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Ms Sarina Fisher
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By email: sfisher@theCIE.com.au

Dear Ms Fisher

Re: Statutory Review of the 2012 Workers Compensation legislative arrangements

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide a submission to the Statutory Review of the 2012 Workers Compensation legislative arrangements.

The Chamber is one of Australia's largest business support groups, with a direct membership of more than 16,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the Sydney Chamber of Commerce, established in 1825, the Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Chamber is a leading business solutions provider and advocacy group with strengths in workplace management, work health and safety, industrial relations, human resources, international trade and business performance consulting.

Operating throughout a network of offices in metropolitan and regional NSW, the Chamber represents the needs of business at a local, regional, state and federal level, advocating on behalf of its members to create a better environment for industry.

As you are aware, the Chamber recently provided submissions to the NSW parliamentary review by the Law and Justice Committee into the exercise of the functions of the WorkCover Authority. We do not intend to revisit the points made in those submissions. We have however provided these for your reference attached as Appendix A and Appendix B.

The Chamber strongly supported the reforms enacted in the *Workers Compensation Act 2012* (the Act). The 2012 changes were necessary to address a number of problems with the workers compensation scheme and to ensure that the scheme was focussed on facilitating the sustainable return of injured workers back into the workplace.

Maintaining a safe work environment is part and parcel of daily business operations for employers and their workforces. Fortunately for most workers and businesses workplace injuries are rare events in NSW and as a result, apart from paying their yearly workers compensation premiums, most employers have very little interaction with the statutory workers compensation scheme. With about 70% of claims by injured workers comprising injuries requiring less than five days absence from work, the system works well for the majority of workers and employers.

However, as a consequence of its complexity and the infrequent interactions of its stakeholders, the NSW workers compensation system still requires further action to ensure it is operating as effectively as possible. It is the Chamber's view that the significant improvements in scheme performance which have been achieved since the 2012 reforms will be at risk, and may well be lost, if operational improvements to embed the 2012 reforms are not pursued. Further changes need to be guided by the need to have a scheme which is fair to both injured workers and employers, provides appropriate levels of support and at a cost which can be sustained and where premiums are not volatile.

While we suggest that further refinement to the legislation is required, in the Chamber's view that is a necessary but not sufficient condition to a fairer and more sustainable system over the longer term. More needs to be done at a system level if the full benefit of the gains made to date are to be realised and sustained for both injured workers and employers. For example, ensuring that there is a free and regular flow of information on scheme performance to stakeholders so debate about the scheme can be properly informed, providing experience rated employers with premium notices that are easy to understand and enable employers to better assess their workers compensation performance and improved service provision, including communications, by scheme agents to assist employers through the process of managing a workplace injury.

Workers Compensation Act 2012

The reforms in the Act addressed a number of underlying issues within the workers compensation system. Although it is too early to adequately assess the long term success of the reforms, the renewed emphasis on return to work as the primary goal of the system provides the basis for a scheme which is fair and balanced and which can combine the dual objectives of appropriate levels of support for injured workers and their employers and affordable premium levels which can be sustained over the longer term.

The Chamber remains strongly supportive of the 2012 legislative reforms however it does appear that some further refinements to the legislation are warranted or should be investigated. It should be emphasised that the following comments have been made in the absence of actuarial advice as to the impact that these measures would have on the scheme if enacted. Consequently, while the Chamber believes the

suggested changes can be accommodated without threatening the gains made, and yet to be made, it reserves its final position on these proposals:

- **Benefits post retirement age** – Weekly payments cease when an injured worker reaches the commonwealth retirement age (currently 65) but workers injured on or after retirement age are eligible for up to one year's weekly payments. Consequently if a worker injures themselves at the age of 64 and 364 days, they are only entitled to one day of weekly payments, whereas a worker who injures themselves on or after their 65th birthday is entitled to up to a years of weekly payments. This appears to have been an unintended drafting oversight and should be corrected. An amendment which provided for up to year of weekly benefits for workers injured after reaching commonwealth retirement age less one year will ensure equitable treatment of workers in the last year of employment before reaching retirement age and those who work beyond that age.
- **Prosthetics, Hearing aids and other ongoing impairment needs** – Some injuries require ongoing repair and replacement of prosthetic limbs, hearing aids and other devices. Because the reforms link the provision of ongoing support to the provision of weekly benefits, there are claimants, who have an ongoing need for support and assistance, who are now ineligible to receive that support. This situation should be revisited with a view to finding ways in which this support can be provided, where warranted, and in a way that does not undermine the intent of the 2012 reforms.
- **30% whole person impairment threshold** –30% whole person impairment is a significant threshold for the continuation of benefits beyond 5 years. The Chamber would not oppose a further examination by Government as to whether this figure is appropriate. That examination however will need to consider how a change in the threshold might impact on long term scheme performance both directly via higher numbers of injured workers being eligible for long term benefits but also indirectly as a result of changes in claimant behaviour.
- **Consultative Council**-The Chamber supported the disbandment of the Work Health and Safety and Workers Compensation Advisory Council. In our view the Council as it was then constituted had reached the end if its usefulness. However we do believe there is an important role that can be played by a ministerial consultative group of key stakeholders (workers through their representative bodies and employers through their representatives).

