EDUCATION, TOURISM, INNOVATION AND SMALL BUSINESS COMMITTEE

Members present:

Mr SJ Stewart MP (Chair)
Mr MA Boothman MP
Mr SE Cramp MP
Dr MA Robinson MP
Mr PS Russo MP
Mr BM Saunders MP

Staff present:

Ms S Cawcutt (Research Director)
Ms M Coorey (Principal Research Officer)

PUBLIC HEARING—NATIONAL INJURY INSURANCE SCHEME (QUEENSLAND) BILL 2016

TRANSCRIPT OF PROCEEDINGS

MONDAY, 9 MAY 2016

Brisbane

MONDAY, 9 MAY 2016

Committee met at 9.29 am

BEGLEY, Ms Kate, Policy Adviser, Vision Australia

JAMIESON, Mr Shane, Manager, Youngcare Connect, Youngcare

McKAY, Ms Julie, Government Relations Adviser, Vision Australia

NELSON, Mr Russel, Chief Operational Officer, Headway ABI Australia and Community Lifecare & Support Service

WILLIAMS, Ms Jane, General Manager, Headway ABI Australia

CHAIR: I declare open the committee's public hearing into the National Injury Insurance Scheme (Queensland) Bill 2016. I will introduce the members of the Education, Tourism, Innovation and Small Business Committee. I am Scott Stewart, the member for Townsville and chair of the committee. Other members are Dr Mark Robinson, the member for Cleveland and deputy chair; Mr Mark Boothman, the member for Albert; Mr Bruce Saunders, the member for Maryborough; Mr Sidney Cramp, the member for Gaven; and Mr Peter Russo, the member for Sunnybank, who is standing in for Ms Nikki Boyd, the member for Pine Rivers. The hearing is being transcribed by Hansard and the transcript will be published on the committee's website. Please turn off your mobile phones or turn them to silent.

The committee's hearing is a proceeding of the Queensland parliament and is subject to its standing rules and orders. On 19 April, the Treasurer introduced the National Injury Insurance Scheme (Queensland) Bill into the parliament. The bill was referred to this committee for detailed consideration. The committee is required to report to the Legislative Assembly by 19 May 2016. This morning the committee will hear from invited witnesses. First we will hear from representatives of non-government organisations, followed by members' questions; at around 10.30 this morning we will hear from legal organisations.

I welcome our first panel of witnesses: Shane Jamieson from Youngcare; Julie Williams from Headway; Russell Nelson, representing Community Lifecare & Support Services and Headway; and by phone we have Julie McKay and Kate Begely from Vision Australia. I remind witnesses to speak clearly into the microphones. We have allowed till 10.30 this morning to hear from you all, including questions from members. We will start with opening statements from the representatives of each of the organisations and then we will move to questions. Shane, would you like to introduce yourself and give an opening statement of up to 10 minutes?

Mr Jamieson: Thank you. I am the manager for Youngcare Connect at Youngcare. I would like to take the opportunity to thank the committee for enabling us to make this submission and also to present to you today. Since 2007, Youngcare has worked to create choice and control for young people with high-care needs through the creation of housing solutions, grants programs, the Youngcare Connect information and referral service and through advocating for better outcomes.

Zaine, a hardworking teenager, loved his new job as a jackaroo near Townsville and had acquired his own car to travel there from his home in Ayr. However, while taking the car for a test drive he lost control on a bend. Zaine suffered massive head injuries. He was rushed to hospital. He was not expected to live. After months on life support and numerous operations, he was eventually moved to a rehabilitation unit to start the long and difficult road to recovery. Zaine is now wheelchair dependent and has lost the ability to speak. His family fought a three-year battle to find him a place in supported accommodation that would meet his needs, only to find that they did not have the money to build or to buy all the specialist equipment he was going to need on an ongoing basis. Family members contributed what they could and exhausted all sources of funding to buy a wheelchair, a mattress, a bath chair and other aids. The last and most important item that was needed was a

high-low hospital bed, which was going to cost the family thousands of dollars. Finally, out of desperation, they contacted Youngcare and we were able to provide the money that they needed. At the time, Zaine's Aunty Melita stated—

There is a terrible lack of funding available to young adults to provide much needed medical aids and equipment. Without the donation of this bed, my beautiful nephew Zaine would have lost his placement and would have gone into aged care before his 21st birthday.

That is just one example of not having a lifetime care and support framework in place, which puts extra pressure on families that find themselves not only at the mercy of a disability support system that is unable to cope but also facing prolonged hospital stays, creating poor outcomes for people not covered by a no-fault scheme.

Youngcare welcomes the National Disability Insurance Scheme into Queensland as a huge step forward for those people who will suffer life-changing injuries from motor vehicle accidents. Youngcare has made two submissions leading up to the bill currently before the Queensland parliament. The first one was to the Disability Services and Domestic and Family Violence Prevention Committee, outlining the areas of the national injury insurance scheme that Youngcare believe should be addressed prior to deciding a preferred model for administering the scheme in Queensland. The second submission is to this committee to specifically outline the areas of the draft bill that we felt could broaden the eligibility criteria for accessing the scheme. My statement today will take into account Youngcare's position relating to the draft bill.

Youngcare identified in both submissions that there is scope for broadening the criteria of eligibility to include not only those who have sustained long-term or permanent injuries but also those whose injuries are significant but are for only a short or intermittent term. This needs to be considered in regards to those people who will be placed at severe economic disadvantage as a result of the injuries that they have sustained. For example, such eligibility requirements may apply to a person who cannot work for a significant period and, as a result, may lose income.

In the draft bill under section 14(1) (b), the minimum period participants can be included within the scheme is two years. Although this is suitable for Youngcare's core constituency, such a restriction would limit others who could benefit from the scheme. Youngcare recommends that the National Injury Insurance Scheme does not keep the eligibility of interim participants to a prescribed time frame, but expands the eligibility to people with non-permanent injuries to join the scheme as an interim participant where there is evidence of economic hardship that a loss of earnings will have on their short to long term recovery. This can be achieved by using a similar method to the Accident Compensation Corporation in New Zealand, to ensure that those with severe short-term injuries are also covered under the Queensland NIIS scheme. This is discussed in wider detail in our written submission.

The definition as to what constitutes an injury according to schedule 2 of the draft bill is unnecessarily prescriptive. Accordingly, Youngcare agrees with the statement on page 3 of the legislation's explanatory notes that the experience to date of some other jurisdictions suggests that there is some benefit in adopting even more detailed definitions to reduce uncertainty about the eligibility. Youngcare does suggest broadening the scope of the definitions to include such things as wounds, lacerations, contusions, burns, fractures, amputations or dislocations, damage to dentures, prosthetics, blindness, poisoning, choking, loss of consciousness and a foreign body in the eye. If the National Injury Insurance Scheme limits the definition of the injuries that would allow participants to qualify for the scheme, the overall effectiveness of the legislation is undermined. The suggested definitions above would ensure that fewer people would be able to fall through the cracks of the scheme, enabling them to recover quicker and ensuring that their productivity is resumed at the earliest possible opportunity.

Section 8 of the bill outlines the government's core responsibility in terms of the provision of treatment, care and support needs for a person relating to rehabilitation. Youngcare believes that rehabilitation is a key component of assisting a person with a catastrophic injury to live a life that enhances their choice and control. In Youngcare's previous submission to the parliamentary committee, it is argued that rehabilitation plays a crucial role in preventing secondary complications and maximising remaining physical function that will increase the chance of reintegration into the community. Although there are currently calls for a national rehabilitation service, rehabilitation continues to remain the responsibility of respective state funded health departments.

Requests for a national approach are primarily a response to an over-burdened state health system that is unable to keep up with demand. In order for the National Injury Insurance Scheme to have its intended impact, the Queensland government needs to invest and provide more services for

slow-stream rehabilitation. These services must work in concert with the injury insurance scheme to ensure that eligible participants can maximise their potential and expedite their recovery time, thus reducing long-term costs to the providers of those services and the scheme as a whole.

Youngcare, therefore, echoes the recommendation regarding the rehabilitation from our previous submission and strongly urges the Queensland government to utilise the National Injury Insurance Scheme to encourage further investment in rehabilitation services and enhance facilities for victims of catastrophic motor vehicle accidents. I would like to thank the committee again for the opportunity to further put forward Youngcare's position on the draft bill.

CHAIR: Thank you very much, Shane. We will move on to Julie from Headway. Would you like to make an opening statement?

Ms Williams: Good morning, gentlemen of the committee and ladies. My name is Julie Williams, I am the general manager at Headway ABI Australia, formerly Headway Gold Coast. We feel very privileged to be here on behalf of our support persons and the people with an ABI whom we support in the community. Together with our management team at Headway, we have more than 60 years experience in managing and delivering services and supports to people with an acquired brain injury and many of those complex and catastrophically injured in motor vehicles accidents. We will share with you our concerns around some of the situations or the positions in the draft bill. As well, we are open to discussing some of the recommendations that we have put forward.

