d'finitive

October 2021

Self Insurers

This is the first of a series of updates for self-insurers and organisations that retain claims risk.

In this edition

- An update on current issues impacting organisations and corporations that self-insure their Workers Compensation liabilities
- The issues explored in this d'finitive are also important for *potential* self-insurers across Australia

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Workers Compensation in Australia

In Australia, Workers Compensation is predominately jurisdictionally based. There are nine main Workers Compensation schemes, one for each state and territory together with the Commonwealth Government's Workers Compensation scheme, Comcare. The schemes are either underwritten by state or commonwealth governments (NSW, VIC, QLD, SA, Comcare) or by private insurers (WA, TAS, NT, ACT).

A snapshot of the current position of each scheme is shown below. We explore each centrally funded scheme in more detail later.

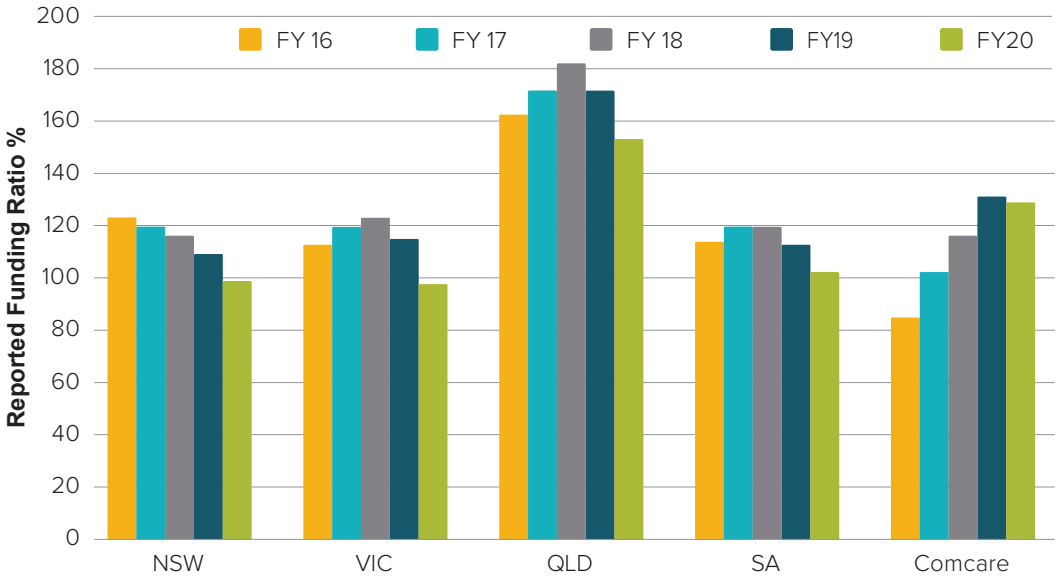
National snapshot

		Funding Ratio		Premium Rates	Reported Profitability FY20
		FY20	Change	FY21 vs FY22	
Centrally Funded	NSW	<100%	↓	↑	Loss
	VIC	<100%	↓	→	Loss
	QLD	>100%	↓	→	Loss
	SA	~100%	↓	↑	Loss
	Comcare	>100%	↓	n/a	Loss
Privately Underwritten	WA	n/a	n/a	↑	Small Profit
	TAS	n/a	n/a	↓	
	ACT	n/a	n/a	↓	
	NT	n/a	n/a	n/a	

Scheme funding

The funding ratio provides an indication of the financial position of each scheme.

Figure 1 – Funding ratio by jurisdiction (centrally funded schemes only)



The funding ratio is calculated as assets divided by liabilities as published in the financial accounts of each scheme. This differs from the way funding ratios are reported by some jurisdictions. For comparability across schemes, the funding ratio is presented on a consistent basis here.

Source: Scheme annual reports

Over the past five years, funding ratios have trended downwards in all jurisdictions except Comcare. The funding ratios have reduced across all judications in FY20. We note that:

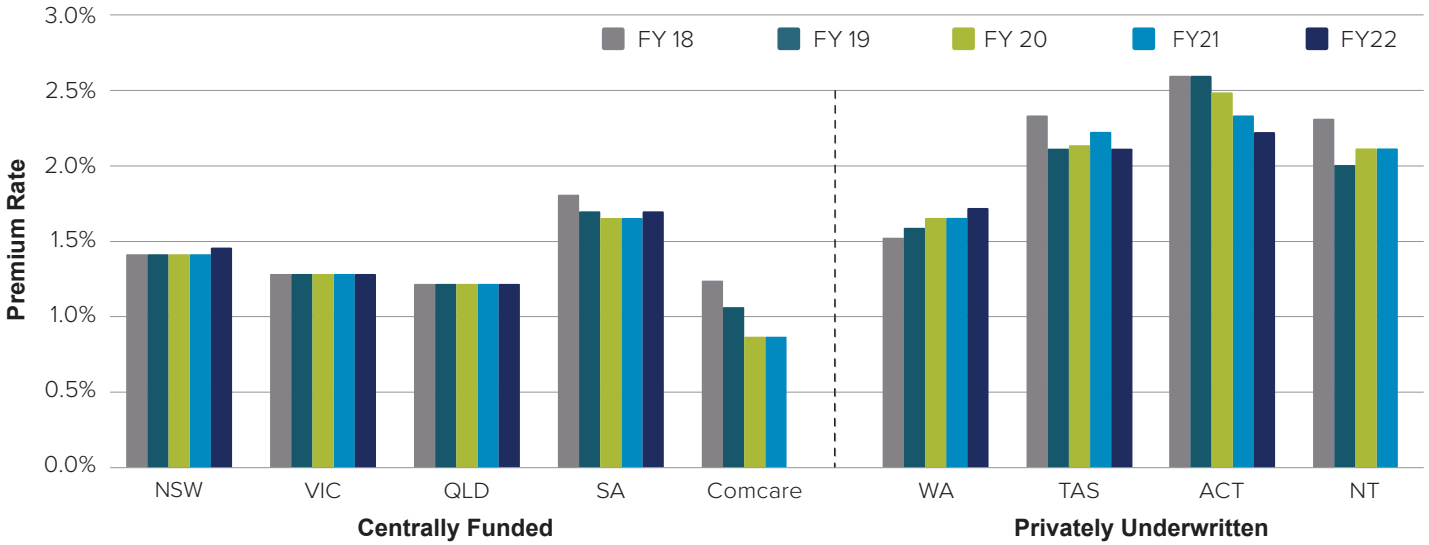
- NSW and VIC are now in deficit; the funding position of both schemes has reduced significantly in recent years.
- QLD has the highest funding ratio; however, the funding ratio has reduced considerably in the last two years.
- The funding ratio for SA is now just over 100%.
- The funding ratio of Comcare has improved significantly since FY16.

