



# Workers' Compensation Market Update



November 2021



# State of the Market (Underwritten States)



**Across the last quarter, we have continued to see premium rate increases across the ACT, NT, TAS and WA markets. The increase has varied depending on the performance of the insurer's portfolio along with the performance of the insured entity.**

Insurers are seeking 5 -7% increase on profitable policies whereas unprofitable programs are experiencing 20%+ rate increases. This is compounded due to a number of insurers experiencing portfolio profitability issues whilst others are being very selective as to which markets they will continue to participate in. Poor results and low appetite, combined with reduced investment income has created challenging conditions in the market.

Despite these challenging conditions, insurers are still supporting entities that demonstrate sound risk management intervention and risk profile articulation with leading market engagement. MMB is still best placed to manage strong results for clients.

## Excess of Loss (XOL)

Outside of traditional policies in the risk states, the XOL market has had even greater challenges over the last 12 months.

Unfortunately, large and unforeseen losses in this class have resulted in pricing pressure on insurers, which continues to drive significant increases in average rates. The decision by Vero to exit the XOL market has also reduced appetite and capacity within the market.

For clients that hold a XOL policy, we recommend that you have a robust claim notification process established to meet your policy requirements. Additionally, a strong claims management program and engagement with insurers is vital and ultimately beneficial in mitigating poor outcomes.

# New South Wales

## EML Contract Extension (Scheme)

EML have received confirmation of an extension of their contract until 31 December 2022.

## Allianz Contract Extension (Authorised Provider)

Insurance and Care NSW (icare) has extended its Authorised Provider agreement with Allianz for a further 12 months until 31 December 2022.

The 12-month extension to 31 December 2022 aligns the end date of the Allianz agreement with the GIO and QBE Authorised Provider agreements.

## McDougall Review (icare)

The icare board has also taken action to improve the operation of their business across risk and governance and performance improvement. icare is now providing monthly updates on the Improvement Program which includes the icare and State Insurance and Care Governance Act 2015 Independent Review Report by the Hon Robert McDougall QC (McDougall Review).

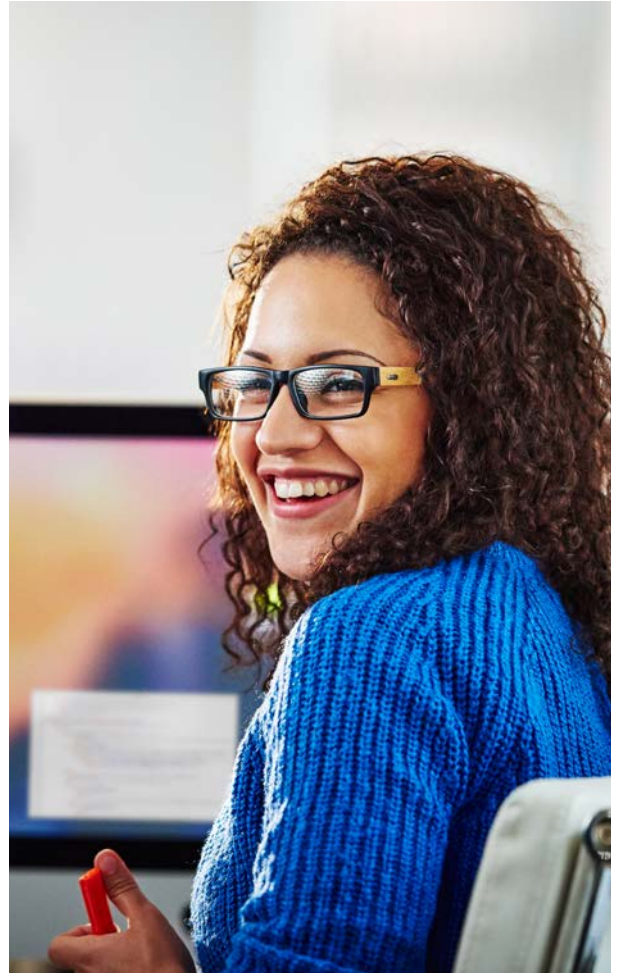
According to icare, as at 15 October 2021, 84 % of activities to address recommendations by the McDougall Review are 'in progress'.