We wanted to highlight our reservations and concerns relating to various sections and articles within the proposed bill. In the document that we submitted, we endeavoured to raise and advise you of our concerns which affect some 70 per cent of the anticipated prospective participants who will suffer an acquired brain injury as a result of a motor vehicle accident. As a core cohort representative body, Headway ABI Australia asks that you please consider our concerns and responses from our direct experience, first-hand knowledge and understanding of the complex issues and circumstances of ABI victims. We are certainly excited for all Queenslanders with the introduction of the NIIS and hope our input will contribute to and influence the ideal universal accident and injury scheme for this state.

One of our major concerns with the proposed legislation was the potential for all people to have access to a lump sum payment for care. We believe it is imperative that the catastrophic injury scheme fully fund all required treatment, support, care and equipment for its participants, irrespective of fault or where fault cannot be attributed. Where the participant has been identified as sustaining a catastrophic injury from a single vehicle rollover, collision with animals and other participant claims of that nature, they should clearly and specifically be identified in the legislation as not requiring anything other than an NIIS application and assessment process after commencement of services. Essentially, at the moment, they are talking about them being entitled to access a lump sum payment.

The classification of a client must clearly and expressly advise that no lump sums will be available to those who are deemed at fault at any time under the NIIS legislation. It is subordinate legislation to the NDIS which is currently changing its legislation to ensure that no lump sums are to be made available. This is where they are at fault. As this group will be specifically excluded from compensation for economic and general damages, any lump sum payment will result in the immediate suspension of Centrelink disability benefits and all other associated Centrelink services under the preclusion period and, depending on the amount of the lump sum, could effectively preclude them from benefits for the rest of their lives. This will result in the individual having to effectively live off those lump sums provided for the care and support for their daily living expenses.

Further, it is absolutely paramount that this legislation is not ambiguous. Legislation which is abundantly clear and unambiguous will enable all parties to understand the eligibility benefits, the scope of services and the care, support, equipment and treatment available under the injury scheme. Without a clear description, the scheme is vulnerable to litigation resulting in spurious claims for items such as gratuitous care.

It is important to highlight the significant factors which impact individuals, their lives, care needs and lifestyles on receipt of lump sum compensation such as, as discussed, it will ensure Centrelink prescribed preclusion from benefits will take effect with many, if not all, types of welfare assistance, including pensions, child benefits and healthcare concession cards, which will be forfeited or restricted for many years and, in some cases, a lifetime. Of course, divorce for catastrophically injured people is twice the general average. It should be considered also that Indigenous people in Queensland have cultural financial obligations to tribal elders and family which cannot be avoided and expose lump sum recipients to significant financial loss resulting in insufficient funds to care and support those over their lifetime and therefore they are vulnerable to homelessness and poverty.

Centrelink uses no discretion in their assessment and asset test of lump sum funds which will result in all lump sum recipients being ineligible to access disability pensions as well as carer pensioners for their spouse or other carers, including entitlement to PBS medications.

It could be determined that the primary and long-term beneficiaries of a lump sum provision in most cases will be the plaintiff and defendant legal services as well as public and private trustees who receive significant fees for the management of those funds. Discount rates applied by the courts on lump sum settlements, legal costs and public trust costs as well as access to appropriate accommodation—often people purchase homes—will ensure that the catastrophically injured person's care and support funding is quickly eroded and rarely will be adequate to cover their lifetime costs.

Under the NDIS Queensland Treasury will be required to bear the full cost of the returnees once their lump sum is eroded and the individual is destitute or in crisis. We make reference to the concern already being raised under the NDIS concerning lump sums and their proposed utilisation of benefits and compensation funds. Documents obtained under freedom of information laws show the NDIA has suggested a raft of changes to the laws underpinning that program. The act and rules are silent on significant amounts of implementation and operational detail, as the submission to NDIA stated. It also warned that it did not have the power to ensure people who receive compensation spend the money on care. It said that people could instead buy a house and then continue to access taxpayer funded care under the NDIS. We further submitted a number of recommendations to parts of the bill. I expect that you probably have our paper there.

CHAIR: You have about three minutes left, Julie.

Ms Williams: We do make a point about chapter 1 'Preliminary' part 3 'Interpretation' section 10 at subclause 9 (3) that—

... subsection 2A does not apply if the treatment, care and support is being provided to a person at a hospital ... as part of the services provided by the hospital.

We strongly believe that this section will effectively cause delays to early intervention by service providers and other parties which could be of significant benefit to the applicant. Clarification of this section is necessary as it actually leaves it open to interpretation that a non-registered provider could provide intervention at this time.

It should be noted that our proposal for a community lifetime care and support alliance would ensure that we are there on day one—that is, that we are notified of an accident victim. For example, Vision Australia would attend the hospital. We would work with the family around discharge planning, care planning and community services that are available. Post injury we would work closely with the hospital staff and therapists to develop an extensive information awareness and discharge planning strategy.

Obviously, we have made a number of recommendations. Our most important recommendation was that at-fault persons do not have access to lump sum payments. They would be eroded through the purchase of a home and other costs incurred and therefore not be available for their lifetime care and support.

CHAIR: We move onto Russell. I understand that you will make an opening statement for the Community Lifecare & Support Service and that later you will able to assist with questions concerning the Headway submission.

Mr Nelson: Good morning esteem committee members. I come before you today with possibly the only ray of light in w sea of grey despair and disparate viewpoints over the choice of option B in respect of the NIIS. We ask that you consider our innovative proposal of a community based alliance of public benevolent institutions to operate and manage the NIIS with an emphasis on specialist service providers and pose changing just one aspect of one article of the legislation. With your bipartisan consideration and agreeance you will institute change for good that will be applauded not only by the disability community, both government and NGO, but also, at the same time, significantly reduce the financial impost on Queensland motorists whilst providing insurers with a system which can result in significantly improved case outcomes thus improving profitability for them. In short, your attention to the following concept can and will result in a historically inclusive outcome focused system that would be applauded both by Queensland and Australian commentators on best practice legislation.

I am here today on behalf of Headway, the Amputees and Families Support Group Queensland and Vision Australia which currently make up the Community Lifecare and Support Service, CLCS. Until quite recently the burns victims association also wanted to be represented in this document.

However, we could not conclude that they had a presence in Queensland. Unfortunately, at this time, we were required to remove them. We cannot find a burns support unit or charity of any description in Queensland to discuss this matter with.

Our united public benevolent institution cohort representative group, Community Lifecare & Support Service, are proposing an innovative new concept for the establishment of a community life care and support service to manage and coordinate the delivery of services and support to individuals who have sustained a catastrophic injury and are eligible for lifetime care and support under the Queensland National Injury Insurance Scheme. Our proposal is to establish an innovative model and framework for the management, provision and delivery of NIIS services in Queensland via a community based alliance of recognised specialist public benevolent institutions and experienced service providers representing their respective injury cohorts. Currently, the alliance comprises three participants. However, if we are successful in achieving bipartisan support for this essential change to just one aspect of the proposed legislation we are confident that the two other participant cohorts, which have already been in discussions with us, will come on board immediately.

What we are proposing is that the committee consider a change to division 2 section 60 of the proposed National Injury Insurance Scheme (Queensland) Bill 2016. We propose that it be modified to read that only public benevolent institutions which currently provide services in respect to cohorts under the bill and who can substantiate that more than 80 per cent of their activities are in respect of support services concerning their respective cohort can be considered as agent entities under the proposed legislation. We are in no way seeking to disempower for-profit organisations. Rather our proposal will ensure that entities which work with the unfortunate catastrophically injured on a daily basis will be there to shape and mould provision to be proactive and outcome focused, as gatekeepers. Effectively we will ensure that the for-profit allied health providers and associated services will also be of the highest standards and will be necessarily motivated to be able to undertake this essential work.

The introduction of the socially significant NIIS in Queensland is a once in a generational opportunity to respond with an innovative, creative and ideal community based model of service management and operations to meet the care and support needs of all Queenslanders who have experienced a catastrophic car injury. We also note that this will carry on to workers compensation and other classifications of injury into the future.

Further, we believe that this is an exceptional opportunity for a social benefit bond model to be utilised to underwrite the cost of the implementation and construction of this entity which will significantly reduce the impost on government and the public CTP contributor. In this respect, we have approached Queensland Treasury with a framework outline of a market led innovation program on behalf of the alliance. They are awaiting the finalisation of the legislation before being able to further consider this application.