Premium rates

Despite falling funding ratios, premium rates remained stable in all centrally funded government schemes up to FY21. For FY22, NSW and SA announced a small target premium increase (+3%) while premium rates remained unchanged for the other centrally funded government schemes.

For the privately underwritten states, premium rates for WA have gradually increased while premiums for ACT have reduced. The premium rates for TAS and NT have fluctuated over the last few years.

Figure 2 – Targeted premium rate by jurisdiction



Source: Media releases, premium rate reports, scheme annual reports

Industry-wide trends

Environment

COVID-19 has completely changed the workplace landscape – there has been a fundamental shift in the way Australians work, coupled with greater social and economic uncertainty. The pandemic has led to both direct and indirect COVID-19 Workers Compensation claims and other impacts.

The current **economic environment** poses additional challenges with low investment returns, high claims inflation (particularly for medical benefits) and difficulty in implementing premium increases when businesses are suffering. In many jurisdictions, there has also been a shift towards higher cost claims, driven by longer claim durations and an uplift in mental injury claims.

Emerging and strategic issues

The volume of primary and secondary **psychological claims** has increased across the industry driven by improved awareness and acceptance of mental health. The average cost of psychological claims is significantly higher than the average cost of other claims. It is often difficult to determine the cause of mental injury claims which places challenges around claims acceptance, management and prevention. Market stakeholders will need to consider strategies to control claim cost escalation in this area.

With funding ratios for most states deteriorating in recent years, schemes and insurers face a difficult financial landscape. Increasing premium rates may be challenging when there is low corporate profitability, low wage inflation and increasing unemployment. In addition, scheme reviews have also called for better treatment of injured workers which may contribute to higher claim costs.

Across the insurance industry, **technology** is becoming an increasingly important part of business operations. The industry is exploring and implementing claims management automation techniques such as analytics, fraud detection and triaging. The use of technology will improve process efficiency and provide market players with a competitive advantage.

The changing landscape of the way we live and work and the increase in the use of technology across all businesses has led to the rise of the gig economy. The **gig economy** relates to freelance, temporary or contract jobs such as rideshare and food delivery services through platforms like Uber, Airtasker and Deliveroo. Generally, these workforces and employment arrangements are not covered by Workers Compensation. The Queensland Government is currently considering the possible extension of the Workers Compensation scheme to cover certain gig workers; it is likely other jurisdictions will follow in due course.

COVID-19

As the pandemic evolves within Australia, COVID-19 continues to impact the workplace. We have identified a number of areas where COVID-19 has impacted Workers Compensation. Some of these impacts were prominent in the early stages of the pandemic while others have arisen more recently.

SafeWork Australia reported in the early stages of the pandemic that COVID-19 related claims were 40% related to workers diagnosed with COVID-19, 30% related to testing and isolation requirements and 30% related to mental health.

Table 1 – COVID-19 impacts on Workers Compensation

Direct claims	Mental injury claims	Indirect impacts
• Contracting COVID-19: presumptive legislation in some jurisdictions • Working from home claims • COVID-19 related death claims • "Long COVID" – could lead to significant claims	• Caused by fear, lockdown, return to work anxiety, vaccination and job security concerns	• Slower return to work due to lack of suitable duties • Delays in elective/non-urgent surgeries • Disruption to claims management • Drop in claim volumes due to reduced hours in some industries

With the current vaccination roll-out we anticipate that the impact of COVID-19 will reduce in the long term. However, the Delta variant is affecting more people of working age than previous strains and there is growing evidence of 'long' COVID-19 where symptoms continue for months, possibly longer. Both of these factors could lead to significant Workers Compensation claims if the person contracted COVID-19 at work. In addition, the "opening up" of the economy in NSW and Victoria could result in a material number of COVID-19 related Workers Compensation claims, particularly in NSW where presumptive legislation exists.

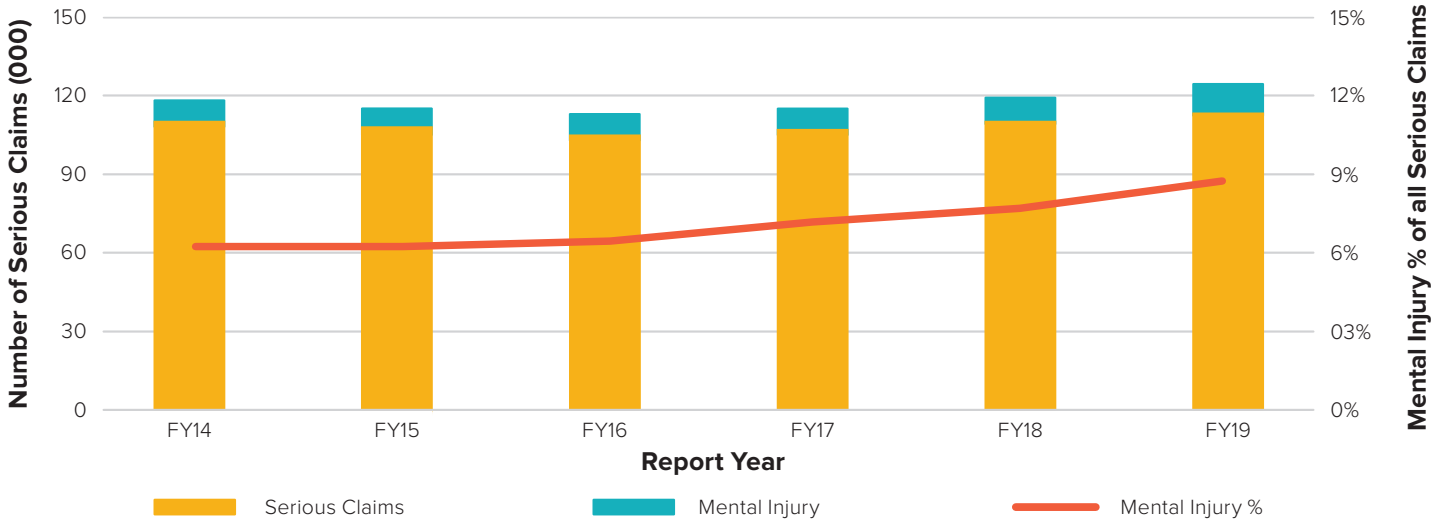
Mental injury claims have been on the rise across the market, possibly exacerbated by the impacts of the pandemic. However, we have observed a reduction in performance management related mental injury claims for some self-insurers during COVID-19.

