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STANDING COMMITTEE ON LAW AND JUSTICE

2023 Review of the Workers Compensation Scheme



Report 84

December 2023

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Standing Committee on Law and Justice

2023 Review of the Workers Compensation Scheme

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2023 Review of the Workers Compensation Scheme

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Chair: Hon. Greg Donnelly MLC.



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Terms of reference

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice is the designated Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers' compensation and motor accidents legislation:
 - (a) the Workers' Compensation Scheme,
 - (b) the Workers' Compensation (Dust Diseases) Scheme,
 - (c) the Motor Accidents Scheme, and
 - (d) the Motor Accidents (Lifetime Care and Support) Scheme.
2. In exercising the supervisory function outlined in paragraph 1, the committee:
 - (a) does not have authority to investigate a particular compensation claim, and
 - (b) must report to the House in relation to the operation of each of the schemes at least once every Parliament.

The terms of reference were referred to the committee by the Legislative Council on 10 May 2023.¹

¹ *Minutes*, NSW Legislative Council, 10 May 2023, p 32.

Committee details

Committee members

Hon Greg Donnelly MLC	Australian Labor Party	<i>Chair</i>
Hon Chris Rath MLC	Liberal Party	<i>Deputy Chair</i>
Ms Abigail Boyd MLC*	The Greens	
Hon Susan Carter MLC	Liberal Party	
Hon Anthony D'Adam MLC	Australian Labor Party	
Hon Stephen Lawrence MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	
The Hon Rod Roberts MLC	Independent	

* Ms Abigail Boyd MLC substituted for Ms Sue Higginson MLC from 30 August 2023 for the duration of the inquiry.

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Chair's foreword

The workers compensation scheme provides fundamental support to workers who have suffered a personal injury including a disease at work in New South Wales. At its core, the scheme is designed to support and enable injured workers to recover and return to work as soon as possible.

The Standing Committee on Law and Justice plays a key role in overseeing the workers compensation scheme, ensuring that it is operating both effectively and efficiently. The committee reviews the scheme at least once every four years, closely monitoring its performance and identifying aspects that may, or do require reform and improvement.

A substantial part of the evidence that formed the basis of this review was received by the previous Standing Committee on Law and Justice in 2022. However, the committee was not able to complete that review and table its report prior to the end of the 57th Parliament.

The current committee considered it a priority to complete the important work that previously had been undertaken but not concluded. It sought and obtained the agreement of the Legislative Council to consolidate the body of evidence collected in the 2022 review, and refer it to the new Parliament so the work that had been commenced could be concluded. Accordingly, the 2023 review is based on the incompleting 2022 review, incorporating some additional evidence to bring it fully up-to-date. The committee is grateful to all inquiry participants for their patience, and we extend our thanks to those who took the time to update their original submission to ensure that the most current information was available.

Due to the marked increase in the number of psychological injury claims in recent years, the committee in the previous Parliament had resolved to make psychological injuries the focus of the 2022 review. Psychological injuries are debilitating in nature and have a significant impact on individuals, workplaces, and the scheme as a whole. These claims typically are more complex to resolve, longer in duration, and have a considerable impact on the cost of operating the workers compensation scheme.

While the committee noted that Insurance and Care NSW (icare) and the regulator, State Insurance Regulatory Authority (SIRA) and major stakeholders are already working to better respond to and manage psychological injuries, it is very clear that much more needs to be done.

A key question that emerged throughout the inquiry was whether the current workers compensation scheme itself, is fit for purpose regarding dealing with psychological injuries. The observation was made by a number of witnesses that the current workers compensation scheme was primarily designed to deal with physical as opposed to psychological injuries. Given the impact of psychological injury claims on the cost of operating the scheme, there is an immediate need to develop and implement without delay, much better systems and practices to better manage psychological injury claims. This will include, but is not limited to, ensuring how such claims are managed much better and injured workers enabled to return to work sooner than is currently the case. Critical to this will be the requirement to significantly improve data collection and analysis overall, and specifically with respect to secondary psychological injuries.

The committee expresses its appreciation to the many participants who contributed to this inquiry through either making submissions and providing oral evidence at the three hearings undertaken in 2022 and 2023. These include peak stakeholders, regulatory bodies, government agencies, academics, trade unions and individuals. The committee is grateful for the contributions from injured workers and their

families, including those who participated in private roundtable discussion in 2022. These participants like no others, were able to provide the committee with a critical perspective of those who have experienced the workers compensation scheme firsthand.

The committee is concerned that some injured workers have and continue to have negative experiences with respect to the workers compensation scheme. It is clear that measures must be implemented to ensure that the claims management process itself is not the cause of unintended stress or further suffering for an injured worker. The committee is grateful for the candour and willingness of the injured workers who participated in the inquiry to recount the difficulties they have experienced in order to help the committee identify where improvements to the workers compensation scheme can be made.

Finally, I wish to acknowledge and thank my committee colleagues for the collegiate way in which they have engaged and participated in this important inquiry. Can I also thank all the Committee Secretariat and Hansard staff for their hard work and professionalism, without which this report could not have been produced.



The Hon. Greg Donnelly MLC
Committee Chair

Recommendations

Recommendation 1

11

That the State Insurance Regulatory Authority, Insurance and Care NSW and the NSW Government continue to work with stakeholders to implement the forty-nine recommendations of the Hon Robert McDougall QC in his report, *icare and State Insurance and Care Governance Act 2015: Independent Review* (30 April 2021).

Recommendation 2

26

That the State Insurance Regulatory Authority and Insurance and Care NSW continue to enhance and expand work with stakeholders to implement measures to address declining return to work rates in the workers compensation scheme.

Recommendation 3

27

That SafeWork NSW as the work health and safety regulator collaborates more closely with the State Insurance Regulatory Authority and Insurance and Care NSW to ensure safer workplaces reducing workers compensation claims.

Recommendation 4

27

That the NSW Government review the State Insurance and Regulation Authority 'significant matter' policy and the application of that policy in practice, to ensure the policy is functioning and ensuring that major mistakes or errors by insurers including Insurance and Care NSW are notified to the State Insurance and Regulation Authority in an efficient manner.

In recognition of the oversight functions of this committee, in instances where an issue is found to be a significant matter:

- Insurance and Care NSW must in writing inform this committee of such issues as soon as practicable. Such information should be in the form of a highlight summary of no more than one page
- the State Insurance Regulatory Authority must notify this committee as soon as practicable of the way in which they have overseen the effective redress of the significant matter. Again, such information should be in the form of a highlight summary of no more than one page.

Recommendation 5

55

That the NSW Government engage with the State Insurance Regulatory Authority and Insurance and Care NSW to establish a specific timetable to implement a robust and reliable method of data collection that ensures information on secondary psychological injuries is collected by insurers and is maintained on an ongoing basis.

Recommendation 6

56

That the NSW Government:

- investigate and look to implement opportunities to support injured public sector workers to return to work
- develop a whole of government return to work strategy for the public sector to facilitate the placement of staff who have sustained an injury, in particular a psychological injury, but cannot return to their usual workplace.

- Recommendation 7** **56**
 That the State Insurance Regulatory Authority, Insurance and Care NSW, and SafeWork NSW:
- continue to investigate and examine in detail the factors influencing the large number of psychological claims from injured workers employed in the Stronger Communities, Education and Health clusters within the public sector
 - prioritise the implementation of any changes revealed as necessary by the integrated compliance audit and performance review of the Treasury Managed Fund.
- Recommendation 8** **57**
 That Insurance and Care NSW, the State Insurance Regulatory Authority, SafeWork NSW and the Department of Education work in partnership to conduct a forensic investigation into the underlying drivers of stress-related psychological claims in the Education sector.
- Recommendation 9** **57**
 That the State Insurance Regulatory Authority investigate and undertake further research and modelling into potential options to deal with psychological claims in the workers compensation scheme, including whether such claims should be dealt with as a separate stream within the existing framework or whether they should be managed entirely separately.
- Recommendation 10** **58**
 That SafeWork NSW, in consultation with industry and union stakeholders:
- develop, implement, evaluate and publicly report on all programs that manage and reduce psychosocial risk
 - undertake a project to build the capacity and number of health and safety representatives who have received training in identifying, managing and responding to psychosocial hazards in the workplace
 - undertake an enforcement campaign targeting workplaces that have high incidents of psychological injury to ensure they have in place a psychosocial hazard risk assessment. The efficacy of this campaign should be subject to an independent external evaluation.
- Recommendation 11** **58**
 That the research functions of SafeWork NSW, the State Insurance Regulatory Authority and Insurance and Care NSW work more closely and collaboratively together and the responsible Ministers consider unifying those functions to ensure the best use of these resources.
- Recommendation 12** **90**
 That the State Insurance Regulatory Authority and Insurance and Care NSW, in consultation with key stakeholders and injured workers, identify and implement measures to minimise the impacts caused by case manager turnover, in order to avoid further distress and/or trauma to injured workers if they have to re-tell their story.
- Recommendation 13** **90**
 That the State Insurance Regulatory Authority investigate the extent to which delays in medical support and treatment are occurring and potential compliance measures.
- Recommendation 14** **91**
 That the NSW Government consider amendments to the workers compensation legislation that would ensure injured workers are only required to have a single independent medical examination from a specialist agreed upon by all parties, where relevant.

Recommendation 15**91**

That the NSW Government considers amending the workers compensation legislation to increase access to commutation settlements, provided that appropriate safeguards are included, such as the requirement for independent legal advice and the approval of the Personal Injury Commission where appropriate.

Recommendation 16**92**

That the NSW Government considers amending the workers compensation legislation to:

- enable a further assessment of whole person impairment where there has been a significant deterioration in relation to an injury
- ensure there is a consistent threshold for whole person impairment regardless of whether the injury is physical or psychological in nature.

Recommendation 17**92**

That the State Insurance Regulatory Authority review the use of the Psychiatric Impairment Rating Scale within the workers compensation scheme, to assess whether it is the most effective tool for calculating whole person impairment in relation to psychological injuries.

Recommendation 18**93**

That the NSW Government prioritise a targeted review, engaging with key stakeholders, of the entire workers compensation scheme, to ensure claims management and the claims management process meet the needs of injured workers and better reflects the nature of injuries occurring in modern workplaces. This review should include a consideration of whether there is an appropriate level of external oversight of quality assurance programs concerning claims service providers.

Conduct of inquiry

The terms of reference were referred to the committee by the Legislative Council on 10 May 2023.

In 2022, the previous Standing Committee on Law and Justice commenced a review of the workers compensation scheme but did not table a report prior to the end of the 57th Parliament.

The previous committee received 43 submissions and two supplementary submissions as part of the 2022 review. They also received 79 pro forma contributions from injured workers.

That committee held two public hearings at Parliament House in Sydney on 8 September 2022 and 10 October 2022. They also held a private injured workers roundtable at Parliament House in Sydney on 8 September 2022.

Following a resolution of the current Standing Committee on Law and Justice to finalise the 2022 review, the Legislative Council agreed on 24 August 2023 to refer the evidence from the 2022 review of the workers compensation scheme to the Standing Committee on Law and Justice in the 58th Parliament. This ensured the evidence could be considered as part of the next review of the workers compensation scheme.

In keeping with its intention to finalise the 2022 review, the current committee resolved that it would not accept new submissions. However, the authors of the original submissions to the 2022 review were invited to provide an update of their submission, should they wish, in recognition of the time that had passed. The committee received 12 supplementary submissions in response.

A public hearing was held at Parliament House in Sydney on 20 October 2023.

Please note that a reference to 'supplementary submission' in this report generally refers to an updated submission received in 2023, whereas 'submission' refers to the initial submission from 2022.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents, pro formas, and answers to questions on notice and supplementary questions.

Chapter 1 Background

This chapter provides an overview of the workers compensation scheme, including key developments that have occurred since the committee's 2020 review. This includes the release of the McDougall report and other reforms implemented by Insurance and Care NSW (icare) and the State Insurance Regulatory Authority (SIRA) over the last three years.

Role of the committee and focus of this review

- 1.1 The Standing Committee on Law and Justice supervises the operation of the workers compensation scheme in New South Wales, as required by section 27 of the *State Insurance and Care Governance Act 2015*. The committee reports to the Legislative Council at least once every Parliament on the operation of the scheme, having done so most recently in April 2021.
- 1.2 In the 57th Parliament the previous Standing Committee on Law and Justice commenced a 2022 review of the workers compensation scheme. However, the committee did not formally table a report on the 2022 review before the 57th Parliament ended.
- 1.3 The current Standing Committee on Law and Justice resolved to finalise the 2022 review, as part of their 2023 review of the workers compensation scheme. The Legislative Council referred all evidence from the 2022 review to the current committee for this purpose.
- 1.4 The previous committee had resolved that a focus of the 2022 review be on the increase in psychological claims in the workers compensation scheme. The 2023 review accordingly maintained this focus. This report largely reflects the focus on psychological claims, while also covering the committee's consideration of the general performance, operation and financial sustainability of the scheme.

The workers compensation scheme in New South Wales

- 1.5 The workers compensation scheme is the largest defined benefit scheme in Australia. It is funded by more than 350,000 employers and covers over 4.7 million workers.² Its legislative framework includes the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* and associated regulations.³
- 1.6 The *Workplace Injury Management and Workers Compensation Act 1998* provides for the effective management of work-related injuries and injury compensation. The Act includes a number of objectives for the workers compensation system which are to be delivered efficiently and effectively, being to:
 - assist in securing the health, safety and welfare of workers and prevent work-related injury

² Supplementary submission 37, SIRA, pp 1 and 2.

³ For a brief history of the workers compensation scheme, including reforms implemented over the years, see: Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), p 2ff.

- provide prompt treatment of injuries, and their effective and proactive management, as well as necessary medical and vocational rehabilitation to assist injured workers and promote their return to work as soon as possible
- provide injured workers and their dependents with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses
- be fair, affordable, and financially viable
- ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work.⁴

1.7 The workers compensation market is comprised of four categories of insurers:

- the Nominal Insurer, which is administered by icare, and offers policies for all industries except coal
- the Treasury Managed Fund, which is managed by icare, and provides policies for government agencies
- specialised insurers, which provide policies for certain industries
- self-insurers.⁵

1.8 In evidence to the committee, Mr Richard Harding, Chief Executive Officer and Managing Director of icare, highlighted that while the Nominal Insurer represents 67 per cent of the market share, it mostly covers small to medium-sized businesses (280,000 of the 330,000 employers), with self and specialised insurers only accounting for 17 per cent of the market.⁶

icare

1.9 icare provides insurance and care services for more than 3.7 million workers, 330,000 private employers and 205 NSW Government agencies under the Nominal Insurer and Treasury Managed Fund workers compensation schemes.⁷ It is the largest workers compensation service provider in New South Wales.⁸

1.10 The Nominal Insurer contracts insurance agents to manage claims on its behalf, using Employers Mutual NSW Limited (EML), Allianz Australia Worker's Compensation (NSW) Limited, GIO General Limited, QBE Workers Compensation (NSW) Limited, Gallagher Bassett and DXC Technology. The claims managers for the Treasury Managed Fund include

⁴ Section 3, *Workplace Injury Management and Workers Compensation Act 1998*.

⁵ State Insurance Regulatory Authority, *How to get workers compensation insurance*, <https://www.sira.nsw.gov.au/insurance-coverage/workers-compensation-insurance/how-to-get-workers-compensation-insurance>

⁶ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, Insurance and Care NSW, 10 October 2022, p 43.

⁷ Submission 26, icare, p 3.

⁸ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 31.

Allianz Australia Insurance Limited, Employers Mutual Limited and QBE Insurance (Australia) Limited.⁹

SIRA

- 1.11** SIRA was established in 2015 to regulate various statutory insurance and care schemes, including the compulsory third party, home building compensation and workers compensation schemes. As such, SIRA regulates all workers compensation insurers, including the Nominal Insurer.
- 1.12** In March 2022, SIRA launched a new strategy, SIRA2025, which sets out various goals and strategies designed to enable SIRA to utilise the full range of scheme stewardship, design, and regulatory functions available to it to deliver better outcomes.¹⁰

SafeWork NSW

- 1.13** SafeWork NSW is the regulator for work health and safety legislation in New South Wales and is funded by the workers compensation operational fund. It provides advice to businesses and workers on how to improve work health and safety and undertakes a range of compliance activities.¹¹
- 1.14** Inspectors from SafeWork NSW support the work of SIRA in regulating employer compliance with the workers compensation scheme. They monitor and assess compliance in relation to the systems used by employers for workplace injury management and return to work.¹²

Independent Review Office

- 1.15** The Independent Review Office is an independent statutory office established under the *Personal Injury Commission Act 2020*.¹³ It fulfils a number of statutory functions, including:
- dealing with complaints related to claims and insurers
 - managing and administering the Independent Legal Assistance and Review Service
 - conducting inquiries into matters arising in connection with the operation of the *Personal Injury Commission Act 2020* and the workers compensation and motor accidents legislation.¹⁴
- 1.16** As noted above, the Independent Review Office receives complaints about insurers affecting an injured worker's rights or entitlements under workers compensation legislation. These

⁹ State Insurance Regulatory Authority, *How to get workers compensation insurance*, <https://www.sira.nsw.gov.au/insurance-coverage/workers-compensation-insurance/how-to-get-workers-compensation-insurance>

¹⁰ Submission 37, SIRA, p 1.

¹¹ Submission 33, SafeWork NSW, pp 1-2.

¹² Submission 33, SafeWork NSW, pp 1-2.

¹³ Schedule 5, *Personal Injury Commission Act 2020*.

¹⁴ Submission 31, Independent Review Office, p 2.

complaints may relate to matters such as weekly benefits, medical treatment, denial of liability, as well as delays in having claims determined. The Independent Review Office provides funding for expert lawyers via the Independent Legal Assistance and Review Service when needed to advise and act for injured workers.¹⁵

Developments since the last review

- 1.17** The committee's last report, tabled on 30 April 2021, focused largely on the performance and operations of icare. It included 22 findings and nine recommendations.¹⁶ Many of its outcomes followed on from the issues documented in the *Independent Compliance and Performance Review of the Workers Compensation Nominal Insurer managed by icare*, an independent review process undertaken by Ms Janet Dore which was commissioned by SIRA (see the committee's previous report for further information).
- 1.18** Overall, the committee's last report documented substantial deficiencies in icare's leadership, governance and culture. It also highlighted the significant deterioration in the financial position of the Nominal Insurer and the Treasury Managed Fund, with net losses of \$1.9 billion and \$635 million respectively.¹⁷
- 1.19** Noting the steady decline in the funding ratio of the Nominal Insurer, the committee found that the losses were largely due to a collapse in return to work rates resulting from icare's introduction of a new claims management model. The committee found that unless return to work rates improved, the Nominal Insurer and Treasury Managed Fund would continue to sustain major underwriting losses.¹⁸
- 1.20** The committee ultimately recommended that the NSW Government consider addressing the deteriorating position of the Nominal Insurer and the Treasury Managed Fund scheme primarily through administrative efficiencies and operational improvements to icare. Other key recommendations included:
- SIRA commissioning an independent evaluation of the effectiveness of icare's claims management model
 - expansion of SIRA's regulatory powers to ensure it had adequate oversight of the Nominal Insurer and Treasury Managed Fund
 - notifying all potentially affected claimants in relation to historic miscalculations of pre-injury average weekly earnings

¹⁵ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 37.

¹⁶ Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021).

¹⁷ Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), p 11 and 26.

¹⁸ Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), Findings 1 and 4.

- investigation of some specific legislative reforms, including to the whole person impairment test.¹⁹

1.21 While this report will turn shortly to the progress icare and SIRA have made in relation to these recommendations, it is important to first outline the outcomes from the independent review of the *State Insurance and Governance Act 2015*, which was also released on 30 April 2021.

McDougall review

1.22 At the time of the committee's 2020 review, an independent statutory review of the *State Insurance and Governance Act 2015* was being conducted by The Hon Robert McDougall QC. The review focused on:

- providing a comprehensive organisational review of icare, having regard to various issues recently raised in the media and in Parliament
- reviewing the government-managed workers compensation schemes (Nominal Insurer and Treasury Managed Fund) and the legislative framework that supports them
- looking at recommendations for improvement, including in relation to: organisational effectiveness of icare; financial stability and management of the workers compensation schemes; any amendments to the *State Insurance and Governance Act 2015*; and any amendments to the *Workers Compensation Act 1987* or *Workplace Injury Management and Workers Compensation Act 1998*.²⁰

1.23 The McDougall report included forty-nine recommendations. Thirty-three of its recommendations related to the organisational review of icare, including in the areas of claims management, oversight by SIRA, and the realisation of benefits. Nine recommendations concerned the review of the government-managed workers compensation schemes and covered:

- potential legislative redrafting, including consideration of whether to consolidate workers compensation legislation
- medical costs and value-based care
- assessment of entitlement to weekly and medical benefits
- potential expansion of commutation and settlement options
- amendments to the unconditional licence of the Nominal Insurer
- measurement of financial sustainability of the Nominal Insurer, including consideration of the explicit use of an economic funding ratio for the purposes of assessing the Nominal Insurer's capital management needs.²¹

¹⁹ Correspondence from the Hon Victor Dominello MP, Minister for Customer Service and Minister for Digital, to the Clerk of the Parliament, 25 October 2021.

²⁰ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 9.

²¹ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 21ff.

1.24 The McDougall report described how icare had been established to centralise the management of insurance functions for the Nominal Insurer and the claims management functions in relation to the Treasury Managed Fund. It noted that failures of process had produced 'manifold unhappy consequences' as:

The new model for claims management did not deliver the benefits that the legislature had intended. Return to work (RTW) rates dropped. Costs increased. Injured workers experienced very considerable difficulties in getting access to the benefits to which, by law, they were entitled'.²²

1.25 Nonetheless, the report concluded that the 'icare experiment' was not a 'disaster' and that there was 'no present threat' to the financial sustainability of the scheme.²³

1.26 The remaining seven recommendations of the McDougall report regarded the specific statutory review of the *State Insurance and Care Governance Act 2015*, with recommendations relating to:

- the objectives of the Act and the three agencies, namely icare, SIRA and SafeWork NSW
- SIRA's investigative powers
- clarification of SIRA's regulatory reach
- ministerial directions
- a review of SafeWork NSW.

Developments related to icare

1.27 In accordance with a recommendation from the 2020 review, icare provided a written update to this committee in November 2021 on the action it took to ensure it was complying with all the requirements expected of a public sector agency, including compliance with information disclosure requirements, the procurement framework and policies related to the management of conflicts of interest, gifts and benefits and public interest disclosures. It also provided a written update on the measures it was taking to improve the financial performance of the Nominal Insurer and Treasury Managed Fund and return to work rates.²⁴

1.28 The committee also held a hearing on 15 December 2021 with icare and SIRA representatives to explore these issues further. By this time, a new Chief Executive Officer, Managing Director, and Chair of the Board were appointed at icare.²⁵

²² Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 12.

²³ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, pp 13 and 14.

²⁴ icare, *Legislative Council Standing Committee on Law and Justice – icare update in response to recommendation 7* (November 2021), <https://www.parliament.nsw.gov.au/lcdocs/other/16439/icare%20response%20to%20Law%20and%20Justice%20Committee%20dated%2030%20November%202021%20.pdf>

²⁵ Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), p 10.

- 1.29** Mr Richard Harding, Chief Executive and Managing Director of icare, spoke of the cultural change occurring at icare, which included a new leadership team and new policies related to risk, governance and the management of conflicts of interest and gifts and benefits.²⁶
- 1.30** At that hearing, Mr Harding also informed the committee that three of the four committee recommendations of the 2020 review that were directed at icare had been completed. This included the provision of an apology to Mr Chris McCann, a former employee, and actions towards addressing the underpayments in historic calculations of pre-injury average weekly earnings.²⁷ In terms of the recommendation to investigate and implement measures to reduce medical expenses, Mr Harding noted that icare was continuing to work with SIRA in this area.²⁸
- 1.31** While Mr Harding spoke positively at this hearing about the reforms being implemented at icare, Mr Adam Dent, Chief Executive of SIRA, maintained some reservations about icare's improvement. Reflecting on the McDougall review and the issues highlighted in the Dore report, Mr Dent said that there was yet to be evidence of a turnaround in the most important indicators of scheme health at icare, including the funding ratios and return to work measures. Mr Dent stressed to the committee that 'the health of the system is inextricably linked to the performance of icare'.²⁹
- 1.32** Moving forward to the evidence the committee received in 2022 and 2023, Mr Harding provided the committee with a further update as to the changes that icare had been implementing in response to the McDougall review and Dore report. In his view, icare had made good progress, having established an Enterprise Improvement Program dealing with governance, risk and accountability and a Nominal Insurer Improvement Plan to lift performance.³⁰
- 1.33** The committee was informed that icare had engaged Ms Janet Dore to review its plans to address data quality, return to work performance, case manager capability and claims model performance. Ms Dore will also provide feedback on progress and recommendations, and provide insights on areas of focus for transition.³¹
- 1.34** The committee learned in 2023 that proposed contracts between icare and claims service providers will incorporate new approaches that have been piloted through the Improvement Plan and are designed to improve the experience of workers with psychological injuries.³² icare has established a 'Test and Learn' team to identify and implement better claims practice and pilot new initiatives.³³

²⁶ Evidence, Mr Richard Harding, Chief Executive and Managing Director, Insurance and Care NSW, 15 December 2021, p 2.

²⁷ Evidence, Mr Richard Harding, Chief Executive and Managing Director, Insurance and Care NSW, 15 December 2021, p 2.

²⁸ Evidence, Mr Richard Harding, Chief Executive and Managing Director, Insurance and Care NSW, 15 December 2021, p 2.

²⁹ Evidence, Mr Adam Dent, Chief Executive, SIRA, 15 December 2021, p 27.

³⁰ Evidence, Mr Richard Harding, Chief Executive and Managing Director, Insurance and Care NSW, 10 October 2022, p 42.

³¹ Answers to pre-hearing questions, icare, received 21 September 2022, p 12.

³² Supplementary submission 26, icare, p 6.

³³ Supplementary submission 26, icare, p 8.

- 1.35** icare also advised the committee of the steps it had taken since the 2020 review to address concerns about its financial performance. It noted that:
- operating costs have been reduced, achieving a gross cost savings target of \$100 million over two years, with a management expense ratio of 18 per cent for the Nominal Insurer and 10 per cent for the Treasury Managed Fund
 - there is enhanced oversight of return to work performance, which it reported was improving, with the three month rolling average up from 62.6 per cent last December to 66.7 per cent in May 2022
 - significant steps were being taken to change the way in which claims are managed, with a number of initiatives to reduce the cost of claims, including creating a competitive marketplace for claim service providers and other third-party service providers.³⁴
- 1.36** In terms of financial performance, icare contended that the Nominal Insurer and Treasury Managed Fund are fully funded and able to meet long-term liabilities. To secure the long-term financial sustainability of the Nominal Insurer, icare noted that it had implemented a 2.9 per cent increase in the average premium rate for 2021-22.³⁵
- 1.37** In its submission, icare also identified a number of initiatives it had developed to support employers, government agencies and workers, namely:
- developing a specialist claims model for psychological injury claims
 - introducing a professional standards framework for claims professionals
 - establishing a new partnership with the Personal Injury Education Foundation
 - working on injury prevention and early intervention initiatives.³⁶
- 1.38** It also outlined some changes made to improve the claims services provided by Employers Mutual NSW Limited. These included a reduction in case loads, the employment of new staff, the recruitment of Career Transition Specialists, targeted use of vocational rehabilitation providers for complex cases, and the professional development of case managers. In addition, it noted that a new Professional Standards Framework was introduced in November 2021.³⁷
- 1.39** A new claims model in the Nominal Insurer commenced in January 2023, moving from a single service provider to a network of providers.³⁸ icare has appointed six specialised claims service providers, of which four provide specialist services and teams to manage psychological injury claims.³⁹

³⁴ Submission 26, icare, p 34; Answers to pre-hearing questions, icare, received 21 September 2022, pp 6, 7 and 12.

³⁵ Submission 26, icare, p 34; Answers to pre-hearing questions, icare, received 21 September 2022, p 8.

³⁶ Submission 26, icare, p 4.

³⁷ Answers to pre-hearing questions, icare, received 21 September 2022, pp 12-13.

³⁸ Supplementary submission 26, icare, p 6.

³⁹ Supplementary submission 26, icare, p 6.

SIRA's implementation of previous recommendations

- 1.40** In its initial submission, SIRA provided an update regarding the implementation of recommendations made by the Standing Committee on Law and Justice as part of the 2020 review. SIRA noted that it is engaging with insurers, including icare, to improve payment compliance and governance. A medical payment leakage reporting tool is being developed that will identify instances of non-adherence to rules by insurers and providers. This will enable SIRA to identify problem areas and consider the results of changes implemented.⁴⁰
- 1.41** SIRA is also assessing icare's improvement plan documents especially in relation to claims and return to work outcomes, financial performance, customer, medical payment leakage, and data quality to ensure icare's claims management model is effective.⁴¹
- 1.42** It was a recommendation of the 2020 review that SIRA investigate:
- whether the use of the whole person impairment test in the workers compensation scheme is appropriate
 - whether the restriction of having one assessment of impairment could be removed for certain injuries
 - whether the old definition of 'suitable employment' might be more appropriate
 - other options for injured workers and insurers to reach settlements and exit the scheme
 - the feasibility and potential impacts associated with increased legal costs under the Workers Compensation Regulation 2016.⁴²
- 1.43** SIRA reported that it undertook a public consultation in relation to these proposed reforms in October 2021. However, due to their impact and complexity, it explained it was conducting a further consultation process, and expecting a report by the end of 2022.⁴³
- 1.44** In October 2022, Mr Adam Dent, Chief Executive of SIRA, informed the committee that the *State Insurance and Care Legislation Amendment Bill 2022*, which was then before the 57th Parliament, addressed the majority of the issues raised in the McDougall Review. He also indicated that SIRA is looking at the restructure and consolidation of workers compensation legislation.⁴⁴
- 1.45** At its hearing on 20 October 2023, SIRA informed the committee that the 'lion's share' of recommendations from the McDougall report that have yet to be implemented require the passage of relevant legislation through Parliament.⁴⁵
- 1.46** SIRA is currently conducting a comprehensive integrated compliance audit and performance review of Treasury Managed Fund workers compensation claims. This has involved a review of 951 claim files, 10 employer visits, and interviews with various stakeholders, including unions,

⁴⁰ Submission 37, SIRA, p 43.

