



Independent
Review Office

**IRO Delay in Determining
Liability Update Report
December 2024**

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Introduction

The Office of the Independent Review Officer (IRO) complaints function is an integral part of the NSW personal injury compensation scheme.¹ For those who are often without an effective voice – injured persons – we provide a fast, accessible and fair avenue to get problems with their insurer resolved.

Clause 6 of Schedule 5 to the *Personal Injury Commission Act 2020* (NSW) provides that a function of the Independent Review Officer (Officer) is to inquire into and report to the Minister on any matters arising in connection with the operation of the Workers Compensation Acts.

In June 2021, the Officer published the *Delay in Determining Liability Inquiry Report* (Inquiry Report).² This report explored the potential systemic causes of complaints from injured workers to IRO about delays in determining liability³ and provided recommendations to reduce the number of complaints. It also highlighted the physical, financial and psychological effects on injured workers caused by the delays.

The Inquiry Report included an analysis of 100 complaints and consultation with insurers and the State Insurance Regulatory Authority (SIRA). The Inquiry Report established that common causes of these complaints include that insurers sometimes require more information to decide a claim, as well as poor case management and communication by insurers.

The impact of delays

Receiving 'prompt treatment of injuries...to assist injured workers and promote their return to work as soon as possible'⁴ is a key objective of the NSW workers compensation scheme. Delayed access to treatment, caused by insurer delay in determining liability, can undermine this legislative intention.⁵ It adversely affects injured workers in medical claims where they may not be compensated for treatment or miss out on treatment. It may also result in greater costs for the workers compensation system overall by increasing time in the scheme

¹ Schedule 5, Part 3, Clause 6 of the *Personal Injury Commission Act 2020* (NSW).

² [IRO Inquiry report: Delay in determining liability – June 2021 \(Inquiry Report\)](#).

³ When discussing delays in determining liability, the Inquiry Report – and this update – defines delay as the failure to comply with legislative time limits for making decisions. Those time limits are to be found in the *Workplace Injury Management and Workers Compensation Act 1998* (NSW). Such delays can occur at the beginning of a claim, when a claims manager is considering all aspects of liability, and throughout the life of the claim.

⁴ Section 3(b) of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

⁵ The Standing Committee on Law and Justice's 2023 Review of the Workers Compensation Scheme (SCLJ Report) highlighted how delays in treatment can exacerbate claimants' injuries and affect return to work rates: Standing Committee on Law and Justice, *2023 Review of the Workers Compensation Scheme* (December 2023), p69-71.

taken to settle a claim, delaying return to work (RTW) and contributing to a need for additional treatment which otherwise might not have been required.

In conjunction with such delay, secondary psychological injuries may develop as a result of the worker's experience with and duration in the compensation process.⁶ The impact of secondary psychological injuries on the scheme are likely to be significant as these injuries can delay RTW and complicate the recovery process.⁷

Purpose of this update report

Since IRO published the Inquiry Report, the NSW workers compensation scheme has experienced an increase in psychological injury claims and a decrease in RTW rates.⁸ This decline has been more significant in NSW than in other jurisdictions.⁹

There have also been several external reviews of the NSW workers compensation system identifying concerns with insurer case management.¹⁰ These reports, coupled with further persistent trends in IRO data, suggest that delayed insurer decision making continues to be a systemic issue impacting injured workers and efficient operation of the scheme.¹¹ In this context, an update to the 2021 Inquiry Report is timely.

This report provides an overview of the complaints IRO has received on delays in determining liability between July 2020 and June 2024.

⁶ SCLJ Report p29.

⁷ Ibid p55.

⁸ SCLJ Report p14;

⁹ [State Insurance Regulatory Authority, Treasury Managed Fund Review Report \(TMF Review\) \(April 2024\)](#) p50.

¹⁰ [SCLJ Report p60-61, p69](#); [TMF Review p8, p40-41, p49, p50](#); [NSW Auditor-General's Report on Workers compensation claims management \(April 2024\) p10, p20, p26](#).

¹¹ Recommendation 13 of the SCLJ Report 2023 provided that the State Insurance Regulatory Authority should 'investigate the extent to which delays in medical support and treatment are occurring and potential compliance measures' (page xi), indicating that delayed decision making has been identified as a scheme-wide issue.

IRO Data Update

Between July 2020 and June 2024, IRO received 8,651 complaints from injured workers about delays in determining liability. Table 1 shows the total number of complaints received by IRO against the number of complaints about delay in determining liability.

A complaint¹² about a delay in determining liability is one where an injured worker expresses dissatisfaction in the time taken by an insurer to either accept or deny liability for a claim for compensation.

