Australian Industry Group

Compliance and Performance Review of the NSW Workers Compensation Nominal Insurer Scheme

Submission to State Insurance Regulatory Authority in response to Discussion Paper

JULY 2019

COMPLIANCE AND PERFORMANCE REVIEW OF THE NSW WORKERS COMPENSATION NOMINAL INSURER SCHEME

SUBMISSION TO STATE INSURNCE REUGLATORY AUTHORITY IN RESPONSE TO DISCUSSION PAPER

INTRODUCTION

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of businesses employing more than one million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Our vision is for ***thriving industry and a prosperous community*****.**

We have ongoing contact and engagement with employers across Australia on the broad range of issues related to the operation of their businesses, informing them of regulatory changes, discussing proposed regulatory change, discussing industry experiences and practices and providing advice, consulting and training services.

We also interact with and provide regulators and scheme managers across all Australian jurisdictions with employer views and experience on WHS/OHS and workers' compensation.

Our membership is diverse, operating across a broad spectrum of industries. We have a significant number of large organisations within our membership. However, around three quarters of our members employ fewer than 50 employees and half employ fewer than 20 employees.

CONTRIBUTING TO THIS REVIEW

Ai Group welcomes the opportunity to provide feedback on the operation of the NSW Workers Compensation Nominal Insurer Scheme (the scheme).

The information we are providing is largely based on feedback received from employers during the provision of training and consulting services and when member companies contact our Workplace Advice Line, or our specialist workers' compensation advisers, to discuss difficulties they are experiencing within the scheme. We have also asked members to provide us with information specifically associated with this review.

We have encouraged members to share their first-hand experiences by making their own submissions to the review. However, we highlight that there are a number of barriers to them doing so, particularly: a lack of time to allocate to this type of activity; the acceptance that workers' compensation will always be difficult to deal with and there is little value in providing feedback; and concerns that detailed feedback about their experiences with a claim may lead to the identification of individual claimants and breach their privacy and confidentiality obligations.

We find that employers are often more willing to discuss their experiences, rather than put those issues in writing. Ai Group would be happy to facilitate discussions between the reviewer and a small number of our members, if that would be of benefit to the process.

We acknowledge that a review of this type, and indeed the nature of our interactions with members, means that the feedback we receive is mostly from those who have had a negative experience with the scheme. Employers do not generally contact us when they have a satisfactory experience with the scheme, because that is what they believe should happen.

PREMIUMS

Providing clear information about the premium calculation

The current premium system has been in place since 2015/16; this system is significantly different to the previous premium system. Several of the changes were positive and have been supported by Ai Group. However, the change was not clearly articulated in advance; some large employers had significant increases in their premium that were not anticipated and, therefore not factored into their budgets. It is our view that icare continues to suffer reputational impact from this poorly managed change process.

Ai Group acknowledges that the premium formula is now simpler than that which preceded it, and that the removal of "estimates of future costs" has significantly reduced the dispute over the costs that are included in the premium calculation.

We are also of the view that the current premium notice is a major improvement over the previous notification process and is amongst the best in the country.

However, the ability for an individual employer to understand their premium, and how it can be reduced in the future, is still limited. Many employers tell us they do not understand their premium and are not provided with clear explanations from icare.

Historically, premium formulae and tariff rates had been published annually in the Government's Insurance Premiums Order (IPO). In 2015/16 this included information about the new premium formulae and rates. This was the last time that an IPO was published. Subsequently, there was a significant reduction in the information generally available. In 2016/17 we received advice from icare that the previous IPO was still being applied. This was helpful to us, but it was not something that was being communicated more broadly. Subsequently, some factors of the premium calculation have changed so the previous IPO is no longer relevant.

Over recent years icare has increased the amount of information about premiums on their website and provided updates on changes that occur each year. See the 2019-20 Premium Update as an example. The renewal premium information pack is also a good source of information for each employer.

However, none of this information (on the website or in the renewal pack) provides employers with the full picture, leading to a view that the premium formula is not transparent.

