2023 review of the operation of the Queensland workers' compensation scheme

Final report

28 June 2023

Hon Grace Grace MP
Minister for Education, Minister for Industrial Relations
and Minister for Racing

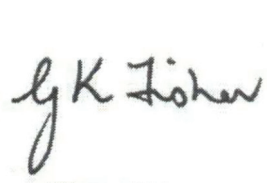
1 William Street
Brisbane QLD 4000

Dear Minister

We have pleasure in providing you with our report on the five-yearly review of the operation of the workers' compensation scheme in Queensland, undertaken pursuant to section 584A of the *Workers' Compensation and Rehabilitation Act 2003*.

We wish to record our appreciation of all organisations and individuals who made written submissions and engaged with us in meetings either in person or virtually. We also acknowledge the valuable support and assistance provided by staff of the Office of Industrial Relations in preparing this report.

Yours sincerely



Glenys Fisher

David Peetz

Table of Contents

Glossary

Term	Definition
Accepted claim	When the first decision about the application for compensation is to accept the claim. This excludes claim decisions where the first decision is rejected, cancelled, withdrawn, report only or common law only
Accident Insurance Policy	A workers' compensation insurance policy, compulsory for employers engaging workers. The policy covers the employer's liability for workers' compensation and damages arising out of a work-related injury sustained by the worker
The Act	The *Workers' Compensation and Rehabilitation Act 2003* (as amended)
Affected Persons Committee	Consultative Committee for Work-related Fatalities and Serious Incidents established under the *Work Health and Safety Act 2011*
AHPRA	Australian Health Practitioner Regulation Agency
ALP	Australian Labor Party
AMAQ	Australian Medical Association Queensland
Average premium rate	The average premium rate is a rate per $100 of wages (that is, it is expressed as a percentage), calculated by averaging net premium assessed for the year as a proportion of total wages declared by all employers for that year
Average settlement cost	The average settlement cost, regardless of when payments were made, of finalised common law claims (excludes claims with a nil settlement)
Claims experience	An employer's claims experience is used when calculating premium and is comprised of the statutory claims amounts paid under an employer's Accident Insurance Policy for the preceding three years and the damages claims amounts paid under the policy for the two years preceding that
CLSO	Claims Liaison Support Officer
Common law claim	A court action commenced by a worker against their employer for damages arising from alleged negligence
CPD	Continuing professional development
CPM	Comparative performance monitoring by Safe Work Australia
CRIS	Consultation Regulatory Impact Statement
CSG	*Commonwealth Scholarship Guidelines (Research) 2017* (Cth) made under s 238-10 of the *Higher Education Support Act 2003* (Cth)
Damages	Damages are amounts awarded to a successful litigant in a common law claim. Examples include general damages (compensation for pain and suffering) and economic loss (compensation for loss of past earnings or future earning capacity)
DDG	Deputy Director-General
DPI	Degree of permanent impairment
DSM	Diagnostic and Statistical Manual of Mental Disorders (number afterwards refers to edition)
ES Act	*Electrical Safety Act 2002*
ESO	Electrical Safety Office
Estimated wages	When calculating premium, WorkCover requires details of the actual wages paid during the last financial year and the estimated wages expected to be paid in the next financial year
EWE Act	*Education (Work Experience) Act 1996*
The Framework	Nationally Consistent Approval Framework for Workplace Rehabilitation Providers endorsed by HWCA (replaced by the Principles of Practice for Workplace Rehabilitation Providers)
FTE	Full-time equivalent

Term	Definition
FW Act	*Fair Work Act 2009* (Cth)
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
GEPI	Guidelines for Evaluation of Permanent Impairment
GP	General practitioner
HDR	Higher Degree Research
Health provider	Health provider refers to any medical or allied health provider (for example a doctor, medical specialist, physiotherapist, chiropractor or occupational therapist) who is registered with the relevant professional board (e.g. Physiotherapist Board of Queensland)
HES Framework	*Higher Education Standards Framework (Threshold Standards) 2021*
Host employer	Except in a labour hire context, an employer who agrees to host an injured worker at their workplace when the worker is unable to participate in workplace rehabilitation with their original employer, such as through WorkCover's Recover at Work program
HWCA	Heads of Workers' Compensation Authorities
IARC	International Agency for Research on Cancer
icare	Insurance and Care New South Wales
Impairment	The Act describes impairment from injury as being 'a loss of, or loss of efficient use of, any part of a worker's body'
Industry	All industry codes are based on the insurers' coding of industry to the divisions from the 'Australian and New Zealand Standard Industry Classification' (ANZSIC), Australian Bureau of Statistics (ABS), 2006
Industry rate	The WorkCover industry rate is the amount of premium per $100 of wages for a specific WorkCover Industry Classification (WIC) code
Injury	Under the Act, an injury is, 'a personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury'
IP Act	*Information Privacy Act 2009*
IPaM	Injury Prevention and Management Program. A partnership between WorkCover and Workplace Health and Safety Queensland which helps employers who have a high frequency of claims bring about a workplace culture change and achieve a better standard of workplace health and safety and injury management
IPP	Information Privacy Principles
IR Act	*Industrial Relations Act 2016*
IRRI	The Injury Risk Reduction Initiatives program operated by WorkCover
ISCRR	Institute of Safety, Compensation and Recovery Research
***It Pays to Care* report**	*It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace* (the *It Pays to Care* report) authored by the Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine
Journey claim	A workers' compensation claim for an injury arising in the circumstances mentioned in section 35 of the Act, such as an injury sustained while on a journey between the worker's home and place of employment
K10	Kessler Psychological Distress Scale
LHL Act	*Labour Hire Licensing Act 2017*

Term	Definition
Lodgements	All claims lodged with insurers, regardless of the outcome (i.e. excludes cancelled claims, includes withdrawn and report only claims)
MAT	Medical Assessment Tribunal
National Communication Principles	*National principles for communicating workers' compensation information to workers*
NIIS	National Injury Insurance Scheme
Nil settlement	A settlement finalising a common law claim with no damages paid
NRTW Survey	Safe Work Australia's National Return to Work Survey
NWE	Normal weekly earnings
OIR	Office of Industrial Relations
Operating Model Review	The external review of the WCRS Review Unit's operating model commissioned by WCRS
Orebro Questionnaire	Orebro Musculoskeletal Pain Questionnaire
PAYG	Pay As You Go (taxation instalments)
PC	Productivity Commission
PCBU	Person Conducting a Business or Undertaking
Permanent impairment	An impairment that is stable and stationary and not likely to improve with further medical or surgical treatment (section 38 of the Act)
PIEF	Personal Injury Education Foundation
PIRS	Psychiatric Impairment Rating Scale
Policyholder	An individual or entity that holds an insurance policy with WorkCover
Premium notice	A notice that is sent to WorkCover policyholders detailing an amount payable on their policy following inception, renewal or reassessment
Premium rate	The premium rate per $100 of wages for an individual employer
The Principles	Principles of Practice for Workplace Rehabilitation Providers endorsed by HWCA
Psychosocial Code	*Managing the risk of psychosocial hazards at work Code of Practice 2022*
PTSD	Post-traumatic stress disorder
PTT	Permission to Teach, given by the Queensland College of Teachers
Q-COMP	Q-COMP is now the Workers' Compensation Regulator
QCU	Queensland Council of Unions
QIRC	Queensland Industrial Relations Commission
QOTE	The Act describes Queensland ordinary time earnings (QOTE) for a financial year as being 'the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year; or if this amount is less than QOTE for the previous financial year, QOTE is the amount that is QOTE for the previous financial year'
RACGP	Royal Australian College of General Practitioners
The Regulation	*Workers' Compensation and Rehabilitation Regulation 2014*
The Regulator	Workers' Compensation Regulator

Term	Definition
Rehabilitation	Under the Act, the purpose of rehabilitation is to ensure the worker's safest and earliest possible return to work or to maximise the worker's independent functioning. Rehabilitation for return to work (sometimes called occupational, vocational or workplace rehabilitation) can include treatment from a range of health providers, assessments of work capacity and suitable duties programs
Rehabilitation Guidelines	The Guideline for Standard for Rehabilitation published by the Regulator
Return to work	The worker's timely, safe and medically structured return to preinjury duties, or other employment, following workplace injury
RIS	Regulatory Impact Statement
RMA	Reasonable management action
RTO	Registered Training Organisation
RTW	Return to work
RRTW	Rehabilitation and return to work
RRTWC	Rehabilitation and return to work coordinator
Self-insurer	An employer who meets certain legislative criteria to insure its workers other than with WorkCover
SIRA	New South Wales State Insurance Regulatory Authority
Suitable duties program	A suitable duties program is designed to help workers return to work gradually through a supervised process. The program matches a worker's abilities with appropriate work tasks and hours. The goal of the program is to help workers return to their normal duties
SWA	Safe Work Australia
Time lost claims	All accepted claims which have resulted in time lost from work excluding fatalities
Wages	The total amount an employer pays to a worker as defined by Schedule 6 of the Act
WCIAS	Workers' Compensation Information and Advisory Service
WCPU	Workers' Compensation Prosecutions Unit
WCRS	Workers' Compensation Regulatory Services
WFH	Work from home
WHS	Work health and safety
WHS Act	*Work Health and Safety Act 2011*
WHS Board	Work Health and Safety Board
WHSQ	Workplace Health and Safety Queensland
WIL	Work integrated learning
WISE	Work Injury Screen Early
WorkCover	WorkCover Queensland
WorkCover Industry Classification (WIC)	An industry classification system based on the Australian and New Zealand Standard Industrial Classification. Businesses will be assigned an appropriate industry category on the basis of their whole-of-business activity
Worker	Under the Act, a 'worker' is an individual who works under a contract and in relation to the work, is an employee for the purpose of assessment for PAYG withholding under Schedule 1, Part 2-5 of the *Taxation Administration Act 1953* (Cth) or specifically included under Schedule 2 Part 1, unless specifically excluded under Schedule 2 Part 2

Term	Definition
Workers' Understanding Report	*Australian workers' understanding of workers' compensation systems and their communication preferences* released by Safe Work Australia
Work-related injury	An injury arising out of, or in the course of, employment where employment was a significant contributing factor
WPSS	Workers' Psychological Support Service
WRP	Workplace rehabilitation provider
2018 Review	The second operational review of the workers' compensation scheme undertaken in 2018 by Professor David Peetz

List of Recommendations

Rec #	Recommendation	Page #
Chapter 1: Introduction		
1	That future reviews of the workers' compensation system and legislation, and of work health and safety legislation, include, as a term of reference, the systems, practices and legislation needed to allow better co-ordination between workers' compensation and workplace health and safety, without compromising the objectives of either system.	22
2	That the leadership of OIR investigate and consider the systems, practices and policies necessary to maximise co-ordination between workers' compensation and workplace health and safety, without compromising the objectives of either system.	22
Chapter 2: Mental injuries		
3	That the Minister consider introducing a Bill to amend the Act by replacing the phrase "psychological or psychiatric injury" with "mental injury". Relevant regulatory and guidance documents should also be updated to incorporate this term. The *Workers' Compensation and Rehabilitation Regulation 2014* should be amended to update the DSM to the latest version.	24
4	That, in relation to information at the early claims stage: (a) the Regulator should finalise and publish the factsheet on reasonable management action; and (b) the Regulator should ensure that WorkCover and other insurers review their claims forms so they are suitable for mental injuries and provide links to the Regulator-approved factsheet about reasonable management action, subject to vetting by the Regulator.	25
5	That the Minister consider introducing a Bill to amend the Act to require insurers to make in-person contact with primary mental injury claimants, for the purpose of enabling them to access, where appropriate, relevant early intervention supports.	27
6	That WorkCover should improve workers' access to mental health support by reviewing their practices to ensure the greater use of allied health workers with relevant mental health qualifications and provides for such services in the Table of Costs.	28
7	That the Regulator commission research to identify pathways from primary physical to secondary mental injuries. These should include: (a) engaging a research provider to identify the main drivers of secondary mental injuries; (b) primary research comparing the trajectories of workers with physical workplace injuries who (i) lodge a secondary mental injury claim; or (ii) develop a mental disorder but do not lodge a claim; or (iii) do neither; and if/how this intersects with policies and programs; and (c) projects examining safety leadership, culture and the drivers of secondary mental injuries in the mining and finance/insurance industries.	29
8	That the Regulator establish a stakeholder reference group, including representatives of scheme psychiatrists and/or peak psychiatric bodies, to develop guidance for insurers to assist insurers' claims representatives in making decisions in claims for secondary mental injuries.	31
9	That the Minister consider introducing a Bill to amend the Act to require early intervention services for workers with relevant physical injuries, designed to minimise the development of secondary mental injuries. In particular: (a) once a claim for a physical injury is lodged, if the physical injury is likely to lead to two or more weeks off work, the insurer should identify appropriate referrals that should be made to prevent the development of a secondary mental injury, including possible workplace discussion facilitation; (b) this identification process should be done using a psychosocial assessment tool; and (c) the threshold expected period off work (initially two weeks) should be defined in the Regulation and can be amended after evaluation of this reform.	33

Rec #	Recommendation	Page #
10	That the Regulator establish an external expert consultative group to determine the most appropriate psychosocial screening tool for immediate use and later to examine the outcomes of the research to consider a bespoke screening tool and other measures to minimise the conversion of primary physical claims into secondary mental claims.	33
11	That the Minister consider introducing a Bill to amend the Act to: (a) enable the Regulator to share information about high-risk workplaces for mental injuries with WHSQ while protecting the privacy of individual workers, without relying on a specific request from WHSQ; and (b) permit the Regulator to collect information from insurers about high-risk workplaces. Prior to this, a working group, chaired by the DDG of OIR, with representatives of WCRS and WHSQ be established to devise processes that would enable the identification of 'high risk' workplaces for mental injuries, and the sharing of information on these workplaces. WHSQ should then work with management and health and safety representatives in those workplaces to ensure that the *Managing the risk of psychosocial hazards at work Code of Practice 2022* is being followed.	36
Chapter 3: Rehabilitation and return to work		
12	That the Minister consider introducing a Bill to amend the Act to provide that enforceable standards or codes of practice can be issued to support the enforcement of any aspect of the Act. All guidelines and factsheets on rehabilitation and return to work should be reviewed to ensure that any which are enforceable are not referred to as 'guidelines' and to determine which should be transitioned to an enforceable standard or code of practice under the Act.	41
13	That the Minister recommend that Government establish 'model employer in compensation and rehabilitation' principles to apply to all agencies of the State, drawing from the principles of 'model litigant' that lawyers acting for the State follow, and include principles on good behaviour, including an obligation to offer suitable work.	42
14	That the Minister consider introducing a Bill to amend s 228(4) of the Act to require that: (a) the employer, when providing written evidence that suitable duties are not practicable, describe the steps taken or the inquiries made to reach that determination; and (b) the insurer take reasonable steps to satisfy itself that no suitable duties are available, and, where appropriate, use the penalty provisions at s 228(1) and s 229 where it is not satisfied.	42
15	That the Minister consider introducing a Bill to amend s 42 of the Act to include a provision that suitable duties are to be meaningful to the worker. This requirement is also to be included in the Workers' Statement of Rights (see recommendation 37).	43
16	That the Regulator undertake regular targeted audits to ensure that all employers who are required to appoint a rehabilitation and return to work coordinator under s 226(1) of the Act have an appropriately trained person in place.	44
17	That the Principles of Practice for Workplace Rehabilitation Providers endorsed by the Heads of Workers' Compensation Authorities be given effect in the scheme by an enforceable standard or code of practice under the Act, which would ensure the quality of workplace rehabilitation providers in the scheme.	45
18	That, in developing the regulatory mechanism for WRPs, the Regulator consult with relevant professional bodies to set out the qualifications and types of services that can be provided by each of the professions.	45
19	That the Minister consider introducing a Bill to amend the Act to provide that an injured worker has the right to choose an alternative WRP from the list of accredited providers where the worker is dissatisfied with the WRP selected by the insurer. This right is to be included in the Workers' Statement of Rights (see recommendation 37).	46

Rec #	Recommendation	Page #
20	That the Minister consider introducing a Bill to amend the Act to provide that a RRTW plan for an injured worker is to be developed within 10 business days of a claim for compensation being accepted. It may be amended from time to time thereafter, in consultation with the worker, to take account of changed circumstances.	**47**
21	That the Minister consider introducing a Bill to amend the Act to provide access to workplace facilitated discussions delivered by a suitably qualified and accredited WRP. Separately, that WorkCover amend its Table of Costs to include workplace facilitated discussions. Access to workplace facilitated discussions should occur where an employer or a worker is resistant to participating in a RRTW plan, where the employer declines to provide suitable duties or if the desirability of such discussions becomes apparent during the RRTW process. It may also be activated by the screening tool identified in early intervention.	**48**
22	That the Minister consider introducing a Bill to amend the Act to require host employers to cooperate with labour hire providers to assist them to comply with their obligations to establish and implement a rehabilitation and return-to-work program and provide the pre-injury position or a suitable duties position to the extent it is reasonable to do so. This should be an offence provision.	**49**
23	That the Minister consider introducing a Bill to amend the Act to enable insurers to take account, in the setting of premiums, of the claims experience of labour-hire workers on host employers' sites in the same way as their own employees' are taken into account.	**50**
24	That WorkCover consider extending the claims cost exemption for workers taken on after the expiry of their coverage by the 'Recover at Work' scheme, from six months to 24 or 36 months.	**51**
25	That: (a) the Minister consider introducing a Bill to amend the Act to oblige insurers to contact workers six months after benefits cease, and offer to pass their name on to a selected RRTW provider if, after exiting the scheme, they had become unemployed due to their injury. The provider should be selected through a procurement process; and (b) the information collected by insurers should be shared with the Regulator on an anonymous basis under a mandatory reporting requirement.	**52**
Chapter 4: Coverage		
26	That the Minister consider introducing a Bill to add asbestos related diseases, primary site liver cancer, primary site lung cancer, primary site skin cancer, primary site cervical cancer, primary site ovarian cancer, primary site pancreatic cancer, primary site penile cancer, primary site thyroid cancer and malignant mesothelioma into the Act as presumptive illnesses for firefighters.	**55**
27	That the Minister: (a) consider introducing a Bill to amend the Act to treat day work rotation as service for the purpose of s 36E of the Act; and (b) refer the qualifying periods for the new diseases, and the issue of the treatment of extended leave, for consultation with stakeholders, experts and the Special Commissioner, Equity and Diversity with the prima facie starting point for consultations being the qualifying periods used in the other jurisdictions.	**56**
28	That the Minister consider introducing a Bill to amend the Act to ensure that tertiary students (including student nurses and student teachers and others in work-integrated learning) are covered by workers' compensation insurance while in placements that are required for their studies or where those placements are performing functions benefiting the organisations for which they are working.	**58**

Rec #	Recommendation	Page #
Chapter 5: Benefits		
29	That the Minister consider introducing a Bill to amend the Act to provide a default payment of weekly compensation after a claim is accepted and until an insurer calculates the applicable rate of weekly compensation. This would be a fixed percentage of QOTE. For part-time and casual employees, the default payment would be the fixed percentage of QOTE expressed as an hourly rate, times the number of hours per week the employee nominates they normally work. Over/underpayments would be made up through subsequent benefits once the correct rate was calculated.	**64**
30	That an independent review of the scope and adequacy of the Act's provisions related to work-related deaths should occur, as a matter of priority, to ensure that the families of deceased workers receive appropriate support to help ameliorate their loss, both financial and non-financial. The review should include representation from kin of deceased workers.	**66**
Chapter 6: Compliance, education and prevention programs		
31	That the Minister consider introducing a Bill to amend the Act to: (a) impose on insurers a positive duty to report suspected offences by employers to the Regulator; and (b) include protections for employees of self-insurers who report employer offences.	**68**
32	That the Minister consider writing to the Commonwealth Minister with portfolio responsibility for the Fair Work Ombudsman, formally requesting greater co-operation in identifying employer non-compliance.	**69**
33	That the Regulator undertake a review of the employer-specific obligations and offences in the Act to ensure that they are fit for purpose, meet community standards and can be practically enforced. The Minister consider introducing a Bill to amend the Act to introduce further regulatory tools including enforceable notices and on the spot fines.	**70**
34	That the Minister consider introducing a Bill to amend the Act to include an offence prohibiting employers from making payments to an injured worker in lieu of the worker making a claim for compensation.	**70**
35	That the Workers' Compensation Information and Advisory Service and the Workers' Compensation Helpline be actively promoted by insurers and by the administering organisation, including by more prominently displaying these services on their websites and by written information, YouTube, webinars and on lodgement or notification of a claim, to increase visibility and accessibility.	**72**
36	That the Regulator provide a grant for the establishment of an advisory service for GPs, along the lines of those funded for workers and employers, to be based within an organisation that represents the interests of GPs.	**72**

Rec #	Recommendation	Page #
37	That, in consultation with stakeholders, the Regulator should develop a statement of workers' rights and responsibilities in the workers' compensation system, to be distributed in workplaces, on insurer websites and provided to all injured persons on notification of an injury. The statement should include such matters as – the right of a worker to: (a) make a claim for workers' compensation; (b) choose their own treating medical practitioner; (c) not have an employer contact the treating practitioner or attend a medical consultation except with genuine consent; (d) choose their WRP where they are dissatisfied with the choice made by the insurer; (e) seek advice and support from their union, the WCIAS, the WPSS or lawyer; and (f) participate in the development of their RRTW plan; and the responsibilities of a worker to: (a) satisfactorily participate in RRTW; and (b) treat insurer staff with courtesy.	**74**
38	That the Minister consider for which rights, set out in recommendation 37, it is necessary or appropriate to introduce a Bill to confirm their existence.	**74**
Chapter 7: Delays and time frames		
39	That the Minister consider introducing a Bill to amend the Act to require an insurer to decide an application for compensation for a mental injury within 25 business days. The amendment should also require the time frame to be reviewed every two years.	**78**
40	That, to enable the above time frames to be met, WorkCover should: (a) in the short term, create a "Legacy" Claims Team to respond quickly to the remaining mental injury claims received before the new dates; (b) in the medium to long term, commit to meeting its legislative obligations regarding time frames for decision making; and (c) take into account, in the setting of future premiums, the need to meet legislative obligations regarding time frames for decision-making.	**78**
41	That the Minister consider introducing a Bill to amend the Act to allow the Minister to set, through Regulation, maximum periods for the provision of information to insurers for the purpose of calculating the decision-making time frame in recommendation 39. These would be: (a) information from the injured worker to WorkCover – 7 business days; (b) information from the employer to WorkCover – 5 business days; (c) information from a medical practitioner to WorkCover – 5 business days; and (d) response from the injured worker to WorkCover (natural justice response) – 3 business days.	**79**
42	That the Minister oversee discussions with WorkCover to determine the most appropriate method for imposing a 10 business day limit for the employer submission of wage information to WorkCover. This could involve either: (a) a Bill to amend the Act to allow insurers to compel employers to comply with requests for wage information within 10 business days; or (b) for employers who provide the information within time, a discount on the excess payable, administered by WorkCover.	**79**
43	That WorkCover should continue to be excluded from staffing limitations on hiring in state government agencies, and any future staffing limitations should not be voluntarily adopted by WorkCover.	**80**

Rec #	Recommendation	Page #
44	That the Minister seek to ensure that the Review Unit of the Regulator (the Unit that decides applications for review of insurer decisions) is adequately resourced by: (a) to overcome the backlog, providing a significant short-term increase in resources to enable most current physical and some mental injury cases to be dealt with by a legacy panel, comprising an expanded Legal Panel including barristers plus existing Regulator staff; (b) seeking to remove the Review Unit from the FTE cap facing OIR, except for staff funded by consolidated revenue; and (c) to minimise the gap between receipt and allocation of cases, providing an appropriate sustained increase in resources to the Review Unit. This may involve revisiting the regulated formula for the levy and contribution.	82
45	The Minister consider introducing a Bill to amend the Act to provide that: (a) the Regulator can establish a standard on the format of the file the insurer is to provide to allow the review to proceed; (b) the file, in the required format, is to be provided to the Regulator within 5 business days of being requested; (c) an application for review is to be allocated for review no later than 10 business days after receipt of the insurer's file in the prescribed format; (d) the Regulator must then review and decide the application within 25 business days of the date after the file has been allocated for review; (e) the time frame for the allocation of the review is to be subject to a sunset clause of two years after the date of assent of the Act; and (f) the current provisions allowing an extension of time to make a decision within prescribed circumstances remain.	83
Chapter 8: Claims administration and reviews		
46	That the Regulator be funded, through the levy on insurers, to provide a claims liaison and support officer/adviser (CLSO), such that: (a) the CLSO would be the principal point of contact for claimants who have lodged claims for death entitlements, very serious injuries and latent onset injuries; (b) the aim would be to help such claimants navigate through the system and claims process; (c) the CLSO would be separate from and independent of the case manager and their organisation; and (d) the CLSO program should be piloted for a period of one year and then evaluated to determine whether it should be continued or extended to other groups of injured workers.	84
47	That OIR should ensure implementation of the external review of the Regulator. To this end: (a) it should establish a working group comprising representatives of WCRS, WorkCover, self-insurers and WHSQ to oversee reforms; (b) the purposes of the working group should include evaluation of the implementation of reforms, and consideration of what other changes need to be made to ensure data is high quality and being optimally used; and (c) the review should report directly to the DDG of OIR.	85
48	That the early intervention programs set out in recommendations 5 and 9, and other initiatives, be supported though adequate training and development of insurer staff, by: (a) the Regulator establishing appropriate standards and competencies for training and development in early intervention; and (b) insurers increasing their investment in education of staff, especially new staff dealing with initial claim lodgements or referrals to early support services.	86

Rec #	Recommendation	Page #
49	That, in consultation with relevant stakeholders, the Regulator develop an enforceable standard for insurers' claims administration and conduct to include: (a) proactive contact with workers and employers; (b) ensure relevant information is collected before the claim is determined; and (c) ensure insurers are advising employers of their obligations under the Act to supply relevant information and to enforce this.	88
50	That the Regulator should amend the employer reporting injury form to include a response as to whether: (a) an incident report was made (and to be attached); (b) there were witnesses to the incident; and (c) an investigation of the incident was being/had been undertaken by the employer and the progress/outcome of the investigation (with supporting information and/or documentation to be attached).	88
51	That the Regulator convene a working group of stakeholders including unions, employers, legal organisations and insurers to develop guidance or a code of practice on the type of supporting information required to be provided to insurers by injured workers and employers for a mental injury claim. Claims staff of insurers should receive training in the type of information required to support a mental injury claim and how to determine the relevance of it in determining a claim.	89
52	That the Regulator should implement a governance framework to ensure appropriate training/refresher training and ongoing due diligence checks for medical specialists who undertake the evaluation of permanent impairment in the Queensland scheme. The Regulator's Medical Advisor should provide advice to inform the development of the framework and assist in overseeing its implementation.	91
Chapter 9: Gig economy workers		
53	That, in light of the likely outcomes from developments in the federal sphere, the Minister: 1. note the absence of impediments to legislating in the area of gig economy workers; and so 2. consider introducing a Bill to implement preferred options from the CRIS. That is, in relation to gig economy workers, to: (a) amend the Act to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums (as per the recommendations of the 2018 Review); and (b) in relation to the other insecure work covered by the CRIS, amend the Act to either: extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement; or enhance and mandate private personal accident insurance for taxi and limousine licence holders.	101
54	That, after the Queensland system of workers compensation is extended to gig workers, OIR should monitor developments in the federal jurisdiction to determine if any other groups of vulnerable workers, not captured by the recommendation in the 2018 Review, should be covered by the Queensland workers' compensation system. Options for including such workers would include use of the deeming provisions in the Act.	101

Chapter 1: Introduction

This is a report of the third operational review of the Queensland workers' compensation scheme. The review was completed under section 584A of the *Workers' Compensation and Rehabilitation Act 2003* (Act), which requires that a review be conducted every five years. The terms of reference for this review are contained in **Appendix A**, along with the legislative reference to the review.

In undertaking this review, we consulted with scheme stakeholders including unions, insurers, employers, and medical, legal and allied health professions. Relevant scheme stakeholders were provided with an issues paper outlining key scheme trends and developments and invited to make a written submission to the review. Written submissions were also accepted from additional stakeholders during the consultation process. Between February and May 2023, we held in-person and virtual consultation sessions with key scheme stakeholders. Lists of the above stakeholders appear in **Appendix B**.

1.1 Overview of the Scheme

The operation of the Queensland workers compensation scheme is summarised in **Appendix C**, which includes both textual and schematic descriptions of the scheme. However, a brief summary is provided below.

The Queensland workers' compensation scheme is a centrally funded, short-tail, no-fault scheme, with access to common law damages. The scheme covers over 182,000 employers and an estimated 2.6 million workers.

The object is to provide benefits for workers who sustain an injury in their employment, for the dependants of deceased workers, and for other specified non-workers. The scheme is intended to maintain a balance between providing fair and appropriate benefits for these individuals and ensuring reasonable cost levels for employers.

Administration of the scheme is undertaken by:

- Workers' Compensation Regulatory Services (WCRS) within the Office of Industrial Relations (OIR), which performs regulatory functions of the Workers' Compensation Regulator (the Regulator)[1] and implements government's policy and legislative agenda;
- WorkCover Queensland (WorkCover), a State-established default insurer which administers approximately 93 per cent of claims in Queensland; and
- 27 self-insurers, comprising employers licensed by the Regulator to provide their own workers' compensation insurance instead of insuring with WorkCover.

Workers' compensation entitlements are payable in the event a worker is injured at work or develops a work-related illness or disease. A worker is usually an employee, although certain others subject to PAYG withholding in the taxation system, or otherwise specified in the Act are also covered. Independent contractors are not presently covered. Coverage of workers' compensation systems is broadly similar between the states, but all have some differences to others; an outline of the coverage in each jurisdiction is in **Appendix D**. The injury must be a personal injury arising out of, or in the course of employment, and the employment generally must be a significant contributing factor. An injury may include a disease or aggravation of a personal medical condition; however mental injuries can be excluded in circumstances relating to reasonable management action.

Statutory no-fault compensation is payable by an insurer (most commonly, WorkCover). This can include weekly compensation for lost wages, medical expenses, rehabilitation and travel, as well as death entitlements and lump sum compensation.

Queensland has a 'short tail' workers' compensation scheme, meaning that the entitlement of a worker to weekly compensation stops when the first of the following happens:

- the incapacity itself ends;
- the worker has received weekly payments for the incapacity for five years;
- the weekly benefits received reach the maximum amount under Part 6 of the Act ($361,273 as at 1 July 2022);[2] or
- there is a settlement or judgment for damages,[3] a redemption payment from the insurer,[4] or a notice of assessment with an offer of lump sum compensation.[5]

1 The Regulator is the Deputy Director-General of OIR.

2 *Workers' Compensation and Rehabilitation Act 2003*, s 144A.

3 *Workers' Compensation and Rehabilitation Act 2003*, s 119.

4 *Workers' Compensation and Rehabilitation Act 2003*, s 176.

5 *Workers' Compensation and Rehabilitation Act 2003*, s 190. In this case, the entitlement ceases within a specified timeframe.

Lump sum compensation is payable for a permanent impairment, that is, the impairment has become stable and is unlikely to further deteriorate or improve, according to the degree of permanent impairment sustained. The short tail is offset by the ability of injured workers to elect to seek damages at common law. Workers can sue their employer for negligence through a common law claim and, if successful, the lump sum payment of damages takes into account future economic loss and pain and suffering. By contrast, most other Australian jurisdictions either operate long tail schemes (that pay benefits for the duration of incapacity) or restrict or preclude access to common law. The features of the entitlement arrangements in each jurisdiction are shown in **Appendix E**.

Injured workers are eligible for lifetime treatment, care and support payments if they sustain serious personal injuries, such as a serious permanent spinal injury, traumatic brain injury, multiple amputations, severe burns or permanent blindness, through the National Injury Insurance Scheme (NIIS).

Rehabilitation is designed to either ensure the worker's earliest possible return to work or maximise the worker's efficient functioning, with the best possible outcome being achieving a safe and durable return to work with the same employer. If this is not feasible, it aims to return the worker to other suitable duties with the same or another employer. The insurer must take all reasonable steps to secure the worker's rehabilitation and early return to suitable duties. The employer must take all reasonable steps to assist or provide the worker with rehabilitation. The injured worker must satisfactorily participate in rehabilitation.

There are various mechanisms for dispute resolution via independent review and appeal pathways, and Medical Assessment Tribunals (MATs). Many insurer decisions can be referred to the Regulator for review. MATs (panels of three or five doctors) provide independent, non-adversarial, expert medical review and assessment of injury and impairment sustained by workers for the scheme.

The scheme has experienced frequent review and reform since the early 1990s. Major rewrites of workers' compensation legislation in 1990, 1996 and 2003 resulted in significant changes, including the establishment of WorkCover and the separation of regulatory functions from the commercial delivery of insurance services. A number of reforms have arisen from statutory reviews of the scheme conducted under section 584A of the Act. To date, two such reviews have been undertaken (in 2013 and 2018). The most recent review in 2018 (undertaken by one of the current reviewers) indicated that stakeholders were generally supportive of the structure and broad operation of the scheme and found the scheme was financially sound, involved low costs for employers, provided fair treatment for both employers and injured workers, and was not facing any crises.[6] It is discussed in more detail later in this chapter.

1.2 Current Trends and Major Issues

Overall, the state of the workers' compensation system is still fairly strong, particularly by comparison with other jurisdictions. It appears to be more financially efficient than in the recent past, with operating costs a lower proportion of total expenditure in 2020-21 (6.5 per cent) than in 2016-17 (7.4 per cent).[7] Yet delays are increasing, perhaps a sign that administrative resources are not meeting system demands. The rate of claims is falling, from 3.96 per cent of employees in 2017-18 to 3.42 per cent in 2021-22.

The frequency of 'serious' injuries (requiring a week or more off work) appeared to be slowly increasing, but may have fallen in 2021-22, possibly a COVID-19 effect. The funding ratio[8] declined from 171 per cent[9] in June 2017 to 142.5 per cent[10] in June 2022, but this was a conscious strategy by WorkCover, which had subsidised employers through low premiums for several years, to reduce its funding ratio to within a target range of 120-140 per cent. Volatile investment returns accelerated but did not cause this shift.

That said, the scheme faces some threats, not unique to Queensland. One is labour shortages, which are increasingly evident,[11] and known to be associated with deteriorating workplace safety,[12] thereby raising system costs. The COVID-19 pandemic had a big impact on many aspects of the scheme, and it is often hard to separately identify what patterns we see in data reflect underlying trends, and what are hangovers from the pandemic.

6 *The Operation of the Queensland Workers' Compensation Scheme – Report of the second five-yearly review of the scheme*, Professor David Peetz (2018), page vi.

7 Safe Work Australia, *24th edition of the Comparative Performance Monitoring*, Canberra, https://www.safeworkaustralia.gov.au/doc/workers-compensation-funding-assets-liabilities-and-expenditure-24th.

8 The ratio of assets to liabilities.

9 WorkCover Queensland, *Annual Report 2018-19*, page 12.

10 Ibid, page 13.

11 National Skills Commission, *2022 Skills Priority List: Key Findings Report, Department of Employment and Workplace Relations*, Canberra, 2022.

12 Kisi K.P., Shrestha K.J. & Kayastha R., 'Labor Shortage and Safety Issues in Post-earthquake Building Construction: Case Study', *J. Leg. Aff. Dispute Resolut. Eng. Constr.*, 2020, 12(3); Salzwedel M, 'Labour shortage poses safety challenge for growing agritourism sector', *Journal of Agromedicine*, 2023, 28(1), 53-56; Fernández-Muñiz B., Montes-Peón J.M. & Vázquez-Ordás C.J., 'Occupational accidents and the economic cycle in Spain 1994–2014', *Safety Science*, 2018, 106, 273–284; Karimi H., Taylor T.R.B., Goodrum P.M. & Srinivasan C., 'Quantitative analysis of the impact of craft worker availability on construction project safety performance', *Construction Innovation*, 2016, 16(3), 307-322.

One thing that is clear, though, is the rise in mental injury claims, including secondary mental injury claims, which have higher costs, lower return-to-work (RTW) rates, lower acceptance rates, longer duration, and take longer to determine. A primary mental injury claim is one in which the initial injury was itself a mental injury; however, a secondary mental injury can develop where a worker with a physical injury also develops, while injured, a mental injury that has arisen from an aspect of the physical injury, for example, its impact on the worker's mobility, employment prospects, quality of life expectancy or even their reaction to the treatment.

To give an idea of scale and context: accepted primary mental injury claims have increased by 92 per cent over the four years to 2021–22,[13] and they have an average cost over three times the average for physical injury claims ($60,524 for mental injuries compared to $19,329 for physical injuries involving time lost in 2021-22). Similarly, the number of secondary mental claims over the last ten years has almost tripled. The potential is huge, as 9 per cent of people with a self-reported mental health condition believe it was caused by work, but at present the number of claims lodged cover probably less than a twentieth the number of workers this implies.[14] Far fewer people lodge a mental injury claim than suffer a mental illness that they attribute to work. Part, but not all, of this is likely due to the 'reasonable management action' exclusion for mental injuries.

Primary mental injuries are still a very small proportion (3.1 per cent) of accepted claims and even of scheme costs (7.5 per cent). These numbers mean mental injuries are presently a concerning but manageable part of the system, but with the potential to fundamentally alter the system in the future (as illustrated by the recent Victorian experience). This is particularly the case if the stresses manifested in some parts of the economy — for example, in universities,[15] construction,[16] finance and community services[17] — are translated into growth in mental injury claims.

Two key features of mental injuries are that the challenges with return to work intensify the longer that injured workers are away from work, and that many people with mental illness do not lodge a claim, at least initially. Safe Work Australia's 2021 *National Return to Work Survey* (NRTW Survey) found that most injured people who showed 'probable serious mental illness' (92 per cent in 2021)[18] had not made a mental injury claim, but the proportion exhibiting such illness increased significantly the longer injured workers were on benefits — being more than double the level amongst those off work for over 40 days than for those off work for a shorter time.[19] This is no surprise: financial stress also increased the longer people were on benefits,[20] longer engagement with the scheme may worsen mental health[21] and a long time off work gives people the opportunity to ruminate over a physical injury and its circumstances.

Critically, these data showed the importance of early action to preclude people with physical injuries developing mental illness and mental injury claims. The question was raised with us as to whether new norms now meant that people would feel free to add mental injuries to their claims if they had a physical injury. If some people had done that, it was very much a minority situation, at least in shorter-duration claims, which were by far the majority. Mental illness did not normally translate into claims for mental injury, despite the high incidence of the former, unless people were out of work for a long period of time.

The patterns outlined above highlighted the weaknesses with RTW in Queensland. Timely RTW is clearly critical, to prevent the growth of secondary mental injuries. Yet Queensland is the State with the lowest incidence, amongst workers, of a rehabilitation and return to work (RRTW) plan (62 per cent), and the State where workers are least likely to have had contact with an RRTW coordinator.[22] RTW rates might be in recent decline, but it is impossible to be certain because of recently uncovered weaknesses in the administrative data.[23] Survey data, while subject to sampling error, tend to suggest Queensland had been performing at or above the national average in RTW rates,[24] but clearly not in RRTW plans and coordinators.

13 From 1142 in 2017-18 to 2196 in 2021-22, reflecting the combined effect of a 26 per cent increase in lodgements and a 12 percentage point decline in the claim rejection rate.

14 Sam Popple, presentation to Industrial Relations Society of Queensland, Brisbane, citing a recent Superfriend Survey with Finity and SafeWork Australia data., 20 April 2023

15 Winefield A. et al, 'Occupational Stress in Australian University Staff: Results From a National Survey', *International Journal of Stress Management*, 2023, 10(1), doi:10.1037/1072-5245.10.1.51.

16 Sage Media Group, 'Australian construction exodus driven by stress and burnout', *Build Australia*, 19 October 2022, https://www.buildaustralia.com.au/news_article/australian-construction-exodus-driven-by-stress-and-burnout/.

17 Wellbeing Lab, '2019-2022 Workplace Report: The state of wellbeing in Australian Workplaces', Australian Human Resources Institute, 2022, 11, https://www.ahri.com.au/wp-content/uploads/MMcQ_WellbeingLab_Australia_WorkplaceSurvey_2019-2022-1.pdf.

18 Safe Work Australia, *2021 National Return to Work Survey*, Canberra, https://www.safeworkaustralia.gov.au/doc/2021-national-return-work-survey-summary-report, 40.

19 'Those who had 40 or more days compensated were … more likely (23.1 per cent) than those with shorter claims (8.6 per cent) to meet the criteria for probable serious mental illness.' Ibid.

20 Ibid.

21 Senate Education and Employment References Committee, *The people behind 000: mental health of our first responders*, 2019, 69.

22 Safe Work Australia, *2021 National Return to Work Survey*, Canberra, https://www.safeworkaustralia.gov.au/doc/2021-national-return-work-survey-summary-report, 47, 53.

23 A coding error at WorkCover, referred to in the opening of chapter 3.

24 See opening of chapter 3.

It is also clear, from the above, that increased delays before decision-making and increasing claim durations are significant issues. While part of this was due to the growth of mental injury claims, these patterns were evident even in purely physical injury claims, suggesting one reason why secondary mental claims were increasing was these increasing delays. The main factor in the growing cost of all types of claims is the growth in duration, although for mental (especially secondary mental) injuries the growth in cost exceeds the growth in duration, suggesting it is the more serious injuries that are becoming hardest to deal with.

Delays may also be increasing in the provision of information by employers. This was reported in stakeholder consultations, and perhaps attributed to growing pressures on employers and tightening labour shortages. The NRTW Survey showed, between 2018 and 2021, a significant deterioration (for the first time) in perceived employer support for injured workers across a range of variables across the country[25] (the published data do not show state-level data). Employer support is considered (along with worker coping) to be one of the two main risk factors for poor outcomes.

Other likely influences in the growth of mental injuries included the shift from blue- to white-collar work, work intensification, especially for insecure workers, as the labour market has tightened, the increasing recognition in many fields of the importance of dealing with mental health issues and, in the short term, the pandemic.

More details about the financial performance and other aspects of the scheme are at **Appendix F**.

In recognition of these trends, and notwithstanding reforms already made in this area, this report recommends a suite of actions designed to:

- increase early intervention to pre-empt the deterioration of physical injuries into secondary injuries;
- address workplace issues that may be causing or worsening mental injuries;
- make it easier for injured workers to find gainful employment with their own or another employer;
- promote reductions in delays in the time taken to provide information and make decisions in the system; and
- facilitate coverage by the system of insecure workers in the gig economy who may otherwise be exposed to uncompensated risk.

There is also a series of individual recommendations designed to address specific issues with the operation of the system that we have encountered in our investigations.

The key points among those recommendations are outlined at the end of this chapter. Before then, however, we briefly cover the recent history of reform in the system.

1.3 Recent reform and review of the system

This is the third review of the system under the current Act. The first was undertaken in 2013 by a Parliamentary Committee, and the second in 2018 by one of these reviewers, David Peetz (2018 Review). More information on reviews since 2009 is in **Appendix G**.

The 2018 Review made a number of recommendations that cut across the whole of the scheme. These included reforms in relation to eligibility for compensation, coverage, internships, the time limit for lodgement of claims, the calculation of weekly benefits, the disclosure of medical records, the accrual and taking of annual leave and sick leave, the collection of statistics, definitions, exclusions and claims management affecting psychological injuries, the legislative definition of rehabilitation, performance measurement and claim closure, gaps in RTW, the rehabilitation capability of employers, regionalism and providers, sustainable return to work assistance for small business, prevention activities, education of workers, education for medical practitioners, building supportive workplaces, bonuses, compliance, access to common law claims, obligations on self-insured employers, incentives facing self-insurers and behaviour, the assessment of self-insurers, the exemption of self-insurers from the duty to report an injury, the treatment of workers in the 'platform' or 'gig' economy, reviews of insurer decisions, appeals of review decisions, MATs and research. Some of those recommendations related to legislation, others to administration of the scheme by the Regulator, or WorkCover or the relationship to the administration of workplace health and safety.

Many, but not all, of the recommendations from that review were implemented. Unfortunately, it was only when writing was nearly completed that we obtained a complete list of the implementation status of each recommendation from the 2018 Review, though we had received a verbal briefing in April. Regardless, it was possible to identify which legislative recommendations had been implemented, that being on the public record.[26] It is apparent that those recommendations that related to legislation had mostly been implemented, often in full. The main outstanding legislative recommendations related to workers in the 'gig' economy, in no small part because those

25 Safe Work Australia, *2021 National Return to Work Survey*, Canberra, https://www.safeworkaustralia.gov.au/doc/2021-national-return-work-survey-summary-report, 68.

26 *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*.

recommendations, involving as they did groups beyond the traditional stakeholders in workers' compensation (for example, 'gig' and taxi firms), were subject to a separate Regulatory Impact Statement (RIS) process. Indeed, one of the terms of reference asks us to report on the implications of national developments for the Queensland government's response to the RIS process.

We do not plan, in this report, to focus on the implementation of recommendations arising from the 2018 Review, except where it impinged on an issue covered in this report. If recommendations have not been implemented in the way sought, there is usually little point in repeating those recommendations. Our focus is on the situation now, not so much the decisions that have led to it. So we mostly only touch on the latter to the extent that we consider important for understanding our recommendations. That said, it is worth highlighting the recent actions that have been taken in relation to workers suffering from mental injury, given the growing importance of mental injury to the scheme.

Since 2018 there has been significant reform to the Act and the scheme to support workers suffering from mental injury, because this is an area of major change since the 2018 Review, and the reforms already undertaken are useful to understanding what still needs to be done. In that area, reforms have included:

- establishing the Workers' Psychological Support Service (WPSS) in 2018, to improve the level of assistance available to Queensland workers experiencing a work-related mental injury. This is a confidential and independent service that connects such workers with established community and other independent support services;
- changing the definition of injury for psychiatric or psychological disorders to remove 'the major' as a qualifier for work's 'significant contribution' to the injury, to align with the same test as a physical injury;
- requiring insurers to provide claimants access to supports such as medical treatment and/or counselling for psychological injury claims up until a decision is made to minimise the severity, duration and recurrence of mental illness;
- increasing the opportunities injured workers have to return to meaningful work by extending the obligation on insurers to provide access to an accredited RTW program to workers at the end of their statutory claim if they are fit for work but have no job to return to;
- giving insurers the discretion to accept a claim lodged more than six months after being assessed by a doctor if the worker lodges their claim within 20 business days of certification of an incapacity, because many workers with mental injuries may not make a claim upon diagnosis because they were not incapacitated;
- protecting apologies and expressions of regret which recognises apologies have a positive role in resolving disputes and providing a mechanism for achieving justice between people with differing perspectives;
- implementing a presumptive streamlined pathway for first responders and eligible employees diagnosed with post-traumatic stress disorder (PTSD);
- an action plan developed with stakeholders with practical initiatives to address other areas of concern for first responders such as stigma, workplace culture, and return to work opportunities; and
- amending the Act in October 2019 to require insurers to take all reasonable steps to provide reasonable services to support workers with a claimed mental injury during the claim determination period. Around 53 per cent of mental injury claims lodged since 1 October 2019 (an average of 600 claims per quarter) have accessed the early intervention and support provided by the scheme;
- the publishing by Workplace Health and Safety Queensland (WHSQ), in November 2022, of the *Managing the risk of psychosocial hazards at work Code of Practice 2022*. This assists persons conducting a business or undertaking to manage psychosocial hazards and risks, and discusses control measures for specific psychosocial hazards and risks such as work overload, poor support, isolated work, workplace violence and other hazards.

Also worth mentioning here are recent reforms in the area of RRTW, the other major theme of this report. They included:

- requiring employers to notify of the coverage and qualifications of their RRTW coordinators;
- requiring insurers to continue providing RRTW services, even if statutory entitlements has ceased, where workers have not yet been able to return to work; and
- the production of several evidence-based guidance documents on RRTW.[27]

As mentioned, the one matter hanging over from the 2018 Review, as explicitly referred to in the terms of reference, is the issue of gig economy reforms. These are covered in chapter 9 of this report.

27 For more detail on each, see chapter 3.

1.4 Key points of the rest of this report

As discussed at the beginning, the state of the workers' compensation system is still fairly strong, especially compared to many of those in other jurisdictions. That said, the scheme faces some threats, including underlying forces driving up claims and the relative growth of primary and secondary mental injuries. Data show the importance of early action to preclude people with physical injuries developing mental illness and mental injury claims. Hence, this report makes 54 recommendations that are designed to:

- increase early intervention to pre-empt the deterioration of physical injuries into secondary injuries, by:
  - enhancing early diagnosis and support for workers with primary mental injuries;
  - early intervention for workers with physical injuries to minimise the chance of secondary mental injuries developing, using a psychosocial assessment tool and appropriate referrals;
  - information sharing between the Regulator and WHSQ to identify and manage 'high risk' workplaces;
  - clarifying the situation of voluntary guidelines and mandatory standards or codes of practice, and transitioning some of the former to the latter;
  - easing financial stress by creating a default payment to enable immediate cash flows to injured workers with accepted claims, even if a decision on the rate of payment is pending;
- address workplace issues that may be causing or worsening mental injuries, by:
  - providing access to facilitated workplace discussions in cases where particular criteria regarding likely benefit are met;
- make it easier for injured workers to find gainful employment with their own or another employer, by:
  - establishing 'model employer' principles for government agencies when it comes to workers' compensation and rehabilitation;
  - audits to ensure employers have RRTW coordinators as required by law;
  - ensuring suitable duties are meaningful to the worker; and
  - imposing a statutory deadline on the development of RRTW plans for injured workers;
- promote reductions in delays in the time taken to provide information and make decisions in the system, by:
  - building into the Act a regular two-yearly review of the decision-making time frame specified in the Act to ensure that it is being met;
  - creating a credible and achievable immediate goal for the current time frame for making decisions on mental injury claims;
  - modifying the way in which the current time frame for making review decisions is calculated, with crucially, improvements in information quality and addressing resource difficulties affecting review processes;
  - flagging the prospect of a deemed decision framework for both insurers and the Regulator; and
  - enabling insurers to compel employers to provide certain information within a defined period; and
- facilitate fair treatment by the system of insecure and vulnerable workers, by:
  - ensuring organisations hosting labour hire workers provide a safer environment for those vulnerable workers by participating in RTW and suitable duties programs, and enabling premiums to genuinely reflect the risks at their workplaces; and
  - recognising the absence of federal barriers to proposed reforms of the treatment of gig economy workers for workers' compensation purposes.

