

Final Report | Independent review of the modernisation of the WorkCover Scheme

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27 March 2025

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Foreword

In August 2024 the Victorian Government appointed me to conduct an independent review of the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (the Modernisation Act). The Terms of Reference for the Review include:

- examine the causes of the Scheme's recent financial sustainability challenges;
- examine the expected efficacy of the amendments in the Modernisation Act to restore the Scheme to a financially sustainable position over a reasonable period of time; and
- use a sample of case studies to draw initial insights about how Return to Work Victoria is and can support injured workers.

This report responds to these Terms of Reference with appreciation of the Scheme's operating environment and the objectives of the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act) that requires a balance between ensuring appropriate compensation is paid to injured workers, while minimising the burden on Victorian businesses and maintaining a fully funded scheme.

The report begins by describing the history of the WorkCover Scheme and how financial sustainability of the Scheme has been managed over time. It then summarises the Scheme's recent performance, describing the trends in claims liability that contributed to the challenges that necessitated the reforms. The report then outlines the expected efficacy of the reforms – namely that they are expected to improve the Scheme's financial sustainability, but more time is needed to understand the degree of improvement. Finally, the report describes Return to Work Victoria's (RTWV) role and initiatives, exploring how it is and can support injured workers.

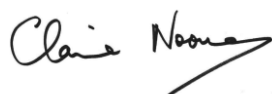
The Review was conducted from August to October 2024 and included analysis of data and documents provided by WorkSafe Victoria (WorkSafe) and the Department of Treasury and Finance (DTF), and a four-week external consultation period. I engaged representatives from 23 organisations and forums, including worker representatives and people with lived experience on the Scheme, employer representatives, medical representatives, legal representatives, and occupational therapy and rehabilitation representatives.

I would like to express my appreciation to all the stakeholders who offered their time and insights for this Review. Their contributions were invaluable to our understanding of the Scheme's historical performance and the expected efficacy of the reforms.

I would also like to thank those at the Department of Treasury and Finance and WorkSafe who provided ongoing support. I am grateful for their willingness to lend their deep expertise and experience. In particular, I wish to thank:

- Julie Osborn, Director, Financial Assets and Liabilities (DTF)
- Ranya Shahwan, Director, Government and Executive Services (WorkSafe).

Kind regards,



Dr Claire Noone

Executive Summary

The Victorian Government commissioned this Review following reform of the WorkCover Scheme.

The Victorian Government passed the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (the Modernisation Act) in March 2024. The Victorian Government appointed Dr Claire Noone to conduct the Independent Review of the Modernisation Act (the Review). The Review:

- examined the causes of the WorkCover Scheme's (the Scheme) recent financial sustainability challenges;
- considered the expected efficacy of the amendments in the Modernisation Act to restore the Scheme to a financially sustainable position over a reasonable period of time; and
- used a sample of case studies to draw initial insights about how Return to Work Victoria is and can support injured workers.

Dr Noone was supported in conducting the Review by Nous Group (Nous) acting as secretariat and assisted by the DTF and WorkSafe.

The Scheme supports injured workers by replacing lost income and covering treatment and legal costs, funded by premiums and investments.

The modern Victorian workers' compensation scheme, currently called the WorkCover Scheme, was established under the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act). It provides for a variety of entitlements to workers who are injured or become ill because of their work and insures employers against economic and non-economic loss suffered by workers.

The WIRC Act's objectives reflect the Government's desire to marry the twin needs of economic development through reduced business costs with fairness and equity in the field of workers' compensation.¹ Namely:

- to ensure appropriate compensation and provisional payments under this Act is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible;
- reduce the incidence of accidents and diseases in the workplace, make provision for the effective occupational rehabilitation of injured workers and their early return to work, and increase the provision of suitable employment to workers who are injured to enable their early return to work;
- to ensure workers compensation costs are contained to minimise the burden on Victorian businesses; and
- to establish and maintain a fully funded scheme.²

A worker who is injured or becomes ill because of their work can lodge an application for support, known as a claim. Their entitlements can include replacement of lost income (weekly payments), medical and rehabilitation treatment costs and legal costs. WorkCover is a 'no-fault' scheme, meaning that a worker can access these entitlements without the employer needing to be found legally liable for the workplace injury or illness. The Scheme also allows for common law claims, where workers can sue their employer for negligence if their injury is serious (WIRC Act, s. 325).

¹ *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)

² *ibid*

Claims can vary significantly in length. However, a claim's potential lifecycle can occur over four stages: the application (0-4 weeks), the first entitlement period (0-13 weeks)³, the second entitlement period (14-130 weeks), and the post-130 week period (known as the 'long tail').

The Scheme is funded through two main income sources. Almost all Victorian employers are required to pay premiums to fund the Scheme. The average premium rate is 1.8 per cent of remuneration but the actual premium rate charged to each employer depends on their pre-tax remuneration of workers, claims history and the performance or risk of the industry in which they operate. The Scheme's other income source is its substantial investment portfolio, with a long-term return target of Average Weekly Earnings (AWE) plus 4 per cent per annum which leads to a slightly different target each year. The rate at 30 June 2023 was 6.85 per cent.

There is a delicate balance that must be struck between cost to business (via premiums) and access to compensation and treatment for workers to maintain a fully funded scheme. The history of the Scheme demonstrates the ongoing challenge to maintain financial sustainability without compromising socially and economically appropriate compensation to workers.

The Scheme's financial sustainability is typically measured using the Insurance Funding Ratio (IFR). It is defined as the assets available to meet outstanding claims liabilities divided by those liabilities, where the liabilities are discounted at the expected long-term rate of return and include a risk margin. The preferred IFR range is 100 to 140 per cent, which means that WorkSafe aims to have \$1-1.40 in assets for every \$1 of claims liabilities.

Two key legislative reforms underpinned modernisation of the Scheme, supported by increased premiums.

In his second reading speech, the former Minister for WorkSafe and the Transport Accident Commission (TAC) stated that "the legislative changes, combined with premiums that better reflect the cost of claims and the creation of Return to Work Victoria, will ensure that the Scheme and the Victorian Government continue to support positive outcomes for Victorian workers into the future." This Review heard that the reforms were designed to improve the Scheme's alignment to its original objectives and ensure its durability in the long term.

The Modernisation Act made several key amendments to the WIRC Act and the *Accident Compensation Act 1985* (ACA). The two main changes to the Scheme were:

- **New eligibility requirements for mental injury claims.** Employment must be the predominant cause of a worker's mental injury for it to be eligible for compensation. In addition, workers will not be eligible for compensation where a primary mental injury has been mainly caused by stress and burnout as a result of events that are considered usual or typical and are reasonably expected to occur in the course of their duties. However, if a worker's mental injury has been predominantly caused by stress or burnout resulting from traumatic events that are considered usual or typical and reasonably expected to occur in their work, they will remain eligible.
- **An additional whole person impairment (WPI) requirement of more than 20 per cent** for workers to continue to receive weekly payments after the 130-week second entitlement period. The WPI threshold relates to the greater of the WPI determination for a worker's physical or mental injuries.⁴

Alongside the legislative amendments, the Government also increased the average premium rate in FY24 to 1.8 per cent of remuneration.

³ The first entitlement period overlaps with the application window, as some claims may be eligible for certain entitlements while their application is being assessed.

⁴ "Scheme modernisation", WorkSafe Victoria, 2024, <https://www.worksafe.vic.gov.au/scheme-modernisation>

Several considerations that informed the design of the reforms were noted throughout this Review. The Government had identified two policy challenges facing the Scheme, stemming from a rapidly changing workplace environment:

1. The Scheme's original and enduring intention was to provide compensation for primarily physical injuries incurred in the workplace. Over time, mental injuries were increasingly being compensated under the Scheme. Such injuries are often more complex than physical injuries and are rarely attributable to a single cause. The Scheme design needed to evolve to respond to the increasing prevalence of mental injury claims and to more clearly define when a mental injury could be attributed to experience in the workplace.
2. The Scheme was originally designed as a means to provide compensation for injuries while a worker is being assisted to return to work (RTW). Over time an increasing number of workers on the Scheme were not returning to work. In some cases, workers receiving compensation may be better supported by other Government social insurance or disability support schemes.

The reforms considered these two issues against policy settings in comparable jurisdictions and found that Victoria was more exposed to non-severe long-tail injuries than other jurisdictions, and that Victoria's guidance on compensable mental injuries was less definitive. Comparable policy settings were also considered to inform an appropriate WPI threshold for the Victorian Scheme.

It is expected that these reforms will also yield financial sustainability improvements for the Scheme.

The Scheme's financial sustainability issues were driven by rapid growth in overall claims liability, accompanied by premiums that did not cover costs.

The Scheme's financial position deteriorated in each year between 2018 and 2023 – the IFR fell from 150 per cent to less than 105 per cent. Without intervention, the IFR was on track to fall below 100 per cent within two years. Two fundamental factors contributed to financial sustainability issues prior to June 2023:

- Total claims liability was rising at an accelerating rate.
- Income did not increase in line with growth in annual claims costs.

Total claims liability was rising at an accelerating rate.

Scheme liabilities were growing annually by an average of 13 per cent between FY19 and FY23. Growth in claims liability was driven by two interrelated and reinforcing factors. First and most important, the number of active claims was growing – as was the number of active claims past 130 weeks. Second, the liability tied to each claim was also increasing. The reason these issues are related is because the length of each claim is a key driver of liability per claim, but also a driver of growth in the number of active claims. They were therefore underpinned by the same factors, namely:

1. **Entry:** Rejection rates for mental injury claims declined amid steadily increasing claim lodgements;
2. **Exit:** Workers were exiting the Scheme at a declining rate; and
3. **Nature of claims:** Mental injuries, which are generally longer and more costly, comprised a growing share of claims.

On a separate but related matter, the Scheme's actuary forecast an increase in common law cost, but its share of overall cost remained steady. WorkSafe's forecast of common law cost was increasing, but this growth was broadly similar to overall growth in active claims. This suggests that growing common law cost was not an inherent driver of sustainability issues, and instead a symptom of rising active claims.

Income did not increase in line with growth in annual claims costs.

Most income was derived from premiums and investments. Premium revenue consistently comprised around 50-60 per cent of total income, depending largely on investment performance. Investments,

meanwhile, usually comprised around a third of income. It remained prudent and effective for the Scheme to diversify its revenue base by maintaining a managed investment portfolio. However, like all investments, the Scheme's annual investment returns fluctuated, peaking at over 16 per cent but falling near zero in 2020 and below zero in 2022. The combination of premium and investment income is designed to fund claims costs and expenses each year. If investment returns are lower than the expected target rate in a year, a scheme operating sustainably within the preferred IFR range should be capable of absorbing volatility. Over the period analysed by this Review, the average investment return was on target.

This report discusses three 'versions' of WorkSafe's premium:

- **The average premium rate:** This is a statewide average that, when applied to the remuneration of employers covered by the Scheme, determines WorkSafe's annual premium income. The actual premium rate charged to each employer reflects an individual employer's size, workers' compensation claims history and the risk profile of their industry. The larger the employer, the greater the weight given to their own claims history.
- **The historical Break Even Premium (BEP):** the premium that WorkSafe's analysis, based on prevailing data and assumptions, suggests is necessary to meet the cost of claims and other expenses for an injury year. The BEP is typically assessed following each 31 December actuarial valuation of the Scheme and is then used to inform the following year's average premium rate (e.g. the historical BEP that was calculated in December 2020 was used to inform the average premium rate for FY22).
- **The hindsight BEP:** the premium that WorkSafe's analysis suggests was necessary to meet the cost of claims and other expenses, based on current knowledge and updated assumptions that were not known at the time the historical BEP was calculated. The hindsight BEPs considered by this Review were calculated as at 31 December 2023 and reflect actual claims experience to that date.

Between FY14 and FY22, the average premium rate did not change. Prior to FY19, the average premium rate was in line with WorkSafe's calculation of the historical BEP and was expected to be sufficient to meet the cost of claims for those years. However, the hindsight BEP that has been assessed based on experience to 31 December 2023, is higher than the historical BEP and average premium rate.

Actuarial forecasts that were used to calculate the historical BEP over this period assumed that emerging trends in mental injuries, claim duration and, later, that Covid-related trends were likely to slow without legislative change. These trends were highly uncertain at the time and difficult to accurately predict. Therefore, the premiums that were being collected over this period were, with hindsight, not sufficient to meet costs. This created a large cumulative income shortfall which, while appropriate responses were considered, led to government payments to maintain the Scheme's financial sustainability.

The reforms are expected to address the drivers of the Scheme's financial challenges, but it is too early to estimate the outcomes of potential legal interpretations or to understand behavioural change.

The Review was provided with the output data and charts showing IFR projections based on the expected impact of changes to the premium rate and the introduction of Scheme modernisation. The Review concluded that the reforms are expected to help address the drivers of the Scheme's financial sustainability challenges, but that the magnitude of the expected financial impact is still unclear.

At a minimum, the reforms will go some way to addressing the Scheme's financial challenges by better aligning the compensation offered under the Scheme with its objectives. Clarifying the severity of the injury and strengthening the link to the worker's employment should slow growth in active mental injury claims by ensuring that only claims where work is the predominant cause are compensable. This is expected to reduce the proportion of mental injury claims that are accepted as the new mental injury eligibility will mean that workers will not be eligible for compensation where a primary mental injury has been mainly caused by stress and burnout as a result of events that are considered usual or typical and are reasonably expected to occur in the course of their duties.

Finally, introducing a WPI threshold of more than 20 per cent at 130 weeks will reduce the subjectivity of the previous test and support consistent practice. A more objective threshold should restrict the proportion of injured workers that stay on the Scheme after 130 weeks.

However, it is important to note that this is an early review – otherwise known as a 'pulse check'. More time is required for the long-term effects of the reforms to become evident. In particular:

- Courts and appeals bodies will set precedent relating to interpretation of the new mental injury definition. This will have flow-on effects for acceptance rates, lodgement numbers and active claim numbers.
- Workers may adapt their lodgements to identify a different cause for their mental injury to remain eligible under the new mental injury definition.
- Claims management practices must align with WorkSafe's priorities and the spirit of the reforms.
- The financial impact of common law claims that workers may lodge when weekly payments cease will not be known for some time. Such claims are made, on average, 18 months after weekly payments cease and take, on average, a further 18 months to settle.

In all, the reforms are likely to address the drivers of the Scheme's deteriorating financial position, but more time is required to determine the extent of their financial impact.

Stakeholders identified opportunities for other improvements.

Stakeholders consulted for this Review offered a variety of suggestions on how to improve the WorkCover Scheme. Many noted that the reforms helped to address the Scheme's immediate financial sustainability challenges and that there are additional opportunities to improve the operation of the Scheme and achievement of the Scheme's three objectives. They suggested to:

- increase support for workers to find work with a new employer;
- increase focus on early intervention and resolving interpersonal conflicts quickly;
- reduce the time between a worker's lodgement of a claim and the agent's referral of the worker to occupational therapy/rehabilitation;
- improve incentives for businesses to proactively improve the safety of their workplaces;
- allow occupational therapists to sign certificates of capacity so that workers do not need to see a different practitioner (e.g., GP, physiotherapist); and

- increase training of case managers to improve their ability to engage with workers using a trauma-informed approach.

Return to Work Victoria is providing support to injured workers in an effort to improve return to work outcomes.

RTWV was established on 31 March 2024 as a business unit within WorkSafe, to align with the commencement of the Modernisation Act. This Review was also asked to comment on how RTWV is and can support workers.

The key objectives of RTWV are to:

- improve prevention activities to reduce the incidence of accidents and diseases in the workplace;
- remove barriers to timely treatment and support for injured workers;
- increase the provision of suitable employment to injured workers;
- ensure workers compensation costs are contained to minimise burden on businesses; and
- assist WorkSafe to maintain a fully funded scheme.

RTWV consolidates previously existing WorkCover programs under a new structural alignment within WorkSafe and will also support the development and piloting of new prevention, early intervention and RTW initiatives.

RTWV provides support across the life of a claim, including by helping workers access treatment and other recovery-supporting benefits such as funding exercise programs or social workers and supporting workers transition from the Scheme and back into the workplace.

RTWV runs three flagship programs:

1. **New Employer Services (NES):** At any point in a claim lifecycle, workers in receipt of a weekly benefit can access one of three services to support their readiness and RTW. These services are the **job seeking service** for workers that have certified capacity for work, **transferrable skills analysis** for workers that have no certified capacity for work, and the **capacity support service** for workers that are certified unfit to RTW but have some capacity to work identified by an independent medical examiner (IME).
2. **WorkSafe Incentive Scheme for Employers (WISE):** A complementary service to NES, WISE is an opt-in program for employers, who receive a subsidy of up to \$26,000 for offering new employment to an injured worker of 8 hours per week or more. An occupational rehabilitation provider assists in the placement and completion of documentation for workers and employers.
3. **Transition Support Service (TSS):** Connects injured workers with external services that may assist them to manage their finances, health and social needs independently of the Scheme. The TSS can be offered by an agent at any time, but must be offered when an injured worker is commencing the 130 week review process, receiving an adverse 130 week decision, or a low income earner and receiving any weekly payment termination.

In addition to existing programs, RTWV is proactively searching for innovative approaches to support risk reduction and injured workers' recovery and RTW. RTWV is currently implementing two new pilot programs:

- **The Mentally Healthy Workplace pilot:** The objective of the Mentally Healthy Workplaces pilot is to increase mental health awareness and build capability of small and medium sized businesses to identify, manage, monitor and control psychosocial risks and hazards. Upon being contacted by a business the provider would attend the workplace and undertake an assessment to identify any psychosocial hazards. A plan would be developed with the employer to address any hazards. The service will be offered to small to medium-sized businesses.

- **The Worker Mental Health Support Helpline pilot:** The objective of the Worker Mental Health Support Helpline is to improve the mental wellbeing of workers and prevent mental injuries, including stress and burnout of workers. A third-party provider will be engaged to provide a range of short-term, confidential, professional services, which may include counselling, additional support services or other approaches that support the worker in a holistic way. Employees working in small to medium-sized business without similar services are eligible to participate.

This report details the Review's findings in five sections.

Section 1 outlines the purpose and methodology of the Review, including describing the context and content of the Terms of Reference. It also summarises the modernisation reforms passed in March 2024 and the considerations that informed their design.

Section 2 briefly describes and history of the Scheme. It demonstrates the ongoing challenge to maintain the Scheme's financial sustainability and the need for the Government to make changes to maintain the balance between workers' entitlements and cost to business.

