

INQUIRY INTO 2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: AEU NSW Teachers Federation

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**AUSTRALIAN EDUCATION UNION
NEW SOUTH WALES TEACHERS FEDERATION BRANCH**

SUBMISSION TO

STANDING COMMITTEE ON LAW AND JUSTICE

ON

2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

Authorised by

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General Secretary
AEU NSW Teachers Federation Branch**

29 May 2020

SUBMISSION

Introduction

The Australian Education Union NSW Teachers Federation Branch (Federation) represents school teachers in New South Wales public pre-schools, infants, primary and secondary schools, Schools for Specific Purposes and teachers working in consultant/advisory positions. Teachers in TAFE are also represented by Federation. The current financial membership totals over 61,000 practicing teachers and student teacher members.

Matters of Concern

As the terms of reference are broad, Federation has chosen to concentrate on two matters concerning the present implementation of the scheme. Both these matters are of concern to the Federation and they have effects on the return to work experiences of our members.

The two matters are:

1. The independence of the Workers Compensation Independent Review Officer (WIRO) and
2. The need for the State Insurance Regulatory Authority (SIRA) to effectively supervise not just the nominal insurer under icare but to extend their supervision and plans for systems improvement to the Treasury Managed Fund (TMF).

1. The independence of the Workers Compensation Independent Review Officer (WIRO)

The position and office of the WIRO must be not only retained, but must maintain its independence.

As well as responsibilities for dealing with complaints, the WIRO has other functions related to oversight of the various Workers Compensation schemes in NSW. These functions are outlined in the *NSW Workplace Injury Management and Workers Compensation Act 1998* No 86 and include:

27 (c) to inquire into and report to the Minister on such matters arising in connection with the operation of the Workers Compensation Acts as the Independent Review Officer considers appropriate or as may be referred to the Independent Review Officer for inquiry and report by the Minister,

and

27C Annual report

- (1) As soon as practicable after 30 June (but before 31 December) in each year, the Independent Review Officer is to prepare and forward to the Minister a report on his or her activities for the 12 months ending on 30 June in that year.*
- (2) The report is to be tabled in Parliament and for that purpose the Minister is to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.*

At present the funding for the WIRO is sourced from the Workers Compensation Operational Fund and maintained by SIRA. This monetary connection between WIRO and SIRA has the capacity to reduce the ability for WIRO to maintain independence in upholding its responsibilities to respond to the Minister.

These concerns were recognised by the Standing Committee on Law and Justice in its report following the First Review into the Workers Compensation Scheme in March 2017.

WIRO advised that this funding arrangement limits the independence of the office.⁵¹ For example, WIRO was unable to complete two inquiries it has initiated – the Parkes Project and the Effeney Review of Hearing Loss – as funding was withdrawn by the department.⁵²¹

and

3.15 *The absence of financial independence has clearly hampered the work of WIRO. For many stakeholders and injured workers WIRO is seen as a genuinely helpful, independent part of the scheme. Ensuring that the office is able to continue to exercise its functions is clearly in the interests of all scheme participants.²*

The WIRO further articulated concerns in November 2019 in a submission to the *Inquiry Into Budget Process For Independent Oversight Bodies And The Parliament Of New South Wales* where they stated that:

WIRO did not undertake any formal inquiries in the 2016, 2017 and 2018 reporting years in circumstances where there was no assurance that funding would be available to pursue this function in accordance with its legislative mandate.³

The *NSW Workplace Injury Management and Workers Compensation Act 1998* No 86 provides powers to the WIRO to run inquiries and report system faults and present proposals for improvements directly to the minister. To enable the implementation of this independent role, the WIRO should be a directly funded statutory body, via the Ministry rather than through the system itself.

2. Effective supervision of TMF by SIRA

SIRA has placed too little emphasis on the effectiveness or otherwise of the TMF. The emphasis placed on the inquiry into the nominal insurer followed by delays in implementation of the ensuing 21 point plan have left TMF with insufficient scrutiny and no timeline for change.

SIRA must actively regulate all insurers not just the nominal insurer/ icare.

¹ <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2414/Report%20-%20First%20review%20of%20the%20workers%20compensation%20scheme.pdf> 1.43 page 8.

