

PORTFOLIO COMMITTEE NO. 5 - JUSTICE AND COMMUNITIES

Wednesday 11 March 2026

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

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The Committee met at 9:15.

MEMBERS

Ms Sue Higginson (Acting Chair)
Ms Abigail Boyd
Mr Mark Buttigieg
The Hon. Susan Carter (Acting Deputy Chair)
Dr Amanda Cohn
The Hon. Greg Donnelly
The Hon. Mark Latham
The Hon. Tania Mihailuk
The Hon. Bob Nanva
The Hon. John Ruddick
The Hon. Damien Tudehope

PRESENT

The Hon. Michael Daley, *Attorney General*

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The Hon. JOHN RUDDICK: Good morning, Mr Attorney General. Are you aware that professional indemnity insurance is compulsory for solicitors in New South Wales?

Mr MICHAEL DALEY: Yes.

The Hon. JOHN RUDDICK: Would you agree that there is a monopoly that Lawcover has on the providing of professional indemnity insurance in New South Wales?

Mr MICHAEL DALEY: There is one provider in New South Wales at the moment, yes.

The Hon. JOHN RUDDICK: Which is Lawcover?

Mr MICHAEL DALEY: Correct.

The Hon. JOHN RUDDICK: Would you consider that a monopoly?

Mr MICHAEL DALEY: Yes, you could say that.

The Hon. JOHN RUDDICK: There are 30 per cent of solicitors in New South Wales who can access other professional indemnity insurance, so it's not a pure monopoly. Do you know who those other 30 per cent are?

Mr MICHAEL DALEY: The 30 per cent of other legal practitioners—

The Hon. JOHN RUDDICK: Solicitors—30 per cent of solicitors in New South Wales can access cheaper, competitive professional indemnity insurance.

Mr MICHAEL DALEY: Not under the Act, they can't.

MICHAEL TIDBALL: National law practices can.

Mr MICHAEL DALEY: Right. National law practices can.

The Hon. JOHN RUDDICK: That's right. I'm glad Mr Tidball advised you of that. Yes, 30 per cent of solicitors in New South Wales, if their firm is operating not just in New South Wales, can access it. When they access that insurance, because they might have an office in Perth or something, are they generally getting cheaper insurance?

Mr MICHAEL DALEY: I'd have to check on that.

The Hon. JOHN RUDDICK: You'll take that on notice?

Mr MICHAEL DALEY: Yes.

The Hon. JOHN RUDDICK: Mr Attorney General, I hear it's a very significant reduction.

Mr MICHAEL DALEY: It might be.

The Hon. JOHN RUDDICK: Lawcover is owned by the Law Society, correct?

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Mr MICHAEL DALEY: It is.

The Hon. JOHN RUDDICK: It's making a huge amount of profit from this insurance, which they have a monopoly on.

Mr MICHAEL DALEY: It's making an appropriate amount of profit.

The Hon. JOHN RUDDICK: Are you aware of the advice that Bret Walker, SC, gave on this issue and your ability to maintain a monopoly?

Mr MICHAEL DALEY: I'm aware generally that he gave advice to someone who was seeking—

The Hon. JOHN RUDDICK: It's not long. I'd like to read it out. This is Bret Walker, SC, a very respected jurist in this country. He said:

It should go without saying that this scheme of legislation gives no support whatever to consideration by the Attorney General of the question whether Lawcover should be maintained as a monopoly, with its obvious anti-competitive policy implication.

Do you agree with that statement, sir?

Mr MICHAEL DALEY: Sorry, could you say it again, please?

The Hon. JOHN RUDDICK: He says:

It should go without saying that this scheme of legislation gives no support whatever to consideration by the Attorney General of the question whether Lawcover should be maintained as a monopoly, with its obvious anti-competitive policy implication.

Mr MICHAEL DALEY: I'm not sure I agree with that. That's not entirely consistent with the advice I've been given.

The Hon. JOHN RUDDICK: Have you obtained advice from the department or elsewhere which is contrary to Bret Walker's advice?

Mr MICHAEL DALEY: I can take you through the whole process that unfolded in relation to the decision I made. I took advice from the department and received actuarial advice in relation to this as well. I have issued a statement, which is on DCJ's website, in relation to last year's insurance. I don't want to say too much more about that, because this matter might be litigated in court. My reasons have been made public for maintaining the sole position of Lawcover in New South Wales for last year and for this year.

