

Supplementary Questions – Law and Justice Committee 2020 Review of the Workers Compensation Scheme

1. **If available, please supply to the committee data on the number of workers who have had their benefits cease under Section 39 of the Workers Compensation Act 1987 broken down by year of cessation and by state electorate.**

Please see attached response.

2. **If available, please supply to the committee data on the number of workers who have had their benefits cease under Section 59A of the Workers Compensation Act 1987 broken down by year of cessation and by state electorate**

Please see attached response which provides the data on those injured workers in the Section 39 cohort who have subsequently ceased entitlement to benefits under Section 59A.

3. **Has any study been undertaken, proposed to be undertaken or funded by SIRA to be undertaken into the impact of the operation of Section 39 and 59A on workers after they have had their benefits ceased? If so, please provide details.**

SIRA is funding a Monash University study to evaluate the impact of workers who transition off workers compensation weekly payment entitlements on welfare, health and health service use, as a result of the 260-week limit to weekly payment compensation under section 39 of the *Workers Compensation Act 1987*.

The aim of the study is to determine the long-term health and welfare outcomes of this cohort, and to compare these outcomes with matched groups with shorter duration claims.

Following Ethics approvals from the Monash University Human Research Ethics Committee, the New South Wales Population and Health Service Research Ethics Committee, and the AIHW ethics committee, the data linkage process commenced in June 2020. The study is expected to reach completion in September 2021.

4. **Are any statistics collected by SIRA or any other agency on the operation of Section 248 of the Workers Compensation Act 1987? If so, please provide details.**

Section 248 of the *Workers Compensation Act 1987* (1987 Act) provides protections for workers by making it an offence to dismiss a worker because the worker is not fit for employment as a result of a work-related injury. Except as otherwise provided by the section, this protection applies for six months after the worker first becomes unfit for employment. Section 250 of 1987 Act makes provision for the enforcement of this protection by applying provisions of the *Industrial Relations Act 1996*.

Accordingly, SIRA does not collect individual statistics on the operation of Section 248 of the 1987 Act as NSW Industrial Relations and the Industrial Relations Commission are the agencies with the regulatory power to enforce this employer obligation. However, SIRA can actively seek data from NSW Industrial Relations on any investigations and/or compliance activity they may have undertaken.

As of August 2020, the NSW Industrial Relation Compliance branch has advised SIRA that they have not prosecuted any employers on this matter.

The Industrial Relations Commission has advised SIRA that a number of applications for protection of injured workers from dismissal has been filed. The number of applications received by the Industrial Relations Commission by year is as follows:

Year	Number of Applications filed
2015	9

2016	6
2017	3
2018	23
2019	Not yet published.

SIRA intends to undertake a review of Part 8 of the 1987 Act. The review will assess whether the provisions in Part 8 provide appropriate protections for injured workers and whether arrangements in relation to monitoring, dispute resolution, compliance and enforcement are fit for purpose. SIRA will provide advice to Government on the outcomes of the review by end of 2020.

5. Has any analysis been undertaken on the effectiveness of Part 8 of the Workers Compensation Act 1987 and in particular the operation of Section 248? If so, please provide details.

SIRA has not examined the effectiveness of either Part 8 or Section 248 of the 1987 Act.

SIRA will undertake a thorough analysis of the operation of Part 8 of the 1987 Act and provide advice to Government.

6. If available, please supply to the committee data on how many workers have had their employment terminated by their employer while in receipt of benefits for the period from 1 July 2015 - 30 June 2020?

SIRA has not yet obtained statistics on the operation of Section 248 in time to respond to this question.

SIRA will undertake an analysis of the operation of Part 8 of the 1987 Act and provide advice to Government.

7. Is any data collected on the number of disputes around return to work? If yes can you provide the committee with the data for the period from 1 July 2015 - 30 June 2020?

SIRA collects complaints data related to Return to Work (RTW), which may include disputes, however the Workers Compensation Commission (WCC) is the entity responsible for receiving workplace injury management dispute applications directly by injured workers.

The WCC publishes information regarding the number and types of disputes in their Annual Report. For more information, please visit the [WCC website](#).

8. Who has responsibility for enforcing the requirements of Section 44 of the Workplace Injury Management and Workers Compensation Act 1998? How many prosecutions/ actions to enforce have been undertaken for non-compliance with this provision for the period from 1 July 2015 - 30 June 2020? (Please indicate for each financial year in the period)

As the regulator of workers compensation, SIRA is responsible for ensuring compliance with the Workers Compensation legislation. To support this function, SIRA delegates some authorities to inspectors within SafeWork NSW.

