

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Correspondence received in response
to the Legislation Review Committee
Digest No. 42 – 10 May 2022



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Our reference: COR-02689-2022

Mr David Layzell MP
Chair
Legislation Review Committee
By email: legislation.review@parliament.nsw.gov.au

Dear Chair

State Insurance and Care Legislation Amendment Bill 2022

Thank you for your correspondence about the *State Insurance and Care Legislation Amendment Bill 2022*. I would like to respond to the issues raised by the Legislation Review Committee (the Committee).

Strict liability offences

I note the difference in penalties identified by the Committee. I consider the penalty under section 195 of the *Workers Compensation Act 1987* more appropriate given the nature of the scheme.

Access to Justice - Legal Representation

The requirement that parties be legally represented in lump sum death settlement proceedings (unless otherwise directed by the Personal Injury Commission) ensures protection for individuals and reflects that the compromised settlement of a lump sum death benefit claim involves the determination of significant legal rights and interests, particularly with respect to minor child dependants.

I note your concern about access to legal representation. Schedule 5, Part 5 of the *Personal Injury Commission Act 2020* establishes the Independent Legal Assistance and Review Service, administered by the Independent Review Officer. The Service provides funding for legal and associated costs for workers under the workers compensation legislation seeking advice about decisions of insurers and to help resolve disputes between workers and insurers. This mitigates the Committee's concern about protracted litigation due to lack of legal representation.

Further, it is noted that the Personal Injury Commission may discretionarily permit parties to an agreement be unrepresented in proceedings.

Commencement by proclamation

The second print of the *State Insurance and Care Legislation Amendment Bill 2022* no longer includes provisions that commence by proclamation.

Matters deferred to subordinate legislation

Clauses in the Bill about commutations were removed from the Bill by amendment.

The compromised settlement of a lump sum death benefit claim involves the determination of significant legal rights and interests, particularly with respect to minor child dependants. The Bill provides that such disputes may only be resolved within the Personal Injury Commission to

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ensure adequate oversight of these settlements. A guideline making power permits the Workers Compensation Guidelines to provide for the management of claims before referral of such disputes to the Commission. This will mitigate against the risk of misuse of the provisions and will complement and support the legislative intent.

The regulation-making power to prescribe what actions the State Insurance Regulatory Authority (SIRA) may require licensed insurers to take under a written direction issued by SIRA, is intended to build flexibility into the regulatory framework to facilitate the efficient and responsive operation of the state's compensation scheme, as noted by the Committee.

In the *Independent review of icare and the State Insurance and Care Governance Act 2015*, the Hon. Robert McDougall QC noted that the regulator ought to have power to give directions to those involved in managing claims under the scheme. This recommendation was directed at enhancing regulatory oversight of the scheme. Noting there are a range of regulatory directions that can be issued in a complex regulatory environment, this reflects the need for flexibility to ensure there are adequate directions to provide oversight of the scheme. As observed by the Committee, there will be further consultation on regulations which are disallowable by Parliament.

If you have any more queries, please contact Cheri Boxoen, Principal Policy Officer in the Office of the Secretary, NSW Department of Customer Service on [REDACTED].

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Victor Dominello', with a stylized flourish at the end.

The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government

Date: 15/06/22



The Hon. Paul Toole MP
Deputy Premier
Minister for Regional New South Wales
Minister for Police

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IM22/9813
Your ref: D22/21332

Hon. Dave Layzell MP
Chair, Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Minister,

Thank you for your correspondence of 12 May 2022 regarding matters raised by the Legislation Review Committee following consideration of the *Work Health and Safety (Mines and Petroleum Sites) Amendment Bill 2022*. I note the Committee's concern that the Bill increases Ministerial discretion when appointing industry health and safety representatives and commences via proclamation only.

This Bill delivers a range of reforms recommended in Mr Kym Bill's report on the 2020 Statutory Review of the Work Health and Safety (Mines and Petroleum Sites) laws. Mr Bills recommended updating the appointment of industry health and safety representatives to align the legislation with government standards. It is the Department of Regional NSW's existing practice to apply NSW Government appointments standards on behalf of the Minister to any Ministerial appointment, even when nominated by industry. Government appointments standards require probity checks to be conducted on the nominated candidate.

Amending the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* formalises this procedure. This ensures appointed persons are fit and proper to exercise specified powers and functions in relation to workers' health and safety standards in the coal industry. The aim of this change is to promote confidence in how the industry is regulated and give a clear ground of refusal for appointment, which does not currently exist.

Commencing the Bill via proclamation provides flexibility, ensuring the necessary administrative arrangements are in place and for related regulatory amendments to begin together at a later date.

Thank you for the opportunity to respond to the matters raised by the Legislation Review Committee.

Yours sincerely

The Hon. Paul Toole MP
Deputy Premier
Minister for Regional New South Wales
Minister for Police

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