

## INQUIRY INTO 2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

**Organisation:** State Insurance Regulatory Authority (SIRA)

**Date Received:** 23 June 2020

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**Submission to the Law and  
Justice Standing  
Committee  
2020 Review of Workers  
Compensation**

State Insurance Regulatory  
Authority

June 2020

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## 1. About SIRA

The State Insurance Regulatory Authority (SIRA) regulates three statutory insurance schemes in NSW - Workers Compensation, Compulsory Third Party (CTP) and Home Building Compensation. It also has some regulatory functions in other schemes including the Lifetime Care and Support and Dust Diseases schemes.

SIRA was created under section 17 of the *State Insurance and Care Governance Act 2015* (SICG Act). In establishing SIRA, the Government's intention was to *create a consistent and robust framework to monitor and enforce insurance and compensation legislation in NSW, and to ensure that public outcomes are achieved in relation to injured people, policy affordability and scheme sustainability* (from the second reading speech, SICG Act). SIRA's objectives and regulatory role are set out in section 23 of the SICG Act 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

## 2. Governance

SIRA is an independent agency with the Customer Service Cluster. The affairs of SIRA are managed and controlled by the Chief Executive in accordance with the general policies and strategic direction determined by the SIRA Board. Anything done by the Chief Executive on behalf of SIRA is taken to have been done by SIRA (section 19(3) of the SICG Act).

The functions of the SIRA Board are set out in s 18(5) of the SICG Act and include:

- determining the general policies and strategic direction of SIRA
- overseeing the performance of SIRA
- giving the Minister any information relating to the activities of SIRA that the Minister requests
- keeping the Minister informed of the general conduct of SIRA's activities and of any significant development in activities

While SIRA is not, in the exercise of its functions, subject to the control and direction of the Minister, the Minister may give SIRA a written direction with respect to its functions if the Minister is satisfied that it is necessary to do so in the public interest. SIRA must include in its annual report particulars of each direction given by the Minister during the reporting year.

### **3. Regulatory approach**

SIRA's role is to ensure that the schemes it regulates continue to be fair, effective and affordable for policy holders, and for people who make a claim for compensation today, or in the future. SIRA's regulatory approach has matured and adapted, including in response to the findings of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* and the *Australian Prudential Regulation Authority Capability Review*. Many key themes and issues arising from these reviews are important for SIRA and responding to changing community expectations regarding the role of regulators and regulated entities has been an important area of focus for the organisation.

During 2019 and the first half of 2020, a range of changes were made to strengthen SIRA's effectiveness as a regulator and build trust in the organisation and the schemes it regulates. Some examples of the measures SIRA has taken to advance role clarity, accountability, transparency and customer-centricity, are outlined below.

#### **Separation of policy and regulatory roles, and more focus on governance and culture**

In 2019, significant changes were made to the SIRA operating model and supervision frameworks to more clearly delineate policy, supervision and enforcement functions, and increase focus on culture and governance. In addition, a new team dedicated to in-depth audits and performance reviews was created.

#### **More visibility of regulatory action**

SIRA commenced publishing information about compliance and enforcement in July 2019. This decision followed close consideration of findings out of the Hayne Royal Commission regarding the importance of transparency and visibility of regulatory action in maintaining public trust. While there will always be some limits to what information can be made available, SIRA believes that transparency is in the best interest of its customers, and will ultimately contribute to achieving sustainable, affordable, fair and effective schemes. Details of enforcement action are published widely by email through SIRA Bulletins which are also available on the SIRA website.

#### **Better access to scheme data**

In 2019, SIRA launched a self-service visual analytics tool to make it easy to view and compare workers compensation scheme data over time. This was an important step in improving transparency and accountability across the workers compensation system. The open data portal includes information provided by the Workers Compensation Independent Review Office (WIRO), the Workers Compensation Commission (WCC) and a range of other stakeholders. It is an example of the NSW Government's Open Data Policy to improve community access to information. Enhancements to existing features, such as new metrics and filters, will continue to be added through 2020.

At the same time, SIRA has maintained its bespoke monthly system dashboard-provided updates and explanatory notes on the key system trends, and actions it has undertaken in response to those trends. This means SIRA has an information product available for scheme participants, contributors or critics that suits their preference.

In addition, in response to the current pandemic, SIRA has introduced open data monitoring and reporting on COVID-19 which is updated daily.

## Workers compensation system dashboard

February 2020



State Insurance Regulatory Authority (SIRA) is responsible for regulating the NSW workers compensation system is committed to providing timely reporting on the performance of the NSW workers compensation system

[Find out more...](#)

### **Making expectations, ways of working and priorities clear for policy holders, insurers, providers, employers and injured workers**

As a regulator, one of SIRA's core responsibilities is to ensure compliance with the law. However, as stewards of compensation schemes, there are many other ways in which the organisation works to influence positive scheme outcomes. SIRA's broader responsibilities are set out in Section 22 of the *Workers Compensation and Injury Management Act 1998*.

SIRA has developed 10 principles to guide our regulatory approach. SIRA's 10 regulatory approach principles are:

1	<b>Customer focus</b>	Everything SIRA does is guided by protecting the interests of customers
2	<b>Responsiveness</b>	SIRA is responsive to changing community expectations and to public scrutiny. Maintaining trust in SIRA and regulated schemes is central to our role
3	<b>Accountability</b>	SIRA will take strong enforcement action when needed, based on the severity of harm or potential harm, the degree of negligence, or the need for deterrence.
4	<b>Stewardship</b>	Administering the law is just part of SIRA's role. As a steward of statutory insurance schemes, SIRA also seeks to innovate, influence and engage others in support of scheme outcomes.
5	<b>Information</b>	SIRA actively publishes information about scheme and provider performance, and prioritises making more data more accessible and more valuable.
6	<b>Consultation</b>	SIRA consults widely and often to make better decisions and deliver better solutions.
7	<b>Evidence</b>	SIRA relies on evidence to do what works – not just what's expected or easy.
8	<b>Innovation</b>	SIRA is always looking for innovative ways to improve outcomes.
9	<b>Efficiency</b>	SIRA seeks to maximise value across all outcomes, build future capability through current challenges, leverage others' work and apply areas of excellence across schemes.
10	<b>Fairness</b>	SIRA makes expectations clear and treats everyone fairly and with respect.