There are also individual recommendations designed to address specific issues with the operation of the system that we have encountered in our investigations, including with respect to:

- requiring follow-up of workers six months after benefits cease;
- imposing a positive duty on insurers to report suspected employer offences to the Regulator;
- developing a statement of workers' rights and responsibilities; and
- establishing claims liaison and support officer positions, initially focused on claimants seeking death entitlements or with very serious or latent onset injuries.

There are many other recommendations not listed in the above summary.

The next chapter outlines our findings and recommendations on mental injuries, a major focus of the report. The third chapter canvasses RRTW, the other major theme. Subsequent chapters concern: coverage of the scheme; benefits payable; compliance, education and prevention programs; delays and time frames; and claims administration and reviews. The final chapter, as foreshadowed, deals with the gig economy issue and its interaction with federal reforms. Appendices provide more detailed material on matters mentioned in this chapter and subsequently. Recommendations identify whether legislation is required, whether changes to the regulations (such as new regulations) are required, and which organisational element should be accountable for the implementation of the recommendation. In most cases this is OIR, the Regulator, or WorkCover.

We wish to raise one other matter at this point, though it is not explicitly identified in our terms of reference,[28] and so has not been the subject of thorough investigation to verify or refute our impressions. Perhaps if investigated in depth, some key elements of our impressions would not be found to be correct, but we raise them so that further investigations can be undertaken, and some safeguards put in place. Through our inquiries, it became apparent that the connections between the workers' compensation function and the workplace health and safety function might not have been as strong as they should have been, even though the relevant branches are all within OIR. The level of coordination was raised by more than one person we spoke to and its effects seemed evident in our limited observations, yet many good efforts were being made to communicate across the organisational boundaries. While the term 'silos' is often over-used when describing the internal workings of organisations, it nonetheless is something that effective ones mostly want to avoid. A small number of our recommendations, particularly regarding information flows, are designed to avoid such occurrences. Our interest is in identifying this as a matter that warrants investigation. It does not mean that we want health and safety practice to become dominated by workers' compensation policy, or vice versa — either would be counterproductive — but it is clear that the objects of both systems are assisted by active co-operation when it cuts across both parts of the organisation, and this suggests a more considered review of the resources and frameworks with which both areas operate is always a good thing. Others, with a more specific mandate, will be better placed than us to investigate these issues and offer remedies if and where appropriate. In particular, this is something of which future reviewers of both pieces of legislation should be more aware when conducting their investigations.

Recommendation 1: **That future reviews of the workers' compensation system and legislation, and of work health and safety legislation, include, as a term of reference, the systems, practices and legislation needed to allow better co-ordination between workers' compensation and workplace health and safety, without compromising the objectives of either system.**

Is legislation required: No

Amendments to Regulation: Possible

Organisational responsibility: Deputy Director-General (DDG) of OIR (as the Regulator and Work Health and Safety (WHS) Regulator, WCRS and WHSQ)

Recommendation 2: **That the leadership of OIR investigate and consider the systems, practices and policies necessary to maximise co-ordination between workers' compensation and workplace health and safety, without compromising the objectives of either system.**

Is legislation required: No

Amendments to Regulation: Possible

Organisational responsibility: DDG of OIR (as the Regulator and WHS Regulator), OIR

28 Though it can be considered pertinent to 'the performance of the scheme'.

Chapter 2: Mental injuries

2.1 Introduction

Workers with a mental injury experience a range of cognitive, emotional, and behavioural symptoms that have an impact on their life and can significantly affect how they feel within themselves and interact with others. A mental injury may include diagnoses such as depression, anxiety disorders, adjustment disorders or PTSD. While job stress is commonly used to describe physical and emotional symptoms which arise in response to work situations, it is not in itself classed as a mental injury.

Queensland has experienced growth in workers' compensation claims for both primary and secondary mental injuries. A primary mental injury claim occurs when a worker makes a claim for a mental injury caused by a traumatic event(s), the nature of work or other work stressors (e.g., bullying, harassment). In comparison a secondary mental injury arises where the worker has an accepted claim for a physical injury, but they also claim for a mental injury, caused either at the time of the physical injury or over time. Mental injury claims are more complex to determine and manage than physical injury claims. They result in substantially longer claim durations, poorer RTW outcomes and higher common law conversion rates than claims for physical injuries.

Primary mental injury claims make up only 3.1 per cent of all accepted statutory claims, though representing around 10 per cent of total statutory payments (for 2021-22). The key trends for mental injury claims include:

- accepted claims for mental injuries are increasing (92.3 per cent over the last five-year period from 1,081 in 2017-18 to 2,196 claims in 2021-22);
- workers with a mental injury are staying on benefits longer. Mental injury claims have a longer average duration than other claims (179.5 days in 2021-22 compared to the scheme average of 72 days) and more workdays lost (an average of 179.7 workdays in 2020-21 per claim compared to 74 workdays for physical injuries);
- mental injury claims are the most expensive claim type (with an average finalised time lost claim cost of $60,524 in 2021-22 compared to the scheme average of $28,785);
- the top direct causes of these injuries for accepted claims include exposure to workplace or occupational violence, exposure to a traumatic event, work related harassment and/or workplace bullying and work pressure;
- mental injury claims are most likely to occur in health care and social assistance, public administration and safety, and education and training sectors;
- return to work outcomes for workers with a mental injury are poorer (around 80 per cent of workers return to work compared to 94 per cent for all injuries);
- claims for mental injury take longer to decide (with an average decision time of 35.5 days compared to 9.5 days for other claims);
- primary mental injury claims have a high rejection rate (50.3 per cent in 2021-22, compared to 3.8 per cent for physical injury claims) for a number of reasons including the 'reasonable management action' exclusion, the injury was not work-related (i.e., it was pre-existing or due to stressors outside of the work environment); the claim was not made within the prescribed time; or the claimant was not a 'worker' covered by the scheme; and
- mental injury claims represent a significant proportion of disputes and generally take longer to resolve. They comprise around 40 per cent of review applications; around 60 per cent of appeals filed; and around 80 per cent of MAT cases.

Secondary mental injury claims are also continuing an upward trend (from 1,931 in 2019-20 to a forecasted increase of 2,176 in 2022-23). The proportion of claims with a secondary mental injury has increased over the past ten years from around 1.0 per cent for 2012-23 to around 2.4 per cent for 2020-21. Expectations for 2022-23 and 2023-24 are relatively in line with 2021-22 at around 2.6 per cent.

Since 2018 there have been significant reforms to the Act and the scheme to support workers suffering from a mental injury. These were outlined in chapter 1, and so are not repeated here.

2.2 Terminology

Mental injuries are currently described in the Act as 'psychological or psychiatric injuries' despite there being no medical distinction between a psychological injury and a psychiatric injury, and the injuries being treated identically under the Act.

These terms have also been in place for over 30 years since the *Workers' Compensation Act 1990* (now repealed) commenced in December 1990 and are generally considered outdated. The term 'mental injury' is now more commonly used to describe psychological and psychiatric injuries and aligns with language used in the community and health services around the issue of mental health. Further, the language is more consistent with one of the world's most prominent diagnostic tools for these types of injuries, the Diagnostic and Statistical Manual of Mental Disorders (DSM), which uses the term "mental disorder".

Relevant scheme medical stakeholders consulted indicated support to updating the terminology used by the scheme to "mental injury".

Recommendation 3: That the Minister consider introducing a Bill to amend the Act by replacing the phrase "psychological or psychiatric injury" with "mental injury".

Relevant regulatory and guidance documents should also be updated to incorporate this term.

The *Workers' Compensation and Rehabilitation Regulation 2014* should be amended to update the DSM to the latest version.

Is legislation required: Yes
Amendments to Regulation: Yes
Organisational responsibility: OIR

2.3 Primary mental injuries

2.3.1 Claim determination and 'reasonable management action'

Workers with a mental injury can claim 'no fault' statutory compensation and access common law damages in Queensland. To be compensable, employment must be a significant contributing factor to the injury.[1] However, under the 'reasonable management action' (RMA) exclusion, a mental injury is not compensable if it arises out of, or in the course of:

- RMA taken in a reasonable way by the employer in connection with the worker's employment; or
- the worker's expectation or perception of RMA being taken against the worker.

It is also not compensable if it arises from action by the Regulator or an insurer in connection with the worker's application for compensation.[2]

The aim of the exclusion is to avoid compensation for worker stress arising from decisions like promotion or discipline. So, in the Act, the following are examples of actions that may be RMA taken in a reasonable way:

- action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker; and
- a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment.

The RMA exclusion does not apply to certain claims made by first responders and eligible employees with PTSD. In 2021, laws were amended to include a new presumptive streamlined pathway for these workers. This was due to increasing awareness of how PTSD manifests in these workers and the importance of supporting their mental health and wellbeing. These presumptive laws do not change existing workers' compensation entitlements but reverse the onus of proof. So, first responders' or eligible employees' PTSD is deemed to be work-related unless there is evidence to the contrary.

1 *Workers Compensation and Rehabilitation Act 2003*, s 32(1).
2 *Workers Compensation and Rehabilitation Act 2003*, s 32(5).

2.3.2 Information about reasonable management action

(i) RMA Factsheet

The term 'reasonable management action' has been extensively considered in the context of workers' compensation laws however it is a complex concept. It turns on the individual circumstances of the case.

In this review, some stakeholders submitted that workers are ill-informed about workers' compensation application requirements under the Act including the RMA exclusion. These stakeholders submitted that s 32 of the Act should be amended to require an insurer provide to a worker an information sheet about RMA and how it operates to exclude claims.

Recognising the complexities around the interpretation of RMA, the 2018 Review recommended[3] that OIR, in consultation with stakeholders, develop an information booklet for scheme participants that clearly sets out examples of 'reasonable' and 'unreasonable' management action for the acceptance of mental injury claims.

This recommendation is partially implemented with a draft RMA factsheet that has been prepared and informed by a number of recent reforms in the scheme and information from stakeholders. The WorkSafe Queensland website also contains guidance about the treatment of mental injury claims in the scheme, including the RMA exclusion, albeit such guidance is limited.[4]

We are concerned that this information is not yet available to claimants five years after being recommended. Given the concerns are still being raised, this factsheet should be completed as a matter of priority so as to better inform injured workers.

(ii) Links to information at the application stage

Some stakeholders also submitted that the Act be further amended so that where an insurer fails to provide this RMA information sheet to a worker immediately following the lodgement of a claim, the insurer is precluded from relying on the exclusion to deny liability.

Insurers, by their nature, mostly deal with injured workers making a compensation claim. Providing an information sheet about RMA after the worker has made a claim will not set expectations and support workers in providing relevant information as early as possible, or minimise ineligible claims being lodged.

The current WorkCover claim form (FM 106 – version 11) is primarily designed for applicants claiming physical injuries. For example, the form requires the applicant to provide information about the nature of the injury and the part of the body that is injured, but only gives the examples of a cut right index finger, fractured leg and lower back strain.

The WorkCover claim form should be reviewed and updated to ensure it is appropriate for workers claiming a mental injury. The updated form should also include or contain links to information about operation of the RMA exclusion, such as the RMA Factsheet. Providing information about the RMA exclusion in this way, rather than via a separate information sheet post claim, eliminates the risk of insurers failing to provide such information and removes any need to impose a consequence for such a failure.

As claims forms are approved forms under the Act that require approval from the Regulator, the Regulator should ensure all insurers undertake a review of their claim forms in the manner described.

Where telephone applications are made, insurer claims representatives should advise claimants of the RMA exclusion and notify them of where to find the information on the insurer's website or offer to send the Regulator's factsheet on the subject (see recommendation 4 below).

Recommendation 4: That, in relation to information at the early claims stage:

(a) the Regulator should finalise and publish the factsheet on reasonable management action; and

(b) the Regulator should ensure that WorkCover and other insurers review their claims forms so they are suitable for mental injuries and provide links to the Regulator-approved factsheet about reasonable management action, subject to vetting by the Regulator.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

3 See recommendation 5.2.

4 The State of Queensland, *Psychological or psychiatric injuries*, WorkSafe, 2023, https://www.worksafe.qld.gov.au/claims-and-insurance/work-related-injuries/types-of-injury-or-illness/psychological-or-psychiatric-injuries.

(iii) Management action that may not be reasonable

The *Work Health and Safety Regulation 2011* (WHS Regulation) has been amended to include provisions about psychosocial risks. The amendment to the WHS Regulation commenced on 1 April 2023 together with the *Managing the risk of psychosocial hazards at Work Code of Practice* (Psychosocial Code). Some stakeholders submitted that the meaning of 'injury' in the Act should be amended to provide examples of actions that may not be RMA taken in a reasonable way, specifically, that mental disorders resulting from the employer's failure to manage risks of psychosocial hazards in accordance with the *Work Health and Safety Act 2011* (WHS Act), WHS Regulation or the Psychosocial Code may not be RMA taken in a reasonable way.

The proposal raises several difficulties. Whether the employer contravenes the WHS Act is not a material consideration in a no-fault workers' compensation claim. Further, contravention of the WHS Act is not a matter of subjective opinion and would need to result in prosecution or other enforcement outcome to be a relevant consideration, which would adversely affect claim determination timeframes. Were the position otherwise, insurers would be required to adjudicate on an employer's compliance with the WHS Act as part of claims determination. This would undermine the WHS jurisdiction and complicate the claims determination process. Further, the proposal would introduce a test that, in relation to common law claims, was abolished long ago. An employer's duty of care is only a relevant consideration in a common law matter where negligence is in issue.

Although we understand the desire on the part of certain stakeholders to ensure adherence with the WHS Act, WHS Regulation and the Psychosocial Code (as well as their overarching concern about workers' mental health), we are not satisfied that the approach being urged upon us is practical. The RMA exclusion is not intended to assess fault but to exclude actions that are, rightly or wrongly, considered part of the normal exercise of the managerial role. Bringing the concept of fault back into the statutory benefits jurisdiction of workers' compensation would not necessarily be a step forward over the longer term.

2.4 Improving mental health support for workers with primary mental injuries

Following the 2018 review, early supports were put in place to assist injured workers with a primary mental injury. We wish to build on that. Later in this chapter, recommendations are made for support to be provided to workers with a secondary mental injury.

2.4.1 Early personal contact with injured workers

Early intervention is critical to reducing the risk and severity of mental illness. This is supported by *Taking Action: A Best Practice Framework for the Management of Psychological Claims in the Australian Workers' Compensation Sector* developed by Safe Work Australia. This Framework provides advice on the entire claims management process from pre-lodgement to completion and states:

> *Current best practice indicates regardless of whether you are working in a scheme that offers provisional liability, access to early medical treatment and an expedited claims determination process can have positive impacts on injured workers.*[5]

Workers who report positive interactions with their case manager have higher rates of RTW, report less pain, greater perceived health, quicker recovery and improved quality of life.[6] Research has found that many claimants experience high levels of stress from engaging with injury compensation schemes, and this experience is positively correlated with poor long-term recovery. Intervening early to boost resilience among those at risk of stressful claims experiences and redesigning compensation processes to reduce their stressfulness may improve recovery and reduce costs.[7] This demonstrates that taking a worker-focussed approach is key to achieving better outcomes.

5 Safe Work Australia, *Taking Action; A Best Practice Framework for the Management of Psychological Claims in the Australian Workers' Compensation Sector*, Safe Work Australia, Canberra, 2018, 9.

6 Wyatt M. & Lane T., *Return to Work: A comparison of psychological and physical injury claims: Analysis of the Return to Work Survey Results*, Safe Work Australia, Canberra, 2017.

7 Grant G.M., O'Donnell M.L., Spittal M.J., Creamer M. & Studdert D.M., 'Relationship between stressfulness of claiming for injury compensation and long-term recovery: a prospective cohort study', JAMA Psychiatry, 2014, 71(4), 446-53.

The importance of ensuring access to timely and effective early intervention services was also recognised in the 2018 Review, which recommended:

> *Early intervention in cases of potential psychological or psychiatric injury should be promoted by requiring insurers (on a 'no prejudice' basis) to cover the costs of treatment for such injuries before liability has been assessed, up to a limit (defined by reference to a time period). These costs would not form part of the experience rating of the relevant employer, if the claim is subsequently rejected.*[8]

In 2019, amendments gave effect to this recommendation by inserting a new Chapter 4, Part 5A into the Act (the early intervention provisions).[9] These provisions require insurers to take all reasonable steps to provide reasonable services (such as counselling and mediation services), on a without prejudice basis, to support workers with a mental injury while their claim is being determined.

To access these support services a worker must submit a valid workers' compensation application together with a work capacity certificate diagnosing the worker with a work-related mental injury. There are some exceptions such as that a person cannot access the services if they are not a worker; the insurer has evidence that the injury is not work-related; or the worker has recently had a claim denied for the same or a related injury event.

While insurers report having taken steps to operationalise the requirement to provide early intervention, take-up by workers does not appear to be as high as could be expected. Since the introduction of the early intervention provisions, only around 56 per cent of eligible workers have accessed early intervention services, although the rate is increasing each quarter. The rate for self-insurers is lower still, at around 36 per cent, although this lower number might be influenced by the availability of support through employee assistance programs in those organisations. While a 100 per cent rate is unrealistic, as some workers may choose not to accept early intervention services, more can be done to encourage uptake of these services.

Reflecting under-usage, the total cost of workers accessing early support services is well below expectations, with a cumulative cost of around $6 million to date.[10] The initial estimate was a cost of $5 million *per annum*. The average cost per decided claim is around $592.

As currently drafted, the early intervention provisions do not specify how early intervention must be offered or facilitated. These matters are left to insurers, who must only be satisfied that they have taken 'reasonable steps to provide reasonable services'. In the case of WorkCover, most injured workers are first notified of their potential eligibility to access early intervention services via an automated text message sent after their claim is received.

To increase the take up rate for early intervention services, and to achieve real benefits, insurers must actively invest in the process. This can be achieved by making early, in-person contact with an injured worker to proactively engage with them, ascertain their concerns and then connect them to appropriate services such as counselling or arranging for workplace facilitated discussions with their employer (see recommendation 5). To ensure this delivers optimal results, the insurer staff member making the contact must have relevant qualifications and training (see recommendation 6).

As with existing arrangements, such early intervention services would not become part of the experience-rating calculation of the employer if the claim was subsequently rejected.

Recommendation 5: That the Minister consider introducing a Bill to amend the Act to require insurers to make in-person contact with primary mental injury claimants, for the purpose of enabling them to access, where appropriate, relevant early intervention supports.

Is legislation required: Yes
Amendments to Regulation: Yes
Organisational responsibility: OIR

8 Peetz, D., *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-yearly review of the scheme*, Queensland Government, Brisbane, 27 May 2018, recommendation 5.4.

9 *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*, s 65.

10 The cost does not affect an employer's experience-based rating used for premium calculation purposes for claims which are later rejected.

2.4.2 Improving access to mental health support

During consultation, several stakeholders identified difficulties being experienced by injured workers in gaining timely access to a treating psychiatrist. Over the last few years, demand for mental health support has increased, placing pressure on registered psychiatrists and psychologists who are unable to meet demand. This is an issue not only for the workers' compensation scheme but more broadly in the community. Delays in accessing these services are also being experienced by injured workers. However, other professionals with relevant mental health qualifications (including certain occupational therapists, social workers, rehabilitation counsellors and nurses) are able to provide different forms of mental health support.

WorkCover funds treatment in the scheme in accordance with the relevant Table of Costs. The Table of Costs for occupational therapists recognises that occupational therapists who have been endorsed by Occupational Therapy Australia for practice within the *Medicare – Better Access to Mental Health Scheme* can deliver focussed psychological services to workers.[11] Similarly, the Table of Costs for rehabilitation counsellors and social workers provides for the funding of adjustment counselling services to workers who display psychological, social, cognitive, emotional and behaviour problems.[12]

Despite the availability of these services in treating mental injury, it is understood that WorkCover applies a strict medical model to managing such injuries in accordance with its *Mental Injury Treatment Guidelines*.[13] As a result, the take up of allied health treatments (beyond those within the field of psychology) is not as well developed as it could be. Greater access to these services would alleviate this pressure and assist in providing early support and intervention to workers with mental injuries.

Recommendation 6: That WorkCover should improve workers' access to mental health support by reviewing their practices to ensure the greater use of allied health workers with relevant mental health qualifications and provides for such services in the Table of Costs.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: WorkCover

2.5 Secondary mental injuries

2.5.1 Understanding and addressing workplace causes

A secondary mental injury is a mental injury that arises in consequence of a physical injury. These injuries are complex in nature and have longer claim durations, associated with higher claim costs and poorer return to work outcomes than both physical claims and primary mental injury claims.

Claims data from WorkCover show that some of the most common type of injuries that give rise to a secondary mental injury are soft tissue trauma, followed by fractures, back pain and related conditions, and muscular trauma. This prevalence is supported by evidence that individuals with musculoskeletal injuries are more likely to experience depression and PTSD than the general adult population.[14]

As mentioned previously, the proportion of claims with a secondary mental injury has increased from around one per cent in 2012-13 to around 2.4 per cent for 2020-21.

They also have a high common law conversion rate (that is, the proportion of claimants that end up making a common law claim for damages) of 54 per cent. This is significantly higher than the conversion rates for physical injuries (2 per cent) and primary mental injuries (19 per cent). Hence, with the rise in mental injuries, the number of common law claims with a secondary mental injury has increased from around 900 claims in 2017-18 to around 1,440 for 2021-22 (up 58.4 per cent). In the same period, the proportion of common law claims with a secondary mental injury also increased from around 33 per cent to 44 per cent.

While secondary mental *claims* represent a small proportion of overall claims, the proportion of workers who experience secondary mental *illness* is likely to be far greater. Recent data suggest that up to half of workers who

11 Available at https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0023/99032/Occupational-Therapy-Services-1-July-2022.pdf.

12 Available at https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0028/99037/Rehab-Counsellor,-Social-Worker-and-Voc-Placement-Provider-Services-1-July-2022.pdf.

13 Ibid.

14 Kang K.K., et al, 'The Psychological Effects of Musculoskeletal Trauma', J Am Acad Orthop Surg, 2021, 29:e322-e329.

experience a physical workplace injury develop depressive symptoms within a year of injury.[15] Despite this, a Victorian study of workers' compensation claims found that the number of workers with a musculoskeletal injury and a serious mental illness who accessed mental health services was low, with an uptake rate of only 40 per cent.[16] A recent Australia-wide study of 28,870 claims for lower back pain found that only 9.7 per cent of claimants accessed any mental health service during the two years after claim was accepted.[17]

To date, there has been limited research on the development of secondary mental injuries within workers' compensation schemes, a fact acknowledged in the 2022 paper, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace* (the *It Pays to Care* report) authored by the Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine.[18] Without data and research findings, it is difficult to formulate targeted evidence-based strategies to reduce the incidence and impact of secondary mental injuries. To better prevent and manage these injuries, research is required on the causes and triggers that drive the incidence of such injuries as well as the best pathways into RRTW.

Insurer data indicate that the industries with the highest proportion of finalised time lost claims with a secondary mental injury over the last five years (to 2021-2022) were the financial and insurance services industry (6.6 per cent) and the mining industry (5.9 per cent) and the information, media and telecommunications industry (5.1 per cent). Research commissioned by the Regulator should examine the drivers of secondary mental injury in these quite different industries where the incidence is highest.

Recommendation 7: That the Regulator commission research to identify pathways from primary physical to secondary mental injuries. These should include:

(a) engaging a research provider to identify the main drivers of secondary mental injuries;

(b) primary research comparing the trajectories of workers with physical workplace injuries who (i) lodge a secondary mental injury claim; or (ii) develop a mental disorder but do not lodge a claim; or (iii) do neither; and if/how this intersects with policies and programs; and

(c) projects examining safety leadership, culture and the drivers of secondary mental injuries in the mining and finance/insurance industries.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

2.5.2 Determination of secondary mental injury claims

The Act does not have special provisions or restrictions relating to the assessment of a secondary mental injury claims, other than the general eligibility tests. When determining an application for compensation for a secondary mental injury, insurers rely on the diagnosis given in the Certificate of Capacity by the worker's treating general practitioner (GP) or psychiatrist. To be accepted, the diagnosis must be of an actual clinical disorder and not merely symptoms (e.g., suffering pain compared to developing a pain disorder). Stress is a common and normal physical response to challenging or new situations. It has both mental and physical aspects and can be triggered by different life experiences. However, stress is not a diagnosis or medical condition and is not an accepted injury type in the Queensland scheme.

To assist GPs who are the front-line health providers for workers with work-related mental health conditions, the Monash University Department of General Practice and a number of other agencies including the OIR, sponsored and supported the development of the *Clinical guideline for the diagnosis and management of work-related mental health conditions in general practice*. The guideline, published in March 2019, was approved by the National Health and Medical Research Council and endorsed by the Royal Australian College of General Practitioners, the Australian College of Rural and Remote Medicine, and Beyond Blue.

15 Kim J., 'Depression as a psychosocial consequence of occupational injury in the US working population: findings from the medical expenditure panel survey', BMC Public Health, 2013, 13:303; Carnide N., Franche R.L., Hogg-Johnson S., et al, 'Course of depressive symptoms following a workplace injury: a 12-month follow-up update', Occup Rehabil, 2016, 26:204-15.

16 Orchard C., et al, 'Prevelance of Serious Mental Illness and Mental Health Service Use After a Workplace Injury: A Longitudinal Study of Workers' Compensation Claimants in Victoria, Australia, Occup Environ Med, 2020, 77(3):185-187, doi:10. 1136/oemed-2019-105995.

17 Gray S.E., Di Donato M., Sheehan L.R., et al, 'The Prevalence of Mental Health Service Use in Australian Workers with Accepted Workers' Compensation Claims for Low Back Pain: A Retrospective Cohort Study', Journal of Occupational Rehabilitation, 2023; (https://doi.org/10.1007/s10926-023-10098-3).

18 Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace*, 2022, 30.

It includes a section dealing with indicators that the patient is developing a secondary mental injury. The guideline aims to provide GPs with the best available evidence to guide their diagnosis and management of patients with work-related mental health conditions. It notes:

> *The comprehensive clinical interview for a suspected mental health condition should be supported by DSM-5 criteria, which is designed to identify symptoms and behaviours, cognitive functions, physical signs, syndrome combinations, and durations to assist GPs to differentiate from normal life variation and transient responses to stress.*

However, the Act does not specify the injury be listed in the DSM.

The majority of Australian jurisdictions (NSW, Victoria, Western Australia, the Northern Territory, the ACT, the Commonwealth, Tasmania) do not have special provisions relating to the acceptance of secondary mental injury claims, so acceptance of these claims is based on the general provisions of the legislation. South Australia excludes acceptance of secondary mental injury claims. Some jurisdictions do not allow a secondary mental injury to be considered in determining a worker's DPI.

Some have 'special' criteria for the acceptance of a mental injury (primary and secondary) such as the injury must be diagnosed by a specialist practitioner; or it must be in the DSM; or it must cause disability or need for medical treatment or employee must generally be employed by the employer for at least six months.

Although secondary mental injury claims have been increasing in recent years, moving to special criteria at this stage is not considered warranted. Our preferred approach is to proceed with the development of a person-centred approach, utilising the range of measures set out in this report.

While the legislative structure guides decision-making at a high level, it was identified throughout this review that further education and guidance could improve knowledge and skills amongst claims officers about secondary mental injury on:

- identifying or responding to the presence of the secondary mental injury early;
- the nature and types of secondary mental injury (including aggravations of pre-existing injuries); or
- whether the injury should in fact be a primary mental injury claim (i.e., the mental injury has not arisen from the physical injury but is work-related); and
- a description of the type of medical based evidence required to support a claim written in easy to understand language.

The Regulator should develop guidance for insurers to assist claims officers in making decisions claims for secondary mental injuries. This should be done in consultation with representatives of the medical profession and peak psychiatric bodies. Such guidance may assist insurers in making prudent and better informed decisions on claim acceptance, early intervention supports and pre-liability treatment, and approval of post-acceptance treatment.

As a starting point we consider this guidance should include the following matters:

- clinically based evidence presented in layperson's terms, such as examples of the diagnostic criteria of common diagnoses and insights from clinical practice, including what insurers might expect from a claimant with a diagnosis (e.g., that for a claimant with a diagnosis of adjustment disorder, the symptoms of the disorder are expected to subside within six months of the removal of the stressor or adjustment by the injured worker);
- details of the requisite connection from a secondary mental injury to a primary physical injury; and
- delineation of the differences between primary and secondary mental injuries.

Together with the early intervention supports, faster claims decision making and the promotion of the clinical guideline, detailed in this report, these approaches may assist in preventing the development of secondary mental injuries or at least slowing their growth. Should such a result not be achieved, then it may be appropriate for the next review to consider other measures, bearing in mind the 'special criteria' applied in some jurisdictions.

Recommendation 8: **That the Regulator establish a stakeholder reference group, including representatives of scheme psychiatrists and/or peak psychiatric bodies, to develop guidance for insurers to assist insurers' claims representatives in making decisions in claims for secondary mental injuries.**

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

2.5.3 Early intervention to minimise the risk of secondary mental injuries

Despite our incomplete understanding of the pathways to developing a secondary mental injury, thereby warranting further research, we know enough already to recognise that steps can be taken now to help mitigate the possibility of workers with a physical injury developing a secondary mental injury.

The Act currently requires insurers to take reasonable steps to provide early intervention services on a 'no prejudice' basis to workers as part of the pre-claim determination period for a mental injury claim (including a secondary mental injury). Early intervention is not provided to workers with physical injury until the claim is accepted by the insurer. Once liability is accepted, the Act provides the insurer must pay the cost of the medical treatment or hospitalisation that the insurer considers reasonable, having regard to the worker's injury.[19]

The *It Pays to Care* report notes there is a '*strong body of evidence [linking] the relatively poor health outcomes seen in workers compensation schemes to poorly managed psychosocial influences*'.[20] Further, research shows that '*injured people are healthier and more likely to have durable and timely RTW when injury insurance systems systematically identify and manage psychosocial risks*'.[21] Similarly, there is specific evidence supporting the use of a biopsychosocial approach for the management of musculoskeletal injuries[22] and in preventing the development of chronic lower back pain and improving recovery.[23]

The early identification of psychosocial risks is important in assisting return to work.[24] Specifically, there is evidence that interventions applied within 6 to 12 weeks after injury demonstrate the greatest potential in preventing secondary complications.[25] A 2021 paper published by the American Academy of Orthopaedic Surgeons also notes protective factors, such as resilience, self-efficacy, social support and coping skills can be identified and addressed at an early stage in the recovery process for workers with musculoskeletal injuries.[26] It notes that early psychological intervention 'may help minimize the long-lasting effects of PTSD' for such injuries.[27]

The *It Pays to Care* report identifies three components of a systematic approach to biopsychosocial risk management:

- psychosocial triage, i.e., the routine screening of workers who are off work for a week or more to identify those at a heightened risk of work disability;
- assessment of salient psychosocial barriers for the individual worker; and
- treatment for psychosocial barriers, such as through referral to psychosocial counselling.[28]

19 *Workers' Compensation and Rehabilitation Act 2003*, s 210.

20 Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace – A values and principles based approach*, 2022, 5.

21 Ibid, 6.

22 Dersh J., Gatchel R. J., et al., 'Prevalence of Psychiatric Disorders in Patients with Chronic Work-Related Musculoskeletal Pain Disability', Journal of Occupational Environmental Medicine, 2002; 44: 459-468, 466.

23 Gray S. E., Di Donato M., Sheehan L. R., et al, 'The Prevalence of Mental Health Service Use in Australian Workers with Accepted Workers' Compensation Claims for Low Back Pain: A Retrospective Cohort Study', Journal of Occupational Rehabilitation, 2023, https://doi.org/10.1007/s10926-023-10098-3.

24 Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace – A values and principles based approach*, 2022, 10.

25 Palmer J., Feyer A. & Ellis N., *Best Practice Framework for the Management of Psychological Claims Project: Evidence Review and Examples of Innovation*, Melbourne: SuperFriend, 2015; Frank J., Sinclair S., Hogg-Johnson S., Shannon H., Bombardier C., Beaton D., et al, 'Preventing disability from work-related low-back pain. New evidence gives new hope--if we can just get all the players onside', Canadian Medical Association Journal, 1998, 158(12):1625-31; Iles R., Long D., Ellis N. & Collie, A., *Risk factor identification for delayed return to work: best practice statement*, Insurance, Work and Health Group, Faculty of Medicine, Nursing and Health Sciences, Monash University, 2018, 16.

26 Kang K.K., et al, 'The Psychological Effects of Musculoskeletal Trauma', J Am Acad Orthop Surg 2021, 29:e322-e328.

27 Ibid, e325.

28 Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace*, 2022, 139-141.

The first step of this approach, psychosocial triage, should occur at an early stage using an appropriate screening tool.[29] Tools developed for this purpose include the Orebro Musculoskeletal Pain Questionnaire (Orebro Questionnaire), the Depression, Anxiety and Stress Scale, and the Kessler Psychological Distress Scale (K10). The Orebro Questionnaire in particular has been developed and implemented in several organisations, mostly in short form (10 questions or less).

The 2020 Work Injury Screen Early (WISE) study used the Orebro short form Questionnaire to screen injured hospital workers who had taken medically sanctioned time off work within the first one to three weeks after their injury to identify those at high risk for delayed recovery. An intervention plan was to be implemented immediately. The control group followed the usual care arrangements for injured workers who showed a poor response to initial treatment after six to eight weeks. The results of the study showed that psychological screening could identify workers at high risk of delayed RTW and that targeted interventions reduced time off work and lowered claim costs.[30] These findings have been replicated in other studies.[31]

Consistent with some important ideas in the *It Pays to Care* report, WorkCover currently applies a Biopsychosocial and Lifestyle Model to the management and treatment of mental injuries.[32] This model encompasses biological, psychological and social perspectives and enables understanding of the factors that contribute to the development of mood disorders and for planning clinical management.[33] WorkCover has stated that it adopts a 'tailored care and support approach' to claims management more broadly, in which it gathers information about a worker's risk factors at an early stage using evidence-based tools and then tailors treatment to the worker's needs.[34] However, an ad hoc approach, while tailored to individual needs, lacks scalability. Our proposal is a systematic approach to managing and treating physical injuries that aims to identify and pre-empt many secondary mental injuries, in line with recent developments in best practice. It would involve a standardised triage process, with a systematic approach to undertaking psychosocial assessment on all claims over a defined threshold (based, e.g., on expected time lost from work). This should be applied within one to two weeks of claim lodgement. The assessment process itself would be standardised. Those at high risk of prolonged work disability need an assessment of their individual barriers, to match care to the issues impacting that person. It would involve a standardised (rather than a resource-intensive, case-by-case, discretionary) intervention approach, allowing it to be done on a large scale, including consistent supports, ease of access, and with skills development for assessors and counsellors. It is important that everyone eligible is screened, even if in what seems like a mass approach, because it then means that most people who need tailored, individualised treatment (which is what people would in effect be referred to) receive it.

In our view, the Act should be amended to require insurers to offer early intervention support for physical injury claimants after screening. The amendments should direct insurers to adopt psychosocial triage, assessment and treatment processes that are consistent with those advocated in the *It Pays to Care* report. They should initially be limited to claimants with physical injuries that are likely to require two or more weeks off work, as claimants with more severe, long-lasting injuries are more likely to develop secondary mental injuries, and we aim to prevent these secondary injuries from developing. The support would include mental health supports, such as those provided by the allied health professionals referenced in section 2.4.2, and, in appropriate circumstances, could include referral to occupational and environmental physicians given their knowledge and expertise in the field.

An existing instrument, such as the Orebro short form Questionnaire, should be used in the short term, pending finalisation of a more bespoke instrument by a consultative group established by the Regulator. It should comprise representatives from WorkCover, relevant medical and allied health professions, unions, employers and the Association of Self-Insured Employers of Queensland (ASIEQ). After a sufficient period, this reform should be reviewed by this group, with consideration given to whether it should be extended to all workers with serious injuries (i.e., with expected time loss of more than one week) or a subset thereof. Once the research in relation to understanding the causes of the development of secondary mental injuries mentioned in recommendation 7 has been completed, the consultative group should be reconvened to consider the most suitable forms of early intervention.

Action in this area should be systematic and targeted to make use of limited resources. An insurer needs a strong system to deal with the volume of cases involved. Psychosocial screening and intervention need to fit within the overall claims system. The system needs to collect data so that clear information is available to assess, monitor and improve the systematic approach. The process needs to be an aid for case managers, not extra work for them.

29 Ibid, 139, 141.

30 Nicholas M.K., et al, 'Implementation of Early Intervention Protocol in Australia for 'High Risk' Injured Workers is Associated with Fewer Lost Days over 2 Years than Usual (Stepped) Care', Journal of Occupational Rehabilitation, 2020, 30:93-104.

31 See, for example, Australia Post's Early Matched Care Program.

32 WorkCover Queensland, *Mental Injury Treatment Guidelines*, 2020, 3.

33 Ibid.

34 WorkCover Queensland, *Recovery Blueprint*, 2020, https://www.worksafe.qld.gov.au/about/who-we-are/workcover-queensland/workcover-queensland-research-initiatives/previous-work/recovery-blueprint.

We have no illusions that a simple psychometric tool can faultlessly identify people whose conditions will degenerate into secondary mental claims, let alone be used for other purposes. Such tools can contain inadequacies and hidden biases, and they should not be relied on for making decisions on a claim.[35] However, they can be very useful for directing limited resources to areas with the greatest likelihood of need in the context we are discussing.

This is linked to recommendation 21 in relation to facilitated workplace discussions.

Recommendation 9: **That the Minister consider introducing a Bill to amend the Act to require early intervention services for workers with relevant physical injuries, designed to minimise the development of secondary mental injuries. In particular:**

(a) once a claim for a physical injury is lodged, if the physical injury is likely to lead to two or more weeks off work, the insurer should identify appropriate referrals that should be made to prevent the development of a secondary mental injury, including possible workplace discussion facilitation;

(b) this identification process should be done using a psychosocial assessment tool; and

(c) the threshold expected period off work (initially two weeks) should be defined in the Regulation and can be amended after evaluation of this reform.

Is legislation required: Yes
Amendments to Regulation: Yes
Organisational responsibility: OIR

Recommendation 10: **That the Regulator establish an external expert consultative group to determine the most appropriate psychosocial screening tool for immediate use and later to examine the outcomes of the research to consider a bespoke screening tool and other measures to minimise the conversion of primary physical claims into secondary mental claims.**

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

2.6 Post-traumatic stress disorder

In May 2021, the Act was amended to introduce a presumptive compensation pathway for first responders and other eligible employees diagnosed with PTSD (presumptive provisions). A first responder or eligible employee's PTSD is deemed to be work-related unless there is evidence to the contrary.[36] This removes their need to prove PTSD is work-related when applying for workers' compensation.

First responders are prescribed workers and volunteers who are required to respond to life-threatening or otherwise traumatic incidents, for which time may be critical to prevent actual or potential death or injury or prevent or minimise damage to property or the environment. This includes, for example, ambulance officers, fire service officers and police officers. Eligible employees are certain departmental workers and volunteers who are required to experience repeated or extreme exposure to the graphic details of traumatic incidents. This includes workers who respond to calls for information and advice in emergency situations, and workers who are required to investigate complaints of child sexual abuse. A complete list is at **Appendix H**.

Various stakeholders submitted that the operation of the PTSD provisions should be expanded to include additional occupational groups, because of the potential for those groups to be exposed to traumatic incidents and the rates of PTSD suffered by members of such groups.

35 For a reflection on some of the limitations of seemingly objective tools, see the discussion at pages 55-56 of the 2018 Review report.

36 *Workers' Compensation and Rehabilitation Act 2003*, s 36ED.

The scope of the PTSD provisions was developed to align with criteria set by Safe Work Australia for determining the appropriateness of including diseases in presumptive legislation, which require:

- a strong causal link between the disease and occupational exposure supported by academic literature;
- clear diagnostic criteria; and
- a considerable proportion of cases of the relevant disease in the overall population or in an identifiable subset of the population known to be due to occupational exposure.

The presumptive provisions apply to first responders due to the unique and inherent nature of work performed by these workers. Many first responders are unable to identify one particular event which led to their decompensation due to their cumulative exposure to trauma. The presumptive provisions overcome this barrier and mean they do not need to prove their PTSD was caused by work. We were advised that the Government consulted extensively in the development of the presumptive provisions and the scope was carefully considered, using an evidence-based approach using workers' compensation claim data, published literature, as well as the guidance and outcomes from recent reviews into first responder mental health, such as Beyond Blue's report, *Answering the Call*,[37] and the 2019 Senate Committee Inquiry into first responder mental health.[38]

The presumptive legislation is occupationally based, as different occupations have differing risks of exposure when it comes to PTSD. We were advised that the rates of PTSD by occupation were calculated to identify high risk occupations currently outside the presumptive measures, with labour force trends also used to indicate potential future PTSD claims trends. Following an evaluation of the current occupational groups that are covered by the PTSD provisions, no new groups of first responders have been identified to be included.

In November 2021, a report by Professor Tim Driscoll for Safe Work Australia found that there was evidence to support the inclusion of PTSD in first responders on the Revised Deemed Diseases List maintained by Safe Work Australia.[39] However, the report recommended against extending this list to PTSD in other occupational groups:

> *For other occupational groups, given the uncertainty in the risk associated with specific exposures that appear related to the risk of PTSD, issues with establishing the diagnosis, and uncertainty about the prevalence of the disorder in apparently at-risk populations, PTSD does not seem appropriate to include on the List with the current state of knowledge, and is not recommended for inclusion on the Revised Deemed Diseases List.*[40]

As part of its response to the report of the Queensland Parliament's Education, Employment and Training Committee in relation to the amendments, the Government committed to evaluating the appropriateness of the scope where other occupations may be justifiable and this was a term of reference in the review. In light of these considerations, no recommendation is made to extend these provisions to additional occupational groups at this time.

It is important to note that the presumptive provisions do not prevent individuals who do not satisfy these provisions from accessing workers' compensation under the usual claim pathway. Accordingly, the presumptive provisions do not disadvantage any individuals.

2.7 Information sharing regarding 'high risk' workplaces

The 2018 Review report discussed the close linkages between work health and safety (WHS) and workers' compensation, with injury prevention (through better WHS interventions) being preferred to the 'cure' of such injuries through the workers' compensation scheme.[41] Getting these linkages right is all the more important now, given the particular emphasis in this report on early intervention.

The Regulator faces increasing pressure to develop policies and practices that need analysis of and insights from good, contemporary data. Emergent and increasingly prevalent injuries such as dust lung diseases, mental injuries, and COVID-related claims need better use of existing data to improve worker outcomes – both for safety and RTW purposes. There are limitations on the data that are shared between those parts of OIR that are responsible for workers' compensation and those that are responsible for WHS. Data flows are mainly driven by requests initiated by the WHS function, less so at the initiative of the Regulator. One explicit factor is privacy concerns, driven by legislation, but some of those concerns can be overcome. The Regulator and WHSQ have databases that do not integrate, with

37 Beyond Blue Ltd, *Answering the call* national survey, National Mental Health and Wellbeing Study of Police and Emergency Services – Final report, 2018.

38 Commonwealth Senate Education and Employment References Committee, *The people behind ooo: mental health of our first responders*, Commonwealth of Australia, Canberra, 2019.

39 Driscoll T., *SWA Deemed Diseases List Recommendations for amendments to 2015 – Final Report*, Safe Work Australia, 2021, 14-15, https://www.safeworkaustralia.gov.au/doc/review-2015-deemed-diseases-australia-report.

40 Ibid.

41 Peetz, D., *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-yearly review of the scheme*, Queensland Government, Brisbane, 27 May 2018, recommendation 5.4.

a factor preventing full integration being the privacy of injured workers and the associated fear that workers may be afraid of making claims if information is shared. An implicit factor limiting any sharing of information in any situation is resourcing, with its impact on the ability of people to spend time communicating and interrogating data, so administrators of any organisation must always counter the tendency towards 'silos', alluded to in chapter 1. We are advised that these two arms of the organisation are increasingly working together to enhance their connectedness, as they both have responsibilities in terms of injury management and recovery. However, more improvements can be made to enhance the outcomes for workers.

In particular, the Regulator has data that could identify 'high risk' workplaces for primary and secondary mental injuries, but does not have the legislative mandate or the expertise to intervene to reduce that risk. WHSQ has the expertise, but does it have all the data it needs? Are its resources spread across such a large number of workplaces, that many 'high risk' workplaces can be missed? This is not something we have been able to fully investigate, given our terms of reference, but it is something that warrants consideration, both in the long term (see recommendations 1 and 2), and in the short term.

The Director Deputy-General of OIR (DDG) is the regulator of both the workers' compensation scheme and the WHS regime, however these roles are distinct, operate independently and are governed by different Acts. Regulatory functions for each area are delegated to distinct branches within OIR (WCRS for workers' compensation, and WHSQ for WHS).

Under s 327 of the Act, the Regulator is required to maintain a database of claims information collected from insurers. This data has wide-reaching purposes, including but not limited to:

- scheme wide reporting and analysis;
- monitoring performance and compliance with the Act;
- responding to information request; and
- providing data to other organisations such as Queensland Health for the notifiable dust lung disease register, WHSQ for campaign and compliance activity planning, and Safe Work Australia for the national dataset for comparative monitoring.

This database includes granular details including claims information that identifies specific workers, employers and workplaces. As claims information held by the Regulator contains personal information under s 12 of the *Information Privacy Act 2009* (IP Act), the Regulator is required to comply with the Information Privacy Principles (IPPs) under s 27 of the IP Act, unless the disclosure is authorised under law. It is also recognised that sharing identifying claims information held by the Regulator may disincentivise workers, or cause workers to be disincentivised by their employer, from making workers' compensation claims.

WHSQ receives reporting from the Regulator that identifies industry subsets that may require a WHS intervention, but only receives more detailed data identifying particular employers and workplaces when specific requests are lodged. The two, request-driven ways by which identifying workers' compensation data can be and are lawfully shared by the Regulator with WHSQ, are:

- permissible disclosure under s 573 of the Act based on a request from WHSQ that information (statistical or otherwise) that would help in the performance of WHSQ's administrative functions. This request requires the identification of an administrative purpose and the permitted use would be limited only to an administrative purpose; or
- a specific request (notice) made under s 155 of the WHS Act which relates to the power of the WHS Regulator to obtain information or that will assist the WHS Regulator to monitor or enforce compliance with the WHS Act. This ensures full usability of the data for compliance purposes.

As a result, WHSQ's ability to identify and intervene in 'high risk' *workplaces* (as opposed to *industries*) for primary and secondary mental injuries is constrained. The limitations on transfer of information add to the costs of the system and, with the growth in mental injuries, this potential is likely to increase. Privacy concerns are driven by privacy laws that bind the information management practices of government agencies. Those concerns centre on the interests of individuals — in this case, injured workers with claims — not of unsafe workplaces. It should be possible to exchange information that helps identify unsafe workplaces without identifying injured workers making claims. It should be possible to do so without creating a disincentive for a worker to lodge a claim or leading to retaliation against a worker who has made a claim.

A working group should be set up, chaired by the DDG and with representatives of WCRS and WHSQ, to identify the characteristics that make a workplace 'high risk' for primary and/or secondary mental injuries, and the logistics of legally providing that information while maintaining the privacy and confidence of injured workers. WHSQ should then work with management and health and safety representatives in those workplaces to ensure that the Psychosocial Code is being followed.

A specific legislative mandate may be necessary to enable the Regulator to share information about high-risk workplaces for mental injuries with WHSQ and to permit the Regulator to collect information from insurers about those workplaces.

Recommendation 11: **That the Minister consider introducing a Bill to amend the Act to:**

(a) enable the Regulator to share information about high-risk workplaces for mental injuries with WHSQ while protecting the privacy of individual workers, without relying on a specific request from WHSQ; and

(b) permit the Regulator to collect information from insurers about high-risk workplaces.

Prior to this, a working group, chaired by the DDG of OIR, with representatives of WCRS and WHSQ be established to devise processes that would enable the identification of 'high risk' workplaces for mental injuries, and the sharing of information on these workplaces.

WHSQ should then work with management and health and safety representatives in those workplaces to ensure that the *Managing the risk of psychosocial hazards at work Code of Practice 2022* is being followed.

Is legislation required: Yes

Amendments to Regulation: Possible (regarding type of information)

Organisational responsibility: DDG of OIR (as Regulator and WHS Regulator), OIR

Chapter 3: Rehabilitation and return to work

3.1 Introduction

Rehabilitation and return to work (RRTW) are key issues in the terms of reference.

