



Legislative Council
Economy and
Infrastructure Committee

Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023

Inquiry

February 2024

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About the Committee

Functions

The Legislative Council Economy and Infrastructure Committee inquires into and reports on any proposal, matter or thing concerned with agriculture, commerce, infrastructure, industry, major projects, public sector finances and transport.

The Committee consists of members of the Legislative Council from the government, opposition, and other parties.

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Terms of reference

Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023

On 29 November 2023, the Legislative Council agreed to the following motion:

That this House requires the Economy and Infrastructure Committee to inquire into, consider and report, by 6 February 2024, on the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 and in undertaking this Inquiry the Committee is required to hold public hearings and is empowered, under the Standing Orders, to utilise a subcommittee.

Chair's foreword

The Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 is seeking to introduce changes relating to work place injuries and the WorkCover Scheme. This Inquiry focused on considering the Bill's proposed changes and the scope is deliberately confined to assessing the merits, implications, and potential ramifications of the Bill itself. It is not, and was never intended to be, an inquiry into the WorkCover Scheme itself.

The Inquiry had some significant challenges. Firstly, it was referred to the Committee by the Legislative Council on the last day of sitting in 2023 and had a required tabling date of 6 February 2024, the first day of the new parliamentary year. Therefore, the Inquiry was held over the Christmas and New Year period, when many people are on annual leave. Therefore, it was difficult for many of the organisations who the Committee identified as key stakeholders to engage as they would have liked.

I would like to express my appreciation for the stakeholders who were willing to give up valuable time to either appear in the three days of public hearings that were held in mid-December or to provide a submission subsequently. The Committee at all times recognised that the timing of the Inquiry and the tight deadline made it difficult for them.

I would also like to thank the Committee members for making themselves available during those very busy pre-Christmas times for the public hearings and for giving up time in January which is often one of the few periods in the year when members can have a break.

The Committee had different views on the preferred outcome of the Inquiry and that is reflected in minority reports in this report. However, despite these differences of opinion, I would like to express my appreciation of the courteous and professional manner in which members expressed their different views throughout.

I would also like to thank the staff of the Committee, in particular Michael Baker, the Committee Manager, and Caitlin Connally, the Inquiry Officer, for pulling together the public hearings at very short notice and for providing the comprehensive draft report quickly over the Christmas period. The administrative staff, Julie Barnes, Jo Clifford and Sylvette Bassey also made a significant contribution in getting this report ready in time for the tabling.



Georgie Purcell MLC
Chair

Findings and recommendations

1 Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023

RECOMMENDATION 1: That the Victorian Government conducts urgent and meaningful consultation with stakeholders, with the Bill proceeding after consultation is completed. The Government should table a consultation report in the Parliament prior to the Bill proceeding.

4

RECOMMENDATION 2: That the Victorian Government establishes an independent inquiry by an expert panel into the operation and viability of the WorkCover scheme within 3 months, which:

- obtains agreement of employee and employer organisations before the appointment of reviewers
- publicly reports on the outcome of the inquiry within 12 months.

5

RECOMMENDATION 3: That the Victorian Government releases the Occupational Health and Safety Amendment (Psychological Health) Regulations immediately.

8

2 Key issues raised in the Inquiry

FINDING 1: The Victorian Government's consultation in the development of the legislation was inadequate and left stakeholders feeling they had not been able to influence the Bill in any meaningful way.

11

RECOMMENDATION 4: Prior to the Parliament considering the Bill, that the Victorian Government undertakes a detailed and thorough consultation process focussed specifically on the Bill with business, unions and injured workers and their advocates. The consultation should include consideration of:

- the differentiation between physical and mental injury
- the exclusion of stress and burn out in mental injury assessments
- degrees of impairment and the impact on injured workers
- potential impacts on injured workers of limitations on payments after the second entitlement period
- the timetable for review of the legislation
- the establishment of Return to Work Victoria.

12

FINDING 2: The Bill's proposed definition of 'mental injury' is not fit for purpose. The definition does not clearly define 'significant' dysfunction meaning judicial interpretation will be necessary for the amendments to operate properly.

13

RECOMMENDATION 5: That the Victorian Government urgently consults with peak bodies including the Australian Medical Association, Royal Australian College of General Practitioners, Mental Health Victoria, the major psychology associations, the Australian and New Zealand College of Psychiatrists and other relevant stakeholders on its proposed mental injury amendments to ensure they are fit for purpose and meet contemporary understanding of treating and supporting mental health injuries.

14

RECOMMENDATION 6: That the consultation proposed in Recommendation 5 with relevant stakeholders includes consideration of the definition of 'mental injury' and the appropriateness of the use of the word 'significant'.

14

FINDING 3: The Bill's proposed changes to entitlements to compensation to clarify when a worker with a mental injury can be compensated are not fit for purpose. The requirements are too rigid and do not reflect contemporary practices of the mental health and wellbeing sector.

17

RECOMMENDATION 7: That as part of Recommendation 2, the review should also include consideration of the proposed mental injury amendments and publicly report within 12 months.

17

RECOMMENDATION 8: That the independent review proposed in Recommendation 2 examine:

- Clause 6 of the proposed Bill and its suitability
- options for a further exception where the work-related stress or burnout has arisen from events that, whilst they are typical or usual, are objectively unreasonable
- the appropriateness of the wording of ‘predominant cause’ in proposed s 40(2A). **19**

RECOMMENDATION 9: That the Victorian Government releases the outcome of any gender impact assessments conducted in relation to the Bill. If an assessment was not conducted, the Government should release its rationale. **19**

RECOMMENDATION 10: If a gender impact assessment has not been undertaken, that the Victorian Government conducts and releases an assessment on the proposed changes to the WorkCover Scheme as required under the *Gender Equality Act 2020* (Vic) prior to its consideration in Parliament. **20**

FINDING 4: It is unclear to the Committee how the Victorian Government determined the 20% threshold, or how many workers are going to be affected by this requirement. Given stakeholders’ significant concerns that the threshold is unreasonably high, the Government should provide an explanation, including any modelling. **21**

RECOMMENDATION 11: Prior to the resumption of debate on the Bill, that the Victorian Government tables in Parliament:

- an explanation of how the Victorian Government determined the 20% threshold for the assessment of a whole person impairment, including any modelling or data used to assist with decision-making
- an estimate of the number of people currently on WorkCover—
 - whose injuries exceed a 20% whole person impairment
 - whose injuries do not exceed a 20% whole person impairment, including how many have not exceeded the second entitlement period. **21**

FINDING 5: New Section 167A(2) proposed in Clause 16 creates an arbitrary distinction between physical and mental injuries which was not supported by the majority of stakeholder evidence. **23**

RECOMMENDATION 12: That the review proposed in Recommendation 2 include examination of Clause 16 to assess whether an alternative amendment would allow for greater flexibility and accuracy in assessing the totality of a worker’s physical and mental injuries. 23

FINDING 6: The impact of mental injury can be devastating for an injured worker and those close to them, the injury is often harder to detect and the recovery period can be long and complex. 25

RECOMMENDATION 13: In relation to the review proposed in Recommendation 2, that the appropriateness of Clause 9 of the Bill as it relates to s 263A of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) be considered with respect to entitlement to provisional payments. 26

RECOMMENDATION 14: In relation to the review proposed in Recommendation 2, in the context of Clause 16 of the Bill relating to s 167C of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), that the ability of the Authority or self-insurer to make determinations without a claimant having prior access to an independent medical examiner before a determination is made be considered. 26

FINDING 7: Cutting off support for workers with mental injuries after the second entitlement period will save the WorkCover scheme money but may have a negative impact on some workers. 29

RECOMMENDATION 15: In relation to the review proposed in Recommendation 2, the review should consider the impact of Clause 16 in relation to proposed s 167H in respect of the right of workers to arbitration. 29

FINDING 8: The Committee considers that 2027 is too late for a review of these changes as the impact on affected workers by then may have already occurred. 30

RECOMMENDATION 16: That should the Bill be passed, the statutory review of the impacts of the legislation be conducted in 2026 and a report tabled before the end of this parliament. 30

FINDING 9: The Bill's changes to eligibility criteria for receiving payments are significant and will result in a number of injured workers being disqualified from payments beyond the provisional period. The lack of meaningful detail about Return to Work Victoria means the Committee is unable to determine if workers' ineligible for payment will be properly supported to re-enter the workforce.

35

RECOMMENDATION 17: That the Bill be amended to create a Return to Work advisory committee responsible to the Board of WorkSafe for the coordination of return-to-work initiatives at WorkSafe. The committee should be tasked with identifying, overseeing the implementation, and monitoring the performance of Return to Work Victoria and reporting to the Board concerning return-to-work programs and outcomes. It should consist of equal representation of employees, employers and rehabilitation providers and report biannually to both Houses of Parliament.

36

RECOMMENDATION 18: That the review in Recommendation 2 look into the composition of the WorkSafe Board to consider the representation of employees, employers and skilled representatives with appropriate expertise.

36

RECOMMENDATION 19: That the review in Recommendation 2 consider the frequency and content of reporting by WorkSafe to Parliament.

36

RECOMMENDATION 20: That the review in Recommendation 2 consider premiums.

36

What happens next?

There are several stages to a parliamentary inquiry.

The Committee conducts the Inquiry

This report on the Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 is the result of extensive research and consultation by the Legislative Council Economy and Infrastructure Committee.

The Committee received written submissions, spoke with people at public hearings, reviewed research evidence and deliberated over a number of meetings. Experts, government representatives and individuals expressed their views directly to us as Members of Parliament.

A Parliamentary Committee is not part of the Government. The Committee is a group of members of different political parties (including independent members). Parliament has asked us to look closely at an issue and report back. This process helps Parliament do its work by encouraging public debate and involvement in issues.

You can learn more about the Committee's work at: <https://new.parliament.vic.gov.au/get-involved/committees/legislative-council-economy-and-infrastructure-committee>.

The report is presented to Parliament

This report was presented to Parliament and can be found at: <https://www.parliament.vic.gov.au/get-involved/inquiries/workcoverbill/reports>.

A response from the Government

The Government has six months to respond in writing to any recommendations made in this report.

The response is public and put on the inquiry page of Parliament's website when it is received at: <https://www.parliament.vic.gov.au/get-involved/inquiries/workcoverbill/reports>.

In its response, the Government indicates whether it supports the Committee's recommendations. It can also outline actions it may take.

Chapter 1

Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023

1.1 Introduction

The Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (referred to as ‘the Bill’ throughout the Report) is seeking to introduce changes relating to work place injuries and the WorkCover Scheme. It primarily amends the (the Principal Act), as well as other relevant legislation.

This Inquiry is focused on considering the Bill’s proposed changes, tasking the Committee with determining whether the clauses are appropriate, sound and fit for purpose.

1.2 Terms of Reference

On 29 November 2023, the Legislative Council agreed to the following motion:

That this House requires the Economy and Infrastructure Committee to inquire into, consider and report, by 6 February 2024, on the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 and in undertaking this Inquiry the Committee is required to hold public hearings and is empowered, under the Standing Orders, to utilise a subcommittee.

1.3 A Bill inquiry

Parliamentary committees are responsible for conducting inquiries into important policy, public or legislative matters. A committee conducts different types of inquiries, but generally they are policy inquiries with a wide ranging terms of reference.

Committees can also conduct inquiries into a specific bill or piece of legislation. A bill inquiry is focused on the contents of the proposed legislation referred to the committee. For this type of inquiry, a committee is tasked with considering the proposed legislation and making recommendations to Government on improving the bill.

This Committee was tasked with conducting a bill inquiry into the WorkCover Scheme Modernisation Bill.

1.3.1 Scope of the Inquiry

The Inquiry is specifically centred on the WorkCover Scheme Modernisation Bill, with the Committee directing its focus towards a comprehensive examination of the proposed legislation. Under the direction of the Terms of Reference, its scope is deliberately confined to assessing the merits, implications, and potential ramifications of the Bill itself.

However, the Committee notes that despite this targeted approach it received a plethora of evidence that extends beyond the confines of the proposed legislation. Stakeholders who engaged with the Inquiry made both practical feedback on the Bill itself but also delved into a broader spectrum of issues associated with WorkCover and the management of workers' injuries.

In the Committee's view, this broader input underscores the complexity and multifaceted nature of the challenges facing WorkCover and Victoria's approach to workplace injury management. The Committee would be remiss if it did not acknowledge the importance of these additional matters and recognise the need for further consideration.

Nonetheless, matters not contained in the Bill are outside the immediate purview of this Inquiry.

1.4 Key elements of the Bill

The Bill contains several significant proposed changes to WorkCover and dealing with workers' injuries:

- amends the Principal Act to insert a definition of 'mental injury'
- makes provisions for the circumstances where benefits can be paid for a worker's mental injury
- introduces an impairment threshold to assess eligibility for payments beyond the second entitlement period (after 130 weeks)
- amends the (Vic) to introduce the impairment threshold for assessing eligibility to receive payments beyond the second entitlement period
- amends the (Vic) in relation to use and sharing of information
- provides a process for reviewing the operation of the proposed amendments.

1.5 Stakeholders' views of the Bill

Throughout the Inquiry, the Committee heard consistent concerns from stakeholders about the proposed changes outlined in the Bill. In general, majority of stakeholders indicated they did not support the Bill and did not believe it should pass Parliament in its current form.

Whilst stakeholders raised a myriad of concerns, the main issues raised in relation to the Bill were:

1. **Introduction of 20% whole person impairment threshold:** the Bill's creation of a new impairment threshold of 20% whole person impairment was considered a blunt instrument for assessing disability and incapacity for work, potentially impacting a large number of injured workers.¹
2. **Redefinition of mental health injury claims and entitlement tests:** many stakeholders were concerned that the introduction of a definition of 'mental injury' as well as amendments to eligibility criteria for payments beyond the second entitlement period could significantly reduce the number of workers eligible to receive support.²
3. **Complicated litigation and new definition tests:** some stakeholders argued that the Bill was unworkable leading to significant and complicated litigation.³
4. **Removal of arbitration rights:** the Bill restricts the types of disputes that can be heard by the courts, which could lead to an increase in litigation and increase the number of cases needing to engage in adversarial judicial processes.⁴
5. **Failure to holistically consider worker injuries:** the new whole person impairment assessment was seen as not looking at a person holistically.⁵
6. **Lack of consultation and perception of rushed drafting:** many stakeholders expressed concern that the Bill was rushed and there is a lack of public information from the Victorian Government on implementation and operation of its changes. The Government identified numerous changes made to the Bill during consultation, however several witnesses noted a lack of proper consultation prior to the Bill.⁶

1 For example, see: Luke Hilakari, Secretary, Victorian Trades Hall Council, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*.

2 For example, see: Paul Serong, Occupational Rehabilitation Provider, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*. Also, on concerns with the definition of 'mental injury', see (for example): Geoff Lewin, CPSU, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*. On concerns with changes to eligibility criteria for payments beyond the second entitlement period, see (for example): Lachlan Fitch, Victorian Branch Committee President, Australian Lawyers Alliance, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*.

3 For example, see: Shaun Marcus, National President, Australian Lawyers Alliance, public hearing, Victoria, 13 December 2023, *Transcript of evidence*.

4 For example, see: Karen Batt, Secretary, CPSU, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*.

5 For example, see: Rachel Halse, ANMF, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*.

6 For example, see: Meredith Peace, Branch President, AEU Victoria, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*; Paul Guerra, President, Victorian Chamber of Commerce and Industry, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*.

The Committee acknowledges the substantial concern raised by stakeholders about the current iteration of the Bill. In particular, the Committee is concerned about the lack of consultation undertaken by the Victorian Government to assist with drafting the Bill. It believes that proper consultation was necessary to ensure that changes to the WorkCover scheme reflected contemporary practices for supporting injured workers.

RECOMMENDATION 1: That the Victorian Government conducts urgent and meaningful consultation with stakeholders, with the Bill proceeding after consultation is completed. The Government should table a consultation report in the Parliament prior to the Bill proceeding.

1.5.1 Stakeholders' views of WorkCover

As noted in Section 1.3.1 above, the scope of the Inquiry was on the WorkCover Scheme Modernisation Bill. However, the Committee did receive a lot of evidence which discussed WorkCover more broadly. In general, stakeholders were highly concerned about the scheme, from how it operates to its financial viability. The following is a summary of some of the key issues raised that were broader than consideration of the Bill (but provided important context for the policy environment which the Bill exists in):

- Significant concerns were raised about the lack of support for individuals beyond 130 weeks, especially for mental health claims.⁷
- Stakeholders highlighted that the current focus of the scheme is on saving money rather than supporting injured workers to properly rehabilitate and return to work.⁸
- There was a perception of a lack of employer effort in preventing injuries and supporting workers post-injury. Several stakeholders noted a lack of employer intervention in preventing and managing injuries, especially related to bullying and harassment.⁹
- Many stakeholders believed that the scheme centred on agents and WorkCover and was not focused on the rights and needs of injured workers.¹⁰
- The proposed Bill was criticised for not addressing the fundamental problems with WorkCover, instead shifting the costs of return-to-work failures onto social safety nets and other insurance schemes.¹¹
- There was criticism of employers not maintaining contact with injured workers—contrary to WorkCover recommendations—leading to psychological effects on the workers.¹²

⁷ For example, see: Meredith Peace, *Transcript of evidence*.

⁸ For example, see: Michael Jandula, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*.

⁹ For example, see: Michael, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*.

¹⁰ For example, see: Vasalia Govender, Injured Workers Support Team, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*.

¹¹ For example, see: Sam, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*.

¹² For example, see: Michael, *Transcript of evidence*.

- Witnesses expressed concern with the perceived maladministration of the scheme by agents.¹³
- A number of stakeholders highlighted the challenges injured workers experience getting mental-health related claims accepted.¹⁴
- Several concerns were raised about the experience of injured workers navigating the scheme, including:
 - the adversarial approach by employers during the claims and return-to-work processes¹⁵
 - long wait times for treatment and diagnosis, especially for mental health injuries¹⁶
 - too many individuals found the process traumatic (sometimes more so than the initial injury) resulting in secondary mental health trauma.¹⁷

These concerns reflect a broad range of issues highlighting significant shortcomings in the WorkCover scheme, particularly in terms of support for injured workers, the claims process, and the approach of employers and agents within the system.

As the Committee's focus was on the Bill, it was not able to consider these issues in detail. Given the complexity and seriousness of the concerns raised, the Committee believes further investigation is warranted.

RECOMMENDATION 2: That the Victorian Government establishes an independent inquiry by an expert panel into the operation and viability of the WorkCover scheme within 3 months, which:

- obtains agreement of employee and employer organisations before the appointment of reviewers
- publicly reports on the outcome of the inquiry within 12 months.

1.6 Psychosocial Health Regulations

An issue that was raised by a number of witnesses during the Inquiry, while not related to the Bill directly, may have some impact on the operations of the WorkCover scheme. Changes will be introduced by the Occupational Health and Safety Amendment

¹³ For example, see: Vasalia Govender, *Transcript of evidence*.

¹⁴ For example, see: Vivek Rajan, Senior Industrial Officer, Victorian Allied Health Professionals Association, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*.

¹⁵ For example, see: Joe Gagliano, Psychologist, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*.

¹⁶ For example, see: Marcelle Mogg, Chief Executive Officer, Mental Health Victoria, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*.

¹⁷ For example, see: Dr Mary Wyatt, RTW Matters, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*.

(Psychological Health) Regulations. These changes are expected to affect all Victorian workers and were expected to commence later in 2022.¹⁸ At the time of undertaking this Inquiry, the regulations have not been released.

It is the Committee's understanding that the regulations will set out how the obligation of Victorian employers to provide and maintain a working environment that is safe and without risks to employees' health will be discharged.

The proposed regulations seek to:

- provide clearer guidance to employers on how to identify and control risks to protect workers from mental injury
- recognise that psychosocial hazards are just as harmful to employee health and safety as physical hazards.

According to the Victorian Government Solicitor's Office, the proposed regulations will require employers to identify psychosocial hazards. These hazards are defined as:

any factor or factors in the work design, systems of work, management of work, carrying out of work or personal or work-related interactions that may arise in the working environment and may cause an employee to experience one or more negative psychological responses that create a risk to their health and safety.¹⁹

These hazards include:

- bullying
- sexual harassment
- aggression or violence
- exposure to traumatic events or content
- high job demands
- low job demands
- low job control
- poor support
- poor organisational justice
- low role clarity
- poor environmental conditions
- remote or isolated work
- poor organisational change management

¹⁸ Victorian Government Solicitor's Office, *New psychological health regulations for Victorian employers are expected to commence this year, 2022*, <<https://www.vgso.vic.gov.au/new-psychological-health-regulations-victorian-employers-are-expected-commence-year>> accessed 16 January 2024.

¹⁹ Ibid.

- low recognition and reward
- poor workplace relationships.²⁰

The proposed regulations also require employers—so far as is reasonably practicable—to eliminate any risk associated with a psychosocial hazard.

The Committee understands that the development of the proposed regulations follows several recent reviews. These reviews have recommended strengthening workplace health and safety laws to better address risks to workplace psychological health.

A number of witnesses commented on both the value of these proposed regulations and the delay in their implementation.

In a public hearing, Dr Kay Wilson stressed the importance of implementing the regulations, saying:

the government should enact its own draft psychological harm regulations, which it has been sitting on for the past 18 months and which quite frankly are brilliant, because they also contain a monitoring and reporting regime and the things that you would actually do if you were implementing the law and making it real rather than just having it on the books.²¹

This view was echoed by Ms Rachel Halse of the ANMF who also spoke very positively about the proposed regulations, telling the Committee:

These new and responsive regulations will mean at the very least that employers will be forced to take their obligations to prevent mental injury more seriously and implement appropriately robust controls to do so.²²

Given that the views expressed to the Committee about the proposed regulations were positive and indicated that these regulations will make a difference to prevention of injury to workers, there was some disappointment about the delays in their implementation.

An injured worker who appeared before the Committee, Sam, said of the delay:

Those issues can lead to mental injuries that would not be compensated under these new proposed laws. The proposed changes are at odds with the employer's duty under the OH&S Act to provide me with a psychologically safe and healthy workplace. The new Victorian psychological health regulations were promised over two years ago. Victoria was the first jurisdiction to commit to those regulations but is now the only one yet to implement them.²³

²⁰ Ibid.

²¹ Dr Kay Wilson, NTEU, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*, p. 17.

²² Rachel Halse, *Transcript of evidence*, p. 20.

²³ Sam, *Transcript of evidence*, p. 12.

1

It was even suggested that the delay in releasing and implementing the new regulations was actually stopping organisations taking action on injury prevention because they do not know what they need to do. As a result, they are not doing anything until the requirements are made clear. Dr Wilson told the Committee:

The other thing I am finding is that without the regulations, even though there is an obligation under section 5 of the Act that OH&S does cover psychological health, the pushback I am getting is from my manager saying, ‘Well, we don’t have any regulations, so we don’t have to do anything.’ That creates a delay, I suppose, because they are waiting to see what they have to do.²⁴

The release of the Occupational Health and Safety Amendment (Psychological Health) Regulations would improve the operations of the WorkCover scheme. This would compel organisations to better prioritise their prevention mechanisms and thereby take pressure off the scheme.

RECOMMENDATION 3: That the Victorian Government releases the Occupational Health and Safety Amendment (Psychological Health) Regulations immediately.

1.7 Approach to the Inquiry

The Committee was given a truncated timeline to complete its Inquiry. It held three days of public hearings between 12 and 14 December 2023 with a variety of stakeholders. By the conclusion of these days of public hearings, the Committee had:

- held 15 public hearings
- heard from 28 witness groups, including two panels of injured workers.

Stakeholders who were unable to attend a public hearing were given the opportunity to provide a written submission to the Inquiry. The Committee received 20 submissions.

Transcripts and submissions were vital testimony from stakeholders on their concerns and reflections on the Bill. These have formed the basis for the Committee’s determinations. The Committee is grateful to all witnesses and submitters who gave up their time and expertise to give evidence, especially under the short-time frame.

²⁴ Dr Kay Wilson, *Transcript of evidence*, p. 20.

Chapter 2

Key issues raised in the Inquiry

2.1 Introduction

This Chapter examines the key issues raised by stakeholders in relation to the WorkCover Scheme Modernisation Bill. Throughout the Inquiry, there was broad consensus among stakeholders that there were some significant concerns with the Bill, with many stakeholders noting the same suggestions for improvement.

2.2 Consultation process

One of the concerns raised with the Committee during the Inquiry was a lack of consultation undertaken by the Victorian Government prior to introducing the Bill to Parliament.

In a public hearing, Chris Barrett, Secretary of the Department of Treasury and Finance, outlined the Government's consultative process to 'support Government's consideration of the options available to address the scheme's financial sustainability challenges'.¹ The Government established a steering committee, comprising representatives of the Australian Industry Group, the Australian Lawyers Alliance, the Victorian Chamber of Commerce and Industry and Victorian Trades Hall Council.

Mr Barrett told the Committee that the intention was 'to help stakeholders understand the problem and proposed solutions, and to assist the Government to understand how their proposals may be received by stakeholders, and through them the wider community'.² Mr Barrett said in evidence:

Stakeholders' concerns about worker impacts of changes to the scheme resulted in refinements to the initial scheme and redesign options that were considered. Following approval in principle of the legislative amendments, cabinet-in-confidence discussions were undertaken with the consultation steering committee and their affiliates. This engagement was designed to identify any unintended consequences and resulted in further changes to the wording and operation of various aspects of the Bill.³

In addition, Mr Barrett advised the Committee that the Government also undertook confidential engagements with agents, medical panels, the Workplace

1 Chris Barrett, Secretary, Department of Treasury and Finance, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*, p. 4.

2 Ibid.

3 Ibid.

Injury Commission and the Self Insurers Association of Victoria to ‘support the implementation process and facilitate resource planning’.⁴

It was clear to the Committee that it was the view of the Victorian Government that consultation had taken place and that this consultation had informed the development of the Bill that was introduced in Parliament.

However, the adequacy of the consultation was questioned by a number of witnesses. While acknowledging that they had been consulted early on regarding the challenges facing the WorkCover scheme, many witnesses indicated to the Committee that the Bill was not what they expected and they did not support it. In fact, none of the witnesses appearing before the Committee other than those from the government agencies were supportive of the Bill.

Even members of the consultative steering committee did not consider they had been consulted on the Bill itself.

On the subject of the degree of consultation, the Victorian Trades Hall Council Secretary, Luke Hilakari, characterised it as less ‘consultation’ and more ‘consult-told’.⁵ In evidence, Mr Hilakari suggested that the Government’s position was a *fait accompli* and that their views were not reflected in the Bill. He said:

I think we have had probably zero impact, between business and us, about the development of the Bill and the outcome of the Bill. If we had, we would have had something better, because business and unions are highly aligned about what would fix this Bill or what would fix the problem.⁶

Other members of the consultative steering committee echoed Mr Hilakari’s views on the adequacy of the consultation. Paul Guerra, the CEO of the Victorian Chamber of Commerce and Industry (VCCI), told the Committee that the consultation was not extensive and did not enable the VCCI to have real input into solutions. He said in a public hearing:

We understood the financial predicament that the WorkCover system was about to go through. But that is pretty much where it stopped for us. There was no opportunity to provide input with the experience and the extent that we have in terms of what possible solutions could be put forward and then, through the group that was there, debated through and then put solutions on the table. Was it consultation? I guess that depends on your definition.⁷

Tim Piper, CEO of the Australian Industry Group (AIG), was also involved in the consultative steering committee and told the Committee in evidence that the consultation did not offer the AIG an opportunity to influence solutions in the legislation:

⁴ Ibid.

⁵ Luke Hilakari, *Transcript of evidence*, p. 21.

⁶ Ibid.

⁷ Paul Guerra, *Transcript of evidence*, p. 6.

...it was far from being a review. We were met pretty much with a *fait accompli*. The system, we were told, was bust and we were told that premiums had to increase and changes had to be made. That was simply the message that we got from day one. We did not have much interaction with regard to the legislation or the Bill or what might be proposed, but we were involved with it and were able to offer some points of view.⁸

The Victorian Automotive Chamber of Commerce (VACC) in a submission to the Inquiry expressed its disappointment with what it considered a lack of genuine consultation in the development of the Bill. It said:

...it was not consulted with during the enquiry period; and understands that the Victorian Government's substantive engagement with employers was limited to its two longstanding appointees to the WorkCover Advisory Committee (WAC). VACC views this failure to go outside the inner sanctum of the WAC instructive as to how the Scheme has become "fundamentally broken". This lack of industry engagement has underscored a general disconnect between government and VACC, which reduces overall confidence in government's industry engagement priorities.⁹

The Committee was told by the National Lotteries Newsagents Association (NLNA), which represents small businesses (many of which it describes as Mums and Dads businesses), that appearing before the Inquiry was the first time it had received any invitation to obtain its views on WorkCover in any forum.¹⁰ NLNA said in its submission that 'consultation should occur with all relevant associations and industry advisory groups established to feed into Government on WorkCover issues'.¹¹

The evidence presented to the Committee suggested that the consultation process undertaken to develop this Bill was inadequate and did not provide major stakeholders with an opportunity to influence the development of the Bill. It appears to have been more about highlighting problems in the WorkCover system generally—and possibly preparing the ground for premium increases—rather than a way to develop legislation that would meet the needs of the system and that would have broad consensus.

FINDING 1: The Victorian Government's consultation in the development of the legislation was inadequate and left stakeholders feeling they had not been able to influence the Bill in any meaningful way.

⁸ Tim Piper, Head Victoria, AIG, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*, p. 32.

⁹ Victorian Automotive Chamber of Commerce, *Submission 11*, p. 1.

¹⁰ National Lotteries Newsagents Association, *Submission 2*, p. 1.

¹¹ *Ibid.*

RECOMMENDATION 4: Prior to the Parliament considering the Bill, that the Victorian Government undertakes a detailed and thorough consultation process focussed specifically on the Bill with business, unions and injured workers and their advocates. The consultation should include consideration of:

- the differentiation between physical and mental injury
- the exclusion of stress and burn out in mental injury assessments
- degrees of impairment and the impact on injured workers
- potential impacts on injured workers of limitations on payments after the second entitlement period
- the timetable for review of the legislation
- the establishment of Return to Work Victoria.

2.3 Mental injury amendments

One of the key purposes of the Bill was to introduce provisions for compensating mental injuries incurred by a worker. Presently, mental injury is not defined and there are no specific provisions for compensating these types of injuries. The Bill amends the Principal Act to:

- introduce a definition of ‘mental injury’
- provide for the circumstances where mental injuries can be compensated.

2.3.1 Definition of *mental injury*

Clause 4 of the Bill seeks to introduce a definition of ‘mental injury’ into the Principal Act. Currently, mental injury is undefined in principal legislation. The Bill defines ‘mental injury’ as an injury that:

- (a) causes significant behavioural, cognitive or psychological dysfunction; and
- (b) is diagnosed by a medical practitioner in accordance with the latest version of the Diagnostic and Statistical Manual of Mental Disorders.¹²

The Explanatory Memorandum clarifies that the definition may also extend to the:

recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing mental injury.¹³

¹² Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic) cl 4.

¹³ Explanatory Memorandum, *ibid.* This is reflected in cl 6 amendments to s 40 of the *Workplace Injury Rehabilitation and Compensation Act 2013*.

The Committee heard concerns that the proposed definition of ‘mental injury’ was too narrow and does not reflect how practitioners in the mental health and wellbeing sector understand mental health conditions. In particular, the reliance on diagnoses under the Diagnostic and Statistical Manual (DSM) concerned several stakeholders who believed it was not the correct tool to assess workplace injury.¹⁴

The Minister’s Statement of Compatibility acknowledges that cl 4 of the Bill narrows the definition of mental injury, stating the:

definition will have the effect of narrowing the concept of ‘mental injury’, which is not presently defined and there is not limited to dysfunctions that are ‘significant’ or diagnosed in accordance with the DSM ... These changes will result in some workers who have a mental or psychological disease or disorder (and therefore have a ‘disability’ as defined under the EO Act) no longer being eligible to receive compensation under the Principal Act.¹⁵

Alongside concerns that the new definition created a too narrow diagnostic threshold, there were also criticisms that the threshold of ‘significant’ is too broad. Clause 4(a) of the Bill specifies that mental injuries are those which cause ‘significant behavioural, cognitive or psychological dysfunction’.¹⁶ The lack of a more prescriptive threshold to define ‘significant’ is likely to require judicial interpretation.¹⁷ Without judicial interpretation to develop clear precedent, the Committee is concerned that cl 4(a) will be unevenly applied and cause significant confusion for workers, employers and agents.

Further, the current proposed definition places a substantial burden on workers to prove not only their mental injury but also its seriousness.¹⁸ The Committee is concerned this could place undue barriers to accessing WorkCover payments for injured workers and the lack of clarity could also be a deterrent for medical practitioners to support and diagnose injured workers.

However, some stakeholders were supportive of the proposed definition. The introduction of a mental injury definition was viewed as a way to narrow the criteria for compensable injuries. Stakeholders supportive of the changes argued this would lead to reductions in costs to employers and WorkSafe.¹⁹

FINDING 2: The Bill’s proposed definition of ‘mental injury’ is not fit for purpose. The definition does not clearly define ‘significant’ dysfunction meaning judicial interpretation will be necessary for the amendments to operate properly.

¹⁴ Marcelle Mogg, *Transcript of evidence*, p. 25; Emma Greeney, Executive Director, Strategy, Policy and Advocacy, Mental Health Victoria, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*, p. 25.

¹⁵ Statement of Compatibility, Victoria, Legislative Assembly, 1 November 2023, *Parliamentary debates*, p. 4131.

¹⁶ Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic) cl 4(a).

¹⁷ Shaun Marcus, *Transcript of evidence*, pp. 45–46.

¹⁸ *Ibid.*, p. 45; Geoff Lewin, *Transcript of evidence*, p. 27.

