

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

INFORMATION PAPER



WCRS

Workers' Compensation Regulatory Services
worksafe.qld.gov.au



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Terms of reference

Section 584A of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) requires the responsible Minister to ensure a review of the operation of the Queensland workers' compensation scheme (the scheme) is completed at least once every five years; and as soon as practicable after the review is completed, table the review report in the Legislative Assembly. The next (and third review) must be completed by 30 June 2023.

The objective of the review is to report to Parliament on:

1. the performance of the scheme in meeting the objectives under section 5 of the Act, including:
 - a. maintaining a balance between providing fair and appropriate benefits for injured workers or dependants and persons other than workers, and ensuring reasonable cost levels for employers;
 - b. ensuring that injured workers or dependants are treated fairly by insurers;
 - c. providing for the protection of employers' interests in relation to claims for damages for workers' injuries; and
 - d. providing for employers and injured workers to participate in effective return to work programs.
2. emerging issues facing the scheme;
3. the effectiveness of current rehabilitation and return to work programs and policy settings, including ways to increase Queensland's current return to work rate;
4. the management of mental injuries (i.e. psychological injuries) in the scheme such as:
 - a. further opportunities to improve the experience of injured workers with a mental injury;
 - b. the growth of secondary mental injuries claims i.e., mental injury claims that arise with or following a physical injury; and
 - c. the impact of the presumptive post-traumatic stress disorder provisions for first responders introduced in the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2021*;
5. considering the issues raised in the review, any matters that may be relevant in the remake of the *Workers' Compensation and Rehabilitation Regulation 2014* (the Regulation); and
6. any national regulatory proposals or findings from national reviews in relation to gig workers and other forms of insecure work that should be taken into account by the Government in its consideration of the outcomes of the *2019 Consultation Regulatory Impact Statement for Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry*.



Scheme covers over

2.6 MILLION

**WORKING
QUEENSLANDERS**



Scheme comprises

**WORKCOVER QUEENSLAND
AND 27 SELF-INSURED
EMPLOYERS**

**LOWEST
PREMIUM RATE**

of any State or Territory in Australia

\$1.23 PER \$100
OF WAGES

(after discounts) for 2022-23



WorkCover Queensland

FUNDING RATIO OF

142.5%



OVER

90,000

claims lodged per year



AROUND

6%

of claims lodged relate
to **PSYCHOLOGICAL
INJURY**



LESS THAN

4%

of claims seek
COMMON LAW
damages



**THE RETURN
TO WORK RATE**
for injured workers was

<91.7%¹

**FASTEST DISPUTE
RESOLUTION**



HIGHEST PROPORTION

OF PAYMENTS MADE DIRECTLY TO INJURED WORKERS

of any other Australian workers' compensation scheme

¹ Please refer to page 18 for further information about the return to work rate.

Queensland's workers' compensation scheme

The Queensland workers' compensation scheme (the scheme) is a no fault, centrally funded, short tail scheme that covers more than 182,000 employers and an estimated 2.6 million workers. The scheme is established under the Act.

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

An injured worker who meets the Act's criteria is entitled to statutory compensation (as opposed to common law damages) regardless of whether it is the worker's or the employer's fault that the injury occurred. Issues of fault and negligence (including contributory negligence by a worker) may be dealt with in a common law action for damages. The short tail nature of the Queensland scheme is offset by the ability of injured workers to seek damages at common law.

The Act also contains an injury management framework that emphasises the rehabilitation of injured workers for return to work. This includes responsibilities on insurers and employers in relation to the rehabilitation and early return to suitable duties of injured workers

Administration of the scheme is undertaken by:

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

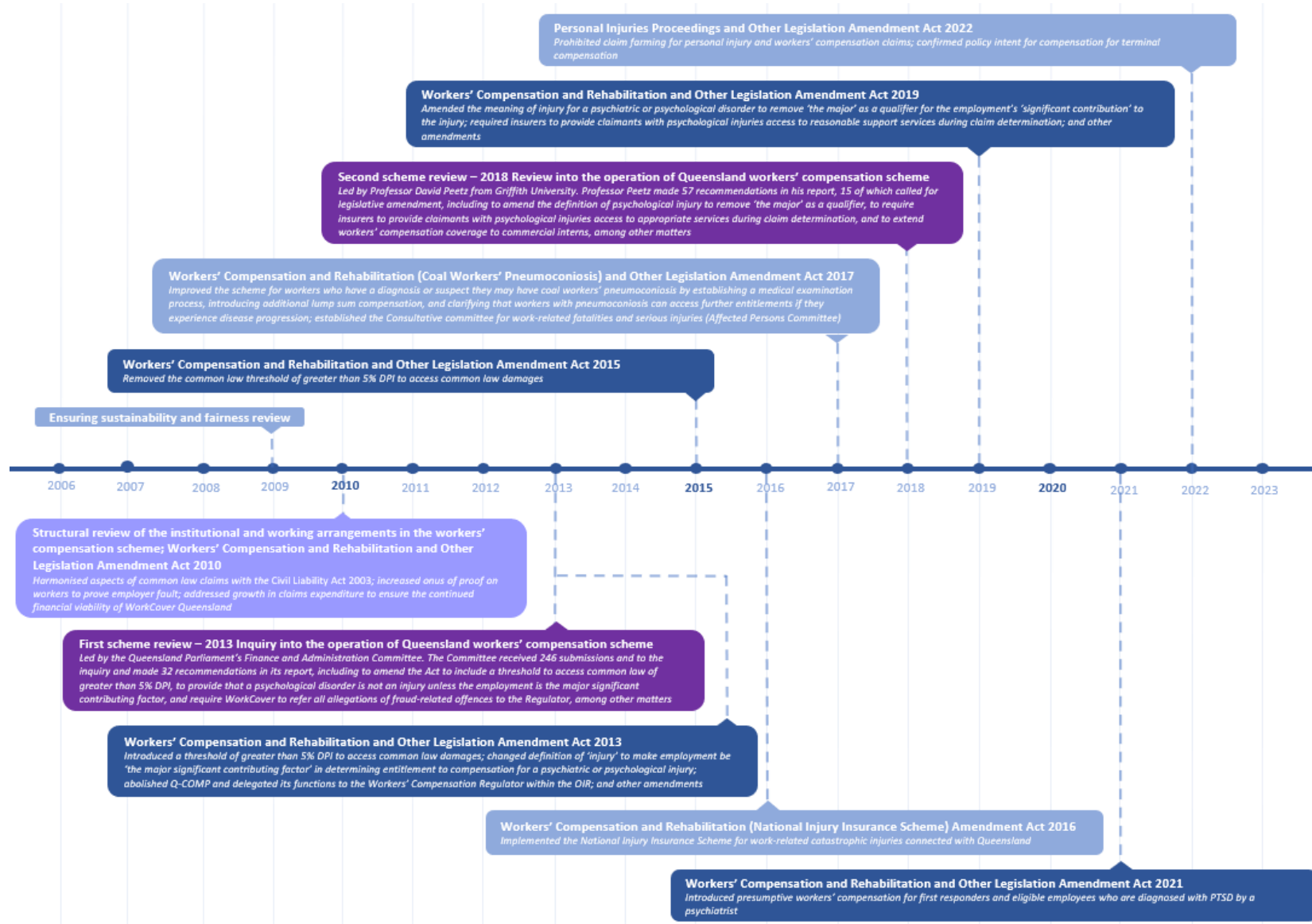
The scheme has experienced frequent review and reform since the early 1990s. Major rewrites of workers' compensation legislation in 1990, 1996 and 2003 resulted in significant changes, including the establishment of WorkCover and the separation of regulatory functions from the commercial delivery of services.

