



Independent
Review Office

**Error in Weekly
Payments Discussion
Paper**

April 2022

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1. Introduction

Each year, hundreds of injured workers complain to the Independent Review Office (IRO) about errors in weekly payments of compensation – that the payments are delayed, reduced without explanation or stopped without reason. These complaints have substantial and, sometimes, severe consequences for workers, potentially impacting on their housing security, their capacity to meet bills, or even their ability to put food on the table.

Given the prevalence of these complaints and their impact on workers, the IRO has examined 100 matters closely from 2020-21, including complaints representing all insurer types and complaints where either the employer or the insurer makes the payment. We've sought to unpack the causes and impacts of errors in weekly payments, and to seek information about solutions that will reduce these errors going forward.

This Discussion Paper lays out the evidence and seeks a response to a series of questions. Through this collaborative approach, we hope to identify good practice and solutions for common issues. We will publish a final report in mid-2022 with our recommendations.

2. Have your say

We welcome your response to the questions asked in this report, and any other views you have about the causes of and solutions to reduce errors in weekly payments.

Please make your submission by sending your response to feedback@iro.nsw.gov.au by **Friday 13 May 2022**. We are also happy to meet to discuss feedback if preferred.

If you or your office have any questions or require further information, please contact Neha Chopra, Policy Officer on neha.chopra@iro.nsw.gov.au.

3. Overview of report

The IRO receives complaints from injured workers where employers and insurers make errors in weekly compensation payments. The types of errors made include unexplained changes in the weekly payment amount, missing payments, and payments ceasing or delayed. Under the workers compensation scheme regulatory framework, insurers have an overarching responsibility to ensure that weekly payments are correct.

Statutory Review of the Motor Accident Injuries Act 2017

These errors in weekly payments can have a substantial impact on individuals, negatively impacting the worker and their family's physical, psychological and financial wellbeing.

Cumulatively, these errors impact on the efficient operation of the workers compensation scheme. Delays in resolving these complaints can impact the trust relationship between the employer, insurer and worker. Delays in the receipt of compensation funds can cause claim-related stress which, in turn, has a negative influence on recovery.¹

¹ Elbers NA, Hulst L, Cuijpers P, Akkermans AJ, Bruinvels DJ. (2013). Do compensation processes impair mental health? A meta-analysis [Review]. *Injury*, 44(5):674–83.

Given the prevalence and impact of errors in weekly payments over several years, the IRO is conducting an inquiry into these complaints.

This report:

- A. identifies potential causes and systemic issues contributing to errors in weekly payments based on the complaint data collected by IRO, and
- B. raises questions for discussion about potential solutions to reduce the number of complaints relating to an error in weekly payments and to identify improvements to the overall efficiency of the workers compensation system.

4. Background

The Independent Review Officer (Officer) under Part 3 of Schedule 5 to the *Personal Injury Commission Act 2020* (PIC Act) has a function to inquire into and report to the Minister on any matters arising in connection with the operation of workers compensation legislation as the Independent Review Officer considers appropriate.

'Error in weekly payment' complaints are complaints where an injured worker is entitled to receive weekly compensation payments and the employer or insurer delays making the payment, makes an incorrect payment or stops making payments. In 2020/21, there were 711 complaints about errors in weekly payments. This represents 9 per cent of total complaints (8065) received by IRO from injured workers in 2020/21.²

Under workers compensation insurance policies, the employer has a contract of insurance with an insurer to indemnify it from liability for workplace injuries. Employers and insurers have obligations to ensure injured workers, entitled to receive weekly compensation payments, receive the correct compensation.

IRO resolves complaints made by injured workers about the acts and omissions of workers compensation insurers, including complaints about the insurer's alleged failure to ensure the payments to workers are correct.

4.1 Employers

Regular and accurate weekly payments are essential for an injured worker who relies on such payments to continue managing aspects of their life. Employers usually make weekly payments to injured workers on behalf of insurers. For example, in 2020/21, icare had 52,008 (total) claims that had a weekly payment:

- 46,782 claims (90 per cent of the total) were paid by the employer, and
- 5,223 claims (10 per cent of the total) were paid by the insurer.³

² As per [SIRA's compensation dashboard](#), 98,290 workers received weekly benefit payments for the 2019/20 financial year.² IRO recorded 1246 error in weekly payment complaints for the same time period. IRO complaints do include complaints that injured workers may raise directly with their legal representatives, unions, employers and icare. See 12.1 Errors in weekly payments – a systemic issue.

³ icare response to IRO request for information, 5 November 2021.

This is often a preferable system as it is administratively streamlined from the injured worker's perspective, and the injured worker maintains their relationship with the employer. When this is the case, employers continue to pay workers through payroll and are reimbursed by the insurer.

It is an offence for employers to not:

- pass on weekly payments owed to workers as soon as practicable without a reasonable excuse,⁴ and
- maintain records of wages paid.⁵

Employers are also required to provide information to enable the insurer to calculate Pre-injury Average Weekly Earnings (PIAWE) to assist in working out how much compensation should be paid.⁶

4.2 Insurers

Insurers calculate injured workers weekly compensation payments using a formula and the worker's PIAWE. Where weekly payments are paid to the employer, it is the insurer's responsibility to ensure there is supporting documentation to verify the reimbursement amount.

In line with the SIRA Benchmark, insurers are:

Responsible to ensure there is supporting documentation to verify the reimbursement amount & seek evidence on the claim file that the worker is receiving the correct weekly payments and is being paid on time.⁷

Whether the insurer is the Nominal Insurer, a specialised insurer, Treasury Managed Fund (TMF) or a self-insurer, insurers have an obligation to support employers and their workers during the recovery process and manage the claim to ensure all entitlements are received.

The insurer may pay the injured worker in a number of circumstances. For example, icare advised IRO of circumstances where it may pay an injured worker directly. These include:

- at the employer's or worker's request
- where payment by the employer may disadvantage the worker, for example, due to an employer's pay cycle, system limitations or lack of knowledge/understanding of workers compensation
- where the employer has failed to make payment to the worker
- where there has been a breakdown in the relationship between the worker and employer, or

⁴ Sections 264(3) and 69(1)(c) *Workplace Injury Management and Workers Compensation Act 1998*.

⁵ Section 174 *Workers Compensation Act 1987* and Clause 166 *Workers Compensation Regulation 2016*.

⁶ [SIRA Standards of practice Expectations for insurer claims administration and conduct December 2018](#).

⁷ Section 174 *Workers Compensation Act 1987* and Clause 166 *Workers Compensation Regulation 2016*.

- where the worker is job detached and/or looking for employment with a new employer.⁸

The State Insurance Regulatory Authority (SIRA) Standards of Practice: Expectations for insurer claims administration and conduct⁹ and the Workers Compensation Guidelines¹⁰ set expectations that guide insurer conduct and claims management.

Where the insurer is making weekly payments, Standard 8 of SIRA's Standards of Practice applies.

*Where making weekly payments insurers to consult with the employer and advise the injured worker and employer once payments have commenced.*¹¹

Standard 8 also requires stakeholders to be kept informed of whether weekly payments need to be processed directly by the insurer to the worker. This will 'ensure the worker receives ongoing and timely support and the employer is informed of their ongoing obligations and responsibilities.'¹²

Self-insurers determine and pay workers weekly compensation payments. They are required to undertake a claims management self-audit and lodge the report with SIRA.¹³ Licensed specialised insurers can underwrite workers compensation obligations and manage workers compensation claims for employers in a defined industry. All insurer types are required to apply for a license with SIRA to operate as a workers compensation insurer. In SIRA's evaluation, it ensures the insurer to which it is granting a licence is financially viable and maintains high standards of injury management and case management throughout the term of the licence.¹⁴

4.3 SIRA

A principal objective of SIRA in exercising its functions is to provide for the effective supervision of claims handling and disputes arising under NSW workers compensation legislation, under section 23 of the *State Insurance and Care Governance Act 2015*. The Standards and Guidelines are part of SIRA's regulatory framework in addition to the workers compensation legislation.

