is common law access for general damages and for care and support for serious injuries. I believe it is a 30 per cent whole person impairment threshold. Forgive me, I do not claim expertise in the full design of the TAC arrangements, but I believe it is of that sort of nature.

Thank you Geoff for prompting that. That was one of the points I wanted to raise from the discussion that I had heard today. It came through in a couple of submissions as well. Treasury's analysis of those has included that as well. A no-fault care and support scheme is a hybrid as well. Nothing is lost in terms of those other heads of damage.

I will just make one other comment as far as an opening statement is concerned. Neil has just raised the difficulty of understanding some of the comments made during the discussion without actually observing all of the papers that were tabled. I must admit we found it a little confusing. I hope you will forgive us for not being able to immediately rebut any individual figure that was provided.

I would prefer to be able to see those. So I assume they will be posted in the usual way. We would be very happy to respond to those. To the extent that there have been points raised and we think there is an issue of interpretation or further questions that the committee would like to pose we would be happy to provide those. I think it would be much better from the committee's perspective if we did that in full knowledge of those papers rather than just hearing numbers here or there. I emphasise that from my point because most of the confusion was about numbers, which is my part of the game. That was very difficult with the information that we had available to us. I hope you will allow us to provide that sort of information later.

If you have any specific questions that came up that you would like to discuss we can do our best to answer those with the information before us. If we feel we cannot then obviously we will ask to take them on notice. If there are any other questions with regard to analysis that Treasury has provided we would be very happy to talk about that as well.

ACTING CHAIR: Mr Cannon, one of the criticisms of the scheme is that under a common law claim a big portion of what a person would receive under the current system would be for their ongoing medical care. One of the components that has been spoken about often in the submissions that I have read, in particular from the Queensland Law Society and Australian Lawyers Alliance, is that it would seem that under the NIIS there will be disproportionate amount in terms of what a person would receive in relation to housing. I understand—and correct me if I am wrong about this figure—that under one of the schemes, I think in New South Wales, there is a lump sum payable for housing in the vicinity of $390,000. It is capped.

Under the common law scheme there would be flexibility built into what the individual may have access to and the categories that it affects. For example, an individual who is renting a house does not have the capacity to amend that house because he does not own it. Therefore, they can ask for a component to buy an existing residence that perhaps can be renovated to accommodate their catastrophic injury. That has been one of the criticisms. Can you comment on what you think about that?

Mr Cannon: This goes to the scheme design to some degree. I dare say my colleague the insurance commissioner may be able to add some further colour. Let me respond in this way. It is my understanding that there is no identified component, no head of damage, in any insurance

arrangements in these personal injury matters for the purchase of a house. You cannot find it anywhere. As you say, you get payments that are made under various heads of damage. The main ones of those are: economic loss, past and future; general damages, sometimes called pain and suffering; care and support. They are the main ones.

Under the proposed lifetime care scheme for those where there is another party who can be found to be at fault for the accident—of course, those who are fully at fault do not have these options—they are able to use the lump sums that they receive for those other heads of damage for whatever purpose they choose. You could argue that the lump sum that is under the existing arrangements and proposed under the hybrid option B for this committee's consideration could also be used. I agree it is a larger number of them. There are no caps that I am aware of, by the way. Neil may be able to comment further on that. I am not aware of that. Clearly the larger the sum the more flexibility the claimant has to spend it on whatever they choose. That point is absolutely clear.

But I just make this point: if you use the benefit that you have received for your care and support to buy a house, what will you use for your care and support? So it is a choice I guess and it is a choice that claimants can make, but it is a debatable question obviously. Everyone can have their own view as to the appropriateness of that or other views. I would say that it is not common. The existing scheme does not provide for a house. It is not one of the heads of damage. It provides for those various payments to meet various things. Economic loss is about putting the person back in the condition that they were pre the accident. They have lost money in the past because they have been in hospital and elsewhere; they will have future loss of earnings. It is about trying to put the person back as best they are able to. That is what the general sort of tenor, if you like, of the insurance scheme is about and care and support is about providing the best opportunity for that person to have rehab and to be able to return to the best life that is available to them. So it is a debatable point. I note the submissions, but I just note that you cannot spend the money twice. If it is used for a house, it cannot be used for care and support. I will stop there. Neil, did you want to add anything?