The last 15 years of legislative amendment have strengthened Queensland's position as one of the most efficient and balanced workers' compensation jurisdictions in Australia. A timeline of key changes is shown in **figure 1** below.

A number of these reforms have arisen from statutory reviews of the scheme conducted under section 584A of the Act. To date, two such reviews have been undertaken:

- one in 2013, undertaken by the Queensland Parliament's Finance and Administration Committee (found [here](#)); and
- one in 2018, undertaken by Professor David Peetz of Griffith University (found [here](#)).

Figure 1 – legislative amendments and scheme reviews in the last 15 years



Financial position of the scheme

Overall, the scheme is financially sound, providing benefits to injured workers and other beneficiaries at low costs for employers. Select information about the financial position of the scheme is summarised below.

WorkCover financial position

As at 30 June 2022, WorkCover recorded total equity of \$1.871 billion. It remains fully funded with a funding ratio of assets over liabilities of 142.5 per cent.

WorkCover recorded an operating loss (after tax) of \$326 million in 2021-22,¹ largely due to rising claims costs and significantly poorer investment returns from the difficult economic climate. Rising statutory claims costs is a trend being experienced across all workers' compensation jurisdictions in Australia. WorkCover's investment portfolio is managed by Queensland Investment Corporation. The net market value in funds invested as at 30 June 2022 was \$5.466 billion.

Self-insured employers

Like other jurisdictions in Australia, the Queensland scheme allows for self-insurance. When deciding an application for a self-insurance licence, the Regulator must consider whether the employer is likely to continue to be able to meet its liabilities and the long-term financial viability of the employer including its profitability and liquidity. Due to the stringent prudential requirements placed upon them, the solvency risk posed to the scheme by self-insurers is low. In particular, the Act mitigates the risk of self-insurers defaulting on their workers' compensation liabilities by requiring self-insurers to lodge a security (such as a bank guarantee) with the Regulator for 150 per cent of their estimated claims liability (ECL)², and to have approved reinsurance for an unlimited amount.³ Solvency risks are further mitigated by the Regulator's regular monitoring of self-insurer performance and financial results, as well as the general financial strength of self-insurers.

Scheme efficiency

Queensland's centrally funded scheme provides economies of scale which contributes to Queensland's efficiency. In 2020-21 over 66 per cent of all scheme expenditure in Queensland was spent directly on the claimant, up from 64.3 per cent in 2016-17. This was higher than in other centrally funded or managed schemes in both years. A further 22.7 per cent was spent on services for the claimant, slightly down from 22.9 per cent in 2016-17. The cost of insurance operations was also the lowest of the centrally funded or managed jurisdictions at 6.5 per cent of total scheme expenditure, down from 7.4 per cent in 2016-17. A comparison of these and other scheme costs in 2020-21 is shown in **figure 2** below.

¹ WorkCover Queensland, 'Annual Report 2021-2022' <<https://www.worksafe.qld.gov.au/resources/publications/annual-reports>>.

² *Workers' Compensation and Rehabilitation Act 2003*, section 84.

³ *Workers' Compensation and Rehabilitation Act 2003*, section 86.

Figure 2 – Comparisons of scheme expenditure for centrally funded and managed schemes

2020–21	Percentage of total expenditure (%)				
Scheme costs	NSW	Vic	Qld	SA	Comcare
Direct to claimant	49.9	58.1	66.3	48.7	53.3
Services to claimant	25.8	19.4	22.7	24.0	26.1
Insurance operations	17.8	16.5	6.5	19.9	9.9
Regulation	0.7	1.2	0.7	1.1	0.9
Dispute resolution	1.9	1.3	0.8	1.1	0.2
Other administration	3.8	3.5	3.1	5.2	9.7
Total	100.0	100.0	100.0	100.0	100.0

Source: Comparative Performance Monitoring Report 24th Edition⁴

WorkCover premiums

Employers insured with WorkCover pay an annual premium. This premium is used for payments to injured workers for income replacement and medical treatment, rehabilitation and return to work support, injury prevention activities and scheme administration.

The actual premium paid by an employer varies according to the size, claims experience and the employer's industry. Premium collected in a year pays for all injuries that occur in that year, which will be paid out in that year and over future years.

Premium rates

For the past eight years, WorkCover has consistently delivered the lowest average premium rate of \$1.20 per \$100 of wages for employers when compared with all other State schemes. In March 2022, the WorkCover Board notified the Minister for Industrial Relations of its decision to increase the average premium rate to \$1.23 per \$100 of wages (after discounts), a 2.5 per cent increase. This is the first premium rate increase since 2012-2013.

The premium rate increase has been driven by:

- increasing statutory claim durations and payments (including increasing psychological injury claims);
- an increase in injured workers remaining in the scheme beyond one year; and
- potential trends in common law claims with a primary or secondary psychological injury.

These trends are also being experienced in other workers' compensation schemes across Australia.

Even with the increased premium rate, Queensland's average premium rate remains the lowest of all States and territories. The Commonwealth workers' compensation insurer (Comcare) is able to offer

⁴ Safe Work Australia, 'Comparative performance monitoring report 24th edition' (2022) <<https://www.safeworkaustralia.gov.au/comparative-performance-monitoring-report-24th-edition>>.

a lower average premium rate reflective of its industry mix, which principally comprises the Australian Public Service.

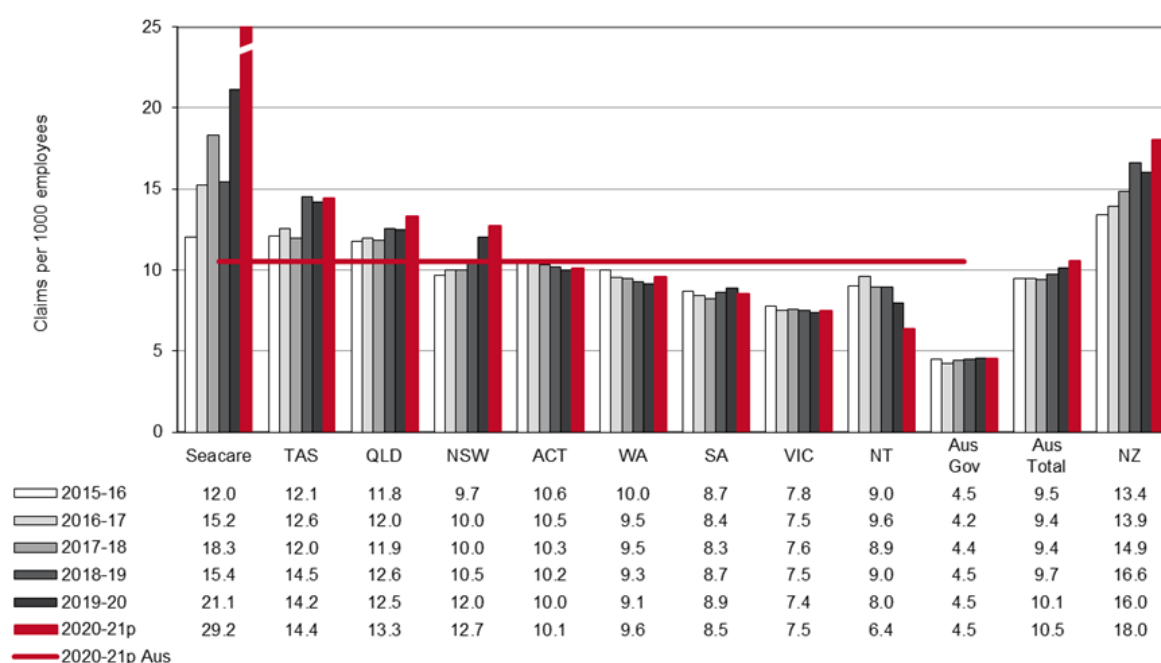
In addition, the scheme has delivered premium savings by exempting apprentices from premium calculations and offering early payment premium discounts. Through these initiatives, employers have saved \$387.4 million since 1 July 2017.

