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The Review
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ICARE AND WORKERS' COMPENSATION INDEPENDENT REVIEW

The Insurance Council of Australia is pleased to provide a submission on behalf of its insurer members to the icare and workers compensation independent review (Review). Specifically, the Insurance Council will respond against two of the three matters in scope, which are:

1. A comprehensive organisational review of icare, including issues raised in the media
2. The structure and sustainability of the nominal insurer's and treasury managed fund workers' compensation schemes

Our response draws on the knowledge and substantial experience of our members in the many personal injury schemes in Australia, including NSW, which is complemented by several key reports and analysis into the scheme and return to work performance in Australia. These are:

- *Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme* by Janet Dore in December 2019 (the Dore Report).
- *A Best Practice Workers Compensation Scheme* (Finity Best Practice Report) in May 2015
- *National Return to Work Strategy 2020-2030* (Safe Work Australia 2020-2030)
- *National Return to Work Survey 2018* (Safe Work Australia 2018)

As the largest State in Australia, NSW is a major influencer on the many Workers Compensation performance measures collected and reported on by Safe Work Australia. The criticality of this review cannot be understated, particularly against the backdrop of COVID-19 where the impacts of health, work and wellbeing are more interwoven now than ever, quoting Safe Work Australia 2020-2030:

*"The economic consequences of being out of work are clear. More than half a million Australians sustain a work-related injury or illness each year at an estimated cost of \$61.8 billion. The impact of this is felt across the Australian health system, economy and society through loss of productivity, income and quality of life. Most importantly, the impact is felt in the daily lives of workers affected by work-related injury or illness, their families and communities."*¹

¹ *National Return to Work Strategy 2020-2030* (Safe Work Australia 2020-2030), p3, available at [National Return to Work Strategy 2020-2030](https://www.safeworkaustralia.gov.au/national-return-to-work-strategy-2020-2030).

The review must find a sustainable roadmap to lead NSW out of the current crisis; the Insurance Council and its members are committed to working collaboratively with all stakeholders to make this happen for the benefit of workers, their families and the communities of NSW.

1. A comprehensive review of icare, including issues raised in the media

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

Workers compensation systems aim to minimise the cost and impact of work-related injury and illness, and supporting timely, safe and durable return to work (RTW) for workers. This is a central objective of all schemes.² As such, the measurement of RTW can provide insights into the effectiveness and performance of a workers compensation scheme.

The Dore Report noted a significant deterioration in return to work performance of the scheme shortly after the introduction of the new claims model in January 2018. This was further exacerbated by the launch of the Nominal Insurer Single Platform (NISP) in February 2019. This deterioration operates across the board including measures at 4 weeks, 13 weeks, 26 weeks and 52 weeks.³

The Insurance Council feels there are three key components driving this adverse experience, which if addressed will lead to an improvement in return to work measures. The rollback of the NISP does not feature on this list, while the cost, timeliness and overall governance issues related to this project are well known, the pursuit of a single system that integrates insurer claims and underwriting data, with customer (employer and injured worker) integration can work.

The NISP is not the major issue but rather the fact the automated process flows reflect the claims management model. This statement aligns with a comment made in the Dore Report, which stated:

“While there have been some external factors that affected the deteriorating performance of the Nominal Insurer, the primary driver for the decline is the implementation and operation of the new claims model implemented by icare.”⁴

i. Claims management model

The current claims management model which uses algorithms rather than individual case management principles has not resulted in improved scheme outcomes. The Dore Report notes that this automated process does not consider the subtleties of individual circumstances, for which case management skills are needed.⁵ The importance of timely, tailored and high quality support from an insurer (which in NSW includes a claims agent model under both Treasury Managed Fund and Nominal Insurer schemes), working in collaboration with other scheme participants is critical. We believe that second only to the ‘employer or colleague of worker’, the ‘insurer’ is a significant supporter and influencer of claim outcomes.⁶

² Safe Work Australia 2020-2030, p8.

³ *Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme* by Janet Dore in December 2019 (the Dore Report), pp 41-43, https://www.sira.nsw.gov.au/_data/assets/pdf_file/0005/584798/Independent-Reviewer-Report-into-the-Nominal-Insurer.pdf

⁴ Dore Report, p 5.

⁵ Dore Report, p 64.

