RightHandTurn

Transform | Design | Assure

Report of the Customer Advocate

Customer Vulnerability in the Nominal Insurer Workers Compensation Scheme

7 May 2021

RightHandTurn
Transform | Design | Assure

Table of Contents

Summary of Findings and Observations 3
Findings 3
Observations 4
Introduction 6
icare and SIRA 6
icare's request of the Customer Advocate 7
This Report 8
Content 8
Terms of Reference 8
Limitations 8
Customer Experiences not Academic Research 9
Methodology 10
Approach 10
Interim Definition of Vulnerability 10
Pre- Existing Factors of Vulnerability 11
Participant Selection 13
Injured Workers 13
Stakeholders 15
Qualitative Interviews 15
Quantitative Surveys 16
Ethics Approval and Professional Support 16
Summary of Injured Worker Feedback 17
Injured Worker Core Questions 17
Summary of Stakeholder Feedback 32
Stakeholder Interviews 32
Discussion 40
Literature Scan 40
Definition of Vulnerability 41
Nominal Insurer Definition 42
Observations for Claims Service Providers 43
Appendix 1: Media Release 45
Appendix 2: Terms of Reference 46
Appendix 3: Stakeholders 48
Appendix 4: Bibliography 49

RightHandTurn
Transform | Design | Assure

Summary of Findings and Observations

Findings

The analysis of all evidence collected in this review demonstrated that eight-seven percent (87%) of injured workers interviewed had experienced some level of vulnerability during the claims management process. Table 1 below sets out the findings of vulnerability in the injured worker population interviewed:

Table 1: Vulnerability in the claims management process

Claims Management Interface	Description	Vulnerability Experienced	Duration of Vulnerability
Power Imbalance	The Claims Service Provider makes decisions about and controls their health and future without input / consultation	Loss of control over themselves, limited capacity to influence decisions, being directed, helplessness	Ongoing
Relationship Management	Personal relationships with case managers; rehabilitation professionals more inclusive, less coercive with treating drs	Loneliness in the system, lack of trust in the motives of contracted third parties, feeling superfluous to the process	Ongoing
Process Clarity	Lack of information from case manager on 'what happens when' and role clarity	Uncertainty, tendency to not believe case managers and seek answers for self from alternative sources	Situational
Acceptance	Repeatedly prosecuting genuineness, treating medical practitioners opinions discounted, preference to rely on IME opinions to manage health decision making	Not being believed negated the opportunity for mutually respectful relationships and willingness to participate, guilt, over emphasis, frustration towards everyone	Ongoing
Expectation Setting	Two way expectation management based on explicit assurances	Loneliness, overwhelmed, focus on finding out for self	Ongoing
Personal Circumstances	Broader personal and family concerns and needs not considered in the approach to case management	Feeling of not 'being known', life circumstances are irrelevant, lack of empathy and compassion, no connection with the decision maker	Ongoing

Approval Delays	Consistent delays in the approval of medical and like treatment	Frustration at and reduced trust in their case manager, reinforcement of not being believed, self-doubt, deterioration in physical and mental health	Ongoing
Vocational Support	Mutual goal setting and respectful management of relationships from rehabilitation professionals	Potential and opportunity unrealised (employment), combative responses, anxiety, loss of self respect and respect from others	Ongoing
Financial Insecurity	Incorrect and late payment of wages Delayed remediation of errors	Immediacy of financial crisis, reinforcement of a hopeless position, social tension	Situational
Avenues for Support	Knowing where to / who to go to for assistance	Loneliness, frustration, helplessness, giving up	Ongoing

Observations

The opportunity for vulnerability to arise was evident in policy, relationship management, case management, claims administration, polices and governance. Table 2 below sets out the observations arising from the qualitative evidence of this review:

Table 2: Observations on opportunities for vulnerability to arise

System	Observation on Where the Management System Enables Vulnerability
Policy	• Claims Service Providers lacked a clear and consistent definition of vulnerability and management practices. Work is required to ensure that both the triggers for vulnerability and the associated behaviours are readily identifiable and acted upon with an early intervention approach
Relationship Management	• Case manager changes impact the ability for an injured worker with complex claim to have a genuine and personal relationship with their decision maker • Contracted third parties involved in the delivery of services were seen as coercive and solely focussed on delivering the outcome dictated by the Claims Service Provider
Case Management	• The claims management practices do not acknowledge or manage the power imbalance that exists between the case manager and injured worker having a profound impact on injured workers health and future • Extended delays in approvals for medical and like treatment are normal practice reinforcing the lack of control and powerlessness

	• Minimal mutual expectation setting between case managers and injured workers creates uncertainty • Holistic case management through understanding and supporting an injured worker's personal circumstances is not standard practice directly impacting their ability to focus on their recovery and health • Independent medical experts are preferred over the opinions of treating medical experts and are used excessively and in an adversarial manner • Access to government and not for profit support agencies are not understood by case managers and injured workers and there is subsequently poor utilisation (referral) from case managers
Claims Administration	• Minimal accessible information available to injured workers on the claims journey creates significant uncertainty • Inadequate systems and/or poor execution in determining accuracy and payment of weekly wages to injured workers on time and in full creates multi-layer vulnerability for them and their families
Governance	• Data capture in icare Guidewire and Claims Service Provider legacy systems restricts the ability to accurately identify pre-existing factors to vulnerability to allow for risk mitigation strategies to be developed and implemented • Claims Service Providers do not have adequate reporting for client feedback or operational management on injured worker vulnerability with the exception of threats of self-harm and harm to others (noting evidence was not provided)

RightHandTurn
Transform | Design | Assure

Introduction

icare and SIRA

icare delivers insurance and care services across five schemes – Workers Insurance (the Nominal Insurer), Insurance for NSW (Self Insurance), Lifetime Care, Dust Diseases and the Home Building Compensation Fund (HBCF) and is a Public Financial Corporation regulated by SIRA.

The State Insurance Regulatory Authority (SIRA) is the regulatory body of all statutory schemes in NSW including Compulsory Third Party (CTP), workers compensation and the home warranty fund. SIRA's focus is ensuring key public policy outcomes are being achieved in relation to service delivery to injured people, affordability and the effective management and sustainability of the insurance schemes. SIRA is responsible for pricing regulation, insurer licencing, dispute resolution and issuing claim and premium guidelines.

The objectives and regulatory role of SIRA(1) is to:

- **to promote the efficiency and viability of the insurance and compensation schemes established under** the workers compensation and motor vehicles legislation and **the Home Building Act 1989** and the other Acts under which SIRA exercises functions;
- **to provide for the effective supervision of claims handling and disputes under** the workers compensation and motor accidents legislation and **the Home Build Act 1989;**
- **to promote compliance with** the workers compensation and motor accidents legislation and **the Home Building Act 1989**.

icare's request of the Customer Advocate

The review of vulnerability experienced in NI claims management experience has been undertaken at the request of the NI and is specifically focused on obtaining a more comprehensive understanding of when customers experience vulnerability and the impact this has. In its normal operating cycle the NI undertakes customer surveys and meets regularly with stakeholders, however icare wanted to utilise the opportunity to obtain more granular insights and observations upon which to implement changes to deliver an improved customer experience.

I would like to thank the customers and stakeholders who gave their time to discuss their observations and experiences with their claims journeys. The conversations were at all times professional, transparent, honest and overwhelmingly in the interest of helping the NI to understand where vulnerability is being experienced and the impact that this is having.

Lastly, I would like to thank icare for the very immediate responses and resolutions that were provided to NI customers who had raised specific issues or queries with me. My referrals to the icare Customer Advocacy Team (first response team) resulted in prompt and professional issue resolution on each occasion.

This Report

Content

In accordance with the terms of reference, this report focuses on the insights received from stakeholders and customers on their experiences in dealing with claims administration in the NI workers compensation scheme. The report does not draw insights into the financial health of the NI or examine NI claims management product specifications.

Where possible and appropriate, there is evidentiary metrics to support customer feedback however as icare's Customer Advocate it is my role to advocate without bias, the experiences that stakeholders and customers want to share with the NI. As such, the majority of feedback is qualitative only as shared by stakeholders and customers.

I have made observations only, addressing the themes and issues that have been identified through qualitative feedback, as the NI wanted to be able to digest the findings and determine the specific actions needed within the service delivery and operating model. The observations, and are focussed on understanding where vulnerability arises for customers in the administration of claims management.

Terms of Reference

The Term of Reference are set out in Appendix 2.

Limitations

Readers should be aware when considering this report, that the terms of reference limited this review to the experiences of claims management customers in engaging with NI workers compensation scheme.

There was some difficulty experienced by the icare Customer Advocate Team (CAT) in contacting and scheduling appointments for injured workers to talk to me. This arose due to the very slow internal process in granting legacy system access to CAT representatives to obtain contact details to make the appointments. Additionally, as this was 'opt in' research a

large number of injured workers chose not to participate mostly due to the stress of reliving their experiences (noting that this is a theme in the main body of the report).

The vulnerability that employers may experience in the NI was not in scope of this review.

The terms of reference did not incorporate the requirement to resolve specific customer issues arising within discussion although I note on occasions I referred specific matters to icare's first line response team (complaints) for resolution, on request from the customer.

Customer Experiences not Academic Research

This review was commissioned to understand where customers may experience vulnerability when interacting with the claims management administration process. The focus therefore is the voice of stakeholders and customers and how they articulated where they have experienced vulnerability and what that manifests itself as. It is therefore not conducted as academic research although a literature scan has been undertaken and where appropriate, research articles and academic findings are referenced.

Methodology

Approach

NI services provided to employers and workers are outsourced to multiple Claims Service Providers for management of injured worker claims. These providers are:

- Employers Mutual Ltd (EML)
- Allianz
- GIO (Suncorp)
- QBE

The random selection of injured worker participants was shared across the Claims Service Providers as much as was possible however it is noted that EML are the core provider for the NI with more than 50% of claims managed by them thereby impacting the number of EML participants.

Interim Definition of Vulnerability

A literature scan prior to this research commenced identified several definitions of customer vulnerability nationally, internationally and across industries. The initial search did not identify any specific definition in personal injury schemes however there is substantial research that evidences people involved in compensation schemes are at risk of worse health outcomes than those who are not.