Impact of injury rates on premiums

Premium is calculated using the Experience Based Rating (EBR) system which multiplies an employer's *wages* by their *premium rate*. It is designed to reward employers with good injury prevention and management.

An employer's injury rate influences its premium, affecting not only the employer's EBR but also their industry's rate and the scheme's average premium rate. **Figure 3** below shows the incidence rate of serious injuries across jurisdictions for the period 2015-16 to 2020-21. As shown, Queensland has had a six per cent increase in the serious injury rate over the four-year period 2015-16 to 2020-21. The preliminary data for 2020-21 shows an overall increase in the Australian serious injury incidence rate.

Figure 3 – Serious injury rate (claims per 1000 employees) by jurisdiction



Source: Comparative Performance Monitoring Report 24th Edition⁵

Injury prevention programs and initiatives

Workplace Health and Safety Queensland (WHSQ) are responsible for improving work health and safety in Queensland and helping reduce the risk of workers being killed or injured on the job. WHSQ performs regulatory functions of the Regulator under the *Work Health and Safety Act 2011* (WHS Act) to enforce work health and safety laws; investigate workplace fatalities and serious injuries; prosecute breaches of legislation and educate employees and employers on their legal obligations. Safety and

⁵ Safe Work Australia, 'Comparative performance monitoring report 24th edition' (2022) <<https://www.safeworkaustralia.gov.au/comparative-performance-monitoring-report-24th-edition>>.

health in Queensland's mining, quarrying, petroleum, gas and explosive industries is separately regulated by Resources Safety & Health Queensland.

WHSQ and WorkCover jointly deliver the Injury Prevention and Management (IPaM) program, a free initiative designed to help Queensland businesses develop and implement sustainable health, safety and injury management systems and, if people are injured, return them to meaningful and appropriate work as soon as practical.

As part of the program, a team of experienced advisors located throughout Queensland work with employers who have comparatively high workers' compensation claims rates and costs compared to other businesses of similar size and nature.

Since its introduction in 2011, IPaM has assisted over 2,700 Queensland employers to improve their health, safety and injury management systems. In the 2021-22 financial year, 528 employers were assisted by IPaM advisors and 2,172 site visits were conducted.

The IPaM program includes ongoing review to ensure continued value, reach and influence and ultimately ongoing improvement to health, safety and return to work outcomes in Queensland.

In 2019, the Act was amended to clarify that WorkCover has the power to fund and provide programs and incentives to encourage improved health and safety performance by employers.⁶ WorkCover must consult with the Regulator under the WHS Act and certain prescribed entities before doing so.⁷

Subsequent to the amendments, WorkCover introduced the Injury Risk Reduction Initiatives (IRRI) program. The IRRI program was designed to identify, investigate and pilot initiatives to assist WorkCover, in collaboration with WHSQ and other key stakeholders, to reduce workers' exposure to injury risk and associated impact. In the following years, the IRRI program focused on high-risk industries, employers, injuries, demographics and equipment. Since its introduction, the IRRI program has been expanded to implement new pilots with selected employer groups, such as the horticulture industry, health and community services sector, and community clubs. Existing pilots have been expanded in aged and disability care and the manufacturing sector.

⁶ *Workers' Compensation and Rehabilitation Act 2003*, sections 383(1)(b) and 385A(1).

⁷ *Workers' Compensation and Rehabilitation Act 2003*, section 385A(2).

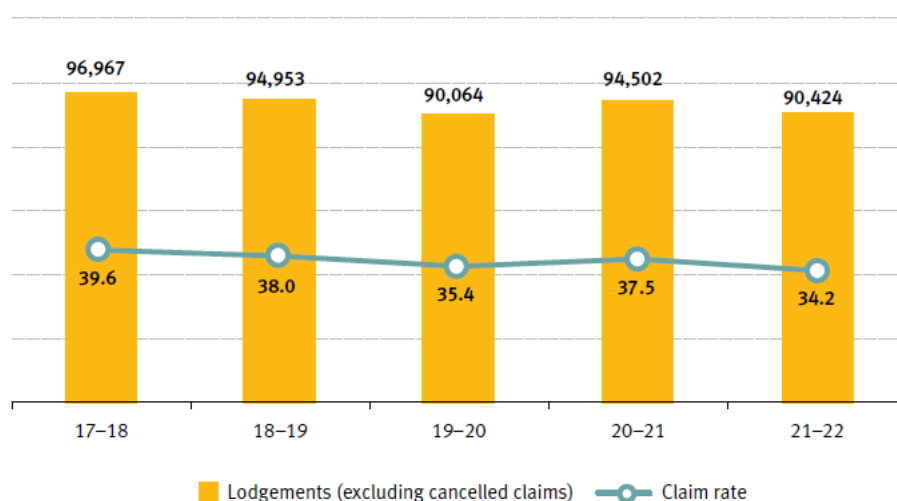
Claims experience

Statutory claims

In 2021-22, 90,424 injured workers lodged statutory workers' compensation claims in Queensland. This represents a 4.3 per cent decrease in claims lodged from 2020-21 (94,502). It is also important to note the claim rate (i.e., claims per 1,000 employed people) between the two years has decreased 8.8 per cent, down from 37.5 to 34.2 claims per 1,000 employed people.

For greater context, looking at these same measures over the five period to 2021-22, claim lodgements have reduced (6.7 per cent) while the claim rate also reduced (13.6 per cent) over the period. This is shown in **Figure 4** below.

Figure 4 – Claim rates (per 1,000 employed people) and lodgements 2017-18 to 2021-22



The average statutory claim duration (measured by the number of workdays by finalised time lost claim) increased from 45.9 days in 2017-18 to 72 days in 2021-22. Over the same period, the average cost per finalised time lost claim increased from \$17,450 in 2017-18 to \$28,163 in 2021-22.

The cause of the increase in claim durations is likely to be multifaceted and due to several potential drivers including changes to the injury mix including the incidence of psychological injuries (which have longer average durations), claims management practices (including a focus on rehabilitation and return to work), economic conditions, and behavioural changes from claimants and the medico/legal professions.

Common law claims

Access to common law is available to all workers in Queensland who can prove negligence against an employer and who have a work injury as defined by the Act. Consistent with this, the scheme provides employers with insurance cover for the provision of common law damages. Liability and quantum may be contested by WorkCover and self-insurers both in the pre-proceedings process and in court.

