FINANCE AND ADMINISTRATION COMMITTEE

Members present:
Ms DE Farmer MP (Chair)
Miss VM Barton MP
Mr MJ Crandon MP
Mr CD Crawford MP
Mr DA Pegg MP
Mr PT Weir MP

Staff present:

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)

PUBLIC HEARING—INQUIRIES INTO THE WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL 2015 AND THE WORKERS' COMPENSATION AND REHABILITATION (PROTECTING FIREFIGHTERS) AMENDMENT BILL 2015

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 13 AUGUST 2015

Brisbane

WEDNESDAY, 13 AUGUST 2015

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Committee met at 1.20 pm

BORG, Mr Ashley, Senior Industrial Officer, Construction, Forestry, Mining and Energy Union Queensland

COOKE, Mr Anthony, Industrial Officer, United Firefighters Union Queensland

GILBERT, Mr James, Occupational Health and Safety Officer, Queensland Nurses' Union

MARTIN, Mr John, Research and Policy Officer, Queensland Council of Unions

MOHLE, Ms Beth, Secretary, Queensland Nurses' Union

ONG, Mr Simon, Industrial Officer, United Voice

WILSON, Ms Danielle, Industrial Officer, Independent Education Union, Queensland and Northern Territory

CHAIR: Good Afternoon, ladies and gentlemen. I declare open this public hearing of the Finance and Administration Committee's inquiries into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 and the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015. I am Di Farmer, the chair of the committee and the member for Bulimba. The other members of the committee are our deputy chair, Mr Michael Crandon, who is the member for Coomera; Miss Verity Barton, who is the member for Broadwater; Mr Duncan Pegg, who is the member for Stretton; Mr Pat Weir, who is the member for Condamine; and Mr Craig Crawford, who is the member for Barron River.

The purpose of this hearing is to receive additional information from submitters about the bill, which was referred to the committee on 16 July 2015. This hearing is a formal proceeding of parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence.

Thank you for your attendance here today. The committee appreciates your assistance. You have previously been provided with a copy of the instructions for witnesses. So we will take those as read. Hansard will record proceedings and you will be provided with a transcript. This hearing will also be broadcast. Could I remind witnesses to speak into the microphones, please, particularly for the benefit of Hansard.

I remind all of those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the hearing at the discretion of the committee.

We are running this hearing as a round-table forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise an issue for discussion, I ask you to direct your comments through the chair. I also request that mobile phones be turned off or switched to silent mode and I remind you that no calls can be taken in the hearing room.

The committee is familiar with the issues that you have raised in your submissions and we thank you for the detail that you have put into those. The purpose of today's hearing is to explore further aspects of the issues that you have raised in those submissions and we have quite a number of questions that we want to put to you. I now would like to invite each organisation to make a brief—up to three minutes only as a maximum, please—opening statement, if you wish to take up that opportunity. Beth, would you like to start?

Ms Mohle: Thank you, chair. The Queensland Nurses' Union thanks the committee for this opportunity to discuss the proposed changes to the workers compensation act. Some members of this committee may recall a previous hearing in October 2012 at which the QNU appeared where we strongly opposed the amendments to the workers compensation act that were under consideration at that time. To its credit, that committee did not support some of the proposed amendments, in particular, the threshold for common law claims. However, the government chose to override the committee's recommendations and went on to introduce a raft of measures that we are here today seeking to rectify.

The argument we made at the time was supported by many others. The Queensland workers compensation scheme was one of the most efficient in Australia. There was no need to launch an investigation to change such a well-operated system. Since the introduction of thresholds, the real concern to the QHU has been the loss of common law claims for individuals as assessed as having zero to five percent whole-person impairment. The QNU has assisted nurses and midwives whose employers have terminated their employment after an assessment of zero per cent work related impairment when the employer became aware of a pre-existing condition aggravated in the workplace. Quite often a pre-existing condition, particularly those associated with the spine, are the result of the ageing process and occur during the manual handling component of a nurse's or midwife's work.

Our other major concern is that a number of members have indicated that they will not pursue a workers compensation claim for fear that they may damage future employment prospects. Unfortunately, the bill as it now stands does not omit disclosure requirements allowed under section 571B and the potential loss of benefits under section 571C of the act. In our view, it is essential that these provisions are withdrawn so that workers in Queensland can expect a return to fairness and equity. Our recommendation to the committee is to withdraw all disclosure provisions from the act, including sections 571B and 571C. We have included case studies in our submission demonstrating how these provisions have led to the misuse of disclosure information and the potential for discrimination in employment practices. These sections have imposed a burden of disclosure on employees by ostensibly making them experts in determining whether their injury or medical condition might be aggravated by their potential employment. Their only method of assessing the possibility is based on the employer's description of the duties.

Nurses and midwives work to keep the health system safe. We ask the committee to restore the workers compensation scheme to its original position so that this system can work to keep Queensland nurses and midwives safe. Thank you.

CHAIR: Thank you. The Queensland Council of Unions?

Mr Martin: Thank you, chair. I think it would be easy enough for me to support the submission of the QNU, particularly with respect to the common law damages threshold. We would again emphasise that, the previous time this was looked at by a committee of this nature, the report came down that there was no need for change. So we would urge this committee to come to a similar finding and return the scheme to what it was.

We would also support those submissions with respect to sections 571B, C and D, which provide the potential for an employer discriminating whether intentionally or otherwise against an employee on the basis of an impairment. We believe that the introduction of those provisions into the workers compensation act conflated the obligations that you would expect under workplace health and safety laws with that of a workers compensation scheme. In our submission, they do not belong there. Those would be our submissions at this stage.

CHAIR: Thank you. United Firefighters?

Mr Cooke: Thank you, chair, and I thank the committee for the opportunity to be able to appear today. We rely on the content of our submission, in particular pages 7 and 8, which are relevant to our appearance at this hearing this afternoon—the first hearing. I have a very brief statement about that particular aspect of the content.

UFUQ members seek advice as required on workers compensation matters. They also seek their union's assistance with workers compensation appeals and also with common law claims. Our members are aware that the government's workers compensation scheme proudly reports each year that it is either the best performing or one of the best performing workers compensation schemes in any jurisdiction in Australia. Therefore, despite what can only be described as a successful and well-run scheme, the previous parliament placed restrictions, particularly on common law rights, and introduced access by employers to job applicants' previous claims history. When scrutinised, these changes did not appear to be made based on any current or even future necessity.

I appear today on behalf of all the permanent auxiliary firefighters and also the fire communication officers of Queensland to say that those particular changes should be reversed. We support the policy objectives of the bill in these matters. We also support the submissions of the QCU and the other unions. We also support the submission by the ADCQ. We would support the provisions of the bill that streamline the day-to-day operation of the workers compensation scheme as well.

Finally, I make the point that we have many further submissions to be made at another hearing this afternoon about particular aspects of the bill and I will not be speaking about those today.

CHAIR: Thank you. The CFMEU?

Mr Borg: Thank you. The CFMEU welcomes the opportunity to make these submissions to the committee today. I will be extremely brief. I will just refer the committee to our written submissions that were filed last week. In summary, our position is that we support this bill. We say that it should even go further and, indeed, we support and adopt the submissions of the QCU and the QNU insofar as we say that those sections which pertain to the disclosure of pre-existing injuries as a whole should be removed from the bill. We say that sections 571A through to D should all be removed as part and parcel of this bill. Thank you.

Mr Ong: At the outset I will say that United Voice supports the position put forward by the QCU and other affiliated unions. United Voice has made a written submission to the committee in respect of the bill and the amendments contained within it. I do not intend to repeat those submissions and therefore my comments will be brief.

United Voice commends the Palaszczuk government for honouring its election commitments in relation to this matter and also for the positive steps taken to address the attacks on workers made by the Newman government. United Voice has a diverse membership across the state and federal industrial jurisdictions, but the changes made by the former government were an attack on all workers in Queensland. As is outlined in our submission, the Queensland workers' compensation scheme prior to the Newman amendments operated most effectively and provided an appropriate balance between compensated injured workers, moderating employer premiums and ensuring safe return to work practices all whilst functioning in an economically viable manner. In words which would be familiar to this committee throughout the various inquiries that have been conducted thus far in this term, the changes introduced by the Newman government were nothing more than an ideological attack on workers. This is particularly so in relation to the five per cent permanent impairment threshold at which workers could seek relief at common law. When those particular amendments were before the committee in 2013 the committee recommended against that threshold. Nonetheless, the government of the day had its way.

The honourable Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, in his introductory speech to this bill, described the 2013 legislative amendments as unnecessary and offensive. We respectfully support the honourable minister's characterisation of those amendments and support the amendments proposed in this bill which achieve the end of restoring fairness to injured workers. In all other regards, United Voice relies upon its written submission.

Ms Wilson: Thank you for the opportunity to talk to this today. We are a union that proudly supports 17,000 members across Queensland. We refer to our submission as well for information about the specific issues that affect our members. We support the submissions of the QCU and our affiliates. We note that the current government gave an election commitment to end the unfairness to workers in Queensland brought about through the changes made to the legislation by the previous Attorney-General and the previous Premier of Queensland. However, the proposed amendments do not reverse all the unfairness that that unleashed.

In terms of the amendments that we can commend, clearly the removal of the common law threshold is a significant step forward in making sure that people who are injured as a result of the negligence of their employer are treated the same way as people who are injured elsewhere. Many of our members suffer further injuries as a result of the original work related incident, such as adjustment disorders and injuries resulting from unsuccessful treatments, so the reinstatement of the capacity to ensure the consequential injuries are not disregarded in the common law process is also significant. There are some sensible housekeeping changes in the expansion of review rights for matters that have not been previously considered and the presumptive legislation that recognises the plights of firefighters is also to be commended, as is the removal of the ability for employers to seek claims histories.

Having said that, there are aspects of the current legislation that diminish the rights of people injured at work. We would like to see the reinstatement of the rehabilitation and return to work coordinators and the retention of regulatory accreditation for training and procedures. We would also

like to see the 2013 amendment which redefined the meaning of injury in respect of psychological and psychiatric injuries reversed. We have concerns about the appearance of the regulator as it currently exists within the Department of Industrial Relations. We would like consideration given to a statutory authority model, again for the sake of transparency and independence from any perceived departmental influence in its decision making processes. Most significantly, we are disappointed that the bill does not extend to removing sections 157A, B and C of the act requiring workers to provide information to employers about pre-existing medical conditions. These provisions are discriminatory and are not consistent with the provisions in the Antidiscrimination Act which state that a person must not ask another person, either orally or in writing, to supply information on which unlawful discrimination might be based. There is ample room for employers to legitimately determine a worker's capacity to carry out the inherent requirements of the role under the existing antidiscrimination law without having to rely on the provisions in this act.

The outcomes of the 2012 review into the scheme created division and unfairness for workers in Queensland. This bill is a whole lot better than what we have had for the last two years but we would like to see a greater effort to fully restore the balance for injured workers.

CHAIR: Thank you all very much for that and also for the detail that you have all put in your submissions. We will go straight to questions now. I would like to start off by asking about the capacity of these proposed amendments to take away employers being able to access previous work claim histories. We heard in the public briefing with the department last week that there have been over 26,000 work histories accessed and that that number has been rapidly increasing and that a majority of those are being accessed by labour hire companies. A number of you have given us some examples of how those particular sections have affected your members and given some case studies, but I would like to invite comment across the panel on the number of work claims being accessed and also perhaps give us some examples of how you see that that has affected your members in the last couple of years.

Ms Mohle: I might hand over to James who has had some direct experience in relation to that.

Mr Gilbert: In terms of numbers, clearly we do not have access to information that has gone to the regulator or to WorkCover, but I can say that in my contact with members, on a number of occasions, and I have put it in the submission, where people have rung me for advice about workers' compensation, I have told them there are new sections in the act that should a new employer that you are going for a job with seek to gain access to your workers' compensation history they are able to. We have had discussions that theoretically it is illegal for them to use that information to make a determination around your employment, but how you are going to prove that that occurred when you do not even get an interview is farcical. They have made a determination that they will not put in a workers' compensation claim for their career, essentially. But in terms of numbers, no, I do not know. I did read the transcript in relation to your conversation with the regulator and, yes, I had heard that it was certainly labour hire companies that were utilising that, but as we put in our submission, I have just recently become aware of a big employer that seeks to use that section of the act to gain access to people's workers' compensation history.

CHAIR: Would anyone else like to comment on that?

Mr Martin: I guess that number would strike one as being alarming in this jurisdiction. That is a considerable size—26,000 would be extraordinarily high. It is interesting that the bulk are labour hire companies. As we referred to in our submission, there was some caution being issued about the use of that particular section of the act on the basis that it may have got employers into trouble. By merely using that section an employer may find themselves falling foul of the Antidiscrimination Act. Clearly that advice was not widely heeded and perhaps those who are not as concerned as they might be about whether they are complying with antidiscrimination legislation or not may have been the ones who chose to take advantage of that particular section.

CHAIR: Would anyone else like to comment?

Mr Borg: I want to reiterate the comment from my friend from the Queensland Council of Unions that that kind of figure is absolutely alarming. These are amendments that only went through in the last couple of years. It does not surprise me, however, that the bulk of these things occur amongst labour hire employers because that is where employees are treated as most disposable. But that is the point: these matters go to precarity of employment questions. This is where people's pre-existing conditions and so forth, which may not even go to the inherent role which they are supposed to be performing, are being misused to, in effect, you might say, blacklist employees, which is quite alarming. You will note from the written submission provided by the CFMEU that we cite the Scottish Affairs Committee in the UK House of Commons. That is quite worthwhile reading for the

purposes of this bill because it does show to what extent employers go, particularly in the construction and building industry, which the UK committee inquiry looked into. Documents were found, on the face of it, where vast databases were compiled against workers to effectively blacklist them from employment in the industry. Amongst the matters that put black marks against the names of individuals were industrial activity but also previous injury claims. What is reported to the CFMEU is that similar things are occurring here in Australia, and indeed here in Queensland, and I speak in particular in relation to large resources projects which use a registration of interest process and they ask for such information as your previous worker compensation claims and so on and so forth and what we are being reported back to is that employees are effectively being shunned from the industry, are not even being able to apply for jobs because this registration of interest process has brought up their names against a worker compensation claim and where an employer might have otherwise have been keen to take on that employee, even in those circumstances workers have been knocked back because then the information was provided to the principal contractor and the principal contractor would not permit that person onto the site. So it is quite alarming. We are in the resources state so it affects a great deal of people working here in Queensland, this registration of interest process, and it is just an example of just how bad the Newman government's amendments were as a matter of public policy. There were legislative requirements for employees to provide that information. That is really all I have to say.

CHAIR: Would United Voice or UFU or IEU like to comment on that?

Mr Ong: Just very quickly following on from what Mr Borg said, it also has the other effect which is to act as a deterrent for workers to make claims in the first place which is contrary to the nature of this legislation and the whole scheme.

Ms Wilson: I can reiterate our experience as well with members weighing up that risk of lodging claims and what it means for them down the track. I do not have exact figures, I would have to look at that for you, but we have had queries to that extent. We know members have not lodged claims because of the fear of what might happen down the track. The other thing is that many of our sectors are quite large sectors so they do follow the rules relatively well, but we do have a significant sector in our RTO and ELICOS and business college sector where there is a large proportion of our members working casually and we regularly see contracts of employment or documentation relating to conditions of appointment to positions where employees must provide permission for them to get a copy of the history or they will not get the job, similar to providing information about pre-existing injuries as well, but they are probably the two big things for us as well.

Mr Cooke: As some of the other people have just said, the employer will not give us any of that data so we cannot say whether they are screening or not, but I can certainly say personally that I have been contacted by auxiliaries, who are the part-time firefighters in Queensland in regional and rural areas, who will usually hold the auxiliary role as a second job and they do something else as well, they are fearful of lodging workers' compensation claims because they have multiple employers. They are also often seasonal workers or in many parts of Queensland they are working in the resources or construction sector and they are well aware that a workers' compensation application can affect their future employment at the moment.

Mr CRANDON: The department advised the committee that it has undertaken consultation using a stakeholder reference group framework. Could you please confirm to the committee whether or not your organisation was involved in that consultation through these groups and, if you were, how did you find the process compared with other processes that you have been subjected to?

Ms Mohle: I was one of three Queensland Council of Union representatives on the stakeholder reference group, along with Michael Ravbar and Ron Monaghan, who is now retired. We found the process very worthwhile, actually. We had employer representatives involved, as well as other stakeholders from the legal fraternity.

Mr CRANDON: Do you remember the names of any of them or their organisations?

Ms Mohle: Nick Behrens was there from the QCCI. There was someone from AIG. I cannot remember all of their names. There was someone from AIG, someone from the self-insurers organisation, there was the bar society. I cannot remember the lawyer's name but—

CHAIR: Various people have reflected that in their submissions, too.

Ms Mohle: Three legal representatives, as well as representatives from the Queensland Council of Unions and also the Australian Workers' Union had a representative involved in that as well. It was a broad cross reference. It was a very good discussion. Representatives from WorkCover were involved in that as well. It was an open and transparent process. We found it a very worthwhile one.

Mr CRANDON: So you were happy. Was anyone else involved in that process?

Mr Martin: Not personally, but my former general secretary, Ron Monaghan, was also involved in that process, as well as Mr Borg's current state secretary.

Mr Borg: But I have nothing to add to what my friend from the Nurses' Union said, thank you.

Miss BARTON: Beth, previously we have talked about nurses in relation to some of their injuries and I think it was a couple of months ago when dealing with one of the other bills. My understanding is that musculoskeletal injuries are quite significant for nurses in particular. I am trying to get an appreciation of the zero to five per cent. I was not on this committee in the last term of parliament. In terms of what falls into that proportion—

Ms Mohle: James Gilbert will be able to answer that, because he is our technical expert.

Mr Gilbert: Thanks Beth, but I do not know about 'expert'. Under the previous scheme, they used the AMA four guides. We are now using the AMA five, with a document that is called the GEPI, which is the Guidelines for the Evaluation of Permanent Impairment. It is a little bit different to the last mechanism that they used to determine impairment levels, but essentially it is the same. If you are an older person, you are going to have some pre-existing degeneration in your spine. It is greater than five per cent; you actually have to make six per cent. You are not going to reach it. Quite often, we have members who, at the end of the workers compensation process, have been sent off for an independent medical examination by an orthopod who has determined that any injury they have is just a pre-existing injury; it was an aggravation and the aggravation is now resolved. Those people are still in significant pain which they did not have prior to that and are unable to continue working. Quite often an employer will then, at the end of the workers compensation process, send them for their own medical assessment. Quite often it will come back saying, 'No, they cannot continue working, they cannot perform the inherent requirements of the role', and they are left with no job as a result of that. In circumstances where there was some negligence on the part of the employer—that is, not enough staff, not enough proper manual handling equipment or even lack of training—they are left with nothing. They are out of work. That is the end of their career. Then they are further disadvantaged because when they go for a new position—because clearly they cannot rely on social security; they want to continue to work—you have these odious disclosure requirements where they are supposed to make an assessment of a job. Quite often what we see is that you do not get a history or a tasks list for that particular job. You will get a generic one for an RN, which will require manual handling. Do they disclose or don't they? That is the decision that they have to make, with the possibility that should they injure themselves they do not get workers compensation.

To be fair, there have been a lot of changes in the nursing profession. When I started, we used to do what were called fireman's lifts. We were all trained. We would all go in there and every year we would get training. We would be lifting people up with shoulder lifts. Do you remember it, Beth?

Ms Mohle: Shoulder lifts as well.

