



**FINAL REPORT**

# Employment flexibility reforms

Better Regulation Statement

*Prepared for  
NSW Government  
28 May 2021*

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## Summary

The NSW Government implemented a number of changes to legislation and regulations in response to COVID-19. These had the various objectives of:

- better enabling businesses and employees to respond to the economic changes occurring as a result of COVID-19
- reducing pressure on public health systems that might need capacity to focus on COVID-19
- allowing for interactions consistent with social distancing, instead of in-person interactions.

While some of the measures introduced were only relevant to the COVID-19 pandemic circumstances, others could have longer term benefits. The NSW Government is now systematically reviewing regulatory changes made in response to COVID-19 to consider whether these should be continued, or whether regulations should revert to what was in place prior to COVID-19, or some other alternative. This process is being undertaken in stages. This document is the Better Regulation Statement covering changes made to employment flexibility. It includes changes to the following four Acts:

- *Long Service Leave Act 1955* section 15A & section 15B
- *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* section 118
- *Workers Compensation Act 1987* (and the subordinate *Workers Compensation Regulation 2016*) and the *Motor Accident Injuries Act 2017* (and the subordinate *Motor Accident Guidelines*).

The specific changes are detailed in table 1.

### 1 Description of changes made in response to COVID-19

Regulatory change	Description
Provide flexibility under Long Service Leave Act to assist businesses and their employees during COVID-19 pandemic: Leave flexibility	Allows an employer and a worker to agree to taking accrued leave and leave in advance in smaller blocks, such as one or two days a week. Allows an employer to give less than one month's notice to a worker to take their long service leave by agreement.
Expedited access to cleaners' LSL funds	The amendment enables workers who have left the industry to access payments without having to wait the usual 20 weeks period.
Workers compensation and CTP (motor accident injury) insurance – Evidence as to work capacity for second or subsequent certificates	Change to require second or subsequent certificate of work capacity provided by an injured worker (or certificate of fitness for work for a motor vehicle accident injury) to the insurer to be in a form approved by the State Insurance Regulatory Authority (SIRA); and given by a medical practitioner, or an appropriately qualified physiotherapist or psychologist treating the worker for the injury.

Sources: *Long Service Leave Act 1955* section 15A & section 15B; *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* section 118; *Workers Compensation Act 1987* (and the subordinate *Workers Compensation Regulations 2016*); *Motor Accident Injuries Act 2017*.

## *Process for evaluating regulatory changes*

The alternative regulatory changes have been evaluated through a process of considering the objectives of the regulation, alternative options to meet these objectives and evaluating these options both qualitatively and using cost benefit analysis. Stakeholder consultation has involved one-on-one discussions with key interest groups for each legislative change.

## *Summary of evaluation*

A summary of the evaluation of options is shown in table 2.

### **2 Summary of evaluation**

Regulatory change	Summary of evaluation
Provide flexibility under Long Service Leave Act to assist businesses and their employees during COVID-19 pandemic: Leave flexibility	<p>No need for legislative constraints regarding the duration of LSL or notice periods, as long as this is by agreement.</p> <p>Very large benefits to allow for flexible LSL, of \$1.9 billion in present value terms over 10 years.</p> <p>Stakeholder support for flexibility in how employees take LSL, as long as this is by agreement.</p>
Expedited access to cleaners' LSL funds	<p>Ensuring cleaners do not access LSL entitlements as a payout is consistent with the objectives of the scheme.</p> <p>A 20 week waiting period is excessive relative to employer obligations</p> <p>Very small net benefits from any of the options, with no waiting period having the highest net benefit, but having a small risk of behaviour inconsistent with the objectives of the scheme</p> <p>No stakeholder support to remove waiting period in full.</p>
Workers compensation and CTP (motor accident injury) insurance – Evidence as to work capacity/fitness for work for second or subsequent certificates	<p>Rationale for government to regulate who can issue certificates of work capacity/fitness for work</p> <p>Limited evidence on outcomes of COVID-19 amendments in NSW, but good evidence for physiotherapists in Victoria</p> <p>Estimated net benefit of \$8m to \$63 million from continuing with changes for physiotherapists. No evidence for psychologists</p> <p>Stakeholder support for continuing with the amendments, with a recognised need for evaluation in several years when the regulatory changes in both schemes have matured</p>

Sources: The CIE.

## *Recommendations*

Based on the evaluation of alternative options, the recommended options are set out in table 3.

### 3 Recommendations

Regulatory change	Recommendation
Provide flexibility under Long Service Leave Act to assist businesses and their employees during COVID-19 pandemic: Leave flexibility	The changes continue, but are further expanded to remove any requirements for how LSL can be taken, as long as this is with agreement between the employee and employer. This would include removal of any limitations around duration of leave and notice periods for leave and leave in advance.
Expedited access to cleaners' LSL funds	The changes are wound back partly, to allow for a 10 week period prior to being able to access a pro rata leave payout on permanently leaving the industry.
Workers compensation and CTP (motor accident injury) insurance – evidence as to work capacity/fitness for work for second or subsequent certificates	The changes to continue, as currently specified and an evaluation of these changes to be undertaken following further uptake of the use of the amendments, to enable a review within the next several years.

Sources: The CIE.

# 1 Introduction

This report is a Better Regulation Statement for the proposed extension of changes relating to employment flexibility made in the *COVID-19 Legislative Amendment (Emergency Measures) Act 2020*. The changes considered in this Better Regulation Statement are those that apply to the following four Acts:

- *Long Service Leave Act 1955* section 15A & section 15B
- *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* section 118
- *Workers Compensation Act 1987* (and the subordinate *Workers Compensation Regulations 2016*) and the *Motor Accident Injuries Act 2017* (and the subordinate *Motor Accident Guidelines*).

## **Background**

### ***COVID-19 Recovery Act 2021***

The NSW Government implemented a number of changes to legislation and regulations in response to COVID-19. These had the various objectives of:

- better enabling businesses and employees to respond to the economic changes occurring as a result of COVID-19
- reducing pressure on public health systems that might need capacity to focus on COVID-19
- allowing for interactions consistent with social distancing, instead of in-person interactions.

While some of the measures introduced were only relevant to the COVID-19 pandemic circumstances, others could have longer term benefits, suggesting that they should be evaluated to assess if there is merit in making them permanent. The NSW Productivity Commission 2020 Green Paper, and subsequent 2021 White Paper, recommended that these changes be evaluated, and retained permanently unless it is shown they do not deliver a net benefit.

This RIS considers three specific changes made. These are described in table 1.1. The purpose of the RIS is to consider whether these should be continued, continued in part or with adjustment or whether legislation should revert to that in place pre-COVID-19.

These changes were introduced via many different Acts and instruments. The *COVID-19 Recovery Act 2021*, and other changes to regulations and guidelines, extended the measures being evaluated.



The government is also evaluating the continuation of other changes made in response to COVID-19, and this report forms part of a broader suite of analysis. For example, evaluations are being conducted about continuation of changes to digital processes associated with conveyancing, digital justice reforms relating to use of pre-recorded evidence in criminal proceedings, and increased flexibility for licenced venues to provide takeaway and home delivery of alcohol.

### 1.1 Description of changes made in response to COVID-19

Regulatory change	Description
Provide flexibility under Long Service Leave Act to assist businesses and their employees during COVID-19 pandemic: Leave flexibility	Allows an employer and a worker to agree to taking accrued leave and leave in advance in smaller blocks, such as one or two days a week. Allows an employer to give less than one month's notice to a worker to take their long service leave by agreement.
Expedited access to cleaners' LSL funds	The amendment enables workers who have left the industry to access payments without having to wait the usual 20 weeks period.
Workers compensation and CTP (motor accident injury) insurance – evidence as to work capacity/fitness for work for second or subsequent certificates	Change to require second or subsequent certificate of capacity of work provided by an injured worker/ or a certificate of fitness to work provided by a an injured person to an insurer to be in a form approved by the State Insurance Regulatory Authority (SIRA); and given by a medical practitioner, or an appropriately qualified physiotherapist or psychologist treating the person for the injury.

Sources: Long Service Leave Act 1955 section 15A & section 15B; Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 section 118; Workers Compensation Act 1987 (and the subordinate Workers Compensation Regulations 2016).

### *Sunset of selected measures*

The COVID-19 measures considered in this RIS have current expiry times as shown in table 1.2.

### 1.2 Expiry of changes made in response to COVID-19

Regulatory change	Current expiry date
Provide flexibility under Long Service Leave Act to assist businesses and their employees during COVID-19 pandemic: Leave flexibility	31 March 2022
Expedited access to cleaners' LSL funds	31 March 2022
Workers compensation— evidence as to work capacity for second or subsequent certificates	17 April 2022
Motor vehicle insurance – evidence as to work capacity for second and subsequent certificates	31 March 2022

Sources: Long Service Leave Act 1955 section 15A & section 15B; Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010 section 118; Workers Compensation Act 1987 (and the subordinate Workers Compensation Regulations 2016); Motor Accident Guidelines (Version 7 – Effective from 1 March 2021).

### *Better Regulation requirements in NSW*

The Better Regulation requirements provide a formal framework to help policy-makers think through the impacts of regulatory proposals in a disciplined and comprehensive

way. This helps to ensure that policy decisions are based on best practice regulatory principles (see box 1.3) and the best available evidence, which may result in better policy outcomes for the community. The document itself which is produced as a result of this framework is a RIS. The *Guide to Better Regulation*<sup>1</sup> provides details on how to apply the Better Regulation principles.

### 1.3 Better Regulation Principles

**Principle 1:** The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.

**Principle 2:** The objective of government action should be clear.

**Principle 3:** The impact of government action should be properly understood by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.

**Principle 4:** Government action should be effective and proportional.

**Principle 5:** Consultation with business and the community should inform regulatory development.

**Principle 6:** The simplification, repeal, reform or consolidation of existing regulation should be considered.

**Principle 7:** Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

## *Structure of the report*

The remainder of the report is structured according to the set of regulatory changes that are being considered. That is:

- chapter 2 examines changes to flexibility of LSL arrangements, mainly allowing for taking LSL in multiple periods
- chapter 3 examines changes to the Cleaners Portable LSL scheme, and
- chapter 4 examines changes to which medical professionals can issue subsequent Certificates of Capacity as evidence for a Workers Compensation claim.

Within each of these chapters, we:

- set out the case for government action and the overarching objectives of the Act,
- consider what alternative options are available in addition to making permanent the Emergency Measures, and
- assess the impacts of each option.

<sup>1</sup> NSW Government, *NSW Guide to Better Regulation*, January 2019, p. 5, <https://www.treasury.nsw.gov.au/sites/default/files/2019-01/TPP19-01%20-%20Guide%20to%20Better%20Regulation.pdf>

## 2 Flexibility of long service leave (LSL) arrangements

### Background

The *Long Service Leave Act 1955* sets out the arrangements for accruing long service leave in NSW and how this can be used. This applies to long service leave (LSL) provided in the private sector. Most public service employees are covered by different arrangements but these are still underpinned by the *Long Service Leave Act 1955*.

Prior to COVID-19 amendments, long service leave was required to be taken in blocks and with one month's notice. The specific arrangements are set out in box 2.1. For example, if someone had 2 months of long service leave, they could take this as two blocks of one month each, or one block of 1.5 months and one of 0.5 months etc.

#### 2.1 Relevant provisions from the *Long Service Leave Act 1955*

##### 4 Long service leave

(3) Subject to subsection (5), where a worker has become entitled to long service leave in respect of the service of the worker with an employer, the employer shall give to the worker and the worker shall take the leave—

(a) ...

(b) in one continuous period or, if the worker and the employer so agree, in the following separate periods and not otherwise—

(i) where the amount of the leave is 2 months, in two separate periods,

(ii) where the amount of the leave exceeds 2 months and does not exceed nineteen and one-half weeks, in two or three separate periods,

(iii) where the amount of the leave exceeds nineteen and one-half weeks, in two, three or four separate periods—

...

(3A) If the employer and the worker so agree, a period of long service leave of not less than one month may be given by the employer, and taken by the worker, wholly or partly in advance before the worker has become entitled to any long service leave or to the amount so agreed to be given and taken. No such agreement shall, for the purposes of subsection (2) (A) (i) (B) or (C), be deemed to confer on the worker an entitlement to long service leave.

...

(10) The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken.

In response to COVID-19, amendments were made to the *Long Service Leave Act 1955* to enable greater flexibility in how businesses and employees could arrange to take LSL. The specific changes are set out in box 2.2. These allow for employees to take LSL in blocks as small as one day, and with less than one month's notice. The changes require agreement between employees and employers.

The intention of the changes was to provide flexibility under Long Service Leave Act to assist businesses and their employees during the COVID-19 pandemic, to enable better response to economic conditions such as a lack of work and shutdowns.

## 2.2 Provisions added to the *Long Service Leave Act 1955*

### 15A COVID-19 pandemic—special provisions

- (1) This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act.
- (2) An employer may, under section 4(3A), give a worker a period of long service leave that is less than one month if the worker agrees to that lesser period of leave.
- (3) An employer may, under section 4(10), give a worker less than one month's notice if the worker agrees to that lesser period of notice.

(4) In this section—

*prescribed period* means the period—

- (a) starting on the commencement of this section, and
- (b) ending on 31 March 2022.

### 15B COVID-19 pandemic—taking long service leave

- (1) This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act.
- (2) Despite section 4(3)(b), an employer and worker may agree to the worker taking long service leave during the prescribed period in 2 or more separate periods of not less than 1 day.
- (3) In this section—

*prescribed period* means the period—

- (a) starting on the commencement of this section, and
- (b) ending on 31 March 2022.

See below for sections 4(3), 4(3A) and 4(10).

