

Submission
No 32

INQUIRY INTO WORKERS COMPENSATION AMENDMENT BILL 2021

Organisation: State Insurance Regulatory Authority (SIRA)

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**Submission to the Inquiry
into the Workers
Compensation
Amendment Bill 2021**

January 2022

Contents

1. About SIRA.....	3
2. Current situation.....	3
2.1. Presumptive legislation.....	3
2.2. The Workers Compensation Amendments Bill 2021.....	3
2.3. Funding COVID-19 claims	3
3. Modelling.....	3
3.1. Current data.....	5
4. SIRA actions.....	5
4.1. Insurers.....	5
4.2. Cross Sector.....	6
4.3. Customer information and experience.....	6

1. About SIRA

The State Insurance Regulatory Authority (SIRA) regulates three statutory insurance schemes in NSW - Workers Compensation, CTP and Home Building Compensation, and also has some regulatory functions in other NSW insurance schemes including the Lifetime Care and Support and Dust Diseases schemes.

SIRA is an independent agency within the NSW Customer Service Cluster. The affairs of SIRA are managed and controlled by the Chief Executive in accordance with the general policies and strategic direction determined by the SIRA Board. Anything done by the Chief Executive on behalf of SIRA is taken to have been done by SIRA (section 19(3) of the SICC Act).

While SIRA is not, in the exercise of its functions, subject to the control and direction of the Minister, the Minister may give SIRA a written direction with respect to its functions if the Minister is satisfied that it is necessary to do so in the public interest. SIRA must include in its annual report particulars of each direction given by the Minister during the reporting year.

2. Current situation

2.1. Presumptive legislation

In May 2020, the NSW Parliament passed the *COVID-19 Legislation Amendment (Emergency Measures) Bill 2020* in response to the emerging public health emergency. The amendments to the *Workers Compensation Act 1987* (the 1987 Act) introduced a rebuttable presumption that workers in prescribed employment who contracted the COVID-19 virus, did so in the course of their employment. The COVID-19 presumption and related provisions are contained in section 19B of the 1987 Act and Part 19N of Schedule 6 to the Act.

The COVID-19 presumption was designed to provide additional assurance to workers at a time when little was known about the impacts of COVID-19 and vaccinations were a work in progress. The presumption is broad and covers industries including healthcare, education, retail, transport, emergency services, construction, disability and aged care, dining, and entertainment.

2.2. The Workers Compensation Amendments Bill 2021

The *Workers Compensation Amendment Bill 2021* does not remove the right of a worker who contracts COVID-19 to make a claim for workers compensation. Like other workers compensation claims, workers will need to show they contracted the illness or injury, in this case COVID-19, in the course of their employment.

2.3. Funding COVID-19 claims

The costs of the NSW workers compensation system are funded by employers through premiums. Any costs to the system of claims made through the presumption will have an impact on employer premiums. In addition to the direct claim costs are the additional administrative costs for insurers in managing increases in claims. Insurers are currently considering the premium impact of COVID-19 as part of their upcoming premium filing to SIRA for the 2022/23 financial year.

3. Modelling

In April 2020 SIRA received a report from independent actuaries Ernst & Young (EY) that presented the indicative potential cost impact of COVID-19 on workers compensation

claims using scenarios of up to 20% of the population contracting COVID-19 and the presence of presumptive legislation. This was less than three months after the first reported COVID-19 case in Australia and less than one month after the Ruby Princess docked in Sydney.

The assumptions in the report were informed by the international experience of COVID-19 at the time as information about how COVID-19 would spread in Australia, and the availability and impact of any vaccines didn't exist at that time. The scenarios estimated the potential cost of COVID-19 claims to be up to \$8.6 billion over the duration of the claims if 20% of the population contracted COVID-19 and the Australian experience replicated what was happening overseas.