Mr Gilbert: It was just inherently dangerous. Now we utilise a lot of equipment: hoists, mobile ceiling hoists, they even have technology called hover mats, which uses the same technology as a hovercraft, essentially. There is a thin layer of air between a mat that they blow up and the bed. Essentially, you can just push it up. It requires little forceful exertion. But they are not everywhere. It is reflected in the type of facilities. In aged care, you would not see a hover mat anywhere. That is reflected in the fact that their injury rates are greater than in hospitals. It comes down to the capacity of the employer to afford those sorts of technologies. It is also reflected in their average premiums, too. You will note that with residential aged care, their workers compensation average premium rate is a lot higher than hospitals. You are leaving people out to dry. For some people, that is their only career. Generally they are older and they are female.

We were very happy with the report and we commented on that the last time. We were very happy with that report. We thought that was very fair. Then to see the changes that were made, and we did not get the opportunity to respond to them because they were made after the committee produced the report. This is your opportunity to fix that. We are really hoping. Our members look at workers compensation as a critical component of their social wage, because they know the devastating effects on their colleagues. Everybody knows a nurse who has injured their back and what that has meant for them. We want you to do the right thing.

Mr CRANDON: I have a supplementary question, if you do not mind, Madam Chair?

CHAIR: Sure.

Mr CRANDON: In past submissions, you provided us with some examples and you have just referred to a couple of things. I am flicking through your submission and I cannot see any examples like that. Could you supply us with a couple of those case studies?

Mr Gilbert: I can. I will go through the files when I get back. We chose not to this time because we had done it last time. The things that we provided—

Mr CRANDON: The point that I am making is that we can reference that type of thing in our report. It is real-life stuff.

Mr Gilbert: I am happy to do that. We will not be providing names, of course. They will be scenarios.

CHAIR: To all of you, in fact: if you have any case studies or particular examples that really highlight your point, and there are many throughout your submissions which we appreciate, that will be of great help to us.

Mr PEGG: I had a question for the QNU. Beth or James might be able to assist me. In response to Verity's question, you talked about the situation people find themselves in where they have an aggravation that has been assessed at zero per cent and there has been perhaps an independent evaluation about their work capacity and, effectively, they are losing their jobs. What are the employment outcomes for people in that situation? Under the previous legislation, they would have potentially a common law right. Are they able to get back into the industry? What is the outcome for them?

Mr Gilbert: If you are in aged care it is a bit more difficult, clearly. We have not seen the uptake or we are not aware of the numbers of aged care employers that are requiring people to allow them to access their workers compensation history. Quite often they do move on. Sometimes they do not.

Ms Mohle: To other careers.

Mr Gilbert: To give an example, just recently a new graduate contacted us. She had been put through a functional capacity evaluation of her physical capacity. She was a young woman, but she could not meet a requirement in terms of grip strength. She did not get the job. I would have to say there is more to nursing than just the physicality of it. I was quite astounded, actually, because it was a big employer. It was almost like a light switched when all these changes took place that, okay, we are going to be really hardball with these things. The capacity to find suitable duties for people. It was like at the end of WorkCover: 'Bang! Our obligation to you is no longer there. You're out of here'.

Ms Mohle: You are disposable. The issue is the fact that it is seen as a disposable workforce in that regard. Following on from Mr Crandon's previous question about the stakeholder reference group and the process there, one thing that group agreed to continue to do work on—it is still ongoing—is in the area of rehabilitation and return to work, because everybody who was there realised we can do much better in that regard. Particularly in regards to nursing/midwifery, we are an ageing workforce. We have a lot of new graduates. There is a commitment that we greatly welcome from this government to employ up to 1,000 new graduates per year for the next four years, but we need to retain experienced registered nurses and midwives to support those new graduates, so we have to change that mindset of a disposable workforce. All of the representatives on that particular stakeholder reference group will continue to work together, focusing on rehabilitation and return to work, and finding ways to work together to make that work better.

Mr CRAWFORD: John, everyone made comment earlier, including yourself, in relation to 571B, C and D. We have seen that through a number of different submissions, including the Anti-Discrimination Commission. Can you elaborate a little more on QCU's perspective as to how that operates and what we can do in that space?

Mr Martin: The submission we would make is that the removal of 571B, C and D would be the easiest way to deal with it. I noted that the ADAQ suggested the amendment of those, whereas we would be suggesting their repeal as part of this bill. What it does is it places a further obligation on an employee and an employer that does not really form part of a workers compensation regime. What it is looking at in the pre-employment area is the sorts of questions that an employer would ask a potential employee. Those questions, now informed by the capacity to obtain the workers compensation history of that individual, places the employer into, you might describe, a fairly precarious position vis-a-vis the anti-discrimination legislation, because that legislation prohibits discrimination on the basis of an impairment. I mentioned some of the early advice that went to employers from the law firms that we saw which said to be very cautious about this because of a couple of things. Once you ask the question, it is within your knowledge and that would mean that there is greater obligation on you in terms of providing a safe system of work in the first instance. Also—and perhaps more likely—this employer would make a decision not to employ the person and, therefore, potentially run foul of the Anti-Discrimination Act, which prohibits failing to employ someone on the basis of an impairment where it is not a genuine occupational requirement.

It is not as though employers do not have any rights with respect to that, but a decision has to made based on genuine occupational reasons. It is not to be, 'You've had an injury of some description which may not, in anyway, be relevant to the position for which you apply, but I am going to use the fact that is now within my knowledge and would have not been within my knowledge had it not been for this amending legislation. That information is going to influence my decision not to employ you.' This thereby means the employer shifts from a position of blissful ignorance to now having this information within their knowledge. Chances are that the employer will make a decision not to employ a person to avoid any other legal implications that could result from employing someone when they know about their injury. Does that answer the question?

Mr CRAWFORD: That is good.

Mr WEIR: My question is going to run along the same lines. I noticed in the Nurses' Union's submission that you mentioned 571D.

Mr Gilbert: There was a typo in our recommendation. At page 2 it should read 'the QNU recommends sections 571B and C' because the proposed legislation says that 571D will be omitted.

Mr WEIR: I am particularly concerned about 571B, where an employee knowingly makes a false or misleading disclosure in relation to an injury or medical condition. I will use myself as an example. I have had a back operation and had a disc removed. I have had one shoulder operation and the other one badly needs it. You have described a job that if I applied for and got I would injury myself. How do you cover that situation if there is no need to disclose a serious injury?

Mr Martin: Did you feel obliged to indicate to the people of Condamine that you had that injury?

Mr WEIR: It is common knowledge.

Mr Martin: But you did not run on it as a—

Mr WEIR: I did not put it on my resume.

Mr Martin: Because it is completely irrelevant as to whether or not you can hold the position of member of the Legislative Assembly.

Mr WEIR: But not in terms of the lifting that has been described before. I would definitely injure myself if I were a firefighter.

Mr Martin: The way in which that should be assessed, regardless of whether or not you have a workers compensation history, is whether or not you are fit to perform the genuine occupational requirements of that job.

Mr WEIR: That is right.

Mr Martin: That is go off to a doctor and they will make an assessment to see whether you can do that job. In the case of firefighters that is fairly rigorous in terms of what steps need to be gone through before you will be employed. They will make that assessment based on medical evidence. What the provisions in the workers compact enable is not for that process of science to be gone through but rather, 'You have a workers compensation history—bang you are gone.' The significant difference is that it holds itself open to be used for discriminatory purposes as opposed to going through a proper process which would be to assess that individual and their capacity to perform the genuine operational requirements of that job.

Mr Gilbert: I might comment too. I said before when I answered Miss Barton's question that you get a generic job description. That is what you get. You might be going for a job in the eye clinic—and there is not a real lot of lifting in the eye clinic—but you will get a generic job description and that is what you will be presented with to answer.

That was the scenario we put in our submission. That is still going on. I went to a meeting with a member and she was presented with a job description which was the closest they thought they could get to the job. They had detailed it in terms of forceful exertion and weight limits and all sorts of things, but it was not the job she was actually working in. That is the danger.

You might have had a shoulder injury five years ago. You have been rehabilitated and you still have some pain, but that does not necessarily mean that you cannot continue working. If people stopped going to work in nursing because they had a bit of back pain you would have no workforce whatsoever. That is the danger.

An employer, given the opportunity, will say, 'We have all these graduates out there and we have the 1,800 people out there who got the punt applying for jobs. We will take the pristine one, thank you very much. We will not take you—you are soiled.' It is very dangerous.

In my view, it stifles an employer's consideration as to how to keep those people at the work. What can we do? They might not be able to do the manual handling in terms of the slide sheet up the bed scenario, but can we look at having additional workers, wards people or somebody like that who can do that role because we want the specialist skills of that individual? If you are purely focused and obsessed with the budget you will say, 'We will not have those wards people, we will just get another woman who is 45 years old and injury her.' That is the problem with it.

CHAIR: We will have one more questions on this then I think we might move on from this topic because we have a range of other matters to cover.

Mr CRANDON: I take all of those points. One of the things you talked about was job descriptions and someone looking to be employed to assist an eye surgeon—

Mr Gilbert: That was just a scenario.

Mr CRANDON: I know. Once someone has got a job, do they go through the process again if they are looking to move from that role to another role?

Mr Gilbert: Within the same employer?

Mr CRANDON: Yes.

Mr Gilbert: If you read the act it appears that that can happen. We had assurances from WorkCover at the time that that was not how they interpreted it. That was one of the questions we asked: what if you are employed within Queensland Health and you now go for a clinical nurse role or some sort of advancement? We were assured that you would not be put through that process. There is nothing, in my view, in the act that says that. You are just relying on the good faith of the employer not to do that.

Mr CRANDON: Your interpretation is that the employer would have the right to—

Ms Mohle: It is open to interpretation.

Mr Gilbert: Because essentially you are going for a new job. Whether you are considered a prospective employer, I do not know. I am a health and safety officer not a barrister.

CHAIR: Thank you. I would like to go onto the matter of transitional arrangements and also arrangements for workers who may be seeking claims for the period 15 October 2013 to 13 January 2015. I know the IEU, in particular, has raised this issue. There has been much comment about the retrospectivity of the transitional arrangements. Also, there has been quite a lot of comment from submitters about the period before this government took office, including matters such as people saying, 'The law is the law. If you were operating and working under that law during the period 2013 to 2015 that is just the way it was.'

Obviously the stakeholder reference group is looking at ways of dealing with people in that period. There have been questions about who actually makes those decisions. If you make arrangements for some people who were affected during that period does it not disadvantage others who actually had claims processed during that period? Could I get some general comment on that? You may not have had the opportunity to read all of the other submissions as there were quite a number of them. Can I get some general comment about that feedback?

Ms Wilson: Our position largely relates to the commitment that the government has given to restore fairness for injured workers in Queensland. We are talking about a period of two years, approximately—or maybe a bit longer by the time we get this finalised. It seems most unfair to us that there would be a relatively small group of people in a two-year period that, if the amendments that were made in 2013 were not there, would have been perfectly entitled to access a common law damages process.

We appreciate that retrospectivity is always difficult in legislation, but we are only talking about quite a small period of time. We have the opportunity to correct that. That is the position we are coming from. We are seeing that this government has an opportunity to do that. We would like them to at least give that some consideration.

Ms Mohle: Yes, the stakeholder reference group considered this at some length. It was a very strongly held view of the QCU and AWU nominees on that group. The previous committee said in their report that people's rights would be improperly removed if you actually imposed that threshold below five per cent in terms of being able to make claims.

We understand that there was a problem with retrospectivity and going back and addressing it to the date of the amendments in 2012, but we believe that there is a need for another mechanism. We need to think outside the square with regard to that. There has been precedent for an alternative scheme, such as for the Patel Bundaberg Hospital inquiry and people who suffered harm as a result

of the incidents up there. We strongly support a statutory adjustment scheme type of arrangement where people, whose rights were improperly removed, have a chance to receive some compensation for the loss of those rights.

CHAIR: Would anyone else like to comment on that?

Mr CRANDON: I shudder to think what the response will be to this next question. It is pretty much the last question but it opens up the floodgates for you all. Are there any other issues that have not been raised yet today that stakeholders feel the committee should consider?

CHAIR: If I could just add, because it was quite cheeky of him, that this session is due to wind up in about three minutes. We will be coming back to you all with quite a few questions.

Mr Gilbert: I will leave it.

Mr Cooke: There is obviously one that is going to be talked about at length at 4.30 this afternoon. There is a silent elephant in the room today.

Miss BARTON: A few of us have held our tongue on a few issues knowing that they are coming up later.

CHAIR: There are a number of questions we would like to ask you. You have obviously spent quite a lot of time over X number of years—if not you yourselves your organisations—on this. We appreciate all the work that you have put into this. It is a very complex and broad issue. We will be coming back to you with more questions. Thank you very much for coming along today and for the time you have put into your submissions. We really appreciate it. That concludes the first session.

CARTER, Mr Adam, Chief Financial Officer, Racing Queensland

FOOTE, Mr David, Group Managing Director, Australian Country Choice Group

GOMULKA, Mr David, Queensland Workers' Compensation Manager, JBS Australia Pty Ltd

HAMILTON, Ms Jillian, National OHS and Risk Manager, AWX Group

LONG, Mr Damian, President, Civil Contractors Federation

LUCEY, Mr Michael, Legal Counsel, Racing Queensland

TEMBY, Mr Warwick, Executive Director, Housing Industry Association

WILD, Ms Cassandra, Group Manager—Queensland, Employers Mutual

CHAIR: Good afternoon, ladies and gentlemen. I declare the second session of the public hearing of the Finance and Administration Committee's inquiries into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 and the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 open.

I am Di Farmer, the chair of the committee and the member for Bulimba. The other members of the committee are: Mr Michael Crandon, the deputy chair and member for Coomera; Miss Verity Barton, the member for Broadwater; Mr Duncan Pegg, the member for Stretton; Mr Craig Crawford, the member for Barron River; and Mr Pat Weir, the member for Condamine.

The purpose of this hearing is to receive additional information from submitters about the bill, which was referred to the committee on 16 July 2015. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. We appreciate your assistance.

You have previously been provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with the transcript. This hearing will also be broadcast. I also remind witnesses to speak into the microphones.

I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee.

We are running this hearing as a roundtable forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise an issue for discussion, I ask you to direct your comments through the chair. I also request that mobile phones be turned off or switched to silent mode. I remind you that no calls can be taken in the hearing room.

The committee is familiar with the issues you have raised in your submissions and we thank you for the detailed submissions that you have made. The purpose of today's hearing is to further explore aspects of the issues you have raised in those submissions, and we do have quite a number of questions that we would like to put to you.

I would now like to invite each of you to make a brief opening statement if you would like to do so. I ask you to limit it to three minutes at the absolute maximum please because obviously we have quite a range of people here today. We will start with Racing Queensland.

Mr Carter: Racing Queensland is a statutory body which administers racing on behalf of all three codes of racing in Queensland—that is, thoroughbred, harness and greyhound racing. Racing Queensland has made a submission to the Finance and Administration Committee in response to the Queensland Jockeys' Association submission. We are looking at maintaining the status quo of the current contract of insurance that Racing Queensland currently takes out on behalf of all jockeys in Queensland.

Racing Queensland is currently over the next six months undertaking industry consultation on behalf of all industry stakeholder groups and is developing a plan to take the industry forward for a sustainable racing future. As part of this process we are looking at reviewing the jockeys' WorkCover contract of insurance. We currently have the contract of our insurance secured for the next six months for jockeys whilst we take that industry consultation forward.

Racing Queensland merely facilitates the contract of insurance on behalf of jockeys. Racing Queensland does not deem jockeys to be workers but merely as contractors engaged by owners and trainers on behalf of the industry. Racing Queensland facilitates the payments on behalf of owners and trainers. Racing Queensland does not deem jockeys to be workers or employees of Racing Queensland. Racing Queensland does not engage the jockeys directly. It does not employ or terminate jockeys' employment. It does not accrue any entitlements such as sick leave, annual leave et cetera. It does not supply any tools of trade to the jockeys. That is the jockeys' responsibility—the jockeys' silks, helmet and whip.

Racing Queensland has been working with the Queensland Jockeys' Association over a period of time and has increased the level of cover for jockeys. We have increased the weekly benefits from $1,300 to $1,600. We have increased the death cover, the secondary income and all Australian race earnings. It is important to highlight that the majority of jockeys—88 per cent—are under the current cap of $1,600 which is in the current contract of insurance. So only 12 per cent of jockeys are above that cap of $1,600. Jockeys have access to personal accident cover through Gow-Gates.

CHAIR: I am sorry. You only have another five seconds.

Mr Carter: Due to the above, Racing Queensland would like to maintain the status quo of the contract of insurance to ensure that jockeys remain professional sportsmen and not workers.

CHAIR: Next is the Australian Country Choice Group.

Mr Foote: Thank you for allowing these proceedings. I have three points to make in three minutes. I will do it in 1½ minutes. The first point raised in my letter is retrospectivity. I do not know how you can run a competitive business when laws can be brought in that are a catch-up for the past. We do not budget for it. We have banked it. We have spent it. We were operating under the laws of the state at the time. We feel that we have paid the price for the laws of the state at the time.

Secondly, the impairment assessment is well out of line with other jurisdictions in Australia. If Queensland wishes to remain a state of competitive investment opportunity, it needs to have competitive workforce rules of engagement. We are going to drift so far apart when we change the impairment.

Finally, I would like to challenge the notion that the whole change is not going to impact on the $1.20 per $100 in premium rates. Actuarial advice is confirming to you that this is not the case. What will change though is the $100 to the employer. By reducing the five per cent threshold, my $100 is now going to be likely to be $150 or $180 or $200. Yes, the actuarial's report said that it will only be $1.20 per $100. That is fine, but my operating costs have just doubled and I am now less competitive again in a state and in an operation where I need to be competitive. Please consider the three points of Queensland remaining a competitive state to invest in and to be an employer in.

CHAIR: Next is Employers Mutual.

Ms Wild: Employers Mutual is a third party claims agent and we have coverage nationally. In Queensland though we are partnered with Woolworths in managing their self-insurance licence and we manage all claims functions associated with that licence for Woolworths. I am not here today to represent Woolworths' interest specifically but more just to be a presence frforom Employers Mutual. Our focus is on providing that balance of great return-to-work outcomes for workers as well as a cost-effective scheme for employers.

So far we have seen a decrease in the amount of common law claims as a result of the threshold being introduced, but we have not seen a change in the return-to-work outcomes for workers. So we still think that there is a balanced approach currently with the existing benefit levels and do not see that there needs to be a change specifically to the threshold arrangements but that the focus remain on positive return-to-work outcomes for injured workers.

CHAIR: Next is the Housing Industry Association.

Mr Temby: I would like to make two observations in addition to what is in the submission that we have made. The first one is around the five per cent threshold. There was an example in the legislative package that talked about a mythical worker who was impaired by less than five per cent but unable to return to work. The observation I would make about that is that if that is the case then I

think there is something fundamentally wrong with the way impairment is measured. I think that is something that the committee might want to consider in its recommendations. If that is the outcome that you can get from a less than five per cent impairment, there is something wrong with the measure.

My only other observation is about the retrospective elements in the legislation. Our view is that people win and lose from changes in government policy all the time. There has been no cogent argument put to us to suggest that the group under five per cent impairment warrants any special treatment over and above other people that have missed out on changes because of government policies in the past.

CHAIR: Next is the Civil Contractors Federation.

Mr Long: We have raised two main points. Retrospective legislation is a concern to us. The reduction of the five per cent threshold is a great concern. The ability to vet previous injury is also a great concern. At present now we believe that a genuinely injured worker should get the right support, encouragement and compensation for their injuries and also to get back to work as quickly as possible. Currently we are not seeing that as well. There certainly have been some improvements. I believe that removing the current status is actually going to make the situation worse.

Ms Hamilton: Chair, I have some copies of my statement for the committee.

CHAIR: Thank you.

