

**SUBMISSION TO
THE ICARE AND STATE
INSURANCE AND CARE
GOVERNANCE ACT
2015 INDEPENDENT
REVIEW**



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INTRODUCTION

1. The Public Service Association and Professional Officers' Amalgamated Union of NSW ("**PSA**") welcomes this review into icare and the *State Insurance and Care Governance Act 2015* ("**SICG Act**"). We have called for the Independent Commission Against Corruption ("**ICAC**") to investigate several matters at icare, which are mentioned in a confidential basis below. We have referred examples where there appears to be indication that the workers compensation system has been systematically manipulated by an employer, the scheme agent and then allowed to continue by icare, including alleged acts of collusion. We do not believe that this review has the authority to investigate these matters or call for evidence in the same way that ICAC does. Having a workers compensation authority that is designed to support workers who do not have the typical workplace rights to turn away from danger, is important to every one of our members.
2. The PSA and our federal counterpart the Community and Public Sector Union – NSW Branch ("**CPSU NSW**") cover workers in the NSW public sector and State Owned Corporations. This coverage also sees us supporting a number of members in privatised agencies that do the work of the NSW Government, as well as university sector. The PSA has just under 40,000 members under the Treasury Managed Fund, Separate self-insurance licenses and also the Nominal Insurer. Approximately 1 in 10 of our members are under the nominal insurer, with the remainder under the Treasury Managed Fund Self insurer, or stand-alone self-insurers such as universities and utilities.
3. Our members work in diverse occupations including: agricultural scientists, veterinarians, research officers, zoo-keepers, prison officers, court officers, psychologists, special constables, property management, school assistants, school learning support officers, disability support workers, national park rangers, child protection workers, fisheries officers, fire-fighters and state emergency workers, to name just a few. Many of these occupations are inherently dangerous, with workplace conduct and at times criminal consequences if the workers turn away from safety risks.
4. We also have coverage of non-executive workers at icare. These workers are compassionate about the service that they deliver, a service that is there to support people who go to work and are injured, a service that supports people who are victims of car accidents, severe lifetime accidents, experience horrific and crippling effects of dust diseases, manage the insurance for home building industry and in effect the viability of the industry, and also manage the insurance for the State entity.
5. As we have stated to members at icare, nothing in this submission should be deemed a criticism of these workers. These workers have like most of the workers across the sector, made adjustments during the COVID-19 pandemic, changed office locations and work practices, but importantly continued to provide services to the people of NSW.
6. The PSA states that the overall management culture is what has gone in the wrong direction at icare.
7. We refer to the terms of reference below and provide answers accordingly. The documents that are attached to this submission are confidential and should not be published.

RESPONSE TO TERMS OF REFERENCE

1) *Comprehensive organisational review of icare, having regard to issues recently raised in the media and in Parliament.*

This part of the Review will cover icare's:

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

1. The PSA states that the claims agent model adds no value to the system. It simply allows more service providers and rent seekers to draw fees from the system, and make the experience of injured workers inferior.

Scheme Agent Practices Under Investigation

2. The PSA has attached as a confidential addendum a copy of an ICAC Submission submitted on 14 April 2020 on behalf of PSA members who have been poorly treated by icare, their scheme agent and their employer. The PSA's submission included a copy of a KPMG Report from July 2018 that was only initiated after a family member of one of the affected approached icare to investigate the matter. The review and subsequent report undertaken by KPMG cost nearly a quarter of a million dollars to produce. The KPMG Report included inquiries into alleged changes to evidence to deny liability, collusion between employers and the insurer, and improper application of section 11A of the *Workers Compensation Act 1987*. Additionally, criminal charges were laid against nine officers, which were later withdrawn, "no billed" or overturned for different officers. Four versions of the report by KPMG were produced (with the relevant reports dated April 2018 and July 2018). After the PSA finally received a copy of the April 2018 KPMG Report in August this year, a further submission was made to ICAC containing the April 2018 Report (**attached**). We are providing the PSA's two ICAC submissions and attached KPMG Reports confidentially, so as to not prejudice any of the parties.
3. The above matters have also been the subject of a SIRA investigation, and work injury damages claims have been settled for several of these injured workers. We were not a party to the settlements.
4. In this matter, despite icare taking over the claims, the claims remained disputed for significantly longer after icare took control, without any corrective action by icare to address the claims nor address the behaviours of the employer or scheme agent identified by the KPMG report. All of the operatives in the report (except retirees) are still working for the employer or the insurers. The scheme agent was rewarded with an expansion of their work in the recent review of scheme agents despite the deficiencies in these reports.
5. icare's role in continuing to not resolve these issues nor take action to prevent these issues from occurring again is not a demonstration of either *commercial mind or social heart* as per the icare slogan. The issues surrounding the claims and its management has cost Treasury Managed Fund many millions of dollars in settlements and legal costs.

