

TRANSCRIPT

LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

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

Melbourne – Thursday 14 December 2023

MEMBERS

Georgie Purcell – Chair

David Davis – Deputy Chair

John Berger

Katherine Copsey

David Ettershank

Bev McArthur

Tom McIntosh

Evan Mulholland

Sonja Terpstra

PARTICIPATING MEMBERS

Gaelle Broad

Georgie Crozier

Michael Galea

Renee Heath

Sarah Mansfield

Rachel Payne

WITNESSES

Ruth Jelley, Assistant Secretary, Victoria, and

Dr Kay Wilson, National Tertiary Education Union; and

Meredith Peace, President, Victorian Branch, and

Seir Holley, Deputy Secretary, Victorian Branch, Australian Education Union.

The CHAIR: I declare open the Legislative Council Economy and Infrastructure Committee's public hearing for the Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023. Please ensure that mobile phones have been switched to silent and that background noise is minimised.

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

Before we begin I will get committee members to introduce themselves, starting in the room and then up on the screen with Ms Broad.

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

David ETTERS HANK: Good morning. David Ettershank, Western Metro Region.

Bev McARTHUR: Bev McArthur, Western Victoria Region.

Evan MULHOLLAND: Evan Mulholland, Northern Metro.

David DAVIS: David Davis.

The CHAIR: Georgie Purcell, Northern Victoria Region.

Tom McINTOSH: Tom McIntosh, Eastern Victoria Region.

John BERGER: John Berger, Southern Metro.

Katherine COPSEY: Katherine Copsey, Southern Metro.

Sonja TERPSTRA: Good morning. Sonja Terpstra, North-Eastern Metropolitan Region.

The CHAIR: All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following this hearing, and then transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record can you all please state your full names and the organisations you are appearing on behalf of. For convenience I will just start at this end of the room.

Kay WILSON: I am Kay Wilson. I suppose I would say I am from the National Tertiary Education Union.

Ruth JELLEY: Ruth Jelley, Victorian Assistant Secretary of the National Tertiary Education Union.

Meredith PEACE: Meredith Peace, President, Australian Education Union, Victorian branch.

Seir HOLLEY: Seir Holley, Deputy Secretary, Australian Education Union, Victoria branch.

The CHAIR: Wonderful. Thank you. We now welcome your opening comments but ask that they are collectively kept to around 10 to 15 minutes so we have plenty of time for questions and discussion.

Ruth JELLEY: I will start. Yes, that would be wonderful. Thanks, branch colleagues. The National Tertiary Education Union represents knowledge workers in Victoria's higher education sector, a sector that is the third-largest national export. The greatest threat to the health and safety of these workers is workplace mental injury. Our members have reported to us in recent years the impact of workload intensification. In 2020 and 2021, significant changes were implemented as we switched to remote learning and teaching in support of the state's public health measures. While student numbers remained steady during this period, thousands of staff lost their jobs, meaning increased workloads were pushed onto those staff fortunate enough to retain employment in the absence of JobKeeper support. Shifting rapidly to new methods of learning and teaching is time-consuming and requires specialised skills. This is something I can attest to personally as a learning designer. Work pressures were high, and WorkCover claims during this time increased and have continued to increase across the sector ever since.

The NTEU has called on the Minister for WorkSafe to withdraw this Bill, which is intended to address the financial pressure that the scheme currently faces after 15 years of absurdly low premiums. We are concerned at the rapid pace of the proposed changes, including the short policy development time line as well as the proposed commencement date early in 2024. We question the apparent urgency to limit eligibility criteria, especially in the absence of a fully functioning prevention and support system. We call on the government to change the focus of its WorkCover reform efforts. Any amendments to the WorkCover scheme should seek to improve the support provided to injured workers. Any worker who is injured as a result of workplace operations, systems and cultures should be entitled to compensation. This is the backbone of Victoria's workers compensation scheme, and we should continue to strengthen this pillar.

This Bill as it stands undermines the government's excellent work in reducing stigma around mental health. Isolating physical and mental injuries to be measured separately for the purposes of calculating ongoing support makes a mockery of the government's commitment to supporting mental health in the community. Reducing the eligibility of mental injuries will also reduce any incentives for employers to provide psychologically safe workplaces.

The NTEU supports the establishment of Return to Work Victoria as a mechanism to provide injured workers with support and opportunities to return to the workforce. The best support that we can provide to injured workers facing mental injuries is in fact prevention. WorkSafe and the trade union movement have done excellent work in recent years addressing the causes of mental health injuries, and we urge the government to continue to invest in WorkSafe prevention programs for mental injuries. There is great opportunity in the higher education sector to establish preventative mental health programs to reduce the number of mental injuries that workers incur in the ordinary course of their work. We need a government that will show leadership to support employers to engage in such prevention programs and demonstrate they are dedicated to ensuring that workers have safe and healthy work environments and they continue to do the work that they love.

We also call on the government to prioritise the release of the psychosocial health and safety regulations, which we understand have been ready for release for up to 18 months now. We firmly believe that the government should be focusing its reform efforts on prevention rather than reducing eligibility for injured workers. I remind all parliamentarians that behind the statistics on WorkCover – the number of injured workers, the cost of the scheme, the cost of claims – these are people, real-life people. They are our colleagues, our neighbours, our parents, our siblings, our children and our friends. They are all people who have built and sustained our communities and educational institutions. They deserve respect and to be with treated with dignity. They are not just numbers; they are not just a problem to be dealt with. They are people with something to contribute to our society. I now hand over to my learned colleague Dr Wilson to highlight the enormous benefits that can be achieved for the state of Victoria when we focus our efforts on prevention of workplace mental injuries.

