

The Impact on Injured Workers of Changes to NSW Workers' Compensation:

JULY 2012 – NOVEMBER 2015

REPORT NO. 3 FOR UNIONS NSW



MACQUARIE
University

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EXECUTIVE SUMMARY

In June 2012 the NSW workers' compensation scheme was substantially amended. Compensation designed to support injured workers to return to work was re-imagined as payments that reduced incentives to work. This encompassed reimbursements for workers who required medical treatments to be able to continue in their employment, and for those who suffered a financial penalty as a result of their workplace injury. The idea that compensation for injured workers constituted a disincentive to work provided justification for terminating long-term support for all but the most seriously injured. Amendments were made to the legislation in 2014 and 2015 to partially reinstate benefits to injured workers, however these improvements have not gone far enough to restore fairness to the scheme.

Indeed, when more than 5,000 injured workers had been exited from the scheme within two years of the 2012 changes, this was portrayed as a success. The NSW government announced in April 2014 that the objective of the changes, to return more injured workers to work, had been attained. Ministers proclaimed that 'NSW now has the equal highest return to work rate in the country'.¹

The 'return to work rate' being referred to by the Ministers was a commonly used, overly simplified measure of the proportion of workers who returned to work at some stage since their first day off work. Whether the workers had long-term, sustainable employment in work that is meaningful, adequate and appropriate is not recorded. Whether the workers require ongoing medical treatments or aids in order to remain working productively is also not recorded. Similarly, whether the workers are prevented from returning to work, or working in their full pre-injury capacity, because their injury has been exacerbated or a secondary injury has developed as a result of earlier efforts to remain at work, or their interactions with the workers' compensation scheme, is not recorded. These are important factors that contribute to the success of sustainable return to work outcomes.

The widespread use of simplistic return to work measures detracts from understandings of whether workers have actually secured long-term employment. The objective of returning injured workers to work that is appropriate, meaningful and sustainable can only be achieved if it is understood whether they have, indeed, returned to work of this nature.

This report includes a study of the return to work experiences of twenty injured workers. The experiences these workers have shared provide a deeper understanding of obstacles to returning to work, and how these can be overcome. These findings were further substantiated by the benchmark data and analysis from two annual surveys of injured workers in the final section of this report. The key findings are summarised as follows.

¹ Constance and Perrottet, 2014.

The role of employers

- Employers have the greatest capacity to influence positive return to work outcomes for injured workers.
- Employers will have the best sustainable return to work outcomes if they start with taking the lead in improving workers' wellbeing and preventing injuries, and continue with proactive and constructive communication with all stakeholders, particularly the worker, after an injury has occurred.
- Premium structures that do not provide incentives for employers to support injured workers to remain at work will continue to undermine any other return to work efforts.
- The failure of authorities to enforce legal obligations for employers to provide suitable duties, implement return to work programs and for large employers to appoint a return to work coordinator results in many employers simply not complying with these laws.

Measuring 'return to work'

- Overly simplified return to work measures will never provide incentives for stakeholders to support meaningful and sustainable return to work outcomes.
- 'Return to work' should always be thought of as a long-term, sustainable engagement with work that is meaningful, adequate and appropriate for that worker.

Stigma and discrimination against injured workers

- Endemic bullying hostility toward workers' compensation claimants is counterproductive and undermines the objective of supporting injured workers to return to work.

Conflicts of interest

- Insurers' ability to persuade employers to meet their return to work obligations is compromised by the commercial requirement to retain their custom.
- Insurers have the power to withdraw financial benefits, harass and pressure injured workers, unbridled by effective appeal rights, thus undermining the progress with recovery and return to work.
- The structure of the compensation system incentivises insurers to minimise medical treatments in the short-term, regardless of the long-term costs to the scheme, which detracts from the objective of timely and durable return to work outcomes.
- In the separation of the functions of WorkCover the workers' compensation regulatory authority, SIRA, has not been given authority over 'icare', so they will be limited in their capacity to act as a 'regulator' of 'icare'.

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GLOSSARY

ABS	Australian Bureau of Statistics
AMA	American Medical Association
CIE	Centre for International Economics
DEEWR	Department of Education, Employment and Workplace Relations
‘icare’	Insurance & Care NSW
MPHS	Multi-purpose household survey
NSW	New South Wales
RTW	Return to work
RTO	Registered Training Organisation
SI Corp	Self-Insurance Corporation
SIRA	State Insurance Regulatory Authority
WCA 1987	Workers Compensation Act (1987) NSW
WCD	Work capacity decision
WHS	Work health and safety
WIRO	WorkCover Independent Review Office
WorkCover	WorkCover Authority of NSW
WPI	Whole of person impairment

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1. INTRODUCTION

In June 2012 the NSW Government introduced amendments to the workers' compensation scheme that dramatically reduced compensation for injured workers. At the same time, these changes gave insurers unilateral powers to determine a worker's level of work capacity, and thus their compensation entitlements.

Reports number 1 and 2² in this series have documented the impacts of legislative changes on the injured workers, and the recommendations made by government reviews of the scheme in 2014.

In response, in August 2015 the NSW Government introduced two Bills to restructure the WorkCover Authority and improve entitlements for injured workers:

1. State Insurance and Governance Act 2015 (NSW), and
2. Workers Compensation Amendment Act 2015 (NSW)

These Bills were subsequently passed. The changes were made in the context of an extraordinary turnaround in the financial position of the scheme, from a projected \$4.1 billion deficit in December 2011 to a scheme surplus of \$2.6 billion in June 2014. By August 2015 the scheme had a surplus of approximately \$3 billion.³ Employers paid \$447 million less in premiums in the 3 years between the July 2012 changes and 2015.⁴

The stated intentions of the 2012 legislative changes were to:

1. Stimulate employer focus on the prevention of workplace injuries and illnesses;
2. Return employees to work more quickly;
3. Reduce insurance premiums; and
4. Improve the financial viability of the scheme.

The changes have undoubtedly been successful in achieving objectives 3 and 4, to reduce premiums and the costs of the scheme. Questions remain as to whether employers are more focused on prevention of injuries and are achieving better return to work outcomes.

This report will:

1. Outline and evaluate the legislative changes made in August 2015;
2. Explore the actual impacts of the 2012 legislative changes on return to work outcomes for injured workers, based in interviews with 20 injured workers; and
3. Revisit benchmark quantitative measures for the impacts of the changes included in Report nos.1 and no.2.

² Markey, Holley, Thornthwaite and O'Neill, 2013; Markey, Holley, Thornthwaite and O'Neill, 2014.

³ 12 August 2015 Hansard – Reverend the Hon. Fred Nile https://www.parliament.nsw.gov.au/Prod/parliament/hansard.nsw/V3Key/LC20150812054?open&refNavID=HA8_1

⁴ WorkCover NSW, 2015.

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2. LEGISLATIVE CHANGES TO WORKERS' COMPENSATION – AUGUST 2015

The State Insurance and Governance Act 2015 (NSW) was enacted on 21 August 2015. This Act is intended to separate the WorkCover Authority into three distinct government agencies:

1. **SafeWork NSW** the work health and safety regulator;
2. **State Insurance Regulatory Authority (SIRA)** the insurance regulator; and
3. **Insurance & Care NSW** the insurance provider, presently being called 'icare'.

The Workers Compensation Amendment Act 2015 became effective from 21 August 2015. This Act amends the Workers Compensation Act (1987) NSW (hereafter 'WCA 1987'). Key changes to workers' benefits are set out in Table 1.

TABLE 1: WORKERS COMPENSATION AMENDMENT ACT 2015

Benefit	Changes	Section of Act
Death Benefits for worker leaving dependants	Increased from \$425,000 to \$750,000. Funeral expenses increased from \$9,000 to \$15,000.	WCA 1987 s.15
Definition of 'seriously injured worker'	Workers with >30% WPI now called 'worker with highest needs'. Workers can now meet this category if a medical assessment is still pending. Workers with >20% and <31% WPI now called 'worker with high needs'.	WCA 1987 s.32A
Continuation of weekly payments	Workers with >20% WPI are now eligible for continued weekly payments after 130 weeks, even if they have work capacity and are not working 15 hours per week or more.	WCA 1987 s.38
Minimum weekly payments for 'worker with highest needs'	Workers with >30% WPI are now entitled to minimum weekly payments of \$788.32 as indexed.	WCA 1987 s.38A
Work Capacity Decisions (WCD)	When a review of a WCD is underway the decision of the insurer is now stayed, so insurers cannot change workers' payments until the WCD review is resolved or time limits for the worker to continue a stage of the review have expired.	WCA 1987 s.44BC
	Potential for legal practitioners to be paid for assisting a worker or an insurer with a WCD review.	WCA 1987 s.44BF

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Weekly payments when reaching retirement age	Weekly payments are terminated 12 months after a worker reaches retirement age, removing the discrepancy that saw 64 year old injured workers with less eligibility than 65 year old workers. This is applicable to claims made on or after 1 October 2012.	WCA 1987 s.52(2)(a)
Medical and related expenses	Workers with 10% or less WPI can receive medical benefits up to 2 years after weekly payments cease (or date of claim if no weekly payments were made). Workers with >10% and <21% WPI can receive medical benefits up to 5 years after weekly payments cease (or date of claim if no weekly payments were made). Workers with >20% impairment can receive medical entitlements indefinitely.	WCA 1987 s.59A
	There are no time limits on the provision of crutches, artificial members, eyes or teeth and other artificial aids or spectacles (including hearing aids and hearing aid batteries).	WCA 1987 s.59A
	There are no time limits to modifications of a worker's home or vehicle.	WCA 1987 s.59A
	There are no time limits to compensation payable for secondary surgery.	WCA 1987 s.59A
	Disputes as to future medical treatment are no longer required to be referred to an Approved Medical Specialist.	WCA 1987 s.60
Return to work assistance	Provisions for return to work assistance for workers who must return to work with a new employer. The compensation is to be paid by the pre-injury employer's insurance cover. Maximum amount payable is \$1,000. For instance, this could be used by the workers to fund purchasing new clothing or equipment for a new job. This is expected to commence mid-2016 after the details have been resolved.	WCA 1987 s.64B
	If a worker has >20% WPI and has been receiving weekly payments for >78 weeks the employer's insurer is required to pay costs for education and training to assist with RTW up to \$8,000. Payments are made directly to the RTO. This is expected to commence mid-2016 after the details have been resolved.	WCA 1987 s.64C
Lump sum compensation	Maximum amount payable is increased depending on the level of impairment. For instance, where permanent impairment is 74% or greater, the maximum lump sum payable is \$577,050 (as indexed)	WCA 1987 s.66

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We now examine how these changes address the following recommendations⁵ made by NSW parliamentary and government reviews:

1. Separate the functions of WorkCover to remove conflicts of interest
2. Lower the threshold for seriously injured
3. Restore medical benefits for work-related injury and illness
4. Legal representation for WCD reviews, stay the decision while a WCD is under review and include location as a consideration in WCDs
5. Ensure WorkCover meets legislative obligation to consult with stakeholders
6. Improve data transparency in annual reports and statistical bulletins
7. Ensure Guidelines are clear, accurate, simplified and consolidated
8. Address bullying of injured workers by WorkCover and insurers
9. Enforce prevention and return to work legislation and regulations for employers
10. Correct anomaly for 64 year old workers.

2.1. Separate the Functions of WorkCover to Remove Conflicts of Interest

The State Insurance and Governance Act 2015 (NSW) separates the WorkCover Authority into three distinct government agencies:

1. **SafeWork NSW** the work health and safety regulator. The approach of the regulator centres on 'harm prevention and improving the safety culture in NSW workplaces'.⁶ Benchmark 7, in the final section of this report, will demonstrate that the approach taken is almost entirely educational and consultative, with minimal use of enforcement penalties to encourage compliance.

2. **State Insurance Regulatory Authority (SIRA)** the insurance regulator; responsible for regulating the workers' compensation scheme, motor accident insurance and the home building compensation regulation. The regulatory roles relating to workers' compensation are broad and appear to overlap with the role of SafeWork NSW:

- (a) promote efficiency and viability of the workers' compensation scheme;
 - (b) minimise the costs arising from workplace injuries;
 - (c) promote workplace injury prevention, injury management and return to work;
 - (d) ensure injured workers have access to treatment;
 - (e) supervise claims handling and disputes in the workers' compensation scheme;
- and
- (f) promote compliance with workers' compensation legislation.⁷

⁵ Refer to Report 2 in this series: Markey, Holley, Thornthwaite and O'Neill, 2014.

⁶ <http://www.safework.nsw.gov.au/>

⁷ State Insurance and Governance Act 2015 (NSW) s.23.

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As well as to:

- (a) collect and analyse information on the prudential matters relating to workers' compensation insurers, and to evaluate the effectiveness of those practices and promote sound prudential practices;
- (b) encourage and promote the carrying out of sound prudential practices by insurers under that legislation; and
- (c) evaluate the effectiveness and implementation of those practices.⁸

3. **Insurance & Care NSW** a single insurance provider, presently being called '**icare**'; acts as the nominal insurer and is the insurer responsible for administering:
- SI Corp (self-insurance corporation), including: Treasury Managed Fund;
 - Emergency and Rescue Workers Compensation Fund, Bush Fire Fighters Compensation Fund, Home Building Compensation, and Construction Risk Insurance Fund;
 - Workers Compensation for Dust Diseases Fund;
 - Lifetime Care and Support Authority Scheme for motor accident injuries; and
 - Sporting Injuries Compensation Scheme.

Comments:

The separation of these functions is still underway at the time of writing this report; it remains to be seen how effective they are in removing the conflicts of interest. Early remarks are that:

- SIRA has not been given authority over 'icare', so they will be limited in their capacity to act as a 'regulator' of 'icare'.
- SIRA and 'icare' are both overseen by the Department of Finance, Services and Innovation, which may limit their capacity to act independently.
- The functions of SIRA and SafeWork NSW appear to overlap.

2.2. Lower the Threshold for Seriously Injured

Assistance for families of workers who have been killed as a result of their work has been increased. Death benefits for workers leaving dependants have been increased from \$425,000 to \$750,000. Funeral expenses have increased from \$9,000 to \$15,000.⁹

Weekly entitlements for workers with >30% WPI have also been increased; they are entitled to minimum weekly payments of \$788.32 as indexed.¹⁰

⁸ State Insurance and Governance Act 2015 (NSW) s.24.

⁹ WCA 1987 s.15.

¹⁰ WCA 1987 s.38A.

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The 2015 Amendments have lowered the threshold for the definition of what was previously termed 'seriously injured workers'. Workers with >30% WPI are now defined as 'worker with highest needs'. Workers with >20% WPI are now defined as 'worker with high needs'.

Workers with >20% WPI are eligible for continued weekly payments after 130 weeks, even if they have work capacity and are not working 15 hours per week or more.¹¹

This arbitrary threshold (20% WPI) for workers with 'high needs' will mean that no more than 5% of injured workers are likely to be assessed as having 'high needs' or 'highest needs'. In the NSW workers' compensation scheme only 2,357 out of 57,966 workers (4%) in the scheme as at 22 August 2014 were assessed as having greater than 20% WPI.¹²

Therefore, at least 95% of injured workers are likely to be assessed as not being a worker with 'high needs'.

The 20% threshold for 'seriously injured' workers is arbitrary. The method for calculating WPI percentages is questionable. The American Medical Association (AMA) Guides state that:

*It must be emphasized and clearly understood that impairment percentages derived according to Guides criteria **should not** be used to make direct financial awards or direct estimates of disabilities.*¹³

It is conceded that AMA Guides are commonly used to determine WPI percentage as a singular threshold in Australian workers' compensation systems. However, this is not best practice. The Guides should be only one factor incorporated into a well-rounded, holistic judgment about capacity to work and corresponding compensation.

Comments:

- Increases to benefits are beneficial and important changes, albeit the increases could have been greater to adequately support workers who are injured or killed as a result of the work they do.
- Changes for those with >20% WPI are helpful, however, this will only account for as few as 5% of injured workers.

¹¹ WCA 1987 s.38.

¹² Answers to supplementary questions on notice, WorkCover Authority of NSW – Attachment B, p.2. in Standing Committee Review of WorkCover, 2014.

¹³ AMA Guides 4, 1995 p.1/5, emphasis added.

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2.3. Restore Medical Benefits for Work-Related Injury and Illness

The problem with using assessed level of whole of person impairment (WPI) remains for the availability of medical compensation. Under the 2015 amendment, workers with:

- 10% or less WPI can receive medical benefits up to 2 years after payments cease (or date of claim if no weekly payments were made);
- >10% and <21% WPI can receive medical benefits up to 5 years after payments cease (or date of claim if no weekly payments were made);
- >20% impairment can receive medical entitlements indefinitely.¹⁴

Examples of workers who will require indefinite support in order to remain at work, but fall under the 20% threshold include most workers who have suffered:

- injuries to the back, knees, wrists, shoulders or other musculoskeletal injuries and require ongoing physiotherapist, chiropractic or similar treatments in order to maintain their health and remain productive at work.
- from a workplace accident or musculoskeletal injuries and require ongoing opioid medication for pain relief in order to remain physically active and productive at work.

These workers need medical treatment and this system does not provide it if they do not meet the arbitrary cut off level. A more sensible change would have been to tie the entitlement to medical compensation with the need for treatment in order to keep working productively, not to an assessed degree of impairment.

One positive change has been the restoration of compensation for crutches, artificial members, eyes or teeth and other artificial aids or spectacles (including hearing aids and hearing aid batteries). There are also no limits to modifications of a worker's home or vehicle.

Another positive change has been that there are no limits to compensation payable for secondary surgery, providing the surgery is approved by the insurer within 2 years after the earlier surgery was approved (or is approved later than that pursuant to the determination of a dispute that arose within that 2 years).

Comments:

- Improvements to access to physical aids, artificial members and aids, and modifications to the worker's home and vehicle are positive if workers know this assistance is available and insurers agree to provide it.
- Medical compensation should be expanded to provide treatment for all workers who require it to remain productive members of the workforce.

¹⁴ WCA 1987 s.59A.

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2.4. Legal Representation for WCD Reviews, Stay Decision While a WCD Is Under Review and Include Location as a Consideration in WCDs

The change to stay the insurer's Work Capacity Decision (WCD) when a review is underway is a good one. Insurers now cannot change workers' payments until the WCD review is resolved or time limits for the worker to continue a stage of the review have expired.¹⁵ This protects workers from suffering from a drop or termination of income while a WCD is still under review.

The change allowing legal practitioners to be paid for assisting with WCD reviews is potentially a positive one. However, despite the legislation being passed, the regulations to detail its execution are yet to be written.

The legislation states that only reviews of a 'prescribed class' (yet to be defined) can be paid for and only if a maximum amount payable is ascribed.¹⁶ The biggest potential problem with this is the clause stating that there can be circumstances in which workers must bear the insurer's costs in relation to conducting the review.¹⁷ Depending on how this is written into the regulations, there is a serious risk that workers will be strongly discouraged from ever submitting a review of a WCD for fear they may be held liable for the insurer's costs.

Comments:

- There is a risk that when the regulations are written, to govern the availability of payment for legal assistance with WCD reviews, many workers could be largely excluded if they do not fit a yet to be defined 'prescribed class', or if there is a possibility they will be held liable to pay the insurer's costs.
- No change has been made to include location as a consideration in WCDs. This remains a problem for workers who have payments reduced on the basis that they could take an arbitrary job at a random location, regardless of where they live.¹⁸

2.5. Ensure WorkCover Meets Legislative Obligation to Consult With Stakeholders

Injured workers are key stakeholders in the workers' compensation scheme; trade unions are representatives of the injured workers. Since the Standing Committee recommendation for WorkCover to improve consultation, there remain only rare instances when consultation has occurred with trade unions to develop the legislation amendments and guidelines. One or two meetings do not constitute adequate

¹⁵ WCA 1987 s.44BC.