¹⁹ Tim Piper, *Transcript of evidence*, p. 32.

RECOMMENDATION 5: That the Victorian Government urgently consults with peak bodies including the Australian Medical Association, Royal Australian College of General Practitioners, Mental Health Victoria, the major psychology associations, the Australian and New Zealand College of Psychiatrists and other relevant stakeholders on its proposed mental injury amendments to ensure they are fit for purpose and meet contemporary understanding of treating and supporting mental health injuries.

RECOMMENDATION 6: That the consultation proposed in Recommendation 5 with relevant stakeholders includes consideration of the definition of ‘mental injury’ and the appropriateness of the use of the word ‘significant’.

2.3.2 Circumstances in which a mental injury is compensable

The Bill’s mental injury amendments have the general purpose of identifying when a mental injury is compensable. Presently, the Principal Act does not distinguish mental and physical injuries, leaving some ambiguity about when a worker is entitled to compensation.

Clause 4, as discussed above, introduces a definition for diagnosing mental injuries permissible to be considered under WorkCover claims. However, cl 4 does not relate to whether a mental injury is compensable.

In his second reading speech, the Minister explained the eligibility reforms for compensable mental injuries are:

designed to strengthen the nexus between employment and its potential to cause injury. It also improves the rigour applied to diagnosing mental health conditions, to ensure the Scheme supports those it was intended to.

...

Events that are reasonably expected to occur, or that are typical or usual, including modern work-related stressors that most workers experience during employment, such as reasonable additional hours and reasonable work-related interpersonal interactions. The determination of eligibility for a mental injury claim will consider what is reasonably expected to occur during the course of that worker’s employment. For example, certain interpersonal conflict, workload pressure and long hours are not considered to be unusual or go beyond what is reasonably expected in the course of employment.²⁰

²⁰ Second reading speech, Victoria, Legislative Assembly, 1 November 2023, *Parliamentary debates*, p. 4136.

Mental injury suffered in or out of the course of employment

Clause 5 of the Bill seeks to amend s 39 of the Principal Act to provide entitlements to compensation for mental injuries. The Clause amends s 39 to provide a worker is only entitled to compensation if:

- the mental injury ‘predominantly’ arose out of or during their employment
- the mental injury is ‘predominantly’ caused by traumatic events which are usual, typical or reasonably expected to occur as part of work duties.²¹

The Bill establishes a threshold for mental injuries requiring them to be ‘predominantly caused’ by trauma at work. The Bill does not define ‘predominant’ or a way to measure a workplace event as the predominant reason for a mental injury. According to the Explanatory Memorandum, it is intended to take its ‘ordinary meaning, referring to the strongest or largest contributing factor relative to all other contributing factors’.²²

The Explanatory Memorandum further explains that:

New section 39(2A) (as inserted by clause 5(3)) provides that despite new section 40(1A) (as inserted by clause 6), a worker is entitled to compensation for a mental injury predominantly caused by traumatic events experienced by the worker that are usual or typical and reasonably expected to occur in the course of the worker’s duties.

New section 39(2A) provides an exception to the exclusion at new section 40(1A) which provides that there is no entitlement to compensation where a worker’s mental injury is predominantly caused by work related stress or burnout arising from events that are usual or typical and reasonably expected to occur in a worker’s employment. Section 39(2A) ensures this exclusion does not apply where a worker’s usual duties could be characterised as routinely traumatic or generally involving exposure to trauma.²³

The Section below discusses the exclusion of ‘work-related stress and burnout’ further.

The Committee heard serious concerns from stakeholders that the requirement for compensable mental injuries to arise from traumatic events was too narrow. Stakeholders had several intersecting concerns with the proposal to increase the threshold for compensable mental injuries:

- potentially excluding mental injuries arising from an extraordinary event which is traumatic by focusing on events which are usual or typical and reasonably expected²⁴
- a plain reading interpretation of new s 39(2A) suggests that a worker needs to experience multiple traumatic events and a singular event is not sufficient to be compensated under the Scheme²⁵

²¹ Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic) cl 5.

²² Explanatory Memorandum, *ibid*.

²³ Explanatory Memorandum, *ibid*.

²⁴ Shaun Marcus, *Transcript of evidence*, p. 48; Joe Gagliano, *Transcript of evidence*, p. 9.

²⁵ Joe Gagliano, *Transcript of evidence*, p. 27.

- it is unclear if the proposed legislation can appropriately deal with vicarious trauma experienced by workers, particularly frontline workers; new s 29(2A) provides a worker must experience traumatic events, making it ambiguous if exposure vicariously would be covered under the Scheme²⁶
- symptoms of trauma may not arise immediately but after a longer period of time, even years;²⁷ the ambiguity of the amendments makes it unclear if the changes can sufficiently deal with mental injury occurring later or if there is a risk that delayed injuries will be attributed to ordinary work-related stress or burnout.

A common thread underpinning these concerns is that cl 5 has the potential to establish an unreasonable threshold for compensable mental injuries, leaving too many workers without support and unable to return to work. The Committee is concerned that the proposed changes to entitlements for compensation are not sufficient and do not provide sufficient latitude or flexibility.

Some stakeholders suggested that the combination of requiring traumatic events and that the injury ‘predominantly’ arises out of the course of employment was establishing an unfair standard, too difficult for injured workers to meet. Vivek Rajan pointed out to the Committee that:

If we start adopting language from [the] legislation, replacing ‘significant contributing factor’ with, say, ‘predominantly’ and things like that, I think it is going to be detrimental to Victorian workers.²⁸

Stakeholders argued that amending the Bill to remove or widen one of these requirements may make the mental injury amendments more accessible.

The Committee heard several concerns about the proposed mental injury amendments within the Bill.²⁹ The lack of consultation with key stakeholders—including the mental health and wellbeing sector—is a significant missed opportunity to ensure the amendments reflect best practice in the treatment of mental health injuries. The overwhelming majority of stakeholders were critical of the drafting of the mental injury amendments, suggesting to the Committee that the proposed changes are not reflective of best practices, stakeholder expertise or community expectations.

Specifically on mental injuries suffered in the course of employment, the Committee believes the Bill’s proposed amendments are too narrow and rigid. Further, key terms in the proposed changes are left undefined in the proposed legislation. This creates a risk for assessors to misunderstand and misapply the rules for compensable mental

²⁶ Chris Kennedy, Assistant Secretary, Police Association Victoria, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*, p. 31.

²⁷ Ibid.

²⁸ Vivek Rajan, *Transcript of evidence*, p. 48.

²⁹ For example, see: Marcelle Mogg, *Transcript of evidence*; Emma Greeney, *Transcript of evidence*; Vivek Rajan, *Transcript of evidence*; Shaun Marcus, *Transcript of evidence*; Joe Gagliano, *Transcript of evidence*; Chris Kennedy, *Transcript of evidence*.

injuries, to the detriment of workers in great need of support. This is further compounded by the lack of clear guidelines and frameworks for Return to Work Victoria. It is unclear how workers ineligible for payments beyond the provisional period will be supported. This issue is discussed further in Section 2.8 below.

FINDING 3: The Bill’s proposed changes to entitlements to compensation to clarify when a worker with a mental injury can be compensated are not fit for purpose. The requirements are too rigid and do not reflect contemporary practices of the mental health and wellbeing sector.

RECOMMENDATION 7: That as part of Recommendation 2, the review should also include consideration of the proposed mental injury amendments and publicly report within 12 months.

Stress and burn-out

Clause 6 of the Bill provides a worker is not entitled to compensation if the mental injury is ‘predominantly caused by work-related stress or burnout’ associated with usual, typical or reasonably expected duties.³⁰ ‘Work-related stress and burnout’ is not defined in the Bill with the Explanatory Memorandum noting that it will take its ‘ordinary meaning’.³¹ Leaving ‘work-related stress and burnout’ undefined in the Bill means that judicial interpretation will be required.

The Statement of Compatibility explained the purpose of the ‘specific and targeted exclusion’ of ‘general stressors of the modern workplace and modern life’, stating:

Providing financial compensation in respect of claims that are not clearly attributable to employment or serious psychological stressors risks the imposition of significant costs on the compensation scheme that would undermine its ongoing viability.³²

Nearly all stakeholders who gave evidence to the Committee did not support the exclusion of work-related stress and burnout believing the proposed amendments were too blunt and would exclude workers with serious mental health injuries stemming from work.³³

Numerous stakeholders were concerned about the exclusion of work-related stress and burnout from compensable mental injuries. The Committee heard that stress and

³⁰ Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic) cl 6.

³¹ Explanatory Memorandum, *ibid.*

³² Statement of Compatibility, Victoria, Legislative Assembly, 1 November 2023, *Parliamentary debates*, p. 4132.

³³ For example, see: Victorian Trades Hall Council, *Submission 8*; Australian Psychological Society, *Submission 9*; CPSU Victoria, *Submission 10*; Vivek Rajan, *Transcript of evidence*; Paul Healey, State Secretary, HACSU, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*, p. 21.

burnout are often symptomatic of other issues, such as a mental health illness³⁴ or even a poor workplace environment.³⁵

On burnout and stress being symptomatic of mental health issues, Paul Healey, State Secretary of HACSU, told the Committee that:

We see that the symptoms that they are talking about, stress and burnout, are not mental illnesses; they are just symptoms of mental illnesses. You cannot diagnose a person on stress and burnout. They are not real symptoms. So they are not going to catch people – what is going on. It does not make sense to me to have that in the Bill. It is not going to work.³⁶

Stakeholders questioned the unintended consequences of excluding work-related stress and burnout from compensable mental injuries, particularly when unsafe or unsustainable workplace norms are the predominant cause of the injury.³⁷ The Committee was told these practices could present as typical or reasonable requirements of duties but place acute stress on workers.

The Committee heard from stakeholders that work-related stress and burnout cannot be neatly separated from mental injuries primarily occurring because of extraordinary or traumatic events. For many workers, symptoms of mental injury may not occur in the immediate aftermath of a traumatic event but present later, risking them being improperly assessed because of stress or burnout occurring as a result of ordinary work duties.³⁸

Further, the Committee heard that these proposed amendments could disproportionately affect women. Karen Batt, Secretary of the CPSU, stated:

We do believe it will [disproportionately impact women], particularly in the public sector, where the majority of our workers are women – 56 per cent, I think, are women. A large number of claimants are in areas where they are support for frontline work. They are often ones that are not given the training to deal with what they are confronting, so an admin officer in a child protection office is constantly seeing the files and the reports of child abuse and child neglect. They are not exposed to the trauma, but they are developing PTSD symptoms.³⁹

The Committee was also told that women were more likely to be the victims of bullying and harassment which can lead to mental injuries. In a public hearing, Ms Jelley of the NTEU told the Committee that:

Women are more likely, as far as we understand, to incur mental health injuries in the ordinary course of their work, and I would posit that they are more likely to just try

³⁴ Paul Healey, *Transcript of evidence*, p. 21.

³⁵ Vivek Rajan, *Transcript of evidence*, p. 53.

³⁶ Paul Healey, *Transcript of evidence*, p. 21.

³⁷ Vivek Rajan, *Transcript of evidence*, p. 53.

³⁸ Danny Hill, Secretary, Victorian Ambulance Union, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*, p. 34.

³⁹ Karen Batt, *Transcript of evidence*, p. 22.

and work through it at first. As Dr Wilson mentioned earlier, there are certain patterns of work and certain categories of workers who experience higher rates of bullying and harassment in the workplace, and those workers are predominantly women in the higher education workforce. We do believe there is a disproportionately gendered impact of this legislation.⁴⁰

Several stakeholders argued that the Victorian Government should have conducted a gender impact assessment as defined under the *Gender Equality Act 2020* (Vic) on the Bill. By conducting an assessment on the Bill, it would provide an opportunity to identify any adverse impacts on women and mitigate them before passing legislation.⁴¹

The Committee is concerned that the exclusion of ‘work-related stress and burnout’ from compensable mental injuries provided under cl 6 will leave too many workers’ unsupported. Stress and burnout are often symptomatic of other issues such as mental health illnesses or systemic workplace issues which could be too easily conflated with ‘ordinary’ work.

The Committee acknowledges that the Bill allows provisional payments up to 13 weeks whilst claims are determined, including for workers who ultimately may fall under cl 6 exclusions. However, the short provisional payment period along with a lack of articulated return to work support highly concerns the Committee. Factors contributing to stress and burnout are not always easily dealt with, and cl 6 leaves open the possibility that people may return to work without appropriate recovery time or to an environment continuing to perpetuate stressors.

RECOMMENDATION 8: That the independent review proposed in Recommendation 2 examine:

- Clause 6 of the proposed Bill and its suitability
- options for a further exception where the work-related stress or burnout has arisen from events that, whilst they are typical or usual, are objectively unreasonable
- the appropriateness of the wording of ‘predominant cause’ in proposed s 40(2A).

RECOMMENDATION 9: That the Victorian Government releases the outcome of any gender impact assessments conducted in relation to the Bill. If an assessment was not conducted, the Government should release its rationale.

⁴⁰ Ruth Jelley, Assistant Secretary Victoria (Professional Staff), NTEU, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*, p. 21.

⁴¹ Victorian Trades Hall Council, *Submission 8*, p. 6.

RECOMMENDATION 10: If a gender impact assessment has not been undertaken, that the Victorian Government conducts and releases an assessment on the proposed changes to the WorkCover Scheme as required under the *Gender Equality Act 2020* (Vic) prior to its consideration in Parliament.

2.4 Degree of impairment

Clause 13 of the Bill introduces an impairment threshold to assess a worker's eligibility to continue receiving compensation beyond 130 weeks. Section 163 of the Principal Act is amended to provide that a worker can continue to receive payments after 130 weeks if the worker:

- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
- (b) has a whole person impairment of more than 20 per cent resulting from one or more compensable injuries.⁴²

Under the Principal Act, s 163(1) provides that a worker is only entitled to ongoing payments beyond the second entitlement period if they are assessed to have 'no current work capacity' and that it is 'likely to continue indefinitely'.⁴³ The Principal Act defines 'no current work capacity' as:

a present inability arising from an injury such that the worker is not able to return to work, either in the worker's pre-injury employment or in suitable employment.⁴⁴

Some stakeholders argued that a whole person impairment threshold of 20% was too high, and would unfairly disqualify workers from ongoing support even where they have no real capacity for working.⁴⁵

Luke Hilakari, Secretary of the Victorian Trades Hall Council, provided a confronting example highlighting the difficulty in reaching a 20% whole person impairment threshold:

So what type of people are we talking about missing out? A recent good example would be of a 33-year-old emergency services worker – I will let you guess which emergency service they worked for – who had been employed by the service for 14 years, just doing service for the state. He had witnessed multiple traumatic events, and then one day he presented at a car accident. He saw that a kid had been decapitated and another kid had been crushed to death. That worker got diagnosed with severe PTSD, now regularly sees a psychiatrist, has suicidal thoughts, cannot

⁴² Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic) cl 13.

⁴³ *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) s 163(161).

⁴⁴ *Ibid.*, p. 3.

⁴⁵ For example, see: Frank Imbesi, Victorian President, Australian Rehabilitation Providers Association, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*, p. 34; Paul Serong, *Transcript of evidence*, p. 37.

leave the house, is on medication and his mum had to move back into the home to look after his kids. That worker, who gave his life to service and to the state, got a WPI of 15 per cent.⁴⁶

Reaching a 20% whole person impairment is made more difficult because physical and mental injuries are assessed separately. This issue is discussed further in Section 2.4.1 below. The Committee notes that the Explanatory Memorandum explains that the purpose of introducing an assessment of whole person impairment is to establish an ‘objective assessment of permanent impairment’, stating it:

will complement the more subjective and individual assessment of a worker’s future return to work prospects. These tests ensure that ongoing weekly payments continue to be provided to those workers most in need of continued financial support.⁴⁷

Further, the Statement of Compatibility explained that the:

threshold of 20 per cent [whole person impairment] has been identified as necessary to ensure that the scheme remains viable and able to continue to deliver services into the future.⁴⁸

FINDING 4: It is unclear to the Committee how the Victorian Government determined the 20% threshold, or how many workers are going to be affected by this requirement. Given stakeholders’ significant concerns that the threshold is unreasonably high, the Government should provide an explanation, including any modelling.

RECOMMENDATION 11: Prior to the resumption of debate on the Bill, that the Victorian Government tables in Parliament:

- an explanation of how the Victorian Government determined the 20% threshold for the assessment of a whole person impairment, including any modelling or data used to assist with decision-making
- an estimate of the number of people currently on WorkCover—
 - whose injuries exceed a 20% whole person impairment
 - whose injuries do not exceed a 20% whole person impairment, including how many have not exceeded the second entitlement period.

⁴⁶ Luke Hilakari, *Transcript of evidence*, p. 18.

⁴⁷ Explanatory Memorandum, Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic).

⁴⁸ Statement of Compatibility, Victoria, Legislative Assembly, 1 November 2023, *Parliamentary debates*, p. 4133.

2.4.1 Clause 16 — impairment assessment determined by greater injury not sum of injuries

Clause 16 of the Bill introduces new sub-div 1A into the Principal Act providing for the determination of eligibility for compensation after the second entitlement period (post-130 weeks). New section 167A(2) disallows the assessment of a whole person impairment by examining physical and mental injuries collectively. Instead, s 167A(2) provides that:

The degree of impairment of a worker is the greater of the worker's —

- (a) degree of impairment resulting from one or more compensable injuries that are physical injuries; or
- (b) degree of impairment resulting from one or more compensable injuries that are psychiatric or psychological injuries.⁴⁹

Further, where multiple injuries of the same category are present they can only be assessed together if they arose from the same event or circumstance.⁵⁰

Luke Hilakari from the Victorian Trades Hall Council expressed concern about the requirement for a whole person impairment assessment to be based on either physical or mental injuries, and not the totality of injuries:

if a nurse was assaulted in an emergency department, she will have trauma from the assault. She will also have a physical injury from the assault. You are asking that nurse to pick one or the other – ‘You can't claim both, even though that injury happened to you as a whole person.’ I think this little bit with the 20 per cent is just such a nonsensical piece of the legislation. It is completely going backwards on all modern thinking about treatment and medicine.⁵¹

Several stakeholders also echoed criticisms that new s 167A(2) effectively disallows a holistic assessment of a person's injuries.⁵²

The Committee is concerned about the implications of new s 167A(2). Injury and harm does not occur in a vacuum, nor are its effects felt in isolation. The ability of a worker to safely return to work must consider both physical and mental factors; it is not uncommon for serious physical injuries to coexist with trauma or stress. The Victorian Government did not clarify why it is appropriate to separate physical and mental injuries to assess a worker's whole person impairment. By doing so, the Bill is effectively disallowing a holistic examination of injured workers by arbitrarily separating injuries.

The whole person impairment should be based on the totality of a worker's injuries stemming from an event or circumstance experienced during the course of their

⁴⁹ Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic) cl 16.

⁵⁰ Ibid.

⁵¹ Luke Hilakari, *Transcript of evidence*, p. 18.

⁵² For example, see: Rachel Halse, *Transcript of evidence*, p. 20; Lachlan Fitch, *Transcript of evidence*, p. 48; Chris Kennedy, *Transcript of evidence*, p. 31.

ordinary employment. Under the current amendments, the following scenario could take place:

- a worker could be seriously injured at work, leaving them with physical injuries but also mental injuries associated with the trauma of the incident
- new s 167A(2) only allows the greater of the injuries to be assessed to determine the degree of impairment; for this worker both injuries are assessed below 20% individually for the whole person impairment assessment—however, combined would exceed 20%
- the worker is ineligible for continued compensation under the Scheme because the totality of their injuries were not assessed together, but the assessment was based on the greater of the worker’s injuries.

The Committee acknowledges that the aim of the Bill is to contain the increasing costs of the WorkCover scheme—an aim enshrined in s 10(e) of the Principal Act.⁵³ The Committee supports this aim and believes there is work to be done to ensure the Scheme is sustainable. However, this must not come at the expense of workers dealing with a myriad of injuries which the totality leaves them unable to work.

FINDING 5: New Section 167A(2) proposed in Clause 16 creates an arbitrary distinction between physical and mental injuries which was not supported by the majority of stakeholder evidence.

RECOMMENDATION 12: That the review proposed in Recommendation 2 include examination of Clause 16 to assess whether an alternative amendment would allow for greater flexibility and accuracy in assessing the totality of a worker’s physical and mental injuries.

2.5 Compensation Payments

Another issue raised during the Inquiry was related to payments made for mental injury. Concerns were raised in relation to two separate payments: the cutting out of provisional payments for mental injury after 13 weeks, and the limitations on payments after the second entitlement period (specifically after 130 weeks).

2.5.1 Provisional Payments for mental injury

Section 2631 in Part 5 of the Principal Act states that:

- (1) Provisional payments are payable under this Division on and from the day the worker is determined under section 75A to be entitled to provisional payments until—

⁵³ Section 10 of the Principal Act prescribes the objectives of the legislation. Section 10(e) provides that one of the Act’s objectives is to ‘ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses’.

- (a) if the worker's claim for compensation in respect of the mental injury is accepted by the Authority or a self-insurer, the day the claim is accepted; or
- (b) in any other case, 13 weeks after the day the worker is determined under section 75A to be entitled to provisional payments.

The Bill does not change the provisional payment entitlement for mental injury.

In recognising the importance of early intervention and treatment in getting injured workers back to work, Mr Barrett from the Department of Treasury and Finance told the Committee that despite changes all workers who make a mental injury claim will continue to be eligible to receive 13 weeks of provisional payments to fund early treatment. Joe Calafiore, the interim CEO of WorkSafe Victoria, suggested that such provisional payments were unusual in compensation schemes, telling the Committee that:

I would describe as an enhancement of the Victorian scheme, which you will not see in most schemes around the world, the ability to access provisional payments. It is rare to see schemes where while your claim is still being assessed you are provided access to support.⁵⁴

While witnesses acknowledged this payment, it was seen as having limited value in supporting early treatment. Firstly, the time period was considered too short for workers with a mental injury to be able to see a professional service provider. Mr Hilakari told the Committee that:

For mental health, that is extremely difficult because we do not have the workforce that sits behind it – so psychiatrists, psychologists. To get a booking there, that is three to six months. It does not matter that we have got a 13-week entitlement, you will not be able to spend that money to see someone⁵⁵

This view was echoed by Ms Jelley of the NTEU, who said in a public hearing that:

We repeatedly raised our concerns and raised questions, particularly that there is a lot of unknown information about the 13 weeks of provisional payments and support – how is that going to function when we have a mental health system where, whether you are workers or through other means, you cannot get access to mental health support workers in Victoria in that time?⁵⁶

Such limitations on support for injured workers are not an abstract or theoretical concern but—as Meredith Peace of the AEU put it in public hearings—these limitations are ‘going to have a really significant impact on individuals’ wellbeing’. She told the Committee that these impacts could cause:

⁵⁴ Joe Calafiore, Interim Chief Executive Officer, WorkSafe Victoria, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*, p. 7.

⁵⁵ Luke Hilakari, *Transcript of evidence*, p. 22.

⁵⁶ Ruth Jelley, *Transcript of evidence*, p. 21.

further mental health injuries because of the stress associated with that. But of course it impacts on their personal lives. It concerns us that we might in fact have people returning to work who are unwell and should not be at work and who should be being supported.⁵⁷

From an injured worker's perspective, the impacts of such limitations are very real. Nicole, an injured worker who gave evidence in a public hearing, told the Committee that:

... there are waiting lists to engage with psychologists or psychiatrists or even find a good GP that you have a trusted rapport with. For me that was six months after my initial injury. Again, you know, in my instance, if it was the 13 weeks, I ... shudder to think of where I would be without the psychological support that I have now.⁵⁸

It was also suggested to the Committee that the length of time available for these provisional payments was also inadequate as an early treatment option. Psychologist Joe Gagliano told the Committee:

And let me tell you, no matter if I am a good or bad psychologist, I am not going to sort somebody out in 13 weeks. I cannot do it in 13 weeks. It is impossible. And that is what the legislation is suggesting – 13 weeks of psychology. Are you kidding?⁵⁹

The Committee is aware that the consequences of mental injury can be devastating. In a submission received during the Inquiry,⁶⁰ the impact of mental injury created in a workplace was brought into stark focus. In her submission, Andrea Holden said:

My partner ... acquired a workplace injury ... due to the toxic workplace culture. Rob had no prior history of any mental health conditions, yet developed high anxiety, depression & stress due to unreasonable work demands. This ultimately caused him to take his own life on the 12th May 2022.

The last year and a half have been the hardest time in my life. My life has changed forever & will never be the same again. There has also been a flow on affect to others including my family, friends and (his) work colleagues. It has been devastating to all those that knew him and it has mentally affected many people/colleagues in very many ways.⁶¹

FINDING 6: The impact of mental injury can be devastating for an injured worker and those close to them, the injury is often harder to detect and the recovery period can be long and complex.

⁵⁷ Meredith Peace, *Transcript of evidence*, p. 19.

⁵⁸ Nicole, public hearing, Melbourne, 13 December 2023, *Transcript of evidence*, p. 13.

⁵⁹ Joe Gagliano, *Transcript of evidence*, p. 5.

⁶⁰ Due to the short timeframe, the Committee did not call for public submissions but invited submissions from invited witnesses who were unable to attend public hearings on short notice. It also received a small number of unsolicited submissions, which were accepted and published.

⁶¹ Andrea Holden, *Submission 3*, p. 1.

RECOMMENDATION 13: In relation to the review proposed in Recommendation 2, that the appropriateness of Clause 9 of the Bill as it relates to s 263A of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) be considered with respect to entitlement to provisional payments.

RECOMMENDATION 14: In relation to the review proposed in Recommendation 2, in the context of Clause 16 of the Bill relating to s 167C of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), that the ability of the Authority or self-insurer to make determinations without a claimant having prior access to an independent medical examiner before a determination is made be considered.

While there was no suggestion from any stakeholders that the impact of work-related mental injury cannot be severe, support for provisional payments is not universal. In its submission to the Inquiry, the VACC recommended the repeal of provisional payments. It said:

Persistent anecdotal feedback from VACC membership suggests that whilst claims for non-work-related mental injuries are not eligible for weekly compensation, in practice many of the claims are being ‘waved through’, as WorkCover Agents do not have the time, resources (and in some cases, motivation) to determine that the claim is not work-related.

Accordingly, VACC believes that for the sustainability of the Scheme, the provisional payment amendments must be repealed.⁶²

2.5.2 Limitations of payments after the second entitlement period

A more significant concern was raised by a number of witnesses regarding limitations of payments after the second entitlement period for people with a mental injury. This is referred to as ‘the long tail’ and affects people who have been on the scheme for more than 130 weeks.

One of the purposes of the Bill is to introduce an impairment threshold for assessing eligibility for the payment of benefits beyond a period of 130 weeks.

Clause 13 of the Bill proposes:

For section 163(1) of the Principal Act substitute—

- “(1) Subject to section 165, a worker’s 5 entitlement to compensation in the form of weekly payments under this Part ceases upon the expiry of the second entitlement period unless the Authority or self-insurer determines that the worker—
- (a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

⁶² Victorian Automotive Chamber of Commerce, *Submission 11*, p. 3.

- (b) has a whole person impairment of more than 20 per cent resulting from one or 15 more compensable injuries.”.

According to written responses by the Department of Treasury and Finance to questions asked in a public hearing, the Bill is going to reduce the number of people eligible for payments.

The Department advised that:

Independent actuarial firms were engaged to assess the financial and worker impacts of the proposed changes.

Based on available data and analysis, the changes to mental injury eligibility are expected to reduce the number of claims that are eligible to receive weekly payments. The introduction of a WPI threshold is also expected to reduce the number of injured workers that continue to receive weekly payments beyond 130 weeks noting that, subject to eligibility requirements, workers that are no longer eligible to receive weekly payments beyond 130 weeks may be able to access impairment benefits and common law damages.

Combined with an average premium rate of 1.80 per cent of remuneration, over time these changes are expected to steadily return the Scheme to a financially sustainable position as measured by an Insurance Funding Ratio (IFR) (i.e. the ratio of assets to liabilities) close to the mid point of the preferred IFR range of 100 to 140 per cent (i.e. 120 per cent).⁶³

The issue of the degree of impairment has already been addressed in this Report. This Section highlights concerns about the timing of the limitation and what will happen to workers who lose their entitlement under this provision.

In explaining the proposed change, Mr Barrett told the Committee that the ‘deterioration in the scheme’s financial position is mainly due to an increase in WorkSafe’s liabilities due to the increased cost of weekly income support, more workers staying on the scheme for longer and an increase in the number of mental injury claims’. He told the Committee that:

In 2015, 8 per cent of claims reached 130 weeks, whereas 18 per cent of claims are expected to continue to receive benefits beyond 130 weeks in 2023, an increase of 133 per cent.⁶⁴

He also emphasised that a significantly higher percentage of mental injury cases went beyond the 130 weeks compared to physical injury cases, which has led to the proposed change to entitlements.

Roger Arnold, Executive Director of Insurance at WorkSafe Victoria, stated that the issue is further complicated by the occurrence of secondary mental injuries. This refers

⁶³ Department of Treasury and Finance, Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 hearing, response to questions on notice received 8 January 2024, p. 2.

⁶⁴ Chris Barrett, *Transcript of evidence*, p. 3.

to a situation where, as a result of their injury and loss of employment and normal life, an injured worker becomes:

depressed, stressed, unable to return to work because of the secondary depression, ... And so probably eight in 10 of those injured workers who have been there for 130 weeks have got a mental health issue of some sort.⁶⁵

Other stakeholders expressed significant concerns with this change.

The key concern raised was simply the impact of the change to eligibility on affected workers. As highlighted previously, Mr Hilakari provided an example of this potential impact:

A recent good example would be of a 33-year-old emergency services worker – I will let you guess which emergency service they worked for – who had been employed by the service for 14 years, just doing service for the state. He had witnessed multiple traumatic events, and then one day he presented at a car accident. He saw that a kid had been decapitated and another kid had been crushed to death. That worker got diagnosed with severe PTSD, now regularly sees a psychiatrist, has suicidal thoughts, cannot leave the house, is on medication and his mum had to move back into the home to look after his kids. That worker, who gave his life to service and to the state, got a WPI of 15 per cent. That is the worker who is going to be kicked off the scheme at 130 weeks. That is the worker we are talking about. That person has no chance of getting Centrelink. They are not going out and applying for jobs; that is not happening. They are not going to be on the NDIS, and they are not going to get a disability pension. Even if they got Centrelink at 375 bucks a week, that is not paying for a mortgage...⁶⁶

A number of other witnesses echoed the concern about the impact on the lives of those with a mental injury who were not yet able to return to work after the second entitlement period.⁶⁷

It is also recognised that mental injury often has a longer recovery period than physical injury. In its submission, the Australian Association of Psychologists told the Committee that:

National data also confirms psychological injury claims do cost more and last longer than physical injury claims, across the board. This is directly related to complexities in assessing the claim at initial point, complexities in treating and managing mental health conditions, factors within the workplace such as cause of injury, culture, supportiveness, communication, timeliness of treatment and consistency of treatment, and support for return to work.⁶⁸

⁶⁵ Roger Arnold, Executive Director, Insurance, WorkSafe Victoria, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*, p. 10.

⁶⁶ Luke Hilakari, *Transcript of evidence*, p. 25.

⁶⁷ See: Nicole, *Transcript of evidence*, p. 15; Frank Imbesi, *Transcript of evidence*, p. 34; Lachlan Fitch, *Transcript of evidence*, p. 46; Meredith Peace, *Transcript of evidence*, p. 19; Chris Kennedy, *Transcript of evidence*, p. 40.

⁶⁸ Australian Association of Psychologists, *Submission 17*, p. 3.

The Australian Clinical Psychology Association (ACPA) echoed this view, suggesting in its submission that the requirement that claims must be made within 30 days of becoming aware of the injury is problematic in the case of psychiatric injury because:

the material time of a person's 'knowledge' of injury is a grey area. Some diagnoses require 6 months of relevant symptoms before meeting clinical diagnostic criteria.⁶⁹

Further, ACPA stressed that there needs to be a recognition of the cumulative nature of trauma. Its submission said:

Isolated incidents must be identified as part of the claim. However post-traumatic stress disorder can occur following an accumulation of traumatic experiences, such as the vicarious trauma experienced by Ms Korarov as outlined in *Kozarov v State of Victoria* [2022] whereby the claimant was exposed to materials related to child sexual offence prosecutions as part of her ordinary duties as a prosecutor in the Specialist Sexual Offences Unit of the Office of Public Prosecutions.⁷⁰

FINDING 7: Cutting off support for workers with mental injuries after the second entitlement period will save the WorkCover scheme money but may have a negative impact on some workers.

RECOMMENDATION 15: In relation to the review proposed in Recommendation 2, the review should consider the impact of Clause 16 in relation to proposed s 167H in respect of the right of workers to arbitration.

2.6 Review of the Bill

In Clause 25 of the Bill, new s 620A provides that an independent review by an expert panel must be commenced on or after 1 January 2027 and before 1 January 2028. The review must be conducted by an expert panel in accordance with the terms set out by the Minister.

The terms of reference for the independent review may include an examination of and recommendations in relation to matters arising from the changes made by the Bill, including the operational and financial impact of the amendments.

New s 620B provides that the Minister must appoint a panel of at least three experts, with experience in one or more of the areas of law, medicine, finance or occupational health and safety to conduct the independent review.⁷¹

⁶⁹ Australian Clinical Psychology Association, *Submission 7*, p. 1.

⁷⁰ *Ibid.*

⁷¹ Explanatory Memorandum, Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic)..

