

# Special Inquiry into certain matters relating to the State Insurance Regulatory Authority

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## Government Response

5 August 2025

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# Acknowledgement of Country

The NSW Department of Customer Service acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

Special Inquiry into certain matters relating to the State Insurance Regulatory Authority:  
Government Response

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## **More information**

[Independent inquiry - State Insurance Regulatory Authority \(SIRA\) | NSW Government](#)

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The NSW Government welcomes the report of the Special Inquiry under section 82 of the *Government Sector Employment Act 2013* into certain matters relating to the State Insurance Regulatory Authority (the **Inquiry Report**) which the Hon Alan Robertson AM SC provided to the Minister for Customer Service and Digital Government on 6 December 2024.

Under section 82(10) of the *Government Sector Employment Act 2013* (the GSE Act), the Minister must cause a copy of the Inquiry Report, together with information as to any action taken or proposed to be taken in relation to the subject of the Inquiry Report, to be laid before each House of Parliament within 30 sitting days of that House after the day on which the Minister was provided with a copy of the report.

This document provides information as to any action taken or proposed to be taken by the NSW Government in response to the Inquiry Report. As the Inquiry Report was provided to the Minister on 6 December 2024, the Inquiry Report and this document are required to be tabled on or before 5 August 2025.

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# 1

## The Inquiry

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## 1.1 Establishment of the Inquiry

On 9 July 2024, the Minister for Customer Service and Digital Government established the Special Inquiry into matters relating to the State Insurance Regulatory Authority (**SIRA**) by issuing a direction with Terms of Reference to the Hon Alan Robertson AM SC.

The Inquiry was established under section 82 of the *Government Sector Employment Act 2013 (GSE Act)*. Section 82 of the GSE Act provides for the Premier, or their delegate, to direct a person to conduct a special inquiry into any matter relating to a NSW government agency. The Premier delegated his power under the GSE Act to instigate the Inquiry to the Minister for Customer Service and Digital Government as the portfolio Minister responsible for SIRA.

Mr Robertson was required to conduct the Inquiry and to report on its findings to the Minister for Customer Service and Digital Government by 6 December 2024.

Mr Robertson was supported in the conduct of the Inquiry by counsel, and by a number of nominated staff of the Department of Customer Service (**DCS**). The Inquiry exercised powers under the GSE Act to require the production of documents and to require witnesses to attend for interviews. Evidence was not taken in public. Both DCS and SIRA co-operated fully with the Inquiry.

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## 1.2 Purpose of the Inquiry

The Terms of Reference are included as Appendix A to this Government Response.

The purpose of the Inquiry was to examine SIRA's handling of and response to certain specified complaints made to SIRA. These complaints were either particularly complex, long-running and unresolved (the complaints under paragraph (a) of the Terms of Reference), or were included in a prior review of SIRA's policies, procedures, guidelines and training for the management of complaints about SIRA (the complaints under paragraph (b) of the Terms of Reference). One additional complainant was included under paragraph (b) of the Terms of Reference because, although the complaint had not been considered in the prior review, it appeared to be similarly complex.

Taking account of the material in relation to these complex complaints, the purpose of the Inquiry was also to consider the complaint handling role of SIRA more generally, and whether reforms are needed to improve its complaint handling, including to improve how SIRA ensures workers compensation insurers comply with their obligations.

The role of DCS was also considered because it had become involved in some of the complaints, particularly those under paragraph (a) of these Terms of Reference. SIRA is part of the DCS portfolio and the staff of SIRA are employed in DCS. Other staff employed by DCS also provide services to SIRA, as part of the DCS portfolio of agencies.

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## 1.3 Complaints considered by the Inquiry

### Paragraph (a) of the Terms of Reference

Paragraph (a) of the Terms of Reference identified complaints made by three complainants, who were given the pseudonyms Complainant 1 to 3 in the Inquiry Report.

These complaints were ongoing and long-running and had not been resolved. The three complainants had raised particular concerns in relation to SIRA which were the subject of an earlier investigation by PricewaterhouseCoopers (the **PwC Inquiry**), which commenced in late 2022 and reported in April 2023.

The Terms of Reference required Mr Robertson to invite these complainants to contribute to the Inquiry, and each of them contributed to the Inquiry through attending interviews and making submissions.

## Paragraph (b) of the Terms of Reference

Paragraph (b) of the Terms of Reference identified complaints made by 12 complainants, who were given the pseudonyms Complainant 4 to 15 in the Inquiry Report.

Eleven of these complainants had been included in a review of SIRA's policies, procedures, guidelines and training for the management of complaints about SIRA, which was conducted by Mr Chris Wheeler PSM and was completed in March 2022 (the **Wheeler Report**). The Wheeler Report included a desktop review of documents held by SIRA in relation to a number of complaints and did not involve contact with the complainants.

In advising the Minister for Customer Service and Digital Government in relation to the establishment of the Inquiry, DCS considered it important to include the Wheeler Report and the complaints considered in it, both to allow the Inquiry to consider a larger number of complaints and to ensure that SIRA would not be subject to two sets of potentially different recommendations in relation to complaints handling.

One additional complainant was included under paragraph (b) of the Terms of Reference. Although this complainant's complaint had not been considered in the Wheeler Report, SIRA identified that it appeared to be similarly complex. This complainant had not been involved in the PwC inquiry and so was not appropriate to include under paragraph (a) of the Terms of Reference. Including the complainant under paragraph (b) of the Terms of Reference was intended to ensure that the complaint could also be considered by the Inquiry.

The Terms of Reference required Mr Robertson to take account of the case studies in the Wheeler Report and documents relating to the case studies and the additional complainant identified by SIRA and included under paragraph (b) of the Terms of Reference. Mr Robertson was authorised to conduct such further inquiries as he considered necessary in relation to these complaints, but he was not required to contact these complainants or invite them to contribute to the Inquiry.

Three of these complainants contacted the Inquiry. Mr Robertson received documents and submissions from them and interviewed two of them.

## Additional complainants who approached the Inquiry

Following the announcement of the establishment of the Inquiry in July 2024, a number of persons with complaints in relation to workers compensation contacted the Inquiry and requested to have their matters considered.

An additional nine complainants were considered by the Inquiry. They were given the pseudonyms Complainants 16 to 24. Mr Robertson received documents and submissions from them and interviewed three of them.

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## 1.4 Privacy considerations and the Inquiry Report

Engagement with a number of the complainants has confirmed that it would cause considerable distress to at least some of the complainants to be identified in public, and that it would cause considerable distress to have particularly sensitive personal information including health information about them available in public, even if they are not identified by name. A number of the complainants are known to each other, and some are known to a broader group of people with an interest in workers compensation, and so a number of complainants may be identifiable even if they are not named.

In the Inquiry Report, the complainants have been given pseudonyms, as required under the Terms of Reference, and their names are given only in an appendix. The Government has redacted the complainants' names in the appendix to protect their privacy. The Government has also redacted some words and phrases in the body of the Inquiry Report where those words or phrases might enable a complainant to be identified and/or to protect information that might be particularly sensitive to a complainant, such as health information and information about trauma.

