



Workers Compensation independent review office

WIRO SOLUTIONS GROUP CURRENT ISSUES AND TRENDS

KIM GARLING

INDEPENDENT REVIEW OFFICER

ALBURY, 21 JULY 2017

WIRO SOLUTIONS GROUP



WIRO FUNCTIONS

Relevant functions set out in s27 and s27A of *Workplace Injury Management and Workers Compensation Act 1998*.

27 Functions of Independent Review Officer

(a) to deal with complaints made to the Independent Review Officer under this Division.

27A Complaints about insurers

- (1) A worker may complain to the Independent Review Officer about any act or omission (including any decision or **failure to decide**) of an insurer that affects the entitlements, rights or obligations of the worker under the Workers Compensation Acts.
- (2) The Independent Review Officer deals with a complaint by investigating the complaint and reporting to the worker and the insurer on the findings of the investigation.
- (3) The Independent Review Officer is to deal with a complaint within a period of 30 days.

Enquiry and Complaint Handling Protocol

- WIRO is the agency with the statutory obligation to handle complaints by workers about decisions of insurers regarding workers compensation claims.

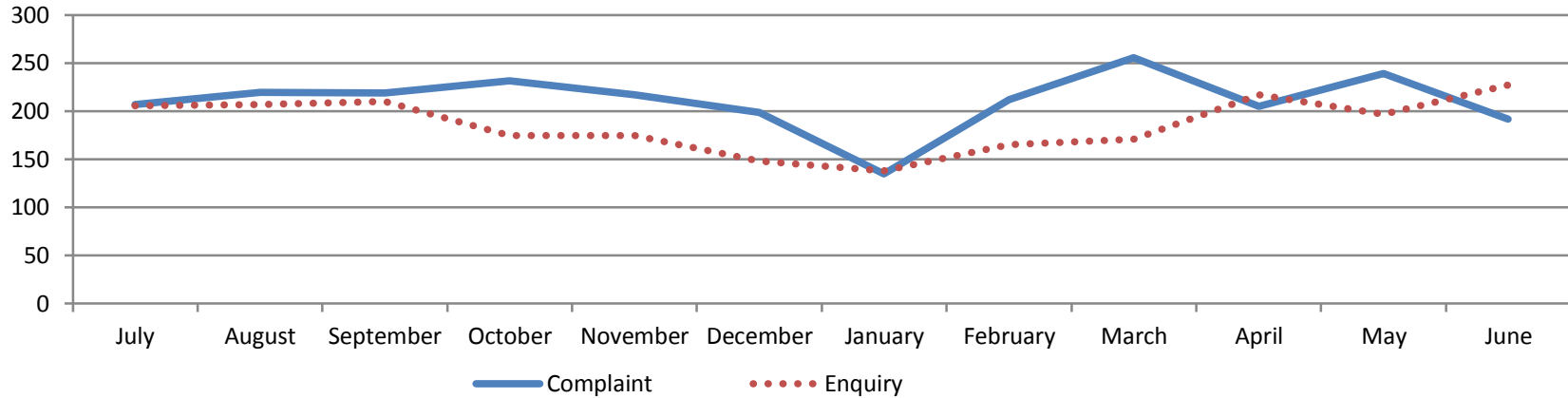
WE ARE A COMPLAINT HANDLING BODY

- Tens of thousands of claims.
- Around 2500 complaints a year.
- People rarely call complaint lines to give compliments. It's not human nature.

A CHANGE IN APPROACH TO COMPLAINTS

- Communication and solution focused.
- Agreement with insurers to respond to preliminary enquiries (requests for information) within 2 business days.
- Do not provide legal advice.

COMPLAINT AND ENQUIRIES 2015/2016



- 2533 Complaints - 52% of Complaints received from 1 July 2015 to 30 June 2016 were resolved within 2-7 days
- 2236 Enquiries - 71% of Enquiries received from 1 July 2015 to 30 June 2016 were resolved the next business day

THE WIRO ADVANTAGE

- Data driven.
 - Interaction with ILARS.
 - Access to work capacity decisions.
 - Collating data across insurers.
- Seeing trends before they eventuate.
- Identifying blind spots.