6. icare in blindly following the employer, and allowing the scheme agent to continue their pursuit of starving the workers out, has in effect lead to the cost blow out of the claims, and importantly made these workers' injuries worse.

Claims Management - Our Members Experience

7. The PSA supports hundreds of injured workers every year recover and return to work. The PSA undertook a survey of workers who had experienced a workers compensation claim in one of our largest employing agencies under the Treasury Managed Fund to demonstrate the experience of injured workers under the current legislative framework.
8. The results demonstrate significant problems with the scheme agent model, with significant resources put into investigations over claims than supporting workers return to work and get the necessary medical assistance.
9. The survey was conducted with 200 injured workers within a large public sector cluster. The key issues surround the prevalence of psychological claims, and the lack of support in returning workers to work, issues with misuse of "Independent Medical Examinations" and lack of reasonable adjustment for returning workers.
10. The cluster deals with issues which expose workers to direct and indirect trauma, physical assault, and other musculoskeletal injuries. There is likely to be a level of selection bias due to the differential treatment and support for workers suffering psychological injury, including the length of time that these workers experience away from work. Of the 200 respondents, the major injury types experienced include the following primary injuries:
 - a) Primary Psychological Injury- 45.6%
 - b) Upper Limbs including shoulder- 12.44%
 - c) Lower Limbs including Feet- 11.92%
 - d) Back or Neck- 7.8%
 - e) Secondary Psychological Injury- 4.15%
 - f) Other- 13%
11. Whilst there are issues of causality between the employer, the insurer (scheme agent), and icare, the icare - Treasury Managed Fund has for most cases outsourced its claims management to scheme agents. These scheme agents are under great pressure from the employer, and we have witnessed a number of incidents where the employer has put pressure on the claims manager, or other service providers to change decisions regarding injured workers.
12. The following questions were asked of 200 injured workers with the numerical responses below.
13. Only 36.6% stated they agree with the following statement, *"I found my experience gaining provisional liability (first 12 weeks) for my injury, an experience that I was supported by my employer"* with 45% disagreeing.
14. The following comments were received:

"I have never been contacted from (my employer)"
"I felt like I was in a nightmare throughout"

"The management were not on board and actually made life more difficult by not contacting me or assisting at any time."

But also,

"My Director (name withheld) was great, they contacted QBE and said to pay the claim straight away and kept on supporting me get back to work."