### **Holding insurers to account for customer service standards**

Under Customer Service Conduct standards developed and issued by SIRA in 2019, insurers are required to attest to meeting five principles. In 2020, and going forward, independent research will be conducted and published on the extent to which injured people and policy holders believe their claims experience and policy purchase experience was consistent with these principles.

#### **3.1.1. Principle 1: Be easy to engage and efficient**

The insurer must keep customer interactions simple and accessible to make the experience easier, so that the focus is on recovery and resolution. This means:

- customers should only have to provide or ask for information once
- information is clear and understandable enabling a streamlined experience
- complexity is reduced by communicating in simple language

- information is timely and accessible
- customers will experience visible support and information throughout their customer journey.

### **3.1.2. Principle 2: Act fairly, with empathy and respect**

The insurer must be respectful of people's individual circumstances and needs and support them accordingly. This means:

- customers are treated fairly, receiving the same quality services, every time
- customers are shown compassion and understanding of their individual situations.
- customers are treated with dignity, empathy and respect.

### **3.1.3. Principle 3: Resolve customer concerns quickly, respect customers' time and be proactive**

The insurer must be proactive in supporting recovery and resolution. This means:

- resolve customer concerns at the first opportunity
- customers are supported early, leading to better recovery outcomes and resolution
- customers' time is valued
- customers will be contacted when they need to know something.

### **3.1.4. Principle 4: Have systems in place to identify and address customer concerns**

The insurer must have systems in place to engage customers and listen to concerns and suggestions. This means:

- customer views will be sought on service design and improvement
- insurers must ensure transparency in addressing systematic issues as they are identified and rectified
- continuous improvement systems are in place.

### **3.1.5. Principle 5: Be accountable for actions and honest in interactions with customers**

Customers will receive an acknowledgement when things don't go to plan. This means:

- customers will receive an acknowledgement when harm is caused, when expectations are not met or when legislative breaches occur
- poor service or behaviour will be acknowledged, and action taken.

## **4. The NSW Workers Compensation system**

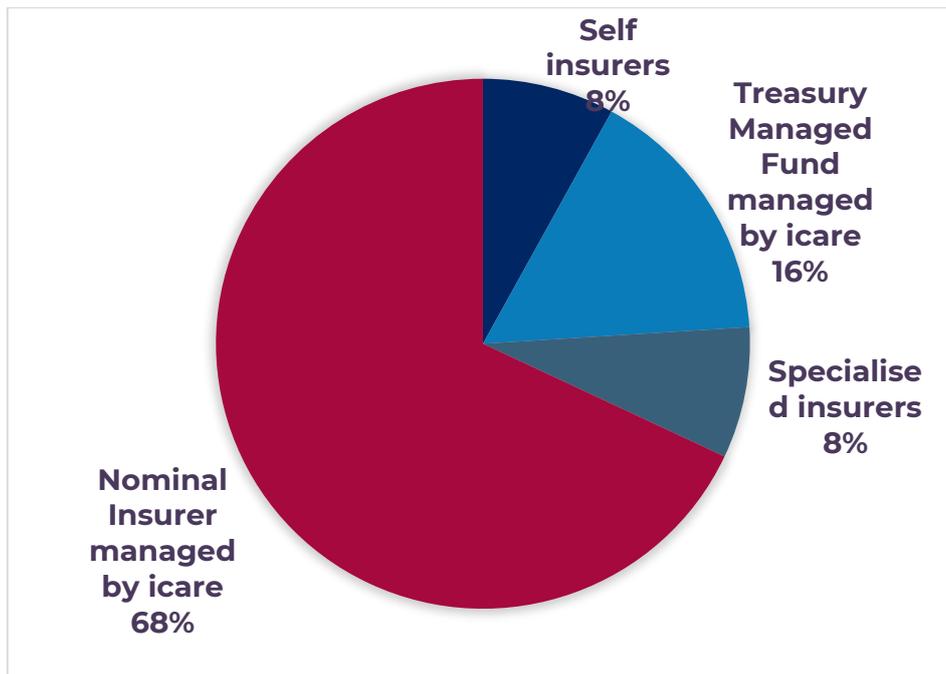
The NSW workers compensation system is a critical social safety net, protecting over 4.5 million workers and providing income replacement and medical support for approximately 100,000 people injured at work each year. For employers, workers compensation is intended to provide affordable and effective insurance cover.

Workers compensation assists with the costs of weekly benefits, medical and hospital expenses and a range of other benefits to help the worker recover and return to work, including domestic assistance, education and training and payments in the event of death. Section 3 of the *Workers*

*Compensation and Injury Management Act 1998* sets out objectives for the workers compensation system which are summarised below:

- Secure workers' health, safety & welfare while preventing work-related injury
- Provide prompt treatment & rehabilitation to assist injured workers to return to work
- Provide income & treatment payments to injured workers & their families
- Provide a fair, affordable & financially viable system
- Fair pricing of risk considering injury prevention, injury management, and return to work
- Deliver an efficient & effective system

