Cost-Sharing Mechanism for COVID-19 Workers Compensation Claims

Proposal for consultation

November 2020

NSW GOVERNMENT

Contents

Context

Impact of COVID-19 on workers compensation

The COVID-19 pandemic continues to have significant impacts on communities and economies across the world. Many of these impacts, both direct and indirect, are still emerging, and the ramifications are likely to persist for the foreseeable future.

The impacts of the pandemic on the NSW workers compensation scheme are many and varied. These include the direct impact of compensation claims from workers who contract COVID-19 at work and a range of indirect impacts. Indirect impacts include reduced insurer premium revenues, investment returns and asset values and deteriorating worker outcomes due to challenges effectively managing existing claims.

In particular, deterioration in return to work outcomes for both existing and new claimants, regardless of injury type, is a significant risk to the workers compensation system and will likely impact insurer liabilities. There is also emerging evidence of an increase in primary and secondary psychological claims broadly associated with the impacts of the pandemic of workers and employers across NSW.

The workers compensation system is designed to support workers following a work-related injury and facilitate their recovery and return to work. Workers compensation in NSW is a no-fault scheme. It provides benefits to eligible workers who sustain a work-related injury, regardless of fault. The legislation provides for a range of support and assistance for injured workers.

The workers compensation system applies to compensable physical injuries, psychological injuries and disease injuries. COVID-19 would satisfy the definition of a disease injury if the virus is contracted in the course of employment and the employment was the "main contributing factor" in contracting the disease. For workers exempt from the 2012 reforms, a disease injury is compensable if the employment was a "substantial contributing factor" to contracting the disease.

Generally, determining whether a COVID-19 case is compensable under workers compensation law will depend on the factual and medical evidence of each case. However, amendments to the legislation made in May 2020 created presumptive rights to compensation for workers in prescribed employment who contract COVID-19. This will make it easier for these workers to access their compensation entitlements.

In any event, if rates of community infection in NSW increase, it is inevitable that some people will contract COVID-19 in the course of their employment. This will invariably increase liabilities for workers compensation insurers; however, it is difficult to predict which insurers are likely to be most impacted. Some industries and employers are at a higher risk of work-related COVID-19 infections, and it is likely that some insurers will be more exposed to COVID-19 claims liabilities than others.

This paper sets out a proposal for sharing the costs of COVID-19 claims across all NSW workers compensation insurers.

Section 19B presumption

The amendments to the *Workers Compensation Act 1987* (1987 Act) that commenced in May 2020 introduced a rebuttable presumption that workers in prescribed employment who contract COVID-19 contracted the virus in the course of their employment. The COVID-19 presumption and related provisions are contained in section 19B of the 1987 Act and also in Part 19N of Schedule 6 to the Act. The provisions give workers in prescribed employment who contract COVID-19 a presumptive right to workers compensation benefits.

The legislative amendments are supported by changes to the Workers Compensation Regulation 2016, which came into effect in July 2020. The relevant provisions are contained in clauses 5B-5D and Part 2 of Schedule 2 to the Regulation. The Regulation sets out the medical tests and results required for workers to be taken to have contracted COVID-19 for the purposes of the presumption. The Regulation also provides further detail about workers' presumptive right to weekly payments and clarifies the categories of prescribed employment.

Impact of COVID-19 claims

The likely impact of direct COVID-19 claims on the workers compensation scheme is uncertain, largely because future claims volumes and costs are difficult to predict at this point in time. However, if claims volumes are high, costs to the scheme may be significant, particularly if a large number of death benefit claims are made. The uncertain long-term health impacts of COVID-19, an understanding of which is still emerging, also make it difficult to estimate the ultimate cost of COVID-19 claims.

The aggregate financial impact of COVID-19 claims will vary between insurers, based on insurer exposure to industries in which workers are at a higher risk of contracting the virus in the course of their employment. Insurers also have different exposure to "prescribed employment" categories, in which workers will have the benefit of the section 19B presumption.

The legislative amendments that created the section 19B presumption also established new powers enabling the regulations to make provision in relation to the sharing of financial risk arising out of COVID-19 between all insurers. The proposed cost-sharing mechanism for COVID-19 claims could be established in the regulation using the new powers.

Rationale for cost-sharing mechanism

There is a strong public interest case for all insurers and employers in NSW to contribute to the cost of COVID-19 workers compensation claims.

As set out above, it is difficult to predict the future volume and cost of claims from workers who contract COVID-19 in the course of their employment. It is also difficult to predict which employers and insurers will be the most impacted by work-related infections. This is exacerbated by the highly contagious nature of COVID-19 and the possibility of asymptomatic individuals unknowingly spreading the virus. In this sense, all NSW workers are exposed to some risk of contracting COVID-19 in the course of

their employment, and all workers and employers will all benefit from these risks being managed at a whole-of-scheme level.

While all workers carry some risk of contracting COVID-19, there are many workers who continue delivering essential services to the community throughout the pandemic, at an elevated personal risk of COVID-19 exposure. This includes, for example, workers in the health and aged care sectors, the retail industry, emergency services and the education and childcare sectors. Continued delivery of these services is essential to the health and wellbeing of communities across the state and the proper functioning of the NSW economy. It is important that these workers and their employers are supported; and it is appropriate for the cost of COVID-19 workers compensation claims to be equitably dispersed across insurers, to avoid these industries bearing a disproportionate financial burden.