Section 3 offers a detailed data analysis of the Scheme's recent history. It describes how the Scheme's recent financial sustainability challenges were caused by increasing total claims costs without a commensurate increase in income. This combination of factors necessitated reforms to address structural Scheme design issues.

Section 4 offers the Review's perspective on the expected efficacy of each of the main legislative reforms. It also describes some of the key opportunities suggested by stakeholders to further improve the Scheme.

Section 5 explores RTWV, the new business unit within WorkSafe created at the time of the reforms. It outlines the purpose and initiatives of RTWV to consider how the new unit is and can support injured workers to RTW.

1 About the Review

This section introduces the Review. It outlines the three Terms of Reference the report responds to and the methodology that guided the Review. It also describes the recent legislative reforms and the considerations that informed their design.

1.1 The Review responds to three Terms of Reference.

The Victorian Government passed the Modernisation Act in March 2024. The Government commissioned an independent review of the modernisation of the WorkCover Scheme. The Victorian Government appointed Dr Claire Noone to conduct the Independent Review. The Review:

- examined the causes of the Scheme's recent financial sustainability challenges;
- examined the expected efficacy of the amendments in the Modernisation Act to restore the Scheme to a financially sustainable position over a reasonable period of time; and
- used a sample of case studies to draw initial insights about how Return to Work Victoria is and can support injured workers.

Dr Noone was supported in conducting the Review by Nous Group (Nous) acting as secretariat and assisted by the DTF and WorkSafe.

The Review followed on from the Inquiry into the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023* (the Inquiry) undertaken by the Legislative Council Economy and Infrastructure Committee. The Inquiry tabled its final report on 6 February 2024.

For the full Terms of Reference, please see Appendix A.

1.2 The Review analyses reforms made to improve the Scheme's financial sustainability.

The Terms of Reference for the Review provide the following context (Box 1).

Box 1 | Background to the Review provided in the Terms of Reference

The number of mental injury claims received by the Scheme has grown significantly. Historically, mental injury claims have demonstrated poorer RTW outcomes compared to physical injury claims. Therefore, the growth in mental claims has resulted in the duration and cost of claims increasing. In addition, more workers with physical injury claims are continuing to receive weekly compensation for more than 130 weeks.

This increase in claim volume and duration has occurred alongside an average premium rate that did not increase between 2001-02 and 2022-23, and in fact only declined during this period. In combination, these factors have placed increasing pressure on the Scheme's financial sustainability, threatening its ability to meet claims liabilities and support injured workers in future.

The Victorian Government passed the Modernisation Act in March 2024. The reforms introduced in the Modernisation Act are expected to address these challenges by amending structural Scheme design issues. These reforms balance WorkSafe's obligations to proactively and efficiently manage the viability of the Scheme with the need to ensure that appropriate compensation is paid to injured workers and that safe and effective RTW is prioritised.

In his second reading speech, the former Minister for WorkSafe and the TAC stated that “the legislative changes, combined with premiums that better reflect the cost of claims and the creation of Return to Work Victoria (RTWV), will ensure that the Scheme and the Victorian Government continue to support positive outcomes for Victorian workers into the future.”

More information on the Scheme’s recent financial performance can be found in Section 3.

1.2.1 The reforms aimed to address key cost drivers and increase income.

The Modernisation Act made several key amendments to the WIRC Act and the ACA. The main changes to the Scheme are:

- **New eligibility requirements for mental injury claims.** In particular, employment must be the predominant cause of a worker’s mental injury for it to be eligible for compensation. In addition, workers will not be eligible for compensation where a primary mental injury has been mainly caused by stress and burnout as a result of events that are considered usual or typical, and are reasonably expected to occur in the course of their duties. However, if a worker’s mental injury has been predominantly caused by stress or burnout resulting from traumatic events that are considered usual or typical and reasonably expected to occur in their work, they will remain eligible; and
- **An additional whole person impairment (WPI) requirement of more than 20 per cent** for workers to continue to receive weekly payments after the 130 week second entitlement period. The WPI threshold relates to the greater of the WPI determination for a worker’s physical or mental injuries.⁵

Several supporting changes were also made. These include:

- an increase in the average premium rate to 1.8 per cent of remuneration for 2023-24 and maintained for 2024-25;
- the establishment of RTWV;
- changes to WorkSafe’s ability to share information across business units;
- a requirement for certain rejected claims that cannot be resolved through conciliation to be determined by the courts, instead of arbitration;
- an independent review of the changes introduced under the Scheme Modernisation Act to be conducted by a panel of experts in 2027; and
- the establishment of the Return to Work Advisory Committee, to provide advice to the WorkSafe Victoria Board on RTW initiatives.⁶

1.2.2 Several considerations informed the design of the reforms.

The Review heard that Government considered:

- **Policy settings in other jurisdictions.** For example, the introduction of the WPI threshold of more than 20 per cent to determine eligibility after 130 weeks reflects the design of Tasmania, the Northern Territory, New South Wales and South Australia’s schemes. Although not directly comparable to Victoria, they apply WPI thresholds of greater than 15 per cent, 15 per cent, 20 per cent and 35 per cent respectively to long tail claims. Western Australia and Queensland use a total payment limit instead of a WPI. Further, the Queensland scheme utilises a WPI threshold at 130 weeks and closes all claims at five years, so does not have a ‘long tail’ of claims. This supports the Queensland scheme’s ability to maintain low premiums relative to the other jurisdictions.
- **The historical design of the Scheme.** When the Scheme was designed, only a very small proportion of reported workplace injuries related to mental injuries and its assessment measures were better aligned

⁵ “Scheme modernisation”, WorkSafe Victoria, 2024, <https://www.worksafe.vic.gov.au/scheme-modernisation>

⁶ *ibid*

to physical impairment claims which typically relate to a single event. The new definition of a mental injury sought to reflect the unique nature of mental injury, which is often the result of the cumulative effect of a number of events.

- **Ensuring continued eligibility for the most vulnerable.** Consideration was given to potential unintended consequences of the new mental injury definition. In particular, there was concern that those who may be regularly exposed to emotionally shocking or traumatic events as part of their usual duties, such as emergency service workers, police officers, firefighters, paramedics and nurses, would be deemed ineligible. Therefore, the legislation was written in a way that ensured mental injuries incurred following a traumatic event or in the course of work that is routinely traumatic, would remain compensable.
- **The relative burden on workers and employers.** Tightening eligibility for workers and increasing premiums for businesses sought to distribute the cost of the reforms evenly across the economy. This avoided any one group having to shoulder the full cost of the reforms.

1.3 The Review was delivered over three stages.

The Review was conducted over three months, from August to October 2024, and included a document review and literature search, data analysis and stakeholder engagement. The Review involved three stages:

- **Stage 1:** Conducted an initial document review, analysing documentation from WorkSafe and DTF, as well as relevant academic literature and legislation. This helped improve the Review's understanding of the history of the Scheme, the factors that contributed to the Scheme's recent financial sustainability challenges and the considerations that informed the design of the reforms. It also helped the Review understand best-practice and compare Victoria's Scheme with interjurisdictional comparators.
- **Stage 2:** Analysed data made available regarding WorkCover claims and the Scheme's financial performance. This helped identify the specific elements of the Scheme that were driving the overarching trends in claims.
- **Stage 3:** Undertook a four-week consultation period. The Review engaged with representatives from 23 organisations and forums through a series of group discussions and one-on-one interviews to inform the Review. The Review also engaged with stakeholders involved in the Scheme, due to their expert knowledge of the operation of the Scheme and the legislative changes. Consultations involved five main stakeholder groups:
 - Worker representatives and people with lived experience
 - Employer representatives
 - Medical representatives
 - Legal representatives
 - Occupational therapy and rehabilitation representatives.

These consultations helped contextualise the data analysed in Stage 2 and explored the perspectives of those involved and with lived experience of the Scheme.

2 Background to the Victorian WorkCover Scheme

This section briefly introduces the design and history of the Scheme. It highlights the challenge of balancing the three objectives of the WIRC Act.

2.1 Financial sustainability requires a balance between workers' entitlements and cost to business.

The modern Victorian workers' compensation scheme, currently called the WorkCover Scheme, was established under the WIRC Act. It provides for a variety of entitlements to workers who are injured or become ill because of their work and insures employers against economic and non-economic loss suffered by workers.

The WIRC Act's objectives reflected the Government's desire to marry the twin needs of economic development through reduced business costs with fairness and equity in the field of workers' compensation.⁷ Namely:

- to ensure appropriate compensation and provisional payments⁸ under this Act is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible;
- to ensure workers compensation costs are contained to minimise the burden on Victorian businesses; and
- to establish and maintain a fully funded scheme.⁹

Workers have a variety of entitlements under the Scheme.

A worker who is injured or becomes ill because of their work can lodge an application for support, known as a claim. Their entitlements can include replacement of lost income (weekly payments), medical and rehabilitation treatment costs and legal costs. Claims are 'no-fault', meaning that a worker can access these entitlements without the employer needing to be found legally liable for the workplace injury or illness. The Scheme also allows for common law claims, where workers can sue their employer for negligence if their injury is serious, as defined by s. 325 of the WIRC Act.

The duration of a claim, as well as the services a worker receives, vary widely. Contributing factors include the nature and severity of the injury, the worker's willingness and capacity to RTW and the support the worker receives from health professionals, their employer and case managers.

Figure 1 visualises the four stages in a claim's total potential lifecycle.

1. **The application stage** covers the first four weeks after a worker lodges a claim. In this period an investigative process occurs to assess the worker's eligibility, which results in an eligibility decision by Day 28. During this period a worker can receive provisional payments (for mental injuries only) for medical and like services.
2. **The first entitlement period** occurs 0-13 weeks after the initial lodgement. In this period the worker continues to receive provisional payments regardless of their eligibility. Claims that have been accepted can start to receive occupational rehabilitation services, specialist support and agent case conferencing, as well as weekly payments at 95 per cent of pre-injury average weekly earnings.

⁷ *ibid*

⁸ These payments are a recent addition to the Scheme and apply only to mental injury claims.

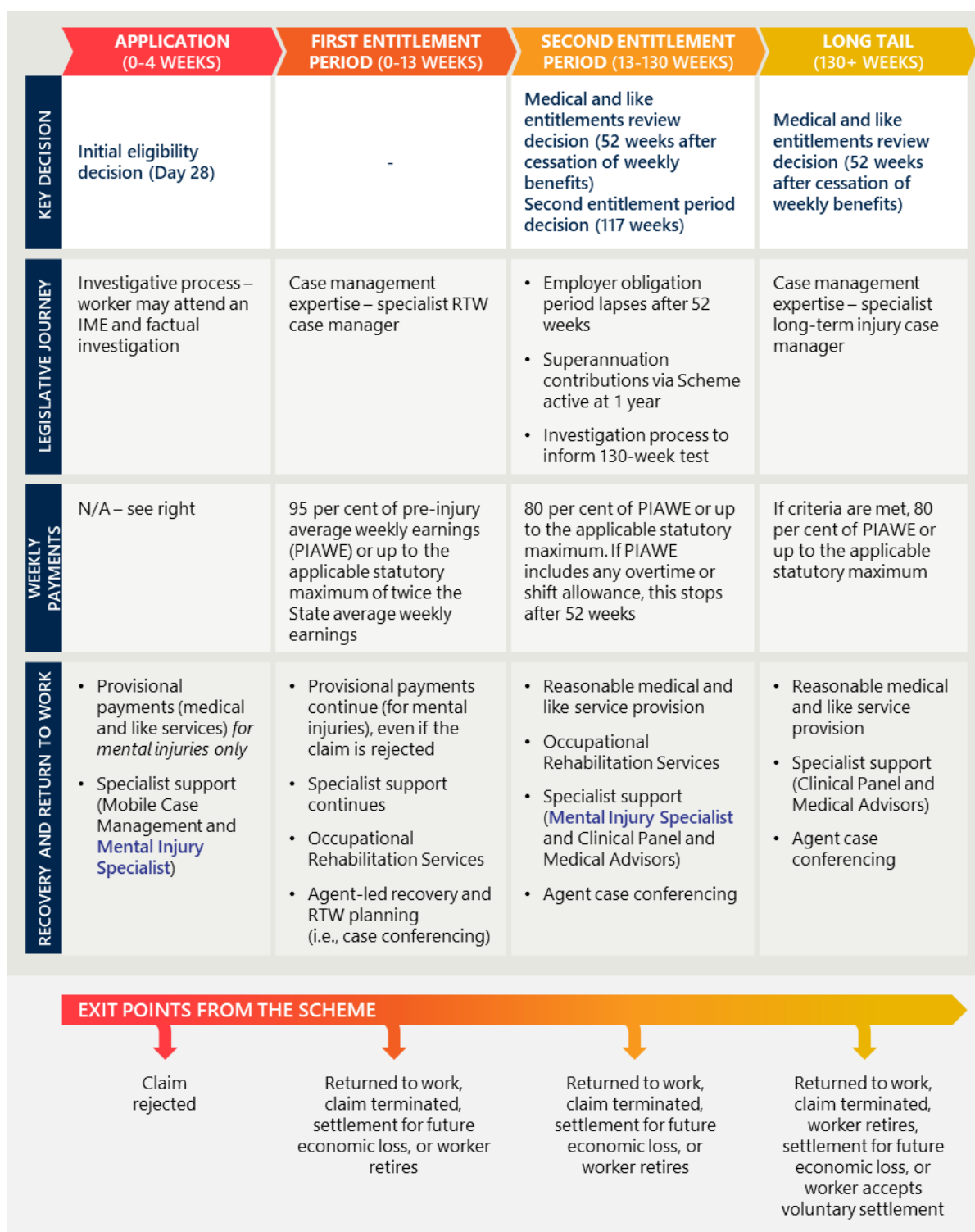
⁹ Clause 3, *Accident Compensation Act 1985 (Vic)*

3. **The second entitlement period** occurs 14-130 weeks after lodgement. In this period, accepted claims continue to receive weekly payments at 80 per cent of pre-injury average weekly earnings, medical and like services, occupational rehabilitation services, specialist support and agent case conferencing. After 70 weeks workers also gain access to transition support services, to prepare workers for life once they are off the Scheme. Finally, there is an investigative process to inform an eligibility decision by Week 117 about the worker's access to the Scheme after 130 weeks.
4. **The post-130 week period** is known as the 'long tail'. These workers are found to have ongoing entitlement because they have a whole person impairment of more than 20 per cent, no current work capacity and are likely to continue indefinitely to have no work capacity. They can receive case management expertise, medical and like services, specialist support and agent case conferencing.

Exit points for weekly payments exist at every stage of the claim journey. These include initial rejection of a claim, RTW, termination of a claim, common law economic loss settlement and in a very small number of cases, receipt of a voluntary settlement (i.e., lump sum payout, instead of future weekly payments). Voluntary settlements are rare given they are only available to workers over 55 years old that have already received 130 weeks of payments. It is also worth noting that a worker's condition may deteriorate throughout the claim journey due to interaction with the Scheme itself. Common drivers include poor claims management experience and delayed access to care. We understand that WorkSafe has developed and implemented initiatives to improve claimants' experience but have not considered this further as it is not within the scope of this review.

Figure 1 illustrates the claims journey and exit points.

Figure 1 | Claim journey and exit points



The Scheme is predominantly funded by premiums charged to employers.

The Scheme is funded through two main income sources. Almost all Victorian employers are required to pay premiums to fund the Scheme. Premiums are calculated as a percentage of an employer's pre-tax remuneration of workers and are also affected by the claims history of the employer and their industry. Therefore, the average premium rate is 1.8 per cent but the actual premium rate varies by industry and employer.

The Scheme is also funded by investment returns. WorkSafe aims for a long-term return of AWE plus 4 per cent per annum over a rolling eight-year period. However, the inherent volatility of investment activity means that the annual return fluctuates, as well as the proportion of Scheme revenue that comes from WorkSafe's investments. If the Scheme is in a financially sustainable position, where it is operating around the mid-point of its preferred IFR range, it can absorb yearly investment volatility.

There is a tension between the objectives of the Act.

The WIRC Act includes objectives to both pay appropriate compensation to injured workers and to minimise the burden of these costs on Victorian businesses. There is therefore a delicate balance that must be struck between cost to business (via premiums) and access to compensation for workers to maintain a fully funded scheme. The history of the Scheme demonstrates the ongoing challenge to maintain financial sustainability without compromising socially and economically appropriate compensation for workers.

Beyond adjusting workers' entitlements and premium rates, there are two other key factors that affect the financial sustainability of the Scheme. They are:

- **risk reduction**, by taking proactive and preventative steps to reduce the likelihood and severity of injury and illness; and
- **rehabilitation, treatment and RTW support**, to help injured or ill workers become ready to rejoin the workforce and exit the Scheme.

The tension between worker entitlements and premium rates is not unique to Victoria; it is observed in workers' compensation schemes nationally and worldwide.