A definition developed for the purposes of this research, for testing and refinement as part of the research, that is specific to the impact that compensation systems was:

> *'A claimant or recipient of icare's products and services that achieves poor or worse than anticipated outcomes as a result of interacting with compensation or insurance products and services and may therefore, be vulnerable on a situational, temporary or ongoing basis'*

Pre- Existing Factors of Vulnerability

The European Commission issued a fact sheet in 2016 entitled 'Understanding Consumer Vulnerability'(2). Whilst the fact sheet is set out in an 'easy English' reading style it sets out principles for understanding vulnerability as follows:

- Having **difficulties choosing and accessing products and services** is the most important driver of consumer vulnerability. Consumers who are not able to read terms and conditions due to small print, who do not know their contract conditions, who rarely compare deals from providers or who rarely read or thoroughly understand communication from their providers, are more likely to be vulnerable in some indicators compared to their peers.
- Both **young and old age** can be drivers of consumer vulnerability depending on the situation. Furthermore, consumers who are **non-native speakers, female, poorly educated** or who **live in low-density regions** are more likely to be vulnerable in some indicators compared to other consumers.
- Consumers in **difficult financial situations** are generally more likely to be vulnerable compared to other consumers. Furthermore, consumers who suffer a **long-term sickness or disability** are more likely to be vulnerable in some indicators, such as having limited capacity to maximise their well-being, compared to other consumers.
- **Not using the internet** overall, and not using the internet to search for information is associated with a higher likelihood of vulnerability in some indicators.
- Consumers who are considered as **credulous, impulsive** or **risk averse** and consumers who have **poor computational skills** or are **less trusting of people** in general are more likely than others to be vulnerable in certain indicators.

Consumer Affairs Victoria released a discussion paper in 2004 entitled 'What do we mean by vulnerable and disadvantaged consumers'(3). In this paper they proposed that vulnerability is a relative concept that is influenced by two factors being the 'ability to protect or defend against the chance of injury or loss and the ability to cope with the negative consequences of injury and loss when it occurs'. That paper adds the dimension of disadvantage which they describe as 'any unfavorable circumstance or condition' and set out the following factors that contribute to disadvantage:

- Mental and/or physical capacity
- Race or ethnicity;
- Age;
- Gender and sexual preference;
- Health status;
- Education attainment;
- Income status; and
- Geographical location (remoteness from urban based services).

The Financial Conduct Authority of the United Kingdom released a report entitled 'Vulnerability Exposed: the consumer experience of vulnerability in financial services'(4). This report resulted from a 2014 study and found that 'vulnerable people are not a special category of people with a unique set of identifiers and characteristics' and concluded that vulnerability will 'inevitably impact everyone to some degree'.

Importantly this report found a number of impacts of vulnerability which included:

- Heightened stress levels due to difficult personal circumstances;
- Increasing time pressures, leaving less time for 'personal admin';
- Increasing pre-occupation – 'brain is elsewhere' – limiting ability to manage;
- Processing power and ability decreases due to competing pressures;
- Lack of perspective, especially when experiencing something for the first time – and therefore not full understanding the broader implications, unable to make comparisons, or see the 'bigger picture';
- Changing attitudes towards taking risks – people often become more 'reckless' and / or careless at moments of stress.

Participant selection, set out below, considered these pre-existing factors of vulnerability when setting the criteria for identifying injured worker customers to opt in to this review.

Participant Selection

Injured Workers

Participants were randomly selected on the basis of a number of widely accepted risk factors for vulnerability together with specific workers compensation risk factors. These factors are set out below with participants required to meet at least one criteria point:

Pre-Existing Factors

a. Low income (80% or below the average weekly earnings of $1,714.90(5));
b. Low English proficiency;
c. Illiteracy;
d. Limited education;
e. Sole parent;
f. Remoteness;
g. Indigenousness; and
h. Serious or chronic health (co-morbidity) above their compensable injury.

It should be noted that criteria (b) to (e), (g) and (h) are not captured as separate data fields in the icare Guidewire system or legacy systems managed by the Claims Service Providers. Proxy indicators were developed where possible and it is noted that qualitative interviews were able to identify existence of these factors for the participants.

Factors Specific to Claims Management

a. Loss of employment;
b. Mental health injury (primary or secondary);
c. Health and/or Return to Work outcomes that are substantially outside the expected outcome (time lost from work greater than 26 weeks was selected); and
d. Living arrangements.

It should be noted that criteria (a) and (d) are not captured as separate data fields in the icare Guidewire system or legacy systems managed by the Claims Service Providers.

RightHandTurn
Transform | Design | Assure

The injured workers interviewed met the above criteria as set out in the table 3 below.

Table 3: Vulnerability Criteria

Vulnerability Criteria	Applicability
Income at or below 80% of average weekly earnings	**97%** met this criteria
Low English proficiency	**20%** nominated English as their second language
Low levels of literacy	**Not** able to be identified in icare systems however none interviewed met this criteria
Limited Education	**Not** able to be identified in icare systems however none interviewed met this criteria
Sole Parent	**Not** able to be identified in icare systems however **3%** of interviewed met this criteria
Remoteness	**37%** of were from Sydney and metropolitan suburbs, **56%** were from regional and rural areas **7%** lived interstate
Indigenousness	**Not** able to be identified in icare systems however none interviewed met this criteria
Serious or chronic health mobility (pre-injury)	**Not** able to be identified in icare systems however none interviewed met this criteria
Loss of Employment	**Not** able to be identified in icare systems however 83% met this criteria
Mental Injury – primary and secondary	**10%** had primary mental injury claims **33%** declared a secondary mental injury
Poor Return to Work outcomes	**17%** had been off work for between 6 months and 1 year **60%** from 1 – 3 years and **23%** from 3 – 5 years
Living Arrangements	**Not** able to be identified in icare systems

Stakeholders

The stakeholders requested to participate, were those that provided services or support to injured worker throughout the normal life cycle of a claim. The stakeholder group was also expanded to include organisations that provided support and services to groups to people that have some of the pre-existing risk factors widely recognised to precede vulnerability. Whilst there was a high uptake with forty (40) individuals across twenty-three (23) organisations interviewed it was noted that for organisations who provide support and services to broader groups of vulnerable people (beyond workers compensation) there was a lower uptake due to time constraints and feedback that specific vulnerability associated with workers compensation was not a strong theme in those who utilised their services.

Stakeholders interviewed are set out in Appendix 3.

Qualitative Interviews

A discussion guide incorporating open ended questions across four (4) broad areas was developed for all qualitative interviews for stakeholders and across five (5) core areas with injured worker participants.

The icare CAT team directly contacted injured workers seeking their agreement to participate in the research by interview. The CAT team scheduled the interview with myself and each participant. Prior to the interview, participants were provided with a document that described the research and a consent form for completion (a verbal consent option was offered also). All participants were advised that conversations were confidential with non-identifying information to be included in the report to the NI. Participants were offered the opportunity to be interviewed by telephone or virtual technology with in person meetings not offered due the current COVID-19 social distancing restrictions.

A total of forty (40) stakeholder and thirty (30) injured worker interviews were conducted. Additionally, a group forum (focus group) of twenty-nine (29) injured workers was also undertaken.

Quantitative Surveys

Given the nature of the conversations being held with participants it was agreed in the Research Plan that quantitative surveying would not yield detailed responses required as it would be difficult to capture the context and intimacy of storytelling afforded in qualitative research.

Ethics Approval and Professional Support

The icare Research team had provided ethics approval for the injured worker interview questions as the nature of the research topic had the potential to give rise to increased emotional responses.

At the conclusion of interview, injured worker participants were offered the opportunity to access a confidential phone line provided by Acacia Psychology. Participants were advised of the availability of the service for post interview support and it is noted that twenty-seven percent (27%) of injured worker customers requested the service provider contact details.

Summary of Injured Worker Feedback

This section provides an overview of the discussions with injured workers on their experiences in the claims management system that have caused vulnerability. As a record of the voice of the customer, the conversations focus on their experiences and perceptions and did not involve testing their legitimacy.

There were thirty (30) one-to-one injured worker interviews and a group forum held with a further twenty-nine (29) injured workers, eight (8) of whom made written submissions for consideration and four (4) had separate one to one interviews.

Whilst the feedback provided in this section considers all conversations held with injured workers as well as the written submissions, the data displayed in graphs is restricted to those who participated in one-to-one interviews. It is important to note however there was very strong correlation between the experiences of those participating in one-to-one interviews and those that attended the group forum.

The question guide for interviews with injured workers set out five (5) core questions and a further four (4) context or administrative points.

Injured Worker Core Questions

Question 1: Tell me about your experience when lodging a claim

Generally, participants felt that there was some degree of process clarity when lodging a claim. For seventy-three percent (73%) of those interviewed it was their first workers compensation claim ever lodged and they therefore did not have a point of comparison for their experiences. The twenty-seven percent (27%) with prior claims reported that their current overall experience was worse than their prior claims, with all prior claims experiences preceding the advent of icare (the NI).

For the majority it was their employer that lodged the claim on their behalf and provided guidance on the process and interacted with the Claims Service Provider to provide and obtain information. Forty-three percent (43%) reported that their employers were supportive through the claims lodgement process and were actively engaged up to the point of claim

determination whilst the remaining fifty-seven percent (57%) dealt directly with the nominated case manager, of which fifty-three percent (53%) found their case manager to be supportive and able to provide clarity through the claims lodgement process whilst forty-seven (47%) did not find their case manager supportive or able to provide process clarity.