**Workers Compensation claims reported to SIRA 2018/19 - % by insurer type**



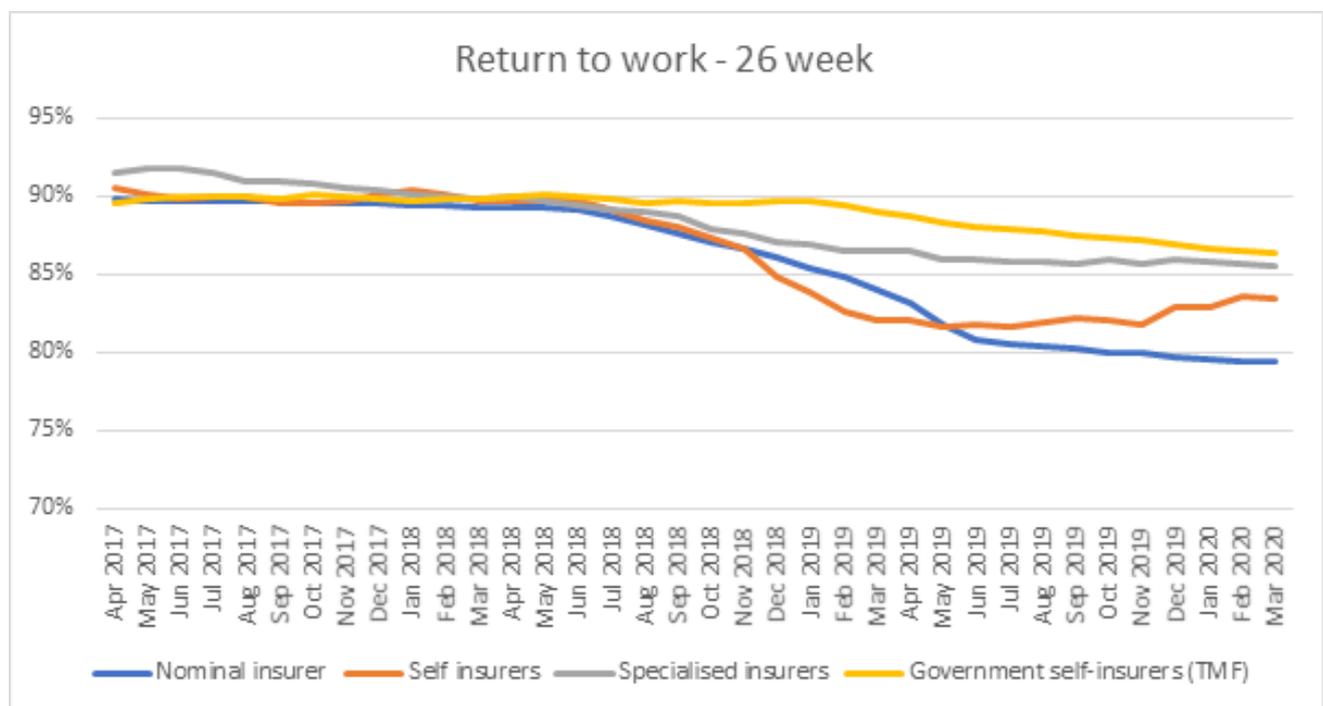
## **5. NSW Workers Compensation scheme performance**

Workers compensation system performance data is published monthly and annually on SIRA's website. A snapshot of the February 2020 performance data, already available on SIRA's website, is included below.

**February 2020 Insurer Scorecard**

	% share of premium paid FY 2017/18	% share of total claims FY 2017/18	% share of total payments made	% share of total active claims	% of injury notifications actioned within 7 days	% of Level 1 complaints to active claims	% Level 2 complaints resolved within 20 business days	RTW rate 4 weeks	RTW rate 13 weeks	RTW rate 26 weeks
Nominal insurer	74%	67%	71%	67%	99%	0.05%	90%	62%	74%	79%
Government self-insurers	13%	17%	19%	19%	99%	0.05%	100%	70%	82%	87%
Specialised insurers	6.0%	8.0%	4.9%	6.6%	95%	0.00%	100%	73%	83%	86%
Self-insurers	7.0%	8.5%	5.7%	7.5%	94%	0.11%	100%	69%	79%	84%

The performance of the workers compensation system overall is influenced to a large extent by the Nominal Insurer (NI), managed by icare, as it holds the majority of the scheme’s market share. Declining return to work rates and rising healthcare costs have significantly impacted claims costs and the financial position of the NI since 2017. SIRA commissioned a comprehensive review of the performance of the NI under the *Independent Compliance and Performance Review of the Nominal Insurer (managed by icare)* in 2019. See section 6 below.



SIRA has developed a performance framework which aligns with the legislation.

Performance framework		Examples of measures
<b>Effectiveness:</b>	System effectiveness in protecting workers and getting workers back to work and well-being	Getting workers back to work Return to work (RTW) rates Claims frequency Recovery rates
<b>Efficiency:</b>	Efficient system delivery in terms of cost, time and process	Cost and process efficiency Payments direct to workers and to support workers Timeliness of key processes
<b>Viability:</b>	System sustainability and viability for generations to come	Sustainability and adequacy of security Viability and stability of system costs
<b>Affordability:</b>	Insurance affordability	Premium affordability
<b>Customer experience:</b>	Customer experience with the workers compensation system	Worker experience with system services Employer experience in navigating the system Customer attitudes to RTW Customer feedback services
<b>Equity:</b>	System equity and fairness	Customer perception of system equity

COVID-19 is expected to put further pressure on the financial performance of the NI and the Workers Compensation Scheme more broadly (see section 9).

## 6. Independent Compliance and Performance Review of the Nominal Insurer

### 6.1.1. Background to the Review Principle

SIRA is responsible for regulating all workers compensation insurers in NSW, the largest of which is the Nominal Insurer (NI) managed by icare. The NI accounts for around 65% of total active claims, provides compensation cover for more than 320,000 employers, collects \$2.3 billion in premiums, and pays out approximately \$1.97 billion in claim-related costs per year.

The success of the NI is critical to the performance of the NSW workers compensation system. Through 2018 SIRA closely monitored aspects of the NI's performance and compliance and observed some negative trends in liability valuations and costs, premium setting, operational reforms, risk management, return to work rates and data quality. SIRA also considered customer complaints and concerns raised by business representatives, unions (noting that employers and workers are the customers of the workers compensation system) and other stakeholders.