Ms Hamilton: I have three points. One is about the common law recommencement. We do not support the changes. I have some specific statistics from our business. I am from AWX Group. We are a group of employers. We do contract services for people around the country, particularly Queensland. Since the commencement of the common law nought to five per cent changes being ceased, 90.9 per cent of common law claims have been nought to five per cent. Seventy-five per cent of all of our claims from the 2010-11 financial year have been nought to five per cent claims. Of those claims, 83.5 per cent were aggravation of pre-existing injuries. It is my recommendation that you review the WorkCover statistics for the number of permanent impairment assessments that are nought to five per cent post this change of law to attempt the real cost of recovery for this particular change.

There are associated high costs to business as part of this change. In particular, our business receives weekly requests—an average of five per week—for common law and PIPA claims which takes two to four hours to gather the information and averages at about 20 hours per week for this task alone. The legal cost to manage PIPA claims for our business of nought to five per cent from the unintended error by not closing the PIPA claim Gap has been an average of $20K to $40K per case for our company. Legal costs as additional contributions to close these cases with clients when brought in from the zero to five per cent unintended error have been $20K to $50K per case. Another hit to our business has been significant increases in contractual indemnities regarding workers common law. It has increased dramatically since these changes. We have had to take out additional insurance policy extensions under our public liability policy to close the PIPA and WorkCover loophole which has cost us $1,500 per annum.

We have had significant increases in the requirement to engage host employer liability policies which on average increases our cost of sale of 0.43 per cent of all wages with our claims experience reviewed, and other companies may be paying higher percentages based on their histories. This is the best policy we could find, with the fee originally being 2.25 per cent of wages and completely unachievable for our company to sustain. We have engaged specific common law strategies for post October 2015. For example, on the day of changes other law firms offering no-win, no-fee held a project nought to five per cent conference to ensure they could still benefit—

CHAIR: I am sorry, Jillian, but you have about five more seconds.

Ms Hamilton: We also note there are higher costs to the workers based upon this regime. The workers are being told they are going to win $500,000. On average they settle for $50,000 and they walk away with only $10,000 to $20,000 in hand.

CHAIR: Thank you. We appreciate having that in writing.

Mr Gomulka: We are a self-insurer and we employ over 5,000 Queenslanders. The effect of this bill in relation to common law claims will be to significantly increase costs to employers and insurers, yet not all of this extra expenditure will land in the pockets of injured workers. Much of it will go into the legal fees of plaintiff lawyers. The annual number of common law claims lodged in Queensland rose by 62 per cent from 2006 to 2010. Some minor legislative amendments were made

in 2010, but the number of common law claims in 2013-14 were still 37 per cent higher than in 2005-06. This is not sustainable. The 2013 amendments attempted to ensure only the most genuine claims and the most significant injuries progressed to become common law claims. Almost every other workers compensation jurisdiction in Australia has similar controls in place.

We are also concerned about the retrospective provisions in this bill, one being the removal of the threshold back to 31 January 2015 and the other being the imposition of a financial obligation on employers to pay an additional lump sum to workers injured between October 2013 and January 2015. In my 35 years working in the Queensland workers compensation scheme, I have not seen legislative amendments applied in such a retrospective manner. The financial provisions already set by insurers will not be adequate to meet these retrospective costs and liabilities. Businesses should not be asked to budget for retrospective costs. If legislative changes must be made, we submit that they should be made from the date of assent of the bill.

I have also mentioned the subject of legal fees. In 2013 the Finance and Administration Committee, of which the Hon. Curtis Pitt was deputy chair, reported concerns that the 50-50 rule had become a target for lawyers to make super profits from common law claims. We urge this committee to recommend that this issue be investigated. Otherwise it will be the plaintiff lawyers who will benefit from common law payouts and not injured workers. We have provided a more detailed submission on these issues and a number of other issues in the bill which I do not think is necessary to repeat at this point.

CHAIR: Thank you very much. We will now move to questions. I have a question which I would like all of you to comment on. It is about the amendment that removes the entitlement prospective employers have to obtain a copy of the prospective workers compensation claims history. We heard evidence from the department last week that the number of claims histories which have been accessed exceeds 26,000, that that number is rapidly increasing and that a majority of them are being accessed by labour hire companies. The people who support this amendment say that the ability to access claims histories can be used in a discriminatory fashion and that has discouraged people from making legitimate claims. There are privacy issues. Can I get a comment from all of you or from whomever would like to give us some feedback on that?

Mr Long: We have a duty of care in a workplace to provide a safe work environment. In the past we have seen workers appearing for work with prior injuries which they have not declared. We have no opportunity to put them in a situation that is safe. Our experience is that we do not see any discrimination. It is about making sure that the worker is fit for the work they are doing and that we have the ability to make sure they are not being disadvantaged by the tasks they are doing. There have been instances in the past where people have moved from employer to employer and made multiple claims based on either the same injury or a variance of the same injury. This is one way for other parties to make sure that they are being up-front about their injuries and are not putting themselves in a situation that can happen again.

Ms Hamilton: We employ people based upon their presentation to work. We do use the Q-Comp form. It does help us identify any risk that the person may have when placed at work. We employ people that do declare, and if they have any injuries that are posed we may still employ that person, and often we do, but we employ them based upon their restrictions at the time. It does limit their risk. We have had zero aggravation claims in our scheme for Queensland since the Q-Comp form has been introduced.

CHAIR: Would anyone else like to make a comment?

Mr Foote: I would like to support what Damian said. As the person controlling the business, we are ultimately responsible for the safety of the person. Without being able to know that the person is truthfully eligible for the role we wish to place them in, we are running a risk. There has always been a concern about casualisation of the workforce or employers seeking to go back to third-party labour hire. This is one of the areas that will drive growth in that area back away from employment prospects, because the owner's responsibility is going to the person controlling the business. We have no tools to check, and people are not always truthful when they apply for a position or sign on the form to start work.

CHAIR: Would anyone else like to make a comment?

Mr Temby: I would like to reinforce what Damian was saying. In a relatively high-risk industry like house construction, or residential construction more generally, it is very important for employers to be able to mitigate their risks. They need to have that information at their disposal so they can direct people to the right kind of work and not have workers who are potentially bringing a condition with them, wilfully not disclosing that condition and exposing themselves to further injury.

Mr CRANDON: I have a couple of things that the two Davids talked about in their opening statements that I would like to flesh out. First of all, David Foote talked about the doubling of costs, the $1.20 per hundred and increasing costs—and I did not write it all down—from 100 to 200. I would like you to flesh that out for us. What you have said is not quite clear. I do not quite understand what you are saying. For you, David, so you can some time to think about it while David is talking, do you have some numbers on the 12 months before versus the 12 months following the change in the legislation in 2013? Give some thought to that. Back to you, David.

Mr Foote: We could do it the other way, Michael, but that is okay. Part of the basis of this being of minimal impact to Queensland is that the workers comp premium rate of $1.20 per hundred will not change. So have no fear; have no concerns—

Mr CRANDON: It came down, though, David. That is the point I am making. It came down from a higher figure.

Mr Foote: Yes.

Mr CRANDON: And you are saying that your costs will double. That is where I wish to go.

Mr Foote: No, my challenge is that people are saying no impact because the $1.20 is $1.20 and we are committing to the rate being no more than $1.20 per hundred. What I am suggesting, Michael, is that is $1.20 per hundred on the claims that we submit for. If you are going to lower the bar on the right to submit a claim, then obviously the cost of our claims will go higher. The $1.20 per hundred will not go up, but the hundred that I need to spend on the claims settlement will go up, because simply that group now has a reassessment opportunity, an impairment opportunity. The whole basis is that the premium rate is not changing, but what I am challenging is the gross cost of my operations as claims will change.

Mr CRANDON: Through you, Madam Chair, could you provide us with some numbers in the form of a written submission to explain it to us?

Mr Foote: I will happily submit that.

Mr Gomulka: Thank you for the question, Mr Crandon. I would like to preface what I say with this: any changes to common law legislation take a while to come through. From the date of injury common law claims can be lodged three years later. Part of the political debate for the last decade is: has this change here had enough effect yet? Well, we do not know yet. What I can tell you is that about 60 per cent of our common law claims were in the zero to five per cent group. This would have knocked out 60 per cent of our common law claims. Some of those claims cost more in legal fees for us to defend than it does to pay out in damages. They are that small and that inconsequential.

Ms Wild: Can I add to David's comments? From our perspective in the Woolworths portfolio, certainly from the 2013-14 financial year to the 2014-15 financial year, we saw our common law claims halve. I support David in that the impact of common law changes will take some time to see, with the average time between injury and claim being about 1½ to two years. I do not know if that reduction can all be attributed to the threshold changes, but they have certainly had a significant impact.

We do find ourselves in a situation sometimes at settlement negotiations where we are negotiating on how much the worker is going to walk away with after the lawyer takes their share, and trying to talk lawyers down on their charges so that the worker can actually walk away with something that is fair to actually compensate them for the injury, as opposed to what is actually being discussed at the time.

Mr Temby: I just wanted to explain a little more about David Foote's problem. I think the issue is that the $120 per $100 of wages is the base rate. The base rate is predicted not to change, only because just at the moment WorkCover has a significant surplus of funds. Inevitably, that will have to go up because of these changes. I think the observation that David was making was that the penalty rates that he may have to pay, as he might incur a loading on his premiums because he gets claims in the under five per cent category that he otherwise would not get, is where the big jump in premiums will come from for an employer.

Mr Foote: Thank you, Warwick. I will still send the figures.

CHAIR: Jillian, did you wish to add something?

Ms Hamilton: I just want to add to Cassandra's comment about in settlement where we are to give extra money to the worker because the lawyer is taking so much money in fees. I think the other point is that the worker has waited so long for their settlement time. In two years they could have

earned themselves $40,000 to $70,000 per year. Instead they are walking away with, on average, $5,000 to $10,000 per year, based upon a no win, no fee lawyer promise of 'You're going to get $500,000,' which turns out to be $50,000, and then when costs are taken away the poor worker has earned, on average, $5,000 to $10,000 per year—when they could have earned their $40,000 to $80,000 per year each.

Miss BARTON: Cassandra, I have a quick follow-up question to your opening statement. One of the things you spoke about was you are focused very much on the return to work and trying to strike the right balance. Obviously, in terms of workplace injuries, the return to work is critical in terms of giving people an opportunity to continue to make a viable contribution if that is what they want to do. In terms of the ability to access information, how critical is that in terms of general return to work—as opposed to whether or not someone is biased in employing them, but providing them with opportunities and options as part of a return to work, and prospective employers who would be part of that being able to understand what their options would be and how they could support the particular worker?

Ms Wild: So the access to information is what you are referring to, the worker's claims history, and how that might impact the return to work?

Miss BARTON: Yes.

Ms Wild: I do not have any direct experience in the Woolworths portfolio that we are looking after at the moment, but I guess generally what we are seeing in our portfolio is that workers are concerned that they will be discriminated against if they have to try to find employment and that employer has access to their claims knowledge. We are in a good situation with Woolworths, having multiple divisions of their business, that we can I guess often find them alternative employment that is suitable in a different part of the business without them having to re-enter the general workforce. But I know with our matters that proceed to common law and that person may have left their employment, it is definitely a concern of theirs. As to how much it is having an impact, I apologise, I do not have any direct experience with that.

Mr PEGG: I have a question for Mr Foote. I refer to your submission in relation to clause 30 where the right of an employer to obtain a prospective worker's claims history summary is removed. You say, 'To restrict this option will see employers looking to engage employees through labour hire or third party labour suppliers to shift the onus of worker liability to this host.' Mr Foote, on what basis are you making that submission? For instance, with your company, when these changes were put in place, did you switch from using third party or labour hire providers to direct employment? Are you aware of other employers doing that? Is it common for employers to use third party or labour hire employment in order to avoid, as you say, 'worker liability'? I am just wondering if that is common.

Mr Foote: Mr Pegg, the chair noted some statistics earlier about people seeking worker history and there will be a direct correlation. The growth in third party labour hire, or the third party engagement, has been significant over the last three years—if not all towards shifting employer responsibility, but part shifting employer responsibility. So the employer now has no recruitment costs and effectively is not at its risk of identifying that the person is suitable for the work. It is now up to the contractor to provide a suitable person for the work.

So, yes, we can, in part, abrogate our responsibility. Is it fair? Not really because in most of those cases that poor worker can no longer get a house loan because it is not deemed permanent employment. With the casualisation, they cannot get a house loan. So in the overall benefit, it is not to the employee's benefit. Certainly, at the moment, it is to my employer benefit because somebody else is doing what we would call 'drafting off' those employees that will fail being a long-term employee for us.

Mr PEGG: With respect, I am not sure you answered my question in relation to the basis on which you hold that belief. Since these changes have come in, has your company—or are you aware of other employers who have done this—increased direct employment because they have had access to these claims history statements?

Mr Foote: Sorry, I cannot attribute to access to claims history. What I can attribute to is that the number of directly employed employees in the meat industry is decreasing, versus the opportunity to employ through third party.

Mr PEGG: But you are saying that removing the claims history summary will lead to more employment by labour hire companies and third party employers.

Mr Foote: There is no incentive to me to go back to be the direct employer.

Mr PEGG: But you are saying that is happening currently. I just do not understand the basis on which you are making that argument.

Mr Foote: Labour hire did not commence three years ago in Queensland at the change of the legislation.

Mr PEGG: I understand that.

Mr Foote: It was coming in to ease the chronic worker shortage. The opportunity of going back through a previous claim is something we had not had now for I think 11 years. The Beattie government brought the provision in first because it used to be a tool that was available to employers to check back over the history. So it is just a simple method. Are we going back? We have changed our employment practices. Over the last 12 months, we have started re-engaging under our banner and reducing the number of third party employees, so yes there has been a change.

Mr PEGG: That was the answer I was looking for.

Mr Foote: Sorry, Duncan.

Mr PEGG: Thank you.

Mr CRAWFORD: Mr Temby, during your introduction you very briefly talked about maybe there needs to be some more work done on the nought to five per cent measurement and how that works. You are obviously not under a time frame now with the three minutes, so could you elaborate on that because I was interested to hear what you had to say.

Mr Temby: I think it was either in the Treasurer's speech or in the explanatory memorandum—I am not sure which—where there was an example of a plumber who had sustained a back injury which was deemed to be less than a five per cent impairment but according to that particular scenario that plumber was unable to return to work as a plumber. Now to my simple way of thinking that said to me that that fellow was obviously impaired by more than five per cent if he could not go back to his previous occupation. That just raised the question in my mind—which has come up in previous considerations of this legislation as well—about whether that measure of impairment is robust. I understand that it is based on international standards for how these things are measured, but I just wonder whether it is measuring the right thing and whether there may be some better way of measuring impairment which would potentially head off a lot of common law claims. If people's impairment beyond the direct and specific job that they were doing when they were injured is somehow taken into consideration in developing that overall measure, you may well end up with a whole lot less common law claims. I have not got the answer, unfortunately, but it certainly raised the question in my mind.

Mr Gomulka: Madam Chair, can I comment on that.

CHAIR: Yes, I was going to ask if anybody else had any other comments on that.

Mr Gomulka: I do not know the full circumstances of the case given by the minister in his second reading speech, but I would suggest that maybe the answer lies in something that one of the departmental representatives told you last week at the hearing—that is, that a two or three per cent impairment superimposed on underlying or chronic conditions may render that person unemployable or unable to work. The two to three per cent that has been caused by the work related injury is arguably and morally what employers feel they might have to compensate someone for, but it is superimposed on something else and that sometimes is the straw that breaks the camel's back. That is the moral dilemma that we have sometimes—that people cannot work not just because of the work related injury but in addition to the underlying chronic condition that is already there.

CHAIR: Would anybody else like to comment on that?

Mr Long: I would concur with that. Especially in construction, we see a wide range of people in certain different physical conditions, and yes we have seen situations where people have been considered with low impairment unfit for work based on other conditions. I would not say the superimposing issue is rampant, but it does happen.

Mr WEIR: I have a question on the disclosure and your percentage of impairment. Does this five per cent and less have any bearing when you are going through a prospective employee whether there have been claims on that below five per cent, as to above five per cent? Is that used as a guideline? Are they put at risk if they are less than that?

Ms Wild: I believe that that information is not readily available. In the pre-employment checklist that you can get, it just describes the nature of the injury and whether there was an impairment assessed. It does not provide the detail of the level of impairment that was assessed.

CHAIR: We have talked a little bit about the retrospectivity and people making claims on or after 31 January and the transitional arrangements. The stakeholder reference committee is talking about other arrangements for those people who were wanting to make claims for the period between 2000 and 2015 where the current legislation applies. Some of you have made specific comment about that in your submissions. Can I just ask which of you are actually on the stakeholder reference group?

Mr Temby: Yes.

CHAIR: There have been a range of comments made about both of those periods: about workers who have actually had claims processed during that period who may be disadvantaged by others whose claims are subsequently being looked at; about the capacity of any group of people to actually examine those and what their qualifications might be; about the lump sum payments. Could I get some general comments on those things that have been considered? Warwick, perhaps you could lead on that.

Mr Temby: I think in terms of the specifics of what that system might look like for people making those retrospective claims, that is still very much up in the air as part of the discussions going on in that group. Our comment about the legislation was that the legislation was very, very thin about what that might look like. I think that makes that very difficult for parliament to make any kind of sensible judgement about whether that kind of retrospective scheme is a good thing or not a good thing. We do not think it is a good thing partly on principle about retrospective application and also because of the reasons that you allude to—about the proposition that if you settled for a statutory payment during that 2013-15 period you are excluded from whatever this new beneficial arrangement might be. I think that is just replacing one alleged unfairness with a real one.

CHAIR: Thank you. Would anyone else like to comment on that?

Mr Gomulka: I believe the additional lump sum came from one of the union stakeholders who likened it to the reparation scheme involved in the Dr Patel matter. I cannot see the correlation between the two, quite honestly. In the Dr Patel matter, people were obviously wronged by something that occurred at the time and that was decided by various bodies. Here we have a situation where people who by virtue of their date of injury are not able to claim a certain benefit—that is, a common law claim. As I said before, in my 35 years I have seen many changes to the workers compensation scheme and sometimes you have a date of injury before that change, sometimes you have a date of injury after that change, and it just so happens that is where your injury falls. Sometimes you are entitled to the change; sometimes you are not. I do not see any compelling argument for this additional lump sum to be applied to people who are affected by a decision made by a previous government that had the parliamentary right to do so.

CHAIR: Does anyone else want to comment?

Ms Wild: I just want to reiterate what Warwick has said in relation to the legislation that is being proposed is very thin on detail in terms of how this scheme is going to work. So it is very difficult for myself and maybe for the other panel members to actually say what impact that might have and realistically what benefit that actually might add to a worker. What we did see in terms of behavioural change over the 2013 to 2015 period is that where workers previously would have had full access to their permanent impairment entitlement without anyone trying to take a cut of that, we now have a number of law firms trying to impose that any permanent impairment be paid to them so they can take their cut of fees before workers are able to access that. That is a statutory entitlement. It cannot be argued; it is what it is. I guess that unfairness existed there. Certainly our concern is that that unfairness would continue in any reparation scheme, particularly where it becomes a legal process. The workers still may not walk away with what could potentially be their rightful entitlement.

Mr CRANDON: Back to you, Warwick, along the lines of what you were talking about. You referenced this a short while ago about the reserves that the scheme has. It suggests to me that perhaps you have done some modelling on this. In fact, I will read the question as we have it written here, 'Your submission iterates your concern that the explanatory notes fail to detail any quantitative assessment of the cost to workers comp of the policy change. Your submission details your concern that the question remains: how long will it be before the reduction in the scheme's net assets require a top-up by increasing premiums?' Have you done some numbers on that? Can you elaborate on what you mean?