⁴¹ Submission 37, SIRA, p 43.

⁴² Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), recommendation nine.

⁴³ Submission 37, SIRA, p 43.

⁴⁴ Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 32.

⁴⁵ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 7.

claims management providers, icare and Treasury.⁴⁶ It is anticipated that the review will be completed by the end of 2023.⁴⁷ However, the committee heard that preliminary findings from the review indicate that 'there is a significant lack of compliance with some of the more basic obligations at the start of claims'.⁴⁸ SIRA had also observed a 'high degree of variability' in the understanding of employers in relation to return to work planning and their obligations.⁴⁹

Legislative developments

- 1.47** The State Insurance and Care Legislation Amendment Bill 2022 was introduced by the Hon Victor Dominello MP, then Minister for Customer Service and Digital Government, in the Legislative Assembly on 30 March 2022.
- 1.48** The bill had sought to make a number of amendments to the *State Insurance and Care Governance Act 2015*, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* regarding governance and regulatory arrangements and workers compensation death benefits. It formed part of the then NSW Government's response to this committee's previous recommendations, as well as recommendations made in the McDougall report.⁵⁰
- 1.49** In particular, the bill had proposed to extend SIRA's enforcement powers in relation to the Nominal Insurer and icare, which relates to recommendation five from our previous review.⁵¹
- 1.50** The bill was agreed to by the Legislative Assembly on 18 May 2022 and introduced in the Legislative Council on 19 May 2022. However, it was not read for a second time in the Legislative Council and lapsed on prorogation.
- 1.51** The Australian Lawyers Alliance has voiced its disappointment that the amendments that would have enabled parties to a death benefit claim to settle their dispute did not pass. It claimed that this proposed amendment was 'welcomed by everyone involved in dispute resolution'.⁵²
- 1.52** Amendments have since been made to workers compensation legislation in the 58th Parliament. In 2023, the State Insurance and Care Governance Amendment (ICNSW Board) Bill 2023 and the State Insurance and Care Governance Amendment (ICNSW Governance) Bill 2023 were passed by both Houses, amending the *State Insurance and Care Governance Act 2015*. These bills also made alterations to the governance arrangements for icare and also inserted principal objectives of icare when exercising its functions.

⁴⁶ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 3.

⁴⁷ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 3.

⁴⁸ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 3.

⁴⁹ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 12.

⁵⁰ The Hon Victor Dominello MP, Minister for Customer Service and Digital Government, Second reading speech: State Insurance and Care Legislation Amendment Bill 2022, 30 March 2022.

⁵¹ Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), recommendation five; Submission 37, SIRA, p 43.

⁵² Supplementary submission 38, Australian Lawyers Alliance, p 13.

Committee comment

- 1.53** Although a significant focus of this review has been on the increase in psychological claims, the committee has continued to monitor, in particular, the progress icare and SIRA have made in relation to implementing recommendations from the previous report and the McDougall review. In particular, we have been closely monitoring the performance and administration of icare, and the changes it has made to address our concerns.
- 1.54** The committee recognises that some progress has been made, particularly related to icare's leadership and governance framework. Other matters, like improving the financial position of the Nominal Insurer and Treasury Managed Fund and lifting return to work rates, require further work and monitoring.
- 1.55** In the committee's view, it is absolutely imperative that all measures are taken to ensure the financial sustainability of the scheme. It is also important for all injured workers to be given the support and treatment they require, enabling them to return to work as soon as possible. All of these issues will be discussed in more detail throughout this report.

Recommendation 1

That the State Insurance Regulatory Authority, Insurance and Care NSW and the NSW Government continue to work with stakeholders to implement the forty-nine recommendations of the Hon Robert McDougall QC in his report, *icare and State Insurance and Care Governance Act 2015: Independent Review* (30 April 2021).

Chapter 2 Scheme performance

This chapter looks broadly at the workers compensation scheme and trends in relation to the volume and cost of claims and return to work rates. Given the significant focus of the last review on the financial performance of the Nominal Insurer and Treasury Managed Fund, this chapter touches upon the scheme's financial sustainability.

Scheme snapshot

- 2.1** This first section looks broadly at trends related to the number of workers compensation claims, payments and return to work rates by insurer type. The next chapter will focus more on data and trends related specifically to psychological claims.

Volume and nature of claims

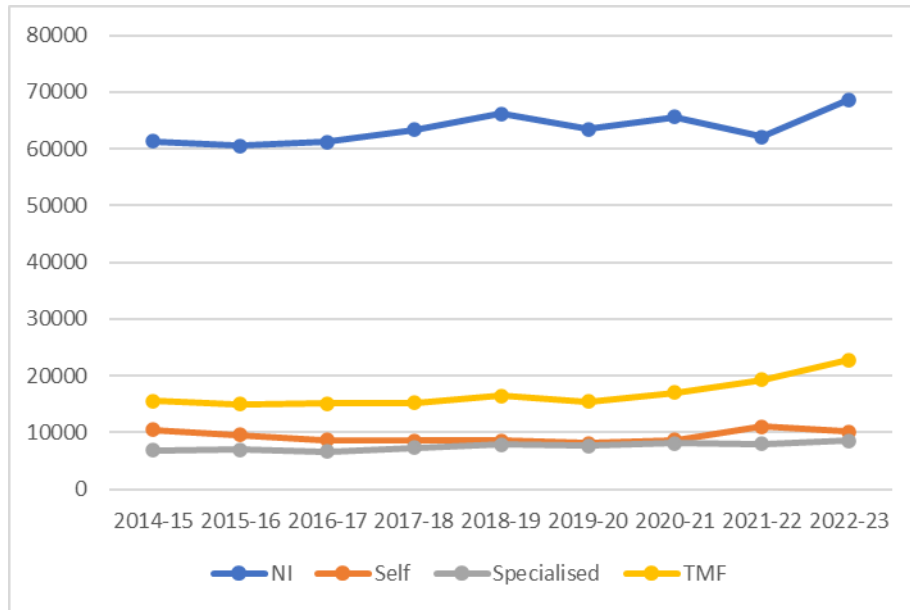
- 2.2** In 2022-23, there were a total of 110,223 new reportable claims for all workers compensation insurers.⁵³ SIRA informed the committee that the rate of claims, including for primary psychological injuries, has stabilised since 2020-21. Nonetheless, the occurrence of secondary psychological injuries is increasing and is especially prevalent within the Nominal Insurer.⁵⁴
- 2.3** Figures 1 and 2 depict the change in the total number of new reportable claims and total number of active claims respectively between 2014-15 and 2022-23, by insurer type. These figures show how the Nominal Insurer is responsible for the majority of new reportable claims, with a recent spike in new reportable claims for the Nominal Insurer and Treasury Managed Fund. The total number of active claims with the Nominal Insurer has continued to increase since 2017-18.⁵⁵

⁵³ Supplementary submission 37, SIRA, pp 15-16.

⁵⁴ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 2.

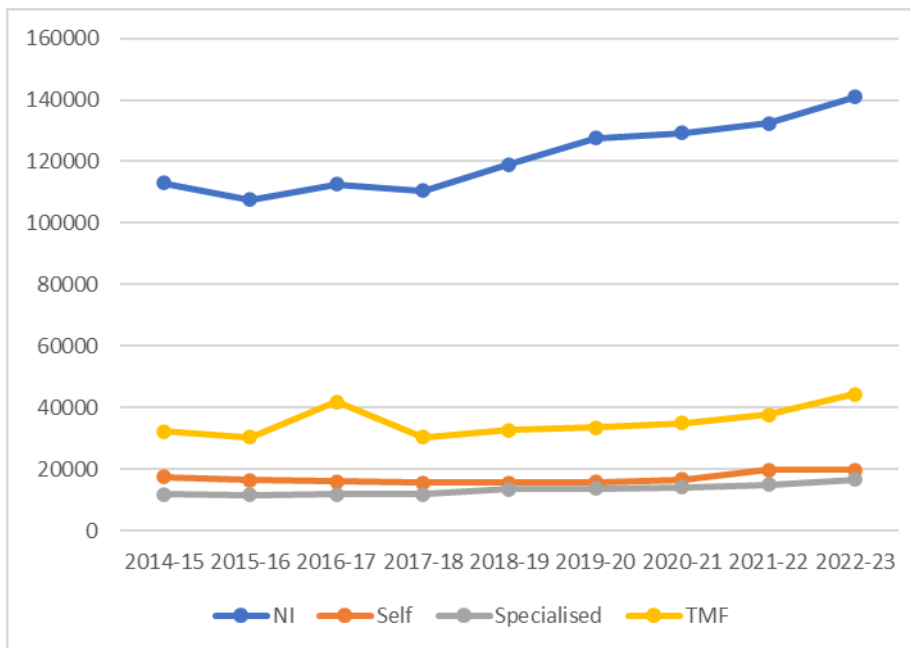
⁵⁵ Supplementary submission 37, SIRA, pp 15-16.

Figure 1 Total number of new reportable claims, by insurer, 2014-15 to 2022-23



Source: Supplementary submission 37, SIR-A, p 15.

Figure 2 Total number of active claims, by insurer, 2014-15 to 2022-23



Source: Supplementary submission 37, SIR-A, p 16.

2.4 As will be shown in the next chapter, the nature of workplace injuries is changing. SIRA noted that while total claim numbers are steady, there has been a decline in physical injury claims and an increase in psychological injury claims.⁵⁶

⁵⁶ Submission 37, SIR-A, p 3.

2.5 Table 1 compares the number of claims by insurer type and nature of injury for 2022-23. The largest number of claims for all insurers concerned were for traumatic joint/ligament and muscle/tendon injuries.

Table 1 Claims by insurer type and nature of injury, 2022-23

	Government self-insurers (TMF)	Nominal Insurer	Self-insurers	Specialised self-insurers
Intracranial injuries	204	612	48	80
Fractures	635	4967	328	480
Wounds, lacerations, amputations and internal organ damage	2524	17029	1728	1789
Burn	84	1214	159	254
Injury to nerves and spinal cord	8	46	11	14
Traumatic joint/ligament and muscle/tendon injury	6415	23858	3669	2969
Other injuries	893	2898	601	288
Musculoskeletal and connective tissue diseases	1850	7295	1588	1223
Mental diseases	4020	3777	614	493
Digestive system diseases	60	685	101	52
Skin and subcutaneous tissue diseases	67	100	22	19
Nervous system and sense organ diseases	375	2367	400	333
Respiratory system diseases	54	203	34	24
Circulatory system diseases	36	69	12	7
Infectious and parasitic diseases	5339	2591	1556	659
Neoplasms (cancer)	89	18	31	6
Other diseases	58	29	9	6
Other claims	201	1144	76	13
Total	22912	68902	10987	8709

Source: SIRA, SIRA Stats: Reportable claims data, (October 2023) <https://www.sira.nsw.gov.au/open-data/system-overview/claimsdata#!>

Payments

2.6 In 2021-22, the workers compensation scheme saw \$4.5 billion paid on all claims, including weekly payments, medical payments, common law payments, lump sum payments and payments

for rehabilitation treatment.⁵⁷ During the same period, approximately \$4.9 billion was collected from premiums.⁵⁸

- 2.7** In its 2022 submission, SIRA highlighted that despite the number of new claims having remained relatively steady between 2015 and 2021, claim payments across the workers compensation scheme are increasing.⁵⁹ However, in its supplementary submission it noted that there had been an increase in the number of claims in the scheme in 2022-23 as well as the amount paid in claims.⁶⁰ It is worth noting that the workers compensation scheme has increased to cover an additional 300,000 workers since SIRA's submission in 2022.⁶¹
- 2.8** Between 2015 and 2021, total payments increased by 60 per cent, weekly payments rose by 76 per cent, lump sum payments went up by 87 per cent and common law settlements rose by 43 per cent.⁶²
- 2.9** The average yearly payment per claim in 2022-23 was:
- \$14,000 for non-psychological claims
 - \$52,000 for primary psychological claims
 - \$82,000 for physical injury with psychological payments.⁶³
- 2.10** Table 2 breaks down the total payments made on all claims, by insurer, between 2018-19 and 2022-23, with total payments 51.1 per cent greater than in 2018-19. However, for the Treasury Managed Fund, the growth was much larger, with total payments on all claims increasing by 63.9 per cent.⁶⁴

Table 2 Total payments on all claims by insurer and financial year, \$m

Insurer type	2018-19	2019-20	2020-21	2021-22	2022-23	Percentage change 2018-19 to 2022-23
Nominal Insurer	\$2,258	\$2,571	\$2,941	\$3,036	\$3,335	47.7%
Self insurers	\$207	\$222	\$267	\$290	\$325	57.0%
Specialised insurers	\$180	\$190	\$222	\$240	\$255	41.7%

⁵⁷ Supplementary submission 37, SIRA, p 2.

⁵⁸ Supplementary submission 37, SIRA, p 2.

⁵⁹ Submission 37, SIRA, p 3.

⁶⁰ Supplementary submission 37, SIRA, p 1.

⁶¹ Supplementary submission 37, SIRA, p 1.

⁶² Submission 37, SIRA, p 3.

⁶³ Supplementary submission 37, SIRA, p 2.

⁶⁴ Submission 37, SIRA, p 30.

Insurer type	2018-19	2019-20	2020-21	2021-22	2022-23	Percentage change 2018-19 to 2022-23
Treasury Managed Fund	\$648	\$783	\$841	\$895	\$1,062	63.9%
Total scheme	\$3,294	\$3,766	\$4,271	\$4,460	\$4,977	51.1%

Source: Supplementary submission 37, SIRA, p 22.

Return to work rates

2.11 In addition to providing data on the average number of claims and trends related to payments, SIRA also provided data on return to work rates. Overall, it reported that for injured workers:

- 69 per cent return to work within 4 weeks
- 82 per cent return to work within 13 weeks
- 87 per cent return to work within 26 weeks, and
- 91 per cent return within one year.⁶⁵

2.12 SIRA in its supplementary submission reported that nine out of ten injured workers with a non-psychological injury claim returned to work within 13 weeks in 2022-23. This compared to four out of ten workers with a psychological injury claim.⁶⁶

2.13 Table 3 compares the return to work rates for each claim type at different points in time in 2022-23.⁶⁷

Table 3 Return to work rates on each claim type, 2022-23

Claim type	4 weeks	13 weeks	26 weeks	52 weeks
Non-psychological	74%	88%	92%	95%
Primary psychological	25%	42%	50%	51%
Physical with psychological payment	33%	48%	52%	58%
All claims	69%	82%	87%	91%
All claims excluding COVID	65%	80%	85%	89%

Source: Submission 37, SIRA, p 23.

⁶⁵ Supplementary submission 37, SIRA, p 2.

⁶⁶ Supplementary submission 37, SIRA, p 1.

⁶⁷ Supplementary submission 37, SIRA, p 17.

- 2.14** The type of injury has a large influence on the average number of weeks lost, with claims involving a psychological component generally resulting in more time off work:
- non-psychological claims – 6 weeks lost
 - primary psychological claims – 20 weeks lost
 - physical claims with psychological payments – 31 weeks lost.⁶⁸
- 2.15** Further data about return to work rates for psychological claims, including data by insurer, is discussed in chapter 3.
- 2.16** Importantly, the committee learnt that return to work rates began to decline in 2006 in all Australian jurisdictions. According to icare, they stabilised briefly in 2012 before continuing their decline from 2013 onwards.⁶⁹
- 2.17** Mr Adam Dent, Chief Executive, SIRA, also reflected on this decline, stating that nine out of 10 people returned to work within 13 weeks in 2015, before falling to the current rate of eight out of 10.⁷⁰ Mr Darren Parker, Executive Director, Workers and Home Building Compensation Regulation, SIRA, informed the committee that return to work had been identified as a priority for SIRA in 2022, with a new inspectorate created.⁷¹
- 2.18** In its October 2023 update, SIRA highlighted that the 13 week return to work rates for all claims overall had increased slightly since 2018-19. However, when restricted to primary psychological injury claims, the 13 week return to work rate declined significantly in that time.⁷²
- 2.19** Professor John Buchanan of the University of Sydney informed the committee that he has conducted research on behalf of icare examining the key factors influencing changes in return to work rates for injured workers in the workers compensation scheme. One of the initial findings of the project reflected that declining return to work rates are due to more than administrative factors internal to icare, with Victoria and Queensland having also experienced declining return to work rates since 2018.⁷³
- 2.20** SIRA also informed the committee that it uses predictive modelling to identify those at higher risk of a delayed recovery. This enables the provision of education and support to relevant employers to improve workers' recovery and return to work outcomes.⁷⁴ According to SIRA,

⁶⁸ Submission 37, SIRA, p 4.

⁶⁹ Submission 26, icare, p 18.

⁷⁰ Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 39.

⁷¹ Evidence, Mr Darren Parker, Executive Director, Workers and Home Building Compensation Regulation, SIRA, 10 October 2022, p 38. A Workers Compensation Assist Outreach Program commenced as a pilot program in June 2022. This formed part of a 10 Point Plan of priority actions that SIRA would implement to lift return to work performance: Answers to questions on notice, SIRA, received 9 November 2023 – Dr Andrew Fronsos, Report of the Independent Review of the Operation of SIRA's Workers Compensation Assist Outreach Program (Pilot), p 1.

⁷² Supplementary submission 37, SIRA, p 6.

⁷³ Submission 12, Professor John Buchanan, pp 9-10.

⁷⁴ Submission 37, SIRA, p 1.

frontline workers, employees of small businesses, and regional workers are particularly vulnerable to a delayed return to work.⁷⁵

Financial sustainability of the scheme

- 2.21** As discussed in chapter 1, the financial performance of icare and concerns around the long term sustainability of the workers compensation scheme, particularly with respect to the performance of the Nominal Insurer and Treasury Managed Fund, were key issues to emerge from the 2020 review of the workers compensation scheme.
- 2.22** In 2020-21, the deteriorating financial position of the Nominal Insurer and the Treasury Managed Fund was noted, with net losses of \$1.9 billion and \$635 million respectively.⁷⁶ At Budget Estimates in August 2022, the Hon Matt Kean, then NSW Treasurer, also reported that the NSW Government had injected \$1.9 billion into icare's Treasury Managed Fund, to assist with the deficit.⁷⁷ In 2023, the new NSW Government had to further 'top up' icare with a \$669 million transfer.⁷⁸
- 2.23** In 2022, icare highlighted the work it has done to address concerns about the financial performance and sustainability of the Nominal Insurer and Treasury Managed Fund. icare informed the committee that it has reduced operating costs, embarked on a number of initiatives to reduce the cost of claims, made changes to pricing, and reviewed its investment strategy.⁷⁹
- 2.24** Noting that it 'expects to see a major improvement in the performance and sustainability of all schemes into the future', icare stated that the Nominal Insurer and Treasury Managed Fund are fully funded and able to meet long-term liabilities.⁸⁰
- 2.25** Notwithstanding the strategies implemented by icare, and its response to our previous recommendations and the recommendations from the McDougall review, a number of inquiry participants voiced their ongoing concern about the financial position of icare, and in particular, the performance of the Nominal Insurer.
- 2.26** The National Insurance Brokers Association reported that it 'remains concerned' about the increased deficit in the Nominal Insurer's budget in the six months leading to December 2021.⁸¹ The Australian Industry Group also expressed the concerns of its members that the financial

⁷⁵ Submission 37, SIRA, p 5.

⁷⁶ Standing Committee on Law and Justice, NSW Legislative Council, *2020 Review of the Workers Compensation Scheme* (2021), p 11 and 26.

⁷⁷ Portfolio Committee No. 1 – Premier and Finance, Legislative Council, Budget Estimates 2022-2023, Evidence, Mr Matt Kean MP, Treasurer, 22 August 2022, p 38.

⁷⁸ Media release, Hon Sophie Cotsis MP, Minister for Industrial Relations and Minister for Work Health and Safety, 'Minister orders operational review of icare as next phase of reform begins', 6 November 2023.

⁷⁹ Answers to pre-hearing questions, icare, received 21 September 2022, p 6.

⁸⁰ Submission 26, icare, p 34.

⁸¹ Submission 18, National Insurance Brokers Association, p 2.

performance of icare would result in greater premiums, 'unless the current trends can be reversed'.⁸²

2.27 SIRA also maintained some concerns about the financial position of the scheme. It noted increasing claims liabilities, declining return to work performance, and recent economic conditions, all of which had significantly impacted the performance of the workers compensation scheme.⁸³

2.28 While SIRA acknowledged that good progress had been made in relation to the implementation of recommendations from the McDougall report, it considered that key indicators of scheme health had not shown a sustainable improvement:

Return to work rates continue to be below historic levels, system costs are rising without a corresponding improvement in recovery outcomes, and the financial performance of the scheme is deteriorating.⁸⁴

2.29 Like SIRA, a number of inquiry participants stressed the link between improving return to work rates and reducing the financial burden of the workers compensation scheme.⁸⁵ It was the view of the Police Association of NSW that returning an injured worker to work achieves many of the objectives of the workers compensation scheme and is a key metric of performance:

Returning an injured worker to work, including use of rehabilitation programs, is also the best way to reduce costs of claims, and thereby ensure the scheme remains affordable and financially viable – an injured worker back at work costs the scheme less in entitlements, and through the improvement of health outcomes, will cost the scheme less in rehab and medical costs in the long run.⁸⁶

2.30 SIRA also highlighted how COVID-19 had placed pressure on various aspects of the workers compensation scheme, including claims management practices, access to healthcare, in-person assessments and hearings, and return to work opportunities. It informed the committee that insurers had reported 11,559 COVID-19 related claims to SIRA by 31 May 2022, with total payments on these claims at \$40 million, with a gross cost of \$84 million.⁸⁷

2.31 In October 2023, Mr Darren Parker, Executive Director, SIRA, explained that it was predicted that various strategies implemented by icare would start to have a financial impact in coming years. While he acknowledged that the financial position of the workers compensation scheme would continue to deteriorate over the next year, Mr Parker highlighted that icare anticipates that it will start to improve from 2024 to 2025, with the Nominal Insurer meeting the capital target zone in June 2030.⁸⁸

⁸² Submission 13, Australian Industry Group, p 4.

⁸³ Submission 37, SIRA, p 3.

⁸⁴ Submission 37, SIRA, p 2.

⁸⁵ For example, submission 27, Police Association of NSW, p 10; submission 33, SafeWork NSW, p 2.

⁸⁶ Submission 27, Police Association of NSW, p 10.

⁸⁷ Submission 37, SIRA, p 3.

⁸⁸ Evidence, Mr Darren Parker, Executive Director, Workers and Home Building Compensation Regulation, SIRA, 20 October 2023, p 9

Funding, insurance and management expense ratios

- 2.32** Given continued stakeholder concerns about the financial sustainability of the scheme, the committee considered further the funding and insurance ratios with respect to the Nominal Insurer and Treasury Managed Fund. The funding ratio generally reflects the ratio of available assets to estimated liabilities. The insurance ratio, also known as the economic funding ratio, is 'the ratio of scheme assets to scheme liabilities, where the scheme liabilities allow for the time value of money that is reflective of the scheme's investment assets'.⁸⁹
- 2.33** As can be seen in Table 4, the funding ratio for the Nominal Insurer, as at June 2022, was 94 per cent, and the insurance ratio was 102 per cent.⁹⁰

Table 4 Financial summary of workers compensation scheme (Nominal Insurer) as at June 2022

Net result	Funding ratio	Insurance ratio	Investment funds under management	Investment return	Investment benchmark
\$(993)m	94%	102%	\$16.2bn	(5.1%)	(5.2%)

Source: *icare*, Annual Report 2021-22, p 54.

- 2.34** Mr Richard Harding, Chief Executive Officer and Managing Director, *icare*, explained that as at 30 June 2022, 'the negative result was around \$993 million in terms of the overall result for the Nominal Insurer'. Of that, he explained, '\$892 million was investment losses drive by investment market volatility'.⁹¹
- 2.35** Explaining that a long term view of the scheme is taken, Mr Harding later added: 'We are comfortable that the investment return, whilst volatile given the nature of investment markets at moment, is doing the right job that it's supposed to do across the scheme'.⁹² Mr Harding also informed the committee that over \$1 billion of adverse movement is the result of inflation, primarily wage inflation. He also noted the impact of increases in psychological claims, which he stated was a \$153 million increase in liabilities.⁹³
- 2.36** Turning to the Treasury Managed Fund, as at 30 June 2022, the insurance ratio was 125 per cent.⁹⁴ The funding ratio for self-insurance schemes generally (of which the Treasury Managed Fund is the largest component) was 105 per cent.⁹⁵
- 2.37** In response to a question at the hearing on 10 October 2022 about the long term sustainability of the scheme and whether there should be cause for alarm, Mr Harding stated:

⁸⁹ *icare*, *Annual Report 2020-21*, p 89.

⁹⁰ *icare*, *Annual Report 2020-21*, p 31.

⁹¹ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, *icare*, 10 October 2022, p 45.

⁹² Evidence, Mr Harding, 10 October 2022, p 45.

⁹³ Evidence, Mr Harding, 10 October 2022, p 45.

⁹⁴ *icare*, *Annual Report 2021-22*, p 70.

⁹⁵ *icare*, *Annual Report 2021-22*, p 70.

I think we are obviously all concerned and working towards improving the outcomes across icare in all respects across the four different levers that I spoke about in that conversation. It's clear that the funding ratio is below our targets and below where we want them to be. There are a number of factors that have got us there. Some of them are about declining return-to-work rates. A lot of them are to do with changes to the scheme, changes to the environment that is going on around us, the shifting nature of work, as well as, more currently, investment markets, COVID and other impacts. So that's why I think it's not simple to look at it and say there is one problem to solve here.⁹⁶

2.38 icare highlighted a number of measures it had implemented in 2022 to address concerns about its financial performance. In particular, it outlined how it had taken a number of steps to reduce operating costs. These include:

- Enterprise Project net savings through the stabilising and simplifying of operations
- operational efficiency benefits via consolidation of lease premises, the writing down of leased asset due to COVID-19, organisational redesign and broader efficiency improvements
- targeting premium debts of more than 180 days
- reducing fees as a result of insourcing the debt collection function from QBE, and introducing a policy and billing portal.⁹⁷

2.39 The committee was also advised that the icare Board, in November 2021, aligned the investment strategy for the investments of the Nominal Insurer with the insurance ratio, as recommended by the McDougall Report. icare informed the committee of the impact of this alignment:

This resulted in changes to the key return objectives documented in the Investment Risk Appetite Statement moving the return objectives from CPI+2.5% and AWE+1.5% over a rolling 20 years to CPI+3.0% and AWE+2.0% over a rolling 20 years. A revised asset allocation aligned to meet these new return objectives was approved by the icare Board in February 2022. A further investment strategy review will be undertaken in October 2022 given an explicit target of interest rate hedging being removed. The investment outcomes of the Scheme have strongly outperformed the Board approved risk and return objectives over the longer term, and it should be noted more recent changes will take time to take effect.⁹⁸

2.40 icare also informed the committee that the management expense ratio, which shows the percentage of scheme expenses against assets, is 18 per cent for the Nominal Insurer and 10 per cent for the Treasury Managed Fund, as at 30 June 2022.⁹⁹

2.41 Commenting further on the financial position of the scheme, icare highlighted that the Nominal Insurer had an underlying \$490 million favourable movement as at June 2022, which it viewed as the result of improved return to work and claims management. Nonetheless, it noted that

⁹⁶ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2023, p 48.

⁹⁷ Answers to pre-hearing questions, icare, received 21 September 2022, p 6.

⁹⁸ Answers to pre-hearing questions, icare, received 21 September 2022, p 8.

⁹⁹ Answers to pre-hearing questions, icare, received 21 September 2022, p 7.

this improvement was partly offset by a \$220 million unfavourable movement due to higher inflation in the six months to March.¹⁰⁰

Premiums

2.42 In 2021-22, icare increased the average premium rate by 2.9 per cent to secure the long-term financial sustainability of the Nominal Insurer. The NSW Government had issued a written direction to icare requiring that this be the limit of the increase 'to ensure predictability and stability for businesses'.¹⁰¹ icare informed the committee that premium rate increases had also occurred in Queensland, South Australia and Western Australia.¹⁰²

2.43 The committee heard a variety of views as to who should bear the costs of supporting the workers compensation scheme. Mr Richard Harding, Chief Executive Officer and Managing Director, icare, emphasised the importance of considering premium increases:

There have been eight years prior to me joining the organisation where premiums have been held flat. That's been a great boon for New South Wales businesses, but there is a need now to address the gap between the current premium level and the break-even premium level, which is around about 18 per cent.¹⁰³

2.44 However, some stakeholders raised concerns in relation to potential premium increases. Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, highlighted that the cost of insurance is generally rising at more than four times the rate of inflation.¹⁰⁴ Ms Elizabeth Greenwood of Business NSW elaborated on this point, explaining the impact on larger employers:

The particular issue with the premiums and the costs for psychological injuries relates to the larger employers—the ones who have to pay what's known as a claims performance adjustment. That's the sharing of the risk between the scheme and the larger employers. They have an extra component on their premium. That formula—we don't know what it is, since the 2015 changes because it's a confidential filing.... The longer an injured worker is in receipt of weekly benefits, the bigger that amount is that goes into the very volatile formula.¹⁰⁵

2.45 In its submission, the Australian Industry Group also voiced its concern about premiums, expressing its fear that icare's increasing costs, especially in relation to claims liabilities, would result in greater premiums.¹⁰⁶

¹⁰⁰ Answers to pre-hearing questions, icare, received 21 September 2022, p 7.

¹⁰¹ Answers to pre-hearing questions, icare, received 21 September 2022, p 8.

¹⁰² Answers to pre-hearing questions, icare, received 21 September 2022, p 8.

¹⁰³ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 45.

¹⁰⁴ Evidence, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, 8 September 2022, p 32.

¹⁰⁵ Evidence, Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, 8 September 2022, p 32.

¹⁰⁶ Submission 13, Australian Industry Group, p 4.