Mr Singleton: I concur with what Wayne Cannon has said. Both the CTP scheme and the proposed necessary minimum benchmarks provide compensation for housing modifications, which obviously work when someone has a property themselves, and for someone who is renting perhaps they are able to negotiate with the landlord or through some other housing regime, but there is not a head of damage as such for someone who is a renter to receive compensation to buy a house as part of their settlement. They may choose to use some part of that compensation for that purpose, so they are generally able to use their economic loss. But for someone who has gone through negotiating how much money they need for their lifetime care and support to then say, 'I want choice to use that to use for another purpose'—so have a holiday, buy a house—I think that comes back to Wayne's point: you can only spend the money once, so perhaps by definition there will be then less funds available for the lifetime care and support of that person.

ACTING CHAIR: I have a couple more questions for Mr Cannon. Mr Cannon, are you familiar with the structure, the operations and the financial performance of the New Zealand accident compensation scheme?

Mr Cannon: Not in detail. We have just had a look more recently, because I assume you are referring to the references that were made to that in a couple of the submissions to the committee. There was an assertion made that, shall we say, non-common law schemes—we will call it that because there are other aspects to it—are fundamentally financially flawed in that they are a financial disaster waiting to happen and it is going to happen. A couple of schemes were given as examples such as the ACC in New Zealand and the South Australia WorkCover scheme was one as well. In response to that—and I will just quickly answer the question directly in the sense that I am not an expert on the ACC scheme but I do have just a little bit of knowledge of its more recent arrangements—my understanding is that more recently they have just announced reductions in their premiums. The scheme is well funded as I understand it, and this is only as at, I think, 30 June 2015 but we will be able to look it up and provide more information as required if you require. But it is not an example I would suggest that you can use to assert that non-common law schemes are fundamentally financially flawed. I think there was a point made—I think John Walsh may have made a point—earlier about common law schemes having their financial moments. I think it would be fair to say that every single workers comp and motor vehicle accident insurance scheme in Australia over the last 30 years, whether common law or not and whether some have had greater and lesser extents of it, have had financial issues. That has happened even in the Queensland schemes at various times. WorkCover has had its moments and reviews have been required. It has happened in every single scheme. So I would rebut the assertion that a non-common law arrangement is an automatic qualifier for financial trouble. Schemes can find themselves in financial trouble because they offer benefits that are greater than the community is willing to pay. That is the main point.

We have just got the information about the ACC in New Zealand and they have just made—this was announced in December 2015, so fairly new—substantial reductions in their motor vehicle levy with a 33 per cent reduction and also it gets funded in different ways there. They have petrol levies and other sorts of things, but they have been reduced as well. The general gist that I take from it is that the scheme is doing fine. It has had its moments, as every scheme does, but my understanding is right now the ACC scheme is doing quite well.

ACTING CHAIR: That leads me to a second question which anyone could answer. As you would be aware, a number of the submitters have put the proposition that the existing CTP scheme here in Queensland is stable, solvent and affordable and it seems to me that, save for the absence of no-fault coverage for the catastrophically injured, most stakeholders are generally happy with the operation of the scheme. Would you agree that that is where we are with CTP in Queensland?

Mr Singleton: Yes, I would. That is I think a clear position from the submissions and also more generally—that the Queensland CTP scheme is held in high regard. Premiums have been very stable for at least the last five years and probably longer and are currently less than 25 per cent of average weekly earnings, which is well below any benchmark and one of the most affordable schemes in Australia, but for the fact that it does not cover the National Injury Insurance Scheme component. So, yes, it is a fault based scheme, but for a privately underwritten scheme versus a publicly underwritten scheme it would beat most benchmarks against any other scheme in Australia.

ACTING CHAIR: In my layman's language, the schemes are quite profitable for the individual insurance companies that operate them.

Mr Singleton: Indeed. We would say that the insurance profitability is strong.

ACTING CHAIR: Can you give any figures as to what the profitability margin is in relation to some of those insurers?