¹⁶ WCA 1987 s.44BF.

¹⁷ WCA 1987 s.44BF(2).

¹⁸ refer to Report 1 in this series: Markey, Holley, O'Neill and Thornthwaite, 2013 p.27.

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opportunity for the perspectives of injured workers to be incorporated into the scheme. There has been no consultation with trade unions regarding the employer premium changes and incentives to return to work.

A central objective of the Standing Committee Review of WorkCover was to improve the accountability of the WorkCover Authority. Accountability requires stakeholder engagement; this encompasses discussions and consultation as well as reviews and evaluation with stakeholders and other interested parties, including trade unions.¹⁹

Comments:

→ Consultation with key stakeholders, including representatives of injured workers, is essential for developing an effective compensation scheme.

2.6. Improve Data Transparency in Annual Reports and Statistical Bulletins

The Standing Committee Review of WorkCover recommended that WorkCover include more information in the Annual Report and recommence publishing the Statistical Bulletins, which had ceased to be published after 2009. WorkCover was asked to publish the 2010-2014 Bulletins 'as a matter of urgency'.²⁰

The Statistical Bulletins were published, and in fact the 2013 Bulletin was 'urgently' published in October 2014. However, the 2010-2012 Bulletins were only released in February 2015. We are still awaiting the publication of the 2014 Statistical Bulletin. Typically Bulletins were released between May-July of the following year, so it is reasonable to expect the 2014 Bulletin to be available in December 2015.

The Standing Committee Review of WorkCover also recommended that WorkCover report statistical information in the Annual Reports, including:

- Claims processes,
- Injury management,
- Fraud,
- Premium auditing, and
- Return to work

WorkCover added a statistical page at the beginning of the 2014 Annual Report entitled '2013-14 At a Glance' and included limited information on claims processes and a return to work figure that was published in the *Safe Work Australia – Return to Work Survey*.

¹⁹ Argyrous, G. 2012. p.463; Hufen, J. A. M. & Koppenjan, J. F. M. 2014. p.15.

²⁰ Standing Committee Review of WorkCover, 2014, p.95.

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There was also information on fraud included later in the text of the report. The other important items, injury management and premium auditing, were not addressed.

Transparency allows for accountability. This is essential – policy makers should be held accountable to those impacted by decisions, technical experts, those with different theoretical perspectives and those who could use the evidence.²¹

Comments:

- Meaningful data must be regularly published in order for those making and implementing workers' compensation policies to be held accountable for the impacts on all stakeholders.

2.7. Ensure Guidelines Are Clear, Accurate, Simplified and Consolidated

There are presently 105 Guidelines to accompany the workers' compensation legislation. These Guidelines lack cohesion, clarity, applicability and accuracy.²² As far as we know, no changes have yet been released that consolidate and simplify these Guidelines.

Comments:

- The existing 105 Guidelines need to be simplified and consolidated so they are clear and accurate.

2.8. Address Bullying of Injured Workers by WorkCover and Insurers

The Standing Committee on the Inquiry into Allegations of Bullying in WorkCover NSW (2014) condemned the widespread culture of bullying within WorkCover and of WorkCover clients (injured workers).²³ The Unions NSW survey conducted in 2014 and 2015 (refer to the final section of this report) found that more than a quarter of workers who had claimed workers' compensation in NSW, experienced some bullying or similar by WorkCover or their scheme agents. This can be seen in Table 23, later in this report.

²¹ Argyrous, G. 2012. p.464.

²² See Markey, Holley, Thornthwaite and O'Neill, 2014 p.34.

²³ Markey, Holley, Thornthwaite and O'Neill, 2014 p.36-37.

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Comments:

- Despite an extensive government inquiry confirming entrenched bullying at WorkCover, there is little evidence that bullying of injured workers by WorkCover and their insurers has yet been reduced.

2.9. Enforce Prevention and Return to Work Legislation and Regulations for Employers

The most important change to the workers' compensation scheme is likely to be premium strategies designed to support return to work. Employer premiums are presently being altered to actively **discourage** employers from keeping their injured workers at work. Specifically, these changes include:

- All employers receive a 10% discount, the Employer Safety Incentive, which they are expected to spend on improving safety and preventing injuries. There are no stipulations or restrictions on how employers spend the 10% discount, thus, predictably, employers treat it as a discount.²⁴
- NSW employers paying less than \$30,000 per annum in premiums (96% of employers) are being offered a Return to Work Incentive. This is a 15% discount for returning injured workers to work within 13 weeks. The vast majority of cases fit this timeframe anyway; this does not tackle the difficult cases and is unlikely to change behaviour. A 10% discount applies if the worker is returned to work between 13 and 26 weeks after the injury claim date. And a 5% discount applies if the worker is returned to suitable duties within 52 weeks. These long term cases are the most difficult ones and employers need the most financial incentive to be encouraged to support them to return to work. A 5% discount is not an adequate incentive to do this.
- Prior to 2012 the scheme required employers paying more than \$10,000 premiums per annum to pay for all future expected costs of a claimant. The incurred cost of claim – a calculation of all future costs from a claim – was included in employer premiums. It was more cost effective for employers to provide suitable duties than to pay for long-term unemployment of an injured worker. Now the 4% of employers who pay more than \$30,000 in annual premiums (14,200 employers) are 'risk rated'. This means they only have the weekly benefits costs and WPI lump sum claim costs incorporated into their premiums. As a result there is significantly less penalty for employers who do not support injured workers to return to work. Interestingly, however, this new calculation means large employers will be paying significantly more (e.g. one large employer has a bill \$700,000 higher than last year), but the employers

²⁴ <http://www.wrib.com.au/documents/Small%20Employer%20Reforms.pdf>

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cannot avoid this extra cost by reducing injuries or returning injured workers to work. The only way large employers can address these substantial cost increases is to reduce staff levels, not injury levels.

Large employers are already calculating that return to work programs will not be cost effective. Instead, they are talking about how to cut staff levels to account for the changes. However, the lack of transparency and clarity about premium changes means it is unclear what the changes will be until they see their premium bill.

The 2015 legislative amendments introduced provisions for assisting injured workers with their return to work efforts. These include up to \$1,000 maximum payable to assist workers who return to work with a new employer, and up to \$8,000 to assist with education and training. Insurers can already provide assistance with training or education to support workers to return to work, so it is unclear how these changes will improve the current provisions. The changes are expected to commence mid-2016 after the details have been resolved.²⁵

Safe Work NSW will be appointing 'Return to work inspectors' in February 2016. However their role is explicitly to 'partner with NSW employers', to 'provide advice regarding the benefits to the business', to 'ensure employers and workers are aware of their obligations regarding the provision of suitable employment', and 'provide advice about work health and safety practices'.²⁶ Thus, they will be advisors, not enforcers.

Comments:

- Premium structures that do not provide incentives for employers to support injured workers to remain at work will continue to undermine any other return to work efforts.
- The provisions introduced for assisting workers to return to work lack substance. Providing more money for clothes, equipment or training may well be meaningless if the injury has deteriorated due to inadequate treatment, or the worker has lost confidence to join the workforce as a result of bullying and stigma against injured workers.
- The introduction of return to work inspectors in an advisory role from February 2016 would be more effective if there was an intention for Safe Work NSW to include enforcement measures in their regulatory toolkit.

2.10. Correct Anomaly for 64 Year Old Workers

The 2015 amendments have corrected an odd mis-phrasing in the 2012 legislation that discriminated against 64 year old workers. Weekly payments are now terminated 12 months after any worker reaches retirement age, removing the discrepancy that saw 64 year old injured workers with less eligibility than 65+ year old workers. This is

²⁵ WCA 1987 s.64C.

²⁶ Return to Work Inspectors – WorkCover NSW Job Posting. Closing date 16th July 2015.

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applicable to claims made on or after 1 October 2012.²⁷ Therefore many workers will be eligible to apply back to WorkCover for the payments they did not receive.

Comments:

- Although the unintended discrimination against 64 year old workers has been corrected after three years, the policy to differentiate workers who have reached 'retirement age' remains at odds with other government policies to encourage the ageing workforce to continue working.

2.11. Journey Claims

Reports 1 and 2 in this series have recommended that journey claims be reinstated,²⁸ although the reviews did not recommend this measure. No changes have been made thus far to rectify the inequities and anomalies brought about by denying workers compensation for injuries incurred while travelling to or from work. Workers' compensation journey claims were negligible, constituting 2.6% of claims in the scheme prior to 2012. Yet workers bear a significant impact from injuries that would not have been incurred had they not been travelling to or from work.

Given the substantial, and increasing scheme surplus, the withdrawal of journey claims for injured workers is a particular, and unreasonable impost on workers who must travel long distances for work, or who walk, jog, or ride a bicycle to work.

Comments:

- Journey claims should be reinstated to support workers who are injured while trying to travel to or from work.

²⁷ WCA 1987 s.52(2)(a).

²⁸ Markey, Holley, O'Neill and Thornthwaite, 2013 p.46-48; Markey, Holley, Thornthwaite and O'Neill, 2014 p.43.

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3. RETURN TO WORK

3.1. Introduction to Studies on Return to Work

Meaningful engagement with the workplace has been shown to improve workers' physical and mental health and well-being, promoting healthy recovery and rehabilitation.²⁹ There is ample evidence that optimal timely and sustainable return to work outcomes are achieved if workers stay engaged with, or are returned to a suitable working environment as quickly as possible after suffering an injury.³⁰ However, a focus on initial return to work has been shown to be a poor predictor of sustainable return to work outcomes. Recurrences of work injuries requiring additional absences from work and further treatment are common, particularly for musculoskeletal injuries.³¹ For an injured worker to be sustainably employed in appropriate work, several attempts at return to work may be required. Thus, thinking about the long-term continuing engagement of injured workers with the workplace is vital.³²

Therefore, the 'return to' work mentality needs to be superseded by an approach that centres on keeping injured workers meaningfully engaged with the workplace. This should be framed in a more holistic way, with employers, and indeed all stakeholders talking about prevention and meaningful engagement with the workplace during and after an injury, rather than a singular 'return to work'.³³

Simplistic return to work measures, such as days until first return to work or a single day of returning to work at any time since injury have been discredited.³⁴ Nevertheless, the NSW scheme only reports one singular measure of the proportion of injured workers who had returned to work for any period of time at some stage since their first day off work.³⁵ When provided as a singular percentage measure, with no point of comparison to other jurisdictions or previous years, this measure is meaningless.

Superior measures of return to work outcomes include cumulative duration measures, which provide proxies for return to work, by comparing, for instance, hours normally worked with hours of compensation claimed. These proxies give a more accurate indication of partial and failed efforts to return to work.

²⁹ Industry Commission Australia, 1994; Huang, Shaw and Chen, 2004; Murphy and Young, 2006; Waddell and Burton, 2006; Rueda, Chambers, Wilson, Mustard, Rourke, Bayoumi, Raboud and Lavis, 2012.

³⁰ Waddell and Burton, 2006; Page and Tchernitskaia, 2012; Markey, Holley, O'Neill and Thornthwaite, 2013 p.52-53.

³¹ Berecki-Gisolf, Clay, Collie and McClure, 2012.

³² Butler, Johnson and Baldwin, 1995; Bultmann, R-L, S, Cote, Lee, Severin, Vidmar and Carnide, 2007; Berecki-Gisolf, Clay, Collie and McClure, 2012.

³³ Cooney and Sohal, 2014.

³⁴ Collie, Lane, Hatherell and McLeod, 2015 p.7.

³⁵ WorkCover NSW, 2014 p.4.

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A significant limitation of current measures of return to work is that they do not account for whether workers who cease to receive workers' compensation are actually working or if they have become dependent on welfare, savings or family members. Measures can only utilise data from workers' compensation agencies, which records when injured workers leave the scheme, not whether they are working.³⁶

Studies have identified several different factors that contribute to return to work outcomes, ranging from individual worker characteristics to scheme incentives.³⁷ Research on chronic lower back injuries³⁸ has revealed that pre-injury job characteristics, appropriate provision of suitable duties and appropriate training are most likely to impact workers having positive timely and durable return to work outcomes. Individual patient characteristics, health and medical interventions are not as important.

Thus, employers have the highest degree of influence over whether a worker has a timely and sustainable return to work outcome.³⁹ Yet, managers and co-workers are the most likely source of obstruction in a worker's return to work – with 26% of workers reporting that someone from work was the least help in return to work.⁴⁰

A 2014 study involved case studies of six large organisations with well established procedures for injury prevention and occupational rehabilitation, including preventative health treatments for workers, return to work co-ordinators of staff, and regular contact with insurers and other key stakeholders.⁴¹ It was discovered that good return to work practices can be found where organisational leadership places high value on workplace safety and continuity in the workplace relationship. This means that leaders implement the following actions:

- Focusing on a safe workplace and injury prevention;
- Promoting workers' wellbeing, including support for both physical and emotional problems;
- Building and maintaining relationships with treatment and rehabilitation services and insurance agents; and
- Training for all managers and workers in workplace safety and return to work procedures.

To summarise, an important finding of the research has been the benefits of employers taking the lead in not only preventing workplace injuries, but also keeping injured

³⁶ Collie, Lane, Hatherell and McLeod, 2015 p.7.

³⁷ Collie, Lane, Hatherell and McLeod, 2015 p.4.

³⁸ Anema, Schellart, Cassidy, Loisel, Veerman and van der Beek, 2009.

³⁹ Safe Work Australia, 2014.

⁴⁰ Campbell Research, 2011; see also Safe Work Australia, 2014 and WorkCover NSW, August 2014.

⁴¹ Cooney and Sohal, 2014.

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workers meaningfully engaged with the workplace, to achieve timely and durable return to work outcomes.

To this end the NSW workers' compensation scheme contains provisions to ensure that employers actively engage with injured workers, to keep them employed. Section 49 of the Workplace Injury Management and Workers Compensation Act (NSW) 1998 states that after an injury occurs the employer 'must at the request of the worker provide suitable employment for the worker'. Furthermore, 'the employment that the employer must provide is employment that is both suitable employment (as defined in section 32A of the 1987 Act) and (subject to that qualification) so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was at the time of the injury'.⁴²

Nevertheless, these provisions do not apply if 'it is not reasonably practicable to provide employment', if 'the worker voluntarily left the employment of that employer' or if the employment was terminated 'other than for the reason that the worker was not fit for employment as a result of the injury'.⁴³ An even greater concern is that there is little evidence of the requirement for employers to provide suitable duties for injured workers being enforced.⁴⁴

Further regulations exist to ensure employers take the lead in keeping injured workers engaged with the workplace to optimise timely and durable return to work outcomes. All employers are required to establish a return to work program, to maintain policies and procedures that align workplace rehabilitation and recovery with the insurer's injury management plan.⁴⁵ Large employers⁴⁶ are additionally obliged to have a return to work coordinator.⁴⁷

If complied with, these laws should facilitate workers remaining meaningfully engaged with their workplace while they recover and rehabilitate, until they are able to undertake pre-injury duties without risk of re-injury. Where pre-injury duties are inappropriate for the type of injury these regulations, if effectively implemented, will ensure that workers are productively employed in work that utilises their skills and experience, while paying an income commensurate with their pre-injury employment. There has been little research conducted to understand the experience of injured workers, and whether they are, indeed, supported to return to work for the long-term. The research conducted for this report seeks to fill this gap in understanding.

⁴² Workplace Injury Management and Workers Compensation Act (NSW) 1998 s.49(2).

⁴³ Workplace Injury Management and Workers Compensation Act (NSW) 1998 s.49(3).

⁴⁴ Markey, Holley, O'Neill and Thornthwaite, 2013 p.61-63.

⁴⁵ Workplace Injury Management and Workers Compensation Act (NSW) 1998 s.52(1).

⁴⁶ This applies to all employers who pay more than \$50,000 per annum in premiums, or are self-insured or have specialised insurance and more than 20 employees, under the Workers Compensation Regulations (2010) s.3.

⁴⁷ Workers Compensation Regulations (2010) s.23.

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3.2. Research Approach

This study sought to understand the ways in which workers in the NSW workers' compensation scheme are supported to have a timely and durable return to work by interviewing a sample of injured workers about their experiences. This research method does not allow us to draw general conclusions for injured workers as a whole. However, qualitative research of this kind does enable a richer, more in-depth examination of issues and their interconnections at the individual level than a purely quantitative study allows. The interview data is also broadly supported in key respects by the quantitative data from the Unions NSW surveys of 2014 and 2015, as well as the official data used for the three reports' ongoing benchmarks. This quantitative data, therefore, allows a degree of triangulation of the qualitative interviews, and is referred to in detail in subsequent sections of this report.

Twenty injured workers were asked a range of open-ended questions about their return to work experience. Participants were randomly selected from a range of injured workers who had completed the Unions NSW online survey in 2015, and volunteered to participate in the Macquarie University study, involving one-on-one interviews. Interviews were conducted by telephone in November 2015.

Interviewees included twelve male and eight female participants. At the time of injury, twelve participants were under 50 years of age and the remaining eight were 50 years of age or older. Half the participants were injured prior to the 2012 legislative changes, and the other half have been injured and made their claim since the 2012 changes. Half of the interviewees were members of a trade union at the time of the interview and the other half were not.

Interviewees worked in a range of professions, and had a variety of different return to work experiences. The industries participants worked in are summarised in Table 2:

TABLE 2: INDUSTRIES OF INTERVIEW PARTICIPANTS

ANZSIC Industry	Number of participants
Education and training	5
Public administration and safety	4
Healthcare and social assistance	3
Transport, postal and warehousing	3
Accommodation and food services	1
Manufacturing	1
Other services - repair and maintenance	1
Financial and insurance services	1
Electricity, gas, water and waste services	1
<i>Total</i>	<i>20</i>

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Seventeen of the participants had been working for more than fifteen years in the job they were in at the time of injury. In fact, five of those participants had been in their job for 30 years or more at the time of injury. The remaining three participants had been working in their job for between two and nine years before they were injured.

The types of injuries suffered by the interview participants are summarised in Table 3. There are more injuries than participants in this Table because seven workers suffered multiple types of injuries.

TABLE 3: TYPES OF INJURIES SUFFERED BY INTERVIEW PARTICIPANTS

Type of injury	Number of participants
Psychological	7
Musculoskeletal - back/ neck	6
Musculoskeletal - legs/hip	5
Musculoskeletal - shoulder/ arms/ hands	4
Bone fracture	3
Blunt force trauma	2
Animal bite	1

The time taken until the first opportunity to return to work for each of the participants is shown in Table 4.

TABLE 4: TIME OFF WORK UNTIL FIRST ABLE TO RETURN

Time taken until first able to return to work	Number of participants
< 1 month	7
1 month	1
2 months	1
5 months	2
6 months	3
8 months	1
10 months	1
1-2 years	2
Never	2

The time taken to return to work shown in Table 4 is misleading. Eight participants had made more than one attempt to return to work, while only nine of the eighteen participants who had been able to return to work at some stage remained in the workforce at the time of the interview. None had voluntarily retired. Indeed, all eleven participants who were not working wanted to be able to work after they were injured.

Only one participant who was working at the time of the interview was happy with the duties they were doing. Of the other eight participants who were working, six found the

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duties they were assigned to be unsatisfactory, demeaning or exacerbating their workplace injury. In fact, the worker who was happy with the work they were doing suffered only a minor injury from an animal bite, which was treated immediately and he returned to pre-injury duties with no restrictions the following day. All other workers suffered long-term injuries, could not appropriately carry out their pre-injury duties and had difficulties in attaining suitable duties.