The proposed cost-sharing mechanism will ensure that the cost of COVID-19 claims is shared across the widest possible base, rather than individual employers and insurers bearing a variable and uncertain amount of risk. There are existing precedents for specific risks being managed at a whole-of-scheme level in this way. For example, all insurers in NSW contribute to the cost of claims from workers who contract a dust disease at work; and, while it has never been deployed, the workers compensation law makes provision for the cost of claims arising from an act of terror to be managed at a scheme-level.

The proposed cost-sharing mechanism will redistribute the cost of COVID-19 claims in a way that reflects the scale and nature of each insurer's NSW workers compensation business. This will help to maintain a healthy and competitive workers compensation market in NSW. It is anticipated that these costs will largely be passed on through employer premiums. In this way, all employers will contribute to supporting workers who contract COVID-19 at work.

Consultation questions

1. Do you believe that it is appropriate in the circumstances to establish a mechanism to enable the cost of COVID-19 workers compensation claims to be shared equitably across all insurers and employers in NSW; or should each insurer and employer be required to manage its own risk and the cost of any claims?

Cost-sharing mechanism overview

Objectives

The objectives of the cost-sharing mechanism are:

- to assist in maintaining a healthy and competitive workers compensation market in NSW;
- to prevent one or more insurers from experiencing excessive financial strain due to disproportionate impacts from COVID-19 claims; and
- to enable the cost of COVID-19 claims to be redistributed across the scheme and, if required, deferred to future years and/or subsidised by other funding sources.

Design principles

Proportionate

Costs are shared based on participants' capacity to contribute and reflect the scale and nature of participants' NSW workers compensation business; and participants retain a reasonable amount of cost.

Predictable

The trigger for the mechanism is clear and participants have certainty about potential financial impacts.

Efficient

The mechanism can be deployed in a timely and efficient way that enables costs to be redistributed quickly and does not impose unnecessary regulatory or administrative burdens.

Summary

The cost-sharing mechanism is proposed to operate in the following manner:

- The mechanism will reimburse insurers for defined claim payments made in relation to COVID-19 claims.
- Reimbursements will be funded by contributions from insurers.
- Contributions and reimbursements will be calculated using a clear and transparent methodology.
- Each insurer will have an insurer-specific annual retention threshold and annual contribution threshold that is proportionate to the scale and nature of its NSW workers compensation business.
- If total insurer contributions in a given year are insufficient to fund reimbursements, consideration will be given to subsidisation or borrowing; and any borrowed funds will be repaid from future-year insurer contributions.
- If funds cannot be identified for subsidisation or borrowing, reimbursements will be deferred to future years.

Scope of proposed mechanism

Claims and claim costs

The purpose of the cost-sharing mechanism is to minimise undue financial pressure for insurers disproportionately impacted by COVID-19 claims, regardless of the industry of origin of the claims. The proposed mechanism will therefore include all claims from workers who contracted COVID-19 in the course of their employment, regardless of whether the claim is made with the benefit of the section 19B presumption. This may also reduce contention/disputation about whether a worker falls within the scope of the prescribed employment categories.

It is proposed that all claims costs for COVID-19 claims (e.g. weeklies, medicals, lump sums, death benefits, etc.) will be within the scope of the mechanism except work injury damages. This will provide appropriate coverage for impacted insurers and employers across the workers compensation system and ensure certainty in relation to claims risk.

Consultation questions

2. Do you agree that the cost-sharing mechanism should extend to all claims from workers who contract COVID-19 in the course of their employment, rather than, for example, only applying to claims made with the benefit of section 19B?
3. Do you agree that the cost sharing mechanism should be limited to claims from workers who have a positive COVID-19 diagnosis, rather than other pandemic-related claims, such as psychological injuries arising from the impact of the pandemic?
4. Do you agree that the cost-sharing mechanism should apply to all claims costs except work injury damages payments?

Insurers

There are clear benefits to the workers compensation system as a whole, and to the NSW community, of broad participation in the cost-sharing mechanism. It is proposed that the Nominal Insurer, self-insurers and APRA-authorised specialised insurers will be included within the scope of the mechanism. However, government self-insurers covered by the Treasury Managed Fund (TMF) and non-APRA-authorised specialised insurers (i.e. Racing NSW and Coal Mines Insurance) will be excluded.

The TMF is proposed to be excluded on the basis that NSW employers should not be required to subsidise the Government's workers compensation liabilities. Racing NSW and Coal Mines Insurance are proposed to be excluded on the basis that they are state insurance business established by statute, they have a high degree of control over workplaces and can mitigate COVID-19 exposure risks, and they are not subject to APRA prudential requirements.

Consultation questions

5. Do you agree that the Nominal Insurer, self-insurers and APRA-authorised specialised insurers should be included within the scope of the mechanism but the TMF, Racing NSW and Coal Mines Insurance should be excluded?

