LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Ms SL Bolton MP (virtual)
Ms JM Bush MP
Mrs LJ Gerber MP
Mr JE Hunt MP (virtual)
Mr JM Krause MP

Staff present:
Ms R Easten—Committee Secretary
Ms K Longworth—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE PERSONAL INJURIES PROCEEDINGS AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 4 MAY 2022

Brisbane

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The committee met at 10.30 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022. My name is Peter Russo, the member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share. With me here today are: Laura Gerber, the member for Currumbin and deputy chair; Sandy Bolton, the member for Noosa, via videoconference; Jonty Bush, the member for Cooper; Jason Hunt, the member for Caloundra, via videoconference; and Jon Krause, the member for Scenic Rim.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask that you kindly turn your mobile phones off or to silent mode.

AVERY, Ms Kate, Director, Kare Lawyers

CHAIR: Welcome, Kate. Would you like to make an opening statement before the committee has some questions for you?

Ms Avery: I thank the committee for inviting me to present to you today. Firstly, I want to make it clear that Kare Lawyers very much supports the review into the act. We agree that further restrictions to eliminate the practice of claim farming are appropriate. Claim farming is abhorrent. It has a number of problems, obviously, not the least of which from our perspective is the tendency to bring the profession into disrepute and to challenge the ongoing viability of our insurance schemes. From my personal perspective, my concern is that it will cause unnecessary distress to victims of trauma. It is for the same reasons that we also support the ongoing restrictions on advertising of personal injuries services. It is true that tasteless advertising brings the profession into disrepute, it can cause unnecessary trauma to vulnerable members of our community and, if it has the propensity to encourage people to make claims in circumstances where they otherwise would not, it also brings into question the ongoing viability of the insurance schemes.

The written submissions that we have made to the committee relate not so much to whether there should be restrictions on advertising but the manner in which the advertising has played out since it was introduced—remembering that it was introduced in 2002, prior to the existence of social media and prior to the important changes to the reputational economy, where there are a lot of Google reviews and things like that that go up on the internet that were not contemplated at the time the legislation was brought into effect.

The Legal Services Commission has interpreted section 66 of the Personal Injuries Proceedings Act as having the effect that firms cannot have photographs of the practitioners on any page of a website that also refers to what they do. The ongoing feedback that we are getting from prospective clients is that they look at our website, even having searched for personal injuries lawyers in Brisbane, and do not know what we do. That can raise a lot of problems. One is just simply that people are not able to find us. Another is that they suspect we might be hiding something: 'Why is there not full disclosure here? Why are you not saying what you do?' We have had people say that to us. We have also had inquiries from people who assume that because we have two female directors we must practise in family law. That is not very effective and not very efficient. Also, it is not great for consumers if they cannot find out what people are doing. I do not believe that was ever the intention of the

legislation. My view is that websites are really not so much designed to be advertising mechanisms as they are the shopfront, effectively. People want to know whether they are at the right place and whether they can call these people and they will get an answer.

Large firms have been able to circumvent—quite legally, I should say—the restrictions that were intended on advertising. For example, a large firm can legally—and, according to the Legal Services Commission, completely ethically—put a large billboard on the M1 that says the name of the firm and then 'no win, no fee' and then 100 metres down the road have another sign that says the name of the firm and 'personal injuries lawyers'. That was not really what was intended by the legislation but because they have not used the terms 'no win, no fee' and 'personal injuries lawyers' on the same billboard, the Legal Services Commission's interpretation of that is that the no-win no-fee statement could relate to other areas of practice in the large firm because large firms practise in multiple areas. We would respectfully suggest that that outcome is disingenuous because I am completely unaware of any area of practice in which solicitors routinely accept instructions on what is commonly known as a no-win no-fee basis. It also has the effect of doing precisely what I understand the legislation was designed not to do.

We would also suggest that the term 'no win, no fee', when used even indirectly in connection with any form of injury, is disrespectful to victims of injury and misrepresents the nature of our compensatory system. The system that we have in place in Queensland through the common law in the legislation is a compensatory system. To suggest that somebody receiving compensation for injuries has achieved a win we would suggest is disrespectful. We would prefer to see a situation in which the term was not permitted to be used in any context and for any area of law.

Another way in which some firms have been able to legally circumvent the restrictions on advertising is by advertising for TPD and superannuation claims. These are not covered by section 66 as they relate to contractual claims. Again, it is perfectly legal and the Legal Services Commissioner has assured everybody that it is ethical, but my concern with that form of advertising is twofold. It is a little misleading because a layperson watching an advertisement that shows all of the visual signals of personal injuries—the debris from a car accident, for example—but then has an asterisk and says 'TPD and superannuation claims' is going to assume that it is an ad for personal injuries services, whatever the small print may say.

We have another concern with this legal loophole—remembering that we could use it should we choose to, but the reason we have not is that our view is that, generally speaking, consumers do not require legal representation for TPD and superannuation claims. We will accept instructions in relation to them but always with the proviso that lawyers do not offer any kind of actual commercial benefit to the client until a claim is rejected. We just do not feel that that is a useful area of law and allowing that loophole is actually encouraging people to seek out legal representation in circumstances where it is not required.

We are also concerned—and this perhaps I should declare has a level of self-interest for our firm—by the uncertainty created by the legislation in the context of the modern digital environment. On one reading of the legislation, we may actually be legally and ethically obliged to remove any kind of unsolicited positive review that our clients leave on Google or social media. The reason for that is that it is a third-party database and that may be regarded as an unlawful testimonial. On one reading of the act we are actually required to remove positive reviews and leave negative ones. Obviously that is not in our interests, but it has the tendency to bring the profession into disrepute and it is not useful for consumers either.

I really want to emphasise that it is not our intention to be disrespectful to lawyers in larger firms. Larger firms are essential. They are the only people who can run class actions. What they are doing is not unlawful or unethical but there are reasons consumers seek out smaller firms. We are able to provide a more cost-effective and personalised service. We simply suggest that consumers should have the ability to find us without knowing a lawyer. Our entire firm operates on word-of-mouth referrals. We can run a very successful business on that model, but it does depend on the consumer knowing a solicitor to give them that referral before they can see us. We would just suggest that consumers without that legal contact should be able to find us should they be actively seeking out a smaller firm.

To that end, the suggestions that we have made to the committee are: that there is altering of the legislation so that the advertising restrictions contained in section 66 not apply to a firm's website or social media; that unsolicited testimonials or reviews should not be required to be removed by a firm; that restrictions contained in section 66 should be extended to TPD and superannuation claims or any other form of contractual dispute that relates to personal injuries; and that solicitors should not be allowed to advertise using the term 'no win, no fee' irrespective of the area of law in which they may be referring. I am open to any questions in relation to that.

Mrs GERBER: Given you are the director of a significant law firm, can you give the committee any insight into one of the policy intents of the bill, being to 'prevent undesirable costs agreement practices by law practices for personal injury claims'? I am after your insight in relation to that policy intent and specifically around law firms giving certain aspects of their practice that they would otherwise do in-house to a third entity and then being able to classify that as a disbursement, thereby circumventing the fifty-fifty rule. I understand that may also open the door to claim farming, but in my view it is an issue in itself in relation to circumventing the fifty-fifty rule. I am after your perspective on it as a legal practice director.

Ms Avery: I completely agree. I think there are certain things that are being outsourced that do not need to be. I even extend that to the overuse of counsel, but that is perhaps more appropriately an issue for legal ethics rather than legislation. It is true that some firms are outsourcing tasks that really should be done in-house and should be classified as professional fees for the purpose of the fifty-fifty rule.

Mrs GERBER: What is the consequence of that? Why would they do that? Can you give us a bit more detail around that?

Ms Avery: I should say that a lot of what you have mentioned I only saw from the proposals to the review, but I could certainly see how it could be used in the sense that we have been approached by organisations that have offered to obtain statements from witnesses following a motor vehicle accident. We have decided not to accept those referrals because they just seemed a little bit too close to claim farming and, in view of the submissions that have been previously made to the committee, it is quite clearly the case that they were. It does raise another important issue—that is, if the firm is leaving the obtaining of statements to a third-party entity and then passing that on as a disbursement to the client, yes, that would make a substantial difference to the application of the fifty-fifty rule because the amount being charged is probably reflective of a substantive component of the professional work that should be done by the solicitor.

Mrs GERBER: Just to make sure that my understanding of it is correct, the reason it falls outside the fifty-fifty rule is because disbursements—

Ms Avery: That is right.

Mrs GERBER: And the fifty-fifty rule is a high-water mark. Not all firms charge 50 per cent of the claim that they are able to get for the claimant. That is my understanding.

Ms Avery: Yes, that is right.

Mrs GERBER: I think that pretty well answers my question, thank you.

Ms BOLTON: Regarding the advertising and the concerns and the suggestions you have put through, what did the department come back with as a response, if any?

Ms Avery: The department?

CHAIR: Sandy, I do not know if that is a question that Kate could answer. You are asking for the department's response to her submission?

Ms BOLTON: Yes and whether you are satisfied.

Ms Avery: I have not received one.

Ms BUSH: Kate, you have actually cleared up some of the questions that I had. You mentioned that the Legal Services Commission had interpreted section 66 in a particular way around imagery and specifying the nature of the work that a lawyer was engaged in. Can you explain to me how you know that? Had they issued instructions to you? Is it just something that they speak about in a conference? How was that brought about?

Ms Avery: No. They actually contacted us and asked us to amend our website. As I said, we have ethical concerns ourselves about not having imagery or video footage that would be triggering to people who had suffered trauma. We assumed that photographs of ourselves were just a practical issue. If people saw a website they may want to see a face to know that we are going to provide personal service. If they were coming to meet us in a public place, as some of our clients do, in a coffee shop, they could recognise us. The Legal Services Commission said that we could have the photographs of ourselves but it could not be on the same page as any reference to us being personal injuries lawyers.

Ms BUSH: I can see that on your website you have your team and then you have your services—

Ms Avery: They are not on the same page.

Ms BUSH: And your preference would be to join them up?

Ms Avery: Yes, just to increase the ease with which people can understand it.

Ms BUSH: I get that.

CHAIR: In relation to your submission, I read somewhere that you do acknowledge that that is outside the scope of the bill.

Ms Avery: Yes.

CHAIR: Is it fair to say that you felt it was timely that the advertising provisions under the act be revisited? Is that the crux of where you are coming from?

Ms Avery: It was partly that. It is also that I see some overlap between claim-farming practices and a lack of proper, clear communication with consumers.

Mrs GERBER: In your response to my question you mentioned that your firm had been approached to compile statements and that you turned that down, and rightly so. Are you able to inform the committee who that was? Was it from other law firms?

Ms Avery: No.

Mrs GERBER: Was it private businesses?

Ms Avery: It was a private business.

Mrs GERBER: Did you report that to anyone? Where did that go?

Ms Avery: We sought clarification from the ethics solicitor at the Queensland Law Society. We did not get a clear answer as to whether or not it was ethical. We made the decision that it was just too close to being claim farming for us to feel comfortable with it.

CHAIR: Are you saying that an individual or an individual organisation approached your firm to purely prepare statements on behalf of potential claimants?

Ms Avery: Yes, but it went further than that. The reason we were concerned by it was that they were saying, 'We can take statements from victims of road trauma'—

CHAIR: I am sorry; they would take the statements?

Ms Avery: They would take the statements and then refer the client to us. That seemed a little too close to claim farming.

CHAIR: And then would charge a fee for that?

Ms Avery: Yes.

CHAIR: I think this may have been answered already: were they legal practitioners?

Ms Avery: It was a little bit unclear. They tried to reassure us that they were not claim farmers because they had an association with a barrister in Melbourne, but it just did not smell right.

CHAIR: That brings to a conclusion this part of the hearing. We thank you for your attendance and thank you for your written submission.

Proceedings suspended from 10.50 am to 11.09 am.

HORTON, Ms Kylie, Executive Manager Qld CTP Claims, AAI Ltd

WILKINSON, Mr Daniel, Executive Manager CTP Qld & ACT, AAI Ltd

CHAIR: Good morning. I invite one or both of you to make an opening statement.

Mr Wilkinson: Thank you, Chair. I will make an opening statement on behalf of us both. Good morning. My name is Daniel Wilkinson. I am the Executive Manager of CTP Queensland and ACT at Suncorp. For clarification, AAI Ltd is the legal name for Suncorp Insurance. I am joined today by Kylie Horton, who is the Executive Manager of Queensland CTP Claims at Suncorp. On behalf of Suncorp, I thank the chair, deputy chair and members of the committee for the opportunity to come here and talk to you today and also for the opportunity to provide input to the Personal Injuries Proceedings and Other Legislation Amendment Bill, which I will refer to as 'the bill' from here.

Suncorp is one of Australia's largest personal injury insurers. We operate in all privately underwritten CTP and workers compensation schemes across the country, along with a significant general liability insurance business. As such, we have a particular interest in ensuring that injured people receive timely treatment and fair compensation and that activities such as claim farming are discouraged.

With firsthand experience of the implementation of the claim-farming legislation in Queensland CTP, we support the objectives of the bill and offer the following suggestions for consideration by the committee. With regard to objective 1, to stop claim farming for personal injury and workers compensation claims, we have made two recommendations. Recommendation 1 is to remove the provision for legal practitioners to provide gifts and hospitality to the value of $200 for claim referrals. Our concern here is that the exception does open a loophole that could weaken the bill and that there is little or no benefit for an injured person in having the provision in the bill.

Recommendation 2 is that the Legal Services Commission be appointed the central authority responsible for management of information sharing and ensuring appropriate investigation is conducted when issues are identified. We note that other submissions made to the committee support this idea of some form of coordination as well. There will be something required to coordinate all of the information gathering and sharing across the workers compensation CTP scheme and all of the other personal injury schemes as well. This is essential to ensure that the claim-farming provisions are effective and also that any administration overhead is not duplicated.

In support of objective 2, preventing undesirable cost agreement practices, Suncorp has for some time been active in highlighting to regulators matters where we became aware that claimants were being charged what appeared to be excessive legal fees, or there was a breach or a suspected breach of the fifty-fifty rule as it is known under the Legal Profession Act. We welcome the changes outlined in the bill and offer for consideration by the committee further recommendations.

Recommendation 3 was that the investigative powers of the Legal Services Commission be expanded, empowering the LSC to investigate all legal firms regardless of structure, including partnerships. Recommendation 4 is to implement a mechanism to capture and report all personal injury insurance legal costs in Queensland. Such a mechanism would enable monitoring of adherence to cost restrictions but also monitoring of the efficiency of delivering compensation to injured people, particularly in statutory schemes where the public have a reasonable expectation of knowing how much of the paid premiums ultimately end up with injured people.

Our fifth and final recommendation is to implement further education for prospective claimants explaining common legal terms in cost agreements. Some provision does already exist to provide claimants with additional information; however, injured people are unlikely to fully appreciate the financial implications and intricacies of a speculative personal injury cost agreement, particularly if they have no external reference point by which to judge the reasonableness of the agreement that is being presented to them which is often at a time when they are quite vulnerable.

Thank you for the time to deliver the statement. We have no further suggestions on objectives 3 and 4 of the bill, but we are happy to take questions from the committee.

Mrs GERBER: Thank you for your submission. I appreciate it. I am interested in hearing more from you around the powers of the Legal Services Commissioner under the bill and whether or not they are adequate to target claim farmers or target the abhorrent practice of claim farming, particularly in light of the fact that we do not have any data around who the claim farmers potentially are. We do not know whether it is law firms in collusion with other third parties or whether it is third-party criminal syndicates. In that context, I am interested in your view around how this could be strengthened so that we can get it right the first time and prevent claim farming as part of this bill.

Mr Wilkinson: An insight I could probably offer from Queensland's CTP: when the legislation came into effect, it is difficult for me to say whether the powers that would be given to the LSC would be sufficient to prevent claim farming. We have seen with the claim-farming model, even before the legislation came in for Queensland, that the claim farmers' business model adapts and it adapts quite quickly, so it is hard to say that any bill would implement sufficient powers to stamp it out.

What we did notice in the Queensland CTP implementation was that the pure fact that the regulator was given power to investigate and to prosecute was enough to persuade a lot of the activity that we were seeing around claim farming. In Queensland we are yet to see a conviction under that legislation. I know that there is plenty of work going on by the commission, but even prior to a conviction we have seen a lot of that behaviour gone. I think just the act of giving the Legal Services Commission the oversight will be one good step. Giving them some power to investigate and prosecute would also be another great step. It may need to be reviewed at a future point as those business models adapt, but I think the act of having the power there would be a great deterrent to start with.

CHAIR: In relation to that point in relation to evidence, the difficulty that your organisation faces is that you work in a specific space in relation to compulsory third-party claims, whereas what the new legislation will do is dealing with other claims which you may not have the data from. Your data really comes out of the previous amendments to the motor vehicle insurance legislation? I am not being critical but, for want of a better description, pigeonholing where I guess your expertise is.

Ms Horton: Agreed. We do have claims that will respond to the PIPA legislation but agree that our evidence would be very scant in that regard.