Regular updates and further information can be found here: <https://www.icare.nsw.gov.au/about-us/reform-at-icare/improvement-at-icare-updates>

## McDougall Review (SIRA)

SIRA has released a consultation paper that seeks feedback about recommendations made in the McDougall review. Feedback relates to:

- Reforms to workers' compensation thresholds and entitlements recommended in the McDougall Review.
- Reforms to thresholds, entitlements and costs that were proposed in the 2020 Law and Justice Review of the workers' compensation scheme.



- Options to mitigate the impact of COVID-19 on customers of the workers' compensation and CTP schemes.
- Preliminary ideas for modernising and aligning customer experience and support within the workers' compensation and CTP schemes.

Customers, stakeholders, providers and regulated entities were invited to review the consultation paper and provide feedback prior to 4 November 2021.

## Claims Migration Pilot

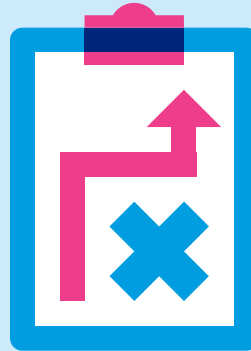
In October 2021, icare announced a claims migration pilot which will see claims (both open and closed) move from EML to QBE for clients who had elected to move to QBE under the Authorised Provider Model. The success of the pilot could result in efficiencies in the future migration of claims across agents within the scheme.

## Ozcan decision

The Ozcan decision relates to a worker who sustained two spinal injuries and one shoulder injury, and 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 determining causation.

Employers need to consider the impact of subsequent or related injuries on permanent impairment awards to their premiums.



# Queensland

## Psychological injuries

Legislation was passed in late 2019, removing the requirement for work to be determined as 'the major' contributing factor for a claim to be compensable. Instead, work must only be found a 'significantly contributing factor' in order for the claim to be compensable.

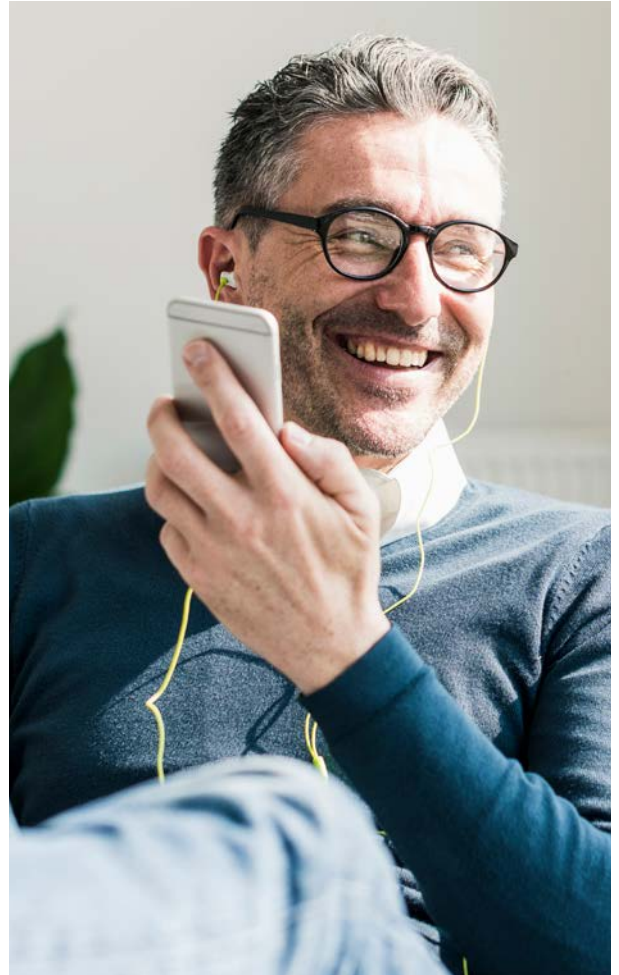
In May 2021, laws were passed with regards to presumptive assessments, meaning that first responders and other eligible employees who have been diagnosed with PTSD by a Psychiatrist, no longer need to prove their PTSD was caused by their employment.

## Mine Dust Lung Disease (MDLD)

The Queensland Government will shortly be releasing guidelines for safely returning workers diagnosed with Mine Dust Lung Disease (MDLD) to the workplace.

The guidelines apply to workers who are diagnosed with a MDLD which would include those working in coal mining, metals and quarries. The guidelines outline return to work recommendations for a worker based on the severity of their disease; requirements for enhanced medical surveillance; carrying out a workplace occupational dust exposure assessment for a worker diagnosed with a MDLD and psychosocial factors impacting on return to work.

