



N.S.W. Workers' Compensation
Self Insurers Association Inc.

Employers Managing Their Own Risk
ABN 69 780 464 009

30 October 2020

Consultation Feedback from NSW Self Insurers Association on Independent review into icare, SIRA and the statutory review of the State Insurance Care and Governance Act 2015.

Thank you for the opportunity of providing a consultation submission regarding the independent review into icare, SIRA and statutory review of State Insurance Care and Governance Act 2015.

The NSW Workers Compensation Self Insurers Association Inc (SIA) received e-mail communication dated 02 October 2020 of the proposed independent review seeking feedback from the community.

1. Independent review into icare

The SIA acknowledges the operation of icare has no direct impact on self-insured (SI) employers. However, it seems clear the increasing number of large employers who have recently become self-insured or are seeking to become self-insured is a consequence of the failings in all elements of claims management, injury management and return to work under the Nominal Insurer.

Further many of the poor case management practices of icare have become the template or have been adopted for case management practices imposed on self-insurers by SIRA through ill-conceived guidelines and standards of practice.

These poor practices are a result of an obsession with discouraging the proper investigation and assessment of claims and avoiding disputes at any cost. Examples of this include the virtual prohibition on surveillance and constraints on the use of independent medical examinations.

This inevitably increases the incidence of unmeritorious claims and fraud as well as resulting in the unnecessary escalation of all claims costs together with poorer return to work outcomes. Another example of SIRA's misconceived regulatory approach is the upcoming Standard of Practice 33 which virtually obliges insurers to accept liability for psychological injuries from the outset regardless of the merits of the claim.

2. State Insurance Regulatory Authority (SIRA)

Regarding the review of the State Insurance Care and Governance Act 2015 the objectives of SIRA are found in S.23. The SIA is of the view the objectives found in S.23(a), (b) and (e) are not being met and rather the regulatory oversight by SIRA is making the workers compensation system much less efficient and significantly costlier. Moreover, SIRA is directly responsible for totally ineffective supervision of claims handling and disputes. Guidelines and Standards of Practice issued by SIRA specifically direct poor claims handling practices resulting in substantially increased costs of claims as well as poorer and less appropriate return to work outcomes.

SIRA has demonstrated a complete inability to provide a reasoned and proficient direction in response to all claims management, injury management and return to work issues. SIRA does not have a reasoned understanding of the way the workers compensation system should operate. One glaring example of this failing is the introduction of the recent Customer Service Principles and the

requirement for self-insurers to sign a Letter of Attestation.

The SIA disagrees with the notion of injured workers being referred to as customers.

SIA disagrees with the notion of customer or customer service when it comes to dealing with injured workers. They are not customers. They are workers who suffer injury. They have entitlements and obligations. Equally, the employer/insurer has obligations. There is no contract or commercial arrangement between the employer and an injured employee such that the injured employee becomes a customer. SIA thinks this is all nonsense. It comes down to compliance with the legislation and there are mutual obligations.

SIRA has defined customer service by reference to a series of motherhood statements. SIRA has failed to define how customer service will be assessed and benchmarked. What is satisfactory? What is not satisfactory? It is all unclear.

SIA does not believe SIRA has the legislative power to impose the attestation request on self-insurers.

It is not clear to SIA how SIRA will monitor and measure compliance with the commitment made in the letter of attestation, how results may be publicised, and potential consequences should a failure be identified by SIRA in the future. Further, SIRA has not disclosed whether there is a review mechanism to enable an aggrieved self-insurer to challenge an alleged failure before any action is taken against the self-insurer. SIA thinks SIRA has been less than transparent in this regard.

The attestation letter is required to be signed by the CEO or the board of the organisation. These individuals are far removed from the coalface of workplace injury and workers compensation. SIA thinks it is inappropriate for the regulator to ask the head of an organisation to guarantee compliance with misconceived customer service principles when they are so far removed from the coalface.

The SIA can point to many other examples of a poor and unnecessary response by SIRA.

Finally, SIRA does not recognise the legislation imposes obligations on both workers and insurers. The mutuality of obligation is ignored by SIRA in visiting increasing costly and unnecessary regulatory burden on insurers only.

The SIA welcomes the opportunity to meet with your honour to supplement these observations should you deem it appropriate and necessary.

Regards



Alan Becken
Chairperson
NSW Self Insured Association