15. This is despite 15 years of best practice for employers to contact injured workers within the first few days after injury and to re-contact the injured worker.
16. Similarly, only 38.1% stated they agree with the following statement, *"I found my experience gaining provisional liability (first 12 weeks) for my injury, an experience that I was supported by my insurer"* with 39.7% disagreeing.
17. Of concern in the context of the confidential allegations contained in the attached KPMG report is that the experience of injured workers in gaining liability from their insurer (scheme agent) and employer appears to be negative.
18. 30.7% of injured workers agreed with the following statement *"I found my experience gaining full liability for my injury (essentially agreement that work was the cause of your injury as deemed by the Worker Compensation Act 1987), an experience that I was supported by the employer"*. 36.5% of injured workers disagreed.
19. 34.5% of injured workers agreed with the following statement *"I found my experience gaining full liability for my injury (essentially agreement that work was the cause of your injury as deemed by the Worker Compensation Act 1987), an experience that I was supported by the employer"*. 43.5% of injured workers disagreed.
20. 11.7% of injured workers agreed with the statement *"Were you advised at any time that you can challenge liability decisions regarding income payments and medical assistance with a lawyer?"* 88.3% of injured workers were not advised.
21. Only 15.3% of injured workers agreed with the statement, *"I found my experience in calculation of my weekly compensation (PIAWE) clear and supported by the employer and insurer"*. 52% of injured workers disagreed with the statement.
22. Up to 22.5% of respondents have indicated that they may have an underpayment claim from the miscalculation of pay associated with the workers compensation claim.
23. Only 31.2% of injured workers agreed to the following statement, *"I found my experience in accessing medical benefits/support (access to specialists, pharmaceuticals, allied medical professions) was clear and supported by the employer and insurer"*. 46.1% of injured workers disagreed.

24. The access to medical support is a key fundamental issue to support people's recovery. Examples of the difficulties, *"My pharmaceuticals would not be approved unless I went to the (insurer name) preferred chemist, involving significant travel out of my own time, which after returning to work, added to my pain management"* and
25. The combined power imbalance that Treasury Managed Fund employers have as the employer, and to exert significant influence over the scheme agents, and access to liability and service providers appears to be a major contributor towards a less than optimal experience for injured workers.
26. The PSA is unaware of how many people just accept the decision of the insurer, regardless of whether there are grounds for the refusal to access the service or decline of liability.

Return to Work

27. When we look at the support for returning to work, we see injured workers encountering more difficulties.
28. Only 21% agreed with the statement, *"I found my experience in being provided with a rehabilitation provider of my choice was clear and supported by the employer and insurer"*, whereas 51.5% disagreed.
29. Many of the responses indicated that company based rehabilitation coordinators can add very little value to return to work experience, with comments about bullying, providing unsolicited advice about resignation, and aligning with the employer often over medical advice. The providers often change case managers, and appear to ignore calls from injured workers but are content to meet with management prior to case management meetings.
30. Company and insurer contracted rehabilitation providers have a poor reputation in several of our agencies. All rehabilitation providers aim to support a return to work, however, for the contracted ones they often go to different employer as a first option for return to work without exploring same employer return to work options without challenge to the employer.

"I have had multiple rehab providers and not one has remained unbiased to (scheme agent) and stood up for me."

"I was bullied and harassed whilst at my return to work meeting and was told there will be no reasonable adjustment made to me."

"The insurer-supplied rehab provider, (name withheld), abandoned me in the middle of treatment in September 2019. I ended up going to the PSA for help and I am now working successfully with (name withheld), who I have been with since March 2020., so for 7 months I had no rehab provider"

"I was just given one and he basically forced me back into work early, then had another re-dislocation"

"I was presented with a rehab provider & not told I could choose differently. He did a lot of damage before I personally discovered (name withheld) "

"The first rehab provider that I was issued with told me to leave (employer) because I would lose against the insurance company and (employer). I declined any further services from her and found my own rehab provider who was fantastic!"

31. This is a decision and it is critical to have a suitable rehabilitation coordinator available to assist injured workers, who have often not experienced the system before to navigate the injury and return to work. We find that a number of the contracted rehabilitation providers speak privately to our members saying that they disagree with the decision of the employer to withhold suitable duties but they are going along with it. This is not adding value to return to work process, and is simply delaying return to work.
32. When posed with the following statement *"Were you advised at any time that you can choose your own Treating Doctor, Specialists, rehabilitation provider to assist with injury management and return to work?"* 27.5% said yes, whilst 68% said no.
33. There appears to be some pressure applied regarding doctor's choices, often made by the scheme agents or rehabilitation provider on behalf of the employer. It is not uncommon in our sector for rehabilitation providers to be forceful with the doctor to encourage greater hours of return to work, only to have the same employer withdrawal suitable duties unless full unrestricted capacity is available. This leaves the worker in a vulnerable position, and is often done to reduce income payments, but often creates uncertainty and can exacerbate psychological injuries.
34. Comments included:

"I was told I can choose my treating GP but not specialists"

"The insurer made claims that they wanted to send me to their psychiatrist to help me recover. The psychiatrist filmed me throughout the interview. I was incredibly distressed during and afterwards and he rolled his eyes throughout my time in his office. He produced a report to the insurer with statements that I had not made. My lawyer would eventually prove the report was flawed and was based on lies."

