

**INQUIRY INTO 2018 REVIEW OF THE WORKERS  
COMPENSATION SCHEME**

**Organisation:** The Law Society of New South Wales

**Date Received:** 28 June 2018

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THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: ICC:DHjl 1548059

27 June 2018

The Hon. Natalie Ward MLC  
Committee Chair  
Standing Committee on Law and Justice  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

By email: [lawandjustice@parliament.nsw.gov.au](mailto:lawandjustice@parliament.nsw.gov.au)

Dear Ms Ward,

### **2018 Review of the Workers Compensation Scheme**

The Law Society welcomes the opportunity to provide a submission to the Standing Committee on Law and Justice ("Standing Committee") in relation to its 2018 review of the workers compensation scheme ("2018 Review"). This submission has been prepared on the basis of input from the Injury Compensation Committee, whose members represent key stakeholders in the workers compensation scheme, including workers, scheme agents, self-insurers and employers. The Law Society would be pleased to assist the Standing Committee by providing oral testimony to supplement this submission.

### **Focus of the Review**

The Law Society notes that the focus of the Standing Committee in its 2018 Review is determining the feasibility of a consolidated personal injury tribunal, which the Standing Committee recommended in its first review of the workers compensation scheme in 2015 ("First Review")<sup>1</sup>.

The Law Society notes that since the Standing Committee released its report into the First Review there have been a number of developments in the area that are highly relevant to the Standing Committee's consideration of this issue. In particular, we note the introduction of a new compulsory third party ("CTP") scheme through the *Motor Accident Injuries Act 2017*, the Motor Accident Injuries Amendment Regulation 2017 and the Motor Accident Guidelines, which came into force on 1 December 2017, the announcement on 4 May 2018 by the Minister for Finance, Services and Property of the Government's planned reform of the workers compensation dispute resolution system, and the Standing Committee announcing its 2018 Review of the CTP insurance scheme on 1 May 2018.

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<sup>1</sup> Legislative Council Standing Committee on Law and Justice, *Report on the First review of the workers compensation scheme*, (2017), Recommendation 16.

## **Law Society position**

The Law Society submits that a single consolidated personal injury tribunal is a feasible concept. However, we would only support the establishment of such a tribunal if a number of fundamental principles are followed in relation to its structure, operation and management. The Law Society submits that any model that fails to adhere to the principles that we have noted below will not provide parties with the level of independent, professional and robust decision making that is necessary for personal injury disputes.

We understand that there may be valid economic and structural arguments in favour of combining the workers compensation scheme and the CTP insurance scheme. However the primary consideration must be whether such a tribunal would result in better outcomes for parties involved in the process. We note that our position on the feasibility of a single personal injury tribunal is not an endorsement of either the current workers compensation scheme or the CTP insurance scheme, and we maintain previous concerns raised in relation to those schemes.

## **Fundamental principles**

### ***Independence from the State Insurance Regulatory Authority***

The Law Society restates its position that any consolidated personal injury tribunal must be completely independent from the State Insurance Regulatory Authority ("SIRA") – the government regulator for the insurance industry. As previously submitted, the principal functions of SIRA are listed in section 23 of the *State Insurance and Care Governance Act 2015*. Permitting SIRA to engage in dispute resolution would far exceed its legislative remit and responsibilities and is fundamentally inconsistent with its role as a regulator.

Further, we consider that it would be inappropriate for dispute resolution matters to be governed by SIRA as it would be antithetical to the fundamental notion that such a forum should be structurally, functionally and institutionally independent from the scheme regulator.

### ***Judicial oversight***

The Law Society holds the view that the significance, complexity and volume of personal injury matters are such that it is essential that the forum for determining disputes be overseen by an independent judiciary. We consider it necessary for matters to be heard in a standalone, appropriately funded single-purpose forum that is tailored to the specific requirements of the jurisdiction. We are of the view that this would require consideration and development of legislative and process measures to ensure such a forum provides efficient and effective outcomes and access to justice for all parties.

We submit that any consolidated personal injury tribunal requires appropriately qualified and experienced presiding officers who have substantial knowledge of, and relevant subject matter experience in the areas over which they are making determinations. We further submit that it is necessary for such presiding officers to be statutory appointments to ensure sufficient independence in their decision-making process. We also consider that judicial members should preside over appeal matters to ensure the integrity of the system.

### ***Robust, transparent procedures and guidelines***

We consider that appropriate levels of accountability should be paramount in the consideration of a consolidated personal injury tribunal. The Law Society submits

that the dispute resolution forum should adhere to best practice principles and guidelines such as the Council of Australasian Tribunals Excellence Framework 2017. In particular, we are of the view that the forum should be established by statute, funded independently and impose procedures including the creation of transcripts for proceedings and the publishing of judgments.

We submit that the appropriate forum for dispute resolution should be determined through a thorough analysis of the system requirements. The Workers Compensation Commission would be a 'natural fit' for a single personal injury tribunal. It is the view of the Law Society that utilisation of this forum should be subject to appropriate structural and procedural modification to accommodate both jurisdictions, and should be undertaken in consultation with the Commission.

The Committee thanks you for the opportunity to provide a submission. Should you have any queries with regard to this submission, please contact the Committee's Policy Lawyer, Jonas Lipsius at \_\_\_\_\_ or on \_\_\_\_\_

Yours sincerely,

Doug Humphreys OAM  
**President**