

**INQUIRY INTO IMPACT OF TECHNOLOGICAL AND
OTHER CHANGE ON THE FUTURE OF WORK AND
WORKERS IN NEW SOUTH WALES**

Organisation: State Insurance Regulatory Authority (SIRA)

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**Submission to the Select Committee
on the impact of technological and
other change on the future of work
and workers in New South Wales**

State Insurance Regulatory Authority

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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 is constituted under section 17 of the *State Insurance and Care Governance Act 2015* (SICG Act) 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 sections 23 and 24 of the SICG Act:

- 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. Workers Compensation

This submission will focus on the technological impacts and changing nature of work in the context of workers compensation schemes and regulation.

The NSW workers compensation system provides support to people injured at work, including assistance with recovering and returning to work. The 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. There is strong evidence that helping workers to recover at work improves their health outcomes. It also reduces the financial impact on businesses by enabling them to maintain the skills and knowledge of an experienced worker, reduce the cost of training a replacement worker and demonstrate to all workers that they are valued.

Employers in NSW that engage persons 'under a contract of service or a training contract' must obtain a worker's compensation policy for their workers. As well as paying premiums, under the workers compensation system employers have obligations relating to workplace injury prevention, effective injury management and measures to assist and accommodate injured workers back at work.

The changing nature of work includes the emergence of the 'gig economy' which uses digital platforms to facilitate the sale of labour. In the gig economy, instead of wages, workers get paid for

the 'gigs' they do, whether that is designing a logo, delivering food, conveying passengers or providing attendant care for people with disability.

The engagement and contractual arrangements of each "gig economy" business model vary. To determine whether an individual is covered by workers compensation, the specific characteristics of each individual worker's circumstances and the arrangements of the business need to be considered.

Because of this complexity, when a person is injured performing work, it is not always immediately clear whether the person is a 'worker', as defined in the workers compensation legislation, and entitled to workers compensation. SIRA encourages anyone injured at work to lodge a claim, which means their entitlements can then be assessed individually. Additionally, those who meet the definition of a worker for the purposes of the scheme, but whose employer has not purchased insurance, may be covered by the government safety net, the Uninsured Liability Indemnity Scheme, administered by icare. Workers seeking legal advice may also be eligible for funding through the [Independent Legal Assistance Service \(ILARS\)](#).

2.1. Gig Economy Reference Group

SIRA convened a Gig Economy roundtable in late 2017 inviting participants to be part of an ongoing dialogue through the Gig Economy Reference Group which met throughout 2018.

Issues considered by the group:

- People working in the gig economy have the advantage of flexible, mobile working arrangements. However, as contractors, they may not be eligible for workplace benefits such as workers compensation, holiday pay and sick leave.
- There are many different business 'models' operating in the gig economy, but they are typically established so there is no employer/employee relationship.
- There is a range of types of work in the gig economy from on-demand delivery and point to point transport on the roads, to scheduled provision of household services to providing attendant care services in the client's home. These types of work have different risks.
- Some stakeholders suggested the gig economy creates jobs. Others consider it a way for people who have difficulty obtaining employment because of a lack of experience or references to get a start in the workforce.
- Personal accident and injury insurance schemes available to gig economy workers are relatively expensive and do not have the same level of benefits as the workers compensation scheme.
- The introduction of legislative changes that clarify the status of people working in the gig economy and the entities that arrange their work and pay them would be complex and require Government approval

As the digital platform companies that facilitate gig work become more prevalent and expand into new and sometimes sensitive industries (e.g. disability support work), sector engagement is imperative. This engagement should seek to support innovation balanced with appropriate and fair regulation, to ensure a level playing field with other NSW businesses together with certainty around the rights of workers.

3. Future of Work

The existing workers compensation legislation is based on a traditional employment relationship. However, this model may not be fit for purpose in the twenty-first century with the rise of technological tools and techniques to remotely manage employees (algorithmic management) as well as the establishment of the gig economy. In addition, the changes to the work environment as a result of the COVID-19 pandemic have provided an opportunity for fresh thinking about the future of work and the removal of barriers to inclusiveness. It is clear that many historical assumptions and processes, such as set working hours or long commutes to a central workplace, may no longer be relevant or desired.

Rather than tweaking existing state-based systems, it may be more appropriate to consider a national approach to the future design that considers gig workers and a broader consideration of the future of work, which could be led by SafeWork Australia. A harmonised design has been successful in the Australian workplace health and safety space and has provided more certainty for both employers and workers. The recent [Report of the Inquiry into the Victorian On-Demand Workforce](#) recommends that the Commonwealth should lead any change, in collaboration with state governments and other key stakeholders, as it is responsible for Australia's national system of workplace laws. The report states that reforms confined to a single state could create further complexity and impose unnecessary burden on national businesses.