The Hon. JOHN RUDDICK: Have you received any submission or any requests for large insurance companies to enter this market to provide some competitive forces?

Mr MICHAEL DALEY: I've received a request from ABC Insurance to enter the market.

The Hon. JOHN RUDDICK: Good. ABC Insurance is funded by a huge American finance company, Liberty, which I think are on listed on the stock exchange. It's a very impressive company. Do you think that it could be a breach of the US-Australia free trade agreement that this cartel is blocking solicitors in New South Wales from having access to cheaper insurance?

Mr MICHAEL DALEY: No-one has made that submission to me.

The Hon. JOHN RUDDICK: I believe it is. We are preventing an American company from offering a cheaper service here. That sounds to me like it could be a breach. Is that a concern to you of the free trade agreement?

Mr MICHAEL DALEY: It might well be. If it is, I don't know. As I said, I've not received a submission in relation to that, but I would imagine that if it is a breach of some enforceable agreement, ABC Insurance might run off to the Federal Court or somewhere else to gain the appropriate relief, if any exists.

The Hon. JOHN RUDDICK: I'm pleased you're going to look into it.

Mr MICHAEL DALEY: I didn't say I was.

The Hon. JOHN RUDDICK: The Law Society, which owns Lawcover, is acting as a regulator, and they've also got a cartel on the supplying of insurance. Do you think this is an appropriate relationship, or is it something that should be looked at for reform?

Mr MICHAEL DALEY: Professional indemnity insurance is essential to the functioning of our legal system. It protects solicitors from the consequences of professional negligence, and it also ensures that consumers are protected and can access legal help when they need it.

The Hon. JOHN RUDDICK: You're running down the clock, sir. We'll return to this.

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The Hon. JOHN RUDDICK: Mr Attorney General, have you approved any insurance policies for solicitors in the coming 2026-27 financial year?

Mr MICHAEL DALEY: Yes, I have approved the Lawcover policy.

The Hon. JOHN RUDDICK: Have you informed the other applicants whether their application has been approved or declined?

Mr MICHAEL DALEY: Correct me if I'm wrong, Mr Tidball, but there was only one other applicant, and it was ABC. I believe I have written to them and I have informed them.

The Hon. JOHN RUDDICK: You believe you have written to them and you have advised them that their application has not been approved?

Mr MICHAEL DALEY: Yes.

The Hon. JOHN RUDDICK: Last year you approved Lawcover's insurance and then it was a full three weeks later that you informed ABC that theirs had been declined. It does feel as though you consider ABC and the prospect of competition to be an irritation. Do you consider that a fair—

Mr MICHAEL DALEY: No, that's absolutely not true. There has been long-running consideration of this. This is a hugely important issue, for all those reasons that you have outlined. I've undertaken extensive advice on this. On 26 February I wrote to ABC Insurance advising them that I did not approve their professional indemnity insurance. The decisions and reasons for that decision are set out on the website, as I said before. I have regard to the type of policy, the level of insurance provided by ABC policy, the terms and conditions of the ABC policy, the identity of the insurer, the objectives of the uniform law and the relevant parts of it, matters identified by ABC and Lawcover that are relevant to the above matters, and the effect that approving the ABC policy may have on key market features, including premium affordability, premium stability, market stability and the public interests in those features.

I considered public interest factors for and against the policy, including that competition in a market can drive premium decreases and policy innovation. However, the solicitors' professional indemnity insurance market has some special features that may impede the full benefits of competition. Actuarial advice I relied heavily on was provided by Deloitte in October 2024. I read that report in full. It suggested that, in the short term, some New South Wales solicitors—that is, ABC's customers—would benefit from lower premiums due to their lower risk profiles. That may have the benefit of aligning risk and premium costs, producing a more efficient and equitable market. There's a whole raft of reasons. I can read them all out now if you like.

The Hon. JOHN RUDDICK: No, that's okay.

Mr MICHAEL DALEY: I can give them to you on notice, which might be a bit more efficient. I don't want to chew your time up.

