

30 October 2020

The Review
Office of the Secretary
Department of Customer Service
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

By email: independentreviews@customerservice.nsw.gov.au

Dear Mr McDougall,

Submission: icare and State Insurance and Care Governance Act 2015 Independent Review

EML appreciate the opportunity to provide a submission to help form the recommendations of this review. EML is a personal injury claims management provider which has provided 110 years of continuous service to injured workers and employers in New South Wales. We were founded in 1910 by forward thinking individuals from a range of industries. They came together with a view to ensure that their workers were properly protected when injured. They formed an enduring partnership, a corporate mutual, to make a difference. We now operate nationally, servicing many organisations in the public and private sectors.

We help people get their lives back — that is our purpose. It is what drives our culture. The customer is at the heart of the decisions we make and we are constantly engaging with our most valuable asset, our people, to ensure that we can deliver the best possible service to members of the community—often at their greatest time of need. EML was the largest provider of workers compensation claims management in Australia before the 2018 New South Wales contract was awarded, and we remain so. We draw on 110 years of specialist experience and a three and a half thousand strong workforce, committed to providing return to life and work outcomes and improving work health and safety for the broader community.

EML has a continuing proven track record in exceptional performance in contracts such as Hospitality Employers Mutual, Woolworths and the Victorian WorkSafe scheme.

As a mutual, EML reinvests funds back into services and research initiatives to assist employers to create safer workplaces and to help their people return to work sooner after injury. We have allocated more than \$90 million in the last decade to projects to directly benefit employers and their workers. Through this investment, we have delivered a series of programs tailored to assist injured people to return to work. This includes post-traumatic stress disorder guidelines for emergency services, the WISE protocol, the NSW Police Force RECON program and Fire and Rescue NSW career transition. The latter is now in its fifth year. All of our projects are designed to help injured workers and their families or reduce the possibility of injury in the first instance.

While we have been engaged in New South Wales for 110 years, EML was engaged as the claims agent for ReturnToWork South Australia in 2006. That contract has been renewed or extended on five occasions. In 2016, as a result of our continued performance and services to stakeholders, we were selected by WorkSafe Victoria as an agent and commenced providing service to workers and employers in Victoria. EML has national contracts with iconic Australian brands to deliver self-insurance under the State-based schemes and also within the Comcare scheme. This also includes programs to assist employees to find future employment in the event that they can no longer undertake their current roles.

For 12 years we have also been in partnership with the hospitality industry in New South Wales—getting great outcomes for pubs, clubs and hotel workers and their employers. This year that strong relationship saw us work to mitigate some of the impacts of the COVID-19 crisis that resulted from the March shutdowns that significantly affected that industry.

Executive Summary

EML has worked to deliver the new claims operational model in the manner designed by icare. Since the appointment of the interim icare CEO and under his new team, EML and icare have enjoyed a more collaborative and consultative approach to addressing issues within the scheme. We have critically engaged in productive discussions with icare, in which a number of pathways to enhance optimal scheme performance have been considered. To that end, in Q3 of 2020 icare and EML have agreed to several progressive iterations to the operational structure with respect to additional resourcing, triage, and decision rights which we are confident will drive improved performance. Together, we share the view that these changes will improve the scheme and have a positive effect on return to work outcomes. EML looks forward to a productive year for the scheme in 2021 and continues to strive towards improved performance and outcomes for all scheme participants.

Additional Resourcing

EML has a track record as a leading claims manager in the industry – a track record which spans more than a century. EML achieves industry leading results, particularly in our highly successful specialised insurance company, Hospitality Employers Mutual. Our extensive experience in claims management has proven that the most critical component in ensuring successful return to work is enabling case managers to operate at appropriate case loads with the required support around them.

icare based approvals for EML resources on their claims volume forecasting model. EML have worked with icare to rectify their claims forecasts and gradually gain approval for the necessary resources, such that as of April 2020, adequate levels of staffing were reached to support the fulfillment of the objectives of the scheme. We have welcomed the icare approval of further resourcing and are confident that the scheme will continue to progressively benefit from increased performance across all critical metrics. We note that a number of newly on boarded staff are relatively inexperienced, given that they have only recently commenced employment with EML. We expect their skill and expertise will progressively increase, which will continue to be reflected in key performance indicators throughout the 2021 period.