- 2.46** SIRA noted that the McDougall Report had recognised that premium increases would greatly assist with ensuring the long term sustainability of the Nominal Insurer.¹⁰⁷ However, SIRA acknowledged that 'the costs associated with returning the workers compensation scheme to a sustainable financial position will be incurred by employers over the longer term'.¹⁰⁸
- 2.47** The committee heard that SIRA is currently undertaking a significant enforcement program identifying those employers that have not taken out workers compensation insurance or who are underinsured.¹⁰⁹ Mr Adam Dent, Chief Executive, SIRA, informed the committee by way of anecdote, that as a result there was a 12 month period in which \$110 million worth of additional wages were covered, resulting in millions of dollars in additional premiums being received by the Nominal Insurer.¹¹⁰
- 2.48** However, in November 2023, Mr Harding, icare, confirmed at Budget Estimates that there would be further premium increases for workers compensation to ensure the long-term viability of the scheme. He acknowledged that the NSW Government has directed icare to keep premium increases to an average of eight per cent per annum for the next three years.¹¹¹

Underpayment of workers

- 2.49** On 22 November 2022, there were media reports that icare had discovered a potential issue concerning the underpayment of workers but had delayed informing SIRA for seven months.¹¹² At the October 2023 hearing, icare subsequently told the committee that it is expecting to remediate up to 17,500 workers who were underpaid due to their payments not being properly indexed between 2012 and 2019.¹¹³
- 2.50** In his evidence to the committee, Mr Adam Dent, Chief Executive, SIRA, reflected that it was remarkable that the underpayment had not been detected earlier:
- Given the number of workers impacted, it ... is surprising that no-one had raised a significant complaint about indexation not having happened, given the number of matters that get reviewed over time. It's both staggering that it occurred and I think fair to say staggering that it wasn't noticed, including perhaps, quite fairly, by us.¹¹⁴
- 2.51** When questioned about the factual basis of the media report from November 2022, namely whether icare had not informed SIRA of the potential issue with underpayments until seven

¹⁰⁷ Submission 37, SIRA, p 3.

¹⁰⁸ Submission 37, SIRA, p 3.

¹⁰⁹ Evidence, Mr Darren Parker, Executive Director, Workers and Home Building Compensation Regulation, SIRA, 20 October 2023, p 13.

¹¹⁰ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 13.

¹¹¹ Portfolio Committee No. 1 – Premier and Finance, Legislative Council, Budget Estimates 2023-2024, Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 8 November 2023, p 28.

¹¹² Adele Ferguson, 'Thousands more hurt workers underpaid', *Sydney Morning Herald*, 22 November 2022, p 8.

¹¹³ Evidence, Mr Tony Wessling, Interim Group Executive, Workers Compensation (Nominal Insurer and TF), icare, 20 October 2023, p 31.

¹¹⁴ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 12.

months later, Mr Dent responded 'Yes, in a sense'.¹¹⁵ He then elaborated that whether or not there was a delay in icare's reporting of the issue turned on at what point icare considered it to be a 'significant matter' that needed to be reported to SIRA.¹¹⁶ He explained that SIRA has a 'significant matter' policy that determines the appropriate threshold for reporting a concern to SIRA.

2.52 In any event, icare did not update or notify the committee about the issue regarding the indexation of weekly payments.¹¹⁷ When asked why icare, separate to its obligation to report to SIRA, did not report these issues to the committee, given its oversight role, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, assured the committee that the mindset of icare is one of transparency and the need to fix any issues that have been identified. He stressed that the board of icare is kept informed about any issues as they arise and that icare also reports any issues to the Minister for Better Regulation and Fair Trading.¹¹⁸ He also noted that icare regularly meets with SIRA, usually 15 meetings per month.¹¹⁹ Further, the committee was advised that a media statement about the issue was placed on icare's website on 8 May 2023.¹²⁰

2.53 Mr Harding further cautioned of the dangers of hastily reporting issues more widely. He stressed that this can cause unnecessary concern and pain for individual workers. He explained that in relation to the specific matter concerning the underpayment of workers, there was complex work that first needed to be completed to ascertain the nature and extent of the issue:

...we are very careful on making sure we know exactly what we're talking about, we've got the right data and we've got the right understanding of what the problem is, and we actually then have a plan for how we are going to deal with it. The shortest distance between people knowing and then understanding the plan to do it is how we create certainty and comfort for those people.¹²¹

Committee comment

2.54 The committee continues to be concerned about the financial sustainability of the scheme, despite many of the measures icare has implemented to improve the financial position of the Nominal Insurer and Treasury Managed Fund.

2.55 While the number of new claims appears to be relatively steady, the committee notes that the amount paid in workers compensation claims is substantially larger than it was six years ago. So too we note that additional funding had to be injected into the Treasury Managed Fund in 2022, and that the scheme has been significantly impacted by a range of factors, including volatility in

¹¹⁵ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 10.

¹¹⁶ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 10.

¹¹⁷ Answers to questions on notice, icare, received 9 November 2023, p 5.

¹¹⁸ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 30.

¹¹⁹ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 31

¹²⁰ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 29; Answers to questions on notice, icare, 9 November 2023.

¹²¹ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 30.

the investment market, inflation rises and an increase in liabilities due to the growth in psychological claims.

- 2.56** While we will discuss the rise in psychological claims further in the next chapter, many of these factors, along with the recent increase in premiums and ongoing poor return to work rates, continue to cause concern in terms of the financial position of the scheme.
- 2.57** In this regard, we note that while icare remains more optimistic about the state of the Nominal Insurer and Treasury Managed Fund, maintaining that it takes a long term view of the scheme, the regulator remains significantly concerned. Indeed, SIRA noted that the funding and insurance ratios for icare are simply not where they need to be. While the committee recognises that it may take some time for the impact of recent changes to be realised in full, the committee is troubled by the regulator's conclusion that the financial performance of the scheme is still deteriorating.
- 2.58** In this context, the committee acknowledges stakeholders concerns about potential premium increases to address the state of the scheme, particularly given many employers are already dealing with other economic impacts, including the impacts of the COVID-19 pandemic and various natural disasters.
- 2.59** In our view, the financial position of the scheme needs to be addressed through significant improvement to return to work rates and better claims management. While we accept that declining return to work rates is an experience not limited to New South Wales, and that outside factors may also be influencing the trend, we believe that addressing return to work rates and claims management issues is critical to improving the financial state of the scheme (the latter of which will be discussed more in chapter 4).

Recommendation 2

That the State Insurance Regulatory Authority and Insurance and Care NSW continue to enhance and expand work with stakeholders to implement measures to address declining return to work rates in the workers compensation scheme.

- 2.60** As we also recommended in the last review, the committee would prefer to see the financial sustainability of the scheme addressed through further administrative efficiencies and operations improvements to icare, rather than an increase to premiums.
- 2.61** To this end, the committee is also mindful that the best outcome is one where there are fewer workplace injuries in the first place. A safe workplace is to everyone's benefit. There is much to be gained from SafeWork, SIRA and icare working together to ensure that workplaces are as safe as possible in New South Wales. We recommend that there be greater collaboration between these agencies to achieve this.

Recommendation 3

That SafeWork NSW as the work health and safety regulator collaborates more closely with the State Insurance Regulatory Authority and Insurance and Care NSW to ensure safer workplaces reducing workers compensation claims.

- 2.62** In addition, we take our role as an oversight committee very seriously and expect to be kept informed without delay of all relevant matters by key stakeholders. The previous committee was extremely disappointed to discover in November 2022 that icare had not been forthcoming about the potential issue regarding the underpayment of injured workers. There was no mention of the issue in icare's submissions and correspondence with the committee, nor when its representatives appeared before the committee in October 2022. It is of the utmost importance that the committee has all relevant information before it and we request icare to approach this aspect of its role with the utmost diligence in future. It is apparent to the committee that there is a lack of clarity around the threshold for reporting a concern under SIRA's 'significant matter' policy. To this end, we recommend that the NSW Government review the policy and its application in practice, to ensure it is functioning and that major mistakes or errors by insurers, including icare, are promptly brought to SIRA's and the committee's attention.
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Recommendation 4

That the NSW Government review the State Insurance and Regulation Authority 'significant matter' policy and the application of that policy in practice, to ensure the policy is functioning and ensuring that major mistakes or errors by insurers including Insurance and Care NSW are notified to the State Insurance and Regulation Authority in an efficient manner.

In recognition of the oversight functions of this committee, in instances where an issue is found to be a significant matter:

- Insurance and Care NSW must in writing inform this committee of such issues as soon as practicable. Such information should be in the form of a highlight summary of no more than one page
 - the State Insurance Regulatory Authority must notify this committee as soon as practicable of the way in which they have overseen the effective redress of the significant matter. Again, such information should be in the form of a highlight summary of no more than one page.
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Chapter 3 Psychological injury claims

As noted in the previous chapter, the growth in psychological claims is a factor affecting the financial position of the workers compensation scheme. This chapter looks at data in relation to the volume and cost of psychological claims and factors driving the growth over the last decade. It then discusses whether the workers compensation framework is fit for purpose in relation to supporting and managing psychological claims. The chapter will also look at strategies, both proactive and reactive, that have been introduced to counter further growth in the number of psychological injuries, as well as identifying areas in which further initiatives would be welcomed.

Psychological injuries – volume and cost of claims

3.1 The focus of this review was on the increase in workers compensations claims for psychological injuries. Before looking at the data related to the number of psychological claims, it is important to understand what constitutes a 'psychological injury'. SafeWork Australia defines a psychological injury as:

... a range of cognitive, emotional and behavioural symptoms that interfere with a worker's life, which can significantly affect how they feel, think, behave and interact with others.

Psychological injury may include such disorders as depression, anxiety or post-traumatic stress disorder.

Job stress is commonly used to describe physical and emotional symptoms which arise in response to work situations but it is not in itself a disorder or a psychological injury.¹²²

3.2 The workers compensation scheme distinguishes between primary and secondary psychological injuries. Primary psychological injuries are caused by incidents in the workplace, whereas secondary psychological injuries arise as a consequence of a physical injury.¹²³ Secondary psychological injuries may occur as a response to the physical injury, especially for those with head or back injuries, or they may develop as a result of the worker's experience with the compensation process.¹²⁴

3.3 While this chapter will look at data related to primary psychological injuries, SIRA advised the committee that insurers currently do not provide data on diagnosed secondary psychological injury.¹²⁵ The committee subsequently learned that icare is unable to record secondary psychological injuries as there is not a separate coding process for them.¹²⁶ Mr Richard Harding, Chief Executive Officer and Managing Director, icare, informed the committee that while icare

¹²² Evidence, Ms Nicole Jess, President, Public Service Association of NSW and Chairperson, Prison Officers Vocational Branch, 8 September 2022, p 3.

¹²³ Submission 37, SIRA, pp 5 and 13.

¹²⁴ Submission 37, SIRA, p 13; Standing Committee on Law and Justice, NSW Legislative Council, *Private roundtable discussion with injured workers – summary report* (8 September 2022); Pro forma contributions by injured workers – Contributions 15, 24 and 70.

¹²⁵ Submission 37, SIRA, p 13.

¹²⁶ Evidence, Mr Tony Wessling, Interim Group Executive, Workers Compensation (Nominal Insurer and TMF), icare, 20 October 2023, p 24.

would be happy to have a code for secondary psychological injury, it would require SIRA's involvement as they are responsible for determining the claims codes.¹²⁷

Number of psychological injury claims

- 3.4** Of the 110,223 new reportable claims for all insurers in 2022-23, 8,831 were for primary psychological claims (representing 8 per cent of all new claims).¹²⁸ Active primary psychological injury claims have increased by 15 per cent since 2020-21.¹²⁹
- 3.5** Primary psychological active claims represented 7 per cent of total active claims for each of the Nominal Insurer, self-insured, and specialised insurer categories in 2022-23. However, for the Treasury Managed Fund which provides policies for government agencies, they represented one-quarter of all active claims.¹³⁰
- 3.6** The table below was compiled by SIRA and compares the number of new reportable primary psychological claims by insurer type for each year between 2014-15 and 2022-23. It shows how they have risen from five per cent of new claims in 2014-15 to eight per cent of new claims in 2022-23. However, the increase was particularly pronounced for some insurers, notably the Treasury Managed Fund, where they rose from 11 per cent of new claims in 2014-15 to 20 per cent in 2020-21 before falling to 17 per cent of new claims in 2022-23.

Table 5 New reportable claims, by insurer type, 2014-15 to 2022-23

Payment type	Insurer type	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Total new reportable primary psychological claims	NI	2,045	2,059	2,194	2,583	3,141	3,557	3,674	2,994	3,753
	Self	412	426	454	471	492	497	522	518	605
	Specialised	289	234	260	342	379	418	551	394	485
	TMF	1,734	1,929	2,116	2,215	2,838	2,814	3,335	3,367	3,988
	Total	4,480	4,648	5,024	5,611	6,850	7,286	8,082	7,273	8,831
Total number of new reportable claims	NI	61,337	60,604	61,247	63,402	66,208	63,510	65,673	62,160	68,672
	Self	10,467	9,633	8,722	8,518	8,523	8,117	8,642	11,048	10,120
	Specialised	6,889	6,985	6,660	7,331	7,951	7,698	8,103	7,976	8,599
	TMF	15,582	15,043	15,140	15,192	16,530	15,477	17,003	19,291	22,832
	Total	94,275	92,265	91,769	94,443	99,212	94,802	99,421	100,475	110,223

Source: Supplementary submission 37, SIRA, p 15.

- 3.7** The growth in psychological claims as a proportion of active claims is more pronounced for some insurer types, as seen in Figure 3 below. While psychological injuries generally accounted for a greater proportion of active claims in 2022-23 compared to 2014-15, the difference was particularly stark for the Treasury Managed Fund. Figure 3 shows how primary psychological injury claims increased from 17 per cent of active claims for the Treasury Managed Fund in 2014-15 to more than a quarter of claims in 2020-21 (27 per cent) before declining to 25 per

¹²⁷ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 28.

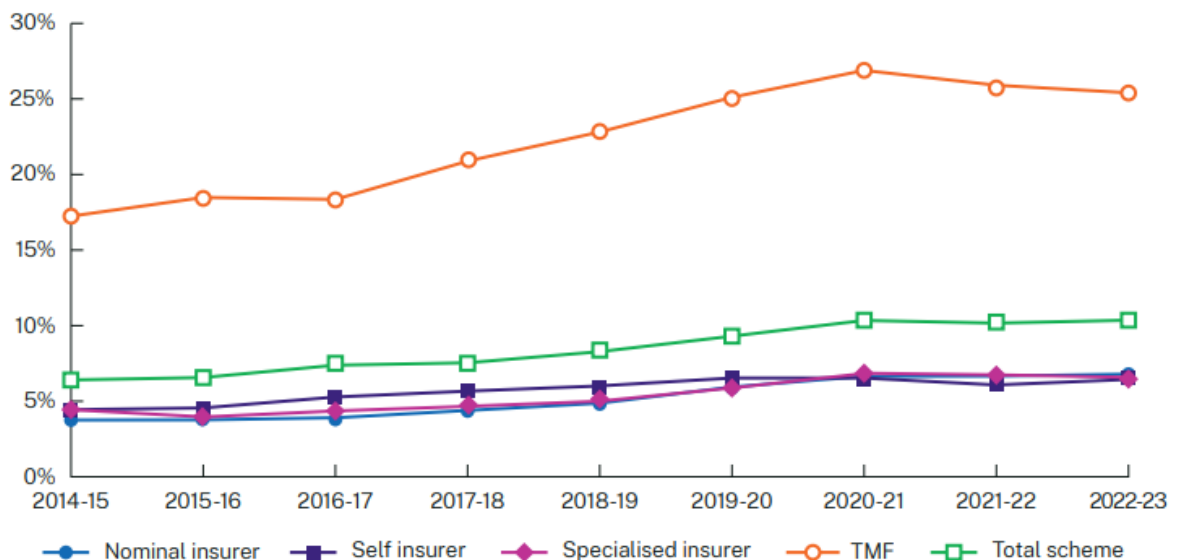
¹²⁸ Supplementary submission 37, SIRA, p 15.

¹²⁹ Supplementary submission 37, SIRA, p 5.

¹³⁰ Supplementary submission 37, SIRA, p 16.

cent in 2022-23. The proportion of primary psychological active claims with the Nominal Insurer increased from four per cent of active claims in 2014-15 to 10 per cent in 2022-23.¹³¹

Figure 3 Active primary psychological claims as a percentage of total active claims



Source: *Supplementary submission 37, SIRA, p 4.*

- 3.8** The Treasury Managed Fund represents the public sector in New South Wales. In 2020-21, 2.7 per cent of the NSW public sector workforce had an active psychological injury claim.¹³² Agencies insured with the Treasury Managed Fund accounted for almost half (49 per cent) of all active primary psychological claims in the workers compensation scheme, with the majority of such claims coming from the Stronger Communities, Education and Health clusters.¹³³
- 3.9** SIRA informed the committee that it is currently completing an integrated compliance audit and performance review of the Treasury Managed Fund, focussing on this disproportionate representation, especially within the Stronger Communities portfolio. It is anticipated that the review will be released to key stakeholders in November 2023.¹³⁴
- 3.10** In its submission, the Independent Review Office referred to the McDougall Report and its observation that psychological claims were particularly increasing within the Treasury Managed Fund. In particular, it noted that 'an increasing proportion of such claims are reaching the 15 per cent whole person impairment (WPI) threshold, have a longer tail and see greater difficulty in achieving return to work'.¹³⁵
- 3.11** Mr Adam Dent, Chief Executive of SIRA, indicated that the Treasury Managed Fund review will highlight the importance of ensuring there are appropriate opportunities to redeploy injured public sector workers into alternative duties when needed:

¹³¹ Supplementary submission 37, SIRA, p 16.

¹³² Submission 37, SIRA, p 8.

¹³³ Supplementary submission 37, SIRA, p 5.

¹³⁴ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 2.

¹³⁵ Submission 31, Independent Review Office, p 5.

That's the point we're making, particularly in the Treasury Managed Fund review, is that across the public sector, an employer of 430,000 people in New South Wales, there has to be greater opportunities to redeploy staff into alternative duties when they can't go back to their primary role. You may not be able to go back to your direct role where you have a health or physical requirement to undertake that role, but surely in the breadth of employment in the Crown there would be somewhere that person could be engaged in meaningful work that would support their recovery because we know recovery outcomes are considerably better when they're at work.¹³⁶

- 3.12** While the committee's focus was on the rise in psychological claims over a long term view of the scheme, some inquiry participants made the observation in 2022 that the number of psychological claims had decreased over the last 12 to 18 months, as also reported at Budget Estimates in 2022.¹³⁷
- 3.13** SIRA and icare stressed, however, that the number of psychological injuries is increasing, especially over the long-term, drawing the committee's attention to the sizeable impact of even a small increase in psychological injury claim numbers.¹³⁸ icare reported that in relation to the Nominal Insurer, 'the frequency of psychological injury claims of more than one weeks' duration has increased 2.4 times since 2015', roughly doubling every four years or the equivalent of a 19 per cent annual increase.¹³⁹
- 3.14** In 2022, Mr Adam Dent, Chief Executive of SIRA, explained that while the increase over the last decade may not immediately seem large, it is still significant:

An increase from 5 per cent to 8 per cent is nearly double, so there certainly has been significant growth. That said, if it's stabilising, that's possibly a good thing. But I don't think we've seen any evidence that would suggest that, and certainly not in a systematic way. The rise is really quite important. And the fact it is double, while it's still only 8 per cent, given the cost of those claims, I think we've got reason to be concerned.¹⁴⁰

- 3.15** However, in evidence to the committee in 2023, Mr Dent was of the view that the rate of claims, including primary psychological injuries, had stabilised since 2020-21.¹⁴¹

Cost of psychological injury claims

- 3.16** The cost of psychological injury claims is substantially more than claims for physical injury, with the cost of physical claims that include a psychological services payment being around six times that of a physical injury alone.¹⁴²

¹³⁶ Evidence, Mr Adam Dent, Chief Executive, SIRA, p 15.

¹³⁷ Evidence, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of New South Wales, 10 October 2022, p 7; Evidence, Mr Shane Butcher, Australian Lawyers Alliance, 10 October 2022, p 8; Responses to supplementary questions, Budget Estimates 2021–2022 (Portfolio Committee No. 4 – Customer Service and Digital Government), 26 September 2022, p 31ff.

¹³⁸ Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 34; submission 26, icare, p 10.

¹³⁹ Submission 26, icare, p 10.

¹⁴⁰ Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 34.

¹⁴¹ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 2.

¹⁴² Submission 37, SIRA, p 15.

- 3.17** According to SIRA, the proportion of physical injury claims with payments for psychological services has increased for all insurer types across the workers compensation scheme since 2011-12. The increase is particularly pronounced for the Nominal Insurer. However since 2018-19, there has been a slight decline in the use of psychological services by non-psychological injury claims with the TMF.¹⁴³
- 3.18** SIRA also informed the committee that liability for primary psychological injury claims is being accepted more often, in 86 per cent of primary psychological injury claims in 2022-23.¹⁴⁴ The cost of active primary psychological claims is also increasing (25 per cent of active claim payments in 2022-23 compared to 17 per cent in 2018-19).¹⁴⁵ In 2022-23, this equated to \$1,222.7 million out of \$4,976.7 million.¹⁴⁶ Total payments for psychological injury claims have increased by 114 per cent since 2018-19.¹⁴⁷
- 3.19** Providing further data, and comments on the disproportionate impact of psychological injury claims on total costs, icare noted that mental health claims represent 5 per cent of claims volume within the Nominal Insurer in 2022-23 but 17 per cent of claims costs.¹⁴⁸ For the Treasury Managed Fund psychological injury claims represent 22 per cent of claims volume but 57 per cent of claims costs.¹⁴⁹
- 3.20** icare also advised that an additional \$550 million in costs were incurred in relation to mental health related claims in 2023 (\$200 million for the Nominal Insurer and \$350 million for the Treasury Managed Fund).¹⁵⁰ It further noted that annual agency contributions to the Treasury Managed Fund increased by more than \$600 million between 2014-15 and 2023-24 as a result of psychological claims and related payments.¹⁵¹
- 3.21** icare informed the committee how psychological injury claims, on average, involve a much greater period off work, highlighting that for the Nominal Insurer, 36 per cent of psychological claims reach 12 months duration compared to 8 per cent of physical injury claims.¹⁵² This is also true for the Treasury Managed Fund where 46 per cent of psychological claims reach 12 months duration compared to 3 per cent of physical injury claims.¹⁵³
- 3.22** In evidence to the committee, Mr Richard Harding, Chief Executive and Managing Director of icare, further explained how the additional recovery time required for psychological injuries impacts icare's delivery of services as the 'additional time is reflected in claims costs, which, on

¹⁴³ Supplementary submission 37, SIRA, p 10.

¹⁴⁴ Supplementary submission 37, SIRA, p 9.

¹⁴⁵ Supplementary submission 37, SIRA, p 9.

¹⁴⁶ Supplementary submission 37, SIRA, p 9.

¹⁴⁷ Supplementary submission 37, SIRA, p 1.

¹⁴⁸ Supplementary submission 26, icare, p 5.

¹⁴⁹ Supplementary submission 26, icare, p 5.

¹⁵⁰ Supplementary submission 26, icare, p 5.

¹⁵¹ Supplementary submission 26, icare, p 5.

¹⁵² Supplementary submission 26, icare, p 5.

¹⁵³ Supplementary submission 26, icare, p 5.

average, are four to five times higher for psychological injury claims, exceeding \$137,000 per claim in the Nominal Insurer and over \$200,000 per claim in the 'TMF'.¹⁵⁴

Return to work rates for psychological injuries

- 3.23** As SIRA noted, return to work rates are an important measure of the workers compensation scheme. An early return to work is generally seen as supporting the best health and social outcomes, as the longer a person is away, the less likely they are to return to work.¹⁵⁵
- 3.24** While chapter 2 showed declining return to work rates generally across the scheme, it is important to note that return to work rates are much lower for primary psychological injuries than they are for all claims generally.
- 3.25** Table 6 shows the return to work rates for primary psychological claims as well as for all claims by type of insurers in 2022-23. The return to work rate for all claims at 52 weeks is fairly similar for all insurers (between 90 and 94 per cent). However, there is substantial variation between the types of insurers in relation to the return to work rate for primary psychological claims, irrespective of whether it is measured at four, 13, 26 or 52 weeks.¹⁵⁶

Table 6 Return to work rates on primary psychological and all claims by insurer, 2022-23

Insurer type	4 weeks		13 weeks		26 weeks		52 weeks	
	Primary psych claim	All claims	Primary psych claim	All claims	Primary psych claim	All claims	Primary psych claim	All claims
Nominal Insurer	22%	67%	40%	82%	51%	87%	56%	91%
Self insurer	35%	73%	60%	84%	71%	86%	*	90%
Specialised insurer	43%	77%	57%	89%	67%	91%	*	94%
Treasury Managed Fund	25%	71%	40%	82%	46%	87%	41%	91%
Total	25%	69%	42%	82%	50%	87%	51%	91%

*Cohort size is not shown as is less than or equal to 50 claims

Source: Supplementary submission 37, SIRA, pp 18-19.

- 3.26** SIRA informed the committee that in 2021-22, all insurers experienced a significant downward trend in the return to work rates for psychological injury claims at all stages; that is, from four weeks to 52 weeks. The four and 13 week return to work rates then stabilised in 2022-23, while the downward trend continued for 26 and 52 weeks. SIRA attributed this to the performance of the Treasury Managed Fund.¹⁵⁷

¹⁵⁴ Evidence, Mr Richard Harding, Chief Executive and Managing Director, icare, 10 October 2022, p 43.

¹⁵⁵ Submission 37, SIRA, p 3.

¹⁵⁶ Supplementary submission 37, SIRA, pp 18-19.

¹⁵⁷ Supplementary submission 37, SIRA, p 7.

3.27 The return to work rates for psychological injury claims has a flow on effect to the return to work rate figures for all claims. icare asserted that, in relation to the Nominal Insurer, one-third of the decline in the overall return to work rate was linked to the growing volume of psychological injury claims between 2017 and 2020. For the Treasury Managed Fund, it argued that two-thirds of the deterioration in the return to work rate was due to the increased number of psychological claims.¹⁵⁸

Industry trends

3.28 Claims for psychological injury are more prevalent in particular sectors rather than being evenly spread across all industries. In 2022-23, the top three industries for primary psychological claims were public administration and safety, healthcare and social assistance, and education and training.¹⁵⁹

3.29 Table 7 was compiled by SIRA and reveals the substantial increase in payments for primary psychological claims for these industries between 2020-21 and 2022-23, increasing by 56%, 33% and 51% respectively.¹⁶⁰

Table 7 Total payments for top three industries for primary psychological claims

Industry	2020-21	2022-23
Public administration and safety	\$259,572,188	\$404,520,824
Healthcare and social assistance	\$176,595,307	\$235,205,267
Education and training	\$104,357,579	\$157,239,295

Source: *Supplementary submission 37, SIRA, p 9.*

3.30 The committee learned that the health and community sector in particular is experiencing significant growth in claims for psychological injury. icare reported in 2022 that the rate of psychological injury claims in the Nominal Insurer for the health and community sector grew exponentially between 2016 and 2022. In 2022, it had double the claims frequency of the next most frequent sector (transport and storage) and four times that of the construction industry.¹⁶¹

3.31 As discussed earlier in the chapter, the Treasury Managed Fund has experienced notable growth in psychological injury claims. Figure 4 depicts the growth in the volume of psychological claims since 2016-17 within various agencies covered by the Treasury Managed Fund. The largest number of these claims are attributable to the NSW Police Force and Department of Education, with a particularly steep increase in the volume of claims from the NSW Police Force.¹⁶²

¹⁵⁸ Submission 26, icare, p 18.

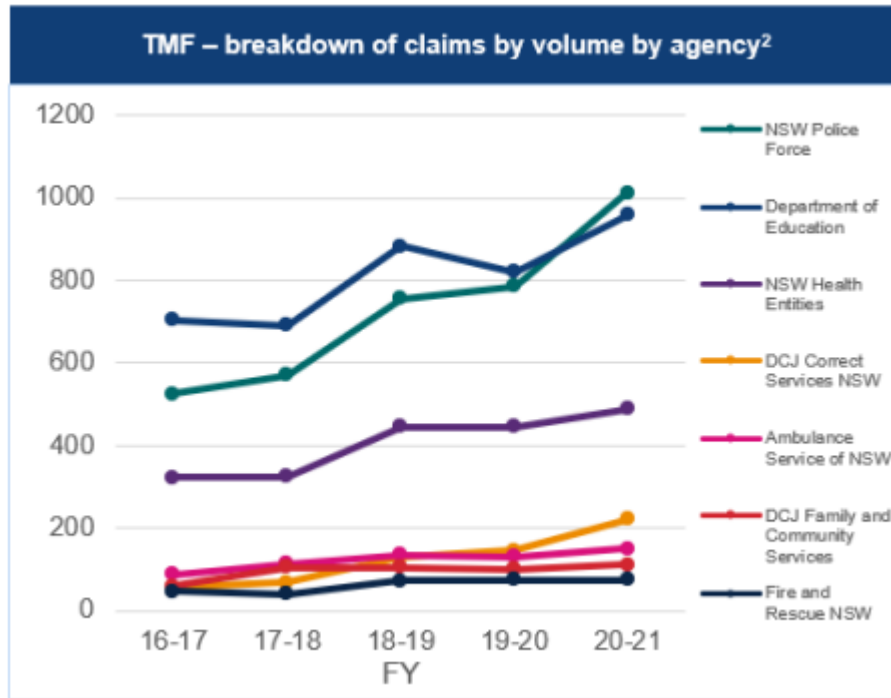
¹⁵⁹ Supplementary submission 37, SIRA, p 9.

¹⁶⁰ Submission 37, SIRA, p 35.

¹⁶¹ Submission 26, icare, p 11.

¹⁶² Answers to pre-hearing questions, icare, received 21 September 2022, p 5.

Figure 4 Treasury Managed Fund – psychological claims volume by agency



Source: Answers to pre-hearing questions, icare, received 21 September 2022, p 5.