The following analysis provides a more informative picture of return to work processes and outcomes for workers injured in NSW than commonly used data, such as that seen in Table 4, are able to provide. The results of this study demonstrate that injured workers with serious injuries often make multiple failed attempts to return to work, and these attempts can exacerbate their injury leaving them unable to work in the long term. Furthermore, when they cease to receive compensation that is certainly not an indication they have successfully returned to work.

To protect the anonymity of the workers who participated in this survey, participants are coded according to the primary injuries they suffered as follows in Table 5.

TABLE 5: CODING OF INTERVIEW PARTICIPANTS

Type of primary injury	Code
Psychological	PSY1-PSY5
Musculoskeletal - back/ neck	MBN1-MBN5
Musculoskeletal - legs/ hip	MLH1-MLH4
Musculoskeletal - shoulder/ arms/ hands	MSA1-MSA3
Blunt force trauma	BFT1
Animal bite	ANB1
Bone fracture	BOF1

3.3. Research Results

3.3.1. Role of Employers

Previous research has proven that employers have a central and critical role in facilitating workers' timely and sustainable return to work after suffering a workplace injury.⁴⁸ This study of 20 injured workers' experiences with trying to return to work after workplace injuries further substantiates these findings. The appropriateness and sustainability of a workers' return to work was significantly impeded if employers did not take the lead in ensuring injured workers had suitable duties that kept them meaningfully engaged with the workplace.

Large employers in the NSW scheme are required to appoint a trained return to work coordinator to facilitate the implementation of a return to work program. All but one of

⁴⁸ Anema, Schellart, Cassidy, Loisel, Veerman and van der Beek, 2009; Safe Work Australia, 2014.

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the interviewees (MBN3) in this study worked for large employers; therefore nineteen of the workers should have been supported by a trained return to work coordinator, who could oversee their return to work program and facilitate them remaining meaningfully engaged with the workplace.

Support from employers and return to work coordinators

Respondents had had varying levels of support from employers and return to work coordinators to return to work. While in most cases, employers had appointed a return to work coordinator to facilitate this process, in some cases, no such position had been established. Return to work coordinators also adopted a variety of approaches to injured workers which affected their experiences with the process.

Workers perceive that it would be constructive for employers to appoint someone, such as a return to work coordinator, who can facilitate their return to work. Indeed, a participant in this study, PSY2, suggested it would have been helpful if the employer had appointed an appropriate staff member who the injured worker could talk to about the injury, the return to work program and other related matters. She added that support for the injured worker is critical; she considered that she would have recovered better and more quickly if there had been,

Someone in the workplace to tell me it's going to be alright... Nothing more than simply a pat on the back. (PSY2)

Despite the regulations requiring her large public sector employer to appoint a return to work coordinator to do precisely this, the employer failed to comply.⁴⁹

Another participant, MLH3 explained that he would have benefitted from ongoing support during his recovery at home and after he had returned to work while still recovering from his injury. He stated, it would have been helpful to,

Have somebody there who I know I can go to or for them to be in contact with me, even after I'd been back at work after a while, just to have somebody to talk to me because at that stage there were still problems. (MLH3)

Similarly, MLH4 suffered a serious injury at work and although he had a positive return to work experience, the employer did not maintain contact while he was on workers' compensation,

I've been working there for seven years but after the operation no one rang me – emotionally that hurt me a little bit. (MLH4)

Another worker, PSY4 felt that he would have been able to return to work sometime since his claim four years prior if his employer had provided support from the commencement of the period:

⁴⁹ Workers Compensation Regulations (2010) s.23.

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Feeling supported early on would have helped me a lot. I was asking them to give me something to do at home so I could be part of the team, I asked to be sent weekly updates and participate in weekly meetings. They said no. They're the things that would have helped me be part of the team and feel like I belong. That really hurt. (PSY4)

One participant, PSY1, has only received communication from her return to work coordinator twice in four years, and these were replies to emails she had sent. She stated that she could have recovered from her injury more quickly and the sense of isolation and stigma could have been reduced, or even alleviated, if the manager had simply called her and said 'I'm here to support you.'

For workers with psychological injuries, it can be particularly important that they feel supported to return to their workplace so their injury is not exacerbated. Participants PSY2, PSY3 and PSY4 had the opposite experience. They felt that if they reached out for assistance, discussed their condition or sought support from a return to work coordinator, or manager, they would face recrimination or be discriminated against when future employment decisions were made by that employer.

Workers who have sustained life changing injuries also explained that they would benefit from ongoing support, even after they have returned to their full pre-injury duties. One worker stated that:

There is no support physical, psychological or otherwise to help you accept how your life has changed as a result of the injury. No support for me to deal with how the knee injury affects my life on a day to day basis. (MLH2)

Workplace injuries can have life changing consequences for workers, but workers are left to deal with this alone.

Not all workers were neglected or ignored by their employers when they were injured; some experienced overt harassment from return to work coordinators. Rather than providing support, the return to work coordinators for MLH2 and PSY3 harassed them to return to work. In fact, MLH2 required surgery in order to walk again, and thus return to work; yet her return to work coordinator telephoned once or twice per day for five months to ask when she was returning to work.

I would explain that we had the conversation yesterday and she needed to call [the insurer] to ask when I was getting surgery. (MLH2)

After the surgery, the same return to work coordinator belittled MLH2, telling her she should recover more quickly from the surgery, on the basis of irrelevant information about a different surgical procedure. Once back at work she felt her employer ignored her ongoing pain and mobility issues resulting from the injury,

They don't care; you're back at work, that's all they care about. (MLH2)

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Another worker, PSY5 was also harassed and bullied by the return to work coordinator and manager in the first month after his workers' compensation commenced. Then the employer abruptly discontinued all communication, ignoring the worker entirely.

The return to work coordinator for MSA1 took an even less constructive approach. She repeatedly asked MSA1, 'Why don't you leave?' and 'Do you want to work here?' This return to work coordinator allegedly labelled herself 'The Terminator', with reference to her ability to terminate injured workers. It is extremely concerning if employers are able to interpret the role of a return to work coordinator as being one of terminating injured workers, rather than supporting them to return to work.

Two workers, MSA3 and MLH4, reported positive return to work experiences, which complied with the laws, and in which they were supported to remain meaningfully engaged with their workplace. The employer for MSA3 made comprehensive efforts to ensure he had an appropriate, graduated return to work process,

During the rehab period I was coming to work, as soon I was clear I was turning up to work to do any suitable duties. There is definitely an effort to get you back. I wouldn't want to do nothing for six months as that would be counterproductive. (MSA3)

In this case, rehabilitation exercises were accommodated into the daily routine of suitable duties:

They have a very well managed system. Once you are able to do anything they get you in on the ground and you're doing something. (MSA3)

Injury management plans and suitable duties

There were several instances where employers disregarded the injury management plan that had been approved and agreed upon by medical practitioners and insurers in consultation with the employer.

It was common for participants in this study to explain that their return to work coordinators had refused to cooperate with injury management plans devised by insurers and the treating doctors. Seventeen participants in this study (PSY1, PSY2, MLH1, BFT1, MBN1, MBN2, MLH2, PSY3, MSA1, MSA2, MBN3, MLH3, MBN4, PSY4, BOF1, MBN5 and PSY5) were told explicitly or implicitly at some stage during their efforts to return to work that they could either work in their full, pre-injury employment with no restrictions or leave that workplace. Only MSA3 and MLH4 were supported by their employers, who complied with all requirements for employers to facilitate injured workers returning to work. The minor injury suffered by ANB1 meant he was able to return to full pre-injury duties the day following his injury and did not encounter any need for suitable duties.

When BFT1 presented her return to work coordinator with the injury management plan prepared by her employer's insurer and treating doctors, she was met with refusal. The

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return to work coordinator was reported as stating, 'I don't care', and made clear that the only option was full pre-injury duties, or no work at all. The RTW coordinator reportedly said,

'We don't really need you, we can get anyone.' I was treated like a nothing. 'Just go away, get another job and don't bother knocking on our door again.' (BFT1)

This was in spite of having worked nearly four years at that workplace and having an outstanding work record.

Similarly, the return to work coordinators for PSY1 and PSY2 were reported as refusing to cooperate with insurers in devising return to work programs. Instead, when presented with programs constructed by the insurers and treating medical practitioners the return to work coordinators reportedly informed these workers they would need to identify, apply for and secure positions that fitted within their return to work programs. In both instances the workers did so independently, however the lack of support they received has further exacerbated their original workplace injuries. These workers had different employers, however, in both instances their employers had a variety of available and appropriate positions the workers could be transferred to; suitable duties was not an unreasonable request.

More than two years after her workers' compensation claim the employer of PSY2 offered her suitable duties, however, these duties were considered demeaning and tokenistic in nature, which has further worsened her injury. At the time of interview she was persisting with working in these demeaning duties as the only alternative was to be unemployed, which was not acceptable for this worker.

Additional injuries were also suffered by MLH3 as a result of his employer allegedly demanding he return to full duties before it was appropriate to do so,

There was a lot of pressure to get back before I was ready. Even to the point that we had decided on one path of action and the paperwork was presented differently. (MLH3)

Cessation of return to work programs

Another commonly reported experience is that employers commence a return to work program, only to abruptly withdraw the program before it is completed. Typically, the worker is following the program, recovering well at work, meaningfully engaged and working productively. Then they are suddenly told to return to full duties or they will not be able to work at all. This was the case for five of the twenty workers who participated in this study.

One participant, MSA2, stated that he had been working in accordance with a graduated return to work program for four months when his employer suddenly demanded that he return to full pre-injury duties. The worker complied as he did not want to lose his job. However, the injury was exacerbated, such that he was unable to work for several

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days each month; he used personal leave to cover the monthly absences from work. After twelve months working like this his injury had worsened to the extent that he could no longer work full-time and he requested part-time or modified duties. The employer reportedly notified him that he was medically retired.

Another participant, MBN5 claimed that he had been given four weeks suitable duties when his employer unexpectedly required him to return to full duties. The employer allegedly gave him harder duties than he had performed before his injury and succeeded in influencing him to resign from the job.

A third worker, BOF1, suffered life threatening traumatic physical and psychological injuries as a result of an event in the workplace that was foreseeable and preventable. The employer did provide support during an absence from work and a graduated, appropriate return to work for the first twelve months after the injury. The return to work coordinator was proactive and supportive throughout this period. As a result this worker had no negative interactions with the insurer, because his recovery was managed by the return to work coordinator. Nevertheless, after twelve months he recounted that the employer abruptly decided he needed to be back on full duties in the same job he had been injured in, despite there being numerous other options for suitable duties in this workplace. This also contradicted medical advice – the treating doctors and psychologist had advised him not to return to the same work environment. He did as instructed by the employer and persisted with the pre-injury duties for more than two years, but suffered ongoing serious psychological trauma and risk of re-injury to the broken bones and other traumatic injuries. Eventually the only option he saw was to leave that workplace and find suitable employment, using his skills and experience. He commenced in an appropriate and meaningful job shortly before the interview took place.

Another worker, PSY5, also suffered serious life threatening injuries. After a short recovery time at home he commenced a graded return to work program that the treating doctors and psychologists had approved. Ten weeks into the injury management plan, he described how the employer informed him that he had,

Failed to make 'satisfactory' efforts to return to my pre-injury substantive position, which the doctor, psychologist and [insurer's] psychiatrist agreed would be detrimental to my improvement in health. (PSY5)

Instead this worker was moved to a different worksite, one which was extremely high risk for his injury. The worker was unable to return to full pre-injury duties and asked for the gradual return to work program to be restored. He even offered to work on a voluntary basis to remain connected with the workplace if paid work was not available. The employer reportedly denied all requests, not allowing him to work part-time or in any modified capacity, paid or unpaid.

I've been labelled as having psychological injuries so they say, 'No we don't want him to work here'. (PSY5)

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One worker, MBN3, recounted that he was required by his employer to return to full duties three weeks after suffering a serious injury and attempting to work to a program. The injury never had time to heal and the worker did not have adequate time to receive treatment for the injury as he was working fulltime. This exacerbated the injury, resulting in a second absence from work eight months after the injury occurred. After fifteen months of attempting to work in full pre-injury duties, experiencing significant secondary injuries and exacerbation of the original injury, he is now unable to work at all.

I tried to do the right thing, I did what they said, I tried to get back to work, but when I was told to do what I wasn't supposed to do for my injury I told them, but they just ignored it and told me to do it anyway... My manager consistently wanted me to do jobs that the rehab centre said I couldn't do. Every time I slightly twisted I'd re-aggravate the injury and the physios kept saying, 'What are you doing?' Because my back was getting tighter each day... I went up to the big boss early on because my immediate manager was telling me to do things I wasn't supposed to be doing and he said, 'You either get back to your job or I fire you'. (MBN3)

This injured worker added that there was no accountability for the employer when they failed to provide suitable duties, instead pushing him to work in a way that exacerbated the original injury with life changing consequences:

There is no one to put complaints to, my work didn't cop any fines, they just got rid of me. There's no come back on them. It's saving them money and I'm the only one who loses out. (MBN3)

Self-insured employers

In terms of employers' strategies for returning injured workers to work, this study has found that self-insured employers take a different approach to other large employers. The distinction between employer and insurer is blurred for self-insured employers, to the extent that these workers were unable to discern whether they were being treated by a medical practitioner who was compensated by the 'insurer' or if they were receiving in-house treatments from a practitioner engaged directly by the employer. Time off work on workers' compensation was also conflated with time off work using annual leave.

One participant, MLH1, was under the impression that her injury had not been recorded as a workers' compensation injury by her self-insured employer. Instead, her employer allowed her to take one week off work on a reduced wage. After one week the worker was informed that if she did not return to work on full pre-injury duties, she would be managed out of her position. For the two years since returning to work MLH1 has continued to work fulltime and manage her own substantial and painful injuries, paying all medical expenses and using personal leave to attend medical appointments. This has

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exacerbated her injuries, however she is fearful that she will be made redundant if she informs her employer of the extent of her ongoing injuries or seeks assistance.

The reported experience of MLH1 is that her self-insured employer has not appointed a return to work coordinator, nor has it prepared a return to work plan or provided her with suitable duties. Instead, they offered one week recovery time, with one medical consultation for her serious injury, and then she was expected to return to full pre-injury duties or leave the place of employment.

Another worker, MBN4, described a similar experience with his self-insured employer. Treatments were provided sporadically by an onsite physiotherapist. The return to work coordinator reportedly told him he would never be able to learn anything or do any different tasks that would be more appropriate for his injury because he was hired for one specific role alone, although this employer had multiple types of appropriate roles available for this worker. Instead, the employer/insurer's approach, as recounted by MBN4, was to pressure him to work in the maximum possible duties for his position, which were physically more challenging than what he had done prior to his injury. He perceived this as an effort to press him, and other injured colleagues, to leave that place of employment.

I saw them hold back physical lifting work especially for injured workers when we needed to be doing other functions that didn't exacerbate the injury. We needed a variety of jobs where we could sit down sometimes. Instead they would re-roster me to duties I was slower at then give me a hard time about being slow and the jobs I was slower at were the ones exacerbating the injury and I just kept getting slower. They could selectively pick which criteria they were judging you against and they were doing it selectively to harass me... They kept deliberately putting me in areas that were above my weight restriction and then having a go at me for not being able to do it. (MBN4)

After two years the worker felt he had no choice but to reduce his hours (and pay) to part-time to accommodate his injury. This continued for seven years, and the injury did not improve. On the contrary, the work continued to exacerbate the injury and the worker was terminated nine years after the injury occurred.

3.3.2. Role of Insurers

Insurers and employers

Insurers' relationships with employers are conflicted – on the one hand the employers are their customers, but on the other hand the behaviour of employers in preventing injuries, appointing effective return to work coordinators, and implementing return to work programs have critical impacts on the timely and durable return to work outcomes. Yet, insurers have limited ability to influence employers' behaviour. They can educate and consult, but they cannot threaten meaningful consequences for non compliance with the return to work coordinator and suitable duties laws. Insurers can,

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however, threaten workers with withholding or withdrawing compensation if they do not comply with insurer's stipulations.

This is paradoxical; it is the employers, not the workers who have control over the provision of appropriate rehabilitation and suitable duties. Without appropriate rehabilitation and provision of suitable duties, which only the employer can provide, many workers will not have successful, sustainable return to work outcomes.

One worker explained how these divergent interests of the insurer impacted him:

Policies for employees are vigorously enforced. Rules for employers are optional. Insurers will cut off everything if you don't follow their rules... The insurer tells me that if I dare not follow what they say, I will be cut off. In the early days all I was doing was trying to stay alive, I didn't care about money. They were harassing me and calling me several times per week telling me to get back to work. (PSY5)

Other workers (BFT1, MBN2, MLH2 and MBN3) recorded haphazard payment of compensation, which is contingent on them obeying the insurer's particular instructions. MBN2 claimed that the insurer told her she would only continue to have her medical treatments if she persuaded her treating doctor to increase the number of hours per week she was cleared for capacity to work.

MBN3 stated that another insurer told him that given his employer had refused to provide suitable duties or allow him to meet with a vocational specialist, if he failed to return to pre-injury duties his compensation payments would be withheld. This insurer had no authority to persuade the employer to provide suitable duties, or even to allow the injured worker to meet with a vocational specialist, as the insurer had initially recommended.

Another worker described a similar experience and concluded that:

They just seemed totally driven to get you back to work at any cost. They just cut off your payments so if you have kids and a mortgage you just crawl in if that's what you've got to do. So long as your bum's on that chair that's all they care about. (MLH2)

Insurers' interests in getting injured workers back to work

Insurers' interests are not aligned with the objective of getting injured workers back to work. Insurers appear to have incentives to minimise the acceptance of claims and expenditures on medical treatments. As a result, their delayed acceptance of liability for costs causes long term exacerbation of the injury for injured workers, which delays and obstructs their return to work.

Twelve of the twenty injured workers who participated in this study referred to their medical treatment being delayed (BFT1, MBN1, MBN2, MLH2, PSY3, MSA1, MSA2,

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MBN3, MLH3, MLH4, PSY4, and BOF1). In some instances this has resulted in serious long-term injuries that restrict the worker from being able to work.

In the case of MBN2 the insurer reportedly delayed treatment for four years, which resulted in severe nerve pain, and is still causing chronic pain thirteen years later. By the time surgery was approved the surgeon was unable to guarantee if the worker would ever be able to walk again. It took two years for her to be able to walk after the surgery. The surgery needed to have been conducted within 10-12 months for the injury not to cause the permanent damage that has been incurred.

Another worker, PSY3 recounted waiting one year for the insurer to accept liability for her psychological workplace injury. She remarked that,

Until liability was accepted I found the process to be invasive, patronising, emotionally abusive and disrespectful. (PSY3)

These are not behaviours that assist a worker with a psychological injury to recover and return to work. Instead, the delays risked rendering the worker unable to participate in the workforce at all.

MSA1 declared that his insurer took nearly three years to assign a rehabilitation provider to facilitate his return to work. Another worker, MLH4, claimed that he waited six months for his knee surgery to be approved, which extended his time off work to eighteen months, when he would have preferred to have the treatment sooner and return to work much sooner.

Yet another worker, PSY4, recorded encountering many obstacles from the insurer that impede his recovery. Initially the insurer delayed accepting liability by five months. It now repeatedly arranges medical assessments at inconvenient times and places, giving him late notice and not notifying him if an appointment has been cancelled. This worker has been sent to eight independent medical examinations. The insurer also withholds reimbursements for treatments they are obliged to pay for, with the worker making multiple requests for reimbursement, which will then be paid in randomly allocated instalments, with multiple requests made for each further payment to be reimbursed.