Kay WILSON: Thank you, Ruth. Hello. I am Dr Kay Wilson, postdoctoral research fellow and convener of the disability law network at Melbourne Law School. I am also a health and safety representative and an NTEU member. You could say that mental health is my bread and butter and that research on the social determinants of health and mental health means that prevention is my middle name. Full disclosure: for me these

submissions are not about politics. I am not here to trash the government – sorry, David and Bev. I am here because I think the proposed cuts to WorkCover are just really dumb social policy, and by targeting mental health they are discriminatory too.

We know the WorkCover scheme is in trouble, but today I am here with good news, because every crisis is an opportunity – in this case, to completely reset how we think about stress and mental health in the workplace. How? It makes no sense to cut claims when employers have absolutely no incentive to reduce psychological harm in the first place. It sends a bad message to employers that, ‘Well, you can’t traumatise or bully your workers, but you can just keep loading them up and up and up with work until it’s impossible.’ It is not like overwork and burnout are really all that serious, right? It is not like physical risks, which can actually be life or death – that is, except for Bob Karkut of the VBA, Jessica Wilby of the coroner’s office or the overworked EY consultant who took his life, prompting the recent EY Oceania report. The distinction between overwork and other types of harm is very artificial. Have you ever been to a toxic workplace? It is very rare that there is only one source of stress, so the exclusion of overwork and burnout may not even cut that many claims. We lawyers can be a bit slippery, so when my client tells me about their burnout, I am going to ask them about how they were bullied.

Fortunately, there are some easy solutions. One of them would be for the Victorian government to join the national work health and safety regime and enact model laws, regulations and codes of practice which are based on the science around reducing psychosocial hazards, including job strain – which is code for overwork – and effort–reward imbalance, which is code for feeling unappreciated and exploited. If businesses complain that the Victorian government is imposing too much red tape, it is the same red tape for the rest of the country, and for businesses with operations in more than one state the Victorian government will have just cut their compliance costs by harmonising laws. You are welcome!

If this change is only about ticking boxes, red tape and doing paperwork, then boy, we are really in trouble, because it actually needs to be so much more than that. It needs to be a fundamental change in how business operates. Being a manager is more than just having a fancy title, a corner office and a car spot. It is also about managing workload and inspiring and motivating your workers without breaking them – that is, we need to reframe workplace mental injury from an individual weakness to a management failure.

While I did not think I had a lot of time to talk about it, there is actually so much we can do, so I will just give a few examples. They include things like good job design, appropriate resourcing, better work allocation, mental health training for managers, worker support and leadership from the top, to name just a few – and prevention. I keep hearing that we have got some sort of productivity problem and crisis. Workers that are not that stressed are actually more productive, and the Productivity Commission says that for every dollar that you invest in prevention you actually get back \$4. That seems like low-hanging fruit to me.

But let us just say that we Victorians think we are a bit better than the rest of the country. Then the government should enact its own draft psychological harm regulations, which it has been sitting on for the past 18 months and which quite frankly are brilliant, because they also contain a monitoring and reporting regime and the things that you would actually do if you were implementing the law and making it real rather than just having it on the books. Cutting claims by preventing injuries – revolutionary. But does it actually work? Aren’t all claimants just malingering snowflakes? It is not that easy to actually make a mental health claim, given the 70 per cent rejection rate. They are rigorously reviewed, and there is some evidence from Finland that once you start tightening the prevention model, claims do start dropping. In fact, prevention is pretty much the way the whole civilised world is going, because it is smart. Cutting WorkCover? You can do better. Thank you.

Meredith PEACE: Thank you. The AEU is a union which represents education staff across schools, TAFE, early childhood and disability services. We have 45,000 members across all of those particular settings. We are deeply concerned about the impact of the proposed changes to WorkCover on our members in all of those settings. It will result in our members and employees not receiving compensation and timely support when they sustain a mental health injury, and as such, our view is that this legislation should be withdrawn and there should be further, genuine consultation to discuss alternative changes.

To give you some insight into why we have that view, the most recent WorkSafe data shows that education is one of the four public sector departments that account for 25 per cent of all mental health injury claims. We are second only to police and in fact in front of ambulance services and corrective services, which might surprise

you. In addition, our claims are increasing at the fastest rate of any of those departments. According to the Department of Education's most recent data in their annual report, we have seen consistent increases over the past three years in the reporting of incidents, in the reporting of hazards and in claims, including claims that exceed 13 weeks.

In terms of the work the AEU does directly with our members, we obviously respond to calls for support. We have also over a period of the last three years seen an increase in the number of WorkCover cases that are being raised with us where our members are seeking support, and 56 per cent of those WorkCover cases across all of those education settings are for mental health injury claims. So it is quite clear that these changes will have a serious impact on our membership and result in injured workers not being supported by government in the way that they should be.

We do not understand the logic behind treating mental health injuries and physical injuries differently. We have had a really important mental health royal commission in this state, which has played a really important role in rightfully elevating the issues around mental health in our community and for the workforce and for young people, given that our role is in educating those young people. Why would you then single out that particular group and say that their injuries are not going to be treated in the same way and are not going to be treated as importantly as something like a physical injury? It makes absolutely no sense.

We understand that reform is absolutely needed. Like the NTEU, we support the proposal for the return-to-work model, and we understand we need a sustainable scheme – that is incredibly important in terms of supporting workers across the state. But the rushed nature and the lack of consultation and consideration of alternative improvements, such as genuine and funded preventative measures to address the issues which result in mental injury claims, will leave education staff without support from government for injuries they have sustained at work.

Workers who are injured at work have a right and an entitlement to be supported by their employer – in this case, government – and there is not enough work being done to address those really significant issues that result in those mental health claims in terms of things like the impact of increasing volumes and complexity of work; workforce shortages, which are rife, particularly across schools and TAFE at the moment; mental health concerns of young people; and the complex learning and behavioural challenges that our members confront every day when they walk into their school, their TAFE or their early childhood setting. So we urge you to reconsider in your report the need to proceed with this Bill in its current form and go ahead with further consultation around how to address having a sustainable WorkCover scheme.