Source: <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1955-038#sec.15A>

There is no systematic data on the use of the provisions. However, stakeholder discussions indicated that the provisions were widely used by businesses and employees in the initial stages of the pandemic, when working hours were reduced in some businesses.

### ***The need for government action***

This RIS is about whether there is a need for NSW Government action to determine how and when long service leave is taken more flexibly on a permanent basis. It is not considering whether there is a need for NSW Government action in relation to LSL in general, which is a much broader question.

### ***Overarching objectives of the Long Service Leave Act 1955***

LSL has its foundations in historical needs, and the purpose of LSL has evolved over time to meet evolving needs of employers and employees. For example, LSL originated to provide for leave for civil servants from the UK to return home for extended visits.<sup>2</sup>

Modern formulations of the benefits of LSL focus on four domains:

- LSL can alleviate the stress and mental health costs associated with employment, which has increased in duration and intensity over time
- LSL can provide for more family-friendly flexibility
- LSL can improve precautionary savings
- LSL can improve retirement savings, for which the age pension is insufficient

### ***Objective of the regulations on how LSL can be taken***

Regulation of how Long Service Leave can be taken could be justified where this assisted in achieving the overall objectives of LSL. For example, if leave taken in larger blocks was more likely to alleviate stress and mental health costs, or to provide for more family-friendly flexibility.

### ***Reason for changing regulation during COVID period***

During the lockdowns associated with COVID-19, there were many businesses that had less or no useful work for existing employees. Options for affected businesses included making the affected roles redundant, standing down workers without pay, or keeping employees working despite the lack of revenue.

Affected workers would be left without job security if their roles were made redundant. Further, it would be damaging to the long-term prospects of the business to make these jobs redundant.

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<sup>2</sup> See: Ferris, S., Parr, N. and Kyng, T., 2015, 'Long service leave: Past, present and future', *Australian Journal of Actuarial Practice*, Volume 3.

However, businesses could also encourage workers to take leave, which would ensure that they were paid, avoid compromising the financial prospects of the business (since entitlements had to be paid out eventually if the worker was with the same employer for a required amount of time) and keep workers matched to jobs to ensure a faster recovery after lockdowns ended. Annual leave entitlements are limited, and not all workers had annual leave available to be taken.

One type of leave that could be taken was Long Service Leave. Some barriers to taking Long Service Leave during lockdowns included:

- employers having to provide one month of notice for LSL to be taken, and
- restrictions on taking LSL in short periods such as one day.

Accordingly, there were potential benefits to emergency measures in facilitating LSL to be taken more flexibly during this period.

The reasons for more flexible LSL arrangements may or may not differ outside of COVID-19. Individuals or their employer's circumstances may still lead to situations where there are benefits from taking leave in different ways. More broadly, employees may find advantages in taking leave more flexibly for other reasons.

### *Objectives of the proposed reforms*

The objective of the proposed reform is to maximise the value of LSL entitlements, through enabling employees and employers to better use LSL entitlements in a way that meets the economic circumstances and their personal circumstances.

### *The base case and options*

The RIS is considering the following options:

- the base case — the changes to LSL flexibility expire after 31 March 2022 and the legislation reverts to pre-COVID-19 arrangements, which means that LSL can be taken:
  - in-advance for a period of not less than one month
  - with not less than one month's notice of a period of LSL
  - in one continuous period, except for the specific allowances of splits provided by the *Long Service Act 1955* (e.g. if LSL entitlement is 2 months, then can be split into two periods by agreement)
- Option 1 — the changes to LSL flexibility are made permanent, which means that LSL can be taken by agreement between the employer and employee:
  - in-advance for a period of less than one month
  - with less than one month's notice of a period of LSL
  - be taken in two or more separate periods of not less than one day
- Option 2 — as per option 1, but with a minimum duration of separate periods of LSL of not less than 1 week.

- Option 3 — that arrangements for taking leave are not specified in the legislation, except where agreement between an employee and employer does not occur.

The difference between Option 1 and Option 2 is the minimum period of LSL allowed, which is 1 day and 1 week respectively. The difference between Option 1 and Option 3 is that periods of less than one day could be taken if an employer and employee agree.

This RIS is not examining options for reforms to LSL more broadly that have been suggested in stakeholder consultations. These could include:

- allowing payment of LSL instead of taking leave, or double pay or half pay for LSL with employer and employee agreement
- allowing employees to choose whether to opt in to LSL or put into superannuation or wages
- developing a portable LSL scheme for all employees.

## *Evaluating the options*

### *Qualitative evaluation*

Qualitatively, there is strong support for extending the COVID-19 changes to provide greater flexibility in the use of LSL entitlements.

- Stakeholders are supportive of making the changes permanent
- Similar levels of flexibility exist across most other Australian jurisdictions and for public sector employees
- Greater flexibility in how leave is taken aligns more strongly to the objectives of LSL identified above, as set out further below
- Business surveyed by NSW Industrial Relations had positive views on their use and benefits of the change.

This evidence is set out in further detail below.

### *Stakeholder views*

The stakeholders that were consulted for this project covered employer and employee representative organisations. There was universal support for continuing the changes that were put in place in response to COVID-19. The key stakeholder feedback was that:

- LSL should be allowed to be taken in a way that the employee considers is for their benefit, as they are best placed to consider how leave can meet their personal circumstances. Transition to retirement was noted as one particular example where shorter LSL blocks is very useful
- Some employers would prefer greater flexibility in LSL, as shorter periods can be less disruptive, as long as taking LSL is by agreement between an employee and employer
- the *Long Service Leave Act 1955* is archaic, not in plain English and lacking clarity. This leads to disputes. For example, about when LSL is able to be taken, can be directed by an employer and when an employee is eligible for pro rata LSL, and

- employee groups considered that LSL should not be able to be taken as a payment, as the objective is to provide for leave rather than additional financial compensation. However, employer groups would be willing to extend flexibility to taking LSL as a financial payment.

While there is considerable consensus that employees and employers should be able to take LSL more flexibly by agreement, there is disagreement about other aspects of LSL.

### *Other jurisdictions and employee types*

The *Long Service Leave Act 1955* is more restrictive (prior to the COVID-19 amendments) than arrangements in other states and for employees covered under other instruments.

- A summary of arrangements for taking leave across other jurisdictions is shown in table 2.3. NSW is one of the least flexible in how leave can be taken by employees.
- In NSW, public sector employees have considerable flexibility in taking long service leave. This includes being able to take leave in as short a period as desired (e.g. one day) and being able to take leave at half pay or double pay.<sup>3</sup> Note that there are many other differences in LSL arrangements across jurisdictions, such as minimum service years and amount of leave.

The greater flexibility in how long service leave may be taken has not been a noted issue in these other jurisdictions and contexts.

## 2.3 Taking long service leave in different Australian jurisdictions

Jurisdiction	How leave is taken
NSW	Maximum of two periods by agreement (meaning blocks of ~one month minimum in practice if split equally)
Victoria	Not less than one day by agreement and can take at half pay (double leave) by agreement
Queensland	Any duration by agreement
Western Australia	Not less than one week by agreement and may be cashed out by agreement
South Australia	Any duration by agreement
Tasmania	Maximum of two periods by agreement
ACT	Any duration
Northern Territory	Minimum of four weeks

Source: Victoria: [https://business.vic.gov.au/\\_\\_data/assets/pdf\\_file/0007/1748860/Comprehensive-Guide-to-the-Victoria-Long-Service-Leave-Act-2018.pdf](https://business.vic.gov.au/__data/assets/pdf_file/0007/1748860/Comprehensive-Guide-to-the-Victoria-Long-Service-Leave-Act-2018.pdf); Queensland: <https://www.business.qld.gov.au/running-business/employing/employee-rights/long-service-leave/cashing-in>; WA: <https://www.commerce.wa.gov.au/labour-relations/long-service-leave-0>; South Australia: <https://www.safework.sa.gov.au/workers/wages-and-conditions/long-service-leave>; Tasmania: <https://worksafe.tas.gov.au/topics/laws-and-compliance/long-service-leave>; ACT: [https://www.worksafe.act.gov.au/\\_\\_data/assets/word\\_doc/0006/1673961/Long-Service-Leave-Guidance-Note.docx](https://www.worksafe.act.gov.au/__data/assets/word_doc/0006/1673961/Long-Service-Leave-Guidance-Note.docx); NT:

### *Alignment of options to objectives*

Consideration of alternative options for duration of LSL against the objectives of LSL set out above is shown in table 2.4.

<sup>3</sup> For example *Teaching Service Act 1980*.



- More flexibility is assessed as being better aligned to family-friendly flexibility, as family needs could include working part time or taking LSL to coincide with school holidays.
- It is not clear if more or less flexibility is associated with different stress or mental health outcomes. If employees are able to address their own needs best then more flexibility would be better aligned.
- The duration of LSL is not relevant for precautionary savings and retirement savings, as in these situations LSL is not taken but is saved up.

#### 2.4 Alignment of options to objectives of LSL

Option	Stress and mental health	Family-friendly flexibility	Precautionary savings	Retirement savings
Base case	Not clear if shorter or longer durations are better for stress and mental health. Not well aligned if employees are in best place to understand their own mental health needs.	Not well aligned, as cannot use LSL for some family friendly changes, such as working four day weeks.	No impact as LSL not taken	No impact as LSL not taken
Option 1	Not clear if shorter or longer durations are better for stress and mental health. Well aligned if employees are in best place to understand their own mental health needs.	Well aligned	No impact as LSL not taken	No impact as LSL not taken
Option 2	Not clear if shorter or longer durations are better for stress and mental health. Not well aligned if employees are in best place to understand their own mental health needs.	Not well aligned, as cannot use LSL for some family friendly changes, such as working four day weeks.	No impact as LSL not taken	No impact as LSL not taken
Option 3	Not clear if shorter or longer durations are better for stress and mental health. Well aligned if employees are in best place to understand their own mental health needs.	Most aligned, as employees can best determine their flexibility.	No impact as LSL not taken	No impact as LSL not taken

Source: The CIE.

#### *Survey undertaken by NSW Government*

NSW DPC undertook a survey of employers in relation to the changes to the Long Service Leave Act 1955. This was sent out via an Employee Relations newsletter and attendees at several information sessions. In total, 96 responses were received from almost exclusively employers and their associates (bookkeepers & accountants) of small to medium sized businesses.

The survey questions and responses are shown in table 2.5. This indicates a very positive response to the changes, albeit the survey is not representative of businesses in general.

## 2.5 Results of DPC survey

Question	Response
Are you aware of the temporary changes made to the Long Service Leave Act 1955 in 2020/21 to help promote flexibility in NSW workplaces?	83% of respondents stated they were aware of the temporary changes made to the Long Service Leave Act
If you are aware of the temporary changes to Long Service Leave, did you use these provisions?	53% of respondents stated they had used the provisions under the Long Service Leave Act that had been temporarily amended.
Were the temporary changes to Long Service Leave helpful to your business during the COVID-19 pandemic?	73% of respondents stated they had found the temporary provisions under the Long Service Leave Act to be helpful to their business during the COVID-19 pandemic

Note: Not all people responded to all questions.

Source: NSW DPC.

## Quantitative evaluation

The types of costs and benefits of the changes made to LSL are shown in table 2.3.

## 2.6 Costs and benefits for Long Service Leave flexibility reforms

Benefits	Costs
Employees gaining a higher value from leave because they have greater flexibility as to when it can be taken to meet their own needs	Costs to employees if leave is coerced rather than agreed
Smaller business disruption costs where leave is taken in a way that reduces costs for temporary staffing changes (e.g. search, training for temporary staff as compared to overtime costs for meeting shorter term gaps)	Changes to administrative costs for businesses of more flexible leave arrangements (e.g. additional record keeping)
Allowing for phased retirement, such as using LSL to move to part-time load for older workers	Businesses paying out LSL earlier (but at a lower rate) because of more immediate use by employees
More immediate use of LSL because of expanded ability to use it (i.e. employees get benefits earlier, although at a lower rate)	

Source: The CIE.

There is little systematic data on LSL entitlements and use across NSW or Australia. The last time data was collected by the ABS was in 1990.<sup>4</sup> To assess the benefits and costs of more flexible leave arrangements, we have derived an estimate of the long service leave accrued (and expected to be eventually used) in any given year, based on hour worked and wages for full-time employees and removing a share of workers that are in industries not generally covered by the *Long Service Act 1955*, such as the public sector. This suggests LSL entitlements accrued (and expected to be eventually used) are ~\$1.8 billion per year

<sup>4</sup> ABS 1990, *Annual leave and long service leave taken, Australia, May 1988 to April 1989*, Catalogue no. 6317.0, [https://www.ausstats.abs.gov.au/ausstats/free.nsf/0/5E7072594A344EF2CA25848D001386AF/\\$File/63170\\_May88-Apr89.pdf](https://www.ausstats.abs.gov.au/ausstats/free.nsf/0/5E7072594A344EF2CA25848D001386AF/$File/63170_May88-Apr89.pdf).