As the regulator, SIRA monitors insurer and employer compliance with regulatory and legislative requirements. SIRA undertakes insurer compliance, enforcement and supervision activities based on the degree and severity of harm or potential risk, the degree of

⁸ icare response to IRO request for information, 5 November 2021.

⁹ [SIRA Standards of practice: Expectations for insurer claims administration and conduct.](#)

¹⁰ [SIRA Workers Compensation Guidelines.](#)

¹¹ [SIRA Standards of practice Standard 8 insurer making weekly payments.](#)

¹² Ibid.

¹³ [Self-insurers, SIRA website.](#)

¹⁴ [Specialised insurers](#) and [Self-insurers](#), SIRA website.

negligence and the need for deterrence.¹⁵ In relation to weekly payments examples of compliance action includes:

- conducting a claims management audit of an insurer based on SIRA insurer claims management audit manual (audit manual), and
- ensuring employers are not committing an offence/breach of legislation by failing to pass on compensation monies owed to workers as soon as practicable.

In 2020/21, SIRA recorded:¹⁶

- 60 self-insurer audits
- 0 offences under section 264(3) of the 1998 Act (employer not passing on monies)
- 19 offences under section 174 of the 1987 Act (employer requirement to keep records)

5. Methodology

In 2020/21, IRO received 711 complaints from injured workers about an error in their weekly payments.

A random sample of 100 complaints made to IRO was analysed, including an equal number of those categorised as errors in weekly payments caused by insurer, and those assessed as employer errors.

- **Employer error** – an injured worker complaint about an insurer’s failure to ensure their weekly compensation payment is paid by their employer.
- **Insurer error** – an injured worker complaint about an error in their weekly compensation payment provided directly by the insurer.

While the IRO does not deal with complaints from injured workers about employers, given insurers ultimately bear responsibility for ensuring workers receive the compensation to which they are entitled, the IRO is able to assist a worker to resolve these complaints, regardless of where the error or fault lies.

SIRA has complaint handling jurisdiction for injured workers who have a complaint about their employer or a provider (e.g. treatment provider), which they have been unable to resolve with the insurer in the first instance. SIRA also manages complaints from employers, insurers and other stakeholders who have an enquiry or complaint related to workers compensation.¹⁷

¹⁵ [SIRA Workers Compensation Compliance and Reporting Activity 2020-21.](#)

¹⁶ SIRA response to the IRO Operational Query, 2 November 2021.

¹⁷ [SIRA Workers Compensation Complaints.](#)

Each complaint was qualitatively analysed using the following criteria:

- Insurer type (Nominal Insurer, TMF, special insurer, self-insurer)
- Type of error (delayed payment, stopped payment, changed payment, payment not commenced)
- Reason for complaints (administrative error (which has been further categorised), employer not passing on payment, no reason provided)
- Outcome of the complaint (employer payment corrected, insurer takes over payment, payment made prior to resolution of complaint, other outcome)
- Impact of the delay on the injured person (financial, psychological, physical)

The IRO carefully reviewed the data to ensure that all complaints in the sample were correctly categorised as errors in weekly payments and each complaint was classified correctly based on the above criteria.

In October 2021, IRO sent a request to SIRA and icare seeking relevant data and information to inform IRO's inquiry into errors in weekly payments ('response to IRO's request for data on errors in weekly payments'). This data has been referred to and has informed the discussion paper.

There is currently a remediation program underway to correct historical errors in calculating PIAWE.¹⁸ Given this, errors in weekly payments resulting from insurers inaccurately calculating PIAWE are not within the scope of this inquiry. However, complaints from injured workers about delays in payments resulting from the time taken to calculate PIAWE, including due to an employer not providing relevant information to the insurer, are within the scope of this inquiry.

6. Results

Out of the 711 complaints about errors in weekly payments made to IRO, 317 complaints were categorised as employer errors, and 394 as insurer errors.

icare noted for the financial year 2020/21, it received 1,229 payment-related complaints from injured workers across the Nominal Insurer and TMF schemes.¹⁹ Of the 1,229 complaints, only 8 per cent (101) were complaints about employers, including 60 complaints about employer failure to pass on payment (5 per cent) and 41 complaints about the payment arrangement (3 per cent).²⁰

This indicates that although insurers directly pay weekly payments to the injured workers in a minority of cases (for the Nominal Insurer and TMF, approximately 10 per cent or 5,223 of 52,008 claims with weekly payments in 2020/21), they account for a large (and disproportionate) number of payment errors. They accounted for 55 per cent of IRO weekly

¹⁸ [icare Update on historical PIAWE remediation.](#)

¹⁹ icare response to IRO request for information, 5 November 2021.

²⁰ Ibid.

payment complaints in 2020-21 across all insurers (394 of 711 complaints), and 92 per cent of icare’s weekly payment complaints (1,128 of 1,229 complaints).

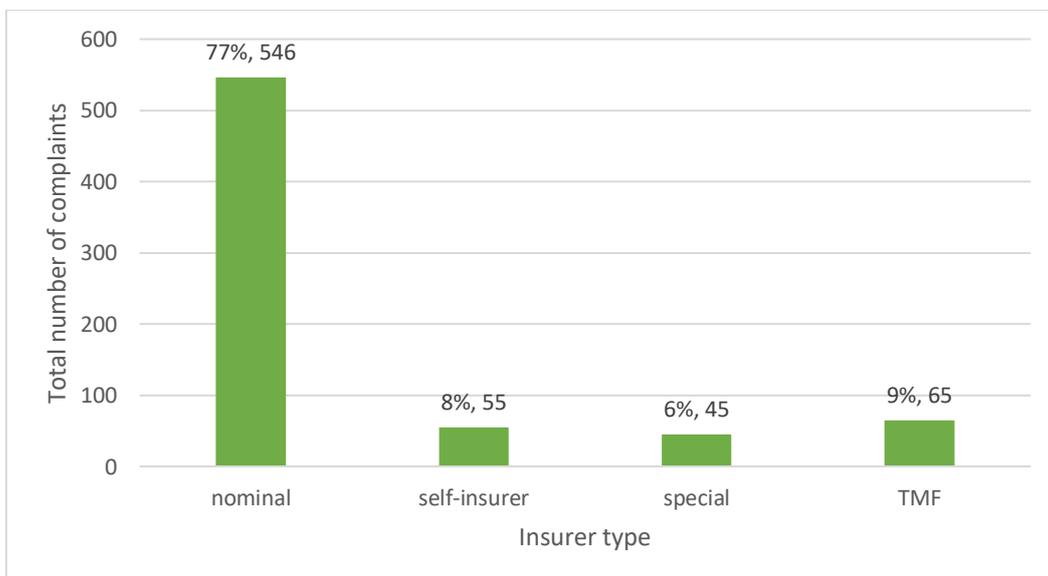
7. Complaints by insurer type

Out of 711 complaints to IRO by injured workers in relation to errors in weekly payments, 77 per cent of complaints related to the Nominal Insurer. Self-insurer related complaints comprised 8 per cent of total error in weekly payment complaints. Special insurers were involved in 6 per cent of complaints and TMF insurers were involved in 9 per cent of complaints.

Based on these numbers, the Nominal Insurer is slightly overrepresented in the data as compared to their share of active claims which is 65 per cent.²¹ Conversely, TMF is underrepresented as they represent 20 per cent of claims but only 9 per cent of complaints. This may be attributable to the fact that TMF includes government self-insurers that have sophisticated payroll systems and personnel in place to make payments and solve any issues that arise quickly.

Another possible explanation is that the Nominal Insurer insures a number of small businesses with little claims experience and a lack of workers compensation expertise. IRO cases demonstrate, for example, some smaller employers are dissatisfied their worker has an accepted workers compensation claim, which impacts premiums (for example, Case Study 3 below) or there may be financial issues faced by a business which results in payments not being passed on in a timely way.

