

Submission

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Committee Chair
Public Accountability and Works Committee
Parliament House, Macquarie Street
Sydney NSW 2000

Inquiry into the proposed changes to liability and entitlements for psychological injury in New South Wales

The National Insurance Brokers Association (NIBA) welcomes the opportunity to contribute to the NSW Legislative Council Public Accountability and Works Committee inquiry into the *Workers Compensation Legislation Amendment Bill 2025*.

NIBA supports policy and regulatory reforms aimed at halting unsustainable premium increases and restoring the long-term financial integrity of the scheme. In doing so, NIBA recognises that reform must balance the legitimate entitlement of injured workers to timely and adequate support with the need to ensure the scheme remains commercially viable and retains the confidence of employers who ultimately fund it.

However, NIBA is concerned that the proposed amendments, while well-intentioned, fail to address the underlying systemic drivers of the scheme's deteriorating financial position, namely, persistent shortcomings in claims management by Claims Service Providers and the increasing acceptance of claims that lack a clear nexus to employment. We submit that without targeted reform in these areas, the proposed legislative changes risk treating symptoms rather than the root causes of the crisis the scheme now finds itself in.

About NIBA

NIBA is the peak representative body for the general intermediated insurance profession. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, as well as small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general industry operates with integrity and professionalism.

NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy,

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education, and adherence to ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, thereby strengthening trust and confidence in the insurance broking profession.

The role of brokers in the NSW workers' compensation scheme

Insurance brokers play a critical role in supporting the effective operation of the NSW workers' compensation system. By aligning employer interests with scheme objectives, brokers help ensure the NSW workers' compensation system delivers fair and sustainable protection for workers while remaining affordable and predictable for businesses.

Brokers act as trusted advisers to employers, especially small and medium enterprises that lack in-house risk and claims management capabilities. Our members assist businesses in understanding and fulfilling their obligations under workplace health and safety and workers' compensation legislation, designing and implementing proactive risk mitigation strategies to prevent workplace injuries, and arranging and reviewing appropriate insurance cover to ensure adequate protection for workers.

Beyond policy placement, brokers provide comprehensive support throughout the policy lifecycle, including advice on injury management, rehabilitation, and return-to-work programs, liaising with insurers, Claims Service Providers, allied health professionals, and other service providers to facilitate timely and fair claims outcomes, and monitoring premium trends while advising on cost-containment strategies and legislative updates.

Through their specialist expertise and knowledge, insurance brokers meaningfully contribute to the effective operation of the workers' compensation system by enhancing scheme efficiency by reducing friction between employers, CSPs and regulators, providing aggregated market intelligence on emerging risks and claim trends to icare and SIRA, and supporting a culture of compliance and continuous improvement in workplace safety.

The need for reform

The NSW workers' compensation scheme is facing a growing financial crisis that threatens its long-term sustainability and the affordability of premiums for employers.

In the 2024 financial year, claims expenditure under the nominal insurer rose to \$5.3 billion¹, significantly exceeding premium income and driving the scheme deficit to \$3.6 billion, an increase of approximately \$1.8 billion in a single year.² As a result, the nominal insurer's funding ratio deteriorated to 85% (see figure 1), falling well below the target funding ratio adopted under the *Nominal Insurer Capital Management Policy*.³

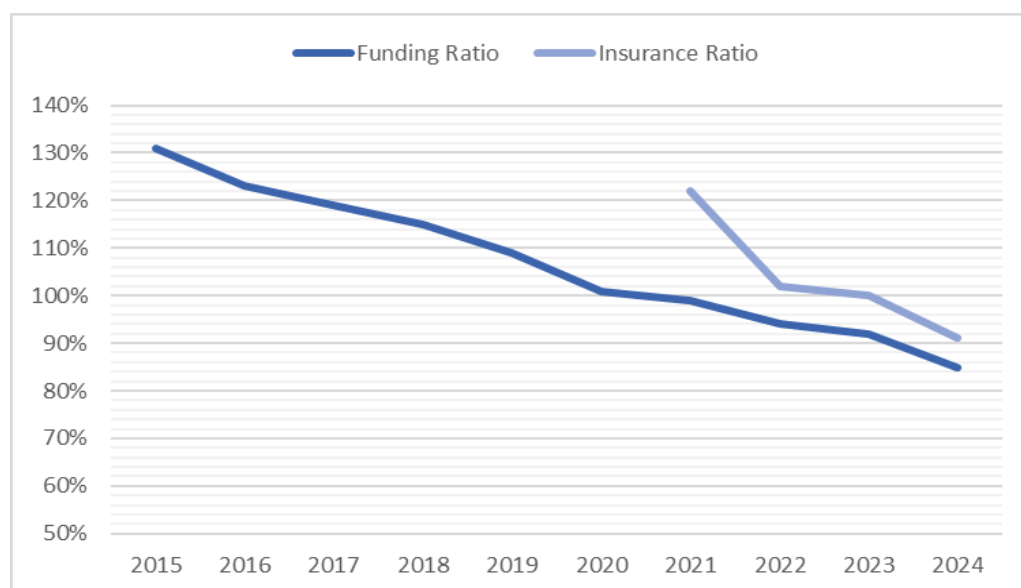
¹ icare, Premium updates for 2025-26, 2025, accessed at: www.icare.nsw.gov.au/employers/premiums/premium-updates

² icare, Annual Report Annual Report 2023–24, 2024.

