

7 December 2022

Mr Kevin Gillingham  
Manager Policy and Legislative Services  
WorkCoverWA

By email: [kevin.gillingham@workcover.wa.gov.au](mailto:kevin.gillingham@workcover.wa.gov.au)

Dear Mr Gillingham

## **WORKERS' COMPENSATION AND INJURY MANAGEMENT BILL 2022**

The Law Society has previously made a submission regarding the *Workers Compensation and Injury Management Bill 2021*, and we have noted that a number of our submissions have been included in this current draft.

However, the Law Society wishes again to express its concerns that too many substantive matters are left to subsidiary legislation.

In accordance with your instructions, we have only considered the most important technical aspects in reviewing this draft. In this context, the main concerns of the Law Society relating to the *Workers Compensation and Injury Management Bill 2022* are:

- **Section 12 – Definition of Worker**

The Law Society does not support this new definition of Worker, as it is narrower than the current “extended definition.” Presumably, the aim is to include all workers that provide nothing more than their personal labour or services. The proposed wording does not appear to do that.

- **Section 25 – Making claim for compensation**

We note that the failure to provide authority to consent to the disclosure of information may affect the prompt acceptance of claims and delay the decision-making process for the insurer.

- **Section 32 – Worker to provide information about other employment**

As per our previous submission, there is no requirement that an Employer is to advise a Worker of their obligations under this section.

This section should include the ability for an employer and/or insurer to request information from a worker regarding the provision of information regarding remunerated work carried out after the claim is made.

Currently, this section refers only to the obligation of a worker to inform the employer or insurer of remunerated work that a worker does for any other employer after the claim is made.

- **Section 34 – Claiming compensation when question as to liability or apportionment between employers**

There is no reason that s34(1)(b) should be limited to an acceptance notice. The Law Society considers that any liability notice under s28 should suffice. Employers and/or

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insurers should be allowed to ask the arbitrator to rule on apportionment at any time when new information arises, as often at times, the question of apportionment may not immediately be apparent.

- **Section 57 – Minimum weekly rate of income compensation**

This section should be removed. Section 55 provides a fair and reasonable method for calculating the payment of income compensation. The Law Society considers it fair that everyone will then fall under the same payment rate calculation method.

Further, it is unclear why the new definition of *regular additional earnings* is needed. Not only will it be difficult to apply, but the Law Society also considers it doubtful that by adding the *regular additional earnings* as required by 57(3)(b), will arrive at a different result than making the calculations under section 55.

- **New section to be inserted**

An equivalent section to s70(4) in the current *Workers Compensation and Injury Management Act 1981*, should be inserted into this draft Bill, requiring a worker who has obtained a medical report of their own volition, to provide that report to the employer.

The Law Society would like to thank you for providing us with the opportunity to make further comments on the proposed Bill.

If you have any queries regarding the above, please contact Mary Woodford, General Manager of Advocacy and Professional Development on (08) 9324 8646 or [mwoodford@lawsocietywa.asn.au](mailto:mwoodford@lawsocietywa.asn.au).

Yours sincerely



Rebecca Lee  
**President**