'Rehabilitation' is defined in the Act to mean a process designed to ensure the worker's earliest possible RTW or maximise the worker's independent functioning.[1] Rehabilitation includes necessary and reasonable suitable duties programs, services provided by treating medical or allied health practitioners, rehabilitation services approved by an insurer, or the provision of necessary and reasonable aids or equipment to the worker.[2]

The purpose of rehabilitation under the Act is 'to return the worker to the worker's pre-injury duties' or, 'if it is not feasible to return the worker to the worker's pre-injury duties—to return the worker, either temporarily or permanently, to other suitable duties with the worker's pre-injury employer' or, failing that, 'to return the worker, either temporarily or permanently, to other suitable duties with another employer' or, failing that, 'to maximise the worker's independent functioning'.[3]

RTW means assisting injured workers in getting back to and staying in meaningful and safe work. Getting back to work is an important step in recovering from a work-related injury and means a worker can return to a normal life, often reducing the financial and emotional impact on the worker and their family. The Health Benefits of Good Work®, an initiative from the Australasian Faculty of Occupational and Environmental Medicine of the Royal Australasian College of Physicians, recognises the significance of work to an individual's physical and mental health and wellbeing. Long periods away from work are acknowledged to be detrimental for a person's health and the longer a worker is away from the workplace, the less likely they are to return.

It is best practice to apply a person-centred approach to RRTW.[4] This means allowing an injured worker's values, beliefs, circumstances and needs to guide how services and supports are designed and delivered, and enabling a worker to participate meaningfully in decisions that affect them in partnership with their support team (insurer, employer, treating health provider/s, and other stakeholders).

Returning an injured worker to the same job with the same employer is considered to be the best outcome which can be achieved on a claim.

3.1.1 Scheme RTW performance

The scheme appeared to maintain a stable return to work rate over the past five years, though with some complications in 2021-22. During the 2021-22 financial year, WorkCover identified errors in correctly recording the RTW outcome for WorkCover-insured workers when closing the claim. WorkCover data suggested a midpoint estimate of the true RTW rate at 88 per cent, with a 95 per cent probability that the true RTW rate for these workers is between 84.4 and 91.5 per cent.[5] That said, preliminary data suggest that the RTW rate for the 11 months to May 2023 was back up to 91.9 per cent, still below the average 2020-21 level of 93.9 percent.

The actual RTW rates for 2021-22 and 2022-23 are thus very likely to be below that reported for 2020-21. While the estimated RTW performance within WorkCover had remained relatively stable over the preceding four years before the coding failure, there had seemingly been gradual improvements of varying degrees across all duration bands (where duration is time off work). The largest improvements over the four years to 2020-21 had been estimated for the longest duration bands.

1 *Workers' Compensation and Rehabilitation Act 2003*, s 40(1).

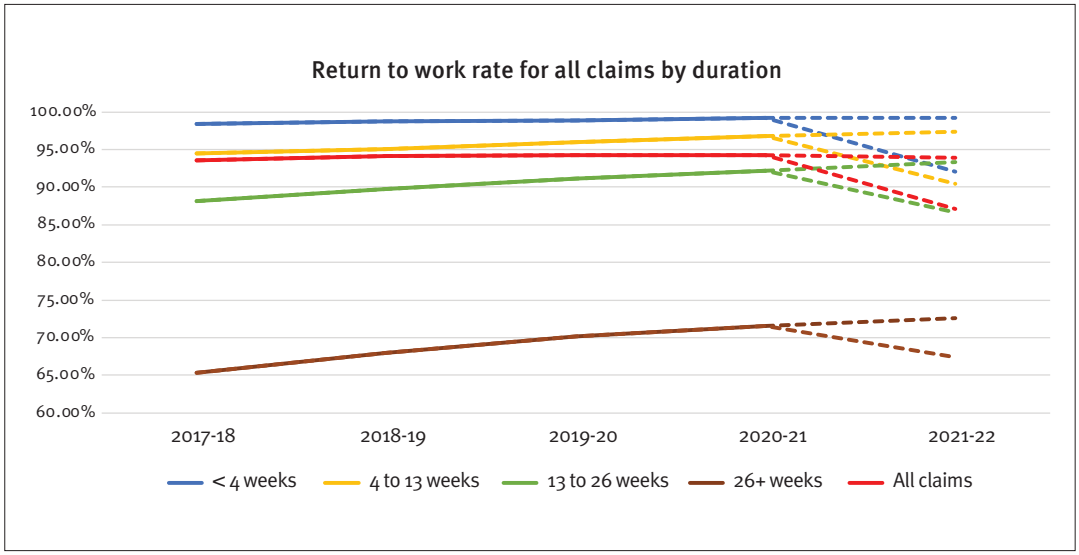
2 *Workers' Compensation and Rehabilitation Act 2003*, s 40(2).

3 *Workers' Compensation and Rehabilitation Act 2003*, s 40(3).

4 The importance of a person-centred approach is recognised in key policy documents including *It Pays to Care* and *Taking Action: A best practice framework for the management of psychological claims in the Australian workers' compensation sector*.

5 In its Annual Report for 2021-22, WorkCover reported the RTW rate as ‹91.5 per cent. WorkCover self-reported this compliance issue to WCRS and implemented measures to rectify this issue.

Table 3.1 Estimated RTW rate for all claims by duration, WorkCover



Source: Office of Industrial Relations

The problem appears to have arisen from confusion over the coding of cases where the worker is deemed fit to return to work but there is no job for the worker to return to or the worker chooses not to return. Apparently, it was not possible to subsequently correct the estimate by recoding the affected observations. It is regrettable that we are therefore unable to assess the more recent developments in RTW, though it seems likely that some sort of deterioration had occurred, since partly reversed.

Unfortunately, the survey data through the NRTW Survey (generally conducted biennially) do not offer a clear picture, though they do reduce our concern somewhat. The 'current RTW rate' observed in the survey, at 83.6 per cent in 2021,[6] is almost identical to the 83.4 per cent estimated for 2018.[7] However, the sample size is too small (N=773 for Queensland in 2021) to make meaningful time series comparisons unless movements are large, and indeed the study's authors avoid doing that at the state level, so administrative data is normally the preferred source for comparisons over time.

The NRTW Survey also pointed to some weaknesses with RTW in Queensland, as mentioned in chapter 1. It was the State with the lowest incidence, amongst workers, of a RRTW plan (62 per cent), and the State where workers were least likely to have had contact with an RRTW coordinator.[8] While survey data, subject to sampling error, tend to suggest Queensland had been performing at or above the national average in RTW rates, clearly this is not the case in relation to RRTW plans and co-ordinators.

3.1.2 Current requirements under the Act

The Act provides for the safe, timely and durable RTW of the injured worker having regard to the worker's injury. So, the Act imposes various duties and obligations on insurers and employers to rehabilitate injured workers.

Insurers must take all reasonable steps to secure the rehabilitation and early return to suitable duties of workers who have an entitlement to compensation, and workers who are participating in an accredited rehabilitation and return to work program of the insurer.[9] Failure to do so is an offence punishable by a maximum of 50 penalty units. Insurers must also take all reasonable steps to coordinate the development and maintenance of RRTW plans for workers who have sustained an injury.[10]

In May 2023, WCRS published insurer guidelines to support RRTW outcomes. These were developed in response to the 2021 NRTW Survey results, scheme RTW data performance mentioned above, and scheme intelligence gathered through complaints management as well as claims and rehabilitation compliance audits. Following extensive consultation with stakeholders, three were produced:

6 The survey was conducted between 22 June and 30 September 2021. Social Research Centre, *2021 National Return to Work Survey Report*, Social Research Centre and Safe Work Australia, Melbourne and Canberra, February 2022.

7 Social Research Centre, *National Return to Work Survey 2018 Headline Measures Report*, Social Research Centre and Safe Work Australia, Melbourne and Canberra, July 2018.

8 Social Research Centre, *2021 National Return to Work Survey Report*, Social Research Centre and Safe Work Australia, Melbourne and Canberra, February 2022, 47, 53.

9 *Workers' Compensation and Rehabilitation Act 2003*, s 220(1).

10 *Workers' Compensation and Rehabilitation Act 2003*, s 220(5).

- *Understanding rehabilitation and return to work terms, roles and responsibilities* established clarity and consistency in RRTW terminology, roles and responsibilities;
- *Accredited rehabilitation and return to work program guideline – for insurers* outlined the minimum requirements an insurer must meet for RRTW program accreditation, the purpose of an accredited RRTW program, how an insurer can support an injured worker, and when an injured worker needs to be referred; and
- *Rehabilitation and return to work plans guideline – for insurers* provided information on obligations relating to RRTW plans.

Employers must, among other things:

- take all reasonable steps to assist or provide an injured worker with rehabilitation from the date of injury to the date an insurer's responsibility for the worker's rehabilitation ends under s 220 (in essence, when the worker's entitlement to compensation ceases or the worker ceases to participate in an accredited RRTW program of the insurer).[11] The rehabilitation must be of a suitable standard as prescribed by the Regulator's Guidelines for standard for rehabilitation (Rehabilitation Guidelines).[12] The Rehabilitation Guidelines emphasise that:
  - employers should ensure adequate resources are allocated to support workplace rehabilitation activities;
  - employers should provide workers with opportunities to recover at work;
  - employers have a vital role in managing workplace issues such as informing managers, supervisors and co-workers of the existence of a RRTW plan;
  - workers' supervisors are crucial to successful RRTW outcomes;
  - employers should make contact with injured workers as soon as possible and put in place strategies that inform the worker that the employer will assist in their recovery; and
  - employers should build a relationship with and obtain information from the injured worker's treating doctor;[13]
- appoint a RRTW coordinator if the employer meets criteria prescribed under a regulation;[14] and
- if the employer is required to appoint a RRTW coordinator, have a workplace rehabilitation policy and procedures.[15]

Failure to comply with any of these requirements generally attracts a maximum penalty of 50 penalty units.[16] Employers (other than self-insurers) who fail to take reasonable steps to assist or provide a worker with rehabilitation may be required by WorkCover to pay a penalty equal to the amount of compensation paid to the worker during the period of the employer's non-compliance.[17]

A worker must also satisfactorily participate in rehabilitation as soon as practicable after the injury is sustained; and for the period for which the worker is entitled to compensation.[18] If the worker fails or refuses to participate in rehabilitation without reasonable excuse, the insurer may suspend the worker's entitlement to compensation until the worker satisfactorily participates in rehabilitation. This decision can be reviewed by the Regulator.

3.1.4 Recent reforms

Since 2019 reforms aimed at improving RRTW outcomes in Queensland have been introduced. These have included:

- requiring employers (where they meet prescribed criteria[19]) to notify their insurer of their RRTW coordinator (RRTWC), what workplaces they have responsibility for and how they are appropriately qualified for the work being undertaken at those workplaces. This provision aims to facilitate more effective communication with coordinators and enable targeted compliance; and

11 *Workers' Compensation and Rehabilitation Act 2003*, s 228.

12 *Workers' Compensation and Rehabilitation Act 2003*, s 228(2); *Workers' Compensation and Rehabilitation Regulation 2014*, reg 116. *The Guidelines for Standard for Rehabilitation* are available at https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0029/25688/guidelines-for-standard-for-rehabilitation-second-edition.pdf.

13 During the remake of the regulations to the Act in 2014, the standard for rehabilitation which contained over 30 requirements was replaced with a general provision allowing the Regulator to publish a guide administratively. This approach was made as part of the red tape reduction initiatives in 2014, however, anecdotally, this may have created adverse impacts such as a reduction in the focus on return to work by employers noting these requirements were removed from the *Workers' Compensation and Rehabilitation Regulation 2014*.

14 *Workers' Compensation and Rehabilitation Act 2003*, s 226.

15 *Workers' Compensation and Rehabilitation Act 2003*, s 227.

16 Currently equivalent to $7,740 (for an individual) and $38,700 (for a body corporate).

17 *Workers' Compensation and Rehabilitation Act 2003*, s 229.

18 *Workers' Compensation and Rehabilitation Act 2003*, ss 231 and 232.

19 *Workers' Compensation and Rehabilitation Act 2003*, s 226 and *Workers' Compensation and Rehabilitation Regulation 2014*, reg 115.

- requiring insurers to continue providing RRTW services where the injured worker's statutory entitlement has ceased but they have not yet been able to return to work. This ensures workers are given every reasonable opportunity to achieve durable return to work and their rehabilitation support is not ended prematurely when their statutory claim ends. In response, WorkCover established its Employment Connect program which provides access to services such as help from consultants specialising in return to work, funding for courses to support upskilling, and job preparation and placement help.

3.2 Regulatory tools

As mentioned above, the Regulator has published a number of legislative and non-legislative standards and guidelines to support duty holders[20] to comply with their RRTW duties under the Act. The three guidelines produced in 2023 as outlined above are 'non-legislative guidelines'. That is, they are to provide best practice guidance, not enforceable requirements. Only the older Rehabilitation Guidelines are a legislative guideline, that sets the standard required of employers in discharging their rehabilitation obligations under s 228 of the Act.

The 2023 guidelines, we are advised, aim to raise awareness of rights and obligations and help duty holders know how to comply with the legislation and build their capability to address workers' compensation and rehabilitation issues and achieve compliance. Despite not having the status of an enforceable standard, they are said to present the minimum benchmark of what compliance should look like in practice for all insurers, as adherence will be considered at licence renewal in determining whether self-insurers are fit and proper to hold a licence, whether they are considered a high, moderate or low performing insurer and the duration of their next licence.

Separately, the Act enables the Minister to make a code of practice about particular matters,[21] but that power has not been exercised to date. Contravention of a code of practice is an offence,[22] making codes of practice an enforceable legal document and an ideal vehicle for outlining the expectations of the Regulator in an authoritative way. Yet codes of practice may only be made about limited matters, as they may only state:

- ways an insurer may perform its functions under the Act in relation to the management of claims;
- ways an insurer may exercise its powers under the Act in relation to the management of claims; and
- ways an insurer may meet its obligations under the Act in relation to the management of claims.

This means, for example, that a code of practice cannot currently be made about the ways in which employers may comply with their duties under the Act. This contrasts, for example, with the code of practice regime in the WHS Act, which enables enforceable codes of practice to be made 'for the purposes of [the WHS Act]'.[23] It also contrasts with the situation of regulators in other jurisdictions that set enforceable standards and so more tightly ensure accountability of duty holders.

The ambiguous use of the term 'guideline' (is it guidance or is it an obligation?) and the narrow potential use for obligatory codes of conduct has the potential to create gaps and confusion.

The Act's code-making provisions should be amended to match the broader power available under the WHS Act. This would provide greater opportunities to set a broader range of enforceable standards, which in turn has the potential to lift the standards of service provided to injured workers. The terminology used should give unambiguous messages about which documents constitute guidance (these can indeed be called 'guidelines') and which constitute rules that can be enforced. These should be called 'codes of practice'. Amendments to the Act should also ensure the Regulator has the power to issue enforceable standards and associated material to support compliance with any aspect of the Act.

To support this, and to minimise confusion about the legal status of the Guidelines and other material published by the Regulator, all should be reviewed by the Regulator to determine which should be transitioned to an enforceable code of practice under the amended Act.

20 Insurers and employers.

21 *Workers' Compensation and Rehabilitation Act 2003*, s 486A.

22 *Workers' Compensation and Rehabilitation Act 2003*, s 486B.

23 *Work Health and Safety Act 2011*, s 274(1).

Recommendation 12: **That the Minister consider introducing a Bill to amend the Act to provide that enforceable standards or codes of practice can be issued to support the enforcement of any aspect of the Act. All guidelines and factsheets on rehabilitation and return to work should be reviewed to ensure that any which are enforceable are not referred to as 'guidelines' and to determine which should be transitioned to an enforceable standard or code of practice under the Act.**

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

3.3 The State as a model employer in compensation and rehabilitation

The duties regarding compensation and rehabilitation under the Act apply to all employers in Queensland, including government departments. This means departments have a duty to take all reasonable steps to assist or provide the worker with rehabilitation that must be of a suitable standard. Further, where they consider it is not practicable to provide the worker with suitable duties programs, they must give WorkCover written evidence that it is not practicable.[24]

Some stakeholders contended a number of Queensland Government agencies do not make sufficient enquiries as to whether suitable duties can be made available within the agency for an injured worker, and/or that little or no evidence is provided to the insurer to support the employing agency's assertion that it could not offer suitable duties to an injured worker. As the Queensland Government is the largest employer in Queensland and offers job opportunities across a wide range of employment areas, there is great potential here.

Agency conduct could be improved by the adoption of whole-of-Government principles that outline how a model employer should act in workers' compensation matters, and especially in RRTW. This recommendation draws on the existing model litigant principles that apply to the State and all agencies.[25] The model litigant principles are issued at the direction of Cabinet and are premised on the notion that the power of the State is to be used for the public good and in the public interest, and not as a means of oppression.[26]

The adoption of model employer principles for workers' compensation claims could proceed from the same basis. Such principles may also have the additional benefit of encouraging private sector employers to meet the same standards of conduct.

Consideration should be given to whether the adoption of these principles should be implemented in the same way as the model litigant principles (by direction of Cabinet), or by an alternative method. An example of an alternative method is found in the approach taken in relation to model litigant principles by the Commonwealth Government. In that jurisdiction, the obligation of the Commonwealth and Commonwealth agencies to behave as model litigants has a statutory basis and is outlined in the *Legal Services Directions 2017* (Cth).[27]

As the model litigant principles would apply across all Government agencies, the drafting should be undertaken by a central agency such as the Public Sector Commission. However, given the Regulator's and WorkCover's specialised knowledge of the scheme, it is important they be heavily involved in the development of the principles.

24 *Workers' Compensation and Rehabilitation Act 2003*, s 228.

25 Model litigant principles are available at www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles.

26 Ibid.

27 *Legal Services Directions 2017* (Cth) s 4, appendix B.

Recommendation 13: **That the Minister recommend that Government establish 'model employer in compensation and rehabilitation' principles to apply to all agencies of the State, drawing from the principles of 'model litigant' that lawyers acting for the State follow, and include principles on good behaviour, including an obligation to offer suitable work.**

Is legislation required: Probably not

Amendments to Regulation: Possible

Organisational responsibility: Public Sector Commission (possibly) in consultation with the Regulator and WorkCover

3.4 Obligation to provide suitable duties

3.4.1 Employer requirements

The Act requires the employer of an injured worker to take all reasonable steps to assist or provide the worker with rehabilitation, which includes necessary and reasonable suitable duties programs.[28] Contravention of this requirement is an offence.

If an employer considers it is not practicable to provide a worker with a suitable duties program, they must give the insurer written evidence that it is not practicable.[29] Despite this, and as noted earlier, some stakeholders expressed reservations about the lack of rigour around employers' compliance with the law about suitable duties and about insurers interrogating an employer's assertions that suitable duties are not available.

Lack of scrutiny has the potential to impact RRTW outcomes for injured workers. The Rehabilitation Guidelines published by the Regulator acknowledge that support and early intervention by the employer in the development and implementation of a suitable duties program is key to a successful outcome.[30]

Recommendation 14: **That the Minister consider introducing a Bill to amend s 228(4) of the Act to require that:**

(a) the employer, when providing written evidence that suitable duties are not practicable, describe the steps taken or the inquiries made to reach that determination; and

(b) the insurer take reasonable steps to satisfy itself that no suitable duties are available, and, where appropriate, use the penalty provisions at s 228(1) and s 229 where it is not satisfied.

Is legislation required: Yes

Amendments to Regulation: Possible

Organisational responsibility: OIR

3.4.2 Suitable duties to be meaningful

Injured workers who do not have suitable duties to perform with their pre-injury employer can be placed with a host employer as part of a host program (such as WorkCover's 'Recover at Work' program) but participation in such programs does not guarantee the worker a return to employment, either with the host employer or their pre-injury employer.

Some stakeholders raised concerns that suitable duties programs undertaken by injured workers through 'host' placements do not always take account of the worker's pre-injury job skills. One stakeholder submitted that injured workers are often placed into suitable duties that bear little relevance to their pre-injury duties, impacting their sense of belongingness and exacerbating the potential for further decompensation.

28 *Workers' Compensation and Rehabilitation Act 2003*, s 40(2), 228(1).

29 *Workers' Compensation and Rehabilitation Act 2003*, s 228(4).

30 Office of Industrial Relations, *Guidelines for standard for rehabilitation*, 2023, 3.

Although the concerns were largely directed to host placements, similar issues were identified with respect to employer provided suitable duties.

Section 42 of the Act currently defines 'suitable duties' as work duties for which a worker is suited having regard to:

- the nature of the worker's incapacity pre-injury employment;
- relevant medical information;
- the worker's RRTW plan;
- the provisions of the employer's workplace rehabilitation policy and procedures;
- the worker's age, education, skills and work experience;
- if duties are available at a location other than the location in which the worker was injured – whether it is reasonable to expect the worker to the attend the other location; and
- any other relevant matters.

The Rehabilitation Guidelines describe suitable duties as 'meaningful job tasks selected from the injured worker's usual job or another role' that are agreed between the worker and employer in consultation which the insurer, treating doctor and approved providers.[31] However, the requirement for meaningful duties is not expressly reflected in the Act.

To ensure that workers do not feel devalued when undertaking suitable duties, the definition of 'suitable duties' should be amended to expressly require consideration of whether the proposed duties are meaningful to the worker. This can be achieved by including this matter as an additional factor to be considered amongst the current list in s 42 of the Act.

Recommendation 15: That the Minister consider introducing a Bill to amend s 42 of the Act to include a provision that suitable duties are to be meaningful to the worker. This requirement is also to be included in the Workers' Statement of Rights (see recommendation 37).

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

3.5 Rehabilitation Coordinators

Some stakeholders raised concerns in relation to compliance with s 226(1) of the Act, which requires employers who meet a prescribed wage threshold to appoint a RRTW coordinator.

RRTW coordinators have various statutory functions, including:

- initiating early communication with an injured worker in order to clarify the nature and severity of the worker's injury;
- providing overall coordination of the worker's return to work;
- consulting with the worker and the worker's employer to develop suitable duties programs;
- liaising with people engaged by the employer to help in the worker's rehabilitation and return to work; and
- liaising with the insurer about the worker's progress.[32]

To be a RRTW coordinator, a person must be appropriately qualified to perform the functions of a RRTW coordinator under the Act, which will be the case if they have completed a training course approved by the Regulator.[33] While some employers employ a dedicated person to fulfil this role, the Act does not require this, and in many organisations the role is held in conjunction with another role. Unless an employer has a reasonable excuse, failure to appoint a RRTW coordinator within the period specified by the Act[34] is an offence.[35]

31 Ibid 7.

32 *Workers' Compensation and Rehabilitation Act 2003*, s 41(b); *Workers' Compensation and Rehabilitation Regulation 2014*, reg 114.

33 *Workers' Compensation and Rehabilitation Act 2003*, s 41.

34 Under s 226(3) of the Act, the relevant period is within six months after establishing a workplace or starting to employer workers at a workplace, or such later period approved by the Regulator.

35 *Workers' Compensation and Rehabilitation Act 2003*, s 226(3).

The importance of this role is addressed in the Rehabilitation Guidelines published by the Regulator. The Rehabilitation Guidelines note that RRTW coordinators play an important role in facilitating actions detailed in RRTW plans and establishing suitable duties programs, and that the employer's support for this role can lead to better outcomes.[36]

To improve compliance with the Act's requirement to appoint a RRTW coordinator, the Regulator should conduct targeted audits of employers who are subject to the requirement to identify whether they have appointed a RRTW coordinator. Conducting such audits will serve as a deterrent to non-compliance and may support the Regulator to take appropriate enforcement action, including prosecutions, in appropriate cases.

Recommendation 16: That the Regulator undertake regular targeted audits to ensure that all employers who are required to appoint a rehabilitation and return to work coordinator under s 226(1) of the Act have an appropriately trained person in place.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

Certain stakeholders have raised an issue over the requirement in s 226 of Act for the RRTW coordinator to be employed in Queensland under a contract regardless of whether the contract is a contract of service. The concern is that this requirement restricts a national employer from being able to offer flexibility of resources in each of the States; Queensland is the only State with this restriction.

As mentioned, the Act provides a level of flexibility in the employment of a RRTW coordinator. However, the presence of a RRTW coordinator based in Queensland delivers several benefits including ensuring specific knowledge of the Queensland scheme and the factors affecting RRTW in a large decentralised State as well as allowing direct in-person contact with the injured worker and other stakeholders. We do not consider it necessary to amend the Act to remove the requirement.

3.6 Workplace rehabilitation providers and services

3.6.1 Principles of Practice for Workplace Rehabilitation Providers

In 2010, the Head of Workers' Compensation Authorities (HWCA), a body comprised of representatives from workers' compensation authorities in Australia and New Zealand, endorsed the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers (the Framework). The purpose of the Framework was, among other things, to provide a robust, nationally consistent system for approving workplace rehabilitation providers (WRPs). This system, implemented via statutory and administrative frameworks in participating jurisdictions, required organisations seeking to operate as a WRP to obtain approval from the relevant workers' compensation authority, with approved providers subject to ongoing monitoring activities and specified conditions of approval.

Queensland, South Australia and New Zealand were the only HWCA jurisdictions that did not formally adopt the Framework. Instead, WorkCover adopted elements of the Framework, such as those relating to professional standards, as a matter of practice in its contractual engagements with WRPs.

In December 2018, following a review of the Framework, HWCA members agreed the Framework would be discontinued and replaced with a set of principles for the delivery of WRP services. To that end, in October 2019, HWCA members endorsed the Principles of Practice for Workplace Rehabilitation Providers (the Principles). Among other things, the Principles are designed to guide WRPs in delivering workplace rehabilitation services and inform the WRP approval and management frameworks of workers' compensation authorities.[37] The Principles seek to achieve this by outlining:

- five principles of service delivery by WRPs; and
- two principles directed toward competency and professional standards of WRPs and the conduct and administration of their business.[38]

The Principles function as a 'best practice' document, and no formal adoption is required. That said, in some Australian jurisdictions, elements of the Principles are adapted into authoritative guidance and regulatory documents published by the relevant workers' compensation authority. For example, Comcare has developed a *Performance*

36 Office of Industrial Relations, *Guidelines for standard of rehabilitation*, 2023, 5.

37 Heads of Workers' Compensation Authorities, *Principles of Practice for Workplace Rehabilitation Providers*, 2019, 2.

38 Ibid 5-11.

Monitoring Framework outlining its performance requirements and approach to monitoring approved WRPs.[39] Under this Framework, providers are expected to meet specific service delivery requirements adapted from the service delivery principles outlined in the Principles.

In Queensland, WorkCover applies the Principles in its contractual arrangements with WRPs as appropriate. However, this occurs as a matter of practice and is not underpinned by any formal regulatory document or framework. Further, the Regulator has no direct oversight of the requirements for WRPs. Giving effect to the Principles through a regulatory mechanism, such as an enforceable code of practice[40] (building on recommendation 12) is in accordance with one of the functions of the Regulator under the Act which is to undertake workplace rehabilitation and return to work accreditation activities.[41] This would fill a gap in the rehabilitation quality assurance system and would ensure consistency in the delivery of services by WRPs across the scheme. This approach would also bring Queensland into line with other Australian workers' compensation jurisdictions.

Recommendation 17: That the Principles of Practice for Workplace Rehabilitation Providers endorsed by the Heads of Workers' Compensation Authorities be given effect in the scheme by an enforceable standard or code of practice under the Act, which would ensure the quality of workplace rehabilitation providers in the scheme.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

3.6.2 Qualifications and types of services – Workplace Rehabilitation Providers

The Appendix to the Principles are used as guidance by workers' compensation authorities to establish professional registration/membership requirements of WRPs in their jurisdiction. Eight different professions are listed (medical and allied health), with a note that others may be used by workers' compensation authorities.

As part of the development of an enforceable regulatory mechanism by the Regulator, the opportunity should be taken to set out the qualifications of and types of services that are able to be provided by those occupational groups. The development of this matrix is to be done in consultation with the various, relevant professional bodies, using the Appendix to the Principles and the WorkCover Tables of Costs as a starting point.

With appropriate training, claims staff of insurers could then be assured that they are selecting the most appropriate professional to assist the worker in their RRTW.

This information should also be made available in an accessible form to workers so that they can properly understand the qualifications of and services provided by the chosen WRP (see recommendation 17).

Recommendation 18: That, in developing the regulatory mechanism for WRPs, the Regulator consult with relevant professional bodies to set out the qualifications and types of services that can be provided by each of the professions.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

39 Available at https://www.comcare.gov.au/service-providers/workplace-rehabilitation-providers/operating.

40 See recommendation 3.1.

41 *Workers' Compensation and Rehabilitation Act 2003*, s 327(1)(h).

3.6.3 Worker right to choose provider

Some stakeholders submitted injured workers should be consulted on, or have the right to choose, their preferred WRP from the insurer's list of accredited providers.

Under the Act, an insurer must take all reasonable steps to coordinate the development and maintenance of a RRTW plan for injured workers.[42] The Act requires that this RRTW plan be developed in consultation with the worker, among others.[43] However, it does not specifically require that the worker be consulted about their preferred WRP.

Research shows that 'where workers are empowered to have an active role in safety matters and where there are high levels of cooperation between persons conducting a business or undertaking, workers, and others, safety outcomes improve'.[44] Consistent with this, the *It Pays to Care* report notes the importance of empowering workers to be active participants in their recovery and return to work.[45]

Giving workers the right to choose their WRP where they have concerns about the initial selection made by the insurer empowers workers to contribute to the RRTW process and achieve a successful return to work outcome.

Recommendation 19: That the Minister consider introducing a Bill to amend the Act to provide that an injured worker has the right to choose an alternative WRP from the list of accredited providers where the worker is dissatisfied with the WRP selected by the insurer. This right is to be included in the Workers' Statement of Rights (see recommendation 37).

Is legislation required: Yes
Amendments to Regulation: No
Organisational responsibility: OIR

3.6.4 Timing of RRTW plan

Safe Work Australia's National RTW Survey shows that Queensland had the lowest proportion of workers who reported having a RRTW plan in place of all Australian workers' compensation jurisdictions except Seacare (61.9 per cent).[46] This was significantly less than the Commonwealth Comcare jurisdiction (77.5 per cent) and other states and territories (between 65.3 per cent and 74.7 per cent), as well as the national average (67.2 per cent).[47] Across all jurisdictions, workers with mental injuries were less likely to have a RRTW plan than those with physical injuries.

While the Act requires insurers to coordinate the development and maintenance of RRTW plans for injured workers,[48] it does not specify a timeframe for doing so. The Regulator's *Rehabilitation and Return to Work Plan Guideline – for insurers* recommends that an initial RRTW plan be developed, and sent to the worker, employer and treating doctor, 'usually within 20 business days'.[49] However, this is not legally enforceable but can be used to promote and drive compliance.

There is no consistency across jurisdictions in provisions prescribing the time by which RRTW plans are to be developed. The Northern Territory requires a proposal for an RRTW plan be developed by an employer within seven days after the employer becomes aware the worker is likely to be partially or totally incapacitated for more than 28 days. New South Wales publishes a standard of practice that requires a plan to be developed within 20 business days.[50]

42 *Workers' Compensation and Rehabilitation Act 2003*, s 220(5).

43 *Workers' Compensation and Rehabilitation Act 2003*, s 220(5), (7)(b).

44 Massy C., Allen C. & Swan D., *Review of the Work Health and Safety Act 2011*, Queensland Government, Brisbane, 2021; citing Nichols, T., Walters D., & Tasiran A.C., Trade unions, institutional mediation and industrial safety: Evidence from the UK. Journal of Industrial Relations., 2007, 49(2), 211-225; and Trucco P., Onofrio R., & Cagliano R. (Eds.) (2020) AHFE 2020, AISC 1204, 18-25.

45 Royal Australasian College of Physicians and Australian Faculty of Occupational and Environmental Medicine, *It Pays to Care*: *Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, 2022, 63, https://www.racp.edu.au/advocacy/division-faculty-and-chapter-priorities/faculty-of-occupational-environmental-medicine/it-pays-to-care, 2022.

46 Social Research Centre, *2021 National Return to Work Survey Report*, Social Research Centre and Safe Work Australia, Melbourne and Canberra, February 2022, 46-47.

47 Ibid.

48 *Workers' Compensation and Rehabilitation Act 2003*, s 220(5).

49 Office of Industrial Relations, *Rehabilitation and return to work plan guideline – for insurers*, https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0020/113942/rehab-and-return-to-work-plan-guideline-for-insurers.pdf, 2023, 10. The guideline was developed in response to the Queensland outcomes of the NRTW Survey, among other things.

50 *Standard of practice S12 Injury management plans*. Available at https://www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/other-instruments/standards-of-practice/s12.-injury-management-plans.

The 20 business day timeframe in the *Rehabilitation and Return to Work Plan Guideline – for insurers* was the product of stakeholder consultation. It applies after claim acceptance, although the Guideline notes that best practice is for contact to be made with an injured worker as early as possible after injury. The Guideline was developed in response to the survey data on the low incidence of RRTW plans. Although it is still in its infancy, introducing a legislative timeframe for the development of a RRTW plan will help drive up the number of RRTW plans being developed and will ensure that more injured workers are assisted in their return to work.

A RRTW plan should be developed within 10 business days of a claim being accepted with the ability for such plans to amended from time to time, in consultation with the worker, to take account of changed circumstances. The time frame has been lowered in recognition of the early discussions that have taken place,[51] which should provide some direction as to the type of RRTW that will be required and to ensure that the injured worker receives the necessary rehabilitation support to return to work as soon as they are able. It is consistent with the emphasis in the Act on early RRTW. Two weeks seems enough, the consequences for a worker of not having one are potentially severe, and it is something on which Queensland needs to improve its performance. It is better to have a plan that needs amending in light of circumstances, than to not have one at all.

Recommendation 20: That the Minister consider introducing a Bill to amend the Act to provide that a RRTW plan for an injured worker is to be developed within 10 business days of a claim for compensation being accepted. It may be amended from time to time thereafter, in consultation with the worker, to take account of changed circumstances.

Is legislation required: Yes
Amendments to Regulation: Yes
Organisational responsibility: OIR

3.6.5 Workplace facilitated discussions

Certain stakeholders recommended consideration be given to adopting facilitated workplace discussions as a mechanism to resolve disputes about return-to-work matters, including the provision of suitable duties. The early engagement of such a WRP would allow the issue of suitable duties to be explained and explored in a non-adversarial way, may assist in identifying suitable duties that had not been previously considered, e.g., through the use of vocational assessment, and would help to resolve any anxieties or concerns on the part of the employer and the worker.

These stakeholders also stated that this type of service could also assist with addressing workplace conflict or interpersonal issues that may be presenting as a barrier to return to work, particularly as it relates to mental injuries.

Facilitated discussions by an independent third party have recently become a feature of the New South Wales and Victorian workers' compensation schemes. In New South Wales, these discussions are arranged by insurers and facilitated by WRPs. SIRA considers these discussions are suitable where the parties in the workplace (such as the injured worker, their employer or a co-worker or line supervisor) do not agree with each other and cannot maintain a workable relationship.[52] This may arise where the worker has been bullied or harassed, where there are differences in working or communication styles, where change management is occurring, or where issues have arisen from job or role demarcation.[53] The cost of providing this service is covered as a claim cost. Victoria's initiative operates similarly, although is arranged through authorised claims agents, consistent with the outsource model adopted by the Victorian scheme.

In Queensland, while the WorkSafe Queensland website and the Rehabilitation Guidelines both provide general guidance about the resolution of RRTW disputes, there is no comparable initiative to that in NSW and Victoria. The Rehabilitation Guidelines outline the steps that employers should take where a worker disputes a proposed RRTW plan or suitable duties program but is limited and not specific. They say that the resolution process should attempt to address concerns raised by the injured worker or their representative in an effective and efficient manner and that an employer may request assistance from an insurer to assist in resolving disputes.[54]

51 The guideline proposes that insurers contact the injured worker and employer as soon as possible after the lodgement of a claim where the worker is certified to be unfit for more than a week or certified fit for partial work duties to commence discussions on RRTW.

52 New South Wales State Insurance Regulatory Authority, *Workplace facilitated discussion*, State of New South Wales, https://www.sira.nsw.gov.au/resources-library/across-schemes/workplace-facilitated-discussion.

53 Ibid.

54 Office of Industrial Relations, *Guidelines for standard for rehabilitation*, 2023, 8.

This means there is no formalised framework in Queensland to support the conduct of facilitated discussions by WRPs or reference in WorkCover's Table of Costs, which determine how WorkCover funds treatment and rehabilitation expenses. Formalising this initiative would help to break down psychosocial barriers to return to work for all parties, including the injured worker, the employer, and the treating practitioner. This is particularly relevant for mental injuries to ensure an injured worker's safe return to work. Such processes would be facilitated by WRPs who hold appropriate qualifications in the delivery of workplace facilitated discussions (see recommendation 21 above).

Stakeholders working in the rehabilitation field have advocated for the inclusion of this service. WorkCover is also supportive of the introduction of workplace facilitated discussions and has providers on its panels who could provide this service immediately.

The psychosocial screening tool identified in recommendation 9 in relation to early intervention can also be designed to identify where such discussions would facilitate resolution of problems in management-employee relations that could culminate in secondary mental injury claims.

Recommendation 21: That the Minister consider introducing a Bill to amend the Act to provide access to workplace facilitated discussions delivered by a suitably qualified and accredited WRP. Separately, that WorkCover amend its Table of Costs to include workplace facilitated discussions.

Access to workplace facilitated discussions should occur where an employer or a worker is resistant to participating in a RRTW plan, where the employer declines to provide suitable duties or if the desirability of such discussions becomes apparent during the RRTW process. It may also be activated by the screening tool identified in early intervention.

Is legislation required: Yes

Amendments to Regulation: Yes

Organisational responsibility: OIR (legislation), WorkCover (Table of Costs)

3.7 Labour hire and host employers

3.7.1 Rehabilitation and return to work cooperation

The Act requires the employer of an injured worker to take all reasonable steps to assist or provide the worker with rehabilitation, which includes necessary and reasonable suitable duties programs.[55] Contravention of this requirement is an offence. In labour hire arrangements, the labour hire provider is the legal employer and has this obligation. However, in practice, labour hire providers rely on host employers to provide suitable duties programs because, being suppliers of labour, limited suitable duties exist within their own workplace. WorkCover has advised that RTW for injured workers can be delayed because of this. The non-RTW rate (that is, the inverse of the RTW rate) is 7.2 per cent for labour hire workers, compared to 5.8 per cent amongst other workers. Expressed another way, a labour hire worker is nearly 25 per cent more likely to not return to work than another worker.

Host employers that take on labour hire workers generally have control of the workplace where such workers work (or at least far greater control than the labour hire provider). Despite this, there is no consequence for host employers when workers are injured at their workplace except where there is a recovery against them in common law proceedings. Instead, labour hire providers, as the legal employers of these workers, bear the premium increase arising from claims experience as well as liability for the payment of excess.

Although the obligations in the WHS Act effectively require cooperation between host employers and labour hire firms in relation to the health and safety of labour hire workers generally,[56] the Act does not require a host employer to cooperate with a labour hire firm in relation to RRTW. Safe Work Australia's view is that host organisations and labour hire firms should work together to coordinate RTW arrangements.[57]

55 *Workers' Compensation and Rehabilitation Act 2003*, s 40(2), s 228(1).

56 *Work Health and Safety Act 2011*, s 46. See also the *Work health and safety consultation, cooperation and coordination Code of Practice 2021*.

57 Safe Work Australia, *Labour hire: duties of persons conducting a business or undertaking*, 2020, https://www.safeworkaustralia.gov.au/system/files/documents/1908/labour-hire-duties-of-persons-conducting-business-undertaking.pdf.

The Victorian legislation requires host employers to cooperate with labour hire firms, to the extent it is reasonable to do so, in respect of action taken by the labour hire firm to comply with specified return to work obligations.[58] The Western Australian Government has recently introduced the *Workers Compensation and Injury Management Bill 2023* which includes a comparable provision.[59] These provisions apply (or in the case of Western Australia, are proposed to apply) in addition to general WHS duties of cooperation under each State's WHS legislation.[60]

It is appropriate that host organisations be required to support workers' RRTW in circumstances where they control the workplace at which the worker is injured or to which the worker is returning to work. Doing so will minimise the disadvantage suffered by labour hire workers in RRTW matters compared to conventionally-employed workers. It will also incentivise host employers to focus on injury prevention for labour hire workers. As in Victoria and (soon) Western Australia, this should be an offence provision, attracting a penalty for non-compliance.

Recommendation 22: That the Minister consider introducing a Bill to amend the Act to require host employers to cooperate with labour hire providers to assist them to comply with their obligations to establish and implement a rehabilitation and return-to-work program and provide the pre-injury position or a suitable duties position to the extent it is reasonable to do so. This should be an offence provision.

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

3.7.2 Labour hire provider premiums

The amount of premium paid by an employer, including licensed labour hire providers, depends in part on the cost of any injury claims against it (known as 'claims experience'). Under WorkCover's premium calculation method, employers are allocated an experience rating based on their claims experience, which is then factored into the calculation of the employer's premium rate. It is designed to reward employers with good injury prevention and management.

Claims experience affects not only the employer's experience rating based but also their industry's rate and the scheme's average premium rate.

Claims costs for injured labour hire workers are counted toward the claims experience of the relevant labour hire provider, even though the worker's injury was sustained at the workplace of the host employer. Conversely, there is no premium impact for the host employer, and the only cost impact results from a potential common law claim or recovery action. WorkCover raised concerns about this issue during consultation.

The biggest single factor affecting the safety of a labour hire worker will be the practices at the workplace, which are dictated by the host employer, not the labour hire employer. Moreover, work health and safety outcomes for non-standard workers such as labour hire workers are generally inferior to those for workers employed under conventional working arrangements.[61] To promote better safety outcomes for labour hire workers, the experience rating of host organisations for premium purposes should take into account the effects of injuries suffered by labour hire workers supplied to such organisations to perform work.

Premiums are a matter for the WorkCover Board. In fact, it would be up to the Board of WorkCover, on actuarial advice, to determine the actual premiums that would be payable by affected employers. Noting this, a legislative change is necessary to enable insurers to treat the claims experience associated with injured labour hire employees on a host employer's site the same way as a host employer's own employees are treated.

This amendment would not specify any particular formula or mode of calculation for either group (that would remain a matter for WorkCover), but would simply require that they be treated the same way.

58 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 109.

59 *Workers Compensation and Injury Management Bill 2023* (WA), s 167.

60 *Occupational Health and Safety Act 2004* (Vic), s 35A(2); *Work Health and Safety Act 2020* (WA), s 46.

61 Quinlan M. *The Effects of Non-Standard Forms of Employment on Worker Health and Safety*, Conditions of work and employment series, no. 67, ILO, Geneva, 2015; Forsyth A, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report*, Industrial Relations Victoria, Department of Economic Development, Jobs, Transport & Resources, 2016.

A criticism could be that this amendment would represent a major shift to the nature of the workers' compensation scheme and involve cost shifting from public liability schemes to the workers' compensation scheme. However, it would improve the ability of the system to deliver on one of its founding concepts: that premiums should reflect the risk arising from the work practices of the organisation that shapes those practices, and be borne by those organisations.

There is also the question of whether it would have any deleterious impacts on the labour hire sector. This seems unlikely as, if anything, it should lead to improvements in safety practices and hence improvements in the viability of legitimate labour hire firms. While some host firms may reduce their use of labour hire, this would only occur where the claims and safety records of such firms was poor.

Under this approach, labour hire firms would need to continue to have workers' compensation policies, and the effects of injuries suffered by labour hire workers would continue to be factored into the experience rating of labour hire providers. An application for a labour hire licence in Queensland must be accompanied by information about the applicant's compliance with work health and safety and workers' compensation laws. While contraventions of work health and safety laws and workers' compensation laws do not automatically disqualify an applicant from holding a licence, the applicant may be asked for further information to assess their suitability to hold a licence.

Should WorkCover implement this in its experience rating calculations, the Government could later consider amendments to provide that, where the host employer is self-insured, and the labour-hire firm is covered by WorkCover, when a labour-hire worker is injured and WorkCover compensates them for lost earnings, WorkCover would thereby be reimbursed by the host employer for expenses incurred through that injury. This would ensure that self-insured host employers are, in effect over the long term, financially treated the same way as system-covered host employers in the above scenario.

Recommendation 23: That the Minister consider introducing a Bill to amend the Act to enable insurers to take account, in the setting of premiums, of the claims experience of labour-hire workers on host employers' sites in the same way as their own employees' are taken into account.

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

3.8 Placements after 'Recover at Work'

As part of the RTW assistance provided as part of claim management, WorkCover operates a number of initiatives to support workers' return to work, including the Employment Connect program and the 'Recover at Work' program.

The Employment Connect program is designed to help increase workers' chances of finding a new job where they cannot be returned to the same job in their original workplace. Under the program, workers have access to a variety of employment services including assistance from consultants specialising in return to work, funding for courses to support upskilling, and job preparation and placement help.

The 'Recover at Work' program places injured workers in short term host employment with an employer from a panel maintained by WorkCover. Under the program, WorkCover pays the worker's wages while they participate in a suitable duties program with the host employer. The host employer is not obliged to employ the worker at the end of the placement, although if they do so, they will be entitled to a six-month claims cost exemption. This means any statutory benefits or damages payable under the Act for an aggravation of the worker's injury sustained in the six months immediately after the placements will not be included in the host employer's future premium calculations.

Beyond receiving the six-months claim cost exemption, there are limited incentives for employers to employ an injured worker at the completion of the 'Recover at Work' program. Risk-averse employers may be concerned about the WHS or workers' compensation implications of hiring an injured worker, despite their capacity for suitable duties. In consultations, employers were perceived as being hesitant to take on anyone who had a past workers' compensation claim. In this context, extending the claims cost exemption well beyond six months could encourage provision of suitable work, especially amongst small private sector employers, and who would find it harder to immediately see opportunities for suitable work. We suggest WorkCover should consider extending it to 24 or 36 months, to minimise employer reluctance to take on injured workers who are unable to go back to their previous employer and who may have difficulty finding work elsewhere.

Recommendation 24: That WorkCover consider extending the claims cost exemption for workers taken on after the expiry of their coverage by the 'Recover at Work' scheme, from six months to 24 or 36 months.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: WorkCover

3.9 Durable return to work

A small but material proportion of injured workers are not able to return to their pre-injury position or an alternative suitable position. In response to recommendations from the 2018 Review, the Act was amended in 2019 to require insurers to refer workers to an accredited RRTW program where the injured worker has not returned to work because of their injury after their statutory entitlement has ceased.[62] As every worker's circumstance and injury is different, the Act does not prescribe any fixed end point for discharging this duty. Rather, the duty continues so long as there are reasonable steps open to the insurer to secure the rehabilitation and early return to suitable duties of the relevant worker (e.g. through WorkCover's Employment Connect Program).[63] Beyond this, insurers' responsibilities for injured workers are limited and insurers are not required to monitor the work status or health condition of workers who have exited the scheme.[64]

Research by Monash University has found there is a significant transition to Centrelink payments after workers' compensation ends.[65] However, the only data currently collected on injured workers post-claim is via the NRTW Survey, which is based on a sample of random injured workers and is not conducted annually.

To improve the durable return to work rate, and the collection of data about this issue, a more active role needs to be taken by the scheme to monitor and support workers who have exited the scheme. This can be achieved by amending the Act to enable follow up on workers who have exited the scheme to check whether durable return to work has occurred and offer further RRTW support if it is sought. To verify whether workers have returned to work (and have remained in employment) in a meaningful sense, such contact should be made six months after the worker's benefits cease.

When a claim is about to finish, the insurer should ensure the worker's contact details are current and advise the worker that contact will be made after six months. The insurer should then make contact with the worker at the six-month mark and simply ask: (i) is the worker unemployed and looking for work; (ii) if 'yes', do they wish to have RRTW assistance; and (iii) if 'yes', can they provide permission for the worker's name to be passed on to a designated RRTW provider. If the answer to (iii) is 'yes', the insurer can pass their name on to that provider and at that point the insurer's obligation toward, and links with, the worker cease. The designated RRTW provider (the 'six month provider') can then make contact with the worker, assess what assistance is required, and provide that assistance, within parameters determined by the Regulator. The 'six-month provider' would be selected through a procurement process managed by OIR, with the cost funded from the Regulator's levy.

62 *Workers' Compensation and Rehabilitation Act 2003*, s 220(2)(c).

63 As noted above, however, the short tail nature of the Queensland scheme means that statutory entitlements to compensation will cease when particular payment or time thresholds are met (among other circumstances).

64 Noting some administrative initiatives exist which can connect workers with social support services outside the scheme. For example, the Queensland Government-funded Workers' Psychological Support Service (WPSS) offers free and confidential assistance to workers suffering mental injury by connecting them with relevant services such as community and social support, counselling and social inclusion programs. The WPSS is available to workers with a closed claim, including those who have not returned to work.

65 Griffiths D., di Donato M., Gray S., Lane T., Iles R., Smith P. & Berecki-Gisolf J., Receipt of Centrelink payments after long-duration workers' compensation claims: Transitions study report 1, Monash University, Melbourne, 2022.

The insurer's only other obligation would be to provide anonymised data on the outcome of their six-month contact to the Regulator, who can keep a database that would enable better estimation of the durable RTW rate of injured workers. In situations where the insurer is unable to make contact with the exited worker by email, telephone or mail within a defined period, then they would advise the Regulator accordingly and that information would also be entered into the database.

Recommendation 25: That:

(a) the Minister consider introducing a Bill to amend the Act to oblige insurers to contact workers six months after benefits cease, and offer to pass their name on to a selected RRTW provider if, after exiting the scheme, they had become unemployed due to their injury. The provider should be selected through a procurement process; and

(b) the information collected by insurers should be shared with the Regulator on an anonymous basis under a mandatory reporting requirement.

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

Chapter 4: Coverage

This chapter provides information about worker's compensation coverage and eligibility for compensation in the Queensland workers' compensation scheme.

4.1 Definitions

Determining whether a person is covered by workers' compensation primarily depends on the definitions of 'worker' and 'injury'.

