

23 November 2018

Mr Darren Parker
A/Executive Director
Workers and Home Building Compensation Regulation
State Insurance Regulatory Authority (NSW)
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Dear Mr Parker

CONSULTATION DRAFT: WORKERS COMPENSATION GUIDELINES

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide comments to the draft *Workers Compensation Guidelines* and *Claims Administration Manual: Standards of practice for insurers*.

The Chamber is one of Australia's largest business support groups, with a direct membership of 20,000 businesses and providing services to over 30,000 businesses each year. The Chamber works with businesses spanning all industry sectors including small, medium and large enterprises.

The Chamber is concerned the proposed Guidelines:

- Do not appropriately recognise the exemption from compensation for psychological injuries caused by reasonable management action provided under section 11A of the *Workers Compensation Act 1987* ("the 1987 Act").
- Do not contain sufficient or provide sufficient employer notification and/or engagement.

Section 11A

Section 11A of the 1987 Act states:

- (1) *No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.*

Feedback from businesses indicates this exemption is being ignored by insurers who are accepting claims without considering whether section 11A may apply.

The Chamber maintains it is not acceptable to continue the current practice of commencing provisional payments while a factual investigation is being conducted for section 11A claims.

The Chamber recommends Part 2 of the Guidelines be amended to include a provision to delay the start of provisional weekly payments for claims under section 11A until a factual investigation into the claim has been completed.

This amendment is required to ensure compliance with the Act and will help restore employer confidence in the NSW workers compensation system.

Employer Notification and Involvement

As raised with State Insurance Regulatory Authority (SIRA), the Chamber is concerned with the number of complaints raised in regard to insufficient communication and consultation with employers in relation to claims.

The Chamber would like to see a greater commitment from SIRA to recognise the importance of the employer's role as key stakeholder in the NSW workers compensation system by making amendments to the Guidelines to promote an enhanced level of notification and consultation.

The Chamber submits that the following sections of the Guidelines need to be strengthened in this respect:

- Initial notification of injury – last paragraph on page 7 – *"(and the worker, if possible and the employer, in the event the employer was not the notifier)."*
- 3.2 Signed Authority – first paragraph on page 10 – *"This signed authority authorises the sharing of information between service providers, the employer and the insurer"*
- 5.1.1 Work capacity assessment schedule – last paragraph on page 18 – *"Before the insurer does these assessments, it must notify the worker and the employer in writing."*
- 5.3 Requirement to attend work capacity assessments – second paragraph on page 20 – to include a notice to the employer and rehab provider (if applicable)
- Part 6 Injury management consultants – the guideline needs to be amended to:
 - Allow the employer (or the rehab provider, as the employer's representative) to participate in the discussions being held between the injury management consultant and the nominated treating doctor.

- Delete the words '*where involved*' in the third dot point of the second paragraph under 6.5.
- 7.5 Notice to the worker – to include a provision requiring a copy to be sent to the employer.

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

Yours sincerely



Chris Lamont
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