

Friday, 23 November 2018

The Hon. Dominic Perrottet MP
Member for Hawkesbury
Treasurer, and Minister for Industrial Relations
BY EMAIL: office@perrottet.minister.nsw.gov.au
: hawkesbury@parliament.nsw.gov.au

Dear Minister,

RE: Workers Compensation Scheme

I refer to our recent correspondence regarding a matter of concern pertaining to the workers compensation scheme, our insurance company and a particular individual (**attachment 1**).

On 17 September 2018, I received correspondence from your representative at iCare in reply to my letter expressing my concerns, dated 1 May 2018 (**attachment 2**).

Although I greatly appreciate you taking the time to have this matter investigated, it still remains unresolved and the response given, is far from satisfactory. Not only did the response ignore the main issues I raised, but appears to raise more questions. In an attempt to clarify the matters raised with your office, please find my following responses to your letter.

- *I refer to your correspondence to the Minister for Finance, Services and Property, the Hon Victor Dominello MP, about your concerns with the potential impact to the Australian Automotive Group's workers compensation policy resulting from the claim of former employee, Mr Andrew Lippett. As the matters you have raised fall primarily within the portfolio responsibilities of the Treasurer, the Hon Dominic Perrottet MP, your correspondence was forwarded to him for consideration. I have been asked to respond to you and apologise for the delay in doing so.*

Thank you. Although I understand the necessity for due process in the government sector, I attempted on many occasions to contact various ministerial offices to obtain a progress update. None were able to provide one. I do feel the need to point out that the delay of this extent, is unacceptable and regrettably, I would have expected a far better standard from a ministerial office and again, it is very disappointing.

- *I understand you have previously been in contact with our Customer Service Team about your concerns, and have also heard from members of our Case Management Specialist and Prevention, Product and Pricing teams.*

I received numerous telephone calls and was informed on two separate occasions that the various sections of the relevant legislation I was referring to (Chapter 3 section 48) were repealed. For that reason, the action taken by our insurer specifically, paying wages to an injured employee who refused to comply with light duties and resign, was valid. I point out again there were no restrictions of any significance imposed on the injured party. I requested an explanation be sent in writing so I could address the matter with our employer association and other(s). None were provided.

- *Employers Mutual Limited (EML) has advised it was notified of Mr Lippett's injury on 21 March 2018. As required by the workers compensation legislation, EML started provisional payments for medical expenses on 28 March 2018. At that time, provisional payments of weekly compensation were not required because Mr Lippett had not lost any income because of his injury. Certificates of capacity issued by his nominated treating doctor indicated a capacity for suitable employment of 40 hours a week with standing tolerance restrictions, from 17 January 2018 to 9 April 2018.*

As you are aware, on 4 April 2018 Mr Lippett resigned. Because he attested he had not undertaken any other forms of paid suitable employment since his resignation, provisional payments of weekly compensation became payable from his resignation date

EML has since confirmed that full liability for Mr Lippett's injury was accepted on 7 September 2018 and weekly compensation has been paid from the date of his resignation to 9 April 2018. While he also submitted a certificate of capacity for suitable employment for the period of 12 June 2018 to 12 July 2018, weekly compensation has not been made because EML is awaiting advice as to whether he had undertaken any other form of paid suitable employment over this period.

Although I understand EML accepted liability, I also understood the injured party was in fact working at certain periods and continued to partake in his regular gym and mixed martial arts activities as he had done, well before the injury occurred. This could have easily been verified had EML kept me apprised of this situation.

Furthermore, at no time did our organisation cease to provide the injured employee light duties which were in fact, his regular duties. EML was well aware that Mr. Lippett's restrictions in no way, had any impact on his regular work. In essence the matter was purely medical expense related and the resignation was prompted for another reason.

- *Under Chapter 3, section 48 of the Workplace Injury Management and Workers Compensation Act 1998, as a worker with current work capacity, Mr Lippett has an obligation to make reasonable efforts to return to work in suitable employment. This suitable employment may be with his pre-injury employer or with a new employer. Should Mr Lippett unreasonably fail to comply with his obligations under section 48, his entitlement to weekly compensation may be suspended.*

When I brought this provision to the attention of EML and iCare, both EML and your representative (iCare) advised me this provision was repealed. Not accepting that, and only after persistent requests to receive written clarification on this point, was my concern addressed many months later.

I point out that this misleading and deceptive conduct has financially benefited our insurance company, at the expense of our business. This conduct also goes against the very nature of the workers compensation scheme as outlined in [section 3](#) of the Act. This is unacceptable and I would expect the conduct of the insurer and advice given to me by all parties investigated accordingly, referred to the relevant government authorities and shadow minister immediately and if not, an explanation as to why.

- *I am also advised EML has received MRI reports, X-rays and ultrasounds of Mr Lippett's left foot, ankle and heel, but has requested further information from his treating physiotherapist and nominated treating doctor to assist in confirming any ongoing entitlement as a result of the injury.*
- *As weekly payments have now been awarded, Australia Automotive Group's premium will be affected at the next policy renewal. At that time, you will be able to request an icare review of any subsequent premium impact that has occurred.*

Please provide in writing details as to how this can be done.

