

**Submission
No 12**

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

Organisation: Australian Federation of Employers and Industries

Date received: 2 November 2017

Submission to: Parliament of New South Wales
Legislative Council Standing Committee
on Law and Justice

Matter: Statutory review of the *State Insurance
and Care Governance Act 2015*

October 2017

Lodged by:	Australian Federation of Employers and Industries
Address for	Australian Federation of Employers and Industries
Service:	PO Box A233, Sydney South NSW 1235

Australian Federation of Employers and Industries (AFEI)

Submission to: Parliament of New South Wales
Legislative Council Standing Committee
on Law and Justice

Matter: Statutory review of the *State
Insurance and Care Governance
Act 2015*

October 2017

1. The terms of reference require the committee to examine two specific questions:
 - whether the policy objectives of the *State Insurance and Care Governance Act 2015* remain valid
 - whether the terms of the Act remain appropriate for securing those objectives.
2. In our view the operation of the workers compensation scheme demonstrates that the State Insurance and Care Governance Act 2015 (**SICG Act**) and the related relevant provisions in the Workers Compensation Act 1987 and Workers Compensation Act 1998 are in need of reform to enable a “*consistent and robust approach to the monitoring and enforcement of insurance and compensation legislation in this State*”.¹ The SICG Act has been drafted in the broadest possible terms, without clear and specific obligations for State Insurance Regulatory Authority (**SIRA**) or ICNSW as to the manner in which they discharge their statutory functions. As a consequence, both bodies are able to conduct their operations without any requirement to be transparent or accountable to NSW employers who own the scheme liabilities (*Workers Compensation Act 1987 154D(4)*).
3. The SICG Act gives SIRA broad financial, premium, market practice and prudential supervisory powers to regulate insurers. With removal of almost all scheme agents in workers compensation, this is effectively now ICNSW as the nominal insurer for most private sector employers in NSW. This submission is concerned with SIRA’s role in relation to the nominal insurer; to supervise ICNSW and to hold ICNSW accountable for its operation of the scheme. It does not consider the impact of the legislation on self and

¹ Minister Perrottet State Insurance and Care Governance Bill 2015: Second reading speech 5 August 2015

specialist insurers, nor the plethora of state government and other agency insurance now provided by ICNSW, except to the extent that the ICNSW reinvention of itself as a supposedly mega world class insurer has eclipsed attention on the performance of the employer funded workers compensation scheme.

4. ICNSW has failed to hold itself accountable for its performance as the nominal insurer which is unsurprising given that it is not required to do so by the SICG Act or by the Workers Compensation Act 1987 (s 154A—154CA). Section 10(1)(d) of the SICG Act merely requires ICNSW to “monitor” the performance of the schemes for which it provides services.
5. The SICG Act provides that 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.*
6. The functions of SIRA under the SICG Act are:
 - (1) *SIRA has such functions as are conferred or imposed on it by or under this or any other Act (including under the workers compensation and motor accidents legislation).*
 - (2) *The functions of SIRA also include the following:*
 - (a) *to collect and analyse information on prudential matters in relation to insurers under the workers compensation and motor accidents legislation,*
 - (b) *to encourage and promote the carrying out of sound prudential practices by insurers under that legislation,*
 - (c) *to evaluate the effectiveness and carrying out of those practices.*