In recent searches of the icare website our advisers were unable to find clear information about the current formula. The section of the website entitled Calculating the cost of your workers compensation premiums provides general information, but does not provide specifics. A key factor in the premium calculation is the Claims Performance Rate (CPR); there is reference to this term on this website page, but no explanation of how it is calculated or utilised in the premium calculation. A Claims Performance Adjustment Rates matrix is provided on the website, but there is no link to it from this main page. In fact, we were only able to locate the table by specifically searching for this topic.

We note that new information was added to the renewal pack in 2016/17. Next to the heading *Your Safety Performance* was included a question: *Did you know, your net claim costs are $xxx,xxx.xx?* For one of our members, the net claims costs were $798,400.15, compared to the *included costs* of $94,495 that were utilised to calculate the claims performance measure. It is presumed that this information was added due to employers' complaints that premium costs far outweighed the recorded cost of claims and that this is designed to show employers that the cost of claims (with full costs and an estimate of future costs) is far higher than the amount utilised in the calculation. However, there is no explanation within the pack of what this information means, and employers are unlikely to understand its relevance. We were also unable to locate information on the website to explain the net claim costs.

Ai Group is of the view that:

- There are opportunities to further enhance the premium renewal pack to make it easier for employers to understand. We would be happy to contribute to this by sharing how an employer reads the information, compared to how the premium experts might understand it and read the notice.
- More information should be provided on the icare website about how the premium is calculated. An example of a clear explanation of premium can be found on the South Australian webpage explaining their premium.

Challenges with the premium calculation

Stepped increases

The adoption of the current premium system provides a much simpler calculation than the previous approach. However, a key problem with the current approach is that movements in premium are "stepped", with a change in claims costs having a variable impact depending on where an employer sits within each range of the Claims Performance Rate (CPR).

Example: A Category 8 employer (Average Performance Premium (APP) of more than $2m)

> A CPR of 110%, will have the APP multiplied by 1.142
> A CPR of 119.9% will also have the APP multiplied by 1.142
> A CPR of 120% will have the APP multiplied by 1.262
>
> With an APP of $2.1m, this results in a change in premium from $2,398,200 to $2,650,300; an increase in premium of $252,000 for what may be a small increase in claims costs utilised in the premium calculation.

We acknowledge that changes were made to the Claims Performance Adjustment Rate in 2018/19. However, whilst this has reduced the impact, significant variations still occur at the margins.

Increased penalty for a second year with CPR at 400+%

In 2018/19, an additional premium penalty was applied. An employer who has a CPR in excess of 400% for more than one year has an increase in the Claims Performance Adjustment Rate. This is particularly problematic for smaller employers who may have one bad claim that takes their CPR over 400%, with no opportunity to influence this in coming years.

Example: A Category 1 employer (Average Performance Premium (APP) between $30,000 and $50,000); CPR over 400%.

Year 1: $50,000 APP with a large claim:	APP multiplied by 1.750 = $87,500
Year 2: No further claims or costs:	APP multiplied by 2.275 = $113,750
Year 3: No further claims or costs:	APP multiplied by 2.275 = $113,750

In this scenario the employer has borne an additional penalty of $52,500 (in addition to the normal increase in premium), when there was nothing they could do to decrease costs in the subsequent two years.

We have utilised a Category 1 employer in this example as they are the ones most likely to have an individual claim that significantly increases their premium, but it could occur in any of the categories.

Capping is an important part of the premium scheme

In the first year of the new premium scheme a 30% cap on premium rate was applied as a transitional arrangement. Since that time the cap has been reintroduced as part of the general premium calculation.

It is Ai Group's view that the cap is an important part of the premium calculation which provides incentives to minimise claims costs whilst protecting employers from significant increases in premium if there is a sudden spike in claims costs. The nature of the cap means that an employer with ongoing, or increasing, high claims costs will experience an ongoing increase in their premium.

We note that the capping is also applied in relation to a reduction in premium. Whilst employers in this situation may not welcome this approach, it is recognised that a scheme that utilises claim costs as a basis for determining contributions to the scheme must balance any protections to ensure financial viability of the scheme.

We encourage icare to maintain this approach to capping.

Workers Compensation Industry Classifications (WICs)

The Workers Compensation Industry Classifications (WICs) have a major impact on the premium payable by individual employers. This is not an area that most employers look at. However, from time to time an employer will seek clarification as to whether they are allocated to the correct WIC.

