

Restoring Security and Respect:

Rebuilding NSW's Workers Compensation System

By Dr. Ian Watson and Dr. Jim Stanford
Centre for Future Work at the Australia Institute

April 2018

About The Australia Institute

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. We barrack for ideas, not political parties or candidates. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues..

Our Philosophy

As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

The Australia Institute's directors, staff and supporters represent a broad range of views and priorities. What unites us is a belief that through a combination of research and creativity we can promote new solutions and ways of thinking.

Our Purpose – 'Research That Matters'

The Institute publishes research that contributes to a more just, sustainable and peaceful society. Our goal is to gather, interpret and communicate evidence in order to both diagnose the problems we face and propose new solutions to tackle them.

The Institute is wholly independent and not affiliated with any other organisation. Donations to its Research Fund are tax deductible for the donor. Anyone wishing to donate can do so via the website at <https://www.tai.org.au> or by calling the Institute on 02 6130 0530. Our secure and user-friendly website allows donors to make either one-off or regular monthly donations and we encourage everyone who can to donate in this way as it assists our research in the most significant manner.

Level 1, Endeavour House, 1 Franklin St
Canberra, ACT 2601
Tel: (02) 61300530
Email: mail@tai.org.au
Website: www.tai.org.au

About the Centre for Future Work

The Centre for Future Work is a research centre, housed within the Australia Institute, to conduct and publish progressive economic research on work, employment, and labour markets. It serves as a unique centre of excellence on the economic issues facing working people: including the future of jobs, wages and income distribution, skills and training, sector and industry policies, globalisation, the role of government, public services, and more. The Centre also develops timely and practical policy proposals to help make the world of work better for working people and their families.

www.futurework.org.au

Dr. Ian Watson is a former senior research fellow at the Australian Centre for Industrial Relations and Training, University of Sydney, who currently works as a research consultant on a range of labour and social policy issues. Dr. Jim Stanford is Economist and Director of the Centre for Future Work in Sydney.



Table of Contents

Summary	4
I Introduction	7
II The Evolution of Workers Compensation in New South Wales	10
2.1 Historical background	10
2.2 Developments since 2012	13
III. Trends in Workplace Safety	18
3.1 Work-related injuries and illnesses.....	18
3.2 Fatalities.....	21
3.3 Composition of claims.....	22
3.4 Return to work	27
3.5 Improving workplace safety.....	29
IV. The Human Costs of Workers Compensation Cutbacks	31
4.1 Shifting the burden to injured workers	31
4.2 Personal experiences with the failures of workers compensation	33
V. The Financial Performance of Workers Compensation in NSW	36
5.1 Introduction	36
5.2 Payments.....	37
5.3 Premiums	41
5.4 Injured workers' entitlements	46
5.5 Investment income	48
5.6 Private insurers	49
5.7 Funding ratios	52
VI. Shifting Boundaries Between Public and Private	55
VII. Rebuilding a Fair and Sustainable Workers Compensation System	58
7.1 An agenda of reform.....	58
7.2 Principles for reform	59
7.3 Funding the repair of workers compensation benefits	62
VIII. Recommendations and Conclusions.....	73
References	77
Appendix	81

Summary

The workers compensation system in New South Wales has undergone a wrenching transformation since 2012. At that time, a newly-elected Liberal government, citing an alleged financial crisis in the system, imposed far-reaching cutbacks in benefit payments to injured workers, and other changes. Adjusted for inflation, real benefit payments from the system have declined 25 percent in just five years – and the burden of benefit reductions has still not been fully implemented. Indeed, thousands of seriously injured workers have had their benefits cut off entirely in recent months, as the culmination of limits on benefit payouts first imposed in 2012 (under Section 39 of the revised NSW Workers Compensation Act).

However, even as injured workers suffer the consequences of reduced benefits, the financial position of the workers compensation system has been radically transformed – from “famine to feast” – in the intervening years. The supposedly dire accumulated deficit which justified the cutbacks disappeared entirely within a year; by June 2013 the fund was back in surplus. That surplus swelled to \$4 billion by 2015, driven by reduced benefit payouts and a recovery in financial markets after the global financial crisis (which was in fact the primary cause of the previous temporary deficits). Some partial restoration of benefits has been implemented since 2014. But the major beneficiary of the dramatic reversal of the system’s financial fortunes has been private business: average effective premium rates for private employers have declined by 30 percent since 2011 (and by even more longer-term). The financial position of the system will continue to improve further in coming years, on the strength of three core drivers: ongoing growth in the premium base for the system (thanks to growing employment and rising wages), a steady and sustained decline in injury rates (reducing the long-term cost of payouts), and a gradual recovery in interest rates (which will reduce the present-value burden of the system’s liabilities)

There is no fiscal or moral justification for injured workers to continue to suffer from austerity in the form of reduced benefits, while the workers compensation system carries a multi-billion dollar surplus – one that is poised to get even bigger in the years ahead. This report reviews the roller-coaster ride of the NSW workers compensation system over the past decade, highlighting the artificial and temporary nature of the financial circumstances invoked to justify the benefit cuts in 2012. It documents and explains the improvements in injury rates, premium revenue, and financial markets that underpin the continued surplus-generating capacity of the system. Finally, the report shows that there are ample resources available to fund a gradual but ambitious repair in benefit entitlements for injured workers in the years ahead, centred around Unions NSW’s 12-point vision for a fair, effective, and sustainable workers compensation system.

The report makes 10 core recommendations to the state government and icare directors regarding future reforms in the system; these recommendations are discussed fully in the last section of the report. The recommendations include:

1. Maintain overall effective average premium rates at their current level relative to overall private sector labour compensation (while still adjusting premiums for specific employers in line with injury experience and other factors).
2. Simplifying and making more transparent the formulae for calculating premiums for specific employers.
3. Undertake a detailed actuarial review of the estimated impact on present value liabilities of reversing specific components of the 2012 policy changes, and otherwise improving benefit entitlements for injured workers (including the twelve reform principles outlined by UnionsNSW).
4. Develop a staged timetable for restoring and enhancing benefit entitlements, increasing present value liabilities by \$1 billion annually over the next five years.
5. Impose a moratorium on the cessation of monthly benefits under Section 39, and restore benefits for those injured workers who have been cut off under the first wave of cessations.
6. Revise capital funding policy to target full funding (100 percent) of adjusted present value liabilities (adjusted to incorporate a cushion to reflect an 80-percent probability risk margin).
7. Monitor financial balances of the system, and in the event that financial balances fall below or exceed current expectations, the schedule of benefit improvements can be delayed or accelerated accordingly.
8. Release the terms of the contractual arrangement with EML (now a monopoly private provider of core insurance and claims management services to the system), and investigate the potential for in-sourcing EML-provided services within the public agency.
9. Undertake and publish a detailed evaluation of the performance of icare's investment program to explain fully the recent underperformance of its investment income, and consider re-sourcing or in-sourcing investment management services.
10. Implement a meaningful tripartite system of governance within the workers compensation system, including formal representation on the icare Board of Directors and other decision-making bodies from injured workers' organisations and the trade union movement.

Under this timetable, benefits for injured workers would be repaired in several stages over the next five years, with no increase in effective premium rates, and maintaining the full (100 percent) funding of the system's obligations – including a significant risk margin to protect against adverse cost increases in existing liabilities. There is no fiscal excuse for treating injured workers with the callous disrespect they have endured since 2012. That

legacy cannot be reversed overnight, but it can be reversed with a significant and responsible commitment to rebuild the integrity of the program over the coming years.

On the strength of a growing economy, falling injury rates, and continuing normalisation of financial markets, providing injured workers with decent and secure benefits has never been more affordable. Relative to total labour costs and to state GDP, the burden of workers compensation premiums has never been lower: down by 60 percent since 2009. Our society should focus, first and foremost, on preventing workplace injuries and diseases, through effective pro-active education, inspection, and enforcement (including by empowering trade unions to perform their legitimate function in ensuring workplace safety standards are respected by employers). But when injuries occur, society has an obligation to provide workers with compensation they can count on, as a partial offset for the pain and loss they will bear – in many cases, for the rest of their lives. This report confirms that NSW is fully capable of meeting this responsibility. It is simply a matter of political and fiscal priority on the part of the state government, to ensure it happens.

I Introduction

The workers compensation system in New South Wales has been dramatically restructured since the current government was elected in 2011. First, justified by overblown claims of a looming fiscal emergency, benefit levels and eligibility were dramatically reduced—including a harsh new policy that eliminates benefits entirely after a maximum of five years for all but the most seriously injured workers. Some of those cuts are still being implemented; for example, at the end of December 2017, over 4000 injured workers had their monthly benefits eliminated (since five years have now expired since the enactment of the new policy).¹ For those injured workers who were ineligible to receive CentreLink payments, the advice from the NSW government was that they should approach the Salvation Army and other charities to seek handouts.

During the same time, premium rates for private employers have been cut substantially. More recently, in the face of continuing public concern about the plight of injured workers, some of the benefit reductions were partly reversed (with changes implemented in 2015); but the overall level of benefit protection for injured workers in the state is still substantially reduced. In sum, total benefit payouts from the system (adjusted for inflation) have declined by over 30% since 2010.

Our comprehensive analysis of financial data on the scheme confirms that the workers compensation system has abundant resources with which to fund a full repair of benefits for injured workers. The so-called fiscal emergency of 2011-12 was largely a temporary accounting fiction resulting from the effects of the Global Financial Crisis (which suppressed investment returns and inflated the apparent cost of future liabilities). Now the system has a large and growing surplus, more than adequate to finance significant repairs in benefit levels (including protecting the thousands of injured workers now being cut off from monthly benefits). Yet the system's administration is intent on continuing to accumulate even larger surpluses in the future, instead of rebuilding benefits. They are targeting an even larger cushion of surplus finances in coming years. This ultra-cautious financial approach is not necessary in the context of a publicly-run insurance system—but may be part of a longer-run plan to prepare the system for privatisation.

This report examines how the NSW workers compensation system has been dramatically scaled back and restructured since 2011. The changes were publicly justified by deficits that were largely the result of temporary factors (investment losses and a steep decline in discount rates) associated with the Global Financial Crisis. Yet those deficits have been rapidly transformed into large and growing surpluses: in part because of better financial

¹ See ABC Radio National, 2017, and Patty, 2017b.

market conditions, but also because of dramatic reductions in benefit payments to injured workers.

The report analyses the latest financial data from the workers compensation system and shows that even with the modest and partial repair of benefits implemented in 2015, the system continues to generate surpluses that will accumulate further in future years. Yet the administrators of the scheme place more emphasis on sequestering those surpluses in various cushions (boosting target funding ratios, and continuing to apply large “risk margins” in costing liabilities), so as to insulate these resources from demands to repair benefits for injured workers. Contrary to this ultra-cautious management style, the underlying financial parameters of workers compensation in NSW are in fact improving over time, driven by several positive factors: growing employment and wages (which boost the fiscal base for premiums), falling injury rates, investment returns that will increase in future years, and an inevitable increase in discount rates that will reduce the apparent cost of future liabilities. At the bottom line, therefore, the argument that NSW somehow cannot “afford” decent benefits for injured workers is not credible. There is no fiscal reason to deny benefits to the thousands of injured workers who are losing them.

After outlining the background to workers compensation in New South Wales, Section II of the report examines the key changes which took place beginning in 2012, including steep reductions in benefits, the splitting of the former organisation into three separate entities, and (beginning in 2017) the consolidation and partial in-sourcing of some functions previously provided by external for-profit providers. In Section III the importance of workplace safety is considered, on the basis of comprehensive data regarding work-related injuries and illnesses. The former show a declining trend over time. The section also considers in some detail the patterns in workers compensation claims, showing that these have also undergone a steep decline since 2012. This further highlights the effects of cuts to benefits initiated by the NSW government in that year. Section IV explores the human costs of these cutbacks, grounding the overall financial analysis of this report in the painful lived experience of injured workers – whose losses have been needlessly exacerbated by the failings of the workers compensation system. Section V reviews a range of indicators describing the financial performance of the system, including payments, premiums, and financial balances. Section VI reviews the evolving role of private providers within the NSW workers compensation system, and considers the potential threat of further privatisation of the scheme in the future. Section VII outlines founding principles and costings for rebuilding a fairer and more efficient workers compensation system in New South Wales – one that prioritises workplace safety and injury prevention, and restores a stronger sense of dignity and humanity to the injured workers who bear the biggest burden of workplace accidents and illness. It shows that the scheme possesses ample fiscal capacity to fund the repair of benefits, without increasing premium rates, and proposes a schedule of benefit improvements phased in over a five-year period.

The analysis of this report is based on published data from various government agencies, including annual reports and financial reports from icare and the previous WorkCover Scheme. It also utilises Australian Bureau of Statistics data on injuries, claims, workers compensation costs, and other variables. In addition, the report draws on interviews with key informants, a review of parliamentary inquiries and submissions, and other published literature.

II The Evolution of Workers Compensation in New South Wales

The objectives of the New South Wales workers compensation system as outlined in legislation² are as follows:

- “To assist in securing the health, safety and welfare of workers and in particular preventing work related injury;
- to provide prompt treatment of injuries, effective and proactive management of injuries, and necessary medical and vocational rehabilitation following injuries, in order to assist injured workers and to promote their return to work as soon as possible;
- to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses;
- to be fair, affordable, and financially viable;
- to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work; and
- to deliver the above objectives efficiently and effectively.”

2.1 HISTORICAL BACKGROUND

The genesis of Australian schemes to provide compensation to workers for injuries at work lies in the failure of 19th Century laws to adequately protect them. Initially, injured workers could only sue employers for negligence under common law, an action which rarely succeeded (and most workers lacked resources to launch such cases in the first place). After Federation, workers compensation laws based on the ‘no-fault’ principle came into operation: these only required that workers prove their injuries were work-related and not the result of employer negligence. Throughout the 20th Century, these schemes were steadily improved with reforms which extended eligibility coverage, incorporated insurance arrangements, provided for lump sum payments and improved benefit payments.³

² Section 3 of the Workplace Injury Management and Workers Compensation Act 1998.

³ This background draws on Safe Work Australia 2010b, *Workers’ Compensation Arrangements in Australia and New Zealand*, February, Canberra: Safe Work Australia, pp. 7–8

As in many other areas of social and economic life, the 1980s saw this onward advance stall, and then begin to reverse. Pressure to reduce workplace costs, particularly insurance premiums paid by employers, became the focus for further changes in the various state-based systems. A greater emphasis was placed on occupational health and safety -- to prevent injuries happening – and on the rehabilitation of injured workers – to minimise benefit payouts and encourage a faster return to work. At the same time, the overall direction of change now entailed reducing workers benefits and reducing premiums for employers.⁴

Some scholars have viewed the 1980s as a seminal period in the transition from a system of workers compensation based on the status of workers as ‘industrial citizens’, to one based on ‘clients of intensified therapeutic management’ in which a preoccupation with reducing the ‘burden of cost’ on employers became pre-eminent.⁵ The notion of ‘industrial citizen’ is a useful one, because it also encompasses a basic human right to ‘bodily integrity’—that is, freedom from the onset of injury or occupational disease—as well as economic compensation if and when injuries or occupational disease arise.

For much of the 20th century the Workers Compensation Act 1926 regulated arrangements in NSW. It established compulsory insurance for employers and set up a specialised workers compensation tribunal. It was replaced by the the Workers Compensation Act 1987, which removed workers’ rights to claim common law damages against employers, and introduced public underwriting of the scheme. Later, the Workers Compensation (Compensation Court Amendment) Act 1989 reinstated common law rights and laid out the role of the Compensation Court.⁶

In the early 1990s the workers compensation system in NSW was in surplus, but by the mid 1990s had moved into deficit. Various changes in the period from 2000 to 2005 saw the deficit eliminated by 2006. A number of changes which improved benefits were introduced in the period between the beginning of 2007 and the end of 2008 (and these are evident in the time-series data shown later in this report).⁷

Employer premiums were reduced considerably between 2005 and 2008, and in 2009 a ‘retro-paid loss premium’ arrangement was brought in. This system derived an employer’s premium:

⁴ Safe Work Australia 2010b, p. 8

⁵ Kate O’Loughlin 2005, “From industrial citizen to therapeutic client: the 1987 workers compensation ‘reforms’ in NSW”, in: *Health Sociology Review* Vol. 14. No. 1, pp. 21–32.

⁶ Safe Work Australia 2010b, p. 8 It is worth recalling that these changes to the workers compensation scheme in 1987 were a factor in the defeat of the Unsworth Labor Government in 1988.

⁷ *Ibid.*, p. 9.

“...Almost entirely from their individual claims experience and success in injury prevention and claims management during the period of the insurance policy ... [providing] a strong financial incentive for these employers to reduce the number and cost of workers compensation claims.”⁸

The principle of financially penalising employers for unsafe work practices is positive and important. There is a risk, however, that employers may try to shirk those incremental experience-rated costs by suppressing claims, rather than improving safety. In practice, both outcomes occur, and it is important that workers are educated regarding their rights to file claims in case of injury, and supported in doing so with active protection provided by regulators and unions.

The year 2012 marked a watershed in workers compensation in NSW. In this year a major overhaul of the NSW WorkCover scheme took place. Claiming that a \$4 billion accumulated deficit was looming,⁹ newly-elected Premier Barrie O’Farrell introduced severe reductions in injured workers’ entitlements and benefits. Among the changes introduced were time limits on weekly compensation payments (which are now cancelled after five years) and a time limit on payment of medical expenses. In addition, fewer workers were to be eligible for lifetime and lump sum payments, with the threshold for serious injury raised to 30 percent ‘whole person impairment’. Journey to work claims were also severely curtailed.¹⁰

The five year cap is particularly relevant in the current situation. In October 2017 the first group of injured workers from 2012 who have been assessed with 20 percent or less impairment lost access to weekly payments.¹¹ Over subsequent months an estimated 4,500 injured workers in NSW are scheduled to lose their benefits, and the only official income support available to them will be through the social security system (such as, NewStart or Disability Support Pensions). However, not all will be eligible for these payments as previous lump sum payments may disqualify them. For those falling into this gap between the workers compensation system and the social security system, charity may be the only avenue: icare’s advice to affected workers has been to refer them to the Uniting Church and the Salvation Army.¹²

⁸ Safe Work Australia 2010b, p. 9

⁹ In fact, the year-end accumulated deficit in the system peaked at \$2.4 billion at the end of fiscal 211.

¹⁰ While the 2012 changes affected both new and existing workers compensation claims, a number of occupational groups were excluded from these changes, including police, paramedics and fire fighters. Various volunteer groups were also excluded, as were certain dust disease claims. See Safe Work Australia 2010a and Whitbourn 2012.

¹¹ The threshold for impairment was reduced from 30 percent to 20 percent in 2015, in response to strong criticisms from injured workers and their advocates that the 30 percent threshold was unduly barring workers from benefits.

¹² ABC Radio National, 2017.

2.2 DEVELOPMENTS SINCE 2012

In the lead-up to the 2012 retrenchment of workers compensation, a vibrant community and labour movement campaign attempted to prevent the proposed cutbacks. After the passage of the changes through State Parliament, the campaign focussed on exposing the human costs of the benefit reductions. As a result of these ongoing efforts, in subsequent years the state government agreed to partially roll back some of the reductions in benefits and the restrictions on eligibility. These concessions, however, still left workers in a much worse situation than prevailed prior to 2012. Among partial improvements introduced in 2014 were:

- some extensions to medical benefits;
- increasing some benefit protection to workers nearing retirement and those involved in work assessment disputes;
- clarifying some aspects of eligibility.

Additional changes implemented in 2015 were of a more substantial nature, including an organisational restructuring of the whole workers compensation system and the abolition of the former WorkCover Authority.¹³ These changes were purportedly motivated by an effort to resolve potential conflicts of interest arising from WorkCover's multiple roles.¹⁴ Prior to these changes, the WorkCover Authority of NSW regulated both the NSW workers compensation system and those areas of legislation which covered work, health and safety. After the WorkCover Authority was abolished, this domain was split into three areas:

1. The regulatory aspects of insurance were assigned to the *State Insurance Regulatory Authority* (SIRA). As the regulator, SIRA does not issue insurance policies or manage claims, but rather provides oversight of icare and the scheme agents.
2. *Insurance & Care NSW* (icare) was established as a single insurance service provider, in the form of a public financial enterprise with an independent board of directors. It is responsible for both insurance and care services, and it acts for the nominal insurer (the government body which ensures that injured employees can make a workers compensation claim when the employer is uninsured or unable to be identified). It established a *Workers Care* division as the vehicle to manage workers compensation.
3. SafeWork NSW took over the regulation and enforcement of workplace health and safety legislation. It has advisory, licensing and investigative roles, and is charged with enforcement of work, health and safety laws.¹⁵

¹³ These major changes in 2015 were based on two pieces of legislation: *State Insurance and Care Governance Act 2015* and the *Workers Compensation Amendment Bill 2015*.

¹⁴ Standing Committee on Law and Justice 2017, *First review of the workers compensation scheme*, Report 60, Sydney: NSW Legislative Council, p. 10.

¹⁵ *Ibid.*, pp. 1–7.

The Workers Compensation Independent Review Office, established in 2012 as part of the changes in that year, continued to operate. It deals with complaints from injured workers about the conduct of their insurance claims, conducts occasional reviews of the system, and carries out public education activities.¹⁶ A discussion paper recently released by the NSW government proposes the potential abolition of this office, purportedly in order to “streamline” dispute settlement process.¹⁷ Injured workers’ advocates (including the Law Society of NSW) have opposed this proposal on grounds that the independent office has played such an important role in supporting workers’ appeals and enhancing the integrity of the dispute resolution system.¹⁸

As well as this organisational restructuring, further changes in benefits were implemented in 2015 as a response to the concerted community campaign to undo the 2012 cutbacks.

These included:

- increases in various lump sum payments;
- various extensions in benefits;
- some improved eligibility provisions.

As a result of these improvements in benefits, the liabilities reported by icare’s workers compensation division increased on a one-time basis by \$1.06 billion. That represents the cost (in present value terms) of the total future expenses associated with that partial reversal of benefit cuts.

In the wake of the 2015 organisational restructuring, the workers’ insurance system in NSW now consists of four major segments:

1. The nominal insurer: the statutory body responsible for the Workers Compensation Fund. This is administered by icare (more on this below).
2. Specialised insurers: six private insurers licensed to operate within particular industries.
3. Self-insurers: 55 large employers licensed to self-insure their own workers without paying actual premiums.
4. Government self-insurers: major agencies such as NSW Police, Ambulance etc, which are covered by the Treasury Managed Fund (TMF), itself administered ultimately by icare (through the NSW Self-Insurance Corporation).¹⁹

¹⁶ Ibid., pp. 7–8.

¹⁷ See Department of Finance, Services and Innovation, 2017.

¹⁸ Patty (2018).

¹⁹ See Standing Committee on Law and Justice 2017, pp. 1–2. The Treasury Managed Fund is managed by the NSW Self-Insurance Corporation, which was formerly a branch of NSW Treasury. The fund provides workers compensation coverage for all NSW Government employees, as well as their budget-dependent agencies.

Until 2017 the system made use of ‘scheme agents’ who were contracted by licensed insurers (including the nominal insurer) to act on their behalf. These included six private insurance companies: namely, Allianz, CGU, Employers Mutual (EML), GIO and QBE. This arrangement changed during 2017, as icare began to take the insurance aspects of workers compensation back ‘in house’. During 2017 only EML, GIO and Allianz remained as scheme agents. From 1 January 2018, EML became icare’s ‘partner’ and managed all new claims, whilst GIO and Allianz continued to manage their existing portfolio of claims. The ‘partnership’ with EML was intended to reflect a ‘service’ model, with most of the insurance aspects of workers compensation more fully integrated within icare. In particular, the new arrangements were intended to reduce approval times for injured workers.²⁰ icare anticipated that it would save over 20 percent of the fees it previously paid to the scheme agents by consolidating these insurance activities ‘in house’. The potential savings from reducing duplication and bringing more of the core insurance function back inside the public agency are encouraging – although the change begs the question of why it was outsourced to overlapping private providers in the first place. And as discussed in Section VI of this report, the resulting concentrated power of a now-monopoly private supplier (EML) raises questions regarding the vulnerability of the public system to private market pressure and even demands for outright privatisation.

Parliamentary review

Important insights into how the system operated from 2012 (after the major reductions in benefits were imposed) through 2016 were provided by a comprehensive review of the workers compensation system conducted by the NSW Legislative Council’s Standing Committee on Law and Justice (SCLJ for short). In March 2017 the Committee handed down its *First Review of the Workers’ Compensation Scheme*.²¹ This review assessed the new arrangements since the 2015 overhaul, and offered a snapshot of the operations of the scheme between 2012 and 2016. While some of its specific findings may now have been superseded by subsequent events, the overall review nevertheless carries considerable and continuing relevance. The review found that the financial performance of the scheme was very strong, but that dispute resolution processes and insurer conduct were major problems. It found that the processes to resolve disputes were so complex that they generated more problems than they solved, and that “the current system is impenetrable for many scheme participants.” As for the private insurers:

“... The committee’s attention was repeatedly drawn to issues with insurer conduct, particularly the conduct of case managers. It was disappointing to receive evidence suggesting that scheme agents are not adequately supporting injured workers and in some

²⁰ From 28 February 2017 new businesses began buying insurance directly from icare and from April 2017 existing businesses began renewing their policies through icare.

²¹ Standing Committee on Law and Justice 2017.

instances not appropriately following guidelines issued by SIRA and icare, especially in relation to the use of surveillance, Independent Medical Examiners and nominated treating doctors.²²

In terms of financial performance, the SCLJ noted that the Workers Compensation Insurance Fund had moved from a projected deficit of \$4 billion at 31 December 2011 to a surplus of \$1.3 billion by May 2014. (This cumulative surplus again grew in later years, peaking at \$4 billion in June 2015.) The SCLJ was informed that the initial reduction in the deficit could be attributed to reductions in claims benefits – which flowed from the 2012 changes – and to improved investment returns.²³ But the cost to injured workers from these changes was bluntly acknowledged by the committee: “The 2012 reforms have seen significant cuts to the benefits payable to the majority of injured workers,” and “the committee acknowledges that following the 2012 reforms to the workers compensation system the financial viability of the scheme improved by limiting workers’ entitlements.”²⁴

The most recent financial data to which the SCLJ had access was for the period ending 30 June 2016. Updated financial data – published by icare for the year ending June 2017 – provide a more recent assessment of the current financial situation. These data show that workers compensation insurance holds assets to the value of \$17.7 billion and liabilities of \$15.3 billion. In other words, the scheme currently has an ‘official surplus’ of about \$2.4 billion. The auditor’s assessment of the capital funding ratio of the scheme was 119 percent: that is, its assets were about 20 percent greater than the foreseeable liabilities.²⁵ In fact, the true surplus is even larger than this, because the reported value of liabilities has already been inflated by application of a substantial risk cushion (equal to 15.6 percent of original estimates); this issue is discussed further in Section VII of this report.

Regarding premiums, the SCLJ noted considerable confusion amongst employers regarding premium levels, as a result of the opacity of the formulae used by icare to calculate premiums. In 2015–16 icare received about \$2.2 billion in premiums and contributions through the workers compensation program, and paid out claims of about \$1.8 billion. This allowed them to return \$188 million to ‘high performing employers’ in the form of lower premiums. While in theory this represented an example of icare’s model of establishing direct linkages between the claims experience of employers and what they paid in premiums, the opacity in the system undermines this goal because employers were not able to anticipate their premium costs.²⁶ This approach is a less transparent way of continuing to reduce employer premiums, which have already declined dramatically over the past decade.