The impact of the pandemic on Workers Compensation varies by industry; generally, front line workers such as community services and health receive more direct claims while industries that have a high proportion of casual and part-time workers and sectors that have seen a significant downturn due to the lockdowns, have had worse return to work outcomes.

Mental injury

Mental health is becoming an area of focus across businesses and governments with at least 1 in 5 Australians having a mental health condition in any one year[1]. The incidence of mental injury claims linked to the workplace is increasing nationally. In FY14 and FY15 mental injury claims made up 6% of all serious claims, this proportion increased by 50% to 9% of all serious claims in FY19.

Figure 3 – Number and proportion of mental injury Workers Compensation claims



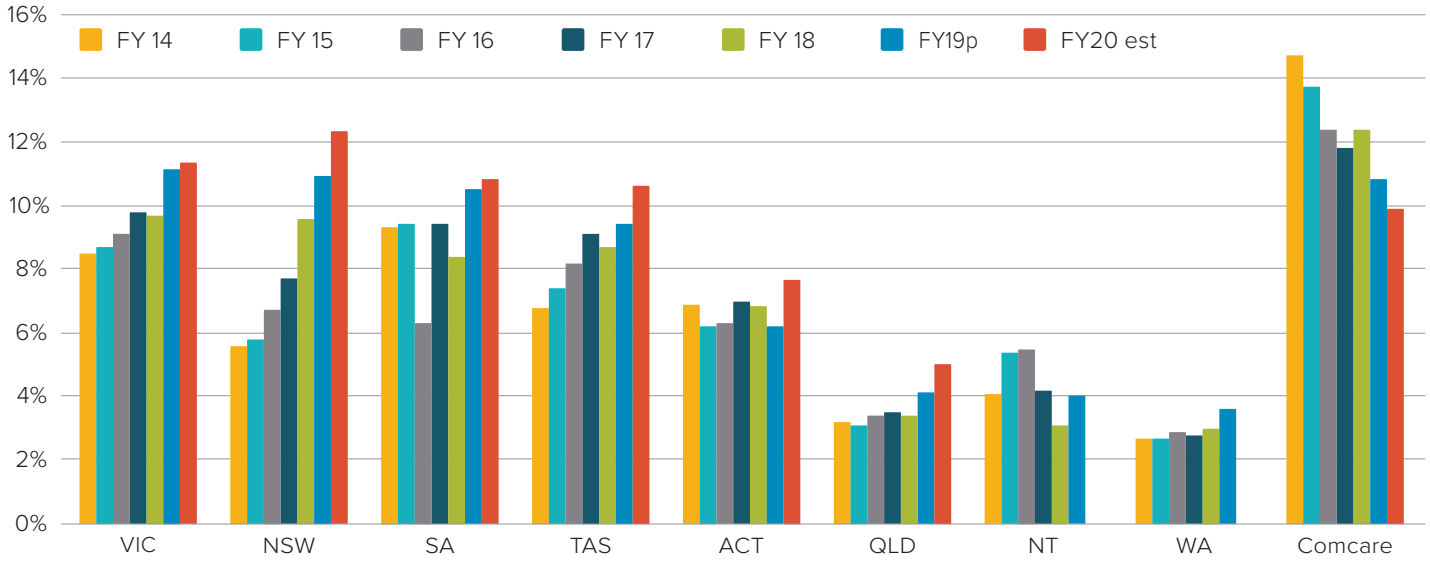
Source: SafeWork Australian Workers Compensation Statistics 2018-19, Serious claims defined as claims with greater than 1 week off work

Mental injury claims are generally higher cost than other claims as they are more complex to manage and it is more difficult for claimants to return to work. The average cost and duration of mental injury claims is around three times higher than all serious injury claims across all jurisdictions, noting that:

- The median duration of mental injury claims is around 20 weeks compared to an average duration of six weeks across all serious claims
- The median cost of mental injury claims is around $36,000 compared to $13,000 for all serious claims[2].

Looking at the trends in mental injury claims by jurisdiction, NSW has had the largest increase in the proportion of mental injury claims with TAS, VIC and QLD also having substantial increases. For Comcare, the incidence of mental injury claims has been reducing. The proportion of mental injury claims is highest in NSW where the rejection rates for mental injury claims is the lowest of all jurisdictions.

