

SIRA

Submission to the Independent Review of SafeWork NSW

28 February 2023

Contents

Introduction	1
Regulatory arrangements between SIRA and SafeWork NSW	2
Workers compensation and return to work inspectors	3
Oversight of funding arrangements	7
Coordination of research and injury prevention strategy	9
Sharing data and insights	10

Introduction

SIRA welcomes the opportunity to make a submission to the Independent Review of SafeWork NSW carried out by the Hon. Robert McDougall KC.

SIRA was established in 2015 to steward and regulate NSW's statutory insurance and care schemes — workers compensation, motor accidents and the home building compensation insurance schemes. SIRA is a customer-centric, intelligence-led, risk-based regulator whose core purpose is to *ensure that NSW insurance schemes protect and support the people who need them, now and in the future.*

SIRA's role in the State's insurance and care schemes is to:

- ensure that access to compensation is balanced with affordability of insurance and the efficiency and viability of the schemes
- minimise the cost to the community of motor accident and work-related injuries, and the risks associated with the injuries
- ensure access to treatment that will assist in injured persons' recoveries
- lead the strategic development and effective oversight of NSW insurance and care schemes
- promote the effective management of claims and any disputes or complaints that may arise
- promote injury prevention, effective injury management and return to work measures and programs
- oversee and monitor compliance with legislation
- collect, analyse and publish data relating to performance
- advise the Minister on appropriate strategies, policies, and practices.

Last year, SIRA launched a new strategy that sets out a series of goals and strategic priorities to achieve by 2025. Maintaining a contemporary regulatory environment, putting the customer at the centre, and data and digital, are important elements of the strategy.

SIRA has made significant progress to date, holding regulated entities to account for outcomes, advancing transparency, and investing heavily in its regulatory intelligence, data, and analytics capability to ensure that SIRA can deliver optimal outcomes and impact.

This submission highlights some opportunities to leverage and build on the progress SIRA has made with the respect to its functions that relate to SafeWork NSW. These opportunities relate to how the return to work inspectors, oversight of funding arrangements, coordination of a research and injury prevention strategy, and data arrangements, could be amended to deliver optimal outcomes.

Regulatory arrangements between SIRA and SafeWork NSW

The *State Insurance Care and Governance Act 2015* brought about significant changes to the regulatory arrangements of workers compensation and workplace health and safety in NSW. The legislation abolished the former WorkCover Authority and split its functions into three new structurally separate organisations:

- SIRA as the regulator of compulsory insurance and care schemes
- icare became the insurance provider
- SafeWork NSW was established as the workplace health and safety regulator.

In its role as the workers compensation regulator and lead policy agency, SIRA ensures that desired public outcomes are achieved in relation to injured people, policy affordability and scheme sustainability in the insurance schemes that it regulates.

Operating as the workplace health and safety regulator, SafeWork NSW ensures compliance with the work, health and safety legislation, focusing on harm prevention and improving the safety culture in NSW to minimise the risk of injury and disease at work.

Given these mandates, SIRA and SafeWork NSW cooperate to deliver their respective functions.

For example:

- SIRA currently authorises SafeWork NSW to carry out some workers compensation and return-to-work inspector functions.
- All SafeWork NSW inspectors undertake a workers compensation policy check at every work, health and safety engagement.
- SafeWork NSW refers suspected workers compensation under-insurance or non-insurance to SIRA. Since July 2021, SafeWork has made over 304 referrals to SIRA allowing SIRA to recover more than \$500,000 as a result for referrals for under-insurance.
- SIRA funds SafeWork NSW through the Workers Compensation Operational Fund.
- SIRA provides SafeWork NSW with data to inform its prevention activities.

The Independent Review of icare and NSW State Insurance and Care Governance Act 2015 highlighted the importance of role clarity between SIRA, SafeWork NSW and icare. The Government sought to deal with the issues identified between SIRA and icare, through amendments proposed in the *State Insurance and Care Legislation Amendment Bill 2022*. The Bill proposed strengthening aspects of the workers compensation scheme, including better clarifying the respective roles and obligations of SIRA and icare. Given the different legislative bases of the workers compensation agencies, the Bill did not propose amendments to clarify the functions of SafeWork NSW. This review now provides an opportunity to further consider the need for additional clarity of agency roles.

Workers compensation and return to work inspectors

SafeWork NSW inspectors

In 2015, when the WorkCover Authority was abolished, SIRA authorised its workplace inspection function to SafeWork NSW.

Under this arrangement, SafeWork NSW inspectors act on SIRA's behalf to assess and enforce employer obligations under the workers compensation legislation. SIRA sets the priorities, strategies, and targets for this activity.