If a worker's degree of permanent impairment (DPI) is less than 20 per cent, the worker must choose between receiving the statutory lump sum compensation payment and seeking damages at common law. If the DPI is assessed at 20 per cent or more, the injured worker can accept both the lump sum payment and seek damages at common law.

During 2021-22, 3,286 injured workers lodged a common law claim to access financial support for the impact of their injury on their life and ability to work (1.4 per cent increase from 3,241 in 2020-21). Approximately 12% of common law claims relate to psychological injury.

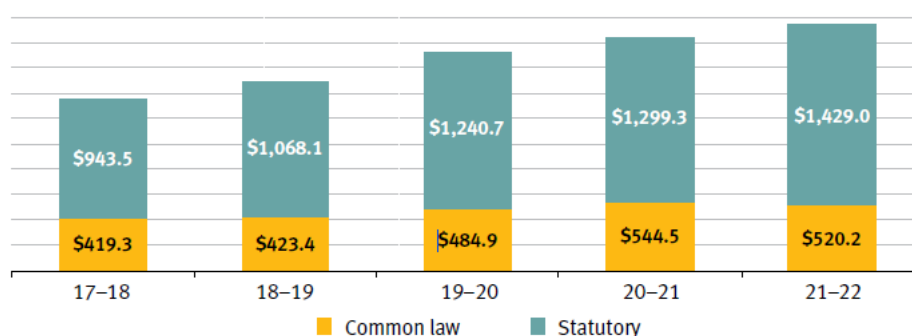
While common law claims make up only a small percentage of claim numbers, they represent a large proportion of scheme costs. In 2021-22, common law claims cost a total of \$520.2 million. This represented a 4.5 per cent decrease from the 2020-21 cost of \$544.5 million.

The average settlement cost of a finalised common law claim (excluding nil settlements) has increased 1.9 per cent from \$172,524 in 2020-21 to \$175,772 in 2021-22. The cost of a common law claim can include payments for loss of earnings, pain and suffering, plaintiff legal costs, and medical and hospital costs.

Total claim payments

As shown in **figure 5** below, total payments for workers' compensation claims in 2021-22 were \$1,949.2 million. Common law payments made up 26.7 per cent (\$520.2 million) and statutory claim payments made up 73.3 per cent (\$1,429.0 million).

Figure 5 - Scheme payments 2017-18 to 2021-22



Specific claim types and scheme trends

COVID-19 claims

Claims for COVID-19-related injuries are assessed in the same manner other injury claims. As at 30 November 2022, the scheme has accepted 451 claims in relation to COVID-19 for both physical and psychological injuries. In total, 248 claims related to COVID-19 have been rejected since the start of the pandemic.

Presumptive legislation for first responders and eligible employees

In May 2021, the Act was amended to introduce a presumptive compensation pathway for first responders and other eligible employees diagnosed with post-traumatic stress disorder (PTSD) (presumptive provisions).

The presumptive pathway aims to provide this cohort with easier, timelier access to necessary support and compensation by reversing the onus of proof and deeming their injury to be work-related unless there is evidence presented by the employer to the contrary. The Government recognised that this approach was integral to ensuring the long-term mental health, rehabilitation and return to work outcomes for these workers.

As part of its response to the report of the Queensland Parliament's Education, Employment and Training Committee (EETC) in relation to the amendments, the Government committed to evaluating the appropriateness of the scope where other similar occupations may be justifiable. In developing the amendments, the Government consulted extensively with stakeholders representing first responders and other eligible employees, including registered industrial organisations, employers and the medical profession. The scope of the amendments was carefully considered, using an evidence-based approach using workers' compensation claims data, published literature, as well as the guidance and outcomes from recent reviews into first responder mental health, such as Beyond Blue's report, *Answering the Call*,⁸ and the 2019 Senate Committee Inquiry into first responder mental health.⁹ In addition, the scope of the amendments were balanced with providing presumptive coverage to those workers most at risk of cumulative exposure to trauma and developing PTSD and ensuring the ongoing financial sustainability of the scheme.

Further, at the time, the Government noted that all workers with trauma-related psychological injuries were not disadvantaged by the introduction of the presumption. All Queensland workers are currently able to make a workers' compensation claim for any work-related injury, including PTSD and other psychological injuries.

For 2021-22 there were almost 700 accepted claims for PTSD in the scheme. This includes claims accepted through both the presumptive pathway and the standard claims pathway. Emerging trends in PTSD claims by occupation show that the potential for increases in these claims are likely to come from occupations already covered by the presumptive legislation. The public sector accounts for the majority of claims (84.3 per cent) noting most first responders and eligible employees are employed in the public sector.

National Injury Insurance Scheme claims

The Queensland workers' compensation scheme also includes the National Injury Insurance Scheme (NIIS) for workers who are catastrophically injured in workplace accidents connected with Queensland. The NIIS is consistent with the NIIS for motor vehicle accidents under the *National Injury Insurance Scheme (Queensland) Act 2016*.

Workers are eligible for treatment, care and support (TCS) payments if they sustain certain serious personal injuries such as serious permanent spinal injury, a traumatic brain injury, high level or multiple amputations, severe burns or permanent traumatic blindness. In contrast with the Queensland workers' compensation scheme's short-tail design, eligible workers will have TCS provided for their lifetime unless they opt out of these payments and accept an award of treatment, care and support common law damages.

The Act empowers insurers to contract and contribute to operating expenses of the NIISQ agency established for the NIIS for motor vehicle accidents to perform their functions and exercise their powers in relation to TCS.

As at November 2022, 81 claims have been managed in the NIIS scheme for workplace accidents since its commencement in September 2016.

⁸ Beyond Blue Ltd, *'Answering the call' national survey, National Mental Health and Wellbeing Study of Police and Emergency Services – Final Report* (2018).

⁹ Australian Senate Education and Employment References Committee, *'The people behind 000: mental health of our first responders'* (2019).

Queensland Treasury and WCRS have conducted a separate consultation process in relation to seeking stakeholder feedback about, among other things, pre-conditions for re-entry to NIIS after accepting lump sum TCS damage and exiting the NIIS. Work on this matter is continuing.

