

# **Compliance and performance review of the workers compensation Nominal Insurer, icare**

Submission to State Insurance Regulatory Authority  
(SIRA)

**18 July 2019**



## CONTENTS

Who we are .....	4
Introduction .....	5
Benefits and risks of the performance of the NSW workers compensation system arising from icare changes; the Nominal Insurer’s performance in relation to return to work outcomes, claims management customer experience, data quality and reporting .....	6
Medical expenses.....	6
ALA members’ experience with the management of claims by the Nominal Insurer (icare) and/or its scheme agents EML, Allianz and GIO .....	7
The impact icare’s new claims management process has had on return to work outcomes and the customer experience .....	8
What the Nominal Insurer (icare) and/or its Scheme Agents EML, Allianz and GIO should be doing differently .....	8
Provide a more personal experience .....	8
Provide better information about making a claim to injured workers.....	9
Provide greater training to Nominated Treating Doctors (NTDs).....	9
Investigate the use of company doctors.....	10
Use of IMES .....	10
Conclusion.....	11

## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to provide a submission in relation to the review of the performance of the workers compensation Nominal Insurer managed by Insurance and Care NSW (icare) and the work undertaken on its behalf by its agents (EML, Allianz and GIO).
2. The ALA's NSW members are some of the most engaged in the workers compensation scheme. Our stated objective is to ensure a fair, sustainable and affordable workers compensation scheme that delivers fair outcomes and benefits for workers, focusing on genuine return to work and restoration of health without perversion by the arbitrary and capricious decisions of Insurers. We desire a single dispute resolution system and a single Act to bring consistency, harmony and fairness to the system.
3. The ALA notes that the following terms of reference:
  - a. Assess Nominal Insurer compliance with SIRA's Market Practice and Premium Guidelines and identify any unintended consequences, risks and priorities for improvement in SIRA regulation of the premiums of the Nominal Insurer;
  - b. Identify the benefits and risks of the performance of the NSW workers compensation system arising from icare changes to the Nominal Insurers operating model and supporting digital platforms;
  - c. 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.
4. While the ALA welcomes this review the terms of reference are, in our view, limited and consideration should be given to a wide-ranging review of the scheme including a review of the legislation in which the Nominal Insurer has to operate within.
5. In addition to the specific information provided during a meeting with the Independent Reviewer, Ms Janet Dore, our general observations on issues associated with the scheme are outlined below. Given the make-up of the members of the ALA, the first point in the terms of reference is probably out of our expertise to comment on. In relation to the second and third points we have set our feedback, in no particular order. Where convenient we have created our own subheadings to assist navigating the submission.

## **Benefits and risks of the performance of the NSW workers compensation system arising from icare changes; the Nominal Insurer's performance in relation to return to work outcomes, claims management customer experience, data quality and reporting**

6. Due to the way in which icare have chosen to run the scheme our members typically have a much greater experience in dealing directly with the scheme agents. As touched on below, the number of scheme agents have decreased in recent years and this has not been without its problems. Despite dealing predominantly with scheme agents there are clear icare policies that flow through the scheme such as the new claims model, the Medical Support Panel and the general policies that icare have seems to have adopted towards the investigation and disputation of claims. In terms of dealing directly with icare in the workers compensation sphere our experience is generally limited but includes:
  - a. Their assistance with the initial section 39 transition;
  - b. Their involvement with workers with highest needs.
7. In these two examples our members' experience of the involvement of icare has been positive. While the ALA maintains its disagreement with the policy behind section 39 we do concede that, for the large part, the nominal insurer together with WIRO and the WCC, were able to work together to process a lot of matters in a short period time. There will of course, be very sad examples of hardships that arose in that time but the blame for those hardships should predominantly be pointed at the introduction of section 39 as opposed to the management of the transition of that cohort of workers.

### **Medical expenses**

8. In relation to icare's Medical Support Panel the ALA notes that the 2018 Annual Report states that the Medical Support Panel has reduced average treatment approval timeframes from six weeks to five days and made more than 2,400 treatment recommendations since its introduction in 2017.
9. Unfortunately this does not reveal if the rate of treatment declinature remains the same since its introduction or if that has also changed. That is, are they getting to the same decision

quicker or are they getting to different (and more or less favourable) decisions more quickly?  
The ALA members have seen a marked decrease in the number of treatment disputes issued by scheme agents. That is we have seen treatments and surgeries approved that prior to the Medical Support Panel would have been declined.

