



Victor Dominello MP
Minister for Finance, Services and Property

Hon Shayne Mallard MLC
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Legislative Council Standing Committee on Law and Justice
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Dear Mr Mallard *Shayne*

I write in relation to the NSW Government's response to the report and recommendations of the Legislative Council Standing Committee on Law and Justice (the Committee) first review of the workers compensation scheme. The Government's response to the Committee is due to be tabled by 11 October 2017.

The Committee's report was released on 9 March 2017 and contains 26 recommendations directed to the Government, the State Insurance Regulatory Authority (SIRA) and Insurance and Care NSW (icare). The Government's response, which I am pleased to enclose, supports, or supports in principle, all 26 recommendations.

Should you have any enquiries, please contact Ms Carmel Donnelly, Acting Chief Executive, SIRA on 02 4321 5468 or at carmel.donnelly@sira.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Victor Dominello'.

The Hon Victor Dominello MP
Minister for Finance, Services and Property

27.9.17

GOVERNMENT RESPONSE
to
**REPORT OF THE LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND
JUSTICE**
on
THE FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

Recommendation 1 - That icare provide more detailed information about how premiums are calculated.

Supported – For the benefit of employers who purchase Nominal Insurer Scheme policies, icare is introducing an education series of articles that explain the factors that influence pricing and how the Nominal Insurer premiums are calculated.

The *2017/18 Workers Compensation Market Practice and Premiums Guidelines* published on 1 March 2017 provided by SIRA, requires all licensed insurers (Nominal insurer and specialised insurers) to provide detailed premium information.

Recommendation 2 - That SIRA and icare collect clearer data regarding the circumstances in which an injured worker returns to work and maintain statistics in relation to that worker for at least 12 months following their return to work, and that the return to work data specifically identify workers who have returned to work for insignificant periods or have had their benefits terminated for a reason other than return to work.

Supported - The NSW Government supports the recommendation that SIRA and icare collect clearer data regarding the circumstances in which an injured worker returns to work. It should be noted that there are a number of complexities involved in collecting this type of data. SIRA currently collects return to work information based on claims and weekly payment data provided by insurers (Nominal insurer, self insurers and specialised insurers) and data from the National Return to Work Survey. SIRA will undertake to develop a multi-layered approach to measure system-wide return to work performance that will provide more consistent and complete analysis and reporting of return to work outcomes.

icare has initiated a Net Promoter Score Survey for Nominal Insurer participants as a method of assessing sustainability of employment following a worker ceasing to receive weekly benefits.

The survey asks the worker the following questions at intervals of 3, 6 and 12 months following injury:

- Are you still employed with your pre-injury employer?
- Have you commenced employment with a new/different employer?

- Are you working the same or more hours than prior to your injury?
- Have you had any further absences away from the workforce as a result of your workers compensation injury?
- Have you/are you receiving alternate income support e.g. Centrelink?

Recommendation 3 - That SIRA develop a guideline for use by scheme agents which outlines how rehabilitation services should be utilised during the case management process.

Supported in principle - Workplace rehabilitation providers in the NSW Workers Compensation System operate under a nationally consistent approval framework. The guide for this framework defines the model of workplace rehabilitation and the role of workplace rehabilitation providers. SIRA will review the framework in partnership with the Heads of Workers Compensation Authorities. SIRA will also consider inclusion of additional guidance to insurers in the *SIRA Guidelines for Claiming Workers Compensation*.

Recommendation 4 - That the NSW Government consider the need for the Workers Compensation Independent Review Office to complete the Parkes Review.

Supported in principle – The Government supports this recommendation in principle and has given consideration to the need for the Workers Compensation Independent Review Office (WIRO) to undertake further work on the Parkes Project. The Government is broadly supportive of all efforts to improve the NSW Workers Compensation System, and respects the statutory independence of the WIRO to inquire into and report on matters that the Independent Review Officer considers appropriate. The Government has implemented several legislative, regulatory and administrative reforms to improve the NSW Workers Compensation System in the two years since WIRO published its last progress report on the Parkes Project. In light of this, the Government has considered the need to complete this review and has decided that subsequent reforms and current consultation and review projects mean the Parkes Project has been largely overtaken by later developments and further work is not necessary.

Recommendation 5 - That SIRA issue a guidance note explaining how the new Guidelines for claiming workers compensation operate with respect to s 60(2A) of the Workers Compensation Act 1987.

Supported - SIRA will provide further guidance in relation to accessing treatment without pre-approval within the *Guidelines for Claiming Workers Compensation*.

