Submission No 4

STATUTORY REVIEW OF THE STATE INSURANCE AND CARE GOVERNANCE ACT 2015

Organisation: Unions NSW

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Submission

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Introduction

Unions NSW welcomes the opportunity to make a submission to the statutory review of the *State Insurance and Care Governance Act 2015* (**the Act**). Unions NSW also supports the submissions filed by its affiliates.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 600 000 members. These unions represent a diverse range of workers from both blue and white-collar industries.

The Act created Insurance and Care (**icare**), the State Insurance Regulatory Authority (**SIRA**) and SafeWork NSW in order to remove the conflicts of interest that existed within WorkCover NSW. Unions NSW supports the establishment of the separate organisations, however our experience suggests that both SafeWork NSW and SIRA do not effectively regulate workplace safety and workers compensation. There also appears to be a lack of communication between SIRA and icare creating a barrier to accessing information as each organisation will often lay blame with the other for failures in data collection and sharing.

Since the changes made to the NSW workers compensation scheme in 2012, Unions NSW and its affiliates have made several submissions to this Honourable Committee. This submission will draw on information provided to the *First Statutory Review of the 2012 Workers Compensation Changes* and will highlight systemic problems existing with:

1. SIRA's role as regulator including a failure to work cooperatively and a lack of transparency;
2. Section 39 of the Workers Compensation Act 1987;
3. SafeWork NSW as WHS regulator;
4. Failure of the Act to meet its objectives.

We attach Unions NSW submission to the Law and Justice Committee on the *First Statutory Review to the 2012 Workers Compensation Changes* and continue to support the three main arguments put forward in this submission:

1. That the harsh cuts to workers compensation made in June 2012 have failed. Many sick and injured workers are not returning to the workforce, and are being left to fend for themselves;

2. Sick and injured workers have been driven to suicide and despair because workers compensation support is now so limited and the system treats them so badly;
3. The workers compensation system introduced under the stewardship of then Treasurer Mike Baird has been constructed to serve the interests of insurers and employers. Sick and injured workers are no longer considered. [1]

1. SIRA as regulator

SIRA was established to regulate workers compensation, compulsory third party insurance and home building insurance.

In his second reading speech for the *State Insurance and Care Governance Bill 2015*, Minister Perrottet stated:

> SIRA will focus on ensuring key public policy outcomes are being achieved in relation to service delivery to injured people, affordability, and the effective management and sustainability of the insurance schemes. Consolidating regulatory responsibility for State insurance into one regulator will enable a consistent and robust approach to the monitoring and enforcement of insurance and compensation legislation in the State. [2]

The objectives and functions of SIRA as set out in Part 3, Division 2 of the Act are consistent with this statement.

Yet SIRA has shown a lack of willingness to engage with, or take action against, employers when complaints have been raised by injured workers or their representatives. If SIRA is to adopt a robust approach to the enforcement of legislation, it must regulate all participants in the workers compensation system.

Unions and injured workers have found that seeking the assistance of the Workers Compensation Independent Review Office (WIRO) is a more effective and faster way of delivering results than seeking the assistance of SIRA. The WIRO process is simpler and faster and will result in better outcomes for injured workers.

[1] Unions NSW, Submission to the Law and Justice Committee, *First Statutory Review of the 2012 workers compensation scheme,* 9 October 2016, 5.
[2] New South Wales, *Legislative Assembly Hansard*, 5 August (2015),5.

While we support the separation of these regulatory authorities to avoid conflicts of interest, the experience of Unions NSW affiliates suggests that SIRA and icare do not work cooperatively and that SIRA does not know what icare is doing and vice versa. Data collection across both agencies is poor and there is a lack of transparency.

An example of this was when a new PIAWE form became available through icare with little or no involvement from SIRA. Unions NSW affiliate, the Construction, Forestry, Mining and Energy Union (CFMEU), became aware of this form when one of their members received it and forwarded it to them. The CFMEU raised a query with SIRA and also raised concerns over failure to consult with stakeholders, including unions. SIRA escalated this query to icare however failed to pass on icare's response to the CFMEU. The CFMEU were able to locate the new form on icare's website and after lodging a direct query to icare, icare sent the SIRA response directly to the CFMEU.

It came to light that SIRA had been sent draft copies of the form, however given the form required no authorisation, no action was taken. This created unnecessary anxiety for injured workers who held concerns their failure to use the correct form could result in their application for recalculation being denied. Had the two organisations worked together to develop this form, this unnecessary anxiety, along with the time wasted by the CFMEU and those investigating the CFMEU's enquiry, could have been avoided.

Despite the Minister's view that the split of agencies would result in greater transparency, this has not been our experience.

Unions NSW recommends a tripartite consultative mechanism be established in the Act enabling genuine consultation with all stakeholders, in line with the Australian Governments' obligations under ILO Conventions.

Unions NSW further recommends that the Act be amended to require the three entities, SIRA, icare and SafeWork NSW, to genuinely engage in this tripartite consultation.

2. Section 39

This year marks five years since the introduction of the *Workers Compensation Amendment Act 2012* and marks the beginning of section 39

cut offs for injured workers who do not meet the high needs and highest needs threshold. Section 39 of the *Workers Compensation Act 1987* provides that an injured worker will not be entitled to income support beyond a period of 260 weeks if they do not meet the greater than 20% whole person impairment (WPI) requirement.