It is likely that many gig workers sign up with more than one platform to obtain work. For example, drivers may work for multiple point to point transport platforms. In addition, the flexibility of gig work allows it to fit in with study or other employment. However, gig workers may not be eligible for some of the benefits available to employees, such as workers compensation, sick leave and holiday leave, and may also not be covered by other forms of insurance.

Due to the complexity of this issue and the need to balance flexibility and protection, consideration could be given to different insurance models including models that offer optional coverage, or models that allow the purchase of top-up or bundled products.

There is also an opportunity to leverage technology platforms and the 'gig economy' to improve service delivery. For example 'Hire-up' is a technology platform that connects people with disability with support workers who fit their needs and share their interests.

4. SIRA's role in a changing environment

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 expects that injured workers will receive their entitlements and be able to access treatment and support when they need it.

SIRA responds quickly within its powers to ensure the workers compensation system provides support during emergencies. SIRA is focused on responding to the immediate and long term impacts of COVID-19 on the schemes it administers and has already introduced changes to provide support and financial assistance, enable greater use of telehealth, more flexible procedures for certificates from health practitioners and increased digital service delivery. Many of these policy and service adaptations are relevant and respond to the changing nature of work and the impact of global events on the workforce and the community.

4.1. SIRA's research priorities include the future of work, ageing workforce and key collaborations

SIRA is a member of the Australia and New Zealand Research Collaboration group and the SafeWork Australia Evidence Reference Group. Both groups seek to bring together jurisdictions to engage and collaborate on research and acknowledge the future of work arrangements as a key consideration for regulators.

SIRA is developing an updated research program to guide its research investment over the next five years. The program includes the future of work, including NSW's ageing workforce, as a key research priority during this period. The program also focuses on future and emerging trends, including technological advancements to ensure SIRA can make informed policy and scheme design decisions in relation to the impact of technology both in the workplace and in the treatment of injured people e.g. telehealth and telerehabilitation.

4.2. Inclusion of people with disability is critical to the future of work

One in five people in Australia have a disability, and as we age the likelihood of acquiring a disability increases. For people with disability or recovering from injuries, the future of work offers both opportunities for inclusion, and the potential for existing barriers to inclusion to be removed. In addition, diverse workforces have the potential to improve organisational effectiveness.

The COVID-19 pandemic has made working from home widely accepted, which is an [advantage for some people with disability](#), particularly those with physical disabilities. In fact, some people with disability [report](#) better inclusion than ever before. This new willingness for employers to promote working from home as an adjustment to work can benefit both people recovering from work and those with disability. The future of work should not lose these gains in inclusion and work for people with disability or those recovering from injury.

Person-centred design will continue to be critical in the future of work, particularly to identify any new barriers to work participation for people with disability. *SIRA's Engaging Lived Experience: Strategic framework for guiding our work impacting mental health* is an example of a structured approach to developing fit for purpose engagement, with the aim of producing more cost effective and efficacious policies, products and services, while ultimately building trust with citizens who engage in the process.

Strong leadership promoting diversity and inclusion, as well as a commitment to promoting recovery from injury at work, may also be able to mitigate these potential barriers and support meaningful work for all employees.

4.3. In times of uncertainty, supporting mental health in the future of work will be more important than ever

SIRA has a broad focus on workplace mental health, demonstrated through the strong commitment to the *NSW Government Mentally Healthy Workplaces Strategy 2018 – 2022*. SIRA provides financial, governance and leadership support to the implementation of the strategy, and leads the recovery @ work stream.

The recovery @ work stream focuses on supporting earlier help seeking and better support for recovery, while working toward reducing stigma and increasing mental health literacy in the NSW workforce. Current initiatives include a contestable grant program, Recovery Boost, which aims to build the evidence base in this area, a recovery @ work toolkit for supporting individuals recovering from a mental health issue in the workplace, and a stream of work focussed on engaging with people with lived experience of mental health recovery in the workforce.

Person centred design will continue to be critical in the future of work to respond to effectively to change and uncertainty. SIRA's *Engaging Lived Experience: Strategic framework for guiding our work impacting mental health* is an example of a structured approach to developing fit for purpose engagement, with the aim of producing more cost effective and efficacious policies, products and services, while ultimately building trust with citizens who engage in the process.

5. Conclusion

SIRA appreciates the opportunity to provide a submission, and would be pleased to provide further information as required by the Select Committee.