Most workers compensation-related activities in SafeWork NSW are performed by a specialist return to work team comprising of one manager and six inspectors. However, in practice, this team has a shared workplace health and safety and workers compensation focus.

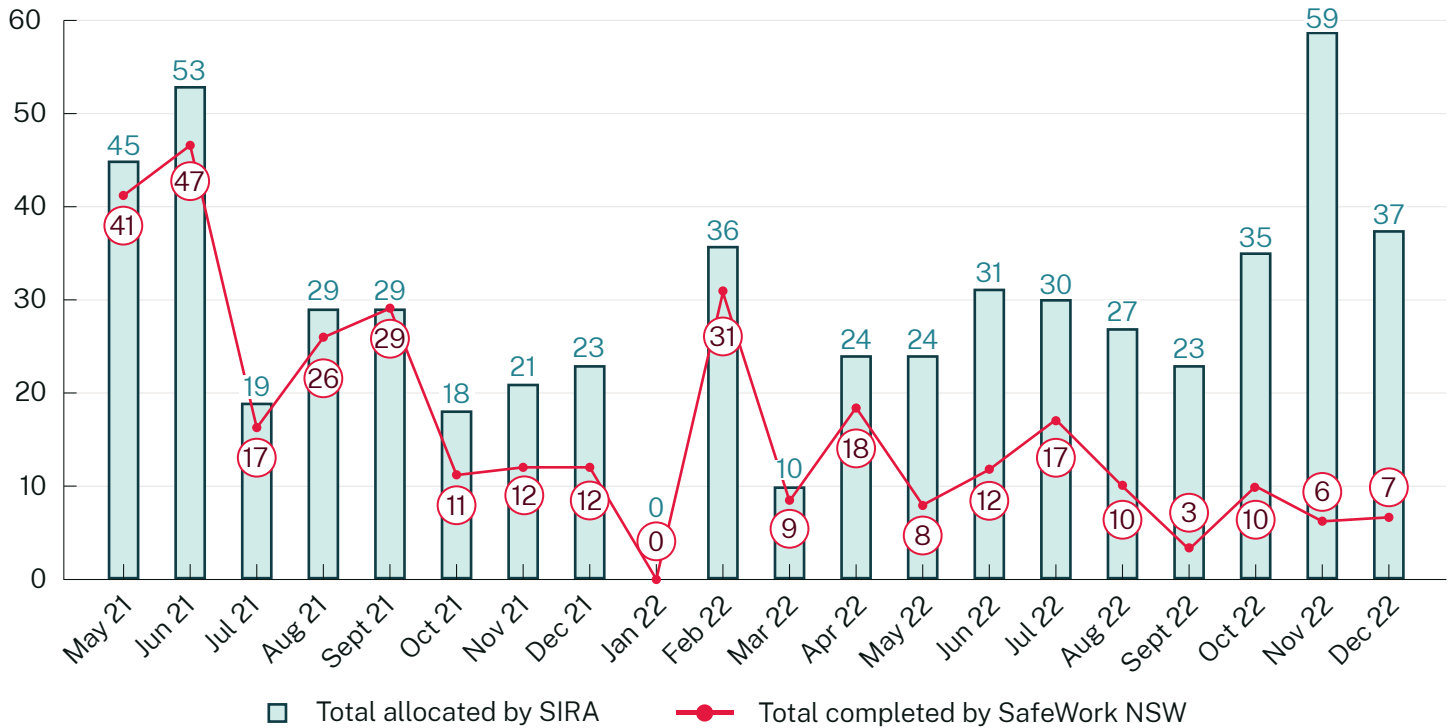
In addition to the specialist return to work team, all other SafeWork NSW inspectors can perform workers compensation policy checks, proactive employer engagements on return to work, and/or return to work system checks. In total, approximately 200 of the 370 inspector positions at SafeWork NSW assist with workers compensation and return to work matters.

SafeWork NSW inspectors respond to a mix of proactive and reactive engagements requested by SIRA.

With proactive engagements, SIRA uses its data to predict employers who have workers with a higher risk of a poor return to work outcome and allocates the engagement to SafeWork NSW. In May 2021, SIRA and SafeWork NSW agreed that SafeWork NSW would undertake at least 30 proactive engagements every month. These targets are not being met.

The number of proactive engagements SafeWork NSW has undertaken, compared to the number of matters allocated by SIRA, is below.

