



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: InjuryComp:EEap1759608

19 July 2019

Ms Carmel Donnelly
Chief Executive
State Insurance Regulatory Authority
2-24 Rawson Place
Haymarket NSW 2000

Dear Ms Donnelly,

SIRA Compliance and Performance Review of the Workers Compensation Nominal Insurer

Thank you for the opportunity to provide a written submission to the discussion paper on the performance of the Workers Compensation Nominal Insurer (Nominal Insurer) managed by Insurance and Care NSW (icare) and the work undertaken on its behalf by its agents (EML, Allianz and GIO). The Law Society's Injury Compensation Committee has contributed to this submission.

The Law Society notes the Nominal Insurer is not a private corporate insurer. Rather its scope, functions and objectives are dictated by statute. The Nominal Insurer has been in existence for three years and in that short time, has been required to create a new operating structure and introduce a new claims management model. Since its establishment, there have also been a number of significant changes to the legislative framework and system within which the Nominal Insurer operates.

While we welcome a compliance and performance review of the Nominal Insurer scheme, we recommend further consideration also be given to the complexity of the legislation and system within which the Nominal Insurer operates, which we understand has been previously criticised as difficult to navigate.

In addition to the specific information provided during a meeting with the Independent Reviewer, Ms Janet Dore, our general observations of issues associated with the scheme are outlined below.

Claims management

Members of the Law Society have noted issues with the scheme agent's claims management system, in particular that claims are often assessed and managed via an automated system or by multiple assessors. We understand issues with claims manager turnover have been exacerbated by the various changes to service provider arrangements over the last few years.

The Workers Compensation scheme deals with personal injury matters, and we consider assessment and management of personal injuries necessarily requires human consideration.

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We also note issues, to both claimants and employers, of a high turnover of claims managers, which creates uncertainty, unnecessary delays and inefficiencies. This is particularly problematic for seriously injured workers who, as a result, may be unable to get the treatment they require.

The Law Society strongly supports a requirement for a single claims manager to deal with a complaint throughout its life, and who should communicate with, and be contactable by, both employers and claimants.

Robust claims management

We note the most recent data produced by icare and SIRA on the scheme's performance shows that the costs of the scheme and claims liabilities are increasing.¹ The costs of claims in the six months to December 2018 were higher than the costs incurred throughout the full previous year.² While the cost of medical payments has increased dramatically, investigation and legal payments have decreased. The Nominal Insurer's return to work performance has deteriorated (with inconclusive results due to data quality issues),³ and rehabilitation payments have reduced.

The Law Society strongly supports all efforts to ensure injured workers receive the necessary treatment and compensation they require as a result of workplace injuries. We consider it imperative, however, that all claims decisions are well-considered, accurate and objective, and that claims managers conduct necessary due diligence in managing claims.

Choice of single scheme agent

We note that on 1 January 2018, EML became the sole agent for all new claims. The Law Society queries the choice of a single scheme agent, which, in our view, appears unnecessarily restrictive.

We also query whether a single scheme agent may lead to reduced capacity of qualified assessors and contribute to issues in relation to timely and robust claims assessments.

Employers' ability to challenge a decision

We note there is no formal mechanism for an employer to challenge the Nominal Insurer's decision in respect of a claim or to seek redress in relation to decisions that potentially have premium impact. In contrast, an aggrieved worker may seek redress in the Workers Compensation Commission to overturn an adverse decision in relation to their claim.

Noting the issues outlined above, and a concern among some of our members that there may be a decline in rigorous claims assessments, we recommend consideration be given to enabling an employer to challenge decisions through the Workers Compensation Commission.

¹ Icare, *Nominal Insurer Liability Valuation as at 31 December 2018*, (June 2019) <[file:///C:/Users/aprigan/Downloads/Nominal%20Insurer%20Liability%20Valuation%20as%20at%2031%20December%202018%20\(2\).pdf](file:///C:/Users/aprigan/Downloads/Nominal%20Insurer%20Liability%20Valuation%20as%20at%2031%20December%202018%20(2).pdf)>; State Insurance Regulatory Authority, NSW Workers Compensation reports, <<https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports>>.

² Icare, *Nominal Insurer Liability Valuation as at 31 December 2018*, (June 2019) <[file:///C:/Users/aprigan/Downloads/Nominal%20Insurer%20Liability%20Valuation%20as%20at%2031%20December%202018%20\(2\).pdf](file:///C:/Users/aprigan/Downloads/Nominal%20Insurer%20Liability%20Valuation%20as%20at%2031%20December%202018%20(2).pdf)>.

³ State Insurance Regulatory Authority, *Explanatory Note: NSW Workers Compensation December 2018 monthly dashboard and open data* (June 2019) <https://www.sira.nsw.gov.au/data/assets/pdf_file/0007/529045/december-2018-note.pdf>.

While perhaps beyond the scope of the review, we draw the independent reviewer's attention to the *Return To Work Act 2014* (SA) as an example of a scheme within which an employer can request a worker submit to an independent medical examination; require that the agency making the assessment undertake a reasonable investigation; and dispute a decision.

Thank you again for the opportunity to contribute a written submission to the independent review of the Nominal Insurer scheme.

Should you have any further queries in relation to this submission, please contact [REDACTED] or [REDACTED] or at [REDACTED].

Yours sincerely

[REDACTED]

Elizabeth Espinosa
President