Why our Community Lifecare & Support Service rather than a for-profit organisation model to provide this service? Under our respective organisational mandates, we exist to provide core support and industry best practice for our respective cohorts. Supporting our proposal will ensure that not only do the unfortunate individuals catastrophically injured and who sustain an injury post 1 July receive the best quality functional outcomes but those who suffered prior to this date will also significantly benefit.

The alliance would manage, operate and coordinate services, information, resources, care and support, conduct evaluation and provide reporting on participant outcomes to the Motor Accident Insurance Commission as required. The alliance would ensure that all participants of the scheme have been benchmarked for quality services available to improve their function and lifestyle and reach their optimal potential to participate as valued members of our community. We do not want to see the visually impaired go without the necessity of a guide-dog or sufficient supports for families nor amputees having to use ineffective prostheses when inclusion and return to best functioning can be achieved with the intelligent utilisation of the latest technology. It is best provided by the people who are most up to date with the technical innovations concerning the disabled, namely members of this alliance.

The CLCS alliance would be oversighted and supported by the MAIC as the legislative regulatory and financial statutory body and underwritten by the Queensland government and social investors via a social investment bond. We are of the opinion that the alliance would be able to undertake this task with significant cost savings against the anticipated operational budget of $19.8 million on the hybrid option.

The CLCS Alliance would be modelled on the principles of the NDIS, Queensland's disability service standards and human service framework. The model of care would be based on individualised

support and choice, a self-directed and person centred approach, early intervention, multidisciplinary and holistic service integration, innovative slow stream and lifelong rehabilitation planning, promotion of the latest assistive technology, outcome focused, access and equity, community participation and inclusiveness, research and innovation, carer and peer support, education and vocational planning et cetera.

What are the strategic advantages of going down this particular route? An alliance of experienced and expert established service providers and innovative planners are able to implement the scheme and CLCS services upon the commencement of Queensland's NIIS from 1 July. In essence, we are already doing the job on a daily basis now. We happen to report to the department of disability services or in some cases the NDIS. A new and costly government agency will not need to be established, duplicating services, systems and management already existing and long established in the community.

The significant cost benefits from the effective and efficient management of the scheme by the alliance of not-for-profit specialist providers will enable surplus funds to be reinvested in disability housing and appropriate accommodation options; expanded services and support options; regional and rural service development; individuals outside the scheme by default will be able to access and participate in services that they currently cannot; assistive technology and innovation for which our alliance cohorts are at the front of would be an integral part of the scheme; workforce capacity, planning and specialist training; and research, development and community information and resources.

Finally, we have had our concept and framework reviewed by some of Australia's most eminent specialists in the field. I refer you to the comments provided by Adjunct Professor Jeffrey Chan, who was Queensland's first Chief Practitioner Disability and held the inaugural Governor in Council appointment as the Director of Forensic Disability dedicated to safeguarding the rights of forensic adults with intellectual or cognitive disability. He was also Victoria's inaugural statutory Senior Practitioner in Disability Services. He has communicated his support in writing for our proposal and said the following—

Individuals who sustained a catastrophic injury present with a high level of vulnerability and other risks in addition to their injury. As such, safeguarding their rights and that of their families are critical in ensuring service providers are subject to a degree of oversight.

Private enterprises are not typically governed by or focused on safeguarding rights as compared to existing community-based support and care services who are subject to human rights standards and accreditation.

As Queensland's proposed NIIS legislation is tasked with, the safeguarding of the safety and well-being of people who sustained catastrophic injury this Community LifeCare & Support Service Alliance initiative is paramount to the legislations successful operation.

We thank the committee for your time and for listening to our views.

CHAIR: Finally, by phone, we have Julie McKay and Kate Begley from Vision Australia. Julie, could you please state your name and make your opening statement?

Ms McKay: My name is Julie McKay. I am the Government Relations Adviser here at Vision Australia. I am here today with my colleague Kate Begley, who is a policy adviser. I would like to thank the committee for the opportunity to present to you today for this inquiry into aspects of the National Injury Insurance Scheme (Queensland) Bill. We would also like to take this opportunity to thank the Queensland government for including blindness within their definition of 'serious personal injury' caused by a motor accident.

I am here representing Vision Australia, as I have mentioned. Vision Australia is the largest provider of services to people who are blind or have low vision. We are a national not-for-profit organisation, with 28 officers working with 27,500 members of the blindness and low vision community each year. We have participated in consultations contributing to the development of the National Injury Insurance Scheme in New South Wales. We have worked as a service provider to assist people supported through the Victorian Transport Accident Commission Scheme, we have made multiple submissions to the NDIA during the development of the National Disability Insurance Scheme, and we are a registered NDIS service provider.

Vision Australia has a strong presence in Queensland, consisting of more than 100 staff in our four offices. We also deliver services through several additional outreach centres throughout the state. Currently there are around 70,000 people who are blind or have low vision residing in Queensland—just 10 per cent of whom are legally blind. The remaining 90 per cent of people with vision impairment are classified by the World Health Organization as having low vision. Blindness

and low vision is a low incident disability, mostly acquired through a person's lifetime through physiological changes in conditions such as lifestyle factors, disease, exposure to sunlight and chemicals and some accidents. We ask the committee to note that only a small minority of people with vision impairment acquire their condition through accident and injury.

Today we would like to focus on three key issues: the inclusion of counselling and psychological treatment in the list of necessary care and support needs, eligibility for people who have low vision, and eligibility for people who have pre-existing eye conditions. I would like to start with the point about counselling and psychological treatment.

We agree by and large with the support needs provisions as listed in the bill, but we would also like to strongly advise the committee to consider including counselling and psychological treatment as a funded support. The shock and grief of a major injury is often life changing. It is chronic in nature and, according to research, leads to a greater risk of developing depressive symptoms. This is true of any serious injury and not just relating to blindness and low vision. There are many serious repercussions resulting from permanent vision impairment. These can include a loss of independence and mobility, a loss of a driver's licence and loss of employment.

It is estimated that approximately 35 per cent, or one in three people, who are blind or have low vision experience depressive symptoms which is double the rate experienced in the general population where symptoms are prevalent in around one in six people. Depression can also impact on a person's ability to function and actively engage with rehabilitation, employment, continuing with their education and participating in social activities. This can lead to even greater social isolation.

We believe that psychological treatment as a funded care and support need is necessary for all participants in the National Injury Insurance Scheme and not just those with permanent blindness. To minimise the impact of depression on participants in the scheme and to ensure a better and arguably faster path towards rehabilitation, psychological treatment or counselling must be offered as a funded care and support need in this bill. As it was pointed out by one of the earlier presentations, anything that assists someone with completing their rehabilitation more quickly inevitably would lower the cost of the scheme.

Eligibility for people who have low vision is also incredibly important to Vision Australia. Within the proposed bill, blindness means 'permanent blindness caused by a trauma'. This definition is based on the legal definition of blindness. Vision Australia does not support this approach as the correct minimum benchmark on which to base a person's eligibility in the scheme. We acknowledge that some medical or clinical diagnosis must be set as a benchmark for establishing an individual's impairment as a preliminary assessment measure. However, we believe that permanent blindness or low vision should be defined under a spectrum of impact based on both clinical and functional variables. The functional impact of vision loss is based on what a person is unable to do because of their vision loss. Vision Australia's position on this important matter has been supported by consecutive alternate Australian governments in the development of the National Disability Insurance Scheme.

The NDIS under section 24 refers to 'substantially reduced functional capacity to undertake ... activities' as an indicator of disability. Subsequently, both people who are blind or have low vision are eligible for the NDIS plan. Also, the World Health Organization referred to two lists as defining disability. The first is a list of body functions and structure and the second is a list of domains of activity and participation.

Vision Australia believes that it is imperative that a consistent approach be maintained across the two complimentary schemes of the NDIS and the National Injury Insurance Scheme. By keeping the definition and the criteria the same in both schemes there will be a comparable outcome for people with a traumatic injury and the ongoing management of their vision loss. We therefore strongly recommend the definition of permanent blindness caused by serious injury be defined by both clinical and functional measures and based on the impact of the vision loss and the subsequent supports required for their rehabilitation. We urge the committee to reconsider the eligibility threshold beyond the legal definition of 'blindness' and to amend the scheme's definition of 'permanent blindness caused by a trauma' accordingly.

I would like to finish with the point about pre-existing eye conditions and people's eligibility under the scheme. As highlighted in our submission, chapter 2, part 1, section 12 of the bill states that a person is not eligible to participate in the scheme if, prior to the motor accident resulting in the serious personal injury, the person suffered from another injury or condition. Vision Australia is especially concerned with the use of the word 'condition' in this context since there are some eye conditions which are dramatically affected by subsequent trauma to the head, face or eye. One

example of this is pathological myopia, which is extreme short-sightedness and carries a high risk of retinal detachment.

