



T H E M C K E L L I N S T I T U T E

The Cost of Workplace Injury

How Improving the Return to Work Rate Can Strengthen SA's Economy & Alleviate the Skills Crisis

Ed Cavanough, February 2023

About the McKell Institute

The McKell Institute is an independent, not-for-profit research institute dedicated to identifying practical policy solutions to contemporary challenges.

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About this Project

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Introduction

As South Australia began to recover economically from the most challenging periods of the COVID-19 pandemic, one of the most stubborn issues facing the state has been labour shortages.

Despite fears that the pandemic would drive unemployment in Australia's as high as 15 per cent, major policy interventions at state and federal levels helped avoid that outcome. Instead, unemployment remained relatively low by international standards. And as the state began to bounce back after COVID-19 associated restrictions on economic activity, the state's unemployment rate fell to its lowest level in nearly 50 years.

This welcome development, however, created a new challenge: labour shortages. As more workers found employment, employers have found it more challenging to find suitably skilled workers.

For some workers, this has been of great benefit, as more competitive labour market requires employers to offer higher pay and better conditions to attract the right staff. But there remains a broader challenge associated with skills deficits in the South Australian labour market, which means that, irrespective of the pay and conditions on offer, there are genuine shortfalls of workers in certain highly skilled occupations.

This labour market shortage has become a national issue. In September 2022, the Commonwealth Government held the national Jobs and Skills Summit, the purpose of which was to drive consensus amongst policymakers, unions and business as to ways to address the skills shortfall facing Australia. This important summit delivered a roadmap to addressing future skills shortages, but to some degree overlooked a sleeper issue that is exacerbating the labour shortages Australia is seeing today: safety.

By international standards, Australian workers enjoy a relatively high standard of safety in workplaces. But this varies considerably by occupation. On average, a worker dies every two

days in Australia. As of July 2022, 82 Australians had passed away as a result of workplace accidents this calendar year.

In addition to these tragic deaths, over 500,000 Australian workers are injured at work each year – many of which drive workers out of the workforce for extended periods of time, and a quarter of which result in workers' compensation payments for the victims of workplace injury.

These accidents impact no-one more than the individuals directly involved. But in addition to the personal cost, workplace accidents have a number of significant economic impacts.

First, injured workers are often unable to contribute economically to the same degree as they could prior to their injury, lowering economic activity and aggregate demand over the medium and longer term post injury. Secondly, the high prevalence of workplace injuries only adds pressures to existing skills deficits. In South Australia alone, as many as 1200 workers are prematurely removed from the labour market due to workplace injury each calendar year.

This report examines the economic consequences of the current rate of workplace injury in South Australia. It examines the current challenges facing the Return to Work framework in the state, and advances a novel economic analysis examining the correlation between the Return to Work Rate, and aggregate demand in South Australia's economy.

It finds that even marginal increases to the Return to Work Rate would have a meaningful economic contribution to the state, reduce the incidence of poverty amongst injured workers, and would help alleviate the current skills shortages facing South Australian employers.

Key Findings

1. South Australia's *Return to Work Rate* is lower than the national average, at 90.7 per cent compared to 91.6 nationally. In 2021, of the 13,488 accepted workers' compensation claims, approximately 1,241 South Australian workers were prematurely exited from the workforce each year due to workplace injury and inadequate support in returning to the workforce after sustaining injuries.
2. Collectively by 2030, 11,348 South Australian workers will be prematurely displaced from the labour market due to workplace injury. By 2030, this will equate to 1628 workers annually on current trajectories.
3. On the current trajectory, workers' prematurely exited from the SA labour market due to workplace injury will spend, in aggregate, \$106m *less* in the SA economy than they would have if they remained in the workforce. If SA achieved a higher *Return to Work Rate*, this number would be reduced significantly.
4. The workers displaced from the workforce due to workplace injury often hold decades of invaluable skills that employers are seeking in this period of acute labour shortages.
5. Statistically, an injured worker in South Australia is more likely to be prematurely and permanently exited from the workforce compared with injured workers in other Australian jurisdictions.
6. If South Australia were to gradually achieve a Return to Work Rate equivalent to the National Average by 2030, that would see 582 fewer South Australians exiting the workforce over that period than under the status quo. This has an economic benefit, but more importantly, would see more than 500 South Australians forgo the hardship associated with an injury-induced labour market exit.

7. The current Return to Work system is leaving many South Australians mired in poverty particularly arising from the 20% reduction in weekly payments after twelve (12) months and the removal of weekly payments after two (2) years for all but the most seriously injured workers. This is compounded by the fact that those waiting for compensation are reliant for a period on social security (be it Newstart or a disability pension), which is not keeping up with escalating costs of living. In the long term, these workers' are impacted by the fact that superannuation is not payable on worker's compensation weekly payments, meaning workers lose out on super during critical times in their working life.

8. In summary:
 - a. Injured workers who are required to rely on the Return to Work Scheme often face severe financial hardship, including due to the reduction in income support, cessation of income support and the non-payment of superannuation;

 - b. Injured workers who prematurely leave the labour market are at serious risk of poverty;

 - c. On the current trajectory, injured workers who leave the labour market prematurely will spend, in aggregate, \$106m less in the SA economy than they would have if they remained in the workforce; and

 - d. South Australia's *Return to Work Rate* is lower than the national average, while a serious skills shortage unfolds in the state.

Part 1: SA's Labour Market Crunch

Key Points

1. *Businesses in South Australia are finding it challenging to hire skilled, suitable workers as the economy recovers from the pandemic-induced recession.*
2. *This labour market crunch is occurring in addition to longer-term structural issues facing SA's labour market, such as an ageing population and sustained rates of interstate migration of younger and working age South Australians.*
3. *Workplace injuries are exacerbating this skills shortage, leading to over 1200 South Australian workers prematurely exiting the labour force every year.*

South Australia is facing a labour market crunch and skills crisis

In the economic recovery since the most restrictive periods of the pandemic, South Australia's labour market has tightened, creating skills and labour shortages for many employers. In effect, the pent up demand for goods and services, and excessive demand in certain sectors caused by historically low borrowing costs, have created more demand than many goods and services providers have been able to cater for. This has led to a scramble for workers, and a dedicated push by governments to invest in skills development to meet these shortfalls.

This dynamic is a national one, and to varying degrees is being replicated in other advanced economies. Given these national and international skills shortages, South Australia's ability to attract more workers is further impeded, as foreign and interstate workers are able to find more opportunities in other jurisdictions than during the pre-pandemic years.

South Australia is losing workers to other jurisdictions

South Australia's post-pandemic labour market crunch comes after more than a decade of South Australia, on net, losing significant numbers of working age South Australians due largely to interstate emigration by younger South Australians. In 2021, as a result of pandemic border restrictions, South Australia briefly turned around its immigration trend around. But it nevertheless is the case that South Australia has a structural issue when it comes to sustaining, and growing, its working age population.

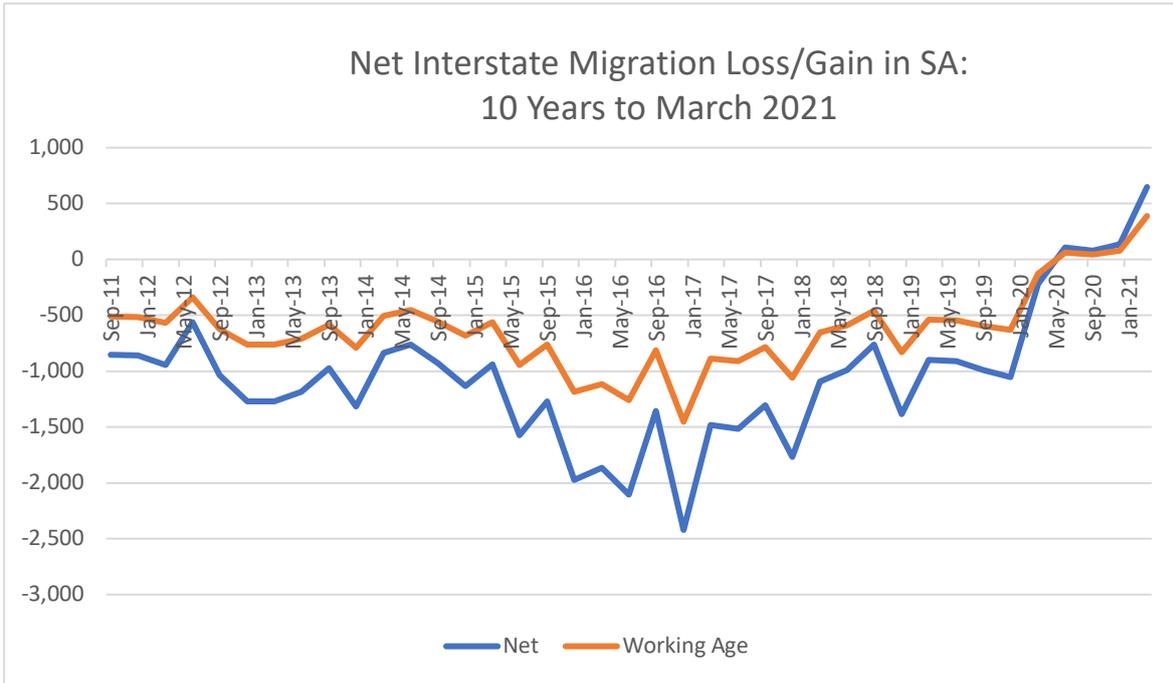


Figure 1.1: Net interstate migration loss/gain in SA. Source: Author analysis of ABS Cat. 3412.0.55.005.

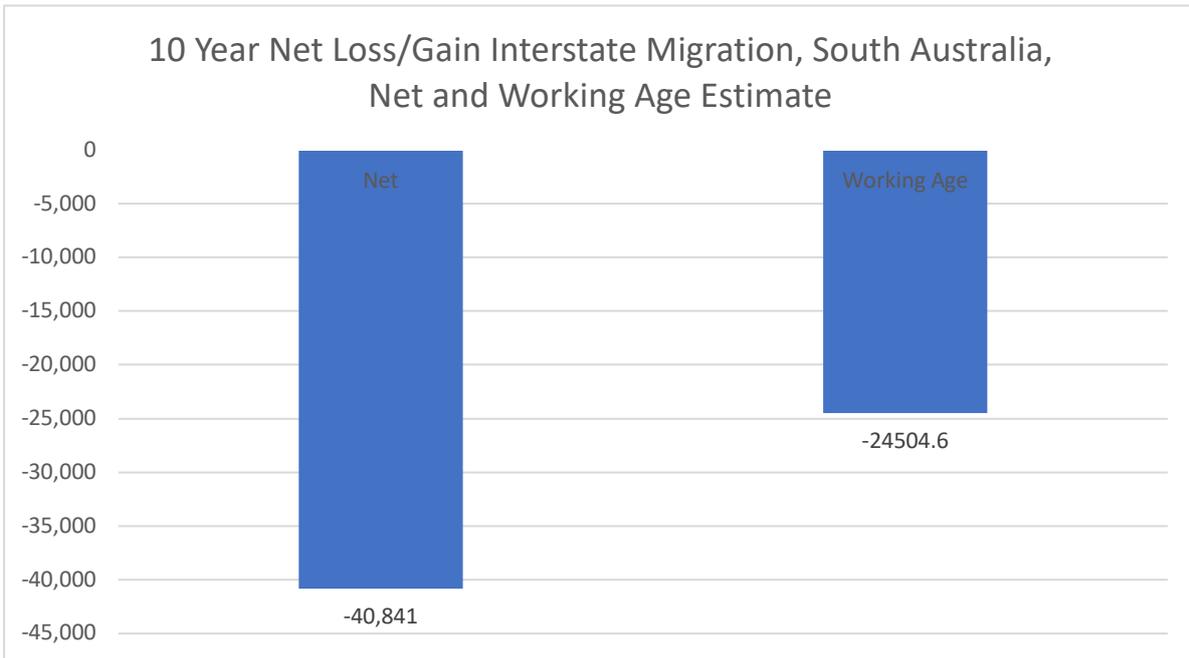


Figure 1.2: 10 Year net loss/gain interstate migration, SA. Source: Author analysis of ABS Cat. 3412.0.55.005.