> *'I was anxious about what was going to happen, getting paid and how I was going to recover from my injury. My case manager gave me assurance it would be all ok''* (Injured worker on claim lodgement)

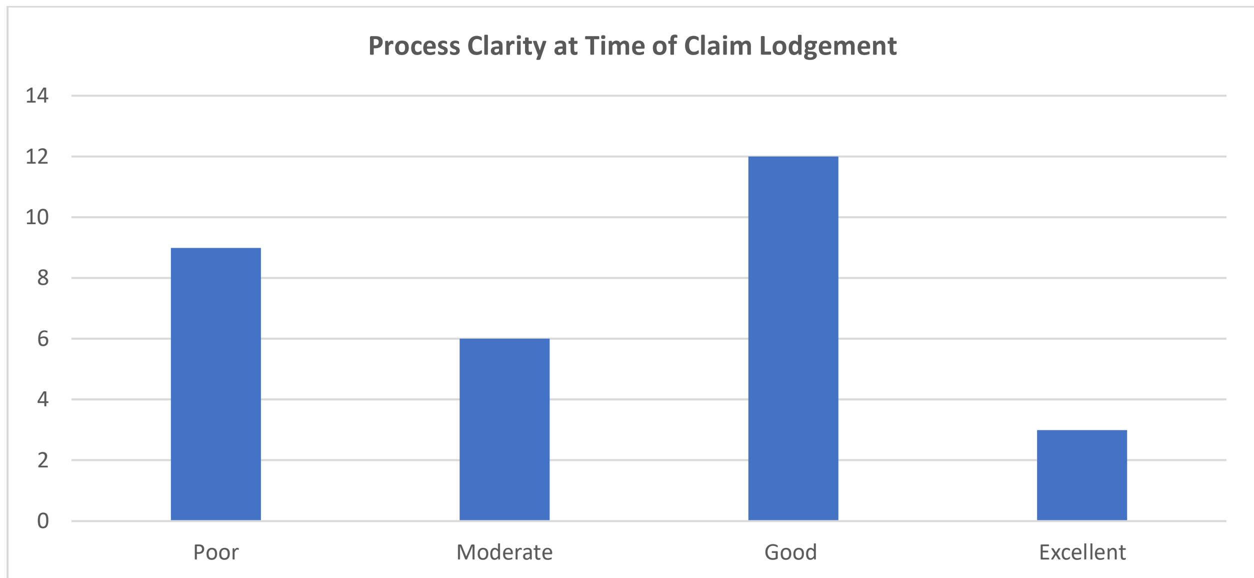
There was consistent feedback that entering the claims management system was intimidating. For those that had not previously lodged a claim, the uncertainty as a result of the lack of available information on the claims journey (guides on 'what happens when') elevated levels of anxiousness. Of those interviewed, twenty percent (20%) nominated English as a second language however all reported that this was not a barrier to communicating and understanding information received from the Claims Service Provider or other parties involved in the management of their claim. Those with prior claims experience indicated they were more forthright in asking questions, lodging complaints or seeking guidance and representation from SIRA, WIRO or other legal avenues.

> *'icare should tell us what they are about at the beginning'*
> *'not very clear at all, took a month to get treatment approved, struggled big time in the beginning'* (Injured workers on claim lodgement)

Figure 1 demonstrates that the level of clarity and understanding of the process when entering and initially navigating the process is inconsistent. The vulnerability injured workers reported experiencing was the 'fear of the unknown', an immediate lack of trust 'in the system' and a propensity to focus on where to find information relating to the claims process, with their health needs 'taking a back seat'. Central to their need for clarity is understanding how decision-making processes work particularly relating to certainty on payment of wages, and access to treatment to commence recovery.

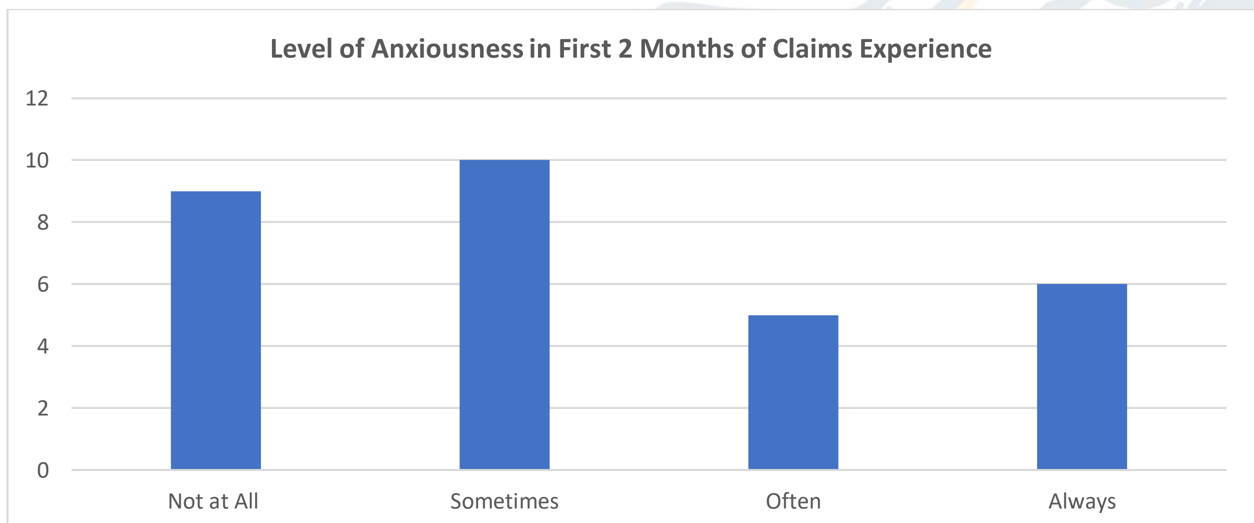
> *'case manager didn't respond to queries from me, my GP or my employer; took 1 month to make contact'* (Injured worker on claim lodgement)

Figure 1. Process clarity for injured workers when lodging a claim



Injured workers expected to be able to enter a system that would facilitate ease in making contact with the person responsible for their claim and to feel supported with clarity of information, both of which impact the level of anxiety and injured worker experiences. Figure 2 demonstrates shows the level of anxiousness felt by injured workers in the first two (2) months of their claims management experience.

Figure 2. Level of anxiousness experienced in the first 2 months of claims management



Whilst figure 2 identifies low to moderate levels of anxiousness, deeper analysis of the data demonstrates how the anxiety is arises. Eighty-two percent (82%) of injured workers who received support from their case manager during the claims lodgement process reported no anxiety or it only happening sometimes (intermittently). Seventy-seven percent (77%) of injured workers who felt supported by the employer, reported no anxiety or it only happening sometimes whilst twenty-three percent (23%) reported feeling anxious often or all the time because they had no visibility on the role or actions of the case manager. Twenty percent (20%) reported feeling unsupported by both their employer and case manager whilst thirty-three percent (33%) often felt anxious and sixty-seven percent (67%) felt anxious all the time.

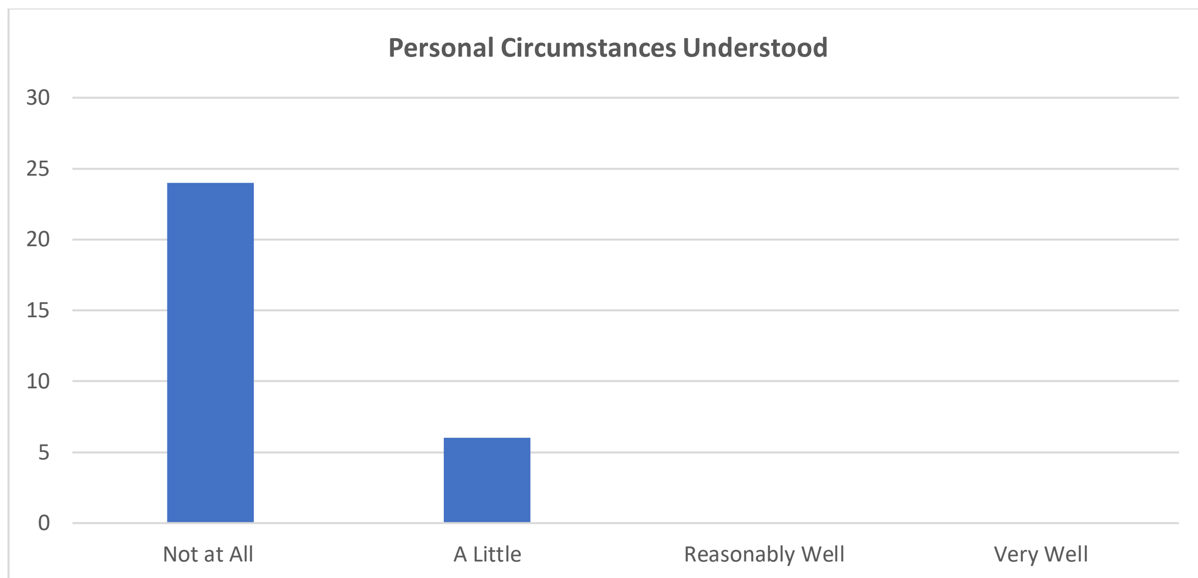
'I was anxious at times understanding the system' (Injured worker on experiencing anxiety at claim lodgement)

For those that reported experiencing levels of anxiousness, this was attributed to an inconsistent connection with the decision maker and a perceived threat to financial survival ('not knowing if I can pay my bills') and health ('will I have to self-fund my recovery').

Question 2: To what extent do you feel the workers compensation system has taken the time to understand your personal circumstances and set and manage mutual expectations?

Personal circumstances play an important role in influencing the types of services required and how they can be accessed. Information regarding living arrangements, literacy and language needs, cultural differences, geographical impacts, broader health concerns of the injured worker and family members and any extenuating circumstances that may impact their ability to actively and consistently participate in the claims management process was rarely sought.

Figure 3. Extent to which the case manager understood personal circumstances and needs



Injured workers were asked if their case manager had sought to understand their personal circumstances during the claim lifecycle. Eighty percent (80%) of injured workers indicated they had not been asked by any of the case managers that had managed their claim. Twenty percent (20%) of injured workers that reported a small amount of enquiry on personal circumstances indicated that it was in the context of asking how they were as a general question which afforded the opportunity for the injured worker to share circumstances. This was not asked by the case manager as a deliberate question.

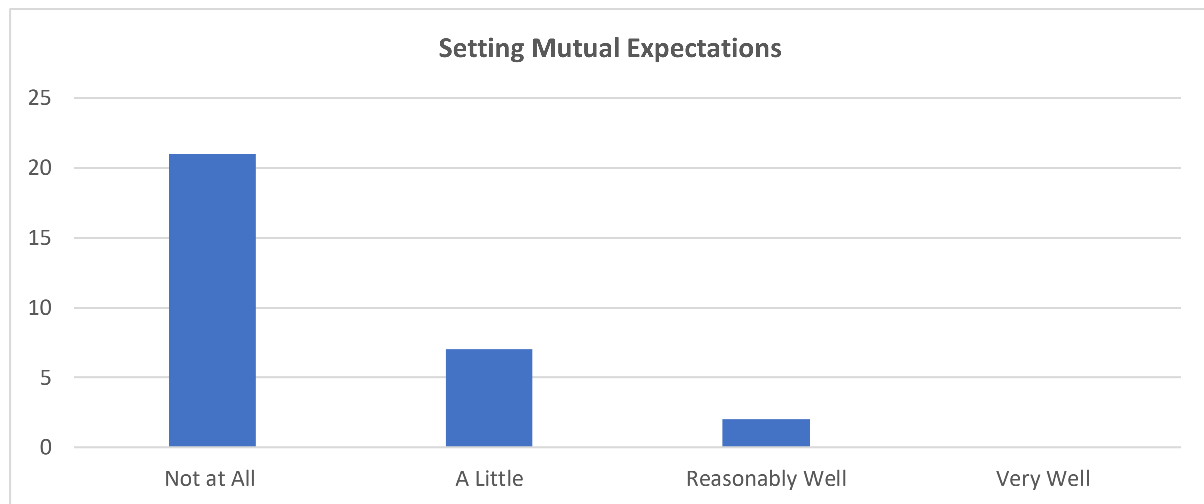
'they can be nice but there is zero compassion, empathy and understanding' (Injured worker on understanding their personal circumstances)

Injured workers reported case manager turnover was expected however 'lived in hope' the next case manager might take a deeper, more genuine level of interest in them than the prior case manager. They experienced vulnerability in the form of loneliness within a system that does not consider their personal circumstances to be relevant when decisions are made regarding health and treatment and their future employment prospects.