"I just assumed my every day doctor was who I had to go to. However, at certain points the 'threat' that my treating doctor would be changed because they didn't agree with decision wanted by insurer. I didn't get this threat with psychologist or psychiatrist. However, it has become evident my rehab provider (who has told me on several occasions) they are under pressure by the insurer to push me to increase my hours despite the doctor saying this is not in my mental health best interest at present. I now no longer feel supported by my rehab provider as they constantly remind me "the insurer is wanting...." I limit my contact with this 'support person' so I cannot feel anxious and focus on getting back to work"

35. When asked directly about the support for recovery and return to work, the following responses were provided from injured workers:

- a) By Employer-39% were supported, 61% were hindered in their recovery and return to work by their employer.
 - b) By Insurer-46% were supported, 54% were hindered in their recovery and return to work by their employer.
 - c) By Rehabilitation Provider- 58% were supported, 42% were hindered in their recovery and return to work by their employer.
36. These negative responses indicate that the employer (TMF self-insurer in this scenario) and the insurer (scheme agent) are not perceived as supportive in recovery and return to work. A trend we have seen recently is that the claim manager and rehabilitation provider simply agree that there is no reasonable adjustment, nor suitable duties available for the worker if the employer makes this statement. The employer still needs to pay for the worker through the TMF, but the local workplace does not. This appears to be contrary to the legislative return to work obligations, and in could be a big part of the reason for the increase in claims expenses under the TMF and expanded return to work length experienced.
37. Interestingly when matters become complicated for the scheme agents, many of these matters are referred to icare to manage in-house. With claims management costing in the hundreds of millions of dollars per year, the question arises as to why this work cannot be managed in house more effectively.
38. In the confidential example above, it is clear that the insurer and the insurer's lawyer had met with the employer and advised about how the evidence would determine liability.

Recommendation

That this review considers insourcing into icare the claims management functions of the Treasury Managed Fund and the Nominal Insurer.

Comprehensive organisational review of icare, having regard to issues recently raised in the media and in Parliament.

This part of the Review will cover icare's:

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f. Executive remuneration

39. As demonstrated by the media, there has been a reduction in confidence in the icare management structure. The legislation provides only limited ability to do otherwise within organisation with such an important role to play in ensuring the financial viability of the state. The PSA has warned that removal of the senior officer award positions through the Government Sector Employment Amendments would threaten the independence of senior public servants. This has been duplicated at icare through section 16 of the SICG Act requiring all positions above the level of Clerk Grade 12 to be on contract.
40. In icare, we have seen a group culture emerge with it being reported that the number of workers who receive a salary of \$300,000 increase from 2 to 48 over the four years of icare's

existence. Senior executives cannot be frank and fearless as they can be sacked without reason or notice under the public sector contract framework for executives.

41. In the public sector previously, important senior positions that were required to make impartial professional judgements (including delivering bad news to ministers), were often tenured public servants in senior officer roles under the Senior Officers Award. They were still accountable for getting their job done, but were viable past the bad news cycle. They were also remunerated sufficiently to attract their talent or skills, held accountable, but also able to balance job security with the integrity of the role.
42. In icare, it would appear that a number of these roles, such as senior IT roles, senior economist roles, underwriting and in house actuary roles could only employ people via senior executive services or contract for services as a consultant if they wished to attract the quality candidate. If these workers are required to provide this impartial advice, but cannot for fear of their employment security then we have an ethical problem for the leadership of the organisation. We also have a similar problem with regards to sustainability of corporate knowledge and accountability of decision makers if the positions do not encourage long term occupancy.
43. The PSA is also aware of a number of people who have come from the insurance industry who appear to be advising as though icare runs traditional for profit insurance products. This potentially is leading to some of the poorer outcomes where declining of liability and service provision is the first option, and have the injured worker struggle to get back into liability.

