Submission to SIRA Review- Dr Arthur Chesterfield-Evans

Appendix 5 of Submission to McDougall Inquiry into iCare

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Review - Terms of Reference

The review will be undertaken for SIRA by an independent expert, Ms Janet Dore and supported by independent actuaries Ernst and Young (EY) and authorised officers of SIRA.

Consistent with the objectives, functions, responsibilities and powers of SIRA under the *State Insurance and Care Governance Act 2015*, the WIM Act and the 1987 Act, the Terms of Reference for the review are to consult with stakeholders and undertake analysis of data to provide findings in relation to the NI's compliance and performance, in particular to:

- assess NI compliance with the MPPGs and identify any unintended consequences, risks and priorities for improvement in SIRA regulation of the premiums of the NI
- identify the benefits and risks to the performance of the NSW workers compensation system arising from iCare's implementation changes to the NI operating model and supporting digital platforms
- Assess the NI'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.

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Summary

iCare and SIRA have both undergone regulatory capture by the insurance industry who have had far too much influence in setting up both bodies, their objectives, protocols, staffing and continuing operations.

iCare and SIRA have lost touch with the core objective of the Workers Compensation (and CTP system) which is to provide medical care and rehabilitation to injured people. Instead of this, the system has become little more than a niche scam, where a significant but unquantified percentage of patients have treatment denied to deliver super-normal profits to insurers and dividends to government, while leaving patients untreated, or transferring their costs to other funders within the health system after lengthy treatment delays which are often financially and emotionally crippling.

The protocol that allows IMEs (Independent Medical Examiners) to create medical disputes by denying treatment, and have this beyond the scrutiny of the regulator has allowed insurers to do what they like in the area of treatment denials, immensely empowering insurer interests against patients and treating doctors.

The terms of reference of this Review are far too narrow, and the Reviewer too close to SIRA and too close to the insurance industry to conduct such an inquiry, and a new inquiry with broader terms of reference is needed, with real efforts to get feedback from patients and treating professionals.

A Stakeholder Group comprised principally of patients, but with doctors and other treating professions is needed as an independent voice to balance insurance interests in the scheme.

Details of the delays and rates of denials of procedures by individual insurers must be kept by iCare or SIRA, and these figures must be made publically available to allow monitoring of the scheme and to allow choice of insurer or accountability of a monopoly insurer.

A more detailed critique of WC and CTP insurance exists in Dr Chesterfield-Evans' submission to the Haynes Royal Commission into Banking and Financial Services and this is also submitted for the attention of the Review.

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Recommendations:

1. That SIRA acknowledge that it cannot set premiums as suggested in the terms of reference without examining whether the current level of treatment refusals is reasonable and justified.
2. That SIRA constitute a New Inquiry with broader terms of reference and an independent chair, preferably with links to the treatment sector rather than the financial sector.
3. That SIRA conduct independent investigations on claims denials, both of the initial claim and of treatments and referrals and publishes such figures by insurer regularly so that consumers can decide on a fact basis which insurer to choose or a monopoly insurer can be held to account.
4. That SIRA investigate the delay inherent in the insurance process, collect statistics of this and publish the delays by insurers so that consumers can decide on a fact basis which insurer to choose.
5. That the figures from SIRA of insurer refusals be a central part of the new Inquiry.
6. That SIRA reinforce the position of the NTD and ensure that the NTDs determine the treatment plans, not the insurers or rehab professionals.
7. That Rehab professionals be chosen by NTDs, not insurers so that they act in the interest of the patients not the insurers.
8. SIRA should establish a Stakeholder group composed of a majority patients' representatives, but also doctors, paramedical groups and Unions to assess the effect of policies and the effectiveness of the Workers Compensation and CTP schemes as a whole. There must be funding to allow such groups to contact injured people and to collect and collate information. Funding arrangements must be such that the Stakeholder group cannot have its independent compromised, and it must have the ability to advocate both within and without the framework of SIRA and iCare.

Submission

The first two terms of reference of this inquiry deal with what is merely one component of the function of the Workers Compensation system- its premiums. It deals with how they are set and what changes there might be from new management models.

The fact that changes to premium setting is the first two terms, and that the third merely has everything else in a 'catch-all' third term shows SIRA's preoccupation with its financial outcomes to the exclusion of other aspects of its obligations.

SIRA has to regulate the insurers to see that they deliver a cost-effective insurance to injured workers. This assumes that such a service will actually be delivered, not just that the cost will be minimised. iCare seems to do little to monitor how often insurers deny claims and treatments. If one is injured in anything other than a work or CTP situation, health insurers are obliged to pay for the treatments that the doctors order. In the case of WC (and CTP), insurers can delay and deny treatment at will and the regulatory function of iCare and/or SIRA on this aspect is negligible. The terms of reference of this inquiry are a further indication that the regulation of insurer behaviour is not even on their corporate radar and that they are totally out of touch with the interests of the injured people for whom the whole scheme exists.