Occupational dust diseases

Queensland has undertaken a significant body of national-leading work in relation to pneumoconiosis (including silicosis and Coal Workers' Pneumoconiosis (CWP)) and other mine dust lung diseases (MDLDs) to ensure workers are appropriately diagnosed and supported through the workers' compensation scheme. This has included:

- Establishing the [Mine Dust Health Support Service](#) (MDHSS), which is a single point of contact for workers to access information and support regarding mine dust lung disease, and is a joint initiative between OIR, the independent statutory body Resources Safety and Health Queensland (RSHQ), and WorkCover. This service offers independent and confidential support and makes it easier for workers and their families to connect to the information, services and supports they need. The MDHSS was independently reviewed in 2021 and found the service is meeting its intent and providing quality support to current and former workers to navigate their mine dust health journey;
- Providing for a free lung disease examination for all former or retired Queensland coal workers who stopped working in the industry before 1 January 2017 and have 6 months cumulative exposure to coal dust through their employment in Queensland. This free lung disease examination was available until 1 January 2022;
- Facilitating world first expert medical [guidelines](#) to assist with decisions on safe return to work after a MDLD diagnosis. The guidelines provide a best practice and evidence-based framework which considers the individual circumstances of the worker's MDLD, including its severity and the best outcome that can be achieved;
- WorkCover funding free health screening for all current and former workers in the stone benchtop fabrication industry. As at 30 June 2022, 1,053 workers and former workers in the industry have undergone a free health assessment. 204 stonemasons have been diagnosed with silicosis, 36 have a diagnosis of progressive massive fibrosis and a further 13 workers have a respiratory condition that is not silicosis;
- Counselling support for workers in the mining and stone benchtop fabrication industry;
- Implementing a new lump sum payment to workers with pneumoconiosis based on the severity of their disease and the ability to re-open a workers' compensation claim if a worker experiences disease progression;
- Facilitating the development of a clinical [guidelines](#) by medical professionals and for medical professionals for the consistent assessment and diagnosis of diseases related to respirable crystalline silica exposure; and
- WorkCover commissioning [research](#) to develop an evidence-based approach to return to work and vocational rehabilitation support for workers suffering from silicosis. This research aimed to identify factors, principles or limitations that need to be considered in designing tailored return to work plans for workers to ensure they achieve a safe and early return to work.

Medical research grant funding

More recently, the Queensland Government committed up to \$5 million over four years for medical research to improve the health and wellbeing of workers suffering from occupational dust lung disease, in particular CWP and silicosis (including accelerated silicosis). The funding aims to support

medical research that would benefit Queensland workers with occupational dust lung diseases in the following areas:

- understanding the pathogenesis of silicosis (including accelerated silicosis) and CWP;
- identifying factors to determine disease severity and risk of disease progression (linked to ability to return to work); and
- determining the efficacy and sensitivity of methods for early diagnosis, prevention and progression of disease including anti-fibrotic medications, pulmonary rehabilitation, whole lung lavage and other developing treatments.

Following a competitive evaluation process, over \$3 million has already been granted to Queensland researchers, including interstate and international research collaborations. A further tender process is underway to award the remaining funding. More information can be found [here](#).

Claims for psychological injuries

The proportion of psychological statutory claims as a percentage of all lodgements increased slightly for 2021-22, at 6.1 per cent (6 per cent in 2020-21). Psychological claims currently represent 10.6 per cent of total statutory payments (\$152 million for 2021-22) and have an average finalised time lost claim cost of \$61,047 (\$55,402 in 2020-21). The long duration of psychological injury claims affects the average finalised time lost claim cost.

In 2021–22, the average duration of a psychological injury claim was 181.4 days (168.5 days in 2020–21) compared with the overall scheme average of 72 days. The presence of a psychological injury also impacts the likelihood of a worker returning to work.

Summary of recent reforms

Since 2018 there has been significant reform to the Act and the scheme to support workers suffering from psychological injury.

Grounded in and supported by the recommendations of multiple reviews and stakeholder reference groups, this work has included:

- establishing the Workers' Psychological Support Service (WPSS) to provide additional support to workers who have experienced a work-related psychological injury;
- changing the definition of injury for psychiatric or psychological disorders to remove 'the major' as a qualifier for work's 'significant contribution' to the injury, to align with the same test as a physical injury;¹⁰
- requiring insurers to provide claimants access to supports such as medical treatment and/or counselling for psychological injury claims up until a decision is made to minimise the severity, duration and recurrence of psychological illness;¹¹
- increasing the opportunities injured workers have to return to meaningful work by extending the obligation on insurers to provide access to an accredited return to work program to workers at the end of their statutory claim if they are fit for work but have no job to return to;¹²
- giving insurers the discretion to accept a claim lodged more than six months after being assessed by a doctor if the worker lodges their claim within 20 business days of certification

¹⁰ *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*, section 34.

¹¹ *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*, section 65.

¹² *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*, section 61.

of an incapacity, because many workers with psychological injuries may not make a claim upon diagnosis because they were not incapacitated;¹³

- protecting apologies and expressions of regret which recognises apologies have a positive role in resolving disputes and providing a mechanism for achieving justice between people with differing perspectives;¹⁴
- implementing a presumptive streamlined pathway for first responders and eligible employees diagnosed with PTSD;
- an action plan developed with stakeholders with practical initiatives to address other areas of concern for first responders such as stigma, workplace culture, and return to work opportunities; and
- more recently, developing the WHSQ *Managing the risk of psychosocial hazards at work Code of Practice 2022* to assist persons conducting a business or undertaking to manage psychosocial hazards and risks.

Workers' Psychological Support Service

The WPSS was established in 2018 to improve the level of assistance available to Queensland workers experiencing a work-related psychological injury.

The WPSS is a confidential and independent service that connects such workers with established community and other independent support services. Further information about the service can be found [here](#).

Support is available to workers from the commencement of the claims process, regardless of the ultimate outcome of the claim. The WPSS is promoted to all stakeholders and agencies across government to empower workers to access the service independently. With consent, clients may also be referred to the WPSS through insurers, WCRS, employers, registered industrial organisations and treating medical or allied health professionals.

An evaluation of the WPSS was conducted in 2021. It found the service was successful in meeting its purpose and service deliverables, provided useful and timely support to workers throughout the workers' compensation process, and remained in demand.

Early intervention supports

To reduce the severity, duration and recurrence of psychological injuries, in October 2019 the Queensland Government amended the Act to require insurers to take all reasonable steps to provide reasonable services to support workers with a claimed psychological injury during the claim determination period.¹⁵

Early intervention is understood to have a positive effect on claim outcomes, including a reduction in the number of days off for the worker, reduction in average claim costs and slightly improved return to work outcomes.

Data gathered since the commencement of the early intervention amendments indicates that around 53 per cent of psychological injury claims lodged since 1 October 2019 (an average of 600 claims per quarter) have accessed the early intervention and support provided by the scheme.

¹³ *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*, section 46.

¹⁴ *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*, section 69.

¹⁵ *Workers' Compensation and Rehabilitation Act 2003*, section 232AB.

The cost to the scheme for workers accessing psychological support services is around \$6.7 million to date. The average cost per decided claim is around \$592.

Psychosocial Hazards Code of Practice

In November 2022, WHSQ published the *Managing the risk of psychosocial hazards at work Code of Practice 2022* (the Code).

The Code will assist persons conducting a business or undertaking to manage psychosocial hazards and risks. It discusses control measures for specific psychosocial hazards and risks such as work overload, poor support, isolated work, workplace violence and other hazards.

The Code will commence on 1 April 2023 alongside the *Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022*, which provides for the management of psychosocial hazards through risk management provisions of the *Work Health and Safety Regulation 2011* (WHS Regulation).

Rehabilitation and return to work

Since 2019 there have been a number of reforms that aim to improve rehabilitation and return to work outcomes in Queensland. This has included:

- requiring employers to notify their insurer of their Rehabilitation and Return to Work Coordinator, what workplaces they have responsibility for and how they are appropriately qualified for the work being undertaken at those workplaces. This aims to facilitate more effective communication with coordinators and enable targeted compliance and education with coordinators to support them in undertaking their important role; and
- requiring insurers to continue providing rehabilitation and return to work services in cases where the injured worker's statutory entitlement has ceased but they have not yet been able to return to work. This ensures workers are given every reasonable opportunity to achieve a durable return to work and their rehabilitation support is not ended prematurely when their statutory claim ends. In response, WorkCover established its [Employment Connect program](#) which provides access to services such as help from consultants specialising in return to work, funding for courses to support upskilling, and job preparation and placement help.