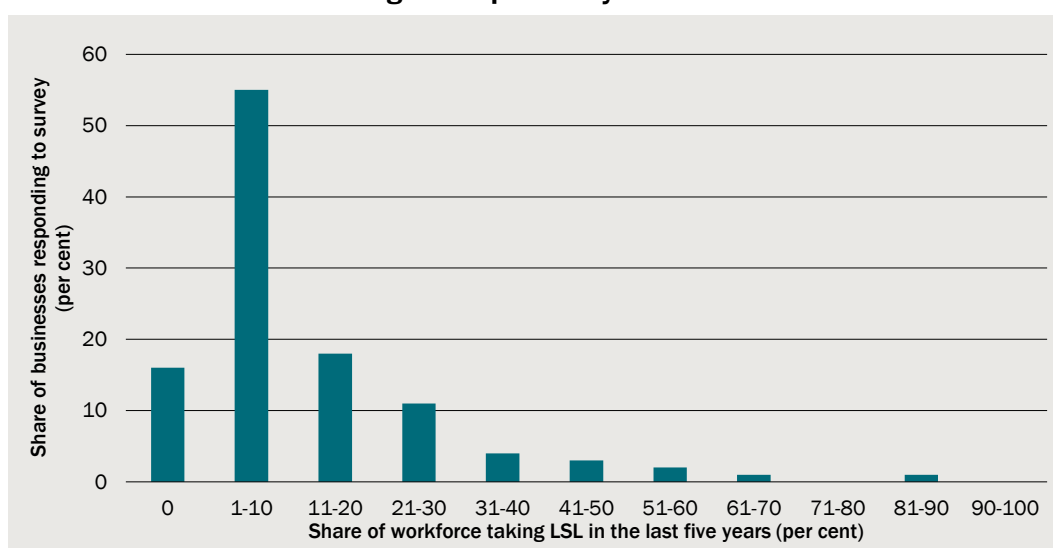
in NSW. This is 0.6 per cent of the overall compensation of employees in NSW in 2019/20. This seems reasonable given that:

- LSL is accrued at a rate of 1.7 per cent of wages
- not all LSL accruals become realised LSL, because employees change jobs prior to obtaining LSL, and
- not all employees are subject to the provisions in the *Long Service Act 1955* around how LSL is taken, such as public sector employees.

In terms of how LSL is taken, there is no systematic data available since 1990.<sup>5</sup> In 1990, a small amount of people who took LSL took less than one week (1 per cent), almost 30 per cent took 1-2 weeks, 32 per cent took 3-4 weeks. The remainder (37 per cent) of people who took LSL took five weeks or more. It was not obvious how many people were not using LSL. About 10 per cent of people eligible to take LSL, based on having more than 10 years service, used LSL in a given year.

The Australian Human Resources Institute gathered data from businesses about how much of their workforce were taking LSL. For most businesses 1-10 per cent of their workforce had taken LSL in the last five years (chart 2.7). This reflects that many people would not be eligible, and that some of those not eligible would not take LSL.

## 2.7 Share of workforce taking LSL in past five years



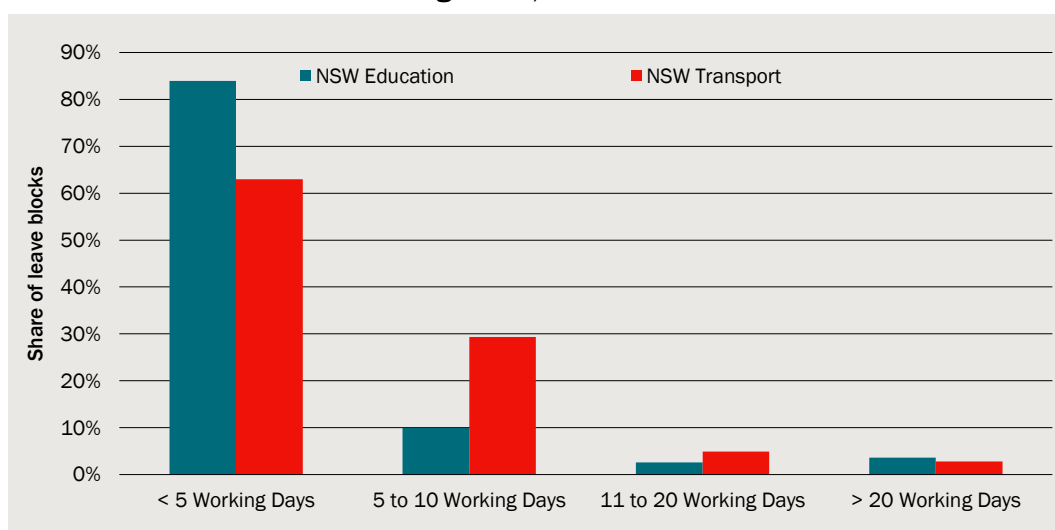
Data source: Australian Human Resource Institute 2016, submission to the review of Victoria's long service leave laws, <https://www.ahri.com.au/media/2699/long-service-leave-submission.pdf>.

We have also obtained data from NSW Government agencies about how their staff use LSL. This is for the 2020 calendar year for Education and May 2020 to April 2021 for Transport. Note that NSW Government staff can take LSL in quarter day blocks and as half pay or double pay.

<sup>5</sup> ABS 1990, *Annual leave and long service leave taken, Australia, May 1988 to April 1989*, Catalogue no. 6317.0, [https://www.ausstats.abs.gov.au/ausstats/free.nsf/0/5E7072594A344EF2CA25848D001386AF/\\$File/63170\\_May88-Apr89.pdf](https://www.ausstats.abs.gov.au/ausstats/free.nsf/0/5E7072594A344EF2CA25848D001386AF/$File/63170_May88-Apr89.pdf).

- Most LSL was taken as leave rather than as a payout (around 90 per cent of staff receiving LSL in both organisations were receiving it as leave rather than as a payout).
- **The majority of LSL blocks taken are for less than one week** and very little LSL was taken in blocks of over 4 weeks (chart 2.8)
- LSL was often taken at half pay, but seldom at double pay. Most leave appears to be taken as at normal pay.

## 2.8 LSL from NSW Government agencies, 2020



Note: 2020 calendar year for Education and Ma 2020 to April 2021 for Transport.

Data source: NSW Transport and NSW Education.

Note that the way public sector employees use LSL may not be representative of what employees covered under the *Long Service Leave Act 1955* would choose to do. The data also covers a period over which COVID-19 lockdowns occurred, which may have seen different forms of leave taken than usual. However, this clearly shows that where flexibility is available, it has been used extensively.

Also note that the share of hours of LSL taken at smaller blocks is not as high as the share of LSL periods, because smaller blocks only use a smaller set of leave. If we make adjustments for this, and average across agencies:

- 10 per cent of leave is taken as a payout
- 16 per cent is taking in blocks of more than four weeks
- 37 per cent is taken in blocks of 1-4 works, and
- 37 per cent is taken in blocks of less than one week.

### *What is the value to employees of flexibility?*

That employees are choosing to use LSL in ways that are more flexible and this is being supported by employers is evidence that both employees and employers consider there to be benefits in doing so. To estimate the size of these benefits, we have reviewed studies on the value of flexibility to employees and employers. This is set out below.

There is a large literature on the value of employment flexibility as a general proposition, although in few instances does this get to the point of estimating a monetary value.

- The UK Department of Business, Innovation and Skills surveyed the literature on the *Costs and Benefits to Business of Adopting Work Life Balance Working Practices* in 2014.<sup>6</sup> This was much broader than just leave practices, and found benefits such as productivity benefits, reduced absences and reduced recruitment costs.
- A 2014 Dutch willingness to pay study found that people were on average willing to pay US\$403 per month for high flexibility in terms of choosing work hours from day to day.<sup>7</sup> As a proportion of the average wage, this is equivalent to 6 per cent. The value to those taking up flexibility will be higher than the average willingness to pay. The study also found substantial differences in the value of flexibility across respondents.
- Another Dutch study on trading time and money examined decisions on leave and wages, as part of flexible benefit plans.<sup>8</sup> Almost half of people in the government department examined had chosen to change their plan through flexibility. While both men and women took up the option of flexibility, women's choices were more easily linked to their particular circumstances. Employees were more likely to sell time (taking reduced leave) than to buy time (to gain more leave).
- Using an industry where there is substantial flexibility, Uber drivers, Chen et al 2020 find that there is substantial variation in an individual's reservation wage (what they require to work at a particular time) across time.<sup>9</sup> The inverse of this is that leave would be more or less valuable at different times. They find that fairly minimal restrictions on the hours of work choice within a week would lead to a 5 per cent increase in the required reservation wage.
- In an earlier paper, Chen et al 2017 found that requiring Uber drivers to commit to a monthly schedule, rather than being fully flexible in when they chose to drive, would reduce the benefits to drivers from 40 per cent of their wages to close to zero.<sup>10</sup> They

<sup>6</sup> UK Department of Business, Innovation and Skills 2014, *Costs and Benefits to Business of Adopting Work Life Balance Working Practices*, June, <https://westminsterresearch.westminster.ac.uk/item/q4774/costs-and-benefits-to-business-of-adopting-work-life-balance-working-practices-a-literature-review>.

<sup>7</sup> Eriksson, Tor & Kristensen, Nicolai. (2014). Wages or Fringes? Some Evidence on Trade-Offs and Sorting. *Journal of Labor Economics*. 32. 10.1086/676662.

<sup>8</sup> Hillebrand et al 2009, "Trading Time and Money: Work and Household Effects on Employee participation and Leave Choices in a Flexible Benefit Plan" in Lippe, A.G. van der; Peters, C.P. (ed.), *Competing Claims in Work and Family Life*, pp. 175-194, <https://repository.ubn.ru.nl/handle/2066/46346>.

<sup>9</sup> Chen, Kuan-Ming and Ding, Ning and List, John A. and Mogstad, Magne, Reservation Wages and Workers' Valuation of Job Flexibility: Evidence from a Natural Field Experiment (September 8, 2020). University of Chicago, Becker Friedman Institute for Economics Working Paper No. 2020-124, Available at SSRN: <https://ssrn.com/abstract=3686752> or <http://dx.doi.org/10.2139/ssrn.3686752>.

<sup>10</sup> Chen, M. Keith, Judith A. Chevalier, Peter E. Rossi, and Emily Oehlsen 2019, The Value of Flexible Work: Evidence from Uber Drivers, *Journal of Political Economy* 2019, 127:6, 2735-2794.

found that even restrictions on hourly choice would substantially reduce the benefits to Uber drivers.

These studies suggest that we could expect flexibility to be associated with potentially large gains in the value to employees using their LSL more flexibly, ranging from 10 per cent to 40 per cent. We use these as foundation points for the analysis, taking the mid-point of 25 per cent as the highest impact that could occur from restricting how LSL can be taken.

The value of restricting someone who would choose to take half a day, to taking a full day will be smaller than the impact if they are restricted to take a full month. To account for this, we apply the percentage impacts shown in table 2.9. These are scaled down from the 25 per cent impact of going from full flexibility to a 4 week minimum.

## 2.9 Costs of restrictions on use of LSL applied as a share of wages

Preferred leave	Restriction applied			
	No restriction	One day minimum	One week minimum	4 weeks minimum
	Per cent	Per cent	Per cent	Per cent
Less than one day	0	5	10	25
Less than one week	0	0	10	25
One week to four weeks	0	0	0	15

Source: The CIE.

We apply the cost of the restrictions shown in table 2.9 to the annual LSL entitlement impacted by the *Long Service Leave Act 1955* of \$1.8 billion per year, and to the shares of LSL expected to be taken at different levels of duration. For example, the cost of the current legislative restriction is estimated at \$270 million per year, as shown in table 2.10.

- The share of LSL used with no restrictions is based on data from NSW public sector employees
- The value of LSL in total is \$1.8 billion, and this is allocated to each different duration of LSL
- The cost of the restrictions as a share of wages is from table 2.9
- The cost of restrictions (\$m) is the value of LSL multiplied by the cost of restrictions as a share of wages.

## 2.10 Cost of current legislative restrictions on the use of LSL

Duration of LSL	Share of LSL used with no restrictions	Value of LSL	Cost of restriction, as a share of wages	Cost of restriction
	Per cent	\$m	Per cent	\$m
Less than one day	2	37	25	9
Less than one week	35	633	25	158
One week to four weeks	37	686	15	103
More than four weeks	16	290	0	0

Duration of LSL	Share of LSL used with no restrictions	Value of LSL	Cost of restriction, as a share of wages	Cost of restriction
	Per cent	\$m	Per cent	\$m
Payouts	10	187	na	na
Total	100	1833		270

Source: The CIE.

This calculation is done for each of the different options.

### *What is the value to employers of flexibility?*

For employers, benefits can flow on from employee benefits, through more productive workers. There are also more direct benefits and costs to employers that result from different durations of LSL. For example:

- if a staff member takes a month of LSL, this may require some temporary staffing to fill the position, handover of ongoing work
- if a staff member takes LSL at one day per week, then a business may be able to cover with overtime from others, with casual staff or not replace at all. There would likely not be a need for handover of ongoing work.

These benefits and costs will differ across particular businesses. Because the LSL arrangements are by agreement, where there is expected to be high costs from a flexible LSL pattern, such as taking one day LSL per week, then employers could simply not agree.

Nous examined the benefits and costs of more flexible work practices for three Victorian Government agencies.<sup>11</sup> It found net positive impacts of 0.21 per cent for Wannon Water, 2.25 per cent for Department of Environment, Land, Water and Planning and 3.92 per cent for Mercy Health. This included:

- benefits related to productivity, reduced absenteeism, increased staff retention and reduced recruitment costs
- costs related to additional IT, onboarding, backfill for extended leave and management costs.

The flexible work practices are a much larger set of changes than providing flexibility in LSL. More flexible use of LSL is also more likely to have avoided costs in relation to additional IT, onboarding, backfill for extended leave and management costs, as opposed to flexibility in general.

There may be administrative costs for business of more flexible LSL. However, leave/payroll systems are generally set up in a way that we expect this to be close to zero. Where there are limitations on payroll systems, employers would be unlikely to agree to leave (such as less than one day).

<sup>11</sup> Nous 2018, *Flexible work, good for business?*, Modelling the bottom line impact of flexible work for the Office of Prevention and Women's Equality (OPWE), [https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0031/548581/Final-For-public-release-Report-Flexible-work-return-on-investment.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0031/548581/Final-For-public-release-Report-Flexible-work-return-on-investment.pdf).