SA's labour market challenge a long-term, structural issue

The growth-rate of South Australia's working age population has been slowing considerably over the past half-century. In the 1970s, SA's working age population consistently grew at above 1 per cent; by the 2020s, this has almost flatlined, according to ABS population data. At the same time, SA's non-working age population has grown considerably. This creates a dynamic in which South Australian Governments must support, through the provision of state services such as health, a larger non-working population, while the overall rate of tax-paying, working-age adults grows only marginally.

South Australia is also experiencing a structural challenge when it comes to interstate migration. Over the last decade, SA has recorded a net loss of 40,841 people to interstate migration. It is estimated that lose to 25,000 of these individuals are working age. These dire numbers are somewhat offset by natural population growth, as well as immigration from overseas. But the numbers highlight the difficulty South Australia still has in retaining working-age South Australians, who are increasingly attracted to alternative career opportunities in larger Australian economies, such as Sydney, Melbourne and Brisbane.

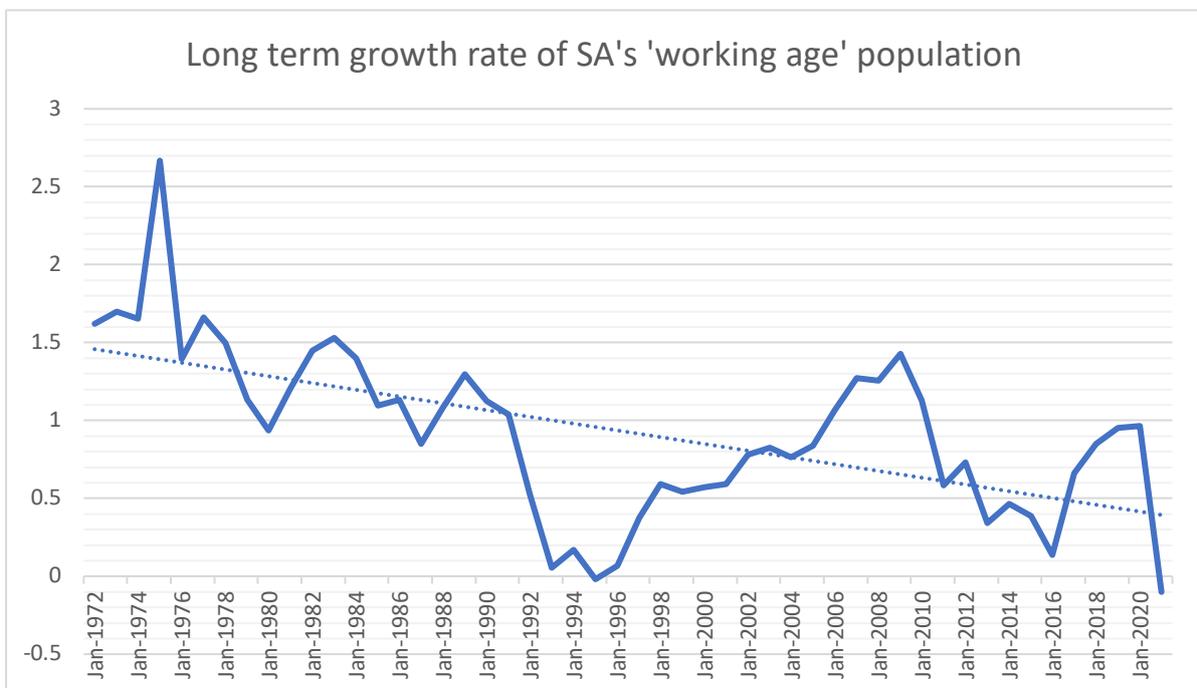


Figure 1.3: Long term growth rate of SA's working age population. Source: Author analysis of ABS Cat. 3412.0.55.005.

Making the most of what we've got

These structural dynamics are a profound challenge for policymakers, and require a broad suite of policy interventions aimed at attracting additional workers to South Australia, while ensuring that the workers who already live and work in South Australia are able to keep up with the rising costs of living.

This includes improving the attractiveness of the state to interstate and international migrants, creating business conditions that are conducive to future-facing industries, and generating enough opportunities at home to dissuade younger South Australians from emigrating. The Federal Government, too, has a role to play. The Jobs & Skills Summit held by the Albanese Government in September 2022 advanced ideas such as incentivising retirees on the age pension to return to the workforce.

The above interventions are frequently cited when discussing the state's skills and labour market challenges, ensuring SA's existing cohort of skilled workers are protected and sustained in the first place is often ignored. Currently, around 1200 South Australian workers are permanently and prematurely exited from the labour market each year due to workplace injury. This contributes noticeably to the overall availability of skilled workers in South Australia.

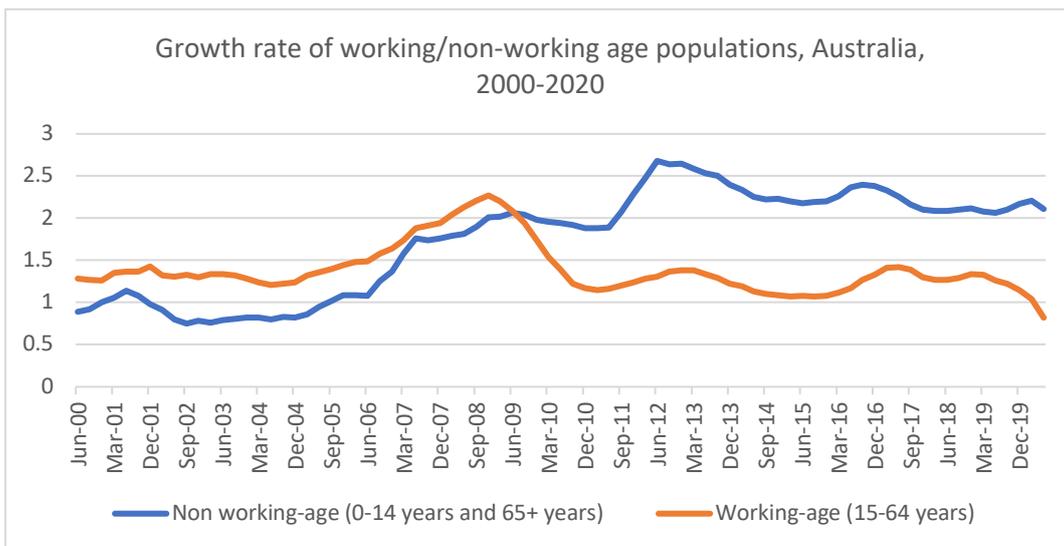


Figure 1.4: Growth rate of working/non working age population in Australia. Source: Author analysis of ABS Cat.

Part 2: Understanding Workers' Compensation Claims in SA

Key Points

1. Around 13,000 workers each year are both injured and apply for compensation through Return to Work SA. This number does not include injured workers who do not seek workers' compensation, however.
2. Around 1200 South Australian workers are prematurely exited from the labour market each year in South Australia.
3. 90.7 per cent of injured SA workers who interface with Return to Work SA return to work — lower than the national average of 91.6 and substantially lower than in the Northern Territory and New South Wales, the national leaders.

Workers in South Australia today are more protected from injury and workplace related illness than in the past. But the incidence of workplace injury remains relatively common in the state. In 2021, Return to Work SA accepted 13,177 workers' compensation claims - 9,369 of which were from male workers, with the remaining 3,808 accepted claims coming from female employees.

While this number is substantial, it is appropriate to highlight the fact that a large number of injured workers are able to return to the workplace without requiring support or intervention by the scheme. Approximately 70% of injured workers successfully return to work within four (4) weeks of injury, with 60% of injured workers returning to work without having required payments of income support.¹

¹Return to Work SA, 2022. 'Insurer Statistics', Accessed online:

<https://public.tableau.com/app/profile/rtwsa/viz/ReturnToWorkSA-InsurerStatisticsFY2022/ReturnToWorkSA-InsurerStatistics>

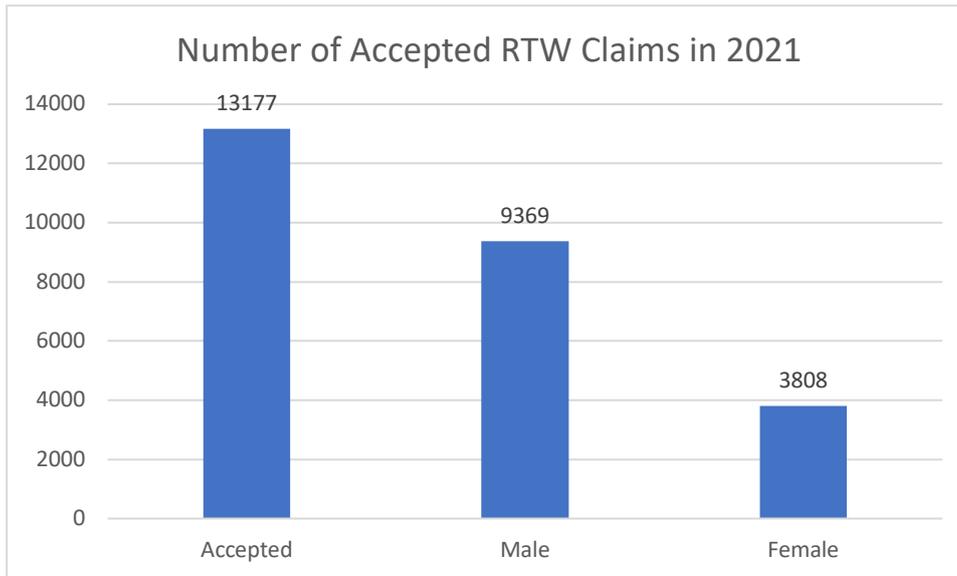


Figure 2.1: Number of Accepted RTW Claims in 2021. Source : Return to Work SA

It's with respect of the relatively small number of badly injured workers who are not able to effect a quick return to work that the scheme performs particularly poorly, puts workers at high risk of financial hardship and poverty, and deprives South Australia of skilled workers who can fully participate in our society and economy.

Understanding the 'Return to Work Rate' & 'Current Return To Work Rate'

The *Return To Work Rate (RTW)* is often measured in two variants. The first is the rate to which employees return to work at any time after they have received workers compensation. This may mean at any future point in their lifetime. As Safework Australia describes:

*"The Returned to Work Rate is the proportion of injured workers surveyed who reported having returned to work **at any time since their work-related injury or illness**"*²

Safework SA also measures the Current Return to Work Rate (CRTW), which it defines as the following:

² Safework Australia, 2021. 'Return to Work Survey 2021'. Accessed online:

<https://www.safeworkaustralia.gov.au/sites/default/files/2021-12/return-to-work-2021-headline-measures-report.pdf> Page 3.