10. This view seems to be reflected in the limited data that icare have publically released. The Nominal Insurer Valuations appear to reveal some insights but not enough to make a concluded view. For example the reporting shows an increase in outstanding liability estimate for expenditure on treatment expenses from \$5,851 (\$m) in December 2017 increased to \$6,556 (\$m) in December 2018. The same sets of data show a decrease for investigations from \$257 (\$m) to \$200 (\$m) and a reduction in the estimate for legal costs from \$295 (\$m) to \$253 (\$m) over the same period. The data would lead support the conclusion that icare is investigating less, disputing less and paying more.
11. icare should be asked to share greater data about the operation of the Medical Support Panel, including the rate of treatment declinature prior to the introduction of the Medical Support Panel versus with the Medical Support Panel. If the rate varies significantly then further investigations can be made into the appropriateness of the Medical Support Panel determinations.

## **ALA members' experience with the management of claims by the Nominal Insurer (icare) and/or its scheme agents EML, Allianz and GIO**

12. Given the ALA is made of members of the legal profession our experience is heavily influenced by the more significant injuries, the more complex claims and claims that involve disputes. The average, run of the mill workers compensation claim where liability is accepted and the worker has a short time off work does not often involve contact with a lawyer and hence our members' experience with this category of worker is limited.
13. In relation to those claims that we do have contact with, GIO is an easier scheme agent to deal with. Their pragmatic approach to dispute resolution means that where possible quick sensible outcomes can be achieved.
14. The transition from five insurers to three was handled poorly by icare. EML appear to have struggled with the large increase in work and it was difficult to get information from the file

that was needed to progress a matter that was in dispute. This caused unnecessary delays for claims management and dispute resolution and in the end greater hardship for the injured worker. Compare the EML experience to GIO which took the majority of the tail. They were able to quickly get up to speed and because they appeared to be ready for the increased work volume, they were pragmatic in their approach to dispute resolution and they were able to make quick decisions on issues that arose.

15. To date, the benefits of reducing the number of scheme agents has not been seen by the injured worker. One would have thought that greater competition would have been a driver for better service delivery if properly managed and incentivised. Instead reduced competition will lead to a poorer quality of work and less incentive to be innovative and efficient.

## **The impact icare's new claims management process has had on return to work outcomes and the customer experience**

16. The ALA has had the benefit of seeing the Law Society's submission on claims management. The ALA fully supports the comments made in that submission.
17. In relation to return to work we have seen no evidence that the new claims model has resulted in any meaningful improvement in return to work rates. The little data provided seems to suggest that return to work rates have deteriorated. If it has not already done so, SIRA should be asking icare to provide all relevant data, research data and performance data that was relied upon in making the decision to move to the new claims model together with their analysis of why return to work rates are not improving. SIRA should urgently take action if it is found that the new claims model is not providing any benefit in return to work.

## **What the Nominal Insurer (icare) and/or its Scheme Agents EML, Allianz and GIO should be doing differently**

### **Provide a more personal experience**

18. As commented earlier the workers compensation scheme is about personal injuries arising in the workplace. The ALA strongly believes that injured people deserve a personal experience and the restoring to automated systems disenfranchises the injured worker and leave them both feeling, and as a reality denied, individual consideration.

19. If icare is insistent on maintaining the new claims model then the regulator should independently examine the benefits of the model including but not limited to the psychological impacts on injured workers and the effect this has on return to work rates.

### **Provide better information about making a claim to injured workers**

20. In our submission SIRA, icare, or the scheme agents should provide injured workers with greater information regarding how they complete the Claim Form, and should also provide injured workers with information about their available benefits pursuant to the scheme at that time.
21. It is all very well to have information on a website, but many injured workers do not have access to a computer or the internet. Injured workers may have limited skills with the English language or have difficulty reading or writing. In our submission injured workers, at the time that they are lodging a claim, should be provided with written information regarding their potential entitlements and benefits. This information should be provided by the Insurer. The information should be provided in plain English, and provide injured workers with access to interpreting services at that time, if required.