The guidelines do not apply to workers diagnosed with dust disease related to the fabrication of artificial stone, due to exposure to high levels of pure respirable crystalline silica (artificial stone benchtop workers).



# South Australia

## Summerfield Decision

The Summerfield full bench of the SA Supreme Court decision was handed down on 11 March 2021, permitting combination of workers' injuries for Whole Person Impairment (WPI) assessment. The decision overrides the previous decision in Preedy (2018).

ReturnToWorkSA has been challenging court rulings that have repeatedly upheld the worker's claim for further compensation for complications from his original injuries, including a limb and back pain (combining his permanent impairment). The matter was heard on 5th November 2021 and [special leave was not granted by the High Court](#).

As a result, the Supreme Court decision in the Summerfield matter stands. This allows for some injured workers to combine impairments from separate injuries, moving them into a higher category of impairment. This will increase the benefits that an injured worker will receive through lump sum payments for a whole person impairment (WPI), and will allow their claim to cross the threshold to apply for a serious injury.

ReturnToWorkSA will now apply the Supreme Court ruling in accordance with the individual claim circumstances. This decision is also likely to have an impact on the funding ratio of the scheme and it is anticipated that rates will be increased in 2022/23 as a result.



# Victoria

## WorkSafe Annual Report 2021

WorkSafe has released their Annual Report on the current status of the scheme and performance. The main call-outs are:

- 22% of injured workers on weekly benefits were receiving them for mental injury claims (up from 20.8% in 2019/20)
- 21,000 injured workers have been assisted in their return to work
- Performance from insurance operations resulted in a \$3.9b deficit, deteriorating from \$3.5b last year
- As at 30 June 2021, WorkSafe's total assets were \$24.3 billion, compared to \$20.9 billion at 30 June 2020
- Total liabilities were \$25.4 billion, compared to \$21.5 billion at 30 June 2020
- 2,665 common law applications in 2020/21 vs 3,011 last year.

## Claim Experience Period

Claims reported between 1 January 2018 and 31 December 2020 will be used in the calculation of experience rating for employers' 2021/22 premium rate. For claims reported in the 12 months from 1 January 2020 to 31 December 2020, only weekly payments will be used in the experience calculation.

## Mental Injuries – Provisional Payments

Legislation was recently passed on 1 July 2021 that allows any Victorian worker who has sustained a work-related mental injury access to provisional payments. These payments are to cover reasonable medical expenses while the insurer is determining their claim.

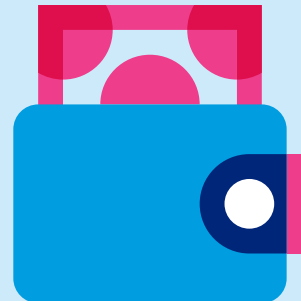
These benefits will also continue, even if an insurer rejects a claim, for up to 13 weeks from the date of the claim. Insurers will have two business days to assess and approve provisional payments from claim lodgement.



## Employer Transfer Freeze

WorkSafe will extend the temporary Employer Transfer Freeze Policy (Policy) until 30 June 2022. This is due to emerging and ongoing issues associated with the COVID-19 pandemic, the transition of CGU Workers' Compensation (Vic) Limited (CGU) out of the Scheme and the extension to the current Agency Agreement. These combined factors have had the potential to cause disruption and uncertainty within the Scheme.

The primary objective of the 'freeze' is to ensure continuity in the support and care provided to injured workers as they face challenges to their health recovery, and uncertainty in their return to work outcomes due to the current environment. It is worth noting that many of these claimants may have already had their claims transferred to another Agent during 2020/21 as a result of the CGU transition.



## WorkSafe Inspector Penalties

Effective from 31 July 2021, WorkSafe Inspectors will have the authority to issue infringement notices, with penalties of up to 10 penalty units, or \$1,817.40.

Infringement notices can be issued for offences including:

- A person undertaking work without a required license, registration, qualification, experience or supervision
- The use of equipment or substances that are not licensed or registered as required
- Failing to meet various duties relating to the removal and storage of asbestos
- Failure to keep various required records

Fines will vary depending on the nature of the offence and range from 0.5 penalty units to 10 penalty units (\$1,817.40) for a corporation, and up to two penalty units (\$363.48) for an individual. Infringement notices will not be retrospective, they are just another tool for Inspectors to achieve compliance for minor breaches. It is worth noting that employees can also be given an infringement notice for breaches such as an employee operating a forklift without having a license.