“The Current Return to Work Rate is the proportion of injured workers surveyed who reported having returned to work at any time since their work-related injury or illness **and** were in a paid job at the time of interview.”

The CRTW rate is typically substantially lower than the RTW rate. This reflects the fact that many injured workers have lifelong challenges finding and sustaining employment. Though many injured workers do find a path back to employment, only 81.3 per cent of injured workers surveyed by Safework Australia were currently employed at the time of interview.

South Australia’s RTW Rate is Lower than the National Average

Of these 13,177 workers who lodged an accepted workers’ compensation claim in 2021, 90.7 — or 11,952 individuals — re-entered the workforce (or were expected to do so). This 90.7 per cent figure is known as South Australia’s *Return to Work Rate*, or RTWR.

In 2021, South Australia’s 90.7 per cent RTRW meant that 1255 workers who lodged workers’ compensation claims with Return to Work SA were expected to exit the workforce. Given these exits are the result from workplace injury, we can assume that they are premature labour market exits — exits from the workforce that pre-dates the moment which the worker themselves would have volunteered to enter retirement.

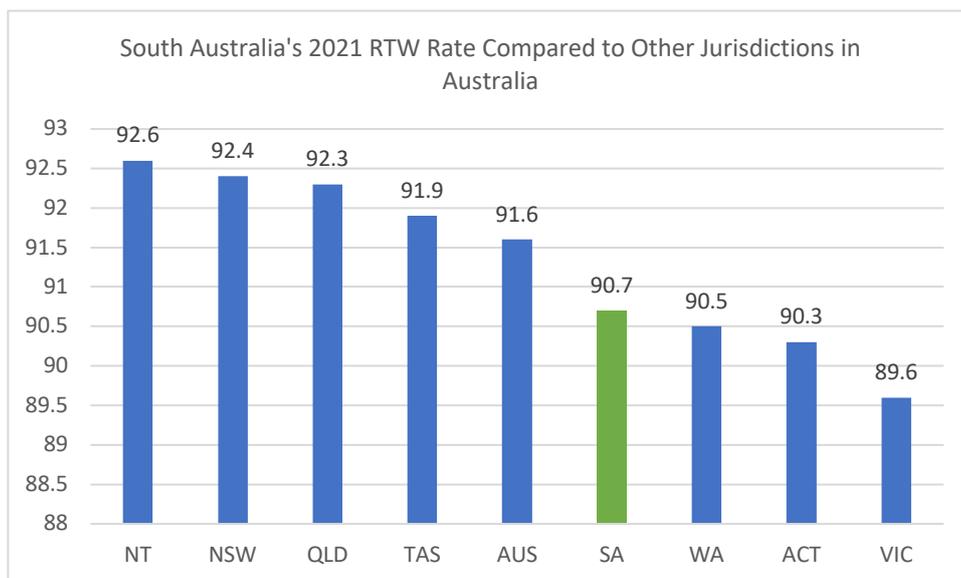


Figure 2.2: South Australia’s Return to Work Rate compared to other states. Source: Author analysis of Safework Australia.

South Australia's return to work rate is relatively poor by Australian standards. In 2021, the RTW rate equated to 90.7 per cent, below the national average of 91.6 per cent. The RTW rate is the percentage of workers who after seeking workers' compensation eventually return to some form of employment.

In noting SA's RTW rate is lower than what is seen in other jurisdictions, we must also acknowledge that the determinants of whether an individual returns to work are varied. The severity of the initial injury, the age of the injured worker, the nature of the work they undertake, and the quality of their return to work plan, and the state of the labour market all play a role in determining whether the worker is able to return to work. Various labour market characteristics and Statewide demographics may influence a RTWR. The cumbersome process in engaging with Return to Work SA also deters those with less acute injuries or workplace related illnesses from engaging with the scheme, which places downward pressure on the RTW rate.

[Workplace injuries occur in all industries & across all working age brackets](#)

The granularity of data related to workplace injury held and published by Return to Work SA is relatively poor. However, from the data that is available for public consumption, it is clear that the incidence of workplace injury is not confined to any one injury type, age bracket, or industry in South Australia. *Figure 2.2*, for example, illustrates the age spread of workplace injury in SA.

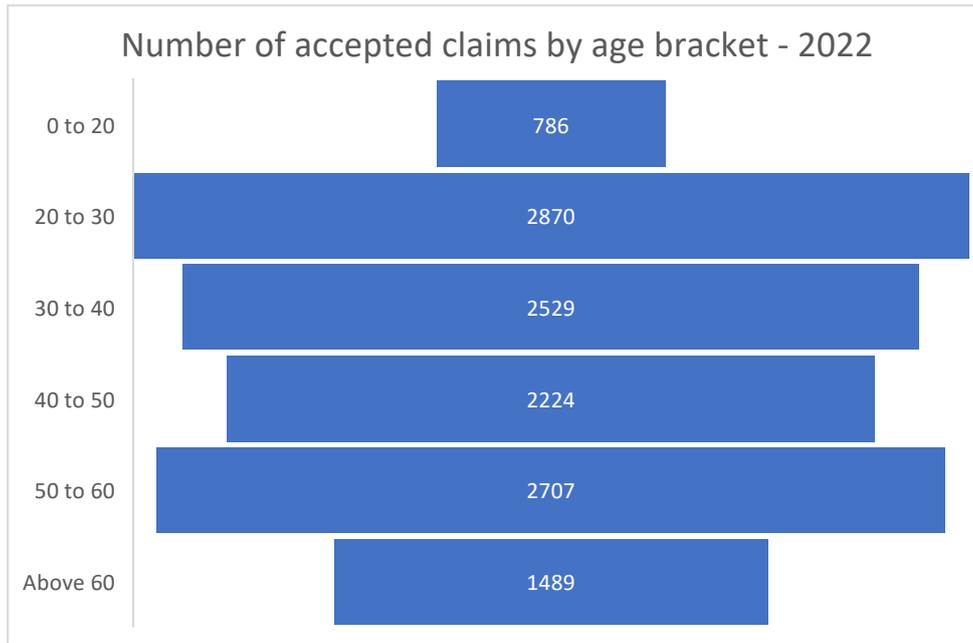


Figure 2.3: Accepted Return to Work SA claims by age bracket. Source: Return to Work SA.

We do know, however, that some industries are riskier than others, and that some injuries are more common and more costly to workers’ compensation providers than others. This will be further illustrated later in this report.

Mental stress among the highest liabilities for Return to Work SA

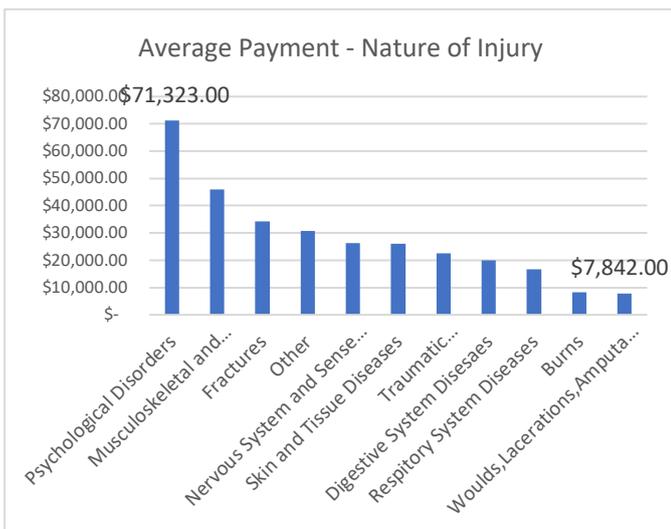


Figure 2.4: Average payment by nature of injury. Source: Return to Work SA.

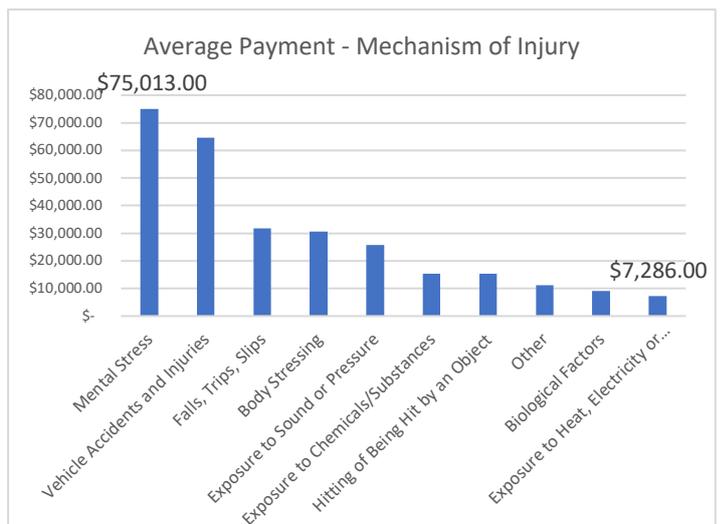


Figure 2.5: Average payment by mechanism of injury. Source: Return to Work SA.

Psychological injuries are among the highest liabilities for Return to Work SA. The highest average payment by both *Nature of Injury* and *Mechanism of Injury* are both related to psychological and mental distress resulting from workplace stress or other psychological harmful practices. Concerningly, the average payments for these psychological injuries are substantially higher than other injury types, noting these data are related to single lump sum compensation payments, rather than ongoing income support resulting from the illness. These psychological injuries carry a longer term cost, both for the individual and for the state's economy, with likely long-term effects for individuals affected, which may impact their capacity to contribute to the economy after their initial impairment.

There are multiple drivers of SA's lower RTW rate including performance issues with RTW SA South Australia's RTW rate is significantly below the national average (1.1 per cent below that average). This broadly suggests that, statistically, a worker that is injured in South Australia is less likely to return to work than a worker in Tasmania, Queensland, New South Wales and the Northern Territory. This should concern policymakers. But policymakers should also be cognisant of the myriad determinants driving this outcome.

South Australia's workforce is composed of a different set of workers than other labour markets. SA's labour market is typically older than in other jurisdictions, and is dispersed across different industry groups. SA has a significant construction, agricultural and manufacturing industry, all of which are higher risk occupations than other forms of work. While each state maintains these industries, the older demographic in SA working in these industries marginally increases the likelihood of injury, and delays recovery. Similarly, the fact that SA's workforce is older would also mean that, in some circumstances, injured workers retire slightly earlier than planned, rather than being forced.

In addition to these demographic and economic determinants of the RTW rate, though, the performance of Return to Work SA, and therefore workers' willingness to interface with the system, also has an impact on the RTW rate. This report tables Return to Work SA data that demonstrates certain performance issues with the organisation. In recent years, there have been an increase in case disputes, and the time between claims being lodge and cases being

settled has also increased. By 2021, 56.6 per cent of claims to Return to Work SA were closed without any income support being paid to these claimants. These challenges may act as a deterrent for some workers with less severe workplace injuries from seeking workers' compensation, due to the complex hurdles they will face, and the likelihood of their claim receiving no compensation at all. This status quo disincentivises lesser injured workers from seeking workers' compensation, which may impact the Return to Work rate more broadly.