2.1.1 The Insurance Funding Ratio measures financial sustainability.

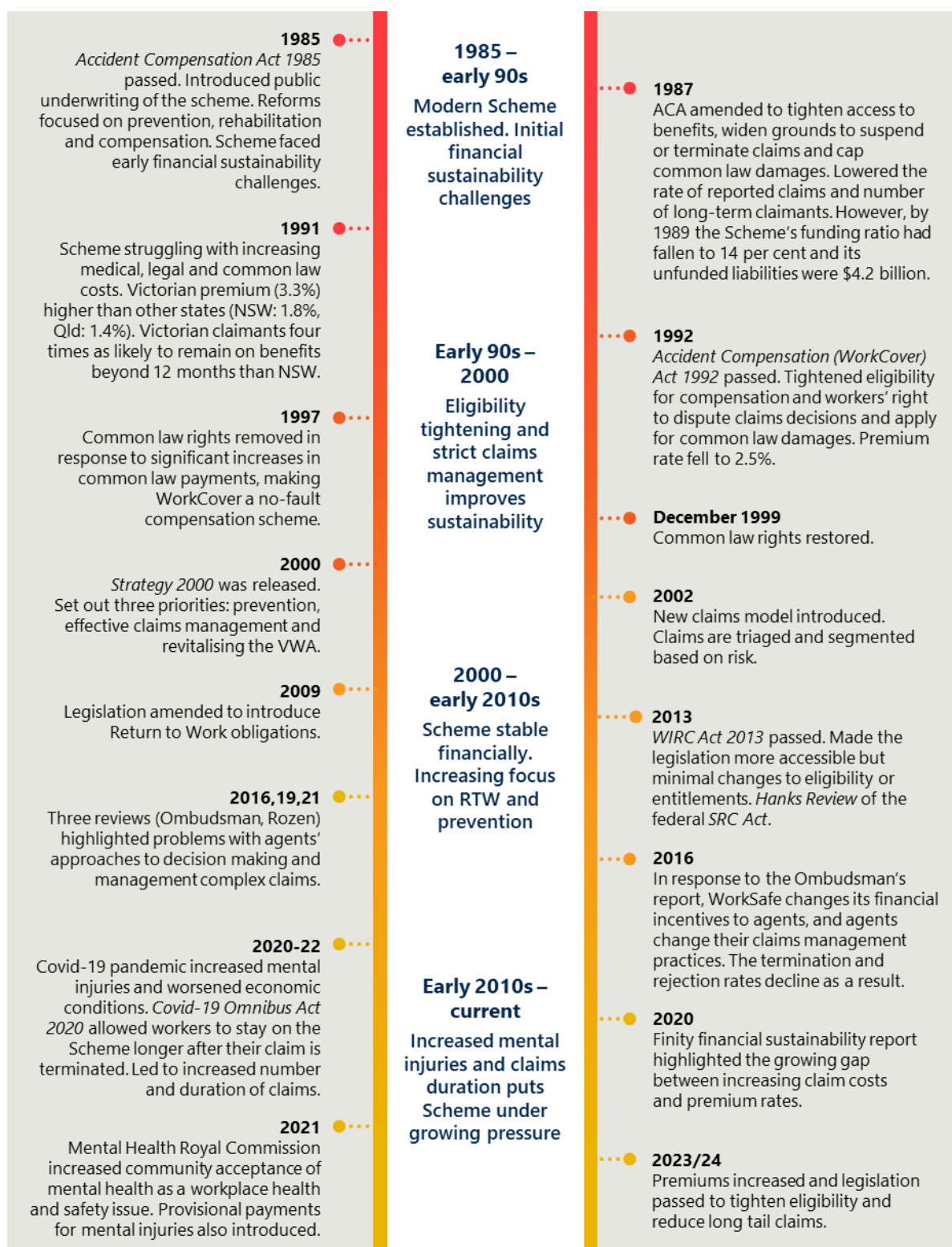
The Scheme's financial sustainability is one of WorkSafe's strategic priorities and critical to the Scheme's ability to continue supporting injured workers in the long term. A key metric of financial sustainability used by WorkSafe and the Government is the Insurance Funding Ratio (IFR). It is defined as the assets available to meet outstanding claims liabilities divided by those liabilities, where the liabilities are discounted at the expected long-term rate of investment return and include a risk margin. The preferred IFR range is 100 to 140 per cent, which means that WorkSafe aims to have \$1-1.40 in assets for every \$1 of claims liabilities.

To align with existing practice, this Review adopted the IFR as the key metric of the Scheme's financial sustainability. This report uses IFR in two ways: to illustrate the Scheme's recent financial sustainability challenges and to examine the expected efficacy of the legislative reforms.

2.1.2 Maintaining financial sustainability has been a consistent theme throughout the Scheme's history.

The recent history of the Scheme is summarised in Figure 2. It highlights the ongoing challenge for Government to maintain the Scheme's financial sustainability and the regular adjustments in entitlements, premiums and claims management practices required to respond to an ever-evolving operational context.

Figure 2 | Key events in the Scheme's history (summarised)



3 Causes of the Scheme's recent financial sustainability challenges

This section provides a point-in-time analysis of the Scheme's financial position in June 2023, when the reforms were being designed. It describes the factors that were contributing to a declining IFR. It responds to Term of Reference 1a: *Examine the causes of the Scheme's financial sustainability challenges*.

Financial sustainability issues were a consequence of changes to the Scheme's operating environment.

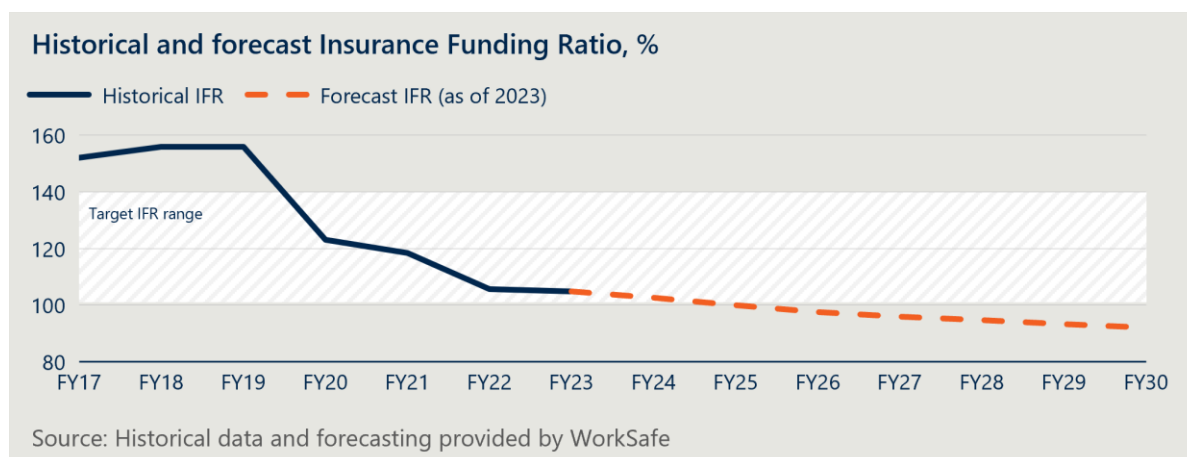
The Review heard that the Scheme's underlying financial sustainability issues were a symptom of misalignment between the Scheme's design, which was focused on supporting workers with physical injuries, and the nature of modern workplace claims in a rapidly changing work environment. This was particularly relevant in the context of the growing prevalence of mental injuries. The nature of work and workplace injuries has shifted, and the Scheme's legislative settings had not been modernised in response to ensure it continued to meet the objectives of the WIRC Act. The policy considerations that informed reforms are detailed further in Section 4.

The remainder of this section describes the financial sustainability challenges that were facing the Scheme when the Modernisation Act was designed and introduced, because of underlying policy complexity.

The Scheme's financial position deteriorated in each year between 2018 and 2023.

The IFR fell from more than 150 per cent to less than 105 per cent between FY19 and FY22. A value of less than 100 per cent would suggest the Scheme does not have sufficient assets to cover its liabilities. Figure 3 demonstrates a sharp decline in the IFR, particularly since FY19. The forecast (as of 2023), which did not account for the reforms, indicated that the Scheme's IFR was expected to fall below the lower bound of the preferred range if no action was taken.

Figure 3 | The Scheme's financial position over time



This section details two factors and their sub-issues that contributed to the Scheme's declining IFR:

1. **Total claims liability was rising at an accelerating rate (Section 3.1).** This was due largely to an increasing number of active claims and active long-tail claims. Three issues were primarily contributing to this trend:

- a. **Entry:** Rejection rates for mental injury claims declined amid steadily increasing claim lodgements (Section 3.1.1).
 - b. **Exit:** Workers were exiting the Scheme at a declining rate (Section 3.1.2).
 - c. **Nature of claims:** Mental injuries, which are generally longer and more costly, comprised a growing share of claims (Section 3.1.3).
2. Simultaneously, **income did not increase in line with growth in annual claims costs (Section 3.2).** As discussed earlier in this report, the Scheme's income is primarily derived from premiums levied on employers and investment returns. This Review noted two salient income factors:
 - a. Despite volatility, investments provided expected returns over the long term (Section 3.2.1).
 - b. The premium levied on employers was below the hindsight BEP in every year between FY14 and FY22 (Section 3.2.2).

Common law costs were not expected to drive further financial sustainability challenges (Section 3.3). This is because common law costs were expected to grow in line with the growth in overall Scheme costs.

Alongside an unchanged average premium rate, the impact these claims trends were having on claims costs challenged the financial sustainability of the Scheme and necessitated reform. Each factor and its contributing sub-issues are explored below.

3.1 Total claims liability was rising at an accelerating rate.

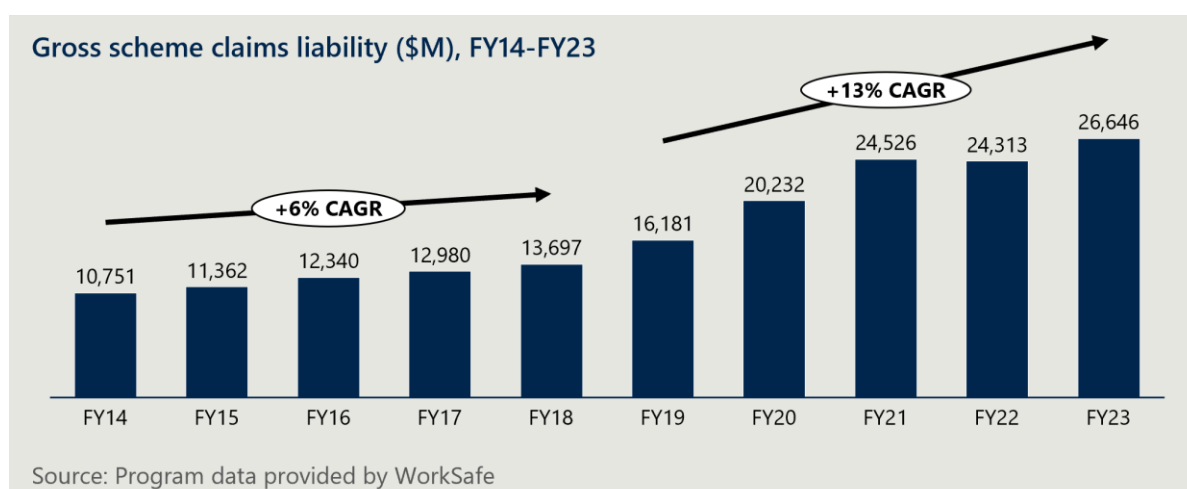
The financial sustainability of the Scheme was adversely affected by rapid cost growth, particularly after FY18. In subsequent charts, annual growth is depicted as 'CAGR', or compound annual growth rate.

Gross claims liability was increasing at 13 per cent a year between FY19 and FY23.

Claims liability is a complicated concept. The Scheme makes payments to workers regularly as part of ongoing claims, which are an expense at the time they are paid. However, the Scheme's financial position is best measured by the claims liability each year and the assets available to meet these liabilities. The claims liability is a forecast of the future cost of all claims and expenses incurred up to the balance date – that is, the last day in a financial year.

Figure 4 below depicts this data. It shows steady growth in overall claims liability between FY14 and FY18 (six per cent a year) before more rapid growth between FY19 and FY23 (13 per cent per year).

Figure 4 | Gross claims liability over time

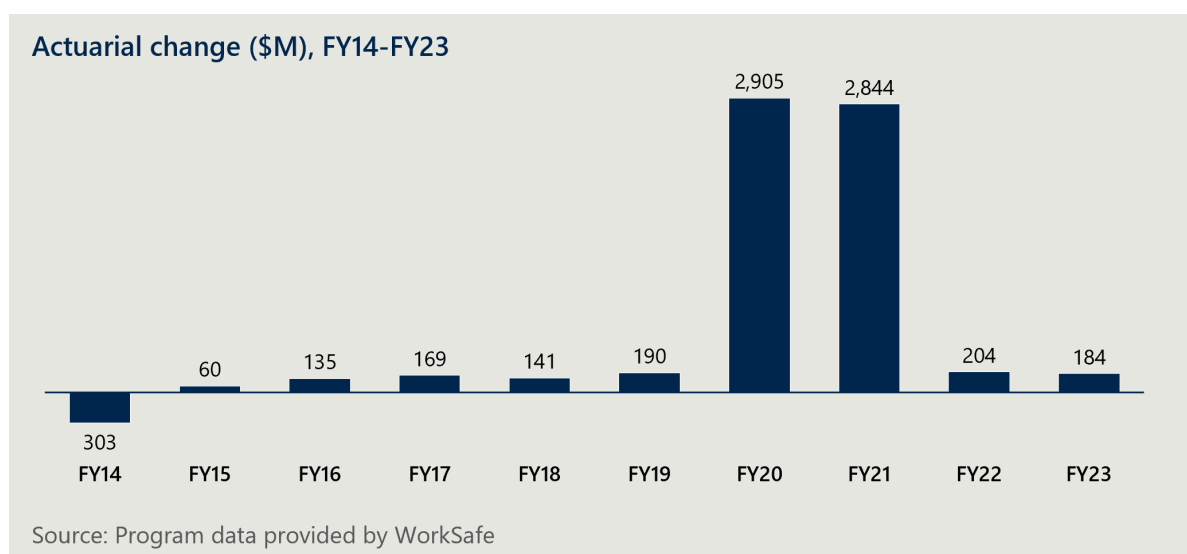


Further complicating interpretation of this data is that the valuation of the claims liability relies on a number of actuarial assumptions, some of which relate to the economic outlook and others that relate to

claims experience (e.g. claim volumes and claim duration). When a number of assumptions change at the same time it can be hard to attribute growth in the liability to any one cause. To manage this, WorkSafe measures the annual 'actuarial change' to the claims liability. This identifies the change in the liability due to claims experience in isolation, before the impact of any economic or legislative changes are allowed for. The annual actuarial change is shown in Figure 5. Of note, the pre-adjustment claims liability has increased in every year since 2014. This included disproportionate 'jumps' in liability in FY20 and FY21.

The Review heard that the large actuarial changes in FY20 and FY21 reflected a recognition that the changes in claims experience that had been occurring in previous years (e.g., decline in the termination rate, increase in mental injury claims) were not an aberration and in fact represented a 'new normal' for the Scheme. As a result, claims liability was recalculated based on new assumptions aligned to recent performance, rather than the long-term average.

Figure 5 | Annual actuarial change



While not contributors to growing liabilities, the Review also considered non-claims costs incurred by the Scheme. These include:

- **Authorised agent fees:** The fees that WorkSafe pays its agents in exchange for claims management. While WorkSafe is the regulator and underwriter of the WorkCover Scheme, it delegates most claims management and premium collection to private service providers, known as agents. As of October 2024, there were four WorkSafe agents: Allianz Australia, EML VIC, Gallagher Bassett and DXC Claims Management Services.
- **Investment expenses:** Expenses associated with WorkSafe's investment portfolio.
- **Other operating costs:** All other costs, including WorkSafe's regulatory and administrative costs.

The proportion of each non-claims cost category has stayed relatively constant, with small fluctuations, since FY14. Moreover, all these costs combined comprise only ~15 per cent of the Scheme's costs. There was a moderate increase in other operating costs over this period, offset by reducing agent fees.

Of note, total non-claims cost did not substantively change over this period, relative to growth in total active claims. Claims were therefore the fundamental driver of the Scheme's cost growth, not administrative or operational costs. Hence, this Review did not explore non-claims expenses further. It follows that the remainder of this section focuses on claims liability only.

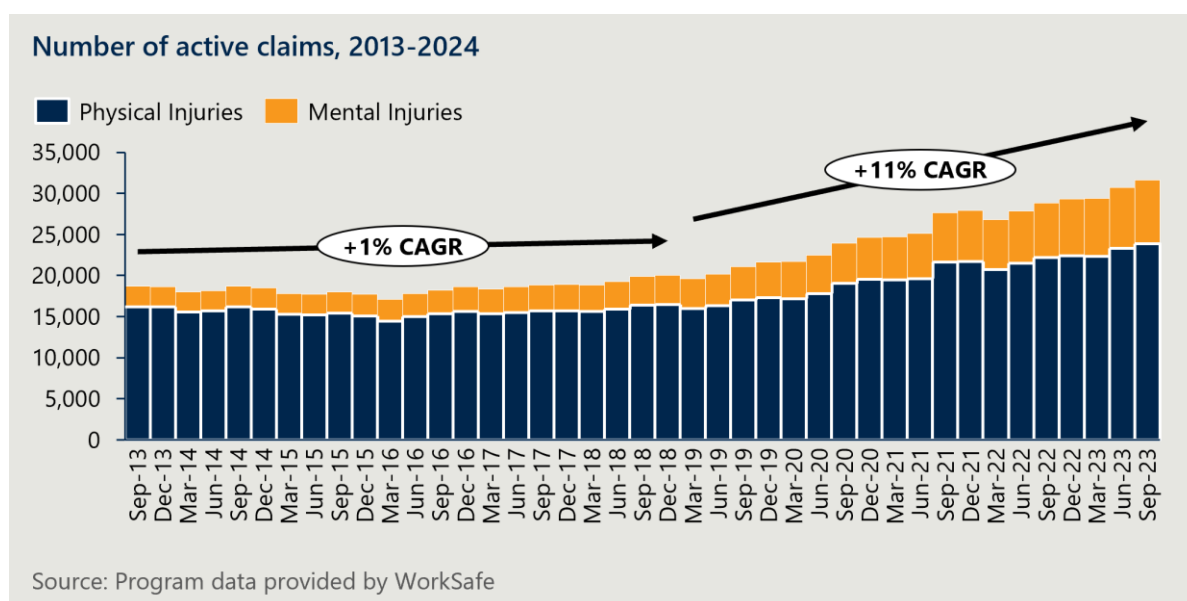
Growth in claims liability was driven by two interrelated and reinforcing factors.

First and most important, the number of active claims was growing – as was the number of active claims past 130 weeks. Second, the liability tied to each claim was also increasing. The reason these issues are

related is because the length of each claim is a key driver of liability per claim, but also a driver of growth in the number of active claims. They are therefore underpinned by the same factors. This introductory section details the growth in active claims and liability per claim, before introducing the underlying factors that were driving this growth.

