



The icare and *State Insurance and Care Governance Act 2015* Independent Review

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Introduction

Unions NSW welcomes the opportunity to make a submission to the icare and *State Insurance and Care Governance Act 2015* Independent Review.

Unions NSW supports the submissions of our affiliate unions.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 600000 members. These unions represent a diverse range of workers from both blue and white-collar industries.

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

Unions NSW has serious concerns about the management of claims and the service provided to injured workers. We believe the current model based on financial incentives to deny claims and therefore essential medical treatment because the scheme is operating as a business accruing profit, is a model which can never meet the objectives of the Act or prioritise the treatment of injured workers to pre-injury health or as near as possible. In this regard it also fails to return injured workers to meaningful work or in many cases any work. A scheme which does not focus on health outcomes cannot achieve the return to work outcomes it aspires to achieve.

3 System objectives

The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives—

- (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
 - (b) to provide—
 - prompt treatment of injuries, and
 - effective and proactive management of injuries, and
 - necessary medical and vocational rehabilitation following injuries,
- in order to assist injured workers and to promote their return to work as soon as possible,

- (c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
- (d) to be fair, affordable, and financially viable,
- (e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
- (f) to deliver the above objectives efficiently and effectively.¹

While the Terms of Reference do not include the WIM Act, beyond its relevance to this Review, it is important to note that the objectives of any Act serve an important purpose and should always be considered by those who oversee any operation, business, undertaking etc. The objectives set the standards expected of all who work within the scheme, and those in senior management positions with significant legal and fiduciary duties to uphold. The objectives define the purpose of the scheme. Where the scheme does not deliver on the system objectives as cited above, questions must be asked of those who manage the scheme and undertake to uphold these objectives.

Injured workers report a system that is adversarial. Assumes fraud. Tries to buy time to establish a reason to deny a claim. Doctor shops. Fails to contact injured workers regularly, or in some cases at all. Provides incorrect advice. Delivers rude and intimidating customer service and is confusing, complex and unhelpful.

Recently it has been confirmed through a media investigation conducted by Adele ferguson through Four Corners, 7.30 and The Sydney Morning Herald that employers and insurers are colluding to decline claims.

This behaviour is in direct contradiction of the system objectives. It assumes the injured worker is lying at best. At worst it does not care that the injured worker is injured and in need of support and treatment. It does not assist in the prompt treatment of injuries and does not provide the necessary medical treatment required, it does not support injured workers, it does not provide rehabilitation, it does not assist in return to work and does not provide financial assistance to injured workers and their families to allow them to get survive whilst undergoing treatment to get better.

¹ *Workplace Injury Management Act 1998*, (NSW) s3 a-f

The problems do not end here. The 'service' provided to injured workers, very often leads to secondary psychological injuries. Many injured workers enter the system quite naïve to the way it operates and find little assistance from case managers. Injured workers do not realise the system is very adversarial and are unprepared for the dispute they are about to encounter.

1. Delivery of the recommendations of the 2019 Compliance and Performance Review of the Nominal Insurer (NI) ('the Dore Review')

The Dore Review unfortunately was established a little late. The stable door appears to have been closed after the horse had bolted.

The release of the Dore Review is still relatively recent and given the disclosure of systemic problems within the scheme agent recently, it would appear the Dore Review has been successful in bringing to light, and to the attention of the media and the public, the desperate need to reform a system in dire need of financial and cultural change. Unions NSW is unaware of any positive changes in the operation of the scheme as a result of the Review as yet. The Review appears to have only touched on the many systemic problems within the scheme.

2. Realisation of benefits that it was established to achieve

The financial mismanagement of the scheme is an important public revelation. This was not a positive situation to find the scheme in but it is one that needs to be addressed.

3. Culture

The internal culture as was revealed by 7.30 on the ABC was very distressing. The treatment of staff trying to undertake their jobs within the good governance rules that apply to all organisations was disgraceful. The homophobic behaviour that appears to have been allowed to flourish within icare is also extremely distressing.

Aside from the revelations being distressing, the behaviour was illegal and reflected a culture of systemic bullying and harassment.

This is not dissimilar to the 'customer service' delivered.

4. Governance

It is clear that the governance of icare was problematic. Media stories have revealed the many questionable decisions, one may say corrupt decisions, and a toxic culture within icare. It would not be unreasonable to replace the entire Board. This Board has proven it is not able to make decisions that fulfil their fiduciary duty and the due diligence they must undertake as part of their role.

5. Executive remuneration

The rate of executive remuneration was clearly unsustainable and played a role in plummeting the scheme into debt. Unions NSW is opposed to outlandish payments and bonuses to senior executive and CEO's or Board Directors.

The \$4million paid to senior executive and the CEO was money that should have provided medical and financial assistance to injured workers. Many of whom were living well below the poverty line. Return to work KPI's were clearly not met or set at such a low standard they were easily met. Regardless the Return to work rates have plummeted. The newly elected LNP Government assured the public in 2012 it would be focusing on recovery and return to work and removed thousands of workers from the scheme using s39 claiming the scheme was in financial ruin using a projected and forecast that was not in any way realistic. The scheme at the time was in surplus and travelling well.

It is shameful that after 8 years of LNP management the scheme is now in a dire financial condition. Injured workers have never been worse off. Evidence suggests that some have turned to suicide and most are living in poverty.