Mr Temby: I am not in any position to have done the modelling for that. That requires a degree of actuarial skills that I do not have. That is more a question for WorkCover—

Mr CRANDON: You could have employed an actuary. That is why I am asking, because you have referenced it in your submission.

Mr Temby: It is almost tautological that if you're going to be paying out a whole lot more claims, premiums will have to go up at some point. That is the basis of our observation.

Mr CRANDON: You are just sort of throwing that out there?

Mr Temby: There was some work done for the reference group. I am probably not at liberty to reveal that work that was done. That is a question we would suggest you ask of the department, but they certainly have done that modelling.

Mr CRANDON: It is worth asking the question then so we can go back to the department. Thank you.

Mr Temby: But it is modelling based on this unknown reparations scheme: is it this big or this big? Not sure.

Mr Foote: The department has done it twice. So its information is very current. It has engaged external actuaries to do exactly the modelling that you are requesting.

Mr CRANDON: Thank you very much for that.

Miss BARTON: I have a question for Racing Queensland. You did give a very detailed opening statement, but I am not sure that we necessarily got the opportunity to hear all of it. In response to both your submissions today and also the Jockeys' Association's points of view, I guess I am looking for more detail about how this particular process that we are going through in the legislation will impact with the definition of employee and also the process that you said that you were going to go through over the next six months or so. Forgive me if I have missed something very obvious, but I guess I have always thought that there was a very firm definition of what was and was not an employee. I am wondering how this process impacts you. Obviously if they are determined to be employees, your liabilities will change, but how does this impact whether or not they are employees and the extension of cover to a jockey? That is a very long question. Sorry.

Mr Carter: It was elaborated on in our submission. In terms of a jockey, we do not necessarily see a jockey as an employee. So pre 1 July 2014 we did not pay superannuation to a jockey. From 1 July 2014 all states agreed to pay jockeys superannuation. But for the purpose of WorkCover, we see them as a professional sportsperson. We have gone and ensured that the only exclusion at this stage is common law under the contracts of insurance, but we do take out public liability through clubs and jockeys do claim common law against our clubs and our overall cover. We have added the secondary income over a period of time to insure those jockeys—and probably at least 47 per cent of jockeys earn under $2,500 per annum. There are a lot of country jockeys who run TAB race meetings who do it for the love of the sport and are not, in essence, deemed professional sportspersons. The 12 per cent that are professional sportspeople earn in excess of the $1,600 cap that we currently have in place. They do have access to other personal accident type of cover to top up their earnings. We have increased their fatal and death cover over the last two years to mirror—to treat them as if they were a worker. So they do have access to additional cover.

Mr WEIR: I believe that varies from state to state. In some states they are regarded as an employee; is that correct?

Mr Carter: Yes, it is only in Queensland that they are not deemed a worker; they are deemed a professional sportsperson.

CHAIR: Following on from something Verity said, if you would like to provide us with a copy of your opening statement because you were not able to finish it, we are certainly very happy to receive it.

Mr CRANDON: On that, Adam, I think you said that time there is a $1,600 cap. Does that mean that is the most you will pay? In other words, does a jockey have to prove his income?

Mr Carter: Yes, that is correct. A jockey's race riding fees—for each race that he races, he gets on average $167 per ride plus his prize money earnings, which is five per cent. That is all Australian earnings across any state and also includes a secondary income as well.

Mr CRANDON: But if he fell short of the $1,600, he does not get the $1,600?

Mr Carter: The cap is up to $1,600 we will pay.

Mr CRANDON: Is it a percentage then, a lower percentage, or is it 100 per cent of that? Say it just so happened that this particular jockey that was making a claim earned exactly $1,600 a week on average. Would he get the $1,600, or would he get a percentage of the $1,600?

Mr Carter: My understanding is it is up to $1,600. I would have to confirm that with WorkCover.

Mr CRANDON: Could you?

Mr PEGG: I have a question for Ms Wild. In your opening statement you talked about the effect of the 2013 changes to the act and you said that there had been a large reduction in common law claims but there had not been any change to return-to-work outcomes. You also said that the full effect of those reforms perhaps has not been fully realised as yet. I want to ask you about your view of the 2010 changes and what effect you thought they had on claims and whether or not you thought that the full effects of those 2010 changes had been felt at the time that the 2013 amendments were made. I hope you could follow the point I was making.

Ms Wild: I probably do not have the exact numbers to be able to give you any answer with any level of confidence, but I am certainly happy to go back and look at what that impact was. I do not know whether David could speak to what he may have noticed. I am happy to provide something further.

Mr PEGG: That would be great. On that basis, I am happy to ask anyone on the panel here for their views.

Mr Gomulka: I do not have our particular figures for JBS, but in our submission we did include the scheme figures. There were 3,072 common law claims in 2005-06. In 2010 there were 4,988. We saw a small drop down to 4,215 in 2013-14. The 2010 amendments reduced one of the heads of damages relating to pain and suffering. They also took away the absolute duty of care issue in relation to a case called Bourk v Power Serve. Other than that, it did not have much impact at all.

Mr Temby: WorkCover actuaries have done quite a bit of work on that question. They have publicly available information that would answer that question for you.

Mr CRAWFORD: I have a general question for anybody. I am particularly interested in clause 33, which is for the workers who sustained an injury between 15 October 2013 and 31 January 2015. I heard with interest a number of people on the panel referring to the no win, no fee lawyers and how they potentially clean up more than what the worker does. I also listened with interest to the discussion about the hundred to the $1.20. My question is: are the people who were caught in this period of time entitled to anything? We had the conversation before with Warwick about the naught to five per cent and the conversation about the layered approach and that sort of thing. I have met these people. Some of these people have written to this committee, so they are out there. The question is: are they entitled to anything, and how should our legislation reflect that? I am interested in some opinions.

Mr Temby: Our view is that they should not be entitled to anything for the reasons that David mentioned before. Legislation changes all the time. People benefit from and miss out on those changes in legislation. The other thing, which I think Jillian mentioned earlier on, was the PIPA opportunity that some of these people will have taken advantage of over the last three years where they would have made a common law claim against somebody other than their employer for the injury that they sustained. So to the extent that you are providing a reparation benefit to them as well, you are potentially providing almost a double-up for them in the kind of support they could get.

Mr Gomulka: Part of the answer, of course, is they are still entitled to their statutory lump sum for their permanent impairment. Are they entitled to something? Yes, they are, that lump sum, remembering that the lump sum is an irrevocable choice for people with an impairment under 20 per cent. So they take that lump sum or go the common law route. These people were simply given one choice and that is to take the lump sum.

Ms Hamilton: In regards to that, we have found on the statistics that I have reviewed that the lump sum is actually normally more or about the same amount as the common law settlement post legal fees from the no win, no fee lawyers. They are definitely accessing the PIPA claim opportunity, which means that they are not actually being disadvantaged at this point. Unfortunately, they are bringing another party to claim, which is also increasing costs for business in Queensland. So it is not just the employer who has been called.

Ms Wild: Part of the 2013 amendments were also to introduce greater obligations on insurers to provide return-to-work services at the completion of a claim or towards the completion of a claim. I think that in conjunction with the statutory lump sum that David referred to are the entitlements that they have available to them.

Mr WEIR: We have heard about the legal fees and so forth from a few of you. I was just going to ask when somebody is injured at work, I presume that the lawyers get that information from WorkCover or some other source and they then source out that injured worker. I am wondering if you had any comment on the five per cent reduction removal, the impact on that, in closing.

Mr Gomulka: I am just trying to understand the question, sorry.

Mr WEIR: How much do you feel that the claim is in the worker's interest? We all know cases of workers who have gone for those small injuries and it seems like the lawyer takes an awfully big slice of that compensation.

Mr Gomulka: I understand. The common law process in our opinion often disincentivises people from trying to return to work. Their focus becomes on the financial gain rather than the return to work direction and aim that should be the real aim of all of this. But these people do sometimes end up in the office of the plaintiff lawyer for various reasons, either through word of mouth or the billboard advertising that we see. As Jillian said before, they get made very big promises but end up getting delivered with very little in the end. We try to help people as long as we possibly can but we know that, once they end up in that lawyer's office, the attitude changes. I do not know if anybody else has experienced that, but that is what we have experienced.

Mr Long: I could not agree more, David. It is exactly what David said. Once the lawyers get hold of the workers, these cases could run for years. You are not privy to the legal bill on the other side, but with experience in paying legal bills I would suggest that every penny of a lot of these payments would be sucked out by the lawyers.

Mr Foote: Mr Weir, the glitter of gold is huge and the lawyers need a vehicle to travel along. Generally it is in an area—and with no disparaging comments—where we are working in the majority with unskilled labour. You can leave school and you can turn into a very good meatworker over time. The attractiveness of being offered 10 years wages for agreeing and going through a process and not having to work—it is much more attractive than getting up at half past four in the morning and going and standing in what is a cool environment, albeit you get to go home at 2.26 pm. Our experience has been that this is an area that has really got out of hand. It is not anymore in the workers' favour. We had a woman who actually got a bill at the end of her process. So she won, but she ran up a legal fee that was larger than the settlement that was negotiated—and she is not on her own. I expect that there are many other cases out there.

Really, it has become an industry on its own that has no regard for the future employment prospects of the worker or getting them back into the workplace. Believe it or not, the employer has more concern over their livelihoods going forward than the lawyer, because it is a one-off payment for them. So that is probably a part of the system, whilst not under review at the moment, that is probably one of the really underlying concerns that is existing in the workplace.

CHAIR: Does someone else want to comment on that?

Ms Hamilton: I just wanted to concur with that as well—and thank you, David. I think the real risk that we are facing here is that you have workers who are happy and they are working and they have hurt themselves and they are in the return-to-work process. Then they end up in a lawyer's office and they are actually advised not to leave the house in case of surveillance. They are advised not to work. They become depressed and I see two years later a person who is expecting to walk away with $500,000 walking away with a $50,000 settlement of which the lawyer can take half—$25,000—and then they have to have their WorkCover bill taken off. They are walking away with only 10 or so grand, which was really the average of these zero to five per cent claims. It is very disheartening to see a worker, who is our worker, who has been turned by a person who they thought was looking after them—it is a lawyer and 'It's my lawyer.' It actually quite upsets me when we to go to settlement, because they are just misled. Often they do not even know. They have not read the contract that they have signed. It is very disadvantaging to them at this point.

CHAIR: Thank you. Michael has a follow-up question and I do if we have time. But I note that this hearing is due to close in a couple of minutes. So we will just make them very quick.

Mr CRANDON: I just wanted feedback from you. You have taken the opportunity to talk about the fifty-fifty and what have you. If you were giving advice to this committee, would you be advising that that limit be reduced and, if so, to what level?

Mr Gomulka: I definitely think the 50 per cent rule is overly generous in these smaller claims. As we have all discussed, it is taking out most of the workers' payout. That is after the outlays are taken out. So that is specialists, experts, barristers. Then they get 50 per cent of what is left over. So in actual fact, the workers are getting less than 50. So by reducing that 50 per cent to, say, 20 per cent, it will do two things: it will reduce the cost to the scheme but it will also be a disincentive to the speculative nature of common law claims. That is one of the big issues. Because we have this pre-proceedings process that was developed in the 1990s where you can bring a claim just by lodging a form with the insurer, the insurer has to pay a sum of money to basically say, 'Bugger off.' That is what we are having to do as self-insurers and WorkCover is doing it, too. We are paying a sum of

money quite often even when there is not a lot of merit in the claim, because it is cheaper for us to do that than to go to court and pay $100,000 in legal fees. And the lawyers know that and they are exploiting that. So I think there needs to be less incentive for the lawyers to get involved.

Mr Foote: Michael, I suspect that if we went for a fixed price fee you would find that the duration of the cases would probably reduce by 80 per cent, the number of cases would halve and the worker would receive their fair entitlement for the true injury, which may be a faster return to work to go back to earning the $70,000 a year instead of getting a $10,000 payout and losing time from work.

CHAIR: I think we probably should finish. We have some lawyers coming into the next session, so they will no doubt have an opportunity to respond to some of those things. Thank you all very much for the detail that you have put into your submissions and for coming today. We may come back to you with further questions, but thank you very much your time. I declare this hearing closed.

Proceedings suspended from 3.20 pm to 3.25 pm

ANDERSEN, Ms Anne, State Director, Complaint Management, Anti-Discrimination Commission Queensland

BEHRENS, Mr Nick, Director, Advocacy and Workplace Relations, Chamber of Commerce and Industry Queensland

BUDDEN, Mr Shane, Manager, Advocacy and Policy, Queensland Law Society

CROWLEY, Mr Justin, Chair, Association of Self-Insured Employers of Queensland

DIEHM, Mr Geoff QC, Vice-President, Bar Association of Queensland

FITZGERALD, Mr Michael, President, Queensland Law Society

HALL, Mr Cameron, Principal, Hall Payne Lawyers

JAMES, Ms Michelle, Queensland President, Australian Lawyers Alliance

MURPHY, Mr Luke, Accident Compensation and Torts Law Committee, Queensland Law Society

SWAN, Mr David, Manager, Commercial Solutions, Local Government Association of Queensland

TRAN, Mr Thanh, Deputy Chair, Association of Self-Insured Employers of Queensland

CHAIR: Good afternoon, ladies and gentlemen. I declare open this public hearing of the Finance and Administration Committee's inquiries into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 and the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015. I am Di Farmer, the chair of the committee and the member for Bulimba. The other members of the committee are Mr Michael Crandon, who is our deputy chair and the member for Coomera; Miss Verity Barton, who is the member for Broadwater; Mr Duncan Pegg, who is the member for Stretton; Mr Craig Crawford, who is the member for Barron River; and Mr Pat Weir, who is the member for Condamine.

The purpose of this hearing is to receive additional information from submitters about the bill, which was referred to the committee on 16 July 2015. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. We appreciate your assistance.

You have previously been provided with a copy of the instructions for witnesses. So we will be taking those as read. Hansard will record the proceedings and you will be provided with a transcript. This hearing will also be broadcast and could I remind witnesses to speak into the microphones—and this is particularly for the benefit of Hansard with so many of you here today, if you could be especially conscious of that. I remind all of those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the hearing at the discretion of the committee.

We are running this hearing as a round table forum to facilitate discussion. However, only members of the committee may put questions to witnesses. If you wish to raise an issue for discussion, I ask you to direct your comments through the chair. I also request that mobile phones be turned off or switched to silent mode and I remind you that no calls can be taken in the hearing room.

The committee is familiar with the issues you have raised in your submissions and we thank you for the detail that you have put into those. The purpose of today's hearing is to further explore aspects of the issues you have raised in the submissions and the committee does have a number of questions that it wishes to put to you. I would now like to ask each organisation to make a brief opening statement if you wish to do so. I ask you to make them a maximum of three minutes only, as there are a number of us here today and we have a range of questions as well. So may I start over here with the LGAQ. Thank you very much.

Mr Swan: The LGAQ is the representative body for local government in Queensland and local government is also a significant self-insurer, with virtually all of the sector involved in self-insurance. In 2012, the LGAQ stated to this committee that further action was needed to deal with the impact of common law claims based on low and sometimes zero levels of impairment. We did not rule out at that time having a threshold, but our preference was to deal with speculative common law claims and weaknesses in the system that encouraged those claims. At that time parliament, as we know, opted for a threshold. The position now is that the gate should not be reopened by focusing solely on the threshold. If a threshold is removed without taking any specific action to control the speculative claims, then the scheme will be placed at significant financial risk.

The bill also proposes what the LGAQ believes to be unprecedented and an unjustified basis for providing additional lump sum compensation to certain workers. The bill provides no information at all on the proposed lump sum amounts and the procedural arrangements and incomplete details on the conditions of entitlement. The LGAQ respectfully submits that the parliament should not take such a significant step of approving the additional lump sum compensation and certainly not in the absence of full details on entitlement amounts and conditions.

CHAIR: Thank you.

Mr Behrens: We are also a member of the state government's reference committee on workers compensation. Through the hard work of progressive governments, Queensland' workers compensation scheme is regarded as the best performing in Australia not only in terms of solvency but in delivering the lowest or second-lowest average premium for businesses across the last 10 years. At the same time the benefits delivered to injured workers and their families across this period have also been regarded as both fair and reasonable.

CCIQ is of the view that the 2010 reforms, which limited the size of common law payouts, coupled with the reforms of 2013, which introduced the threshold for common law claims, have brought greater balance to the workers compensation scheme in Queensland. Both sets of reforms have undoubtedly had a positive impact on average premiums payable by employers through the scheme, which ultimately encourages small business in Queensland to invest in their business and employ more staff.

CCIQ strongly urges this committee to retain the current limitations to accessing common law damages, more specifically, requiring a worker to have a degree of permanent impairment as a result of their injury greater than five per cent in order for Queensland to continue to deliver the lowest workers compensation premiums in Australia.

CCIQ is opposed to the proposal to introduce a statutory adjustment scheme. CCIQ's objections are across a number of areas including, as a matter of principle, the legislation at the time as determined by the government of the day as determined by the people of Queensland precluded individuals with a DPI of zero to five per cent accessing common law. Retrospectivity sets a very dangerous precedent for the future and from the perspective of administration of a statutory adjustment scheme it will be inefficient, complex, costly, give rise to both distortion and high administration costs and the impact of a statutory adjustment scheme will have a further significant negative impact on premiums.

In respect to retaining employer's access to individual worker's history, CCIQ recommends that this provision remain in the legislation in the interests of the benefits to employers and their duty of care and, in turn, employer wellbeing and safety. CCIQ outrightly opposes any changes to the existing scheme, however if the proposed legislative changes do achieve passage, CCIQ calls for the date of effect to coincide with the date of royal assent of the amendment bill not backdated to the 2015 state election. It is critical that Queensland retains the lowest workers' compensation premiums in Australia. Queensland workers' compensation premiums are a central element in our state's efforts to keep Queensland the best place to do business in the nation. Thank you.

Mr Crowley: We thank you for the invitation and opportunity to present to the committee today. As the representative group for self-insurers, ASIEQ is committed to the improvement of the Queensland workers' compensation scheme for all stakeholders. Our self-insured members occupy a unique position within the scheme, being both employers and licensed self-insurers. To this end we promote and strive for best practice injury management and injury prevention above all else which is good for both employees and employers. We agree with the submission of the Insurance Council of Australia that a successful scheme must focus on capacity rather than incapacity, with early medical and rehabilitation to help people stay in work and achieve sustainable return to work. Unfortunately, in our view unrestricted access to common law distracts from that goal and puts a greater focus on

disability and incapacity thereby creating a disincentive to rehab and return to work. We are of the view that the money would be better spent upfront on rehab and return to work and, in fact, that is the success within self-insurers.

We have made submissions to the inquiry that for policy certainty the removal of the common law threshold ought be from date of assent of the bill. The introduction of additional lump sum payments in lieu of the common law threshold is an attempt at retrospectivity and is opposed by our members. Also the legal costs in the scheme ought be investigated as was recommended by the Finance and Administration Committee during the last inquiry into the legislation. We welcome the opportunity to provide our views on the status of the Queensland workers' compensation scheme and take questions on our submission. Thank you.

Mr Fitzgerald: You will be pleased to hear that I do not propose to make a statement. You have our submission and we are happy to take questions.

Ms James: The Australian Lawyers Alliance welcomes this bill for the reasons set out in our submission, particularly the removal of the common law threshold. We further welcome the statutory adjustment scheme which will go some way towards making recompense to those people caught by the amendments in October 2013 and, finally, we welcome the consultation process and we are very pleased to have been a part of that. Thank you.