The CHAIR: Thank you very much for your contributions. We will now go around the room with questions. We have about 4 minutes each for members, so if we can try and keep it to that, that would be great. I will commence. To what extent did the government or the minister involve you in consultation on this Bill?

Meredith PEACE: We were consulted through the Trades Hall process, so we were involved in a number of meetings. It would suffice to say, as I said in my statement, that we believe that was inadequate. We wanted to have a genuine discussion around what was needed and what were alternatives. I think we were simply presented with a range of changes that we did not support, and we did not feel we could have appropriate input.

The CHAIR: To your understanding, what is Return to Work? There seems to be some confusion about what it is as a concept – Return to Work Victoria.

Meredith PEACE: As in Return to Work Victoria? I think that is a very good question. That is a really good example of where there absolutely needs to be greater consultation. Return to work is really important. We know in the education department in relation to schools, for example, that there is some really good work going on around improving return to work for mental health injury claims. But we simply need more understanding of what that body will do and what resourcing is going to be available to genuinely assist workers in returning to work.

The CHAIR: Yes. Have you looked into or considered at all the impact that it would have on your members if they are kicked off the scheme at 130 weeks and what it would mean for other services such as housing and health and all of those things?

Meredith PEACE: Sorry, I am not quite –

The CHAIR: We have heard from other witnesses that there will be flow-on effects from being kicked off the scheme at 130 weeks. Have any of your members expressed concern about how they will continue to pay their mortgage or access health services –

Meredith PEACE: Function.

The CHAIR: Or live, yes.

Meredith PEACE: Yes. There will be significant concerns. If people cannot be supported beyond 130 weeks – or in fact for mental health claims the proposal is around 13 weeks of medical support but no compensation in terms of salary – that is going to have a really significant impact on individuals' wellbeing, possibly causing further mental health injuries because of the stress associated with that. But of course it impacts on their personal lives. It concerns us that we might in fact have people returning to work who are unwell and should not be at work and who should be being supported. But we will also have people drawing on other government services if they cannot get the appropriate compensation through the WorkCover scheme.

Ruth JELLEY: If I could add to that. Many NTEU members and workers in the higher education sector through their superannuation scheme have income protection insurance, and in the absence of WorkCover entitlements around particularly mental health injuries – the greatest number of mental health injuries that our members experience would be around bullying and harassment in the workplace, and it is well known some of the sexual harassment incidents in higher education, so I do not need to make that clear to the committee – if we have got members who are drawing down on their income protection insurance because the government has decided to withhold protection and compensation from people for injuries that they have incurred through the course of their work, that is then going to have a flow-on impact on to insurance. This is something that we have raised with government in early consultation stages. We have not heard back whether there has been an investigation into the flow-on to insurance premiums.

The CHAIR: Okay. Thank you for that. Mr Berger.

John BERGER: Thank you, Chair, and thank you for your appearances today. I think this is directed to you, Dr Wilson. I am very keen to understand a bit more, given that we have been speaking about prevention and early intervention with previous witnesses, about how you might see the workplace conflict that adds to people ending up on the WorkCover scheme and how you might eliminate a lot of that.

Kay WILSON: I guess there are a lot of causes. What we know from the research is there are quite a lot of different work pressures that result in poor mental health in the workplace. Sometimes that will result in claims. There are three of them. One of them is overwork. Bullying, harassment and trauma are the three big ones. There are a lot of other ones, things like insecure work and so on, and there is poor communication. That is a really big problem.

I guess dealing with mental health in the workplace is actually quite similar to the processes you could put in place and that employers would already have in place for physical health problems. The first thing to do is obviously go through and identify where all the risks are and look for those things. I think one of the things that the regulations and code of practice do is they start directing people's attention to the things that we know from science are a risk, and obviously employers will then think about, 'How does this actually affect my particular workplace?' And then obviously the thing to do is to look at ways of minimising those risks and eliminating them or reducing them where you can and coming up with plans to do so.

Starting really from the top, having a commitment in the workplace from senior managers, flowing all the way down, that 'We're taking mental health seriously here' is really, really important. And also one of the things that has been shown to be really useful is mental health training for managers so they are aware of the risks and also not just aware of them but they feel more confident in dealing with them and identifying them. So that is really, really important. It can include things like looking at how jobs are designed; ensuring that with insecure work the jobs have high levels autonomy, social support, feedback and lower levels of job demands; creating a safe system of work – how work is allocated and time frame support from supervisors and other workers; the workplace environment and conditions and workplace interactions; and thinking about them in combination. I know you just asked me about workplace conflict, but these things are a bit of a combination, so they all combine together. If there are pressures to do with workload, then people are stressed and they do not communicate properly or they may involve bullying and things like that. Then that creates even more stress,

and it just builds. I think you are probably not necessarily dealing with it in isolation. You need to really have a comprehensive plan to deal with it all together.

I mentioned mental health training and policies and plans and looking at workloads and things like exposure to traumatic materials, bullying and harassment and aggression. I think setting standards of what is expected in the workplace and how those interactions should occur is really important, as are ensuring that there is adequate recognition and reward, really regular feedback, suggestions for improvement and recognition for good work, opportunities for professional development, supervision and peer support.

One of the things that the OECD has found is that the manager's attitude towards the employee is probably the most important factor that impacts mental health. A positive attitude from a manager can reduce the probability of moderate mental disorder by 6 per cent, so that is definitely something to be focused on. I think that really sort of covers it – particularly, as I said, really reinforcing leadership on mental health and really indicating that it is being taken seriously, because the evidence shows that Australian employers are not taking mental health seriously. In my workplace we have all these great plans as HSRs to do with physical risks. I have just recently become an HSR, and I looked at it all and I just said, 'But what about psychosocial risk?' There was nothing.

