6 October 2022

The Hon Chris Rath, MLC
Chair
Standing Committee on Law and Justice

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

Dear Mr Rath

2022 Review of the Workers Compensation Scheme - Post-hearing responses - 8 September 2022

Please find attached Business NSW's responses to the Supplementary Questions.

1. In terms of employers' voices being excluded in the first 10-13 weeks of the claims process, what changes do you think should be made to this regarding the workers compensation system?

Exclusion generally

Clear communication with employers must be a priority for improving the first 10-13 weeks of the claims process.

SIRA's Standards of Practice contain its '*expectations for insurer claims administration and conduct*'.

Business NSW supports the publication of these standards. We nevertheless remain concerned at how there is very little focus on the manner in which insurers are required to interact with an injured worker's employer.

Business NSW has, on a number of occasions, asked the Nominal Insurer to provide it with a copy of its procedures for managing claims, especially as they relate to how (and how often) it communicates with employers.

The reason for these requests is to share those procedures with employers to facilitate the management of stakeholder expectations.

To date, Business NSW's request has not been fruitful.

Access to clear communications tools such as checklists and journey maps will go a long way towards helping employers, especially smaller-sized employers, navigate the NSW workers' compensation system.

Exclusion during the first 10 to 13 weeks

In relation to the 10 to 13 weeks aspect of the question, Business NSW continues to receive anecdotal feedback that claims agents typically inform employers that they 'have 13 weeks' before they are required to accept or decline liability and often leave their evidence-gathering activities to the last minute.

This can be attributed in part to the fact that section 11A (reasonable management action) is no longer a 'reasonable excuse' but it does not explain why the claims agents are not turning their minds to the requirements of section 9A (which is a 'reasonable excuse' and requires consideration of whether the workplace has a 'substantial connection' to the psychological injury within the first seven days of the initial notification of the psychological injury).

2. How can the process of dealing with psychological injuries be demystified for employers?

The process of dealing with psychological injuries can be de-mystified through increased training and education accompanied by improved service levels. Clear communication is key.

Consideration should also be given to the provision of mediation services to ensure the channels of communication between the injured worker and their employer are positive and remain open.

a. What needs to change?

The legislation quite clearly requires a high degree of collaboration between stakeholders, particularly in relation to injury management and return to work activities.

The required degree of collaboration is not occurring in practice.

In addition, for psychological injuries, we continue to receive anecdotal evidence to the effect that there is a tendency for the nominated treating doctor to not only recommend time off work but to actively recommend that the injured work never return to their pre-injury workplace again.

More needs to be done to ensure that, not only the benefits of recovery at and/or return to work are promoted by nominated treating doctors and claims agents but that the legislative requirements are adhered to as well.

Yours Sincerely

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