In February 2019 the SIRA Chief Executive commissioned the *Independent Compliance and Performance Review of the workers compensation Nominal Insurer (NI) managed by icare* (the Review) and appointed an Independent Reviewer, Ms Janet Dore. The Review was supported by independent actuaries from EY and authorised officers of SIRA. The scope of the Review included the work undertaken on behalf of icare by its agents Allianz, EML and GIO.

The Review was established as part of SIRA's role in regulating the workers compensation system to deliver on the objectives set out in Section 3 of the *Workplace Injury Management and Workers Compensation Act 1998*.

### 6.1.2. Scope of the Review

The Independent Reviewer engaged with stakeholders, audited compliance with legislation and guidelines including the Market Practice and Premium Guidelines (MPPGs) and reviewed claims management performance and return to work outcomes. Specifically, Ms Dore was tasked to provide findings in relation to:

- Unintended consequences, risks and priorities for improvement in SIRA's regulation of NI premiums
- Benefits and risks to the workers compensation system performance arising from changes to the NI operating model and digital platforms
- NI performance in relation to return to work outcomes, claims management (encompassing injured workers, employers and health service providers), customer experience and data quality and reporting

The final report of the Independent Reviewer was published on the SIRA website on 13 December 2019, along with three supporting reports by scheme actuaries EY. Responses from both SIRA and icare were also published on 13 December 2019.

### 6.1.3. Findings and SIRA response

The Review contains findings on the operation and sustainability of the NI and recommends significant steps for improvement. It is an important contribution to maintaining a fair and sustainable workers compensation system for NSW. In tabling the Review and the actions that flow from it, SIRA has highlighted a range of issues that need to be addressed in the interests of current and future customers and stakeholders of the workers compensation scheme. Priorities for improvement are:

- early and safe return to work outcomes, including for people with psychological injury
- claims management, early intervention and treatment
- premium transparency and volatility in alignment with SIRA guidelines
- engagement with employers
- data quality
- escalating medical costs due to leakage and increases in utilisation

The Review assessed progress and performance through audits and stakeholder consultation immediately following a period of significant transformation of the NI. icare introduced changes to its operations over 2019 while the Review was underway. A further program of audits in 2020 will assess the impact of changes made since the Review audits and stakeholder consultation.

The Independent Reviewer made thirteen findings, twelve of which are operational or regulatory in nature. SIRA supports eleven of the findings, as does icare. Both SIRA and icare support an additional finding in principle (Finding 4) and have agreed that SIRA, rather than icare, will take action on this finding. One finding (Finding 12) would require consideration of legislative amendment and is matter for the Government and Parliament.

SIRA welcomes Ms Dore's findings that relate specifically to our role as workers compensation regulator and steward. SIRA will continue to respond to the new landscape for regulators and changing community expectations following the Hayne Royal Commission.

In responding to the Review, SIRA published a 21-point action plan that provides a foundation for fact-based steady improvement. SIRA is working closely with icare in addressing the Review recommendations and the 21-point action plan with a view to improving the performance of the NI and the health of the workers compensation scheme more broadly.

SIRA has committed to a number of initiatives in the 21-point action plan to increase transparency and improve performance scheme-wide. These include publishing the results of regular customer experience surveys, reviewing and strengthening performance benchmarks and leading consultation in return to work (RTW) measures to contribute to the national RTW measurement framework.

It is important that the way SIRA and icare respond to the Review stabilises and improves services and results without causing uncertainty and volatility. After a period of large-scale change in workers compensation and the NI operating model, SIRA's 21-point action plan provides a foundation for fact-based and steady improvement rather than further rapid or large-scale change.

SIRA is continuing to hold icare accountable for delivery of actions in response to the Review, while noting that the impact of the COVID-19 pandemic has created some disruption to planned activities as well as some additional risk.

SIRA conducted a follow-up file review with the NI to ascertain rate of improvements since the Dore Report. The conduct of this review was impacted by the COVID-19 restrictions. Interim outcomes of this review are expected to be finalised in the near future.

Separate to the Review, in February 2020, icare disclosed to SIRA the results of an internal risk discovery exercise which identified error in administration of weekly payments to injured workers. SIRA required icare to develop and implement a Pre-Injury Average Weekly Earnings (PIAWE) Remediation and Risk Plan. SIRA is closely monitoring this process to ensure any underpayments are identified and remediated as swiftly as possible.

SIRA will continue to supervise the NI closely and report publicly on progress against the action plan, the performance of the NI and the workers compensation system more broadly.

## **7. Measuring return to work**

The impact of delayed RTW on injured workers is a serious concern. There is a strong body of evidence that shows the longer an injured person is away from work, the less likely they are to ever return. Return to work is a key metric for the performance of the NSW workers compensation system.

In response to a recommendation of the Legislative Council Standing Committee on Law and Justice in 2017, the NSW Government committed SIRA to *developing a multi-layered approach to measure system-wide return to work performance to will provide more consistent and complete analysis and reporting of return to work outcomes.*

SIRA has worked to collect clearer and more comprehensive data on return to work. It now uses a range of measures and is developing more evidence based and multilayered lead and lag indicators of RTW. In particular, for workers compensation, SIRA uses an RTW measure based on “work status” which records the work status of a worker at a point in time ( after 4, 13, 26 and 52 weeks). This is reported by insurers to SIRA and includes information on whether a worker has returned to work in either suitable work or pre-injury work, or has not returned to work and payments have ceased for other reasons such as retirement. Previously, RTW was primarily measured in the NSW workers compensation system by measuring cessation of weekly payments. However, in response to stakeholder concerns and an observed lag in the data, SIRA no longer solely relies on this measure as a proxy for RTW.