Opt out option

It is proposed that self-insurers and APRA-authorised specialised insurers will be able to opt out of the cost-sharing mechanism. Insurers will only be able to opt out by notice in writing to SIRA prior to the commencement of amendments to the regulations establishing the mechanism. If an insurer does not opt out, the insurer will be within the scope of the mechanism for the whole of the next financial year and will be eligible for reimbursements and liable for contributions.

Eligible insurers that have not previously opted out of the mechanism will also be able to opt out in advance of a new financial year commencing by notice in writing to SIRA. However, the insurer will still be liable for contributions required to make reimbursement for claim payments made during the year in which the insurer had not opted out of the mechanism.

Insurers that elect to opt out of the cost-sharing mechanism will be out of scope indefinitely. However, in extraordinary circumstance only the SIRA chief executive may, on application by an insurer who has opted out of the mechanism, approve the insurer again being brought within the scope of the mechanism. If this occurs, the insurer will only be entitled to reimbursements for claims incurred from the date on which the insurer is again within scope.

Consultation questions

6. Do you agree that self-insurers and APRA-authorised specialised insurers should be able exercise a once-only option to opt out of the cost sharing mechanism?

Retention & contribution arrangements

The method for calculating annual retention and contribution thresholds and apportioning contributions must appropriately balance simplicity and certainty against measures that are representative of exposure. It has been determined that calculations will be based on prior-year claim payments. This will enable calculations to be made and communicated to insurers in advance of each financial year commencing, which will provide certainty.

Combined weekly and medical payments for each insurer from the previous financial year will be the basis for annual retention and contribution threshold calculations. These are referred to as "prior year in-scope payments." The relativity between insurer prior year in-scope payments will also be used to apportion contributions.

Consultation questions

7. Do you agree that retention and contribution thresholds and contribution relativities should be calculated based on insurer prior-year spend on weekly and medical payments (rather than on, for example, premium income, wages coverage or incurred claims)?

The application of annual retention thresholds, annual contribution thresholds and contribution relativities, and their method of calculation, are outlined below.

Annual retention threshold

Each insurer will be required to absorb a known quantum of payments in relation to COVID-19 claims each financial year prior to payments being reimbursable by the cost-sharing mechanism. This is referred to as the "annual retention threshold."

The annual retention threshold will be 10 percent of each insurer's spend on prior year in-scope payments. Claim payments above the annual retention threshold will be reimbursable and contributions will be levied on all participating insurers to enable reimbursements to be made. The annual retention threshold amount will be recalculated in advance of each financial year commencing, based on each insurer's prior year in-scope payments.

Contributions made by an insurer to fund reimbursement to other insurers will count towards the insurer's annual retention threshold. An insurer may therefore reach its annual retention threshold by a combination of payments made in relation to its own COVID-19 claims and contributions made to enable reimbursements to be paid to other insurers under the cost-sharing mechanism. Once the annual retention threshold is breached, COVID-19 claim payments made by the insurer are reimbursable.

Consultation questions

8. Do you agree that the annual retention threshold should be set at 10 percent of an insurer's prior-year spend on weekly and medical payments (i.e. is this amount too high or too low)?

Annual contribution threshold

Each insurer will have a known maximum amount the insurer may be required to contribute to fund reimbursements in each financial year. This is referred to as the "annual contribution threshold". Once an insurer has reached its annual contribution threshold, the insurer will not be required to make any further contributions during that financial year to fund reimbursements payable to other insurers.

Note, insurers that have reached their annual contribution threshold will continue to be required to make payments in relation to the insurer's own COVID-19 claims, though these payments will be reimbursable because the insurer will necessarily have exceeded its annual retention threshold.

The annual contribution threshold will be recalculated in advance of each financial year commencing, based on each insurer's in-scope prior year payments.

The annual contribution threshold will be 15 percent of each insurer's in-scope prior year payments. Payments made by an insurer in relation to its own COVID-19 claims, including the amount required to be absorbed under the annual retention threshold, will count towards the insurer's annual contribution threshold. An insurer may therefore reach its annual contribution threshold by a combination of payments made in relation to its own COVID-19 claims and contributions made to enable reimbursements to be paid to other insurers under the cost-sharing mechanism.

Consultation questions

9. Do you agree that the annual contribution threshold should be set at 15 percent of an insurer's prior-year spend on weekly and medical payments (i.e. is this amount too high or too low)?

Contribution apportionment

When one or more insurers exceeds its annual retention threshold for a given financial year, further payments in that year in relation to COVID-19 claims will be reimbursable. Contributions will be levied on all insurers that have not reached their annual contribution threshold to fund these reimbursements. Aggregate contributions must be adequate to cover the total amount of reimbursements to which insurers are eligible. Assessment of the amount of reimbursements to be made, and the collection of requisite contributions, will occur on a quarterly basis.

Contributions will be determined in a way that reflects the relative size of each in-scope insurer's NSW workers compensation business. This will be achieved by apportioning contributions on the basis of on each insurer's prior year in-scope payments as a proportion of the total spend on these payments by all contributing insurers in the previous year. This proportion is referred to as an insurer's "contribution relativity."

Consultation questions

10. Do you believe that the proposed approach to apportioning contributions between insurers is fair and equitable and reasonable in the circumstances, noting that in virtually all scenarios, the insurers with the largest market share will be required to make the most significant contributions?