### **Provide greater training to Nominated Treating Doctors (NTDs)**

22. NTDs should be provided with more information about their role in the workers compensation process. In our submission many NTDs dislike completing the Certificate of Capacity form every 28 days. They dislike being harassed by the Insurer's rehabilitation providers. In the experience of many of our members, many general practitioners are refusing to treat injured workers and be involved in the workers compensation process due to the complexity of the documentation and the aggressive attitude of the rehabilitation providers engaged by the Insurers. NTDs should be encouraged to report inappropriate behaviour by rehabilitation providers to SIRA and/or icare. In our submission if these types of complaints are received, SIRA and/or icare should take action to counsel, or re-train, rehabilitation providers that are behaving inappropriately.
23. We have received numerous reports from our members about rehabilitation providers insisting on attending every medical examination that an injured worker has with their NTD. These practices, if they are occurring, should be investigated as they involve over-servicing, excessive expense to the scheme and a breach of the injured worker's privacy. There are

provisions to allow for case conferences between the injured worker, his or her NTD, and the Insurer and/or its rehabilitation provider. These case conferences can be arranged when necessary, from time to time, but we see no necessity for the rehabilitation provider to attend every appointment that an injured worker has with his NTD.

### **Investigate the use of company doctors**

24. Many of our members report that certain employers maintain what are referred to as 'company doctors'. These employers require their injured workers to attend a particular general practitioner that they have selected. It has been reported to us that these employers inform their injured employees that they will only accept Certificates of Capacity from their company doctor.
25. In our submission the role of the company doctor is an obvious conflict of interest between the obligations of the doctor to treat an injured worker and the doctor's financial relationship with the employer.
26. We submit that SIRA, icare and/or the Insurers should investigate the use of and discourage the practice of company doctors. Injured workers should all be provided with information about their right to choose their own Nominated Treating Doctor if they are injured at work.

### **Use of IMES**

27. In our submission the Insurers should not be referring to their medico/legal specialists as 'Independent Medical Examiners (IMEs)'. In our submission many of these IMEs favoured by the Insurers are anything but independent. The term 'Independent Medical Examiner (IME)' should not be used by the Insurers. The Insurers should call the doctors what they are — 'our medico/legal specialist'.
28. In our submission referring to these doctors as Independent Medical Examiners is misleading and causes confusion on the part of injured workers. If the Insurer's IME comes to a contrary view to that of the injured worker's Treating Medical Practitioner or specialist, and the injured worker receives a Section 78 Notice declining liability for ongoing weekly compensation, treatment expenses or even a Section 66 entitlement, many injured workers feel that they are bound by the decision of the so-called Independent Medical Examiner arranged by the Insurer.

29. They are discouraged from seeking advice, or seeking to challenge, the opinions of these so-called Independent Medical Examiners. This is particularly prevalent in relation to treatment disputes. Insurers refer requests for pre-approval for surgery to certain specialists. Those specialists provide the Insurer with advice and the Insurer may decline liability for the surgery based on that advice.
30. In our submission SIRA and/or icare should monitor Section 78 Notices that relate to pre-approval for surgery, or treatment generally. If the opinions of certain medico/legal specialists retained by Insurers are regularly overturned by Approved Medical Specialists (AMS) in the Workers Compensation Commission, then SIRA and/or icare should require the scheme agents to cease using those particular doctors and relying upon their opinions in relation to treatment disputes.
31. Delays in providing injured workers with treatment that is reasonably necessary, and caused by their involvement in an accident at work, leads to a compromise of the outcome that those injured workers might achieve from that treatment and their claim is delayed. The claim becomes more expensive to the scheme due to these unnecessary delays occasioned by the opinions that the Insurers rely upon from particular medico/legal specialists. There should be monitoring and oversight of those opinions by the Regulator. As far as we are aware, no such monitoring or oversight has been conducted to date.

## Conclusion

32. The Australian Lawyers Alliance (ALA) appreciates the opportunity to have input into the review of the performance of the workers compensation Nominal Insurer managed by Insurance and Care NSW (icare) and the work undertaken on its behalf by its agents (EML, Allianz and GIO). We look forward to SIRA's response to the review in due course.



Andrew Stone SC

NSW President  
Australian Lawyers Alliance