The other thing I am finding is that without the regulations, even though there is an obligation under section 5 of the Act that OH&S does cover psychological health, the pushback I am getting is from my manager saying, 'Well, we don't have any regulations, so we don't have to do anything.' That creates a delay, I suppose, because they are waiting to see what they have to do. You would think this stuff is common sense, really, but that is I guess causing a certain amount of inertia on the issue, even though we know through discussions with people in our faculty that there are problems, particularly around bullying of professional staff by academic staff. Everyone is just under pressure. Also, for example, with having someone getting all the emails from students talking about their life and their trauma and asking for extensions, you have got one person just doing that, with hundreds of them day in, day out. That is a real problem. Of course for my academic colleagues, our jobs just seem to be expanding, particularly after COVID. You know, everyone is just feeling really stressed and burnt out and just feeling like they have to do more and more. So, yes, it all builds up.

John BERGER: Thank you.

The CHAIR: Thanks, Mr Berger. Mr Mulholland.

Evan MULHOLLAND: Thank you. I appreciate the evidence here today. Would your unions or union ever accept less coverage for workers struggling with mental injuries like stress and burnout?

Ruth JELLEY: As I said in my opening remarks, mental health injuries are the biggest health and safety risk that our members face in the workplace, so we do not accept any reduction in entitlements compensation for that. Part of the problem with this Bill is that in the initial consultation phases, which my colleague mentioned earlier, there was a mention of coupling Return to Work Victoria and setting up this new body, and so the changes that would be introduced to the WorkCover compensation scheme would also be coupled with a strong prevention scheme to go alongside that. So without knowing exactly what that is going to look like and how we can actually forcefully go into the prevention space to prevent these mental health injuries, as Dr Wilson has outlined, there are very poor management systems in place for employers. So, no, the NTEU does not accept any reduction in mental health injury compensation for our workers.

Meredith PEACE: We would say the same thing, I think. Workers who are injured in their workplace, whether that is a mental health injury claim or a physical injury, should be supported by their employer to get healthy again and get back to work, so we would not accept a diminution of those programs that ensure people are appropriately supported whilst they are unwell. There needs to be a greater focus around prevention. If I use schools as an example, in a public school system that is grossly under-resourced where we have unsustainable workloads and we have increasingly challenging students in terms of learning difficulties and behavioural challenges, to then have our employer turn around and say, 'Well, we expose you to all those risks and there is a strong possibility, as the data shows very clearly, that you will sustain a mental health injury, but we're not going to support you if that happens,' is just simply inappropriate. And if these changes go ahead without appropriate resourcing of both preventative and return-to-work measures concurrently, then we will simply see a whole lot of our members left without the financial support and the medical support that they need to make sure that they are well and they can actually return to work.

Evan MULHOLLAND: The head of Trades Hall Luke Hilakari described the consultation as ‘consul-told’. I am just wondering whether you would agree with that assessment. But also, Meredith, you would obviously consult with the government on a number of different reforms regarding education. How does that compare to the consultation on this particular Bill?

Meredith PEACE: Look, I made comments about this in my opening. We were consulted, but that was not what we would regard as appropriate consultation. We in our industry operate on a very consultative model in our members’ workplaces and also with the Department of Education. We regularly meet and discuss whatever the relevant issues are pertaining to our membership and their work. I think it is accurate to say that we have had a range of consultation meetings through Trades Hall over this Bill, and we did not feel that we got an appropriate opportunity to have a full and frank discussion about what the solutions might be, not only in terms of the compensatory arrangements but also around the issues of what the Return to Work Victoria body will do, how will it operate, how will it support workers and also in terms of what government intends to do around prevention.

Ruth JELLEY: Could I add some additional comments about the consultation? Initially government was quite responsive to our requests to separate the changes to the WorkCover eligibility requirements from the decision around the premium increases. We sought that change so that we could engage in further consultation sessions, but as Meredith outlined, the flavour of those consultation sessions very strongly indicated to us that certain decisions had already been made and were brought to us for ‘This is what we intend to do.’ We repeatedly raised our concerns and raised questions, particularly that there is a lot of unknown information about the 13 weeks of provisional payments and support – how is that going to function when we have a mental health system where, whether you are workers or through other means, you cannot get access to mental health support workers in Victoria in that time? We asked for a lot of detail around that. We also asked for information around the budgeting, the estimates and the financial modelling, and we are yet to receive any of that information. These are elements that are actually very important to addressing what the government has stated are the aims of making these changes. Good policy development actually requires parties coming together to develop consensus. Now, that takes time. When you look at, for example, the time it took for Obamacare to be developed, it was not done overnight. There were several attempts over many years – over a five- to 10-year period – in order to get all the parties together from very disparate positions to build a scheme that actually everybody could accept.

That is what we are looking for here. We would like more time to sit down so we can all work through the detail and so that we can all discuss what our concerns are, ranging from the broader picture of eligibility – what is in and what is out – to how the eligibility calculations might be done to determine long-term compensation payments, as well as the nitty-gritty details of how we make other improvements to the scheme. That is what we are seeking from government: additional time to make really good policy. WorkCover Victoria is the best workers compensation scheme in the country, and as Victorians we should be proud of that history, and we need to make sure that we retain that.

Evan MULHOLLAND: Thank you.

The CHAIR: Thanks, Mr Mulholland. Ms Copsey.

Katherine COPSEY: Thank you. I am curious, given the workforces that you represent, whether you are concerned that this Bill as it stands will have a gendered impact, any thoughts you have on the importance of a gender impact statement and when that should occur.

Ruth JELLEY: Yes, I think it is very clear from the figures. Again, we have not got a lot of access to all of the figures, but our workforces – in higher education we have slightly more women than men, but also we have people who do not identify as either men or women, so a gender-diverse workforce. I think there would be a gendered impact. Women are more likely, as far as we understand, to incur mental health injuries in the ordinary course of their work, and I would posit that they are more likely to just try and work through it at first. As Dr Wilson mentioned earlier, there are certain patterns of work and certain categories of workers who experience higher rates of bullying and harassment in the workplace, and those workers are predominantly women in the higher education workforce. We do believe there is a disproportionately gendered impact of this legislation. We have requested that information from government and, along with the financial modelling, we are still waiting to find out exactly what the modelling is and what that is going to mean for women workers.