7. Further, S 24 of the SICG Act stipulates that SIRA has such functions “*as are conferred or imposed on it by or under this or any other Act (including under the workers compensation and motor accidents legislation)*”. The *Workplace Injury Management and Workers Compensation Act 1998* s 22 set out the objectives and general functions of SIRA under workers compensation legislation, with s 23 setting out specific functions. These provisions make it clear that SIRA is responsible for (among other matters):
- day to day operational matters relating to the scheme [22(2)(b)]
 - monitoring and reporting **to the Minister** on the operation and effectiveness of the workers compensation legislation and on the performance of the workers compensation scheme [22(2)(d)]
 - monitoring and reviewing key indicators of financial viability and other aspects of the workers compensation scheme [22(2)(f)]
 - collecting analysing and publishing data **as SIRA considers appropriate** [23(1)(m)]
 - to assist in the provision of measures to deter and detect fraudulent workers compensation claims [23(1)(g)]
8. As the nominal insurer, ICNSW, unlike other insurers, is not answerable to APRA. In setting its prudential standards SIRA has opted to meet only minimum APRA standards but it is not obliged to do so. According to the Auditor General, it has set up a governance structure that aligns closely with APRA standards.² SIRA has stated that “*As workers compensation insurance is required by law in NSW, there is a need for transparency and accountability to the general public. A key component of competition within any market is the availability of information to consumers.*”³ However, with the limited exception of self and specialist insurers, there is no competition for NSW employers in their choice of insurer. The NSW workers compensation scheme is a closed compulsory scheme, which does not provide detailed, accurate and timely information about its operation and performance. To date SIRA appears to be a somewhat passive statutory regulator, dependent on information provided to it by ICNSW which currently appears to be at an inadequate level.
9. December 2016 prudential information has only recently – mid October 2017 – been made publically available, indications in the June 2016 Nominal Insurer Liability Valuation that ICNSW would be required “*to publish an executive summary of the June valuation report and executive summaries of the future valuation reports within five months of each period ended – 30 June and 31 December*”. SIRA was also to provide a report to the Minister at least annually, by January each year. These have not been made publically available.
10. The Nominal Insurer Liability Valuation as at 31 December 2016 had been published in July 2017 but was subsequently removed from the SIRA website. So from June 2016 to October 2017 employers had to rely on the aspirational and limited governance and risk management statements released by SIRA in the form of its Board communiques and the

² NSW Auditor-General's Report to Parliament | Volume Five 2016 | Governance 27

³ SIRA MPPG Discussion Paper 2016

Workers Insurance Scheme (Nominal Insurer) Capital Management Policy.⁴ The SICG Act has permitted the operation of a government monopoly scheme in which limited information is provided to the employers who fund it. The SICG Act provides SIRA and ICNSW with wide powers to expend monies but with no corresponding restrictions or measures to account for this expenditure.

11. While current information on scheme performance is not available, the December 2016 report showed a significant reduction with its funding ratio at 112% , down from 123% six months earlier, (based on an 80% probability of adequacy) and below the target band of 120%—140% set out in the Nominal Insurer’s Capital Management Policy. After the 2012 Amendment Bill was introduced the scheme had a surplus of just under \$4 billion. By June 2016 this had shrunk to \$3.3 billion and by December 2016 to \$1.8 billion. Has this rapid deterioration continued? NSW employers have no way of knowing until SIRA and ICNSW release this data.
12. This lack of transparency and accountability is further demonstrated by the absence of data on ICNSW operations. Whilst ICNSW states it is a data driven organisation⁵ there is no public evidence for this, in fact to the contrary, they have published no timely information⁶ relevant to scheme operation and performance – injuries and claims rates, return to work data, expenditure on rehabilitation and return to work assistance, all of which are crucial determinants of scheme performance. SIRA needs to demonstrate by ensuring the timely publication of comprehensive scheme data that is paying close attention to the claims management process within ICNSW, given the requirements of 23(e) of the SICG Act 2015 and the considerable impact claims management has on premiums. Within the broad legislative framework and the SIRA *Guidelines for claiming compensation* which sets out what insurers must do in the claims process ICNSW has too wide a discretion in its claims management, without accountability to SIRA or NSW employers for outcomes. This important issue is considered further in this submission.
13. Amendments to the Workers Compensation Act 1987 as part of the State Insurance and Care Governance Bill 2015 enabled SIRA to issue Workers Compensation Market Practice and Premium Guidelines (**MPPGs**) which replaced setting insurance premiums by insurance premium orders.[WCA 1987 s 168]. SIRA did develop MPPGs, which met legislative obligations for only moderate change initially and were heavily focussed on process as prescribed by the legislation. However, going into their second iteration, these remain an aspirational statement of objectives without details as to actual premium determination. SIRA does consult on the MPPGs and publishes a summary of its consultation findings, but without transparency as to the basis for premium determination or the rationale for the insurer’s premium filings. For most NSW employers this insurer is now ICNSW. As the Government nominal monopoly insurer, all relevant information about ICNSW premiums

⁴ The ICNSW and SIRA annual reports’ data was also as at June 2016.

⁵ 2015-16 Annual Report

⁶ The most recent icare annual report is 2015-16.o

and scheme performance should be public. It is not clear why SIRA has not sought this outcome. It should be required to do so through amendments to the SICC Act.

