

Submission
No 1

**STATUTORY REVIEW OF THE STATE INSURANCE AND
CARE GOVERNANCE ACT 2015**

Name: Name suppressed

Date received: 10 October 2017

Partially
Confidential



The Tumbleweed

Submission to review of ICARE ACT 2015

The perspective of a primary psych claim, who could have been back in a safe workplace after 2 months, said insurers psychiatrist, but is now 2.5 years in the system, 24%wpi

CONTENTS

- **Introduction**
- **The old Workcover**
- **SIRA**
- **ICARE**
- **SAFEWORK NSW**
- **Conclusion**

Introduction

My name is _____ and I'm a primary psych claim. After two and a half years in the system referring to myself as a person would not be accurate. I could go on about how you should treat someone as a person, but I won't bother, I'm a primary psych claim. I've been assessed as 24 % WPI. My life, including my working life, is over. I am 41 years old.

It didn't have to be this way. The early intervention report said I could be back at work in two months. Instead I am here. You did that.

You people who thought the tumbleweed joke was funny.

WIRO put its seminar videos on youtube. In 2017 _____ got up and described SIRA's compliance department as looking like this:



The audience, of regulators, insurers, and doctors, laughed.

_____ is of course correct about that.

That tumbleweed is my life, so I will leave it to your imagination what the impact of that laugh was on me, because I don't want the cops coming around to my house a second time to try to lock me up in a psych ward, for talking about the impact of what you people have done, like happened last time.

What _____ could be corrected on is whether it is a minority of conduct. The Tumbleweed signifies the Wild West. You could say that being an outlaw in the wild west was a minority of conduct. But it was what could happen that made it the wild west. What happens to the victims of your system are things that any reasonable person would think could not happen. And when they do happen, you people don't do anything about it.

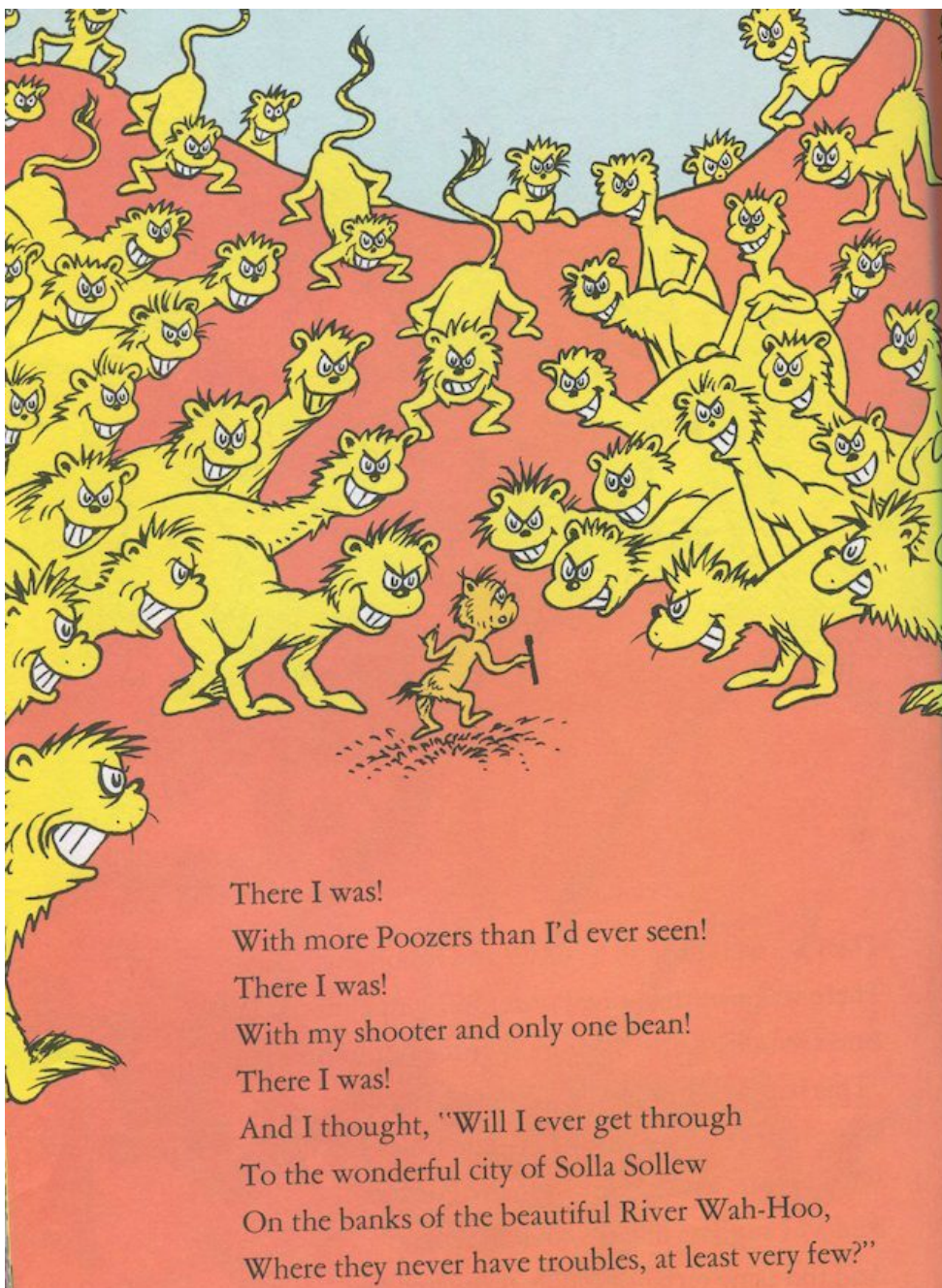
Like the Wild West, the outlaws killed the last Sheriff. Would any of you take your chances on a claims journey? Are you feeling lucky, punk?

