

STANDING COMMITTEE ON LAW AND JUSTICE 2018 REVIEW OF THE WORKERS COMPENSATION SCHEME

STATE INSURANCE REGULATORY AUTHORITY (SIRA) RESPONSES TO QUESTIONS TAKEN ON NOTICE 2 OCTOBER 2018

QUESTION 1

The Hon. DANIEL MOOKHEY: Did SIRA receive complaints prior to the royal commission about Allianz and the other insurers about cultural practices in claims handling which now mirror the concerns that have been raised at the royal commission? I will allow you to interpret the judgement of that mirroring claim. It is a judgement for you to reach. It is not really for me to tell you what that means.

Ms DONNELLY: Thank you for the question. I have reflected on this very carefully. I think it would be fair to say that as the regulator we obviously see behaviour and conduct from insurers from time to time that is not acceptable. I also think it is fair to say, in my view, that the royal commission has shone a light on insights into just how systemic this may be. What I will say is that I wrote to every one of the general insurers in every one of the schemes that we steward last week, putting them on notice that I would be raising these issues and concerns with them, that I would be requiring them to come and meet with me, also seeking formal written assurance from them that the claims management in the New South Wales statutory schemes is being handled in accordance with the legislation and regulatory requirements and community expectations, requiring them to disclose any matters that they are aware of in which that is not the case. In my letter I particularly called out some of the practices that I found of concern and that would include some of the claim handling practices.

The Hon. DANIEL MOOKHEY: Do you wish to tell us what the concerns are that you have identified?

Mr DAVID SHOEBRIDGE: Or perhaps table the letter.

The Hon. TREVOR KHAN: No, I think oral evidence at this stage before tabling any letter, thanks, David.

Ms DONNELLY: And I am also prepared to provide the letter later. I have one that has lots of marks written all over it here but—

The Hon. DANIEL MOOKHEY: Yes.

Ms DONNELLY: So I wrote to them and said as the regulator for statutory insurance schemes in New South Wales I have noted a number of serious issues raised in the evidence: insurer claim handling practices such as extended use of surveillance and other investigative measures to justify denial of liability or cessation of payments, setting productivity targets for claims handling staff which meant claims handlers felt unable to spend time on properly managing claims associated with problems in claim management including delays in payments to claimants, non-compliance with regulator standards and apparent failure to notify the relevant regulator of breaches when required, alleged misleading and deceptive statements that appeared on an insurance company website for several years and evidence that it was more important to protect the bottom line than stop misleading customers, evidence of insurer practices that are not demonstrative of a customer-centric model. They are the key points that I drew out in my letter to general insurers.

ANSWER:

Attached is a sample of the letters sent to all insurers regulated by SIRA in September 2018 regarding general conduct concerns raised by the Financial Services Commission (**Appendix 1**).

A variation of this letter was sent to all insurers.

QUESTION 2

The CHAIR: Thank you. Do we have any other questions?

The Hon. DANIEL MOOKHEY: Yes, we do. You make the point in your answer on notice that for the use of insurer surveillance there is a permission structure applicable in icare. I think you say they have to go before the committee monthly to seek approval—is that correct?

Ms DONNELLY: Um—

The Hon. DANIEL MOOKHEY: And have you got the data? How many people are receiving monthly requests? It says: These Guidelines provide that prior to undertaking surveillance, Agents must make an application to either the Nominal Insurer or icare Self Insurance—

The CHAIR: Mr Mookhey, I am not sure I follow the question. In fairness, if you could start the question again and slowly quote, because I am not sure where you are quoting from, for the assistance of Hansard and the committee members. I am getting nods from Hansard so if you could just slow it down for my benefit, if no-one else's.

The Hon. DANIEL MOOKHEY: I am quoting from page 8 of 21 of your answers on notice. You say in the second paragraph:

These Guidelines provide that prior to undertaking surveillance, Agents must make an application to either the Nominal Insurer or icare Self Insurance Corporation for approval as appropriate.

You go on to say:

This application includes details such as duration, scope and method of surveillance proposed.

In the next paragraph you go on to say:

icare provides monthly investigation cost data to SIRA, which SIRA uses as insight into the utilisation of surveillance.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: In the next paragraph you say—or you are implying, I think:

This is supported by trend analysis which confirms investigation costs across the scheme have decreased by 50 percent ...