³ In 2021 icare transitioned from a 'funding ratio' to the preferred 'insurance ratio', which provides a better perspective of the long-term solvency of the scheme. *The Nominal Insurer Capital Management Policy*, has a target insurance ratio of 130%-160%. The insurance ratio, as of FY24 is 91%.

These trends have direct consequences for employers. Over the past two financial years, premiums have risen by an average of 8% annually, with a further 8% increase confirmed for the 2025/26 financial year.⁴ Some industries have experienced above-average premium increases, such as the community services industry, which has seen an annual premium increase of 13%. Sustained premium increases are placing growing pressure on NSW employers, particularly small and medium-sized enterprises, and risk undermining business confidence and competitiveness. While external cost drivers have contributed to this deterioration, publicly available data and independent reviews highlight deeper systemic problems.

Figure 1: icare funding and insurance ratios 2015-2024



Average claim durations in the NSW workers' compensation system have lengthened over recent years, most notably for psychological injury claims. Delays in diagnosis and treatment, including extended wait times for psychiatric assessments, often result in prolonged periods away from work. These delays increase the complexity and cost of claims, as workers may experience worsening symptoms and disengagement from the workplace the longer they remain untreated. In turn, this increases liability for the scheme and puts pressure on premiums.

The volume and cost of secondary psychological injury claims have also increased. This trend appears to be partly driven by inconsistencies in claim acceptance decisions, which can leave workers uncertain about their entitlements and prolong the dispute resolution process. Additionally, the lack of effective early intervention measures means that what might initially be a straightforward physical injury claim can escalate into a more complex claim involving psychological harm, further extending duration and cost.

⁴ icare, Premium updates for 2025-26, 2025, accessed at: www.icare.nsw.gov.au/employers/premiums/premium-updates

Persistent shortcomings in claims management by Claims Service Providers (CSPs) have contributed to these challenges. Delays in decision-making, inadequate communication with injured workers and employers, and inconsistent application of injury management policies can all unnecessarily prolong claims. These systemic issues not only increase claim costs but also undermine return-to-work outcomes, ultimately impacting both workers and the employers who fund the scheme through rising premiums.

Reports by the NSW Auditor-General and independent reviews commissioned by icare have identified weaknesses in the oversight and performance management of CSPs by SIRA and icare. These include inadequate enforcement of service standards, insufficient transparency of CSP performance data, and limited accountability for poor outcomes.⁵

Collectively, these systemic issues have eroded the scheme's funding position and led to higher employer premiums, without delivering better outcomes for injured workers. Sustainable reform requires confronting these root causes directly, rather than focusing solely on liability thresholds or benefit structures.

Poor Claims Management

icare outsources the management of workers' compensation claims to external insurance agents, known as Claims Service Providers (CSPs). CSPs are responsible for registering and assessing workers' compensation claims, managing payments to injured workers, and liaising with injured workers, employers, and medical providers to support injury management and return to work.

In 2021, following a significant deterioration in the scheme's performance, icare decided to implement a new claims management model, transitioning from a single outsourced CSP to a multiple CSP model. Despite these changes, poor claims management practices continue to plague the scheme. These practices delay access to essential medical and rehabilitation services, further exacerbating injuries and adversely affecting return-to-work outcomes.

Multiple reviews, including those conducted by the NSW Audit Office and icare, have highlighted systemic issues in the timeliness, consistency and quality of claim handling by CSPs contracted under the Nominal Insurer model.

Key issues include:

- i. Delays in liability decisions and treatment approvals, which prolong claim durations and increase both direct and indirect costs.
- ii. Inconsistent application of injury management practices, leading to variable outcomes for injured workers and employers.
- iii. Poor communication and engagement with employers and injured workers, undermining trust and delaying return-to-work planning.

⁵ NSW Auditor-General's Report to Parliament Workers compensation claims management: Oversight of workers compensation scheme performance, 2024.

- iv. Limited integration of injury prevention and rehabilitation strategies, resulting in missed opportunities for early intervention.

