



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Injury:JD:lw:775817

26 September 2013

The Hon. Andrew Constance MP  
Minister for Finance & Services  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

By email: [office@constance.minister.nsw.gov.au](mailto:office@constance.minister.nsw.gov.au)

Dear Minister,

### **Workers Compensation**

The Injury Compensation Committee has asked me to write to you about issues of concern that have arisen from the changes to the workers compensation scheme in NSW following implementation of the *Workers Compensation Legislation Amendment Act 2012*. Problems have developed in particular as a consequence of the new Division 2 Subdivision 3 of the *Workers Compensation Act 1987* ("1987 Act") dealing with work capacity assessments, work capacity decisions and the review process for such decisions by insurers.

As the WorkCover Independent Review Office (WIRO) itself has acknowledged, the legislative framework governing the entitlement to benefits and the transition from the previous benefits scheme is complex and yet injured workers are denied access to legal assistance or advice as a result of section 44(6) of the 1987 Act. This section provides that a legal practitioner is not entitled to recover any amount for costs incurred in connection with a review of a work capacity decision of an insurer.

The Committee has received regular feedback from practitioners who have been placed in the difficult position of explaining to an injured worker that they are prohibited from being paid for any advice with respect to a work capacity decision and are therefore unable to assist them. Of course there will have been many instances when solicitors, for a variety of reasons, have provided free advice to injured workers in these circumstances.

The Committee also wishes to express concern regarding the new Work Capacity Guidelines which came into effect on 12 August 2013. The Committee notes in particular that the requirement for WorkCover to maintain an advisory service to assist workers with the procedures for reviews of work capacity decisions has been removed. The new Guidelines state only that workers "may obtain information on work capacity decisions and review processes from the WorkCover Customer Service Centre". In the absence of legal representation, there is now no source of advice for injured workers seeking review of a work capacity decision.

The Committee believes it is critical that this issue be addressed and the Law Society is keen to work with the government on achieving this.

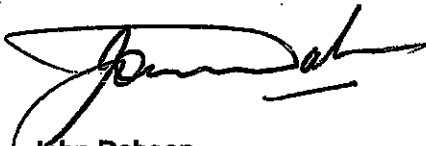
The Committee also wishes to refer you to the recent WIRO Recommendation dated 27 August 2013 (Decision No. 6). As you are undoubtedly aware, the insurer in that matter was found to have breached s 54 of the 1987 Act in that its compliance with notification requirements was deficient. The insurer was also found to be in breach of the first edition of the WorkCover Work Capacity Guidelines published on 28 September 2012 and it was recommended that another work capacity assessment take place. The WIRO officer also identified an oversight in the policy framework in respect of the decision making process. This decision calls into question the validity of previous work capacity decisions and provides an excellent opportunity for the Law Society to work with your officials in relation to this complicated legislative regime.

The Committee has anticipated that you would wish to be alerted to some of the difficulties that have arisen as viewed from the perspective of the legal profession. The Law Society would welcome the opportunity to discuss these issues or to provide any further information that might be of assistance.

Please do not hesitate to contact me (9926 0216) or the Chief Executive Officer, Michael Tidball (9926 0215) should you wish to discuss these issues.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Dobson', with a horizontal line underneath the name.

John Dobson  
President