Submission
No 28

INQUIRY INTO 2022 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: Aware Super

Date Received: 27 July 2022

27 July 2022

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2022 Review of the Workers Compensation Scheme
NSW Legislative Council Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney NSW 2000

By online submission

Dear Mr Rath,

Thank you for the opportunity to contribute to the Standing Committee on Law and Justice's (the Committee) 2022 Review of the Workers Compensation Scheme (the Scheme).

The Scheme is a critical element of ensuring that workers who are injured on the job in NSW have the support they need to recover. The Scheme is particularly important for frontline workers, whose roles carry greater risk of injury than most other occupations.

Aware Super has more than 500,000 members in NSW. Approximately 75% of our members work in frontline services, including as first responders. Many of these workers hold life insurance through their superannuation.

Our submission focuses on the interaction between the Workers Compensation Scheme and the superannuation system, including life insurance held through superannuation, and sets out key considerations for the Committee. We make two specific recommendations to ensure that total system costs are better considered as part of design and review of the Scheme.

We have also provided data below to show the changes in claims experience across our current insurance providers, particularly regarding mental health claims.

Consideration 1: Scheme reviews should consider system-wide costs

While the financial sustainability of the Scheme is important, it is also necessary to consider the total system costs of all entitlements to illness and injury benefits when considering Scheme reforms to ensure that there is appropriate coverage for frontline workers.

It is our observation that reforms aimed at reducing the cost burden of the Scheme can result in claims and costs moving to adjacent illness and injury schemes. For example, the group life insurance that workers have access to through superannuation.

<u>2012 Workers Compensation reforms</u>

In June 2012, the NSW Government introduced amendments to the Scheme that reduced compensation entitlements for injured workers. At the same time, these changes gave insurers unilateral powers to determine a worker's level of work capacity, and thus their compensation entitlements.

The stated intentions of the 2012 legislative changes were to:

1. Stimulate employer focus on the prevention of workplace injuries and illnesses;
2. Return employees to work more quickly;
3. Reduce insurance premiums; and

4. Improve the financial viability of the scheme.[1]

The result was a significant turnaround in the financial position of the Scheme, from a projected $4.1 billion deficit in December 2011 to a surplus of $2.6 billion in June 2014.[2]

However, the life insurance market, particularly group insurance issued via superannuation, had a significantly different experience over the same period. In the 12 months to end of March 2014, APRA Quarterly Life Insurance Performance Statistics showed Group Lump Sum Superannuation businesses making a loss of $521 million. These losses resulted in significant premium increases for insurance in superannuation.

Although several factors were likely to have contributed to these losses, insurers TAL and MetLife have observed that the change in workers compensation benefit entitlements was a material contributing factor. However, while the 2012 Scheme changes appear to have contributed to premium increases, system-level impacts of reforms are not currently considered or tracked.

<u>Understanding system costs</u>

Moving costs from Workers Compensation to insurance within superannuation increases the premiums for fund members which results in higher costs and reduced retirement balances. This is a particularly acute issue for Aware Super given that we are the superannuation fund of choice for frontline workers in NSW.

To prevent inequitable cost-shifting, it is important that the impacts of Scheme changes across other relevant sectors, including life insurance, are well understood and considered as part of Scheme design.

To ensure system-wide costs are understood and considered as part of the reform process, Aware Super recommends:

1. flow-on impacts of Scheme reforms on other sectors, including life insurance within superannuation, are explicitly included in the Terms of Reference for all future reviews of the Scheme; and
2. improve data collection on system-wide impacts of Scheme changes through the tracking and modelling of flow-on impacts – in consultation with the life insurance sector – to ensure that costs are not being unintentionally shifted to other sectors.

Consideration 2: Reforms to reduce system costs should focus on re-training and retirement solutions

<u>Workers compensation and an ageing workforce</u>

A key area of reform to address rising costs in both workers compensation and life insurance is to meet the need for re-training and retirement solutions. Workers' compensation and insurance payments, particularly TPD, are often viewed as a financial necessity for ill and injured workers approaching retirement age.

While most injuries to workers usually occur in the 20 to 29 age category, older workers are more likely to have longer recovery times and may require retraining to rejoin the workforce.[3] According to the

[1] Markey, R, et. al. (2015). 'The Impact on Injured Workers of Changes to NSW Workers' Compensation: July 2012 – November 2015'. Macquarie University. *Scrutiny of Financial Advice*. Submission 186 – Attachment 2.

[2] Ibid.