Figure 1: Total number of employer and insurer errors complaints across different insurer types (total n=711)



Figures 2 and 3 show this pattern of proportionally that more Nominal Insurer complaints

²¹ SIRA Works Compensation dashboard June 2021.

and fewer TMF complaints is persistent across complaints classified as insurer and employer error.

Figure 2: The number (per cent and count) of complaints by insurer type classified as 'insurer error' in 2020/21 (total insurer error complaints n=394)

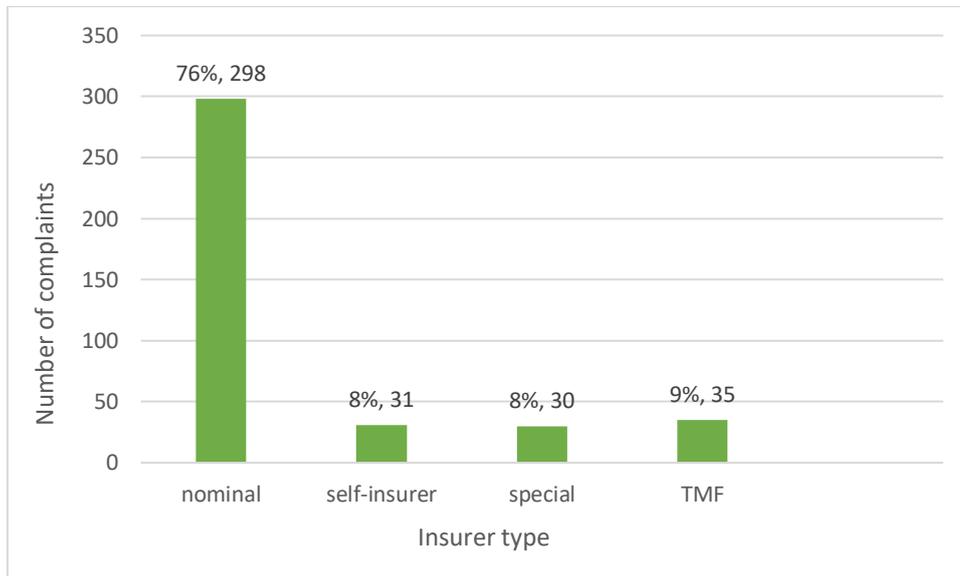
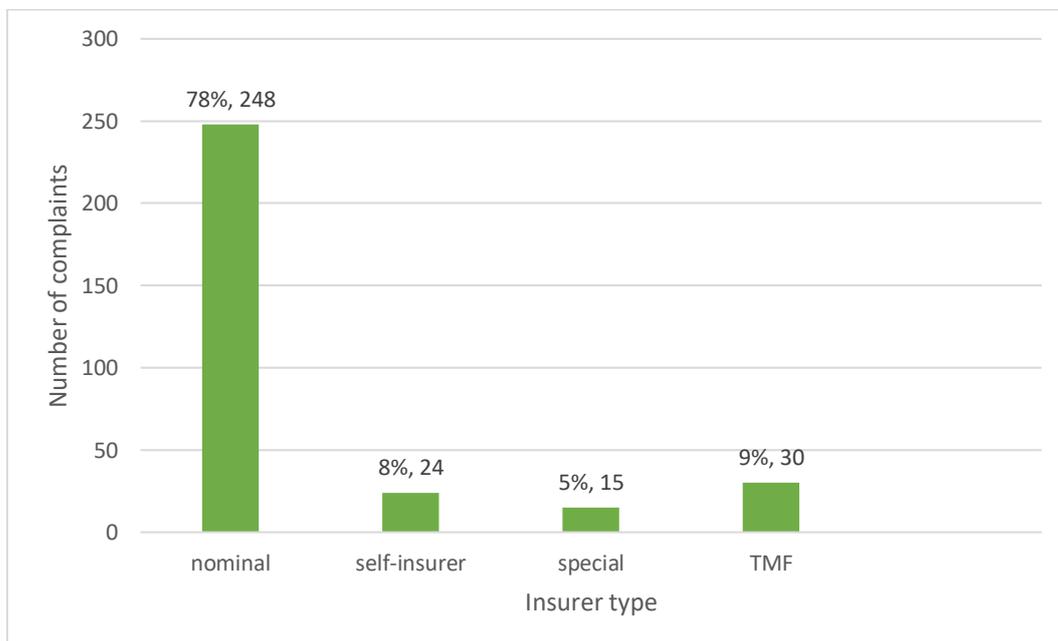


Figure 3: The number per cent and count) of complaints by insurer type classified as 'employer error' in 2020/21 (total employer error complaints n=317)



8. Reason for the error in payments to injured workers

Four main causes of errors were identified through the analysis:

- 'Administrative error', refers to any errors of administrative nature, such as case managers on leave or leaving the employment of the insurer or employer, errors

by new staff, errors in payroll, and delays in communication between the employer and insurer. These types of errors were mainly attributable to insurers errors. These errors are further categorised in Figure 5.

- *'Employer not passing on payment'* refers to complaints where the insurer has paid the employer the weekly entitlements that they are required to pass on to the injured worker, but the employer has not passed these payments on. There could be numerous reasons for this, such as the employer having poor processes and procedures and a lack of communication.
- *'No reason provided'* refers to all communication between IRO, the injured worker, the insurer and the employer where there was no reason provided for an error in the weekly payments. IRO's Solutions team is focused on finding a solution in the first instance and may not always collect information on why the error was caused. Some of these complaints may also be attributable to administrative errors.
- *'Other reasons'* include issues in calculating PIAWE such as an employer not providing relevant information and where further information was required such as an employer waiting for a certificate of determination, payslips or Centrelink clearance so the payment could be made to the injured worker.

Most commonly, administrative errors were identified as the cause of complaint (45 of the 100 complaints). This included 38 complaints where an insurer error was identified and seven (7) where employer errors were identified.

The second most common reason for an error in weekly payments was the employer not passing on the payment to the injured worker, which occurred in 37 complaints. These were all related to employer error, with the exception of one specialised insurer.

There was no reason provided for the error in 12 complaints.

Figure 4: Reason provided to IRO for error in weekly payments from 100 complaints across employer and insurer error (n=100)