Mr Wilkinson: To add to that, I think currently under the CTP legislation the data-gathering requirements for a CTP insurer are quite high compared to the other schemes. It was already a good baseline of information that could be used to then highlight what the issue was and that the need for action was there. PIPA is good in the sense that there are other states that do not have a framework like that, but it does not have the obligation for insurers to collect and report, certainly not as much information in CTP. You are right: even the information we do collect is not going to be as insightful as the information we had under the CTP scheme.

Ms BOLTON: In your opening statement you spoke of a central authority but also obviously increasing the powers of the Legal Services Commission. I am presuming that you are referring to the same entity? It is not two separate ones?

Mr Wilkinson: That is correct, yes, the same entity. Our submission proposes the Legal Services Commission because the commission is there and already has some jurisdiction over these related matters. It is obviously open to the committee, through other input as well, to determine that perhaps someone like the QLS might be better placed to perform a coordinating type role, depending on what that coordinating function would look like.

Ms BUSH: This has been asked by other members, but so I can understand claim farming and proposals around expanding the scope of the LSC, who is the appropriate entity? What we are hearing is that a number of the third-party farmers may not be lawyers or from that trade; they could just be another body. Is your recommendation stating the scope should be that broad, that they do not need to be a legal practitioner at all to be in the scope of being investigated by the LSC, or are you just trying to deal with the demand aspect?

Mr Wilkinson: The latter is correct. I think that is right. We would not propose that the LSC should have some jurisdiction over prosecuting a matter regarding an entity that is not a legal practice. Within the CTP scheme we have seen that the provision of a legal practice certificate we feel is the right measure, that you are getting a lawyer to confirm that the claim did not come into existence through one of those processes, and that is the point at which this is policed rather than it trying to be too broad.

Ms BUSH: Who, then, is responsible for pursuing those claim farmers that are not legal firms?

Mr Wilkinson: The philosophy of the claim-farming legislation when the review was done way back in 2016 for CTP did look at a number of these factors. It looked at a number of these claim farmers actually being international and the trouble of trying to get some kind of jurisdiction over policing that. Exactly as you said, there can be backyard operations. We do see a broad range of very professional outfits to very unprofessional outfits. The intent of the legislation was to try to pick a point where you could effectively cut off the supply to the claim farmers rather than try to police the farmers themselves. Knowing how quickly they can adapt and may not be members of any association at all, it would become a very difficult policing exercise. The point of trying to make sure that a claim only came into the scheme via means that did not involve claim farming was seen as the way that you would cut off

the supply and destroy the business model regardless of how it was going to adapt. They can obviously adapt now to still try to find ways through it, but it is probably a stronger angle than trying to police the claim farmers directly.

Ms BUSH: On that likelihood of adapting, do you anticipate where they might look at going next if this were to close?

Mr Wilkinson: I feel the claim farmers are more creative than I am.

CHAIR: That may not necessarily be true.

Ms BUSH: I was not sure if you had seen any suggestions.

CHAIR: There is evidence from the previous scheme that that type of activity may not have stopped, but it definitely decreased in the evidence that you collected as an organisation; is that correct?

Ms Horton: That is correct. We have the ability to make referrals to the Motor Accident Insurance Commission. In the first year of the legislation being implemented we were sending a lot of referrals through, but there is a definite decline in our business. In the last 12 months we have sent less than a dozen referrals through to MAIC. There has been a distinct reduction in what we would term as potentially claim farming.

CHAIR: I know it is always difficult to predict how this new legislation will impact on future unsavoury practices in relation to claim farming, but that example would indicate that hopefully there would be a downturn in the number of matters that this type of activity was because that is the evidence that you are able to provide to the committee.

Mr Wilkinson: That is right. I would probably only add one smaller piece to that. We would not gauge success of the bill or the CTP legislation in being necessarily reduced number of claims. It would first and foremost be the reduction in people being harassed and coerced into making a claim when they would not have otherwise done that. Someone accessing their current legal rights is not an issue. If they want to push to make a claim they should be able to, and we have no interest in seeing people not being able to make a claim. We certainly do not want to see people being cold-called and approached out the front of courthouses and things like that.

Mrs GERBER: Just to follow on from what the chair was saying in relation to stopping at the entry point of coming to law firms—and you perhaps are only able to speak to it from your CTP data and experience—is there that element of some unscrupulous law firms colluding with third-party entities in order to get those claims and was that stopped as part of the CTP amendments to reduce claim farming?

Mr Wilkinson: I probably cannot comment on whether there was collusion between any parties or not. For one, I would not like to allege that that was happening, but, two, how we see these things surface—we do not get that level of detail. The types of things that we see that indicate to us that something is happening around claim farming or that a firm is involved in claim farming is something that is typically like there is a firm we have never heard of before that suddenly is providing us with 50 claims. Something looks very suspicious there. That can be completely innocuous, that someone has purchased someone else's portfolio of business, which is completely legal and fine, but when you see a pattern of smaller firms suddenly coming up with a large number of claims it looks highly suspicious. It does give us reason to look a bit further into some of these claims. Some of them quite obviously have inconsistencies where dates of signatures do not match up with other evidence on file and that type of thing. Like I mentioned before, some of these outfits range from very sophisticated and highly polished to not so well. I fear it is at the end where they make sloppy mistakes around dates that we quite obviously see this happening. More sophisticated claim farming we probably would not be able to see because we do not get that level of detail.

Mrs GERBER: The current powers given to the Legal Services Commissioner would be able to address that situation because they have bought a law firm and therefore the LSC can investigate.

CHAIR: Not until the bill is passed.

Mrs GERBER: Obviously we have to wait until the bill is passed. With the more syndicate style set-ups of claim farming, are the powers within the current proposed bill sufficient to address that?

Mr Wilkinson: My point around that is that the sufficiency is a difficult one to crack. The power in this will be around setting up reporting that allows the LSC to have that level of oversight, to be able to see that there are a number of claims coming through from a firm that apparently might have only been registered in Queensland in the last week or something—something that indicates there is

something unusual about that for the LSC to look into further. Without some kind of aggregation of data or coordination of that data point, particularly around certificates and things like that, that task is going to become a lot harder.

Ms BUSH: Just on high-level oversight of what is going on, is part of your recommendation that the LSC should take the lead in terms of the monitoring and oversight role?

Mr Wilkinson: That is our suggestion. We have nominated the LSC to do that job just as it seemed like an obvious coordination point for the information. Like I say, it is probably open to the committee to choose either of the three regulators that are across those schemes to act as the coordinating role because I just fear that, without that deliberate coordination piece and some responsibility and authority to coordinate, some of these practices might be missed because that collation of data is not obvious when it is spread across three schemes.

Ms BUSH: Obviously there are proposals in section 73B of the PIP Act and 573A of the WorkCover act around information sharing. Do you have any views on that or whether that goes far enough or whether that helps support what you are wanting to achieve there? It sounds like what you are saying is that someone still needs to lead that.

Mr Wilkinson: That is right. The provision to ensure that information can be shared and can be done legally is very important. I still think that coordination piece and how this information is collated is where the power in preventing claim farming lies.

CHAIR: Thank you for your attendance today and for your written submission. That brings this part of the hearing to a conclusion.

HOYTE, Ms Margot, Director, Asbestos Disease Support Society

TORRENS, Mr Trevor, General Manager, Asbestos Disease Support Society

CHAIR: I now welcome representatives from the Asbestos Disease Support Society. I invite you to make an opening statement—either one or both of you; it is up to you.

Mr Torrens: Thank you, Chair. It will be a joint effort.

CHAIR: Once that is concluded, the committee will have some questions for you.

Mr Torrens: In opening I thought I would provide a bit of background about the society briefly. The society was founded in 1992—which is 30 years ago now and we are still here—primarily to provide support and assistance to people, their families and carers, who have been diagnosed with an asbestos related disease and also information to the community on the health risks associated with exposure to asbestos fibres. In 2018, following the failure of employers to provide a safe workplace and also the failure of Work Health and Safety regulator to ensure that workplaces were safe, the society expanded support to people who have been diagnosed with silicosis, another deadly dust related lung disease resulting from the inhalation of respirable crystalline silica . This assistance is provided under the banner of the Silicosis Support Network.

The society is a member based organisation, currently with over 750 members. On average, 70 members of the society die each year from preventable dust related diseases such as mesothelioma, asbestosis, silicosis and related cancers—unfortunately, only to be replaced by a little more than that as a result of exposure to deadly dust and diagnosis. Obviously our comments today only relate to the proposed amendment of section 39A of the Workers Compensation and Rehabilitation Act.

Ms Hoyt: One of the points we are particularly concerned about in terms of the case that is being made for this legislative change is what is purported to be a cost of the scheme with the current provisions. The first point I would like to make is that the case actually is not made that the current workers' rights create a cost to the WorkCover scheme. The changes of 2019 pertain to an ability of a worker when they have a terminal diagnosis to make a claim. The fact is that if a person has a terminal diagnosis that is a finite quantity. Changes to the legislation a couple of years ago have not increased the number of terminal claims; they have changed the right to access that payment. The diagnosis of a terminal condition is not variable, but what is proposed to be varied is a person's right to access a terminal payment. The eligibility for payment should be triggered when a terminal condition is diagnosed. The matter that has been said in relation to the post Blanch cases are due, we consider, not simply to an avalanche of claims after the decision in December last year but rather that there were a number of claims that the regulator was sitting on, that everyone was sitting on and waiting on, to see what was happening with that case. So it is somewhat artificial to point to that.

CHAIR: Dealing with that point that the regulator was sitting on claims pending the decision in the Industrial Commission, do you know how many they were sitting on or is that outside your remit of information?

Ms Hoyt: We have been advised that they have been sitting on them. We would be particularly interested, in what appear to be 37 cases outstanding at the moment, in when they were first submitted. We have not been able to find that exact information about when those outstanding 37, as of last week, were submitted.

CHAIR: One of the things that came up in our public briefing was that if a person accesses their claim they are then prevented from further assistance under the scheme. Do you have any comment on that?

Mr Torrens: Chair, our members have never expressed that concern—not to me and I have been with the society for over four years now. I remember the day when WorkCover imposed the policy awaiting the outcome of the Blanch decision, which was 1 April, the day before Easter Friday. Our members have never expressed any concerns about their ongoing care following the awarding of a terminal condition payout.

CHAIR: I think the suggestion was that once they get that then they are not eligible for other benefits that may be obtained had they not brought their terminal claim.

Mr Torrens: That is an informed decision that that person makes. Certainly my advice, in consultation with my members or the members of my society who have terminal conditions, is that that is not a concern. They make provision for that. They can also access the public facilities. It has never been raised as a concern to me.

Ms Hoyt: Perhaps the other point in relation to this is that the presence of the current provisions do not require and do not force a person to make a claim for a terminal payment. It creates an option, doesn't it?

Mrs GERBER: Following on from the question of the Chair, can you tell the committee how your members might benefit from activating their claims when they choose to under the current regime and not the proposed changes? I am specifically asking you to talk us through some of the benefits or what it is that your members are able to achieve by accessing their claim early? Perhaps that might speak to why you said your members do not say that they are unhappy with the claim after they have processed it.

Mr Torrens: It is a very personal decision. It depends on where you are in your life. The asbestos related cohort, to use that term, generally have finished their working life. Their life has been cut short because of an exposure many decades previously. They are in the older generation so they are 75. Their need to perhaps pay down a mortgage or provide for their families, school fees et cetera are not as apparent. With silicosis, it is a lot younger cohort. They have family needs. Many families are broken up over this because they have just cannot go back to work again. They are looking for that money to provide for the financial wellbeing for their family when they pass. It is quite an emotional time, particularly for the people who have been diagnosed with silicosis and, in particular, progressive massive fibrosis, which is the terminal stage.

Mrs GERBER: Can you give us the time frame or an estimate? I realise you are not medical practitioners but from your experience with your members when they are diagnosed in the terminal phase of silicosis?

Mr Torrens: Progressive massive fibrosis is the end stage of silicosis.

Mrs GERBER: What is the general time period?

Mr Torrens: The general time period would be post three years. It depends on their diagnosis and their lifestyle et cetera. Going back to an asbestos related disease, mesothelioma is generally less than 12 months; with asbestos, again, it depends—these are progressive diseases—but generally it would be potentially more than two years but it could be less. It is a very personal diagnosis and personal issue.

Mrs GERBER: It is very subjective; I understand.

Ms Hoyt: A point that we make in our submission and in a number of submissions made to the committee as well is that there is a financial aspect and then there is a psychological aspect as well. If you know that you can settle matters and things are settled, for some people doing that earlier is the purpose of it. It seems to be viewed by WorkCover as a payment to deal with the increased potentially higher expenses closer to the end of life but that has not been an element of the legislation. There is a different attitude, I think, by WorkCover than what is actually in the law and what our members and other workers expect to be able to access.

Ms BOLTON: Ms Hoyt, I want to follow on from the question of the member for Currumbin, which is really relevant here: on the amendments and the time frames, can you articulate exactly what that will do to your members straightaway if that is brought in, in terms of detriment?

Ms Hoyt: In terms of detriment, some members will not be affected because they will die within a short window of time. There are some members who will be affected because they may have a current claim and this legislation proposes, for no good reason, to create a retrospective taking away of that right. They will definitely be detrimentally affected. There are others who will not be able to access a terminal payment at a time of their choosing. At the moment they have a choice and the legislative change will take away that choice. Last week there was a question from the member for Cooper about whether anyone would be worse off under these amendments. We think clearly just about every element of these amendments will mean some people will be worse off.

CHAIR: That leads me to another question that was answered during the public briefing, that if the retrospectivity of the legislation is not allowed to occur then it will cause inequity within the claimants. I think I can find it, if you need me to.

Mr Torrens: No.

CHAIR: You may have seen that?

Mr Torrens: Yes.

CHAIR: I bring that up because that was stated to us and I am sure you would have a view.

Mr Torrens: If we are talking about the transitional arrangements and the retrospectivity, we hold deep concerns and I notice a lot of submissions that have come to the committee also hold those deep concerns.

CHAIR: What about the comment that if they do not get the retrospectivity it will create inequity between claimants?

Mr Torrens: Claims that are submitted and not yet determined, as of the date of commencement, will be kicked out of being able to access that terminal condition payment at that point in time. For those people at that date, those claims will be delayed.

CHAIR: What do you say about their assertion that this inequity will be created if they do not get retrospectivity?

Ms Hoyte: We do not agree. I read and I re-read and I noted and I highlighted et cetera. What our submissions and what we would say is that if you do bring this retrospectivity in then you will have two classes of claimants—one class being terminally injured workers who can access payments and the other class being terminally injured workers with a terminal diagnosis who cannot access payments. I could not see that logic in that transcript.

Mr Torrens: The other point I would make is that workers with a claim currently lodged who are terminal but have not been determined would have an undeniable expectation that their claim will be assessed as per the current wording of section 39. Those are our members now who just do not know what is going on—that somehow with the stroke of a pen they are going to be wiped out from a claim that is currently lodged and is in the system but they are just waiting for a determination. That is abhorrent. It is abhorrent to our members. I have got people who have this terminal condition who do not understand what is happening here. I cannot explain it, apart from saying we will do our best particularly around the retrospectivity. It is bad law. It is bad policy.

CHAIR: This may be an unfair question to ask. If you took away the retrospectivity and you made the period five years as has been suggested by your submission—well, what I am trying to work out is: how do you work out a fair time to start this legislation?

Ms Hoyte: Five years is different from commencement.

CHAIR: Yes, exactly.

Ms Hoyte: And I take your point about commencement that you were making last week.

CHAIR: Because at some point the act will be proclaimed and that could be the kick-in date.

Ms Hoyte: And different bits can commence at different points.

CHAIR: Or the legislation could nominate a commencement date. How do you arrive at what is fair and equitable to the people who have been diagnosed?

Mr Torrens: Our view is that a person who has lodged a claim and is in the system should not be denied. They should be assessed under the current section 39A and not the new legislation. There is always going to be a time period. We understand that; there was always going to be a cut-off. However, these are people who have lodged a case to be determined, have submitted medical evidence and have gone through a number of hoops to get to this particular stage, and then at some time with the stroke of a pen they fall over that side of the line even though they are in the system.

CHAIR: The legislation would be implemented at a date of proclamation. There may be some people disadvantaged just simply by the passing or not.

Ms Hoyte: Perhaps something could be done to have a regulatory impact statement or some form or other that says the changes to the current rights were to kick in one year, six months or whatever after proclamation. That would then give sufficient time to advise all parties. But if we are looking at a fair provision—putting the five years on the shelf for the moment—using a football analogy, you would boot that ball, being the retrospectivity, right out.

I did a bit of research on when retrospective law is a good thing. Google is not always useful. However, it did bring up war crimes. There was a case made several years ago that it was fair and reasonable and in the interests of society to make laws that were retrospective in the case of significant war crimes. There is no way you would say that one of these workers—who has had a wrong done to them, who now has a terminal condition because of that wrong, who has commenced a termination payment process, who has incurred financial costs and who has then had that pulled out from under them—was the equivalent of a war criminal.

CHAIR: Trevor, I think you mentioned that you have two cohorts of members. You have the person who has reached retirement age and gets diagnosed, and you have a younger cohort because of the more recent diagnoses. You have got both.