²² Standing Committee on Law and Justice 2017, p. ix.

²³ *Ibid.*, p. 13.

²⁴ *Ibid.*, pp. 11 & 88

²⁵ See icare 2017a, pp. 211, 248.

²⁶ Standing Committee on Law and Justice 2017, pp. 15–19.

Finally, when it came to the core goal of meeting the needs of injured workers, the current arrangements came in for considerable criticism. As the Australian Lawyers Alliance argued before the committee, the system failed to support an injured worker's recovery and return to work:

“The system, as it has become, does not provide an integrated experience for a worker whereby a worker is supported by weekly income replacement, a sympathetic employer, a treatment and care program that sees them supported in the workplace as they recover from injury.”

III. Trends in Workplace Safety

The best strategy for protecting the victims of workplace accidents is to prevent them from occurring in the first place. Moreover, the rate of injuries is a powerful determinant of the total cost of the workers compensation system. For both humane and financial motives, therefore, a central emphasis on injury prevention must be a core feature of workers compensation policy.

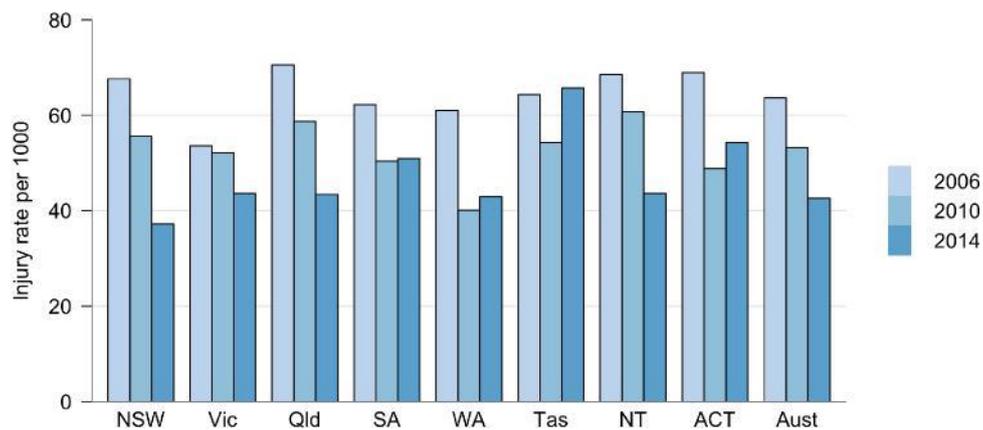
How safe are workplaces in New South Wales? There is little doubt that over the last decade workplace safety has improved. In some cases this reflects industry employment changes: for example, there are fewer workers in manufacturing, which typically experiences a higher than average rate of injury. In other cases it reflects better occupational health and safety (OHS) practices in workplaces. This section of the report reviews the *occurrence* of injuries and illnesses, and then reviews data on *claims* for injuries and diseases. As will be apparent, the two measures (injuries and claims) do not coincide, which raises important issues regarding injury reporting and the access of injured workers to their benefit entitlements.

3.1 WORK-RELATED INJURIES AND ILLNESSES

Work-related injuries and illnesses have been declining since the early 2000s, nationally and in most states. The national average injury rate has declined by one-third: from 63.6 injuries per thousand workers in 2006 down to 42.6 per thousand in 2014.²³ As Figure 3.1 shows, the drop in NSW has been even more impressive, falling from a figure in 2006 above the national average (67.6) to a figure below it in 2014 (37.2). That represents a 45 percent decline in the injury rate in less than a decade. This trend is hugely beneficial for workers, preventing the immeasurable trauma and hardship associated with accidents and recovery; it will also serve to drive long-run reductions in the overall cost of workers compensation, opening up the possibility of repairing benefit levels (in the wake of the 2012 cutbacks) without increasing premiums.

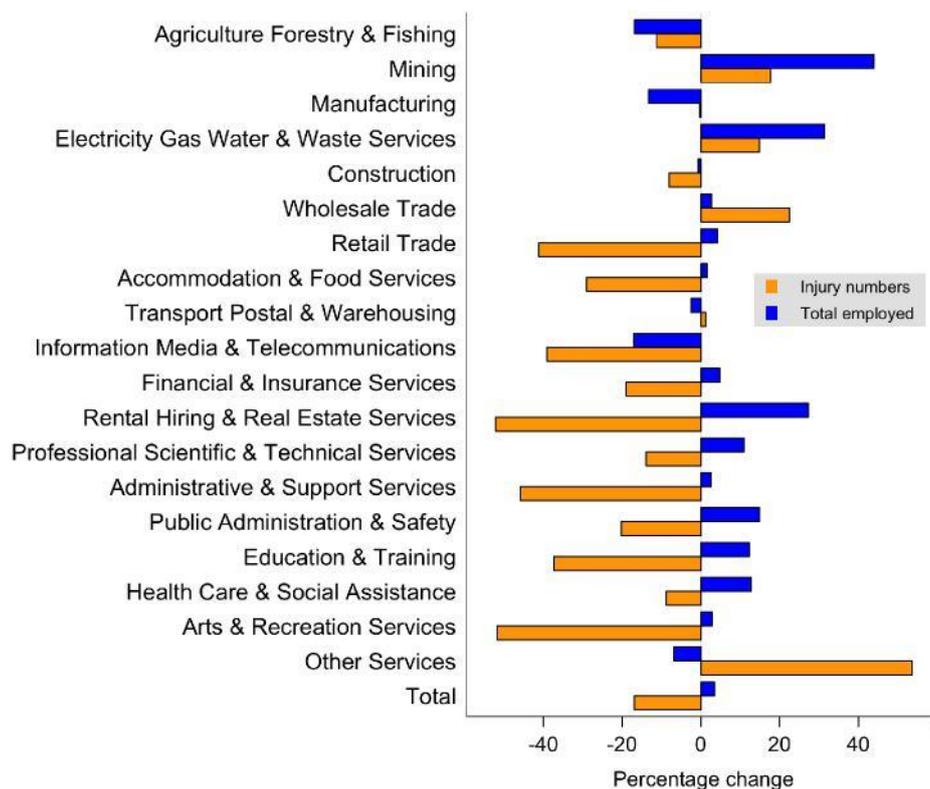
It needs to be kept in mind that the workforce has grown over the same period of time; one might expect injury rates rates to fall but still see an increase in the absolute number of workers affected by work-related injuries and illnesses. However, this has not been the case: injuries have actually fallen in absolute terms, because the rapid drop in the injury rate has outweighed growth in the size of the workforce. Thus, in NSW for example, the number of workers who experienced work-related injury or illness fell by nearly 100,000 between 2006 and 2014, from about 240,300 to 143,600 (see Table A1 for details).

Figure 3.1: Work-related injury or illness, by jurisdiction, 2006, 2010 and 2014



Note: Financial year data. Source: ABS, *Work-related injuries, Australia*, Cat.No. 6324.0, Table 2. (Details in Table A1).

Figure 3.2: Work-related injury or illness, by industry, Australia, changes between 2010 and 2014



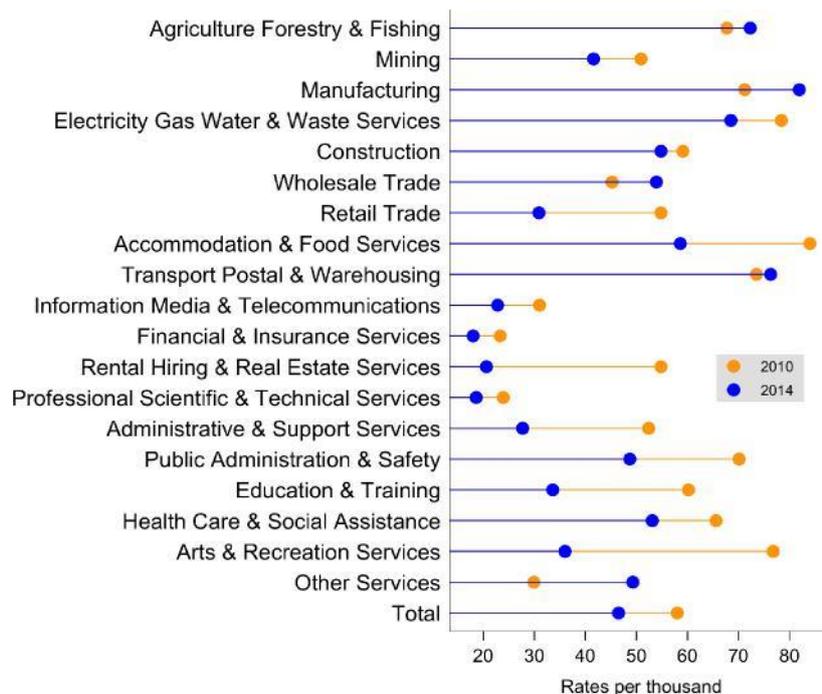
Note: Financial year data. Source: ABS, *Work-related injuries, Australia*, Cat.No. 6324.0, Table 4.1. (Details in Table A2)

This overall improvement in workplace safety outcomes was not shared across all industries. Sample size restrictions mean that the ABS only reports industry outcomes at the national level and these are shown in Figure 3.2. These data indicate a 17 percent fall in the overall number of workers experiencing work-related injury or illness, and this took place in a

period—between 2010 and 2014—when the workforce grew by 3.5 percent. This relationship can be viewed as a benchmark to judge each industry. Some did better than this, for example, retail trade—a very large employer of workers—saw a 41.2 percent drop in injury / illness, while its workforce grew by 4.2 percent.²⁷ On the other hand, several other industries fared relatively poorly. The ‘other services’ industry – including diverse jobs like vehicle smash repairs, hairdressing and laundry work – saw a modest decline in its employment (6.9 percent) but a massive increase in the number of workers experiencing work-related injuries and illness (53.6 percent).²⁸

Other ‘black spot’ industries included agriculture, manufacturing and wholesale trade. These problematic sectors are particularly evident if we look at injury rates, that is, the rate of injuries and illness per thousand workers employed (illustrated in Figure 3.3). Among the ‘best improvers’ were accommodation and food services and the large public sector industries.

Figure 3.3: Injury Rates by Industry, Australia, 2010 and 2014



Note: Financial year data. Source: As for Figure 3.2

As well as there being ‘more dangerous places’ to work, there are also some groups of workers who appear much more vulnerable to experiencing work-related injuries and illnesses. Some are at the start of their working life, and no doubt relatively inexperienced,

²⁷ While other industries, like rental hiring and real estate services, also excelled, the numbers of persons employed in these sectors were much smaller. See Table A2 for details.

²⁸ The magnitude of this increase may reflect sampling issues, or it may reflect the extent to which parts of this industry are able to evade scrutiny and regulation. In terms of absolute numbers, the injuries in the ‘other services’ industry grew from 14,000 in 2010 to 21,500 in 2014 but the relative standard error for this size population in 2014 was 21.4 percent, suggesting caution is warranted in interpreting the increase.

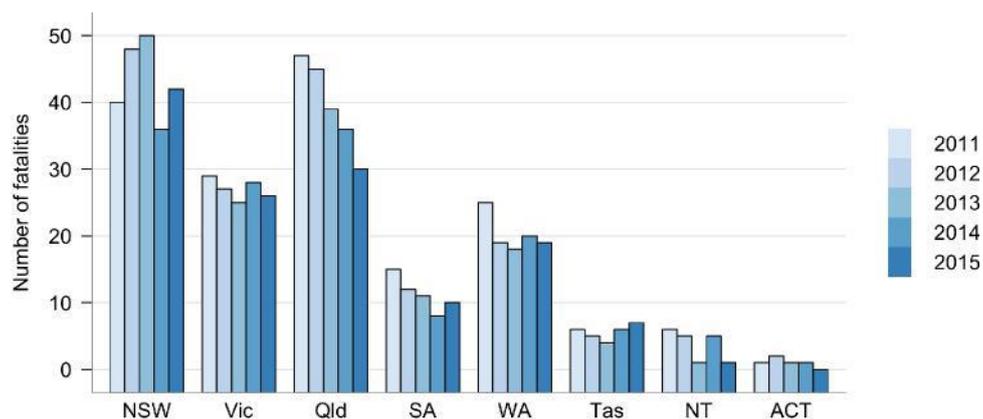
while others are towards the end of their working life, with bodies worn down by years of hard work. Thus, young male workers, aged 15 to 19, have injury rates of 63.8 per thousand, and mature age male workers, those aged 50 to 54, have injury rates of 61.2 per thousand. These compare with ‘prime age’ males – in the 30s and 40s – for whom injury rates fall to the 40s per thousand range. Among women, the rates are consistently lower than for men, ranging from the mid 20s to the 40s per thousand workers. Injury rates for women are highest from age 40 upward.²⁹

3.2 FATALITIES

Unlike work-related injuries and diseases, data on fatalities resulting from injuries show no clear trend in recent times. As Figure 3.4 shows, there is considerable volatility in the numbers of workers killed on the job over the period from 2010–11 to 2014–15. As one would expect, absolute numbers of fatalities are generally higher in the more populous states, though the higher figures in Queensland compared to Victoria suggest an anomaly in this pattern.³⁰

Fatality incidence rates control for these population differences, and are shown in Figure 3.5, expressed as a rate per 100,000 workers. As these figures show, New South Wales, Victoria and the ACT have the lowest incidence rates, while the less populous states have much higher rates.³¹ The national incidence rates do suggest a slight downward trend over this five year period, but there is always considerable year-to-year variation because of the irregular and unpredictable nature of this type of incident.

Figure 3.4: Traumatic injury fatalities, by state, 2011 to 2015 (counts)



NSW Vic Qld SA WA Tas NT ACT

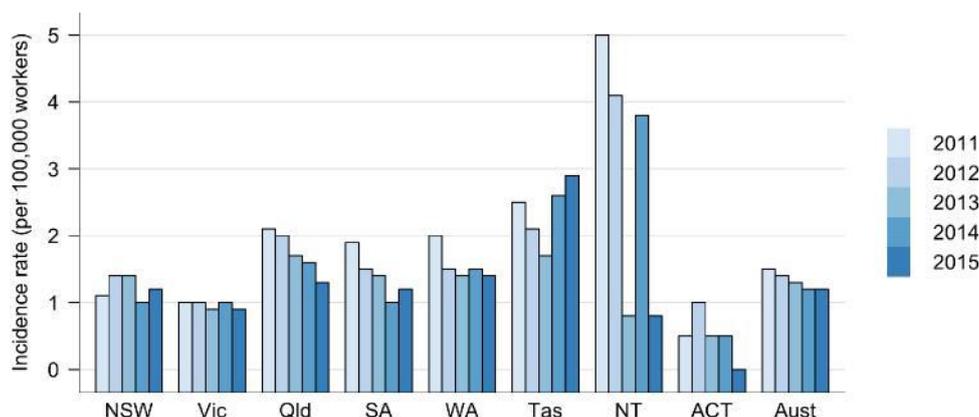
²⁹ Figures are all for 2013–14 and from ABS, *Work-related injuries, Australia*, Cat.No. 6324.0, Table 2.

³⁰ These data come from the Traumatic Injury Fatality (TIF) data collection and are provided by Safe Work Australia 2017a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers’ compensation schemes in Australia and New Zealand*, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia, p. 6. Note that these data exclude fatalities on a public road.

³¹ This may reflect the greater proportional presence of high-injury industries in those regions. The volatility in these figures also reflects the small counts involved.

Note: Financial year data. Source: Safe Work Australia 2017a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand*, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia, Indicator 7, p.6. Based on figures from the Traumatic Injury Fatality (TIF) data collection. (Details in Table A3).

Figure 3.5: Traumatic injury fatalities, by state, 2011 to 2015 (incidence rates)



Note: Financial year data. Source: As for Figure 3.4.

3.3 COMPOSITION OF CLAIMS

It is important to realise that workers compensation claims are a *subset* of injuries, diseases and fatalities. Not all reported injuries are converted into claims within the workers compensation system.³² We consider the reasons for this divergence further below.

Figures 3.6 and 3.7 show incidence rates (claims per thousand employees) and frequency rates (claims per million hours worked) for the period from 2004 to 2016 for NSW, Victoria, Queensland and the national average.³³ These measures are more useful than absolute numbers of claims because the number of injuries will change depending on the number of people working, and the amount of time they spend working. Incidence rates and frequency rates allow for useful comparisons between jurisdictions and over time because they remove these sources of variability. Both these measures show that claims fell steadily over this period, with very similar rates of decline for all jurisdictions. What is notable, in considering the level of claims (left-side panel of the figures), is that Victoria's figures are considerably lower, while the figures for NSW are mostly above the national average. In

³² The claims data presented here comes from Safe Work Australia rather than SIRA. The latter presents data on 'major employment injuries', which constitute about one third of all all employment injuries. While SIRA sometimes uses the terms 'claims' and 'injuries' interchangeably, they recognise a number of exclusions which make the former a smaller component of the latter (such as: claims not being lodged; ineligibility; non-employee work status; some dust diseases; Police employed prior to 1988). Time series analysis with the SIRA data is problematic because the definition of 'major employment injuries' changed after 2012. See SIRA 2015b, *Statistical Bulletin 2014/15: NSW workers compensation statistics*, Sydney: State Insurance Regulatory Authority, pp. 5, 8, 9.

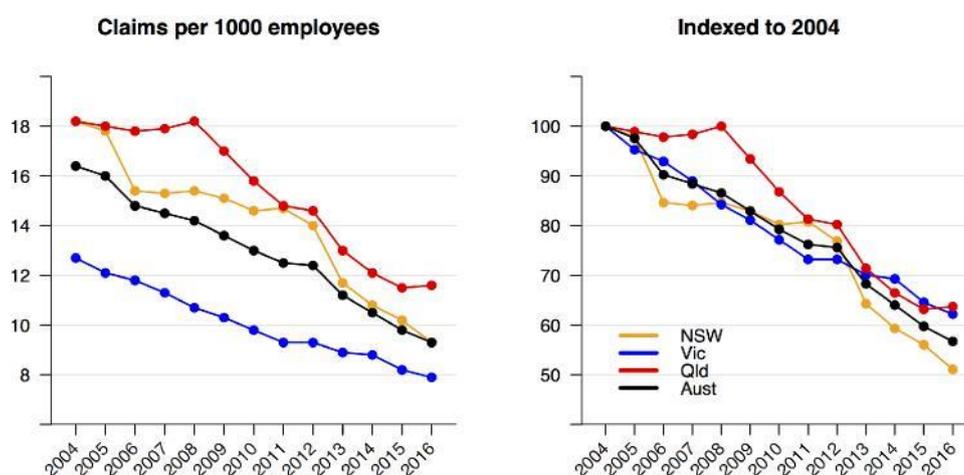
³³ Note that the data in the appendix tables show all Australian jurisdictions (with New Zealand and SeaCare omitted).

looking at changes (right panels), there is a sharp decrease in both the incidence and frequency rates of claims in NSW after 2012 (a 16 percent fall in both between 2012 and 2013). Another steep drop for the NSW figures took place between 2015 and 2016, especially visible in the frequency rates of claims.

The positive side to declining claim rates is that it at least partly reflects an improvement in occupational health and safety. The Productivity Commission, for example, suggested that declines such as these are likely due to “safer workplaces, safer work practices and changes to the nature of work, such as a decline in the relative importance of manufacturing and manual labouring jobs.”³⁴

The negative side of declining claim rates, however, is that the trend may also partly reflect increased difficulty for workers being able access workers compensation (for example, through reduced eligibility) or an increase in the various categories of workers who are not captured in the workers compensation system.³⁵

Figure 3.6: Incidence rates of serious injury & disease claims, by jurisdiction, 2004 to 2016

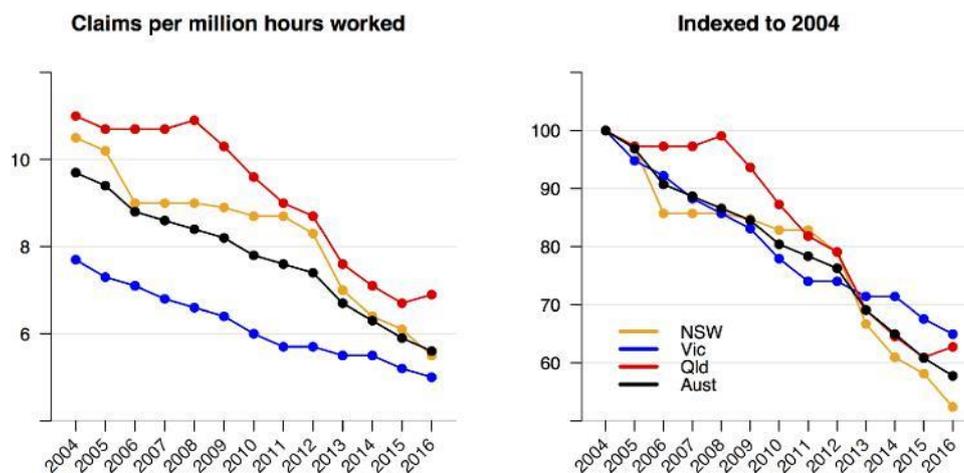


Financial year data. *Source:* Based on combining data from Indicator 5 in Safe Work Australia 2010c, p. 7; Indicator 5 in Safe Work Australia 2012, p. 6; Indicator 1 in Safe Work Australia 2017a, p. 1; and Indicator 1 in Safe Work Australia 2017b, p. 8. (Details in Table A4).

³⁴ This assessment was for the period prior to that considered here. The Commission also noted that the nature of injuries and illnesses had been changing: ‘there have been increases in the incidence of occupational over use syndrome and stress claims, and there is some evidence of an increase in permanent disabilities.’ Productivity Commission 2004, *National Workers’ Compensation and Occupational Health and Safety Frameworks*, Inquiry Report 27, Canberra: Productivity Commission, pp. 2–3.

³⁵ In the case of the former, this may lead to an actual decline in the *number* of claims – as happened after 2012 – while in the case of the latter, the rate may fall because the denominator (which includes work in the excluded categories) is growing faster than the numerator (the number of claims).

Figure 3.7: Frequency rates of serious injury & disease claims, by jurisdiction, 2004 to 2016



Note: Financial year data. Source: Based on combining data from Indicator 6 in Safe Work Australia 2010c, p. 7; Indicator 6 in Safe Work Australia 2012, p. 6; Indicator 2 in Safe Work Australia 2017a, p. 2; and Indicator 2 in Safe Work Australia 2017b, p. 9. (Details in Table A5).

Figure 3.8: Number of employees and number of claims, NSW, 2008 to 2016



Note: Financial year data. Source: Appendix Table 1, from Safe Work Australia, *Comparative Performance Monitoring Report*, Editions from 2009 through to 2017. (Details in Table A6).

How much does the decline in injury claims reflect policy changes that have restricted access to the workers compensation scheme, and how much do they reflect genuine safety improvements? One way of answering this question is to compare changes in the size of the labour force in NSW and changes in injury claims. If safety is improving over time, then the incidence of claims should fall gradually over time. If the labour force is increasing in size, the number of claims might also increase, but at a slower rate, and this would lead to a lower incidence of claims. On the other hand, if major policy changes take place, one would

expect to see a more uneven pattern, with abrupt changes in the number of claims. Turning to the data, Figure 3.8 suggests that the policy changes of 2012 did indeed have a major effect on injury claims. The NSW labour force increased steadily between 2008 and 2016, but the number of claims for serious injuries showed a precipitous drop after 2012: they fell by about 10,000 claims per year (or over 20 percent) in just two years.

Another indication of this dramatic change was the fall in the number of *all* claims by injured workers between 2012 and 2016. From approximately 110,000 in 2011–12, the numbers dropped to just over 60,000 in 2015–16.³⁶ In its performance report SIRA explained the fall as due to a number of factors: reduced work-related injuries; ‘reduced propensity’ by workers to make claims; and the exclusion of some journey-related claims.³⁷

Who gets workers compensation?

In its analysis of occupational health and safety outcomes, Safe Work Australia makes use of workers compensation claims but acknowledges that these claims do not correspond with actual work-related injuries, diseases and fatalities. In particular, workers compensation claims only cover employees, not all employed persons. In the case of fatalities, only about 60 percent of those which are entered into the Traumatic Injury Fatality (TIF) data collection – which was the basis of our discussion in the last section – are then processed within the workers compensation system. As Safe Work Australia notes: “Many self-employed workers work in high risk sectors such as agriculture, transport and construction.”³⁸

As well as the legitimately self-employed, there are a considerable number of workers who work outside of the traditional ‘employer-employee’ framework. In particular, the growth in the numbers of contractors, labour hire workers, outworkers and casual workers over the last few decades – as well as the more recent emergence of the ‘gig’ economy – have reduced the proportion of workers covered by the workers compensation system. As far back at 2004 – well before the emergence of digital platform workers and ‘gigs’ – the Productivity Commission warned: “There is growing evidence that this [contract, part-time and casual jobs] has adversely affected OHS outcomes and reduced the likelihood of workers lodging claims.”³⁹ Finally, the claims data underreport the incidence of disease: it can take many years for occupational diseases to surface, and thus establishing a direct link with the occupational origin of the disease can be difficult.

³⁶ In its Annual Reports, icare presents figures of 60,174 claims for 2015–16 and 61,221 claims for 2016–17. (icare 2016a, p. 107 and icare 2017b, p. 55).

³⁷ SIRA 2015a, *NSW workers compensation system: inaugural performance report, 2014/2015*, Sydney: State Insurance Regulatory Authority, p. 15.

³⁸ Safe Work Australia 2017a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers’ compensation schemes in Australia and New Zealand*, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia, p. 5.

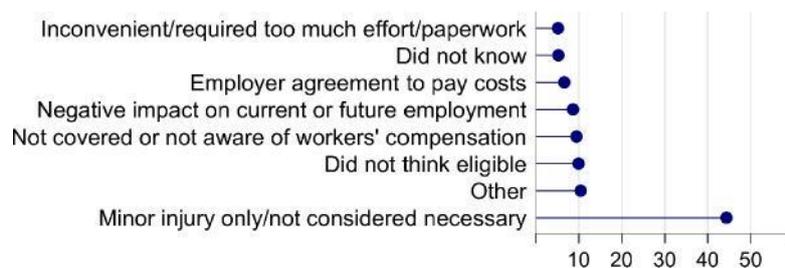
³⁹ Productivity Commission 2004, p. 4. They also noted that workers may slip through the net because employers may not declare their employment of casual workers and may make use of cash-in-hand work arrangements (*ibid.*, p. 165).

As well as these various ‘exclusions’, another issue related to workers compensation coverage is the large number of workers – including full-time employees – who do not make any claims on the workers compensation system, despite being injured at work. In one of its supplements to the Labour Force Survey, the ABS collects national data relevant to this issue (no NSW data is publicly available). The survey finds that the *majority* of workers who experienced a work-related injury or illness did not apply for workers compensation. In particular, for the 12-month period ending June 2014 (most recent data):

- 531,800 workers experienced a work-related injury or illness;
- of these, some 326,100 did not apply for workers compensation (61 percent);
- of the 205,700 who did apply, some 183,200 received compensation (89 percent of those who applied, but only 34 percent of those with an injury or illness);
- 128,600 of those who did not apply for workers’ compensation nevertheless received some form of financial assistance to cover injury-related costs, such as from a health insurance plan or directly from their employer.