Recommendation

Whilst the senior executives of icare should remain as Senior Executive Service, section 16 of the SICG Act should be varied to enable positions required to make independent decisions or provide independent advice to be put in tenured positions above Admin and Clerical Grade 12.

1. *Comprehensive organisational review of icare, having regard to issues recently raised in the media and in Parliament.*

This part of the Review will cover icare's:

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- g. Board effectiveness and accountability*

44. It is the experience of PSA staff that the Board members are required to maintain confidentiality on most issues discussed. This made it difficult to ascertain what accountability mechanisms were in place at the Board, even from PSA staff who have worked closely with Board members.
45. However, the following aspects of the historical Boards covering the field of the icare Board should be noted.

46. At both the Advisory Council circa 2011-2012 and also the Dust Diseases Board prior to 2015 Amendments, it was reported to the author of this submission, that these forums became adversarial between the industry representatives and the executive management of WorkCover and Safety and Return to Work Support Board on these Boards. The main topic for the adversarial nature was the non-provision of information to the members of the Advisory Council/Board or the failure to act on the direction of Board. Additionally, there was conflict about how and what responsibilities the Board had towards the employees of the Dust Diseases Board as officers of the Person Conducting a Business of Undertaking under the *Work Health and Safety Act 2011* (NSW). The resulting solutions in both scenarios was to effectively disband the Advisory Council and Dust Diseases Board.
47. At the time the Executive management representatives on these Boards stated that these statutory Boards did not have the same fiduciary responsibilities as corporations, were asked to provide this advice in writing and were subsequently disbanded.
48. Below under governance we have detailed a number of issues with the governance of icare and the difficulties of the existing Board structure.
49. The Board is appointed by the Minister and not by industry. There are also no clear public documents that make it clear what the accountabilities of the Board are, nor how they have performed within this framework. Formerly the Board would have had accountability to the stakeholders they represent injured workers and premium payers.

Recommendation

- That the statutory Board be issued with published accountabilities and key performance indicators.
- That the composition of the Board be changed to one that has representatives from organisations affected by the decisions of the Board, Industry Employer Representatives and Industry Worker Representatives.
- That issues such as the different schemes funding ratios be published, including the list of all actuarial assumptions.
- That all contracts for service, including scheme agents are reported on for the agency, with a description of what services are provided

1. *Comprehensive organisational review of icare, having regard to issues recently raised in the media and in Parliament.*

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h. Procurement practices

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

This part of the Review will consider:

a. whether the workers compensation schemes are delivering on their policy objectives

b. financial sustainability of the two schemes

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

50. The PSA is aware of previous ICAC reports, and the media reports surrounding less than optimal procurement practices.

51. Without knowing the finer details of these procurement processes, the PSA would limit comment to:

We have had to defend members' employment in the past elsewhere in the sector for undertaking more robust procurement actions in line with their policies, which have still become the subject of probity and misconduct investigations.

In reviewing the numerous articles arising regarding the contracts at icare, it would appear to be a systematic problem that should have been dealt with at the Executive level, for which the Executive level should be held responsible.

52. The Public Service Commission has an ethical framework document that guides agencies in the development of policies in these areas.

53. The PSA has been involved in numerous consultations regarding these types of policies for our members.

Recommendation

- That procurement and gifts and benefits, travel and conflict of interest policies are developed in consultation with the Public Service Association, which includes an education component to increase awareness of these policies at Icare.

1. Comprehensive organisational review of icare, having regard to issues recently raised in the media and in Parliament.

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j. Relationship with the State Insurance Regulatory Authority (SIRA)

54. The relationship initially was one that was too close for comfort for injured workers and their representatives. The regulator (SIRA) and nominal insurer (icare) were from the same parent body and had pretty much worked hand in glove as they had previously been in the same executive structure.

