

# Insurance costs in the ACT

Submission to the Standing Committee on Economics,  
Industry and Recreation, Legislative Assembly for the  
Australian Capital Territory

28 March 2025



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## Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.<sup>1</sup>

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au)

## Introduction

1. The ALA welcomes the opportunity to have input to the Legislative Assembly for the Australian Capital Territory (ACT) Standing Committee on Economics, Industry and Recreation ('Committee') as part of the Committee's inquiry into insurance costs in the ACT.
2. **The focus of the ALA's submission is the workers compensation scheme in the ACT, although we will briefly discuss public liability claims.**
3. ALA members represent injured workers and assist those workers in navigating the ACT's workers compensation scheme. Our members also represent people injured in incidents of a 'public liability' nature.
4. Any inquiry into a workers compensation scheme must, in the ALA's view, consider the following ideas:
  - A worker is not only an economic unit to be valued by their contribution to the profit of the enterprise in which they are employed;
  - A workplace has its own culture, and the quality of workplace culture is an important contributor to the quality of a society's culture – in the same way that work is a very important part of life;
  - In most workplaces there exists an inequality between employer and employee, as primarily the employer has the ability to shape and modify the essential conditions or nature of the work – what, when, how, where and why the work is to be done;
  - In recognition of the inequality of power between employer and employee, our society has made laws to govern the workplace and to protect the safety, health and human dignity of employees, while respecting the right of employers to command their own workplace. With power comes responsibility, and that responsibility applies to both sides of the relationship in proportion to the power wielded; and
  - Workers compensation schemes are only one part of the laws that apply to safety in workplaces.
5. **The ALA contends, based on actuarial data plus the direct experiences of our members and their clients, that there is no crisis in the ACT's workers compensation scheme.**

6. Further, the ACT Government has a contract with Finity Consulting Pty Ltd,<sup>2</sup> signed on 27 October 2022, to provide actuarial services regarding the operation and performance of the private sector workers compensation scheme.
7. Pursuant to that contract, Finity must provide annual draft review reports to Chief Minister, Treasury and Economic Development Directorate (CMTEDD) by 15 March every year, and public release of the report is required by 31 March every year. The latest published Finity report covers matters up to the financial year ending 2023.<sup>3</sup>
8. The due date for submissions to this Committee inquiry was 14 March 2025, the day before the latest data was to be provided to the ACT Government. Even for stakeholders like the ALA who were granted extensions for making written submissions to the Committee, there has still been no access to the latest Finity report. After an enquiry from the ALA about the latest Finity report, the Committee's secretariat indicated to the ALA on 21 March 2025 as follows: *"The Committee does not have access to that report and has not heard back from the Minister about it"*.
9. The ALA contends that the Committee and relevant stakeholders cannot fully assess current trends in the ACT's workers compensation scheme – and make recommendations that may affect the scheme – without using current data.
10. It is relevant to ask why the ACT Legislative Assembly has tasked this Committee with expending ACT public resources to re-examine a workers compensation scheme that:
  - the ACT Government pays Finity to independently audit each financial year; and
  - is not in financial deficit like many other schemes nationally, despite providing reasonable protection for injured workers (unlike many of the other schemes).

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<sup>2</sup> Contract number 2022.2913444.210 for Actuarial Services for Multiple Areas.

<sup>3</sup> See: Finity Consulting Pty Limited for the Chief Minister, Treasury and Economic Development Directorate, *ACT Workers' Compensation Review of Scheme Performance to 30 June 2023* (Report, 2024).

## The Territory to pick up the tab?

11. What will be the effect of reducing the entitlement of injured workers under the current workers compensation scheme? Unfortunately, workers in the ACT will still be injured. If the insurers do not pay for the medical and rehabilitation costs and the loss of income, who does?
12. Some of those 'costs' will be borne by the injured worker – physically, psychologically, and financially – because they may be unable to pay for medical treatment when needed, and are unlikely to be compensated, or adequately compensated, for loss of income.
13. Some of the unpaid treatment and rehabilitation costs will be borne by the Canberra Health Services or paid for by the National Disability Insurance Scheme (NDIS), both of which are already stretched in providing or paying for services to our community. Other costs will be paid by Commonwealth taxpayers through Medicare.
14. Our members report numerous examples where an insurer refuses to fund reasonable and necessary surgery, so that an injured worker must then wait on the public waitlist for the procedure. This is then at the cost of the ACT taxpayer, and often exacerbates the consequences of the injury through delay in treatment.
15. We note that Committee member Mr Thomas Emerson MLA, as the owner of a health and rehabilitation business called Praksis, expressed his concern about the impact of Canberra's inadequate healthcare services in his inaugural speech.<sup>4</sup>
16. The ACT is currently experiencing a budget deficit in the healthcare sector, with a major cause being many more people needing healthcare in the ACT than the Government had predicted.
17. Data from late 2024 indicates that nearly 9% of patients waited over 365 days for elective surgery, which was the highest rate nationally (cf the national average of 6.4%).<sup>5</sup> Just under 15,000 people waiting for public elective surgery in the ACT were admitted in 2023-2024.<sup>6</sup> Category one surgeries are meant to be conducted within 30 days, yet the average wait time

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<sup>4</sup> Thomas Emerson MLA , *Independent MLA Thomas Emerson Delivers Inaugural Speech Calling for Change* (5 December 2024) <[www.thomasemerson.com/241208mr](http://www.thomasemerson.com/241208mr)>.

<sup>5</sup> Australian Institute of Health and Welfare, Australian Government, *Elective Surgery Waiting Times 2023-24* (2023).