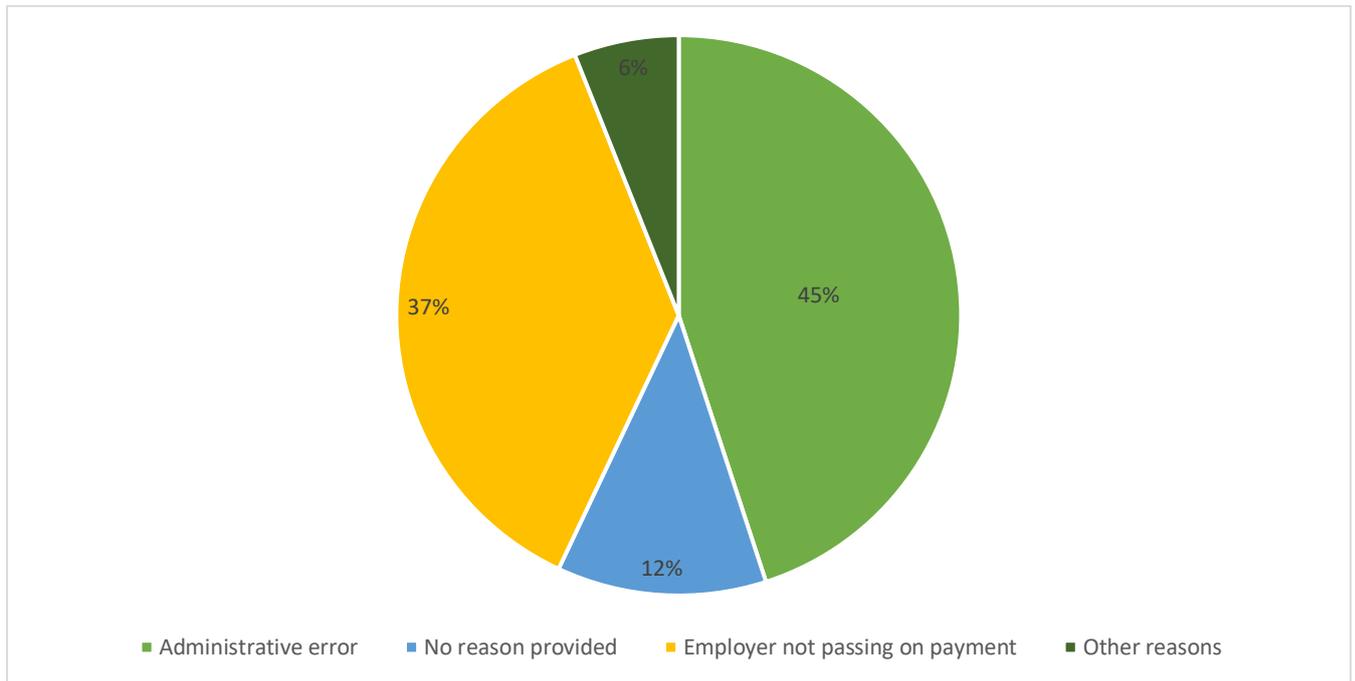


Table 1: Reasons for errors in payment by insurer and employer errors (n= 100)

Reason for payment error	Insurer error	Employer error	Total
Administrative error	38 (76%)	7 (14%)	45
No reason provided	11 (22%)	1 (2%)	12
Employer not passing on payment	1 (2%)	36 (72%)	37
Other reasons	0 (0%)	6 (12%)	6
Total complaints	50	50	100

8.1 Employer not passing on payment

The employer not passing on payment was the reason for the majority of employer errors (72 per cent). This included complaints which indicated the employer was unwilling to comply with their obligations to make payments or had a lack of understanding of their obligations.

Employer errors are indicative of issues with insurer processes and practices, as they are responsible under the SIRA benchmark for ensuring the employer meets their obligations.

Case study 1 – employer not passing on correct payment, payment stopped, insurer takes over payment

The injured worker's representative contacted the IRO in September 2020 reporting the employer was not passing on weekly payments to the worker. After IRO enquired the insurer contacted the employer who agreed 7 (seven) weeks (from July 2020) had not been paid and the employer agreed to pay the outstanding amount. The insurer also agreed to take over payments to the worker going forward.

However, the employer passed on only 4 (four) weekly payments and the representative contacted IRO again. The IRO raised this with the insurer again who paid the worker 3 (three) weeks of outstanding payments directly in September 2020 and advised they would recover payments made to the employer. This meant the final payments were more than eight weeks late, causing significant financial stress in addition to dealing with an injury.

Issues in relation to payments persisted for the injured worker when he returned to suitable duties. The employer did not pass on wage information for the insurer to then calculate make-up pay. In response to further IRO inquiries, the insurer took steps to calculate and pay make-up payments to the worker. The insurer also undertook to remind the employer of its obligation to make wage payments to the worker for hours worked.

Case study 2 – employer not commenced payment, lack of understanding

The injured worker contacted the IRO in early March 2021 to advise they had not been receiving weekly payments since September 2020, when JobKeeper ended. The injured worker was on restricted duties and not working at this time. Over this six-month period, the injured worker had been provided conflicting advice from case managers about whether the employer or insurer should be paying her. In contacting the IRO, she expressed that 'with no income life is extremely stressful and I'm receiving no financial help from anyone'. This was compounding the challenges she was already facing 'struggling daily with [her] work related injury'.

Following inquiries made by the IRO, the insurer confirmed they would pay the injured worker directly from September 2020, which equated to 24 weeks of payment totalling \$3,185.25.

Case study 3 – employer not commenced payment, unwilling to comply

The injured worker contacted the IRO in November 2020 stating his former employer had failed to pass on 3 (three) weeks of payments, despite the injured worker following up multiple times since September 2020. In response to inquiries by the IRO, the insurer contacted the employer in relation to non-payment. The insurer followed up with the employer on multiple occasions. The insurer's advice to IRO was that the employer was concerned about the impact of the injured worker's claim on their premium. The employer was also refusing to provide the insurer with proof of payment via payslip.

The outstanding payment was explained to the employer several times and when prompted for a timeline for the worker to receive his payment the employer terminated the call. The lack of cooperation by the employer meant the insurer had to follow up repeatedly further delaying the payment to the injured worker.

Ultimately, the payment was made to the injured worker in December 2020, some three months after it was initially raised by the worker.

8.2 Administrative errors

Administrative errors account for 76 per cent of insurer errors analysed as part of the sample.

Administrative errors were further categorised into:

- case manager error, which also includes errors where:
 - there are delays in communication between the insurer and the employer
 - an injured worker is no longer employed by the employer
 - there is delay with the certificate of determination or Centrelink clearance
- issues with payroll and systems, and
- case manager absence and new staff.

Over half of administrative errors were caused by case manager error (51 per cent). Issues with payroll and systems made up the second largest per cent of administrative errors (31 per cent). Finally, insurer case manager absence and new staff represented 18 per cent of complaints.

Table 2: Administrative errors as a reason for complaint by insurer and employer error (n=45)

Administrative errors as a reason for complaint	Total
Case manager error	23 (51%)
Issues with payroll and systems	14 (31%)
Case manager absence and new staff	8 (18%)
Total	45 (100%)

The below case studies demonstrate the difficulties the injured worker faces due to absence of a case manager or an error in the payroll system.

Case study 4 - Administrative error, insurer case manager absence/resignation

Over a 15-month period, an injured worker raised four complaints with the IRO about a delay in payment of his weekly benefits. With IRO intervention, the insurer was able to arrange payments and special pay runs, however, the repeated missed payments resulted in a significant financial impact on the injured worker and his family.

The injured worker initially contacted IRO in January 2020 as he had not received payments since December 2019. The reason provided for non-payment was the insurer

had not been provided with a copy of the injured worker's Certificate of Capacity and a recent payslip.

The injured worker contacted the IRO again in June 2020 as he had not received his payment despite providing the requested documentation to the insurer. When contacted by IRO, the insurer acknowledged there had been a delay and that this was unintentional and was missed in the absence of the case manager.

The injured worker made a further complaint to the IRO in July 2020 regarding a missing weekly payment and therefore would "miss out on paying my obligations for the fortnight". When the IRO again contacted the insurer, they advised that the failure to pay was due to human error following resignation of his usual case manager. A special pay run was arranged to ensure that the injured worker would receive his payment. The injured worker was unhappy that the failure in payment had occurred again and expressed embarrassment having to constantly contact the IRO.

The injured worker contacted the IRO in April 2021 as he had again not received his fortnightly payment. The injured worker stated that he only had \$150 to spend over the weekend with his young son. Following enquiries by the IRO, the insurer confirmed that the case manager was on leave and that the case manager who should have completed the payment had a technical issue and lost systems access which resulted in the payment being missed. The payment was made through a special pay run.

Administrative error – systems and payroll

Errors with systems and payroll made up 31 per cent of administrative error complaints. Examples of issues with payroll/systems include where incorrect hours, benefit start date, leave or pay rate is entered in the system.

Case study 5 below demonstrates that an insurer has exposed the injured worker to repeated errors in weekly payments over 20 months, which had resulted in financial, psychological and physical consequences for the worker. The repeated nature of the delays suggests the insurer has not adequately addressed the underlying issues with system and process failures which caused the delays.

Case Study 5 - Payment changed and delayed

An injured worker made 6 (six) complaints to IRO in relation to weekly payments that were changed and delayed across 2020 and 2021.

The worker first contacted the IRO in January 2020 to complain the insurer was deducting an overpayment without authorisation and the attempts to obtain information from the insurer had been unsuccessful. Following the IRO's assistance, the insurer clarified the payments had been paid two weeks in advance based on an agreed schedule.