The key assumptions used were:

- 5%, 10% or 20% of the NSW population contract COVID-19 (400,000 – 1.6 million people)
- NSW workforce participation rate of 65% (sourced from NSW Treasury)
- case severity and duration including hospitalisation and death rates by age based on studies at the time from London and Wuhan. Duration was assumed as:
 - approximately 2 weeks for mild cases (85%-90% of claims)
 - 3 to 6 weeks for severe cases (10%-15% of claims)
 - 2 to 8 weeks for fatalities (approximately 0.5% of claims)
- average costs for weekly benefits were based on 90% of the relevant industry average weekly earnings
- hospital and medical costs were based on unit costs published by the Medical Journal of Australia, Australian Institute of Health and Welfare and Independent Hospital Pricing Authority
- death and funeral benefits of \$841,000

Modelling to understand the impact of COVID-19 on NSW workers compensation system was completed by EY in October 2021 based on the Doherty Institute's modelling. An executive summary of the EY modelling is attached for information. The modelling prepared by the Doherty Institute outlined the COVID-19 infection rates, hospitalisations and deaths for 180 days following transition to Phase B of the National Plan. EY extrapolated this out to 12 months to estimate the potential impact of COVID-19 based on 80% double vaccination coverage of the NSW adult population.

This modelling estimated approximately 25,000 claims, including over 320 deaths at a total cost of up to \$638 million to the NSW workers compensation system. This estimate does not include the additional claims management costs incurred by insurers.

Assumptions around workforce participation rates and the average costs of weekly benefits, hospital, medical and death benefits are similar to the assumptions used in the 2020 scenarios.

The assumed average durations were:

- 3 weeks for mild cases based on the public health policy at the time and the requirement of the presumptive legislation
- 3.6 weeks for hospitalisation (over 12% of claims)
- 5.1 weeks for hospitalisation requiring ICU cases (almost 4% of claims)

Since the modelling was undertaken, double vaccination rates have passed 93%, suppression strategies including lockdowns, capacity limits and masks were introduced. Possibly as a result of these and other public health settings put in place by the NSW Government, hospitalisation and fatality rates, which are the major drivers of cost, have not reached the probable scenarios.

Despite the slower than anticipated return to normal life and higher than modelled vaccination rates, the number of claim notifications is in line with the modelling at this stage.

The rapidly changing COVID-19 environment, as evidenced by the impact of Omicron, makes modelling with any level certainty, particularly long term modelling, difficult. SIRA has been engaging with relevant bodies, though there is no long term modelling available that could be used to forecast the impact on the workers compensation system over the year ahead with any degree of confidence.

3.1 Current data

The following section provides some data on impacts to date. While the data is frequently changing, notifications of workers with a positive COVID-19 diagnosis are approximately 1.1% of the publicly reported 1 million infections in NSW.

COVID-19 related notifications*

	Confirmed diagnosis	Other	Psych	Grand Total
NI	2,220	35	113	2,368
SSI	8,214	14	45	8,273
TMF	822	302	264	1,388
Grand Total	11,256	351	422	12,029

*Data as at 21 January 2022 as provided to SIRA by insurers through COVID reporting

Claims costs**

	Notifications	Gross incurred costs
All COVID related claims	2,394	\$27,857,286
Confirmed COVID-19 diagnosis only	1,717	\$11,851,618

**Data as of 30 November 2021 as provided to SIRA through monthly submissions

It should be noted that costs for wage reimbursements and recoveries from NSW Health for hospitalisations can take several months. As a result, gross incurred costs may change as claims develop and actual payments are made. Additionally, gross incurred costs does not include insurer administration costs.

4. SIRA actions

4.1. Insurers

SIRA produced a new Standard of Practice: *Managing claims during the COVID 19 pandemic*, which sets the expectation that insurers are flexible and adaptable and ensure that claims are managed with empathy and transparency, making liability decisions, and paying entitlements without delay. The Standard promotes the delivery of a tailored approach to meet the needs of workers, employers, and other system participants.

