Submission No 16

INQUIRY INTO 2018 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: NSW Bar Association

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NEW SOUTH WALES BAR ASSOCIATION

SUBMISSION TO STANDING COMMITTEE ON LAW AND JUSTICE 2018 REVIEW OF THE WORKERS COMPENSATION SCHEME WITH RESPECT TO THE FEASIBILITY OF A CONSOLIDATED PERSONAL INJURY TRIBUNAL FOR COMPULSORY THIRD PARTY AND WORKERS COMPENSATION DISPUTE RESOLUTION

1.0 The background to these submissions

1.1 In 2016 the NSW Legislative Council Standing Committee on Law & Justice ("the Standing Committee") undertook its first (post 2012 amendments) review of the NSW workers compensation scheme and made a number of recommendations including:

> ***Recommendation 13***
>
> *That the NSW Government investigate removing the distinction between work capacity decisions and liability decisions in the workers compensation scheme.*
>
> ***Recommendation 14***
>
> *That the NSW Government establish a 'one stop shop' forum for resolution of all workers compensation disputes, which:*
>
> *- allows disputes to be triaged by appropriately trained personnel*
> *- allows claimants to access legal advice as currently regulated*
> *- encourages early conciliation or mediation*
> *- uses properly qualified judicial officers where appropriate*
> *- facilitates the prompt exchange of relevant information and documentation*
> *- makes use of technology to support the settlement of small claims*
> *- promotes procedural fairness*
>
> ***Recommendation 16***
>
> *That the NSW Government consider the benefits of developing a more comprehensive specialised personal injury jurisdiction in New South Wales*

1.2 The Standing Committee has now commenced its second review and has resolved that its 2018 review will focus on a topic within the scope of recommendation 16 being:

> *"- the feasibility of a consolidated personal injury tribunal for Compulsory Third Party and workers compensation dispute resolution ..... including where such a tribunal should be located and what legislative changes are required.*

- recommending a preferred model to the NSW Government."

1.3 The New South Wales Bar Association greatly appreciates the opportunity to provide submissions to the Review.The Bar Association has prepared these submissions to provide its views to the Standing Committee with respect to this specific topic and also with respect to the related matters canvassed by recommendations 13,14 and 16.

2.0 A summary of the Association's view on recommendation 16 and personal injury dispute services generally

2.1 The Bar Association does not believe there are any benefits to be derived from a comprehensive specialised personal injury jurisdiction as contemplated by Recommendation 16. Submissions on that question are set out in section 7 below.

2.2 With respect to personal injury dispute resolution generally:

(a) The Association is very much opposed to any suggestion that may be made to the effect that any workers compensation disputes should be dealt with in SIRA's Merit Review Service. This is discussed in section 4 below. It is also noted a Media Release issued by Minister Dominello on 4 May 2018 has proposed certain reforms to the NSW workers compensation scheme including that:

> *"The Workers Compensation Commission ..... will undertake all dispute resolution once an internal review is completed by an insurer."*

The Association welcomes this particular announcement, which when implemented will abolish SIRA's current workers compensation dispute resolution role.

(b) The Association's position is that workers compensation disputes should be dealt with in the Workers Compensation Commission ("WCC") (with the historic exception of the District Court's residual jurisdiction for coal miners and certain emergency type workers. It is assumed the Minister is not intending to propose changes to the arrangements for these workers). Certain changes should however be made to the WCC's legislative framework and costs regimes. This is discussed in section 6.1 below.

(c) Motor vehicle injury matters should continue to be dealt with in the Claims Assessment and Referral Service ("CARS") and the District Court. The new Dispute Resolution Service ("DRS") under the *Motor Accidents Injuries Act 2017* ("MAIA") should be amalgamated into CARS. The Association is also of the view that CARS/DRS should be made independent of SIRA. This is discussed in section 6.3 below.

(d) Other matters should continue to be dealt with in the Local, District or Supreme Courts. This is discussed in section 7 below.

3.0 Removing the distinction between work capacity decisions and liability decisions in the workers compensation scheme.

3.1 As the Standing Committee's report subsequent to its first review discussed, it has been difficult in practice to draw a distinction between work capacity decisions and liability decisions. As the current workers compensation legislation sends disputes about these decisions to three different jurisdictions (the Workers Compensation Commission, SIRA's Merit Review Service and the Approved Medical Specialists) - the overlaps create delays, confusion, additional costs and potentially the very undesirable outcome of the inconsistency in decision-making between the three jurisdictions.