4.1.1 Who is a 'worker'?

In Queensland, the definition of 'worker' has evolved over time in response to changes in the labour market. In most jurisdictions, including Queensland, legislation has been extended to cover some people who did not fit into a traditional concept of 'worker', reflecting the fact that it is not just employees who warrant the protection of beneficial legislation. Thus, Queensland legislation now covers certain contractors and labour hire workers.

At its core, the Act defines a 'worker' as a person who works under a contract and is an employee for the purpose of PAYG withholding under the *Taxation Administration Act 1953* (Cth).[1] The definition of 'worker' generally captures employees in traditional employment relationships, subject to some specific deemed additions and exclusions. Independent contractors are generally not included as workers in the scheme.

The Act provides for certain people in particular circumstances to be 'workers', including sharefarmers, salespersons, contractors, persons party to a contract of service involving an intermediary or labour hire arrangement, and unpaid interns.[2] Certain people who are not workers, but are covered under a contract of insurance with WorkCover, are entitled to compensation under the Act, including members of public bodies (e.g., local government and unions), students, and people in voluntary positions with non-profit organisations.[3]

Workers' compensation coverage may extend to volunteers if WorkCover has entered into a contract of insurance with the responsible entity (authority, person, charitable institution, or not-for-profit organisation). This coverage is limited to medical expenses and weekly and lump sum compensation only.

The Act also specifies certain people who are not workers in particular circumstances, including professional sportspeople, members of fishing crews, and participants in approved programs under the *Social Security Act 1991* (Cth).[4]

4.1.2 What is an 'injury'?

A worker is entitled to receive compensation for a work-related injury if the injury meets the Act's definition of 'injury'.

They are eligible for compensation for the injury or disease if it arose out of, or in the course of, the worker's employment and the employment was 'a significant contributing factor' to the injury. A worker is also entitled to compensation for injuries sustained while on a journey between work and home, as well as on recess breaks.

As discussed in earlier chapters, workers cannot receive compensation for mental injuries if the injury arises out of, or in the course of, RMA. Workers are also ineligible to receive compensation for an injury that is self-inflicted or caused by the worker's misconduct.

4.2 Presumptive illnesses

4.2.1 Overview

As in other jurisdictions, Queensland's workers' compensation legislation generally provides that the entitlement of a worker to compensation depends on the worker providing evidence that the injury or disease arose out of, or in the course of, the worker's employment and the employment was 'a significant contributing factor' to the injury.

Where a worker makes a claim for an injury resulting from a traumatic incident, this element is generally easily proven. However, where a worker makes a claim for a latent or gradual onset injury, the connection between the injury and employment may not be as clear. This means the worker needs to prove that the employment included exposure to a hazard that caused or contributed to onset of the condition. There are some diseases where a substantial body of clinical or epidemiological evidence shows clear connection to work, and others where the evidence is less certain.

1 *Workers' Compensation and Rehabilitation Act 2003*, s 11.

2 *Workers' Compensation and Rehabilitation Act 2003*, sch 2, part 1.

3 *Workers' Compensation and Rehabilitation Act 2003*, chapter 1, part 4, division 3.

4 *Workers' Compensation and Rehabilitation Act 2003*, schedule 2, part 2.

A presumptive provision (or a 'deemed disease' provision) is a legislative provision that reverses the onus of proof by removing the burden on the worker to prove an injury is work-related. Presumptive provisions have been restricted to circumstances where there is strong evidence of causal links between the occupations, exposure and the disease.

Almost all Australian workers' compensation schemes now recognise that firefighters have an increased risk of developing certain cancers as a result of exposure to hazardous substances in their work. Yet it could be difficult for firefighters to prove their cancer was caused by their employment, due to the difficulty in proving exposure to carcinogens. They were often not aware of the fuel of a fire, particularly when the fire occurred at industrial workplaces or on rural properties with a mix of fuel sources.

In Queensland, amendments in 2015 provided greater certainty of entitlement and accessibility to compensation for firefighters (including volunteer firefighters) by introducing presumptive provisions for firefighters with prescribed diseases. Under those provisions, if a current or former firefighter is diagnosed with one of twelve specified 'latent onset' injuries, and has been engaged in active firefighting duties for a specified number of years, then their injury is presumed to be a work-related injury.[5] The provisions are rebuttable if it can be proved that there is another cause of the firefighter's specified disease[6] or their firefighting work was not a significant contributing factor to the specified disease.[7]

The Act requires a person to have been employed as a firefighter for a minimum number of specified years (a qualifying period) before they are diagnosed with a specified disease.[8]

Other Australian workers' compensation schemes (except Seacare) contain presumptive firefighter provisions similar to Queensland's. At a minimum, all participating schemes recognise the firefighter cancers recognised in the Queensland scheme, although the qualifying periods for some cancers differ.

The presumptive provisions do not prevent individuals who do not satisfy these provisions from accessing workers' compensation under the usual claims pathway. Accordingly, the presumptive provisions do not disadvantage these individuals.

4.2.2 Recent developments and the Queensland scheme

In July 2022 the World Health Organisation's International Agency for Research on Cancer (IARC) escalated occupational exposure in the firefighting profession from Group 2B – Probably carcinogenic to humans to Group 1 – Carcinogenic to humans.[9]

In 2022, in response to Dr Tim Driscoll's Review of the Firefighter Provisions of the *Safety, Rehabilitation and Compensation Act 1988*, the Commonwealth Government passed amendments[10] to reduce the qualifying period for oesophageal cancer from 25 years to 15 years; and extend the firefighter provisions of the Commonwealth Act to volunteer firefighters in the Australian Capital Territory. In addition, in December 2022, the Commonwealth Government added eight further cancers to their list of specified cancers:

- primary site lung cancer, qualifying period 15 years;
- malignant mesothelioma, 15 years;
- primary site skin cancer, 15 years;
- primary site cervical cancer, 10 years;
- primary site ovarian cancer, 10 years;
- primary site penile cancer, 15 years;
- primary site pancreatic cancer, 10 years;
- primary site thyroid cancer, 10 years.

5 *Workers' Compensation and Rehabilitation Act 2003*, s 36D.

6 *Workers' Compensation and Rehabilitation Act 2003*, sch 4A.

7 *Workers' Compensation and Rehabilitation Act 2003*, s 36D(3).

8 *Workers' Compensation and Rehabilitation Act 2003*, s 36D.

9 Demers P.A. et al,' Carcinogenicity of occupational exposure as a firefighter', The Lancet Oncology, 2022, 23(8), 985-986; citing International Agency for Research on Cancer, 'Occupational exposure as a firefighter', IARC Monographs on the Identification of Carcinogenic Hazards to Humans, Volume 132, France, June 7–14, 2022.

10 *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* (Cth) part 27.

In addition to the twelve cancers recognised in Queensland, the Northern Territory also recognises asbestos-related disease (which includes mesothelioma), primary site liver cancer, primary site lung cancer and primary site skin cancer (each with a qualifying period of 15 years); and Western Australia recognises primary site melanoma and malignant mesothelioma (each with a qualifying employment period of 15 years).[11] Victoria has also announced it will recognise cervical, ovarian and uterine cancers.

The Tasmanian Government has also recently announced its intention to extend its list of deemed firefighter diseases to include the additional eight cancers recognised in the Commonwealth scheme.

Certain stakeholders recommended the presumptive provisions for firefighters should be expanded to add the following diseases to the list of specified diseases in schedule 4A of the Act:

- asbestos related diseases;
- primary site liver cancer;
- primary site lung cancer;
- primary site skin cancer;
- primary site cervical cancer;
- primary site ovarian cancer;
- primary site pancreatic cancer;
- primary site penile cancer;
- primary site thyroid cancer; and
- malignant mesothelioma.

They contend that this would reflect the current studies and the recent findings of the World Health Organisation in 2022.

The inclusion of cervical and ovarian cancer is appropriate due to the increasing number of women choosing firefighting as a calling or as a volunteer. Although the studies undertaken with respect to cancer among female firefighters have small sample sizes, they have identified either that female firefighters have an increased risk[12] or an increased rate of developing cervical cancer.[13] Further, the IARC has included ovarian (and penile) cancer in the list of cancers where increased risk is deemed to be caused by firefighting.

The escalation of the classification by the IARC of the firefighting profession to 'carcinogenic to humans' was based on 'sufficient' evidence for cancer in humans. There is merit in the submissions of stakeholders that treating firefighters doing the same work in the same conditions differently with respect to deemed diseases is inequitable. Although some variations exist across the jurisdictions, the list of specified diseases should be expanded to include those nominated by the relevant stakeholders. This will provide consistency and equity of treatment of the diseases for Queensland firefighters and ensure that this group of workers, who are at high risk of cancer because of their occupation, can have improved access to benefits.

Recommendation 26: That the Minister consider introducing a Bill to add asbestos related diseases, primary site liver cancer, primary site lung cancer, primary site skin cancer, primary site cervical cancer, primary site ovarian cancer, primary site pancreatic cancer, primary site penile cancer, primary site thyroid cancer and malignant mesothelioma into the Act as presumptive illnesses for firefighters.

Is legislation required: Yes
Amendments to Regulation: No
Organisational responsibility: OIR

11 *Workers' Compensation and Injury Management Amendment Regulations 2023* (WA).

12 Daniels R.D. et al, 'Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009)', Occupational and Environmental Medicine, 2014, 71(6).

13 Ma F. et al, 'Cancer incidence in Florida professional firefighters, 1981 to 1999', Journal of Occupational and Environmental Medicine, 2006, 48(9).

4.2.3 Service required to claim benefits of presumption

The Act provides, in effect that, for the purposes of calculating qualifying period, the only periods that count are those when the person was employed for the purpose of firefighting and attended fires to the extent reasonably necessary to fulfill the purpose of the person's employment.[14] The Act further provides that 'firefighting' means 'extinguishing, controlling or preventing the spread of fires'.[15]

During consultation, some stakeholders submitted that this method of calculating the qualifying period disadvantages firefighters who take parental or long service leave, because they will not have attended fires to the extent reasonably necessary to fulfill the purpose of their employment during such periods. In addition, periods in which firefighters work on "day work rotations" who may be called back to attend fires or deployed on natural disasters within the State or interstate are excluded. Some stakeholders therefore sought the removal of s 36E of the Act because of the disadvantage it causes to these groups of firefighters.

We do not support the removal of the relevant section *in toto* as a method of deciding the years of employment to access the presumptive pathway. However, it should be amended to take into consideration firefighters on day work rotation who are subject to call back or deployment orders, to enable continuity of service to be maintained.

The qualifying periods prescribed for the specified diseases in the Act seem to be guided by the latency periods noted in Safe Work Australia's *Revised List of Deemed Diseases in Australia*, which was last reviewed in 2021,[16] rather than by the quantity of exposure. However, the exclusion of parental and long service leave, for the purposes of calculating years of service in s 36E, seems to reflect the idea that the issue is length or exposure rather than latency. This is not a matter on which we are sufficiently expert to rule, especially as the most recent definitive report from the IARC is yet to be published.[17] At the same time, while we acknowledge that firefighters who take extended leave for other purposes may be disadvantaged, of particular concern is that exposure-based calculation of a worker's period of employment is likely to disproportionately affect women firefighters' access to the presumptive pathway as they are more likely to take extended maternity-related leave.

We believe that there should be consultation with affected stakeholders and experts to consider the appropriate qualifying periods for each disease, and that they and the Special Commissioner, Equity and Diversity[18] should be consulted to consider whether the treatment of leave should be amended to take into account the disproportionate effect on women of the method of deciding the number of years to access the presumptive pathway.

Recommendation 27: That the Minister:

(a) consider introducing a Bill to amend the Act to treat day work rotation as service for the purpose of s 36E of the Act; and

(b) refer the qualifying periods for the new diseases, and the issue of the treatment of extended leave, for consultation with stakeholders, experts and the Special Commissioner, Equity and Diversity with the prima facie starting point for consultations being the qualifying periods used in the other jurisdictions.

Is legislation required: Yes
Amendments to Regulation: No
Organisational responsibility: OIR

14 *Workers' Compensation and Rehabilitation Act 2003*, s 36E(2).

15 *Workers' Compensation and Rehabilitation Act 2003*, s 36E(4).

16 The *Revised List of Deemed Diseases* recognises all specified diseases except primary site testicular cancer, multiple myeloma, primary site prostate cancer and primary site ureter cancer. This document refers to the latency periods, but not exposure periods, for the diseases concerned.

17 International Agency for Research on Cancer, 'Occupational exposure as a firefighter', IARC Monographs on the Identification of Carcinogenic Hazards to Humans, Volume 132, France, June 7–14, 2022.

18 The Special Commissioner, Equity and Diversity holds appointment under the *Public Sector Act 2022*.

4.2.4 Extension of presumptive provisions to workers other than firefighters

Some stakeholders sought the extension of the presumptive cancer provisions to other groups of workers who are associated with firefighting. The cohort of workers currently captured by the presumptive cancer provisions is supported by evidence. No research was provided to this review establishing that the groups of workers who are sought to be included are overrepresented in claims for the existing or expanded list prescribed cancers. Without this, we are unable to make any recommendation.

4.3 Tertiary scholarship recipients and student placements

Three types of issues arose for recipients of tertiary scholarships: for pre-service teachers, students on placements (such as student nurses) and PhD scholarship holders.

4.3.1 Teachers and the first year problem

During consultation it was identified that there is a growing trend in schools toward the employment of pre-service teachers as paid or unpaid interns, or their admission to the classroom under the permission to teach (PTT) provisions of the *Education (Queensland College of Teachers) Act 2005*, to address staff shortages.

In Queensland, only registered teachers and persons approved to teach under PTT are permitted to undertake the duties of a teacher. PTT is designed for situations where a school cannot find a registered teacher to fill a teaching vacancy. For a person to be eligible for PTT, the Queensland College of Teachers must be reasonably satisfied that the person has been offered a teaching position in a school and the employing authority, or principal of, the school cannot find an appropriate registered teacher to fill the position. Guidance published by the Queensland College of Teachers contemplates that persons approved under PTT are to be engaged as employees (in which case they would be workers under the Act). Thus most second and third year participants in the 'Turn to Teaching' and 'Trade to Teach' programs are classed as workers. The situation is not so clear for first year participants, who only receive a $20,000 stipend (taxed) to assist with study expenses. The stipend is less than the minimum wage or the single pension rate. Case law (in particular *Galal* in NSW)[19] appears to indicate that a stipend-holder would not necessarily be a 'worker' under the Act.

Scholarship holders are engaged in teaching and performing duties of employee teachers, e.g., following a curriculum, but may not be covered by the scheme. They appear to have the potential to fall between legal categories of 'employee' and 'intern' and, if so, could escape coverage. Student nurses and midwives on placements (discussed below) and other students on work-integrated learning placements similarly fall between the definitions. Given the work teaching and nursing students undertake, it appears an anomaly to exclude them.

4.3.2 Nurses and other students on placements

Under existing workers' compensation arrangements in Queensland, students undertaking Work Integrated Learning (WIL) placements are not automatically eligible for coverage.

Currently, the Act provides compensation coverage for school students undertaking work experience and commercial interns opting to seek unpaid experience, but universities are not under any general obligation to hold workers' compensation insurance for students engaging in WIL. This creates an uncertain situation as to which party is required to seek insurance (student, university, placement host), and what type of cover is most appropriate.

While many university courses involve some form of real-world experience, nursing, teaching and medicine courses always include a practical component. These cohorts may be affected by any gap in coverage. Stakeholders have raised the concern that these students may be faced with the financial burden of arranging insurance coverage, compounded by the additional cost of mandatory vaccinations, registrations and certifications.

Work integrated learning (WIL) refers to programs that link university students to a workplace related to their field of study. It aims to combine academic learning of a field of study with the practice of work through a specific program. WIL can have many different names depending on the context. For example, WIL programs in health are known as clinical placements, or in teaching they are known as practicums. WIL in other fields may be referred to as industry projects, placements or simulations. In the context of the *Higher Education Standards Framework (Threshold Standards) 2021* (HES Framework), WIL encompasses any arrangement where students undertake learning in a work context as part of their course requirements. WIL can also be undertaken as part of coursework or research training.

Under the Act and the *Education (Work Experience) Act 1996* (EWEA), a student attending a Queensland university will fall within the definition of a 'state student' contained in section 22 of the *Workers' Compensation and Rehabilitation Act 2003* (unless the particular university has been prescribed by regulation to not be an educational establishment). The result is that such students do not fall under the provisions of the Act which deem 'unpaid interns' to be 'workers'

19 *Galal v University of New South Wales* [2020] NSWWCC 275.

for workers' compensation purposes. This effectively means there is a gap in mandatory workers' compensation for students on a WIL placement.

Different provisions apply to individuals undertaking 'work experience', as it is not a course requirement but provides experience to students as part of their education under the EWEA. Provided the work experience program does not form part of the assessment of the course of study (as noted in section 4(2) of the EWEA), there will be an obligation on the education establishment to ensure that a policy of workers' compensation insurance is in place to cover the student undertaking the work experience program (required by s 8(1) of the EWEA).

As WIL placements do not fall under the unpaid intern or work experience provisions, it is not mandatory for universities or hosts to hold a contract of workers' compensation insurance for students engaged in WIL. However, a desktop analysis of publicly available information indicates that most Queensland universities report holding some form of insurance (albeit without some features of workers' compensation insurance) that applies to students on a WIL placement.

Some hosts may have an expectation that private insurance is held prior to the commencement of any WIL placement. We understand Queensland Health is one such host. These insurance arrangements only apply to pre-entry clinical placement students, that is, students who are studying across professions such as medicine, nursing, midwifery, allied health, and Aboriginal and Torres Strait Islander Health Professions, who have a clinical practical placement component as part of their required learning. These placements are centrally coordinated by Queensland Health, rather than the individual hospital and health services. Similarly, the Department of Environment and Science,[20] and the Department of Children, Youth Justice and Multicultural Affairs[21] state that students on placement must be covered by their tertiary education provider's public liability insurance.

Recommendation 28: That the Minister consider introducing a Bill to amend the Act to ensure that tertiary students (including student nurses and student teachers and others in work-integrated learning) are covered by workers' compensation insurance while in placements that are required for their studies or where those placements are performing functions benefiting the organisations for which they are working.

Is legislation required: Yes
Amendments to Regulation: No
Organisational responsibility: OIR

4.3.3 PhD scholarship holders

University stakeholders submitted that Higher Degree Research (HDR) students (i.e., PhD scholarship students) should not be treated as workers under the Act, such that they are excluded from workers' compensation coverage and the assessment of premium.

There has been limited case law to test whether HDR students are in fact 'workers' for workers' compensation purposes. The legal position in Queensland is currently unsettled, with universities and WorkCover adopting opposing views with legal proceedings before the Industrial Magistrates Court to resolve the issue.

The conditions applicable to HDR scholarships are set out in the *Commonwealth Scholarship Guidelines (Research) 2017* (Cth) (CSG), which is a statutory instrument made under s 238-10 of the *Higher Education Support Act 2003* (Cth).[22] The CSG state that the purpose of the scholarships is to provide funding to support the training of domestic and overseas students undertaking HDR at Australian higher education providers, that is, to support students to attain an educational qualification.

However, the intent of the Commonwealth does not necessarily match the behaviour of the university. In practice, HDR students undertake research duties similar to those of employee academics, with a similar or lesser degree of autonomy. They are a source of research labour for universities and work within the parameters of an approved project (often a grant). In this way, they represent a means by which objectives of the university or the grant can be achieved.

HDR students are also a relatively vulnerable cohort, receiving a modest tax-free stipend of typically over $20,000 per annum. Excluding HDR students from workers' compensation coverage would mean that HDR students who suffer a study-related injury would be required to establish negligence against the university or another party in order to be

20 See Department of Environment and Science, *Industry Placements*, 2023, https://www.des.qld.gov.au/our-department/employment/industry-placements.

21 See Department of Child Safety, Seniors and Disability Services, *Volunteering and student placements*, 2022, https://www.cyjma.qld.gov.au/about-us/careers/volunteering-student-placements.

22 Available at: https://www.legislation.gov.au/Details/F2022C00174

compensated for the injury, or otherwise take out their own insurance. This is potentially costly and resource-intensive exercise that would not be practically available to most students. The above considerations would favour coverage by the scheme.

That said, as this issue is currently before the Industrial Magistrates Court, we consider it best to let the Court hear all the evidence and decide the matter. Depending on the Court's decision, the Government can then consider whether existing policy settings, including the Act's definition of 'worker', or the specific treatment of this group, should be revisited.

4.4 Journey and recess claims

The scheme provides compensation for injuries that occur while a worker is on an ordinary break from their workplace, or on their journey between their home and workplace (provided there has not been a substantial delay before commencing the journey or a deviation from the usual journey) by deeming such injuries to arise out of the worker's employment.

Journey claims are treated differently to other claims under the Act. Specifically, the injury is taken to arise in the course of the worker's employment, removing the need for the worker to establish that the injury is work-related or that employment is a significant contributing factor to the injury.[23] A journey from or to a worker's home starts or ends at the boundary of the land on which the home is situated.[24] Accordingly, journey claims do not apply to injuries sustained while working from home (these are dealt with in the next section).

Journey claims represent a relatively small proportion of overall workers' compensation claims. From 2017-18 to 2021-22, 31,488 journey claims were lodged, representing approximately 6.7 per cent of all statutory claims. During this time, the number of journey claim lodgements has gradually reduced from 6,830 in 2017-18 to 5,796 in 2021-22, possibly due to an increase in working from home arrangements. Similarly, the proportion of journey claims has gradually reduced from 7 per cent in 2017-18 to 6.4 per cent in 2021-22.

Most journey claims are accepted (82 per cent). Of accepted journey claims, most are for a physical injury only (92.9 per cent from 2017-18 to 2021-22), followed by mental injury (1.1 per cent) and physical and mental injury (6 per cent).

The financial impact of journey claims on the scheme is relatively small, estimated at approximately $0.05 of the average premium rate for all employers. Further, unlike other claims, journey claims are excluded from the calculation of premium as part of an employer's experience-based rating.[25]

During consultation, certain stakeholders submitted that access to journey claims should be more limited, with some advocating for journey claims to be restricted to certain injuries and others advocating for the complete abolition of such claims. Among other things, it was submitted that the journey claim provisions in the Act currently enable workers to be unfairly compensated for injuries that bear no connection to their employment, resulting in adverse financial impacts to the scheme and individual employers.

Noting the small proportion and cost impost of journey claims, as outlined in the available scheme data, restricting access to such claims would represent a diminution in worker rights without any significant benefit to the scheme or employers. In the context of the financial health of the scheme, and the large, decentralised nature of Queensland (in which a lot of work-related travel occurs), there is little to persuade us that the current arrangements should be altered.

4.5 Remote work including working from home

Since the commencement of the first workers' compensation schemes in the early 20th century, some workers have performed work for employers in their own homes. Many were engaged as outworkers, for example in the textile and garment industries. Clerical and administrative positions also saw some uptake of work from home (WFH) arrangements with the widespread adoption of electronic communication.

WFH arrangements have significantly increased since the COVID-19 pandemic, and have become normalised in many Australian workplaces. Australian Bureau of Statistics data found that in August 2021, 41 per cent of employed people regularly worked from home. Between 1989 and 2008, around 20-30 per cent of people worked from home, but only around 4-8 per cent working most of their hours from home.[26] Productivity Commission research showed comparable trends.[27] The occupations with, by far, the highest rates of home-work were managers and professionals.[28]

23 *Workers' Compensation and Rehabilitation Act 2003*, s 35(1), (2).

24 *Workers' Compensation and Rehabilitation Act 2003*, s 35(3).

25 The costs of claims arising from the circumstances described in s 35 of the Act are excluded from the definition of 'costs' in WorkCover's gazetted premium calculation method.

26 Australian Bureau of Statistics, *Working Arrangements, Australia*, Commonwealth of Australia, August 2021.

27 Productivity Commission, *Working from home, Research paper*, Commonwealth of Australia, 2021, Canberra, 9.

28 Australian Bureau of Statistics, *Working Arrangements, Australia*, Commonwealth of Australia, August 2021.

The obligation on employers to ensure, so far as is reasonably practicable, the health and safety of their workers is not suspended when a worker works from home.[29] An employer retains the primary duty of care and must do what is reasonably practicable to ensure the health and safety of their workers,[30] including when allowing workers to work from their home. A worker also has an obligation to take care of their own health and safety and follow health and safety policies, procedures and instructions of their employer.[31]

In the workers' compensation scheme, injuries sustained while working from home are subject to the same statutory tests applicable to other workplace injuries. This means a worker's employment must be a significant contributing factor to the injury to be eligible for compensation. The Act does not specifically acknowledge working from home arrangements. Other jurisdictions' legislation is similarly silent on the issue, but this has normally not been an impediment to coverage of WFH-related injuries.

This is so despite the fact that the definition of 'injury' and other provisions in the Queensland Act refer to a workers' 'place of employment'. For example, s 32(3)(a) of the Act defines 'injury' as including a disease contracted in the course of employment, whether at or away from the 'place of employment', if the employment is a significant contributing factor to the disease. Section 34 also deems an injury to be work-related, and compensable, if it happens on a day on which the worker attends the 'place of employment' as required under the terms of the worker's employment. As the Act defines 'place of employment' as being 'under the control or management of the employer',[32] this could have the potential to create some uncertainty for work performed at the worker's home.

Yet establishing that the worker's home is the 'place of employment' has not been necessary to demonstrate an injury arises from employment and hence creates an entitlement to compensation. The available scheme data does not demonstrate that WFH arrangements are unduly preventing workers from accessing compensation. Injuries suffered while working from home are assessed by insurers on a case-by-case basis, with claims accepted where they arise in the course of employment. There is also pre-pandemic case law confirming that injuries sustained by a worker while working from home can be compensable.[33]

At the moment, no legislative action appears necessary, and it could even be counter-productive if an attempt to legislatively define the 'home office' led to unanticipated consequences. On that basis, unless or until such time as case law becomes inconsistent with the notion that WFH-injuries are compensable, no legislative action is recommended. The situation should, of course, be monitored to ensure that case law continues to be consistent with this policy intent.

4.6 Workers' connection with the State

Certain stakeholders have raised the concerns about the need for separate workers' compensation insurance for workers who work for a Queensland based employer but who are located outside of the State. Given the current working climate where increased flexibility and working from home arrangements have become common, employers are increasingly exploring recruitment options which include remote working arrangements outside of the State or overseas. In some cases, Queensland based employers are having to take out insurance policies interstate for only one or two workers. They seek an amendment to s 113(3) of the Act to provide, in effect, that where an employer has fewer than five interstate workers, the employer should be able to have those workers covered by their Queensland workers' compensation policy.

Section 113 of the Act contains a hierarchical test to determine the worker's state of connection for workers' compensation purposes. The test is consistent across Australian jurisdictions and is supported by cross-border guidelines published by the HWCA under a Memorandum of Understanding (MoU) between jurisdictions. The Memorandum is intended to ensure a cooperative approach is taken to avoid a dispute over a worker's state of connection and to resolve any issues through administrative means rather than legal action. The cross-border guidelines are currently under review by a working group of the HWCA in response to developments in case law.

In light of the long-standing uniform arrangements across Australia, the potential implications of one jurisdiction altering these, together with the current review being undertaken by the HWCA, it is not appropriate that the Act be amended in the manner proposed. This is a matter that should be considered across jurisdictions with detailed consideration given to the outcome of the HWCA review.

29 See, e.g. The State of Queensland, Remote and Isolated Work, WorkSafe, 6 January 2022, https://www.worksafe.qld.gov.au/safety-and-prevention/hazards/hazards-index/remote-and-isolated-work.

30 *Work Health and Safety Act 2011*, s 19(1).

31 Ibid, s 28.

32 *Workers' Compensation and Rehabilitation Act 2003*, sch 6.

33 See *Simon Blackwood (Workers' Compensation Regulator) v Robert Ziebarth* C/2015/32.

Chapter 5: Benefits

The workers' compensation scheme provides injured workers with statutory benefits that enable them to receive medical treatment, weekly payments of compensation (for lost wages) and rehabilitation during their recovery and RTW. Workers who are permanently impaired as a result of their injury may also be entitled to a lump sum payment of compensation. Claims for statutory benefits paid by insurers[1] are assessed on a 'no fault' basis, if the injury meets the Act's definition of 'injury'. Statutory compensation can include:

- weekly compensation for lost wages;
- reasonable medical, surgical and hospital expenses;
- medical and other supplies;
- rehabilitation treatment and equipment or services;
- necessary and reasonable travelling expenses for the workers to obtain medical treatment or rehabilitation;
- death entitlements for dependants and family members, and funeral expenses; and
- lump sum compensation.

The entitlement to compensation arises on the day the worker's injury is assessed by a doctor or other relevant health practitioner.[2] Compensation is payable from the day the injury is assessed, unless the injury resulted in total or partial incapacity for work on the day the worker stopped work, in which case it is payable from the day after work stopped.[3]

As mentioned in chapter 1, the worker's entitlement to weekly compensation ends when the incapacity itself ends, a time limit is reached, a limit on maximum benefits is reached, or a form of lump sum payment is determined. This 'short tail' character of the Queensland scheme is offset by the ability of injured workers to elect to seek damages at common law for negligence.

In submissions to the review, the key concerns raised related to weekly compensation and death entitlements and so these are the focus of this chapter, along with a benefits matter relating to another key concern — delays.

5.1 Level of weekly benefits

Queensland has a benefits payments structure that seemingly tries to find an effective compromise between four competing objectives: the need to compensate injured workers; the priority of protecting the low paid; the belief that there should be financial incentives to return to work quickly; and the need to minimise expenditure and hence employer premiums under the scheme.[4] The result is a system that is somewhat complex as the amount of weekly compensation payable to a worker depends on various factors including whether the worker is paid under an industrial instrument, the duration of their claim, the amount of their normal weekly earnings (NWE), and the current value of Queensland ordinary-time earnings (QOTE).

NWE refers to a worker's weekly earnings from continuous or intermittent employment during the 12 months prior to an injury.[5] QOTE refers to the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician. The current QOTE value is $1,671.40 as at 1 July 2022. It will be $1,760.70 from 1 July 2023.

The Act uses 'step downs' or reductions in weekly compensation, in the belief this will encourage workers to return to work sooner, as early return to work has better outcomes for the injured worker and reduces costs for the scheme and employer. **Table 5.1** shows the current step-downs and the weekly compensation payable for each step-down.

1 *Workers' Compensation and Rehabilitation Act 2003*, s 108, 109.

2 A nurse practitioner (for minor injuries) or dentist (for oral injuries).

3 *Workers' Compensation and Rehabilitation Act 2003*, s 141(2).

4 The first and fourth of these can be seen in ss 5(4)(a) of the Act, the third can be read into ss 5(4)(d) and the behaviour of policy makers, and the second from behaviour of policy makers.

5 *Workers' Compensation and Rehabilitation Act 2003*, s 106.

Table 5.1 – Step downs of weekly compensation entitlement

Length of claim	Weekly compensation entitlement	
	Worker paid under an industrial instrument	Worker does not have an industrial instrument
Up to 26 weeks	The greater of: • 85% NWE; or • 100% of award or agreement amount[6]	The greater of: • 85% NWE; or • 80% QOTE
26 – 104 weeks	The greater of: • 75% NWE; or • 70% QOTE	
104 weeks until five years of incapacity	A worker can continue to receive compensation at the same rate if they can demonstrate the injury could result in a degree of permanent impairment of more than 15%. If the impairment is 15% or less, the single pension rate applies.	

This structure is not a new phenomenon in Queensland. With those three elements, the method for calculating weekly compensation has not changed significantly since 1995, with key elements being based around: assessments of a worker's relevant industrial award/agreement; average weekly earnings NWE; and/or QOTE. Across that time there have only been changes to payments after 26 weeks duration. **Table 5.2** below provides a summary of this history.

Table 5.2 – History of key features of weekly benefits, 1995-2023

Year	Pre-stepdown	at 26 weeks	at 39 weeks	at 52 weeks	at 2 years
1973	100% award/agreement	Basic wage & dependants supplement			
1990	100% award/agreement		Prescribed base rate & dependants supplement		
1995	100% award/ agreement/85% AWE (greater of)	65% AWE / 60% QOTE (greater of)			
1996	100% award/ agreement/85% NWE (greater of)	65% NWE / 60% QOTE (greater of)			65% NWE / 60% QOTE (greater of) or single pension rate
2004	100% award/ agreement/85% NWE (greater of)	75% NWE / 70% QOTE (greater of)	65% NWE / 60% QOTE (greater of)		65% AWE / 60% QOTE (greater of) or single pension rate
2005	100% award/ agreement/85% NWE (greater of)	75% NWE / 70% QOTE (greater of)		65% NWE / 60% QOTE (greater of)	65% AWE / 60% QOTE (greater of) or single pension rate
2007	100% award/ agreement/85% NWE (greater of)/ OR s 107E rate under certified agreement	75% NWE / 70% QOTE (greater of) / OR s 107E rate under certified agreement			75% NWE / 70% QOTE (greater of) or single pension rate

Queensland's either/or system, of a percentage of NWE versus a percentage of the award of QOTE, is more complex than other jurisdictions. Only Western Australia's also references an industrial instrument. Most others commonly just refer to a percentage of a broad equivalent of NWE,[7] though they also have various floors or ceilings built in, to protect either the finances of the scheme or the lowest paid.

Queensland's benefits structure also builds in protections for some workers. For example, a worker whose earnings were temporarily down in the period immediately before an accident would be disadvantaged by a purely NWE-based system, but is protected by the backstop of the award/QOTE reference. It also means that simplification of

6 Where the worker is a government or university employee, a salaried employee in electricity or a health service employee (under the *Hospital and Health Boards Act 2011*), the amount payable under their contract of service substitutes for the award or agreement rate.

7 Sometimes referred to as Pre-Injury Average Weekly Earnings (PIAWE), which is calculated slightly differently to NWE because of differences in inclusions and exclusions, but these differences have little impact on the total cost of a scheme.

the system would benefit a large number of workers and disadvantage another large number, unless simplification is accompanied by a substantial increase in benefits for the erstwhile losers, in which case the costs of the scheme would grow substantially. So, despite many calls for change, reform is not a simple or obvious process.

Stakeholders reported a number of conflicting concerns about the benefits system. One was complexity. To determine the weekly compensation rate insurers must assess a worker's wages. If a worker works under an award or industrial agreement, insurers must calculate both the industrial award rate and NWE to determine which one is greater. This process is reported as complex and time consuming. This is partly because employers and workers often do not to know what industrial instrument applies or cannot provide guidance on the award rate. It is also partly because of a lack of clarity in what allowances are included in calculating the amount payable under an industrial award (overtime, shift allowances, penalty rates, bonuses/commissions).

Some stakeholders sought to switch from a 'replacement rate' of 85 per cent of NWE to a 100 per cent replacement rate (including overtime and penalty rates, applicable allowances, higher duty payments and superannuation). The latter was based on the valid argument that, in effect, shiftworkers were being penalised by the present structure whereas non-shiftworkers were not. The simplest way to deal with this and the preceding issue would be to move to a system like in other states, and remove the award-based component of benefits. The problem would be that anything less than 100 per cent replacement would disadvantage award workers, and 100 per cent replacement would be very expensive, costing approximately $35m per annum in Queensland (adding about 5 per cent to premiums), just if it was in place for the first 26 weeks (assuming that the QOTE-based protection[8] for low-income earners was retained). Abolishing the QOTE protection would offset about two-thirds of that cost, but at great expense to the low-income earners that it protects.

Another issue raised by stakeholders was the stepdowns. Several stakeholders opposed their retention. The evidence of their impact on providing an incentive to return to work appears weak and inconclusive. On one view it provides a financial incentive to return to work, but the alternative is that placing a worker who is incapacitated from work in financial distress can affect their ability to cope and properly recover from their injury, or create inequity between workers stood down for workplace investigations and sick leave entitlements. Insurers in Queensland also have a suite of mechanisms to incentivise workers including the capacity to suspend payments to a worker if they are not participating in rehabilitation. But again, the cost of change here is not insignificant.

This is, in essence, a problem that it is not for this review to solve. The issue of benefit levels was addressed in the 2018 Review, and a recommendation made that there be consultations with stakeholders over a new formula for benefits. No change preceeded, a likely reflection of irreconcilable differences in stakeholder views on this issue, arising from the fact that there are inevitably winners and losers from any change here. A range of options were examined and costed by the reviewers, but none overcome these inherent difficulties. If those differences can be overcome, then a new model might emerge, but it need not be one that would be developed by these reviewers anyway. After all, for all its identified problems, the existing benefits structure does a reasonable job of balancing the objectives of recompensing injured workers, protecting the low paid, and containing scheme expenditures and premiums.

5.2 Default payments

During consultation it became apparent that WorkCover is often unable to pay benefits in a timely way due to delays in receiving wage information from employers (among other reasons). In some cases, this leaves injured workers with no income for many weeks, despite their workers' compensation claim having been accepted. Employer delays in providing wage information to the insurer should not lead to the injured worker being denied income until that information is provided.

In addition to causing financial stress, procedural delays, including delays in the payment of compensation, worsen return-to-work outcomes.[9] The *It Pays to Care* report observed:

> *There is a dose–response relationship between processing delays in workers' compensation and the development of a long-term claim. The more delays a claimant experiences, the greater the chance that they will be away from work for a year or more. Australian research has also established that delays have a strong association with negative health impacts such as poorer long term-recovery and greater disability, anxiety and depression.*[10]

The impact on workers would be substantially alleviated if an earlier default payment were made after a claim is accepted and until the insurer calculates the correct rate of weekly compensation. Following this, any earlier default payment could be corrected, either upwards or downwards. The Act should be amended to facilitate such payments.

8 As seen in Table 5.2, one option for benefits is 80 per cent of QOTE in weeks 1-26 for non-award workers, or 70 per cent of QOTE for all workers after 26 weeks.

9 Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace*, 2022, 38. (Footnotes were omitted from the quote in the text.)

10 Ibid.

It was suggested that employers should themselves pay workers who have an accepted claim but are not yet receiving benefits, and they could be reimbursed by WorkCover once the benefit was calculated. Yet there was little evidence that most employers were doing this voluntarily at present (even if they were legally entitled to do so, itself a contested claim)[11] and little indication that they would welcome being forced to. Indeed, part of the reason for the emergence of workers' compensation schemes globally was the difficulty of getting employers to pay such compensation. It seems administratively much simpler for WorkCover to make the default payment itself, and make any subsequent correction once the correct benefit is known.

While some stakeholders asserted that such a mechanism would be redundant if the calculation of benefits were simpler, we were unable to identify a simpler method of calculating benefits that gained widespread support, and are not confident that all delays would be circumvented even if this were possible.

Recommendation 29: That the Minister consider introducing a Bill to amend the Act to provide a default payment of weekly compensation after a claim is accepted and until an insurer calculates the applicable rate of weekly compensation. This would be a fixed percentage of QOTE. For part-time and casual employees, the default payment would be the fixed percentage of QOTE expressed as an hourly rate, times the number of hours per week the employee nominates they normally work. Over/underpayments would be made up through subsequent benefits once the correct rate was calculated.

Is legislation required: Yes

Amendments to Regulation: Probably, to set the payment

Organisational responsibility: OIR

5.3 Death Entitlements

Death entitlements, including dependency payments where a worker dies from a work-related injury or disease, have been a feature of the Queensland scheme since 1916. Under the 1916 Act, if a worker left any dependants wholly dependent on the worker, the dependants were to collectively receive a sum equal to the worker's earnings in the same employment during the three years preceding the injury, or the sum of £300,[12] whichever was greater, but not exceeding £600.[13]

Dependency payments were progressively amended and increased over time, with the amount of compensation payable turning on whether the worker's dependant(s) was (were) totally or partially dependent on the worker. New death entitlements were also introduced over time.

In 1936 a new death entitlement for the parents of workers aged under 21 was introduced. The amount of this payment has been increased a number of times since its introduction, with the most recent increase in 2005. As at 1 July 2022 the rate is $40,685 (approximately 6 per cent of the lump sum for total dependants) and increases annually in line with QOTE.

In 2005, a new entitlement was introduced if a worker died leaving no dependants but was survived by a spouse, issue, or next of kin within the meaning of the *Succession Act 1981*. The amount of compensation payable to the worker's estate is 10 per cent of the maximum total dependency payment, or $67,670 (rate current as at 1 July 2022).

11 Under s 109 of the Act, the employer can only pay an injured worker until their claim has been accepted. Once it has been accepted, regardless of whether the insurer has started paying the worker, the employer cannot pay.

12 $34,210.97 in today's money.

13 $68,421.94 in today's money.

A complete summary of death entitlements is provided in **Table 5.3** below.

Table 5.3 – Summary of death entitlements

Type of entitlement	Beneficiary	Statutory amount	Current quantum effective 1 July 2022
Lump sum	All dependent family members (shared)	404.87 x Queensland Ordinary Time Earnings (QOTE)	$676,700
	Partially-dependent family members (shared)[14]	Minimum 15 per cent of above sum, maximum as above	Minimum $101,504, maximum $676,700
	*Non-dependent family members (shared)[15]	10 per cent of maximum	$67,670
	Totally dependent spouse	10.83 x QOTE	$18,105
	Children under 16 years (or students)	21.64 x QOTE	$36,170
	Parents (of worker aged under 21 without dependents)	24.34 x QOTE	$40,685
Weekly payments	Dependent spouse (with children under six years)	8 per cent of QOTE	$133.75
	Dependent children and family members under 16 years (or students)	10 per cent of QOTE	$167.15
	Partially-dependent children and family members under 16 years (or students)	7 per cent of QOTE	$117

*Non-dependent family members are a spouse; issue within the meaning of the *Succession Act 1981* and next of kin with the meaning of the *Succession Act 1981*. For example, spouse, issue, parents, brothers and sisters, grandparents, uncles and aunts and cousins and finally the Crown.

Although not part of the statutory compensation regime, OIR also funds ten free grief and trauma counselling sessions for any person affected by a workplace death.

Between 2012-13 and 2021-22, 709 fatal workers' compensation claim lodgements were submitted, including 66 in 2021-2022.[16] Of these deaths, 29 per cent resulted from injury at work, 27 per cent resulted from a journey to or from work, 14 per cent from another work journey, 19 per cent from disease, with the balance attributable to other causes. During this period, the industries with the highest fatal claim lodgements were construction (14 per cent), transport, postal and warehousing (12 per cent) and manufacturing (12 per cent).

Death entitlements over the ten years to 2021-22 have averaged around 2.7 per cent of gross statutory payments, totalling $272,224,699. However, the trend is downwards: death entitlements as a proportion of gross statutory payments have reduced from around 3.4 per cent in 2012-13 to around 1.8 per cent in 2021-22 ($26 million). Of the death entitlements paid during this decade:

- 81.1 per cent were lump sum benefits paid for dependent family members;[17]
- 0.3 per cent were benefits paid for Australian-resident parents of deceased workers aged until 21 years;[18] and
- 3.6 per cent were lump sum benefits paid for non-dependent spouses, issues or next of kin.[19]

The death entitlements in Queensland are generally comparable to, and in some cases superior to, those paid in other Australian jurisdictions. This is particularly so for entitlements paid to non-dependant spouses, issues and next of kin. In particular, unless living overseas, parents of workers aged under 21 can receive both the non-dependent benefit and the parental payment, assuming there are no other dependents.

14 The sum payable is 'an amount the insurer considers is reasonable and proportionate to the monetary value of the loss of dependence by the dependants'.

15 The sum is payable to the worker's spouse, or an issue or next of kin within the meaning of the *Succession Act 1981*, via a payment to the deceased worker's estate.

16 This figure excludes cancelled claim lodgements.

17 *Workers' Compensation and Rehabilitation Act 2003*, s 200(2)(a), (aa); s 201(2)(a).

18 *Workers' Compensation and Rehabilitation Act 2003*, s 202.

19 *Workers' Compensation and Rehabilitation Act 2003*, s 201A.

Workplace deaths are traumatising for their families, friends and the community in which they lived.[20] In Queensland, the WHS Act was amended to establish the Consultative Committee for Work-Related Fatalities and Serious Incidents (the Affected Persons Committee) which provides advice and recommendations to the Minister about the information and support needs of people impacted by work-related deaths, serious incidents and illness. This initiative has seen Queensland at the forefront of ensuring the supports for the people impacted are in place, particularly in relation to navigating the various investigations that inevitably occur after a workplace death and the claims process.

Although the Queensland workers' compensation scheme provides death entitlements to a broader range of people affected by a workplace death than schemes in several other jurisdictions, i.e., both dependants and non-dependants as well as the parental payment, research on death entitlements has identified gaps in various supports. One qualitative study conducted in Queensland concerned families' experiences and expectations of authorities in the legal system following sudden workplace death. Even though the number of affected people involved in the study was small, one theme that was identified concerned families' expectation of assistance which included redress for personal costs stemming from workplace death and the amelioration of personal hardship without making it worse.[21]

Other research has shown that those who suffer financial loss are more likely than those without financial loss to develop a mental health condition as well as a decline in physical health. The mental health impacts can be significant and often long term both for adults and children. There can be intergenerational effects in children as mental health issues can affect educational attainment and job prospects. Higher benefits have been shown to provide greater scope for mental health support to be accessed.[22]

The last significant review of the death entitlements provided by the scheme was almost 20 years ago. Since then, housing prices have increased exponentially, the cost of living is increasing rapidly and wages are not keeping pace. Although the benefits are linked to QOTE, arguably the current value of the benefits do not adequately take account of the changed economic environment. Further, the current benefit structure may not provide the best support to minimise the trauma, health (especially mental health) effects caused by a workplace death.

It is timely then for another review to occur to ensure the death entitlements provide appropriate compensation to the families of a deceased worker to help ameliorate the hardship, both financial and non-financial, caused by a workplace death. This should be done as a matter of priority to ensure that any legislative changes that ensue can be included in the Bill which the Minister might introduce as a result of this review of the scheme. The review should be led by an independent person with knowledge of the scheme, especially its financials, who has the capacity to appreciate the impact of a workplace death. The Affected Persons Committee should have significant input into this review and one or more of its representatives included in the review committee. One of the matters that could be considered by this review is whether parental benefits should only apply to parents living in Australia.

This recommendation is also related to recommendation 46 in chapter 8, on claims liaison and support officers.

Recommendation 30: That an independent review of the scope and adequacy of the Act's provisions related to work-related deaths should occur, as a matter of priority, to ensure that the families of deceased workers receive appropriate support to help ameliorate their loss, both financial and non-financial. The review should include representation from kin of deceased workers.

Is legislation required: Could follow from the Review

Amendments to Regulation: Possible, could follow from the Review

Organisational responsibility: OIR

20 Matthews L. et al, 'Family Accounts of Their Experiences and Expectations of Authorities Following Sudden Workplace Death in Queensland, Australia', Victims and Offenders, 2022, DOI: 10.1080/15564886.2022.2053257, 1.

21 Ibid, 22.

22 Matthews L., Quinlan M., Jessup G., & Boyle P., 'Hidden costs, hidden lives: Financial effects on fatal work injuries on families', The Economic and Labour Relations Review, 2022, DOI: 10.1177/10353046221114591.

Chapter 6: Compliance, education and prevention programs

6.1 Compliance and enforcement

Compliance responsibility primarily rest with the Regulator with WorkCover's functions mainly directed to premium compliance.

6.1.1 The Regulator's role

Formal responsibility for monitoring and enforcing compliance with the Act rests primarily with the Regulator,[1] who in turn delegates these functions to WCRS. In practice, the Regulator's approach to compliance is underpinned by:

- a *Compliance and Enforcement Policy* that outlines the Regulator's approach in ensuring compliance with the Act, which applies to all insurers, employers, workers, and other persons with a duty or obligation under the Act; and
- a *Self-Insurer Performance and Compliance Framework* that outlines the Regulator's expectations of self-insurers, including how WCRS will (on behalf of the Regulator) monitor self-insurance performance, target compliance and enforcement activities, and determine whether an employer is fit to hold a self-insurance licence.

The Regulator's regulatory approach was recently the subject of an external review, which was commissioned by WCRS to ensure the Regulator has a contemporary, risk-based regulatory framework for insurers. This recommended the development of a single regulatory framework for insurers, and the expansion of the regulatory tools and data analytics available. The findings and recommendations of the review are currently being considered by OIR, so with some exceptions we do not comment on those responsibilities here.

The Regulator's enforcement and compliance functions include the prosecution of offences under the Act.[2] In practice, this function is carried out by the Workers' Compensation Prosecutions Unit (WCPU) within WCRS. WCPU investigates reports from insurers and others (including employers, workers and other business units within WCRS) about suspected offending. If, in the view of WCPU, there is sufficient evidence and it is in the public interest to prosecute, a recommendation is made to the Regulator that a prosecution be commenced.[3] If approved, WCPU manages the prosecution through the court process on the Regulator's behalf.

In 2021-22, the Regulator received 91 reports of potential offending, of which 87 related to alleged conduct by a worker (mostly fraud or related issues), three related to alleged conduct by an employer, and one related to alleged conduct by a service provider. In 68 matters, a decision was made not to prosecute or to withdraw, either due to a lack of evidence or on public interest grounds. Twelve prosecutions were successfully finalised (11 against workers and one against an employer), resulting in the imposition of fines totalling $121,500 and the recovery of $545,000 in restitution for insurers (as well as legal costs totalling $232,985). The Regulator is required to publicly report annually on their regulatory performance in accordance with the *Queensland Government Guide to Better Regulation*.[4]

6.1.2 WorkCover's role

WorkCover has an administrative role in monitoring and enforcing compliance with the Act, particularly in relation to ensuring employers hold adequate insurance. It has a compliance program that supports various administrative enforcement activities such as audits, site visits, and the collection of (and imposition of penalties for) unpaid premiums. WorkCover has advised that, through these activities, it raised $11.8 million in 2021-22 – to March 2022.

