

**Submission
No 13**

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

Organisation: Australian Lawyers Alliance

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

6 November 2017

By email: lawandjustice@parliament.nsw.gov.au

Dear Mr Mallard,

STATUTORY REVIEW OF THE STATE INSURANCE & CARE GOVERNANCE ACT 2015

The Australian Lawyers Alliance (ALA) is a national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

We oppose oppression and discrimination and support democratic accountable systems of government and an independent judiciary.

We value immensely the right of the individual to personal autonomy in their lives and to equal treatment under the law.



The ALA is well placed to provide commentary to the Committee. Members of the ALA regularly advise clients all over the country who have sustained injury or disability in their workplace and by other means. Our members advise clients of their rights under current state based and federal schemes, including, workers compensation schemes motor accident legislation and Comcare. Our members also advise in cases of medical negligence, product liability and other areas of tort. We therefore have expert knowledge of compensation schemes across the country, and of the specific ways in which individuals' rights are violated or supported by different scheme models.

We note that in performing this Statutory Review the Standing Committee seeks specific responses to two questions in particular which will be dealt with separately.

WHETHER THE POLICY OBJECTIVES OF THE *STATE INSURANCE AND CARE GOVERNANCE ACT 2015* REMAIN VALID

The ALA has previously made submissions in relation to the functioning of the NSW workers compensation system, specifically in the Committee's 2014 review and 2016 review of the workers compensation legislation. Submissions have also been made the Committee's review of the motor accidents third party insurance scheme.

We note that in 2014, the Committee in its review of the NSW workers compensation scheme (Review Report Number 54) made 26 unanimous recommendations. Of particular reference is during 2015 Minister Perrottet reported that in addition to implementing some of the recommendations, there would be a structural split of the various functions of WorkCover.

In 2015 Minister Perrottet announced the introduction of three separate structures to undertake the former functions of WorkCover in the *State Insurance and Care Governance Act 2015* which



commenced on 1 September 2015. It is the ALA's understanding, that broadly speaking, that Act affected the following structural changes:

- Repeal of the *Safety Return to Work and Support Board Act 2012* and abolition of the Safety Return to Work Board.
- Creation of a regulator of statutory insurance schemes (a government agency called State Insurance Regulatory Authority of New South Wales known as SIRA).
- Creation of a single insurance and care provider (Insurance and Care New South Wales known "Icare").
- Creation of an Independent Workplace Health and Safety Regulator (Safe Work New South Wales).
- Creation of new prudential standards.
- Abolition of the WorkCover Authority of New South Wales and the Motor Accidents Authority of New South Wales.

In essence, the ALA agrees that the policy objectives remain valid.

WHETHER THE TERMS OF THE ACT REMAIN APPROPRIATE FOR SECURING THOSE OBJECTIVES

From the ALA's perspective there remains a question over who is regulating the Workers Compensation Scheme, particularly when one looks to the functions and objectives of SIRA versus Icare.

SIRA now has the following principal objectives (as regards to workers compensation) set out in section 23 of the *State Insurance and Care Governance Act 2015* (SICG Act).



SIRA's functions as the workers compensation regulator are set out in sections 22 and 23 of the *Workers Compensation and Workplace Injury Management Act 1998* (the 1998 Act). Those functions are supplemented by specific functions set out in section 24 of the SICG Act.

On the other hand, Icare's functions are to:

- Act for the nominal insurer in accordance with section 154C of the *Workers Compensation Act 1987* (the 1987 Act).
- To provide services (including staff and facilities) for any relevant authority, or for any other person or body, in relation to any insurance or compensation scheme administered or provided by the relevant authority or that other person or body.
- To enter into agreements or arrangements with any person or body for the purposes of providing services of any kind or for the purposes of exercising the functions of the nominal insurer.
- To monitor the performance of the insurance or compensation schemes in respect of which it provide services.
- Such other functions as are conferred or imposed on it by or under this or any other Act.

It remains the position of the ALA that there is a tension in relation to monitoring and performance of the Workers Compensation system in that both the regulator and the nominal insurer are charged with the same or similar functions.

In fact, the Icare website proclaimed in late 2015:

"The New South Wales Workers Compensation Scheme (nominal insurer) is the single largest workers compensation insurer in New South Wales. Five scheme agents are currently



contracted to manage claims for injured workers and provides policies to employers on its behalf. Around 272,000 employers and over 3 million workers are covered by the scheme.

A workers compensation scheme under Icare will make it easier for people to receive their benefits, be treated as quickly as possible, track their claims progress and return to work. It will be the agent of change to simplify the Workers Compensation Scheme. It will roll out a range of online and other tools, including mobile apps, to make the customer's journey simpler and more transparent. Under Icare, the Workers Compensation Scheme will be less adversarial, there will be fewer forms and less bureaucracy, and in short, workers will have much more say in their treatment and return to work pathway.

Icare will continue to develop fair, transparent and predictable insurance pricing for businesses across New South Wales that recognise the individual efforts of each business in maintaining a safe work environment.”

Two years later, after various statements and the adoptions of the 'social heart, commercial mind' moniker by Icare, there remains confusion as to whether Icare has not simply assumed regulatory functions in part over the system.

Conflicts of interest remain. Criticisms of whether each separate organisation is fulfilling its statutory objectives and functions exist. The ALA appreciates that this is not currently of interest to the Committee, however the ALA is deeply concerned by the undertaking of SIRA of functions well beyond their remit – most specifically, dispute resolution in all of the statutory compensation schemes (workers compensation and CTP) evidenced by the establishment of a discreet Dispute Resolution Scheme (DRS) decision of SIRA which sits alongside the motor accidents scheme regulator and workers



compensation and home building scheme regulator. The ALA continues to advocate for independence (structural) of any dispute resolution systems.

The ALA has had the opportunity to read the submission of the Law Society of New South Wales and, without repeating those submissions, supports the matters raised therein in lieu of providing a separate submission to the same effect. In addition, the ALA has had the benefit of reading submissions made publicly available on the Committee's website and broadly supports submissions of WIRO, the CFMEU, Unions NSW and the NSW Business Chamber.

The ALA thanks the Standing Committee on Law & Justice for the opportunity to provide this submission in relation to the review of the *State Insurance and Care Governance Act 2015*.

The ALA welcomes the opportunity to provide oral testimony in relation to any of the matters raised in this submission or matters of interest to the Committee.

Yours sincerely,

Andrew Stone SC
NSW Branch President
Australian Lawyers Alliance