Department of Communities and Justice (DCJ) Response to Report on the SIRA Investigation into three Corrective Services workers [sic] compensation claims (Anonymised version), dated 12 October 2020

Section	Comment
1.1.2	Correctives Services NSW (**CSNSW**) is not an employer under the *Government Sector Employment Act* (**GSE Act**). The employer under the GSE Act is the Government of New South Wales. See section 21. The three employees subject of the SIRA report were engaged by the Government of New South Wales in the Department of Communities and Justice (**DCJ**) and were assigned a role in the CSNSW business stream (ss. 20, 21, 22, 45, 46). Only one employee remains an employee of the NSW Government in DCJ.
1.1.8	Please note comments at section 1.1.2.
1.1.9	The description and implications of CSNSW as a self-insurer under s. 211B of the *Workers Compensation Act 1987* (**WC Act**) has implications for all Public Service agencies. DCJ acts as all other agencies within the Public Service and as advised by icare. DCJ proposes that SIRA engages with icare to clarify the role, meaning and practical implications of Departments (as defined in the GSE Act) in respect of SIRA's view that they are self-insurers. Please note our comment regarding who is the employer under section 1.1.2 above. The definition of 'employer' under the GSE Act needs to be read together with section 211B of the WC Act. Section 211B of the WC Act references 'Government employer'. Section 3 of the GSE Act sets out the definitions for various 'Government employers', some of which can employ staff directly through authorising legislation. No such legislation applies to CSNSW, and the Government of New South Wales remains the employer of CSNSW staff.
1.1.11	DCJ cannot comment on the relationship between icare and QBE. This is a matter for icare and the New South Wales Treasury.
1.1.18	In May 2015, DCJ verifies that Ms Sue Wilson, then General Manager, Metropolitan Remand and Reception Centre (**MRRC**) Silverwater Complex, was married to an A/Assistant Commissioner at the time. DCJ submits that the indirect reporting relationship had no bearing on the facts of this matter and is irrelevant. Ms Wilson did not report to the A/Assistant Commissioner; she reported to [redacted] Director Custodial Corrections Metro. Commissioner Peter Severin made a statement on 7 April 2019 in relation to an insurance matter of claim number [redacted] At point 9, he addresses the relationship between Ms Wilson and her husband.

	As currently worded, the SIRA report implies that a conflict of interest was neither identified nor managed appropriately and/or DCJ had withheld information by not confirming that a marriage existed. DCJ respectfully requests that SIRA amend the SIRA report accordingly. DCJ is inaccurately referred to as the 'Department of Stronger Communities' and as formerly having been the 'Department of Justice and Communities'. Both these titles are incorrect.
1.1.25	The matters of concern referred to by Ms Wilson on 26 May 2015 were performance related. There were no allegations of misconduct within the meaning of section 69 of the GSE Act in May 2015 - it is incorrect to reference 'these suggested performance or conduct matters…'. The terminology of performance (unsatisfactory performance) and misconduct are not interchangeable; see definitions in sections 69 and 68 of the GSE Act. SIRA has not referenced any evidence of the '… triggered wider rumour and innuendo throughout the Corrective Services workforce'. There is evidence that, in emails and telephone calls, an Injury Manager advised QBE in May and June 2015 that there had been charges of misconduct and that these had been dealt with in the Industrial Relations Commission of New South Wales (**IRC**). That statement was ill informed, incorrect and it is regretted. The Injury Manager who was involved in this case remains in employment with DCJ. DCJ will run a 2-hour training session for all Injury Managers on the concepts and processes for the handling of unsatisfactory performance, grievances and misconduct.
1.1.28	A claim is not of itself medical only. The costs incurred against that claim are the trigger for whether the injured worker requires reimbursement of pre-injury average weekly earnings (**PIAWE**) and/or the costs of treatment. It is incorrect to say that the claims were initially 'medical only claims'; rather, it is correct that, at the time that the claims were lodged, two of the three employees remained on duty and did not require payment of PIAWE. DCJ can only respond to the presence of claim as opposed to elements of that claim. Decisions as to claim liability are made by QBE, not by DCJ. DCJ can advise QBE if it intends to dispute a claim, and it is the decision of QBE as to whether it investigates a claim. This information does not currently appear in the SIRA report, which is therefore misleading by omission, as it implies that DCJ determines liability. QBE denies or accepts claims on its own behalf.
1.1.29	The statement of the Injury Manager is ill informed, inappropriate and is regretted, and DCJ apologises that this occurred. That employee has since resigned and no longer works for CSNSW.

