



The Section 39 Experience

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16 May 2018



Section 39 cessation of weekly payments after 5 years

- (1) **Despite any other provision of [this Division](#)**, a worker has **no entitlement to weekly payments** of compensation... after an aggregate period of **260 weeks**.
- (2) This section **does not apply** to an injured worker whose injury results in permanent impairment ... more than **20%**.
- (3) **For the purposes of this section**, the degree of permanent impairment that results from an injury is to **be assessed as provided by [section 65](#)**



Section 39 dissected

This Division

- > Part 3 Compensation – Benefits, Division 2 – weekly compensation by way of income support. Comprises sections 32A – 58

260 Weeks

- > 260 weeks is less than 5 calendar years

Assessed as provided by section 65

- > Degree of permanent impairment to be assessed Part 7 (Medical Assessment), Chapter 7 of the 1998 Act.
- > If there is a dispute about the degree of permanent impairment of an injured worker, the Commission may not award permanent impairment compensation unless the degree of permanent impairment has been assessed by an approved medical

When does the count of weeks start?

WCA 1987, Schedule 6, Part 19H, Division 2, Clause 13

- > Earlier periods of incapacity not counted towards '5 year limit' on payments
- > Where **claim** made before 1 Oct 2012, count of weeks commences from **1 January 2013**
- > For all others, count of weeks commences from **first date of incapacity**

Earliest cessation of weekly payments under section 39

260 weeks from 1 October 2012

> 25 September 2017

260 weeks from 1 January 2013

> 26 December 2017

2016 Regulation, Schedule 8, Pt 2A, *Workers Compensation Regulation 2016*

Creates two classes of worker

- > Existing recipients
- > All others

Existing recipients

- > Can be deemed >20%WPI by insurer, or
- > 'NOT MMI' Medical Assessment Certificate

WIRO response to 2016 Regulation

- > Fast Track Grant Application form processed within 24 hrs
- > Paid legal advice to affected workers
- > 3 stage funding to test s39
- > Examination of WCC processes
- > Comprehensive **Section 39 Guide for Lawyers**
- > **Relationship with icare** to refer potential 'deeming' claimants for urgent attention
- > Referral of section 39 affected claimants to icare for 'deeming' before WCC proceedings

WIRO S39 Data

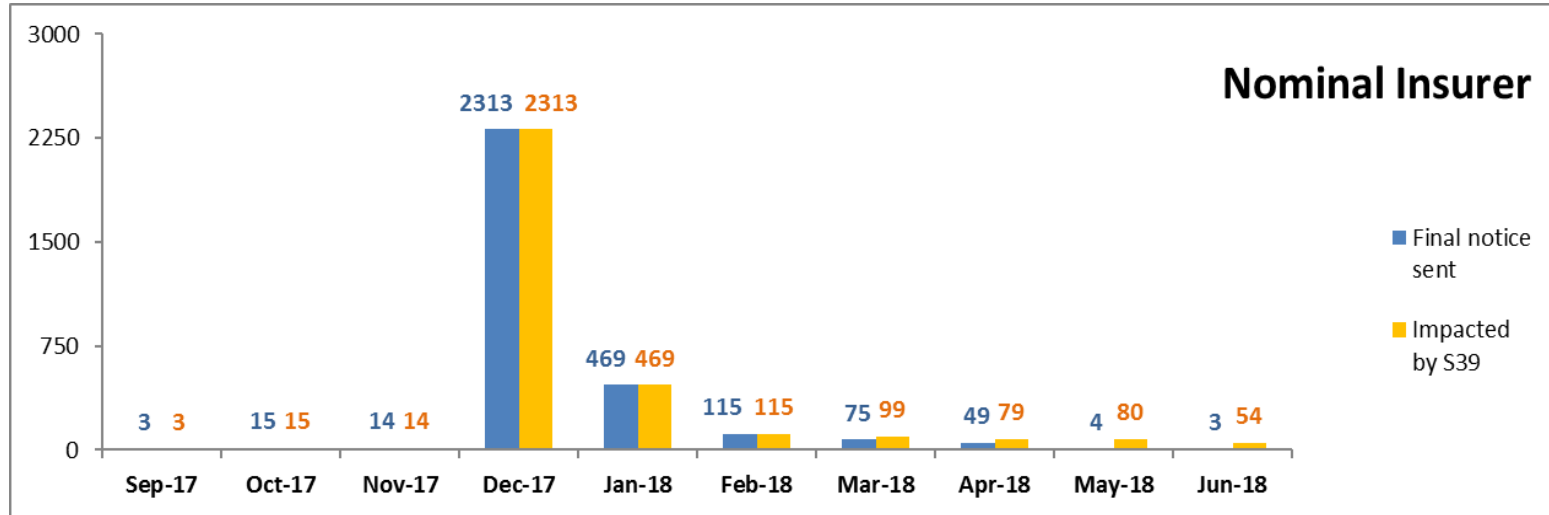
- > **Over 2,250** Applications for s39 Funding
- > **Over 140** claimants not sought paid legal advice
- > **Of finalised cases:**
31% Continuing on benefits
69% Not continuing