3.2 The best way to deal with this undesirable situation is to remove the provisions in the legislation, which create work capacity decisions. The required Bill to achieve this would be quite straightforward. It would basically only need to remove ss.43, 44 and 44A(3) *Workers Compensation Act 1987* ("WCA").

3.3 This would remove the need for SIRA's Merit Review Service to determine any workers compensation disputes.

3.4 It is assumed the proposed legislative amendments required to implement the decision canvassed in the Minister's recent Media Release would be along these lines.

4.0 Some observations about the Merit Review Service ("MRS") and other dispute resolution functions now operated by SIRA

4.1 The very existence of SIRA's MRS as a dispute resolution body is actually a great irony. Historically SIRA's main predecessor (WorkCover) only came into existence in the first place because it was thought undesirable for the original Workers Compensation Commission (which was created in 1926) to perform both administrative and dispute resolution functions. This was a reasonable concern and in the mid 1980s, to avoid conflicts, it was thought appropriate to separate the dispute resolution and administrative functions of the first Workers Compensation Commission ("WCC").

4.2 The dispute resolution role was given to the then new Compensation Court of NSW and the administrative functions were given to a new statutory organisation, which was initially called the State Compensation Board of NSW. The name of this organisation was subsequently changed to the WorkCover Authority of NSW. This body also acquired certain industrial safety and regulatory roles, which had previously been performed by the Department of Labour and Industry. (The Compensation Court was subsequently replaced by the current and second WCC in 2002.)

4.3 Despite this historical background, the 2012 amendments gave WorkCover a dispute resolution function to be performed by its then new MRS on top of its administrative functions. In the aftermath of WorkCover being divided into three bodies (SIRA, icare and SafeWork NSW), SIRA still continues to do both. This is fundamentally unsound. There is a clear conflict with SIRA being responsible for the *"viability of the insurance and compensation schemes established under the workers compensation ... legislation"* (see s.23(a) *State Insurance*

and Care Act 2015) and also being responsible for deciding whether particular workers should continue to be paid weekly compensation (and hence medical expenses) out of the insurance scheme it is responsible for. Workers can have no confidence in the decisions being made by SIRA's MRS because of this conflict of interests.

4.4 To compound this conflict it has also never been articulated why it was thought necessary to remove the role of deciding a worker's *"work capacity"* from the truly independent WCC and why it was thought appropriate to prevent injured workers having legal representation in SIRA's MRS by prohibiting legal professionals from being able to receive any remuneration for acting in SIRA's MRS matters (see s.44(6) WCA). These failures only add to the concerns about the conflict of interests.

4.5 The problem with workers not being able to have legal representation in SIRA's MRS remains. Just prior to the 2016 Christmas holiday period, the Workers Compensation Regulation 2016 was amended to add Part 17 Division 3A. This now provides for a limited fee to be payable to a legal practitioner of between $1,200 and $1,800 with respect to applications to SIRA's MRS - but only with respect to work performed after an insurer has conducted an internal review. It does not provide for the payment of any disbursements such as medical report fees. Putting aside the general inadequacy of the possible fee for most disputes, the truly extraordinary aspect of Division 3A is that the fee is only payable for work done in the 30 day period after an internal review is carried out and the last day when an application for review can be filed with SIRA's MRS (see Clause 99B(2)(d) Workers Compensation Regulation 2016).

4.6 In other words a legal practitioner can only recover some remuneration for work performed within this (at most) 30 day period. This arbitrarily limited period makes it practically impossible for any required evidence to be collated, which could then be used to challenge the merits of the insurer's decision. All that most legal practitioners will be able to do within such a short period is to advise workers that there is insufficient time to collect any useful evidence as well as no ability to recover fees for any required medical reports and other disbursements, such as interpreters fees.

4.7 The Association was provided with a draft of the present Division 3A by SIRA some weeks prior to its gazettal. We discussed the above significant problem with the officers of SIRA. No changes were made to the draft before it was gazetted.

4.8 Another matter worthy of note is that the SIRA's MRS does not carry out any publicly accessible hearings and, except for less than 20 matters, it has never published any of its decisions.

4.9 Hence SIRA's MRS conducts its reviews about work capacity decisions without any public scrutiny and without workers having the benefit of any useful legal representation or being able to obtain reimbursement for required disbursements. This situation is unacceptable and in the Association's view makes it undesirable for SIRA's MRS to have any ongoing role in determining disputes about workers entitlements and also calls into question whether it should have any responsibility for CARS and the DRS. The conflict of interests which SIRA is presented with by determining workers compensation disputes and also being responsible for

the viability of the workers compensation insurance scheme, also makes it fundamentally inappropriate for SIRA's MRS to determine any disputes about workers compensation.

