

AMWU

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union

The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission to the State Insurance Regulation Authority (SIRA) in response to the Compliance and Performance Review of the Workers Compensation Nominal Insurer Scheme – Discussion Paper of May 2019.

The AMWU NSW Branch has a membership of over 15,000 workers across NSW. Our members are employed in the private and the public sectors, in blue collar and white-collar positions, and in a diverse range of industries, vocations and locations.

An objective of any workers compensation systems needs to be an equitable, fair and just system of income protection, access to medical treatment for injured workers and mechanisms to assist injured workers back to work. The objectives including the objective of the Workplace Injury Management & Workers Compensation Act NSW 1998 (WIMWC, 1998)

Chapter Three should always be to the fore – “...timely, safe and durable return to work...”

The workers compensation scheme should seek to return injured workers back to the maximum achievable medical recovery and the highest quality of life. Workers compensation legislation is beneficial legislation targeted at injured and ill workers and in the context of decisions made in the course of workers compensation, that should be aimed at supporting and benefiting the claimant.

In considering the terms of reference the AMWU have considered the objectives of the Workers Compensation Act NSW 1987 and Workplace Injury Management & Workers Compensation Act NSW 1998 – the legislation.

“Injured workers are being pushed around and, in some cases, damaged, in a workers compensation system which has emerged over decades from piecemeal reforms mainly designed to harm and limit

their entitlements...”; AMWU submission to the Department of Finance, Services & Innovation February 2018; Appendix 1

It has long been a feature of the NSW workers compensation scheme that the nominal insurer has a function amongst others, to provide information, advice and assistance to injured workers. In practice the Union sees from iCare a continuing lack of knowledge in relation to required processes and function and disregard towards injured workers and their circumstances despite overtures to the contrary. This has contributed to or created needless delay to treatment, injury management and return to work.

The AMWU acknowledges a benefit to injured workers regarding the online initial notification portal. Apart from this, other alleged benefits provided for injured workers stemming from iCare are at best opaque or non-existent. The Union finds this of great concern given the reported cost blowouts in relation to the administration of iCare.

1. Premium questions

1. *Please rate your experience with workers compensation premiums issued by the Nominal Insurer (iCare) from 5 (excellent) to 1 (poor)*

1 (Poor) – the harm done to injured workers should be reflected in the premium price.

2. *What has been your experience with workers compensation premiums issued by the Nominal Insurer (iCare)?*

The AMWU will not be commenting upon this question as this submission concerns our members.

3. *What should the Nominal Insurer (iCare) be doing more of?*

- Proactive claims handling compliance to ensure injured workers obtain benefits, treatment and injury management assistance in a timely manner.
- Actively monitor and publicly report on claims that did not meet claims management expectations (as per, standards of practice/guideline/legislated requirements & injury management program)
- That public reporting deal with both the facts and the actions taken to prevent a reoccurrence of the non-conformance
- iCare (and SafeWork NSW) should ensure that programs are coordinated and must include consultation with workers and unions in all phases as social partners
- Investing in its staff with quality training
- Develop and implement programs with the purpose of reducing decision timeframes for injured workers claims
- Review the nominal insurers injury management program to ensure best practice and that the claimant is place at the centre of the claim

4. *What should the Nominal Insurer (iCare) be doing less of?*

Immediately review all programs that cannot demonstrate a clear link to the objective of the legislative with regards workers and injured workers.

5. *Are there any improvements you would like to suggest regarding premiums?*

Premiums should not be discounted unless there is independently verified evidence and material to demonstrate that the employer, industry sector and/or industry can demonstrate real and attributable improvements, and that the discounts are not at the expense of workers and other employers. Discounts should not work to undermine the financial viability of the scheme as is currently the case where current premium collection is not meeting cost of scheme.

2. Claims management questions

1. ***Please rate your experience with management of claims by the Nominal Insurer (iCare) and/or its scheme agents EML, Allianz and GIO from 5 (excellent) to 1 (poor)***

1 (Poor)

2. ***What has been your experience with the management of claims by the Nominal Insurer (iCare) and/or its scheme agents EML, Allianz, GIO?***

Unimproved, poor and adversarial.