Meredith PEACE: We would expect a gendered impact simply by virtue of the fact that our members in schools, early childhood and in TAFE – increasingly it is a very feminised workforce. The majority of people who work in our sector are women, and as a consequence you would expect it to have that impact more broadly on women. There is absolutely a need for a gender impact inquiry or assessment in relation to this area, and I think it is one of the things that is probably required under the new *Gender Equality Act*. We do not have those figures, but in considering a Bill like this, that is absolutely something government should not only be considering but it should also be making sure that we are looking at data to see whether there are any adverse impacts on women in relation to the support of mental injury claims.

Katherine COPSEY: Thank you. And just a quick comment: are the limits on public sector funding enhancing some of the challenges facing your workforce? And will this Bill exacerbate that, in your view?

Meredith PEACE: Yes. Public schools are not funded to the federal government's own funding standard. In Victoria only 90 per cent of the funding is received by public schools, as compared to private and independent or independent and Catholic schools. That absolutely results in many of the issues we are confronting in terms of unsustainable workloads, mental health injuries, the challenging behaviours that we are expected to respond to and the learning challenges that many of our students have. We educate greater numbers of disadvantaged children. We educate greater numbers of students with disability.

In TAFE we are the lowest funded state per contact hour across the country. We have seen good investment in early childhood, and that has been very positive, but there is still greater need in that sector in terms of particularly inclusion funding and supporting those children who need extra support. Without doubt all of those funding issues have a close connection to the pressures our members are under and do result in people lodging mental health injury claims.

The CHAIR: Thanks, Ms Copsey. Ms Terpstra.

Sonja TERPSTRA: Thank you, Chair, and thank you to all of you for your presentations this morning. Perhaps if I can sort of direct my questions in regard to the higher education sector and then the public school and TAFE sectors. I do not mind who answers first. But we are hearing a pretty consistent theme of evidence from witnesses about how important the need for early intervention is and how that can help people return to work once they have got an injury, but also before that. Are you able to identify any, I guess, issues or practices in your respective workplaces that you represent people in – changes that could be made? We have talked about psychosocial risks, for example. Are there any themes and trends that you are noticing that really stand out that need immediate attention and could help prevent some of these injuries?

Ruth JELLEY: Yes. In higher education WorkSafe actually ran a pilot program in recent years with a range of universities – I urge you to look up the details on their website for the case study information – where they provided applied mental health leadership training for people in management positions at certain universities. The pilot program only ran for a short amount of time. One of the biggest challenges that they found in getting good outcomes for that program was employer buy-in – people actually being supported through their own workloads to participate in such a training program and to be able to work with teams in order to implement the outcomes of that. It was based on very sound evidence in terms of the way the program was designed, and there is great opportunity I believe for that to be rolled out more broadly across higher education.

But as Dr Wilson mentioned before, in the absence of employers seeing the importance and seeing that they are actually required to engage in preventative practices and manage the risks of mental health safety in the workplace, they are not going to provide the investment. As I mentioned before, we have had quite significant challenges with staffing numbers. We have large numbers of staff who are leaving the sector, particularly professional staff, through workload pressures. In the vicinity of 30,000 people lost their jobs in the higher education sector across Australia during the pandemic. The student numbers remained the same during that time. In the time since, yes, there have been fluctuations in student numbers – we are still waiting for the latest data to come through.

Kay WILSON: Ours have exploded.

Ruth JELLEY: Yes, at the University of Melbourne student numbers have exploded. But when you are talking with educators in the higher education system, the students that they are dealing with either started their university degree or completed high school and have entered the university system in the last three years –

during the pandemic – and they are carrying legacy issues of having to engage in complex learning in remote situations, particularly in Victoria obviously because of the extensive public health measures that we all agreed to undertake.

Sonja TERPSTRA: So your comments go to stress and burnout in regard to workload, right? That is what you are saying in a nutshell – that that is what your staff are experiencing.

Ruth JELLEY: Yes, and these are issues that are poorly managed. Universities do not have appropriate systems in place to manage stress, workload and burnout, because there are not sufficient controls and risk assessments done.

Sonja TERPSTRA: So that is the preventative stuff. You are saying if they had that, that would be a great help. I might ask Ms Peace perhaps if she could talk about the issues that she might see. Also, are there any industrial kind of impediments that stop people returning to work, and what could we do better in the prevention space?

Meredith PEACE: The prevention and return to work are both singularly pretty big issues. There are a range of things in terms of the return to work. There has been a program going on in the Department of Education where the department has been working very closely with the insurer and directly with schools to ensure that there are better and quicker returns to work. Whilst that is a very small program at this stage, it is seeing positive benefits. That is certainly one area. There is a very specific example I can give you about return to work where we have a circumstance where, despite the fact that we have a public school system where everyone is an employee of the Department of Education, if I am injured at work because of an incident, for example, that has occurred at my school and I am deemed to be fit to return to work but I cannot return to that workplace because it is the workplace that has caused that injury, I am unable to return – I cannot be placed, or the department's view is that you cannot be placed, at another school. We have managed industrially to secure a bucket of money, if you like, which the department has used successfully to place people on a temporary basis, so that has been positive. But we believe that if someone is an employee of the Department of Education, they are injured at work and they are fit to return but not at their current workplace, they should be placed permanently in another school where they can return to work successfully. At a time of significant workforce shortage, that is probably even more important.

