

**Submission
No 9**

FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: EML

Date received: 26 September 2016

26 September 2016

The Hon Shayne Mallard
Chair
Legislative Council Standing Committee on Law and Justice
Parliament House, 6 Macquarie Street
Sydney NSW 2000

Dear Chair,

Re: First review of the workers' compensation scheme

EML wishes to thank the NSW Legislative Council's Standing Committee on Law and Justice ("the Committee") for its correspondence dated 18 August 2016 directly inviting EML to provide a submission with respect to the first review of the workers' compensation scheme. EML notes that the review was announced on 15 August 2016.

In preparing this submission, EML notes the terms of reference attached to the invitation and also the operative parts of section 27 of the *NSW State Insurance and Care Governance Act 2015* ("the Act"). EML also notes that the Act commenced operation on 1 September 2015, meaning this review only allows for comment on the first year of operation of the new scheme.

EML understands that teething problems arise during the initial stages of any new project, especially when replacing an existing approach that has operated for more than 28 years. To the extent that it is possible, EML accepts any such problems are part of normal business operations, and will not draw attention to them in this submission.

EML has prepared this submission under two broad headings: areas where it believes the reformed scheme is improved; and areas where EML, in its experience to date, believes opportunities exist to further improve the operation of the State's new workers' compensation scheme.

Perceived improvements

EML believes the structural separation of the State's Nominal Insurer ("icare") from the independent insurance regulator ("SIRA") has largely been successful. From a contractual perspective, EML believes that icare is well positioned to ensure regulation is not overly complicated, and that it has been effective at considering the commercial realities of the regulatory framework. For example, icare played a critical role in relation to the proposed changes to the *Guidelines for Claiming Compensation Benefits* regarding claim notifications. If these changes had been implemented purely as designed by SIRA, they would have had far reaching cost implications for workers' compensation insurers and Scheme Agents.

EML appreciates icare's significant investment in training, development and change management to ensure a consistent approach across the workers' compensation scheme. This investment in the training of case management employees is something we have not previously seen, both in its scale and breadth, as well as icare's engagement with EML's own Learning and Development department.

Perceived opportunities

EML believes SIRA's retention of the data capability of the former WorkCover entity has impacted upon the timely provision of information by icare to Scheme Agents, both on a performance basis and also in relation to gazetted fee orders and benefit indexation rates. The recent decision by the icare Board to pursue a central system may improve this delay.

EML has noted examples of icare developing policy positions on matters we believe SIRA was perhaps designed to take the lead on. This happened when positions were developed for issues that affected the whole workers' compensation system, not just those insured within the scheme. An example was the development of the *Calculating Pre-injury Average Earnings* form by icare. Whilst this should, theoretically, see every worker insured through icare workers' insurance and self-insurance have pre-injury earnings calculated the same way, it does potentially expose workers insured by self or specialised insurers. We acknowledge that the calculation and determination of Pre-Injury Average Weekly Earnings ("PIAWE") has been a complex and, at times, controversial matter in the past, and that it is now formally considered to be the initial work capacity decision on a claim.

From a practical perspective, the rebranding of WorkCover to either icare or SIRA with respect to statutory forms (such as claim forms and certificates of capacity that touch each stakeholder) is yet to be completed. This creates confusion at the workers compensation front line. Case Managers are regularly explaining to stakeholders that WorkCover no longer exists and also the separation of powers, even though the injury was sustained more than 12 months after the fact. Additionally, the fact WorkCover NSW's internet site is still active, rather than providing redirects, adds to the confusion experienced by some participants. We acknowledge these matters may yet be resolved.

Prior to the reforms, EML had a positive working relationship with WorkCover's Merit Review Office. However, EML does not feel it has a similar relationship with SIRA in this area as of yet. This relationship is important in terms of understanding and implementing learnings from merit decisions across portfolios. We look forward to icare fostering this relationship as it enters its second year of operation.

The final matter that EML wishes to provide comment relates to what may be either a disconnect, or in the alternative, unnecessary red tape between the three newly created entities with respect to health and safety and return to work inspectorates. Historically, EML had regular communication with both inspectorates, however since the reform, EML has had limited contact with either. This lack of contact, combined with the data capability opportunity noted above, has the potential to delay the provision of advice and follow-up for safety and return-to-work matters where face-to-face contact and education is required. We encourage the Committee to consider these opportunities as part of its review.

I trust that this submission will be of benefit to the Committee. Overall, the 2015 reforms have been positive. Should any more information be required, please do not hesitate to contact EML directly.

Yours sincerely,

Mark Coyne
Chief Executive