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# 2

## Recommendations and Government Response

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## 2.1 Overview of the Inquiry recommendations

The recommendations are set out in full in Appendix B to this Government Response. The recommendations are not numbered in the Inquiry Report, but they have been given numbers in this Government Response for ease of reference. Each recommendation is also identified by the relevant page number and paragraph number in the Inquiry Report, for ease of cross-referencing with the Inquiry Report.

Consistent with the Terms of Reference, Parts I and II of the Inquiry Report comprise narrative and analysis of the individual complaints and the circumstances of the complainants, following Mr Robertson's review of records obtained by the Inquiry and in some cases, interviews. The case studies in the Inquiry Report illustrate the many interactions injured workers face in navigating workers compensation claims and the cumulative effect on workers of the legislative and other requirements required for workers to receive entitlements.

Part I of the Inquiry Report includes six recommendations for DCS and SIRA to take action in response to the complaints of Complainants 1, 2 and 3. Part II of the Inquiry Report includes seven recommendations concerning SIRA's complaint handling processes arising from the complaints considered under paragraph (b) of the Terms of Reference and the additional nine complainants considered by the Inquiry.

Part III of the Inquiry Report comprises a general analysis of complaints handling by SIRA and SIRA's role in relation to complaints in response to paragraph (c) of the Terms of Reference. Part III of the Inquiry Report includes 27 recommendations for reforms, including legislative and policy reforms. Some of these reforms are directed to SIRA in relation to its policies and regulations. Some are matters for DCS and the Government to consider in terms of legislative and structural reforms.

The recommendations in the Inquiry Report are made in the context of the many organisations and individuals which play a role in workers compensation claims, in addition to SIRA. These organisations and individuals include insurers, employers, treating medical practitioners and allied health practitioners, independent medical examiners and assessors, rehabilitation consultants, the Independent Review Officer (IRO) and the Personal Injury Commission (PIC).

As the Terms of Reference for the Inquiry indicated, some of the complainants' claims for workers compensation predate the establishment of SIRA on 1 September 2015. Some of the complainants made complaints arising from their claims for workers compensation to the WorkCover Authority of New South Wales (**WorkCover**), which was the predecessor to SIRA and Insurance and Care NSW (**icare** or **ICNSW**). Some of the complainants also made complaints to icare, scheme agents, the IRO and its predecessor, the Workers Compensation Independent Review Officer (**WIRO**). While the Inquiry was required to focus on SIRA's handling of and response to the complainants' complaints, the Terms of Reference recognised that Mr Robertson might need to take account of the involvement of WorkCover, icare, relevant scheme agents, the IRO and WIRO in establishing the facts and circumstances relevant to the Inquiry.

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## 2.2 Part I of the Inquiry Report

### Recommendations

Part I of the Inquiry Report addresses paragraph (a) of the Terms of Reference, relating to Complainants 1, 2 and 3. The first section in Part I of the Inquiry Report deals with the PwC Inquiry, in which each of Complainants 1, 2 and 3 were involved. The balance of Part I of the Inquiry Report then contains a separate section in relation to each of Complainants 1, 2 and 3.

Paragraph (a) of the Terms of Reference required Mr Robertson to make recommendations as to any actions that SIRA or DCS should now take in response to the complaints of Complainants 1, 2 and 3. Mr Robertson has recommended that each of Complainants 1, 2 and 3 be paid ex gratia or act of grace compensation in relation to the PwC Inquiry (**recommendation 1**) and that the heads of DCS

and SIRA should give each of Complainants 1, 2 and 3 a written apology and, if they desire it, an apology in person (**recommendation 2**).

Mr Robertson made an additional recommendation in relation to Complainant 2 that, if Complainant 2 is willing to meet, the heads of DCS and SIRA should meet with her to personally convey an apology given by icare and to listen to her proposals for reform (**recommendation 3**).

Mr Robertson made additional recommendations in relation to Complainant 3 that the Chief Executive of SIRA should apologise to Complainant 3 for two earlier inquiries conducted by SIRA, in person if Complainant 3 is willing to meet, and that the heads of DCS and SIRA should meet with Complainant 3 to listen to their ideas of reforms of the workers compensation system (**recommendations 4, 5 and 6**).

## Government Response

Given the Government's purpose in establishing the Inquiry, and the involvement of each of Complainants 1, 2 and 3 in the Inquiry, the Government's response following receipt of the Inquiry report has focused on the recommendations in relation to these three complainants.

Once it had received and read the Inquiry Report, DCS's immediate focus was to engage with Complainants 1, 2 and 3. The timeframe for the Inquiry, particularly given the complexity of identifying and providing all relevant documents, did not leave time for Mr Robertson to consult the complainants and obtain their views in relation to his recommendations about them.

Having reviewed the Inquiry Report, the Secretary of DCS (the **Secretary**) sought to engage with each of Complainants 1, 2 and 3 to inform them of the findings and recommendations relevant to them and to seek their views in relation to the recommendations.

In relation to the PwC Inquiry, Mr Robertson found that:

- each of Complainants 1, 2 and 3 was retraumatised by the experience of being interviewed and reliving what happened to them;
- from the point of view of complaints handling, first SIRA and then DCS brought insufficient rigour to bear in establishing the inquiry which became the PwC Inquiry and then allowing or requiring it to be conducted in the way that it was, with DCS being to blame for failing to limit the PwC Inquiry to the particular claims of alleged misconduct;
- given that it was a preliminary inquiry, it was unnecessary to involve Complainants 1, 2 and 3 either at all or to the extent that they were involved, and each ended up retelling the entirety of their traumatising experiences in the workers compensation scheme;
- insufficient care was taken to limit the involvement of Complainants 1, 2 and 3 in light of the history of their involvement with SIRA;
- insufficient care was taken to explain the nature of the inquiry to Complainants 1, 2 and 3: that it was a preliminary inquiry for a limited purpose, in respect of which there would be no benefit to them in terms of the outcome, and that they would not be told of the outcome or provided with a copy of the report; and
- there was defective administration in relation to the PwC Inquiry.

In relation to the PwC Inquiry, Mr Robertson recommended that each of Complainants 1, 2 and 3 should be paid ex gratia or act of grace compensation in the amount of \$150,000 each (**recommendation 1**). Mr Robertson stated that:

*substantial compensation, ex gratia or as an act of grace, should be paid to each of the three Complainants as there was nothing in the PwC inquiry for them; their participation was in the nature of a public service; and each of them were thoroughly traumatised or retraumatised by the conduct of it and the manner in which they were closed out of it. [p.18, paragraph 54]*

Over a number of months, the Secretary engaged with each of Complainants 1, 2 and 3. Having taken account of their views and their individual circumstances, the Secretary (under delegation

from the Minister for Customer Service and Digital Government) authorised the payment of compensation by way of act of grace payments in the amounts determined by the Secretary in response to the recommendation for the payment of compensation in the Inquiry Report and taking account of the representations of the complainants. These payments have been made to Complainants 1, 2 and 3.

The Secretary also discussed with each of Complainants 1, 2 and 3 the recommended formal apologies (**recommendations 2 to 5**) and with Complainants 2 and 3 the recommended meetings to hear their recommendations for reform of the workers compensation system (**recommendations 3 and 6**).