I think the other comment I would make, though, probably relates to the previous question about resourcing in that many of our challenges relating to these issues relate to properly supporting the students that we are educating, because it is the lack of resources which results in students not necessarily receiving the supports they need, whether that is early intervention, broader social issues that families might be dealing with where we lack the necessary allied health support, or at least in a timely manner, which then results in staff in our education institutions filling in gaps and experiencing vicarious trauma from the family circumstances of their students. The funding of our systems is a really important issue when we talk about how we can ensure prevention in terms of things like unsustainable workloads and ensuring kids get the additional support they need, whether that be because of behavioural challenges, mental health issues or simply learning difficulties, where they need that extra support to make sure they are achieving the outcomes that they should be in any particular year.

But industrially we also need to see further work – there has been some good investment by government in terms of trying, particularly in schools, to deal with workload issues, but there is much more to be done. Workload continues to be a significant driver in terms of stress and burnout and driving people out of our profession. We have the same issues in TAFE and early childhood – we are currently negotiating in TAFE and we are about to embark in early childhood on those issues around workload and the resourcing needed to support students, whether that is actual programs, allied health support or additional staff in our schools and extra support staff in classrooms to work with teachers to support our kids. All of those things will contribute, and there are probably many more, both to the prevention side but also ensuring that people can return to work quickly and in a timely manner with the supports they need.

Sonja TERPSTRA: Thank you so much for that. I am sure my time is up, Chair.

The CHAIR: Thanks, Ms Terpstra. Mr Davis.

David DAVIS: Can I just ask you, and probably Ms Peace in the first instance, the Department of Education stated in its report that there are 413 teachers who have been on WorkCover for more than 130 weeks. I am just interested: do you get updates of these figures? Are you ever provided with this information? No?

Meredith PEACE: We see broader information in annual reports, but we do not have the specific kind of data that you are referring to.

David DAVIS: I just want to focus in on that group. Under the scheme that is proposed in the Bill, that group would not face a good future.

Meredith PEACE: That group would not face a good future and nor would many others with mental health injury claims. We are not just talking about the long tail, as it is called; we are talking about a whole variety of other claims that are made where people might not end up in that long tail but deserve to be supported whilst they get well and hopefully return to work quickly. The singling out of mental health injuries in this Bill creates great concern for us about a workforce where those claims are, as I have said, some of the highest across the public sector but certainly significant in terms of any of the claims that are made within our own sector. And to leave a group of workers not appropriately supported and ensuring that they can get back to work quickly, and I think we all understand that the faster that happens the more success you have, is very concerning.

David DAVIS: Just on that, are teachers in that sort of circumstance routinely provided with occupational rehab, some clear intervention to support?

Meredith PEACE: There are a variety of supports obviously through the scheme where people can get medical and like expenses around psychological support. I think one of the challenges we face –

David DAVIS: But actual rehab support – I understand the medical support, and that is one clear pillar, and then there is –

Meredith PEACE: Are you referring to something specifically?

David DAVIS: I am referring to rehab that actually intervenes and occupational work that comes in –

Meredith PEACE: At the workplace –

David DAVIS: either at the workplace or somebody who comes in and actually assists with these matters. Is there an easy, quick process? I mean, we heard yesterday evidence about the need for early intervention but with rehabilitation providers that actually can get in to the workplace at a very early point.

Seir HOLLEY: What our members raise with us is not specifically about that, so that is not something that our members raise with us.

David DAVIS: They may be unaware of it.

Seir HOLLEY: They may be. The biggest issue that members raise with us is what Meredith spoke about in terms of the barrier being the issue around relocation. I suspect, out of those numbers, some of those people that are on the scheme potentially could be returned to work except that they are facing that barrier of not being able to be relocated.

Meredith PEACE: I think the pilot project I referred to that the department has had in place recently where they are working with the insurer but also the work location in terms of getting people back to work, I do not know the detail of what happens at the school level in particular, but they are certainly indicating to us that they work directly with the school where that is part of the process to ensure people can get back to work successfully.

David DAVIS: We would certainly appreciate any details you have on that scheme. And I understand your point about the placement into different workplaces, and that seems to me to be a very fair point. Can the department, in a sense, take a more active role in this, or should it be about resourcing into the school? I mean, I get the prevention bit, but we have got a person who is injured in whatever way – should this be the department or should it be at the school level where resourcing is supplied to make sure that they can return to work?

Meredith PEACE: I think I would respond to that by saying there is no singular solution to what are very complex issues. Absolutely the Department of Education has a role to play, as does the leadership at the actual work location, whether that is TAFE, early childhood or schools. But concurrent with that you actually also need to have an appropriate WorkCover scheme that ensures people are supported for any expenses but also in terms of compensation around salaries so that they are appropriately supported at all levels to be able to get back to work.

David DAVIS: Okay. Thank you.

The CHAIR: Thanks, Mr Davis. Mr Ettershank.

David ETTERS HANK: Thank you, Chair. Thank you for your evidence this morning – it is still this morning. Can I maybe start with schools, AEU. We have heard a lot about the importance of early intervention, assuming that Return to Work Victoria is at this point an A4 sheet of paper and little more than that, I guess I would be interested in your observations as to – given it is a large and hopefully fairly sophisticated employer in the public schools sphere – how you would characterise the current nature of the early intervention and return-to-work approaches that are being adopted by the education department?

Meredith PEACE: I think it would be fair to say that they are improving. We have seen a lot of work and a lot of support being provided in a whole range of different ways, particularly around trying to support the workforce better. If I use principals, for example, there have been a range of initiatives put in place to provide, you know, what you might term both prevention but also responses when issues arise around psychological support, coaching and a whole raft of different programs that principals can access to provide them with better support. I think our view would be that that has helped enormously.

I think one of the challenges around return to work is that people make mental health claims for a whole range of different and often very specific reasons. It could be, at an extreme end, because of an assault in the workplace perhaps by a student or by a parent or by a colleague. It could be a breakdown in relations within the school between colleagues or between leadership and staff. But it could also be a direct result, which we are increasingly seeing I think, of not having enough mitigation of risks around issues like workload and the complex challenges we face as educators in responding to the needs of our students.