There have been some views expressed that indicate that a review of the legislative changes should take place before 2027. At least one witness suggested that it would be prudent to review the legislation at least once after a year of operation.⁷² Others have suggested it should be reviewed constantly, and certainly before the end of 2027.⁷³

Mr Hilakari suggested that:

We would like it to be constantly reviewed, I would say. I think you will find workers who do not get on the scheme in the first place through stress or overwork – which is just terrible because they are going to start presenting with worse injuries, so we would miss that early intervention – and then those who have been thrown off the scheme at 130 weeks... Victorians should know what their lives have become since that moment, not wait many years to find out about that disaster and then try to fix it up for them.⁷⁴

In the Committee's view, 2028 is too long to wait for a review of legislation that is likely to have a significant impact on the lives of Victorian workers. Should the effects of the changes be as negative as most of the witnesses appearing before the Committee fear, then the damage to workers suffering from mental injury will potentially be substantial and may well be irreversible.

FINDING 8: The Committee considers that 2027 is too late for a review of these changes as the impact on affected workers by then may have already occurred.

RECOMMENDATION 16: That should the Bill be passed, the statutory review of the impacts of the legislation be conducted in 2026 and a report tabled before the end of this parliament.

2.7 Preventative arrangements

An issue that was discussed by a number of stakeholders in public hearings related to the benefits of prevention of workplace accidents and injury, both to the workers and to the scheme itself. This is not part of the Bill being considered by this Inquiry but is discussed briefly here because it was raised as an important issue. In the Committee's view, it should be considered in detail in any future review of the WorkCover scheme.

2.7.1 Prevention is an essential element of WorkCover sustainability

There was widespread agreement from stakeholders—in government, business, the union movement and in the mental health and rehabilitation sectors—that the sustainability of the WorkCover system is greatly improved by preventative measures

⁷² Dr Mary Wyatt, *Transcript of evidence*, p. 69.

⁷³ Tim Piper, *Transcript of evidence*, p. 43.

⁷⁴ Luke Hilakari, *Transcript of evidence*.

being taken in workplaces to stop the injuries, both physical and mental, from occurring in the first place.

A number of witnesses told the Committee that prevention is core to making the scheme sustainable.⁷⁵

In a public hearing, Dr Kay Wilson quantified the value of prevention stating that:

Workers that are not that stressed are actually more productive, and the Productivity Commission says that for every dollar that you invest in prevention you actually get back \$4. That seems like low-hanging fruit to me.⁷⁶

The Committee was also told that not only is prevention desirable as a priority, it is also something that can be done and will improve the sustainability of the WorkCover scheme.

According to the Royal Australasian College of Physicians, educating employers on best practice workplace management can streamline return to work for an individual. In a paper it provided as part of its submission, it told the Committee:

Ideally, workplace practices should be improved so that prevention and early intervention become the norm. If the workplace is supportive, over time the demands on the insurance case manager will be reduced. There will be less need for written agreements, fewer and less severe disputes, and fewer psychosocial obstacles to recovery and RTW to overcome.⁷⁷

2.7.2 Is prevention of workplace injury given priority?

In acknowledging the importance of prevention, some stakeholders expressed their disappointment that there is no provision in the current Bill to improve prevention measures, and that the issue is not given sufficient priority within the WorkCover scheme.

Mr Hilakari told the Committee that:

We were hopeful that it would address prevention, but it does not exist before this Bill comes into effect. Prevention is everything in this space to stop workers getting injured in the first place, to reduce premiums for employers. It is better for their families, it is better for businesses. Right now it does not exist, and I think business and I would be aligned in saying that we do not understand what this is going to be.⁷⁸

⁷⁵ See: Joe Calafiore, *Transcript of evidence*, p. 11; Luke Hilakari, *Transcript of evidence*, p. 22; Marcelle Mogg, *Transcript of evidence*, p. 23; Paul Guerra, *Transcript of evidence*, p. 7; Meredith Peace, *Transcript of evidence*, p. 20.

⁷⁶ Dr Kay Wilson, NTEU, public hearing, Melbourne, 14 December 2023, *Transcript of evidence*, p. 17.

⁷⁷ *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, April 2022, p. 102. In Royal Australasian College of Physicians, *Submission 18*.

⁷⁸ Luke Hilakari, *Transcript of evidence*, p. 22.

This view was echoed by Vivek Rajan, Senior Industrial Officer, Victorian Allied Health Professionals Association, who said that:

There is no emphasis on prevention in the proposed changes. There needs to be pressure on employers to take proactive steps to prevent these injuries arising in the first place. We have seen inappropriate practices become normalised within the sector.⁷⁹

Ruth Jelley, Assistant Secretary Victoria of the NTEU, suggested that the lack of emphasis on prevention illustrated the Government's priorities were wrong:

We firmly believe that the government should be focusing its reform efforts on prevention rather than reducing eligibility for injured workers.⁸⁰

The Committee was told during hearings that WorkSafe does recognise the importance of prevention as a key element of making the WorkCover scheme sustainable. Joe Calafiore told the Committee:

When I think of the statutory obligations that the authority has today, there are a long list, but there are preventative obligations to reduce the incidence of workplace injuries. I think there has got to be a prevention component in this.⁸¹

Despite this view being expressed, witnesses considered that the issue of prevention has not been addressed adequately. Mr Hilakari told the Committee that this is a long-standing problem, not one created by the current government, but has not been addressed in the Bill. He said in evidence:

We need a scheme that is functional, and we need a scheme that provides, but to say, 'This group of workers is who we're going to cut, and this group of workers we ain't going to bring on,' because you need to make a financial saving because of choices that lots of governments have made to either not raise premiums or not actually do the hard work, which is prevention, I think is a cheap cop-out that will unfairly target some of the most vulnerable Victorians. And in doing so you are not actually going to save a penny; what you are going to do is cost shift to services that are already under some stress.⁸²

The importance of prevention was echoed by the Australian Psychological Society (APS) which suggested that:

the introduction of initiatives for prevention and identification of early signs of stress via Return to Work Victoria is also constructive and could lead to a reduction in future claims for bullying, harassment and other psychological injury.⁸³

79 Vivek Rajan, *Transcript of evidence*, p. 46.

80 Ruth Jelley, *Transcript of evidence*, p. 16.

81 Joe Calafiore, *Transcript of evidence*, p. 11.

82 Luke Hilakari, *Transcript of evidence*, p. 24.

83 Australian Psychological Society, *Submission 9*, p. 3.

The APS further suggested that it is the employer’s responsibility to accurately and promptly identify and report on signs of stress and burnout among workers and take appropriate action. It stated that:

Effective reporting involves the early identification of risks for psychological injury. It is important for employers to build a positive workplace culture and demonstrate strong leadership around these matters to increase prevention and reduce the incidence of these scenarios occurring.⁸⁴

2.8 Return to Work Victoria

As outlined in Chapter 1, the scope of this Inquiry is focused on the WorkCover Scheme Modernisation Bill. Whilst Return to Work Victoria is not part of the Bill, the issues raised in this Section may have an impact on the Bill’s operation making it pertinent to the Committee’s consideration.

Box 2.1 What is Return to Work Victoria?

Accompanying changes proposed under the WorkCover Scheme Modernisation Bill, the Victorian Government announced the establishment of Return to Work Victoria. The new division of WorkSafe will be established in 2024 to ‘develop and deliver early intervention and support for workers to return to work’.

The Return to Work Victoria factsheet outlined the agency will be responsible for:

- working in partnership with workers, employer groups, and mental and occupational health experts to pilot prevention, early intervention and return to work programs
- the stressed at work helpline
- improving worker mobility
- early assessment and planning to tailor pathways back to work.

Source: Victorian Government, *WorkCover Scheme Modernisation: Return to Work Victoria factsheet*, 2023, <<https://content.vic.gov.au/sites/default/files/2023-05/Factsheet-WorkCover-Scheme-modernisation-Return-to-Work-Victoria.pdf>> accessed 2 January 2024.

A consistent concern among stakeholders who discussed Return to Work Victoria was the lack of information available.⁸⁵ As mentioned the agency is not featured in the Bill and there is limited details about it publicly available, except public statements and a three-page factsheet on the Government’s website.

⁸⁴ Ibid.

⁸⁵ For example, see: Paul Guerra, *Transcript of evidence*; Luke Hilakari, *Transcript of evidence*.

Some stakeholders were hesitant to support the Bill because they lacked knowledge in the role of Return to Work Victoria.⁸⁶ Given many of the changes to entitlements were contingent on a strengthened return to work infrastructure for workers deemed ineligible, these stakeholders felt they could not support the Bill because the agency was not well understood.

The establishment of Return to Work Victoria is an important component of the Government's proposed changes to WorkCover entitlements. Under the Bill, access to WorkCover payments will be restricted by new eligibility criteria. To offset the challenges this will cause many workers, the Government has committed to creating a new agency focused on pathways back into the workforce. However, Return to Work Victoria is not established and many of the details are still not clear. As a consequence, the Bill's proposed changes to entitlements would likely come into effect before the unit is set up.⁸⁷

Lisa Alcock, Secretary of Medical Scientists Association of Victoria, questioned the appropriateness of changing WorkCover entitlements ahead of Return to Work Victoria operating:

we have not had a lot of detail about what is actually being proposed. It does not exist yet, and at the same time there is a proposal to remove existing entitlements. Alternatively, I think it would be preferred that we implement that proposed change, see how it works, reduce that burden on the system and work through those changes at the same time. There is no need to remove that entitlement while we work through the prevention.⁸⁸

Stakeholders were also concerned about the roles and responsibilities of Return to Work Victoria, with many considering it a good opportunity to strengthen pathways back into the workforce for injured workers. However, there is also a paucity of details about what Return to Work Victoria will do and how it will work. Noting this, several stakeholders suggested that the new division is an opportunity to provide holistic, wrap-around support to remove barriers for re-entering the workforce.⁸⁹

The Committee questioned representatives from WorkSafe and government departments on how Return to Work Victoria would operate. However, these representatives advised the Committee that at the time of the public hearing they are 'currently in the planning phase' and that many of the details were still being decided, including funding and resourcing.⁹⁰

⁸⁶ For example, see: Paul Guerra, *Transcript of evidence*; Meredith Peace, *Transcript of evidence*.

⁸⁷ Lisa Alcock, Secretary, Medical Scientists Association of Victoria, public hearing, Melbourne, 12 December 2023, *Transcript of evidence*, p. 50.

⁸⁸ Ibid.

⁸⁹ Marcelle Mogg, *Transcript of evidence*, p. 26; Luke Hilakari, *Transcript of evidence*, p. 24; Dr Mary Wyatt, *Transcript of evidence*, p. 64.

⁹⁰ Joe Calafiore, *Transcript of evidence*, p. 15.

On 8 January 2024, in response to a question on notice, the Department of Treasury and Finance provided some additional high-level information on funding for Return to Work Victoria, stating:

The cost of establishing and operating Return to Work Victoria will depend on its final form which is still being considered. However, it is expected that these costs will primarily be funded within WorkSafe's operating budget.⁹¹

The Department of Treasury and Finance also explained that:

- the new unit will be 'subject to WorkSafe's existing governance structure'
- initially it will be 'staffed by reorganising existing resources'.⁹²

The Committee shares the concerns of stakeholders about the lack of meaningful details on Return to Work Victoria. The Government has acknowledged that the impact of changes to eligibility requirements which may disqualify workers from receiving payments will be offset by Return to Work Victoria by supporting re-entry into the workforce.⁹³ However, there is no information on the expected rollout of the new division of WorkSafe, its initial pilot programs or its approach to return to workforce planning and support.

The Committee is greatly concerned that the Bill's changes to entitlements will come into effect before Return to Work Victoria is fully realised. This would leave vulnerable workers in a precarious position, without income or the tools to re-enter the workforce. Ideally, Return to Work Victoria should be fully realised before significant changes to the Scheme are in place.

The Victorian Government should also provide more information to the public on how Return to Work Victoria will operate, including its approach to return to work planning, pilot programs it will undertake and the outcome of its consultation with stakeholders.

FINDING 9: The Bill's changes to eligibility criteria for receiving payments are significant and will result in a number of injured workers being disqualified from payments beyond the provisional period. The lack of meaningful detail about Return to Work Victoria means the Committee is unable to determine if workers' ineligible for payment will be properly supported to re-enter the workforce.

⁹¹ Department of Treasury and Finance, response to questions on notice, p. 3.

⁹² Ibid.

⁹³ Victorian Government, *WorkCover Scheme Modernisation: Eligibility factsheet*, 2023, <<https://content.vic.gov.au/sites/default/files/2023-05/Factsheet-WorkCover-Scheme-modernisation-Eligibility.pdf>> accessed 2 January 2024.

RECOMMENDATION 17: That the Bill be amended to create a Return to Work advisory committee responsible to the Board of WorkSafe for the coordination of return-to-work initiatives at WorkSafe. The committee should be tasked with identifying, overseeing the implementation, and monitoring the performance of Return to Work Victoria and reporting to the Board concerning return-to-work programs and outcomes. It should consist of equal representation of employees, employers and rehabilitation providers and report biannually to both Houses of Parliament.

RECOMMENDATION 18: That the review in Recommendation 2 look into the composition of the WorkSafe Board to consider the representation of employees, employers and skilled representatives with appropriate expertise.

RECOMMENDATION 19: That the review in Recommendation 2 consider the frequency and content of reporting by WorkSafe to Parliament.

RECOMMENDATION 20: That the review in Recommendation 2 consider premiums.

**Adopted by the Legislative Council Economy and Infrastructure Committee
Parliament of Victoria, East Melbourne
22 January 2024**

Appendix A

About the Inquiry

A.1 Submissions

1	Australian Medical Association Victoria
2	National Lotteries Newsagents Association
3	Andrea Holden
4	Injured Workers Support Team
5	nabenet
6	H.D.A Medical Group
7	Australian Clinical Psychology Association
8	Victorian Trades Hall Council
9	Australian Psychological Society
10	Community and Public Sector Union (CPSU) Victoria
11	Victorian Automotive Chamber of Commerce (VACC)
12	South East Melbourne Manufacturers Alliance
13	Victorian Farmers Federation
14	Australian Lawyers Alliance
15	Joseph Gagliano
16	Paul Serong
17	Association of Psychologists Inc
18	Royal Australasian College of Physicians (RACP)
19	Australian Counselling Association
20	Master Builders Association of Victoria

A.2 Public hearings

Tuesday 12 December 2023

Davui Room, 55 Saint Andrews Place, East Melbourne, 3002

Name	Title	Organisation
Joe Calafiore	Interim Chief Executive Officer	WorkSafe Victoria
Roger Arnold	Executive Director, Insurance	WorkSafe Victoria
Chris Barrett	Secretary	Department of Treasury and Finance
Kate O'Sullivan	Acting Deputy Secretary, Commercial	Department of Treasury and Finance
Bernard Gastin	Executive Director Financial Assets and Liabilities	Department of Treasury and Finance
Jason Loos	Deputy Secretary, Economic Policy and State Productivity	Department of Premier and Cabinet
Luke Hilakari	Secretary	Victorian Trades Hall Council
Wilhelmina Stracke	Assistant Secretary	Victorian Trades Hall Council
Karen Batt	Secretary	Community and Public Sector Union (CPSU)
Geoff Lewin	-	Community and Public Sector Union (CPSU)
Paul Healey	State Secretary	Health and Community Services Union (HACSU)
Rachel Halse	-	Australian Nursing and Midwifery Federation (ANMF)
Tim Piper	Head Victoria	Australian Industry Group (AIG)
Jack Carmody	Lead OH&S Policy Advisor	Victorian Congress of Employer Associations
Vivek Rajan	Senior Industrial Officer	Victorian Allied Health Professionals Association
Lisa Alcock	Secretary	Medical Scientists Association of Victoria
Dr Mary Wyatt	-	Return to Work (RTW) Matters

Wednesday 13 December 2023

Davui Room, 55 Saint Andrews Place, East Melbourne, 3002

Name	Title	Organisation
Joe Gagliano	Psychologist	-
Sam	-	Panel of injured workers
Nicole	-	Panel of injured workers
Marcelle Mogg	Chief Executive Officer	Mental Health Victoria
Emma Greeney	Executive Director Strategy, Policy and Advocacy	Mental Health Victoria
Paul Serong	Occupational Rehabilitation Provider	-
Frank Imbesi	Victorian President	Australian Rehabilitation Providers Association
Shaun Marcus	National President	Australian Lawyers Alliance
Lachlan Fitch	Victorian Branch Committee President	Australian Lawyers Alliance

Thursday 14 December 2023

Davui Room, 55 Saint Andrews Place, East Melbourne, 3002

Name	Title	Organisation
Paul Guerra	Chief Executive	Victorian Chamber of Commerce and Industry
Michael	Injured worker	-
Ruth Jelley	Assistant Secretary VIC (Professional Staff)	National Tertiary Education Union (NTEU)
Dr Kay Wilson	-	National Tertiary Education Union (NTEU)
Meredith Peace	Branch President	Australian Education Union (AEU) Victoria
Chris Kennedy	Assistant Secretary	The Police Association Victoria
Danny Hill	Secretary	Victorian Ambulance Union
Vasalia Govender	-	Injured Workers Support Team
Francine Rose	-	-
Sue Rose	-	-
Michael Jandula	-	-

Extracts of proceedings

Legislative Council Standing Order 23.20(5) requires the Committee to include in its report all divisions on a question relating to the adoption of the draft report. All Members have a deliberative vote. In the event of an equality of votes, the Chair also has a casting vote. The Committee divided on the following questions during consideration of this report. Questions agreed to without division are not recorded in these extracts.

Mr Mulholland moved, that in section 1.5 at Numbered point 6, after the word ‘further’, the following text be inserted: *‘the Government identified numerous changes made to the Bill during consultation, however’* and that the words *‘and the little consultation which did occur is not reflected in the Bill’* be deleted.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsey
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mr Davis moved, that in the paragraph commencing ‘The Committee acknowledges the substantial concern ...’, all words from ‘*As a result*’ to the end of Recommendation 1 be deleted and a new Recommendation 1 be inserted in the following terms:

Recommendation 1: That the Victorian Government conducts urgent and meaningful consultation with stakeholders, with the Bill proceeding after consultation is completed. The Government should table a consultation report in the Parliament prior to the Bill proceeding.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsey
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mr Davis moved, that in Finding 1 the words ‘*and implementations*’ be deleted and in Recommendation 3 the words ‘*and implements*’ be deleted.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsey
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mr Davis moved, That in Finding 3 all words from *'Until this is achieved'* to *'the WorkCover scheme'* be deleted.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsey
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mrs McArthur moved, That Recommendation 7 be deleted.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsey
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mrs McArthur moved, that Finding 5 be deleted.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsy
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mr Davis moved, That Recommendations 11 and 12 be deleted and replaced by a new Recommendation in the following terms:

That the review proposed in Recommendation 2 include examination of Clause 16 to assess whether an alternative amendment would allow for greater flexibility and accuracy in assessing the totality of a worker's physical and mental injuries.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsy
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mr Davis moved, that in Section 2.5.2 the paragraph commencing with the words ‘Cutting off support for workers’ be converted to a Finding 8 and the words ‘*is likely to have substantial negative impacts on the workers and may well exacerbate the mental injury*’ be deleted and replaced by the words ‘*may have a negative impact on some workers*’.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsey
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mr Mulholland moved, that in Finding 9 the words ‘*be severe and irreversible*’ be deleted and replaced by the words ‘*have already occurred*’.

The question was put.

The Committee divided.

Ayes	Noes
Mr Mulholland	Ms Purcell
Mr Davis	Ms Copsey
Mrs McArthur	Mr Ettershank
Mr McIntosh	
Mr Berger	
Mr Galea	

The question was agreed.

Mr Davis moved, that a further new recommendation be inserted in the following terms:

That the WorkSafe Board be reformed to ensure equal representation of employees and employers and one-third skilled representatives with appropriate expertise.

The question was put.

The Committee divided.

Ayes	Noes
Mr Davis	Ms Purcell
Mr Mulholland	Mr Ettershank
Mrs McArthur	Ms Copsey
	Mr Galea
	Mr McIntosh
	Mr Berger

The question was negatived.

Mr Davis moved, that a new recommendation be inserted in the following terms:

That the review in recommendation to consider whether it is feasible to consider the formal separation of categories of premiums in to 'public' and 'private' sectors with relevant different rates being structured on actual performance within category.

Mr McIntosh moved, that the amendment be amended to read '*That the review in Recommendation 2 consider premiums.*'

The question on the amendment to the amendment was put.

The Committee divided.

Ayes	Noes
Ms Purcell	Mr Davis
Mr Ettershank	Mr Mulholland
Ms Copsey	Mrs McArthur
Mr Galea	
Mr McIntosh	
Mr Berger	

The question was agreed.

Mr Davis moved, that a new recommendation be inserted in the following terms:

That average premium rates for the WorkCover scheme be capped for two years following the passage of the Bill.

The question was put.

The Committee divided.

Ayes	Noes
Mr Davis	Ms Purcell
Mr Mulholland	Mr Ettershank
Mrs McArthur	Ms Copsey
	Mr Galea
	Mr McIntosh
	Mr Berger

The question was negatived.

Mr Davis moved, That the Draft Final Report (Chapters1 to 2 including Findings 1 to 10 and Recommendations 1 to 13 and Appendix A), be adopted as the Report of the Committee, and that it be Tabled 6 February 2024.

The question was put.

The Committee divided.

Ayes	Noes
Ms Purcell	Ms Copsey
Mr Davis	
Mr McIntosh	
Mr Berger	
Mr Galea	
Mr Mulholland	
Mrs McArthur	
Mr Ettershank	

The question was agreed.

Minority reports

Economy and Infrastructure Committee

Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023

Dissenting Report

Executive Summary and Introduction

This dissenting report is a genuine attempt to engage with the evidence provided to the Inquiry into the Workplace Injury, Rehabilitation Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (the Bill). The authors have attempted in good faith to interrogate the matters dealt with by the WorkCover Bill, despite the Victorian Government's manifest failure to consult with the Victorian community, engage with stakeholders and experts, and investigate further reforms to repair Victoria's fundamentally flawed WorkCover scheme.

In March 2023, an unnamed Labor Government spokeswoman stated: "The WorkCover scheme is fundamentally broken." This extraordinary admission followed a long period of poor performance by the WorkCover scheme, two critical Ombudsman inquiry reports, and little action by the Victorian Labor Government to address it.

State-based workers' compensation programs, among the oldest types of social insurance initiatives in Australia, provide crucial medical and income support to workers injured or made sick on the job. WorkSafe Victoria oversees the 'WorkCover' scheme which is funded by employer contributions; and the fundamental objective of the WorkCover scheme is to ensure the right support is provided to the workers who need it. WorkSafe is tasked with reducing the incidence of workplace injuries and the promotion of safe and healthy work environments; yet under its purview, more Victorians are off work and claiming under the scheme than ever before.

For nearly six years, Victoria's WorkCover scheme has seen a decline in performance. The quantity of claims has nearly doubled; and mental injury claims have skyrocketed. A 2020 report into the system performed by Finity Consulting found the costs of the scheme had spiralled out of control, yet despite the clear evidence that WorkCover required significant reform, the Labor Government failed to act. Ahead of the 2022 state election, the Labor Government chose not to publish the Finity report or act on its findings, instead spending \$1.3 billion of taxpayer funds to prop up the scheme.

Labor only acted when WorkCover had reached crisis point, forcing employers to accept a 42 percent increase in their premiums in July 2023; and in November 2023, admitting the WorkCover scheme was in need of urgent reform when it introduced the Workplace Injury, Rehabilitation Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (the Bill) to Parliament.

There is no defensible reason, however, why the Labor Government attempted to introduce the Bill into Parliament without adequately or fully consulting with the Victorian public or with stakeholders, and without publishing any actuarial advice or modelling supporting the proposed changes.

The Liberals and Nationals secured majority crossbench support for an Inquiry into the Bill. The Inquiry has served as a key opportunity to interrogate the changes proposed by the Bill and hear directly from stakeholders affected or representing those affected by the WorkCover scheme.

The Inquiry heard that the Labor Government failed to adequately consult with key stakeholders on the contents of the Bill prior to its introduction, including those it had directly appointed to its

own WorkCover Advisory Committee. The failure to consult with employers, mental health organisations, health practitioners, and peak bodies is particularly concerning given the Labor Government's abject failure to manage the WorkCover system and to deliver its commitments to deliver on the recommendations of the Royal Commission into the Mental Health system. Many of the stakeholders providing evidence to the Inquiry advised the Committee that this had been their first opportunity to provide a robust critique of the WorkCover system and the particulars of the Bill.

The WorkCover scheme evidently requires urgent reform. The authors of this report, however, believe the Bill does not adequately address the fundamental failings of the scheme, which requires strengthening to ensure the future sustainability and fitness for purpose of Victoria's WorkCover arrangements. The sustainability of the WorkCover scheme is important because of the impact of the scheme and its cost on Victorian businesses, our competitiveness, and, importantly, in providing certain and predictable support for injured employees.

This report sets out opportunities to strengthen the Bill, improve the accountability of the WorkCover scheme, and minimise the potential for further crippling increases to employer premiums.



The Hon David Davis MLC



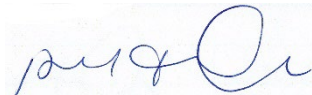
Evan Mulholland MLC



Beverley McArthur MLC



Gaelle Broad MLC



Renee Heath MLC

Summary of findings and recommendations

Findings	Recommendations
<p>Finding 1: Employers will be unable to sustain a further increase in WorkCover premiums</p>	<p>Recommendation 1: The Labor Government should guarantee a cap on premium increases for 24 months</p> <p>Recommendation 2: The Labor Government should separate the WorkCover scheme arrangements for private and public sector employers</p>
	<p>Recommendation 3: The Labor Government should introduce premium discounts for employers demonstrating strong injury prevention and return to work arrangements</p>
<p>Finding 2: The Labor Government failed to act on WorkCover despite knowing the scheme was unsustainable</p>	<p>Recommendation 4: Require WorkSafe Victoria to report every six months to both houses of Parliament, within 60 days of the reporting period, concerning:</p> <ul style="list-style-type: none"> • the quantity of claims, with a detailed breakdown of claims categories • trends and emerging issues • actions taken to address trends/emerging risks; and • the review period to commence from the date the Act receives Royal Assent <p>Recommendation 5: Overhaul the composition of the WorkSafe Board to require:</p> <ul style="list-style-type: none"> • expanding current director representation to nine • directors to have skills and experience relevant to the administration and governance of WorkCover or a similarly complex insurance scheme • three directors from employer associations or groups; • three directors with expertise in employee relations; and • three directors with relevant skills to support the sustainability of the organisation.
<p>Finding 3: The Labor Government manifestly failed to consult on the Bill</p> <p>Finding 4: Inefficiencies in the current system are adding to cost of operating the WorkCover scheme</p> <p>Finding 5: The Labor Government has failed to deliver on recommendation 16 of the Royal Commission into the Mental Health system, which calls for action to foster mentally healthy workplaces</p>	<p>Recommendation 6: The Labor Government should commission an independent, comprehensive review of the WorkCover scheme (not merely the particulars of the Bill) within the next three months:</p> <ul style="list-style-type: none"> • performed in consultation with employers, unions, rehabilitation providers, health and mental health organisations, and subject matter experts • examining the impact of the changed definition of mental injury and its implementation; • examining the efficiency of the system overall and consequent impacts on employers; • timeliness of claims assessments to increase return to work rates and reduce liability; and • the Government should publish the review report in full within thirty days of completion and table the report in both Houses of Parliament <p>Recommendation 7: Amend the Bill to review the operation of the legislation by 2026 (rather than 2027)</p>
<p>Finding 6: The public service is responsible for a</p>	<p>Recommendation 8: The Labor Government should commission an audit of the performance of Victorian public</p>

Summary of findings and recommendations

Findings	Recommendations
disproportionate amount of mental injury claims in Victoria	sector's workplace prevention and early intervention programs within the next 12 months
Finding 7: The Labor Government has failed to outline the composition, role, functions, and responsibilities of Return-to-Work Victoria, undermining the proposed solution to the underlying issues with WorkCover	Recommendation 9: Amend the Bill to remove s 512 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic) the WorkCover Advisory Group and substitute it with a new s 512 creating a Return-to-Work Advisory Committee: <ul style="list-style-type: none">• responsible to the Board of WorkCover for the coordination of return-to-work initiatives at WorkSafe• tasked with identifying, overseeing the implementation, monitoring the performance of, and reporting to the WorkCover Board concerning return-to-work programs and outcomes• consisting of 1/3 employee, 1/3 employer, and 1/3 rehabilitation provider representation• reporting twice annually to both houses of Parliament Recommendation 10: The independent WorkCover review (see recommendation 3) must also consider best international practice concerning rehabilitation and return to work

Key changes proposed by the Bill

The Bill proposes changes to current arrangements for WorkCover in Victoria, including:

- Restricting eligibility for mental injury claims to those predominantly caused by employment,¹ not caused by stress or burnout from usual or typical work activities², and diagnosed by a medical practitioner using the DSM criteria. Injuries caused by work related stress or burnout where a worker's duties are 'routinely traumatic' will, however, be compensable³. To date, the Labor Government has failed to acknowledge or present any model on the impact of the redefinition of eligibility on mental injury claims.
- Changing the entitlement to weekly payments after 130 weeks by requiring workers to demonstrate a minimum 20% whole person impairment (the whole person impairment test), and that they would likely never have the capacity to work again⁴. The Labor Government has not published modelling on the impact of the introduction of the whole person impairment test. Nor has it outlined how many individuals currently on WorkCover will be impacted by the change.

In announcing the Bill, the Labor Government also flagged the creation of a new government body called 'Return to Work Victoria'. The Committee members authoring this report are seriously concerned by the lack of detail concerning "Return to Work Victoria", with the only publicly available information on the functions, roles, and responsibility of this body comprising of a brief fact sheet.

Limiting costs on employers

Victoria's WorkCover scheme is the costliest in the nation, with employers paying a premium rate of 1.8% compared with 1.6% in New South Wales and 1.29% in Queensland⁵. More needs to be done to safeguard the future financial sustainability of the scheme and limit the cost of further premium increases on Victorian businesses, which are already paying more than their counterparts elsewhere in Australia.

In a written submission to the Inquiry, Brendan Tohill of the National Lotteries & Newsagents Association advised:

Premiums our members have already endured are affecting their ability to function. Should further increases occur this would have hugely negative feedback on our members - many of them Mum and Dad business[es].

Speaking to the effects premium increases have had on Victorian businesses, Australian Industry Group Victoria Head, Mr Piper, in his opening address to the Committee stated:

I had many members call me that had 75 per cent increases, and that was through a range of issues, not all based on the premium increases themselves. But when you have increases at that level, obviously people are saying, 'How can I continue to employ as many people as I want to? There are additional costs that I am looking at.' It is a very significant impost on businesses.⁶

Similarly, the Victorian Chamber of Commerce and Industry's Paul Guerra stated to the Committee:

¹ Workplace Injury Rehabilitation and Compensation Amendment Bill 2023 (Vic) cl 5(2)

² Workplace Injury Rehabilitation and Compensation Amendment Bill 2023 (Vic) cl 5(3)

³ Workplace Injury Rehabilitation and Compensation Amendment Bill 2023 (Vic) cl 5(3)

⁴ Workplace Injury Rehabilitation and Compensation Amendment Bill 2023 (Vic) cl 13

⁵ Icare. (2023). Premium updates for 2023-24, website, available at <https://www.icare.nsw.gov.au/employers/premiums/premium-updates#gref>
<https://www.worksafe.qld.gov.au/news-and-events/news/2023/workcover-continues-to-offer-queenslanders-exceptional-value-and-a-sustainable-fund#:~:text=In%202023%2D24%2C%20WorkCover%20Queensland's,the%20premium%20rate%20will%20increase.>

⁶ Tim Piper, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 32.

Slugging businesses with eye-watering increases to WorkCover premiums at an average of 42 per cent, as occurred this year, is the definition of bill shock and cannot be repeated. The state is now faced with a choice: reform the WorkCover system or provide cash from state budgets to prop it up. Business will be unable to cover massive increases next year, and many will shutter if the system continues without change. That is not good for Victorian business and it is not good for Victorian workers.⁷

The Labor Government must rule out further premium increases for businesses for the next two years or risk further damaging the competitiveness of the Victorian economy. Victorian businesses are at breaking point, with rapidly rising energy costs, WorkCover premiums, the mental health levy, and other state government-imposed fees and charges threatening their financial viability. The 2023/24 increase of WorkCover premiums to 1.8% has placed Victorian businesses at a competitive disadvantage with businesses from other Australian jurisdictions.

Box 1: New Zealand's Workers Compensation Scheme⁸

New Zealand businesses pay much lower premium rates than their Australian peers, at 0.63% of payroll for the 'Work Levy' in 2022/23 in addition to paying a flat 'Working Safer Levy' rate of \$0.08. Employers can access substantial discounts to their work levy through New Zealand's Accident Compensation Corporation if they demonstrate strong injury prevention and return to work arrangements for their employees.

Another important difference between the New Zealand scheme and Victoria's arrangements is coverage for mental injury claims. The legislation governing New Zealand's scheme restricts mental injury cover to injuries caused by a single workplace-based event: a much narrower definition than that proposed by the Bill or within existing Australian legislation.

The cross-subsidisation between the private and public sectors must also cease. The Victorian public service is responsible for a disproportionate amount of WorkCover claims, with 38% of all mental injury claims made by public servants who make up only 10% of Victoria's labour force. While different premium rates have been applied to public and private sector employers starting from 2022, the schemes are still combined and the base funding for WorkCover is from a pool principally funded by the private sector.

In New South Wales, the workers compensation market includes a specialist scheme for government agencies (the Treasury Managed Fund) and the Nominal Insurer offering policies for all industries other than coal⁹. This is a better, fairer arrangement that ensures the private sector does not subsidise or act as a de facto 'credit card' to be used when the Government fails to properly manage or support its workforce. It should be considered for Victoria.