The Secretary undertook to provide a formal written apology to each of Complainants 1, 2 and 3 following the tabling of the Inquiry Report. The Secretary and the Chief Executive of SIRA are also making arrangements to deliver in person apologies to those of Complainants 1, 2 and 3 who wish to receive them, and to meet with Complainants 2 and 3 to hear their recommendations for reform if they so wish.

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## 2.3 Part II of the Inquiry Report

### Recommendations

Part II of the Inquiry Report addresses paragraph (b) of the Terms of Reference, relating to Complainants 4 to 15, and the additional complainants considered by the Inquiry, being Complainants 16 to 24. Part II of the Inquiry Report contains a separate section in relation to each of Complainants 4 to 24.

Part II of the Inquiry Report contains seven recommendations concerning SIRA's complaint handling processes where analysis of specific complaints provides a basis for, and context to, the recommendation (**recommendations 7 to 13**). These recommendations address the following matters:

- SIRA should not tell a complainant it is 'escalating' a complaint when it is being transferred or referred to avoid creating expectations that the matter is being taken more seriously and a positive outcome is more likely (**recommendation 7**).
- SIRA should bring to bear an extra level of sophistication to identify the true nature of a complaint where the volume and nature of communications from a complainant are likely attributable to their psychological condition and prompt advice should be available to SIRA's frontline staff to help understand and deal with such complaints (**recommendation 8**).
- Where complaints include allegations of 'fraud' and 'corruption', rather than 'escalating' them automatically, SIRA should require the complainant to identify the basis for their claim; if they do not identify the basis for their claim of fraud or corruption or the claims are obviously baseless, SIRA should deal with the complaints on their merits (**recommendation 9**).
- Specifically in relation to Complainant 16, unless it would prejudice the commutation process, SIRA should provide Complainant 16 with the commutation application and associated documents relating to the certificate SIRA has given certifying the various matters under section 87EA of the *Workers Compensation Act 1987* relevant to the commutation of liability in respect of Complainant 16's injury to a lump sum (**recommendation 10**).
- SIRA should ensure that its Standard of Practice 25 in relation to surveillance captures social media monitoring, which should only be undertaken if the insurer has firm evidence or a reasonable belief of inconsistency or dishonesty in the injured worker's claim (**recommendation 11**).
- SIRA should regulate insurers to ensure that they do not rely on a complainant's general, and often uninformed, broad consent to share information with private investigators (**recommendation 12**).

- SIRA should tell a complainant what has become of their complaint, and where a matter comes from the Independent Review Officer (IRO), SIRA should tell the IRO the result of the matter (**recommendation 13**).

## Government Response

The recommendations in Part II of the Inquiry Report will be addressed as follows.

Pending the outcome of the DCS-led review of the complaints handling and disputes system in workers compensation (discussed below in relation to recommendations in Part III of the Inquiry Report), in consultation with DCS, SIRA will implement relevant recommendations in Part II of the Inquiry Report in relation to complaint handling, where this can be done as an interim measure.

This will include ensuring that SIRA's procedures address the following matters:

- SIRA should not tell a complainant it is 'escalating' a complaint when it is being transferred or referred to avoid create expectations that the matter is being taken more seriously and a positive outcome is more likely (**recommendation 7**).
- SIRA should bring to bear an extra level of sophistication to identify the true nature of a complaint where the volume and nature of communications from a complainant are likely attributable to their psychological condition and prompt advice should be available to SIRA's frontline staff to help understand and deal with such complaints (**recommendation 8**).
- Where complaints include allegations of 'fraud' and 'corruption', rather than 'escalating' them automatically, SIRA should require the complainant to identify the basis for their claim; if they do not identify the basis for their claim of fraud or corruption or the claims are obviously baseless, SIRA should deal with the complaints on their merits (**recommendation 9**).
- SIRA should tell a complainant what has become of their complaint, and where a matter comes from the IRO, SIRA should tell the IRO the result of the matter (**recommendation 13**).

In relation to its regulation of insurers, SIRA will identify any necessary changes to implement the following recommendations:

- SIRA should ensure that its Standard of Practice 25 in relation to surveillance captures social media monitoring, which should only be undertaken if the insurer has firm evidence or a reasonable belief of inconsistency or dishonesty in the injured worker's claim (**recommendation 11**).
- SIRA should regulate insurers to ensure that they do not rely on a complainant's general, and often uninformed, broad consent to share information with private investigators (**recommendation 12**).

In relation to the commutation documents for Complainant 16, SIRA will consider this recommendation and determine whether providing the documents to Complainant 16 would prejudice the commutation process. If it would not, SIRA will provide the documents to Complainant 16 as recommended (**recommendation 10**).

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## 2.4 Part III of the Inquiry Report

### Recommendations

Part III of the Inquiry Report addressed paragraph (c) of the Terms of Reference. It contains 27 recommendations focusing on policy, administration and legislation relevant to SIRA's complaints handling and role in response to complaints.

The recommendations are organised around the following topics:

- **Perspective** – Mr Robertson finds that the dominant perspective from which the staff member or decision-maker (for example, in SIRA) should consider a complaint is from the perspective of the injured worker.
- **Administration and policy** – Mr Robertson identifies the importance of return to work for injured workers, records the changes SIRA made in response to the Wheeler Report and makes a number of detailed recommendations about the SIRA complaints handling policy, unreasonable customer behaviour policy and the DCS complaints handling policy (**recommendations 14 to 22**).
- **Legislation** – Mr Robertson endorses a number of amendments contained in the State Insurance and Care Legislation Amendment Bill 2022 (the 2022 Bill) introduced by the previous Government in response to the ‘icare and State Insurance and Care Governance Act 2015 Independent Review Report’ by the Hon Robert McDougall QC (the McDougall Report), and certain recommendations made by Legislative Council Standing Committee on Law and Justice in its ‘2020 Review of the Workers Compensation Scheme’ (**recommendations 23 to 30**).
- **Accessibility** – Mr Robertson makes a number of recommendations about the accessibility of the complaints system for injured workers. He recommends that consideration be given to merging the complaints functions of SIRA and the IRO, and that SIRA be given explicit complaints functions so that it is an ‘end-to-end’ regulator with the complaint function embedded in it and with powers to deal with complaints against insurers (**recommendations 31 and 32**).
- **Health providers** – Mr Robertson makes recommendations about the role and regulation of health providers, including requiring single independent medical examinations or adopting a roster of medical examiners, with SIRA to supervise any revised scheme. Mr Robertson also recommends that a legal audit be conducted to examine SIRA’s role in relation to health practitioners, including allied health practitioners, with input from relevant stakeholders (**recommendations 33 to 35**).
- **General** – Mr Robertson concludes with general recommendations about how SIRA handles complaints in the nature of the complainants’ complaints, including that it conducts a competent triage, that it ensures responses of substance are obtained and conveyed to the complainant, that it more readily considers using its powers to give specific directions to insurers following the investigation of a complaint, and that it better coordinate its complaints and enforcement functions. Mr Robertson recommends a legal audit of the legislation be undertaken to ensure that there is an appropriate penalty regime to deal with breaches and that SIRA has power to publish the names of those in default (**recommendations 36 to 40**).