Additional Changes to the Triage Model

It is important to invest in innovative and robust technology platforms to support the claims management processes, however the critical process of strategically managing each claim relies on people. It is critical to have the appropriate levels of experienced, and empowered case managers engaging with stakeholders early in the claim lifecycle. At the commencement of the new operational model, icare

developed a new triage system with a view that claims for injuries which had an anticipated time off work of up to six weeks (approximately 60% of injured workers) would engage with self-service opportunities, require minimal support and would not be allocated a case manager.

Since then, icare has refined the triage model. In September 2018, it was adjusted so that any claim with an expected time off work of four weeks or greater was allocated immediately to a case manager. This was a considerable improvement on the prior six week threshold. Twelve months later, the model was adjusted again, so that case managers were allocated to all claims where expected time off work was two weeks or more.

We support the progressive changes icare has implemented to the triage model since its inception, which have become more aligned to the approach that has historically demonstrated optimal outcomes across many schemes. Case management that focuses on early intervention and early collaborative consultation with workers, employers, and providers results in stronger scheme outcomes.

EML understands that further initiatives to improve the operation of the triage system continue to be considered by icare. We anticipate that these changes will serve to strengthen the Scheme and deliver a higher level of service and improved return to work outcomes to workers and employers through early intervention by case managers.

Additional Changes to Decision Rights on Individual Claims

Recently, icare and EML have agreed to transition a considerable portion of the claim decision making back to EML as the service provider. To achieve desired service levels and outcomes, EML supports the changes which allow the case management teams, who are closest to the worker and employer, to be empowered to make these decisions.

In 2018, the new claims agent model reconceptualised the contractual arrangement from one of a Scheme Agent to that of a single Service Provider. As a result, icare assumed responsibility for many claims management decisions that were previously the remit of the Scheme Agent. This model hasn't delivered the intended benefits, instead causing delays in decision making and disempowerment of claims managers.

Recently, icare has collaborated with Service Providers to amend the decision-making framework, giving Service Providers responsibility for these key decisions progressively throughout late 2020 and early 2021. EML sees this as an important step in the performance improvement journey. We are confident that these changes will empower case managers to provide a highly individualised service to injured workers and their employers throughout the journey of a claim.

Operations, including claims management, the claims agent model and incentive structures, return to work performance, and the service provided to injured workers

Claims Management

EML's proven best practice claims management processes ensure that the injured worker receives proper consideration as to their required support, necessary benefits, and effective treatment to assist in their recovery and timely return to work. To achieve the excellent return to work rates and reduce scheme liabilities, resulting in lower premiums and/or increased benefits to injured workers, investment in direct claims management resources is crucial.

Throughout the last 20 years, EML has adopted an approach of upfront investment in case management effort and capability. We have been known within the industry for investing in the development of people and investing more in resources than other industry participants. We believe this is the foundation of success in any workers compensation scheme.

We applied this approach when we assumed responsibility for the management of the Coal Services scheme in NSW. Within three years we reduced the breakeven premium from 11.4% of wages to 3.4% of wages as a direct result of this approach. We then applied this approach to our Hospitality Employers Mutual portfolio; in South Australia; for Woolworths and most recently in Victoria.

The key strategy we applied in each case was to invest in more people; to invest in the development of those people and to ensure the majority of those people were directly responsible for managing claims. The results in each of the schemes is consistent – a focus on investment in case management delivers significantly better outcomes in terms of return to work, the financial cost of the scheme and the satisfaction of the key stakeholders, being the injured workers and their employers.

In the transition to the new model and new technology platform in NSW many factors resulted in the investment in capability being less than what was required to achieve target results, and much less than required to deliver fundamental improvement. The performance of the scheme can, in our view, be attributed to the issues that led to under resourcing.

Claims agent model and incentive structures

In 2018, icare introduced a new claims operational model for the Nominal Insurer with the objective of improving the experience and outcomes of scheme participants. Under the new claims operational model, arrangement for the Nominal Insurer changed from a Scheme agent relationship to one of a Service Provider under the new contract issued on 1 January 2018.