There are different ways to measure return to work. Getting the right combination is critical to effectively monitoring scheme health and insurer performance, and in designing interventions and regulatory measures to improve outcomes for injured people. In December 2019 SIRA released a Measuring RTW discussion paper which outlined the suite of metrics SIRA currently uses to measure return to work and sought input about how it could strengthen the approach across both workers compensation and CTP. The consultation period ended in March 2020 with SIRA receiving 27 submissions.

There was broad agreement that common RTW measures are necessary and that there are social and financial benefits of early RTW. Key themes include:

- a. suggestions for further metric design
- b. issues with data quality adversely impacting the metric
- c. issues with the reporting periods, where data develops and therefore improves over time.

SIRA will undertake further targeted consultation with key stakeholders to assist in finalising its multi-layered approach to RTW measurement and its design of an RTW measurement framework.

icare’s response to the RTW measurement discussion paper and any RTW performance discussions has highlighted its concern with SIRA’s RTW measure based on work status. icare prefers the RTW proxy measure based on cessation of weekly payments. SIRA is working constructively with icare to ensure a shared understanding about the deteriorating RTW trend and to improve early accurate assessment of the effectiveness of icare claim management changes designed to improve return to work.

## **8. Healthcare review**

### **Review of Regulatory Requirements for Healthcare Arrangements in the NSW Workers Compensation and CTP Schemes**

Healthcare costs account for more than \$1 billion each year in personal injury insurance schemes in NSW. In recent years, the costs have grown faster in the NSW workers compensation scheme than in Medicare and private health insurance. To better understand and address the drivers of escalating healthcare costs and service utilisation, SIRA is leading a Review of Regulatory Requirements for Healthcare Arrangements in the NSW Workers Compensation and CTP Schemes (Healthcare Review). The Healthcare Review is not about reducing expenditure or the treatment available to injured people. SIRA’s objective is to make sure that every dollar spent delivers quality and value and optimises recovery. As part of the Review, SIRA is considering the full range of healthcare arrangements in both schemes, including fees, clinical quality, data and reporting, monitoring and compliance and regulation. SIRA received 53 submissions to the review, 43 of which have been

published on the SIRA website. A final report will be published in the second half of 2020. In the meantime, SIRA is working with insurers to improve administration of treatment payments and approvals and with the medical community on value-based care and fees models.

Themes in the submissions to the Healthcare Review include:

- the importance of strengthening insurer controls over health provider billing
- the need for insurers to more closely scrutinise proposed treatments
- the importance of early treatment in medical costs across the life of a claim
- the need for insurers to better identify injured people at risk of not returning to work
- a link between adversarial claims and disputes and non-medically appropriate care
- an increase in degenerative, rather than traumatic injuries
- health providers seeing patients for long periods without clinical justification
- the need for increased data publication
- consideration of outcome-based fee models
- the need for SIRA to set clinical frameworks and standards

## **9. Response to COVID-19**

The impact of COVID-19 on the NSW Workers Compensation Scheme may potentially be significant. SIRA is working with insurers, business groups, unions, Department of Treasury officials, other jurisdictions and actuaries to understand, assess and model potential impacts of a range of factors. This includes the potential for changing patterns of work, fewer return to work options, changes to insurer investment returns, wages and premiums, disruption to medical treatments and care and claims impacts (work-related COVID-19 infections, working from home and psychological injury).

SIRA is focused on responding to the immediate impacts of COVID-19 on the workers compensation, motor accident and home building insurance schemes. Detailed information and advice about the changes that SIRA has made in response to the pandemic, and support for affected people including the creation of targeted information hubs, has been published in a dedicated section of the SIRA website. An overview of action relevant to workers compensation to date is provided below.

### **Support for injured workers and road users**

SIRA has created an information hub that contains advice and links to relevant SIRA information to help people injured at work, or on the road, to understand the impact of COVID-19 on workers compensation and the CTP schemes.

The information hub explains changes made which enable a second or subsequent certificate of capacity/fitness to be obtained from a treating physiotherapist or psychologist, and to make sure people can access the treatment and support they need. It contains information about COVID-19 and work, as well as advice about accessing financial support from the Commonwealth and NSW Governments.

### **Support for employers**

SIRA recognises that COVID-19 is having a significant impact on businesses and employment arrangements. SIRA is working closely with all relevant NSW Government agencies and employer

associations to support employers respond to the pandemic and to prepare for business post COVID-19.

SIRA has created an information hub for employers. It is designed to provide employers and people leaders with a quick reference for some actions to take to minimise the impact to business and to injured people. It contains advice and links to relevant SIRA information on how employers can protect their business and support their workers as well as themselves.

### **Financial incentives for helping workers to continue their recovery at work**

The JobCover6 program encourages employers to provide short-term work opportunities to help injured road users and workers who are looking to gain new employment during the COVID-19 crisis.

The Connect2work program encourages employers to provide work placements to assist workers who are unable to recover at their pre-injury workplace or are looking to gain new work skills during the COVID-19 crisis.

### **Approach to regulation**

SIRA aims to ensure that the insurance and support systems it stewards are easy to deal with and deliver protection, recovery and restoration entitlements and good outcomes at an affordable price and in a sustainable way.

SIRA is significantly focusing its regulatory efforts on adapting and responding to the impacts of COVID-19. SIRA is taking a risk and evidence based approach to its advisory, compliance and enforcement activities. These activities focus on matters that present potential or actual harm to injured people and policy holders or risks to scheme sustainability and integrity. All matters of non-compliance are assessed using a risk-based approach.

For example, SIRA is proactively renewing or extending most workers compensation self and specialised insurer licences that are due for renewal up to the end of 2020 for a period of one year. This decision ensures business continuity and reduces regulatory burden. SIRA will increase supervision and regulatory action to mitigate any insurer risks at this time as required.

SIRA is committed to working constructively and pragmatically with scheme participants, and will be working closely with them over the coming weeks and months.