<sup>6</sup> Ibid Table 4.10.

in the ACT was 35.5 days.<sup>7</sup> The recent publicly-reported resignations of a significant number of specialists from the Canberra Health Services will do nothing to alleviate these wait times.

18. The 2024-2025 ACT Budget allocated \$2.6 billion to healthcare, including \$920 million in new initiatives over four years.<sup>8</sup> However, the ACT Government is facing significant fiscal challenges, and the mid-year budget this year revealed a projected deficit of \$830.8 million, marking the largest deficit since self-government.<sup>9</sup>
19. **The ALA, therefore, submits that any reduction in entitlements for injured workers under the ACT’s workers compensation scheme would place more pressure on the ACT’s healthcare system, necessitating the ACT Government to find more money for that system or to reduce the amount of care provided.**

## Workers compensation schemes and insurance: The national picture

20. In Australia, workers compensation schemes are mostly state- or territory-based, apart from a federal compensation system colloquially referred to as Comcare.
21. Generally, the smaller States and Territories have privately underwritten workers compensation insurance schemes, and the fiscally larger states have government-underwritten schemes.

Self-insured	Privately insured
NSW	ACT
VIC	WA
QLD	TAS
SA	NT

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<sup>7</sup> Ibid Table 4.17.

<sup>8</sup> ACT Government, *Budget 2024–25: Budget at a Glance* (2024) <[www.treasury.act.gov.au](http://www.treasury.act.gov.au)>.

<sup>9</sup> ACT Government, *Budget 2024–25: Budget Review* (February 2025) <[www.treasury.act.gov.au](http://www.treasury.act.gov.au)>.

22. Safe Work Australia has stated that “it is difficult to make exact comparisons between the states and territories”,<sup>10</sup> and this sentiment is supported by the ALA given the significant macro and micro differences between jurisdictions.
23. When analysing workers compensation schemes across Australia, it is crucial to remember that one is comparing all sorts of fruit – not just apples and oranges!

## Business in the ACT and the ACT’s workforce

24. We note that citizens of the ACT have the highest per capita income in Australia.<sup>11</sup> In the financial year ending 30 June 2023 there were approximately 132,189 workers in the ACT’s private sector workforce – this represents about two-thirds of Canberra’s workforce.<sup>12</sup> Employees of the ACT Government and the Commonwealth are not covered by the ACT’s scheme.
25. Of the approximately 35,100 small businesses (less than 20 employees) in the ACT in the financial year ending 30 June 2024, 59.2% of those small businesses have no employees.<sup>13</sup> Therefore, by our reckoning it appears that only approximately 14,320 businesses pay private workers compensation insurance premiums.
26. By comparison, we understand there are about 338,000 businesses in NSW, with close to 4 million employees.<sup>14</sup>
27. Medical costs in the ACT are generally higher than the national average due in part to the ACT’s higher average wages. There is also less access to bulkbilling, and the ACT has one of

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<sup>10</sup> Safe Work Australia, ‘Premium setting: Notes relating to the industry rates comparison table’, *Comparison of Workers’ Compensation Arrangements in Australia and New Zealand 2023* (29th Edition, 2023) <[www.safeworkaustralia.gov.au/book/comparison-wc-arrangements-29ed/chapter-8/premium-setting](http://www.safeworkaustralia.gov.au/book/comparison-wc-arrangements-29ed/chapter-8/premium-setting)>.

<sup>11</sup> Australian Bureau of Statistics, Australian Government, ‘State and territory’, *Average Weekly Earnings, Australia* <[www.abs.gov.au/statistics/labour/earnings-and-working-conditions/average-weekly-earnings-australia/nov-2024#state-and-territory](http://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/average-weekly-earnings-australia/nov-2024#state-and-territory)>.

<sup>12</sup> ACT Government, *ACT Small Business Strategy 2023-2026* (28 July 2023) <[www.act.gov.au/open/act-small-business-strategy](http://www.act.gov.au/open/act-small-business-strategy)>.

<sup>13</sup> Commonwealth Treasury, *National Small Business Strategy 2025* (3 February 2025) <<https://treasury.gov.au/publication/p2025-624843>>.

<sup>14</sup> New South Wales, *Hansard*, Legislative Council, 18 March 2025, 30 (Daniel Mookhey, Treasurer).

the highest average out-of-pocket costs for GP visits in Australia, with patients contributing \$52 per visit.<sup>15</sup>

28. Finity reports that the ‘selected average’ payment for medical benefits per claim was \$8,100 in 2022-23,<sup>16</sup> and that figure has been adopted for 2024-25. The claim size analysis in Appendix F does not provide information that non-actuaries can easily comprehend,<sup>17</sup> but our members report that their clients’ actual medical costs are far more than this average.
29. For example, in the case of physiotherapy, the average cost of an initial consultation in Canberra is about 30% higher than the upper limit in the Australian Medical Association’s fee list.<sup>18</sup>
30. Finity reports as follows:<sup>19</sup> *“The five years from 2015/16 to 2019/20 saw sustained above-inflationary growth in the average medical size; over this period the medical [claim] size grew by 9% p.a. above normal inflation.”*
31. Our members hear from their clients that many medical treatment providers charge a higher rate for patients seeking treatment for work-related injuries, if they agree to accept a workers compensation patient at all.

## The ACT workers compensation insurance scheme

32. The privately underwritten workers compensation scheme in the ACT is governed by the *Workers Compensation Act 1951* (ACT) (‘WCA’) and its subordinate regulations and instruments. The ACT’s scheme has stood the test of time.

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<sup>15</sup> Cleanbill, *Blue Report National General Practitioner Listings* (January 2025) <<https://cleanbill.com.au/wp-content/uploads/2025/01/Cleanbill-Blue-Report-January-2025.pdf>>.

