



3 February 2014

The Hon. David Clarke MLC
Chair
Standing Committee on Law and Justice
Parliament House
6 Macquarie Street
Sydney NSW 2000

Dear Mr. Clarke,

Re: Review of the Exercise of the Functions of the WorkCover Authority

The NSW Business Chamber (“the Chamber”) welcomes the opportunity to make a submission to the Review of the exercise of the functions of the WorkCover Authority.

As you may be aware, the Chamber is one of Australia’s largest business support groups, with a direct membership of more than 15,000 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.

The Chamber works collaboratively with NSW WorkCover on a number of workplace health and safety and workers compensation initiatives. The Chamber also regularly engages with the Authority on issues impacting on our members to achieve a regulatory framework that not only supports safe, healthy workplaces but also increases the competitiveness of NSW.

Terms of Reference

(a) To monitor and Review the exercise of the authorities and their functions

As a general observation, the Chamber notes and applauds the steps taken by WorkCover NSW over recent years to change the way in which it undertakes its obligations with respect to both work health and safety and workers compensation.

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NSW Business Chamber Limited
140 Arthur Street
North Sydney NSW 2060

ABN 63 000 014 504

Locked Bag 938
North Sydney NSW 2059

DX 10541 North Sydney

t 13 26 96

f 1300 655 277

e navigation@

nswbusinesschamber.com.au

Regional Offices ACT, Central Coast, Central West Orana, Hunter, Illawarra, Mid North Coast, Murray-Riverina, New England, North West, Northern Rivers, North East Sydney, North West Sydney, South East Sydney, South West Sydney

Until relatively recently NSW, employers had been placed in an adversarial position with WorkCover. Instead of working collaboratively with employers to build safer workplaces, the approach of WorkCover had been overly antagonistic, focusing on forcing compliance through fines and other punitive measures, rather than working with business to deliver on the ultimate policy objective of regulation in this area of building safer workplaces.

Perhaps paradoxically that approach, while characterised by some as resulting in NSW having the highest safety standards in Australia, did not result in NSW having the best safety outcomes or the best rate of improvement in terms of safer workplaces.¹

Similarly workers compensation has been regarded as unbalanced, open to abuse and reliant on punitive not positive incentives with small to medium employers being particularly vulnerable in the event of a significant workers compensation claim (s).

WorkCover has taken significant steps in recent years to build, and refine an improved corporate culture. This has been achieved through a number of initiatives including:

- Being clear about its mission and its impact on the NSW economy²
- Placing greater focus on positively engaging with businesses as the preferred way to achieve safer and more productive workplaces and effective recovery and return to work by injured workers
- Providing targeted support to 'high-risk' industry sectors
- The introduction of community relationship officers who provide mentoring and coaching services
- Improving its communication and engagement with small business at a local level by developing a small business strategy and revised communications strategy.

The 'new' WorkCover remains a work in progress. While member feedback indicates that employers who have interacted with WorkCover in more recent times have noticed a difference, this is not universally the case. It is important the Authority does not lose momentum and builds on the positive progress which has been made so far. It has a significant negative legacy to be addressed and most employers businesses have little or no direct interaction with WorkCover and only limited

¹ A comparison of NSW WHS outcomes and enforcement activity demonstrates NSW, despite historically having more prosecutions and collecting more fines than all other Australian jurisdictions combined did not have the best WHS outcomes. In more recent years more highly targeted prosecution activity combined with greater emphasis on pro-active interventions by WorkCover has coincided with a marked improvement in NSW safety performance -see *Comparative Performance Monitoring Reports – Safe Work Australia*.

² WorkCover Authority of NSW, Annual Report 2012-13

<http://www.workcover.nsw.gov.au/formspublications/publications/Documents/workcover-authority-annual-report-2012-2013-1116.pdf>

exposure to the workers compensation system so it will take some time for the message to be promulgated.

This is particularly the case with small and medium businesses which often find meeting their work health and safety and workers compensation obligations challenging.

Providing businesses with relevant and tailored communication for their industry or business size has been the main focus underpinning the introduction of Workcover's Small Business Strategy which has been developed with direct stakeholder engagement. WorkCover has committed to deliver customer-focused and user-friendly products, services and programs. Sensibly it will also utilise the established and trusted networks of industry and business associations to help deliver simple tailored messages and provide services through a variety of appropriate channels.

While there have been some significant steps in the right direction, there are a number of perennial problems which need to be addressed by the Authority. One of these being that WorkCover does provide employers with rulings on whether or not a person is a worker or sub-contractor for workers compensation purposes. That service provides some comfort and protection for employers but it also involves a fair amount of paperwork. WorkCover did have an online service, which while not providing formal rulings, enabled employers to get an indication of a likely outcome. It is our understanding the on-line facility was closed as it was generating incorrect outcomes. It should, however be fixed and reinstated.