Thresholds and contributions – examples

The table below shows the annual retention threshold and annual contribution threshold for four hypothetical insurers. It also shows the relativities used for contribution apportionment and the amount each insurer would be required to contributed if the total amount to be collected in contributions is $10m, $50m and $100m.

Note, each calculation assumes that the Nominal Insurer, all specialised insurers and all self-insurers (except government self-insurers) are within the scope of the mechanism (i.e. none has opted out); and the calculations are based on total spend on weekly and medical payments for all in-scope insurers of $1,824m (the total shown on SIRA's open data portal for 2018-19).

	Insurer A	Insurer B	Insurer C	Insurer D
Insurer total prior year spend on weekly and medical payments	$1,500m	$100m	$10m	$1m
Annual retention threshold – 10% of insurer prior year spend	$150m	$10m	$1m	$100k
Annual contribution threshold – 15% of insurer prior year spend	$225m	$15m	$1.5m	$150k
Contribution relativity – insurer prior year spend as a percentage of total prior year spend ($1,824m)	82.24%	5.48%	0.55%	0.055%
Insurer contribution if aggregate contribution requirement is $10m	$8.2M	$550k	$55k	$5.5k
Insurer contribution if aggregate contribution requirement is $50m	$41.1m	$2.74m	$275k	$27.5k
Insurer contribution if aggregate contribution requirement is $100m	$82.2m	$5.48m	$550k	$55k

Note, the insurer contribution calculations in the last three rows have been made assuming that none of the hypothetical insurers has reached its annual contribution threshold. For more detailed examples, see the scenarios at the end of this document.

Excessive annual costs arrangements

As set out above, it is intended that each insurer participating in the cost-sharing mechanism will have a known maximum amount the insurer may be required to contribute to fund reimbursements in each financial year. These annual contribution thresholds will be 15 percent of each insurer's prior year spend on weekly and medical payments. It follows that there will be an aggregate maximum amount of funding available to make reimbursement at a scheme level.

Fifteen percent of all insurers' spend on weekly and medical payments in 2018-19 (excluding government self-insurers) is approximately $274m. This is a useful indicator of the maximum amount of reimbursements that could be made using the cost-sharing mechanism in a single financial year; however, the true amount will be less than 15 percent of aggregate spend because absorbed costs (i.e. payments below an insurer's annual retention threshold) will contribute to each insurer's contribution threshold. Also, it is possible some specialised and self-insurers will elect to opt out of the cost-sharing mechanism, reducing the number of potential contributors. However, this would also reduce the number of insurers that may be eligible for reimbursements.

Provision will need to be made in relation to the operation of the cost-sharing mechanism in circumstances where the reimbursements to which insurers are eligible in a given year exceeds the maximum amount that can be levied in contributions. There appear to be four possible ways of proceeding in these circumstances:

1. Insurers are not eligible for reimbursement that cannot be accommodated due to the application of annual contribution thresholds;
2. Reimbursements that cannot be accommodated due to the application of annual contribution thresholds are deferred to the following financial year (or years, if required), when contribution thresholds 're-set';
3. Reimbursements that cannot otherwise be accommodated due to the application of annual contribution thresholds are subsidised by an alternative funding source; or
4. Funds are borrowed to enable reimbursement to be made that cannot otherwise be accommodated due to the application of annual contribution thresholds, and these funds are repaid using future-year insurer contributions, possibly with interest.

Option 1 is not recommended as it does not meet the objectives or design principles of the cost-sharing mechanism. Options 3 and 4 would require alternative funds to be made immediately available to enable reimbursement to be made. It is likely that any decision to make such funds available would need to be taken at the time the funds are required.

It is therefore proposed that Option 2, deferral of reimbursements to future years, be the default position but that all options should be available/contemplated in the establishing instruments for the cost-sharing mechanism. The amount of reimbursement each insurer is entitled to receive will not impacted by deferral; deferral will only impact the timing of reimbursements. For example, if an insurer is entitled to $5m in reimbursements for the final quarter of a given financial year but all insurers have reached their contribution threshold for that year, an additional $5m will be levied in

contributions in the first quarter of the following year to enable the reimbursement from the previous year to be paid.

Note that in circumstance where reimbursements can be only partially funded by contributions due to the application of annual contribution thresholds, insurers entitled to reimbursements will receive the same proportion of their total reimbursement from the available funds. For example, if Insurer A is entitled to $40m in reimbursements and Insurer B is entitled to $10m in reimbursements in the same quarter but only $10m can be levied in contributions, Insurer A will receive $8m (20 percent of the total amount to which Insurer A is entitled) and Insurer B will receive $2m (20 percent of the total amount to which Insurer B is entitled). Any deferred reimbursements will be prioritised when making reimbursements in future quarters.

Consultation questions

11. Do you agree that there are broadly four options for managing costs that exceed the amount that can be levied in contributions from insurers in a given year?
12. Do you agree that the default position in these circumstances should be to defer reimbursements to future years?