The injured workers that the AMWU assist report and exhibit a lack of knowledge about their claim. Routinely there are questions regarding, why the claim has not commenced? Progressed? failed or is stalled? Injured workers are largely unable to interpret the documentation they have in their possession and/or describe what iCare (and or the scheme agent) told them or ask them to do verbally. This is in part due to the lack of education provided to an injured worker, as well as the quality of the communication and the form of the communication. It seems dealing with an injured worker when they present to the AMWU, little or no account is taken of a worker's language needs, their comprehension nor their literacy or numeracy.

See Examples 1, 2 and 4 to 8 at end of submission

The nominal insurer must concern themselves with timely (in its full meaning) decisions about claims (including treatment) and communicate that promptly and appropriately to the injured worker.

See Examples 1, and 4 to 8 at end of submission

3. ***From your perspective what impact has iCare's new claims management processes had on return to work outcomes and the customer experience?***

The AMWU has observed no improvement with respect to work outcomes and the customer experience, the evidence suggests a deterioration particularly with regards to return to work and the durability of return to work. iCare engage in behaviour that intimidates, coerces or otherwise convinces injured workers to act against their own interest as a business model.

Returning to work without having accessed the extensive (pre-approved) medical services is typical, whilst the insurer threatens workers if there is a non-compliance

See Examples 1 to 3 and 6, 8 at end of submission

In instances where we do see return to work, workers are corralled to return to work with no or little treatment, with an interrupted diagnosis, or in some cases, no diagnosis and therefore no prognosis to assist in timely, safe and durable Injury Management and Return to Work. iCare and its agents don't take responsibility for ensuring injured workers are aware of rights such as pre-approved medicals meaningful education of Nominated Treating Doctors (NTDs).

4. What should the Nominated Insurer (iCare) and/or its scheme agents EML, Allianz and GIO doing more of?

iCare should be providing correspondence that is less reliant on graphic art layouts and more reliant on clear concise explanation particularly, if utilised, emails and SMS. iCare should ensure that workers have the assistance they need so that they can obtain treatment in a timely manner, so that an early diagnosis may be obtained, the diagnosis progress, and a prognosis be obtained. To achieve this iCare should focus on the development, implementation, monitoring and review of systems which will achieve these objectives.

5. What should the Nominal Insurer (iCare) and/or its scheme agents EML, Allianz and GIO be doing less of?

Activities that do not directly link to addressing the needs of injured workers as expressed in the objectives of the Act and legislation. That iCare should consult meaningfully with workers and unions rather than rely upon a microscopic cohort of workers to as it does now.

iCare needs to stop funding untendered projects which are not supported by evidence and questionable beneficial results for injured workers.

6. Are there any improvements you would like to suggest regarding claims management?

iCare must ensure all guidelines and standards are complied with as the minimum acceptable standard of performance including on all occasions. iCare must ensure that it and its agents

properly apply the legislation. iCare must provide meaningful assistance to injured workers promptly and investigate matters that prevented and or limited an injured workers timely diagnosis, prognosis, injury management and return to work.

3. Other questions

“Aside from your experience and views on premiums and claims management by the Nominal Insurer (iCare), the scope also includes a review of changes to the Nominal Insurer’s operating model. Its data quality and reporting. We are interested in any other matters you may want to raise [?]”

1. Are there other matters or areas you like to comment on?

There is a requirement to addressing non-compliance with legislation by iCare and scheme agents. Sanctions are available to the regulator and it is time they were applied so as to provide a meaningful deterrent to poor behaviours. We acknowledge the proper role fraud investigation plays in managing workers compensation however they are different matters. The matter of the failure of the Regulator is a significant act of omission in regulating all insurers who act without risk or fear of sanction.

2. Are there any other improvements you like to suggest in these areas?

iCare and its agents in consultation with the social partners (employers and unions) produce a clear one-page document describing the essentials for (injured) workers inclusive of first aid/casualty/emergency rights – initial notification – pre approved medical summary – ongoing claims process/es – injury management & return to work – Pre Injury Average Weekly Earnings (PIAWE) summary, initial and ongoing – other relevant initial matters. Provision of the electronic online initial notification process to all workers covered by any insurer in NSW i.e. a single portal.