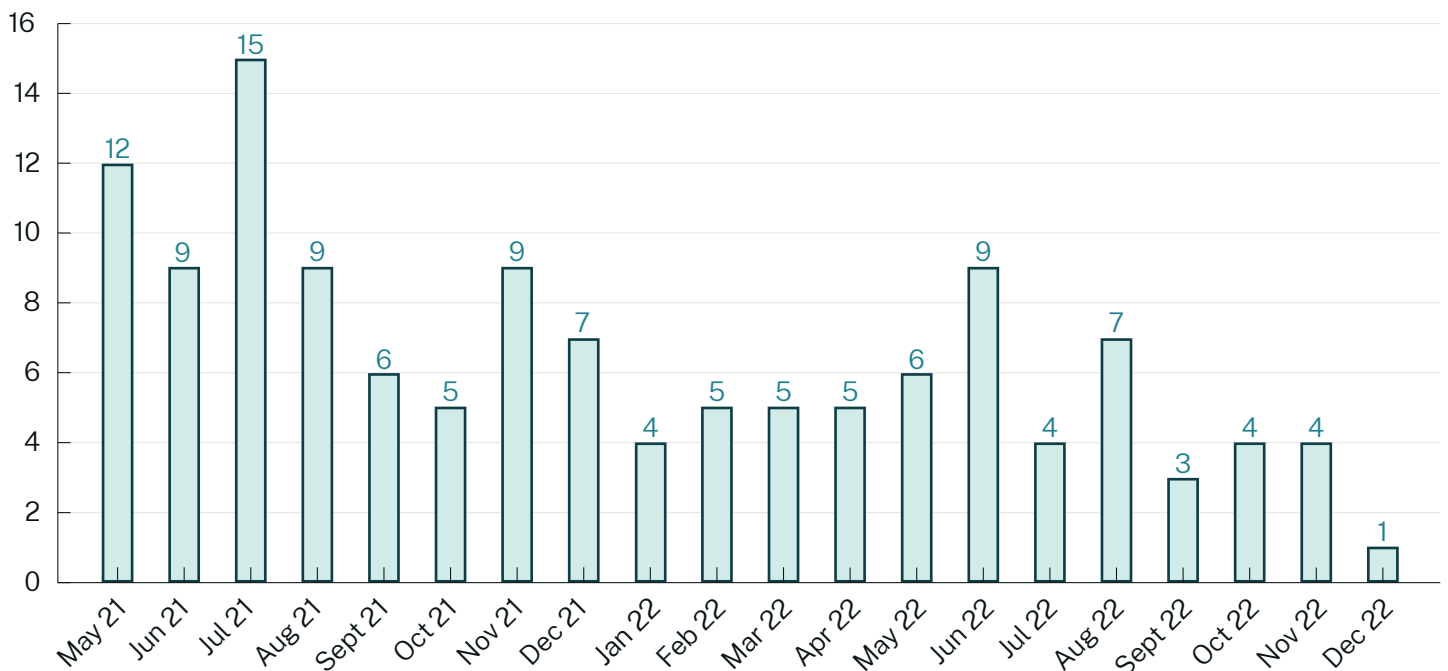
Figure 1: The number of proactive engagements SafeWork NSW has undertaken, compared to the number of matters allocated by SIRA



With reactive engagements, SIRA allocates a request for service to SafeWork NSW in response to a complaint. A complaint may relate to allegations such as employers not providing suitable employment or return to work coordinators negatively impacting return to work outcomes. SafeWork NSW automatically allocates these for an inspector response.

Figure 2 below shows the number of reactive engagements SafeWork NSW has undertaken in response to matters referred by SIRA.

Figure 2: The number of reactive engagements SafeWork NSW has undertaken in response to matters referred by SIRA



Over the last five years, SafeWork NSW has averaged 30 engagements each month (consisting of both proactive and reactive engagements). Of these engagements, 40 per cent occurred in metro areas, 12 per cent in shoulder areas, and 48 per cent in regional areas.

Establishing a SIRA inspector function

To increase the number of workers compensation and return to work inspections and strengthen employer supervision in NSW, SIRA established its own dedicated return to work inspector team in 2022.

SIRA inspectors has been focused on undertaking additional proactive and reactive engagements to improve recovery and return to work outcomes and employer compliance.

The team comprises of one manager and five inspectors. The team responds to specific issues and complaints or predictive data that identifies employers with

workers at risk of poorer return to work outcomes, using a range of regulatory tools to assess, build and enforce employer compliance. Unlike SafeWork NSW inspectors, this team has a singular focus on workers compensation, injury management and return to work matters.

Establishing a team of inspectors was one of 10 actions SIRA committed to as part of its [Return to Work Action Plan](#) aimed at addressing the factors that are contributing to poor return to work performance in the workers compensation scheme.