Design of the NI Claims Operating Model

EML is an organisation that is driven by best case outcomes for injured workers and their employers throughout the entirety of a claim life cycle. We appreciate that Workers Compensation Schemes that have performed well nationally and internationally over time are those that deliver lower premiums, whilst providing for fair and reasonable benefits to claimants in structures that focus on early intervention through frontline claims management, as opposed to reducing claims handling expenses. In recent months, EML has successfully negotiated with icare to realign the new model by way of reintroducing a number of the key fundamentals that are proven to be crucial to successful claims experience and management outcomes.

Resourcing

Adequate and appropriate resourcing is critical to delivering optimal scheme outcomes and ensuring that injured workers and their employers are best supported throughout the claim process.

During 2018 and 2019, EML built up resources as new claims were forecast to be lodged in accordance with icare's active claim forecasting model. That forecasting model has proven to materially understate Active Claims, resulting in higher than expected caseloads. EML has been required to seek approval from icare for all resources above what was forecast, delaying the commencement of recruitment. The consequences of these high workloads were material - staff attrition increased and our ability to allocate adequate time to train staff was also adversely affected.

In 2020 claims forecasting was delegated to EML. Since then, icare and EML have worked collaboratively with icare, and by April 2020 EML had adequate frontline resources. We do however note that as a result

of employing large numbers of people in the last year, many staff members are relatively inexperienced. We expect that their expertise will progressively increase over the course of the next 12 months, which will continue to be reflected in key performance outcomes throughout the period.

IT Design

EML and icare have a shared focus on delivering innovative, customer-centric services and outcomes for workers and employers. The icare team sought to execute a vision of greater automation throughout the claim life cycle in the new operating model. We continue to support ongoing investment in improving critical IT infrastructure, which we believe is a crucial component in improving return to work outcomes. icare launched the NISP 2.1b technology platform which is utilised for all new claims from February 2019. From August there were very significant enhancements and systems upgrades being undertaken regularly to advance the capability and efficiency of the system. This heavy state of change necessitated ongoing systems training and process augmentation. During this period and continuing at present, EML claims management staff operate off dual systems with all claims from January 2018 to February 2019 being managed on EML's legacy claims management system and post February claims on icare's Guidewire system. Migrating all claims onto one system as initially intended will enhance efficiency and consolidate reporting.

Triage Model

EML has welcomed a series of changes to the triage model that were instituted by icare throughout the course of the 2018 and 2019 periods. In September of 2018, claims which receive a case manager changed from greater than 6 weeks expected time off work to 4 weeks. The following September, the expected period reduced from 4 weeks to 2 weeks.

At the commencement of the new operational model, icare developed a new triage system with a view that claims for injuries which had an anticipated time off work of up to six weeks (approximately 60% of injured workers) would engage with self-service opportunities, require minimal support and would not be allocated a case manager.

EML maintain the view that it is critical for frontline staff to liaise with the employer and the injured worker's treating professionals early in the claims lifecycle in order to achieve the optimal scheme outcomes of appropriate treatment and effective return to work.

Incentive Structures under the NI Claims Agent Model

We are pleased that over the last five months we have been able to work closely with key members of the icare Executive team to work towards an improved remuneration framework, which we believe enables EML and icare to work better together to deliver the required scheme outcomes.

The claims Service Provider model under which EML has been operating under since 2018 is predominately a cost plus arrangement, reflecting icare's control of resourcing, investment, triage, decision rights and IT. Due to the construct of this contract, incentives that have long been applied in NSW and other like jurisdictions form a far smaller component of the agreement.

It has been agreed that with increased resources and decision rights, the current remuneration framework of cost plus will be replaced by a traditional risk reward model from 1 January 2021. The new model will be similar to other contracts EML holds, as well as the contracting arrangements icare has with other service providers. The new framework will cover cost but have downside financial risk against service standards. EML will profit based on improvements in return to work rates and employer and worker satisfaction metrics, in accordance with the primary scheme outcomes.

Return to Work Performance

As noted previously in our submission, we believe that the foundation for success in any scheme is to properly invest upfront in both the number and capability of case management resources.