Do you receive specific information about the amount of surveillance that is being used? Are you informed as to the number of applications that are received by icare and the number that are approved? Are you able to provide us that specific trend analysis, which is not directly that trend analysis, as opposed to just the investigation costs?

Ms DONNELLY: I know that Mr Parker has sought information from icare about the actual instances of surveillance. And we do of course have even more detailed reporting from icare—

The Hon. DANIEL MOOKHEY: Perhaps again on notice can you provide us—

Ms DONNELLY: Most certainly.

The Hon. DANIEL MOOKHEY: I do not want to take the Committee's time going down that data rabbit hole if you do not have it. I want to go back: Do you still receive monthly—

The Hon. LYNDA VOLTZ: Can I just clarify that you do not have that data?

Ms DONNELLY: Yes, he does.

The Hon. DANIEL MOOKHEY: But you do not have it with you here.

Mr PARKER: Yes, I do.

The Hon. DANIEL MOOKHEY: Oh, right.

Mr PARKER: I can, if that would be helpful.

The Hon. DANIEL MOOKHEY: Sure.

The Hon. LYNDA VOLTZ: Yes.

Mr DAVID SHOEBRIDGE: You say there has been a 50 per cent reduction between June 2016 and June 2018.

The Hon. LYNDA VOLTZ: Maybe if Mr Parker can just answer my question.

The CHAIR: Mr Shoebridge and members, if you could ask one question at a time, otherwise I will allocate time. Please can we do the witness a courtesy? He was looking for the information. Would you still like that information?

The Hon. DANIEL MOOKHEY: Yes, I still would. Sorry, I thought you said that you did not have it.

The CHAIR: All right. Why don't we give Mr Parker a moment to provide that information?

The Hon. LYNDA VOLTZ: Mr Parker said he has it and he is going to refer to it—if you could do that for us, and particularly the references to trends.

Mr PARKER: Yes. So as part of SIRA's approach to regulating insurers, on a monthly basis we seek a wide range of data from insurers at a detailed level so we can identify where the risks are. The question that has been posed is in relation to what data do we receive about surveillance. The key points that I can point to: We have received the information from icare that for Allianz there was a total of 68 applications, and of those 50 were approved.

The Hon. DANIEL MOOKHEY: Over what period?

The Hon. LYNDA VOLTZ: That is for a month.

Mr PARKER: Since the implementation of the guidelines that were mentioned, in August 2017.

The Hon. DANIEL MOOKHEY: July 2017.

The Hon. LYNDA VOLTZ: August 2017.

Mr PARKER: That is right: 31 August. So 74 per cent of those were approved. For EML, 34 applications were made and 19 of those were approved, an approval percentage of 63 per cent. For GIO there was a total of 32 applications and 26 of those were approved, at the percentage of 81 per cent. And for a cohort of claims that are deemed "uninsured", so they are not with one of the agents, there were seven applications and four of those were approved.

The Hon. LYNDA VOLTZ: Allianz's figures are significantly higher than the other insurers.

Mr PARKER: The figures I have here do not correlate to the number of open claims they have at any particular time.

Mr DAVID SHOEBRIDGE: But EML as I understand it would have far and away the lion's share of open workers compensation claims, would they not?

Ms DONNELLY: They would have the new claims. I think it may be helpful to the Committee if we take the second part of this on notice and give you some data showing what the rate is for the number of open claims rather than

speculate now. I would be happy to do that analysis.

ANSWER:

The table below shows surveillance data for Nominal Insurer by scheme agent for the period 31 October 2017 to 30 September 2018 since the implementation of icare's *Surveillance and Desktop Investigation Guidelines*.

	Total no. of Applications*	Application Approved*	% Applications approved	Average no. of open claims#	% Applications approved/ no. of open claims
Allianz	68	50	74%	10,115	0.49%
EML	30	19	63%	21,323	0.09%
GIO	32	26	81%	18,653	0.14%
ULIS	7	4	57%	247	1.62%
Total	137	99	72%	50,338	0.20%

Data sources:

* icare

SIRA

QUESTION 3

The Hon. LYNDA VOLTZ: Okay, so can you tell me now whether the level of Allianz's surveillance was higher than that of other insurers?

Ms DONNELLY: What I would like to do is give the Committee the answer as a ratio of open claims.

ANSWER:

The scheme agent Allianz's use of surveillance as approved by icare for the period 31 October 2017 to 30 September 2018 as a proportion of the average number of open claims is 0.49%. This is a higher rate than other icare scheme agents.