  Re-establishing an advisory group with these key stakeholders and providing the group with appropriate levels of information and access would provide the Minister with useful feedback on scheme performance and help identify areas requiring attention. Perhaps most importantly history shows the scheme requires continual fine tuning and adjustment.

While some of that fine tuning can be achieved without legislation that is not always the case and an informed debate is more likely to achieve outcomes which both workers and employers can accommodate.

OPERATIONAL REFINEMENTS - WORKERS COMPENSATION SURVEY 2014

To gain a fuller picture of the impact on business of the 2012 reforms and other recent changes on the workers compensation system in May 2014 the Chamber surveyed its 16,000 members. Businesses were invited to comment on their experience with the workers compensation system in NSW and provide feedback and insights as to their satisfaction with the scheme and management of claims. There were over 800 responses.

72% of respondents reported they had an annual workers compensation premiums of $30,000 or less. This is significantly lower than the 95% of NSW WorkCover scheme policy holders who are classified as small employers i.e. employers with basic tariffs of $30,000 or less p.a. Consequently, experience rated employers are overrepresented in this survey. That this should be the case is not surprising given it is experience rated employers who are going to have more interaction with and direct experience of the system.

One third of respondents to the survey indicated that they had made a claim on their workers compensation policy in the last 12 months. Of those businesses that made a claim in the past 12 months, 85% of these businesses had made a workers compensation claim prior to the 2012 reforms and as a consequence were well placed to comment on the improvements or otherwise following the introduction of the 2012 reforms.

75% of respondents who have made a claim post the reforms reported their experience with the management of their claim was good or better. That is an encouraging result however it would be dangerous to assume, based on that result, things are under control.

Respondents were asked what they would most like to change about the workers compensation system in NSW. Their feedback has been collated and grouped together below and is indicative of the main issues businesses face in engaging with the system in NSW.

The issues below have been distilled from answers of respondents who have made claims prior to and post the 2012 reforms i.e. from employers who are in a position to judge what has changed.

Their responses are also reflected in the comments of respondents who have not had recent experience of the system

The issues raised are not new. The matters raised have been identified as problems in the past and they continue to be so identified. Perhaps this is not surprising given how the legislative reform was targeted. However what the comments do show is that much more work remains to be done and without ongoing operational improvements the gains made as a consequence of the reforms will not be fully realised and progress to date may even be undermined.

NOMINATED TREATING DOCTORS

Respondents indicated that their key frustrations with nominated treating doctors were:

- Lack of accountability
- Poor treatment documentation
- Lack of advice on suitable duties for injured workers
- Lack of communication between doctor and employer
- Time delays
- Costs

Respondents suggested that developing more systematic treatment documentation (specifically including advice on suitable duties) and placing a positive obligation on doctors to provide this information would assist in overcoming many of these issues.

> ***"The Doctor should be liaising with employer to facilitate better work outcomes and less time out of the workplace."***
>
> – Medium sized business, Accommodation and food services, Central Coast

RECOMMENDATIONS

- Continuing engagement with the medical profession by WorkCover including support for the campaigns focusing on the health benefits of work
- Continued data mining to identify outlying medical services providers with appropriate action being taken against those who are abusing the system
- Consider a hotline in conjunction with the medical profession where employers can lodge complaints about nominated treating doctors and other medical service providers
- Consider if statutory obligations on treating doctors need to be strengthened

SCHEME AGENT PERFORMANCE

While the performance of scheme agents has improved over time, respondents continue to report a lack of customer service focus, poor case management and inadequate communication. Some of the issues identified included:

- No updates on the progress of claims
- Lack of proactive communication from scheme agents
- Poor follow up of issues with treating doctor
- High rollover of claims staff (e.g. four or five having worked on a single claim)
- Poor practices at the initial stage of a claim (e.g. agents failing to notify employers of claims made directly to the agent)
- Failure/reluctance to pursue fraudulent/exaggerated claims. This issue can occur at the start of a claim and as the claim develops.