People with pathological myopia are at a much high risk of permanent blindness due to retinal detachment as a result of the kind of head trauma typically occurring during a motor accident. We believe a person with an eye condition such as pathological myopia who then suffers a severe injury in a motor accident causing permanent blindness must be eligible to receive cover under the scheme. We therefore urge the committee to exclude the word 'condition' or to introduce amendments to section 12(3) so that people with pre-existing eye conditions which may significantly deteriorate following a serious traumatic injury are not excluded from the scheme.

In conclusion, we wish to reiterate that our primary concern today is to ensure that those people who acquire blindness or low vision as a result of a serious injury in a motor accident are the recipients of necessary and reasonable treatment, care and support in Queensland to aid a return to full participation in their work, study and life in Queensland which is in accordance with the purpose and nature of this bill. I thank the committee for your time and for listening to our evidence this morning.

CHAIR: We will now move to members' questions of any of the witnesses that we have heard from this morning.

Dr ROBINSON: I have an opening question to all of those on the panel including those via teleconference. You all raise specific matters of some concern about the current bill and how we need to look at those specific issues. I am wondering if you could tease that out a bit further. I am hearing some general concern about the bill as it currently stands—the adoption of that particular hybrid model. Some of you have touched on it in different ways. Perhaps you could speak to that more specifically as to whether there is a preference or a strong preference for a different model.

Mr Nelson: Certainly 75 per cent of initial views were that we should go option A. However, the government has chosen option B. Our initial approach is option A would be the preferred choice, but that is not going to happen so option B will be installed. Let us get it right. By getting it right, we need to specifically define who gets what, when you are at fault, when you are in a position where fault cannot be ascertained and when you are 25 per cent negligent. Those criteria need to be set aside to say, 'You go directly into the lifetime care and support scheme. You do not get any entitlement to common law benefits. You do not take up the court's time. You do not fund spurious litigation as a result arguing every single clause of this act,' which is what will happen if you do not clearly define that component as entering automatically under the scheme criteria and being excluded from more common law benefits.

We are not trying to say that people who are not at fault receive one cent less than they are entitled to. People who are 75 per cent not at fault should get everything that they are entitled to. It is this specific category of people who are not getting economic damages. There is no component of economic damages whatsoever in this legislation for them, as per the NDIS legislation which sits above it. If we are excluding them—we know that this money is being set aside for their lifetime care and support and will be specifically stopping them if they get it in any form of lump sum—by a preclusion period—and you are not going to overturn federal legislation in that regard—why are we even considering it? It is just an avenue of headaches.

Mr Jamieson: I agree with my colleagues about the vulnerability of people who have suffered a traumatic brain injury or a traumatic injury of any type through vehicle accident. The risks if the lump sum payment is paid out I think have been explained by my colleagues this morning. One of the things that hit home to me and made me think is the vulnerability of someone who has a car accident, has a traumatic brain injury, they are married but that marriage breaks down. Under common law in Queensland they could potentially lose up to half of that settlement. That will seriously impact on their ability to continue to fund their care.

We know that it costs a minimum of around $180,000 per annum to care for somebody with high-care needs. A lump sum payment for somebody who has a car accident at 18 or 20 and will potentially live until they are 80 is a huge payment. To me, that is not necessarily cost effective when you look at all the other things that will come into play. What a lump sum payment has to take into account is not just the care needs but also the rehabilitation needs and funding for equipment. Equipment wears out and then more equipment needs to be purchased. I think there are some inherent risks and it is going to cost everyone a whole lot more in the long run.

Dr ROBINSON: I have a quick follow-up. You mentioned before that 75 per cent oppose option B, preferring option A. Can you clarify who that 75 per cent is?

Mr Nelson: That was from the initial reading of the Treasury report which clearly indicated that basically everybody other than the plaintiff legal association and plaintiff lawyers were in support of option A. That was pretty much spelled out.

Dr ROBINSON: You make the point that the government has put the bill forward and therefore that is it. It is part of our responsibility with bipartisan hats on that we ask those questions. The parliament still has to pass the legislation. I and others have come here to honestly ask the question: what is the best model going forward. I make that clarification. It is about getting what is best, not necessarily what is best out of what now has been proposed.

Mr SAUNDERS: You mentioned something earlier which I would like to drill down further. You said that if there is a marriage split they split the money. I have read of cases where the courts have quarantined the money for a payout in an accident. The money has been quarantined and cannot be touched in a divorce payout. Let us be honest here. If you drill down and look at the cases, there are cases where the money has been quarantined. It has not been split up in a family agreement.

Ms Williams: Having worked within ABI where people have received lump sum payments, that is not always the case. People have purchased houses with their lump sum payments. We currently have a man who is homeless. He was injured, received a lump sum payment and bought a property. That is usual. The marriage broke down, he was ejected from the house and he was homeless. We ended up taking him on in Queensland—he was in New South Wales—and he has lived in our transitional accommodation for a number of years. The family have the assets. He lives in one of our houses. He is essentially homeless. We have had situations where the lump sum has not been quarantined.

Mr SAUNDERS: In the cases I have read the lump sums have been quarantined.

Ms Williams: That should be the case across-the-board, but I know from my experience that is not always the case.

Mr CRAMP: Russel, you mentioned the management of this scheme and the possibility of specialist care groups coming together to administer such a scheme. I take it from what I have read and what you have said today that you believe you could put forward a more efficient model than a government department and definitely more efficient than a for-profit group. Is there any concern with profit groups managing this that there might be a cost efficiency issue? How do you propose to be more cost efficient?

Mr Nelson: Having been a C level executive in the largest for-profit rehabilitation providers in Australia, having worked as an insurer on a state level management basis, I can tell you that the drivers in respect of rehabilitation are profit drivers from an insurer's or rehabilitation provider's point of view and the client is a very low bottom rated concept. What we are saying is that, by funding this via a social bond which from our indications and initial advice would be oversubscribed because it is what you would qualify as a gold plated social bond, just one change to division 2, section 60 to say that the scheme can place it with an agent is of concern to us—if that specification is not changed that the agent must be a public benevolent institution.

If the scheme can be run by public servants more efficiently, away you go but it will take a hell of a long time to train them up, get them to figure out what an ABI is, what a blindness issue is and what the best course of action is because the pool of employees will come from insurers who understand how to litigate in Queensland and do not really know how to spell the word 'rehabilitation', unfortunately, with all due respects to my friends in the insurance and legal industry, whereas we do this on a daily basis. We have the clients in our face on a daily basis. I know it is standard procedure for most CTP insurers to never speak to a client. A case manager is forbidden from speaking to a client on the presumption that they may strike up a relationship with that client which would be detrimental to their handling of the case. I will leave you with those thoughts in that regard.

Mr RUSSO: Going back to the question that Mr Saunders asked in relation to the split up xx of property, I was wondering as an organisation whether you had sought some legal advice or opinion as to how the Family Court deals with this situation.

Mr Nelson: We have reviewed a number of Family Court decisions in respect to—

Mr RUSSO: I do not want to interrupt you, but the question was: did you seek legal advice in relation to how the Family Court would deal with divorce in relation to people who had been catastrophically injured? How would the courts deal with that property split? Did you seek either legal advice or counsel's advice?

Mr Nelson: No, we did not seek counsel advice categorically.

Mr RUSSO: That leads me to my second question. In relation to how trustee companies deal with disbursement of funds for people catastrophically injured, did you speak to any of these trustee companies to find out how they manage these people's funds?

Mr Nelson: Absolutely. We deal with a number of public trustees and trustees on a daily basis on behalf of Headway's ABI clients so we know what they charge. We know that, if you put that charge on top of a discount table charge and take the legal fees out, you are not going to start with very much to start with.

Mr RUSSO: When you say you spoke to them, did you get some written advice from them as to how they structure their fees?

Mr Nelson: We do not need to. We already know that as a matter of our standard operational procedure. These people are effectively dealing with us.

Mr RUSSO: I understand from your answer that you did not seek any written advice as to how they deal with people who are catastrophically injured to come along and give evidence at this committee.

Mr Nelson: With all due respect, Mr Russo, if you are dealing with it on a daily basis why would you seek to get any clarification other than seeing their bill every month?

Mr CRAMP: On the surface, Russel, I concur with the potential of specialist organisations that you put together to run an efficient scheme. If that were granted, how quickly would it take to have you guys up and running? Have you explored that by asking, 'Are we operationally ready?' What would it take to have your organisation operationally ready, because this is a very important scheme and you could not have it falter at the first hurdle. If the government and the parliament were to look at that favourably, are you ready?

Mr Nelson: I might pass that on to Julie, who does our operations day-to-day, but it is not like we are going to get 300 clients in one day. We will probably get the maximum of one, two, then four and then one.

Ms Williams: We have spent a lot of time considering the operations and establishment of the alliance. As pointed out, initially one of the advantages of the alliance decision would be that from day one we would be able to be there to support the families and to put in place discharge planning and the services. We know what is required from day one.

