



THE LAW SOCIETY
OF NEW SOUTH WALES

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Ms Pauline Kavanagh
Director, Workers and Home Building Compensation Regulation
State Insurance Regulatory Authority
Level 14-15, 231 Elizabeth Street
Sydney NSW 2000

By email: Pauline.Kavanagh@sira.nsw.gov.au

Dear Ms Kavanagh

Section 25(1A) funds management provisions

The Law Society is grateful to provide feedback in relation to SIRA's 18-month post commencement evaluation of the section 25(1A) *Workers Compensation Act 1987* (NSW) funds management provisions. The Law Society's Injury Compensation Committee has contributed to this submission, and we look forward to the opportunity to discuss these matters with you on 30 August.

The Law Society supports the amendments, which commenced on 16 December 2022, and introduced a new compensation entitlement for the minor dependents of deceased workers. Section 25(1A) is an important provision to assist in covering the fees charged by the NSW Trustee and Guardian (**NSW TAG**) to manage a dependent's lump sum death benefit.

In relation to the questions posed in the circulated discussion paper, since the commencement of s 25(1A), no concerns have been formally raised with the Law Society around the implementation of the entitlement, or the operation of the current formula. We understand that, in the experience of some of our Committee members, however, there are sometimes barriers to communicating with the relevant contact at NSW TAG who is responsible for the trust fund in question, as well as in obtaining approval for funds to be released to the beneficiary in appropriate circumstances.

We do not oppose making the entitlement available in respect of benefits paid to private trust arrangements. However, we recommend that, for the NSW TAG, as well as any private trust arrangements, there be legislated safeguards to prevent arbitrary increases to trust fund management fees. For example, maximum fees could be introduced in relation to trusts of this kind.

At the current time, s 25(1A) as drafted does not seem on its face to preclude the provision of the entitlement to other dependents, including to:

- an adult dependent of a deceased worker who lacks legal capacity; or
- a dependent child of a deceased worker who lacks legal capacity in circumstances where the trust continues beyond 18 years.

However, we note that, read together with cl 177 of the *Workers Compensation Regulation 2016*, and the second reading speech for the Motor Accidents and Workers Compensation Legislation Amendment Bill 2021, the entitlement does appear to currently be restricted to minors.

The Law Society supports amendments to cl 177 to provide for the categories of dependents listed above. We further support legislative amendments to include a provision similar to s 25(1A) providing for additional compensation payable to an injured worker who lacks legal capacity as a result of a work injury, and whose claim has been commuted and paid to the NSW TAG, to account for the fund management fees

In our view, as a matter of principle, the additional entitlement should be extended to the persons in the categories described above for as long as they lack legal capacity, or until the trust is drawn down.

Please contact Sophie Bathurst, Senior Policy Lawyer, on (02) 9926 0285 or at Sophie.Bathurst@lawsociety.com.au or in the first instance if you have any queries.

Yours sincerely,



Brett McGrath
President