

**INQUIRY INTO PROPOSED CHANGES TO LIABILITY AND
ENTITLEMENTS FOR PSYCHOLOGICAL INJURY IN NEW
SOUTH WALES**

Organisation: National Insurance Brokers Association
Date Received: 15 May 2025

Submission

The Hon Greg Donnelly MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House, Macquarie Street
Sydney NSW 2000

Inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback to the NSW Legislative Council's Standing Committee on Law and Justice inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales.

A strong and sustainable workers' compensation system is fundamental to safeguarding the welfare of injured workers, supporting workforce productivity and ensuring the long-term commercial viability of NSW businesses.

NIBA supports policy and regulatory reforms aimed at halting unsustainable premium increases and restoring the long-term fiscal integrity of the scheme. In doing so, NIBA recognises that a balance must be struck, one that delivers timely and appropriate support to injured workers while preserving the confidence of employers in a scheme that is equitable and sustainable into the future.

About NIBA

NIBA is the peak representative body for the general intermediated insurance profession. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, as well as small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general industry operates with integrity and professionalism.

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NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy, education, and ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, strengthening trust and confidence in the insurance broking profession.

The role of brokers in the NSW workers' compensation scheme

Insurance brokers play a critical role in supporting employers to navigate the complexities of the NSW workers' compensation system. As trusted advisors, brokers assist businesses to understand their obligations under workplace health and safety legislation, implement effective risk management strategies, and arrange appropriate insurance cover.

Beyond policy placement, brokers provide end-to-end advisory support throughout the policy lifecycle and critical support in the event of a claim, including;

- Advising on injury management, rehabilitation, and return-to-work programs;
- Liaising with insurers, allied-health professionals and service providers to facilitate timely outcomes; and
- Monitoring premium trends and identifying cost-containment strategies.

Through their specialist expertise and knowledge, insurance brokers meaningfully contribute to the effective operation of the workers' compensation system and the broader goal of safer, healthier workplaces.