Mr Singleton: In our last annual reports we have outlined what we believe the level of scheme profitability is. It is a difficult position to be firm on because at any point in time there are outstanding claim liabilities which may come in higher or lower than expected. In terms of premium determination, our profit allowance for insurers is set at 7.75 per cent and the experience we are seeing at a scheme level currently is that insurer profitability appears to be in excess of 20 per cent.

ACTING CHAIR: So in cold, hard numbers, numbers that have been bandied around with me are that the CTP premium at the moment I think is—correct me if I am wrong—about $300.

Mr Singleton: It is $336.60.

ACTING CHAIR: To be exact, $336 and I understand that at least, in layman's terms again, $100 of that ends up in the insurers' pocket.

Mr Singleton: It does. I think that the challenge for both us as the regulator and for insurers is that when you are setting your premium you are looking forward into how many accidents will occur in the coming year, how many claims will come from that and the cost of those claims. It is very difficult to be precise around how that experience will unfold. Currently, as I say, the scheme is stable and performing well so insurers are, if you like, benefiting from that with sound profitability. Equally, claims experience and crash rates could turn and the insurers might find themselves under strain. So it is not that insurers deliberately sit there going, 'We will insist on a profit margin of 20 per cent.' It is just the way the scheme is performing at the moment that is delivering that. That said, insurers are continually looking at ways we can improve the scheme, improve efficiency and looking for ways we can continue to make the scheme more affordable for motorists.

Mr Cannon: If I may just add another comment to that, just to expand a little further on the point that Neil has raised, the profit margin is set prospectively. The best estimates are made by actuaries who advise the advisory committee as to the likely costs of the scheme and those costs include claims inflation, so the likelihood that over the long time it takes for these claims to eventually be reported and paid inflation will affect them. As it has turned out in hindsight—and it is in hindsight, so it is very difficult to apply that from an actuarial perspective prospectively; we wish we could—things have turned out to be profitable. So the allowances that were made for the claim rates that would emerge and the overall costs of those claims when they come in, including the inflation that might normally affect those, has turned out to be conservative in hindsight. So that is why the insurers have made those so-called super profit margins, if you like, retrospectively. But how can anyone—a regulator or an insurer—know what these things are going to be when they are being priced? You do not know. You have a lot of uncertainty. It could have gone the other way. There could have been a break out in inflation. Claims rates could have been much higher. Those are the sorts of things that can happen in any regulated environment.

ACTING CHAIR: I have a couple more questions, and I have one question that deals with the problems that may be associated with dealing with the regions. Apart from Western Australia, I think you would agree Queensland is a very large state in terms of dealing with the challenges that present in rural and regional areas for the delivery of rehabilitation and like services. Do you have any suggestions on how that can be dealt with?

Mr Singleton: I think an important part of a scheme such as this is that, if you like, you bring together the total experience of people suffering catastrophic injury so you can build some scale into resources. Probably similar to watching how New South Wales has evolved, their scheme started as a Sydney-centric office and now they have developed some regional offices so as they start to get injured people in regional areas they can build infrastructure. I would picture Queensland having a similar system where you would have case coordination centres probably in obviously the key regional centres like Townsville and probably around the central Mackay and Rockhampton area. As you get into the much more rural remote areas, it becomes a question of scale, but you can do things once you start to bring those larger numbers together rather than leaving each individual person to have to find their own resources. So if you are out the back of Mount Isa looking for an attendant care service, you are pretty much having to do it yourself. But through a coordinated scheme, you can start to develop buying power and encourage providers to move into those areas. I think that is probably the one sort of prospect you see in a NIIS that probably has not come through in the conversations to date around particularly, as you say, Queensland being so diverse. Victoria and South Australia are probably more metropolitan or have fewer key centres to have to service compared to Queensland. But I think that is the opportunity for us as much as a challenge.

Mr Waite: We also need to remember—and none of us are experts in NDIS—that this is a parallel process with the implementation of NDIS and one would imagine those same regional issues in terms of lifetime care and support and services will face the NDIS. So not only does the NIIS scheme have the opportunity to aggregate demand, but I would imagine—not being an expert but still imagine—that if we pool that with the NDIS we will start to see some of those capacity issues addressed through regional areas.