Recommendation 6 - That icare, in the new scheme agent deed, consider including penalties for scheme agents who exert undue pressure on nominated treating doctors.

Supported in principle - This will be included in the new service provider deed (currently being drafted) as part of a service standard on conduct and governance. This is linked to a proportion of their base fee that is at risk

Currently, icare monitors the interaction between General Practitioners (GPs) and claims managers through its Net Promoter Score program, which identifies areas for intervention that are implemented by the business. As part of the 12-week pilot Medical Support Panel recently commenced by icare, a new liaison function has been introduced that provides guidance and support services to GPs to assist in medical decision making where required.

SIRA is addressing this from a whole of system perspective through collaboration with insurers and a comprehensive qualification and training framework. SIRA will consider this recommendation at the next Operational Outcomes Partnership forum with insurers.

Recommendation 7 - That icare collaborate with scheme agents to provide guidance to nominated treating doctors about their legal obligations in workers compensation matters.

Supported in principle - icare is developing a Stakeholder Engagement Plan for General Practitioners (GP) which will provide additional support and guidance regarding their role in the workers compensation system as nominated treating doctors. To ensure a collaborative approach to GP engagement, key stakeholders from the medical fraternity will be engaged in the plan development. In addition, the Medical Support Panel currently assists in providing a direct avenue of support for GPs regarding workers compensation matters.

From a system-wide perspective SIRA will work in collaboration with stakeholders including the Royal Australian College of General Practitioners (RACGP) and icare to provide additional education to general practitioners in regard to their role and obligations as nominated treating doctors. In addition, SIRA has commenced a review of the workers compensation certificate of capacity. Once the new certificate is finalised, a comprehensive education campaign will be integral to the implementation of the new certificate. This will present a key opportunity to further educate doctors regarding their integral role in the management of workers compensation claims and the importance of liaison with all members of the worker's support team.

Recommendation 8 - That icare work with scheme agents to:

- ***ensure that notices are written in plain English***
- ***consider options to shorten the format of notices.***

Supported in principle - In April 2017, icare commenced a project to improve written communication that is centred on simplifying and improving customer communications with the focus on:

- plain English
- tone
- simple key messages in a covering letter and all other detail required or mandated by legislation and guidelines in an attached information sheet.

Key communications will be tested with customers. An example of the proposed design for a letter to a worker communicating provisional payments is attached.

From a system-wide perspective SIRA will consider this recommendation at the next Operational Outcomes Partnership forum with insurers to ensure self and specialised insurers also follow these principles.

Recommendation 9 - That SIRA amend the Guidelines for claiming workers compensation so that injured workers are provided with any supporting documents relevant to a work capacity decision in real time or at pre-determined stages throughout the life of a claim, rather than only as attachments to a work capacity notice.

Supported - SIRA will develop a *Claims Administration Manual* that will apply to all insurers in the Workers Compensation System. The manual will establish clear and consistent expectations of all insurers in the management of their claims, disputes and litigation processes and their conduct in dealing with workers to foster a more supportive and transparent environment. The new manual will require insurers to provide certain health and vocational reports to workers at pre-determined stages throughout the life of a claim (subject to suitability for release such as health and safety concerns).

SIRA is also undertaking a post implementation review of the *Guidelines for Claiming Workers Compensation*. SIRA will enhance guidance on providing workers with information relevant to a work capacity decision prior to receiving the notice.

The Government will undertake a comprehensive review of the workers compensation dispute resolution arrangements.

Recommendation 10 - That SIRA expedite its stakeholder consultation process regarding the calculation of pre-injury average weekly earnings and develop a regulation on this issue as a matter of priority.

Supported in principle – The Government notes this is an important issue. There are a number of competing stakeholder perspectives that require further consideration. SIRA has undertaken extensive consultation regarding the calculation of pre-injury average weekly earnings (PIAWE) in the NSW Workers Compensation System. SIRA engaged an independent expert to lead further stakeholder consultation, which concluded with a PIAWE forum in December 2016. The Committee will be consulted on any future proposed changes.

Recommendation 11 - That SIRA issue a guidance note explaining the appropriate operation of s 44BC of the Workers Compensation Act 1987.

Supported in principle -

The Government has commenced a review of workers compensation dispute resolution arrangements.

Recommendation 12 - That icare develop a mandatory standard for the use of interpreters and translation services by scheme agents during the life of a workers compensation claim.