The establishment of all the operations and management of the alliance once the legislation is in place, for that to happen in the background of course we would have to employ appropriate people but we know how it operates. We do it every day. Our systems would be established as it goes along. For client data management we would look at South Australia, which has just implemented its scheme. We try not to reinvent the wheel. We utilise what is already existing where possible but you have the advantage of time. Even if there were 10 people injured in the first week, we can cope with that. There are not going to be hundreds injured. The beauty of us is that we can be there from day one straightaway giving the best supports possible to the family and the injured.

CHAIR: Unfortunately, we have run out of time. I would like to thank all of our witnesses for briefing us this morning.

HODGSON, Mr Rod, Queensland President and National Director, Australian Lawyers Alliance

MURPHY, Mr Luke, Deputy Chair, Accident Compensation Committee, Queensland Law Society

POTTS, Mr Bill, President, Queensland Law Society

CHAIR: I will invite opening statements from each of you before we ask our questions. Please remember to speak into the microphones that you have in front of you.

Mr Hodgson: Thank you again for the opportunity to submit to this committee. Both the QLS and ALA commend the legislation's intent. We have very closely followed the process by which the bill has come into existence. The bill provides a valuable and affordable safety net whilst having minimal impacts on existing rights. The choice and self-determination which is enshrined in the bill is fair. We would expect some bipartisanship on the passage of the bill. We have identified a number of matters which are detailed in the ALA's submission. Save for one matter, the ALA and the QLS are in agreement about the need to adjust various aspects of the bill. Most of the matters are drafting issues and relatively minor administrative detail, and we do expect further constructive engagement with Treasury on those matters imminently.

There are, however, two matters which in our view warrant more serious attention: the first is the surprising and inconsistent treatment of the contributory negligence issue; and the second is the impact upon participants of pricing prescriptiveness by the agency. Both issues are very likely to negatively impact participants. We have dealt with both issues in some detail in the submission. I will not repeat the matters contained in our submissions, but I would welcome questions on those issues and any others arising from the immediately preceding discussion the committee had with other stakeholders.

Mr Potts: The Queensland Law Society, as perhaps you would all know, represents the 12,000 members of the solicitors' branch of the profession. Many of our members—although it is a very broad church, to borrow a phrase that I think we often hear at elections—represent significantly people who are the subject of this legislation. It is very easy quite often to point at lawyers and say, 'You have self-interest in your own pocket.' To that extent I can tell you right from the get-go that no lawyer is going to be making a retirement fund out of this: the numbers are not huge. It is a very, very important part of social infrastructure that we as a society care—and care well—for those who find themselves catastrophically injured.

Much of what we are discussing and this committee is inquiring into is the best manner in which to deal both with the expense and the inevitable cost of this scheme. Balanced against that is what we see as a fundamental right, and that is choice. I think the late great Kerry Packer at just such an inquiry as this into the amount of tax he was paying said that government, however well-meaning, was not necessarily the best group of people to determine how they should be spending his hard-earned money. Putting aside the question of whether Kerry got to the other side and saw something or not, the reality is that the best of all possible minds—and that includes all of us, whatever political or party persuasion we may have—may differ as to the approach, but the fundamental duty that we all have is to effectively formulate a scheme that best deals with this most vulnerable group.

The Queensland Law Society commends the proposed legislation, which retains the choice of common law rights for people who are catastrophically injured. The society acknowledges the work of all stakeholders, and in particular I acknowledge the incredible and hard work that Mr Hodgson of the Australian Lawyers Alliance has done in this area to ensure that the rights of our most vulnerable citizens are protected. The society is also very grateful to the government and opposition members who have engaged with us on this issue and for the spirit in which that engagement has been conducted. The latest catchword for both sides is 'consultation', and can I say that we are extremely pleased that, rather than it just being a word or an aspiration, in this particular area there has been detailed, repetitive and significant consultation with both sides, and for that we are very grateful.

The Law Society, as you know, has a great depth of expertise and Luke Murphy, who is the deputy chair of the accident compensation committee, is one representative of that great well of expertise. We provide that to government and to the parliament in general so that decisions with respect to evidence based policy can be made in the most reasoned and reasonable way. The society has advocated long and hard for the rights of disabled people to choose their course, and it is very encouraging to see that this bill is largely consistent with the views that we have presented on a number of occasions. It is the society's view that the scheme would now provide for catastrophically

injured people while maintaining their choice of carer and the ability to live nearer their personal support networks and to be financially viable. It is our view that the legislation in fact represents a win for fiscal responsibility and the community at large.

The Queensland Law Society has submitted repeatedly that any scheme which removes common law rights and is purely a long tail will inevitably fail financially, as we have seen in other jurisdictions. However, by maintaining common law rights—effectively the rights of all Queenslanders—this scheme has the best chance of balancing both cost and sustainability. This society contends that the broad approach adopted in the bill is responsible and compassionate, and with some minor amendments which we will talk to today we believe it will ensure that the rights of catastrophically injured people in Queensland are protected and well-represented in this legislation.

Mr Murphy: If I can simply address a couple of direct issues. The first is what Mr Hodgson touched on earlier. Of significant concern to the society is the section that removes the ability for the exercise of common law rights categorically where there is a finding of contributory negligence of 25 per cent or greater. We have touched on that in our submission, and I am happy to take any questions in relation to that. In a nutshell, we think there are sufficient other avenues contained within the bill that do not require such a categorical removal of people's rights without justification and the consideration of individual circumstances to allow for the independence and autonomy of those that are injured and their support network to make decisions that allow for the freedoms that should be maintained.

The second matter that Mr Hodgson touched on is our concern in relation to price setting, particularly in relation to what we see as the economic reality for regional participants. That is something of serious concern to us. The further points are in relation to the review process. We think there is a need for consideration to be given in the review process to the inclusion of some mediation process that allows the participants and their support network to be involved in decision-making rather than simply having a decision dictated to them. Where participants are put to expense in having the opportunity to present their position to tribunals and particularly to the courts in relation to applications under section 42 and 43, there should be provision for their costings to be met. That is all I wanted to add.

CHAIR: We are now open for questions.

Mr SAUNDERS: Thank you for the ALA's submission to the committee. You and the QLS have given much thought to making this initiative workable. It is clear to me that the legal profession regards the policy position as a valuable improvement in the safety net and critically it maintains all existing rights; however, you have raised some issues about the wording of the bill. As a layman it seems to me that most of what you have raised is detail and that the department and drafters should be able to sort this out moving forward; is that right?

Mr Hodgson: I agree with both propositions. The legislation is clearly an enhancement of the safety net for the most seriously injured people in car accidents, and the plan is to extend it to the most seriously injured cohort in a work injury context. We commend the former government for signing the minimum benchmarks, and we commend this government for making it a reality at a cost significantly less than other states and territories and in doing so maintaining legal rights which Queenslanders clearly strongly value. If you go back to the former Newman government's dealing with the workers compensation legislation—wrongly characterised at the time as being minor changes, but which were effectively a chainsaw to common law rights—quite rightly that became an election issue and reflected the fact that Queenslanders value their rights significantly. This is a reflection of that reality. So, yes, I agree with both propositions and, as I said before, we expect some bipartisanship. I would endorse what Mr Potts has indicated in that there has been excellent engagement with both sides at a very senior level and that can only be a positive thing for the goodwill that is needed to make this scheme work.

Mr Potts: The point you make is can the drafters deal with it? The answer is clearly yes. They, however, will take their lead significantly from the attitude of this committee and the material placed before it, so the quality of the submissions has been directed at that detail because we believe—like all pieces of legislation—the devil, or perhaps the angel, is in the detail.

Dr ROBINSON: Mr Potts, with regard to the comments you made I would like you to tease it out further and perhaps give us some examples to help us better understand. You made a comment along the lines of the long tail of some other schemes that in the past have failed, or something along those lines. I wonder if you can give us further detail, and excuse me if I have missed something in a report or something like that.

Mr Potts: No. Before I throw violently to my left or my right, I should tell you that—and Mr Russo will know this very well—I am a mere humble criminal lawyer so the schemes which I will have referred to are basically some of those in other states but in particular in New Zealand, so for the detail I throw back to Mr Murphy but first to Mr Hodgson.

Mr Hodgson: It is an excellent question and the fundamentals of this bill are not just about fairness; they ought also to be about economics. I can give you many examples nationally and internationally that answer your question, but I will give you two because time precludes going through more detail. The first is New Zealand. Some 40-odd years ago on the back of a report from a guy named Sir Owen Woodhouse New Zealand completely removed all common law rights. In jurisdictions like the UK, Canada, Australia and the United States we have common law rights—common law rights that we have had for hundreds of years. They completely removed all common law rights and the practical effect of that is that a person injured through someone else's fault in that country, no matter how egregious the fault and no matter how serious the injury, has as part of a crazy social contract no right to pursue common law damages. The consequence of that is not only unfair but also has been an economic disaster.