3.32 When asked whether there was a clear nexus between teacher workload and the high number of psychological claims by teachers linked to work pressure, Mr Adam Dent, Chief Executive of SIRA confirmed that was the case:

Absolutely. I think that is quite concerning. I think that then leans to a conversation around the structure of work in those environments. From our point of view, we would see those issues as being good ones for agencies like SafeWork to potentially then work with employers. But certainly the employers themselves will be able to take those matters into consideration. But that is highly disproportionate number, absolutely.¹⁶³

3.33 The frequency of workers experiencing a psychological injury differs between emergency services and non-emergency services within the Treasury Managed Fund.¹⁶⁴ While the trend for non-emergency service agencies generally follows that of the private sector, there was a marked increase for emergency service agencies.¹⁶⁵ Nonetheless, icare advised the committee that there had been significant growth in the number of psychological claims in both emergency and non-emergency agencies within the Treasury Managed Fund.¹⁶⁶

¹⁶³ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 4.

¹⁶⁴ Submission 26, icare, p 12.

¹⁶⁵ Submission 26, icare, p 12.

¹⁶⁶ Submission 26, icare, p 21.

Causes of primary psychological injury

3.34 Various types of psychological injuries may give rise to a claim for workers compensation. Data supplied by icare indicated that of the mental health claims with the Nominal Insurer:

- 39 per cent were due to harassment or bullying
- 33 per cent were due to work pressure
- 10 per cent were linked to workplace/occupational violence
- 9 per cent resulted from exposure to a traumatic event.¹⁶⁷

3.35 The breakdown of mental health claims in the Treasury Managed Fund were as follows:

- 22 per cent were due to other mental stress
- 22 per cent were due to workplace/occupational violence
- 20 per cent resulted from work pressure
- 18 per cent were caused by harassment or bullying
- 9 per cent were linked to exposure to a traumatic event.¹⁶⁸

3.36 As noted above, the Treasury Managed Fund provides cover for the public sector in New South Wales, including health care and emergency services workers. The NSW Police Force were the largest source of mental health claims resulting from exposure to a traumatic event, with almost five times as many claims as the NSW Ambulance Service (the second largest source).¹⁶⁹ Mr Richard Harding, Chief Executive Officer and Managing Director, icare, highlighted that NSW Police account for 50 per cent of the TMF workers compensation scheme, before adding:

Ninety per cent of the people who go on medical discharges are as a result of psychological injury. That's not suggesting they aren't psychologically injured, but it is the nature of the scheme that that is a very, very big contributor to the overall whole-of-government position.¹⁷⁰

3.37 In evidence to the committee, Mr Adam Dent, Chief Executive, SIRA, emphasised that the majority of psychological injury claims within the public sector are due to modifiable workplace factors, such as stress, harassment and bullying, rather than exposure to trauma.¹⁷¹

Factors driving the increase in psychological injury claims

3.38 Throughout the inquiry, the committee heard from various participants about some of the factors driving the increase in the number of psychological claims. These included broader

¹⁶⁷ Supplementary submission 26, icare, p 1.

¹⁶⁸ Supplementary submission 26, icare, p 4.

¹⁶⁹ Answers to pre-hearing questions, icare, received 21 September 2022, p 2.

¹⁷⁰ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 34.

¹⁷¹ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 5.

changes in society, such as the greater prevalence of mental ill-health, as well as changes to the labour market.

Greater prevalence of mental ill-health within society

- 3.39** A number of participants commented on the prevalence of poor mental health within society. SIRA observed how the nature of injuries within the workers compensation scheme has changed, shifting away from physical injuries towards claims for psychological injury. It was of the view that this increase in primary psychological injury claims is consistent with societal trends, such as rising levels of psychological distress in the community.¹⁷²
- 3.40** icare reported that mental ill-health is the most diagnosed long-term condition in Australia.¹⁷³ It stated that the cost of psychological injuries was 'an important indicator of the rapidly growing human and social costs of declining community mental health'.¹⁷⁴ According to icare, this was cause for concern as 'poor mental health is the single greatest challenge to the sustainability of our workers compensation schemes if international and Australian trends continue'.¹⁷⁵
- 3.41** Some stakeholders posited that a greater awareness and understanding of mental health in the community may be also influencing growth in the number of psychological claims.¹⁷⁶ While Professor Samuel Harvey, Executive Director and Chief Scientist, Black Dog Institute, acknowledged that one of the drivers of the increase in the number of psychological injuries was around improved recognition and ease with labelling mental health concerns, he stressed that it is not the entire reason for the increase in the number of psychological injuries, but that it is 'partly driven by the broader changes in society of the rising burden of mental ill health'.¹⁷⁷
- 3.42** Mr Angus Skinner of the Police Association of NSW similarly warned that improved awareness and reporting of mental health should not be seen as the full answer for the growing number of claims:
- The most consistent and reliable longitudinal data regarding the mental health of workers shows the increase in psychological injuries and claims made in the workers compensation scheme is a genuine deterioration in the mental health of workers and the mental health impact caused by work, not a reporting phenomenon or an increased awareness.¹⁷⁸
- 3.43** Nonetheless, in its submission, icare stated that the increasing prevalence of poor mental health in society is impacting the workforce.¹⁷⁹ It argued that this may result in workers being more

¹⁷² Submission 37, SIRA, p 6.

¹⁷³ Submission 26, icare, p 3.

¹⁷⁴ Submission 26, icare, p 20.

¹⁷⁵ Submission 26, icare, p 20.

¹⁷⁶ Evidence, Mr James Kelly, Director, Health and Safe Design, SafeWork NSW, 10 October 2022, p 20.

¹⁷⁷ Evidence, Professor Samuel Harvey, Executive Director and Chief Scientist, Black Dog Institute, 8 September 2022, p 23.

¹⁷⁸ Evidence, Mr Angus Skinner, Research Manager, Police Association of NSW, 8 September 2022, p 2.

¹⁷⁹ Submission 26, icare, p 9.

vulnerable to pressures in the workplace, leading to psychological injuries and claims. icare concluded that the 'impact of mental health issues in the broader community is being felt on claims outcomes for injured workers and employers and has led to declining return to work rates and increasing claims costs across the workers compensation system'.¹⁸⁰

3.44 icare also asserted that workplaces need to rethink the way in which they view their workers, 'there is a need to ensure employers adjust to the fact that increasingly their employees are joining them with mental health conditions, and they can no longer assume a baseline of a mentally healthy workforce'.¹⁸¹ Mr Richard Harding, Chief Executive Officer and Managing Director, icare, expanded on this view:

Employers are used to thinking of the idea that they have a mentally healthy workforce, that people walk in the door, healthy. We have to get employers thinking of the fact that one in five Australians in any one year has a mental health concern of some kind. It is not very difficult in that scenario for someone who is already vulnerable to receive normal workplace feedback and that to then trigger into a case of potential bullying and harassment. This is what I'm talking about when I say there needs to be a tripartite, a three-way conversation. Employers need to get to the mindset of thinking that 20 per cent of their workforce is walking in, vulnerable.¹⁸²

Workplace and organisational factors

3.45 In addition to increasing community awareness of mental health, and a rise in mental health issues being diagnosed, the committee received evidence about the changing nature of workplaces and employment conditions.

3.46 icare noted that some of the long-term trends that are changing both the nature of the workforce and the type of work undertaken may be influencing the number of psychological claims. In particular, it noted:

- a shift away from manufacturing into the services sector (especially health and community services, professional and financial services, and education)
- work is increasingly defined by mental as opposed to physical effort
- the impact of new technology, accelerated by the pandemic, adding to physical and mental demands as well as the number of people working outside of standard hours
- ageing of the workforce population.¹⁸³

3.47 Mr Richard Harding, Chief Executive Officer and Managing Director, icare, described the changing nature of work throughout Australia, highlighting that the highest growth in employment is occurring within the health care, community services and aged care, education, and professional services sectors:

¹⁸⁰ Submission 26, icare, p 10.

¹⁸¹ Submission 26, icare, p 13.

¹⁸² Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 47.

¹⁸³ Submission 26, icare, p 5.

What are the highest areas for mental illness claims? Health care, community services, education and, to some degree, professional services. We're moving from an economy of manufacturing, where physical work was the nature of what people did, to an economy where it is about caring, it's about emotion, it's about using your mind to look after somebody and not your body, and therefore the injuries are different. They are far more complex.¹⁸⁴

3.48 Mr Angus Skinner, Research Manager, Police Association of NSW, stressed the role of organisational factors as opposed to job content in contributing to many claims involving psychological injury:

...the main drivers behind the bulk of psychological injuries, in particular the ones that are difficult to recover from and difficult to return to work, are driven by or at least exacerbated by factors which can be described as organisational factors, not necessarily related to the job content that workers are performing but the actual conditions that they find in their workplace—psychosocial risks, things like work intensification, the job demands placed on workers, lack of control over the manner in which they perform their work and complexity of work.¹⁸⁵

3.49 While Mr Skinner acknowledged that the COVID-19 pandemic had increased stress, he maintained that the increase in psychological harm pre-dated COVID and that the pandemic should not be seen as the cause of the trend.¹⁸⁶

3.50 Professor Harvey, leader of the workplace mental health research program at Black Dog Institute, also pointed to workplace factors and the changing nature of work as an explanation for the rising burden of mental health. He noted that factors like 'lower levels of job security, more lower levels of control in the workplace, sometimes higher demand... can all contribute to rates of mental ill health amongst workers'.¹⁸⁷

3.51 Professor Harvey also highlighted some research contained within the *Modern Work* report, which found that the last ten years had seen an increase in mental health symptoms amongst Australian workers, particularly younger workers under 44 years of age and, even more strikingly, amongst those in their early 20s. Professor Harvey contended that without further intervention, the burden of mental health and cost of psychological injury will only get worse.¹⁸⁸

3.52 The role of workplace factors in psychological claims was also recognised by icare, which noted that work pressure, harassment and bullying are key causal mechanisms in over half of the psychological claims it received.¹⁸⁹ Exposure to a traumatic event is less prevalent as the initial

¹⁸⁴ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 49.

¹⁸⁵ Evidence, Mr Angus Skinner, Research Manager, Police Association of NSW, 8 September 2022, p 5.

¹⁸⁶ Evidence, Mr Angus Skinner, Research Manager, Police Association of NSW, 8 September 2022, p 5.

¹⁸⁷ Evidence, Professor Samuel Harvey, Executive Director and Chief Scientist, Black Dog Institute, 8 September 2022, p 23.

¹⁸⁸ Evidence, Professor Samuel Harvey, Executive Director and Chief Scientist, Black Dog Institute, 8 September 2022, p 22.

¹⁸⁹ Supplementary submission 26, icare, p 4.

cause of a psychological injury.¹⁹⁰ Mr Angus Skinner of the Police Association of NSW told the committee that 'psychological harm caused by work has increased over the past decade, yet we have not improved the outcomes of preventative, recovery or return-to-work efforts'.¹⁹¹

3.53 Some stakeholders noted that the societal and workforce changes are not unique to New South Wales. Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, informed the committee that most workers compensation schemes throughout Australia are facing the same kinds of issues in terms of increasing psychological injury claims and difficulties with return to work.¹⁹² It is also an issue globally, with the World Health Organisation having published its *Guidelines on mental health at work* in September 2022.¹⁹³

3.54 In evidence to the committee, Professor John Buchanan from the University of Sydney, described how some of these broader societal issues and labour market changes converge in the work place and subsequently impact the workers compensation scheme:

I think this issue is something that when we're talking about workers comp you've got to look at what's going on in the workplaces themselves. I think that is, in a funny sense, poor old workers comp picks it up. When you're looking at problems of skills and you're looking at problems of wages, looking at problems of working time, families absorb that shock. It's in the workers comp system you've got an integrated ecosystem where the costs of this are picked up. I think that's why workers comp is seeing this more starkly than just about any other area of workforce management.¹⁹⁴

Is the workers compensation scheme fit for purpose in relation to psychological injury claims?

3.55 Throughout the inquiry, it became increasingly evident that the circumstances in which the workers compensation scheme was initially established differ markedly to the current situation. This section explores the increasingly fluid divide between work and home. It also discusses how the workers compensation scheme was primarily designed for physical injuries, before considering whether the nature of psychological injury claims warrants a separate stream within workers compensation or an entirely different scheme.

¹⁹⁰ Supplementary submission 26, icare, p 4.

¹⁹¹ Evidence, Mr Angus Skinner, Research Manager, Police Association of NSW, 8 September 2022, p 2.

¹⁹² Evidence, Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, 8 September 2022, p 30.

¹⁹³ World Health Organisation, *Guidelines on mental health at work* (September 2022), <https://www.who.int/publications/i/item/9789240053052>

¹⁹⁴ Evidence, Professor John Buchanan, Mental Wealth Initiative, University of Sydney, 8 September 2022, p 24.

The changing nature of work conditions

3.56 To consider whether the scheme is still appropriate for the shift in the nature of injuries arising, the committee explored further the connection between the growth in psychological claims and the changing nature of work, including more people working from home.

3.57 Professor John Buchanan, from the University of Sydney, noting that for much of history people have worked from home, stated that 'it's only in the last couple of hundred years that we've had this idea that there's a deep separation' between work and home.¹⁹⁵

3.58 Professor Buchanan commented on the implications of recent shifts in the separation between work and home, suggesting it needs to be considered in relation to the workers compensation system:

What we're going to be witnessing is a reconfiguring of the relationship between work at home and work in designated workplaces. I think that's something that's going to have to be thought about for the workers comp scheme, because the workers comp scheme was one of the defining institutions for work as a place away from home.¹⁹⁶

3.59 Professor Buchanan also spoke of the need for integrated care in workers compensation. He viewed the issues that have emerged for workers compensation as being due to deeper causes, warning against the conclusion that the workers compensation system had failed:

If something gets registered as a mental health problem in the workers comp system, it's there for everyone to see. When we're thinking about the challenges of workers comp, let's not single out the workers comp system that's failing in some way. What you're getting are deeper problems in the health system as well as the labour market being manifested in a way that researchers and families see but, by and large, aren't visible to policymakers.¹⁹⁷

3.60 When questioned about whether the growing incidence of remote working has had an impact on the number of claims arising from workplace bullying and difficult workplace relationships, Mr Adam Dent, Chief Executive, SIRA, acknowledged it as an area worth exploring but for which SIRA has yet to collect specific data.¹⁹⁸ Nonetheless, he posited that the 'the workers who are the most exposed to psychological injury tend to be those workers who are least likely to have been able to work remotely'.¹⁹⁹ He further noted that teachers, police and health workers are generally less able to work remotely, if at all, so the impact of remote work on psychological claims within these sectors would not be as relevant.

¹⁹⁵ Evidence, Professor John Buchanan, Mental Wealth Initiative, University of Sydney, 8 September 2022, p 28.

¹⁹⁶ Evidence, Professor John Buchanan, Mental Wealth Initiative, University of Sydney, 8 September 2022, p 28.

¹⁹⁷ Evidence, Professor John Buchanan, Mental Wealth Initiative, University of Sydney, 8 September 2022, p 25.

¹⁹⁸ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 7.

¹⁹⁹ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 7.

A physical scheme attempting to deal with psychological injuries?

- 3.61** The committee also heard how the framework for the workers compensation scheme was originally designed to assist with physical injuries.
- 3.62** In this manner, Mr Harding, icare, described it as 'a physical scheme attempting to deal with psychological claims'.²⁰⁰ He described how the scheme used to have short-duration physical claims with a lower cost compared to the current situation where both physical and psychological injuries are more complex.²⁰¹ Mr Harding stated:
- Limitations within the worker compensation system itself, which is inherently modelled for physical and not psychological injuries, continue to present challenges for insurers. So too does the natural adversarial approach and the prescriptive nature of the legislation.²⁰²
- 3.63** Mr Harding indicated that icare intended to engage with all stakeholders to support legislative and regulatory reform that improves the current approach.²⁰³ icare emphasised the importance of a holistic response with the NSW Government, insurers, regulators, policy makers, employers and treating professionals working together.²⁰⁴
- 3.64** In his evidence, Mr Simon Cohen of the Independent Review Office, explained the fundamental differences between a physical and psychological injury and how this is relative to scheme design:
- That includes the mechanism of injury itself. It includes the questions around whether the workplace is responsible for that injury. It also includes the response of the workplace to an injured worker, both in terms of being able to return the worker to the workplace but also in terms of how the workplace can actually make adjustments itself—if the cause is stress caused by overwork or the like, how quickly workplaces can respond to that, as against a trip hazard or something along those lines.²⁰⁵
- 3.65** Other stakeholders also highlighted the difference in the response required to physical and psychological injuries in the workplace, including practical matters such as it being generally easier to identify the time and place of a physical injury. In this regard, the committee noted that it is not uncommon for some psychological injuries to have multiple contributing factors, and for there to be some time after a psychological injury occurs before treatment is sought.
- 3.66** As Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, noted, unlike physical claims, psychological injury claims are not necessarily

²⁰⁰ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 52.

²⁰¹ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 49.

²⁰² Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 43.

²⁰³ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 43.

²⁰⁴ Submission 26, icare, p 4.

²⁰⁵ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 37.

lodged when symptoms first appear.²⁰⁶ The Independent Review Office found that compared to physical injuries, many psychological injury claims were more serious, requiring more time off work, and featuring workers with significant and permanent impairment.²⁰⁷

- 3.67** The Australian Education Union – NSW Teachers Federation Branch contended that the workers compensation scheme needs to provide more than monetary and medical support, but also 'consist of processes which provide a psychologically safe experience for the injured worker to heal and to re-engage with the world of work'.²⁰⁸
- 3.68** The Independent Review Office concluded that 'elements of the existing system, many of which were originally established with physical injury and swift return to work as front of mind, may not be ideally suited to managing psychological injury'.²⁰⁹
- 3.69** Business NSW described how it can be extremely difficult to prove a mental health condition was caused by a workplace in contrast to physical injuries.²¹⁰ Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, explained how psychological injuries often involve shared responsibility rather than one point of responsibility within a workplace as a result. This led him to suggest 'the actual methodology probably being not fit for purpose for dealing with much more complex causes behind psychological injury'.²¹¹

Should there be a separate stream or scheme for psychological injuries?

- 3.70** In the context of concerns as to whether the current scheme works well for psychological claims, the committee also considered whether there should be a separate stream or scheme for the management and support of psychological injuries.
- 3.71** icare acknowledged that the committee had received several submissions that the current scheme may not be fit for purpose when it comes to primary psychological injury claims and reflected:

Early findings from research conducted through icare's partnership with the Black Dog Institute reflect the reality that our current workplace health and workers compensation systems were designed for physical health problems. This is because of the nature of a psychological injury, the difficulties in accessing appropriate medical treatments, especially for workers in regional areas, and the fact that the relationships between employer and worker may be fractured beyond repair, make it difficult to adhere to an Injury Management Plan, delaying recovery and return to work. icare would welcome an opportunity to contribute to any reviews on how to ensure that workers with

²⁰⁶ Evidence, Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, 8 September 2022, p 5.

²⁰⁷ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 37.

²⁰⁸ Submission 24, Australian Education Union – NSW Teachers Federation Branch, p 3.

²⁰⁹ Submission 31, Independent Review Office, p 3.

²¹⁰ Submission 25, Business NSW, p 17.

²¹¹ Evidence, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, 8 September 2022, p 30.

psychological injuries receive the support that they need, without jeopardising the financial viability of the scheme.²¹²

3.72 Mr David Harding, Executive Director, Policy and Advocacy, Business NSW argued that that the 'one size fits all' approach to how claims are managed and risk is shared between the scheme and larger employers may be flawed.²¹³ Mr Harding then raised the question of whether these flaws can be 'overcome by making changes to the current design of the scheme, or does New South Wales need a new, tailored approach to better managing psychological illnesses within our workplaces?'²¹⁴

3.73 Some participants expressed views on this issue. For instance, Mr Harding, Business NSW, proposed that a potential solution may be to separate psychological injuries into its own scheme or stream to accommodate the fundamentally different nature of injury, including the notion of shared responsibility:

I think you've hit the nail on the head, as it were, with the fact that physical injuries at work are a lot easier to place in terms of time and place, and often the causation is easily investigated. But the principle we would like to see within a different scheme that manages the much more complex areas of psychological claims is shared responsibility—so, the acknowledgment that there is more than one causal factor in many cases. That is a complex area. It's a complex thing. But, nonetheless, if we embrace that principle, that would be a bedrock, I think, of having much less of a transactional or adversarial approach to what are complex human issues here.²¹⁵

3.74 Mr Harding elaborated on how there is a greater understanding of the necessary process to reach a successful return to work outcome in relation to a physical injury, but how this is lacking for psychological injuries:

I think these elements are all largely absent or misplaced within the management of psychological injury in that there is a lack of understanding, there is a lack of process, there is a lack of understanding and communication between the parties which, therefore, leads to this unacceptably high rate of unsuccessful return to work, and particularly return to work where they've come from. I mean, for people to not only have a difficult period in their life because of psychological injury but also have to change jobs is not a successful outcome.²¹⁶

3.75 In its submission, Business NSW proposed that the NSW Government conduct modelling work to see whether there is an alternative scheme design that would better suit psychological injuries.²¹⁷ It argued that this scheme should still provide income support for workers and promote the benefits of recovery at work. Ultimately, Business NSW recommended that the

²¹² Answers to pre-hearing questions, icare, 21 September 2022, p 11.

²¹³ Evidence, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, 8 September 2022, p 30.

²¹⁴ Evidence, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, 8 September 2022, p 30.

²¹⁵ Evidence, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, 8 September 2022, p 34.

²¹⁶ Evidence, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, 8 September 2022, p 35.

²¹⁷ Submission 25, Business NSW, p 17.

NSW Government consider 'confining the type of injuries covered by the NSW workers compensation scheme to personal bodily injuries, and, if applicable, any secondary psychological injury which may be a consequence of the personal bodily injury'.²¹⁸

3.76 By contrast, the Law Society of NSW did not agree that psychological injuries warranted a separate scheme:

While we appreciate that there are some unique factors in dealing with psychological injuries (for example, the method by which Whole Person Impairment (WPI) is assessed), we do not consider that a separate scheme would be more beneficial in terms of claimant experience or rates of return to work. Rather, we emphasise the need for experienced case management of psychological claims with access to specialist support.²¹⁹

3.77 Echoing this view, the NSW Bar Association also stated that it saw little benefit in having a separate scheme to deal with psychological claims. It argued that significant investment should instead be made in improving the way in which claims managers are trained, so claims are managed 'effectively, efficiently and appropriately' and in a way that avoids 'unnecessary harm to injured workers'.²²⁰

3.78 The Australian Lawyers Alliance was similarly not in favour of a separate scheme for psychological injuries. Instead it proposed that consideration be given to the possibility of creating deeming provisions for liability for psychological injuries in specific professions such as emergency service workers.²²¹ In its view, such a provision would establish a default position that the psychological injury is work-related with the onus on the insurer to establish otherwise.²²²

The need for specific strategies to reduce the volume and cost of psychological injury claims

3.79 Aside from whether the scheme is reformed more significantly to better deal with psychological claims, many stakeholders highlighted the need for specific strategies to be implemented to reduce the volume and cost of psychological injuries. This section will touch upon some of the current strategies in place to both prevent and respond to psychological injury in the workplace, before outlining some other approaches suggested by various stakeholders.

3.80 It will then look at some particular challenges faced by small businesses in dealing with psychological injuries, and various initiatives that are being developed in response.

3.81 As Mr Alan Mansfield of the Australian Manufacturing Workers Union observed, "To focus on the increase in psychological claims, as the committee is doing, it is necessary to consider both

²¹⁸ Submission 25, Business NSW, p 17.

²¹⁹ Answers to questions on notice, Law Society of NSW, 1 November 2022, p 1.

²²⁰ Answers to questions on notice, NSW Bar Association, 9 November 2022, p 2.

²²¹ Answers to questions on notice, Australian Lawyers Alliance, 3 November 2022, pp 1-2.

²²² Answers to questions on notice, Australian Lawyers Alliance, 3 November 2022, p 2.

prevention and reaction, the workers compensation domain and the work health and safety domain'.²²³

Current strategies

3.82 SafeWork NSW, the regulator responsible for workplace health and safety, provided evidence on existing strategies to promote healthy workplaces. In particular, it informed the committee about the *Mentally Healthy Workplaces Strategy*, introduced in 2018 and updated by the NSW Government in response to the impact of COVID-19, bushfires and drought, with a focus on increasing the mental health capability of small and regional businesses.²²⁴

3.83 The *Mentally Healthy Workplaces Strategy* seeks to:

- increase awareness and understanding of mentally healthy workplaces
- increase the capability of employers to create mentally healthy workplaces
- improve the perception of workers that their workplaces are safer and healthier
- better promote, preserve and restore social connections within the workplace and community
- improve productivity, by reducing absenteeism and presenteeism
- improve recovery at work outcomes and employer cost savings.²²⁵

3.84 SafeWork NSW described this updated strategy as an initiative 'to ensure more than 90,000 NSW businesses take effective action to create mentally healthy workplaces by 30 June 2022'.²²⁶ A 2022 benchmarking tool survey was to commence from July 2022 to assess progress against this target. Mr Matthew Press, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, updated the committee on the results from the first round of survey analysis:

We seem to have achieved at least 92,000 businesses taking effective action, exceeding our target and representing a 37.5 per cent increase on the baseline results from 2017. We've also observed similarly positive signs from the workplace training programs, with 91 per cent of businesses reporting that they have invested in changes after completing the direct practical coaching and 78 per cent making changes after completing the training.²²⁷

3.85 As part of the strategy, SafeWork NSW offers free coaching and training programs on mentally healthy workplaces. Mr James Kelly, Director, Health and Safe Design, SafeWork NSW, informed the committee that the coaching services were useful for employers in regional areas

²²³ Evidence, Mr Alan Mansfield, Workers Compensation Health and Safety Officer NSW and ACT, Australian Manufacturing Workers' Union, 8 September 2022, p 4.

²²⁴ NSW Government, *NSW Mentally Healthy Workplaces: Strategy to 2022*, <https://www.nsw.gov.au/mental-health-at-work/mentally-healthy-workplaces-strategy>

²²⁵ NSW Government, *NSW Mentally Healthy Workplaces: Strategy to 2022*, <https://www.nsw.gov.au/mental-health-at-work/mentally-healthy-workplaces-strategy>

²²⁶ Submission 33, SafeWork NSW, p 3.

²²⁷ Mr Matthew Press, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, 10 October 2022, p 19.

where access to mental health services can be challenging.²²⁸ He further noted that SafeWork had engaged the Black Dog Institute to provide training for small and medium businesses which had been well received.²²⁹

- 3.86** The Public Service Association, however, highlighted that the free coaching and training programs are only available to private businesses and not-for-profit organisations.²³⁰ It argued that they should be available to all organisations, including the public sector.²³¹
- 3.87** Importantly, the strategy also includes a Recovery at Work stream which SIRA has led since 2018. Employers are encouraged to create mentally healthy workplaces to support people to stay at work or return to work while managing their mental health recovery. One of the key initiatives under the stream is *Recovery Boost*, which provides grants of up to \$50,000 for mental health projects that 'encourage early help seeking, support recovery and reduce stigma in workplaces'.²³² SIRA will have invested more than \$2.5 million on research and initiatives within this stream by the end of 2022.²³³
- 3.88** SafeWork NSW advised the committee that the *Mentally Healthy Workplaces Strategy* will be independently evaluated, with a final report due in December 2022. It also noted that a new mentally healthy work plan will be implemented in early 2023.²³⁴
- 3.89** SafeWork NSW also pointed to the *Code of Practice: Managing psychosocial hazards at work* in helping to counter psychosocial hazards in the workplace. The code was gazetted by the former Minister for Better Regulation and Innovation in May 2021 and is the first code of its kind in Australia.²³⁵
- 3.90** Mr Matthew Press, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, described in 2022 the significance of this code in dealing with psychological risks and injuries:

Last year we became the first jurisdiction to introduce an industry-wide code of practice, which formally clarified the legal responsibilities businesses have in addressing psychosocial hazards at work. Having this code in place has been transformative for us because it has helpfully explained what compliance looks like, making it easier for us as the regulator to enforce but also, just as importantly, for businesses to understand and implement. We believe that by having this detail in place it will significantly help us advance the understanding and management of psychological hazards.²³⁶

²²⁸ Evidence, Mr James Kelly, Director, Health and Safe Design, SafeWork NSW, 10 October 2022, p 29.

²²⁹ Evidence, Mr James Kelly, Director, Health and Safe Design, SafeWork NSW, 10 October 2022, p 29.

²³⁰ Submission 39, Public Service Association, p 3.

²³¹ Submission 39, Public Service Association, p 3.

²³² Submission 37, SIRA, p 20.

²³³ Submission 37, SIRA, p 20.

²³⁴ Submission 33, SafeWork NSW, p 3. The *Mentally Healthy Workplaces Strategy 2018-2022: Final Evaluation* prepared for SafeWork NSW was published in February 2023 and is available at <https://www.nsw.gov.au/sites/default/files/2023-03/nsw-mentally-healthy-workplaces-final-strategy-evaluation-report-2022.pdf>

²³⁵ Submission 33, SafeWork NSW, p 4.

²³⁶ Evidence, Mr Matthew Press, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, 10 October 2022, p 19.