Where EML has operated as a scheme agent or claims services provider we have traditionally developed our cost models around a caseload of 40-50 claims on average. Experience in schemes across Australia has demonstrated that this caseload provides a reasonable balance between the financial constraints of the regulator, client, and the expectation of return to work. Return to work rates are directly proportional to the volume of claims management resources (and therefore, their caseload). Lower caseloads will ensure even stronger return to work outcomes, and higher caseloads result in worse outcomes.

In our own portfolio within Hospitality Employers Mutual, where we make all the investment decisions, we operate with caseloads of 40 claims per case manager and achieve a better return to work result than any other area of our operation and any scheme we are aware of nationally. The new operational model in NSW was developed around caseloads consistent with the traditional approach of 60-65 claims per case manager. It was envisioned that this target should have provided the base to at least maintain return to work performance and continually improve over time. Unfortunately, in the early stages of implementation of the new model, the forecast claim volumes was materialising at a higher rate than the initial projections. This resulted in case loads exceeding targets and, in our view, has been a significant contributor to the return to work performance in the scheme.

Challenges continued to be experienced in the modelling until late in 2019 when a new claims forecast model developed by EML was adopted and required resources were approved by icare on the basis of that model. The actual caseload throughout 2018 and 2019 exceeded target by a significant amount and at all times during that period, caseloads were above the benchmark we have used to support expected return to work performance.

By mid 2020, with agreement and approval from icare, we reached a point where case management resources are at a level that means caseloads are within target. We do however note that many of the case managers are inexperienced and we anticipate a gradual improvement in the overall skill and capability of the team throughout the 2021 period.

We are confident that these factors will deliver improved return to work performance across 2021.

Service Provided to Injured Workers

Many positive iterative changes have been made since the new icare claims model began in 2018. As demonstrated by current Net Promotor Score (NPS) results, injured workers and employers are more satisfied with the scheme today than they were in 2017. There is certainly more opportunity to improve customer satisfaction and we believe the framework to do so is now in place.

EML's philosophy is based on significant return to work activity at an early stage in the claim management process. We believe quick diagnosis, referral to the appropriate treatment and re-engagement with the workplace are critical components in a speedy and sustainable return to work.

The key characteristics of a Worker's Compensation Scheme that is successful is one where premiums are low, workers are returned to work quickly, and people impacted by disease and injury are promptly paid their entitlements under the scheme. From January 2018 through until April 2020, the high case loads, the claims model, new system launch, the lack of decision rights at the case manager level, and amount of administrative burden placed on the claims service providers has contributed to the Scheme not achieving its legislative purpose.

The new model put a significant focus on the experience of the injured worker. The majority of injured workers in a personal injury scheme are looking for assistance to navigate the system and support for treatment and return to work. EML are of the belief that the focus of the claims management model had shifted too far towards a general insurance model and away from what we believe are good principles of personal injury management; people led and supported by systems.

Delivery of the recommendations of the 2019 Compliance and Performance review of the Nominal Insurer (NI) ("The Dore Review")

EML welcomed the Dore review and its overarching objective of ensuring that optimal scheme outcomes are achieved for injured workers and employers. EML acknowledges that several issues raised in the review have had an adverse impact on overall Scheme performance. We continue to work closely with icare to discuss these concerns and proactively address operational issues within the Scheme.

Finding 1: SIRA should review definitions where it requires reporting of data in consultation with all stakeholders

EML welcomes the recommendation as to greater clarity and consistency in the definitions relied upon by SIRA and the Nominal Insurer. Whilst inconsistent data reporting serves to be a distraction for the Scheme, we note that generally EML does not interact with SIRA under this contract. Nevertheless, EML supports SIRA and icare adopting agreed definitions to enable the reporting on the Scheme to be consistent and transparent to all stakeholders.

As part of the negotiations for the 2021 contract period, icare and EML have agreed to incorporate Return to Work performance measures aligned to the SIRA return to work measure.

Finding 2: Regular meetings between Board Chairs, CE and CEO of SIRA and icare should be continued on an open and constructive basis to promote understanding between, and positive relations with, the two organisations in meeting their respective responsibilities.