Injured workers reported entering a system that they understood was there to personally support them in their return to health and work journey however their relationship with their

case manager was based on a standard process. Case managers did not take the time to set mutual expectations which left injured workers with uncertainty and in a position where things were done to them, as opposed to with them.

Figure 4. Extent to which the case manager set mutual expectations for claims management



Participants were asked if there was a mutual expectation setting process (an open, collaborative approach to setting expectations between the injured worker and case manager), either at the beginning of the claim or at any point during the lifecycle of their claim. Figure 4 demonstrates that seventy percent (70%) reported never having a discussion on mutual expectations. This cohort advised being told in a directive manner of their responsibilities to 'provide a certificate every 28 days or your benefits will cut off' and 'they give direction and you don't get much of a say'.

> *'there is no proactive approach saying is what we can do for you'*
> *'you become part of a system you can't change or influence'* (Injured workers on mutual expectation setting)

Those that reported intermittent expectation setting indicated that it was based the genuineness of their case manager during their first interactions. Importantly, one hundred

> *'every time I turn around I have a new case manager and no-one tells me why'*
> *'system has not worked for me as I have had so many case managers; the new one each time has no idea what is going on'*
> *'they pass you round like a hot potato'* (Injured workers on case manager change)

percent (100%) of participants had more than three case managers with the highest frequency reportedly being twenty-eight (28) case manager changes.

Only six percent (6%) of injured workers reported mutual expectation setting was managed 'reasonably well' when they received a clear understanding of the case manager's role and were able to understand the claims management process through an open two way exchange with the case manager.

Without mutual expectation setting, injured workers report vulnerability as a sense of no direction, uncertainty over their lives and being lost in a system that is large, confusing and complex.

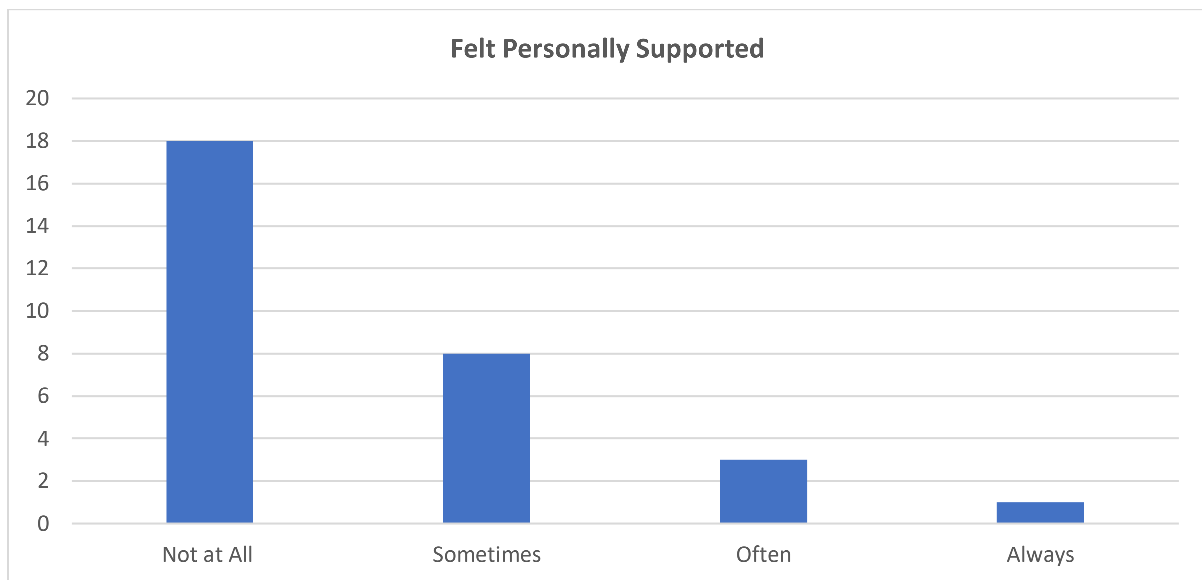
> *'not that I can recall; case managers just tell you that you have 5 years on workers compensation; it is not a help based system'* (Injured worker on lack of mutual expectation setting)

Question 3: To what extent do you feel the workers compensation system has supported you to achieve best possible return to work outcomes, your normal activities of daily living and a safe and normal pre-injury family environment?

During interviews, injured workers laboured the view that establishing a relationship based on trust, responsiveness and empathy with their case manager was the most significant determinant in the level of vulnerability experienced in the claims management process. As indicated earlier, the change in case manager whilst frustrating was not their key concern of but rather the inability to establish a personal and mutually respectful relationship in which they felt trust and confidence.

Injured workers described being personally supported in terms of being able to count on the case manager to talk to, provide clarity on process, be empathetic and to act fairly and in their best interest. In saying this, they acknowledged the role the legislation plays however it was not always administered fairly.

Figure 5. Extent to which the injured worker felt personally supported



Sixty percent (60%) of injured workers who experienced no personal support at all reported a deep sense of distrust in the motives of Claims Service Providers. They felt the commercial imperatives of Claims Service Providers were aligned to 'just getting me off the system no matter what' or 'shifting me to Medicare as soon as they can'.

> *'you can't service someone if you have a financial interest in not servicing them'*
> (Injured worker on misalignment of injured worker needs and how Claims Service Providers are rewarded)

Further, sixty percent (60%) of those interviewed reported being offered no level of support or inquiry from their case manager regarding their ability to manage the activities of daily living nor were they made aware of the entitlement to ask for assistance. This had subsequently placed a significant level of pressure on the families and friends with seventy-five percent (75%) of this cohort reporting a deterioration in these relationships resulting from their reduced capacity to contribute to activities of daily living and not being able to sustain trust based relationships.

> *'people who have injuries are not understood by people sitting behind a desk; they talk over the phone but don't see you physically and what you go through'* (Injured worker on case manager approach)

Importantly, fifty-seven percent (57%) reported a negative change in relationships with family and friends and their broader social network. They attributed this to the pressure of existing in a system where they had no control or influence and feeling as if they are ‘being dealt with and not cared for’. Injured workers describe an erosion of trust and support with family and friends who ‘are no longer able to continue on the journey’ with them.

Injured workers consistently reported feeling that the case manager did not act in their best interest and were simply an advocate of the insurer who was incentivised to say no to costs specifically recommended to improve their health outcomes. This lack of support by the case manager, family and friends exacerbated feelings of isolation, being made to feel like a burden, not being believed and a social outcast.

> *‘treated as a file on the table’*
> *‘we’re here to support you, well they haven’t yet’* (Injured workers on feeling supported)

The correct and timely payment of Pre-Injury Average Weekly Earnings (PIAWE) was cited as an issue directly relating to the financial vulnerability experienced. Fifty-three percent (53%) reported having concerns with their (PIAWE) with issues ranging from incorrectly calculated (thirty-three percent (33%)) or late payments (sixty-seven percent (67%)). Surprisingly the limitations the legislation put on the PIAWE entitlement such as step downs was not the driver (although some felt this was not fair) but the repeated incorrect calculations and irregular payments creating the need to ‘juggle finances’ and feeling financially uncertain had the most significant impact.

> *‘I feel drained in all ways – mentally, financially, in all ways; I want to be independent; it’s horrible being in constant arguments in email and over the phone’*
> *‘late pay…put me into debt and thank God for tax time otherwise I would have been screwed’*
> (Injured workers on financial vulnerability)

Health management was the most fundamental aspect of the claims management process for injured workers with them consistently discussing the impact of not feeling supported and believed regarding their injury. Central to this was the power imbalance or as some referred to it ‘abuse of power’ with delays in treatment approvals being a normal practice and the stress of having a third party determine their health trajectory. This experience extended from simple treatment requests such as physiotherapy through to complex needs such as surgery or

treatments that may be classed as experimental or new. One hundred percent (100%) of participants had experienced what they believed to be unreasonable delays in treatment approval. Although case managers are afforded 21 calendar days under the SIRA guidelines (reference) to approve treatment, eighty-seven percent (87%) felt that this was too long and detrimental to their medium and long term health recovery.

> *'they just take the 21 days whether they need it or not'* (Injured worker on case manager approach to treatment approval process)

Figure 6. Extent to which the injured worker felt health supported

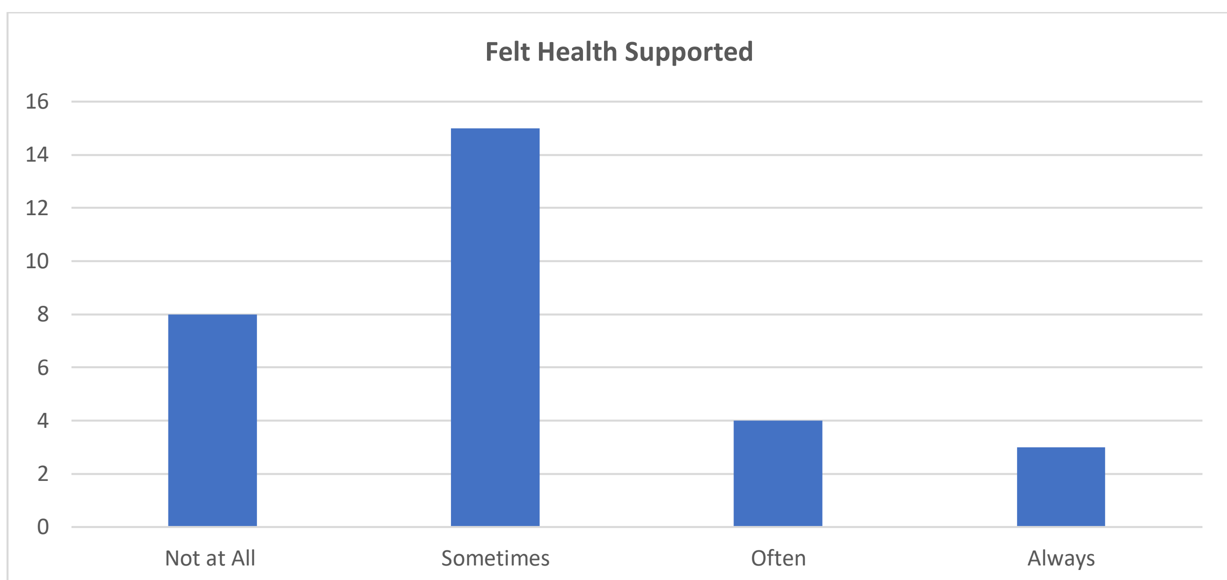


Figure 6 demonstrates the extent to which injured workers felt health supported by the claims management process. Despite the resentment expressed by eighty-seven percent (87%) of injured workers at waiting a month or more for treatment approvals, seventy-three percent (73%) reported they were somewhat supported but only in the context that it was ultimately approved and someone was willing to pay for it. More importantly, they were very clear in their feedback that it came at a substantial 'price' with a real or perceived deterioration in the primary injury condition during the waiting period and in some cases the development of a secondary mental health condition.