# Western Australia

## State of the Market

With regards to COVID-19 in WA, the impact has been far less than initially anticipated. This is largely due to:

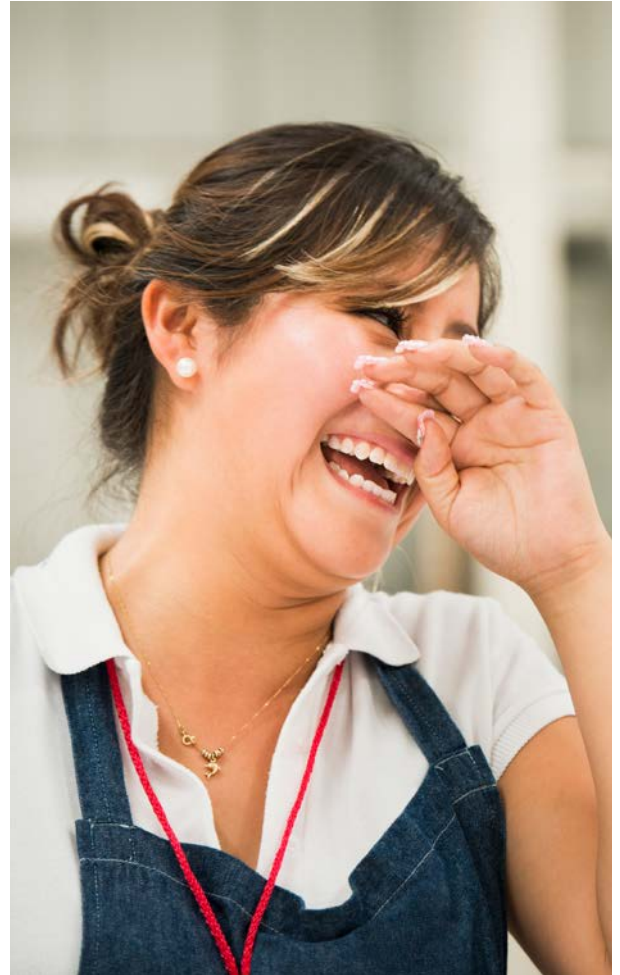
- The Job Keeper program supporting employment and providing a “floor” under declared wages
- WA experiencing the lowest infection rates and shortest lockdowns
- Minimal claims for COVID-19 infections in the privately underwritten jurisdictions

## Draft Legislative Changes

A review of the bill has commenced to modernise WA's workers' compensation laws. Marsh has representation in the consultation group drafting response submissions for the consultation phase, which closed on 10 November 2021. The legislative changes are expected to have a significant impact on WA premium rates once the bill is passed.

Their key proposed changes that are relevant to employers, injured persons and agents are noted below:

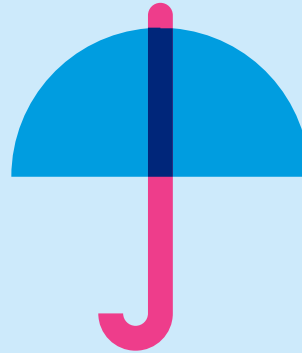
- Definition of a 'Worker' -changed to align with 'employee' under Commonwealth taxation law, with specific work arrangements included/excluded.
- Key note – Contractors will no longer be covered but an online ATO Tool is available to assist in determining if a person is an employee or contractor.
- Claims Liability Process – New provisions have been added which deal with decisions with respect to liability, provisional payments and deemed acceptance by insurers. Insurers and self-insurers will be required to give a worker a liability decision notice or a deferred decision within 14 days and if they fail to provide, they are deemed to have accepted the claim. If a deferred decision notice is given, then a decision on liability must be notified to the worker by the deemed liability acceptance date (likely to be 90 days from the date the claim was lodged). If the insurer or self-insurer give a



worker a deferred decision notice, the insurer or self-insurer must begin making 'provisional payments' to the worker which will be deducted from the prescribed amount should the claim subsequently be accepted.

- Payments – provisional benefits are to commence, should liability be pended (*this could be 28 days from claim lodgement on insurer, and non-recoverable from the worker*).
- Medical Expenses – Medical expense capped amount increased to 60% of general maximum amount. New 'miscellaneous' category to cover first aid/ambulance/emergency transport.