EML supports this recommendation and its alignment with the principles of better regulation. EML see benefit in all parties having a constructive operational dialogue. Since the report was published, EML have extended and received invitations of this nature from and toward SIRA and icare.

Finding 4: Priority should be given to a training program for GPs by icare

EML supports a position that prioritises increased claims management resources as a primary response to best engage with GPs and injured workers. EML are of the view that optimal scheme outcomes are best achieved by way of ensuring that frontline claim management staff work closely with an injured worker and their GP directly with respect to their individual recovery and return to work plan. The effectiveness of this approach greatly increases when case loads are low.

Given our extensive experience in claims management, we appreciate that independent engagement in training with GPs can be a difficult exercise. As such, we recommend that training should be executed on a focused basis with GPs that regularly perform assessments on injured workers. We would also support the development of a system that could be made available to GPs who do not attend to many injured workers so as to provide tailored information with respect to operating within the Scheme.

Finding 6: icare should provide SIRA sufficient regular information to assure the regulator that premiums are calculated in compliance with the legislative requirements

EML continue to support the adherence to and enhancement of regulatory and legislative compliance throughout the Scheme.

Finding 9: icare should ensure its agreements with agents and service providers give adequate weighting to the primary goal of RTW

Return to work is the critical component in scheme performance. We anticipate from 2021 over 70% of EML's performance remuneration will be based on improvement in return to work outcomes, as opposed to the 25% of performance remuneration currently. EML welcomes an appropriate risk and reward remuneration model that encourages Scheme Agents and Service Providers to invest in achieving better return to work outcomes.

Finding 10: icare should review its internal governance claims management model to ensure adequacy of intended outcomes. In particular, it should consider allocating files to other agents with expertise to reduce the load on EML and provide time for skills and experience to improve.

icare and EML have worked to ensure that the scheme is now appropriately resourced to support capability uplift and the skill and experience of the overall EML team has increased materially since the Dore report. As of April 2020, EML now has adequate frontline resources that are now managing claims portfolios of an appropriate size for their skill and experience. A capability program (EML Grow) has also been implemented to ensure staff coming into the personal injury industry are upskilled rapidly. As a result of these actions, EML has enjoyed an uplift in performance.

Finding 11: icare should address the staff turnover at EML as a matter of priority to ensure case management services are improved

The original Dore report stated an incorrect turnover number which has now been corrected by SIRA. The correct turnover was just over 20% per annum which is within normal range for the industry. EML continue to look to improve engagement to reduce turnover and ensure the ongoing stability of our workforce which has been challenged often due to workload pressures of the resourcing model. We continue to be committed to remaining within industry norms for turnover.

Review of the government-managed workers compensation schemes (NI and Treasury Managed Fund (TMF) and the legislative framework that supports them)

Whether the Workers Compensation Schemes are Delivering on their Policy Objectives

As previously referenced in this submission, since the Dore review significant improvements have been made and continue to be made to the model which is now showing improvement in return to work outcomes. We acknowledge that the policy objectives of the NSW Workers Compensation Scheme have not been optimally met since the commencement of the new claims operational model in 2018 and return to work rates deteriorated throughout this period.

On face value, the TMF delivers on the policy objective of facilitating return to work for government employees. Government Agencies are actively involved and invested in the return to work process and claim management. The TMF Scheme is complicated by this interaction from Agencies and their principles with respect to management of workplace injuries balanced against operational priorities. Further complication arises from Emergency Services Agencies being exempt from the 2012 reforms (and subsequent reforms) – in essence these Emergency Services Agencies are exempt from using Pre-Injury Active Weekly Earnings (PIAWE) calculations, timeframe benefit cessations and work capacity decisions.

The nature of operations as first responders impacts the capability and capacity of NSW Police and to a lesser extent, Fire Rescue NSW, to provide sustainable and meaningful long-term return to work to personnel who are unable to fulfil active operational duty. Opportunity presents to revisit the TMF Policy Objectives to align more closely with the operational complexity of the Emergency Services Agencies.