Administration of the mechanism

Due to the uncertain duration of the COVID-19 pandemic, and therefore the unclear future period over which new COVID-19 workers compensation claims will continue to arise, the cost-sharing mechanism has been designed so that it can operate indefinitely on financial year cycles. The mechanism will operate by reimbursing insurers for actual claim payments made in a given financial year in excess of the insurer's annual retention threshold. Key features of the operation of the mechanism are set out below.

Calculation of annual thresholds and interim relativities

Annual retention thresholds, annual contribution thresholds and interim contribution relativities will be calculated and communicated to insurers before the end of February each year, using prior year spend data as at end December. This will enable policy-issuing insurers to consider any impacts on premium rates, which must be filed with SIRA before end March.

Insurers may elect to opt out of the cost-sharing mechanism by notice in writing to SIRA before 30 June each year. If one or more insurers elects to opt out of the mechanism, contribution relativities will be recalculated and communicated to participating insurers by 31 July. Additionally, contribution relativities will be recalculated each time contributions are apportioned, based on the insurers on whom contributions will be levied from time to time (for example to exclude any insurers that have reached their annual contribution threshold).

Outsourced, net-zero contribution/reimbursement process

SIRA will be ultimately responsible for administering the cost-sharing mechanism. However, no formal fund will be established to facilitate administration; and the services of a third-party provider will be engaged by SIRA to receive contributions and pay reimbursements, as directed.

The contribution/reimbursement process will occur at regular intervals. Each time the process is undertaken, the total amount levied in contributions will be equal to the total amount of reimbursements to which insurers are entitled (except in circumstances where excess annual costs arrangements are engaged). There will therefore be no accrual of excess funds.

Quarterly contribution/reimbursement cycle

The contribution/reimbursement process will occur quarterly, and calculations for each quarter will be made using data as at the end of the following quarter. Four weeks will be allowed to determine funding requirements for reimbursements and to apportion contributions, and eight weeks will be allowed for contributions and reimbursements to be processed. This means that all contributions and reimbursement will be paid no later than six months after the end of the quarter to which the payments relate. Non-payment of contributions will be established as an offence in the regulations, with the penalty proportionate to the size of the contribution and escalating where contributions continue to be unpaid.

A worked example for a single quarterly contribution/reimbursement process is set out below, using the quarter ending 30 September.

Task	End date
Calculate reimbursements and contributions • Identify all insurer payments for COVID-19 claims in excess of annual retention thresholds for the quarter ending 30 September using data as at end December • Identify all insurers on whom contributions will be levied (i.e. excluding any insurers that have reached the annual contribution threshold) • Calculate relativities for contributing insurers and determine contributions required by each insurer to generate funds required to make all reimbursements • Advise financial services provider of individual insurer contribution requirements and reimbursement entitlements	End January
Process contributions and reimbursements • Financial services provider invoices insurers; insurers are required to make contributions within 28 days of the date of the invoice • Financial services provider receives contributions and pays reimbursements to eligible insurers	End March

Consultation questions

13. Do you agree with the proposed arrangements for administration of the cost-sharing mechanism?
14. Do you agree that contributions should be collect and reimbursements should be paid on a quarterly cycle? Would there be any material risks if the mechanism instead operated on a six-monthly or annual cycle, which may have the benefit of reducing regulatory burdens and administrative costs?

Illustrative scenarios

Four scenarios have been designed to illustrate how the cost-sharing mechanism will operate. Under all four scenarios, it has been assumed that the Nominal Insurer, all specialised insurers and all non-government self-insurers are participating in the cost-sharing mechanism. For the purposes of apportioning contributions, it is assumed that total spend on weekly and medical payments by all in-scope insurers in the previous financial year was $1,824 million.

The impact of the four scenarios is shown for three insurers – the Nominal Insurer and two hypothetical insurers. The prior-year spend on weekly and medical payments for each of the three insurers is set out in the table below. Also shown is each insurer's annual retention threshold (10 percent of prior year spend), annual contribution threshold (15 percent of prior year spend) and relativity for contribution apportionment (proportion of total prior year spend of all in-scope insurers paid by each insurer).

	Nominal Insurer	Insurer A	Insurer B
Prior year spend on weekly and medical payments	$1,476.5m	$31m	$8m
Annual retention threshold	$147.7m	$3.1m	$0.8m
Annual contribution threshold	$221.5m	$4.7m	$1.2m
Contribution relativity	80.9%	1.7%	N

It should be noted that none of the scenarios is based on actual modelling of possible or likely COVID-19 claims for specific insurers. The scenarios have been developed to demonstrate how the mechanism operates and do not provide any indication of expected claims liabilities. In the examples, the spend on COVID-19 claims (shown in the rows shaded green) and the total value of reimbursements (shown in the rows shaded blue) have been fabricated to illustrate how the mechanism would respond under different scenarios.

Scenario 1

In this scenario, it is assumed that aggregate COVID-19 claims costs are modest, and Insurer A is the only insurer within the scope of the cost-sharing mechanism that exceeds its annual retention threshold.

Key inputs are in the green and blue rows. The green row shows each insurer's spend on the insurer's own COVID-19 claims in the relevant quarter. The blue row shows the total amount of insurer spend that is reimbursable for the quarter. This is the amount that must be collected in contributions from all insurers that have not exceeded to annual contribution threshold. Note all figures have been rounded.