QUESTION 4

The Hon. DAVID CLARKE: Have you written to any insurers at any time about any of these complaints of surveillance?

Ms DONNELLY: I would need to take that question on notice because there would be a high volume of communication. Whether it is letters, whether it is requiring insurers to come in to meetings, whether it is feedback again performance parameters, there would be a high volume of that material.

The Hon. DAVID CLARKE: Is there anybody here that can confirm now that you have been in contact with any insurers at any time over problems relating to surveillance?

Ms DONNELLY: I can tell you that, for instance, of the 73 matters in the last three months that icare raised with the Committee as an example of us intervening and seeking information, there were, from my recollection, 44 matters related to treatment of claimants. I would need to take on notice—

The Hon. TREVOR KHAN: I would hope so.

The Hon. DAVID CLARKE: Relating to surveillance?

Ms DONNELLY: Not necessarily in relation to surveillance. I would need to take on notice—and I am very happy to do that—some information about what kind of matters they were.

The Hon. DAVID CLARKE: Because it has been a major issue over a long period of time.

Ms DONNELLY: I agree it has been a major issue.

The Hon. DAVID CLARKE: A very major issue, and you cannot recall whether there has been any contact with any insurance companies.

Ms DONNELLY: I would be certain that there has been. Please do not misinterpret my answer. I thought you were asking about the quantity. There is a very high volume of interaction between SIRA and insurers and I would need to take that on notice.

The CHAIR: In fairness I think the Hon. David Clarke's question was quite specific: Have there been letters issued in relation to surveillance procedures?

Ms DONNELLY: I am certain there would have been communication around use of surveillance.

The Hon. DAVID CLARKE: All right. Would you take that notice and come back with some specific information on that issue?

Ms DONNELLY: Yes. I am happy to take that on notice, Mr Clarke.

The Hon. DAVID CLARKE: Thank you.

ANSWER:

During 2018 SIRA has received three reports from workers about the behaviour of private inquiry agents. SIRA has contacted insurers in relation to each of these three matters to obtain information and assess whether regulatory action is appropriate. SIRA will contact an insurer when concerns about surveillance of a worker's family or colleagues have been raised, to ensure that the insurer is aware of those concerns and to ascertain the insurer's actions to address them. SIRA investigates these matters further if assessment identifies that legislation, guidelines or licence conditions have been breached by an insurer.

The three complaints were not assessed as requiring a regulatory response in the form of written communication to specific insurers.

SIRA continues to communicate more generally with insurers in relation to surveillance, and in particular with icare regarding implementation of icare's surveillance policy for scheme agents.

SIRA proposes a mandatory standard of practice on surveillance as part of its Claims Administration Manual. This Standard will seek to reinforce that surveillance is only to be used when necessary, is to be conducted in an ethical manner with any information obtained being appropriately used and stored. SIRA is currently seeking feedback on the draft Claims Administration Manual Standards of Practice, with public consultation commencing on 16 October 2018 and concluding on 16 November 2018.

QUESTION 5

Document tabled.

The Hon. DANIEL MOOKHEY: Mr Parker or Ms Donnelly, of those 490 complaints—they are of a level 2 standard, which is helpful to know—how many of them relate to surveillance—

The CHAIR: I am sorry, the information has now been taken away from Ms Donnelly, so I am not sure she is able to answer that, as she has just indicated.

The Hon. DANIEL MOOKHEY: I think it is slightly different information, Ms Donnelly.

The CHAIR: We will allow the question and see if she is able—

Ms DONNELLY: Sorry, would you mind starting again, Mr Mookhey?

The Hon. DANIEL MOOKHEY: Sure. Mr Parker, you identified the 490 for the year to date. I will now go to the categories Ms Donnelly mentioned in her letter to see whether or not you are in a position to break this down by how many of those complaints relate to each of those categories. Are you in a position to tell us how many of them relate to surveillance, delays in payments, non-compliance or failure to notify the regulator, misleading or deceptive conduct or other areas, given that they were the subject of your letter?

Ms DONNELLY: Mr Parker may like to add. I am aware that delays in payments are one of the top categories of complaints that we receive. I would be surprised if complaints from injured workers were about breaches and failure to notify of breaches.

The Hon. DANIEL MOOKHEY: Have you detected those instances yourself?

Ms DONNELLY: A failure to notify us of a breach?

The Hon. DANIEL MOOKHEY: Yes—or non-compliance with a direction of the regulator or anything like that.