- 3.91** The development of this code incorporated feedback from SafeWork NSW stakeholders, including unions and industry representatives.²³⁷
- 3.92** Mr Alan Mansfield, Australian Manufacturing Workers Union, stated that the code was a 'pretty good outcome in the end'.²³⁸ He further highlighted its utility in providing a place to start:
- It's a useful beginning point in working with HSRs [health and safety representatives] and workers and organisers and others working for unions to think about what is the breadth of psychosocial hazards and risks for workers, and the scenarios with that.²³⁹
- 3.93** However, some inquiry participants were concerned about enforcement of the code, with Ms Sherri Hayward from the Construction Forestry Maritime Mining and Energy Union describing SafeWork NSW as an 'absent regulator' who is not willing to enforce the code of practice.²⁴⁰ When asked whether SafeWork NSW appropriately deals with safe systems at work and addresses the types of hazards that lead to psychological injuries, Ms Hayward said that it does not:
- My answer is pretty quick on this, and that this is they don't, particularly not for construction. As I mentioned in my opening, we have not seen them at all dealing with psychological claims or how the systems of work on a construction site might increase the risk of psychological claims. Out workers work 60 to 70 hours a week, so work intensification is a real issue for them. There has been nothing from SafeWork.²⁴¹
- 3.94** In addition to the *Mentally Healthy Workplaces Strategy* and the *Code of Practice: Managing psychosocial hazards at work*, the committee heard how the Work Health and Safety Regulation 2017 was recently amended by the Work Health and Safety Amendment Regulation 2022, to among other things, now requiring a person conducting a business or undertaking to manage psychosocial risks in the same way as physical risks.²⁴² Psychosocial hazards are specified as those that arise from the design or management of work, a work environment, plant at a workplace, or workplace interactions or behaviours that may cause psychological harm.²⁴³
- 3.95** Mr Press informed the committee that these new provisions complement the code of practice and support SafeWork's focus on harmful workplace behaviours.²⁴⁴ Mr Press also noted that as a result of these changes, New South Wales has become the first jurisdiction to adopt the model

²³⁷ Submission 33, SafeWork NSW, p 4.

²³⁸ Evidence, Mr Alan Mansfield, Workers Compensation Health and Safety Officer NSW and ACT, Australian Manufacturing Workers Union, 8 September 2022, p 7.

²³⁹ Evidence, Mr Alan Mansfield, Workers Compensation Health and Safety Officer NSW and ACT, Australian Manufacturing Workers Union, 8 September 2022, p 7.

²⁴⁰ Evidence, Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, 8 September 2022, p 3.

²⁴¹ Evidence, Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, 8 September 2022, p 6.

²⁴² Clause 55C, *Work Health and Safety Regulation 2017*.

²⁴³ Clause 55A, *Work Health and Safety Regulation 2017*.

²⁴⁴ Evidence, Mr Matthew Press, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, 10 October 2022, p 19.

provisions on psychosocial risks that were published by Safe Work Australia in June 2022.²⁴⁵ The amendments were welcomed by the NSW Teachers Federation.²⁴⁶

3.96 According to SafeWork NSW, the implementation of these changes 'significantly enhanced the laws that we have to regulate and that businesses have to operate in'.²⁴⁷

The need for other well-designed programs and strategies

3.97 Despite the important measures discussed above, stakeholders highlighted the need for further programs and strategies to mitigate psychological injuries in the workplace, particularly for certain industries.

3.98 In particular, the Black Dog Institute, as part of its *Modern Work* report, made five recommendations to businesses that would enable them to adopt proactive strategies to mitigate psychosocial risk factors and enhance workplace protective factors. This included the need to:

- provide managers with evidence-based mental health training to improve their recognition of and response to mental ill health and related risk factors in the workplace
- build mentally healthy workplaces through organisational-level strategies that facilitate worker autonomy, improved job control and flexible work
- take immediate preventative action on workplace bullying, and sexual harassment and assault
- implement evidence-based protective mental health and wellbeing intervention for all employees
- account for a steady post-pandemic workplace transition.²⁴⁸

3.99 Some inquiry participants raised the need for industry-specific programs and strategies. MATES in Construction NSW, while acknowledging that SafeWork NSW helps prevent workplace psychological claims in the construction industry by providing leadership and driving awareness of mental health challenges, argued: 'If we are to reduce potential psychological claims we should establish independent, evidence based, peer reviewed programs with workplace grounding and delivery for consideration and properly fund these programs to meet industry demands'.²⁴⁹

3.100 The construction industry, in particular, was highlighted as an industry that has been working actively to manage mental wellbeing. This is shown in the case study below.

3.101 A number of inquiry participants also spoke of the need to better protect workers who are exposed to traumatic events as part of their duties. As noted in the previous chapter, there was

²⁴⁵ Evidence, Mr Matthew Press, SafeWork NSW, 10 October 2022, p 19.

²⁴⁶ Evidence, Ms Amber Flohm, Senior Vice President, NSW Teachers Federation, 10 October 2022, p 2.

²⁴⁷ Evidence, Mr Matthew Press, Executive Director, Compliance and Dispute Resolution, SafeWork NSW, 10 October 2022, p 19.

²⁴⁸ Black Dog Institute, *Modern work: how changes to the way we work are impacting Australians' mental health*, White Paper, Black Dog Institute, Sydney, October 2021.

²⁴⁹ Answers to supplementary questions, MATES in Construction NSW, p 1.

a disproportionately high number of psychological injury claims within the Treasury Managed Fund compared to other insurers.²⁵⁰

- 3.102** While the Independent Review Office acknowledged that this may be due in part to many public sector roles involving exposure to traumatic events and material, it argued that more could be done to counter this:

...as the largest employer in the State, and with various measures having been adopted in recent years to promote consistent recruitment processes and workforce mobility across agencies (for example, sector wide talent pools, and standardised eligibility criteria across grades), there may be options for more lateral transfers between agencies, to offer new environments, work forces and duties for workers to perform whilst unfit for their pre-injury duties.²⁵¹

- 3.103** However, the committee also received evidence that exposure to traumatic events should not automatically result in a psychological injury. When questioned about whether there should be an obligation on the Police Force in relation to resilience training, Mr Angus Skinner, Research Manager, Police Association NSW, responded:

Firstly, will police inherently see traumatic things? Yes. Will police inherently be harmed and suffer injury from that? That concept must be unacceptable. It cannot be acceptable that because police will deal with traumatic content they will inevitably be injured. Anyone who thinks that needs to stop thinking that now. As I said earlier, in most cases—in most psychological injuries—it is not the traumatic content that is the primary contributor to the injury. It is the workplace conditions that they face in interacting with their experience of trauma. I can't stress strongly enough that, yes, police will inherently deal with difficult and traumatic content. They will face violence, they will be unsafe physically and they will experience stress from the danger that they put themselves in. But that does not mean that they should be and will always be harmed. If the NSW Police Force manages psychosocial risks correctly, they will be able to go to those incidents that are inherently traumatic but continue to work as police officers, not be psychological injured, and stay mentally healthy'.²⁵²

- 3.104** Ms Nicole Jess, President, Public Service Association of NSW, also voiced concern about the lack of support provided to staff within Corrective Services who may regularly witness or experience disturbing events:

What I'm finding with Corrective Services is that there is definitely an increase in psychological claims. That's due to various different factors, whether it's the incidents that we have to deal with, which are deaths in custody, assaults—assaults are on the increase—we're seeing inmates self-harm on a regular basis and we're seeing stuff most individuals would not see, on a daily basis. But what we're not getting is the backup from the department in regards to how we are managed. We don't have proper training. In regards to resilience, the managers aren't trained to give proper debriefs. Most of the time after critical incidents, it's the debriefs that will actually assist people and can stop

²⁵⁰ Submission 31, Independent Review Office, p 22.

²⁵¹ Submission 31, Independent Review Office, p 23.

²⁵² Evidence, Mr Angus Skinner, Research Manager, Police Association of NSW, 8 September 2022, p 12.

people from having prolonged PTSD or psychological injury. Those things aren't happening in our workplace to a level of acceptance at all.²⁵³

- 3.105** However, Professor Harvey from the Black Dog Institute stressed that strategies must be evidence-based, noting that the use of debriefing after traumatic events can be counter-productive.²⁵⁴
- 3.106** In relation to post-traumatic stress disorder, the Black Dog Institute noted that poor working conditions such as working extended hours and workplace stress can be workplace risk factors for developing post-traumatic stress disorder after a traumatic event.²⁵⁵ It informed the committee that more research is required to understand how to reduce rates of post-traumatic stress disorder in high risk jobs such as emergency service workers and noted that Black Dog Institute has begun research in this area.²⁵⁶
- 3.107** The Black Dog Institute also informed the committee that it had worked with Fire and Rescue NSW to develop workplace manager training to reduce rates of workers compensation leave.²⁵⁷ The committee learned how Fire and Rescue NSW developed RESPECT manager training, a four hour in-person educational program to upskill the mental health literacy of managers and improve their communication with staff in relation to mental health issues.²⁵⁸
- 3.108** The committee also learned of other helpful programs, such as 'HeadCoach', an online training program to build the confidence and behaviour of managers in creating mentally healthy workers. icare informed the committee that HeadCoach has had a positive impact on ambulance workers and those in the construction industry, and that there is an intention to use this program in the NSW Police in the future.²⁵⁹
- 3.109** Some stakeholders also suggested the use of financial incentives to encourage workplaces to reduce psychosocial risks. The Black Dog Institute proposed that reduced insurance premiums for workers compensation insurance policies be offered to those who utilise evidence-based strategies, such as manager training, as an incentive for workplaces to reduce the risk of psychological injury.²⁶⁰

Case study - Improving mental wellbeing within the construction industry

MATES in Construction informed the committee that there are a number of programs and strategies that specifically and proactively target the mental wellbeing of the construction industry, given suicide rates among construction workers are 71 per cent higher than for other employed men in Australia.²⁶¹

²⁵³ Evidence, Ms Nicole Jess, President, Public Service Association of NSW and Chairperson, Prison Officers Vocational Branch, 8 September 2022, p 11.

²⁵⁴ Evidence, Professor Samuel Harvey, Black Dog Institute, 8 September 2022, pp 26-27.

²⁵⁵ Answers to supplementary questions, Black Dog Institute, 7 October 2022, p 1.

²⁵⁶ Answers to supplementary questions, Black Dog Institute, 7 October 2022, p 2.

²⁵⁷ Answers to supplementary questions, Black Dog Institute, 7 October 2022, p 2.

²⁵⁸ Submission 26, icare, p 21.

²⁵⁹ Submission 26, icare, p 21.

²⁶⁰ Answers to supplementary questions, Black Dog Institute, 7 October 2022, p 1.

²⁶¹ Submission 17, MATES in Construction, p 1.

As an independent charity that has developed a workplace suicide prevention and evidence-based program for the construction, energy and mining industries, MATES in Construction, gave evidence about how it provides tailored training and support onsite, as well as a 24/7 helpline and case management service.

The committee heard how the organisation 'raises awareness of suicide as a preventable problem, builds a stronger and more resilient workforce, connects workers to the best available help and support, and is evidence based to measure effectiveness'.²⁶² It has been recognised by the World Health Organisation as an example of best practice.

Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, also gave evidence about Foundoblu, a program administered by Foundation House that focuses on 'mental health wellness, suicide prevention and building confidence in seeking help-seeking behaviour' within the construction industry.²⁶³ The committee heard how construction workers are taught to recognise symptoms in co-workers, enabling the industry 'to tackle mental health concerns before they become workers compensation claims'.²⁶⁴

Helping small businesses to better prevent and respond to psychological injury

- 3.110** A number of inquiry participants highlighted that it is often more difficult for small businesses to reduce psychosocial risks to employees, and support injured workers as they recover and return to work.
- 3.111** This challenge is important to note, given that small businesses account for a significant proportion of those who are insured with the Nominal Insurer. Indeed, icare highlighted that 85 per cent of businesses supported by the Nominal Insurer have fewer than 10 employees, noting that for these businesses 'there is little infrastructure to support businesses and workers in managing mental ill-health' and that 'this is a key driver of scheme costs and is having a tangible impact on return to work'.²⁶⁵
- 3.112** In a similar vein, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, noted how there is a prevalence of small businesses in New South Wales as opposed to medium sized or large businesses, stating that 'our businesses are small and don't have access to the normal not only lack of governance but also lack of HR and so on within their organisation'.²⁶⁶
- 3.113** icare referred to data that revealed a strong recent trend of a higher number of workers from small businesses making complex claims that take longer to resolve and return to work. The number of time lost claims from small employers within the Nominal Insurer scheme rose by 20 per cent in the past two years.²⁶⁷ icare further noted that the deterioration in return to work

²⁶² Submission 17, MATES in Construction; Evidence, Mr Brad Parker, Chief Executive Officer, MATES in Construction NSW, p 23.

²⁶³ Evidence, Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, 8 September 2022, p 3.

²⁶⁴ Evidence, Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union, 8 September 2022, p 3.

²⁶⁵ Submission 26, icare, p 4.

²⁶⁶ Evidence, Mr David Harding, Executive Director, Policy and Advocacy, Business NSW, 8 September 2022, p 31.

²⁶⁷ Submission 26, icare, p 19.

rates from employers with less than five employees was three times that of very large employers.²⁶⁸

3.114 The committee learned of the following initiatives introduced by icare to specifically support small businesses:

- a Mobile Engagement Team – which offers online and in-person information forums providing practical advice and support
- a Small Business Hub on icare's website – which provides tailored advice on promoting mentally healthy workplaces, information and resources on injury prevention, and strategies for increasing the likelihood for a successful recovery.²⁶⁹

3.115 The committee was also informed that icare is working with the NSW Department of Customer Service Behavioural Insights Unit to test and build ways to help small businesses with digital solutions to prevent psychological injury.²⁷⁰

3.116 However, the committee heard how some employers feel excluded from the workers compensation process, and need assistance with navigating the scheme. Business NSW stated that the interactions between the insurer and the employer of an injured worker require attention.²⁷¹ It suggested that clear communication tools such as checklists and journey maps would benefit employers, and that consideration should be given to the use of mediation services between a worker with a psychological injury and their employer to ensure communication remains positive and open.²⁷²

3.117 Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, highlighted that it can be awkward for a supervisor or manager to initiate a conversation with a worker who may have a psychological injury:

They're worried that they might make the injury worse. Talking to somebody about a broken arm is not going to make their broken arm worse. Talking to someone about a psychological injury, people will often feel that that will make it worse and lots of discomfort. Particularly, if there's conflict between the supervisor and the worker, all of those normal recovery processes just don't occur.²⁷³

3.118 Ms Browne advocated for claims agents to initiate early intervention in relation to a psychological injury, 'particularly for smaller employers who don't have the HR manager or the safety manager who can be the buffer between the worker and where the conflict has occurred'.²⁷⁴ In her view, this would enable them to 'be part of the conflict resolution through either a rehabilitation service, mediation or a service which has been referred to as facilitated

²⁶⁸ Submission 26, icare, p 19.

²⁶⁹ Answers to pre-hearing questions, icare, 21 September 2022, p 15.

²⁷⁰ Answers to pre-hearing questions, icare, 21 September 2022, p 15.

²⁷¹ Answers to supplementary questions, Business NSW, 6 October 2022, p 1.

²⁷² Answers to supplementary questions, Business NSW, 6 October 2022, pp 1 and 2.

²⁷³ Evidence, Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, 8 September 2022, p 31.

²⁷⁴ Evidence, Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, 8 September 2022, p 31.

discussions in some of the schemes to try and deal with the interpersonal conflict so that those return to work can occur'.²⁷⁵ Ms Browne argued that dealing with the conflict early would make it easier for employers in small businesses to be comfortable with the injured person returning to work.²⁷⁶ However, she also suggested that in some situations the best outcome would involve the worker being provided with alternate employment.²⁷⁷

Committee comment

- 3.119** Given the long term trends in workplace injuries and claims, a significant focus of this review was on the increase in psychological claims in the scheme. Psychological injuries can be incredibly debilitating for a worker, impacting not only the worker but also their family. Such injuries also have a substantial effect on workplaces, and the scheme as a whole.
- 3.120** In this regard, the committee notes the increase in the number of primary psychological claims, from 5 per cent of new claims in 2012-13 to 8 per cent of claims by 2020-21. This growth is not insignificant. Psychological injuries are more complex to resolve, tend to have longer claim duration, and disproportionately impact the scheme in terms of claim costs.
- 3.121** Injured workers with a psychological claim also have low return to work rates. Understandably, the longer an employee is off work, the harder it is to return to work. Improving the return to work rate for those with a psychological injury is clearly a priority, as it is for all injured workers, and our recommendation two is relevant in this regard.
- 3.122** While much of the data we received focused on primary psychological injuries, it should be noted that there was limited information available on the trends related to secondary psychological injuries. In the committee's view, the impact of these claims on the scheme are likely to be significant, as secondary injuries can also delay return to work and complicate the recovery process. We therefore recommend that the NSW Government engage with SIRA and icare to establish a specific timetable to implement a robust and reliable method of data collection that ensures information on secondary psychological injuries is collected by insurers and is maintained on an ongoing basis.

Recommendation 5

That the NSW Government engage with the State Insurance Regulatory Authority and Insurance and Care NSW to establish a specific timetable to implement a robust and reliable method of data collection that ensures information on secondary psychological injuries is collected by insurers and is maintained on an ongoing basis.

²⁷⁵ Evidence, Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, 8 September 2022, p 31.

²⁷⁶ Evidence, Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, 8 September 2022, p 32.

²⁷⁷ Evidence, Ms Tracey Browne, Manager, National Safety and Workers Compensation Policy and Membership Services, Australian Industry Group, 8 September 2022, p 32.

- 3.123** On the data provided by the State Insurance Regulatory Authority, it was interesting to note how claims for psychological injury are not evenly distributed between insurers and industries, with the Treasury Managed Fund having a large proportion of all active primary psychological injury claims due to the cover it provides for the public sector, including for many frontline and emergency workers.
- 3.124** The committee is particularly concerned about the volume of claims for psychological injury for workers within the NSW Police Force and the Department of Education. Like the Independent Review Office, we believe that there may be more options to assist injured workers in returning to work. Noting the size of the public sector, and the opportunities there may be to laterally transfer workers between agencies, we recommend that the NSW Government investigate and look to implement opportunities to support injured public sector workers to return to work, and also develop a whole of government return to work strategy for those who cannot return to their usual workplace.
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Recommendation 6

That the NSW Government:

- investigate and look to implement opportunities to support injured public sector workers to return to work
 - develop a whole of government return to work strategy for the public sector to facilitate the placement of staff who have sustained an injury, in particular a psychological injury, but cannot return to their usual workplace.
-

- 3.125** Notwithstanding that icare has implemented a number of specific strategies to address the high proportion of psychological claims within the Treasury Managed Fund, and the risks posed to workers in certain industries, the committee also recommends that the State Insurance Regulatory Authority and icare further investigate and examine in detail the factors influencing the large number of psychological claims from injured workers employed in the Stronger Communities, Education and Health clusters within the public sector.
- 3.126** The committee is pleased to learn that the State Insurance Regulatory Authority is currently conducting an integrated compliance audit and performance review of the Treasury Managed Fund. We urge both the State Insurance Regulatory Authority and icare to prioritise the implementation of any changes deemed necessary by the findings.
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Recommendation 7

That the State Insurance Regulatory Authority, Insurance and Care NSW, and SafeWork NSW:

- continue to investigate and examine in detail the factors influencing the large number of psychological claims from injured workers employed in the Stronger Communities, Education and Health clusters within the public sector
 - prioritise the implementation of any changes revealed as necessary by the integrated compliance audit and performance review of the Treasury Managed Fund.
-

- 3.127** The committee further recommends that the State Insurance Regulatory Authority, icare and SafeWork NSW work with the Department of Education to investigate the underlying drivers of stress-related psychological claims within the Education sector.

Recommendation 8

That Insurance and Care NSW, the State Insurance Regulatory Authority, SafeWork NSW and the Department of Education work in partnership to conduct a forensic investigation into the underlying drivers of stress-related psychological claims in the Education sector.

- 3.128** Noting that the prevalence of mental ill-health is growing in our community, and that labour market and employment conditions have shifted, such that the delineation between work and home is less clear than it once was, the committee believes there should be further work undertaken to determine the appropriateness of the workers compensation framework, particularly relating to psychological claims.
- 3.129** The workers compensation scheme was primarily designed to deal with physical injuries. These claims are usually easier to identify and treat, and are fundamentally different to a psychological injury. With injuries like post-traumatic stress disorder or depression, the point of injury can be harder to identify and it may have been caused by multiple contributing factors. Psychological injuries are also usually more complex and costly to resolve when compared with a physical injury.
- 3.130** Further, the nature of a psychological injury may not be suitable for a rapid return to work. In this manner, we note icare's view that the current workers compensation system is essentially a 'physical scheme attempting to deal with psychological claims'.
- 3.131** Noting however that there are varying views as to whether the current workers compensation scheme is fit for purpose, or whether a separate stream or an entirely different scheme is required to manage psychological claims, the committee recommends that the State Insurance Regulatory Authority investigate various options as to how best deal with psychological claims.

Recommendation 9

That the State Insurance Regulatory Authority investigate and undertake further research and modelling into potential options to deal with psychological claims in the workers compensation scheme, including whether such claims should be dealt with as a separate stream within the existing framework or whether they should be managed entirely separately.

- 3.132** It is clear that there is also enormous need for effective strategies that buffer against further growth in psychological injury claims. In this regard, the committee notes important work the NSW Government has contributed in this space, through both the *Mentally Healthy Strategy* and *Code of Practice: Managing psychosocial hazards at work*. We also note the amendments to the Work Health and Safety Regulation and are pleased to see that New South Wales is the first jurisdiction to adopt the model provisions on psychosocial risks.

- 3.133** Nonetheless, it is clear that much more remains to be done to reduce the number and impact of psychological injury claims in workplaces, particularly for certain industries. The construction industry is doing well in this regard, with initiatives such as MATES in Construction NSW and Foundblue making an important impact. In our view, it is imperative that strategies such as these continue and consideration be given to their expansion. No one should view it as inevitable that certain workers will experience psychological injury simply because of the nature of their work.
- 3.134** More must also be done to support our emergency and frontline workers and ensure appropriate supports are in place and that training is provided to manage and reduce psychosocial risk within organisations. Greater research on preventing psychological injuries in high risk jobs and industries, along with evidence based programs that may assist in this area, is warranted.
- 3.135** The committee is aware that an operational review of icare has commenced with the purposes of cutting 'excessive spending, waste and salary costs'.²⁷⁸ Throughout the inquiry, the committee was also pleased to learn of various research initiatives being conducted by individual key stakeholders. However, we are of the view that there are efficiencies to be gained by greater collaboration between SafeWork, SIRA and icare and encourage these agencies to working more closely and collaboratively together and the responsible Ministers consider unifying those functions to ensure the best use of these resources.
-

Recommendation 10

That SafeWork NSW, in consultation with industry and union stakeholders:

- develop, implement, evaluate and publicly report on all programs that manage and reduce psychosocial risk
- undertake a project to build the capacity and number of health and safety representatives who have received training in identifying, managing and responding to psychosocial hazards in the workplace
- undertake an enforcement campaign targeting workplaces that have high incidents of psychological injury to ensure they have in place a psychosocial hazard risk assessment. The efficacy of this campaign should be subject to an independent external evaluation.

Recommendation 11

That the research functions of SafeWork NSW, the State Insurance Regulatory Authority and Insurance and Care NSW work more closely and collaboratively together and the responsible Ministers consider unifying those functions to ensure the best use of these resources.

²⁷⁸ Media release, Hon Sophie Cotsis MP, Minister for Industrial Relations and Minister for Work Health and Safety, 'Minister orders operational review of icare as next phase of reform begins', 6 November 2023.

Chapter 4 **Claims management, return to work and other scheme issues**

This chapter looks at a number of other issues raised in relation to workers compensation claims, including concerns related to the claims management process. It will consider the impacts of case manager turnover on claimants, the adversarial nature of the system and delays in treatment. The chapter then turns to discuss the importance of early intervention in enabling injured workers to return to work. Finally, the chapter outlines a number of concerns related to specific areas in workers compensation legislation, including independent medical examinations, commutations, provisional liability and whole person impairment.

Claims management

- 4.1** Throughout the inquiry, many stakeholders raised concerns about various aspects of claims management, including the adversarial nature of the process and the revolving door of case managers experienced by some claimants. The impact of these aspects on injured workers, particularly those with psychological injuries, was a cause of concern for a number of inquiry participants.
- 4.2** According to SIRA, an insurer's approach to managing claims to prevent secondary psychological injury is 'one of the most important determinants of a person's recovery'.²⁷⁹ In the context of psychological injury claims being particularly complex, SIRA stressed that 'understanding and addressing this complexity is essential to improve recovery and return to work outcomes'.²⁸⁰
- 4.3** Mr Adam Dent, Chief Executive, SIRA, informed the committee of the various actions insurers can take to improve the claims management experience of injured workers with mental health concerns, including:
- screening for the risk of delayed return to work and psychological distress, and developing tailored pathways and hyper-care arrangements where those risks exist
 - minimising exposure to 'friction points' by focusing on the right things early in a claim
 - recruiting and training capable case managers.²⁸¹
- 4.4** SIRA also pointed to various guidelines and practice notes which provide expectations and guidance in relation to claims management, including guidance notes specifically related to managing claims for workers with a psychological injury.²⁸²

²⁷⁹ Submission 37, SIRA, p 18.

²⁸⁰ Submission 37, SIRA, p 3.

²⁸¹ Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 33.

²⁸² Submission 37, SIRA, p 18.

- 4.5** In particular, SIRA noted that practice standard 33 requires that psychological injury claims 'be managed with empathy and a strong focus on early treatment, tailored communication, timely recovery and return to work, in a manner likely to minimise conflict and delay'.²⁸³
- 4.6** Additionally, the committee heard that SIRA has developed a value-based healthcare strategy, integrating care with the workplace, employers, insurers and healthcare providers, to address issues that impact the return to work for those with psychological injuries.²⁸⁴
- 4.7** Likewise, icare noted that it has protocols in place to support people in situations where the case manager is concerned about declining mental health, with additional support provided more than 5,000 times since 2019.²⁸⁵ It informed the committee that it utilises a substantial report and referral support system to quickly respond to threats and incidences of self-harm for at-risk injured workers. It also has a Mental Health Team comprised of clinical and technical claims specialists who work with Claims Service Providers to manage the complexities associated with at risk workers.²⁸⁶
- 4.8** Despite these measures, a number of stakeholders raised concerns about how claims are managed within the workers compensation scheme. Mr Shane Butcher, Australian Lawyers Alliance, stated that 'it is the ALA's firm belief that the manner in which claims are currently handled, the conduct of the investigations and the manner in which they are disputed all lead to unnecessary harm of the injured person'.²⁸⁷ In his view, improvements could be made to the regulatory and operation approach provided by SIRA and the Nominal Insurer.²⁸⁸
- 4.9** In its 2023 update to the committee, icare highlighted that it is working with claims service providers to improve capability in a range of areas. This includes injury management planning, early access to treatment, improving the decision-making processes and practices specific to the needs of those with a mental health claim, and running mental health programs that utilise psychological injury research to improve outcomes for recovery and return to work.²⁸⁹ It also launched a Mental Health Claims Hub at the end of 2022 to provide workers and employers with information and assistance for supporting a mental health claim.²⁹⁰
- 4.10** Relevant to this is data provided by the Independent Review Office on the number of complaints it receives related to claim management. It reported 1,881 general case management complaints and enquiries in 2021-22. In fact, complaints by injured workers about case management by insurers was the third most common cause of complaint. Grievances included the frequent change of claims managers as well as the failure by insurers to pay invoices in a timely manner, which can 'damage the worker's relationship with their treatment provider and insurer. The Independent Review Office suggested that the complaints it receives from injured workers serve as evidence that some claims are not managed well at critical stages.'²⁹¹

²⁸³ Answers to pre-hearing questions, SIRA, 26 September 2022, p 5.

²⁸⁴ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 2.

²⁸⁵ Submission 26, icare, p 16.

²⁸⁶ Submission 26, icare, p 16.

²⁸⁷ Evidence, Mr Shane Butcher, Australian Lawyers Alliance, 10 October 2022, p 8.

²⁸⁸ Evidence, Mr Shane Butcher, Australian Lawyers Alliance, 10 October 2022, p 8.

²⁸⁹ Supplementary submission 26, icare, p 7.

²⁹⁰ Supplementary submission 26, icare, p 7.

²⁹¹ Submission 31, Independent Review Office, pp 7, 17 and 19.

- 4.11** In its submission, the Independent Review Office also highlighted a number of challenges experienced by workers with psychological injuries at numerous junctures throughout the system, including:
- psychological injury claims being more likely than physical injuries to be disputed, often early in the process, and more likely to result in protracted dispute resolution
 - complaints relating to delayed decisions by insurers, excessive requests for independent medical examinations, distress from attending assessments, and case management that 'fails to meet acceptable standards of consistency, empathy, flexibility and courtesy'
 - relevant laws and guidelines appearing to be poorly understood or not adhered to, with unreasonable actions taken by insurers to the detriment of injured workers
 - the cost of claims being proportionately greater
 - the manner in which the claim is managed exacerbating a person's psychological injury, with case management issues adversely affecting recovery.²⁹²
- 4.12** The Independent Review Office confirmed that these challenges remain just as relevant in 2023.²⁹³
- 4.13** The Independent Review Office made a number of suggestions for changes that could be implemented to assist with these issues, including: funding treatment for mental health conditions without the need to establish liability; reducing the number of medical assessments; improving return-to-work opportunities; ensuring the most skilled case managers are allocated to psychological injury claims and increase the monitoring of decision-making. The Independent Review Office concluded that 'that there is an urgency to improving how the workers compensation system responds to psychological injuries'.²⁹⁴
- 4.14** The Independent Review Office also saw a role for act of grace payments as a form of compensation where claims have been seriously mismanaged with an adverse impact on the injured worker.²⁹⁵ It noted that while some employers or insurers will occasionally make an act of grace payment, this did not apply to icare. It referred to advice it had received that the powers of the Nominal Insurer to allocate funds do not extend to act of grace payments. Accordingly, the Independent Review Office suggested that legislative reform in this area may be warranted.²⁹⁶

Injured workers' perspectives of the scheme

- 4.15** Throughout the inquiry, the committee had the benefit of hearing directly from injured workers through submissions and pro forma contributions. A number of stories illustrated the points

²⁹² Submission 31, Independent Review Office, p 24.

²⁹³ Supplementary submission 31, Independent Review Office, p 3.

²⁹⁴ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 37.

²⁹⁵ Submission 31, Independent Review Office, p 24. See also supplementary submission 34a, Name suppressed, p 2.

²⁹⁶ Submission 31, Independent Review Office, pp 23-24.

raised by the Independent Review Office, and some issues related to claims management, although others were more about scheme design.