Section 44(2) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act) requires an employer of an injured worker to notify the insurer within 48 hours after becoming aware that a worker has received a workplace injury. Clause 36 of the *Workers Compensation Regulation 2016* states that a person who fails to comply with section 44(2) of the 1998 Act is guilty of an offence, with a maximum penalty of 20 penalty units.

Regulatory action to promote compliance with early notification includes:

- Incentives: The 2020 Workers Compensation Market Practice and Premiums Guidelines (guidelines) state that if an employer notifies the insurer of an injury within five days of becoming aware of the injury, the claim excess is \$0. For 2018/2019 financial year, icare reported collecting claims excess of \$7.25m from 8,810 claims.
- Deterrents: The number of penalties issued by inspectors for failing to notify the insurer of an injury within 48 hours is outlined in the table below.

RTW Inspectorate statistics			
	2017*/2018 FY	2018/2019	2019/2020
Number of visits – request for service (responsive)	60	61	152
Number of visits – RTW verification (proactive)	323	234	435
Total Number of improvement notices issued	71	74	102
Number of improvement notices issued related to failure to notify insurer within 48 hours	3	1	2

* Data in 2017 was only captured from September 2017

Note: Inspectors have resolved many matters without the need to issue penalty notices. However, with an increased focus on early intervention in the Employer Supervision and RTW strategy, SIRA will be working with the inspectorate to increase the focus on early notification.

SIRA is also planning enhanced regulatory action on late notifications. As part of this planning, SIRA analysis has identified that there is a negative effect on return to work for those workers who have a delay in notification.

9. Why has the Safe Work Australia “Best practice guide for the management of psychological claims in the Australian Workers Compensation Sector” not been implemented in NSW?

SIRA has encouraged the implementation in NSW of Safe Work Australia’s “Best practice guide for the management of psychological claims in the Australian Workers Compensation Sector” (the Guide).

In January 2017, SIRA [published](#) an endorsement of the Guide in issue 36 of the SIRA Workers Compensation Regulation Bulletin encouraging “all insurers and claims agents in the workers compensation system to review, consider and implement this best practice framework in their case management models for the management of psychological claims”. SIRA followed up on this endorsement with education sessions for self-insurers.

SIRA has also published Standards of Practice which set expectations for insurer claims administration and conduct, and strengthened the Workers Compensation Guidelines in the following areas highlighted within the Guide as case management practices leading to better outcomes:

- early appropriate communication and expeditious supports
- decision making at key points in the claim including when claims can be reasonably excused

- use of factual and surveillance particularly for psychological injury
- injury management plans

SIRA is currently developing an additional Standard of Practice which will set expectations for insurers on managing claims for workers with a psychological injury.

Other initiatives implemented by SIRA which align with the Guide include:

- **The Recovery Boost contestable grants program:** Grants for projects that evaluate innovative approaches, to strengthen of the evidence base for actions that support mental health at work
- **The recovery at work toolkit:** Simple and practical actions for workers and employers to help maintain positive mental health and make necessary adjustments at work.
- **The lived experience program:** A reference group composed of industry leaders and people with lived experience of workplace recovery, and a co-designed strategic framework to support engagement of end users in the development of mental health policy, projects and initiatives.
- **Assistance for GPs with best practice diagnosis and management of work-related mental health conditions:** SIRA helped fund and is helping implement the [Clinical guideline for the diagnosis and management of work-related mental health conditions in general practice](#) developed by Monash University with the Royal Australian College of General Practitioners and the Australian College of Rural and Remote Medicine.
- **SIRA's on-line Claims management guide:** an easy to use, 'one stop shop' for NSW workers compensation claims management information which provides a comprehensive range of information and related topics to help insurers make decisions in-line with legislation and community expectations, and helps workers understand their entitlements.

10. If available, please provide to the committee data on the number of psychological claims made for the period from 1 July 2015 - 30 June 2020. If possible, please break the data down by insurer type and by whether the claim was accepted or contested?

Since 1 July 2015 there have been 35,633 psychological claims made to insurers of which 22,172 claims (62.2%) have been 'accepted'. Where:

- Accepted means Provisional payment or Liability Accepted
- Contested means Reasonable Excuse or Liability Disputed
- Pending means Not progressed past notification to insurer.

The below table shows reportable Claims for Psychological injury data from 1 July 2015 to 30 June 2020:

Insurer Type	Accepted	Contested	Pending
Government self-insurers (TMF)	10,088	3,565	533
Nominal insurer	9,798	6,164	830
Self-insurers	1,338	1,405	45
Specialised insurers	948	887	32
Total	22,172	12,021	1,440

As above broken down by year in which claim was notified to insurer.

