



THE LAW SOCIETY
OF NEW SOUTH WALES



Our ref: ICC:GUml1223325

30 November 2016

The Hon Shayne Mallard, MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

By email: law@parliament.nsw.gov.au

Dear Mr Mallard,

First Review of the Workers Compensation Scheme

Thank you for providing the legal profession with a question on notice arising from the hearings forming part of the first review of the workers compensation scheme.

Mr Tim Concannon and Mr Paul Macken, members of the Law Society of NSW Injury Compensation Committee, Mr Ross Stanton, barrister and member of the NSW Bar Association Common Law Committee, and Ms Roshana May, NSW Branch President of the Australian Lawyers Alliance ("ALA"), appeared on behalf of the legal profession before the Standing Committee on Law and Justice on 4 November 2016 for this review.

The Law Society of NSW and the ALA set out below their joint response to the question taken on notice. We understand that the NSW Bar Association is providing a separate response.

Question

"Mr DAVID SHOEBRIDGE: This could be resolved by a statutory provision that prohibits employers from discriminating on the basis of having a workers compensation history.

Mr MACKEN: Theoretically that already exists if it is unlawful discrimination. There is a distinction of course between lawful and unlawful discrimination. An employer has an obligation to guarantee people safety so on one view asking them whether they have been injured previously at work is part of fulfilling that obligation. One of the ways, ironically enough, that really would solve it is giving workers the opportunity to settle their claim so that they could safely go to new employers having absolved their workers compensation history with a so-called clean slate. We know that improves return to work.

Mr DAVID SHOEBRIDGE: Could you perhaps provide us with your collective wisdom on notice about how best to resolve this problem? That would be really useful.

Mr MACKEN: Sure."

Answer

The Law Society of NSW and the ALA understand that there are protections in place against unlawful discrimination on the grounds of disability, particularly within s 49D of the *Anti-Discrimination Act 1977* (NSW). However, a larger problem arises when an injured worker returns to work in suitable employment with a different employer in circumstances where they have a current workers compensation claim.

One solution lies in the legal profession's recommendation regarding the availability of unrestricted commutations. A worker who is able to settle on a final basis an entitlement to statutory compensation in exchange for a lump sum is then far more likely to be able to return to work in suitable employment with an alternate employer. A worker with a finalised claim is no longer "in the system" and as a result is more employable. Our experience has demonstrated the positive impact a lump sum settlement can have upon an injured worker's sense of autonomy and psychological state, which is often an impediment to a sustainable return to work.

Should you have any questions or require further information, please contact Meagan Lee, Policy Lawyer at the Law Society of NSW on [redacted] or email [redacted]

Yours sincerely,

Gary Ulman
President
Law Society of NSW

Roshana May
NSW Branch President
Australian Lawyers Alliance