Meanwhile, MLH3 stated that just getting approval for simple physiotherapy treatments takes 6-8 weeks. It is already challenging to fit physiotherapy around his full-time work schedule, but the difficulties in attaining approval from the insurer discourages this worker from attending physiotherapy appointments at all. As a result, he may be saving the scheme money in the short-term, but his injury is deteriorating and he may require more serious treatment or extended time off work in the future, which will be a greater cost to the scheme, and the injured worker himself.

3.3.3. Retraining for Work that is Meaningful and Appropriate

Where it is no longer appropriate for a worker to continue working in their pre-injury employment, the best way to ensure their return to work as soon as possible is to

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support them in retraining. Insurers need to coordinate with the worker and, where appropriate, their employer, to provide retraining that is relevant to the worker's skills and experience and will allow them to work in a job that pays a salary similar to their pre-injury employment.

Three workers who were interviewed for this study described processes in which their employer's insurer had decided upon a new career path for them, and enrolled them in training courses to prepare them for that career. The problem for each of these workers was that the career prescribed by the insurer was demeaning, tokenistic in nature or inappropriate for the injury each worker had suffered.

The first worker, MBN5, requested retraining for an appropriate position in the industry in which he had been working for 30 years and for which he had acquired considerable knowledge and skills. He offered a couple different career options for training that the insurer could provide, and had a good understanding of the achievable career pathways he could follow if he had the training. However, the insurer found a less expensive training course in a different industry. The job that the insurer prepared him for was not appropriate for his injuries, nor was it an industry the worker had interest or particular skills or expertise in. Furthermore, the training the insurer provided did not offer the worker an income commensurate with what he was earning prior to his injury.

The second worker, MBN1, claimed she was pressured to commence training for office work, in disregard of the fact that her injuries precluded her from being able to sit and concentrate, in the way that would be required for office work.

The third worker, BFT1, found the way her employer's insurer managed the retraining process to be disempowering. The insurer was prescriptive about what types of training and work she should undertake with her 'transferable skills'. She found the work options they ascribed to her demeaning and underestimating the qualifications, skills and experience she had. The breakthrough for this worker was when her insurer sent her to a pain clinic four years after the injury had initially occurred, at the pain clinic,

The psychologist told me to think about what I want to do, not what they want me to do. (BFT1)

This empowered her to enrol in and self-fund a training course that would enable her to embark on a new purposeful and appropriate career.

They were asking me to do demeaning work and I've taken control of my life so I can do work I want to do. (BFT1)

This is an unusual success story; typically the way insurers interact with workers is reported as eroding their self-empowerment and many workers are unable to restore their self-confidence to re-emerge from that.

Instead of retraining, another worker, MSA2, was compelled to undertake a 'job trial' by his employer's insurer. This was a demeaning and pointless process because,

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The trial was with an organisation that does not offer any jobs (they use volunteers instead). The job itself was not something I could do or was interested in. It was just done to tick yet another box... There were no checks, follow-ups or any consultation during the job trial either. (MSA2)

The job trial was also inappropriate for the injuries this worker had suffered; he resorted to taking 'copious amounts of pain killers' to relieve his pain while undertaking the trial.

3.3.4. Stigma, Discrimination and Bullying of Injured Workers

It is unfortunate, yet well understood, that workers who claim compensation for workplace injuries are likely to be subjected to stigma, bullying and discrimination.⁵⁰ This study confirmed that workers are, indeed, discriminated against and suffer the stigma of being a workers' compensation claimant. In particular, workers who have made claims for psychological injuries suffer a strong stigma and discrimination because these types of injuries are so poorly understood:

I am of the firm belief that anyone with a psychological injury is to be managed out of their job as quickly as possible. Others are advised not to lodge workers' compensation claims on this basis. (PSY2)

This worker was advised by WorkCover to pursue an anti-discrimination claim against her employer on the basis that they refused to allow her to return to work after she made a psychological injury claim.

Another worker who made a claim for a psychological injury and reported being denied any suitable duties, and thus unable to work for twelve months, remarked that:

I really just wanted to go back to work but workers' compensation really is a death warrant. It really is career suicide, it really is. They discriminate against you. There's a stigma attached to workers' compensation. (PSY1)

An additional worker who claimed compensation for a psychological injury stated:

I have worked extremely hard in my area of employment and this has impacted on my physical and mental health. My employer does not acknowledge all the work I have done and instead questions my ethics and morals by challenging whether my injury is credible and work related. [Workers' compensation is] a disgusting and morally degrading process. (PSY3)

Workers who suffered other types of injuries were also subjected to bullying, discrimination and stigma. Several workers explained that they had been 'good workers' who 'did the right thing' and worked hard. Yet, they described how as soon as they made a claim for workers' compensation the employer's attitude toward them

⁵⁰ General Purpose Standing Committee No. 1 - Legislative Council, 19 June 2014; Holley, Thornthwaite, O'Neill and Markey, 2015.

changed. Two workers (PSY1, MSA2) even claimed that they were blacklisted by the employer, so their colleagues and friends were prohibited from making contact with them.

One worker said she felt that:

In workers' comp the attitude is everyone's a malingerer, everyone can't be trusted. There seems to definitely be a culture in my dept that anyone who goes off on compensation is scamming the system. Everyone seems to think you're malingering and trying to scam the department... I don't know what it is I was supposed to ever be getting because this certainly hasn't been a financial win for me in any way shape or form. (MLH2)

Other workers explained that:

I suddenly went from someone who had exceeded all my KPIs to someone who was not helping my manager meet his lost time injury goals. (MSA3)

Once the injury isn't fixed in two weeks people treat you like a bludger. (MBN4)

A case manager said to me, 'You're only doing this to rot the system' but I have such a low income [from workers' compensation] that doesn't make sense. (MBN5)

3.4. Research Conclusions

Timely and sustainable return to work is not only critical for the injured worker, but also for the financial sustainability of the workers' compensation scheme.⁵¹ This study of injured workers' experiences of trying to return to work has suggested several systemic and entrenched obstacles to workers attaining sustainable employment. These include:

- Return to work measures that only record when a worker has exited the workers' compensation scheme, not when they have actually returned to appropriate and sustainable employment, will never provide incentives for stakeholders to support meaningful return to work outcomes.
- Large employers are not all complying with their obligation to appoint a trained and effective return to work coordinator to support workers remaining meaningfully engaged with the workplace.

⁵¹ Hodges, Kirkhope, Naphtali and Slevison, 2013.

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- Employers are not all complying with their obligation to cooperate with the insurer in implementing an injury management plan, and finding suitable duties, when it is reasonably practicable for them to do so.
- Self-insured employers are able to completely self-regulate and thus focus on ways to drive injured workers out of their employment, rather than devising or implementing injury management plans, return to work plans or provide suitable duties.
- Insurers' authority to influence or enforce return to work obligations rests solely on injured workers, as they are compromised in their ability to influence or enforce the employer/ their customer to comply with their return to work legal obligations.
- Insurers' interests diverge from the objective of returning injured workers to work; instead they focus on objectives such as minimising medical treatments in the short-term and finding ways to decline liability.
- Training and job trials offered by insurers can be counterproductive if they are not appropriate for the worker and do not lead to meaningful and sustainable outcomes.
- Stigma, bullying and discrimination against injured workers remains a pervasive problem, further undermining an injured workers' confidence and diminishing the likelihood of successful return to work outcomes.

These obstacles place a particular burden on workers who are claiming compensation for a psychological injury. These workers need a cohesive and constructive effort from their employer, insurer and medical practitioners to support them to recover and return to work as soon as possible, so that their confidence is not further eroded. Instead, the current system not only exacerbates psychological injuries, but can lead to workers who have made a claim for a physical injury incurring a secondary psychological injury. When workplace injuries result in significant deterioration of physical, financial, social and psychological well-being, psychological illnesses, such as depression, will inhibit successful return to work outcomes.⁵²

No stakeholder in the workers' compensation scheme has more influence over a workers' timely and sustainable return to work outcomes than the employer. For actual return to work outcomes to be improved, fundamental changes need to be made to the scheme to provide incentives for employers to support injured workers to remain meaningfully engaged with their workplace. This study has demonstrated that workers will be better supported to return to and remain at work if:

⁵² Stice and Dik, 2009 p.354.

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- Legal obligations for employers to implement a return to work program, appoint a return to work coordinator, and provide suitable duties are complied with.
- The legislation is amended such that suitable duties take account of a workers' incapacity to work, age, education, skills and work experience and location, as well as any other relevant circumstances, including the proviso that suitable duties must be meaningful, and not token in nature or demeaning.⁵³
- Insurers have incentives to ensure 'return to work' outcomes that mean workers have long-term, sustainable engagement with work that is meaningful, adequate and appropriate.
- Employers insurers and are educated about the nature of psychological injuries and understand how to support these workers to return to work.

⁵³ This is the case for the Tasmanian workers' compensation scheme: Workers' Rehabilitation and Compensation Act 1988 (Tas) s143M(5).

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4. BENCHMARKS

Report no. 1 in this series⁵⁴ established a series of benchmarks for data to continue to monitor the impact on injured workers of the legislative changes since 2012.

Level One ➤ Broad quantitative data – benchmarks the distribution of expenditures in the scheme, numbers of injured workers and longevity of claims, return to work, enquiries to the Injured Workers' Support Network, enforcement measures by WorkCover and cost-shifting to Centrelink benefits.

Level Two ➤ Survey – The second annual survey was conducted in May 2015. Results of this survey are analysed in this report.

4.1. Broad Quantitative Data

This section includes the following eight benchmarks:

- Scheme expenditure;
- Numbers of injured workers, claims and accepted claims;
- Longevity of claims;
- Serious incidence rates and long-term injury claims;
- Return to work;
- Enquiries to Injured Workers' Support Network;
- Enforcement by WorkCover; and
- Uptake of Centrelink payment.

⁵⁴ Markey, Holley, O'Neill and Thornthwaite, 2013.

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BENCHMARK 1: SCHEME EXPENDITURE

This benchmark provides a stark picture of the reductions in weekly payments and services that are provided to injured workers. Table 6 shows that scheme expenditures paid directly to claimants were reduced by 9% in 2012/13 and a further 5% in 2013/14 from the previous years. Meanwhile, services to claimants were reduced by 4% in 2012/13 and a further 9% in 2013/14.

The reductions in payments and services for injured workers have not corresponded to similarly large reductions in total scheme expenditures. The total scheme expenditures only fell by 4% each year in 2012/13 and 2013/14.

TABLE 6: NSW SCHEME EXPENDITURE: PERCENTAGE CHANGES – SAFE WORK AUSTRALIA

	Direct to claimant, NSW (\$m)	% change from previous year	Services to claimant, NSW (\$m)	% change from previous year	Total scheme expenditure NSW (\$m)	% change from previous year
2003/04	\$1,194.5	-	\$648.8	-	\$2,400.9	-
2004/05	\$948.0	-21	\$522.7	-19	\$2,205.6	-8
2005/06	\$944.4	0	\$505.0	-3	\$2,043.5	-7
2006/07	\$944.2	0	\$508.1	1	\$2,042.5	0
2007/08	\$964.7	2	\$535.6	5	\$2,039.3	0
2008/09	\$1,094.3	13	\$606.3	13	\$2,193.9	8
2009/10	\$1,194.7	9	\$636.6	5	\$2,333.0	6
2010/11	\$1,257.3	5	\$632.0	-1	\$2,417.6	4
2011/12	\$1,310.9	4	\$689.1	9	\$2,629.0	9
2012/13	\$1,187.4	-9	\$659.7	-4	\$2,521.6	-4
2013/14	\$1,123.3	-5	\$603.4	-9	\$2,416.9	-4
Source: Safe Work Australia <i>Comparative Performance Monitoring Reports 11-17, 2009-2015</i>						

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Changes in NSW scheme expenditures compare poorly with Australia-wide scheme expenditures, as demonstrated in Table 7. While benefits for NSW injured workers in 2013/2014 continued to decrease, there were further increases for injured workers as a whole in Australia.

TABLE 7: AUSTRALIA SCHEME EXPENDITURE – SAFE WORK AUSTRALIA

	Direct to claimant, Australia (\$m)	% change from previous year	Services to claimant, Australia (\$m)	% change from previous year	Total scheme expenditure Australia (\$m)	% change from previous year
2003/04	\$2,892.4	-	\$1,312.4	-	\$5,611.1	-
2004/05	\$2,810.3	-3	\$1,218.6	-7	\$5,653.1	1
2005/06	\$3,002.6	7	\$1,274.4	5	\$5,808.7	3
2006/07	\$3,198.0	7	\$1,325.3	4	\$6,030.4	4
2007/08	\$3,381.7	6	\$1,418.8	7	\$6,300.5	4
2008/09	\$3,786.2	12	\$1,581.4	11	\$6,936.1	10
2009/10	\$4,063.8	7	\$1,633.4	3	\$7,302.0	5
2010/11	\$4,089.2	1	\$1,706.6	4	\$7,448.2	2
2011/12	\$4,191.3	2	\$1,822.7	7	\$7,838.3	5
2012/13	\$4,214.4	1	\$1,848.6	1	\$7,979.0	2
2013/14	\$4,370.5	4	\$1,839.9	0	\$8,258.1	3
Source: Safe Work Australia <i>Comparative Performance Monitoring Reports 11-17, 2009-2015</i>						

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BENCHMARK 2: NUMBERS OF INJURED WORKERS, CLAIMS AND ACCEPTED CLAIMS

The following section reports on changes in the incidence of injured workers, compensation claims and accepted claims. Importantly, Tables 8-13 show a substantial decline in the number of reported injuries over the period. These reductions can be attributed to a number of factors, including workers compensation changes, and major changes to work health and safety legislation introduced in 2012. The latter is likely to have amplified focus on workplace health and safety and injury prevention, driving a reduction in workplace injuries and illnesses. Reductions will be most likely observed in low consequence, high frequency injury and illness occurrences.

TABLE 8: NUMBERS OF INJURED WORKERS, CLAIMS AND ACCEPTED CLAIMS

Injured workers in NSW	2009/10		2012-13	
	Number of workers	%	Number of workers	%
Persons who worked at some time in the last 12 months⁽¹⁾	3,834,300		3,863,700	
Persons who worked at some time in the last 12 months and experienced a work-related injury or illness in that period⁽¹⁾	213,200	5.5% of all persons who worked	143,600	3.7% of all persons who worked
Number of claimants for workers' compensation who received some form of compensation⁽²⁾	129,482	60.7% of all persons who were injured*	104,137	72.5% of all persons who were injured*
Number of non-contested claims⁽²⁾	112,211	86.6% of all persons who made a claim*	96,404	92.5% of all persons who made a claim*
Source: (1) ABS 6324.0 Work-Related Injuries from <i>Multi-Purpose Household Survey</i> (MPHS) and (2) Combined sources from Safe Work Australia, various reports, 2008-2013 *Note that this percentage is derived from two sources: NSW data for work-related injuries from the Multi-Purpose Household Survey, where total numbers are extrapolations from surveys of a sample of the population; numbers of claimants from Safe Work Australia reports. Therefore, percentages are indicative only.				

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Data for Table 8 regarding acceptance of injury and illness claims is only available every four years; the last update was in 2012/13. Therefore this Table was included in the second annual report in this series. This data can be updated again in 2016/17.

There has been a steady decrease in the number of workers in the scheme, with a more dramatic reduction of 27% since September 2012, as shown in Table 9.

TABLE 9: ALL INJURY AND ILLNESS CLAIMS ACCEPTED OR DELAYED

	Total number of claims	Total number of claims accepted initially	Percentage of contested claims
2008/09	131,933	120,400	9%
2009/10	129,426	123,252	5%
2010/11	131,760	125,472	5%
2011/12	130,861	123,327	6%
2012/13	104,137	96,404	7%
2013/14	95,650	88,363	8%
Source: Combined sources from Safe Work Australia, various reports, 2008-2015			

Table 9 indicates that between 5 and 9% of claims have initially been declined, but ultimately the injured worker has received compensation. Note, however, that these figures do not account for injured workers who attempted to claim workers' compensation but were unsuccessful.

Despite the significant reduction in the total number of claims, insurers continued to decline 8% of claims when first presented to them.

Table 10 shows that claims for illnesses and injuries that were not journey claims have been significantly reduced – with 120,490 in 2011/12, dropping to 95,305 in 2013/14, equating to a 21% reduction.

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TABLE 10: ALL CLAIMS EXCLUDING JOURNEY CLAIMS – ACCEPTED OR DELAYED

	Total number of claims	Total number of claims accepted initially	Percentage of contested claims
2008/09	121,782	111,052	9%
2009/10	119,632	113,791	5%
2010/11	121,421	115,490	5%
2011/12	120,490	113,380	6%
2012/13	103,386	95,911	7%
2013/14	95,305	88,085	8%
Source: Combined sources from Safe Work Australia, various reports, 2008-2015			

As might be expected, journey claims have also been substantially diminished in total, as shown in Table 11. The only journey claims that remain are those that have a real and substantial connection between the journey and the work, and claims from specific occupations excluded from the 2012 legislative changes – including fire fighters, paramedics, coal miners and police officers.

TABLE 11: JOURNEY CLAIMS ACCEPTED OR DELAYED

	Total number of claims	Total number of claims accepted initially	Percentage of contested claims
2008/09	10,151	9,348	8%
2009/10	9,794	9,461	3%
2010/11	10,339	9,982	3%
2011/12	10,371	9,947	4%
2012/13	751	493	33%
2013/14	345	278	19%
Source: Safe Work Australia, various reports, 2008-2015			

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Similarly, Table 12 demonstrates a very significant reduction in claims for heart disease.

TABLE 12: CLAIMS FOR HEART DISEASE ACCEPTED OR DELAYED (HEART ATTACK, ANGINA, MYOCARDIAL INFARCTION OR CORONARY EXCLUSION)

	Total number of claims	Total number of claims accepted initially	Percentage of contested claims
2008/09	44	17	61%
2009/10	33	15	55%
2010/11	30	12	60%
2011/12	41	12	71%
2012/13	44	7	84%
2013/14	13	2	85%
Source: Safe Work Australia, various reports, 2008-2015			

Table 13 reveals a spike in claims for exposure to trauma in the year preceding the June 2012 legislative changes. Claims in 2013/14 remained higher than pre-2012 changes.

TABLE 13: CLAIMS FOR EXPOSURE TO TRAUMA ACCEPTED OR DELAYED (WITNESS TO ACCIDENT FATAL OR OTHER)

	Total number of claims	Total number of claims accepted initially	Percentage of contested claims
2008/09	142	117	18%
2009/10	273	226	17%
2010/11	233	213	9%
2011/12	594	517	13%
2012/13	249	232	7%
2013/14	368	336	9%
Source: Safe Work Australia, various reports, 2008-2015			

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BENCHMARK 3: LONGEVITY OF CLAIMS

Table 14 indicates the longevity of all workers' compensation claims since 2007/08. It confirms a trend downward in claims overall. The decline in number of claims is particularly marked for 2012/13 (as noted in Benchmark 2). There has been no pattern of change in the proportion of workers making claims for more than 12 weeks.

TABLE 14: LONGEVITY OF CLAIMS FOR ALL INJURIES AND ILLNESSES EXCLUDING JOURNEY CLAIMS

	Less than 12 weeks	12 weeks or more	Percentage of claims ≥12 weeks
2008/09	109,806	11,976	10%
2009/10	107,798	11,834	10%
2010/11	108,826	12,595	10%
2011/12	108,631	11,859	10%
2012/13	93,793	10,324	10%
2013/14	87,056	8,249	9%
Source: Safe Work Australia <i>Comparative Performance Monitoring Reports</i> 10-17, 2008-2015			

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BENCHMARK 4: SERIOUS INCIDENCE RATES AND LONG-TERM INJURY CLAIMS

Table 15 highlights the downward trend in claims made per 1,000 employees over the last 5 years. This downward trend has been accentuated since the June 2012 legislative changes occurred. It could be misleading to interpret this decline in claims rates as an improvement in workers' health and safety outcomes.