Mr Torrens: A terminal condition is an individual issue. I think the only point I can make to that is that we would prefer to see no amendment go through on this. That is our position. However, if this goes through, we do not want to see someone who has been diagnosed as terminal and who has put a claim in and has all of the evidence be kicked out of the system because of a commencement date of a piece of paper. That is our main concern.

Mr KRAUSE: To that point, Mr Torrens, do you know how many people—whether they are your members or people you know of—are in the claim system who would be impacted by that retrospectivity?

Mr Torrens: It is in the vicinity of about 20, and they are at various stages of their claim at the moment. We understand that the Blanch decision has confirmed the actual wording of the legislation so they are moving through the system. That is my understanding. I have taken calls from a number of our members who are quite distressed over this.

Mr KRAUSE: No doubt.

Mr Torrens: They are distressed about what it means for them, particularly the silicosis ones who are of a younger generation, if I could say that. They are most concerned about it. It has just added to the whole psychological damage they are going through. They cannot work anymore. They have got families. They have got other added cost pressures. They have a claim either in or just about to go in and it is just so uncertain.

Mrs GERBER: And presumably they have incurred costs.

Mr KRAUSE: I was just about to ask that question. In relation to costs that are imposed or were borne by those parties in getting into the claims system—and I know every case will be slightly different—how much does it cost in a broad sense?

Mr Torrens: Well, a cost is a cost. I am sorry, I could not tell you that. They have expressed to us concerns that they have jumped through the hoops. A lot of those costs have come out of the actual claim and everything like that.

Mrs GERBER: So there is a financial cost and a—

Mr Torrens: Absolutely. And by delaying until, let us say, they are imminently going to die—which is a horrible thing to say—then they can access it. This retrospectivity is—

Ms Hoyte: Needless.

Mr Torrens: We just fail to understand how a worker is being treated fairly, which is one of the cornerstones of the workers compensation act.

Mr KRAUSE: Chair, I have one more quick question, if I could.

CHAIR: No. We have to move along. Thank you for your attendance and your written submission.

SPINDA, Mr Greg, Principal Lawyer and Brisbane Office Leader, Maurice Blackburn Lawyers

WALSH, Mr Jonathan, Principal Lawyer and Queensland Head of Dust Diseases, Maurice Blackburn Lawyers

CHAIR: Welcome. I invite you to make an opening statement, after which the committee will have some questions for you.

Mr Walsh: Maurice Blackburn certainly welcomes the opportunity to contribute to this important review. My name is Jonathan Walsh. I am a principal lawyer and the Queensland practice group leader for asbestos and dust diseases. My colleague is Greg Spinda, a principal lawyer in the personal injuries practice. We are both based in Brisbane. The committee will note that we focused our submission on four key areas: the terminal illness benefits, the issuance of LPCs, the proposed amendments to the LPA and some thoughts on regulation and enforcement. If convenient to the committee, I will take any questions related to the terminal illness benefits and Greg will be able to respond to questions related to the rest of our submission.

Before opening up to questions, we would like to reiterate that Maurice Blackburn fully supports the principle that claim farming is an insidious and unethical practice and we applaud the Queensland government for taking steps to destroy the business model of these agencies which seek to engage in it. We believe that sensible adjustments to the bill are possible to make this well-intentioned piece of legislation fairer for injured workers. However, as made clear in our written submission, our position in relation to the proposed changes to the terminal illness benefits is that they are extremely troubling. As a supplement to our written submission, we wish to make three points about this.

First, the current bill seeks to reverse a legislative stance adopted only three years ago. At the time in espousing the benefits of the 2019 changes, Minister Grace noted in her first reading speech that—

> The payment of this lump sum allows the worker to be provided with palliative care and support and ensures that the worker can plan and attend to the financial needs of their family and dependents.

She described the removal of the then two-year time period as—

> … an important amendment for those who need it most and a great step forward in that area.

It is very easy to perceive the changes in the current bill as merely a timing issue—the inherent assumption being that the worker will at some point end up receiving their lump sum. But, to the worker, the timing of the payment is far more than trivial. In our experience representing these workers, our clients use the terminal benefits to manage their debts, provide a fund for future out-of-pocket expenses, shore up their living arrangements and ensure that their spouse and children are provided for to the extent that is possible. They do all of this because most of these workers in our experience cannot return to work. They certainly cannot return to the place where they were exposed to the toxic dust, and for many reasons they are unable to be retrained back into the workforce. To suggest, therefore, that it is reasonable for a worker to wait around for years until they have three years of life left—that is, until such time as they are essentially sick enough to then access terminal illness benefits—absolutely denies the stark reality that these workers face. In addition, such a proposition also denies the well understood psychological impacts that being on a long tail workers comp scheme creates.

Second, we find it concerning that one of the key policy principles upon which the proposed change is based is that it will save the scheme money or, in other words, contribute to the long-term viability of the scheme. In our view, it absolutely does not. These workers will still receive a lump sum payment from the scheme. That is, the compensation will still be paid. It is just a matter of whether it is paid now or at some time in the future. It is apparent that policymakers appear to have been rattled by an uptick in claims since the Blanch decision. This uptick is and was to be expected. However, basing assumptions about future claim numbers on the uptick immediately after a court decision which clarified the law—that is, Blanch—is just bad modelling.

We anticipate the claim numbers will stabilise after the initial spike then start to reduce. By way of example, we saw a similar spike in the wake of the James Hardie inquiry in 2004, after the black lung issues arose in Queensland in 2015 and after stonemasonry silicosis issues arose in 2018. In each of these instances, spikes in cases ensued then plateaued and in some cases fell away.

Third, contrary to what has been suggested to this very committee, the Blanch decision will not lead to more workers being capable of claiming terminal illness benefits. When a worker develops a terminal disease as a result of their work, their fate has already been decided years ago. They will develop their disease as a result of the work they have already undertaken. It is therefore perverse to

suggest that the court in Blanch has somehow created a new cohort of terminally ill workers. Postponing the payment of lump sum benefits to somewhere down the track does not save money overall. It merely creates financial anxiety for workers and their families right at the time they most need certainty. With that opening, we are happy to take any questions.

CHAIR: Greg, did you want to add to that?

Mr Spinda: No.

CHAIR: Seeing I cut you off before, Jon, do you want to go first?

Mr KRAUSE: No. Laura can.

Mrs GERBER: Thank you for your appearance and your opening statement. I am interested in your perspective in relation to what was raised with the previous witness around part of the reason for this is because claimants who access their claim early are then prevented from accessing the scheme later on. I am interested in your perspective on that and whether that is in fact an issue.

Mr Walsh: Not with our clients past and present. There has been evidence provided to this committee that in the alternative, if workers do not access their terminal illness benefits now or some time in the near future, they can simply stay on the scheme for an indeterminate period of time at which point they will become terminal and therefore claim benefits. There are a lot of inherent assumptions in that principle which are completely wrong and false, one being that a worker can only receive wages for a period of five years for one injury. The way in which it works is a worker receives 80 per cent of prior pre-injury earnings for six months, then 70 per cent for 18 months and then after two years they are dropped back down to the minimum Centrelink Newstart rate. The expectation inherent in that assumption is that these workers will be able to persist on wages as low as a Newstart Centrelink amount per week and pay a mortgage, fund their kids' schooling, pay for bills, pay for their food and support a spouse. There is a lot wrong with that inherent assumption around that they can simply exist on a scheme and that is the point we make in respect of that.

Mrs GERBER: This is a question that we have posed to almost all of the witnesses who have presented to the committee today: are you able to give us an indication of the amount of people who might be affected by the retrospectivity of this legislation and if you can expand upon it?

Mr Walsh: Most definitely. As a point of principle we absolutely agree with the proposition that any retrospective law is perverse and it is wrong and it is bad law and should not be adopted in any circumstance, particularly one as sensitive as this one. Insofar as affected workers, we note the updated evidence given to this committee on 29 April which suggests there are 18 pending cases before WorkCover Queensland. What that data does not indicate is how many cases are pending before the self-insurers in this state of which Glencore, through their self-insurance vehicle XtraCare hold quite a number with respect to the clientele of Maurice Blackburn presently, but I can indicate we have five affected workers who, if the law was changed today, would be affected by the retrospectivity.

Ms BOLTON: Your responses to the member for Currumbin have covered my questions on that matter. However, can you extrapolate out within your submission regarding the risks of having three separate regulators?

Mr Spinda: I can answer that question. The risk of three separate regulators covers a number of issues. One is enforcement activity. If the regulators are not resourced appropriately and are not communicating appropriately there is a real risk that those claims farmers who are dabbling in the three different schemes that we have may be missed. The other opportunity that creates some difficulties or leeway for claims farmers is if the regulators pursue a prosecution, and particularly for hybrid claims, so those claims that cover workers compensation and public liability, you have two regulators, the LSC and the Office of Industrial Relations, who would have to run the prosecution jointly. Now, those prosecutions are going to be run under the separate pieces of legislation and both of them would need to ensure that they are presenting evidence which is consistent otherwise the risk is, and I am not a criminal lawyer, but the risk is that if the evidence is not consistently presented it could potentially cause difficulties with a successful conviction.

I think across the regulators the most important point that we would like to make is that resourcing needs to be very solid. The resourcing is not just people. I understand from the second reading speech that the LSC will be provided with some additional headcount, but I do not think that that is appropriate. Suncorp earlier made the point that data matching is a really important tool. The IT systems need to be adequately and appropriately resourced and amongst the three regulators it is absolutely critical that IT infrastructure can talk to each other.

Ms BUSH: You have answered this question, but I was interested in your views on Suncorp's earlier submission, particularly around the LSC taking a lead role. It sounds as if that is something that you would get behind.

Mr Spinda: That is a really good question. It is a difficult one, I think, because everything will come down to the appropriate resourcing. We already have the CTP scheme, which has been in operation since 2019 in terms of the claims-farming amendments. My understanding is that the commission is well advanced in a number of investigations and I think if we pull the rug out from under the Insurance Commissioner when those investigations are so well advanced that might not be appropriate.

The submission from the Australian Lawyers Alliance I understand is for a call for a review of how the regulators are performing in, say, three years time, and that is something that I think the stakeholders would support, and at that appropriate time identifying whether or not the three regulators are working collaboratively or, alternatively, whether at that stage there should be consideration given to a different regulatory mechanism.

Mr KRAUSE: If someone falls out of the scheme as a result of the legislation and then they need to re-enter it, what costs are involved in that process? I asked the previous witness. They could not give an all-round general answer. Do you have an idea of how much it would cost to apply?

Mr Walsh: In terms of an actual application itself, the cost is inherent in the medical evidence obtained to support that particular application and that does vary from case to case depending on the situation.

Mr KRAUSE: I understand. In relation to the bill before us, it is a complicated matter for people who are not familiar with the terrain. Is there a class of people out there who as a result of this bill passing would be eligible to enter the scheme now but will not be in the future?

Mr Walsh: No. It would limit the cohort of worker capable of making a successful application, not expand it.

Ms BUSH: Jonathan, just a question to you, and pardon my lack of awareness in this space, are you able to speak to that experience when someone is diagnosed with silicosis, the types of needs that they would have? I can imagine, but it would be helpful to hear what recovery needs they might have at that time from initial diagnosis through the life course.

Mr Walsh: It depends at what stage their disease is at at the time of diagnosis. Some workers are diagnosed at the progressive massive fibrosis stage, that is the advanced, very progressive stage of silicosis, some very early on.

Ms BUSH: Perhaps the earlier ones I am interested in specifically.

Mr Walsh: Certainly. Assume for this example that there is a mild silicosis diagnosis of a worker in his thirties. Their immediate needs are financial insofar as how they are going to pay their bills, their mortgage, things of that nature. In terms of their medical needs, these conditions are irreversible and untreatable by medicine. Some can be temporarily addressed via a lung transplant if they are a suitable candidate—most workers are not—but there is no medical treatment need other than regular review to ensure that they are being checked on in terms of progression of disease.

Most of our clients in particular who are diagnosed at an early stage have psychological needs. The diagnosis itself absolutely rocks a human to their core. Then the prospect of their life ending prematurely because of this disease, which through no fault of their own they acquired by simply working hard, is absolutely very devastating to a lot of men, a lot of men who are the breadwinners in their household, a lot of men who take pride in working, and working hard, and they are struck down and prevented from returning to the workplace. Often times their needs are psychological and they need that to be attended to before anything else can flow from there.

Ms BUSH: How is that attended to currently?

Mr Walsh: Presently through the WorkCover scheme if their claim is accepted. WorkCover does provide psychological assistance and support throughout the life that that particular worker is in the scheme.

Mrs GERBER: WorkCover would fund them to access a private psychologist of their choice in their town, for example?

Mr Walsh: Correct, and so long as the worker is willing to take up that help, which is often for young men in regional areas a difficult decision for them to take up.

Ms BUSH: This question goes to the member for Currumbin's question earlier. I believe in the public hearing with the department we were told that under the current scheme if a person applies and is successful in their terminal payment that then precludes them from accessing those other support services through WorkCover like the psychological assistance.

Mr Walsh: Yes.

Ms BUSH: That is, in fact, the case?

Mr Walsh: Yes. The payment of a terminal lump sum extinguishes all their other rights to workers compensation, but a point to be made in respect of that is often times a worker, unless they are diagnosed at a progressive stage, are in the scheme for anywhere from 12 to 24 months because WorkCover needs to check every six months on average as to how they are progressing in order for them to determine whether they are, in fact, terminal or for a worker to obtain his or her own evidence with respect to that and what their support needs may be. So by the time they exit the scheme on receipt of a terminal illness benefit they have received the psychological counselling necessary to get them back on their feet. Often times that is the case. Some workers, some of our clients, have persistent psychological needs which are more than adequately cared for or taken care of by way of a terminal illness payment. They can choose when they see a psychologist, they can choose who they see at their level of comfort.

Ms BUSH: Do you mind if I be devil's advocate on that with you?

Mr Walsh: Please.

Ms BUSH: Imagine a young man in their thirties diagnosed, that stigma and shame, and I take your point about not being the breadwinner, is there any risk that a person could be influenced by a person close to them to apply for the terminal illness payment to offset any ongoing mortgage or something which inadvertently precludes them from accessing the important psychological help that they actually might need for another 10 years potentially? I guess it is like elder abuse, but it is not an elder, but like a DV kind of claim.

Mr Walsh: I suppose in that circumstance it is theoretically possible, but the reality and the practicality is a little bit different. I think a lot of these psychological injuries, at least for our clients in my personal experience representing them, are driven by the financial impact of a diagnosis. They are prevented from going back to work and so their needs are immediately financial, as I raised a bit earlier in an answer to a prior question. If those needs are taken care of, which they often are with a terminal illness payment such as it is, then the ongoing permanent impact upon them is lessened significantly, in my experience.

Mrs GERBER: I am sorry to labour the point, but I just wanted to go back, and I will read out your written submission, so that I can get an indication of the financial cost of the retrospectivity of this legislation to claimants who are already in the system. I note on page 9 of your submission you say—

> The application of the Proposed Commencement Date and section 744 will also mean that workers that have incurred costs (often significant costs) associated with medical expert opinions and related legal advice incurred seeking Terminal Benefits under the WCRA,

I know it is very subjective and everyone's assessment in relation to their medical needs is different, but can you give us a range so that we can have a figure in mind as to the financial cost?

Mr Walsh: An expert report ordinarily costs around $2,500. That is your starting point. The expert report addresses not just matters of the terminal nature of their diagnosis, but the diagnosis itself, which is often in dispute, the cause of that particular diagnosis, particularly where there are multijurisdictional exposures to these particular workers and then the fact of the terminal nature of the condition itself, particularly in light of competing comorbidities to their health.

The cost of any medical report is very much dependent on a case-by-case basis. It goes upwards from there. We have one client presently appealing his rejection of a terminal illness claim in the QIRC. He has now incurred court costs: other lawyers' fees to get to that level. That particular case is against a self-insurer, not against WorkCover Queensland—I will make that point. Nonetheless, the costs can be significant, as we point out in our written submission, depending particularly on the level of appeal which workers need to go to to access these benefits presently. If the law changes today then that worker's right is removed completely. The appeal in the court is null and void because the law has changed.

Mrs GERBER: Those particular workers would then have to re-incur those costs at the point where they then become re-eligible under the proposed bill?

Mr Walsh: It is very likely the QIRC appeal would need to be discontinued and restarted at a later time, doubling the cost, effectively, to that particular worker.

CHAIR: That brings to a conclusion this section of the hearing. I would like to thank you for your written submission and for your attendance today.

Proceedings suspended from 12.14 pm **to 1.00 pm.**

ALLEN, Mr Peter, State Secretary, Rail Tram and Bus Union, Queensland Branch

CHAIR: I now welcome Peter Allen, State Secretary of the Rail Tram and Bus Union Queensland branch. Good afternoon, Peter. I invite you to make an opening statement, after which the committee will have some questions for you.

Mr Allen: Thank you, Chair. In opening I would like to acknowledge the traditional owners of the land upon which we meet here today and their elders past, present and emerging. As we always do, our organisation commits to stand in acts of solidarity as First Nation peoples fight for self-determination, justice and equality.