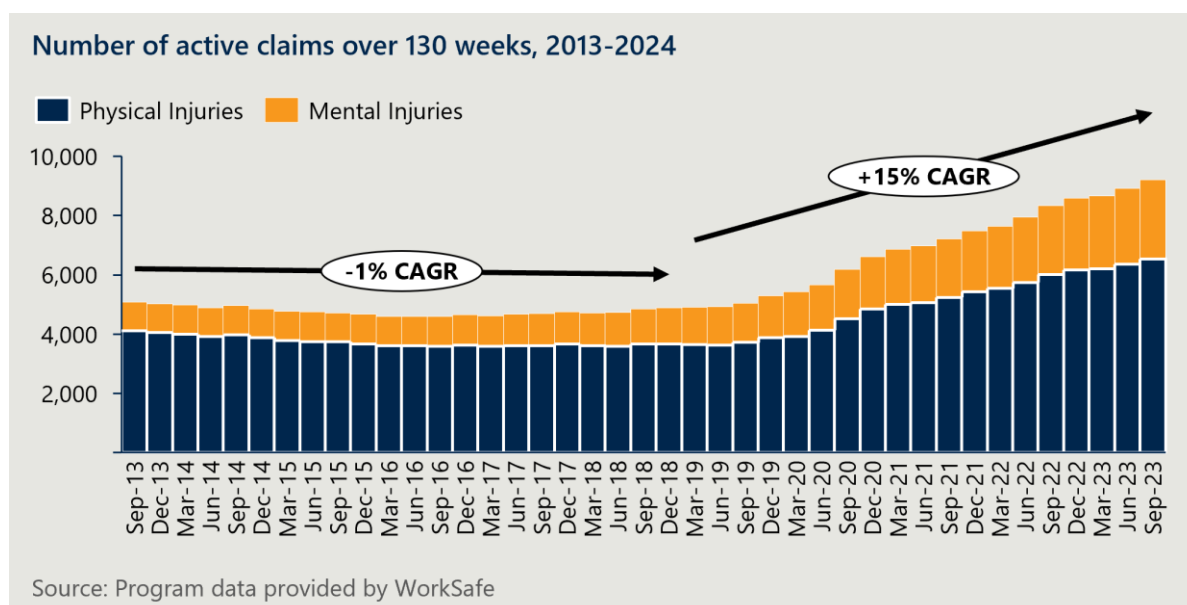
As stated above, the number of active claims was increasing rapidly. An 'active claim' is any claim currently receiving weekly payments through the Scheme. These grew by approximately 5 per cent a year between 2013 and 2024 – from around 19,000 active claims to over 32,000. However, as demonstrated in Figure 6, this growth occurred almost entirely between 2019-2024, when annual growth was around 11 per cent. Figure 6 shows the number of active claims in each quarter since September 2013, separated into physical and mental injuries.

Figure 6 | Number of active physical and mental injury claims (quarterly)



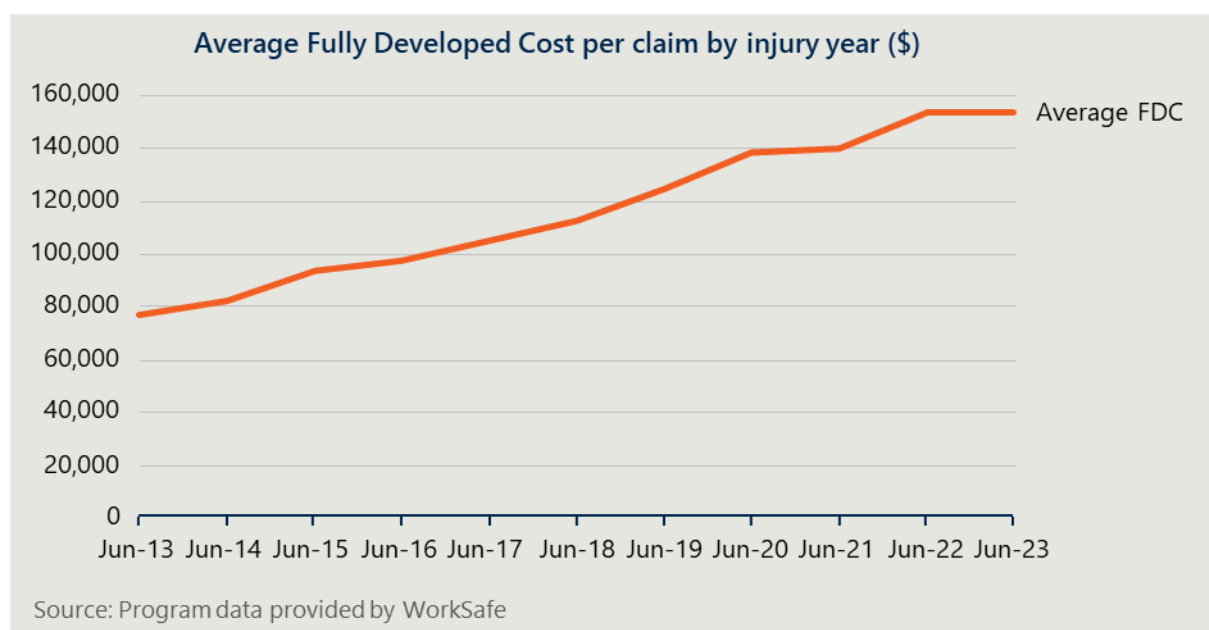
The number of active claims over 130 weeks was increasing at an even faster rate than total active claims. This is demonstrated in Figure 7, which shows the number of claims in each quarter since 2013 that have been active for more than 2.5 years, or 130 weeks. This is an important milestone; claims are all re-assessed at 130 weeks to confirm ongoing eligibility for weekly payments. Many individuals whose claim progresses past 130 weeks will remain on the Scheme until they retire. For this reason, it is often referred to as the 'long tail' of claims. The long tail is important to the Scheme's financial sustainability. When claims pass 130 weeks, the cost of those weekly payments is effectively 'locked in' for the long term.

Figure 7 | Number of active physical and mental injury claims over 130 weeks (quarterly)



At the same time as growth in the number of active claims there was a steady rise in the liability (total cost) from each individual claim. Indeed, the average fully developed cost (FDC)¹⁰ (i.e., total cost of a claim over its lifetime) doubled from 2013. Increases in the duration of claims and proportion of mental injury claims were key contributors to the FDC's growth.

Figure 8 | Average FDC per claim



Three underlying drivers were contributing to growth in the number of active claims and their associated cost:

1. **Entry:** Rejection rates for mental injury claims declined amid steadily increasing claim lodgements.

¹⁰ The Fully Developed Cost is an estimate of the total cost of a claim over its full course, adjusted for inflation. It accounts for the duration of the claim and all costs – including the weekly payments, treatment costs, impairment benefits and common law costs. Because it accounts for duration, longer claims will generally have a higher FDC than shorter claims.

2. **Exit:** Workers were exiting the Scheme at a declining rate, which was increasing the average claims duration.
3. **Nature of claims:** Mental injuries, which are generally longer and more costly, comprised a growing share of claims.

Each is outlined further in a corresponding section below. In addition, Box 2 outlines stakeholder views on the drivers of growing claims liability.

Box 2 | Stakeholder comments on growth in claims liability

Stakeholders made comments regarding the growth in claims liability:

- Worker representatives and people with lived experience were of the view that growth in mental injuries reflected increased vulnerability of workers across the economy and the need for further support to RTW.
- Employer representatives also noted a growth in mental injury claims and suggested the use of provisional payments was creating an expectation among workers that they were already 'in the system'.
- Health representatives stated that delays for workers to access appropriate care, including delayed referral to the right specialists and the need for approval for some services such as medical scans, were delaying RTW.
- Employer, medical and occupational therapy representatives all mentioned issues arising from insufficient supply of independent medical examiners, which was making it difficult for agents to make informed decisions regarding workers' eligibility.

3.1.1 Rejection rates for mental injury claims declined amid steadily increasing claim lodgements.

After an incident, workers make a claim to the Scheme. WorkSafe records these as 'lodgements'. All lodgements are reviewed by agents, before an eligibility determination is made. If a determination is 'successful' for the worker, it is recorded as an accepted claim. Otherwise, it is recorded as rejected. Figure 9 shows lodgements and the acceptance rate for both physical and mental injuries over time. Lodgements are expressed as an absolute number, while the rejection rate is shown as a percentage of all lodgements.

For mental injuries, Figure 9 shows that the rejection rate fell as lodgements grew. Prior to 2018, around half of all mental injury claims were rejected. This Review heard that growth in mental injury lodgements was likely due to a combination of factors, including greater community awareness of mental health issues and heightened environmental stressors such as disasters, conflict and Covid-19. Over this same period between 2018 and 2021, the rejection rate halved to around 25 per cent. The underlying cause is not entirely clear. However, it is possible – if not likely – that the falling rejection rate for mental injury claims between 2018 and 2021 was due to a combination of:

- **Behaviour change:** Ombudsman's reviews in 2016 and 2019¹¹ were conducted into the management of complex claims. This included a variety of elements of the claim journey, including lodgements. Both reports highlighted problems with agents' approaches to decision making and management of complex claims and attributed these problems in part to the way in which payments to agents were structured. Following the Ombudsman's findings, including the implementation of the recommendations, WorkSafe introduced a number of initiatives such as a sustainable decision making framework and a process for intervening in wrongful disentanglement of injured workers. As a result, the rate at which claims were rejected declined significantly as agent decision making behaviour adjusted.

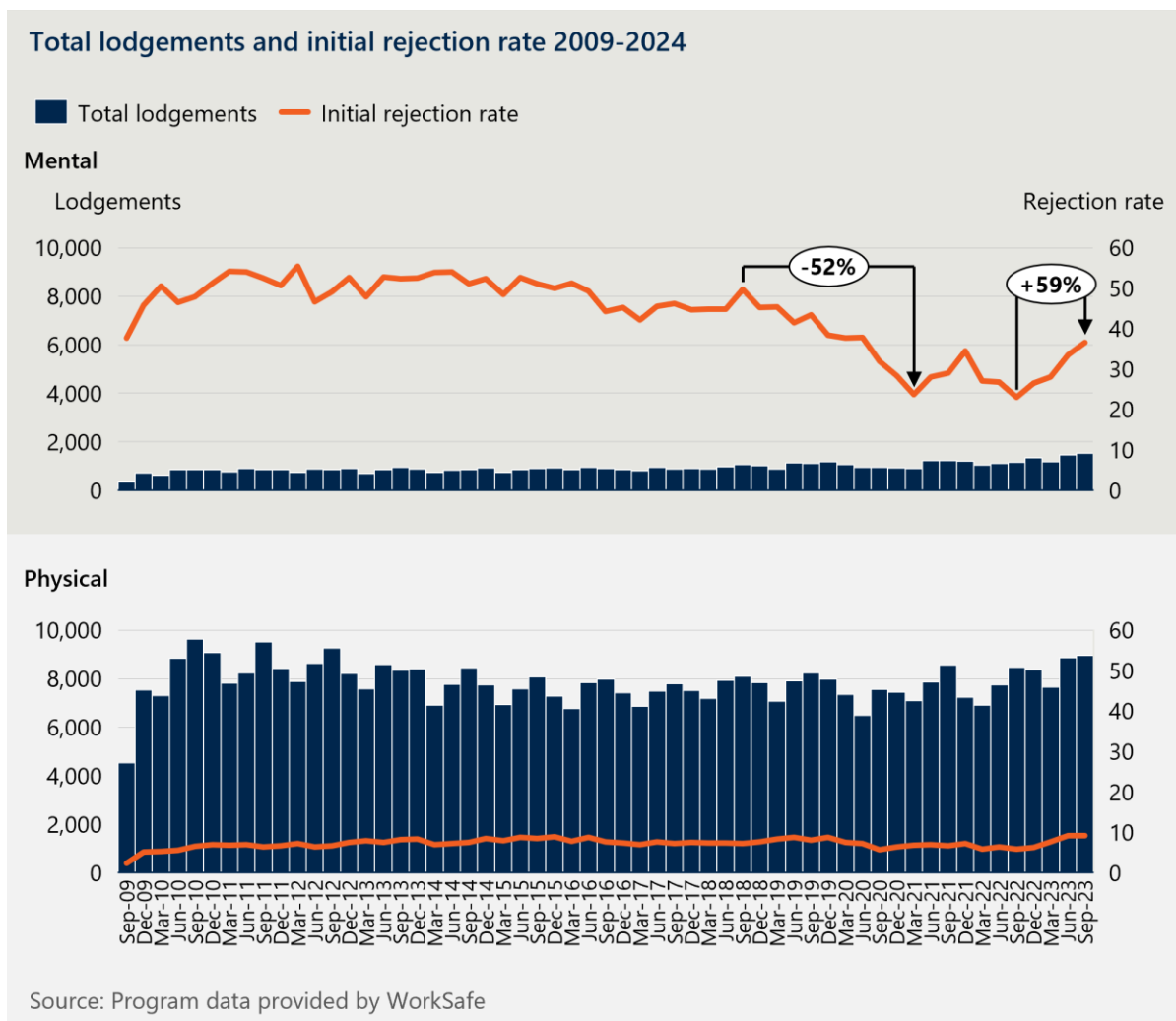
¹¹ The Ombudsman's reviews were *Investigation into the management of complex workers compensation claims and WorkSafe oversight* and *WorkSafe2: Follow-up investigation into the management of complex workers compensation claims*.

- **System pressure:** Growth in overall claims and increased pressure on the system, including on agents and independent medical examiners (IMEs) may have also contributed to an increase in claims acceptance rates. Ideally, a worker is assessed by an IME before the agent must make the eligibility decision within the first 28 days of a claim. In circumstances where only treater information was available (i.e. an IME is not available within the 28-day assessment period), agents were more likely to accept a claim. This was particularly the case during periods of heightened system pressure such as the pandemic. If required, agents would then need to review the decision once an IME became available.

The story is simpler for physical injuries. Figure 9 demonstrates a largely unchanged number of physical injury lodgements – which, as a share of a growing labour force, suggests fewer workers per capita were lodging physical injury claims. The rejection rate was also level, until late 2022.

The claim rejection rate for physical and mental injuries subsequently increased 59 per cent. This corresponded with a pilot program run by WorkSafe that facilitated greater access to IMEs within the 28-day eligibility determination period. This gave agents access to more detailed information on which to make the initial eligibility determinations, thus reducing the likelihood of initial eligibility decisions needing to be reviewed at a later date (as described above).

Figure 9 | Shifting number of lodgements and rate of rejection



3.1.2 Workers were exiting the Scheme at a declining rate.

While there are many pathways for workers to exit the Scheme, including retirement, claim termination, RTW, common law economic loss settlement and voluntary settlement, this Review heard and observed

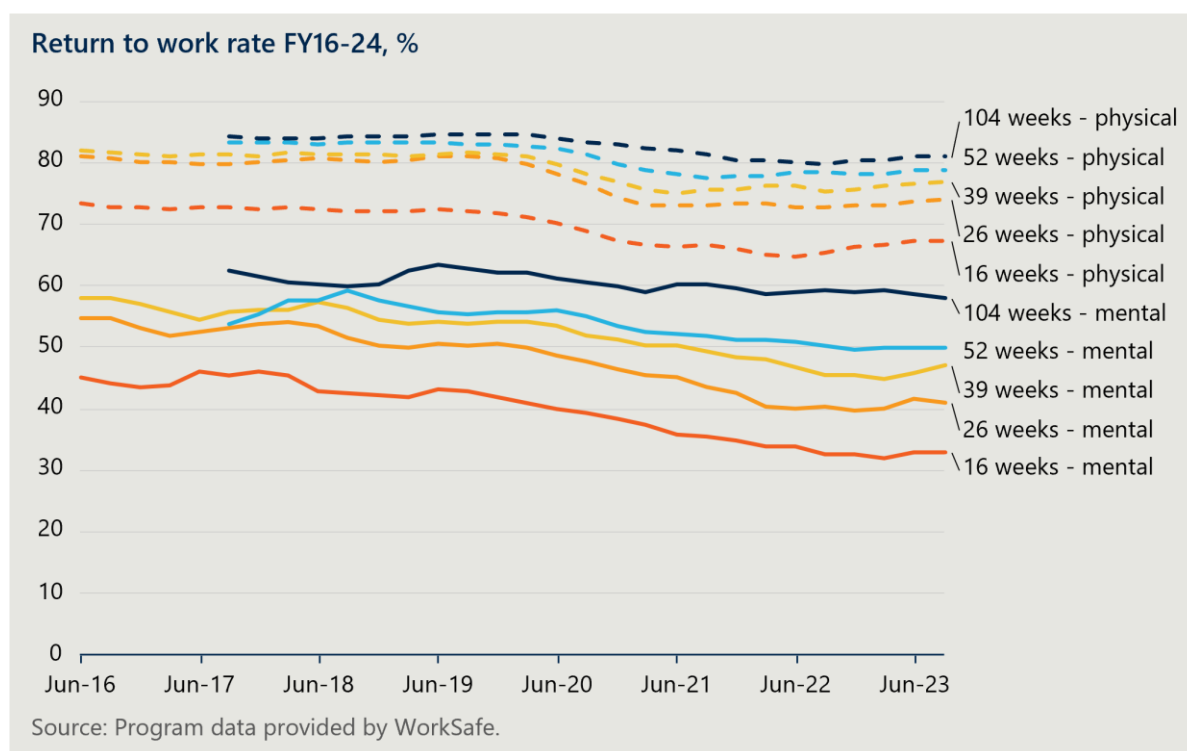
that RTW and termination are the most important exit factors with respect to the Scheme's financial position. These are detailed below.

Return to work outcomes deteriorated for both mental and physical injuries.

Workers are often seeking to RTW throughout the life of their claim and are often supported by employers to do so. WorkSafe's RTW rate measures the proportion of workers on the Scheme that exit by returning to their previous workplace or a new workplace. Figure 10 shows the proportion of injured workers that had returned to work at different development times. For example, the line labelled '52 weeks – physical' represents the annual proportion of physical injury claims that had returned to work 52 weeks after joining the Scheme. Taking this example further, the RTW rate for physical injury claims after 52 weeks declined – from about 83 per cent in 2018 to 79 per cent in 2024.

Indeed, across all development periods workers were increasingly unlikely to RTW (Figure 10). Physical injury RTW rates declined sharply in 2020-2021 – around 5 percentage points (pp) – and have remained there since. Mental injury RTW rates declined more steadily, but also generally saw a 5-10 pp reduction on already lower levels compared to physical injuries. It is also evident that the longer a worker stays on the Scheme the less likely they are to RTW. For both mental and physical injuries, RTW outcomes are worse for each subsequent development period.

Figure 10 | RTW outcomes for mental and physical injuries at different development stages (quarterly)



Falling RTW outcomes for physical injuries were likely related to the effects of Covid-19 in 2020 and 2021, which created difficult economic and social conditions for injured workers to return to the workforce. This Review heard that RTW rates for some physical injuries have risen recently but have yet to return to pre-Covid levels (as of late 2024).

Mental injury RTW outcomes, on the other hand, fell continuously. Issues deeper and more fundamental than Covid-related economic and social settings were influencing these outcomes – though these likely played a role. Stakeholders noted several drivers that could have contributed, including:

- **Workplace psychosocial safety:** Workers generally had increased awareness and understanding of psychosocial hazards in the workplace, driven by increased emphasis from WorkSafe and others (e.g., 2021 Mental Health Royal Commission). Stakeholders noted growing societal acceptance and

understanding of psychosocial hazards as a cause of mental injury and workers feeling less comfortable to return to their old employer. Stakeholders also noted workers' need for more support to find a new employer. Taken together, this meant workers with a mental injury were less likely to RTW.

