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Ms Janet Dore  
Independent Reviewer  
Compliance and Performance Review of the  
Workers Compensation Nominal Insurer

By email to [consultations@sira.nsw.gov.au](mailto:consultations@sira.nsw.gov.au)

Dear Ms Dore,

## COMPLIANCE AND PERFORMANCE REVIEW OF THE WORKERS COMPENSATION NOMINAL INSURER

Thank you for providing the NSW Small Business Commission (NSWSBC) with the opportunity to contribute to the State Insurance Regulatory Authority's (SIRA) Compliance and Performance Review of the Workers Compensation Nominal Insurer.

The NSWSBC advocates on behalf of small businesses, provides mediation and dispute resolution services, speaks up for small businesses in government, and makes it easier to do business through policy harmonisation and regulatory reform.

The NSWSBC is committed to supporting SIRA and icare in their efforts to deliver the best possible Workers' Compensation System for NSW businesses. We would welcome the opportunity to further discuss any or all of the issues raised in this Submission.

### NSW Small Business Landscape

Based on latest ABS data, there are 765,000 small businesses operating in NSW almost 299,000 of which are employers and therefore require workers compensation insurance.

SIRA reported that for the 2015/16 financial year, 93% of workers compensation policy holders were small businesses and that between 2008/09 and 2014/15 small businesses had:

- accounted for the highest proportion of major claims (on average 38%); and
- the highest proportion of the total cost of claims (on average 43%).<sup>1</sup>

Small businesses, almost by definition, are time poor, with a raft of regulatory requirements to which they must adhere, often being required to engage with three levels of government and the myriad of regulations this entails.

It is vital that services provided to small businesses are regularly reviewed to ensure that they are affordable, accessible, and transparent and that any regulatory burdens are reduced to allow for a fair and competitive environment where small businesses can grow.

This Submission is organised into three focus areas, which align with the Terms of Reference of the Compliance and Performance Review of the Workers Compensation Nominal Insurer.

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<sup>1</sup> *Making it Easier: Work Health and Safety and Workers Compensation Small Business Strategy 2017-2019*

**Focus Area 1: Assess Nominal Insurer compliance with SIRA’s Market Practice and Premium Guidelines (MPPGs) and identify any unintended consequences, risks and priorities for improvement in SIRA regulation of the premiums of the Nominal Insurer.**

Transparency around the calculation of workers’ compensation premiums by icare and the volatility of premiums have been raised with the NSW SBC by businesses as an issue of concern.

The NSW SBC understands that since the introduction of the ‘file-and-write’ system in 2015, each year’s formula remains confidential and employers have no way of finding out how their premium has been calculated, how and why the premium changed and how aspects of their business can change the premium (such as labour on-costs).

The icare website does offer employers a ‘quick quote’, based on the number of employees, number of contractors, type of industry and whether any workers are exposed to asbestos. However, this provides only minimal details and hence does not provide businesses with sufficient data to fully inform themselves and interrogate their own risks.

By contrast, WorkSafe Victoria offers registered employers a calculation of their premium – either via their web portal or via telephone<sup>2</sup>. Additionally, its website provides an array of background material under the heading ‘What affects your premium’.<sup>3</sup> WorkCover Queensland also publishes their premium calculation in significant detail in the Queensland Government Gazette.<sup>4</sup>

Given that most small businesses are unlikely to be ‘experienced-rated’, that is have their premiums be impacted by their claims performance, it is reasonable to assume that most small businesses would not experience significant volatility in their premiums.

However small business concerns around volatility of premiums and the desire for greater transparency in how they are calculated, indicates that they would benefit from a more detailed explanation of the calculation of premiums.

The NSW SBC has also received representations from small businesses regarding the difficulty in understanding their premiums, including miscalculations that have required an independent consultant being hired to assist them in understanding the errors and resolving the issue. Case Study 1 outlines an example of this from the owner of a Northern NSW transport company.

**Case study 1**

The company reported that at the start of [redacted] they employed [redacted] people and had no workers compensation claims in eight years. The company subsequently received a workers compensation premium notice of [redacted]. Over the subsequent 12 months, the company employed another six people and had three workers compensation claims totalling less than \$12,000 outlay for the insurance company.