CASE STUDY – REHABILITATION

- The worker's rehabilitation provider complained to WIRO that further rehab hadn't been approved following the issuing of a s74 Notice declining all ongoing liability for the injury.
- The worker was very keen to return to the workforce following a psychological injury at work, but needed return to work assistance.
- Upon intervention by WIRO alerting the insurer to s41A of the WIM Act the insurer agreed to approve further rehab services for an amount not exceeding \$6,200, as per the plan submitted by the rehab provider.

41 Object and application of Chapter

- (1) The object of this Chapter is to establish a system that seeks to achieve optimum results in terms of the timely, safe and durable return to work for workers following workplace injuries.

41A Chapter applies even when liability disputed

CASE STUDY – IME APPOINTMENT

- The worker lives in northern NSW.
- An IME had been arranged 1.5 hours from her place of residence.
- The worker was unable to attend the IME for 3 reasons – the time of the appointment did not allow for the worker to arrive home in time to pick up one child from school; the travel to the appointment was along a winding road and given her shoulder injury she was concerned of doing further damage; and lastly she did not have care for her second child with special needs and would need to take him with her.
- WIRO discussed alternate travel locations with the worker who confirmed South Coast QLD would be a better option if available.
- The insurer agreed to change the IME appointment and provided the worker with 3 alternative IME options, all located on the QLD border.
- The worker was then able to choose a day on which both of her children had alternate care arrangements.

CASE STUDY – PIAWE

- The worker has a WPI of 28% WPI. His DOI is 28/03/1995 and he has been working since DOI but may be medically retired shortly. He works for a Regional Council supervising work on the gardens.
- He was not in receipt of weekly benefits immediately prior to 01/10/2012 and as a non-existing recipient of weekly benefits his PIAWE will be calculated based on his earnings back in 1995.
- His employer advised that his base rate of pay per week prior to injury was \$466.70.
- This PIAWE was indexed from the 01/04/2013 to date and currently sits at \$513.00.
- He was very concerned about his benefits being reduced so drastically.
- WIRO confirmed the insurer is applying the law correctly.

ROOM FOR IMPROVEMENT

- Communication.
- Cheques v EFT.
- Complaint handling protocol.
- Request for documents.
- 7 day responses.

COMMUNICATION

- Complaints about benefits.
- Themes of communication permeate throughout.
- Phone calls and emails going unanswered.
- A “no response” response is better than no response at all.

CHEQUES V EFT

- Many complaints about delay are for where payments are not made by EFT.
- Payments by cheque – why?

COMPLAINT HANDLING PROTOCOL

- Two working days to respond.
- Every. Single. Time.
- Anyone can count to two. You also need to answer the question!

COMPLAINT HANDLING PROTOCOL

- Case studies.
 - Insurer asked if witnesses had been contacted? Insurer responded “we are comfortable with our decision.”
 - Insurer issued WPI assessment and then took it back. Could not answer why they took it back for 7 weeks.

REQUEST FOR DOCUMENTS

- E.g. under s126 of 1998 Act.
- Limited scope for production.
- Many agents make exceptions.
- Workers not the best record keepers.
- Encourages baseless claims.
- Scope for legislative reform?

NUDGE THEORY

- Nudge theory “is a concept in behavioural science, political theory and economics which proposes positive reinforcement and indirect suggestions to try to achieve non-forced compliance to influence the motives, incentives and decision making of groups and individuals. The theory claims to be at least as effective, if not more effective, than direct instruction, legislation, or enforcement.” (Wikipedia)

NUDGE THEORY

- An image of a housefly on a men's urinal in Germany.



NUDGE THEORY IN GOVERNMENT

- Started in UK.
- Not necessarily for workers comp.
- Moved to NSW. E.g. penalty notices.
- icare project with TMF and DEC.