Figure 4 – Proportion of mental injury claims by jurisdiction



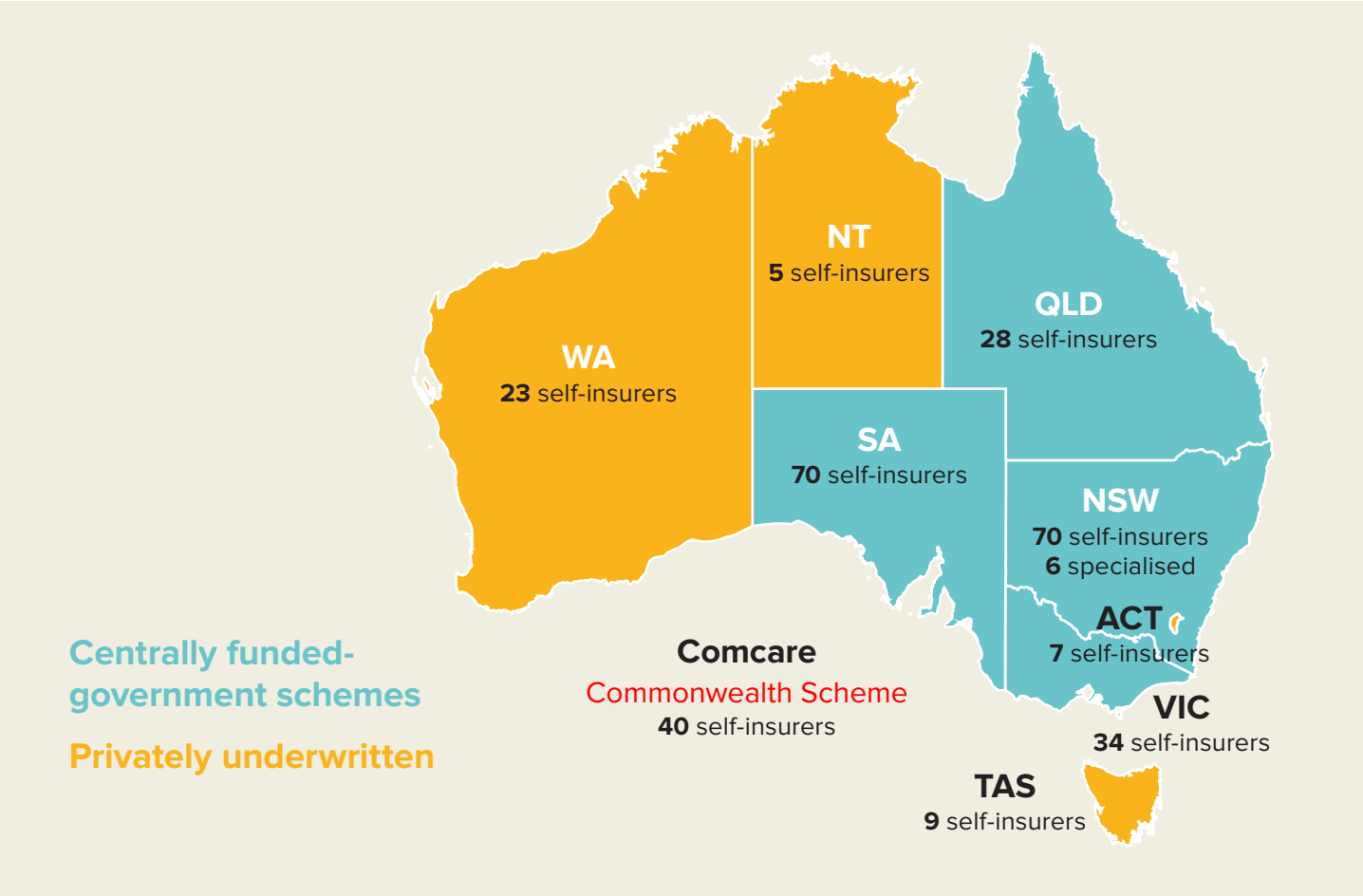
Source: SafeWork, Finity forecasts
Chart shows mental stress claims as a proportion of all claims that result in absence from work of one working week or more.
Data up to FY19 data was published by Safe Work Australia. FY19 is provisional data and subject to change.
FY20 is a Finity forecast based on public data published by each jurisdiction (where available).

[1] ABS, AIHW
[2] SafeWork

Self-insurance

In each jurisdiction, large employers have the choice of insuring their workers compensation risk by paying a premium or self-insuring and paying claims themselves. The number of self-insurers in each jurisdiction provides an indication of the relative attractiveness of self-insurance in each scheme.

Figure 5 – Number of workers compensation self-insurers by jurisdiction



Source: Scheme websites, as at mid 2021.

In NSW, employers in certain industries can insure with a specialised insurer. In NSW, QLD and SA, large employers also have the choice of paying retro paid loss premiums which more closely reflect claims experience. NSW and SA have the most self-insurers where premium rates have historically been the highest.

The number of self-insurance licensees has increased over the last 10 years, most notably in NSW (10 additional self-insurers since 2017) and under the Comcare scheme (11 additional self-insurers since 2011).

Table 2 – Number of self-insurance licensees

Jurisdiction	Number of self-insurers 2011	Number of self-insurers 2017	Number of self-insurers 2021	% of employees covered
NSW	60	60	70	19%
VIC	37	38	34	5%
QLD	25	28	28	8%
SA	67	69	70	37%
WA	27	24	23	n/a
TAS	n/a	11	9	4%
ACT	n/a	7	7	<1%
NT	n/a	5	5	5%
Comcare	29	35	40	48%
TOTAL	**n/a**	**277**	**286**	

Source: Scheme websites, SafeWork

State based schemes

To become a self-insurer, each state-based scheme has set criteria related to the size and financial position of an employer. The take up rate in each jurisdiction reflects the attractiveness of self-insurance and the eligibility requirements.

Comcare

Eligible corporations and Commonwealth authorities can apply for a licence to self-insure their Workers Compensation risk under Comcare. While there is no size threshold, generally large corporations, that compete with a Commonwealth authority and operate in multiple jurisdictions are eligible.

The advantage of Comcare self-insurance is consistent workers compensation benefits across all jurisdictions as well as only having one set of fees and levies. In addition, older Comcare licensees covered by the WHS Act 2011, have the added benefit of consistent WHS regulations nationally.

Recent developments

Reinsurance

In each jurisdiction, self-insurers are required to hold reinsurance to protect against high cost claims. Many self-insurers are currently facing reinsurance premium increases due to:

- A hardening reinsurance market globally
- An escalation in costly mental health claims
- Concerns about a surge in COVID-19 claims (i.e. presumptive legislation in NSW, opening up with a “living with COVID” strategy, long COVID, etc)
- Recent decisions suggesting ‘related’ injury impairments may be combined in NSW and SA.

New South Wales

Environment and recent developments

Scheme reviews

There have been a number of reviews of the NSW scheme over the last few years which have led to numerous recommendations about scheme operation, governance, accountability and culture.

New claims management guidelines

In mid 2019, SIRA launched a claims management guide to help managers and other key stakeholders make decisions in-line with legislation and community expectations, and help workers understand their entitlements. The claims management guide platform includes a number of 'standards of practice' across a range of processes and procedures in claims handling and administration. Most recently, in December 2020, SIRA issued a 'standards of practice' on managing psychological injury claims.

COVID-19 presumptive legislation

In mid 2020, legislation and regulations were passed meaning that workers in prescribed employment diagnosed with COVID-19 are presumed to have contracted the virus in the course of their employment. The change is designed to make it quicker and easier for workers in prescribed employment to access Workers Compensation entitlements. Prescribed employment categories include the retail industry (e.g. supermarkets), health care sector, disability and aged care facilities, educational institutions, public transport and cleaning.