<sup>16</sup> Finity Consulting Pty Limited for the Chief Minister, Treasury and Economic Development Directorate, *ACT Workers’ Compensation Review of Scheme Performance to 30 June 2023* (Report, 2024) 29.

<sup>17</sup> *Ibid* 77.

<sup>18</sup> See: AFPA, Submission to the Independent Panel, *An Independent Review of the Safety, Rehabilitation and Compensation Act 1988* (16 December 2024) 6.

<sup>19</sup> Finity Consulting Pty Limited for the Chief Minister, Treasury and Economic Development Directorate, *ACT Workers’ Compensation Review of Scheme Performance to 30 June 2023* (Report, 2024) 28.

33. Five private shareholder owned insurance companies offer workers compensation insurance policies in the ACT. The ACT Government has stated:<sup>20</sup> *“Insurers have a critical role under the [WCA] in supporting injured ACT workers to return to work.”*
34. The ALA submits that the primary objectives of any workers compensation scheme are (and must remain) as follows:
- a. To support injured workers to obtain all necessary medical treatment and rehabilitation services when needed to achieve maximum recovery;
  - b. To assist injured workers to return to work when and if possible, in accordance with advice from the worker’s treatment provider; and
  - c. To return workers to the situation in life that they were in before the injury, if they were injured by the negligence of the employer, by providing access to common law benefits.

## **Common law schemes**

35. Best practice design for workers compensation schemes must include meaningful access to common law benefits. This is a key feature of most state and territory schemes and is based on hundreds of years of legal process.
36. Meaningful access to common law confers benefits on communities, including:
- a. Safer workplaces – The tort of negligence makes employers who take unacceptable risks with the health, safety and lives of their workers accountable for those workers’ injuries;
  - b. Finality of claims – Once a claim has been settled by agreement or adjudicated, it is ‘over’ for both the worker and the insurer, thereby shortening the ‘tail’ and making the administrative infrastructure required to run a scheme smaller and more sustainable; and

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<sup>20</sup> Workers Compensation (Insurer Licence Application) Protocol 2022 Notifiable instrument NI2022–164; Workers Compensation (Self-Insurer Licence Application) Protocol 2022 Notifiable instrument NI2022–165.

- c. Providing agency to injured workers – Injured workers can take back control of their lives, including future treatment and care requirements, and are not permanently stuck within a long-tail statutory insurance scheme (for example, Comcare).

37. **The ACT Government has established a workers compensation scheme which has stood the test of time, and unlike many other injury insurance schemes, is not financially haemorrhaging.**

## How are premiums set?

38. Safe Work Australia’s *Comparative Performance Monitoring Report 25: Workers’ Compensation Premiums* shows that for the 2021-22 year (the most recent data) the standardised average premium rates, including insured and self-insured sectors, for the ACT’s private sector was 1.62% of payroll.<sup>21</sup> The Australian average premium is 1.47% of payroll when Comcare is excluded:

Self-insured	Privately insured
NSW – 1.45%	ACT – 1.62%
VIC – 1.31%	WA – 1.45%
QLD – 1.15%	TAS - 1.92%
SA - 1.60%	NT – 1.29%
AVERAGE: 1.38%	AVERAGE: 1.57%

39. Premiums far outstrip claim costs. **The ALA submits that to adjust the workers compensation scheme at the expense of workers and the community generally would be likely to widen the gap between what insurers charge and what they pay on claims.**

40. *Workers Compensation Regulation 2002* (ACT) Regulation 75(1) stipulates:

*It is a condition of an insurer licence that, in working out premiums, an insurer must:*

- (a) *provide for sufficient (but not excessive) income from premiums to fully fund liabilities arising from policies of insurance to which the premiums relate; and*
- (b) *ensure that premiums are structured to minimise, as far as reasonably practicable, the cross subsidisation of premium rating groups.*

<sup>21</sup> Safe Work Australia, *Comparative Performance Monitoring Report 25: Workers’ Compensation Premiums* (25<sup>th</sup> Edition, December 2023) <<https://data.safeworkaustralia.gov.au/report/cpm25>>.

41. *Workers Compensation Regulation 2002* (ACT) Regulation 75(4) states:

*An insurer is taken to have complied with subsection (1) (a) if the insurer provides for sufficient (but not excessive) income from premiums in accordance with actuarial advice about the liability arising from policies of insurance to which the premiums relate.*

42. The ALA asks the Committee to examine whether the insurers report on their actuarial advice, and does the regulator determine what is 'excessive'? If so, how does the regulator determine what is 'excessive'? If not, why do insurers not report on their actuarial advice and/or why does the regulator not determine what is 'excessive'?

43. *Workers Compensation Regulation 2002* (ACT) Regulation 75(2)(c) allows for insurers to set premiums that (inter alia) "*provide a profit margin after the payment of claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken*". (underline emphasis added)

44. **Finity sets a profit margin of 12% of premiums as 'reasonable'**.<sup>22</sup> We ask the Committee to examine whether 12% profit margin reasonable, when employers are compelled by law to pay premiums to the insurers? Further, are insurers making more profit than that? If so, by how much and why?

45. **Finity also notes that the insurers' data did not include details of reinsurance recovery amounts, so we urge this Committee to investigate such matters to determine just how much the insurers are profiting overall from the ACT workers compensation scheme.**

46. Finity notes that they do not independently verify or audit the insurers' data but Finity does review it 'for general reasonableness and consistency'. Does the regulator and this Committee have visibility of the insurers' audits? **Is the Committee satisfied that Finity's review is adequate?**

47. The calculation of premiums is also governed by a 2022 Protocol which lists five factors to determine whether there is sufficient income from premiums if the premium "*provides a profit margin after the payment of claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken*". **We ask the Committee to examine how the regulator determines what is an 'adequate return'.**

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<sup>22</sup> Finity Consulting Pty Limited for the Chief Minister, Treasury and Economic Development Directorate, *ACT Workers' Compensation Review of Scheme Performance to 30 June 2023* (Report, 2024) 35.