² Ibid page 34

³ [https://www.parliament.nsw.gov.au/lcdocs/submissions/66775/0051%20Workers%20Compensation%20Independent%20Review%20Office%20\(WIRO\).pdf](https://www.parliament.nsw.gov.au/lcdocs/submissions/66775/0051%20Workers%20Compensation%20Independent%20Review%20Office%20(WIRO).pdf) page 5

Evidence that SIRA has concentrated on regulation of the Nominal Insurer is evident not only in the Dore review but in the amount of information on TMF available on their website.

In a search of the SIRA website for TMF, of the first 10 results, 1 provides direct information about TMF and the other 9 are data reports or explanation notes for data reports comparing all of the schemes covered by SIRA.⁴

While these data reports do provide evidence that during 2018-19, outcomes for TMF were slightly better than for the nominal insurer (e.g. for August 2019 RTW rates at 4, 13, and 26 weeks were 3-5% higher for TMF than the NI), this is insufficient reason for SIRA to be more focused on achieving improvements in the NI than in TMF.⁵ The small difference in efficiency does not mean that TMF is not also in need of review and improvement.

Another source of data to illustrate that TMF deserves equivalent oversight is the number of complaints made to the WIRO. Using the *WIRO Periodic Performance Review 1 July 2019 to 30 September 2019* as an example, the complaints for the Scheme Agent totalled 2794 while those for TMF were 642⁶. This matches the relative proportion of workers covered by the two schemes

The fact that errors in claim management are not confined to the nominal insurer has been recognised by SIRA. A Sydney Morning Herald article of 8 March 2020 reporting some of the outcomes of the Dore report stated that SIRA *demand[ed] a risk assessment audit for other NSW government workers compensation funds and the government property insurance scheme managed by icare, known as the Treasury Managed Fund.*⁷ Federation welcomes this level of scrutiny, while maintaining that other outcomes of the review should also be extended to the TMF Scheme.

As a result of the review, SIRA put forward a 21 point action plan to improve performance and management of the NI.⁸ Federation would contend that many of these improvements should also be extended to the TMF scheme. Those we believe relevant to both schemes include:

5. Noting icare has advised SIRA that icare and its agents now allocate a dedicated case manager where an injured worker is away from work for 2 weeks. SIRA recommends icare consider a further enhancement to allocate a dedicated case manager whenever an injured worker is likely to be (or has been) incapacitated for work for a continuous period of more than 7 calendar days. This would include any injured person meeting the definition of a worker with a significant injury as defined by s42 of the Workplace Injury Management and Workers Compensation 1998 Act (1998 Act) and would strengthen delivery of appropriate injury management as required by s45 of the 1998 Act.

Such good practice should be expanded to all workers in NSW.

⁴ <https://www.sira.nsw.gov.au/search?query=TMF>

⁵ <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/sira-reports/monthly-report/august-2019/workers-compensation-monthly-report>

⁶ <https://www.sira.nsw.gov.au/search?query=TMF>

⁷ <https://www.smh.com.au/national/nsw/errors-in-workers-comp-victims-payments-for-six-years-with-25-per-cent-underpaid-by-icare-20200308-p5480d.html>

⁸ <https://www.sira.nsw.gov.au/fraud-and-regulation/review-of-the-nominal-insurer/Response-and-actions#21>

8. SIRA will invite icare to attend SIRA Tripartite Reference Group meetings at least once per quarter to outline progress in actions arising from the Review and on the performance of the NI. It is recommended the icare CEO attend whenever possible to engage with peak business organisations and unions.

TMF should also be expected to report to the Government Agencies and unions involved.

10. During 2020, SIRA will conduct and publish a quarterly compliance and performance audit of claims management by the NI, under Division 4 of the Workers Compensation Act 1987, including file reviews utilising an enhanced methodology. Audit reports will be provided to the SIRA and icare boards.

This information should be requested of all scheme agents to provide transparency and consistency across the schemes.

13. SIRA will engage constructively with the icare board and senior executives on the NI management and improvement plans; SIRA will retain its independent approach on compliance and enforcement matters.

As SIRA has a similar level of responsibility for TMF this is good practice for all areas of the scheme.

16. As a priority, SIRA will lead consultation on measurement of return to work outcomes for injured people and is working with Safe Work Australia on its national RTW measurement framework.

19. SIRA will conduct a rolling survey to measure the customer experience of injured people and policy holders across workers compensation and CTP. The first survey will commence by March 2020 and will be published by June 2020.

Both 16 and 19 will affect all workers across NSW so should not be confined to the NI.

An extension of these items so that they are implemented across TMF as well as the NI would be a step towards increasing SIRA's oversight of all NSW Workers Compensation Schemes.