⁶ *National Return to Work Survey 2018* (Safe Work Australia 2018), p 47, <https://www.safeworkaustralia.gov.au/system/files/documents/1811/national-rtw-survey-2018-summary-report.pdf>

We feel the balance within the model has been lost between speeding up processing while still retaining core workers compensation case management knowledge and skill (both hard and soft skills) as well as the involvement of employers, particularly small and medium businesses.⁷

We consider that this can have a detrimental impact on outcomes for injured workers, which aligns with Safe Work Australia's view of what is required to create and support high performing insurer/claims managers.⁸ The Insurance Council and its insurer members propose that a dedicated claims adviser be appointed for every claim. This, supported by algorithms and automation, would give a dedicated focus to each claim whilst also driving better performance from the scheme.

ii. Claims agent choice

In addition, we suggest the impacts of this approach were exacerbated by the reduction of claims agents to one and consequent loss of expertise and relevant claims management skills. The Dore Report notes the reduction in the number of scheme agents seems contrary to the NSW Government's objectives of competition and innovation as noted in the second reading speech of the then Minister.⁹

The Dore Report also notes an examination undertaken by McKinsey Consulting at the time of this change warned of the reduction of choice for employers, and fewer options to change agents if required.¹⁰ Finding 10 specifically recommends icare should consider the appointment of additional scheme agents with relevant claims management expertise.¹¹ The Insurance Council supports this recommendation.

Competition engenders greater innovation in claims management with more investment in systems and practices to ensure the best community and financial outcomes are achieved for all parties.

Given the recent performance issues, we note that icare has recently introduced an Authorised Provider model for eligible employers¹² which provides a level of competition and choice of claims management service provider for those employers that satisfy the eligibility criteria. A large proportion of NSW employers however do not satisfy the eligibility criteria and consequently, are not able to make this choice. Importantly, this cohort of ineligible employers includes small employers which are facing the greatest challenges with return to work.¹³

We understand that SIRA has also recommended icare enhance the Nominal Insurer operating model to provide small business employers with greater choice of claim management service provider, which we support. We submit that the Review should recommend the immediate consideration of how claims portfolios are allocated to support a transition in Q2 2021 (or sooner if practicable) to a multi-agent model. We believe that this transition will support the allocation of new claims between other agents to provide workers and employers with more support and address the deterioration of the scheme.

⁷ Safe Work Australia 2020-2030, p 30.

⁸ Safe Work Australia 2020-2030, pp 35-36.

⁹ Dore Report, p 76.

¹⁰ Dore Report, p 64.

¹¹ Dore Report, p 69.

¹² Eligible employers are those that have an Average Performance Premium (APP) or Basic Tariff Premium (BTP) that exceeds \$500,000 for their most recently issued renewal period or are part of a Group, with a Group Average Performance Premium (GAPP) or Basic Tariff Premium (GBTP) that exceeds \$500,000 for their recently issued renewal period.

¹³ Safe Work Australia 2018, p 16.

iii. Claims agent support

Safe Work Australia's strategy in Safe Work Australia 2020-2030 rightly identifies that "...claims management is a critical component of the Australian workers' compensation system..." and "taking a tailored and client-centric approach to claims management is being widely considered.... In recognition that one size does not fit all injuries, illnesses or individuals".¹⁴

The Insurance Council is concerned that icare has been too focused on standardisation and cost containment in the claims agent space (while not providing sufficient focus in other areas such as procurement and system implementation). This has caused detriment to innovation, collaboration, claim decision rights/authorities and resourcing models permitted within the claims agent model.

We recommend a ground up review of the resourcing, flexibility and claim decision rights/authorities between icare and its claims agents to ensure the intent of Safe Work Australia's "Action Area 4: Supporting Other Stakeholders" can be met, which if amended in a collaborative and transparent way, will have the added benefit of removing duplication, speeding up claim decision making and focusing resources on claims frontline to aid genuinely tailored client-centric approaches to claims management.

2. The structure and sustainability of the nominal insurer's and treasury managed fund workers' compensation schemes

b. Financial sustainability of the two schemes

The Dore Report received submissions addressing how premiums are calculated as well as concerns about the accuracy of premium notices, delays in renewal documents and the processing of wage declarations. The Dore Report referred to an EY appraisal of premium setting in the 2017/18 and 2018/19 premium years. EY found that 23% of policies had premium increases greater than 30% between these years. This volatility impacts on scheme stability and adds to employer dissatisfaction.¹⁵ The Dore Report also highlights the deteriorating performance of the scheme across a range of measures including Funding Ratios, Loss Ratios and Outstanding Claims Liability.¹⁶

Finity Consulting's recent valuations of the Nominal Insurer Liability showed a \$2 billion increase in liabilities over the previous 12 months to 31 December 2019.¹⁷ A government insurer typically relies heavily on income from investments to make up an insurance underwriting loss. However, we believe this significant increase in liabilities in a short period will be challenging for icare to fund from investment income. The Insurance Council believes that the poor claims performance will test the financial sustainability of the scheme if it continues its current trajectory. By way of contrast, an APRA-regulated entity would have been forced to act under prudential guidelines to rectify the current performance issues well before they had reached this financial position.