The shifting of the cost burden for negligent behaviour from the wrongdoer and their insurer to the taxpayer has meant two things have operated in lock step. Firstly, the scheme designers and governments and in particular Treasury say, 'Gee, this thing is extraordinarily expensive. Let's look at the crystal ball and see if, as a long-tail scheme,'—actuarial maturity has yet to occur in the New Zealand scheme—'it is going to keep getting expensive. What do we do about it?' They do two things. The first thing they do is they screw the benefits down to the very people that it is intended to benefit, so the benefits become far less appropriate for the needs of the participants. The second thing they do is they need to top the scheme up with funds from consolidated revenue, so the taxpayer ends up picking up the burden. It ends up being the worst of all worlds in that the participant gets—I am trying to think of polite phraseology—minimalist benefits, the scheme becomes a huge bureaucratic nightmare and it becomes extremely costly for the taxpayer.

The second example is South Australia's workers compensation scheme. About 11 or 12 years ago South Australia, which had up until that point common law access similar to the structure of Queensland's workers compensation scheme today, decided it was a really good idea to remove all common law rights. Almost immediately the scheme went into the red. Its unfunded liabilities increased and this unsatisfactory situation snowballed such that a couple of years ago they in a tiny state, effectively population wise, had unfunded liabilities of well north of a billion dollars in their scheme. You might think that removing common law rights might lead to lower premiums for employers. No, that did not happen. Employer premium rates went higher as well, so it was, again, the worst of all worlds: participants missed out, this great big long-tail scheme spawned a huge bureaucracy and the people paying for the scheme—employers—paid more. The detriment of long-tail schemes—large-scale long-tail schemes—are writ large. We need to have the economics of this as well as the fairness addressed squarely.

Mr Potts: Dr Robinson, I will ask Mr Murphy to talk about that as well.

Mr Murphy: You specifically asked for examples. Just to build on the comments that Mr Hodgson has made in relation to New Zealand, I think it is important that the two examples that Mr Hodgson highlighted are South Australia and New Zealand—both geographically not large distances and the systems did not work there. In New Zealand what they did do at one stage in the late eighties or early nineties when the unfunded liability reached a level that was a cause for concern for the government was they made a decision that anyone who had been assessed with a percentage impairment—and I cannot tell you, I am sorry, with exactness; it was something like 10 per cent impairment or less—who had been on benefits for an extended period of time were paid three months benefits and then wished good luck. The difficulty with that was that they were giving a three-month benefit to people who had been in weekly receipt of benefits for decades. All of a sudden there is this dramatic shift in what is being expected of the individual participants, and that was one of the ways in which the unfunded liability was going to be addressed. The other interesting example is in the Northern Territory where they have had the removal of lump sum compensation or common law rights in relation to, I think—and Rod will correct me if I have this wrong—motor accident insurance.

Mr Hodgson: It is both.

Mr Murphy: What has occurred in the Northern Territory in recent years is rather than having people on the long-term payments for decades they have brought in an ability to commute the benefits. When asked how the determination of what the correct commutation payment should be it was done according to common law principles. It speaks for itself in the view of the society as to what is the most economical way of ensuring the long-term viability. The last example I will mention is the

Comcare scheme, which is the Commonwealth workers compensation scheme. That was brought in back in 1972. It leaves the ability for claims for economic loss. However, what you find is that the Comcare scheme—and there is a national review of workers compensation schemes that is done, I think, annually where they highlight premiums and disputation rates—is way above the general average of many of the others, and what is important there is the particular industries that are being covered by that. They are not the high-risk industries such as mining and construction and that nature.

Mr RUSSO: In relation to some of the matters, I was puzzled and troubled by the bill's treatment of contributory negligence. Rod, what we are setting up here is a safety net for treatment, care and equipment, regardless of fault. If someone is catastrophically injured when, for example, they drink too much or they fall asleep at the wheel they get lifetime care.

Mr Hodgson: Yes.

Mr RUSSO: Can you explain how the bill would operate for people who can prove fault but the accident is partially their own fault—for example, someone who does not wear a seatbelt?

Mr Hodgson: Yes, that is of great concern to us. The practical effect—and it is critically important this be understood—of that section is that for people who can prove fault but it is also partly their own fault, for example not putting a seatbelt on, they receive less compensation for care and equipment than someone who is 100 per cent at fault for their own injuries. The explanatory memorandum to the bill says—

The purpose of this Bill is to ensure that certain people who suffer particular serious personal injuries as a result of a motor vehicle accident in Queensland, receive necessary and reasonable treatment, care and support, regardless of fault.

This section as drafted at present means that people who choose to exercise existing rights to take care and equipment damages in a lump sum using the opt-out methodology contained in the bill have less money to live independently and to exercise the choices which are implicit in the choosing of option B and also means that if a person is more than 25 per cent at fault for their own injuries that participant completely loses existing rights to receive care and equipment as part of their lump sum and have no choice—no choice—but to remain on the long-term drip-feed. In our view good scheme design means that for those who choose to opt-out no reductions for contributory negligence ought to apply. They will still apply to the other heads of damage covered by the CTP insurers, but this unexpected provision is in stark conflict with the notion of care and supports regardless of fault and utterly inconsistent with the choice principle which underpins the government's choice of option B. We have submitted and provided some wording that those provisions in respect of contributory negligence ought to be removed and replaced with some policy wording that is consistent with the policy position adopted elsewhere in the bill.

The only other thing I would add is that there are already excellent existing safeguards in the form of trustee arrangements. It has been submitted earlier today that trustees are holding their hands out for money. Funds management fees for trustees are claimable in damages actions, so there has been an unfortunate mispositioning of what the facts are in respect of trustees. In addition to existing arrangements, we recognise and have recognised during our stakeholder engagement process that there will be a small number of people for whom legal capacity may not be an issue but nevertheless the receipt of a lump sum for care and equipment may pose risks. We have been up-front about that and the process in the bill where court sanctioned court approval—a court gets to look at it and analyse it—permits consideration of such cases, so it is an enhanced level of safeguards on a foundation of already existing excellent safeguards.

Mr Potts: I should add on behalf of the Law Society that we take exactly the same view, although perhaps less fulsomely than Mr Hodgson's excellent excoriation of the facts. Quite simply, you cannot have a system, which is essentially a cost-shifting system—that is, who is going to bear the costs of these things—which has some moral equivalence on the degree of fault. Whether they are 25 per cent at fault, they are 100 per cent injured. To have some kind of moral equivalence into that is really to deny the social contract that is the responsibility that we as a society inevitably in a just, liberal democracy have to care for people who are injured. We do not, as the Romans or the Greeks used to do, suddenly decide that people are useless because they have injured themselves and go out and ram a spike through their foot on a hill so that the wolves can eat them. We, as a society, have made a decision properly and fairly that, despite the tragedies that visit upon these victims and their families, we try to work out the just solutions. Any moral equivalence on 25 per cent, quite frankly, is anathema.

Mr BOOTHMAN: My question is to Mr Potts, the humble lawyer, as you said before—

Mr Potts: Humble criminal lawyer.

Mr BOOTHMAN: Humble criminal lawyer. Today, you heard Julie, the good lady from Headway, make some comments about the fees and charges put forward by yourselves in representing these clients. What are the costs to you in representing these individuals? In my community people say, 'Yes, lawyers make lots of money.' Unfortunately, you guys are tarnished in that area. Can you elaborate on what it costs you to represent these individuals?

Mr Potts: Yes. Mr Boothman, I am also from the Gold Coast, as you perhaps rightly and readily know. Among the three people at this table, I suspect that I am the only one who has never sued anybody in their life. I defend the poor, the weak and the sometimes innocent. To that extent, can I say these things: lawyers are tarnished with a brush, if I can put it that way, but we live in a free enterprise system. We generally believe that a free enterprise system works the best when people have at least some interest and some incentive in working hard. Whether you think it is anathema for lawyers, it is the system that we throughout Australia promote as being the best system perhaps of many systems that promote themselves as being better.

I am not going to go into some lengthy discussion about socialism or the spreading of these things, but the simple reality is that workers work hard for their money and lawyers work hard to get money for their clients.

Mr BOOTHMAN: But what are the costs, though?

Mr Pott: To that extent—to get to your question—

Mr BOOTHMAN: For you as lawyers through representing these individuals.

Mr Potts: Because I have never sued anybody, I am going to have to throw to the experts.

Mr BOOTHMAN: Yes.