48. That 2022 Protocol requires that all insurers provide (according to a template) “*information and evidence as to the model used within their organisation for the determination of workers’ compensation policy premium rates*”. The template lists a series of items which sets out the minimum information required to assess insurers’ calculation of premiums. We will not replicate them here, although we note from the Finity reports that there is discrepancy between insurers as to the manner of reporting, and it is worth remarking on the significant variations reported by different insurers as to their administrative costs. **This discrepancy appears to skew the data, and we urge the Committee to recommend to CMTEDD that the reporting be standardised.** Why is there so much variation in administration expense rates between insurers?
49. Finity has adopted an average claim size of around \$55,800 (net of recoveries) for the 2024-2025 policy year, which was reduced from the previous year being \$55,900. For the 2022-2023 year, \$302 million in premiums were collected.<sup>23</sup>
50. Table 3.2 in Finity’s report summarises claims numbers and average claim size to estimate reasonable premium rates for 2023-24.<sup>24</sup>
51. The ACT Government provides recommended reasonable per annum rates based on Australian and New Zealand Standard Industrial Classification and based on an actuarial analysis undertaken by Finity. However, as the system is fully privately underwritten, each insurer determines their own industry rates (cf Comcare, in which employers are only ‘experience rated’).
52. Insurers will group customers into ‘Insurance Risk Classes’, based on similar characteristics, which are then used to determine the risk associated with offering a policy and the premium to be charged for that policy. Riskier risk groups obviously pay higher premiums.
53. As well as a customer’s risk profile and claims experience, market conditions and the insurers’ claims experience for the entire portfolio can influence renewal premiums. Those latter factors are well outside the control of employers, leaving them to the mercy of the insurers.
54. We understand actual premium rates can vary greatly from the amounts suggested by the ACT Government. One broker has informed us that they have noted policy holders with nil claims

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<sup>23</sup> Ibid 5.

<sup>24</sup> Ibid 34.

may experience increases of almost 15% in one year. Why is this? Are insurers subsidising other insurance categories, to make up for losses in other areas, such as flood disasters?

55. Each year the suggested rate for the upcoming policy year is compared with the previous policy years. As Finity reports,<sup>25</sup> **the suggested average premium rate has *reduced* from 2.10% of wages to 2% of wages** (a 4.7% proportionate reduction). Are policy holders enjoying this reduction?

56. The ACT Government has refused access to the relevant data behind the actuarial reports, and further, have not provided the current workers compensation review.

## The suggested alternatives to our financially viable workers compensation scheme

57. Since the announcement of this inquiry, some within the business community have asserted that there are several clear alternatives to reduce workers compensation in premiums.

58. Respectfully, ALA members disagree. To even attempt to compare workers compensation schemes requires an in-depth knowledge of every scheme, the financial viability of every scheme, and the impact on the injured worker – rather than simply looking at how to achieve a small cost saving for an employer.

### Suggestion 1: The troubled NSW workers compensation scheme

59. Given its proximity to the ACT, the NSW workers compensation scheme ('the NSW Scheme') was an obvious geographic comparison for commentators, including for the Canberra Business Chamber. The Canberra Business Chamber has alleged that workers compensation insurance is substantially more expensive in the ACT than in NSW,<sup>26</sup> yet has provided no evidence to support their allegation.

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<sup>25</sup> Ibid 44.

<sup>26</sup> Ian Bushnell, 'ACT business outlook gloomy for 2025 as rising costs and red tape take their toll', *Riotact* (online, 5 February 2025) <<https://the-riotact.com/act-business-outlook-gloomy-for-2025-as-rising-costs-and-red-tape-take-their-toll/843577>>.

60. There were significant changes to the NSW Scheme that took place when icare was established as the Nominal Insurer (NI) in NSW in September 2015.<sup>27</sup> In NSW, icare is the NSW Government entity which manages the NI. By comparison, the ACT's workers compensation scheme is currently a *privately* insured scheme, for which the ACT Government is not financially responsible.
61. In NSW, the \$175 minimum premium charge for a policy was capped and, therefore, remained unchanged from 2015 until the NSW Government raised this cap in 2024.
62. icare has been under significant scrutiny for at least six years due to:
- a. the financial viability of the insurance scheme;<sup>28</sup>
  - b. an independent report revealing underpayment of injured workers and mounting financial losses;<sup>29</sup> and
  - c. the NSW Government needing to bailout the NI to the tune of \$3.8 million by August 2022.<sup>30</sup>
63. The NI increased the average workers compensation premium by 8% for the 2024-2025 financial year, with further raises of up to 8% available to be implemented in the 2025-2026 financial year.<sup>31</sup> The NI cited the following as key factors driving increased premiums:

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<sup>27</sup> See: *State Insurance and Care Governance Act No 19* (NSW), which refers to the workers compensation Nominal Insurer established under section 154A of the Workers Compensation Act 1987. icare acts for the Nominal Insurer and exercises the functions of the Nominal Insurer as required by the NSW workers compensation legislation.

<sup>28</sup> State Insurance Regulatory Authority, *Compliance and Performance Review of the Nominal Insurer (Part 3: Expense Review, December 2019)*.