14. In the NSW scheme premiums are a levy structured to fund a wide range of SIRA and ICNSW expenditure apart from the cost of claims and are not solely (or even primarily) a reflection of employers' safety and workers compensation performance. No information is provided on this non-cost of claims expenditure and its weighting in the premium formula. Nor is information provided about expenditure levels on the various benefits and services provided within claims, for example on service providers and benefits such as educational assistance. There is no certainty as to what will be included in the formula or its weightings; these can be altered without explanation or justification. Employers have no way of knowing that Premium Principles are being met or that the formula meets the stated objective — to “reward” good performers and penalise others (we consider there are flawed assumptions in this objective — that every claim reflects a WHS failure by the employer — see claims management below).

15. In a repeat of ICNSW 2016 late release of premium notices, many of our members report that 2017—18 premium notices have not yet appeared for employers with a July 2017 renewal. Those who have to close off books for end of year have to estimate what their costs will be. Requests for information from ICNSW have been met with no response, delayed response or are told that the notices are unavailable and no issue date can be given. Typical employer feedback from our members as at mid October 2017:

Have called many times to find out what this year's premium will be and cannot get an answer- premiums are not ready and nobody can tell me when they will be ready.

We have not received our premium notice yet. Have emailed many times and had no response.

Getting simple things like premium payment schedules have been impossible. Icare are useless - have no interest in assisting - phoned them yesterday 11/10 and was advised that they were running behind and that I would pay premium the same as last time. This is a typical Government Department – absolutely useless. They have never once contacted me - I contacted them after I realised that they were the new workers compensation people.

I'm still waiting on the declaration of wages to be processed which was sent back on 17/7. I received a confirmation email and have followed up but just get the run around. Considering our wages dropped dramatically I presume we are due for a refund it would be nice to have it in our account.

16. Members who for various reasons have renewed their premiums (new ABN number for example and those who have received premium renewal) report uncertainty about the premium calculation process and outcome. For example, one member was told her premium which she calculated would be 200% higher than last year, despite no wages increase or claims. After the employer's strenuous objections, the premium was eventually reduced to that of the previous year, but no reasons were provided as to the initial advice or the final outcome. According to our member, it seemed the ICNSW individual calculating the premium simply made adjustments until it "*seemed about right*". Another member reports that they were informed of the impending change and assured that premiums would not be affected. They were, with premiums across their two companies increasing from \$230K to \$380K. With external assistance (for which they incurred additional expense) the premiums were reduced by around \$30,000. This lack of transparency, consistency and certainty creates a high level of scepticism about ICNSW management of premiums. Effective oversight by SIRA is needed to correct these deficiencies and a loss of confidence that the scheme is operating in a fair and balanced manner.
17. The transitioning process following the exit of QBE and CGU from the scheme has created further difficulties for NSW employers. Employers have not been contacted about the new arrangements. They frequently have been unable to get calls or emails about current claims or policies returned or only after lengthy and time consuming persistence with icare or GIO. Claims have been lost in the transfer, no point of contact has been established with the new agent and, consequently, claims costs have escalated as management of the claim has been non-existent. These poorly managed claims impact scheme costs. ICNSW has not delivered on its earlier assurances that every employer would be sent a letter advising of the changes or the outcomes for employers set out on its website. For example:

Employers FAQs
What do I need to do now?

You do not need to do anything. We'll keep you fully informed every step of the way. Your current claims service provider will be in touch with you before your any of your claims are transferred, advising who the new claims service provider will be, contact details, and when the claim will be transferred.⁷

18. This is not what happened. Employers were not kept fully informed every step of the way or even before claims were transferred. According to our members, most report that they were not contacted at all.

⁷ <https://www.icare.nsw.gov.au/news-and-stories/changes-to-workers-insurance-policies-and-claims-management>
accessed 19 October 2017

19. As one member stated:

In the lead up to the transfer our insurer became unresponsive and disinterested. We have at least two employees who have a significantly (\$100,000+) more expensive claim purely because the insurer would not respond and accepted claims without challenge.

20. Employer reimbursements have been similarly adversely affected, with members reporting delays extending for months. For example:

We have not been reimbursed for one open injury weekly wages claim for a few months during the transition period. After the file for the worker was moved from CGU to GIO the representative at GIO said it would take time to come up to date with the claim as they would need to go through each document one by one. I normally need to wait on the phone for 45-50 minutes to speak to a GIO claims officer, this was not the case with CGU.

We have long delays in getting payments reimbursed and GIO has been difficult to contact. We are now owed \$10,000 but reimbursement is not a GIO priority.

21. These are matters for SIRA's under the SICK Act and related legislation. They raise questions as to the legislation's efficacy in charting the things SIRA should be doing.