- **Agent decision making:** While there are many programs and supports available, workers' health conditions can be complex and their willingness to RTW differs for many reasons. This creates a degree of subjectivity for agents in deciding the appropriate actions in supporting a worker's RTW (e.g., deciding when it is appropriate to issue a non-compliance notice to a worker who has not complied with their RTW obligations).
- **Access to treatment:** The Review heard that Covid-19 increased societal demand for mental and other health services, which was highlighted by the 2021 Mental Health Royal Commission. High demand for, and inadequate supply of, relevant practitioners reduced WorkCover claimants' access to treatment, which undermined their rehabilitation and reduced their likelihood to RTW.
- **Secondary injuries:** Being on the Scheme can also lead to further injury. This is particularly so for mental injuries. Stakeholders noted that those on the Scheme might acquire secondary mental injuries from stress or isolation when they are not working. It was noted that workers with primary physical injuries may also acquire secondary mental injuries as a result of being on the Scheme.¹² This was exacerbated by Covid-related stresses and prolonged periods of isolation. Because RTW data measures outcomes over time periods ranging from several weeks to several years, the effects of Covid-19 are still being observed for longer-duration RTW measures.

The termination rate nearly halved for all claims between 2014 and 2023.

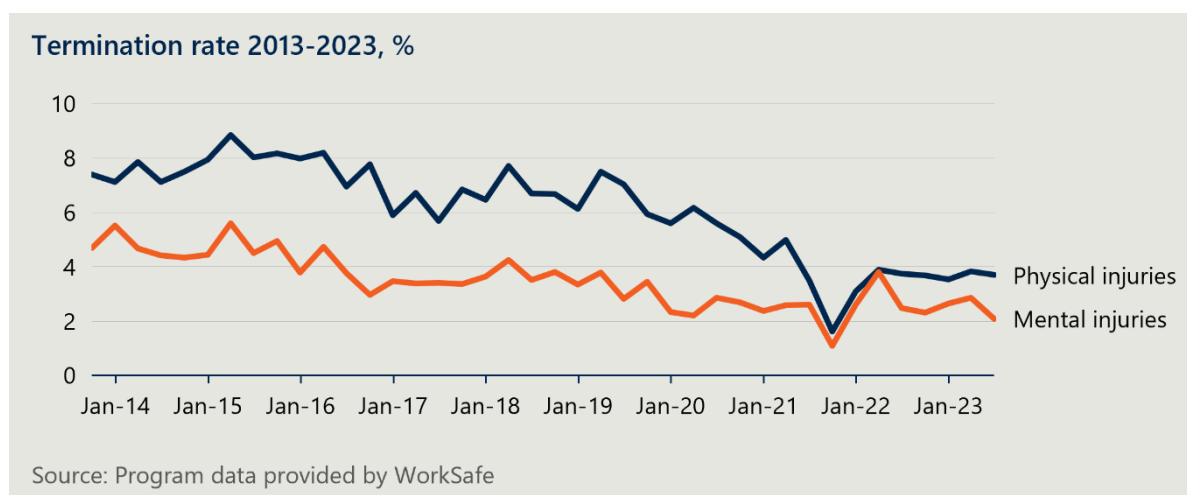
Terminations are accepted claims which are found no longer eligible due to a work capacity test following the second entitlement review (or a subsequent two-year capacity review) and removed from the Scheme. They are a critical factor in determining the number of active claims. Those receiving weekly payments are periodically re-assessed to determine if they are entitled to continued support – first following the second entitlement period (130 weeks) and then every two years afterwards.

Termination does not account for claims that 'exited' the Scheme to directly RTW, though employees whose claims are terminated may later RTW after exiting the Scheme. Claimants who returned to work are discussed in the section above and are captured by a separate metric.

Figure 11 shows the proportion of active claims with more than 78 weeks of weekly compensation which were subsequently terminated. This termination rate is an important precursor to determining the proportion of claims that will advance beyond 130 weeks. The chart shows a declining rate of termination for both physical and mental injuries – halving from around eight per cent for physical injuries in 2015 to less than four per cent in 2024, and from around five per cent for mental injuries to two per cent.

¹² For some mental injury claims, if a worker's condition deteriorates it may not be recorded as a secondary mental injury if the Scheme exacerbates or causes further mental injury.

Figure 11 | Termination rate for physical and mental injury claims (quarterly)



Again, the reasons underpinning this are not entirely clear or agreed by stakeholders. It is also likely that a combination of reinforcing factors led to the decline. As with rejection rates, Ombudsman's reviews in 2016 and 2019¹³ and the Rozen review in 2021¹⁴ all contributed – indeed, sharp declines in 2016, 2019 and 2021 are all notable in Figure 11.

More broadly, there was a shift in practice from WorkSafe, medical professionals issuing certificates of capacity, and agents over this period. This was in response to a confluence of pressures, including:

- **Shifting community expectations:** stakeholders noted that over this period society had become more aware and accepting of mental injuries.
- **Covid-19:** temporary changes in claims management were implemented during Covid-19 lockdowns. This included a 6-month extension of payments for terminated claims, legislated in s623N of the *COVID-19 Omnibus (Emergency Measures) Act 2020* (Omnibus Act). This Review was informed that the implementation of the Omnibus Act contributed to the reduction observed in September 2021. More broadly, stakeholders observed a shift in overall claims management that resulted in lower terminations at this time.

3.1.3 Mental injuries, which are generally longer and more costly, comprised a growing share of claims.

A sub-driver of growth in the number and duration of claims was the increasing prevalence of mental injury claims. This is not a mutually exclusive issue to growth in the number and duration of active claims; indeed, as detailed below, the nature of mental injuries has been a major contributor to these issues.

The prevalence of mental injury claims grew over the ten years to 2023.

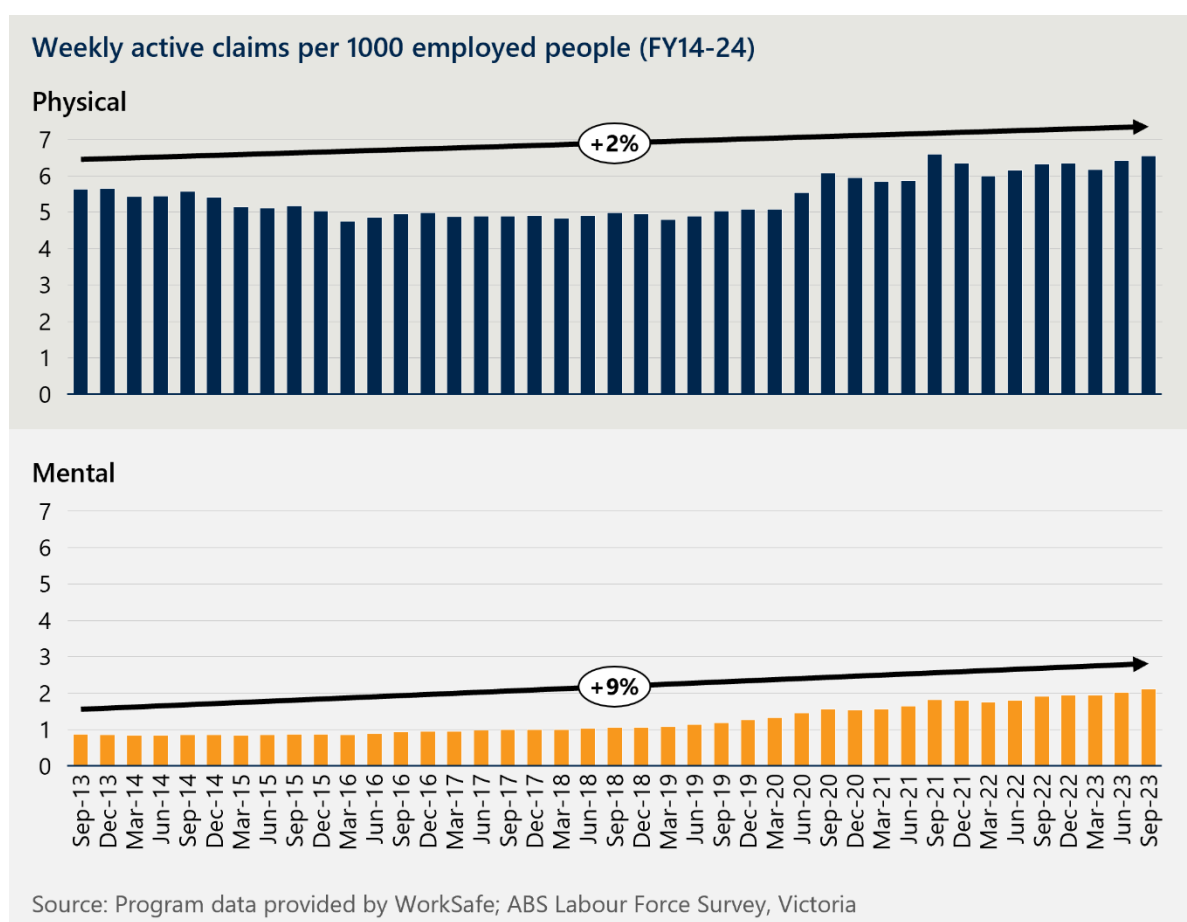
Figure 12 shows the normalised growth in mental and physical injuries since 2013. It outlines how many active claims there are for each injury type per 1,000 people in the workforce. This removes population and labour force growth as potential drivers of growth in active claims.

¹³ Glass, Deborah. Investigation into the management of complex workers compensation claims and WorkSafe oversight. 2016. Glass, Deborah. WorkSafe2: Follow-up investigation into the management of complex workers compensation claims. 2019.

¹⁴ Rozen, Peter. Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims. 2021.

Over this period, mental injury claims became an increasingly important driver of Scheme cost. Since 2013, physical injury claims grew by just two per cent each year relative to the size of the workforce. On the same measure, mental injury claims increased by nine per cent a year.

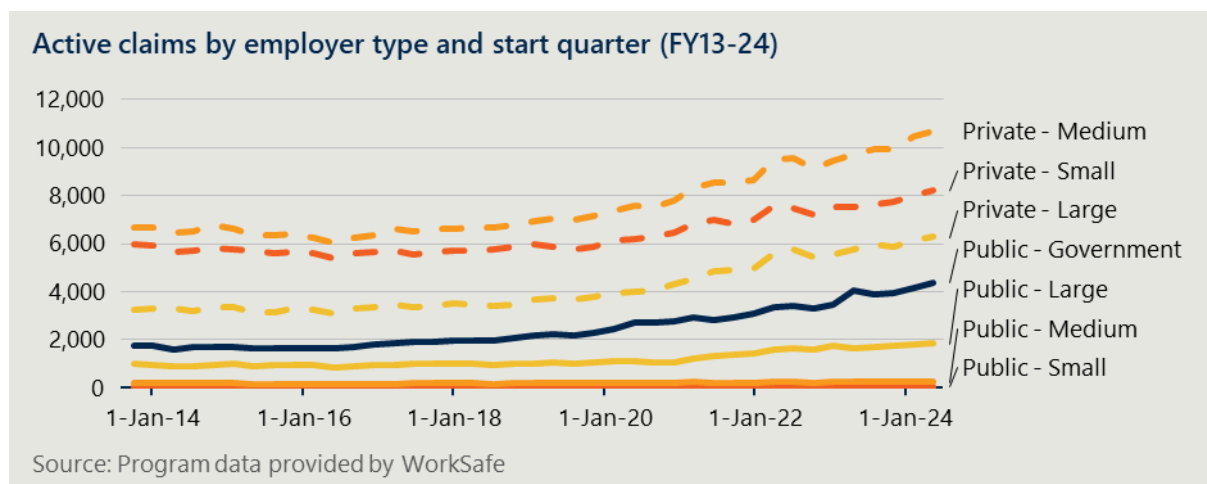
Figure 12 | Weekly active claims, normalised to workforce size



Mental injury claims from 'frontline' public sector workers were increasing, along with steady growth in claims from private sector employers.

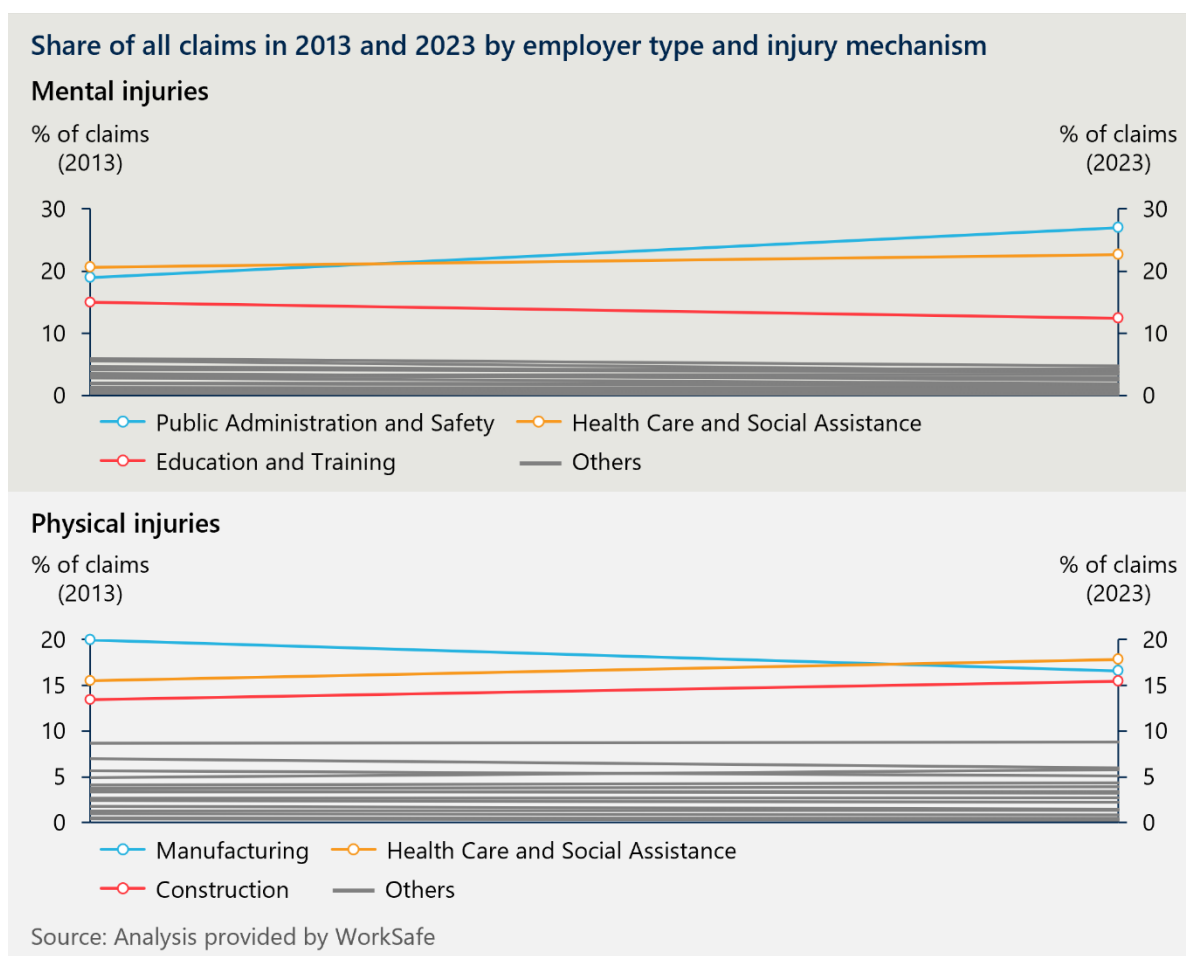
Most categories of private and public sector employers faced growth in claims since 2016. Figure 13 describes the number of active claims for each type of employer (public or private) and their size. Employer size is categorised based on total workforce remuneration for that employer. Public – Government means Government departments – including employees of the Department of Justice and Community Safety and the Department of Education, which are employers of public-facing workers including police, social workers and teachers. Other public sector employers not captured in this definition are government agencies and government-owned corporations – such as water corporations and public hospitals. These employers are covered by 'Public – Small/Medium/Large'. In Figure 13 it is evident that claims growth has been similar for public and private employers, with active claims against private employers still substantially more common than against public employers. Largely, this growth has been in line with the overall size of the workforce.

Figure 13 | All active claims (i.e., mental and physical) by employer type (quarterly)



When claims are compared by industry there are several clear trends. Figure 14 shows the share of all mental and physical injury claims from each industry, regardless of employer type. The position of the line on the left side notes the share of claims in that industry in 2013, while the position on the right notes the share of claims in 2023. The top three industries for mental and physical injuries have been highlighted in each. An interesting trend is evident, where only healthcare and social assistance is in the top three for both physical and mental injuries. This makes sense given the high-risk nature of this work and supports reports heard through the course of this Review. Another clear trend is growth in mental injury claims in public administration and safety. This sector includes government employees involved in policy making and program delivery, as well as frontline public safety workers such as police.

Figure 14 | Change in claim distribution, by industry (2013 and 2023)



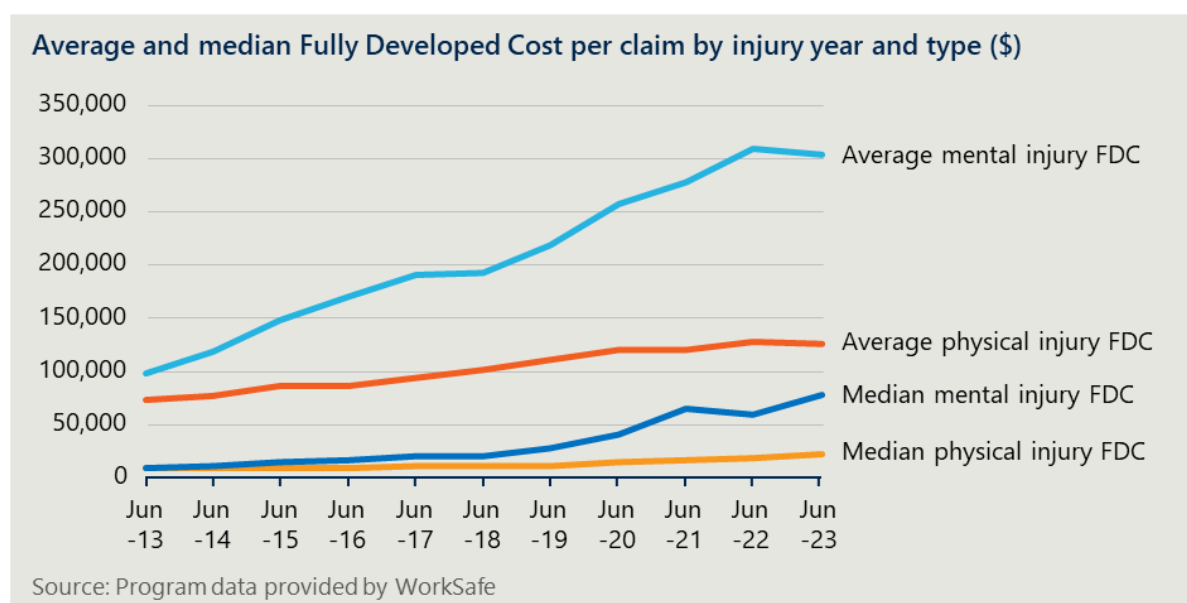
Stakeholders noted that growth in public services, particularly throughout the Covid-19 pandemic, was a key driver of change in mental injury claims. For example, hospitals and emergency services saw surging demand and constrained working environments due to government restrictions. This likely contributed to an increased psychosocial risk level in 'frontline' public sector workforces. In addition, stakeholders felt that improved culture around seeking treatment for mental injuries was also a factor. This could mean that the rate of mental injuries in public sector workforces had not necessarily grown as much as shown above – instead, growth could also be attributed to heightened rates of claiming for injuries that had been occurring for some time.