Mr Diehm: I, too, was a member of the reference group that was formed to consult regarding the removal of the cap on common law claims. In addition to the matters observed in our submission, I would add that the exclusion of common law claims based upon impairment assessments up to five per cent was an arbitrary measure that was, in truth, unjust and ineffective to achieve the purposes that it sought apparently to pursue. Measuring impairment rather than disability is the wrong measure with respect to trying to determine whether claims are worthy of compensation or the award of damages at common law. The difference between the two needs to be understood. Disability is the real effect upon the person of their injury whereas impairment is an attempt to try to find some measure that is objectively demonstrable, such as restriction of range of movement or the arbitrary assignment of percentages based upon the particular injury that has been suffered. It is all well and good in statutory compensation claims for those sorts of measures to be employed where there is not the opportunity to more closely examine the real effect upon a person of an injury and nor perhaps the need to, the difficulty with excluding claims based on impairment is that it is really quite ineffective with respect to excluding claims brought by persons who are not, in truth, suffering significant loss.

There may well be quite a number of people who qualify to bring a claim because they are above a five per cent impairment assessment whose real impact upon them by way of their inability to perform their work and to earn their living is not so properly measured. Take myself as an example. If I was to lose my left arm I would probably be perfectly capable of continuing on in my occupation. The same cannot be said for a labourer. In such a case obviously the person is going to be assessed at more than five per cent, but nevertheless some injuries can be assessed at less than five per cent and have a similarly profound effect upon the person. Back injuries are a classic example. That may be the case even when they are zero per cent. The reality is that people are excluded when they ought not to be and they are included, perhaps, when their merits are not quite as deserving as those excluded. The flexibility of the common law is much more effective with the way it goes about assessing damages by looking qualitatively at the nature of the injury and the impact upon the individual and assigning an award of damages accordingly. We commend the changes that have been made by the reintroduction of the former regime. Thank you.

Mr Hall: We do not intend to make a statement in addition to what we have noted in our submissions apart from and save to mention that we echo Mr Diehm's remarks in relation to the effectively arbitrary nature of the imposition of the threshold when it was introduced by the previous government. We certainly do not consider that retrospectivity to 31 January this year is unreasonable. It certainly was known to all and sundry prior to the election that the Labor Party's position in relation to the removal of the threshold was to remove it and I think that is certainly a date that ought be maintained.

Ms Andersen: Today I would like to focus my opening on one particular aspect of the 2013 changes that is not proposed to be amended. In opening I would like to say, firstly, that we commend the removal of the provision in relation to allowing employers to obtain copies of the claims histories for prospective employees as we see that there is a real danger that those claims histories are used for discriminatory purposes.

The other aspect that concerns us is the right of the employer to ask on notice questions in relation to the current medical conditions or injuries of prospective employees during the recruitment process. Significantly, we think that those provisions are confusing. They are confusing for us and

this is our bread and butter and they are confusing certainly to employers and employees. The effect of those provisions is that prospective employees are caught between a rock and a hard place. If they do not disclose a then current workplace injury or condition that might affect their ability to do the job safely they will be excluded from workplace compensation or damages should that injury or condition be aggravated during their period of employment. At the same time, if they do disclose they risk an even more serious situation and that is not being employed because they have a pre-existing injury or illness.

We think the focus should be, as the Anti-Discrimination Act puts it, on ensuring that employees are given a real opportunity to obtain jobs despite disabilities by focusing on their ability to do the job or to reasonable adjustments an employer is able to make in order to facilitate them doing the job in the best possible way and to ensure their workplace health and safety. We recommend that the request provisions be amended so that if a request is to be made it is made after the decision to employ has been made. In that way the employer still has an opportunity to ensure that the person is the best person for the job, because under the Anti-Discrimination Act they can, of course, establish that the person can do the genuine occupational requirements of the job, the employee has the ability to prove that they can do the job and they can do that safety and the employer also has the information that they need to make any necessary adjustments and also to ensure that the employee is safe in the workplace.

CHAIR: You only have about five seconds to go. We are happy to take anything you have in writing.

Ms Andersen: I am happy to take any questions from the committee should you require any further information.

CHAIR: Thank you. We will go straight through to questions. I think some of you may have been here for the previous session. I will continue along a line that was raised by a number of submitters. I think, Michael, you were here.

Mr Fitzgerald: I wasn't here but someone made a comment to me outside about the last session so I have lined someone up to field the question.

CHAIR: We may as well go straight into it. I do not know if you have had an opportunity to look at some of the submissions. My question is aimed at the various representatives of legal organisations here. A number of submitters in their written comments but also in the panel before have basically been talking about things like the no win, no fee approach. I think there was a comment that if you took that out of the equation or you changed the fifty-fifty ratio that the number of claims would substantially drop. On the other side of the argument there has been a lot of talk across all of the hearings today about how important it is to encourage return to work. The criticism that was made by the previous panel of speakers was that the no win, no fee approach encourages people to sit and wait for their claim to go through and in the end the workers are disadvantaged because they hardly get anything of the claim. I am interested to get your comments on that. If I can start with the Law Society.

Mr Murphy: In relation to the suggestion that an injured claimant may be encouraged to not return to work—and I would be most surprised if this is not accepted by the vast majority of practitioners—the very best thing that any claimant can do for their claim is to return to work. The reason for that is a number fold. Firstly, it crystallises any loss that the worker has suffered, because it is the best way of displaying the actual work capacity. The second is that the most common way for any claimant's claim to be subject to analysis or criticism is to establish that they are not fulfilling or not working to the potential that they can. When you have a claimant who has returned to work in whatever capacity, particularly consistent with medical evidence, it is impossible for a claim to not be sustainable. The starting point for any claimant has to be that the best thing they can do is to maximise the opportunity, firstly, that is given through the statutory regime to undertake rehabilitation and to maximise the opportunities to return within that. If they cannot within the statutory regime, there is now under the common law regime an obligation to also undertake rehabilitation. That is, in fact, what would be encouraged by the vast majority of legal practitioners. Anything to the contrary is not in the client's interests.

In terms of the fifty-fifty rule, that is not a practice that would be occurring in the vast majority of claims. It is certainly in the minority of claims that the fifty-fifty rule comes into or should, in fact, come into effect. It would not be the position that any claimant would be provided with a cost agreement that complies with the Legal Profession Act, which specifies fees as a percentage. That is a contingency fee, illegal. The fifty-fifty rule is a proviso that sets out what is, in fact, the worst case scenario after missing out on establishing a common law entitlement completely. It would only be, in

the society's view—it is not right to say 'rare', because as a result of the cost regimes and the other restrictions that have limited the amount of damages that are recoverable, it does occur more often than we would like, but it is certainly not in the majority of claims. The claimant should be fully informed, as part of the cost disclosure provisions, of the rights that they have in relation to seeking a review of any legal costs they have incurred. There should be very clear and full disclosure of the legal costs that are part and parcel of the claim process.

CHAIR: Would the ALA like to comment on that?

Ms James: I was not in the last session and I am not sure that I understand the reference that was made or the criticism that may have been made in relation to no win, no fee and claims. I would be happy to address that if you would be able to provide some more detail.

CHAIR: You may like to do it after you have seen a transcript. They were having quite a session. They were making quite some criticism of lawyers, I guess, saying that it basically gave false expectation to people. There were some quotes made about false expectation given to injured workers who may have been expecting quite some significant payout, but who in the end did not receive a significant percentage of that payout. One gave an instance of someone having to pay a bill, even though their claim was successful. What I wanted to do, to balance out the argument, was to make sure that you had an opportunity to answer that. I am very happy for you to have a look at the transcript and come back to us with your comments.

Ms James: I am happy to do. I will address an example that appears to have been given that a person would run a claim and then be left with a bill. That is an impossibility in the present scheme due to the operation of the fifty-fifty rule. It cannot happen. I am not sure what that example was or how it can be proper.

CHAIR: We did not get any other detail about that.

Mr CRANDON: Just to clarify that, there was some more detail. I recall, just to give a fuller explanation, that by the time other costs—medical costs and other costs—are taken out of the full claim, then it ends up being that the 50 per cent that goes to the lawyer leaves a deficit. It leaves the individual owing money, because of the other costs that do not come under that fifty-fifty component of the rule. Perhaps you could clarify how that works then?

Mr Murphy: Michael, I am happy to answer that. That cannot work. As Michelle just said, the way in which the fifty-fifty proviso takes effect, there are four parts to it. The starting provision is that any statutory refunds that are payable have to be taken out first. You have the damages that are agreed. The claim has been resolved. Out of that there is the standard refund to Medicare, HIC, a refund to Centrelink and, prior to the figure being determined, there is often but not always a refund of the statutory benefits to the WorkCover regime. The first thing is the statutory refunds are paid.

The second thing, and this is extremely rare if it happens at all now within the WorkCover regime, is if there is an adverse costs order. By that we mean—and I am happy to be told that I do not need to offer the explanation—there may have been an interlocutory application of some sort and the claimant has been ordered to pay the costs that WorkCover and their solicitors have incurred. That would be paid as well.

The third fee that then comes out are the outlays that have been incurred by the legal firm in putting the claim together. The large items in those outlays are the obtaining of medical specialist reports that enable the claim to be quantified because they give you the future prognosis of what that injury means for the individual, the cost of instituting legal proceedings and then, if necessary, the cost of obtaining an engineering report in relation to the circumstances of the accident and, more rarely, the cost of a forensic accountant report. They all come out.

What then is left is split on the fifty-fifty rule, but only in circumstances where, if the legal firm was to charge their full fees including GST as per the cost agreement, the fees would be exceeding what the plaintiff would be left with in the hand themselves. It just cannot happen.

CHAIR: We might ask the person who gave that particular example. We might go back to them and ask for more detail on that specific instance. Michelle, did you want to make any other comment on that?

Ms James: No. I just thank Luke for that explanation. That is right: it just cannot happen.

CHAIR: Thank you very much for that. That is good. Geoff, did you want to make any comment?

Mr Diehm: Yes, thank you, Di. These considerations do not really directly involve barristers, because barristers' fees, as part of these claims, are one of the outlays that Luke has mentioned that get paid and the fifty-fifty rule applies thereafter. I can make these observations: firstly, picking up on

something else that Luke said, it needs to be understood that prior to 1996 when the first of what might be regarded as the suite of reforms in workers compensation law were introduced, workers compensation common law damages claims were, like remains the case virtually exclusively in other personal injury litigation and much other litigation, operating under a regime whereby where a claim was settled or was the subject of an award by the court, the successful plaintiff recovered their costs or at least a substantial contribution towards their costs from the defendant, the insurer, in addition to their award of damages. From 1996, under various iterations, the legislation in workers compensation has said that in many cases—not all, but in many cases—the plaintiff has to pay their own legal costs out of the award of damages they receive. The fifty-fifty rule came in some time a little later, of course, as a consumer protection to prevent the situation as Luke described whereby plaintiffs might be left getting less than what the solicitors themselves receive for their professional fees, and that was plainly an unfair and improper outcome.

If the contention is to be that there should be some further protection to ensure that plaintiffs are receiving a greater share of awards than is sometimes the case because the fifty-fifty rule is invoked, because indeed the costs are 50 per cent of the balance moneys, as Luke has referred to, the real evil that causes that is the lack of a right to recover costs. For those who want to make that contention, they should be prepared to accept that any review of that position should involve a review of the unfair law that says that these plaintiffs who are put to this expense in recovering their just compensation have to pay their own costs. The insurer should be paying them. That is our primary submission about that contention.

The second thing is that, if it were to be invoked, one would have to be wary of unintended effects. There are plenty of claims that are settled commercially, as we call it, that is, claims where there are hotly contentious issues between the parties about liability or the assessment of damages. They are able to be settled commercially because the parties weigh up what the cost to them and their risks are going forward on both sides and come up with a compromise. That compromise involves the lawyers for the plaintiff, who have put a lot of effort into running claims and have incurred expenses, sometimes paying outlays on behalf their clients for medical reports and engineering reports and the like on the way. They, fairly enough, are looking to make sure that they are not disadvantaged overly—often times they do take a hit—but not disadvantaged overly by, as it were, assessing their own position with respect to the client and themselves in terms of the recovery of costs.

If the cap on lawyer's fees or solicitors fees is to be reduced so as to say, for instance, you can only get 25 per cent, that might have an unintended consequence of causing those claims settling for smaller sums commercially suddenly not to be settle-able for those smaller sums and the insurer might have to pay a bit more because the lawyer will not be too keen about advising their client to settle the case when they are going to be so significantly out of pocket for their own effort in the meantime.

CHAIR: Thank you. I know Michael has a supplementary question, but I might ask Cameron: do you have any comment on that, first?

Mr Hall: To avoid the risk of echoing and repeating a lot of what has been said already, I will only make one brief comment. Without the ability for injured workers to consult lawyers—or plaintiff lawyers we are talking about, in particular, obviously—to act on a no win, no fee basis would deny pretty well the majority of injured workers the ability to access common law damages. Their rights would not be able to be exercised. Obviously, without some specifics in relation to the issue that has been raised previously, it is difficult to provide a more informed response than my colleagues have provided already.

Mr CRANDON: Just as a supplementary to that because it has started to ferment in my mind, would there ever be a case where all of those other costs actually exceed the amount of the claim that has been paid, so both the claimant and the lawyer miss out completely?

Mr Murphy: Your question, Michael, as I understand it, is, firstly, would the statutory refunds and adverse costs and outlays consume all of the damages? The answer to that is that I cannot tell you that it would never happen, but it would be extremely rare. The second part of your question was would there be circumstances in which the claimant and the plaintiff lawyers do not recover anything at all? Certainly, and the common example in that is when, of course, the claim does not succeed. That, from a plaintiff lawyer's point of view, is happening far more regularly than we would like, but it is the nature of the beast. Subject to anything that any of my colleagues say, I think that is the only circumstance in which that would occur.

Ms James: I would agree with Luke. It is a possibility. However, this is one of the things that we as plaintiff lawyers have to take into account and advise a person—that is, whether it is in their interests to make a claim and the likely amount of any statutory refund in particular.

Mr CRANDON: It is possible, but very unlikely?

Ms James: That is correct. These are the sorts of checks and balances that already exist within the legislation, or as it was prior to October 2013, that prevent a lot of claims that may be regarded by some observers as frivolous et cetera.

CHAIR: Some of you have referred to this, but you may like to go back to the *Hansard* of today's hearing, that will be available to you, and provide further comment in the interests of providing balance. Cameron, I take your point about not knowing exactly what has been raised. Because it was a reasonably strong point that was being made during the last session, it is very important to the committee that you have the opportunity to give us a balanced view on that.

Ms James: Thank you.

Mr Murphy: Could I add one further thing. The point that Michelle made and Geoff made earlier is that those circumstances, which the second part of your question is driven at, are what drives the commercial settlements that Geoff has referred to and is one of the checks and balances. It is exactly that commercial outcome that eventually forces and plays a large part in getting a negotiated resolution either prior to formal proceedings being instituted or certainly prior to a trial.

Mr CRANDON: I did have a question for Anne. Anne, you made the comment—and I scribbled it down quickly—that you saw a real danger that disclosure is used in a discriminatory manner. Are you aware of something like that or is it something that you would foresee potentially happening in the future?

Ms Andersen: Certainly it is a common source of complaint in the prework area. Large employers particularly seem to have a fairly standard practice of asking questions about pre-existing injuries. The reason they ask for that information is so that they can make the selection decision. That is generally what it is for.

Mr CRANDON: Have cases like that been brought to you?

Ms Andersen: Absolutely. We have had 359 complaints in the area of work, and a third of those relate to impairment. A smaller proportion would relate to the pre-employment process. Certainly there are a number of those. In fact, some of those have gone through to hearing and they are referred to in our submission.

CHAIR: I have a supplementary question on that. We received evidence from the department last week that the number of WorkCover history claims that have been accessed exceeds 26,000 and that that number is increasing. It is a matter that has been of some interest in the committee. If you are able to give us any redacted examples or any further figures over and above what you have already provided in your submission it would be very helpful to the committee.

Ms Andersen: We are happy to do that. Perhaps that is more appropriate in a written submission.

CHAIR: Thank you.

Miss BARTON: My question is for Nick and completely changes the subject, with due respect to the lawyers in the room. One of the previous witnesses made comment about the impact that this is going to have on his business, particularly in terms of competitiveness and the ability for Queensland businesses to be competitive in a national framework, particularly when the states are trying to encourage large businesses to create jobs in their states. I am not sure whether you had a chance to hear his comments. Did you want to comment on what some of the impacts might be for business and their competitiveness as much as you might be able to?

Mr Behrens: Thank you very much for the question. If we cast our mind back to prior to 2013, only 27 per cent of small businesses in this state actually felt that the workers compensation scheme was a balanced one. The absolute majority felt that the existing operation of the scheme was skewed too far in favour of the employee. That is why 81 per cent of small businesses, when we surveyed them back in 2013, were supportive of the introduction of a common law threshold. The first point that I would make is that the 2013 reforms moved Queensland into alignment with the other states. It is words and only words when you say, 'You have to examine the short tail nature of the scheme and the long tail nature of the scheme. Queensland has a different scheme.'

The fact of the matter is that if you compare apples with apples, Queensland was moving into alignment with what was done in other states. The practical implication of that was, on average, a 17 per cent reduction in the premium—a reduction from $1.45 to $1.20. That restored Queensland as having the lowest workers compensation premium in Australia. Victoria had had that distinction. That delivered a $250 million stimulus to Queensland's small business community.

I am sure the committee is already aware, but through our dealings with the stakeholder reference group we know that if we remove the threshold the premium will go up to $1.36. Irrespective of what this government commits to, the break-even premium for the scheme, if we do not have a threshold, is $1.36. It is inevitable that the premium would have to increase to that figure.

We think that Queensland has a competitive business operating environment and workers compensation premiums is one of the key attributes for achieving that mantra. That is why we regard the threshold as such a pivotal issue in maintaining the competitiveness of Queensland's small businesses in particular.

Mr CRANDON: Nobody else has been able to furnish us with those figures. Where did you get them from, Nick?

Mr Behrens: In the discussions of the reference group, $1.36 was raised as the notional break-even point. My understanding is that WorkCover Queensland has not been invited to provide evidence. I would encourage the committee to ask WorkCover Queensland what the notional break-even premium would be. I think you would find that we would lose our spot as having the lowest premium in Australia. I am not talking out of school; it was in the public domain and this has been the subject of discussions since.

Mr PEGG: I have a question for Nick as well. I refer to your submission where you talk about the provisions of this bill that remove the right of prospective employers to obtain a worker's claims history summary. We have heard earlier that these summaries include fairly limited detail and effectively they are limited to the date of the injury and a description of the injury. There is no actual information about the degree of impairment or indeed the disability. What utility are these statements to your members?'

Mr Behrens: It is a good question. Our organisation primarily sees the availability of that information to an employer as a conversation starter. That conversation is really around ensuring that an employer's duty of care is sufficient to meet that employee's needs and to have a discussion with the employee around whether or not they are able to fulfil the duties required of that position. We think that this an appropriate outcome.

Our counsel to this committee would be to look at the statistics. The statistics are that there have been 26,977 requests from businesses for that information. Only 14 per cent of those were from group hire companies. Reversing that, 86 per cent of these requests have come from businesses outside labour hire businesses.

Referring to statistics that the Anti-Discrimination Commission cited, four per cent of one-third of 359 gives you five claims. I am sure it is not limited to five claims. But, nevertheless, five claims as a percentage of 26,977 shows that quite simply the statistics do not back up the claims that employers are discriminating against employees on the basis of WorkCover history. We are not seeing it by the umpire.

Mr PEGG: I have a follow-up.

Mr CRANDON: Anne wanted to respond.