WorkCover also has statutory powers to prosecute certain offences under the Act. Specifically, it may prosecute offences that are not 'prescribed offences' (the most serious offences), and that are not offences against chapter 8 of the Act, in a summary way.[5] In practice, WorkCover has not exercised this power, and has not commenced a prosecution since 2013.

6.2 Employer non-compliance

The Regulator is highly reliant on reports from scheme participants to investigate and prosecute offences under the Act. Insurers must report to the Regulator without delay if they have a reasonable belief that a person is:

1 See *Workers' Compensation and Rehabilitation Act 2003*, s 327(1).

2 *Workers' Compensation and Rehabilitation Act 2003*, s 327(1)(n).

3 Decisions to commence a prosecution are made in accordance with the Workers' Compensation Regulator Prosecutions Policy, available at https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0021/108219/Workers-Compensation-Regulator-Prosecutions-Policy.pdf.

4 The most recent report is available at https://www.treasury.qld.gov.au/queenslands-economy/office-of-productivity-and-red-tape-reduction/regulatory-review/regulator-performance-framework/.

5 *Workers' Compensation and Rehabilitation Act 2003*, s 579. Chapter 8 concerns WorkCover itself (so WorkCover cannot prosecute itself). Prescribed offences are offences against section 486B(2) (contravention of a code of practice); chapter 12, part 2 (fraud and false and misleading statements); section 136 (worker's failure to notify their insurer of their return to work or engagement in a calling) where connected with an offence against section 533; or a claim farming offence.

- contravening certain claims farming provisions;[6] or
- defrauding or attempting to defraud an insurer or has provided false or misleading information to an insurer or a registered person.[7]

In practice, claims farming offences involve law practices, whereas workers are most likely to be involved in offences involving fraud or false or misleading information. For all other offences, including offences that have direct application to employers, there is no legislative obligation for insurers to report suspected offending to the Regulator. While this does not prevent insurers or others from reporting such conduct to the Regulator, the absence of a mandatory reporting obligation undoubtedly diminishes the capacity of Regulator to detect and prosecute these offences.

The disparity in reporting obligations for workers and other duty holders, such as employers and service providers, is reflected in the Regulator's enforcement and prosecution activities. As mentioned above, most successful prosecutions completed by the Regulator relate to offending by workers (often fraud), and hardly any involved offending by an employer.

Summary proceedings for certain offences must be taken within one year of their commission or six months after they have come to the knowledge of the Regulator or WorkCover (whichever is the later).[8] This means depending on the circumstances of a matter the time limitation period for commencing a prosecution starts from the time a duly authorised WorkCover officer becomes aware of the alleged offending. This can raise a risk that if offending is not promptly reported to the Regulator, the Regulator may be prevented from prosecuting the offence on the ground that the limitation period has expired.

The absence of a mandatory reporting obligation for employer offences, together with a lack of penalty provisions for offences against some requirements, also inhibits the Regulator's ability to commence a prosecution in cases where it is informed of alleged offending.

Imposing a duty on insurers to report suspected employer offences to the Regulator would ensure better oversight of scheme administration and should increase prosecutions of non-compliant employers. This would result in a fairer approach to enforcement under the Act. As with the existing mandatory reporting obligation, contravention of a requirement to report should attract a commensurate penalty (currently maximum 50 penalty units).[9]

This duty would apply both to WorkCover and self-insurers. It is our view that all employers, whether insured by WorkCover or through self-insurance should be treated equally under the Act in respect of compliance with the obligations imposed on them. Importantly, the Act's restrictions on the use of workers' compensation documents[10] practically require self-insurers to separate the claims management and employment arms of their business. Self-insurers currently do and are encouraged to self-report identified issues. However, we cannot know what undetected problems are not reported. We recognise that employees of self-insurers may feel conflicted or constrained in reporting employer offences to the Regulator. To address this, whistle blower type protections should be built into the Act.

Recommendation 31: That the Minister consider introducing a Bill to amend the Act to:

(a) impose on insurers a positive duty to report suspected offences by employers to the Regulator; and

(b) include protections for employees of self-insurers who report employer offences.

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

An employer has an obligation to hold accident insurance in respect of the employer's workers for its legal liability for compensation and damages.[11] Contravention of this requirement is an offence, and may occur where an employer is uninsured (the employer does not hold a valid workers' compensation insurance policy) or underinsured (the employer does not hold inadequate insurance because they have understated wages payments to particular workers, or not declared the existence of particular workers, to WorkCover).

6 *Workers' Compensation and Rehabilitation Act 2003*, s 325Y.

7 *Workers' Compensation and Rehabilitation Act 2003*, s 536.

8 *Workers' Compensation and Rehabilitation Act 2003*, s 579(3).

9 See *Workers' Compensation and Rehabilitation Act 2003*, ss 325Y, 536.

10 See *Workers' Compensation and Rehabilitation Act 2003*, s 572A.

11 *Workers' Compensation and Rehabilitation Act 2003*, s 48.

As is the case for other offences, the Regulator is responsible for prosecuting employers that contravene their obligation to insure. However, WorkCover also has an important role in monitoring and enforcing compliance with this requirement. Among other things, WorkCover may recover from an uninsured or underinsured employer the amount of unpaid premium together with a penalty equal to 100 per cent of the unpaid premium.[12] We understand that in practice, WorkCover tends to report suspected offending to the Regulator only where its attempts to recover unpaid premium through this pathway have been unsuccessful, or the employer's conduct is particularly egregious.

During consultation it was apparent that non-compliance with employers' obligation to insure remains an issue in the scheme. This issue was previously considered in the 2018 Review, where it was remarked that under-declaration of wages for workers' compensation purposes can be associated with underpayment of workers generally (namely, where an employer pays their workers less than their industrial entitlement under an award or enterprise agreement).[13] Given this, the 2018 Review recommended that WorkCover '*improve the compliance of employers with their obligation to pay premiums by improving coordination with the Fair Work Ombudsman*'.[14]

WorkCover currently utilises data from the Australian Taxation Office, the Queensland State Revenue Office and other State and Commonwealth agencies to identify employers who are uninsured or underinsured. We gather, however, that this does not include data from the Fair Work Ombudsman (FWO), with whom WorkCover had attempted to engage without success. Given the FWO's regulatory role for federal industrial and employment matters, including the enforcement of federal wage conditions, the absence of engagement with the FWO substantially weakens WorkCover's ability to monitor and enforce employers' compliance with insurance obligations under the Act.

As WorkCover's attempts to engage with the FWO have been unsuccessful, the Minister for Industrial Relations should consider writing to the Commonwealth Minister with portfolio responsibility for the FWO (currently, the Minister for Employment and Workplace Relations) to formally seek the FWO's cooperation in supporting WorkCover's monitoring and enforcement activities.

Recommendation 32: That the Minister consider writing to the Commonwealth Minister with portfolio responsibility for the Fair Work Ombudsman, formally requesting greater co-operation in identifying employer non-compliance.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: OIR

WorkCover has been increasing its activity in ensuring employers are complying with their insurance obligations, with the result that the total amount raised from compliance activities has been increasing. Whether this is due to better targeting or greater evasion is hard to tell. It also suggests that other measures may be necessary to drive employer compliance. Although some objection might be taken to greater compliance and enforcement measures being introduced, their purpose is to ensure the scheme remains viable and is equitable for all employers and workers.

Earlier, we referred to the review of the Regulator which, in part, dealt with the development of a regulatory framework. Clearly, the compliance and enforcement measures that are open to the Regulator and WorkCover are limited. Unlike the WHS Act, there is no capacity to issue improvement or infringement notices, nor is there any capacity to issue on the spot fines.

It is equally important to ensure that the offences and penalties contained in the Act remain appropriate and that new offences and penalties be identified where trends in employer misconduct are identified. Examples that have been raised by stakeholders include phoenixing, sham contracting, head contractor liability and threats by employers to deport migrant workers should they make a workers' compensation claim.

The Regulator should undertake a consultative review of the current offence and penalty provisions to ensure that they are fit for purpose, reflect contemporary circumstances and can be enforced. This review should also consider whether it is the Regulator or WorkCover which is better placed to enforce particular aspects of compliance. If the review shows that is appropriate for the Regulator to be involved in more enforcement, then that would require an increase in resources for the WCPU.

12 *Workers' Compensation and Rehabilitation Act 2003*, s 57.

13 Peetz, D., *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-yearly review of the scheme*, Queensland Government, Brisbane, 27 May 2018, 72.

14 Ibid, recommendation 7.15.

This is a substantial body of work which may not be completed for some time. In the interim, there is an amendment that could be made to address an emerging issue. We have been alerted to several recent instances of an employer offering to pay a worker a lump sum if they do not make a workers' compensation claim or similar behaviour. This conduct undermines workers' rights to access workers' compensation (and any other future rights) and is contrary to the scheme's objective of providing benefits to workers who sustain an injury in their employment.[15]

Although s 109 prohibits an employer from paying an amount either in compensation or instead of compensation that is payable under the Act by an insurer for an injury sustained by a worker, there are concerns it may not be fit for purpose in addressing the type of incidents recently reported. Further, the section is not an offence provision.

We consider the Act should be amended to include an offence provision which specifically prohibits payments to workers by employers for the purpose of preventing workers applying for compensation. A standalone provision would send a strong message to employers that this conduct is unacceptable. This is a matter that could be addressed by an Act amendment relatively quickly while the broader review takes place.

Recommendation 33: That the Regulator undertake a review of the employer-specific obligations and offences in the Act to ensure that they are fit for purpose, meet community standards and can be practically enforced.

The Minister consider introducing a Bill to amend the Act to introduce further regulatory tools including enforceable notices and on the spot fines.

Is legislation required: No
Amendments to Regulation: Possible
Organisational responsibility: Regulator

Recommendation 34: That the Minister consider introducing a Bill to amend the Act to include an offence prohibiting employers from making payments to an injured worker in lieu of the worker making a claim for compensation.

Is legislation required: Yes
Amendments to Regulation: No
Organisational responsibility: OIR

6.3 Advice and education

The Regulator has an educative function under the Act.[16] The Regulator publishes a range of online guidance and other material to assist workers, employers, insurers and others to navigate the scheme. This includes website pages on discrete operational issues (e.g., early intervention programs, reporting injuries, unpaid interns) and recently published guidance for insurers in supporting RRTW.[17]

6.3.1 Advice and education for workers and employers

Additionally, the Queensland Government funds two advisory services within the scheme – the Workers' Compensation Information and Advisory Service (WCIAS) for injured workers, and one for employers. The WCIAS for workers is a free service that provides information to injured workers, unions and community organisations about workers' compensation in Queensland, and is currently operated by the Queensland Council of Unions. The one for employers is a free service that provides advice and support to Queensland businesses about workers' compensation (Workers' Compensation Helpline), and is currently operated by the Business Chamber Queensland. Each service is supported by a webpage containing basic information and frequently asked questions about workers' compensation.[18]

15 *Workers' Compensation and Rehabilitation Act 2003*, s 5(1)(a).

16 *Workers' Compensation and Rehabilitation Act 2003*, s 327(1).

17 See Chapter 3.

18 For the WCIAS, see blog.qldunions.com/wcias. For the Workers' Compensation Helpline, see sbusinesschamberqld.com.au/services/workerscompensation/workcoverfaqs/.

The scheme also funds the WPSS which was established in 2018 to improve the level of assistance available to Queensland workers experiencing a work-related mental injury. The WPSS is a confidential and independent service that connects such workers with established community and other independent support services.

The WPSS provides support to workers from the commencement of the claims process, regardless of the ultimate outcome of the claim. The WPSS is promoted to all stakeholders and agencies across government to empower workers to access the service independently. With consent, clients may also be referred to the WPSS through insurers, WCRS, employers, unions and treating medical or allied health professionals. An unpublished evaluation of the WPSS in 2021 found the service was successful in meeting its purpose and service deliverables, provided useful and timely support to workers throughout the workers' compensation process, and remained in demand. The Regulator (through WCRS) manages the grant and funding process for these grants.

Insurers such as WorkCover provide workers' compensation information and education to workers and employers alike during the claims process, and to employers specifically when undertaking compliance activities in relation to insurance coverage obligations (discussed above). Unions, lawyers, medical and allied health professionals, and some employers are also sources of information about the workers' compensation process for injured workers.

Improving workers' understanding of workers' compensation schemes has been recognised as a national issue. A 2022 report commissioned by Safe Work Australia, titled *Australian workers' understanding of workers' compensation systems and their communication preferences* (Workers' Understanding Report), found that 'workers have low levels of understanding of workers' compensation and do not get the information they need when they need it'.[19] The report also found that workers have difficulty finding information. Specifically, while 32-40 per cent of surveyed workers sought out workers' compensation information, only 19-26 per cent of workers were successful in finding or otherwise receiving such information.[20] Lack of knowledge about workers' compensation can contribute to the fear and stigma associated with suffering a workplace injury, resulting in stress, impeding recovery and delaying RTW.[21]

Various stakeholders reported that, for an injured worker who is already suffering, navigating the scheme can be time consuming, frustrating and stressful, especially if the worker has a mental injury. This can, in itself, intensify mental injuries or increase the likelihood of a secondary mental injury emerging from a physical injury. Concern was also expressed that employers do not generally have a good understanding of the scheme and that small businesses find difficulty in contacting WorkCover within business hours.

In response to a recommendation of the Workers' Understanding Report, Safe Work Australia published the *National principles for communicating workers' compensation information to workers* (National Communication Principles) in 2023. These principles state that communication with workers about workers' compensation should be relevant, clear, trusted, timely, accessible and empowering.[22]

Currently, workers and employers are mostly made aware of the WCIAS and Workers' Compensation Helpline through active promotion by the service providers, or otherwise through reactive means such as government responses to complaints. The Regulator should work with the organisations administering these to ensure that the services are actively promoted.

While referrals to these pathways should continue, insurers are ultimately best placed to inform workers and employers of such services by virtue of the direct contact they have with both groups during the claims administration process. Clearly, claims staff have the responsibility of informing workers and employers of matters pertaining to the claim that has been lodged but more general information about the operation of the scheme could be provided by the advisory services. Promoting these services to workers and employers early in the claims process (such as at or shortly following claim lodgement) could have the benefit of reducing the number of enquiries made to claims officers about basic aspects of the workers' compensation process, freeing up insurer resources for other tasks.

There is some evidence that information and guidance provided by insurers can be regarded by workers with suspicion because of a perception that the insurer aims to minimise costs.[23] We consider this risk is lessened here because the WCIAS is operated by a third party (currently, the Queensland Council of Unions) and information provided through the service is independent of the insurer. Insurers should ensure that claims officers clearly communicate this fact to workers when informing them of the service.

These services should also be mentioned in the statement of workers' rights and responsibilities, the subject of recommendation 37.

19 Curtin University, *Australian workers' understanding of workers' compensation systems and their communication preferences*, 2022, https://www.safeworkaustralia.gov.au/sites/default/files/2023-01/australian_workers_understanding_of_workers_compensation_systems_and_their_communication_preferences_report.pdf, 5.

20 Ibid 29.

21 Ibid 58.

22 Safe Work Australia, *National principles for communicating workers' compensation information to workers*, 2023, https://www.safeworkaustralia.gov.au/sites/default/files/2023-05/national_principles_for_communicating_workers_compensation_information_to_workers.pdf.

23 Curtin University, *Australian workers' understanding of workers' compensation systems and their communication preferences*, 2022, https://www.safeworkaustralia.gov.au/sites/default/files/2023-01/australian_workers_understanding_of_workers_compensation_systems_and_their_communication_preferences_report.pdf, 31.

Recommendation 35: **That the Workers' Compensation Information and Advisory Service and the Workers' Compensation Helpline be actively promoted by insurers and by the administering organisation, including by more prominently displaying these services on their websites and by written information, YouTube, webinars and on lodgement or notification of a claim, to increase visibility and accessibility.**

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator, insurers

6.3.2 Advice for General Practitioners to improve understanding of the scheme

GPs play a fundamental role in supporting injured workers and the workers' compensation process. They are often the first point of contact for an injured worker, assisting them to apply for compensation by making an initial diagnosis and providing a work capacity certificate,[24] managing their treatment, and liaising with insurers and employer representatives to support return to work. For these reasons, it is beneficial if GPs have a working knowledge of the workers' compensation process.

The 2018 Review acknowledged the need to promote awareness of workers' compensation in GPs, recommending that the Regulator, the Australian Medical Association Queensland (AMAQ) and the Royal Australian College of General Practitioners (RACGP) jointly develop a course on workers' compensation, occupational therapy and return to work for GPs as part of their continuing professional development (CPD).[25] WCRS and WorkCover engage with AMAQ and RACGP to understand the challenges for GPs and opportunities to support their professional development, and some developments have occurred, but the new CPD course does not exist.

The Regulator publishes various educational tools on the WorkSafe Queensland website to assist doctors in navigating the workers' compensation process. These include video, audio and text resources addressing topics such as the preparation of work capacity certificates, the role of GPs in helping injured workers return to work, and the management of mental injury.

In addition, and as mentioned in chapter 2, the *Clinical Guideline for the diagnosis and management of work-related mental health conditions in general practice* has been developed with the support of OIR, amongst others. It is the first clinical resource internationally on the identification and treatment of mental health conditions arising from work-related factors such as trauma and bullying. OIR is also a sponsor of the IMPRovE project (lead by Monash University) which seeks to implement the Clinical Guideline through academic detailing sessions, a community of practice and resources.

Despite these actions, various stakeholders, including those representing doctors, identified deficiencies in GPs' knowledge of the scheme and the consequential impact on a worker's participation in RRTW.

While information services are available to workers and employees through the WCIAS and Workers' Compensation Helpline respectively, no such service exists for other scheme participants, in particular doctors. An information and advisory service for GPs, housed within a doctors' organisation such as the AMAQ or the RACGP, would provide easy access for GPs to discuss any issues they are having with the workers' compensation processes with someone who has relevant knowledge of the scheme and GPs' role within it. It would also provide another mechanism to promote the Clinical Guideline to GPs. A grant for a service of this nature would have a similar legal basis to grants to other scheme participants.

Recommendation 36: **That the Regulator provide a grant for the establishment of an advisory service for GPs, along the lines of those funded for workers and employers, to be based within an organisation that represents the interests of GPs.**

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

24 A worker must generally lodge a workers' compensation application within 6 months after their entitlement to compensation arises, which for injuries other than minor injuries and oral injuries, is the day the worker's injury is first assessed by a doctor, *Workers' Compensation and Rehabilitation Act 2003*, ss 131(1), 141(1)(a).

25 Peetz, D., *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-yearly review of the scheme*, Queensland Government, Brisbane, 27 May 2018, 69, recommendation 7.11.

6.3.3 Statement of workers' rights and responsibilities

The 2018 Review recommended that the question of whether any information regarding injured workers' rights must be provided to injured persons on notification of an injury should be considered as part of the current review.[26] As noted above, the Safe Work Australia-commissioned Workers' Understanding Report identified poor knowledge among Australian workers of the workers' compensation process. The report found that workers would prefer to receive information from a 'trusted, transparent, knowledgeable, and reliable third-party organisation', with 43 per cent of surveyed workers identifying 'WorkCover/WorkSafe' as their preferred information source.[27]

While general information about the workers' compensation process is available on the WorkSafe website, there is no document or statement that currently summarises workers' rights and responsibilities within the scheme. We consider that developing such a statement would improve workers' ability to understand and navigate the scheme, and address some of the issues raised in the Workers' Understanding Report. To support recommendation 36 above, the statement should include contact details for relevant government-funded support services, including the WCIAS and the WPSS.

The Regulator would be the appropriate body to develop such a statement, noting its educative function under the Act, its impartial position within the scheme, and the general preference of workers, identified in the Workers' Understanding Report, to receive information from their relevant workers' compensation authority.[28] The statement should be developed in consultation with relevant scheme stakeholders (including WorkCover, self-insurers, employers and unions) and should be consistent with Safe Work Australia's National Communication Principles. Importantly, communication styles should recognise the needs of Aboriginal peoples and Torres Strait Islander peoples and workers whose first language is other than English.

The statement should explain workers' rights and responsibilities within the scheme and should clarify common misconceptions or myths about workers' compensation (including, for example, the right to a treating doctor of choice and to not have the employer present in a medical consultation). While the WorkSafe website says that workers have a right to obtain treatment from a doctor of their choice, this is not made explicit in the Act. For avoidance of doubt, it would be good to codify this in the Act, similar to the approach taken under the new Western Australian Bill that has created a right about choice of doctor for an injured worker.

Some workers' compensation claims can be complex (e.g., certain mental injury claims, latent onset injury claims amongst others), and the scheme can be difficult to navigate at a time when the injured worker is vulnerable. In these circumstances advice other than from the employer or insurer can be invaluable. Recognising this, the statement should include the right of the injured worker to seek advice from the worker's union, the WCIAS or a lawyer.

We noted earlier that the person-centred approach to RRTW enables workers to participate meaningfully in decisions that affect them. One of the most important decisions affecting an injured worker is the RRTW plan. Although the insurer should consult the worker in the development of the plan, the injured worker should have the right to contribute to the development of the plan. After all, the plan is designed for the worker for their RRTW. Allowing a formal right would not give the worker a right of veto as the insurer retains the obligation to develop the plan and, further, any disagreement with the worker can be referred to facilitated discussion. This right should be included in the statement of worker's rights and responsibilities.

Insurers and employers would be best placed to disseminate the statement given their direct interaction with workers during the claims process. Insurers should provide the statement in a suitable form to injured workers as soon as practicable after the insurer is notified of a workplace injury. As many workers report receiving too much information from insurers at the commencement of their claim,[29] insurers should consider whether the statement can be used to replace or condense any existing educational material provided to workers (something which the Regulator can seek to encourage when consulting on the development of the statement).

Employers should be required to provide the statement to workers as soon as practicable after the worker commences employment, and to display the statement in the workplace. This approach is not dissimilar to the provision of Fair Work Information Statements by national system employers in the federal industrial relations system. In that jurisdiction, employers must give each employee a statement, prepared by the Fair Work Ombudsman, that addresses basic employment law rights and concepts including minimum employment standards and entitlements.[30]

26 Ibid, recommendation 9.4.

27 Curtin University, *Australian workers' understanding of workers' compensation systems and their communication preferences*, 2022, https://www.safeworkaustralia.gov.au/sites/default/files/2023-01/australian_workers_understanding_of_workers_compensation_systems_and_their_communication_preferences_report.pdf, 46.

28 Ibid, 38.

29 Ibid, 31.

30 *Fair Work Act 2009* (Cth), s 124.

Recommendation 37: **That, in consultation with stakeholders, the Regulator should develop a statement of workers' rights and responsibilities in the workers' compensation system, to be distributed in workplaces, on insurer websites and provided to all injured persons on notification of an injury. The statement should include such matters as – the right of a worker to:**

a) make a claim for workers' compensation;

b) choose their own treating medical practitioner;

c) not have an employer contact the treating practitioner or attend a medical consultation except with genuine consent;

d) choose their WRP where they are dissatisfied with the choice made by the insurer;

e) seek advice and support from their union, the WCIAS, the WPSS or lawyer; and

f) participate in the development of their RRTW plan;

and the responsibilities of a worker to:

a) satisfactorily participate in RRTW; and

b) treat insurer staff with courtesy.

Is legislation required: No
Amendments to Regulation: Possible
Organisational responsibility: Regulator

Recommendation 38: **That the Minister consider for which rights, set out in recommendation 37, it is necessary or appropriate to introduce a Bill to confirm their existence.**

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

6.4 Risk reduction and prevention programs

WorkCover's statutory functions include funding and providing programs and incentives to encourage improved health and safety performance by employers.[31]

WorkCover operates an Injury Risk Reduction Initiatives (IRRI) program that identifies, investigates and pilots initiatives to assist WorkCover, in collaboration with WHSQ and other key stakeholders, to reduce workers' exposure to injury risk. Pilots have been conducted in high-risk industries addressing high risk demographics such as mental health, musculoskeletal injuries and heavy equipment e.g. forklift injuries. These pilots are currently being evaluated, though early results show reductions in claim numbers and costs together with positive stakeholder feedback and wider adoption of the initiatives.

WHSQ and WorkCover jointly deliver the Injury Prevention and Management (IPaM) program, a free initiative designed to help Queensland businesses develop and improve injury prevention and RRTW systems. As part of this initiative, a team of experienced advisors located throughout Queensland work with employers who have comparatively high workers' compensation claim rates and costs compared to other businesses of similar size and nature.

The IPaM program was established in 2010 and has undergone various changes since that time. Initially, participation in the program was limited to larger employers that had workers' compensation premiums capped at more than twice the industry rate and that were referred directly from WorkCover with the long-term goal of reducing injury rates and minimising scheme costs. In 2017, the scope of the program was expanded to include a broader range of employers,

31 *Workers' Compensation and Rehabilitation Act 2003*, s 383(1)(b), s 385A.

including employers experiencing high incident frequency in priority areas (namely manufacturing, transport, health care and social assistance, construction, or agriculture), employers with a high volume of musculoskeletal or mental health incidents, and small businesses employers with high claim or incident frequency. Currently, the IPaM program provides a tiered service delivery for employers of varying levels of maturity, size, complexity, safety and workers' compensation performance. Since its introduction, IPaM has assisted over 2,700 Queensland employers. This includes 528 employers in 2021-22, when 2,172 site visits were conducted.

Over the years, a number of reviews and audits have been undertaken involving IPaM, each providing various findings and recommendations in relation to the role of prevention activities within a regulatory framework. The diverse findings from these have resulted in varied stakeholder perceptions regarding the role of IPaM in continuing to meet the needs of Queensland businesses and contributing to reducing injury and minimising workers' compensation costs.

Stakeholders broadly expressed support for the IPaM program, but there was some disagreement over whether the program should continue to be administratively led by OIR (in the WHS function) or by WorkCover. As the program is delivering results, it should continue but be reviewed to ensure its administration is appropriate given the services it provides.

Chapter 7: Delays and time frames

7.1 Delays — Initial applications

7.1.1 Time frames for making decisions

The requirements on insurers to make a decision on an application for compensation within a set time have varied since 1996. At that time, it was 6 months, moving to 3 months in 1999 and then to 60 business days for mental injuries and 40 business days for physical injuries in 2004.

Since 2007 the Act has required an insurer to decide an application for compensation within 20 business days after the application is made.[1] If the insurer does not do so, they must, within five business days after the end of the 20 business day period, notify the claimant of its reasons for not making the decision and that the claimant may have their application reviewed by the Regulator.[2]

In recent years, the average claim determination period for all claims in the scheme has increased 41 per cent from 2017-18 to 2021-22, as shown in table 7.1 below.

Table 7.1 – Average claim decision timeframes (for all insurers) 2017-18 – 2021-22

Year	2017-18	2018-19	2019-20	2020-21	2021-22
Average decision time (business days)	8.1	9.2	8.5	9.5	11.4

Source: Office of Industrial Relations

Additionally, while the average decision timeframe for all injury types is currently sitting below the 20 business day period (at 11.4 business days in 2021-22), the average decision timeframe for primary mental injury claims is considerably longer (35.5 business days in 2021-22). This means mental injury claim decisions are routinely being made outside the prescribed timeframe. Data about the time frame for deciding secondary mental injury claims was not available to us.

The primary reason for the delay in deciding mental injury claims is the need to ensure that procedural fairness is provided to all parties to the claim. Parties must be given the opportunity to respond to any information provided by another party that may affect the decision being made. To allow for appropriate consideration to be given to any new information, it is commonplace for a worker to be given five business days to respond. This is in addition to the time taken for a worker to submit their list of events, which as detailed in chapter 2, can be lengthy and time consuming to prepare.

Mental injury claims are more complicated to assess and manage than claims for physical injury. When deciding whether to accept such claims, insurers must often assess competing versions of workplace events that may have occurred over a long period of time. Adding to this complexity, mental injuries encompass a wide variety of presentations that can result in differing levels of impact between affected individuals. This prevents a predictable and consistent pattern of treatment of claims being applied across individuals suffering similar injuries.[3]

Research shows that procedural delays, including delays in the payment of compensation, worsen return to work outcomes.[4] We saw this in the *It Pays to Care* report, quoted in chapter 5.

Following amendments to the Act in 2019, mental injury claimants can now access insurer-funded early intervention support, including counselling and mediation services, from the date they lodge a claim until the date the claim is decided (and thereafter if their claim is accepted). Facilitating access to early treatment aims to minimise some of the disadvantage associated with delayed claim decision-making. However, it does not fully overcome the impact of decision times, as other benefits such as weekly compensation are only payable following the acceptance of a claim.

WorkCover has implemented several measures to minimise the time taken to decide claims, including centralising its claims determination teams into its New Claims Group and an organisational restructure aligned to dedicated focus areas of earlier claims determination and case management. Further measures to streamline claims administration have been proposed by WorkCover as part of this review, including proposals concerning medical expense-only claims and employer excess-only claims. WorkCover submits that were these changes to be made, resources could then be

1 *Workers' Compensation and Rehabilitation Act 2003*, s 134(2).

2 *Workers' Compensation and Rehabilitation Act 2003*, s 134(6).

3 Safe Work Australia, *Taking Action: A best practice framework for the management of psychological claims in the Australian workers' compensation sector*, Canberra, 2018, 6.

4 Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace*, 2022, 38.

diverted to deal with high-risk claims. These proposals would require legislative amendment and at this time, we assess there to be little appetite for these changes amongst certain groups of stakeholders.

Other proposed changes concerned the method of calculating weekly benefits. These, and other proposals, were thoroughly examined as part of this review. Although no change has been recommended for the calculation of weekly benefits (see chapter 6), the development of a default payment should assist in benefits being paid earlier.

Despite the measures implemented by WorkCover, the assessment of mental injury claims within the statutory time frame continues to prove challenging. The number of primary mental injury claims being made has increased 25.5 per cent over the four years to 2021-22. Data are not available on the change in secondary mental injury claims made over the same time period, but over the two years, to 2021-22, numbers increased by 8.3 per cent. The voluntary acceptance by WorkCover of the Savings and Debt Plan announced by the Government in 2020 affected the recruitment of staff, which may in turn have contributed to delayed decision making. WorkCover, like other organisations, is also continuing to be challenged by skill shortages.

Given all of these factors, especially the need to provide procedural fairness, arguably the 20 business day timeframe for decision making on mental injury claims is presently unrealistic. It also sets up unrealistic expectations for injured workers and can create unnecessary frustration about when they might receive a claim decision.

In recognition of this, we propose to that the decision making time frame for mental injury claims should be reviewed every two years. Having reviewed the current time taken to decide mental injury claims we believe that a minimal increase of five business days is warranted. This will bring the decision making time frame to 25 business days. The current provision allowing a claimant to seek a review of the decision with the Regulator if it is not made within time should remain. Similarly, the current provision which gives insurers five business days to notify the claimant of reasons for not making the decision within time should also remain.

We consider this timeframe is a credible and achievable goal. It better reflects insurers' existing capacity to decide mental injury claims, leading to more realistic expectations on the part of workers and employers about when claims will be decided. The nature of the extension is designed to give insurers sufficient time to improve their claims determination processes, and for the effects of recent initiatives to materialise.

In recognition of the growth in the number of both primary and secondary mental injury claims, a 'legacy' claims team should be created. This would enable insurers to quarantine those claims which have been lodged prior to the commencement of this time period and deal with those separately and methodically while allowing claims lodged after the commencement date to be determined in accordance with the new time frame.

A review at the end of two years should be statutorily prescribed and thereafter required every two years. It would be reviewed to take account of such matters as the trends in mental injury claims, the status of the decision making and the effects of any initiatives including the Code of practice on psychosocial hazards as well as those from this review. It would also be open to the Minister to consider other options, including whether to reduce the time frame or deeming claims to be accepted if the time frame is not met. These types of outcomes might assist in keeping decision making on track.

Extending the time frames for decision making in the short term, even just for mental injury claims, will undoubtedly raise questions. However, to continue claims determination on the 'business as usual' model for mental injury claims, in which a legislative time frame lacks relevance, is simply not sustainable. The recommended time frame is not significantly longer than the existing target for all claims, and is nowhere near that which existed before the Act was last amended. It recognises the current trend of increasing numbers and complexity of mental injury claims, a trend which does not look like reversing in the short term. It also gives time to insurers to make the necessary internal reforms to ensure the time frame is met in the knowledge that there is potential for it to further reduce.

It may be that insurers decide they can only meet this requirement by the addition of new resources, which they can only get from increasing premiums. That is an internal matter for the insurers. But it is inappropriate for mental injury claims to be cross-subsidising the rest of the system. As noted in chapter 1, administration costs in the scheme are relatively low and declining, while delays have increased. The level of administration costs in the systems needs to be commensurate with the demands put upon it.

This recommendation affects mental injury claims only. The mean time for deciding physical injury claims is around 10 business days and so for physical injuries WorkCover is therefore, at least on average, meeting the current statutory time frame.

Recommendation 39: **That the Minister consider introducing a Bill to amend the Act to require an insurer to decide an application for compensation for a mental injury within 25 business days. The amendment should also require the time frame to be reviewed every two years.**

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

Recommendation 40: **That, to enable the above time frames to be met, WorkCover should:**

(a) in the short term, create a "Legacy" Claims Team to respond quickly to the remaining mental injury claims received before the new dates;

(b) In the medium to long term, commit to meeting its legislative obligations regarding time frames for decision making; and

(c) take into account, in the setting of future premiums, the need to meet legislative obligations regarding time frames for decision-making.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: WorkCover

7.1.2 Time frame for providing information on a claim

To assist in meeting the recommended statutory time for making decisions, action is required to ensure the timely provision of, and response to, information that is provided by workers and employers and which is necessary for claims determination.

Insurers rely on the provision of information from various sources (including workers, employers and medical practitioners) to decide claims. The Act does not prescribe timeframes for the production of relevant claim information from anyone even though the time taken to provide such information can contribute to delays in deciding claims within the legislated time frame.

We see benefit in legislating these time frames to encourage the timely provision of information to insurers. The timeframes proposed in the recommendation are derived from WorkCover estimates of the timeframes for the relevant parties to provide information or documents to meet a 25-business day legislated time frame for decision. These legislated time frames would not impose any penalties on the parties who are slow to provide information but knowing what the law requires may encourage compliance. Should the Minister in future feel the need to impose deemed decisions on WorkCover, these time frames could be taken account into setting the deeming deadlines.

Recommendation 41: **That the Minister consider introducing a Bill to amend the Act to allow the Minister to set, through Regulation, maximum periods for the provision of information to insurers for the purpose of calculating the decision-making time frame in recommendation 39. These would be:**

(a) information from the injured worker to WorkCover – 7 business days;

(b) information from the employer to WorkCover – 5 business days;

(c) information from a medical practitioner to WorkCover – 5 business days; and

(d) response from the injured worker to WorkCover (natural justice response) – 3 business days.

Is legislation required: Yes
Amendments to Regulation: Yes
Organisational responsibility: OIR

7.1.3 Time frame for employers to provide wage information

As mentioned above (and in chapter 6), WorkCover has advised that it regularly encounters difficulty with employers providing timely wage information. While adopting the default rate of compensation would ensure timely provision of compensation (per recommendation 29), we consider more should be done to ensure the timely provision of wage information by employers, to enable the correct rate to be calculated and paid more quickly. Specifically, employers should be under an obligation to comply with insurer requests for wage information within 10 business days of the request.

There is a question as to whether this obligation should be imposed by statute or by WorkCover itself. If the latter, it could be implemented by applying a variation to the excess paid by those employers who do, and who do not, meet the target deadline.

Recommendation 42: **That the Minister oversee discussions with WorkCover to determine the most appropriate method for imposing a 10 business day limit for the employer submission of wage information to WorkCover. This could involve either:**

(a) a Bill to amend the Act to allow insurers to compel employers to comply with requests for wage information within 10 business days; or

(b) for employers who provide the information within time, a discount on the excess payable, administered by WorkCover.

Is legislation required: Possible
Amendments to Regulation: Possible
Organisational responsibility: OIR, WorkCover

7.1.4 Staffing Limitations

Staffing limitations can be a major constraint on the ability of WorkCover to adequately process claims and avoid delays. The Savings and Debt Plan was one such constraint. While WorkCover (and its employing office) is a public sector entity under the *Public Sector Act 2022*, we understand the staffing limitations arising from the Savings and Debt Plan and other full-time equivalent (FTE) staff limits did not formally apply to WorkCover. As mentioned, however, that agency voluntarily adopted the Plan. In light of increasing delays, matters which can hamper the addressing of delays should be avoided in future.

WorkCover is an agency that is not funded by taxes and so does not contribute to state debt. It has a responsibility, over the long term, to keep premiums in line with costs and revenues, and to ensure that claims receive adequate attention. If its injury-driven workload requires an increase in staffing it should be permitted, and the resultant premium will reflect the actual cost of injuries in the system. A cap on recruitment does not lead to any reduced burden on the taxpayer; instead, the burden falls on injured workers (and, to the extent that delays increase costs and hence premiums, employers).

Recommendation 43: **That WorkCover should continue to be excluded from staffing limitations on hiring in state government agencies, and any future staffing limitations should not be voluntarily adopted by WorkCover.**

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: WorkCover

7.2 Delays — Review applications

7.2.1 Time frames for making decisions

The Regulator is responsible for undertaking independent statutory reviews of certain insurer decisions concerning workers' entitlements to compensation and employers' policies of insurance.[5] The Regulator must make a review decision within 25 business days and issue a written notice of the decision, including reasons for decision, within a further 10 business days.[6] This timeframe may be extended but only at an applicant's request or with their consent, or if the applicant requires time to give the Regulator more information.[7] An applicant may appeal to an Industrial Magistrate if the Regulator fails to make a review decision within the legislative timeframe, otherwise there is no other legislative consequence for not making a decision within time.[8]

Staff within the Review Unit in WCRS are delegated the Regulator's review functions under the Act. The Review Unit has, for many years, had a high caseload of open matters, and been experiencing significant delays in completing reviews. Significant frustration and dissatisfaction was expressed by many stakeholders during consultation for the review.

In 2021-22, 2,506 applications for review were received by the Review Unit. Three per cent of these were decided within 25 business days with the average duration of a finalised review being 60.1 days. The Review Unit continues to perform at a similar level during 2022-23. It is difficult for the Regulator to sustain a position of ensuring other duty holders' compliance with the scheme when it has not been able to comply with one of its fundamental roles, that of making review decisions within the prescribed time. Although there are some good reasons for this, the current situation is unacceptable. What is more, the Regulator has witnessed the deterioration, with concrete action being taken to address the problem only in more recent times.

A key contributor to delays in completing reviews within the legislative timeframe is the high number of open reviews awaiting finalisation (628 at the end of June 2022 and 817 at the end of May 2023). Because of this high open caseload, reviews are held in abeyance until a review officer is available to be allocated new matters. Once reviews are allocated, review officers manage the process efficiently, with the average timeframe between allocation and the decision being finalised reducing from 19.8 days in 2020-21 to 16.9 days at the end of May 2023. In 2022-23 year to date, 99 per cent of written decisions have been issued within 10 business days (within two days on average) of being allocated.

In 2021-22, 39.6 per cent of reviews related to mental injury claims, with this more complex review type contributing to longer decision timeframes. As has been shown with insurers, these claims have more complexity in the issues raised, the volume of material provided and increased exchange of information due to procedural fairness requirements.

A further contributor to review delays is the scope of the review functions delegated to the Review Unit. In addition to undertaking workers' compensation reviews, the Review Unit also holds delegated responsibility for managing:

- internal and external reviews of enforcement notices issued by inspectors under the WHS Act and *Electrical Safety Act 2002* (ES Act); and
- internal reviews under the *Labour Hire Licensing Act 2017* (LHL Act).

The impact of internal reviews under the safety and labour hire licensing schemes remains significant due to their strict legislative timeframes imposing a deemed decision where decision timeframes are exceeded. The Review Unit therefore completes 100 per cent of WHS Act, ES Act and LHL Act reviews within legislative timeframes. This requires internal reviews to be prioritised over workers' compensation reviews, which contributes to delay in allocating workers' compensation reviews.

5 *Workers' Compensation and Rehabilitation Act 2003*, s 327(1)(f).
6 *Workers' Compensation and Rehabilitation Act 2003*, s 545(1).
7 *Workers' Compensation and Rehabilitation Act 2003*, s 545(4).
8 *Workers' Compensation and Rehabilitation Act 2003*, s 546(4).

In response to the workload pressures detailed above, over the past two years WCRS has undertaken a series of reviews to explore the factors contributing to workload and delays in completing reviews including a 2021-22 independent review conducted by PwC in relation to the Review Unit's operating model (Operating Model Review).

The Operating Model Review identified six key strengths in the Review Unit's current state that positively impact the operating model and are an important foundation for improvement. These included that the Review Unit is already identifying and actively addressing process bottlenecks.

Following receipt of PwC's report, during 2022 the Review Unit developed an implementation roadmap of key projects and initiatives to implement the recommendations with work currently underway on these initiatives. WCRS is currently working to implement the recommendations of the Operating Model Review.

It is obvious that a key contributor to the delays is resourcing, in particular the inadequacy of current level of staffing to meet the current and rising workload demand.

Review and Appeals Unit internal staff resources are 51.2 FTE of which 23.4 FTE are allocated to Review Officer positions. These positions range between AO4-AO6 classification levels with more senior staff responsible for the broadest range of review types across the various regulatory schemes. The Review Unit's internal staff establishment has not increased significantly since 2013, when the former Q-COMP merged into the department, yet the number of applications for review, especially those involving mental injuries, has increased.

The Review Unit uses outsourced legal services to assist in review decision making. The Review Unit has contracts with two solicitor firms that provide legal services. The Review Unit also refers reviews to counsel on the Appeals Unit's barrister panel. The aim of these arrangements is to maximise the Review Unit's capacity to manage its workload. Some 46 per cent of reviews during the year to date 2022-23 have had legal panel involvement. This situation is not sustainable in the medium to long term.

Since February 2022, the Review Unit has engaged four temporary review support officers who undertake administrative aspects of the review process to enable review officers to devote more time to reviewing files and drafting review decisions. This arrangement has contributed to the reduction in the average decision time after allocation.

Review staff undergo a comprehensive training program upon commencement and due to the complex and unique nature of the review officer role, it can take between 9-12 months for a review officer to develop competence across a range of different review types.

It appears that steps are now being taken to address the not inconsiderable delays, including steps on staffing. In 2023-24 we understand that in addition to implementing the Operational Review, additional Review Officers will be employed. However, given the level of dissatisfaction about the Review Unit's delays in decision making raised in this review, it would be remiss of us not to make our own recommendations on the matter of staffing. In the long run, as mentioned, the resources put into administration of the system need to reflect the demands put upon it.

The FTE staff caps applying across all departments, including the Department of Education of which OIR is a part, may be part of the reason why activities that could be undertaken in-house have been outsourced. Originally seen as helping with 'overflows', these now, *de facto*, account for roughly half of all reviews. In the short-term, expanding this is the only way to rapidly deal with the backlog, but in the long term a more sustainable model requires the removal of the FTE cap, with respect to staff whose work is funded by the insurers' levy, so that it is the level of *financial* resources that determines the staffing allocated to reviews. In the meantime, though, it seems necessary to supplement the levy-funded activities of the Regulator through consolidated revenue, to overcome a backlog of cases.

It is also important for stakeholders to be aware of our expectations for the immediate future given the number of outstanding reviews continues to increase and the time it will take to recruit and train review officers. The first step is to ensure the Regulator is held to account and should within the next three months develop a strategy setting out how it intends to reduce the delays in the short term. This could include temporarily increasing the number of reviews it outsources, realigning staff in the review unit to deal the backlog, upskilling more legal professionals, or appointing temporary or contract review officers who may have recently retired.

Further, in addition to providing this report to the Minister, it should be provided to all insurers, unions and their peak bodies as well as the peak bodies of employers. Thereafter, every six months, further reports should be provided updating these stakeholders on the implementation of reforms as well as the progress to reduce the delays including statistics on the number of outstanding claims, the average time taken to make a review decision as well as the percentage of claims being decided in the prescribed time frame.

Recommendation 44: **That the Minister seek to ensure that the Review Unit of the Regulator (the Unit that decides applications for review of insurer decisions) is adequately resourced by:**

(a) to overcome the backlog, providing a significant short-term increase in resources to enable most current physical and some mental injury cases to be dealt with by a legacy panel, comprising an expanded Legal Panel including barristers plus existing Regulator staff;

(b) seeking to remove the Review Unit from the FTE cap facing OIR, except for staff funded by consolidated revenue; and

(c) to minimise the gap between receipt and allocation of cases, providing an appropriate sustained increase in resources to the Review Unit. This may involve revisiting the regulated formula for the levy and contribution.

Is legislation required: No
Amendments to Regulation: Possible
Organisational responsibility: OIR

7.2.2 Insurer Files

While the resourcing issues are being addressed, there are other measures that can be implemented to help reduce the time taken for decision making.

We are advised that another contributor to review delays is the quality and presentation of claims information received from insurers. To undertake reviews, the Regulator requests a copy of the workers' compensation file for the matter from the relevant insurer. We are advised that the quality of the file received from insurers is variable: it is frequently not in a format that is logical, accessible or contains all of the documents required in order to make a decision. This adds to the delay.

The allocation of reviews is also a significant contributor to the ongoing review delays that the Review Unit is experiencing but this is also (largely) a product of the current resourcing levels, which if remedied, should not be a source of continuing delay. To provide space for the resourcing issues to be addressed and the other outcomes of the Operating Model to be implemented, we see benefit in introducing legislative amendments to require review applications to be allocated to a review officer within a specified period (10 business days after receipt of the insurer's file in the prescribed format). The current 25 business time frame for deciding reviews should remain, but should only commence when the file has been allocated to a review officer in this way.

The existing mechanisms in the Act for extending the review timeframe would remain.

However, the recommended process should have a sunset clause of no later than two years from date of assent of the Act. Thereafter, where the review timeframe is not met, and is not able to be extended, consideration could be given to deeming the decision in favour of the review applicant. Deemed decisions are not without pitfalls, and raise important issues of procedural fairness that have to be considered; however, they act to provide an incentive for timely decision making and the imbalanced incentives for timely decision making are themselves a barrier to fairness. As mentioned, the prioritisation of reviews under the WHS Act, ES Act and LHL Act over workers' compensation reviews, contributing to the delay in workers' compensation reviews, is itself a function of the deeming of some decisions but not others.

It is no accident that deemed decision provisions are a feature of other statutory regimes, including (as noted above) the WHS Act, ES and LHL Act. They work. The WHS Act provides that, if a reviewable decision is not varied or set aside within the time prescribed for deciding the review, the decision is taken to have been confirmed.[9] A deemed decision framework in the workers' compensation scheme could take a similar form. The inclusion of such a framework would also remove the existing incentive for workers' compensation reviews to be deprioritised when there are decisions to be made under the WHS Act, ES Act and LHL Act. But deeming is more complex when workers' compensation reviews are involved. We do not recommend it yet, in the hope and expectation that other actions recommended here can seriously address the problem of delays.

9 *Work Health and Safety Act 2011*, s 226(6).

Recommendation 45: **The Minister consider introducing a Bill to amend the Act to provide that:**

(a) the Regulator can establish a standard on the format of the file the insurer is to provide to allow the review to proceed;

(b) the file, in the required format, is to be provided to the Regulator within 5 business days of being requested;

(c) an application for review is to be allocated for review no later than 10 business days after receipt of the insurer's file in the prescribed format;

(d) the Regulator must then review and decide the application within 25 business days of the date after the file has been allocated for review;

(e) the time frame for the allocation of the review is to be subject to a sunset clause of two years after the date of assent of the Act; and

(f) the current provisions allowing an extension of time to make a decision within prescribed circumstances remain.

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

Chapter 8: Claims administration and reviews

8.1 Claims liaison and support officers

The Affected Persons Committee sought the creation of an independent claims liaison support officer (CLSO) to support the families of workers involved in fatal accidents or with very serious injuries.

It was submitted that the CLSO would allow claimants to be advised of what to expect, their responsibilities and requirements as well as facilitating support to third party services where appropriate. This proposal has much merit. It builds on the other recommendations designed to make the system more navigable for users (see chapter 7 in relation to advice and education), and the other independent information and support services for workers and employers including the WCIAS, the Workers' Compensation Helpline, the WPSS and the Mine Dust Health Support Service.

This role could be trialled with consideration given to the possible extension to other groups of injured workers. Account needs to be taken of the need to ensure the arrangements for the engagement of such officers are appropriate, including ensuring that the process is independent of insurers. Funding would be through insurers to the Regulator (that is, it would become part of the insurers' levy).

Recommendation 46: **That the Regulator be funded, through the levy on insurers, to provide a claims liaison and support officer/adviser (CLSO), such that:**

(a) the CLSO would be the principal point of contact for claimants who have lodged claims for death entitlements, very serious injuries and latent onset injuries;

(b) the aim would be to help such claimants navigate through the system and claims process;

(c) the CLSO would be separate from and independent of the case manager and their organisation; and

(d) the CLSO program should be piloted for a period of one year and then evaluated to determine whether it should be continued or extended to other groups of injured workers.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

8.2 Data collection and notification

Under s 327 of the Act, the Regulator is required to maintain a scheme-wide database of claims information collected from insurers. This data is imperative for the efficient oversight and administration of the Queensland workers' compensation scheme and has wide reaching purposes, including but not limited to:

- scheme wide reporting and analysis for insurers, employers, actuaries, and other interested parties;
- monitoring performance and compliance with the Act;
- information requests for media inquiries, right to information requests, and ministerial and parliamentary briefings; and
- providing data to other organisations such as Queensland Health for the notifiable dust lung disease register, Workplace Health and Safety Queensland for campaign and compliance activity planning, and Safe Work Australia for the national dataset for comparative monitoring.

All insurers must provide data on a monthly basis to the Regulator in accordance with the data specifications[1] to meet their legislative obligation.[2] The Regulator is entirely dependent on insurers providing data to enable it to meet the above obligations.