The injured worker contacted the IRO again in June 2020 stating that following a disc replacement operation in May, and since the operation, the insurer had been asking for more paperwork and a subsequent weekly payment was missed. The insurer did not provide a reason for the delay and made an urgent payment.

In November 2020, the injured worker again contacted IRO advising that weekly payments had not been received. The injured worker stated:

"This isn't the first time my pay hasn't been processed properly. It's happening every few months. I don't earn enough to be able to have my pays disrupted."

The injured worker's wage payment was a day late. The insurer explained that the error was due to a system upgrade being undertaken. The insurer assured the IRO that the injured worker would be provided with future payments based on a schedule previously agreed with the worker.

In April 2021, the injured worker contacted the IRO again stating that the insurer had not provided the weekly payment. There was no reason provided by the insurer. The worker informed IRO: "I do speak with my team leader each time this has happened and I get told all different stuff and to be patient. That is easier said than done when suffering a massive injury and being on minimum wage." The payment was provided later that day and the complaint closed.

The injured worker contacted the IRO in July 2021 stating that the weekly payment had not been received and that she was experiencing financial hardship as she had to pay for medications following surgery the previous week. Inquiries by the IRO revealed that the delay was due to the insurer experiencing a 'system failure'. The insurer conceded that payments had not been issued on a regular day each week and apologised for the delay in payment and the undue hardship as a result of the late payment. The insurer assured the IRO that it would process the payments on an agreed date each week and to keep in regular contact with the injured worker to ensure payments are received in a timely manner.

Finally, in September 2021, the injured worker contacted the IRO again advising that a payment was once again not received and stating "I can't keep having this happen as my landlord can't keep waiting" and expressing that this had been an ongoing issue. Following inquiries by the IRO, the insurer confirmed that the delay in payment was due to a delayed peer review approval of the payment. The insurer again assured the IRO that payments would be processed and approved on time to prevent future delays.

9. Type of error

An analysis based on the 'type of error' categorised the complaints based on the type of error that occurred with the weekly payments.

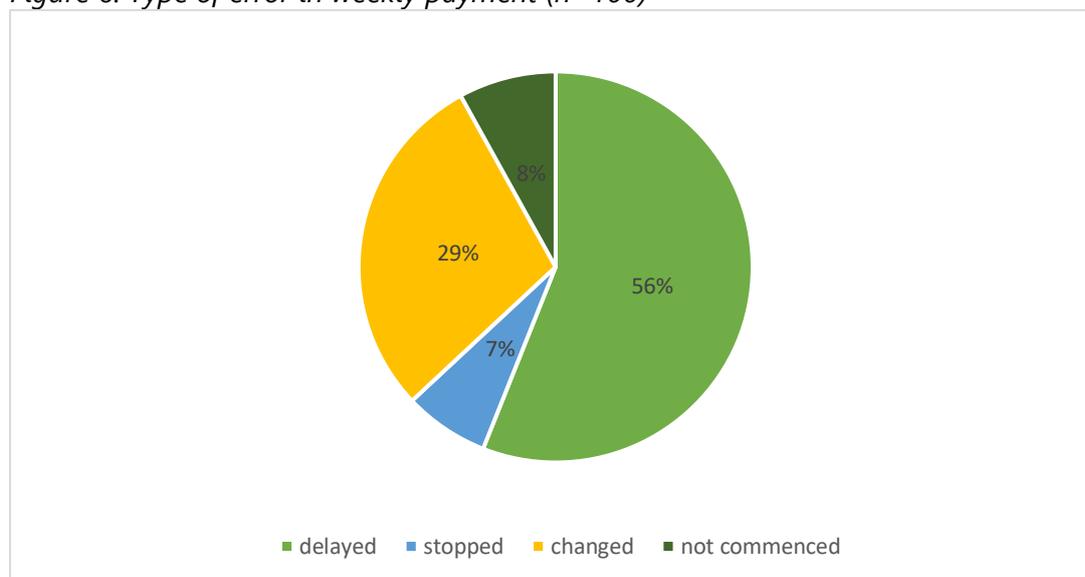
Weekly payments were:

- **delayed:** payments were missing

- **changed:** unexplained changes in the dollar amount of payments received by the injured worker, mostly underpayments
- **not commenced:** payments did not start
- **stopped:** payments stopped altogether

Figure 6 shows that out of the sample of 100 complaints that were analysed, more than half (56 per cent) of the complaints were due to a delay in payment. Twenty-nine per cent of complaints were due to payments amount being changed, 8 per cent of complaints were due to weekly payments not commencing and 7 per cent of complaints were due to payments stopping.

Figure 6: Type of error in weekly payment (n=100)



Of the complaints for which data for outstanding payments was available, the owed payments to injured workers ranged from \$74 to \$42,978.37. The median payment amount was \$4,700 and the length of time before a payment was corrected ranged from days to over six months in some instances.

Case study 6 – employer changed payment, employer not passing on correct payment and breach of section 235 Workplace Injury Management and Workers Compensation Act 1998

The injured worker's lawyer (representative) contacted the IRO advising that her client has been underpaid approximately \$5,000 by their employer since weekly payments started in August 2020. When contacted by IRO the employer alleged they had overpaid the worker and had been taking money out of his weekly benefits to recoup the alleged overpayment. The injured worker was not provided with any information by the employer regarding an alleged overpayment.

When contacted by IRO, the case manager at the insurer relied on a note made by a previous case manager that the employer "did not pay the worker the reduced amount after the 13-week stepdown and has now overpaid the worker, as a result, the employer

is not paying the worker their full entitlement to recoup the money". The representative advised IRO she had concerns about the accuracy of the PIAWE calculation and there was no PIAWE calculation notice.

After further investigations, the insurer acknowledged the total amount outstanding to the worker was \$5,550.61. The employer had been underpaying the worker for three months. The employer had \$426.97 deducted each week and the total amount outstanding to the worker was \$5,550.61. In this instance, the insurer took over the payments from the employer. The final payment was not received until May 2021, four months after the first underpayment.

This case study demonstrates the financial impact the worker faced due to the employer underpaying the worker. The cause of the error was an administrative error due to a change in the case manager. Due to the difficulty faced by the insurer and the worker in requesting the employer to correct the payment, the insurer had to take over the payment.

Case study 7 - Insurer delayed payment, administrative error, case manager oversight

The injured worker contacted the IRO in May 2021 and advised weekly payments from March 2021 to April 2021 were being paid to the employer in error. This meant the injured worker had not received payment for over a month and was experiencing financial hardship.

IRO was advised that despite the employer advising the insurer to pay the worker directly, as they were going through a restructure and wouldn't have access to the bank details on file, the insurer paid the employer directly for a month.

The insurer was waiting for the employer to return the money from the period March to April 2021 before paying the injured worker. The insurer contacted the employer on several occasions to follow up the recovery of weekly benefits. Ultimately, the insurer made payment directly to the injured worker for the period, totalling \$5846.12 gross. This payment was made almost two months after the payment was due.

This case study demonstrates the financial impact that a delay in payment had on the injured worker due to the administrative error the insurer made in paying the employer, against the employer's request, rather than paying the worker directly as requested by the employer. Once the issue was identified, the insurer did not want to pay the worker until it recovered money from the insurer, further disadvantaging the worker.

The below case study is an example of an underpayment of \$26,421.70 to the injured worker by the insurer due to weekly payments that ceased with no explanation provided to the worker.

Case study 8 – Insurer stopped payment, no reason

The injured worker contacted the IRO in March 2021 and advised they had not been paid weekly benefits since October 2020. The worker was injured in August 2020, the claim was provisionally accepted by the insurer and the payments stopped without explanation after 11 weeks, in October 2020, despite the worker still being unable to work.

After the IRO contacted the insurer, the insurer advised there was no reason why payments ceased. After further prompting by IRO, the insurer stated that 'unfortunately payments were overlooked since the last wage payment was processed'. The insurer had accepted full liability and made a back payment of weekly benefits totalling \$26,421.70. The insurer contacted the worker advising full acceptance of the error.