TABLE 15: SERIOUS INCIDENCE RATES AND LONG-TERM CLAIMS FOR NSW

	Incidence rates of serious¹ injury and disease claims	Frequency rates of serious¹ injury and disease claims	Incidence rates of long term (12 weeks or more compensation) injury and disease claims	Frequency rates of long term (12 weeks or more compensation) injury and disease claims
	Claims per 1,000 employees	Claims per million hours worked	Claims per 1,000 employees	Claims per million hours worked
2008/09	13.3	7.9	3.7	2.2
2009/10	13.2	7.8	3.7	2.2
2010/11	13.3	7.9	3.8	2.2
2011/12	13.1	7.8	3.7	2.2
2012/13	11.0	6.6	2.9	1.7
2013/14	10.0	6.0 ²	2.4	1.4
¹ Includes accepted workers' compensation claims for temporary incapacity involving one or more weeks compensation plus all claims for fatality and permanent incapacity. ² Each year this is no better than the national average e.g. the national average in 2013/14 was 5.9.				
Source: Safe Work Australia Comparative Performance Monitoring Reports 11-17, 2009-2015				

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BENCHMARK 5: RETURN TO WORK

The stated intention of the 2012 legislated changes to workers' compensation was to give workers incentives to return to work. Table 16 provides no evidence of improvements in return to work rates for injured workers in NSW. The government has made less information available each year, so only data on the percentage of injured workers currently working in a paid job is available in 2015.

TABLE 16: RETURN TO WORK - SURVEY DATA

	Returned to work at any time since workplace injury or illness	Currently working in paid job	3 Month stable return to work rate*
% of NSW injured worker respondents			
2006/07	86	78	-
2007/08	86	76	-
2008/09	83	72	-
2009/10	85	74	-
2010/11	86	78	-
2011/12	85	76	-
2012/13	88	80	64*
2013/14	87	78	65*
2014/15	n/a	77	n/a
<p>* Given that the average number of days back at work before needing to stop work again is 86 days, a 3 month 'stable return to work' is not going to capture a large portion of workers who are unable to work after trying to return to work for 3 months.</p> <p>NB: 600 respondents in each year except 2012/13 with 826 and 2013/14 with 824 respondents.</p> <p>n/a: Not available</p>			
<p>Sources: <i>Return to Work Monitor</i> 2006/07 to 2011/12, Campbell Research prepared for Heads of Workers Compensation Authorities and <i>Return to Work Survey</i> August 2013 & July 2014, The Social Research Centre prepared for SafeWork Australia, Safe Work Australia Comparative Performance Monitoring Report 17th Edition, 2015.</p>			

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BENCHMARK 6: ENQUIRIES TO WIRO

The WIRO service received more than 200 complaints and enquiries per month for most months in 2013. For 2014 monthly complaints and enquiries increased to greater than 300 for most months. Then in 2015 the number has increased to greater than 400 for most months.

Table 17 indicates types of enquiries to the WIRO service. The most prominent concerns for injured workers calling the WIRO service are denial of liability, medical treatment, and, increasingly, weekly benefits.

TABLE 17: FREQUENCY OF TYPES OF INQUIRIES TO WIRO

	Communication %	Delay %	Denial of liability %	Independent Medical Examination %	Incorrect calculations %	Medical costs %	Medical treatment %	Procedural review %	Rehabilitation %	Weekly benefits %	Work capacity (general) %	WPI %	Not recorded %
1 July 2013 to 30 June 2014	10	7	13	1	1	8	17	9	2	22	7	2	2
1 July 2014 to 30 June 2015	11	11	14	2	0	7	13	0	5	23	9	4	0
1 July 2015 to 30 Sept 2015	8	10	15	1	0	7	16	0	5	26	7	5	0
Source: WorkCover Independent Review Office Performance Reports 2013, 2014, 2015													

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BENCHMARK 7: ENFORCEMENT BY WORKCOVER

Table 18 shows a continuing downward trend in enforcement activities by WorkCover (now SIRA). The reductions in the issuing of infringement notices for 2012/13 and 2013/14 are particularly marked.

TABLE 18: ISSUING OF NOTICES AND PROSECUTIONS BY WORKCOVER

	Number of infringement notices issued	Number of improvement notices issued	Number of prohibition notices issued	Number of legal proceedings resulting in a conviction, order or agreement (number of defendants in a successful WHS prosecution)	Total amount of fines awarded by the courts (\$'000)
2007/08	620	13,109	994	182	\$8,600
2008/09	686	10,832	767	96	\$4,602
2009/10	688	12,161	856	76	\$5,614
2010/11	588	11,326	834	89	\$6,039
2011/12	357	8,859	601	84	\$7,922
2012/13	124	6,118	551	78	\$5,057
2013/14	55	5,098	498	41	\$2,481
Source: Safe Work Australia Comparative Performance Monitoring Reports 11-17, 2009-2015					

The number of infringement notices issued in NSW decreased by 65% from 2012/13 to 2013/14.⁵⁵ NSW WHS legislation shifts the enforcement mechanism for many infringements from the issuing of notices to enforceable undertakings, which explains, in part, why there was such a dramatic reduction in infringement notices issued. However, there was only one enforceable undertaking in NSW since they were introduced in 2012, and this occurred in 2013/14.

⁵⁵ Safe Work Australia, 2015 p.15.

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The number of notices issued when inspectors identified a breach under NSW WHS legislation decreased by 17% from 2012/13 to 2013/14.⁵⁶ The amount of court awarded fines in NSW decreased by 51% from 2012/13 to 2013/14.⁵⁷

The regulatory approach taken by WorkCover (now SafeWork NSW) has become one very much dominated by education and consultation activities. Enforcement officers are increasingly conducting proactive workplace visits, as illustrated in Table 19.

TABLE 19: ENFORCEMENT ACTIVITY BY WORKCOVER

	Number of workplace proactive visits	Number of workshops, presentations, seminars or forums	Number of reactive workplace visits	Other reactive interventions	Number of field active inspectors per 10 000 employees
2006/07	na	na	na	na	1.1
2007/08	na	na	na	na	1
2008/09	na	na	na	na	1.1
2009/10	8,915	631	15,661	19,138	1
2010/11	9,735	3,015	16,370	23,263	1
2011/12	6,577	1,065	13,652	26,244	1
2012/13	10,162	223	12,782	28,777	1*
2013/14	19,505	644	10,403	17,019	1.0
* National average is 1.1 for each of these years					
na – data not available					
Source: Safe Work Australia Comparative Performance Monitoring Reports 11-17, 2009-2015					

⁵⁶ Safe Work Australia, 2015 p.14-15.

⁵⁷ Safe Work Australia, 2015 p.16.

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BENCHMARK 8: UPTAKE OF CENTRELINK BENEFITS

There have been suggestions that limits on workers' compensation benefits will lead to cost shifting as workers register instead for sickness benefits, Newstart and the disability support pension. The graphs in this section document trends in numbers of recipients of each of these forms of government financial support that enables comparisons between NSW and Australian figures generally. Table 20 shows the general trends in claimants for Centrelink benefits that injured workers might be receiving if they are unable to access workers' compensation.

TABLE 20: CENTRELINK BENEFITS – NUMBER OF RECIPIENTS

	Sickness Allowance	% change	Newstart	% change	Disability Support Pension	% change
Sep-11	1,826	-	163,805	-	267,798	-
Mar-12	1,917	5	173,395	6	268,709	0
Sep-12	1,965	3	172,949	0	267,828	0
Mar-13	2,218	13	203,633	18	267,611	0
Sep-13	2,082	-6	207,166	2	268,213	0
Dec-13	2,132	2	213,512	3	270,761	1
Mar-14	2,088	-2	216,370	1	271,033	0
Jun-14	2,188	5	218,600	1	270,128	0
Sep-14	2,148	-2	214,774	-2	268,806	0
Dec-14	2,211	3	222,711	4	267,990	0
Mar-15	2,120	-4	219,135	-2	266,401	-1
Jun-15	2,209	4	224,734	3	264,400	-1
Source: Department of Social Services demographics data available at data.gov.au						

The data in Table 20 does not indicate how many workers have transferred from workers' compensation to Centrelink benefits. Data that demonstrates cost-shifting from workers' compensation to welfare is not available. Figures 1, 2 and 3 show that variations to numbers of recipients of Centrelink benefits in NSW have been closely

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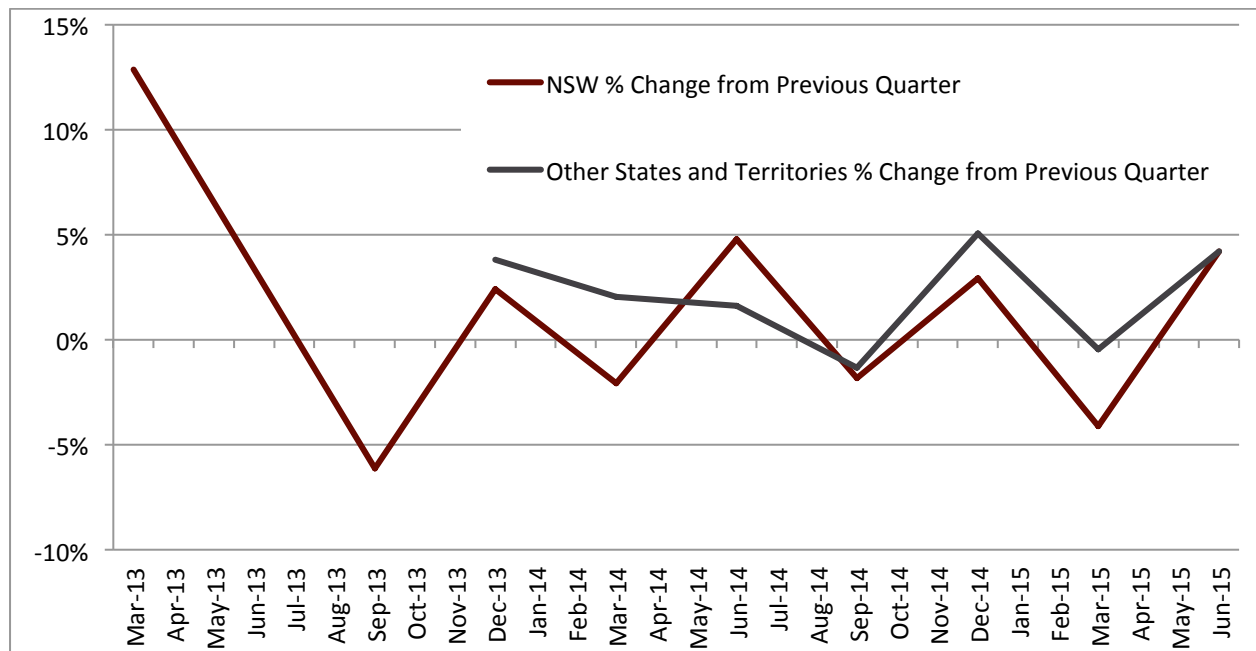
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aligned with variations to numbers of recipients receiving benefits in other Australian states and territories. There are several factors that can impact recipient numbers: for instance the ageing population results in more workers converting to the aged pension, and other economic and demographic factors. Data that demonstrates the cause of workers receiving welfare benefits would be required to assess the extent to which injured workers are being left with no option but to claim welfare benefits. However, it is known from the Unions NSW survey results, analysed later in this report, that many injured workers have needed to claim Centrelink benefits in order to survive.

FIGURE 1: SICKNESS BENEFITS – COMPARISON OF CHANGES TO NUMBERS OF RECIPIENTS



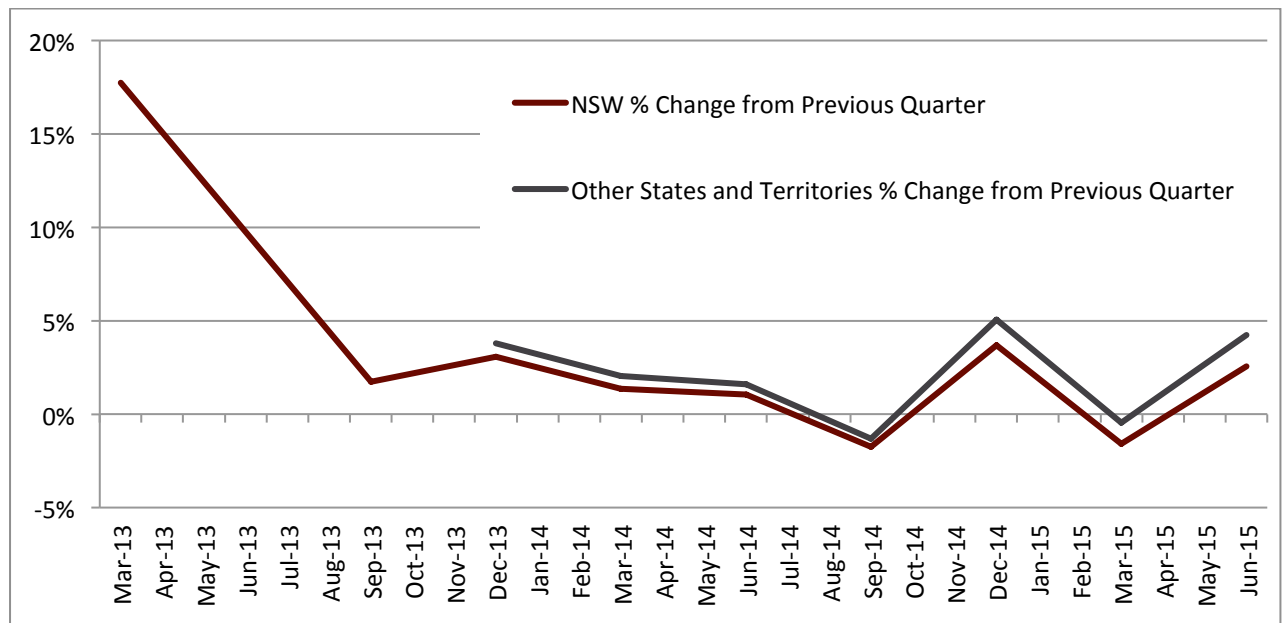
Source: Department of Social Services demographics data available at data.gov.au

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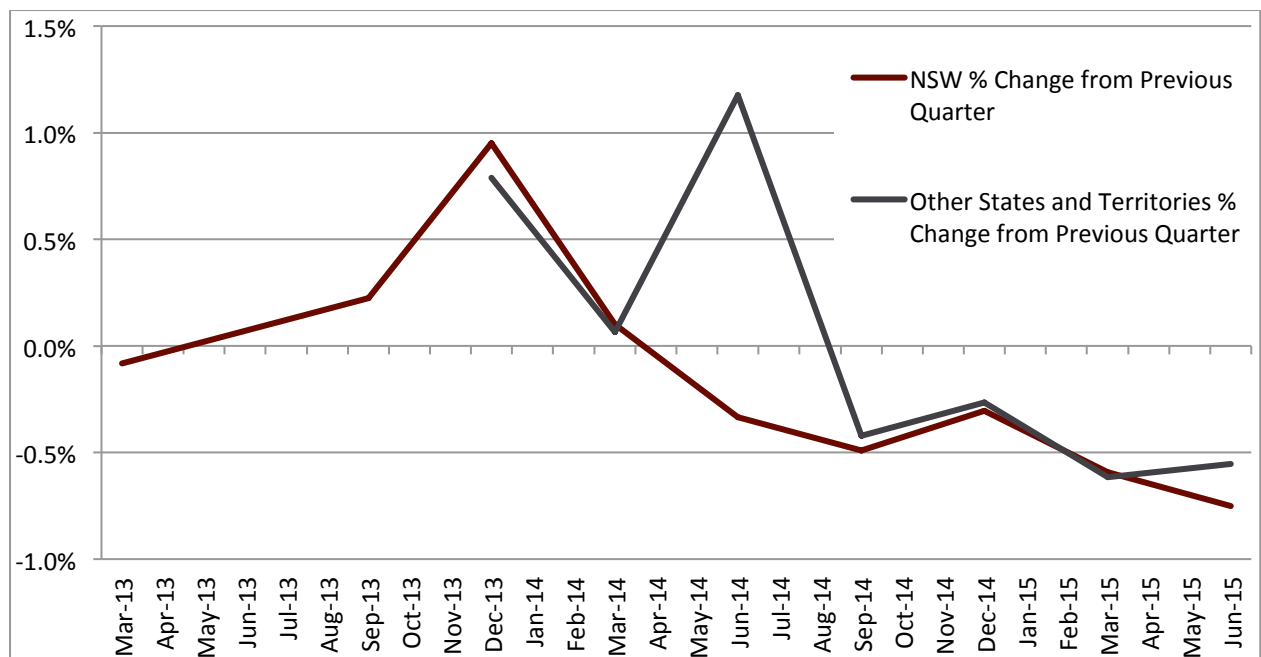
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FIGURE 2: NEWSTART – COMPARISON OF CHANGES TO NUMBERS OF RECIPIENTS



Source: Department of Social Services demographics data available at data.gov.au

FIGURE 3: DISABILITY SUPPORT PENSION – COMPARISON OF CHANGES TO NUMBERS OF RECIPIENTS



Source: Department of Social Services demographics data available at data.gov.au

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4.2. Survey

It was suggested in Report no. 1 that Unions NSW conduct an annual survey of injured workers to garner a deeper understanding of the impacts on workers. This was necessary because there is a dearth of publicly available data to analyse the NSW workers' compensation scheme. A survey of injured workers was conducted by Unions NSW in April-May 2014 and repeated in July-August 2015. This survey asked workers about their experiences with workplace injuries, workers compensation and return to work. Survey questions were developed by Unions NSW staff in consultation with the authors of this report. The survey was hosted on Survey Monkey and emailed to union members throughout NSW during April and May 2014 and again during July and August 2015. A total of 2,200 responses were received in 2014, and 1,536 responses were completed in 2015. These included responses from workers who had experienced workplace injury and illness, as well as workers who had not.

Table 21 provides a picture of the injured workers who responded to this survey in terms of their access to workers compensation, whether or not their injury or illness predated the 2012 legislative amendments and their financial benefits since 2012.