3. Do you have any other issues or ideas about the Nominal Insurer (iCare) that you want to share?

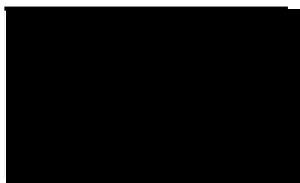
iCare does not consult with workers and unions in a meaningful manner. Consultation must commence that is meaningful and ongoing with workers and unions.

Customer service standards must be assessed, the AMWU has observed a significant problem with privacy when calling iCare post 2017. It appears a work environment issue with the call centres, it is possible to clearly hear other operators at iCare and its agents dealing with other matters, this issue needs to be dealt with some urgency.

See Examples 1 to 8 at end of submission

The AMWU has lost confidence in the iCare Board, it has demonstrated its inability to properly govern the nominal insurer and would appear to be incapable of independent decision making for the benefit of injured workers or even the affective administration of iCare. The AMWU's observations lead it to assess that the Board has failed to exercise due diligence to an acceptable standard. The AMWU recommending the Board's replacement with a representational board which would have accountabilities to key stakeholders and 'skin in the game'.

We, the AMWU, thank you for this opportunity to respond. As always we remain available for ongoing dialogue and consultation.



Steven Murphy

State Secretary

AMWU NSW & ACT

All enquiries and responses to the following contact people:

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Examples commence

Example – One

Demographic – [REDACTED]

Legislative breach – s41, s44, s267,268,269 and s274 of the Workplace Injury Management and Workers Compensation Act 1998 (WIMWC1998)

Guideline breach - Workers compensation guidelines 2018 (Guideline'18)

Standard Breach including Standards appendix – Standard 3 and Standard 15, and Appendix Two

Summary – Initial notification made some four months prior to the worker contacting the AMWU. At the time of contacting the AMWU the worker had sort assistance from an NTDr, physiotherapist, Treating Specialists (though it was confused as to whether both were qualified and provided IME or medical reports to the insurer each time the worker saw them. The workers employment was under threat from the employer as indications were that the nature of the injury and physical requirements of the preinjury job were likely to be incompatible with medium and long continuation in the pre-injury job. However, it became obvious that the insurer had no idea, despite evidence on file, that the worker had been working suitable employment including short hours for much of the previous months, despite the activity in the claim. No decision had been made about weeklies at this time! That was resolved soon after however when the worker selected their own rehabilitation provider with their employment now at risk the insurer took weeks and multiple contacts to resolve the injured workers selection of rehabilitation provider delaying planning and causing unnecessary stress and distress

Example – Two

Demographic – [REDACTED]

Legislative breach – s60 Workers Compensation Act 1987 NSW (WC1987), Chapter Three

WIMWCA Act 1998 (section 41a)

Guideline breach - Guideline'18, Part 4

Standard Breach including Standards appendix – Standard 4

Summary – Worker with [REDACTED]. Initial injury occurred to [REDACTED] worker

returned to work – Pre-Injury Duties? (PID) – subsequently after some time they have suffered an injury to [REDACTED]

[REDACTED] Workers reports that at no stage was he ever helped with occupational/vocational rehabilitation services that is the service of an accredited rehabilitation provider. Whilst continuing to work the insurer and the employer are now arguing offer causation and liability, and again providing no rehabilitation assistance.

Example – Three

Demographic – [REDACTED]

Legislative breach – Chapter Three, WIMWC1998 and s60, WC1987

Guideline breach - Part 4, Guideline'18

Standard Breach including Standards appendix - Appendix 2: Practice guidance - rehabilitation services during case management

Summary – Worker suffered an injury that made the ability to achieve or sustain PID in the medium to long term unlikely however it is disturbing that despite that information the insurer approved rehabilitation services limited to travel (it can be assumed) and attendance at every Nominated Treating Doctor (NTDr) and local Treating Specialist appointments, whilst not once arranging assessments of the workplace nor of the worker to assist with rehabilitation.