Ozcan decision

The Ozcan decision relates to a worker with two spinal injuries and one shoulder injury, who was able to combine these injuries for the purpose of assessing impairment. This decision by the NSW Court of Appeal in early 2021 demonstrates the ability for impairment assessments in NSW to be combined if subsequent injuries were 'caused by' the same initial injury. The decision means that the 'test' changes from being related to the same body location, to a test about causation. Employers and case managers need to consider the impact of subsequent or related injuries on permanent impairment awards.

Premiums

Standard premium model

Despite the reducing funding ratio, targeted average premium rates remained at 1.40% for the three years to FY20. During FY21, icare again held premiums steady to alleviate pressure on businesses during the pandemic. For FY22, icare announced a premium rate increase to 1.44% of wages, with the intent to increase this year-on-year for the next few years.

LPR model

The Loss, Prevention and Recovery (LPR) model is an alternative approach to calculating premiums for larger employers in NSW. Premiums under the LPR model are derived by applying a prescribed loading to claim costs four years after the policy year start. The loadings have increased significantly year on year over the last 5 years; FY21 was an exception with the loading remaining flat to provide financial relief to employers during COVID-19. The increase in loadings equates to a 34% increase in premiums since FY18.

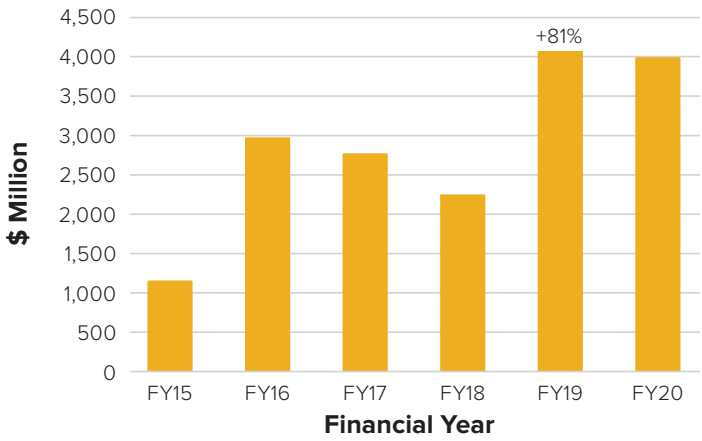
Table 3 – LPR factors by year

Year	LPR Factor (based on $350,000 claims cap)
FY18	1.75
FY19	1.98
FY20	2.24
FY21	2.24
FY22	2.35

Claims

The claims experience in NSW has deteriorated in the two years to 30 June 2020, with claim costs in FY19 and FY20 around 80% higher than FY18.

Figure 6 – NSW: Net claims expense



Some of the key features of the NSW claims experience are explored below.

Lower return to work rates

Lower return to work (RTW) rates leads to higher claim durations and therefore, higher weekly compensation costs. As shown in Figures 7 and 8 below, there is evidence of reducing return to work rates within the NSW scheme across both insured employers and self-insurers.

The return to work rates are higher, particularly at 4 weeks and 13 weeks, for self-insurers compared to employers insured in the scheme. While this comparison is not adjusted for differences in the profile of self-insured versus scheme workers, it suggests that generally, injured workers of self-insurers return to work faster than workers of insured employers.

Figure 7 – Insured employers (nominal insurer) return to work rates

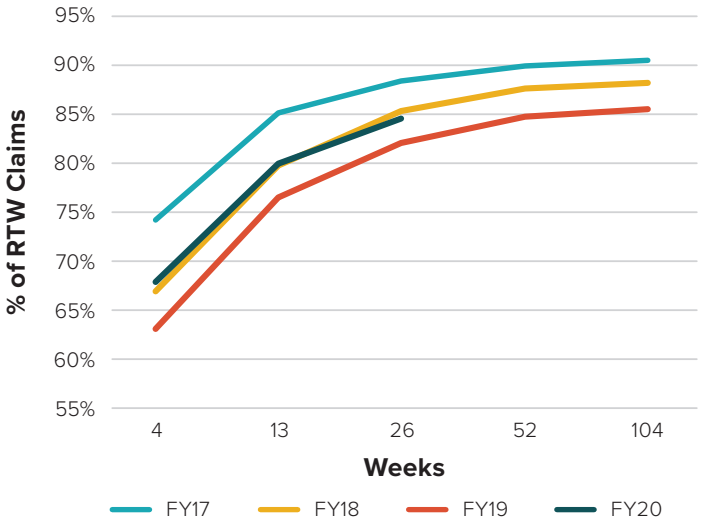
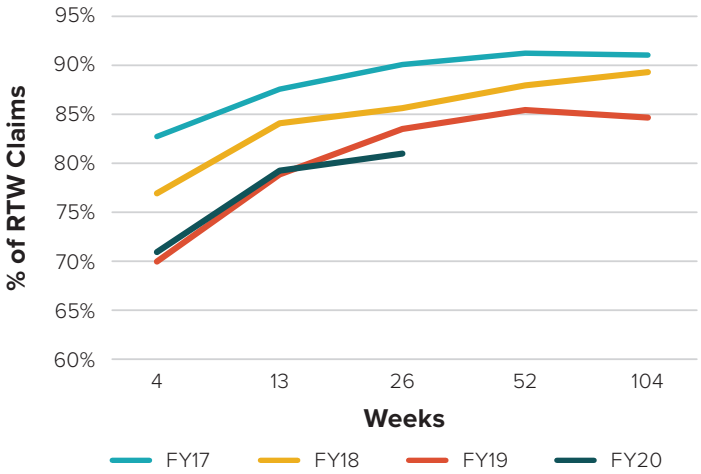


