



19 March 2015

Mr Kim Garling
WorkCover Independent Review Officer
Level 4, 1 Oxford Street,
Darlinghurst NSW 2010

By email: parkesproject@wiro.nsw.gov.au

Dear Mr Garling

Re: Parkes Project Submission

The NSW Business Chamber (“the Chamber”) welcomes the opportunity to provide commentary on the issues raised in the Parkes project discussion paper. We apologise for the delay in submitting this feedback.

As you may be aware, the Chamber is one of Australia’s largest business support groups, with a direct membership of more than 17,000 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, through consultation with members with specialist experience in workers compensation, has identified several areas of concern in relation to the current workers compensation system. These issues have been set out below:

Amalgamation of the Acts

While members were in principle supportive of the proposal to amalgamate the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, the Chamber is concerned that the process to bring the legislation together will be overly resource intensive and may unintentionally result in further ambiguities being created.

We further note that the expressed intent of the Parkes review is to remain “policy neutral” however the process of combining the two acts would require an

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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@](mailto:navigation@nswbusinesschamber.com.au)

nswbusinesschamber.com.au

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assessment to be undertaken of the merits of retention or deletion of certain sections, benefits and definitions which would by necessity require policy consideration.

Return to Work

With studies consistently demonstrating that injured workers recover best at work, ensuring return to work processes are as efficient as possible needs to be a key focus for the Parkes Review. However, as we identified in our submission to the 2014 Independent Statutory Workers Compensation Review, this needs to be balanced with the capacity of business to bring workers back into the workplace. While employers of injured workers would like employees to return to work sooner, there are some industries such as agriculture or manufacturing where there are fewer opportunities to provide suitable duties making it difficult to bring an injured worker back to work.

In that submission, we also noted that the calculation of statutory pre-injury earnings can 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 pre-injury earnings for part-time and casual employees with injury dates prior to commencement of the 2012 reforms. We recommended that pre-injury earnings relevant to pre-reform claims be revisited to see if anything can be done to remove anomalous situations.

The Chamber has also received feedback in relation to Work Capacity Decisions. In the view of some members, the current process creates an incentive for insurers to avoid making unfavourable decisions and that decisions of the WIRO are made on overly technical grounds. With the work capacity process being relatively new, some of these concerns may be related to the new system bedding down however, with employers relative bystanders in the process, some of these concerns may come back to general communication issues between employers, insurers and the WIRO.

WIRO's most recent Periodic Performance Review provides the following table measuring case outcomes from work capacity procedural reviews:

Case Outcome	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Totals
Case Withdrawn	0	0	0	1	0	1
WCDR Upheld	7	37	29	17	10	100
Dismissed	0	7	14	1	12	34
TOTAL	7	44	43	19	22	135

While December 2014 saw for the only time in the reporting period more cases dismissed than those upheld (i.e. there were more cases where it was found that the correct procedure was applied by insurers in making a work capacity assessment) over the full period measured in only 30% of cases was the correct procedure applied. The Chamber expects that as insurers improve and refine their work capacity assessments the number of cases where the proper process is applied

will increase. It would assist in assessing how improvements are being implemented through the release of the full year's data on cases. We note however that the WIRO's 2014 Annual Report is still unavailable.

Although the WIRO does report on work capacity decisions, and insurers are working to ensure that their procedures are correct, employers are often left with a decision in limbo trying to decipher a complex procedural review process. Clearer information targeted towards employers on the work capacity review process should be developed and delivered by the WIRO (and shared with insurers) to help better inform employers on these reviews.

In discussions with employers, concerns with Injury Management Plans were also raised. Employers indicated that current Injury Management Plans are resource intensive, ineffective and unenforceable. Employers have advised the Chamber that they believe that these plans add no value to the outcome even in successful return to work cases.

Claims Process / Claims Management

Members have expressed concerns to the Chamber that the basis of remuneration for Scheme Agents is inadequately linked to their performance in claim outcomes. In the Chamber's view Scheme Agents should have their performance incentivised to reduce claims costs Members have also indicated that Agents have been reduced to bureaucratic box ticking where innovation in managing claim issues is effectively discouraged.

The Chamber has also previously raised the need for the performance of nominated treating doctors to be examined. Feedback from members on nominated treating doctors indicated there is

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

Identifying ways to address these concerns, including by increasing statutory reporting obligations on treating doctors, would be welcomed by the Chamber.

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



Paul Orton
Director, Policy and Advocacy