> *'my case manager just says no, no, no'* (Injured worker on attempting to access treatment)

Interestingly, of the thirty-three percent (33%) of injured workers interviewed with a secondary psychological condition all advised that once a secondary psychological condition was diagnosed, there was an increase in denials for treatment requests for the primary physical injury with the focus shifting to the treatment for the secondary psychological injury even though the physical injury had not resolved.

'they have stopped my physio without telling me but I don't know why, my specialist says I need it'
'it is like running into a brick wall as fast as you can' (Injured workers on attempting to access treatment)

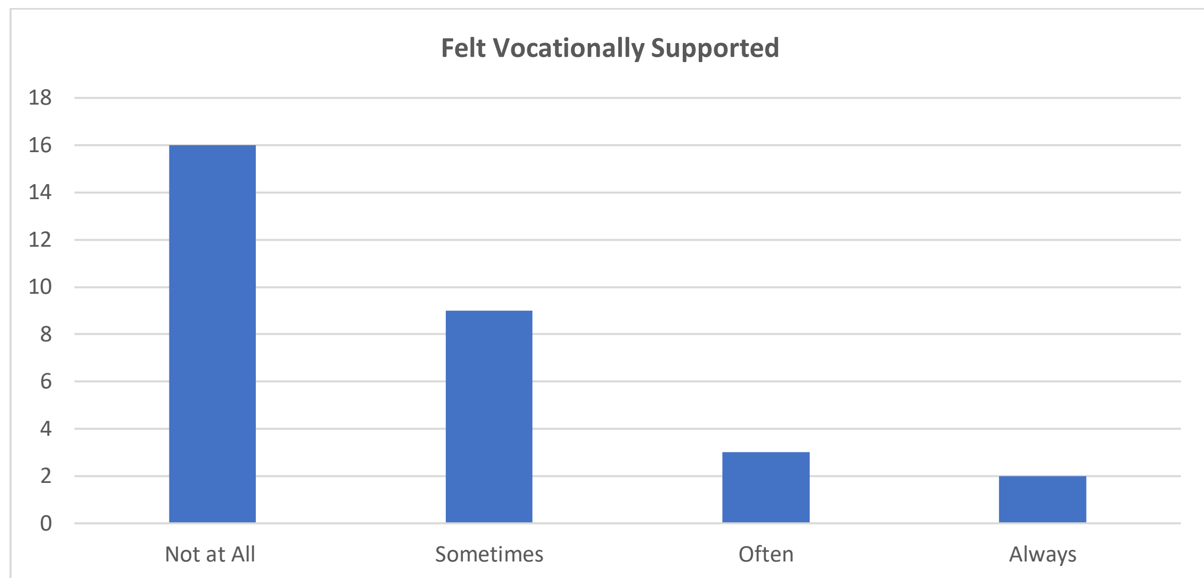
Thirty-three percent (33%) of injured workers reported significant weight gain as a result of injury, medication or through the 'stress of dealing with the system' the treatment for which was not supported by their case manager. Weight gain lead to a loss of self-esteem further exacerbating their withdrawal from family, friends and their social environment and negatively impacting their mental health.

The preference for Independent Medical Examinations (IME) over the opinion of their own treating doctors also exacerbated the feelings of not being believed and supported. Thirty percent (30%) experienced multiple IMEs with different IME specialists each time (the highest reportedly being 10 different IME psychiatrists for one injured worker). Concerns regarding being asked to travel several hundred kilometres to attend an IME, not being aware of the ability to choose the IME specialist and their perception the questions posed by the case manager were not relevant to their injury and circumstances. All reported that the case manager was slow to release copies of IME reports or did not release them at all. The vulnerability felt by injured workers was the 'intrusion of a stranger' into their health management at the expense of the voice of their own treating practitioners. It was felt that IMEs were used to discredit a worker's health condition and treatment, and position the Claims Service Provider to take aggressive action in the denial of treatment and cessation of wages. It was further described as IMEs being used by the case manager to further cement their position of power over the injured worker.

'I just wasn't given a choice of IMEs and didn't know until later the Insurer had to give me a choice'
they send you back to the same IME if it suits their purpose only' (Injured workers on case manager use of IMEs)

Surprisingly, despite being advised when entering the claims management process that the primary objective was a return to work only seventeen percent (17%) felt they were always or often vocationally supported as can be seen in figure 7.

Figure 7. Extent to which the injured worker felt vocationally supported



Injured workers reported attempting to return to work at all costs as a result of pressure from their employer and the ‘fear of retaining their employment’. Their assessment of the level of vocational support was greatly influenced by their experience with a rehabilitation professional. Twenty-seven percent (27%) reported experiencing unreasonable levels of pressure and coercion on them and their treating doctors to increase capacity to work with them left feeling that the core objective of the rehabilitation professional was to accelerate their exit from the system at the behest of the case manager or their own commercial imperatives. Discussions also included the experience of rehabilitation professionals attending doctor appointments, being spoken about, but not with, leaving them ‘completely powerless’ and their observation that their treating doctors were being ‘unreasonably forced’ to change capacity certification, all of which reinforced the power imbalance in the system. When questioning the approach of the rehabilitation professional they report being told ‘if you don’t agree it will be detrimental to your claim’ which they interpreted as threatening.

> *‘help is one thing, force is another’* (Injured worker on approach of rehabilitation professionals with treating doctors)

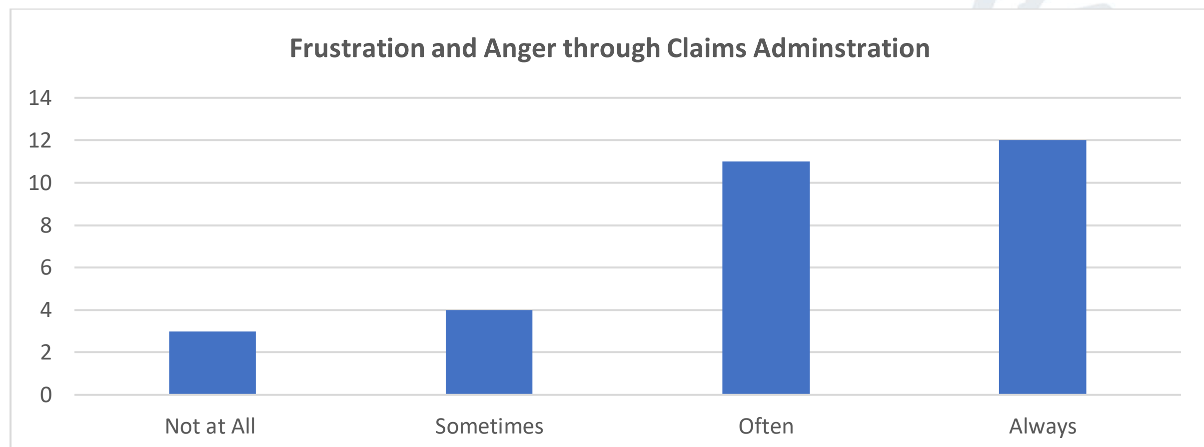
For the twenty percent (20%) of injured workers who reported vocational support was provided, that return to work outcomes were led or achieved by themselves with administrative support from the rehabilitation professional.

Question 4: Have there been times throughout the lifecycle of your claim that you have felt frustrated or angry with the claims management approach and felt that there is nowhere to go for assistance?

Seventy-seven percent (77%) of injured workers reported being frustrated often or all of the time with the claims management process (see figure 8). Further questioning identified that injured workers were able to separate frustration in health and return to work progress versus frustration with the 'mechanics' of the claims management process arising mostly from the lack of personal and meaningful relationship with their case manager. The twenty-three (23%) of injured workers who reported less frustration and anger still experienced 'down days' but had 'learnt to live with the system' and made the necessary personal adjustments to minimise the impact to their wellbeing.

> *'I have developed a bad temper with [Claims Service Provider]'* (Injured worker on expressing frustration with the claims management process)

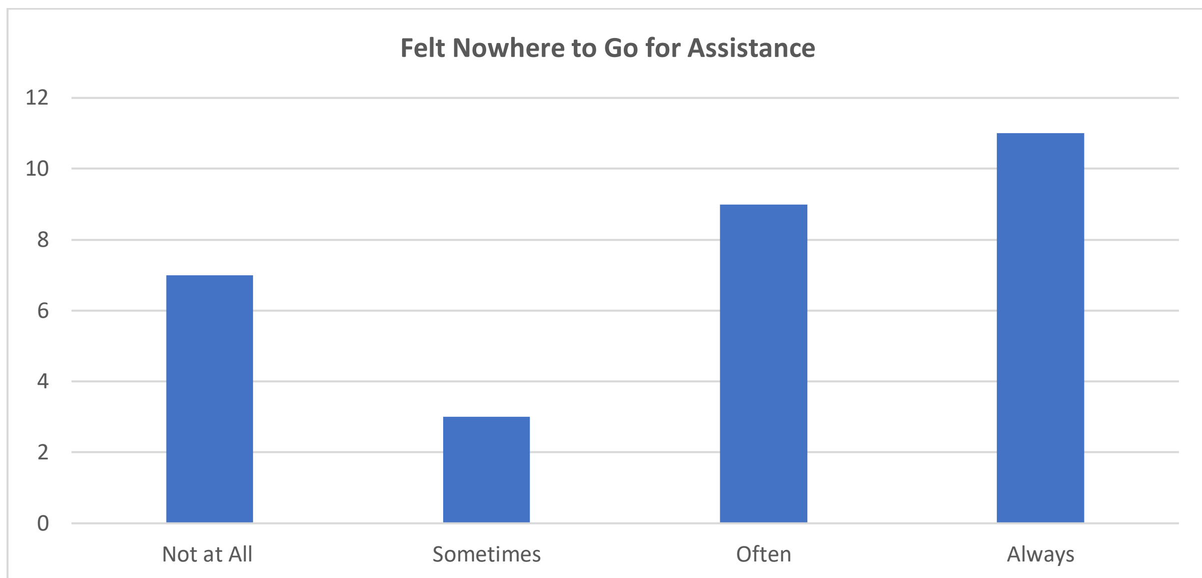
Figure 8. Extent to which injured workers felt frustration and anger with the claims management process



Injured workers reported that anger and frustration did not necessarily manifest itself in outbursts towards the case manager but in being 'snappy' with family members and 'difficult to get along with'. Case managers did not witness the 'emotional reaction' that occurred after the phone call ended, unfortunately family members and friends bared the brunt. This was

partly because previous complaints to case managers had not been addressed creating feelings of helplessness. There was a sense that after a 'few years in the system you are no longer a priority' for the case manager and that you become a 'set and forget' activity.