<sup>29</sup> Janet Dore, *Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme - For the State Insurance Regulatory Authority (NSW)* (December 2019) 78; Adele Ferguson, Lesley Robinson and Lauren Day, 'Australia's biggest workers compensation system icare faces looming financial disaster', *ABC News* (online, 27 July 2020) <[www.abc.net.au/news/2020-07-27/four-corners-workers-compensation-investigation/12477902](http://www.abc.net.au/news/2020-07-27/four-corners-workers-compensation-investigation/12477902)>.

<sup>30</sup> Paige Cockburn and Ashleigh Raper, 'NSW government forced to spend \$1.9bn bailing out workers' insurance scheme icare', *ABC News* (online, 22 August 2022) <[www.abc.net.au/news/2022-08-22/government-spent-1-9-billion-on-icare-bailout/101357898](http://www.abc.net.au/news/2022-08-22/government-spent-1-9-billion-on-icare-bailout/101357898)>.

<sup>31</sup> icare, *Premium updates for 2024-25* (Web Page, 2025) <[www.icare.nsw.gov.au/employers/premiums/premium-updates](http://www.icare.nsw.gov.au/employers/premiums/premium-updates)>.

- a. Increasing physical and psychological claims numbers – psychological claims in general take longer to resolve than physical claims;
- b. Physical injuries increasing in severity resulting in higher levels of permanent impairment; and
- c. The cost of medical treatment has been rising faster than the average rate of inflation (high medical inflation).

64. **The above issues are not unique to the NSW jurisdiction.** It could be extrapolated that these factors may have led to increases in premiums within the NSW Scheme at an earlier time had a price cap not been in place.

65. Being a publicly funded scheme, there are four levers available to the NSW Government to assist the NI to improve its financial position:

- a. Premiums;
- b. Claims management;
- c. Investments; and
- d. Operating expenses.

66. Premium adjustment was not utilised until recently, and this has resulted in lower premiums for NSW policy holders. However, this cannot be expected to last given the financial problems within the NSW Scheme.

67. The NI initially requested a premium increase of 22% in the first briefing of the new government, insisting such an increase was necessary, after inadequate rate increases from 2014 to 2021, to reach a break-even point.<sup>32</sup> On expiry of the cap placed by the NSW Government, it is likely that premium increases will swiftly follow.

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<sup>32</sup> Lucy Cormack, 'Minister rejects icare premium plea, caps rises at 8%', The Sydney Morning Herald (online, 24 April 2023) <[www.smh.com.au/politics/nsw/minister-rejects-icare-premium-plea-caps-rises-at-8-percent-20230423-p5d2m2.html](http://www.smh.com.au/politics/nsw/minister-rejects-icare-premium-plea-caps-rises-at-8-percent-20230423-p5d2m2.html)>.

68. The NSW Treasurer recently said this of the NSW scheme:<sup>33</sup>

For every \$1 needed to care for injured workers, the state's main workers compensation scheme currently holds only 85 cents in assets ... without reform, **premiums for businesses facing no claims against them are forecast to rise by 36%** over the three years to 2027-28.

(Bold emphasis added)

69. **The ALA strongly contends that the NSW Scheme is not one that the ACT Government should seek to adopt or copy, given the NSW Scheme is in financial disarray, and the ACT Government would have to accept the financial risk associated with such a scheme. Adopting the NSW Scheme would see the ACT Government picking up the tab.**

## **Suggestion 2: The Comcare scheme – Does one size fit all?**

70. ALA members who practise in state and territory workers compensation schemes, as well as Comcare, are in an excellent position to compare those state and territory schemes with Comcare.

71. Comcare is often pointed to as a scheme to be replicated in the ACT private sector. We draw the Committee's attention to the review of Comcare currently being undertaken by the Commonwealth,<sup>34</sup> and note the many and varied criticisms of that scheme contained in the publicly available submissions.<sup>35</sup>

72. Comcare compares poorly to state and territory workers compensation schemes, especially regarding workers' experiences. Comcare is poorly designed in that its processes are demeaning to injured workers, and it facilitates insurer and licensee behaviours which both exacerbate the distress of injured workers *and* add to the administrative costs of the scheme.

73. Most workers currently covered under the Comcare scheme are administrative workers, in industries that are considered lower risk and which attract lower premiums. However, **if the**

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<sup>33</sup> Treasurer Daniel Mookhey, NSW Government, 'Workers compensation reform to address psychological safety' (Media release, 18 March 2025) <<https://www.nsw.gov.au/ministerial-releases/workers-compensation-reform-to-address-psychological-safety>>.

<sup>34</sup> See: Department of Employment and Workplace Relations, Australian Government, *Public consultation - independent review of the Safety, Rehabilitation & Compensation Act 1988* (Web Page) <[www.dewr.gov.au/workers-compensation/independent-review-safety-rehabilitation-and-compensation-act-1988](http://www.dewr.gov.au/workers-compensation/independent-review-safety-rehabilitation-and-compensation-act-1988)>.

<sup>35</sup> *Ibid.*

**Comcare scheme was extended to cover all industries, including high risk industries such as construction, premiums would be expected to skyrocket. As such, the Comcare system is not a realistic comparison.**

74. It is expected there would be even more red tape for businesses to navigate if they were required to report to the standard required of the Comcare scheme.
75. Further, under the Comcare scheme, injured workers often must pay gap fees for medical costs – particularly in the ACT, where medical services are often more expensive than the national average. **In the view of ALA members, transition to the Comcare scheme is not a cost that low-income earners in the private sector (such as students and apprentices, or those working part-time) can afford.**
76. **Further, transition to the Comcare scheme is not a cost that the ACT Government can afford.** When the ACT became a self-insured licensee, the Territory did not have sufficient assets in its Public Sector Workers Compensation Fund to cover its workers compensation liabilities. This presented a financial risk to the Territory, and uncertainty as to whether it could manage its workers compensation liabilities.<sup>36</sup> That situation has now changed.
77. **Instead, the ALA submits that it may be time for the ACT Government to consider transferring its public sector workers compensation insurance to the private scheme. That would provide the ACT's workers compensation scheme with greater economy of scale and would ensure its viability.** It would certainly save significant costs incurred with Finity auditing two workers compensation schemes annually.
78. Finally, the ALA maintains our strong opposition to the establishment of any broader national workers compensation scheme, a move which would not provide the treatment and support needed by workers currently covered by state- and territory-based schemes.