The Labor Government should also investigate stronger incentive arrangements for employers who demonstrate robust injury prevention and return to work arrangements for their workers, such as the discount scheme administered by New Zealand's Accident Compensation Corporation.

Finding 1: Employers will be unable to sustain a further increase in WorkCover premiums

⁷ Paul Guerra, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 1-2.

⁸ Safe Work Australia. (2021). *Comparison of workers' compensation arrangements in Australia and New Zealand*, available at https://www.safeworkaustralia.gov.au/sites/default/files/2022-10/comparison_of_workers_compensation_arrangements_in_australia_and_new_zealand_2021_swa_edits.pdf

⁹ Safe Work Australia. (2022). 'Table 4.5', *Comparison of Workers Compensation arrangements in Australia and New Zealand*, available at <https://www.safeworkaustralia.gov.au/book/comparison-workers-compensation-arrangements-australia-and-new-zealand-2021-28th-edition/chapter-4-coverage-and-eligibility-benefits/table-45-workers-compensation-arrangements-government-employers>.

Recommendation 1: The Labor Government should guarantee a cap on premium increases for 24 months

Recommendation 2: The Labor Government should separate the WorkCover scheme arrangements for private and public sector employers

Recommendation 3: The Labor Government should introduce premium discounts for employers demonstrating strong injury prevention and return to work arrangements

Building confidence

The Labor Government's financial sustainability review of the WorkCover scheme brought the need for reform into stark relief. A 2020 report commissioned from Finity Consulting (the Finity report – **Appendix A**) found that by 30th June 2030, WorkSafe's net assets could drop to -\$22.7 billion with total liabilities exceeding \$53 billion, while the insurance funding ratio (IFR) for the WorkCover scheme could crash to 38 percent, compared to 147 percent in December 2019. WorkSafe highlight the range should sit between 105-140%.

Ahead of the 2022 state election, the Labor Government chose not to publish the Finity report or act on its findings, instead spending \$1.3 billion of taxpayer funds to prop up the WorkCover scheme (\$550 million in 2020/21; \$450 million in 2021/22; and \$300 million in 2022/23).

In the three years since the Finity report was provided to (and then buried by) the Labor Government, the growth in claims and longer recovery times have continued to place immense pressure on the WorkCover scheme, with the cost of weekly income support reaching \$3.2 billion in 2022, compared to \$1.88 billion in 2016. Benefits for mental injury claims nearly doubled over the same six-year period.

More generally, public reporting has been opaque, incomplete, and has obscured critical information about the performance of the WorkCover scheme. The 2022-23 WorkSafe Annual Report, which was tabled in the last sitting week of the 2023 calendar year, publishes only general details concerning the quantity, type, and cost of claims: for example, reporting the total number of claims but not breaking this information down by claim type.

This information is critical if the WorkCover scheme is to be subjected to public scrutiny: a necessary outcome given the system failures that have only been revealed by the Labor Government in proposing the Bill.

At the same time, even the scant publicly available information about the performance of the WorkCover scheme shows that the system has needed reform for years. Analysis of data extrapolated from WorkSafe's publicly available annual reports (**Table 1** below) shows the volume and size of WorkCover claims have grown significantly over the past nine years.

The average claim size more than doubled between 2014/15 and 2022/23, while the financial performance of the scheme has fallen to a negative balance of -\$1.76 billion in 2022/23 from a positive balance of \$210 million in 2014/15.

Table 1: Summary of WorkSafe Annual Report data

	2022/23	2021/22	2020/21	2019/20	2018/19	2017/18	2016/17	2015/16	2014/15
New Claims	32,780	28,632	27,925	27,686	27,606	26,429	25,843	26,286	26,757
Mental health injury % of claims	16%	15.10%	13.10%	14.30%	14%	12.60%	Not reported	Not reported	Not reported
Claims per million hours worked	6.8	6.36	6.55	6.27	6.31	6.23	6.43	6.95	7.34
No. workers supported with treatment or weekly benefits	98,047	90,916	83,667	82,711	79,654	Not reported	Not reported	Not reported	Not reported
Claims Paid	\$3.2B	\$2.9B	\$2.5B	\$2.4B	\$2.01B	\$1.99B	\$1.86B	\$1.85B	\$1.90B
Premiums Received	\$3.25B	\$2.92B	\$2.85B	\$2.45B	\$2.74B	\$2.54B	\$2.21B	\$2.07B	\$1.94B
Average Claim Size	\$145,179	\$131,315	\$129,761	\$109,821	\$82,992	\$77,741	\$73,438	\$65,714	\$60,967
No. of Deaths	69	68	50	37	24	24	21	31	20
Workplace inspections	44,438	37,882	39,593	47,831	48,652	48,044	Not reported	Not reported	Not reported
Improvement Notices issued	10,873	9,035	9,460	12,888	2,674	Not reported	Not reported	Not reported	Not reported
Prosecutions completed	182	137	83	118	151	127	103	110	121
No. FTEs	1,847	1,554	1,505	1,351	1,176	1,056	1,040	1,023	964
Net Financial Result Performance from insurance operations	-\$1,764M	\$1,585M	\$3,869M	\$3,542M	\$68M	\$73M	\$233M	\$280M	\$210M
Performance against budget	\$1.2B above target	\$0.6B above target	\$2.7B below target	\$3.4B below target (Covid)	\$40M below target	\$13M above target	\$96M below target	\$116M below target	\$152M below target
Total Comprehensive Result For Year	-\$180M	\$43M	-\$540M	\$3,021M	-\$823M	\$483M	\$694.1M	-\$475M	\$454M
Total Equity (Balance Sheet)	\$1,259M	\$1,083M	\$1,125M	-\$586M	\$2,435M	\$3,258M	\$2,775M	\$2,081M	\$2,556M

Employers deserve timely, transparent information about the performance of WorkCover and, as funders of the scheme, the confidence that it will be financially sustainable without further premium hikes.

Witnesses indicated their support for more frequent reviews of the WorkCover scheme to ensure its financial sustainability.¹⁰ The Victorian Automotive Chamber of Commerce’s (VACC) written submission advised:

Genuine engagement and consultation dictate that stakeholders in the Scheme be provided with a detailed analysis of actuarial and related data, to assess the merits of implementing major structural reforms.¹¹

The authors of this report recommend amending the Bill to require six-monthly reporting to both houses of Parliament concerning the quantity of differing claims categories, trends and emerging issues, and mitigatory actions. This will bolster the accountability and transparency of the WorkCover scheme, incentivise improved performance by WorkSafe, and build public confidence that taxpayer funds will not again be used to prop up a fundamentally broken scheme.

The WorkSafe Board should also be overhauled so it is fit for the purpose of providing frank, fearless advice and oversight of the WorkCover scheme. Board Directors should be recruited in

¹⁰ Tim Piper, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 43.

¹¹ Victorian Automotive Chamber of Commerce and Industry. (2023). *Submission to the WorkCover Inquiry*.

equal proportions from employer associations, employee representatives (for example, unions), and health and/or occupational health providers and peak bodies.

Finding 2: The Labor Government failed to act on WorkCover despite knowing the scheme was unsustainable

Recommendation 4: Require WorkSafe Victoria to report every six months to both houses of Parliament, within 60 days of the reporting period, concerning:

- the quantity of claims, with a detailed breakdown of claims categories
- trends and emerging issues
- actions taken to address trends/emerging risks; and
- the review period to commence from the date the Act receives Royal Assent

Recommendation 5: Overhaul the composition of the WorkSafe Board to require:

- expanding current director representation to nine
- directors to have skills and experience relevant to the administration and governance of WorkCover or a similarly complex insurance scheme
- three directors from employer associations or groups;
- three directors with expertise in employee relations; and
- three directors with relevant skills to support the sustainability of the organisation.

Boosting accountability

The Labor Government manifestly failed to consult with stakeholders concerning the Bill and their perspectives on the reform needed for the WorkCover scheme.

Labor's failure to consult is apparent from the facts surrounding the timeline for the Bill itself. The Bill was not released to the public in exposure draft form; submissions were not invited; and the Labor Government attempted to force the Bill through Parliament in its final weeks of sitting.

Secretary Barrett (Department of Treasury and Finance) informed the Committee that the Labor Government consulted with a steering committee involving the Australian Industry Group, the Australian Lawyers Alliance, the Victorian Chamber of Commerce and Industry and the Victorian Trades Hall Council in the development of the Bill, stating:

Following approval in principle of the legislative amendments, cabinet-in-confidence discussions were undertaken with the consultation steering committee and their affiliates. This engagement was designed to identify any unintended consequences and resulted in further changes to the wording and operation of various aspects of the Bill.¹²

Statements from the Australian Lawyers Alliance,¹³ the Victorian Chamber of Commerce and Industry¹⁴ and the Victorian Trades Hall Council¹⁵, however, indicated that despite their involvement in the steering committee they were not shown the draft Bill and were not consulted regarding its key proposals.

The Inquiry heard further evidence substantiating the Labor Government's disregard for the perspectives of stakeholders with subject matter expertise and, in the case of employers and employee representatives, a clear stake in the future financial viability of the WorkCover scheme.

¹² Chris Barrett, Tuesday 12 December 2023, Legislative Council Economy and Infrastructure Committee, p. 4.

¹³ Lachlan Finch, Wednesday 12 December 2023, Legislative Council Economy and Infrastructure Committee, p. 53.

¹⁴ Paul Guerra, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 3.

¹⁵ Luke Hilakari, Tuesday 12 December 2023, Legislative Council Economy and Infrastructure Committee, p. 21.

The VACC advised in a written submission:

The VACC also wishes to express its disappointment at the lack of genuine consultation or engagement, by the Labor Government, with industry on the Bill. VACC notes that it was not consulted with during the enquiry period.¹⁶

Several witnesses to the Inquiry also indicated they were not consulted on the Bill or, more generally, on the performance of the WorkCover scheme.¹⁷

Both Mr Hilakari (Trades Hall) and Ms Alcock (Medical Scientists Association of Victoria) separately referred to the process as being 'consult-told'.¹⁸ Mr Marcus (Australian Lawyers Association) reflected on the consultation process, stating:

As we said in our opening, we have been engaged with meetings under the guise of stakeholder consultation, but it has not been real ...¹⁹

Ms Peace (Australian Education Union) noted:

The rushed nature and the lack of consultation and consideration of alternative improvements, such as genuine and funded preventative measures to address the issues which result in mental injury claims....²⁰

Similarly, Ms Jelley commented:

The flavour of those consultation sessions very strongly indicated to us that certain decisions had already been made and were brought to us for 'This is what we intend to do.'²¹

This consistent theme from witnesses on being 'consult-told' reflects the lack of proper research and stakeholder engagement in the preparation of the Bill. The changes proposed by the Bill have either not been modelled, or modelling has not been published; and stakeholders have not been provided with adequate time or information to contribute to a stronger, more sustainable WorkCover scheme. While the Committee has had the opportunity to hear from a small selection of stakeholders with an interest in the WorkCover scheme, the short timeframe permitted for this Inquiry mean gaps in the scheme may remain.

Evidence to the Inquiry indicates the Bill's principal change, which involves inserting a new definition for 'mental injury', was also not mooted with the mental health sector.

Chief Executive Officer of Mental Health Victoria, Marcelle Mogg, commented that her organisation had to proactively contact the Minister for WorkSafe and the TAC, Danny Pearson MP, to discuss proposed changes to the WorkCover scheme after the changes had been briefed to media.²² Ms Mogg confirmed that Mental Health Victoria only saw the Bill 'when it was released in Parliament'.²³

The failure to consult with mental health organisations, providers, and peak bodies is particularly concerning given the Labor Government's abject failure to deliver its election commitments to deliver on the recommendations of the Victorian Royal Commission into the Mental Health system. To date, the Government has failed to deliver on the Royal Commission's key recommendations to strengthen the mental health workforce, while also cutting funding for

¹⁶ Victorian Automotive Chamber of Commerce and Industry. *Submission to the WorkCover Inquiry*, p. 1.

¹⁷ Paul Serong, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 34; Marcelle Mogg, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 24.

¹⁸ Luke Hilakari, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 26; Lisa Alcock, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 47.

¹⁹ Shaun Marcus, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 50.

²⁰ Meredith Peace, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 47.

²¹ Ruth Jelley, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 21.

²² Marcelle Mogg, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 24.

²³ Marcelle Mogg, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 28.

training psychiatrists, and failing to act on the majority of the 14,000 complaints received by the Mental Health and Wellbeing Commission over the past decade.

The Victorian Government's treatment of the Bill is also another indication of its failure to act on recommendation 16 of the Royal Commission, which calls for action to foster the commitment of employers to mentally healthy workplaces and resources to assist employers and employees to foster mentally healthy workplaces. The Bill was not paired with any announcement concerning such action or resources: and no evidence was provided by the Labor Government to the Inquiry advising of any intention to assist employers to foster mentally healthy workplace environments.

At the same time, the Inquiry heard from employers that something must be done to reduce the impact of mental injury claims on the scheme and employer-paid premiums. Mr Guerra (Victorian Chamber of Commerce and Industry) advised the Inquiry:

The concept of using business as a credit card has to stop. Business has been hit consistently over the past couple of years with either increases in payroll tax, increases in WorkCover levy, increases in mental health levy or the introduction of new levies with the mental health levy and the now the COVID debt levy.²⁴

And later:

The mental health levy, which business pays, is meant to support the mental health of the broader community. Well, a worker is part of the broader community anyway. Our view is with most of the mental health claims emanating from non-work-related issues, they could be dealt with through that other component.²⁵

The authors of this report, if granted further additional time, would have recommended pausing action on the Bill until it had been thoroughly consulted on with mental health organisations, employer groups, rehabilitation providers and other stakeholders with a legitimate interest in the WorkCover scheme. Unfortunately, the Labor Government's decision to introduce the Bill in the wake of a 42% increase in premiums and under the threat of further premium increases has constrained the authors' ability to recommend this pause.

The Committee instead recommends a further independent, comprehensive review of WorkCover take place within the next two years, to be informed by the expertise of a wide range of employer, union group, rehabilitation provider and health stakeholders. The outcome of the review should guide, if recommended, further reforms to the WorkCover system to assure its sustainability and fairness.

Finding 3: Inefficiencies in the current system are adding to cost of operating the WorkCover scheme

Finding 4: The Labor Government has failed to deliver on recommendation 16 of the Royal Commission into the Mental Health system, which calls for action to foster mentally healthy workplaces

²⁴ Paul Guerra, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 1-2.

²⁵ Paul Guerra, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 1-2.

Recommendation 6: The Labor Government should commission an independent, comprehensive review of WorkCover within the next twelve months:

- performed in consultation with employers, unions, rehabilitation providers, health and mental health organisations, and subject matter experts
- examining the impact of the changed definition of mental injury and its implementation;
- examining the efficiency of the system overall and consequent impacts on employers;
- timeliness of claims assessments to increase return to work rates and reduce liability; and
- the Government should publish the review report in full within thirty days of completion and table the report in both Houses of Parliament

Recommendation 7: Amend the Bill to review the operation of the legislation by 2026 (rather than 2027)

The Government as a responsible employer

The Victorian Government is the state's largest employer, with 354,800 people employed as public servants, representing 10% of Victoria's labour force.

While the Victorian public service makes up approximately 10% of the state's labour force²⁶ the 2021-22 WorkSafe Annual Report indicated that more than 38% of all mental injury claims under the WorkCover scheme are made by public servants.²⁷ No data on the scale of mental injury claims by the public sector was provided by WorkSafe in their 2022-23 Annual Report, although the report included the admission that '[m]ental injuries continue to be a challenge, and a focus for WorkSafe, including in this sector'.²⁸

Evidence provided to the Committee indicated that four public sector departments alone account for 25% of all mental health injury claims in Victoria.²⁹ Witnesses to the Inquiry revealed teachers and police officers had the highest proportion of mental health injury claims.³⁰

Ms Stracke (Victorian Trades Hall Council) commented, *inter alia*:

I mean, we know most stress claims come – the worst offender is the public sector ...³¹

Ms Wyatt (Return to Work Matters) said:

The mental health claims are predominately coming from the public sector, so obviously getting in and working with the public sector departments that are the biggest areas of mental health injuries would be the place to start....³²

Mental injury claims stemming from the public sector are likely to continue to present a challenge to the WorkCover scheme. This is partly due to the nature of some public sector occupations: for example, police officers and paramedics who are frequently exposed to distressing events. These occupations are excluded from the new requirements for mental injury claims on the basis that they are routinely traumatic.³³

²⁶ <https://vpsc.vic.gov.au/data-and-research/past-releases/2021-workforce-data-facts-and-visuals/employee-numbers/>

²⁷ WorkSafe Annual Report 2021-22, p. 32.

²⁸ WorkSafe Annual Report 2022-23, p. 23.

²⁹ Meredith Peace, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 17.

³⁰ Meredith Peace, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 17.

³¹ Wilhelmina Stracke, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 22.

³² Mary Wyatt, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 60.

³³ Workplace Injury Rehabilitation and Compensation Amendment Bill 2023 (Vic) cl 5(3)

Nevertheless, it is vital that the Labor Government, as an employer, take its responsibility to safeguard the mental health of its workers more seriously.

Finding 5: The public service is responsible for a disproportionate amount of mental injury claims in Victoria

Recommendation 8: The Labor Government should commission an audit of the performance of Victorian public sector's workplace prevention and early intervention programs within the next 12 months

Return to Work Victoria

A significant challenge for Victoria's WorkCover scheme is assisting claimants to return to work. Evidence from the Victorian Ambulance Union advised 'that if a person does not return to work within 12 weeks after a post-traumatic stress disorder claim, chances are they do not make a return to work at all'.³⁴ WorkSafe data also confirms this to be the case.

Workers receiving WorkCover payments for over 130 weeks have nearly doubled from 4,500 workers in 2016 to 8,500 workers in 2022.³⁵ The average wait time for occupational rehabilitation under the WorkCover Scheme in Victoria is 112 days.³⁶ Multiple witnesses to the Inquiry have emphasised the importance of early intervention in successfully returning injured workers to work and preventing additional workers from joining the long-tail.³⁷ This is not a new concept and has been widely understood for a long time.

More needs to be done to encourage employees to return to work more quickly, and to assist employers to work collaboratively with their workers on recovery.

Adjacent to this Bill, the government announced the creation of a new body titled Return to Work Victoria.³⁸ The body is being developed with the stated intention of assisting those on WorkCover to return to work and 'reimagine what supports can be provided'.³⁹

The Committee members authoring this report are concerned, however, by the lack of detail concerning "Return to Work Victoria", with the only publicly available information on the functions, roles, and responsibility of this body comprising of a brief fact sheet.

Return to Work Victoria's functions are broadly described as developing and implementing early intervention programs, assisting workers to return to their usual employment or alternative work, and working with employers, unions, mental health experts and occupational health providers on pilot initiatives.⁴⁰ They appear no different to the functions already assigned to WorkSafe and there has been no cost-benefit analysis tabled to describe why it is required or how the body will function within the current authority.

Occupational health provider Paul Serong advised the Committee:

They are talking about this magic Return to Work Victoria division that they are going to have. Return to work is now – we do return to work. When the case comes to rehab, we work on return to work. I do

³⁴ Danny Hill, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 32.

³⁵ Luke Hilakari, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 17.

³⁶ Paul Serong, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 35.

³⁷ Danny Hill, Thursday 14 December 2023 Legislative Council Economy and Infrastructure Committee, p. 32; Frank Imbesi, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 34.

³⁸ 'Getting Victorians Healthy And Back To Work', 19 May 2023.

³⁹ Joe Calafiore, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 2.

⁴⁰ Labor Government. (2023). *Fact Sheet – Return to Work Victoria*, retrieved on 27 December 2023 from <<https://content.vic.gov.au/sites/default/files/2023-05/Factsheet-WorkCover-Scheme-modernisation-Return-to-Work-Victoria.pdf>>.

not know what this new magic Return to Work Victoria is going to achieve, because it is actually in place now; it is just not utilised enough.⁴¹

While WorkSafe Victoria gave evidence that its representatives are having 'very productive conversations with unions and employer groups' concerning Return to Work Victoria, other witnesses advised this was a generous interpretation of the limited discussions that did occur.⁴²

Mr Hilakari (Trades Hall) stated in his opening address, *inter alia*:

There is no information apart from a two-page fact sheet on a website that talks about Return-to-Work Victoria ...⁴³

This was a sentiment shared by other witnesses including Ms Alcock (Medical Scientists Association of Victoria) who stated 'I know that it is proposed, and that is kind of all we really know about it'.⁴⁴ Mr Rajan (Victorian Allied Health Professionals Association) further stated 'I am aware that this has been proposed, but that is about it'.⁴⁵

Robust return-to-work measures will play a critical role in minimising the number of workers on the long tail of WorkCover. Rather than legislate for the creation of yet another statutory organisation (and the consequent costs of operating such an organisation), the authors of this report strongly recommend an independent Return to Work committee tasked with advising on and overseeing the performance of piloted return-to-work initiatives.

The Committee should consist of equal employer, union, and rehabilitation provider representation, report to the WorkSafe Board, and would be empowered to oversee and monitor return to work programs across the state. Creation of the Committee will embed a mechanism for direct stakeholder oversight of the WorkCover scheme, structured stakeholder consultation, and will incentivise the performance of Government-backed return to work measures.

Finding 6: The Labor Government has failed to outline the composition, role, functions, and responsibilities of Return-to-Work Victoria, undermining the proposed solution to the underlying issues with WorkCover

Recommendation 9: Create a Return-to-Work Advisory Committee:

- responsible to the Board of WorkCover for the coordination of return-to-work initiatives at WorkSafe
- tasked with identifying, overseeing the implementation, and monitoring the performance of return-to-work programs and initiatives
- consisting of 1/3 employee, 1/3 employer, and 1/3 rehabilitation providers
- reporting twice yearly to both houses of Parliament

Recommendation 10: The independent WorkCover review (see recommendation 6) must also consider best international practice concerning rehabilitation and return to work

⁴¹ Paul Serong, Wednesday 13 December 2023 Legislative Council Economy and Infrastructure Committee, p. 35.

⁴² Joe Calafiore, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 2.

⁴³ Luke Hilakari, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 19.

⁴⁴ Lisa Alcock, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 52.

⁴⁵ Vivek Rajan, Tuesday 12 December 2023 Legislative Council Economy and Infrastructure Committee, p. 52.

Financial Sustainability Review

WorkSafe Victoria

December 2020

2 December 2020

Mr Colin Radford
Chief Executive Officer
WorkSafe Victoria
1 Malop Street
GEELONG VIC 3220

Dear Colin

Financial Sustainability Review

We are pleased to present our report on WorkSafe Victoria's Financial Sustainability Review (FSR) as at 30 June 2020.

We want to record our thanks to all members of the WorkSafe team (both staff and board) for so willingly participating in this process and for being generous with their time.

We look forward to discussing this report with you.

Yours sincerely

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Financial Sustainability Review

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Part I Summary of Findings

The purpose of this Financial Sustainability Review (FSR) is to provide an assessment of matters that materially affect the overall financial sustainability of WorkSafe Victoria (WorkSafe).

Risks to financial sustainability are those that result in a significant and sustained fall in funding ratios, coupled with an inability to internally recover sufficiently, in a reasonable time, to the preferred state. To be clear, the FSR specifically focuses on *financial* sustainability, and so there are other aspects of a scheme's sustainable operation beyond those covered here.

1 This Report

The structure of this report is such that is intended to be read as a whole. To that extent, we have prepared a Summary of Findings rather than an Executive Summary.

2 What's covered? And what's not?

This FSR has been prepared following the completion of the June 2020 accounts for WorkSafe which showed a material diminution in the financial position of the Scheme. It has been prepared over a short period of time and therefore necessarily focuses on the key drivers of financial sustainability, rather than providing detailed pathways to recover, which are outside the scope of this Report. Nevertheless, we have made a number of recommendations in areas that require immediate attention and have provided some commentary on the likely effectiveness of some of WorkSafe's existing strategies.

3 Summary of conclusions

Until recently WorkSafe had been remarkably stable over almost 20 years, despite comparatively little supporting legislative change over that time. This stability is in contrast to many of the other schemes around Australia which have undergone significant changes over that period, generally in response to material deteriorations in their financial performance.

However, WorkSafe is now at a tipping point in its history and is facing both internal and external threats to its financial sustainability. That is, unless changes can be made to improve claims performance then the scheme is on an unsustainable financial trajectory that will require either significant premium increases or legislative reform, or both, to address the trajectory.

Table 1 below summarises the key drivers of financial sustainability and our commentary on the outlook for each.

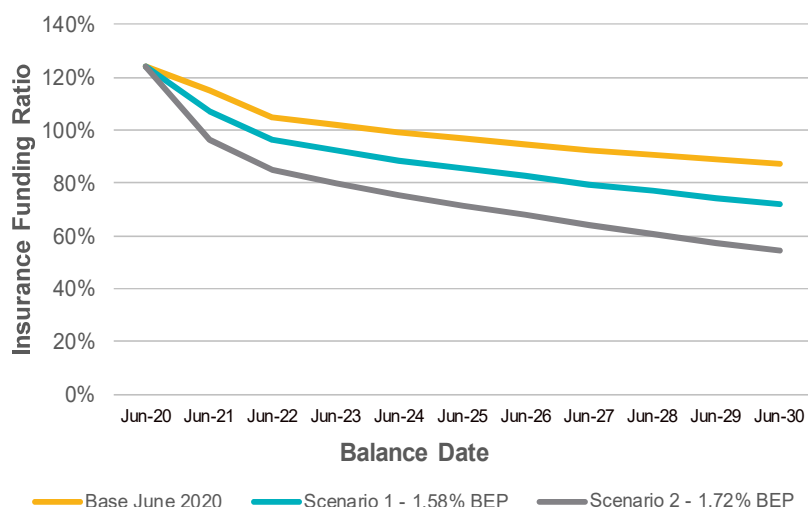
Table 1 – Summary of Key Financial Drivers and their Outlook

	Premiums	Investment Income	Claim Costs	Dividends
Why important?	WorkSafe's most direct income lever. However, it is only equivalent to about 12.5% of outstanding claims, so it can take many years to rectify a balance sheet driven financial issue.	Has historically funded around 1/3 of the claims cost by achieving above inflationary returns. These returns are 'baked into' premiums, with return assumptions in line with long term investment targets. This means WorkSafe must generate returns in line with investment forecasts (i.e. AWE plus 4%) simply to fund the costs (i.e. claims plus expenses) of running the Scheme.	WorkSafe exists to support injured workers. 73c of each \$ paid in premiums is spent directly on benefits to or in support of injured workers (i.e. excluding legal costs and Expenses).	Dividends remove funds from WorkSafe, potentially depleting its ability to withstand adverse financial outcomes
Drivers	Ultimately a decision of Victorian Government (acting on advice from WorkSafe), based on claim costs, expenses and expected investment returns.	Return is 'market driven', given the high growth weighting (>70% in growth assets).	Benefits are legislated. Claim outcomes depend on claims management practices, legal precedent and participant behaviour.	As required by Government.
Key Observations	Current premium (1.272% of wages) has not increased in a decade. It is now apparent that premiums have been insufficient to fund scheme costs for at least 5 years. Most recent forecast BEP is 1.501%, but without material improvement in claim performance this will increase further – possibly towards or above 1.7% over the next 2-3 years.	Need to be able to distinguish between volatility and changes in the expected level – volatility can be managed over time without impacting long term solvency, but a reduction in the expected average future return can only be covered by higher premiums.	Benefit package has been stable over more than 20 years. However, current performance is particularly adverse and multiple areas are threatening financial sustainability: <ul style="list-style-type: none"> - RTW rates continue to deteriorate. - The capacity test is failing, with materially more claims gaining access to long term benefits. - Mental injury claim growth is unsustainable. 	Dividends of around \$700 million are currently forecast across the forward estimates. In the context of the current financial trajectory, payment of these dividends will exacerbate financial trends. Future dividends will not be possible without further exacerbating the financial trajectory.
Outlook	Average rate needs to be increased significantly. The broader premium model would benefit from updates in key areas.	The post COVID environment, with extremely low interest rates and an uncertain economic outlook will make this challenging in the short term (as noted by the lower projected investment income for the next couple of years).	Poor – improvement is required just to avoid further financial strains on BEP and liability. It is not currently clear that this is achievable.	Limited, unless the financial outlook can be significantly improved.

As part of our investigations we have developed a ten-year future funding model, drawing on current internal and PwC projections. We have then looked at the outcomes for WorkSafe under various future claims costs scenarios (expressed as a BEP%). In Figure 1 below we have assumed premium rates

continue at the current rate of 1.272% but future costs (i.e. claims plus expenses) are 1.501% (equivalent to the June 2020 valuation projections, which we have labelled 'Base'), a 1.58% BEP or a 1.7% BEP (in line with PwC's premium scenarios).

Figure 1 - Projected Insurance Funding Ratio: Base and BEP Scenarios



Under all plausible outcomes, WorkSafe's IFR will trend below 100% over the next one to three years which will be a trigger for a capital management plan.

Expenses

While important, we have not included a discussion of Expenses in the table above. WorkSafe's expenses (including agent fees) are currently around \$0.7 billion per annum – a not insignificant amount that requires careful control – however, when compared to premium volumes of \$2.5 billion and outstanding claims of just over \$20 billion it is not possible to materially improve the financial sustainability of the Scheme via a focus on expenses. Indeed, our preliminary view is that expenses may need to be increased, at least in some areas, given the recent growth in the size of the portfolio and the amount of work that is to be done to improve it.

4 Overall Conclusions

In summary, the current financial trajectory is unsustainable over the longer term. While COVID related impacts have exacerbated this, including through volatility in the investment funds, it is changes in recurrent claim costs that need to be addressed to fix the issues WorkSafe is facing.

Required changes to 'right the ship' could include:

- Material increases in premiums: we do not see a pathway back to a BEP of 1.272% (without benefit changes at least)
- Greater work on prevention of mental injury claims and understanding drivers of duration including secondary prevention and even so far as WorkSafe's role within a system of support: these types of claims are the largest (but by no means the only) driver of the scheme's recent adverse performance

- RTW improvement: RTW rates have been deteriorating over many years, and unless these can be improved then the end result is more claimants on benefits for longer
- Termination provision use: these provisions have been the single biggest 'enabler' of a low premium rate since the early 2000's, because they have acted as a gateway to manage the number of claims getting onto long term benefits
- Potentially, changes to scheme design.

Put simply, 'pulling one lever' will not be sufficient to rectify the current financial trajectory; compounding the difficulty of managing this, the two biggest response levers – premium change and benefit design – are outside of WorkSafe's direct control.

Furthermore, these changes will need to be made in an environment of much distraction – COVID-19, uncertainty about the ongoing role of claims agents and how 'complex claims' will be managed, and a need to update IT systems at some point, will all make it harder to get things done. If for any reason claims management slips or is disrupted, for example through any change to the agent model, then things will only get worse from the financial trajectories shown in this report.

5 Reliances and Limitations

Our report includes a number of important reliances and limitations and the readers' attention is drawn to these.

Part II Detailed Findings

1 Introduction

1.1 Scope

WorkSafe is the statutory workplace injury insurance scheme in Victoria providing a range of benefits to injured workers. It operates under several Acts of Parliament, chiefly the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Act).

This Financial Sustainability Review (FSR) for WorkSafe has been prepared by Finity Consulting Pty Limited (Finity) in accordance with the Department of Treasury and Finance (DTF) Prudential Insurance Standard. The purpose of this report is to provide an assessment of matters that materially affect the overall financial sustainability of WorkSafe.

The report was commissioned by Fiona Schutt, Chief Financial Officer, for WorkSafe.

We understand that this report will be distributed to the Board of WorkSafe and (potentially) to DTF. No further use or distribution outside WorkSafe is allowed without our prior written consent.

1.2 Thanks

We thank all members of the WorkSafe team (both staff and board) for so willingly participating in this process. The information we have been provided with has been thorough and the people we spoke with were open and engaged in their participation; there were not requests of substance that were unanswered.

1.3 Approach

Defining 'Financial Sustainability'

Risks to financial sustainability are those that result in a significant and sustained fall in funding ratios, coupled with an inability to internally recover sufficiently, in a reasonable time, to the preferred state. To be clear, the FSR specifically focuses on *financial* sustainability, and so there are other aspects of a scheme's sustainable operation beyond those covered here.

The long tail nature of WorkSafe's liabilities, as well as the approach to investments, presents particular challenges as the reported financial results can be volatile from year to year, reflecting changes in economic conditions (as mandated by accounting standards) and volatile investment returns. As such, large movements in year on year financial results do not necessarily represent risks to sustainability, but they may. Generally speaking it is recurrent and trending imbalances between income and expenses, leading to ongoing deficits, that pose the greatest risk to long term financial sustainability. WorkSafe have recognised this challenge through its move from considering the accounting funding ratio to the insurance funding ratio.

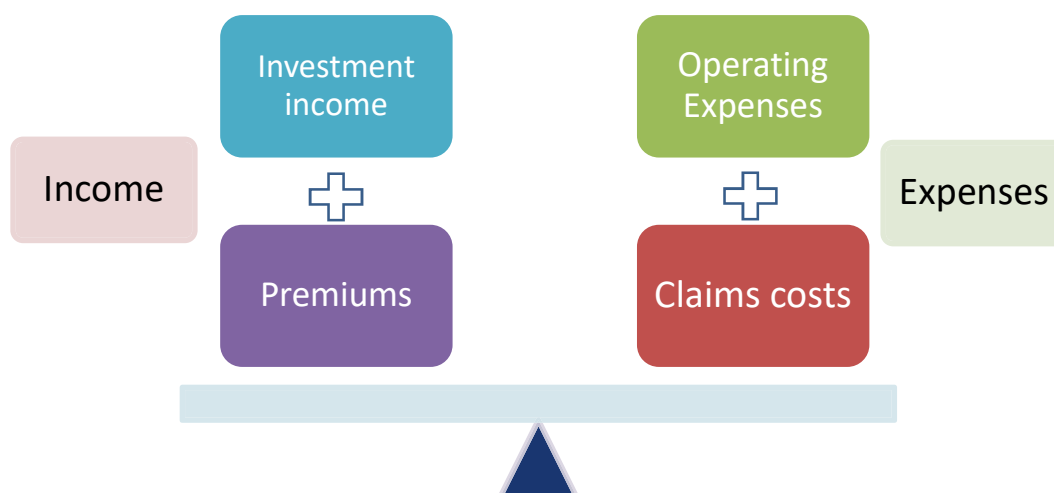
Once an imbalance reaches the point that it is threatening long term sustainability there are generally only two options available: major premium increases, or scheme reform.

