



17 July 2024

[REDACTED]
Committee Secretariat
Standing Committee on Communications and the Arts
Department of the House of Representatives
PO Box 6021
Canberra
Act 2600

By email: communications.reps@aph.gov.au.

Dear [REDACTED]

Parliamentary inquiry into Challenges and Opportunities in the Australian live music industry: Insurance Council of Australia appearance on 26 June – Responses to questions on notice and transcript

Thank you for the opportunity to appear at the Inquiry hearing on 26 June.

Marked-up transcript

Please find attached marked-up pages of the transcript where some minor corrections have been made.

Questions on Notice and further information:

Impact of psychological claims on public liability insurance and statutory compensation schemes.

The ICA does not hold data that can provide a specific breakdown in relation to the growing impact psychological injury claims on public liability insurance and workers compensation schemes.

However, we can provide the following relevant information evidencing the increasing impact of these claims:

- the Australian Prudential Regulatory Authority (APRA) Review of claims trends and affordability of public liability and professional indemnity insurance in Australia [report](#) identified:
 - that the data provided by insurers identifies ‘an increasing number of psychological claims in recent years’.¹
 - there has been an increase in the proportion of claims classified as “mental or nervous system” and “Minor Injury – small laceration and psych”, which they say may be indicative of an increasing level of psychological injuries in public liability claims.²
 - data indicates an increasing number of psychological claims have been incurring in recent years and outlines that inflation in claims costs has been driven by a combination of social inflation (higher claimant demands), legal and litigation inflation, and medical costs inflation.³
 - based on the claims data collected from insurers, mental or nervous system claims make up the second highest average claim size for any bodily injury claims.⁴ The only

¹ NCPD Analysis – Review of claims trends and affordability of public liability and professional indemnity insurance in Australia, APRA, May 2023, p. 6.

² *ibid.* p. 43

³ *ibid.* p. 6

⁴ *ibid.* p. 42

other personal injury claims with a high average claims size are those that involve the death of a claimant.

- Finity Consulting's 2023 Optima General Insurance Insights report states there has been an increasing number of public liability psychological claims in recent years and notes that psychological claims have a higher-than-average claim size (of about \$200K).⁵
- Analysis by insurance actuary, Taylor Fry, has identified an increasing proportion of psychological claims reported for public liability and other liability type classes, such as workers compensation and CTP.⁶
- Within statutory workers compensation schemes – mental (psychological) injuries accounted for 6.2% of overall serious claims in 2014-15. By 2020/21 this had risen to 9.3% of claims.⁷
- Safe Work Australia has identified that treatment for a worker suffering a mental injury cost more than physical injuries and are one of the 'costliest forms of workplace injury'.⁸
- According to the NSW Workers Compensation Scheme regulator (SIRA),
 - Payments for psychological injury claims across the NSW workers compensation scheme are increasing at a higher proportion than non-psychological injury claims.⁹
 - In 2018-19 total payments for psychological injury claims represented 17% of the system payments.¹⁰
 - In 2022-23, psychological injury claim payments have increased to 25% of the system payments despite representing only 10% of active claims.¹¹ Total payments for psychological injury claims increased by 114% from 2018-19 to 2022-23.¹²
- In Victoria, WorkCover claims liability has tripled since 2010 due to people staying in the scheme longer and soaring mental health (psychological injury) claims.¹³ More recently, over the 2022-23 financial year 16% of Victorian workers compensation claims were for mental injuries, with this expected to rise by 5% every year until 2030.¹⁴ This has led the Victorian government to undertake reforms to the state's workers compensation insurance scheme to restrict access to compensation for some mental health / psychological injuries to curtail skyrocketing costs and ensure the scheme remains sustainable.

Areas of potential civil liability reform

We note the Standing Committee's interest in potential civil liability reform that could be implemented to increase capacity and take pressure off insurance premiums.

As outlined at the hearing, the ICA is examining areas of potential reforms that could address rising claims costs that are driving increases in underwriting risk and insurance premiums.

Some of the potential reform options could include:

- Stricter application of existing statutory limitation periods to bring a common law personal injury claim. For example, aligning limitation periods to narrow the circumstances in which the limitation period can be extended to allow late claims.

⁵ Finity Consulting, Optima General Insurance Insights 2023, page 92.

⁶ Taylor Fry, [Radar FY2023](#), page 26.

⁷ Insurance News, [Still got the blues](#), 2024

⁸ *ibid.*

⁹ [Supplementary Submission of the State Insurance Regulatory Authority to the Standing Committee on Law and Justice](#), September 2023, p. 1

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ The Guardian, [Victoria to limit WorkCover compensation for stress after deal struck with opposition](#), 5 March 2024.

¹⁴ *ibid.*

- Require a claimant and their lawyers to give notice of their injury to an insured (and hence their insurer) within three months of the date of incident giving rise to the injury (while maintaining the existing limitation period to bring a claim).
- Reform to eligibility to access common law damages for psychological / mental injury. For example, limit compensation available for less serious mental health injuries or impose higher threshold to access compensation for 'nervous shock'.
- Apply thresholds based on severity of injury before damages for non-economic loss can be claimed and/or apply consistent caps for non-economic loss at a level equivalent to that applied in statutory insurance schemes.
- In relation to claims for gratuitous care, remove the right to claim damages for gratuitous care for care an injured claimant provided to others (commonly called Sullivan v Gordon damages)
- Amend relevant laws to remove the right to bring a personal injury claim based on breach of the Australian Consumer Law (ACL) given it was not the intention that the ACL be used as mechanism to seek compensation for personal injury.
- Legal costs: introduce caps on legal fees that can be charged for personal injury claims, particularly in relation to legal fees that can be charged for lower quantum claims.

Information in relation to the ACT Festival insurance premium and coverage

The ICA note the Committee has requested the ICA shed further light in relation to the reported experience of the ACT Festival that experienced a 2000% increase in the cost of their insurance attributed to the provision of a pill testing service. We are not privy to the circumstances of this matter and the particular insurer involved. Therefore, we are unable to provide any further insights or information in relation to the circumstances of this specific matter.

The ICA has contacted insurers and sought greater insight into potential factors likely to be considered by insurers in relation to providing cover for music festivals, including the provision of pill testing services. We will provide any additional information we receive to you in due course.

We hope this further information and material is of assistance.

Please contact Tom Lunn, Director Insurance Lines on [REDACTED] if you have any queries.

Kind regards

[REDACTED]

Kylie Macfarlane
Chief Operating Officer