	Quarter 1			Quarter 2			Quarter 3			Quarter 4		
	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B
Cumulative spend on COVID-19 claims carried forward from previous quarter	N/A	N/A	N/A	$10m	$1.1m	Nil	$26m	$3m	Nil	$45.8m	$3.14m	$0.009m
Insurer spend on COVID-19 claims during quarter	$10m	$1.1m	Nil	$16m	$1.9m	Nil	$18m	$2.3m	Nil	$20m	$3.4m	Nil
Cumulative spend on COVID-19 claims prior to redistribution	$10m	$1.1m	Nil	$26m	$3m	Nil	$44m	$5.3m*	Nil	$65.8m	$6.54m	$0.009m
Amount of insurer quarterly spend that is reimbursable (amount above retention threshold)	Nil	Nil	Nil	Nil	Nil	Nil	Nil	$2.2m	Nil	Nil	$3.4m	Nil
Net insurer spend assuming eligible reimbursements are made	$10m	$1.1m	Nil	$26m	$3m	Nil	$44m	$3.1m	Nil	$65.8m	$3.14m	$0.009m
Total value of reimbursement required to be made for the quarter	Nil			Nil			$2.2m			$3.4m		
Amount of insurer contribution to fund reimbursements for the quarter	N/A	N/A	N/A	N/A	N/A	N/A	$1.8m	$0.04m	$0.009m	$2.8m	$0.058m	$0.013m
Cumulative spend on COVID-19 claims after quarterly contributions/reimbursements	$10m	$1.1m	Nil	$26m	$3m	Nil	$45.8m	$3.14m	$0.009m	$68.6m	$3.2m	$0.022m
Cumulative spend a percentage of prior year spend on weekly and medical payments	0.7%	3.5%	N/A	1.8%	9.7%	N/A	3.1%	10.1%	0.1%	4.6%	10.3%	0.3%

* = point at which insurer exceeded annual retention threshold

** = point at which insurer reached annual contribution threshold

Scenario 2

In this scenario, it is assumed that aggregate COVID-19 claims costs are moderate. Costs for the Nominal Insurer and Insurers A and B are the same as in Scenario 1; however, the total amount of reimbursements required to be made for each quarter (i.e. the blue row) is greater than in Scenario 1. This would occur if multiple insurers other than the Nominal Insurer and Insurers A and B also incurred costs for their own COVID-19 claims. Again, of the three insurers shown, only Insurer A exceeds its annual retention threshold.

Key inputs are in the green and blue rows. The green row shows each insurer's spend on the insurer's own COVID-19 claims in the relevant quarter. The blue row shows the total amount of insurer spend that is reimbursable for the quarter. This is the amount that must be collected in contributions from all insurers that have not exceeded to annual contribution threshold. Note all figures have been rounded.

	Quarter 1			Quarter 2			Quarter 3			Quarter 4		
	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B
Cumulative spend on COVID-19 claims carried forward from previous quarter	N/A	N/A	N/A	$19.7m	$1.3m	$0.048m	$47.8m	$3.36m	$0.108m	$57.8m	$3.65m	$0.18m
Insurer spend on COVID-19 claims during quarter	$10m	$1.1m	Nil	$16m	$1.9m	Nil	$18m	$2.3m	Nil	$20m	$3.4m	Nil
Cumulative spend on COVID-19 claims prior to redistribution	$10m	$1.1m	Nil	$35.7m	$3.2m*	$0.048m	$65.8m	$5.66	$0.108m	$77.8m	$7.05m	$0.18m
Amount of insurer quarterly spend that is reimbursable (amount above retention threshold)	Nil	Nil	Nil	Nil	$0.1m	Nil	Nil	$2.3m	Nil	Nil	$3.4m	Nil
Net insurer spend assuming eligible reimbursements are made	$10m	$1.1m	Nil	$35.7m	$3.1m	$0.048m	$44m	$3.36m	$0.108m	$77.8m	$3.65m	$0.18m
Total value of reimbursement required to be made for the quarter	$12m			$15m			$17m			$22m		
Amount of insurer contribution to fund reimbursements for the quarter	$9.7m	$0.2m	$0.048m	$12.1m	$0.26m	$0.06m	$13.8m	$0.29m	$0.068m	$17.8m	$0.37m	$0.088m
Cumulative spend on COVID-19 claims after quarterly contributions/reimbursements	$19.7m	$1.3m	$0.048m	$47.8m	$3.36m	$0.108m	$57.8m	$3.65m	$0.18m	$95.6m	$4.02m	$0.27m
Cumulative spend a percentage of prior year spend on weekly and medical payments	1.3%	4.2%	0.7%	3.2%	10.8%	1.5%	3.9%	11.8%	2.5%	6.5%	13%	3.7%

* = point at which insurer exceeded annual retention threshold

** = point at which insurer reached annual contribution threshold

Scenario 3

In this scenario, it is assumed that aggregate COVID-19 claims costs are high but costs for the Nominal Insurer and Insurers A and B for their own COVID-19 claims are the same as in Scenario 1 and Scenario 2. The total amount of reimbursements required to be made for each quarter (i.e. the blue row) is greater than in both previous scenarios. This assumes many specialised insurers and self-insurers incurred significant costs for their own COVID-19 claims. In this scenario, both the Nominal Insurer and Insurer A exceed their respective annual retention thresholds. Insurer A also reaches its annual contribution threshold. (Note, this scenario is unlikely in that payments by the Nominal Insurer for its own COVID-19 claims make up only a small proportion of all payments on COVID-19 claims for in-scope insurers. Given the exposure of the Nominal Insurer, this is not likely to occur.)