We have not quantified the benefit to employers, given that this will vary considerably. This means our estimates of benefits are conservative, as the evidence strongly supports the view that employers would be positively impacted, as long as the taking of LSL is by agreement of the employer and employee.

### *Summary of costs and benefits*

A summary of the costs and benefits of the options is shown in table 2.11. This is based on data on how LSL is used from the Department of Transport and Department of Education. Note that we do not know how much LSL is in blocks of less than one day and have assumed this is 2 per cent of leave. These results indicate that **more flexibility is associated with very large additional benefits**. The exact magnitude is uncertain, but we expect is in the order of \$270 millions of dollars per year.

There is only a small difference in net benefits of Option 3 (no restrictions) versus Option 1 (minimum of one day), with the former having a net benefit that is \$13 million higher over 10 years. A restriction of one week minimum (Option 2) would be substantially more costly than having no restrictions.

We also note that this is based on employers and employees using LSL as specified in the Long Service Leave Act 1955. Some consultations suggested businesses may disregard the requirements where they and the employee agree on a different way of taking leave anyway. However, this does leave an employer open to risk of retrospective claims that LSL should not have been able to be taken as allowed.

### **2.11 Costs and benefits of options relative to the base case**

	Option 1	Option 2	Option 3
	One day minimum	One week minimum	No restrictions
Benefit to employees (\$m/year)	269	203	270
Benefit to employees (\$m, present value over 10 years)	1 886	1 429	1 899
Benefit to employers	Not measured	Not measured	Not measured

Note: Using a 7 per cent social discount rate.

Source: The CIE.

## ***Conclusion and preferred option***

There is not a clear reason for the NSW Government to continue to impose legislative constraints about how long service leave can be taken, where an employer and employee can agree as to how it can be taken. The pre-COVID-19 requirements to specify that LSL has to be taken in blocks and with one month's notice can be removed and LSL should be able to be taken in a way that suits the needs of employees and employers through agreement.

The qualitative evidence available indicates:



- the changes made in response to COVID-19 have been used by employees and businesses to enable more flexible response to the economic and workplace conditions
- stakeholders are supportive of making the changes permanent, and flexibility will allow employees to use LSL in ways to meet their own circumstances, such as for family commitments and for transition to retirement
- there is already flexibility across most other Australian jurisdictions and for public sector employees and no evidence of risks emerging as a result of this, and
- greater flexibility in how leave is taken aligns more strongly to the objectives of LSL outlined above, particularly around family friendly flexibility.

The quantitative evidence indicates that there are material benefits from greater flexibility in taking LSL and no costs have been identified in consultations. Based on our estimates, removing all restrictions on the duration of LSL and notice requirements would have benefits of \$270 million per year. There is some uncertainty in these estimates due to data limitations, but there is a high degree of confidence of significant positive benefits.

There are other options that could impose limits on duration such as being no less than one day (Option 1) or not less than one week (Option 2). Option 1, which is what has been implemented during COVID-19, is unlikely to impose much of a cost relative to full flexibility, while Option 2 would impose costs. However, there appears to be no clear need for the current legislative constraints on how LSL is taken, and we therefore consider the preferred option is Option 3 (no regulation of duration of LSL or notice periods, where these are determined by agreement). There may be circumstances where some employers consider it to be administratively cumbersome to allow LSL of less than one day. If payroll systems do not allow this. Because the LSL is to be agreed, these employers do not have to agree to LSL where it is administratively difficult.

### 3 *Expedited access for cleaners to LSL*

#### ***Background***

The *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* provides workers in the contract cleaning industry with portable LSL entitlement. Portable entitlements are those that move with the employee, meaning that the LSL entitlement of each worker is calculated based on their duration of accredited industry service rather than service with one employer.

The Act provides for registration of eligible employers and workers, including both employees and contractors. Each worker accrues LSL entitlements based on recognised engagement periods with one or more industry employers. The costs of the scheme are financed by a levy on registered employers equal to 1.7 per cent of registered worker remuneration.

A LSL entitlement is provided to a worker of 8.67 weeks after 10 years of accredited industry service. A worker is entitled to a pro rata LSL payment instead of leave if and only if:

- the worker has at least five years' credited service, and
- the worker has permanently left the industry.

Workers are not able to receive pro rata payments instead of LSL in any circumstances except their permanent departure from the industry.

Prior to the *COVID-19 Legislative Amendment (Emergency Measures) Act 2020*, s63 required that the worker must not have worked in the industry for 20 weeks in order to be able to receive their pro rata payment (see box 3.1). That is, a worker has to wait for 20 weeks once they exit the industry in order to receive their LSL payment.

As a result of the *COVID-19 Recovery Act 2021*, the 20-week requirement does not apply until 31 March 2022.

### 3.1 Relevant sections of the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*

#### 63 Entitlement to pro rata payment instead of leave in limited circumstances

(1) This section applies to a registered worker for the contract cleaning industry who has 5 years of recognised service if—

- (a) the worker has permanently left the industry, and
- (b) 20 weeks have passed since the day on which the worker permanently left the industry, and
- (c) the worker has not been credited with service in the workers register for any of the days in the 20-week period.

(2) If the Corporation is satisfied that this section applies to the worker, the worker is entitled to payment instead of long service leave for the number of weeks of long service leave worked out in accordance with the long service leave formula.

#### 118 Special provision for pro rata payment during COVID-19 pandemic

- (1) Section 63(1)(b) and (c) do not apply during the prescribed period.
- (2) During the prescribed period, a reference in this Act to section 63 is to be read as a reference to section 63 as modified by this section.

(3) In this section—

*prescribed period* means the period—

- (a) starting on the commencement of this section, and
- (b) ending on 31 March 2022.

Source: <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2010-122#sec.6>

## *The need for government action*

The rationale for requiring a waiting period for cleaners who exit the industry reflects the overarching rationale for LSL. In the sections below, we discuss the objectives of the LSL in general, and how the 20 week period fits within this.

### *Overarching objectives of NSW Government regulation of LSL for cleaners*

The Statutory Review of the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* found that the principal purpose of the Act is “to establish a scheme which provides workers in the NSW contract cleaning industry with portable [LSL] entitlements.” This is also reflected in the second reading speech, which indicated that the Act was intending to address the following issues:

- a statutory portability scheme addresses the issue that accrued LSL was resetting to zero following the expiration of a cleaning contract, even if subsequent contracts were with the same employer
- an education and compliance regime will deter non-compliant operators and level the playing field
- leave, rather than a payment, addresses the barriers to accessing leave faced in the contract cleaning industry.

### ***Objective of the 20-week requirement***

The objective of having a period of time before accessing LSL as a payout is to reduce the likelihood of people claiming a LSL payout while actually remaining in the industry. For example, if there was no waiting period, a cleaner could indicate that they have left the industry, claim their LSL, and then continue working in the industry. This would be counter to the overall objectives of the scheme because the scheme is intended to provide leave, not financial payouts.

### ***Problem addressed by the proposed option***

The removal of the 20 week requirement for accessing LSL was introduced in response to covid-19 because of an expectation that there could be cleaners exiting the industry facing financial hardship. Allowing these cleaners to access their payouts more rapidly could alleviate this financial hardship.

There were cleaners who accessed their LSL entitlement prior to 20 weeks. However, as set out further below, the numbers were fairly low, and many of the recent claims are for people who have not worked in the industry for several years. We expect that this reflects the management of COVID-19 in Australia and NSW, and the increased demand for cleaning services as a result of COVID-19.

Queensland and the ACT also enacted measures during COVID-19. The ACT measure was the same as the NSW measure. The Queensland measure allowed for use of LSL by cleaners previously unable to use it, such as who had not accrued sufficient leave as yet.

### ***The base case and options***

There are a number of alternative ways that the LSL Scheme could ensure that cleaners do not claim LSL when they are not actually leaving the industry. The options examined in this RIS are:

- The base case — after 31 March 2022, the legislation reverts to pre-COVID-19 arrangements. This means that the requirement for 20 weeks out of the industry before a worker is eligible for a pro rata payment is reinstated.
- Option 1 — the removal of the 20-week requirement is made permanent.

- Option 2 — a requirement is permanently instituted that requires cleaners to have been out of the industry for 10 weeks before a worker is eligible for a pro rata payment.
- Option 3 — the removal of the 20-week requirement is made permanent, but a contract cleaner who accesses a payout is not allowed to re-enter the LSL scheme within a set period such as one year.

### *Evaluating the options*

A summary of the expected costs and benefits of the options relative to the base case are shown in table 4.1. The options will generally provide a **benefit to cleaners who exit the industry**, because they can access their payout earlier. However, there may also be unintended effects because some cleaners access their pay-outs **when they do not leave the industry**.

### **3.2 Costs and benefits for cleaners' Long Service Leave reforms**

Option	Benefits relative to the base case	Costs relative to the base case
Option 1 – remove 20 week waiting period	Cleaners exiting the industry receive a payment up to 20 weeks earlier Cleaners not exiting the industry may receive payment earlier, and then continue in industry, if they consider this to be in their interest	Long Service Corporation make payments up to 20 weeks earlier for cleaners exiting the industry, reducing their return Long Service Corporation may provide payouts to people not exiting the industry earlier May encourage cleaners to exit the industry for short term financial gain
Option 2 – reduce waiting period to 10 weeks	Cleaners exiting the industry receive a payment up to 10 weeks earlier Very small likelihood cleaners will wait for payout, while not really existing the industry, because they consider this to be in their interest	Long Service Corporation make payments up to 10 weeks earlier for cleaners exiting the industry, reducing their return Long Service Corporation may provide payouts to people not exiting the industry earlier
Option 3 – remove 20 week waiting period and restrict re-entry to scheme	Cleaners exiting the industry receive a payment up to 20 weeks earlier	Long Service Corporation make payments up to 20 weeks earlier for cleaners exiting the industry, reducing their return May encourage cleaners to exit the industry for short term financial gain Cleaners re-entering the industry cannot accrue leave for a period, leading to administrative complexity Administrative complexity for Long Service Corporation to track employees to restrict eligibility on re-entry

Source: The CIE.

### *Qualitative evaluation of options*

The cleaners LSL is intended to be a leave scheme. Allowing employees to access pay-outs instead of leave may well have benefits, but would be inconsistent with the

objectives of the scheme. Given this, the key issue is whether cleaners would choose to take a pay-out if they did not have a waiting period or some other sort of penalty on re-entry.

### *Stakeholder views*

Neither employer nor employee stakeholders were supportive of making permanent the removal of the 20 week waiting period for payouts. The reasons for this differed across groups, and included:

- the scheme's purpose is to provide leave, and there is some risk that easier access to financial payments would see cleaners access entitlements as payouts rather than as leave. United Workers considered that this risk could be managed in other ways, but would not want to see cleaners using the scheme to take financial payouts every five years and continue in the industry
- cleaners may exit the industry for short term financial gain in the absence of a waiting period, leading to greater difficulties for employers in finding cleaners, and
- the removal of the waiting period would reduce the Long Service Corporation's revenues. The main employer group would prefer a reduction in the levy, which the change would work against. It was open to reducing the waiting period to ten weeks as long as this was not anticipated to impact substantially on the Long Service Corporation's revenues.

### *Equivalence to employer payouts*

Employers are generally expected to make their payouts to employees within 7 days.<sup>12</sup> The requirement for cleaners to wait 20 weeks is excessive compared to what is expected for employers in paying outstanding LSL.

### *Consistency with schemes in other jurisdictions*

There are three other schemes for cleaners operating in Australia — in the ACT, Victoria and in Queensland. The ACT and Queensland schemes have been operating for longer than the NSW scheme, while Victoria's scheme is more recent. All schemes allow for entitlements earned in one jurisdiction to be relevant in the other jurisdictions.

In terms of waiting periods for payouts:

- the ACT scheme has a waiting period of 20 weeks to access a pay-out on leaving the industry, similar to NSW<sup>13</sup>

<sup>12</sup> Fair Work Ombudsman, <https://www.fairwork.gov.au/ending-employment/notice-and-final-pay/final-pay#:~:text=Final%20pay%20is%20what%20an,final%20pay%20must%20be%20paid>.

<sup>13</sup> Long Service Leave (Portable Schemes) Act 2009, Section 2.8, <https://www.legislation.act.gov.au/View/a/2009-25/current/PDF/2009-25.PDF>

- the Queensland scheme has no waiting period for accessing payouts<sup>14</sup>
- the Victorian scheme has no waiting period for accessing payouts but requires a statutory declaration that the person is permanently leaving the industry.<sup>15</sup>

#### *Expected leave entitlements if receiving payout and re-entering the industry*

We can consider the incentives for a cleaner to take a payout and remain in the industry, to understand the risks around different designs. For a cleaner, the trade-off is that by taking a LSL payout, they then have to wait five more years before their entitlement is able to be accessed. This means that if they worked for 4 years, the entitlement is not worth anything.

Chart 3.3 shows the value today of future leave entitlement, in terms of equivalent weeks, in two such scenarios:

- 1 The employee takes a payout each 5 years and returns to the industry, as denoted by the red line
- 2 The employee takes their leave every 10 years (as leave), as denoted by the grey line.

We assume wage growth of 3 per cent per year and a discount rate of 7 per cent.

If people take the payout early (say every five years) and then return to the industry, they can receive a greater entitlement in a small set of circumstances:

- they were in the industry at just more than 10 years, 15 years or 20 years – in this case, they do not lose much LSL for the years worked before their next five year pay-out
- if they work just less than 10 years, then they would have been better off waiting, as they would lose a large leave accrual when they exit the industry.