The Old Workcover.

The old Workcover lives. It lives on in the complaints made to the old workcover by people still in the system which have gone unresolved.

I reported workplace bullying to the old Workcover on 15 April 2015. Later on I discovered that my complaint had been closed the day after it was received. It is now two and a half years later. It still sits there, closed, while the cost to my life and family is incalculable, and the cost to the scheme is going to run at somewhere between \$100,000 and, what, \$1 million ?? a lot.

At the WIRO seminar this year there are murmurings about basically bringing the old workcover back, except making it less adversarial. Lets be clear about what that means, it means taking from injured workers their last remaining peashooter and bean.





The State matter has been closed authority, with no objectives, which regulates nothing.

Security Classification: Sensitive: Personal

Please contact icare to follow-up your information request with their Privacy Officer. **I can confirm that as icare is a separate agency, this is not within the jurisdiction of SIRA.** Please contact icare via icarequestions@icare.nsw.gov.au. I note that you have also sent this email to the appropriate area for a response.

(READ THAT AGAIN. DID YOU KNOW, NSW PARLIAMENT, THAT SIRA DOES NOT THINK IT REGULATES ICARE?)

Further correspondence received by Customer Care regarding follow-up of your icare privacy request for information will be filed.

Thank you,

Customer Care is now closing your enquiry.

Dear

Thank you for your email.

Your comments have been noted and **as previously advised, this complaint has been closed by Customer Care at this time.**

Yours sincerely,

Customer Care is now proceeding with closing your enquiry.

Thank you for your enquiry.

Yours sincerely,

I will await the details of your nominated contact point of which will be passed on to GIO. Please note that if you do not provide this information SIRA will not be able to assist you further in this regard.

the Customer Care Team is closing this enquiry.

As per our telephone conversation this afternoon in response to your enquiry, Customer Care is closing this enquiry in regards to the complaint about the IMC only.

As discussed on Wednesday 12 October 2016, Customer Care have closed your most recent enquiry in relation to being provided with an Injury Management Plan (IMP).

As per our telephone conversation this afternoon informing you of the details received from GIO in response to your enquiry, Customer Care is now proceeding with closing your enquiry.

As per our telephone conversation on 27 April 2016 informing you of the details received from GIO in response to your complaint, Customer Care is now proceeding with closing your complaint.

State Insurance and Care Governance Act 2015 No 19

Current version for 14 November 2016 to date (accessed 9 October 2017 at 14:01)

[Part 3 Division 2 Section 23](#)

23 Principal objectives of SIRA

The principal objectives of SIRA in exercising its functions are as follows:

- (a) to promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation and motor accidents legislation and the other Acts under which SIRA exercises functions,
- (b) to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries,
- (c) to promote workplace injury prevention, effective injury management and return to work measures and programs,
- (d) to ensure that persons injured in the workplace or in motor accidents have access to treatment that will assist with their recovery,

- (e) to provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation,
- (f) to promote compliance with the workers compensation and motor accidents legislation.