Ms DONNELLY: There have been occasion where an insurer has not notified us of something that we would regard as a significant matter. I would need to take on notice whether or not it was a breach. But I certainly would not rule it out. I think there probably would have been.

The Hon. DANIEL MOOKHEY: Maybe on notice you can provide us with that.

Ms DONNELLY: Yes. The other thing I would add is that one of the provisions in the bill that the Parliament is considering at the moment is stronger requirements to actually notify us of breaches, because that is not entirely clear—

Dr BOLLEN: Legislatively clear.

Ms DONNELLY: —in terms of our ability to enforce.

The CHAIR: So a reverse onus.

Ms DONNELLY: Yes.

Dr BOLLEN: That breach notification.

Ms DONNELLY: It is that they need to notify us if there is a breach, which is not clear at the moment.

The Hon. DANIEL MOOKHEY: Ms Donnelly, you mentioned earlier that you had imposed licence conditions.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: On whom did you impose it, for what, and when did you do that?

Ms DONNELLY: There would be an array of different situations for different insurers. I may need to take that on notice. But certainly—

ANSWER:

Level 2 complaints 1 January to 31 July 2018.

Of the 490 level 2 complaints referred to in evidence, there were zero relating to surveillance and 243 regarding delays in payments. Level 2 complaints include those received through SIRA's advisory service which are either not subsequently resolved by the insurer or service provider or where the initial Level 1 complaint is considered to require immediate escalation to Level 2 for managing. Issues in relation to non-compliance with regulator standards, failure to notify the regulator or misleading or deceptive conduct would not typically be brought to light through the customer complaints process and therefore would be unlikely to be captured within the complaints management system.

SIRA's supervision of the workers compensation system consists of a regulatory approach to insurers that is risk and evidence based and outcome focussed. SIRA's insurer supervision model consolidates information to provide data and intelligence that drives proactive management of risks by both SIRA and insurers, including the types of risks encapsulated in the question above.

Failure to notify of significant matter / breach

For the same period 1 January to 31 July 2018 there was one instance of SIRA detecting a potential breach of legislation in respect of a failure to report a significant matter by a specialised insurer. SIRA continues to investigate the matter.

Imposition of short term licences and licence conditions

SIRA issued a series of short-term licences containing special conditions to Arrium, a self-insurer, from April 2016 until September 2017 whilst the company was under administration.

Four other self-insurers have been issued one year licences (noting the maximum licence term is eight years) following SIRA's identification of risks in performance.

The standard licence conditions imposed on self-insurers and specialised insurers are attached (**Appendix 2** and **Appendix 3**).

QUESTION 6

The CHAIR: What is the question?

The Hon. DANIEL MOOKHEY: Liverpool—these are the ones that are accounting for the largest number of complaints that you are receiving. Have you imposed conditions on any of their licences?

The CHAIR: Which ones specifically?

Mr DAVID SHOEBRIDGE: Why don't we start with Westpac? Westpac, for example, has an appalling return to work outcome according to these figures, of only 57.14 per cent of workers having a return to work after 26 weeks. The nominal insurer has 87 per cent. Westpac also has an appallingly low record in terms of percentage of injury notifications actioned within seven days. There has been a royal commission into the banks. What have you done to Westpac?

The Hon. DANIEL MOOKHEY: And the high number of complaints—

Mr DAVID SHOEBRIDGE: Can we just deal with Westpac?

The CHAIR: One at a time.

Mr DAVID SHOEBRIDGE: There is one.

Ms DONNELLY: I am happy to see if Mr Parker has at a high level any information. We may need to take that on notice though, for more detail.

Mr DAVID SHOEBRIDGE: Would it be fair to say your answer, so far as you are aware at the moment—

The Hon. TREVOR KHAN: David, just—

The CHAIR: Just a moment.

Mr DAVID SHOEBRIDGE: —is you are not aware of anything but you will ask Mr Parker if he has any knowledge?

Ms DONNELLY: No, I think it would be fair to say that I do not want to mislead the Committee—

The CHAIR: Thank you.

Ms DONNELLY: —and so I want to take care with my answer, Mr Shoebridge.

The Hon. TREVOR KHAN: She is entitled to refer it, David.

Mr DAVID SHOEBRIDGE: I am fine. Mr Parker?