As evidenced by the case studies, the delay in payment can cause unnecessary stress and anxiety in the lives of an injured worker and their dependents. Where payments are changed without notice, this adds undue stress to an already difficult period for an injured worker as they are recovering from their injury. Case study 6 demonstrates the insurer's failure to comply with SIRA's Standard of Practice S23.1²² which requires that, 'where an insurer identifies an overpayment to a worker due to an error and wishes to seek recovery, the insurer is to advise the worker of the details of the payment(s) and clearly describe the error and the potential impact to the worker.'

10. Impact of Errors in payment

In 90 per cent of the complaints analysed, the workers identified a financial impact due to the error made. The data did not generally record evidence of other types of impacts but there were some examples of identified psychological and physical impacts noted as part of the complaint record.

Delays in the receipt of compensation funds can cause *claim-related stress* which in turn has a negative impact on recovery. Research suggests that higher levels of stress attributed to the claims process contribute to increased disability and poor psychological function or mental health of individuals who have a claim.²³

Below is an example of a complaint received by IRO where the worker experienced financial, psychological and physical impacts due to the error in weekly payments.

Case study 9 – Financial, psychological and physical impacts

The injured worker contacted the IRO on multiple occasions due to errors made by the employer and insurer since 2019 which had significant financial and psychological impact on the worker.

²² [SIRA Standards of Practice Standards of Practice Expectations for insurer claims administration and conduct 26 June 2020](#), page 40.

²³ Elbers et al 2016.

The injured worker first contacted IRO in October 2020 stating that they had not received a payment due in September. When IRO contacted the insurer, the insurer informed the IRO that the payments will be made in the next pay run.

The injured worker contacted the IRO in November 2020 distressed that the insurer advised that they had missed the pay run again and therefore would not receive a payment that week. The injured worker informed IRO they were "significantly financially distressed and requested an urgent payment".

IRO called the insurer advising them of the urgency of the situation and asked the insurer whether there was some sort of provision for them to make an (same day) urgent payment. The insurer advised that the pay could not be released prior to the next pay run, a week later. The insurer informed IRO that due to technical issues all payments were not released in the last payment cycle.

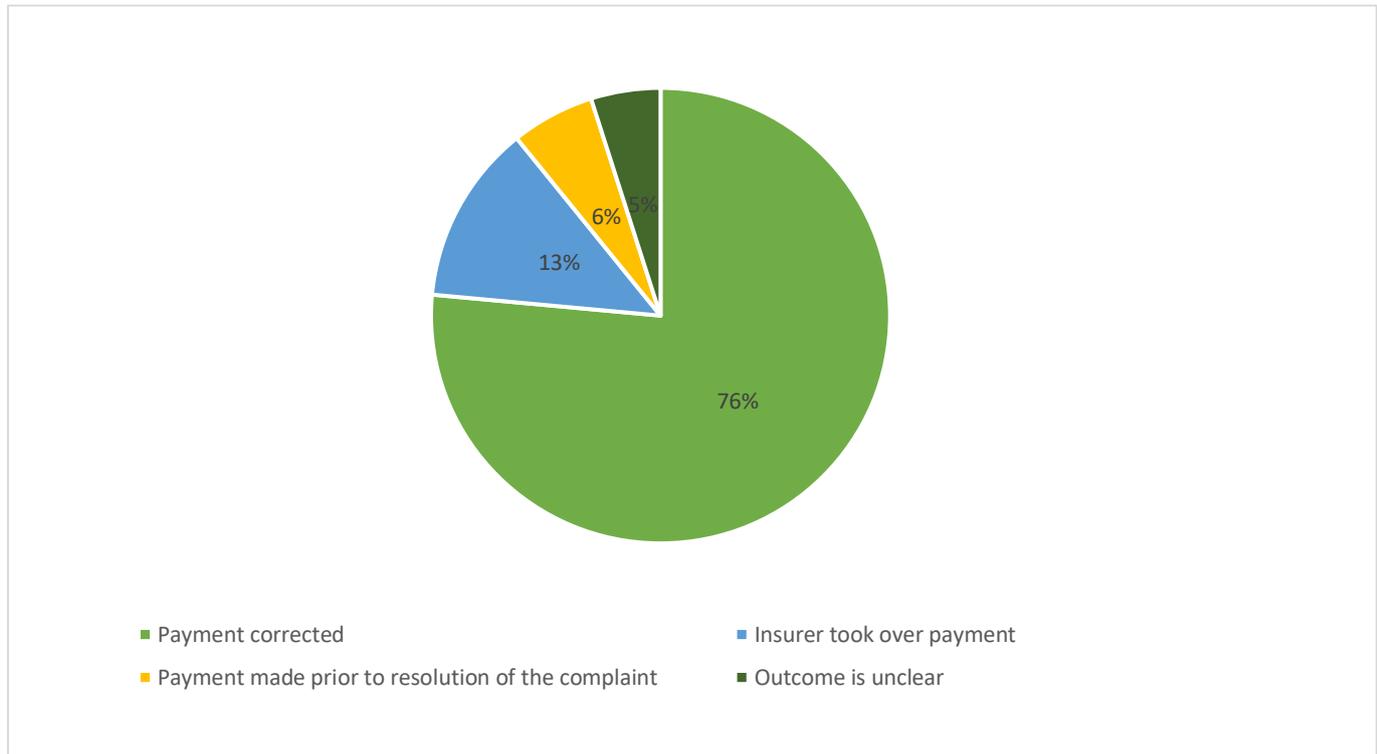
The delay in the weekly payment impacted the injured worker's Centrelink payments and concession entitlements, which in turn impacted their ability to afford insulin medication. The outstanding payments were released the next week.

In addition to error in weekly payment complaints, the injured worker also made several other complaints relating to delays in insurer reimbursement of medicals and travel due to a change in claims management, in January, June and September 2021.

11. Outcome of the complaints

As noted in Figure 7, in most instances where there was an error, 76 per cent of complaints, the payment was corrected by the employer. The insurer took over the payments in 13 per cent of complaints, the payment by the employer or insurer was made prior to a resolution by IRO in 6 per cent of complaints and in 5 per cent of complaints the outcome was unclear.

Figure 7: Outcome of the 100 complaints due to an error in weekly payments (n= 100)



The case study below provides an example where there were multiple errors impacting the same worker over a number of months, increasing the adverse financial and other impacts on the worker. On each occasion, a failure of the insurer to immediately resolve the issue resulted in the worker contacting the IRO for intervention.

Case Study 10 – Employer error where the payment was corrected and the insurer did not take over payment

The injured worker contacted the IRO in May 2021 ‘distressed’ stating they were owed weekly payments from March to April 2021. The insurer had issued the payment to the employer, but the worker had not received it. The injured worker had been trying to contact the employer to have these funds paid for over a month without any success. The injured worker was experiencing financial hardship as a result, as weekly benefits were the only income the family received and the delay in receiving payment had meant that they “weren’t able to feed children or animals last night.”

IRO inquiries established the cause of the delay as 'a payroll issue resulting in all workers compensation employees wages being delayed' and the insurer advised it was an isolated incident that should not occur again.

The injured worker complained to the IRO again in December 2021 in relation to an unexplained delay in weekly payment by the employer. The injured worker informed the IRO that she had been chasing weekly entitlements payments and incurred a dishonour fee as a result of the delay. She said it was also especially stressful due to it being around Christmas.

Following IRO inquiries, the insurer advised there appeared to be some confusion with weekly benefits within the employer's business and unfortunately the worker's payment was missed. The employer then contacted the injured worker regarding the issue in December 2021 and confirmed that an off-cycle payment would be processed. The insurer also agreed to review any fees incurred by the worker for late payments.

The injured worker also contacted the IRO again in January 2022 stating that the insurer had agreed to pay weekly benefits every Tuesday. The injured worker advised that they had not received the current week's entitlement or a response from the insurer. The injured worker pointed out that this was the fourth time they had been left without funds while injured and could not afford for this to continue.