Figure 9. Extent to which the injured worker felt there was nowhere to go for assistance



As shown in Figure 9, sixty-seven percent (67%) of injured workers reported often or always feeling that there was nowhere else to go in the system. Importantly the thirty-three percent (33%) who felt this only occasionally or not at all had engaged legal representation or sought WIRO's assistance to navigate the system or respond to their queries.

> *'can't go to my [Claims Service Provider] for help and assistance when they can deny all the time. Why bother?'* (Injured worker on avenues for assistance)

Many injured workers expressed exasperation at the lack of support available to navigate the system. WIRO was seen as a mechanism that could accelerate responses on some issues from the Claims Service Providers however attempts to have issues addressed or complaints resolved directly with the case manager or icare were seen as 'pointless' as all control and 'power' sits with the case manager.

> *'every time [Claims Service Provider] contact me I am left with nowhere to go; who do I get to, where do I go?*
> *All I get is a survey from [Claims Service Provider] and now I don't trust them and won't fill it in again'* (Injured worker on avenues for assistance)

Question 5: What could have been done differently to make you feel more certain about the workers compensation system and your return to health and work?

Injured workers offered the following views on strategies and actions that could be adopted to minimise the occurrence of vulnerability arising from claims management:

I. Speed in decision making (specifically initial liability decisions and approvals for medical and like treatment);
II. Regularity of payments of weekly wages (more than 50% of injured workers interviewed reported irregular and / or incorrect payments);
III. Setting of agreed expectations and subsequent transparency in managing to outcome with this process taking into account an injured workers personal circumstances;
IV. Genuineness in being listened to and accepted (believed);
V. Minimising the impact of a change of case manager (the development and maintenance of meaningful relationships between the injured worker and case managers);
VI. Case management staff that have a moderate level of injury management understanding that can facilitate informed conversations and decision making on health related decisions;
VII. Consistent displays of empathy and compassion;
VIII. Transparency in:
    i. decision making (evidence for denials and deferrals);
    ii. personal support (being proactively offered support for daily activities of living)

Summary of Stakeholder Feedback

This section is intended to provide an overview of stakeholder discussions and an understanding of what they consider to be important about vulnerability in the claims management system. Stakeholder insights are discussed below and listed in Appendix 3.

As the stakeholders interviewed were from a broad range of service and support provisions, an open-ended questioning approach was adopted across four (4) key areas:

1. What do you believe vulnerability is (generally)?
2. What do you believe generates vulnerability for injured workers in claims management?
3. What are the behaviours that you observe when vulnerability occurs in the claims management process?
4. What in your opinion can be done to minimise vulnerability in claims management?

This approach was deliberately adopted to allow stakeholders the opportunity to express their experiences in dealing with people broader than those within the workers compensation system.

Stakeholder Interviews

Question1: What do you believe vulnerability is (generally)?

There was consensus amongst stakeholders interviewed that vulnerability is an individual concept and that by its nature everyone is vulnerable as we are all exposed to something at a point time that will create fragility within us.

As an individual concept stakeholders expressed that each person has different thresholds for coping and resilience and felt that it could be characterised as:

- a perception or real state that harm might come to someone;
- being exposed to decisions, not the decision itself;

- a lack of, or no, control over a situation and therefore having to take people on face value;
- feeling powerless (‘like a cog in the system’) and experiencing a loss of autonomy;
- not being able to contribute to decisions being made about you;
- an inability to navigate a system or process (likened to being ‘caught in a maze’);
- not knowing where to place your trust; and
- lack of awareness (where things are and how things work).

Question 2: What do you believe generates vulnerability for injured workers in claims management?

Stakeholder discussion on this question can be summarised into the following themes:

i. Power Imbalance

The majority of stakeholders made the observation that there is a power imbalance between the Claims Service Provider and the injured worker with very little opportunity for them to address. Stakeholders see drivers for this as:

- decisions are made about an injured worker’s health by a third party with little to no input or influence being able to be exerted by the injured worker;
- where mental injuries exist (primary of secondary) power imbalances are magnified due to a reduced cognitive ability to process and comprehend information and influence actions and decisions;
- decision makers hide behind legislation and process with written and spoken language towards injured workers couched as ‘you must do this by this date because of legislation’;
- the system being non-patient centric. Stakeholders draw the distinction between the system dynamics of an injured worker in a claims management process and the health needs of patients in a private health setting and observe there being no correlation between the two.

ii. Being Believed

A strong theme throughout discussions was that injured workers are required to repeat and justify their story many times in the life cycle of a claim. This occurs most notably when

the claim is initially lodged (particularly when an employer disputes the evidence or there is a factual investigation undertaken by the Claims Service Provider), every time there is a change in case manager, engagement of rehabilitation providers and attendance at Independent Medical Examinations. Stakeholders advise that injured workers live through a need to constantly prosecute the validity of their injury and capacity which becomes a focus that overshadows recovery progression.

iii. Relationship between Case Manager and Injured Worker

There is a strong feedback from stakeholders that case managers:

- have no personal investment in claims they manage as they act at arm's length in decision making and are not involved in dispute management. It is acknowledged that there is high case manager turnover and that case managers are time poor however it is felt that Claims Service Providers implement a front-end focus on claims and are then largely disengaged beyond that. This creates minimal opportunity for injured workers to create anything beyond a transactional relationship with their case manager impacting decision making and creating vulnerability as they are not able trust or rely upon a case manager that gets to know them personally.
- a lack of effective and consistent communication was raised by all stakeholders. This results in injured workers constantly chasing up the case manager whether it be for information, when decisions will be made, reasons for decisions or access to payments all of which create uncertainty and a feeling of loneliness;
- consistent lack of compassion and empathy to the impact the injury is having on their life contributing to a feeling of loneliness.

iv. Approach to Medical and Like Approvals

This was singled out as one of the most significant drivers to vulnerability:

- delays by case managers in approving medical and allied health treatment, x-rays and liability decisions were seen as normal practice;
- case managers using legislative time frames as a matter of course and not acting with any sense of urgency; a 'hurry up and wait' approach to case management;
- injured workers place a lot of faith in case managers acting quickly and in their best interest but they lose trust creating an unwillingness to cooperate when extended delays are experienced;

- decisions come as a shock, often unannounced, with limited information to explain the decision;
- an accepted claim does not alleviate vulnerability as the delays for approvals create at least a (perceived) further deterioration in health;
- an accepted claim can at any time be subject to a denial of treatment and wages which creates a constant threat to both health and survival.

v. **Confusion**

Stakeholders observed that an inability to navigate the claims management system creates learned helplessness in some injured workers.

vi. **Language (English a Second Language) and Literacy**

Language and literacy was not a strong theme in discussions with stakeholders although it was noted that where an injured worker's second language is English, case managers inappropriately rely on a family member to interpret information exchanges breaching the injured worker's privacy. This also causes some distress with family members being exposed to intimate health details, for example mental health deterioration.

vii. **Unreasonable and Unspoken Pressure**

Stakeholders raised a number of instances where they believe unreasonable pressure (real or perceived) is applied to injured workers:

- pressure from employers to return to work generating a need to comply at all costs, diminishing optimism in recovery resulting in a very real fear of losing employment and financial stability;
- pressure from rehabilitation providers to agree to their attendance at treating practitioner medical appointments and their subsequent pressure on the treating doctor to increase capacity;
- the use of work capacity decisions and section 39 provisions as 'weapons' and not opportunities to assist the injured worker to understand the decision and the reasons for it, seek advice or transition to new arrangements.

viii. **Financial Distress**

There were various elements to financial vulnerability highlighted by stakeholders:

- the legislation creates medium to long term vulnerability with the ‘step down’ of wage entitlements and the loss of superannuation contributions;
- the denial of claims entitlements whether initially or at any point in the life cycle of the claim creates an immediate vulnerability in not being able to meet daily commitments and the progress of health recovery;
- incorrect Pre-Injury Average Weekly Earnings (PIAWE) decisions are a driver of financial vulnerability as remediation to correct the amount often takes time and creates financial pressures on injured workers and their families;
- late payment of PIAWE entitlements and reimbursement of expenses personally incurred create the requirement to ‘juggle finances’ and magnifies vulnerability felt by financial uncertainty;
- the uncertainty created by financial vulnerability brings about survival fears of:
  - homelessness;
  - ability to provide for their family;
  - access to phone and internet;
  - affordability to pay for medications and other health related needs;
  - PIAWE step downs creating the need to defer mortgage repayments and maximise credit cards;
  - inability to get credit as financial institutions see their finance situation as temporary;
  - not being eligible for broader support networks e.g. not able to qualify for a healthcare card as they have a workers compensation safety net, and this precludes access to charities that require a health card.

ix. Dispute Management

Stakeholders raised two areas of dispute management that generate vulnerability for injured workers:

- protracted disputes often result in injured workers making poor decisions, driven by the need for ‘it just to be over’;
- a reinstatement or ‘yes’ result at the Workers Compensating Commission isn’t necessarily a win as injured workers don’t know what and when the next treatment or wage issue may be;
- when decisions are overturned by the Workers Compensation Commission or through the engagement of WIRO there is a distinct feeling of injustice.

Question 3: What are the behaviours that you observe when vulnerability occurs in the claims management process?