Figure 8 – Self-insurers return to work rates



Source: SIRA

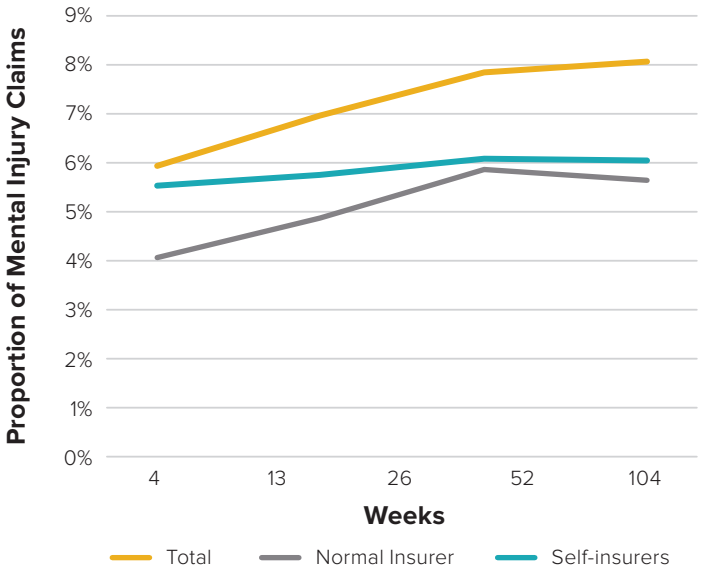
Medical cost escalation

There has been a significant rise in medical payments over the last 5 years. The NSW gazette rates are far higher than Medical Benefits Schedule (MBS) rates and even higher for surgeries than Australian Medical Association (AMA) rates. In fact, surgeon fees in the NSW Workers Compensation Scheme have been between 50% to 400% higher than fees in other personal injury schemes. However, we note that SIRA announced in February 2021 that AMA rates will be adopted from July (in line with the NSW CTP scheme) which should reduce the level of medical costs.

Mental Injury claims increasing

The proportion of psychological injury claims has been increasing across the NSW scheme; the increase has been more pronounced for insured employees (nominal insurer). The proportion of psychological claims is higher for self-insurers compared to insured employers, noting there is no adjustment for industry mix within both groups.

Figure 9 – Proportion of mental injury claims by duration

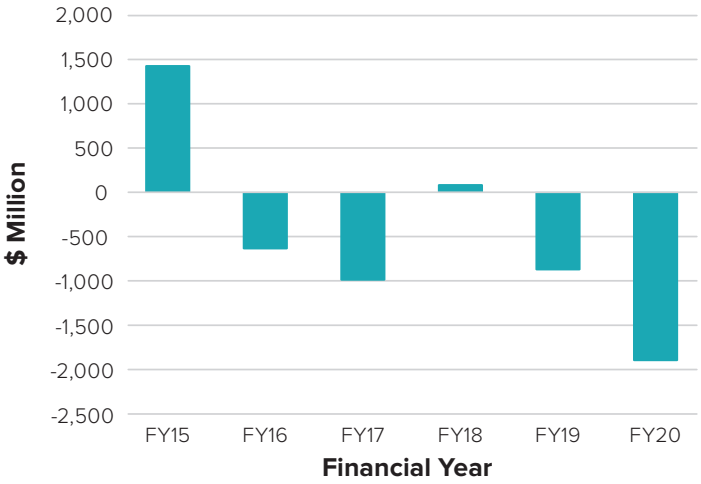


Source: SIRA, 'Total' includes Nominal Insurer, TMF, self-insurers and specialised insurers

Profitability

The NSW scheme has reported a loss in four out of the last six years; the years with larger losses correspond to years with higher net claim costs and low investment returns.

Figure 10 – NSW net comprehensive income



Environment and recent developments

Provisional payments for mental injury

From 1 July 2021, new legislation means that any Victorian worker who suffers a work-related mental injury, will be entitled to provisional payments to cover reasonable medical expenses while their claim is being determined. Workers whose claims are rejected will continue to receive access to payments for up to 13 weeks from the date of claim. This ensures claimants have early access to support and treatment with the aim to improve health and return to work outcomes.

Under the legislation, insured employers will be required to provide early notification of mental injury claims to their scheme agent (within 3 business days of receiving the claim). Agents will then need to determine whether a claim is eligible to receive provisional payments within two business days. Self-insurers will have five business days to determine provisional payments.

It is yet to be seen what impact this legislative change will have on claim costs in Victoria.

Victorian Ombudsman report

The Victorian Ombudsman deals with complaints about WorkSafe agents and self-insurers in Victoria. The Ombudsman released two reports, in 2016 and again in 2019, investigating the management of Workers Compensation claims, particularly those with complex injuries. The investigation was critical of the work capacity test at 130 weeks and remuneration of claims agents that encouraged termination of claims. Although the 2019 report did not specifically call out self-insurers, we expect the general principles and findings would apply.

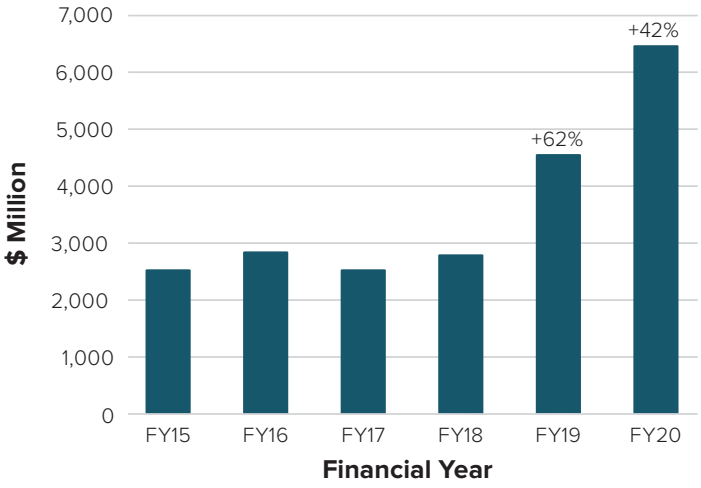
Premiums

While the funding ratio in Victoria has fallen in recent times and the scheme is now in deficit, average premium rates have been steady over the last five years. For FY22, the average industry premium rate remained unchanged at 1.27%. However, the claims experience used to calculate premiums is now based on claims received in the three years from 1 January 2018 to 31 December 2020; the last 12 months of the claims experience period (i.e. claims reported between 1 January 2020 to 31 December 2020), will only use weekly compensation payments and exclude statistical claims estimates (SCEs) and other payment types. In FY21, the last six months of the premium window excluded SCEs and in prior premium years SCEs were not excluded at all. Premium increases will remain capped at 30% for FY22 to limit year-on-year rate changes.

Claims

The claims experience in Victoria has deteriorated in the two years to 30 June 2020, with claims costs increasing from less than $3m in the four years to FY18 to more than $6m in FY20.

