



# **Standing Committee on Law and Justice**

## ***2023 Review of the Workers Compensation Scheme***

**RESPONSES TO QUESTIONS ON NOTICE  
FROM HEARING ON 20 OCTOBER 2022**

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**The Hon. ANTHONY D'ADAM:** It is possible that a worker might have sustained a physical injury and be physically able to return to work but, because of the secondary psychological injury, they aren't able to return to work?

**TONY WESSLING:** Yes.

**RICHARD HARDING:** Very true.

**The Hon. ANTHONY D'ADAM:** Obviously, the scheme has a series of time frames, and certainly the benchmarks around return-to-work metrics are all premised on the first injury when you've actually got a secondary. Do you think there's some inequity there that the Committee perhaps should be focusing on?

**TONY WESSLING:** Yes, maybe it's something worth looking at, Mr D'Adam. I am not sure the extent of that issue. icare's claims managers will certainly ensure that if an injured worker who has started with a physical injury has a psychological injury that they get access to all the treatment that's required, and we do that consistently with the legislation. I would have to come back to you about what options there might be to open up a second claim.

**ANSWER**

Secondary psychological injuries are treated and managed on an injured worker's primary physical injury claim. This is because secondary psychological injuries are a consequence of the initial physical injury.

The State Insurance Regulatory Authority (SIRA) Standards of Practice (SOP) recognise that as a claim progresses, additional medical or consequential conditions (like secondary psychological injuries) may be added to certificates of capacity issued by nominated treating doctors on an existing injury / claim and require prompt and proactive assessment by icare's Claim Service Providers (CSPs) on the management of the claim. This includes whether there is the need for additional support and compensation.

If the additional medical or consequential condition includes a request for treatment, SOP 13 prescribes that CSPs must decide if there is a causal link between the initial injury and the secondary injury within 21 days. SOP 33 also specifies insurers are to screen for biopsychosocial factors to help identify where workers are at risk of developing a secondary psychological injury.

**Entitlements**

A worker with a secondary psychological injury can access weekly compensation payments for any incapacity for work that persists up to 130 weeks even if their primary physical injury resolves earlier. Like workers with a primary psychological injury or a primary physical injury, the ability to access weekly payments after 130 weeks will depend on the injured worker's capacity for work and their assessed level of permanent impairment.

A worker with a secondary psychological injury can also access reasonably necessary medical and other related treatment expenses to ensure their condition is treated.

Currently in accordance with the *Workers Compensation Act 1987*, when an injured worker's degree of permanent impairment resulting from a physical injury is assessed, no consideration is given to any impairment or symptoms resulting from a secondary psychological injury. An injured worker is also not entitled to compensation for permanent impairment for a secondary psychological injury in accordance with section 65A of the Act.

**Data**

The data captured in line with SIRA's 'Workers Compensation Insurer Data Reporting requirements' does not currently require or allow for secondary psychological injuries to be readily identified.

While it is possible to obtain information on the proportion of workers with physical injuries who access psychological treatment as reported by SIRA in its submission to the Committee, using this information to inform the incidence of secondary psychological injuries is ambiguous.

This is because psychological treatment can also be accessed by a worker with a primary physical injury to treat symptoms and conditions that do not amount to a diagnosis or secondary psychological injury, like the management of chronic pain.

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**The Hon. STEPHEN LAWRENCE:** I was more curious about the feedback of data. Is there feedback of data, in a general sense and potentially in a de-identified way, about what treatments were utilised? For example, that could then form data that starts to suggest a trend about what actually works. Is there feedback of that nature? Or is it more "that's clinical and that stays in that box"?

**TONY WESSLING:** I would have to take that question on notice, Mr Lawrence. I would say, though, that what we spend most of our time focusing on when we see an impact in the efficiency or the efficacy of helping injured workers with psychological injuries is the speed with which they get a treatment, whatever that treatment may be as defined by the treating doctor. Right at the start, access to basic psychological services is the challenge. But to answer your question, I'd have to take that on notice. We would have that information; I'm not sure whether we've programmatically used that.

**ANSWER**

In accordance with legislative requirements, an injured worker can choose their nominated treating doctor / nominated treating specialist, who has the expertise to recommend the most appropriate treatment to obtain the best possible outcome for the worker. The role of icare's CSPs is to enable an injured worker to access the prescribed treatment in a timely manner while ensuring it meets the legislative requirements for treatment approval, including the requirement for treatment to be reasonably necessary.

Data relating to treatment is captured in line with SIRA's Workers Compensation Insurer Data Reporting requirements but does not currently require or allow for the collection of specific treatment modality data. However, this data does identify whether an injured worker has received a psychological or counselling consultation, trauma focussed treatment or group / class intervention.

It is clear from this data that early appropriate psychological treatment intervention does deliver positive outcomes for workers with a primary psychological injury. Allied health services, particularly psychological treatment and medical consultations are the highest number of services delivered to individuals who return to work within 4 weeks post psychological injury. This is also evidenced in those who return to work within 13 weeks post injury. Early access to treatment is therefore critical.

icare is aware of emerging and novel treatment requests that may not have an established evidence base being requested. This generally occurs in older and more complex claims where despite the use of evidence-based treatments, the injured worker may not have returned to work. icare's current data limitations do not readily identify these specific treatments across the scheme and therefore icare cannot understand their efficacy.

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**The Hon. ROD ROBERTS:** This Committee has an oversight role. Don't you think you have some obligation to us along the same lines? You could have said, "Listen, we're aware we have an issue at the moment. We don't know how big it is, but we believe we have we have an issue with some underpayments. We are yet to quantify it. It may well only be indexation. It may be bigger. We don't know. We don't know how many workers it affects, but it does affect some degree of workers. We think we should have some sort of obligation to tell you, and the moment we have some facts we will come back and report to it you."

**RICHARD HARDING:** Mr Roberts, the moment that we have certainty that we understand the issue and we are in a place to understand how we're going to remediate it and what it looks like—as we did with this case—we put a statement on our website, and we provide a media statement.

**The Hon. ROD ROBERTS:** Did you send the link to our Committee at all?

**RICHARD HARDING:** I don't really know whether we did or not. I can give you that on notice, if you like.

**ANSWER**

icare did not update or notify the Committee regarding the issue of indexation of weekly payments. icare notified the general public of the issue via a media statement on 8 May 2023, and subsequently published a public information page and fact sheet for affected workers. These are available to view on icare's website:

**Media Statement:** <https://www.icare.nsw.gov.au/news-and-stories/2023/icare-to-review-and-remediate-historical-indexation-issue>

**Information Page:** <https://www.icare.nsw.gov.au/injured-or-ill-people/workplace-injuries/payments/indexation-payments>

**Fact Sheet:** <https://www.icare.nsw.gov.au/-/media/icare/unique-media/employers/make-a-claim/payments-for-your-employees/calculating-piawe/piawe-fact-sheets-indexation.pdf>