We support the broad thrust of the legislation as it relates to the practice of claim farming. Our concern goes to two points in the bill which we made out in our written submission. Our first is to the amendments to the terminal compensation benefits and the second is the retrospectivity of the proposal. To quickly address the second point, we think withdrawing benefits, no matter the small number that may be affected, is unreasonable. I know that others have made more detailed submissions about this point so I will not go on to labour that. Suffice to say, we oppose that element. The primary concern that I want to talk about today is the likely effect of narrowing the definition and therefore the availability of terminal benefits. I will not simply go through our submissions and regurgitate those. Instead, I would like to briefly illustrate them.

Our members come into contact with deadly disease-causing dusts in a number of places, chief amongst them on the track dealing with ballast. Ballast are those large rocks you see in-between the rails and underneath the sleepers and we find that they are full of silica dust. Some of our members have been exposed due to inattention and incompetence by their employers over many years and, while we fight like hell to gain lifesaving protection for our members, we acknowledge that some, especially now, will suffer shorter life spans as a result of the diseases they acquire such as silicosis, for which there is no cure and only some treatment. There is no magic number for how long someone will live once diagnosed and, at least to our experience, the diagnosis is a guide at best.

I want to tell you about Greg. He is one of our members. That is not his real name, but he is a real person. Given the nature of this hearing, I have de-identified his information so as not to add to his misery. Greg is 45. He was diagnosed with silicosis progressive. That means he started with mild symptoms—a cough and shortness of breath while exercising—and they will get worse, progressively until he dies. He will die in a manner similar to drowning but not nearly as quickly and nowhere near as peacefully. At diagnosis he was given 10 years to live—nothing definitive, an estimate, subject to so many variables, nothing set in stone. He hopes for 10 years, but there is no reason that that will not be revised back radically depending on how his disease progresses—something that is unique to him and his circumstances. We see that alteration far too often—people gone earlier than they expect. He used to work as a track worker. We call them navvies; they call themselves lizard chasers. They are strong, fit and hardworking people. They are the people who build the track, they fix it when it gets buckled by the hot Queensland sun and they fix it when it is washed out by flood.

Greg lives in Central Queensland and the average wage for someone in his field is about 100,000 bucks a year. He might make $120,000 in a good year. That is made up of around 20,000 bucks in shift penalties, allowances and a little bit of overtime. Once Greg got sick, he went back to about $85,000 for the first six months and then down to $75,000. Then after some time—two years in fact—he goes back to Centrelink payments. It is a steady, inevitable decline physically and financially. The amount of money he loses initially is a little bit more or less than the size of a rent or mortgage payment each week and it hurts, and that is the start. After six months it is significantly more than the value of a rent or mortgage payment. After two years, frankly I wonder how people live on any more than dog food.

But for Greg there was one ray of hope—his terminal worker benefit. It was paid a few months after his diagnosis. Like Jimmy Barnes says, he works hard to make a living, believes in God and Elvis and, like everyone else who puts their family first, he wants his kids to have a future. With a mortgage, school costs and all the things that face a working family, like a black cloud his impending death hangs assuredly over everything they do—from birthdays to Christmases and anniversaries. Will this one be his last, left to wonder if whether these photos will be the ones that stop causing joy and bring pain? Being paid his benefit shortly after diagnosis did not cost one extra dollar, but he did get it in time to remove some drivers of anxiety such as mortgage payments and medical costs. They helped defray the problems of a declining income and, yes, they provided some comforts to a man robbed of his health and fitness.

Like so many of us, Greg is a man who derives not just satisfaction but meaning from being able to work with his hands to produce things. It used to be a source of pride; now it is a memory, and with an oxygen tube wrapped around his ears and under his nose it is a very long-fading memory. If these

proposed changes were in place now, Greg's story would be much different. It would be unnecessarily harder. He would still suffer the decline in income, and let us be clear: the chances of a man who is progressively dying getting a job remotely equivalent to the one that he held are minuscule. He will never again earn anything remotely approaching the income that he previously received. That is not a guess; that is our experience, so he will suffer the decline in income.

He would also suffer a decline in self-esteem by being unable to provide for his family. He would likely suffer depression and all the attendant problems that go with that. He would steadily or maybe quickly lose his health. So far, these are the things he might already have to contend with in either circumstance. Enacted however, he would have to also deal with crushing mortgage payments which initially he would have to scratch together and inevitably be unable to deal with. They are simply the facts of life. He would have to suffer this decline for seven or so years before he would even be able to make an application for terminal worker benefits—the assistance that allows him to set things up for the future while he can. Over the first two years while his wages decline but he remains on workers comp but without terminal worker benefit I do not know what happens next. Does he somehow find cheap rental? Does he move in with his parents, if they are able to have him? Are they equipped to deal with that? I do not know, but I do know that in this alternate reality he does not just lose his house; he loses his dignity and his agency.

In this alternate reality he needlessly loses everything he worked so hard for. He does this all the time while a clock no-one can truly read accurately is ticking away. It becomes almost like he is better to die than to keep struggling on for another Christmas. It is better he dies sooner for the sake of his family, and if that is the case how can that be right? I know this sounds dramatic, because it should, but think about it: what bit have I overinflated? What bit have I conflated? Sure, I have not taken into account some community support that he might get along the way and I acknowledge that, while he gets a proportion of a good wage through workers comp for the initial stages, like you and me he is leveraged up to the level of income that he has right now and it is not simple to disentangle that life and that lifestyle from that level of income as quickly as his wages would drop. It is just impossible. Should the wages of a terminal diagnosis be the collapse in your living standard and that of the future of your family? I do not think so. He needs the benefit of the payment at the beginning, not at the end.

By the end for Greg, he would have sat for seven years under the current proposal and, presuming the doctors got it right, he would have lost everything. The money is a help at that stage for sure, but those important years when his family could have actually derived early ongoing security and then enjoyed some time together in his final years would not have occurred and those photos from Christmas are a reminder of the steady decline in all aspects of their lives and not the good times that they had. Restoring the benefit costs no extra. It just means claims get paid early rather than late, and we accept that there has been a spike in claims since the previous loosening of the rules, if you like, and it is just that—it is a spike; it goes up and then it regularises. Early access to the ability to claim does not create one additional diagnosis; it simply enabled some cases to move forward a little early and I simply ask that the committee consider the human impact in the circumstances people find themselves in with these terrible progressive diseases. I talked about Greg, but I could have talked about more—far too many more—and on their behalf I ask you to not leave them behind. Thank you.

CHAIR: Thank you, Peter.

Mrs GERBER: We have asked this question of a number of organisations that have membership bases. When we received our briefing from the department one of the rationales for this proposed bill is that claimants are unable to access services. If they access it early under the present scheme, they are unable to access services again under the scheme and they are at a detriment. A number of other organisations said that they have never experienced that from their members; their members have never said that they have been detrimentally impacted by accessing their claim early. I am interested in your perspective. What is the perspective of your members in relation to the current scheme and then the proposed bill?

Mr Allen: I think I probably outlined our concerns about the proposal in terms of how that would impact them, but with regard to your specific question our experience has been that with early access people have had great benefit. Most of our members do not have huge accumulations of cash to get them by. If anything, they have to dip into things like superannuation, if that becomes available to them. Having early access to those benefits is an enormous relief for people. It allows them to get on and make those arrangements like paying off their mortgage or coping with school fees, as I mentioned, and all of those sorts of things and gives them that level of peace of mind. We have not had any negative experience.

Mrs GERBER: What I was specifically referring to is the rationale presented to us from the department that once a claim is paid out that claimant then is not entitled to access the services that they would get—for instance, psychological treatment—if they were still in the system. The department

said that that is a detriment, but what we have heard from a number of other membership organisations is that they have never had that expressed to them by their members and so I am interested in your perspective in relation to once they have received their claim and their payout and they then are no longer able to access the system. Have they had a negative impact as a result of that?

Mr Allen: We have not heard of any negative impact, and I guess that is speculative in a sense. I would also say that the benefits outweigh that and put people in a position to be able to access those kinds of services in any event.

CHAIR: Sandy?

Ms BOLTON: I have no questions as they have been covered by the questions from the member for Currumbin.

Ms BUSH: Thank you, Peter, for your written and oral submission. My questions are probably along the same lines, and you might have heard us with other witnesses as well, but if I can check a few things with you. Someone earlier, I think from Maurice Blackburn, might have mentioned that particularly for silicosis the need often for people with that diagnosis is not so much medical—some medical—but mostly psychological need through the WorkCover scheme. Can I check that with you in your experience?

Mr Allen: It is always going to come down to the individual's circumstances, but I think broadly that is right. As soon as people get that diagnosis—people who feel like they have COVID symptoms or cold symptoms but find out that in fact they are going to die—it comes like a body blow. It changes everything and people need assistance with that. In the very early stages whilst they are employed they get assistance. For our members they get assistance of course through their employers—all but a few would have that available to them—and then through those services that are provided by WorkCover initially. So, yes, for sure it is difficult for people and they need that assistance.

Ms BUSH: It sounds then that a lot of the financial needs are more around the cost-of-living expenses—mortgage and children's fees and things that are not met through the missing salary part.

Mr Allen: That is right, yes.

Ms BUSH: Coming back to the member for Currumbin's point around once they access that terminal benefit payment, they are then precluded from coming back to WorkCover for other matters, would it be—I have completely lost my train of thought now. I cannot remember where I was going with that. I know I had an important question to ask you. I might have to come back, sorry, Chair. It will come to me in two seconds.

Mrs GERBER: I have a simple question: we have asked other membership organisations as well to give us an indication of the number of their members that might be negatively impacted by the retrospective aspect of this legislation. Are you able to give us an indication of how many members within your organisation might be impacted by the retrospective application?

Mr Allen: When it comes to the retrospectivity there would be few, if any, that would be impacted in our membership because the things that they would be impacted by would be the cost of medical—

Mrs GERBER: Medical reports?

Mr Allen: All of those sorts of things which, so long as they have used the assistance of the union, are covered in that regard. The retrospectivity is an issue in principle which we are quite concerned about.

Mrs GERBER: That is the financial cost, but there is, of course, a mental cost to initiating a claim and then having that claim become redundant as a result of a piece of legislation.

Mr Allen: Yes, that is right.

Mrs GERBER: Can you give us an indication if there are any claims?

Mr Allen: I would probably have to come back to give any accuracy on that, but that is pretty easy for us to work out.

Mrs GERBER: Are you happy to take that one on notice?

Mr Allen: Yes, I am happy to.

Mrs GERBER: Thank you. The question is how many members you might have with a claim in progress that will be affected by the retrospectivity of the legislation.

Mr Allen: I can work that out, yes.

CHAIR: One of the questions that has come up is whether the legislation, if amended and passed, goes from three to five years. Do you have any feedback from your members about that particular aspect of the bill?

Mr Allen: Thinking about the person that I referred to, he got a diagnosis of 10 years, so that would still leave him out in the cold for quite a long time, and that is if he made it for 10 years. Sure, it would make it easier for people to claim a little earlier than three, obviously, but we still think that the sooner people are able to get access to that, the sooner they are able to seek advice and all of those sorts of things before they make these claims. The earlier that they are able to make those claims, the earlier we see people are able to get their affairs in order. Every person I have dealt with is so desperate to get their affairs in order and then start to ensure that their family are looked after. I suppose unsurprisingly, but always remarkably, they always put themselves last in that equation. We think that that early access is really important so that people can enjoy that quality of life while they can because that decline can be steady and then it falls off a cliff, we see, with these sorts of diseases.

Mrs GERBER: Following on from what the chair said, if we were to accept some of the submissions that say to bring it to five rather than three, are you able to give us an indication of how many of your membership base that would not help, as in how many people have benefitted from being able to access WorkCover past five years, at the 10-year mark like Greg, the example that you gave? Is there a general gist you can give us in relation to your membership base?

Mr Allen: Again, I can come back to you on that. We keep statistics; I just do not have them at hand. I can come back very quickly on that.

Ms BUSH: I can come back to my forgotten question. Peter, do you have any concerns about people using that terminal benefit to clear away any expenses and then when they do get to the end of their life, where they might have palliative care expenses, they are left in fact with nothing to get them through that period?

Mr Allen: Of course there are those and many other concerns that have been expressed along those lines. We tend to find anecdotally that people are exceptionally careful when they get these payments, exceptionally careful about what they do because their motivation is certainly otherly, if you like. We see them getting financial advice. We see them getting all of that assistance they can. Yes, they probably put themselves last, to be honest, but we see that most of them provide that sort of stability, I suppose, in accessing the public system in some ways for that end-of-life care or use what is available through their private health cover.

CHAIR: That brings to a conclusion this part of the hearing. Peter, I understand there were two questions that you took on notice. Are you able to provide those responses to the secretariat by close of business, Wednesday, 11 May 2022?

Mr Allen: No problem at all.

CHAIR: Thank you.

TOSH, Mr Nate, Industrial Officer, United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ)

CHAIR: I now welcome Nate Tosh from the United Firefighters' Union of Australia. Good afternoon, Nate. I invite you to make an opening statement after which the committee will have some questions.

Mr Tosh: Thank you, chair, and good afternoon, committee members. We appear today to inform the committee of our opposition to the proposed amendments in the bill at clauses 58, 65 and 66 relating to workers compensation entitlements for terminal conditions.

In the course of their duties, firefighters are frequently exposed to toxins and carcinogens that epidemiological evidence has clearly demonstrated puts them at an elevated risk of being diagnosed with cancer. The nexus between our members' work and the incidence of cancer is acknowledged here in Queensland. As you would know, in 2015 the Palaszczuk government passed amendments to the Workers' Compensation Rehabilitation Act, which introduced presumption of injury claims for firefighters who are diagnosed with one of 12 cancers. As a result, our members are one of the cohorts of workers within the scheme that are most likely to be diagnosed with a terminal condition. However, we were not offered the opportunity to be directly consulted during the drafting and preparation of this bill. Our members deserve to have their interests represented in this process, so on behalf of the UFUQ I thank the committee for the invitation to appear today and ensure our members' voices are heard.

We strongly oppose the proposed reintroduction of an arbitrary time limit for workers compensation entitlements for terminal conditions. We believe the proposed amendments are inconsistent with the objects of the workers compensation scheme, particularly the objective to provide fair and appropriate benefits for injured workers. There is nothing fair or appropriate about the reintroduction of an arbitrary time limit. A fair and appropriate benefit would have a rational basis, rather than just plucking a number out of the air. A fair and appropriate benefit would consider an injured worker's specific circumstances. The UFUQ acknowledges that the committee's considerations would benefit from hearing about this from lived experience, but, given the circumstances, it was too big of an ask for a relevant member to appear with me today. That is why we are here today representing their interests.

Through our discussions with members, we have gained a reasonable understanding of the importance of these entitlements. It assists in alleviating many of the external stressors that cloud their final years and worries about their families' future and financial security which accentuates the impact of anticipatory grief in their families' life, particularly while in receipt of reduced income. It allows them to focus on spending time with their family before their condition deteriorates and their families' lives are consumed with end-of-life planning increasing needs as they relate to palliative and other care and support, and the grief associated with watching a loved one no longer have the capacity to complete basic activities of daily living. These matters should reasonably be considered when determining eligibility for this entitlement. An arbitrary time limit clearly does not. It also does not reasonably address the fact that it is difficult to diagnose the life expectancy of someone battling cancer. It is not an exact science and we are all familiar with stories of people passing too soon. For these reasons, we believe an arbitrary time limit is not fair or appropriate, and we recommend to the committee that the relevant amendment is removed from the bill.

We also oppose the retrospectivity of the proposed amendment, as proposed in clause 66 of the bill. Our members have a reasonable and legitimate expectation under the current legislation that they will be entitled to the same benefit as other firefighters who have found themselves in the same or similar circumstances. This could very well be a firefighter they have worked with on the same shift at the same station for 30 years. However, this expectation will not be met should the amendment be passed. The practical effect of the bill gives rise to a circumstance that cannot reasonably be perceived as fair. One firefighter is prevented from accessing terminal compensation for a year while their mate was not.

The amendment also effectively reverses the previous amendments in 2019 that were designed specifically to address our members' circumstances, and is not beneficial for any worker within the scheme. It only benefits the government and the coffers of WorkCover Queensland. We implore the committee to ensure this is reasonably scrutinised and considered in your deliberations, including its appropriateness given the fundamental legislative principles relating to retrospectivity in the Legislative Standards Act. Thank you.

Mrs GERBER: Thank you, Mr Tosh. I am going to pose to you the same questions that I have posed to other membership organisations. Are you able to give the committee an indication of how many of your members might be affected by the retrospectivity of this bill? Also, are you able to give

the committee an indication of whether or not, if the time frame was moved from the proposed three to five years, there are still members who would have been affected, that is receive their claim at the 10-year mark or previous to five?

Mr Tosh: It is difficult to place a number on that. One of the reasons for that is because of the presumption of injury legislation. We now have a circumstance where we do not necessarily hear from all of the members in our membership that might have an active workers compensation claim; they might be pursuing that because the nature of the presumption of injury claim means they have their diagnosis and they do not necessarily need the same level of advocacy as they did prior to 2015, so it is difficult to capture that number.