Financial Sustainability of the Schemes

The TMF Scheme references an element of self-insurance due to the unique funding arrangement direct from NSW Treasury. However, this application of Self-Insurance is different to the application of Self-Insurance for a large corporate employer – primarily due to the funding arrangement with Treasury compared to a large corporate assuming the workers compensation financial risk through their balance sheet.

The NSW Police portfolio attracts significant attention from NSW Treasury given the annual contribution (or premium) reaching historically high levels. To be clear, EML plays no role in the direct pricing of the annual contribution – although actuarial assumptions derived from claims performance and claim costs contribute significantly. There are a number of factors currently adversely impacting the annual contribution that may be considered an opportunity for Scheme re-design, including but not limited to:

- NSW Police operational requirements and medical retirement application (primary driver of the annual contribution accounting for close to 70% of cost)
- Actuarial assumptions applied against medical retirement claims and work injury damages
- Due to exempt legislation, limited levers and restrictive legislation to reach agreement with injured workers in how to exit the Scheme, namely the current restrictions on commutations
- The litigious nature and costs of work injury damages being the only feasible avenue to exit the Scheme if unable to RTW
- High incidence of psychological injury (primarily PTSD) and ongoing no capacity to RTW
- Financial entitlements/benefits indirectly related to a workers compensation claim. For example, the legislated Police Blue Ribbon Insurance Scheme
- An element of coaching through the various entitlements to maximise financial benefit from Legal firms and Treating Specialists
- FRNSW and NSW Health (South), whilst subject to claim cost pressure, generally outperform the TMF Scheme in their respective claims' performance.

With the deterioration of return to work since 2018, the scheme is under pressure to remain financially sustainable. Recent improvements to the model, the increased effectiveness of the new technology platform, appropriate resourcing and changing in decision rights back to Service Providers is seeing improvement in return to work outcomes. This is also creating the much needed space and 'time to train' to further improve capability. Continued improvement in return to work will see the schemes become more financially sustainable. Specifically, the TMF scheme remains under pressure with the Emergency Services portfolio and the ongoing increase in psychological claims.

The legislative and regulatory structure of the schemes to the extent they relate to icare, the TMF, the NI, insurance, funding, or the powers, functions, and independence of SIRA

Agencies within the TMF Scheme, largely operate independently of icare in the claim management space given their scale of operations, internal return to work resourcing and partnership with claims managers, such as EML. icare are active with Agencies in the preventative and pricing space.

A key difference from the NI Scheme, demanded by the Agencies and supported by Claims Agents in contract renewal discussions (September 2019), was the maintenance of the independence of the decision rights framework, i.e. limited interaction and/or decision making ability from icare. This was maintained and continues to operate effectively. EML has contractual reporting requirements to icare in the decision rights, but this does not impact the operational claims management rhythm with the agencies.

Recommendations for Improvements in line with Parts 1-3 of the Terms of Reference, including in relation to

Organisational effectiveness of icare

In recent months EML have commenced ongoing discussions with icare regarding the nature of the Service Provider contract and how it differs from the Scheme Agent contract. icare have agreed to provide EML with considerably more decision making rights particularly around resourcing requirements. The remuneration model is also now better balanced between risk and reward rather than the cost plus arrangement under the existing contract. icare has indicated that they will adopt a trust and verify approach to ensure that scheme objectives are being achieved by Scheme Agents.

Financial Sustainability and Management of the Workers Scheme

Due to the reasons outlined above, EML recognises that there are claims from the 2018 and 2019 year that haven't returned to work due to the new claims model not delivering to their return to work needs. These claims need to be managed in a different manner and should be segmented to ensure more support is provided to assist them to return to work. For some claims, commutations could be considered to enable injured workers to get on with their lives. The key to meeting expected return to work goals is to ensure that appropriate diagnosis and support is provided to the injured worker and that the employer continues to keep the worker engaged in their normal operations through alternate suitable duties. The effectiveness of early engagement has a significant impact on return to work and it is important that claims staff have an appropriate number of cases to manage. Upfront investment will ensure that a worker will not be off work longer than expected.

Thank you for the opportunity to participate in this review. If EML can be of any further assistance please do not hesitate to contact me.

Yours Sincerely,



Mark Coyne
Chief Executive