4.10 Simply put, SIRA is a regulator. It should be confined to that important activity. It should not be involved with resolving disputes about the entitlements of particular individuals to workers compensation or compensation or damages for motor vehicle accidents. Its parent body came into existence to make the regulator separate from a dispute resolution body. The sound reasons for this remain and make it inappropriate for SIRA to determine disputes.

5.0 Some general observations about dispute resolution forums

5.1 Historically in NSW disputes about the entitlements of individuals to statutory entitlements and damages for personal injuries were dealt with in various courts.

5.2 For disputes about workers compensation entitlements the *Workers Compensation Act 1926* ("WCA26") established the first WCC as a specialist court of record (s 31 WCA26). After 1938 all its decision makers were commissioned as judges with the same status and general powers as judges of the District Court. Between 1984 and 2002 this general situation was maintained with the judges of the Compensation Court of NSW, which was established under the *Compensation Court Act 1984*.

5.3 Disputes relating to other matters such as damages claims arising from motor vehicle accidents were dealt with in the courts which had general jurisdiction - being the Courts of Petty Sessions (later amalgamated into the Local Court) and the District and Supreme Courts of NSW. The various decision makers in these bodies were of course magistrates and judges.

5.4 The costs payable to successful litigants in these courts were assessed in accordance with various cost regulations applicable for these jurisdictions. These regulations all had the underlying basis of the recoverable costs being assessed by reference to scheduled amounts payable for particular items of work, certain periods of time (such as time spent in court) and for any required disbursements such as fees payable for medical reports and witness expenses. Disputes about what overall sums were payable were determined by deputy registrars of the courts through a process known as "taxations". The costs were assessed on the basis of the minimum amount of work reasonably required to properly present a case. Costs were not recoverable for unnecessary work, excessive amounts of time or any duplication of tasks.

5.5 The above system worked very adequately for many decades with minimal delays in most jurisdictions. Shortages of judges did create delays in the District and Supreme Courts in the 1980's. The flexible but disciplined costs system also resulted in adequate preparation and actively discouraged "over-servicing".

5.6 Magistrates and judges also have secure tenure in their positions and can only be removed from office by Parliament. This centuries old practice exists to ensure they are independent. The very real concern is that decision makers who only have limited contracts may tailor their actions and decisions to try to increase the

likelihood that their contracts will be renewed. The generally limited tenure of most tribunal members in NSW erodes the perception and perhaps even the reality of independence.

5.7 In recent years certain dispute resolution functions have been removed from NSW courts and given to various tribunals. A recent example of this trend was when the Compensation Court of NSW was abolished in 2002 (with its judges being transferred to the District Court) and replaced with the current Workers Compensation Commission of NSW. Although it shares the name of the body, which existed between 1926 and 1984, it is a differently constituted organisation, which was essentially started from "scratch".

5.8 Members of the Association have routinely appeared in the current Workers Compensation Commission since it was created. Their assessment is that the quality of its processes and decisions were initially of lesser quality than the Compensation Court but that this situation improved markedly over subsequent years and that they are now quite good. One illustrative statistic is that in 2006 there were 360 appeals from the decisions of its Arbitrators whereas in 2016 there were only 63. (As with all things, there is scope for further improvements and in the Association's view there are still particular problems with how the WCC currently deals with more complex matters. This is discussed in section 6.1 below.

5.9 In the Association's view this historical experience demonstrates that new tribunals starting from "scratch" will struggle and take time to achieve the quality of their predecessors. Hence where there is a well-established existing tribunal, it is a better use of financial and human resources to utilise it. Setting up a new tribunal such as SIRA's DRS would, in the Association's opinion, be a waste of financial and human resources - in addition to the other problems discussed in these submissions.

6.0 A suggested way of improving the existing dispute resolution structures

6.1 Workers Compensation

6.1.1 As previously noted NSW has a historic practice of having a separate dispute resolution body for most disputes regarding statutory workers compensation benefits. There are advantages with this as:

(a) It is easier to fund it from sources other than NSW consolidated revenue. Traditionally it has been funded from the premiums collected for workers compensation insurance;

(b) There has always been a sufficiently large volume of disputes so as to justify a separate dispute resolution body. This contrasts with say the ACT where the small volume of such disputes is dealt with in the ACT Magistrates Court;

(c) A specialised jurisdiction can tailor its procedures to better suit the disputes it normally deals with;

(d) A specialised jurisdiction acquires a body of expertise about its legislation, which is particularly useful in NSW at present - given the extraordinary complexity of its workers compensation statutes;

(e) A specialised workers compensation jurisdiction also acquires a useful body of expertise among its decision makers with matters such as medical conditions, medical procedures, employment conditions and wage levels. This can lead to more conciliated outcomes and if required, quicker hearings and decisions.