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<sup>36</sup> ACT Auditor-General, ACT Government, *Transfer of workers' compensation arrangements from Comcare* (Report, 30 June 2020) <[www.audit.act.gov.au/\\_\\_data/assets/pdf\\_file/0004/1566193/Report-No.-6-of-2020-Transfer-of-workers-compensation-arrangements-from-Comcare.pdf](http://www.audit.act.gov.au/__data/assets/pdf_file/0004/1566193/Report-No.-6-of-2020-Transfer-of-workers-compensation-arrangements-from-Comcare.pdf)>.

### Suggestion 3: Cut the scheme to the bone

79. Media reports since this inquiry was announced contain a myriad of statements which only serve to perpetuate various ‘compo’ myths. Perhaps unintentionally, some constitute ‘victim blaming’ – one of the behaviours from which the ACT’s workers compensation scheme is designed to protect workers.

80. We address some of these statements in general terms in this section of our submission.

81. *The ACT workers compensation scheme would benefit from the introduction of person impairment thresholds:*

a. The ALA’s response: **The ALA does not support any restrictions to accessing common law whether through caps on damages, or thresholds for injury.** The ALA has observed the drastic impact the introduction of thresholds has had since the ACT’s Compulsory Third Party motor accident scheme was overhauled in February 2020:

- i. In the last five (5) years, only 14 injured road users have qualified, by receiving a rating of at least 10% whole person impairment, and have been able to settle their common law claims to ensure their future medical costs and lost or reduced wages are compensated.<sup>37</sup> This statistic is significant, given over 2,000 injured motorists have lodged claims. This grave error should not be repeated by the ACT Government.
- ii. Insurers of defendants in common law claims (and their insurers) already benefit from measures, other than thresholds, designed to reduce damages amounts, such as:
  - ‘vicissitudes of life’/’contingencies’ – commonly a 15% discount is applied to future damages for economic loss; and
  - the application of a discount of 3% on future damages awards.

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<sup>37</sup> Motor Accident Injuries Commission, ACT Government, *Motor Accident Injuries Scheme – Quarterly Report* (31 December 2024).

82. *Common law claims are being made for minor injuries:*

- a. The ALA's response: **Many workers do not pursue such actions. It is often not economically viable to commence a common law claim for a minor injury.** It is not enough to allege negligence – the onus is on the claimant to prove negligence, as well as to prove causation.
- b. It is often relative. The most 'minor' injury to a business owner can mean the end of a career, and/or the loss of the family home for a 'tradie'.
- c. Further, the common law deterrent effect ought not be forgotten whether the injury is 'minor' or not.

83. *Insurers are incentivised to settle:*

- a. **The risk and cost of litigating a claim is a deterrent for both sides, thus making for a very effective dispute resolution system.** The cases that do run to a verdict in the judicial system are the difficult cases; they set the law that the negotiating parties use to compromise their cases.

84. *Claims are being brought many years later:*

- a. The following quote was attributed to Canberra Business Chamber CEO Greg Harford in the *Riotact* on 5 February 2025: *"You can come back 30 years after you were injured at work and lodge a claim for something that might have happened and might have contributed to something in your life, but it might not have as well"*.
- b. The ALA's response: Without any details of such an allegation, we can only assume that a tradesperson or someone else has suffered a late onset injury, such as hearing loss, mesothelioma or asbestosis. We are pleased to see the system working as it should to ensure those injured workers receive compensation when they really need it. However, these are very rare situations and do not reflect the usual cases where strict time limits apply.
- c. **The ACT workers compensation scheme does not significantly differ from any other private workers compensation scheme in that respect.** Most schemes require notification of injury 'as soon as practicable' and the time frame for the bringing of a claim in most schemes has some flexibility built into it. Workers may not necessarily

know they have been injured, or by whom, until medical opinion is obtained that clarifies the situation.

- d. It would be unfair to curtail such a person's rights, when an insurance policy existed at the time of injury. To do so would simply boost an insurer's profits.

85. *Unlimited liability:*

- a. One commentator was quoted as saying, "*There is a big difference between ACT and NSW, and that is there is unlimited liability for workers' compensation in the ACT ... That means there is no end to where a claim can end up*".<sup>38</sup>

- b. The ALA's response: **This is misinformed for the following reasons:**

- i. Damages are capped for common law claims by the common law itself and by various statutory restraints on the common law principle that a person injured by the negligence of someone else – in this case an employer – is entitled to be restored to the position they were in before the employer's injurious action or inaction.
- ii. In statutory claims, there already exists a formula for calculating weekly incapacity payments for a worker, based on their pre-injury earnings, and limited by a 'statutory ceiling'.
- iii. In statutory claims, there is also an age limit on receipt of weekly incapacity entitlements.
- iv. In statutory claims, permanent impairment lump sums are calculated by a formula and medical opinion.