### **Legislative changes**

The *COVID-19 Legislative Amendment (Emergency Measures) Act 2020* made amendments to both the *Workers Compensation Act 1987* and the *Motor Accident Injuries Act 2017*.

These changes enable treating physiotherapists and psychologists to now issue second and subsequent certificates of capacity/fitness. SIRA has supported stakeholders to implement these changes through provision of guidance and training, including release of training videos.

The *COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020* commenced on 14 May 2020. The Act makes amendments to the *Workers Compensation Act 1987*

(1987 Act) to introduce a presumption that workers who contract COVID-19 while working in prescribed employment have contracted COVID-19 in the course of their employment.

SIRA is carefully considering the amendments and will work closely with the Government and stakeholders to implement the changes, including development of the supporting Regulation.

## **Changes to Guidelines**

SIRA has amended the workers compensation guidelines to reduce regulatory barriers and provide clarity for insurers and other stakeholders regarding the approach to arranging work capacity assessment appointments and independent medical examinations.

SIRA has revised the [Workers Compensation Market Practice and Premium Guidelines](#) (MPPGs) to clarify the impact of wages subsidy programs such as JobKeeper on wages for premium calculation purposes. The change to the definition of wages in the MPPGs is intended to make clear that only payments made to workers under their ordinary employment arrangements are wages for premium purposes, not any additional government-subsidised payments.

The motor accident guidelines have been amended to provide regulatory relief during COVID-19 to CTP insurers when complying with timeframes for electronic transition of eGreenSlips to Transport for NSW and implement measures to allow treating physiotherapists or psychologists to issue certificates of fitness. The amendments will be in place for 12 months, unless repealed earlier.

## **Other changes**

### **9.1.1. New COVID-19 related Standard of Practice**

SIRA has undertaken public consultation on a new Standard of practice on the management of claims during the COVID-19 pandemic. It aims to set expectations for insurers about the handling of COVID-19 workers compensation claims and claims handling practices more generally throughout the period of the pandemic. The Standard of practice will apply to insurers during the COVID-19 pandemic period.

### **9.1.2. Telehealth Services**

SIRA recognises that COVID-19 may impact an injured person's ability to attend face-to-face medical appointments. SIRA has introduced new arrangements for telehealth services so that consultations between injured people and providers can occur over the telephone. This change has helped to minimise social contact and the demands on our health system.

### **9.1.3. Guidance for independent medical examinations**

SIRA has issued guidance material for referrers and examiners to consider for independent medical examinations and reports during the COVID-19 pandemic.

### **9.1.4. Changes to Dispute Resolution Service processes**

SIRA's Dispute Resolution Service (DRS) has adapted the way its services operate to protect the wellbeing of injured people, stakeholders and decision makers in light of the COVID-19 pandemic. In recognition of the Government commitment to establish a combined CTP and workers compensation Personal Injury Commission, SIRA has worked closely with the Workers Compensation Commission to align COVID-19 adaptations in dispute resolution services wherever possible.

SIRA's DRS is working with the parties to limit in-person medical assessments and determine alternative methods of resolving disputes. Assessment of claims may proceed on the papers, by

teleconference or by video conferencing, or may be deferred, as appropriate. Where there is no alternative to conducting an in-person assessment, DRS will work with medical assessors and confirm that assessments proceed in line with NSW Public Health Orders.

### **Monitoring and reporting on COVID-19 claims**

SIRA is reporting COVID-19 related workers compensation claims using data provided by insurers. The information on SIRA's website is updated daily.

## **10. Appendices**

1. Status report on SIRA action in response to recommendations from previous Law and Justice Committee reviews
2. Table of links

**Submission to the Law and Justice Standing Committee 2020 Review of Workers Compensation  
State Insurance Regulatory Authority**

**Appendix 1 - Status report on SIRA action in response to recommendations from previous Law and Justice Committee reviews**

Year	Recommendation	Status	Update
2016	<b>Recommendation 2:</b> <i>That SIRA and icare collect clearer data regarding the circumstances in which an injured worker returns to work (RTW) and maintain statistics in relation to that worker for at least 12 months following their return to work, and that the return to work data specifically identify workers who have returned to work for insignificant periods or have had their benefits terminated for a reason other than return to work.</i>	Completed July 2019	SIRA publishes extensive data on workers compensation including return to work based on work status of actual return to work rather than termination of benefits. This data is available through the SIRA open data portal on the SIRA website. SIRA also published data on durability of return to work (followed up over a 12 month period) in workers compensation system performance reports for each year. SIRA has identified a range of return to work measures that may assist with improving return to work and transparent reporting of return to work performance and has released a discussion paper for public consultation. SIRA and icare are currently undertaking detailed analysis of return to work trends and metrics. SIRA will propose enhanced return to work measures and will undertake public consultation later in 2020.
2016	<b>Recommendation 3:</b> <i>That SIRA develop a guideline for use by scheme agents which outlines how rehabilitation services should be utilised during the case management process.</i>	Completed June 2019	<a href="#">Standards of practice 15 Approval and payment of medical, hospital and rehabilitation services</a> published in December 2018 outlines expectations to ensure workplace rehabilitation services are in line with the <a href="#">Nationally Consistent Approval Framework for WRPs</a> and <a href="#">NSW supplement</a> .
2016	<b>Recommendation 5:</b> <i>That SIRA issue a guidance note explaining how the new Guidelines for claiming workers compensation operate with respect to s 60(2A) of the Workers Compensation Act 1987.</i>	Completed December 2018	Amended <a href="#">Workers Compensation Guidelines</a> were published and gazetted in December 2018, with effect from 1 January 2019. Additional <a href="#">insurer guidance</a> was published alongside the <a href="#">Standards of practice</a> .
2016	<b>Recommendation 9:</b> <i>That SIRA amend the Guidelines for claiming workers compensation so that injured workers are provided with any supporting documents relevant to a work capacity decision in real time or at pre-determined stages throughout the life of a claim, rather than only as attachments to a work capacity notice.</i>	Completed December 2018	SIRA published the <a href="#">Standards of practice</a> in December 2018. The Standards include <a href="#">overarching claims management principles</a> . Principle 2 relates to transparency and participation and provides that workers, employers and other scheme participants be empowered and encouraged to participate in the management of claims. <a href="#">Standard 2 Worker access to personal information</a> also provides that workers are

