

27 May 2020

The Hon. Wes Fang MLC  
Chair, Standing Committee on Law and Justice  
NSW Parliament  
Macquarie Street  
SYDNEY NSW 2000

By email: [law@parliament.nsw.gov.au](mailto:law@parliament.nsw.gov.au)

Dear Mr Fang

## **2020 REVIEW OF THE NSW WORKERS COMPENSATION SCHEME**

Suncorp Group Limited (*Suncorp*) welcomes the opportunity to respond to the 2020 Review of the Workers Compensation Scheme in New South Wales (NSW), announced on 18 March 2020.

We believe that opening the Scheme to greater competition would drive performance across key indicators and deliver improved outcomes for employers and injured workers in NSW.

Suncorp is Australia's largest private provider of personal injury insurance. In NSW, we provide workers compensation claims management services for more than 14,000 claimants through the GIO brand.

Supporting those who are injured has been part of GIO's identity since our inception as the Government Insurance Office in 1927. Our focus on the recovery and rehabilitation of injured workers and our commitment to deliver the best possible outcomes for employers underpins our strong reputation and industry-leading performance in the Scheme.

The purpose of this submission is to provide an insurer's perspective on the operation of the Nominal Insurer Scheme, as it covers the largest portion of workers in NSW and its success is critical to the performance of the Scheme in NSW.

At this time, as attention is rightly directed to the important task of assisting businesses and employees to recover from the outbreak of COVID-19 and its economic impact, it is vital that the Scheme is effective in supporting employers and workers.

We offer recommendations to improve the Scheme's deteriorating financial position and return to work (RTW) performance based on the experience of our customers and our participation across the workers compensation scheme in NSW and other States.

Suncorp's recommendations are:

1. Parliament should require icare to reintroduce competitive claims management across the whole NI Scheme, regardless of industry sector or company size.
2. SIRA and icare should report back to the Committee on:
  - a. the progress of the 21-Point Action Plan agreed in response to the Dore Report;
  - b. progress (if any) on issues that were 'out of scope' but raised in the Dore Report; and
  - c. the scope and timing of the 2020 audit.
3. In providing advice to Government on legislative policy matters, SIRA should consider how legislative arrangements in other jurisdictions support injured workers back to health, and contain medical spend and premium impacts.

## Introduction

In reviewing the Scheme the Committee should consider whether it is meeting the objectives set by Parliament and delivering for the people of NSW. When initiating major reforms to workers compensation in 2012, the intention of Parliament was to 'ensure better protection for injured workers, save businesses from unnecessary premium hikes and get the scheme back into surplus'<sup>1</sup>.

On each of these measures, the challenges facing the Scheme remain. The independent review of the Nominal Insurer commissioned by the State Insurance Regulatory Authority ('The Dore Report')<sup>2</sup> highlighted the impact that the Single Provider model is having on injured workers, employers and the sustainability of the NI Scheme.

With more than 110,000 NSW private and public sector workers making a claim and relying on the Scheme for rehabilitation and protection in the last year alone, it is vital that the current serious deterioration is properly addressed. We commend the action taken by the Regulator to address some of the significant issues in the NI Scheme.

The recent downward trajectory of the NI Scheme suggests that either injured worker benefits will have to be reduced, or premium costs for businesses in NSW will need to increase.

Following the 2012 and 2015 reforms, opportunities to reduce benefits further have diminished and addressing these challenges at this time without increasing premiums must rely on more effective administration and management of the Scheme into the future. It is our view that this is best achieved in a dynamic and competitive market operating between scheme agents, like that which existed in NSW prior to 2018.

We commend icare on the action it has taken to date, including reforms to Pre-Injury Average Weekly Earnings (PIAWE) calculation and agreeing the 21-Point Action Plan. Implementation of these actions provides a potential focus for this Committee's Review.

## Competitive Claims Management

Prior to 2018, NSW employers and injured workers enjoyed the benefits of competitive tension between scheme agents. NSW employers were able to change scheme agents if they were dissatisfied with the services provided to their injured workers, and injured workers were supported through their claim by claims managers who knew that their performance and engagement of the claim was subject to a competitive market.

### The current status of the NI Scheme

Since January 2018, almost all new workers compensation claims in NSW are allocated to a single provider, EML. The creation of this monopoly by icare has placed huge pressure on a single provider and seen a deterioration in the NI Scheme return to work (RTW) rates. RTW rates have fallen by 10 per cent or more for every measure (4-week, 13-week and 26-week periods), meaning more people are remaining off-work and on benefits for longer.

This avoidable delay in returning injured workers back to work has penalised employers who must both cover for injured staff and pay additional premiums for longer claims. This decline has impacted the Scheme through significant increases in claims costs, and contributed to eroding the \$3.9 billion surplus in place at icare's inception. Approximately \$750 million of the 2015 surplus remains according to the icare December 2019 valuation.