22. The SIRA Board of August 2017 communique projects a positive view about scheme functioning but the experience of employers on the ground in the NSW workers compensation "system" is very different:

Improving customer satisfaction with key government services is a state priority and the SIRA Board was pleased to receive information about the increasing SIRA focus on improving outcomes for claimants and purchasers in the schemes and systems SIRA regulates. The Board was encouraged to hear about plans for cross-SIRA collaboration as the learnings from the 2016 CTP consultation process are equally applicable to parties in the workers compensation system.

23. ICNSW expenditure on claims has escalated without any evidence to demonstrate this has been offset by early return to work and aggregate reduced claims cost. ICNSW expenditure on claims has not been published but indications from the following sources provide an insight into scheme expenditure:

- The December 2016 Nominal Insurer Scheme evaluation (2015 benefit reforms, Section 39 payments, increased average rehabilitation payments, increase in legal costs, costs of new incurred claims);
- The Auditor general's report; (work injury damages continues to be third largest payment type and a key risk; decline in funding ratio due to benefit reforms);
- ICNSW statements made to NSW Budget estimates;
- WIRO announcements on legal funding and provision of training and workshops;

- The promotion of enhanced benefits available to injured workers (ICNSW website);
- The expansion in engagement of rehabilitation providers;
- The apparent pull back of five year claimant departure from the scheme;
- The re-emergence of work injury damages claims;
- The near automatic acceptance of all claims as ICNSW policy and failure to enforce worker compliance with obligations.

24. ICNSW non-claims expenditure over past two years has also clearly escalated dramatically. This is evident from the:

- The ICNSW website, replete with excessive self-promotion and the encouragement to make claims;
- The purchase of automated claims management and premium purchase software;
- The grants information in the latest ICNSW annual report (2015-16);
- The icare Foundation: The Foundation does not make clear the proportion of its funding from the NSW workers compensation scheme. Recent announced expenditure includes \$1 million for small business mental health in the Hunter region; invitations for charities to receive up to \$100,000 for injury prevention/post injury care. There is no information on the due diligence processes followed by the Foundation. We have widespread concern about the nature of some of ICNSW expenditure. A particular case concerns Craig’s Table which has received \$0.5 million from the icare Foundation. We are aware of its claimed South Australian origins but so far we have not found any verified information or performance data for South Australia or NSW beyond a Youtube “soft” interview on the ICNSW website;
- the activities of ICNSW Health and Community Engagement, whose primary aim is to allegedly *“break the cycle of disadvantage”* and whose General Manger is a *“strong advocate of challenging convention and disrupting the status quo in the pursuit of developing socially innovative solutions to address deep rooted problems with disadvantage”*.⁸

25. While one of the principal legislative objectives of SIRA is to *“promote the efficiency and viability of the insurance and compensation schemes”* (SICG Act 23(a)) it appears to have no actual oversight of ICNSW expenditure or that due diligence has been undertaken. Of particular concern is the procurement process for software intended for the much publicised automated claims processing and issuing of premiums, and the increasing expenditure on community engagement and social justice issues, including the icare Foundation (see above). Here NSW employers are funding ICNSW’s move into the area of social reform. An example can be seen in the news item of 22 September 2017, urging the building of better communities and *“the importance of connecting with neighbours”*.⁹

⁸ Eugene McGarrell Linked in <https://au.linkedin.com/in/emcgarrell> accessed 10 October 2017

⁹ <https://www.icare.nsw.gov.au/news-and-stories/working-towards-community-connection> accessed 8 October 2017

26. A further example is ICNSW partnering with the Local Communities Services Association “to address social issues, build resilience and improve services” in disadvantaged communities.¹⁰ Promoting icare sponsorship of the LCSA 2017 conference, icare tells us that:

A highlight at the conference will be Pentti Lemmetyinen, President of the Helsinki-based International Federation of Settlement & Neighbourhood Houses’ - a global grassroots movement for social justice - who will address delegates on social justice issues, such as diversity and inclusion, and the work of Neighbourhood Centres across Europe in effectively advocating for human rights.

27. These initiatives are described as part of a holistic approach to recovery. However, from the limited information available from ICNSW, the proportion of workers who do not return to work following a workplace injury are small.¹¹ They are also a small proportion of the overall population, particularly in comparison with those who do not work at all.