6.1.2 It is difficult to think of any reasons why a wider jurisdiction in NSW, with say responsibility for statutory entitlements for motor accident victims as well as workers compensation, would create any advantages. The possible sharing of some office type or other administrative infrastructure might produce some limited savings - however these could probably also be achieved by simpler arrangements. For instance CARS already shares the same Sydney complex of hearing rooms that the WCC uses.

6.1.3 The Association's view is that would be more appropriate to maintain the existing separate WCC as a body to mediate and where required, to determine disputes about statutory entitlements to workers compensation - subject to making certain changes to improve it in various ways and to implement the removal of *"the distinction between work capacity decisions and liability decisions in the workers compensation scheme"* (the proposal contemplated by Recommendation 13 of the Standing Committee's report subsequent to its first review.).

6.1.4 In this context it is also useful to again note the Standing Committee's Recommendation 14 to:

"establish a 'one stop shop' forum for resolution of all workers compensation disputes, which:

- *allows disputes to be triaged by appropriately trained personnel*
- *allows claimants to access legal advice as currently regulated*
- *encourages early conciliation or mediation*
- *uses properly qualified judicial officers where appropriate*
- *facilitates the prompt exchange of relevant information and documentation*
- *makes use of technology to support the settlement of small claims*
- *promotes procedural fairness"*

6.1.5 The following steps would achieve this:

(a) Amending the WCA to remove "work capacity decisions". As already noted this will avoid the overlaps, delays, confusion, additional costs and the very undesirable potential of the SIRA's Merit Review Service (which currently deals with disputes about work capacity decisions) and the WCC (which deals with all other disputes) coming to inconsistent decisions.

(b) Legally qualified and experienced deputy registrars of the WCC can be given the task of allocating small or simple matters to a concise paperwork process (which could be computerised and accessed through sufficiently secure systems), which they can then deal with assisted by electronic communications and/or telephone conferences. There can be a right of appeal to a WCC arbitrator.

(The WCC already has a process, which does something very similar called "Applications for Expedited Assessments" which are dealt with by delegates of the registrar).

(c) Deputy registrars can also be given the task of allocating more complicated matters to a more detailed paperwork process (using secure computerised systems) with telephone conferences and/or a mediation and if required further referral to an abbreviated form of hearing before an arbitrator. Appeals could then lie to the WCC Presidential Members. (This is how the WCC currently deals with most matters before it, albeit the mediation is conducted by an Arbitrator who will also hear the matter if required).

(d) Giving arbitrators the power to refer more complex or contentious matters (such as those involving allegations of fraud) to a hearing applying the law of evidence with technological assistance such as video type links to take medical evidence etc. In the WCC structure these referrals could be made subject to the concurrence of a Presidential Member who could then conduct any required hearing - with appeals to the Court of Appeal limited to questions of law (which is what occurred with the Compensation Court).

It needs to be appreciated that some proceedings in the WCC involve matters where there are very serious allegations to the effect that individuals have committed fraud or assaults (including sexual assaults) and such like. Fairly dealing with such matters typically involves some individuals having to give lengthy oral evidence, as the alternative of simply reading competing written statements does not provide a decision maker with the level of detail required to reasonably determine (on the civil onus) that a person has engaged in criminal activity.

Hence there are some matters in the WCC where a hearing can take several days to be fairly conducted and where witnesses need to give oral evidence to describe or respond to assertions of great seriousness. With CTP claims these sorts of matters are exempted from the CARS tribunal system by the Principal Claims Assessor and then taken to the District Court where a judge deals with the matter and applies the law of evidence.

In the Association's view there needs to be an equivalent process in the WCC for complex and seriously contentious matters. The above suggested procedure would achieve this.

(It is also worth observing that these sorts of matters also provide a clear example of the inappropriateness of the current inflexible scheme of fixed scale costs in Schedule 6 Workers Compensation Regulation 2016 ("WCR"). The scale amounts are premised on the incorrect assumption that all hearings only take one day at most. The current inflexible scheme essentially does not provide any remuneration for second or subsequent hearing days when they occur. This is not rational.)