Acknowledging the work that SIRA has already undertaken in response to the Wheeler Report to improve how it handles complaints, the Inquiry Report makes a number of recommendations about SIRA’s complaint handling functions and its complaint handling policy, including the application of SIRA’s complaint handling policy to workers who have psychological injuries. The Inquiry Report finds that the dominant perspective for a staff member or a decision maker should be the perspective of the injured worker, and return to work should inform the administration of the workers compensation legislation.

The Inquiry Report includes commentary concerning the complexity and ambiguity of the regulatory framework and endorses several of the recommendations made in the report prepared by the Hon Robert McDougall KC, *icare and State Insurance and Care Governance Act 2015 Independent Review Report*. These recommendations address SIRA’s role, powers, functions and enforcement powers in relation to licensed insurers, self-insurers and claims administration agents.

Several of the complaints analysed in the Report arose from or were exacerbated by the treatment and examination of injured workers by medical specialists, independent medical examiners and assessors, and allied health practitioners. Mr Robertson makes detailed recommendations concerning SIRA’s role in regulating health practitioners, including to examine SIRA’s legal powers to regulate health practitioners and deal with complaints and to implement a single or joint independent medical examination of workers, agreed by the parties.

The Report concludes with recommendations relating to complaint handling and responding to complaints, including the exercise of regulatory and enforcement powers and a review of SIRA's powers to ensure adequate penalties are available where necessary.

## Government Response

The Government understands that much of the time allowed for the Inquiry was spent examining the experiences of the complainants under paragraphs (a) and (b) of the Terms of Reference, and other complainants who sought to participate in the Inquiry. This work involved the review of extensive documentation obtained from DCS and SIRA, documents and submissions obtained from some complainants, and interviews of a number of complainants. It also involved a number of interviews of persons the subject of allegations made by complainants and of others involved in the handling of complainants' complaints. The Inquiry was not required under the Terms of Reference to conduct public or stakeholder consultation in relation to any recommended reforms, and the available time would not have allowed for detailed consultation to occur.

Recognising that the Inquiry recommendations have not been the subject of public or detailed stakeholder consultation, the Government has determined to respond to the recommendations for system and policy reform as follows.

### Current legislative reform

In relation to the Inquiry's recommendations for legislative reform, the Government is already seeking to progress a number of reforms through the Workers Compensation Legislation Amendment Bill 2025 (**the Bill**), which is currently before Parliament.

The Bill includes provisions that, if enacted, will implement the following recommendations in the Inquiry Report:

- Insert a new Division 4A to the *Workers Compensation Act 1987* to deal with enforceable undertakings by insurers (**recommendation 28**).
- Address the low rate of single joint medical examinations in New South Wales with a view to reducing disputes and achieving shorter claim duration (**recommendation 33**).
- Have a roster of medical examiners to reduce the perception by complainants that the medical examiners would "take the side" of the insurer (**recommendation 34**).

Recommendation 28 is dealt with in Schedule 1.6 of the Bill. This schedule provides for the insertion of Division 4A into the Workers Compensation Act, which will give SIRA the power to accept enforceable undertakings from insurers in relation to a contravention, or alleged contravention, of the Workers Compensation Acts.

Recommendations 33 and 34 are dealt with in Schedule 1.3 of the Bill. This schedule will introduce provisions for a single process to assess an injured worker's degree of permanent impairment through joint medico-legal assessments. It will also introduce a public register of approved assessors, to be managed by SIRA.

### Review of complaints handling and disputes system in workers compensation

In relation to the Inquiry's recommendations for structural and other changes to complaints handling and the resolution of complaints and disputes in workers compensation matters, DCS will lead a review of the roles and responsibilities for complaints handling and resolution of complaints and disputes in workers compensation, including across SIRA, PIC and the IRO. This review will assess the effectiveness and efficiency of existing structures, processes and approaches, taking account of the Inquiry's recommendations (including **recommendations 31, 32 and 36 to 39** in Part III of the Inquiry Report) and other relevant issues raised in the McDougall Report and reports of the Standing Committee on Law and Justice. It will invite public submissions and undertake detailed stakeholder consultation, before making recommendations to the Government for any necessary reforms.

The DCS review will examine the important discussion in the Inquiry Report in relation to perspective in considering how the system can be structured and resourced to ensure that the dominant perspective from which a staff member or decision-maker considers a complaint is from the perspective of the injured worker. This perspective is likely to be particularly important in complex complaints, including those where the complainant has a psychological injury or condition. The review will also take account of **recommendation 8** in Part II of the Inquiry Report which relates to complainants with a psychological injury or condition.

### **Amending complaints handling policies**

Pending the outcome of the DCS-led review of the complaints handling and disputes system in workers compensation, in consultation with DCS, SIRA will implement the Inquiry's specific recommendations in relation to its complaints handling policy and unreasonable customer behaviour policy where this can be done as an interim measure (**recommendations 14, 16 to 20, 22 and 36 to 39**). SIRA will also implement relevant recommendations in Part II of the Inquiry Report in relation to complaint handling, again where this can be done as an interim measure (**recommendations 7, 8, 9 and 13**).

DCS will also consider the Inquiry's recommendations in relation to relevant DCS policies (**recommendation 21**).

In relation to complaints about SIRA or DCS staff, the Inquiry discusses the recommendation in the Wheeler Report that SIRA should seek an exemption from the DCS policy because it said, as a matter of principle, an independent regulator should have its own policy/s to handle complaints made to or about it. The Inquiry quotes the Wheeler Report in stating "[a]s a matter of good practice, the fewer the complaint related policies, procedures and guidelines that apply to an organisation the better". Mr Robertson recommends that this proposal from the Wheeler Report be pursued with a view to SIRA having its own policy (**recommendation 15**).

Staff of SIRA are, however, employed by DCS under the GSE Act. They are staff of DCS. This applies both to senior executive and other staff of SIRA. While there is no difficulty in SIRA having its own policy separate from DCS in relation to how it handles complaints about SIRA, where complaints raise issues about the behaviour of SIRA staff, it is important for reasons of consistency and to ensure comprehensive policies are in place that the DCS policies apply to all staff employed by DCS. However, DCS will review the applicability of its complaints handling policy in relation to complaints about SIRA staff to ensure that, in its application to staff of SIRA, it does not produce unintended difficulties or inconsistencies for SIRA in its handling of complaints generally.

### **Health providers**

In relation to health providers, as noted above, the Bill currently before Parliament includes provisions for a single process to assess an injured worker's degree of permanent impairment through joint medico-legal assessments. It will also introduce a public register of approved assessors, to be managed by SIRA. If enacted, these provisions will address **recommendations 33 and 34**.

In addition to these provisions in the Bill, SIRA has commissioned a review of SIRA's role in relation to health practitioners, including allied health practitioners, with input from relevant stakeholders, as recommended by the Inquiry (**recommendation 35**). SIRA will ensure that this work is undertaken in close collaboration with DCS so that it can inform, and be informed by, the other work DCS is leading, including the review of the complaints handling and disputes system in workers compensation and the consideration of recommendations for further legislative reform.

### **Other legislative reform**

In relation to the Inquiry's other recommendations for legislative reform that are not addressed in the Bill currently before Parliament, the Government will consider these recommendations for inclusion in subsequent legislative reforms. DCS will review these recommendations and provide advice to the Government, alongside any recommendations for legislative reform arising from the

DCS-led review in relation to the complaints handling and disputes system in workers compensation and the work SIRA has commissioned in relation to health practitioners (**recommendations 23 to 27, 29, 30 and 40**).