28. This raises further issues concerning the appropriate and responsible expenditure of funds for which employers are ultimately liable, and the lack of reporting of that expenditure, (apart from high level data in annual reports which are inevitably out of date), the absence of any public disclosure of due diligence within ICNSW and the effectiveness of SIRA supervision of ICNSW activities and compliance with its legislative remit.

29. The legislation needs to be amended to:

- require greater disclosure by ICNSW about workers compensation fund expenditure and scheme performance;
- provide SIRA with specific powers of oversight in these areas.

30. The current legislation is so broadly framed that almost any activity and expenditure by ICNSW falls within its remit yet there are no corresponding provisions for due diligence or accountability to those who have liability for workers compensation scheme funding. The legislation provides for ICNSW to prepare an annual statement of business intent which is to be submitted to the Minister and Treasurer each year (SICG Act s 11). This also should be made public.

31. The ICNSW business and service delivery model is that of a vast integrated insurer with fully automated processes. How can this be suited to the massive variability at the individual claimant level in the no fault workers compensation scheme? Employer attempts to elicit information or a response are frequently delayed or ignored completely. The workers *insurance customer experience net promoter score* remains negative for employers. Members have told us that on receiving the email to participate in the net promoter score they have dismissed it as junk or a dodgy email. Yet ICNSW appears to believe that

¹⁰ <https://www.icare.nsw.gov.au/news-and-stories/icare-partners-with-lcsa> accessed 18 October 2017

¹¹ ICNSW annual report 2015-16 page 104

measuring views on service is substitutable for actually providing service to employers (and whose experience is overwhelmingly negative).

32. The SIRA Board communique 7 March 2016 states that Minister Dominello considers SIRA *“had a key role to play in achieving Government priorities to make NSW the easiest state in which to start a business, increase the proportion of digital transactions and improve customer satisfaction with Government services.”* The Minister urged the Board to make SIRA a *“leading light”* in implementing increased digitisation and improved use of data. The Board strongly supported the Minister’s emphasis on improving SIRA’s data analysis and reporting capabilities and noted there are massive opportunities to increase digitisation and reduce paperwork in statutory insurance schemes. Over 18 months later, employers confront a scheme which is to be increasingly automated, is increasingly unresponsive, cannot issue premiums on time and is unable to provide comprehensive up to date data on critical scheme performance measures.
33. Other jurisdiction schemes are demonstrably capable of providing data on injury and compensation rates, schemes costs and scheme performance measures on an up to date, routine basis. The 2012 reforms and 2015 restructuring are now well behind us yet the apparent disorganisation and inadequate information flows remain within ICNSW. The legislation requires amendment to impose explicit duties on ICNSW under SIRA oversight to remedy this situation.
34. The only way there can be confidence in the management and performance of the NSW workers compensation scheme is to amend the SICG Act to require the public reporting of all data and reports (however officially described) that are accurate, comprehensive and timely.
35. The data and reports should include:
 - (a) All the monthly data and reports that are or may be considered by the internal and external actuaries examining and reporting on scheme performance, regardless of whom they report to;
 - (b) Full, audited financial accounts and reports of the workers compensation division of ICNSW which , if not currently prepared, should be prepared on a quarterly basis commencing with the quarter commencing 31 December 2017;
 - (c) A detailed monthly or quarterly report of every grant of funds made by ICNSW and the ICNSW Foundation directly or indirectly to any provider of any service or in relation to the workers compensation scheme, workplaces, and ICNSW social and community ventures funded by the NSW workers compensation scheme.