IRO inquiries resulted in the worker's payment being urgently made. The cause appeared to be an administrative error – a failure of the employer to authorise a payment to the worker after the insurer has provided the funds to the employer.

Employer error and insurer requested to take over payments

Where complaints were identified as being caused by the employer not passing on payment to the injured worker (n= 37), the insurer took over weekly payments in less than a quarter of matters (n=8, 22 per cent). This suggests a reluctance by insurers to take on weekly payments.

One explanation is that insurers and employers may prefer that, where possible, employers continue to make payments as they already have a relationship with the injured worker and the worker is already set up in their payroll system.

Case study 11 – Employer error where the insurer takes over payment

The injured worker's lawyer contacted the IRO in December 2020 stating that the employer had significantly delayed weekly payments and wrongly deducted leave whilst the injured worker was recovering from the injury. The injured worker approached the insurer requesting that they be paid directly as they "had no confidence the employer would do the correct thing".

The insurer advised that, as the worker was still employed with the relevant department, it was "best to continue to allow them to pay wages as they would ensure superannuation and other entitlements are processed".

After the complaint was raised, the insurer followed up with the employer's payroll to facilitate payment of the outstanding weekly benefits and then agreed to take over future payments.

12. Discussion – Possible opportunities to reduce complaints & errors

12.1 Errors in weekly payments – a systemic issue

A systemic issue is an issue that may affect more than one person, and examples include where there are many complaints that are similar in nature or an issue that affects more than one insurer.²⁴

The IRO's assessment is that the issue of errors in paying injured workers their weekly compensation payments is a systemic issue, for reasons including that:

- in 2020/21, there were 711 complaints about errors in weekly payments. This represents 9 per cent of total complaints (8,065) received by IRO from injured workers in 2020/21; and
- errors in weekly payments to injured workers occur across all insurer types.

This assessment considers the number of claims where weekly payments are made. For example, in January 2022, 37,901 workers received almost \$140 million in weekly payments.²⁵

Worker complaints to IRO about errors in weekly payments therefore represent only a small proportion of all payments made. The IRO's experience, however, is that errors may arise where a worker does not make a complaint, or the insurer is able to remedy the matter without any assistance from the IRO. For example, case studies 5, 9 and 10 are matters where systems issues impacted workers in addition to the worker who complained to the IRO.

Errors in weekly payments raise issues of fairness and effectiveness in the worker compensation scheme. Claim related stress, caused by payment errors, can negatively impact on both an individual's recovery and return to work objectives of the scheme.

The financial impact on the injured worker and their family can be significant. Examples from complaints handled by the IRO include workers potentially being exposed to loss of housing, inability to afford medications and being unable to meet regular payments, potentially impacting on credit ratings. Worker comments included that they could not afford to be paid irregularly, and they were embarrassed at having to repeatedly raise payment issues.

The purpose of this Discussion Paper (see report overview) is to help to ensure these issues are more effectively dealt with, minimise further complaints about the issue and ultimately promote improvements to industry (including insurer) practice.

²⁴ Adapted definition from paragraph 198 *Regulatory Guide 267: Oversight of the Australian Financial Complaints Authority*, Australian Securities and Investments Commission, September 2021.

²⁵ [Weekly benefits data - SIRA \(nsw.gov.au\)](https://www.sira.nsw.gov.au/weekly-benefits-data).

The following discussion points are intended to promote discussion and assist stakeholders to identify these opportunities for improvement.

- 1. What data do system participants have about errors in weekly payments? How is the information captured? Are there gaps in information that would assist in assessing the scale and impact of this systemic issue?**

12.2 Employer Errors

Errors when employers make payments include circumstances where employers do not pass on payments or make administrative errors resulting in a failure to pay legal entitlements.

The common error types were either a delayed payment with injured workers payments missing (22 complaints) or unexplained changes in the dollar amount of payments received by the injured worker (21 complaints).

Based on IRO's analysis of 50 employer error complaints, there were 36 (72 per cent) complaints that related to the employer not passing on the payment or the correct payment. In some instances, it was clear that the employer did not understand their obligations, but in others the employers did not seem willing to comply with their obligations. This was despite active management from insurers in some instances.

There were also examples of administrative errors by the employer, including communication and system and process errors.

Education and support

One response may be to provide greater education and support to employers so that they understand and are following through with their obligations. Insurers have an obligation to support employers and their workers during the recovery process and to manage the claim to ensure entitlements are received. For example, icare advised that they currently have initiatives to increase employer understanding of their obligations, including an icare employment engagement team and mobile engagement team.²⁶ Understanding the impact of these initiatives and how they can be further developed may be important.

There may also be a need for more targeted support for smaller employers that have less experience with workers compensation claims processes, to understand their obligations.

- 2. How do insurers currently assist employers in meeting Workers Compensation obligations, especially as regards the payment of weekly benefits? How can this assistance be improved?**
- 3. What arrangements currently exists to provide tailored support for employers who may not often have Workers Compensation claims? What training or additional support could be provided?**

²⁶ icare response to the IRO Operational Query, 5 November 2021.

Communication between employers & injured workers

Employers pay the majority (approximately 90 per cent) of weekly payments to injured workers, leveraging existing payroll processes. This means that when there is an error, the injured worker needs to communicate with their employer.

The outcome for the majority of the complaints examined by the IRO was the employer correcting the payment error. Insurers only took over payments from employers in the minority of cases, where the employer continued to make errors.

There are a number of issues that flow from this:

- a number of cases suggest that employer payroll processing issues can impact a number of workers receiving weekly payments of compensation (e.g., case studies 9 and 10), but workers have not been proactively contacted about these, and information and assistance offered
- where errors do occur, employers may not be sufficiently responsive in solving matters, and may be unaware that late payments can substantially impact workers
- where the worker is not in the workplace and the relationship has broken down, they generally need to follow up an employer error with the insurer and they are then dependent upon the insurer to progress enquiries with the employer.

4. How effective are communications between injured workers and employers about weekly payments? Are there any actions that insurers and employers can take to improve the communication channels, in particular where there are known issues that may impact compensation payments?

Addressing education and communications issues may be some of the responses to reduce employer errors in making weekly payments to injured workers. However, there may be other steps that can be taken to reduce the occurrence and impact of errors.

5. What other opportunities for improvement exist to reduce, or eliminate, errors by employers in making weekly payments?

12.3 Insurer Errors

Given their limited role in administering weekly payments to injured workers (insurers pay approximately 10 per cent of weekly payment claims²⁷), insurers are overrepresented in IRO complaints for payment and administrative errors.

Administrative practices

Administrative errors account for 76 per cent of insurer errors analysed as part of the sample. The analysis of the data and case studies highlights gaps in an insurer's administrative practices. This aligns with the findings of various other reports and submissions about issues

²⁷ icare response to IRO request for information, 5 November 2021.

with case management by insurers, including claims of lack of contact from case managers, inconsistent approaches, errors and excessive turnover in staff.²⁸

Insurer administrative practices, including errors caused by case manager oversight and payroll or ICT system issues, are impacting on whether an injured worker gets paid the right amount in a timely way. In addition, there were eight complaints, from a sample of 50, where an insurer case manager absence or change was attributed to be the cause of a delayed payment to an injured worker. Several of these examples related to repeated delays. Where an individual case manager was away or left the insurer, there appeared to be ineffective internal processes to arrange or authorise payments. The case studies may highlight instances demonstrating a lack of internal controls to avoid these events resulting in late payments.