Key inputs are in the green and blue rows. The green row shows each insurer's spend on the insurer's own COVID-19 claims in the relevant quarter. The blue row shows the total amount of insurer spend that is reimbursable for the quarter. This is the amount that must be collected in contributions from all insurers that have not exceeded to annual contribution threshold. Note all figures have been rounded.

	Quarter 1			Quarter 2			Quarter 3			Quarter 4		
	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B
Cumulative spend on COVID-19 claims carried forward from previous quarter	N/A	N/A	N/A	$38.3m	$1.7m	$0.14m	$90.7m	$3.87m	$0.32m	$145.1m	$4.6m	$0.5m
Insurer spend on COVID-19 claims during quarter	$10m	$1.1m	Nil	$16m	$1.9m	Nil	$18m	$2.3m	Nil	$20m	$3.4m	Nil
Cumulative spend on COVID-19 claims prior to redistribution	$10m	$1.1m	Nil	$54.3m	$3.6m*	$0.14m	$108.7m	$6.17	$0.32m	$165.1m*	$8.0m	$0.5m
Amount of insurer quarterly spend that is reimbursable (amount above retention threshold)	Nil	Nil	Nil	Nil	$0.5m	Nil	Nil	$2.3m	Nil	$17.4m	$3.4m	Nil
Net insurer spend assuming eligible reimbursements are made	$10m	$1.1m	Nil	$54.3m	$3.1m	$0.14m	$108.7m	$3.87m	$0.32m	$147.7m	$4.6m	$0.5m
Total value of reimbursement required to be made for the quarter	$35m			$45m			$45m			$60m		
Amount of insurer contribution to fund reimbursements for the quarter	$28.3m	$0.6m	$0.14m	$36.4m	$0.77m	$0.18m	$36.4m	$0.77m	$0.18m	$48.5m	$0.1m	$0.24m
Cumulative spend on COVID-19 claims after quarterly contributions/reimbursements	$38.3m	$1.7m	$0.14m	$90.7m	$3.87m	$0.32m	$145.1m	$4.6m	$0.5m	$196.2m	$4.7m**	$0.74m
Cumulative spend a percentage of prior year spend on weekly and medical payments	2.6%	5.5%	1.9%	6.1%	12.5%	4.4%	9.8%	14.8%	6.8%	13.3%	15%	10.1%

* = point at which insurer exceeded annual retention threshold

** = point at which insurer reached annual contribution threshold

Scenario 4

In this scenario, it is assumed that aggregate COVID-19 claims costs are again high. Costs for all three insurers (i.e. those in the green row) are higher than in previous scenarios, as is the total amount of reimbursements required to be made for each quarter (i.e. the blue row); however, a greater proportion of COVID-19 claims costs is now accounted for by the Nominal Insurer's payments for its own COVID-19 claims. In this scenario, all three insurers exceed their respective annual retention thresholds; and the Nominal Insurer and Insurer A also reach their annual contribution thresholds. In this scenario, it is likely that the cost-sharing mechanism would not be able to generate requisite funds from insurer contributions to make all necessary reimbursements. Most of the $60m in reimbursement in Quarter 4 would need to be deferred to the following financial year unless funding could be identified for subsidisation/borrowing. Each insurer would therefore be required to carry Quarter 4 payments above its retention threshold until contributions are collected for Quarter 1 the following year to enable Quarter 4 payments to be reimbursed.

Key inputs are in the green and blue rows. The green row shows each insurer's spend on the insurer's own COVID-19 claims in the relevant quarter. The blue row shows the total amount of insurer spend that is reimbursable for the quarter. This is the amount that must be collected in contributions from all insurers that have not exceeded to annual contribution threshold. Note all figures have been rounded.

