



THE LAW SOCIETY  
OF NEW SOUTH WALES



The New South Wales Bar Association

12/35

25 June 2012

The Hon Barry O'Farrell MP  
Premier and Minister for Western Sydney  
Level 40 Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Premier

***Workers Compensation Legislation Amendment Bill 2012 - Christian Democrats amendment***

We write concerning the Hon Reverend Nile's amendment to the above Bill denying the recovery of costs in workers compensation matters. The amendment passed with the Government's support.

Rev. Nile's comments recorded in the Legislative Council Hansard during the Committee stages of the Bill at 12.25am and 12.46am suggest he may not have appreciated the significance of the change. The amendment is inconsistent with the balance of the Act. It does not give new protection against costs. It requires the injured party to meet the costs caused by an insurer's failure to pay compensation. It will generate a chaotic rush of unrepresented injured persons to WorkCover and the Workers Compensation Commission. The amendment will interfere with uncompleted matters. No other State has such a provision. We assume it is an error but it needs to be corrected.

The new provision cannot be changed by Regulation if that is what is hoped. The amendment created a bar to costs orders. It is a provision that makes the system unworkable. This provision cannot have been intended by the Government - numerous other major amendments would have been required to make a non-represented claimant system operate.

**The New South Wales Bar Association and the Law Society of NSW urge and advise the Government to delay proclamation of the provision (amendment 7 on the schedule of Legislative Council amendments to the Bill), until its effect is reversed.**

The amended system operates on the assumption that lawyers do much of the administrative work for the scheme. Without them, the administrative costs to the scheme will escalate massively and suddenly. To contest a claim there has to be a dispute and it must be established by the provision of a complying report. The system demands medical assessments costing between \$1,000 and \$1,500 each. Those costs are usually carried by lawyers until costs recovery. Workers cannot afford such reports. Is the scheme to meet the cost of such reports even when not justified? Lawyers currently only act as a filter allowing only cases likely to succeed. The scheme administration could not cope with the consequence of workers having no access to advice.

For obvious reasons compensation money has always been barred as a source for lawyers' costs. That should remain the case. But even if it was intended to change that - a matter never previously mentioned by the Government - the money does not come until after the claim is paid. Compensation monies should not be used to pay unregulated legal costs.

If an insurer wrongly refuses to pay compensation they must pay the cost of the wrongdoing. It does not make sense to require a claimant to pay for an insurer's wrongful refusal to meet a claim. Worse still, the change is contrary to a major outcome sought by the Government - reduced administrative cost.

We note that the grant of additional favour to Police and emergency services workers did not include this costs burden. Nevertheless, we assume that the effect of the Christian Democrats amendment was an unintended consequence.

We urge the Government to delay the amendment so that this error can be reversed.

We are happy to assist the Government to resolve this situation through appropriate consultation.

Yours sincerely



Bernard Coles QC  
President, New South Wales  
Bar Association



Justin Dowd  
President  
Law Society of NSW