Supported - icare has developed two downloadable web applications for workers and employers that provide assistance in eight different languages. These applications are available on the icare website.

icare is considering all the options available, including:

- employing multilingual claims staff
- engaging National Accreditation Authority for translators and Interpreters (NAATI) accredited services with specific guidelines for use
- using telephone interpretation services
- using technology translation solutions.

The solution selected will be that which best supports customer need and will possibly include a number of the options listed above.

From a system-wide perspective SIRA, in consultation with insurers, will develop a mandatory standard for the use of interpreters and translation services to ensure that workers are better able to navigate the Workers Compensation System.

Recommendation 13 - That the NSW Government investigate removing the distinction between work capacity decisions and liability decisions in the workers compensation scheme.

Supported in principle - The Government has commenced a review of workers compensation dispute resolution arrangements.

Recommendation 14 - That the NSW Government establish a 'one stop shop' forum for resolution of all workers compensation disputes, which:

- **allows disputes to be triaged by appropriately trained personnel**
- **allows claimants to access legal advice as currently regulated**
- **encourages early conciliation or mediation**
- **uses properly qualified judicial officers where appropriate**
- **facilitates the prompt exchange of relevant information and documentation**
- **makes use of technology to support the settlement of small claims**
- **promotes procedural fairness.**

Supported in principle - The Government has commenced a review of workers compensation dispute resolution arrangements.

Recommendation 15 - That the NSW Government introduce a single notice for both work capacity decisions and liability decisions made by insurers.

Supported in principle - The Government has commenced a review of workers compensation dispute resolution arrangements. In addition, SIRA will develop a *Claims Administration Manual* that will apply to all insurers in the NSW Workers Compensation System. The manual will establish clear and consistent expectations of all insurers in the management of their claims, disputes and litigation processes and their conduct in dealing with workers to foster a more supportive and transparent environment.

Recommendation 16 - That the NSW Government consider the benefits of developing a more comprehensive specialised personal injury jurisdiction in New South Wales.

Supported in principle - The Government has commenced a review of workers compensation dispute resolution arrangements.

Recommendation 17 - That the NSW Government investigate the possibility of amending s 322A of the Workplace Injury Management and Workers Compensation Act 1998 to allow up to two assessments of permanent impairment for certain clearly defined injuries that are prone to deteriorate over time, such as spinal injuries.

Supported in principle - The current legislative framework provides appropriate mechanisms for the assessment of permanent impairment for workers whose condition deteriorates over time. A worker is able to appeal against a Medical Assessment Certificate where there has been a deterioration of their condition that results in an increase in the degree of permanent impairment. Further, case law supports the approach that where parties agree and enter into a complying agreement, this does not prevent a worker from applying for and obtaining an assessment by an approved medical specialist where they are able to show there has been deterioration in their condition.

The Government's review of workers compensation dispute resolution arrangements will further investigate the recommendation to amend section 322A of the *Workplace Injury Management and Workers Compensation Act 1998* to allow up to two assessments of permanent impairment.

Recommendation 18 - That SIRA amend the Guidelines for claiming workers compensation concerning s 38 of the Workers Compensation Act 1987 to set out an objective test for insurers to adhere to when determining the requirements for continuation of weekly payments after the second entitlement.

Supported in principle - The NSW Government supports the use of evidence-based decision making as part of appropriate claims management procedures. SIRA will develop a *Claims Administration Manual* to provide insurers more detailed claims management instructions. The manual will include principles of fairness and transparency in claims handling to ensure insurers adhere to procedural fairness when making a work capacity decision.

Recommendation 19 - That the NSW Government clarify the intended scope of s38A of the Workers Compensation Act 1987 and if necessary, extend the minimum weekly compensation payments for injured workers with highest needs to existing recipients of weekly payments, subject to an analysis of its financial impact.

Supported – The NSW Government acknowledges the need to clarify section 38A of the 1987 Act and its application. The Government commits to reviewing this section and its application.

Recommendation 20 - That SIRA use the data collected from icare and self and specialised insurers concerning the first cohort of workers affected by the operation of s39 of the Workers Compensation Act 1987 to identify workers in need of intensive case management and work placement, and provide these opportunities to eligible workers before the expiration of weekly benefits.

Supported - In December 2016, amendments to existing Vocational Programs that are provided for under section 53 of the *Workplace Injury Management and Workers Compensation Act 1998* were made to allow the section 39 cohort to access these programs. These include covering costs of training, workplace modification and work trials. SIRA has provided insurer guides, fact sheets and information sessions to ensure insurers are providing timely and appropriate support to workers through the transition process, including providing access to these and other supports to assist with return to work.