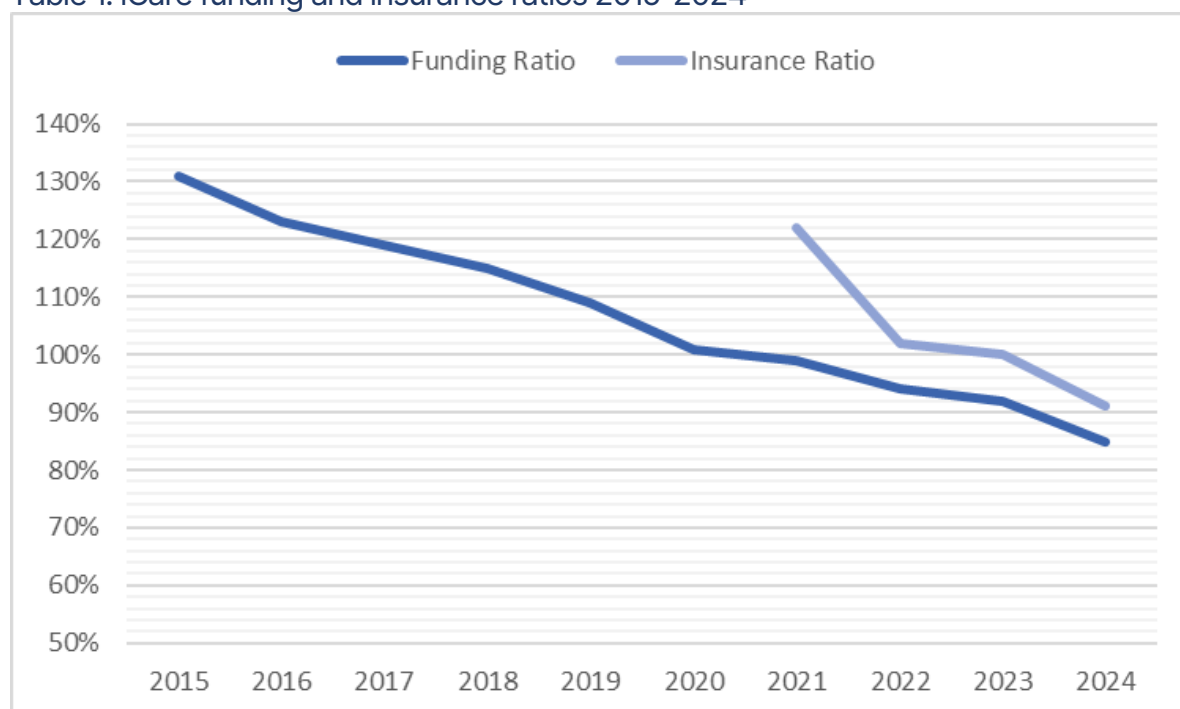
The need for reform

The NSW workers' compensation scheme is facing a growing financial crisis. The current scheme deficit has reached \$3.6 billion, growing by approximately \$1.8 billion in the last financial year. In the 2024 financial year claims expenditure reached \$3.9 billion, significantly outstripping premiums and exposing a growing funding deficit. Consequentially, the nominal insurer's funding ratio deteriorated to 85% (see table 1), well below the target funding ratio adopted under the *Nominal Insurer Capital Management Policy*¹. The erosion of this ratio over successive reporting periods underscores a deepening imbalance between liabilities and funding capacity.

Meanwhile, average premiums have risen by 8% year-on-year over the last two years, with a further 8% rise confirmed for the upcoming financial year. These compounding cost pressures are placing increasing strain on employers across the state and diminishing public confidence in the system's sustainability. Government leaders have acknowledged this critical state of affairs, warning that in the absence of reform, the scheme risks becoming insolvent within two years.

¹ In 2021 iCare transitioned from a 'funding ratio' to the preferred 'insurance ratio', which provides a better perspective of the long-term solvency of the scheme. *The Nominal Insurer Capital Management Policy*, has a target insurance ratio of 130%-160%. The insurance ratio, as of FY24 is 91%

Table 1: iCare funding and insurance ratios 2015-2024



Key Cost Drivers

The financial and operational pressures currently facing the NSW worker's compensation scheme are underpinned by three interrelated costs drivers. These challenges reflect deeper structural issues that require focused regulatory intervention.

Psychological injury claims

A primary contributor to the scheme's financial pressures is the rapid growth in psychological injury claims. Although these claims represent only 12% of total claim volume, they account for a disproportionately high share of scheme liabilities due to their extended duration, increased complexity and greater reliance on specialist mental health treatment and support services.

Deficiencies in claims management

In addition, persistent shortcomings in case management by claims services providers (CSP's) further inflate costs. While members have noted modest improvement in CSP performance, since increasing the number of CSP's to six, delays in decision making, inconsistent application of workers' compensation guidelines, and poor oversight by case managers have led to prolonged claim durations, higher treatment costs, and poor return-to-work outcomes.

Admission of non-work-related claims

Compounding these issues is the acceptance of claims into the system without a clear causal link to the workplace. Such claims place an unnecessary burden on the scheme, diverting

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resources away from legitimate cases and undermining the confidence of both employers and genuine claimants.

NIBA urges the government to address these structural issues as part of its broader program of reforms aimed at restoring sustainability and strengthening the long-term integrity of the scheme.

Reasonable management action

NIBA supports the Bill's inclusion of a clear and practicable definition of *reasonable management action*. By delineating the circumstances under which an employer's decisions regarding performance management, rostering, operational restructures, and workplace conduct will not give rise to actionable psychological injury, the proposed wording provides much-needed certainty for both employers and employees.

This clarity will help to minimise disputes over the validity of such claims and prevent the diversion of scheme funds towards matters that fall outside the intended scope of workers' compensation. Moreover, the adoption of this definition promotes fair and consistent application of the law by claims decision makers. Insurers and self-insurers alike will benefit from a common benchmark against which to assess claims, reducing the time and cost associated with protracted liability determinations. Equally, employers will be better placed to manage their workforces confidently, knowing that reasonable decisions taken in good faith will not expose them to unforeseen liabilities.

NIBA welcomes the opportunity to contribute to this inquiry and supports the objectives underpinning the proposed reforms. We look forward to working with the government to support the design and implementation of practical and sustainable reform measures.

Should you have any queries in relation to this submission or wish to discuss any of the matters raised, please do not hesitate to contact Allyssa Hextell, Head of Policy and Advocacy,

Yours sincerely,

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