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			to be provided with convenient and timely access to their personal and health information in accordance with relevant privacy and workers compensation laws. Detailed insurer guidance has also been published regarding worker access to information including <a href="#">proactive release of reports</a> , and <a href="#">decision notice requirements</a> .
2016	<b>Recommendation 10:</b> <i>That SIRA expedite its stakeholder consultation process regarding the calculation of pre-injury average weekly earnings (PIAWE) and develop a regulation on this issue as a matter of priority.</i>	Completed October 2018	PIAWE amendments were included in the <a href="#">Workers Compensation Legislation Amendment Act 2018</a> , which received assent on 26 October 2018. Amendments have been made to the <a href="#">Workers Compensation Regulation 2016</a> , <a href="#">Workers Compensation Guidelines</a> and <a href="#">Standards of practice</a> to support the reforms which took effect for workers injured on or after 21 October 2020.
2016	<b>Recommendation 11:</b> <i>That SIRA issue a guidance note explaining the appropriate operation of s 44BC of the Workers Compensation Act 1987.</i>	Completed January 2019 (overtaken by events)	S44BC provided for the stay of a work capacity decision. This has since been repealed as part of reforms to dispute resolution.
2016	<b>Recommendation 13:</b> <i>That the NSW Government investigate removing the distinction between work capacity decisions and liability decisions in the workers compensation scheme.</i>	Completed January 2019	Following an extensive review, the NSW Government made changes to workers compensation dispute resolution arrangements from 1 January 2019. These changes did not include changing the nature of work capacity decisions.
2016	<b>Recommendation 15:</b> <i>That the NSW Government introduce a single notice for both work capacity decisions and liability decisions made by insurers.</i>	Completed January 2019	Legislation, regulations and SIRA approved requirements for a single decision notice commenced on 1 January 2019.
2016	<b>Recommendation 17:</b> <i>That the NSW Government investigate the possibility of amending s 322A of the Workplace Injury Management and Workers Compensation Act 1998 to allow up to two assessments of permanent impairment for certain clearly defined injuries that are prone to deteriorate over time, such as spinal injuries.</i>	Completed	The legislation provides appropriate mechanisms for the assessment of permanent impairment for workers whose condition deteriorates over time. A worker is able to appeal against a medical assessment certificate where there has been a deterioration of their condition that results in an increase in the degree of permanent impairment. Special provisions apply to workers who were in receipt of weekly payments immediately before 1 October 2012 ('existing recipients') which permits one further assessment of the degree of permanent impairment in respect of existing

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			recipients. SIRA also published <a href="#">Standard of practice 21 Negotiation on the degree of permanent impairment</a> .
2016	<b>Recommendation 18:</b> <i>That SIRA amend the Guidelines for claiming workers compensation concerning s 38 of the Workers Compensation Act 1987 to set out an objective test for insurers to adhere to when determining the requirements for continuation of weekly payments after the second entitlement.</i>	Completed December 2018	Guidance note <a href="#">GN 5.4 Weekly payments after the second entitlement period</a> has been published with the <a href="#">Standards of practice</a> which provides insurers guidance on how insurers apply <a href="#">section 38</a> of the 1987 Act.
2016	<b>Recommendation 19:</b> <i>That the NSW Government clarify the intended scope of s 38A of the Workers Compensation Act 1987 and if necessary, extend the minimum weekly compensation payments for injured workers with highest needs to existing recipients of weekly payments, subject to an analysis of its financial impact.</i>	Completed August 2019	Guidance Note <a href="#">GN 5.5 Payments to workers with highest needs</a> was published in August 2019 as part of the <a href="#">Claims Administration Manual standards of practice</a> . It provides detailed guidance on the application of <a href="#">s38A</a> (also known as the 'Special provisions for workers with highest needs').
2016	<b>Recommendation 20:</b> <i>That SIRA use the data collected from icare and self and specialised insurers concerning the first cohort of workers affected by the operation of s 39 of the Workers Compensation Act 1987 to identify workers in need of intensive case management and work placement, and provide these opportunities to eligible workers before the expiration of weekly benefits.</i>	Completed December 2016 (i.e. already completed when Government Response was prepared)	In December 2016, amendments to existing vocational programs that were provided for under s 53 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> were made to allow the s 39 cohort to access these programs. These include covering costs of training, workplace modification and work trials. SIRA provided insurer guides, fact sheets and information sessions to ensure insurers provide timely and appropriate support to workers through the transition process, including providing access to these and other supports to assist with return to work. Insurers must report to SIRA on the management and support mechanisms in place for workers in need of intensive case management and work placement. SIRA provides reports back to insurers on their performance against a range of requirements, relative to other insurers. Additional insurer guidance and forums are provided where required.
2016	<b>Recommendation 22:</b> <i>That icare and SIRA expedite work on a mandatory surveillance guideline for scheme</i>	Completed December 2018	Standard of Practice <a href="#">S25 Surveillance</a> was published in December 2018 as part of the <a href="#">Standards of practice</a> .

