



12 April 2016

Mr. Anthony Lean
Chief Executive
State Insurance Regulatory Authority

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Dear Mr. Lean,

Review of Pre Injury Average Weekly Earnings (PIAWE)

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide feedback to the State Insurance Regulatory Authority (SIRA) on the review of pre injury average weekly earnings (PIAWE).

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.

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 understands that as a result of the passage of the *Workers Compensation Amendment Act 2015* in August 2015 a range of benefit reforms were introduced into the NSW workers compensation system focusing on three objectives:

- helping injured workers with the highest needs
- assisting those with injuries to return to work, and
- applying benefits equitably for all injured workers.

The Chamber is in broad support of these reforms and the objectives that underpinned their introduction. It should be noted however that the Chamber's support for these reforms is predicated on our commitment to advocate for a sustainable and competitive workers compensation system that balances the needs of injured workers and the businesses that support the scheme.

As part of this advocacy, the Chamber has consistently called for a simplified calculation of PIAWE. Feedback from member businesses indicates that current PIAWE calculations are overly complex.

Though previous legislative reforms to workers compensation arrangements from 2012 onwards were intended to simplify PIAWE calculations, feedback continues to suggest that these calculations are confusing for employers and are creating disincentives for injured workers to return to work.

In June 2014, the Centre for International Economics found in their *Statutory review of the Workers Compensation Legislation Amendment Act 2012* that:

“The PIAWE approach is complex and often difficult to calculate, and yet it is still able to generate ‘winners’ and ‘losers’ compared to a more simple averaging calculation that was used previously and is still used by those exempt from the amendments.”¹

Furthermore, the CIE reported that:

“Given the way that PIAWE is calculated, it is possible for injured workers to receive higher weekly benefits on the transitional rate than they would if they returned to work. This directly disincentivises return to work.”

The Chamber has received feedback from member businesses highlighting some of the key issues that employers continue to have in relation to PIAWE.

Casual / Shift workers

In 2014, the Chamber partnered with the WorkCover Authority of NSW to gather employer insights into the workers compensation scheme. A report, *Business Attitudes to Workers Compensation in NSW*², delivered by Newgate Research, highlighted numerous concerns employers had in relation to benefits provided in the NSW workers compensation scheme. Surveyed businesses identified similar issues to those identified in the CIE Report in relation to the PIAWE calculation:

“(PIAWE) was seen to be problematic for casual or seasonal workers who, if injured during the height of the season, may actually receive a higher payment

¹ The Centre for International Economics, *Statutory review of the Workers Compensation Legislation Amendment Act 2012*, (June 2014)

http://www.thecie.com.au/wp-content/uploads/2014/06/Embargo-CIE-Final-Report_NSW-Workers-Comp-Statutory-Review-300614.pdf

² SIRA shared the Business Attitudes to Workers Compensation Report with the NSW Business Chamber. It remains unpublished. Please contact Louise Briffa, SIRA on Louise.briffa@sira.nsw.gov.au for further information on the report.

from workers compensation than their average weekly earnings. Conversely, those who are injured during the off-season will receive a very small compensation that may be disproportionate to the overall time they have worked throughout the year. Another noted that the wages week for workers compensation runs Sunday to Saturday, which often conflicts with the pay schedule of the employer. This creates confusion in calculating the entitlements and in some cases; a worker may be at a financial disadvantage if they're injured on a certain day of the week."

Another challenging issue concerns injured employees who may work for more than one employer. Should an injury occur, the PIAWE applied may be out of proportion with the hours actually worked by the employee.

Disabled employees under supported employment framework

Another significant difficulty employers in the supported employment sector have with PIAWE calculations is that the calculation does not take into account the particular circumstances of a person in supported employment. As a result, in the event of a workers compensation claim these workers receive substantially more than their pre-injury earnings. This goes against the stated objectives of the most recent reforms of the NSW Workers Compensation Act by actively disincentivising a return to work.

Conclusion

It is clear to the Chamber from the examples provided above that the current approach to the calculation of PIAWE is generating some perverse outcomes. These outcomes are likely to act as a disincentive for injured workers to return to work. The NSW workers compensation scheme is built on the proposition that recovery at work is more likely to produce better medical and social outcomes for the injured workers than recovery away from work. It is essential all elements of the scheme design support that proposition including the calculation of PIAWE.

The Chamber encourages SIRA to make changes to the PIAWE calculation and to ensure the changes are communicated effectively to stakeholders including through targeted education and training sessions.

Additionally, changes to the PIAWE calculation need to be monitored to see if the intended outcomes are in fact being achieved and any unintended and/or unwanted outcomes are identified and addressed in a timely manner.



Thank you for the opportunity to contribute to this review. If you wish to discuss any aspect of this submission, please contact Craig Milton, Policy Analyst on (02) 9458 7913 or craig.milton@nswbc.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton".

Paul Orton
Director, Policy and Advocacy