ACTING CHAIR: It has been put by some submitters that in, for example, damage settlements money almost always or very commonly runs out quickly and certainly well before the end of the life of the claimant. Has the Motor Accident Insurance Commission ever compiled data or commissioned studies or become aware of any empirical evidence which supports such assertions?

Mr Singleton: The Motor Accident Insurance Commission has not compiled any information of that nature. In a common law system where there is a once and for all lump sum settlement, there is no tracking of the person beyond the settlement of the claim to understand what happens to them or to their funds. So, no, there is no empirical study.

Certainly in the process of this review we have had a number of representative bodies come to us with examples of people who received lump sums some years ago and who have now exhausted those moneys and are now dependent on other services and support. Some have indicated that they were effectively wiped out by the GFC—so circumstances beyond their control or beyond their prediction. Others have indicated that it was simply by the rising cost of care or even the cost of prosthetics or wheelchairs rising beyond what they expected. I would not even say it is anecdotal; it is direct evidence from people who have been affected, telling us about the fact that funds have run out. But I am not aware of any empirical studies at least in a Queensland context. There may well be national or international studies elsewhere, but I am not aware of them.

Mr Cannon: I would like to make one further comment. This was raised in a couple of submissions, but it is a really key point in the difference between lump sum schemes and schemes that provide care over long periods. Neil has just touched on a couple of the risks that individuals have to bear when they receive a lump sum, and one of those was investment risk. He spoke of the GFC and things can happen that are completely out of your control. Inflation risk is another one. It is impossible to predict with certainty the cost of care that you need and the cost of materials, if you like—all the various supports that you need, appliances et cetera. I will mention one other risk which I think is probably even much bigger, although the investment risk is very material, and that is longevity risk. You do not know how long you are going to live. It is very, very difficult to set a lump sum—

ACTING CHAIR: I thought you might know how to work that out!

Mr Cannon: Actuaries are good at that on average, shall we say. When you are attempting to value a retirement scheme, for example—a pension scheme, as I do with QSuper—whilst you cannot tell, and I certainly cannot tell—there is the old joke about only the mafia actuary knows when you are going to die—

Mr McARDLE: Self-assessment.

Mr Cannon: On average, for a large group of people you can make reasonable assessments about their longevity. So across the scheme you can make reasonable assessments, and that is exactly what actuaries do. But when it comes to any individual—that is the point here—a scheme can manage that longevity risk across a large group or cohort of claimants but the individual cannot. That is one of the problems we observe in retirement incomes as well. You probably know people yourself who have retired with a lump sum, self-funded retirees, and they have to work out how are they going to draw that down. They have a relatively easier path, I would assert, than someone who is catastrophically injured, who has a lot more difficulties with regard to inflation risk and a lot more things to have to worry about in terms of their expenditure. That is a very, very difficult problem and one of the fundamental issues with lump sum schemes. I am not sure that it is solvable, but it is one of the risks that has to be identified and recognised.

Mr McARDLE: Mr Singleton, you made comment about either organisations who had made comment about people who had lost their lump sum or people themselves making comment. Do you know if any of those groups or those people have made submissions to this inquiry?

Mr Singleton: Certainly Spinal Life is one of the submissions that comes to mind. I think the Young People in Nursing Homes National Alliance was one of the submissions. I could probably go back through the various submissions. We have not tagged them in terms of who made that sort of assertion, but I think we could go back through them and find the individual cases where they asserted that there were examples or evidence of that.

Mr McARDLE: Can you tell me the proportion of people who fall into that category as a proportion of the number of lump sum payments that have been made in the last, say, 10 to 20 years?

Mr Singleton: As I said before, I am not aware of any empirical studies of that nature. It is just anecdotal or individual cases being raised with us which was the answer to the question. I am certainly not aware of the proportion of people who would say their lump sum has been adequate versus those who say it is not.

Mr McARDLE: You would also, I suspect, be aware—I am not being disrespectful to people involved—that it is always important to assess an individual case individually against circumstances, as opposed to making a general comment as to what took place to cause the loss of the money.

Mr Singleton: Indeed.