Mr PARKER: Can you clarify the question, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: What have you done for Westpac? Westpac has an appalling return to work record of only 57.14 per cent after 26 weeks. The nominal insurer is at 87 per cent. The government self-insurer is at 88 per cent. Westpac is at 57 per cent. And it is not only one indicator that seems to be stalling on. They also have a very poor record of injury notifications being actioned within seven days. They are at 85 per cent, whereas the nominal insurer and the Treasury Managed Fund is at 98 per cent. What have you done to Westpac?

Mr PARKER: I do not have with me the performance arrangements that are currently around Westpac as a self-insurer. I am happy to take that on notice. I can say that, when we receive data each month aligned to the information you are providing us today, we will engage with the insurer to make sure that they have an improvement plan in place to rectify the issues that are being raised and then we will hold those insurers accountable to make sure that they do fix those things. I am aware that Westpac do take their responsibilities very seriously. I would need to check whether those details that have been tabled here today have been validated. I would like to confirm that, ensuring the principles of natural justice before we draw any inclusions of any poor performance of any insurer.

ANSWER:

Westpac Banking Corporation - Return to work (RTW) rates

The RTW figures referred to related to the 18-month period from 30 December 2016 to 30 June 2018. Self-insurers such as Westpac generally have a smaller cohort of claims than icare and specialised insurers. For this period Westpac had 5 claims in the 4-week cohort, and 7 claims in the 13 and 26 week cohorts. Small cohort size may be associated with fluctuations in RTW rates.

SIRA has required data validation by Westpac and will work with Westpac to identify areas for improvement or action as appropriate.

Attached is the *Insurer Supervision Scorecard and RTW calculations* which assists to explain Westpac's return to work rates (**Appendix 4**)

Injury notifications action within 7 days

The figure of 85.7% for injury notifications actioned within 7 days is a raw data figure, covering the period 1 April to 30 June 2018. The cohort size of this result is 14, meaning that 2 claims in the quarter were identified as non-compliant.

For the period 1 July 2017 to 31 March 2018 Westpac's compliance with this requirement was 100%. As an annual figure, the 2 claims identified as potentially non-compliant out of a total 55 claims mean Westpac's annual compliance rate is 96.36%.

QUESTION 7

Mr DAVID SHOEBRIDGE: You are suggesting to us that SIRA has this early warning ability, that you are picking up these concerns. What I am proposing to you is that when it comes to Northern Meats, this all happened about a month ago when you were put on notice by WIRO, who had actually met with the workers, identified the appalling situation and alerted you to it, which is quite different from SIRA having early warning mechanisms. Mr Parker?

Mr PARKER: Thank you, Mr Shoebridge. The information I have, which I would need to clarify the source of those complaints, I understand and reflect on that the insurer supervision team of SIRA were aware of matters with that insurer. I would need to clarify whether it was at the same time or just before. We had discussions with Mr Garling's office when they were contemplating going to visit Casino and were engaging with them—

ANSWER:

SIRA became aware of potential performance issues of Northern Co-operative Meat Company (NCMC) in July 2018 through complaints received by SIRA and discussions with officers of WIRO. In response to this information, SIRA engaged with NCMC's Workers Compensation Insurance Manager and arranged a performance meeting to discuss allegations of poor performance. The meeting took place onsite at NCMC, Casino on 14 August 2018.

QUESTION 8

The Hon. TREVOR KHAN: Are there any other self-insured who are in a similar position to Northern Meats at the present time?

Ms DONNELLY: There are some other self-insurers whose tier status rating from us is being reviewed. And there are some that are in the low tier.

The Hon. TREVOR KHAN: Are you able on notice, because we are running very short on time, to provide us with those details.

Ms DONNELLY: I am happy to, and that information is on our website.

ANSWER:

Low Tier: *a self-insurer is classified as low tier where they do not meet mid-tier measures. Regulatory action is taken with low tier insurers to ensure an improvement in performance to at least mid-tier standards. The low tier is intended to be a short-term placement allocation for self-insurers that they are performing below the mid-tier standard. The self-insurer must improve their performance to move to a higher tier or risk losing their licence.*

Low-tier self-insurers as at September 2018 quarter:

- Council of the City of Wollongong
- McDonald's Australia Holdings Limited
- Northern Beaches Council
- Pacific National (NSW) Pty Ltd
- Toll Holdings Limited.