10 occupations with the Highest Workers Compensation Premiums

<i>Occupation</i>	<i>% Premium</i>
<i>Thoroughbred Horse Racing</i>	20.96%
<i>Cutlery and Hand Tool Manufacturing</i>	10.44%
<i>Other Horse Racing Activities</i>	8.83%
<i>Cured Meat and Smallgoods Manufacturing</i>	7.15%
<i>Road Freight Transport</i>	7.00%
<i>Meat Processing</i>	6.90%
<i>Roofing Services</i>	6.66%
<i>Timber Resawing and Dressing</i>	6.65%
<i>Pig Farming</i>	6.52%
<i>Tree Lopping and Arborist Services</i>	6.46%

10 Occupations with the Lowest Workers Compensation Premiums

<i>Occupation</i>	<i>% Premium</i>
<i>Life Insurance</i>	0.35%
<i>Financial Asset Broking Services</i>	0.35%
<i>Other Auxiliary Finance and Investment Services</i>	0.35%
<i>Non-Financial Intangible Assets (Except Copyrights) Leasing</i>	0.35%
<i>Architectural Services</i>	0.35%
<i>Engineering Design and Engineering Consulting Services</i>	0.35%
<i>Accounting Services</i>	0.35%
<i>Computer System Design and Related Services</i>	0.35%
<i>Specialist Medical Services</i>	0.35%
<i>Political Parties</i>	0.35%

Risk adjusted rates mean workers’ compensation premiums are manageable for most employers

The way that risk adjusted rates work means that the vast majority of South Australian sectors pay an affordable workers’ compensation premium. Around 3/5ths of all employer-types in South Australia have a risk adjusted premium of 2.5 per cent or below. The industries in which premiums exceed this represent genuine risks to workers. Typically, these include manufacturing, agricultural and sporting industries — industries in which workers’ are routinely placed in dangerous environments where injury inducing mistakes are more likely than in typically “white collar” jobs.

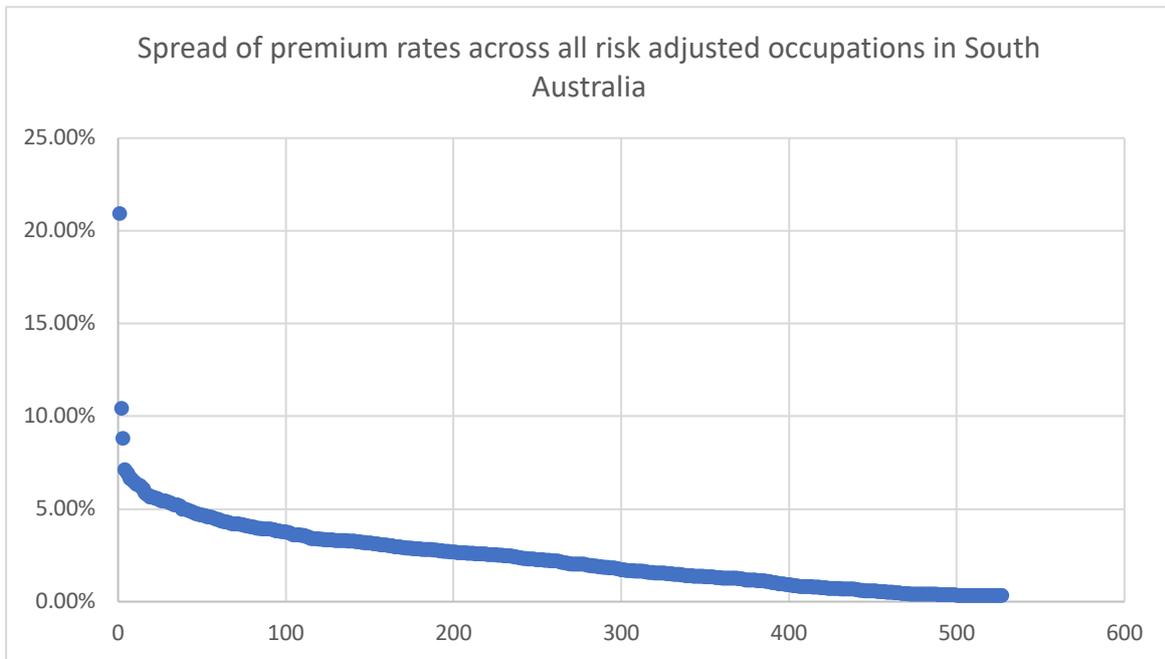


Figure 2.5: Spread of premium rates by employer type. Source: Return to Work SA.

Average workers’ comp premiums have substantially decreased since 2010

Workers’ compensation payments are paid by employers as a percentage of payroll. If an employer has a payroll of \$1m, for example, and they are a life insurance firm with a premium rate of 0.35 per cent, their overall workers’ compensation premium will be \$35,000. This is a cost to business, however, it is a cost that has been decreasing since 2010. Average premiums in 2010 were 3 per cent; in 2022-23, it is 1.80 per cent. Return to Work SA has previously described the premium rate of 1.65 per cent as an “all-time low”.

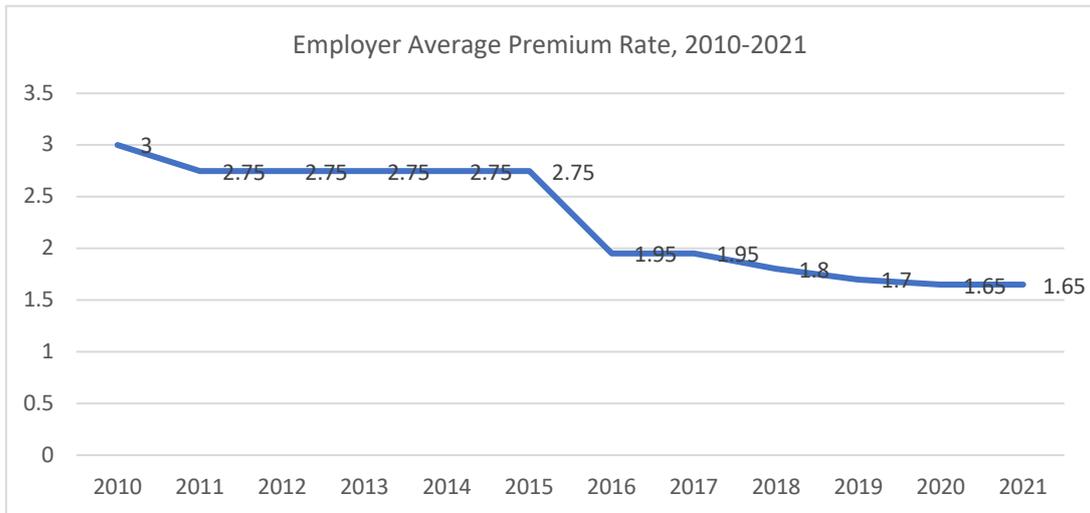


Figure 2.6: Employer average premium rates since 2010. Source: Return to Work SA.

Part 3: The Summerfield Principle & Subsequent Changes to SA's Workers' Compensation Framework

Key Points

1. Supposed financial issues facing Return to Work SA resulted in changes to legislation in 2022.
2. Legislation introduced in June 2022 following negotiation with unions and business ensures the system is funded, but leaves room for improvement to supports for injured workers.
3. The changes to the legislation mean that average employer premiums will remain below the target rate of 2 per cent of payroll, but some profoundly injured workers will have reduced coverage.

The Summerfield Decision & Its Suggested Impacts

In 2016, South Australian truck driver Shane Summerfield was assaulted while on the job. The truck driver was pushed from behind while working, landing firmly on a concrete floor, and sustaining severe injuries. In the horrific attack, Mr Summerfield broke his leg, damaged his hip to an extent that he required a hip replacement, and received injuries to his back that led to chronic pain. Given Mr Summerfield was working at the time of his attack, he understandably believed that he would be eligible for compensation for the totality of his impairment. But soon after applying for workers' compensation, Mr Summerfield realised that his expectations for compensation were far different to what Return to Work SA believed he was eligible for.

Mr Summerfield had sustained a left hip injury requiring surgery for a total left hip replacement. The surgery caused considerable scarring and, later, Mr Summerfield sustained a lumbar spine injury. Mr Summerfield's lumbar spine injury was not sustained in the fall but arose from his altered gait following left total hip replacement, with muscle wasting and left leg shortening. Mr Summerfield sought lump sum compensation with respect of the totality of the injuries he had sustained, considered together.

However, according to Return to Work SA, he was not entitled to have his injuries considered together but, instead, RTW SA sought to treat the injuries as separate and distinct.

With Mr Summerfield’s injury and compensation claim setbacks began a lengthy legal process which has had extraordinary consequences on South Australia’s Return to Work system. Given the inadequacy of the compensation Mr Summerfield was offered, he took Return to Work SA to court to argue that the Return to Work Act provided for his injuries to be combined and that he was entitled to a compensation package that factored in the totality of his injuries. The court battle began in the South Australian courts system, where Mr Summerfield was successful. In challenging the ruling, Return to Work SA eventually sought to have the case heard by the High Court, but were refused.

The *Summerfield* matter had important consequences for the system as a whole. Effectively, the result of the court action upheld the notion that injured workers’ total impairment should be quantified by considering all injuries caused by or resulting from the relevant workplace injury. The following scenario describes the difference the *Summerfield* principles would make in a hypothetical workplace injury:

Scenario	RTW SA’s position prior to the Summerfield principles	Applying the Summerfield principles
A worker sustains a wrist and a back injury in the same workplace incident. The back injury equates to “20 per cent impairment” and the wrist injury equates to “10 per cent impairment”.	The worker is considered by RTW SA to have two (2) impairments less than the threshold for “seriously injured worker” status.	The two (2) impairments are combined, and the workers’ total impairment was deemed to meet the serious impairment threshold for more sustained compensation.
OUTCOME		

	The worker is eligible for income maintenance and medical expenses capped at two (2) and three (3) years respectively and receives two (2) lump sum payments – one based on 10% and one based on 20%.	The worker is eligible for “ongoing medical support and weekly income maintenance payments until retirement age” plus a lump sum payment based on 30%.
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Summerfield decision concerned RTWSA and employers

The *Summerfield* ruling was a win for injured workers, who had their entitlement to the combination principles of the Return to Work Act, which accurately reflect the seriousness of their injuries, upheld by the courts. But from Return to Work SA’s perspective, the decision created a significant financial challenge for the organisation for which it had not provisioned. RTWSA claimed that the *Summerfield* decision had imposed a nearly \$1.1bn liability on the organisation, as it would likely lead to more workers being awarded more compensation money than the organisation had considered. What RTWSA argued was that this financial liability would need to be passed onto the South Australian businesses within the premium-paying scheme.

South Australian businesses (which are not “self-insured” for the purposes of the scheme) fund the Return to Work scheme in South Australia. They do so through the payment of a premium that is calculated as percentage of their total payroll. The premium is not the same in each business. Return to Work SA calculates risk by industry, and imposes a premium according to the risk. The highest premium is over 20 per cent for employers in the horse racing industry, where injuries are common; conversely, occupations such as consulting or financial advising carry a low injury risk, with employers paying a Return to Work premium of just 0.35 per cent.

Claiming *Summerfield* had created a significant financial liability, Return to Work SA suggested that they would have to increase the average premium to 2.2 per cent. This triggered a statutory obligation on RTW SA to report to the Minister under s137 of the *Return to Work*

Act 2014 (SA).³ Though this increase would not be evenly distributed across every business in the state, it would likely see Return to Work premiums increased noticeably for a broad swathe of South Australian businesses.

Given the court rulings in favour of the legality of Mr Summerfield’s interpretation of the *Return to Work Act 2014 (SA)*, Return to Work SA argued that, to avoid the alleged \$1.1 billion *Summerfield*-induced liability, the South Australian Parliament needed to legislate changes to the Act that would alter that liability.