The effective management of workers' compensation is essential to ensure that injured workers receive appropriate support and timely medical treatment, enabling a safe and sustainable return to work. Supporting workers to return to work as soon as practicable not only improves medical, social and psychological outcomes for claimants but also delivers financial benefits for employers by containing claims costs.

The NSW Audit Office warns that any increase in off-work time "can have a long-term impact" by making return-to-work progressively less likely and by causing secondary psychological injuries and further delay or prevent return-to-work.⁶ A McKell Institute's survey of claimants further underscores these concerns, with over 80% of respondents stating that their experience with the workers' compensation system had not helped them recover from their injury, and 73% having contemplated suicide due to their experiences.⁷

These delays also impact employers, who face the financial burden of covering absent employees and endure higher premiums caused by prolonged claims and escalating claim costs. Data from icare's annual reports and SIRA's published dashboards consistently confirm that psychological injury claims have significantly longer durations than physical injury claims. Extended wait times for diagnostic psychiatric assessments exacerbate these delays, compounding the human and economic toll.

Case Study A: Delay of treatment and non-compliance oversight

Background

The injured worker (Employee A) sustained a shoulder injury while operating machinery at work. The incident resulted in a dislocation, requiring surgical intervention. Following the initial surgery, his employer (Employer A) supported Employee A's recovery by offering suitable duties in an administrative role, facilitating a return to work.

Complication and Delayed Recovery

While recovering, the worker experienced a second shoulder dislocation while sleeping. Further medical investigation revealed that the original surgery had not been completed correctly, necessitating a second surgical procedure. The Claims Service Provider took approximately 10 months to investigate and approve the required surgery, significantly delaying the workers' recovery and return to full capacity.

Return to Work (RTW) Goal Adjustment

Due to the prolonged recovery and complications from the second surgery, the RTW goal was revised. Following this, Employee A became non-compliant with their job-seeking obligations. Despite this, the Claims Service Provider did not initiate any non-compliance procedures and continued to pay weekly compensation benefits.

⁶ NSW Auditor-General's Report to Parliament Workers compensation claims management: Oversight of workers compensation scheme performance, 2024, p34

⁷ The McKell Institute, It's Broken: Workers' Compensation in New South Wales Since 2012, 2022, p30-32.

Financial Impact

At renewal, Employer A's premium increased significantly to \$423,468. A formal request was submitted to icare to review the weekly compensation period in light of the Employee A's non-compliance. Approval of this request would have resulted in a reduced premium of \$283,648, representing a potential saving of \$139,820; however, the request was denied.

Case Study B: Delayed Injury Reporting and Excessive Compensation Post-Employment

Background

While on leave, Employee B notified his employer (Employer B) that he had sustained a knee injury. At the time of notification, Employee B was unable to recall how the injury had occurred. Employee B later advised that the injury had taken place almost one month prior, when he slipped and fell awkwardly while at work.

Upon notification, the CSP accepted provisional liability and Employee B was referred for an MRI, which confirmed a meniscus tear. A specialist review recommended arthroscopic surgery, and the CSP arranged an Independent Medical Examination (IME). Following the IME, surgery was approved and completed. The total time between the injury occurring and the surgery being performed was 15 weeks, during which Employer B provided home-based suitable duties aligned with a Return to Work (RTW) plan, supporting Employee B's recovery and maintaining engagement with the workplace.

Following surgery, the treating specialist provided a prognosis of six weeks total incapacity, after which Employee B was expected to resume suitable duties. Shortly after surgery, Employee B graduated from his apprenticeship with Employer B, marking the formal end of his employment with the company. Employer B had capacity to offer ongoing suitable duties but was unable to do so due to the completion of the apprenticeship.

Post-Apprenticeship Compensation

Following this, Employee B advised the CSP that he intended to commence full-time work within a family business. However, he remained completely incapacitated for an extended period, without clear medical justification. Despite this, the CSP continued to pay weekly compensation directly to Employee B, and he was not subject to any job-seeking obligations during this time.

Financial Impact

Employee B received 44 weeks of compensation payments following the completion of his apprenticeship and notification of his intention to resume work elsewhere. These payments totalled over \$33,000, and the extended claim duration resulted in a premium impact exceeding \$120,000 for Employer B.

Acceptance of claims unrelated to employment

Employers in New South Wales are required by the *Workers Compensation Act 1987* to maintain valid workers' compensation insurance. The scheme provides financial support for those injured at work, covering living costs, medical treatment and a range of rehabilitation services designed to promote

recovery and facilitate a safe return to the workplace. However, NIBA is concerned about the increasing acceptance of claims that lack a clear and material causal connection to the workers' employment including:

- Instances where pre-existing conditions, or conditions not materially related to work, have been accepted without adequate scrutiny.
- Growth in secondary psychological injury claims where the primary physical injury has resolved, yet liability continues based on psychological conditions with limited work causation.
- Inconsistent decision-making by CSPs in applying the legislative threshold of 'substantial contributing factor'.