Ai Group assists employers with these issues around Australia. Often, we advise employers that they are correctly classified and provide clear information about why this is the case. At other times we provide them with the information and support necessary to make a case for change, on some occasions making an application on their behalf.

We have two recent examples of employers approaching Ai Group to seek assistance to understand the WIC allocation when a review from icare has been unsuccessful. Whilst we are still working through these issues with the employers, it appears that their frustrations are as much with the communication processes as they are with the decisions that have been made. One employer described it as "they just told me that's how it is, without explaining why".

Where classifications are being reviewed, it is important that time is taken to clearly explain the decisions made and the rationale behind those decisions.

The Premium Renewal Pack

As outlined above, the NSW Renewal Pack is one of the better approaches to informing employers about their premium. Importantly, it does contain all the information necessary for a person with a good understanding of the premium calculation to trawl through the data and understand how the premium has been calculated.

We note that a new section was introduced on page 2 in 2017/18 pack entitled "What's new about your premium". The same heading was included in 2018/19, but it included the same information as the prior year. Ai Group would have liked to make comments on the 2019/20 renewal pack. However, it appears that they have not been distributed yet, despite the year having commenced.

We believe some enhancements to the pack would be beneficial, and an annual review of information presented would be helpful.

Timing of premium information

Employers continue to be frustrated with delays to the provision of premium information. As indicated above, employers are yet to receive their renewal pack for the 2019/20 premium year. These same employers have had budgets for 2019/20 in place for many months and may have had to price contracts and services based on an unknown cost which is difficult for employers to estimate in advance due to the previously highlighted complexity in understanding the premium calculation.

Efforts should be made to provide the premium renewal packs much earlier and at least before the end of the preceding financial year.

CLAIMS LODGMENT, DETERMINATION AND MANAGEMENT

Ai Group is regularly contacted by employers experiencing difficulties associated with the lodgement, determination and management of claims. Due to the current distribution of employers across Agents most of these issues relate to EML; it is not to say that similar issues are not arising with Allianz and GIO.

Ai Group understands that there are times when claims must be accepted contrary to the views of an employer; this is especially the case in relation to gradual onset injuries and psychological injury claims. In this context, we often find ourselves explaining to our members the reasons for claim acceptance and the way the scheme must consider claims.

Accordingly, we do not take employer complaints on face value and often spend considerable time reviewing documentation and/or discussing the responses they have received from a scheme Agent. From time to time we also become directly engaged in the conversations with the Agents; this enables us to experience the same issues as employers.

With this level of scrutiny and understanding in mind, it is Ai Group's view that many of the problems with the current management of the scheme come down to a lack of communication with employers and an unwillingness, or lack of skill, in clearly explaining the reason for decisions.

Key issues

The most widespread sentiment members have relayed to us about the current claims process is that they feel shut out of the process; that their views are either ignored or not sought. They feel the system prioritises the needs of the worker to the exclusion of them. It doesn't feel balanced.

Difficulties associated with direct lodgement of claims

When claims are lodged directly with the scheme, employers do not get an immediate ability to manage the claim or provide the necessary information to help determine the claim.

We have received multiple complaints about employers being advised of claim lodgement and claim acceptance at the same time, i.e. not being provided with the opportunity to have input in relation to the facts. This is a clear failure of the scheme to obtain relevant information for claim determination.

It is essential that robust systems are in place to ensure that employers receive immediate notification of a claim being lodged, to enable timely interaction with injured workers and an opportunity to provide input prior to a claim being determined.

Lack of clarity about who is providing the service

We have received advice that much of the communications employers are receiving from their Agent are now branded as icare. This is blurring the lines between the nominal insurer and the Agents acting on their behalf and creating confusion for employers.

It may also be creating a reputational risk for icare, if Agent behaviours are not up to the expectations of the nominal insurer.

If there is to be a change to the branding associated with icare and their Agents, this should be clearly communicated to all stakeholders.

Delays in decision making

One of the key features of a scheme that has provisional liability, is the opportunity to utilise up to 12 weeks to make a decision. This should lead to better decision-making processes. However, we have been advised of some situations where decisions on claims have been delayed until the last days of the provisional liability period. This often involves medical information arriving very late, leading to a feeling that the "clock is ticking" and decisions then appear to be made hastily. In these situations, employers feel that their views are not being considered and due process has not been applied.