A considerable proportion (over 40 percent) of those who did not apply for workers compensation regarded their injury as minor, or otherwise felt that an application for workers compensation was not deemed necessary. This group consisted of about 144,500 workers, and of these some 49,700 did receive some form of financial assistance. The full range of reasons for not applying for workers compensation is illustrated in Figure 3.9.

Figure 3.9: Reasons persons with work-related injury or disease did not receive workers compensation payments, Australia, 2014



Note: Financial year data. *Source:* ABS, *Work-Related Injuries, Australia, 2014*, Cat.No. 6324.0. (Details in Table A24).

Several sub-groups in this breakdown reflect workers who were discouraged or prevented from filing legitimate claims for various reasons: some didn’t know about workers compensation, some didn’t think themselves eligible, some weren’t covered, and some worried about their job security. Those discouraged or barred workers made up a significant proportion of the total population of injuries which were not claimed: 91,700 workers, or 28 percent of all non-claiming injured workers. In other words, about 17 percent of all injured workers who may have been eligible for workers compensation missed out on access to the system. While this is a national figure, a similar proportion is likely to apply in

NSW. This indicates a need for more education, support from regulators and unions, and protection so that injured workers feel more confident in applying for the benefits they are entitled to.

3.4 RETURN TO WORK

As outlined in Section VII of this report, a core element in the reform principles advanced by Unions NSW is that the return to work should be elevated as a central tenet of workers compensation by:

- placing an absolute obligation on employers to provide suitable duties;
- preventing termination unless the injury management plan states that the return to work goal is a different job with a different employer; and
- incentivising the employment of injured workers.

At present, the workers compensation system appears to be very “effective” at reducing the costs of payments – but not at getting people back to work. Often employers are more interested in seeing their injured workers medically retired, off their hands, and thereby becoming free to employ a new worker in that newly vacant position. The injured worker thus becomes a ‘problem’ for the insurer, rather than a challenge for the employer. The latter may need to adjust the tasks which an injured worker returning to work can initially undertake, such as lighter duties, and may not be prepared to do so. The ‘employment protection period’, that is, the period during which the job must be held open for the injured worker to return, is only six months. Insurers, keen to reduce their caseloads, can also impose unrealistic demands on injured workers, requiring them to accept occupational downgrading or geographical relocation. In the case of the public sector, anomalies arise from the operation of the 2012 changes, which quarantined some key occupations. Thus within the police force, for example, civilian employees are treated differently to sworn officers. The latter can return to civilian jobs much earlier; can be rotated through positions; and are generally looked after better physically and mentally. The same advantages do not apply to injured civilian employees.⁴⁰

One of the most problematic aspects of the current return to work regime is the concept of ‘suitable employment’. This is the basis for determining an injured worker’s ‘current work capacity’ (which also plays a role in determining their compensation payments). Workers receive compensation only when they are unable to return to their pre-injury employment and unable to return to work in other suitable employment. This test is based in part on the worker’s capacity, age, education, skills and work experience; but it is also dependent on factors over which the worker has no control (such as whether suitable jobs are actually available, and whether such jobs exist near where the worker lives). As the Australian

⁴⁰ Key informant interview.

Workers Union (AWU) argued before the SCLJ inquiry, excluding any consideration of the availability of work “allows insurers to reach manifestly unfair and absurd outcomes that severely limit or deny continued compensation payments when, in reality, there is no suitable employment.”⁴¹ The Law Society of NSW also objected strongly to this concept and how it was applied:

“Any system that puts the determination of suitable employment solely in the hands of an insurer and entitles an insurer to disregard factors such as the state of the employment market or the claimant’s place of residence is inherently unfair.”⁴²

The Australian Lawyers Alliance was even more scathing: “The arbitrariness, subjectivity, inherent inequity and unfairness of these decisions does not need further amplification.”⁴³

‘Work capacity’ tests and the emphasis on returning to work after injury can also lead to worse long-term health outcomes for injured workers. Being forced to return to work too early can jeopardise long-term recovery. If the return to work entails unsuitable duties, then an acute medical condition may become a chronic one. Proponents of the importance of injured workers returning to work may genuinely believe that it’s better for their recovery if injured workers return to the workplace. However, for the insurer the imperative is to reduce payouts, even if that ultimately undermines successful returns to work. This happens because of an almost exclusive focus on work capacity decisions, even at the expense of injured workers’ long-term recovery. As health professionals told the SCLJ inquiry, rehabilitation was not being used in a genuine fashion:

“Insurers are using rehabilitation and other treatments only to determine work capacity, rather than to support an injured worker’s return to work more broadly ... The use of rehabilitation and return-to-work has been limited by the agents and is selectively used to help support work-capacity decisions, rather than to build the capacity in a worker to help that person return to work ... Rehabilitation services could be far better used to achieve better health, well being and social outcomes for workers, but they have been too narrowly targeted towards work capacity decisions ... The focus on work capacity decision-making in the workers compensation scheme compromises the objectives of the scheme and is exacerbated by the conflict between the commercial and health interests inherent in the system.”⁴⁴

The CFMEU also pointed out to the inquiry that in their experience:

⁴¹ Standing Committee on Law and Justice 2017, p. 59.

⁴² Ibid., p. 60.

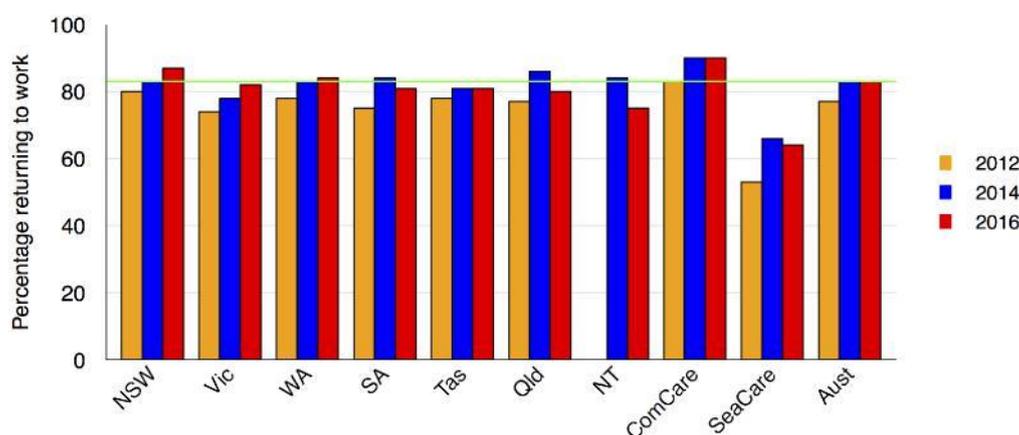
⁴³ Ibid., p. 60.

⁴⁴ Standing Committee on Law and Justice 2017, p. 45.

“Work capacity assessments and work capacity decisions are used as a mechanism for pushing people off the workers compensation system or pressuring injured workers to remove themselves from the system voluntarily rather than being constantly subject to the whim of the work capacity process.”⁴⁵

It is important to keep these various qualitative concerns regarding return to work in mind when examining the quantitative data (Figure 3.10). The latter seems to show some improvement in outcomes over the last few years, with NSW achieving a return to work rate of 87 percent of all injuries in 2016 (slightly higher than the national average of 83 percent). As with injury and compensation claim rates, average return to work performance will also reflect compositional factors (such as the relative importance of different industries, such as construction, manufacturing, and mining, which typically demonstrated more frequent and more severe injuries – and hence which would be expected to demonstrate lower return to work rates).

Figure 3.10: Current return to work rate by jurisdiction, 2012, 2014 and 2016



Note: Financial year data. *Source:* Indicator 19 in Safe Work Australia 2017a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers compensation schemes in Australia and New Zealand*, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia, p.30. (Details in Table A9.)

3.5 IMPROVING WORKPLACE SAFETY

Fixing the problems in the current compensation eligibility and return-to-work regimes is a fundamental priority, but so too is the prevention of injuries and fatalities. A core theme in our proposals for reforming workers compensation is that employers and workers should always aim to prevent injuries, diseases and fatalities from happening in the first place. If

⁴⁵ Ibid., p. 52.

and when they do occur, adequate compensation should be available; but the first priority needs to be effective prevention.

However, part of the collateral damage from deregulating the world of work – a key business priority over the last 30 years – has been a reluctance by governments to actively enforce standards, including OHS rules. The general preference has been for self-regulation, and the notion that differential workers compensation premiums will affect employer incentives and hence elicit better OHS practices has been part of this framework. Resources allocated to inspection and enforcement activities have been reduced. It should also be noted that the stated goal of motivating better OHS behaviour from high-injury employers through experience-rated premiums, is undermined by the simultaneous emphasis on generally reducing employer premiums. Indeed, unsafe workplaces enjoy the largest absolute savings from a general reduction in premium rates (since their specific rates were relatively higher to start with). At the same time, traditional union rights to enforce safety in workplaces have been curtailed in numerous ways (such as limitations on union right of entry).

One important benefit from the declining rates of work-related injury and disease – potentially enhanced by improved OHS enforcement in the future – is that the long-term financial viability of workers compensation in NSW is enhanced accordingly. The ongoing decline in injury rates (combined with other positive trends, such as the rebound of interest rates from unusually low levels) provides ample economic and financial space for the repair of entitlements and eligibility provisions that were either removed or restricted in 2012.

IV. The Human Costs of Workers Compensation Cutbacks

4.1 SHIFTING THE BURDEN TO INJURED WORKERS

Public debate over changes to NSW's workers compensation system has been focused on the system's fiscal condition. However, the ultimate purpose of the system is to provide care and support for workers who have been injured in the course of performing their duties. But this human dimension is often lost or downplayed amidst the fixation with the system's financial dimensions.

As the next chapter will show, total benefit payments (adjusted for inflation) have declined by over 30 percent since 2010. This decline reflects the number of workers who have been excluded from benefits under the new, tighter rules. It also reflects reduced benefit levels for those still receiving benefits. And it has also reflected the impact of cutting off seriously injured workers from benefits altogether—once the five-year cap on benefits for workers deemed to have less than 20 percent whole person impairment came into effect.

But the erosion of benefits in the system since 2012 cannot be adequately described with reference only to these statistical indicators. The human consequences of the post-2012 retrenchment in benefits must also be kept front and centre in considering the future of the system.

One of the most acute if delayed impacts of the 2012 changes is the cessation of weekly benefits for several thousand injured workers—a process which began in earnest in late 2017.⁴⁶ They are the first cohort of injured workers to lose entitlements under the five-year cap (promulgated five years ago). These workers will now have to turn to CentreLink or other social programs, or fall on the generosity of family or charity, to support themselves. Personal testimony and media coverage attests to the insecurity and hardship they will face, when their weekly benefits are cut off: some injured workers report having to sell their homes, others to deplete their personal savings, others fear personal bankruptcy.⁴⁷ In general, affected workers are relatively old (the average age of those whose benefits will

⁴⁶ Close to 7000 injured workers were originally notified by their respective insurers that their benefits would be cut off; however some of those have succeeded in maintaining eligibility by challenging their WPI evaluations or through other appeals. See Anna Patty 2017b. icare has reported that the number of claimants cut off under the five-year rule will be 16 percent smaller than originally anticipated, likely due in part to these advocacy efforts. See icare 2017a, Note 15, p. 242.

⁴⁷ See Reynolds 2017, Stack 2017, and Vinales 2017.

cease is 54) and hence have little opportunity for retraining and redeployment to alternative employment.⁴⁸

It is evident that creating a dependence on welfare or charity is a form of cost-shifting, whereby the broader community is forced to bear the costs which employers and insurance companies have dodged. Another dimension of the broader social cost of depriving injured workers of benefits is the ultimate impact on the superannuation system, particularly for older injured workers. Increasingly, as cutbacks eat into the workers compensation system, super funds find themselves shouldering a larger burden, either through increased claims on their income protection and disability insurance benefits or through greater numbers of older injured workers taking early retirement.

It is not just those whose benefits have been cut off entirely, who are enduring significant personal and familiar hardship as a result of the benefit cutbacks. Other restrictions on benefits implemented in 2012 included reductions in weekly benefit payments (imposing new “step downs” from workers’ pre-injury earnings); additional cuts in benefits to reflect potential “notional” incomes from alternative “suitable employment” (whether or not a worker actually earns that money); severe curtailment of journey to work claims; and the cessation of medical payments after certain periods of time. The policy changes introduced in 2015 (after campaigning by injured workers, legal advocates, and others) partially reversed some of those changes, but still left the level of benefit protection far lower than earlier years.

The 2012 changes were certainly ‘successful’ in reducing the apparent financial liability associated with the workers insurance scheme’s accumulated claims. Indeed, on an undiscounted basis, the 2012 reforms reduced the actuarial value of liabilities by \$2.3 billion in just one year, with another \$2.5 billion in additional reductions in the subsequent three years.⁴⁹

However, that “saving” is associated with the imposition of significant financial and personal costs on the injured workers whose benefit entitlements were consequently reduced. The changes did not, therefore, reduce the final cost of workers compensation so much as shift it onto the backs of injured workers, their families, and broader society. Reduced benefits imply greater household financial stress, more dis-savings on the part of injured workers, greater mental and family hardship, and other human consequences. Simply shifting the costs from a public insurance scheme originally intended to protect injured workers, onto the workers themselves, is hardly an efficient nor fair response to the catastrophic events which these workers have faced. Injured workers are already estimated to absorb over three-quarters of the total cost of workplace injuries (through lost earnings, suffering, and

⁴⁸ Anna Patty 2017a.

⁴⁹ See NSW WorkCover Scheme Financial Statements, various years, Note 15, “Movement in Claim Liabilities and Recoveries.”

other burdens), with employers bearing only 5 percent;⁵⁰ shifting an even-larger share of the total cost onto injured workers and their families is both unfair and inefficient (since it reduces the economic incentive for businesses to improve safety practices on their premises).

It is important to remember, as well, that the reduction in benefits to injured workers from the workers insurance scheme also imposes greater costs for other components of the public social security system. Injured workers ultimately fall back on CentreLink and other public income supports, when their workers compensation benefits are inadequate to cover their requirements. Longer term, payouts of Age Pension benefits are also enhanced, on the assumption that workers on reduced benefits are less able and likely to make contributions into their superannuation accounts. This further highlights the cost-shifting (rather than cost-reducing) nature of the workers compensation cutbacks. Much of what is saved from workers compensation payouts is offset by increased payouts from other public programs.

Since the “savings” in workers compensation benefits have been passed through to employers in the form of reduced premiums, the overall effect is to shift the cost of providing for injured workers from employers to broader society; of course, workers themselves bear an enormous personal cost.

4.2 PERSONAL EXPERIENCES WITH THE FAILURES OF WORKERS COMPENSATION

As part of its ongoing outreach work with injured workers and their families, Unions NSW has compiled an exhaustive catalogue of over 100 personal stories, documenting the needless emotional and financial trauma which injured workers have experienced at the hands of the workers compensation system— in addition to the physical hardship arising from their actual injuries. The compilation of these personal experiences has been published by Unions NSW.⁵¹ Here are excerpts from three of those case studies:

Penelope’s Story:

I was originally injured working at a hospital trying to resuscitate a patient. I was assessed as having 61 per cent whole person impairment. This means I meet the definition of someone who is seriously injured even after the 2012 law changes.

⁵⁰ Safe Work Australia 2015.

⁵¹ Unions NSW, “Return to Work Inquiry,” June 6 2017, http://www.unionsnsw.org.au/return_to_work_inquiry.

I actively sought a return to work. Recently, I have asked to be retrained as a speech pathologist. But my insurer refused to fund the retraining, even though I offered to pay part of the cost myself. My insurer told me they are the ones that make the decisions regarding my training and that it is not about what I want to do.

My insurer even threatened to cut off my weekly payments if I did the speech pathology course on my own bat. I don't understand how that is even possible given that I meet the definition of serious injury for lifetime coverage under workers compensation laws.

My insurer has spent \$40,000 having me followed by private investigators. The speech pathology course I want to do would cost about \$5,000 per semester. It seems ridiculous that someone would spend money on private investigators when someone has been accepted as having a 61 per cent whole person impairment. I had seven case managers since February 2015.

Aaron's Story:

It's probably impossible for me to work in any physical job now because of all this. I've been certified as 23% WPI. When I was terminated in October 2015 I felt betrayed. I had 16 years of service. I've never been in trouble. When I was on light duties the work coordinator on the shift was told to watch me and report even if I was one minute late back on the smoke break. I felt victimized. Everywhere I went there were bosses turning up and in the end they made me paranoid.

My medical treatment has not been great. My first operation was cancelled because it hadn't been approved by the insurer yet. The mental trauma that caused was unbelievable.

Other little things do your head in. I get paid weekly and we agreed that would be on Thursday so I can pay my rent. But then it keeps changing. Every time I get a new case manager, they cut off my pay for that week, just to get my attention. I've had 8 case managers.

I receive about \$600 a week less what I should have been earning. I reckon I lost \$74,000 when I had the injury.

Fiona's Story:

I was injured in October 2015. The injury is to my right arm which included a bite and 55 kilo crash injury which resulted in a tear in the tendon in the elbow. The injury took about 4 months to diagnose properly. I had lots of physio initially, which was actually the worst thing that could possibly have been done.

Initially I returned to work after about 3 to 4 weeks. I was doing light duties on group programs with a buddy which was ok. After 2 weeks of having a buddy I was meant to be working in admin then returning to my job. This plan was developed by the rehab coordinator. But I went off work again because the injury wasn't settling down and I had to have a resting splint.

When I came back, we had a new HR manager and she said the assessment had cleared me for full duties. I never received this paperwork and after talking to the occupational therapist later. They were in effect refusing to provide me with suitable duties. There was work for me to do.

I have had no contact from my work. I have had no contact from the insurer, so I'm just in limbo. I want to go back to my old job. I can do it in every respect but one. I can't mop. I could do the mopping if they bought a steam mop. I am receiving weekly payments, but less than I received before.

V. The Financial Performance of Workers Compensation in NSW

5.1 INTRODUCTION

The substantial cutbacks in workers compensation benefits imposed by the NSW government in 2012 were justified in public by reference to a looming financial crisis in the system. WorkCover’s accumulated deficit reached \$2.4 billion at the end of fiscal 2011, and dire warnings were presented about the catastrophic consequences if that deficit was allowed to continue to grow. Incredibly, this artificial “crisis” dissipated as fast as it had been concocted: the system reattained an accumulated surplus within just 2 years. Since 2013, that accumulated surplus has averaged above \$3 billion, despite policy measures (in 2015 and 2016) that increased stated liabilities by over \$2 billion. It is clear that the predictions of fiscal doom invoked to support the 2012 cutbacks were deliberately exaggerated for maximum political effect. The accumulated deficit at the time was the obvious result of extraordinary factors, primarily arising in financial markets: including investment losses associated with the global financial crisis, and a dramatic decline in interest rates (which increased the present value of the system’s existing liabilities). Those negative financial factors have eased in subsequent years (as was expected), and will continue to improve in coming years; in particular, the coming rise in interest rates (already visible in world bond markets) will have major positive impacts on the stated value of the system’s liabilities, and will generate continuing improvement in financial balances. It is now clear that the painful benefit reductions imposed in 2012 – the consequences of which are still being felt by thousands of injured workers who are losing their monthly benefits entirely – were not fiscally necessary at all. Moreover, it is increasingly apparent that the system has ample fiscal room to repair its badly-damaged benefit structure.

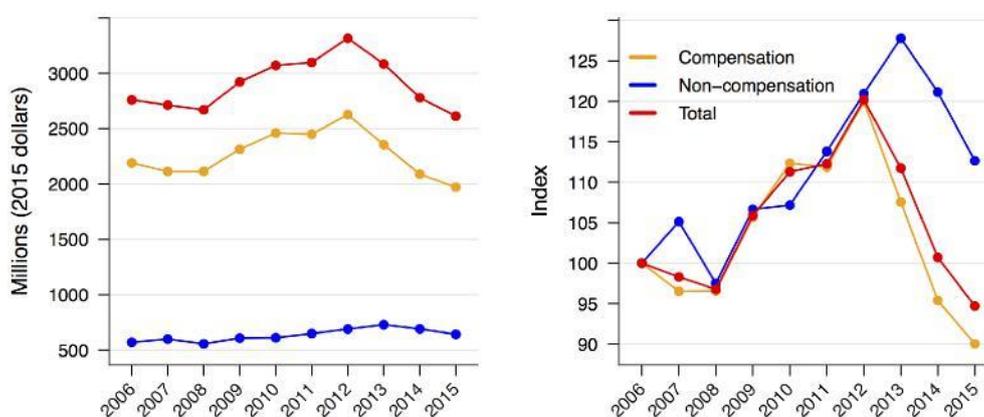
To provide some badly-needed historical perspective on the evolution of the system’s finances, this section reviews 10 years of financial data: covering the period leading up to, and after, the 2012 benefit changes. Our historical review helps to identify which types of benefits have been affected most severely by the 2012 cuts; how premium levels have also been reduced as the system’s financial balances improved; and how quickly the supposedly dire state of the system’s finances were resuscitated. Figures 5.1 through 5.3 are organised in two parts: the left-hand side of each figure illustrates the evolution of different components in absolute dollar amounts (adjusted in most cases for inflation), while the right-hand side indexes each variable to its starting 2006 level (set equal to 100) to allow an

easier comparison of the proportional changes that have affected each component of the system since. The main sources of data for this analysis are the State Insurance Regulatory Authority (SIRA), Safe Work Australia (SWA), Insurance and Care NSW (icare), and the Australian Bureau of Statistics (ABS). While the NSW data for the period up to 2015 are comprehensive and consistent, the data since 2015 are less so. Because of the institutional restructuring of the workers compensation system in 2015 (with the operations of the former organisation split into three different entities), a full set of disaggregated data comparable to the earlier series is not yet available for the most recent period.⁵² Nevertheless, where available the most recent data have been included in every section.

5.2 PAYMENTS

Between 2006 and 2012, payments (in real terms) under the workers compensation scheme in NSW gradually increased. After 2012, however, payments fell sharply.⁵³ This pattern is illustrated in Figure 5.1. While compensation payments were always much higher than non-compensation payments (left panel), the proportional decline was slightly worse for compensation than non-compensation payments (right panel). At the start of this period compensation payments made up 79 percent of all payments; by the end of the period this share had fallen to 75 percent (see Table A10 for a more detailed breakdown).

Figure 5.1: Compensation and non-compensation payments, NSW, 2006 to 2015

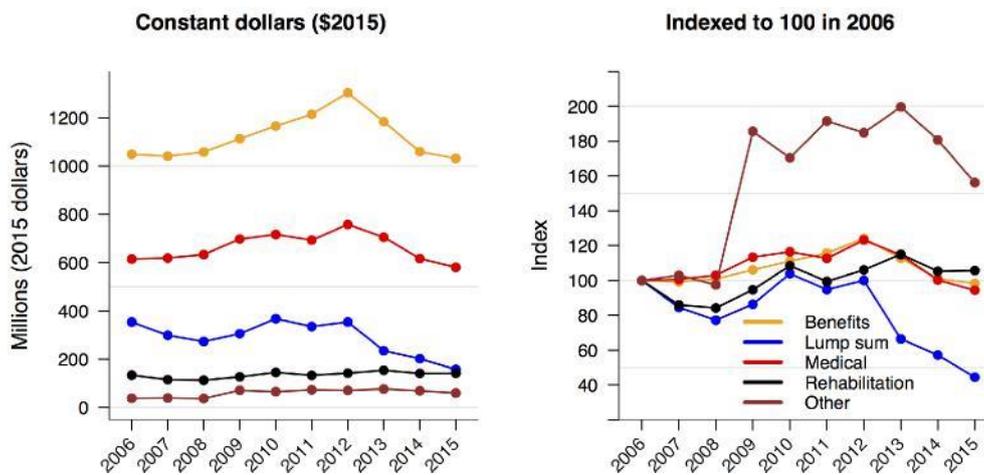


Source: SIRA 2015b, *Statistical Bulletin 2014/15: NSW workers compensation statistics*, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.1. (Details in Table A10). Financial year data.

⁵² The Standing Committee on Law and Justice noted: 'The lack of transparency and poor access to credible data from SIRA is a repeated theme in the submissions to this committee's current review. While we accept that a change in culture takes time in any organisation, we would have expected significantly more advances in this regard than have been evidenced to date.' Standing Committee on Law and Justice 2017, p. 44.

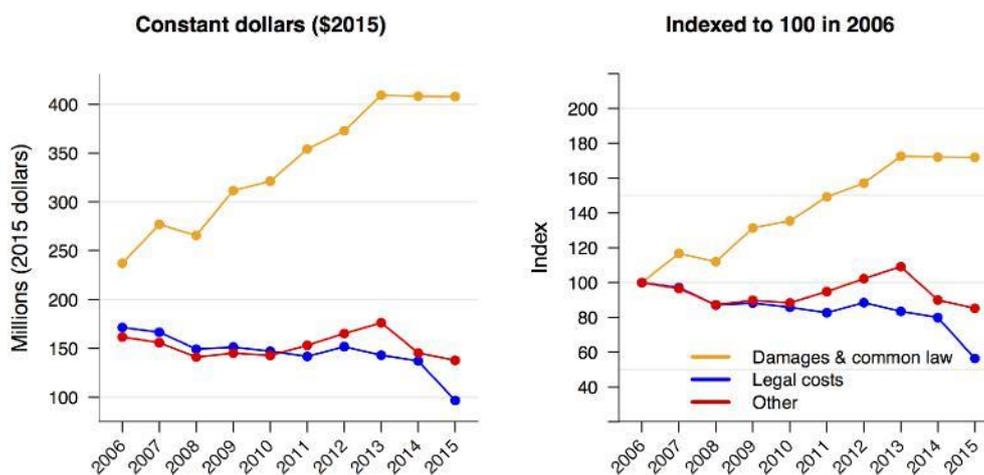
⁵³ The payments have been indexed to the consumer price index (CPI) so that all series are stated in 2015 dollar terms. Note that 2014–2015 is the latest available disaggregated data available from SIRA.

Figure 5.2: Compensation payments (detailed breakdown), NSW, 2006 to 2015



Source: As for Figure 5.1. Financial year data.

Figure 5.3: Non-compensation payments (detailed breakdown), NSW, 2006 to 2015



Source: As for Figure 5.1. Financial year data.

A more detailed look at payments data reveals some interesting patterns. Looking first at compensation payments (Figure 5.2), we see that benefit and medical payments traditionally made up the bulk of payouts, followed by lump-sum and rehabilitation payments. The first two categories accounted for over 60 percent of all payments. Lump sum payments declined most dramatically after 2012. Whereas lump sum payments made up 16 percent of payments in 2006, by 2015 this had fallen to 8 percent (see Table A11). These changes are particularly evident in the right panel of Figure 5.2, which shows a very steep drop in lump sum payments after 2012. While the other categories also declined after 2012, the contraction was not as steep.

This dramatic decline in lump sum payments mostly reflects changes to Section 66 payments, related to the permanent impairment provisions, in the wake of the 2012

overhaul. In some cases, changes to eligibility resulted in a fall in claims. In other cases, the procedures themselves changed, such as the withdrawal of the right to repeat claims.

Regarding non-compensation payments, the detailed breakdown reveals a rather different experience. As Figure 5.3 shows, legal costs and other payments (transport, interpreters, investigations) both declined after 2012, but payments for damages and common law awards stabilised and did not fall. As the left panel shows, these payments grew strongly in the period after 2008 to become by far the major component of non-compensation payments. Whereas in 2006 damages and common law payments made up 42 percent of all non-compensation payments, by 2015 this had risen to 64 percent (see Table A12).