The Hon. JOHN RUDDICK: We'll have quite a few supplementary questions at the end of the day, I imagine. Do you agree that, in accordance with section 46 of the competition Act, a corporation that has a substantial degree of power in a market must not engage in conduct that has the purpose or is likely to have the effect of substantially lessening competition?

Mr MICHAEL DALEY: I accept that.

The Hon. JOHN RUDDICK: Do you accept that Lawcover Insurance and its owner, the Law Society, have a substantial degree of market power?

Mr MICHAEL DALEY: In New South Wales I think that's probably a reasonable proposition, yes.

The Hon. JOHN RUDDICK: Do you think it's reasonable to refer to it as a cartel?

Mr MICHAEL DALEY: I'm not sure I'd go that far. You've got to have more than one party for a cartel.

The Hon. JOHN RUDDICK: The Law Society last financial year reported a profit of \$25 million, sir. That would place it in the top 600 companies in New South Wales. This is only a professional association. Half of those profits, Mr Attorney General, are coming from their fully owned insurance subsidiary. This does seem like a huge amount of money, and it's giving the Law Society an incentive to retain the current arrangements. Do you agree with that?

Mr MICHAEL DALEY: I hope so, because if they exit the market, we're going to be in all sorts of trouble.

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The Hon. JOHN RUDDICK: Just look at the bigger picture, Mr Attorney General. Why are you, as the Attorney General, even involved in this process? Why can't we have a free market in professional indemnity insurance and let the solicitors and the insurers sort it out themselves? Why do you have this power to control the market so much?

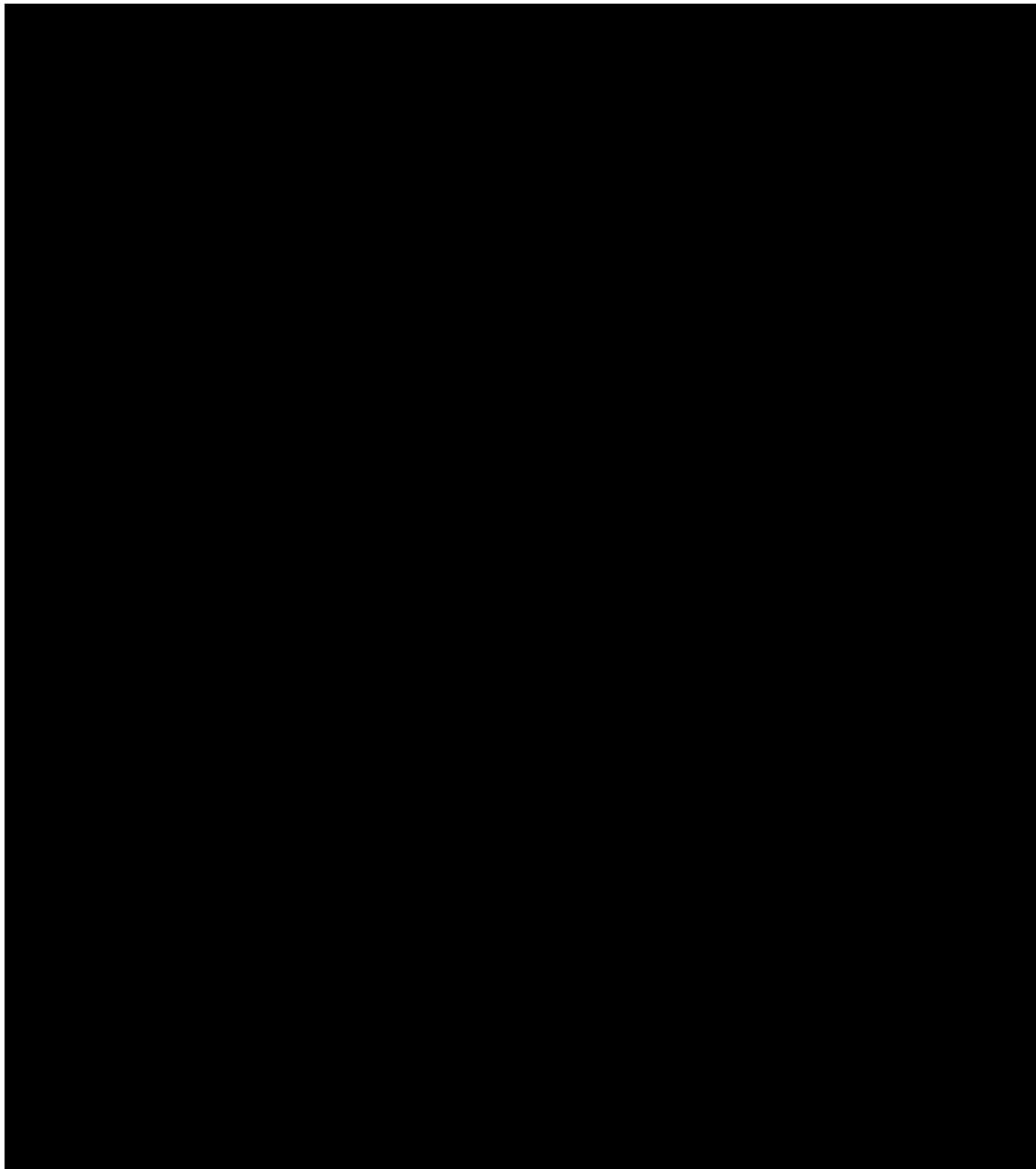
Mr MICHAEL DALEY: Because that's what the various provisions of the uniform law say.