Mr McARDLE: I think you would have heard Mr Mason make comment about the WA proposal—and I use the word 'hybrid'. He made the comment that the WA proposal would add $100 over and above the proposal in South Australia because WA kept the common law claim component that had been removed in South Australia in terms of what we are talking about at the moment. You heard WA make the comment that that is not correct. There would not be an additional levy component because of their retention of that right, having been removed in South Australia. Can you comment about that? They are quite clearly contradictory.

Mr Singleton: That was one of the confusions we had sitting in the gallery trying to follow some of the conversation, particularly from an outsiders' view of Western Australia and we have not seen their legislation.

Mr McARDLE: We are all outsiders to Western Australia.

Mr Singleton: We are all waiting to see that legislation to understand it in more detail. Today was probably the first time I have heard some of those statements. I must admit I was struggling to understand some of the maths that was being lined up across the schemes. I am aware that Western Australia is proposing an additional $100 levy to cover their new scheme, but I am not aware of the mechanics of how that scheme will work in terms of who gets a lump sum and who does not. In South Australia, there were CTP scheme reforms to reduce benefits for minor injury claims to reduce premiums ahead of the introduction of the lifetime support scheme that increased the cost factor for motorists. In New South Wales—and I think I followed what happened there—the insurance premiums reduced as the lifetime care scheme came in. So the net offset to the motorist was less than the cost of the lifetime care scheme itself.

Mr McARDLE: It was significant.

Mr Singleton: Trying to put them all side by side to work out why was one $20, one $60 and one $100, I was struggling with the maths and I would probably need to—

Mr McARDLE: I was struggling with $65 in South Australia and $19 in New South Wales. I accept that the population base is different but therefore the claimant base must also be reduced accordingly. I could not quite work out how those figures were so different when the schemes seemed to be very similar in style compared to WA.

Mr Singleton: As I understand Western Australia—and I think it was mentioned—they include a risk margin in that. That would add $20 or so to their cost. I understand that there is also GST allowed for in that cost.

Mr McARDLE: Aren't they exempt from GST?

Mr Singleton: The way they are proposing it—certainly the documents I have seen to date included a GST element. If that nets down to about $60, maybe the three schemes—New South Wales mentioned something around $70; South Australia is $60 something; Western Australia maybe on a comparable basis is also around $60 to $70. Again, I would defer to having a chance to understand the maths of what they were talking about with the benefit of seeing their packs or clarifying that separately.

Mr McARDLE: The reason I raised the point is that in Taylor Fry's document of January this year, on page 7, there is a clear distinction between option A and option B of $15-odd difference. You would follow if not the figures then the logic by Mr Mason in regard to WA's proposal to add in more than a straightforward option A proposal.

Mr Singleton: I think so, yes.

Mr McARDLE: On page 51 of Taylor Fry's report of 2014, there is the amount per vehicle of $61. Then you have the risk margin of 20 per cent and then a 30 per cent risk margin of $78.10 and $86.60 respectively. Your figure of $61 would be on a central estimate basis, wouldn't it? There is no risk margin in that. But on page 6 of Taylor Fry's 2014 report, they make it quite clear that these figures are very sensitive and we are really not in uncharted waters but in uncertain waters. Am I right in saying that to fund the long-term proposal for the fund—the initiative contained in their first report is the way you strike the levy—there could be a range between $61 and $86 using 2014 figures to be adjusted down to January 2016 figures as well?

Mr Singleton: Can I defer to the actuary in the room?

Mr McARDLE: Of course.

Mr Cannon: Thank you for the question. The actual levy I guess is still to be determined by whatever body gets put in place to do that. We will go on the basis that a per vehicle levy is an appropriate mechanism and assume it will be something of that nature.

Mr McARDLE: Option A, not option B.

Mr Cannon: Indeed. We will assume that there is going to be some sort of funding along those lines for this purpose. The question is: should we have a risk margin or not? This is a debatable point. I think there is a good argument for there not to be a risk margin, and I will explain why. When you include a risk margin, by definition you are not expecting to pay that additional amount. It is like an insurance—sorry, I should not use that term. Shall we call it a contingency? You are not expecting to pay those amounts. By definition, that means that if you price including a risk margin the generation that has to pay those prices funds the risk margin for those future generations that may or may not have to bear those risks.