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# 3

## Appendices

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# Appendix A: Terms of Reference of the Special Inquiry

## Special inquiry under section 82 of the Government Sector Employment Act 2013

The Hon Alan Robertson SC (the inquirer) is appointed to conduct a special inquiry under section 82 of the *Government Sector Employment Act 2013* (GSE Act) into certain matters relating to the State Insurance Regulatory Authority (SIRA), a NSW government agency within the meaning of section 82 of the GSE Act (s17(2) *State Insurance and Care Governance Act 2015* (SICG Act)).

The staff of SIRA are employed in the Department of Customer Service (DCS), a government sector agency within the meaning of section 82 of the GSE Act. Other staff employed by DCS also provide services to SIRA, as part of the DCS portfolio of agencies.

The inquirer may examine the conduct of the staff of SIRA, and the conduct of other staff of DCS, to the extent necessary to inquire into the matters relating to SIRA.

### Terms of reference

The inquirer is to inquire into SIRA's handling of and response to complaints made to SIRA as follows:

- a. **Current complaints:** Three complainants who are named in the Annexure have made a series of complaints to SIRA arising from their claims for workers compensation. These complaints are ongoing and long-running and have not been resolved. The inquirer is to inquire into SIRA's handling of and response to these current complaints and is to:
  - i. identify the relevant facts and circumstances of the complainants' workers compensation claims from which their complaints initially arose;
  - ii. identify how the complaints to SIRA in relation to the complainants' workers compensation claims were responded to;
  - iii. identify the relevant facts and circumstances of the complainants' subsequent complaints in relation to how SIRA responded to their initial complaints, including complaints alleging conflicts of interest, breaches of privacy or any other conduct;
  - iv. identify how the complainants' subsequent complaints were responded to by SIRA and, where relevant, DCS;
  - v. make findings as to the allegations made by the complainants in relation to SIRA, including the SIRA board, any former or current members of the SIRA board, any former or current chief executive or former or current senior executive of SIRA, and DCS;
  - vi. make findings as to the adequacy or otherwise of SIRA's response to each complainant's complaints; and
  - vii. make recommendations as to any actions that SIRA or DCS should now take in response to any complainant's complaints.
- b. **Other complex complaints:** SIRA commissioned a review of its policies, procedures, guidelines and training for the management of complaints about SIRA, which was completed in March 2022 (the 2022 Review). This review included consideration of 11 case studies involving complaints in relation to workers compensation and motor accidents where SIRA identified the complaint as a complex case and/or where the complaint included allegations of corrupt conduct on the part of SIRA or SIRA staff. The names of the complainants in the case studies are listed in the Annexure, together with an additional complainant identified by SIRA as having made a similar complaint. The inquirer is to inquire into SIRA's handling of and response to these other complex complaints and is to:
  - i. identify the relevant facts and circumstances of the complainants' complaints to SIRA; and
  - ii. identify how the complainants' complaints were responded to by SIRA.

- c. **Complaints handling by SIRA and SIRA's role in relation to complaints:** Taking account of the inquirer's inquiry into SIRA's handling of and response to the current complaints and the other complex complaints, the inquirer is to:
- i. make recommendations as to any reforms that the inquirer considers would improve how SIRA and, to the extent relevant, DCS handle complaints in the nature of the complainants' complaints in future;
  - ii. examine SIRA's role in relation to complaints arising from the handling and determination of workers compensation claims generally, including SIRA's oversight of the handling of complaints by ICNSW and scheme agents;
  - iii. make recommendations as to:
    - a. any reforms that the inquirer considers would improve how SIRA ensures compliance with the workers compensation legislation in relation to complaints made by injured workers in relation to matters arising under the workers compensation scheme;
    - b. any procedures that the inquirer considers SIRA should establish for dealing with complaints made by injured workers in relation to matters arising under the workers compensation scheme; and
    - c. any reforms that the inquirer considers would improve the use SIRA makes of complaints to inform the identification of improvements to the oversight and regulation of the workers compensation system.

In relation to the current complaints, the inquirer will invite the three complainants who made the current complaints to contribute to the inquiry in the manner and circumstances that the inquirer considers will be of assistance to the inquiry. The complainants may choose whether to contribute to the inquiry.

In relation to the other complex complaints, the inquirer will take account of the case studies in the 2022 Review and documents relating to these case studies and the complaint made by the additional complainant identified by SIRA. The inquirer may conduct such further inquiries as the inquirer considers necessary in relation to these other complex complaints.

Some of the complainants' claims for workers compensation predate the establishment of SIRA on 1 September 2015. Some of the complainants made complaints arising from their claims for workers compensation to the WorkCover Authority of New South Wales (WorkCover), which was the predecessor to SIRA and Insurance and Care NSW (icare or ICNSW). Some of the complainants also made complaints to ICNSW, scheme agents, the Independent Review Officer (IRO) and its predecessor, the Workers Compensation Independent Review Officer (WIRO). This inquiry is to focus on SIRA's handling of and response to the complainants' complaints. However, the inquirer may need to take account of the involvement of WorkCover, ICNSW, relevant scheme agents, IRO and WIRO in establishing the facts and circumstances relevant to this inquiry.

Some of the complainants' complaints to SIRA and allegations arising from those complaints have been, or are currently, the subject of other processes of inquiry or review, including the 2022 Review. The inquirer is to take account of these other processes and their outcomes, if any. However, the inquirer need not adopt any factual findings of these other processes, but may if the inquirer considers it appropriate to do so.

The inquirer is not to redetermine or purport to redetermine the liability under workers compensation legislation or at common law of the insurer or employer to a complainant or to any other person nor to examine the legal validity of any payment or payments made to a complainant or to any other person.

## **Report of the inquiry**

The inquirer is to prepare a report on the conduct and findings, and any recommendations, of the inquiry by Friday, 6 December 2024, or by such later date as the Minister allows, and is then to provide the Minister with a copy of the report.

If the inquirer wishes to recommend that SIRA or DCS take any actions under paragraph (a)(vii) of the Terms of Reference during the course of the inquiry, the inquirer may make those recommendations to the Chief Executive of SIRA or the Secretary of DCS, as appropriate. The inquirer is to include those recommendations in the report of the inquiry provided to the Minister.

Section 82(10) of the GSE Act requires the Minister to cause a copy of the report, together with information as to any action taken or proposed to be taken in relation to the subject of the report, to be laid before each House of Parliament within 30 sitting days of that House after the day on which the Minister was provided with a copy of the report.

As the report is required to be tabled in Parliament, and as a House of Parliament may resolve to make the report public, the inquirer is to endeavour to minimise the disclosure of sensitive information in relation to the complainants as far as is reasonably possible and the complainants are to be identified in the report by the pseudonyms 'Complainant 1', 'Complainant 2' etc., or such other pseudonyms as the inquirer prefers.

If the inquirer considers it necessary to include material in the report that the inquirer considers should not be made public, the inquirer should include that material in an annexure to the report and should recommend that that annexure not be made public but should be restricted to Members only (recognising that this will be a recommendation only and that it is within the power of each House of Parliament to determine that the full report be published, regardless of the inquirer's recommendation).