[3] icare. (2022). *Managing an ageing workforce*. Sourced from: https://www.icare.nsw.gov.au/employers/industry-and-partners/industry-hub/preventing-injury/managing-an-ageing-workforce#gref

Australian Bureau of Statistics, in the 20 years leading up to April 2021, the workforce participation rate of older Australians (aged 65 and over) more than doubled from 6.1% in 2001 to 15% in 2021.

With the retirement age being lifted in Australia from 65 to 67, older workers with workplace injuries and/or occupational diseases may increasingly look to compensation, insurance, and superannuation savings to meet their financial needs before they qualify for the aged pension. A 2016 report by the NSW Audit Office found that an ageing workforce is a future risk area for injury management, as workers compensation leave tends to increase with age. Therefore, with an aging workforce and increasing retirement age, the Scheme and insurance providers are likely to see an increase in claims associated with older workers over time.

Reforms to address rising Scheme costs

Existing training programs within the Scheme (such as Section 53 of the *Workplace Injury Management and Workers Compensation Act 1998*) enable injured workers to re-train and commence work with a new employer or within a new sector.

An expansion of these programs – particularly for workers approaching retirement age or transitioning to retirement – may address the needs of individuals who might not otherwise meet eligibility criteria for ongoing support.

It is our view that a focus on re-training and retirement solutions for older workers will help to address rising costs in both the Scheme and life insurance premiums by:

- reducing the time taken for injured workers to return to employment with their existing employer, including alternate duties and comprehensive graded return-to-work plans, particularly for older workers who are more likely to have longer recovery times;
- providing workers with viable alternate employment opportunities, increasing the chance of a return to work, and lowering the risk of future injury; and
- proactively re-skilling older workers who might otherwise rely on compensation or insurance claims as a financial necessity when approaching retirement.

Consideration 3: Scheme return to work programs should address rising mental health claims

Psychological claims on group life insurance policies have been increasing at a steady rate for the past decade. Our two current insurance providers represent over 50% of the group life insurance in superannuation and have provided statistics to outline the experience within their respective portfolios.

The percentages represented are those in respect of psychological (mental health) claims as the primary cause by notified period. To the extent there is a trend, the notified percentages may understate the ultimate share of claims as generally mental health claims have longer notification delays than those overall. However, it is not expected to change the general message on the trend observed.

The first two graphs below clearly show the increasing trend in reported mental health claims across both Total and Permanent Disablement (TPD) and Income Protection (IP) claims. Also of note is that, particularly for TPD, mental health claims represent higher value (benefit payment) claims compared to the wider insurance portfolio.

The third graph, provide by a separate insurer, outlines the paid mental illness claims across all group superannuation clients across all cover types – death, TPD and IP. Again, the trend is significant.

