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Our Ref: **RFB:JD**

10 November 2015

Executive Director,
Workers Compensation Regulation,
State Insurance Regulatory Authority,

By e-mail: 2015benefitsreform@sira.nsw.gov.au

Dear Madam,

**RE: REGULATION OF LEGAL COSTS FOR WORK CAPACITY
DECISION REVIEWS**

We refer to your Discussion paper in relation to the regulation of legal costs for work capacity decision reviews and have noted the eleven (11) focus questions contained in that document.

Before turning our attention to those focus questions an overview of the current system discloses that injured workers are not only disadvantaged by not having access to legal assistance but further disadvantaged by not being able to obtain and provide appropriate evidence to the insurer prior to the making of a work capacity decision. It is submitted firstly that the relevant Regulation be altered so that the injured are given sufficient notice to enable them to obtain relevant evidence (medical, factual, etc.) to provide to the insurer before they make the work capacity decision. Having an experienced workers compensation solicitor overseeing this process and being fairly remunerated would mean that any of the three (3) forms of the review which followed would be a review in the true sense of the word and legal costs could be kept to a minimum.

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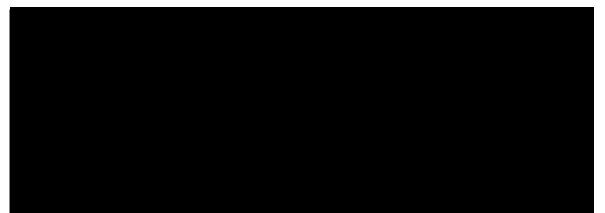
An alternative to the above would be to allow lawyers to become involved after the internal review by the insurer and before the merit review by SIRA but again much more time would have to be allowed to enable the gathering of relevant evidence with appropriate changes to the legislation and Regulations.

In general terms, before returning to the focus questions, the procedure outlined above seems to fall into what is covered at present by the Costs Regulations in Schedule 6, Item D.

Legal assistance in seeking a review of a decision where the Applicant has been able to obtain appropriate evidence and legal advice would perhaps be the equivalent of Schedule 6, Table 3, Item A.

Turning to the focus questions our brief response is as follows:-

1. Yes.
2. No.
3. We are not sure of the meaning of this question.
4. See above.
5. Yes. See above.
6. Never.
7. It must be borne in mind that the only party that can seek a review is the injured worker. If costs are based on Schedule 6, Schedule 6 is effectively the compliance mechanism.
8. As they are now, by WIRO.
9. Covered above.
10. See above.
11. It does not appear so.



R.F. BRENNAN