## Appendix B: List of Recommendations

No.	Recommendation
<b>Part I – Terms of Reference paragraph (a)</b>	
1.	<p><b>p.18, paragraph 54</b></p> <p>I consider and recommend that substantial compensation, ex gratia or as an act of grace, should be paid to each of the three Complainants [Complainants 1, 2 and 3] as there was nothing in the PwC inquiry for them; their participation was in the nature of a public service; and each of them were thoroughly traumatised or retraumatised by the conduct of it and the manner in which they were closed out of it. I see no point of distinction between any of the three Complainants for this purpose. In my view these circumstances constitute special circumstances under section 5.7 of the Government Sector Finance Act 2018: each of Complainant 1, Complainant 2 and Complainant 3 has suffered substantial detriment as a result of these workings of government and although the State has no legal obligation to compensate those Complainants, it is nonetheless morally justifiable to make the payments in the circumstances. I <b>recommend</b> that \$150,000 be paid to each of the three Complainants.</p>
2.	<p><b>p.18, paragraph 55</b></p> <p>I consider that because both DCS and SIRA were involved in the PwC inquiry, the heads of both DCS and SIRA should provide to the three Complainants a written apology, and, if desired by any of the three Complainants, an apology given in person. I so <b>recommend</b>.</p>
3.	<p><b>p.78, paragraph 82</b></p> <p>My <b>recommendations</b> as to actions that SIRA or DCS should now take, in addition to what I have written about the PwC inquiry process, are that, if Complainant 2 is willing to meet, the heads of SIRA and DCS should meet with her, personally convey to her the apology which was given by icare, and listen to her proposals for reform.</p>
4.	<p><b>p.125, paragraph 76</b></p> <p>I <b>recommend</b> that the Chief Executive of SIRA apologise to Complainant 3, in person if Complainant 3 is willing to meet, in relation to the first inquiry in respect of failing to explain the purpose of it and failing to provide to Complainant 3 the information about the specifics of the outcome and the details of the outcome.</p>
5.	<p><b>p.125, paragraph 77</b></p> <p>I also <b>recommend</b> that the Chief Executive of SIRA apologise to Complainant 3, in person if Complainant 3 is willing to meet, in relation to the second inquiry in respect of failing to explain the limitations on SIRA’s functions and powers and in respect of the length of time it took to complete.</p>
6.	<p><b>p.126, paragraph 79</b></p> <p>I also <b>recommend</b> that the heads of DCS and SIRA meet with Complainant 3, in person if Complainant 3 is willing to meet, to listen to her ideas for reform of the workers compensation system.</p>
<b>Part II – Terms of Reference paragraph (b)</b>	
7.	<p><b>p.184, paragraph 52</b></p> <p>I agree with the observation in the Wheeler Report that, to the extent it is understood, the use of the word ‘escalation’ in correspondence with a complainant conveys more significance to a member of the public than that the matter has merely been transferred or referred to another entity, or that a request for information has been made. This creates an expectation that the matter is being taken more seriously and therefore that a positive outcome is more likely. I <b>recommend</b> the word, and its related verb ‘escalate’ not be used.</p>

No.	Recommendation
8.	<p><b>p.235, paragraph 7</b></p> <p>It is clear to me that the volume and nature of the communications were attributable to Complainant 12's psychological condition. I do not doubt the seriousness of that condition: in such a case, prompt advice should be available to SIRA's frontline staff as to the best course to take in understanding the complaints and dealing with them in a manner likely to be best adapted to the complainant's condition. That approach would also allow for the evaluation by SIRA of the substance of a complaint. I do not, of course, suggest that a complainant with a psychological condition will not have a valid basis for complaint but that an extra level of sophistication be brought to bear by SIRA to identify the true nature of the complaint. If that had been done in Complainant 12's case, a consequence may have been that he would have felt less aggrieved. Another consequence may have been increased administrative efficiency on the part of SIRA, by homing in on the substance. Such a qualitative approach and analysis would, in my view, help the injured worker achieve a result; would help SIRA work efficiently to achieve its statutory responsibilities; and would improve the workers compensation system. I so <b>recommend</b>.</p>
9.	<p><b>p.306, paragraph 38</b></p> <p>I <b>recommend</b> that where [claims raising allegations of fraud and corruption, but which are no more than frustrated expressions of strong disagreement with the relevant decision-making] are made, rather than "escalating" them automatically, the first resort should be to require the complainant to identify with particularity the instances they rely on to found those claims. Where the claims are not particularised or are obviously baseless, the staff member should deal with the claims on their merits.</p>
10.	<p><b>p.313, paragraph 23</b></p> <p>Unless it would prejudice the commutation process in some way which has not yet been articulated, I do not understand why SIRA could not provide Complainant 16 with the commutation documents and I <b>recommend</b> that SIRA do so.</p>
11.	<p><b>p.344, paragraph 52</b></p> <p>If SIRA takes the view that so-called social media monitoring is not within Standard of Practice 25 then that Standard should be amended. I so <b>recommend</b>.</p>
12.	<p><b>p.344, paragraph 57</b></p> <p>A related point is using a complainant's general, and often uninformed, broad consent to disclosures to justify sending this information for managing the case in this way, by giving it to a private investigation company. In my view, close attention should be given to overbroad consents relied on by insurers. SIRA could, and in my view should, undertake this task as a matter of regulation. I so <b>recommend</b>.</p>
13.	<p><b>p.345, para 59</b></p> <p>A useful reform would be for SIRA to tell a complainant what had become of their complaint. And where a matter comes from the IRO, I see no reason why SIRA could not also tell the IRO the result of the matter of significant concern. It may involve a shift in approach so as to be person-centred, but SIRA should both regulate and treat the complainant as a person with an interest in the progress of the complaint and in its outcome. I so <b>recommend</b>.</p>
<b>Part III – Terms of Reference paragraph (c)</b>	
<i>Administration and policy</i>	
14.	<p><b>p. 374, paragraph 26</b></p> <p>In relation to the SIRA Complaints Policy, I <b>recommend</b> that it be recast in plain English. At present, in my view, the Policy does not explain clearly to an injured worker with an issue what an inquiry is, what SIRA regards as a regulatory matter as distinct from a complaint; what a complaint is, or what</p>