NUDGE THEORY IN CORRESPONDENCE

- “Not returning to work as quickly as possible after injury can have serious consequences because the longer someone’s away from work, the greater the chance they will never return to work.
 - 20 days off work – 70% chance of getting back to work.
 - 45 days off work – 50% chance of getting back to work.
 - 70 days off work – 35% chance of getting back to work.”

NUDGE THEORY IN CORRESPONDENCE

- “Being out of work for a long time may have a negative impact on a person’s mental health. Studies show it will reduce their life expectancy and can result in mental health issues such as depression.”
- “Most people with a(n) fracture injury return to work in 21 days. But we understand that everyone recovers at different rates, so I will work collaboratively with you, your doctor and your employer to develop a tailored personal work and health plan.”

NUDGE THEORY IN LEGISLATION

- Seven-day responses.
- Reasonable excuse v provisional liability.

PROVISIONAL LIABILITY OR REASONABLE EXCUSE?

- Section 267 of the 1998 Act requires provisional payments of weekly compensation to be made by an insurer within 7 days of the initial notification of injury unless the insurer has a “reasonable excuse” for not commencing those weekly payments. Provisional liability payments of weekly compensation can only be made for a period of up to 12 weeks before the insurer must make a final determination in relation to liability for the claim.
- If the insurer decides to reasonably excuse a claim, s 268 of the 1998 Act requires the insurer to advise the worker of the reason the claim is being reasonably excused and provide a statement to the worker that they are “entitled to make a claim for compensation and that the claim will be determined within 21 days” and provide details of how this claim can be made.
- Often this leads to a situation where an insurer will place a claim under a reasonable excuse for an extended period of time, leaving the worker without an income source. While a claim is reasonably excused the worker cannot move forward with their claim or seek to challenge the insurer’s decision in the Workers Compensation Commission.

PROVISIONAL LIABILITY OR REASONABLE EXCUSE?

- Offences under s267 and s268 of the 1998 Act punishable by a fine of up to 50 penalty units (\$5500).
- SIRA charged with policing the Act and issuing fines.



CASE STUDY – A DELAYED FIRST RESPONSE

- **9 January 2017:** Worker is employed at a car dealership washing cars. The suggestion is that repeatedly standing in water all day caused an infection of a blister in his foot. Worker reports this to his employer.
- **10 – 13 January 2017:** Worker is hospitalized due to injury.
- **18 January 2017:** Worker reports to employer that part of his foot had to be amputated. Employer provides notification of injury to Insurer.
- **1 February 2017:** Worker submits a Certificate of Capacity to the employer.
- **14 February 2017:** Employer forwards certificate to insurer.
- **22 February 2017:** Reasonable excuse notice issued to worker.
- **2 March 2017:** Worker contacted WIRO who lodged a PI. Insurer stated that the claim was “notification only” at 18 January 2017 and therefore no action taken until 22 February 2017 when the reasonable excuse letter was issued.
- **14 March 2017:** After much back and forth where WIRO points out that the insurer’s “notification only” stance has no basis in the legislation and that a Certificate of Capacity had already been provided, the insurer agrees to make provisional payments.
- **Postscript:** Insurer disputes liability. The only medical evidence on file was from the GP who was wholly supportive of the claim. The insurer relied on an email from the employer saying that all cleaning fluids used in the workplace were “biodegradable.”

NUDGE THEORY + SEVEN-DAY RESPONSE = RTW GOALS

- Difference in outcomes between provisional liability and reasonable excuse?
- Inference of reasonable excuse = worker not being believed.
- Provisional liability = suggestion of support.
- How does depriving a worker of support align with goals of quick return?
- “The thing about first impressions is, you only get one.”
- Use in psychological injuries.

STAKEHOLDER ENGAGEMENT



CONTACT US

wiro.nsw.gov.au or 13 9476

Subscribe to our WIRO Bulletin:

editor@wiro.nsw.gov.au

