

AFEI response to Questions on notice

Mr DAVID SHOEBRIDGE: The icare board now has much more statutory independence, but the SIRA board is a little bit more independent. Would you take on notice to look at the way those two boards operate and see if either model is more effective?

Mr BRACK: The proposition is not debatable. There should be representation, certainly on our side. It does not matter who it is. There should be people who understand what is going on and who have the capacity to say, "That is the wrong answer." They have to make them think about those things again.

Given the paucity of data on scheme performance made available by either board it is not possible to make an informed assessment of the effectiveness of either board. Members of both boards are appointed by their respective Minister and are directly accountable to their Minister. The icare board sees its role as "to govern icare rather than manage it" [icare 2015-16 Annual report page 30] with wide legislative power enabling the considerable delegation of its functions and responsibilities to the CEO and committees. Similarly the SIRA board has strategic direction and policy roles and responsibilities along with its oversight functions. Both are to keep their Minister fully informed and may be subject to Ministerial directives. S20 of the *State Insurance and Governance Act 2015* provides that other than Ministerial directives made in the public interest, SIRA is not subject to the control and direction of the Minister. However, while it is the role of the ministerially appointed icare Board to appoint the icare CEO, the chief executive of SIRA is the person employed in the Department of Finance Services and Innovation as the chief executive of SIRA.

The coalescence of employer funded workers compensation into the NSW government's disparate insurance schemes (motor accident; home building; sporting; lifetime care; self insurance for government agencies) has been a deliberate strategy to create a state "super" insurance scheme; effectively further diluting the role of employers despite the fact that they fund the workers compensation scheme. Management of the workers compensation scheme has been merged into a government managed, consolidated insurance scheme with diverse funding sources and whose stated focus is to become "customer centric". This core ambition is underpinned by the icare vision to be a "social insurer" — "*We'll be there for the people, not for profit*" [icare 2015-16 Annual report page 6]

While the nominal insurance scheme is not for profit, this sentiment overlooks the fact that for most NSW employers, profit is essential if they are to employ. Workers compensation premiums can be a major component of labour costs and consequently a determinant of business viability and employment. The further the management of the scheme is removed from employer input and pushed further into the realm of "*customer centricity and world class ambitions*" the more the realities of workers compensation premiums and claims management impacts in the workplace will be diminished. Similarly the current boards' composition with no experienced workers compensation

scheme representative, let alone employer representation, further removes the possibility of any meaningful employer input. This is now confined to the heavily process driven icare/ SIRA “consultations” in which the two stakeholders, workers and employers, along with all manner of service providers and any other interested party, are invited to put their views. For employers this process seldom yields meaningful outcomes. icare/SIRA goals (reflected in the activities of their boards) are seldom shaped by employer needs. The service providers (lawyers, academic researchers, marketers etc), on the other hand, are the beneficiaries of inflated premiums paid by employers who have an ever diminishing voice in the operation and management of the scheme as icare/ SIRA move further down the path of a government run insurance and care services scheme.

It is further concerning that these organisations, under the direction of their boards, are now referring to “profit” within the scheme. NSW employers who are compelled to insure with the nominal insurer face a monopoly provider. There is no financial or competitive advantage in choosing an agent within the scheme, and they are not the beneficiaries of the insurance policy they must take out within icare. Despite this, icare insists they are not a monopoly [Mr Bhatia, transcript page 18] and that there is a changed operating environment. SIRA, in its Workers compensation financial and premium supervision discussion paper (September 2016) includes in Principle 1 *“that its proposed target average premium rate for a particular cohort fairly reflects the claims costs, expenses and suitable profit margin for that cohort”*. [page 33] The nominal insurer is not an insurance company, has taken no risk, and any liability within the scheme is owned by the employers of NSW. It is of considerable concern that this ‘new environment’ envisages the scheme making a profit from premiums which employers are compelled to pay. The ramifications of this development are compounded by the fact that employers have no representation at either board level to influence board decision making.

Mr DAVID SHOEBRIDGE: There are two options, and they are not necessarily contradictory. One is to re-establish something like the two ministerial advisory councils—that is, a ministerial advisory council that has representatives of both ministers on it. The other option is to have tripartite representation on the board.

Mr PATTISON: I will take that on notice and think it through. It might depend on how information may or may not flow and whether just having the board option places restrictions on the participants. Information may or may not flow sensibly with an advisory body. I want to share one story about information sharing that I think is important. There was a lot of debate at the time provisional liability was brought in. There was a lot of concern from our side of the table that it would be abused.

Given the governance structure of icare and SIRA, both options should be pursued — a ministerial advisory panel for both ministers and also employer and employee representation on both SIRA and icare boards.