Mental injury claims were generally more costly than physical injury claims.

Alongside growth in the number of mental injury claims, the liability per claim for mental injuries outstripped physical claim expenses in the last decade. Figure 15 shows the median and average FDC (i.e., total cost of a claim over its lifetime), similar to Figure 8. However, this chart separates the FDC for physical and mental injuries. It illustrates growth in physical and mental injury FDC, but disproportionately so for mental injuries. This is mostly attributable to increasing claim duration – a function of the termination and RTW factors outlined above.

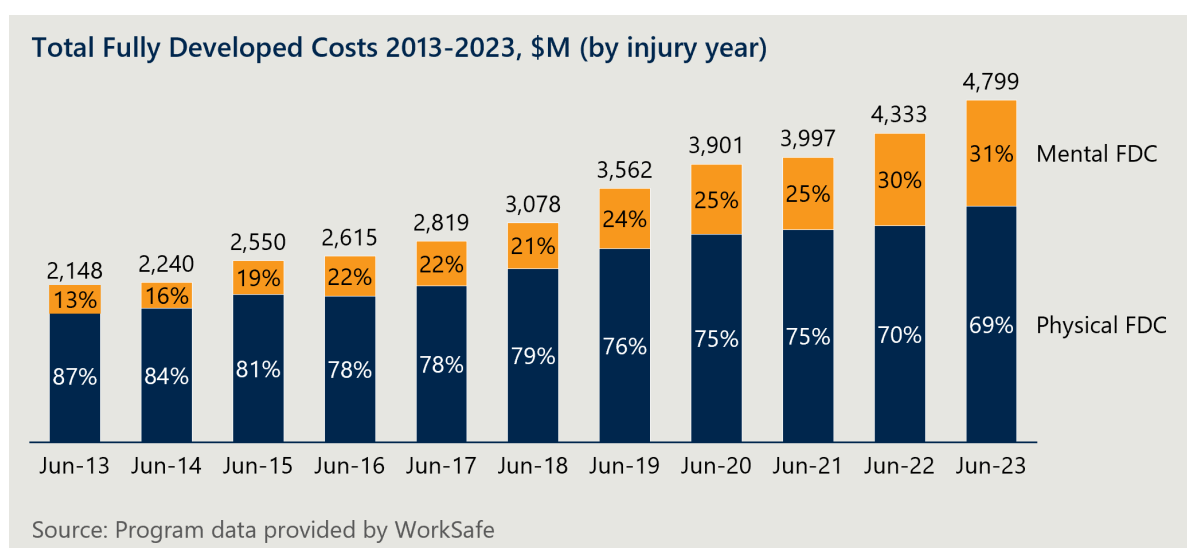
Stakeholders noted many causes for this trend, including growing issues accessing adequate care – especially for mental injuries. They suggested that there have historically been challenges with remuneration for medical practitioners who treat WorkCover patients and difficulty accessing medical investigations in a timely way. Since that time, WorkSafe has taken steps to address this, including increasing the fees for independent impairment assessments and independent medical examinations.

Figure 15 | FDC per claim for mental and physical injuries



As a result, mental injury claims comprised 31 per cent of total FDC by 2023, compared to just 13 per cent in 2013. This is demonstrated in Figure 16, which outlines the total FDC attributable to both physical and mental injuries since 2013.

Figure 16 | Fully developed cost by claim type and injury year



Despite growth in mental injury claims, they continued to represent a lower proportion of FDC than physical injury claims. This section has primarily explored trends in mental injuries, but it is important to note that physical injuries remained the Scheme's largest cost centre. While the analysis above demonstrates that active claims per 1,000 people has not changed significantly for physical injuries (Figure 12), total cost attributable to physical injuries had still grown, owing mostly to higher weekly benefit payments (Figure 16).

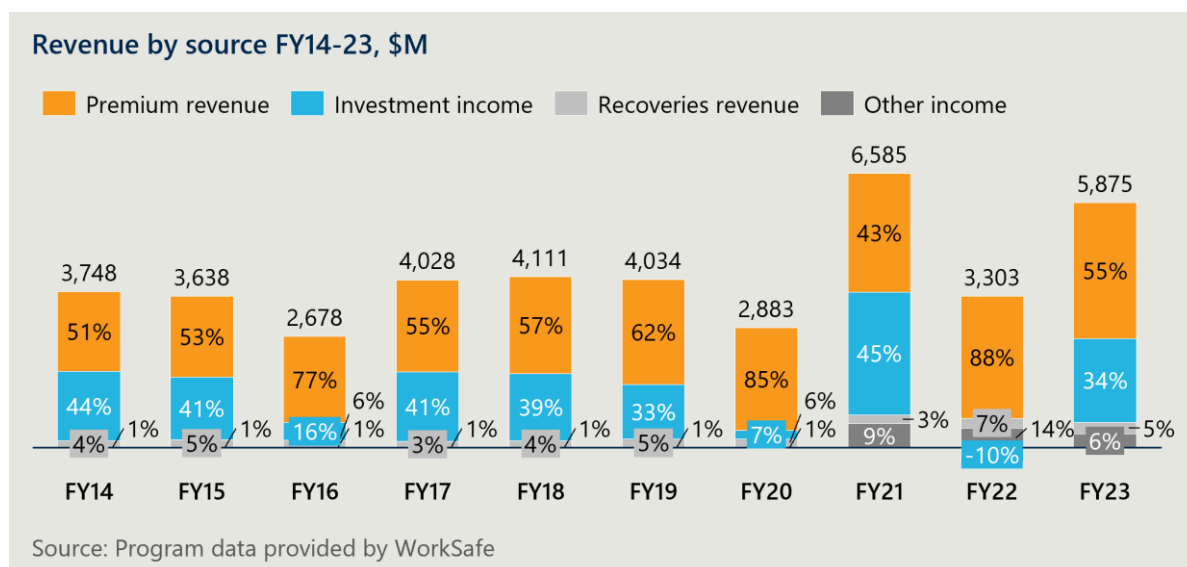
3.2 Income did not increase in line with growth in annual claims costs.

As described at the beginning of Section 3, a range of factors were contributing to growth in Scheme costs – particularly claims liability. For the Scheme's IFR to remain in the preferred range, cost and liability

growth must be accompanied by income growth to ensure assets can meet liabilities. This sub-section describes the nature of the Scheme's income and outlines why it did not grow in line with costs.

There was little change in the nature of the Scheme's income base over the ten years prior to implementation of the reforms (Figure 17). Premium income consistently comprised 50-60 per cent of total income. Investments, meanwhile, usually comprised around a third of income – with year to year variations in line with the performance of global markets.

Figure 17 | Scheme income



Against this backdrop, two key factors – investments and premiums – are clearly the key determinants of income sustainability. This Section explores the performance of each over time, namely:

1. Despite volatility, investments provided expected returns.
2. The premium levied on employers was below the hindsight BEP in every year between FY14 and FY22.

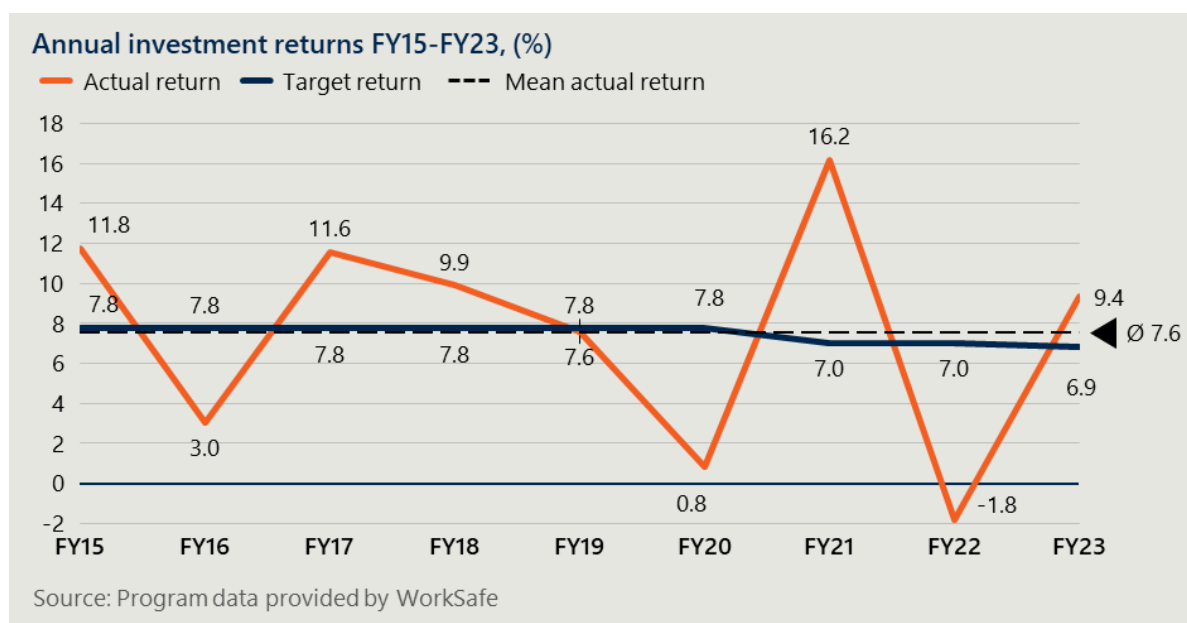
Each is outlined further below.

3.2.1 Despite volatility, investments provided expected returns.

The Scheme's investment portfolio provided an average annual return of 7.6 per cent between FY15 and FY23. Figure 18 shows the Scheme's investment return in each year since FY14 (orange line), the target return (blue line) and the average annual return over that period (dotted line).

It remained prudent and effective for the Scheme to diversify its revenue base by maintaining a managed investment portfolio. Like all investments, the Scheme's annual investment returns fluctuated, peaking at over 16 per cent but falling near zero in 2020 and below zero in 2022. Nonetheless, average returns exceeded the target over the period between FY15 and FY23.

Figure 18 | Scheme investment revenue (%)



Therefore, this Review concluded that investment income was not a driver of sustainability issues, and instead focused on the adequacy of premiums to meet growing liabilities. This is detailed below.

3.2.2 The premium levied on employers was below the hindsight BEP in every year between FY14 and FY22.

Premiums are estimated to ensure that, in combination with expected investment income, they are sufficient to meet claims cost and associated expenses. As noted above, investment income performed as expected (on average) and therefore was not contributing to the Scheme's financial sustainability issues.

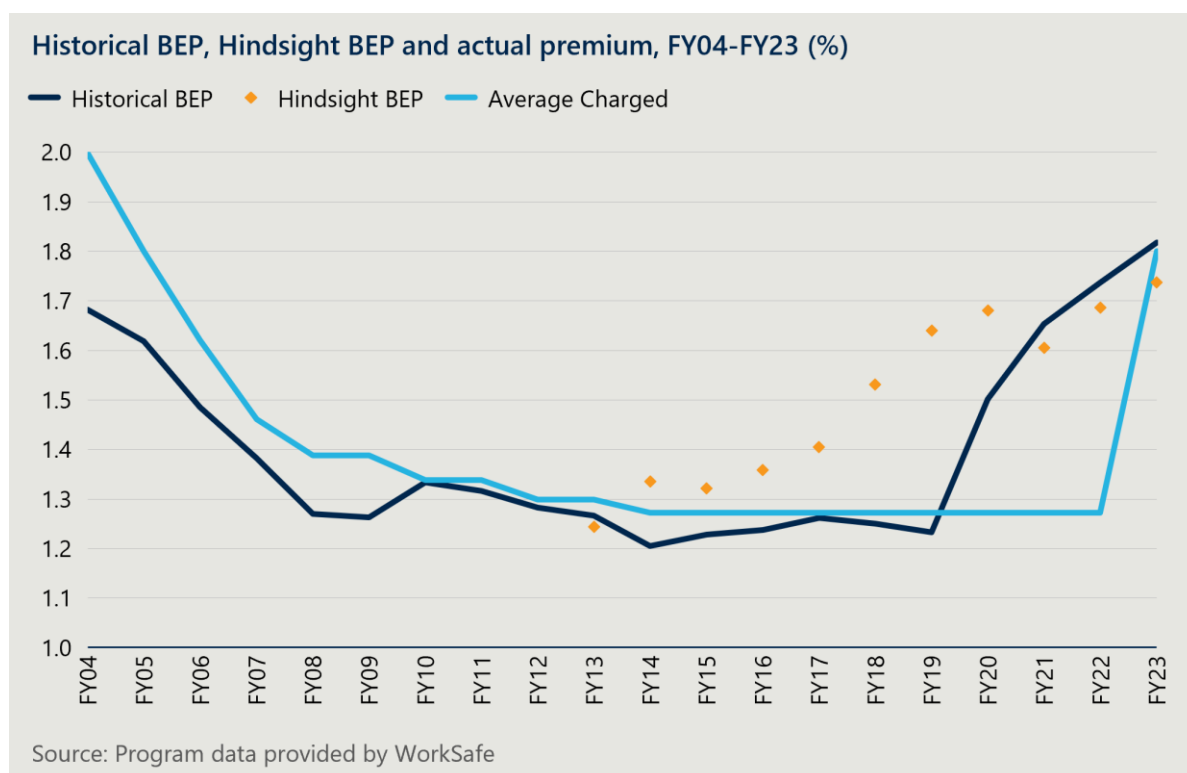
The core challenge facing Scheme income was a misalignment between the average premium rate charged to employers and the hindsight BEP that was required to cover the costs of the Scheme.

Figure 19 shows each of these premiums over time expressed as a percentage. Between FY14 and FY22, the average premium rate was unchanged. Prior to FY19, this was in line with WorkSafe's calculation of the required break-even premium at the time (historical BEP). However, between FY19 and FY22, rapid liability growth (discussed in section 3.1) indicated that premium income was beginning to fall short of levels required to meet growing claims costs. In response, the Victorian Government contributed \$1.3 billion over this period to bolster the Scheme's financial position.¹⁵ The premium was not increased until FY23, at which time it was raised by 42 per cent (i.e., 0.53 percentage points).

Actuarial forecasts that were used to assess the annual BEP expected that growth in claims costs would slow without legislative change. These trends were highly uncertain at the time and difficult to accurately predict. Therefore, while the average premium rate was higher than the historical BEP until FY20, it was lower than the hindsight BEP between FY14 and FY22. This meant that the Scheme's income in each of these years was insufficient to meet growing claims liabilities.

¹⁵ Premier of Victoria, "Keeping Workplaces Safe and Supporting Businesses", 2021, <https://www.premier.vic.gov.au/keeping-workplaces-safe-and-supporting-businesses>
 Premier of Victoria, "Helping Business Recover and Ensuring Safer Workplaces", 2022, <https://www.premier.vic.gov.au/helping-businesses-recover-and-ensuring-safer-workplaces>

Figure 19 | Trends in required and actual premiums



The effect of the premium shortfall was cumulative. In each year that the actual premium was less than the required BEP the Scheme's financial deficit grew. Three Government support payments were required: \$550m in FY21, \$450m in FY22 and \$300m in FY23.¹⁶

3.3 Common law costs were not expected to drive further financial sustainability challenges.

A common law claim refers to a worker seeking damages in court due to their employer breaching their duty of care or not complying with their legal obligations and injury results. This is a separate process to lodging a WorkCover claim as the Scheme is no-fault, meaning that a worker may be eligible to join the Scheme without their employer being found to have acted improperly or have broken a legal obligation.

This Review heard that common law claims often are not made until at least two years after a worker enters the Scheme, with most lodgements occurring 3-5 years after injury. For this reason, WorkSafe must estimate the total cost of common law grants by predicting the future volume and cost of common law grants for injuries incurred each year.

Before the reforms, this projected number of grants was expected to increase in line with growth in the number of active claims and claims over 130 weeks. Overall growth in claims volume is logically expected to translate to growth in common law grants. However, because other costs were also growing, the proportion of common law cost compared to overall claims liability had been largely unchanged. The cost per common law grant, meanwhile, has not changed materially for nearly two decades.

Given common law volume has broadly increased in line with claims volume and the cost of each common law claim has remained steady, common law costs do not appear to have been a major driver of the Scheme's financial sustainability challenges.

¹⁶ WorkSafe 2023, 22/23 Annual Report, p.69

4 Efficacy of the reforms

This section describes the Review's analysis of the expected efficacy of the reforms. It responds to Term of Reference 1b: *Examine the expected efficacy of the amendments in the Modernisation Act to restore the Scheme to a financially sustainable position over a reasonable period of time.*

The reforms intended to realign the Scheme design with its objectives and consequently improve the Scheme's financial position. This section discusses the efficacy of the reforms against these related aims. It has been informed by conversations with DTF, WorkSafe and stakeholders. The Review also analysed program documentation and data provided by WorkSafe and DTF.

Any conclusions about the efficacy of the reforms are necessarily limited by the fact that this is an early review – otherwise known as a 'pulse check'. More time is required for the long-term effects of the reforms to become evident. For example, it is too early to consider the effect that precedent in courts and dispute resolution will have on how the new mental injury definition is applied. Behaviour change – such as changes in worker lodgement practices under the new mental injury definition, or agent claims management practices – will influence the financial efficacy of the reforms. Insufficient time has passed for these trends to play out adequately for this Review to comment. The statutory review required in 2027 will provide further evidence to assess efficacy of the reforms.