As demonstrated above, if SIRA can palm something off, it doesn't have any objectives.

OK so you tell me folks, does repeatedly closing complaints while a person is repeatedly smashed into being a non-person fulfil any of the principle objectives of SIRA? That is one of the ways the system turns a two month return to work into never returning to work ever. Every time a person tries to use a little of their momentary recovery to reassert their personal agency, they get piledriven back into the ground. You can only do that so many times before they never get up again.

You have a regulator of a system of people with a disability without the word disability being mentioned in its objectives.

You have a regulator of a system of people with rights without the word rights being mentioned in its objectives.

You have a regulator of a system where "Insurers out-and-out lie" (WIRO Seminar 2016) where reducing or taking any steps about insurers out-and-out lying is not mentioned in its objectives.

We now live in the world of the NDIS, in the world of choice and control for people with disability in NSW, and have done for many years now.

These objectives of SIRA are no longer appropriate. They need to mention peoples rights, disability, transparency.

There also need to be mechanisms for people who have made complaints whereby SIRA will take action when Safework is doing nothing about workplace safety.

For example in my case it was absolutely not good enough that it took a year and a half from my original complaint in April 2015, til November 2016 when Safework finally said, yes the complaint that the employer breached their bullying policy, and breached the medical certificate is substantiated. You know very well the return to work stats on a person a year and a half in workers compensation with a psych claim, its never ever going to happen at a year and a half. You did that. It is now two years and a half and there has still been zero action on that safework finding by SIRA.

But the tumbleweed, oh that's funny to you isn't it.

You think its funny that a two month return to work got turned into two and a half years and WPI of 24%. Where was the regulator at any stage? Where was any assistance to safely return to work in November 2015? Where was the regulator when the perpetrator was at my return to work meeting while I was excluded from being there at my own return to work meeting in June 2016?

Do you think its funny that the employer engaged in unlawful behaviour and pushed an avoidable up to a million dollar cost onto the scheme, or is that, to you, just what employers pay premiums for?

Just change the objectives of SIRA to “ensuring that insurance is at all times the efficient proxy and weapon of the person paying for the policy”. At least that would be clear and honest.

As put it, that person should have got their own insurance.

NOTICES

A notice sent by an insurer which out-and-out lies can be of no effect. Currently all SIRA will do is raise a query with the insurer. They cannot actually do anything.

Notices from insurers to attend appointments which breach the guidelines can be of no effect. SIRA again does nothing.

The insurer has all the power. They can lie on notices, give false reasons for appointments, send people to appointments against the guidelines.

In my case I was sent to who, apart from everything I have discussed elsewhere was at that time the ONLY Independent Medical Consultant for psychiatric issues. So when I was sent to the appointment against the guidelines, SIRA said to me that the guidelines didn't apply.

Guidelines either apply or they don't. The guidelines are there to protect the public. If there is only one IMC, make the appointment in a way that doesn't breach the guidelines. For example if the appointment is more than 100km away, get the psychiatrist to travel. (The guy advertises his services as including travel anyway, its not impossible). If the regulator says the guidelines only exist when the insurer can be bothered following them, there are no guidelines, and you don't actually have a regulator.

TRANSPARENCY

This submission is about SIRA, ICARE and SAFEWORK. If you want to see what I am talking about with regard to my claim journey through workers compensation, go and read my confidential submission to the Workers Comp review number 1. Keep in mind that was written about a year ago now.

But you talk about TRANSPARENCY a lot in the governments response to that review. There is no mention of transparency in the objectives of SIRA.

A move back toward the old workcover but with a less adversarial system is going to mean that the system which is in place needs to be totally transparent, that can be the only trade off for being adversarial.

This means all the documents need to be on the table. No secret surveillance. No secret meetings. The insurer shows all their work all the time. No secret correspondence between insurers and workplace bullying perpetrators. No secret correspondence between rehab providers and workplace bullying perpetrators.

Nothing about me without me means I get CC into every single email ever. I should not have to go and try to get a copy of information under the health records and personal information privacy

legislation, because I should have a record of everything in real time. There should be no going back and amending the record when it is no longer relevant.

SIRA also need to play a mediating role in the ensuring correcting of personal information in real time actually happens. For example injury management plans. They come out and they are wrong. The person complains to SIRA. SIRA does nothing and sends out a "this matter is closed" email. That cannot happen any more.