Ms BOLTON: Have any of your members who have been awarded lump sums ever been in a position where then they were negatively impacted from receiving that lump sum for any reason; for example, they paid out their mortgages and made provisions for their future, but they suddenly were in a position where they were not given access to the care they needed, whether medical, palliative or otherwise?

Mr Tosh: Not that I am aware of. I cannot obviously give you 100 per cent certainty about that, but the members whom I have dealt with have had a positive experience from receiving that payment. They were able to do and address all of the things that I talked about.

Mrs GERBER: This is the same question that I posed: one of the rationale from the department for this bill is that once a WorkCover claim is paid out that claimant then cannot access the benefits of the WorkCover scheme into the future, which might include psychological treatments or any other benefit that WorkCover provides while they are in the scheme. Can you give your members' perspective in relation to whether that is a negative thing or whether you have had feedback from your members that it is not an issue for them?

Mr Tosh: I will answer it in two parts. The department and WorkCover do not seem to be too concerned about that when they end people's claims for permanent impairment for psychological injury, which lots of our members have—post-traumatic stress injury. Their claim is ended at a time when, although it might be considered stable and stationary by the independent medical examination, they clearly still need ongoing psychological support and ongoing services to transition into other employment. There seems to be no concern about the impact in those circumstances. However, for some reason it is used here as a reason to rally against, I guess, the call from the UFUQ and our comrades to say that this is not a good idea. That is the first point.

The second point, to go to your question, is that the experience from our members is that they do not really see any detriment in regards to that type of thing. One of the reasons for that is their employee assistance program with QFES is also able to be accessed by former or retired firefighters. They do get some care through there. Normally when they are in the early stages of receiving that care, even before they might get care through WorkCover, a lot of them use that service anyway so they have developed a relationship with the particular psychologist who might be working with them or whatever it might be.

Mrs GERBER: Do you have a perspective that you could add in relation to the other elements of the bill around claim farming? Do you have any feedback from your members?

Mr Tosh: We do not have any specific feedback in relation to that. There are others, I guess, with a bit more experience in that area who have made submissions and we do not disagree with any of the submissions that have been made. We are mainly here to talk about the specific matter that impacts our members.

One thing I will talk to, if I may, is that it appears as though—and please correct me if I am wrong—that the committee is considering whether three years is appropriate and maybe it should be five years or whatever it might be. I do not think there should be any hard and fast rule, but if there was the provision would benefit from some flexibility. For instance, I will take a current provision in the legislation: the time for applying. That has a rigid time frame around when a worker needs to lodge a workers compensation claim, but if there is a reasonable cause or a mistake there is some flexibility there for the claim to be accepted.

Given our submissions are that a reasonable, fair and appropriate entitlement would be based on person-specific circumstances and needs, an idea that could be submitted to the committee is that whatever the time frame that might be landed on—whether it be three or five—there should also be some flexibility for consideration around a person's specific needs and circumstances and whether it is appropriate for them to receive that payment earlier than three or five because of those specific needs and circumstances.

CHAIR: Would you suggest that there be no time limit?

Mr Tosh: I do not think there should be any. However, I am saying that if there was the committee should consider flexibility around that. It might say it is five years but ensure that there is a discretion to consider relevant circumstances. As I said, a like provision—although it is in the reverse—is the time for applying. It is six months unless a claimant can demonstrate a reasonable cause or a mistake and claims can be accepted outside of that time for applying.

CHAIR: Outside the six-month time period?

Mr Tosh: Yes.

Ms BUSH: Nate, I appreciate you are not medically trained and I do not have any intimate understanding of these illnesses myself. Is there any link between silicosis and cognition or cognitive ability as a person deteriorates physically, in your experience?

Mr Tosh: I do not have much experience with silicosis in terms of our membership. Our members are covered by the presumption-of-injury legislation. That is the 12 cancers that are listed in schedule 4A of the legislation: brain cancer, bladder cancer, kidney cancer, non-Hodgkins lymphoma, leukaemia, breast cancer, testicular cancer, myeloma, prostate cancer, ureter cancer, colorectal cancer and oesophageal cancer.

Ms BUSH: Does cognitive function come up as an issue across any of those?

Mr Tosh: There might be but I am not an expert in any of those really. There might be with some of them, I suppose; particularly brain cancer maybe. I do not have any great insight into that.

Ms BUSH: That is fine, thank you so much.

CHAIR: In your submission you say that this bill will affect 2,600 members.

Mr Tosh: We cover 2,600 firefighters and they are all covered by this legislation.

CHAIR: But you do not mean that you have 2,600 members with pending claims?

Mr Tosh: No, but the likelihood is they will have one probably before their career ends, if they stick around for 30 years.

CHAIR: Is that a trend that the union has identified, that is, the longer you stay as a firefighter the chances of you getting something from that list of cancers that you just outlined is high?

Mr Tosh: The minimum number of years was actually aligned with epidemiological studies that were done around, essentially, the firefighting service and an increased likelihood compared to the general population of being diagnosed with one of those cancers. As you look at those time frames and as their service progresses towards those years, their likelihood of being diagnosed increases. That is not to say that someone cannot go through their whole career without being affected, of course, but the likelihood increases.

CHAIR: Thank you for attending and for your written submissions.

Mr Tosh: Thank you.

BRUCK, Mr Simon, Principal Lawyer, knowmore

HANCOCK, Ms Lauren, Law Reform and Advocacy Officer, knowmore

STRANGE, Mr Warren, Chief Executive Officer, knowmore

CHAIR: I now welcome representatives from knowmore. Would you like to make an opening statement?

Mr Strange: I begin by acknowledging the traditional custodians of the lands on which we are meeting this afternoon and pay our respects to the elders. I thank the committee for the opportunity to make a submission on this bill and to appear today.

Our focus is very much on the claim-farming provisions, particularly in the context of the impact of what we have seen happening with our client group, that is, survivors of child sexual abuse and principally survivors of institutional child sexual abuse. I note that when the Royal Commission into Institutional Responses to Child Sexual Abuse delivered its redress and civil litigation report in 2015, that led to a very significant change in the landscape of the legal rights of survivors. As a result of that report and the commission's recommendations, we now have the National Redress Scheme where survivors can access payments of up to $150,000, if they are eligible, and we have had very significant reforms to civil litigation rights such as the removal of barriers such as limitation periods and enabling survivors to now sue institutions that were previously effectively immune from suit. Those changes have enabled many more survivors to bring civil claims for damages for personal injuries and often for very significant amounts.

While those important reforms have been of great benefit to survivors in affording them access to justice, it has also created a market for their cases and for their work, which has led to many undesirable practices. There are many good lawyers and good law firms that provide very high-quality and trauma informed services to survivors, charge reasonable fees and put clients' interests ahead of their own commercial considerations. However, we have become aware, over a number of years now, of practices that we have highlighted in our submission that have been brought to our attention by our clients and other survivors, by services that we work with and by other partners about practices that exploit survivors in relation to their legal rights. Claim farming is one of those practices, as are high and arguably excessive and inappropriate fees that at times we see charged for services that are not of what we think to be an appropriate professional or trauma informed standard and that might, in some cases for redress claims, have been available to survivors for free from the network of services that the Commonwealth government funds.

Obviously we support survivors being able to make a decision about who they turn to to help them access justice. However, the principles of trauma informed practice—safety, trust, collaboration, empowerment and choice—are primary in that respect. People should have enough information and be treated in a way that enables them to exercise those decisions without being subject to inappropriate pressure or other practices. Many of the survivors that we work with generally are in circumstances of vulnerability, including through advanced aged, isolation, ill health, low literacy levels, financial disadvantage and incarceration. Those circumstances often occur in combination, which increases their vulnerability and impacts upon their capacity to fully understand the implications of engaging with particular services. That leaves many of them susceptible to exploitation.

We have raised our concerns about these practices at length for a number of years now, including with the federal parliament's joint select committee that is looking at the National Redress Scheme. We have also raised them in other forums, including the review of the National Redress Scheme, and we have raised with them other stakeholders. Our submission to this committee sets out some illustrative information about the nature of the concerns that have been raised with us across that time about claim-farming practices in Queensland and how they have targeted survivors.

To conclude, we strongly support the bill's objectives to stop claim-farming practices for personal injury claims. We recognise the leadership that Queensland has shown in introducing this legislation and responding to the problems that clearly exist. In that respect, we hope that this bill, once passed, stands as a model that other states and territories will be able to adopt so that we address this problem across the country rather than just simply here in Queensland. That is all I wanted to say by way of opening remarks.

Mrs GERBER: Thank you for your appearance today. I am interested in your perspective in relation to the aspect of this bill that is proposing to prevent undesirable cost practices by law firms. I understand that sometimes those undesirable cost practices open the door to claim farming, but that sometimes it is a way to circumvent the fifty-fifty rule. I am interested in your perspective on that. Should

it be looked at, in the context of this bill, in relation to claim farming or should the regulations that are proposed to prescribe disbursements and expenses also be looking at closing that loophole in relation to unscrupulous law firms exploiting the fifty-fifty rule by lumping certain disbursements and expenses to a third party, meaning that they are not done in-house and outside the fifty-fifty rule? I am sorry: that was a very long explanation.

Mr Strange: I might ask Simon to answer that. I think we are following—

Mrs GERBER: What I am saying; thank you.

Mr Bruck: We do think it is important that both issues are dealt with in this bill, so both the claims-farming referral fees and also the fifty-fifty rule in making sure that the costs cannot be externalised into these survivor advocacy businesses as disbursements to get around that fifty-fifty rule.

Mrs GERBER: You answered that very succinctly despite my very long question, so thank you.

Ms BOLTON: Mr Strange, do you feel there are any additional amendments that need to be made specifically to protect child abuse survivors as it relates to survivor historical events?

Mr Strange: I think we are generally satisfied with the ambit of the current provisions. I would add the caveat that obviously they are untested in practice and I know some of the other stakeholders have raised some issues around the operation of certificates and some of the technical aspects. We are not really able to comment usefully on that, but we would obviously wish to see this legislation be effective in its implementation and enforcement, so those issues are very important ones. We do not want a regime introduced which does not work or is met with great resistance from the legal stakeholders, for example, because that will then impact upon the prospects of other reforms being implemented in other jurisdictions.

Ms BOLTON: Mr Strange, do you feel that we do need to have a central authority or greater powers for the legal commission to, as we have heard from other witnesses, have not only better data but to crosscheck and cross-reference?

Mr Strange: I think all I can say is we want the legislation to be effective. I do not know how it will work in practice and there are other stakeholders that have more experience with how the compulsory third-party claim-farming prohibitions have worked, which I understand have been quite effective. I do understand there is a concern about, in effect, a multiplicity of enforcement mechanisms, but hopefully that will work well and cooperatively in practice and obviously all parties need to make sure that the intent of the legislation is put in place with what happens in practical terms with enforcement action. It is probably one of those issues that needs to be monitored and if there is a need for amendments then hopefully that will be brought to the parliament's attention in a timely way.

Ms BOLTON: Thank you.

CHAIR: In your submission on page 10 under the title 'Targeting of the most vulnerable survivors', the second paragraph states—

Survivor advocacy businesses are known to regularly send unsolicited mail ...

You go on to say that you have seen letters. Do you still have copies of those letters in knowmore's possession?

Ms Hancock: We do.

CHAIR: Obviously you need to protect your client's name and where the letter was sent. Are you able to provide a sample of those letters to the committee with the appropriate redactions so that the person cannot be identified or their place of residence cannot be identified? Is that doable or is that one step too far?

Mr Strange: It is. We have a number of pieces of material of that nature which we could provide the committee which include promotional materials that the claim farmers have used. I am sure we could appropriately redact and de-identify those to protect client privilege and confidentiality.

CHAIR: Thank you. Jon?

Mr KRAUSE: I was going to ask that question, Chair, and ask if knowmore wanted to identify directly any of those parties, but I think that is what you have just asked, so thank you, Chair, and I am okay.

Ms BUSH: On page 6 of your submission—and Peter has touched on it—you mention that there are four main survivor advocacy businesses that you are aware of that are participating in this kind of behaviour. Just to be clear, these are not not-for-profit funded survivor advocacy services; these are businesses established purely with the intent of doing this type of claims farming? Is that correct?

Mr Strange: It is probably hard to make that specific categorisation. Some at least have charity status or registration. I might be wrong on that.

Ms Hancock: I am not sure about that.

Mr Strange: Lauren might correct me on that.

Ms BUSH: It would be interesting to know if they do have charitable status.

Ms Hancock: Picking up on what Warren is saying there, there are a number of different survivor advocacy type groups operating in this space. In terms of the four that we have referred to in our submission, my understanding is that they are all companies or businesses and I do not think that they have any charitable status attached to them. We do know of others that we have not referred to here that we do not have the same concerns about that are operating in that not-for-profit space, but we do not have concerns with them, if that makes sense.

Ms BUSH: It does, yes. Thank you.

Mr Strange: I will check on that. I do have some recollection of a website entry about a charity, but I will check. My only other comment on that would be that some of these operations probably have multiple purposes, but a strong commercial focus is a primary one.

Ms BUSH: Thank you.

Ms BOLTON: United Firefighters gave a real-time example of a member who had been impacted and how these amendments would impact negatively. Would you be able to give an example of how these amendments regarding claim farmers will be a positive as in a real-time example if you have one?

Mr Strange: Yes. We have cited a number of examples in our submission where we have seen concerning practices and we selected those to be illustrative of the problems, and this legislation would effectively curb all of that type of conduct. An example is a survivor whose details became known to a claim-farming business and the claim-farming business then, in attempting to reach out and make contact with the survivor, made contact with his family and disclosed to the family members or to the people speaking on the telephone the survivor's status as a survivor of institutional child sexual abuse. That survivor had not told their family members, so you can imagine the distress and trauma of that occasion for the family members and the survivor to, in effect, receive a cold-call from a referral business seeking to connect with that person. That is the type of thing that this legislation will prevent. It will then also prevent the claim farmer gathering information and passing it on to lawyers who may then pay a referral fee, of many thousands of dollars in some cases, which ends up being charged back to the survivor as a disbursement and part of their ultimate legal costs and disbursements.

Ms BOLTON: Thank you.

CHAIR: Jason?

Mr HUNT: No, I am good; thank you, Chair.

Mrs GERBER: Following up on some of the questions that have been asked around trying to really identify where these claim farmers are coming from and who they are, I understand that the idea of the legislation is to cut the supply chain off so that through the law practice certificates the Legal Services Commissioner is able to ensure that claim farming cannot reach the end game of a lawyer type thing, but in order to make sure that it is effective in stopping claim farming we need to know who is doing it. I understand there are businesses doing it, but is there also this circumstance of law practices colluding with third parties? Is there also the circumstance of law practices doing it as well?

Mr Strange: Claim farming needs to have an ultimate purchaser of the information or the potential claim which is a law firm and the survivor advocacy businesses that we have noted in our submission are quite open about having relationships with various law firms around the country and that material is all on their websites. They do not generally identify what law firms, but they speak of having those relationships. Some of the principals have spoken about those relationships in other materials such as interviews and podcasts as well, so it is quite open and they publish a lot of material about how 'we'll gather information and connect you with one of our lawyers'. Sometimes there is language that might reflect there is a choice there; sometimes there is not. It refers to 'referring you to one of our chosen lawyers', so those relationships are what drives this business.

Mrs GERBER: Thanks.

CHAIR: Unless anyone has a burning question, I think we have exhausted it. Warren, is there anything that you think the committee should be made aware of or perhaps we have not asked the right question or anything you would like to add? You provided us with a very fulsome written submission and you have been very succinct in your presentations today.

Mr Strange: I do not think there is anything specific to add.

Ms Hancock: I was just going to ask in relation to that material you have asked us to provide—

CHAIR: Yes, I was going to mention that.

Ms Hancock: We could also provide the links to the websites if that would be helpful to the committee.

CHAIR: Yes, it would be.

Mrs GERBER: Thank you.

CHAIR: If we can have that by close of business on Wednesday, 11 May, is that doable?

Ms Hancock: That is fine.

Mr Strange: I will also check on that issue about the charitable status.

CHAIR: Yes. Thank you for your time, thank you for your written submission and thank you for the good work you do.

Mr Strange: We thank the committee. Thank you.

CAVANAGH, Ms Julie, Executive Director, Election Event Management, Electoral Commission of Queensland

THURLBY, Mr Matthew, Acting Director, Funding, Disclosure and Compliance, Electoral Commission of Queensland

CHAIR: I welcome representatives from the Electoral Commission of Queensland. Good afternoon. I invite you to make an opening statement if you so desire, after which the committee will have some questions for you.

Mr Thurlby: Thank you for the opportunity to appear before the committee this afternoon. The Electoral Commission of Queensland is an independent statutory body responsible for the impartial conduct of Queensland's state and local government elections and for administering and promoting compliance with part 11 of the Electoral Act 1992 and part 6 of the Local Government Electoral Act 2011, both of which relate to election funding and financial disclosure. In 2020 the Queensland parliament passed the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill which introduced political donation caps for Queensland state elections and by-elections. These political donation cap laws are due to commence operation on 1 July 2022.