55. Whilst the relationship appears to have broken down recently, there is a reluctance or inability of the SIRA to publicly take action against icare or its scheme agents that significantly alters the outcomes for injured workers.

56. The union representatives of injured workers are aware of several significant matters that have been referred to SIRA, which we hope will be expose alarming problems with the administration of Icare.
57. We need a robust and fearless regulator to manage icare. Without this oversight, rent seekers that hover around the workers compensation industry can flourish, infiltrate icare and push up costs significantly. We need the regulator to not continue their “soft touch” but actually take on the role of an enforcer of the laws and rules that they are required to regulate. The only public enforcement actions appear to be around worker and provider fraud. Systematic declining, or refusal of services appear to go on with opposition.
58. The viability of the scheme is a significant driver for the union movement, as whenever, there is a downturn and a reduction in scheme capitalisation, with decreased return to work performance, increased injury rates or decreased investment outlook, the first thing all governments do is aim to reduce benefits under the scheme. Excessive over examination and investigations of claims, whilst withdrawal of support can decrease the effectiveness of the scheme and also increase disputed claims.
59. If icare with its vast resources can’t maintain compliance with the law, then they need to be held to account.
60. In an area with the complexities of icare’s operations, regulation has gone to a mandatory reporting regime for certain trigger events. This places the onus on the duty holder to report when certain events occur.
61. Recently when dealing the matter referred to in the confidential documents, SIRA was advised that they were misled regarding the report and the number of versions of the report and what was concluded. Mandatory self-reporting requirements and full disclosure is necessary in order to reduce poor claims management.

Recommendation

- There should be a requirement to have a mandatory public reporting scheme, with details of breached operating requirements, non-compliance with legislation or other significant risk factors occur.

1. Comprehensive organisational review of icare, having regard to issues recently raised in the media and in Parliament.

This part of the Review will cover icare’s:

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e. Governance

62. icare governance is an extremely important issue for the PSA/CPSU NSW.

63. The historical transformation of the work that icare does around worker compensation for Dust Diseases and General Workers Compensation has been one that has seen a model of public accountability transformed into one of secrecy and no accountability.
64. Previously, the WorkCover Board was composed of representatives from industry, from workers, and independents who managed the overall scheme and administration of regulation. They were guided by a broader representative group titled the WorkCover Safety and Workers Compensation Advisory Council. WorkCover also had Industry Reference Groups so that WorkCover could develop industry specific mechanisms to improve injury prevention, return to work, and workers compensation outcome in that industry.
65. These representatives had “*skin in the game*” and were directly accountable to their membership base because if the scheme fails, workers’ benefits are reduced, and employer premiums can be increased.
66. The WorkCover Advisory Council became politicised when it was then stacked with employer friendly doctors, and WorkCover executives who refused to comply with sharing of information requirements of the governance structure, before being disbanded for the Safety Return to Work and Support Board in 2012, then the current icare Board in 2015.
67. The Advisory Council was disbanded in 2012 with the Workers Compensation Act amendments, and perhaps did the critical work of detailed analysis and review of all of WorkCover’s safety (injury prevention) and workers compensation work.
68. The detailed work around adequate governance and management of these vital schemes has not occurred in detail and the connection with what occurs in industry amongst the workforce has been lost.

Treasury Managed Fund

69. The Treasury Managed Fund has a history of mystery for workers and their representatives. It has historically been managed by Treasury, and only permitted limited external involvement. It is acknowledged that the TMF covers a range of insurance types, with regard to workers compensation, there was formerly some direction provided by Si Corp - NSW Self Insurance Corporation in the injury prevention and management field. Si Corp allowed employer representatives the opportunity to participate in schemes that aimed to reduce injuries and assist with return to work across the public sector.
70. It was not ideal as it only had the employer’s perspective, but despite the PSA and Unions NSW making representations that workers were not party to these important strategic discussions to reduce injury, it appears that the employers have also now had their capacity to contribute reduced also. Several employer representatives have complained ironically to the unions, that Si Corp does not operate the programs to the extent that it did.