Fig 1 – Mental Health as % of TPD Claims (Superannuation Clients) – 2012-2022

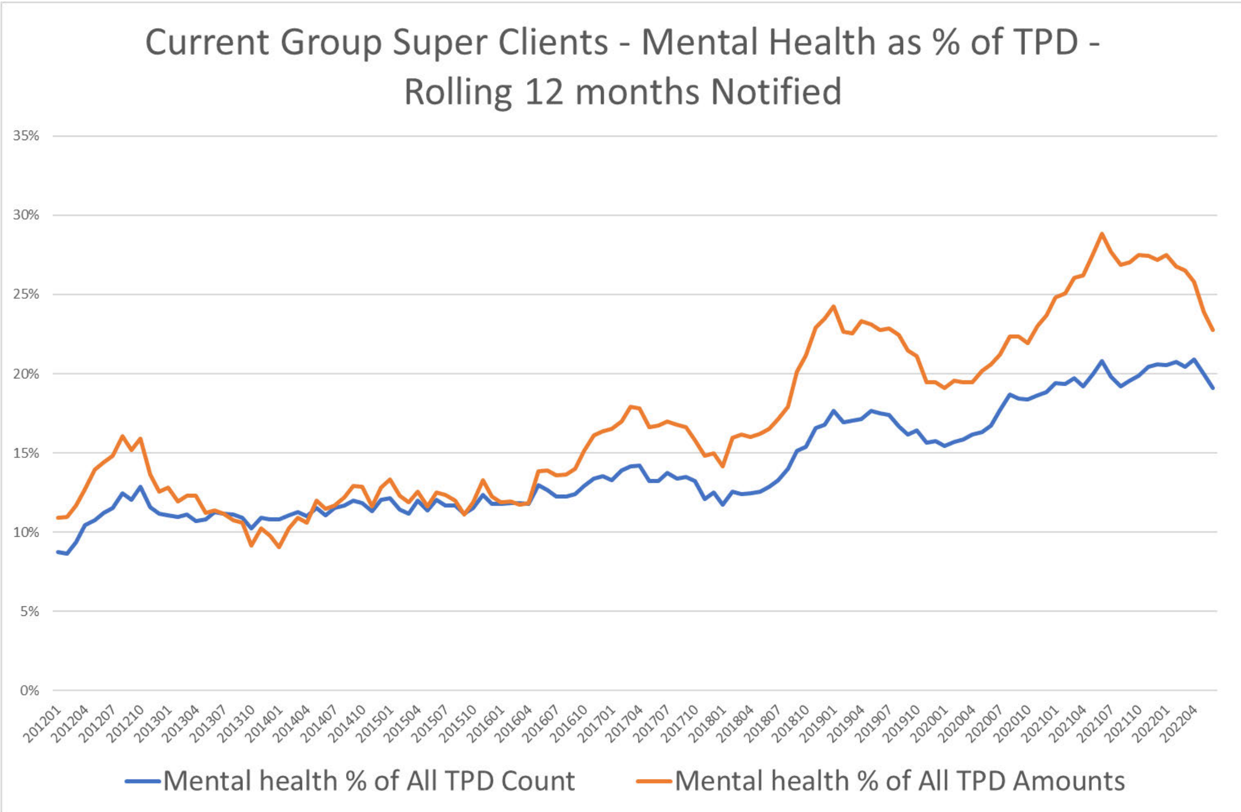


Fig 2 – Mental Health as % of Insurance Premiums (Superannuation Clients) – 2012-2022