Figure 11 – VIC net claims expense



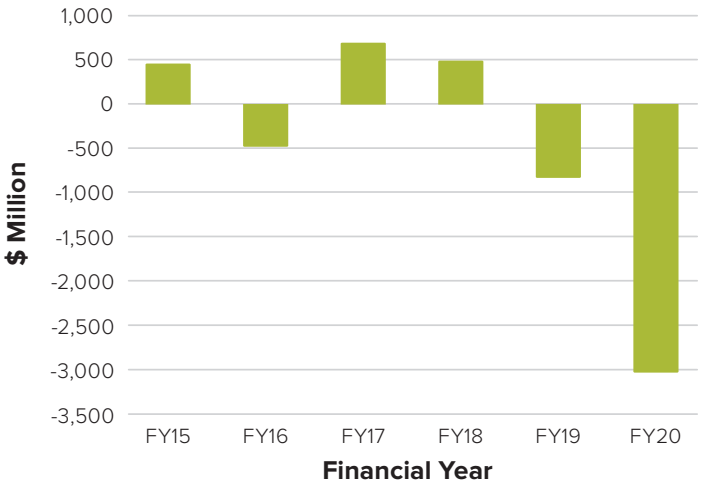
Potential reasons for the increasing claim costs include:

- The Victorian Ombudsman report which put pressure on WorkSafe and claim agents to “favour” injured workers
- An increasing number of mental injury claims
- Reducing return to work rates due to longer claim durations for both mental and other injuries and fewer claims being terminated at 130 weeks.

Profitability

The scheme has reported a loss in three out of the last six years, with the largest loss in FY20 relating to high claim costs and reduced investment returns.

Figure 12: VIC net comprehensive income



Environment and recent developments

Psychological injuries

In late 2019 legislation was passed to remove the requirement for work to be 'the major' contributing factor for psychiatric and psychological injuries. Instead, work must be a 'significant contributing factor' for a claim to be accepted. In addition, self-insurers are required to provide claimants with access to reasonable support services during claim determination.

From May 2021, presumptive workers compensation laws were passed which means that first responders and eligible employees diagnosed with post traumatic stress disorder (PTSD) by a psychiatrist will no longer need to prove their PTSD was caused work.

Silicosis and other respiratory conditions

There is a rising number of claims for injuries related to exposure to silicosis from working with engineered stone. Workcover Queensland recently undertook research to understand the current state of knowledge to inform return to work and rehabilitation support for workers diagnosed with work-related silicosis or other chronic work-related respiratory conditions. WorkSafe Queensland have also published guidelines for assessing engineered stone workers exposed to silica here.

Premiums

Standard premium model

The standard, or Experience Based Rating (EBR), premium model uses a combination of exposure (wages) and claims experience based on the size of an employer. Average premium rates were unchanged in FY21 at 1.20% of wages. Workcover Queensland has not raised the average premium rate since FY15.

LEAP model

Large employer alternative pricing (LEAP) is a premium calculation method introduced as an option for large employers in Queensland from 1 July 2019. To be eligible for LEAP, the employer must be eligible for a self-insurance licence and have over 2,000 FTE workers. The premium under the LEAP model is calculated as a loading charged on top of claim costs. Employers have the option to cap individual claims at $350,000 or $500,000 under the model.

Table 4 – LEAP model for FY21

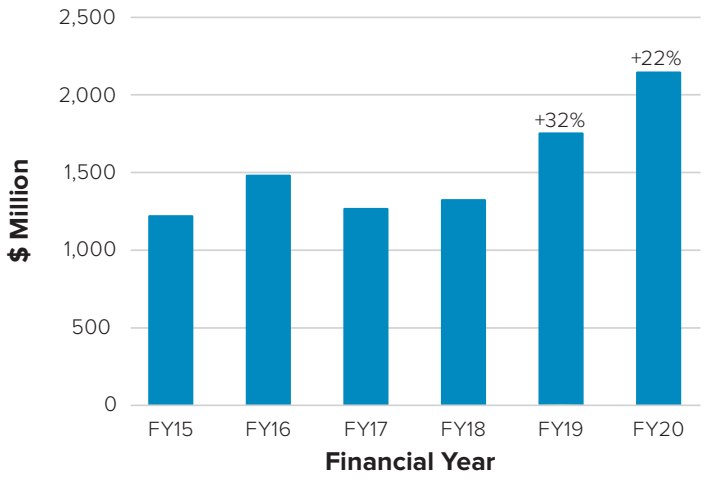
Claims cap	Premium loading on claim costs (4 years after policy start)
$350,000	1.30
$500,000	1.25

Subject to a minimum and maximum of 50% of the deposit premium. The deposit premium is equal to the Experience Based Rating (EBR).

Claims

The claims experience in Queensland has deteriorated in the two years to 30 June 2020 with claims costs increasing from less than $1.5m in the 4 years to FY18 to more than $2m in FY20 (an increase of around 60%).

Figure 13 – QLD net claims expense



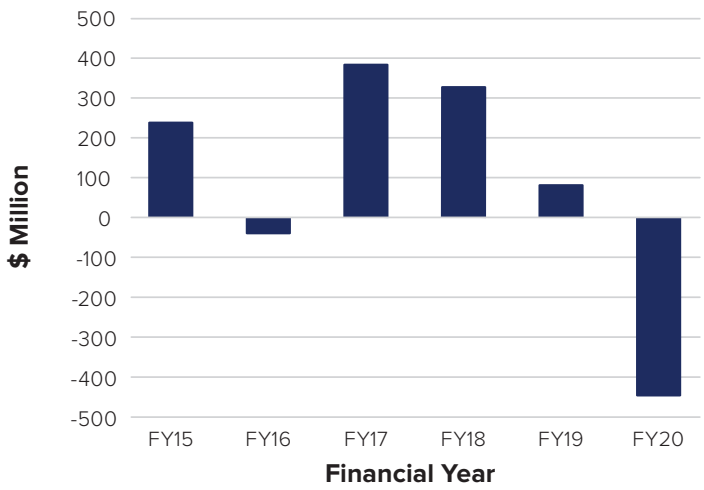
The increasing claim costs are due to a number of factors, including:

- An increase in weekly claim payments due to both higher volumes of claimants receiving weekly benefits and also claimants staying on weekly benefits longer
- An increase in the number of mental injury claims in recent years – as mentioned, these claims typically are longer in duration and have higher costs
- An increase in time lost claims which has led to an increase in Degree of Permanent Impairment (DPI) assessments and a gradual increase in common law claims (although, not back to pre-threshold levels).

Profitability

Scheme profitability reduced considerably in FY19 and then again in FY20 (a loss of over $400m) due to a combination of poor claims performance and lower investment returns.