The fact that an internal SIRA premium-setting employee is conducting the inquiry reinforces the absurdly narrow focus of SIRA and iCare.

SIRA and iCare merely serve to reinforce the insurers' hand against the interests of the injury victims, as they appear totally unaware of the rate of denials of treatment. iCare may have different subcontracting insurers and may claim to deliver the services. The nature of these arrangements are not clear to outside observers, but what is clear is that the regulators have so abandoned any position of advocacy for the injury victims against insurer profits that they are dangerous. They give an appearance of a regulated system when no such system exists, merely a facilitator of exploitation that would be better abolished than remaining in its current form. Perhaps then tort law or some other alternative could be considered.

Further evidence of the out of touch nature of iCare is provided in its annual report. Its Board has almost no one with any history of patient contact. The report is composed principally of management slogans, boasts and public relations statements. As an example, there is an index of customer relations, which is poorly defined, but is termed NPS, which presumably relates to some commercial survey methodology.

NPS is supposedly an index of customer relationships, but iCare or SIRA have has been extremely difficult to contact with complaints. The website and protocols have referred patients back to the insurer. Most insurers require that the patient contact their immediate case manager, who in practice has little say at all, then someone higher up the hierarchy, before iCare will even get involved. I received an online survey from iCare. This was after I had spoken to Ms Elizabeth Uehling from iCare who had said that they were using the same company that did surveys for Coca Cola and McDonalds. The survey asked how my experience had been with insurers and intended that I give

them feedback, with all my contact details. It was as if the survey was for Coca Cola and any confidentiality did not matter, and the insurer had no control over the life of the person surveyed. Most patients are very frightened of the insurers as they know that a denial will put them into a parlous financial situation. This is why they are unwilling to complain about anything. My own letters to SIRA have led to no useful actions at all and merely state a backing of the insurers. One of these replies had a total of 84 pages, mostly of photocopies. I suspect that the reason the surgery was refused was because the patient, despite his pain had tried to continue his business and been photographed working by a surveillance camera, but naturally this was not mentioned in the 84 pages. The convenient assumption is made that if anyone works, there is clearly nothing wrong with them and no definitive treatment is approved. SIRA then supports this decision, despite receiving retailed medical information about the man's pathology and scan reports. The use of IMEs (Independent Medical Examiners) by insurers to turn the situation into a 'medical dispute' and then define it as beyond the remit of the regulator is an effective technique of insurers to allow them to refuse treatments. IMEs are dependent on pleasing insurers to get work which in the most euphemistic interpretation seems to influence their opinions. Agencies who choose IMEs are also under pressure to come up with doctors who are convenient to the insurers, so doctors working for these may not get work if their opinions are not favourable to insurers.

The delays in the system are inherent in the fact that the insurers have 2 weeks to approve treatments which in any other situation would be implemented as soon as the treating doctor ordered them. It must be noted that this alone means that the WC scheme causes a lot of distress to patients. But many insurance clerks work for home or job share, often working only 2 days per week. So the convenience of the insurer creates delays even within the 2 week time frame the insurer is working less than half the time. The delays caused by insurers checking previous medical records create delays much longer than 2 weeks and appear automatically tolerated by iCare and SIRA as the statutory periods are so long.

My patients feel totally depowered and the fact that iCare can pretend that it has good contact with 'customers' shows either that management are totally out of touch with the patients or that they wish to pretend that all is well when it clearly is not. My own view is that the former explanation is more likely as given the backgrounds of the board and upper management of iCare with an overwhelming preponderance of insurance manages, generic managers, lawyers and wealth manager and the total lack of anyone who actually speaks to patients, with the possible exception of Mark Lennon, a unionist, or Don Ferguson who deals with the long-terms problems of the catastrophically injured or terminal conditions rather than the day to day problems of those who have their e]reasonable treatments refused by venal insurers. These two clearly cannot change the culture of the organisation.

The obvious conclusion is that iCare management are totally out of touch with what is happening and the response of SIRA has been to defend insurers as complying with procedures and having total discretion in their denials, with no input or oversight from SIRA at all. SIRA have told me that they do not collect statistics on what treatments are denied, so are naturally and by definition unable either to compare insurers or to state whether they are meeting their obligations under the Act actually to pay for the treatment of injured people. The State Insurance and Care Governance Act 2015 is

mainly concerned with cost control and as such may undermine the Workers Compensation and CTP acts that try to help injured patients, but it is surely the regulators job not merely to use cost control to render the other Acts meaningless and in practice transfer the treatment costs to Medicare, the Private insurance system and the patient. But this is what is happening, as NTDs try to look after their patients. Presumably it is not in the remit of SIRA and iCare to look at the alternative treatments that NTDs arrange, but it is their job to monitor unreasonable treatment denials by insurers, and this they fail to do. I have drawn this to their attention by writing letters about a number of patients and by giving a submission that I wrote to the Haynes Royal Commission to Carmel Donnelly. Neither of these actions seem to have made the slightest difference to SIRA who have still organised this inquiry, done by one of their own with terms of reference that are minimal. They have made no serious effort to get submissions from patients or treating doctors, so clearly have no real interest in what they think or how they are affected by insurer policy and their non-supervision by iCare and SIRA.