Ms Andersen: It was a third of the complaints. Some 101 complaints involved impairment. I cannot say specifically how many of those involved the particular situation of discrimination in work because of a workers compensation history record being obtained. I do want to say that there is quite a lot of both anecdotal evidence and research evidence to suggest that people do not complain readily, and particularly do not complain outside the organisation. There is fear of victimisation and the need to sustain their job. That means that the statistics, in terms of the numbers of complaints, do not really reflect the true nature of the issue in our view.

CHAIR: You talk about anecdotal evidence and research evidence. Are you able to supply us with any of that research—just what you consider to be the most informative pieces?

Ms Andersen: I am happy to do that.

CHAIR: Nick, did you want to respond to that.

Mr Behrens: I think my point is well made. If you look at the data and look at the evidence you will see that. I would encourage the committee to do that once the commission has come back to you. I do not think there would be a substantive case as to why employers should not have access to an

employee's history. Ultimately that is in place to enhance the duty of care of the employer and ensure employee safety and wellbeing. Based on previous inquiries that this committee has had, this is a concept that rings true with this committee. That is the spirit in which employers are currently using it.

Mr PEGG: Nick, you talk about the employer and employee relationship. The current provisions go beyond that because it is prospective employer and prospective employee. I am wondering what kind of privacy frameworks or protections are in place around that information. We heard Ms Andersen talk about a potential for victimisation. I am interested to see whether you have any guidelines or frameworks in place for your members?

Mr Behrens: The Commonwealth Privacy Act 1988 precludes employers from sharing personal information. My understanding is that if an employer were to request a WorkCover history that would be considered to be personal information and that employer would not be able to share it with any other party.

Mr Fitzgerald: The society would like to comment on the answer that the CCIQ gave to the deputy chair's question.

Mr Behrens: Can I make a point about fairness. It might be inappropriate, but I think the lawyers have been afforded a pretty good say. I know there are a number of other employer organisations that are keen to have a say too.

CHAIR: I think a number of witnesses here have appeared before the committee before. We will certainly be following up anything else that is not covered today. I ask you to respond very quickly to that because we do have some other questions.

Mr Murphy: I comment in relation to Nick's comment about the break-even point being $1.36. I was a member of the stakeholders group representing the Law Society. Mr Hawkins, the CEO of WorkCover, presented a whole series of statistical data and made it very clear that the threshold could be removed and the $1.20 premium maintained. What he was not in a position to be able to say was whether in fact that could be maintained for any period of time into the future. One of the initial considerations that was made clear at the discussion was that in Mr Hawkins's view and, as I understand it, representing the board of WorkCover, they felt that the threshold could be removed and there was not likely to be a significant increase in the premiums.

Mr Behrens: Can I provide further comment? Given that the current solvency of the scheme is 170 per cent, indeed there is capacity to absorb removing the threshold for a number of years. That has an assumption of five per cent investment returns for WorkCover Queensland. However, it is only a matter of years before the premium would have to increase because you cannot continue to draw down on the solvency of the scheme. There is a legislative requirement that it be 100 per cent funded. By removing the threshold, inevitably the break-even point would have to increase to $1.36.

Mr CRAWFORD: I have a question for Ms Andersen. I was quite interested to hear the Anti-Discrimination Commission's perspective. I note in reading your submission—I am not sure if you wrote or someone else wrote it, and you also touched on this in your opening statement—there are suggestions around measures to assist in balancing the interests of workers having a fair chance of getting employment as well as employers being able to screen in relation to current injuries and medical conditions. You made a comment that the commission's preferred approach is that the request for disclosure be made after the applicant is offered the position. Would you be able to talk more about that, please?

Ms Andersen: Yes, certainly. The whole point in the employer-employee relationship is that the balance of power is tipped towards the employer. There is no doubt about that. When it comes to the employer and the prospective employee it is even more balanced in favour of the employer. What that means is that the employee has to compete for the job against other applicants as well.

In a situation where they are required under the Workers' Compensation and Rehabilitation Act to provide information either in the form of access to their workers compensation claims history or in relation to injuries or medical conditions existing at the time of the recruitment process, they are in a position where if they disclose that information prior to getting a job offer and accepting a job offer they are at risk of being discriminated against because of the information provided. A quick example is a person who has a WorkCover claim history with a back injury disclosed in the WorkCover claim. Straightaway the employer has a choice perhaps between an employee who has a WorkCover claim history for whatever reason and an employee who does not. Who do you think the employer will take the risk to employ, even if their relative merits for the job are otherwise equal or perhaps even tilted a little bit in favour of the person who has the compensation history?

Compensation history is not current necessarily. It does not reflect their ability to do the job. What it is is a history, and a history does not necessarily predict a future propensity or a future risk in terms of workplace injury or wellbeing or ability to do the job. What is important is what they can do at that time. So we have had a situation where someone has a WorkCover history of a back injury perhaps 10 years old and has worked in the industry in very similar jobs for eight years. The employer obtains the WorkCover history and all they focus on is the WorkCover history and not the fact that they have actually been doing the job injury free in other similar environments for the last eight years. So that is the concern.

It is not just about the WorkCover history. It is also about the ability of the employer to ask about current existing injuries or illnesses for very similar reasons. That means that the employee is caught between taking the risk of not disclosing and then not being able to have a compensation or damages claim because of the WorkCover provisions or taking the risk and disclosing and missing out on the job. What do you think that a lot of employees will do? They will take the risk if they need the job enough. Is that in the interests of the employee and is it in the interests of the employer? Surely the interests of the employee and employer are both best served by having employees who can do the job safely and without unreasonable risk to their workplace health and safety getting the job and the employer fulfilling their responsibilities that they have to all their employees, regardless of their previous injury history or previous medical conditions, to take reasonable care for the workplace health and safety of those workers and to make reasonable adjustments.

Under the Anti-Discrimination Act already the provisions allow for all of those things to happen. An employer does not have to employ someone whether or not they have a disability. They can direct questions to an employee in order to ascertain whether or not that employee can carry out the genuine occupation requirements of the job with the adjustments that are reasonable given the circumstances of that particular employee and employer.

Mr CRAWFORD: Years ago I sat for a position as a firefighter of all things that we are about to talk about for the next hour. They put me through testing at the time. It was a number of years ago. It was basically practical testing—'Stand here, lift this, reach over there, do that, drag the dummy,' and all of those sorts of things. They were obviously testing my manual ability. From an anti-discrimination perspective, is that a better way to assess a potential employee than going back through a person's claims history and saying, 'Because you had a back injury 10 years ago, that now makes you a risk,' or are we better to make the person do a work related task and then make the decision? What is the perspective from your commission?

Ms Andersen: It is always a vexed question for employers as to how to obtain the best person for the job. Certainly we recommend a wide variety of tools. So it may be that pre-employment medical testing is appropriate, but there are dangers in that too. There are a number of cases that point out dangers like the doctor not having sufficient knowledge of the job, not having the current particulars of the job and so not really knowing what is required, not having knowledge of the work environment, having out-of-date conditions or work descriptions and things like that. So there are number of dangers in that sort of process. Provided that the pre-employment testing is done as late as possible in the recruitment selection process to the narrow field perhaps—or post selection choice and pre-employment would be even better—the dangers of discrimination are lowered from that type of process. It may be a case of simply looking at the work history of a person—have they done a job like this or a job involving similar tasks and could they do it safely? To give you a quick example, there was a very early case in the Anti-Discrimination Tribunal—

CHAIR: Sorry, Anne, if we could make it very quick because we do have some more questions.

Ms Andersen:—of a police officer who was short-sighted and who the police were not prepared to recruit even though he was otherwise suitable. He had worked in similar jobs in some respects in that he had been a corrections officer. He had also played football. He was very athletic and could do just about everything. In the end the tribunal accepted that he could do the genuine occupational requirements of the job and was not a risk even though the pre-employment medical screened him out. So that is one of the dangers of pre-employment medicals.

Mr WEIR: I am quite curious about this five per cent threshold. In the submissions there were cases of people whose impairment was less than five per cent and they could not get employment. They could not hold a job. You made comment about it earlier. Obviously there is something seriously wrong with the system if that is the case. If I am an employer and someone has come to me and they have already had a three per cent claim, to me they do not have to go very far before they become a liability to the company. There is something wrong here. Do you have an opinion?

Mr Diehm: I do, and that is that you really need to put out of your mind these percentage figures. They are just numbers. They do not really mean anything. You have to look at the detail that underlies it before you know how badly affected a person is. The numbers are magic because they make us think we really know what is going on but they are tricking us. So we have to ignore them.

Ms James: I echo the point that Geoff made in opening today, and that is the difference between an impairment figure, which is an arbitrary number, and a disability. It is a trite example but the concert pianist who loses the tip of their little finger would have a very, very low impairment but has lost their career and livelihood. Then there is the example that Geoff gave that if he lost the use of his left arm admittedly that would be more than a five per cent impairment. However, he could still work but a labourer could not. That really is the issue. These numbers really mean very little. They are based on an American standard and they are not reflective of the impact of an injury on a person's ability to work. It is also not the case to use the example that you did that if someone has a three per cent impairment they have not got far to go. It does not work like that either. If somebody has a three per cent impairment to their knee, it is not the case that they only have to get another two and then they are unemployable or whatever the case may be. It is really about the impact of the injury.

Mr WEIR: Do you mean from occupation to occupation? How would you do that?

Ms James: It is about the occupational requirements of somebody's job. I can do little more to illustrate it than to provide examples. If a person is required in their job to be able to raise their arm above their head then if they cannot do that, regardless of the number that you put on that impairment, whether it is three per cent or 25 per cent, they simply cannot do their job. To give it that arbitrary number because of this guide that we have to use—the WorkCover guide is based on this American standard—really is irrelevant. What is relevant is that they cannot do their job.

Mr WEIR: If somebody cannot raise their arm and they do not disclose that when they are applying for the job, doesn't that come back to an employer having a right to have that information?

Ms James: In the act at the moment there would be consequences for that person if they reinjured that body part. They would not be able to make a claim based on the legislation as it stands at the moment. There is a flip side to this. There are plenty of people with huge impairments who can work. As we said, if you lost the use of your left arm the impairment on that would be very high but if I was that person as a lawyer I would not have a claim that had any economic value because I could still perform the duties. We are focused here on people who are getting more than five per cent and somehow their claims do not have merit, but you need to look at the other side of it too.

Mr Diehm: With regard to getting access to records of workers compensation claims, that will tell you nothing of course about the person who cannot raise their arm because they had a sporting accident or a motor vehicle accident or fell over at home or were injured interstate, by way of example, at work. So really employers need to be looking for other sources of information if they want to assess a person's capacity to engage in work and meet the genuine occupational requirements.

CHAIR: Unfortunately we are past the time for this session, but I do want to ask one more question of the LGAQ, and perhaps ASIEQ might like to answer as well. Then unfortunately we will have to close. However, we will have a number of questions that we will want to put to witnesses in writing. I apologise we have not been able to cover all of those in the hour that has been allotted. I just wanted to go to the LGAQ first and this is about section 193A. You raised the issue about lump sum entitlements—one of them being about the scant level of detail that is available. You referred to your membership of the Association of Self-Insured Employers of Queensland as well, so I am interested in what ASIEQ has to say. Can you elaborate on that a little and some of the other points you have made about the lump sum entitlement?

Mr Swan: Yes. As I mentioned earlier on, this is a very significant step that has been proposed and there really is not a lot of information in terms of how it will work in practice. We are not being told in the bill what the amounts will be and what all the conditions of entitlement will be and how the panel that will review insurance decisions will operate. I note that it is being discussed in a stakeholder reference group. As to what will come out of that, who knows? It is very difficult to make any sort of informed decision on our part and, we would suggest, on the part of parliament in terms of how this should work and whether this is a reasonable thing, particularly to apply on a retrospective basis, if we do not have that sort of information.

It is something that I know was mentioned in the last session, too, that in many people's view is unprecedented. It has not been done before in this way and it does create potential precedents that a lot of people may not like. I would think that if anybody was going to make that sort of decision it would be on the basis of absolutely full information.

CHAIR: Would ASIEQ like to comment?

Mr Crowley: Yes, I would like to reiterate David's comments. Nick mentioned that he was a member of the SRG, the stakeholder reference group, that looked into these matters along with the Law Society, the Bar Association and a number of other parties. Unfortunately, neither my deputy chair, Thanh, nor I were, but one of our representatives was so they were privy to what is proposed to be in the regulations—we understand they are being drafted—and agree with David's comments. They are proposing that additional lump sums be paid to people affected by the common law threshold. As David said, the issue with that is that rights and benefits within workers compensation have been modified and changed over time without retrospectivity. This is a new precedent in terms of the reversal—that is, providing the additional lump sum to those who were affected.

Mr Swan: One of the issues that I think is critically important is the additional lump sums are supposed to be targeted at particular people. How are we going to know how those people will be targeted? How will they be found? There is nothing to suggest how the right people can be reliably found so you are not introducing some significant cost imposition in terms of the way a system operates—a very inefficient system—to provide some entitlements to some people. That is part of the great unknown. How are you going to find the right people to provide this for?

Mr Crowley: Paradoxically, and by way of a quick example, a person with a six per cent impairment or higher who has accepted their lump sum would be disadvantaged by this retrospective scheme because someone under five per cent or less who was entitled to this additional compensation would get more than a person who has already accepted their lump sum being higher and has no recourse to this proposed scheme.

CHAIR: Yes, a few submitters have made that point as well. We are going to have to close. Again, thank you all very much. The submissions to the committee have been excellent, and I really thank you for the detail and the case studies that many of you have provided. As I said, I think we will be coming back to you with further questions. Thank you for your assistance with those as well. I declare this hearing closed.

BUNNEY, Mr Steve, Director, Firefighter Cancer Foundation Australia

CHOVEAUX, Mr Justin, General Manager, Rural Fire Brigades Association of Queensland

GILLESPIE, Mr Alan, President, Rural Fire Brigades Association of Queensland

JAMES, Ms Leeha, Executive Member, Firefighter Cancer Foundation Australia

MARSHALL, Mr Peter, National Secretary United Firefighters Union Australia

OLIVER, Mr John, State Secretary, United Firefighters Union Queensland

SAMBROOKS, Mr Rodger, President, Queensland Auxiliary Firefighters Association

WATSON, Ms Joanne, National Industrial Officer, National Secretary United Firefighters Union Australia

CHAIR: Good afternoon, ladies and gentlemen. I declare this public hearing of the Finance and Administration Committee's inquiries into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 and Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015 open. I am Di Farmer, the chair of the committee and the member for Bulimba. The other members of the committee are Mr Michael Crandon, our deputy chair and member for Coomera; Miss Verity Barton, the member for Broadwater; Mr Duncan Pegg, the member for Stretton; Mr Craig Crawford, the member for Barron River; and Mr Pat Weir, the member for Condamine.

The purpose of this hearing is to receive additional information from submitters about the bill, which was referred to the committee on 16 July 2015. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. The committee appreciates your help.

You have previously been provided with a copy of the instructions for witnesses so we will take those as read. Hansard will record the proceedings and you will be provided with the transcript. This hearing will also be broadcast. I remind you all to speak into the microphones. That is as much for the benefit of Hansard as all of us here. I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee.

We are running this hearing as a roundtable forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise an issue for discussion, I ask you to direct your comments through the chair. I also request that mobile phones be turned off or switched to silent mode, and I remind you that no calls can be taken in the hearing room.

The committee is familiar with the issues you have raised in your submissions, and we thank you for the detailed submissions that we have received. The purpose of today's hearings is to further explore aspects of the issues you have raised in your submissions. The committee has a number of questions that we wish to put to you, but before we do that I invite each organisation to open with a brief statement. I ask you to limit it to a maximum of three minutes, as we have a number of organisations here today and we want to make sure we have plenty of time for questions afterwards. I will start with the Firefighter Cancer Foundation.

Mr Bunney: Madam Chair and members of the committee, thank you for offering us the opportunity to address this very important committee on presumptive legislation. My name is Steve Bunney and this is my colleague Leeha James. We are executive members of the foundation. The Firefighter Cancer Foundation Australia is the Australian branch of the International Firefighter Cancer Foundation. We are a charity. We assist full-time, part-time and rural volunteer firefighters when they receive a diagnosis of cancer. We have been providing this service since approximately 2006 throughout Queensland, and we also undertake educational and awareness programs for firefighters in relation to carcinogenic exposures and risks they have to minimise to stop them getting these types of cancers.

We do most of our work with firefighters by assisting them and their families when they receive a diagnosis of cancer. We provide networks to assist them in going about their day-to-day activities. We also provide advocacy for when they want to make claims through workers compensation in Queensland. The foundation supports the general provisions of the presumptive legislation. We do have concerns with the threshold of 150 for volunteers. Importantly, today we find ourselves in perhaps a unique position in that we have assisted firefighters in making claims of workers compensation in Queensland. We can provide to the committee real-life examples of what it means and what is involved right now, as of today, for firefighters and their families when making claims for this type of compensation. We come to the committee today with express consent from our clients. They have two main tasks to receive our assistance—that is, they are or were firefighters and they have received a diagnosis of cancer. So we come here today with their express permission to detail their experiences to you, if you wish. Their names will be withheld. We have worked hard with WorkCover in the past 18 months to streamline this process and to get claims moving through.

It is a unique position that we are in because we are constantly dealing with firefighters who are making claims, and we have been involved from the moment the claim has been made to the decision being made. That can vary in time. So it is a very important discussion that will probably need to be held. We thank you for the opportunity and we look forward to discussing that during today's committee.

CHAIR: Thank you.

Mr Choveaux: I appear here today with Alan Gillespie, the President of the Rural Fire Brigades Association of Queensland. We would both like to thank the committee for allowing us to present today the position of the association on behalf of all 1,441 rural fire brigades in Queensland. The RFBAQ submits that the government bill is unworkable in its current format and that there needs to be significant amendments before the bill moves back to the House. The RFBAQ submits that the 150 attendance number proposed for volunteers is not based on science, as the initial Tasmanian legislation required the volunteers in that state to attend 260 incidents before coverage was deemed presumptive. This number was amended by the state of Tasmania as a result of political will. The South Australian legislation sees volunteers and paid firefighters requiring the same attendance level of one incident under the schedule. Why would Queensland not look at this as a better model than that which the current bill proposes?

It is most important to note that any number of attendances for volunteers that is different from a remunerated firefighter who is under the schedule means that this bill is unworkable. A clear example of the proposed bill's inability to operate is the common situation in which TEM, Training and Emergency Management, the commercial arm of QFEST, Queensland Fire and Emergency Services, wins a contract to provide services to a landholder for hazard reduction burning. TEM then hires volunteer firefighters from a rural fire brigade on a casual basis to undertake the burn. These firefighters would need one exposure under the schedule to gain coverage. At the same hazard reduction burn, TEM retains the services of a local brigade to supply appliances at an agreed hourly rate and the brigade supplies unpaid volunteers to man the appliances. These firefighters would need 150 exposures even though they are standing in the same smoke.

Another example is that, during the course of the year, rural fire service staff support many of the volunteer firefighters during hazard reduction burns and, most importantly, support firefighters during fires. The proposed government legislation would see these support staff covered from one exposure under the schedule, and the volunteers they support would need 150 exposures, even though they are standing in the same smoke.

The above are only two of many very real situations where this proposed government legislation is impractical and where the 150 exposures will not physically work in the real world. This then removes the emotive argument and transfers the debate into a matter of mechanics, and the mechanics of the bill is that the cogs will just simply not line up. The RFBAQ contests that the 150 claim threshold under the schedule in the bill is precisely the threshold that this government was elected to abolish, not introduce. To cite from a committee member's maiden speech, when they were a solicitor who fully came to realise the importance of having an effective system of workers compensation in this state, I will quote, if I may—

I find it unbelievable that currently in this state we have a situation where a person who is injured at work—

CHAIR: I am sorry, Justin, you have about five seconds to go. We are very happy to take a written version of your speech.