Our Approach to Assessing WorkSafe’s Financial Sustainability

Our approach to identifying the key risks to WorkSafe was to first conduct a review of all relevant WorkSafe reports and policies, noting that this assessment was significantly aided by recent review work we undertook on parts of the June 2020 outstanding claims valuation. We supplemented this information with interviews with the individuals directly responsible for key areas of scheme management and governance.

In assessing the financial sustainability of the scheme, we have attempted to present our work with reference to the most basic ‘insurance equation’ – that is, for an insurer to be sustainable there must be a balance between its income side (premiums and investment income) and its expense side (claim costs and operating expenses).

Figure 1.1 - Financial Sustainability



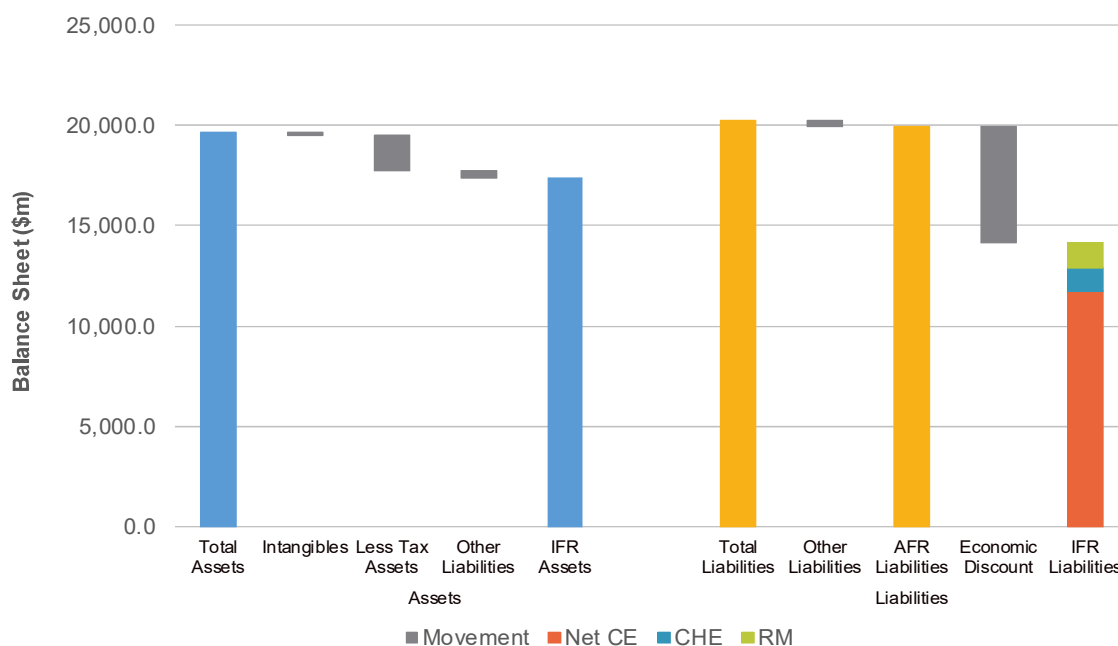
By considering the individual drivers of each of these four elements it allows underlying performance to be assessed before the collective consequences for future financial sustainability can be considered.

The body of this report has been kept deliberately concise, with the supporting detail and analysis contained in the appendices.

1.4 Overview of Current Financial Position and Key Financial Drivers

To set the scene for our work, we thought it helpful to provide a quick overview of WorkSafe’s current financial position, and the key drivers of its financial metrics. Figure 1.2 shows WorkSafe’s balance sheet at 30 June 2020 and Figure 1.3 shows the annual BEP and premium rate charged over recent years.

Figure 1.2 – WorkSafe Balance Sheet as at 30 June 2020

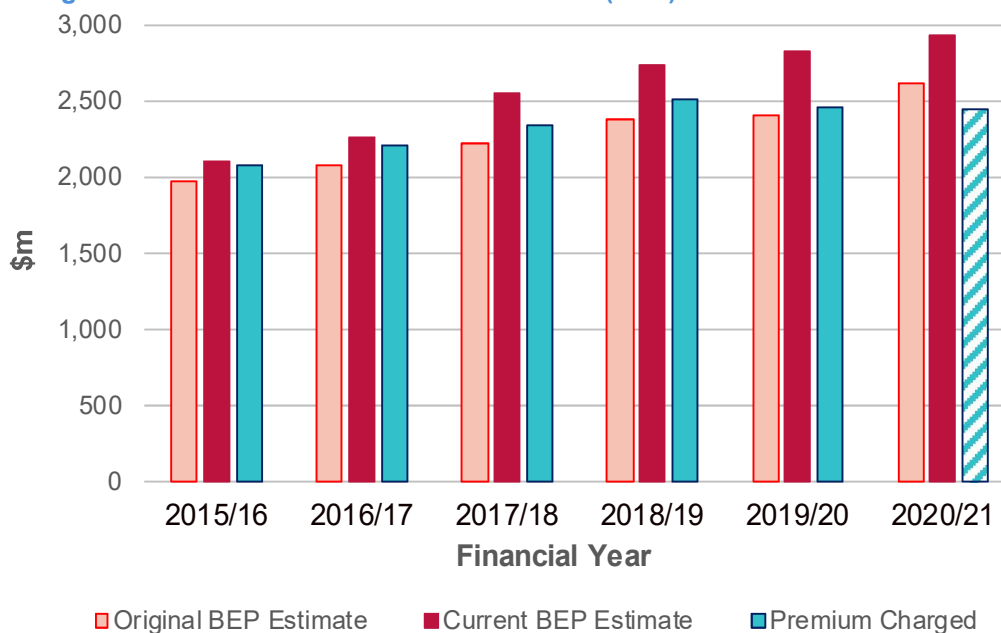


The key features we note from Figure 1.2 are:

- The current accounting balance sheet shows assets of \$20.9 billion compared to liabilities of \$21.5 billion, or a deficit of \$0.6 billion; we note that the asset base includes a \$1.8 billion deferred tax asset which on current trends may be difficult to realise in the next few years, and as such the accounting deficit may prove to be higher than shown. After removing the Deferred Tax Asset (and other intangibles) the assets used to determine the accounting funding ratio are \$17.4 billion and the ratio is 87%.
- On the ‘economic’ or ‘insurance funding’ balance sheet, the value of liabilities is recalibrated to the long-term economic basis, which reduces the outstanding claims to \$14.1 billion. This includes a risk margin of \$1.25 billion (9.5%). The resulting insurance funding ratio is 123%.

Of the \$20.2 billion claims liability at 30 June 2020, about 35% is projected to crystallise as payments in the next three years, with the remaining 65% expected to take up to 50 years to fully runoff. At 30 June 2020 there were 21,600 active weekly claims that contribute to this liability, of which some 8,800 (41%) were injured more than two years ago.

Figure 1. 3 – WorkSafe Break Even Premium (BEP) as at 30 June 2020



The key features we note from Figure 1. 3 are:

- The (currently assessed) BEP equates to \$2.9 billion of new incurred claims occurring in 2020/21. WorkSafe is forecasting premium income of \$2.4 billion in the same period, creating a financial deficit of almost \$500 million for the 2020/21 year.
 - ▶ Around 27,400 new claims (excluding hearing loss) are projected to be incurred in the year. Of these 27,400 claims:
 - ▶ 9,000 (32%) don't receive a weekly payment from the scheme (in layman's speak, they are 'medical only')
 - ▶ 18,500 (68%) receive a weekly payment (noting that this means the claimant has been off work for at least the two-week employer excess to reach this threshold)
 - ▶ Around 15% of claims are still receiving weekly payments two years after their injury
 - ▶ Around 2,250 (8.2%) of claims are ultimately projected to get a (non-zero) common law settlement.
 - ▶ Only 21% of the new year's liability is paid out in the first two years:
 - ▶ As such, even relatively small changes in the number of claims that get to/beyond (say) two years on benefit will have a very leveraged impact on the cost of the scheme given around 80% of costs are attached to this group.

While already highlighted above, in considering the overall financial sustainability of WorkSafe it is important to understand the relative quantum of each of the key items such as premiums, outstanding claims, etc: assets and liabilities are around \$20 billion, while annual premiums are around \$2.5 billion. Given the long tail liabilities of the scheme, the outstanding claims are sensitive to trends in claims experience and hence relatively small changes in continuance rates and termination rates can have a 'leveraged' impact on the balance sheet (as has been experienced this year). When such changes impact the balance sheet, it is very challenging to rectify just through premium movements given the difference in scale.

2 Background Historical Context

2.1 Overview of WorkSafe

WorkSafe is the statutory workplace injury insurance scheme in Victoria providing a range of benefits to injured workers. It operates under several Acts of Parliament, chiefly the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Act) and the Board of Directors are appointed by the Governor in Council on the recommendation of the Minister for Workplace Safety to be responsible for the management and governance of the affairs of WorkSafe. Importantly, however, management of investment operations is outsourced, by Government directive, to VFMC.

WorkSafe's specific objectives under its Act are set out in Section 3 of the Act, viz:

- (a) *to reduce the incidence of accidents and diseases in the workplace;*
- (b) *to make provision for the effective occupational rehabilitation of injured workers and their early return to work;*
- (c) *to increase the provision of suitable employment to workers who are injured to enable their early return to work;*
- (d) *to ensure appropriate compensation under this Act is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible;*
- (e) *to ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses;*
- (f) *to establish incentives that are conducive to efficiency and discourage abuse;*
- (g) *to enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations;*
- (h) *establish and maintain a fully-funded scheme;*
- (i) *in this context, to improve the health and safety of persons at work and reduce the social and economic costs to the Victorian community of accident compensation.*

In this FSR we have only commented on WorkSafe's responsibility in relation to health and safety to the extent that these activities directly impact on the financial sustainability of the scheme.

2.2 Scheme Design

WorkSafe has had a remarkably stable benefit structure for many years, with only relatively modest changes to benefits over the last 20 years. The most significant changes since the scheme's inception were the removal of common law in the 1990s and its subsequent reintroduction in the very early 2000's. The last substantive reform was in 2010, following the Hanks review.

The scheme is long tail, with weekly benefits potentially being payable until retirement age and medical costs for life. One of the features of WorkSafe's design is its relatively "soft boundaries" – soft boundaries are Scheme rules that rely on interpretation rather than 'black letter law'. Examples include the common law threshold, which is based on the 30% WPI or the "narrative" test, and the ability to access long term compensation being based on work 'capacity'.

Examples of schemes with 'hard' boundaries include both the Queensland and NSW workers compensation schemes, where benefits are either 'cut off' at a particular time limit, or subject to a strict 'objective' test to exceed injury limits: Queensland has a strict five-year cap on weekly payments, and NSW has a five year 'hard stop' for weekly benefits with WPI <21%. A further example is the TAC where there is a three year income cap for WPI <50%.

For many years there has been a relatively stable use (and community and legal acceptance) of WorkSafe's boundaries. However, over the last few years this has been challenged to a very significant extent, particularly in relation to the long-term capacity test. This is discussed further below.

2.2.1 A note on Mental Health Injuries

Mental health injuries have always been a feature of the WorkSafe scheme. However, while in the very early days Mental Health claims represented around 2% of claims, they now represent in excess of 14% of claims and an even higher proportion of costs.

Figure 2.1 - Mental Health claims as % total (ex Hearing Loss)

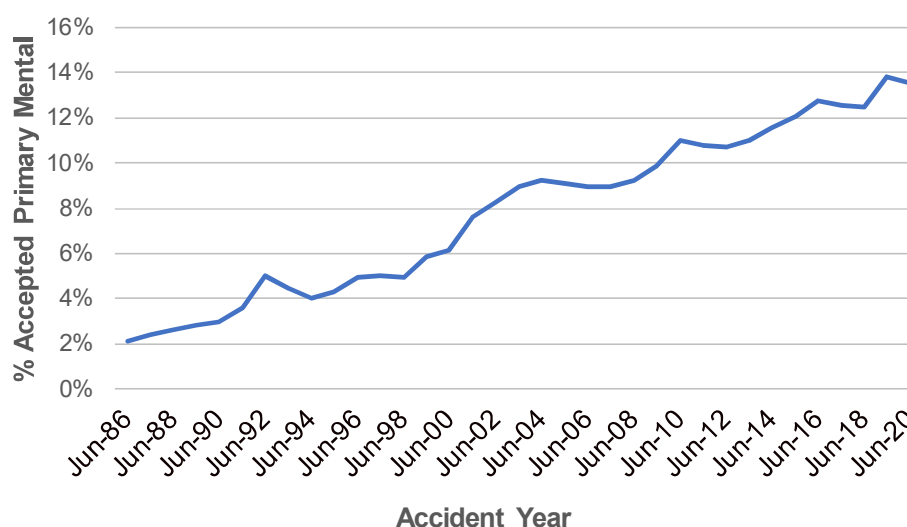


Figure 2.1 shows that the proportion of mental health claims has increased at around 3.5% pa (with some periods of rapid increase and others of apparent stability) over a very long period of time. 500,000 Victorian workers experience a mental health disorder each year. As such, WorkSafe's current claim reports represent less than 1% of this group, and so the potential for mental health injuries to keep growing year on year is very real (and significant).

The increase in mental injury claims reflects, at least to some extent, changes in societal attitudes to mental health. Examples of these changes include:

- The significant public profile of organisations such as Beyond Blue and their promotion of mental health issues
- Changes in the way people communicate, particularly by using social media, which can result in significant pressure being applied to both companies and individuals through online 'campaigns' or attacks
- The Royal Commission into Victoria's Mental Health system. In its opening comments as part of its Interim report the Commission stated "...the state's mental health system has catastrophically

failed to live up to expectations. Past ambitions have not been realised or upheld, and the system is woefully unprepared for current and future mental health challenges.” The report also estimated that poor mental health was costing Victorian employers \$1.9 billion per annum¹, with the total cost to Victorian’s being well in excess of \$14 billion per annum².

2.3 Long Term Scheme Performance

WorkSafe has enjoyed a long period of relative financial strength and stability since the early 2000’s, but as can be seen in Figure 2.2 and Figure 2.3 this wasn’t always the case, with costs running materially higher in the pre-2000 period. This is best captured in the funding ratio and Break-even Premium.

Figure 2.2 - Funding Ratio

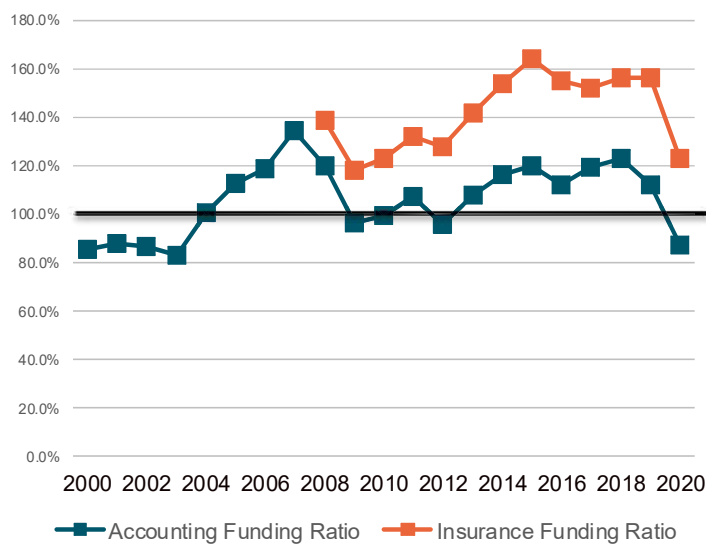
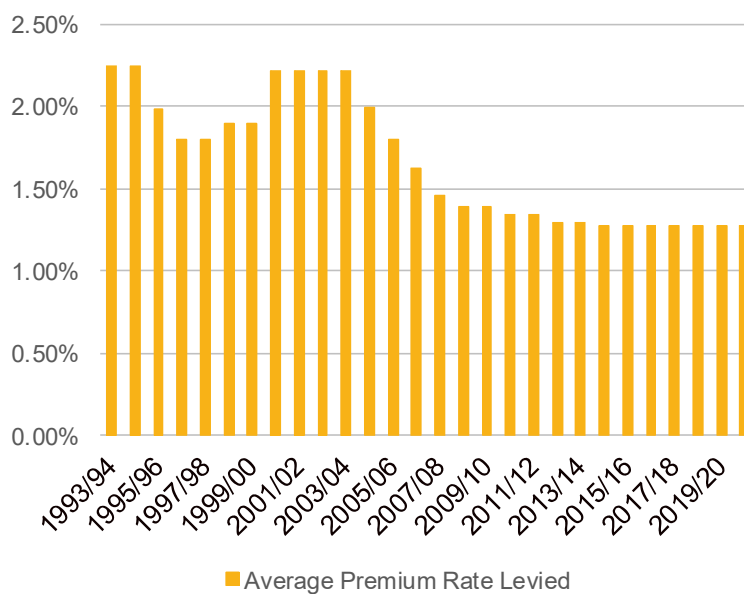


Figure 2.3 - Average Premium Rate Charged



¹ Royal Commission Mental Health page 367

² Royal Commission Mental Health page 361

While there have been periods of volatility over the last 20 years these have largely been driven by changes in investment markets rather than significant deteriorations in claims experience. However, the experience over the last 2-3 years is different: investments markets have again been volatile however claims performance has deteriorated significantly which has become a recurrent financial impact; this is discussed further in Section 3.2.

The recent deterioration means key financial metrics are now looking more like those seen in the 1990's or early 2000's (noting that the balance sheet has responded to the claims deterioration via increased liabilities, however the average premium rate has not yet been increased). That is, while they are significant, they are not unprecedented.

2.3.1 What have been the key financial drivers over the very long term?

Key long term drivers of financial sustainability for performance in WorkSafe have been:

- High investment returns over a very long timeframe
- Long term improvements in claims frequency
- Control of, and at times improvement in, the management of the scheme's soft boundaries (for example consistent trends in the proportion of claims accepted, use of the termination provisions, and management of common law numbers)
- Modest growth in the overall cost of claims due to
 - ▶ Duration of weekly claims held at reasonable levels
 - ▶ Consistent patterns of terminations at 130 weeks
 - ▶ Common law has been, generally, 'under control'
 - ▶ Control of medical and provider costs.

2.4 Recent External Influences

WorkSafe operates in a broader societal context. A few key recent influences on include:

- Ombudsman Victoria (OV) Reports in 2016 and 2019
 - ▶ This has been a key influence on both WorkSafe and agent behaviour, and seemingly also on broader participant expectations and behaviours. The OV reports were critical of both behaviour in relation to the cessation of benefits and also incentives provided to agents for terminations.
 - ▶ Scheme experience has shown substantial changes as a result of these reports. In particular this has included reductions in terminations post the 2016 (and also 2019) reports. Anecdotal evidence suggests that recently more terminations are being overturned on appeal.
- Societal expectations regarding mental health (as discussed above)
- Wages growth: private sector wages growth has lagged public sector for some years
- Casualisation of work force: both more generally and specifically through the 'Gig' economy. This has resulted in more people working for multiple employers and/or partly as an employee and partly as an 'independent contractor'

- COVID – while an important consideration for 2020, it is not clear how the economic impact of COVID will play out in the Victorian economy over the next 2-4 years. Likely impacts include increased unemployment, closures of business (and so fewer opportunities for return to work) and low wages growth.

2.4.1 Legislative Changes & Legal Precedent

As noted above, the scheme has not had any material changes in benefit structure for 20 years.

Similarly, there have also been no major legal cases that have changed the interpretation or implementation of the legislation.

2.5 Organisational Change

In addition to both the changing external environment and recent claims performance, the last five years has seen substantial change in WorkSafe as an organisation. These changes have included:

- The move to Geelong which resulted in around 1/3rd of WorkSafe's staff leaving
- Changes at all levels of senior management over the last two years including CEO, Executive and Board level.

While change is inevitable from time to time in any organisation, and can often be beneficial to an organisation, in periods of substantial change organisations can become more inward focussed and so take their eye 'off the ball' for a period of time. In workers compensation this can result in material changes to scheme performance over a short period and these changes can be difficult to both arrest and turn around. This is particularly the case for a scheme such as WorkSafe, which has had relatively 'soft' boundaries around benefits.

As a general observation, we also observed some areas of 'siloes' knowledge or understanding through our interviews with WorkSafe staff, which is different to past observations we would have made.

2.6 Our Assessment

WorkSafe has been incredibly successful over a long period of time, even with no material changes in benefit structure for 20 years. Given the broader societal changes that have taken place over this time, the stability of the scheme over this time has been remarkable.

That said, a combination of internal and external changes has created an environment where the drivers of this long term success are under threat. In particular, the two Ombudsman's reports appear to have triggered changes that have created step changes in the use of termination provisions as explained in Section 3.1.3.

3 Recent Scheme Performance

3.1 Claims Management

The following section summarises our assessment of the key risk areas to the claims side of the portfolio. In our interviews with WorkSafe staff there was strong consistency as to the main risks in the claims operations, although not always consistency in terms of the likely extent of these issues.

For ease of communication we have broken down the claim journey into four parts:

1. New claim numbers – influenced by how many claims are reported to WorkSafe, and its decision making on who is eligible for benefits
2. Return to Work (RTW) – the majority of claimants ‘get better’ and will RTW within the first 1 – 2 years after they are injured. The longer a claimant is off work the less likely they are to RTW and so front end RTW activity is central to the financial cost of a worker’s compensation system
3. 130 week boundary – by design, there is a legal test in the legislation to determine which claimants can access longer benefits. As explained in the following sections, the operation of this boundary has been a key determinant of the scheme’s annual running cost
4. Long term claims – once a claim has moved past the 130 week boundary there are relatively few exits. Common law awards are one aspect of this longer term cost, and it is important to note that these can also be available to claims that do *not* get past the 130 week boundary.

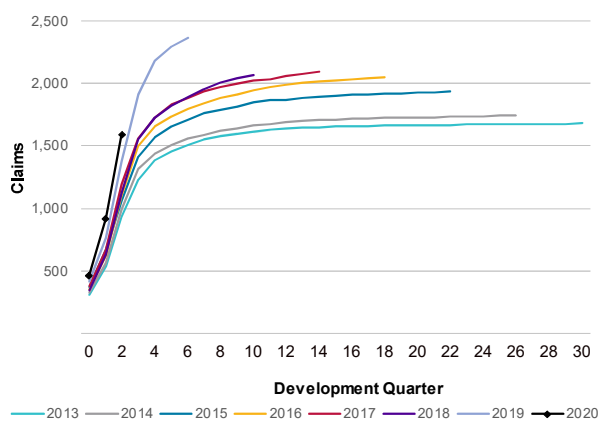
It is quite clear that Mental Injuries have been a key driver of recent cost growth, however they are not the only driver – to help demonstrate both of these points we have generally separated our analysis to show how both Mental Injuries and Other Injuries³ have performed.

3.1.1 New Claim Numbers

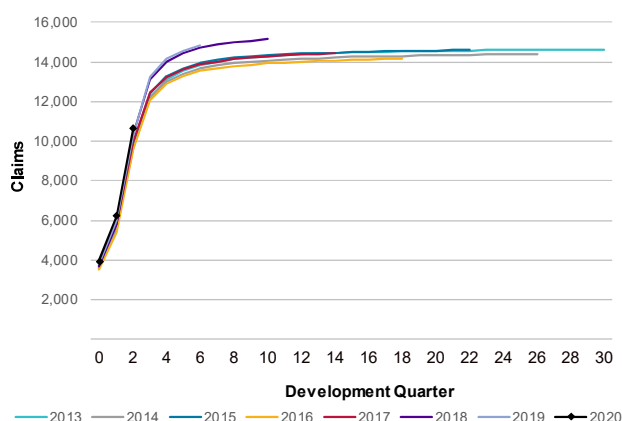
The number of new claims each year is a function of both: (1) how many claims are reported to WorkSafe, and then (2) WorkSafe’s decision making on who is eligible for benefits. Importantly, the number of claims reported each year (step 1 of this process) will also vary over time with changes in community expectations and norms, including individuals’ perceptions of whether what has happened to them should or shouldn’t be compensated; WorkSafe’s own actions will also have a role in the forming of these perceptions.

³ Hearing loss claims are excluded from the analysis in this section to help keep the comparisons more meaningful.

**Figure 3.1 – Accepted Weekly Claim Numbers by Accident (Financial) Year
Mental Injuries**



Other Injuries



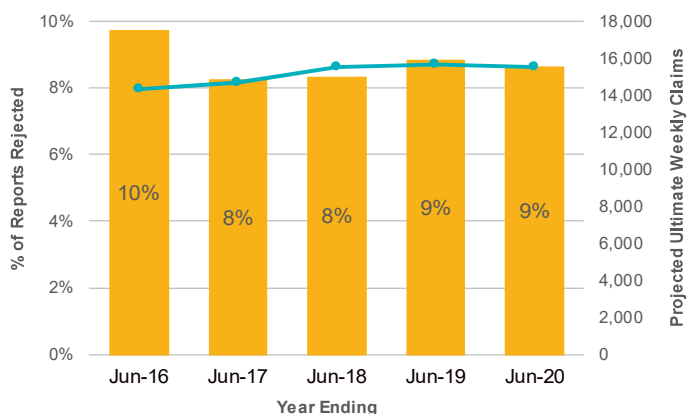
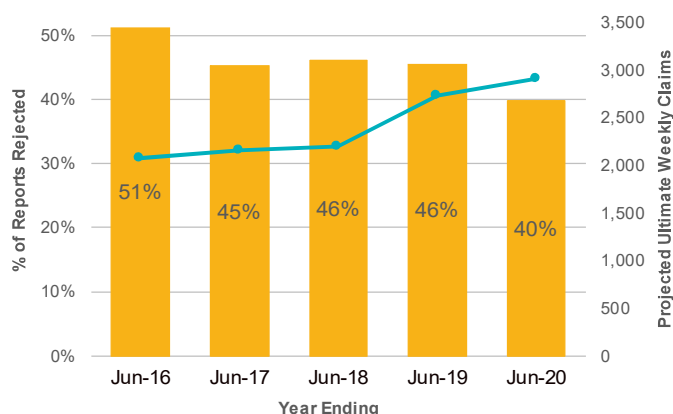
Key observations from Figure 3.1 are:

- Mental Injury numbers were growing year on year, before experiencing a very significant step up (25% increase) in 2018/19. 2019/20 claim numbers have continued following this increasing trend
- Other injuries were much more stable in number between 2013 and 2017 – representing continued improvement in claim frequency given the growing workforce that was covered. In 2017/18 claim numbers then increased by around 6%, and have remained higher since
- The key implications of the above are that:
 - ▶ There will have been an increased claims management workload over the last 2 – 3 years
 - ▶ The claims mix has become more adverse over time, which would also generally lead to higher workloads and higher claim costs
 - ▶ Unless the growth in Mental Injury claims can be arrested, then it should be assumed that these pressures will continue.

The claim number growth appears to be coming from a broad range of employers, although the government sector is a notable driver.

An important component of the above claim number growth is that WorkSafe now accepts a higher proportion of claim reports than it did in the past, particularly on mental injuries.

**Figure 3.2 – Rejection Rates and Projected Ultimate Weekly Claims
Mental Injuries**



This suggests that internal actions are at least partly responsible for the claim number growth, however we caution that we do not have any background information on why these changes have occurred. Broadly speaking, the reduced rejection rate on Mental Injuries will explain around 20% of the claim number growth in recent years (i.e. accepting 60% rather than 50% of claims would equate to a 20% growth in the volume of claims being accepted). Furthermore, if WorkSafe has become perceived as a 'light touch' decision maker then potentially this could also be feeding back into the increased propensity of workers to lodge a claim – while we cannot in any way say it is causal, we observe that claim numbers grew more quickly for both Mental Injuries and Other Injuries after the rejection rates reduced.

3.1.2 RTW Performance

As there is a two week 'employer excess' before a claim is counted as a weekly claim, RTW performance can impact both the count of weekly claims (i.e. if RTW performance slips in the first two weeks then more claims will be counted as a 'weekly claim') and the number of ongoing claims at longer durations. Figure 3.3 looks at the first of these impacts, showing the proportion of claims that exceed the two week employer excess, and Figure 3.4 looks at the second impact, showing the percentage of weekly (i.e. excess of two week) claims who have returned to work at specified durations (as % of weekly claims).

Figure 3.3 – Proportion of Claims that Exceed the Two Week Weekly Claim Employer Excess (AYs to 2019)

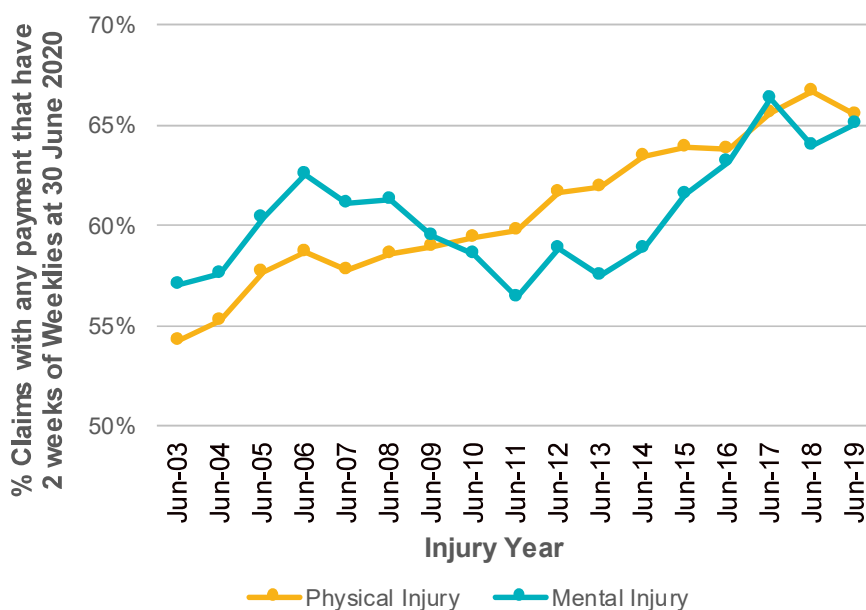
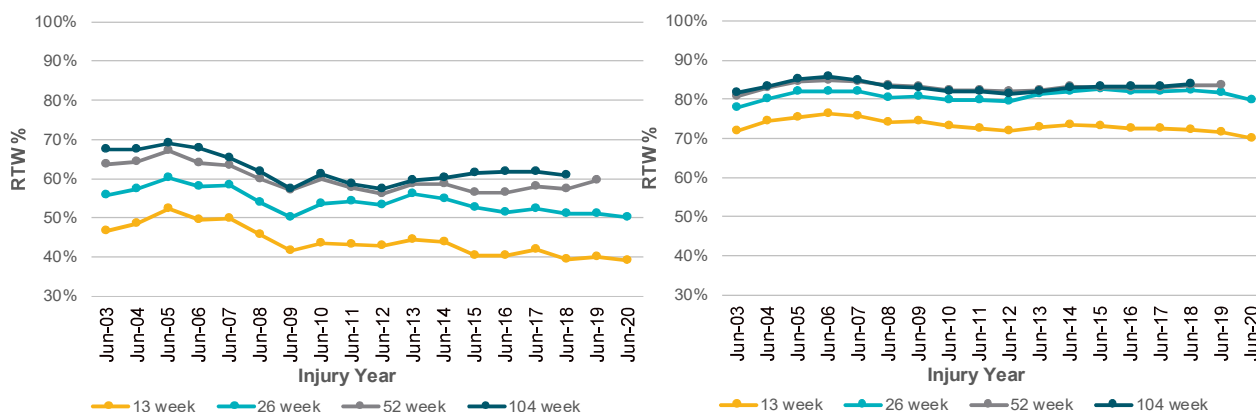


Figure 3.4 – RTW Rates for Weekly Claims by Accident (Financial) Year
Mental Injuries Other Injuries



Key observations from Figure 3.3 and Figure 3.4 are:

- A growing proportion of claims are exceeding the two week employer excess and thus being counted as weekly claims. While it is difficult to form absolute conclusions based on this, given the measure can be impacted by changes in employer claim reporting behaviour, it does suggest that RTW performance within the first two weeks after injury has slipped over time; this applies to both Mental Injuries and Other Injuries
- Mental Injury RTW rates are much lower than for Other Injuries
- The majority of RTW takes place in the first 13 weeks. Beyond 13 weeks the gap between successive lines narrows dramatically, which demonstrates the much lower likelihood of returning to work as duration increases
- Mental Injury RTW rates have been trending downward over the last 15 years. It is interesting that the latest observation on the 52 week RTW has actually improved a little, as this corresponds to

the cohort where claim numbers grew by 25% in a year (we also note that this data point is incomplete, as about one third of claims have not yet reached the measurement point)

- Other injury RTW rates are more stable, although the trend has been slowly downward for the 13 week RTW rate in particular; remembering that the overall volume of Other Injuries is much higher than for Mental Injuries, this change still has material consequences:
 - ▶ Also, while the overall rates are higher for Other Injuries it is interesting to observe how little 'gap' there is between the lines between 26 weeks and 104 weeks, which implies that at a net level the RTW process is largely ineffective in this range – that is, as many claims are 'reactivating' back onto benefits (after having returned to work) as are achieving RTW at these durations
- The key implications of the above are that:
 - ▶ A greater proportion of claims are meeting the two week employer excess and thus being counted as a weekly claim. To be clear, from our investigations to date, there is no evidence to suggest that these are 'less severe' claims, as the RTW rates post-2 weeks have not improved as more claims have become weekly claims
 - ▶ Claim durations are increasing, thus increasing direct benefit payments and also increasing the claims management workload; the combination of increasing claim numbers (from above) and increasing durations will be producing compounding impacts in both cases
 - ▶ As claim durations lengthen, it becomes easier for 'other factors' to become involved in the claim, which can further complicate RTW efforts
 - ▶ Increasing numbers of claims will be subject to the 130 week boundary test.