86. *There is a prevalence of psychological injury claims:*

- a. Safe Work Australia's *Key Work Health and Safety Statistics 2024* confirm that claims for mental health conditions continued to increase across Australia in 2022-2023, and

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<sup>38</sup> Oliver Jacques, 'Why are ACT business insurance costs much higher than in NSW? Inquiry to seek answers', *Riotact* (online, 27 January 2025) <<https://the-riotact.com/why-are-act-business-insurance-costs-much-higher-than-in-nsw-inquiry-to-see-answers/841410>>.

accounted for 11% of all serious claims. The median time lost from work in these cases is over five times higher than recorded across all injuries/diseases.

- b. The ALA's response: Critics of the current scheme want to restrict access to claims for psychological or psychiatric injury caused in the workplace. However:
- i. The national statistics show that workplace psychological injuries are increasing;
  - ii. Nationally, governments including the ACT Government, have introduced compulsory legislation to protect workers' psychosocial health at work.
  - iii. On 6 October 2021, WorkSafe ACT launched its inaugural *Strategy for Managing Work-Related Psychosocial Hazards 2021-23*. Then, on 27 November 2023 the ACT '*Managing Psychosocial Hazards at Work Code*' came into effect. The Code provides businesses with practical guidance on how they can comply with the requirements of the Work Health & Safety legislation and effective ways to identify and manage psychosocial risks.
  - iv. Although the ACT has the highest number per capita of registered psychologists, there are long waiting times for individuals seeking psychological support. When workers compensation insurers fund psychologists' treatment costs, our members' clients often experience reduced wait times. This prevents people from having to resort to public emergency departments for mental health assistance (and or Medicare partly funded psychology treatment), or not getting timely treatment at all.
- c. **Given the stigma already associated with mental illness, any restrictions made to the workers compensation scheme will make it much less likely that injured workers will receive the support they need and render the recent introduction of the Code a nullity.**

87. *Journey claims*:

- a. Some critics of the ACT's workers compensation scheme have pointed to 'journey claims' as partly responsible for some employers' increasing premiums.

- b. The ALA's response: The overarching principle of the workers compensation scheme is that if a worker is injured 'out of, or in the course of, their employment' they will be compensated. Going to or from work, or being on a break from work, is in the course of employment.<sup>39</sup> We note that there are many other jurisdictions in Australia which cover injuries on the journey to/from work, and all cover onsite breaks. Many also cover breaks offsite.
- c. Finity's actuarial report does not provide detail regarding the extent of these claims in the ACT scheme, so criticism of workers who bring such claims seems to lack an evidential basis.
- d. If a worker is injured in a motor accident in the course of their employment, they can choose to access statutory entitlements under the workers compensation scheme, but alternatively the injured worker may elect for the motor accident insurer to provide statutory entitlements (regardless of whether the worker is at fault or not). Similarly, if a worker is injured e.g. tripping on the footpath on the way into their workplace, the risk might be shifted from the employer to an occupier. In those two circumstances, the workers compensation insurer recovers any payments it has made to the injured worker.
- e. **We ask the Committee to examine whether workers compensation insurers are giving employers the benefit of those recoveries when setting subsequent premiums and, if not, to recommend that legislation be introduced to stipulate that it be done.**

88. *Work from home arrangements create problems for employers:*

- a. The ALA's response: Employers are legally obliged to ensure a safe working environment for their employees, regardless of the location. Employers should take **reasonable steps** to prevent workplace injuries in home offices, such as providing guidance on ergonomic workstation setups and ensuring workers have the necessary equipment and support to perform their tasks safely.
- b. For an injury sustained at home to be covered by workers compensation, it generally needs to occur during work hours and be related to work activities. As discussed

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<sup>39</sup> See: National Employment Standards regarding workers' entitlement to breaks.

above, injuries that occur during authorised breaks, may also be covered, as they would if the workers had been working from the office.

- c. We repeat our comment above re Finity's actuarial report does not provide detail regarding the extent of these claims in the ACT scheme, so criticism of workers who bring such claims seems to lack an evidential basis.

## The employer's blurry lens

89. Subrogation of workers compensation claims from employers to insurers is not unique to the ACT, nor to Australia.

90. Employers may perceive that an insurer simply has not undertaken sufficient investigations to investigate a claim. **The reality is that the information shared with the employer is purely the tip of the iceberg, as an injured worker who submits a workers compensation claim suffers the indignity of not only suffering the injury, but also having their privacy significantly eroded by the insurer (and sometimes their employer),** who will take all or some of the following steps:

- a. Obtain their current GP, specialist, psychologist and psychiatrist records;
- b. Obtain their historical medical records;
- c. Request they attend appointments with a rehabilitation consultant, who will report back to the insurer;
- d. Request they are interviewed by a professional investigator and/or be required to answer particulars; and
- e. Conduct surveillance both online and in public, and sometimes at the worker's home.

91. After such investigations, an injured worker is likely to also be assessed by an independent medicolegal specialist as well, whose job it is to determine whether the injury is pre-existing, an aggravation of a pre-existing injury, or a new injury. This applies irrespective of whether it is a psychological or physical injury being considered.