The company was then hit with a workers compensation premium notice of more than double than the previous year – taking their monthly fee from \$3,800 to over \$9,000. The company was informed by their insurance broker that this increase was due to the way icare calculates premiums, namely that:

*...Larger businesses with many claims and poor safety records are blowing out the*

<sup>2</sup> <https://www.worksafe.vic.gov.au/calculate-how-much-your-workcover-insurance-premium-will-cost-year>

<sup>3</sup> *ibid.*

<sup>4</sup> [https://www.worksafe.qld.gov.au/\\_data/assets/pdf\\_file/0020/8057/Queensland-Government-Gazette.pdf](https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0020/8057/Queensland-Government-Gazette.pdf)

*premiums, dragging smaller businesses up into that bracket as soon as they make a claim. Larger companies just pay the maximum premiums and continue making claims, doing nothing to improve safety, while smaller companies with only one or two claims per year are lumped in the same bracket and are left to foot the bill. These bigger companies can afford these premiums, smaller businesses cannot.*<sup>5</sup>

After what were described as many failed attempts to discuss the issue with icare, the business resorted to hiring an independent workers compensation consultant. The consultant found many errors in icare's calculation of the business' premium which ultimately resulted in icare reducing the amount owed by \$██████, resulting in only a modest increase in the business' premium.

This example highlights the frustration felt by time-poor small businesses, when faced with a complex system they feel ill-equipped to navigate but with which they are required to engage.

Because of these factors, it is not uncommon for small businesses to outsource these responsibilities to external consultants, resulting in them having to pay for an additional resource to help them navigate and comply with their mandatory workers compensation obligations.

This need for specialist support is a clear sign that the system is overly complex and is opaque in nature. The lack of transparency and information is a significant barrier to small businesses understanding how the scheme works and the calculation of their premiums. It is recommended that greater transparency and improved access to information is provided to small businesses. This should also include the ability to easily gain advice or information on current workers' compensation claims, employer's obligations and liabilities, and on the calculation of premiums.

It is also noted that the NSW Workers Compensation Market Practice and Premium Guidelines requires licensed insurer premium filings to demonstrate that premiums are fair and reflective of risk. The Guidelines also require that premiums should not be unreasonably volatile or excessive. Inherent in this should be the ability of policy holders to hold insurers to account on these points.<sup>6</sup>

The case study above also highlights the need for a mechanism for small business owners to challenge decisions, which is not currently available to them. Employers must have the right to a proper and fair review process to resolve errors caused by the miscalculation of premiums. This would also provide further transparency for businesses in the scheme.

Finally the NSW SBC has for some time advocated for NSW Group Training Organisations (GTOs) in relation to their concerns regarding the cost of workers compensation premiums. As you would be aware, these are not-for-profit companies which provide apprentices for NSW employers, meaning they have an inherently high risk profile.

It is understood that the Apprentice Employment Network and the NSW Business Chamber will make submissions to the Review directly on this issue. However, the NSW SBC seeks to echo the concerns raised by other stakeholders, namely that these businesses, which offer a vital service to the NSW economy, that is providing new apprentices, should be afforded a more individualised assessment of their workers compensation premiums, which takes into account their particular risks and vulnerabilities. It is noted that the Government's Apprentice Incentive Scheme supports GTOs. However, more substantive changes are required to ensure sustainability long-term for these businesses, such as including trainees within the incentive scheme and providing greater transparency in premium calculation to better equip them to understand and manage their risks.

<sup>5</sup> Correspondence referred to the SBC for response in June 2018

<sup>6</sup> Workers compensation market practice and premiums guidelines: for premium filings on or after 1 March 2018

## **Recommendations**

- That icare publish the formula used to calculate workers compensation premiums in full, either through the NSW Gazette and/or on its website.
- That icare provide a detailed explanation of premium calculations to small business operators, including if there has been a change and why this change has occurred.
- Develop an independent review mechanism for employers, to ensure they have an efficient and cost-effective way to challenge premiums and claims outcomes.
- Include trainees in the current Incentive Scheme for Apprentices, so as to reduce the cost of premiums and further incentivise training new employees.

## **Focus Area 2: Identify the benefits and risks to the performance of the NSW workers compensation system arising from icare's implementation changes to the Nominal Insurer operating model and supporting digital platforms.**

The NSW SBC has received reports of larger rehabilitation providers being prioritised for work over smaller providers and a lack of smaller specialised providers being offered through the scheme. This places small businesses in this sector at significant disadvantage and shuts them out of a significant revenue stream.