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<sup>14</sup> Contract Cleaning Industry (Portable Long Service Leave) Act 2005,  
<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2005-021>

<sup>15</sup> Long Service Benefits Portability Act 2018, Schedule 2, section 15,  
[https://content.legislation.vic.gov.au/sites/default/files/367d901c-f53c-3183-9df6-f5ac9424dc88\\_18-44aa002%20authorised.pdf](https://content.legislation.vic.gov.au/sites/default/files/367d901c-f53c-3183-9df6-f5ac9424dc88_18-44aa002%20authorised.pdf).

### 3.3 LSL accrued benefit under different years of working in the industry



Note: Long service leave accrues at 0.867 weeks per year and may only be paid out after 5 years

Data source: The CIE.

If cleaners had a particularly high need for money now (which is a higher discount rate) then the benefits of taking payouts and re-entering the industry would be larger.

This analysis suggests that for most cleaners, taking leave early and re-entering the industry would not be beneficial. However, there are sufficient circumstances that this would be likely to be taken up by some cleaners, such as those who:

- were expecting to remain in the industry for a long time, and hence would not lose any leave accrual by taking a payout and then re-entering, or
- had a high need for money immediately.

In Queensland's cleaners LSL scheme, the same possibility exists, after seven years of service. QLeave, who operates the Queensland scheme, does not track whether cleaners are doing this in practice, but anecdotally has not seen this as a problem.<sup>16</sup>

#### *Would easier access encourage cleaners to exit the industry?*

Employer groups were also concerned that easier access to financial pay-outs for exiting the industry may encourage cleaners to exit the industry for good. This could be the case if:

- access to LSL entitlements earlier could enable a cleaner to take the time to find a new job, or provide financing for self-employment — while not a positive for the cleaning industry, this may well be a beneficial outcome for the cleaner
- access to LSL entitlements earlier allowed a cleaner to meet an immediate financial need, and they then felt they could not continue in the industry because they had

<sup>16</sup> Personal communication with QLeave, 10 May 2021.



taken a payout or could not find re-employment. This would be most likely if a cleaner left from a longstanding relationship with a single employer – however, in this case a cleaner can already access entitlements through their employer, typically within seven days.

This impact would be further exacerbated if there was a penalty on re-entering the industry.

We consider it fairly unlikely that removing the waiting penalty for LSL entitlements would lead to costs from cleaners exiting the industry. Cleaners who had worked for a single employer would already be able to access payments rapidly, as they are not subject to the waiting period if they claim through an employer and take leave, while also seeking other employment. If earlier payment enabled cleaners to find preferable employment, then that is a benefit overall, albeit not a good outcome for the cleaning industry in terms of their available pool of workers.

### *Quantitative evaluation of options*

#### *Number of cleaners making claims for leaving the industry*

Long Service Corporation has provided data on the number of people making claims on permanently exiting the industry, and the timeframes for claims (table 3.4). This shows gradually increasing claims, which is expected given that the long service scheme is still maturing and hence more people are becoming eligible for LSL.

- Historically, LSC has received and paid out some claims prior to 20 weeks, even though this is not strictly consistent with the waiting period restriction. LSC has indicated that this might occur because of the person's specific circumstances.
- In 2020, there was a large increase in both total claims for leaving the industry and the number received prior to 20 weeks have elapsed. The share prior to 20 weeks was still relatively low in 2020 because 376 of the claims were made by people who had ceased service in a year prior to 2020, some as far back as 2016. That is, the claims appear to reflect a backlog of people who had left the industry and not claimed.
- In the first four months of 2021, about half of the claims were received prior to 20 weeks. The distribution of the length of time between the last day of service and the claim is shown in chart 3.5. Many of the claims not within the 20 week period are very old (more than a year since last day of service). These are often for people who have a small amount of leave left over that has not been claimed.

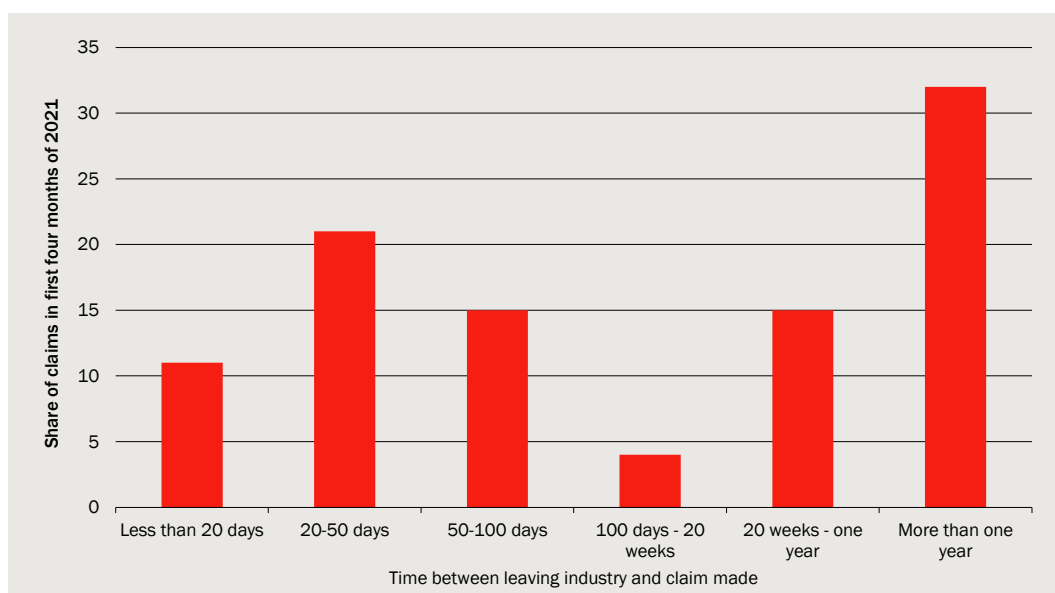
### **3.4 Claims for permanently leaving industry**

Calendar year	Number of Claims for permanently leaving industry	# of claims received prior to 20 weeks	% of claims received prior to 20 weeks	Claims paid sooner than 20 weeks after their last date of service
	No.	No.	Per cent	No.
2016	52	4	7.7	1
2017	86	5	5.8	2

Calendar year	Number of Claims for permanently leaving industry	# of claims received prior to 20 weeks	% of claims received prior to 20 weeks	Claims paid sooner than 20 weeks after their last date of service
	No.	No.	Per cent	No.
2018	111	10	9.0	5
2019	235	8	3.4	6
2020	513	86	16.8	81
2021 (end of April)	98	51	52.0	49

Source: Long Service Corporation.

### 3.5 Claims in first four months of 2021



Source: Long Service Corporation.

The pattern of claims suggests that a number of cleaners who had not been working in the industry made claims following the COVID-19 pandemic. This appears more likely to be because of financial need rather than the change to the legislation, as many could have made claims anyway.

It is also clear that cleaners have taken advantage of being able to make a claim without waiting 20 weeks, with half of the claims in 2021 being made in a shorter time period. There is no evidence available at this stage about whether any cleaners have made a claim for permanently leaving the industry and then re-registered.

Note that for cleaners who have worked more than 10 years, they could access their entitlements more rapidly simply by taking leave at the end of their employment period. For example, if a cleaner intends to exit the industry permanently, they could first put in a claim for leave, receive their leave payment, and then exit the industry. This would not be possible for cleaners who have been in the industry for between 5-10 years, who have to receive a pro rata payout. Only 7 of the 98 claims in the first four months of 2021 were

for pay-outs consistent with 5-10 years of service and made within 20 weeks of their last date of service.

### *Costs and benefits for cleaners exiting the industry*

The cost or benefit of removing or changing the 20 week requirements for cleaners who are exiting the industry will partially depend on the value that cleaners place in receiving payment earlier or later. This will reflect a trade-off between:

- the benefit to the cleaner of receiving payment up to 20 weeks earlier, which is the discount rate for the cleaner of receiving payment at an earlier or later time
- the cost to the LSC paying out earlier, thereby not realising 20 weeks of returns on funds managed.

There is a net benefit from removing the 20 week requirements as long as the discount rate for cleaners is higher than the rate of return on LSC funds.

- However, it is not quite clear what the discount rate would be for cleaners of getting money earlier. This will depend on their particular circumstances. The social discount rate used by Treasury is 7 per cent real.
- The LSC benchmark return noted in its 2020 Annual Report is 5 per cent nominal, which is equivalent to a real return of ~3 per cent.

Using the number of claims within 20 weeks for the first four months of 2021, extrapolated to a full year, the costs and benefits of having no waiting period are set out in table 3.6.

- The benefits for cleaners accessing pro rata claims for less than 10 years service is estimated at a very small \$2189 per year, with a similarly small cost to the LSC of \$964 per year
- The benefits for cleaners accessing claims for more than 10 years service is estimated at a slightly higher \$20 005 per year, with a cost to the LSC of \$8804 per year.
  - as noted above, these cleaners could alternatively access their entitlement more rapidly through making a claim for leave prior to exiting the industry.
- The net benefits over ten years is slightly less than \$100 000.

### **3.6 Costs and benefits of Option 1 under a discount rate of 7 per cent for cleaners**

Item	Unit	Claims for 5-10 years service	Claims for 10+ years service
Claims per year	No./year	60	234
Claims per year within 20 weeks	No./year	21	129
Wait for claim - base case	Weeks	20	20
Wait for claim – option	Weeks	0	0
Average payout	\$	4 059	6 037
Total pay-outs that would occur within 20 weeks	\$	85 238	778 813
Discount rate for cleaners	Per cent	7	7
Real return for LSC	Per cent	3	3
NSW Treasury discount rate	Per cent	7	7

Item	Unit	Claims for 5-10 years service	Claims for 10+ years service
Time period for evaluation	Years	10	10
Growth in claims	Per cent per year	0	3
<b>Costs and benefits</b>			
Change in value of entitlement to cleaners	\$/year	2 189	20 005
Loss of return to LSC	\$/year	- 964	-8 804
Net benefit	\$/year	1 226	11 201
Net benefit over ten years	\$, PV	8 610	90 852

Source: The CIE.

An assessment of the alternative options under different discount rates for cleaners is shown in table 3.7. The administration costs for checking if new cleaners have left the industry and sought to re-enter before a fixed time period is based on \$5 per new registration and 3000 registrations per year, similar to the number of new registrations in 2020.

- The highest net benefit relative to the base case is achieved from the full removal of the waiting period. However, this may allow for cleaners to undermine the intent of the scheme through taking a pro rata payment and re-entering.
- The second highest net benefit is the option with a 10 week waiting period. There is unlikely to be any incentive to take a pro rata payment and re-enter under this option.
- The option to allow for a penalty on re-entry has net costs. This is because the benefits for allowing cleaners more rapid access to their entitlement are very small, and even a very low administration cost to check that new registrations are not cleaners who have exited and claimed a payout would outweigh the benefits. Note that the administration costs could eventuate in different ways — LSC has indicated that it may need to change its IT system to allow for this.

### 3.7 Costs and benefits of options with different cleaners' discount rates

	3 per cent	7 per cent
	\$, present value	\$, present value
<b>Option 1</b>		
Benefit to cleaners	78 176	177 639
Cost to LSC	-78 176	-78 176
Net benefit	0	99 463
<b>Option 2</b>		
Benefit to cleaners	38 977	88 242
Cost to LSC	-38 977	-38 977
Net benefit	0	49 265
<b>Option 3</b>		
Benefit to cleaners	78 176	177 639
Cost to LSC	-78 176	-78 176

	3 per cent	7 per cent
	\$, present value	\$, present value
Less admin cost	-105 354	-105 354
Net benefit	-105 354	-5 891

Source: The CIE.

### *Costs and benefits for cleaners remaining in the industry*

The main issue for cleaners claiming a payout and not exiting the industry is that the scheme is intended to provide leave, rather than a payout. This type of activity may have a net benefit, but would still be inconsistent with the objectives of the scheme.

A cleaner can become eligible for a LSL payout on leaving the industry if they have worked for five years of service. At this point they are eligible for approximately one month of long service leave. If they had to wait for one month to access that leave without working in the industry, then that is a natural equivalent of taking one month of leave. For example, if a cleaner 'exited' the industry for one month, received their payout and then re-entered the industry, they would have taken 'leave' from the industry equivalent to their payout.<sup>17</sup> A 20 week waiting period is equivalent to:

- five times the leave that a cleaner has accrued if they are in the industry five years
- 2.5 times the leave that a cleaner has accrued if they are in the industry ten years.

A 10 week period would still be well above the leave accrued, which should be sufficient to deter any cleaner from exiting to obtain a pro rata payment.

## **Conclusion**

The response to COVID-19 of allowing cleaners to access a payment for LSL on exiting the industry **with no waiting period** should not be continued.

- Stakeholders representing employers and employees are not in favour of continuing the change
- There are net benefits from having no waiting period, but these are very small, and this largely represent a transfer from the Long Service Corporation to cleaners, of paying out earlier
- There is a moderate risk that some cleaners will choose to take payouts and continue in the industry, which would be against the objectives of the scheme. The analysis suggests this is likely for cleaners who have a high value of financial reward as opposed to leave and a high discount rate. While this would be against the objectives of the scheme, it would still have a net benefit
- There is a small risk that some cleaners would choose to take payouts and exit the industry because their entitlement can be accessed more rapidly.

<sup>17</sup> Note that in practice they could be working in another job.

From a distributional perspective, a waiting period of 20 weeks to access an entitlement for cleaners exiting the industry is very long, and much longer than acceptable practices for an employer. The option to reduce the waiting period to 10 weeks provides an improved timeframe for cleaners exiting the industry, while leaving minimal risk that cleaners will act in a way to undermine the objectives of the scheme.

■ **We consider that the preferred option is to adjust the waiting period for cleaners leaving the industry to 10 weeks.**

A 10 week period is slightly more than the leave that a cleaner would have accrued if they had reached 10 years of service and taken leave. In this sense, this length of time is consistent with a cleaner receiving a pay-out at the end of a period of time that would align to their accrued leave.