Figure 14 – QLD net comprehensive income



South Australia

Environment and recent developments

Combining impairment assessments - Summerfield decision

The March 2021 High Court Summerfield decision meant that two or more impairment assessments could be combined if a worker suffers two or more injuries from the same trauma or cause. This is likely to mean that there is a greater chance of a worker meeting the 30% impairment threshold to qualify as a seriously injured worker and, increases in combined impairment scores leading to higher lump sum payments for permanent impairment. There are no publicly available statistics to assess the potential impact on the scheme of this decision. A special leave application to appeal the decision to the High Court will be heard in November.

Employee right to return to work - application of Section 18

Section 18 of the Return to Work Act 2014 relates to return to work following a work injury. Section 18 imposes a duty on employers to provide suitable employment to a worker if that worker was injured at work and can return to work. Essentially, the employee has a right to be provided by their employer with suitable duties. Section 18 should be considered before terminating or discontinuing the employment of a worker with an active workers compensation claim in South Australia. While this legislation came into operation on 1 July 2015 there appears to have been an increase in the application of Section 18 in recent years.

Silicosis

In mid 2020, RTWSA added "pneumoconiosis (including silicosis) and other injuries that are caused by exposure to crystalline silica" to the list of regulated injuries. This means non-seriously injured workers diagnosed with silicosis and other similar insidious diseases, can be eligible to receive medical treatment beyond the normal time limitations (i.e. beyond the three-year maximum for non-seriously injured workers).

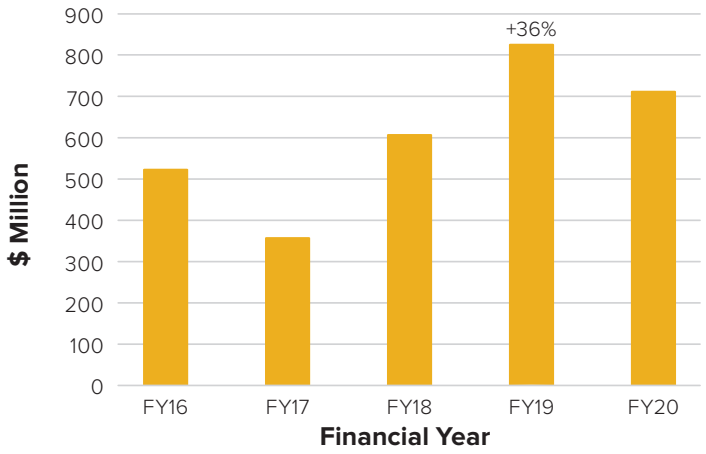
Premiums

In South Australia, scheme premiums are based on a blend of an employer's exposure (measured by wages) and claim costs. The premium formula has remained largely unchanged since 2015. Since the introduction of the Return to Work Act on 1 July 2015, premiums rates (expressed as a percentage of remuneration) have been steadily reducing from 2.75% in FY15 to 1.65% in FY21. While the scheme has remained fully funded over this period, the funding position has been reducing over the last few years. For FY22, the average premium rate increased to 1.70%, reflecting claim cost pressures from higher volumes of serious injury claims and additional supports required for this group.

Claims

The claims experience in South Australia has deteriorated in the two years to 30 June 2020, albeit not to the same extent as other states.

Figure 15 – SA net claims expense



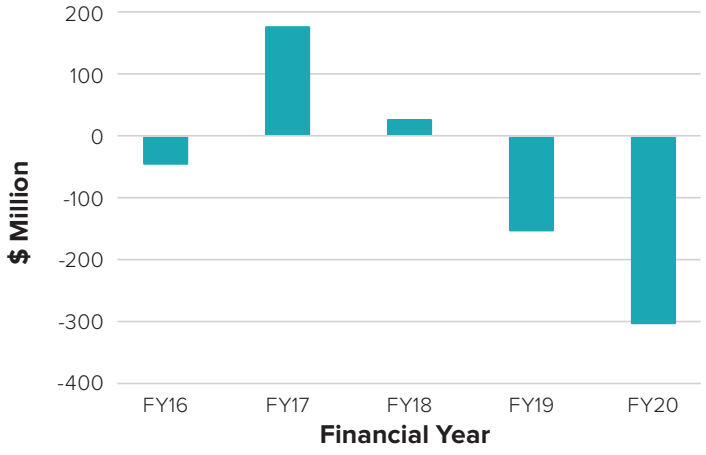
In SA, the scheme has observed:

- Higher than expected **serious injury claims activity** demonstrated by a higher proportion of serious injury claims
- **Lower return to work rates** in FY20 and FY21 compared to the two previous years. Despite improving return to work performance, a higher number of claims are meeting the serious injury threshold.
- An **uplift in hearing loss claims** in recent years. Based on statistics published on RTWSA's website hearing loss claims have increased from 3% of all claims in FY17 to 6% in FY20. We understand that a lot of this increase is driven by lawyers and targeted provider activity.

Profitability

The increase in claim costs has contributed to losses for the latest two years. FY20 was also impacted by lower investment returns.

Figure 16 – SA net comprehensive income



Comcare

As shown earlier in this d'finitive, the funding ratio of the Comcare scheme has improved dramatically in recent years (in contrast to other schemes) from a ratio of 80% in FY16 to more than 120% in FY19 and FY20. Given, premium rates have been reducing this implies an improvement in claim costs under the Comcare scheme (for government employees).

There has been a substantial increase in the number of Comcare self-insurers over the last 10 years, from 29 self-insurers in 2011 to 40 in 2021, with consistent benefits nationally being a key attraction.

Claims trends

Comparing the claims experience under Comcare, between government workers and self-insurers, shows that while the frequency of serious and mental injury claims is reducing for government workers, it is increasing for self-insurers. Generally, the severity of claims for government workers is higher than self-insurers (shown by more mental injury claims and longer claim durations).

Table 5 – Comcare claim trends: FY16 to FY20

Metric	Scheme	Government Workers	Self-insurers
Serious Injury claim frequency (per FTE)	Slight increasing trend	Reducing, lower than scheme	Increasing, higher than scheme
Mental Stress claim frequency (per FTE)	Stable	Reducing, higher than scheme	Increasing, lower than scheme
Time lost (median)	Stable	Increasing, higher than scheme	Reducing (slightly), lower than scheme

Source: Comcare Scheme Workers Compensation statistics 19-20

Finity's Self Insurance Team

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