Summerfield decision triggered changes, but was preceded by similar cases

Though the *Summerfield* case became a trigger for the most recent push by RTWSA to alter the RTWSA system, *Summerfield* was predated by a series of decisions known as the *Preedy* judgements which related to the combination of injuries. From July 2017, RTW SA was on notice that the courts were interpreting the Act in a way in which combined impairments. This suggests that RTWSA would (or should) have been cognisant of the risks associated with the *Summerfield* case.

Matter	Date	Premium
<p><i>Preedy v Return to Work SA</i> [2016] SAET 36</p> <p>The Applicant’s “...left shoulder injury PIA and his neck injury PIA should not be combined.”</p>	4 August 2016	2016-17 1.95%
<p><i>Preedy v Return to Work SA</i> [2017] SAET 71</p> <p>Appeal allowed – <u>Impairments combined</u></p>	21 July 2017	2017-18 1.80%
<p><i>Return to Work Corporation of South Australia v Preedy</i> [2018] SASFC 55</p> <p>Appeal allowed and the matter remitted to a single presidential member of the SAET to determine that factual question in light of SASFC reasons</p>	15 June 2018	2017-18 1.80%

³ Australian Legal Information Institute, 2022. ‘Return to Work Act 2014 Sect 137’. Accessed online: http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/sa/consol_act/rtwa2014207/s137.html

<p><i>Shane Summerfield v Return to Work SA (McCormack Freightlines Pty Ltd)</i> [2019] SAET 106</p> <p>"The Applicant's WPI for left hip, scarring, and lumbar spine are to be combined."</p>	31 May 2019	2018-19 1.70%
<p><i>Preedy v Return to Work Corporation of South Australia</i> [2019] SAET 228</p> <p>Remittal by the Full Supreme Court - The impairments should be combined</p>	19 November 2019	2019-20 1.65%
<p><i>Return to Work Corporation of South Australia v Summerfield</i> [2020] SAET 106</p> <p>Appeal by RTW SA dismissed</p>	12 June 2020	2019-20 1.65%
<p><i>Return To Work Corporation of South Australia v Summerfield</i> [2021] SASCFC 17</p> <p>Appeal by RTW SA dismissed</p>	11 March 2021	2020-21 1.65%
<p>Special leave refused by the High Court.</p>	5 November 2021	2021-22 1.70%

2022 changes to address Summerfield impacts imperfect

In early 2022, the recently elected Malinauskas Labor Government sought to address the Summerfield liability issue. In June, the government introduced, without widespread consultation, a contentious reform bill aimed at addressing the cost pressures that it was advised would be levied on South Australian businesses. After initial concerns, the Government then approached various stakeholders for broader consultation, and negotiated an alternate position that informed legislative changes.

The *Return to Work (Scheme Sustainability) Bill 2022* codified this alternate position — one that had been struck in a short period amongst the government, the trade union movement and business representatives. When explaining the merits of the alternate position, the bill, the government highlighted three key outcomes that, in its view, addressed the core concerns

voiced by worker representatives, while balancing the cost concerns held by business. The alternate positions were:

1. The bill would “Increase the seriously injured threshold for physical injuries to 35 per cent whole person impairment (WPI)”
2. Provide seriously injured workers affected by any proposed changes “the choice to receive a single lump-sum payment instead of weekly payments until retirement age”.
3. Offering “redemptions” to seriously injured workers.

The *Return to Work (Scheme Sustainability) Bill 2022* averted a spike in premiums for South Australian businesses, but also averted the deep and significant cuts originally proposed by the government, allowing for multiple injuries to be considered when quantifying the total impairment for the workers.

It is worth noting that, while the financial circumstances of RTW SA arising from the *Preedy* and *Summerfield* decisions were the basis for the State Government’s legislative reform, the impact of that legislative reform extends well beyond RTW SA. The Government’s legislative reform applies to all self-insured employers, which include the Government itself. In undertaking its legislative reform, ostensibly to fix an alleged financial crisis within RTW SA, the Government has reduced a financial liability from itself and all other employers outside of the premium-paying scheme.

[2022 changes did not fix structural issues facing Return to Work SA](#)

The 2022 changes offer only a temporary fix to an immediate financial issue within the Scheme. There remains fundamental, structural problems, including the issues with SA’s Return to Work system evident by SA’s below-average return to work rate and the risk of poverty for injured workers.

There are numerous cases, some of which will be presented in Part 5 of this report, of injured workers’ passing through the Return to Work system, only to end up with an inadequate income stream after being processed.

There are a number of workers who, once injured, end up living in poverty in South Australia, unable to afford close to the quality of life they enjoyed and were entitled to prior to their injury. A moral question for those administering the Return to Work system in South Australia is simply: should a workplace injury in the state of South Australia result in the recipient of that injury living in poverty? Few would agree to this premise. But often this outcome occurs.

The 2022 changes didn't address all issues

While the State Government was justified in ensuring that SA businesses workers' compensation premiums didn't escalate significantly, it is important to put the prospective increase of the *Summerfield* decision into historic context. Through the decade to 2021, average premiums almost halved. At 3 per cent in 2010, by 2022, the average premiums SA businesses paid to RTWSA had fallen to 1.65 per cent payroll. Of course, in certain industries, this premium is higher. But for a majority of SA businesses, the overall rate of RTWSA premiums has considerably fallen over the reference period.

Punitive costs on businesses should be avoided. But given the performance issues evident with the scheme, it raises some questions. Further, following the *Summerfield* case, the quality of coverage for injured workers has been lowered. The 2022 changes struck by the Government, unions and business addressed the immediate risk of a significant premium hike on businesses. At the same time, it did materially impact the quality and extent of workers' compensation coverage for severely injured workers. It also didn't address some of the emerging performance issues with Return to Work SA, as evidence by the organisation's own data.

SA’s workers’ comp framework has some worrying performance issues

Even before the *Summerfield* Return to Work SA was experiencing a set of challenges that were materially impacting the experience of workers interacting with the organisation. In 2019, 74.5 per cent of all accepted claims at Return to Work SA were determined within two weeks of receiving the claim. By 2022, this has fallen to 68.6 per cent. Concerningly, the percentage of claims that take over 10 weeks to determine has doubled since 2019.

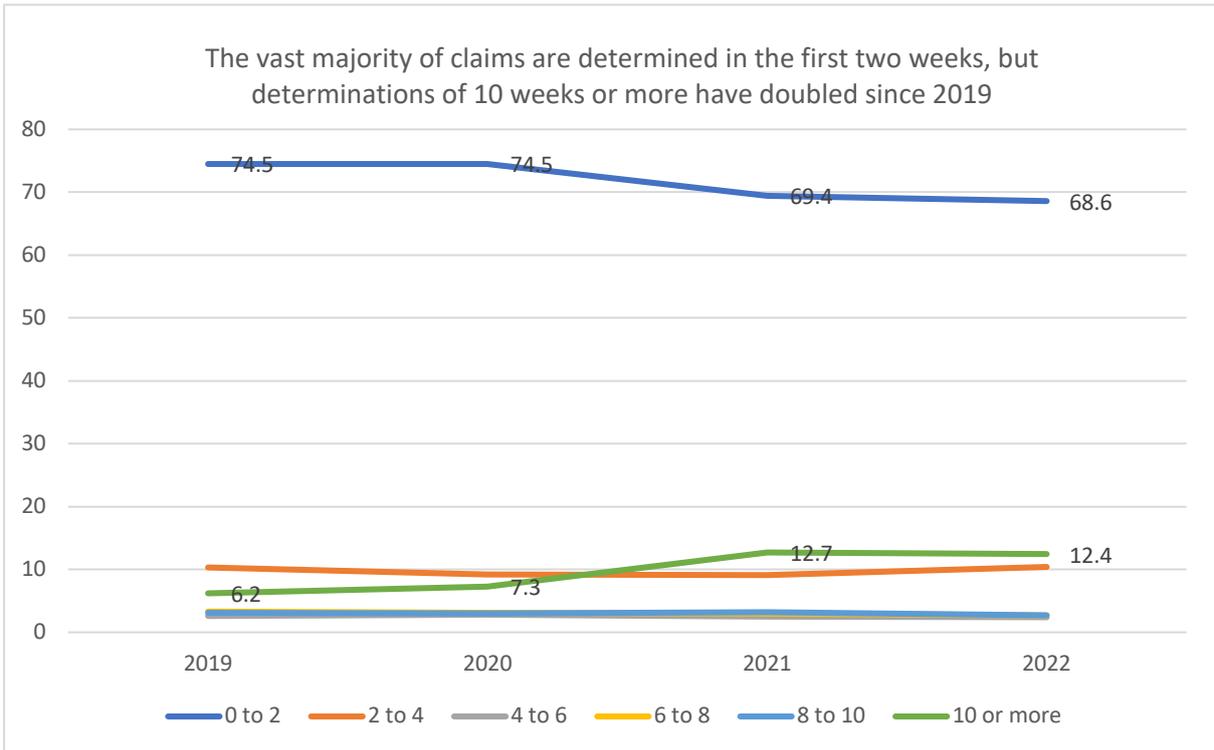


Figure 3.1: Determination times of workers’ compensation claims at Return to Work SA. Source: Return to Work SA

RTWSA is receiving an increased number of disputed claims – and not keeping up with them. While claims are now taking longer to determine, there is also a growing number of disputed claims that are not being resolved. Return to Work SA has stated that “the closure rate of disputes has not kept pace with the growth in disputes received. This has resulted in the number of open disputes remaining at high levels”. Figures 3.2, 3.3 and 3.4 illustrate this growing challenge.

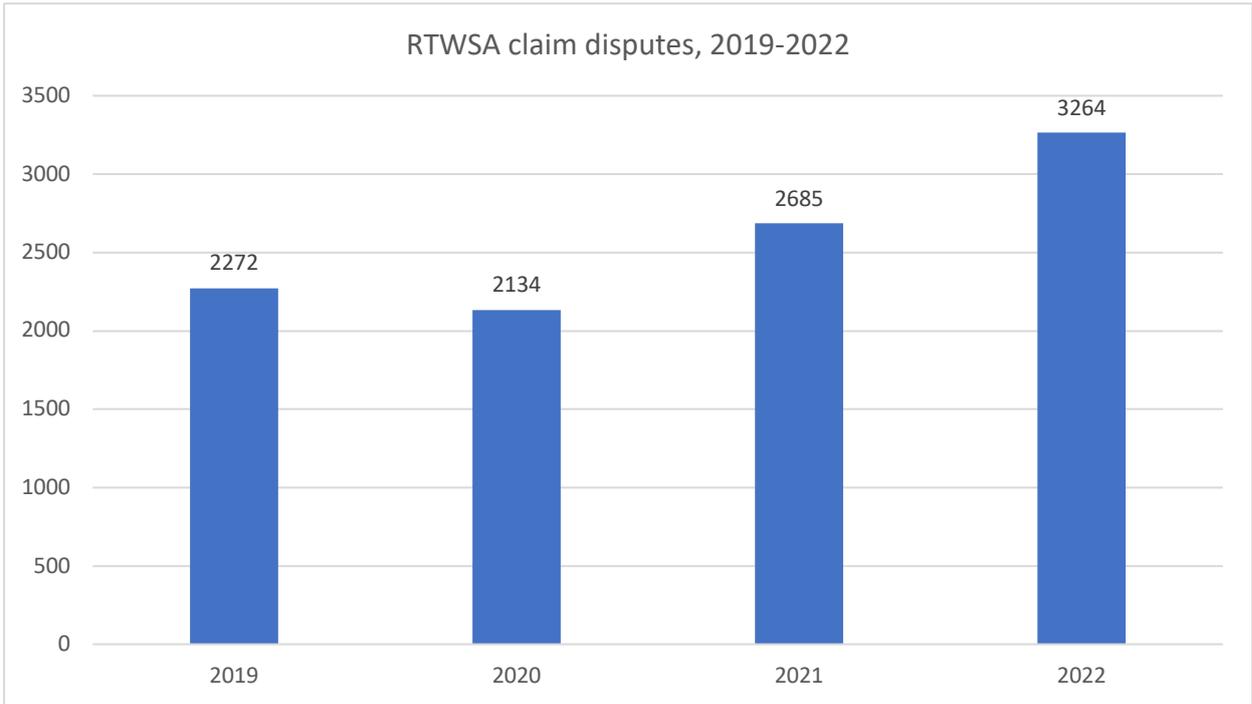


Figure 3.2: Claim disputes. Source: Return to Work SA.