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	<i>agents which sets objective standards for when surveillance should be used.</i>		
2018	<b>Recommendation 1:</b> <i>That the NSW Government consolidate the workers compensation scheme and CTP insurance scheme dispute resolution systems into a single personal injury tribunal, by expanding the jurisdiction of the Workers Compensation Commission, but retaining two streams of expertise.</i>	Open	Minister Dominello introduced the <i>Personal Injury Commission Bill 2020</i> into Parliament, and delivered the second reading speech, on 3 June 2020. SIRA and the the Workers Compensation Commission are undertaking preparatory work to establish the Personal Injury Commission (PIC).
2018	<b>Recommendation 2:</b> <i>That the NSW Government ensure that if a single personal injury tribunal is established, as outlined in recommendation 1, it:</i> <ul style="list-style-type: none"> <li>▪ <i>Be independent and judicial</i></li> <li>▪ <i>Have statutorily appointed presiding officers</i></li> <li>▪ <i>Provide a judicial appeal mechanism</i></li> <li>▪ <i>Publish its decisions</i></li> <li>▪ <i>Allow claimants to have access to legal representation</i></li> </ul>	Open	Consistent with the Government Response, this action is being considered as part of the actions taken in relation to Recommendation 1 (see above).
2018	<b>Recommendation 3:</b> <i>That the NSW Government preserve the Workers Compensation Independent Review Office and Independent Legal Assistance and Review Service in the workers compensation scheme, and expand its services to claimants in the CTP insurance scheme disputes.</i>	Open	Following the work being undertaken in relation to Recommendations 1 and 2 to establish a Personal Injury commission, SIRA will undertake analysis and public consultation on options for provision of legal aid services, complaints handling and legal costs regulation in the CTP scheme, working closely with Workers Compensation Independent Review Officer (WIRO), the Workers Compensation Commission and the Personal Injury Commission as it is being established.
2018	<b>Recommendation 4:</b> <i>That the NSW Government assist injured workers who have lost, or will lose their weekly entitlements under section 39 of the Workers Compensation Act 1987 to transition quickly to the disability support pension, where eligible, and investigate other support mechanisms for those ineligible for these payments.</i>	Completed	SIRA worked with insurers to ensure workers received timely communication and resources to assist in locating services and supports following the cessation of weekly entitlements. SIRA continues to monitor 'existing recipients' of this cohort of workers (i.e. workers in receipt of weekly payments at the time of the 2012 legislative amendments) in the upcoming transition off medical entitlements in 2019/2020 and 2022/2023.

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2018	<p><b>Recommendation 5:</b> <i>That the State Insurance Regulatory Authority give consideration to resolving legislative ambiguities including issues of back-pay following resumption of weekly payments, pre- existing psychological injury, assessment of permanent impairment and aggregating impairments, as a part of the Workers Compensation Dispute Resolution Reform Steering Committee Review, and in ongoing consultation with the Workers Compensation Independent Review Office.</i></p>	Open	<p>The Workers Compensation Dispute Resolution Steering Committee convened by SIRA, including the Workers Compensation Commission (WCC) and the WIRO, considered the identified ambiguities with the exception of matters which were before the WCC and not appropriate for the President of the WCC to discuss. It is anticipated clarity on those matters will be provided through review of the relevant WCC decisions by higher courts.</p> <p>SIRA continues to convene the steering committee and works collaboratively with the WCC and the WIRO to better understand and respond to emerging issues in the workers compensation system. SIRA regularly provides advice to the Minister on opportunities to remove ambiguity in legislation through clarifying legislative amendment.</p>
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**SIRA documents**

- [Customer service conduct principles](#)
- [Dedicated COVID-19 section of the SIRA website](#)
- [Independent Compliance and Performance Review of the Nominal Insurer \(managed by icare\)](#) including:
  - [The final report of the Independent Reviewer, Ms Janet Dore](#)
  - Three supporting reports by scheme actuaries EY:
    - [EY Report Part 1: Claims Management](#)
    - [EY Report Part 2: Premium Policy and Review](#)
    - [EY Report Part 3: Expense Review](#)
  - [SIRA's response, including SIRA's 21-point action plan](#)
  - [The icare response to the Review](#)
- [Insurer guidance on meeting legislative and regulatory claims handling requirements and expectations](#) including:
  - [Decision notice requirements](#)
  - [Guidance Note 5.4 Weekly payments after the second entitlement period](#)
  - [Guidance Note 5.5 Payments to workers with highest needs](#)
  - [Proactive release of reports](#)
- [Market Practice and Premium Guidelines \(MPPGs\)](#)
- [Measuring return to work discussion paper](#)
- [Motor Accident Guidelines](#)
- [NSW Supplement to the Guide: Nationally consistent approval framework for workplace rehabilitation providers](#)
- [Review of Regulatory Requirements for Healthcare Arrangements in the NSW Workers Compensation and CTP Schemes and submissions](#)
- [Standards of Practice](#) including:
  - [the overarching claims management principles](#)
  - [Standard of practice 2 Worker access to personal information](#)
  - [Standard of practice 15 Approval and payment of medical, hospital and rehabilitation services](#)
  - [Standard of practice 21 Negotiation on the degree of permanent impairment](#)
  - [Standard of practice 25 Surveillance](#)
- [Workers Compensation Bulletins](#)
- [Workers Compensation Guidelines](#)
- [Workers compensation self-service analytics visual analytics tool \(open data portal\)](#)
- [Workers compensation system performance reports](#)

**Legislation**

- [COVID-19 Legislative Amendment \(Emergency Measures\) Act 2020](#)
- [Motor Accident Injuries Act 2017](#)
- [State Insurance and Care Governance Act 2015](#)

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- [Workers Compensation Act 1987](#)
- [Workers Compensation Legislation Amendment Act 2018](#)
- [Workers Compensation Regulation 2016](#)
- [Workplace Injury Management and Workers Compensation Act 1998](#)

**Other**

- [Final report of the Australian Prudential Regulation Authority Capability Review](#)
- [Final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#)
- [Nationally Consistent Approval Framework for Workplace Rehabilitation Providers](#) (published by the Heads of Workers Compensation Authorities Australia and New Zealand)
- [Previous recommendations of the Legislative Council Standing Committee on Law and Justice in 2017](#)