Reform of the NSW workers compensation dispute resolution system

Kim Garling
Independent Review Officer
16 May 2018
Standing Committee on Law and Justice
First review of the NSW workers compensation scheme

March 2017: 3 key recommendations

**Recommendation 13**
The NSW Government investigate removing the distinction between work capacity decisions and liability decisions in the workers compensation scheme.

**Recommendation 15**
The NSW Government introduce a single notice for both work capacity decisions and liability decisions made by insurers.

**Recommendation 14**
The NSW Government establish a “one stop shop” forum for resolution of all workers compensation disputes.
Purpose

> to build a “better dispute resolution system for workers compensation insurance in NSW.”
> “make it easier for claimants to navigate the system and exercise their legal rights when required.”
> “increase efficiency and consistency in the way disputes are resolved”
> Help parties “reach agreement and resolve issues before they escalate”
> Reduce the complexity of the current system and provide “more clarity around the roles of the various government agencies involved”
Scope of the reform process

In scope

> The procedures, roles, responsibilities, and support services used to resolve disputes
> Some legislative change likely to be required
> Complementary initiatives that could be adopted to reduce the overall number of disputes
> Potential system improvements to “make the system run more efficiently”

Out of scope

> Changes to benefits, impairment thresholds and common law rights
The ‘current system’

Roles of the scheme bodies in the current system

<table>
<thead>
<tr>
<th>Scheme bodies</th>
<th>Roles</th>
</tr>
</thead>
<tbody>
<tr>
<td>SIRA</td>
<td>Handles complaints and enquiries, info provision</td>
</tr>
<tr>
<td>WIRO</td>
<td>Handles complaints against insurers, provides info about options</td>
</tr>
<tr>
<td>WCC</td>
<td>Information provision about its processes</td>
</tr>
<tr>
<td>icare and other insurers</td>
<td>Information provision about claim and dispute processes</td>
</tr>
<tr>
<td>NSW Legislative Council Standing Committee on Law and Justice</td>
<td>Delegated by SIRA to administer funding for ILARS</td>
</tr>
<tr>
<td>NSW Ombudsman</td>
<td></td>
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</tbody>
</table>
Current pathways for resolving a dispute

- Insurer fails to determine claim or makes a decision on a compensation claim that a claimant disagrees with
- Claimant complaint/query to insurer, WIRO, or SIRA
- Work capacity decisions 9.4%
- Liability, medical & permanent impairment 90.6%

1. **Internal review by insurer**
   - Total applications 2015/16 = 797

2. **Merit review by SIRA**
   - Total applications 2015/16 = 351

3. **Procedural review by WIRO**
   - Total applications 2015/16 = 157

4. **Workers Compensation Commission**
   - There are a variety of pathways within the WCC, depending on the nature of the dispute. Resolution methods used include expedited assessment, initial teleconference, conciliation, and arbitration.
   - An arbitrator’s decision can be appealed to a Presidential Member. Approved Medical Specialists provide an examination and assessment where required. The case can then be appealed to the Medical Appeal Panel.
   - Total applications in 2015/16 = 7,662

5. **Appeal to NSW Supreme Court**
   - Point of law only
   - Judicial review

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**REFORM OF THE NSW WORKERS COMPENSATION DISPUTE RESOLUTION SYSTEM**

16 May 2018
## Option 1 - One Stop Shop

<table>
<thead>
<tr>
<th>Model</th>
<th>Claimant support</th>
<th>Legal support</th>
<th>Dispute management and resolution</th>
<th>System oversight</th>
</tr>
</thead>
<tbody>
<tr>
<td>One stop shop</td>
<td>Status quo: 1. Complaints about insurers handled by WIRO; and 2. Claimants can also use SIRA’s helpline</td>
<td>Status quo: ILARS, delivered by WIRO</td>
<td>One stop shop for formal dispute resolution, with some process and technology improvements (delivered by WCC) supported by a single, centralised online portal bringing together all scheme bodies.</td>
<td>Status quo: SIRA, WIRO, L&amp;J Committee, NSW Ombudsman</td>
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Option 2 - One Stop Shop, with more focused claimant and legal support

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</tr>
</thead>
<tbody>
<tr>
<td>One stop shop, with more focused claimant and legal support</td>
<td>An expanded, service delivered by WIRO, including proactive support for complex claims</td>
<td>A more targeted ILARS, delivered by: 1. WIRO; or 2. SIRA</td>
<td>One stop shop for formal dispute resolution with more process improvements (delivered by WCC) supported by a single, centralised online portal bringing together all scheme bodies.</td>
<td>SIRA, L&amp;J Committee, NSW Ombudsman</td>
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Option 3 - One Stop Shop, with increased CTP consistency

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</tr>
</thead>
<tbody>
<tr>
<td>One stop shop, with increased CTP consistency</td>
<td>An expanded model for claimant support, delivered by SIRA, including proactive support for complex claims</td>
<td>More targeted ILARS managed by SIRA moving to consistency with CTP approach over time</td>
<td>One stop shop for formal dispute resolution, with greater process and technology improvements (delivered by WCC) supported by a single, centralised online portal bringing together all scheme bodies.</td>
<td>SIRA, L&amp;J Committee, NSW Ombudsman</td>
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## Option 4 - consolidated personal injury dispute resolution model

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</tr>
</thead>
<tbody>
<tr>
<td>Consolidated personal injury dispute model</td>
<td>An expanded model for claimant support (delivered by SIRA), including proactive support for complex claims</td>
<td>CTP model (i.e. “costs follow the event”)</td>
<td>Workers compensation and CTP dispute resolution consolidated by delivering them either: 1. In SIRA’s Dispute Resolution Service, potentially with separate divisions for WC and CTP; OR 2. Via a new personal injury tribunal (or an expanded WCC), potentially with separate divisions for WC and CTP.</td>
<td>SIRA, L&amp;J Committee, NSW Ombudsman</td>
</tr>
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</table>
Government announcement 4 May 2018

Ministerial Media Release and Fact Sheet

> All enquiries and complaints from injured workers that are not resolved with their insurer in the first instance will be directed to WIRO for assistance

> All enquiries and complaints from employers and other system participants will be referred to SIRA

> The WCC will undertake all dispute resolution once an internal review is completed by an insurer, removing these functions from SIRA and WIRO

> WIRO will continue to administer the Independent Legal Aid and Review Service (ILARS), providing legal support to injured workers
Reform implementation

> No immediate changes to the existing system
> Legislation required to pass through the Parliament (draft Bill expected August 2018)
> Detailed planning and implementation required post Bill
> Expected to be in place by early 2019
Standing Committee on Law & Justice ‘Second Review’

> Announced 1 May 2018

> Hon Natalie Ward, Committee Chair:

‘Given the recent completion of a comprehensive review of the workers compensation scheme, the committee will be focusing in this review on the establishment of a consolidated personal injury tribunal for Compulsory Third Party and workers compensation dispute resolution, as per recommendation 16 of the committee’s last report. This review will investigate the feasibility of a consolidated tribunal, including where it should be located and what legislative changes are required, and recommend a preferred model to government.’
Questions
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