

Our reference: D23/223886

[REDACTED]
Chief Executive Officer and Managing Director
icare
GPO Box 4052
Sydney NSW 2001

By email: [REDACTED]
Cc: [REDACTED]

Dear [REDACTED]

**Letter of Censure issued under section 183A(1)(b) Workers Compensation Act 1987 –
Workers compensation Nominal Insurer failure to apply indexation to workers
compensation claims**

Further to the State Insurance Regulatory Authority’s (**the Authority**) letter dated 4 August 2023 indicating it was considering a civil penalty or letter of censure to the NSW Workers Compensation Nominal Insurer (**NI**) in respect of the failure to correctly apply indexation to claims managed by the NI, and to the response of icare dated 25 August 2023.

The Authority has finalised its review into the historical indexation of workers Pre-Injury Average Weekly Earnings (**PIAWE**) and on the Guidewire claims management system (**Guidewire**). The Authority is satisfied that the NI has contravened Division 6A of Part 3 of the Workers Compensation Act 1987 (**1987 Act**).

Specifically, the NI failed to comply with the requirements of Division 6A of Part 3, and in particular section 82A of the 1987 Act, which requires:

“The amount of a weekly payment to a worker under Division 2 in respect of an injury is to be varied on each review date after the day on which the worker became entitled to weekly payments in respect of that injury, by varying the amount of the worker’s pre-injury average weekly earnings for the purposes of the calculation of the amount of the weekly payment ...”

An example of this failure to comply with section 82A of the 1987 Act is:

Claim reference number: [REDACTED]

Weekly payment prior to April 2022 indexation period: \$662.40

Weekly payment post April 2022 indexation period: \$662.40

Response from Claims Service Provider: “Agree, indexation not applied from Oct 2020 until applied at 01/04/23.”

Total estimated adjustment requirement: \$3,099.20

According to the indexation update provided from icare to the Authority on 30 November 2023, this failure to comply with section 82A of the 1987 Act has occurred on up to 13,915 open and closed claims managed on the Guidewire claims system since its inception in 2019. These claims are in addition to the non-Guidewire historical matters managed ‘possible 20,643 claims that may require review and possible remediation’ referenced on the icare website dated 8 May 2023.

For the reasons outlined below, the Authority is issuing the NI with this letter of censure, pursuant to s183A of the 1987 Act.

Section 183A of the 1987 Act provides:

(1) If the Authority is satisfied that a person who is or was a licensed insurer or self-insurer has contravened its licence or this Act or the regulations, the Authority may:

(a) impose a civil penalty on the person not exceeding \$50,000, or

(b) issue a letter of censure to the person.

Pursuant to section 154B of the 1987 Act, the NI is taken to be a licensed insurer. In exercising its licensed insurer functions, the NI is expected to comply with all aspects of the NSW workers compensation legislation.

On the 6 September 2022, the Authority was advised by the Chief Risk Officer at icare that it had identified a potential issue in the NI of non-compliance in the indexation of worker’s PIAWE on historical claims from 2012 to 2019. At this time, icare provided assurance that this issue did not affect claims managed on the Guidewire claims management system, stating:

“These potentially impacted claims are not managed on Guidewire. For claims managed on Guidewire, there are automated controls in place that support the claims managers to correctly apply indexation.”

The Authority sought confirmation on 15 September 2022 that icare had undertaken actions to validate that the Guidewire controls have been effective in the indexation process.

On 5 October 2022, the response from the Group Executive Workers Compensation at icare stated:

“icare has an ongoing review process for the application of indexation in Guidewire. There are associated process checks and exception reports in place both prior to and following the application of indexation. From the ongoing review process icare believes the application of indexation within Guidewire is operating as intended.”

The Authority reviewed payment data for claims managed on Guidewire for the indexation point 1 April 2022. Claim data for a cohort of Guidewire managed claims reflected the weekly benefit paid to workers certified with no capacity, did not increase as expected over this indexation point.

On 30 January 2023, the Authority met with icare to discuss updates on the indexation issue. During this meeting, icare indicated that from its’ and Deloitte’s investigation to date, the Guidewire system had sufficient controls in place to ensure that indexation was applied properly to workers weekly payments and that missing indexation points was not a material problem for this cohort.

On 10 February 2023, the Authority provided to icare two example cases on the Guidewire system that had been identified to test the icare / Deloitte investigation conclusions.

On 13 March 2023, icare confirmed in a Principal Executive meeting with SIRA that upon review, the two identified example cases shared by SIRA on 10 February 2023 had required retrospective manual indexation. SIRA raised further concern in this meeting that there may be other Guidewire related claims that required retrospective indexation. The meeting minutes from this meeting note that icare was to take this concern on further notice.

On 24 May 2023, the Authority's Chief Executive wrote to icare to again seek assurance that indexation for claims managed on Guidewire since 2019 had been applied correctly.

On 26 May 2023 the Authority further provided icare with payment data of 277 claims, indicating weekly benefits had not changed over the April 2022 indexation point.

