


Submission for the *Claims Administration Manual and Guidelines Review*: State Insurance and Regulatory Authority

SUBMISSION | MAY 2018



Workers Compensation Claim Form

Personal Details

Your first name and initial _____ Last name _____ Document No. 38520-1
Nationality _____ Phone Number _____ Number 1 _____
Address (street and number), see instructions. _____ No. _____ Number 2 _____
City, town, street and ZIP code, see instructions. _____ The number above is required.

▶ Checking a box for confirmation (See instructions on page 12) You Spouse

Status Single Married Divorced Others Yes No

Check only one box.

Income 1 It is a process to allow an organization to focus resources on the greatest

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Overview

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide a submission to the proposed Claims Administration Manual and Guidelines.

The Chamber is one of Australia's largest business support groups, with a direct membership of more than 20,000 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.

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Note

Given the current work being done on designing a new dispute resolution system for workers compensation purposes, the Chamber's submission will be confined to those aspects of the claims administration process that precede any dispute processes.

The Chamber also recognises that the scope of this consultation does not extend to legislative amendment and has omitted any recommendation for legislative change from this submission.

Introduction

Three significant issues of concern for the Chamber's members are:

1. Prevalence of 'bogus claims' being accepted by the Nominal Insurer.
2. Lack of consultation and/or communication between stakeholders (namely, the employer, the worker, the insurer and the treating medical practitioners) during claims, rehabilitation and return to work processes.
3. Difficulties associated with administering the weekly payroll processes required under the workers compensation legislation (in addition to the employer's normal payroll processes).

The Chamber notes that Section 192A of the 1987 Act permits a Claims Administration Manual ('CAM') to cover topics such as:

- The 'proper investigation of liability' for claims.
- Making provision for the liaison between insurers and employers in relation to matters such as the provision or arrangement of 'suitable employment' for injured workers.
- Procedures to be followed before a claim is made.

The Chamber also notes that SIRA has statutory power to give insurers directions regarding procedures to be followed in the administration of any claim or class of claims, including specified processes, procedures, strategies and policies.

With these aspects of the legislation in mind, the Chamber's submission will include, where possible, specific recommendations to address what it believes to be the shortfalls that currently exist in the claims administration processes being followed by the Nominal Insurer, icare.

'Bogus' Claims

By 'bogus' claims, the Chamber's members are referring to two scenarios.

First of all, the acceptance by the Nominal Insurer of claims that employers believe to fall within the meaning of 'fraudulent' as provided by sections 235A to 235D of the 1998 Act.

Secondly, circumstances where the Nominal Insurer has refused to consider evidence offered by the employer where such evidence refutes one or more aspects of the injured worker's claim (including the manner in which the injury was obtained). This is despite the fact that evidence put forward by the employer specifically addresses one or more of the statutory pre-requisites to liability as outlined in Part 2 of the 1987 Act.

The Chamber has feedback from members on incidents where the Nominal Insurer has failed to properly or transparently consider relevant evidence on the bona fides of a claim. We are concerned this has become a systemic issue and requires immediate attention.

Trust is essential to the effective operation of the workers compensation scheme and in ensuring that positive safety behaviours of both employers and workers are encouraged.

The Chamber is concerned that insufficient attention is being given to the concerns of employers regarding the integrity of an injured worker's claim or the evidence (such as surveillance materials) being provided by employers in relation to a purported workplace injury. Failure to consider the concerns of employers will significantly erode the level of trust in NSW's workers compensation and the workplace safety system as a whole.

The Chamber's Proposed Solution

As the legislation currently stipulates the features that are required to be present in order for an injury to be regarded as compensable under NSW's workers compensation legislation, the Chamber submits that a CAM must require the notification process for both workplace injuries and claims to include the following steps:

- 1. All injuries and claims to be notified by way of a **prescribed form** that addresses all of the relevant requirements of the legislation (for example, the factors listed in sub-section 9A(2) of the 1987 Act).*
- 2. Where the completed form has been lodged by one party (for example, the worker), **a copy of that (completed) form be provided to the other party** (for example, the*

employer) together with an explanation and advice on mechanisms for challenging the allegations contained in that notice.

- 3. Once a decision has been made by the Nominal Insurer in relation to the information provided by both parties, it should provide written notification to both parties of its decision to accept or reject liability and that **written notice should include the reasons for the decision**, such reasons to be cross-referenced to the evidence provided by both parties.*

The lack of consultation and/or communication between stakeholders following acceptance (provisional or otherwise) of a claim

Feedback from Chamber members suggests that once a claim commences, there is limited consultation and communication between stakeholders (for example, a common complaint is that nominated treating doctors refuse to communicate with employers).

This makes it difficult for employers to discharge their statutory obligations as they are simply not sure what to do or by when.

This issue has been exacerbated by the lack of active claims management on the part of the Nominal Insurer which has been a constant feature since early 2017, when the transition from 'scheme agents' to 'claims agents' commenced.

The Chamber's Proposed Solution

The Chamber submits the CAM should identify milestones to be reached by particular stakeholders throughout the claims administration process (preferably linked to the nature of the worker's injury) and stipulate the minimum requirements for formal notification between all the stakeholders in relation to the passing of each of those milestones.

Difficulties with administering an injured worker's payroll

The legislation provides for the payroll for each injured worker to be calculated on a weekly basis commencing on the date of the injury.

For a five-day working week, this could result in an employer having to perform five different payroll calculations in addition to their normal payroll.

In addition, members who use the services of off-site payroll providers have advised of difficulties in integrating workers compensation calculations with their normal payroll processes. In order to manage the payroll of their injured workers in accordance with the requirements of the workers compensation legislation, these members need to extract those workers from their usual payroll system and manually perform the different payroll calculations for each injured worker.

Many report that, especially with the departure of those scheme agents who have proactively assisted employers with these administrative processes, it is simpler to keep paying the worker their pre-injury wages and delay the submission of the necessary paperwork to the Nominal Insurer.

Having to conduct payroll processes in this manner creates an undue and unnecessarily onerous administrative burden on those businesses who have injured workers who are receiving weekly benefits under the workers compensation system.

The Chamber's Proposed Solution

Although the Chamber recognises that the solution to this problem lies in amending the legislation, we submit more could be done, on the part of the regulator and Nominated Insurer to assist employers with this administrative process.

If you wish to discuss any aspect of this submission, please contact Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation by telephone on (02) 9458 7078 or by email to elizabeth.greenwood@nswbc.com.au.