SIRA has manifestly failed in its principal task which is to ensure that people injured in NSW are adequately treated and has instead seen its job as minimising costs of insurance. What should be a system of checks and balances has become one of cheques and bank balances. The boast by iCare that premiums have not risen for 5 years must be recognised as vainglorious idiocy[1]. The cost of treatment has risen faster than inflation; the number of claims has not fallen, so the only way that this could have been achieved is that less money has been paid out in claims. In that there is no analysis of what happens to claims in terms of what happens to patients when their treatment is refused, one can only conclude that iCare do not care about this at all and that their name is as false as their efforts are misdirected. In that SIRA supposedly monitors iCare, iCare's failure is also SIRA's.

A real effort must be made to have patient input, as injury victims are the reason for the scheme's existence. SIRA should survey all injured people independent of iCare and the insurers to monitor how effective the insurance and medical regimes are. NTDs should be similarly surveyed, and other treating professionals, such as rehab, physiotherapists, exercise physiologists and psychologists. The use of organised groups, such as professional bodies, such as colleges of the AMA need to be considered and Unions that collect information on patient outcomes should also have an input. Currently insurers appear keen to deal with patients directly and to by-pass treating doctors to increase their influence on treatments and costs, often using rehab professionals to develop management plans which the treating doctor is then pressured to comply with.

Restatement of Haynes Royal Commission Summary

I attach my submission to the Haynes Royal Commission, which is now a year old and also covers both the WC and the CTP system, which exists in parallel. The submission is still relevant as:

1. SIRA and iCare manage and supervise both WC and CTP in much the same manner, prioritising the cost control approach over the main function of the schemes, which are to treat people injured either at work or by motor accidents.
2. The issues are the same as at the time of writing and the situation has not improved.

[1] www.icare.nsw.gov.au/news-and-stories/five-years-of-premium-stability-and-counting/#gref- attached as Appendix 1

The key aspects that need to be re-stated from that submission are:

1. There are 83 patients whose histories illustrate unacceptable insurer behaviour either with:
    a. Unreasonable denials of investigations or treatment or
    b. Unreasonable treatment of the treating doctor, such as rehab professionals recommending the patient change practitioner to one more convenient to the insurer and failure to provide IME reports that are used to deny treatments.
2. The frequency of denials in a survey of my visits for 2 weeks were that 83% of CTP and 60% of WC patients had had a significant investigation or referral denied. As SIRA states that it does not collect these figures, it has no idea whether my sample is representative or not, and clearly does not want to know.
3. The frequency of denial of WC and CTP amounts to 17% of my billings in one year and 14% in another 6 month period so the insurers are denying all treatment to a significant number of patients. SIRA seems unaware what percentage of claims are denied or how many of these denials are reasonable.
4. A sample of radiology denials from other doctors appears to support the proposition that the rate of denials that I experience is not significantly different from other practitioners, but again, there is no data from SIRA on this.
5. Insurers are behaving far worse than the Banks were shown to be in the Haynes Royal Commission, and the regulation of them by SIRA and iCare is far worse than that shown by ASIC and APRA in their regulation of the banks. There has been regulatory capture of SIRA and iCare by insurance interest in its establishment and management by insurance personnel, and its focus on saving money by not paying benefits when they are clearly necessary.
6. The level of refusals of treatments by insurers has made the insurance schemes of WC and CTP in NSW little better than scams. The premiums were set with projected payout levels, but the lack of supervision and the encouragement by SIRA and iCare has allowed insurers to restrict payouts beyond their wildest dreams. They have taken supernormal profits in a protected market and there has even been a 'dividend' taken by the State government and given back to motorists as a pre-election sweetener. All this has happened at the expense of the patients who have gone untreated, or had their cost transferred to other parts of the health system, Federal, State, private health insurance or the patients' depleted resources.
7. The scheme has massively enriched insurers but mainly represents a transfer of costs from the State WC insurers to the Federal and other health payment systems and SIRA and iCare have aided and abetted this process.