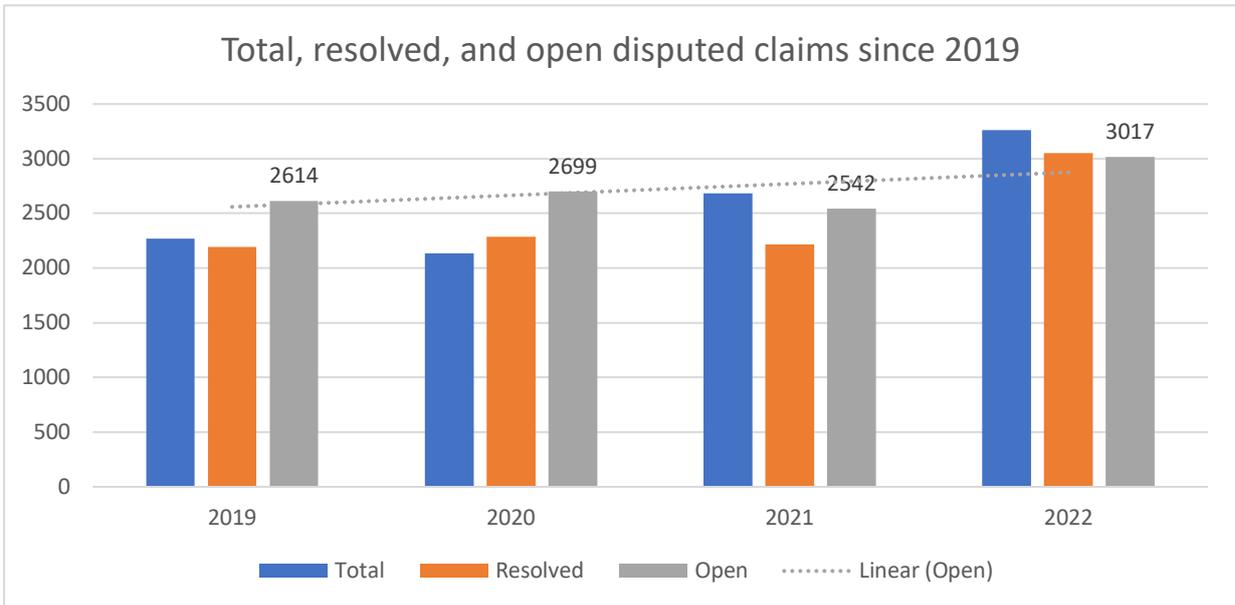


Figure 3.3: Claim disputes by status. Source: Return to Work SA.

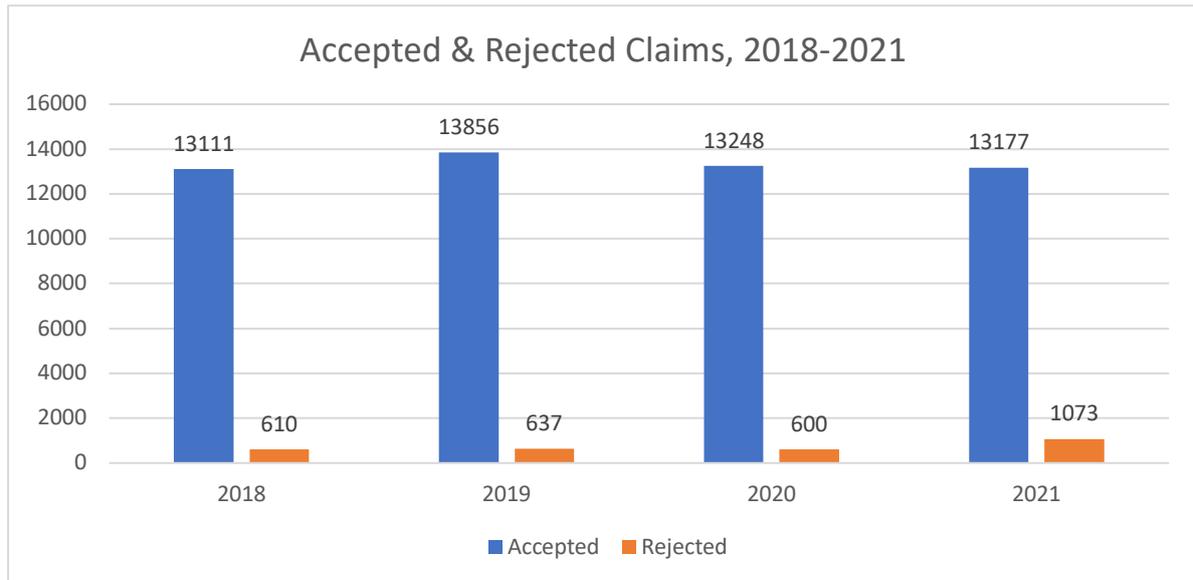


Figure 3.4: Accepted and Rejected Claims, 2018-2021. Source: Return to Work SA.

The number of workers' compensation claims that are being rejected has also increased significantly since 2019. In that year, 637 claims were rejected. In 2021, this had risen to 1073.

Part 4: The Human & Economic Benefits of An Increased RTW Rate

Key Points

1. *This report utilises findings from novel calculator, which quantifies the economic effects of adjustments to South Australia's Return to Work rate.*
2. *It finds that marginal adjustments to the RTW rate has meaningful economic benefit to South Australia's economy.*
3. *If SA were to successfully achieve the National Average RTW rate by 2030, 582 South Australians would remain in the workforce than would have otherwise occurred under a business as usual trajectory. If SA were to outperform the national average, this number would rise considerably.*

Advancing a novel calculator to understand the costs of RTW Rate changes in SA

This report has so far articulated the current economic context in which South Australia's *Return to Work* system is operating. Part 1 examined the skills crisis facing South Australia's economy, with Part 2 describing the nature of SA's *Return to Work* framework and recent adjustments to legislation governing *Return to Work SA*. This section details the economic value in mitigating workplace injury in South Australia.

Premature exits from the workforce have a significant cost

Return to Work SA data suggests that, with an RTW rate of 90.7, over 1200 workers injured each year that work their way through the RWT system in South Australia do not ever re-enter the workforce. This section explores the cost of this outcome, and calculates the costs should the RTW rate improve or worsen. While the broader economic costs are considered, it is important to stress that the most acute impacts of workplace injury are felt at the individual level. Prematurely exiting the workforce can have profound individual financial and

health implications, which carry their own economic consequences. Case studies examine the impact of workplace injury, and the problems associated with navigating South Australia's *Return to Work* system, are detailed in Part 4 of this report.

Injured Worker Case Study: Jeanette, a Cleaner in Her Mid 60s

Jeanette is a cleaner in her mid-60's who had worked in the same job for almost 20 years before suffering a shoulder injury.

She was unable to return to work and prematurely left the workforce, receiving just two years of income support which ended in March 2018. Jeanette's pre-injury gross weekly income was \$1,049.74. In the years between their income support ending and them qualifying for the pension, she lost wages of \$54,586.48.

She is now on a pension, with the injuries sustained at work creating life-long impacts. She is unable to perform basic household chores such as vacuuming or mopping and experience ongoing pain when sleeping.

Overview of the model

This report advances a novel model designed to predict the economic costs to South Australia associated with adjustments in the Return to Work rate. It examines these costs at a state-wide level, factoring in wage and population growth forecasts over the next twenty years. The primary outputs of the model are as follows:

1. The number of prematurely exited workers from SA's workforce under varying RTW rates, to 2030.
2. The reduced spending capacity of individuals associated with the premature exit from SA's labour market, to 2030.

The intention behind the model is to provide policymakers with an estimate of the economic value of reducing workplace injury and improving *Return to Work* rates for those who are

injured. It finds a notable economic benefit in reducing the number of workers that are displaced each year due to injury.

Industry Specific Impacts & Assumptions

The following analysis considers the impacts specific to individual industries. Though workplace injuries can happen in all sectors, there is a high prevalence of injury in three industries: construction, agriculture and hospitality. Often, the injuries sustained in these industries are also the most acute. These sectors, particularly construction and agriculture, also have higher rates of workplace fatalities than the average across other sectors. The model demonstrates the economic dividends associated with decreasing the rate of workplace injury in these high risk sectors.

The industry specific models profile the typical worker within that sector, and utilise average incomes and ages of the workforces within those specific industries. Of course, individual cases vary. The model also applies conservative assumptions about the impact on incomes for those who have either permanently lost their job, or who have returned to work after injury. We have assumed that for injured workers who do return to work, they do so at 80 per cent of their original earnings. For workers who are permanently removed from the workforce, we have assumed their post-injury earnings (through compensation and pensions, and personal savings or superannuation) is 60 per cent of the pre-injury earnings. These are conservative estimates, based on real-world scenarios tabled below. However, for certain individuals, the costs associated with workplace injury are much more significant, and for a number of workers who are seriously injured and receive weekly payments at 80% of their pre-injury income (minus superannuation) until retirement.

The model only quantifies direct reduction in consumption from injured workers, not broader economic cost

When an individual is prematurely exited from the labour market, there are a broad number of economic and social ramifications. Of course, the individual worker is most significantly affected: they will have reduced spending capacity, and be presented with other

psychological and financial implications associated with their experience. There are, however, costs and impacts on others. Many injured workers will receive additional care – both formal and through family or friends – that carries an economic cost, too. The individual may also require more routine medical care, and further financial support in the form of cost of living concessions and/or social security.

These are real costs that will vary depending on individual experiences, and are challenging to precisely quantify. While acknowledging these economic outcomes associated with workplace injury, this report only attempts to quantify the direct impact on spending capacity of SA workers prematurely exited from the labour market due to injury. The model is based upon a median income earner, and factors in wages growth, the marginal propensity to consume, tax liabilities for individuals, and other determinants of individual spending.

Injured Worker Case Study: Brianna, A Hospital¹ Worker in Her 50s

Brianna is a hospital worker in her early 50's who had worked in the same job for almost 15 years before suffering injuries at work to her hip and knee.

As a result of her injuries she had to undergo surgery, but still sustained permanent restrictions and had to reduce their hours at work losing \$265.57 each week ongoing.

Their income support only recently ended this year such that her loss so far is \$4,249.12. However taking into account her age assuming they continue to work the reduced hours until retirement age they will lost an estimated \$179,525.32 over the next 13 years.

The findings make clear the benefit of improving SA's RTW Rate by 2030

Currently, South Australia's *Return to Work Rate* is 90.7 — which is significantly below the national average of 91.6. This gap between the South Australian rate and what is seen in other jurisdictions has real world consequences, and leads to a higher than acceptable number of South Australian workers being prematurely exited from the workforce. Under this status quo, South Australia could expect to see 1628 workers prematurely exiting the workforce

annually by year 2030. The below figure commences in 2023, in which, under the status quo, 1225 South Australian workers are expected to be prematurely exited from the labour market.