SIRA continues to engage with insurers to understand the impacts of the increase in COVID-19 related notifications upon claims management practices and system stakeholders. Insurers are actively implementing strategies to manage the increase in notifications, including increasing internal resources, automation of some tasks or outsourcing certain processes. Additionally, SIRA continues to engage insurers and APRA (where relevant) to monitor the capital adequacy of insurers.

4.2. Cross Sector

SIRA convenes a Cross Agency group with representatives from the Independent Review Office (IRO), Personal Injury Commission (PIC), icare and SIRA to discuss operational impacts and changes so all agencies are aware of the impacts on insurers and injured workers. The group also discusses claim and complaint numbers, external communications and any proposed changes so we can all make any required operational adaptations.

SIRA received formal communication from IRO dated 25 January 2022 recommending COVID-19 claims management improvements. SIRA is currently reviewing the recommendations.

4.3. Customer information and experience

SIRA is providing up to date easily accessible information on our website to assist customers and stakeholders.

SIRA has overseen the implementation of numerous measures to address the ongoing impact of COVID-19 in its personal injury schemes. Some of these measures include:

- telehealth services being available without insurer pre-approval for nominated treating doctors, medical specialists (within 3 months from the date of injury), and some allied health services.
- treating physiotherapists and psychologists being able to issue second and subsequent certificates of capacity for injuries or illnesses within their area of expertise. The first certificate of capacity must be issued by the nominated treating doctor.
- SIRA programs offering financial incentives to support recovery at work.

Disclaimer


This publication may contain information that relates to the regulation of workers compensation insurance, motor accident compulsory 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.

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Executive Summary

COVID-19 indicative cost
impact of Doherty modelling

NSW Workers Compensation System

4 November 2021

Contents

1.	Executive Summary	1
1.1	Background	1
1.2	Summary of results.....	1
1.3	Key assumptions.....	6
1.4	Reliances and limitations	7

1. Executive Summary

1.1 Background

SIRA has requested that EY provide an indicative cost estimate of the impact of COVID-19 infections on the NSW workers compensation system based on the modelling performed by the Doherty Institute (Addendum to Doherty Modelling Report Revised 10 August 2021) which was commissioned by the Commonwealth Government to advise on the National Plan to transition Australia's National COVID-19 response.

The modelling prepared by the Doherty Institute outlines the COVID-19 infection rates, hospitalisations and deaths for 180 days following transition to Phase B of the National Plan assuming a vaccination strategy consistent with the national COVID-19 immunisation programme (referred to as the 'Transmission Reducing Strategy').

Utilising this modelling, we have calculated an indicative cost estimate of the impact to the NSW workers compensation system for one year considering the amendments made to the Workers Compensation Act 1987 (the Act) in May 2020 which established presumptive rights to compensation for certain workers who contract COVID-19.

This Executive Summary provides an overview of the cost impacts and modelling performed. The full Report, provided to SIRA on 8 October 2021, contains the full detail and assumptions underlying the modelling.

1.2 Summary of results

The analysis in this Report is based on the following two infection scenarios modelled by the Doherty Institute:

- ▶ **Scenario 1:** Transmission reducing vaccine allocation strategy with vaccine coverage of **70%** and partial effectiveness of test, trace, isolate and quarantine (TTIQ) measures
- ▶ **Scenario 2:** Transmission reducing vaccine allocation strategy with vaccine coverage of **80%** and partial effectiveness of test, trace, isolate and quarantine (TTIQ) measures

Our approach to estimating the indicative cost impact on the NSW Workers Compensation system includes:

- ▶ Estimating the total number of COVID-19 cases by severity (mild symptomatic cases, hospitalisations, ICU cases and fatalities) in Australia over a one year period based on an extrapolation of the Doherty modelling
- ▶ Considering the possible impact of asymptomatic infections being identified and requiring time off work
- ▶ Estimating the total NSW workforce split by industry and age distribution
- ▶ Estimating the potential infections and accepted claims attributed to the NSW workforce by industry and case severity
- ▶ Estimating the weekly, medical and death costs considering:
 - ▶ Expected duration of claims
 - ▶ Expected average weekly earnings
 - ▶ Expected medical costs for hospitalisation and ICU admission, treatment and medical expenses
 - ▶ Death and dependant benefits.