4.16 Importantly, on Thursday 8 September 2022, the committee met privately with four injured workers who had prior experience of navigating the scheme. During the roundtable discussion, a number of common themes emerged:

- the participants initially had every intention of returning to work following recovery from their original injury
- their experience of the workers compensation scheme either prevented recovery from their injury or led to a secondary injury which made a return to work impossible
- lengthy delays were experienced in accessing treatment and/or relevant treatment was denied which impeded their recovery
- the adversarial nature of the system was counter-productive and hindered recovery
- the assignment of multiple case managers throughout the participants' time in the scheme was problematic
- the scheme required injured workers to frequently prove their injury and situation which was often traumatising
- there are appropriate regulatory standards available but they are either not being enforced or there is not sufficient power to enforce them
- treatment should be led by doctors, not insurers.²⁹⁷

4.17 Further examples of concerns related to claims management, among other matters, is highlighted in the case study box below.

The experience of injured workers

The committee received numerous submissions and supplementary submissions from injured workers who detailed their experience of navigating the workers compensation scheme. Many stories spoke of harassment and feeling threatened or unsupported by insurers. Others highlighted the impact of their experience on their families. In a number of cases, the negative experience was viewed as having contributed to the development of a secondary psychological injury.

The following are excerpts from some of the submissions received:

- 'Just being injured at work is a huge thing, but the actual process of the system adds further injury, in that treatment is denied and delayed making injuries worse'.²⁹⁸
- 'It has had a huge effect on my health, body, family, social life, spiritual life and severely damaged my quality of life in many ways including mental health. It is disgusting that we workers are treated this way'.²⁹⁹

²⁹⁷ Standing Committee on Law and Justice, Legislative Council, *Private roundtable discussion with injured workers – summary report* (September 2022), p 1.

²⁹⁸ Pro forma contributions by injured workers, Contribution no 15, p 22.

²⁹⁹ Pro forma contributions by injured workers, Contribution no 74, p 98.

- 'The system is so broken, it is destroying the injured workers psychological health. It leaves you damaged and broken and then pushes you to the disability pension where you cannot afford treatment for your physical workplace injury, or treatment for the psychological damage the system has left you with'.³⁰⁰
- 'The biggest problem being that the system has become so dysfunctional that it is traumatising injured workers unnecessarily. So not only does this jeopardise recovery, it creates barriers to retraining or returning to work and keeps claimants in a state of unnecessary stress'.³⁰¹
- 'I still cannot hear the phone ring, without reliving the endless trauma that came from bullying from my initial caseworker, that manipulated me in a cruel and abusive way in an unrelenting effort to get me to give up'.³⁰²
- 'The NSW workers compensation system has caused me immense stress and turmoil in my life with overload of paperwork, medical appointments and doctor shopping to guarantee low WPI scores along with inflicting anguish on my mental health, therefore it is imperative that workers compensation must change for the better'.³⁰³
- 'The NSW workers compensation system has not only failed to support me in my recovery, but has in numerous ways exacerbated my existing psychological injury, and undoubtedly caused a secondary iatrogenic injury'.³⁰⁴
- 'The injuries I sustained were traumatic, losing my career to injury has been traumatic, but there's no reason that being on worker's compensation should be traumatic to the point that three out of four are contemplating suicide'.³⁰⁵
- 'The saddest outcome from my experience in the workers compensation process has been the effect on my family, particularly my children. This is something I find intolerable and something needs to be urgently done to prevent other families suffering the same way ours has'.³⁰⁶

4.18 Essentially, the two common issues related to claims management that arose specifically in this review were the adversarial nature of the scheme and the impact of multiple claims managers.

Adversarial nature of the workers compensation scheme

4.19 A number of inquiry participants gave evidence that the workers compensation scheme was adversarial in nature.³⁰⁷ Some participants argued that this was to the detriment of injured workers, especially those with psychological injuries. Several stakeholders contended that is

³⁰⁰ Pro forma contributions by injured workers, Contribution no 24, p 34.

³⁰¹ Pro forma contributions by injured workers, Contribution no 41, p 58.

³⁰² Pro forma contributions by injured workers, Contribution no 15, p 20.

³⁰³ Pro forma contributions by injured workers, Contribution no 62, p 82.

³⁰⁴ Pro forma contributions by injured workers, Contribution no 70, p 92.

³⁰⁵ Pro forma contributions by injured workers, Contribution no 41, p 59.

³⁰⁶ Submission 41, Mr Matthew U'Brien and Ms Sarah U'Brien, p 3.

³⁰⁷ See for example, submission 31, Independent Review Office, p 6 and submission 23, Walker Law Group, p 3.

hindering recovery, leading to the deterioration of injured workers' conditions, often resulting in the development of a secondary psychological injury.³⁰⁸

4.20 Mr Matthew Buxton, Workers Health Centre, described the adversarial approach between stakeholders as unhelpful, noting that it does not 'facilitate trust and rapport with injured workers'.³⁰⁹ Other stakeholders, such as Business NSW, were of the view that the adversarial nature of the scheme was unfortunate but unavoidable so long as the scheme requires a nexus to be established with the workplace.³¹⁰

4.21 On this point, the committee receive evidence that psychological claims were more likely to be contested than claims related to a physical injury.³¹¹ As stakeholders pointed out, this is due to a number of factors, such as contributing factors to a psychological injury not being as readily apparent.³¹²

4.22 Mr Peter Remfrey, Chief Executive Officer, Workers Health Centre, stressed the importance of keeping the focus on early intervention and treatment, arguing that emphasising liability issues in the initial stages may aggravate injury:

If someone's suffered an injury, we need to make them well. That's the first instance in the scheme—not whether or not someone's to blame, which is the whole purpose of contingent liability, but to see if we can get people back to work. It has been my experience, in 38 years of representing police officers, that whether or not they're ill because of non-compensable or a compensable injury, they are still not available to do the work that's required. The scheme was designed specifically to get early treatment and get people back into the workplace. We can worry about the liability issues later. If we focus up-front on liability, we're just going to exacerbate the injury, whether it's work-related or not work-related.³¹³

4.23 While Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, concluded that the adversarial nature of the scheme was in some ways necessary, she acknowledged the negative impact of the process on someone with a psychological injury:

But workers compensation is necessarily adversarial to a certain extent, and it's just unfortunate that those processes can exacerbate psychological injuries, but you've got to understand that there are hoops. You have to prove necessarily that nexus with the workplace, and that's very difficult to show within the workers comp scheme, which is

³⁰⁸ See for example, submission 32, Unions NSW, p 4 and submission 41, Mr Matthew U'Brien and Ms Sarah U'Brien, p 1.

³⁰⁹ Answers to supplementary questions, Mr Matthew Buxton, Workers Health Centre, 7 October 2022, p 1.

³¹⁰ Evidence, Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, 8 September 2022, p 33.

³¹¹ Submission 31, Independent Review Office, p 14.

³¹² Submission 31, Independent Review Office, p 10.

³¹³ Evidence, Mr Peter Remfrey, Chief Executive Officer, Workers Health Centre, 8 September 2022, p 17.

why part B of our submission is asking the question: Is it fit for purpose? Because in trying to prove that nexus, no-one is winning when it comes to psychological injury.³¹⁴

4.24 When questioned whether the scheme is unnecessarily adversarial, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, highlighted the impact of an insurer appointing an investigator and requiring independent medical examinations early in the claims process for a psychological injury. He argued that such actions entrenched an adversarial atmosphere for the claim:

I think that early involvement of the investigator, coupled with repeated IME examinations, or independent medical examinations, commissioned by the insurer does create at an early point in a lot of claims—the figures that I saw in answer to the questions proposed by SIRA and/or icare was that 63 per cent of psychological injury claims have an investigator appointed. If you couple those things together, it does create, particularly in psychological injury claims, a highly adversarial nature. Section 11A, whilst it is true that the onus is on the employer, if you've got a work situation where the employer is able to say who can or can't give a statement and the worker who has left that employment has got little or no control, unless that worker has left that employment, the reasonableness or otherwise of the action relating to promotion, demotion or discipline—it is very difficult for the worker to get that evidence together, especially when faced with an investigator who might have obtained two or three written statements from a fellow worker. I think that is something that really entrenches the adversarial nature at a pretty early stage in the process.³¹⁵

4.25 Likewise, Mr Shane Butcher, Australian Lawyers Alliance, agreed with this assessment, adding that '... workers are constantly feeling like they have to prove themselves and tell their story over and over again'.³¹⁶

4.26 The committee heard that disputes before the Independent Review Office usually revolve around one of two things - whether the injury was caused by work or whether the injury resulted from reasonable management action by the employer.³¹⁷

4.27 Mr Bill Parady, Risk and Strategy Consultant, Rehab Options Injury Management, viewed section 11A of the *Workers Compensation Act 1987*, which provides a complete defence to a claim for compensation for a psychological injury where it has been caused by the reasonable actions of the employer, as one of the factors that drives the litigious nature of psychological claims. In addition, he argued that a 'lack of independently verifiable, objective evidence' as to the existence and severity of a psychological injury compared to a physical injury also contributes to the adversarial nature of some psychological injury claims.³¹⁸

³¹⁴ Evidence, Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, 8 September 2022, p 33.

³¹⁵ Evidence, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, 10 October 2022, p 14.

³¹⁶ Evidence, Mr Shane Butcher, Australian Lawyers Alliance, 10 October 2022, p 14.

³¹⁷ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 38.

³¹⁸ Answers to supplementary questions, Mr Bill Parady, Rehab Options Injury Management, 30 September 2022, p 1.

4.28 To counter this adversarial tendency, Mr Pardy proposed that more resources should be directed towards establishing injury, diagnosis and causation at an early stage in the process. He also argued that the following measures would facilitate the settlement of psychological claims:

- greater availability of commutation
- enabling employers to resolve industrial disputes through a damages settlement that also concludes a worker's entitlement to workers compensation
- the provision of formal guidance from icare and/or SIRA to ensure employers are authorised to resolve hybrid industrial and compensation disputes by including the formal resignation of the worker as part of the settlement
- changing the 15 per cent whole person impairment threshold for a lump sum compensation claim for psychological injury to be consistent with that required for physical injuries.³¹⁹

4.29 Other participants highlighted how the burden of some aspects of the scheme falls on employers. Business NSW viewed some of the current attempts to decrease the adversarial nature of the workers compensation scheme being to the detriment of employers.³²⁰ It was of the opinion that the bulk of responsibility for psychological injury tends to be on the employer, rather than workers also being responsible for their own health and safety:

The importance of joint responsibility seems to have been lost in the NSW workers' compensation system which, in the interests of being non-adversarial, tends to result in responsibility for all mental health conditions alleged to have occurred in the workplace by way of 'perception' falling solely on the employer.³²¹

4.30 Although these concerns exist, according to the McDougall Report, icare considered the reduction of the adversarial nature of the workers compensation system to one that is more neutral between employers and workers as an important reason for the creation of icare. The McDougall Report deemed icare as having achieved this, as complaints from employers and workers now appeared to be balanced in number and content.³²²

Multiple case managers

4.31 One of the common issues raised by injured workers was the requirement to retell the nature of their injury at different points in the system, or with different case managers, with this potentially causing further trauma and damage.³²³

³¹⁹ Answers to supplementary questions, Mr Bill Pardy, Rehab Options Injury Management, 30 September 2022, pp 1-2.

³²⁰ Submission 25, Business NSW, p 17.

³²¹ Submission 25, Business NSW, p 17.

³²² Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 13.

³²³ Submission 31, Independent Review Officer, p 13; Submission 38, Australian Lawyers Alliance, p 11.

4.32 Some claimants reported having multiple case managers throughout the claims management process, with little, if any, handover between them.³²⁴ In fact, during the committee's private roundtable discussion with selected injured workers, all participants told the committee that they had each experienced multiple case managers during the claims process, one having had 16 case managers to date.

4.33 There were various ideas put forward on how changes could be made to the process to, if not eliminate, at least minimise injured workers having to retell their story. In this context, Ms Elizabeth Welsh, Deputy Chair, Common Law Committee, NSW Bar Association, explained to the committee how workers compensation claim files used to contain a report of injury form, which meant that that claims officers did not have to re-require information from people.³²⁵ Noting the absence of this form in the current claims process, she stated:

It's more stressful at the beginning for people for things to be investigated, but that should be done once and be done properly without being any more intrusive than it has to be for any of the people involved.... Claims officers should not be asking people to tell them what happened to them when they're ringing up to check in on them, because that's just going to put that person right back where they were on the day they walked out of work.³²⁶

4.34 One of the participants in the private roundtable discussion suggested that a system should be created that includes a health summary designed to help injured workers communicate with health professionals. In their view, this could keep all of their medical records in one place and avoid the injured worker having to retell their story.³²⁷

4.35 The Chief Executive of SIRA, Mr Adam Dent, acknowledged this was an important issue raised, agreeing that there may be a 'considerable gap' in information, despite the minimum amounts of information collected. He agreed that 'the process of having to tell and retell your story is not a good one for anybody'. He also added:

I think it could be solved not necessarily by going back to paper forms, but a digital claims form of some sort that did capture that minimum information that could then follow the claimant through is an excellent idea, and certainly something we'll now look at.³²⁸

4.36 Further to this point, acknowledging that insurers are required to collect information during the claims journey for an injured worker, Mr Dent agreed that there could be improvements made to ensure the information is 'more accessible when there's a change of claims manager or handover to another professional'. Accepting this is an issue, he commented: 'I think there's an

³²⁴ Standing Committee on Law and Justice, Legislative Council, *Private roundtable discussion with injured workers – summary report* (September 2022), p 2; Evidence, Mr Shane Butcher, Australian Lawyers Alliance, 10 October 2022, p 17.

³²⁵ Evidence, Ms Elizabeth Welsh, Deputy Chair, Common Law Committee, NSW Bar Association, 10 October 2022, p 7.

³²⁶ Evidence, Ms Elizabeth Welsh, Deputy Chair, Common Law Committee, NSW Bar Association, 10 October 2022, p 10.

³²⁷ Standing Committee on Law and Justice, Legislative Council, *Private roundtable discussion with injured workers – summary report* (September 2022), p 3.

³²⁸ Evidence, Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, 10 October 2022, p 37.

opportunity certainly for insurers to do that well, but starting with the claims form that collects the right information up-front is definitely worthy of our time'.³²⁹

- 4.37** At the hearing in 2023, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, told the committee of some of the unintended consequences of case managers complying with the requirements under the legislation in re-traumatising workers with a psychological injury. He highlighted that a case manager in their first contact with an injured worker, has between four and eight legislative requirements with which they need to comply, in addition to more than 30 guidance notes, practices and regulatory requirements, all within the first call.³³⁰ He explained that at icare's 'test and learn' centre, they are trialling different ways of complying with these requirements, including obtaining data from other sources such as the treating doctor, so the worker is less negatively impacted.³³¹

The needs for specialist claims managers

- 4.38** Noting the concerns above, the importance of having competent, highly trained and experienced case managers, particularly to manage psychological claims, became evident in this review.
- 4.39** Indeed, the Independent Review Office was firmly of the view that the most skilled and experienced case managers should either be assigned to psychological injury claims or have close oversight of them.³³² Mr Simon Cohen, Independent Review Officer, viewed expert case managers with experience of psychological claims as critical to the process, in addition to having appropriate systems and processes in place:

Whether provisional liability is disputed, whether liability is accepted, whether there's a treatment dispute that's on foot, whether weekly payments are going to cease, whether there's a concern about the impairment which may impact upon benefits—they're all the critical areas where we see, in complaints that we receive, heightened distress from workers because they may no longer be able to access the psychological treatment that they've been relying on, or they may find themselves at risk of financial distress, and, as a consequence, that can exacerbate their psychological injury. I think expert case managers, but also a system that identifies those key points and then really drills in to make sure the best decisions are being made.³³³

- 4.40** Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, also stressed the importance of having specialist case managers for psychological injury claims:

We recognise the importance of effective case management to support injury recovery, particularly in respect of psychological injuries and in respect of return to work. In the

³²⁹ Evidence, Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, 10 October 2022, p 37.

³³⁰ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 21.

³³¹ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 20 October 2023, p 25.

³³² Submission 31, Independent Review Office, p 26.

³³³ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 42.

experience of our members, where a worker has suffered a significant psychological injury, it can take upwards of one year for the worker to be referred to a specialist case manager. In our view, it is critical that significant investment be made in developing and educating specialist case managers to deal with these types of claims.³³⁴

4.41 Mr Richard Harding, Chief Executive, icare, also recognised the crucial role of case managers in developing an effective relationship with the injured worker, particularly to ensure return to work occurs.³³⁵ In this regard, the committee learned that icare has redesigned its claims model to improve claims performance and deliver a more specialised approach to psychological claims.³³⁶ It has also moved from a single service provider to six providers from January 2023, four of which provide specialist psychological claims capability, to improve its ability to offer specific and tailored support to workers.³³⁷

4.42 Mr Harding also noted that icare has been developing professional standards for case managers, which he said will 'drive improvement in both the capability and capacity of the industry in New South Wales'. He added that this 'will help case managers gain greater skills to be able to work with injured workers, including those suffering from psychological injuries return to health and return to work faster'.³³⁸

4.43 In the context of the move from one to six providers at icare, Mr Dent, Chief Executive, SIRA, noted the importance of onboarding insurers appropriately and 'getting the technology right', given they 'are unravelling where they took the technology for a single claims provider'. He also noted his concern about building capability, given the new entrants, stating: 'That's why we're considering credentialing around case managers'. Explaining the importance of this, he added:

We do know that an experienced case manager can get a 20 per cent better outcome in terms of return to work on average than somebody who is inexperienced. New entrants into the scheme will hopefully have people who have experience, but it's hard to see how that will work easily. From our point of view, we'll be watching it very, very carefully, making sure that the risks are mitigated along the way.³³⁹

Delays in treatment

4.44 Related to concerns about the claims management process and how the approach taken by insurers can negatively impact claimants, the committee also heard how delays in treatment can exacerbate claimants' injuries and affect return to work.

³³⁴ Evidence, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of New South Wales, 10 October 2022, p 7.

³³⁵ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 44.

³³⁶ Supplementary submission 26, icare, p 6.

³³⁷ Supplementary submission 26, icare, p 6.

³³⁸ Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 44.

³³⁹ Evidence, Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, 10 October 2022, p 34.

- 4.45** A number of inquiry participants spoke of the delays they experienced in accessing treatment, with the intervention of the Independent Review Office often required.³⁴⁰ One inquiry participant reflected that this extended to simple requests:

I was not operated on until three months after my injury the insurer would not approve the operation the insurer even ignored the requests from the treating doctor on one occasion it took 16 weeks just to approve a simple consultation with the intervention of IRO it's a number of times I've had to contact the IRO.³⁴¹

- 4.46** Another inquiry participant, who had a claim for a psychological injury, highlighted various examples of having treatment either denied or delayed until complaints were lodged with the Independent Review Office:

In May of 2021 my treating psychiatrist provided a referral to a specialist in order to be prescribed CBD oil to help with severe anxiety, panic attacks and sleep deprivation. My case manager advised that I would need to be assessed by EML's Independent Medical Examiner for this request to be considered, to which I agreed. EML did not arrange the assessment with the IME, then completely ignored my multiple follow ups (emails, phone calls and messages) for three months, despite the fact that insurers are required to respond to requests for treatment within 21 days. The referral was only approved after I lodged a complaint with the Independent Review Office.³⁴²

- 4.47** The committee heard how injured workers are more likely to have a secondary psychological injury the longer a claim continues:

Because at that point you're possibly in a more adversarial part of the system and you've probably had multiple claims managers. All those factors that we know impact someone's likely recovery start to play out when you're in the system for that long. The secondary psychological injury claims are the ones that drive up the costs quite substantially.³⁴³

- 4.48** Professor Harvey from the Black Dog Institute also commented on this issue, suggesting that mental health clinicians are also declining to assist workers with psychological claims due to lengthy delays associated with insurer decisions and the claims process.³⁴⁴ He argued that there was more that could be done to train clinicians in how to get people back to work. For example, Professor Harvey highlighted that in 12 years combined training at medical school and in psychiatry he was never taught how to assess someone's capacity for work and determine what interventions are needed to return people to work.³⁴⁵

³⁴⁰ Submission 34, name suppressed, p 2; Pro forma contributions by injured workers, Contribution no 70, p 91; Standing Committee on Law and Justice, Legislative Council, *Private roundtable discussion with injured workers – summary report* (September 2022).

³⁴¹ Contributions by injured workers, Contribution no 67, p 88.

³⁴² Contributions by injured workers, Contribution no 70, p 91.

³⁴³ Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 40.

³⁴⁴ Evidence, Professor Samuel Harvey, Executive Director and Chief Scientist, Black Dog Institute, 8 September 2022, p 25.

³⁴⁵ Evidence, Professor Samuel Harvey, Executive Director and Chief Scientist, Black Dog Institute, 8 September 2022, p 25.

- 4.49 The case study below highlights how delays in treatment and the claims management process affected one injured worker.

Case study: An injured worker's experience³⁴⁶

Judy* left her job of 10 years after bullying and harassment in the workplace led to a psychological injury. Initially diagnosed with anxiety and adjustment disorder, Judy sought help and support through the workers compensation scheme in order to recover from her injury and return to the workforce. Less than two years later, Judy was diagnosed with 'major depressive disorder, sleep disorder, and immune system disorder'.

Judy described how she did not have time to focus on recovery. Shortly after she entered the scheme, her insurer was 'constantly harassing' her, with up to 12 interactions in a week. She felt pressured by her case managers to return to work or find another job. On more than 10 occasions she had to 'recall the trauma' of her psychological injury in multiple appointments with medical professionals appointed by the insurer. Judy recalls feeling threatened that her payments would stop if she didn't follow the insurer's requests. She felt like she was 're-experiencing the same trauma' suffered in her workplace.

Judy described her insurer as unresponsive, with communication often delayed. She was burdened with having to chase them for a response, and needed to lodge complaints with icare, the Independent Review Office, SIRA and various other agencies for escalation. The lack of response for treatment approvals by her insurer ranged from five months to more than a year and seven months in the case of psychiatric treatment. Judy detailed how on three occasions she had to escalate her complaints to the Independent Review Office as a result. She believes that most complaints are unheard, unresolved or unsuccessful, either because there is not an agency or organisation with sufficient jurisdiction over icare and insurers, or because outcomes are not enforced.

Multiple psychiatrist assessment reports state that the only way Judy can attempt to recover from her injury is to be 'immediately discharged from the system and allow her psychiatrist to lead her treatment'. Judy believes she has no alternative to the scheme, as she is unable to work due to her injury and without the option of a lump sum payment to leave the system, she feels stuck inside the scheme. Judy disclosed that she feels 'kidnapped ... and tortured'. This view was supported by a psychological test which found that her major depressive disorder was due to a lack of appropriate treatment and that her high level of post-traumatic stress disorder mirrored those who have been kidnapped and tortured.

Judy reflected that ultimately her experience with the scheme has left her 'psychologically broken, financially and physically ruined'. This is due to frustration in dealing with the insurer's mismanagement of her claim, continued harassment, significant delays in communication, and escalation to other bodies and agencies without resolution. She reported that she is now worse than when she first entered the scheme; her mental and physical health having significantly deteriorated.

Return to work

- 4.50 As outlined in Chapter 2, return to work rates have been declining since 2006. Stakeholders emphasised the importance of this issue being addressed, both in terms of injured workers receiving effective support and also reducing costs to the scheme. As Mr Matthew Buxton,

³⁴⁶ Name has been changed to protect the privacy and confidentiality of the injured worker. Submissions 34 and 34a, name suppressed.

Workers Health Centre, noted, early intervention is 'a fundamental value of effective treatment and cost reduction to the scheme'.³⁴⁷

- 4.51** The Independent Review Office referred to findings from the McDougall report which emphasised a clear correlation between delays in accessing treatment and delays in returning to work, potentially leading to a secondary psychological injury:

The personal and economic benefits of return to work are universally recognised. Conversely, the personal and economic detriments of delayed return to work are obvious. The worker's overall recovery may be hindered; consequently, the duration and hence the cost of treatment may be extended; and there is a very real likelihood of secondary psychological injury arising.³⁴⁸

- 4.52** The committee learned that the median payment on claims that received their first psychological payment within two months was \$25,979 compared to \$156,887 for those that received their first psychological payment later than two months.³⁴⁹ Those who received support from psychological services within two months were also 1.5 times more likely to return to work.³⁵⁰

- 4.53** SIRA also stressed the importance of early intervention in the claims process, with Mr Dent referring to the new *Standard of Practice 34*, which is designed to ensure that insurers are 'doing more early'.³⁵¹ *Standard of Practice 34* is based on the principle that 'insurers will actively manage the first four weeks of a claim for a significant injury to establish effective relationships, assess for risk of delayed recovery and work loss, and identify and agree the tailored actions to optimise recovery and work outcomes'.³⁵² Mr Adam Dent, Chief Executive, SIRA, stressed that 'The first four weeks of a claim are fundamentally likely to determine the outcome'.³⁵³

- 4.54** The Independent Review Office suggested that funding treatment for workers until they return to work for up to six months post lodgment of a claim, irrespective of liability, may have the effect of improving return to work rates for those with psychological injuries.³⁵⁴ Black Dog Institute also proposed that clinical treatment for all mental health related workers compensation claims be funded for up to six months irrespective of liability. It argued that this would expedite access to mental health treatment, enabling workers 'to recover and return to work more quickly, reducing the cost of lengthy psychological injury compensation claims'.³⁵⁵

- 4.55** While the Independent Review Office recognised that timely return to work is beneficial to the recovery of an injured worker, to avoid secondary psychological injury, it noted that there are

³⁴⁷ Answers to supplementary questions, Mr Matthew Buxton, Workers Health Centre, 7 October 2022, p 1.

³⁴⁸ As quoted in submission 31, Independent Review Office, p 13.

³⁴⁹ Supplementary submission 37, SIRA, p 12.

³⁵⁰ Supplementary submission 37, SIRA, p 12.

³⁵¹ Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 39.

³⁵² SIRA, *Standards of Practice: Expectations for insurer claims administration and conduct* (April 2022), Standard 34, p 45, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0008/439172/Standards-of-Practice-April-2022.pdf

³⁵³ Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 6.

³⁵⁴ Answers to questions on notice, Independent Review Office, 7 October 2022, p 2.

³⁵⁵ Submission 15, Black Dog Institute, p 2.

unique challenges for those with psychological injuries.³⁵⁶ It warned that focusing on a return to work as soon as possible 'may see some psychologically injured workers encouraged or feel pressured to return to work before they are ready, which may not be conducive to the recovery and longer term health of the worker'.³⁵⁷

4.56 Consequently, it questioned whether one of the objectives of the *Workplace Injury Management and Workers Compensation Act 1998*, which is aimed at promoting the return to work of injured workers through prompt treatment and medical and vocational rehabilitation, is appropriate for workers with psychological injuries.³⁵⁸

4.57 In the context of some injured workers being highly unlikely to return to the workplace because of the nature of the psychological injury they have sustained, some stakeholders also discussed the need for proper mechanisms to allow claimants to exit from the scheme.³⁵⁹

The role of workplace rehabilitation providers

4.58 In light of the need to address declining return to work rates, the committee considered the role workplace rehabilitation providers play in the scheme.

4.59 According to SIRA, workplace rehabilitation providers can address risk factors that may affect the ability of an injured worker to recover at work, including difficulty identifying suitable work duties, complex injury, delayed recovery, and/or a breakdown in communication.³⁶⁰

4.60 The Australian Rehabilitation Providers Association noted that workplace rehabilitation providers ensure that 'medical assessment and treatment services are coordinated, goal driven, evidence-based and timely' and that workers return to work with duties that are 'safe, medically, psychologically and functionally appropriate and that are ultimately sustainable for the long term'.³⁶¹

4.61 The Australian Rehabilitation Providers Association noted the outcomes of an Ernst and Young research report into the role of workplace rehabilitation providers, published by SIRA in September 2021.³⁶² The report found that:

- the appointment of a workplace rehabilitation provider improves the return to work outcome for claims between 6 months and 24 months time lost (relative to those claims that do not have one appointed)

³⁵⁶ Submission 31, Independent Review Office, p 20.

³⁵⁷ Submission 31, Independent Review Office, p 21.

³⁵⁸ Submission 31, Independent Review Office, p 21.

³⁵⁹ Evidence, Mr Shane Butcher, Australian Lawyers Alliance, 10 October 2022, p 15; Evidence, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, 10 October 2022, p 15.

³⁶⁰ See, State Insurance Regulatory Authority, *What to expect from your workplace rehabilitation provider*, <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/help-with-getting-people-back-to-work/what-to-expect-from-your-workplace-rehabilitation-provider>

³⁶¹ Submission 21, Australian Rehabilitation Providers Association, pp 3-4.

³⁶² Answers to supplementary questions, Australian Rehabilitation Providers Association NSW, 7 October 2022, p 1.

- the timely appointment of a workplace rehabilitation provider, that is, within the first eight weeks, can improve return to work by 3 to 5 per cent
- appointing a workplace rehabilitation provider early in the claims process can result in total claims costs savings of between 4 and 9 per cent
- the impact of a workplace rehabilitation provider on psychological injury claims is materially more than physical injury claims.³⁶³

4.62 SIRA informed the committee that the timely appointment of workplace rehabilitation providers where the worker has either a primary or secondary psychological injury can improve return to work outcomes by as much as 20 per cent for primary and secondary psychological injuries.³⁶⁴ The research report noted that this improvement was not evident if a workplace rehabilitation provider was engaged late in the process.³⁶⁵

4.63 The Australian Rehabilitation Providers Association, which represents approximately 70 per cent of all SIRA-approved rehabilitation providers, also referred to various studies that demonstrated the value of rehabilitation services, noting these findings:

- the return on investment for every \$1 invested in early intervention is \$7
- international evidence shows expenditure on work reintegration and rehabilitation provides a return of investment of 3.76 for employers
- Swisse RE found that every \$1 spent on rehabilitation services as part of life insurance claims, resulted in a saving of \$24 to \$39 on income protection claims costs for the insurers.³⁶⁶

4.64 In its submission, the Australian Rehabilitation Providers Association claimed that the appointment of a workplace rehabilitation provider early in the process could save the workers compensation scheme in New South Wales \$330 million.³⁶⁷

4.65 Ms Karen Castledine, NSW President of the Association, explained to the committee that the best time to impact return to work is between four and 13 weeks.³⁶⁸ However, given the current delays in referral, Mr Nathan Clarke, National Chief Executive Officer, Australian Rehabilitation Providers Association, noted that workplace rehabilitation providers are often receiving the hardest cases much later, 'when the claims agent doesn't know what to do with them'.³⁶⁹ When

³⁶³ Answers to supplementary questions, Australian Rehabilitation Providers Association NSW, 7 October 2022, p 1.