	Quarter 1			Quarter 2			Quarter 3			Quarter 4		
	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B	Nominal Insurer	Insurer A	Insurer B
Cumulative spend on COVID-19 claims carried forward from previous quarter	N/A	N/A	N/A	$62.4m	$1.87m	$0.25m	$126.8m	$3.87m	$0.68m	$196.2m	$4.7m	$1.04m
Insurer spend on COVID-19 claims during quarter	$26m	$1.1m	$0.07m	$28m	$2.5m	$0.25m	$25m	$3.0m	$0.5	$24m	$3.4m	$0.8m
Cumulative spend on COVID-19 claims prior to redistribution	$26m	$1.1m	$.07m	$90.4m	$4.37m*	$0.5m	$151.8m*	$6.87	$1.18m*	$220.2m	$8.1m	$1.84m
Amount of insurer quarterly spend that is reimbursable (amount above retention threshold)	Nil	Nil	Nil	Nil	$1.27m	Nil	$4.1	$3.0m	$0.38	$24m	$3.4m	$0.8m
Net insurer spend assuming eligible reimbursements are made	$26m	$1.1m	$.07m	$90.4m	$3.1m	$0.5m	$147.7m	$3.87m	$0.8m	$196.2m	$4.7m	$1.04m
Total value of reimbursement required to be made for the quarter	$45m			$45m			$60m			$60m		
Amount of insurer contribution to fund reimbursements for the quarter	$36.4m	$0.77m	$0.18m	$36.4m	$0.77m	$0.18m	$48.5m	$0.83m	$0.24m	$1.3m	Nil	$0.23m
Cumulative spend on COVID-19 claims after quarterly contributions/reimbursements	$62.4m	$1.87m	$0.25m	$126.8m	$3.87m	$0.68m	$196.2m	$4.7m**	$1.04m	$221.5m**	$4.7m	$1.2m**
Cumulative spend a percentage of prior year spend on weekly and medical payments	4.2%	6%	3.4%	8.6%	12.5%	9.3%	13.3%	15%	13%	15%	15%	15%

* = point at which insurer exceeded annual retention threshold

** = point at which insurer reached annual contribution threshold

Glossary of key terms

annual contribution threshold	The annual contribution threshold is the maximum amount an insurer may be required to contribute to fund reimbursements in a financial year. The annual contribution threshold is 15 percent of the insurer's total spend on prior year in-scope payments (i.e. weekly and medical payments).
annual retention threshold	The annual retention threshold is the quantum of payments in relation to an insurer's own COVID-19 claims that the insurer must absorb in a financial year prior to COVID-19 claim payments being reimbursable by the cost-sharing mechanism. The annual retention threshold is 10 percent of the insurer's total spend on prior year in-scope payments (i.e. weekly and medical payments).
contribution relativity	An insurer's contribution relativity is the percentage of the total amount required to be collected in contributions for the purposes of the cost-sharing mechanism that each insurer will be required to contribute. An insurer's contribution relativity is determined by calculating the insurer's prior year in-scope payments as a proportion of the total spend on these payments by all contributing insurers in the previous year.
COVID-19 claims	For the purposes of the cost-sharing mechanism, COVID-19 claims are claims made by workers who contracted COVID-19 in the course of their employment, regardless of whether the claim was made with the benefit of the section 19B presumption. For claims to be COVID-19 claims for the purposes of the mechanism, the worker must have a confirmed diagnosis.
section 19B presumption	The section 19B presumption is the presumption established in section 19B(1) of the *Workers Compensation Act 1987*. This section provides that workers in prescribed employment who contract COVID-19 are presumed to have done so in the course of their employment and their employment is presumed to have been the main (or a substantial) contributing factor to contracting the virus. The section 19B presumption gives workers in prescribed employment who contract COVID-19 a presumptive right to workers compensation benefits.

excessive annual costs	Excessive annual costs refers to a circumstance in which the reimbursements to which insurers are eligible in a given year exceed the maximum amount that can be levied in contributions, due to the application of annual contribution thresholds. In this circumstance, reimbursement will be deferred to future years when additional contributions can be levied on insurers and consideration will be given to subsidisation or borrowing to enable reimbursement to be made sooner.
prescribed employment	Prescribed employment is a defined term in section 19B(9) of the *Workers Compensation Act 1987*. Only workers whose employment falls within this definition are able to make a workers compensation claim for COVID-19 with the benefit of the section 19B presumption. Prescribed employment includes employment in: • the retail industry (other than businesses providing only on-line retail) • the health care sector, including ambulance officers and public health employees • disability and aged care facilities • educational institutions, including pre-schools, schools and tertiary institutions (other than establishments providing only on-line teaching services) • police and emergency services (including fire brigades and rural fire services) • refuges, halfway houses and homeless shelters • passenger transport services • libraries • courts and tribunals • correctional centres and detention centres • restaurants, clubs and hotels • the construction industry • places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos) • the cleaning industry • any other type of employment prescribed by the regulations for the purposes of this definition Clause 5D of the *Workers Compensation Regulation* 2016 prescribes the following additional types of employment for the purposes of the definition: cafes, supermarkets, funeral homes and child care facilities. NB – Workers whose employment does not fall within the definition of prescribed employment are still able to make a claim for COVID-19; however, the virus will not be presumed to have been contracted in the course of the worker's employment.

prior year in-scope payments	Prior year in-scope payments are all weekly payments of compensation and all payments for medical and related treatment made by an insurer in the most recent year for which reliable insurer spend data is available. Prior year in-scope payments are used to calculate each insurer's annual retention threshold and annual contribution threshold. Prior year in-scope payments are also used to calculate contribution relativities, for the purposes of apportioning contributions between insurers.

Consultation questions

15. Is there any additional information about the cost-sharing mechanism that is required to enable stakeholders to provide informed advice to SIRA about its purpose and proposed operation?

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

Workers and Home Building Compensation Regulation, Level 6, McKell Building, 2-24 Rawson Place, Sydney NSW 2000

Website www.sira.nsw.gov.au

Catalogue no. SIRA09112 | ISBN 978-0-7347-4720-4