Table 5.1 reports the decline in all the various payment categories between 2012 and 2015. Overall, total payments declined by over \$700 million, from around \$3.3 billion in 2012 to around \$2.6 billion in 2015 (a decline of over 20 percent in three years). This decline reflected a reduction in all main categories: workplace injury payments (down \$420 million); other work-related injury payments (down \$159 million); and occupational disease payments (down \$125 million).

Table 5.1: Payment categories by injury type, \$000, 2012 and 2015

2012	Workplace injuries	Other work-related injuries	Occupational diseases	Total
Benefits	914,187	97,018	291,557	1,302,762
Lump sum	240,766	27,645	85,621	354,032
Medical	557,986	78,637	121,021	757,644
Rehabilitation	103,074	12,403	26,782	142,259
Other comp	44,277	18,003	8,670	70,950
Dam & com law	288,578	1,922	82,200	372,700
Legal costs	97,572	11,850	42,352	151,774
Other non-comp	109,760	13,382	42,017	165,159
Total	2,356,200	260,860	700,220	3,317,280
2015				
Benefits	761,681	41,961	228,194	1,031,836
Lump sum	110,849	7,235	39,418	157,502
Medical	456,889	28,072	95,523	580,484
Rehabilitation	111,527	3,106	27,091	141,724
Other comp	43,325	6,741	9,895	59,961
Dam & com law	292,872	3,517	111,491	407,880
Legal costs	65,493	6,765	24,456	96,714
Other non-comp	93,641	4,410	39,643	137,694
Total	1,936,277	101,807	575,711	2,613,795
CHANGE				
Benefits	-152,506	-55,057	-63,363	-270,926
Lump sum	-129,917	-20,410	-46,203	-196,530
Medical	-101,097	-50,565	-25,498	-177,160
Rehabilitation	8,453	-9,297	309	-535
Other comp	-952	-11,262	1,225	-10,989
Dam & com law	4,294	1,595	29,291	35,180
Legal costs	-32,079	-5,085	-17,896	-55,060
Other non-comp	-16,119	-8,972	-2,374	-27,465
Total	-419,923	-159,053	-124,509	-703,485

Notes: Payments are in 2015 dollars (indexed to CPI). 'Dam & com law' = 'Damages & common law'. Financial year data. *Source:* **SIRA2006–15** Based on data in Table 7.2.

Among payments for workplace injuries, the largest decreases were experienced in benefits (down \$153 million), lump sum payments (down \$130 million) and medical payments (down \$101 million). In the case of other work-related injuries, benefits declined the most (down \$55 million), followed by medical payments (down \$51 million). Lump sum payments also fell (down by \$20 million).

Payments for occupational diseases as a group experienced the smallest declines, but within this type of injury, falls in benefit payments were considerable (down \$63 million), followed by lump sum payments (down \$46 million) and medical payments (\$26 million).

The only major category which witnessed a rise in payments was damages and common law payments, driven mostly by payouts for occupational diseases (which grew by \$29 million over those three years). This represents a shift from the traditional social insurance model for workers' compensation, toward a greater reliance on private liability.

In summary, from a peak in 2012 payments to injured workers fell dramatically, and that decline was experienced broadly across most categories of benefit. By 2015, these declines—in real terms—amounted to cuts of more than 20 percent. The most severe cuts in absolute terms were benefit payments, followed by lump sum payments and medical payments. In relative terms, lump sum payments took the largest cuts (56 percent), followed by medical payments (23 percent) and benefit payments (21 percent). The dramatic scale of such reductions imposed over such a short space of time attests to the serious impact experienced by the injured workers who have been on the receiving end of those benefits cuts.

Current situation

Since the organisational restructuring of the workers compensation system in 2015, consistent data on benefit payouts with equivalent detail regarding category of payment have not been made available (as was the case in the former WorkCover Statistical Bulletins). icare annual reports only present partial breakdowns of payments. The 2015/16 report indicated total payouts of:⁵⁴

- \$658.3 million in weekly benefit payments, and
- \$432.2 million in medical payments.

The subsequent icare annual report for 2016–17 also presented only a partial reporting of disaggregated payments data:⁵⁵

- \$160.1 million for rehabilitation payments; and
- \$501.75 million for medical payments.

⁵⁵ icare 2016a, p. 107.

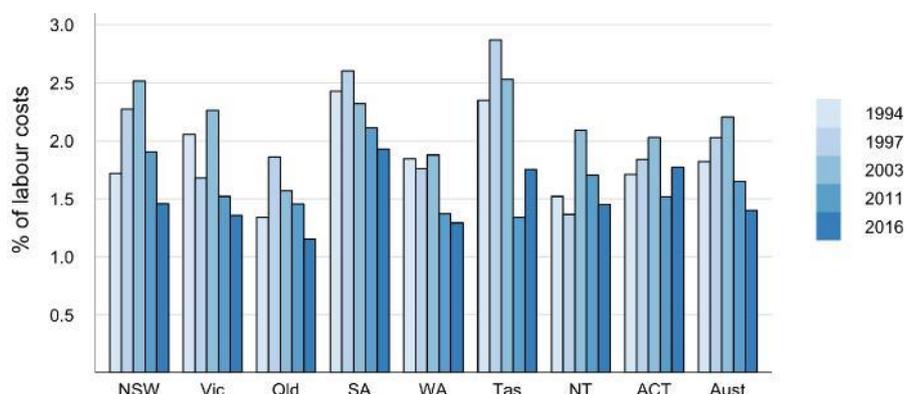
These most recent data cannot be compared to the pre-2015 payments data reported above. Aggregate payments information, however, confirms that overall payments have remained at suppressed levels, despite the partial restoration of some benefits in 2015. Indeed, weekly benefit payments in 2015–16 (\$658 million) represent a low point in the provision of compensation to injured workers: falling well behind figures for the previous financial year (\$762 million), and about 30 percent below weekly benefit payments in 2012 in real (inflation-adjusted) terms.

A simplified but consistent longer-term picture of overall payments (including compensation and non-compensation) can be compiled on the basis of aggregate current cash claims payments (as reported in the system’s annual cash flow statement). This reports actual payments to benefit recipients in each year. These payments declined by about 15 percent in nominal dollars between 2012 and 2017 – and by closer to 25 percent in real terms. A modest increase in cash payouts in 2017 (by \$84 million relative to the previous year) may reflect the partial restoration of some benefits after 2015; it will take additional years of experience to determine to what extent those changes are affecting yearly benefit payments. It is already apparent, however, that the 2012 changes continue to substantially suppress benefit payments.

5.3 PREMIUMS

A longer term perspective on the costs of workers compensation is provided by the Australian Bureau of Statistics labour cost series. This breaks total labour costs into various components, one of which is workers compensation premium payments. Figure 5.4 describes this component as a percentage of total labour costs for a number of selected years since the early 1990s, across jurisdictions in Australia.

Figure 5.4: Workers compensation as percentage of total labour costs, by jurisdiction, selected years 1994 to 2016

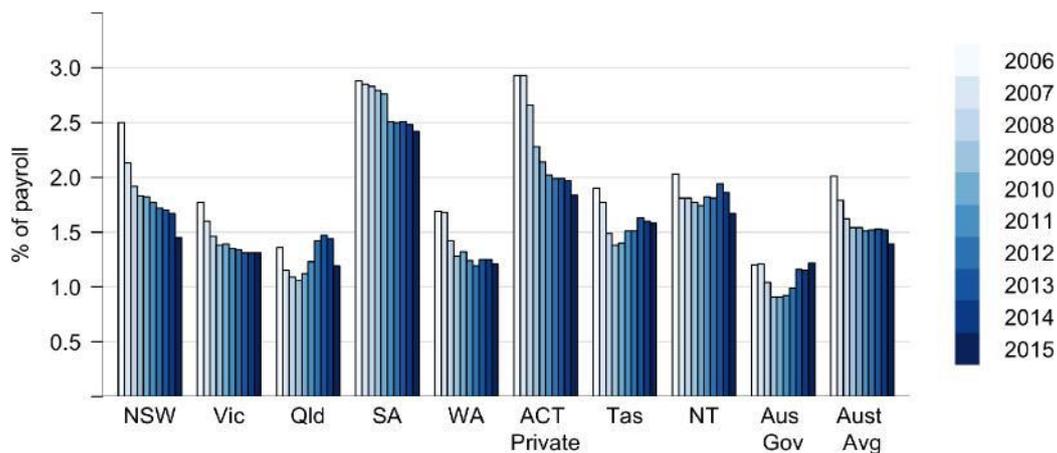


Source: ABS, Labour Costs, Australia, Cat.No. 6348.0 (Details in Table A19). Financial year data.

These data suggest that most jurisdictions saw increases in the relative cost of workers compensation during the 1990s, but since 2003 these costs have been falling rapidly. The declines have been steeper in some states, and over different time periods. For the national average, premiums began declining after 2003. In NSW, the decline in premium costs was especially large, falling by over one full percentage point between 2003 and 2016 (a decline of 40 percent). That is the largest decline in average premium costs of any state. Close to half that decline has occurred since 2011 alone, simultaneous with the dramatic reduction in benefit payouts.

A second useful source to directly compare jurisdictions is to use the ‘standardised premium rates’ which Safe Work Australia has developed for the purposes of its comparative performance monitoring reports.⁵⁶ While the ‘standardised premium rates’ allow us to directly compare jurisdictions within Australia, they only available for the period since 2006. Nevertheless, this is sufficient to confirm that the costs of workers compensation have fallen substantially over the last decade, as suggested in the ABS data. These comparisons for Australian jurisdictions, and a national average, are shown in Figure 5.5.

Figure 5.5: Standardised average premium rates, by jurisdiction, 2006 to 2015



Source: Based on combining data from Indicator 15 in Safe Work Australia 2011, p.24; Indicator 15 in Safe Work Australia 2012, p.21; and Indicator 12 in Safe Work Australia 2017a, p.18. (Details in Table A20). Financial year data.

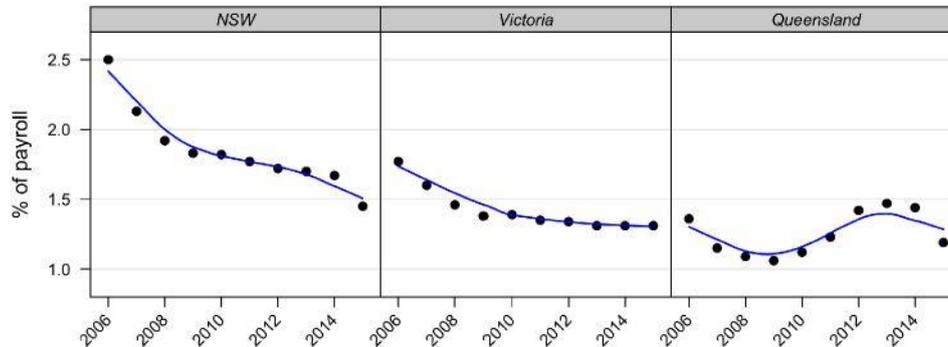
These data confirm the trend from the ABS data, and show a steady decline in standardised premiums in most jurisdictions, particularly in the years between 2006 and 2008. With regards to NSW, the most distinctive feature of Figure 5.5 is the notable decline in

⁵⁶ The ABS data comes from an employers survey, with various exclusions (such as agriculture, forestry and fishing). See the Explanatory Notes to ABS, *Labour Costs, Australia, 2015-16*, Cat. No. 6348.0. As Safe Work Australia explains with regards to the following data: “It should be noted that these data will be different to premium rates published directly by the jurisdictions due to the adjustments made to the data to enable more accurate jurisdictional comparisons. The principal regulatory differences that affect comparability for which adjustments have been applied in this indicator are: the exclusion of provision for coverage of journey claims; the inclusion of self-insurers; the inclusion of superannuation as part of remuneration; and the standardisation of non-compensable excesses imposed by each scheme.” Safe Work Australia 2017a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers’ compensation schemes in Australia and New Zealand*, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia, p. 19.

standardised premiums in 2007, 2008 and 2015 – with smaller decreases experienced in every intervening year. At the start of the period the average standardised premium rate was 2.5 percent of payroll; by 2015 this had dropped by more than a full percentage point to just 1.45 percent. The fall in 2015 (from 1.67 percent in 2014) left NSW with rates close to the Australian average of 1.39 percent (see Table A20 for more details).

One of the arguments advanced by Premier O’Farrell when introducing the major changes to workers compensation in 2012 was the claim that premiums in NSW were ‘uncompetitive’ compared with Victoria and Queensland. However, the figures cited at the time – based on 2010 data – did not consider longer-term trends in the data. Over the ten years examined here, the relative position of NSW vis-a-vis the other states was improving markedly. Queensland, for example, experienced higher premiums between 2011 and 2014. This is illustrated in Figure 5.6 which compares the data for these three states – showing a smoothed trend line in blue – and suggests that the long-term decline in NSW in premiums reductions was more pronounced than was the case in the other two states. Moreover, this pattern of falling premiums was well underway prior to the dramatic reductions in benefits in NSW in 2012. Standardised premiums are now broadly equivalent in all three of these states (all under 1.5 percent of payroll).

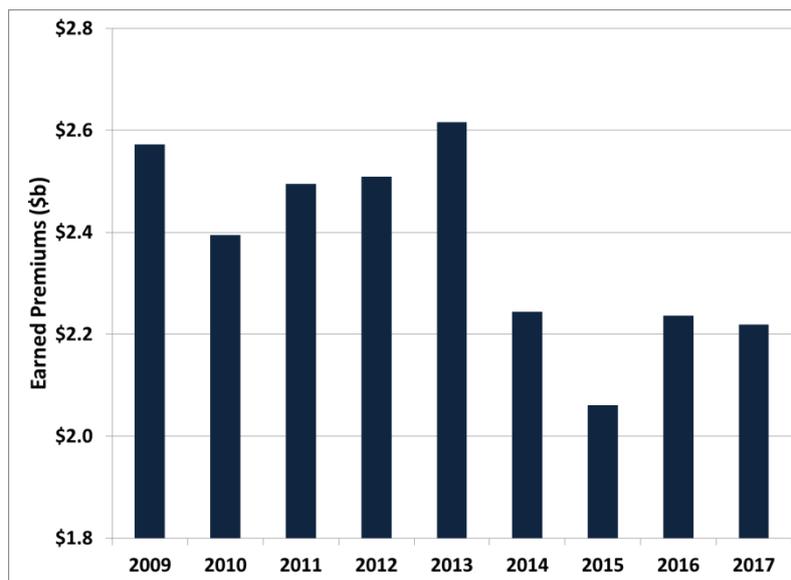
Figure 5.6: Standardised average premium rates, NSW, Victoria and Queensland, 2006 to 2015



Source: As for Figure 5.5. Financial year data.

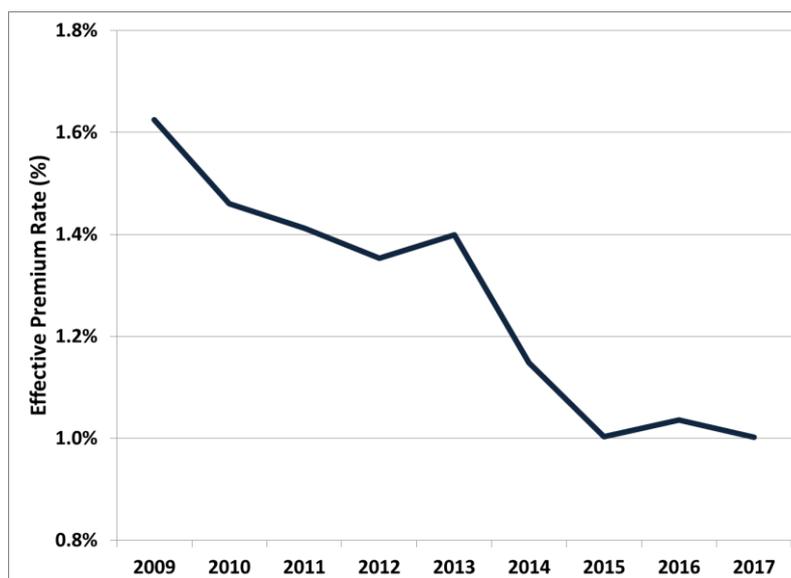
Another perspective on the long decline in workers compensation premium rates is provided by data from icare financial statements (and earlier financial statements from WorkCover). Figure 5.7 illustrates aggregate premium income since 2009, in nominal terms. Premiums peaked in 2013 at \$2.6 billion, and have declined since to around \$2.2 billion. However, this occurred during a time when overall employment and payrolls in NSW were growing relatively strongly. Relative to overall labour costs, therefore, the decline in premiums has been more dramatic.

Figure 5.7: Earned premiums, 2009 to 2017



Source: icare and Workcover financial statements.

Figure 5.8: Effective average premium rate, 2009 to 2017



Source: icare and Workcover financial statements; ABS Catalogue 5206.0, Table 44.

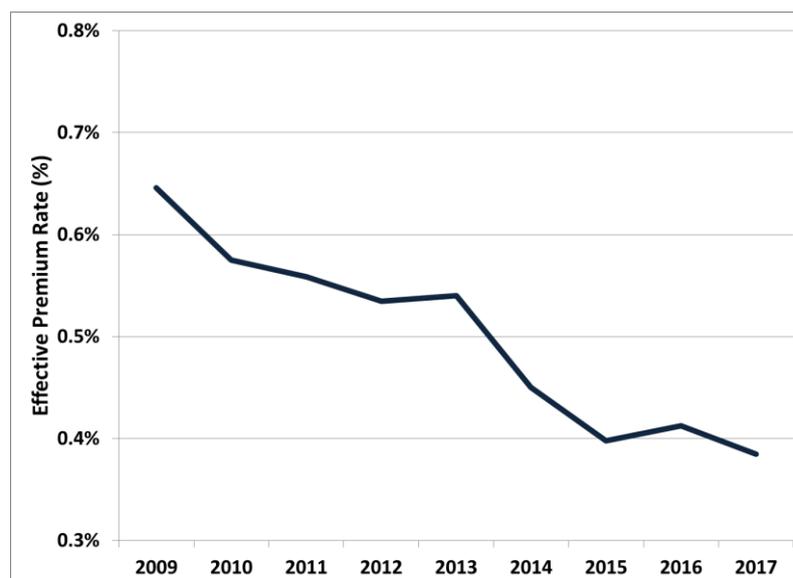
Figure 5.8 illustrates the system's earned premium revenue relative to total private sector compensation paid out in NSW.⁵⁷ This is an approximate measure of average effective premiums paid; it is lower than the standardised premium rates reported above, mostly because total compensation includes more workers, as well as compensation components (such as superannuation contributions) that are not insurable for workers compensation

⁵⁷ We use private sector compensation as the denominator of this ratio since major public sector employers self-insure and hence do not pay premiums to icare.

purposes; nevertheless, this ratio provides a good depiction of the overall trend in premiums. As indicated in Figure 5.8, the decline in average effective premiums was well-established prior to the 2012 benefit cuts. It then accelerated as the fiscal balance of the compensation system was dramatically transformed in the wake of those benefit cuts. Effective premiums reached an all-time low of precisely 1.0 percent of total private sector compensation in NSW in 2017. These ongoing premium cuts, implemented simultaneous to the painful reduction in benefit payments to injured workers, have constituted an enormous fiscal dividend paid out to private NSW employers.

Inter-state comparisons of insurance premiums feature prominently in public debates over workers compensation, but this begs the question of whether workers compensation costs are actually somehow ‘too high.’ This can be partly assessed by asking whether these payments have constituted an undue component of the costs of employing labour. We saw earlier that workers compensation premiums as a proportion of total labour costs have been falling since at least 2003. At the same time, total labour costs have also been falling relative to the total size of the economy. Thus there is a two-fold erosion in the importance of workers compensation costs: they are declining as a share of total labour costs, which in turn are shrinking as a share of total gross state output (the state-level equivalent of GDP). State-based data from the ABS national accounts system confirm this decline. Figure 5.9 shows earned premiums in NSW as a proportion of state output: this ratio has declined more continuously and even more dramatically than premiums measured relative to total labour costs: falling by over 60 percent since 2009, to under 0.4 percent of state product by 2017.

Figure 5.9: Premium revenue relative to NSW state product, 2009 to 2017



Source: icare and Workcover financial statements; ABS Catalogue 5222.0, Table 1.

In summary, workers compensation costs for private sector employers are low, and declining over time. These costs now account for just 1 percent of total private sector compensation costs, and less than 0.4 percent of state gross product. It is hard to view proportions of this magnitude as ‘too high’ by any definition. Indeed, the target for workers compensation premiums as a percentage of wages once advanced by the then-Minister for Industrial Relations, John Della Bosca, in 2001, was 2.8 percent.⁵⁸ Today’s share is barely one-third of that level.

Finally, in the context of the declining wage share of total output that has occurred in NSW over the last two decades – declining from nearly 60 percent at the turn of the century, to just over 56 percent last year – the capacity of business to meet these costs has never been more favourable.

5.4 INJURED WORKERS’ ENTITLEMENTS

As Safe Work Australia notes in its comparison of premium rates across jurisdictions, differences in benefit entitlements in different jurisdictions influence the level of premiums.⁵⁹ At the same time, those entitlements also determine how well the needs of injured workers (and those with occupational diseases) are met. Benefit entitlements are typically defined with respect to the impairment period experienced by an injured worker (measured in weeks of incapacity), and also the level of pre-injury earnings of the worker. These are broadly classified by Safe Work Australia as ‘low’, ‘middle’ and ‘high.’⁶⁰

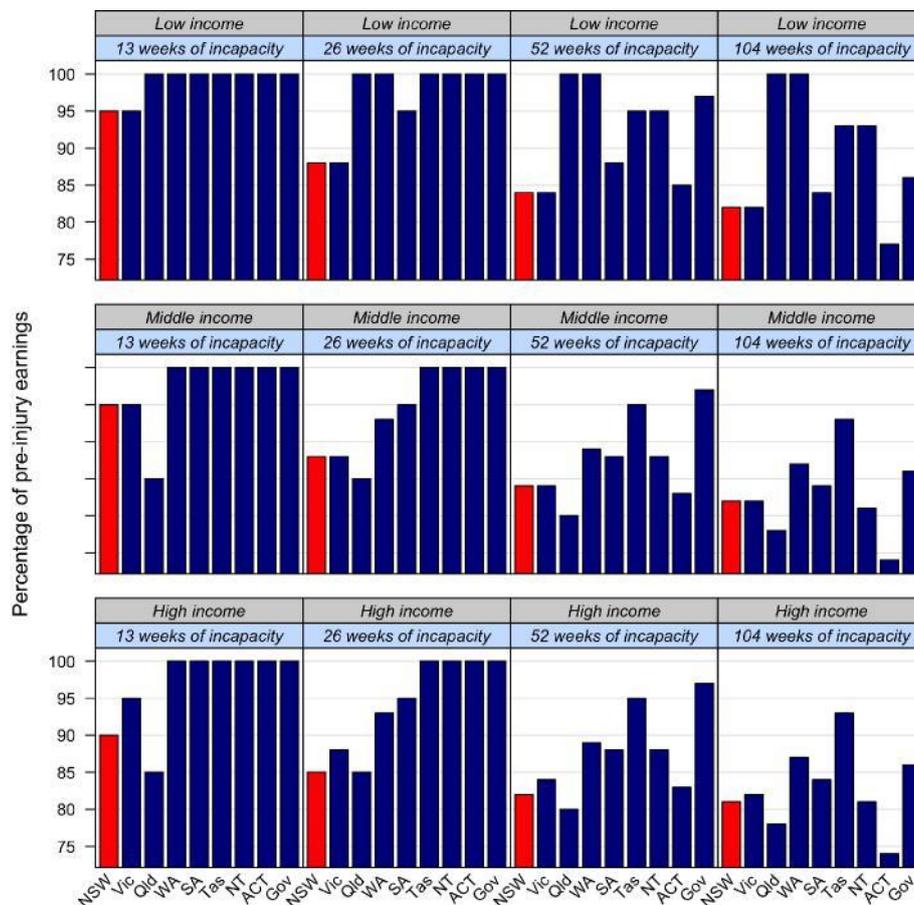
For each category of pre-injury earnings, we can compare the benefit schedules across different jurisdictions in 2015 (the most recent year for which these comparisons are available). In this comparison, NSW compares poorly with other jurisdictions. As Figure 5.10 illustrates, benefits in NSW (shown in red) and Victoria both fall below most other jurisdictions for all periods of impairment. While middle and high income earners fare worse in Queensland, low income earners fare much better there than in most other jurisdictions. The general similarity in benefit entitlements between NSW and Victoria breaks down for high income earners, who fare significantly worse in NSW.

⁵⁸ Rachel Callinan 2001, *The Future of the New South Wales Workers’ Compensation Scheme*, Briefing Paper 8, Sydney: NSW Parliamentary Library Research Service, p. 24

⁵⁹ Entitlements are prescribed payments to which injured workers are entitled under legislation, as well as common law payments. They may take the form of maximum lump sum payments, or specified weekly payments.

⁶⁰ In 2015, the definition of ‘low income’ was pre-injury earnings of \$950 gross per week (award wage); ‘middle income’ was \$1600 gross per week (non-award wage); and ‘high income’ was \$2200 gross per week (non-award wage). Safe Work Australia 2017a, p. 19.

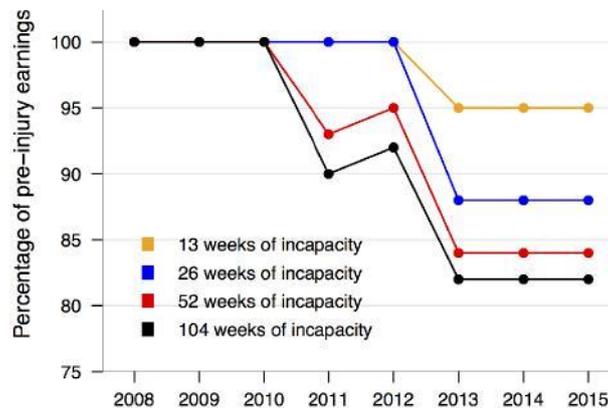
Figure 5.10: Average percentage of pre-injury earnings replaced for selected periods of incapacity across jurisdictions by level of pre-injury income, 2015



Source: Taken from Indicator 13 in Safe Work Australia 2017b, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers compensation schemes in Australia and New Zealand, Part 1 - Work Health and Safety Performance*, Nineteenth Edition October 2017, Canberra: Safe Work Australia, p.20. (Details in Table A25.) Financial year data.

The relatively poor level of entitlements for NSW reflects the effects of the benefit cutbacks imposed in 2012. Figure 5.11 highlights entitlements for low income workers in NSW, for the period from 2008 to 2015. As this figure reveals, low income workers with the most severe incapacity began to lose benefits in 2010–2011, and entitlements were further cut in 2012–13. By 2013, workers with more than a year’s incapacity were left on benefits equivalent to just 84 percent of their pre-injury earnings, while those with two year’s incapacity were on just 82 percent. In this period (2012–13), payments to those injured workers with less severe incapacity (particularly the 26 weeks incapacity category) were also dramatically cut. A low income worker in this situation saw their payments fall from 100 percent of their pre-injury earnings to 88 percent.