³⁶⁴ Submission 37, SIRA, p 19.

³⁶⁵ Ernst and Young, *Impact of Workplace Rehabilitation Providers: Analysis of claims data* (September 2021), p 13, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0008/1017188/EY-Impact-of-Workplace-Rehabilitation-Providers-analysis-of-claims-data.pdf

³⁶⁶ Submission 21, Australian Rehabilitation Providers Association, p 5.

³⁶⁷ Submission 21, Australian Rehabilitation Providers Association, p 5.

³⁶⁸ Evidence, Ms Karen Castledine, NSW President, Australian Rehabilitation Providers Association, 8 September 2022, p 20.

³⁶⁹ Evidence, Mr Nathan Clarke, National Chief Executive Officer, Australian Rehabilitation Providers Association, 8 September 2022, p 20.

questioned about the average time it currently takes for a workplace rehabilitation providers to be appointed, Mr Clarke indicated that it was in the hundreds of days.³⁷⁰

- 4.66** In light of this evidence, the Australian Rehabilitation Providers Association advocated for the Nominal Insurer to mandate referral to workplace rehabilitation for workers not expected to return to work within four weeks. It argued that this will minimise delays to support and return to work and associated wages.³⁷¹ Further, it stated that this would improve the experience of both the worker and the employer by allowing an earlier return to work, encouraging the worker to stay engaged and recover at work.³⁷²
- 4.67** The Association warned that delays can 'contribute to a breakdown in the relationship between the worker and the employer and the heightened development of secondary psychosocial factors that directly impact on an individual's recovery timeframes'.³⁷³ It therefore recommended that mental health injury claims be referred to workplace rehabilitation providers as soon as possible.³⁷⁴
- 4.68** Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, supported the Australian Rehabilitation Providers Association's proposals, describing it as 'an excellent idea', noting the invaluable role of rehabilitation providers for small businesses:
- They help small business manage their claims. In 2016, when there was a transfer from scheme agents to the in-house claim agents, the rehab providers stepped up and actually did the claims management for the employers. Without rehab providers, you wouldn't have had return-to-work rates as good as they were, even though they were declining.³⁷⁵
- 4.69** Discussing some of these points with icare representatives, Ms Mary Maini, icare, noted that icare has established some pilots in relation to rehabilitation providers, which seek to identify which matters should receive early referrals.³⁷⁶ However, when questioned about whether the appointment of a rehabilitation provider should be mandated where return to work is not expected within four weeks, Ms Maini was of the view that 'there are probably certain circumstances where mandating workplace rehab providers on every single matter is probably not the most effective way to focus on early intervention'.³⁷⁷
- 4.70** Ms Maini elaborated, explaining that some injured workers may not be ready for a rehabilitation provider at four weeks, as, for example, they may be having surgery. Ms Maini suggested that

³⁷⁰ Evidence, Mr Nathan Clarke, National Chief Executive Officer, Australian Rehabilitation Providers Association, 8 September 2022, p 16.

³⁷¹ Answers to supplementary questions, Australian Rehabilitation Providers Association NSW, 7 October 2022, p 2.

³⁷² Answers to supplementary questions, Australian Rehabilitation Providers Association NSW, 7 October 2022, p 2.

³⁷³ Answers to supplementary questions, Australian Rehabilitation Providers Association NSW, 7 October 2022, p 2.

³⁷⁴ Submission 21, Australian Rehabilitation Providers Association NSW, p 13.

³⁷⁵ Evidence, Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, 8 September 2022, p 32.

³⁷⁶ Evidence, Ms Mary Maini, Group Executive, Workers Compensation, icare, 10 October 2022, p 45.

³⁷⁷ Evidence, Ms Mary Maini, Group Executive, Workers Compensation, icare, 10 October 2022, p 46.

mandating a rehabilitation provider at four weeks may not be appropriate, contending that an intervention may not always be required.³⁷⁸

Independent medical examinations

4.71 Another key issue raised in this inquiry was the requirement for independent medical examinations, with some injured workers, including those with psychological claims, reporting that they were required to undergo several examinations.

4.72 The Independent Review Office noted that injured workers mostly undergo medical examinations or assessments with their treating doctor or allied health practitioners to determine the nature and extent of an injury. However, some may be required to also undergo an independent medical examination by a medico legal expert at the request of their lawyer, employer or insurer.³⁷⁹

4.73 SIRA explained that Part 7 of the *Workers Compensation Guidelines* specifies the requirements for arranging an independent medical examination, including whether one is reasonable in the circumstances.³⁸⁰

4.74 The Independent Review Office noted that as insurers are less willing to accept liability for a psychological injury early in the process and are more likely to contest the claim, the injured worker is often required to undergo a number of independent medical examinations at any or all of the following stages, where:

- initial liability is being considered by an insurer
- a work capacity decision is to be made
- an insurer is considering liability on the basis that a worker may have recovered from the injury
- a new form of treatment is requested
- the worker makes a claim for lump sum compensation
- the Commission makes a direction as part of its dispute resolution process.³⁸¹

4.75 Reflecting on this requirement for claims involving a psychological injury, Mr Richard Harding, Chief Executive Officer and Managing Director of icare, stated that 'determining our liability on a psychological claim is quite a complex and difficult matter'. Mr Harding explained that higher referral rates for independent medical examinations is influenced by case managers' skills and the need to create a 'causal connection to the workplace':

We see a higher referral rate to IMEs in those cases because the case manager doesn't have the skills to be able to make that determination or review or assessment because of the complexity of it. The situation itself is complex. Normally, by the time the claim

³⁷⁸ Evidence, Ms Mary Maini, Group Executive, Workers Compensation, icare, 10 October 2022, p 46.

³⁷⁹ Submission 31, Independent Review Office, p 13.

³⁸⁰ Answers to pre-hearing questions, SIRA, 26 September 2022, p 5.

³⁸¹ Submission 31, Independent Review Office, p 14.

is lodged, unfortunately, the relationship between the employer and the injured worker has broken down quite a lot.... The nature of the scheme is one where that liability determination is, by its nature, somewhat adversarial because of the need to create that causal connection with the workplace. That can be something where people have different points of view. So that complexity can be difficult for an under-developed case manager to work through and they can tend to rely on IMEs or other experts to try and help them.³⁸²

4.76 Explaining how the requirement for independent medical examinations can impact an injured worker, Mr Simon Cohen, Independent Review Officer, stated that 'injured workers often report that they are required to undergo multiple medical examinations for each of those steps, and that is part of what causes the distress for them'.³⁸³

4.77 Indeed, the committee heard of the detrimental effect independent medical examinations may have on those with psychological injuries, given they often have to retell their story and explain how they were injured. As seen in some complaints received by the Independent Review Office, the workers injury can be exacerbated, as the requirement to undergo independent medical examinations can be traumatic:

The complaints received by the IRO indicate that this can be very distressing and may, in fact, exacerbate those injuries; workers report the process to be upsetting and re-traumatising. Added to this, some workers are concerned that, if they do not attend an IME at the request of an insurer or they obstruct the examination, the insurer may suspend their weekly compensation payments, or it may affect their right to recover compensation.³⁸⁴

4.78 One inquiry participant described this impact to the committee:

What I do know is that each IME would set back my mental health for weeks. An IME always required explaining the situation which caused the injury. It required discussion of every aspect of my life, my whole life history and relationships. I felt like I was being interrogated and did not trust this process. I felt like the aim was to prove there was something wrong with me and that the injury was my own fault.³⁸⁵

4.79 The Independent Review Office reflected that 'the more examinations a worker has, the greater the potential for magnifying distress', concluding that 'more needs to be done – at a system and case management level – to reduce the number of unnecessary IMEs injured workers are requested to attend, and to reduce any negative impact of IMEs that workers attend'.³⁸⁶

4.80 Mr Cohen, the Independent Review Officer, stressed that this would help reduce the distress experienced by the injured worker as part of the claims process. Accordingly, he indicated his

³⁸² Evidence, Mr Richard Harding, Chief Executive Officer and Managing Director, icare, 10 October 2022, p 51.

³⁸³ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 40.

³⁸⁴ Submission 31, Independent Review Office, p 14.

³⁸⁵ Pro forma contributions by injured workers, Contribution no 44, p 62.

³⁸⁶ Submission 31, Independent Review Office, pp 14 and 17.

support of the proposal that there be a single independent medical examination agreed to by both the worker and insurer.³⁸⁷

- 4.81** Relevant to this discussion, icare informed the committee that it has established a Medical Support Panel, comprised of medical specialists with expertise in occupational medicine and psychiatry, to reduce the need for workers to be referred to independent medical examinations to confirm treatment requirements.³⁸⁸

Commutations

- 4.82** Another issue raised by stakeholders was the need for greater access to commutations in the workers compensation scheme. A commutation is an agreement between a worker and their employer/insurer to finalise their entitlement to weekly and medical payments under the workers compensation legislation in a single lump-sum payment. As SIRA explained, commutations are intended to be voluntary and non-adversarial.³⁸⁹

- 4.83** Commutations are available in limited circumstances and are subject to a number of preconditions:

- the injury must have resulted in permanent impairment of at least 15 per cent
- compensation for permanent impairment must have been paid
- it must have been more than two years since weekly payments for the injury were first received
- all opportunities for injury management and return to work must have been exhausted
- weekly payments must have been received throughout the previous six months
- there must be an existing and continuing entitlement to ongoing weekly payments
- weekly payments must have not been terminated as a result of failing to comply with return to work obligations.³⁹⁰

- 4.84** The Independent Review Office advised that it currently supports workers who want to exit the workers compensation scheme via commutation through the provision of funding to approved lawyers under the Independent Legal Assistance and Review Service, with lawyers assisting to negotiate the agreement. Thirty-seven such funding grants were finalised in 2020-21 (26 in 2021-22). Twenty workers (24 in 2021-22) were successful in commuting their rights, registering the agreement in the Personal Injury Commission. The Independent Review Office concluded that these 'small numbers demonstrate the current limitations on the ability of parties to agree to a settlement on a final basis of statutory compensation'.³⁹¹

³⁸⁷ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 39.

³⁸⁸ Answers to pre-hearing questions, icare, 21 September 2022, p 5.

³⁸⁹ Answers to pre-hearing questions, SIRA, 26 September 2022, p 7.

³⁹⁰ State Insurance Regulatory Authority, *Commutations*, <https://www.sira.nsw.gov.au/claiming-compensation/workers-compensation-claims/commutations>

³⁹¹ Answers to questions on notice, Independent Review Office, 7 October 2022, p 5.

- 4.85** Relevant to this, the McDougall Report concluded that there are 'significant psychosocial benefits in allowing workers and their families to settle claims, avoid the ongoing stress and difficulty that pursuit of a claim can create, and get on with their lives'.³⁹² Accordingly, it recommended:
- That the legislature give consideration to expanding the powers of commutation and settlement of lump sum death benefits, subject to the approval of the Personal Injury Commission.³⁹³
- 4.86** The McDougall Report noted that icare viewed commutations as providing 'greater choice and flexibility to injured workers, allowing them to remove themselves from ongoing contact with the scheme, and encouraging timely resolutions of claims'.³⁹⁴ icare had proposed that 'eligibility criteria be made less stringent, so as to encourage greater take-up of commutation by injured workers', recommending that the pre-conditions for commutation should be no likelihood of return to work and a whole person impairment of more than 10 per cent.³⁹⁵
- 4.87** A number of inquiry stakeholders favoured increased access to commutations, especially in relation to psychological injuries. The Independent Review Office argued that increasing access to commutations (as well as allowing settlements for disputed claims regarding lump sum death benefits) should be prioritised. It stressed that reforms should include appropriate safeguards such as independent legal advice and supervision by the Personal Injury Commission. The Independent Review Office contended that this would 'substantially reduce the stress and impact of the existing scheme arrangements'.³⁹⁶
- 4.88** Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, proposed that there be no restrictions on the types of claims that are able to be commuted. The Law Society's view was that any restrictions should be based on whether it is in the best interests of the injured worker to commute their compensation payments rather than on the type of claim. In relation to psychological injuries, it highlighted that it is often in the best interests of the injured worker to commute the claim and end ongoing contact with the scheme. Like the Independent Review Office, the Law Society of NSW considered the obtaining of independent legal advice and the approval of the Personal Injury Commission to be appropriate safeguards.³⁹⁷
- 4.89** In response to the proposition that allowing greater access to commutations could create a lump sum culture in the workers compensation scheme, Mr Bill Parry, Risk and Strategy Consultant, Rehab Options Injury Management, countered that a lump sum culture already exists due to the 15 per cent whole impairment threshold being required to claim both section 66 lump sum compensation and work injury damages for the alleged negligence of an employer. He further

³⁹² Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 277.

³⁹³ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, Recommendation 40.

³⁹⁴ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 276.

³⁹⁵ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 276.

³⁹⁶ Answers to questions on notice, Independent Review Office, 7 October 2022, p 7.

³⁹⁷ Evidence, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, p 8; Submission 30, Law Society of NSW, p 3.

argued that earlier access to commutations will both promote the resolution of claims and normalise early settlement and a quick return to alternative work.³⁹⁸

- 4.90** On this issue, it is important to note that some amendments related to commutations were originally included within the *State Insurance and Care Legislation Amendment Bill 2022* (see chapter 1). This would have provided a regulation power to expand access to commutations, but was amended in the Legislative Assembly to remove this provision.³⁹⁹ As noted previously, the bill subsequently lapsed upon prorogation of the 57th Parliament.
- 4.91** While the Australian Lawyers Alliance supported the need for increased access to commutations, it voiced that it did not agree with the approach provided in the original bill. It advocated for the removal of all current restrictions such as requiring minimum degrees of permanent impairment and for certain periods of time to have elapsed.⁴⁰⁰ Like others, it also supported the need for injured workers to first obtain legal advice, with agreements being subject to the approval of the Personal Injury Commission if the injured worker did not have capacity to provide instructions.⁴⁰¹

Provisional liability

- 4.92** During this review, some stakeholders raised concerns in relation to the operation of provisional liability, which enables an insurer to provide an injured worker with provisional weekly payments and early intervention while the insurer investigates and make a formal liability decision about the claim.⁴⁰²
- 4.93** An insurer must start provisional weekly payments within seven days of notification of an injury, unless it has a reasonable excuse as provided by the *Workers Compensation Guidelines*.⁴⁰³ Provisional payments may cover up to 12 weeks of payments for loss of income and up to \$10,000 for reasonably necessary medical treatment.⁴⁰⁴

³⁹⁸ Answers to supplementary questions, Mr Bill Parry, Rehab Options Injury Management, 30 September 2022, p 4.

³⁹⁹ Answers to pre-hearing questions, SIRA, 26 September 2022, p 7.

⁴⁰⁰ Section 87EA, *Workers Compensation Act 1987*.

⁴⁰¹ Submission 38, Australian Lawyers Alliance, p 7.

⁴⁰² See, State Insurance Regulatory Authority, *Claims management guide* (1 March 2021), <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/understanding-the-claims-journey/claims-decisions/provisional-liability>

⁴⁰³ Section 267, *Workplace Injury Management and Workers Compensation Act 1998*. The workers compensation guidelines support delivery of the objectives of the workers compensation legislation by guiding insurers, workers, employers, injury management consultants, independent medical examiners and other stakeholders in the process of claiming workers compensation: SIRA, *Workers compensation guidelines: Requirements for insurers, workers, employers, and other stakeholders* (1 March 2021), https://www.sira.nsw.gov.au/__data/assets/pdf_file/0011/438338/Workers-Compensation-Guidelines-March-2021.pdf

⁴⁰⁴ State Insurance Regulatory Authority, *Claims management guide* (1 March 2021), <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/understanding-the-claims-journey/claims-decisions/provisional-liability>

- 4.94** Some stakeholders highlighted the benefits of provisional liability, including the Independent Review Office, who noted that it can be 'a simple and quick way to ensure that injured workers can be financially supported to take the time they need to recover, seek necessary treatment, and return to work as soon as possible, sometimes without the need for a formal liability decision.'⁴⁰⁵ Other stakeholders raised concerns related to the need to apply an appropriate degree of scrutiny to all claims.⁴⁰⁶
- 4.95** The Australian Manufacturing Workers Union, while noting that the provisional liability mechanism is a 'sound model' when implemented properly and in accordance with the legislation, stated that it can be 'vulnerable to frustration' where organisations are of a mind to delay.⁴⁰⁷ It argued that it 'requires consistent execution that is diligent, professional, and thoughtful'.⁴⁰⁸
- 4.96** Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, also raised communication related concerns, informing the committee that provisional liability decisions are not always properly explained to either the employer or injured workers, and can result in a false impression as to the validity of the claim:
- When the injured worker is receiving the weekly benefits and medical treatment on a provisional basis, they don't understand it is on a provisional basis. They feel vindicated, and then they think, "Yes, I am in the right. The employer is in the wrong." Then, ultimately, if it does get declined, that relationship breakdown is beyond repair, and then they're left—they're lost. They don't understand, and it probably exacerbates their injury.⁴⁰⁹
- 4.97** Related to this, the Australian Industry Group noted that employers are seeking greater transparency around 'how the 12-week provisional liability period is effectively utilised to access relevant information to make an appropriate decision'.⁴¹⁰ It raised concerns that not all employers are being informed by insurers about the final determination of the claim at the end of the provisional liability period, creating confusion for employers in relation to ongoing entitlements and liability.⁴¹¹
- 4.98** The Australian Industry Group also argued for greater oversight of the type of treatment provided to workers with psychological injuries as part of the allowance for \$10,000 of medical expenses on the basis of provisional liability.⁴¹²

⁴⁰⁵ Submission 31, Independent Review Office, p 7.

⁴⁰⁶ Submission 16, Rehab Options Injury Management, p 4.

⁴⁰⁷ Submission 36, Australian Manufacturing Workers Union, p 4.

⁴⁰⁸ Submission 36, Australian Manufacturing Workers Union, p 5.

⁴⁰⁹ Evidence, Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, Business NSW, 8 September 2022, p 31.

⁴¹⁰ Submission 13, Australian Industry Group, p 9.

⁴¹¹ Submission 13, Australian Industry Group, p 13.

⁴¹² Submission 13, Australian Industry Group, p 14.

The reasonable excuse exception

- 4.99** One of the concerns raised in relation to provisional liability was the application of the reasonable excuse exception, especially in psychological claims.
- 4.100** An insurer is not required to commence provisional weekly payments if they have a 'reasonable excuse', as provided by the *Workers Compensation Guidelines*.⁴¹³ Reasonable excuses include:
- insufficient medical information
 - the injured person is unlikely to be a worker
 - the insurer is unable to contact the worker
 - the worker refuses access to information
 - the injury is not work related
 - there is no requirement for weekly payments
 - notification of the injury occurred after two months.⁴¹⁴
- 4.101** The Independent Review Office reported that it received 118 complaints in 2021/22 where the primary issue concerned the initial notification of claims, especially the insurer's use of a reasonable excuse to avoid provisional liability payments. Forty-five per cent of such complaints were from workers with psychological injuries.⁴¹⁵
- 4.102** In its submission, the Independent Review Office detailed how some of these complaints involved the misapplication of reasonable excuses, including insufficient medical information. In some situations, this involved the insurer making no attempt to clarify the information received contrary to the standard practice requirements which set out the way in which insurers are to manage psychological injuries.⁴¹⁶
- 4.103** The Independent Review Office also had concerns about the inappropriate denial of provisional liability on the basis that the insurer may have a defence to the claim under section 11A of the *Worker Compensation Act 1987*. Section 11A provides that no compensation is payable for a psychological injury caused by reasonable action of the employer in relation to 'transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal'.
- 4.104** The Independent Review Office highlighted that the Personal Injury Commission has determined that this is not a reasonable excuse for the purpose of denying provisional liability.⁴¹⁷ Business NSW also noted that this was removed as a reasonable excuse from SIRA's *Guidelines for claiming workers' compensation* when they were revised in 2016.⁴¹⁸ Other stakeholders also noted

⁴¹³ Section 267, *Workplace Injury Management and Workers Compensation Act 1998*.

⁴¹⁴ State Insurance Regulatory Authority, *Workers compensation guidelines: Requirements for insurers, workers, employers, and other stakeholders* (1 March 2021), pp 8-9, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0011/438338/Workers-Compensation-Guidelines-March-2021.pdf

⁴¹⁵ Submission 31, Independent Review Office, p 8.

⁴¹⁶ Submission 31, Independent Review Office, p 8.

⁴¹⁷ Submission 31, Independent Review Office, p 9.

⁴¹⁸ Submission 25, Business NSW, p 7.

that insurers should not be making a decision about provisional liability with reference to this defence.⁴¹⁹

- 4.105** Rehab Options Injury Management drew the committee's attention to the widespread perception within the workers compensation industry of the difficulty of successfully raising a section 11A defence to a claim:

This discourages the detailed investigation by scheme agents of psychological injury claims, despite it being proper to do so. It also discourages the step of a scheme agent formally disputing a psychological injury as being compensable, because of the perceived risks of an unsuccessful defence (including the delay in treatment of workers who may later successfully challenge a decision to decline the claim).⁴²⁰

- 4.106** Rehab Options Injury Management stated that 'accepting provisional liability for psychological injury claims is almost always the right decision, rather than instead applying a reasonable excuse not to commence weekly payments'.⁴²¹ It also stressed that it is imperative for the provisional period to be used properly by the scheme agent to determine a correct diagnosis of the injury and whether it is compensable.⁴²²

Implications of improper denial of provisional liability

- 4.107** Stakeholders emphasised the importance of having provisional liability determined appropriately, given the implications of liability being declined for injured workers, particularly those with a psychological injury.

- 4.108** The Independent Review Office noted that the incorrect denial of provisional liability can have particularly significant repercussions for a worker with a psychological injury :

...wrongly denying provisional liability can see workers feel unsupported, disbelieved, and pressured to return to work quickly, regardless of whether they are ready. It may also mean that injured workers do not have the financial support they need to take time to recover or to seek early medical assistance. The consequences for a worker already experiencing a psychological injury can be substantial, may impact on the worker's recovery, and may set an adversarial tenor to the relationship between the worker and the insurer from the outset.

- 4.109** Walker Law Group similarly highlighted the particular vulnerability of a worker with a psychological injury:

A 'reasonable excuse' is a kick in the guts for an injured worker lodging a claim for a psychological injury. Despite the good work in our society to de-stigmatise mental illness, it still is a big step for an injured worker to lodge a psychological injury claim. No matter how well a case manager communicates such a decision, this is a set back for

⁴¹⁹ See, for example, Submission 36, Australian Manufacturing Workers Union, p 5; Submission 23, Walker Law Group, p 4.

⁴²⁰ Submission 16, Rehab Options Injury Management, p 2.

⁴²¹ Supplementary submission 16a, Rehab Options Injury Management, p 2.

⁴²² Supplementary submission 16a, Rehab Options Injury Management, p 2.

an injured worker who has lodged a psychological injury claim at a point where they are already vulnerable and at a low point in their life.⁴²³

- 4.110** The Workers Health Centre submitted that the provisional liability provisions should be 'fully implemented, monitored, and regulated in the context of supporting early intervention and early referral to workplace rehabilitation providers unless there is reasonable excuse not to do so'.⁴²⁴ This view was partly supported by the Public Service Association. However, it argued that consideration should be given to the removal of the reasonable excuse provision altogether.⁴²⁵

Whole person impairment

- 4.111** A number of stakeholders in this review also discussed the whole person impairment test and how it applies to psychological claims.
- 4.112** Essentially, the thresholds applying to compensation for non-economic loss differ according to whether an injury is physical or psychological. For compensation for non-economic loss in relation to permanent impairment resulting from a primary psychological injury, there is a threshold of at least 15 per cent whole person impairment. No compensation is payable in relation to secondary psychological injuries. By comparison, the threshold that applies to physical injuries is 10 per cent whole person impairment.⁴²⁶
- 4.113** In its submission, the Australian Industry Group reflected on the Nominal Insurer valuations from 2016 to 2021, noting that there has been movement in outstanding claims liability between December 2019 and December 2021 due to the increase in psychological claims, including claims that have reached higher whole person impairment thresholds. It noted that the December 2020 and December 2021 valuations both identified psychological claims as an uncertainty, pointing to claims (including stress claims) that have significantly longer durations and higher associated costs.⁴²⁷
- 4.114** Reflecting on this trend, the Australian Industry Group noted that the increased valuation for psychological injuries was due, in part, to higher whole person impairment assessments at above 15 per cent which increase access to payments.⁴²⁸ However, it noted that is not clear whether the higher whole person impairment assessments were 'due to more extreme initial occurrences of injuries, delays in return to work that exacerbate the level of psychological impairment, or simply a more generous assessment of WPI [whole person impairment] by the medical specialists'.⁴²⁹
- 4.115** Some legal stakeholders raised a concern with the appropriateness of the WPI assessment to access benefits. The Law Society of NSW stated that 'a WPI assessment is not an appropriate

⁴²³ Submission 23, Walker Law Group, p 4.

⁴²⁴ Submission 29, Workers Health Centre, p 2.

⁴²⁵ Submission 39, Public Service Association of NSW, p 2.

⁴²⁶ Sections 65A and 66, *Workers Compensation Act 1987*.

⁴²⁷ Submission 13, Australian Industry Group, p 5.

⁴²⁸ Submission 13, Australian Industry Group, p 6.

⁴²⁹ Submission 13, Australian Industry Group, p 6.

threshold test for recovery of medical treatment expenses' as 'injured workers may sustain injuries that require ongoing medical attention regardless of their WPI assessment'.⁴³⁰

- 4.116** Mr Shane Butcher of Australian Lawyers Alliance agreed, stating: '... however you do the assessment, the whole person impairment shouldn't be the basis upon accessing rights for weekly benefits, medical treatment and other things within the scheme—however you get to the figure'.⁴³¹
- 4.117** Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, told the committee that 'that linking eligibility for medical benefits to the degree of whole person impairment, in addition to the cessation of weekly payments, is problematic and results in many injured workers not being able to access the benefits they need to return to work or to recover'.⁴³² The Law Society of NSW advocated for further consultation to develop a replacement test for entitlement to weekly and medical benefits, noting that this would also implement recommendation 37 of the McDougall Report, which was to give consideration to 'a replacement threshold test for entitlement to weekly and medical benefits that more accurately reflects the need for compensation'.⁴³³
- 4.118** When questioned about the use of whole person impairment as a method of assessment, Mr Simon Cohen, Independent Review Officer, queried:
- ...whether a score that has been designed to assess impairment for the purpose of a monetary compensation is the appropriate tool to actually make a decision about whether someone is unable to work and therefore should receive weekly benefits or continues to suffer from the effects of the injury and therefore continues to need treatment.⁴³⁴
- 4.119** In addition, the committee learned of concerns with the tools used to assess whole person impairment.⁴³⁵ icare advised the committee that the Psychiatric Impairment Rating Scale (PIRS) is used to evaluate whole person impairment in psychiatric and psychological disorders. icare considered that the Psychiatric Impairment Rating Scale tool should be reviewed as to its challenges and to assess 'whether the PIRS is the best and most effective way of calculating WPI [whole person impairment] within the workers compensation system'.⁴³⁶
- 4.120** There was also some discussion among participants as to where thresholds should be set. The Australian Industry Group noted that a 15 per cent threshold applied for access to permanent impairment payments for a primary psychological injury compared to 10 per cent for physical injuries.⁴³⁷ However, it highlighted that there is no differentiation for accessing work injury

⁴³⁰ Submission 30, Law Society of NSW, p 4.

⁴³¹ Evidence, Mr Shane Butcher, Australian Lawyers Alliance, 10 October 2022, p 12.

⁴³² Evidence, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, 10 October 2022, p 8.

⁴³³ Submission 30, Law Society of NSW, p 4; Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, recommendation 37.

⁴³⁴ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 38.

⁴³⁵ Answers to pre-hearing questions, icare, 21 September 2022, p 11.

⁴³⁶ Answers to pre-hearing questions, icare, 21 September 2022, p 11.

⁴³⁷ Submission 13, Australian Industry Group, p 15; sections 65A and 66, *Workers Compensation Act 1987*.

damages which are set at 15 per cent for all claims,⁴³⁸ and 20 per cent for all claims to access ongoing weekly benefits beyond five years.⁴³⁹

4.121 The Australian Industry Group questioned 'why the legislation clearly creates a different level of WPI [whole person impairment] to access permanent impairment benefits, but not in other parts of the legislation that rely on a threshold to determine access to benefits'.⁴⁴⁰

4.122 In its submission, the NSW Bar Association recommended that the 15 per cent permanent impairment that applies to primary psychological injuries should be changed to being on par with that of physical injuries so as to 'bring fairness and equity to workers'. It stated that such a change would enable workers to recover permanent impairment compensation but that they would not be entitled to work injury damages unless they met the higher threshold of 15 per cent.⁴⁴¹

4.123 Rehab Options Injury Management supported the NSW Bar Association's proposal, describing the potential impact of such a change:

The proposal set out by the NSW Bar Association would likely enable the settlement of a considerable number of psychological injury claims at an earlier stage and for a more reasonable sum, leading to increased flexibility in managing the cohort of psychological injury claims within the NSW Workers Compensation Scheme and potentially reducing the number of work injury damages claims to which the Scheme is exposed.⁴⁴²

4.124 The Independent Review Office deemed it a high priority that whole person impairment be replaced as the threshold test for weekly payments and treatment compensation.⁴⁴³ It argued that its current use could result in unfair outcomes contrary to the system objectives of providing income support during incapacity and reasonable medical expenses. It also drew attention to the failure of the legislation to account for the deterioration of injuries over time, with workers restricted to a single assessment. It concluded: 'There is a pressing need to reform the legislation to ensure workers can have their WPI [whole person impairment] assessed at any stage, and in particular following a demonstrable change in their condition'.⁴⁴⁴

4.125 The need to properly account for a deterioration in injury was also raised by the McDougall Report which recommended that NSW Parliament amend the *Workplace Injury Management and Workers Compensation Act 1998* 'to provide for a further assessment of whole person impairment where there is a significant deterioration in a compensable injury'.⁴⁴⁵ The McDougall Report stressed that whole person impairment assessments do not measure the capacity to work or the necessity of medical treatment:

⁴³⁸ Section 151H, *Workers Compensation Act 1987*.