Table 1 details the projected infections, hospitalisations and fatalities for Australia based on the Doherty modelling for the first 180 days and the EY extrapolated infections out to one year. Section 5 of the complete Report details how the extrapolation was performed.

Table 1: Cumulative projected infections, hospitalisations and fatalities for Australia over 180 days and 1 year				
	Scenario 1		Scenario 2	
	180 days (Doherty Model)	One year (EY extrapolation)	180 days (Doherty Model)	One year (EY extrapolation)
Symptomatic infections	385,982	701,781	227,701	529,532
Asymptomatic infections	1,429,084	2,598,319	678,456	1,577,790
Hospital admissions	12,337	37,374	6,950	29,801
ICU admissions	2,732	9,415	1,506	7,475
Fatalities	1,456	4,281	762	3,158

Table 2 below details the projected accepted claims for the NSW Workers Compensation Scheme. This was derived applying the workforce participation rate assumptions detailed in section 7 of the complete Report and claims acceptance rates detailed in Attachment A of the complete Report.

Table 2: Cumulative projection of accepted cases for NSW Workers Compensation				
	Scenario 1		Scenario 2	
	180 days	One year	180 days	One year
Symptomatic infections	20,225	35,150	11,693	25,712
Hospital admissions	1,339	4,057	755	3,237
ICU admissions	356	1,227	197	976
Fatalities	150	441	79	326
Asymptomatic infections (10% testing rate)	7,984	14,516	3,709	8,626
Asymptomatic infections (20% testing rate)	15,968	29,032	7,418	17,252
Asymptomatic infections (40% testing rate)	31,935	58,064	14,836	34,503

Table 3 details the cost estimates to the NSW Workers compensation system for one year following transition to Phase B of the National Plan under scenario 1 (70% vaccination) and scenario 2 (80% vaccination).

Table 3: Estimated cost to the NSW Workers Compensation System

	Cost of absenteeism \$m	Medical costs \$m	Death benefits \$m	Total cost \$m
Scenario 1: Transmission reducing vaccine allocation strategy with partial TTIQ and 70% vaccine coverage				
Symptomatic cases				
<i>Mild (non-hospitalised)</i>	119	n/a	n/a	119
<i>Severe (hospitalised)</i>	19	139	375	533
Sub-total symptomatic cases	138	139	375	652
Longer term impacts				
<i>PASC</i>	150	-	n/a	150
<i>Psychological injury claims</i>	43	6	n/a	49
Sub-total longer term impacts	193	6	-	199
Total Cost Estimate Scenario 1	331	144	375	850
Asymptomatic cases				
<i>Asymptomatic (10% testing rate)</i>	49	n/a	n/a	49
<i>Asymptomatic (20% testing rate)</i>	98	n/a	n/a	98
<i>Asymptomatic (40% testing rate)</i>	197	n/a	n/a	197
Scenario 2: Transmission reducing vaccine allocation strategy with partial TTIQ and 80% vaccine coverage				
Symptomatic cases				
<i>Mild (non-hospitalised)</i>	87	n/a	n/a	87
<i>Severe (hospitalised)</i>	15	110	277	403
Sub-total symptomatic cases	102	110	277	490
Longer term impacts				
<i>PASC</i>	109	-	n/a	109
<i>Psychological injury claims</i>	34	5	n/a	39
Sub-total longer term impacts	144	5	-	148
Total Cost Estimate Scenario 2	246	115	277	638
Asymptomatic cases				
<i>Asymptomatic (10% testing rate)</i>	29	n/a	n/a	29
<i>Asymptomatic (20% testing rate)</i>	58	n/a	n/a	58
<i>Asymptomatic (40% testing rate)</i>	117	n/a	n/a	117

Table 4 details for scenario 2 (80% vaccination) the cost estimate to the NSW Workers compensation system should the COVID-19 presumption be repealed.