Not assessed yet or "under review": *self-insurers who have been operating within the system for less than 12 months are not assessed. We have the discretion to review any self-insurer's tiering level for any reason or risk.*

Self-insurers either not assessed yet or 'under review' as at 30 September 2018 quarter:

- Austube Mills Pty Ltd
- BOC Limited
- Boral Limited
- Broadspectrum (Australia) Pty Limited
- Commonwealth Steel Company Pty Ltd
- Liberty OneSteel (Manufacturing) Pty Ltd
- Mars Australia Pty Ltd
- OneSteel Recycling Pty Ltd
- OneSteel Trading Pty Ltd
- Southern Meats Pty Limited
- Sydney Trains
- Tomago Aluminium Co Pty Ltd

Tiering information and the listing of self-insurers against each tiering category is also published on SIRA's website.

QUESTION 9

Ms DONNELLY: My language is to say that there are four tiers. That is because the fourth one is you are exiting.

The CHAIR: Right—you are out.

Ms DONNELLY: The lowest one.

The CHAIR: So level 1 is top tier.

Ms DONNELLY: Top tier.

The CHAIR: Level 2 is mid tier.

Ms DONNELLY: Mid tier.

The CHAIR: Level 3 is low tier.

Ms DONNELLY: Low tier.

The CHAIR: Thank you.

Ms DONNELLY: I am happy to share with the Committee there are some very clear formal policy documents about how this works. It is not a capricious system. It is a structured system with procedural fairness. It is well described.

ANSWER:

Attached are SIRA's formal tiering documentation:

- Self-insurer tiering model, 2017 (**Appendix 5**)
- Self-insurer tiering: Panel and internal review process, April 2018 (**Appendix 6**)

QUESTION 10

The Hon. DANIEL MOOKHEY: That would be great. Can you also provide us with the list of all enforcement actions, the data that you have by tier, by insurer—as much information as possible—so we can judge the extent to which SIRA is regulating insurers and the marketplace?

Ms DONNELLY: Happy to. I certainly know that there would be at any time a complete data set of what risks we are monitoring by insurer, where they are up to in the action plan and remediation.

The CHAIR: Thank you very much.

The Hon. DANIEL MOOKHEY: Also, any enforcement actions undertaken in the last two years.

Mr DAVID SHOEBRIDGE: Madam Chair—

Ms DONNELLY: This system has only been in place since the middle of last year. We spent a fair bit of time working to build it. I am happy to go back till, say, the middle of last year when the system was implemented, Mr Mookhey.

ANSWER:

SIRA regularly assesses complaints and performance data for potential breaches. SIRA's Insurer Performance team communicates actively with insurers via phone calls and meetings to require information about complaints or performance issues and follows up on required insurer action to improve performance and legislative compliance. Following assessment, a matter may be escalated to SIRA's Compliance, Investigation and Enforcement Unit.

Since July 2017, SIRA has engaged with every insurer setting clear expectations and requesting improvement actions where necessary. Issues presented to insurers and rectified include late liability decisions, slow management of complaints and poor submission of data. No insurer has yet been prosecuted. SIRA is currently considering formal regulatory actions against three self-insurers and one licensed insurer for different performance issues.

In the last year, SIRA has issued four penalty notices against the Nominal Insurer for non-compliance with legislative timeframes, including breaches of sections 74 and 281 of the Workers Compensation legislation.

In the last year SIRA has also undertaken proactive audits of insurer claims management, employer compliance and workplace rehabilitation providers.

Between August 2017 to August 2018, SIRA received and is actioning 518 referrals relating to fraud, non-insurance and other issues within the scheme.

QUESTION 11

Mr DAVID SHOEBRIDGE: —how many injured workers do you expect to be losing their medical benefits under section 59A between now and the end of the year?

Ms DONNELLY: I may ask Mr Parker—I think he has the data in front of him—about 59A. I will just set some context: 59A is where the cessation of medical treatment, rehabilitation and those kinds of entitlements—

Mr DAVID SHOEBRIDGE: Twelve months after you get chopped off on section 39 you get chopped off—

Ms DONNELLY: Two years or five years, depending on the level of whole person impairment. Mr Parker has some information.

Mr PARKER: SIRA has worked diligently to make sure that the people on section 39 have been supported. While many of them have been on workers compensation payments for the last 14 years, they were provided five years notice with a whole person impairment of less than 20 per cent. It will be the same approach that we will apply for those people affected by 59A. As to Mr Shoebridge's question, there are 1,889 workers that will be reaching the two-year limit in between September 2019 and June 2020. Those people will have a permanent impairment percentage of between 0 per cent and 10 per cent.

The CHAIR: It is the low end.