¹⁴ Safe Work Australia 2020-2030, p 35.

¹⁵ Further detail and graphics are contained in the Dore Report, pp59-60.

¹⁶ The full analysis is available in Section 5 of the Dore Report, pp 36-43.

¹⁷ The December 2018 valuation of icare's discounted liability assessment was \$15.03 billion, in December 2019 it was \$17.06 billion. Both valuations are available at via <https://www.icare.nsw.gov.au/about-us/annual-reports> (accessed 3 Nov 2020). ¹⁷ The December 2018 valuation of icare's discounted liability assessment was \$15.03 billion, in December 2019 it was \$17.06 billion. Both valuations are available at via <https://www.icare.nsw.gov.au/about-us/annual-reports> (accessed 3 Nov 2020).

c. 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

We also believe that consideration should be given to the structural imbalance in the governance of the scheme that exists under the current model. Although operating as the body administering the Nominal Insurer, icare is not itself an insurer and is not required to meet APRA's financial adequacy requirements unlike our insurer members. Section 154D of the *Workers Compensation Act 1987* (Act) confirms that NSW employers are responsible for meeting any deficit in the scheme and that the state does not hold this responsibility on its balance sheet.

As a result, SIRA's regulatory compliance powers over insurers in section 194 of the Act do not necessarily apply to the Nominal Insurer under section 154 A and B. This issue was highlighted in the Dore Report and Finding 12 specifically recommends a reconsideration of the legislative powers available to SIRA.¹⁸ We submit that appropriate legislative changes be made so that icare is subject to APRA oversight to give comfort to employers, providers and stakeholders that their premiums are being managed in the best interests of the scheme.

These principles were also included in the, dated but still relevant, Productivity Commission Inquiry Report (2004) into National Workers' Compensation and Occupational Health and Safety Frameworks¹⁹ as well as far back as the HIH Royal Commission (2003).²⁰

We support these findings and confirm that icare should be subject to prudential regulation to ensure financial safety and stability and to give comfort to employers, providers and stakeholders that their premiums are being managed in the best interests of the scheme.

Recommended improvements

As highlighted in the Insurance Council's submission²¹ to the recent Law and Justice review into the workers compensation scheme, our longstanding position that best practice workers compensation schemes are those which are open to competition in relation to claims management and underwriting.²² Opening schemes up to private underwriting has demonstrated a range of benefits including: greater competition in pricing, enabling regulators to focus on regulation rather than administration, greater innovation in claims management, reduced fiscal volatility for governments, and small employer community rating mechanisms which provide for rating of better or poorer performing employers, driving employing organisations to invest in Work Health and Safety practices and the management of any workers compensation claims which may arise.

The Insurance Council considers that the scheme would benefit from the extensive experience of our members both as claims management agents (in the short term) and underwriters (in the long term) for numerous workers compensation schemes across Australia. Given the issues currently facing the scheme, including a range of factors underlying the financial sustainability of the scheme, we suggest two stages of reform for your consideration, which we expand on more fully below:

¹⁸ Dore Report, p 70.

¹⁹ *National Workers' Compensation and Occupational Health and Safety Frameworks* Productivity Commission Inquiry Report 2004, p. 335, and Box 11.2 pp 329-30, <https://www.pc.gov.au/inquiries/completed/workers-compensation/report/workerscomp.pdf>

²⁰ HIH Royal Commission Report 2001-2003, recommendation 52, p. 268, Available at State Library of NSW.

²¹ <https://www.parliament.nsw.gov.au/lcdocs/submissions/68136/0021%20Insurance%20Council%20of%20Australia.pdf>

²² *A Best Practice Workers Compensation Scheme* (Finity Best Practice Report) in May 2015, p3,

<http://www.insurancecouncil.com.au/assets/report/May%202015%20-%20a%20Best%20Practice%20Workers%20Compensation%20Scheme.pdf>

- in the short term (Multi-Agent Model) - a model that facilitates greater choice in claims management providers for all employers (especially small employers), and
- in the longer term (Privately Underwritten) – progressively introduce a range of reforms to support a privatised model, which will enable not only choice, innovation and a commitment to delivering on Safe Work Australia RTW Strategy to 2030 but also an APRA regulated model that will remove the ongoing (significant) financial burden of the Nominal Insurer Scheme workers compensation to the government and communities of NSW.