Insurers are required to report to SIRA on the management and support mechanisms in place for workers in need of intensive case management and work placement. SIRA has commenced the provision of reports back to insurers on their performance against a range of requirements, relative to other insurers. Additional insurer guidance and forums will be provided where required.

Recommendation 21 - That icare monitor the outcomes of the Work Injury Screening and Intervention protocol trial, and subject to results, roll out the protocol to all scheme participants.

Supported in principle - icare is continuing to monitor this and other programs to ensure the results are validated before further roll out.

icare supports and understands the benefit of early screening, identification and early intervention for those who may be at risk of delayed recovery/return to work. Preliminary

results from the WISE protocol are being validated by icare, which will inform the appropriateness of further application of the WISE protocol in the private sector, or explore other similar methods that support early identification and intervention. icare will continue to collaborate with its partners to identify and trial interventions that improve recovery at work.

SIRA will review the research findings when they are released and continue to collaborate with its partners to identify and trial interventions that improve recovery at work.

Recommendation 22 - That icare and SIRA expedite work on a mandatory surveillance guideline for scheme agents which sets objective standards for when surveillance should be used.

Supported in principle - icare has drafted guidelines for consultation with its key stakeholders. icare notes that while a guideline is useful in setting standards, it is the responsibility of each insurer to specify how surveillance providers operate when undertaking work on their behalf.

SIRA, in consultation with insurers, will develop a *Claims Administration Manual* that will apply to all insurers in the Workers Compensation System. The manual will establish clear and consistent expectations of all workers compensation insurers in the management of their claims, disputes and litigation processes and their conduct in dealing with workers to foster a more supportive relationship and environment. SIRA will also include objective standards for the use of surveillance in the manual.

Recommendation 23 - That icare release the remuneration provisions in the new scheme agent deed, including incentive-based remuneration provisions.

Supported – icare will make the new service provider deed available once it is finalised. This will include the remuneration framework. It is anticipated the new service provider deed will be available by December 2017.

Recommendation 24 - That icare, in the new scheme agent deed, require scheme agents to comply with the NSW Government's Model Litigant Policy for Civil Litigation.

Supported – This is already part of the current deed and will also be part of the new agent deed.

From a system-wide perspective SIRA will develop a *Claims Administration Manual* that will include the principles of the Model Litigant Policy to act honestly, fairly and efficiently.

Recommendation 25 - That icare:

- **develop a single, comprehensive qualifications and training framework for all case managers, incorporating specific skills to identify and deal with mental health issues**
- **make compliance with this framework mandatory under the new scheme agent deed.**

Supported in principle – This will be incorporated into the new icare claims service model. Since its inception, icare has built 23 e-learning and face-to-face training courses that have been completed by nearly 1,300 claims staff and front line customer managers in the icare eco-system.

It should be noted that a large percentage of case managers have an allied health background and therefore previously undertaken relevant training in dealing with mental health issues.

icare has developed a Competency Model to reflect the new Service Model to be implemented 1 January 2018. The competency model reflects customer needs and includes a specific mental health component, so that mental health claims are managed by staff with the appropriate skills and mental health background.

The competency model will be supported by a comprehensive Knowledge Base and training program. The training program will be aligned with an appropriate qualification (e.g. Certificate III or IV in Personal Injury Management). Certification will be managed by an independent Registered Training Organisation (RTO).

Employers will also receive a tailored training program and it is intended that this will also receive RTO certification.

From a system-wide perspective SIRA will investigate the current arrangements and programs being undertaken by insurers and other workers compensation providers to better understand the key issues and develop a range of options

Recommendation 26 - That icare, in the new scheme agent deed, include sanctions for scheme agents who fail to comply with the applicable guidelines on the use Independent Medical Examiners.

Supported in principle – Currently, icare monitors the interaction between Independent Medical Examiners (IMEs) and claims managers through its Net Promoter Score program, which identifies areas for intervention by icare.

Sanctions will be included in the new service provider deed (currently being drafted) as part of a service standard on conduct and governance. This is linked to a proportion of base fee that is at risk.

icare is developing an Independent Medical Examiners (IME) Handbook as a reference tool to provide guidance and support to scheme agents. Regular Health Checks will be undertaken to ensure consistency in the IME process including identification of improvement opportunities.

The Government notes that this issue should be addressed from a system-wide perspective. In the latter part of 2017, SIRA will commence a review of the regulatory frameworks governing non-treating health practitioners in the Workers Compensation System. Non treating health practitioners include:

- Independent Medical Examiners (IMEs)
- Permanent Impairment Assessors
- Injury Management Consultants.