Table 1 Number of delay in determining liability complaints received by IRO from FY2020/21 to FY2023/24

	FY2020/21	FY2021/22	FY2022/23	FY2023/24
Number of delay in determining liability complaints	2,272	1,834	2,073	2,472
Percentage of delay in determining liability complaints out of Total No. of complaints	28%	26%	27%	30%
Total No. of complaints received	8,065	6,936	7,603	8,296

Delays in determining liability continue to be the most common complaint to IRO

Complaints about delays in determining liability continue to be the most common complaint received by IRO. Approximately 28 per cent of all workers compensation complaints that IRO receives are complaints concerning delays in liability decisions (see Table 1). This consistent level of complaint showcases that this issue is persistent and has not reduced over the past 3 years. In addition, as the total number of claims has increased, we see the number of injured workers affected by delays in determining liability have also risen as a consequence.

After the Inquiry Report was published in June 2021, the number of delay in determining liability complaints reduced almost 20 per cent from FY2020/21. This reduction may align with reduced activity during COVID-19. Overall, the number of complaints IRO has received year on year has been variable, with a general upward trend following a low in FY2021/22.

From July to December 2023, in 619 of the complaints (52 per cent of all complaints about delays in determining liability) the insurer was considered to be outside the relevant timeframe for making a decision. When compared to FY2019/20 where the insurer in 36 per

¹² A complaint is an expression of dissatisfaction or grievance made to IRO about an insurer where a response or resolution is explicitly or implicitly expected. When an injured worker contacts IRO to make a complaint about a new issue, a new complaint record is opened.

cent of complaints concerning delay was considered to be outside timeframes, recent data reveals a potential deterioration in compliance with statutory timeframes. It should be noted that many workers make a complaint to IRO because they have been unable to obtain a response to the claim from the insurer in what they consider to be a timely manner, rather than a focus on statutory timeframes.

Complaints across insurer types

The Nominal Insurer continuously receives the most complaints from injured workers about a perceived delay in their claim (see Table 2). This reflects their coverage of workers as they insure 3.2 million employees in NSW across the private and public sector and receive around 63 per cent of total reportable claims.¹³

When reviewing the Treasury Managed Fund (TMF), approximately 15 per cent of delay in determining liability complaints received by IRO have arisen from TMF claims. However, after factoring in that the TMF is responsible for approximately 20 per cent of total reportable claims, it is seen that it is not overrepresented.

Table 2: Delay in determining liability complaints by insurer type received by IRO from FY2021/22 to FY2023/4

	Nominal Insurer	Self-insured	Specialised insurer	TMF	Other insurer including not provided*
FY2021/22	1,175	174	96	280	8
FY2022/23	1,300	172	109	345	10
FY2023/24	1,570	233	124	347	14

*These cases include advice only matters where the insurer has not been identified.

A recent file review conducted by SIRA, as part of its compliance audit and performance review of the TMF (TMF Review),¹⁴ showed compliance with statutory timeframes for decisions on liability could be as low as 82 per cent in some areas covered by the TMF.¹⁵

¹³ Allianz, DXC, EML, Gallagher Bassett, GIO and QBE manage claims for the Nominal Insurer scheme. They provide claims management services to more than 329,000 public and private sectors employers in NSW and their 3.2 million employees.

¹⁴ TMF Review.

¹⁵ It should be noted that only a sample of files were reviewed and we do not have similar data for our claims.

IRO now shares complaints data with SIRA under a Memorandum of Understanding (MoU) to support its regulatory activity.¹⁶ This includes information regarding regulatory non-compliance, which may assist SIRA to target future compliance activities.

Delays shorten when there is IRO intervention

IRO has an essential role in assisting injured workers to resolve complaints about delays in determining liability. As noted in submissions to the Standing Committee on Law and Justice (SCLJ) from injured workers and their representatives and exemplified in IRO case studies (see below), liability for treatments is often either denied or delayed until complaints are lodged with IRO.¹⁷

When it reviewed files for compliance with complaint handling requirements, the TMF Review found the main source of complaints were '*due to lack of communication from CSPs and delays in reviewing medical treatment requests and approving weekly payments of compensation*'.¹⁸ The causes included failure to resolve complaints quickly and proactively.

In June to October 2023, our office conducted a survey of injured persons regarding their complaint handling experience with insurers before contacting IRO.¹⁹ The survey results indicated that injured persons attempt to resolve complaints by themselves, with the insurer, before they contact IRO.²⁰ In particular, 80 per cent of respondents attempted to resolve the matter with the insurer three or more times.²¹ The report also made observations about opportunities for improvement in insurer complaint handling practices.