1 Available at https://www.worksafe.qld.gov.au/statistics/data-hub/data-specifications.

2 *Workers' Compensation and Rehabilitation Act 2003*, s 573(5).

In late 2021, KPMG was commissioned by the Regulator to undertake an independent external review into the provision of claims information from insurers to the Regulator's database. The review aimed to determine whether the current data specifications are fit-for-purpose and meet the needs of the scheme and information consumers, and to improve the process and governance of data provision between insurers and the Regulator.

The external reviewer's final report was provided in May 2022. It identified a number of strengths but also several key areas for improvement, including the scope of data collected across all insurers not meeting the Regulator's evolving reporting and analytics needs and it not being flexible enough to keep pace with emergent issues such as changes in workplaces, claims and injuries.

While a schedule for implementation of the recommendations over a three-year period has been prepared, this work must be a priority for the Regulator, to ensure the scope, accuracy and provisioning of data are improved for all parties. Further, the implementation of the KPMG data review should take account of the findings and recommendations of the KPMG regulatory review. While the implementation plan currently includes extensive stakeholder engagement and consultation, a more formalised process should be established, with a working group overseeing implementation, led by, and reporting directly to, the Deputy Director-General (Office of Industrial Relations).

Recommendation 47: That OIR should ensure implementation of the external review of the Regulator. To this end:

(a) it should establish a working group comprising representatives of WCRS, WorkCover, self-insurers and WHSQ to oversee reforms;

(b) the purposes of the working group should include evaluation of the implementation of reforms, and consideration of what other changes need to be made to ensure data is high quality and being optimally used; and

(c) the review should report directly to the DDG of OIR.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: OIR

8.3 Training of insurer staff

Some jurisdictions around Australia, such as Western Australia, have published a Claims Manager Capability Framework that sets out the practices, skills, and behaviours expected of claims managers in the Western Australia workers' compensation scheme, on entry to the industry and throughout their career.

In New South Wales, icare (the default workers' compensation insurer) publishes a Professional Standards Framework outlining the practices, skills, knowledge and behaviours required by claims management teams on entry to the industry and throughout their career.[3] Announced in 2021, the framework is stated to be the first of its kind in Australia and details: core competencies within each standard; proficiency levels for each core competency; and expected minimum skills and knowledge. In May 2022, icare announced an educational partnership with the Personal Injury Education Foundation (PIEF) (with which WorkCover also has a corporate membership) as part of the latest phase of the framework's rollout. The partnership is intended to improve accreditation pathways for claims management professionals, focussing on access to high-quality vocational qualifications.[4]

In Queensland, the resourcing of an insurer's claims management functions, including recruitment and training of claims officers, are the responsibility of insurers. WorkCover has a 'new starter academy', with a structured, six-week training program, followed by coaching and mentoring by more experienced officers on the job. It also provides ongoing claims capability development for all employees, with mandatory training topics determined by compliance requirements, changes to legislation and policy, and the results of quality management processes, along with various workshops, clinics and self-paced modules.

While the Regulator has not published a framework or specified competencies for claims officers, certain standards are included as part of the regulatory approach for self-insurers and are expectations of all insurers. In particular,

3 icare, *Professional Standards Framework – NSW Nominal Insurer & Treasury managed Fund Workers Compensation*, 2023, https://www.icare.nsw.gov.au/-/media/icare/unique-media/about-us/improvement-at-icare/professional-standards-framework.pdf.

4 icare, *icare announces education partnership with the Personal Injury Education Foundation (PIEF), 2022*, https://www.icare.nsw.gov.au/news-and-stories/icare-announces-education-partnership-with-the-personal-injury-education-foundation.

a quarterly assessment of self-insurers includes the category 'Resources and Systems' to identify opportunities for improvement and promote best practice with respect to claims management. A Self-Insurer Audit Process requires that the self-insurer has a comprehensive claims management manual, they are appropriately resourced to manage claims, and claims management staff are appropriately skilled and trained for workers' compensation. There are requirements about supervision of new claims managers, induction training, training logs and registration of decision-making claims management personnel.

The Regulator also engages with claims managers through education delivered through forums, conferences, publications and in-person training. Meanwhile, WorkCover has its own training academy for new claims staff as well as programs for other staff,[5] but if its training was faultless we would not have seen the RTW data problem referred to in chapter 3.

The implementation of the early intervention reforms discussed in chapter 2 will be demanding of insurer staff, and require an upgrading of the skills required of frontline staff with whom injured workers make initial contact. It will require greater investment in training and development by the insurers. The Regulator needs to ensure training is up to the standards required for these new initiatives, as well as set the basic expectations for insurers generally, to provide consistency in training and competencies across the scheme and to ensure relevant claims officers are trained on specific issues such as workplace sexual harassment matters or the National Injury Insurance Scheme.

Overall we consider there would be benefit in developing a capability framework for all insurer's claims officers in Queensland (this would also need to extend to third party claims providers used by self-insurers). This will provide greater transparency about the training standards required of claims staff, and will also support claims staff in gaining competency in changes to claim management processes arising from the recommendations of this report (including recommendations 5 and 9 in relation to early intervention for relevant injuries).

It is relevant for the Regulator to create the authorising environment for this and set the appropriate standards and competencies (in consultation with scheme stakeholders) which are then operationalised by Queensland insurers.

Recommendation 48: That the early intervention programs set out in recommendations 5 and 9, and other initiatives, be supported though adequate training and development of insurer staff, by:

(a) the Regulator establishing appropriate standards and competencies for training and development in early intervention; and

(b) insurers increasing their investment in education of staff, especially new staff dealing with initial claim lodgements or referrals to early support services.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator, insurers

8.4 Claims investigation and decision-making

8.4.1 Claims handling and decision-making

As mentioned earlier in this report, the *It Pays to Care* report notes that procedural delays in the compensation process worsen return to work outcomes.[6] The report also says that 'workers who view their compensation experiences as unfair have poorer outcomes than workers who feel they have been treated fairly', with perceived injustice linked to 'slower recovery from injury, lower-rated quality of life, poorer physical and psychological health, worse pain, more disability, increased use of healthcare services, and a failure to RTW'.[7]

Some stakeholders contend that insurers decide claims with insufficient information, with little apparent attempt to access relevant information from the employer, an expectation that workers will supply information held by their employer or simply to rely on the employer's response without adequate examination. These issues can add to the stress of applying for compensation, result in delays in claims determination, and contribute to a worker's perception that the compensation process is unfair.

5 WorkCover Annual Report 2021-2022, 34-35.

6 Royal Australasian College of Physicians and the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplace*, 2022, 38.

7 Ibid, 37.

The Regulator has published a performance management program for Queensland workers' compensation self-insurers[8] to promote the standards for which a self-insurer fulfils its functions under the Act. This includes ensuring claims management is fair, timely and applied consistently. The Queensland Self-Insurer Audit Process also includes a standardised and transparent way of assessing a self-insurer's claims management and RTW performance for compliance and performance. The audit criteria are used to assess matters such as whether a self-insurer:

- is proactive in obtaining the evidence required to decide on a claim as soon as possible;
- considers all relevant and obtainable evidence both adverse to and supportive of a claim before deciding on a claim;
- decides a claim when, on the balance of probabilities, they had reasonable evidence to determine liability;
- prior to deciding to reject or cease an application for compensation on medical grounds, has made documented attempts to obtain a report or comment from the claimant's treating medical practitioner; and
- considers and acts on new information regarding the injury type or any additional diagnoses linked to the work event.

We understand that the audit criteria were developed in consultation with all scheme stakeholders, and that they form the basis for expectations on all insurers.

In New South Wales, SIRA publishes standards of practice (NSW standards) outlining its expectations for insurer claims administration and conduct. SIRA uses the NSW standards to hold insurers accountable for the delivery of a high standard of service to workers and their families, carers, employers and other system stakeholders.

The NSW standards contain overarching claims management principles of fairness and empathy, transparency and participation, and timeliness and efficiency. These are supported by more specific 'standard of practice principles' which deal with particular issues arising during the administration of a claim. Relevant to the issues raised by union stakeholders in this review, standard 3 requires that liability decisions are informed by careful consideration of all available information and proactive consultation with the worker and employer. This principle requires, among other things, that insurers obtain and consider all relevant information, consult with the worker and the employer, and make a liability decision at the earliest possible opportunity. Additionally, these steps must be supported by evidence on the file. This is consistent with the Queensland audit criteria which set the expectations for all insurers to consider all relevant and obtainable evidence, both adverse to and supportive of a claim, before deciding on a claim.

Standard 3 is further supported by a guidance note[9] which outlines, among other things, how the insurer should make initial contact with a worker who has suffered a 'significant injury' (i.e., an injury where the worker will have a total or partial incapacity for work for a continuous period of more than seven days).[10] Subject to some qualifications, the guidance note provides for initial contact to be made with the injured worker, employer and the worker's nominated treating doctor within three working days. The guidance note also states that during this contact, the insurer should discuss the importance of recovery at work, the relevant injury management plan, and the roles, responsibilities, rights and obligations of each stakeholder.

Additionally, WorkSafe Victoria publishes a claims manual to assist claims agents (external organisations appointed by WorkSafe Victoria to manage claims) to navigate their legislative obligations. This includes detailed, practical guidance about matters such as the claims application process, how claims are to be received and registered, and how initial liability is to be determined.

Western Australia also publishes *Insurer and Self-insurer principles and Standards of Practice* to ensure high standards of service are provided to employers and workers, and support effective claims handling, injury management, underwriting and administrative practices. It also provides a useful model of performance standards being transparent and promoted across the scheme. It sets a number of performance standards such as '*Insurers and self-insurers will exercise due diligence in identifying and gathering information from workers, employers and relevant stakeholders to make timely, fair and informed decisions*.'

Taking into account the existing published standards for self-insurers in Queensland, we consider that the Queensland scheme would benefit from developing principles and performance standards such as those in Western Australia that apply to all insurers in the scheme and publishing these for transparency for all scheme stakeholders. The status of this document should be considered in the context of section 3.2 (Regulatory tools) and the accompanying recommendation.

These principles and standards should consider and build on the existing standards in Queensland and the other jurisdictions mentioned in this chapter. Noting the issues raised by stakeholders, this document should initially

8 Available at https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0014/20318/performance-management-program.pdf.

9 See *Guidance Note 3.1 Initial notification of injury*.

10 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 42.

focus on the process to be followed by insurers in registering claims and deciding initial claim liability. This will be particularly important to ensure that insurer claims staff are giving effect to the changes to claims management recommended elsewhere in this report (for example, early intervention requirements for physical injuries – see recommendations 5 and 9 above). The development of this document should take into consideration the recommendations arising from the KPMG regulatory review (discussed above).

Recommendation 49: **That, in consultation with relevant stakeholders, the Regulator develop an enforceable standard for insurers' claims administration and conduct to include:**

(a) proactive contact with workers and employers;

(b) ensure relevant information is collected before the claim is determined; and

(c) ensure insurers are advising employers of their obligations under the Act to supply relevant information and to enforce this.

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

8.4.2 Injury reporting information

Under the Act, an employer whose worker sustains an injury for which compensation may be payable must complete a report in the approved form and give the report to the insurer.[11] Currently, the approved form requires the employer to provide limited information about the injury. This includes the date of the event causing the injury, the location where the event occurred, the date the employer became aware of the injury, and details of any known medical or other treatment.

We consider that insurers would be better supported through the claims determination process if employers were required to report more detailed information about workplace injuries.

Specifically, employers should be required to provide information about the circumstances of the event causing the injury, including whether an incident report was made, whether there were any witnesses to the event, and whether the event has or will be investigated. Doing so will assist insurers in discharging their obligation to provide procedural fairness to all parties and may enable quicker and more informed claim decision-making.

Recommendation 50: **That the Regulator should amend the employer reporting injury form to include a response as to whether:**

(a) an incident report was made (and to be attached);

(b) there were witnesses to the incident; and

(c) an investigation of the incident was being/had been undertaken by the employer and the progress/outcome of the investigation (with supporting information and/or documentation to be attached).

Is legislation required: No
Amendments to Regulation: No
Organisational responsibility: Regulator

8.4.3 Use of factors in mental injury claim determination

As noted above, primary mental injury claims can be rejected for a number of reasons, including the RMA exclusion. The information required by insurers and the application of RMA in deciding a claim are sources of concern for some stakeholders.

They submitted that, when determining applications, insurers request that workers list all 'factors' causative of the injury. This causes workers to either list events (also referred to as 'stressors') that are not necessarily relevant to

11 *Workers' Compensation and Rehabilitation Act 2003*, s 133(1).

the cause of the injury which can lead to delay and confusion in claim determination, or to be put to the expense of seeking a report from a psychiatrist in times of limited access. Further, workers are encouraged to list more than one factor even in circumstances where their application refers to a specific traumatic event or bullying conduct.

Although the RMA factsheet will provide useful guidance to injured workers, the problems that arise with the use of factors will remain. Some mental injuries will arise from a single event whereas others occur over time, which may involve many factors. It is in the interests of the worker, employer and insurer that where possible, only relevant contributing factors are provided.

The provision of only relevant contributing factors at the first instance should assist in reducing delay in claim determination and in the application of the RMA exclusion. This is not without some difficulty, however, it should be possible to provide guidance on how a worker might decide if an event is relevant and contributed to their injury.

Information provided at the outset about the types of relevant information e.g., medical reports, incident reports, witnesses, and who is responsible for providing it to the insurer would also aid in streamlining the claims process.

It would be worth including, in that material, information about what may not be relevant, by reference to the examples of RMA given in s32(5) of the Act.[12] This information is best developed in consultation with all stakeholders.

Further, it would seem from stakeholder comments that insurer staff may need further training to properly understand what information might be required to support a mental injury claim so that they can provide appropriate assistance to claimants as well as better determine claims.

Recommendation 51: That the Regulator convene a working group of stakeholders including unions, employers, legal organisations and insurers to develop guidance or a code of practice on the type of supporting information required to be provided to insurers by injured workers and employers for a mental injury claim.

Claims staff of insurers should receive training in the type of information required to support a mental injury claim and how to determine the relevance of it in determining a claim.

Is legislation required: No
Amendments to Regulation: Possible
Organisational responsibility: Regulator

8.5 Access to records

The Act empowers the Regulator to appoint 'authorised persons' to:

- provide the Regulator with information and advice about compliance with the Act;
- require compliance through the issuing of notices; and
- investigate contraventions and assist in the prosecution of offences.[13]

Authorised persons have various powers, including of entry and seizure. They can also require someone to give information or produce documents if they reasonably believe that this is relevant to:

- someone's liability to insure as an employer, including liability for premiums;
- someone's entitlement to compensation or to claim damages; or
- any contravention of the Act they reasonably believe has been committed.[14]

Certain OIR and WorkCover staff are appointed authorised persons. Inspectors under the *Industrial Relations Act 2016* and the WHS Act are automatically taken to be authorised persons.[15]

Representatives of self-insurers submit that self-insurers currently lack the power to require the production of certain documents and that this would be resolved by enabling staff of self-insurers to be appointed as 'authorised persons'

12 Section 32(5) of the Act specifies that an injury does not include a mental condition arising out of reasonable management action taken in a reasonable way, and gives as possible examples of this – action taken to transfer, demote, discipline, redeploy, retrench or dismiss a worker or decisions not to award or provide promotion, reclassification or transfer of, or leave of absence.

13 *Workers' Compensation and Rehabilitation Act 2003*, s 336.

14 *Workers' Compensation and Rehabilitation Act 2003*, s 532C.

15 *Workers' Compensation and Rehabilitation Act 2003*, s 330(2).

under the Act (something which is currently impermissible due to a limitation on who may be appointed as an authorised person). They argued that considerable delays can occur in accessing hospital records which are necessary for a decision to be made on a claim (e.g., when an injured person is in a coma).

The statutory functions of authorised persons are concerned with enforcing compliance with the Act. The powers of authorised persons extend far beyond requiring the production of information or documents, and include powers of entry and seizure (as well as coercive powers) usually reserved for individuals acting on behalf of the State. It is therefore not appropriate that the cohort of individuals eligible to be appointed as authorised persons be extended to include employees of private entities, such as self-insurers.

We understand that WorkCover does not utilise its 'authorised person' powers to obtain claim information. In these circumstances, we do not consider that self-insurers face particular disadvantage in obtaining such information.

8.6 Permanent impairment assessment

Where a worker's injury is assessed as being stable and stationary, such that it is unlikely to improve with further medical or surgical treatment, the insurer may have the worker's injury assessed to determine the worker's DPI. Following the assessment of DPI, the worker will receive a notice of assessment stating the amount of lump sum compensation to which the worker is entitled.[16] Lump sum compensation is calculated by multiplying the maximum statutory compensation by the workers' DPI.[17]

An injured worker with a mental injury is entitled to receive lump sum compensation from their insurer if the injured worker has sustained a permanent impairment as a result of a work-related injury. In the case of a mental injury, the insurer can only have the permanent impairment assessed by the MAT in accordance with s 179 of the Act.

This process differs from physical injuries as an injured worker's permanent impairment is initially assessed by a qualified doctor. An injured worker has the right to dispute this assessment and have a second assessment by a different qualified doctor or be assessed by the MAT. If this second assessment is disputed, the insurer must refer the matter to the MAT.

Several stakeholder submissions recommended changes to the process for determining DPI, to bring mental injuries in line with physical injuries by having DPI arising from such injuries assessed by a single specialist (i.e., a psychiatrist) in the first instance and the right to dispute through a second chance assessment and the MAT. The reasons advanced for this change included the delay in obtaining an appointment to appear before the MAT, the delay contributing to the duration and statutory claim costs, and the travel requirements for a worker residing outside of Brisbane to attend in person in Brisbane, which can be costly, distressing and inconvenient if the worker requires a support person and incurs child care costs.

At first blush, this proposal seems to have merit. By allowing appropriately trained psychiatrists to assess permanent impairment, fewer tribunal referrals might be made, with possible outcomes being cost savings and reductions in waiting times for Tribunals. In addition, injured workers would have a more robust decision-making pathway to a final decision.

However, on closer analysis, the proposal has a number of drawbacks. It may place a greater load on psychiatrists and have an adverse impact on waiting times for other assessments and services. The additional pathway may also create further stress for workers, require workers to revisit traumatic events causing potential for further harm,[18] and increase overall timeframes for resolving a disputed worker's DPI.

One of the key drawbacks with the proposal is the current state of the diagnostic instruments to determine permanent impairment. We are advised that a wholly reliable incapacity assessment tool does not presently exist for the evaluation of mental injuries. As a result there is wide variability in how the Psychiatric Impairment Rating Scale (PIRS) is applied.

We are also advised that not all independent medical examiners operating in the private medico legal space have been trained in Queensland's Guidelines for Evaluation of Permanent Impairment (GEPI) (version 2) or PIRS, which leads to disparity and inconsistency of PIRS determinations.

Given all of this, tribunals comprised of three psychiatrists are best placed to work through the variability to reach a consensus or, failing agreement, by a majority of the tribunal (secondary mental injuries often require deliberation amongst a tribunal panel to reach consensus on the final outcome). Three member tribunals contribute to greater consistency and reliability in MAT assessments and can more effectively determine complex cases where there are

16 *Workers' Compensation and Rehabilitation Act 2003*, s 185.

17 *Workers' Compensation and Rehabilitation Regulation 2014*, reg 108.

18 Work has been undertaken by WCRS to limit the requirement for injured workers to undertake IMEs prior to a Tribunal and comprehensive medical information can be provided by their treating specialist.

often vulnerabilities preceding the occurrence of symptoms, non-work related stressors and other medical conditions which may affect the level of symptoms and functioning.

We are informed that the Safe Work Australia members recently agreed to a streamlined review of the Template National Guidelines for the Assessment of Permanent Impairment (guidelines). The proposed amendments to the guidelines are yet to be considered in detail by relevant medical experts. However, it will include consideration of mental disorders.

For these reasons we are not persuaded to move to change the process of determining DPI for mental injuries *at this time*. Once this review and its outcomes are completed (including the provision of training), the issue of the process of aligning the assessment of DPI for mental injuries with that currently operating for physical injuries should be re-considered, if appropriate and in consultation with relevant stakeholders.

8.7 Quality assurance of medical practitioners engaged to perform as Independent Medical Examiners or Medical Assessment Tribunal assessments

Medical specialists who wish to undertake assessments of permanent impairment are required to be trained in the GEPI. This tool helps in the assessment of the DPI within the context of workers' compensation. The aim is to ensure an objective, fair and consistent method for evaluating the degree of impairment.

The Regulator provides training in the guidelines for medical specialists who wish to undertake assessment of permanent impairment and maintains a list of trained specialists. However, it has no legislative authority to accredit specialists.

As a result, there is no ongoing review to maintain the list to ensure currency with Australian Health Practitioner Regulation Agency (AHPRA) registrations (e.g., issuance of conditions, undertakings, reprimands or restrictions on their practice).[19] This has resulted in medical specialists who have been restricted in their practice remaining on the list of trained specialists with the result that workers may choose them as their assessing provider. There is also no requirement for refresher training to be undertaken or for the monitoring of compliance with professional standards. The current system is not reflective of contemporary best practice in quality assurance.

Considering the significance of permanent impairment assessments for injured workers, there is strong justification for the Regulator to develop a governance framework for medical assessors who are required to undertake permanent impairment assessments (say for an insurer), to ensure the training is robust and appropriate governance arrangements are in place to ensure integrity of these practitioners. The Regulator's Medical Advisor should play a key role in both the development of the framework and its implementation.

Recommendation 52: That the Regulator should implement a governance framework to ensure appropriate training/refresher training and ongoing due diligence checks for medical specialists who undertake the evaluation of permanent impairment in the Queensland scheme. The Regulator's Medical Advisor should provide advice to inform the development of the framework and assist in overseeing its implementation.

Is legislation required: Possible
Amendments to Regulation: Possible
Organisational responsibility: Regulator

8.8 Appearances before Medical Assessment Tribunals

Some stakeholders expressed concern over workers being permitted to have a legal representative present at the MAT. The reasons for this generally relate to perceived procedural fairness issues – neither the insurers nor the employer's interests are seen as being protected as they are not permitted to be represented. In addition, having legal representatives involved in the MAT could add costs to the scheme, as it shifts the injured worker's focus from RRTW to financial outcomes.

19 The Regulator conducts such reviews for members of the Medical Assessment Tribunal regularly, but it is the responsibility of insurers to ensure they engage appropriately qualified specialists.

Following a decision of the Queensland Court of Appeal,[20] the Act was amended in 2006 to reaffirm the independent and non-adversarial nature of tribunal proceedings by clarifying that an insurer, employer or any other person (other than the worker or their representative) has no entitlement to be present or heard before a tribunal. The amendment Act also ensured accordance with natural justice principles by safeguarding all parties' rights to full disclosure and the opportunity to comment on written material submitted to a tribunal before the material is considered at hearing.[21]

Perhaps some concern stems from the use of the word 'tribunal' which implies a hearing and determination of a dispute between two or more parties. Despite their name, the tribunals are not quasi-courts but are established to provide medical assessment and review.[22] Perhaps different nomenclature might resolve any confusion, but it is not a matter for our consideration here.

The Act provides that only a worker and any representative may be present or heard before the tribunal.[23] The worker's representative may be a legal representative, union advocate or support person (e.g., a family member). MATs have the discretion to determine the extent to which and on what matters the worker's representative is heard (which are only matters relevant to the medical matters they decide upon). All MAT sessions are recorded and MAT members have not expressed concern about the presence of legal representatives.

Given the narrow and specialised remit of MATs to determine questions of a medical nature, it is not considered necessary or desirable to amend the Act to permit either an insurer or an employer (or their representative) to be present while a worker is being physically or clinically examined by a doctor for the purpose of making a medical decision. To do so could risk introducing conflict into a medical process at a time when the worker is vulnerable and in an unfamiliar environment.

8.9 Costs on appeal to the Queensland Industrial Relations Commission

Some stakeholders sought the removal of costs orders in appeals to the Queensland Industrial Relations Commission (QIRC).

The decision of the Industrial Court of Queensland in *Workers' Compensation Regulator v Queensland Nurses and Midwives Union of Employees (No 2)*,[24] significantly limited the costs capable of being claimed by clarifying that the only costs capable of being ordered are those of the hearing. This means that trial preparation costs, for example, are not costs that can be awarded against the unsuccessful party. This effect of this decision has been to reduce the amounts being awarded by approximately half.

Because the Court held that the QIRC has the discretion to award costs, the QIRC must provide reasons for its decision. The practical effect of the Court's decision is that costs orders no longer follow the event (i.e., the unsuccessful party is ordered to pay the costs of the successful party). A successful party is now required to apply to the QIRC for an award of costs. The QIRC must then consider the submissions made and make a decision as to whether to exercise its discretion. Applications for costs are not now routinely made after a decision on the appeal but may be made given the particular circumstances of the case and after the parties have been head on the question. This approach strikes a reasonable balance between the interests of the parties.

20 *Australia Meat Holdings P/L v Douglas & Ors* [2005] QCA 437.

21 *Workers' Compensation and Rehabilitation Act 2003*, s 490.

22 *Workers' Compensation and Rehabilitation Act 2003*, s 490.

23 *Workers' Compensation and Rehabilitation Act 2003*, s 510(1A), s 511.

24 [2021] ICQ 13.

Chapter 9: Gig economy workers

This chapter follows on from the chapter in the 2018 Review dealing with gig workers, and focuses on the relevance, to regulation in that field, of developments in the federal arena. It responds to three terms of reference for the Review. The first one, which is only addressed in this chapter, is to report on:

> any national regulatory proposals or findings from national reviews in relation to gig workers and other forms of insecure work that should be taken into account by the Government in its consideration of the outcomes of the *2019 Consultation Regulatory Impact Statement for Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry*.

The second one, which most chapters of this report address in one way or another, is to report on:

> emerging issues facing the scheme.

And the third similarly requests the reviewers to report on:

> the performance of the scheme in meeting the objectives under section 5 of the Act.

It was under an identically worded term of reference that the 2018 Review devoted a chapter to gig workers. This was because, amongst other things, s 5 of the Act starts by pointing out that the Act

> establishes a workers' compensation scheme for Queensland (a) providing benefits for workers who sustain injury in their employment…and (b) encouraging improved health and safety performance by employers.

So the principal aim of this chapter is to inform the government of any developments that may affect its ability to implement actions affecting the coverage of gig workers by the workers' compensation system in Queensland and to consider their implications for the effective performance of the scheme in providing benefits for gig workers and encouraging a healthy and safe working environment for them, and emerging issues in doing so.

9.1 The gig economy problem

Before addressing developments in the federal jurisdiction, we briefly reiterate the problems that led to this issue being addressed in the 2018 Review, including the recommendations of that review.

9.1.1 What is the gig economy?

The expansion of the 'gig economy' — sometimes referred to as the 'platform economy' or even 'freelancing' — is the most significant change to the nature of work in recent decades. 'Gig' work is characterised by the engagement of workers in a series of predominantly short-term paid tasks (as with musical 'gigs', the origin of the term), as opposed to regular or long term on-going traditional work arrangements. The gig economy is usually understood to include chiefly two forms of work.

The first is often called 'crowdwork', and refers to 'working activities that imply completing a series of tasks through online platforms'.[1] It is not considered further in this report.

The second, referred to as 'Work on-demand via apps', or 'location-based gig work':

> *is a form of work in which the execution of traditional working activities such as transport, cleaning and running errands, but also forms of clerical work, is channelled through apps managed by firms that also intervene in setting minimum quality standards of service and in the selection and management of the workforce.*[2]

Workers in this second group are simply described as 'gig workers' in the rest of this report. The origins, growth, size and scope of the gig economy were dealt with in some detail in the 2018 Review,[3] so those details are not repeated here. However, it is worth briefly summarising why policy makers are concerned about workers in the gig economy.

9.1.2 Why is there concern about gig economy workers?

Gig economy workers are characterised by vulnerability. That is the principal reason why policy makers express concern about them.

This vulnerability is inherent in the fact that work involves short-term paid tasks as opposed to regular or long term on-going employment, and that gig workers are normally contractors rather than employees. As contractors, they lack the protection provided through labour law (and through the internal rules typically created within firms regarding

1 V. De Stefano, 'The Rise of the Just-in-Time Workforce: On-Demand Work, Crowdwork and Labour Protection in the Gig-Economy', Conditions of Work and Employment Series, Geneva: International Labour Office, 2016, No. 71, 1.

2 Ibid.

3 Peetz, D., *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-yearly review of the scheme*, Queensland Government, Brisbane, 27 May 2018, 89-92.

employees). They can be terminated with little or no notice, and without recourse to unfair dismissal laws if they are dismissed harshly, unjustly or unreasonably. They receive no compensation if dismissed.

They have very low power compared to the typically large gig firms that hire them. They therefore have little say over the income they receive or the conditions under which they work. Most are underemployed, that is, they are after more hours of work than they are offered by the gig firms.[4]

They also often receive low incomes. Many gig workers receive incomes that, after expenses are taken into account, are below the relevant award wage they would receive if they were employees. Outside Australia, many receive incomes equivalent to amounts below the minimum wage in the relevant country.[5] They also receive fewer training opportunities than other workers.

Because they are mostly contractors rather than employees, most gig workers are presently outside the formal scope of workers' compensation systems. Occasionally, even though premiums are not paid on their behalf, one will apply for compensation for an injury suffered at work. When their claims are processed, some are accepted and some are denied,[6] reflecting their unclear status at present and the uncertainty of injury coverage. At the time of the 2018 Review, this ambiguity may have worked to the advantage of some, but since then High Court decisions[7] have made clear that most, or all, would be treated as contractors, if the contracts drafted by the gig firm stated that they were contractors. Thus, the case for legislative action to clarify the protection of gig workers is stronger than in 2018.

9.2 Recommendations from the 2018 Review

In light of the above considerations, the 2018 Review made several recommendations regarding gig workers. It considered six options:

- rely on the ATO definition of 'worker' to determine workers' compensation coverage;
- create a new definition of worker or a new class of employed person such as 'dependent contractor';
- redefine the coverage of workers' compensation laws and responsibilities to be similar to those under WHS legislation, relating to persons conducting a business or undertaking (PCBU) and workers;
- redefine the coverage of workers' compensation laws and responsibilities to encompass those who work under agency arrangements, and require payment of premiums by the intermediaries or agencies;
- redefine the coverage of workers' compensation laws and responsibilities to encompass those who work under agency arrangements, but require payment of premiums by those who hire them; or
- give the Minister (or other regulator) power to 'deem' certain classes of people to be 'workers' for workers' compensation legislation and/or certain classes of organisation to be 'employers' for such purposes.

Due to limitations with most of those options for a State government, the 2018 Review recommended pursuit of the fourth option, and in particular recommended that:

- the coverage of the Act should be redefined to include any person engaged via an agency to perform work under a contract (other than a contract of service) for another person. This would exclude employees of licensed labour hire businesses and employees of firms that engage contractors, and specify that it applied where at least two parties were in Queensland at the time the work was undertaken;[8] and
- intermediaries or agents who engage any person to perform work under a contract (other than a contract of service) for another person should be required to pay premiums, based normally on the gross income reported by the intermediaries or agencies.[9]

It also made two subsidiary recommendations regarding RTW protocols and awareness of the reforms once implemented.

4 Ibid, 93.

5 Ibid.

6 The 2018 Report observed (p96) that 'the gig worker has been found either to be the worker of the platform or facilitator (11 accepted claims) or an independent contractor (4 denied claims), and a further 4 claims have been withdrawn after being made. Many would not have submitted claims because they believed they were not covered or it never occurred to them.'

7 *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1; *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.

8 Recommendation 10.1.

9 Recommendation 10.2.

9.3 Developments since 2018 in the Queensland jurisdiction

Following the 2018 Review's recommendations, the Queensland Government went through a RIS process. This involved stakeholder consultation and publication of a Consultation RIS,[10] and then a submission period in which stakeholders were given an opportunity to respond to the RIS.

The RIS separately canvassed options for gig workers and for bailee taxi and limousine drivers. This reflected the different status of and arrangements presently in place for those two groups and the fact that the 2018 Review, while it commented on the situation regarding bailee taxi-drivers, did not use that term in its recommendation, instead framing its recommendation by reference to a 'person engaged via an agency'. Taxi drivers are considered (e.g., by the Taxi Industry Advisory Committee) to be 'vulnerable' workers, due to the danger of violence from passengers.[11] The RIS identified a preferred government option for dealing with gig work but gave two such options for taxi and limousine drivers.

The Queensland Government's preferred option for gig workers, specified in the RIS, was to:

> *amend the Workers' Compensation and Rehabilitation Act 2003 to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums.*

It thus identified, as *not* preferred, the alternative of gig workers relying on voluntary private personal accident insurance and not being covered by Queensland's workers' compensation scheme. It made this choice on the basis that the preferred approach would:

- protect gig workers who are particularly vulnerable by providing fair and equal access to workers' compensation rights and entitlements in Queensland;
- improve injured workers' chances of achieving a durable RTW following injury;
- support the flexibility offered by the gig economy (which is a strong driver of participation and job satisfaction of many gig workers), by not altering or limiting the way in which intermediaries operate;
- provide a level playing field by ensuring gig businesses pay the same proportion of costs on workers' compensation as current employers pay in the industry that the intermediary is working in;
- reduce cost-shifting to the community—in particular, to the public health system or a worker's private medical insurance to recover from an injury, and
- result in improved WHS outcomes due to the incentivisation of workers' compensation insurance premiums to improve performance.

On bailee taxi and limousine drivers, the RIS offered the following options for reform:

- amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement; or
- enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licences issued by the Department of Transport and Main Roads.

These options were what remained after the Government had also identified, as not preferred, the status quo of taxi and limousine drivers relying on voluntary personal accident insurance and not having workers' compensation coverage.

As noted in the RIS, enhancing and mandating private personal accident insurance 'would not include all benefits available under the workers' compensation scheme such as Medicare related medical costs, hospital stay costs, common law damages, lifetime care and support needs for seriously injured workers, or ongoing benefits to dependent children of deceased workers.'[12] It would thus provide inferior benefits to bailee drivers than would be provided by the extension of workers' compensation coverage via amendment to the Act.[13]

During the RIS process, stakeholders acknowledged the vulnerability of gig workers and the potential benefits of extending workers' compensation coverage. Some expressed concerns that are summarised at the end of section 10.5, along with a discussion of the implications of subsequent developments for those concerns. After the RIS process,

10 Queensland Government, *Consultation Regulatory Impact Statement: Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry in Queensland — Workers' Compensation and Rehabilitation Act 2003*, Office of Industrial Relations, Brisbane, 2019.

11 Queensland Government, *Queensland Government Response to Report on Investigation into the Taxi Industry in Queensland by the Queensland Workplace Rights Ombudsman*, Brisbane, 2011, 32. There are clearly WHS considerations for this occupation, exemplified in Worklace Health and Safety Queensland, *Work Health and Safety for Taxi Drivers and Operators, Brisbane*, 2012.

12 Queensland Government, *Consultation Regulatory Impact Statement: Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry in Queensland — Workers' Compensation and Rehabilitation Act 2003*, Office of Industrial Relations, Brisbane, 2019, 101.

13 In the words of the RIS, 'The level of coverage and benefits available under the workers' compensation scheme is of a much higher standard than insurance policies currently available in the private market.' (106).

the issuing of a final decision was put on hold pending decisions made at the federal level concerning reforms in that jurisdiction, with a commitment to make a decision in the Queensland government's final term. It was apparent to many observers that significant reforms would occur at the federal level, particularly in relation to what became known as 'employee-like' work, and some considered there would be no point in Queensland legislating if the Commonwealth were to enact laws that would override any state reforms or make them redundant.

Subsequently, the Queensland Government undertook a review of the *Industrial Relations Act 2016*. As a result of that review, the Government introduced amendments to the Act that would, once proclaimed, empower the QIRC to make orders setting minimum conditions for a certain group of gig economy workers, independent courier drivers, through a new Chapter 10A, modelled on chapter 6 of New South Wales' *Industrial Relations Act 1996*. These provisions enable contract determinations (similar to awards) and negotiated agreements covering drivers, principal contractors and relevant registered organisations. Like the probable federal arrangements, these do not redefine gig workers as employees but instead enable the tribunal to set minimum remuneration and working conditions for a class of them. Like the chapter 6 provisions in New South Wales, part of the rationale is to promote worker and community safety.[14] Proclamation of these provisions awaits the finalisation of federal reforms, as an exemption under the federal *Independent Contractors Regulation 2016*, which would otherwise override Chapter 10A, is necessary to enable Chapter 10A to take effect.

9.4 Developments in the federal jurisdiction

In the above context, we have been asked, as part of the terms of reference for this report, to report to Parliament on:

> *any national regulatory proposals or findings from national reviews in relation to gig workers and other forms of insecure work that should be taken into account by the Government in its consideration of the outcomes of the 2019 Consultation Regulatory Impact Statement for Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry.*

The first major event in the federal jurisdiction after the finalisation of the 2018 Review was the report, in September 2018, of the Senate Select Committee on the Future of Work and Workers.[15] Amongst other things, it recommended that the Australian government 'broaden the definition of employee to capture gig workers and ensure that they have full access to protection under Australia's industrial relations system'. As this report reflected the view of the Committee majority (Australian Labor Party (ALP), Greens and Centre Alliance), it might have been thought that this form of regulation was also the view within the ALP at the time. However, well before the 2022 election it became apparent that the national ALP's view had switched from one supporting a redefinition of gig workers as employees, to one supporting the separate provision of protections for gig workers without necessarily redefining them as employees.

This was evident before the 2022 federal election, when the ALP platform promised:

> *Labor will ensure that the Fair Work Act provides appropriate coverage and protection for all forms of work and that gig economy platforms and other working arrangements are not used to circumvent industrial standards or to undermine workers' rights to collectively organise and access their union.*[16]

The platform also contained a more detailed policy on 'safe rates' which had 'become more pressing given the emergence of new technology and the gig economy in passenger and freight transport'.[17]

The new ALP government has promised to enact a number of reforms that are relevant to the gig economy. So the pre-election commitments mentioned above were reinforced by a number of statements and actions following the election. For example, in June 2022, Minister Burke promised that:

> *The Albanese Labor Government will legislate to give the Fair Work Commission new powers to set minimum standards for gig workers…*
>
> *[T]he Government will extend the powers of the Fair Work Commission to be able to set minimum pay and standards for gig workers. It is the appropriate independent body to do this job.*
>
> *This will deliver a national approach that gives the Commission the scope and flexibility it needs to deal with "employee-like" forms of work.*[18]

14 G Grace, Second Reading Speech: Industrial Relations and Other Legislation Amendment Bill, Hansard, Brisbane, 23 June 2022.

15 Senate Select Committee on the Future of Work and Workers, *Hope is not a strategy – our shared responsibility for the future of work and workers*, Senate, Canberra, September 2018.

16 Australian Labor Party, *National Platform*, Canberra, 2021, 21.

17 Ibid, 95.

18 Tony Burke MP, 'Important step on rights for gig workers', Media release, Department of Employment and Workplace Relations, Canberra, 22 June 2022.

In August 2022, a National Road Transport Roundtable was hosted by Minister Burke at Parliament House, Canberra, and reinforced the commitment, not only of the federal government, but also of a number of key industry stakeholders, to reforms in the road transport sector. In anticipation of major industrial relations reforms at the federal level later in this Parliament, the federal government issued a number of discussion papers on various aspects of reform.

Most relevantly, the government commenced a long process of consultation on regulation of employee-like work. In October 2022 it began oral consultation, supported by a short document, in which it briefly outlined its objectives, guiding principles and discussion questions.[19] Subsequently this was refined for a longer consultation paper on '*Employee-like' forms of work and stronger protections for independent contractors* in April 2023.[20] That paper reiterated the new government's commitments to giving the Fair Work Commission (FWC) 'new powers to set minimum standards for workers in 'employee-like' forms of work, including the gig economy',[21] as well as 'Improving avenues to dispute unfair contractual terms' and 'Making the road transport industry safe and sustainable',[22] and sought views on the best options for achieving these objectives. Amongst the guiding principles for developing these options, the Consultation Paper specified that:

- all workers should have access to minimum rights and protections regardless of whether they are characterised as an employee or an independent contractor;
- businesses should benefit from a level playing field among industry participants;
- the FWC should set minimum standards that:
  - are fair, relevant, proportionate, sustainable and responsive;
  - reflect workers' independence and flexible working arrangements;
  - mitigate to the greatest extent possible unintended consequences for workers, businesses, consumers and other aspects of the labour market; and
- the standard-setting framework should be accessible, transparent, fair and offer a high degree of certainty to affected parties.[23]

The Consultation Paper outlined issues with the definition and boundaries of gig work that were relevant to the type of regulation envisaged, and stated that the FWC could be directed to make minimum standards in respect of, but not limited to:

- minimum rates of pay;
- concepts of 'work' time (e.g. which activities performed by a worker should attract compensation);
- payment times (e.g. timeframes between performance of work and payment);
- workplace conditions, such as portable leave, rest breaks, etc.;
- treatment of business costs, including vehicles and maintenance, insurances, licences, etc.;
- record keeping;
- training and skill development; and
- dispute resolution.[24]

It sought submissions on the scope of minimum standards that the FWC should be empowered to set.

Workers' compensation was not among the matters listed nor was it canvassed or mentioned in the consultation paper.

Alongside and relatively independent of these developments, the Productivity Commission (PC) in early 2023 issued a five-yearly report on productivity. Amongst other recommendations that would have had the effect of reducing protections for workers, the PC advocated that (state) governments should 'evaluate insurance arrangements of classes of platform work'.[25] The PC identified three options for responding to inadequate insurance arrangements: extending workers' compensation; implementing an insurance scheme that did not involve extending workers' compensation; or requiring platforms to provide a baseline level of personal injury insurance.[26]

19 Department of Employment and Workplace Relations, '"Employee-like" forms of work: Consultation', slide ('Placemat'), Canberra, October 2022.

20 Department of Employment and Workplace Relations, 'Employee-like' forms of work and stronger protections for independent contractors, Consultation paper, Canberra, April 2023.

21 Ibid, 7.

22 Ibid.

23 Ibid, 8.

24 Ibid, 12-13.

25 Productivity Commission, *5-year Productivity Inquiry: A more productive labour market*, Inquiry report – volume 7, Canberra, 2023, 175, recommendation 7.19.

26 Ibid, 170-171.

9.5 Implications of federal developments for the implementation of gig worker reforms in Queensland workers compensation

Forthcoming Commonwealth reforms in this area appear unlikely to alter the employment status or workers' compensation treatment of gig economy workers.

The current Consultation paper on '*Employee-like' forms of work and stronger protections for independent contractors* points to mechanisms by which the FWC could regulate minimum standards of some gig economy workers and contractors, but it makes no mention of regulating workers' compensation.

This is not surprising, as the FWC does not presently regulate workers' compensation for award-covered (or any other) employees, since this is presently a State responsibility. Given the expense involved and the uncertain outcome of a fight with State governments, it is unlikely the Commonwealth would contemplate taking over workers' compensation systems in whole or in part.

So the main way in which these federal reforms could affect the matters of the Queensland review is if a group of workers presently defined as self-employed became defined as employees under federal law.[27]

But there is nowhere that the Commonwealth's Consultation Paper proposes redefining any gig economy workers as employees through the *Fair Work Act 2009* (Cth) (FW Act). The most likely reform, as it is the most sensible one and the one that public messaging points to, would be to not redefine any 'employee-like' workers as 'employees' but instead give the FWC the power to establish minimum standards for designated 'employee-like' workers or in designated sectors, and for any other 'employee-like' workers that the FWC thought were appropriate.

This approach is plausible as it would have a strong policy rationale. It would enable regulation to be tailored to circumstances,[28] for example, by applying an hourly wage rate in one sector, and a piece rate of some sort in another. A precedent for this approach comes from New South Wales provisions enabling regulation of payments to owner-drivers of trucks.[29] Those provisions have been in place for more than 40 years, and have inspired provisions passed by the Queensland Parliament (pending proclamation) to regulate the work of independent courier drivers.[30]

While the relationship of many workers to platforms can look like an employment relationship – hence the term 'employee-like' — the outcome of trying to define gig workers as employees has been mixed. Around the world these attempts have sometimes succeeded and sometimes not.[31] This is partly because of different interpretations by courts, tribunals and other bodies, but also because of the strong political resistance platform firms to attempts to define their workers as employees,[32] leveraging the fact that quite a number of gig workers like to imagine themselves as independent,[33] self-employed people, as well as customers' preference for cheap services. Even when a rule is devised to interpret the contracts that gig workers sign as employment contracts, gig firms could amend their contracts to get around that.[34] In the end, though, platform firms will end up adhering, grudgingly, to most standards that are imposed on them — other than defining their workers as employees.[35]

27 Technically, it could affect the matters of the Queensland review if it brought them within the definition of 'worker' in s 11 of the Act – which is not strictly a test of employment but requires that the relevant person (1) work sunder a contract, and (2) is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cth), schedule 1, part 2-5. However, it appears implausible that any action the Commonwealth might do that led gig workers to satisfy the above definition of 'worker' would not also mean they satisfied a definition of 'employee'.

28 D Peetz, 'Institutional Experimentation, Directed Devolution and the Search for Policy Innovation', Relations Industrielles/Industrial Relations, 76, no. 1 , 2021, 69-89.

29 *Industrial Relations Act 1996* (NSW), Chapter 6.

30 G Grace, 'Industrial Relations Act changes introduced to Queensland Parliament', Media statement, Brisbane, 30 June 2022, https://statements.qld.gov.au/statements/95479. These provisions (which would become Chapter 10A of the *Industrial Relations Act 2016*), could be overridden by the existing *Independent Contractors Act 2006* (Cth) and so their proclamation is awaiting a response by the Commonwealth government to correspondence.

31 See Peetz, D., *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-yearly review of the scheme*, Queensland Government, Brisbane, 27 May 2018, 97-99.

32 K Conger, 'Uber and Lyft Drivers in California Will Remain Contractors', *New York Times*, 7 November 2020, https://www.nytimes.com/2020/11/04/technology/california-uber-lyft-prop-22.html; C Murphy, 'Uber bought itself a law. Here's why that's dangerous for struggling drivers like me' *Guardian*, 12 November 2020, https://www.theguardian.com/commentisfree/2020/nov/12/uber-prop-22-law-drivers-ab5-gig-workers.

33 Chartered Institute of Personnel and Development, 'To Gig or Not to Gig? Stories from the Modern Economy', London: CIPD, March 2017.

34 J Bell, 'Uber Eats announces new business model and contracts for riders', Human Resources Director, 30 January 2021, https://www.hcamag.com/au/specialisation/industrial-relations/uber-eats-announces-new-business-model-and-contracts-for-riders/245068.

35 Thus Uber, for example, has accepted training requirements in Quebec (after first threatening to quit the Canadian province), fare regulation in Massachusetts and driver accreditation requirements in several jurisdictions. J Hughes, 'Uber Threatens to Leave Quebec Over New Driver Training Requirements', *The Drive*, 27 September 2017, https://www.thedrive.com/article/14652/uber-threatens-to-leave-quebec-over-new-driver-training-requirements; S Schoenberg, Gov. Charlie Baker signs law regulating Uber and Lyft in Massachusetts, *Masslive.com*, 5 August 2016, https://www.masslive.com/politics/2016/08/gov_charlie_baker_signs_law_regulating_uber_and_lyft_in_massachusetts.html; bne intellinews, 'Uber reaches agreement with the Czech government', 12 March 2018, https://www.intellinews.com/uber-reaches-agreement-with-the-czech-government-138071/.

The plausibility of this approach is strengthened when we look in more depth at how it could reasonably be operationalised. Different panels of the FWC could determine different forms of gig economy regulation for different industries. Legislation need not specify how regulation should be expressed. It would just need to make sure that the FWC has all the power it needs, to regulate in whatever way it sees fit, and to encompass whichever other workers it considers warrant coverage.

As neither federal law nor the decisions of the FWC are likely to redefine gig workers as employees, the federal jurisdiction is unlikely to solve the workers' compensation problem of gig workers in Queensland by redefining them as employees to make them directly eligible for workers' compensation coverage.

Nor is it likely that any decisions of the FWC subsequent to the passage of the 'employee-like' forms would deal with workers' compensation. As set out above, workers' compensation is a state matter, so the FWC has not dealt with workers' compensation in the past, and it is unlikely to deal with it in the future.

This would also mean that, unless the Act is amended, then some on-demand gig workers would find themselves covered by the scheme and others would not, judging by the mixed outcomes to date of applications through the system. That is, the problems of the existing system would remain.

The one issue that is raised by developments in the federal jurisdiction, and might impinge upon the state systems of workers' compensation, arises from the PC report mentioned above. The PC recommendations are not all that relevant to the decision facing Queensland in response to the RIS. For one thing, they do not involve a specific recommendation to the *federal* government. Moreover, it is hard to see how they would fit in with the directions of reform foreshadowed by the federal government. The federal government's consultation paper points to the delegation of powers to the FWC as the likely direction of reform for gig economy workers and, as mentioned above, it seems unlikely that this would lead to any specific policies about workers' compensation for gig economy workers or anyone else.

Second, the Queensland Government is already ahead of the intervention point identified by the PC. The PC report said that governments should examine the adequacy of insurance arrangements for gig economy workers. In Queensland, the 2018 Review has already done that, and found them wanting. The PC Report then identified three options for action, one of which was extending workers' compensation coverage. The Queensland Government has already consulted on this matter through the RIS process, and identified the preferred approach as involving extending workers compensation coverage. Requiring a minimum level of insurance was rejected in the 2018 Review, as private insurance comes with fewer benefits for workers, or at higher cost to employers, or both, than inclusion within the system of workers' compensation. Further problems with that approach, identified in the RIS and the PC report, include the absence of a proper focus on RRTW in private systems, and the inability of private insurers to cover medical expenses. The latter is because of federal legislation banning private insurers from providing cover for medical services, as part of the legislation supporting Medicare. That is unlikely to be repealed.

