Queensland Law Society

Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
[redacted] | [redacted] | [redacted] | qls.com.au
Office of the President

29 May 2026

Our ref: [HS:ACTL]

Mr Glenn Ferguson AM and
Mr Gary Black
Reviewers
2026 Industrial Relations and
Workers' Compensation Scheme Review

By email: [redacted]

Dear Reviewers

Joint Submission from Psychiatric Assessment Tribunal Leadership (WCRS) and the Queensland Law Society – Workers' Compensation Scheme Review

In addition to the Queensland Law Society submission sent as separate correspondence, QLS and the leadership of the Psychiatric Assessment Tribunal have collaborated to produce the enclosed submission.

We would be pleased to discuss the submission or provide further assistance to the reviewers.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted].

Yours faithfully

[redacted]

Peter Jolly
President

Joint Submission from Psychiatric Assessment Tribunal Leadership (WCRS) and the Queensland Law Society

Submission to Mr Glenn Ferguson AM and Mr Gary Black, Independent Reviewers of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) under Section 584A of the Act.

Dear Mr Ferguson and Mr Black,

This is a joint submission from the leadership of the Psychiatric Assessment Tribunals (**PAT**), Workers Compensation Rehabilitation Service (**WCRS**) and the Queensland Law Society (**QLS**).

The submission is made to assist the reviewers' inquiries into the following issues upon which the Terms of Reference governing the review require you to report:

- The growth of primary and secondary psychological/psychiatric injury claims (**psychological claims**) and the impact of this growth on injured workers, employers and the scheme.
- Relevant laws applying in other Australian jurisdictions and reform. We respond specifically in response to the growth of primary and secondary psychological claims.
- Measures to ensure the Queensland workers' compensation scheme (**QLD scheme**) is fair, sustainable and protected. We respond specifically in relation to primary and secondary psychological claims.

Overview of Submission

The leadership of the PAT and the QLS acknowledge:

- There is an emerging trend of increasing psychological claims in the QLD scheme.
- The established financial stability and sustainability of the QLD scheme - a product of decades of good management and administration - should not be risked by a failure to take steps to address the acknowledged emerging trend in psychological claims.
- There are several initiatives that, if implemented, PAT and QLS strongly believe will have significant positive impacts on addressing the trend of increasing numbers of psychological claims and the consequential cost burden of same.

- These initiatives do not require a change to the definition of *injury* that has been necessary in Victoria and New South Wales. The short tail QLD scheme is fundamentally different to the long tail schemes in those states and does not share the financial problems faced by those schemes. There is no reason for the QLD scheme to enact definitions that restrict entitlements.
- The initiatives are predominantly administrative in nature and should result in greater clarity in the management of psychological claims within the QLD scheme.
- In a nutshell, PAT and QLS consider there are a number of levers in the administration of the QLD scheme that can be pulled to result in better outcomes. In particular, if initiatives are administered effectively, significant costs savings are likely because of shorter claim durations resulting in reduced benefit payments and treatment expenses and improved return to work outcomes.

1. The growth of primary and secondary psychological claims and the impact of this growth on injured workers, employers and the scheme.

There is no doubt that primary and secondary psychological claims have escalated in the last half decade. In the experience of the members of PAT, the reason for this growth is multifactorial, including:

- Post Covid there has been a significant increase within our community of general psychological distress and an expansion of psychological knowledge. At the same time the historical stigma of psychiatric disorders is gradually diminishing and there is a greater desire to obtain counselling and support.

  These trends are not something that can be directly addressed by legislation or by WorkCover Queensland but there are initiatives that can be implemented to address their consequences. Those initiatives are set out in detail below.

- There has been a loosening of injury definitions, with the experience of psychological distress being conflated with psychiatric disorders.

  We contend that a more rigorous application of internationally and nationally accepted diagnostic criteria for psychiatric disorders would go a long way to diminishing the number of submitted and accepted claims. This would be aided by

the referral terminology for accepted claims being changed from the current "psychological/psychiatric injury" to "psychiatric disorder". Often normal psychological distress is being pathologised into a psychiatric condition, which in the PAT's experience ultimately has a negative impact on the worker's recovery and return to work. Real life experience teaches that prolonged psychological counselling delays the worker's recovery and emphasises disability rather than capacity.