Mr DAVID SHOEBRIDGE: Of the 1,889, what is the average length of time they have been on benefits?

Ms DONNELLY: We might take that on notice. I have some figures but I think they relate to the larger cohort.

Mr DAVID SHOEBRIDGE: If you have the figures relating to the larger cohort, what are the figures relating to the larger cohort and what is the larger cohort?

Ms DONNELLY: The larger cohort would be the 3,450-odd—approximately that number of people who transitioned off section 39, as the Committee would well understand, over the September to June period for 2017-18. I am sorry, I am just trying to find the number in front of me. I think it may well be 14 years—is it? Yes.

Mr DAVID SHOEBRIDGE: So it is 14 years.

Ms DONNELLY: Yes. It is 14 years on average.

The CHAIR: Two minutes.

The Hon. DANIEL MOOKHEY: Do you have monthly projections?

The CHAIR: No. One at a time.

The Hon. DANIEL MOOKHEY: I am just asking—

The CHAIR: One at a time, please.

The Hon. DANIEL MOOKHEY: I am asking—

Mr DAVID SHOEBRIDGE: But I am happy for Mr Mookhey to assist.

Ms DONNELLY: We do have monthly projections.

The Hon. DANIEL MOOKHEY: On 59A?

Ms DONNELLY: For section 39. I think we may have them for 59. We certainly could provide them on notice if you like.

Mr DAVID SHOEBRIDGE: We would appreciate it on notice. Many of these injured workers have had long-term pain medication, long-term antidepressant medication, and they will just simply be cut off at an arbitrary point determined on the statute.

What are you doing to ensure that we do not see, as we heard in data that came to the Committee last time, a wave of potential self-harm or even worse?

Ms DONNELLY: Certainly within that cohort, as you know, we have required the insurers to notify us of people who are vulnerable or at risk in that cohort. That is the 375 people that we have mentioned before.

Mr DAVID SHOEBRIDGE: Are you saying the 375 are the same people under section 59A as under section 39?

Ms DONNELLY: Effectively that is how it will pan out, because for section 39 they lose their weekly benefits and then two years or five years after that they then cease to be entitled under the law to the medical treatment.

Mr DAVID SHOEBRIDGE: But the 1,889 who are losing their benefits now cannot be the same subset as those who lost it under section 39, because they are two years in. They are a different set. Surely you understand that, on your own answers.

Ms DONNELLY: They are a set of people who at one point in time have lost their weekly benefits—

Mr DAVID SHOEBRIDGE: Correct.

Ms DONNELLY: —and then two years later will lose their medical benefits under section 59.

Mr DAVID SHOEBRIDGE: Yes. So the ones who are losing it now are not the section 39 ones who started losing their benefits at the end of last year.

Ms DONNELLY: They started losing their weekly benefits and then they have a two-year period until they lose their medical and treatment.

Mr DAVID SHOEBRIDGE: Yes. So can we agree that the 1,889 who are now losing their benefits are a different cohort?

Ms DONNELLY: No, I do not agree.

Mr DAVID SHOEBRIDGE: Okay.

Ms DONNELLY: I do not agree and I am happy to take on notice an explanation.

ANSWER:

Workers affected by section 59A (not part of the section 39 cohort)

Participants within the workers compensation system cease entitlement to most medical expenses under Section 59A unless they have been assessed at greater than 20% permanent impairment. Workers assessed at greater than 20% are entitled to reasonably necessary medical expenses related to their work injury for life.

Workers with a permanent impairment of 0-10% cease entitlement after 2 years, and workers with a permanent impairment of 11-20% cease entitlement after five years. The time period is calculated from either the date of injury or the last date of receipt of weekly payments, whichever is the latter.

Section 59A does not apply to exempt workers (police officers, fire fighters and paramedics).

Workers affected by section 39 who are also affected by section 59A

3,453 workers affected by section 39 ceased weekly payments between the period September 2017 and June 2018.

1,882 of the 3,453 workers will cease entitlement to medical expenses between September 2019 and June 2020 (2 years from ceasing weekly payments).

Cessation by Month

September 2019	6
October 2019	9
November 2019	7
December 2019	1,340
January 2020	225
February 2020	93
March 2020	65
April 2020	56
May 2020	36
June 2020	45
Total	1,882*

Note: the reduction from 1,889 quoted in the hearing to 1,882 in the above table is attributed to workers PI being reassessed since the hearing and the workers now either having either 5 years or lifetime entitlement.