With a workplace injury being a relatively rare event for most employers, a number of suggestions were made that more needs to be done by scheme agents to target assistance towards those employers going through a claims process for the first time. Identifying such employers and undertaking a more detailed claims management approach may assist in these circumstances. Mechanisms such as a claims tracking system that alerted the business as to the progress of their claim at key points, should be considered. We note that larger employers i.e. those with premiums above $150,000 p.a. are likely to have access to an account manager, while smaller experience rated employers do not and as a consequence many are unclear as to how to best operate within the system and the services they should reasonably expect from their agent. Poor claims management is often cited by members as the reason for extended claims durations. The impact of which is felt by both the injured worker and the employer, the former by being absent from the workplace longer than is necessary with corresponding economic and social costs and the employer through increased premiums and on-going business disruption.

A number of respondents expressed frustration that not enough was being done by scheme agents in challenging obviously fraudulent or exaggerated claims.

Respondents also suggested that scheme agents need to be doing more to investigate the impact of pre-existing injuries from prior incidents on current claims. Scheme agents should be taking all necessary steps to ensure they are satisfied the injury occurred at the place of work and is not an aggravated prior injury or an off-site injury not occurring in the workplace.

> ***"Insurers need to be open and upfront with the business about the claim. Taking on an education role to ensure the employer understands all aspects of a claim and what it means to them (even if this is just telling them to get independent advice). They need to be proactive in moving a claim along"***
>
> - Medium sized business, Health care and social assistance, New England

RECOMMENDATIONS

- Increase the required level of support and communications provided by Agents, to employers particularly those employers who experience claims infrequently.
- Require agents to act promptly when an employer provides adequate information with respect to fraudulent and exaggerated claims
- Develop and publicise a mechanism by which employers can seek premium reductions when claims costs are inflated by poor claims management. Ideally to hold agents accountable that recovery should be from the claims agent not the scheme. (There is a premium appeal system in place however it is lengthy and generally only activated at premium renewal time which means employers are required to pay premiums while the appeal is determined). Care will have to be taken in the design to avoid or minimise the opportunity for gaming strategies.
- In the longer term, consideration should be given to the introduction of a centralised database to be used by all agents, specialised and self-insurers. The system should be designed so agents and others can 'bolt-on' their own proprietary systems where they wish.

PREMIUM NOTICES AND CALCULATIONS

Employers have consistently expressed concern that premium notices are difficult to understand. It is also clear many employers are also unaware of how the premium system operates.

Changes in 2013 mean premiums for most businesses are not directly affected by claims experience consequently forecasting future premiums is relatively straight forward provided there are no sudden and unexpected changes in industry tariff rates and or payrolls. That is not the case for experience rated employers whose premiums are the result of a complex equation taking into account not only the wages, industry tariff and claims cost of the employer but the employers performance relative to other employers in the same industry. This situation is compounded by the relatively late release of the annual Insurance Premium Order (generally late May /early June) which sets not only industry rates for the coming year but also the Industry Claims Cost Ratios (ICCR) which can be a significant factor

in the determination of the final premium. (Note – June 30 is the most common premium renewal date). The impact of these ratios can be profound.

The 2014-15 Premium Order was released on 30 May 2014. A member of the Chamber has been subsequently advised by their agent that because of changes to ICCRs the member now faces an adjustment premium for 2013/14 in excess of $750,000 and a deposit premium of over $3 million. Prior to the release of the Order the business had been expecting a refund on its 2013/14 premium and a deposit premium of just over $2.25 million. The increases have occurred despite reducing claims costs. These are massive imposts on the business which it became aware of only days before the Board was to approve its 2014/15 budget. The business must now recast its 2014/15 plan.

Respondents have directly raised the following issues:

- They were not aware how a claim would impact on their premium calculation for the following year.
- They should receive a discount or refund on their premium if they had not made a recent claim (experience rated employers with history of zero of low claims do in fact get a "discount" but identifying that "discount" on the premium notice is not easy).
- Several employers indicated that a common renewal date that aligns with the financial year would benefit their business. (This facility was offered to employers as part of the 2013 package of reforms so it would seem the communication of this message has been incomplete.)
- Claims cost being calculated on the estimated not the actual cost of claims

These responses indicate that many employers are unaware how the current premium system works.