During the process of operationalising the political donation caps, the ECQ identified a small number of matters for clarification which would assist the ECQ in administering and ensuring compliance with the laws. The ECQ subsequently worked with the Department of Justice and Attorney-General to develop the legislative amendments in this bill. These proposed amendments will amend the disclosure provisions of the Electoral Act and require gift disclosure returns to identify whether a gift is a political donation which must be used for state campaign purposes and comply with political donation cap regulations or an ordinary gift which cannot be used for state electoral expenditure and does not need to comply with political donation cap regulations.

The ECQ has been working with all stakeholders affected by the introduction of political donation caps to ensure education and support where required and will continue to do so up to and after the laws commence. We welcome any questions the committee may have.

Mrs GERBER: Thank you very much for your appearance this afternoon. I understand that the proposed amendments are prospective, but can the commission advise if there have been any instances of noncompliance so far?

Mr Thurlby: Noncompliance just generally?

Mrs GERBER: In relation to the amendment to close the loophole around the gifts.

Mr Thurlby: Political donation caps do not come into effect in Queensland until 1 July.

Mrs GERBER: I understand they are prospective.

Mr Thurlby: So there is no compliance or noncompliance at the moment because they are not in place.

CHAIR: In your written submission, and you touched on it in your presentation, you identified a small number of matters that needed clarification. Have you already outlined them to the committee and I missed it or can you expand on that?

Mr Thurlby: Sure. The only thing we would add is a question I believe the department may have briefed you on as well about the fundraising contribution and unintended policy outcome in the current drafting of the bill. The act as it currently reads and due to commence from 1 July would allow for all fundraising contributions regardless of value to be used for a state campaign purpose and the bill which amends that definition is designed to clarify that only the first 200 of a fundraising contribution can be used for a state campaign purpose

Mr KRAUSE: Thank you for coming in and talking to us. For the record, I declare I was lobbied by Mr Jim Soorley on one occasion, December 2019: a meeting sought by him in respect of a Wanless dump proposal in the Scenic Rim electorate. It does not impact on me asking questions about this matter. I just wanted to ask did the ECQ propose any amendments regarding lobbying that were not included in this package of amendments in the bill?

Mr Thurlby: Not as far as I am aware. Any regulations regarding lobbying would be a matter for government, not a matter for the ECQ.

Ms BUSH: You mention in your submission that you have already been engaging with stakeholders and plan on publishing extensive communication around the changes if the bill was to pass. I was wondering if you could give the committee a sense of what that communication campaign might look like.

Mr Thurlby: Thank you for the question. We have been engaging with all our registered political parties since July last year, including individual meetings where they have been requested or we have been approached to clarify what those laws may be. We will start engaging this week with our regular donors who may be impacted to understand what changes will impact them if they wish to make a donation after 1 July, that includes a dedicated fact sheet which we have published this week, as well as a pre-recorded webinar which we will be emailing to frequent donors this week as well.

Ms BOLTON: Further to the question from the member for Scenic Rim, the ECQ did not put forward any recommendations regarding this bill in terms of what was needed in relation to those donations. Is there anything that the ECQ may like to add that would improve this particular round?

Mr Thurlby: May I clarify, is that in relation to political donation caps or disclosures more generally?

Ms BOLTON: Both.

Mr Thurlby: Thank you for the question. My current view would be that the amendments proposed in this bill would be sufficient to administer political donation caps. That being said, we will, of course, be reviewing the disclosures as the laws are implemented over particularly the first six months to 12 months of implementation. If we identify anything during that period we may consult with government on those as appropriate. In relation to donations disclosure more generally, I cannot recall if we have made any specific recommendations to government or approached government on anything specific. I would be happy to take that on notice, but off the top of my head I cannot recall any. I would be happy to take that on notice and get confirmation of that.

Ms BOLTON: Fabulous. Thank you.

CHAIR: Is that something that you can answer or is it outside your remit?

Mr Thurlby: I am happy to answer whether we have made any. As to whether they have been approved or anything, that would be a question for government about why that may or may not be the case.

CHAIR: Unless you have anything further you want to add we have run out of questions. Thank you for your written submission and also thank you for your attendance here this afternoon.

GARBETT, Mr Michael, Chair, Accident Compensation and Tort Law Committee, Queensland Law Society

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

THOMSON, Ms Kara, President, Queensland Law Society

CHAIR: I now welcome representatives from the Queensland Law Society. Good afternoon. I would like to invite you to make an opening statement after which the committee will have some questions.

Ms Thomson: Thank you to the committee for inviting the society to appear at the public hearing today. In opening I would like to respectfully recognise the traditional owners and custodians of the land on which we meet, Meanjin, and recognise the home of the Turrbal and Jagera peoples, paying deep respect to all elders past, present and emerging.

The Law Society has previously appeared in connection with amendments to the Motor Accident Insurance Act in relation to claim-farming activities. The society remains strong in its support for the eradication of claims-farming practices and welcomes efforts to prohibit the insidious practice in Queensland by extending operative provisions to the Personal Injuries Proceedings Act and the Workers Compensation and Rehabilitation Act. In making an opening statement, there are a few matters the society wishes to highlight for the committee's attention. Firstly, there are excessive compliance burdens associated with legal practice certificates; secondly, there is undue reliance on respondent solicitors and insurers to report noncompliance in PIPA claims; and, thirdly, the society is concerned the investigation powers are an overreach and violate cornerstone legal principles.

If I can briefly turn to each of those matters and take you through them as part of the opening statement and then we are happy to take questions on them. Law practice certificates are a means of detecting claims farming, they are not an end in themselves. It must be simple for the vast majority of practitioners who are not engaged in claims farming to comply with LPC requirements. It must be as simple as possible for regulators to detect when there are those who are doing the wrong thing and unable to comply. We recommend the committee reconsider the current drafting of the LPC provisions with the intention of streamlining and simplifying the requirements in relation to hybrid claims in particular.

Hybrid claims are those, as you know from the materials provided, where there might be more than one respondent. There will be a claim perhaps against an employer under the WCRA and one or several against a PIPA respondent. Notices of claims are often not served at the same time and in some instances can be served months or perhaps years apart. It is necessary, in our view, to ensure the burden of delivering LPCs is more streamlined in these matters than currently contemplated and, as I said, we are happy to talk further on this in due course. Embedded in the proposed legislation is reliance on insurers and respondent solicitors to report noncompliance with the LPC requirements to the Legal Services Commissioner. In the society's view, noncompliance will be far more effectively detected and perhaps trends identified if claimant solicitors were required to provide the LPC to a central authority.

Turning to investigation powers, the society is concerned there are provisions in the proposed legislation which abrogate the right to silence, privilege against self-incrimination and legal professional privilege. The society's view is that the powers enacted to investigate claims farming should be drafted in the narrowest terms that will allow the legislation to achieve its purpose of eliminating claims farming and conform to fundamental legislative principles. Our written submissions outline a number of other matters and we are happy to speak to those, which includes the changed definition of terminal condition and its retrospective application, as well as the proposed amendment to the fifty-fifty rule regarding legal costs.

The society has here today with me two senior solicitors who have been instrumental in the society's response and advocacy on claims-farming topics dating back to the Motor Accident Insurance Act amendments. I introduce Michael Garbett, chair of the Accident Compensation and Tort Law Committee, and Luke Murphy, who is the deputy chair of that committee and a former president of the Law Society. Thank you.

CHAIR: Are there any further opening statements?

Mr Garbett: In terms of opening statements, I would like to echo what the president has said. Fundamentally we obviously agree with the intention of the legislation. We were a force in instigating the push for the legislation. What we do not want to see is the legislation becoming overly complicated and requirements for solicitors become overly complicated so that we do not achieve the goal of eradicating claim farming that we are all setting out to do.

Mr Murphy: What the society considers is fundamentally essential in considering this draft bill is that we go back and understand the foundation for the approach that underpinned the motor accident insurance legislation—that is, that it was impossible to regulate against the claim farmers but what could be regulated against was the conduct of legal practitioners. That is essential to remember when considering the proposals that are in this bill—in particular, the nature of what we consider to be overly bureaucratic requirements around legal practice certificates and the imposing of obligations on respondents, respondent insurers and their solicitors when there is, we consider, little to be gained by imposing those bureaucratic obligations and there is a simpler alternative, as president Thomson has referred to.

Mrs GERBER: I am interested in you expanding on the simpler alternative in relation to law practice certificates. I understand that those are essentially the gatekeeper—that is, the mechanism by which we are going to cut the supply off in relation to claim farming—and that if it is not done right, there could be unintended consequences in terms of costs and in terms of firms being held liable for a failure to do a law practising certificate when it was an unintended error. There are a litany of issues there. I am interested in your perspective on how it can be done better in a really simple way.

Mr Garbett: The Law Society certainly agrees with you. The LPCs, the law practice certificates, are fundamental and are very important to the whole process and they have worked very well in the motor accident arena. What the Law Society is more concerned about is just some of the complexities around the law practice certificate requirements in the bill as it is currently drafted. Some examples have been given—for instance, in what we call hybrid claims, where they might be across a number of different schemes. Another example is with the workers compensation arena amendments, where requiring law practice certificates in cases where a solicitor might be involved simply to investigate a statutory claim probably is a bit of an overreach or unnecessary in our view. Fundamentally, we entirely agree with you; the law practice certificates are fundamental to what we are trying to achieve here.

Mrs GERBER: So how do we simplify it?

Mr Murphy: If we talk just about the PIPA, because we would acknowledge that the CTP scheme is operating well and there is nothing to justify, in our view, upsetting the operation around that. The WorkCover regime—again, with an established central authority that administers it—has the same capacity we believe to make it effective, provided there is the information sharing and subject to what Mr Garbett has just said around some of the statutory claim notices.

In relation to PIPA though, we have a concern that there are too many certificates being required. They are being given to entities who have no interest in the outcome. In the two regulated regimes, there is an interest from all insurers in it because they are regularly dealing with the administration of the regime. That is not the case with PIPA. We think the easier way is to have the certificates given to a central authority—whether that be the Legal Services Commission or indeed the Law Society itself—and then, before any payment is made, a clearance be given by that central authority that the certificate has been received. It requires one or two certificates. It does not require ongoing certificates as further notices are given. We think it has the potential to address a number of issues.

Mrs GERBER: If the Legal Services Commissioner was the central authority tasked with that role, in your view would the funding need to be reconsidered to ensure it is adequately funded in order to maintain that specific role, or could that be incorporated in the current policy objectives?

Mr Murphy: I am not aware of the current funding arrangement for the Legal Services Commissioner. In my meetings with the commissioner, it has certainly been expressed that there is concern in relation to appropriate funding, but again I think there is potential for a number of alternatives that could address that. Ultimately, I cannot answer your question because I am not across the state of play.

Ms Thomson: I think that is right. The funding would be more than putting bodies in seats; it would need to be the technical infrastructure to support that as well.

CHAIR: Going back to your unpacking, Luke, you said that certificates would be supplied to parties or bodies that have no interest in the claim at all. Are you able to expand on that?

Mr Murphy: One of our concerns is that, for example, in some of the PIPA claims some of the respondents—which could be any of us here if we had a visitor sustain an injury at our home—may not be insured, and receiving a legal practising certificate in circumstances where a notice has been given

is going to be meaningless to a significant number of the respondents. In circumstances where they are insured, again, many of the respondents simply pass it on and do not have any ongoing interest in it. With the insurers who are in the public liability market, our fear is that there is no regulation of their participation in the market; it is purely driven by commercial considerations. If they do not give the certificate or notify the commissioner of concerns—they have a discretion, which is another issue. It is just not tight enough in our view to ensure the objectives can be achieved. We think it creates a bureaucracy that actually defeats the purpose of what is trying to be achieved here, which everyone is supportive of.

Mr Garbett: Put simply, under the current regime there would be a lot of respondents who would not know the first thing about what a law practice certificate is, let alone what to do with it, nor do they have any motivation to pass it on, make complaints, et cetera—to be distinguished from the current motor accident insurance regime obviously where the commission is across all of these issues.

CHAIR: Isn't the motor insurance scheme a lot simpler in the sense that you are dealing with one entity? When you have a PIPA claim, you could be dealing with multiple. Why is not serving the other respondents with a certificate—whether they understand it or throw it in the bin or whatever they do with it—a more efficient way of trying to regulate? We go from the premise that we are trying to stop claim farming. We know that the certificates in relation to the motor vehicle insurance scheme have had some success anecdotally in ridding claim farmers out of that space, but we are in a more complicated space, for want of a better definition. Basically, the motivation for all this claim farming came about because of the victims of institutional abuse cases. My understanding from the evidence we received is that was the motivating force—that we needed to do something about this because unscrupulous practices were going on. Now we get to the point where we are saying we only need to issue one certificate, but how do you deal with the rest of those bodies that may need to be notified? Why are they less important?

Mr Murphy: If I understand your question correctly, we are not suggesting that the other entities are not important by any stretch of the imagination. If we take it back to the understanding of the foundation for the legislation in the motor accident act, it was to address it at the level of the solicitors. If in fact that is still the fundamental objective—which we think it should be because that is the demographic that is regulated—the best way to address that in the PIPA space, where there is not a central authority like the WorkCover regulator or MAIC, is we believe more likely to be one of the co-regulatory authorities of the profession itself, either QLS or the Legal Services Commissioner. What we think is important is that all of those other entities, before any payment is made, are obliged to obtain from the central authority, using Centrelink and Medicare established practices, clearances that there has been a compliance, and if there has not then—

CHAIR: All bets are off.

Mr Murphy: Yes. Can I just make one other point? In addition to the concern about the institutional abuse area, there was to our knowledge a development of claim-farming activity within the WorkCover regime as well. A number of our members had conveyed to us some meetings they had had with people who invited them onto their panel.

Mr Garbett: Can I add to that, going back to the point you made originally. I think the Law Society agrees wholeheartedly. You are correct. The motor accident insurance scheme is far simpler and the PIPA scheme is far more complex. By suggesting that the certificates go to a central body, we are trying to simplify it in what is understandably a more complex regime.

CHAIR: I apologise for making my question so long. You have definitely clarified my concern. Thank you for that.

Mrs GERBER: I want to move to the objective of the bill relating to looking at unscrupulous cost agreements in relation to the fifty-fifty rule. My understanding is that one of the objectives of this bill—whilst some of those cost agreements open the door to claim farming, it is not just claim farming—is the notion of trying to name in the regulations disbursements and expenses that have to be identified in the cost agreement to try to prevent firms from circumventing the fifty-fifty rule by naming certain expenses as disbursements. I am interested in the society's perspective on that because the department has not been able to specify to us what will be put in the regulations in relation to disbursements and expenses.

Mr Garbett: We agree. In terms of regulating the disbursements—for instance, payments to third parties and things like that—it does have the objective of trying to eliminate claim farming. You are right, it does go further than that in that that is a practice. If a particular firm is incurring external expenses and then treating them as disbursements when they should not be, we would agree that that is an unscrupulous billing practice, and that whole issue is broader than just claim farming. Does that answer your question?

Mrs GERBER: That does answer my question.

Ms BUSH: Coming back to the issue around the certificates—and you mentioned having almost like a host station to hold onto those—I am not sure if you saw the submission from the Australian Lawyers Alliance that gives another alternative that there could be amendments made to this act that allows for a certificate to be given under one act and then copies of that to be made across the other schemes in a hybrid application arrangement. I am interested in your views on that.

Mr Murphy: Ms Bush, we have seen the ALA's submission and we are, on the whole, completely supportive of it. There is one fundamental difference which we do not need to go into at this point. We agree wholeheartedly with the giving of one certificate and strongly support the fact that ideally we are going to have one certificate that covers all three regimes. However, what we are advocating in the PIPA regime is where that certificate would go within that regime. It is an additional issue that would be supported by the one certificate for all three regimes.

CHAIR: I want to clarify something that is in your submission. You refer in the very last paragraph that the claim farming provision contains an error in the bill, that it ought to refer—that is simply what is says.

Ms Thomson: As I understand it, DJAG has responded and confirmed that that is an error that will be corrected.

CHAIR: Okay. There are examples given in the rest of the sections—I will not read them all out—should be consistent with?

Mr Murphy: Consistency between the three schemes. In one of the initial drafts in which there had been some consultation, there were some inconsistent references and then there were also some inconsistencies within expressions. It comes back to a fundamental concern that if the legislation is going to achieve its purpose, which we certainly hope it does, we need to ensure that it is consistently applied across all three regimes because if in fact we start to get some differences in the administration and in the prosecution of offences, our fear is that would just embolden the claim farmers more.

CHAIR: I wish to deal with the provisions in relation to how a claim or a breach of the PIPA legislation, if the bill is passed, would be investigated. Am I fair in assuming that under the Motor Accident Insurance Act it is not as prescriptive in relation to the rights that the president has outlined about self-incrimination, client privilege and I forget the other one.

Mr Garbett: I do not have them in front of me, but from memory there are similar provisions that were introduced into the Motor Accident Insurance Act, but I think the society voiced the same objection at that time.

Mr Murphy: Mr Chair, they are the same. What has been adopted is that the same powers that have been given to the MAIC appointed investigators are proposed to be given to the WorkCover and PIPA investigators. Our fundamental concerns, as a society, on those cornerstone principles, remain the same and just as forceful.