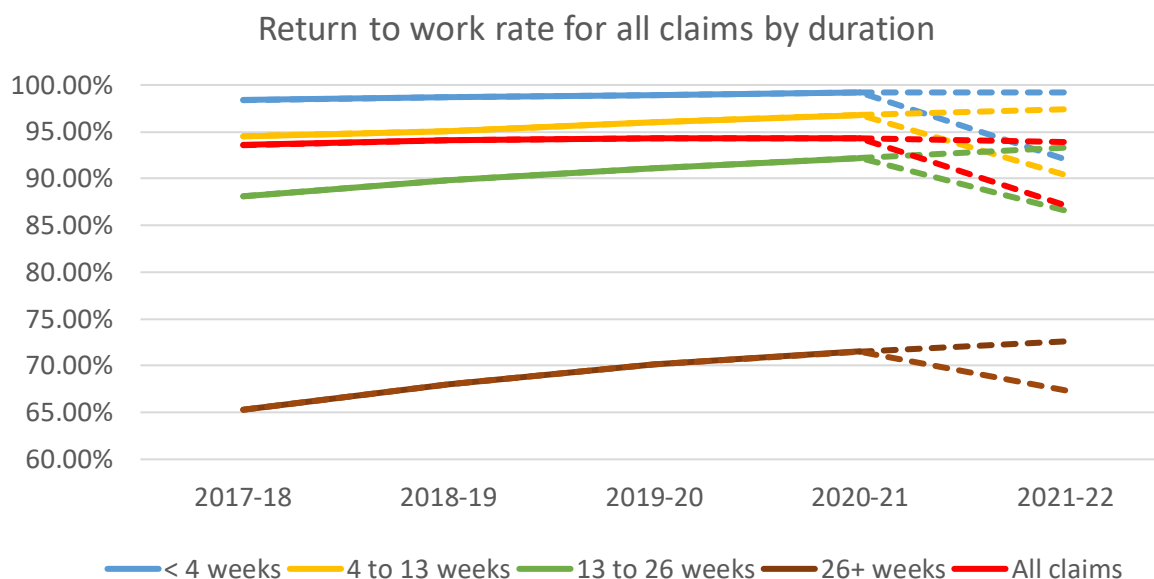
Return to work rate

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

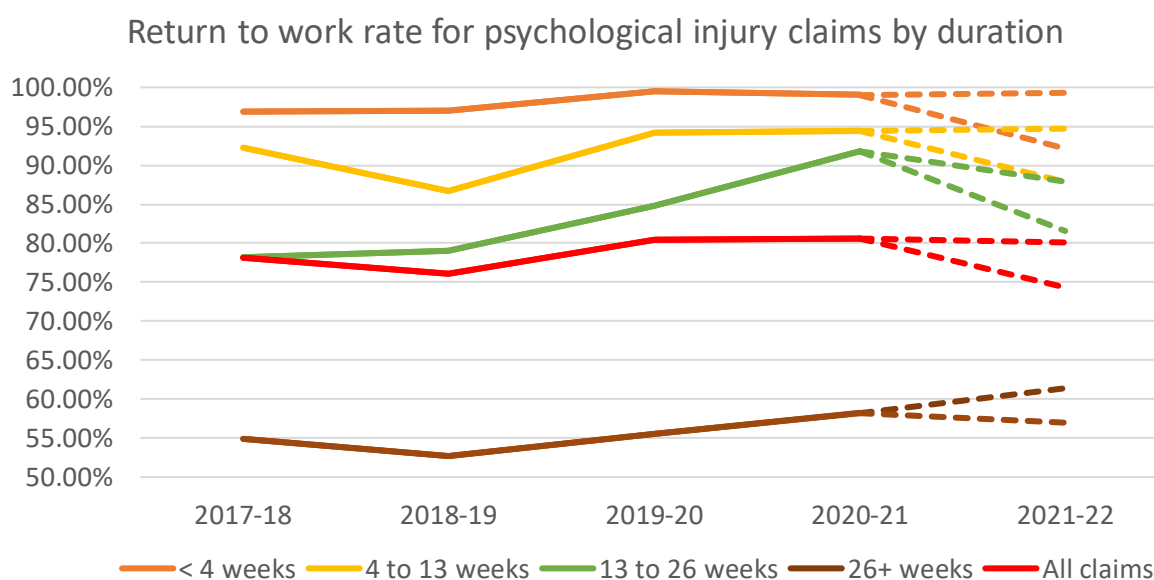
The return to work rate for 2021–22 is likely to be less than 91.7 per cent (93.9 per cent in 2020-21). In a small number of cases, the worker is deemed fit to return to work but there is no job for the worker to return to or the worker chooses not to return.

During the 2021-22 financial year, WorkCover identified errors in correctly recording the return to work outcome for WorkCover-insured workers when closing the claim. WorkCover advises there is a 95 per cent probability that the true return to work rate for these workers is between 84.4 and 91.5 per cent with a margin of error of 3.5 per cent. The error rate was established through internal reviews and independently verified through internal audit.

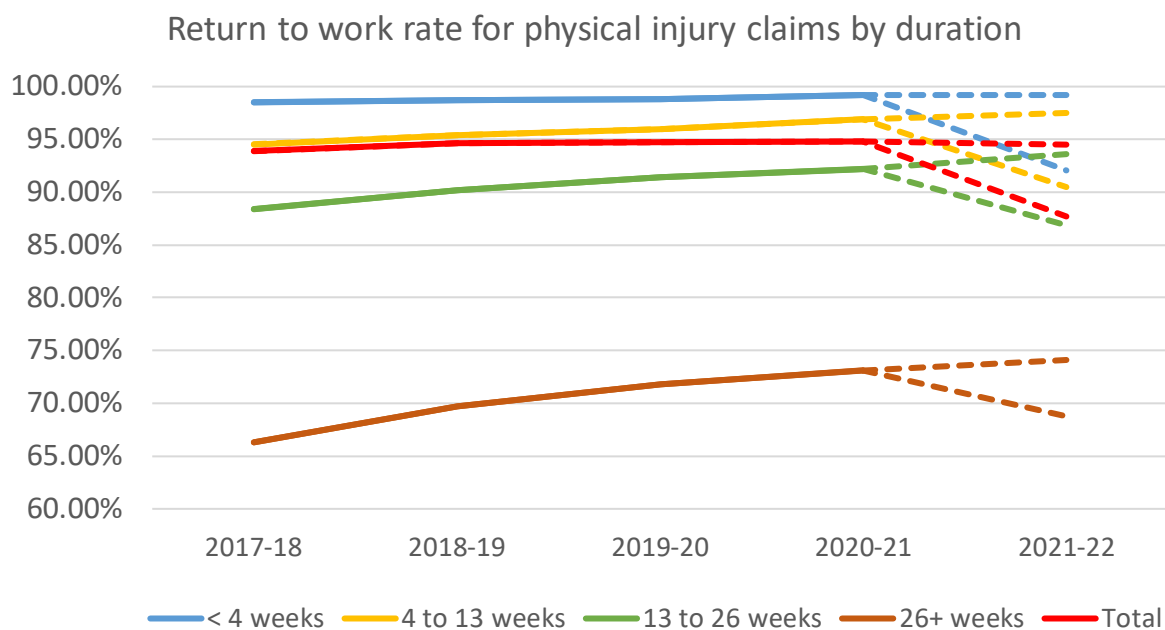
The scheme has maintained a stable return to work rate over the past five years with the exception of 2021-22 (see note above). Improvements have come across all duration bands (time off work), in particular the longer duration bands have improved considerably over the past five years (with the exception of 2021-22, see note above).