6. Board effectiveness and accountability

This has been covered in previous questions. The Board has made very poor decisions and has not undertaken seriously their due diligence or fiduciary duty. The Board should be replaced.

7. Procurement practices

Has exposed on 7.30, ABC by Adele Ferguson, the procurement processes were a sham. Proper procurement processes as required by Governance policies any

corporation or union is subject to, were simply not followed. Contracts were given to family and friends.

8. Management of probity matters such as gifts, travel, & conflict of interests

Unions NSW does not object to rewarding hard working staff who produce excellent results with reasonable bonuses or Christmas celebrations. These however should be clearly set out within the organisations policies and guidelines and excessive gifts should be declared. It would appear once again that excessive gifts and travel were enjoyed by the lucky few at the higher levels of icare.

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

Recommendation 5

That the NSW Government note the evidence received in this review concerning the relationship between icare and SIRA, and SIRA and SafeWork NSW's effectiveness in carrying out their enforcement and compliance functions, and keep a watching brief on these issues for consideration as part of the five-year statutory review of the State Insurance and Care Governance Act 2015.²

Since the establishment of the three bodies Unions NSW felt the State Insurance and Regulatory body (SIRA) was very slow to understand its role as Regulator and for many years did very little to oversee the running of the scheme agent. Questions asked by Stakeholders as to the powers SIRA had in regulating were usually met with uncertainty and couldn't be answered.

Our working relationship with both icare and SIRA is satisfactory. We are involved in Stakeholder groups with both organisations. If the relationship is at times tense, the job of SIRA to regulate icare, would be reason enough for this.

SIRA should be a stand-alone independent regulator with the power to prosecute and strong investigative powers, if the scheme is to operate as it should according to the objectives of the *WIM Act*.

² Standing Committee on law and Justice, Recommendation 5, Report 63, December 2017

3) Statutory review required by s32 of the SICG Act:

10.whether the policy objectives of the SICG Act remain valid

23. *Principal objectives of SIRA*

The principal objectives of SIRA in exercising its functions are as follows:

- 1. (a) to promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation and motor accidents legislation and the other Acts under which SIRA exercises functions,*
- 2. (b) to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries,*
- 3. (c) to promote workplace injury prevention, effective injury management and return to work measures and programs,*
- 4. (d) to ensure that persons injured in the workplace or in motor accidents have access to treatment that will assist with their recovery,*
- 5. (e) to provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation,*
- 6. (f) to promote compliance with the workers compensation and motor accidents legislation.*

The objectives remain valid although it has become clear through our discussions with SIRA that there is uncertainty around how SIRA is able to enforce the objectives, or whether these objectives should or can be enforced at all.

Clearly the recent problems that have been identified through the Dore Report and media investigations show that many of these objectives have not been followed and SIRA has been either unwilling or unable to stop this from happening.

24 Functions of SIRA

1. *(1) SIRA has such functions as are conferred or imposed on it by or under this or any other Act (including under the workers compensation and motor accidents legislation).*
2. *(2) The functions of SIRA also include the following:*
 1. *(a) to collect and analyse information on prudential matters in relation to insurers under the workers compensation and motor accidents legislation,*
 - (b) to encourage and promote the carrying out of sound prudential practices by insurers under that legislation,*
 - (c) to evaluate the effectiveness and carrying out of those practices.*

The DORE Report has revealed serious failings that should have been revealed earlier. SIRA appears to have struggled to find its feet until recently.

11. whether the terms of the SICG Act remain appropriate for securing those objectives

Unions NSW agrees with the suggestion of our affiliate union the CFFMEU and its Legal and Industrial Officer Sherri Hayward. Section 27(2) of the SICG Act should be amended to include a provision that states:

*(2A) The resolution of the Legislative Council is to specify the terms of reference of the committee so designated which relate to the supervision of the work health and safety regime and the regulatory and educational functions of the designated regulator under the *Work Health and Safety Act 2011*.*

It is clear from anecdotal evidence we are presented with regularly from affiliates such as the CFMMEU, that independent oversight, such as that provided by the Standing Committee of Law and Justice in the workers compensation system, is the only way to encourage SafeWork to take its regulator role seriously and to fulfill its functions effectively.

Without this the regulation of safety within NSW has reached a point where it is almost non-existent. Workers are injured regularly, sometimes killed at work, and the Regulator sits on its hands and does nothing.

Last week we were informed of three serious incidents that occurred in the building and construction industry. Two workers lost fingers and one worker was de-gloved. SafeWork NSW failed to attend the worksites to initiate any form investigation. Instead the CFMMEU was informed that the workers had medical assistance as all had been taken to hospital in ambulances and there was no need for SafeWork NSW to attend the sites.

SafeWork NSW's job is not to provide medical assistance. It is to investigate the scene of accidents to ensure that similar accidents do not occur again, and to prosecute illegal behaviour. This was extremely disappointing behaviour from the Regulator.

Last year a nurse was murdered while visiting a psychiatric patient in his home. Once again SafeWork NSW did not attend the scene, stating that it was a police investigation and in a residential property, which they argued they could not enter.

The system of work, or poor work design, which placed a nurse in such a dangerous position will not change as SafeWork NSW have refused to investigate this incident. This leaves hundreds of workers who daily enter people's homes alone to provide care in an extremely vulnerable position.

Unions NSW strongly endorses independent oversight of SafeWork NSW.