- Weekly Compensation – Rate of Pay calculations to be based on 12 months prior earnings, and drop down to applicable rate after 26 weeks (*subject to minimum wage*).
- Leave Entitlements – Workers are entitled to take annual or long service or teacher's vacation leave in addition to weekly compensation, and annual/sick/long service leave continues to accrue whilst on weekly compensation.
- Return to Work Case Conferences – Provision for mandatory worker attendance to facilitate return to work.
- Medical Examinations – Employers/insurers and agents of insurers are prohibited from being in attendance at medical examinations.
- Pre-employment Medicals – Workers are not required to disclose claim information for the purpose of employment selection.

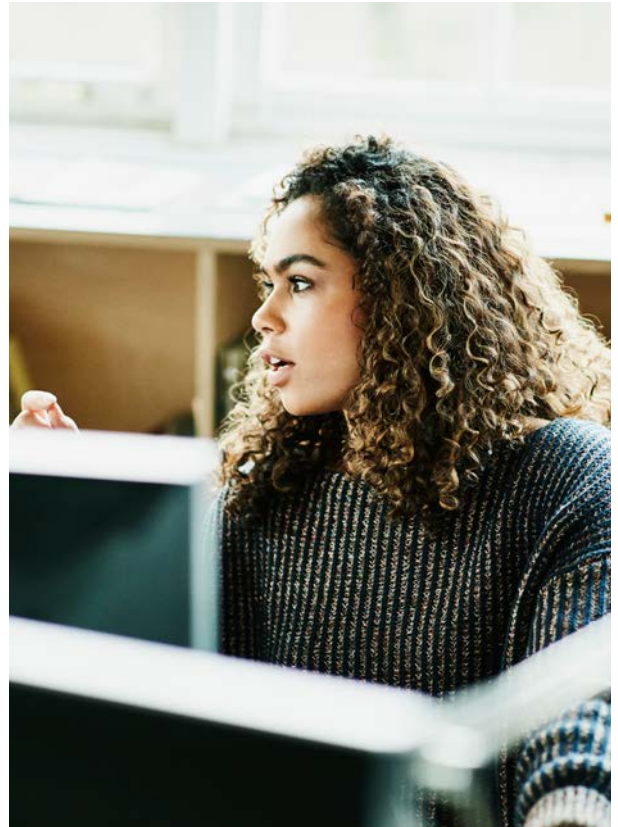


# Northern Territory

## State of the Market

With regards to COVID-19 in NT, the impact has been far less than initially anticipated, this is largely due to:

- The Job Keeper program supporting employment and proving a “floor” under declared wages
- NT experiencing the lowest infection rates and shortest lock-downs
- Minimal claims for COVID-19 infections in the privately underwritten jurisdictions



# Tasmania

## State of the Market

Tasmania remains in top spot on the economic performance ranking in the last quarter, leading on four of the eight economic indicators with its strength in relative population growth as per the Commsec State of the States Report – October 2021.

# Australian Capital Territory

## State of the Market

The Default Insurance Levy (DIF) has decreased to 2.80% (from 2.90%), for all policies at 30 June 2021.

The scheme is heavily impacted by Common Law Claims (due to the fact that there is no threshold on eligibility and benefits are unlimited). Noting that there has not been a material increase in the number/size of common law claims, they still heavily attribute to claims costs since 2015/16.

Strategy for Managing Work-related Psychosocial Hazards 2021-23 was launched for the first time. The key focuses are bullying, sexual harassment, work related violence and aggression. This strategy promotes and emphasises the need to protect workers from these harms.



# Self-Insurance

## 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 period of COVID-19, etc.)
- Recent decisions suggesting ‘related’ injury impairments may be combined in NSW and SA

## Changes to the Queensland Self-Insurer Audit Process

Following an extensive consultation period, Workers' Compensation Regulatory Services (WCRS) have finalised the Queensland Self-Insurer Audit Process and tool. The new process commenced for all audits from 1 July 2021.

WCRS will continue to monitor and will evaluate its implementation by the end of 2022.

## Changes to the ACT Scheme

WorkSafe ACT has confirmed that as a result of upcoming changes to the Scheme, they are currently not accepting new self-insurance licence applications. New Regulations were expected in late October 2021, however, they are still currently pending.