Figure 5.11: Average percentage of pre-injury earnings for selected periods of incapacity for low income workers, NSW, 2008 to 2015



Source: As for Figure 5.10. Financial year data.

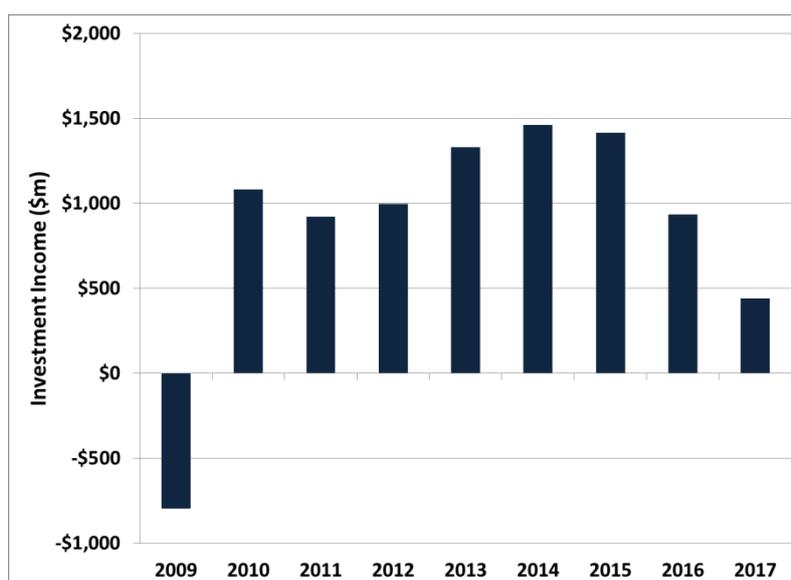
Overall, these data demonstrate that workers compensation benefits in NSW in 2015 are now significantly less generous than most other states, particularly for workers on low pre-injury incomes. The partial restoration of benefits since 2015 has not reversed this situation. Despite its nation-leading economic performance in recent years, when it comes to compensating injured workers NSW ranks near the bottom of the pack.

5.5 INVESTMENT INCOME

A particularly volatile dimension of workers compensation funding is the investment income generated by the system’s accumulated assets. These assets are set aside to cover expected future expenses associated with payments for the current portfolio of booked claims. Income generated on those investments helps to offset the cost of future benefit payments, and helps to stabilise future benefit payments against economic, fiscal or political fluctuations. This pre-funding of future benefits is not an absolute requirement for a viable workers compensation system: benefits can also be funded on a pay-as-you-go basis from future premiums or taxes. But for reasons of both financial stability and intertemporal fairness (so that the cost of injuries experienced in a particular year is financed primarily from revenues collected in that year), the pre-funding of future benefits is standard practice in most workers compensation systems.

The poor performance of the system’s investments during the GFC was an important factor behind the emergence of significant (but temporary) accumulated deficits in the plan. The fund’s investments lost \$800 million amidst the turmoil of fiscal 2008-09. Those losses were recouped in subsequent years: the fund’s investment returns were especially strong in 2014 and 2015 (see Figure 5.12). In general the fund can expect to earn around \$1 billion per year on its investments.

Figure 5.12. Annual Investment Income, 2009 to 2017



Source: WorkCover and icare annual financial statements.

More recently, however, the performance of the investment portfolio was very disappointing in 2017. Total investment income equaled just \$439 million: well under half typical levels. This was equivalent to an average rate of return of just 2.46 percent,⁶¹ one-third below the benchmark return on similarly-composed portfolios in the broader Australian investment market. The published explanation given by icare management for this shortfall was both incomplete and unconvincing: management claimed it was due to “underlying defensive equity and alternatives strategies.”⁶² Section VIII of this report recommends that icare provide a more thorough explanation of the disappointing 2016/17 result, and undertake a comparative review of the performance of its investment management relative to other managers.

It is important to note that the overall workers insurance fund still generated positive underlying net income (after adjusting for the one-time effects of the change in accounting for Section 39 benefit cuts), despite this \$500 million shortfall in investment income (compared to normal levels). As investment returns will almost certainly improve in future years, this enhances the fiscal scope for benefit improvement (as discussed later in this paper).

5.6 PRIVATE INSURERS

As part of its assessment of the efficiency of the workers compensation scheme, the Standing Committee on Law and Justice published data on the proportions of each dollar

⁶¹ See icare annual report 2016-17, p. 42.

⁶² icare annual report 2016-17, p. 41.

paid in premiums that was returned to injured workers as benefits (in the form of weekly payments, medical costs, etc.). The remainder of the premiums which were not paid as benefits were absorbed by service delivery costs, profits for the private firms engaged in service delivery, and changes in the surplus or deficit recorded by the system. Table 5.4 presents this data for the financial years 2012–13 through to 2015–2016. It shows that about 87 percent of premiums were paid in benefits over this four-year period. This meant that the remainder – amounting to nearly half a billion dollars – was spent on service delivery and insurer profits. In 2015–2016 some \$396 million was spent on remuneration for the scheme agents: the private insurance companies contracted by the scheme to issue policies and manage claims.⁶³

Table 5.4: Return of premium income to injured workers via entitlements, NSW, 2013 to 2016, current dollars (millions)

Year	Payments	Premiums	Costs/profits	Benefits (%)
2013	2,956.1	3,505.8	549.7	84.3
2014	2,737.6	3,236.9	499.3	84.6
2015	2,619.4	3,000.4	381.0	87.3
2016	2,641.6	3,044.9	403.3	86.8

Source: Answers to questions on notice, SIRA. Published in Standing Committee on Law and Justice 2017, p. 19. Financial year data.

While in theory these private insurers were obliged to follow ‘five premium principles’ (set out in SIRA’s *Market Practice Premiums Guidelines*) which are meant to align their premiums with the target premium rate set by SIRA, in practice the situation may differ: “Unlike the compulsory third party insurance scheme, there is no legislative requirement requiring the five workers compensation scheme agents to account for their actual profit margins.”⁶⁴

The four segments in the workers compensation insurance system at the end of 2017 were:

1. The nominal insurer (managed by icare);
2. Specialised insurers (6 insurers within particular industries);
3. Self-insurers (covering 57 large employers); and
4. The Treasury Managed Fund (TMF) (also managed by icare).

The nominal insurer covers the vast bulk of the workforce, making up 74 percent of the wages bill in 2016–17 (\$174,877 million) and 67 percent of new claims (61,297 claims).⁶⁵ Figure 5.13 shows this breakdown. Prior to the new arrangements implemented during 2017 and 2018, icare, which acts for the nominal insurer and for the Treasury Managed Fund, used a ‘multi-provider model’ for its claims management, engaging GIO, Allianz, QBE and Employers Mutual Limited (EML). While the basis of this involvement was a contractual

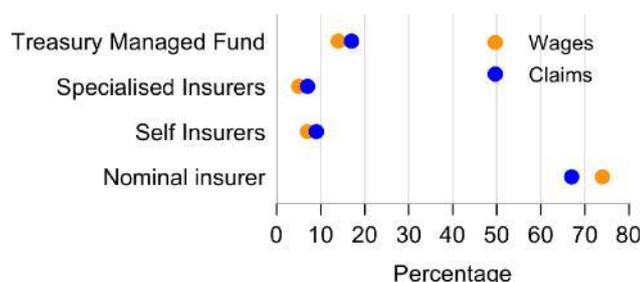
⁶³ Standing Committee on Law and Justice 2017, p. 20.

⁶⁴ Standing Committee on Law and Justice 2017, p. 20.

⁶⁵ SIRA 2017, *State Insurance Regulatory Authority Annual Report 2016/17*, Sydney: State Insurance Regulatory Authority, p. 21.

one—based on fees rather than a profit margin—there was scope for monetary incentives to influence insurance company behaviour. Their contracts provided for both a base fee and a performance fee, and the latter may be linked to claims outcomes. In the new arrangements, in which icare has taken its workers compensation insurance activities ‘in-house,’ EML is the only remaining provider involved. The contractual terms of EML’s engagement with icare are not publicly known.

Figure 5.13: Insurance segments by proportions of wages and claims, NSW, 2016–2017



Note: Financial year data. Source: SIRA 2017, State Insurance Regulatory Authority Annual Report 2016/17, Sydney: State Insurance Regulatory Authority, p. 21. (Details in Table A28.)

While information on the profitability of the workers compensation component of their insurance is not publicly available, the recent overall profitability of three of these private insurers is reported in Table 5.5. The most notable feature of these data is that the Australian arm of the international insurance company Allianz has achieved profit margins over 10 percent in four of the last five years. By contrast, QBE earned average profits margins of about 6 percent (overlooking one year when losses were incurred). The results for the much smaller insurer, Employers Mutual Limited, were more variable: ranging from losses in two years through to a healthy 11.8 percent in 2014.

Table 5.5: Profitability, selected insurance companies, Australia, 2012-2016

Year	QBE		Allianz Australia		Employers Mutual Limited	
	\$000s	%	\$000s	%	\$000s	%
2012	1,305,111	5.1	525,378	15.2	-6,385	-4.7
2013	-621,349	-2.5	470,166	12.5	6,042	3.4
2014	1,291,241	5.6	559,923	14.3	23,716	11.8
2015	1,321,754	6.4	376,289	9.0	13,363	6.0
2016	1,486,800	7.5	462,536	10.4	-720	-0.3

Source: IBIS World, various industry reports. Profits before tax in dollars; profit margins in percentages. Financial year data.

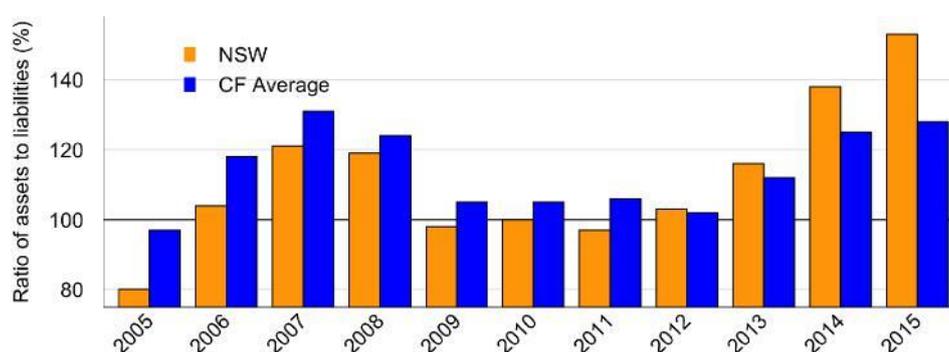
As discussed in the next section of this report, while the private role in service delivery under the system is being restructured and consolidated, it will remain central to the scheme. The diversion of a significant share of total premium revenue to the profits of

private insurance providers raises important policy and ethical issues – especially at a time when so many injured workers are enduring the effects of benefit cutbacks.

5.7 FUNDING RATIOS

Safe Work Australia reports the outstanding claims liabilities of all the centrally funded workers compensation schemes in Australia, and this provides another informative perspective on the relative condition of the system in NSW. These centrally funded schemes operate at the Commonwealth Government level (Comcare) and in New South Wales, Victoria, Queensland and South Australia. These liabilities are then compared to the assets held by each scheme, to derive a funding ratio which is interpreted as an indicator of the adequacy of the scheme to meet future claim payments.⁶⁶ Safe Work Australia adjusts measures of both liabilities and assets to ensure comparability between jurisdictions (and hence the measures reported here differ from those reported by individual agencies).

Figure 5.14: Standardised ratio of assets to net outstanding claim liabilities for centrally funded (CF) schemes



Note: Financial year data. *Source:* Based on combining data from Indicator 18a in Safe Work Australia 2011, p. 30, and Indicator 15 in Safe Work Australia 2017a, p. 25. (Details in Table A29).

As Figure 5.14 indicates, in 2005 and again in the period from 2009 to 2011, the funding ratio in NSW fell below 100 percent. In other words, at those times the scheme had less assets on hand than would ultimately be required to pay its outstanding claims.⁶⁷ By 2012 this ratio had already recovered to 103 percent, and after that grew very strongly to reach 153 percent by 2015. It is important to note that by this measure the scheme had regained full funding by June 2012, even before the major reductions in workers compensation entitlements began to be implemented. The claim that these benefit cuts were necessary

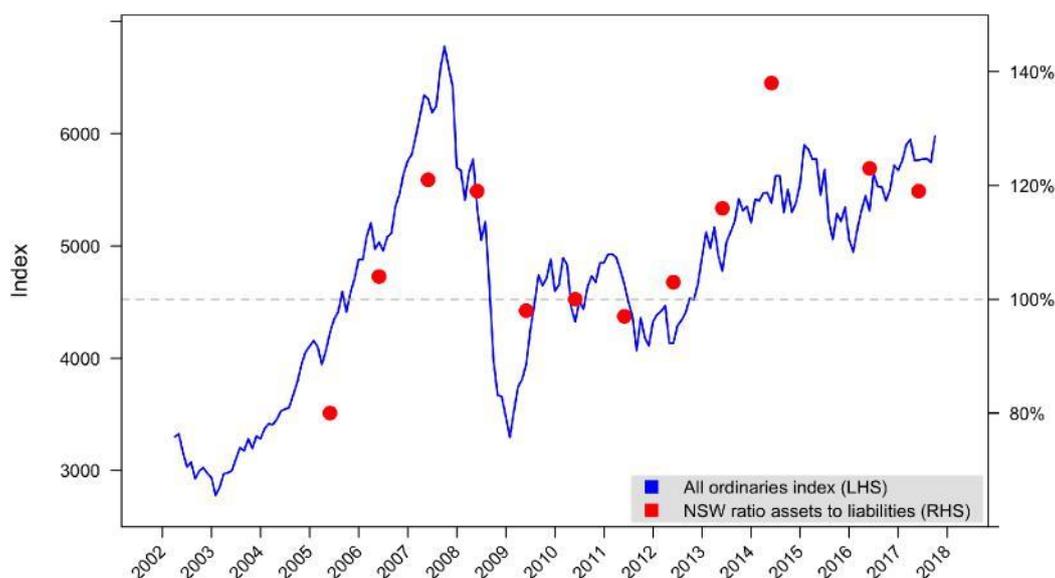
⁶⁶ Self-insurers lodge guarantees with the regulatory authority to cover their future liabilities, and so neither those guarantees nor associated liabilities are included in these measures.

⁶⁷ This shortfall could be covered by increased premium revenue in future years, a recovery in investment valuations, or other actions and policy changes, so a funding ratio below 100 percent does not imply financial inviability.

because of an alleged fiscal emergency facing the fund was invalid even before the cuts began.

There are several reasons for the decline in the funding ratio in the period 2009 to 2011. One key factor was the impact of the global financial crisis (GFC) on the valuation of the scheme's invested assets. During fiscal 2009 share prices fell dramatically, and did not recover to their 2008 levels until several years later. The overlap between the performance of financial markets and fluctuations in the funding ratio are evident in Figure 5.15. A second effect of financial markets on the scheme's funding was experienced through the decline in interest rates on government bonds, which are used to discount the value of future liabilities; the unprecedented post-GFC decline in discount rates drove large increases in the reported present value of liabilities carried by the system (even as benefit levels were being cut). The recovery of share market prices after 2012 explains some of the subsequent improvement in the funding ratio (to levels far above full funding). But the increase in the funding ratio also reflects the large reductions in current outgoings and in future liabilities caused by the 2012 reductions in benefits.

Figure 5.15: NSW ratio of liabilities to assets and Australian all ordinaries index

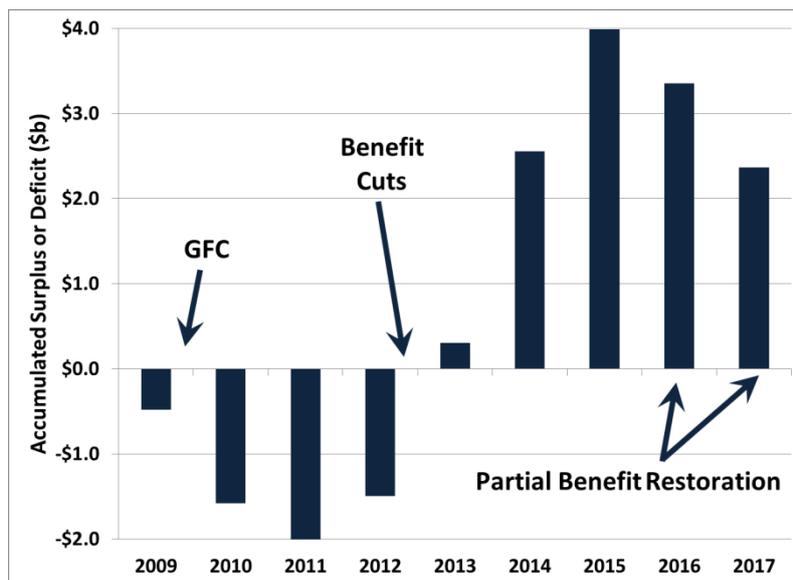


Note: Financial year data for ratio. *Source:* See Table A29 for ratio data for 2005 to 2015; for 2016 and 2016, from icare 2016b, *Financial Statements, 2015–2016*, Sydney: Insurance and Care NSW; icare 2017a, *An Eye for Numbers, A Heart for People: Financial Statements, 2016–2017*, Sydney: Insurance and Care NSW; ASX index from <http://www.asx.com.au/about/historical-market-statistics.htm>.

The dramatic turnaround in the bottom-line financial position of the workers compensation system is summarised in Figure 5.16, which illustrates the accumulated surplus or deficit of the fund at the end of each fiscal year from 2009 through 2017. A relatively small deficit appeared in 2009, directly attributable to the immediate effect of investment losses

associated with the GFC. That deficit got larger in the next two years, mostly because of the deferred impact of falling interest rates on the estimated present value liabilities of the system. Without those twin consequences arising from the GFC, the system would have maintained an accumulated surplus throughout this period. Following the dramatic benefit cuts imposed in 2012, and reinforced by a recovery in investment income, the system’s accumulated deficit transformed into a large and growing surplus, which reached \$4 billion by the end of fiscal 2015. Despite policy changes which have added \$1 billion to liabilities in each of 2015 and 2016, the accumulated surplus has remained elevated.

Figure 5.16 Accumulated Surplus or Deficit of the Workers Compensation System



Source: Authors’ compilation from WorkCover and icare annual financial statements.

VI. Shifting Boundaries Between Public and Private

For years, the NSW workers compensation system has embodied an uneasy combination of public and private provision. The underwriting of the core insurance service has been undertaken by a public entity, the NSW nominal insurer. The principle of insurance relies on a pooling of risk across a population, so that the costs of rare events are shared and individuals are protected against misfortune. This is accomplished most effectively through a single public underwriter: the pool for risk-sharing is greater, the system is backed by the greater financial stability of the government (as compared to a private business), and the costs associated with needless duplication and/or perverse incentives facing private providers are avoided.

However, in line with the general (and misplaced) interest of recent NSW governments in privatising public assets and services, many ancillary services associated with the workers compensation system have been outsourced to private for-profit providers. For many years this has included the important functions provided by the ‘scheme agents’: private firms paid to issue insurance policies to employers (underwritten by the public entity), and then process and manage claims from injured workers.

Of course, the scheme agents captured a significant premium from both ends of that business (issuing policies and managing claims), adding to the costs of providing the service – and potentially distorting the process of claims management. The scheme agents themselves were paid performance bonuses that could be enhanced by unduly restricting or delaying benefits for injured workers. In 2015-16, for example, icare reported \$396 million in remuneration fees paid to scheme agents;⁶⁸ this was only one component of the total revenues captured that year by private providers. In 2016-17, icare stopped reporting payments to the scheme agents (incorporating them within a larger envelope of payments from the Nominal Insurer to icare). In general, there has been inadequate transparency regarding the terms of icare’s contracts with the private providers, the amount and nature of payments they receive, and the incentive structure of performance bonuses and other factors that could influence the scheme agents’ actions with regard to injured workers.

Beginning in 2017, icare announced significant changes in its practices regarding both claims management and policy writing. After reviewing the performance of the various scheme agents (and in light of continuing concerns that agents were harassing injured workers and delaying their claims).⁶⁹ icare has now narrowed the roster of approved claims agents to just

⁶⁸ See Standing Committee on Law and Justice 2017, p. 20.

⁶⁹ The Senate Standing Committee explored those concerns in detail; see Standing Committee on Law and Justice 2017.

three firms. And only one of these firms – EML – will be assigned new claims after January 1, 2018. At the same time, icare will now issue insurance policies directly to employers, rather than funnelling this business through a privately-owned intermediary.

The consolidation of these ancillary functions holds some promise for improved efficiency in the delivery of benefits to injured workers, although the private provision of the service could still be open to abuse and perverse incentives. icare has determined it is better to consolidate this service within a single private operation, but this begs several important questions:

1. Why was the system fragmented for so many years into several parallel private providers, and what was the accumulated cost of that fragmented delivery approach?
2. What specifically spurred icare to shift to using a single provider?⁷⁰
3. What are the terms of icare’s contract with EML, how is EML compensated for its services, and what are the potential implications for injured workers?
4. If a single provider (rather than some pseudo-competitive process) is the most efficient method for managing claims, why is this consolidated role being assigned to a private firm rather than being conducted internally by the scheme itself? What is the “value-added” by the now-monopoly private provider, that justifies its fees, and could not be provided internally by the public agency?

By establishing an effective private monopoly with responsibility over a core segment of the whole workers compensation system, the public agency is placing itself in a vulnerable position—since its ability to shift this function to another provider if needed is compromised. The private monopoly will have considerable sway over the public agency in any future negotiations regarding compensation, performance standards, or other matters.

Another concern regarding the potential conflict between the public interest and the private sector, is the decision of icare’s Board of Directors to further increase the funding ratio for the workers insurance system. The Board has adopted a capital management strategy which targets a higher funding ratio to cover its anticipated claims liabilities: the Board now targets an assets/liabilities ratio of 127 percent. In other words, the directors of the system are requiring that it hold 27 percent more assets on hand at any time, than it expects will be required to cover all future liabilities carried by the system. It justifies this substantial financial cushion by reference to prudential requirements imposed on *private* insurers by the APRA. But for a public agency backed by the fiscal resources and policy-making powers of the state government (including the ability to adjust premiums and benefit entitlements as the government sees fit – something injured workers in NSW experienced painfully after 2012), there is no legal or financial necessity to maintain such a generous financial reserve.

⁷⁰ In its annual report, icare ascribes the change broadly to the results of a “rigorous review of the agent selection process”, without explaining or justifying this major change in management strategy. See icare 2016a, p. 56.

Moreover, it should be kept in mind that this funding ratio is applied after the reported value of claims liabilities has already been inflated by a significant amount (15.6 percent, at present) to supposedly offset the uncertainty associated with valuing future claims payments. That 15.6 percent embedded risk margin, combined with the explicit 27 percent target funding cushion, would imply total assets would be almost 50 percent higher than the best guess of the present value of liabilities.⁷¹

In the first place, this is a grossly inflated financial reserve—especially illegitimate at a time when thousands of injured workers are losing their benefits altogether. The adoption of unnecessary financial cushions seems intended to insulate the system’s abundant resources from public demands to repair benefits for injured workers.

More worrisome, imposing *private* insurance funding benchmarks onto a *public* insurance system raises concerns that the system may be being prepared for eventual privatisation. “Whipping a public agency into shape” prior to its tendering to private investors is a tried-and-true strategy, wielded in previous privatization episodes, to stoke investor interest and facilitate a quick transfer of a public asset. The combination of EML’s new private monopoly over the management of future claims, with the accumulation of lucrative excess financial assets, would create a potential investment opportunity extremely appealing for private investors—but at the expense, once again, of the public interest. There is a clear need for careful public oversight of the performance, actions, and profitability of EML, now that it has been installed as a private monopoly provider of insurance management services to the whole system, and more transparency regarding the terms of its arrangements with icare. In addition, advocates of workers compensation should stand ready to confront potential proposals to privatise more parts of the system: with a single private firm playing such a crucial and strategic role in the system, and with the system’s financial targets now pegged to private insurance benchmarks (rather than being determined on public policy criteria), the temptation for investors and some politicians to explore transferring even more of the system to private provision will be powerful.

⁷¹ This is comparable to the estimated funding ratio reported in Safe Work Australia’s standardised estimates of funded status of the centrally-funded schemes, described above.

VII. Rebuilding a Fair and Sustainable Workers Compensation System

7.1 AN AGENDA OF REFORM

Unions NSW and its affiliates have developed 12 priorities for repairing and improving the workers compensation in New South Wales.⁷² These goals are summarised below; the following sections the report will then consider the fiscal capacity of the NSW workers compensation system to implement these reforms.

1. Workers compensation should be available on a no-fault basis where an injury “arises out of or in the course of employment”, even where it is the aggravation of an existing injury or disease.
2. Premiums must recover the costs of the system as well as encourage safe work practices.
3. SafeWork NSW must be properly resourced to carry out its functions properly including an increased emphasis on prevention and compliance.
4. Meaningful tripartite consultation and governance must be central in the system.
5. The system of scheme agents and self-insurers should be abolished and all workers compensation functions should be internalised within Insurance and Care NSW (icare).
6. Trade unions must have the power to enforce non-compliance with workers compensation law together with rights of entry, inspection and other investigative and preventative powers.
7. The worker’ compensation system should provide a quick, easy, effective and legally binding mechanism to resolve disputes about all aspects of the workers compensation system.
8. Return to work should be elevated as a central tenet of workers compensation by:
 - placing an absolute obligation on employers to provide suitable duties;
 - preventing termination unless the injury management plan states that the return to work goal is a different job and a different employer; and
 - incentivising the employment of injured workers.

⁷² These priorities are described more fully in Unions NSW, 2016.

9. Journey claims and recess claims should once again be covered by the system.
10. Weekly payments should be set at a level equivalent to an injured worker's pre-injury average weekly earnings irrespective of their fitness for work and should not be subject to any caps or step-downs.
11. Costs associated with medical and all related treatment should be covered for workers compensation purposes with no arbitrary caps or limits such as pre-approval requirements.
12. Work capacity reviews and decisions should be removed from the workers compensation legislation. Consideration of a worker's functionality is appropriately addressed as part of their general rehabilitation plan.

7.2 PRINCIPLES FOR REFORM

For many years debates around workers compensation have been pre-occupied with affordability. This is usually couched in terms of 'high' premiums making NSW businesses 'uncompetitive', or problems of 'unfunded' liabilities in public schemes. As we have seen, however, premiums have declined dramatically relative to total labour costs and overall economic output; moreover, the supposedly dire accumulation of unfunded liabilities in the system has miraculously been converted into large and growing fiscal surpluses. The misdirection of debate over workers compensation into narrow and misleading financial considerations obscures the fundamental principles that should be central to the design of a fair and sustainable system:

1. Work-related injuries and occupational diseases are ultimately an assault on the bodily integrity of workers;
2. The economic costs to injured workers invariably leave them in a worse financial position than before the onset of the injury or disease;
3. The costs to employers of insuring against injury and diseases (their premiums) are very small relative to the overall financial scope of their operations;
4. Employers are in a better position than workers to ensure a safe workplace.

Bodily integrity

Even when full recovery of health is possible (and often it is not), no-one should have to endure financial hardship in addition to the trauma of work-related injury or disease. Thus adequate compensation, or a successful return to work, do not erase the experience.

For this reason, occupational health and safety – where the primary concern is always prevention – should be at the centre of any workers compensation system. This has implications for setting premiums and for common law remedies.