⁴³⁹ Section 39, *Workers Compensation Act 1987*.

⁴⁴⁰ Submission 13, Australian Industry Group, p 15.

⁴⁴¹ Submission 11, NSW Bar Association, p 5.

⁴⁴² Supplementary submission 16a, Rehab Options Injury Management, p 1.

⁴⁴³ Answers to questions on notice, Independent Review Office, 7 October 2022, p 6.

⁴⁴⁴ Answers to questions on notice, Independent Review Office, 7 October 2022, p 7.

⁴⁴⁵ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, recommendation 38.

The use of a WPI assessment for those purposes creates a significant risk that workers may be left uncompensated for a real and severe loss of capacity to work, or substantial medical expense, arising from a workplace injury.⁴⁴⁶

- 4.126** On this issue, it is important to note that the committee recommended as part of its 2020 review that SIRA investigate whether the use of the whole person impairment test in the workers compensation scheme is appropriate and whether the restriction of having one assessment of impairment could be removed for certain injuries.⁴⁴⁷
- 4.127** SIRA informed the committee in 2022 that it had undertaken public consultation on the proposed reforms in October 2021, and was undertaking further consultation due to the impact complexity. It told the committee that it expected to provide a report to the NSW Government by the end of 2022.⁴⁴⁸

The need for a thorough evaluation of the entire scheme

- 4.128** In 2021, the Hon Robert McDougall QC in his report, *icare and State Insurance and Care Governance Act 2015: Independent Review*, described the workers compensation scheme as a 'cumbersome, confusing and unwieldy' legislative system that had been amended repeatedly:

It consists of two key Acts, each containing hundreds of sections; a further Act dealing with regulatory and structural matters; and a suite of regulations, guidelines and policies issued by multiple agencies with overlapping functions.

....

The current legislative provisions, Byzantine in their elaboration and labyrinthine in their detail, have resulted in a level of confusion, inconsistency and complexity that does nothing to assist the schemes in to achieve their policy objectives.⁴⁴⁹

- 4.129** Accordingly, the McDougall Report recommended that there be an overall review of the various legislation that governs workers compensation in New South Wales, with the aim of consolidating them into one statute.⁴⁵⁰
- 4.130** In 2022, SIRA noted that the then NSW Government had accepted the above recommendation, highlighting that 'many of the existing challenges will not be resolved without legislation that delivers a modern and fit-for-purpose workers compensation scheme'.⁴⁵¹ Mr Adam Dent, Chief Executive, SIRA, drew attention to the opportunity this presents to design a new scheme that

⁴⁴⁶ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 267.

⁴⁴⁷ Standing Committee on Law and Justice, NSW Legislative Council, *2020 review of the workers compensation scheme* (2021), recommendation 9.

⁴⁴⁸ Submission 37, SIRA, p 43.

⁴⁴⁹ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 256.

⁴⁵⁰ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 14 and Recommendation 34.

⁴⁵¹ Submission 37, SIRA, p 2.

responds to 'the changing nature of workplace injuries and add to the elements of the system that can cause or exacerbate mental health conditions'.⁴⁵²

- 4.131** The McDougall Report also concluded that 'there are a number of areas in which the legislative structure that supports the schemes could be improved'.⁴⁵³ Some recommendations of the McDougall Report related to the need for greater clarity around the roles and functions of some of the major stakeholders, as well as the powers held by SIRA.⁴⁵⁴
- 4.132** Recommendation 44 of the McDougall report proposed that legislation be amended to 'state clearly the objectives sought to be achieved by the creation, and the roles, powers and functions, of icare, SIRA and SafeWork NSW as legally distinct entities'.⁴⁵⁵ In addition, recommendation 45 suggested that SIRA's investigative powers be extended to icare to enable it to properly perform its functions.⁴⁵⁶
- 4.133** Many inquiry participants supported the view that the entire workers compensation scheme needs significant reform. Mr Simon Cohen, Independent Review Officer, agreed that there is a need to review the entirety of the workers compensation legislation.⁴⁵⁷
- 4.134** The Independent Review Office made a number of suggestions as to desired features of the review process:
- the review is conducted by an agency or body independent of all stakeholders
 - the terms of reference are limited
 - the review is 'deeply informed by the experience and views of stakeholders who work day-to-day in administering the workers compensation legislation' due to their 'clear perspective and examples that illustrate where complexities, inconsistencies and ambiguities impact on the effective operation of the workers compensation scheme, and solutions that could solve these issues'
 - the review has access to independent technical expertise, including actuarial and legal
 - the review is appropriately resourced with a clear and realistic timeframe.⁴⁵⁸
- 4.135** Both the Australian Lawyers Alliance and the Law Society of NSW concurred with the McDougall Report's conclusions about the complexity of the legislative scheme.⁴⁵⁹ The Law

⁴⁵² Evidence, Mr Adam Dent, Chief Executive, SIRA, 10 October 2022, p 33.

⁴⁵³ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 14.

⁴⁵⁴ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 22.

⁴⁵⁵ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 22.

⁴⁵⁶ Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 22.

⁴⁵⁷ Evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 8 September 2022, p 38.

⁴⁵⁸ Answers to questions on notice, Independent Review Office, 7 October 2022, pp 3-4.

⁴⁵⁹ Submission 38, Australian Lawyers Alliance, p 15; submission 30, Law Society of New South Wales, p 3.

Society of NSW expressed its support for a review that 'builds on the work of the Parkes Project, and looks at the scheme as a whole, rather than the current piecemeal approach to amendment'.⁴⁶⁰

- 4.136** Various legal stakeholders advocated for their involvement in the legislative reform process due to their expertise in the area. Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, requested that the legal profession be consulted early in the process, due to its 'deep knowledge of the operation of the scheme'.⁴⁶¹ Ms Elizabeth Welsh, Deputy Chair, Common Law Committee, NSW Bar Association, acknowledged that preparation for a legislative review had commenced and cautioned that sufficient time be allocated to the process:

It is quite a task. We look forward to assisting in that endeavour and would welcome the opportunity to review the bills when they are available. Given the breadth and complexity of the legislation, we are of the view that it should not be rushed, allowing the parties time to properly engage where necessary.⁴⁶²

Committee comment

- 4.137** The committee is grateful to all who participated in the inquiry, including regular stakeholders of these reviews and injured workers and advocates who have had significant personal experience navigating the workers compensation scheme. The committee has greatly benefited from the detail of the evidence provided, and has shaped our conclusions and recommendations with the intention that they are directed towards addressing many of the concerns raised.
- 4.138** In the committee's view, there are significant issues with the scheme affecting the support, treatment and recovery available to injured workers. The committee heard firsthand personal accounts of the negative experience some injured workers have endured through the claims management process. Key issues include a high turnover of case managers, case managers with inadequate training and skills, and unacceptable delays in treatment.
- 4.139** We heard evidence about the adversarial nature of the scheme, and the impact a poor claims management process can have on injured workers, especially those with a psychological injury. We also heard about the trauma that can be created when injured workers have to re-tell their story to multiple case managers throughout the claim process.
- 4.140** The committee acknowledges that some measures have been implemented to improve the quality of case management, and that icare moved from one single provider to six from January 2023.
- 4.141** It is pleasing to see that four of the six providers appointed by icare provide specialist psychological claims capability, especially given the growth in psychological claims we outlined in the previous chapter. The committee was also pleased to hear from icare that professional

⁴⁶⁰ A brief summary of the Parkes Project may be found in Hon Robert McDougall QC, *icare and State Insurance and Care Governance Act 2015: Independent Review*, Report, 30 April 2021, p 258; Submission 38, Australian Lawyers Alliance, p 15; submission 30, Law Society of New South Wales, p 3.

⁴⁶¹ Evidence, Mr Tim Concannon, Chair, Injury Compensation Committee, Law Society of NSW, 10 October 2022, p 8.

⁴⁶² Evidence, Ms Elizabeth Welsh, Deputy Chair, Common Law Committee, NSW Bar Association, 10 October 2022, p 7.

standards are being developed for case managers, which will hopefully improve the capability and capacity of the industry.

- 4.142** Further, to address issues being raised in relation to case manager turnover, we believe there is merit in looking at ways to minimise the need for injured workers to re-tell their story when case managers change.
-

Recommendation 12

That the State Insurance Regulatory Authority and Insurance and Care NSW, in consultation with key stakeholders and injured workers, identify and implement measures to minimise the impacts caused by case manager turnover, in order to avoid further distress and/or trauma to injured workers if they have to re-tell their story.

- 4.143** In the context of declining return to work rates, the committee also sees benefit in a workplace rehabilitation provider being engaged early in the process, where appropriate. It is clear that workplace rehabilitation providers can have a positive impact on improving return to work outcomes and reducing claims costs, even in relation to psychological injury claims.
- 4.144** One of the issues also having an impact on return to work rates is delays in treatment. The committee was troubled to hear that some injured workers have been unable to access the medical support and treatment at the time they need them. Delays clearly compound the process, and prevent an injured worker from being able to recover and get back to work. While this may be related to turnover in claims managers and capability issues, we believe that SIRA should investigate the extent to which delays are being experienced and potential compliance measures.
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Recommendation 13

That the State Insurance Regulatory Authority investigate the extent to which delays in medical support and treatment are occurring and potential compliance measures.

- 4.145** Another issue causing significant concern for a number of stakeholders is the requirement for independent medical examinations. In this regard, we acknowledge the actions by SIRA and icare to reduce the number of independent medical examinations required of an injured worker, including the establishment of a Medical Support Panel. While the increased use of specialist case managers and enhanced capability and standards of case managers may assist in reducing the need for independent medical examinations in some cases, the committee considers there is merit in requiring only a single independent medical examination from a specialist agreed upon by all parties, where relevant.
-

Recommendation 14

That the NSW Government consider amendments to the workers compensation legislation that would ensure injured workers are only required to have a single independent medical examination from a specialist agreed upon by all parties, where relevant.

- 4.146** The committee accepts that for some injured workers, particularly those with a psychological injury, too great a focus on a return to work, particularly undertaking identical work in the same workplace, may be detrimental to the injured worker. The committee further acknowledges that a return to work may not always be feasible. For this reason, the committee accepts that there must be provision for such workers to exit the workers compensation scheme appropriately.
- 4.147** Key stakeholders, including icare, the Independent Review Office, and the Law Society of NSW, saw many benefits to be gained from increasing access to commutation settlements, although there were differing views as to what restrictions should apply. The McDougall Report also noted that there are many psychosocial benefits to be gained from allowing injured workers to exit the scheme through the use of a commutation settlement, especially for workers with psychological injuries. Therefore, the committee makes the following recommendation.
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Recommendation 15

That the NSW Government considers amending the workers compensation legislation to increase access to commutation settlements, provided that appropriate safeguards are included, such as the requirement for independent legal advice and the approval of the Personal Injury Commission where appropriate.

- 4.148** While there are many benefits to be gained from allowing provisional liability, namely that it ensures injured workers are provided with financial assistance and medical benefits while their claim is investigated, the committee acknowledges that there are some problematic aspects to the application of the reasonable excuse exception.
- 4.149** A number of inquiry participants also raised issues with the way in which the whole person impairment test is used in relation to psychological injuries. The committee has previously voiced its concern about the use of whole person impairment as a test within the workers compensation scheme. The committee recommended as part of its 2020 review that SIRA investigate whether the use of the whole person impairment test in the workers compensation scheme is appropriate and whether the restriction in terms of having one assessment of impairment could be removed for certain injuries. We note that the McDougall Report also had similar views in this area.
- 4.150** In addition, the committee notes evidence from stakeholders about the impact of having different thresholds for whole person impairment for psychological versus physical injuries. In our view, there may be benefit in reducing this complexity, and having the same measure in place regardless of the nature of injury.
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Recommendation 16

That the NSW Government considers amending the workers compensation legislation to:

- enable a further assessment of whole person impairment where there has been a significant deterioration in relation to an injury
 - ensure there is a consistent threshold for whole person impairment regardless of whether the injury is physical or psychological in nature.
-

- 4.151** The committee acknowledges that various concerns have been raised in relation to the tools used to measure whole person impairment, particularly the Psychiatric Impairment Rating Scale. The committee recommends that the use of this tool be reviewed, to determine whether it is the most effective way of calculating whole person impairment in relation to psychological injuries.
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Recommendation 17

That the State Insurance Regulatory Authority review the use of the Psychiatric Impairment Rating Scale within the workers compensation scheme, to assess whether it is the most effective tool for calculating whole person impairment in relation to psychological injuries.

- 4.152** Finally, the committee notes that throughout this review, many participants, including key stakeholders, agreed that a thorough review of the entire workers compensation scheme is warranted. Noting that this report has highlighted the need for a workers compensation scheme to deal more appropriately with psychological injuries, and that there are other areas of scheme design that would benefit from a fresh approach, the committee agrees such a review would be beneficial.
- 4.153** We urge the NSW Government to prioritise this work, particularly given the significant challenges currently faced by the scheme, and the experience of many injured workers.
- 4.154** The committee recommends that key stakeholders, who understand the intricacies of the system and the full implications of any changes, be included in every stage of this review process. This will help to ensure that any subsequent reforms mean New South Wales has a well-designed workers compensation scheme that reflects modern workplaces and responds well to the needs of an injured worker.
- 4.155** In this regard, we note that some of the other recommendations in this report, particularly those that related to potential legislative amendments, may best be actioned specifically through this comprehensive review process.
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Recommendation 18

That the NSW Government prioritise a targeted review, engaging with key stakeholders, of the entire workers compensation scheme, to ensure claims management and the claims management process meet the needs of injured workers and better reflects the nature of injuries occurring in modern workplaces. This review should include a consideration of whether there is an appropriate level of external oversight of quality assurance programs concerning claims service providers.

Appendix 1 Submissions

No.	Author
8	Name suppressed
12	Supplementary submission - Professor John Buchanan
20	Confidential
22	Supplementary submission - Miss Leah Redman
26	Supplementary submission - Insurance and Care NSW (icare)
30	Supplementary submission - The Law Society of New South Wales
31	Supplementary submission - Independent Review Office
34	Name suppressed
37	Supplementary submission - State Insurance Regulatory Authority (SIRA)
38	Supplementary submission - Australian Lawyers Alliance
40	Supplementary submission - Public Service Commission
41	Supplementary submission - Mr Matthew and Ms Sarah U'Brien

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday, 20 October 2023	Mr Adam Dent	Chief Executive, State Insurance Regulatory Authority
Macquarie Room		
Parliament House, Sydney	Mr Darren Parker	Executive Director, Workers and Home Building Compensation Regulation, State Insurance Regulatory Authority
	Mr Richard Harding	Chief Executive Officer and Managing Director, icare
	Mr Tony Wessling	Interim Group Executive, Workers Compensation (Nominal Insurer and TMF), icare

Appendix 3 Minutes

Minutes no. 4

Tuesday 22 August 2023

Standing Committee on Law and Justice

Room 1043, Parliament House, at 3.30pm

1. Members present

Mr Donnelly, Chair

Mr Rath, Deputy Chair

Mrs Carter

Mr D'Adam

Ms Higginson

Mr Lawrence

Mr Nanva

Mr Roberts

2. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 3 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 10 July 2023 – Letter from inmate at Cooma Correctional Centre, to the Chair, regarding telephone charges for persons in custody at Cooma Correctional Centre
- 17 July 2023 – Letter from individual, to the committee, enclosing documents submitted to the Independent Commission Against Corruption
- 24 July 2023 – Email from Ms Larissa Blake, Executive Assistant to the Chief Executive, State Insurance Regulatory Authority, to the committee, attaching document entitled 'Introduction to SIRA – Information Pack'
- 26 July 2023 – Email from Ms Andree Wheeler, Executive Director – icare, NSW Treasury, to the committee, providing a copy of NSW Treasury's speaking notes from the briefing on 20 July 2023 and responses to the committee's requests for further information.

Resolved, on the motion of Mr D'Adam: That the committee keep the letter from inmate at Cooma Correctional Centre, regarding telephone charges for persons in custody at Cooma Correctional Centre, dated 10 July 2023 confidential, as per the recommendation of the secretariat, as it contains sensitive information and potential adverse mention and that the committee refer this correspondence to the Chair of Portfolio Committee No. 8 – Customer Service.

4. 2023 Review of the Workers' Compensation Scheme

4.1 Referral of evidence from 2022 Review of the Workers' Compensation Scheme

The committee considered the timeline for finalising the 2022 Review of the Workers' Compensation Scheme, which was not table in the 57th Parliament. The committee considered referring the evidence received as part of the 2022 Review, to this committee, to form part of its evidence for the 2023 Review.

Resolved, on the motion of Mr D'Adam: That:

- the first of the oversight reviews conducted by this committee for the 58th Parliament be the review of the Workers' Compensation Scheme, and

- the Chair move a motion in the House to have the evidence from the 2022 Review of the Workers Compensation scheme referred to the committee to form part of the committee's evidence for its 2023 review of the workers compensation scheme.

4.2 Submissions

The committee considered inviting previous submission authors to update their submissions to the 2022 Review, should they so wish.

Resolved, on the motion of Mr Rath: That the Chair write to stakeholders who previously made a submission to provide an opportunity to update evidence previously provided, should they wish to do so.

4.3 Hearing dates

The committee considered inviting icare and SIRA to appear at a half-day hearing in September 2023 and to give an update on the evidence they provided to the previous inquiry on 10th October 2022.

Resolved, on the motion of Mr Roberts: That, subject to the evidence from the previous review being provided to the committee, and any updating information or evidence from those who made submissions in 2022, icare and SIRA be invited to appear at a half-day hearing in September 2023 and to give an update on the evidence they provided on 10th October 2022 to the previous inquiry.

4.4 Preparation of report

The committee considered the preparation of the report, incorporating evidence received during the 2022 Review as well as evidence received from icare and SIRA as part of the 2023 Review.

Resolved, on the motion of Mr D'Adam: That:

- a draft report be prepared and provided to the committee, incorporating evidence referred from the 2022 Review, as well as evidence received from previous submitters, as well as icare and SIRA as part of the 2023 Review, and
- the committee table the report into the 2023 Review on Tuesday 14 November 2023.

The committee noted that the completion of the 2023 Review will satisfy the requirement contained within the resolution establishing the committee that the committee report on the scheme at least once every Parliament. However, the committee is not precluded from conducting a further review of the scheme in this Parliament.

5. Next meeting

The committee adjourned at 3.51 pm *sine die*.

Laura Ismay

Committee Clerk

Minutes no. 5

Friday 20 October 2023

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney, 9.15 am

1. Members present

Mr Donnelly, *Chair*

Mr Rath, *Deputy Chair* (until 12.20 pm)

Ms Boyd (substituting for Ms Higginson for the duration of the inquiry)

Mrs Carter

Mr D'Adam

Mr Lawrence (until 11.00 am, then from 11.38 am)

Mr Nanva

Mr Roberts (until 12.34 pm)

2. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 4 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 30 August 2023 – Email from Mr Dan Reid, Office of Sue Higginson MLC to secretariat, advising that Ms Abigail Boyd MLC will be substituting for Ms Higginson for the duration of the inquiry
- 8 September 2023 – Email from Ms Elizabeth Greenwood, Senior Policy Officer, Workers Compensation, WHS and Regulation, Business NSW to secretariat, declining opportunity to update submission
- 25 September 2023 – Email from Ms Alicia Facal, Manager, Public Accountability, SIRA to secretariat, providing a corrected version of SIRA's supplementary submission
- 27 September 2023 – Email from an individual to secretariat, raising concerns about SIRA
- 4 October 2023 – Email from Ms Elle Bowsher, Senior Advisor, Ministerial and Parliamentary Support, SIRA to secretariat, providing a further updated version of SIRA's supplementary submission.

Sent

- 24 August 2023 – Email from secretariat to Portfolio Committee 8, NSW Parliament, forwarding correspondence from an inmate at Cooma Correctional Centre
- 19 October 2023 – Letter from Chair, to Ms Jennifer Lynch, previous inquiry participant, regarding the scope of the 2023 review of the workers compensation scheme.

Resolved, on the motion of Mr Rath: That:

- the committee keep the correspondence from an individual, regarding concerns about SIRA, confidential as per the recommendation of the secretariat, as it contains potential adverse mention
- the individual's name be redacted from Minutes No. 5
- the committee keep the correspondence from the Chair, to Ms Jennifer Lynch, regarding the scope of the 2023 review of the workers compensation scheme confidential.

4. Correspondence from individual enclosing documents submitted to the Independent Commission Against Corruption

Resolved, on the motion of Mr Rath: That the committee keep the correspondence from a member of the public enclosing documents submitted to the Independent Commission Against Corruption confidential as per the recommendation of the secretariat as it contains identifying and sensitive information.

5. 2023 review of the workers compensation scheme

5.1 Public submissions

The committee noted that the following supplementary submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: supplementary submission nos. 12, 26, 30, 31, 37, 38, 40 and 41.

Resolved, on the motion of Mr D'Adam: That the committee accept and publish the revised supplementary submission from the State Insurance Regulatory Authority, received on 4 October 2023 and that this version replace supplementary submission no. 37.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Lawrence: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in supplementary submission no. 34.

Resolved, on the motion of Mrs Carter: That the committee:

- authorise the publication of supplementary submission no. 8, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author
- authorise the publication of supplementary submission no. 22, with the exception of potential adverse mention which is to remain confidential, as per the recommendation of the secretariat.

5.3 Confidential submissions

Resolved, on the motion of Mr Nanva: That the committee keep submission no. 20 confidential, as per the recommendation of the secretariat, as it contains potential adverse mention.

5.4 Public hearing

Resolved, on the motion of Mr Roberts: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Resolved, on the motion of Ms Boyd: That witnesses be requested to return answers to questions within 14 days of receipt of the transcript.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority
- Mr Darren Parker, Executive Director, Workers and Home Building Compensation Regulation, State Insurance Regulatory Authority.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Richard Harding, Chief Executive Officer and Managing Director, icare
- Mr Tony Wessling, Interim Group Executive, Workers Compensation (Nominal Insurer and TMF), icare

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.46 pm. The public and the media withdrew.

Tabling date

Resolved, on the motion of Mr D'Adam: That the committee table the report on the 2023 review of the workers compensation scheme on Tuesday 5 December 2023.

6. Adjournment

The committee adjourned at 12.55 pm, *sine die*.

Talina Drabsch
Committee Clerk

Draft minutes no. 6

Friday 1 December 2023

Standing Committee on Law and Justice

Room 1043, Parliament House, Sydney at 1.06 pm

1. Members present

Mr Donnelly, *Chair*

Mrs Carter

Mr D'Adam

Mr Lawrence (via videoconference)

Ms Munro (substituting for Mr Rath)

Mr Nanva (via videoconference)
Mr Roberts

2. Apologies

Ms Boyd

3. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 5 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 21 October 2023 – Email from Ms Glenda Saville to secretariat, enclosing copy of affidavit
- 27 October 2023 – Email from Ms Vicki Bourbous to secretariat, regarding SIRA
- 30 October 2023 – Email from Ms Vicki Bourbous to secretariat, regarding SIRA
- 31 October 2023 – Email from Ms Vicki Bourbous to secretariat, regarding SIRA
- 3 November 2023 – Email from Ms Vicki Bourbous to secretariat, regarding SIRA
- 16 November 2023 – Email from Ms Elizabeth Atanasovski to secretariat, regarding dust diseases.

Resolved, on the motion of Mrs Carter: That the committee keep the correspondence from Ms Vicki Bourbous, regarding SIRA, dated 27, 30 and 31 October and 3 November 2023, confidential as per the recommendation of the secretariat, as it contains identifying and sensitive information and potential adverse mention.

Resolved, on the motion of Mrs Carter: That the committee keep the attachment to the correspondence from Ms Glenda Saville, enclosing copy of affidavit, dated 21 October 2023, confidential as per the recommendation of the secretariat, as it contains identifying and sensitive information and potential adverse mention.

5. 2023 review of the workers compensation scheme

5.4 Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Alicia Facal, Manager, Public Accountability, SIRA, received 9 November 2023
- answers to questions on notice from Koby Moore, Government Relations Advisor, icare, received 9 November 2023.

5.5 Consideration of Chair's draft report

The Chair submitted his draft report entitled *2023 review of the workers compensation scheme*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Roberts: That Recommendation 4 be amended by inserting the following new paragraph at the end:

'In recognition of the oversight functions of this committee, in instances where an issue is found to be a significant matter:

- a) icare must in writing inform this committee of such issues as soon as practicable. Such information should be in the form of a highlight summary of no more than one page;
- b) SIRA must notify this committee as soon as practicable of the way in which they have overseen the effective redress of the significant matter. Again, such information should be in the form of a highlight summary of no more than one page.'

Resolved, on the motion of Mr D'Adam: That Recommendation 6 be omitted: 'That the NSW Government investigate and look to implement opportunities to support injured public sector workers to return to work', and the following new recommendation be inserted instead:

'That the NSW Government:

- investigate and look to implement opportunities to support injured public sector workers to return to work
- develop a whole of government return to work strategy for the public sector to facilitate the placement of staff who have sustained an injury, in particular a psychological injury but cannot return to their usual workplace.'

Resolved, on the motion of Mr D'Adam: That the secretariat be authorised to insert the following quote, with an introductory sentence, at the relevant point near paragraph 3.9:

'That's the point we're making, particularly in the Treasury Managed Fund review, is that across the public sector, an employer of 430,000 people in New South Wales, there has to be greater opportunities to redeploy staff into alternative duties when they can't go back to their primary role. You may not be able to go back to your direct role where you have a health or physical requirement to undertake that role, but surely in the breadth of employment in the Crown there would be somewhere that person could be engaged in meaningful work that would support their recovery because we know recovery outcomes are considerably better when they're at work.' [FOOTNOTE: Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 15.]'

Resolved, on the motion of Mr D'Adam: That Recommendation 9 be omitted: 'That SafeWork NSW develop and implement more programs to manage and reduce psychosocial risks in conjunction with industry and union stakeholders' and the following new recommendation be inserted instead:

'That SafeWork NSW, in consultation with industry and union stakeholders: (i) develop, implement, evaluate and publicly report on all programs that manage and reduce psychosocial risk'.

Mr D'Adam moved: That Recommendation 9 be amended by inserting at the end: '(ii) undertake a project to build the capacity and number of health and safety representatives who have received training in identifying, managing and responding to psychosocial hazards in the workplace'.

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Donnelly, Mr Lawrence, Mr Nanva, Mr Roberts.

Noes: Mrs Carter, Ms Munro.

Question resolved in the affirmative.

Resolved, on the motion of Mr D'Adam: That Recommendation 9 be amended by inserting at the end: '(iii) undertake an enforcement campaign targeting workplaces that have high incidents of psychological injury to ensure they have in place a psychosocial hazard risk assessment. The efficacy of this campaign should be subject to an independent external evaluation.'

Resolved, on the motion of Mr D'Adam: That the secretariat be authorised to insert the following quotes, with introductory sentences, at the relevant points in chapter 3:

'It's a useful beginning point in working with HSRs and workers and organisers and others working for unions to think about what is the breadth of psychosocial hazards and risks for workers, and the scenarios with that.' [FOOTNOTE: Evidence, Mr Alan Mansfield, Workers Compensation Health and Safety Officer NSW and ACT, Australian Manufacturing Workers Union, 8 September 2022, p 7.]

'The Hon. ANTHONY D'ADAM: I've asked SafeWork at estimates about their enforcement action around psychological hazards and around those kinds of approaches. Perhaps the panel might be able to offer some commentary around whether they think the regulator is appropriately dealing with that

question of safe systems at work that seems to deal with those questions around how organisations might address the types of hazards that lead to psychological injuries.

SHERRI HAYWARD: My answer is pretty quick on this, and that is they don't, particularly not for construction. As I mentioned in my opening, we have not seen them at all dealing with psychological claims or how the systems of work on a construction site might increase the risk of psychological claims. Our workers work 60 to 70 hours a week, so work intensification is a real issue for them. There has been nothing from SafeWork.' [FOOTNOTE: Evidence, Ms Sherri Hayward, Legal/Industrial Officer, Construction Forestry Maritime Mining and Energy Union (NSW Branch), 8 September 2022, p 6.]

Resolved, on the motion of Mr Nanva: That Recommendation 17 be amended by inserting at the end: 'This review should include a consideration of whether there is an appropriate level of external oversight of quality assurance programs concerning claims service providers.'

Resolved, on the motion of Mr D'Adam: That the following new recommendation be inserted after Recommendation 7:

'Recommendation X

That iCare, SIRA, SafeWork NSW and the Department of Education work in partnership to conduct a forensic investigation into the underlying drivers of stress-related psych claims in the Education sector.'

Resolved, on the motion of Mr D'Adam: That the secretariat be authorised to insert the following quote, with an introductory sentence, at the relevant point under the section entitled 'Industry trends':

'The Hon. ANTHONY D'ADAM: It is quite clear that work pressure is the primary driver. I think this table is very illustrative of the intersection between a broader public policy question around teacher workload and teacher numbers. Here we see that phenomena translating into an increase in, or a high number of, psychological claims driven by work stress. Some 41 per cent of claims are assigned to work pressure. There is a clear nexus there, isn't there?

ADAM DENT: Absolutely. I think that is quite concerning. I think that then leans to a conversation around the structure of work in those environments. From our point of view, we would see those issues as being good ones for agencies like SafeWork to potentially then work with employers. But certainly the employers themselves will be able to take those matters into consideration. But that is a highly disproportionate number, absolutely.' [FOOTNOTE: Evidence, Mr Adam Dent, Chief Executive, SIRA, 20 October 2023, p 4].

Resolved, on the motion of Mrs Carter: That

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, summary report of the injured workers roundtable discussion and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report at 11.30 am Tuesday 5 December 2023;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

6. Adjournment

The committee adjourned at 2.31 pm, *sine die*.

Talina Drabsch
Committee Clerk