Mr Choveaux: I have three paragraphs to go and they are all short ones.

CHAIR: Great.

Mr Choveaux: If I may finish that quote because it is I believe quite germane—

… through no fault of their own can find themselves unable to work due to their injury yet not be able to make a common law claim if they do not meet the thresholds ...

The RFBAQ submits that this committee has an opportunity to recommend the introduction of legacy legislation that will not only support current firefighters regardless of pay status but support all those who come after us.

My two children, Max, eight, and Sophie, nine, have every intention of joining the brigade when they are 16. They like many others have grown up in a rural fire brigade family and have seen me and their grandfather go out and fight fires and not be seen for days. This legislation should be made equitable, fair and workable and should be used as a best practice model to show that the state of Queensland truly values their volunteer firefighters.

CHAIR: Thank you.

Mr Marshall: I am the national secretary of the United Firefighters Union of Australia and I appear here with Ms Watson, who is our national legal officer. Thank you for this opportunity. We have been involved in presumption legislation development since 2011 and appeared in the Senate inquiry in 2011 as well as in the Tasmanian inquiry in 2013. In relation to the structure of presumption legislation, we have had the experience as to why it came about. In simple terms, without taking you in detail through our submission—and I am happy to answer questions later on—it came about because there was an artificial barrier for firefighters to actually access workers compensation against the background of international science that says firefighters have a higher level of incidence of cancer than the general population.

Prior to 2011, it was absolutely impossible, if not impractical, for a firefighter to be able to show causation and effect, to be able to make out the claim under workers compensation systems around Australia. We looked to the model over in the United States and Canada, and what we were able to see was that they actually reversed the onus of proof but they did it on the basis of scientific evidence. On page 14 of our submission is all the studies that were submitted to that Senate inquiry, and it was a very robust Senate inquiry. The only study that was not submitted to that Senate inquiry was the Monash study, which came down in December 2014. Those studies were the evidentiary base that convinced the Senate of Australia to remove the onus of proof based on the litigious model—in other words, an adversary litigious model where a firefighter had to go into a courtroom and argue causation and effect over what could have been one of many thousands of fires, one of many tens of thousands of toxins.

The Senate inquiry predominantly looked at four things. They looked at the burden of proof, and the studies that are contained in our submission show that. They looked at checks and balances for the employer, and that was the fact that it could be rebutted. They also looked at to resolve the litigious nature of it so the firefighter could look at getting well. All those studies I have referred to in the evidence before the Senate inquiry were in relation to career firefighters. That does not mean that we say that volunteer firefighters should not receive compensation the same. However, I think there is a misapprehension on the premise of one of the bills. I will look at the Tasmanian model, and I am happy to take questions on that. The very thing we are trying to avoid, if you actually enact the first legislation—that being the latency periods without the contact periods—will result in the litigious environment we had before. It will result in a denial of claims to volunteer firefighters, because an insurer or a lawyer for an insurer would simply just have to rock up and say, 'Here's the latest study'—and I will point this to you—

CHAIR: Peter, you only have about five seconds as well, but you can rest assured that we have lots of questions. I will ask you to close.

Mr Marshall: In closing, the very thing we are trying to avoid would actually occur because it would rebut it every time. The compensation would be denied unless the contact periods were there. The Tasmanian model is the right one, and the Northern Territory followed it through. That is the misapprehension of one of the bills. It is well meaning, but the effect of it would be to deny volunteers the compensation.

CHAIR: Thank you.

Mr Oliver: I am the state secretary of the United Firefighters Union of Queensland. Our union is commonly known as the UFUQ. The UFUQ is affiliated with the national United Firefighters Union of Australia. UFUQ and UFUA have worked closely together over the last few years to advance the issue of presumptive legislation on behalf of firefighters across Australia. On behalf of our members, we are pleased that the Queensland parliament is considering introducing laws that will simplify the

process of managing certain workers compensation claims. In particular, we expect that such laws will reduce costly and time-consuming litigation for all concerned. UFUQ trusts our written submissions assist the committee in your deliberations. If we can assist further or provide further information, we will endeavour to do so on your request. Thank you.

CHAIR: Thank you.

Mr Sambrooks: We would like to thank you for giving us the opportunity to talk. With our submission, you can see that we are very happy with how the auxiliaries will benefit by this, but our biggest concern is our partners, the rural fire brigade, because a lot of the rural fire brigades work out of the same stations as the auxiliaries do. You have got to understand that they are both going to the same fire, but an auxiliary can go on the truck and he is covered straightaway after he has done his course, whereas a rural has to go to 150 fires. We reckon that is just not fair and there has got to be some other better way of looking at the volunteer.

The university study said it is going to cost $11 million or whatever, and we have asked what it is going to cost the Queensland government for their insurance, and I think it is about $11 million a year. Well, that is nothing. It is not costing us a cent to run the volunteer firefighters, so why should they be discriminated against? Why aren't they given the opportunity the same as the permanents and the auxiliaries? We feel that they are under the same threat and we hope that you look at it pretty thoroughly. I am quite sure that the figures you are working out of from South Australia and places like that are overstated. You have to look further into them because I do not think it is the expense that you think. I think there have to be better studies. We would like to think that you would look at that clause of the 150.

As I said in the opening, the auxiliaries are very, very happy. We cannot be any happier with getting what the permanents and the auxiliaries have got, but we are very disappointed for the rural firefighters and they are our counterparts.

CHAIR: Thank you. We will go straight to questions now. I did actually want to go to what you were talking about in your research, Peter, and I am interested in the comments of the RFBAQ on this. The submission was excellent in summarising the research available, and I think you made the point a number of times that it is evolving. There is significant research already available, but it is evolving. You made the point that there is quite strong evidence around firefighters in urban environments but that there is no evidence at the moment about impacts for voluntary firefighters. I think you and a couple of other people made the point that, if the volunteer firefighters were actually included in the same way as the urban firefighters are, in fact it would weaken the legislation, it would leave it open to challenge, and that while there is not research available that is the way it is going to be. Justin or Alan, I am not sure who will answer this, can you comment on that issue that has been raised by the UFUQ, the UFUA and other submitters please?

Mr Gillespie: Our contention is that a firefighter is a firefighter is a firefighter. We cannot see how in fact this would weaken the legislation, when the only difference is whether you are paid or you are not. We are under the understanding that the government's bill is reliant somewhat on the Monash study. We were not privy to that in terms of the explanatory notes of the bill. However, during the departmental hearings, we are aware that the Monash study was in fact mentioned a number of times and was the underpinning documentation that was used. In fact, during the departmental study, it was alluded to by Ms Hillhouse that the study was of Australian firefighters. I just want to clarify that a little bit. Out of the seven states and territories in Australia, six of the organisations that employ, in terms of workers compensation, volunteer firefighters were not even part of the study. The Western Australian Bush Fire Service, the ACT Rural Fire Service, the Northern Territory bushfire service, all of South Australia and all of Tasmania were not involved in the Monash study. So it is very interesting that the government is using the Tasmanian model—a state that was not even involved in the Monash study itself.

I can also advise the committee that the Queensland figures for volunteer firefighters were actually removed from the Monash study. The Monash study began in 2011 and, as the study notes, Queensland's database in terms of accuracy for volunteers was not considered to be robust enough until 2011, when the study was done, so the figures were actually removed. So there is a significant body of volunteers, particularly here in Queensland—and, after all, we are talking about Queensland legislation—that were not even included in the study.

The reality is the Monash study does mention on a number of occasions that its figures in terms of volunteering from the agencies were dubious and inaccurate. It recognised that and made a very specific reference that a separate study for volunteer firefighters should be undertaken. I have spoken to AFAC and to date that has not been taken up, but we understand the report was only handed down last year so it may very well be something in the process.

The report does indicate on a number of occasions that there is an increase in certain types of cancer that were noted during the study for those volunteer firefighters for whom they had the data. The reality is, though, that we are talking about firefighters. We are talking about paid firefighters, unpaid firefighters and part-paid firefighters. They are all firefighters. They can stand in exactly the same smoke. I myself went to a car fire only two nights ago where permanent firefighters were also in attendance. We were standing there breathing exactly the same smoke. The only difference is that they had breathing apparatus. In Queensland, rural fire brigades are not allowed to have breathing apparatus. So we are all breathing the same smoke. That is what it is about. It is not about the pay scale or whether you are career or a volunteer; it is about the smoke that we breathe.

CHAIR: Thank you for that. Peter, could I ask you to make comment? I recall seeing in your submission about certain groups of volunteer firefighters being excluded from the study. We are obviously not in a position to comment on those things that Alan has said. Can you comment on them?

Mr Marshall: I take the committee to page 17 of our submission. In particular, on page 16 at the last paragraph 4.9 it actually talks about—Madam Chair, can I just clarify something? Our submissions are designed to remove the very barriers that existed to begin with. I do not want it being portrayed that we are actually anti volunteer. Just for the record—

CHAIR: Absolutely. Everyone here today has the best interests of firefighters at heart, as does the committee. So all of our questions are totally objective. We just want to make sure we get a balanced view on every question.

Mr Marshall: The only reason I said that is, having experienced this from day one, I am probably in a privileged position to understand the arguments that were being put. One of the arguments that was being put was the burden of evidence. One was in relation to cost. The other was the litigious nature of the whole adversarial system. So they came up with a structure based on North America, but that was based on research on career firefighters, and I can take you through those. They are actually on pages 15 and 16—and there are lots of them—of our submission. The problem is simply this: there was no evidence in relation to volunteer firefighters in that Senate inquiry. The fair protection for firefighters bill in 2011 did not address the issue of compensation in terms of cancer for volunteer firefighters.

The next state was Tasmania. Tasmania wanted to look after their volunteer firefighters. But, having read the transcript, the *Hansard* and the evidence of the Senate inquiry, they found that the system that was being proposed would be unworkable because essentially you would end up in the very situation you are, and that is a litigious environment. It would be rebutted every time because of the lack of evidence based on the studies. The federal study was put in based on scientific evidence and lots of it. The Senate inquiry accepted that career firefighters had a higher rate of cancer for 12 particular types of cancer. Contemporary science has actually added two more but I won't go into that. What it did not do is it did not address the issue of volunteers because it had no evidence on that fact.

In Tasmania the government wanted to make sure that its volunteer firefighters were looked after as well. So they tried to get around that very trap that was there in the first place, and that is the rebuttable part, the protections for the employer and the insurer to remove the litigious nature. It would have been simply a case that for a career firefighter, the claim would have been made out if the latency period had been met. But for a volunteer firefighter, it would have been easy for a lawyer to simply say, 'We rebut that,' because there is no evidence. The Senate of Australia has found no evidence; in fact, it makes reference to that. There is no evidence to support that claim and you are back to where you started, back to show causation and effect.

What the Tasmanian government did is it actually put in latency periods or qualification periods as well as contacts, and they base that on the records. We say they got it right because now there is a firm basis if a lawyer comes along and says, 'Look, there's a volunteer firefighter who is claiming compensation. There is no evidence.' However, the fact that they have 150 contacts, the fact that they have actually also got the latency period in place, they would get around that criteria. That is the reason for the whole structure in Tasmania. That was prior to the Monash University report, which came out in December 2014. I will take you to this because it is very important. That is on page 16. Under 4.9 it says—

The Monash Australian Firefighters' Health Study was the first study to include a significant volunteer cohort within the context and meaning of "volunteer" in the Australian fire services. While the study was consistent with international research when finding an overall rate of increased incidence of cancer for career firefighters, there was no overall increased risk for volunteers.

That is a lawyer's picnic. If you have a system that is rebuttable a lawyer would simply put that in there every time a volunteer put up a claim. If I go to your question, if we go on to page 17 of our submission, there is a breakdown at 4.12 about the people who were involved in that study, in particular, in relation to the breakdown of career firefighters, volunteer firefighters, paid, part-time and auxiliaries. As you can see in 4.12, it says 18,035 career firefighters participated. On a voluntary basis, fire services around the country bought into this study. 13,704 were either paid part-time or retained auxiliary firefighters and 201,132 were volunteer firefighters. That is a very large sample. One of the largest studies for paid firefighters is the LeMasters study, which is referred to in our submission on page 16. That is a meta-analysis of 120,000 career firefighters. So the figure 201,000 is a very large figure.

In relation to the people who were excluded from the study in relation to the volunteers, if you have a look at 4.13 it answers your question, Chair. That is, the initial records sent from the fire agencies to Monash included 305,000 volunteer firefighters. Approximately 45,000 volunteer firefighters were eliminated from the study as they had never been to an incident or fire scene in any capacity. A further 55,000 volunteers were then eliminated from the study as they did not meet the criteria of attending one fire a year. That is the data that was extracted. I also want to point out that in 4.10 Queensland Fire and Rescue Service were involved in this study at Monash. That is one of the fire services that did forward their data.

Again, I go back to the whole purpose of the legislation to begin with in 2011, which was to reverse the onus, remove the barriers to accessing compensation and to stop the litigious environment of having to go in there and prove that, 'Look I have been affected because of my service as a firefighter.' If you do not have the evidentiary base there—and certainly Monash has done incredible damage to a case if I was representing a volunteer and that is there is no evidence, based on an Australian study that involves Queensland fire services, the largest study that has ever been conducted on the incidence of cancer in firefighters for volunteers. If I am an employer or a lawyer—I can see what is coming. They are simply going to rebut it and then the volunteer will have to go into litigation and you are back to where you started.

Tasmania got it right. Tasmania saw a hurdle and said that argument may be put, even prior to the Monash University study. So they said that they will make sure that their volunteers are looked at by putting in a number of contacts where there is proof that have actually attended the fires. That does overcome that burden of proof and stops that rebuttal. On top of that, if you have a look at the Tasmanian legislation—that is at page 27 of our submission—there is a quote from the then minister under 5.25 in relation to the number of exposures and why the legislation was structured in the manner it was. But in 5.24 of our submission on page 27, it states that originally there were 520 exposures over a 10-year period of employment or 260 exposures over a five-year period of employment. After analysis of their response records, they actually reduced that down to 150. That is the background.

CHAIR: Peter, thank you very much for taking us through that. We do have that detail here, which is excellent, but I want to give some of the other members of the committee an opportunity to ask questions as well.

Ms James: Can we just add something to do that?

CHAIR: Yes.

Ms James: In relation to the Monash study, if you do have the report—and I note that it was to be tabled to you following the public hearing—on pages 13 and 14 of that report there is referencing to certain cancers that do have a significantly higher risk for the volunteers. I think from memory—and I do not have the report in front of me—it is prostate, testicular and a couple of others that they have made mention of that there was significant data there to support volunteers being at a higher risk.

The other thing that I think may have been missed in some of the submissions is that in that Monash report when they are talking about the volunteers, they are actually talking about pure volunteers. What they are not talking about are the volunteers who have been volunteers for a certain number of years and then have moved into a paid firefighting role. They are actually put into the part-time firefighter category. So you are looking at a hybrid firefighter if we are looking at the part-time category. In that data in the Monash study, there are significant findings for risk. One of the problems with the legislation that we have in relation to the 150 is that it also applies for those hybrid firefighters. They still have to go back and find those 150 attendances. The issue that we found with the claims that we are putting through workers compensation at the moment—and we have had success—is that we cannot actually get the data to prove 150. So whatever the arbitrary number is, whether it is

50, 150 or 690, it matters not. Even if it is one, we cannot get the data out of QFES or out of any of the record systems to prove that there was an attendance at an exposure incident, however it may be end up being defined, because the data does not exist; it has not been kept. That is where the unfairness of this comes from. It is an evidentiary burden. It is an offering to the volunteers, in some way some respect, but it is never going to be achieved. It is a dangling carrot that cannot be reached.

CHAIR: I think a number of submitters have actually made the point about record keeping in a number of different ways. I do not know if that is the question Michael is going to ask, but I am sure someone will.

Mr CRANDON: It is interesting that you talked about attending a car fire the other day. I know that the rural firies in my area are the first on the scene down in the Rocky Point area, in the canelands; they are miles away from the firies. They are normally first on the scene at truck rollovers and so on. That was another good example. There was an example that I used at our hearing with the department the other day and that was one that I was aware of where unbeknownst to all and sundry, there was an illegal tyre dump. Of course, in goes the fire, in go the firies behind the fire, up go the tyres and you guys know better than anyone what sort of a mess that makes.

I think we also suggested that it is not unreasonable to assume that there is the occasional illegal dumping of chemicals or, for that matter, just the dumping of unused chemicals that are dumped out in the scrub somewhere—out of a sight, out of mind type of thing. The response, if you like, to some of the questions from the department was that you guys are taught to be upwind from the fire. My mind tells me, 'Hang on a second, winds change direction pretty quickly at times,' and we see that with disasters that occur where the wind changes direction and comes back and, sadly, takes the life of a firefighter. Can all of you—and even you, Steve—relate? For us to consider, we need this type of information about the rural firies. Can you pinpoint some examples of where those sorts of things have happened?

Mr Gillespie: There is just one thing that I would like to address with Michael if I could. Cast your mind back to last year when they had the big boat shed fire in Steiglitz; do you remember that?

Mr CRANDON: Absolutely.

Mr Gillespie: The very first three appliances on that fire were Rural Fire Brigade appliances and they stayed there for the whole time. Volunteers were exposed in exactly the same way. Justin has some further information for you.

Mr Choveaux: This is something that was definitely, I believe, not covered well in the departmental hearing last week. There may have been a perception given in the departmental hearing last week that rural fire brigades only go to grassfires and that they will stand waiting for a red truck to turn up with either part-time or full-time firefighters, they will meet the needs of the community and the volunteers will stand in the background. That perception that was given is completely erroneous on a number of different levels. The first is let me talk about Mungallala. Mungallala is just west of Roma. Mungallala used to be an auxiliary station. So there was the butcher, the baker, the grazier and the candlestick maker. Their pager would go off, they would go down and hop on the red truck. They would get part-time pay and they would go and deliver road crash rescue, BA, internal structural attack and all those things that make the township and the local environment in Mungallala safe.

That auxiliary station has now been transitioned into a rural fire brigade. That means that the red truck has been taken away. There is still the same butcher, still the same baker, still the same grazier, still the same candlestick maker, but now when their pager goes off they go and hop on a yellow truck and they fight the fires that are emerging in the community. Are there house fires in that community there? Are the toxins that come off the houses any different? No. Are the shed fires they fight, the grassfires they fight, any different? No, they are not. When they were auxiliary firefighters and they were going out to the same butcher and the baker, they would be under the schedule 1 fire. Now that they have been transitioned to rural, they are still exactly the same fires. There is the burden of 150 fires, which is under that scheduled period, which we would see as a double barrier. So that is another barrier that has been put in the way of rural firefighters.

Let us talk about Weipa. Weipa is a rural fire brigade town. The closest auxiliary appliance to Weipa is Cooktown. On a good day, when it is not raining, it is a seven-hour drive. So whatever the volunteer rural fire brigade has to deal with in Weipa or on any of the islands, or generally, the rest of the state is up to the volunteers. The smoke does not discriminate. The smoke does not care about that.

That is just talking about fire. Let us talk about the other major component of what rural fire brigades do and that is meeting the emergent needs of their communities wherever they are. Rural fire in Queensland has 36,000 volunteers. We have 1,000 yellow trucks. We have 2,700 mop-up or

slip-on units. We have 760 trailable units. Really, rural fire is the largest capacity response and recovery organisation in the state. It is about cyclone, it is about flood; it is about everything else that happens.

If you have a look at Grantham, I was with the clean-up with Grantham. I was down there, as were many other volunteers and soldiers and part-time firefighters and full-time firefighters. If you have a look at the Army records for everybody who went through Grantham, the Army permanent records states that they have been and there was asbestos.