Economic costs

While lump sum payments may be calculated on the basis of the perceived economic losses which an injured worker may sustain over a period of their working life, it is unlikely that such payments can ever fully offset the total financial and non-financial burden imposed on the worker and their family. Interruptions to earning capacity, to career advancement, to occupational mobility: none can be fully compensated, including because the future is simply unknowable. All the opportunities which may have opened up for an injured worker are thrown into question. Instead, life becomes a progression through the health system, through long periods of rehabilitation, and perhaps eventually an alternate job, often in a circumstance of underemployment.

Employer costs

The relentless pressure to reduce business costs has been a central preoccupation of labour market policy (including workers compensation policy) over the last thirty years, with platitudes around 'global competition' justifying repeated retrenchment of workers' entitlements. The hollowness of this line of argument in the context of workers compensation funding is obvious in two ways:

1. Costs have not necessarily been reduced, but rather they have been shifted onto the shoulders of others. Instead, injured workers in particular, and the community more broadly, have borne the costs which once were the responsibility of the employer. Moving injured workers onto CentreLink payments is an obvious case of cost-shifting, with the burden picked up by the entire community.
2. Benefits have also been redistributed, but usually upwards. Private employers have been the main beneficiaries of the financial transformation of the workers compensation system, through their receipt of dramatic reductions in effective premium rates. These gains, in turn, are sometimes distributed to shareholders by way of increased dividends; sometimes to executives by way of inflated salaries and bonuses; and sometimes to rentiers in the financial sector or property owners by way of escalating asset prices and property values.

From this perspective, it is clear that the steady fall in workers compensation premiums over the last decade has been accomplished at the cost of reduced benefits and the hardship of injured workers. Some of the resulting costs have been shifted to the state, picked up by taxpayers. The decline of premiums also served a convenient political purpose, in insulating the system against demands to restore benefits. The dramatic reduction in compensation benefits since 2012 thus constitutes a massive redistribution from injured workers (and all workers, eventually, since even those who do not suffer injury experience heightened insecurity because of the absence of a reliable compensation system in event of injury) to employers. It is clear that the premiums paid for workers compensation are a very

small and falling proportion of overall business costs, and that complaints about their level – and threats to move interstate – are overblown.

Locational decisions by businesses are complex, and depend on numerous factors: including access to domestic and export markets, availability of skilled and competitive labour and managerial talent, the quality of regional supply chains and resource inputs, local innovative and technological capacities, the quality of transportation and communications infrastructure, fiscal and tax parameters, and more. Labour costs are just one item on this long list; and workers compensation premiums (as we have seen) are a very small and shrinking share of total labour costs. So the claim that workers compensation premiums could meaningfully affect investment location decisions was always far-fetched; in light of the dramatic decline in NSW's premiums over the past decade, that claim is now utterly implausible. Then-Premier O'Farrell warned in 2012 that "with premiums in NSW already between 20 and 60 per cent higher than in Victoria and Queensland, any increase would only have driven more businesses and more jobs interstate."⁷³ However, no evidence of such relocations was provided, and simple maths reveal the absurdity of this claim. Imagine that workers compensation premiums somehow increased by half (an outcome that was never in the cards, even when the post-GFC funding balance of the system was at its worst). That would presently result in an increase in total labour costs of one-half percent – and an increase in total business costs (given typical labour intensity) of less than half that again. Moving a business to another state on the basis of saving a fraction of a percent of total costs is not rational. How many of the business's staff would be willing to relocate interstate? What kinds of costs would the business sustain in replacing those highly skilled staff who didn't move?

Knee-jerk concerns about business relocation are especially hard to believe in light of NSW's booming economy and population, and the increased costs (associated with real estate prices, congestion, utilities, and more) that have accompanied that trend. If businesses are relocating to NSW despite those far more significant cost hurdles (attracted by strong demand conditions and economic opportunities), then the argument that they would leave because of workers compensation costs is not credible.

Workplace safety

Employers have the central responsibility and duty of care to provide a safe working environment. They must establish the boundaries of acceptable practice in any workplace, and lead prevention initiatives. Over the last 30 years occupational health and safety standards have improved markedly – clearly evident in the statistics for workplace accidents and fatalities – but at the same time the relentless downward pressure on costs has eroded these gains. This is particularly evident in the documented increase in injuries and diseases

⁷³ Whitbourn 2012.

which are stress related. These reflect work intensification: the pressure to achieve more with fewer resources and to work longer hours and at a faster pace.

Consequently, there is a tension in many workplaces between the official credo of improved OHS and the reality of modern business practices and work intensification. An historical reminder is illuminating. When computers were introduced into offices in the 1980s, OHS standards prescribed that certain limits be placed on the hours workers spent at their computers. Other office tasks, such as filing, phone calls, writing notes, and so forth, would make up the balance of the day. In the office of the 21st century, however, it is not unusual to find workers seated at their computers all day long. Not only is there is no variation in tasks, but often meals and other 'breaks' are taken seated in front of the computer.

In this context it is clear that only employers can ensure a safe workplace. Even the employer-friendly Royal Commission into the Building and Construction Industry⁷⁸ argued that the obligation of employers to reduce risks should be pro-active, rather than reactive:

"Employers should be on the offensive to search for, detect and eliminate, so far as is reasonably practicable, any possible areas of risk to safety, health and welfare which may exist or occur from time to time in the workplace."⁷⁴

7.3 FUNDING THE REPAIR OF WORKERS COMPENSATION BENEFITS

Injured workers in NSW have already experienced enormous personal suffering and financial harm as a result of their injuries. The additional financial burden, not to mention personal stress and indignity, that has resulted from the substantial cutbacks in benefit payments imposed after 2012 has added insult to their injuries. Despite overblown claims at the time that the system faced dire financial straits, it was clear even then that the core system was financially sustainable, despite the unique (and temporary) financial challenges caused by the fall-out from the global financial crisis. Far from 'bankrupting' NSW businesses and causing investment to flee to other states, workers compensation premiums had already begun a sustained decline. Steep reductions in benefit entitlements – some of which are only now being fully implemented, with the cessation of monthly benefits for thousands of seriously injured workers – have underwritten further decline in average premium rates, which have declined by 40 percent over the past decade. And the frightening deficits which justified the painful reductions in benefits imposed in 2012, have suddenly been converted into large and accumulating surpluses.

⁷⁴ Cited in Productivity Commission 2004, p. 44. Negligence by employers can be defined under common law as a requirement to provide employees with a 'safe system of work', which includes a duty to employ reasonably competent staff; take reasonable care to ensure a safe place of work; and provide, inspect and maintain safe plant and equipment. From CCH, cited in *ibid.*, p. 216.

Implicitly, the state government understands that the 2012 benefit reductions went too far, and were fiscally unnecessary. In recent years, under pressure from the persistent efforts of injured workers and their advocates, and in the context of large fiscal surpluses in the workers compensation system, icare has implemented a partial (but inadequate) restoration of some benefits. Most important were a set of 2015 changes that explicitly reversed some of the 2012 cutbacks, adding over \$1 billion to the accumulated liabilities of the system. Then, in 2016, icare acknowledged that a significant number of the injured workers it originally expected would be cut off monthly benefits altogether after five years (under Section 39 of the revised legislation), in fact could not be cut off according to the (revised) whole-body impairment threshold; icare thus reduced by about 16 percent the number of seriously injured workers it expects to cut off benefits under the Section 39 provision. That decision added another \$1 billion to the system's estimated liabilities.

Yet even with two consecutive annual increments in liabilities of over \$1 billion each, the system continues to generate an underlying profit, and the accumulated surplus has begun to grow once again. As of the end of fiscal 2017, icare reported an accumulated surplus in its workers insurance division of \$2.4 billion. That is down from a peak of almost \$4 billion in 2015 (mostly because of the one-time impact of those two consecutive benefit reversals, offset by the continuing capacity of the fund to generate annual operating surpluses), but it still represents an enormous pool of idle resources that is impossible to justify at a time when thousands of families are facing the cessation of monthly benefits (and being forced to turn to CentreLink or charity to pay their bills).

In fact, the official stated surplus of \$2.4 billion considerably understates the true pool of surplus resources that is potentially available to fund benefits repair. Remember, as explained above, icare arbitrarily inflates the stated value of its liabilities by a significant margin (15.6 percent), held to protect against uncertainty that future costs may prove higher than expected. Of course, future costs might also prove to be *lower* than expected. The stated liabilities before application of the 15.6 percent safety cushion reflect the *best estimates* of actuaries regarding the ultimate burden of those liabilities. Uncertainty goes in both directions, yet it is taken for granted that the system should be managed to protect against the risk of higher unforeseen costs – even if that implies imposing heavy costs on injured workers today. If the additional implicit financial cushion represented by that 15.6 percent cost margin (worth some \$1.9 billion as of June 2017) is taken into account, then the true underlying surplus carried by the system swells to over \$4 billion.

Worse yet, icare's directors now want to further increase the accumulated surplus of the system (over and above that 15.6 percent margin) to reach its target funding ratio of 127 percent – purportedly to match prudential requirements that are imposed on *private* insurance companies.⁷⁵ The application of private industry benchmarks to a public insurance scheme (which has a public policy mandate, namely to fairly compensate injured

⁷⁵ This policy is described fully in icare 2017c.

workers, not a commercial mission, and is backed by the fiscal and policy capacity of the state government) is unjustifiable. It could be interpreted as a strategy for insulating fiscal surpluses from the demands of injured workers for further repair of the fraying system of benefits. More nefariously, it could be interpreted as a precursor to future proposals to privatise the system entirely. That strategy would be consistent with the aggressive and continuing efforts of the NSW Liberal government to sell off a wide range of public assets (including transportation services, health care facilities, and other public infrastructure) to enthusiastic private investors.

Fiscal dimensions of benefit repair

The affiliates of Unions NSW have identified the most pressing priorities for repairing the benefit entitlements of injured workers, and establishing processes for managing claims and resolving disputes that more genuinely support workers' recovery and treat them with the dignity they deserve. Each of these twelve proposed priorities will require additional policy research and costing, in the course of describing and implementing a comprehensive plan for rebuilding a fair workers compensation program in NSW. It is beyond the scope of this report to provide precise actuarial estimates of the costs of specific policy changes. But the broad fiscal dimensions of the twelve reform priorities can be identified, as summarised in Table 7.1 below. These dimensions can then be compared against the scale of fiscal resources that are already available within the workers compensation system, and those which will become available as a result of documented trends in injury rates, wage growth, financial market outcomes, and other fiscal parameters. This comparison thus provides a broad but credible perspective on whether Unions NSW's vision of reform is viable.

Most of the Unions NSW proposals would have negligible or positive implications for the funding of workers compensation benefits in NSW. Indeed, several of the proposals above would ultimately generate savings for the system: including greater resources allocated to workplace inspections and compliance efforts, establishing rights for unions to reinforce compliance efforts with their own inspection and enforcement powers, and greater responsibilities for employers to redeploy injured workers in alternative positions (thus reducing the burden on the workers compensation system for income maintenance). Several of the other proposals focus on changes to the practice and governance of the system, including a commitment to meaningful tripartite management practices and faster, fairer dispute settlement mechanisms. These changes would have no direct impact on fiscal costs, and should in fact support the evolution of the system in ways commensurate with more cooperative and efficient relationships among all stakeholders: including employers, worker representatives, injured workers, advocates, and others.

Table 7.1	
Fiscal Dimensions of Proposed Reforms	
Proposal	Fiscal Implications
1. No-fault basis for insurance coverage.	Modest; reaffirms founding principle of the system.
2. Premiums recover costs and promote safer workplace practices.	Savings from higher premiums on high-risk employers, and resulting reduction in injuries.
3. SafeWork NSW properly resourced to carry out inspection and compliance.	Minimal direct. Indirect savings from reduced incidence of injuries.
4. Meaningful tripartite consultation and governance.	None.
5. Abolish scheme agents and self-insurance; internalise all insurance functions within icare.	Likely savings by eliminating duplication and avoiding private profit margins.
6. Union right-of-entry and other powers to ensure compliance and prevention.	No direct. Indirect savings from reduced incidence of injuries.
7. Faster, accessible, and fair dispute settlement mechanism.	Potential savings from faster dispute settlement.
8. Return to work enhanced by restrictions on termination, absolute obligation on employers, and incentives for redeployment.	Return-to-work incentives paid from experience-rated premium revenue. Savings from better return-to-work outcomes. New obligations on employers.
9. Restore coverage for journey and recess claims.	Modest.
10. Weekly payments defined relative to pre-injury earnings with no step-downs or caps.	Significant.
11. Medical and treatment costs fully covered.	Significant.
12. Work capacity reviews removed from legislation; empower rehabilitation programs to make appropriate determinations.	Potential significant costs if reformed processes allow continued benefits.
Source: Adapted from Unions NSW (2016).	

To be sure, however, the repair of benefit entitlements under the NSW workers compensation system will nevertheless require the allocation of significant new resources – given the scale of the cutbacks that were implemented after 2012. The last four of the twelve items listed in Table 7.1 constitute the benefit reforms that will require the most significant fiscal commitments: including the restoration of coverage for journey and recess claims; the elimination of caps and step-downs (so that benefits are consistently linked to pre-injury earnings); the full coverage of medical and treatment costs (without requiring onerous pre-approvals and other needless barriers to care); and the potential relaxation of existing work capacity benchmarks, resulting from the relocation of capacity determinations to more appropriate medical and rehabilitation settings (rather than being controlled by insurance officials). These changes would help to restore benefit payments and undo the painful, unfair legacy of the 2012 changes. Together they would represent a substantial commitment to reinvest resources in benefits for injured workers. Given the continuing record of the workers’ insurance system in generating accumulating surpluses, concurrent with a decline in average effective premium rates, this commitment is entirely feasible, as will be considered in detail in the next section.

Three drivers of fiscal progress

As described above, the NSW workers compensation system currently boasts an accumulated surplus of \$2.4 billion, as of the end of fiscal year 2017. The true fiscal cushion within the system is larger than that, thanks to the additional 15.6 percent “padding” of the system’s stated liabilities. And the surplus remains both large and growing, despite two consecutive increases (of over \$1 billion each) in the system’s liabilities resulting from the 2015 partial restoration of some benefits, and the 2016 acknowledgement that the original plan to eliminate monthly benefits for seriously injured workers was too aggressive.

That \$2.4 billion surplus constitutes an initial and substantial pool of resources which can now be reinvested in the repair of benefits. Since the system’s stated liabilities already include a generous cushion to cover uncertainty in the best estimate of liabilities (of course, liabilities might also turn out to be *lower* than estimated), there is no need for a public workers compensation regime to carry funding in excess of its (adjusted) liabilities. Indeed, until recent years the system was managed with a goal of full funding – not accumulating surpluses. This is appropriate for a government-owned operation with a public policy mandate. The application of private insurance benchmarks to a system controlled by the state government (which, unlike private insurers, faces no risk of bankruptcy), is inappropriate; it seems motivated primarily by a desire to shield surplus resources from demands for the repair of benefit entitlements.⁷⁶

⁷⁶ As noted above, it may also be motivated by an implicit plan to prepare the whole system for privatisation.

The allocation of that existing \$2.4 billion surplus to the restoration of benefits cut since 2012, with a focus on the priorities identified in the last four lines of Table 7.1, would mark an important step forward in repairing the system. But there are at least three other underlying forces affecting workers compensation financing in NSW, which will ensure that the system has even more funds to allocate to improved benefits (and more efficient governance, injury prevention, and dispute settlement process) in the future. We consider each of these positive sources of fiscal improvement in turn:

Growing Wage Bill. Even though wage increases have been unusually slow in Australia in recent years, the overall pool of labour compensation paid out in the NSW economy has grown steadily. Total private sector compensation in the state has increased by an average of 3.6 percent per year over the last five years.⁷⁷ This private sector wage bill is the base for workers compensation premiums. Unfortunately, in recent years icare has squandered the potential benefits of this expansion by implicitly cutting effective premium rates to offset the growth in potential premiums: relative to total private sector compensation, earned premiums in the NSW system have declined by 30 percent since 2011. Future premium revenue to the system can be enhanced by simply maintaining the overall average rate of premiums at their current level,⁷⁸ and relying on employment growth and wage inflation to generate increased revenues. The current NSW State Budget projects that total labour compensation in the state will grow in coming years at an average rate of over 4 percent per year.⁷⁹ Accepting that same assumption, and freezing the overall effective premium rate, would generate a cumulative total of \$1.4 billion in incremental earned premiums over the next five years – close to \$500 million in the fifth year alone. The secretive reductions in average effective premiums by the workers compensation system in recent years, even as injured workers and their families were being cut off monthly benefits altogether, utterly refutes the government’s claim that the system somehow “cannot afford” to pay decent benefits.

Falling Injury Rates. One of the most encouraging aspects of workers compensation policy in recent years has been the impressive and sustained reduction in injury rates, reflecting a combination of changes in the composition of employment (with a relative decline in more injury-prone industries) and improvements in safety practices, knowledge, and technology. As discussed above (and documented in detail in Appendix Table A4), the average rate of claims for serious injuries and disease has been declining in NSW by about 5 percent per year over the past decade. A decline in injury claims translates into reduced outflows from

⁷⁷ As noted above, most public sector employers self-insure under the current system, so the compensation of public sector workers is not included in calculating this base.

⁷⁸ Premiums paid by specific companies would change over time, of course, based on their experience of workplace injuries and other factors; the point is simply that weighted average rate of premiums does not need to increase, in order for the total revenue received by the system to expend over time.

⁷⁹ See NSW Treasury, 2017, Table A.1. Growth in total compensation equals assumed employment growth plus assumed annual growth in the wage price index.

the workers compensation system. This beneficial trend is evident in data on icare’s new claims experience. Stated claims fluctuate considerably from year to year based on numerous factors (including unevenness in injury experience, policy changes that affect the cost of each claim, and other accounting and management changes). Despite this volatility, new claims booked by the system have hovered around a steady-state average of just over \$2 billion per year over the last decade (and in some years, such as 2014 and 2015, considerably less). This stability in the nominal flow of new claims has been achieved despite a growing population of covered workers (driven by employment growth in NSW) and higher wages (which increase the cost of each claim). Continued improvements in injury rates give reasonable assurance that this pattern will continue: namely, that the absolute flow of new claims liabilities (holding current benefit entitlements constant) will remain stagnant, despite growing employment and rising wages. In this context, all of the increased revenue generated by the growth of the premium base (discussed above) can be allocated into benefit improvement – rather than being needed to underwrite a growing pool of claims.

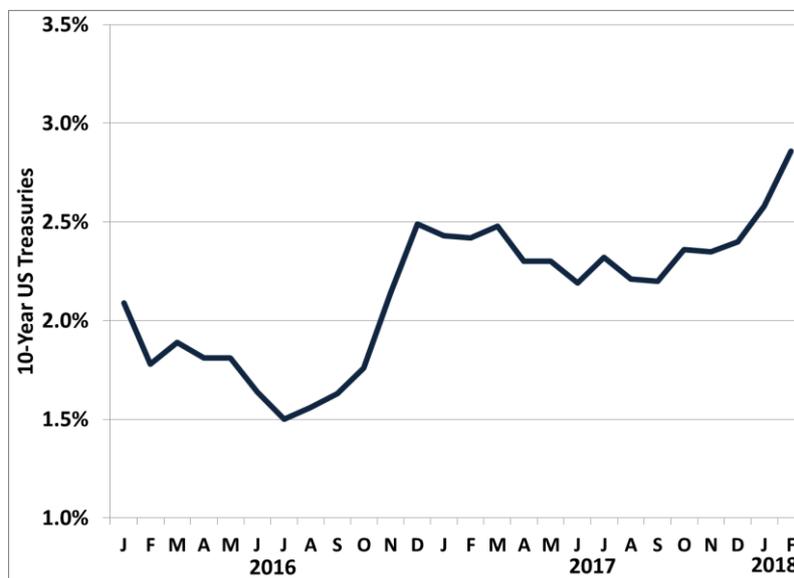
Rising Discount Rates. An important but poorly-understood factor behind the (temporary) deterioration in workers compensation funding after the GFC was the impact of falling interest rates on the stated liabilities carried by the workers compensation system. Liabilities are evaluated in present value terms, by discounting future expected payouts by a discount rate assumed to reflect interest rates paid on secure government bonds. The current-year discount rate used by the system declined by over 3 full percentage points in the five years after 2011, reaching a record low of 1.63 percent in fiscal 2016; longer-run discount rates also fell dramatically. Changes in discount rates added \$3.7 billion to the system’s liabilities in just four years (from 2008 through 2012), and another \$1.5 billion in the subsequent five years.⁸⁰ They thus accounted for more than 100 percent of the seemingly dire accumulated deficit which supposedly necessitated the dramatic reductions in benefits in 2012. Workers compensation funding has improved dramatically since then, of course, on the strength primarily of big reductions in benefit payouts. This progress has been attained despite interest rates that have remained stubbornly low. Now, however, it is clear that global interest rates (and eventually interest rates in Australia) are beginning to recover to “normal” levels. Interest rates for long-run U.S. government bonds have increased on global markets by almost 1.5 percentage points since rock-bottom levels of 2016 (see Figure 7.1). Market rates on Australian Commonwealth government bonds have also increased notably in recent months: up almost one percentage point in the same period.⁸¹ Those rates will increase further still as global economic activity accelerates and monetary policy normalises (including in Australia). icare estimates that its overall portfolio

⁸⁰ As reported in Note 16 to WorkCover financial statements for those years, “Movement in Claims Liabilities and Recoveries.”

⁸¹ Reserve Bank of Australia, Statistical Tables, Table F2.1, <http://www.rba.gov.au/statistics/tables/#interest-rates>.

of liabilities would shrink by \$1.027 billion for each one percentage point increase in the discount rate used to discount those liabilities. The rebound in interest rates since 2016 is only now beginning to show up in icare’s actuarial evaluations;⁸² much bigger savings will be generated in the years ahead as interest rates return to normal. A cautious expectation would see benchmark interest rates grow by 1.5 percentage points in coming years (most of that gain has already been achieved in financial markets), and this will reduce the present value of icare’s stated liabilities by over \$1.5 billion. Note that this would reverse less than one-third of the cumulative “damage” that was done to the system’s stated liabilities by the decline in discount rates in the last decade.⁸³ The expectation that \$1.5 billion will now be regained from the recovery in interest rates is thus very conservative; potential gains could be much larger.

Figure 7.1: Interest rates on 10-year U.S. government bonds, 2016 to 2018



Source: Board of Governors of the Federal Reserve System, Selected Interest Rates, Table H.15, <https://www.federalreserve.gov/releases/h15/>.

Together, these positive drivers of fiscal improvement will substantially enhance the resources available to fund a thorough revitalisation of benefit entitlements for injured workers in NSW – and accompanying improvements in the underlying governance practices of workers compensation and occupational health and safety. Table 7.2 summarises these sources of fiscal improvement, on the assumption that the benefits from rising interest rates are experienced evenly over the next five years.

⁸² See Note 15 to icare’s 2017 Workers’ Insurance Financial Statements, p.246.

⁸³ WorkCover and icare reported increases in liabilities due to adverse movements in discount rates in every one of the last 9 fiscal years, stretching from 2009 through 2017. The cumulative total of those losses was \$5.2 billion (reported in notes to annual financial statements).

Table 7.2
Funding the Repair of Benefits (\$million)

Sources of Fiscal Room	Years					5-Year Total
	1	2	3	4	5	
2017 Surplus	\$2,365					\$2,365
Growing Premium Base	\$89	\$181	\$277	\$377	\$481	\$1,405
Higher Interest Rates	\$308	\$308	\$308	\$308	\$308	\$1,541
Total	\$2,762	\$489	\$585	\$685	\$789	\$5,310
Benefit Improvements	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	
Official Surplus	\$1,762	\$1,251	\$836	\$521	\$310	
Risk Margin (15.6%)	\$1,939	\$1,988	\$2,037	\$2,088	\$2,141	
Total Surplus	\$3,701	\$3,239	\$2,874	\$2,610	\$2,451	

Source: Author’s calculations as described in text, based on icare financial statements.

The existing surplus carried by the fund gives the task of benefit repair a \$2.4 billion “head start.” But additional savings are generated each year by the growing impact of the expanding premium base, and the gradual recovery in interest rates. (The third positive trend identified above, falling injury rates, is experienced via long-run stability in the absolute nominal level of new claims; it therefore is not reflected directly in Table 7.2, but rather permits the full increase in premium revenues generated by growing private sector compensation to be dedicated to benefit improvements rather than to keeping up with population growth and inflation.) These trends contribute nearly \$3 billion in additional resources over five years – more than doubling the starting surplus. In total, therefore, over \$5 billion in incremental resources are available to fund benefit improvements over the coming five-year period, *without any increase* in effective average premium rates.

In fact, this simulation is conservative, for several reasons, and the resources available for benefit improvements are likely to be even larger. As noted, our expectations regarding the growth in the wage bill and the recovery in interest rates are cautious. Moreover, we have not built into the simulation any expectation regarding savings arising from enhanced enforcement and compliance efforts (by both government inspectors and by unions), nor any savings arising from stronger return-to-work obligations imposed on employers. Similarly, we have not specified the potential operational savings that could be attained from in-sourcing insurance services and claims management functions within icare (rather than paying a for-profit firm, EML, to perform these functions on a monopoly basis). Finally, we have not explicitly modeled the rebound of annual investment income from unduly low levels experienced in 2016/17; stronger investment returns will provide another source of additional net revenue. For all these reasons, the fiscal projection summarised in Table 7.2 is cautious; in practice, the system will carry even larger accumulated surpluses throughout, and at the end of, this period than are indicated.

In the long-run, therefore, it is without doubt fiscally feasible to reorient the workers compensation system around its public policy mission, making strong commitments to injury prevention, fair and efficient management of claims, and security of income for injured workers.

Phasing in reform

A useful precedent for how to repair benefit entitlements over time, in a manner compatible with the ongoing fiscal health of the system, has already been provided by the experience of icare over the past two fiscal years. In 2015 and then again in 2016, the system absorbed an additional \$1 billion in benefit obligations: the first resulting from an explicit policy change (partly reversing some of the 2012 cutbacks), the second from the implicit acknowledgement that the original intention to cut off seriously injured workers from all benefits had to be partly rolled back (with 16 percent of targeted revocations abandoned). In each case, the change was financed by dipping slightly into a large existing surplus (the accumulated surplus of the system peaked at \$4 billion at the end of fiscal 2015, a politically and morally unsustainable largesse that clearly precipitated icare's partial backtracking on benefit cuts), offset by continuing operational surpluses generated by the combination of falling injury rates and a growing premium base. (Unfortunately, most of that latter fiscal gain was squandered by continuing reductions in effective premium rates.) After absorbing the initial \$1 billion enhancement in liabilities, in both cases the surplus quickly began growing again.

For example, in the first half of fiscal 2016/17, the accumulated surplus declined as a result of the change in assumption regarding how many workers would be deprived monthly benefits under Section 39. But between end-December 2016 and end-June 2017, the surplus grew again (by almost one-half billion dollars), thanks to the system's continuing underlying capacity to generate net income.⁸⁴ This confirms that the system can "handle" regular improvements in benefits, without slipping into deficit, thanks to the underlying positive fiscal drivers identified above.