TABLE 21: SUMMARY PROFILE OF SURVEY RESPONDENTS

	2014	2015
Total respondents	2,200	1,536
Suffered an injury or illness from their work, or suffered trauma as a result of the injury of a close colleague or family member	1,665	1,379
Received workers' compensation	1,431	1,262
Did not receive workers' compensation	235	117
Suffered injury or illness on or after 19 June 2012	323	390
Suffered injury or illness prior to 19 June 2012	1,107	872
Receiving weekly payments on or since 1 October 2012	592	592
Weekly payments reduced as a result of 2012 legislative changes	237	219

The 2014 survey found that of 592 workers who were receiving weekly payments on 1 October 2012, 237 workers (40%) have had their payments reduced or cut off as a

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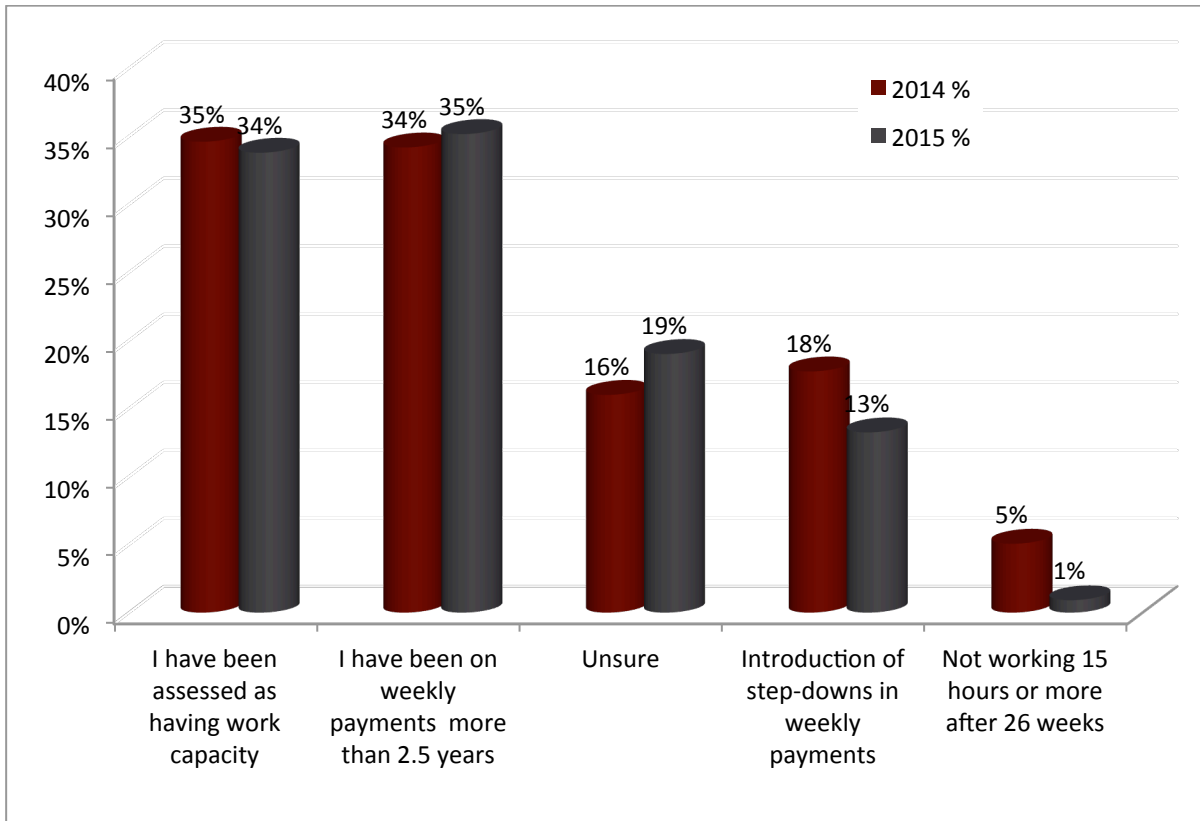
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result of the 2012 legislative changes. In the 2015 survey a slightly smaller number, 219 out of 592 workers, had their payments reduced as a result of the 2012 changes.

The reasons for payments being reduced or terminated are summarised in Figure 4.

FIGURE 4: REASON(S) GIVEN FOR YOUR WEEKLY PAYMENTS BEING REDUCED OR CUT OFF?



Survey question: What was the reason given for your weekly payments being reduced or cut off? (answer as many as apply)

The high proportions of workers who did not know why their payments had been reduced is concerning: 19% of respondents in 2015 said they were unsure why their payments had been reduced. This is indicative of poor communication from insurers. Clarity of communication has been raised as an issue for rectification by the Standing Committee Review of WorkCover⁵⁸ and WIRO.⁵⁹ Yet, a large number of workers are still uncertain as to why their fundamental entitlements have been reduced or terminated.

These results also indicate that the use of work capacity decisions to reduce or terminate workers' payments is unlikely to have increased in 2015.

⁵⁸ Standing Committee Review of WorkCover, 2014 p.96-99.

⁵⁹ WIRO submission to SCLJ Review, 2014 p.13.

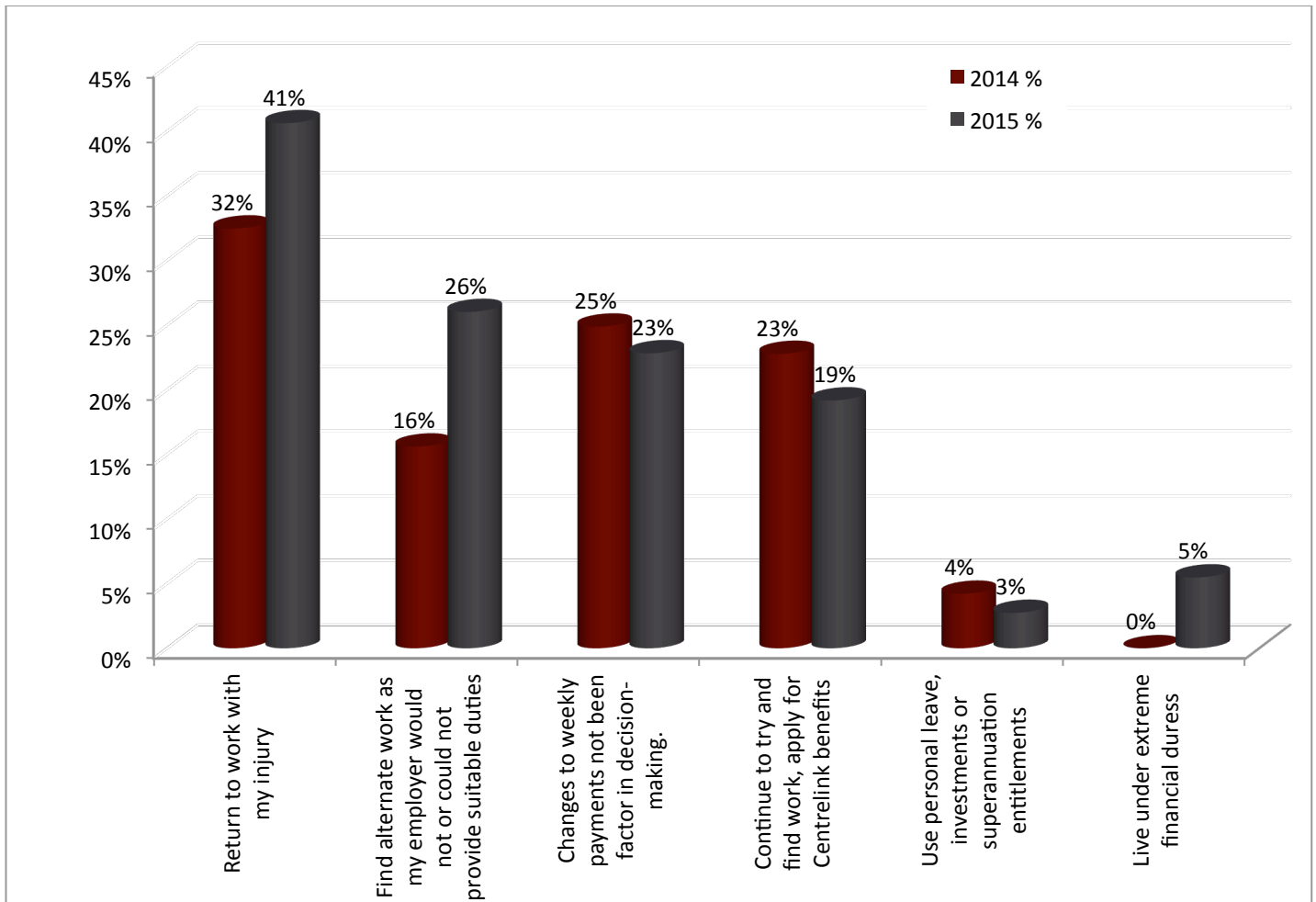
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Survey respondents who had had their weekly payments reduced or terminated reported that this motivated them to take a variety of actions, as summarised in Figure 5 below.

FIGURE 5: ACTIONS MOTIVATED BY REDUCTION OR TERMINATION OF WEEKLY PAYMENTS



Survey question: Did a reduction or termination of weekly payments motivate you to do any of the following? (answer as many as apply)

The findings in Figure 5 are consistent with the expectation that workers who are not receiving financial support through the workers' compensation scheme will have no choice but to take up some sort of employment. Two thirds of respondents (67%) either returned to work with their injury or sought alternative work, and this proportion has increased from slightly over half (52%) in a year.

At face level the approach of reducing or terminating payments appears to be effective in improving return to work statistics. Indeed, these are the types of statistical results that proponents of the 2012 legislative changes would use to highlight the benefits of the changes.

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What these results conceal is the numbers of workers who are exacerbating their injuries or developing related secondary injuries as a result of returning to work prematurely. Return to work outcomes are short-lived when working erodes physical and mental capacities to work in the longer term. These long-term outcomes are not captured in return to work statistics.

By way of illustration, many workers who were interviewed for the study detailed in the previous section made several attempts to continue working (MSA1, PSY2, MBN3, BFT1); however these efforts have seriously hindered their ability to work at all now and in the future.

For instance, worker MBN3 made five attempts to remain at his place of work, but each attempt caused further deterioration in his injury. Two years later he has been assessed by Disability Employment Services to be completely unable to work. Had he been able to modify his duties so they were appropriate to his degree of injury, and receive adequate treatment and rehabilitation, then it is likely he would be able to work now and for many more years.

In another example, one survey respondent who remained employed with the same employer, in the same job after being injured summarised this common problem:

Only had a few days off, but my injury is probably worse now than in the beginning.

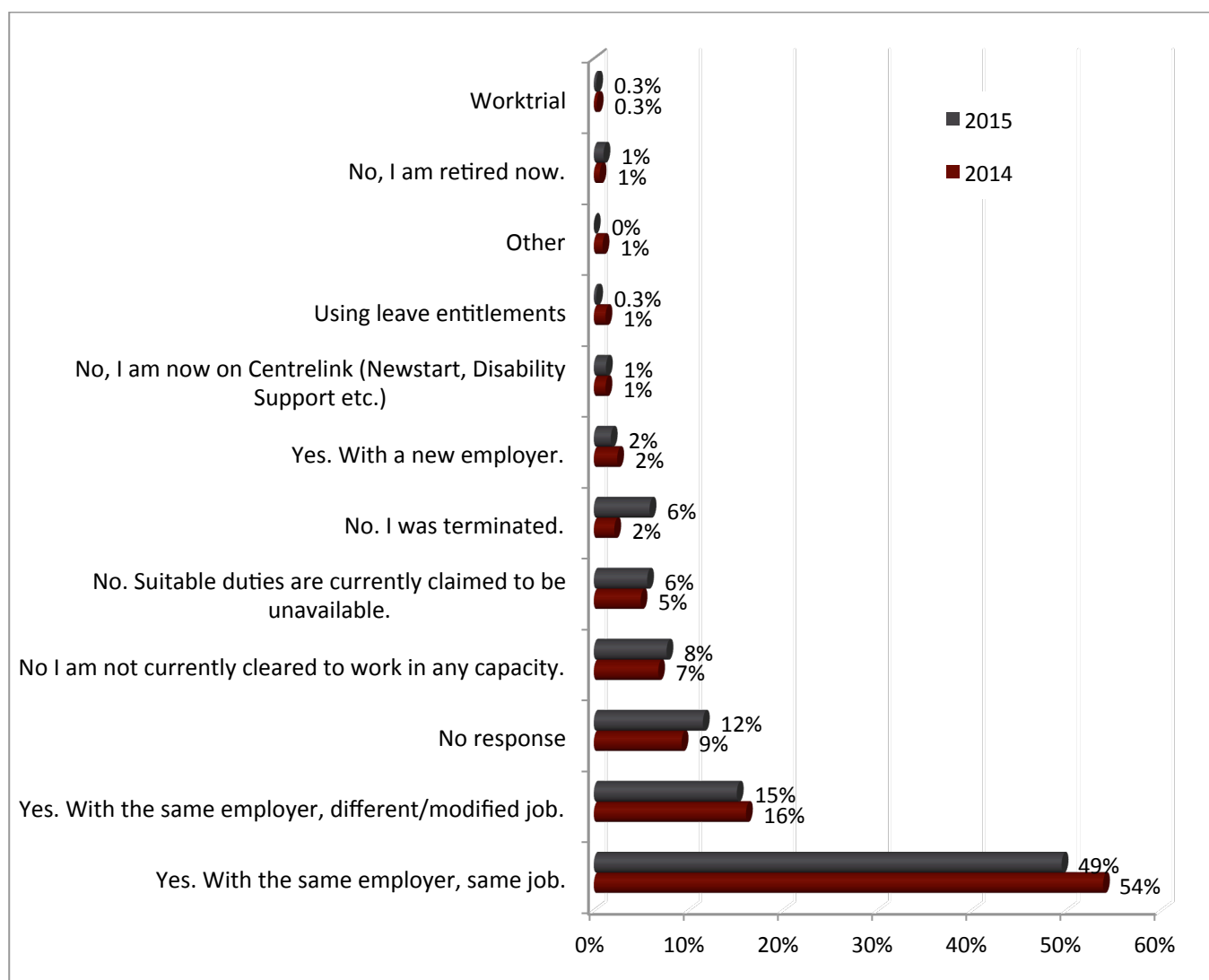
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FIGURE 6: RETURN TO WORK – INJURED ON OR AFTER 19 JUNE 2012



Survey question: Have you returned to work? (Total 323 workers in 2014 and 390 workers in 2015)

Figure 6 compares 2014 and 2015 responses to the question of whether workers who were injured since June 2012 have returned to work, and in what capacity. The most noticeable change since the previous year is that workers are increasingly less likely to be working with the same employer, while more workers were terminated by their employer.

It is also worth considering that even workers who have not been terminated and are provided with modified or suitable duties in the short term are not necessarily having a positive experience with their employer. One survey respondent remarked:

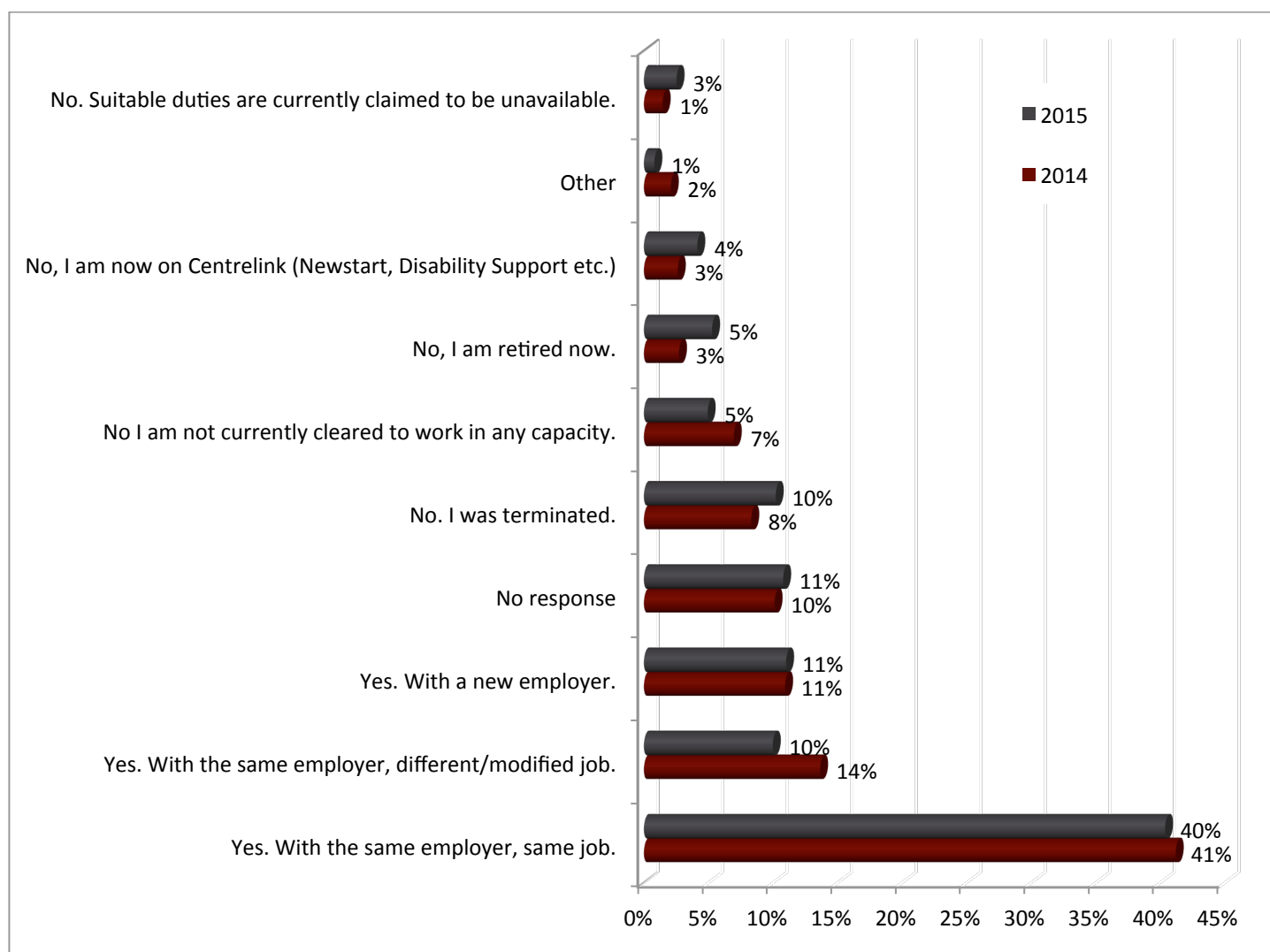
*I have returned to work on modified duties but they have made my life hell.
They want me to resign.*

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FIGURE 7: RETURN TO WORK – INJURED BEFORE 19 JUNE 2012



Survey question: Have you returned to work? (Total 1107 workers in 2014, 872 workers in 2015)

Figure 7 shows the differences between 2014 and 2015 responses to the question of whether workers who were injured before June 2012 have returned to work, and in what capacity. As with workers who were injured since the 2012 change, these workers injured earlier were less likely to be employed by their pre-injury employer and more likely to have been terminated and receiving Centrelink benefits in 2015 than in 2014.

Termination of injured workers is concerning. It raises questions about who will take responsibility for injuries and illnesses that occur as a result of workers performing their duties. Yet, the termination of injured workers has increased, with greater proportions of workers who were injured both before and after the 2012 legislative changes terminated by their employer in 2015 than in 2014.

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This broad data about return to work outcomes conceals the difficulties workers might be experiencing with their work since they were injured. One worker who was continuing to work with their pre-injury employer stated that:

Because of threats made to me if I resumed my claim I just continued to work with my injury and paid for my own treatment. Bullying is rife in workers compensation and I was not prepared to enter into the process. I spend my own money on pain killers to maintain myself at work without having to face the process.

Interrogation of the circumstances in which workers are working with a new employer also reveals that, although they are a positive return to work 'statistic', they may have suffered considerably from the 2012 legislative changes:

I now work for a family member who cares for my wellbeing, therefore I am able to work with my limitations and can work at my own pace and in my own time. Without this support, I would not have been able to continue in the workforce and would have had my payments and medical support cut. Before the changes, my payments were paid even if I was unable to work due to pain or [risk of] exacerbation of the injury.

Another survey respondent stated that:

I work for my father from my own home just processing invoices for 16 hours a week. I was forced to do this to retain some weekly payments but I struggle to do it and my Dad struggles to pay me.

In both instances the workers' families have taken over providing a safety net previously in place through a workers' compensation scheme.

On the other hand some workers have been fortunate enough to be offered suitable duties and a workable transition to resume full employment, such as this survey respondent:

Returned to work at first on lower duties, but within 6 months progressively returned to normal duties with physio treatment starting twice a week eventually to once in two weeks and ending. Other changes made to work.