A key factor that influences the return-to-work outcome on claims is the existence of a psychological or psychiatric injury. The table below shows that the return to work rate for primary psychological injuries has been approximately 80 per cent in recent years. Once an injured worker with a psychological injury has a significant amount of time off work, the return to work prospect reduces considerably. For instance, if an injured worker with a psychological injury has over 26 weeks off work, their likelihood of returning to any form of employment is approximately 60 per cent, compared to having less than 26 weeks off work with around 93 per cent likelihood of returning to employment.

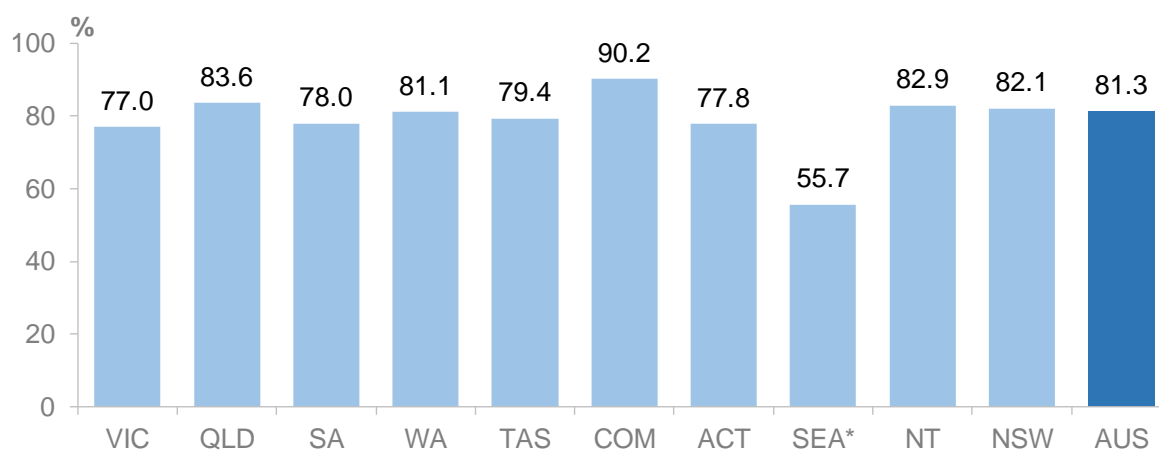


The return-to-work rate for physical injuries is considerably higher than psychological injuries (which have a longer duration off work).



Every two years the National Return to Work Survey¹⁶ commissioned by Safe Work Australia interviews a sample of workers from each jurisdiction. Workers are asked if they are currently working at the time of the survey, three to six months post finalisation of their claim. As shown in **Figure 7** below, 83.6 per cent of Queensland respondents state they are currently working, compared to the national average of 81.3%. Being based on a survey, comparisons with other jurisdictions vary from year to year.

Figure 7 – 2021 Current return to work rate by jurisdiction (%)



Source: Safe Work Australia National Return to Work Survey 2021

¹⁶ Safe Work Australia, 'National Return to Work Survey – Summary report' (2021) <<https://www.safeworkaustralia.gov.au/doc/2021-national-return-work-survey-summary-report>>.

Dispute resolution

Functions of the Regulator include undertaking and administering a range of dispute resolution processes in relation to workers' compensation claims. This function is delegated to and undertaken by WCRS. In comparison with other jurisdictions, disputes in Queensland as a proportion of annual claims are generally significantly lower. Queensland also has more timely and efficient dispute resolution, with 86.2 per cent¹⁷ of disputes resolved in under three months, the highest of any jurisdiction.

Reviews of insurer decisions

Workers and employers aggrieved by insurer decisions can apply to the Regulator to review a decision. The review process is an administrative process involving a review on the papers rather than an adversarial or judicial process.

Review applications received have reduced by 2.5 per cent from 2,570 in 2020–21 to 2,506 in 2021–22. Despite the reduction, in 2021–22, 39.5 per cent of review applications related to psychological injury claims (up from 37.4 per cent in 2020–21), which generally involve greater complexity and time to review than claims for other injury types. Claims for psychological injury have generally increased over recent years, with the proportion of such claims increasing from 4.5 per cent in 2017–18 to 6.1 per cent in 2021–22.

Approximately 55 per cent confirm the insurer's decision and around 22 per cent set aside or vary the decision.

Appeals of the Regulator's review decisions

Workers and employers who are aggrieved by a review decision can appeal to the Queensland Industrial Relations Commission (QIRC), unless the decision relates to an employer's premium, in which case the Industrial Magistrate is the appeal body. An appeal is a hearing de novo, which means the Commissioner or Magistrate will hear both sides of the appeal and decide based on the facts and evidence presented during the hearing.

In 2021–22, 232 appeals were lodged with the QIRC. Of these, four decisions were further appealed to the Industrial Court. Appeal lodgements experienced an increase of 34.9 per cent in 2021–22.

Also notable is the proportion of applications for appeal which related to claims for a psychological injury, being 57.5 per cent in 2021–22 (55.4 per cent in 2020–21).

Medical assessment tribunals

Medical assessment tribunals (MATs) are independent panels of specialist doctors who, on referral from insurers, provide independent, non-adversarial, expert medical review and assessment of injury and impairment sustained by workers for the scheme. Decisions of the tribunals are final and binding unless fresh medical evidence, not known about the worker at the time of the tribunal's decision, can be produced within 12 months of the decision.

Assessment of the degree of permanent impairment for psychological injuries can only be made by a medical assessment tribunal. This requirement was introduced in 1995 and differs from assessments

¹⁷ Safe Work Australia, 'Comparative performance monitoring report 24th edition' (2022) <<https://www.safeworkaustralia.gov.au/comparative-performance-monitoring-report-24th-edition>>.

of physical injuries which may be assessed by up to two independent specialists before final determination by a MAT.

Increasing demand for MAT services has been observed over the past three years. In 2021-22, 3,066 referrals were made to the MAT. Since 2019-20, referrals have increased 10.5 per cent (from 2,774). Of the cases heard, 79.1 per cent (2,425) were heard at a General Medical Assessment Tribunal – Psychiatric (77.8 per cent in 2020-21). A further 15.1 per cent (463) of cases were determined at an Orthopaedic Tribunal.

WCRS has worked proactively with scheme stakeholders to minimise delays and disruption throughout COVID-19 lockdowns, evolving health directives and localised flooding. This has included the following initiatives:

- implementing a virtual MAT hearing model (from May 2020) to ensure continued operation of the MATs in response to COVID-19 travel restrictions and safety requirements. In 2021-22, approximately 40 per cent of all tribunal matters proceeded by virtual hearing;
- developing MAT referral guidelines and forms to improve the quality of insurer referrals to facilitate prompt bookings;
- additional resourcing, regular weekend overtime and scheduling of additional hearings after hours;
- additional intensive psychiatric and orthopaedic hearings planned to reduce hearings timeframes;
- an internal business review of the block booking processes to gain efficiencies; and
- embracing modern technology including completing the roll out of new dictation/transcription software and continuing to pilot voice recognition software.