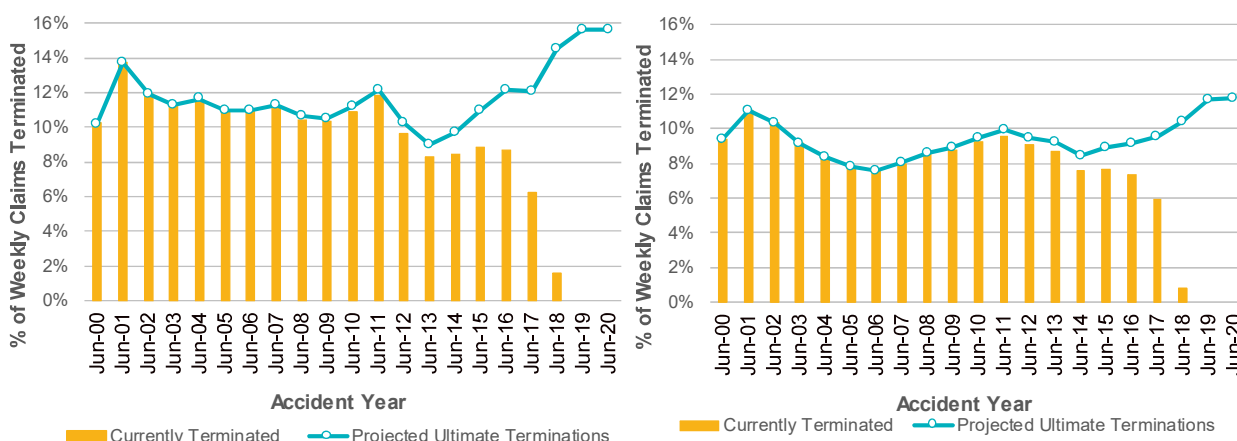
In our discussions with a number of WorkSafe's Insurance team, a growing rate of 'secondary psychological injury' was nominated as a difficulty in achieving RTW outcomes. From the information we have been provided with we have not been able to determine the extent of this impact.

3.1.3 130 Week Boundary

The 130 week test is arguably the most important boundary in the current scheme design. As discussed in Section 2.2, we regard it as a 'soft boundary' design in that it is a subjective assessment of a person's capacity to undertake work (subject to a range of prescribed considerations).

As Figure 3.5 below shows, the 130 week boundary provisions have been a consistent feature of the claims management operation over a very long time – up to around 2011: around 11% of Mental Injury weekly claims had their benefit payments terminated, and around 9% of Other Injury claims had their benefits terminated (for information, the proportion is higher for Mental Injuries because so many claims get through to 130 weeks as a result of their poorer RTW rates as explained above). To be clear, a termination in this sense is the legal cessation of benefits, which is not the same as a RTW outcome.

Figure 3.5 – Historical and Projected Termination Rates by Accident Year
(projections to ultimate are from PWC’s 30 June 2020 valuation)

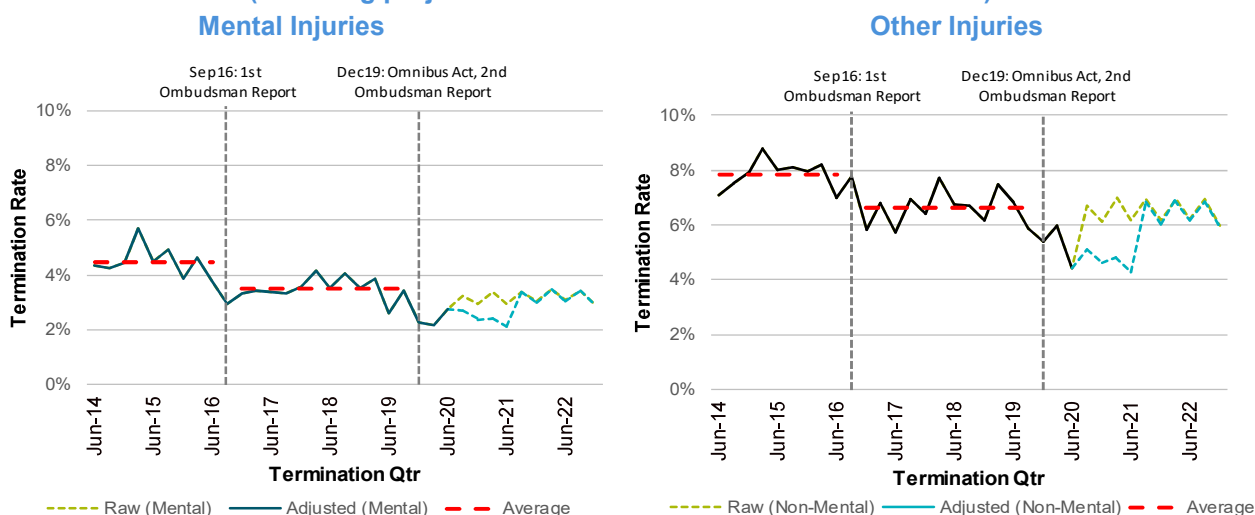


There are two other key features from Figure 3.5 that are also worth noting:

- The level of terminations begins reducing from the 2011 accident year (which would correspond to claims management activity since around 2014/15 and later), through to say 2014, and with relatively few future terminations projected from claims in these cohorts it seems likely that the ultimate termination rate will be lower
- For recent accident years (2018 to 2020), where there are almost no actual terminations completed as yet, given most claims are yet to reach 130 weeks, the assumed level of terminations from the actuarial valuation is *higher* than at any point in the recent history.

In assessing the achievability of this projection, it is worth considering the recent performance of issuing new termination decisions, as shown in Figure 3.6 below.

Figure 3.6 – Termination Rates by Termination Quarter
(including projections from PWC’s 30 June 2020 valuation)



Note: the ‘adjusted’ projections are to reflect the temporary increases to notice periods as part of the COVID Omnibus Bill; in effect this will temporarily lower the number of terminations.

Key observations from Figure 3.6 are:

- Mental Injury termination rates are much lower than the termination rates for Other Injuries
- For both injury types, termination rates reduced after the first Ombudsman's report (by around 20%) and then again after the second Ombudsman's report (by around 25%)
- PwC's projections of future termination rates are comparable to the experience between the first and second Ombudsman's reports – that is, they are more favourable than has been experienced since the second Ombudsman's report was released
- The key implications of the above are that:
 - ▶ To meet the current valuation projections, improvements are required in termination rates – the achievability of this is discussed further below
 - ▶ Given the increased volume of claims that are, and will continue to be, reaching 130 weeks, this will require significant increases in the *number* of terminations issued
 - ▶ Given the much lower termination rate for Mental Injuries, it should be anticipated that the claims mix will continue to get more and more adverse over time due to the combination of growing numbers of new Mental Injury claims, worsening RTW and increasing claims duration, and a higher proportion of Mental Injury claims moving through the 130 week boundary.

In considering what the sustainable level of future termination rates is, there are five key factors we are conscious of – while each can individually influence the use of termination provisions, it is ultimately the collective alignment, or not, of these factors that will determine the outcomes achieved:

- The Ombudsman's reports – the Ombudsman's reports made strong findings in relation to the use of the termination provisions. A number of those we spoke with acknowledged the impact of these reports on termination decision making, and that the findings were also reflective of changing societal attitudes more broadly.
- Medical certification – consequently to the Ombudsman's reports, we are advised that some doctors have changed their certification behaviour to be less definitive about questions of medical capacity to work. While we have not at this stage seen quantitative evidence of this, if true it will make it more difficult to establish a 'complete' evidence basis for making decisions.
- Agent decision making – given the strong findings made in the Ombudsman's reports, a number of general comments were made to us that the claims agents now have a 'fear of getting it wrong' (noting that we have not spoken to the agents themselves) – that is, in the context of the Ombudsman's findings and WorkSafe's internal review function (discussed below) agents are now being more cautious in issuing terminations unless 'every 'i' is dotted and 't' is crossed'.

Further, we understand that the agent incentives have been changed so as to avoid rewarding termination use. This was not raised as an issue in our work, but it may be another component of change in how decisions are made.

- WorkSafe's Workers Compensation Independent Review Service – this is a relatively new piece of the decision making process, and we are advised that WorkSafe's review decision is made with reference to 'whether a decision is sustainable on the basis of all available evidence (i.e. including evidence post the initial decision)'.
 At face value this is a relatively onerous standard to meet, and initial information we have seen on review outcomes supports this – only around 30% of reviewed decisions have been affirmed, although for completeness we note this also includes other types of reviewed decisions.

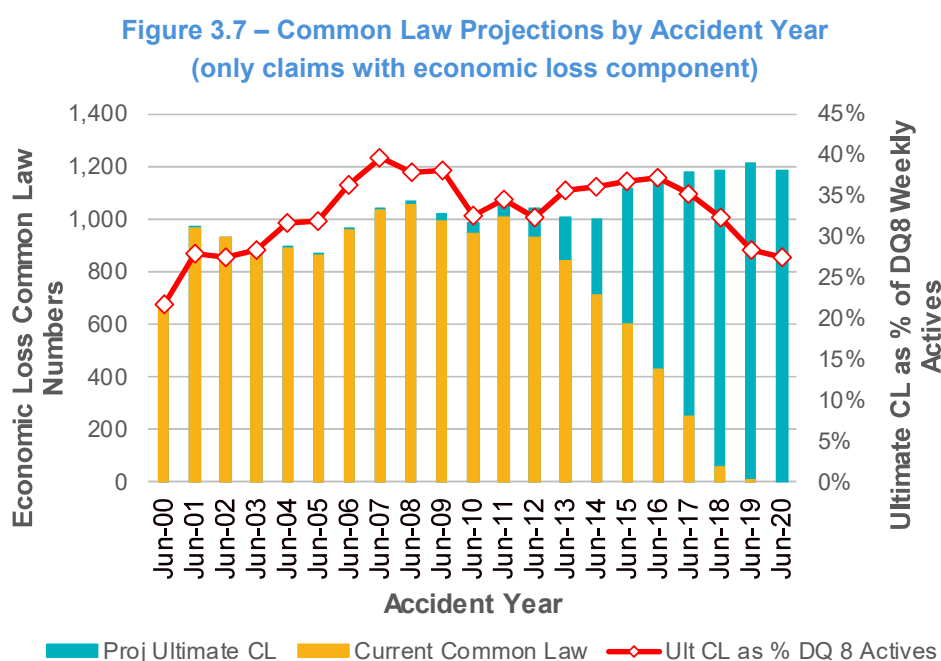
- Court decisions – a number of general comments were made that the Courts were interpreting in a more generous way than in the past, although we did not identify any evidence to prove or disprove this assertion. An example that was given is that in assessing work capacity the reference point is now the ability to undertake ‘meaningful work’ as opposed to just ‘work’ as legislated.

As mentioned above it is the collective operation of all these pieces that acts to determine the sustainable level of terminations in the scheme. As such, it seems clear that a more onerous standard is now being applied than in the past. It therefore seems very unlikely that termination rates will return to historical levels, unless WorkSafe can move it back through some form of intervention (if indeed WorkSafe wants to move it back). If WorkSafe chooses not to try and increase the use of terminations then the new norm is unlikely to be any higher than the most recent outcomes being achieved. This would result in more claims going into the tail and higher costs.

3.1.4 Common Law

Around 1,200 claims receive a common law award that includes economic loss each year, however given their high quantum and long duration they have the ability to adversely impact on the scheme’s financial performance [note: to be clear, we have focused our work in this section on those common law claims who get an economic loss component, and as such the commentary is not relevant to those just getting a pain and suffering award].

In general, very few common law payments are made within the first four years after injury, with most claims finalised between years 4 and 10. Figure 3.7 below shows the projected number of common law claims with an economic loss component from the actuarial valuation, split between actual and projected future outcomes. To help place this in the context of the recent weekly claims deterioration we have also expressed the ultimate common law numbers as a percentage of active weekly claims at two years duration (development quarter 8) which we consider to be a sensible proxy indicator of claims getting to longer term benefits. Because the common law modelling is not done by injury type, this information is shown for both Mental and Other Injuries combined. It is also worth noting that PWC’s current common law modelling is done independently of the weekly claims experience, and so it does not automatically respond to any trends or changes in the weekly claims experience.



Key observations from Figure 3.7 are:

- The projected ultimate common law numbers are relatively stable over time, with a small step up in the 2014/15 accident year
- In the context of the strong growth in weekly active claims over the last few years explained above, this represents a reducing percentage of longer duration weekly claims that are projected to receive an economic loss common law award (as shown by the red lines trending down for recent years)

The key implication of the above is that there is a risk that common law claims will increase due to the higher numbers of weekly claims remaining on benefit – that is, the current actuarial projections (impacting both the valuation and BEP) would need to be increased if common law utilisation grows in line with the growing weekly tail. The financial impact this risk presents depends on how much of these additional common law settlements would be offset by reductions in the weekly liability. In this light it is also worth noting that the Common Law threshold is now largely (>90%) met via the narrative test rather than the serious injury threshold, that is via another ‘soft boundary’.

3.1.5 COVID Impact

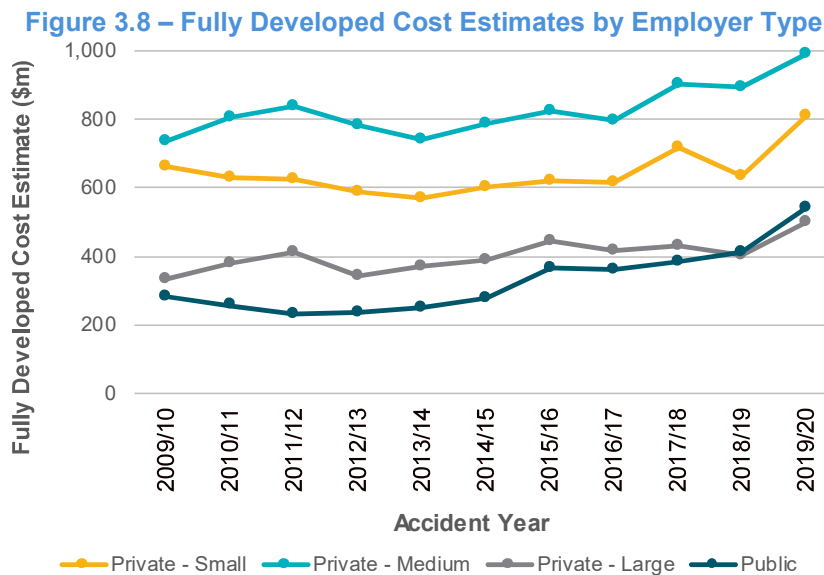
COVID-19 has led to both direct and indirect claim impacts as well as dramatic changes to the level and type of work being undertaken in Victoria. The worst of this has occurred after the June 2020 valuation upon which most of our analysis is based.

In contrast, the trends described in the sections above existed prior to the arrival of the COVID pandemic, and we do not foresee that COVID will provide any meaningful ‘circuit breaker’ to these trends. Indeed they are more likely to further impact the already adverse trends through delayed and reduced RTW opportunities, and as a result of the delay to implementing some termination decisions.

While the COVID-19 impacts will adversely impact WorkSafe’s financial position, likely materially, we expect that these impacts will be relatively one-off and so we have not focused on them beyond considering the potential hit to current year financials. If there is a prolonged economic downturn that depressed the labour market and made it harder to find new employment for existing claimants, then there would likely be further financial pressures on the scheme in coming years.

3.1.6 Government Sector Performance

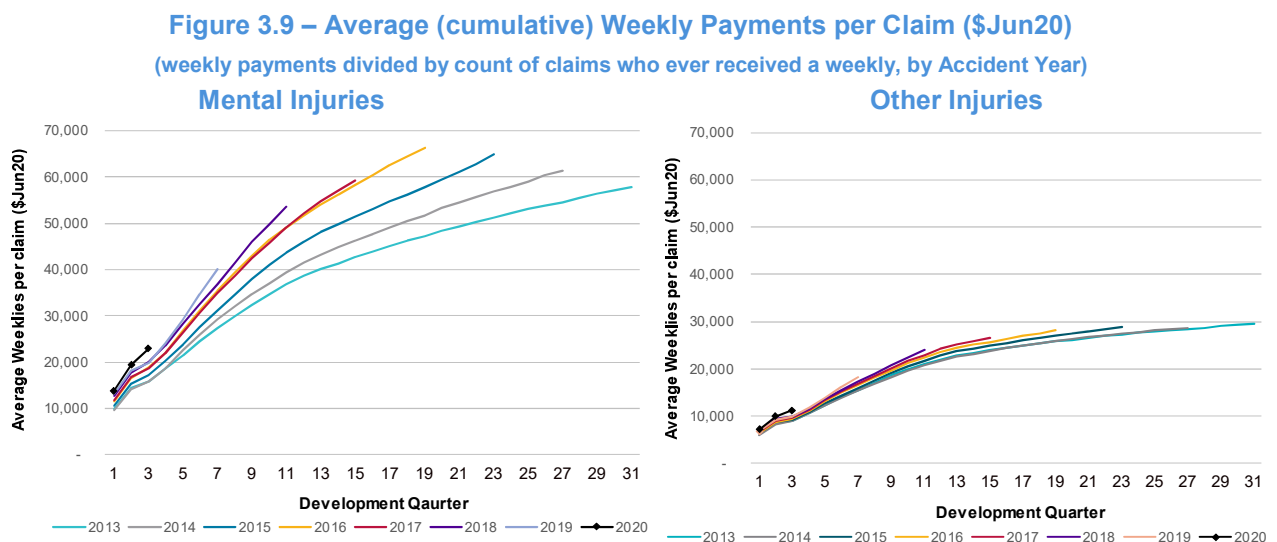
In undertaking our analytical work, there were a number of times where the performance of public sector employers was noted. The simplest way of explaining this is that public sector annual costs have roughly doubled in five years, whereas for other employer segments the increases have been between 25%-35%, as can be seen in Figure 3.8 below.



Given the concentrated nature of this workforce, it may be that the public sector would benefit from specific targeted strategies that are tailored to its behaviours and needs. There may also be changes to the premium model that would encourage additional focus on prevention and RTW activities from within government that can be explored – in short, we see no reason why the upward pressures the scheme is facing will not continue to emerge in the public sector, and so a more forward looking pricing approach may assist with messaging this.

3.1.7 Financial Implications of Recent Claim Outcome Changes

WorkSafe is currently facing claims management pressures essentially ‘across the board’ – growth in claim numbers, worsening claim durations, less effective termination provisions and an increasing risk of common law pressures in the next 2-3 years. Figure 3.9 attempts to demonstrate this pressure by looking at the growth in average payments per weekly claim – the general ‘fanning’ shape indicates that sizes are growing for claims at all durations.



Key observations from Figure 3.9 are:

- The average size for Mental Injury claims is growing unsustainably – early RTW has slipped, and the termination provisions are relatively ineffective at ‘flattening off’ the claim size at 130 weeks (around development quarter 10 on the graphs).
 - ▶ Furthermore, these features are compounded by the growth in claim numbers that mean total costs are growing at an even faster rate than the average size growth shown above.
 - ▶ In some ways these features look more like a social welfare scheme than a ‘RTW scheme’ – that is, with a relatively consistent upward slope at all durations the key observation is that most of these claimants will never go back to work.
- The average size for Other Injuries is much lower, and there is a greater ‘flattening off’ that occurs as a result of the 130 week test at around development quarter 10. However, for all accident years shown there is now a fanning out that is occurring that indicates duration on benefits is increasing; the fastest rate of cost growth is on the most recent claims.
 - ▶ Even though the scale of deterioration is less for Other Injuries, given they comprise the larger part of the claims volume they are still a meaningful contributor to the financial deterioration that has occurred.

The implication of the above is that weekly costs are growing at an unsustainable rate; and given the role that weekly benefits play in keeping claimants attached to the scheme, it should be expected that most other costs will grow correspondingly.

3.1.8 Forward Outlook

The scheme design relies on ‘soft boundaries’ to determine who gets access to which benefits over time (claim acceptance; 130 week test; serious injury test), and the effectiveness of these boundaries has shifted noticeably in recent years. Further, the trends in key areas are adverse and it is not clear where the performance will stabilise, and the COVID-19 situation will only make this worse.

The financial consequence of these shifts is that more claims are getting started on benefits, more claims are continuing on benefits, and more claims are accessing long term benefits than in the past.

Given the way the actuarial valuation is undertaken, even if performance can be stabilised where it is now this will lead to financial outcomes continuing to get worse over the next 1-2 years (i.e. until the valuation assumptions are fully aligned to the latest claims experience).

The ability of WorkSafe’s management response to address these challenges will determine how high the BEP gets over the next two to three years – in short, a lot needs to be done very quickly in order to stabilise the BEP.

While we are aware that lots of work is occurring internally, at the moment we have not seen evidence that this is sufficiently improving either claimants’ work capacity or RTW outcomes to contain the above issues.

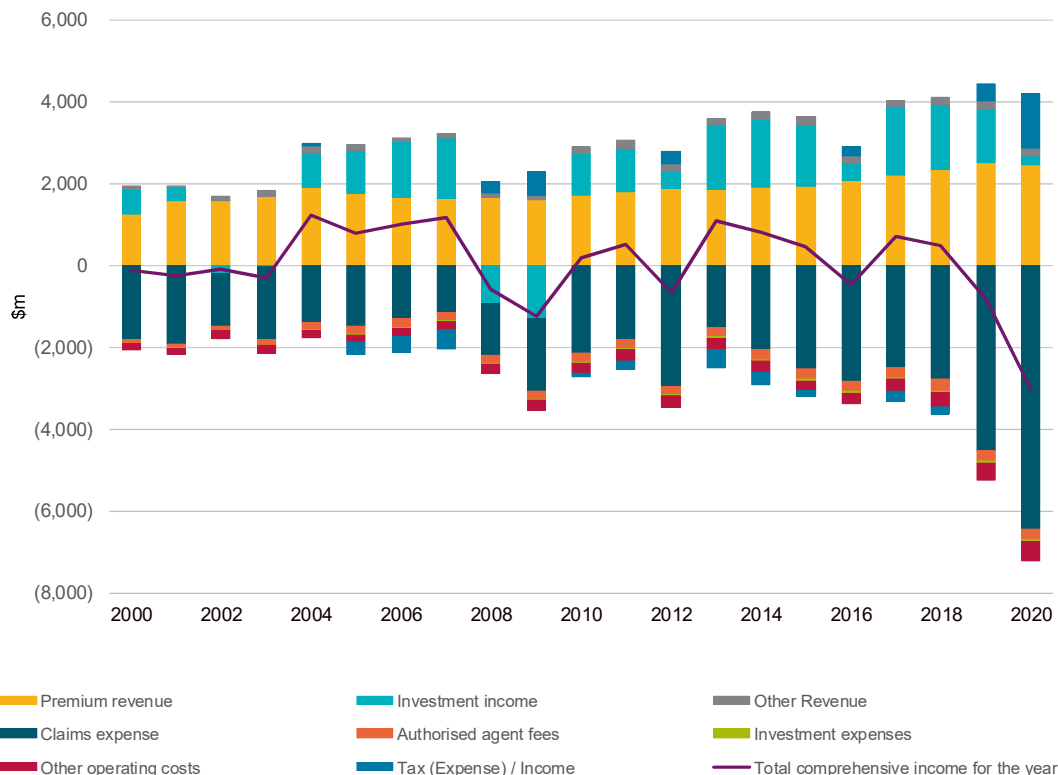
Historically WorkSafe has been very successful at mitigating areas of claims cost pressure as they have emerged over time, but at best it seems that claims performance will continue to get worse over at least the next 1 to 2 years (post June 2020) before there is any likelihood of stability being achieved; as such, it may be that this time is different.

3.2 Financial Performance

3.2.1 Overview of financial performance: Profit and Loss

The chart below summarises the financial performance of WorkSafe over the last 20 years.

Figure 3.10 – Summary of Comprehensive Income over time



Key features of performance include:

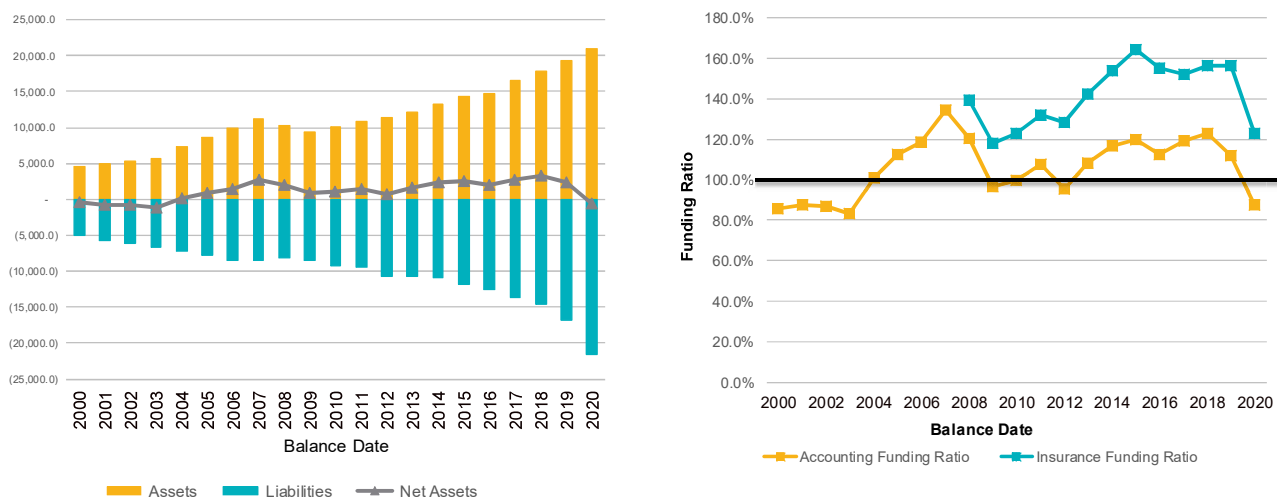
- Investment income is typically the most volatile component of profit: varying between ~+\$1.7bn and ~-\$1.3bn
- Claims costs for many years was comparatively stable, with the key changes being around changes in benefit structure, however over the last two years (in particular) the claims experience has deteriorated very significantly. It has taken some time for this to be recognised in the valuation
- Premium income has only grown modestly over time, reflecting the unchanged average premium rate
- Accounting profit for the last two years would have been materially worse if not for substantial booked Deferred Tax Assets.

The figure highlights the importance of investment income to the long term fortunes of WorkSafe: this investment income is critical as it is already ‘baked into’ the premium rate, as premiums are established using a long term ‘real’ rate of return of AWE+4% p.a.. In essence premium payers are being given the benefit up front of the expected long term returns of WorkSafe.

3.2.2 Overview of financial performance: Balance Sheet and funding ratio

The figures below summarise the balance sheet and funding ratios over time:

Figure 3.11 – Accounting Assets and Liabilities and Funding Ratio over time



Key issues over time include:

- Net assets have been positive for many years but have dipped below zero in 2020
 - ▶ Strong growth in liabilities over the last 2 years due to deteriorating claims performance has driven this.
 - ▶ Assets include a Deferred Tax Asset which may or may not be able to be realised into the future (currently \$1.8bn and expected to increase further across the forward projections).
- Funding Ratios
 - ▶ Until 2019 WorkSafe expressed its financial risk appetite by way of an accounting funding ratio range of 82.5% to 117.5%. This measure relies on the balance sheet, with some adjustments for intangibles.
 - ▶ With effect from 2019 this ratio was re-expressed as the Insurance Funding Ratio, with a range of 100% to 140%. This ratio used economic assumptions consistent with the pricing basis to determine the value of liabilities and so is intended to remove some of the year to year volatility associated with the difference between risk free discount rates and the longer term rates on which premiums are based.
 - ▶ Accounting Funding Ratio has had periods over time where it has been slightly below 100%, however the last time such a substantial year on year change occurred (2009) was following the GFC and was largely due to poor investment markets, rather than deterioration in claims performance (i.e. the issue was volatility rather than recurrent deterioration). The ratio at June 2020 (87%), while still inside WorkSafe's previously expressed preferred accounting funding range of 82.5%-117.5% is toward the lower end of the preferred range.
 - ▶ Insurance Funding Ratio: the decline in this ratio over the last 12 months has been precipitous. As this ratio removes the year to year volatility associated with economic assumptions it can be argued that it presents a 'truer' reflection of the underlying performance of the Scheme on its fundamentals. Given current premium rates are less than

break even, in the absence of material changes in claims performance, this ratio is expected to trend to below 100% over the next 3-5 years and maybe sooner.

3.2.3 Assessment of liability adequacy

The liability valuation is an assessment of the *expected* future cost of claims that have already occurred. The majority of this cost will be for claimants already known to the scheme, although a proportion is for claims that are still to be reported ('IBNR' claims). Because the benefits package is 'long tail' the valuation contains a multitude of explicit and implicit assumptions about claimant outcomes⁴ stretching many decades into the future. As such, the liability valuation can prove to be too high or low as a result of:

- Assumptions that are more or less optimistic than recent claims performance
- Future changes in claims performance, for example a deterioration in RTW rates
- An external event that unexpectedly changes outcomes – for example COVID, which has made it harder to achieve RTW outcomes on some claims and led to delays in the use of some termination provisions
- Changes in claimant behaviour over time beyond what has been recognised in the valuation assumptions – for example, a growing utilisation of common law would likely see higher than projected costs

One way of assessing the adequacy of liabilities is to examine the net claims development table over time. Where experience is deteriorating we would expect to see liabilities increasing, while when experience is improving we would expect to see claims costs reduce. In the chart below the expected cost for each accident year has been reviewed and 'graded' such that the highest estimate is dark red, the lowest estimate is dark green and results in between are graduated.

Table 3.1 – Net Claims Development Table

Accident Year	2011 \$m	2012 \$m	2013 \$m	2014 \$m	2015 \$m	2016 \$m	2017 \$m	2018 \$m	2019 \$m	2020 \$m
At the end of Accident Year	2,024	2,106	2,180	2,119	2,236	2,315	2,530	2,693	3,020	3,914
One Year Later	2,007	2,105	2,009	2,108	2,229	2,409	2,555	2,860	3,664	
Two Year Later	1,959	2,064	1,984	2,057	2,287	2,426	2,631	3,364		
Three Year Later	1,943	2,041	1,960	2,085	2,309	2,469	2,897			
Four Year Later	1,931	2,051	1,937	2,063	2,307	2,640				
Five Year Later	1,971	2,124	1,965	2,021	2,459					
Six Year Later	1,950	2,084	1,913	2,054						
Seven Year Later	1,896	2,061	1,929							
Eight Year Later	1,959	2,068								
Nine Year Later	1,988									
Wages for year	128,990	135,190	139,149	144,952	151,261	160,043	168,286	180,181	192,657	195,296
% change year on year (most recent number in "diagonal")		4.0%	-6.7%	6.5%	19.7%	7.4%	9.7%	16.1%	8.9%	6.8%
Wages growth		4.8%	2.9%	4.2%	4.4%	5.8%	5.2%	7.1%	6.9%	1.4%

⁴ For example: RTW rates, termination rates, medical cost growth, claimant behaviour, disputation of decisions, utilisation of common law, etc

Table 3.1 shows that for accident years 2015 and thereafter there has been consistent reserve strengthening over recent years, with very significant reserve strengthening at the 2020 valuation (the last diagonal). As discussed elsewhere throughout this report, these increases at June 2020 were due to deteriorating claim experience.

We have previously performed a high level assessment of PwC's outstanding claims valuation at 30 June 2020. The summary of our key conclusions was as follows:

- Experience has been deteriorating rapidly. Assumptions are based on (typically) at least a two year average and hence, unless there are rapid changes in scheme performance, we would expect valuation assumptions to be strengthened further at future valuations – that is, because the valuation basis relies on averaging periods that are still behind the most recent adverse experience in their parameterisation, even if performance stabilises where it is currently then the financial projections will continue to increase up until the assumptions are fully aligned to the claims experience.
- There are a number of key assumptions where there is added pressure:
 - ▶ Terminations: the valuation assumes a return to termination rates more like the period before the second Ombudsman's report was published. This may be ambitious.
 - ▶ Common law: the common law projections for recent accident years have not been increased in line with the growth in longer duration weekly claims, and this may prove to be an optimistic assumption.

In our view, while there has been a significant reassessment of the costs of the scheme at June 2020, unless WorkSafe is able to improve a number of aspects of return to work and terminations, we would expect these assessments of claims costs to continue to increase.

We are advised that the recent September 2020 update by PwC has foreshadowed a further increase of \$850 million to the liability at December 2020, which fits with our observations.

3.2.4 Assessment of BEP adequacy

PwC now estimate that premiums have been insufficient to meet the expected cost of claims and expenses since 2015. This is summarised in Table 3.2.