2. Interstate legislative amendments to definitions and benefit entitlement

In our submission, legislative interventions of the type adopted in recent years in New South Wales (2025) and Victoria (2024) are not necessary to address the emerging trends in Queensland.

The changes in New South Wales and Victoria to their respective definitions of psychological injury impose the following requirements:

- Victoria: the injury must *"predominantly"* arise out of or in the course of any employment.
- New South Wales: employment must be the *"main contributing factor"* to the psychological injury.

We strongly recommend these definitions not be adopted in Queensland because determining which element from multiple contributing factors to a psychiatric condition is the "predominant" or "main contributing factor" is, in the experience of the PAT, often impossible.

Nor should there be changes to definitions of injury that specifically exclude claims being accepted for psychological injuries caused by specific work tasks or conduct (e.g. over work or burn out). Responses of this nature are proven by history to be ineffective. Often the more proscriptive legislative provisions create greater uncertainty and distress. More disputes have the past-proven consequence of increasing costs overall for all those involved in the scheme.

It is our strong view that there is no overall benefit in removing the rights of Queensland workers to the statutory compensation benefits which they have had since 1916, by changing the definition of psychological injury to limit those workers entitled to claim for work caused injuries. There are other more practical and efficient administrative changes that should be implemented. The removal of any legal rights should only be exercised as an

absolute last resort. Fortunately, that is not the position the QLD scheme is facing. There are several initiatives that can be adopted to enhance and streamline the already efficient and effective administration and management of the existing QLD scheme.

It is our experience over decades of involvement in the scheme that the short tail QLD scheme results in better outcomes for workers and employers than the long tail schemes that operate in Victoria and New South Wales. It is the very fact these are long tail schemes, combined with less-than-optimal management and administration of those schemes over extended periods, which overwhelmingly contributed to the financial crisis both the Victorian and New South Wales schemes had to address through their recent legislative amendments. Victoria's Scheme Insurance Funding Ratio had decreased from 150% in 2018 to less than 105% in 2023. Both of these long tail schemes have repeatedly over the last decades had to address financial crises. The respective state legislatures have endeavoured to do so by continuing to restrict workers' entitlements. Those endeavours have repeatedly proved ineffective. Queensland, fortunately, does not have the same issues.

The reason the QLD scheme is not confronted with financial crisis is the competent management of the scheme over an extended period. This has seen some of the lowest premiums in Australia being maintained over many years. Nonetheless, we recognise that there is a clear need to implement changes to address the acknowledged emerging trends in the number and cost of psychological claims.

Our submission is that due to years of prudent management, the QLD scheme can address those trends, without having to remove legal rights, by adopting more efficient administration initiatives. We set out below what those initiatives are.

3. Proposed measures to enhance and ensure the security of the current scheme.

One of the most significant negative impacts of the growth of psychological claims is that they take longer to finalise due to the current requirements of the legislative regime in the administration and processing of psychological claims. This results in a significant cost burden for the scheme through increased weekly benefit payments and treatment expenses.

There are, in our view, a number of administrative changes that should be implemented that would assist in more efficiently processing and finalising of psychological claims. These changes are:

A. Disclosure of Past History at IME

As part of any independent medical examination **(IME)** of the applicant worker, it is necessary that a complete history of non-work-related factors be taken into account by the examining specialist. To ensure this is possible at the time an IME is being conducted, the medical specialist should be provided with disclosure of the following for the worker:

- general practitioner records
- employer personnel file
- treating counsellor notes, including notes from the automatically entitled treatment sessions that are available to any applicant on lodgement of the application for benefits.

B. Adoption of Recognised Treatment Guidelines

Stricter control of the number of sessions made available to treat accepted diagnosed psychiatric conditions is necessary. It is not uncommon for WorkCover statutory claims to have covered the cost of as many of 30 to 100 therapeutic counselling sessions for quite minor psychological claims. These sessions are of course provided to treat the accepted condition, but these irregularities in the nature and number of treatment sessions are not being brought to Workcover's attention. According to literature review by the Australian Psychological Society there were three studies that provided Level III evidence or below for cognitive behaviour therapy and mindfulness based cognitive therapy in the treatment of Adjustment Disorder in adults. In that review, there was insufficient evidence to indicate that any of the remaining interventions were effective.[1]

It seems most likely, in our view, that the provision of excessive sessions and ineffective interventions is due to an insufficient opportunity for early psychiatric input during administrative decision making, which enables potential overservicing to occur. The input of specialist psychiatrists at the time of this administrative decision making would enable the adoption and application of national treatment guidelines, for example the Phoenix Guidelines

[1] Evidence Based Psychological Interventions in the Treatment of Mental Disorders: A Literature Review, Third Edition, The Australian Psychological Society Ltd

for the treatment of Post Traumatic Stress Disorder after a single trauma, that by contrast would recommend that 20 treatment sessions are required once the diagnosis is established and the treating professional has conducted on average five sessions to teach the worker anxiety management strategies.