Table 4: Impact of removing presumptive legislation for Scenario 2

Scenario 2	Apply Presumption	Do not apply Presumption	Estimated impact of removing presumption
Number of symptomatic infections	25,712	5,736	(19,976)
Number of hospital admissions	3,237	770	(2,467)
Number of ICU admissions	976	236	(739)
Number of fatalities	326	81	(245)
Number of PASC cases	5,142	1,147	(3,995)
Number of psychological injury claims	793	189	(604)
Number of asymptomatic cases (10% testing rate)	8,626	1,939	(6,687)
Number of asymptomatic cases (20% testing rate)	17,252	3,878	(13,374)
Number of asymptomatic cases (40% testing rate)	34,503	7,755	(26,748)
Cost for symptomatic cases (\$m)	490	119	(371)
Mild	87	19	(67)
Severe: Hospital	72	17	(55)
Severe: ICU	53	13	(41)
Severe: Death	277	69	(208)
Cost for longer term impacts (\$m)	148	34	(115)
Long COVID	109	25	(85)
Psychological	39	9	(30)
Total cost (\$m)	638	152	(486)
Cost of asymptomatic cases at 10% testing rate (\$m)	29	7	(23)
Cost of asymptomatic cases at 20% testing rate (\$m)	58	13	(45)
Cost of asymptomatic cases at 40% testing rate (\$m)	117	26	(91)

Table 5 provides for scenario 2 (80% vaccination) the cost impacts both with and without the presumptive legislation for each industry. The shaded industries are those that have a majority of employees that would fall under the presumptive legislation for COVID-19.

Table 5: Impact of removing presumptive legislation for Scenario 2 (by industry) (\$m)			
Industry	Apply Presumption	Do not apply Presumption	Estimated impact of removing presumption
Agriculture, Forestry and Fishing	0.3	0.3	0.0
Mining	1.8	1.8	0.0
Manufacturing	1.7	1.7	0.0
Electricity, Gas, Water and Waste Services	0.6	0.6	0.0
Construction	101.2	4.0	(97.2)
Wholesale Trade	0.4	0.4	0.0
Retail Trade	78.8	16.4	(62.4)
Accommodation and Food Services	46.1	2.3	(43.8)
Transport, Postal and Warehousing	59.1	6.3	(52.7)
Information Media and Telecommunications	3.4	1.2	(2.2)
Financial and Insurance Services	0.7	0.7	0.0
Rental, Hiring and Real Estate Services	0.2	0.2	0.0
Professional, Scientific and Technical Services	2.4	2.4	0.0
Administrative and Support Services	16.7	2.6	(14.0)
Public Administration and Safety	79.8	8.1	(71.7)
Education and Training	81.9	24.1	(57.8)
Health Care and Social Assistance	154.8	77.4	(77.4)
Arts and Recreation Services	6.6	0.1	(6.5)
Other Services	1.8	1.8	0.0
Total	638.0	152.2	(485.7)

1.3 Key considerations

Extrapolation of Doherty projections

The Doherty Report modelled the first 180 days of transition to phase B of the National Plan. To estimate an annualised impact, the Doherty projection was extrapolated out to one year. Refer to Section 5 of the complete Report for further detail on how the extrapolation was performed. Table 1 shows both the 180 day and one year infection numbers. Hospitalisations, ICU admissions and fatalities are also shown. While the extrapolation for infections appears close to linear, this is not the case for hospitalisations, ICU admissions and fatalities. This is because these more severe impacts lag the initial infection. So, while infections may peak at approximately 180 days, hospitalisations, ICU admissions and fatalities will peak some weeks after this.

Mild symptomatic cases

The modelling performed by the Doherty institute is based on COVID-19 transmission, severity and vaccine effectiveness for the Delta variant. The Delta variant has been the dominant strain in the current outbreak in NSW. Studies have shown that the Delta variant has increased transmissibility and an increased risk of more severe outcomes for unvaccinated individuals compared to earlier variants.