Table 3.2 – BEP Components (as % wages)

	Weekly Mental	Weekly NonMental	Medical and Like	Common law and legal	Impairment, Stat Legal, Death, Other	Rec (inc TAC)	Expenses	Net premium (BEP)	Average premium charged	Difference
2013/14	0.089	0.280	0.188	0.273	0.132	-0.064	0.302	1.200	1.298	0.098
2014/15	0.122	0.295	0.209	0.291	0.141	-0.066	0.313	1.305	1.272	-0.033
2015/16	0.144	0.293	0.209	0.295	0.129	-0.070	0.313	1.313	1.272	-0.041
2016/17	0.166	0.324	0.205	0.296	0.122	-0.071	0.305	1.347	1.272	-0.075
2017/18	0.183	0.392	0.203	0.288	0.121	-0.076	0.293	1.404	1.272	-0.132
2018/19	0.229	0.361	0.205	0.285	0.122	-0.078	0.287	1.411	1.272	-0.139
2019/20	0.245	0.370	0.225	0.286	0.124	-0.081	0.271	1.440	1.272	-0.168
2020/21	0.252	0.380	0.228	0.296	0.121	-0.082	0.306	1.501	1.272	-0.229

Table 3.2 highlights the rapidly increasing cost of mental injuries, with the cost of weekly mental injuries almost tripling over the last seven years. Importantly though, there is a material risk that costs will emerge even higher than this over time given the current projections assume that the rate of growth

between 2018/19 and 2020/21 will only be 5% per annum, whereas the growth between 2013/14 and 2018/19 was 21% per annum (and recalling the claim trends discussed in Section 3.1).

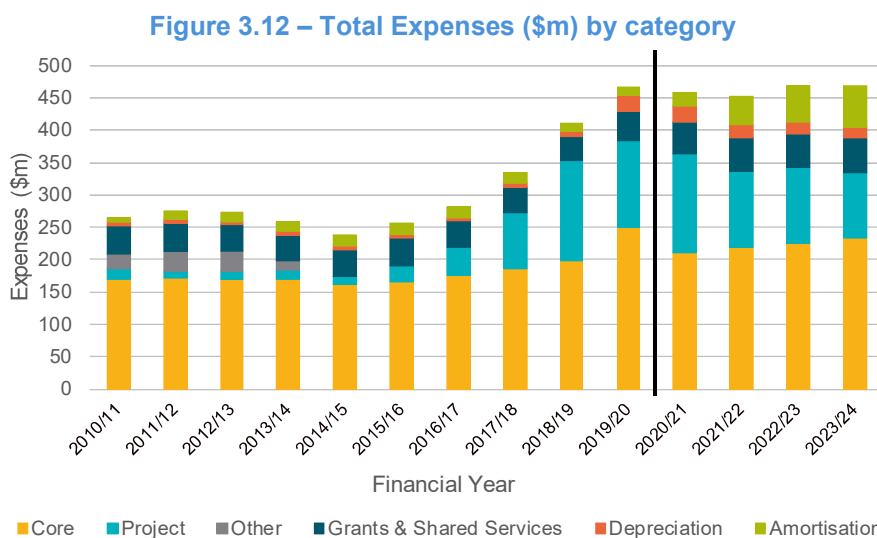
In its September 2020 premium advice (based on the June 2020 valuation), PwC have indicated an estimated BEP of 1.501% for 2020/21. This contrasts with a current average premium of 1.272%: a difference of 0.229% (or 18%). PwC have estimated that total wages of approximately \$195 billion and hence this shortfall is equivalent to a deficit of \$447 million (and to be clear, this will be a recurrent deficit until premiums are increased).

As discussed above, in our view, there remains a very material risk that the current assessment of expected costs for 2020/21 may not be adequate. In discussions with WorkSafe management BEP estimates of 1.5% to 1.8% were suggested, and our works supports that there is a material risk that these higher premium rates may be required if the scheme continues on its current trajectory.

It should be emphasised that even if a premium increase of this magnitude were to be introduced (acknowledging that this is unlikely to be politically possible) it would still not address the shortfall in premiums that are now apparent from the last five years. This highlights one of the key challenges with a long tail scheme such as WorkSafe, i.e.: that as the Scheme grows, the ability of premiums to ‘repair’ any inadequacies in the balance sheet becomes very limited. Current premiums of around \$2.5 billion are only about 12.5% of total liabilities of roughly \$20 billion. The current accounting deficit of circa \$600 million is equivalent to almost 25% of one year’s premiums.

3.2.5 Expenses

Figure 3.12 shows the total expenses, by expense category in WorkSafe’s accounts and the budget projection over the next 4 years.



Over the last 3-4 years there have been a number of additional expenses that WorkSafe have supported on behalf of the Victorian government. These have included:

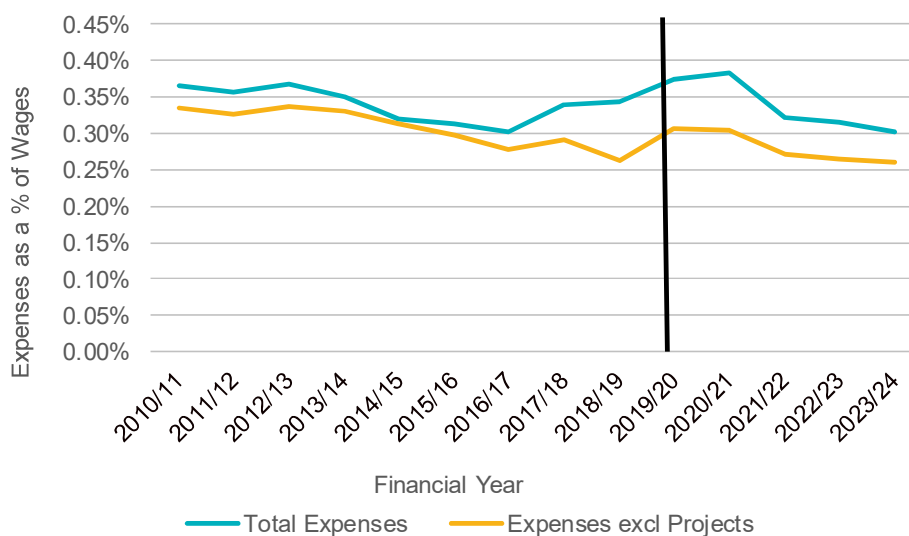
- Projects - workplace manslaughter, dangerous goods unit, on site infringement notices (noting that Project costs have increased from less than \$30 million per annum to well in excess of \$100 million per annum)

- Core costs - the increase in 2019/20 includes the cost of the dangerous goods clean up. Excluding these costs, total core costs have been relatively flat for a long period.

The current allowance in the BEP is for expenses to be around 0.302% of wages. However, WorkSafe’s actual expenses have been well in excess of this level for several years, as summarised below.

Figure 3.13 also shows total expenses and expenses excluding ‘projects’ as identified in WorkSafe’s accounts.

Figure 3.13 – Expenses as a % of Wages by Financial Year



While total expenses are expected to return to more ‘normal’ levels across the projection period, they still remain higher than in the past, and in excess of the current allowance of around 0.3% of wages.

3.3 Other Considerations

3.3.1 COVID-19

There is no doubt that COVID-19 has had a marked effect on WorkSafe staff, the responsibilities imposed by the Minister onto WorkSafe in terms of safety and co-ordination across the response, WorkSafe’s agents’ abilities to discharge their responsibilities, the Victorian workforce and employers and the Victorian economy generally. COVID-19 has been the most significant disruption to WorkSafe in recent history.

COVID however, has not been the root cause of deteriorating claims experience which has been a feature of the scheme’s performance for some years. It does pose a different challenge and must be dealt with in parallel but with quite a different response to the underlying issues discussed above.

3.3.2 Premium Model

By design, the premium model considers a number of years’ claims experience in allocating out the average rate across industry segments. In an environment where the claims experience is changing rapidly, this is likely to mean there are divergences emerging between the ‘true’ cost allocation and the ‘calculated’ premium allocation in some segments. Further, this lagged response to changes in the claims costs is likely to be shifting the balance of cross-subsidies between different employer segments.

A particular example of this is the Government sector, where it is known that costs have grown rapidly in recent years. Given the materiality of this small group of employers on the overall premium and claim

cost outcomes, it may be worth considering more forward looking methods for setting these premium rates that would help to align their premiums to expected future claims costs. It may also be possible to refine the incentive structures, and hopefully encourage greater focus on prevention and improved RTW.

3.3.3 Claims Agents

As described in Section 3.1, there has been major growth in the number of claims requiring claims management over the last three years and, furthermore, the mix of these is now increasingly toward mental injuries which will ordinarily be more complex.

Table 3.3 below summarises recent agent fees as well as the average number of active weekly claims per quarter.

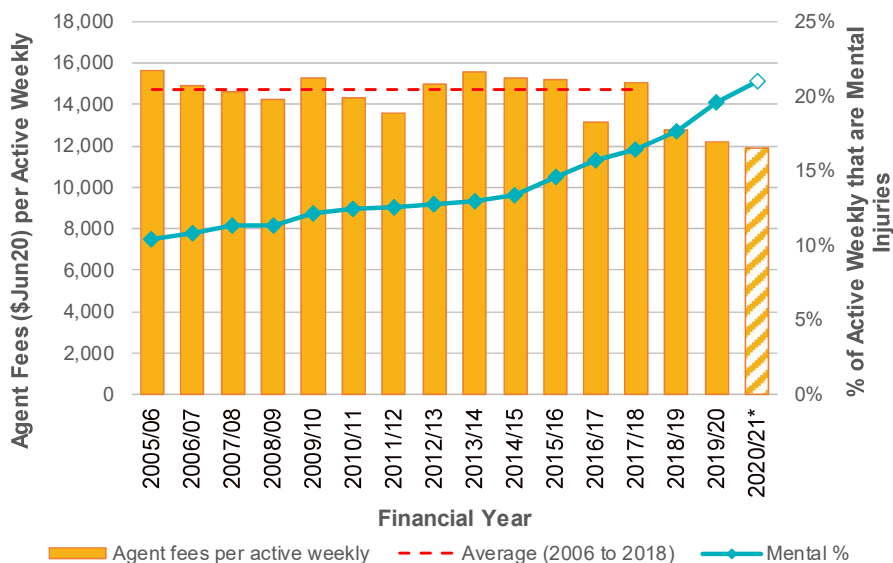
Table 3.3 - Agent Fees vs Active Weekly Claim Workload

	Financial Year						
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Agent Fees (\$m)	248	247	245	228	276	251	266
Agent Fees (\$Jun20, \$m)	286	278	270	245	291	259	269
<i>Cumulative change (post-inflation)</i>		-3%	-6%	-14%	2%	-9%	-6%
Average Active Weekly Claims	18,399	18,223	17,789	18,678	19,352	20,289	22,081
<i>Cumulative change</i>		-1%	-3%	2%	5%	10%	20%

As this shows, the number of weekly claims requiring management each year has grown by 20% since 2013/14, most of which occurred in the last three years, whereas the inflation adjusted claims agent fees are now less than they were in 2013/14. We acknowledge that this is only a proxy measure of claims agent workload as there are a number of other functions the agents undertake, but nevertheless it may indicate that the management expense has not grown quickly enough to match the claim volume growth in recent years.

To help put these features into an even longer term context, Figure 3.14 shows the effective claims agent fee per average active weekly claim. Over an extended period from the mid-2000's through to 2017/18 the level averaged around \$14,750 per active claim (inflation adjusted); since 2017/18 the level has dipped to now be near 20% below this previous level. As Figure 3.14 also demonstrates that the workload is indeed increasingly more toward mental injury claims.

Figure 3.14 – Claims Agent Fees (\$Jun20) Normalised for Weekly Claim Volumes



If this interpretation is correct, then it is likely to be contributing to the RTW deterioration as claims managers will not be getting the same level of contact with injured workers as they did in the past. As a final observation, the broader operating environment also contains quite a high level of uncertainty for the claims agents – due to both the looming end of agent contracts, and the Independent Review in relation to the management of complex claims. In this environment, where security of tenure is unclear, it is unlikely that the claims agents will be choosing to invest in their future performance in ways that would benefit WorkSafe.

Self Insurer vs Insured Scheme Performance

We had hoped to examine the claims performance of self-insurers in comparison to the WorkSafe insured sector in an attempt to identify how much of the above discussion can be attributed to ‘scheme wide issues’. At the moment we have not been able to make meaningful progress on this, given difficulties in how the data is captured and stored, although it may be an area for further work if desired.

3.4 Risk Management

Under the Prudential Standards, examination of financial sustainability is required to include an assessment of risk management. While we note that scheme sustainability is the responsibility of the Finance and Audit Committee, to understand WorkSafe’s position with respect to enterprise risks we reviewed WorkSafe’s enterprise risk profile paper to the May 2020 Risk Committee. The paper appeared to us to be in the form of a ‘business as usual’ update without any special focus or call outs. While there was discussion of the impact of COVID-19, the document did not have an eye to a bigger picture of the sustainability of WorkSafe in the face of deteriorating claims performance (which had already been flagged at the December 2019 actuarial valuation).

As a general observation, the enterprise risks summarised in the May 2020 Risk Committee paper are overwhelmingly inwards looking. Given the challenges facing the scheme there is an opportunity to review the risk profile with greater environmental consideration of the economy, employers, workers, agents and claimants including the risks that affect them and through them the sustainability of the scheme.

3.5 Our Assessment

Control of the various legislative gateways and thresholds has been the foundation of WorkSafe's past financial success. Due to a combination of factors, including changing community attitudes, it appears that most of these gateways are now being applied more generously (to claimants) than in the past. Our review of WorkSafe's risk management function suggests that these risk areas were slow to be identified.

Given the way PwC undertake the actuarial valuation work, that is by relying on averaging periods to set assumptions, it is important to understand that the financial performance will continue to get worse even if the claims performance can be stabilised at the most recent adverse level (that is, the financial position will get worse until the assumptions are fully aligned to the claims experience).

The ability of WorkSafe's management to respond to these challenges will determine the extent of the premium increase that is necessary in the short term, and whether scheme design changes will be necessary in the medium to longer term to ensure financial sustainability.

An immediate priority for WorkSafe is to consider two related questions regarding the use of termination provisions:

1. Does WorkSafe believe the termination provisions are operating at the appropriate level?
2. If not, is it possible to 'move the bar' on decision making to the appropriate spot?

If it is not possible to 'move the bar' on termination use then the costs will be permanently higher than they have been, including being higher than the most recent BEP estimate from PwC.

'Pulling one lever' will not be sufficient to rectify the current financial trajectory. Furthermore, any changes will need to be made in an environment of much distraction – COVID-19, uncertainty about the ongoing role of claims agents and how 'complex claims' will be managed, and a need to update IT systems at some point, will all make it harder to get things done.

Other priority areas should include:

- Mental Injuries:
 - ▶ While prevention on its own will not be sufficient to 'right the ship', greater work on prevention of mental injury claims and understanding drivers of duration including secondary injury prevention, and even so far as considering WorkSafe's role within a system of support.
 - ▶ Deep dive review into a portfolio of Mental Injury claims to 'find a new way' of managing RTW (remembering too that not all Mental Injury claims should be treated the same way) – current performance is just not working.
 - ▶ For Mental Injury claims in particular it seems unlikely that claim management and prevention actions on their own will be sufficient to address the current trends. As such, WorkSafe should consider the longer term plan for these types of claims, and in particular whether this is a growing cost that will just need to be funded by employers (as a higher premium), or else whether benefit changes are necessary to align the claim outcomes with the intention of the scheme.
- Physical Injuries: RTW rates have been on a gradual decline for many years, and beyond the initial 13 to 26 week recovery phase the prognosis for RTW is not good.

- Reviewing the level of claims agent fees to determine whether they are sufficient to provide the level of claims management that is required for the portfolio as it currently sits (regardless of how you got here, the claims agents are WorkSafe's current workforce and means of delivery).
- Clarification of the ongoing role of claims agents in the scheme, as it is unlikely that they will be investing to the level you need them to if they do not have confidence in their tenure.
- Consideration of whether a targeted approach to government could support the steps above work.

To be clear, COVID has not been the root cause of deteriorating claims experience, as the features described above have been emerging for some years. It does however pose a different challenge and must be dealt with in parallel but with quite a different response to the underlying issues discussed above.

4 Financial Outlook

WorkSafe's insurance liabilities are 'long tail' – this means that at an aggregate level there is a significant amount of time between when premiums are collected and when the final payments with respect to the covered claims are made. For some gradual process claims, such as hearing loss, this can be because the onset of symptoms is many years after the initial exposure to the harmful work environment, but in WorkSafe's case it is more so the result of the group of claims who gain access to long duration benefits, some of which will run for decades after the original injury occurs.

As a consequence, the financial management of long tail liabilities is based on actuarial estimation of the 'best estimate' of future payments: estimates that can only ever be made in the context of uncertain numbers of claims, size of payments, duration of benefits and future economic, social, legal, legislative and other inflationary effects. And because it takes so many years for claim payments to be completed, when there are changes in claims performance that are recognised as assumption changes in the actuarial work it has a very leveraged effect on the liabilities and thus financial performance.

The outstanding claims liabilities in long tail insurance are much larger than premium income and, because of this, premiums are only marginally effective as a lever with which to correct funding trends. As an illustration, as at 30 June 2020 the net outstanding claims provision was \$19,916 million. Premium revenue for 2020/21 is estimated to be \$2,446 million, in other words, liabilities are more than eight times premiums. Therefore, to effect a one-off change to funding of 5% requires a single 40% premium increase (or lower increase but sustained over many years). In schemes such as WorkSafe, it is usually the case that an increase in premium to support funding is only required when premiums themselves are assessed as inadequate – therefore, premium rate increases are compounded by firstly needing to deal with the premium inadequacy before making inroads into funding.

On top of the claims uncertainties, premiums also anticipate a certain investment return expectation – in essence, the investment return funds some of the long tail claim costs, thus reducing the amount that needs to be collected up front as premiums. Due to the long tail nature of liabilities this investment return must then hold over the multi-decade life of the claims payments, and the effect on dollars collected is material.

In the case of WorkSafe's premium calculations there are no other explicit or implicit margins: claims costs in premium calculations are at the central estimate level, and future investment returns are fully anticipated at the levels expected to be achieved by WorkSafe's strategic asset allocation.

The result is that no margin for error or risk is passed on to the employers, notwithstanding that significant risk and volatility is a feature of scheme. There is nothing inherently wrong with this approach to premiums. However, its consequences must be understood.

4.1 Claim Costs and the BEP

There is compelling evidence that without fundamental change the current premium charged to employers is inadequate and has been for some time. Claims and expenses are greater than revenue (premium collected plus investment revenue) and will not, without intervention, rebalance into equilibrium.

As claims experience emerges, the BEP for historical years can be re-estimated. This 'hindsight BEP' has been increasing year on year for past injury years back to 2014/15. The changed claims experience that has emerged over time (as described in Section 3.1) affects more recent injury years to a greater extent and thus the 2020/21 BEP is higher than the 2019/20 year and so on.

Figure 4.1 – Assessment of Historical BEP (as per 30 June 2020 actuarial valuation)



PwC in their recent premium advice estimated the 2020/21 BEP to be 1.501% with a range around this of 1.450% to 1.600%. The target premium is 1.272% of premium which is significantly below PwC’s central estimate and below the bottom of their assessed range.

4.1.1 September quarter experience

We understand that PwC has completed a limited review to update scheme liabilities. Their review used data to 30 September 2020 and has resulted in a further strengthening of projected liabilities by around \$800 million for weeklies, common law and paramedical. Further we have been advised the BEP based on this most recently update is 1.622% although we have not had the opportunity to review this in detail (we were provided this information between the draft and final reports).

We have not attempted to recalculate BEP or model projected funding as a result of this September quarter update.

4.1.2 Even further strengthening is a possibility

Our review of claims experience highlighted to us that cost pressures have emerged, and are continuing to emerge, on a number of fronts. In particular, the following two areas of scheme experience warrant calling out and quantifying in potential scenarios:

- Termination rates are low after stepwise reductions immediately following the two Ombudsman Victoria reports
- Continuance rates have also been increasing, which compounds the effect of lower termination rates and results in claims duration extending significantly.

In addition, mental injury claim numbers are trending up strongly year after year, and appear to be far from settling at a new level. While this impact will only have limited impact on the current liability, if the upward trend continues then it should be anticipated that the BEP will continue to increase year on year.

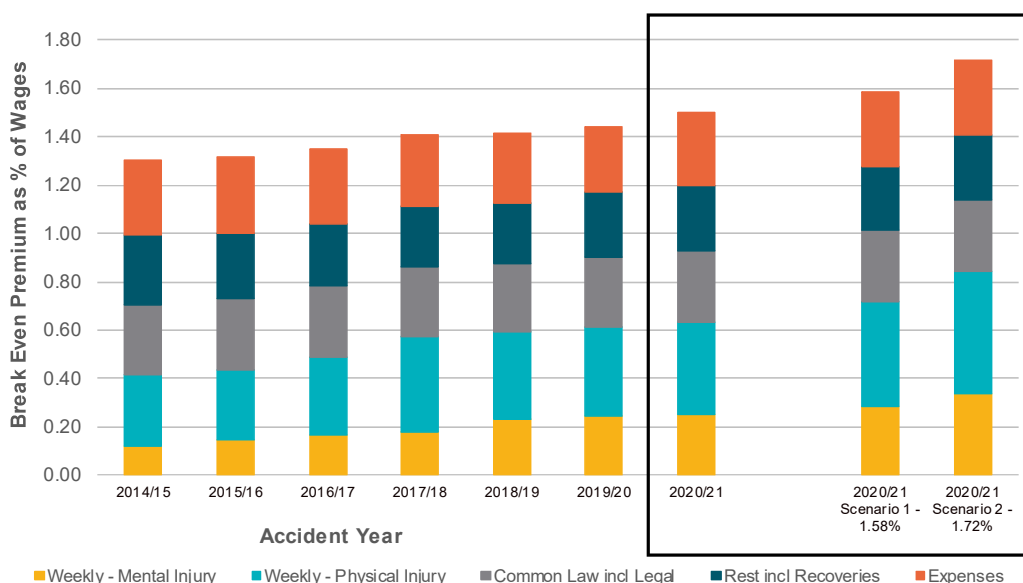
4.1.3 BEP Scenarios

In their 2020/21 premium advice PwC included two scenarios which appear to be fair representations of the current status:

- A scenario that quantifies deterioration in termination rates which increases BEP from 1.501% to 1.58%. We have adopted this as the low scenario for future funding purposes.
- A scenario that captures deterioration in long term continuance rates on top of termination rate experience which results in an estimated BEP of 1.72%. We have adopted this as a high scenario for future funding purposes.

We are of the view that 1.6% to 1.7% is a fair representation of the 2020/21 BEP using current levels of termination and continuance. Another cost pressure is growing mental injury claim numbers. A continuation of this trend will put further upward pressure on costs which could result in a BEP that reaches or exceeds 1.8% over the next two to three years. We have not included this case in our scenario analysis.

Figure 4.2 – 2020/21 BEP Scenarios



In round numbers, remuneration is estimated to be \$200 billion. Therefore, each 0.1% of remuneration equates to \$200 million premium revenue. The difference between 1.27% (target rate if left unchanged) and 1.72% (high scenario if it eventuates) is a \$900 million shortfall per annum.

On top of this, if the above BEP scenarios do indeed eventuate then it ought to be anticipated that the liability for recent accident years will also increase – for example, the 2018/19 and 2019/20 accident years are yet to undertake any meaningful level of terminations, and so a reduction in the termination rates will most likely produce a similar financial increase for those years as for the 2020/21 accident year.

4.2 Funding Projections

4.2.1 Baseline Funding Projection

WorkSafe’s reported funding position and projections depend on:

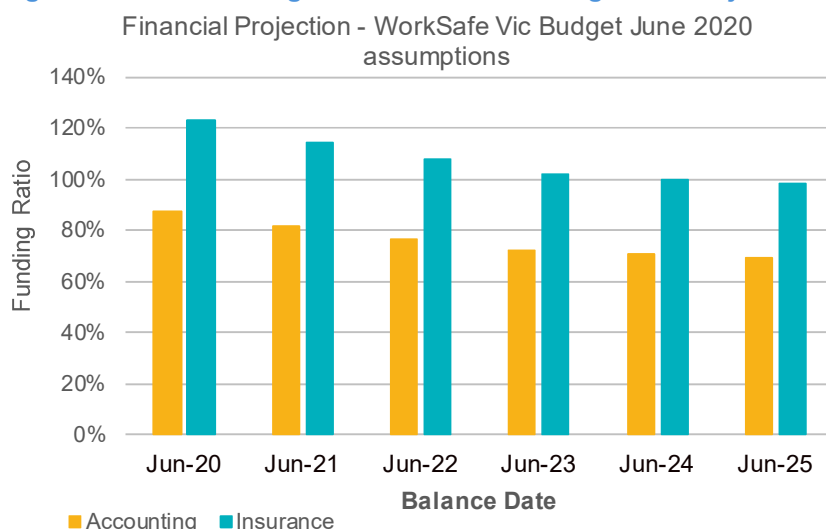
- Valuation estimates of the future cashflows (direct input into balance sheet funding position)
- That these valuation assumptions are appropriately trended (or not) into the future and any future injury year trends (such as mental injury claim frequency) is appropriately captured

- The achieved premium revenue outcomes relative to true underlying BEP
- Achieving future (real) investment returns in line with projections.

We have recreated solvency projections using current central estimates and 30 June 2020 valuation results⁵ and extended these out to 10 years (the first five years match reasonably well with PwC’s projections).

With BEP currently estimated to be 1.501% of wages but future premiums set at 1.272% of wages the insurance funding ratio is expected to decline from 123% at 30 June 2020 to 98% at 30 June 2025.

Figure 4.3 – Accounting and Insurance Funding Ratio Projections



As noted above in Section 4.1.1, we are aware that September 2020 quarter experience is not favourable compared to the 30 June 2020 position and has been reflected by PwC as an expected liability increase of around \$800 million. We have not included this in projected funding however a very approximate affect will be to reduce funding ratios by around 5 percentage points.

Accounting funding ratio is shown above to line up with the 30 June 2020 annual report financial statements and for comparison to the insurance funding ratio. However, from a sustainability perspective, insurance funding ratio is a more direct measure and will be the focus of the remainder of this section.

We have projected the insurance funding ratio a further five years, that is on to 30 June 2030, which is estimated to reduce further to 87%. That is, even with no further deterioration than what was factored in to PwC’s 30 June 2020 valuation and assessment of BEP, the insurance funding ratio continues to decline over time.

We consider the ten year projected funding ratio is a sensible timeframe to consider for a long tail scheme such as WorkSafe. It is a reasonable time horizon within which to work to affect and measure a turn-around in performance.

As mentioned in Section 3, in order even for this projection to hold the underlying trends in claims experience must reverse somewhat. There is a real possibility that this will not eventuate.

⁵ Projected cashflows have been taken directly from PwC’s valuation appendices for our work, which we understand is slightly different to how WorkSafe undertakes its own budgets and forecasts (where some minor adjustments of the PwC cashflow projections are made). The differences ought to be minor, and will not change the conclusions made.

4.2.2 Funding Scenarios

If a different view of the liability and BEP trajectory is taken then this obviously affects future funding. Using the BEP scenarios from Section 4.1.3 above we have produced reforecast insurance funding ratios also going out ten years.

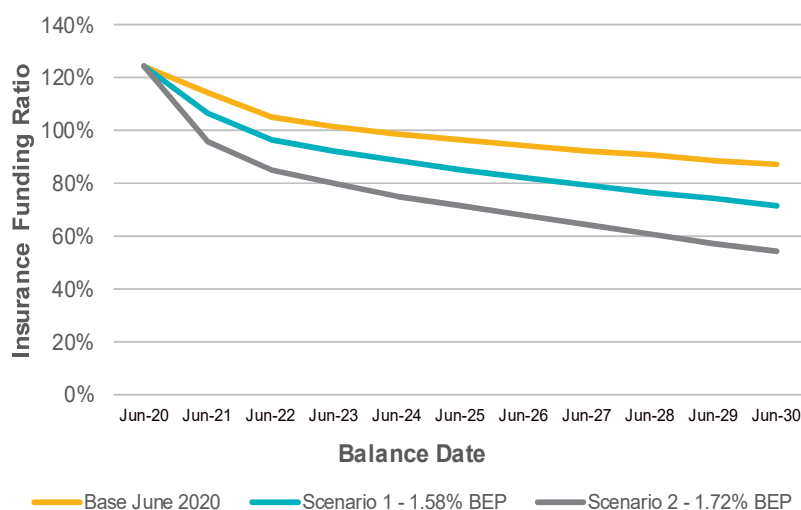
For simplicity we have bundled the naming of future claims scenarios relating to termination and continuance rates into the following scenario names:

- Base – the 1.501% BEP as provided after the June 2020 valuation work
- 1.58% BEP
- 1.72% BEP.

The details behind these scenarios are contained within PwC’s premium advice.

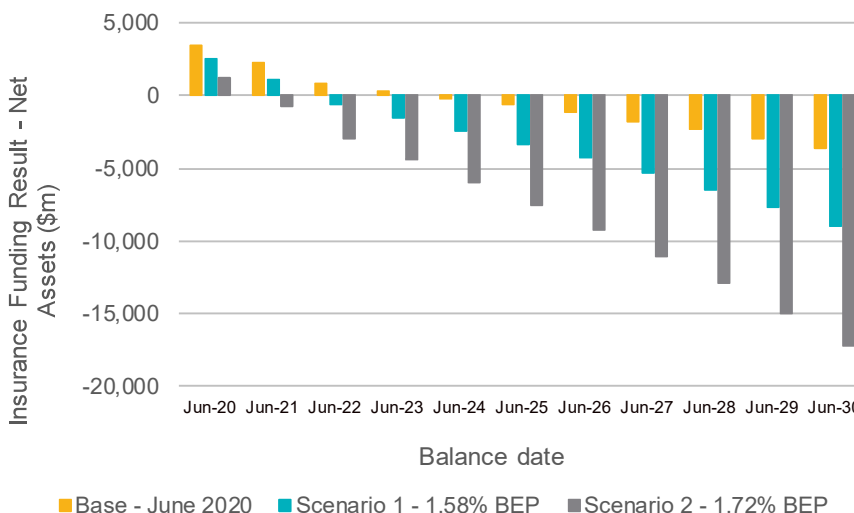
Again, it is likely that the true 2020/21 BEP exceeds 1.501% and is possibly in the range 1.60% to 1.70%; in contrast the current target premium rate is set at 1.272% of wages. By continuing to collect premiums equivalent to 1.272% of wages and with an actual cost in the range 1.60% to 1.70% then the insurance funding ratio is expected to further decline. By 30 June 2025 the IFR forecast under these conditions lies in a range between 70% and 85%.

Figure 4.4 – Projected Insurance Funding Ratio: Base and BEP Scenarios



If claims experience does in fact emerge to be consistent with a BEP of between 1.58% and 1.72% and premium rates continue on at 1.272% then by 30 June 2030 the IFR will be in the range 54% to 72%. This is equivalent to estimated liabilities at 30 June 2020 being \$9 billion to \$17 billion higher than the assets available to fund them, as shown in Figure 4.5.

Figure 4.5 – Projected Insurance Funding Net Assets (\$m)



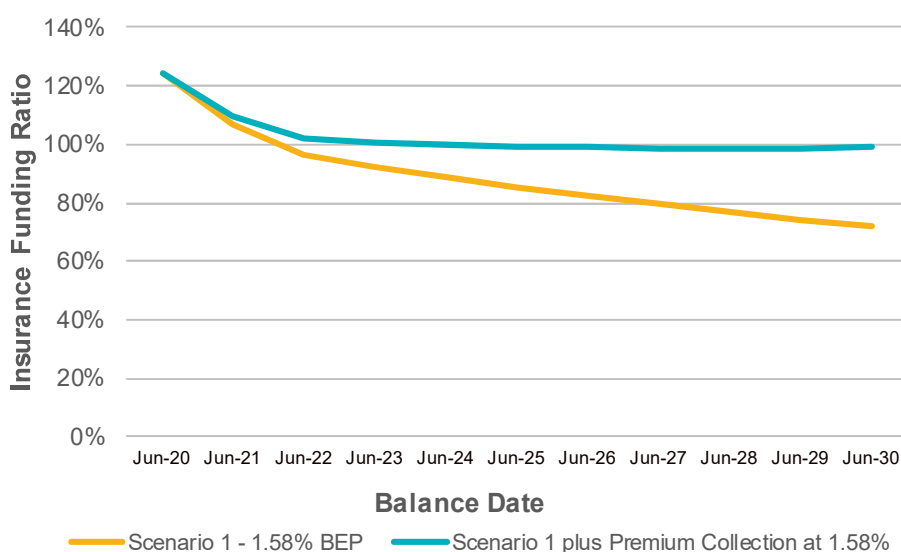
Importantly, we are of the view that these outcomes may not even depend on further deterioration in the claims experience, but rather that this may be where it has already reached (but just not recognised through the actuarial work as yet). As explained above, any further growth in mental injury claim numbers over time will only further worsen the projections from those shown.

Given the long tail nature of the scheme and rate of deterioration that has emerged in the last (say) three years it is impossible to say where the BEP will stabilise at this time (as is indicated by PwC providing a range on its BEP estimate). At best it is likely to be at least a couple of years before it is confidently known where the BEP will stabilise, if at all.

4.2.3 Premium response

If the true BEP is 1.58% and this rate can be targeted and charged from 2021/22 onwards this would put a floor on the IFR trajectory and financial sustainability would be less of an issue.

Figure 4.6 – Insurance Funding Ratio with Target Premium Equal to BEP



As this indicates, an immediate premium increase to match the BEP buys time to maintain the IFR and manage the tail.

Removing dividend obligations in 2022/23 and 2023/24 would further assist as it would result in a scheme that is essentially in financial balance at marginally in excess of 100% IFR after 2021/22, as long as there was no further experience deterioration such as mental injury claim number growth or a BEP cost that emerged higher than 1.58%.