The Hon. JOHN RUDDICK: Do you think it is conducive to a competitive market that has downward pressure on premiums?

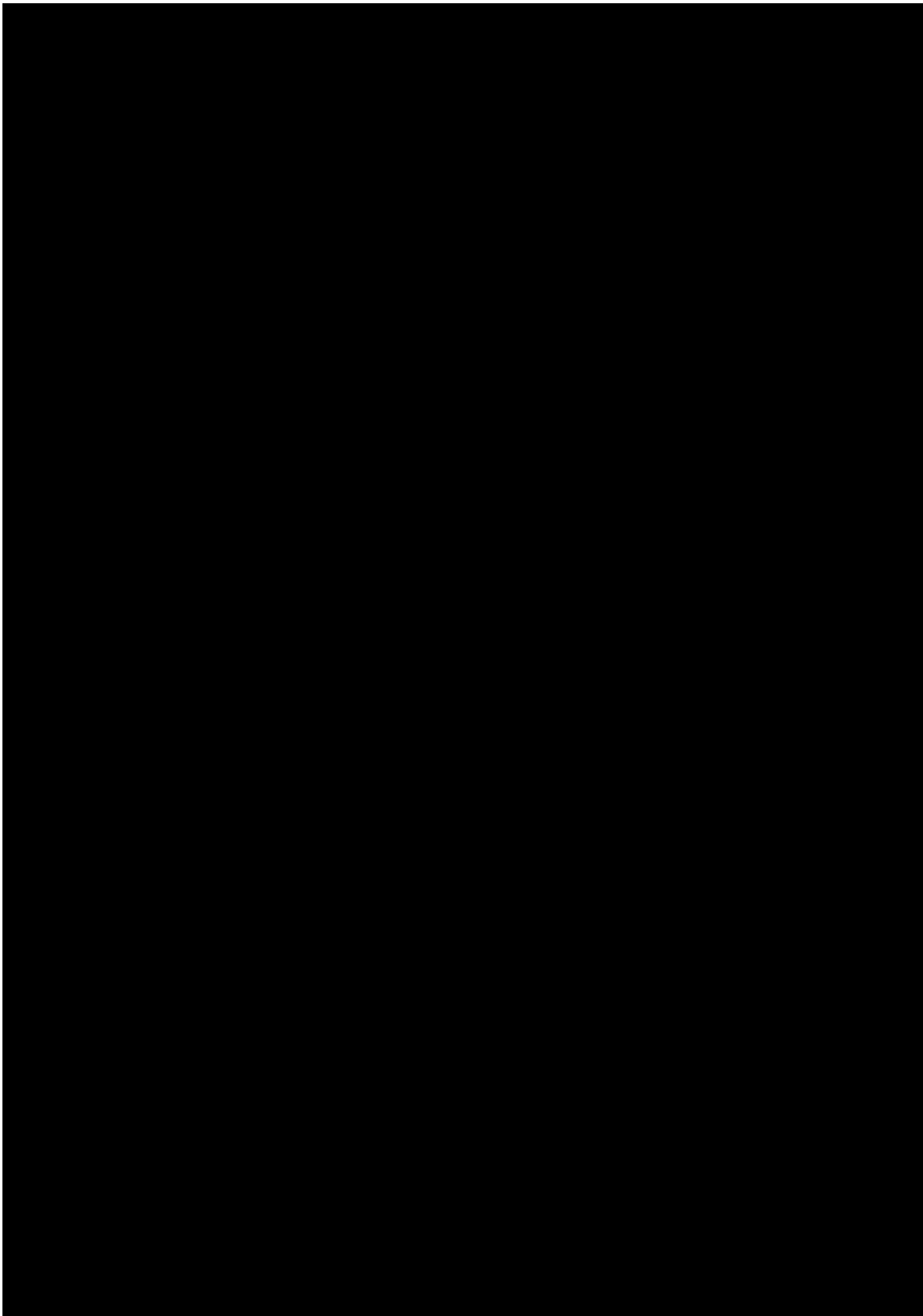
Mr MICHAEL DALEY: I think that's only one of the considerations. I think the stability of the scheme and the fact that we need a stable insurance market—costs are reasonable and in line with other jurisdictions. That's important as well. We've had experiences in the past with HIH, where insurers have gone under and governments have had to step in and pick up—