The figure identifies the number of South Australian workers that would be expected to be prematurely exited from the labour force by 2030 under varying successful RTW rate targets, accounting for population growth. Were SA to achieve the national average RTW rate by 2030, the 1628 number of workers lost to injury would fall to 1470. More aspirational targets would have more outsized benefits, if realised.

Those who do receive income maintenance continue to contribute to the economy

It is important to recognise that, for those workers who are injured at work and displaced from the labour market, income maintenance through workers' compensation has a meaningful economic role to play in South Australia. To minimise the broader societal and economic costs associated with workplace injury, it is essential that income maintenance is at a level that enables those reliant upon it to contribute fully to their local community and economy, to the extent that their injury permits. Income maintenance payments should be viewed as an investment in the health of the broader state economy, rather than viewed as a burdensome financial liability for the state.

Economic benefits to individuals and South Australia from improve RTW rate

Figures 4.2 and 4.3 model the direct impact of aggregate demand resulting from premature workforce exits because of injury, to 2030. Under a business as usual scenario, the *annual* loss in spending will rise to more than \$16 million

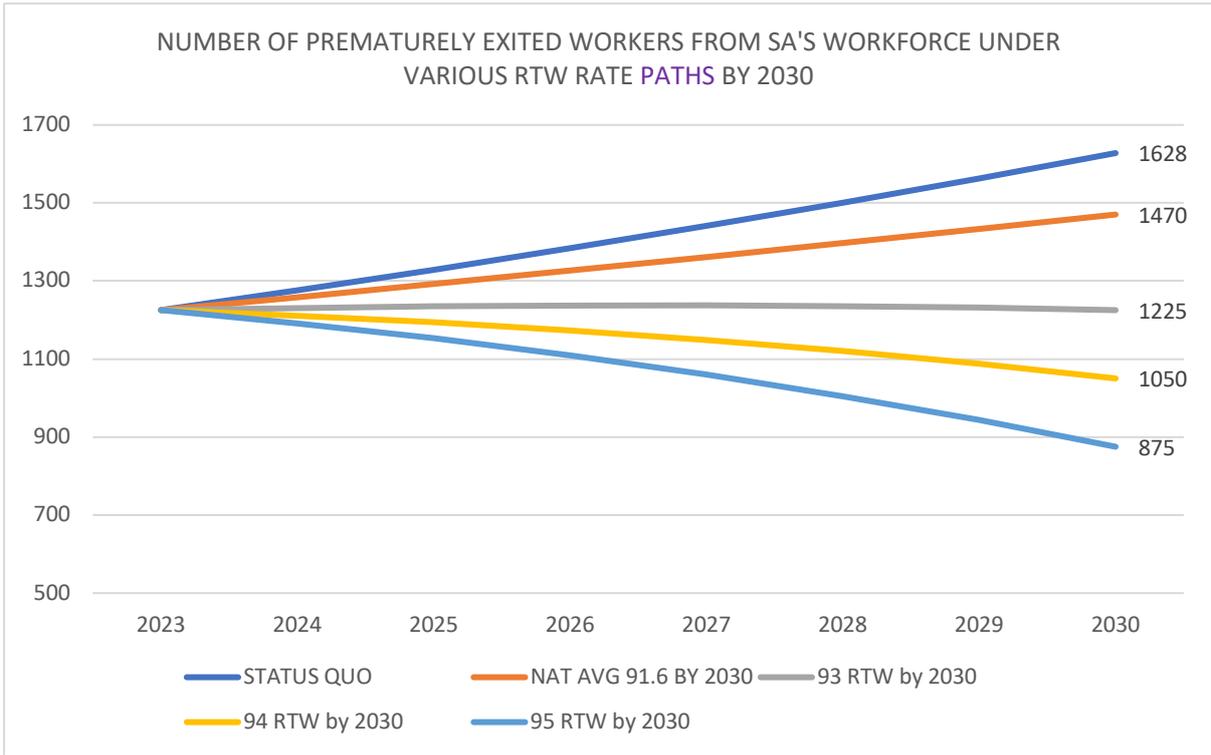


Figure 4.1: Number of prematurely exited SA workers from the labour market under varying RTR Rate Scenarios.

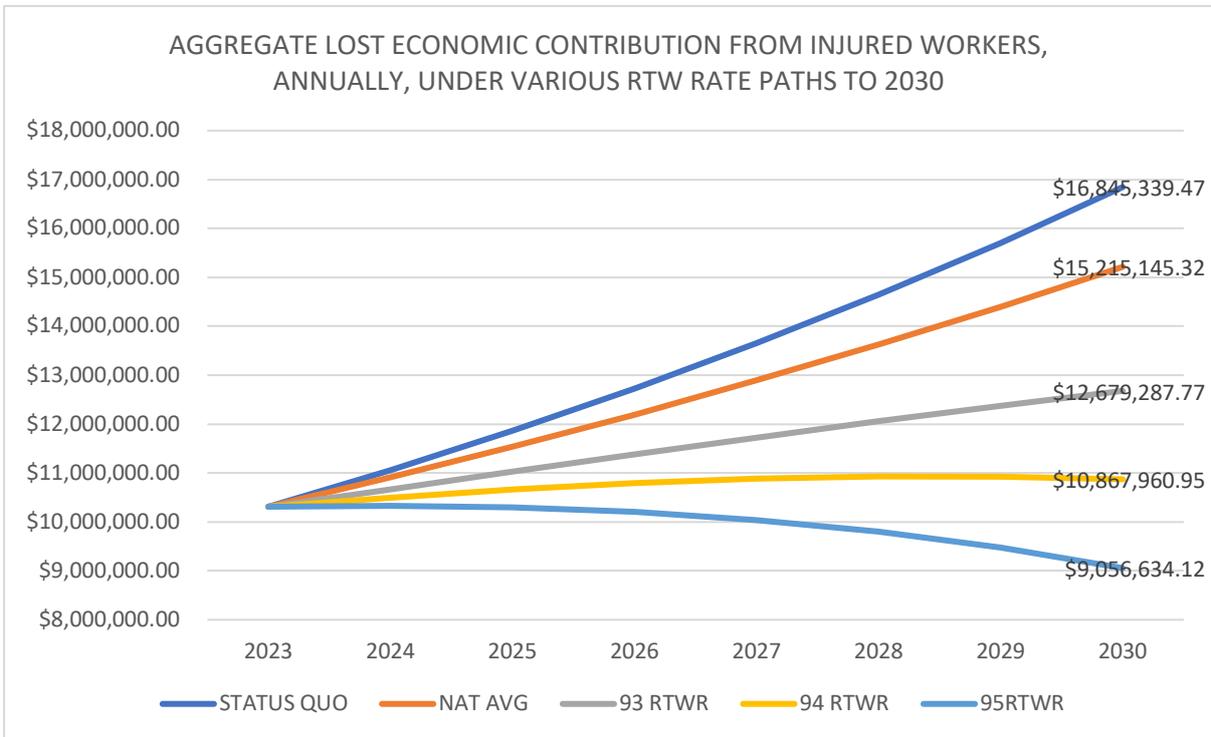


Figure 4.2: Annual economic contribution lost because of premature labour market exits, to 2030, under varying RTW Rates.

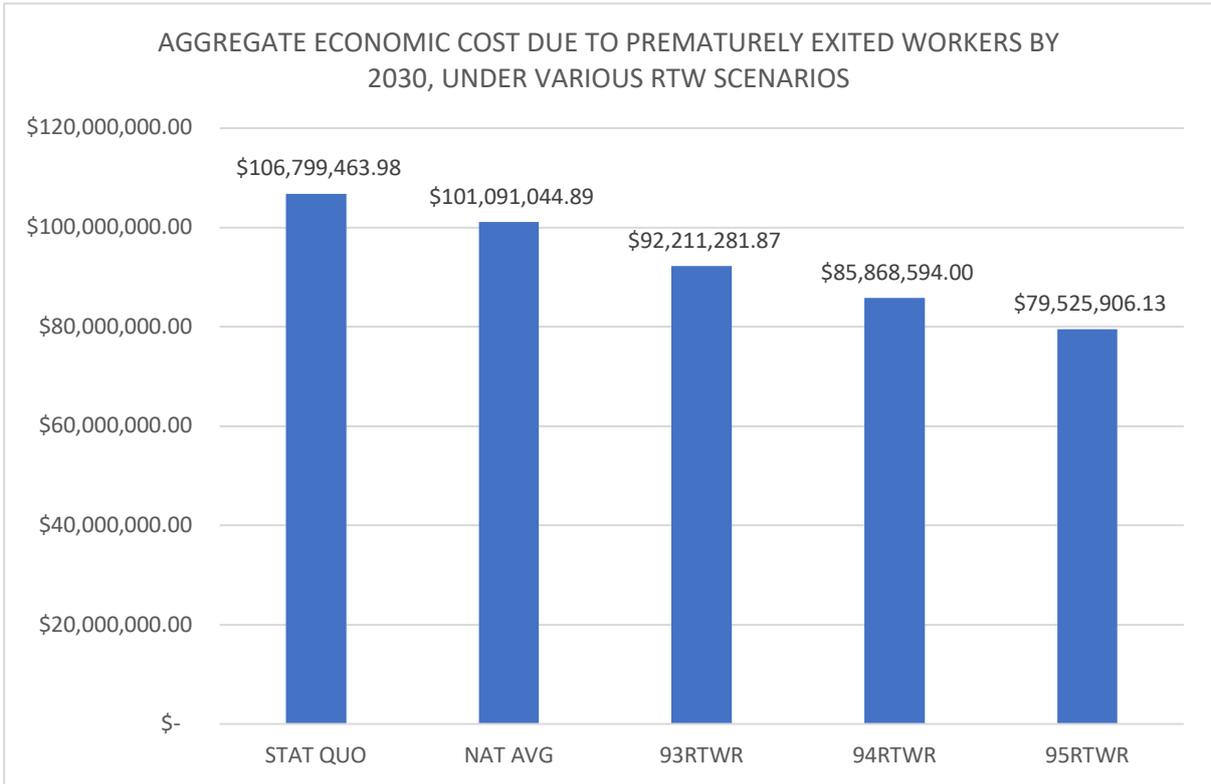


Figure 4.3: Aggregate economic contribution lost because of premature labour market exits, to 2030, under varying RTW Rates

158 fewer workers would be exited from the labour force if SA met national RTW rate

On current trajectories, it is expected that the *annual number* of SA workers displaced from the labour market would increase by 65 more individuals by 2030. Even marginal improvements to the RTW Rate by 2030 would see this number significantly reduced. On a path that sees SA achieve the national average RTW rate of 91.6 by 2030, 158 fewer workers *per year* would be displaced from the labour market prematurely — generating economic benefits through these individuals’ continued economic engagement, but also protecting these 158 additional South Australians from the trauma of dealing with a premature exit from the labour market and ensuing poverty.

Injured Worker Case Study: John, 37, Returned to Work on modified duties for lower pay

John¹, 38, is a qualified electrician who was working primarily in construction electrical work.

In 2016, while performing a routine task, John fell from a platform at a construction site, severely breaking his ankle.

This rendered him unable to perform many functions he had previously been able to, such as climbing ladders.

John eventually returned to work on modified duties for a while, but his company refused to take him back when work slowed down.

He went from earning \$43 per hour in 2016, before his injury, to \$27 per hour and had to switch to building switchboards instead of doing construction electrical work.