A final observation relates to the communication challenge faced by WorkCover. There are over 290,000 employing businesses registered in NSW, and there are around 300,000 workers compensation policies on issue. As a recent matter dealt with by the Chamber demonstrates³, WorkCover while improving still has some way to go when it comes to communicating with stakeholders.

Perhaps the WorkCover story is best summarised by the observations of one chamber member whose construction business operates in regional NSW:

There are people within WorkCover who have the required positive values (ethics, morals, professionalism, intelligence, wisdom, understanding) to make the necessary changes or allow the necessary changes to be made.

There is a lot of work remaining to be done within WorkCover in terms of training personnel or deploying them elsewhere. As industry participants we can assist with this process by maintaining good work relationships with senior personnel.

³ An employer whose employees worked in two states took out workers compensation policies in both states. An audit by WorkCover NSW resulted in the employer being found non-compliant because of its failure to apply cross border arrangements. The employer was aware of those arrangements but at no stage had it been advised their application was mandatory. This was apparently a change which occurred post the commencement of cross border provisions. The matter was satisfactorily resolved however the business was placed at risk because of the combined effect of unpaid premium, penalties and interest.

(b) To monitor and review the exercise by any advisory committees, established under section 10 of the Safety, Return to Work and Support Board Act 212, of their functions.

The Work Health and Safety and Workers Compensation Advisory Council was discontinued as part of the 2012 reforms. The disbanding of that body was supported by the Chamber. There can be little doubt that it was too big and unwieldy and in its later years not adding value when compared to its earliest form when it was smaller and with members drawn from representatives of employers and employees.

It is the Chamber's view serious consideration should be given to the re-establishment of an advisory body, along similar lines to the original Workers Compensation Advisory Council⁴, to provide advice to the Minister on both WHS and workers compensation issues.

(c) to report to the House, with such comments as it thinks fit, on any matter appertaining to the authorities, and the advisory committees, or connected with the exercise of their functions to which, in the opinion of the committee, the attention of the House should be directed

See previous comments

(d) to examine each annual or other report of the authorities and report to the House on any matters appearing in, or arising out of, any such report

The Chamber notes that in recent years the publication of the full 6 monthly actuarial valuations of outstanding claims liability for the NSW Workers Compensation Scheme has been discontinued with only the Executive Summary published.

Workers compensation schemes are complex and recent history shows vigilance is required to ensure deterioration in scheme performance is identified and acted upon promptly and effectively. The scheme valuations are a key piece in this monitoring process and the Chamber is of the view the full valuations should be made available so stakeholders can better understand what is happening within the scheme and make informed contributions to the debate that inevitably comes with proposals for change.

(e) to examine trends and changes in compensation governed by the authorities, and report to the House any Changes the committee thinks desirable to the functions and procedures of authorities, or advisory committees.

Workers Compensations Scheme Reform

⁴ Workplace Injury Management and Workers Compensation Act 1998 Chapter 2 Part 1

The reform of the Workers Compensation Scheme, in particular, has been successful, with a reduction in workers compensation premiums for many industries and the Scheme returning to full funding with a surplus of \$309 million at the end of June 2013.

The turn-around in performance has enabled two targeted premium reductions.

Despite these reductions, average workers compensation rates still remain significantly higher in NSW compared with Victoria and Queensland with average injury insurance premium rates at 1.68% in NSW, compared to 1.298% for Victoria and 1.450% for Queensland. There is still a way to go in ensuring that we have a competitive WorkCover framework.⁵

The Chamber notes that as the scheme has returned to surplus a further Parliamentary review of the Scheme will now take place.

While some changes/refinements are warranted⁶ improvements to date have been encouraging. The Chamber does not believe the reforms have had sufficient time to become fully embedded, consequently any changes need to be carefully considered.

The reform process will be judged to have been successful if it results a scheme which is fair and which has sustainable premium levels which do not result in NSW employers being at a competitive disadvantage.

The Chamber is pleased with the improvements made by WorkCover and its increased focus on working with small business. The shift towards proactively helping employers know and understand their work health and safety obligations, as opposed to strictly enforcing them will ultimately go a great way in ensuring safer workplaces. However, it will take time and a continued effort and commitment by WorkCover to work alongside NSW businesses to ensure that WorkCover's mission is achieved.

⁵ WorkSafe Victoria Media Release, 13 March 2013

<http://www.worksafenews.com.au/component/k2/item/317-worksafe-announces-solid-half-year-results.html>

⁶ For example a worker injured in the year before reaching the commonwealth retirement age ceases to receive weekly benefits upon reaching retirement age whereas a worker injured after reaching retirement age can receive 12 months weekly benefits. Workers injured in the year before reaching retirement age should be entitled to up to a year of weekly benefits

If you require more information regarding our submission, please contact Craig Milton, Policy Analyst on (02) 9458 7913 or craig.milton@nswbc.com.au .

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton". The signature is written in a cursive style with a large initial 'P' and 'O'.

Paul Orton
Director, Policy and Advocacy