Workers can also be inhibited from returning to work after an injury by the stigma against workers' compensation claimants. In 2014, 337 workers stated they had applied for other jobs, and 188 of these workers (56%) had been asked by prospective employers if they had ever made a workers' compensation claim. Then in the 2015 survey 293 workers stated that they had applied for other jobs, and 173 workers (59%) had been asked by prospective employers if they had ever made a workers' compensation claim.

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Table 22 highlights the difficulties that workers experience after suffering a workplace injury or illness and making a workers' compensation claim.

The 2014 survey revealed that for those who are unable to return to work their financial circumstances are highly likely (79-80%) to deteriorate. In 2015, 77% of those who were unable to return to work stated that their financial position had deteriorated since their injury.

TABLE 22: DIFFICULTIES ENCOUNTERED AFTER INJURY OR ILLNESS

	2014 Unable to return to work %	2015 Unable to return to work %	2014 Successfully returned to work %	2015 Successfully returned to work %
Injured on or after 19 June 2012				
Suffered additional (or secondary) injuries after first injury	48	56 	35	44 
Since injury/illness/claim financial circumstances have worsened	79	81 	32	37 
Since injury/illness/claim financial circumstances have improved	3	2 	3	5 
Injured prior to 19 June 2012				
Suffered additional (or secondary) injuries after the first injury	72	74 	54	52 
Since injury/illness/claim financial circumstances have worsened	80	74 	39	33 
Since injury/illness/claim financial circumstances have improved	3	2 	10	8 

Survey questions: Have you suffered additional (or secondary) injuries after the first injury? Since you were injured/suffered illness/made a claim have your financial circumstances: worsened/stayed the same/improved.

It is concerning that in 2014 the financial circumstances of more than 30% of injured workers who had successfully returned to work, had also deteriorated. Importantly, in 2015 this problem expanded, with 34% of those who were able to return to work finding their financial position had worsened since their injury. Many of these workers

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who are in a worse position are working part-time to accommodate their injury and bearing the reduction in earnings themselves.

The high rates of injured workers who have suffered secondary or additional injuries are also concerning. A notable increase has been observed since 2014. In 2014 rates of secondary injuries were lowest for workers who were injured since the legislative changes, who had successfully returned to work (35%), yet by 2015 this figure had increased to 44% of respondents. For those who were injured since the 2012 changes, but have been unable to return to work, 48% of those surveyed in 2014 had suffered a secondary injury, but a concerning 56% suffered a secondary injury in the 2015 survey.

In 2015, overall 55% of respondents who had claimed workers' compensation for an injury or illness had developed an additional or secondary injury or illness. Nearly 10% of workers had developed a mental illnesses including depression and anxiety disorders (17 respondents stated they had post traumatic stress disorders as a result of their injury and/or claims process). Other types of secondary or additional injuries respondents experienced included:

Due to workers comp taking 12 months to approve any surgery a lump has grown just under my knee which causes me pain.

Besides aggravation of my injury (doing 'light' duty at work) I ended up with stress related hypertension and deep depression.

Developed de Quervain's tendonitis as a direct result of a delayed diagnosis and inadequate treatment.

Toe joint needs replacing now because of knee injury impact on that joint.

Bad back from walking badly [as a result of unresolved knee injury] and suicide may be my only way out of this system.

These results raise serious questions about the quality of rehabilitation and return to work programmes that emphasise short-term return to work outcomes.

4.2.1. How Injured Workers' Lives Have Changed Post-Injury

The survey indicates that workplace injuries and illness lead to major changes in injured workers lives in terms of adjustments to their own and their families' lifestyles and domino effects on wellbeing. The most common adjustments reported are reductions in family and social outings, and family holidays, increased debt, becoming unemployed, becoming subsidised by family and friends, and other family members being required to work more. Adverse effects on wellbeing also include having suicidal thoughts, returning to work and being unable to undertake all assigned activities, and refusals or delays in medical treatment. In 10% of cases, injured workers also experience divorce or separation from their partner.

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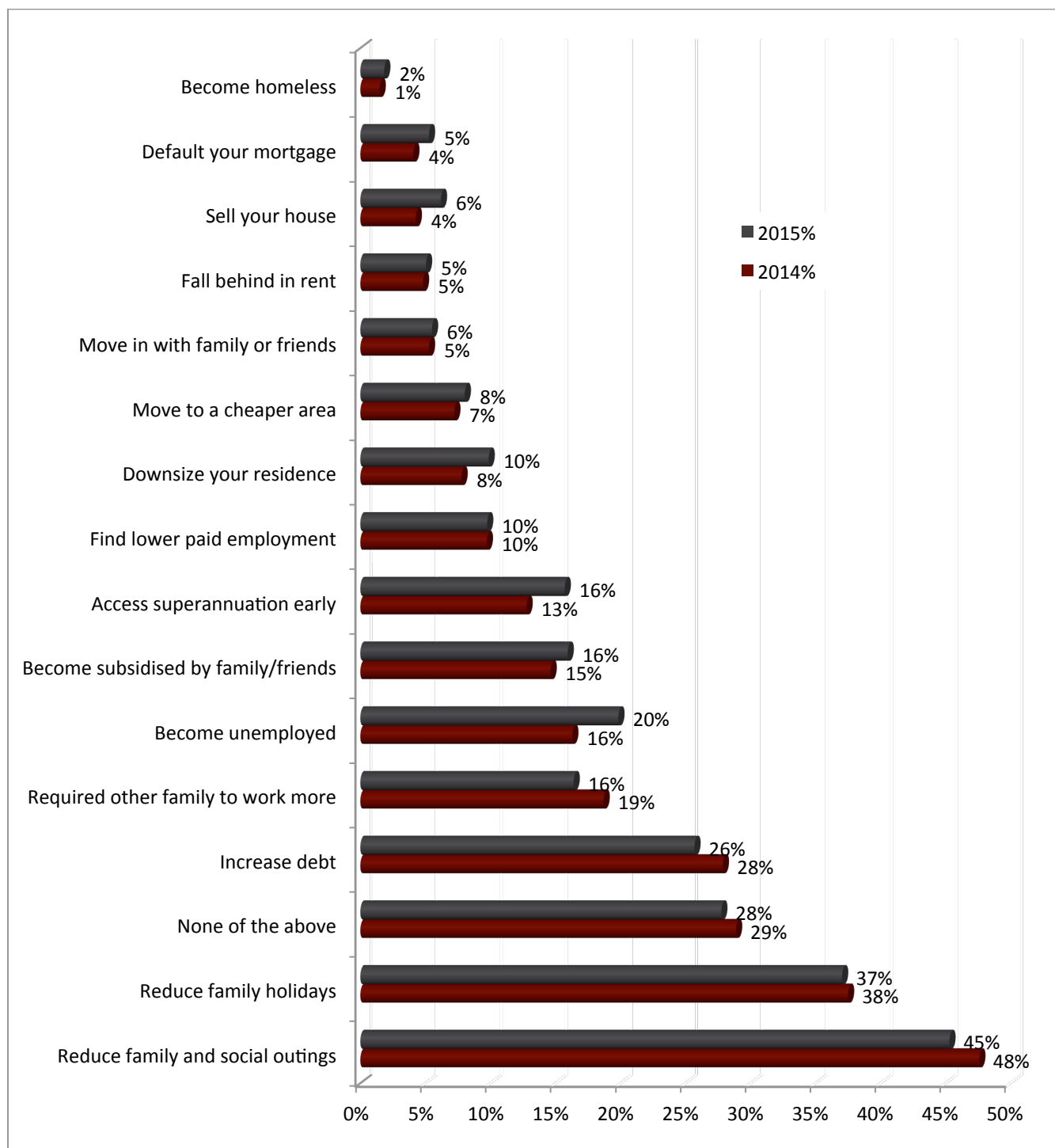
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Figure 8 illustrates the types of impacts having a workplace injury or illness and making a claim for compensation have had on workers' lifestyles if they were injured before the 2012 legislative changes.

FIGURE 8: ADJUSTMENTS REQUIRED SINCE INJURY – INJURED BEFORE 19 JUNE 2012 (FOR THOSE WHO CLAIMED WORKERS COMP)



Survey question: Since your claim/injury have you needed to make any of the following adjustments? (answer as many as apply)

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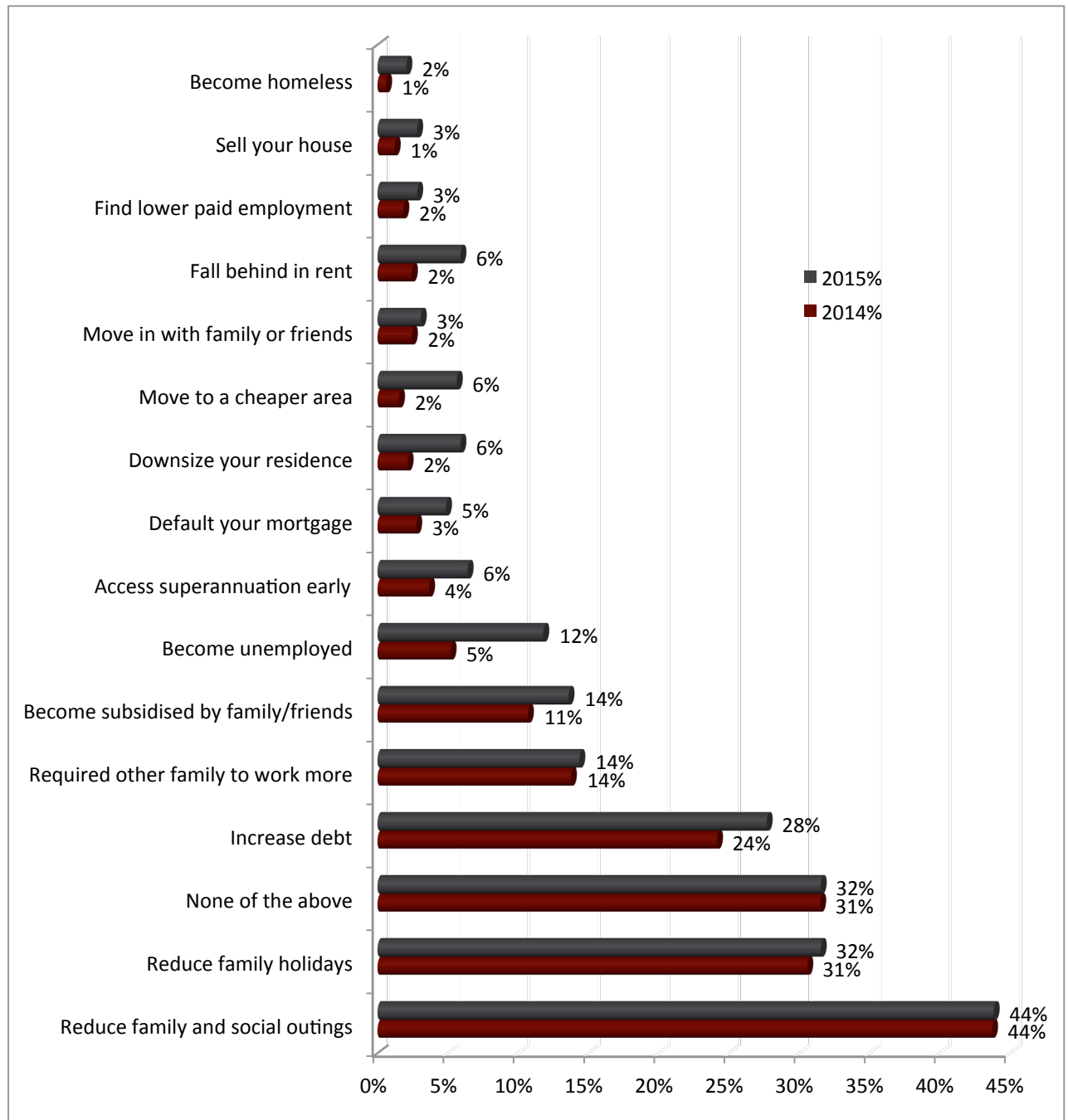
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Injured workers, shown in Figure 8, are increasingly likely to have become unemployed, accessed superannuation early and unable to afford their housing.

Figure 9 illustrates the impacts on workers' lifestyles for those who were injured since the 2012 legislative changes.

FIGURE 9: ADJUSTMENTS REQUIRED SINCE INJURY – INJURED AFTER 19 JUNE 2012 (FOR THOSE WHO CLAIMED WORKERS COMP)



Survey question: Since your claim/injury have you needed to make any of the following adjustments? (answer as many as apply)

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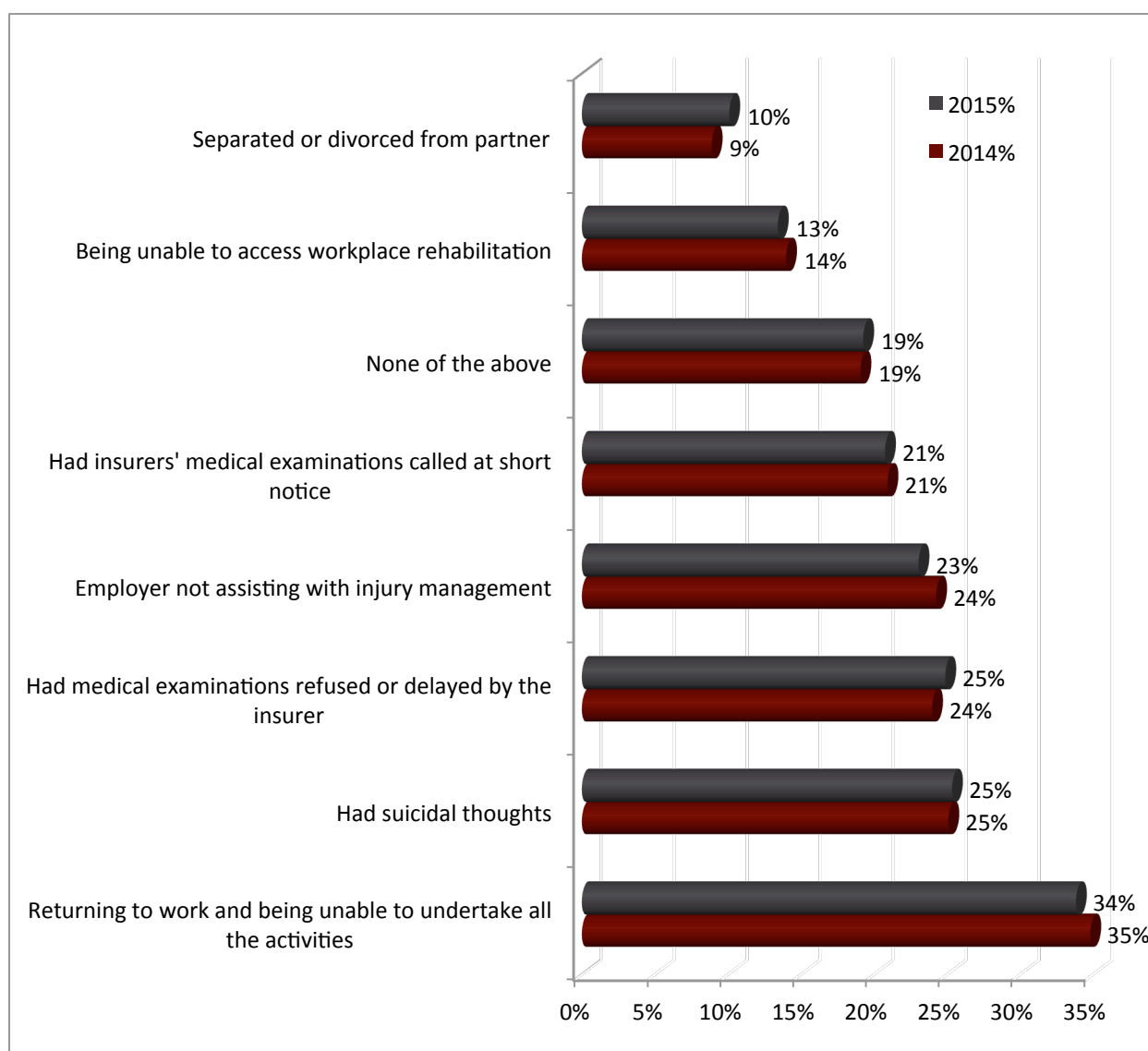
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There are noticeable increases in serious consequences for workers who have suffered a workplace injury or illness, when comparing the 2014 and 2015 survey results. In 2015 these workers have increasingly incurred debts, become unemployed, been subsidised by other family members and unable to afford their housing since the difficulties they reported in 2014.

Workers injured before the 2012 legislative changes have experienced additional difficulties, shown in Figure 10. There is an alarming number of workers who have experienced serious depression, with one quarter stating they had suicidal thoughts as a result of their injury or illness.

FIGURE 10: ISSUES SINCE INJURY – INJURED BEFORE 19 JUNE 2012 (FOR THOSE WHO CLAIMED WORKERS COMP)



Survey question: As a result of your injury/illness have you had any of the following issues? (answer as many as apply)

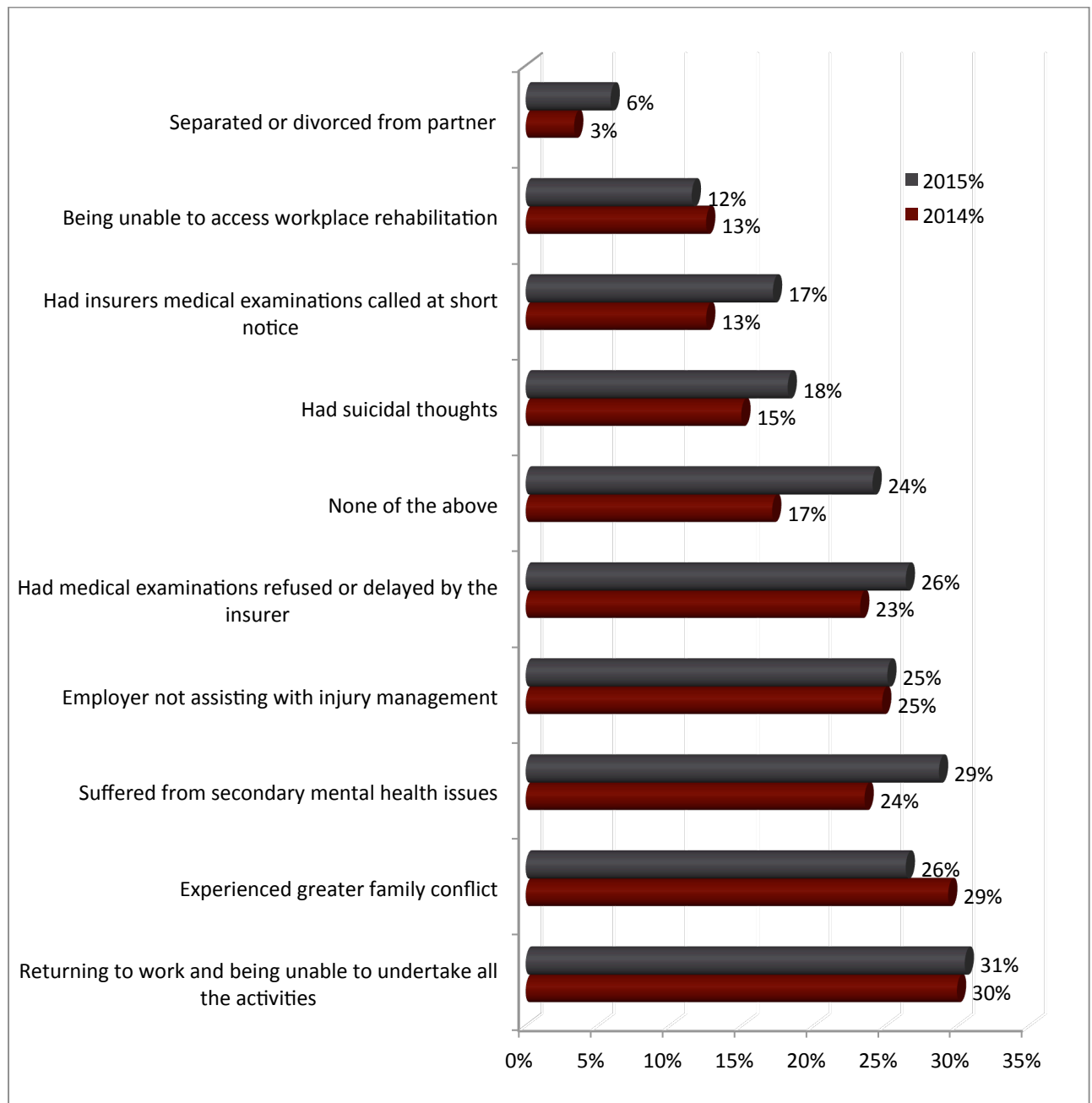
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Workers who have been injured since the 2012 legislative changes have also experienced additional difficulties, shown in Figure 11. The proportion of workers who suffered secondary mental health issues increased from 24% in 2014, to 29% in 2015. The impacts of workplace injuries and illnesses on workers' mental health and their proclivity for suicidal thoughts are extremely concerning.