Example – Four

Demographic – [REDACTED]

Legislative breach – Part 3 Division 2, WC1987

Guideline breach -

Standard Breach including Standards appendix – Standard 7 and 8, and Appendix 1: Context and

relevant provisions - Standard 7 - interim pre-injury average weekly earnings calculation

Appendix 1: Context and relevant provisions - Standard 8 - insurer making weekly payments

Summary – Worker reports that from day one of his claim the employer and insurer have been

unable and or unwilling to reach an accurate calculation of Pre Injury Average Weekly Earnings

(PIAWE) with the consequence now that there is an alleged overpayment subject to

investigation and clarification.

Example – Five

Demographic – Female, 61 to 70 years, [REDACTED]

[REDACTED]

Legislative breach – s3 System Objectives, WIMWC1998

Guideline breach -

Standard Breach including Standards appendix – Standard 24 and 28

Summary – Worker of a NESB& CALD reports that she was approached and ask to participate in

a factual investigation interview in breach of the factual investigation standard and interpreter

standard; the beeches were wholesale. The worker is naïve and could not have meaningfully

given consent to the interview.

Example – Six

Demographic – [REDACTED]

Legislative breach – s3 System Objectives and Chapter 3, WIMWC1998 - s59&s60 WC1987

Guideline breach - 2.2 Provisional liability for medical expenses

Standard Breach including Standards appendix - Standard 4 - Liability for medical or related treatment and Standard 15 - approval and payment of medical, hospital and rehabilitation services, and Appendix 1: Context and relevant provisions - Standard 4: Liability for medical or related treatment, and Appendix 1: Context and relevant provisions - Standard 15 - Approval and payment of medical, hospital and rehabilitation services, and Appendix 2: Practice guidance - Pre-approval of treatment

Summary – Worker contacted the AMWU in the initial weeks after the suffering the injury which had been notified per the requirements of the legislation however the worker reported that his wages inclusive of workers compensation were delayed and then inaccurate, additionally the employer and insurer insisted that despite the significant t pain that had caused him to attend his local hospital for assistance after hours and on weekends that he must continue to drive a plus 100 kilometre round trip to see the NTDr who happened to be the company doctor. The selection of the company doctor had been a demand made upon him by both the employer and insurer, ‘oh you should come to the workplace (plus 100-kilometre round trip from home) and attend our doctor’. In short hat was unsustainable and the worker sacked the company doctor and selected one with less than twenty kilometres round trip remembering he resides in a regional town. The insurer and employer did not like that however the worker was insistent; not that they have any direct link however if the insurer and employer had shown the worker more respect and diligence in resolving the inaccurately calculated PIAWE they may have some influence however the worker felt that he was abandoned in his pain and suffering without

acknowledgement nor respect. I took 5 weeks to confirm correct payment including ensuring payment of public holidays.

Example – Seven

Demographic – [REDACTED]

Legislative breach – s59A, WC1987

Guideline breach -

Standard Breach including Standards appendix - Appendix 1: Context and relevant provisions - Standard 19 - Section 59A notification.

Summary – Worker received notification that their entitlement to medical treatment is to end; notification arrived on the day it was to end along with a phone call from the insurer advising of it's proposed ending! The worker contacted the AMWU to report the issue for other workers as he had himself resolved the issue to his satisfaction as the insurers acknowledged in discussion with the worker that they had prematurely proposed to end medical entitlements.

Example – Eight

Demographic – [REDACTED]

Legislative breach – Chapter Three, s45A Injury Management Consultants

Guideline breach -Part 6 Injury Management Consultants, Guideline'18

Standard Breach including Standards appendix - Standard 14 - referral to an injury management consultant, and Appendix 1: Context and relevant provisions - Standard 12 - Injury management plans, and Appendix 1: Context and relevant provisions - Standard 14 - Referral to an injury management consultant.

Summary – Member with reported symptoms months after bilateral surgery unchanged and unchanged referred to an Injury Management Consultant (IMC). The IMC referral was entirely not compliant with the relevant guidelines and standards. When challenged the insurer provided factually and demonstrably incorrect information to allegedly substantiate the correctness of

their referral. When further challenged the insurer resorted threats of cutting off the workers entitlement to weekly payments with properly describing the instrument they were relying upon the relevant section of the WIMWC1998, that is section 48A which describes a process of notification and compliance.