The Hon. JOHN RUDDICK: That was a one-off example.

Mr MICHAEL DALEY: That's right, so we want to make sure that doesn't happen again.



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The Hon. JOHN RUDDICK: Mr Attorney General, the Law Society is primarily a professional association, but it's also acting as a regulator and as an insurer with a monopoly on professional indemnity insurance. Do you see any conflict of interest here?

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Mr MICHAEL DALEY: None that are apparent. Mr Tidball, who has experience in these matters, might be able to explain better as to why those conflicts are managed as a matter of structure of the body.

MICHAEL TIDBALL: Can I just stress, I have, in my time as secretary since this matter has been considered, totally recused myself from any involvement. All briefs have bypassed me so I have never—

The Hon. JOHN RUDDICK: You were the president of the Law Society for about—

MICHAEL TIDBALL: No, I was chief executive.

The Hon. JOHN RUDDICK: CEO for about 16 years.

MICHAEL TIDBALL: And I certainly disclosed that—14 years, yes.

The Hon. JOHN RUDDICK: But you don't have an opinion on the subject.

MICHAEL TIDBALL: I faithfully, when I was in that role, prosecuted my functions as chief executive of the Law Society. I'm now secretary, in another role. It's entirely inappropriate that I be close to this matter or advise on it, and I have not.

The Hon. JOHN RUDDICK: You recused yourself. You finished up there several years ago, and you're now in an important position. The question I asked the Attorney and which he's passed on to you is, don't we see a conflict of interest? I would have thought you're the best person in the State to answer the question.

MICHAEL TIDBALL: I think I'm conflicted, and I think it would be—

The Hon. JOHN RUDDICK: What's your conflict? You haven't been involved for several years. You don't have a—

MICHAEL TIDBALL: Can I answer that?

Mr MICHAEL DALEY: Madam Chair, if Mr Tidball says he's conflicted then that's the end of the matter.

The Hon. JOHN RUDDICK: What's the nature of the conflict?

Mr MICHAEL DALEY: He doesn't need to explain it. He just said he is conflicted because of his previous role there.

MICHAEL TIDBALL: Or a perception of conflict.

The Hon. JOHN RUDDICK: I'm intrigued. What is the nature of the conflict? You don't have any financial connection with the Law Society anymore, do you?

MICHAEL TIDBALL: Not at all, no.

The Hon. JOHN RUDDICK: We'll move on. Mr Attorney General, would the Government support a parliamentary inquiry into the question of professional indemnity insurance for solicitors in New South Wales?

Mr MICHAEL DALEY: No. I don't see any need for that.

The Hon. JOHN RUDDICK: You don't think some spotlight and some scrutiny on this issue could be valuable? Maybe we'll find out at the end of an inquiry that this is a terrific arrangement, but maybe there might be some errors, so shouldn't we have some curiosity?

Mr MICHAEL DALEY: I have no control over upper House committees that you might want to conjure—

The Hon. JOHN RUDDICK: You do have some control, sir, because you can recommend to the Labor members that they support the inquiry.