Mrs GERBER: In respect of the personal injuries and retrospectivity of the legislation, can I get the society's view on how that should be handled, whether or not that is fair to claimants that currently have their claims in process, and anything else you wish to add to that?

Mr Garbett: The Law Society fundamentally objects to retrospective legislation unless it is justified. We say that in circumstances such as these, retrospectivity is not justified for exactly that reason: it would be fundamentally unfair to people already involved in the system to then be caught by retrospective legislation in relation to terminal condition, and the Law Society will forcefully object to any retrospectivity in that regard.

CHAIR: Does the Law Society have any information in relation to what disadvantage would flow to potential claimants should the retrospectivity remain?

Mr Murphy: We do not have any hard data, Mr Chair. What we have been advised of is that there are a number of claimants who have started the process of working through applications and incurring legal fees and outlays on the basis of the legislation as it stood, and this will now remove their right. You have vulnerable, indeed some of the most vulnerable, members of our community, having incurred expenses quite appropriately and exercised a legal right to which they were entitled to, having that taken away from them. I personally cannot talk to any experience in it, but that has been conveyed to us by some members who do practise in this particular area.

CHAIR: To deal with the issue and perhaps a broader issue from the suggestion that the claims be within three years of five years, what is the fairest way, in the society's view, in being able to deal with the commencement date?

Mr Murphy: Can we take that on notice, Mr Chair?

Mr Garbett: I understand the question, but I must confess I have not thought through the mechanics of how that would best work.

Mr Murphy: The society's position was supportive of the proposed three-year regime, but we would not object if it was five years rather than three. Our understanding was that the three years was partly driven by commercial considerations. The society has always been a staunch supporter of ensuring that the ongoing commercial viability of the scheme is not put at risk. We have been blessed with a very well-run scheme that is well-funded, and we do not want to see that put at risk.

CHAIR: Do you have any evidence that it would be put at risk?

Mr Murphy: Quite the contrary, I understand. I did not understand WorkCover to have said that it would, if it was five years rather than three, put it at risk, but I have not explored that in any detail.

Mr Garbett: If there is any evidence of that, there is nothing that the Law Society has ever seen to the best of my knowledge, and I would be very surprised if there was any evidence of that.

CHAIR: I would like to thank you for coming along. I think there may have been a question taken on notice.

Mr Murphy: If you would like us to address that, Mr Chair, we are more than happy to.

CHAIR: If it is not too burdensome. If there are issues that you are not able to answer it, just contact the secretariat and say, 'It is a little bit too hard.'

Mr Murphy: We will certainly ensure that the president addresses it, Mr Chair.

CHAIR: Sorry, President. The answer has to be with us by Wednesday, 11 May, if that is not too onerous. We thank you for coming along and giving us a fulsome briefing and also for your written submission which was very helpful to the committee.

Proceedings suspended from 2.41 pm to 3.03 pm.

BOWEN, Mr Tim, Manager, Advocacy & Legal, MIGA (via videoconference)

CHAIR: I now welcome Tim Bowen. Tim, I invite you to make an opening statement after which committee members will have some questions for you.

Mr Bowen: Thanks for the opportunity to come before the committee today. I am sorry I am not able to join you in person. MIGA is a medical defence organisation and a healthcare professional indemnity insurer. We insure, advise and educate a broad range of healthcare providers, particularly doctors and their practices, throughout the country. We have extensive experience over many years in medical negligence claims, both in Queensland and more broadly. Our in-house and external panel lawyers assist healthcare providers who face claims against them.

In relation to what the committee is looking at, our concerns focus on, firstly, the operation of the fifty-fifty rule around the use of barristers and, secondly, the proposed reporting obligations on solicitors who act for a respondent in a claim. On the first issue, we recognise that barristers have a very important strategic role to play for plaintiffs in their claims. However, our concern is that such a broad exclusion of their fees from the fifty-fifty rule risks situations whereby they are briefed to take on a much greater role in preparing the claim than is really necessary. This could increase a plaintiff's costs significantly, reduce the amount they receive in hand, reduce the plaintiff solicitor expertise and make it more difficult to settle claims.

On the second issue around reporting obligations, we see what would be asked of respondent solicitors as going too far, requiring judgements to be made about matters that may be outside their knowledge. There are also issues around a lack of reasonable-excuse provisions for not making a report and a lack of protections for those making reports in good faith. Thank you again for the chance to contribute to this inquiry.

Mrs GERBER: Timothy, are you able to explain a bit further about what you mean in your submission when you say that barristers' fees are excluded from the scope of claim related costs? My understanding of the way that the bill is worded is that barristers' fees fall within a disbursement. I understand what the Law Society has said in relation to the other two regimes where barristers' fees perhaps have been left off. Is that what you are saying or are you saying something different?

Mr Bowen: I am speaking specifically in the bigger context so my point is quite different to the position of the Law Society and the other peak bodies. Our concern comes around: what is that exclusion for barristers in the disbursements? As I read the bill, barristers' fees are included in legal costs in the fifty-fifty cap before the first notice of claim. That is quite an early stage. After that first notice of claim, the barrister's fee is not included in that cap, therefore, it becomes a disbursement—not subject to the cap—and that is where the majority of the legal costs are incurred. That creates the risk of more of the work being put to the barristers and less of the work being done at the solicitors, leading to a larger cost bill than if more of the work had been done by the solicitors—the work that is traditionally done by the solicitors.

Mrs GERBER: Following on from that, one of the questions that I have been asking a number of witnesses today is in relation to the fifty-fifty rule and law firms perhaps using third parties to do matters that would otherwise be done in-house, similar to what you were just talking about, in order to circumvent the checks and balances in place with the fifty-fifty rule. Can you provide me with your perspective on that or is your submission only in relation to barristers' fees?

Mr Bowen: Our submission is very much in relation to barristers. We do not have any direct or anecdotal experience around claims farming. We are a little bit removed from that. Looking at what putting caps or restrictions on that would involve, we think the risk is probably heightened in terms of: if there is a cap on something, where else can we, I guess, deal with that issue by involving other people who are not subject to the cap who can undertake that work and that work could be undertaken by barristers.

Mr KRAUSE: Mr Bowen, is it your submission and your group's submission that barristers' fees entirely should be included in the legal fees 50 per cent cap?

Mr Bowen: Yes, it is.

Ms BOLTON: Mr Bowen, by including a cap internally, what mechanism would stop those fees blowing out?

Mr Bowen: It would be relying on the fifty-fifty rule itself to make sure the grey-matter work, so to speak, of a matter do not get out of control. That does not provide a cap on other disbursements like expert reports and mediation fees. However, it provides a mechanism to say that with one of the largest components of the claim that can vary significantly—that is, the professional costs—not just one element of that falls under the cap, as in solicitors' fees, but both elements of that would fall under the

cap, as in barristers' fees. It means then the solicitor who is skilled in this area and who is undertaking a considerable amount of work and involving a barrister in strategic matters is not unduly penalised, on one view, by doing more of that work and being subject to the cap, whereas a solicitor who might involve a barrister doing more not subject to the cap is, I guess, receiving more or making a larger cost claim around that.

Ms BOLTON: Will what you are suggesting benefit the end client or could it be detrimental? What impacts would that have?

Mr Bowen: We would argue that it would benefit the end client because the amount in hand is more likely to be greater. There is the fifty-fifty cap on what their solicitor can charge. Let's say there is no fifty-fifty cap on what their barrister is charging so that could be any amount, subject to a general fair-and-reasonable rule. If we bring that under that, the amount in hand is more because both components are subject to the fifty-fifty. There is a cap around it.

We would say there is not a detriment to the end client because they would be normally engaging the skills of someone who is quite experienced in this area around personal injury. If a person was not as experienced, we would say there would still be a way of involving barristers that does not adversely impact the client's interests. I would say the majority of matters that we see—and I speak anecdotally of the Queensland matters—do involve reasonable charges by solicitors involving barristers not getting towards that fifty-fifty rule. If we do not have that control on it, the concern is that it will go beyond what we see at the moment.

Mrs GERBER: Would you apply the same rationale to the provision of medical reports?

Mr Bowen: We have not sought that and, thinking on my feet, I could see reasons why we would not apply that rationale to medical reports. In our experience, the cost of the medical reports can range considerably and the complexity needed ranges considerably. A report in a medical negligence setting on a liability issue where a doctor has departed from the expected standard of care might cost a $3,000 amount for a more straightforward, so to speak, matter or it could cost much more for a more complex matter so I can understand why it would be more difficult to bring it under that cap. It would then involve, I guess, a supervisory regime over what kind of costs can be charged in that. It might be worthy of looking at, but it is not something that we seek at the moment. We acknowledge that there would be significant challenges for plaintiffs and their solicitors around dealing with that.

Mr KRAUSE: Mr Bowen, in terms of payments that are made by defendants in personal injury cases—in your case, medical matters—what percentage of those payments generally are taken up by your legal fees? Do you have any information about that?

Mr Bowen: No. It is quite difficult to compare it in a sense because often our matters will be settled on a costs-inclusive basis, which is completely separate from any fees we incur. We may not incur fees if it is handled by us internally, by our internal lawyers. It would only incur fees on our part if we involve our external lawyers. It is a very difficult thing for us to compare. I do not have any data on that.

Mr KRAUSE: That is unfortunate. It would be interesting to compare.

Mr Bowen: If I could answer as a follow-up to your question, we do accept that the role of a respondent in a claim is slightly different and that we may be incurring less fees by having to not so much put the claim and find the evidence for it but respond to the claim. In some ways it is narrower and in some ways the costs are less so it makes it challenging to compare a plaintiff's and a defendant's solicitor's costs or lawyer's costs directly.

Mr KRAUSE: Yes, I understand that. I will leave it at that. I know that there would be reports that would need to be done by defendants as well as plaintiffs. However, I take your point that it may be difficult to make those comparisons.

CHAIR: There being no further questions, Timothy, I thank you for making yourself available and for your written submission. We have run out of questions for you.

Mr Bowen: Not a problem. Thank you for your time.

KING, Ms Jacqueline, Assistant General Secretary, Queensland Council of Unions (via videoconference)

CHAIR: Welcome. I invite you to make an opening statement to the committee, after which the committee will have some questions.

Ms J King: Thank you to the committee for the opportunity to make a written submission and also to appear before you today. You have our submission to refer to. There are two matters that we would like to comment on. The first is the claims-farming provisions which are included in the amendment bill. The Queensland Council of Unions and our affiliate unions were consulted by the regulator late last year quite extensively in respect of those amendments. We are supportive of those changes and believe they provide a good balance between protecting vulnerable workers out there in the system and protecting legitimate referral arrangements to receive competent legal advice in that space. I reiterate that we are supportive of those amendments and there has been full and proper consultation from our perspective.

Our comments go more to the amendments to the terminal illness lump sum payment. On this matter, we were consulted mid-February this year with respect to the mooted changes that are now in the bill. We have expressed our concerns about the reintroduction of a time frame limitation on access to that based on the three-year period. As the committee is more than aware, this is just essentially reinstating a cap which was only removed in 2019. We have referred in our submissions to the minister's first reading speech et cetera where the reason provided at that time for the removal of the then two-year limitation was around unfairly excluding some workers who had a terminal illness diagnosis that might be in that three-to five-year period, and I think examples were given at the time in the explanatory notes and in the first reading speech.

We are aware that the Blanch decision of the Queensland Industrial Relations Commission from December last year made a finding that the only discretion that an insurer has is to either accept or reject the claim based on the medical evidence, and that has obviously pre-empted the changes that are here today. We have noted our real concerns. We did ask for information in terms of what the financial impact would be on insurers. We are now aware through the public briefing process that that is estimated to be around $84 million annually. We did ask for and have now received information with respect to the number of people who may be impacted by the decision in terms of those claimants who are currently in the system awaiting a decision. The speed at which the bill has come to the House is one of our concerns with the regulator. It is really around whether we have explored all of the options that may be available to the regulator in recommending legislation that is now obviously before the committee.

Our principal concerns are that for any terminally ill worker who has a diagnosis over three years essentially we will now have two systems again. We are moving back to that system. There will be some workers who have access to it, and then anyone who is above that period is essentially going to be forced back into the common law system. Are we delaying costs in terms of the statutory scheme to be transferred through to when a person can get access to common law damages? At that point, one of the principal things that we see is fundamental to the scheme is that workers have a choice to be able to go through a less legalistic process by accessing a statutory scheme, rather than having to proceed to common law, which obviously takes a longer period of time. When we are dealing with workers who are dealing with a terminal diagnosis, our preference is that they have access to the statutory scheme and are not forced into that common law system which can be quite litigious and costly for them.

The final point I would make on that is we ask the committee to consider one of the key tenets of the workers compensation jurisdiction, which is to get a correct balance between fair and appropriate benefits to terminally ill workers and their dependants and ensuring the viability of the scheme. That is one of the reasons we were asking for the costings and other options that might have been available to ensure that balance was there.

The final point we would make, as others have, is in respect of retrospectivity and the backdating of the provisions to 2015. Obviously, there are a number of those claims. We understand that may impact on a minimum of around 115 people who currently have claims in the system who have not received a decision. Those people will already have incurred legal costs up to this point. They will have taken legal counsel about the pathway they wish to pursue at this time, in the understanding that their life will not last that much longer. They are looking in those circumstances to buy a house for their family and to make sure their family and dependants will be financially dependent. They have already embarked on a decision-making process around that. Our concern is that this retrospective application of the bill will then upset all of that at a time that is already quite emotional for them and their families and also force them back into that common law system and to incur further legal costs.

In our submission, we have highlighted that we think it is a very clear legislative principle that legislation should not adversely affect people's rights. We ask that the committee at a minimum focus in on that retrospectivity and not create a system that will adversely impact on what we believe would be a fairly small group of people currently in the system awaiting decisions. I will leave it at that.

Mrs GERBER: We have heard from some submitters today that rather than three years it should be five years in terms of the time limit. We have heard from other submitters that they would like to see that aspect of the legislation not changed at all—for it to remain the way it currently is, for the status quo to stay. What is the position of the Queensland Council of Unions in relation to those two issues?

Ms J King: Our consultation that we did with our affiliates back in February was to explore the options that might be available. I alluded to that previously, which was exactly that—we wanted the regulator to come back and put a number of options on the table, including that five-year option, given that the minister's comments to the parliament at the time in 2019 reflected that three to five years that they believe that group of workers in particular had been excluded from access to the payment and also in terms of some of the more recent forms of illness—silicosis in the stone benchtop industry and the like—which are likely to fall within that type of period. We had asked for that. We were open to the five-year proposal. As we said, that is where we were asking for some actuarial advice to run some numbers and some figures around the other options, rather than going back to pre-2019 plus one year, if I could put it that way. We do not have an official position, other than we are open to it. We would have liked to have seen what those figures were and to make sure there is a fair balance in the system. Fundamentally, our policy position very clearly is that we are opposed to the retrospective nature of the bill.

Ms BOLTON: Going back to the scheme viability, previous witnesses have said that after 2019 there was a rush of those who had not been eligible but that will now basically decrease because that has happened. A lot of what we are talking about for these changes is in relation to that. Do you have any thoughts on that? Do you have anything that has come back from your affiliates that would support that?

Ms J King: I guess the changes that are in there are for people from 2015. Is that what you are referring to?

Ms BOLTON: Sorry, from the determinations in 2019 and the change that then gave the flexibility of the time frame.

Ms J King: Again, in terms of the flexibility of that, our position in 2019 was supportive of the amendments to the legislation as it was then. We understand the concern of the regulator and the government in respect of the viability of the scheme. That is where we would have preferred to have been given further information. I am sorry to repeat myself, but our fundamental position really was that we understand there may be an impact and we need to see further detail of what that is and what the additional options are to actually address that.

I get what you are saying in terms of there may have been a flood that will ease down to a trickle, but some of that is very difficult for us to comprehend without that actuarial advice. I guess they are the concerns that we have expressed around that. It is in that context that we were saying that we were happy to look at other options, including the five-year options—not necessarily that we fully supported it—but were there other ways to address this and how else could we maintain the financial viability of the system at the same time as maintaining fairness and balance to workers who have a terminal illness diagnosis?

Ms BOLTON: From what you have just said, I gather you have not been provided with the information that you need to make that informed decision around whether it will become a trickle because we have been given no information on that.

Ms J King: I think that is a fair analysis.

CHAIR: Dealing with the viability of the scheme, one of the issues that has come up is there would appear to be more people being diagnosed, which is not as a result of people bringing claims unnecessarily, it just means that unfortunately people are more aware of this disease within three different industries. We have the firefighters who are subject to claims because of the long list of cancers that they are exposed to because of their jobs, and then we have the benchtop guys—a recent addition to this problem—and we also have the rail workers and we also have—

Ms J King: Black lung disease with the coalminers, yes.

CHAIR: Yes. Correlating increasing numbers then is not necessarily as a result of a given court case. It is unfortunate. I do not know, Jacqueline, are you able to—

Ms J King: Again, without the numbers—and I have only read yesterday the public briefing which was provided from the department to the committee which goes to some of those figures as they have gone forward in more recent years—I am not convinced that we have a floodgates position which fundamentally was what our position was. We would like to have more time. We would like to have more information provided so that we can take an informed position on this issue.