We do not consider that a penalty arrangement for re-entry would provide better outcomes than a waiting period:

- administratively, this is more complex for the Long Service Corporation
- if there is a risk that cleaners exit the industry because of easier access to payouts, then this option exacerbates that risk, by making it less beneficial for them to return.

## 4 *Evidence as to work capacity for workers compensation and fitness of work for CTP (Motor Accident Injury) benefits*

### ***Background***

Prior to the amendments to the *Workers Compensation Act 1987* and *Motor Accident Injuries Act 2017* which came into effect on 17 March 2020 due to *COVID-19 Legislative Amendment (Emergency Measures) Act 2020*, GPs were the sole medical practitioners who could issue certificates of work capacity and fitness for work. The amendment to the two Acts were:

- 1 For workers compensation, a GP must provide the initial certificate of capacity, while treating physiotherapists and psychologists can provide second and subsequent certificates of capacity (as long as the injury relates to their area of expertise)
- 2 For CTP claims, a GP must provide the initial certificate of fitness, while treating physiotherapists and psychologists can provide second and subsequent certificates of fitness as long as they are providing treatment for all of a claimant's injuries as a result of the motor accident.

### ***Workers compensation***

The Workers Compensation Act 1987, the Workplace Injury Management and Workers Compensation Act 1998 and the regulations made under those Acts establish a workplace injury management and workers compensation system in New South Wales.

The system objectives as described in section 3 of the Workplace Injury Management and Workers Compensation Act 1998 are:

- to assist in securing the health, safety and welfare of workers and, in particular, preventing work-related injury, to provide:
  - prompt treatment of injuries, and
  - effective and proactive management of injuries, and
  - necessary medical and vocational rehabilitation following injuries,in order to assist injured workers and to promote their return to work as soon as possible
- to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses
- to be fair, affordable, and financially viable

- to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work
- to deliver the above objectives efficiently and effectively<sup>18</sup>

To enable an insurer to make decisions about a worker's compensation claim and entitlement to compensation, a medical practitioner needs to perform an initial assessment of the injured worker and determine their capacity to work by issuing a certificate of capacity. The certificate of capacity is used in the NSW workers compensation system to describe the nature of a worker's injury/illness, their capacity for work and the treatment required for a safe and durable recovery at/return to work.

Second and subsequent certificates of capacity assist the ongoing evaluation of the worker's injury management plan concerning treatment, rehabilitation and retraining requirements to enable a successful recovery at/return to work. Prior to the COVID amendments, all certificates could only be issued by a medical practitioner.

#### *Compulsory third party compensation*

The commencement of the 2017 Motor Accident Injuries Act (MAIA) on 1 December 2017 introduced a six-month period of defined statutory benefits, irrespective of fault or injury severity.<sup>19</sup> Under the 2017 scheme, all people injured in a motor vehicle accident are entitled to 26 weeks of defined statutory benefits, which include treatment and care, return to work and vocational support, as well as weekly payments of income benefits for earners while they are off work.

Under Part 3 of the Motor Accident Injuries Act 2017, statutory benefits are payable in respect of death or injury resulting from a motor accident in NSW.

Part 3 sets out the entitlements to, and calculation of, statutory benefits.

- A person injured in a motor vehicle accident is entitled to statutory benefits for:
  - Reasonable and necessary treatment and care expenses relating to the injury from the accident, and
  - weekly statutory benefits if, as a result of the injury, the person suffers a loss of earnings or earning capacity.

Part 3 also sets out the restrictions and limitations on statutory benefits. For example:

- statutory benefits for a person who was wholly or mostly at fault in the accident is generally limited to a period up to 26 weeks after the date of accident.
- statutory benefits are not payable to an injured person who commits a serious driving offence related to the accident

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<sup>18</sup> SIRA, Workers compensation guidelines, <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/guidelines/workers-compensation-guidelines>, accessed 12 May 2021

<sup>19</sup> SIRA, Benefits for injured people, <https://www.sira.nsw.gov.au/fraud-and-regulation/reforms/ctp-green-slip-reforms/benefits-for-injured-people>, accessed 12 May 2021



- weekly statutory benefits payable after 26 weeks may be reduced for contributory negligence

The certificate of fitness is used by the insurer to make decisions about a person's fitness for work (whether or not they are employed, unemployed or retired) because it provides a clear indication of recovery and the rehabilitation assistance the person may require.

As with certificates of capacity, a physiotherapist or psychologist issuing a certificate of fitness must have general registration under the Health Practitioner Regulation National Law (NSW) No 86a<sup>20</sup>.

### *The need for government action*

The rationale for government to determine which medical professionals are able to certify injured persons for workers compensation and CTP relates to relevant SIRA objectives:

- to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries
- to promote workplace injury prevention, effective injury management and return to work measures and programs, and
- to provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation and the Home Building Act 1989.

#### *Reason for changing regulation during COVID period*

It was expected that it may be more difficult to access GPs during COVID-19, and hence allowing for others to issue certificates of capacity would be useful for flexibility. The expansion was undertaken to physiotherapists and psychologists to ensure that both physical and mental issues could be addressed outside of GPs. It was not expanded to osteopaths and chiropractors because they comprise a smaller share of treatments, and there was a need to rapidly communicate and educate treatment providers, insurers and injured people on the COVID-19 changes.

Since the height of the COVID-19 pandemic in NSW, the ability to access GPs has likely returned to normal, and potentially even become easier with more use of telehealth.

### *Objectives of the proposed reforms*

Amendments to the *Workers Compensation Act 1987* and *Motor Accident Injuries Act 2017* came into effect on 17 April 2020.

The change to the *Workers Compensation Act 1987* stipulated that the second and subsequent certificates of capacity must comply with the requirements prescribed by the

<sup>20</sup> NSW Government, Health Practitioner Regulation National Law (NSW) No 86a of 2009, <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2009-86a>, accessed 13 May 2021

*Workers Compensation Regulation 2016*, which were updated to specify the inclusion of physiotherapists and psychologists.

The change to the *Motor Accident Injuries Act* stipulated that the second and subsequent certificates of fitness must comply with the requirements specified in the Motor Accident Guidelines, which were updated to specify the inclusion of physiotherapists and psychologists registered under the Health Practitioner Regulation National Law (NSW) No 86a<sup>21</sup>.

The amendments allow that for workers compensation claims, a GP must provide the initial certificate of capacity, while treating physiotherapists and psychologists can provide subsequent certificates of capacity (as long as the injury relates to their area of expertise).<sup>22</sup> For CTP claims, a GP must provide the initial certificate of fitness, while treating physiotherapists and psychologists can provide subsequent certificates of fitness only when they are providing treatment for all of a claimant's injuries as a result of the motor accident<sup>23</sup>.

These changes were set to relieve pressure on GP's and the overall health system, whilst ensuring injured persons continue to receive their statutory entitlements in a timely manner.

### *The base case and options*

- Base case — the legislation reverts to pre-COVID-19 arrangements. This means that certificates of capacity can be issued only by GPs
- Option 1 — continue with allowing physios and psychologists to undertake second and subsequent certificates

A further option for consideration could be to expand the issuing of second and subsequent certificates of capacity/fitness to other treating allied health professionals, such as chiropractors and osteopaths. However there is insufficient data on their historical caseloads and RTW outcomes and this has not been evaluated in detail in this RIS.

### *Evaluating the options*

A summary of the expected costs and benefits are shown in table 4.1.

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<sup>21</sup> SIRA, Motor Accident Guidelines, pp.61, [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/325777/Motor-Accident-Guidelines.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/325777/Motor-Accident-Guidelines.pdf), accessed 26 May 2021

<sup>22</sup> NSW Government, COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1, <https://legislation.nsw.gov.au/view/pdf/asmade/act-2020-1>, accessed 12 May 2021

<sup>23</sup> SIRA, Motor accidents, [https://www.sira.nsw.gov.au/resources-library/list-of-sira-publications/coronavirus-covid\\_19/motor-accidents](https://www.sira.nsw.gov.au/resources-library/list-of-sira-publications/coronavirus-covid_19/motor-accidents), accessed 26 May 2021

#### 4.1 Costs and benefits for evidence of work capacity reforms

Benefits	Costs
<p>Reduced GP time costs for work capacity/fitness to work assessments because:</p> <ul style="list-style-type: none"> <li>▪ some assessments undertaken by other treating allied health practitioners</li> <li>▪ no need to have separate consult to see GP to get certificate of capacity, saving GP time.</li> </ul>	Risk of conflict of interest if physiotherapists and psychologists want to prolong treatment
Greater convenience for injured people, as will in some cases avoid the need for a separate GP consult	Additional time costs for psychologists and physiotherapists to provide work capacity/fitness to work assessments – typically incremental if they are undertaking treatment already
Higher share of injured people indicated as having capacity/fitness to work because of more detailed engagement by physiotherapists and psychologists in their treatment	Risk of fraudulent certificates being issued as in some cases the incentives of physiotherapists and psychologists may be to maximise the number of treatments
Additional revenue for health professionals as they can now charge for 1 certificate of capacity	Costs for insurers as get charged for more than 1 certificate of capacity per claim, as currently insurers only pay for the first certificate
	Costs for SIRA to engage with and educate broader range of people about certificates of capacity

Source: The CIE.

### *Qualitative evaluation approach*

#### *Summary*

There is a growing body of research focussing on RTW outcomes from both GPs as well as physiotherapists. Three key studies provided the baseline assumptions for our estimates of the impacts in NSW, as follows:

- 1 *Evaluation of Allied Health Certification in NSW (2021)* was a NSW study showing the most recent outcomes from the NSW COVID-19 changes to certification practitioners
- 2 *Strategies to enable physiotherapists to promote timely return to work following injury (2015)* was an extensive study showing the impact of physiotherapists on RTW outcomes in Victoria
- 3 *Sickness certification of workers compensation claimants by general practitioners in Victoria, 2003–2010 (2013)* was a Victorian study showing the impact of GPs on RTW outcomes

There is not yet enough evidence to provide estimates on the impacts on RTW outcomes for other allied health practitioners such as chiropractors, osteopaths or psychologists. However, for the latter, this can be assessed for NSW if the current changes are maintained for the next few years.

### *Evaluation of physiotherapist and psychologist certification in NSW*

The Insurance Work and Health Group at Monash was engaged to evaluate the impact of the change to certification<sup>24</sup>, the evaluation had three components:

- 1 A survey of physiotherapist and psychologist practitioners to capture practitioners' perspectives on certification
- 2 Brief interviews with case managers to capture the insurer perspective on the perceived impact of certification by physiotherapist and psychologist practitioners
- 3 Analysis of a dataset to compare outcomes when a certificate is written by a physiotherapist or psychologist practitioner compared to the treating doctor only.

The online survey was completed between December 1, 2020, and January 15, 2021. A total of 480 surveys were completed, 210 by physiotherapists and 270 by psychologists.

- 81 respondents reported completing a certificate of capacity, 48 of whom were physiotherapists and 33 psychologists
- The majority who had certified reported writing 2-5 certificates with the minority reporting writing more than 10 certificates
- It was most common that the certificate written was early in the course of injury, with the majority reporting certifying within the first five certificates (83 per cent).

The two most common factors behind certifying were:

- 1 It was difficult for the patient to access the doctor (35 per cent),
- 2 The practitioner felt the patient would benefit from return to work (35 per cent)

Regarding physiotherapists and psychologists fit, the majority found certification:

- Required more time on patient management than usual (65.4 per cent)
- Was a good match to skills and knowledge, patients were comfortable with the Allied Health practitioner writing the certificate and that certification allowed progress of return to activity in line with capacity (>90 per cent).

For awareness of the COVID-19 amendment changes:

- around half of practitioners who reported having not completed a certificate of capacity were aware of the ability to certify. Less than half of this group were familiar with the certificate, and
- the most commonly reported reason for not completing a certificate of capacity was related to the doctor's usual certification role or patient expectation that the doctor would certify. Just over one third reported not being aware they could certify and the minority reported not knowing how to certify (13 per cent).

Half of the insurance case managers interviewed had seen 1-5 certificates written by physiotherapist and psychologist practitioners. One quarter reported no real differences between certificates written by a physiotherapist or psychologist practitioner compared to treating doctors, but **44 per cent reported that certificates were more detailed regarding modified duties**. None of the interviewees noted negative consequences of

<sup>24</sup> Monash University 2021, *Evaluation of allied health certification in NSW*, [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0009/976977/Evaluation-of-allied-health-certification-in-NSW.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0009/976977/Evaluation-of-allied-health-certification-in-NSW.pdf)

physiotherapist and psychologist certification and 44 per cent noted no difference in their role. Positive impacts identified included more detailed descriptions of capacity, upgrades in capacity being more likely, improved access and reduced waiting times for the injured person.

### *Historical evidence on general practitioner and RTW outcomes*

Canadian and UK studies found that GPs can struggle with managing consultations about RTW<sup>25</sup>, with many GPs considering employment and RTW outside their health care provider role.

GP attitudes to recommending RTW appear to be influenced by doctor-patient relationships, beliefs regarding patient advocacy, inadequate consultation time, fears for personal safety, lack of willingness to complete compensation paperwork or interact with stakeholders (possibly due to the time cost), and limited knowledge of occupational health or the care-seeker's workplace<sup>26</sup>. It is likely that many of these factors also influence the behaviour of physiotherapists.

Mazza<sup>27</sup> studied the role of GPs in facilitating injured workers RTW through the appropriate use of medical certificates. Key findings of this report were that both certificate numbers and the period of illness certification increased from 2003 to 2010, with a small proportion of GPs (3.4 per cent) accounting for nearly a quarter (24.8 per cent) of certificates completed. Most initial certificates (71.4 per cent) designated a worker as unfit for all duties.