The broad acceptance of claims with limited employment causation has notable implications. It creates a funding imbalance where employers who maintain safe workplaces and proactively manage risks nonetheless face increasing premium costs driven by claims that are arguably outside the scheme's intended scope. This dynamic undermines the principles of fairness and equity that underpin workers' compensation and erodes employer confidence in the scheme.

Case Study C: Entanglement of Non-Work-Related Medical Conditions in Compensation Claim

Background

Employee C, a truck driver, was involved in a work-related vehicle collision that resulted in abdominal injuries. During surgery to treat these injuries, medical professionals discovered a tumour, which was subsequently diagnosed as cancer. This diagnosis was unrelated to the workplace incident.

Medical Complications and Treatment

Following the discovery, Employee C underwent extensive cancer treatment and additional surgeries. As part of the treatment, a temporary colostomy bag was fitted to support recovery and manage the effects of the cancer. Following treatment, Employee C resisted removal of the colostomy bag for over two years, significantly prolonging the recovery process.

Psychological Impact

After undergoing multiple rounds of treatment and surgery, Employee C reported developing a secondary psychological injury. While Employee C attributed some of this to the original workplace injury, the trauma of the cancer diagnosis and the ongoing physical limitations, including the presence of the colostomy bag, were also identified as significant factors.

Extended Recovery and Financial Impact

What was initially expected to be a six-to-eight-week recovery period for the abdominal injury has now extended over several years. This has resulted in significantly increased premiums for Employer C, who has had limited control over the claim's progression and duration.

Recommendations

In order to address the issues identified in this submission and help restore the financial sustainability and fairness of the NSW workers' compensation scheme, NIBA recommends the following targeted reforms:

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1. Independent review of claims management practices and CSP oversight

The NSW Government should undertake a comprehensive, system-wide review of claims handling practices by Claims Service Providers (CSPs). This review should focus on the timeliness of liability decisions and approvals for treatment, the consistency and transparency of injury management practices, and the quality of communication with employers and injured workers.

As part of this review, the effectiveness of icare and SIRA's supervision and oversight of CSPs should also be examined to ensure that existing service standards and publicly reported data are driving real improvements in performance. Based on the findings, enhancements should be considered to strengthen contractual obligations, regulatory enforcement mechanisms and the accountability framework applied to CSPs, particularly where persistent underperformance is identified.

2. Improve access to timely diagnostic and treatment services

To reduce claim durations and improve return-to-work outcomes, the Government should collaborate with health networks to reduce waiting times for diagnostic psychiatric assessments and other early intervention services. Establishing clear performance targets for these services and publishing regular updates on progress will help ensure greater accountability and transparency.

3. Promote early intervention and risk mitigation

Greater incentives should be introduced to encourage employers to invest in proactive injury prevention, rehabilitation and return-to-work programs. In addition, brokers and other advisers should be supported to provide targeted risk management advice, particularly to small and medium-sized businesses that may lack dedicated in-house expertise.

These targeted, evidence-based reforms will directly address the systemic failings driving cost escalation, improve outcomes for genuinely injured workers and restore employer confidence in the NSW workers' compensation scheme.

NIBA recognises that these reforms will require coordinated action by the NSW Government, SIRA, icare, CSPs, employer groups and worker representatives. To support effective delivery, a dedicated reform working group should be established, including SIRA, icare, CSPs, employer and worker representatives, and independent experts such as brokers.

Finally, specific success metrics, such as reductions in average claim durations and improvements in funding ratios and satisfaction levels, should be defined and reported annually to Parliament to ensure transparency and sustained progress.

Conclusion

The NSW workers' compensation scheme is at a critical juncture. Without targeted reform, rising claims costs and declining funding ratios threaten the affordability and sustainability of cover for NSW employers and the adequacy of support for injured workers.

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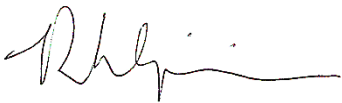
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It is NIBA's view that the primary causes of the scheme's deterioration lie not in the design of benefits or liability thresholds alone, but in systemic shortcomings in claims management by CSPs and the increasing acceptance of claims with limited or no clear employment nexus.

As trusted advisers deeply engaged in the system, brokers stand ready to assist the Government, SIRA and icare in designing and implementing these reforms. NIBA welcomes further dialogue with the Committee to ensure the scheme remains fair, sustainable and responsive to the needs of workers and employers across New South Wales.

Should you have any queries in relation to this submission or wish to discuss any of the matters raised, please do not hesitate to contact Allyssa Hextell, Head of Policy and Advocacy, at ahextell@niba.com.au.

Yours sincerely,



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