Indeed, it is clear from Table 7.2 that the workers compensation system could absorb a \$1 billion increase in liabilities, associated with ongoing repair of benefits (including gradual continued reversal of the 2012 cutbacks) *every year* for at least the next five years. The bottom lines of Table 7.2 assume that a \$1 billion enhancement in benefits (measured by the impact on the present value of liabilities carried by the system) is enacted each year. The combination of the initial \$2.4 billion surplus, plus additional fiscal room generated every year by the combination of a growing premium base, declining injury rates, and increasing interest rates, allows a steady rebuilding of benefits over the five year period. By

⁸⁴ The change in accumulated surplus between end-December and end-June can be imputed from the semi-annual Nominal Insurer Liability Valuations reported by icare, available at <https://www.icare.nsw.gov.au/about-us/annual-reports/#gref>.

the end of that five years, the integrity of the NSW workers compensation would be restored. Premium rates would not have increased. And the system would still end up with an accumulated official surplus (of over \$300 million), despite five consecutive years of significant benefit improvements. And remember, that official surplus is *on top of* the 15.6 percent financial cushion (worth over \$2 billion by the end of the period) that is already built into the liability estimates. The total financial cushion carried by the system, therefore, never falls below \$2.4 billion.

This timetable of gradual but steady enhancements in benefit entitlements proves that injured workers can be treated much better than they are, while still maintaining the financial integrity of the system. Thanks to ongoing economic growth, falling injury rates, and the gradual return of normal monetary and financial conditions, NSW can afford – better than at any time in history – to provide injured workers with fair, secure benefits. The 2012 claim that depriving them of benefits was fiscally necessary, was never convincing – and has since been decisively refuted.

VIII. Recommendations and Conclusions

The preceding analysis has highlighted several dominant findings that explain the trials and tribulations experienced by injured workers in NSW since 2012. The analysis also informs an obvious strategy for undoing the harm that they have experienced, while still maintaining the fiscal health and sustainability of the workers compensation system. The key findings of our historical and financial review of the system include:

- Underlying injury rates are declining steadily, thanks to changes in the composition of employment and better safety practices in all sectors.
- Benefit rates have been cut dramatically in NSW since the artificial “crisis” and corresponding cutbacks of 2012. Adjusted for inflation, aggregate real benefit payouts declined by 25 percent in five years. Benefit entitlements (for each duration of injury and level of pre-injury income) are low in NSW compared to other states. And thousands of seriously injured workers are now facing the ultimate burden of losing their compensation benefits altogether.
- The once-daunting accumulated deficits which were invoked to justify the 2012 cuts, disappeared almost as quickly as they appeared. They were caused not by any fundamental imbalance between the system’s inflows and outflows, but rather by the temporary side-effects of the global financial crisis: which suppressed investment income (for a while) and drove interest rates (and hence discount rates for estimating present value liabilities) to unprecedented lows. Those factors continue to abate.
- In the meantime, thanks mostly to the severe (and unnecessary) reductions in benefits, the system quickly began to generate large surpluses. The accumulated deficit had already disappeared by July 2013 – barely a year after the cutbacks were announced. The accumulating surplus peaked at \$4 billion by the end of 2015. Driven by the obvious contradiction between the swelling surplus and the hardship of injured workers being deprived their benefits – and pressed by the stubborn campaigns of injured workers’ advocates – icare finally relented and began partly restoring benefits. So far they implemented minor adjustments to the initial cutbacks in 2014; more significant but still inadequate repair of benefits in 2015; and an implicit relaxation of the uncaring Section 39 cut-offs in 2016. Much more remains to be done.
- By far the biggest beneficiaries of the improved financial condition of the system, however, have been private employers in NSW, who have enjoyed steady

unannounced reductions in effective premiums. Relative to their overall labour cost bill, workers compensation premiums on private employers have declined by 30 percent since 2011, even as injured workers' benefits were slashed. This amounts to a substantial and unjustifiable redistribution of income from injured workers to private employers.

- Two consecutive adjustments in benefit coverage in 2015 and 2016 added over \$2 billion to the liabilities carried by the system. Yet the surplus remains large, and began to grow again after each adjustment. This confirms (perhaps inadvertently) that the system has ample fiscal capacity to undertake ongoing, staged improvements in benefits.

In light of this historical and financial analysis, we make the following recommendations regarding the future rebuilding of benefit entitlements, and the policy integrity, of the workers compensation system in NSW.

1. Effective premium rates should be maintained at their current average level relative to overall private sector labour compensation (equal to around 1 percent of total compensation). Premium rates for particular employers and industries will continue to be adjusted up or down on the basis of experience-rating practices and other factors. But those adjustments should occur around a stable mean effective premium rate that preserves the overall funding base of the system. This will allow overall premium revenues to grow steadily with continued increases in employment and wages in the NSW economy, but without increasing the overall average premium rate.
2. The formulae for calculating employer-specific premium rates around this (constant) overall rate of premiums should be made simpler and more transparent. At present the incentives for safer work practices that should be created through the experience-rated premium system are diluted by the fact that many employers do not understand how their premiums are actually determined. Moreover, the complexity and opaqueness of the current premium structure has facilitated the reductions by stealth in the overall average rate of premiums (which has declined, as described above, by nearly one-third since 2011).
3. An independent and detailed actuarial review should be initiated by the state government, to estimate the impact on present value liabilities associated with reversing specific components of the 2012 policy changes, and otherwise improving benefit entitlements for injured workers. Among other options, this review would cost each of the twelve core elements of the UnionsNSW vision for reforming workers compensation in NSW (summarised in Table 7.1 above, and some of which have negligible or even positive implications for liabilities) – along with ideas and suggestions provided by other stakeholders. Key priorities in this

independent costing review should include the restoration of monthly benefits to those who have been cut off under Section 39; the restoration of coverage for journey and recess claims; and the removal of step-downs and caps on benefit entitlements (to make NSW's schedule of benefits compatible with those in other states).

4. Through a consultation process with all stakeholders, a staged timetable will then be developed for restoring and enhancing benefit entitlements, through which present value liabilities carried by the system would be increased by \$1 billion annually over the next five years. In other words, from the "menu" of potential benefit reforms costed out in recommendation 3 above, stakeholders would collectively indicate their preferred choices in order of importance, to be phased in over several years.
5. In the interim, pending the actuarial review and the selection of top-priority benefit enhancements, a moratorium should be imposed on the cessation of monthly benefits under Section 39, and benefits should be restored for those injured workers who have been cut off under the first wave of cessations. Given the ample surplus funds being carried by the system right now, the total elimination of monthly benefits for these seriously injured workers is both fiscally unnecessary and morally unconscionable.
6. The directors of icare should revise their capital funding strategy to target full funding (100 percent, centred within a margin error of plus or minus ten percentage points⁸⁵) of adjusted present value liabilities, with liabilities adjusted to incorporate a cushion to reflect the 80-percent probability risk margin identified by actuaries in line with present practice. This would replace the current unjustified plan to accumulate additional assets until they represent 127 percent of liabilities (which have already been inflated by a 15.6 percent risk margin). With allowance for that risk margin, there is no need for the system to carry an additional accumulated surplus.
7. The financial performance of the workers compensation system would be monitored and reported on a regular basis, as at present. In the event that financial balances fall below current expectations, the schedule of benefit entitlements can be delayed accordingly to protect the full funding of the system. If financial balances continually exceed expectations (such that the system's accumulated surplus begins to grow again, despite the \$1 billion-per-year pace of benefit enhancements), then the timetable for benefit enhancements could be accelerated.

⁸⁵ The specification of a buffer zone around the target funding ratio would avoid requiring the directors of the system to undertake unnecessarily dramatic changes in funding or benefit practices in response to temporary fluctuations in the determinants of funding levels.

8. icare should release the terms of its contractual arrangement with EML as monopoly provider of core insurance and claims management services, so that the public is aware of the cost of the outsourcing, the profit margins EML will earn, and the potentially perverse incentives associated with its claims management practice. Results of detailed annual and operational audits on EML should also be released publicly. icare should investigate the potential for in-sourcing EML-provided services within the scope of the public agency, with the aim of reducing administrative duplication and avoiding the payment of private profit margins.
9. The state government should also initiate and publish a detailed independent evaluation of the performance of the icare investment management program, in order to explain fully the underperformance of its investment portfolio in 2016/17. Steps may then be taken as necessary to rectify this underperformance (including re-sourcing or in-sourcing investment management services).
10. The state government should implement a meaningful tripartite model of governance of the workers compensation system, including providing formal representation on the icare Board of Directors and other decision-making bodies from injured workers' organisations and the trade union movement.

The legacy of the 2012 cutbacks in workers compensation benefits is both painful and lasting. It cannot be reversed overnight. But the task of rebuilding a fair, comprehensive, and sustainable workers compensation system can be achieved, and the sooner the state government begins this task, the sooner the job will be completed. Our analysis shows that the system has been taking in far more revenue than it is paying out to injured workers – and that fiscal room would be much larger still if effective premiums to employers were not being steadily cut. We have described an ambitious but feasible timetable to rebuild the integrity of the system over five years. There is no fiscal barrier to that goal, only a fundamental political choice to be made: is it more important to continue to deliver major savings to private employers in the form of shrinking premiums, or to provide injured workers with secure benefits that at least partly compensate them for the pain and loss they have experienced through their injuries? For most residents of the state, the choice is clear.

References

ABC Radio National 2017, *The World Today*, 2 October.

Callinan, Rachel 2001, *The Future of the New South Wales Workers' Compensation Scheme*, Briefing Paper 8, Sydney: NSW Parliamentary Library Research Service.

Department of Finance, Services and Innovation 2017. "Improving Workers Compensation Dispute Resolution in NSW," NSW Government, 20 December, http://wiro.nsw.gov.au/sites/default/files/Discussion-paper%20%281%29_0.pdf.

Finity Consulting 2015, *A Best Practice Workers Compensation Scheme*, Report Prepared for the Insurance Council of Australia, Sydney: Finity Consulting Pty Limited.

icare 2016a, *Design for the Future, Deliver Today: icare Annual Report, 2015–2016*, Sydney: Insurance and Care NSW.

– 2016 b, *Financial Statements, 2015–2016*, Sydney: Insurance and Care NSW.

– 2016 c, *Nominal Insurer Liability Valuation as at 31 December 2016*, Sydney: Insurance and Care NSW.

– 2017 a, *An Eye for Numbers, A Heart for People: Financial Statements, 2016–2017*, Sydney: Insurance and Care NSW.

– 2017 b, *Design for the Future, Deliver Today: icare Annual Report, 2016–2017*, Sydney: Insurance and Care NSW.

– 2017 c, "Workers Insurance Scheme (Nominal Insurer) Capital Management Policy," November, <https://www.icare.nsw.gov.au/-/media/7d3bf72faebb41588d1b4fd2bfc60da0.ashx/>.

NSW Treasury 2017. *2017/18 Budget Half-Yearly Review*, <https://www.budget.nsw.gov.au/nsw-budget-2017-18-budget-papers>.

O'Loughlin, Kate 2005, "From industrial citizen to therapeutic client: the 1987 workers' compensation 'reforms' in NSW", in: *Health Sociology Review* Vol. 14. No. 1, pp. 21–32.

Patty, Anna 2017a, "Injured workers over 50 face being thrown onto 'scrapheap'", in: *Sydney Morning Herald*, 23 September, <http://www.smh.com.au/business/workplace-relations/injured-workers-over-50-face-being-thrown-onto-scrapheap-20170828-gy5t32.html>.

– 2017 b, “Thousands of injured workers to be forced onto welfare”, in: *Sydney Morning Herald*, 16 April, <http://www.smh.com.au/business/workplace-relations/thousands-of-injured-workers-to-be-forced-onto-welfare-20170404-gvdwd5.html>.

– 2018. “Workers' compensation watchdog threatened with abolition,” *Sydney Morning Herald*, 4 March, <https://www.smh.com.au/business/careers/workers-compensation-watchdog-threatened-with-abolition-20180227-p4z1wv.html>

Productivity Commission 2004, *National Workers' Compensation and Occupational Health and Safety Frameworks*, Inquiry Report 27, Canberra: Productivity Commission.

Quiggin, John 1996, *Great expectations: microeconomic reform and Australia*, St Leonards: Allen & Unwin.

– 2012, *Zombie Economics: How Dead Ideas Still Walk Among Us*, Princeton: Princeton University Press.

Reynolds, Emma 2017, “Injured workers will lose compensation the day after Christmas”, in: *News.com.au* (November 9 2017), <http://www.news.com.au/finance/work/at-work/injured-workers-will-lose-compensation-the-day-after-christmas/news-story/f17a518e947eefaaadcf6a903fa6848>.

Safe Work Australia 2010a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand*, Seventeenth Edition October, Canberra: Safe Work Australia.

– 2010 b, *Workers' Compensation Arrangements in Australia and New Zealand*, February, Canberra: Safe Work Australia.

– 2010 c, *Workers' Compensation Arrangements in Australia and New Zealand*, Eleventh Edition December 2009, Canberra: Safe Work Australia.

– 2011, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand*, Thirteenth Edition October 2011, Canberra: Safe Work Australia.

– 2012, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand*, Fourteenth Edition October 2012, Canberra: Safe Work Australia.

– 2015, *The cost of work-related injury and illness for Australian employers, workers and the community 2012-13*, Canberra, URL:

<https://www.safeworkaustralia.gov.au/doc/cost-work-related-injury-and-illness-australian-employers-workers-and-community-2012-13>.

– 2017 a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand*, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia.

– 2017 b, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand, Part 1 - Work Health and Safety Performance*, Nineteenth Edition October 2017, Canberra: Safe Work Australia.

State Insurance Regulatory Authority 2006–2015, *Statistical Bulletin: NSW workers compensation statistics*, From 2005/2006 to 2014/2015, Sydney: State Insurance Regulatory Authority.

– 2015 a, *NSW workers compensation system: inaugural performance report*, 2014/2015, Sydney: State Insurance Regulatory Authority.

– 2015 b, *Statistical Bulletin 2014/15: NSW workers compensation statistics*, Sydney: State Insurance Regulatory Authority.

– 2016, *State Insurance Regulatory Authority Annual Report 2015/16*, Sydney: State Insurance Regulatory Authority.

– 2017, *State Insurance Regulatory Authority Annual Report 2016/17*, Sydney: State Insurance Regulatory Authority.

Stack, Justin 2017, "Changes to workers compensation payments in NSW to hit vulnerable injured workers", in: *Stacks Law Blog*, URL: <https://www.stacklaw.com.au/news/bankruptcy/changes-workers-compensation-payments-nsw-hit-vulnerable-injured-workers/>.

Standing Committee on Law and Justice 2017, *First review of the workers compensation scheme*, Report 60, Sydney: NSW Legislative Council.

Unions NSW 2016. First Statutory Review of the 2012 Workers Compensation Changes: Submission to the Law and Justice Committee, 9 October, [https://d3n8a8pro7vhmx.cloudfront.net/unionsnsw/pages/1271/attachments/original/1476678000/Unions NSW Submission to Law and Justice Committee re WC Act FINAL.pdf?1476678000](https://d3n8a8pro7vhmx.cloudfront.net/unionsnsw/pages/1271/attachments/original/1476678000/Unions_NSW_Submission_to_Law_and_Justice_Committee_re_WC_Act_FINAL.pdf?1476678000).

– 2017. "Return to Work Inquiry," 6 June, <http://www.unionsnsw.org.au/return-to-work-inquiry>.

Vinales, Pablo 2017, "Workers compensation changes in NSW spark fears people could lose everything", in: *ABC News Online* (August 28 2017), URL: <http://www.abc.net.au/news/2017-08-24/workers-compensation-nsw-changes-injury-claims/8836396>.

Whitbourn, Michaela 2012, "Workers' comp 'pig' still under fire", in: *Financial Review* (23 June 2012).

WorkCover 2012, *Annual Report 2011/12*, Sydney: WorkCover Authority of NSW.

– 2015, *Annual Report 2014/15*, Sydney: WorkCover Authority of NSW.

Appendix

Table A1: Work-related injury or illness, by jurisdiction, 2006, 2010 and 2014

	Experienced injury or illness ('000s)				Did not experience injury or illness ('000s)				Total ('000s)				Injury/illness rate (per 000)			
	2005-06	2009-10	2013-14	2005-06	2009-10	2013-14	2005-06	2009-10	2013-14	2005-06	2009-10	2013-14	2005-06	2009-10	2013-14	
NSW	240.3	213.2	143.6	3,314.8	3,621.1	3,770.1	3,555.1	3,834.3	3,863.7	57.6	55.6	37.2	57.6	55.6	37.2	
Vic	143.2	157.4	138.5	2,528.7	2,864.3	3,033.3	2,671.9	3,021.7	3,173.7	53.6	52.1	43.6	53.6	52.1	43.6	
Qld	154.0	144.3	108.7	2,039.1	2,313.6	2,388.0	2,183.1	2,437.9	2,506.7	70.5	58.7	43.4	70.5	58.7	43.4	
SA	49.1	44.4	44.6	740.4	836.7	831.7	788.5	881.1	876.3	62.2	50.4	50.9	62.2	50.4	50.9	
WA	68.5	50.4	62.4	1,053.8	1,208.3	1,350.3	1,122.3	1,258.8	1,432.7	61.0	40.1	42.9	61.0	40.1	42.9	
Tas	15.3	13.7	16.8	222.1	238.9	239.2	237.4	252.7	258.1	64.3	54.3	65.7	64.3	54.3	65.7	
NT	8.1	6.4	5.1	82.5	99.1	111.8	88.5	105.9	116.9	88.5	60.7	43.6	88.5	60.7	43.6	
ACT	13.1	10.8	12.2	177.7	210.3	212.8	190.8	221.0	225.0	68.9	48.8	54.3	68.9	48.8	54.3	
Aust	689.5	640.7	531.8	10,149.1	11,362.2	11,939.2	10,838.6	12,033.0	12,471.0	63.6	53.2	42.6	63.6	53.2	42.6	

Population: Persons who worked at some time in the last 12 months. Note: Financial year data. SOURCE: ABS, Work-related Injuries, Australia, Cat. No. 6324.0, Table 2.

Table A2: Work-related injury or illness, by industry, Australia, 2010 and 2014

Industry	Experiencing injury / illness			All employed persons			Injury rates (per thousand)		
	2010 ('000s)	2014 ('000s)	Change (%)	2010 ('000s)	2014 ('000s)	Change (%)	2010	2014	Change (% pt)
Agriculture, Forestry and Fishing	23.9	21.2	-11.3	352.8	293.1	-16.9	67.7	72.3	4.6
Mining	7.9	9.3	17.7	155.3	223.5	43.9	50.9	41.6	-9.3
Manufacturing	74.6	74.4	-0.3	1,047.5	908.3	-13.3	71.2	81.9	10.7
Electricity, Gas, Water and Waste Services	9.4	10.8	14.9	119.9	157.6	31.4	78.4	68.5	-9.9
Construction	56.9	52.3	-8.1	962.1	954.5	-0.8	59.1	54.8	-4.3
Wholesale Trade	18.2	22.3	22.5	403.1	413.9	2.7	45.2	53.9	8.7
Retail Trade	67.7	39.8	-41.2	1,235.7	1,287.7	4.2	54.8	30.9	-23.9
Accommodation and Food Services	62.5	44.3	-29.1	744.1	755.8	1.6	84.0	58.6	-25.4
Transport, Postal and Warehousing	42.6	43.1	1.2	579.4	564.8	-2.5	73.5	76.3	2.8
Information, Media and Telecommunications	6.9	4.2	-39.1	222.3	184.2	-17.1	31.0	22.8	-8.2
Financial and Insurance Services	10.0	8.1	-19.0	430.0	450.8	4.8	23.3	18.0	-5.3
Rental, Hiring and Real Estate Services	9.2	4.4	-52.2	167.8	213.6	27.3	54.8	20.6	-34.2
Professional, Scientific and Technical Services	20.2	17.4	-13.9	845.4	938.0	11.0	23.9	18.6	-5.3
Administrative and Support Services	19.0	10.3	-45.8	362.9	372.5	2.6	52.4	27.7	-24.7
Public Administration and Safety	48.0	38.3	-20.2	684.8	787.1	14.9	70.1	48.7	-21.4
Education and Training	50.5	31.6	-37.4	838.7	941.5	12.3	60.2	33.6	-26.6
Health Care and Social Assistance	78.6	71.7	-8.8	1,197.8	1,350.9	12.8	65.6	53.1	-12.5
Arts and Recreation Services	14.1	6.8	-51.8	183.6	188.8	2.8	76.8	36.0	-40.8
Other Services	14.0	21.5	53.6	468.5	436.2	-6.9	29.9	49.3	19.4
Total	640.7	531.8	-17.0	11,047.6	11,435.2	3.5	58.0	46.5	-11.5

Table A3: Traumatic injury fatalities, by state, 2011 to 2015

State	Counts						Incidence rate (per 100,000 workers)					
	2011	2012	2013	2014	2015	Avg	2011	2012	2013	2014	2015	Avg
NSW	40	48	50	36	42	43	1.1	1.4	1.4	1.0	1.2	1.2
Vic	29	27	25	28	26	27	1.0	1.0	0.9	1.0	0.9	0.9
Qld	47	45	39	36	30	39	2.1	2.0	1.7	1.6	1.3	1.7
SA	15	12	11	8	10	11	1.9	1.5	1.4	1.0	1.2	1.4
WA	25	19	18	20	19	20	2.0	1.5	1.4	1.5	1.4	1.6
Tas	6	5	4	6	7	6	2.5	2.1	1.7	2.6	2.9	2.4
NT	6	5	1	5	1	4	5.0	4.1	0.8	3.8	0.8	2.9
ACT	1	2	1	1	0	1	0.5	1.0	0.5	0.5	0.0	0.6
Aust	169	163	149	140	135	151	1.5	1.4	1.3	1.2	1.2	1.3

Notes: These figures exclude fatalities on a public road. Financial year data. Source: Safe Work Australia 2017a, *Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand*, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia, Indicator 7, p.6. Based on figures from the Traumatic Injury Fatality (TIF) data collection.

Table A4: Incidence rates of serious injury & disease claims by jurisdiction, 2004 to 2016

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
NSW	18.2	17.8	15.4	15.3	15.4	15.1	14.6	14.7	14.0	11.7	10.8	10.2	9.3
Vic	12.7	12.1	11.8	11.3	10.7	10.3	9.8	9.3	9.3	8.9	8.8	8.2	7.9
Qld	18.2	18.0	17.8	17.9	18.2	17.0	15.8	14.8	14.6	13.0	12.1	11.5	11.6
SA	20.7	20.4	18.8	17.0	14.7	13.3	12.8	11.9	12.7	13.2	12.9	10.9	10.2
WA	14.5	14.8	13.5	13.4	13.6	12.8	12.0	11.6	11.5	10.9	10.1	9.2	9.5
ACT	16.0	13.8	13.7	12.8	12.6	13.1	13.3	12.7	12.5	12.4	11.4	11.3	10.7
Tas	17.8	18.1	18.1	17.6	16.7	17.0	16.1	15.9	15.1	13.7	13.4	11.3	11.4
NT	13.7	14.4	14.7	12.7	13.4	12.2	12.3	13.1	11.7	11.1	9.7	8.3	6.9
Gov	12.0	11.2	9.8	8.9	6.9	8.2	7.9	7.9	8.1	6.9	6.3	4.9	4.1
Aust	16.4	16.0	14.8	14.5	14.2	13.6	13.0	12.5	12.4	11.2	10.5	9.8	9.3

Notes: Incidence rates are claims per thousand [employees](#). Gov = Australian Government; Aus = national average. Includes all accepted workers' compensation claims involving temporary incapacity of one or more weeks plus all claims for fatality and permanent incapacity. Note that changes in the data collection methodology in some years make comparability approximate for parts of the series. Financial year data. Source: Based on combining data from Indicator 5 in Safe Work Australia 2010c, p. 7; Indicator 5 in Safe Work Australia 2012, p. 6; Indicator 1 in Safe Work Australia 2017a, p. 1; and Indicator 1 in Safe Work Australia 2017b, p. 8.

Table A5: Frequency rates of serious injury & disease claims by jurisdiction, 2004 to 2016

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
NSW	10.5	10.2	9.0	9.0	9.0	8.9	8.7	8.7	8.3	7.0	6.4	6.1	5.5
Vic	7.7	7.3	7.1	6.8	6.6	6.4	6.0	5.7	5.7	5.5	5.5	5.2	5.0
Qld	11.0	10.7	10.7	10.7	10.9	10.3	9.6	9.0	8.7	7.6	7.1	6.7	6.9
SA	12.5	12.3	11.4	10.3	9.0	8.3	8.0	7.4	7.8	8.2	8.0	6.7	6.4
WA	8.6	8.6	7.9	7.8	7.8	7.4	7.0	6.7	6.5	6.3	5.8	5.3	5.6
ACT	10.0	8.5	8.6	7.8	8.0	8.3	8.4	8.1	7.8	7.7	7.2	7.1	6.7
Tas	11.0	11.2	11.4	11.1	10.5	10.9	10.4	10.4	9.9	9.0	8.7	7.4	7.5
NT	7.8	8.0	8.3	7.0	7.5	6.8	7.0	7.3	6.4	6.2	5.3	4.6	3.8
Gov	6.6	6.4	5.5	4.9	3.9	4.5	4.4	4.4	4.5	3.8	3.5	2.8	2.3
Aust	9.7	9.4	8.8	8.6	8.4	8.2	7.8	7.6	7.4	6.7	6.3	5.9	5.6

Notes: Frequency rates are claims per million hours worked. Gov = Australian Government; Aus = national average. Includes all accepted workers' compensation claims involving temporary incapacity of one or more weeks plus all claims for fatality and permanent incapacity. Note that changes in the data collection methodology in some years make comparability approximate for parts of the series. Financial year data. Source: Based on combining data from Indicator 6 in Safe Work Australia 2010c, p. 7; Indicator 6 in Safe Work Australia 2012, p. 6; Indicator 2 in Safe Work Australia 2017a, p. 2; and Indicator 2 in Safe Work Australia 2017b, p. 9.

Table A6: Employees and claims for serious injuries, NSW 2008 to 2016

Year	Employees	Claims
2008	3,022,660	42,730
2009	3,008,600	42,640
2010	3,089,100	43,950
2011	3,165,700	43,280
2012	3,201,000	43,150
2013	3,220,800	37,580
2014	3,268,000	32,770
2015	3,299,310	33,800
2016	3,438,040	31,850

Notes: Claims shown are for 'serious claims', that is, claims 'which resulted in a fatality, permanent incapacity or a temporary incapacity with one week or more of compensation (time lost from work) excluding those occurring on a journey to or from work'. These data only apply to employees. That is, contractors and self-employed are excluded. Source: Appendix Table 1, from Safe Work Australia, *Comparative Performance Monitoring Report*, Editions from 2009 through to 2017.

Table A7: Persons who experienced worked-related injury or illness, Australia, 2006 to 2014

Experienced injury etc	2005–2006		2009–2010		2013–2014	
	000s	%	000s	%	000s	%
Yes	689.5	6.4	640.7	5.3	531.8	4.3
No	10,149.1	93.6	11,392.2	94.7	11,939.2	95.7
Total	10,838.6	100.0	12,033.0	100.0	12,471.0	100.0

Population: Persons who worked at some time in the last 12 months: whether experienced a work-related injury or illness in current job or previous job. Financial year data. Source: ABS, *Work-Related Injuries, Australia, 2014*, Cat.No. 6324.0 (63240do001_201314.xls).

