



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC:DHjl 1441916

21 February 2018

Mr Tom Kearney
Director
Central Policy Office
Department of Finance, Services and Innovation
Level 2, 2-24 Rawson Place
Sydney NSW 2000

By e-mail: disputeresolution@finance.nsw.gov.au

Dear Mr Kearney,

Supplementary submission - potential reforms to the NSW workers compensation dispute resolution system

The Law Society appreciates the opportunity to provide a supplementary submission to the Department of Finance, Services and Innovation ('the Department') in relation to its discussion paper on potential reforms to the NSW workers compensation dispute resolution system. This submission addresses the single issue of how costs should be dealt with in a prospective workers compensation scheme.

As in relation to the workers compensation scheme generally, the Law Society holds the fundamental position that the regulation of costs matters in any dispute resolution process should be based on the principles of access to justice, access to appropriate and fairly remunerated legal representation, and independent decision-making in disputes.

As noted in the Law Society's substantive submission, we are strongly of the view that the State Insurance Regulatory Authority ('SIRA') should not play any part in the dispute resolution process – including in any role related to the administration of costs matters. Any involvement by SIRA in the process would be inconsistent with the agency's primary function of providing prudential regulation over the workers compensation scheme, and would inappropriately exceed the statutory objectives of the agency as contained in section 23 of the *State Insurance and Care Governance Act 2015*. Further, any involvement by SIRA in the administration of costs matters would also serve to eradicate the impartiality currently afforded to workers through the independent administration of the system by the Workers Compensation Independent Review Office ('WIRO').

The Law Society holds the position that given the inherent imbalance in financial resources of the respective parties in workers compensation disputes, any proposed dispute resolution

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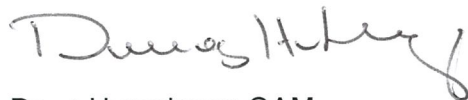
model must contain protections to ensure that workers costs are reasonably provided for. This is particularly the case in relation to payments for disbursements (for medical reports etc) which are necessary to obtain before a legal representative can adequately make a forensic judgement of the merits of a case.

The Law Society is of the view that in a unified, simplified and streamlined workers compensation dispute resolution process, there may be a role for the dispute resolution forum (such as a re-imagined Workers Compensation Commission) to play in making costs orders in relation to professional costs – for example based on the approach of parties to the litigation process and the merits of their respective cases. However, The Law Society's position on this issue is entirely dependant on the adoption, and implementation, by government of our other submissions on this issue – namely those relating to amending legislation, processes and structures to ensure that the forum is appropriately fit for purpose.

Given that the Government has not yet determined the proper scope, role and functions of a future dispute resolution forum for the workers compensation scheme, it is the Law Society's position that the current role of the Independent Legal Assistance and Review Service should be maintained during the initial operation of a reformed dispute resolution forum, provided this function remains managed by an independent WIRO. Once a new scheme has been in operation for a reasonable period of time, further refinement of costs administration should be considered.

The Committee thanks you for the opportunity to provide a supplementary submission. Should you have any queries with regard to this submission, please contact the Committee's Principal Policy Lawyer, Jonas Lipsius at jonas.lipsius@lawsociety.com.au or on (02) 9926 0218.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Doug Humphreys', written in a cursive style.

Doug Humphreys OAM
President