Stakeholder discussion and feedback on this question can be summarised into the following themes:

i. Over Emphasis

In an effort to impress upon others that their injury is 'real' injured workers will over emphasis their injury and its effects. This behaviour is displayed towards those administrating the claim, towards treating and Independent Medical Professionals and to family, friends and the broader social circle.

ii. Support Networks

Stakeholders observe that there is a reduced ability of injured workers to function within normal social networks which manifests itself as:

- relationship breakdowns resulting in isolation;
- marriages and partner relationships adversely affected by the inability to function as a partner and a parent;
- adverse behaviour towards their children;
- increase in alcohol and cannabis consumption;
- threats of self-harm and harm to others;
- withdrawal from pre-claim social circles because injured workers feel there is no longer any prestige to their life, have a perceived diminished reputation and see their prospects for re-employment as substantially diminished.

iii. Giving Up

The inability to navigate the system, establish a relationship with their case manager and understand the actions of the case manager lead to an injured worker 'giving up' or taking a 'what's the point' attitude to their health and recovery as they feel that there are barriers everywhere they turn, ultimately withdrawing within themselves. For some stakeholders this was seen as a deliberate insurer tactic with only those who are persistent or don't give up having a favourable experience.

iv. Anxiousness

Stakeholders reported that anxiety is generated by a number of key interactions in the claims management process:

- Someone else (case manager) is controlling their destiny and the fear this generates.
- Parties involved in the claim, talk about them and not with them, bringing about significant feelings of disempowerment. This specifically occurs at case conferences when rehabilitation providers are present;
- Constant question of genuineness hanging over them.

v. Trust

Trust is difficult to establish and maintain with stakeholders noting that a breakdown in trust between the injured worker and case manager results in a reluctance to re-engage and often the case manager is seen as the enemy.

vi. Despair and a Sense of Helplessness

Stakeholders report this to be a strong theme for injured workers with behavioural observations being:

- threats of self-harm and harm to others are overt;
- despair from feelings of being trapped in a system;
- mental and physical fatigue as injured workers are constantly in 'fight or fright' mode;
- grieving plans once had that now seem out of reach and out of their control;
- the workers compensation system isolating injured workers to the point where they feel it is only them and no-one else in the position they are in;
- an angry injured worker is not necessarily an unreasonable injured worker however unreasonable complainant procedures can be used to punish rather than understand what is causing such behaviour.

vii. Secondary Mental Injuries

The general comment from stakeholders is that secondary mental health injuries are prevalent in the NI often evolving and featuring in an injured workers claim and having an adverse impact on health. It is observed that the Claims Service Provider will revert to focussing on the secondary mental health injury and ignoring the ongoing primary physical injury.

Question 4: What in your opinion should be done to minimise vulnerability in claims management?

Stakeholders offered the following views on strategies and actions that could be adopted to minimise the occurrence of vulnerability arising from claims management:

i. Providing injured workers with brief descriptions of 'the claims journey' with this being specifically provided when a claim is accepted, rejected, and decisions deferred;
ii. Improving case management practices to reduce the number of times an injured worker has to repeat their 'story';
iii. Improving the opportunity for injured worker advocacy with this being specifically focused on how to navigate the claims management process and being proactively shown where to go for support and guidance;
iv. Strong views held on factors regarding case management:
    a. mutual expectation setting that goes beyond rights and responsibilities;
    b. case load levels reduced to a point where mutually respectful relationships can be established between the injured worker and case manager and one that is not based on email and standardised communications;
    c. case manager skill levels increased to enable evidence-based decisions on treatment (i.e. case managers having a level of medical understanding), liability and the management of disputes;
    d. adopting a 'what can I do to help you' approach to interacting with the injured worker e.g. proactive offering of travel reimbursement and arranging pharmacy accounts alleviating financial pressure;
    e. mechanisms in place to ensure that information that has been provided is properly understood and comprehended by the injured worker
v. Accelerate systems and processes to provide immediate decisions on approvals for medical and allied health treatment;
vi. Having a mechanism for restorative justice that minimises injured workers becoming fixated and unable to move forward on any aspect of their health and return to work. An appropriate mechanism would include an acknowledgement, apology and documented plan to restore the relationship and claim management activity.

Discussion

A literature scan was undertaken in conjunction with the icare research team some of which is shared in this section. There is strong correlation between the findings in the literature scan and the qualitative evidence in this review.

Literature Scan

Claims management practices and process can have significant impact on the health outcomes of claimants, with evidence suggesting that interactions between insurers and claimants can influence the development of secondary injury in the form of psychosocial consequences(6). These effects are not limited to people making claims for mental health conditions and may also contribute to secondary psychological harm in people making claims for physical conditions.

The influence of compensation schemes on health is multi-factorial. The stressfulness of claiming compensation contributes to increased disability and poor psychological function post injury, although there is some suggestion that baseline mental health plays a role in whether people experience the claims process as stressful(7, 9).

Research evidence from international disability benefit systems, and Australian injury compensation systems show that experiences of insurance system processes can negatively impact a recipient's health, social function, and quality of life. For example, a systematic review reported that strict and rigid assessment and benefit processes, reliance on medical certainty, and slow decision-making processes can exacerbate disability and inhibit participation in work(10). A review of the qualitative research on interactions between workers compensation insurers and injured workers, reports that claimants can experience the interactions as stressful which in turn contributes to both poor mental health and loss of work function(6). In an Australian cohort of people with traumatic injuries, claims experiences that were most often reported as highly stressful by claimants included; understating what to do for the claim, the time taken to have the claim administered, and the number of medical assessments required(7). Experiencing these processes as stressful was associated with elevated levels of disability and anxiety and depressive symptoms and lower reported quality of life six years after injury(8).

Research suggests a link between the number of independent medical assessments and negative effects on a claimant's health, implied by a positive association between the number of assessments and health care utilisation after transport accidents in Victoria (10). As an example of the impact of other types of eligibility assessment - in the United Kingdom (UK) a study showed that reforms of the Work Capability Assessment for disability benefits was independently associated with an increase in suicides and self-reported poor mental health Barr (2016).

In a cross-jurisdictional study of Australian workers compensation schemes, one quarter (23%, $n = 2515$) of injured workers reported a neutral or negative experience of their insurance claim processes(13). In this study, workers with mental health conditions were least likely to report positive experiences, or to be working at the time of survey. Overall, claims experience was significantly associated with multiple personal, workplace and claim factors, extending the research on the intersection between claims experience and health and work outcomes. Vulnerability factors are highly individual. A qualitative study of a compulsory third-party personal injury scheme in New South Wales reported that participants had contrasting injury recovery experiences. Perceptions of claims process also differed, and were influenced by injury recovery expectations, and timeliness of healthcare decision making(9).

Definition of Vulnerability

The literature scan undertaken prior to the commencement of this review did not identify a definition of vulnerability specific to workers compensation. Two definitions of vulnerability relevant to the financial services industry products address some of the themes found in the qualitative evidence of this review include:

1. 'a vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care'(15)
2. 'a vulnerable consumer is a person who is capable of readily or quickly suffering detriment in the process of consumption. A susceptibility to detriment may arise from either the characteristics of the market or the nature of the transaction; or the individuals attributes or circumstances which adversely affect consumer decision-making or the pursuit of redress for any detriment suffered; or a combination of these'(3)

Whilst not directly related to workers compensation or personal injury, themes from these definitions can inform the development of definition for the NI to consider.

Nominal Insurer Definition

At the commencement of this review a draft definition of vulnerability was developed to test against the qualitative evidence of stakeholders and particularly injured workers for relevance and appropriateness. The constraints of this definition were limited to the vulnerability experienced in the claims administration process and defined as:

> *'A claimant or recipient of icare's products and services that achieves poor or worse than anticipated outcomes as a result of interacting with compensation or insurance products and services and may therefore, be vulnerable on a situational, temporary or ongoing basis'*

At the completion of the research, it has been identified that the above definition is too broad and does not recognise that both process and outcome can also cause vulnerability. Importantly, it has been identified that the claims administration process may provide the appropriate level of support however vulnerability may still be experienced due to the claim outcome. Equally an optimal outcome may be achieved in spite of the administration process causing vulnerability throughout the claim journey. An alternate definition on injured worker vulnerability is proposed:

> *'A claimant of the Nominal Insurer may become vulnerable if they experience a lack of clarity in the setting and management of agreed mutual expectations, a lack of support on their claims journey or a lack of personal respect in the administration of their claim; and a claimant of the NI who believes that their health and return to work outcomes are detrimental to their wellbeing may also become vulnerable'*

This alternate definition incorporates the multiple facets of the claims management process and recognises that worker vulnerability can occur as a result of one facet or many. Importantly it is also recognises that vulnerability can also be experienced due to factors outside of the control of the NI as well as within the control of the NI. Further the alternate definition captures

relevant pre-existing factors of vulnerability and those discovered from this qualitative review and is proposed as set out below:

> *'A claimant of the **[scheme]** may become vulnerable if they experience a lack of clarity in the setting and management of agreed mutual expectations **[considers: literacy, education, low English proficiency]**, a lack of support on their claims journey **[considers: living arrangements, decision maker and influencer relationships, personal needs and circumstances, health needs and outcomes]**, or a lack of personal respect **[considers: trust]** in the administration of their claim; and a claimant of the **[scheme]** who believes that their health and return to work outcomes are detrimental to their wellbeing may also become vulnerable'.*

Observations for Claims Service Providers

Formulation of recommendations was excluded from the terms of reference for this review and as such a series of observations have been set out in the executive summary of this paper for the NI to consider.

Notwithstanding this, a desktop review of the policies, procedures and operational documentation provided by the Claims Service Providers' was undertaken with the purpose to provide context to stakeholder and injured worker interviews. In reviewing these documents and in discussions with the Claims Service Providers it was observed that:

- the identification and management of vulnerability is focused on injured worker threats of self harm and harm to others. Management actions are well documented for this level of vulnerability and the level of learning and development that each Claims Service Providers delivers to staff for this seems on the surface to have a level of adequacy however it requires deeper analysis and testing by an appropriately qualified person(s);
- there is a lack of a clear definition of vulnerability and documented 'flags' or 'triggers' that identify when an injured worker may be experiencing vulnerability outside of self-harm and harm to others. Whilst not examined it is anticipated that the documented case management practices (procedures, work instructions etc) for early identification and management of vulnerability require further development;

- Claims Service Providers have significant learning and development programs on empathy, reliance, motivational interactions and handling difficult conversations all of which feature in their approach to managing threats of harm and self harm. An observation from discussions with injured workers is that during periods of vulnerability what is said can exacerbate these feelings. There would appear to be an opportunity to improve the substance of conversations whilst maintaining the learning and development on the approach to conversations;
- Uniting Care provide a Community Support Service that is available to injured workers who are experiencing vulnerability in relation to their claim or personal matters. Case managers can refer to this service at any point in the lifecycle of the claim however it is noted that for the 2 year period leading up to December 2020 only 467 referrals were made (including some for the Treasury Managed Funds) and it is notable that 49% of referrals related to end of legislative entitlement timeframes(16). As this review has shown that 93% of injured workers interviewed experienced vulnerability there is significant opportunity to leverage the skills of Uniting Care who have deep experience in managing personal vulnerability.
- there is presently no management reporting in place that identifies or captures when injured workers may be or are experiencing vulnerability. There is no formal, structured level of management oversight that affords preventative and proactive identification, engagement and management of vulnerable injured workers.