A process should be established which sets key timeframes for various stages of claim determination.

Agents should be measured against these timeframes and be required to review any situation where claims are being determined in the final stages of the provisional liability period.

Clearer guidance needed for employers with their first claim

Elsewhere in this submission we talk about communication issues. These are particularly important issues for employers who have not previously had a claim. One employer advised that they were not given clear information about what would happen next. They described a scenario where they had to work out what questions to ask the Agent in order to progress the claim.

Employers who have not previously been exposed to the workers' compensation scheme need additional support and should have one individual allocated to step them through the process from start to finish.

Delays in responses and inconsistent answers

A consistent theme in the feedback is that employers find themselves having to make multiple follow up calls or send multiple emails in order to get answers to straightforward questions

One employer needed to get their broker involved in order to get an answer in relation to seeking approval to appoint a rehabilitation provider.

Another employer provided information about their experience with their first claim. A detailed record of phone calls made by the employer showed almost daily follow up on some issues. It also illustrated that on different days, the employer was either provided with conflicting advice or provided with information that was not clear enough for the employer to understand what was required.

Timely and accurate communication with employers and claimants is crucial. Efforts must be made to improve this crucial service element.

Psychological claims

This type of claim is the one that is most frustrating for employers. When a claim is being made that the actions of the employer have caused a psychological injury, it is imperative that the employer has the opportunity to respond to allegations. As outlined above, situations where claims are accepted without input and/or decided at the last minute, are particularly frustrating when a psychological injury is claimed.

We have been provided with examples of situations where employers have not had the opportunity to verify, or otherwise, the facts of the case. This has included scenarios where the employer has been advised of bullying allegations identified during claims determination, but the Agent has not been prepared to share details of the allegations. This creates a number of difficulties: the employer is unable to respond in a way that would assist claims determination, i.e. put forward counter-information; the employer has no information on which to make further inquiries, which is a legal obligation once they are aware of a bullying complaint; and there is a perception that the alleged perpetrator has been found "guilty" by the scheme without any opportunity to respond to allegations. This can be very damaging within a workplace and may lead to others having psychological injury and claims.

In relation to psychological claims, it is extremely important that employers are provided with an opportunity to fully understand the circumstances of the injury and to respond to any areas of disagreement. It is difficult enough for the employer facing such claims without compounding effects of a poor process clouding the issues and adding to their frustrations.

Difficulties with the electronic lodgement system

We have received some positive feedback from employers regarding the recently introduced system of electronic lodgement. We have also received feedback about the system being unreliable, with "fatal error" being a regular outcome of the uploading process. Many employers have subsequently decided to utilise the electronic system for initial claim advice/lodgement, but to utilise emails to provide other documentation

When the lodgement process has seemed to be successful, it appears from the outside that the internal processing of documents is not immediate. We have received feedback that employers have contacted their Agent a few days after electronic lodgement and been told that the Agent cannot see those documents as yet. This can delay important decisions, such as those relating to treatment.

The reliability of the electronic lodgement process and its interaction with the Agent should be reviewed to ensure that the benefits of electronic lodgement are maximised and do not create another delay in the administration of claims.

Lack of allocated case managers

In all communications with a service provider, human beings generally want to know that they have a single point of contact for all their communication needs. This is especially the case when dealing with work related injuries, that involved a system that is generally poorly understood due to the limited need to interact with the system.

A key theme of feedback from employers was the lack of allocated case managers. Some employers had been advised that their claim would be managed by a team that would know the details. Other employers have only been advised that they now need to ring one central number and they feel they will just have to talk to whoever happens to be free at the time.

One employer has received notification from their rehabilitation provider that "Over the past couple of months we have noted all claim documentation has icare branding (rather than EML for instance) and the contact details are generic both email and phone. This means, that in the majority of cases we do not have a personalised email to communicate with the Agent Case Manager or a direct line."

Ai Group recognises that there are times when a pool of staff may be the best solution to deal with the processing of claims related information. However, when a claim involves an ongoing need for contact with the employer and claimant, the allocation of a specific staff member is important to those who rely on receiving timely and accurate information.