Applications by top 15 insurers

Allianz	677
QBE	468
EML	348
CGU	160
GIO	145
QBE TMF	135
Allianz TMF	94
EML TMF	67
Woolworths	32
Coles	20
Qantas	18
StateCover Mutual Ltd	13
Racing NSW Insurance Fund	10

icare data Nominal Insurer

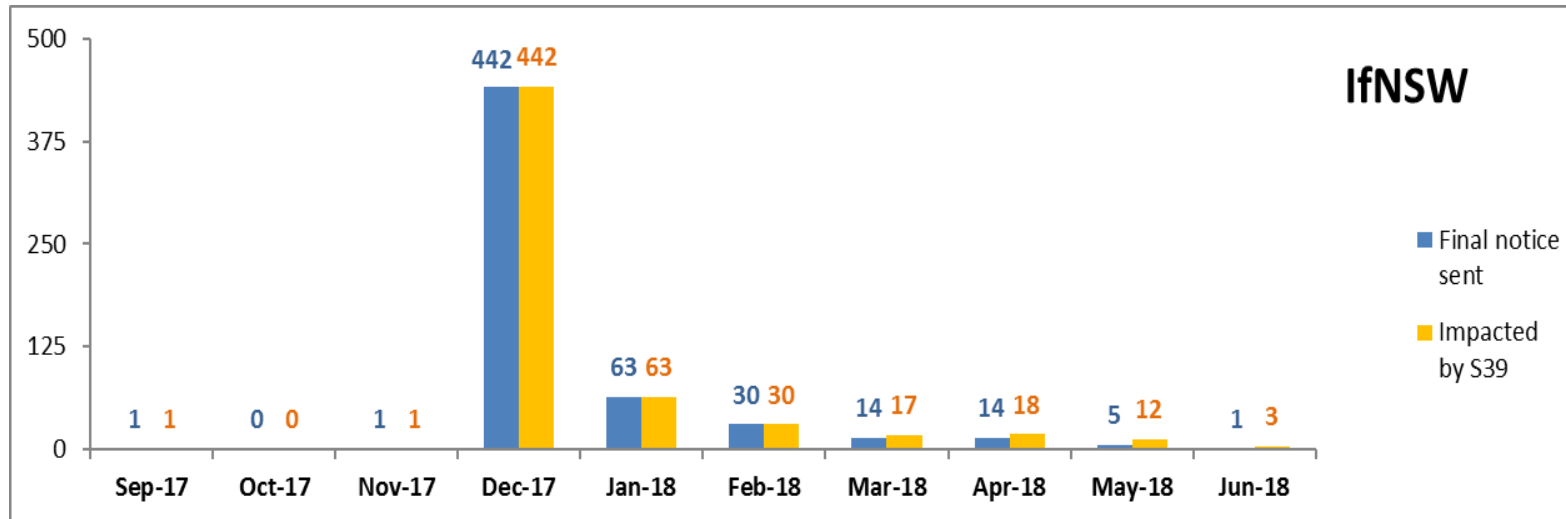
Workers no longer entitled to weekly benefits – to June 18



3,241 of 4,404 ceased benefits – 74%

icare data Treasury Managed Fund

Workers no longer entitled weekly benefits – to June 18



587 of 808 ceased benefits – 73%

Impact of disputes and extension of benefits

Outcomes

- > **376** disputes lodged in the WCC
- > **176** disputed WPI %
- > **200** Not MMI s319(g) applications [**122** confirmed not MMI – 54%]

Uncertainty

- > Timeframe for achieving MMI
- > Deeming after MMI reached?

Procedural pathway for 'Not MMI' workers

'Not MMI' may require lodgement of a further application



Assessed as not reached MMI by WCC



Relevant period of recovery or treatment



New IME assessment to determine MMI & WPI

If assessment >20% ongoing entitlement

No further action

If assessment <=20% cease entitlement

Potential for further dispute

Beyond June 2018 – impacted workers

	ALZ	EML	GIO	Grand Total
July 2018	29	21	25	75
August 2018	22	27	43	92
September 2018	26	17	35	78
October 2018	24	21	30	75
November 2018	40	15	43	98
December 2018	29	14	36	79
January 2019	37	14	44	95
February 2019	28	16	43	87
March 2019	29	14	34	77
April 2019	20	18	22	60
May 2019	29	19	46	94
June 2019	18	15	40	73
Grand Total	331	211	441	983

- > Anticipated **exits** will be > **74%**
- > New recipients require a MAC >20%
- > Surgery does not prevent application of s39



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