(e) The arbitrators should be under the general control and direction of the President of the WCC. At the moment they are under the direction of the Registrar - which is inappropriate as they hear certain appeals from decisions of the registrar.

(f) Deputy Presidents and arbitrators should be provided with longer tenure than that previously afforded to them. Ten years would be a reasonable compromise. In the past it is understood the longest periods of tenure ever made available have been seven and three years respectively. (The President is required to be a judge and accordingly already has tenure to retirement.)

(g) The staged event costs system should be replaced with a more flexible system of cost assessments, which provides for the payment of costs and disbursements reasonably required to fairly and properly present claims and defences. The registrar and deputy registrars should have the power to assess what is recoverable in the event of disputes with WIRO/ILARS or insurers. The current staged costs system is now preventing workers and employers from having their interests properly represented in certain matters. This is a fundamental failure of the present system.

(h) The parties to disputes about workers compensation entitlements should be able to negotiate settlements without any particular constraints - subject to workers being provided with the safeguard of legal representation (if they want it) and independent approval of any overall final settlement of all their potential future entitlements. For most of its history the NSW workers compensation scheme provided for overall lump sum redemption/commutation settlements, which achieved this goal. They were subject to the approval of a judge to ensure the settlements were in the best interests of the worker. WCC arbitrators could perform the same function. Being able to do this is also a very useful device to facilitate conciliated outcomes and reduce delays and costs.

(i) The possibility of having inconsistent decisions between arbitrators or presidential members (of the WCC) and Approved Medical Specialists (in the current separate AMS jurisdiction) should also be removed by bringing the approved medical specialists within the WCC's jurisdiction. This can be achieved through some amendments to the relevant parts of the *Workplace Injury Management and Workers Compensation Act 1998* ("WIM"). A "one stop shop" will actually not be fully achieved for workers compensation disputes if the AMS jurisdiction continues to be separate from the WCC.

6.2 <u>The residual jurisdiction of the District Court with workers compensation matters</u>

6.2.1 The District Court has exclusive jurisdiction to deal with workers compensation disputes concerning coal miners, Rural Fire Service, SES and Surf Life Saving employees and volunteers and certain long serving Police Officers.

6.2.2 It is understood the various interest groups concerned with such matters are content with this arrangement and do not wish to see any change to this situation. Hence the Association is of the opinion that it should not be disturbed except with respect to the general situation with costs. The costs payable to represent such workers, officers and organisations are still based on old Compensation Court cost schedules,

which are now seriously out of date and enormously eroded by inflation. The relevant cost scales should be revised.

6.3 CTP claims

6.3.1 The *Motor Accidents Compensation Act 1999* created a then new tribunal known as the Claims Assessment Referral Service ("CARS") which was essentially designed to try to deal with routine disputes which had previously often required the commencement of District or Supreme Court proceedings. The legislation provides for CARS to have "claims assessors" and "medical assessors".

6.3.2 CARS was initially operated by the Motor Accidents Authority but this arrangement was subsequently revised when SIRA was created and CARS is now operated by SIRA. The operations of CARS are funded from contributions levied from CTP insurers. The claims assessors are senior lawyers from an established panel of assessors. The medical assessors are generally senior medical practitioners from an established panel. They both operate as consultant contractors to CARS and are sent particular matters to assess, which they deal with and they charge certain standard type fees to CARS for their services.

6.3.3 CARS has always had processes to try to hasten and streamline smaller or urgent disputes and paper driven processes for larger disputes with attempts to try to conciliate consensual settlements - with final assessment hearings being conducted if required.

6.3.4 In the Association's experience the processes of CARS have generally worked fairly well. An important reason behind this is that complex or contentious matters, which were not appropriate for CARS processes, are "exempted" from CARS by the Principal Claims Assessor and taken before the District Court.

6.3.6 The new *Motor Accidents Injuries Act 2017* ("MAIA"), which applies to accidents after 1 December 2017 has created a new category of no fault "Statutory Benefits" providing for certain weekly income type payments and medical expenses, which are generally payable for limited periods of time. This Act has required SIRA to establish a new "Dispute Resolution Service" ("DRS"). The legislation provides for the DRS to have "merit reviewers", "medical assessors" and "claims assessors". The cost of running the DRS is understood to be met from the Motor Accidents Operation Fund, which is essentially comprised of funds levied form CTP insurers.

6.3.7 Hence SIRA is now operating (and CTP insurers are funding):

(a) CARS with its assessors and medical assessors; and

(b) The DRS with its merit reviewers, assessors and medical assessors.