Appendix 1: Media Release

Date: 27 July 2020(16)

icare Customer Advocate to review customers experiencing vulnerability

icare's Customer Advocate will undertake a review of customers who experience vulnerability across all icare insurance and care schemes to improve its support of the people who need it most.

icare CEO John Nagle said the Customer Advocate function is being recognised for its ability to reach customers at a personal level and understand their needs more deeply.

"Building on the deeper insights our Customer Advocate provided in the 2019 review of the Nominal Insurer, an important component that our business must be able to deliver upon is best in class support for customers who experience temporary or ongoing vulnerability through the claims processes that we manage and oversee", Mr Nagle said.

"We recognise there's different personal circumstances which can result in vulnerability, and that the interaction with claims management systems and processes may also contribute to customers becoming vulnerable.

"It is vital we have the best management practices and tools that deliver the most appropriate support to our customers."

Customer Advocate Darrin Wright said the review will focus on understanding when greater levels of support are needed across all insurance and care schemes managed by icare.

"I'll be reaching out to customers who have engaged with icare services to learn more about periods of time where they believe they were vulnerable after lodging a claim and understanding how icare can evolve their service delivery models to provide better support to customers," he said.

This will be the third of four reviews by the Customer Advocate and is expected to commence in September 2020 with a final report to be published by the end of the year. The Customer Advocate is currently reviewing the Home Building Compensation Fund (HBCF).

icare provides workers compensation insurance to more than 326,000 public and private sector employers in NSW and their 3.6 million employees. In addition, we insure builders and homeowners, provide treatment and care to people severely injured on NSW roads; and protect more than $193 billion of NSW Government assets.

Appendix 2: Terms of Reference

icare delivers services across five schemes – Workers Insurance (the Nominal Insurer), Insurance for NSW (Self Insurance), Lifetime Care, Dust Diseases and the Home Building Compensation Fund (HBCF) and is a Public Financial Corporation regulated by SIRA. icare is not part of the government sector but is a part of the public sector.

icare services and products provide a safety net in the event of loss or harm. Policies taken out by customers provide cover for injury in the course of employment, asset loss in general insurance and for recourse for homeowners under the Home Builders Compensation Fund (HBCF) for incomplete and defective work carried out by a builder or tradesperson.

icare recognises that its position in the community requires it to have best practice claims management services that support the NSW community in the event of loss and harm. In meeting this high standard icare is commissioning an independent review by its Customer Advocate into understanding the needs of customers that experience situational, temporary or ongoing vulnerability when engaging with icare services.

icare Customer Advocate review

The Customer Advocate should review the vulnerability that customers experience in engaging with icare's claims management business practices subsequent to lodging a claim with a specific focus on the Nominal Insurer Workers Insurance Scheme.

Key questions the research will seek to answer include:

1. Identifying from literature what pre-disposes customers to vulnerability (prior to entering the claims management system);

2. Identifying from the perspective of the customer, events and actions (administrative risk factors) within the claims management process that increase the opportunity for customer vulnerability;

3. Identifying from the perspective of the customer, the management practices and support networks that need to be considered for implementation in order to safeguard customers that are pre-disposed to vulnerability or become vulnerable throughout the claims management experience.

In conducting the research and making recommendations to icare, the Customer Advocate should have regard to:

1. Existing icare customer experience metrics which may include Net Promoter Score data, complaints data and dispute management data; and

2. Documentation that outlines the intent and business practices that icare has in place to support vulnerable customers; and

3. Prior reviews and research into vulnerable customers or cohorts of similar customers conducted by icare or independent bodies; and

4. The non-commercial terms of engagement and key performance indicators of third party administrators engaged by icare to provide claims management; and

5. icare claims experience data, outcomes and feedback;

6. Existing engagement methodologies in use by icare (processes, systems, icare internal documentation and approaches to governance).

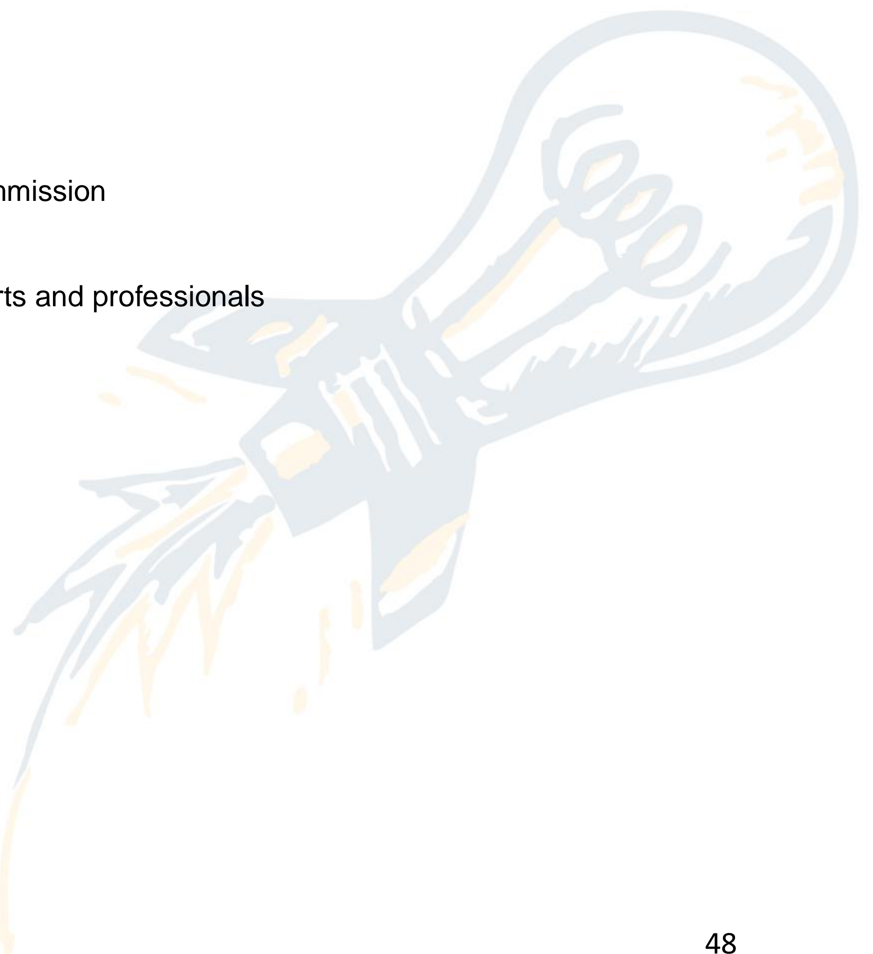
Procedure
The research will commence in October 2020 and be complete by June 2021, subject to the availability of participants. To complete the research the Customer Advocate will engage stakeholders and customers individually and may use survey tools as required as an additional quantitative measure to support the research.

Appendix 3: Stakeholders

Numerous stakeholders were invited to participate in this review with 23 organisations participating. These conversations were held during the COVID-19 pandemic and as a result all customers and stakeholders interviews were undertaken by phone or virtual technology such as Microsoft Teams and Zoom.

Stakeholders included:

- Allianz Ltd
- Australian Rehabilitation Professionals Association
- Employers Mutual
- Royal Australian College of General Practitioners
- Law Society
- NSW Ombudsman's Office
- Unions NSW (and affiliate Unions)
- Craig's Table
- Reading Writing Hotline
- QBE
- Suncorp
- Uniting Care
- Workers Compensation Commission
- WIRO
- Various subject matter experts and professionals



Appendix 4: Bibliography

1. SIRA website https://www.sira.nsw.gov.au/corporate-information/about-us
2. https://ec.europa.eu/info/sites/info/files/consumer-vulnerability-factsheet_en.pdf
3. Consumer Affairs Victoria, What do we mean by vulnerable and disadvantaged consumers, 2004
4. Financial Conduct Authority, Vulnerbaility exposed: the consumer experience of vulnerability in financial services, 2014
5. https://www.abs.gov.au/media-centre/media-releases/average-earnings-rose-may-low-paid-jobs-lost
6. https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/review-of-the-nominal-insurer-issues-paper
7. https://www.sira.nsw.gov.au/claiming-compensation/workers-compensation-claims
8. Kilgour E, Kosny A, McKenzie D, Collie A. Interactions between injured workers and insurers in workers' compensation systems: a systematic review of qualitative research literature. Journal of occupational rehabilitation. 2015;25(1):160-81.
9. Giummarra MJ, Baker KS, Ioannou L, Gwini SM, Gibson SJ, Arnold CA, et al. Associations between compensable injury, perceived fault and pain and disability 1 year after injury: a registry-based Australian cohort study. BMJ open. 2017;7(10):e017350.
10. Grant GM, O'Donnell ML, Spittal MJ, Creamer M, Studdert DM. Relationship between stressfulness of claiming for injury compensation and long-term recovery: a prospective cohort study. JAMA psychiatry. 2014;71(4):446-53.
11. Murgatroyd D, Lockwood K, Garth B, Cameron D. The perceptions and experiences of people injured in motor vehicle crashes in a compensation scheme setting: a qualitative study. BMC Public Health. 2015;15(1):423.
12. Elbers NA, Hulst L, Cuijpers P, Akkermans AJ, Bruinvels DJ. Do compensation processes impair mental health? A meta-analysis. Injury. 2013;44(5):674-83.
13. Bartys S, Frederiksen P, Bendix T, Burton K. System influences on work disability due to low back pain: an international evidence synthesis. Health Policy. 2017;121(8):903-12.
14. Elbers NA, Cuijpers P, Akkermans AJ, Collie A, Ruseckaite R, Bruinvels DJ. Do claim factors predict health care utilization after transport accidents? Accident Analysis & Prevention. 2013;53:121-6.
15. Collie A, Sheehan L, Lane TJ, Gray S, Grant G. Injured worker experiences of insurance claim processes and return to work: a national, cross-sectional study. BMC public health. 2019;19(1):927.
16. Data supplied by the icare on 8 December 2020
17. Financial Conduct Authority, Consumer Vulnerability, 2015
18. see icare website https://www.icare.nsw.gov.au/news-and-stories/2020/icare-customer-advocate-to-review-home-building-compensation-fund