

24 November 2017

The Hon. Shayne Mallard MLC
Chair
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: law@parliament.nsw.gov.au

NSW Business Chamber Lim ted
140 Arthur Street
North Sydney NSW 2060
Postal address
Locked Bag 938
North Sydney NSW 2059
DX 10541 North Sydney
t 13 26 96
f 1300 655 277
e businesshotline@nswbc.com.au

Dear Mr. Mallard,

Statutory review of the State Insurance and Care Governance Act 2015: Questions on Notice

Thank you for the opportunity to contribute to this review. In relation to the two questions on notice, on pages 17 and 22 of the transcript dated Tuesday, 7 November 2017, the Chamber wishes to respond as follows:

The Hon. DAVID CLARKE: *Will you supply the Committee with detailed information on the extent of these bogus claims as you see them?*

Mr BRACK: *Does that mean the names of employers?*

Mr DAVID SHOEBRIDGE: *One case.*

Mr BRACK: *If they are prepared to, yes, we will.*

The Hon. DAVID CLARKE: *Except one swallow does not a summer make. Will you supply more than one case? Will you give the Committee detailed information to show that there are widespread bogus claims out there? I put the same question to Mr Aitken.*

Mr BRACK: *I will take that question on notice.*

The Chamber conducted a member survey during the month of June 2017. In that survey, members were asked to rank different aspects of the workers' compensation system and were invited to provide context by providing feedback in a free text box.

While the survey did ask a broad range of questions in relation to the workers' compensation system, it did not contain a specific question about alleged fraudulent or "bogus" claims. As a result, the feedback received was anecdotal in nature.

448 members responded to the survey and 21 comments were received in relation to "bogus claims". Those comments concerned both a failure on the part of insurance companies to investigate (either adequately or at all) and a tendency for medical practitioners to simply accept the worker's version of events in questionable circumstances.

A sample of these comments are reproduced below:

- *"Injured workers are not managed in terms of compliance and liability is accepted every time regardless of information available to the contrary."*
- *"I disputed the claim and (name of scheme agent) simply went ahead and accepted the claim. I complained that I felt that the claim was false and the employee was 'milking' the system. (name of scheme agent) did nothing. The claim should have been wrapped up in 3 months but the worker remained on w/comp for 12 months. After 9 months I asked for surveillance, only to be ignored."*
- *"(Name of scheme agent) did not consult with us at the outset, when they discovered they were being misled by their client it was to (sic) late for them to go back and let them get away with ripping us off."*
- *"The case manager was not interested in the version of events which occurred in the workers comp case - they only seemed to want to pay out without an investigation. Not sure if this is the correct procedure in w/comp cases."*

As stated during the hearing, while SIRA has a responsibility to assist in the investigation of alleged bogus claims, it can only undertake an investigation once a referral has been made to it by the statutory insurer, icare.

It is the Chamber's understanding that despite a number of our members identifying concerns with claims, few, if any, referrals to investigate have been made by icare to SIRA.

At a scheme level, these issues are of concern to the Chamber as the acceptance of a claim that is arguably false will drive up the costs to the scheme which will then be passed onto employers.

In addition, in a no-fault insurance scheme like workers compensation, a failure to adequately and transparently investigate incidents of alleged fraudulent conduct seriously undermines employers trust in the system and their willingness to support the fundamental driver of the scheme – to return injured workers to the workplace in a timely manner.

Mr DAVID SHOEBRIDGE: *That hard and fast \$30,000 threshold seems to be something that produces a whole lot of adverse consequences—either in employers not employing or being far more aggressive in how they deal with the workers compensation claims or the like. Should there be some sort of sliding scale so that you do not have this harsh threshold? Has that been explored with icare? Maybe you can take that on notice.*

Mr BRACK: *It was \$10,000 once; now it is \$30,000. You might come up with lots of other things that try to ease the move into claims experience cost.*

The CHAIR: *We have to wrap it up.*

Mr DAVID SHOEBRIDGE: *Given we have run out of time, could you take on notice whether a sliding scale might be a way of avoiding that?*

The Hon. LYNDIA VOLTZ: *I ask that each of the organisations answer that question.*

The Chamber has received anecdotal evidence from its members to the effect that the current threshold for determining experience-rated employers can act as a disincentive to businesses taking on more staff to grow and expand their operations.

As a result, the Chamber believes that the introduction of a sliding scale of thresholds (commencing from at least a threshold of \$30,000) that are aligned to different levels of responsibility and liability would be of benefit to the NSW economy.

The Chamber notes that the table of claims performance rates (CPR) currently being used by icare when calculating an experience-rated employer's premium already sub-divides the Basic Tariff Premiums greater than \$30,000.00 into smaller tiers and submits that the publication of this table of rates would have the effect of helping employers understand that a "one-size-fits-all" approach does not apply to experience-rated employers.

If you wish to discuss any aspect of this submission, please contact Elizabeth Greenwood, Policy Manager, Workers' Compensation, WHS and Regulation on

Yours sincerely

Paul Orton
Director, Policy and Advocacy