On 5 June 2023, icare forwarded a commissioned report Deloitte had undertaken into Guidewire dated 22 December 2022 (*icare Assessment of the effectiveness of the automated indexation process in Guidewire for the application to Nominal Insurers weekly benefits*). Deloitte highlighted findings that not all claims were indexed in line with legislative requirements. The accompanying correspondence noted the Deloitte findings and icare reported planned system improvements to address these limitations, however, did not fully address potential issues identified with claims requiring a manual review.

On 30 June 2023, icare confirmed that initial review by Claims Service Providers of the spreadsheet provided by the Authority on 26 May 2023 indicated that workers PIAWE on 227 of these claims was not indexed correctly.

On 4 August 2023, the Authority utilised its powers under s194 of the Act, directing icare to undertake a complete analysis of claims managed on Guidewire to ensure compliance with division 6A, Part 3 of the 1987 Act, and where non-compliant, to make prompt remediation payments. The Authority requested to be provided with regular progress reports.

On 4 August 2023, the Authority also issued a show cause notice to icare, acting for the NI, outlining the findings of the Authority's review of the matter and inviting written submissions in response to the Authority's consideration of a civil penalty or letter of censure.

On 23 August 2023, the Authority met with representatives from icare to discuss in further detail a selection of 10 claims identified from the sample of 277 claim provided to icare on 26 May 2023. This discussion highlighted issues with the Guidewire system not applying indexation correctly and issues with claims requiring a manual review. icare also confirmed in this meeting, plans to implement further improvements to the Guidewire system to correct identified failings.

On 25 August 2023, icare wrote in response to the show cause notice, maintaining that Guidewire is functioning as intended, stating:

“icare continues to have confidence in Guidewire.”

“To the extent any payments made after the introduction of Guidewire have not been correctly indexed within Guidewire, icare's position is these are isolated anomalies and may occur due to the complexity of unique claims circumstances

that are not related to automatic indexation. icare has taken steps to ensure that affected injured workers will be remediated.”

“icare considers there is presently no evidence to justify finding a contravention in relation to the SIRA’s Guidewire Concern.”

On 30 November 2023, an indexation update was provided to the Authority by icare indicating that approximately 7,165 closed claims managed on the Guidewire system had not been auto-indexed and require remediation payments of greater than \$100, with a further approximately 6,750 open claims requiring review by the claims service provider. This totals approximately 13,915 workers who have not received their full entitlements and having a total cost of remediation estimated to be up to \$14.7m. Further to this, icare acknowledged Guidewire system improvements had been implemented in 2023, with further enhancements to be introduced before the next indexation point of April 2024.

The Authority has considered the entirety of icare’s submissions, including the response to the show cause notice dated 25 August 2023, with all material gathered in the course of its review of the matter, and has determined that:

- Deloitte’s report into the indexation of PIAWE on Guidewire highlighted in December 2022 a lack of controls over claims that did not meet the requirements for auto indexation on Guidewire.
- Since the issue was identified, icare has reported to the Authority it has made several enhancements to the indexation software in Guidewire and plans further upgrades to be implemented before April 2024, thereby acknowledging the system and controls were not entirely effective in ensuring the application of Indexation.
- When assurance was sought by the Authority regarding the accuracy of Guidewire payments to workers and associated controls in ensuring workers were not disadvantaged, despite contrary evidence, icare continued to maintain Guidewire was operating as intended.
- As of 30 November 2023, icare has identified up to 13,915 workers whose claims were managed on Guidewire are owed monies as a result of their PIAWE not being indexed in line with the legislation.
- icare has confirmed remediation payments to these workers, estimated to be up to \$14.7m will be delivered by June 2024.

In failing to ensure that the Guidewire system and associated controls correctly indexed workers PIAWE, icare acting for the NI has contravened Division 6A of Part 3 of the 1987 Act.

The insistence in the effectiveness of Guidewire has served to delay icare in undertaking proactive investigation and remediation of underpayment of legislative entitlements to thousands of workers to the value of many millions of dollars. The Authority remains significantly concerned that icare failed to swiftly and fully investigate the issue, despite the Authority providing multiple instances and examples, on multiple occasions, of claims managed on the Guidewire claims management system not having indexation applied correctly.

The Authority supports icare’s remediation plan and will supervise its implementation through to completion.

This Letter of Censure will form part of the regulatory history of the NI (on whose behalf icare acts). In the event the Authority becomes aware of further non-compliance of a similar nature, this Letter of Censure will be taken into consideration of potential further regulatory sanctions such as the imposition of a civil penalty or prosecution.

In addition, as specified under section 183A(5) of the 1987 Act and in accordance with the Authority’s publishing policy, the Authority would normally publish this letter of censure no less than two days from the date of this letter. However, due to the imminent close-down period and the detail contained in this letter, SIRA intends to publish this letter on Monday 15 January 2024. This letter may be redacted in part to protect worker privacy.

The Authority reminds the NI it must comply with all legislative obligations applicable to licensed insurers and trusts that these expectations are clear.

Should you wish to discuss this matter, you may contact [REDACTED]
[REDACTED]

Sincerely,

[REDACTED]

Adam Dent
Chief Executive
State Insurance Regulatory Authority

19 December 2023