Year	FY2015	FY2016	FY2017	FY2018	FY2019	Dec FY20
NSW Workers Insurance Surplus	\$3.992 billion	\$3.353 billion	\$2.365 billion	\$2.454 billion	\$1.578 billion	~\$750 million
Percentage of 2015 surplus	100%	84%	59%	61%	40%	19%

<sup>1</sup> NSW, *Parliamentary Debates*, Legislative Assembly, 19 June 2012, (Mike Baird MP)

<sup>2</sup> see Compliance and Performance Review of the Workers Compensation Nominal Insurer managed by icare (December 2019). Available at [https://www.sira.nsw.gov.au/\\_data/assets/pdf\\_file/0005/584798/Independent-Reviewer-Report-into-the-Nominal-Insurer.pdf](https://www.sira.nsw.gov.au/_data/assets/pdf_file/0005/584798/Independent-Reviewer-Report-into-the-Nominal-Insurer.pdf) (accessed 20 May 2020)

The funding ratio for the NI Scheme (which estimates assets over liabilities) has continued to decline, indicating a weakening ability to provide for injured workers. For December 2019 the ratio is estimated to be 104% (down from 108% in June 2019) with surplus assets of \$723 million<sup>3</sup>; well below the target range established for the Scheme.

Whilst a negative scheme funding ratio is not unusual in NSW workers compensation history<sup>4</sup>, the systemic run of Scheme deficits was part of the justification for reform in 2012 that reduced benefits for injured workers in order to bring the scheme back to surplus. That the post-2012 Scheme will likely return to deficit so early raises questions about its sustainability under the current model.

### Greater choice for Employers

Whilst the Authorised Provider model being implemented in NSW provides some choice to large employers with premiums over \$500,000, it is our view that there is opportunity to expand choice of claims manager to SME businesses to address the deterioration in the scheme.

The consequences of a scheme in deficit will be most likely felt by employers who may face increased premiums, meaning additional costs for NSW businesses and making NSW a less attractive place to do business.

A competitive arrangement between scheme agents for all claims within the NI Scheme, regardless of the industry or the size of the employer, would relieve pressure on the single provider to address the current performance issues.

**Recommendation: Require icare to reintroduce competitive claims management across the whole NI Scheme, regardless of industry sector or company size.**

### Progress on Agreed Actions

The Dore Report was announced in February 2019 and published on 13 December 2019. It made 13 Findings and noted changes to the NI Scheme were underway during the review, and that a further audit would be undertaken in 2020.

This review identified the difficult experience of many injured workers who had faced delays in treatment or other services which negatively impacted their recovery and rehabilitation. It also identified that the Scheme had been relying on investment income to manage the underwriting losses made each year.

**Recommendation: SIRA and icare should report back to the Committee on:**

- **the progress of the 21-Point Action Plan agreed in response to the Dore Report;**
- **progress (if any) on issues that were ‘out of scope’ but raised in the Dore Report; and**
- **the scope and timing of the 2020 audit.**

### Other Workers Compensation Schemes in Australia

In reviewing the Scheme, the experience of competitively underwritten workers insurance jurisdictions is valuable to understand the benefits these schemes deliver to employers and injured workers.

Schemes which include private insurers as underwriters (Western Australia, Tasmania, Northern Territory and the Australian Capital Territory) provide generally higher weekly entitlements for injured workers when compared to those Schemes which are publicly underwritten<sup>5</sup>. In hybrid Schemes which allow private claims management,

<sup>3</sup> Scheme valuations are available on icare's website: <https://www.icare.nsw.gov.au/about-us/annual-reports/> (accessed 20 May 2020)

<sup>4</sup> Between 1997-2011, the scheme was only in surplus three times (2006, 2007, 2008).

<sup>5</sup> A summary table showing entitlements is provided at page 32 of the most recent Scheme comparison report prepared by Safe Work Australia. Safe Work Australia 2019, *Comparison of workers' compensation*

this leads to generally improved Funding Ratios in the Schemes overall. Where employers are allowed greater choice in claims management provider, agents utilise their expertise to drive improved performance and achieve better outcomes for customers.

The largest underwritten scheme is Western Australia, where seven insurers participate in a competitive market, and average premium levels have remained in a narrow band between 1.483% and 1.645% of employer's wages for the past five years. Around 91 per cent of claims had liability decisions made within the statutory 14 days in that Scheme, and medical costs remained stable. In comparison, medical cost inflation for workers compensation in NSW has been 10 per cent year on year.

In privately underwritten schemes there is also no need for an inter-agency dispute process necessitated by the separation of icare and SIRA in NSW. A regulator in a privately underwritten scheme can impose sanctions or take more serious action to ensure compliance than is currently enabled under the legislative provisions in NSW. The Dore report found there is limited ability for SIRA "to enforce guidelines and standards or to otherwise direct the NI to undertake an action or task"<sup>6</sup>.

**Recommendation: In providing advice to Government on legislative policy matters, SIRA should consider how legislative arrangements in other jurisdictions support injured workers back to health, and contain medical spend and premium impacts.**

We would welcome the opportunity to appear before the Committee to discuss the content of this submission and answer any members' questions. Please contact Georgia Lovell, Senior Advisor, Government, Industry and Public Policy on 0426 770 145 or by email to [georgia.lovell@suncorp.com.au](mailto:georgia.lovell@suncorp.com.au).

Regards,



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*arrangements in Australia and New Zealand*, 27<sup>th</sup> Edition, Canberra. Available at <https://www.safeworkaustralia.gov.au/system/files/documents/2001/comparison-report-2019.pdf>

<sup>6</sup> Note 2, pg.5