Multi-agent model - the Insurance Council supports a move to a multiple agent model in the immediate short term to address the serious financial deterioration of the Nominal Insurer Scheme. This would encourage competition for service and innovation in claims management. The South Australian CTP model provides a good example of this type of claims management.

This is also broadly consistent with the SIRA recommendation that small business employers be provided with greater choice of claims management service provider (similar to eligible employers under the recently extended Authorised Provider model). The Insurance Council considers that the rationale behind the current thresholds (Basic Tariff Premium) is unclear. Removal of these thresholds in favour of allocation between participating insurers with a later move to open competition is the best way, we believe, to address SIRA's recommendation.

The multiple agent model would introduce a competitive approach to claims management and address many of the issues highlighted above. Simplifying the scheme, by empowering agents to have more ownership and accountability enables icare to focus on identifying and managing scheme-wide issues, leading industry improvement through encouraging innovation and overseeing the performance of agents. To this end, and to enable provision of an integrated service to employers, agents should also be tasked with responsibility for risk management, policy and billing and key account management after a suggested two-year period of allocated market share.

Other benefits to be gained through competition include encouragement of close consultation with employers to improve return to work outcomes.

Under a multiple agent model, we suggest icare takes on a more strategic and clearly defined role and be APRA regulated. This would enable the setting of sustainable premiums to allow customer choice. It would also ensure that agents have appropriate authority to undertake claims management and can devote resources to effectively managing the complexities of individual claims. Agent practices are heavily influenced by icare's claims and remuneration models so providing more flexibility around the claims model for agents and implementing a remuneration framework that supports appropriate outcomes for workers and employers would drive appropriate and sustainable outcomes for injured persons, the employer and the community generally, rather than devoting substantial resources to managing process requirements.

We believe, in order to best support icare in the delivery of the scheme objectives, agents should have timely access to quality data in order to allow agents to operate effectively. This includes:

- (1) availability of performance data to track key performance metrics and identify areas for improvement and
- (2) better access to premium and policy information to allow agents to assist employers in performance improvement initiatives.

Privately Underwritten - In the longer term the Insurance Council supports a return to private underwriting to achieve a best practice workers compensation scheme.²³ Opening schemes up to private underwriting has a range of benefits including: greater competition in pricing, enabling regulators to focus on regulation rather than administration, greater innovation in claims management and reduced fiscal volatility for governments. For small employers, private underwriting can provide community rating mechanisms to respond to better or poorer performing employers. This will encourage employers to invest in Work Health and Safety practices and the management of any workers compensation claims which may arise.

This model would include a loss portfolio transfer of the outstanding liabilities of the Nominal Insurer. We believe that private underwriting will allow a competitive market to deliver risk focussed underwriting and service and claims management models. It would also support investment in technology to enhance service delivery, reduce administration costs and time frames. The insurer would have clear incentives to expedite approvals for medical treatment and other services to facilitate return to work. Further, under a privately underwritten scheme the insurer is in a strong position to influence employers in a constructive way to encourage sustainable returns to work.²⁴ This would be supported by a regulator with a clearly defined role and powers to manage the sustainability of the scheme.²⁵

We submit that NSW Treasury and the Department of Customer Service should consider examination of a model and pathway for all stakeholders to support a competitively underwritten workers compensation scheme and deliver better outcomes for injured workers. The Insurance Council and our insurer members are keen to participate in such consideration.

Conclusion

The Insurance Council and our insurer members look forward to working with the NSW Government to implement a multi-agent model to improve the financial and operational outcomes of the scheme. This will ensure ownership and discretion to agents to drive improvements in scheme liabilities and outcomes. We believe that this model will also result in a better experience for injured workers as well as employers.

If you have any questions, please contact Tom Lunn, Senior Policy Manager, Consumer Outcomes via email tlunn@insurancecouncil.com.au or on (02) 9253 5122.

Yours sincerely



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²³ *A Best Practice Workers Compensation Scheme* (Finity Best Practice Report) in May 2015, p3,

<http://www.insurancecouncil.com.au/assets/report/May%202015%20-%20a%20Best%20Practice%20Workers%20Compensation%20Scheme.pdf>.

²⁴ Finity Best Practice Report, p17.

²⁵ Finity Best Practice Report, p16.