Mr CRANDON: Mesothelioma.

Mr Choveaux: Volunteers are being exposed to that as well. I think the concept that a volunteer only attends bushfires, does not attend house fires and does not go into these different types of smoke and that is all they do is a completely erroneous proposition and it was something that I believe needed clearing up, because that was the perception that I received when I read the transcript of last week's departmental hearings. In a lot of towns, no-one else is coming; it is your neighbours who fix your problems, because a rural fire brigade is a community response organisation that will meet any needs that happen to that community whatever they are.

Mr Bunney: We would just like to add to that statement that the firefighters who we service, when we walk up the stairs to their house and they meet us at the door and say, 'I just got the diagnosis. It's cancer' or it is some sort of myeloma, we do not distinguish where they are employed; we distinguish that they are firefighters. What we understand—and residing in the outer area and being an operational firefighter for 26 years I have worked side by side with these guys in the yellow trucks and I have been standing there in my full protection equipment when they have throwaway yellow disposable overalls—when I go back to my station, there is a routine in place and a standing order saying that you will get that off and you will put it in a bag. We as an organisation will take responsibility for that to get it cleaned, to get it laundered, to get it checked that there are no carcinogens in it and to get it back to you. In the meantime, we will provide with you a second set of gear—fresh. For the rural volunteers, they do not get any of that. They do not even get a washing machine. They do not even get instructions of what to do when they come back from a fire. They are unaware of the risk that they are taking—doing their community service, turning up to a fire that somebody has seen driving past in Jacob's Well. It was not just a bushfire; it was a stolen car that somebody had driven in there. They do not know until they drive up to the scene what they have. They are standing there in throwaway overalls. If you put them alongside permanent professional firefighters, who are wearing structural firefighting gear and who are aware of the risk and have the protective equipment, we acknowledge that for those firefighters but, for our volunteers, there has been a long line and a long history of second best.

The foundation has been working hard with the Rural Fire Brigades Association to try to raise the awareness as to the risk, but there has to be some recognition from the employer and some awareness from the employees as to the risk. But that does not stop them from going. That does not stop them from presenting themselves to that environment. As we know, firefighters will come back from a fire and go and have that shower, get that contaminated gear off, put fresh clothes on. When the rural firefighters turn up, they stay in them clothes all day. We know from the research studies saying that those particulates and those gaseous substances are trapped and they are being exposed to them. They get back to the station. They cannot shower. A lot of the rural fire stations do not have showers. So there is a whole host of reasons that the arbitrary figure of 150 needs to be looked at justifiably as to say, 'Are they firefighters or are they not really firefighters?' So let us put this protection on.

CHAIR: I think Rodger you were keen to say something.

Mr Sambrooks: Thank you. In our submission we pointed out that—and I am not having a go at anyone or anything—it seems to be that the more money you have to fight these causes, the better off you will be. If we look at the permanent side at the moment, they are very, very strong, good jobs. These firefighters are on shiftwork from eight until six and from six until what? Fourteen hours. I would say that, with most of these surveys, they are done across-the-board. They are not checked with what each firefighter is doing. I can talk to a lot of firefighters in towns where there are permanents and they have not been to a house fire in three years whereas an auxiliary or a permanent are around these fires all the time. They are the same guys turning out. You only have to look at the structure of the way that the permanent system is set up. I think if you had done the survey, they would have to be doing 150 fires, because a lot of them are not going to that many fires before they are covered. So it has to be fair.

They are saying that there is going to be an inquiry. Surely, the legislation can be drawn up that it cannot be doubted—that there is no doubt if a doctor proves that that is what it is. As you said before, if our keeping is not up to scratch as to what fires we are going to, it has to be tightened up so that we have records of what fires for these rural guys. We know with the permanent and auxiliaries, because a report goes in after every fire.

CHAIR: John and Peter and Joanne, you look like one of you is going to make a comment.

Mr Marshall: I have some sympathy with what my colleagues are saying here. However, it is the very point. What was being submitted to this committee is what would be submitted to a hearing in relation to whether a volunteer firefighter is actually entitled to a cancer compensation, because you would have to make the case whereas the whole purpose of presumption legislation is to reverse the onus based on the evidentiary proof already being there. That is the problem—not having to rock up and make a submission in relation to, 'I attended a fire on this night and blah, blah,' because the lawyers will just shoot you down. That was the very situation we had prior to 2011. So as much as I have some sympathy for my colleagues and agree with what some of them are saying, the reality is that it is a misconceived perception. If you do not have an evidentiary base to be able to go in for a presumption case, you are going to get knocked back. It will be a lawyers' picnic. This is the problem with the first bill.

The second bill with the contacts, it was designed not to disadvantage volunteers but to give them a right. As much as I would make submissions on behalf of a person I was representing, the lawyer opposing from council, from the insurer, would just simply say, 'I refer to a Monash University study that Queensland was involved in and it says that there is no elevated risk' and here you are back into a litigious environment.

Ms James: I can add to that. Having had the experience of taking matters through WorkCover—and we have had a number—we have some whose cancers do not fall on that list but the medical evidence is certainly supporting the claim as being an occupational cause. We have had one gentleman who has had his claim for prostate cancer accepted but his claim for bladder cancer, which was a double diagnosis all at the same time, declined. That is what presumption legislation will achieve. The evidence is already there for the decision-makers to refer to in order to make decisions to accept the claims. That is what WorkCover Queensland is doing at the moment.

We worked really hard with WorkCover to share that information to give their doctors, who are doing the reports, access to all of the studies. I have a drop box that I am in control of and WorkCover and the Workers' Compensation Regulator and their doctors all have access to that drop box and we all add to it. We all add all of the data. We are working together really well—

CHAIR: Great.

Ms James:— to get the claims through as quickly as possible and as fairly as possible. We have not had to take one to court yet. The matters that have been rejected have been rejected with good investigation and with sound reasoning. The ones that have been rejected that we have disputed have been sent back to WorkCover for re-decision from the regulator. That was purely a question of timing in that we were unable to get the medical evidence to them.

What we are finding is that the oncologists who are providing the reports and the experts who are providing the reports so far we have not been issued with an invoice from any of those doctors for the cost of those reports. They are very sympathetic to the cause and they go out of their way to get that information so that they can make a valued opinion and offer that up to WorkCover. WorkCover has trialled a number of doctors as well in order to get more than one doctor being able to provide expert opinion on this. They are still looking for other doctors so that there is a team of people who can be working on this issue. So inasmuch as I agree with some of the things that Peter is saying, the response from lawyers, and particularly from the insurers, is just not what is happening in Queensland at the moment.

CHAIR: Yes?

Mr Gillespie: We have heard a lot about what is happening in Tasmania and what may or may not happen. Whether it is one or 150, it is relatively untested because we have not gone to test that legally as yet. Perhaps we need to discuss what is happening in South Australia. South Australia—a Labor government—has presumptive legislation that has equality for volunteers in terms of the number of exposures being one, whether you are paid or whether you are a volunteer. In the last two years, there have been three claims against presumptive legislation in South Australia, all of which have proceeded without challenge. I think that speaks volumes. We are talking in the Tasmanian

concept of a hypothetical. We have a very real set of circumstances here in South Australia where volunteers only have to attend one fire incident in the prescribed period and then they are deemed to be covered. They have already had three claims made in the last two years—not an excessive number, I agree; nonetheless, we have had three claims that have tested that system and that system has stood the test of time and, more importantly, legality.

CHAIR: If you would just like to make a brief comment, Peter?

Mr Marshall: The reality in relation to presumption legislation is not about whether a firefighter is a firefighter; it is about the evidentiary burden of proof. If I could take you to our submission, this is what the Senate in Australia based it on and if I can just take you through—

Miss BARTON: With due respect, Madam Chair, I am conscious that time is running short and we are all capable of reading the submission.

CHAIR: Peter, is there a particular thing just in reference to—

Mr Marshall: All of those studies—and there are six or seven of them with a considerable number of results that were put before the Senate inquiry—were all about career firefighters other than the Monash report, which came out after the Senate inquiry, and that is contra. What I am saying is that it is simple for a lawyer to say, 'The evidentiary burden of proof, you have not made that.'

Miss BARTON: Madam Chair, this point has been well made.

CHAIR: Yes. Thank you very much. I think that we can move on to your question, thank you.

Miss BARTON: Thank you very much. My question is for John. Can I preface my question by acknowledging your members and the work that they do as well as the work that the auxiliaries and the volunteers do. All of us very much appreciate the work that they all do. I wanted to clarify something in the concluding comments in your submission, if I could, because it just seems a little bit vague. I am not sure whether you are holding a view similar to Peter or whether you are holding a view similar to Alan and Justin. You said that you encourage the committee—

... to look towards a co-operative parliamentary approach to dealing with the long overdue recognition, through presumptive legislation, of occupational cancer for firefighters by removing barriers that currently prevent, or discourage, firefighters from accessing entitlements to treatment, assistance and compensation for the 12 listed cancers.

Your submission does not necessarily make it clear: do you think that the volunteer firefighters who serve alongside your members should be treated equally or do you think that they should be treated effectively as second-class firefighters?

Mr Oliver: I do not believe anyone who goes and volunteers for the community is a second-class anything. I would also like to say that we also represent auxiliary firefighters as well, not just career firefighters. In any event, regardless of the emotive positions put here today, it is an evidence based decision and the evidence that is put forward in the studies is clear.

Miss BARTON: I am conscious that others have questions. You believe that volunteer firefighters should have to meet a higher evidentiary burden in order to receive the same compensation that members that you represent do?

Mr Oliver: I think it actually adds protections for them. I actually think it makes it better for them to have the 150. I do not think it is inequitable considering the evidence that is in front of us now. I think it actually helps them with their cause, not makes it more difficult.

Miss BARTON: Just to clarify, you believe that volunteer firefighters who, by their own admission have not been in a position to keep records proving that they may have fought 150 fires, are better treated by having to meet an evidentiary burden that is higher even though they do the same job as the auxiliaries and professional firefighters? Just to clarify, you believe they are well served by having to meet a high burden even though they do the same job?

Mr Oliver: Just to clarify: firefighters, in our view, aren't fire fighters. Firefighters are firefighters. Career firefighters do a lot of different roles apart from just structure fires: bushfires, urban search and rescue, chemical fires, chemical incidents—all different types of rescues, as we all know. I do not want to go into tit for tat about what a firefighter is. However, structural firefighting is what this evidence is based on predominantly and that is going inside a fire and then getting your turn-out gear and all that sort of stuff saturated with the smoke, it goes onto your skin, into your filters and that is what causes the issue. There is not enough science or evidence that I have seen that brings forward any change to that theory. According to Monash, it is the opposite with over 200,000 volunteers. I am struggling to see the comparison. However, if I was looking for a vehicle to add to this legislation to include volunteers I would say the 150 would be of benefit to them not a burden.

Mr PEGG: I just had a question for Justin and Alan. We heard about the evidentiary challenges of proving that you have attended 150 incidents. Putting that to one side, and I appreciate that it would be different for different volunteers and different areas, but how quickly would you reach the 150? For instance, Justin and Alan, do you keep your own personal records? How quickly did you reach 150?

Mr Gillespie: I cannot provide that information in terms of individuals, but I did have Assistant Commissioner Neil Gallant do a quick computer runout in terms of the number of brigades that attended 150 incidents over a five-year period. Obviously five years is one of the qualifying periods. Just as a rough guide, out of 1,400-odd brigades there were 106 brigades that attended 150 incidents. There are a couple of qualifiers on that. Firstly, that is 150 incidents, not 150 fires. Let us remember this particular legislation talks about fires. It does not talk about chemical spills, petrol spills, fumes, accidents, floods; it talks about fires. Those 106 brigades that qualify for 150 incidents, they may not necessarily have been fires. It also means that not every member of that brigade attended that number of fires in that time. But it gives you a good indication that the records that the fire service keeps at the moment have indicated that only 106 brigades out of 1,400-odd would have attended over 150 incidents in that particular period.

Ms James: We might be able to assist to give some perspective of numbers. We have three of our clients that have had accepted claims with workers' compensation. Admittedly they are long-term career full-time firefighters. One gentleman with 29 years in full-time career firefighting attended 410—his categories are—structural, bushfire, rubbish fire, hospitals and 88 chemical exposure events. Another gentleman who is in Northern Queensland and actually formed part of the Atherton firefighter cluster that sparked the study back in 2006, and he sadly passed away three weeks ago with brain tumour, his claim was accepted two weeks after he passed away. From 1990 until 2006 is his category time frame. His structural was I think it is 219, vehicle transportation 41, bush/grassland/wild fires 264 and chemical 34. We have another gentleman who is a Gold Coast firefighter. He also has 29 years of experience and his was transport/vehicle 103, structural 221, bushfire 287 and hazmat chemical 38. That just gives you some idea of what the full-time firies are doing. That is incomplete records as well because our right to information with QFES actually does not provide a full record.

CHAIR: You made that point in your submission. Alan, did you say that Neil Gallant, who was actually here before us last week, provided that profile to you?

Mr Gillespie: Yes, he provided that to me.

CHAIR: Could we get a copy of that?

Mr Gillespie: It was just a verbal. It was just one of those quick things. I said can you quickly find out. It was just a rough estimate.

CHAIR: We can get probably get that information from him anyway.

Mr Gillespie: You can get that information certainly. There are a couple of other points I would like to make as well.

CHAIR: This is obviously a complex and quite big issue. Anything we do not cover today—the hearing is unfortunately going to have to finish soon—we will follow up with questions and ask you to reply to us in writing.

Mr CRAWFORD: I am conscious of the time. I have more of a statement rather than a question. Over the course of my life I have done 21 years as a volunteer firefighter. I know where you guys are coming from. My time was over a number of brigades across a number of areas of Victoria. I have seen good brigades operate where they keep excellent records and I have seen bad brigades operate where they keep terrible records. I think the key thing here is that what the committee is trying to do is put the right level of cover in. That is the decision that we have to make. We do not want to do something that waters something down, we do not want to do something that excludes any group. An interesting thing that came from the conversation with the department the other day is trying to clarify exactly what the 150 will entail. We did speak to them and ask questions about is it fires, is it incidents, what is it. They started talking more about exposures. John, I put you on the spot as a rookie firefighter, when you went through, how many exposures would you have done during your rookie training course? How many times would they light up the pad?

Mr Oliver: Just in our training almost every day depending on what phase you were in. Not only inside container fires and fuel fires, we also used a lot of different types of toxic foams and that was highlighted in places like Oakey airbase of late, but quite often. Also there was a mention of chemical fires as well in some of the stats and one of them was 38, so those exposures are even more severe than what a normal fire would be. Narangba would be a good case of an incident where

firefighters were exposed to a point where they had to change the tyres of the truck and rolling up the hose with all the chemical cocktails. It is not just the fumes, it is also the actual contact with the products.

Mr CRAWFORD: So when we are casting the net across and we are talking about some of the rural brigades as well, we are not just talking about incidents that you get called to, we are also talking about burns that you do and training runs that you do where you light things up. I am mindful of the records of that. I know what it is like being a volunteer. The records of who turned up to a training night last Thursday night where we set a car on fire and put it out in some brigades are probably non-existent. But I do believe that there does need to be something that we have there that gives us some weight.

Mr Choveaux: If I may quickly go to that. I was having a look at your service. You were the first officer at a CFA brigade between 1987 and 2008 and went to over one thousand 000 calls in the town of between 10,000 and 15,000 people. So you would have probably had quite good record keeping there. I think record keeping comes to the crux of one of the most important things of the matter. Whether an auxiliary or a full time firefighter, we know where that truck is all the time. We know what fires it is attending, where they are, who they are. That means you can develop a causal link for claims in the future. I think the conversation should really be flipped over because presumptive legislation is more important for the volunteers because you do not (a) have that record keeping from previously. I started going when I was 16, not because at that time there was an age limit, it was just because I wasn't a particularly big kid. You have to be this high to get on the truck. That is why you find a lot of people who are 12 or 13 when they start riding them. That was a number of years ago now. I would not be able to prove I have been to 150 fires, and we were the first volunteers to fly into Canberra in 2003 and all those different things you get exposed to. I think the burden of providing the 150 for volunteers incorrect because the presumption should be that these people are active, these people are out there in their community defending their communities. Because they are not riding a truck that has that record base of full-time or part-time volunteers, that presumption should be extended to them more than the firefighters who you know where they are at any given time. To have that double barrier added to volunteers in Queensland—where we have seen that in South Australia it can be taken away. There is existing legislation in South Australia that says that the illness—because they do not call it a cancer in the South Australian legislation—is a volunteer and a firefighter needs to attend one over the schedule period and there is a 10-year sunset clause. The recommendation of the South Australian committee was to take that 10-year sunset cause out. I heard another person groan when I said that there, but why would Queensland look at possibly bringing in legislation that is not best practice. Because, remember, Victoria and New South Wales have not started their presumptive legislation debate yet. It has been bubbling away in the background for a while. You have got 130,000 or 140,000 volunteer firefighters in that state. I would like to table two communiques from 24 July 2012 which are joint communique—between the United Firefighters Union Australia, the Victorian branch, and the Victorian Fire Brigades Association down there that talks about a joint message for everybody being entitled to presumptive legislation.

Mr Marshall: Seeing I have just been named I need to explain exactly what that joint communique is. I know you are running out of time. We have come here to assist based on our experience. There are two other points I would like to make if possible.

CHAIR: I will just ask you, Justin, to quickly wrap up because unfortunately one of our committee members has to leave. Is there anything quick that you would like to add to that? I just reiterate that we will be coming back to everybody with questions.

Mr Choveaux: I believe that my case has been made.

Mr Marshall: That joint communique is correct, but the system we are advocating for is the Tasmanian system which has been now replicated in the Northern Territory. Additional to that, the Senate inquiry really looked very carefully at cost as well as the evidence of proof. The issue of cost was one that was significant from the deputy chair, Chris Back, and that is on page 38 and 39 of our submission. There has to be a balance. One, the scheme has to be viable; two, it has to remove the barriers but it also has to give some protection to the insuring employer. That is why the Tasmanian system works. We say that because we have experienced it from day one. In relation to South Australia, it will be interesting to watch what actually evolves there in particular in the future years as to the viability of the scheme. And, three, in relation to the rebuttal. It will be very interesting to see what happens.

Mr WEIR: Very quickly, and probably to Steve because you have experience as a firefighter and you also deal with the cases, obviously: I can only imagine the trauma somebody would go through if they have been diagnosed with cancer and they are trying to scrounge together their record

and prove 150 fires. It could have come in the very first incident, but they have to wait to do 150 before they are eligible and then there is a 10-year sunset clause on it. I imagine the trauma on those people would be astronomical and does not encourage people into a voluntary position, I would suggest.

Mr Bunney: We can confirm that we have actually heard of people being instructed not to make a claim now because there is no presumptive legislation to support them. What we need to identify to everybody is that claims can be made now, but for somebody who sees this legislation and sees they have been excluded they will not make a claim. They will not make a claim. We will be there, regardless of whether they are eligible or ineligible, to support them and fight their fight.

CHAIR: I am very sorry to wrap this up. Thank you all very much for the work you have put into your submissions and for coming today. I reiterate that we will come back to you with further questions. If you see anything that has been raised in today's hearings, in last week's hearings or in any evidence that has been put before the committee, we welcome your further comment on that. We have invited the rural fire brigades themselves to attend next Monday. But if there is any other evidence you see—and obviously we are moving fairly quickly on this hearing—we would welcome those comments as soon as possible.

Mr Marshall: Madam Chair, we have a copy of the Senate report for all committee members. That saves you trying to Google it.

CHAIR: Thank you very much, that is very helpful. We appreciate that. I declare this hearing closed.

Committee adjourned at 5.46 pm