Functions of SIRA and SafeWork NSW inspectors

Generalist or other SafeWork NSW inspectors (non-return to work team)

- Primary focus is on workplace health and safety
- Undertake workers compensation policy check at every workplace health and safety engagement
- Variable levels of participation in proactive engagements
- Responsive engagements as needed (allocation of these engagements are based on location)
- State-wide coverage (metro and regional)

Specialist SafeWork NSW return to work inspectors (manager and six inspectors)

- Shared workplace health and safety and workers compensation focus
- Perform proactive employer engagements as allocated by SIRA
- Perform responsive employer engagements — generally allocated the more ‘complex’ return to work matters
- Provide technical advice and support to generalist inspectors on workers compensation and return to work matters
- Provide new inspector training as well as ongoing and refresher training on updates to workers compensation and return to work policy and procedures
- Metro-based

SIRA inspectors

- Singular focus on workers compensation and return to work
- Perform proactive employer engagements
- Perform responsive employer engagements — allocated the more ‘complex’ return to work matters
- Test new and emerging opportunities for employer compliance
- Provide technical advice and support to SafeWork NSW inspectors on workers compensation and return to work matters
- Provide new inspector training as well as ongoing and refresher training on updates to workers compensation and return to work policy and procedures
- Metro-based

In its first four months out in the field and with a smaller team, the SIRA inspectors performed almost double the number of return to work engagements as the already-established SafeWork NSW. The SIRA inspectors carried out 71 proactive and reactive engagements between 1 September 2022 and 31 December 2022, while SafeWork NSW conducted 38 engagements.

Table 1: The number of engagements carried out by SafeWork NSW and SIRA inspectors

1 September – 31 December 2022	SafeWork NSW inspectors	SIRA inspectors
Number of positions	<p>Return to work inspector team: Manager plus six</p> <p>Total inspectors: Approximately 200 of the 370 could actively use their workers compensation delegations</p>	Manager plus five
Number of employer engagements	38	71

Inspector arrangements moving forward

Given the outcomes the SIRA inspectors has had to date, SIRA plans to transition all workers compensation and return to work-related inspectors functions back in-house. SIRA will retain SafeWork NSW's authorisation, so that it can continue to undertake policy checks as part of routine workplace health and safety functions, continue to refer potential instances of under-insurance or non-insurance, and undertake employer compliance functions in regional areas if required. A review of the SIRA inspectors is scheduled for mid-2023.

Oversight of funding arrangements

SafeWork NSW is largely funded by contributions from the Workers Compensation Operational Fund (WCOF), as well as income received from licences, plant registrations, interest and fines they issue.

SIRA is the administrator of the WCOF, which is established under Division 1 of the *Workplace Injury Management and Workers Compensation Act 1998*. The legislation provides that SIRA uses the WCOF to cover the remuneration, allowances, office accommodation and other associated costs of SafeWork NSW.

Despite SIRA's role as administrator, the legislation provides no corresponding oversight over how funds are spent and whether it is delivering public value.

Currently to support SIRA's administration of the WCOF, SafeWork NSW provides an annual budget submission to SIRA (at a date to be determined in line with meeting the NSW Treasury timeframes each year) for the following budget year identifying the contribution required from the fund. The budget submission is reviewed and considered by the SIRA Board as part of the overall SIRA budget approval process each year.

The current legislation does not provide SIRA with sufficient levels of oversight to be able to determine if the steady increase in expenditure from the WCOF across agencies is delivering public value and appropriate outcomes. This gap in oversight from a legislative point of view impedes SIRA's ability to fully manage the WCOF, which has a potential flow on effect on premiums and the sustainability of the workers compensation scheme.

Ultimately, as part of future funding requests, it would be beneficial if SIRA could assess and validate how the funds are being spent. Greater oversight over the WCOF would ensure that this money is being used appropriately and efficiently.

The table on the next page summarises WCOF expenditure since 2015/16. It should be noted that the 2015 figures represent a transitional establishment phase and include WorkCover finances up until 31 August 2015 and then SIRA's finances from when it was established on 1 September 2015.

