



30 November 2015

Mr Anthony Lean
Chief Executive
State Insurance Regulatory Authority

By email: 2015benefitsreform@sira.nsw.gov.au

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Re: Regulation of Legal Costs for work capacity decision reviews

Dear Mr. Lean,

The NSW Business Chamber (the Chamber) appreciates the opportunity to provide feedback to the State Insurance Regulatory Authority (SIRA) on the regulation of legal costs for work capacity decision reviews.

As you may be aware, the Chamber is one of Australia's largest business support groups, with a direct membership of more than 19,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the establishment of the Sydney Chamber of Manufactures in 1825, the Chamber works with 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.

At the outset the Chamber, continues to question the basis upon which [REDACTED] review [REDACTED] as it put forward in earlier discussions with SIRA's predecessor WorkCover and the Parkes Inquiry conducted by the Workers Compensation Independent Review Office (WIRO), the Chamber's view is that [REDACTED] and processes surrounding workers compensation [REDACTED] using, this, in itself, does not justify the greater [REDACTED] in the system. Instead, where confusion and [REDACTED] these frameworks, steps should be taken to simplify and address them at a policy or system level.

Work capacity assessments were established as a means to provide a systematic and efficient system of tiered reviews to ensure that workers who are capable of recovering from an injury at work do so. The main focus and outcome of a work

For these reasons, in principle, the Chamber does remain opposed to the further participation of legal professionals in workers compensation matters.

Given however that as a result of legislation having passed which allows SIRA to draft regulations in relation to the role of legal costs for work capacity and its intention to do so, the Chamber has considered a potential framework and suggests that the regulation should limit the legal costs recoverable in relation to work capacity decision reviews and costs should not be recoverable where they are incurred from:

- An internal review;
- A merit review;
- Any review that results in a recommendation to not change the original decision; and
- Any review where legal services are not provided by an approved provider.

The Chamber supports effective primary decision-making by insurers and regulatory mechanisms that discourage reviews being requested where it is clearly apparent that the review will not find fault with the procedure of the decision. This ensures that there is no wastage of resources on frivolous requests and that more resources are dedicated for reviews that raise legitimate and worthy concerns.

If the regulation is created, it should be reviewed within two (2) years and costs consistently monitored to ensure any adverse impacts on the workers compensation scheme are addressed as soon as they are identified.

In addition to the points made above, the Chamber strongly supports an innovative approach to workers compensation regulation and remains committed to ensuring that employers play an active role in creating safe and healthy workplaces and returning injured workers to work. We support further education and awareness raising activities and proactive advice and workplace visits by the WHS regulators to assist businesses in achieving their safety goals.

For more information, please contact Craig Milton, Policy Analyst on [REDACTED] or [REDACTED]

Yours sincerely

[REDACTED]

Paul Orton
Director, Policy and Advocacy