Appendix 1 iCare News Release

Five years of premium stability — and counting

Tuesday 29 January 2019

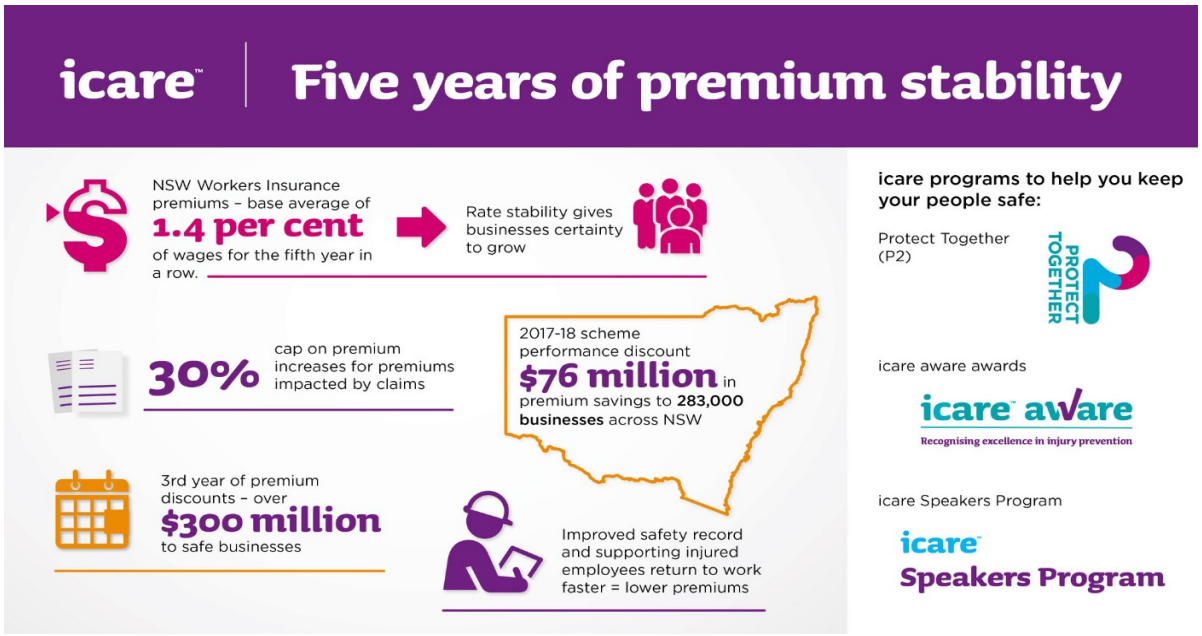
Jason McLaughlin, General Manager Prevention, Products and Pricing talks about workers insurance premium stability and how being safe keeps premiums low.

icare understands how important workers insurance is to NSW businesses, and we're committed to keeping it as affordable as possible. Thanks to a well-performing scheme and the great work NSW businesses are doing to keep their people safe, we've been able to offer five years of premium stability.

This year we're delivering premium savings of $76 million to over 280,000 NSW employers. The savings will benefit businesses in multiple industries, with a large portion going towards construction and manufacturing, industries that tend to have a greater level of risk.

It's the third year running that icare has been able to offer this discount and over those three years we have delivered $300 million in premium discounts. This year workers insurance base average premiums again remained at 1.4 per cent of wages.

This is the fifth year in a row that premiums have been stable at this rate despite the pressures of inflation. Delivering savings means our customers can channel them into things like hiring more staff, investing in efficient technology or initiatives to keep their workers safer.



While we work to keep premiums low and maintain a scheme that is as fair as possible, some businesses may still experience an increase in their premiums from time to time.

If you experience an increase in your premium, it's generally for one of two reasons:

1. Your business has grown (and you're paying more in annual wages)
2. An increase in the number of injuries in your workplace.

To help you manage expenses and invest in improved injury prevention when this does occur, icare has maintained a 30 per cent cap on premium increases.

It's also important to remember that when calculating your premium, icare considers factors such as the industry you operate in, the types of risks you face and your claims experience, as well as how much you pay in annual wages. Changes in any of these factors do impact your premium, which may increase due simply to your business growing.

Work with us to keep premiums low

NSW businesses can keep their premiums low by improving their safety record and supporting their injured employees return to work faster.

icare has been working directly with employers to achieve these goals. We're doing this through our:

- Protect Together program – partnering with businesses who need support with injury prevention and building stronger safety cultures together.
- icare Aware Awards – recognising those who have made efforts to embed a strong safety culture across their business.
- Paralympian Speakers Program - raising awareness of workplace safety through sharing personal stories.

Our Award winners are demonstrating great safety improvements, including considerable productivity gains and reduced injury frequency rates, some by up to 80 per cent. They've in turn kept their premiums up to 50 per cent below the average for their industry by making processes safer and encouraging their people to speak up when something doesn't look safe.

At the end of the day, it comes down to doing what makes sense to keep your business growing and your people safe, and safety makes good business sense. We're keen to partner with more businesses to help them find ways to reduce injuries and keep their premiums low.