Monitoring and enforcing compliance with the Act

WCRS performs regulatory functions of the Regulator under the Act. These functions include, among other things, monitoring the performance of insurers and their compliance with the Act.¹⁸ WCRS's regulatory activities are underpinned by a [Compliance and Enforcement Policy](#) (the CE Policy). The CE Policy applies to all duty holders under the Act including employers, insurers, workers and service providers. Select information about WCRS's recent regulatory approach and performance is summarised below.

Self-insurer monitoring

WCRS monitors the performance of self-insurers through complaints, claims data analysis, return to work outcomes, and undertaking work health and safety and claims management audits.

Following an independent review in 2017, WCRS has worked extensively with scheme stakeholders to implement a contemporary regulatory approach to self-insurer performance, monitoring and compliance. This culminated in the CE Policy and a risk-based [Self-insurer performance and compliance framework](#).

Consistent with these documents, WCRS uses a variety of enforcement tools to regulate self-insurer performance and compliance. A reduction in licence renewal duration is one enforcement method employed by WCRS. As at 1 July 2022, 17 self-insurers had a 4-year licence duration (the maximum available duration), seven self-insurers had a 3-year licence duration, two self-insurers had a two-year licence duration, and one self-insurer had a one-year licence duration. The main reasons for a reduced licence term are sub-optimal claims management, return to work or work health and safety outcomes, and financial viability concerns.

In 2021-22, WCRS has undertaken, facilitated or assessed the following self-insurer performance monitoring activities:

- seven licence renewal audits;
- 15 mid-licence audits;
- five special licence condition audits;
- 20 improvement action plans issued; and
- 12 licence renewals.

Prosecution of offences

As part of its compliance activities, WCRS also investigates and prosecutes offences under the Act. These include, for example:

- offences relating to worker and employer conduct, such as defrauding an insurer and providing false information to an insurer or medical provider;¹⁹
- offences relating to employer conduct, such as failing to insure,²⁰ failing to report worker injuries to insurers,²¹ and obtaining or using workers' compensation documents for a purpose relating to the employment of a worker;²²
- offences relating to insurer conduct, such as failing to take all reasonable steps to secure the rehabilitation and early return to suitable duties of workers;²³ and

¹⁸ *Workers' Compensation and Rehabilitation Act 2003*, section 327.

¹⁹ *Workers' Compensation and Rehabilitation Act 2003*, section 533, 534.

²⁰ *Workers' Compensation and Rehabilitation Act 2003*, section 51.

²¹ *Workers' Compensation and Rehabilitation Act 2003*, section 133.

²² *Workers' Compensation and Rehabilitation Act 2003*, section 572A.

²³ *Workers' Compensation and Rehabilitation Act 2003*, section 220.

- offences relating undesirable practices within the scheme, such as claim farming.²⁴

Prosecutions serve as a strong deterrent against potential offenders and help to preserve the integrity of the scheme. Accordingly, the Regulator takes offences seriously and prosecutes fraud to the full extent of the law.

In 2021-22, the Regulator commenced 29 prosecutions for potential fraud. In this same period, a total of 12 cases were successfully prosecuted, consisting of 11 workers prosecuted for offences relating to fraud or providing false information, and one employer prosecuted for failure to insure. A summary of these prosecutions is available on WorkSafe Queensland's [website](#).

As a result of the 12 successful prosecutions:

- the Regulator recovered \$545,400.36 in restitution on behalf of insurers;
- the Regulator was awarded \$232,985.75 in legal costs; and
- defendants were ordered to pay fines totalling \$121,500 to the Regulator.

²⁴ *Workers' Compensation and Rehabilitation Act 2003*, section 325R.

Changing nature of work

Increased protections for gig workers were a key focus of Queensland's second operational review of the Queensland workers' compensation scheme.

Following a recommendation to extend workers' compensation to Queensland gig workers, a consultation regulatory impact statement was undertaken in 2019, seeking feedback on options to extend scheme coverage to gig workers and bailee taxi and limousine drivers (2019 RIS). Details of the 2019 RIS can be found [here](#). Stakeholders in this process were clear that compensation and support for work related injuries is just one small part of the many barriers faced by vulnerable workers in insecure employment, like that of gig work.

While some gig workers have access to personal accident insurance through the gig economy business they contract with (known as an 'intermediary'), many do not. This shifts costs to individual workers and public health and welfare systems in the event of a work-related injury. Even where private personal accident insurance exists, general insurers cannot provide benefits for any Medicare-covered expenses under Commonwealth legislation. In addition, voluntary private accident insurance coverage and increased self-management of work-related injuries increases the risk that there will be a lack of prompt medical intervention in responding to work related injuries. Evidence shows that there is a correlation between a lack of early intervention and poor recovery, increased time off work, and poorer return to work outcomes for injured workers.

General insurers and gig economy intermediaries do not have the capacity or incentive to provide return to work services. This can mean that injured workers may not have access to an early return to work or suitable duties opportunities. An injured worker and an employer who is supported by the workers' compensation process benefit from holistic claims management approaches, incorporating vocational rehabilitation. Human-centered and specialised claims management approaches are considered best practice for the management of psychological injuries and are unique to the workers' compensation scheme.

Stakeholders acknowledged the vulnerability of gig workers and the potential benefits of extending workers' compensation coverage to them. However, significant concerns were raised about the potential for workers' compensation coverage to result in:

- unintended impacts on the federal classification of the employment relationship between gig workers and intermediaries;
- complexity around how workers' compensation would operate and apply in practice for gig workers;
- the potential for increased control over how gig work is undertaken to erode the flexibility of gig work; and
- Queensland prematurely acting before broader national gig economy regulation.

The Government has committed to making a decision about the 2019 RIS in its current term. Consistent with this, the terms of reference for this review seek to consider any national regulatory proposals or findings from national reviews in relation to gig workers and other forms of insecure work that should be taken into account by the Government in its consideration of the outcomes of the 2019 RIS.

Discussion questions

1. Is the scheme achieving the objects under section 5 of the Act, including balancing fair and appropriate benefits for injured workers, dependents and non-workers and ensuring reasonable costs for employers? If not, why not and what needs to change?
2. Looking ahead, what do you consider to be the emerging issues for the Queensland workers' compensation scheme (e.g., employment trends, new types of jobs, changes in the industry, occupational or injury mix), and how should these emerging issues be addressed?
3. What, if anything, should be done to increase the proportion of injured workers returning to work or recovering at work, and/or to reduce the duration of claims? Should different arrangements be put in place for specific industry sectors or injury types (such as psychological injury)?
4. To date Queensland has undertaken significant reforms to both the Act and the scheme to better support workers suffering from psychological injury. In your view, what further practical actions can be taken to improve experience of injured workers in the scheme?
5. Is the current claims management process adequate to address the wide breadth of injuries and diseases in the Queensland scheme? What improvements, if any, should be made to the current claims management process?