Mr Murphy: Mr Boothman, in a specific breakdown of when you are taking instructions in a catastrophic injury, the first thing is that you will not receive payment until there is a resolution, or a judgement. That means that you are carrying all of the work in progress, for want of a better expression, all of the professional fees that you are incurring and the time devoted to it. For catastrophic injuries, it is two and a half years plus and it is not uncommon for them to be longer. That is driven by the necessity for injuries to become stable and stationary. You heard the lady from Headway quoting a statistic about the expected incidence of acquired brain injury. It is, to my understanding, at least two years before the medical profession will say that an acquired brain injury is at a level where they are able to make some forward prognosis, which is what then enables a claim to be properly formulated. You are looking at least two and a half, three and not uncommon for longer.

During that time, you also have to accumulate the necessary evidence. What that involves depends upon the circumstances of the accident. The firm that I am a member of has acted for Indigenous clients who have been injured up in the cape. That involved, by necessity, at least one, sometimes two of our solicitors travelling to the cape, being up there for a number of days—sometimes weeks—and not just once, probably twice, three times through the life of the claim. Those costs are all met out of our own pockets.

In addition, you then have to commission the necessary medical expert reports. I think orthopaedic reports are now in the order of about $2,500 to $5,000. Depending upon the nature of the injuries and the variety of the injuries, you can require anywhere up to about four or five of those reports. It is not uncommon to have outlays in excess of $40,000 or $50,000 associated with running a claim of this nature and there is always a question about the recoverability of it. In terms of practical examples, that is a hard, cold practical example of the outlays that are carried and there is no payment received until there is a settlement reached.

Then there will be a contribution—in current terms standard costs; in old established terms, party and party costs—recovered from the insurer towards the solicitor and own client or indemnity costs. The Queensland structure in relation to costs also has very strict costs disclosure requirements. That is from the very start where the client must be given a costs agreement that is in compliance with the relevant legislation. They are recommended to seek independent legal advice in relation to that agreement before they sign off on it. There is a five-day cooling-off period once they have signed off on the agreement as well. It is not uncommon for other solicitors to be consulted in relation to costs agreements provided by other firms.

There is then also the ability for assessment of costs after and that is brought to the attention of the client at the time of the resolution. Under the costs provisions there is an obligation to attach what is called a bill disclosure statement, which sets out the entitlements and the rights that the clients have in relation to any questions about the bill that is being presented to them which is, of course, in accordance with the costs agreement that they have been provided with and had recommendations made to them about the independent legal advice at the start.

Mr Hodgson: If I can just supplement that? I would emphasise that the legal profession across-the-board and specifically in relation to legal costs is probably the most heavily regulated profession in the country. Costs are transparent and up-front.

There is another aspect that I would like to address. The Insurance Council of Australia and one of the people appearing earlier today asserted that there would be a significant increase in legal costs to the catastrophically injured who choose to opt out. It is plainly wrong. The pursuit of care and equipment heads of damage occurs now under the existing system and the only additional work will be a relatively straightforward administrative procedure for the opt-out which, I suspect, a lot of the time will be done by consent; it will not be contentious. Again, a small proportion of that small proportion may need to be adjudicated on by a judge, but it is not a full trial. The proposition that this opt-out is going to create a snowballing of legal costs is just incorrect.

Mr BOOTHMAN: Just carrying on from Luke's statements and Rod's also, you are saying that these professional costs to get specialists who review these individuals and the costs of travel makes up the vast majority of the legal fees. Is that correct?

Mr Murphy: No. The main components that make up, if I can use the expression, legal costs include both professional fees and then disbursements. Legal costs are the total.

Mr BOOTHMAN: Yes.

Mr Murphy: Professional fees are the fees that the solicitor conducting the claim charges for their expertise and their time. Then you have the outlay disbursements, which are the payments made to a third party in putting the claim together, in investigating the claim. That also includes barristers' fees as well. The majority of barristers, however, will accept instructions on a speculative basis as well. So they will get paid only if the claim succeeds.

In terms of a proportion of breakdown between professional fees to the solicitor and outlays, it varies depending upon the nature of the individual's practice, the tendency of a solicitor to rely on a barrister more than others may and the time at which a resolution of the claim is reached. For example, under the legislation that is relevant here, the Motor Accident Insurance Act, which has been in since 1994—and this was the first legislation that brought in the precourt procedures, where there are obligatory compulsory conferences held, mandatory final offers served—that has a significant impact in reaching early resolutions, which obviously affect the extent of the professional fees charged. There is no proportion that I can give you, if that is what your question was seeking.

Mr BOOTHMAN: Thank you for the answer. It is for me and some other members on the committee who do not have a legal background. We are quite new to this.

Mr Murphy: Certainly. Can I just say in response to that that all of the clients are. It is rare that you have a plaintiff client who is a repeat business. I have had one who was eight times. That was quite exceptional. The point of not having a repeat client is that at the very start the client does not have that awareness of costs and does not have the awareness of the nature of the relationship that is being entered into. That imposes a very onerous obligation on plaintiff lawyers and one that we all take very seriously, because we have to ensure that there is an ability to make an informed decision at that point in time. That is indeed one of the reasons there has been such strict obligations in relation to costs disclosure.

Mr Potts: The LSC—the Legal Services Commissioner—runs a regulatory framework pursuant to the Legal Profession Act, which he and his organisation takes very seriously. It is essentially consumer protection and it is something that lawyers have worked under at least since 2004 and a modification of the act, or a redrafting of the act, in 2007. There is a significant exercise in keeping the clients informed, or their litigation representation informed as it progresses. That is something that is continuous disclosure. If something changes dramatically, we have to explain that change and what effect that may have on costs.

Whilst the reality is that the lawyers are in a business, to quote another old phrase, if you are trying to win a horserace and you see a horse called Self Interest, you always bet on it because you know that it is trying. The end effect of that is that lawyers, doing their best for their clients, invariably do better when they are, in fact, under such a scheme. The clients do better.

CHAIR: Thank you, gentlemen. I have a question for you that relates to lump sum payments. We heard that from catastrophic injuries there is a high rate of divorces, which then sets up that ugly scene of splitting assets and income. Is there any possibility that that will occur and continue with this legislation?

Mr Hodgson: I have had some experience in family law as a practitioner many years ago and as a personal injuries practitioner with nearly 30 years experience. We sometimes receive requests for information about a damages settlement from a family law firm acting on behalf of a person who

has been a former client of our firm. I cannot give you a categorical assurance that catastrophic injury damages are never, to some degree, taken into account as part of an asset pool in a family law context, but my anecdotal feedback from family lawyers who talk about this is that if catastrophic injury payments are taken account of it is in a minimal way. It follows that I would disagree with the way that this was cast by the presenter from Headway, I think it was, that where divorces occur routinely there is a significant slice of that taken by the person who is not injured.

Mr Murphy: I agree wholeheartedly with Rod's comments. My understanding, and again I have to qualify it in that I have not practised in the family law area but we do deal relatively regularly with family law specialists, is that the very nature of the lump sum compensation payments for—using the expression from the bill—'treatment, care and support' will be excluded from the matrimonial property. I think the only way I could rationalise the nature of the submission made by the representative of Headway is that the lump sum payment in those circumstances would have included some payment for economic loss, some payment for general damages. That may not be excluded, particularly the economic loss component and any superannuation component. To that extent the overall lump sum may not, but when you are talking about the provision of damages for treatment care and support, as Mr Saunders and Mr Russo directed their questions to, it should be protected.

Mr RUSSO: I am also interested in the ALA submission, so I guess this question goes to Rod, on the effect of price setting by the agencies upon the availability and quality of services to participants. I think we would all be very worried if bureaucratic rigidity meant that people did not get the care and support they need. We understand the need for the scheme to operate in a financially prudent way, but why do you say that price setting is undesirable?

Mr Hodgson: Queensland is the most decentralised state in the country. With the growth of regional centres such as Cairns and Townsville—and the list is a longer one than that—that decentralisation does not look like changing. Lots of participants in this scheme will live in rural and regional Queensland. Country roads tend to spawn proportionately more accidents. There are market differentials in the cost and availability of service. That is a reality. Setting prices for the whole state does not recognise that reality. What will occur if there is rigidity in the setting of prices, as set out in the submission, is that in short: no services or a Mexican standoff between the agency and the person or the person's family about the pricing for services; possibly the family, if they have any resources, wanting to top up the inadequate price with some of own resources, which is not the intention of the act; or a race to the bottom in terms of the quality of services being delivered to the participants who need skilled service providers.

Our submissions are not about participants getting Rolls-Royce service when a Holden Commodore will do the trick. It is about flexibility, with the sole guiding criterion on that being reasonableness in all of the circumstances and that reasonableness is infused with market differential realities. The reasonableness test is the test that applies under existing CTP legislation and disputes are uncommon, and there is no suggestion that I have heard that that has spawned lots of cases involving people getting a Rolls-Royce treatment when they ought to be simply getting a roadworthy Holden Commodore by way of treatment. We have suggested that there be some amendment to the bill in that regard, to provide for the flexibility that is part and parcel of our decentralised state.

