



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: GULw:1156849

14 June 2016

Ms Carmel Donnelly
Executive Director
Workers and Home Building Compensation Regulation
State Insurance Regulatory Authority
Locked Bag 2906
Lisarow NSW 2252

By email: wcreg2016@sira.nsw.gov.au

Dear Ms Donnelly,

Draft Workers Compensation Regulation 2016

Thank you for the invitation to provide a submission with respect to the draft Workers Compensation Regulation 2016 ("draft Regulation") which it is proposed will replace the *Workers Compensation Regulation 2010* ("2010 Regulation").

We note that the accompanying Regulatory Impact Statement and Better Regulation Statement refers to the changes in the draft Regulation as a minor revision. Most of the changes involve updating references to legislative instruments and removing unnecessary clauses. The Law Society has no comments with respect to these minor amendments.

The Law Society is disappointed that the staged repeal of the 2010 Regulation was not used as an opportunity to revise it thoroughly, as there is scope for substantial improvement. The draft Regulation does not reflect changed processes in the Workers Compensation Commission or the effects of the significant legislative amendments in 2012 and 2015.

The Regulatory Impact Statement acknowledges that there are a number of current reform projects that may result in amendments to the 2010 Regulation. The Law Society provided substantial submissions with respect to two of these projects, namely the reforms to legal costs in relation to reviews of work capacity decisions and the review of pre-injury average weekly earnings. Law Society representatives also attended various consultation meetings.

With respect to Schedule 6 of the draft Regulation, we maintain that these costs, which are used under the Independent Legal Assistance and Review Service scheme and for insurer legal fees, are grossly inadequate. There has not been any regular indexation of legal fees since the introduction of the Schedules. A comprehensive review of Schedule 6 was concluded in 2010 but the identified anomalies and recommendations made were never implemented. There are, of course, additional items that can now be added to this list. For example, we note that we have written previously about the need for fees incurred for briefing Counsel in respect of Workers Compensation Commission matters to be treated as a disbursement in addition to the maximum costs provided in Schedule 6.

The Law Society would be pleased to be part of any consultation process involving an extensive and much needed review of this Regulation. We suggest that a working group be established to update Schedule 6. This should comprise representatives of SIRA, icare, WIRO, the Workers Compensation Commission, the Law Society and applicant and respondent solicitors.

The Law Society thanks you for the opportunity to contribute to this consultation. Should you require any further information, please contact [REDACTED] for the Injury Compensation Committee on [REDACTED] or [REDACTED].

Yours sincerely,

A large black rectangular redaction box covering the signature of Gary Ulman.

Gary Ulman
President