According to the Doherty modelling, absenteeism and home isolation will be a relatively common occurrence when opening up with 70 per cent or 80 per cent vaccination rates occurs without optimal TTIQ.

Longer term impacts

As the COVID-19 pandemic progresses into a second year, there is an increasing need to understand the burden of emerging comorbidities or worsening of pre-existing comorbidities. We have considered the potential additional costs to the Workers Compensation System as a result of post-acute sequelae of COVID-19 and psychological injury claims post-COVID diagnosis (either initial or recurrent).

Post-acute sequelae of COVID-19 (PASC or Long COVID) generally refers to a syndrome characterised by persistent and prolonged effects after acute COVID-19 infection with symptoms reported that persist more than 4 weeks after a COVID-19 infection.

Much is still unknown about how COVID-19 affects people over time and limited studies are currently available. Further research and multi-year studies are needed to understand the severity and persistence of symptoms, including on the vaccinated population.

Asymptomatic cases

The Doherty modelling also includes estimates of asymptomatic infections, where individuals are carrying the virus but show no symptoms of COVID-19.

Per the Australian Government's public health response, workers that return a positive COVID-19 test will be required to self-isolate for a period of 14 days, regardless of whether they are symptomatic or asymptomatic. The extent to which workers that present as being asymptomatic are tested will likely depend on the effectiveness of the contact tracing system.

There is no data or ability to know how many of these asymptomatic infections will get tested and need to self-isolate. We have provided indicative cost estimates (to provide an order of magnitude) in Table 3 if 10%, 20% or 40% of these cases should get tested and need to self-isolate for a two-week period.

1.4 Reliances and limitations

There are a number of key limitations to the cost estimates presented in this Report including:

- ▶ The Doherty modelling of COVID-19 infections, hospitalisations, ICU admissions and deaths has been used as the basis for this costing.
- ▶ The Doherty model only contains projected infections for the first 180 days from achieving the key vaccination targets. This analysis necessarily extrapolated these infection curves for a full year to estimate the annual impact. Given the stochastic nature of the modelling applied by the Doherty institute and the approximate statistical extrapolation applied, these estimates represent a possible outcome out of a broad range of possible outcomes which could have materially different cost implications.
- ▶ The Doherty modelling is not performed at a state level and hence does not take into account any state-based differences. We have assumed that the number of cases in each state will be proportional to the population of each of the states.
- ▶ The number of claims ultimately accepted into the NSW workers compensation system is highly uncertain. For the presumptive industries we have assumed 100% of infections will become claims. For other industries we have made an estimate of the claims acceptance rate based on a risk assessment of each industry.
- ▶ There is a high level of uncertainty surrounding the cost estimates contained in this Report. Infections numbers, subsequent hospitalisations, deaths and claims lodged and accepted into the NSW workers compensation system could all be materially different to the scenarios outlined in this Report.

The analysis described in this Executive Summary and in the complete Report is a high level indicative estimate only, intended to provide SIRA an approximate indication of the cost impacts. The ultimate impacts of COVID-19 on the NSW workers compensation system will only be known once the current lockdowns end and the virus begins circulating in the community.

In accordance with normal professional practice, neither EY, nor any member or employee thereof undertakes responsibility in any way whatsoever to any person other than SIRA in respect of this Report. The Report should be read in its entirety to understand the full context of the modelling performed.

We disclaim all liability to any other party for all costs, loss, damage and liability that the other party may suffer or incur arising from or relating to or in any way connected with the contents of our Report, the provision of our Report to the other party or the reliance upon our Report by the other party.

In preparing this Report we have assumed that only those persons who are technically competent in the areas addressed will use it. The Report is designed to be read in its entirety. We are available to answer any queries and the reader should seek that advice before drawing conclusions on any matter in question.

Section 10 of the complete Report contains further reliances and limitations.

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