Claim FY	Insurer Type	Total	Accepted	Contested	Pending
Grand Totals		35,633	22,172	12,021	1,440
2019-2020	Total	8,497	5,358	2,991	148
	Government self-insurers (TMF)	3,279	2,293	943	43
	Nominal insurer	4,149	2,567	1,495	87
	Self-insurers	634	262	361	11
	Specialised insurers	435	236	192	7
2018-2019	Total	8,327	5,445	2,863	19
	Government self-insurers (TMF)	3,321	2,373	945	3
	Nominal insurer	3,947	2,543	1,394	10
	Self-insurers	625	281	342	2
	Specialised insurers	434	248	182	4
2017-2018	Total	7,144	4,534	2,593	17
	Government self-insurers (TMF)	2,730	1,953	774	3
	Nominal insurer	3,441	2,093	1,343	5
	Self-insurers	548	287	258	3
	Specialised insurers	425	201	218	6
2016-2017	Total	6,530	3,640	1,815	1,075
	Government self-insurers (TMF)	2,687	1,816	467	404
	Nominal insurer	3,011	1,428	929	654
	Self-insurers	514	267	237	10
	Specialised insurers	318	129	182	7
2015-2016	Total	5,135	3,195	1,759	181
	Government self-insurers (TMF)	2,169	1,653	436	80
	Nominal insurer	2,244	1,167	1,003	74
	Self-insurers	467	241	207	19
	Specialised insurers	255	134	113	8

11. Does SIRA maintain an inspectorate? If yes what is the EFT for this unit as at 30 June 2020?

The SIRA Chief Executive (CE) authorises SafeWork NSW Inspectors under section 161 (inspection of policies) and section 174 (records relating to wages, contracts, etc. to be kept safe and supplied) of the *Workers Compensation Act 1987* (1987 Act) and under section 238 (powers of entry by inspectors) and section 238AA (power to obtain information, documents and evidence) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act).

This arrangement authorises all SafeWork NSW Inspectors to deliver delegated inspectorial services on behalf of SIRA.

Currently there are 330 Inspectors in SafeWork NSW with the authorisation outlined above.

SIRA's Enforcement and Prosecution team members are also authorised SIRA Inspectors under section 155, section 156, section 161, and section 174 of the 1987 Act, and section 238 and 238AA of the 1998 Act.

At present, there are 17 officers (FTEs) within the Enforcement & Prosecutions area.

The SIRA CE also authorises other SIRA officers as inspectors as required. Inspectorial powers under provisions such as section 174 of the 1987 Act and sections 238 and 238AA of the 1998 Act are also held by other officers within SIRA who undertake broader regulatory functions.

12. Can you provide details of the mechanisms in place to ensure the accuracy of the data supplied by employers in relation to Certificates of Currency

Section 174 of the *Workers Compensation Act 1987* (1987 Act) allows SIRA to issue mandatory orders to an employer to provide wages records and relevant contractual documentation regarding wages paid by that employer. Section 174 enables SIRA to direct that those records be made available to the insurer for the purposes of determining the relevant premiums.

Section 174 is also used by SIRA to identify employers that are un-insured or underinsured in contravention of the 1987 Act.

In the 12-month period from 1 August 2019 to 31 July 2020, 37 requests have been made by icare for SIRA to issue a section 174 notice, with 15 of these being granted. The 22 requests that were not granted by SIRA were due to icare being unable to demonstrate sufficient evidence that it had made reasonable efforts to contact the employer or that there was reasonable suspicion of wrongdoing.

A review of the issuing of section 174 notices is currently being undertaken with icare.

13. What enforcement action has been taken by SIRA over the period 1 July 2015 -30 June 2020 in relation to false reporting of information of employers for the purposes of obtaining a Certificate of Currency?

Please see response to Question 12.

14. Can you provide some further submissions in relation to the issues raised by the CFMEU in Submission No 18 on the issue of Certificates of Currency?

Please see response to Question 12.