Our projections of liabilities and funding ratio have been completed with care. However, without access to working underlying models and with limited time to complete our work we have had to cut some corners. In all material respects with respect to scheme sustainability though our conclusions are sound.

4.3 Investments

Investment return is a crucial assumption for WorkSafe as the investment credit expected from its Strategic Asset Allocation is fully factored in to premium setting. Moreover, the Strategic Asset Allocation targets a return of AWE plus 4% over the long term using a material allocation to return seeking assets such as equities, property and infrastructure. We note that over the long term history of the scheme that this has been achieved.

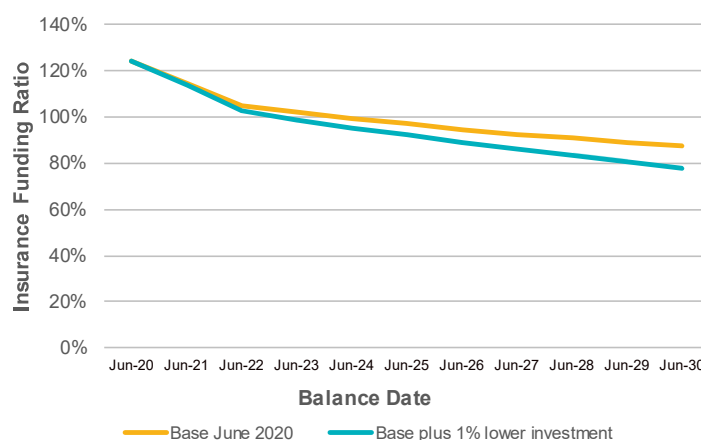
These investment and pricing policies provide a “risk free” promise to claimants to fund future claims cost using risky assets and therefore create a dependency on the investment return being achieved to fund lower premiums to employers.

While the scheme was in a strong position of sustainability, volatility on both the asset and liability side could be absorbed and the investment and pricing policies made sense. That is, the high investment returns can be used to lower the cost to employers, and the asset side volatility can be traded through as finances are kept in equilibrium over the longer term.

However, in the current climate of low and uncertain real investment returns plus a deteriorating balance sheet, the question of appropriate investment and premium policies should be revisited. In saying this, we note that any decisions to de-risk investment allocations or pull back on the investment credit provided in premium setting will result in further upward pressure on the premium rate.

To illustrate the effect of not achieving investment return objectives we have suppressed the investment income by 1% per annum (only on the Base projection).

Figure 4.7 - Insurance Funding Ratio with 1% lower investment return



Over the long term, any failure to meet investment returns that are consistent with premium rate calculations will result in a further material deterioration to funding. In the current climate, this can only add to the urgency to restore claims cost balance.

4.4 Reinsurance

Reinsurance as a financial strategy should be reviewed from time to time. Where risk is quantifiable by size and return period then this enables a sensible view of value for money and risk transfer. At this point events of this type (terrorism, events, CBD earthquake) are very small according to Aon Benfield at around 1% of WorkSafe's balance sheet liabilities and 8% of premium revenue.

Turning to the existing liability, WorkSafe's current run-off risk *may* be able to be protected by aggregate cover. However, we would expect that the cost to obtain such cover would be uneconomic, if it could be placed at all.

Noting that we have not undertaken a detailed market scan and are not reinsurance brokers we do not believe that reinsurance will be a viable option to mitigate the current financial sustainability risks.

4.5 Implications for Capital Management

It is too early in our investigation to comment on the specific solutions to funding trajectories. However, under all plausible outcomes, WorkSafe's IFR will trend below 100% over the next one to three years which is a trigger for a capital management plan.

4.6 Our Assessment

WorkSafe's premiums are significantly below the underlying annual cost, and claim costs are rising. There is a real risk of further liability strengthening which would result in a rapid deterioration in the IFR. There is therefore no capacity to defer remediating decisions without adding risk to WorkSafe's financial sustainability.

As explained in Section 3.5, claims management actions need to deal with a range of issues before any stabilisation is achieved, after what is now several years of claims deterioration. So, unless there is a significant legislative change that would reduce benefit access, there is a tight timeframe – no more than 3 to 5 years and potentially less – for claims management actions to be effective, and recognised as sustainably so, or else WorkSafe's IFR will be well below 100%.

Furthermore, as described through this report, a number of the issues impacting WorkSafe's financial sustainability result from broader external and/or societal changes, that in turn led to government, political or WorkSafe responses: two such examples are the impact of mental injury claim growth over time and the impact of the Victorian Ombudsman review. Such 'big picture' issues have brought about changes that are likely to be difficult, or even impossible, for WorkSafe to push back against, and so all actions may eventually need to be on the table.

In determining the path from here, there are a number of key questions that may need to be considered:

- [as per Section 3.5] In relation to the use of 'termination provisions':
 - ▶ Does WorkSafe believe the termination provisions are operating at the appropriate level?
 - ▶ If not, is it possible to 'move the bar' on decision making to the appropriate spot?

- What is the acceptable upper bound for premiums to move to, both in the immediate term and over time?
- How should government employers fund their workers' compensation costs?
- Can a capital injection from Government be contemplated in the current environment of budget deficit?
- Under what circumstances is scheme reform possible?

In short, it is unclear where the BEP will stabilise, although we are strongly of the opinion that it will be materially higher than the current 1.272% premium rate, and most likely higher than PwC's latest estimate of 1.501% - possibly towards or above 1.7% over the next 2-3 years. As such, there is a need to determine where the upper bound on acceptable premium rates is over the next 3-5 years whilst the management response is in full swing to respond to the adverse claims performance. If this is a premium that still cannot meet costs, whether because the acceptable premium rate is too low or the claims costs become too high, then at that point benefit design becomes the only remaining lever for maintaining sustainability.

5 Reliances and Limitations

5.1 This Report

This report is being provided for the sole use of WorkSafe for the purpose stated in Section 1 of this Report. It is not intended, nor necessarily suitable, for any other purpose. This report should only be relied on by WorkSafe for the purpose for which it is intended.

No other distribution of, use of or reference to this report (or any part thereof) is permitted without our prior written consent. Third parties, whether authorised or not to receive this report, should recognise that the furnishing of this report is not a substitute for their own due diligence and should place no reliance on this report or the data contained herein which would result in the creation of any duty or liability by Finity to the third party.

Inclusion of the report in any financial statement or other similar document, in full text or otherwise or any oral report issued by the management of WorkSafe is expressly prohibited without Finity's prior written consent.

Given the deteriorating financial position WorkSafe has found itself in, this work has been prepared under a short timeframe and with limited opportunity for testing of our findings with relevant subject matter experts. While due care has been taken in preparation of the report Finity accepts no responsibility for any action which may be taken based on its contents.

The report should be considered as a whole. The underlying exhibits and appendices contained in our report are an integral part of this report and should be considered in order to place our report in its appropriate context. We have prepared this report in conformity with its intended use by persons technically competent in insurance financial matters. Judgements as to the conclusions drawn in this report should be made only after considering the report in its entirety.

We remain available to answer any questions which may arise regarding our report and conclusions. We assume that users of this report will seek such explanation and/or amplification of any portion of the report that is not clear.

5.2 Uncertainty

This report contains forecasts of the future financial position of WorkSafe. The financial position of WorkSafe is dependent on a number of individual financial estimates, each containing uncertainty as to their ultimate outcome. These include, but are not necessarily limited to, estimates of future claims liabilities, premium volumes and investment returns.

There is additional uncertainty associated with estimates due to projecting financial outcomes, not just as at the most recent balance date, but also into the future. Hence, for example, estimates of loss outcomes are in respect of policies which have not yet been written and in respect of claims which have not yet occurred.

Our review has been undertaken over a short timeframe and we acknowledge that we have not had the opportunity to investigate all matters raised in the report to their conclusion. This timing constraint adds to the uncertainty of our conclusions.

While we have performed some "stress testing" of the projections, we note the projections (unless explicitly stated) make no allowance for any extraordinary changes to the legal, social or economic

environment that might affect future claims outcomes or premium volumes, the cost, frequency or future reporting of claims or the future course of investment markets.

5.3 Data and Other Information

In developing this report Finity has relied extensively on historical data and other quantitative and qualitative information provided by, or on behalf of WorkSafe. While we have reviewed the data and information for reasonableness and consistency, we have not undertaken a full audit or independent verification of the data. The accuracy of our comments, conclusions and results are dependent upon the accuracy of the underlying data and other quantitative and qualitative information received; therefore, any material discrepancies discovered in this information should be reported to us and, if warranted, the report amended accordingly. This includes documents and information prepared by third parties including the external actuaries at PwC.

This report and the results, opinions and conclusions herein contained are presented as at the date of the report set out in the covering letter and are based on information as at the dates set out in Appendix A. They may be rendered inaccurate by developments after these dates.

Part III Appendices

A Checklist against Requirements

The requirements of the FSR outlined a relatively 'standard' set of considerations. Given the very significant challenges WorkSafe is currently facing in relation to claims management and premium adequacy and future funding projections, these have been the key focuses of this document. Other aspects, such as risk management, have been given a 'lighter touch' review.

Requirements of FSR (as set out in RFQ)	
Provide a context on the WorkSafe scheme's historical performance and future projections, including projected changes in the size and structure of the scheme.	Section 2, Section 4
Review recent experience and trends and the adequacy of plans to address the issues identified.	Section 3
Assess the adequacy of past liability valuations and pricing, and the implications for future projections.	Section 3 and Section 4
Assess the sensitivity of current funding and pricing projections to trends and ability of the scheme to respond in a timely manner to any operational or market changes.	Section 4
Provide an assessment of external factors impacting on the scheme.	Section 2
Review the approach to asset / liability management and investment strategy, and identify any implications for scheme viability.	Section 4.3
Review WorkSafe's projected balance sheets and the implications for future capital management of the scheme.	Section 4
Review the current approach to reinsurance.	Section 4.4
Review WorkSafe's risk management frameworks, policies and procedures that have relevance to financial sustainability.	Section 3.4

B Information Received

B.1.1 Business Overview

- WorkSafe's Organisational Chart
- Revised WorkSafe Strategy (presented to WSV Board on 26 August 2020)
- Back on Track Business Plan, 20 October 2020
- Back on Track Board Presentation, Board Workshop dated 16 July 2020

B.1.2 Financials

- Annual Reports, FY 2018/19 and FY 2019/20
- Financial Statements from June 2000 to June 2020 (including expenses breakdown from June 2010 onwards)

B.1.3 Plan and Strategy

- Financial Plan for FY 2020/21
- Budgeted Financial Statements from June 2021 to June 2025

B.1.4 Investments

- VFMC Investment Risk Management Plan, May 2019
- VFMC Quarterly Investment Report, June 2016
- VFMC Annual Investment report from June 2017 to June 2020
- Investment Policy Statement 2019/20

B.1.5 Legislation and Policies

- Workplace Injury Rehabilitation and Compensation Act 2013 (incorporating amendments as at 24 October 2020)
- WorkSafe Prudential Finance Policies, 2019/20
- WorkSafe Capital Management Policy, April 2020

B.1.6 Department of Treasury and Finance

- Prudential Insurance Standard for Victorian Government Insurance Agencies, July 2015

B.1.7 Risk Management

- Worksafe Internal Audit Plan from FY18 to FY20
- Risk Management Frameworks, December 2019
- Enterprise Risk Profile, May 2020

B.1.8 Recover Model Office (RMO) Papers

- Worksafe Recovery Model Office Executive Summary, February/June 2020
- RMO Hypothesis Business Sponsor Approvals, October 2020
- RMO Evaluation Report Design Workshop, August 2020

B.1.9 Victorian Ombudsman Reports

- Investigation into the Management of Complex Workers Compensation Claims and WorkSafe Oversight, September 2016
- WorkSafe 2: Follow-up Investigation into the Management of Complex Workers Compensation Claims, December 2019

B.1.10 Valuation and Financial Stability Reports

- PwC Report on Outstanding Claims Liability as at 30 June 2020 with Appendices, October 2020
- PwC Financial Sustainability Review, June 2018
- Financial Sustainability Review Cover, Audit Committee Meeting, October 2018
- PwC Outstanding Claims report and appendices at June 2020
- PwC December 2020 Valuation Support (based on data to September 2020), October 2020 – Draft Results Meeting 1 and Draft Results Meeting 2 (including Appendix)
- Additional Claims Data as requested by Finity

B.1.11 Pricing and DFA

- PwC BEP for the 2020/21 Year and Funding Projections, September 2020
- PwC Report to the Board (Addendum) Premiums in the Scheme 2020/21 Year and Beyond, April 2020
- Worksafe DFA Result Letter (Finity), March 2019 and February 2020
- Worksafe Information Paper - Premium Overview and Insights
- Worksafe Information Paper - Premium Rate Options for 2020/21
- VWA Workers' Compensation Catastrophe Analysis (AON), December 2017
- VWA Workers' Compensation Catastrophe Analysis (AON), November 2020 (Draft)
- Premium vs. Claims split by Employer Type or Size
- BEP rate since 1994

B.1.12 Others

- Workers Compensation Independent Review Service Monthly Report, 30 October 2020
- CEO's Report to the Board, October 2020

C WorkSafe Interviews

	Attendees (Finity)	Attendee & Role (Worksafe Vic)
1	33(1)	Aidan Brophy, Director Claims
2		Peter McNally, Director Insurance Division
3		33(1) Manager Actuarial Services
4		Shane O'Dea, Acting Chief Business Operations
5		Colin Bellis, Director, Dispute Management Division
6		Roger Arnold, Executive Director Strategy
7		Marion Nagle, Executive Director Innovation Health Government
8		Tim Gove, CFO / Strategy / Stakeholder Management
9		Kate Despot, General Counsel
10		Fiona Schutt, Executive Director, Business Performance
11		Colin Radford, Chief Executive (Fiona Schutt also attended)
12		33(1) Agent Relationship Manager
13		Julie Nielsen, Executive Director, Health and Safety
14		Doug Kearsley Non-executive Director
15		Julie Warren, Non-executive Director
16		John Merritt, Board Chair
17		Jane Brockington, Non-Executive Director

 - Director interview

D Financial Projections

The appendix provides the detailed projections of the balance sheet relating to the BEP Scenarios and related financial projections shown in Section 4.

In order to compile the financial projections we have:

- Recreated PWC's June 2020 valuation projection of Scheme liabilities using the appendices associated with the report '*Outstanding claims liability as at 30 June 2020 FINAL*' dated 6 October 2020.
 - ▶ For some smaller segments of the liability the cash flow projection and roll forward liability was estimated as limited information was available in the appendices. This makes an immaterial difference on the projected financial position and these scenarios.
 - ▶ For some longer duration cash flows which were aggregated in the appendices, an approximate cash flow pattern was produced. The pattern was calibrated to the discounted mean term information listed in the appendix. This approximation makes an immaterial difference on the projected financial position and these scenarios.
- Used WorkSafe's projected financial accounts as at 30 June 2020:
 - ▶ We note that WorkSafe uses an adjusted version of PWC's June 2020 projection of cashflows and associated liability in the projected financial accounts. We have not recreated these adjustments. The differences in projected financial position are immaterial.

The financial projections were calculated as follows:

- ▶ Receivables, Intangibles, Other Liabilities, Other Assets, Premium income, Other Income, Investment Income, Operating Expenses, Agent Fees – grow in line with the WorkSafe budget for 5 years, assuming similar growth out to 10 years.
- ▶ TAC recoveries – as per WorkSafe budget.
- ▶ Dividend – as per WorkSafe budget.
- ▶ Scheme liabilities and cash flows – projected as per the recreated cash flow projection from the June 2020 valuation.
- ▶ Other items – calculated as appropriate.

Table D.1 – Base Funding Projection – equivalent to June 2020 Valuation

Base - Equivalent to June 2020 Valuation Projection; Report Figure 4.4

	Accounts		Calculated									
	30-Jun-20	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23	30-Jun-24	30-Jun-25	30-Jun-26	30-Jun-27	30-Jun-28	30-Jun-29	30-Jun-30
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Assets												
Financial and cash	17,648.5	17,648.5	17,602.8	17,480.4	18,330.4	19,196.5	20,122.0	20,997.2	21,888.2	22,792.4	23,715.5	24,663.5
Receivables	-86.0	-86.0	-84.3	-82.5	-80.7	-78.9	-77.0	-75.1	-75.1	-75.1	-75.1	-75.1
Other assets	160.5	160.5	137.9	118.4	103.3	90.2	78.8	68.8	60.0	52.4	45.8	40.0
Intangibles	134.9	134.9	208.0	242.8	245.4	199.3	137.8	95.2	65.8	45.5	31.4	21.7
Net Deferred Tax Assets	1,810.6	1,810.6	2,255.3	2,673.5	2,990.4	3,312.8	3,629.6	3,974.5	4,329.4	4,696.3	5,076.4	5,485.1
Total Assets	19,668.5	19,668.5	20,119.8	20,432.5	21,588.7	22,720.0	23,891.2	25,060.6	26,268.4	27,511.5	28,794.0	30,135.2
Liabilities												
Scheme (Net of recoveries)	19,915.8	19,729.7	21,260.4	23,062.2	24,923.6	26,818.0	28,750.5	30,728.8	32,756.2	34,836.7	36,980.0	39,243.8
Other	338.5	338.5	349.7	349.8	349.9	350.0	350.1	350.1	350.1	350.1	350.1	350.1
Total Liabilities	20,254.3	20,068.2	21,610.1	23,412.0	25,273.4	27,168.0	29,100.6	31,078.9	33,106.3	35,186.8	37,330.1	39,593.9
Net Assets	-585.8	-399.7	-1,490.2	-2,979.4	-3,684.7	-4,448.0	-5,209.4	-6,018.3	-6,838.0	-7,675.3	-8,536.1	-9,458.7
Accounting FR												
Assets	17,384.5	17,384.5	17,306.8	17,166.5	18,003.1	18,857.8	19,773.7	20,640.8	21,523.0	22,419.6	23,336.1	24,278.3
Liabilities	19,915.8	19,729.7	21,260.4	23,062.2	24,923.6	26,818.0	28,750.5	30,728.8	32,756.2	34,836.7	36,980.0	39,243.8
Accounting FR	87%	88%	81%	74%	72%	70%	69%	67%	66%	64%	63%	62%
Insurance FR												
Economic Factor	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41
Assets	17,384.5	17,384.5	17,306.8	17,166.5	18,003.1	18,857.8	19,773.7	20,640.8	21,523.0	22,419.6	23,336.1	24,278.3
Liabilities	14,134.1	14,002.0	15,088.3	16,367.1	17,688.1	19,032.5	20,404.0	21,808.0	23,246.9	24,723.4	26,244.5	27,851.0
Insurance FR	123%	124%	115%	105%	102%	99%	97%	95%	93%	91%	89%	87%
WorkSafe VIC Budget Projection		123%	115%	108%	102%	100%	98%					

Table D.2 – Scenario 1 – 1.58% BEP

Scenario 1 - 1.58% BEP (equivalent to PWC 2021 BEP Sensitivity (e-3) page 12); Report Figure 4.4 and Figure 4.6

	Accounts		Calculated									
	30-Jun-20	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23	30-Jun-24	30-Jun-25	30-Jun-26	30-Jun-27	30-Jun-28	30-Jun-29	30-Jun-30
Assets	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Financial and cash	17,648.5	17,648.5	17,570.6	17,397.7	18,174.1	18,941.1	19,738.1	20,453.5	21,149.9	21,821.4	22,470.7	23,100.1
Receivables	-86.0	-86.0	-84.3	-82.5	-80.7	-78.9	-77.0	-75.1	-75.1	-75.1	-75.1	-75.1
Other assets	160.5	160.5	137.9	118.4	103.3	90.2	78.8	68.8	60.0	52.4	45.8	40.0
Intangibles	134.9	134.9	208.0	242.8	245.4	199.3	137.8	95.2	65.8	45.5	31.4	21.7
Net Deferred Tax Assets	1,810.6	1,810.6	2,404.1	2,958.8	3,423.4	3,901.7	4,383.3	4,902.6	5,442.6	6,006.2	6,595.9	7,230.4
Total Assets	19,668.5	19,668.5	20,236.3	20,635.2	21,865.5	23,053.5	24,261.0	25,445.0	26,643.2	27,850.5	29,068.7	30,317.1
Liabilities												
Scheme (Net of recoveries)	19,915.8	20,902.9	22,801.2	25,007.6	27,287.8	29,602.8	31,956.2	34,355.9	36,805.5	39,309.3	41,877.5	44,575.2
Other	338.5	338.5	349.7	349.8	349.9	350.0	350.1	350.1	350.1	350.1	350.1	350.1
Total Liabilities	20,254.3	21,241.4	23,150.9	25,357.3	27,637.6	29,952.7	32,306.3	34,706.0	37,155.6	39,659.3	42,227.6	44,925.3
Net Assets	-585.8	-1,572.9	-2,914.5	-4,722.2	-5,772.2	-6,899.2	-8,045.3	-9,261.0	-10,512.4	-11,808.9	-13,158.9	-14,608.2
Accounting FR												
Assets	17,384.5	17,384.5	17,274.5	17,083.8	17,846.8	18,602.5	19,389.8	20,097.1	20,784.7	21,448.6	22,091.3	22,714.9
Liabilities	19,915.8	20,902.9	22,801.2	25,007.6	27,287.8	29,602.8	31,956.2	34,355.9	36,805.5	39,309.3	41,877.5	44,575.2
Accounting FR	87%	83%	76%	68%	65%	63%	61%	58%	56%	55%	53%	51%
Insurance FR												
Economic Factor	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41
Assets	17,384.5	17,384.5	17,274.5	17,083.8	17,846.8	18,602.5	19,389.8	20,097.1	20,784.7	21,448.6	22,091.3	22,714.9
Liabilities	14,134.1	14,834.7	16,181.8	17,747.7	19,365.9	21,008.9	22,679.1	24,382.2	26,120.6	27,897.5	29,720.2	31,634.7
Insurance FR	123%	117%	107%	96%	92%	89%	85%	82%	80%	77%	74%	72%
WorkSafe VIC Budget Projection		123%	115%	108%	102%	100%	98%					

Table D.3 – Scenario 2 – 1.72% BEP

Scenario 2 - 1.72% BEP (equivalent to PWC 2021 BEP Sensitivity (g) page 12); Report Figure 4.4

	Accounts		Calculated									
	30-Jun-20	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23	30-Jun-24	30-Jun-25	30-Jun-26	30-Jun-27	30-Jun-28	30-Jun-29	30-Jun-30
Assets	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Financial and cash	17,648.5	17,648.5	17,512.3	17,260.9	17,928.2	18,551.4	19,163.3	19,648.8	20,064.4	20,399.3	20,650.8	20,815.6
Receivables	-86.0	-86.0	-84.3	-82.5	-80.7	-78.9	-77.0	-75.1	-75.1	-75.1	-75.1	-75.1
Other assets	160.5	160.5	137.9	118.4	103.3	90.2	78.8	68.8	60.0	52.4	45.8	40.0
Intangibles	134.9	134.9	208.0	242.8	245.4	199.3	137.8	95.2	65.8	45.5	31.4	21.7
Net Deferred Tax Assets	1,810.6	1,810.6	2,635.8	3,402.9	4,098.1	4,819.9	5,559.1	6,350.7	7,179.6	8,050.1	8,966.4	9,952.2
Total Assets	19,668.5	19,668.5	20,409.8	20,942.4	22,294.2	23,582.0	24,861.9	26,088.4	27,294.7	28,472.2	29,619.3	30,754.4
Liabilities												
Scheme (Net of recoveries)	19,915.8	22,794.9	25,252.2	28,088.0	31,027.7	34,010.7	37,037.6	40,115.3	43,247.0	46,437.0	49,696.1	53,100.4
Other	338.5	338.5	349.7	349.8	349.9	350.0	350.1	350.1	350.1	350.1	350.1	350.1
Total Liabilities	20,254.3	23,133.4	25,601.9	28,437.8	31,377.5	34,360.6	37,387.6	40,465.3	43,597.1	46,787.1	50,046.2	53,450.4
Net Assets	-585.8	-3,464.9	-5,192.1	-7,495.3	-9,083.3	-10,778.6	-12,525.7	-14,376.9	-16,302.4	-18,314.9	-20,426.9	-22,696.0
Accounting FR												
Assets	17,384.5	17,384.5	17,216.3	16,947.1	17,600.9	18,212.8	18,815.0	19,292.3	19,699.2	20,026.5	20,271.4	20,430.4
Liabilities	19,915.8	22,794.9	25,252.2	28,088.0	31,027.7	34,010.7	37,037.6	40,115.3	43,247.0	46,437.0	49,696.1	53,100.4
Accounting FR	87%	76%	68%	60%	57%	54%	51%	48%	46%	43%	41%	38%
Insurance FR												
Economic Factor	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41
Assets	17,384.5	17,384.5	17,216.3	16,947.1	17,600.9	18,212.8	18,815.0	19,292.3	19,699.2	20,026.5	20,271.4	20,430.4
Liabilities	14,134.1	16,177.4	17,921.3	19,933.9	22,020.1	24,137.1	26,285.3	28,469.5	30,692.1	32,956.0	35,269.0	37,684.9
Insurance FR	123%	107%	96%	85%	80%	75%	72%	68%	64%	61%	57%	54%
WorkSafe VIC Budget Projection		123%	115%	108%	102%	100%	98%					

Table D.4 – Scenario 4 – Scenario 1 1.58% BEP with premium collection at 1.58%

Scenario 3 - Scenario 1 (1.58% BEP) with premium collection at 1.58%; Report Figure 4.6

	Accounts		Calculated									
	30-Jun-20	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23	30-Jun-24	30-Jun-25	30-Jun-26	30-Jun-27	30-Jun-28	30-Jun-29	30-Jun-30
Assets	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Financial and cash	17,648.5	17,648.5	18,027.4	18,394.1	19,801.3	21,282.5	22,891.3	24,491.6	26,163.4	27,908.6	29,737.5	31,661.2
Receivables	-86.0	-86.0	-84.3	-82.5	-80.7	-78.9	-77.0	-75.1	-75.1	-75.1	-75.1	-75.1
Other assets	160.5	160.5	137.9	118.4	103.3	90.2	78.8	68.8	60.0	52.4	45.8	40.0
Intangibles	134.9	134.9	208.0	242.8	245.4	199.3	137.8	95.2	65.8	45.5	31.4	21.7
Net Deferred Tax Assets	1,810.6	1,810.6	2,267.1	2,659.9	2,935.3	3,199.3	3,437.3	3,691.2	3,938.5	4,180.1	4,415.9	4,662.1
Total Assets	19,668.5	19,668.5	20,556.1	21,332.6	23,004.5	24,692.5	26,468.2	28,271.7	30,152.7	32,111.5	34,155.5	36,309.8
Liabilities												
Scheme (Net of recoveries)	19,915.8	20,902.9	22,801.2	25,007.6	27,287.8	29,602.8	31,956.2	34,355.9	36,805.5	39,309.3	41,877.5	44,575.2
Other	338.5	338.5	349.7	349.8	349.9	350.0	350.1	350.1	350.1	350.1	350.1	350.1
Total Liabilities	20,254.3	21,241.4	23,150.9	25,357.3	27,637.6	29,952.7	32,306.3	34,706.0	37,155.6	39,659.3	42,227.6	44,925.3
Net Assets	-585.8	-1,572.9	-2,594.8	-4,024.7	-4,633.1	-5,260.2	-5,838.0	-6,434.4	-7,002.9	-7,547.9	-8,072.1	-8,615.4
Accounting FR												
Assets	17,384.5	17,384.5	17,731.3	18,080.2	19,474.0	20,943.9	22,543.0	24,135.2	25,798.3	27,535.8	29,358.1	31,275.9
Liabilities	19,915.8	20,902.9	22,801.2	25,007.6	27,287.8	29,602.8	31,956.2	34,355.9	36,805.5	39,309.3	41,877.5	44,575.2
Accounting FR	87%	83%	78%	72%	71%	71%	71%	70%	70%	70%	70%	70%
Insurance FR												
Economic Factor	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41
Assets	17,384.5	17,384.5	17,731.3	18,080.2	19,474.0	20,943.9	22,543.0	24,135.2	25,798.3	27,535.8	29,358.1	31,275.9
Liabilities	14,134.1	14,834.7	16,181.8	17,747.7	19,365.9	21,008.9	22,679.1	24,382.2	26,120.6	27,897.5	29,720.2	31,634.7
Insurance FR	123%	117%	110%	102%	101%	100%	99%	99%	99%	99%	99%	99%
WorkSafe VIC Budget Projection		123%	115%	108%	102%	100%	98%					

Table D.5 – Scenario 4 – Base Scenario with 1% p.a. less investment return

Scenario 4 - Base Scenario (June 2020 Valuation) with 1% p.a. less investment return; Report Figure 4.7

	Accounts		Calculated									
	30-Jun-20	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23	30-Jun-24	30-Jun-25	30-Jun-26	30-Jun-27	30-Jun-28	30-Jun-29	30-Jun-30
Assets	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Financial and cash	17,648.5	17,648.5	17,429.9	17,126.7	17,781.5	18,432.2	19,120.0	19,736.4	20,344.4	20,940.1	21,527.2	22,110.1
Receivables	-86.0	-86.0	-84.3	-82.5	-80.7	-78.9	-77.0	-75.1	-75.1	-75.1	-75.1	-75.1
Other assets	160.5	160.5	137.9	118.4	103.3	90.2	78.8	68.8	60.0	52.4	45.8	40.0
Intangibles	134.9	134.9	208.0	242.8	245.4	199.3	137.8	95.2	65.8	45.5	31.4	21.7
Net Deferred Tax Assets	1,810.6	1,810.6	2,267.1	2,659.9	2,935.3	3,199.3	3,437.3	3,691.2	3,938.5	4,180.1	4,415.9	4,662.1
Total Assets	19,668.5	19,668.5	19,958.7	20,065.2	20,984.7	21,842.1	22,696.9	23,516.4	24,333.7	25,142.9	25,945.2	26,758.8
Liabilities												
Scheme (Net of recoveries)	19,915.8	19,729.7	21,260.4	23,062.2	24,923.6	26,818.0	28,750.5	30,728.8	32,756.2	34,836.7	36,980.0	39,243.8
Other	338.5	338.5	349.7	349.8	349.9	350.0	350.1	350.1	350.1	350.1	350.1	350.1
Total Liabilities	20,254.3	20,068.2	21,610.1	23,412.0	25,273.4	27,168.0	29,100.6	31,078.9	33,106.3	35,186.8	37,330.1	39,593.9
Net Assets	-585.8	-399.7	-1,651.4	-3,346.7	-4,288.7	-5,325.8	-6,403.7	-7,562.5	-8,772.7	-10,043.9	-11,384.9	-12,835.1
Accounting FR												
Assets	17,384.5	17,384.5	17,133.9	16,812.8	17,454.2	18,093.5	18,771.7	19,379.9	19,979.2	20,567.3	21,147.8	21,724.9
Liabilities	19,915.8	19,729.7	21,260.4	23,062.2	24,923.6	26,818.0	28,750.5	30,728.8	32,756.2	34,836.7	36,980.0	39,243.8
Accounting FR	87%	88%	81%	73%	70%	67%	65%	63%	61%	59%	57%	55%
Insurance FR												
Economic Factor	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41	1.41
Assets	17,384.5	17,384.5	17,133.9	16,812.8	17,454.2	18,093.5	18,771.7	19,379.9	19,979.2	20,567.3	21,147.8	21,724.9
Liabilities	14,134.1	14,002.0	15,088.3	16,367.1	17,688.1	19,032.5	20,404.0	21,808.0	23,246.9	24,723.4	26,244.5	27,851.0
Insurance FR	123%	124%	114%	103%	99%	95%	92%	89%	86%	83%	81%	78%
WorkSafe VIC Budget Projection		123%	115%	108%	102%	100%	98%					

Minority Report on behalf of the Animal Justice Party, the Greens Party and Legalise Cannabis Victoria to the Bill Review of the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023*

This minority report represents the views of the representatives of the Animal Justice Party, the Greens Party and Legalise Cannabis Victoria (hereinafter “the Parties”) on the Governments proposed *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023*.

The Government has repeatedly stated that the current WorkCover scheme is “no longer fit for purpose” and requires fundamental change.

It is the view of the Parties, that the Governments proposed Bill does not meet the Government’s own objective.

Rather, the proposed Bill, simply scapegoats workers who have sustained a mental health injury and sacrifices their right to access a universal, no-fault, workers compensation scheme.

The Parties further note that the Government has identified the need for a far more proactive approach to return to work programs and timely interventions to support injured workers and to reduce the likelihood of extended periods of disability. To address this issue the Government has proposed the establishment of Return to Work Victoria to lead this process.

In this context, the Parties, consistent with previous Government statements, believe that the operationalisation of Return to Work Victoria should be a precursor to the introduction of any reform legislation. The failure of the Government to even define the roles and functions of Return to Work Victoria, let alone operationalise it, makes a mockery of any such reform process.

Accordingly, the Parties supported the adoption, as a first recommendation of the Economy and Infrastructure Committee the following:

RECOMMENDATION 1: That the Victorian Government immediately withdraws the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023. Further, that a new bill is not introduced in Parliament until the Government has conducted meaningful consultation with relevant stakeholders and tabled a report on the outcome of consultations prior to introducing new legislation.

Unfortunately, this recommendation was opposed by both Government and Opposition.

Notwithstanding this result, the Parties have worked constructively with the other Committee representatives to produce a set of recommendations to the parliament. We believe, that these recommendations provide a compelling critique of the proposed legislation and similarly require an extensive process of review and stakeholder consultation before any WorkCover legislation is considered by the Parliament.



Georgie Purcell
Animal Justice Party



David Ettershank
Legalise Cannabis Victoria



Katherine Copsey
The Greens Party