Mr Potts: I echo something that Rod said about the size of Queensland and its geographic diversity: this is not a piece of legislation for South-East Queensland where we have significant resources. It is quite clear that, whilst that type of scheme may work in the more geographically compact areas or at least areas where the demography is close to the city, for example South Australia, in Queensland we are very proud to have a broad diversity of background and the geography of this great state requires flexibility, not the rigidity that Mr Russo refers to. It really requires not a one-size-fits-all solution, which really is what that section aims at. We want something that is best for all, no matter where they are from.

Mr SAUNDERS: I agree with you, Mr Potts. This does concern me in terms of places such as Longreach, where I come from, and regional areas. I know that a lot of the NGOs say that they do, but they do not have the agencies out there to cater for these things. A lot of country accidents do happen, if you look at places like Alpha and Barcaldine.

Mr Hodgson: Your point is well made. Over the weekend, I arranged for a bit of analysis to be done on some costing differentials. We used the hypothetical but realistic example of a person who sustained a high-needs acquired brain injury with mobility, behavioural and continence issues and 24-hour care being needed. That person's needs were costed on the basis of (1) living in suburban Brisbane at Jindalee; and (2) living in Atherton, roughly an hour and a half drive from Cairns. There

is about a 40 per cent—not 14, 40—cost differential between those. Out in your neck of the woods, Mr Saunders, which is an even more remote place than Atherton, those risks are underlined again. Cost differentials are a market reality and it should be reflected in the act.

CHAIR: Specifically when you gave the example of the Cape and services to the Cape.

Mr BOOTHMAN: I want to go back to the costings with the NIIS and looking at individuals getting some type of benefit and cover as quickly as possible. Obviously they would have their own doctors and specialists who would be able to write reports to state that this person has a severe brain injury, et cetera, and is not at fault, so therefore could make a common law claim. I would like to see as much money go to my constituents as possible. Could not you use those reports to alleviate some costs associated with seeking secondary professional advice, therefore reducing the costs of your fees, ensuring that the client gets the maximum amount of money possible?

Mr Hodgson: Your question is one that is answered by existing practice. These things happen already. Typically, a person who has a car accident is conveyed very quickly, for a catastrophic injury, to a major hospital here in Brisbane. Most of the regional hospitals are not equipped to deal with the acute phase post-injury, so they will be shipped typically to the Princess Alexandra Hospital for major spinal cord injuries and either the PA or the Royal Brisbane for brain injury cases. Lawyers utilise a lot of the material that is produced as a consequence of the in-patient stay at hospital and the rehabilitation facility attached to the hospital in the claim. In order to maximise the best possible outcome for the client, the sort of reports that Luke referred to before need to be obtained so that one can prognosticate what that person's future is. Often the stuff from the hospital is helpful but it is not determinative, and if you do not get that material you are not discharging your obligation to your client properly and doing the best job by them. It happens already.

Mr BOOTHMAN: Meaning no disrespect to Luke, but his comment confused me a little. There are costs involved in getting reports from specialists, but you are saying that when they go straight to the medical centre after their severe accident the reports are already available.

Mr Hodgson: I would add that catastrophic injury claims require, at the end, the court to sanction the settlement. The court has to say that it is kosher. In the majority of cases, there is a trustee involved. A trustee's fiduciary duty—their duty as a matter of law—is to make sure that the costs are fair and reasonable and in accordance with the regulatory regime. If the trustee saw that the lawyer had gone off and got unnecessary medical reports, not necessary to properly advance the case, the trustee has a duty to stick up their hand and say, 'Hang on, that is not reasonable and the lawyer needs to have another look at it'. Lawyers do not get in and—to use the car analogy—spin the wheels; we are interested in getting the best outcome for our clients.

Mr Murphy: The clinical reports that are prepared by the therapists, allied health professionals and medical specialists involved in acute rehab are all provided to the specialists who then provide that forward prognosis, so they are absolutely vital. You are right in that in some circumstances it may not be necessary for particular reports to be commissioned. However, as a rule of thumb, there tends to be an array of medical reports obtained that are based on the clinical records, an examination of the client and then also often—and we have used the Cape example—attendance up at the Cape. There is one particular experienced former head of the spinal injury unit, a gentleman by the name of Dr Vernon Hill. Dr Hill would have prepared reports on probably 90 per cent of the quadriplegic or spinal injured claimants in Queensland. He has had the clinical experience and then, based on that clinical appearance, is also providing the forward prognosis.

Mr Potts: The point is that there is a difference between those who treat and deal with the rehabilitation and those who, looking at that, are then able to say the extent of it—that is, the percentage loss, which for catastrophics is obvious—and then can prognosticate as to the levels of care, assistance and the like. It is to give a forward looking, rather than a clinical day-to-day, treatment. That is why they exist.

Mr SAUNDERS: With the insurance companies, of course, you have to get the best reports. To be fair, to get a good report and to get the best, you have to pay for it. With everything in the world I have seen, you have to pay to get the best. The insurance companies also drive the need for those reports, because they would have counter claims to cut their costs down so they do not have to pay the affected person; would I be correct?

Mr Potts: More often than not, they have their own expert reports as well.

Mr SAUNDERS: That is what I mean. A lot of cost would be involved in that too, would it not?

Mr Hodgson: Indeed. Probably about 98 per cent of matters resolve through the negotiation process. If you have to put your case in front of a judge and you present a half-baked case to a judge, you can expect that you will not get a sympathetic hearing from the judge and your client's rights will

be detrimentally affected. For the catastrophically injured, it is therefore of great importance that you make sure that the i's are dotted and the t's crossed with quality reports that not only address current functioning but also address the likely future course of the person's condition.

Mr SAUNDERS: We were talking about a 20 year old. Our job is to make sure that that 20-year-old who has a life span of 75, say, is covered. That is why we need the expert advice. You have to pay for that advice. It is as simple as that.

Mr Hodgson: The only other thing that has not been touched on in any of the questioning is this. It has been grossly misrepresented and overrepresented that there will be some people for whom a significant change in circumstances might mean that the money may not last as long as was originally predicted. We have never come to this committee now or previously to put the proposition that no-one ever runs out of money. As I said a moment ago, there have been a number of submitters to this committee who have asserted that it is routine or common. That is plainly wrong. There is no evidence of it. Our experience as practitioners is to the contrary.

The bill sensibly includes a provision that allows, after five years or longer if there is a significant change in circumstances, for a person to re-enter the scheme. The detail in that regard around what criteria will be applied to a re-entry of the scheme will be enshrined in the regulations rather than in the bill so it is not for us to comment on today. We have certainly put the proposition that if there were a dramatic change in circumstances, through no fault of the person themselves—and as long as it does not offend the no double-dripping principle—that that is a sensible thing to do, and we commend that.

Mr Murphy: Rod made the point about no empirical evidence in relation to the dissipation of funds. The Griffith University submission makes two references by way of suggestion of evidence, although it does acknowledge that there is no evidence. One is to data available from Centrelink through the applications for relaxation of the preclusion period. The other is a reference to a South Australian green paper.

The immediate question that arises out of that is that they are not necessarily talking about catastrophic injuries there. The applications for preclusion periods apply to those recipients of damages for less significant injuries as well. The real issue in terms of the relevance of dissipation of damages for this piece of legislation is catastrophic injuries and how often their damages are dissipated. An immediate reference to that Centrelink data is not necessarily relevant. That has to be looked at. Similarly, the green paper from South Australia again suffers from that same question of just what is the source of the information. That was acknowledged in the submission as well.

The only thing I was going to say is that there was a reference earlier to Indigenous culture and the obligation on people to support their community. This is where, in the view of the society and the ALA, the importance of section 43 is important. Rather than removing the right of those recipients to be able to accept a lump sum because they may have a finding of contributing negligence at 25 per cent, section 43 enables the agency to ask the court to consider whether it is appropriate with a lump sum for the opt out to be adhered to.

From the individual's point of view, it enables that individual to properly present to the court for its consideration an explanation and evidence of how they are going to utilise those funds. It is actually, in our view, a far better mechanism which will have the impact of forcing those participants who have capacity to specifically address a plan, to present that to a court and make sure that they are able to maintain their freedom and autonomy rather than just removing it and obligating them to a lifetime receipt of income.

CHAIR: The time allocated for this hearing has now expired. We will draw the proceedings to a close. Thank you Rod, Bill and Luke for coming along today. Thank you to Hansard for their work today. The draft transcript of this hearing will be published on the committee's web page as soon as possible and will be sent to witnesses to make any necessary corrections. I declare the public hearing of the Education, Tourism, Innovation and Small Business Committee closed.

Committee adjourned at 11.35 am