S39 Reporting

S39 Reporting including original cohorts

Insurer agent data as at 31 May 2020 and Claims submission data as at 31 May 2020***

State Electorate and exit year	*	2017**	2018	2019	2020
ALBURY	1	47	24	9	10
AUBURN	1	39	27	8	9
BALLINA	.	19	11	8	0
BALMAIN	.	15	7	3	0
BANKSTOWN	.	49	26	18	9
BARWON	4	69	30	14	3
BATHURST	3	45	21	14	5
BAULKHAM HILLS	.	10	6	5	4
BEGA	2	58	20	18	5
BLACKTOWN	2	37	28	9	2
BLUE MOUNTAINS	1	24	14	4	4
CABRAMATTA	.	77	38	20	4
CAMDEN	.	52	19	16	9
CAMPBELLTOWN	1	53	31	16	8
CANTERBURY	1	67	33	16	12
CASTLE HILL	.	19	17	9	3
CESSNOCK	1	44	16	8	3
CHARLESTOWN	3	63	27	12	4
CLARENCE	2	50	14	11	2
COFFS HARBOUR	2	47	26	20	1
COOGEE	1	10	3	4	3
COOTAMUNDRA	4	50	23	20	4
CRONULLA	1	4	6	0	2
DAVIDSON	.	5	1	1	1
DRUMMOYNE	.	22	14	6	3
DUBBO	.	44	16	12	3
EAST HILLS	1	30	18	8	4
EPPING	.	8	6	2	2
FAIRFIELD	.	73	37	18	6
GOSFORD	2	59	29	14	5
GOULBURN	3	39	24	12	5
GRANVILLE	2	55	24	16	7
HAWKESBURY	2	24	8	5	0
HEATHCOTE	1	20	16	7	3
HEFFRON	1	20	7	7	5
HOLSWORTHY	.	2	5	1	0
HORNSBY	.	10	6	9	2
KEIRA	.	39	25	8	3
KIAMA	2	13	8	4	0
KOGARAH	2	20	16	7	0
KU-RING-GAI	.	3	6	2	0
LAKE MACQUARIE	2	48	14	7	2
LAKEMBA	.	22	13	15	3
LANE COVE	1	10	5	3	2
LISMORE	6	54	18	10	3
LIVERPOOL	1	150	67	61	29
LONDONDERRY	.	29	21	9	3
MACQUARIE FIELDS	2	29	23	12	4
MAITLAND	1	49	18	11	1
MANLY	.	3	5	4	1
MAROUBRA	1	24	14	2	2
MIRANDA	.	28	17	4	3
MONARO	.	19	7	7	1
MOUNT DRUITT	1	53	32	21	4
MULGOA	.	45	17	16	3

S39 Reporting

S39 Reporting including original cohorts

Insurer agent data as at 31 May 2020 and Claims submission data as at 31 May 2020***

State Electorate and exit year	*	2017**	2018	2019	2020
MURRAY	.	48	24	18	10
MYALL LAKES	3	71	29	19	7
NEWCASTLE	.	28	12	8	1
NEWTOWN	.	14	4	16	4
NORTH SHORE	.	5	3	1	0
NORTHERN TABLELANDS	.	52	18	15	2
OATLEY	1	53	24	15	5
ORANGE	4	64	22	15	2
OXLEY	3	75	29	14	7
PARRAMATTA	1	25	21	9	1
PENRITH	3	54	25	16	5
PITTWATER	.	11	2	1	2
PORT MACQUARIE	2	45	24	14	6
PORT STEPHENS	.	51	19	17	4
RIVERSTONE	.	24	17	4	5
ROCKDALE	.	49	25	16	5
RYDE	.	17	5	4	2
SEVEN HILLS	.	11	10	2	5
SHELLHARBOUR	2	65	33	20	6
SOUTH COAST	3	68	35	10	6
STRATHFIELD	1	15	8	5	4
SUMMER HILL	.	20	8	5	1
SWANSEA	.	47	27	11	5
SYDNEY	.	18	14	4	0
TAMWORTH	3	69	35	10	8
TERRIGAL	.	17	11	1	1
THE ENTRANCE	.	38	19	11	2
TWEED	1	16	5	4	1
UPPER HUNTER	.	43	25	13	10
VAUCLUSE	.	8	4	4	0
WAGGA WAGGA	1	41	22	11	6
WAKEHURST	.	12	6	2	0
WALLSEND	1	48	29	15	6
WILLOUGHBY	.	3	1	0	0
WOLLONDILLY	2	27	11	9	4
WOLLONGONG	1	55	29	12	3
WYONG	2	82	39	22	14
_Interstate or Unknown	8	343	128	78	36
Total	103	3,729	1,806	1,034	402

*Claims where the insurer has not reported and/or provided a date for the workers exit (whether this be weekly compensation or medical treatment services). SIRA is actively working with insurers to continuously rectify errors as they are reported.