Unions NSW maintains that it is unconscionable to cut off income support in circumstances where an injured worker is still injured and has been unable to secure employment at their pre-injury wage level.

> To do otherwise involves no recognition that the reason the worker is in this predicament is because they were injured at work and therefore owed a duty of care to receive income (and medical) support until they get back on their feet. It also involves no recognition that finding employment while carrying restrictions or even just a history of workers compensation is near impossible.[3]

Unions NSW holds grave concerns for these workers who, as they approach the date of their s39 cut off, are becoming more and more desperate and unsure of their future. For the majority of the first workers to be impacted by this amendment, their income support will cease on Christmas Day 2017. The failure of the Government to consider the psychological impact of this date is difficult to comprehend.

The assistance provided to these workers by icare does nothing to hide the cost shifting approach this Government has taken to workers compensation. Injured workers impacted by the s39 cut offs are simply provided with contact numbers for various charities, suicide hotlines, homelessness information and Human Services details. Section 39 does nothing but shift the burden to Medicare, Centrelink and various charities. It also provides little incentive for employers to ensure safe workplaces when they know the ultimate burden of long-term injuries will fall on society.

Unions NSW believes the failure of Government to address the timing, if not the substance, of the s39 cut offs stems from the failure to ensure proper tripartite representation on the Boards of SIRA and icare.

Unions NSW recommends that the Act be amended to give dedicated Board positions on both bodies to representatives from unions, employer organisations and the community.

[3] Unions NSW, above n 1, 8

3. SafeWork NSW as WHS regulator

SafeWork NSW is the third agency to be formed as a result of the Act. SafeWork NSW describes its key roles as follows:

1. Provide advice on improving health and safety;
2. Provide licences and registration for potentially dangerous work;
3. Investigate workplace incidents;
4. Enforce work health and safety laws. [4]

Unions NSW and its affiliates have serious concerns about the willingness of SafeWork NSW to enforce the *Work Health and Safety Act NSW 2011*. This is all the more important given that long-term injured workers who do not meet the 20% WPI impairment threshold will now receive limited support. Workers cannot afford to be seriously injured in NSW as they will no longer be supported.

SafeWork NSW has embraced an educative role and signals by its behaviour a lack of interest in enforcing legislation. Employers blatantly in breach of legislation are not penalised. In some cases unions have reported SafeWork's failure to even attend worksites with significant and potentially fatal safety breaches. The CFMEU has seen a number of serious crane incidents over the last 12 months with little or no action from SafeWork NSW to address this rise in crane incidents. The statistics regarding enforcement activity in recent years are outlined on page 45 of Unions NSW submission to the *First Statutory Review to the 2012 Workers Compensation Changes*.

Unions NSW supports a robust regulatory system that ensures all workers come home safely from work. This is the best way to reduce workers compensation costs, yet SafeWork NSW is missing in action.

Unions NSW recommends the Act put more emphasis on compliance and enforcement to ensure this key SafeWork NSW activity is taken seriously.

5. Failure of the Act to meet its objectives

In the Second Reading speech for the *State Insurance and Care Governance Bill 2015*, the Minister for Finance Services and Property, the Honourable Victor Dominello claimed that:

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[4] Legislative Council Standing Committee on Law and Justice, Parliament of NSW, *First review of the workers compensation scheme* (2017) 7 [1.40].

> The new structure will be far more transparent and accountable and, most importantly, lead to better outcomes for injured workers. The new organisations will become more customer-centric, streamlined and efficient, building economies of scale and focusing on clear objectives.[5]

Unions NSW refers to our submission to the *First Statutory Review of the 2012 Workers Compensation Changes* and continues to urge the Honourable Committee to consider the stories shared by injured workers in Annexure 1 of this submission and the recommendations put forward from page 48 of our submission.

The overwhelming evidence put forward in this submission shows, despite the clear objectives and functions of SIRA set out in schedule 6 of the Act, a complete failure to carry them out. The system and its agencies have not supported injured workers and have not effectively prevented workplace injuries in NSW.

Furthermore, the Minister claimed in the Second Reading Speech that the amendments to the legislation had succeeded in improving return to work rates.

> Thanks to reforms introduced by this Government, the scheme now has assets exceeding its target funding ratio, the New South Wales return to work rate is higher, premiums have been reduced by an average of 17 per cent and injured workers with the highest needs are receiving more benefits than before.[6]

Unions NSW asserts that this is simply not the case. Injured workers are not returning to meaningful work. In fact the Standing Committee on Law and Justice in its *First Statutory Review of the 2012 Workers Compensation Changes* has recommended 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 injured worker for at least 12 months following their return to work. They also seek that the return to work data specifically identify workers who have returned to work for insignificant periods or have had their income support terminated for a reason other than return to work.[7]

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[5] New South Wales, *Legislative Assembly Hansard*, above n 2, 4.
[6] Ibid 1.
[7] Legislative Council Standing Committee on Law and Justice, Parliament of NSW, First review of the workers compensation scheme (2017) 29 [2.72].

Unions NSW agrees with the Committee that data collection does not adequately reflect the reality of injured workers returning to work and supports this recommendation.

We would welcome the opportunity to address the Honourable Committee and provide further information as required.