I think what I would say about return-to-work initiatives is that there is probably no singular approach. We really do need probably a very closely managed kind of case management system where the system is able to respond to the individual needs of the employee in relation to a particular claim and the reasons for that claim that they have made. That can mean a whole range of different responses, whether it is the department working with the school to try and address issues around workload or whether it is around responding to perhaps students that might have challenging behaviours. We have a program in schools – I think it is called protective behaviours training – where staff can be provided with professional development around how to appropriately deal with students when those behaviours are very challenging and can be very disruptive, and sometimes dangerous, to other students and to staff.

The response has to be tailored, I think, to the particular circumstances of individual staff, but there also need to be system responses, and that probably goes more to the issues that I have raised around proper resourcing of the system and dealing with things like the workloads that in schools, for example, principals, teachers and support staff have to deal with every day, not only in terms of volume but also the complexity of that work and the complexity of the students they are educating.

David ETTERS HANK: Okay. Thanks. Could I throw to NTEU as well – I guess focusing particularly on this timely return to work and interventions.

Ruth JELLEY: Look, the main point that I will make, and I will be quite brief, is that as we mentioned before, we have very poor systems of managing mental health risks in universities. If I had to use a term to describe it, I would say paying lip service. So we see more options offered to staff in terms of pushing responsibility onto the staff for managing their own mental health, even under crippling workloads – ‘You should do meditation at lunchtime’, ‘Why don’t you join this yoga class at lunchtime?’ – without acknowledging that many staff, when they are under pressure, will work through lunch. It is difficult to do overtime when you have got families to take care of before work hours and after work hours, so they are working into the evenings. This is why we are asking for the psychosocial health regulations to be introduced.

The CHAIR: Thanks, Mr Ettershank.

Kay WILSON: Could I add something to that? I think, also, because I am a disability lawyer, when you have got someone who has been damaged in the workplace or injured and they are having this return to work, it starts becoming a disability discrimination-type issue, and what we are really talking about is reasonable adjustment.

The CHAIR: We are at time, and I have not wanted to cut anyone off just because there are a number of you on the panel and I want to make sure you get a fair say. Are you okay to stay just slightly longer? We have three more members to get through for questions. And is everyone else comfortable? We have got a longer lunch break today. Great, thank you. Mr McIntosh.

Tom McINTOSH: Thank you all for being here. My mum was a teacher, my closest aunty is still a teacher and if we want to see every generation have a better quality of life than the last, teachers are an incredible, big part of that. I want to also thank you for your work and commitment to workers rights, because it is an ongoing battle. That is why I am in this role. We have seen so many battles over generation after generation, whether that is 8-hour days, superannuation, long service entitlements – something we know that the Nationals and coalition have stood against for generation after generation as well. And they have always looked to shield employers, so, Kay –

Bev McARTHUR: Chair, point of order: is he going to get to his question?

The CHAIR: I am getting to – yes, I started –

Tom McINTOSH: Can I cut to my question – Kay, you flagged before employers not being willing to step up to their responsibility in workplaces that you are dealing with. Can you please go to that a bit more?

Kay WILSON: Are you talking about –

Tom McINTOSH: Well, when you are talking about the psychosocial risk and ensuring that employers are considering the holistic nature of employees' mental health in your opening statement.

Kay WILSON: Yes, sure. Okay. Well, there is a bit of evidence around that. It is certainly something that was noted by the Productivity Commission – they pretty much said that mental health is just not taken as seriously as physical health. That has certainly been my experience at Melbourne Law School and the University of Melbourne. As I said, we have comprehensive things in place for physical risks, but when we ask about mental health risks there is absolutely nothing – it is sort of an HR issue, basically.

I think there was a study that said that 50 per cent of Australian managers think that they are never going to encounter any mental health issues in the workplace, but we know that 20 to 25 per cent of people in the community will have a mental health issue every year, and 50 per cent over their lifetime, so that is just a number that does not add up. I think there was even a study in New South Wales that said something like only 9 per cent of businesses had any plans at all for dealing with mental health in Australia. So I think there really is a sense that mental health has not been taken seriously by Australian employers at all, and as I said, that is coming from the research and from my experience in the tertiary sector.

Tom McINTOSH: Something I am passionate about is sustainability. It does not matter what we are talking about environment, economy, I want to make sure that if we are talking about workers getting quality housing, getting education, skills and training, good access to health, infrastructure, public roads, doing it all in a sustainable climate and environment, and the same with our economy – sustainable. What do you think is a point we can go to with premiums to ensure that we have a sustainable model and that workers can get access to the care they need from a workers protection system?

Kay WILSON: Well, I am not really an economist, so I cannot really tell you. But what the Productivity Commission was talking about was potentially tying the prevention regime to premiums to incentivise employers to engage more with prevention, perhaps the idea of having discounted premiums for those who not just have lower claims but also can demonstrate that they are taking it seriously and they have processes and systems in place to prevent mental health issues. I guess that would be one thing that I could suggest.

Tom McINTOSH: And if there are other members on the panel, if those outcomes are not able to be achieved, do you have views on what that point could be?

Ruth JELLEY: Could you clarify?

Tom McINTOSH: There has been discussion around premiums, and to achieve the objectives that you have come and talked about, how far do you think premiums could go from their current perspectives to ensure that – what do you think is a manageable level of premiums to achieve what you are talking about?

Ruth JELLEY: I think that is a very difficult question to answer in the absence of the financial modelling data. Obviously WorkSafe has statistics on the increase in the type of injuries and the average cost per claim. University annual reports indicate that average costs per claim since 2019 have gone from \$300,000 up to just shy of \$800,000, which indicates that those are most likely to be mental injury claims, so in terms of the premium increases –

Tom McINTOSH: Yes, perhaps I can rephrase –

The CHAIR: Just one more quick question.