92. **The ALA urges the Committee to consider the impact of the level of investigation that insurers will go to, and the deleterious impact of this on workers in the ACT.**

## Who bears the burden of workplace injuries?

93. Every reduction in the right of workers to call on employers who operate unsafe workplaces will ultimately increase the burden on the ACT Government, the Commonwealth and the taxpayer. When not compensated, or under-compensated, injured workers often must become reliant long-term on state and territory health systems, Centrelink, Medicare and/or the NDIS. Under the existing private sector scheme, those imposts on the ACT Government and the Commonwealth are minimised.
94. In this regard, the Commonwealth's experience of the NDIS is instructive. The nationalisation of the disability services sector has been the subject of multiple, major inquiries since the inception of the NDIS over a decade ago. The NDIS has had major design, implementation and operational flaws, and policy makers from across the political spectrum have described the NDIS as unsustainable. The results of recent legislative changes to the NDIS are yet unknown. However, the NDIS sounds a clear warning to any government which believes that a national behemoth can deliver better overall outcomes than under the federated model.
95. The NDIS program has been unable to establish financial efficiency, and the cost overruns, administrative inefficiencies and delays have compromised the quality of care and service to NDIS participants. **Canberrans injured at work in the private sector deserve better than this.**

## Trends in public liability claims, litigation behaviour and insurance premiums

96. This section of the ALA's submission addresses item 3 in the Terms of Reference for this inquiry.
97. It is surprising that the ACT Government would expend public resources conducting an inquiry into the cost of public liability insurance, given they have no control over the same.
98. It is also unclear what the Committee seeks to identify as a "trend" in public liability insurance claims, given the large scope of claims covered by such insurance. The vast majority of public liability claims are resolved confidentially, without any public exposure, and those that do get airtime are generally already within the court system and considered newsworthy.

99. The Australian Prudential Regulation Authority (APRA) collects data via the National Claims and Policies Database (NCPD) for public and products liability and professional indemnity insurance policies. The data in APRA’s NCPD report from May 2023 uses data collected up to 31 December 2021, which indicates that nationally the average premium had increased by 40% since 2015.<sup>40</sup> However, it is not specific to the ACT and covers a broad spectrum of types of claims.

## Litigation behaviour

100. The ALA notes that it is not clear what the Committee means by ‘litigation behaviour’ in public liability claims.

101. Some of the commentary covered by local media has indicated that a *lack* of ‘litigation’ is the problem, and suggests that insurers do not investigate claims but are instead ‘*incentivised*’ to settle rather than litigate.<sup>41</sup> The reasoning behind this suggestion is difficult to follow but, in our members’ experience, insurers and their lawyers rarely make decisions to settle based on anything other than what is in their commercial interests (and those of their shareholders). They are usually publicly listed, for-profit companies, or are underwritten by entities of that nature.

102. Fraudulent or exaggerated claims are raised by some commentators as relevant to the discussion about the cost of the ACT’s workers compensation scheme.<sup>42</sup> It remains unclear where commentator Mr Johnston obtained details of “false or exaggerated claims”.<sup>43</sup>

103. Insurers and their lawyers take their role very seriously and, in our members’ experience, the insurers utilise various investigation techniques on most claimants – including those listed above.

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<sup>40</sup> Australian Prudential Regulation Authority, Australian Government, *NCPD analysis: Review of claims trends and affordability of public liability and professional indemnity insurance in Australia* (Report, May 2023).

<sup>41</sup> Ian Bushnell, ‘ACT business outlook gloomy for 2025 as rising costs and red tape take their toll’, *Riotact* (online, 5 February 2025) <<https://the-riotact.com/act-business-outlook-gloomy-for-2025-as-rising-costs-and-red-tape-take-their-toll/843577>>.

<sup>42</sup> Oliver Jacques, ‘Why are ACT business insurance costs much higher than in NSW? Inquiry to seek answers’, *Riotact* (online, 27 January 2025) <<https://the-riotact.com/why-are-act-business-insurance-costs-much-higher-than-in-nsw-inquiry-to-see-answers/841410>>.

<sup>43</sup> *Ibid.*

104. Pre-existing ailments are a common area of debate in personal injury claims, but also a concept which seems to be misunderstood by policy holders and some commentators.<sup>44</sup> Each case must be determined on its own facts, and in some instances the claimant's pre-existing ailment may not be of significance, or may be superseded by the new event, or the new injury is limited to an aggravation or exacerbation.
105. In our members' experience, insurers apply careful consideration of historic and current medical evidence, and are usually also guided by independent medicolegal experts (usually at least one of each relevant specialty for each party to the claim) confirming the cause or causes of the injury.
106. We have observed many public comments since this inquiry was announced suggesting that policy holders would prefer their insurers to fight every claim through the entire court system. Such comments indicate a lack of public awareness about the cost of litigation, or the litigation process itself.
107. Being a party to litigation involves policy holders expending time cooperating with the insurers and their lawyers, which can include multiple interviews and attending court as witnesses – all of which would take policy holders away from their productive work, a particularly significant burden on small business.
108. **Alternative Dispute Resolution is already a very formalised part of the ACT court case management system.**
109. **Increasing litigation through the courts would be very costly, time consuming, stressful and inefficient. In the ALA's view, this would only serve to drive up insurance premiums for businesses, not to mention put extreme pressure on the funding and management of the ACT's Court system.**

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<sup>44</sup> Ian Bushnell, 'ACT business outlook gloomy for 2025 as rising costs and red tape take their toll', *Riotact* (online, 5 February 2025) <<https://the-riotact.com/act-business-outlook-gloomy-for-2025-as-rising-costs-and-red-tape-take-their-toll/843577>>.

## Conclusion

110. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Standing Committee on Economics, Industry and Recreation regarding insurance costs in the ACT.

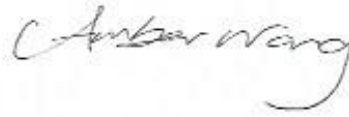
111. The ALA is available to provide further assistance and evidence to the Committee, including at any public hearing convened by the Committee, on the issues raised in this submission.



**Hassan Ehsan**

**President, ACT Branch Committee**

**Australian Lawyers Alliance**



**Amber Wang**

**ACT Director, National Council**

**Australian Lawyers Alliance**