**Data provided for 2017 is from 1 September to 31 December inclusive.

***Insurer agent data refers to information received by SIRA from the insurer or their agents confirming the claimant exiting due to S39. Claims submission data refers to monthly submission data that SIRA manually validates to check claimant exiting due to S39.

S39/S59A Reporting

S59A Reporting including original cohorts

Insurer agent data as at 31 May 2020 and Claims submission data as at 31 May 2020***

State Electorate and Medical exit year	*	2019**	2020
ALBURY	33	13	9
AUBURN	11	18	10
BALLINA	10	4	8
BALMAIN	6	8	2
BANKSTOWN	9	20	7
BARWON	35	24	9
BATHURST	16	19	8
BAULKHAM HILLS	7	3	3
BEGA	24	29	5
BLACKTOWN	22	15	8
BLUE MOUNTAINS	13	6	4
CABRAMATTA	18	36	17
CAMDEN	28	18	5
CAMPBELLTOWN	29	20	6
CANTERBURY	21	30	12
CASTLE HILL	11	7	4
CESSNOCK	27	16	3
CHARLESTOWN	27	19	8
CLARENCE	27	16	2
COFFS HARBOUR	29	15	4
COOGEE	5	5	0
COOTAMUNDRA	35	18	7
CRONULLA	5	1	0
DAVIDSON	4	2	0
DRUMMOYNE	10	7	5
DUBBO	16	19	5
EAST HILLS	19	9	2
EPPING	3	4	4
FAIRFIELD	26	27	11
GOSFORD	36	20	4
GOULBURN	27	18	5
GRANVILLE	19	16	7
HAWKESBURY	15	8	4
HEATHCOTE	10	12	4
HEFFRON	7	10	1
HOLSWORTHY	1	0	3
HORNSBY	8	2	1
KEIRA	23	14	10
KIAMA	8	5	5
KOGARAH	8	6	3
KU-RING-GAI	3	1	1
LAKE MACQUARIE	27	15	5
LAKEMBA	13	7	2
LANE COVE	4	5	1
LISMORE	30	22	6
LIVERPOOL	59	46	20
LONDONDERRY	19	8	3
MACQUARIE FIELDS	23	6	5
MAITLAND	17	26	6
MANLY	.	1	0
MAROUBRA	9	8	2
MIRANDA	10	11	5
MONARO	7	10	3
MOUNT DRUITT	26	20	13
MULGOA	20	17	2
MURRAY	24	14	6
MYALL LAKES	44	23	6
NEWCASTLE	19	9	5
NEWTOWN	6	4	3
NORTH SHORE	3	1	1
NORTHERN TABLELANDS	29	16	5

S39/S59A Reporting

S59A Reporting including original cohorts

Insurer agent data as at 31 May 2020 and Claims submission data as at 31 May 2020***

State Electorate and Medical exit year	*	2019**	2020
OATLEY	18	20	6
ORANGE	28	23	9
OXLEY	35	32	12
PARRAMATTA	11	12	5
PENRITH	33	21	4
PITTWATER	3	6	1
PORT MACQUARIE	31	14	4
PORT STEPHENS	25	26	7
RIVERSTONE	13	7	6
ROCKDALE	25	15	11
RYDE	4	8	3
SEVEN HILLS	7	4	3
SHELLHARBOUR	36	25	11
SOUTH COAST	45	19	9
STRATHFIELD	7	9	1
SUMMER HILL	7	7	3
SWANSEA	33	16	9
SYDNEY	7	8	5
TAMWORTH	35	26	12
TERRIGAL	10	3	3
THE ENTRANCE	23	13	4
TWEED	7	9	0
UPPER HUNTER	23	15	9
VAUCLUSE	3	4	1
WAGGA WAGGA	24	14	5
WAKEHURST	4	7	3
WALLSEND	28	19	8
WILLOUGHBY	.	2	1
WOLLONDILLY	17	11	1
WOLLONGONG	28	20	10
WYONG	61	22	6
Interstate or Unknown	164	128	35
Total	1,875	1,374	522

*Claims where the insurer has not reported and/or provided a date for the workers exit (whether this be weekly compensation or medical treatment services). SIRA is actively working with insurers to continuously rectify errors as they are reported. This figure also includes the claims from S39 that are not impacted by S59A.

**Data provided for 2019 is from 1 September to 31 December inclusive.

***Insurer agent data refers to information received by SIRA from the insurer or their agents confirming the claimant exiting due to S59A. Claims submission data refers to monthly submission data that SIRA manually validates to check claimant exiting due to S59A.