In the unlikely event that the FWC made a ruling about workers' compensation for any designated group, it could only be about the existence of an entitlement to workers' compensation for workers in that group. The precise design of that entitlement would be a matter for the jurisdiction which handled workers' compensation, that is, the relevant State government. That is, the FWC could only say that a group of workers was entitled to coverage under that State's workers' compensation system. This would then create a problem for the relevant State governments, as they would have to design ways of applying the workers' compensation system to cover those workers. Bear in mind that gig workers do not receive a 'wage' from the firm that uses them, and so in most States the mere designation by a federal agency that they are 'workers' in the terms of the States' legislation, or are entitled to workers' compensation coverage, could not in itself specify the way in which premiums are to be calculated or collected for those workers. The existence of this problem is another reason why the FWC is unlikely to regulate on this matter.

Thus, while the PC report provides evidence in support of action regarding workers' compensation coverage of gig workers, its recommendations themselves have no implications for the Queensland Government's actions in this area. The Queensland Parliament can therefore proceed as it wishes with workers' compensation reform for gig workers. In the unlikely event that the federal Parliament or the FWC required that the gig workers be entitled to workers' compensation coverage, or indeed coverage by any form of accident insurance, any new Queensland legislation to provide workers' compensation coverage for gig workers would already satisfy such a requirement.

As it seems probable that most other States will not have legislated to enable a system of workers' compensation coverage for gig economy workers by then, Queensland would plausibly create a model that could be emulated by the remaining States (though whether they would do so is another matter). The possible exception is New South Wales, as that state's ALP leader announced in October 2022 that it would, if elected, 'respond to the rise of the "gig economy" and precarious work by introducing workers' compensation entitlements and a portable entitlement scheme for gig and other key New South Wales workers' and that the benefits would be 'akin to those currently provided to employees injured in New South Wales workplaces'.[36] We are unaware of the timeframe for the introduction of the implementing

36 Minns C., 'A Minns Labor Government Will Modernise NSW Law To Respond To The Rise Of The Gig Economy', https://www.chrisminns.com.au/

legislation. This announcement was made several months after the decision in *Wei v Hungry Panda* in that State, which awarded death entitlements to the family of a gig rider as if they were an employee, but that decision would not have changed the need for reform there anyway, as it was made by consent, the company conceding the worker was an employee and so the worker status of gig riders was not tested.[37]

It is worth, at this stage, referring to the concerns raised by Queensland stakeholders in their response to the 2019 RIS, and what the national developments mean for these concerns. Those concerns can be summarised as:

- unintended impacts on the federal classification of the employment relationship between gig workers and intermediaries;
- complexity around how workers' compensation would operate and apply in practice for gig workers;
- the potential for increased control over how gig work is undertaken eroding the flexibility of gig work; and
- Queensland prematurely acting before broader national gig economy regulation.

In light of the preceding discussion, the implications of national developments are these:

- As outlined above, the federal classification of the employment relationship between gig workers and intermediaries is unlikely to change as a result of new federal laws, as these will create the capacity for the assignment of new rights to gig workers, rather than reclassify them as employees. Likewise, the recommendations of the 2018 Review are unlikely to change the federal classification of the employment relationship, as these would also create the capacity for the assignment of new rights to gig workers, rather than reclassify them as employees.
- Developments in the national system are unlikely to affect the complexity around how workers' compensation would operate and apply in practice for gig workers, in one direction or the other. However, as noted in the 2018 Review, there are already inconsistencies and complexities in the way workers' compensation systems treat gig workers, and so the recommendations of that review establish clear rules for the treatment of gig workers.
- Developments in the national system are unlikely to affect control over how gig work is undertaken. Rather, they would just affect how it is remunerated. Likewise, the 2018 Review's recommendations would affect how it is remunerated, not controlled. Thus there is little reason to be concerned that either would erode the flexibility of gig work.
- As outlined above, national industrial laws on the gig economy are unlikely to affect workers' compensation entitlements or eligibility. So Queensland could not be acting prematurely by acting before, during or after national gig economy regulation.

9.6 Other insecure workers

The terms of reference ask us to enquire not only into the relevance of federal developments for the workers' compensation arrangements for gig workers but also the relevance for workers in 'other forms of insecure work', in its consideration of the outcomes of the *2019 Consultation Regulatory Impact Statement for Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry*. The main people other than gig workers that are covered by the RIS are taxi and limousine drivers, who are predominantly bailees. Other insecure workers, such as casual or labour hire workers, are already covered by the Act if they are workers, and the situation of labour hire workers is discussed in earlier chapters. Regardless, they are not covered by the RIS.

Broadly speaking, the same considerations that apply to gig workers also apply to bailees in the taxi and limousine driver sector. The employment status of those workers is unlikely to be changed by the *Fair Work Act 2009* (Cth) or by subsequent decisions of the FWC, and while most already have private insurance coverage (one difference with the situation for gig workers) that private insurance has fewer benefits, has proportionately higher costs, lacks the emphasis on RRTW, and is unable to cover medical expenses. The reforms presently underway in the federal jurisdiction will not alter the ability or desirability of the Queensland Government enacting its preferred options from the RIS.

There is, however, one aspect of the likely developments in the federal system that could assist the development of workers' compensation for other groups of insecure workers in Queensland. Ultimately, the FWC is likely to identify groups of vulnerable, 'employee-like' workers for whom it will, after receiving argument, make determinations on the minimum standards of their engagement. Some may even be identified in the establishing legislation (the most likely candidates being heavy road transport drivers). This may be a mechanism by which some vulnerable and insecure workers, warranting coverage by the Queensland workers' compensation system, could also be identified. So, once the Queensland system of workers' compensation is extended to gig workers, OIR should monitor developments in

37 *Wei v Hungry Panda Au Pty Ltd & Ors* [2022] NSWPIC 264.

the federal system to determine if any other groups of vulnerable workers, not captured by the recommendation in the 2018 Review, should be covered by the Queensland workers' compensation system. These might mostly be non-gig workers, as most gig workers (at least, those in the on-demand economy) are likely to be covered by the 2018 Review recommendation. That is, the federal system's definition of 'employee-like' may not make a substantive difference to the ability of the Queensland system to cover gig workers, but it may enable coverage to go beyond those workers. For new groups of vulnerable, 'employee-like' workers identified through the federal system, who are not gig workers, the deeming provisions of the Act may be the simplest way to ensure coverage.

9.7 Conclusions and recommendations

In summary, the feasible developments in the federal jurisdiction do not and would not interfere in the ability of Queensland to legislate for reform in the coverage of gig workers for workers' compensation purposes. The Queensland Government can thus proceed with implementing preferred options from the RIS. That is, in relation to gig economy workers, it can amend the Act to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums (as per the recommendations of the 2018 Review), and in relation to the other insecure work covered by the RIS, it can either amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement; or enhance and mandate private personal accident insurance for taxi and limousine licences holders.

Recommendation 53: **That, in light of the likely outcomes from developments in the federal sphere, the Minister:**

1. **note the absence of impediments to legislating in the area of gig economy workers; and so**
2. **consider introducing a Bill to implement preferred options from the CRIS. That is, in relation to gig economy workers, to:**

(a) amend the Act to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums (as per the recommendations of the 2018 Review); and

(b) in relation to the other insecure work covered by the CRIS, amend the Act to either: extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement; or enhance and mandate private personal accident insurance for taxi and limousine licence holders.

Is legislation required: Yes
Amendments to Regulation: Possible
Organisational responsibility: OIR

Recommendation 54: **That, after the Queensland system of workers' compensation is extended to gig workers, OIR should monitor developments in the federal jurisdiction to determine if any other groups of vulnerable workers, not captured by the recommendation in the 2018 Review, should be covered by the Queensland workers' compensation system. Options for including such workers would include use of the deeming provisions in the Act.**

Is legislation required: Not initially
Amendments to Regulation: Not initially
Organisational responsibility: OIR

Appendices

Appendix A: Legislated obligation and terms of reference

Section 584A of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) states that the 'Minister must ensure a review of the operation of the workers' compensation scheme is completed at least once in every 5 year period.'

The next review is required to be completed by 30 June 2023 and a report tabled in Parliament 'as soon as practicable after the review is completed'.

The Honourable Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing, has instructed the reviewers to inquire into and report on the operation of Queensland's workers' compensation scheme, in particular:

1. the performance of the scheme in meeting the objectives under section 5 of the Act, including:
    a. maintaining a balance between providing fair and appropriate benefits for injured workers or dependants and persons other than workers, and ensuring reasonable cost levels for employers;
    b. ensuring that injured workers or dependants are treated fairly by insurers;
    c. providing for the protection of employers' interests in relation to claims for damages for workers' injuries; and
    d. providing for employers and injured workers to participate in effective return to work programs.
2. emerging issues facing the Queensland workers' compensation scheme;
3. the effectiveness of current rehabilitation and return to work programs and policy settings, including ways to increase Queensland's current return to work rate;
4. the management of mental injuries in the scheme such as:
    a. further opportunities to improve the experience of injured workers with a mental injury;
    b. the growth of secondary mental injuries claims i.e., mental injury claims that arise with or following a physical injury; and
    c. the impact of the presumptive post-traumatic stress disorder provisions for first responders introduced in the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2020*.
5. considering the issues raised in the review, any matters that may be relevant in the remake of the *Workers' Compensation and Rehabilitation Regulation 2014*.
6. any national regulatory proposals or findings from national reviews in relation to gig workers and other forms of insecure work that should be taken into account by the government in its consideration of the outcomes of the *Consultation Regulatory Impact Statement for Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry*.

Appendix B: Consultation

Targeted stakeholder	Written submission	Meeting
Unions and employee representatives		
Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees	No	No
Australian Dental Association (Queensland Branch) Union of Employees	No	No
Australasian Meat Industry Employees Union	No	No
Australian Institute of Marine and Power Engineers' Union of Employees, Queensland District	No	No
Australian Federated Union of Locomotive Employees	No	Yes – 23 February 2023 (with QCU)
Australian Maritime Officers Union Queensland Union of Employees	No	No
Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch	No	No
Australian Salaried Medical Officers' Federation Queensland	No	No
Australian Workers' Union	Yes	No
Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (Australian Manufacturing Workers Union)	Yes	Yes – 23 February 2023 (with QCU)
Bacon Factories' Union of Employees	No	No
Baking Industry Association of Queensland – Union of Employers	No	No
Construction, Forestry, Mining and Energy Union, Queensland & Northern Territory Branch - construction division	No	No
Electrical Trades Union of Employees Queensland	No	Yes – 23 February 2023 (with QCU)
Finance Sector Union of Australia, Queensland Branch, Industrial Union of Employees	No	No
Mining and Energy Union Queensland (a division of the CFMMEU)	No	No
Plumbers & Gasfitters Employees' Union Queensland, Union of Employees	No	No
Queensland Council of Unions (QCU) (and all affiliates)	Yes	Yes – 23 February 2023
Queensland Fire and Rescue - Senior Officers Union of Employees	No	No
Queensland Independent Education Union of Employees	Yes	No
Queensland Nurses and Midwives Union	Yes	Yes – 23 February 2023 (with QCU)
Queensland Police Commissioned Officers' Union of Employees	No	No
Queensland Police Union of Employees	No	No
The Services Union Queensland	No	No

Targeted stakeholder	Written submission	Meeting
Queensland Teachers Union of Employees	No	Yes – 23 February 2023 (with QCU)
The Seamen's Union of Australasia, Queensland Branch, Union of Employees	No	No
Rural Fire Brigades Association Queensland	Yes	No
Shop Distributive and Allied Employees Association, Queensland	No	No
State Emergency Services Volunteers Association	No	Yes – 5 April 2023
Together Queensland, Industrial Union of Employees	Yes	Yes – 23 February 2023 (with QCU)
Transport Workers Union	Yes	Yes – 23 February 2023 (with QCU)
United Firefighters Union	Yes	Yes – 23 February 2023 (with QCU)
United Workers Union	No	Yes – 23 February 2023 (with QCU)
Government, Courts & tribunals		
Queensland Industrial Relations Commission	No	Yes – 6 April 2023
National Injury Insurance Scheme Queensland	No	No
Ms Kym Bancroft, (former) Deputy Director-General - Office of Industrial Relations and Workers' Compensation Regulator	No	Yes – 20 March 2023
WHS Engagement and Policy Services	No	Yes
Federal Government		
Department of Employment and Workplace Relations, Canberra	No	Yes – 7 June 2023
Local Government		
Local Government Association of Queensland	No	No
Townsville City Council	Yes	No
Brisbane City Council	No	No
Insurers		
WorkCover Queensland	Yes	Yes – 22 February 2023 and 17 April 2023
Legal		
Australian Lawyers Alliance	Yes	Yes – 9 March 2023
Bar Association of Queensland	Yes	Yes – 20 March 2023
Queensland Law Society	Yes	No
Medical and allied health		
Australasian Association of Medico-legal Providers	Yes	No
Australian Association of Social Workers	Yes	No
Australian Medical Association Queensland	Yes	Yes – 1 March 2023
Australian College of Rural and Remote Medicine	No	No
Australasian Faculty of Occupational and Environmental Medicine	No	Yes – 28 February 2023

Targeted stakeholder	Written submission	Meeting
Australian Rehabilitation Providers Association	Yes	Yes – 5 April 2023
Australian Society of Rehabilitation Counsellors	Yes	Yes – 30 May 2023
Australian Psychological Society	Yes	No
Dr Grant Blake, Psychologist	Yes	Yes – 3 March 2023
Dr Mary Wyatt, Occupational Physician	No	Yes – 19 April 2023
Firefighters Cancer Foundation Australia	Yes	No
Occupational Therapy Australia	No	No
Rehabilitation Counselling Association of Australasia	Yes	No
Royal Australian College of General Practitioners, Queensland Branch	No	No
Medical Assessment Tribunal Chairpersons		
Dr John North, Chair, Orthopaedic Assessment Tribunal	No	Yes – 5 April 2023
Dr James B Muir, Chair, Dermatology Assessment Tribunal	No	Yes – 5 April 2023
Dr Kevin Lee See, Chair, General Medical Assessment Tribunal	Yes	Yes – 5 April 2023
Dr Ken Hossack, Chair, Cardiac Assessment Tribunal	Yes	Yes – 5 April 2023
Dr Cathryn Edrich, Chair, Ophthalmology Assessment Tribunal	No	Yes – 5 April 2023
Dr William Cockburn, Chair, Disfigurement Assessment Tribunal	No	Yes – 5 April 2023
Dr Robert Black, Chair, Ear Nose and Throat Assessment Tribunal	No	Yes – 5 April 2023
Dr John Baker Chair, Neurology/Neurosurgical Assessment Tribunal	No	Yes – 5 April 2023
Dr Josephine Sundin, Deputy Chair ("Chair representative" for the GMAT – Psychiatric)	Yes	Yes – 5 April 2023 and 18 April 2023
Employers and employer peak bodies		
AgForce	No	No
Association of Self-Insured Employers Queensland	Yes	Yes – 9 March 2023
Asbestos Disease Support Society	No	No
Australian Industry Group	Yes	Yes – 3 March 2023
A2B Australia Ltd	No	No
Chamber of Commerce and Industry Queensland	No	No
David and Lucy Hooke (Western Suburbs Taxi Depot)	No	No
DoorDash	Yes	No
Housing Industry Association	Yes	No
JBS Australia	Yes	No
Limousine Action Group Queensland Inc	No	No
Master Electricians Australia	No	No

Targeted stakeholder	Written submission	Meeting
Master Painters, Decorators and Signwriters' Association of Queensland, Union of Employers	No	No
Master Plumbers' Association of Queensland (Union of Employers)	No	No
Master Builders Queensland	Yes	Yes – 8 March 2023
National Retail Association	No	No
Ola	No	No
Queensland Farmers Federation	No	No
Queensland Hotels Association, Union of Employers	No	No
Queensland Master Builders Association, Industrial Organisation of Employers	No	No
Queensland Resources Council	Yes	Yes – 8 March 2023
Queensland Taxi Licence Owners' Association Inc	No	No
Ride Share Drivers Association of Australia	No	No
Registered and Licensed Clubs Association of Queensland, Union of Employers	No	No
Shebah	No	No
Stephen Lacaze	No	No
Taxi Council of Queensland Inc	No	No
Thiess	Yes	Yes – 8 March 2023
Uber	Yes	No
UNiTAB Agents Association, Union of Employers Queensland	No	No
XLNT Chauffeurs	No	No
Academia		
Queensland University of Technology	Yes	No
Griffith University	Yes	No
University of Queensland	Yes	No
Professor John Buchanan, University of Sydney	Yes	No
Community		
Consultative committee for work-related fatalities and serious incidents (Affected Persons Committee)	Yes	Yes – 7 March 2023

Appendix C: Summary of key workers' compensation scheme features

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth
Employees covered for workers' compensation (2018-19)	3,744,030	3,108,363	2,300,330	1,263,997	788,355	226,556	136,286	168,133 Private Sector Workforce	416,556
Cover for journey claims	Yes[1]	No[2]	Yes[3]	No[4]	Yes, but limited[5]	No, some exceptions[6]	No, some exceptions[7]	Yes[8]	No, some exceptions[9]
Redemptions/ settlements available	Yes	Yes – limited[10]	Yes	Yes	Yes – limited[11]	Yes	Yes	Yes	Yes – limited[12]
Number of self-insurers	65, plus 6 specialised insurers	35	27	23	70 self-insured employer groups	10	4	7	40 (as at 30 September 2021)
Fund type	Managed	Central	Central	Private insurers	Central	Private insurers	Private insurers	Private insurers	Central
Standardised Average Premium rate (per cent)	1.60 (2023-24)	1.80 (2023-24)	1.29 (2023-24)	1.727 (2023-24)	1.85 (2023-24)	1.90 (2023-24)	N/A	2.10 (2023-24)	0.78 (2021-22)

1 For certain exempt workers. For all other workers with injuries received on or after 19 June 2012, there must be a real and substantial connection between employment and the accident or incident out of which the injury arose - *Workers Compensation Act 1987* (NSW), s 10; sch 6, Pt 19H, cl 18.

2 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 46.

3 *Workers Compensation and Rehabilitation Act 2003*, s 35.

4 *Workers' Compensation and Injury Management Act 1981* (WA), s 19(2).

5 *Return to Work Act 2014* (SA), s 7(8).

6 *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25(6)

7 *Return to Work Act 1986* (NT), s 4; *Return to Work Regulations* (NT), reg 5AA.

8 *Workers Compensation Act 1951* (ACT), s 36.

9 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 6(1C).

10 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), Part 5 Division 9.

11 *Return to Work Act 2014* (SA), s 53.

12 *Safety, Rehabilitation and Compensation Act 1988* (Cth), ss 30(1), 137(1).

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth
Standardised Funding Ratio (per cent)[13]	114	107	179	124	117	130	108	N/A	128
Disputation rate (per cent)	2.7	6.0	2.9	4.3	9.5	10.0	8.1	N/A	6.0
Return to work rate (per cent)[14]	92.6	89.6	92.3	90.5	90.7	91.9	92.6	90.3	96.0
Access to Common Law	Yes	Yes — limited	Yes	Yes	Yes – limited	Yes	No	Yes	Yes — limited

13 For the 2019-2020 financial year.

14 As at 2021.

Appendix D: Jurisdictional comparison of coverage

	Queensland	New South Wales	Victoria	Western Australia	South Australia
Definition of worker	A worker is a person who works under a contract and, in relation to the work, is an employee for the purpose of assessment for PAYG withholding.[1]	A person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). Certain exclusions apply.[2] In addition, certain persons will be deemed to be workers including outworkers, labour hire workers, and some contractors.[3]	An individual who performs work for or agrees with an employer to perform work at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or an individual deemed to be a worker by the Vic Act.[4] Schedule 1 of the Vic Act also deems certain persons to be workers, including students while employed under a work experience arrangement, structured workplace learning arrangement, practical placement agreement, or certain other arrangements under the under the *Education and Training Reform Act 2006* (Vic) and apprentices while employed under an approved training scheme or employed under a contract of apprenticeship.	Any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing. The meaning of worker also includes: - any person to whose service any industrial award or industrial agreement applies, and - any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services.[5]	A worker is any person by whom work is done under a contract of service (whether or not as an employee), a person who is a worker by virtue of Schedule 1 of the SA Act, a self-employed worker[6] (subject to section 175 or Reg 5), and a former worker and the legal personal representative of a deceased worker.[7]

1 *Workers' Compensation and Rehabilitation Act 2003*, s 11.

2 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 4(1).

3 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), sch 1.

4 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 3.

5 *Workers' Compensation and Injury Management Act 1981* (WA), s 5.

6 Subject to section 175 of the *Return to Work Act 2014* (SA) and regulation 5 of the *Return to Work Regulations 2015* (SA).

7 *Return to Work Act 2014* (SA), s 4(1).

	Queensland	New South Wales	Victoria	Western Australia	South Australia
Coverage of independent contractors	No, unless the contractor is determined to be an employee under a personal services business determination issued by the ATO.[8]	No, unless the contractor is deemed to be a worker.[9]	No, unless the contractor is deemed to be a worker.[10]	No, unless employed under contract for service and remunerated in substance for personal manual labour or service.[11]	Yes, if covered by the definition of 'worker': - 'Worker' includes a person by whom work is done under a contract of service (whether or not as an employee). - 'Contract of service' includes if person undertakes prescribed work or work of a prescribed class.[12]
Coverage of labour hire workers	Yes, labour hire firm held to be employer.[13]	Yes, labour hire firm held to be employer.[14]	Yes, labour hire firm held to be employer.[15]	Yes, labour hire firm held to be employer.[16]	Yes, if the individual's contract is with the labour hire firm, the firm will be the employer.[17]

8 *Workers' Compensation and Rehabilitation Act 2003*, sch 2, pt 2.

9 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), sch 1, cl 2.

10 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), sch 1, cl 9.

11 *Workers' Compensation and Injury Management Act 1981* (WA), s 5.

12 *Return to Work Act 2014* (SA), s 4(7).

13 *Workers' Compensation and Rehabilitation Act 2003*, sch 2, pt 1.

14 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), sch 1, cl 2A.

15 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 3.

16 *Workers' Compensation and Injury Management Act 1981* (WA), s 5.

17 *Return to Work Act 2014* (SA), s 4(1); *Return to Work Regulations 2015* (SA), reg 5.

	Queensland	New South Wales	Victoria	Western Australia	South Australia
Coverage for volunteers	Workers' compensation coverage may extend to the following volunteers if WorkCover has entered into a contract of insurance with the responsible authority/person/charitable institution/not-for-profit organisation: - particular persons under the *Disaster Management Act 2003*; - volunteer fire fighter or volunteer fire warden; - honorary ambulance officers; - rural fire brigade member; - person in voluntary or honorary position with religious, charitable or benevolent organisation; - person in voluntary or honorary position with non-profit organisation; and - persons performing community service or unpaid duties.[18]	The following persons are deemed to be workers: - volunteer and trainee bush firefighters under the *Fire Brigades Act 1989* (NSW); - volunteer ambulance workers under the *Health Administration Act 1982* (NSW); and - an emergency service or rescue association worker as defined by the *Workers' Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* (NSW) (e.g., Rural Fire Service, State Emergency Service, Surf Life Saving).	Volunteers are not workers unless they are deemed to be and are not entitled to compensation unless specified in an Act of Parliament. The following Acts provide that volunteers and other persons assisting government agencies are entitled to compensation if injured whilst carrying out relevant duties: - *Victoria State Emergency Services Act 2005* (applies to voluntary registered and probationary members of the Victoria SES) - *Juries Act 2000* (applies to jurors) - *Education and Training Reform Act 2006* (applies to volunteer school workers or volunteer student workers) - *Emergency Management Act 1986* (applies to volunteer emergency workers) - *Police Assistance Compensation Act 1968* (applies to volunteers assisting police officers) - *Country Fire Authority Act 1958* (applies to casual fire fighters, including volunteer officers and members and volunteer auxiliary workers).	Volunteers are not covered by the *Workers' Compensation and Injury Management Act 1981* (WA). Volunteers may be covered for personal injury under private insurance.	Schedule 1 of the SA Act establishes the Crown as the presumptive employer of persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the State.[19] The following is prescribed as a class of persons: - Volunteer SA State Emergency Service members; - volunteer marine rescue members; and - volunteer firefighters.[20]

18 *Workers' Compensation and Rehabilitation Act 2003*, Pt 4, Div 3.

19 *Return to Work Act 2014* (SA), sch 1.

20 *Return to Work Regulations 2015* (SA), reg 69.

	Queensland	New South Wales	Victoria	Western Australia	South Australia
Deemed workers	Circumstances under the *Workers' Compensation and Rehabilitation Act 2003* where a person may be deemed to be a worker: - sharefarmers — Schedule 2 (1.1) - salespersons — Schedule 2 (1.2) - contractors and workers of contractors — Schedule 2 (1.3) - workers lent or on hire (including labour hire firms and holding companies) — Schedule 2 (1.4 - 1.6).	Schedule 1 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) lists the twenty-one specific circumstances in which persons are deemed to be workers: - workers lent or on hire - outworkers - other contractors - contractors under labour hire services arrangements - rural work - timbergetters - salespersons, canvassers, collectors and others - tributers - mine employees - mines rescue personnel - jockeys and harness racing drivers - drivers of hire-vehicles or hire-vessels — contract of bailment - caddies and others employed through club - shearers' cooks and others - fire fighters in fire districts - workers at place of pick-up - boxers, wrestlers, referees and entertainers - voluntary ambulance workers - ministers of religion - ministers of religion covered by policies, and - participants in training programs	Circumstances under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) where a person may be deemed to be a worker: - students under work experience and practical placement arrangements, apprentices, persons participating in declared training programs — Clauses 1 to 3 Schedule 1 - secretaries of cooperatives — Clause 4 Schedule 1 - door to door sellers — Clause 5 Schedule 1 - timber contractors — Clause 6 Schedule 1 - drivers of passenger vehicles — Clause 7 Schedule 1 - owner drivers carrying goods for reward — Clause 8 Schedule 1 - contractors — Clause 9 Schedule 1 - share farmers — Clause 12 Schedule 1 - declared workers of religious bodies and organizations — Clause 13 Schedule 1 - crown employees, Ministers, government members, judicial officers, bail justices, public corporation members, retired police reserve members — Clause 14 Schedule 1	Circumstances under the *Workers' Compensation and Injury Management Act 1981* (WA) where a person may be deemed to be a worker: - workers lent or let on hire — s5(1) - contract in substance for personal manual labour or service — s5(1) - workers under an industrial award or agreement — s5(1) - deceased worker — s5(1) - police officer — s5(1) (Who suffers an injury and dies as a result of that injury) - clergy — s8, 9 and 10 - tributers — s7 - jockey — s11A - crown workers — s14(2) - certain persons deemed workers — s175AA, and - working directors — s10A.	The definition of 'contract of service' in s4(1) of the *Return to Work Act 2014* (SA) includes: 'a contract, arrangement or understanding under which one person (the worker) works for another in prescribed work or work of a prescribed class'. Current classes of work prescribed under *Regulation 5 of the Return to Work Regulations 2015* (SA), include: - building work (other than wall or floor tilers) - cleaning work - council workers driving a motor vehicle used for the purpose of transporting goods or materials driving a taxi cab or similar motor vehicle - driving or riding for fee or reward a vehicle, other than a commercial vehicle, for the purpose of transporting by road goods or materials (including money) where the driver or rider does not simultaneously own or operate more than 1 vehicle for work purposes - work as an entertainer - thoroughbred riding work where the work is performed by a licensed jockey

	Queensland	New South Wales	Victoria	Western Australia	South Australia
Deemed workers			- municipal councillors — Clause 15 Schedule 1 - persons engaged at places of pick-up for the purposes of being selected for work (e.g. fruit pickers) — Clause 16 Schedule 1 - jockeys and track riders, riders and drivers in mixed sports gatherings — Clauses 17 and 18 Schedule 1 - outworkers — Clause 19 Schedule 1.		- work as an outworker, and - work as a licensed jockey. Under s175(2) of the *Return to Work Act 2014* (SA), the Corporation may also extend the application of the Act to self-employed persons.

Appendix E: Jurisdictional comparison of entitlements

Jurisdiction	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Aust Gov
Entitlements expressed as a percentage of pre-injury earnings for award wage earners[1]									
0—13 weeks (total incapacity)	95% (subject to max cap)[2].	95% up to max	85% of NWE[3] (or 100% under industrial instrument)	100%	100%	100%	100%	100%	100%
14—26 weeks (total incapacity)	80% (subject to max cap).	80% up to max	85% of NWE (or 100% under industrial instrument)	100%	100%	100%	100%	100%	100%
27—52 weeks (total incapacity)	80% (subject to max cap).	80% up to max	75% NWE or 70% QOTE[4]	100%	100%	90% (95% in some circumstances[5])	75–90%	65% or statutory floor	27–45 wks. 100%. 46–52 wks. 100% x adjustment percentage[6]
53—104 weeks (total incapacity)	80% (subject to max cap).	80% up to max	75% NWE or 70% QOTE	100%	80%	53–78 weeks 90% (or 95%[7]), 79–104 weeks 80% (85% in some circumstances[8])	75–90%	65% or statutory floor	75% or adjusted percentage If an employee retires or is retired - 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received.

1 Entitlements benefits in New South Wales, Western Australia, Victoria, Tasmania, Queensland, Northern Territory, Australian Capital Territory and New Zealand do not include superannuation contributions. Compensation in the form of superannuation contribution is payable in Victoria after 52 weeks of weekly payments.

2 Maximum weekly payment is capped at $2,395.30.

3 NWE – normal weekly earnings.

4 QOTE – Queensland Ordinary Time Earnings.

5 If there is medical evidence that the worker is unable to perform the worker's usual duties with the employer; and there is medical evidence that the worker is able to perform suitable alternative duties with the employer; and the employer does not enable the worker to undertake suitable alternative duties as part of the worker's employment by the employer – *Workers Rehabilitation and Compensation Act 1988* (Tas), s 69B(1)(b).

6 75 per cent if not employed, increasing in 5 per cent increments until employee is working 100 per cent of normal weekly hours.

7 *Workers Rehabilitation and Compensation Act 1988* (Tas), s 69B(1)(b).

8 Ibid.

Jurisdiction	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Aust Gov
Entitlements expressed as a percentage of pre-injury earnings for award wage earners[1]									
104+ weeks (total incapacity)	80% (subject to max cap and subject to meeting requirements of s38 of *Workers' Compensation Act 1987* (NSW). These provisions apply after week 130). After 260 weeks payments cease at five years unless permanent impairment of >20%.	80% (up to max, subject to work capacity test after 130 weeks)	If >15% DPI can be demonstrated, 75% NWE or 70% QOTE, otherwise single pension rate.	100%	80% for seriously injured workers (DPI of 30% or more) No entitlements for non-seriously injured workers beyond 104 weeks.	80% (or 85%[9]) The maximum payment period varies according to the assessed percentage of whole person impairment.	75–90% Compensation ceases after 260 weeks unless 15% or greater WPI.	65% or statutory floor	75% If an employee retires or is retired, 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received.

9 Ibid.

Appendix F: Recent Performance and Operation of the Scheme: further detail

This Appendix expands upon some of the material presented in the section 'Major issues and trends' in Chapter 1 of this report, and is derived mainly from the stakeholder information paper prepared for the consultation process for this review. A schematic summary of the claims process is at the end of this Appendix.

Financial position of the scheme

Overall, the scheme is financially sound, providing benefits to injured workers and other beneficiaries at low costs for employers. Select information about the financial position of the scheme is summarised below.

WorkCover and self-insurers

As at 30 June 2022, WorkCover recorded total equity of $1.871 billion. It remains fully funded with a funding ratio of assets over liabilities of 142.5 per cent. WorkCover recorded an operating loss (after tax) of $326 million in 2021-22,[1] largely due to rising claims costs and significantly poorer investment returns from the difficult economic climate. Rising statutory claims costs is a trend being experienced across all workers' compensation jurisdictions in Australia. WorkCover's investment portfolio is managed by Queensland Investment Corporation. The net market value in funds invested as at 30 June 2022 was $5.466 billion.

Like other jurisdictions in Australia, the Queensland scheme allows for self-insurance. When deciding an application for a self-insurance licence, the Regulator must consider whether the employer is likely to continue to be able to meet its liabilities and the long-term financial viability of the employer including its profitability and liquidity. Due to the stringent prudential requirements placed upon them, the solvency risk posed to the scheme by self-insurers is low. In particular, the Act mitigates the risk of self-insurers defaulting on their workers' compensation liabilities by requiring self-insurers to lodge a security (such as a bank guarantee) with the Regulator for 150 per cent of their estimated claims liability (ECL)[2], and to have approved reinsurance for an unlimited amount.[3] Solvency risks are further mitigated by the Regulator's regular monitoring of self-insurer performance and financial results, as well as the general financial strength of self-insurers.

Scheme efficiency

Queensland's centrally funded scheme provides economies of scale which contributes to Queensland's efficiency. In 2020-21 over 66 per cent of all scheme expenditure in Queensland was spent directly on the claimant, up from 64.3 per cent in 2016-17. This was higher than in other centrally funded or managed schemes in both years. A further 22.7 per cent was spent on services for the claimant, slightly down from 22.9 per cent in 2016-17. The cost of insurance operations was also the lowest of the centrally funded or managed jurisdictions at 6.5 per cent of total scheme expenditure, down from 7.4 per cent in 2016-17. A comparison of these and other scheme costs in 2020-21 is shown in **Figure 1** below.

Figure 1 – Comparisons of scheme expenditure for centrally funded and managed schemes

2020–21	Percentage of total expenditure (%)				
Scheme costs	**NSW**	**Vic**	**Qld**	**SA**	**Comcare**
Direct to claimant	49.9	58.1	66.3	48.7	53.3
Services to claimant	25.8	19.4	22.7	24.0	26.1
Insurance operations	17.8	16.5	6.5	19.9	9.9
Regulation	0.7	1.2	0.7	1.1	0.9
Dispute resolution	1.9	1.3	0.8	1.1	0.2
Other administration	3.8	3.5	3.1	5.2	9.7
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Source: Comparative Performance Monitoring Report 24th Edition[4]

1 WorkCover Queensland, 'Annual Report 2021-2022' ‹https://www.worksafe.qld.gov.au/resources/publications/annual-reports›.

2 *Workers' Compensation and Rehabilitation Act 2003*, s 84.

3 *Workers' Compensation and Rehabilitation Act 2003*, s 86.

4 Safe Work Australia, *Comparative performance monitoring report 24th edition*, 2022, https://www.safeworkaustralia.gov.au/comparative-performance-monitoring-report-24th-edition.

WorkCover premiums

Employers insured with WorkCover pay an annual premium. This premium is used for payments to injured workers for income replacement and medical treatment, rehabilitation and return to work support, injury prevention activities and scheme administration.

The actual premium paid by an employer varies according to the size, claims experience and the employer's industry. Premium collected in a year pays for all injuries that occur in that year, which will be paid out in that year and over future years.

Premium rates

For the past eight years, WorkCover has consistently delivered the lowest average premium rate of $1.20 per $100 of wages for employers when compared with all other State schemes. In March 2022, the WorkCover Board notified the Minister for Industrial Relations of its decision to increase the average premium rate to $1.23 per $100 of wages (after discounts), a 2.5 per cent increase. This is the first premium rate increase since 2012-2013.

The premium rate increase has been driven by:

- increasing statutory claim durations and payments (including increasing psychological injury claims);
- an increase in injured workers remaining in the scheme beyond one year; and
- potential trends in common law claims with a primary or secondary psychological injury.

These trends are also being experienced in other workers' compensation schemes across Australia.

Even with the increased premium rate, Queensland's average premium rate remains the lowest of all States and territories. The Commonwealth workers' compensation insurer (Comcare) is able to offer a lower average premium rate reflective of its industry mix, which principally comprises the Australian Public Service.

In addition, the scheme has delivered premium savings by exempting apprentices from premium calculations and offering early payment premium discounts. Through these initiatives, employers have saved $387.4 million since 1 July 2017.

Impact of injury rates on premiums

Premium is calculated using the Experience Based Rating (EBR) system which multiplies an employer's *wages* by their *premium rate*. It is designed to reward employers with good injury prevention and management.

An employer's injury rate influences its premium, affecting not only the employer's EBR but also their industry's rate and the scheme's average premium rate.

Injury prevention programs and initiatives

Workplace Health and Safety Queensland (WHSQ) are responsible for improving work health and safety in Queensland and helping reduce the risk of workers being killed or injured on the job. WHSQ performs regulatory functions of the Regulator under the *Work Health and Safety Act 2011* (WHS Act) to enforce work health and safety laws; investigate workplace fatalities and serious injuries; prosecute breaches of legislation and educate employees and employers on their legal obligations. Safety and health in Queensland's mining, quarrying, petroleum, gas and explosive industries is separately regulated by Resources Safety & Health Queensland.

WHSQ and WorkCover jointly deliver the Injury Prevention and Management (IPaM) program, a free initiative designed to help Queensland businesses develop and implement sustainable health, safety and injury management systems and, if people are injured, return them to meaningful and appropriate work as soon as practical.

As part of the program, a team of experienced advisors located throughout Queensland work with employers who have comparatively high workers' compensation claims rates and costs compared to other businesses of similar size and nature.

Since its introduction in 2011, IPaM has assisted over 2,700 Queensland employers to improve their health, safety and injury management systems. In the 2021-22 financial year, 528 employers were assisted by IPaM advisors and 2,172 site visits were conducted.

The IPaM program includes ongoing review to ensure continued value, reach and influence and ultimately ongoing improvement to health, safety and return to work outcomes in Queensland.

In 2019, the Act was amended to clarify that WorkCover has the power to fund and provide programs and incentives to encourage improved health and safety performance by employers.[5] WorkCover must consult with the Regulator under the WHS Act and certain prescribed entities before doing so.[6]

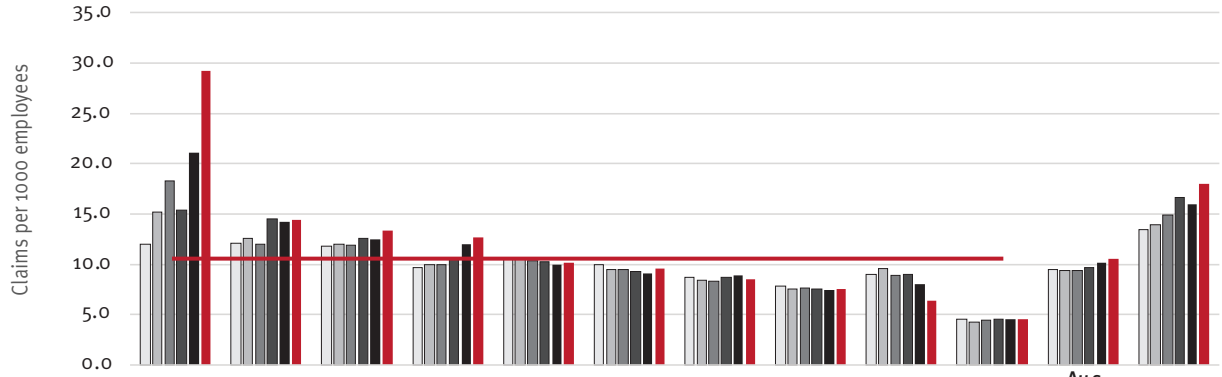
Subsequent to the amendments, WorkCover introduced the Injury Risk Reduction Initiatives (IRRI) program. The IRRI program was designed to identify, investigate and pilot initiatives to assist WorkCover, in collaboration with WHSQ and other key stakeholders, to reduce workers' exposure to injury risk and associated impact. In the following years, the IRRI program focused on high-risk industries, employers, injuries, demographics and equipment. Since its introduction, the IRRI program has been expanded to implement new pilots with selected employer groups, such as the horticulture industry, health and community services sector, and community clubs. Existing pilots have been expanded in aged and disability care and the manufacturing sector.

Injury and claims experience

Serious injury rates

Figure 2 below shows the incidence rate of serious injuries across jurisdictions for the period 2015-16 to 2020-21. As shown, Queensland has had a six per cent increase in the serious injury rate over the four-year period 2015-16 to 2020-21. The preliminary data for 2020-21 shows an overall increase in the Australian serious injury incidence rate.

Figure 2 – Serious injury rate (claims per 1000 employees) by jurisdiction



	Seacare	TAS	QLD	NSW	ACT	WA	SA	VIC	NT	Aus Gov	Aus Total	NZ
2015-16	12.0	12.1	11.8	9.7	10.6	10.0	8.7	7.8	9.0	4.5	9.5	13.4
2016-17	15.2	12.6	12.0	10.0	10.5	9.5	8.4	7.5	9.6	4.2	9.4	13.9
2017-18	18.3	12.0	11.9	10.0	10.3	9.5	8.3	7.6	8.9	4.4	9.4	14.9
2018-19	15.4	14.5	12.6	10.5	10.2	9.3	8.7	7.5	9.0	4.5	9.7	16.6
2019-20	21.1	14.2	12.5	12.0	10.0	9.1	8.9	7.4	8.0	4.5	10.1	16.0
2020-21p	29.2	14.4	13.3	12.7	10.1	9.6	8.5	7.5	6.4	4.5	10.5	18.0
2020-21p Aus												

Source: Comparative Performance Monitoring Report 24th Edition[7]

Statutory claims

In 2021-22, 90,424 injured workers lodged statutory workers' compensation claims in Queensland. This represents a 4.3 per cent decrease in claims lodged from 2020-21 (94,502). The claim rate (i.e., claims per 1,000 employed people) between the years decreased 8.8 per cent, down from 37.5 to 34.2 claims per 1,000 employed people.

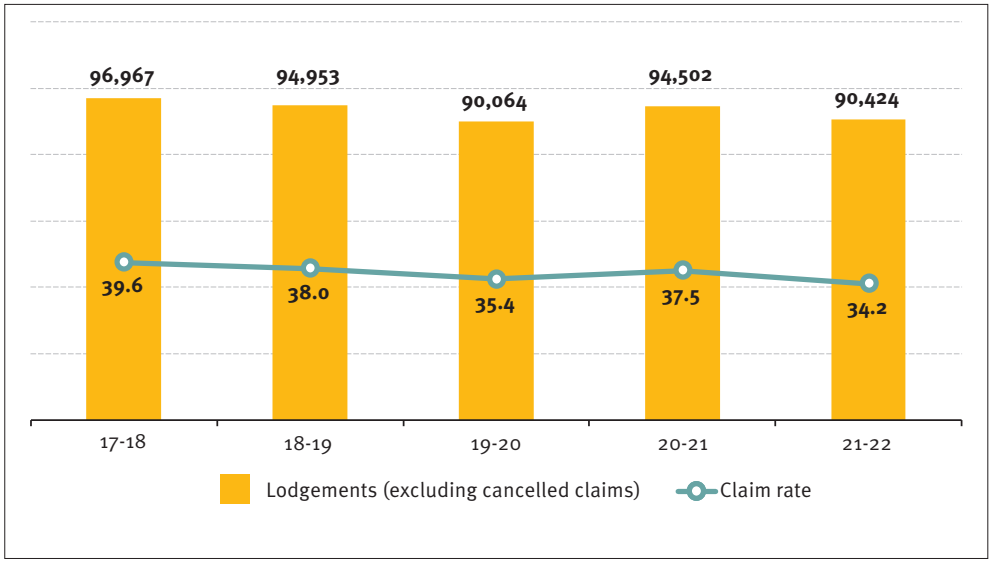
Over the four year period to 2021–22, claim lodgements reduced (6.7 per cent) while the claim rate also reduced (13.6 per cent) over the period. This is shown in **Figure 3** below.

5 *Workers' Compensation and Rehabilitation Act 2003*, s 383(1)(b) and s 385A(1).

6 *Workers' Compensation and Rehabilitation Act 2003*, s 385A(2).

7 Safe Work Australia, 'Comparative performance monitoring report 24th edition', 2022, https://www.safeworkaustralia.gov.au/comparative-performance-monitoring-report-24th-edition.

Figure 3 – Claim rates (per 1,000 employed people) and lodgements 2017-18 to 2021-22



The average statutory claim duration (measured by the number of workdays by finalised time lost claim) increased from 45.9 days in 2017-18 to 72 days in 2021-22. Over the same period, the average cost per finalised time lost claim increased from $17,450 in 2017-18 to $28,163 in 2021-22.

The cause of the increase in claim durations is likely to be multifaceted and due to several potential drivers that may include changes to the injury mix such as the incidence of psychological injuries (which have longer average durations), claims management practices (including a focus on rehabilitation and return to work), economic conditions, and behavioural changes from claimants and the medico/legal professions.

Common law claims

Access to common law is available to all workers in Queensland who can prove negligence against an employer and who have a work injury as defined by the Act. Consistent with this, the scheme provides employers with insurance cover for the provision of common law damages. Liability and quantum may be contested by WorkCover and self-insurers both in the pre-proceedings process and in court.

If a worker's degree of permanent impairment (DPI) is less than 20 per cent, the worker must choose between receiving the statutory lump sum compensation payment or seeking damages at common law. If the DPI is assessed at 20 per cent or more, the injured worker can accept both the lump sum payment and seek damages at common law.

During 2021-22, 3,286 injured workers lodged a common law claim to access financial support for the impact of their injury on their life and ability to work (1.4 per cent increase from 3,241 in 2020-21). Approximately 12 per cent of common law claims relate to psychological injury.

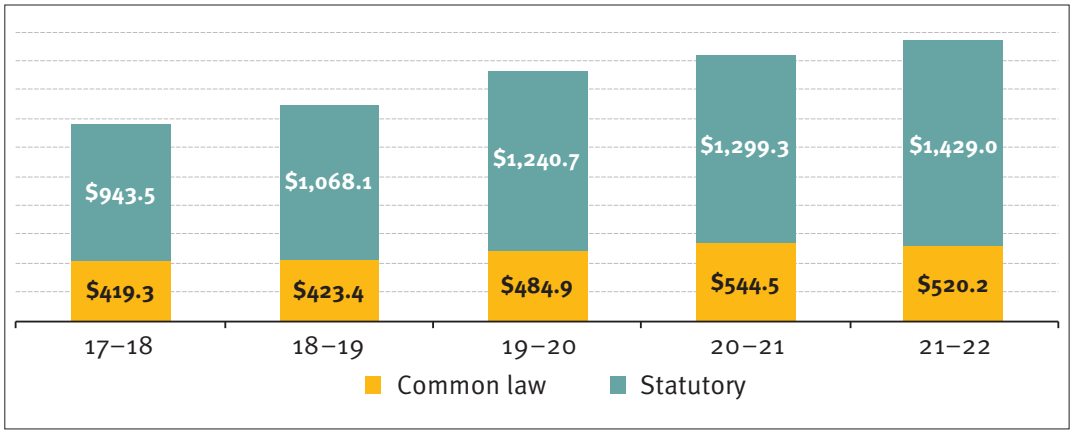
While common law claims make up only a small percentage of claim numbers, they represent a larger proportion of scheme costs. In 2021–22, common law claims cost a total of $520.2 million. This represented a 4.5 per cent decrease from the 2020–21 cost of $544.5 million.

The average settlement cost of a finalised common law claim (excluding nil settlements) increased 1.9 per cent from $172,524 in 2020–21 to $175,772 in 2021–22 (compared to the 5.4 per cent increase in the Brisbane consumer price index over that period). The cost of a common law claim can include payments for loss of earnings, pain and suffering, plaintiff legal costs, and medical and hospital costs.

Total claim payments

As shown in **Figure 4** below, total payments for workers' compensation claims in 2021–22 were $1,949.2 million. Common law payments made up 26.7 per cent ($520.2 million) and statutory claim payments made up 73.3 per cent ($1,429.0 million).

Figure 4 - Scheme payments 2017–18 to 2021–22



Specific claim types and scheme trends

COVID-19 claims

Claims for COVID-19-related injuries are assessed in the same manner as other injury claims. As at 30 November 2022, the scheme had accepted 451 claims in relation to COVID-19 for both physical and psychological injuries. In total, 248 claims related to COVID-19 had been rejected since the start of the pandemic.

Presumptive legislation for first responders and eligible employees

In May 2021, the Act was amended to introduce a presumptive compensation pathway for first responders and other eligible employees diagnosed with post-traumatic stress disorder (PTSD) (presumptive provisions).

The presumptive pathway aims to provide this cohort with easier, timelier access to necessary support and compensation by reversing the onus of proof and deeming their injury to be work-related unless there is evidence presented by the employer to the contrary. The Government recognised that this approach was integral to ensuring the long-term mental health, rehabilitation and return to work outcomes for these workers.

As part of its response to the report of the Queensland Parliament's Education, Employment and Training Committee (EETC) in relation to the amendments, the Government committed to evaluating the appropriateness of the scope where other similar occupations may be justifiable. In developing the amendments, the Government consulted extensively with stakeholders representing first responders and other eligible employees, including unions, employers and the medical profession. The scope of the amendments was carefully considered, using an evidence-based approach using workers' compensation claims data, published literature, as well as the guidance and outcomes from recent reviews into first responder mental health, such as Beyond Blue's report, *Answering the Call*,[8] and the 2019 Senate Committee Inquiry into first responder mental health.[9] In addition, the scope of the amendments were balanced with providing presumptive coverage to those workers most at risk of cumulative exposure to trauma and developing PTSD and ensuring the ongoing financial sustainably of the scheme.

Further, at the time, the Government noted that all workers with trauma-related psychological injuries were not disadvantaged by the introduction of the presumption. All Queensland workers are currently able to make a workers' compensation claim for any work-related injury, including PTSD and other psychological injuries.