- *I appreciate your patience while this matter has been investigated and progressed by EML. I acknowledge that EML's communication with you could have been better from the outset after receiving notification of Mr Lippett's injury, and at explaining the implications and expectations for Australian Automotive Group moving forward given Mr Lippett's resignation.*

As the tone of this letter indicates, this matter has not been resolved. On many occasions, I referred to the relevant principal noted above, and all advice provided to me was in clear contradiction to this. Communication levels continue to be sub-standard at best and our business has suffered financial loss due to this.

Based on the actions of EML and the evidence provided, the reality appears to have been that our insurance company did what was in their best financial interest TO NOT, comply with the provisions you mentioned above ([chapter 3 section 48](#)) nor comply with the objectives of the Act set out in [section 3](#).

- *Now that a full liability decision has been made, I encourage you to talk to EML about an ongoing claims management strategy. In the meantime, should Australian Automotive Group have concerns about EML's decision to accept liability for Mr Lippett's injury, you may seek a full independent review. For further information about disputing EML's liability decision, please call icare's dispute resolution team on 13 99 22 or contact Case Management Specialist, Ms Jayne Birbeck-Fun, on 7922 5057 or at jayne.birbeck-fun@icare.nsw.gov.au.*

Due to the nature of this matter and the fact I have been misled to our financial detriment, I request a ministerial review.

Additionally as noted above, I expect the matter to be raised with the relevant shadow minister and a detailed explanation as to how we can organise an iCare review on mitigating this liability from our premiums.

I regret having to persist with this matter however as a policy holder and a dedicated human resource professional in the retail motor industry, I do believe it is in the best interests of the business community as a whole to ensure the scheme works in a way it was intended to.

Expecting businesses (or the industry for that fact) to be responsible for the costs incurred for an employee's loss of a wage when it was the voluntary decision to resign that prevented wages being earned rather than the injury, is in my view only in the best interest of the insurer and not what the workers compensation scheme was intended for.

Yours sincerely



David Berlusconi
Human Resources Manager

CC: Ms Jayne Birbeck-Fun (iCare Dispute Resolution Team) jayne.birbeck-fun@icare.nsw.gov.au.

CC: The Hon. Gladys BEREJIKLIAN, BA, DintS, MCom MP

CC: Antonette Soliven (The Motor Traders' Association of NSW)

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Friday, 1 June 2018

Minister Dominello
Member for Ryde
Minister for Finance, Services and Property
BY EMAIL: office@dominello.minister.nsw.gov.au

Dear Minister,

RE: Workers Compensation Scheme

Currently working as the human resources manager for the Australian Automotive Group, I have a situation where an employee who commenced employment at the beginning of January 2018, sustained a workplace injury on 13 January 2018. The injury sustained was minor and not reported to our organisation by the employee until 31 March 2018 at which point, a WorkCover medical certificate was issued. The certificate only provided that the employee was required to take a 5 minute break every 30 minutes throughout the day.

As a motor vehicle salesperson, these restrictions only had a very minor impact on the employee's daily routine (if any) and as such, there was generally no change to his role, no lost time and very little impact on our workers compensation premiums.

On 10 April 2018, the employee resigned on an unrelated matter and did not return to work. The insurer was notified at the time and I was led to believe the claim would simply be closed and since then, we have not heard from the employee.

On 28 May 2018, our insurance company Employers Mutual Limited (EML) contacted myself advising that the ex-employee had not found employment and as such, they would back pay the employees' wages and continue paying wages until suitable alternative employment was found.

Only when specifically asked how this would affect our premiums, did the insurer admit our business would be premium impacted for all wages (including back pay) they will pay, the employee. As you can appreciate this is a significant cost, burden and creates a level of uncertainty, with respect to how return to work plans are, and should be managed.

I immediately contacted iCare who advised they would look into the matter and get back to me as there did not appear to be any WorkCover medical certificates on file after leaving. A representative from iCare emailed me on 31.05.18 and it appears our business would be liable for lost wages however they have not yet advised me on what is being relied upon for this assessment.

This is of great concern. At the time the employee resigned, the employee was already performing pre-injury duties and there was no indication the claim would be ongoing for any extended periods of time. There was no impact on our premiums for lost time albeit there were ongoing medical expenses. However as you are aware, in NSW, only lost wages impact business premiums, not medical expenses which is borne by the insurer.

However based on the information from the insurer and iCare, it appears the employee can resign and not give the business any opportunity to continue working through the employees return to work program.

AustralianAutomotiveGroup

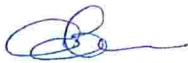
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Wages will be paid by the insurer and billed back to the business by way of premium increases. This notwithstanding the fact that the employee refused to remain employed with that business doing the duties they were originally engaged to do.

I ask that you possibly make time to review this matter and advise how this can be managed. I also ask if you require further information, to have your representative contact me on 0417 293 398 or reply email.

Yours sincerely



David Berlusconi
Human Resources Manager

Date: 17 September 2018
Ref: 00261/18

Mr David Berlusconi
Australian Automotive Group Pty Limited
dberlusconi@austautogroup.com.au

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I appreciate your patience while this matter has been investigated and progressed by EML. I acknowledge that EML's communication with you could have been better from the outset after receiving notification of Mr Lippett's injury, and at explaining the implications and expectations for Australian Automotive Group moving forward given Mr Lippett's resignation.

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Yours sincerely

A handwritten signature in blue ink, appearing to read 'E Uehling'.

Elizabeth Uehling
Group Executive, Personal Injury
icare