FIGURE 11: ISSUES SINCE INJURY – INJURED AFTER 19 JUNE 2012 (FOR THOSE WHO CLAIMED WORKERS COMP)



Survey question: As a result of your injury/illness have you had any of the following issues?
(answer as many as apply)

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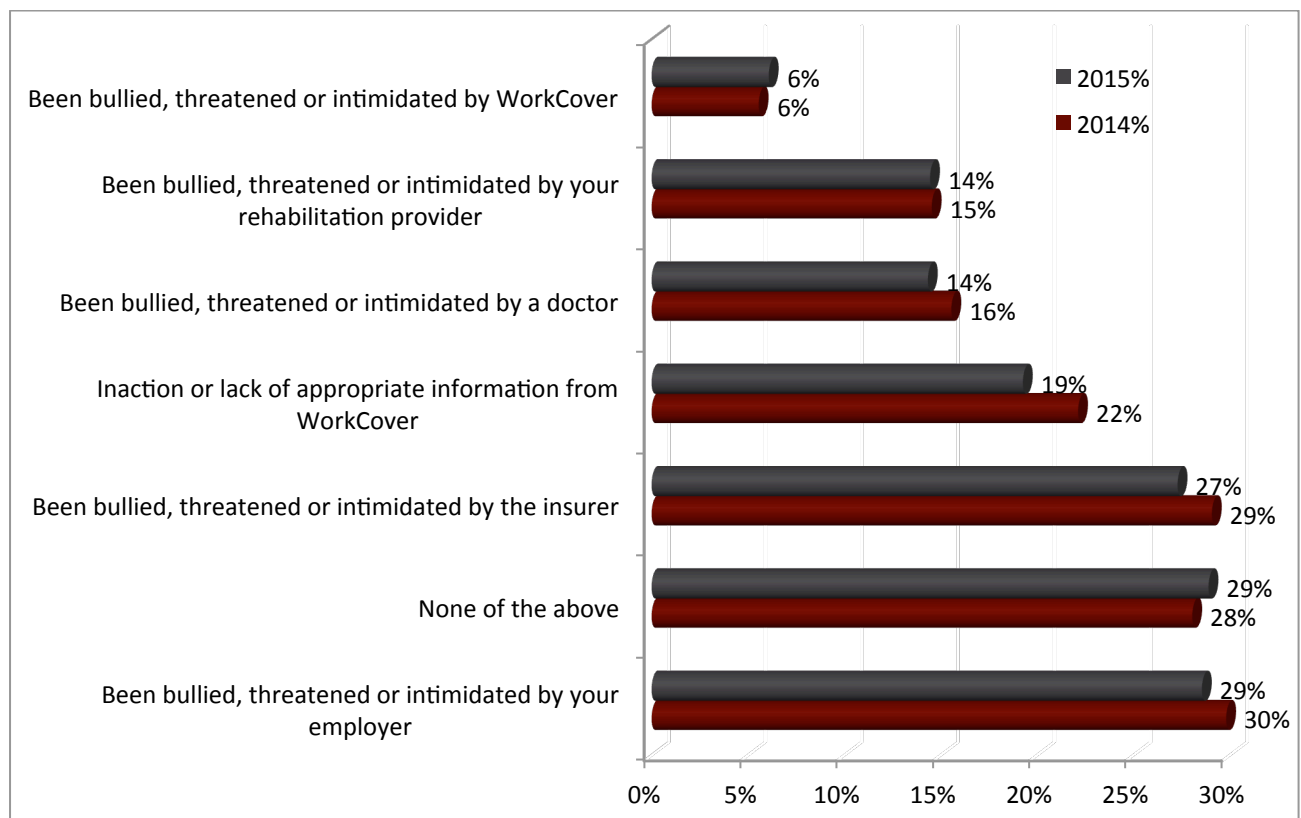
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4.2.2. How Injured Workers Have Been Impacted By Bullying

Figure 12 shows the bullying, threatening behaviour or intimidation workers have experienced since their injury, for those who were injured before the 2012 legislative changes. Encouragingly, the experience of bullying, intimidation or threatening behaviour has reduced slightly in the year from 2014 to 2015. This is not remarkable, as these workers were injured three or more years prior to completing the survey; it is expected that they would have less interactions with people who could bully them about their workers' compensation claim or injury by then.

FIGURE 12: BULLYING SINCE INJURY – INJURED BEFORE 19 JUNE 2012 (FOR THOSE WHO CLAIMED WORKERS COMP)



Survey question: Since your injury/claim, have you: (answer as many as apply)

Bullying, threatening behaviour and intimidation of workers has, however, increased noticeably for workers who were injured after the 2012 legislative changes, as shown in Figure 13. Workers who made a claim for workers' compensation in the last three years are increasingly likely to be bullied, threatened or intimidated by their employer, their rehabilitation provider, their doctor and WorkCover. This is a particularly concerning trend. The introduction of legislative changes to the scheme in 2012 that favoured employers and insurers appears to have done little to improve the treatment of injured workers. Indeed, the increasing incidents of workers experiencing secondary mental

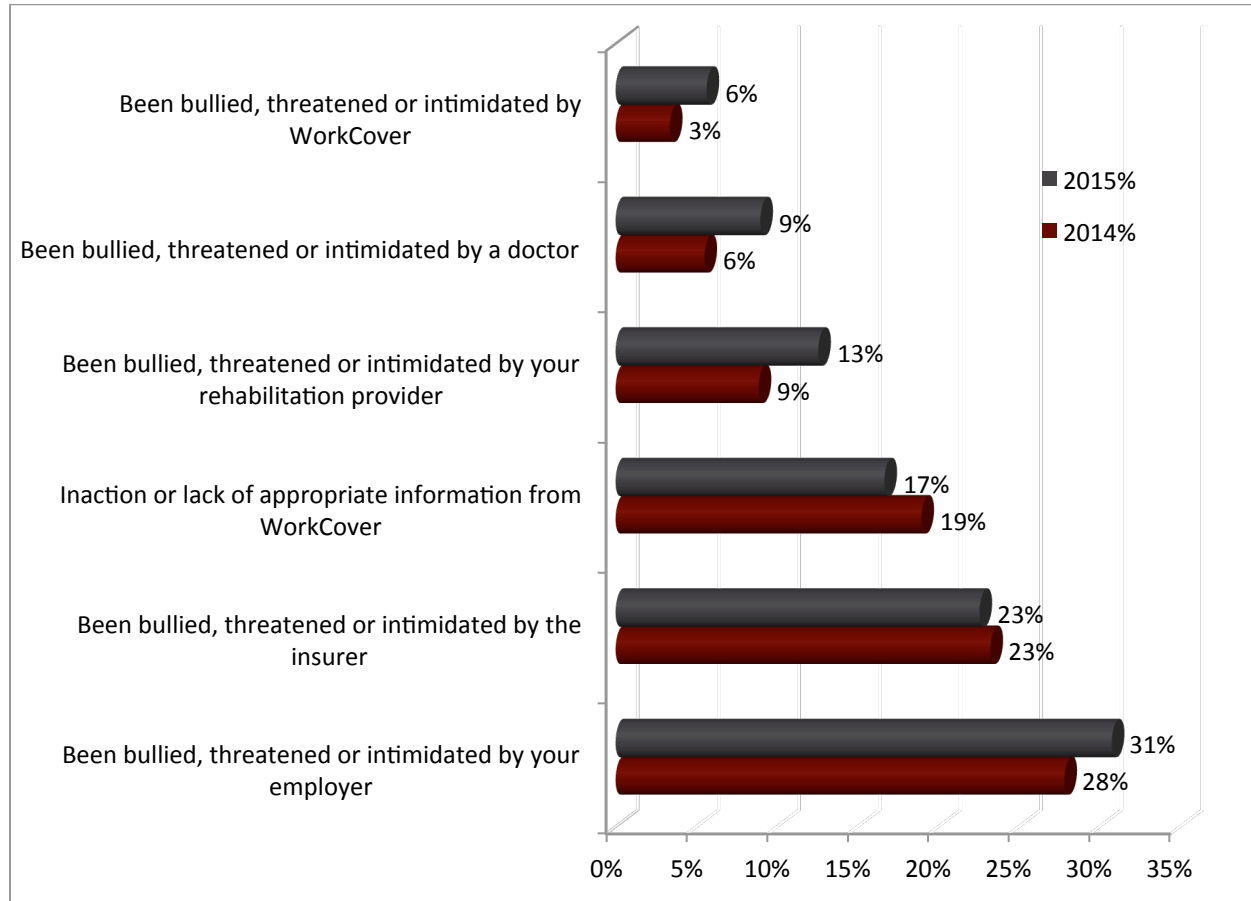
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health issues seen in Figure 11 is likely to be related to the increases in bullying and harassment of workers.

FIGURE 13: BULLYING SINCE INJURY – INJURED AFTER 19 JUNE 2012 (FOR THOSE WHO CLAIMED WORKERS COMP)



Survey question: Since your injury/claim, have you: (answer as many as apply)

A summary of the experiences of bullying, intimidation and threatening behaviour by workers who did or did not make a compensation claim for their workplace injury or illness is provided in Table 23.

Workers who made a claim for workers' compensation were demonstrably more likely to have experienced bullying, intimidation or be threatened by their employer, insurer, rehabilitation provider, or a medical professional. This indicates entrenched hostility toward claimants of workers' compensation, which, at best fails to support injured workers in their endeavours to return to work.⁶⁰ At worst, this hostility leads to secondary psychological injuries and even thoughts of suicide seen in Figure 11 earlier.

⁶⁰ Holley, Thornthwaite, O'Neill and Markey, 2015.

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TABLE 23: BULLYING OF INJURED WORKERS

	2014: % Suffered an injury or illness and made a claim for workers' compensation	2015: % Suffered an injury or illness and made a claim for workers' compensation	2014: % Suffered an injury or illness but did not make a claim for workers' compensation	2015: % Suffered an injury or illness but did not make a claim for workers' compensation
Been bullied, threatened or intimidated by your employer	29	29	18	14
Been bullied, threatened or intimidated by the insurer	27	26	2	8
Been bullied, threatened or intimidated by your rehabilitation provider	13	14	1	5
Been bullied, threatened or intimidated by a doctor	13	13	1	3
Been bullied, threatened or intimidated by WorkCover	5	6	2	5
Inaction or lack of appropriate information from WorkCover	21	18	4	10
Had communication difficulties with the insurer	37	35	5	4
None of the above	28	31	56	57

Survey question: Since you made your injury/claim, have you: (answer as many as apply)

4.2.3. Assistance with Work Capacity Decisions

In 2014 a total of 289 of the 592 respondents who have received weekly payments since 1 October 2012 have had a work capacity assessment or decision completed by their insurer. In 2015 this figure only changed slightly to 291 of the 592 respondents who had work capacity assessments or decisions completed. The second report in this series⁶¹ demonstrated that reviews of work capacity decisions are highly complex and legalistic, making them inaccessible to most injured workers. This means most workers feel they have little choice but to accept the unilateral decision of the insurer. The potential for paid legal assistance with reviews of the work capacity decision was introduced into legislation in September 2015. The details of how this paid assistance

⁶¹ Markey, Holley, Thornthwaite and O'Neill, 2014.

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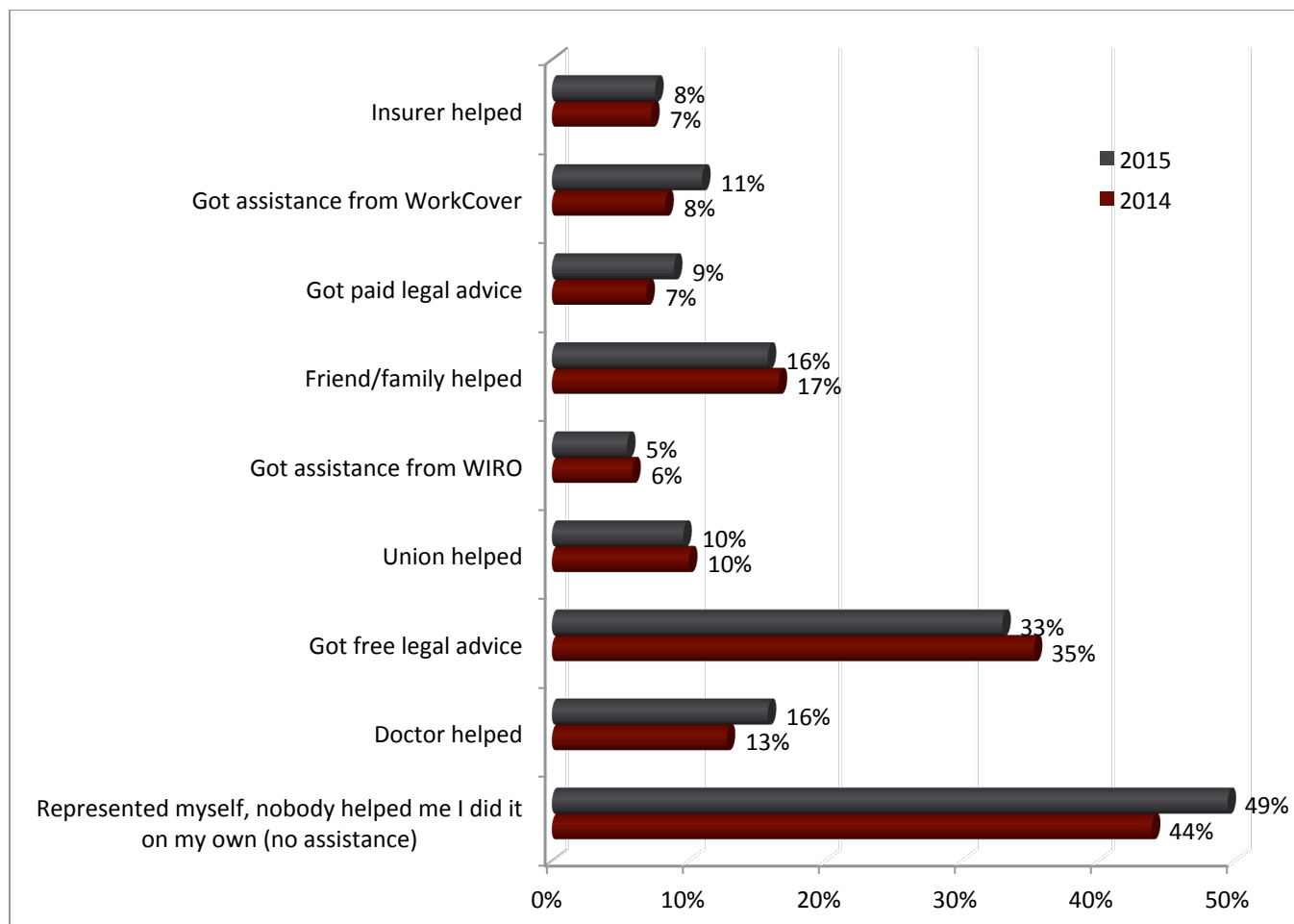
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are likely to be decided in 2016. It remains to be seen whether workers will realistically have access to appropriate legal assistance with these complex reviews, or if they will continue to predominantly do it themselves, as they did in 2014 and 2015 (see Figure 14).

FIGURE 14: ASSISTANCE WITH WORK CAPACITY ASSESSMENTS AND DECISIONS



Survey question: Did you get any of the following help you with your work capacity assessment/decision? (answer as many as apply)

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5. CONCLUSIONS

In 2013, the first of three planned reports for Unions NSW on the NSW Workers' Compensation System⁶² outlined how legislative amendments in 2012 had made the system inefficient, dysfunctional and morally impoverished. The first report also established benchmarks and an ongoing methodology for collecting evidence of how workers have been impacted by the 2012 changes to the workers' compensation legislation.

In 2014, the second report⁶³ examined the implications of the legislative changes. The second report drew on four parliamentary and government reviews of the 2012 legislative changes to the NSW Workers Compensation system as well as empirical data based on the benchmarks established in 2013. This report found that two years after the changes had been implemented more than 5,000 injured workers had had their weekly payment entitlements terminated. The exiting of workers from the scheme was hailed as a success, an indication that legislative amendments had encouraged injured workers to 'return to work'.⁶⁴ Whether those workers who exited the scheme were actually employed sustainably is unknown, as this data is not collected or reported on.

This is the third report in the series. This report outlines further changes made to the scheme in August 2015. These changes have restored a small number of entitlements that were unjustifiably removed in 2012.

Section 3 of this report reveals the findings of a study of twenty injured workers, and their experiences in attempting to return to work. The workers were employed in a variety of industries, suffered a range of workplace injuries and had different experiences in attempting to return to work. Only two of the twenty workers reported having employers who were compliant with legislative requirements to support their employees to remain meaningfully engaged with the workplace, and return to graduated suitable duties, appropriate to their injury.

Section 4 reported the data on key benchmarks used to monitor the impact of the legislative changes on injured workers, and the findings of the second annual Unions NSW survey.

The evidence presented in this report raises continuing serious concerns about the NSW Workers' Compensation scheme including:

- the incentives created by utilising overly simplistic measures of return to work outcomes;
- employers' minimal compliance with legal obligations to support injured workers to return to work;

⁶² Markey, Holley, O'Neill and Thornthwaite, 2013.

⁶³ Markey, Holley, O'Neill and Thornthwaite, 2014.

⁶⁴ Constance and Perrottet, 2014.

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- extensive cost-shifting to injured workers and their families, with detrimental financial impact;
- consistently, more than one-quarter of injured workers are bullied, intimidated or threatened by insurers – this is a grave concern given the power insurers now have over the whole decision-making process concerning compensation;
- entrenched discrimination against injured workers that exacerbates injuries, particularly psychological illnesses; and
- pressures placed on workers that lead to secondary psychological and physical injuries and the worsening of original injuries that can render workers unable to participate in the workforce in the long-term.

Regulatory changes introduced to the system in August 2015 have not changed the incentives for stakeholders to support, or at the very least not obstruct, injured workers from engaging with work that is meaningful, adequate, appropriate and sustainable for that worker. A thorough rethinking of government policy in this area is required in order to achieve the fundamental objectives of guaranteeing support for injured workers and promoting their recovery and sustainable return to work.

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