The NSW SBC advocates strongly that employers should have the opportunity to choose their own provider: to ensure consistency of return to work assessments; increased understanding of specific industries and businesses from the providers; decreased errors and improvements in return to work outcomes.

Additionally, prioritisation of larger rehabilitation providers over smaller providers has had a significant impact, particularly in rural and regional NSW where these services are flown in rather than drawn from local communities. Opportunities for appropriately qualified local providers to deliver rehabilitation services locally will not only support local economies but allows for on-going working relationships to be formed, resulting in businesses being provided with assistance from providers that have an understanding of the industry and region.

The NSW SBC has also received a number of representations from businesses regarding the lack of clarity between the roles and responsibilities of icare, SIRA and SafeWork NSW. Business owners and employees have reported being redirected between the agencies in search of basic information or advice. Small businesses have also raised concerns that staff within the agencies do not have a clear understanding of their own agencies, reporting that they are often referred to another agency only to return to the original agency they called to obtain the information that they were seeking.

## **Recommendations**

- Provide employers with the opportunity to select their own rehabilitation provider
- Review the way rehabilitation services are procured for claimants based in rural and regional NSW and provide opportunities for local providers to undertake work in their local regions.
- Clarify the functions of agencies (icare, SIRA and SafeWork NSW), including clear client-focused communications regarding the roles and responsibilities of these agencies and ensure these do not appear to overlap.

## **Focus Area 3: Assess the Nominal Insurer's performance in relation to return to work outcomes, claims management (including guidance, support and services for workers,**



**employers and health service providers), customer experience and data quality and reporting.**

The most recent data released by SIRA indicates that the new Nominal Insurer operating model is not delivering enhanced return to work rates.<sup>7</sup> This is consistent with the feedback from small businesses that the NSW SBC has received regarding the return to work of injured employees, with businesses raising concerns with the capability of return to work agents in providing an accurate assessment. This is a concern, given the importance of effective return to work assessments on the recovery of employees as well as the cost of workers compensation insurance for the employer.

A number of small businesses have highlighted that having SafeWork inspectors act as return to work agents has impacted on the return to work rates. This is reportedly due to the lack of skills and experience they have to undertake a return to work assessment. Concerns have also been raised by employers that there are conflicts in this overlap between the roles of the agencies involved in the workers compensation system – that a regulator like SafeWork NSW should not also enter businesses on the basis of assessing return to work capability of injured employees.

Any increase in the length of time that an injured worker returns to work directly impacts on the financial and time constraints on a business owner and should be managed effectively to ensure minimal impact to the business whilst also protecting the worker.

Based on the most recent data available, as at December 2018 the Nominal Insurer was responsible for 58,898 active claims, an increase of 10.7% on the previous twelve months and 67% of total claims for the 2017/18 financial year. The Nominal Insurer reported that 98% of injury notifications were actioned within 7 days. The data also appears to indicate a significant deterioration in the Nominal Insurer's Return-to-Work performance, something noted by SIRA.<sup>8</sup>

The NSW SBC has heard from a number of stakeholders that icare's customer service levels are extremely poor. It is understood that icare only provides a 1300 number for clients and that calls are initially picked up by staff who have been found to have very low levels of knowledge of workers compensation issues.

Employers find this frustrating and would prefer to revert back to the option of a dedicated claims manager, who has a level of understanding of their business, rather than dealing with a different staff member each time they interact with icare. Continuity should be provided throughout the course of the workers compensation claim, to ensure that inquiries or concerns can be resolved effectively and efficiently.

Given the NSW Government's 'One Front Door' philosophy with regard to customer service, icare should engage with the Customer Service Cluster in particular, to ensure their customer service offerings reflect current best practice and are also effectively integrated with other NSW Government communications to businesses, particularly the 'Easy to do Business' platform.

Even more concerning have been reports of apparent systemic problems with the management of claims. Examples include clients being given incorrect advice by staff in decision-making roles who have little or no understanding of how businesses operate, and staff with little or no knowledge of the current legislative framework governing the workers compensation system.

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<sup>7</sup> SIRA Stats: Workers Compensation System Monthly Report – Data Tables (published June 2019)

<sup>8</sup> [https://www.sira.nsw.gov.au/\\_data/assets/pdf\\_file/0004/529042/december-2018-dashboard.pdf](https://www.sira.nsw.gov.au/_data/assets/pdf_file/0004/529042/december-2018-dashboard.pdf)

In addition to this, we have heard of large numbers of errors in the processing of claims, which have caused undue stress to employers. The case study below is one example of these errors.