	A formal training session will be held with all DCJ Injury Managers to enable capability development on the purpose of the workers compensation scheme and ethical practice.
1.1.30	Please note comments at section 1.1.25.
1.1.31	In 2015, the Injury Managers who dealt with these claims were employed by the (then) Department of Justice and were assigned roles within a then CSNSW Injury Management team. This team later moved to report through the Corporate Services business stream of the (then) Department of Justice and is now part of the People Branch within the Corporate Services Division of DCJ. It is correct that the Injury Managers were instructed to dispute the claims.
1.1.32	There is no evidence of repeated statements of 'misconduct' by the employees, other than the approaches of no more than two Injury Managers to QBE. In disputing the claims, the (then) Department of Justice claimed that the actions by Ms Wilson to remove three staff from the Immediate Action Team (**IAT**) roster was a reasonable management action. To DCJ's knowledge, SIRA has not attempted to interview the staff involved to determine the meaning of 'hierarchy above', nor their understanding of the use of the term 'disciplinary action'. It is likely that the reference to the 'hierarchy above' was the reporting line for the Injury Manager, i.e. the Team Leader and then the Director, being those involved in the delivery of injury management services to the CSNSW business. Where there is an indication of unsatisfactory performance, it is reasonable to supervise, coach and instruct staff on proper process and behaviour. CSNSW was making changes to the IAT reporting structure and the three employees reacted unfavourably to that news. Examples of this behaviour are quoted in the documentation that has been provided to SIRA. These included nonattendance at a meeting with no explanation, and an unfortunate discussion that was witnessed as being heated. The reaction by the three employees, as set out in the documentation, was so unfavourable that the decision was taken to reassign their duties pending further training, as there were reasonable concerns about their professionalism. The three employees did not attend the usual briefing on the day, and in doing so were taking active steps to undermine the authority of their manager.
1.1.33	Please note comments above regarding DCJ's understanding of the operation of the workers compensation scheme and comments at section 1.1.31.
1.1.34 – 1.1.51	These are not matters that DCJ or CSNSW can respond to; icare is best placed to respond to these matters.
1.1.59	In line with previous comments, DCJ respectfully requests that SIRA consult and discuss with icare the extent to which Departments under the GSE Act are considered 'self insurers' within the scheme, noting that its employees are engaged by the Government of New South Wales.
1.1.62	DCJ provided SIRA with the 800 documents referenced.

1.1.64	Please note separate comments outside of this document concerning the SIRA findings and detailed in the letter accompanying this table.
2.1.1	Please note comments at section 1.1.2 regarding the employment of staff within CSNSW. Please note comments at section 1.1.9 regarding the responsibilities of CSNSW.
3.1.6	SIRA has failed to specify that the proceedings in the IRC were conciliation proceedings in relation to a dispute notified by CSNSW. CSNSW's submissions in the conciliation proceedings were consistent with there being no allegations of misconduct against the three employees at that time in relation to their response to the changes in IAT, that is, there was no disciplinary action as defined in the GSE Act when the conciliation proceedings were held. It is also consistent with CSNSW seeking from the insurer that the claims be excused on the basis of reasonable management action. It is unfortunate and regretted that the Injury Manager incorrectly referred to 'disciplinary action' and failed to properly convey the proceedings in the IRC as anything other than submissions and private discussions in a conciliation conference. DCJ requests that SIRA revise the SIRA report to make it clear that 'disciplinary action' has a particular meaning within the GSE Act, that there is no evidence that the three employees had been issued with any allegations of misconduct and no disciplinary action when the conciliation proceedings were being held.
3.1.13	The Public Service Association (**PSA**) did not pursue proceedings before the IRC of 'victimisation' of staff on the grounds of their delegate duties. Rather, the dispute was resolved in the IRC through conciliation and with the assistance of His Honour. There is no evidence of victimisation, and DCJ requests that SIRA remove such inferences in the absence of evidence, or provide evidence on which it relies so that it can be tested/subject of comment.
3.1.16	CSNSW does not dispute that the three employees perceived the actions of Ms Wilson as being humiliating, but contends that Ms Wilson's management actions were reasonable within the circumstances.
3.1.18	No disciplinary action had been taken against the three employees in relation to the changes at IAT, and it is correct to state that there was no prior warning. However, no prior warning was required, and this was the first step taken to correct a performance issue. In the circumstances where the three employees failed to attend a meeting to discuss the concerns, it was a reasonable management action to reassign the employees to alternative duties.
3.1.19	The GSE Act, related policies and procedures, the *Industrial Relations Act 1996* and common law all address the continuum of issues that can lead to a matter being of a performance nature or an allegation of misconduct.