I think there are quite strong arguments, quite reasonable arguments, within a government underwritten scheme, as the long-term care scheme option A that is being discussed here is, to provide for that intergenerational equity, if you like. Each generation of levy payers pays for the best estimate of their costs. There is a recognition it may turn out wrong in hindsight. As I said, in CTP you have that problem. It is much bigger here. We are talking 30-year plus durations here. It will be a long time before we find out how 2016-17 actually went. We will make our best estimates along the way, and that is what the actuaries do when they are doing the reserving.

If you deliberately load then you are asking the current generations at the start to pay more than their share. It is a debatable point. Everyone is welcome to have their view on it, but I think there is a reasonable argument, from an intergenerational equity perspective, for it not to be the case. Insurance companies do include risk margins because they have to. They are regulated by APRA and APRA requires them to do so, and there are good reasons there about insurance companies having to be more prudent, if you like, in their pricing and reserving. They do not have a government guarantee. The support for those to make sure that claims are eventually paid has to be handled by the pricing and capital of that insurer. So it is a different environment for an insurance arrangement.

Each state has different views on this. You have seen that some are central estimates. Western Australia are proposing a risk margin. There are different views. I am not claiming that my assertion is universally accepted, but I think it is quite a reasonable argument. Taylor Fry have done these calculations as scenarios, so people can get an idea of what the effect might be. But it would certainly be my recommendation not to include a risk margin.

Mr McARDLE: New South Wales made the comment that if they do not meet their six per cent return it would mean a 23 per cent increase on premiums. Isn't that incentive enough to put in place a risk margin? If you do not do that, you are then going to have a significant increase, particularly if you have four vehicles in a family—$240 a year, plus a 20 per cent increase, for two cars, a trailer and a boat. Wouldn't that be incentive enough to put in a risk margin to ensure that you do get that?

Mr Cannon: I think that was Western Australia, that 23 per cent. That durational effect you will find—it might be New South Wales as well. They are very common. These are very long duration schemes, as you are asserting. Payments will be made over future lives. It could be up to 100 years for an infant who happens to be affected. It is certainly very, very sensitive to the discount rate that might be used in pricing, and that is something that Taylor Fry and my own advice has highlighted very strongly.

I make the point that investment returns go both ways. You could argue that it is very, very sensitive to the returns that are earned over those 30-year periods. It is not just each year; it is averaging over those entire periods. You might end up lower than your expectation, and that is absolutely a risk. That, to me, is a question that needs to be considered by the governing body with regard to investment strategy—how much risk is taken. I think that is something that needs to be taken into account within the broader government balance sheet. That is a more complex question, if you like.

But the point of risk margin is exactly the same. Whether it is risk in terms of investment returns that back the liabilities, whether it is inflation risk, longevity risk—all of the things that affect the eventual payments that have been made under this scheme—if you include a risk margin you are deliberately taking more from this generation that do you not expect, because the central estimate is what you would expect. You are deliberating taking more and maybe it will all be needed and maybe it will not. It is a debateable point.

Like I said, I think that everyone can have their own view of it. It would be my recommendation that there not be one, because I think from an intergenerational equity perspective it is unreasonable, but you could certainly take the view—and as I said, there are different approaches around the country and certainly around the world as well as to whether it is reasonable in a publicly underwritten scheme of this nature. So you could. I am not saying, 'No, I think it is a bad idea'; I think there is a judgement to be made and you need to make it in terms of intergenerational equity. So if you include a risk margin, the current guys pay more. You are asking them to pay more than you expect.

Mr Waite: Mr McArdle, can I also point out that Mr Cannon has been very consistent. He wrote a letter that you will read in our submission of 4 December. In that one of the points he made is that the scheme can be expected to spend long periods materially under and overfunded and that neither of those positions is a cause for immediate concern; it just should be expected as part of the investment cycle. So I think there is certainly a consistency in the view that, yes, schemes will spend some time overfunded and sometimes underfunded based on that investment return. I think in the same letter Mr Cannon also pointed out that there is high sensitivity in the investment matrix. So the investment process is sensitive to the way that it is structured, I guess, for those long-term liabilities.