I was not consulted on my injury management plan until TWO YEARS INTO THE CLAIM. What I got was wrong, and nothing substantial was done about it. That was after numerous unconsulted injury management plans has come out before it and numerous complaints to SIRA. Any wonder the claim is now at 2.5 years. How can you get better if there is zero injury management?

Nothing about me without me is a basic starting point in disability. You people need to get some disability skills. If you won't do it from a rights perspective, do it from a cost to the system perspective. Nothing happens without it in disability because nothing works without it.

We are talking about the ICARE ACT 2015, which makes it clear that ICARE is for any purpose an agency. But when you try to get information out of your insurer, they just ignore you and then Icare try to claim nominal insurer immunity. Icare are not the nominal insurer, they act as the nominal insurer, or perform the functions of the nominal insurer, they ARE NOT the nominal insurer. The nominal insurer legislation makes it clear that for any purpose the nominal insurer is NOT AN AGENCY. Icare performs the functions for this legal fiction, but it is clear that the fictional thing is still fictional. When I want information out of GIO, they cannot claim to be a legal fiction. The nominal insurer is for the uninsured. My employer is insured. A system with transparency means that SIRA as the regulator actually open their mouth and say something. Do your job.

The thing is I actually met the Director of SIRA and others at an injured workers meeting and told them all about what was going on. They were 100% on notice about what the employer and insurer were doing to me, were provided all the documentation, and they still let it happen.

Right now as I'm writing this I just had another unmarked car pull up out the front of the house in line of sight to me writing this, sit there for a while without getting out, then drive off. I am trying to get any surveillance documentation from the insurer and I have been blocked by GIO and Icare since December 2016. Could I have got better while being terrorised? No. Can I get any answers? Also no. What is SIRA's response? They don't actually do any regulating of anything. At 2.5 years in the system will I ever get my life back? Ask a statistician.



ICARE

PRIVACY, TRANSPARENCY, DATA BREACH

Consider the following insurance scenario.

My ex partner tries to murder me by running me down with their car. Im seriously injured and am assessed at whole person impairment of 24%.

I make a claim on their Compulsory Third Party insurance. The insurer accepts liability.

I go to a rehab provider. The rehab provider has a meeting with myself and my GP. In that meeting the rehab provider takes a bunch of notes.

The rehab provider goes back to the office and without my knowledge emails those notes directly to the person who tried to murder me, saying "Hi, I think this will help".

I take the person who tried to murder me to court. The perpetrator submits the emails from the rehab provider, which I was not aware of, into evidence. In that court case is the first time I find out about it.

Im outraged. I write to the rehab provider and complain. The rehab provider writes back and tells me to in no uncertain terms, take a hike.

The question then is, what other information has been shared directly with the perpetrator which I didn't know about. I had been complaining for two and a half years that the perpetrator had been managing the complaint against themselves, and this had been an ongoing issue since the start of the claim.

I ring the insurer and they send me an FOI form which I fill out and return. They ignore it.

I go through internal reviews and merit reviews, referring to the fact that the insurer has not been forthcoming with information relevant to these reviews which I would need to rely on. The insurer and Merit Review do nothing.

I go the OAIC they do nothing.

I go to NSW Information Commissioner, they refer me to Icare.

I ask Icare for the information and ask Icare to conduct reviews. Icare are required, but fail to inform the information commissioner that they have been asked to conduct reviews. Icare do nothing.

I go back to the Information Commissioner. They apologise and contact Icare on my behalf.

Icare come back to me and provide nothing of the information which was actually requested, and do not conduct the reviews.

Icare try to claim nominal insurer exemption. But I have not asked for information from the nominal insurer, I have asked for information from the actual insurer because the perpetrator did in fact have insurance.

So I then go to NCAT.

THIS SCENARIO WOULD NEVER HAPPEN BECAUSE IF THIS HAPPENED THE SKY WOULD LITERALLY FALL IN, I mean can you just imagine. There is just no way the rehab provider can go behind the injured person's back and place themselves clearly in the camp of the person who caused the injury, and subject the injured worker to a serious and traumatic data breach.

But replace "ex partner" with "workplace bullying perpetrator" and this is exactly what happened to me.

What should be of interest to all the members of this review, no matter where you come from, is that the rehab provider was the supposedly worker friendly, union backed, . The president of my board, who was also implicated in my injury, I found out in the FWC, works for . Doesn't that just give you the warm fuzzies?