	An alternative available to Ms Wilson was to refer the matters mentioned at section 3.1.19 to the CSNSW Professional Standards Branch as potential allegations of misconduct. This did not occur; rather, efforts were taken to address the matters as a performance issues through reassigning the duties and seeking meetings with the officers – as noted, they failed to attend such meetings.
3.1.20	It is reasonable that Ms Wilson was monitoring the performance of the staff, as it is a requirement of her role.
3.1.22	It is reasonable that in monitoring the staff members' performance, Ms Wilson had formed the view that there was evidence to support reassignment of duties pending further training. This is managerial prerogative to take action in response to a performance issue.
3.1.23	Resistance to change can be a performance issue. Managers have a variety of tools and actions available to them should the resistance continue despite efforts to address it. An example of such an effort was the invitation to a meeting that the employees refused to attend. Staff resistance to well explained and informed changes can be expected, particularly where a way of working has been in place for many years. Where that resistance continues, assignment to alternative duties pending further training is available to provide the employees an opportunity to consider their viewpoints and to address any performance issues. SIRA has not spoken with Ms Wilson, nor sought her views as to why the changes were appropriate or to obtain any other context including the basis for her view that there were performance concerns. DCJ respectfully submits, therefore, that it not available to SIRA to draw a conclusion that Ms Wilson was acting primarily on resistance to change and no other issues.
4.1.3	It is DCJ's understanding that the agency can request that QBE conduct a review of a claim. It is a matter for icare and QBE as to how that review is conducted and who is appropriate to conduct the review. DCJ will work with QBE, icare and our Injury Managers to ensure that the appropriate procedure is clear to all.
4.1.12	SIRA has not spoken with Ms Cathryn Hellams (Director, HR (Business Partner) CSNSW) or Ms Wilson or any other witnesses in that investigation to understand why that change was made. Further, SIRA alludes to something improper occurring, and there is no evidence of that presented in the SIRA report. Ms Hellams refers to the changes as 'draft' and invites Ms Wilson to consider if she is happy with the changes. There are a variety of reasons as to why Ms Hellams may have assisted Ms Wilson. It is not unusual for a witness to seek assistance from others, including the Human Resources team, when compiling a statement. The statement must, however, be true and correct in their view, hence they must consider any suggestions.
4.1.17	DCJ notes the comments made by SIRA and confirms that this is not regular practice by DCJ, and that it was a genuine mistake made in this situation.
4.1.21	Please note previous comments regarding 'medical only claims'.

4.1.26	DCJ does not agree that there is any contradiction. The statement is consistent with a view that there were performance concerns. Options are available under the GSE Act to deal with issues as performance related, i.e. other than by way of formal misconduct and disciplinary action. There is reference to 'conduct matters' that were dealt with at a local level. This is not the same as formal misconduct allegations that can lead to the taking of disciplinary action.
4.1.27	The management of the claims was removed when a complaint was raised. This is usual practice and remains the case within DCJ. It is not practicable for the Injury Manager to remain supporting the injured worker when the injured worker has lost confidence in the Injury Manager. In reviewing the notes of the meeting with the Nominated Treating Doctor, the insurer and one of the employees, it is regretted that the Injury Manager raised matters of liability in a case conference. DCJ, QBE and icare are working with the Injury Managers to understand roles and responsibilities.
4.1.30	DCJ notes SIRA's comments.
4.1.32	Please note comments at section 1.1.29.
4.1.33	Please note prior comments regarding CSNSW as a 'self-insurer', and that DCJ is continuing to work with the Injury Managers to clarify roles and responsibilities, including that of QBE Claims Manager versus DCJ Injury Managers.
4.1.35 and 6.1.33	Please note comments at section 1.1.32.
4.1.36	SIRA has not interviewed any staff of DCJ, including CSNSW, and is relying solely on documents presented. It is not evident that the employees were targeted due to 'opposing senior leadership', nor because they made worker compensation claims. DCJ has been denied procedural fairness. Please note previous comments as to 'medical only' claims. DCJ is currently undertaking a workers compensation review with a view to implementing early intervention support services to all injured workers who present with a psychological injury.
4.1.37	It is noted that SIRA is relying on documentation presented and has not interviewed any person from DCJ in completing its report and, as above, has denied DCJ procedural fairness.
6.1.1	DCJ is considering implementation of a software tool, SafetySuite, to support the case management activities of Injury Managers and ultimately improve and standardise case management documentation.

	DCJ Injury Managers must liaise with QBE early in the injury management process in the event that it seeks to request that the insurer disputes a claim. This step and conversations must be held before the formal evidence is gathered through an investigation.
6.1.3	DCJ supports SIRA discussing and clarifying the roles of QBE, icare and government Departments within the Public Service. DCJ respectfully submits that it would be appropriate if SIRA clarified in the SIRA report that this relationship is not unique to CSNSW.
6.1.9	DCJ agrees that the transcript of conciliation proceedings does not support the comments made. It does not appear that the Injury Manager had a high level of knowledge of the purpose, content and IRC approach to conciliation of disputes. Injury Managers would not ordinarily have this knowledge, as those matters are dealt with by Employee Relations and Industrial Relations officers.
6.1.64	The reference to 'secret agreements' is inappropriate. Injury Managers are made aware that their conversations are recorded (there is a recorded message from QBE reminding staff of this) and that documentation is added to the Claims Files. Injured workers are also informed as to the status of their claim. In this particular case, the Injury Manager is clear about the view of the claim, including with the injured worker during a case conference. All of this information may be discoverable by injured workers in legal proceedings and this is also known by Injury Managers.