### **Case Study 2**

In May 2019, the NSW SBC received correspondence from a regional small business highlighting two recent issues with icare.

The small business advised that icare had sent them a Premium Adjustment invoice, seeking an additional \$ [REDACTED] payment. The business was able to demonstrate that this was based on an error by icare and subsequently the record was amended to reflect a [REDACTED] credit.

Two weeks later, the business received a Debt Collection Notice issued on behalf of icare. Again, the business had to respond to icare and prove that this was an error, which icare again immediately accepted.

As noted by the correspondent, it is concerning to think that this might reflect the experience of small businesses with icare on a broader scale – with small businesses being placed under additional stress and pressure by a NSW Government service provider. It is also concerning to think, as raised by the correspondent, how many small businesses would simply accept claims for payment like this, on the basis that they trust government agencies or do not have the time or expertise to interrogate such claims further.

In a recent meeting with the NSW SBC, icare admitted that at the time of the structural adjustments to the NSW workers compensation system, they lost a large number of experienced staff and are still in a rebuilding phase. This is clearly impacting on their ability to provide effective and efficient customer service to businesses and highlights the need for icare to be staffed by employees sufficiently qualified to accurately advise clients and improve processing times.

A number of businesses have also raised concerns that the resourcing of icare has not kept pace with the number of claims, leading to long delays, increased errors and lengthy delays between an employee being injured and their returning to work.

It has also been raised with the NSW SBC that whilst employers are required to fund the scheme and are held to certain responsibilities (such as providing a safe workplace and overseeing the return to work of injured employees) they are by all accounts routinely not consulted or considered in relation to determining the best approach or outcomes for claims arising from their own businesses. Case study 3 below outlines a recent example of this.

### **Case study 3**

The NSW SBC was recently advised, by a company providing work, health and safety support to businesses, of a workers compensation claim where an employee with an injured thumb successfully argued that the injury required a full treatment plan for carpal tunnel syndrome and significantly more time off work.

This not only impacted on the productivity of the business but also on the employer's future workers compensation premium.

On this occasion the employer was not consulted nor provided an opportunity to comment on the course of action, the employee's evidence was simply accepted by icare.<sup>9</sup> Another

<sup>9</sup> Discussion with Norm Geist (Makibe)

stakeholder commented that, "liability is not a factor in any claim any more, everything is accepted and paid."

In addition, another firm, which works as the agent for businesses' workers compensation claims reported evidence of overpayment of claims arising from a lack of communication with employers and their representatives,

*...Due to the desire to pay quickly, we have identified many double payments to workers. Employers pay and EML<sup>10</sup> pays them, EML do not consult with the employer so many errors arise in duplicate wages payments. A significant cost to the scheme. When I have raised this I have been treated very poorly by claims staff as they believe the worker payments are critical, I try to explain they are on the payroll and the clients are paying them.....we need to talk to each other....*

Given that workers' compensation decisions significantly impact small business employers, they should be brought into such decision-making processes, given the opportunity to make a submission and refute claims made by employees. A dedicated channel for employers to seek review of claims outcomes would help to strengthen the scheme and help to identify any potentially fraudulent claims.

### Recommendations

- That icare establish processes to ensure employers can readily speak to trained staff able to answer their queries.
- That a dedicated claims manager be provided to both employers and employees, to ensure they have continuity throughout the course of their workers compensation claim.
- That icare consult with the Customer Service cluster to ensure their customer service offerings reflect current best practice and are effectively integrated with other NSW Government communications to businesses, including the 'Easy to do Business' platform.
- That icare's new employer portal be designed and integrated effectively with other government services offered to businesses, in line with the 'One Front Door to Government' philosophy and should include a dedicated review channel for use by employers paying into the scheme.
- That icare maintain sufficient levels of staffing, at an appropriate skill level, to ensure accurate advice is being provided.

The NSW SBC welcomes ongoing engagement in regards to this matter. To discuss any issues raised in this submission please contact [REDACTED] Executive Director, on [REDACTED] or [REDACTED]

Yours sincerely

[REDACTED]

**Robyn Hobbs OAM**  
NSW Small Business Commissioner  
5 July 2019

<sup>10</sup> EML manages workers compensation and claims for icare