Case Study 1

The injured worker's representative contacted IRO in November 2023 about how a request for physiotherapy treatment and a request for domestic assistance and an Activities of Daily Living (ADL) assessment had not been determined yet. Both the lawyer and injured person attempted to resolve the matter with the insurer multiple times over two weeks before requesting IRO intervention.

Following IRO enquiries, the insurer approved the claim for physiotherapy treatment a month after the request was made and apologised for the delay in approval. The insurer approved the request for domestic assistance and an ADL assessment 3 months after it was made. The insurer confirmed that the original delay in approval was due to a review of the injured worker's eligibility for ongoing assistance, however, there was

¹⁶ [SIRA IRO Memorandum of Understanding \(14 July 2021\)](#).

¹⁷ SCLJ Report p70-71.

¹⁸ [SIRA Treasury Management Fund Claims File Review \(Appendix 1\)](#) p39.

¹⁹ [IRO Injured Person Survey Report \(May 2024\)](#).

²⁰ Ibid.

²¹ This includes both multiple attempts to resolve the issue and internal escalations with the insurer without success.

still a delay once eligibility was confirmed. The insurer apologised for the delay and any inconvenience it caused.

Typically, poor communication from an insurer causes an injured worker or their legal representative to contact IRO to request an intervention and follow up in their claim. A lack of communication when there is delay reduces the trust between an insurer and injured worker and impels injured workers to contact IRO as an external solution.

Approximately 78 per cent of workers compensation complaints are closed by IRO within a week of receiving the complaint. Thus, a decision on liability by an insurer is often expedited when there is a complaint made to IRO. In many cases, there may have been no resolution without the intervention of IRO.

Overall Observations

Data collected since the Inquiry Report reveals that delays in liability decisions continue to be an issue where intervention by IRO is often required.

Poor insurer case management has been consistently raised as an issue in external reviews of the workers compensation scheme.²² The IRO reported 2,444 general case management complaints and enquiries in FY2022/23, which was the third most common cause of complaint. IRO's submission to the SCLJ Report highlighted challenges in complaints relating to delayed decisions by insurers and difficulties with case management that '*fails to meet acceptable standards of consistency, empathy, flexibility and courtesy*'.²³

Case Study 2

The injured worker's representative contacted IRO in September 2023 stating they had yet to receive a response to a request for spinal decompression surgery, which was made a month prior. The surgery was recommended by a neurosurgeon as the injured worker had been in persistent pain for several months. Following IRO enquiries, the insurer noted that the request was reviewed by the case manager, but a decision was not issued within the time required. A further review was conducted by the insurer and a dispute notice was issued. The surgery was declined pending further information through an Independent Medical Examination (IME).

The injured worker's representative applied for Stage 2 ILARS funding and was granted approval in April 2024. Whilst the worker's representative was completing

²² [Janet Dore Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme \(December 2019\)](#); [Hon Robert McDougall QC icare and State Insurance Care Governance Act 2015 Independent Review \(April 2021\)](#); [NSW Auditor-General's Report on Workers compensation claims management \(April 2024\)](#); [Standing Committee of Law and Justice 2023 Review of the Workers Compensation Scheme \(December 2023\)](#); [State Insurance Regulatory Authority Treasury Managed Fund Review Report \(April 2024\)](#).

²³ SCLJ Report p61.

investigations, the insurer withdrew the section 78 dispute notice and accepted the injured worker's claim for weekly wages and surgery, eight months after the initial claim for surgery was made.

SIRA has also set out customer service conduct principles,²⁴ which seeks to make claims management a more claims-centric experience for injured persons. SIRA has taken action in these areas to improve the overall efficiency and effectiveness of the workers compensation system, with a particular focus on a better experience for workers with injuries.

Based on data, findings from external reviews²⁵ and the case studies in this report, it appears that the causes of delay in determining liability complaints likely remain consistent and that there are ongoing opportunities to improve case management, complaint handling and communication by insurers. This will assist efficient and fair outcomes for injured persons and overall efficiency of the workers compensation scheme.

Regulatory and operational responses

IRO consulted stakeholders on this draft report, seeking feedback. In response, both icare and SIRA informed IRO delays in decision-making are a key focus area and both organisations are undertaking a program of works – broadly covering a range of activities like improving case management, publishing performance data and collaborating with other agencies – which they hope will address some of the issues raised by IRO. IRO will be keen to monitor how these activities flow through to the experience of injured workers.

²⁴ [SIRA's customer service conduct principles](#).

²⁵ TMF Review; SCLJ Report.