RECOMMENDATIONS

- Provide clear, well-constructed and informative premium notices and premium advice identifying how an individual premium is calculated. Premium notices should also provide employers with information on how they are performing relative to their peers in the industry and how their comparative performance may affect their premiums
- Premium notices to clearly identify "discounts" for those employers with zero or low claims.
- Agents to advise employers of the estimated premium impact of a claim when it is first accepted by an agent.
- Agents to provide regular reports to all experience rated employers with active claims on the progress of the claims, their estimated costs and impact on premiums.
- Find ways in which the IPO can be issued earlier.

- Consider lagging the impact of ICCRs so that employers can better budget and take action to mitigate any negative impact. For example release ICCRs to apply from 30 June in December of the preceding year.
- That WorkCover work with agents to develop and publish industry based benchmarking data which will enable employers to compare their performance relative to their industry peers. (Note this needs to be done on a scheme wide basis as most agents do not have sufficient market share for individual agent specific data to be meaningful),
- Re-offer the opportunity for employers to move policy renewal dates.

RED TAPE REDUCTION

Respondents to the survey indicated frustrations with the level of red tape in progressing claims and premium renewals. Respondents indicated:

- The length of time and effort involved in completing forms for minor claims is reported to far outweigh the seriousness of the claim
- The online premium renewal process still requires significant time and effort to make sure it is lodged correctly
- Information provided for a claim or premium renewal is often duplicative

RECOMMENDATIONS

- A centralised online database to allow WorkCover and Scheme agents to access information provided elsewhere by an employer would help to significantly reduce duplication.
- Re-offer the opportunity to move renewal dates

PERSONAL RESPONSIBILITY OF WORKERS AND RETURN TO WORK ACTIVITIES

Respondents to the survey indicated that they believed employees should take a greater level of responsibility for their own actions at work and in return to work activities and their comments included:

- Employees often refuse to participate in return to work activities
- Some respondents indicated that while they wished for employees to return to work sooner, due to the nature of their industries (such as agriculture or manufacturing) the lack of suitable duties made it difficult to bring an injured worker back to work
- Statutory pre injury earnings act as a disincentive to return to work for those workers that have suffered a workplace injury prior to the commencement of the new scheme. The problem arises from the fixing of a pre –injury earnings for part –time and casual employees with injury dates prior to commencement of the 2012 reforms

RECOMMENDATIONS

- Require agents to be more pro-active when injured workers do not participate in return-to-work programs. Consolidated data on this activity should be reported. Publicly available information, depending on the results would help build the trust of employers in the system and reinforce the message to claimants that they also have obligations. There is a risk this may also result in higher disputation however that risk should not be used as a reason not to enforce the law.
- Ensure agents advise all employers of all relevant return to work assistance programmes available from WorkCover
- Revisit the pre injury earnings pre–reform claims to see if anything can be done to remove anomalous situations

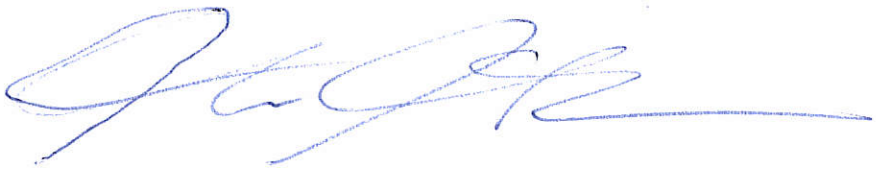
OTHER MATTERS

How employers and injured workers view the scheme is in part conditioned by the terminology which is used with respect to the scheme. While it would require the overturning of long-established practices consideration should be given to two changes.

The first is to remove or lessen the use of the term "compensation". In common parlance compensation most often refers to the payment of money to make good for some wrong or loss or in return for services. While that does occur within the scheme it is not its primary purpose. The purpose of the Scheme is set out in the Workplace Injury Management and Workers Compensation Act. The overwhelming focus of those objectives is on injury management and return to work and the provision of income support and services to assist that return to work. It would assist the positioning of the scheme in our view if the words "Workers Compensation" were removed from current title and the Act renamed to the Workplace Injury Management Act to better reflect the Act (and by consequence the scheme's) purpose.

The second change would be to remove the word "insurance". While the scheme is run and funded using insurance principles it is unlike other insurance schemes employers commonly interact with. It is not uncommon to have experience-rated employers complain that the scheme isn't insurance it is really a time payment scheme and at the ultimately they pay for all their claims costs plus more.

For more information regarding the Chamber's submission, please contact Craig Milton on (02) 9458 7913 or craig.milton@nswbc.com.au



For Paul Orton
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