It is in our view an easy and administratively sensible initiative to adopt the application of nationally accepted psychiatric and psychological guidelines when determining the provision of ongoing treatment.

The adoption and application of guidelines must be applied in an educated and considered manner but would significantly reduce the treatment expenses being incurred for psychological claims.

The adoption of nationally recognised treatment guidelines would be a practice consistent with established practices utilised in the Queensland compulsory third party (**CTP**) jurisdiction. The CTP jurisdiction has, for example, established rehabilitation standards and guidelines that are regularly applied to the provision of rehabilitation for services such as physiotherapy for whiplash injuries. The decision of CTP insurers to cease further funding for whiplash injuries is often referenced to the studies and findings of respected published clinical studies from academic units like RECOVER Injury Research Centre at the University of Queensland.

C. Employment of a Chief WorkCover Psychiatrist - Experienced Clinician

We understand that one of the recent WorkCover initiatives has been to employ qualified psychologists to support the WorkCover claims managers in decision making. We support this initiative but also consider there would be significant additional benefit from having the input of greater clinical knowledge and experience through the appointment of an experienced clinician as Chief WorkCover Psychiatrist. We believe that this would result in significant cost savings to Workcover by contributing to more informed decision making at the time of accepting or rejecting claims and in relation to the provision of ongoing treatment and return to work.

An experienced clinician employed as Chief Psychiatrist by WorkCover should in our view have responsibility where necessary to, amongst other things:

- review case managers' decisions to accept applications for psychological conditions
- review what actual condition has been accepted
- review the approval of requested treatment plans in accordance with the application of international treatment guidelines for specific accepted conditions and
- provide education sessions to case managers on factors of influence and significance that must be considered in the making of decisions regarding the administration of psychological conditions.

D. Administration of IME Providers and Report Content

We propose that any medical specialist appointed to conduct IMEs must guarantee a specified number of appointments per week to conduct IMEs and provide reports within an agreed time frame. A failure to consistently meet the agreed number of sessions and provision of the reports within the agreed time frame may result in removal from appointment to the IME panel. In return for the medical specialist's commitment, WorkCover would guarantee the provision of sufficient workers for examination at the appointed times the specialist has notified, or payment in lieu if an appointment is not filled.

We further propose that IME reports must include recommendations regarding immediate, short and mid-term treatment plans and must reference the applicable treatment guidelines. If the recommendation is not consistent with the guidelines the clinician must then provide an evidence-based justification for the deviation from the guidelines and what the expected outcome is as a result of that deviation. This justification for the deviation from the guidelines should then be considered by the Chief Psychiatrist before being approved.

E. Dispense with Obligatory PAT Assessments

It is our understanding from discussions with WCRS that current statistical data establishes that 88% of all MATs are psychiatric tribunals. This is disproportionate to the 8% of total WorkCover accepted statutory claims being psychological claims. It is inarguable that one of the contributing factors to this significantly disproportionate statistic is the current requirement that all workers must have their psychological condition assessed by the MAT.

It is our submission that this mandatory requirement should be repealed and, in its place, the following regime implemented:

- If the assessment of impairment made by the independent psychiatrist conducting an IME is consistent with an assessment made by the treating specialist/medical practitioner, then a Notice of Assessment can be issued.
- It is not necessary that the assessments be identical, but they must be consistent and within an agreed close range.
- The worker can, upon receipt of a notice of assessment issued following an IME and where there has been no MAT hearing, decide to disagree with the assessment and elect to go to the MAT for a final determination.

In our view, this regime would shorten delays in the finalisation of psychological claims significantly.

We look forward to any further opportunities to assist the reviewers as this review progresses.

Peter Jolly
President
Queensland Law Society

Dr Josephine Sundin
MBBS FRANZCP,
Chair - Psychiatry Tribunals, WCRS