

19 June 2018

The Hon. Shayne Mallard MLC
Chair
Standing Committee on Law and Justice
Parliament House
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Dear Mr. Mallard

THE 2018 REVIEW OF THE WORKERS COMPENSATION SCHEME

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide a submission to the Standing Committee on Law and Justice 2018 Review of the Workers Compensation Scheme. The Chamber notes the terms of reference for this Review, are focussed on:

- *“the feasibility of a consolidated personal injury tribunal for Compulsory Third Party and workers compensation dispute resolution, as per recommendation 16 of the committee’s first review of the workers compensation scheme, including where such a tribunal should be located and what legislative changes are required.*
- *recommending a preferred model to the NSW Government”.*

The Department of Finance, Services and Innovation’s Recent Consultation Process

On 20 December 2017, the Department of Finance, Services and Innovation released the Discussion Paper *‘Improving workers compensation dispute resolution in NSW’*.

The Discussion Paper specifically refers to the Committee’s First review of the workers compensation scheme and recommendations related to establishing a ‘one stop shop’ for dispute resolution.

The Discussion Paper refers to the Committee’s recommendations 14, 15 and 16 and provides four potential options to establish a ‘one stop shop’ for dispute resolution on workers compensation disputes.

Of the four options contained in the Discussion Paper, Option 4 incorporated recommendation 16 *“That the NSW Government consider the benefits of developing a more comprehensive specialised personal injury jurisdiction in New South Wales.”*

In its submissions dated February 2018, the Chamber supported the development of a single system for resolving personal injury disputes in NSW insofar as they relate to workers compensation (Option 3), as long as it:

- Delivers real efficiencies within the system and improves access to dispute resolution services.
- Appropriately recognises and accommodates for the differences that exist between the different types of disputes that occur within the system.
- Ensures current inefficiencies (for example, the illogical and ineffective sequencing of dispute resolution processes that currently exist in relation to challenging a work capacity decision) are removed from the system.
- Removes any perception of bias.

The Chamber preferred Option 3 over Option 4 as it would:

- Remove many problems that currently exist within the system (for example, the duplication of dispute resolution services and the number of entities operating within the system).
- Not unnecessarily delay the broader reform process (as Option 4 would).
- Still allow for the remaining aspects of Option 4 (and the economies of scale that it may bring) to be introduced in the future.

In addition, the Chamber urged DFSI to include in the design a feature that would accommodate the need for specialists within the system to possess expertise in both physiological and psychological treatments. We believe this is a key issue and should be accommodated within the system.

The Chamber still remains of that view.

On 4 May 2018, the Government announced proposed reforms to the dispute resolution system for workers compensation in NSW. These reforms did not adopt a more comprehensive specialised personal injury jurisdiction as proposed under recommendation 16 from the Committee.

The Chamber's Submissions

A consolidated personal injury tribunal for Compulsory Third Party and workers compensation dispute resolution

The Chamber maintains that with DFSI having recently proposed changes to the process of dispute resolution, any consideration of whether or not to develop a more comprehensive specialised personal injury jurisdiction in New South Wales should be deferred until at least 12 months after the reforms proposed by DFSI have been implemented.

Changes to the workers compensation legislation – dispute resolution-specific

In relation to identifying 'what legislative changes are required' for such a tribunal to be established, the Chamber considers that it is premature to debate such changes, given the need to amend the legislation in order to introduce the proposed dispute resolution system announced by the DFSI.

Changes to the workers compensation legislation – other

1. Section 11A of the *Workers Compensation Act 1987*

Given the recent announcement of the NSW government's 'Mentally Healthy Workplaces' strategy, it will be necessary to strengthen the concept of 'reasonable management action' as prescribed by section 11A of the *Workers Compensation Act 1987*.

The Chamber is aware of a recent incident where an employee had been hospitalised for a personal matter (being a pre-existing physical illness unrelated to work) and, upon returning to the workplace some weeks later, was asked by the employer to undergo a medical assessment.

This request was based on health and safety concerns held by the employer. It wanted to ensure that, following the period of hospitalisation, the worker could continue to safely carry out their work duties.

Shortly after having been requested to undergo a medical assessment, the worker lodged a workers compensation claim for a psychological injury. It was alleged that this injury was caused by the employer's request.

Liability for the claim was accepted with the employer being told that its actions did not fall within the scope of section 11A.


The Chamber recommends that section 11A be extended to include other types of 'reasonable management' actions such as those necessary for an employer to execute its duty to eliminate risks and/or minimise risks to a person's health and safety in the workplace so far as reasonably practicable.

2. The three pieces of legislation relating to workers compensation

The Chamber repeats its call for the three pieces of legislation (being the Workers Compensation Act 1987 No 70, Workplace Injury Management and Workers Compensation Act 1998 No 86 and the State Insurance and Care Governance Act 2015 No 19) to be amalgamated, given their common policy objectives and current ability (in their present form) to confound those trying to navigate NSW's workers compensation system.

For more information regarding the Chamber's submission, please contact Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation on (02) 9458 7078 or Elizabeth.greenwood@nswbc.com.au.

Yours sincerely,

A handwritten signature in black ink that reads "Chris Lamont".

Chris Lamont

Director, Policy and Advocacy