When considering the expected efficacy of the reforms it is important to note the increase in premium rates that took place in FY23. The average premium rate was raised prior to the reforms, from 1.272 per cent to 1.8 per cent of remuneration. Prior to this, the premium had not increased in over 20 years. The increase brought it in line with similar jurisdictions (as of FY24) including New South Wales (1.6 per cent), Western Australia (1.73 per cent) and South Australia (1.85 per cent).

The increase in the average premium rate increased premium revenue, moderating the extent to which workers' entitlements needed to be amended to improve the Scheme's financial sustainability. While the increase to the premium rate was not one of the legislative reforms under consideration by the Review, it was an important consideration when developing and assessing the reforms and the Scheme's financial sustainability.

4.1 The reforms are expected to address the drivers of the Scheme's financial challenges, but it is too early to estimate the outcomes of potential legal interpretations or to understand behavioural change.

Several considerations that informed the design of the reforms were noted throughout this Review. The Government had identified two policy challenges facing the Scheme, stemming from a rapidly changing workplace environment:

1. The Scheme's original and enduring intention was to provide compensation for primarily physical injuries incurred in the workplace. Over time, mental injuries were increasingly being compensated under the Scheme. Such injuries are often more complex than physical injuries and are rarely attributable to a single cause. The Scheme design needed to evolve to respond to the increasing prevalence of mental injury claims and to more clearly define when a mental injury could be attributed to experience in the workplace.
2. The Scheme was originally designed as a means to provide compensation for injuries while a worker is being assisted to RTW – but over time, an increasing number of workers on the Scheme

were not returning to work. In some cases, workers receiving compensation may be better supported by other Government social insurance or disability support schemes.

The reforms were developed by considering these two issues against policy settings in comparable jurisdictions. This analysis found that Victoria was more exposed to non-severe long-tail injuries than other jurisdictions, and that Victoria's guidance on compensable mental injuries was less definitive. Nonetheless, it remained front of mind for Government to maintain eligibility for workers with claims clearly related to workplace duties and that were not expected to arise in the normal course of employment, such as bullying or harassment. Comparable policy settings were also used to provide a baseline for the new WPI threshold applied in Victoria under the reforms.

The reforms implemented through the Modernisation Act are expected to address these policy considerations. The reforms are targeted at tightening the relationship between injuries and work, and introducing greater objectivity in determining whether claims should continue past 130 weeks. Both outcomes are reflective of the objectives of the WIRC Act. Of note, behaviour change may affect the financial and policy efficacy of these reforms. Claims behaviour is likely to change and will be influenced by the new criteria, notably the exclusion for stress and burnout. Workers may present differently if they have prior awareness of this criterion. For example, a worker who experiences a mental injury at work, which includes experiences of stress and burnout, may describe their injury in a way that does not focus on those symptoms to avoid the risk of being deemed ineligible to access the Scheme. This change in claims and assessment behaviour may reduce the effect of the reforms.

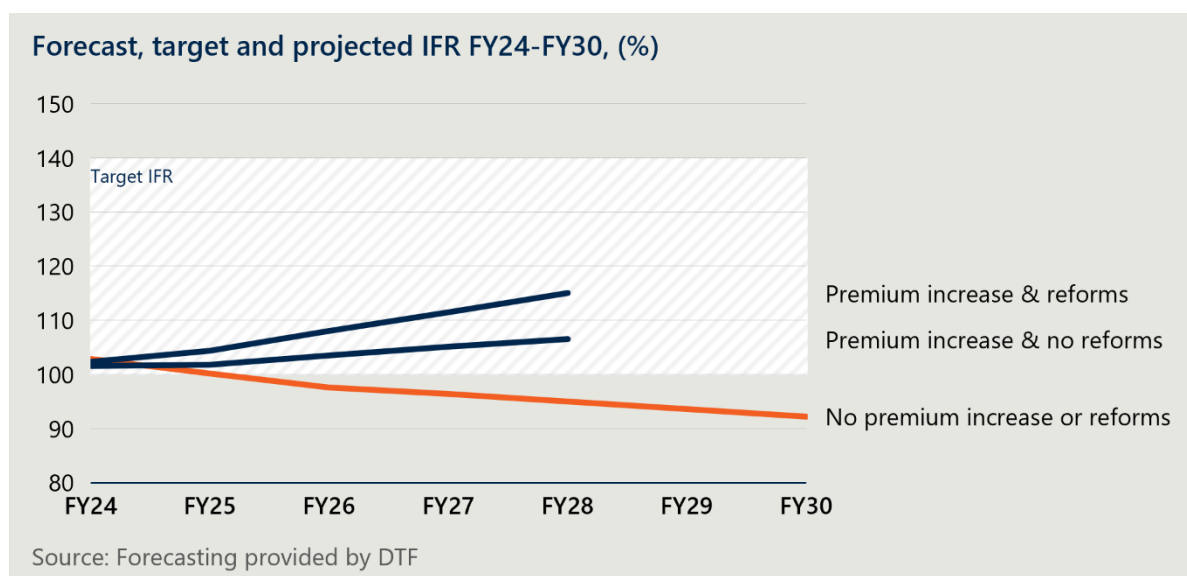
An intended consequence of resolving these policy issues was to improve the Scheme's financial sustainability. Summary modelling performed by WorkSafe from March 2023 shows that the Government projected the reforms would return the forecast IFR to the mid-point of the preferred range (Figure 20). This chart shows four factors in the modelling:

- The hashed area depicts the preferred IFR range of 100-140 per cent.
- The upper blue line shows the potential impact of the reforms alongside a premium increase.
- The lower blue line shows the potential impact of the premium increase without the reforms.
- The orange line presents DTF's projection of the IFR if neither an increased premium nor the reforms were pursued.

DTF and WorkSafe noted that these projections were subject to much uncertainty. Each forecast was sensitive to various assumptions, leading to many scenarios with variable outcomes. Indeed, the true impact of the reforms on the IFR is best represented as a wide range of possible outcomes within the preferred range.

Figure 20 shows that without reforms, premium increase alone would result in an IFR close to the bottom of the preferred range. At this level, small variance from expected outcomes could place financial sustainability in further jeopardy and increase the chance of further premium increases.

Figure 20 | Projected IFR to FY30



As detailed in Section 3, there were many factors contributing to the Scheme's financial sustainability challenges. The intended effect and efficacy of each reform against these factors is outlined below, across three high-level conclusions:

1. Clarifying the severity of the injury and the link to the worker's employment should slow growth in accepted mental injury claims.
2. Limiting eligibility for mental injuries mainly caused by stress and burnout should also limit lodgements and acceptances.
3. Introducing a WPI threshold of more than 20 per cent at 130 weeks is expected to limit the proportion of claims that reach the long tail by reducing the subjectivity of the previous test.

Each of these is bound by assumptions and caveats, outlined in corresponding sections below.

4.1.1 Clarifying the severity of the injury and the link to the worker's employment should slow growth in accepted mental injury claims.

Prior to the reforms, the WIRC Act did not have a specific definition of 'mental injury'. This reform introduced a definition of a mental injury:

- s. 4 of the Modernisation Act defines mental injury as "an injury that **causes significant behavioural, cognitive or psychological dysfunction**" and is "**diagnosed by a medical practitioner** in accordance with the latest version of the Diagnostic and Statistical Manual of Mental Disorders."
- s. 5 of the Modernisation Act clarifies that the mental injury must be "**predominantly arising out of or in the course of**" employment.

Likely efficacy

This reform introduced tighter eligibility requirements for mental injury. Its intent was to ensure only claims where there is a valid relationship between the injury and employment would be accepted. Given it is focused on mental injuries (which are generally longer claims than physical injuries), this should have a secondary effect on reducing the number of long tail claims.

To summarise, it will mean that only mental injuries that cause "significant" dysfunction and that predominantly arise out of or in the course of employment are compensable. Its implementation is expected by stakeholders to slow growth in the number of active mental injury claims where they do not meet these new criteria. The intended effect can be explained in three steps:

1. Initially, this could raise the rejection rate for new lodgements, because agents find that workers have not adequately demonstrated how their mental injury meets the eligibility requirements. The new mental injury definition may also improve clarity for agents in assessing mental injury lodgements.
2. Over time, workers may become less likely to lodge a mental injury claim if they believe they are unlikely to meet the new criteria.
3. In that case, the rejection rate may remain steady, but the financial sustainability of the Scheme would be improved as there would be fewer lodgements and reduced growth in active mental injury claims.

However, the long-term effect of this reform is not certain. The causes of mental injuries are complex and interlinked. It might be difficult for medical practitioners, agents and the legal system to clearly determine whether a mental injury is predominantly arising out of a workers' employment. In addition, the Inquiry noted that the threshold of 'significant' is broad and is likely to require judicial interpretation;¹⁷ which may also be complicated and contested. Eventually, courts and appeals bodies will set precedent on the interpretation of the new definition. This will have flow-on effects for lodgement numbers, acceptance rates, and active claim numbers. The true efficacy of this reform is likely to be determined by this precedent and its consequences.

Employer representatives consulted during this Review suggested that the effect of this reform could decline over time. They noted that legal precedent clarifying the new definition may lower the eligibility threshold. Therefore, even if early changes to the acceptance or lodgement rate are observed, they may not be a reliable indicator of the 'new normal'.

4.1.2 Limiting eligibility for mental injuries mainly caused by stress and burnout should also limit lodgements and acceptances.

As stated above, prior to the reforms, the WIRC Act did not have a specific definition of mental injury. Alongside the eligibility criteria mentioned above, the reforms made other changes to the definition of mental injury:

- s. 6 of the Modernisation Act states that a worker is **not eligible if the mental injury was "predominantly caused by work related stress or burnout** that has arisen from events that may be considered usual or typical and reasonably expected to occur in the course of the worker's duties."
- s. 5 states that a worker remains eligible if the mental injury is "**predominantly caused by traumatic events** experienced by the worker that may be considered usual or typical and reasonably expected to occur in the course of the worker's duties."

Expected efficacy

The Scheme was designed to support workers with physical injuries. However, subsequent changes in modern workplaces and societal expectations have seen growth in mental injury claims resulting from stress and burnout that could be considered typical or reasonable. This necessitated reform to improve the clarity and certainty around the type of injuries that should be compensable under the Scheme and ensure this was consistent with the Scheme's objectives and purpose. This is expected to reduce the number of mental injury claims that are accepted by the Scheme and may also reduce the number of mental injury claims that are lodged:

- **Acceptances:** new criteria might lead to increased rejection of claims for mental injuries predominantly caused by work-related stress and burnout. Agents are likely to have greater clarity in identifying compensable claims, based on the nature of preceding events, cause of the injury, and the worker's expected duties.

¹⁷ WorkCover Inquiry report, p.13

- **Lodgements:** reducing the rate of acceptances for stress and burnout-related mental injury claims could lead to fewer workers lodging claims. Growth in the number of lodgements would slow, in turn potentially increasing the acceptance rate because those claims that were likely to be rejected are no longer lodged at all. The net impact on the Scheme sustainability would be the same.

However, while this reform will strengthen the link between a mental injury and employment, there is uncertainty regarding the financial impact due to the following:

- Mental injuries are not always 'predominantly' caused by a single factor, and in cases where they are, the primary cause could be hard to identify. Multiple stakeholders noted that this presents a risk to the efficacy of the reform, as workers might identify other causes of their mental injuries to align with the new eligibility criteria, where they may have previously listed stress and burnout. This will increase reliance on medical practitioners and independent medical examiners to support agents to investigate claims and identify the causes of an injury.
- As with other reforms, courts and appeals bodies will interpret the new eligibility criteria. In particular, they will set precedents relating to which workers typically experience traumatic events in their jobs and should therefore remain eligible. There may also be legal proceedings to determine what constitutes the 'predominant' cause of a mental injury. Over time, these decisions will affect the reform's impact on lodgements and acceptance rates.
- Other stakeholders noted that the growth in mental injuries was reflective of heightened risk for some workers. Of note was the increasing prevalence of serious incidents that can create trauma for frontline workers, such as floods and fires. For these reasons, it is possible that the prevalence of mental injuries may continue to grow. The intent of this reform is to ensure that such injuries caused by traumatic events, or the cumulative impact of exposure to work that is traumatic in nature, remain compensable.

Stakeholders emphasised the importance of the proposed workplace psychological safety regulations being considered under the *Occupational Health and Safety (OHS) Act 2004* in driving workplace safety practices. Moreover, premiums are not the only incentive for employers to prevent injury; notably, lost productivity and time off work are also important.

4.1.3 Introducing a WPI threshold of more than 20 per cent at 130 weeks is expected to limit the proportion of claims that reach the long tail by reducing the subjectivity of the previous test.

Prior to the reforms, the WIRC Act stated that a worker can continue to receive weekly payments after the second entitlement period if they have no current work capacity and are likely to continue indefinitely to have no current work capacity.

S. 13 of the Modernisation Act introduces an additional requirement that a worker must have a whole person impairment of more than 20 per cent resulting from one or more compensable injuries to remain compensable. The degree of impairment must result from one or more compensable physical injuries or mental injuries. Physical and mental injuries cannot be combined when calculating the worker's WPI; rather, the score will be based on the greater level impairment between the physical or mental injury.

Expected efficacy

The previous 130 week test was considered subjective and lacked clarity for agents making determinations, meaning a greater proportion of claims were progressing past 130 weeks than the Scheme objectives support. This has contributed to growth in long-tail claims. The reforms should therefore reduce growth in active claims by restricting the proportion of active claims that continue after 130 weeks. The WPI threshold of more than 20 per cent provides a clearer measure against which eligibility decisions can be made. Indeed, early reports from stakeholders indicate that the proportion of claims passing the 130-week entitlement test has declined since the reforms were introduced.

Multiple stakeholders noted a potential flow-on effect for common law liability. Prior to the implementation of reforms, common law liability was expected to grow in line with overall claims cost. However, the forecast common law liability may increase under the new settings as increased terminations at 130 weeks prompt workers to seek other avenues for compensation. This presents a risk to Scheme sustainability. The threshold to access common law damages was not affected by the reforms, and therefore remains lower than the new WPI threshold. The current WPI threshold to access common law damages (30 per cent) is higher than the new WPI threshold at 130 weeks (more than 20 per cent), but it is a combined physical-mental WPI. The Review heard that most workers were granted a serious injury certificate to access common law damages through the 'verbal threshold' (or 'narrative test'), which is widely considered to be lower than the new WPI threshold. Workers whose eligibility now ceases at 130 weeks might be more likely to make a common law claim than they were under the previous legislation.

While this could offset the reduction in annual claims costs achieved under the new WPI threshold, this was considered in the IFR projection – which remained within the target range. The impact on common law claims will nonetheless need to be closely monitored to ensure the impacts are aligned with projections.

4.2 The reforms made the Scheme more similar to comparators, but Victoria retained greater worker entitlements.

While the reforms introduced new eligibility requirements and a more objective measure of capacity, the Scheme design remains broadly in line with comparable jurisdictions. However, Victoria's eligibility remains broader than comparators and weekly payments are similar to or higher than other Australian schemes.

Victoria's new mental injury eligibility criteria remain less limiting than some other jurisdictions.

Table 1 outlines how mental injury claims are assessed in Victoria, New Zealand and British Columbia, Canada. While some Australian workers' compensation schemes have criteria around work being the significant contributing factor for mental injury eligibility, at the time of the reforms, they had not introduced mental injury criteria. Therefore, New Zealand's and British Columbia's workers compensation schemes were chosen as comparators due to their alternative approaches to determining mental injury eligibility, which varied from those of other Australian schemes. While these schemes were considered when developing the reforms to Victoria's Scheme, differences remain. For example, Victoria does not consider the 'suddenness' of an injury or the level of exposure to an event.

Table 1 | Mental injury eligibility decision tree

Eligibility criteria	Victoria	New Zealand	British Columbia
Diagnosis	Has been diagnosed by a medical practitioner in accordance with the latest version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and causes significant behavioural, cognitive or psychological dysfunction.	Clinically significant behavioural, cognitive or psychological dysfunction.	Diagnosed by a psychiatrist or psychologist that is described in the latest DSM.
Link to work	The mental injury is predominantly arising out of or in the course of employment.	A single, sudden traumatic event that occurred in the worker's place of employment.	Work-related disorder that arose out of the course of employment.

Eligibility criteria	Victoria	New Zealand	British Columbia
Type of event	Exclusionary: There is no entitlement to compensation if the mental injury was predominantly caused by work-related stress or burnout that has arisen from events that may be considered usual or typical and reasonably expected to occur in the course of the worker's duties.	Inclusionary: Must be a single event. A series of events that arise from the same cause can still be considered a single event.	Inclusionary: The injury is a reaction or one or more traumatic events. ¹⁸
Expectation to cause injury		Event could reasonably be expected to cause mental injury if it would distress, horrify or alarm most people.	
Suddenness of event		Event must be sudden in onset or occur quickly with little or no warning, but the event itself may last a short or longer time.	Predominantly caused by a, or a cumulative series of, significant work-related stressor/s, including bullying and harassment. ¹⁹
Exposure to event		Worker must directly experience the event that caused the mental injury.	
Reasonable management action	The disorder is caused by a decision of the employer relating to the worker's employment (performance or working condition) to discipline or terminate the worker. This is an exclusion.		The disorder is caused by a decision of the employer relating to the worker's employment (performance or working condition) to discipline or terminate the worker. This is an exclusion.

There are several important insights from comparing Victoria's eligibility criteria with those in New Zealand and British Columbia:

- The recent reform in Victoria to strengthen the required link between the mental injury and the worker's employment brings it in line with the other two jurisdictions.
- Victoria's legislation does not stipulate the nature of the event. In comparison, New Zealand requires that the mental injury be a single, sudden traumatic event.
- Victoria's legislation stipulates the severity of the event that caused the injury by exception. Namely, that all diagnosed injuries that cause significant behavioural, cognitive or psychological dysfunction are compensable unless they are predominantly caused by work-related stress or burnout that is typical or reasonably expected. In comparison, British Columbia requires the event to be traumatic and New Zealand requires that the event be likely to distress, horrify or alarm most people.

¹⁸ "Traumatic event" is defined as, "an emotionally shocking event, which is generally unusual and distinct from the duties and interpersonal relations of a worker's employment." The policy recognises that all workers are exposed to "normal pressures and tensions at work" and that not all events will be considered emotionally shocking or significant stressors.

¹⁹ A work-related stressor is considered significant when, "it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment." However, a claim for a mental disorder made by a worker employed in an occupation characterised by a high degree of stress or conflict should not be denied simply because they are normally exposed to an intense level of stress.