36. Failure to provide data and reports at this level has led workers compensation schemes in the past to slide into deficit when coupled with poor claims management, inadequately controlled spending, excessive staffing levels, uneconomic premium levels, unsustainable benefit levels, experimentation with untested or under performing soft ware and a general lack of discipline in scheme management. These all play a critical part in scheme performance. This lack of discipline is currently seen in its adverse effects on the:
- quality of triage for new claims;
 - experience of insurance staff in managing claim files;
 - failure to investigate questionable claims, questionable diagnoses and over treatment;
 - encouragement of lawyer involvement in the scheme process through an inappropriate funding and dispute model;
 - almost total exclusion of the employer from all levels of this whole process.
37. The NSW workers compensation scheme has in the past experienced negative performance swings for precisely these reasons and its fortunes will undoubtedly decline again for a mix of similar reasons. The first and most fundamental step in restoring some discipline to the scheme and its outcomes is to make all the above data and reports publically available. SIRA's job within a government operated employer funded scheme should be to require that this be put in place.
38. The claims management process within ICNSW is in need of overhaul and reform, along with greater supervisory oversight by SIRA to encourage greater accountability for its processes and performance.
39. The 2015 reforms to the scheme were promoted by the Government as increasing benefits and encouraging early return to work. Benefits were significantly increased, however, there was no corresponding reform in the claims management process within ICNSW. This situation has worsened with the reduction in scheme agents. ICNSW is now routinely unresponsive to employer requests for information and assistance on both claims and premiums. Where are the cost offsets to the increased spending on benefits/ICNSW non-claims expenditure?
40. What is required is a cultural shift within ICNSW to recognise the vast majority of employers want the worker back on the job, have suitable duties and need to be an active participant in return to work. This will need to be instigated by legislative amendment to improve ICNSW consultation and communication with the employer in the return to work process. ICNSW has adopted the policy of outsourcing case management to rehabilitation providers. Some are effective, many are not, and there remains the endemic problem of service providers, including rehabilitation providers, having a vested interest in the continued provision of their services which lends itself to extended periods of incapacity. There is early almost automatic claims acceptance but lack of early and effective case management.

41. A change in ICNSW attitude to employers so that they are regarded as equal “customers” will be even more important with the move to automated processing. Triaging is not effectively done currently — if an employer is lucky enough to talk to ICNSW, the response is almost always just “put in the claim”, no engagement on the disputed claims. Once a claim is made, if there is any investigation process, it generally operates at a snail’s pace with any medical examination and any other assessments frequently greatly delayed. Automated processing will entrench this policy of low barrier to entry with almost all claims automatically accepted. Triaging costs may be lowered but this will result in many more workers “having a go” and increasing total scheme costs. This will be exacerbated by the seemingly in-built delays in ICNSW processes: routine decisions subject to lengthy delays; need for permission for surveillance; medical specialist panels (at least 2 weeks wait list); non response to employer queries.
42. A further intractable problem in the icare claims management process is the role of the nominating treating doctor (**NTD**). Despite icare initiatives proclaimed to educate and encourage the NTD to understand the importance of return to work, employers continue to confront difficulty and delays with the NTD and in chasing claims managers to remedy situations where suitable duties are available but the NTD will not adequately specify capacity for work, or will continue to certify the worker as unfit for any work.
43. Workers compensation legislation imposes obligations on employers and workers. Employers frequently have to devote considerable resources to convincing claims managers to enforce worker obligations where a worker does not participate in RTW plan, non attendance with IME, case conference, etc. In the main, no action taken and benefits are rarely suspended and then repaid in full when worker complies — for a time and then further non compliance. This is yet another instance of the imbalance ICNSW demonstrates in its administration of the scheme.
44. The current move to three insurers for claims management (EML only from 2018) has created even greater problems for employers — ex CGU and QBE employers appear to face a black hole in claims management, despite public pronouncement from ICNSW. SIRA in as the scheme regulator, needs to act immediately on this. Similarly, ICNSW is unresponsive to employer requests for investigation into dubious and even fraudulent claims. Public data on scheme performance of this kind is crucial to understanding these issues and grounding effective SIRA action.
45. The proposed mentally healthy workplace strategy recently announced by the NSW Government will inevitably lead to an increase in costly psychological injury claims – the Discussion Paper released by Minister Kean acknowledges this outcome while dismissing this impact as transitory until employers manage to create allegedly perfectly healthy work environments. This is an unrealistic and politically convenient view. In the ICNSW ill disciplined claims acceptance regime, where it is open for every worker to claim that features of their job (hours/control/autonomy/support /reward/flexibility/security/likely

job loss, etc) have made them suffer alleged psychological injury there will be an inundation of such claims. This is a further reason to expand and specify in greater detail the regulatory obligations of SIRA in relation to the effective supervision of claims handling.

46. We need amendment of the SICC Act to provide certainty about the rigour of SIRA's oversight of ICNSW and the NSW workers compensation scheme. If SIRA does not actually operate a comprehensive and effective oversight of ICNSW and the scheme, then what is its purpose?
47. Is SIRA's job to protect both the machinery and the benefits of the workers compensation scheme, operating with effectiveness and balance, for the benefit of workers making genuine claims and employers paying affordable premiums? If the legislation does not empower and require SIRA to command that result, it should be amended. Alternatively, start again: repeal the legislation; create new structure(s) with new rules designed for discipline and balance, and consider the possibility of privatising workers compensation insurance.