Mr McARDLE: New South Wales has a fund worth $4 billion. Liabilities are at $2.6 billion and they are levied $19 in relation to this component, shall we say. They pay out $93 million a year, which is a very small component of the $4 billion. Their argument is that these are long-term schemes and they are looking down the track by 20 or 30-odd years. Therefore, if they are charging only $19, acquiring $4 billion at this point in time, are they not, in fact, doing exactly what you say should not happen—that is, loading up the current generation for down the track? Is not their argument actually, 'No, what we are doing is making certain the fund is viable in 30 years time.' So I go back to the point: would you not then put a risk factor in to make certain that in 30, 40, or 50 years time the money exists, because those who are claiming now in 30 years time will need access plus the thousands who come through as well?

Mr Cannon: It is my understanding that New South Wales did not include a risk margin on their pricing. So in their $19, they did not include one. So it was not deliberate. I think you will find that the surplus that exists in the scheme now has come about because things have come out better than they were expecting. So it was not a deliberate strategy to include a risk margin and that they were

deliberately overpricing, so to speak, to try to collect additional moneys and thus have a greater surplus and thus a greater potential for coverage of liabilities; it is that their experience has been better than assumed. So they were pricing at $19. That was on the basis of certain numbers of claims and the costs of those claims, as we have discussed, and things have turned out better than their assumptions. So that is, I would assert, without seeing the full see valuation reports and having gone through all of the detail, the most likely reason. Investment return will be relevant as well. Their investment returns in the last few years are very likely to have been higher than were assumed in their costings.

Mr McARDLE: The GFC?

Mr Cannon: They only started in 2007 and they hardly had any money when the GFC hit. So that was a bit fortunate from a timing perspective. The other point I will raise is that you also mentioned, I think, $93 million or something. There are very small cash flows coming out at the moment. This is a very, very long duration scheme. If you imagine—and I am not going to air draw the shape of the cash flows—they go out over a very long time. It tends to be initially very low and then grows and grows and grows. For each participant it is going to take—did I hear?—50 years for one of the schemes and that is exactly the sort of advice that we are receiving as well. It will take 30 to 50 years before we reach any sort of equilibrium. So you start off accruing a lot of liabilities that you are going to pay down the track, but payments in initial years are going to be very small.

Do you have to have it covered? It is a government underwritten scheme. I do not think that it is actually possible to be certain—and I do not want to be trite about it—but you can charge more and more. Let us just exaggerate the point to make it. If we charged $1,000 per vehicle, would we have a better chance of coverage? Yes, absolutely. Would it be certain? No. These things are distributions. So there is a clear trade-off in that certainty. When an insurer is pricing its CTP business, does it charge twice as much because it gives us a better chance to be able to cover it and then make more profit? It cannot. Like I said, it is a debateable point: how much do you want the earlier generations to pay for uncertainty and I am asserting that each generation should share that.

Mr McARDLE: I have one final question and I will pass back to the chair. You are considering option A at $60. That would be your net?

Mr Cannon: Yes, net.

Mr McARDLE: Net. New South Wales has $19. We are similar in population—not the same, obviously. We are similar in motor vehicle numbers—not the same, obviously. Why is the gap so wide? There might be a very good reason, but I just cannot understand that particular point.

Mr Singleton: I think there is a point of correction. The New South Wales lifetime care levy is around about $70 a vehicle. I think the gap was the difference in the premium that occurred when the reforms were put through. But the levy itself is about $70 and I think that came through in the evidence this afternoon.

Mr Cannon: So that compares with our estimated levy of around—

Mr McARDLE: $61.

Mr Cannon: No, $82 is the levy. That is why I mentioned net. The $61 is then after the reductions that would be made in the CTP premiums—the estimates of those—because the CTP scheme does not have to pay its benefits for care and support. So that is that trade-off. If New South Wales's two corresponding figures are $78 and their CTP offset is $58, that means a net additional of $20—sorry, I am just rounding these numbers as I am going. Ours is $82 and a $21 offset gets you down to roughly the $60. As to why their offset is different from ours, I cannot tell you off the top of my head. It would need a lot more analysis. I also note that New South Wales CTP premiums are about $700 and ours are about $300. So it is very difficult to make these comparisons but Neil has a bit better experience in these than me.