Reasons for the high number of “unfit” certificates were summarised based on analysis of focus group interviews:

- unclear definition of the role of the GP in RTW
- reliance on worker feedback about work capacity
- availability of alternative/modified duties; age and social circumstances of the worker
- poor communication between stakeholders
- high administrative burden
- poor GP remuneration for the services provided
- system barriers such as poor knowledge of policies and procedures or claim processing delays and

<sup>25</sup> Kosny A et al. 2006, *Early Healthcare Provider Communication with Patients and Their Workplace Following a Lost-time Claim for an Occupational Musculoskeletal Injury*, <https://pubmed.ncbi.nlm.nih.gov/16688485/> and Cohen D e al. 2010, *Managing long-term worklessness in primary care: a focus group study*, <https://pubmed.ncbi.nlm.nih.gov/19955300/>

<sup>26</sup> Cohen D et al 2010. *Managing long-term worklessness in primary care: a focus group study*. *Occup Med (Lond)*; 60(2):121-6. <https://pubmed.ncbi.nlm.nih.gov/19955300> and

Hussey S et al 2004. *Sickness certification system in the United Kingdom: qualitative study of views of general practitioners in Scotland* *BMJ*; 328 :88 <https://www.bmj.com/content/328/7431/88>

<sup>27</sup> Mazza D et al 2013, *FIT to Work: General Practitioners facilitating injured workers return to work*. *Institute for Safety*, [https://research.iscrr.com.au/\\_\\_data/assets/pdf\\_file/0003/309639/FIT-to-work-general-practitioners-facilitating-injured-workers-return-to-work.pdf](https://research.iscrr.com.au/__data/assets/pdf_file/0003/309639/FIT-to-work-general-practitioners-facilitating-injured-workers-return-to-work.pdf)

- conflicting opinions between independent medical examiners and GPs.

#### *Responses from interviews with practitioners in Victoria*

Inappropriate certification by health professionals was considered to be a barrier to RTW by around 75 per cent of participants. The single most commonly reported frustration linked to certification was where other health care practitioners, who were responsible for certifying a person as fit or unfit to RTW, would classify a person as unfit for any work when the person, in the physiotherapist's opinion, had the capacity to do alternative or modified duties.

“... frequently people come in with a certificate of capacity that says not suitable for any work at all or not fit, and they definitely have capacity in some way... and it's a case of changing that.” (Occupational physiotherapist, Male, 30 yrs)

Participants' felt that some doctors adopted a conservative approach to patient care that could result in delays in certifying someone as fit to return to (some) work.

“And then I think GPs, sometimes ... perpetuate that as well, and say, “No, we don't want you to go back to work until you're 100% right.” So often it gets delayed ..., and then the more it's delayed the evidence shows that the chance of it ever actually happening gets less and less.” (non- occupational physiotherapist, Female, 51 yrs)

Insurance case managers report issues with medical certification, and consider that some practitioners give in to patient requests. They felt that, compared to GPs, physiotherapists will certify a fitness to RTW earlier but progress to “full duties” more slowly. Some case managers also felt that the certificate of capacity is misused by many parties, especially by practitioners giving in to the wishes of a patient.

“... allied health practitioners, physios and chiro's will tend to, and this is anecdotal, will tend to give someone a capacity for light duties for work earlier than a GP, but they tend to want to hang on to them for longer. It might be that they think they need to continue to have treatment, um, hands on treatment for a while, but that influences the certification and they don't get a clearance certificate.” (Case manager, WorkSafe, Male, 42 yrs)

#### *Victorian study on physiotherapists RTW certificates*

Monash University in 2015 conducted a study<sup>28</sup> using workplace injury administrative data to evaluate current practices of Victorian physiotherapists in the management and RTW certification of injured workers covered by the Victorian WorkCover Authority. In the Victorian system subsequent certificates are for a maximum of 28 days and can be completed by medical practitioners, physiotherapists, chiropractors or osteopaths.

All data for claims between January 1, 2003 and December 31, 2012 where payment was made for physiotherapy services lodged by people of working age (15-65 years) were extracted from the CRD. A total of 88 061 claims had a scheme payment code indicating that physiotherapy services had been provided. A total of 1 163 353 certificates were submitted for these claims with a median of 8 certificates per claim. Physiotherapists

<sup>28</sup> Monash University 2015, *Strategies to enable physiotherapists to promote timely return to work following injury*, [https://research.iscrr.com.au/\\_\\_data/assets/pdf\\_file/0018/421722/079-Strategies-to-enable-physiotherapists-to-promote-timely-return-to-work-following-injury.pdf](https://research.iscrr.com.au/__data/assets/pdf_file/0018/421722/079-Strategies-to-enable-physiotherapists-to-promote-timely-return-to-work-following-injury.pdf)

completed 50 625 (4.4 per cent) valid certificates for these claims, comprising 2 396 initial certificates<sup>29</sup> and 48 229 subsequent certificates.

### *Victorian study on General Practitioners RTW certificates*

Collie et al<sup>30</sup> in 2013 conducted a retrospective analysis of Victorian workers compensation data for all injured and ill workers with an accepted workers compensation claim from a GP between 2003 and 2010.

All data for accepted compensation claims lodged by working age adults (15 to 65 years) with a date of injury or illness between 1 January 2003 and 31 December 2010 were extracted. A total of 124 424 claims were included for this analysis, with 1 660 176 subsequent certificates issued. The study notes that some subsequent certificates were issued by medical professionals other than GPs.

The number of certificates issued as unfit for work, modified duties and fit for work for physiotherapists and GPs is shown in table 4.2. The two studies show a clear difference between physiotherapists and GPs in the certification of workers for unfit for work for injuries most related to physiotherapist treatments. The average amount of unfit for work certificates for physiotherapists is 35 per cent compared with 48 per cent for GPs. We use this 13 per cent difference for our calculations in the following section as a proxy for the increase in RTW for patients being written a certificate by a physiotherapists in place of doctor.

## **4.2 Numbers of subsequent certificates issued by physiotherapists and general practitioners in the Victorian health system**

Category	Total number of certificates		Unfit for work		Alternative modified duties		Fit for work	
	N		N	%	N	%	N	%
<b>Physiotherapists</b>								
Muscular Skeletal	25 012		8 044	32	17 273	69	1 821	7
Back & Neck Pain	16 158		5 873	36	8 578	53	1 092	7
Other trauma	4 518		1 662	37	2 377	53	331	7
<b>General practitioner</b>								
Muscular Skeletal	765 181		348 558	46	388 624	51	27 999	4
Back & Neck Pain	349 278		165 188	47	172 252	49	11 838	3
Other trauma	170 754		86 342	51	75 112	44	9 300	5

Source: The CIE, Monash studies.

<sup>29</sup> All initial certificates issued by physiotherapists were completed for claims that did not receive compensation for daily earnings

<sup>30</sup> Collie et al 2013, *Sickness certification of workers compensation claimants by general practitioners in Victoria, 2003–2010*, *Med J Aust*; 199 (7): 480-483, <https://www.mja.com.au/journal/2013/199/7/sickness-certification-workers-compensation-claimants-general-practitioners>

### *Jurisdictional overview*

NSW and Victoria have the most progressive systems by allowing allied practitioners to issue subsequent certificates, see table 4.7. South Australia allows nurses in the emergency department to issue a certificate of capacity valid for 7 days.

#### **4.3 Allied Health practitioners who can issue a subsequent certificate of capacity**

State or territory	Workers compensation	CTP
New South Wales	Treating physiotherapists and psychologists	Physiotherapists and psychologists if the sole treating practitioner
Victoria	Physiotherapists, chiropractors or osteopaths	Physiotherapists, chiropractors or osteopaths
Queensland	None	None
South Australia	Nurse if presented in hospital emergency department and valid for 7 days	None
Western Australia	None	None
Northern Territory	None	None
Tasmania	None	None
Australian Capital Territory	None	None

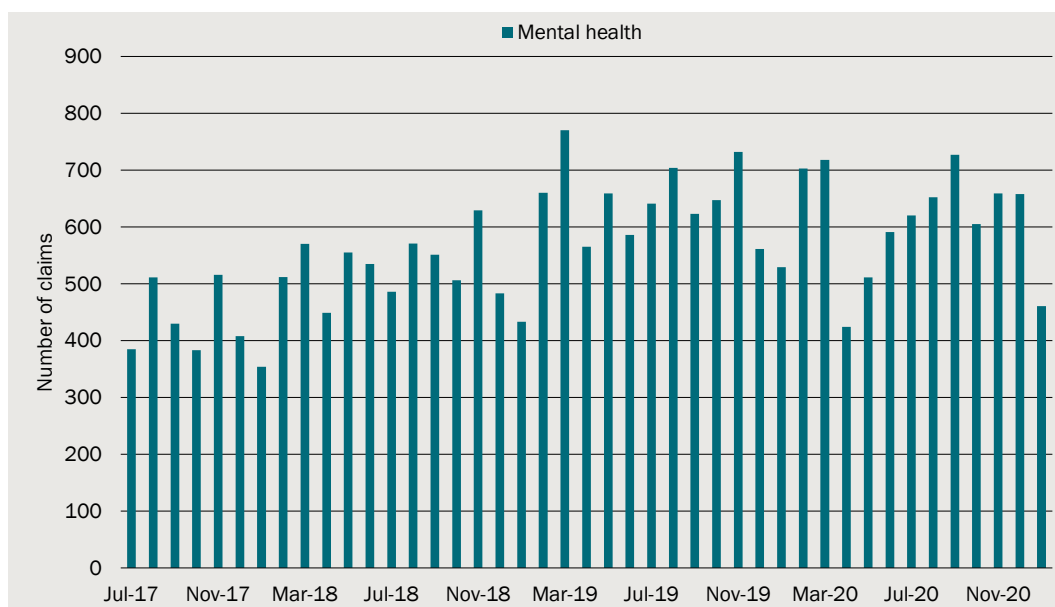
Source: SIRA, Worksafe Victoria, TAC Victoria, Worksafe QLD, MAIC QLD, RTWSA, CTP SA, ICWA, Worksafe NT, MACC, Worksafe TAS, Worksafe ACT.

### *Number of mental health related claims*

The number of mental health related workers compensation claims has been slightly increasing from 2017 to 2021, see chart 4.4. The data does not distinguish if a claim is treated solely by a psychologist or with other medical practitioners and allied health professionals. As a consequence, we are unable to infer whether the increase in mental health related workers compensation claims will correspond to an increase in psychologist issued certificates of capacity.



#### 4.4 Number of mental health related workers compensation claims 2017-2021



Data source: SIRA - payments data by payments type and nature of injury, <https://www.sira.nsw.gov.au/open-data/system-overview>.

#### *Risks and controls of the system*

When a worker becomes injured and enters the workers compensation system, they will be supported by team which includes the employer, the insurer, workplace rehabilitation providers, doctor and other health providers. A summary of the roles and responsibilities of each member is shown in table 4.5. All employers in NSW (except exempt employers) must have a workers compensation policy.

SIRA assumed the insurance regulatory functions of WorkCover on 1 September 2015.

There are three types of insurers in the NSW workers compensation system:

- 1 icare (Insurance and Care NSW) is a government organisation that delivers insurance and care services to people with work-related injuries under the NSW workers compensation scheme (known as the Nominal Insurer) and to NSW government agencies through Insurance for NSW
- 2 self-insurers are employers approved by SIRA to manage their own workers compensation claims
- 3 specialised insurers hold a restricted licence to provide workers compensation insurance for a specific industry or class of business or employers.

In 2019-2020, the share of claims by insurer type were as follows:

- Nominal insurer: 67 per cent
- Government self insurers: 16 per cent
- Self insurers 9 per cent
- Specialised insurers: 9 per cent

#### 4.5 Key members of the injured workers support team for RTW

Function	Role and responsibility
Case manager (insurer)	The employer's insurer appoints a case manager who coordinates all aspects of your workers compensation claim
Treating doctor	The doctor will assess, diagnose, and treat the worker, as well as refer to allied health practitioners when required. The doctor will also assess the RTW capacity through communicating with the other support team members
Employer	The employer is required by law to provide suitable work (where possible) that matches the workers capacity and supports their recovery.
Workplace rehabilitation provider	Approved workplace rehabilitation providers are experts who can address the physical, functional, psychological and/or workplace barriers that may affect the worker recovering at work or returning to work.

Source: The CIE, SIRA.

To manage RTW risks from the treatment plan, an independent medical examination (IME) can be requested to provide an independent opinion regarding their injury and treatment to assist with decisions about their rehabilitation, RTW and entitlements to compensation

The insurer, employer or legal representative may refer the worker to an IME when:

- information from the worker's doctor is unavailable, inadequate or inconsistent, despite requests to provide this information
- the insurer has been unable to resolve issues after discussion with the worker's support team
- an assessment of permanent impairment is required.

This mechanism to refer to an independent expert should provide a sufficient risk management strategy. During the stakeholder consultations, one stakeholder suggested to make a GP assessment mandatory after 12 months of subsequent certificates issued by allied health practitioners. This may not be immediately necessary, however this could be introduced if there is evidence of allied health practitioners extending treatment plans beyond what is necessary.

#### *Stakeholder views*

Stakeholder representative groups were overall supportive of the changes to write subsequent certificates. This largely reflected a view that physios and psychologists were well placed to provide guidance on the functional and cognitive abilities of patients, and writing certificates was a natural task given their role in treatment.

Stakeholder also raised a number of other issues, including the following.

- Communication between GPs and allied health professionals was regarded as essential for this system to work and to prevent the fragmentation of care which could result in poor health and RTW outcomes. This is essential regardless of who is writing

certificates. Employers also considered that it was essential that employers received access to this information.