Table A9: Current return to work rate by jurisdiction, 2012, 2014 and 2016

Year	NSW	Vic	WA	SA	Tas	Qld	NT	Com-Care	SeaCare	Aust
2012	80	74	78	75	78	77		83	83	77
2014	83	78	83	84	81	86	84	90	90	83
2016	87	82	84	81	81	80	75	90	90	83

Table A8: Safety inspectors in NSW, 2006, 2011 and 2016

Year	All				Full-time only		
	Safety inspectors	NSW workforce	As %	Ratio	Safety inspectors	FT %	Ratio
2006	1,373	2,748,396	0.050	2,002	1,155	84.1	2,386
2011	839	3,033,526	0.028	3,616	686	81.8	4,423
2016	906	3,358,188	0.027	3,707	711	78.5	4,723

Notes: Ratio = number of workers in NSW workforce to each safety inspector. Population: All employed persons in NSW. Source: Census 2006, 2011 and 2016 (place of work).

Table A9: Current return to work rate by jurisdiction, 2012, 2014 and 2016

Year	NSW	Vic	WA	SA	Tas	Qld	NT	Com-Care	SeaCare	Aust
2012	80	74	78	75	78	77		83	83	77
2014	83	78	83	84	81	86	84	90	90	83
2016	87	82	84	81	81	80	75	90	90	83

Note: Financial year data. Source: Indicator 19 in Safe Work Australia 2017a, Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand, Eighteenth Edition revised July 2017, Canberra: Safe Work Australia, p.30.

Table A10: Workers' Compensation payments, NSW, 2006 to 2015

Year	Counts (\$000)			Percentages		
	Compensation	Non-compensation	Total	Compensation	Non-compensation	Total
2006	2,189,934	570,211	2,760,144	79	21	100
2007	2,113,619	599,409	2,713,028	78	22	100
2008	2,114,916	555,996	2,670,911	79	21	100
2009	2,314,180	608,096	2,922,276	79	21	100
2010	2,460,276	611,061	3,071,337	80	20	100
2011	2,449,700	648,939	3,098,639	79	21	100
2012	2,627,675	689,640	3,317,315	79	21	100
2013	2,355,235	728,665	3,083,900	76	24	100
2014	2,088,770	690,711	2,779,481	75	25	100
2015	1,971,529	642,295	2,613,824	75	25	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2015b, Statistical Bulletin 2014/15: NSW workers compensation statistics, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.1.

Table A11: Compensation payments, NSW, 2006 to 2015

COUNTS (\$000)	Benefits	Lump sum	Medical	Rehabilitation	Other	Total
2006	1,048,708	353,815	614,930	134,091	38,390	2,189,934
2007	1,040,837	299,013	618,903	115,317	39,549	2,113,619
2008	1,057,740	273,272	633,502	112,969	37,431	2,114,915
2009	1,112,779	305,541	697,615	126,990	71,255	2,314,180
2010	1,165,164	367,716	716,517	145,443	65,437	2,460,277
2011	1,214,093	335,390	693,321	133,368	73,528	2,449,701
2012	1,302,770	354,037	757,649	142,263	70,953	2,627,673
2013	1,183,856	235,219	705,243	154,282	76,635	2,355,235
2014	1,059,139	202,334	616,704	141,209	69,385	2,088,771
2015	1,031,841	157,505	580,488	141,725	59,963	1,971,522
PERCENTAGES						
2006	48	16	28	6	2	100
2007	49	14	29	5	2	100
2008	50	13	30	5	2	100
2009	48	13	30	5	3	100
2010	47	15	29	6	3	100
2011	50	14	28	5	3	100
2012	50	13	29	5	3	100
2013	50	10	30	7	3	100
2014	51	10	30	7	3	100
2015	52	8	29	7	3	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2015b, *Statistical Bulletin 2014/15: NSW workers compensation statistics*, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.1.

Table A12: Non-compensation payments, NSW, 2006 to 2015

COUNTS (\$000)	Damages & common law	Legal costs	Other	Total
2006	237,197	171,467	161,547	570,211
2007	276,932	166,556	155,919	599,407
2008	265,654	149,310	141,033	555,997
2009	311,642	151,356	145,097	608,096
2010	321,179	147,098	142,784	611,061
2011	354,053	141,742	153,144	648,939
2012	372,701	151,775	165,165	689,640
2013	409,348	143,042	176,276	728,666
2014	408,264	137,070	145,378	690,712
2015	407,881	96,715	137,697	642,293
PERCENTAGES				
2006	42	30	28	100
2007	46	28	26	100
2008	48	27	25	100
2009	51	25	24	100
2010	53	24	23	100
2011	55	22	24	100
2012	54	22	24	100
2013	56	20	24	100
2014	59	20	21	100
2015	64	15	21	100

Notes: Counts are in 2015 dollars (indexed to CPI). Other category includes transport and maintenance, investigation expenses and interpreter services. Financial year data. Source: SIRA 2015b, *Statistical Bulletin 2014/15: NSW workers compensation statistics*, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.1. |

**Table A13: Compensation payments for workplace injuries,
NSW, 2006 to 2015**

COUNTS (\$000)	Benefits	Lump sum	Medical	Rehabilitation	Other	Total
2006	797,567	270,782	460,075	100,856	14,777	1,644,058
2007	781,396	225,018	456,600	85,969	19,508	1,568,492
2008	799,814	207,460	478,129	85,275	22,713	1,593,391
2009	817,426	212,208	511,039	94,337	29,876	1,664,886
2010	934,001	293,224	583,458	119,995	38,357	1,969,034
2011	856,991	225,827	507,516	96,586	29,045	1,715,964
2012	914,187	240,766	557,986	103,074	44,277	1,860,290
2013	888,329	172,597	553,123	116,591	48,123	1,778,763
2014	791,572	148,960	485,667	106,703	54,018	1,586,919
2015	761,681	110,849	456,889	111,527	43,325	1,484,271
PERCENTAGES						
2006	49	16	28	6	1	100
2007	50	14	29	5	1	100
2008	50	13	30	5	1	100
2009	49	13	31	6	2	100
2010	47	15	30	6	2	100
2011	50	13	30	6	2	100
2012	49	13	30	6	2	100
2013	50	10	31	7	3	100
2014	50	9	31	7	3	100
2015	51	7	31	8	3	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2006–2015, *Statistical Bulletin: NSW workers compensation statistics*, From 2005/2006 to 2014/2015, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.2.

**Table A14: Compensation payments for other work-related injuries,
NSW, 2006 to 2015**

COUNTS (\$000)	Benefits	Lump sum	Medical	Rehabilitation	Other	Total
2006	93,875	32,149	83,846	12,283	14,502	236,655
2007	92,358	28,831	85,387	9,850	14,465	230,892
2008	76,490	19,613	71,322	8,825	9,720	185,970
2009	100,732	33,241	93,010	12,211	32,278	271,472
2010	64,405	17,142	56,604	8,613	20,781	167,544
2011	110,229	31,688	88,371	13,368	33,654	277,310
2012	97,018	27,645	78,637	12,403	18,003	233,705
2013	71,541	15,975	56,594	9,932	19,137	173,180
2014	50,724	13,906	35,868	5,137	9,011	114,646
2015	41,961	7,235	28,072	3,106	6,741	87,115
PERCENTAGES						
2006	40	14	35	5	6	100
2007	40	12	37	4	6	100
2008	41	11	38	5	5	100
2009	37	12	34	4	12	100
2010	38	10	34	5	12	100
2011	40	11	32	5	12	100
2012	42	12	34	5	8	100
2013	41	9	33	6	11	100
2014	44	12	31	4	8	100
2015	48	8	32	4	8	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2006–2015, *Statistical Bulletin: NSW workers compensation statistics*, From 2005/2006 to 2014/2015, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.2.

**Table A15: Compensation payments for occupational diseases,
NSW, 2006 to 2015**

COUNTS (\$000)	Benefits	Lump sum	Medical	Rehabilitation	Other	Total
2006	156,917	50,869	70,807	20,947	9,019	308,560
2007	166,786	45,029	76,721	19,487	5,547	313,569
2008	181,215	46,091	83,845	18,848	4,971	334,970
2009	194,212	60,002	93,176	20,423	9,092	376,904
2010	165,848	57,092	75,695	16,809	6,265	321,710
2011	246,828	77,600	97,160	23,403	10,818	455,810
2012	291,557	85,621	121,021	26,782	8,670	533,651
2013	223,978	46,641	95,520	27,757	9,373	403,268
2014	216,844	39,469	95,169	29,368	6,356	387,207
2015	228,194	39,418	95,523	27,091	9,895	400,121
PERCENTAGES						
2006	51	16	23	7	3	100
2007	53	14	24	6	2	100
2008	54	14	25	6	1	100
2009	52	16	25	5	2	100
2010	52	18	24	5	2	100
2011	54	17	21	5	2	100
2012	55	16	23	5	2	100
2013	56	12	24	7	2	100
2014	56	10	25	8	2	100
2015	57	10	24	7	2	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2006–2015, *Statistical Bulletin: NSW workers compensation statistics*, From 2005/2006 to 2014/2015, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.2.

**Table A16: Noncompensation payments for workplace injuries,
NSW, 2006 to 2015**

COUNTS (\$000)	Damages & common law	Legal costs	Other	Total
2006	171,810	118,967	108,200	398,976
2007	211,627	116,688	103,445	431,760
2008	199,466	103,084	94,080	396,630
2009	232,854	98,445	93,668	424,968
2010	283,489	113,549	104,036	501,075
2011	272,710	89,692	96,928	459,330
2012	288,578	97,572	109,760	495,910
2013	334,159	101,662	125,068	560,889
2014	300,588	97,430	100,913	498,931
2015	292,872	65,493	93,641	452,006
PERCENTAGES				
2006	43	30	27	100
2007	49	27	24	100
2008	50	26	24	100
2009	55	23	22	100
2010	57	23	21	100
2011	59	20	21	100
2012	58	20	22	100
2013	60	18	22	100
2014	60	20	20	100
2015	65	14	21	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2006–2015, *Statistical Bulletin: NSW workers compensation statistics*, From 2005/2006 to 2014/2015, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.2.

Table A17: Noncompensation payments for other work-related injuries, NSW, 2006 to 2015

COUNTS (\$000)	Damages & common law	Legal costs	Other	Total
2006	6,534	17,361	19,584	43,479
2007	7,279	14,959	18,670	40,908
2008	5,756	11,314	14,003	31,074
2009	4,602	13,254	15,777	33,633
2010	1,360	6,300	9,104	16,763
2011	7,050	11,530	17,531	36,111
2012	1,922	11,850	13,382	27,153
2013	3,057	12,575	11,174	26,805
2014	8,635	10,648	6,473	25,756
2015	3,517	6,765	4,410	14,692
PERCENTAGES				
2006	15	40	45	100
2007	18	37	46	100
2008	19	36	45	100
2009	14	39	47	100
2010	8	38	54	100
2011	20	32	49	100
2012	7	44	49	100
2013	11	47	42	100
2014	34	41	25	100
2015	24	46	30	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2006–2015, *Statistical Bulletin: NSW workers compensation statistics*, From 2005/2006 to 2014/2015, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.2.

Table A18: Noncompensation payments for occupational diseases, NSW, 2006 to 2015

COUNTS (\$000)	Damages & common law	Legal costs	Other	Total
2006	58,848	35,073	33,745	127,667
2007	58,027	34,849	33,772	126,648
2008	60,140	34,852	32,911	127,903
2009	73,743	39,567	35,408	148,718
2010	35,692	27,031	29,073	91,796
2011	67,525	40,376	38,239	146,140
2012	82,200	42,352	42,017	166,569
2013	72,132	28,800	40,028	140,960
2014	99,042	28,989	37,989	166,021
2015	111,491	24,456	39,643	175,590
PERCENTAGES				
2006	46	27	26	100
2007	46	28	27	100
2008	47	27	26	100
2009	50	27	24	100
2010	39	29	32	100
2011	46	28	26	100
2012	49	25	25	100
2013	51	20	28	100
2014	60	17	23	100
2015	63	14	23	100

Notes: Counts are in 2015 dollars (indexed to CPI). Financial year data. Source: SIRA 2006–2015, *Statistical Bulletin: NSW workers compensation statistics*, From 2005/2006 to 2014/2015, Sydney: State Insurance Regulatory Authority. Based on data in Table 7.2.

Table A19: Workers' compensation as percentage of total labour costs by jurisdiction, selected years 1994 to 2016

Jurisdiction	1994	1997	2003	2011	2016
NSW	1.72	2.27	2.52	1.90	1.46
Vic	2.05	1.68	2.26	1.52	1.36
Qld	1.34	1.86	1.57	1.46	1.15
SA	2.43	2.60	2.32	2.11	1.93
WA	1.85	1.76	1.88	1.37	1.29
Tas	2.35	2.87	2.53	1.34	1.75
NT	1.52	1.36	2.09	1.70	1.45
ACT	1.71	1.84	2.03	1.52	1.77
Aust	1.82	2.03	2.21	1.65	1.40

Notes: Costs were measured on a cash accounting basis, net of any reimbursements, subsidies or rebates. Financial year data. Source: Based on combining data for selected years from ABS, *Labour Costs, Australia*, Cat.No. 6348.0 (63480do001_201516.xls; 63480do001_201011.xls).

Table A20: Standardised average premium rates by jurisdiction, 2006 to 2015

Jurisdiction	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
NSW	2.50	2.13	1.92	1.83	1.82	1.77	1.72	1.70	1.67	1.45
Vic	1.77	1.60	1.46	1.38	1.39	1.35	1.34	1.31	1.31	1.31
Qld	1.36	1.15	1.09	1.06	1.12	1.23	1.42	1.47	1.44	1.19
SA	2.88	2.85	2.83	2.79	2.76	2.51	2.50	2.51	2.48	2.42
WA	1.69	1.68	1.42	1.28	1.32	1.24	1.19	1.25	1.25	1.21
ACT	2.93	2.93	2.66	2.28	2.14	2.02	1.99	1.99	1.97	1.84
Tas	1.90	1.77	1.49	1.38	1.40	1.51	1.51	1.63	1.60	1.58
NT	2.03	1.81	1.81	1.77	1.74	1.82	1.81	1.94	1.86	1.67
Gov	1.20	1.21	1.04	0.91	0.91	0.92	0.99	1.16	1.15	1.22
Aust	2.01	1.79	1.62	1.54	1.54	1.51	1.52	1.53	1.52	1.39
NZ	0.88	0.94	0.93	0.86	0.94	1.07	0.89	0.75	0.71	0.60

Notes: Includes insured and self-insured sectors. Seacare premiums dropped from earlier years to be consistent with later years. Financial year data. Source: Based on combining data from Indicator 15 in *Safe Work Australia 2011*, p.24; Indicator 15 in *Safe Work Australia 2012*, p.21; and Indicator 12 in *Safe Work Australia 2017a*, p.18.

Table A21: Components of state income and workers' compensation payments, NSW, 1996 to 2015

Year	State income (\$ millions)			Compensation payments (\$ thousands)			As % employee compensation			As % state income		
	Wages	GOS	Total	Comp	Non-comp	Total	Comp	Non-comp	Total	Comp	Non-comp	Total
1996	98,852	72,319	171,172	1,200,219	388,441	1,588,660	1.21	0.39	1.61	0.70	0.23	0.93
1997	106,282	74,553	180,835	1,523,441	493,396	2,016,837	1.43	0.46	1.90	0.84	0.27	1.12
1998	111,334	79,162	190,496	1,551,316	530,246	2,081,562	1.39	0.48	1.87	0.81	0.28	1.09
1999	118,127	82,757	200,884	1,772,244	712,774	2,485,019	1.50	0.60	2.10	0.88	0.35	1.24
2000	125,296	89,104	214,400	1,893,363	789,414	2,682,777	1.51	0.63	2.14	0.88	0.37	1.25
2001	133,177	90,874	224,051	1,970,775	975,335	2,946,110	1.48	0.73	2.21	0.88	0.44	1.31
2002	134,283	98,593	232,876	2,231,894	1,304,204	3,536,088	1.66	0.97	2.63	0.96	0.56	1.52
2003	141,318	103,777	245,095	1,701,630	1,548,358	3,249,988	1.20	1.10	2.30	0.69	0.63	1.33
2004	149,994	114,917	264,911	1,880,195	925,505	2,805,700	1.25	0.62	1.87	0.71	0.35	1.06
2005	160,173	119,921	280,094	1,760,341	494,582	2,254,923	1.10	0.31	1.41	0.63	0.18	0.81
2006	168,269	127,024	295,293	1,749,910	455,638	2,205,549	1.04	0.27	1.31	0.59	0.15	0.75
2007	179,616	133,498	313,114	1,724,320	489,006	2,213,326	0.96	0.27	1.23	0.55	0.16	0.71
2008	193,536	141,060	334,596	1,802,105	473,760	2,275,865	0.93	0.24	1.18	0.54	0.14	0.68
2009	196,243	157,197	353,440	1,999,882	525,508	2,525,391	1.02	0.27	1.29	0.57	0.15	0.71
2010	203,917	165,326	369,243	2,192,506	544,555	2,737,061	1.08	0.27	1.34	0.59	0.15	0.74
2011	219,887	178,112	397,999	2,260,560	598,835	2,859,395	1.03	0.27	1.30	0.57	0.15	0.72
2012	233,950	183,811	417,761	2,454,126	644,092	3,098,218	1.05	0.28	1.32	0.59	0.15	0.74
2013	236,877	192,600	429,477	2,252,262	696,807	2,949,069	0.95	0.29	1.24	0.52	0.16	0.69
2014	250,459	190,540	441,000	2,057,681	680,431	2,738,112	0.82	0.27	1.09	0.47	0.15	0.62
2015	257,004	200,135	457,138	1,971,529	642,295	2,613,824	0.77	0.25	1.02	0.43	0.14	0.57

Notes: Wages = Employee compensation, GOS = gross operating surplus and gross mixed income. Comp = Compensation payments, Non-comp = Non-compensation payments. Percentages based on compensation payments as a percentage of employee compensation and of total state income. 'Comp payments', 'Non-comp payments' and 'Total payments' refer to financial years payments under the workers' compensation system. Note that the National Accounts data is also on a financial year basis. All monetary amounts are in current dollars. Financial year data. Source: Numerators based on data in Table 7.1 from SIRA 2015b, *Statistical Bulletin 2014/15: NSW workers compensation statistics*, Sydney: State Insurance Regulatory Authority. Denominators from ABS, *Australian National Accounts: State Accounts, Cat.No. 5220.0, Expenditure, Income and Industry Components of Gross State Product, NSW, (5220002_annual_nsw.xls)*.

Table A22: Workers compensation premiums and private sector compensation, NSW, 2011 to 2017
(\$millions and % ratio)

Year	Premiums (\$m)	Compensation (\$m)	Ratio (%)
2011	2,495	176,752	1.412
2012	2,509	185,436	1.353
2013	2,616	187,011	1.399
2014	2,244	195,480	1.148
2015	2,061	205,414	1.003
2016	2,237	216,033	1.035
2017	2,219	221,508	1.002

Notes: Ratio is ratio of premiums to private sector compensation as percentage. Financial year data. Source: Premiums from Workcover Annual Reports, 2012 to 2016, Financial Statements, and icare 2017a, *An Eye for Numbers, A Heart for People: Financial Statements, 2016–2017*, Sydney: Insurance and Care NSW, pp. 210–211. Compensation from ABS, *Australian National Accounts: National Income, Expenditure and Product*, Table 44. Compensation of Employees, State by Sector: Current prices. Cat. No. 5206.0. (5206044_state_coe_summary.xls)

Table A23: 'Wages share' and components of state income, NSW, 1990 to 2016

Year	Millions (in current dollars)			'Wages share' (%)
	Employee compensation	Gross operating surplus etc	Total	
1990	75,539	57,527	133,066	56.77
1991	79,399	58,961	138,360	57.39
1992	80,779	59,768	140,547	57.47
1993	82,418	63,566	145,984	56.46
1994	86,150	66,302	152,452	56.51
1995	91,358	68,833	160,191	57.03
1996	98,852	72,319	171,172	57.75
1997	106,282	74,553	180,835	58.77
1998	111,334	79,162	190,496	58.44
1999	118,127	82,757	200,884	58.80
2000	125,296	89,104	214,400	58.44
2001	133,177	90,874	224,051	59.44
2002	134,283	98,593	232,876	57.66
2003	141,318	103,777	245,095	57.66
2004	149,994	114,917	264,911	56.62
2005	160,173	119,921	280,094	57.19
2006	168,269	127,024	295,293	56.98
2007	179,616	133,498	313,114	57.36
2008	193,536	141,060	334,596	57.84
2009	196,243	157,197	353,440	55.52
2010	203,917	165,326	369,243	55.23
2011	219,887	178,112	397,999	55.25
2012	233,950	183,811	417,761	56.00
2013	236,877	192,600	429,477	55.15
2014	250,459	190,540	441,000	56.79
2015	257,004	200,135	457,138	56.22
2016	269,318	210,159	479,477	56.17

Notes: Gross operating surplus etc = Gross operating surplus and gross mixed income. Wages share = Employee compensation as percentage of the total. Financial year data. Source: ABS, *Australian National Accounts: State Accounts*, Cat.No. 5220.0, Expenditure, Income and Industry Components of Gross State Product, NSW. (5220002_annual_nsw.xls).

Table A24: Reasons persons with work-related injury or disease did not receive workers' compensation payments, Australia, 2014

Reason	Count (000s)	%
Minor injury only/not considered necessary	144.5	44.3
Other	34.1	10.5
Did not think eligible	32.5	10.0
Not covered or not aware of workers' compensation	30.9	9.5
Negative impact on current or future employment	28.3	8.7
Employer agreement to pay costs	21.7	6.7
Did not know	17.2	5.3
Inconvenient/required too much effort/paperwork	16.9	5.2
Total	326.1	100.0

Note: Financial year data. Population: Persons who experienced a work-related injury or illness and did not apply for workers' compensation, Australia, July 2013 to June 2014. Source: ABS, *Work-Related Injuries, Australia, 2014*, Cat.No. 6324.0 (632400010_201314).

Table A25: Average percentage of pre-injury earnings for selected periods of incapacity across jurisdictions by level of pre-injury income, 2015

	13 weeks			26 weeks			52 weeks			104 weeks		
	Low	Mid	High	Low	Mid	High	Low	Mid	High	Low	Mid	High
NSW	95	95	90	88	88	85	84	84	82	82	82	81
Vic	95	95	95	88	88	88	84	84	84	82	82	82
Qld	100	85	85	100	85	85	100	80	80	100	78	78
WA	100	100	100	100	93	93	100	89	89	100	87	87
SA	100	100	100	95	95	95	88	88	88	84	84	84
Tas	100	100	100	100	100	100	95	95	95	93	93	93
NT	100	100	100	100	100	100	95	88	88	93	81	81
ACT	100	100	100	100	100	100	85	83	83	77	74	74
Gov	100	100	100	100	100	100	97	97	97	86	86	86

Notes: 'Low', 'Mid' and 'High' refer to low, middle and high income earners (pre-injury). See the original source for various qualifications regarding high income earners. Weeks refer to weeks of incapacity (i.e. temporary impairment periods). 'Gov' refers to Australian Government. Financial year data. Source: Taken from Indicator 13 in *Safe Work Australia 2017b, Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand, Part 1 - Work Health and Safety Performance, Nineteenth Edition October 2017*, Canberra: Safe Work Australia, p.20.

Table A26: Average percentage of pre-injury earnings for selected periods of incapacity by level of pre-injury income, NSW, 2008 to 2015

	13 weeks			26 weeks			52 weeks			104 weeks		
	Low	Mid	High	Low	Mid	High	Low	Mid	High	Low	Mid	High
2008	100	80	80	100	80	80	100	71	55	100	66	43
2009	100	80	80	100	80	80	100	72	56	100	68	44
2010	100	80	80	100	80	80	100	73	57	100	70	45
2011	100	80	80	100	80	80	91	67	57	90	60	46
2012	100	80	80	100	80	80	95	68	58	92	61	47
2013	95	95	85	88	88	82	84	84	81	82	82	81
2014	95	95	87	88	88	84	84	84	82	82	82	81
2015	95	95	90	88	88	85	84	84	82	82	82	81

Notes: 'Low', 'Mid' and 'High' refer to low, middle and high income earners (pre-injury). See the original source for various qualifications regarding high income earners. Weeks refer to weeks of incapacity (ie. temporary impairment periods). Financial year data. Source: Taken from Indicator 13 in Safe Work Australia 2017b, Comparative Performance Monitoring Report: Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand, Part 1 - Work Health and Safety Performance, Nineteenth Edition October 2017, Canberra: Safe Work Australia, p.20.

Table A27: Financial performance, NSW Workers Compensation Nominal Insurer, 2011 to 2017 (Millions)

Category	2011	2012	2013	2014	2015	2016	2017
Net Premiums	2,495	2,509	2,616	2,244	2,061	2,237	2,219
Investment Returns	621	547	400	412	422	933	439
Claims	-3,533	121	-1,529	-458	-853	2,994	2,835
Underwriting Result	-1,097	2,487	661	1,337	675	-723	-548
Discount Rates / Inlet Assump	-112	-1,193	209	-177	-220		
Assets	13,327	14,565	15,397	16,917	17,069	17,907	17,695
Liabilities	-15,690	-16,062	-15,089	-14,359	-13,077	-14,554	-15,330
Surplus or Deficit	-2,363	-1,497	308	2,558	3,992	3,353	2,365

Notes: Financial year data. Source: Workcover Annual Reports, 2012 to 2016, Financial Statements, and icare 2017a, An Eye for Numbers, A Heart for People: Financial Statements, 2016-2017, Sydney: Insurance and Care NSW, pp. 210-211. Note that these two sources may not be fully compatible due to accounting definitions.

Table A28: Insurance segments by proportions of wages and claims, NSW, 2016-2017

Insurer	Wages		Claims	
	\$ millions	%	\$ millions	%
Nominal insurer	174,877	74	61,297	67
Treasury Managed Fund	32,532	14	15,218	17
Self-Insurers	17,307	7	8,297	9
Specialised Insurers	12,423	5	6,219	7

Note: Financial year data. Source: SIRA 2017, State Insurance Regulatory Authority Annual Report 2016/17, Sydney: State Insurance Regulatory Authority, p. 21.

Table A29: Standardised ratio of assets to net outstanding claim liabilities for centrally funded schemes

Financial year	NSW (%)	CF Average (%)
2004-05	80	97
2005-06	104	118
2006-07	121	131
2007-08	119	124
2008-09	98	105
2009-10	100	105
2010-11	97	106
2011-12	103	102
2012-13	116	112
2013-14	138	125
2014-15	153	128

Note: Financial year data. Source: Based on combining data from Indicator 18a in Safe Work Australia 2011, p. 30, and Indicator 15 in Safe Work Australia 2017a, p. 25.

Table A30: NSW Workers compensation payments, 2006 to 2016 (millions \$2017)

Year	Benefit payments	Medical payments	Total
2006	821.31	384.30	1,205.60
2007	804.66	383.59	1,188.25
2008	823.62	415.29	1,238.91
2009	841.76	441.63	1,283.39
2010	961.80	670.07	1,631.88
2011	882.50	591.15	1,473.65
2012	941.40	629.80	1,571.20
2013	914.77	630.29	1,545.06
2014	815.13	552.85	1,367.98
2015	784.35	509.86	1,294.21
2016	671.03	440.56	1,111.59

Notes: Indexed to 2017 dollars using CPI. Source: Based on data in Table A11 re-indexed to 2017.