No.	Recommendation
	SIRA can and cannot or will or will not do with an issue. The language is too abstract, able to be understood by those working within the system but difficult for those coming to the system for the first time.
15.	<p><b>p. 375, paragraph 31</b></p> <p>In relation to complaints about SIRA or DCS staff, the DCS Complaint Handling Policy applies. The threshold question is whether, as recommended in the Wheeler Report at [4.3], SIRA should seek exemption from that DCS policy. As a matter of principle, the Wheeler Report continued, an independent regulator should have its own policy/s to handle complaints made to or about it. “As a matter of good practice, the fewer the complaint related policies, procedures and guidelines that apply to an organisation the better.” I <b>recommend</b> that this proposal be pursued with a view to SIRA having its own policy.</p>
16.	<p><b>p.376, paragraph 34</b></p> <p>I make a number of recommendations about this part [part 4] of the Complaints Policy:</p> <p>First, I <b>recommend</b> attention should be paid to the language “to take no further action or to end the inquiry process”. The review should extend to any basis of dissatisfaction with the decision rather than be limited to the closing of the process. This would conform better to the language of “why you believe our original decision was wrong” used later in the Policy.</p>
17.	<p><b>p. 376, paragraph 35</b></p> <p>Second, I query the use of the phrase “must be made within” for the time limit on seeking a review and recommend it should read “should usually be made within”.</p>
18.	<p><b>p.376, paragraph 36</b></p> <p>Third, I <b>recommend</b> a change in the language of “A decision to affirm, add to, or change the original complaint decision under review cannot be further reviewed.” so that it refers to “A decision on internal review will not be reviewed again by SIRA.”</p>
19.	<p><b>p.376, paragraph 37</b></p> <p>Fourth, I <b>recommend</b> it be made clear the circumstances in which an issue may be revisited by SIRA. I would not use the language of “history” because for a complainant their matter remains alive. I recommend the use of an expression such as: “SIRA will not revisit a decision unless it is satisfied that there is new information which may lead to a different outcome.” I agree with the observation in the Wheeler Report at [5.10] that organisations should not be drawn into a process of constant review of actions or decisions based on requests that are basically a reframing of the original issue.</p>
20.	<p><b>p.377, paragraph 38</b></p> <p>Fifth, and most importantly, the nature of the review should be explained. In the material I have seen I have detected some inconsistency of approach. I recommend that the internal reviewer conduct a merits review, that is, a review to arrive at the correct or preferable decision on the material before the internal reviewer. It would follow that it would be a mistake to reason “I can see no error in the decision under review” or “I think the decision was open to the primary decision-maker.”</p>
21.	<p><b>p.377, paragraph 40</b></p> <p>I make the same <b>recommendation</b> as to the nature of the internal review under the DCS Complaint Handling Policy.</p>
22.	<p><b>p.377, paragraph 41</b></p> <p>My only <b>recommendation</b> in relation to the Unreasonable Customer Conduct Policy is that it should be applied with an awareness that the apparently unreasonable behaviour may be affected by the psychological injury from which the worker is suffering. Due allowance should be made for this</p>

No.	Recommendation
	possibility or actuality, and I <b>recommend</b> that the Policy be amended to deal expressly with this issue.
<i>Legislation</i>	
23.	<p><b>p.378, paragraph 45</b></p> <p>In relation to clause 23 [of the State Insurance and Care Legislation Amendment Bill 2022] to amend the principal objectives of SIRA, I agree in particular with (c): “to ensure that persons covered by State insurance and care schemes have access to treatment that will assist with their recovery”, and consistently with that objective I note that the best way to ensure the viability of the scheme is to prevent workplace injuries and, when they occur, to put maximum effort into ensuring a speedy return to work where that is possible. I recommend this proposal be adopted.</p>
24.	<p><b>p.378, paragraph 47</b></p> <p>I agree with and recommend the amendment to section 24 [of the State Insurance and Care Legislation Amendment Bill 2022], as follows:</p> <p><b>24 Functions of SIRA</b></p> <p>(1) SIRA has the functions conferred or imposed on it by or under this Act or any other Act, including the scheme legislation.</p> <p>(2) The functions of SIRA also include the following –</p> <ul style="list-style-type: none"> <li>(a) to lead the strategic development and effective oversight of State insurance and care schemes,</li> <li>(b) to promote the effective management of claims under the scheme legislation,</li> <li>(c) to promote the efficient and effective management and resolution of disputes and complaints under the scheme legislation,</li> <li>(d) to promote workplace injury prevention, effective injury management and return to work measures and programs,</li> <li>(e) to be responsible for overseeing and monitoring compliance with the scheme legislation,</li> <li>(f) to collect, analyse and publish data relating to the performance of State insurance and care schemes,</li> <li>(g) to advise the Minister administering the scheme legislation on appropriate strategies, policies and practices in relation to State insurance and care schemes.</li> </ul>
25.	<p><b>p. 379, paragraph 49</b></p> <p>I support and recommend the proposed amendment to section 154B(1) of the Workers Compensation Act 1987 as follows:</p> <p><b>Section 154B Functions of Nominal Insurer</b></p> <p>Omit section 154B(1). Insert instead –</p> <ul style="list-style-type: none"> <li>(1) The Nominal Insurer is taken to be a licensed insurer for the purposes of this Act.</li> <li>(1A) The Authority may impose conditions on the authority conferred by this section on the Nominal Insurer as a licensed insurer.</li> <li>(1B) The conditions that may be imposed on an authority conferred by this section are conditions of a kind that the authority could impose on a licence under Division 3, except section 182(2)(a) and (c).</li> <li>(1C) A condition relating to a matter arising under the following provisions may be imposed on the authority only with the approval of the Minister administering the State Insurance and Care Governance Act 2015, Part 2 –</li> </ul>

No.	Recommendation
	<p>(a) the 1987 Act, section 145 or 145A or Part 7, Division 1A, Subdivision 2,</p> <p>(b) the State Insurance and Care Governance Act 2015, section 12 or Part 2, Division 4.</p> <p>(1D) Section 183 does not apply to the authority conferred by this section.</p>
26.	<p><b>p.380, paragraph 52</b></p> <p>I support and recommend the change proposed to section 192A by adding a new section 192A(6). The proposal is to put a self-insurer on the same footing as a licensed insurer in relation to claims manual prepared and published by SIRA. The proposed section would read:</p> <p><b>192A Claims administration manual (cf former s 93B)</b></p> <p>(1) Authority may prepare and publish a claims manual for use by licensed insurers under this Division.</p> <p>(2) In preparing the claims manual, the Authority is required to promote, as far as practicable –</p> <p>(a) the prompt processing of claims and payment of amounts duly claimed, and</p> <p>(b) the giving of information about workers’ entitlements and about procedures for the making of claims and the resolution of disputes, and</p> <p>(c) the minimisation of the effect of injuries to workers by the making of prompt arrangements for rehabilitation, and</p> <p>(d) the proper investigation of liability for claims, and</p> <p>(e) the recovery of proper contributions in connection with claims from other insurers or persons.</p> <p>(3) The claims manual may make provision (not inconsistent with this Act, the 1998 Act or the regulations under those Acts) in connection with all matters relating to the administration of claims, including –</p> <p>(a) liaison between insurers and employers concerning rehabilitation assessment of injured workers, and</p> <p>(b) the provision or arrangement of suitable employment or rehabilitation training for partially incapacitated workers, and</p> <p>(c) the monitoring of employment-seeking activities or rehabilitation training by partially incapacitated workers, and</p> <p>(d) arrangements for the settlement of claims for damages, and</p> <p>(e) procedures to be followed before a claim is made, such as procedures in connection with early notification of injury and provisional acceptance of liability.</p> <p>(3A) The Workers Compensation Guidelines under the 1998 Act can make provision in connection with any matter in connection with which the claims manual can make provision.</p> <p>(4) The Authority may give an insurer directions as to the procedure to be followed in the administration of any claim or class of claims in order to comply with the claims manual, the Workers Compensation Guidelines, the 1998 Act and this Act.</p> <p>(4A) An insurer who fails to comply with a direction under subsection (4) is guilty of an offence. Maximum penalty – 50 penalty units.</p> <p>(5) It is a condition of the licence of an insurer under this Division that the insurer comply with any direction given to the insurer under this section.</p> <p>(6) In this section –</p> <p><b>insurer</b> includes a self-insurer.</p>
27.	<b>p.381, paragraph 53</b>