The average length of time that the 1,882 workers have been on benefits is 14 years. Given longer periods on benefits, this cohort is more likely to have long term history of use of medications.

1,567 of the 3,453 workers have an assessed whole person permanent impairment (WPI) between 11-20%. These workers will cease entitlement to medical expenses between September 2022 and June 2023 (5 years from ceasing weekly payments).

Cessation by Month

September 2022	7
October 2022	4
November 2022	4
December 2022	1,147
January 2023	169
February 2023	75
March 2023	59
April 2023	28
May 2023	38
June 2023	36
Total	1,567

Four of the 3,453 workers have been reassessed for whole person permanent impairment (WPI) and as a result are no longer affected by either section 39 or section 59A.

QUESTION 12

The CHAIR: We have one more question from Mr Mookhey about pre-injury average weekly earnings [PIAWE] and then I am going to conclude this session.

The Hon. DANIEL MOOKHEY: Is it SIRA's intention to implement the new PIAWE definition for claims received after July next year?

Mr DAVID SHOEBRIDGE: On and from 1 July.

The Hon. DANIEL MOOKHEY: On or from 1 July 2019. If so, why?

The Hon. TREVOR KHAN: "Why the delay?" is the question.

Mr DAVID SHOEBRIDGE: The general will is earlier.

The Hon. DANIEL MOOKHEY: Yes. Assuming assent to the Legislative Assembly first.

Ms DONNELLY: That would be a change that I agree is important, pending the passage of the legislation. We are working to, if you like, second guess when that legislation will be passed and then what is required in terms of guidelines and regulations.

The Hon. DANIEL MOOKHEY: What is the date to which you are working?

Ms DONNELLY: Dr Bolla may have that.

The Hon. TREVOR KHAN: It is a government bill.

The CHAIR: Gentlemen, sorry, one at a time.

The Hon. TREVOR KHAN: Ms Donnelly, it is a government bill and you know it is a government bill. It has been through the upper House, which is where we know problems arise. You do not have to await the passing of the legislation to move forward on it.

Ms DONNELLY: I am not—I am sorry. That is a very good point and let me clarify. I am certainly not saying that we are not taking action. We have a steering committee. We have plans in place. It is more that we needed to revise them because we had a hope—out of our control—that it would actually be passed by September and we would be able to go ahead. That is all that I meant by that.

The Hon. DANIEL MOOKHEY: I just press the question: What date will SIRA be applying the new definition?

Ms DONNELLY: I do not know that it has been finally agreed.

The Hon. DANIEL MOOKHEY: What is it likely to be?

Ms DONNELLY: Sorry, I do not have the program in front of me for that. We might take that on notice.

The Hon. TREVOR KHAN: Would you agree that July would be far too long a delay in the implementation of that reform?

Ms DONNELLY: I certainly agree that we need to expedite the consequential regulations and guidelines in consultation.

ANSWER:

A date for commencement for the new pre-injury average weekly earnings (PIAWE) provisions has not yet been confirmed.

SIRA has convened a pre-injury average weekly earnings (PIAWE) working group with representatives from the Workers Compensation Independent Review Office (WIRO), the Workers Compensation Commission (WCC), insurers, unions, employers and legal practitioners.

The PIAWE working group has agreed to meet regularly to help inform development of supporting Regulation and Guidelines in preparation for commencement and implementation of the new PIAWE provisions that are likely to be implemented early 2019.

SIRA is seeking advice from the working group about the soonest practicable time to commence the new pre-injury average weekly earnings (PIAWE) provisions.

QUESTION 13

Ms DONNELLY: In the consultation about that bill it was very clear that a number of stakeholders are very strongly, as they should be, interested in ensuring that the regulation is what is needed and they want to have input. So one of the things that I am considering in my advice to the Government—and in the end the regulation will be the Minister's regulation—is the balance between expediting the changes being

implemented with making sure that there is appropriate consultation so that it is done right. That is something that we have not finalised in terms of our project plan, but I am happy to take it on notice.

ANSWER:

SIRA has convened a PIAWE working group with representatives from the WIRO, the WCC, insurers, unions, employers and legal practitioners.

The PIAWE working group will meet regularly to help inform development of supporting Regulation and Guidelines in preparation for commencement and implementation of the new PIAWE provisions in 2019.

SIRA is seeking advice from the working group about the soonest practicable time to commence the new pre-injury average weekly earnings (PIAWE) provisions.