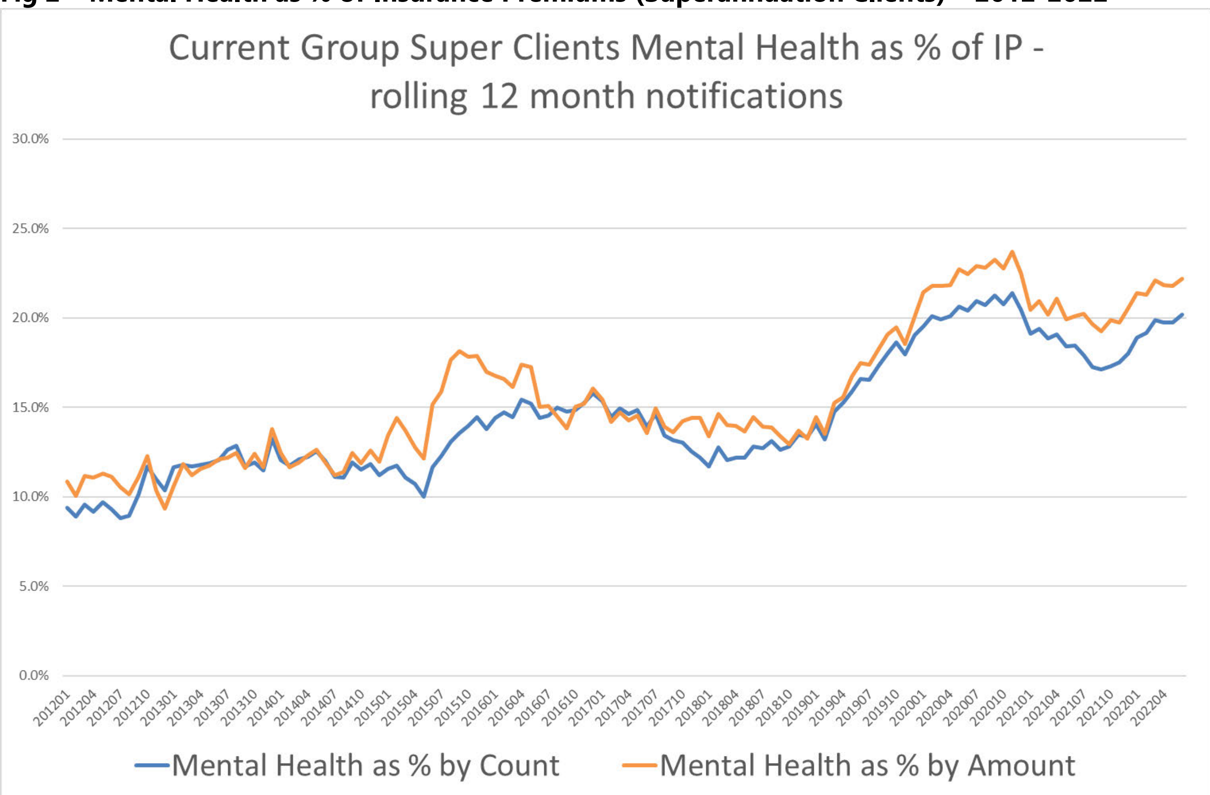
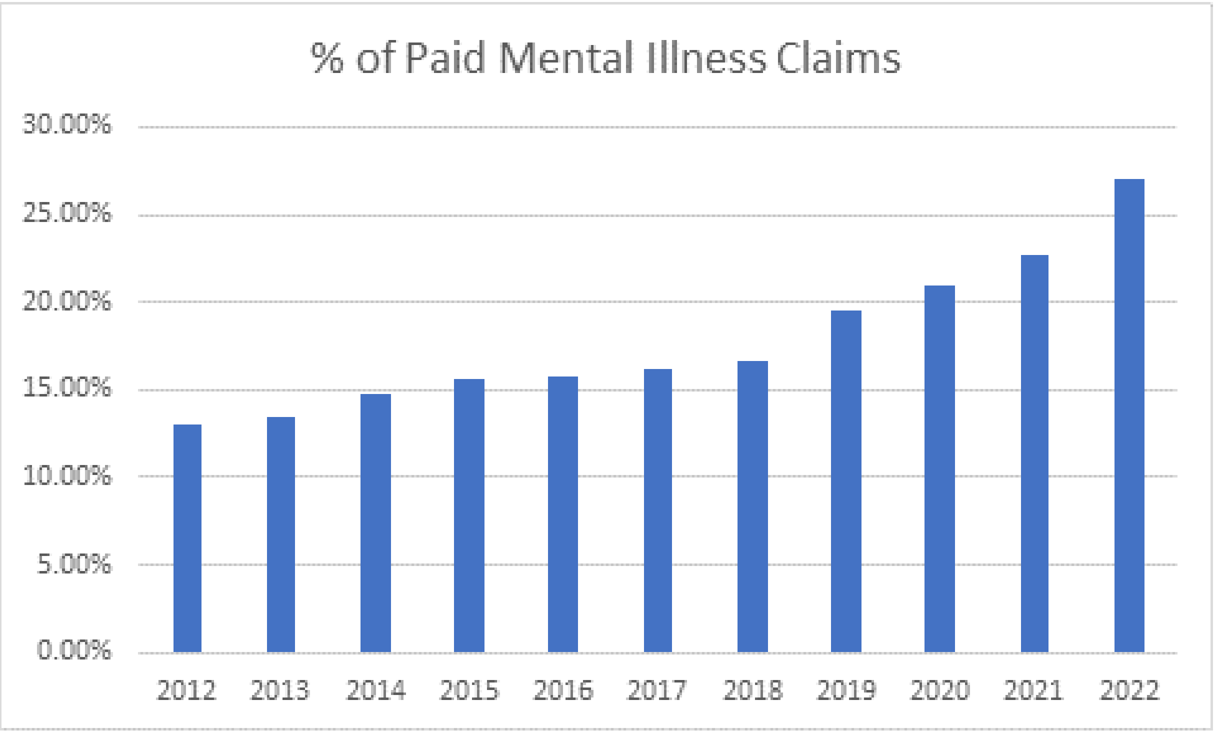


Fig 3 – Paid Mental Illness Claims as % of all Claims (Superannuation Clients)



It is our experience that the increase in mental health claims within TPD can be attributed at least in part to workers' inability to return to the workforce through the Scheme, particularly in instances where a person has been medically discharged from their employer.

The Committee should consider whether return to work programs within the Scheme are fit for purpose, and if they adequately address the specific needs of mental health claimants. This includes where issues within the workplace itself may be a contributor to the mental health claim.

We would be happy to provide additional information at the request of the Committee, should it be useful.

If you wish to further discuss any aspect of this submission, please contact David Johnson

Yours sincerely,

Deanne Stewart
Chief Executive Officer

About Aware Super

Aware Super (formerly First State Super) manages approximately $150 billion in savings, including $32.6 billion in retirement assets at 30 June 2021. Our members—including first responders, teachers, nurses and public servants—work in roles that support our community, and they expect us to do the same by investing in ways that do well for them, and good for all.