It seems particularly unhelpful when a claim is difficult enough to warrant engaging a rehabilitation provider, that the provider does not have direct access to an allocated case manager.

The approach to remove allocated case managers should be reviewed. Whatever arrangement is put in place, it should be clearly communicated to employers and rehabilitation providers. An option to escalate to a known person when things go wrong should be included in that communication.

Lack of information about changes

Our feedback about the change to the allocation of case managers above is one area that does not appear to have been communicated to employers, in a way that meets their communication needs.

Another example is where an employer sent documents to their Agent via their normal mode. When they subsequently chased progress they were advised that the documents had not been received. Ultimately it was identified that the employer had sent their information to the "wrong" place and that they should have been aware of the changed communication requirements.

Irrespective of whether the employer had received notification of the change, which the employer believes they did not, there should be a system in place to capture data or advise employers of their error when changes occur. Simple solutions to this are automatic emails advising that "this email is no longer monitored" or a redirection process that forwards documents on allowing for the issue to be actioned and the changed communication mode to be highlighted for the future.

Claimant frustrations

Some employers are receiving feedback from their employees about them being frustrated with their interactions with their Agent. The employer is then asked to fix it, and in the eyes of the employee, can become part of the problem if not resolved.

In one case a worker has been receiving physiotherapy for four weeks and is till waiting on approval from the Agent.

Delays in approving treatments can increase the recovery time for workers. Research also shows that claimants' negative interaction with a workers' compensation scheme can delay return to work, compared to the same injury that is not work related.

All efforts should be made to facilitate speedy consideration of claimant inquiries and clear and timely communication of the outcome to both the claimant and their employer.

Lack of clarity about which organisation is responsible for process and decisions

When claim decisions become complicated there needs to be a clear understanding about policies and procedures for managing the determination and claims management processes. We have experienced a situation where the employer (and ourselves in the same telephone hook-up) was advised that the Agent's processes are being determined by icare, with nothing the Agent can do about it; implying - don't blame us it's icare's fault. To the employer this seemed like an excuse; we were unable to determine the veracity of that position.

It would be helpful if icare produced publicly available information about how specific issues within the scheme are to be managed. An example of this approach is the WorkSafe Victoria Online Claims Manual. Whilst the manual is a little clunky to navigate, it provides access to a wealth of information that assists employers to more effectively engage with their Agent in an informed manner in relation to key areas of managing the scheme.

General dissatisfaction with the scheme

Prior to the announcement of this review Ai Group had been advised by two employers that they were considering self-insurance, not for any financial reason, but to extricate themselves from having to deal with the allocated Agent. Whilst a full analysis of this option may identify that self-insurance is not a viable option, the fact that interaction with the scheme Agent has caused this position is a concern.

As the nominal insurer for the scheme icare should work to maximise the efficiency and transparency of the scheme to increase credibility of its operations – for employers, claimants and workers generally.

SETTING STANDARDS FOR THE NOMINAL INSURER SCHEME

In 2018 SIRA published a document entitled *Standards of Practice: Expectations for insurer claims administration and conduct.*

It is Ai Group's view that this document provides a good framework by which to measure the performance of icare and its Agents. It is recognised that the document is relatively new and for this reason the scheme should not be "held to account" if areas are not being meet.

However, it should be utilised to inform the review, and identify gaps against this document, and make recommendations for improvement.

In addition, the Standards of Practice should be widely promoted to enable employers to be part of holding icare and the Agents to account for their service delivery. Ai Group has been informing members of the document and it has been well-received by those who have accessed it for reference.

ONGOING IMPROVEMENTS

Ai Group acknowledges that icare and its Agents have been through a significant amount of change over recent years. With change always comes difficulties.

Over this time, and before these changes, Ai Group has had regular contact with senior staff of both organisations. It is our view that this engagement has assisted us to better understand the scheme and to share employer views to aid the scheme's understanding of pain points.

We also acknowledge that senior staff of icare are very helpful when we bring individual issues to their attention on behalf of our members. However, there should not be a need for this to occur.

Ai Group is committed to working with SIRA and icare into the future to enhance the scheme for the benefit of all involved.

In the interests of transparency, Ai Group has provided a copy of this submission to the CEOs of both SIRA and icare.