71. It appears that much of the decision making is now undertaken at a peak Secretaries level, however, they no longer have the same accountabilities in their contracts for injury prevention performance as has occurred in previous years. There is a disconnect from what is occurring in the TMF to what is actually happening on the ground in the administration of the scheme. As the scheme is administered by effectively human resources units and scheme agents acting on behalf of the employer, there is a vacuum of independence on how the TMF is administered. This is despite requirements to consult for other self-insurers with workers representatives.
72. If the retreat of consultation in this sector led to a reduction in injuries, it could be justified, but instead the result has been increased injuries, increased return to work periods and increased blow outs in the TMF. The recent bail out of \$4bn for the Treasury Managed Fund was the same figure as justified the 2012 changes to the Workers Compensation legislation, however, this figure exists for a scheme with 10% of the labour force. There needs to be greater accountability for the TMF and a greater drive for reducing injury rates and improving return to work. This can only effectively occur if there is ongoing structured consultation at a peak level.

Recommendation

That A Treasury Managed Fund tripartite consultative arrangement is formed to manage the TMF more effectively. That this consultative arrangement includes representatives from the peak public sector employers, the employee representatives through Unions NSW, and Icare.

Dust Diseases

73. Similarly, the Dust Diseases Board was fundamentally changed in its operation, with the legislative changes in 2015. Whilst remaining in name only, its role was basically limited to making decision about grants for support groups and medical research. Whilst debating this Bill in Parliament, it was stated by the then Finance Minister, now Treasurer that there would be a role for oversight of the scheme by the Dust Diseases Board, which was not apparent in the legislation nor the practice of the administration of the legislation by the Icare executive.
74. Formerly, the Dust Board had the authority to deal with issues within the existing legislation such as underwriting interpretations, and also approval of new treatments to enable greater care of dust disease victims. This was done in a manner that saw less volatility to the scheme than the broader workers compensation scheme, foresaw the problems with James Hardie attempting to exit the scheme, and enabled government to get ahead of these problems. This was replaced with the broader Icare Board that had little to no technical understanding of the specific problems of Dust Diseases. This combined with the disconnect from the safety regulator has seen an increase in incidence and return of diseases related to silica exposure, formerly an infrequent type of claim.

Disconnection with SafeWork

75. SafeWork is funded through a small levy on the workers compensation scheme. The work of SafeWork we state is fundamentally important for the maintenance of the Icare Workers compensation schemes. Despite a long term trend for a decline in workers compensation claim numbers due to the change of industry and improved safety measures at work, this decline has reversed in recent years.
76. There was a 53% increase in claims for psychological injury (NSW psychological injury claims data) between 2014/15 and 2018/19. This compares to only a 3.5% increase in the same period for physical injuries.¹ Similarly the cost has increased since 2016 from approximately \$50,000 per mental health claim to \$85,000 per mental health claim compared to \$21000 per average claim.
77. This is a reversal of the previous decade long trend of reductions in workplace injuries.
78. Previous reports have indicated that over 50% of mental health claims are made in the public sector generally covered by the Treasury Managed Fund. Yet there is little action on this front. As part of the Government Sector Plan there is a mental health strategy. This was meant to be consulted with workers and their representatives. This has not occurred in any systematic manner agency by agency
79. A self-audit was to be followed with a mandatory SafeWork audit. It appears that the Secretaries have exerted their influence and we are advised that the SafeWork audit will not occur.
80. Part of the problem, we state is that there is a reluctance to address the issue of workplace psychological safety, and support people returning to work after psychological injury. There are some agencies that do this well, but others prefer to medically terminate rather than make reasonable adjustments. This condemns injured workers to prolonged periods of time off work as they are required to find employment elsewhere. It also adds to the scheme costs.
81. Since SafeWork has been absorbed into the Better Regulation Division, the skills of the inspectors have been broadened to include regulation of other law regulatory fields. There is a view amongst inspectors that if this occurs, the focus on enforcement of WHS legislation may become reduced.
82. The following recommendation may be out of the scope of this review, however, as the levy for SafeWork is paid for by Icare levy it provides the optimal opportunity to provide the recommendation.