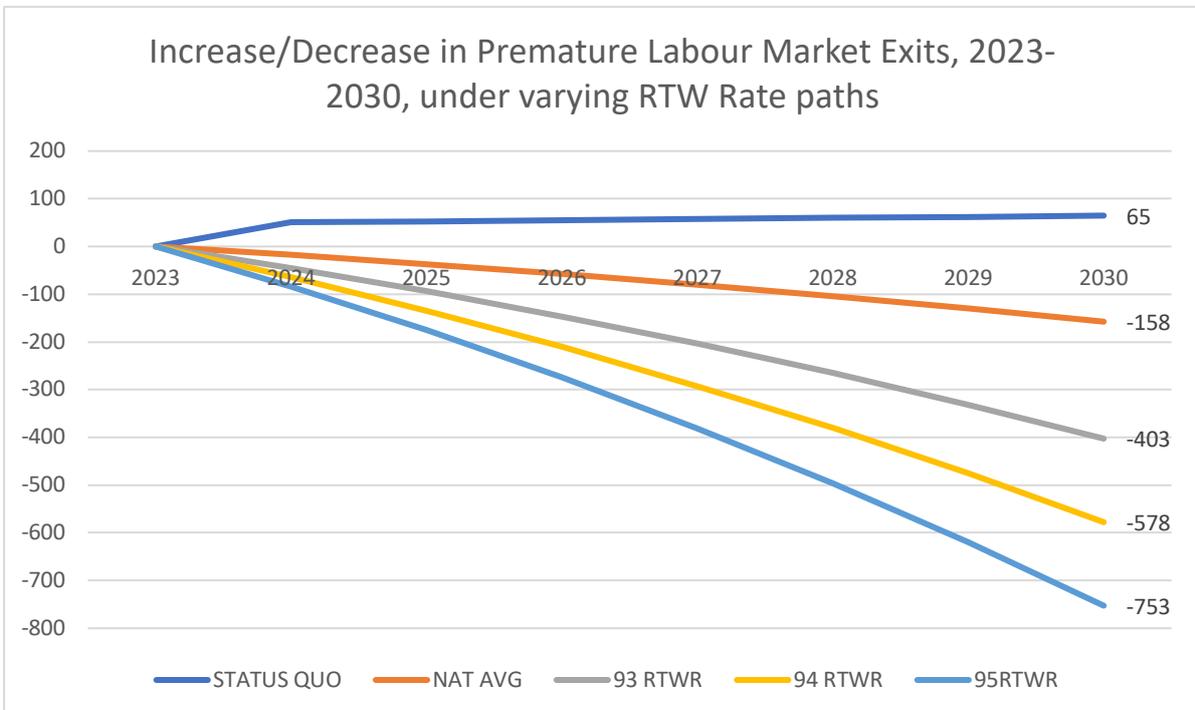


Figure 4.4: The number of workers who would not prematurely exit the workforce under various return to work rate scenarios. Source: author analysis.

Over a decade, the human benefits of an improvement in the RTW rate becomes significant. Were South Australia to successfully pursue a Return to Work Rate of the 2021 national average (91.6) by 2030, this would mean 582 fewer South Australian workers would be exited from the labour market due to their injuries than is currently projected. These benefits increase significant for every point the *Return to Work Rate* is improved.

Injured Worker Case Study: Alex, an Aged Care Worker Who Suffered Back Injuries

Alex was a part-time aged care worker in their early 50's who suffered injuries to their back and legs at work. They received two years of income support which ended in 2020.

They had to undergo surgery for their work injuries, were unable to make a return to work and have suffered from depression associated with this. They had a pre-injury gross weekly income of \$807.78.

To date they have lost an estimated \$119,551 in income. They later underwent a permanent impairment assessment, through that process they obtained economic loss compensation in the amount of \$26,840.58.

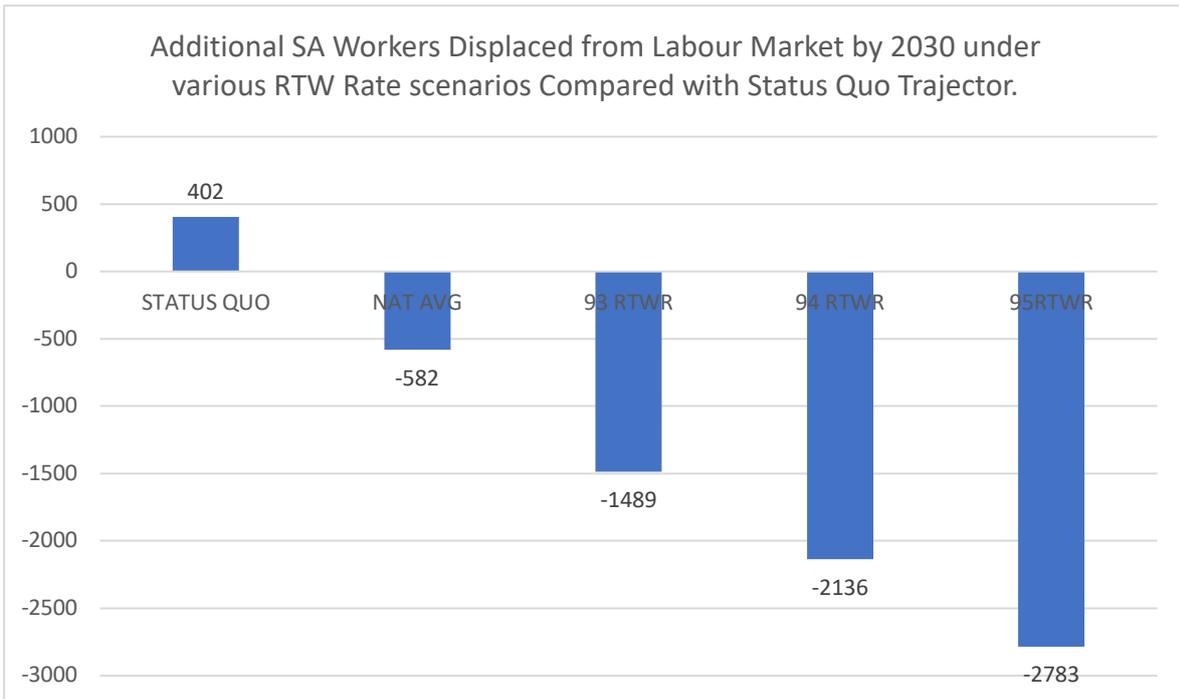


Figure 4.5: The number of workers who would not be displaced from the workforce under various Return to Work Rates to 2030. The 'Status Quo' figure represents the increased number of individuals on top of a flatline trajectory from 2023-2030.

Injured Worker Case Study: Kerry, a high skilled high-school teacher

Kerry was a successful and experienced high school teacher.

They were subjected to severe, ongoing and persistent harassment by students, which included vandalism of personal property, intimidation and sexualised comments.

The worker reported the harassment to their employer, but no meaningful action occurred and the harassment continued unchecked.

Kerry sustained an injury which incapacitated them for work.

As a highly skilled educator, the injured worker had been earning around \$100,000 per year.

Knowing that they didn't have the security of long-term financial support from RTW SA, they decided that they had to make a career change for their mental health and wellbeing.

After approximately six (6) months, they found a job working for a not-for-profit in the disability sector with a salary of around \$57,000 per year.

As a result of their work injury, the injured worker has lost approximately \$43,000.00 per year, their much-loved career, their financial security and sustained significant damage to their mental health.

Part 5: Recommendations for Change

1. The South Australian Government Should Commit to a 2030 Return to Work Rate Target

The Government should consider establishing a *2030 Return to Work Rate Target*, comparable to how it has mandated a *Return to Work Rate Premium Ceiling* for employers. The RTW Rate Target could be pinned to the National Average, which South Australia is currently significantly short of. Such a mechanism would inform policymakers of the performance of the system, with poor performances triggering mandatory review of the WH&S and RTW framework.

2. Consider establishing a “Return to Work Rate Performance Review Trigger”, to ensure SA is aspiring to a best practice workers’ compensation and workplace safety regime, and to inform government policy to maintain workplace safety standards.

The Government of South Australia should consider implementing a ‘RTW Performance Trigger’, which establishes a mandated review of the RTW system when its performance falls to a certain level. The review would consider:

1. The industries in which incidences and severity of workplace injuries increased over the given period.
2. The performance of the RTW system in enabling injured workers to re-enter the labour market.
3. The economic costs associated with the RTW performance gap.

The trigger could be pinned to a pragmatic figure, such as the 3-year National Average return to work rate. The trigger would both enable government to examine issues with the RTW system quickly upon the recognition of poor scheme performance, but also act as an incentive for RTWSA and other agencies responsible for workplace safety to ensure the scheme is performing at its peak. If the incidence and severity of injuries is

increasing in particular sectors, this will allow government to identify gaps in the state's health and safety regime, informing targeted interventions in key at risk industries, to be conducted in collaboration with these industries, workers and employers.

3. The South Australian Government should work with Return to Work SA to improve data transparency and accessibility

Return to Work data is challenging to access, distributed in inaccessible formats, and is backdated only for four years. These limitations minimise the public's capacity to monitor the performance of the state's workers' compensation system. It is important from a public accountability perspective that as much of this data is publicly available as is possible with compromising the privacy of those workers' interfacing with Return to Work SA.

4. Consider changes to income maintenance to better support workers / restore workers to work or their communities to live a full life. For example:

- a. Remove the 20% reduction in weekly payments after twelve (12) months.
- b. Remove the two (2) year hard cap on weekly payments for those workers who are not categorised as "seriously injured workers" under s 21 of the *Return to Work Act 2014 (SA)*.
- c. Make superannuation contributions on weekly payments.

5. Consider costs incentives for returning injured workers to work, including by:

- a. penalising existing employers that unreasonably refuse to provide duties to injured workers, and
- b. provide wages subsidies for new employers who employ injured workers.

6. Provide ongoing payment for medical expenses for workers who rely on medical treatments and interventions to maintain work capacity.

Conclusion

An injured South Australian worker is less likely to return to work than a worker in almost every other jurisdiction in Australia. This is the confronting reality of the state's existing workplace safety and return to work regime. It is a dynamic that has a profound human cost, but also creates an economic problem for South Australia.

This report has outlined the impacts of South Australia's below-average Return to Work Rate, and why improving that rate would bring economic and societal benefits to South Australia. It has outlined the labour market challenge facing SA, and explained how reducing the number of workplace injuries, and improving the Return to Work pathways for workers who are injured, should be considered when discussing policies regarding improving the number of skilled workers in the state.

Further, it has explained some of the challenges facing Return to Work SA. In recent years, the schemes' performance has deteriorated: claims are taking longer to process, and more claims than ever are being rejected. At the same time, SA's Return to Work Rate has fallen well below the national average.

This report has then outlined the benefits of improving SA's Return to Work Rate. If the state achieved the National Average Rate by 2030, that would mean 582 South Australians would remain in the workforce, instead of being prematurely exited from the labour market due to their injury.

Achieving this outcome requires more than just improvements to the workers' compensation framework, it requires improvements in workplace safety. For this reason, this report has argued for a Return to Work Rate Performance Review Trigger — a mechanism that would see a mandatory review SA's workplace safety regime enacted should the Return to Work Rate fall below the national average on three consecutive years. Such a mechanism would ensure that declining Return to Work outcomes are not ignored, but instead trigger

meaningful interventions aimed at improving the safety of SA's workers, and strengthening the South Australian economy.