6.3.8 It is understood that SIRA is utilising or will be utilising lawyers who are CARS assessors and CARS medical assessors as assessors and medical assessors in the new DRS. It is also understood that SIRA has hired some new (legally qualified) staff and/or transferred some existing (legally qualified) staff from CARS into the

new role of DRS merit reviewer. It is also assumed that some staff members are probably performing both CARS and DRS functions.

6.3.9 It is odd that the MAIA saw fit to create the new DRS instead of just giving the new tasks to CARS. There is no reason why the existing and experienced staff and consultants of CARS cannot deal with disputes, which the new DRS will be dealing with. In the Association's view the tasks that the DRS is to perform should be given to CARS. As the DRS is apparently being created from the existing CARS organisation and staff this should not be particularly difficult to achieve.

6.3.10 For reasons akin to the situation with the WCC the Association's view is that CARS (after incorporating the nascent DRS) should continue to determine straightforward disputes about the entitlements of individuals injured in motor vehicle accidents to the new statutory benefits and compensatory damages. Reasons for this include:

(a) It is easier to justify the funding of such a specialised body from sources other than NSW consolidated revenue. The system of funding it from contributions from CTP insurers seems to be well accepted and can simply continue.

(b) There is a sufficiently large volume of disputes so as to justify a separate dispute resolution body.

(c) A specialised jurisdiction like CARS can tailor its procedures to better suit the disputes it normally deals with.

(d) A specialised jurisdiction acquires a body of expertise about its legislation. (It is worth noting that the new statutory benefits payable under the MAIA are payable under provisions which are quite different to the WCA.)

(e) A specialised jurisdiction like CARS also acquires a useful body of expertise within its decision makers with matters such as the effects of motor vehicle trauma, medical investigations and procedures, employment conditions and wage levels. This assists with encouraging more conciliated outcomes and if required, quicker hearings and decisions.

6.3.11 However the Association is of the view that it is generally inappropriate for a government regulator such as SIRA to also be responsible for and in control of any dispute resolution bodies. As noted in section 4 above it is ironic that SIRA's main parent body came into existence to prevent the original Workers Compensation Commission having both administrative and dispute resolution functions. Those concerns remain. Dispute resolution functions should be performed by organisations, which are independent of the regulatory and administrative bodies of government.

6.3.12 The survey evidence collated by the Department of Finance, Services and Innovation and discussed (at p.36) in their recent *"Discussion Paper On Potential Reforms to the NSW Workers Compensation Dispute*

Resolution System" emphasised the same point when it noted there was *"general stakeholder support for a dispute resolution body that is fully independent of Government"*.

6.3.13 Hence the Association is of the view that SIRA should cease to operate CARS and the new DRS. CARS and the DRS should be combined into the one body which is responsible for itself - but which should continue to be funded from contributions made by the CTP insurers. The Principal Claims Assessor of CARS should continue to exempt more complex matters from the processes of CARS with such matters to then continue to be dealt with by a Court.

7.0 A general jurisdiction for personal injury matters

7.1 In addition to court proceedings in claims for work injury damages and exempt motor accident claims, there are commonly situations where court proceedings involving those types of claims are interrelated with actions under the *Civil Liability Act 2002* and commercial disputes between insurers.

The complexity of the *Civil Liability Act* and the issues which arise in actions concerning different statutory regimes would render those cases unsuitable for hearing in anything other than a Court. They are cases which required skilled advocates in order to ensure that the real issues in those very often complex cases are tried in an efficient manner. They are not cases which can be dealt with on the papers or in an abridged form of hearing.

7.2 A situation where there are overlapping injuries requiring separate proceedings where one set of proceedings is dealt with through a tribunal and the other proceedings must be dealt with by a court would be contrary to the interests of justice and cause unnecessary expense and delay. The CARS system has worked well as has the WCC. At present the resources necessary for dealing with disputes under the *Motor Accident Injuries Act* are yet to be ascertained and it is submitted that it is premature to consider any change to the present arrangements until that Scheme has matured.

7.3 Additionally, remedies available to plaintiff claimants, insureds and parties generally would be severely curtailed since such a tribunal could not have any federal jurisdiction and could not, therefore, make orders relying on the Australian Competition and Consumer Law remedies (by way of obvious example) and could not determine any controversy where any party to the proceedings was not "resident" in NSW*: Burns v Corbett; Gaynor v Burns* [2017] NSWCA 3.

7.3 The Association's view is that there is no call for a change to the current arrangements.

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