No.	Recommendation
	<p>I support and recommend the proposed section 195, a new provision [of the State Insurance and Care Legislation Amendment Bill 2022], as follows:</p> <p><b>195 Directions to insurers regarding contraventions</b></p> <p>(1) If the Authority is satisfied an insurer has contravened its licence, the Workers Compensation Acts or a requirement made by the Authority under the Workers Compensation Acts, the Authority may issue a written direction requiring the insurer to –</p> <p>(a) Refrain from conduct contravening the licence or the Workers Compensation Acts or other requirement, or</p> <p>(b) Take action to comply with, or to prevent or remedy a contravention of the licence or the Workers Compensation Acts or other requirement, or</p> <p>(c) Take other action prescribed by the regulations.</p> <p>(2) An insurer must comply with a direction issued to the insurer under this section. Maximum penalty – 1,000 penalty units.</p> <p>(3) It is a condition of an insurer’s licence under this Act that the insurer must comply with a direction issued to the insurer under this section.</p> <p>(4) The Authority must, as soon as practicable after issuing a direction under this section, publish on its website a statement of the effect of the direction and the reasons for issuing the direction.</p> <p>(5) In this section –</p> <p><b>Workers Compensation Acts</b> includes instruments made under the Workers Compensation Acts.</p>
28.	<p><b>p.381, paragraph 54</b></p> <p>Likewise, I see as useful and <b>recommend</b> the proposed Division 4A [of the State Insurance and Care Legislation Amendment Bill 2022] dealing with enforceable undertakings: the making, acceptance by the regulator and the enforcement of such undertakings has proved a useful tool in other regulatory settings.</p>
29.	<p><b>p.383, paragraph 60</b></p> <p>I support and <b>recommend</b> these amendments [to section 211B of the State Insurance Care and Governance Act 2015]. As the Minister said in his Second Reading Speech, they “will bring about a strengthened system of accountability and enhanced oversight of the management of workers compensation claims.” The Minister continued:</p> <p>[The bill] seeks to give SIRA the necessary powers to effectively carry out its vital role in preserving the integrity of the schemes it regulates and to prevent issues such as those highlighted in the McDougall review from occurring again. The bill introduces a broadened definition of “insurer” under the appropriate sections of the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 to explicitly include entities, including icare and any subsidiaries; the Nominal Insurer; the NSW Self Insurance Corporation and the government self-insurers; as well as claims administration agents with respect to certain enforcement powers.</p>
30.	<p><b>p.383, paragraph 61</b></p> <p>Another tool which I think should be available to SIRA and I <b>recommend</b>, which would require legislation, is a function and power of publicising the names of entities or individuals who do not comply with the legislation or with SIRA directions. The exercise of such a power would, of course, need to be conditioned by the principles of procedural fairness. I would include a discretion in SIRA to publish letters of censure and remediation plans.</p>
<i>Accessibility</i>	
31.	<p><b>p.384, paragraph 67</b></p>

No.	Recommendation
	In legislative terms I <b>recommend</b> that SIRA be given explicit complaints functions and the power to deal with those complaints against insurers. The policy is to reduce the confusion for injured workers and to reduce the time spent by staff in explaining what to an outsider is an illogical system. It is to be borne in mind that the complainants are people who have been damaged at work so the system must be easily accessible. The system should provide an “end-to-end” regulator with the complaint function embedded in it.
32.	<p><b>p.385, paragraph 73</b></p> <p>I <b>recommend</b> that consideration be given to merging the complaints functions [of SIRA and IRO] under one roof. That this would involve amending the <i>Personal Injury Commission Act 2020</i> under which the IRO is appointed.</p>
<i>Health providers</i>	
33.	<p><b>p.387, paragraph 83</b></p> <p>I <b>recommend</b> that prompt and serious attention be given to the very low rate of joint medical examinations in New South Wales with a view to reducing disputes and achieving shorter claim duration. I agree with Recommendation 14 [of the 2023 Review of the Workers Compensation Scheme by the Standing Committee of the Legislative Council] that the objective ought to have a single independent medical examination, by a specialist agreed on by the parties.</p>
34.	<p><b>p.387, paragraph 84</b></p> <p>A less structured approach, but one directed to the same ends, to increase quality and reduce cost, would be to have a roster of medical examiners under which the next medical examiner to do the work is the next in line. This would reduce the perception by complainants that the medical examiners would “take the side” of the insurer. In this case as well neither party acting alone should be able to choose what material is to be provided to the medical examiner. I <b>recommend</b> that this option should also be given serious attention.</p>
35.	<p><b>p.392, paragraph 107</b></p> <p>I <b>recommend</b> that a legal audit be conducted to examine, on a holistic basis, SIRA’s role in regulating health practitioners (including allied health practitioners). This should include whether relevant statutory provisions – including section 60 of the Workers Compensation Act 1987, section 376 of the Workplace Injury Management and Workers Compensation Act 1998 and Division 3 of Part 3 of the State Insurance and Care Governance Act 2015 – can be simplified, and the role of SIRA in complaints about health practitioners made clear.</p>
<i>General</i>	
36.	<p><b>p.393, paragraph 113</b></p> <p>I <b>recommend</b> that SIRA, and to the extent relevant DCS, handle complaints in the nature of the Complainants’ complaints in this differential way, which begins with a competent triage. As a Complainant submitted to me, there needs to be a concrete approach to complaints.</p>
37.	<p><b>p.394, paragraph 117</b></p> <p>I <b>recommend</b> that SIRA, on its own behalf and when overseeing complaint handling by icare or the insurers, ensures and requires responses of substance measured against the relevant guidelines and other legislative requirements and that those responses are conveyed to the complainant.</p>
38.	<p><b>p.394, paragraph 119</b></p> <p>SIRA has powers to give specific directions to insurers as to the procedure to be followed in the administration of any claim or class of claims, to audit compliance with directions, to conduct performance audits, and to issue letters of censure and indeed civil penalty notices. SIRA has exercised these powers on some occasions. I <b>recommend</b> a readier consideration of the exercise of</p>

No.	Recommendation
	these powers following the investigation of a complaint. In an extreme case, SIRA should consider bringing prosecution proceedings in respect of breaches of offence provisions.
39.	<p><b>p.394, paragraph 120</b></p> <p>To this end, I <b>recommend</b> that consideration be given by SIRA to better coordination between those staff members exercising its complaints function and those involved with its enforcement function, to enable this to occur. The exercise of regulatory powers following the investigation of complaints, where appropriate, would improve responses to complaints which indicate compliance shortcomings. It is also likely to provide greater reassurance to complainants that action will be taken in consequence of the shortcomings identified by them, dealing with the perception I have noted above as to an imbalance of power between complainants as against employers and insurers.</p>
40.	<p><b>p.395, paragraph 121</b></p> <p>I also <b>recommend</b> that a legal audit of the legislation be undertaken to ensure that the armoury, an appropriate penalty regime, is there to deal with those who are in breach. In that audit, attention should be given to the remedial power of an express authority in SIRA to publish the names of those in default.</p>

Department of Customer Service