While I will never use any rehab provider ever again, the perpetrator had been receiving my personal information from the insurer, and managing the claim against themselves, for two and a half years. Icare let this happen.

I have been defamed by the Fair Work Commission which WIRO sent me to unrepresented, and WIRO has done nothing about having this quashed to remove it from the public record. And this brings up an interesting question for insurance in the NSW jurisdiction and the interface, or lack of, with the commonwealth system. NSW matters need to be dealt with in NSW, and where the NSW jurisdiction has sent a vulnerable person to another jurisdiction, they need to be provided with support.

I will again have no support when I eventually get into the room at NCAT, and this is unacceptable.



SAFEWORK

WISH YOU WERE HERE

The toilet paper logo, findings not worth the paper its written on, would be a better fit for SafeWork, but that's taken so instead Safework is simply Wish You Were Here.

Safework is the agency nowhere to be found. It took a year and a half between my original complaint to Workcover in April 2015, and when Safework finally got around to making a finding that the employer had breached their bullying policy and also breached the restrictions on the medical certificate.

Safework waited until the insurance system had achieved its objective as the perpetrator's proxy of separating me from my employment before this finding was made.

Go and get the transcript from the fair work commission and have a look at the way I was abused and humiliated by the employer and commissioner about the fact that I had complained all the way up to the Director for that outcome. Look at it.

If Safework is what it says it is, and does what it says it does, that decision should have been made in April 2015, not a year and a half later by the Director.

Safework NSW needs to have more than one functional and effective staff member.

That would be a great place to start in re-writing the act.

Again, the workflow category of "case closed" needs to be completely eradicated from anything to do with a person who is still on a claims journey.

Safework findings need to be worth the paper they are written on. So guess what happened when Safework admitted the workplace was unsafe? Nothing. Nothing happened by way of penalty or to make the workplace safer.

I was offered, after termination, that if I was ever back in that workplace, Safework would offer me assistance. Oh ha ha. That was after you had let the employer terminate my employment while being investigated for work health and safety breaches, which you ultimately found to be substantiated, but only after I was terminated and only a year and a half after the complaint was first made.

Safework NSW would be better to come up with a process whereby anyone who makes a work health and safety report can be taken round the back and put down humanely. That would have been preferable to what you have done to me.

To the money-conscious, what is in place to stop the next massive cost to the system coming out of that workplace?

Like I said, the old Workcover still lives. The community expectation is that there is some, any, system of workplace safety operating in NSW. The old Workcover still lives where the organisation in charge of workplace safety was found to have a culture of bullying and punitive use of process. That's the same organisation which didn't accept liability until after after I was unrepresented at the fair work commission for a stop bullying order, and which wouldn't admit the workplace safety breaches until after I was unrepresented for unfair dismissal. You are still punitively using process. On this matter, it is not good enough that icare reports on punitive use of process to an internal committee, this needs to be made public. ¹

Safework NSW should have been involved far before I made my original complaint in April 2015. By the time that complaint was made, I had already reported having panic attacks at work, there being no system in place to manage my workload of doing a full time job part time about which I had made a WHS complaint to the board, I had already used the EAP because I was coming apart, and I had already reported workplace bullying to the board, in the weeks and months or longer before the injury. Where, I ask you, were Safework NSW BEFORE I lost work capacity?

Im shattered and disgusted that it took a year and a half to get a finding which vindicated me but which was otherwise utterly pointless. But what would have actually helped would have been if Safework NSW hadn't been completely missing in action before it got to that point. Bottom line should have been that the issues in that workplace were not about me, they were about the workplace. You helped them remove me from the workplace, that was your real answer.

Punitive use of process, just like you use internally.

CONCLUSION

- You need a regulator, you currently don't have one
- You need a system of safety, you currently don't have one
- You need a system where perpetrators don't manage the claim against themselves, at least not where the employer is a board rather than an individual.
- You need a system which acknowledges the disability status of people, and uses best disability practices, you currently don't have one
- You need a system which acknowledges the rights of ordinary people, you currently don't have one
- You need a system which is transparent, you currently don't have one.
- There can never again be a WIRO seminar that doesn't include people with a disability.
- The workflow category of a closed case needs to be eradicated from anything to do with a person still on a claims journey.
- You need a system which is worthy of a social licence to operate, you currently don't have one, I mean come on, you laughed at the tumbleweed joke.

¹ March 2016, Icare, Update on action plan, General Purpose Standing Committee no 1, Inquiry into allegations of bullying.