- 6. What are the current processes and procedures insurers use to ensure that weekly payments are accurate and timely? Are there any common issues in making payments? What steps can be taken to improve the accuracy and timeliness of payments?**
- 7. What procedures do insurers have in place to ensure continuity in case management, in particular where case managers change, are on leave or depart? What are the opportunities to improve these processes?**

Communication

Communication is key to ensuring an injured worker receives ongoing and timely support, and the employer is informed of and meeting their ongoing obligations and responsibilities. Where the insurer is making weekly payments Standard 8 of SIRA Standards of Practice requires the insurer to consult with the employer and advise the injured worker and employer once payments have commenced.²⁹

A common theme from the complaints analysed was a lack of communication from the insurer to injured workers regarding their payment, including when it was commencing, stopping or changing. An explanation and remediation were only provided after complaining and through intervention by the IRO. There were complaints relating to self-insurers where there was breakdown in communication between different parts of the same business, workers compensation manager and the payroll area of the organisation.

Another area for errors was where the injured worker stopped working at the employer. There was sometimes confusion and delay in the insurer taking over payment from the employer. There appeared to be a lack of clear communication between the employer and the insurer, which resulted in adverse impacts for the injured worker.

²⁸ Robert McDougall QC, [icare and State Insurance and Care Governance Act 2015 Independent Review, 30 April 2021](#), page 40 and Janet Dore, [Independent reviewer report on the Nominal Insurer of NSW workers compensation scheme, December 2019](#), section 4.8, page 28.

²⁹ [Standard 8 insurer making weekly payments](#).

The Dore Report³⁰ noted that the single most common issue raised in the review was communication. This issue was also reflected in observations from the McDougall review.³¹ Changes and delays in payment without adequate explanation result in claim stress, which is detrimental for the worker and the scheme.

- 8. What are the insurer procedures and processes that promote timely and relevant provision of information to workers about weekly payments, in particular where payments are delayed or changed? Where do issues most commonly arise in these communications, and how can these be most effectively addressed?**
- 9. What are the processes within insurers for managing a change in responsibility for making weekly payments from an employer to an insurer, and communicating these changes to the worker? What opportunities are there to improve these processes and communications?**

Addressing administrative processes and communications issues may be some of the responses to reduce insurer errors in making weekly payments to injured workers. However, there may be other steps that can be taken to reduce the occurrence and impact of errors.

- 10. What other opportunities for improvement exist to reduce, or eliminate, errors by insurers in making weekly payments?**

12.4 Common issues – insurers and employers

Systems upgrades

A common issue – identified in a number of matters – was the impact of systems upgrades on the timeliness of worker payments. Examples include where a payroll issue results in all workers compensation employees' wages being delayed, technical issues resulting in all payments not being released and errors due to a system upgrade being undertaken.

Electronic payments systems are complex, and upgrades are necessary and in large organisations, not infrequent. However, our review suggests that more can be done to prevent defects in system upgrade processes that result in workers not being paid, which in our view would be an unacceptable risk.

- 11. What are the causes of errors that occur during systems upgrades (e.g., inadequate testing, assumption of risk) that may result in injured workers' compensation payments being delayed or missed? What steps can be taken to reduce these errors?**

²⁷ Janet Dore, [Independent reviewer report on the Nominal Insurer of NSW workers compensation scheme, December 2019](#) section 4.8.

³¹ Robert McDougall QC, [icare and State Insurance and Care Governance Act 2015 Independent Review Report 30 April 2021](#), section 8.3, page 51.

12.5 Resolving error in weekly payment concerns

The analysis highlights what appears to be a lack of urgency in solving errors in weekly payment matters on the part of both employers and insurers which may have a significant financial, psychological and physical impact on the injured worker.

In raising this issue, it is important to acknowledge the efforts of insurers, when responding to IRO complaints, to find quick solutions.

A better outcome, however, would be that these matters, if they arise, are fixed the first time by the insurer or employer, and without the need for the worker to complain to the IRO. In this context, it's important to acknowledge that, for any number of reasons, a worker might not complain to or escalate their complaint to the IRO. This could include matters such as their age, cultural and linguistic background, literacy skills or simply because they are frustrated that their complaint to the insurer has not made a difference and they don't think complaining to the IRO will help.

There were several examples in the complaints analysed where injured workers were left without payment for months at a time or failed to receive significant sums through non-payment. In one case, an injured worker was owed seven months' worth of weekly benefits by the insurer totalling over \$42,000. In another example, the employer provided reduced payments over a period of four months to 'recoup money', resulting in an underpayment of over \$5,500. There were also several examples where multiple errors occurred over time, indicating that the cause of the error was not resolved.

In a large and complex system such as the NSW workers compensation system, it is understandable that mistakes occur. When this happens, what is critical is that there are processes in place to quickly remediate payment errors.

However, our review of cases in this Discussion Paper indicates that at times, the default is to leave the underpayment to be addressed through the next pay run. In other matters, insurers did not compensate workers until employers repaid funds, resulting in further delays and disadvantage.

There may be opportunity to clarify standards around claims management or errors in weekly payments, including the expectation that errors are remediated as soon as possible to minimise the impact on injured workers.

12. What arrangements are currently in place to deal with errors in weekly payments when they arise? What are the timeframes for resolving such matters and implementing outcomes? What are the opportunities to improve these arrangements and reduce worker detriment? Where workers raise issues of financial hardship or other impacts, how can insurers fast-track decision-making and remediation?

12.6 Regulatory arrangements for the payment of weekly benefits

Workers compensation laws, regulations and practices provide comprehensive arrangements for weekly payments, reflecting the importance of these payments for the wellbeing of injured workers.

There may be opportunities to improve these arrangements, for example:

- to make more explicit the responsibility and role of the insurer in ensuring employers make correct weekly payments, and remedying errors in weekly payments where the employer is making payments to the worker
- to require insurers to promptly report employers to SIRA where they fail to meet weekly payment obligations to workers
- to provide clear timelines for the remediation of payment errors
- to be explicit about the timeliness of payments generally, regardless of whether the employers or insurer is making the payments.

IRO also notes that, since July 2021, information about complaints that raise significant issues, such as those that demonstrate a risk of substantial financial harm to an injured person, are notified to SIRA. This provides an opportunity for a regulatory response to these complaints to address both insurer and employer conduct, in addition to the IRO solving the complaint with the insurer.

13. What improvements could be made to the Workers Compensation Guidelines, Standards of Practice or other instruments to improve the regulatory framework for weekly payments?

14. What additional steps can SIRA take to promote accurate and timely payment of weekly compensation?

13. List of questions

1. What data do system participants have about errors in weekly payments? How is the information captured? Are there gaps in information that would assist in assessing the scale and impact of this systemic issue?
2. How do insurers currently assist employers in meeting Workers Compensation obligations, especially as regards the payment of weekly benefits? How can this assistance be improved?
3. What arrangements currently exist to provide tailored support for employers who may not often have Workers Compensation claims? What training or additional support could be provided?
4. How effective are communications between injured workers and employers about weekly payments? Are there any actions that insurers and employers can take to improve the communication channels, in particular, where there are known issues that may impact compensation payments?
5. What other opportunities for improvement exist to reduce, or eliminate, errors by employers in making weekly payments?
6. What are the current processes and procedures insurers use to ensure that weekly payments are accurate and timely? Are there any common issues in making payments? What steps can be taken to improve the accuracy and timeliness of payments?
7. What procedures do insurers have in place to ensure continuity in case management, in particular where case managers change, are on leave or depart? What are the opportunities to improve these processes?
8. What are the insurer procedures and processes that promote timely and relevant provision of information to workers about weekly payments, in particular, where payments are delayed or changed? Where do issues most commonly arise in these communications, and how can these be most effectively addressed?
9. What are the processes within insurers for managing a change in responsibility for making weekly payments from an employer to an insurer, and communicating these changes to the worker? What opportunities are there to improve these processes and communications?
10. What other opportunities for improvement exist to reduce, or eliminate, errors by insurers in making weekly payments?
11. What are the causes of errors that occur during systems upgrades (e.g. inadequate testing, assumption of risk) that may result in injured workers' compensation payments being delayed or missed? What steps can be taken to reduce these errors?
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13. What improvements could be made to the Workers Compensation Guidelines, Standards of Practice or other instruments to improve the regulatory framework for weekly payments?
14. What other regulatory measures could be taken to promote accurate and timely payment of weekly compensation?