We have consulted with some people in the legal community, as well as obviously amongst our affiliates that are impacted in relation to this, and I would agree that in more recent years the silicosis issue, in particular in the stone benchtop industry, is an emergent issue. It is a different beast in the sense that if you had silicosis 20, 30 or 40 years ago, that might emerge over a 25 to 30-year period versus now; in some cases it is emerging after three to five years exposure simply because of the concentration of silica in that product. That is something that the government has moved on and should be commended for in terms of the swiftness that it moved in terms of the codes of practice and guidelines for industry. However, in the system itself, particularly the Gold Coast area, that is a known problem area for people who we believe will be impacted, particularly in this space.

The other area that we are conscious of is black lung disease and the re-emergence of that in the coal and the power industries. That was something that had not been around for quite a while, even though it was here; the doctors were not diagnosing that.

The other issue from Blanch that I think deserves some reflection upon is that it was simply an interpretation of the law. The QIRC decision essentially is saying that an insurer still, under the current law and post Blanch, still has the right to challenge the medical diagnosis for a person who has put a claim in. A fundamental principle or fundamental part of the workers compensation system is what the regulator or insurers can do currently. That is the basis. There can be differing medical evidence which is provided. I think there are still some protections that are in there, and that was really pointed out in the Blanch decision, that there is still that capacity to do that, except that in that decision that went to the QIRC, the respondent was arguing for other matters for the insurer to be able to take into account.

That is where we came back to the position of are there other options for the government to consider in terms of (a) is there a real cost blowout here? Is there going to be a pile-on effect because of this? If there is, then what are the options for dealing with this legislatively? One would have thought that an appeal may have been on the cards early in the piece. If that process was exhausted, how else could the legislation be framed to allow that fairness to stay in the system?

Fundamentally, our position is that while we have some sympathy for the government in the sense of wanting to maintain the financial viability of the scheme, it is difficult for us to be able to say with any surety that that is actually an outcome of this without providing further evidence of what that is and without providing further evidence of what are the other ways and what are the other options potentially to redress what is in this space without essentially returning to pre-2019 plus one year.

Ms KING: Thank you so much, Jacqueline. I appreciated your comments on this. I understand that the committee heard evidence from the department that accessing a terminal payment too early in the course of their disease can have a deleterious impact on their mental health. Can I ask you to unpack a bit what, in your experience, is the impact on workers once they have been told they have a terminal illness and they have a prognosis of three years or less? Could you reflect on those comments from the department for us, please?

Ms J King: I think anyone who has been around the workers compensation system and dealt with workers who have been seriously injured or who have a terminal illness diagnosis knows that the impact, after the initial shock has occurred and they go through that acceptance stage, is to start to focus on the things that they can control. The things that they can control are: 'What can I do for my family? What can I do for my dependants to make sure that, once I am gone, they are going to be looked after and that I am not leaving them in a situation?'

The advice that we have and the feedback from affiliates and from discussions with people in this space is simply that is what they are focused on, and that is where I think that early access can be of benefit.

At this point in time though, in the majority of cases, they are also often engaging in—and we would strongly advise all people to do this—getting legal counsel at this point. Even if they choose not to proceed with legal counsel and go down a common law path system, people should be aware of what their rights are; they should be aware of their legal options; they should be aware of any time limitations that they may have to access any type of payment et cetera, to make informed decisions. At that point they can have a full discussion with their family about what they want to do. It is not necessarily the case that someone forces someone and says, 'You have to do the statutory lump sum payment,' or, 'No, you are better off taking the common law path', but that they have a fully informed

position about that that will help them in the circumstances in which they find themselves because everyone is different. Someone might have good access to superannuation, whereas other people may not, or they may not own their own home. So that feeling of being able to provide for your loved ones, I think, in those circumstances and understanding all of that is really about the individual circumstances.

Ms KING: Further to that, can you give us a similar reflection on the experience of workers who have received a terminal diagnosis who do go down the common law path?

Ms J King: My experience and my understanding as well is that the common law pathway is quite a long and lengthy process and a lot of people's experience from that is not necessarily a positive one. They are often left hanging in the air. There are long times between conferences. There is disputed evidence, disputed facts and all of that sort of thing. There are conference settlements, pre-conference settlements—all sorts of things that go on. Depending on the individual case, it is often very litigious because the insurer is often opposing. In that instance, there is always that sense of, 'We are not quite sure we are going to get through this.' There is always an unknown figure between what estimates are and what the final outcome is. The length of time that is involved and the legal costs are a factor.

I know the legal fraternity managing that process can also be quite difficult. We run a workers' psychological support service through the Queensland Council of Unions for all workers, not just union members, who are going through the WorkCover system, and a lot of that is referrals to counsellors. There are issues around housing. There are a whole range of other things that may fall out of individual circumstances. The legal fraternity is dealing with a very long, complex and complicated common law system. The individual is having to deal with everything that affects them and their families on a day-to-day basis. You refer to the mental health issues, but there are also the practical types of things and the practical decisions that they are trying to make while they are in the process of dying, to be frank.

CHAIR: That brings to conclusion this part of the hearing. Thank you, Jacqueline, for your appearance and your written submission.

GRACE, Ms Sarah, Queensland Branch President, Australian Lawyers Alliance

HODGSON, Mr Rod, Workers Compensation Special Interest Group Chair, Australian Lawyers Alliance

CHAIR: I now welcome representatives from the Australian Lawyers Alliance. Good afternoon. I invite you to make an opening statement after which the committee will have questions for you.

Ms Grace: The ALA thanks the committee for the invitation to attend today. I begin today by acknowledging the traditional custodians of the land on which we meet and pay my respects to their elders past and present.

Good afternoon, chair and committee. My name is Sarah Grace. I am the Queensland ALA State President. I am accompanied by Rod Hodgson, a state committee member and chair of our Workers Compensation Special Interest Group.

The ALA unambiguously supports the policy intent of expanding claims farming regulation to both the Personal Injuries Proceedings Act and the Workers' Compensation and Rehabilitation Act. The ALA, with the QLS, were closely involved in a CTP iteration of the law several years ago. However, this bill is deeply flawed. As ALA's submission and several others make clear, the ALA opposes this bill in its current form.

I first deal with LPC requirements. There are onerous and unworkable practical effects of providing numerous law practice certificates throughout claims, and in particular in instances where an injured person may have a claim under multiple acts which we refer to in our submissions as hybrid claims. The administrative burden on practitioners is unnecessary to achieve the policy effect of this bill. Those administrative burdens add to costs and operate as an impediment to access to justice for people who are already dealing with the trauma and pain of an injury or illness.

These practical concerns fall into three categories: the need to give multiple law practice certificates at many different times, the failure to consider how this will operate for claimants with access across different personal injury legislative schemes, and the unnecessary and unreasonable complexity in the requirements under sections 325H, I and J of the WCRA. We have detailed the practical issues in our submission, but if the committee needs expansion upon this, I am happy to give some further details.

I turn now to the terminal conditions provisions. These dramatically and unnecessarily affect the rights of dying people. We have heard from many people today on this point. If amendments are to be made to section 39A of the WCRA to impose a strict life expectancy test, then a five-year life expectancy requirement to be introduced should be introduced as opposed to three. The ALA regards the retrospective stripping of any rights to legal redress as unacceptable. This is not retrospectively conferring benefits; it is taking rights away during the legal process. When those rights are rights of dying people, the ALA regards this aspect of the bill as reprehensible. The retrospectivity of this proposal will also immensely prejudice extremely ill workers and their families.

WorkCover Queensland is the most healthy and solvent workers compensation scheme in the nation. ALA rejects absolutely any assertion that a highly profitable scheme with a 155 per cent funding ratio as at the last annual report will be damaged or threatened by allowing those with claims already lodged to have those claims proceed on the current law.

In the three years prior to the Palaszczuk government the then government stripped rights off those injured in unsafe workplaces. Those rights were stripped against the recommendation of an LNP-led parliamentary committee. That was ideological, unconscionable and unnecessary when viewed through any fairness or economic lens and the ALA said so at that time. The first Palaszczuk government restored those rights and the scheme has gone from strength to strength, but what we have here is proposed law which is appallingly unfair and unnecessary and we must call that out.

The proposed removal of those rights retrospectively sends terrible messages to the broader community. It is offensive to the values held by lawyers looking after dying people and entirely inconsistent with WorkCover's stated values. Retrospectivity here is doing the wrong thing and in doing so is inconsiderate and inflicting indignity. The retrospectivity needs immediate removal, there is no place for it, nor any compromise which would pass any fairness evaluation. To illustrate these points we refer to examples provided in our submissions. We have proposed that the operative date for the amendments be 1 July 2022. It could also be the proclamation date. We welcome questions on these matters or any other aspect of our submission.

CHAIR: Thank you. I think you were here earlier when I was questioning the Law Society about simplifying the certificates. Are you comfortable with where their submission landed or do you think there is something further to add to it? They said to have just the one regulatory body receiving a

certificate rather than all the respondents—pull me up if I have got this wrong—and when the claim is settled then the final certificate, and that would cover off on the rest of the respondents. If the certificate had not been given to the regulatory body, whether that be the Law Society or the Legal Services Commission, that would alleviate the complexities. Those are my words. Have I got that right?

Mr Hodgson: We are in vigorous agreement that there needs to be simplification of the LPC regime. Firstly, giving a certificate at the point in time that the client is retained by the law firm. That is one certificate. The recipient of that certificate will depend on which regime or regimes are engaged. It has been pointed out—the term is hybrid claims—that many claims that lawyers see involve injuries at work where the employer may be the respondent to the claim, as well as one or sometimes several other entities. Sometimes those things are not apparent from the time that the law firm takes the claim on. We do not want to have to produce a separate certificate at a later time. It is unnecessary and it is onerous. The same certificate can be given as part of the claim's intimation process at those later points in time.

The only divergence, and it is a minor detail, is who is the recipient or repository for those certificates. There is some strength in the argument that there be a central repository, such as the Legal Services Commission, if they have got the resources, or perhaps the Queensland Law Society. Then the next step, of course, is that there be a clearance given before the settlement funds are paid. Fundamentally we are on exactly the same page about (a) the problems with the existing regime and (b) the need to simplify it without damaging the policy effect of the amending legislation.

CHAIR: In relation to the retrospectivity, I understand your submission and why that is an issue. In your opening statement you suggested a date by when the commencement would be. Have I understood that correctly?

Mr Hodgson: Yes. The retrospectivity issue has been rightly one of the hot-button topics for today. The word 'abhorrent' has been used earlier today. The word 'troubling' has been used earlier today. The word 'reprehensible' was used a moment ago. It is unconscionable to have retrospective legislation stripping rights—not conferring rights, stripping rights—off dying people. It is anathema to the values espoused by WorkCover Queensland and, indeed, by this government. The reasons for that unfairness have been perhaps dryly by lawyers and other people explored today, but powerfully by Mr Allen from the RTBU when he spoke about Greg, his member.

To the extent, and I use that phrase quite deliberately, that there has been an economic rationale expressed for doing this, or seeking to do this, that warrants great scepticism. The architects of this retrospectivity have been selective and minimalist in disclosing material that gives weight to their suggestion that there is going to be a major impact upon scheme viability. They have asserted $84 million is the impact, but not given the detailed analysis behind that. We learn from Ms King that that has been asked for for many weeks, and I think this committee has asked for it as well.

Let us just assume for the purpose of today that that figure is right. Let me just take you through some figures. These are a matter of public record in WorkCover's own report. They have a 155 per cent funding ratio—by a mile the healthiest in the country. They have $5.71 billion in funds under management—of which $84 million is a tiny drop in the bucket. There were only 336 statutory claims in the last financial year attributable to these terminal claims—about half of one per cent of all statutory claims were respiratory and 52 common law claims, or 1.8 per cent of all common law claims, were of the same ilk, and only 5.7 per cent of statutory lump sum claims were made for latent onset conditions.

In most years WorkCover Queensland makes massive profits. Last year it was over $100 million for the 2020-21 financial year. This is a scheme which is flush with dollars. It is superhealthy when measured by all of the criteria that workers compensation schemes are measured by. The Chicken Little argument that the scheme is going to be crushed by an outpouring of people saying 'I want part of this because I am dying' we do not accept. We are talking probably dozens of people, not hundreds of people. We do not have the data from the self-insurers, but dozens of people. The notion that that sort of number will impact scheme viability defies my 33 years experience in looking at schemes around Australia and it defies common sense.

This question has been asked in particular by the deputy chair throughout the day: I also want to debunk this fiction—it is rubbish—that dying people who access these benefits are left bereft of supports after the cheque comes along. That is a cynical and deplorable attempt to justify unconscionable retrospective legislation and it is wrong for these reasons: firstly, as has been pointed out by at least one previous person today, these people will have had some support from the WorkCover system for 12 months or two years as their claim has been assessed, including but not limited to psychological support.

Secondly, perhaps fundamentally, it is their choice. They can choose to wait if they want to, but if they need, for the reasons that have been articulated by other submitters, that money to keep the wolf from the door in terms of mortgages and school fees and so on, it is their choice.

Thirdly, many of them can and will choose to use some of those funds, sock them away: I am going to use it to fund my support, fund my psychological treatment and fund other things that I am going to need in the time that I have got left on this planet.

Fourthly, there are other treatments and supports available from a range of other sources. They will include Medicare. As the gentleman from the firefighters union mentioned, a lot of people remain employed and they have access to EAPs. Not everybody, but a lot of people have private health insurance that provides some measure of funding for those measures of support and, indeed, some people, as long as they are under the age of 65, will become so disabled as a consequence of this condition which is killing them that they will have access to the National Disability Insurance Scheme. This notion that we will give you the money and now these people are left to rot—well, they are dying—but there are a range of other supports available to them through that period of time where they are putting their affairs in order before they die.

What that all distils to, and I hope the point has been made throughout today as well as now, is that retrospective legislation that strips rights off dying people is unacceptable. It is wrong. We submit that if there is to be a period it ought to be a longer period such as five years and we say that no claim presently in the system—people lodge those claims in good faith, their lawyers have pursued those claims in good faith—ought to be prejudiced by virtue of retrospective legislation. We think the solution to that, as we have mentioned, is to make the proclamation date or perhaps pick a specific date like 1 July this year.

CHAIR: If you pick 1 July this year, all claims made up until 1 July?

Mr Hodgson: I think if this legislation goes to second reading fairly soon that there is a window where people know it is coming, we need to put our claim in, but then the door is not closed, but it is ring fenced around whatever period the parliament ultimately decides, whether that be five, four or three years. The proclamation date is the principled way to approach it.

CHAIR: I am conscious of time. Sandy, do you have a question?

Ms BOLTON: Can I ask for a quick clarification. Earlier you mentioned the five-year time line. Given that other witnesses have basically indicated they would like it to remain as is, could you explain why you have gone to the five years instead of no time line?

Mr Hodgson: We understand and have a lot of sympathy for the maintenance of the 'present position' argument. It was legislated and there have been a number of people talking about the rationales for that so we have a lot of sympathy for that, but if the government on economic grounds makes a decision that it needs to be ring fenced, it needs to be circumscribed, limited in time, we consider that a longer period of time is better, in particular because these people know they are dying a long time in advance, in the main. That does not hold true as often for people with mesothelioma where often the diagnosis can be months before the death occurs, but where there is a diagnosis associated with silica dust, especially where the condition has not advanced to PMF, progressive massive fibrosis, and people are told this is going to kill you and it will kill you, probably, best guess—this is an imprecise science—within five to 10 years or within seven to 12 years. These are best guesses by medical experts. In order for people to have all of the benefits, which has been the subject of evidence today, around getting some money and putting their house in order, their mortgage in order, their family in order, a longer period is preferable to a shorter period, in our submission.

CHAIR: What if there was no period?

Mr Hodgson: If there is no period it reverts to the situation which exists under Blanche at the moment. If there is no period it then comes down to a simple question—a simple question, the answer is not always simple—of whether the diagnosis is terminal. Of course, Blanche involved someone whose life expectancy was longer than a decade and the government says, and we surmise this is their rationale, 'Well, actually, that is giving rise to some uncertainties that we do not regard as actuarially appropriate for us and we need to re-establish some sort of a time limit.' As I said before, we have a lot of sympathy for the notion that each case be treated on its own merits and there be no time limit, but we accept that the government has made a decision that the time limit needs to be circumscribed. We say, (a), that ought to be longer rather than shorter and, (b), do not strip rights off dying people retrospectively.

CHAIR: Unless anyone has a burning question or a burning statement to make we have come to the conclusion of today's hearing. I thank the Australian Lawyers Alliance for your submissions in relation to the matter.

Mrs GERBER: Thank you for answering all my questions without me having to ask them.

CHAIR: Thank you for your fulsome submissions here this afternoon and thank you for your patience. I know you have been here for quite some time waiting for your session.

Mr Hodgson: We thank the committee. Thank you.

CHAIR: This concludes the hearing. Thank you to everyone who participated today. Thank you to the secretariat for your help and thank you to the Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 4.01 pm.