For 2021-22 there were almost 700 accepted claims for PTSD in the scheme. This includes claims accepted through both the presumptive pathway and the standard claims pathway. Emerging trends in PTSD claims by occupation show that the potential for increases in these claims are likely to come from occupations already covered by the presumptive legislation. The public sector accounts for the majority of claims (84.3 per cent) noting most first responders and eligible employees are employed in the public sector.

National Injury Insurance Scheme claims

The Queensland workers' compensation scheme also includes the National Injury Insurance Scheme (NIIS) for workers who are catastrophically injured in workplace accidents connected with Queensland. The NIIS is consistent with the NIIS for motor vehicle accidents under the *National Injury Insurance Scheme (Queensland) Act 2016*.

Workers are eligible for treatment, care and support (TCS) payments if they sustain certain serious personal injuries such as serious permanent spinal injury, a traumatic brain injury, high level or multiple amputations, severe burns or permanent traumatic blindness. In contrast with the Queensland workers' compensation scheme's short-tail design,

8 Beyond Blue Ltd, '*Answering the call* national survey, National Mental Health and Wellbeing Study of Police and Emergency Services – Final Report' (2018).

9 Australian Senate Education and Employment References Committee, '*The people behind 000: mental health of our first responders*' (2019).

eligible workers will have TCS provided for their lifetime unless they opt out of these payments and accept an award of treatment, care and support common law damages.

The Act empowers insurers to contract and contribute to operating expenses of the NIISQ agency established for the NIIS for motor vehicle accidents to perform their functions and exercise their powers in relation to TCS.

As at November 2022, 81 claims have been managed in the NIIS scheme for workplace accidents since its commencement in September 2016.

Queensland Treasury and WCRS have conducted a separate consultation process in relation to seeking stakeholder feedback about, among other things, pre-conditions for re-entry to NIIS after accepting lump sum TCS damage and exiting the NIIS. Work on this matter is continuing.

Occupational dust diseases

Queensland has undertaken a significant body of national-leading work in relation to pneumoconiosis (including silicosis and Coal Workers' Pneumoconiosis (CWP)) and other mine dust lung diseases (MDLDs) to ensure workers are appropriately diagnosed and supported through the workers' compensation scheme. This has included:

- Establishing the Mine Dust Health Support Service (MDHSS), which is a single point of contact for workers to access information and support regarding mine dust lung disease, and is a joint initiative between OIR, the independent statutory body Resources Safety and Health Queensland (RSHQ), and WorkCover. This service offers independent and confidential support and makes it easier for workers and their families to connect to the information, services and supports they need. The MDHSS was independently reviewed in 2021 and found the service is meeting its intent and providing quality support to current and former workers to navigate their mine dust health journey;
- Providing for a free lung disease examination for all former or retired Queensland coal workers who stopped working in the industry before 1 January 2017 and have 6 months cumulative exposure to coal dust through their employment in Queensland. This free lung disease examination was available until 1 January 2022;
- Facilitating world first expert medical guidelines[10] to assist with decisions on safe return to work after a MDLD diagnosis. The guidelines provide a best practice and evidence-based framework which considers the individual circumstances of the worker's MDLD, including its severity and the best outcome that can be achieved;
- WorkCover funding free health screening for all current and former workers in the stone benchtop fabrication industry. As at 30 June 2022, 1,053 workers and former workers in the industry have undergone a free health assessment. 204 stonemasons have been diagnosed with silicosis, 36 have a diagnosis of progressive massive fibrosis and a further 13 workers have a respiratory condition that is not silicosis;
- Counselling support for workers in the mining and stone benchtop fabrication industry;
- Implementing a new lump sum payment to workers with pneumoconiosis based on the severity of their disease and the ability to re-open a workers' compensation claim if a worker experiences disease progression;
- Facilitating the development of clinical guidelines[11] by medical professionals and for medical professionals for the consistent assessment and diagnosis of diseases related to respirable crystalline silica exposure; and
- WorkCover commissioning research[12] to develop an evidence-based approach to return to work and vocational rehabilitation support for workers suffering from silicosis. This research aimed to identify factors, principles or limitations that need to be considered in designing tailored return to work plans for workers to ensure they achieve a safe and early return to work.

Medical research grant funding

More recently, the Queensland Government committed up to $5 million over four years for medical research to improve the health and wellbeing of workers suffering from occupational dust lung disease, in particular CWP and silicosis (including accelerated silicosis). The funding aims to support medical research that would benefit Queensland workers with occupational dust lung diseases in the following areas:

- understanding the pathogenesis of silicosis (including accelerated silicosis) and CWP;
- identifying factors to determine disease severity and risk of disease progression (linked to ability to return to work); and

10 Office of Industrial Relations, *Returning workers with mine dust lung diseases to the workplace*, 2021. Available at: https://www.worksafe.qld.gov.au/rehabilitation-and-return-to-work/getting-back-to-work/mine-dust-lung-disease.

11 Office of Industrial Relations, *Guideline for assessing stone workers exposed to silica*, 2019. Available at: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0014/25232/guideline-for-assessing-stone-workers-exposed-to-silica.pdf.

12 Sim, M. R., Collie, A., Hoy, R. F., Edwards, G., Alif, S., Glass, D., Wyatt, M., & McInnes, J. (2019). Return to Work review: Return to Work and Vocational Rehabilitation Support for Workers Suffering from Silicosis. WorkCover Queensland. Available here: https://research.monash.edu/files/321747625/Silicosis_Return_to_Work_Review_Return_to_Work_and_Vocational_Rehabilitation_Support_for_Workers_Suffering_from_Silicosis.pdf.

- determining the efficacy and sensitivity of methods for early diagnosis, prevention and progression of disease including anti-fibrotic medications, pulmonary rehabilitation, whole lung lavage and other developing treatments.

Following a competitive evaluation process, over $3 million has already been granted to Queensland researchers, including interstate and international research collaborations. A further tender process is underway to award the remaining funding. More information can be found here.[13]

Claims for psychological injuries

The proportion of psychological statutory claims as a percentage of all lodgements increased slightly for 2021-22, at 6.1 per cent (6 per cent in 2020-21). Psychological claims currently represent 10.6 per cent of total statutory payments ($152 million for 2021-22) and have an average finalised time lost claim cost of $61,047 ($55,402 in 2020-21). The long duration of psychological injury claims affects the average finalised time lost claim cost.

In 2021–22, the average duration of a psychological injury claim was 181.4 days (168.5 days in 2020–21) compared with the overall scheme average of 72 days. The presence of a psychological injury also impacts the likelihood of a worker returning to work.

Rehabilitation and return to work

Since 2019 there have been a number of reforms that aim to improve rehabilitation and return to work outcomes in Queensland. This has included:

- requiring employers to notify their insurer of their Rehabilitation and Return to Work Coordinator, what workplaces they have responsibility for and how they are appropriately qualified for the work being undertaken at those workplaces. This aims to facilitate more effective communication with coordinators and enable targeted compliance and education with coordinators to support them in undertaking their important role; and
- requiring insurers to continue providing rehabilitation and return to work services in cases where the injured worker's statutory entitlement has ceased but they have not yet been able to return to work. This ensures workers are given every reasonable opportunity to achieve a durable return to work and their rehabilitation support is not ended prematurely when their statutory claim ends. In response, WorkCover established its Employment Connect program[14] which provides access to services such as help from consultants specialising in return to work, funding for courses to support upskilling, and job preparation and placement help.

Return to work rate

Returning an injured worker to the same job with the same employer is considered to be the best outcome which can be achieved on a claim.

The return to work rate for 2020-21 was 93.9 per cent in 2020-21. During the 2021-22 financial year, WorkCover identified errors in correctly recording the return to work outcome for WorkCover-insured workers when closing the claim. WorkCover advises there is a 95 per cent probability that the true return to work rate for these workers is between 84.4 and 91.5 per cent with a margin of error of 3.5 per cent.

A key factor that influences the return-to-work outcome on claims is the existence of a psychological or psychiatric injury. The return to work rate for primary psychological injuries has been approximately 80 per cent in recent years. Once an injured worker with a psychological injury has a significant amount of time off work, the return to work prospect reduces considerably. For instance, if an injured worker with a psychological injury has over 26 weeks off work, their likelihood of returning to any form of employment is approximately 60 per cent, compared to having less than 26 weeks off work with around 93 per cent likelihood of returning to employment.

The return-to-work rate for physical injuries is considerably higher than psychological injuries (which have a longer duration off work).

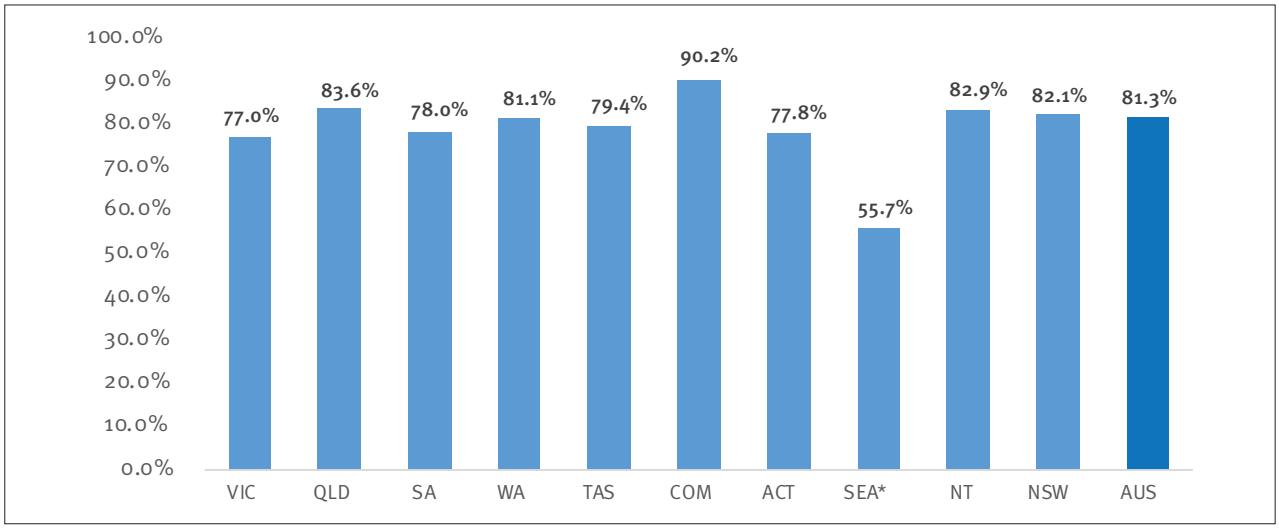
Every two years the National Return to Work Survey[15] commissioned by Safe Work Australia interviews a sample of workers from each jurisdiction. Workers are asked if they are currently working at the time of the survey, three to six months post finalisation of their claim. As shown in **Figure 5** below, 83.6 per cent of Queensland respondents state they are currently working, compared to the national average of 81.3 per cent. Being based on a survey, comparisons with other jurisdictions vary from year to year.

13 Queensland Government Ministerial Statements, $3m for dust lung disease research, 2022. Available at: https://statements.qld.gov.au/statements/95838.

14 Office of Industrial Relations, Employment Connect Program, 2020, Available at: https://www.worksafe.qld.gov.au/rehabilitation-and-return-to-work/employment-alternatives/employment-connect-program

15 Safe Work Australia, 'National Return to Work Survey – Summary report', 2021, https://www.safeworkaustralia.gov.au/doc/2021-national-return-work-survey-summary-report.

Figure 5 – 2021 Current return to work rate by jurisdiction (%)



Source: Safe Work Australia National Return to Work Survey 2021

Dispute resolution

Functions of the Regulator include undertaking and administering a range of dispute resolution processes in relation to workers' compensation claims. This function is delegated to and undertaken by WCRS. In comparison with other jurisdictions, disputes in Queensland as a proportion of annual claims are generally significantly lower. Queensland also has more timely and efficient dispute resolution, with 86.2 per cent[16] of disputes resolved in under three months, the highest of any jurisdiction.

Reviews of insurer decisions

Workers and employers aggrieved by insurer decisions can apply to the Regulator to review a decision. The review process is an administrative process involving a review on the papers rather than an adversarial or judicial process.

Review applications received have reduced by 2.5 per cent from 2,570 in 2020–21 to 2,506 in 2021–22. Despite the reduction, in 2021-22, 39.5 per cent of review applications related to psychological injury claims (up from 37.4 per cent in 2020-21), which generally involve greater complexity and time to review than claims for other injury types. Claims for psychological injury have generally increased over recent years, with the proportion of such claims increasing from 4.5 per cent in 2017-18 to 6.1 per cent in 2021-22.

Approximately 55 per cent confirm the insurer's decision and around 22 per cent set aside or vary the decision.

Appeals of the Regulator's review decisions

Workers and employers who are aggrieved by a review decision can appeal to the Queensland Industrial Relations Commission (QIRC), unless the decision relates to an employer's premium, in which case the Industrial Magistrate is the appeal body. An appeal is a hearing de novo, which means the Commissioner or Magistrate will hear both sides of the appeal and decide based on the facts and evidence presented during the hearing.

In 2021–22, 232 appeals were lodged with the QIRC. Of these, four decisions were further appealed to the Industrial Court. Appeal lodgements experienced an increase of 34.9 per cent in 2021–22.

Also notable is the proportion of applications for appeal which related to claims for a psychological injury, being 57.5 per cent in 2021-22 (55.4 per cent in 2020-21).

Medical assessment tribunals

Medical assessment tribunals (MATs) are independent panels of specialist doctors who, on referral from insurers, provide independent, non-adversarial, expert medical review and assessment of injury and impairment sustained by workers for the scheme. Decisions of the tribunals are final and binding unless fresh medical evidence, not known about the worker at the time of the tribunal's decision, can be produced within 12 months of the decision.

Assessment of the degree of permanent impairment for psychological injuries can only be made by a medical assessment tribunal. This requirement was introduced in 1995 and differs from assessments of physical injuries which may be assessed by up to two independent specialists before final determination by a MAT.

16 Safe Work Australia, 'Comparative performance monitoring report 24th edition', 2022, https://www.safeworkaustralia.gov.au/comparative-performance-monitoring-report-24th-edition.

Increasing demand for MAT services has been observed over the past three years. In 2021-22, 3,066 referrals were made to the MAT. Since 2019-20, referrals have increased 10.5 per cent (from 2,774). Of the cases heard, 79.1 per cent (2,425) were heard at a General Medical Assessment Tribunal – Psychiatric (77.8 per cent in 2020-21). A further 15.1 per cent (463) of cases were determined at an Orthopaedic Tribunal.

WCRS has worked proactively with scheme stakeholders to minimise delays and disruption throughout COVID-19 lockdowns, evolving health directives and localised flooding. This has included the following initiatives:

- implementing a virtual MAT hearing model (from May 2020) to ensure continued operation of the MATs in response to COVID-19 travel restrictions and safety requirements. In 2021-22, approximately 40 per cent of all tribunal matters proceeded by virtual hearing;
- developing MAT referral guidelines and forms to improve the quality of insurer referrals to facilitate prompt bookings;
- additional resourcing, regular weekend overtime and scheduling of additional hearings after hours;
- additional intensive psychiatric and orthopaedic hearings planned to reduce hearings timeframes;
- an internal business review of the block booking processes to gain efficiencies; and
- embracing modern technology including completing the roll out of new dictation/transcription software and continuing to pilot voice recognition software.

Monitoring and enforcing compliance with the Act

WCRS performs regulatory functions of the Regulator under the Act. These functions include, among other things, monitoring the performance of insurers and their compliance with the Act.[17] WCRS regulatory activities are underpinned by a Compliance and Enforcement Policy[18] (the CE Policy). The CE Policy applies to all duty holders under the Act including employers, insurers, workers and service providers. Select information about WCRS's recent regulatory approach and performance is summarised below.

Self-insurer monitoring

WCRS monitors the performance of self-insurers through complaints, claims data analysis, return to work outcomes, and undertaking work health and safety and claims management audits.

Following an independent review in 2017, WCRS has worked extensively with scheme stakeholders to implement a contemporary regulatory approach to self-insurer performance, monitoring and compliance. This culminated in the CE Policy and a risk-based Self-insurer performance and compliance framework.[19]

Consistent with these documents, WCRS uses a variety of enforcement tools to regulate self-insurer performance and compliance. A reduction in licence renewal duration is one enforcement method employed by WCRS. As at 1 July 2022, 17 self-insurers had a 4-year licence duration (the maximum available duration), seven self-insurers had a 3-year licence duration, two self-insurers had a two-year licence duration, and one self-insurer had a one-year licence duration. The main reasons for a reduced licence term are sub-optimal claims management, return to work or work health and safety outcomes, and financial viability concerns.

In 2021-22, WCRS has undertaken, facilitated or assessed the following self-insurer performance monitoring activities:

- seven licence renewal audits;
- 15 mid-licence audits;
- five special licence condition audits;
- 20 improvement action plans issued; and
- 12 licence renewals.

17 *Workers' Compensation and Rehabilitation Act 2003*, s 327.

18 Workers' Compensation Regulatory Services, Office of Industrial Relations, '*Workers' Compensation and Rehabilitation Act 2003* Compliance and Enforcement Policy' 2023, Available at: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0018/25209/workers-compensation-act-compliance-enforcement-policy.pdf

19 Worker's Compensation Regulatory Services, Office of Industrial Relations, 'Self-insurer Performance and Compliance Framework', 2023, Available at: https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0020/23564/self-insurer-performance-compliance-framework.pdf

Prosecution of offences

As part of its compliance activities, WCRS also investigates and prosecutes offences under the Act. These include, for example:

- offences relating to worker and employer conduct, such as defrauding an insurer and providing false information to an insurer or medical provider;[20]
- offences relating to employer conduct, such as failing to insure,[21] failing to report worker injuries to insurers,[22] and obtaining or using workers' compensation documents for a purpose relating to the employment of a worker;[23]
- offences relating to insurer conduct, such as failing to take all reasonable steps to secure the rehabilitation and early return to suitable duties of workers;[24] and
- offences relating undesirable practices within the scheme, such as claim farming.[25]

Prosecutions serve as a strong deterrent against potential offenders and help to preserve the integrity of the scheme. Accordingly, the Regulator takes offences seriously and prosecutes fraud to the full extent of the law.

In 2021-22, the Regulator commenced 29 prosecutions for potential fraud. In this same period, a total of 12 cases were successfully prosecuted, consisting of 11 workers prosecuted for offences relating to fraud or providing false information, and one employer prosecuted for failure to insure. A summary of these prosecutions is available on WorkSafe Queensland's website.[26]

As a result of the 12 successful prosecutions:

- the Regulator recovered $545,400.36 in restitution on behalf of insurers;
- the Regulator was awarded $232,985.75 in legal costs; and
- defendants were ordered to pay fines totalling $121,500 to the Regulator.

20 *Workers' Compensation and Rehabilitation Act 2003*, s 533, s 534.

21 *Workers' Compensation and Rehabilitation Act 2003*, s 51.

22 *Workers' Compensation and Rehabilitation Act 2003*, s 133.

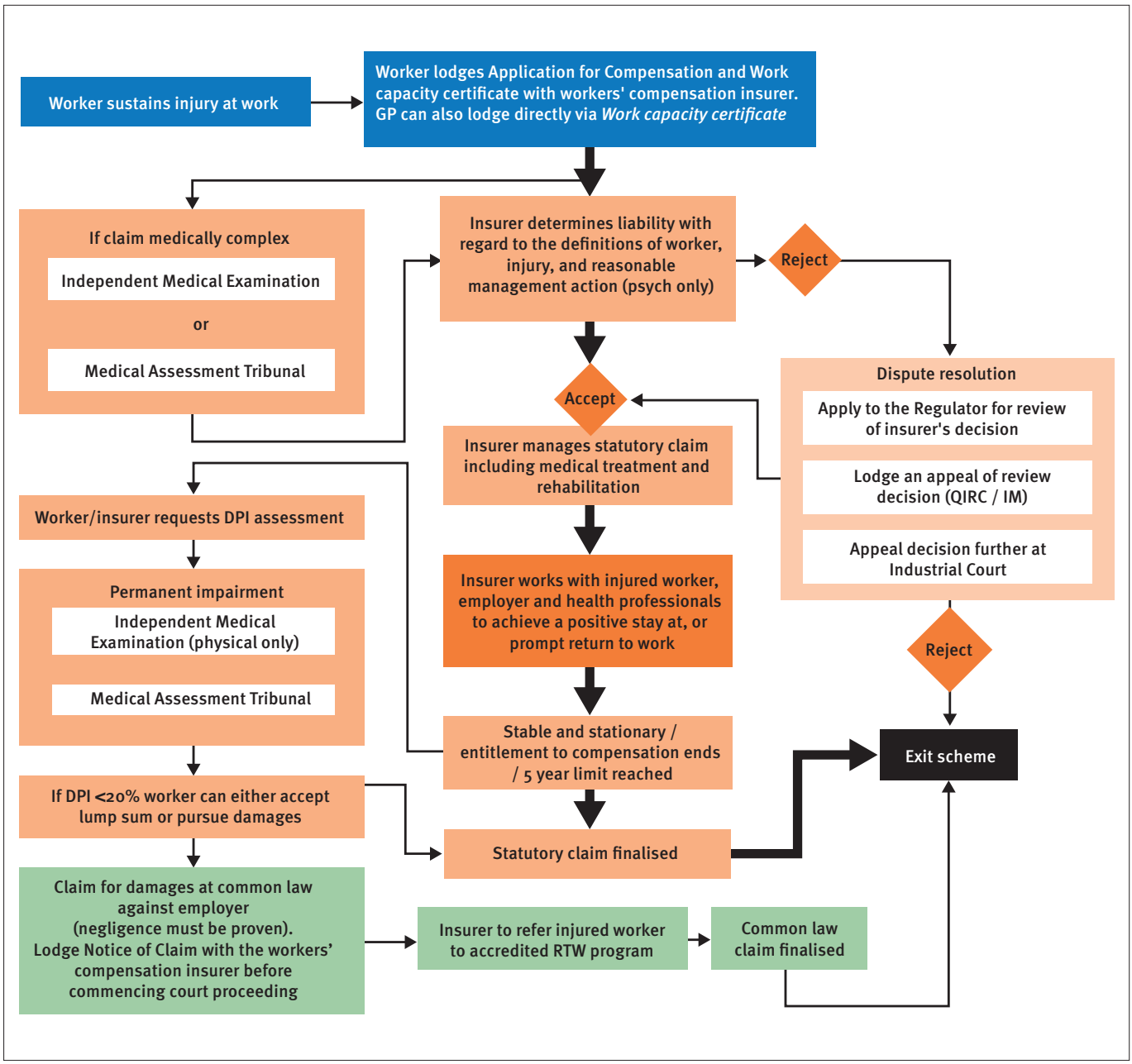
23 *Workers' Compensation and Rehabilitation Act 2003*, s 572A.

24 *Workers' Compensation and Rehabilitation Act 2003*, s 220.

25 *Workers' Compensation and Rehabilitation Act 2003*, s 325R.

26 Office of Industrial Relations, Workers' Compensation Prosecutions, 2020. Available at: https://www.worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement/prosecutions/workers-compensation-prosecutions

The claims process: schematic representation



Appendix G: Recent reviews of the Queensland workers' compensation scheme and legislative amendments

2009 review

In 2007-08, WorkCover recorded an operating deficit of $381 million before tax, followed by an $894 million deficit before tax in 2008-09. These deficits were absorbed by investment reserves.

In 2009, the WorkCover Board commissioned a business review that identified the drivers of WorkCover's financial position as a combination of three factors:

- the increasing cost of claims, particularly a disproportionate increase in common law claims payments and the number of claims when compared to statutory claims payments and the number of claims;
- premium income not keeping pace with net claims growth; and
- two consecutive years of negative investment returns.

Following the release of a discussion paper, *Ensuring Sustainability and Fairness*, 60 submissions were received from scheme stakeholders. A series of stakeholder reference group meetings were also held. Following this process of consultation the government adopted a package of measures that resulted in:

- harmonisation with the *Civil Liability Act 2003* (Civil Liability Act)
- increasing the onus of proof on workers to prove employer fault
- requiring third party contributors to participate in settlement negotiations
- clarifying that costs were potentially payable against plaintiffs whose cases were dismissed.

These amendments are outlined in more detail below.

Harmonisation with Civil Liability Act

The treatment of common law claims under the Act was brought more into line with claims under the Civil Liability Act in terms of liability (standard of care), contributory negligence and caps on general damages (for pain and suffering) and damages for economic loss.

The adaptation of Civil Liability Act provisions on liability and contributory negligence resulted in workers suing under common law having to prove they took precautions against foreseeable and significant risks of harm, where a reasonable person in the position of the person would have taken the precautions. This did not mean the application of the doctrine of voluntary assumption of risk, because the courts have recognised that it is inappropriate in an employment context. However, obvious risks could be taken into account in determining the extent of contributory negligence on the part of an injured worker.

General damages were capped at $300,000 (indexed annually). General damages make up the smaller proportion of damages awards, and are relatively stable across different personal injury schemes. Awards of general damages of more than $300,000 are extremely unusual in workers' compensation matters. The Injury Scale Value (ISV) to determine general damages was also introduced.

Damages for economic loss were capped by limiting the basis for calculating loss of future earnings to three times the annual rate of Queensland Ordinary Time Earnings.

Increasing onus of proof on workers to prove employer fault

The 2008 judgment of the Queensland Court of Appeal in *Bourk v Power Serve Pty Ltd and Ors* [2008] QCA 225 affirmed that, if a worker is injured at work and there is a causal connection between the injury and work, the employer has breached its duty under the then *Workplace Health and Safety Act 1995*. The precedent set by this judgment led to increasing numbers of common law claims based on the argument that strict liability attached to an employer if a work injury had occurred, regardless of fault.

To reverse this interpretation, the *Workplace Health and Safety Act 1995* was amended in 2010 to provide that no provision of that Act created a civil cause of action based on a contravention of the provision. This exclusion has continued as part of the *Work Health and Safety Act 2011*.

Requiring third party contributors to participate in settlement negotiations

Contributors are parties that an employer or insurer considers may share liability for an injury, for example manufacturers, suppliers, designers and importers of plant. Previously, the obligations on contributors to participate in pre-court settlement conferences were not as strict as those imposed on the employer/insurer. A number of stakeholders reported that some contributors used this as a tactic to unnecessarily delay the settlement of claims.

Legislative amendments in 2010 aligned the obligations of contributors and employers/insurers with respect to exchanging relevant documents, providing a certificate of readiness and providing a written final offer to the party that has joined the contributor.

Costs against plaintiffs whose cases are dismissed

The Act previously allowed costs orders only where the court awarded more or less than a plaintiff's final written offer of damages. This had been interpreted by the courts to mean that if the claim was dismissed, no costs were payable by the plaintiff. A legislative amendment in 2010 allowed courts to make costs orders in these cases.

Structural review of institutional and working arrangements

In submissions received following the *Ensuring sustainability and fairness* discussion paper that stakeholders expressed concerns about a lack of available information on scheme performance when compared with other workers' compensation jurisdictions. There were also concerns about clarity on the roles of Q-COMP, and WorkCover, as well as lawyers and the level of legal costs in the system.

A structural review of institutional and working arrangements in the scheme commenced in 2010. An independent reviewer, Mr Robin Stewart-Crompton, led the review. The review was supported by a stakeholder reference group comprising two employer representatives, two union representatives, two representatives of the legal profession, the chief executives of WorkCover and Q-COMP and the then Associate Director-General of the Department of Justice and Attorney-General, who chaired the group.

Mr Stewart-Crompton reported in late 2010. His review made 51 recommendations to improve these aspects of the scheme, all of which were, following a period of public comment, accepted for implementation.

Roles and functions in the workers' compensation scheme

The Review report recommended development of an overarching cross-agency strategy to enable more effective prevention of work-related injury and disease. It required WorkCover, Q-COMP and Workplace Health and Safety Queensland to work together, with each agency's strategic or business planning taking account of the overarching strategy. The strategy allowed agencies to develop, where appropriate, common or complementary goals, policies and initiatives including joint activities.

Transparency

To address stakeholder concerns on transparency, a group of recommendations proposed:

- improving the information flow about the scheme to persons affected by WorkCover's decisions;
- addressing gaps in the Regulator's (Q-COMP) powers;
- requiring all government departments and agencies to adopt best practice compliance with workplace health and safety and workers' compensation obligations; and
- requiring a review of the workers' compensation scheme every five years.

The requirement to conduct a review of the scheme every five years passed into legislation in 2011. With the exception of the remaining recommendations requiring legislative amendment (which were not implemented, as an election was called before the legislation could be enacted), other recommendations, such as regular actuarial presentations on claims trends and outstanding claims liability, were put in place.

Efficiency and effectiveness of claims managements

Another set of recommendations addressed perceptions of: WorkCover not adequately communicating with employers; insufficient investigation of claims; and unnecessary speed in settling common law claims. WorkCover published a new service charter incorporating the recommendations, and conducted regular stakeholder forums. WorkCover also established a Medical Advisory Panel. Senior specialists were appointed to this panel and became available to advise WorkCover claims staff.

Legal costs and management of the legal profession

Concerns were frequently raised that legal costs absorb too much of settlements or awards of damages. While the Review was not presented with evidence of any systematic abuses or direct evidence of inappropriate behaviour by legal practitioners, the report recommended periodic surveys by an impartial third party to determine how much of a settlement has been paid to the various parties, and that survey reports be made publicly available. Once this information was available, discussions should occur, if necessary, on options for managing legal costs. It also recommended further research to identify how the advertising of legal services affected claims for workers' compensation.

The scope of the survey recommended was subsequently determined by the then Government to involve significant cost and privacy issues and, consequently, it did not take place. While lawyer advertising went wider than workers' compensation matters, the *Legal Profession Act 2007* as well as the *Fair Trading Act 1989* and the *Competition and Consumer Act 2010* (Cth) imposed obligations on lawyers and prohibited advertising or activity that is false or misleading. Remaining concerns could be referred, it was believed, to the Legal Services Commission.

Rehabilitation and return to work

On the need for a greater focus on rehabilitation and return to work, the report emphasised:

- more emphasis on securing compliance with the statutory obligations of employers and workers;
- better linkages between the activities of WorkCover and the then Regulator, Q-COMP;
- better guidance material for all interested parties;
- better training and support for Rehabilitation and Return to Work Coordinators; and
- the adequacy of existing protections under the Act for injured workers who are dismissed from their employment.

With the exception of recommendations requiring legislative amendment (again, due to the election), most recommendations were implemented. These included the Q-COMP Regional Network Program, in which 10 regional representatives were appointed and 45 regional forums held in regional Queensland, with over 1,299 attendees. The program promoted better understanding of rehabilitation and return to work services. Q-COMP also appointed an experienced rehabilitation and insurance professional to review and revise best practice guidance material for any person with rehabilitation and return to work obligations or needs under the workers' compensation system.

First five-yearly review of the operation of the scheme and *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013*

The *Workers' Compensation and Rehabilitation Act 2003* requires the responsible Minister to ensure a review is completed at least once every five years on the operation of the scheme.[1] On 7 June 2012, the then-Government referred the Parliament's Finance and Administration Committee to conduct the review, which they completed with a report and recommendations on 23 May 2013.

The consultation consisted of 246 written submissions, 18 public hearings, 5 briefings and 5 in-camera hearings. Among other things, the review identified the structure of Queensland's workers' compensation scheme as the most complex within Australia due to its three separate agencies.

The *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* passed Parliament on 17 October 2013. Included in the Act was a threshold for accessing damages at common law of more than 5 per cent permanent impairment. The onus of proof for compensation of psychiatric or psychological injuries was also increased (by inserting the words 'the major' in relation to causal factors of the injury), and work related impairment (WRI) was replaced by a degree of permanent impairment (DPI) as the measurement for determining statutory lump sum compensation.

Amendments were made to the requirements concerning rehabilitation appointments and return to work coordinators, and insurers became required to refer injured workers to a return to work program. The Amendment Act also provided access to the claim history of prospective workers for employers in certain circumstances, and removed a potential loophole associated with *Foster & Anor v Cameron* [2011] QCA 48.

The Act also merged the Workers' Compensation Regulatory Authority (Q-COMP) into the Office of Fair and Safe Work Queensland in the Department of Justice and Attorney General. The Workers' Compensation Regulator (in effect, OIR) replaced the Authority. WorkCover were to refer investigations and prosecutions for fraud-related offences to the Regulator, and the associated penalties increased.

Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015

On taking office, the Palaszczuk Government established a stakeholder reference group to advise on how the Act was to be amended in reinstating common law rights for injured workers. The consultation process provided representation for employer, worker and legal representatives, WorkCover and the Association of Self-Insured Employers Queensland.

The Queensland Parliament passed the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015 on 24 September 2015*. It amended the Workers' Compensation and Rehabilitation Act 2003 to remove the requirement for a permanent impairment of greater than 5 per cent for workers seeking access to common law. It removed thresholds for injuries sustained on or after 31 January 2015. Additional compensation in the form of lump sum benefits was provided for workers injured between 2013 and 30 January 2015 and affected by the operation of the common law threshold.

1 *Workers' Compensation and Rehabilitation Act 2003*, s 584A.

The Amendment Act also provided provisions for current and former firefighters diagnosed with one of the 12 specified cancers on or after 15 July 2015. Similar to those of other jurisdictions, the provisions deemed most injuries of full-time, part-time and active volunteer firefighters to be work related for the purposes of compensation.

The Amendment Act also removed the ability of prospective employers to obtain copies of a workers' compensation claims history from the Workers' Compensation Regulator, and streamlined regulatory processes by clarifying certain aspects of claim procedures.

Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016

The National Injury Insurance Scheme (NIIS) was established to complement the National Disability Insurance Scheme rollout by ensuring no-fault lifetime care and support arrangements for injuries relating to four streams. The streams concern injuries requiring medical treatment, those occurring in motor vehicles, in the workplace, and at home or in the community. The NIIS operates as a federation of Australia's state and territory insurance schemes. The Queensland Parliament passed the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016* on 31 August 2016. The Amendment Act provided eligible injured workers in Queensland with statutory entitlements to lifetime treatment, care and support payments under the National Injury Insurance Scheme.

The Act also provided the opportunity for a worker to seek common law damages for the cost of treatment, care and support if their injury was caused by negligence. Workers' compensation insurers will contract these services from the National Injury Insurance Agency for a user-pays model.

The Education, Tourism, Innovation and Small Business Parliamentary Committee conducted an inquiry to provide recommendations on how it to implement it in relation to Queensland's workers' compensation scheme.

The committee provided three recommendations, all of which were enacted. They were: that Queensland Treasury consult with stakeholders such as employers, insurers, unions, representative groups and service providers; that a parliamentary portfolio committee oversee the NIIS regarding workplace injuries and provide annual reviews and reports for its first five years of operation; and that participation in the WorkCover scheme be extended to host employers and principal contractors, and that these third parties gain the option of taking out or combining their coverage with a private insurance policy.

The Act also responded to the judgment made by the Supreme Court in *Byrne v People Resourcing (QLD) Pty Ltd & Anor* [2014] QSC 269. The judgment had encouraged principal contractors and other employers to use 'hold harmless' clauses, where they transferred any liability relating to injury costs to subcontractors. As a result, WorkCover had to indemnify a third party liability holder against an employer's policy irrespective of whether they had a contract of insurance.

In reversing the *Byrne v People Resourcing* judgement, the Act allowed WorkCover to contribute to a common law damages claim as a third party and prevent the transfer of liability from principal contractors or host employers to those with a workers' compensation insurance policy.

The Act allowed general insurers to issue financial guarantees for 150 per cent of estimated claims liability. It also clarified the period with which the Workers' Compensation Regulator must commence handling complaints relating to fraud. It changed methods of automatic indexation to prevent a reduction in the ABS estimate of average weekly earnings from leading to a reduction of weekly compensation and entitlement rates.

Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment 2017

Following the re-identification of Coal Workers' Pneumoconiosis (CWP) in Queensland, Parliament established the Coal Workers' Pneumoconiosis Select Committee on 15 September 2016. CWP ('black lung') is a lung disease contracted through workplace exposure to coal dust over a period of time and is considered a latent onset injury under the workers' compensation scheme.

Evidence provided before the Select Committee raised concerns regarding how the workers' compensation scheme operated in relation to CWP. In December 2016 the Government established a CWP Stakeholder Reference Group consisting of representatives of employers, unions, the legal profession, insurers and departments relevant to coal mining to provide advice on gaps in the workers' compensation scheme.

The CWP Stakeholder Reference Group recommendations include:

- an interim medical examination for former coal workers concerned they have CWP, and who have retired or let the coal industry prior to 1 January 2017;
- ensuring workers with simple CWP who experience disease progression could apply to reopen their claim to access further benefits under the workers' compensation scheme;
- extra rehabilitation support to assist workers back into suitable alternative employment; and
- streamlining workers' compensation arrangements so they properly aligned with the Coal Mine Workers' Health Scheme.

The *Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis and Other Legislation Amendment 2017* (the CWP Amendment) implemented two recommendations of the CWP Stakeholder Reference Group. It amended the *Workers' Compensation and Rehabilitation Act 2003* to address concerns about former or retired coal workers not undergoing medical testing for CWP due to the high costs involved. The legislative changes also took account of how the nature of the common law system in Queensland had the potential to lead to injustice to workers with pneumoconiosis who experienced disease progression. This injustice was addressed by the provisions which allow re-opening of claims for pneumoconiosis to access further statutory compensation where a person experiences disease progression, but without permitting the re-opening of common law claims. The re-opening provisions provide a simple and expedient way for workers who suffer disease progression to re-open their workers' compensation claim and access a 'no fault' statutory lump sum top-up payment and keeps legal costs to a minimum.

The Act also introduced a lump sum compensation for workers with pneumoconiosis. This recognised the ongoing nature of pneumoconiosis injuries and ensures workers with CWP or another pneumoconiosis will have access to compensation for their injury, even in circumstances where they are not suffering any permanent impairment for work.

The amendments also addressed recent decisions of the Queensland Industrial Relations Commission to grant applications to stay a decision of the Workers' Compensation Regulator following the review of a self-insurer's decision on a workers' compensation claim. The granting of these stays had resulted in injured workers being denied access to weekly compensation while the appeal is determined. The *Industrial Relations Act 2016* was amended to make it clear that a stay cannot be granted in an appeal against a decision to accept compensation.

Second five-yearly review of the operation of the scheme – 2018 review and *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*

An independent reviewer, Professor David Peetz, was appointed to conduct the second review of Queensland's workers' compensation scheme.

The review found the scheme was performing well, was financially sound, involves low costs for employers, and provides fair treatment for both employers and injured workers. While major reform was not recommended, opportunities were identified to improve the process and experience for injured workers and protect workers in the emerging gig economy. The review made 57 recommendations, 15 of which would require legislative amendment to implement and the remaining being administrative in nature. A Stakeholder Reference Group, comprised of unions, employer groups, insurers, allied health representative bodies, and the legal community, was formed to consider the proposals.

On 22 October 2019, the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019* was passed by the Queensland Parliament, implementing 12 of the review's legislative recommendations.

The remaining three legislative recommendations relate to the potential extension of workers' compensation coverage to workers in the gig economy, and on 7 June 2019 a Consultation Regulatory Impact Statement (CRIS) was released seeking views on the extension of workers' compensation coverage to certain gig workers and bailee taxi and limousine drivers in Queensland.

The recommendations implemented by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019* are set out below.

Definition of psychological injury

At the time of the 2018 review, the Act required a compensable psychiatric or psychological disorder to have arisen out of, or in the course of, employment if the employment is the major significant contributing factor to the injury. Prior to the amendments made in 2013, the definition of compensable psychological injury only required the worker's employment to be 'a significant' contributing factor in line with the definition for physical injuries.

The review found that the 2013 amendments had only a negligible impact on the rejection rate for psychological and psychiatric claims, and recommended the definition of psychological injury in section 32 revert to the previous definition and replace 'the major' with 'a' as the qualifier for work's 'significant contribution' to the injury.

Early intervention for psychological injuries

At the time of the 2018 review, the Act provided that payments were only be able to be made to injured workers where they have an accepted workers' compensation claim. Due to the complexity of these claims they can take longer to decide, and workers must wait a significant period of time before being able to access compensation benefits (an average of 34 working days in 2017-18). To reduce the severity, duration, return to work outcomes and recurrence of psychological injuries, the review recommended insurers meet the costs of a prescribed number of treatment services up until the time the claim is determined.

The Act was amended to require that insurers must take all reasonable steps to provide reasonable services to support workers with a psychological injury during claim determination on a without prejudice basis, excluding hospitalisation costs.

Insurer discretion to waive time limit if a worker is certified with an incapacity

Under section 131 of the Act, a worker's application for compensation is only valid and enforceable if it is lodged within six months after the entitlement to compensation arises. When an entitlement to compensation for an injury arises is defined by section 141 as the day on which the worker is assessed by a doctor.

In *Blackwood v Toward* [2015] ICQ 008, it was determined that the six-month time limit began on the date the doctor assessed the worker as having a work-related injury even if at that point there is no incapacity for work. In consultation, stakeholders noted that this interpretation has negatively impacted workers with chronic, insidious or psychiatric injuries who attempt to manage their injury at work before deteriorating, and do not lodge a claim when they are assessed by the doctor but at a later time when they become incapacitated for work.

At the time of the 2018 review, the Act allowed an insurer to waive the time limit if the insurer is satisfied that a claimant's failure to lodge the application was due to a mistake; absence from Queensland; or a reasonable cause (section 131(5)). The amendments provide for a further circumstance in which an insurer may waive the time limit, which is if the worker is certified with an incapacity (either total or partial) and lodges their claim within 20 business days of the certification.

Rehabilitation and Return to Work - access to accredited programs

Under section 226 of the Act, large and/or high-risk employers are required to appoint an appropriately qualified person to undertake the functions of a rehabilitation and return to work coordinator (RRTWC). The Review found that since the requirement for coordinators to be accredited was removed in 2013, stakeholders consider that the skill level of this group has reduced.

To address concerns, the amendments allow the Workers' Compensation Regulator to approve a list of training courses or qualifications for RRTWCs relevant to the industry of the employer. If a training course is approved and the RRTWC has completed that course, then a statement that the RRTWC has successfully completed the approved training would be sufficient to satisfy the requirement that the RRTWC is appropriately qualified. If there is no approved training course, or the RRTWC has not completed the approved training course, then the employer would be required to demonstrate how the RRTWC is appropriately qualified.

Apologies and expressions of regret exempt from consideration in common law claims

While numerous positive outcomes exist for both workers and employers if an employer offers a sincere apology to a worker following a workplace injury, the review found that many employers are hesitant to apologise to workers, fearing that it will be interpreted as an expression of liability. The case law, including the High Court decision of *Dovuro Pty Ltd v Wilkins* [2003] HCA 51, indicates that although apologies have no effect for a finding of negligence, as the question of negligence is for a Court to determine, what is said after an event may constitute an admission of facts relevant to determining liability at common law.

Under the Civil Liability Act, apologies regarding other personal injuries matters in Queensland are able to be provided without prejudice, that is, they have no 'liability' consequences. The amendments exempt expressions of regret and apologies provided by employer representatives following a workplace injury from being considered in any assessment of liability in a civil action brought under the Act (specifically a common law claim for damages under chapter 5), to bring the Act in line with the Civil Liability Act.

WorkCover-funded health and safety initiatives

The Act was amended to clarify that WorkCover Queensland can fund and provide programs and incentives that support employers improving health and safety performance, in consultation with Workplace Health and Safety Queensland and other relevant regulators.

Requirement for self-insured employers to report injuries and payments to their insurer

During the review, concerns were raised by stakeholders regarding the lack of transparency in injury reporting by self-insured employers. In particular, the requirement to notify WorkCover of all injuries only applies to premium paying employers and excludes self-insurers. This was noted as resulting in underreporting and created the potential for self-insured employers to avoid their obligations to injured workers. The amendments require self-insured employers to notify their insurer when a worker sustains an injury for which compensation may be payable.

Workers' compensation scheme coverage of unpaid interns

The review identified that an unpaid intern will not be covered by the workers' compensation scheme where the intern is engaged outside of a vocational placement or work experience arrangement. To ensure vulnerable interns have access to workers' compensation, the amendments add a new category of worker into Schedule 2, Part 1 of the Act.

Rehabilitation and Return to Work - coordinator qualifications, courses and access to accredited programs

The amendments require employers to provide the details of their Rehabilitation and Return to Work Coordinators to their insurer, including a statement of how the coordinator is appropriately qualified.

Life expectancy to qualify for terminal condition lump sum

At the time of the 2018 review, the Act defined a terminal condition as being a condition that is expected to terminate the worker's life within 2 years after the terminal nature of the condition is diagnosed. Experience from silicosis claims has shown that some workers are being diagnosed with a terminal condition that is expected to terminate the worker's life within 5 years. A worker with a terminal condition greater than 2 years is excluded from entitlement to the latent onset terminal lump sum compensation. The amendment extended the entitlement to the latent onset terminal entitlements by removing the reference to 2 years.

Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2021

This Act introduced a presumption that for first responders and other eligible employees, a diagnosis of post-traumatic stress disorder (PTSD) will be deemed to be a work-related injury unless there is evidence to the contrary. The objective of the amendment was to provide an alternative claims pathway for first responders who are struggling with PTSD by reversing the onus of proof.

A stakeholder reference group was established to consider the findings of recent national reviews (Beyond Blue's 2018 report, *Answering the Call*; the Commonwealth Senate inquiry into first responder health, *The people behind 000: mental health of our first responders*) and the findings of the independent review undertaken by Phoenix Australia, Centre of Posttraumatic Mental Health, of the workers' compensation claims process for first responders claiming for psychological injuries.

The stakeholder reference group found that while trauma-related injuries from single or cumulative trauma are compensable under the scheme, presumptive workers' compensation laws were an option to assist first responders in overcoming barriers to accessing compensation, such as difficulties in proving the legislative test for 'injury', as many first responders are unable to identify one particular incident causing their compensation due to their cumulative exposure to trauma.

Personal Injuries Proceedings and Other Legislation Amendment Act 2022

This Act introduced penalties to prevent claim farming for personal injury and workers' compensation claims. 'Claim farming' is a process by which a third party, the claim farmer, cold-calls or otherwise approaches individuals to pressure them into making a compensation claim for person injuries, then sells the individual's personal information to a legal practitioner or other claims management service provider who handles the claim.

The amendments created two new offences prohibiting claim farming practices, modelled on the existing equivalent provisions in the *Motor Accident Insurance Act 1994*. The first offence removes the financial incentive to engage in claim farming by prohibiting a person from personally approaching or contacting another person to solicit or induce them to make a claim. The second offence prohibits a person from personally approaching or contacting another person to solicit or induce them to make a claim. The amendments also facilitate an information sharing framework among the relevant enforcement bodies, being the Legal Services Commissioner, the Workers' Compensation Regulator, and the Motor Accident Insurance Commissioner.

The amendments also require law practices representing claimants in personal injury and workers' compensation matters to certify at various stages throughout a claim that the supervising principal and each associate of the law practice has not paid a claim farmer for the claim, or approached, solicited, or induced the claimant to make a claim in contravention of the claim farming provisions.

The *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* also confirmed the policy intent for when an entitlement for terminal workers' compensation arises under the Act. Following the decision of the QIRC in *Blanch v Workers' Compensation Regulator* [2021] QIRC 408, which held that there was to be no limit imposed on when a worker can access terminal compensation, the amendments re-inserted an explicit timeframe in the definition of 'terminal condition'. A five-year timeframe was considered to align with the policy intent of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019* and provide additional time where there is medical uncertainty about a worker's prognosis.

Appendix H: Post-Traumatic Stress Disorder: Prescribed occupations

The occupations and entities prescribed as eligible first responders or other eligible workers under the *Workers' Compensation and Rehabilitation Act 2003*, s 36ED and the *Workers' Compensation and Rehabilitation Regulation 2014*, ss 144A, 144B, sch 6A, sch 6B are:

1. An ambulance officer under the *Ambulance Service Act 1991* who is classified by the Queensland Ambulance Service as a paramedic of any type;
2. An authorised officer under the *Child Protection Act 1999*;
3. A corrective services officer under the *Corrective Services Act 2006*;
4. A fire service officer under the *Fire and Emergency Services Act 1990*;
5. A member of the State Emergency Service of an emergency service unit under the *Fire and Emergency Services Act 1990*;
6. A member of a rural fire brigade registered under the *Fire and Emergency Services Act 1990*, s 79;
7. A volunteer fire fighter or volunteer fire warden employed by the authority responsible for the management of the State's fire services;
8. A police officer or police recruit under the *Police Service Administration Act 1990*;
9. A youth justice staff member within the meaning of the *Youth Justice Act 1992*, s 59B;
10. A doctor or nurse employed in any of the following areas – emergency and trauma care, acute care, critical care, high-dependency care;
11. An occupation or profession performed in the private sector that corresponds to an occupation or profession mentioned in item 1, 3 or 4 of Sch 6A of the Regulation;
12. An occupation or profession performed by a local government employee within the meaning of the *Local Government Act 2009* that corresponds to an occupation or profession mentioned in item 1 or 4 of Sch 6A of the Regulation;
13. A coal mine worker within the meaning of the *Coal Mining Safety and Health Act 1999* who is appropriately qualified to perform a rescue function at a coal mine;
14. A worker within the meaning of the *Mining and Quarrying Safety and Health Act 1999* who is appropriately qualified to perform a rescue function at a mine;
15. Employees of the department in which the *Ambulance Service Act 1991* is administered;
16. Employees of the department in which the *Child Protection Act 1999* is administered;
17. Employees of the department in which the *Corrective Services Act 2006* is administered;
18. Employees of the department in which the *Fire and Emergency Services Act 1990* is administered;
19. Employees of the department in which the *Police Service Administration Act 1990* is administered; and
20. Employees of the department in which the *Youth Justice Act 1992* is administered.

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