Mr MICHAEL DALEY: I won't be. I'm satisfied with the arrangements as they currently exist. If I wasn't, I wouldn't have acted the way I did, in accordance with the advice that I received.

The Hon. JOHN RUDDICK: If there is a debate in the upper House about setting up a parliamentary inquiry, your advice to your Labor colleagues would be to vote against?

Mr MICHAEL DALEY: I think you guys have got much more useful things to do.

The Hon. JOHN RUDDICK: You said that there are unique circumstances for solicitors. There are 43,000 solicitors in New South Wales, and those unique circumstances, according to you—in the last session you said that they won't benefit from insurance competition. There are many, many occupations across New South

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Wales that have professional indemnity insurance—barristers, health professionals, accountants, architects, migration agents, real estate agents. These are very diverse occupations, and they are subject to competition when it comes to professional indemnity insurance. What is different about solicitors and other professions?

Mr MICHAEL DALEY: This is a contentious space. ABC Insurance have already engaged in one proceedings in respect of this. It's possible that there might be more. Therefore, I'm going to be entirely guarded about what I say. I can refer you to my reasons, which have been published on DCJ's website, and I don't wish to say any more about it.

The Hon. JOHN RUDDICK: As we discussed last time, the Law Society is generating \$25 million in profits each year. It seems an extraordinary amount for a professional association. Could we use some of those monstrous profits to lower professional indemnity insurance?

Mr MICHAEL DALEY: Why don't you write to the Law Society and ask them these questions?

The Hon. JOHN RUDDICK: I'm asking the Attorney General. You're a central player in this arrangement.

Mr MICHAEL DALEY: I'm not. I approve policies, but I don't play any role in the commercial activities of the Law Society.

The Hon. JOHN RUDDICK: It doesn't concern you that they are accumulating \$25 million each year—a professional association?

Mr MICHAEL DALEY: I wouldn't jump to a conclusion about whether that's excessive unless I gave them the opportunity to explain how and why.

The Hon. JOHN RUDDICK: Insurers are required under statute to put aside a certain amount of capital in case there is a freak event and there's a lot of claims. My understanding is that Lawcover is putting aside up to three times the amount of capital required. Why would that be, Mr Attorney General?

Mr MICHAEL DALEY: You'd have to ask Lawcover that.

The Hon. JOHN RUDDICK: It doesn't strike you as odd that they've got so much cash that they're putting aside three times as much capital?

Mr MICHAEL DALEY: I wouldn't jump to a conclusion that it was odd until I had had the opportunity to talk to them about it, and when I've—

The Hon. JOHN RUDDICK: We should have the inquiry, sir. Hopefully we'll see you next time at the inquiry.

The ACTING CHAIR: Attorney, just while we are on the Law Society—and I'm not going to go to you, Mr Tidball, other than to say I remember when you were the CEO of the Law Society—

The Hon. DAMIEN TUDEHOPE: We all do.

The ACTING CHAIR: We all do, that's right. I just want to raise something that has been raised with me to see whether this is something that has been brought to your attention. The reason I raise this, obviously, is the Government provides resources to the Law Society for some of its regulatory functions, particularly in relation—as I understand it—to trust accounts or the regulation of solicitors in compliance with the rules. The Trust Accounts Department has, over the last 3½ years, quite consistently rejected taking regulatory action against law practices in certain circumstances and situations in relation to trust account noncompliances, where a trust account overdraws \$50,000 or \$100,000 and trust money is not banked into law practice accounts. That's been over the past 15-month period. I'm just curious if you're aware of what seems to be a change in regulatory practice in relation to trust accounts, including a significant reduction in trust account auditors that the Law Society has.

Mr MICHAEL DALEY: That's well outside my realms of day-to-day knowledge. I'm happy to take that on notice. Could I suggest, though, that you ask the Law Society for a meeting? The president and the CEO, Kenny Tickle—I have the highest regard for him and he's an absolute A-grader. He will answer these questions to your satisfaction. If you just ask to meet him, I'm sure they'll meet.

The ACTING CHAIR: Very happy to do that, but I think the reason it's been raised with me is because the Government provides money to the Law Society for those functions, and there is a clear—

Mr MICHAEL DALEY: No, I don't think we do.

The ACTING CHAIR: For regulatory functions at all?