Tom McINTOSH: Sorry, I will just rephrase and simplify it if it is a bit too – would you consider that increased premiums to achieve the outcomes that you are advocating for are worthwhile if that is where it has to go?

Ruth JELLEY: I think that is one of a suite of measures that needs to be implemented.

Tom McINTOSH: Okay, thank you.

The CHAIR: Thanks, Mr McIntosh. Mrs McArthur.

Bev McARTHUR: Let us cut to the chase here: the vast majority of costs in the blowout of WorkCover have been caused by the public sector, not the private sector. You have indicated that 25 per cent of all –

Tom McINTOSH: Sorry, Chair, can we –

Bev McARTHUR: I did not interrupt you, Mr McIntosh.

Tom McINTOSH: You did actually. You tried.

The CHAIR: Look, I will –

Bev McARTHUR: Twenty-five per cent of all mental health claims are in your union. We know that there are 413 teachers on WorkCover for more than 130 weeks. We know that there are 2000 jobs being advertised. We know that 50 per cent of the AEU secondary school principal members are concerned about the ability to fulfil those jobs. Is the government the bad employer here?

Meredith PEACE: I am really pleased that you listened so closely to some of the statistics we have put out about the challenges our members face, particularly in the school sector.

Bev McARTHUR: Exactly.

Meredith PEACE: We need to remember that the public service is actually providing a whole raft of services to our broader community, and if the discussion about having an appropriate WorkCover scheme to support workers that are injured boils down to public versus private, then I think we are missing the point. The public service are vital to our broader community, to everyone in our community, whether that is the police, the education workforce, the public service itself, ambulance drivers et cetera, health workers and so on. So I think it is simplistic to suggest that this is a discussion about ‘Government’s at fault because it’s government workers who have some of the highest rates of mental health injury claims’. This Bill should be focused on ensuring that all workers are supported and also, apart from appropriate compensation when people are injured, that we have appropriate resourcing of, in our instance, the education sector, so that supports, programs and initiatives can be put in place that prevent people from getting injured but also enable the system to respond, and respond quickly, when people are in fact injured.

Bev McARTHUR: But clearly the increase in premiums is going to adversely affect the private sector, yet the majority of claims are coming from the public sector. Do you consider that it is appropriate, as Mr McIntosh has asked you, that the premiums be escalated to whatever extent just to cover the fact that the government sector is actually obviously not doing a good job at employing staff?

Tom McINTOSH: Sorry, Chair, can I just raise something? I think yesterday we established that was not the fact, but anyway.

David DAVIS: I do not know that that is quite right actually.

The CHAIR: I think I will allow Mrs McArthur to continue her question, but can I ask that she gets to the question quickly, because you have 36 seconds left.

Bev McARTHUR: I have got to it. I asked it.

Tom McINTOSH: You already asked it?

Bev McARTHUR: I have already asked it.

Meredith PEACE: I do not think I can add anything more than what I have just said. Everyone in our community, public or private, benefits from the services that the public sector provides to our community, and we should be looking at this as a holistic issue across our community, not one where we want to divide and conquer for whatever reason. We need to make sure that all workers, irrespective of where they come from and what work they are doing, are appropriately supported. And if they are, that is to the benefit of the whole community, not just to people in the public sector.

Kay WILSON: Could I add something to that?

The CHAIR: Yes.

Kay WILSON: The first thing I would say is what we know about mental health in the workplace – probably the reflection of this being more so in the public sector – is to do with the nature of the work in the public sector, because it often involves dealing with people who have trauma. It is emotionally demanding, and it is different sort of work that makes people more likely to have mental health problems. I would say that it is the nature of the work – it is knowledge work, it is service work, it is not manufacturing where people are more inclined to have physical injuries, so I think that is part of it.

Bev McARTHUR: Could we ask: should the secretary of the department be held accountable for this?

The CHAIR: Mrs McArthur, you were aware that was your last question. We have got to move on.

Bev McARTHUR: You did not tell me, Chair.

The CHAIR: I did. I said you had 36 seconds left a minute ago. Ms Broad, just a quick one from you if that is okay, because we are well and truly over.

Gaëlle BROAD: Thank you. I do have so many questions, but I will try and keep it brief.

The CHAIR: We can submit them on notice, if you are happy to take questions on notice following the hearing.

Gaëlle BROAD: I appreciate that. My mum was a teacher too and my daughter wants to be a teacher, but it is not sounding very attractive with some of these statistics.

Bev McARTHUR: Not in the public sector anyway.

Gaëlle BROAD: I have had children attend both, so I value both the private and public sectors very much. I know with the police they have got currently 800 off duty with WorkCover claims at the moment. How many do you actually have on WorkCover at this point in time in the education sector?

Meredith PEACE: I do not have that statistic.

Gaelle BROAD: Okay. All right. Are you able to find out and provide that information?

Meredith PEACE: It might be a question for the Department of Education as the employer of people who are in schools.

Gaelle BROAD: Okay. Can I –

The CHAIR: One more, yes.

Gaelle BROAD: Thank you. Just with the experience of workers, I have heard a number of challenges of the actual process – that they have been referred to GPs and it has cost them \$100 to see a GP; up to 20 different caseworkers in two years. How are your members finding the current system at the moment? How is it working?

Ruth JELLEY: I do not have a lot to add to that, I am afraid. Generally when our members come to us with WorkCover claims, we refer them on to the service provider for workers through the Victorian Trades Hall Council, so unfortunately I cannot comment any further than that, I am afraid.

The CHAIR: Great. Thanks, Ms Broad. That concludes the hearing. Thank you very much for coming along today and appearing so well prepared at such short notice. We really, really appreciate it. If members have further questions, they will submit them on notice for you to respond to.

Witnesses withdrew.