Victoria continues to offer weekly payments that are similar to or greater than other Australian schemes.

Table 2 outlines the weekly payment time limits imposed for weekly payments in other Australian states and under Comcare.

Table 2 | Weekly benefit income support limits

Year	Vic	NSW ²⁰	Qld ²¹	WA ²²	SA	Comcare
2005	Retirement age	Retirement age	5 years	Retirement age	Retirement age	Retirement age
2012	Retirement age	5 years	5 years	Retirement age	Retirement age	Retirement age
Current Act	2.5 years; To retirement if WPI more than 20% (physical and mental cannot be combined)	5 years (aggregate); To retirement if WPI 21% or more (physical and mental cannot be combined)	5 years; Maximum prescribed amount (216.15 times QOTE) – currently ~398k	Retirement age; Maximum prescribed amount - currently ~\$253k	2 years; To retirement if physical WPI 35% or more; mental WPI 30% or more	Retirement age

Australian workers' compensation schemes broadly take two approaches to setting limits on weekly payments:

- Victoria, New South Wales and South Australia provide an initial time limit on weekly payments, with workers required to clear a WPI threshold to continue receiving payments until retirement. When comparing those states, Victoria's WPI threshold is in line with New South Wales' WPI threshold and lower than South Australia's threshold of 35 per cent for physical injuries and 30 per cent for mental injuries.
- Queensland and Western Australia set an upper limit on workers' total potential compensation through a prescribed amount of approximately \$398,000 and \$253,000 respectively. Queensland includes an additional time limit of five years, while Western Australia allows entitlements until retirement.
- Comcare is unique in that it only represents Commonwealth employees. This means that the industries covered under that scheme are generally narrower than state schemes, which cover the entire economy. As a result, Comcare has historically had lower exposure to high-risk industries like construction, mining and frontline health services, which has allowed it to control its costs more easily.

4.3 Stakeholders identified opportunities for other improvements.

Stakeholders consulted for this Review offered various suggested improvements for the WorkCover Scheme. Many noted that the reforms helped to address the Scheme's immediate financial sustainability challenges and that there are additional opportunities to improve the operation of the Scheme and achievement of the Scheme's three objectives.

Six of the opportunities identified by stakeholders are detailed below:

1. **Increase support for workers to find work with a new employer:** Stakeholders noted that mental injuries often resulted from a damaged working relationship between the worker and their

²⁰ Time limits in NSW and SA do not apply for workers with a serious injury. Also, NSW's WPI threshold does not apply to exempt categories of workers, such as police officers, paramedics, firefighters, coal miners or volunteers.

²¹ QLD weekly payments cease when a lump-sum offer is made by the insurer.

²² An additional amount of up to 75% of the prescribed amount may be ordered where a worker suffers permanent total incapacity and his/her social and financial circumstances justifies.

employer. This can make it difficult for workers to return to their original employer. Stakeholders noted that additional support to find new employment could improve RTW rates.

2. **Increase focus on early intervention:** Multiple stakeholder groups observed that additional investment in improving the worker-employer relationship could benefit prevention, recovery and RTW. They suggested that more and targeted support in the first 13 weeks – particularly from occupational therapists – can help a worker quickly RTW and potentially avoid the need for them to lodge a claim.
3. **Reduce the delay in referring a worker to occupational therapy/rehabilitation:** Occupational therapy and rehabilitation providers highlighted that quicker referrals could improve important early treatment for workers. They noted that for many reasons workers can take months to lodge a claim for a mental injury. Any further delays from lodgement to referral can mean that workers are without critical support when it can be most beneficial. These stakeholders suggested that earlier referral would help reduce recovery time and improve RTW outcomes.
4. **Improve incentives for businesses to proactively improve the safety of their workplaces:** Employer representatives noted the benefits of providing assistance, such as incentives, to improve workplace safety. They described these incentives as a more positive way to promote and recognise best-practice, in addition to enforcement measures for employers who do not comply with their obligations.
5. **Allow occupational therapists to sign certificates of capacity so that workers do not need to see a different practitioner:** This was identified by a range of health representatives as an opportunity to streamline the system. They stated that occupational therapists bring the same level of expertise to workplace injuries as other health practitioners, but cannot sign certificates of capacity. As a result, workers are required to see multiple practitioners to obtain this certificate.
6. **Increase training of case managers, focused on trauma-informed approaches:** Some workers have found that their claims manager was not trained in supporting workers with complex claims. Stakeholders suggested that further training would help agents engage with workers using a trauma-informed approach, thereby improving treatment and RTW potential.

WorkSafe noted that these opportunities are being explored by Return to Work Victoria.

5 The role of Return to Work Victoria

This section analyses RTWV's role in supporting injured workers to RTW. It responds to Term of Reference 1c: *Using a sample of case studies, draw initial insights about how Return to Work Victoria is and can support injured workers.*

5.1.1 Return to Work Victoria aims to improve prevention and treatment.

RTWV was established on 31 March 2024 as a business unit within WorkSafe Victoria, to align with the commencement of the Scheme Modernisation Act. The key objectives of RTWV are to:

- improve prevention activities to reduce the incidence of accidents and diseases in the workplace;
- remove barriers to timely treatment and support for injured workers;
- increase the provision of suitable employment to injured workers;
- ensure workers compensation costs are contained to minimise burden on businesses; and
- assist WorkSafe to maintain a fully funded scheme.

RTWV combines existing WorkCover programs under a new structural alignment within WorkSafe. In addition, the RTW Innovations division was established within RTWV to facilitate the development and piloting of new prevention, early intervention and RTW initiatives.

5.1.2 Return to Work Victoria is already supporting injured workers.

The name 'Return to Work Victoria' implies a focus on supporting workers to move from the Scheme and back into the workplace. In practice, RTWV's role is much broader. RTWV provides support across the life of a claim, including by helping workers access treatment and other recovery-supporting benefits such as funding exercise programs or Occupational Rehabilitation services. These services can be accessed at any point in a claim lifecycle by workers in receipt of a weekly benefit. These services support their readiness to RTW either with their pre-injury employer or with a new employer.

RTWV runs three flagship programs that support workers seeking to transition to a new employer following a workplace injury:

- **New Employer Services (NES):** 3,941 workers accessed NES in the 12 months prior to August 2024. Service offerings include:
 - **Job seeking service** for workers that have certified capacity for work. RTWV offers various services including regular job seeking meetings to build the worker's capability and support to identify any retraining goals.
 - **Transferrable skills analysis** for workers that have no certified capacity for work. RTWV explores the worker's employment and education history, interests, skills, preferences and establishes new employment goals given the worker's preferences and current medical capacity.
 - **Capacity support service** for workers that are certified unfit to RTW but have some capacity to work identified by an IME. Workers and RTWV collaborate to build their capacity in line with RTW and re-training goals, in close partnership with the worker's primary care team. This includes case conferences and the development of a tailored action plan.
- **WorkSafe Incentive Scheme for Employers (WISE):** A complementary service to NES, WISE is an opt-in program for employers who receive a subsidy of up to \$26,000 for offering new employment to an injured worker of 8 hours per week or more. An occupational rehabilitation provider assists in the

placement and completion of documentation for workers and employers. In 2023, a record 374 workers were placed with WISE employers.

- **Transition Support Service (TSS):** Connects injured workers with external services that may assist them to manage their finances, health and social needs independently of the scheme. Can be offered by an agent at any time but must be offered when an injured worker is commencing the 130 week review process, receives an adverse 130 week decision, or is a low income earner and receiving any weekly payment termination. TSS includes providing workers with:
 - information about external services that may assist them with their needs; and
 - tailored support and assistance connecting with external services to individuals when required.

TSS information is provided in all adverse decision letters issued to workers.

The case studies below describe RTWV's support to two injured workers.

CASE STUDY 1

Supporting recovery and return to work (new employer) for an injured delivery driver



Context

A full-time delivery driver lodged a claim for a fall out of the rear of a delivery truck where they landed on their back from a 1.2 metre height. The worker was transported by ambulance to hospital, where radiology findings confirmed a moderate compression fracture of the L1 vertebrae in the lower back. The worker was kept in hospital overnight and discharged the next day.

Support provided to the injured worker

The worker was assigned a mobile case manager. The mobile case manager facilitated multiple medical case conferences with various treating health practitioners to ensure all necessary supports to assist recovery were being coordinated and approved.

The worker was referred for physiotherapy, and subsequently a multidisciplinary pain management program. After the program, the worker was also supported with access to hydrotherapy and a social worker to provide mental health support during this transitional time. The agent subsequently approved funding for a gym/swim program to support the worker's transition to self-management and to assist in improving physical functioning with support of ongoing physiotherapy services.

The mobile case manager also conducted medical case conferences with the worker and treating health practitioners with a goal of finding suitable duties at the pre-injury employer. Unfortunately, due to the nature of the pre-injury job requirements, considering the worker's injury and the ongoing physical restrictions, it was indicated pre-injury return to work was not advisable. The agent referred the worker for occupational rehabilitation services to assist with return to work planning. Initial return to work planning included a medical case conference with the worker and GP where suitable alternative employment was explored.

The occupational rehabilitation provider completed a transferrable skills assessment with the worker to identify skills that align with other job options that considered the worker's new level of functioning and capacity. Vocational planning identified that the worker had previous IT administration experience and multiple IT administration qualifications, demonstrating a number of transferable skills. The occupational rehabilitation provider commenced job seeking services with the worker to assist the worker in preparing for interviews and returning to the workforce. Job seeking services were continuing as part of the ongoing entitlement to medical and like expenses post the second entitlement review decision.

The worker has also been supported with access to WorkSafe's HelpConnect. The service provides access to an occupational rehabilitation provider who assists the worker in accessing supports tailored to their individual needs within the community.

CASE STUDY 2

Supporting recovery and return to work (pre-injury employer – alternate duties) for an injured law enforcement officer



Context

A full-time law enforcement officer lodged a claim indicating complex Post Traumatic Stress Disorder (PTSD), anxiety and depression, due to an accumulation of incidents. This was alleged to have occurred undertaking normal duties across the course of a 28-year career. Pre-injury job requirements included management of up to 300 staff, critical incident management, administrative duties and officer duties as required. The worker was experiencing symptoms of agitation, anxiety, flashbacks, nightmares and hypervigilance, and burnout due to work-related traumas associated with attendance at critical incidents.

Support provided to the injured worker

Initially the worker was being treated by a general practitioner, and then referred for psychology treatment. The agent approved alternative treatment of meditation classes and access to a meditation smartphone app. The agent also approved a clinically-guided rehabilitative exercise program consisting of twelve supervised reviews over a three-month period.

Post completion of the rehabilitative exercise program, the worker transitioned into self-management with the agent funding a gym/swim program, as well as remedial massage sessions. The agent referred the worker for occupational rehabilitation services to assist with return to work planning. Initial return to work planning included a medical case conference with the worker, psychologist, GP and employer representative where it was indicated preinjury return to work was not advisable, and suitable duties explored.

A suitable return to work plan was formulated and endorsed by the worker, their worker's treating practitioners, and the employer. The worker made a partial return to work. Occupational rehabilitation services remained engaged to monitor the return to work and ensure open communication between the worker, employer and treating health practitioners. The worker increased hours to maximum hours, completing alternative duties to ensure the worker's ongoing mental health was supported.

The agent guided the worker in completing an application for s. 165 payments before the expiry of the second entitlement period to ensure a continuation of weekly compensation payments post entitlement ceasing at the end of the second entitlement period. The worker is continuing to be supported with weekly compensation 'top up' payments and medical and like expenses to support ongoing recovery and to remain at work.

5.1.3 Return to Work Victoria develops and pilots innovative programs

In addition to existing programs, RTWV is proactively searching for innovative approaches to support risk reduction and injured workers' recovery and RTW. \$50 million has been allocated over the next three years to engage in strategic partnerships to explore ideas, and pilot interventions in consultation with stakeholders.

RTWV is currently facilitating the establishment of two new programs that will be piloted through third party providers:

- **The Mentally Healthy Workplace pilot:** The objective of the Mentally Healthy Workplaces pilot is to increase mental health awareness and build capability of small and medium sized businesses to identify, manage, monitor and control psychosocial risks and hazards. Upon being contacted by a business, the provider would attend the workplace and undertake an assessment to identify any psychosocial hazards. A plan would be developed with the employer to address any hazards. The service will be offered to small to medium-sized businesses.
- **The Worker Mental Health Support Helpline pilot:** The objective of the Worker Mental Health Support Helpline is to improve the mental wellbeing of workers and prevent mental injuries, including stress and burnout of workers. A third-party provider will be engaged to provide a range of short-term, confidential, professional services, which may include counselling, additional support services or other approaches that support the worker in a holistic way. Employees working in small to medium-sized business without similar services are eligible to participate.

5.1.4 Stakeholders were uncertain about Return to Work Victoria's role but expressed optimism about its potential.

Throughout this Review, stakeholders were asked about their views on RTWV and how it would support injured workers to RTW. They noted that they had limited knowledge of how RTWV can support injured workers. However, they had a general desire to better understand RTWV's plans and programs.

Stakeholders expressed optimism that RTWV could improve RTW outcomes and the Scheme's financial sustainability, without requiring changes to entitlements or premiums.

Some stakeholders – including worker, employer and medical representatives – expressed some concern for workers who may no longer be eligible to continue receiving entitlements beyond 130 weeks due to the new WPI threshold. They noted that these workers might need additional transition support to ensure that they receive appropriate care as they exit the Scheme. These stakeholders suggested that RTWV could potentially play a role in supporting workers transitioning off the Scheme.

Employer representatives expressed a preference for RTWV to direct its focus towards workers who are already on the Scheme. They stated that improving RTW outcomes should be the priority, supported by a long-term ambition to improve prevention and risk reduction.

Appendix A Terms of Reference for the Review

Independent review of the modernisation of the WorkCover Scheme

The WorkCover Scheme (Scheme) was originally established, as WorkCare, by the *Accident Compensation Act 1985* and was primarily designed to assist workers with work-related physical injuries.

In the decades since, various legislative changes have been made to appropriately balance the financial viability of the Scheme with the need to support injured workers. This includes the change to WorkCover in 1992 and the introduction of the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act).

Over time, the number of mental injury claims received by the Scheme has grown significantly and these currently account for approximately 16 per cent of all new claims and around 50 per cent of the costs of all weekly benefits.

Historically, mental injury claims have demonstrated poorer return to work outcomes compared to physical injury claims. Therefore, the growth in mental injury claims has resulted in the duration and cost of claims increasing. More workers with physical injury claims are also continuing to receive weekly compensation for more than 130 weeks.

This increase in claim volume and duration has occurred alongside an average premium rate that did not increase between 2001-02 and 2022-23, and in fact only declined during this period. In combination these factors have placed increasing pressure on the Scheme's financial sustainability, threatening its ability to meet claims liabilities and support injured workers in future.

The reforms introduced in the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (Scheme Modernisation Act) are expected to address these challenges by amending structural Scheme design issues. These reforms balance WorkSafe's obligations to proactively and efficiently manage the viability of the Scheme with the need to ensure that appropriate compensation is paid to injured workers and that safe and effective return to work is prioritised.

Terms of Reference

1. The Independent Review (the Review) will:
 - a. examine the causes of the Scheme's recent financial sustainability challenges;
 - b. examine the expected efficacy of the amendments in the Modernisation Act to restore the Scheme to a financially sustainable position over a reasonable period of time; and
 - c. Using a sample of case studies, draw initial insights about how Return to Work Victoria is and can support injured workers.
2. In addition to publicly available documents, the Reviewer will have confidential access to relevant documents and information for the purposes of completing the Review only, including but not limited to:
 - a. Actuarial and financial reports relevant to the current financial status of the Scheme;
 - b. WorkSafe Board papers and recommendations related to the viability of the Scheme; and
 - c. The Gender Impact Assessment for the Modernisation Act.
3. In informing their findings, the Reviewer is required to consult with the following stakeholders involved in or impacted by the operation of the Scheme:
 - a. the WorkCover Advisory Committee;
 - b. the Workplace Incidents Consultative Committee;
 - c. Worker representatives and unions, including but not limited to the Victorian Trades Hall Council and its affiliates;
 - d. Employer representatives, including but not limited to the Australian Industry Group, the Victorian Chamber of Commerce and Industry and the Self-insurers Association of Victoria;
 - e. Legal representatives, including but not limited to the Australian Lawyers Alliance and the Law Institute of Victoria;
 - f. Medical representatives, including but not limited to the Royal Australian College of General Practitioners Victoria and the Royal Australian and New Zealand College of Psychiatrists; and
 - g. Occupational rehabilitation providers and occupational therapists, including but not limited to the Australian Rehabilitation Providers Association and Occupational Therapy Australia.
4. The Reviewer should present their findings on the causes of the Scheme's financial sustainability challenges and the extent to which the Modernisation Act, in combination with the prevailing premium rate, addresses these over a reasonable timeframe.
5. The following matters do not fall within the scope of the Review:
 - a. WorkSafe's Occupational Health and Safety framework, regulatory functions and associated prevention activities;
 - b. Proposed reforms to WorkSafe's Occupational Health and Safety framework, including not but not limited to the proposed Occupational Health and Safety (Psychological Health) Regulations;
 - c. WorkSafe's existing claims management model;

- d. Claims handling and individual claims decisions made by WorkSafe, its Agents or self-insurers; and
- e. WorkCover's premium setting methodology, premium collection and administration arrangements.

Governance and Deliverables

- 6. The Reviewer will be appointed by the Minister for WorkSafe and the TAC from a list of recommended candidates with suitable experience in workers compensation systems provided by the Department of Treasury and Finance.
- 7. The Reviewer will commence their work no later than 30 August 2024 and be supported by a secretariat provided jointly by WorkSafe and the Department of Treasury and Finance.
- 8. The Reviewer will provide a final written report, including any recommendations, to the Minister for WorkSafe and TAC by 29 November 2024.

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Appendix B Glossary

Acronym	Full Term
ACA	<i>Accident Compensation Act 1985 (Vic)</i>
BEP	Break even premium
CAGR	Compound annual growth rate
DTF	Victorian Department of Treasury and Finance
FDC	Fully developed cost
IFR	Insurance Funding Ratio
the Inquiry	<i>The Inquiry into the Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023</i>
IME	Independent medical examiner
Modernisation Act	<i>Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024 (Vic)</i>
RTW	Return to work
RTWV	Return to Work Victoria
WIRC Act	<i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i>

Appendix C Bibliography

The following list outlines all documents referenced in this report, including past reviews, legislation and academic research.

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