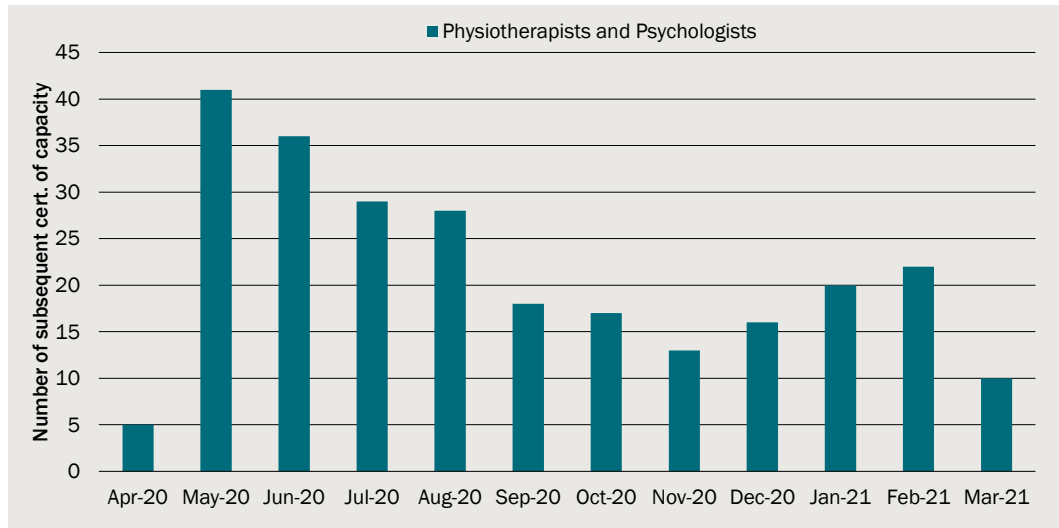
- Physiotherapists and psychologists could avoid the need for patients to visit a GP in some cases, however, not all cases of subsequent certificates being written by a GP would be avoided as GPs can schedule appointments to check overall care as well as mental health.
- GPs are more conservative when issuing RTW certificates and in line with the Victorian evidence will be more likely to issue an unfit for work certificate.
- The extent of uptake will be limited by the reimbursement arrangements, which currently will not remunerate for reporting outside of consultations, aside from the first certificate written. Assessing RTW for issuing a certificate usually requires additional testing which may lead to needing to book an additional consultation, as it leaves insufficient time for the scheduled rehabilitation exercises. It was suggested that a separate billing code for writing certificates would be beneficial.
- The uptake in Victoria has been very slow and would be better improved with more collaborative training. A barrier to uptake in NSW thus far has been that a significant amount of practitioners have not known about the changes to the legislation.
- There has not yet been any evidence of harm or risks as a result of allowing physiotherapists and psychologists issuing second and subsequent certificates.
- Insurers had a positive view on physiotherapists, because they have a good understanding of functional outcomes. Quality is important as it guides how to get back to work.

## *Quantifying the benefits*

### *Data constraints for analysis*

SIRA collects data on the first subsequent certificate of capacity issued by a SIRA approved treating physiotherapist or psychologist per claim. As this data only shows the first certificate, it does not provide an indication on the number of certificates issued by physiotherapists and psychologists beyond the first certificate. It does however provide an indication on the percentage of claims which a physiotherapist or psychologist has issued a certificate. Since the COVID-19 amendment was enacted, there have been 255 first subsequent certificates of capacity issued by a physiotherapist or psychologist and 59 976 first certificates of capacity issued by a GP. This represents a share for physiotherapists and psychologists of 0.43 per cent (chart 4.6).

#### 4.6 Number of first subsequent certificates of capacity issued by a SIRA approved treating physiotherapist or psychologist



Data source: SIRA.

SIRA has also begun an evaluation of the outcomes of certificates of capacity written by different health professionals. This will capture the small number of claims where a physiotherapist has written a certificate of capacity to date. Given the small level of initial uptake in NSW and preliminary stage of research specific to NSW, the estimates in this report rely on the evidence from the Victorian studies and translating this into the NSW context. The Victorian evidence is used for both uptake and impacts for physiotherapist. Unfortunately, there were no comparative studies for psychologists as they are not allowed to write certificates in Victoria. As a result, we are unable to reliably estimate the impact of psychologists writing certificates. Stakeholder feedback has indicated an expectation of similar positive impacts to physiotherapists, but lower uptake. This will only be able to be quantified after sufficient data is collected in several years.

CTP injury claims restrict physiotherapists and psychologists from writing a second and subsequent certificate if the injured person is receiving treatment from different health practitioners. In these circumstances a second or subsequent certificate of fitness for work must be issued by a medical practitioner. We do not have information on whether a physiotherapist is the sole practitioner and cannot infer this from the motor accidents data as it not provided at this level. However, consultations suggested very few CTP injury claims would solely be treated by a physiotherapist or psychologist, and hence the impacts of the change for CTP will be much smaller than for workers compensation.

#### *Estimate of better return to work outcomes in the workers compensation scheme*

SIRA report the number of workers compensation claims, claim payments and RTW percentages on a rolling basis. Payments data for each injury type includes all expenses such as death payments, medical, investigation, and lump sum payments. In our analysis we assume that earlier RTW will only remove the weekly payment of wages from the total payment data, and do not incorporate potential savings from reduced medical expenses, insurer costs and improved health and social outcomes. Therefore this results

in a conservative estimate of benefits. For the year 2019-2020, weekly payments were on average 41 per cent of total payments. Table 4.7 shows the total claims and payments for injuries aligned to physiotherapist treatment.

#### 4.7 Total claims and payments for injuries aligned to physiotherapist treatment for workers compensation 2019-2020

Category	Traumatic Joint/Ligament and Muscle/Tendon Injury	Other Injuries	Musculoskeletal and Connective Tissue Diseases	Total
Total number of claims (n)	33 972	4 670	13 439	52 081
Total number of payments (\$m)	1 174	123	414	1 711
Weekly wage payment (\$m)	481	50	170	700

Note: The weekly wage payment is approximately 41 per cent of the total payment amount.

Source: The CIE, SIRA open data portal.

The workers compensation RTW rolling annual averages for 2019-2020 are:

- 4 weeks: 69 per cent
- 13 weeks: 80 per cent
- 26 weeks: 85 per cent

We estimate the total number of claims that a physiotherapist would be most suited to treating as 52 081 per year and 4 340 per month, which represents 55 per cent of all workers compensation claims for 2019-2020. The total cost of physiotherapist related payments is \$1 711m per year and \$143m per month. The average cost per claim is \$32 855 and the average weekly payment component is \$13 434.

The RTW rates imply that 477 workers have not returned to work between 4 and 13 weeks and 217 workers have not returned to work between 13 and 26 weeks and 651 workers have not returned to work after 26 weeks. In total this creates a pool of 1 345 workers who are receiving second and subsequent certificates of capacity for injuries which could be managed through RTW programs. If the certificates of these workers are issued by a physiotherapist instead of a GP, they would have a higher likelihood of returning to work on partial capacity sooner.

The net (positive) value of returning to work is the difference between the value of working and the disutility of working. The disutility reflects the opportunity cost of a person's time spent at work. To allow for this we include a reservation wage rate, which is the lowest wage rate a worker would accept for work. In NSW, the reservation wage rate is estimated as \$40 581<sup>31</sup> per year per full-time equivalent position, based on guidance used for other NSW Government programs. Note that the net benefits of returning to work are positive, and our estimate is conservative. There is a body of

<sup>31</sup> NSW Government 2020, *NSW Government Guidelines – Cost Benefit Analysis of Special Activation Precincts (November 2020)*

evidence<sup>32</sup> which shows that returning to work promotes recovery and is good for a workers physical, social and financial health. These benefits are not fully quantified and as such our analysis represents a conservative estimate of RTW outcomes.

#### *Estimate of avoided costs for issuing certificates*

Allowing physiotherapists and psychologists to write second and subsequent certificates was implemented in response to concerns that GPs might not have capacity to issue certificates in a timely manner during the COVID-19 pandemic. The benefits resulting from these changes are:

- avoided subsequent GP visits
- lower cost per hour of physiotherapists and psychologists versus a GP, and
- avoided travel time for an injured person to see a GP for the purpose of writing a certificate of capacity.

The Victorian study of physiotherapists found that there was a median of eight certificates per claim for injures requiring a physiotherapist. The study then found that approximately 4 per cent of certificates were written by a physiotherapist. Translating these assumptions to the NSW context, of the 58 081 claims in 2019-2020, there would be approximately 416 648 certificates of which 16 666 would be written by a physiotherapist.

Using this estimate of 16 666 certificates written by a physiotherapist, that would at **maximum** translate to 16 666 avoided GP visits as some visits to the GP may have happened regardless. We estimate the cost per hour of a GP is \$114 from a median yearly salary of 220 042<sup>33</sup>. Assuming a consult time of 15 minutes, this results in a total cost of \$476 508 per year. As the patient would be making a specific trip to see the GP for the certificate, we have estimated the cost of the time for the patient. We assume 1 hour for travel and the consultation, with a value of time of \$17.72 per hour<sup>34</sup>. This results in a value of time cost of \$295 320 per year.

We estimate the cost per hour of a physiotherapist is \$44 from a median yearly salary of 85 556<sup>35</sup>. We assume the certificate would be written at the end of a consultation session and would be 15 minutes, which results in a cost of \$185 274 per year.

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<sup>32</sup> Kosny A et al 2006., *Early healthcare provider communication with patients and their workplace following a lost-time claim for an occupational musculoskeletal injury*, Journal of Occupational Rehabilitation, pp. 27-39. <https://pubmed.ncbi.nlm.nih.gov/16688485/>

<sup>33</sup> Talent.com, GP Average Salary in Australia 2021, <https://au.talent.com/salary?job=Gp>, accessed 12 May 2021

<sup>34</sup> Transport for NSW 2020, *Economic Parameter Values*, pp.10, <https://www.transport.nsw.gov.au/news-and-events/reports-and-publications/tfnsw-economic-parameter-values>

<sup>35</sup> Talent.com, Physiotherapist Average Salary in Australia 2021, <https://au.talent.com/salary?job=physiotherapist>, accessed 12 May 2021

We have included a sensitivity bracket to show an increase in the percentage of certificates that physiotherapists write from 4% to 30%. The difference in net benefit is shown in table 4.8

#### 4.8 Cost benefit analysis of physiotherapists writing subsequent certificates

Category	Low uptake	High uptake
Discount rate	7%	7%
<b>Better RTW outcomes</b>		
Total number of claims physio per year	16 145	16 145
Increase in RTW outcomes	13%	13%
Factor for part time work	0.75	0.75
Per cent of certificates written by physiotherapist	4%	30%
Average total weekly payments per claim	13 434	13 434
Reduction in payments per year (\$/year)	826 743	6 200 573
Reservation wage per year of work (\$/year)	40 581	40 581
Total disutility of work for those back at work earlier (\$/year)	-501 398	-3 760 484
<b>Net benefit (\$/year)</b>	<b>325 345</b>	<b>2 440 089</b>
<b>Avoided costs</b>		
Cost of GPs writing subsequent certificates (\$/year)	476 508	3 573 807
Cost of physiotherapists writing subsequent certificates (\$/year)	-185 274	-1 389 556
Value of time for patient cost (\$/year)	295 320	2 214 901
<b>Net benefit (\$/year)</b>	<b>586 554</b>	<b>4 399 152</b>
<b>Total benefit</b>		
<b>Total net benefit (\$/year)</b>	<b>911 899</b>	<b>6 839 241</b>
<b>PV 10 years (\$ over 10 years)</b>	<b>6 853 131</b>	<b>51 398 485</b>

Source: The CIE.

#### *CTP certificates of fitness*

We have not quantified the benefits and costs related to physios and psychologists being able to write certificates of fitness for CTP insurance claims. These are expected to be smaller than for workers compensation because injuries from motor vehicle accidents often involve multiple injuries and treatment from a range of different medical specialties. Consultations suggested only four per cent of claims are for a single injury. Certificates of fitness can only be issued by a physiotherapist and psychologist where there are no other injuries being treated by other practitioners.

Despite this, consultation suggested that continuing with the change would be supported for similar reasons as for workers compensation. Namely, physiotherapists and psychologists will, where there is only a single injury, often have a better view of functional and cognitive performance than a GP, or would simply be communicating information for a GP to write the certificate.

## *Conclusion*

There is a need for government regulation in determining which medical and allied health practitioners can issue first and subsequent certificates of capacity. Relinquishing this responsibility to insurers may lead to situations where insurers limit the powers of issuing certificates to minimise their liabilities. The government should ensure that the workers compensation and CTP insurance process is fair for all participants through open and equitable access to practitioners.

- **The COVID-19 measures of giving powers to physiotherapists and psychologists to issue subsequent certificates of work capacity/fitness to work should be continued as it provides a net benefit through avoided costs and better RTW outcomes.**

It is important to note that uptake is in its infancy in NSW and that for physiotherapy it will be expected to be slow based on the Victorian experience. NSW is the first state to allow psychologists to issue certificates and as such there is no benchmark for growth.

There has been no evidence of harm from the Victorian and NSW rollouts of these measures, which should be continued to be monitored as uptake increases. Essential to managing the risks of these changes is making sure there is an education campaign to ensure practitioners are aware of their new powers and responsibilities.

The impact of the changes should be reviewed periodically to understand the uptake of the changes as well as any additional benefits and costs. A comprehensive review should be undertaken after five years, which could be an opportunity to consider expanding the powers to issue certificates to other allied health professionals such as chiropractors and osteopaths.







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