Recommendation

A tripartite advisory council should be formed to administer the safety regulator's strategies and governance.

Employment of Insurance Company Experts and Culture

83. Insurance and Care has been noted for their employment of insurance industry staff and contractors in a range of senior positions. This has seen a diversion from long term measured decision making in line with the objectives of legislation, to measures that appear to reward more short term reward structures. For example, the apparent disregard for lengthier procurement processes for multi-million dollar contracts, cannot guarantee that the scheme is getting value for money for injured workers and employer premiums. Similarly attempting to purchase algorithm software similar to the failed “robo-debt” for assessment of claims in a structured legislative bound scheme, would appear to be naïve to the human compassion element of being injured, and also of the ever persistent exacerbation of injuries from workers compensation claims treatment.
84. The importation of an insurance industry claims management behaviour of declinature appears to have been rewarded with the Icare awards. These awards have attracted candidates from across the claims agents, with some being nominated by insurers due to the ability to find a loop holes, and processes and close more claims for injured workers before being recovered. This provides short term bonuses to the claims agents, however, has questionable long term benefits to the worker or the scheme.
85. The actions that were the subject of the KPMG Report and submissions made to ICAC by the PSA this year are subject to significant litigation with Icare, the scheme agent and the employer and demonstrates the types of problems with this culture in Icare. These have been matters of a private settlement which we are not party to. Whilst these matters were initially handled by the scheme agent, after Icare ordered an independent investigation, they were then taken over by Icare, but the claims management behaviour continued.

Problems with the Current Governance Structure

86. The net effect of the issues discussed above and in the media is that the Icare Board could be perceived to have the following fundamental problems:
 - The advice to the Board as reported in the media appeared to be a glass half full approach by senior executives at Icare
 - Insurance industry contractors and employees dominate leading to changed administrative processes
 - The Board has such a broad range of tasks to manage from home building insurance, to workers compensation insurance, to dust diseases, lifetime care and support when combined with the slanted advice from executives made detailed decisions difficult.
 - The removal of the former safety and workers compensation advisory council, meant that much of the work and observations conducted by industry partners who were experiencing the operation of these schemes was lost and that link to the Board was lost.

The above recommendations deal with these issues in part.

Recommendation

The Icare Board should be made a tri partite Board appointed through the Minister, nominees from Industry, Workers and the Government.

Recommendations

1. That this review considers insourcing into Icare the claims management functions of the Treasury Managed Fund and the Nominal Insurer.
2. Whilst the Senior Executives of Icare should remain as Senior Executive Service, Section 16 of the Act should be varied to enable positions required to make independent decisions or provide independent advice to be put in tenured positions above Admin and Clerical Grade 12.
3. That the statutory Board be issued with published accountabilities and key performance indicators.
4. That the composition of the Board be changed to one that has representatives from organisations affected by the decisions of the Board, Industry Employer Representatives and Industry Worker Representatives.
5. That issues such as the different schemes funding ratios be published, including the list of all actuarial assumptions.
6. That all contracts for service, including scheme agents are reported on for the agency, with a description of what services are provided
7. That procurement and gifts and benefits, travel and conflict of interest policies are developed in consultation with the Public Service Association, which includes an education component to increase awareness of these policies at Icare.
8. There should be a requirement to have a mandatory public reporting scheme, with details of breached operating requirements, non-compliance with legislation or other significant risk factors occur.
9. That A Treasury Managed Fund tripartite consultative arrangement is formed to manage the TMF more effectively. That this consultative arrangement includes representatives from the peak public sector employers, the employee representatives through Unions NSW, and Icare.
10. A tripartite advisory council should be formed to administer the safety regulator's strategies and governance.
11. The Icare Board should be made a tri partite Board appointed through the Minister, nominees from Industry, Workers and the Government.

ⁱSafework NSW Public Consultation On The Code Of Practice For Managing The Risks To Psychological Health, <https://www.haveyoursay.nsw.gov.au/60700/widgets/307631/documents/179342/download>