Table 2: Spend from the Workers Compensation Operational Fund (WCOF)

WCOF Funded Programs	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
SafeWork NSW	\$107.555m	\$112.105m	\$122.847m	\$132.904m	\$127.995m	\$128.892m	\$144.486m
SIRA	\$77.302m	\$72.364m	\$60.951m	\$59.136m	\$51.953m	\$53.303m	\$51.544m
Independent Review Office (Workers Compensation Independent Review Office to 28 February 2021)	\$4.898m	\$6.582m	\$7.343m	\$10.559m	\$10.967m	\$12.495m	\$13.277m
Independent Legal Assistance and Review Service	\$44.034m	\$49.864m	\$50.465m	\$57.313m	\$63.050m	\$73.613m	\$77.238m
Personal Injury Commission (Workers Compensation Commission to 28 February 2021)	\$21.828m	\$23.090m	\$26.283m	\$26.650m	\$25.285m	\$28.382m	\$26.720m
Total	\$255.617m	\$264.005m	\$267.889m	\$286.562m	\$279.250m	\$296.685m	\$313.265m

Coordination of research and injury prevention strategy

Currently, there are numerous parties that have an interest in, and undertake, research and injury prevention activities relating to workplace injuries. This includes SIRA, SafeWork NSW, icare and other parties.

In terms of legislative responsibilities, SIRA is the only agency to have an explicit responsibility around research. Under section 23(1)(a) of the *Workplace Injury Management and Workers Compensation Act 1998*, SIRA is “to initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers”. Similarly, the motor accidents legislation provides SIRA with functions to provide funding for safety education and measures for preventing or minimising injuries from motor accidents.

SIRA invests in a range of research activities, educational campaigns and programs directly aligned to current and emerging scheme needs. SIRA commits \$4.5 million from the WCOF (funded by workers compensation policies) and \$4.5 million from the Motor Accidents Operational Fund (funded by CTP Green Slips) to research and education each year. There is financial separation to ensure that workers compensation-related research is funded solely from the WCOF.

SafeWork NSW’s research program, established through the Centre for Work Health and Safety, supports the function of SafeWork NSW to prevent harm in the workplace. In 2021/22, SIRA allocated \$144 million to SafeWork NSW for its primary role of workplace health and safety. SafeWork NSW then allocates a portion of this to the Centre for Work Health and Safety to support its research into prevention of harm.

In 2021/22, icare spent almost \$5 million on grants to support research and initiatives that focus on prevention and care. In 2020/21, icare’s spend was more than \$12 million. icare’s spend on research is funded by employers through their insurance premiums.

While it is appropriate and commendable that these agencies are investing in research activities, there is an opportunity for greater value to be delivered from research and injury prevention strategies through a greater level of coordination and strategic oversight.

In 2021, SIRA engaged Professor [REDACTED] to carry out a comprehensive independent review of SIRA’s research program. The review confirmed that SIRA is funding research relevant to the sector’s challenges and it is having an impact, however there is an opportunity to adopt a more strategic approach to setting and identifying research priorities and facilitating opportunities for research collaboration and co-design across the sector. SIRA is now implementing its Research Strategy 2022-2025, with a view to establishing a sector-wide approach to research priorities.

In 2021, SIRA engaged Professor [REDACTED] to carry out a comprehensive independent review of SIRA’s research program. The review confirmed that SIRA is funding research relevant to the sector’s challenges and it is having an impact, however there is an opportunity to adopt a more strategic approach to setting and identifying research priorities and facilitating opportunities for research collaboration and co-design across the sector. SIRA is now implementing its Research Strategy 2022-2025, with a view to establishing a sector-wide approach to research priorities. This would ensure that the significant investment in research by various agencies occurs in a more joined-up way and that NSW receives maximum value from its investment.

Sharing data and insights

SIRA is the central point for workers compensation claim and payment data in NSW, holding rich datasets pertaining to claims, policies and employers.

SIRA shares its data with SafeWork NSW under a Memorandum of Understanding to help inform work health and safety prevention strategies. The data is collected by SIRA for its own regulatory functions, rather than specifically for a SafeWork NSW purpose.

Prior to 2022, SIRA analysed and peer reviewed the claims data it provided to SafeWork NSW. Over the past year, this arrangement has transitioned to providing SafeWork NSW with access to internal SIRA data tools and allowing them to undertake their own data analysis. This arrangement appears to be working well for both agencies.

SIRA is making a significant investment in its data and analytics capability, working on a new platform that will enable near real-time data collection on all claims by the end of 2024. The new platform will allow SIRA to identify and respond to scheme risks and potential non-compliance faster and better monitor the quality of customer experience.

Going forward, this rich data and insights on claim and injury trends will support SIRA in taking a more strategic approach in setting research and injury prevention priorities across the sector and evidence-led regulation at both SIRA and SafeWork NSW.

Level 14-15
231 Elizabeth Street
Sydney NSW 2000

Locked Bag 2906
Lisarow NSW 2252

T: 13 10 50
W: sira.nsw.gov.au