Mr Singleton: I think back in the 2006-07 period when the lifetime care scheme was brought into New South Wales the insurance premium was reduced at that time and then it flatlines from there. So that was where the $19 occurred—that green slip premiums came down as the NIIS levy, or the lifetime care levy, came in. As Mr Cannon said, their general CTP premium is higher than Queensland's and then they pay the levy as part of that process.

I think one of the other features that came through in this conversation around risk margins and financial risk—and I apologise; I forget which submission or in which conversation this came through—is that what we are talking about in a NIIS context and all the financial risk is that, in fact, it

occurs individually in a common law scheme. Each individual person with their money has to also face all of these risks individually in terms of how they invest, whether they are ahead or behind in terms of the position that they would like to be in. So you are probably seeing this coalesced into one scheme, but in reality it happens in many thousands of cases across Queensland and across Australia where there is a lump sum regime.

Mr McARDLE: Thank you very much.

ACTING CHAIR: First of all, I have quite a few questions and I am very conscious of the time. Could I kindly ask whether you would be prepared to take some of these questions on notice if I got them sent to you through the secretariat?

Mr Singleton: Yes. We are happy to stay a bit longer as well.

ACTING CHAIR: I have one question, which I think is important we get on the record. Obviously, with the Western Australian scheme, they have elected to go with, for want of a better word—I will leave the word 'hybrid' out—retaining the common law scheme as well as having the lifetime scheme running parallel. They are my words. There are particular aspects to the Western Australian scheme that make it a lot harder for Queensland to have a similar scheme. From my reading of it, in terms of how the scheme is underwritten there seems to be myriad things, or obstacles, or challenges for Queensland that Western Australian does not have.

Mr Singleton: And there could well be more on reflection, but the two that came straight to mind was that Western Australia has a government underwritten scheme. So there is one central body managing all of the claims and, from the gist of the conversation that I received, there seems to be a role to determine who gets a lump sum, who gets periodic payments and who does not. I think we need to see their legislation to understand it more clearly but, in having a central government underwritten scheme, you have flexibility to do things whereas in the Queensland market, where you have private licensed insurers, they would clearly need to understand what liabilities they are being put on risk for and then what premium they are receiving for those risks. Then it would be their choice as to how claims are processed, or maybe even a court decision on how claims were processed. So we do not have that latitude, if you like, as a single scheme manager that Western Australia does.

Separately, Western Australia is not a signatory to the heads of agreement with the NDIS. Queensland has signed a heads of agreement committing to refund to the Commonwealth any moneys for people who come into the NDIS because they do not have access to lifetime care and support benefits through an equivalent scheme that meets the minimum benchmarks. Western Australia has not signed a heads of agreement. So they do not have that financial commitment back to the Commonwealth if people exhaust their lump sum, go into the NDIS and then the Commonwealth has to meet that cost.

So I think they are the two material things that stood out for me. I am not really sure if other key points will come through or there are other points of detail around different legislative structures, different scheme dynamics, different vehicle numbers. There may be other points in this as well that become relevant later, but those two certainly stood out immediately.

ACTING CHAIR: Thank you. I am conscious of the time and I think it might be time to wind it up. Thank you for your participation this afternoon. I know that it has been a long afternoon for very busy people.

Mr McARDLE: You made the comment that you would like to see the data that we have been given by other bodies—WA, South Australia et cetera. If we can get that to you, can you do a comparison as best you can as to why the figures are different and how they come to their contribution levies? It would be helpful for us to understand from our perspective why they are different and, more importantly, why that would not suit Queensland, or what are the issues between the relevant states that make it quite important to be different in levies.

Mr Singleton: We certainly could. I am probably able to qualify that point. I do not say this to denigrate the Western Australians, but their presentation was the one that confused me the most. The other presentations I actually found reasonably coherent. Certainly, to put them side by side and understand the various points and scheme structures and levies, we could certainly do that very quickly for you early next week.

ACTING CHAIR: Again, I thank everybody including Hansard and the staff of the secretariat. Thank you.

Committee adjourned at 5.28 pm