

Terms of Reference for the icare and *State Insurance and Care Governance Act 2015* Independent Review

Introduction

This document sets out the Terms of Reference for and the intended approach to the icare and *State Insurance and Care Governance Act* (SICG Act) Independent Review ('the Review').

The Review was announced by the Treasurer and Minister for Customer Service on 4 August 2020.

The Review will be conducted by The Hon. Robert McDougall QC ('the Independent Reviewer').

Terms of Reference

Matters In Scope for the Review

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
- b. Delivery of the recommendations of the 2019 Compliance and Performance Review of the Nominal Insurer (NI) ('the Dore Review')
- c. Realisation of benefits that it was established to achieve
- d. Culture
- e. Governance
- f. Executive remuneration
- g. Board effectiveness and accountability
- h. Procurement practices
- i. Management of probity matters such as gifts, travel, & conflict of interests
- j. Relationship with the State Insurance Regulatory Authority (SIRA)

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

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

This part of the Review will assess:

- a. whether the policy objectives of the SICG Act remain valid
- b. whether the terms of the SICG Act remain appropriate for securing those objectives

4) Recommendations for improvements in line with parts 1-3 of the Terms of Reference, including in relation to:

- a. organisational effectiveness of icare
- b. financial stability and management of the workers compensation schemes
- c. any amendments to the SICG Act
- d. any amendments to the *Workers Compensation Act 1987* (WC Act) or Workplace Injury Management and *Workers Compensation Act 1989* (WIM Act) to the extent they relate to the above Terms of Reference.

Matters Out of Scope for the Review

This review will not examine:

- the WIM Act or the WC Act other than to the extent they relate to icare, the TMF, the NI, insurance, funding, or the powers, functions and statutory independence of SIRA
- the *Personal Injury Commission Act 2020*
- Other schemes managed by icare such as Lifetime Care and Dust Diseases Care

The review will not determine specific cases of workers compensation or provide remediation to injured workers but may make recommendations to improve the workers compensation system generally and the organisations managing it.

Review approach

Focus

The Review will be an inquisitorial rather than adversarial process.

The Review's focus will be on identifying recommendations at the whole-of-system and whole-of organisational level.

While specific cases and detailed issues raised can be considered as part of the Review, the Review will not make determinations relating to specific workers compensation cases, nor in relation to individual allegations of wrongdoing by any party.

Should the Review identify actual or potential issues of malpractice or wrongdoing that may necessitate further formal action, these will be referred to the appropriate authorities.

Methodology

The Review will be carried out on the assumption of complete cooperation and full disclosure from the parties involved.

The Review activities will be determined by the Independent Reviewer and are expected to include the following:

- Interviews by the Independent Reviewer (supported by the Review Team) with representatives from icare and SIRA, as well as representatives from other stakeholder groups.
- Review of documents from icare, SIRA, relevant Parliamentary documents and reviews, media articles and others.
- Review of relevant enabling legislation for workers compensation and the SICG Act.
- Seeking and considering feedback obtained through a targeted stakeholder consultation and public consultation (including a call for submissions based on the Terms of Reference).
- Commissioning of external expert advice on specific topics, for consideration by the Independent Reviewer.

Outputs

The Review will produce two public reports summarising the Review's findings and setting out recommendations:

- One covering the organisational review of icare, the issues raised in the media, and the review of the workers compensation schemes (Terms of Reference Parts One and Two);

- The other covering the SICG Act Statutory Review (Terms of Reference Part Three).

Timing

The Review is planned to conclude by the end of April 2021. However, the Independent Reviewer will endeavour to deliver the report earlier if practicable.

Flexibility is needed in the timeline for the Review, to ensure proper consideration of all relevant matters and to allow for the possibility that new issues come to light that need to be examined.

Roles and responsibilities

Independent Reviewer

The Review will be conducted by The Hon. Robert McDougall QC.

Review Team

The Independent Reviewer will determine the level of support he requires. He will have available to him:

- a Review Team comprised of staff from NSW Treasury and the Department of Customer Service
- additional support and resources as requested by him, such as assisting legal counsel and external expert advisors.

Role of icare and SIRA

As this will be an Independent Review, icare and SIRA have not been consulted on this Terms of Reference, nor will they be part of the Review Team.

However, both organisations will be key contributors to the Review and will be consulted throughout the Review.

Further information and contacts

For further Information or clarification on issues raised in this document, please contact:

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