

Hon James Wood AO QC  
Chairperson  
NSW Law Reform Commission  
GPO Box 5199  
SYDNEY NSW 2001

11 February 2011

Dear Mr Wood

### **REVIEW OF COMPENSATION TO RELATIVES**

The Insurance Council of Australia refers to your letter dated 1 December 2010 and thanks you for the opportunity to comment on the review of the provisions governing the award of damages to the dependents of a deceased person under the following legislation:

- *Compensation to Relatives Act 1897;*
- *Law Reform (Miscellaneous Provisions) Act 1944;*
- *Dust Diseases Tribunal Act 1989; and*
- *Civil Liability Act 2002.*

We understand that this review has arisen in the context of the proposed legislation introduced by the Greens in November 2010 in the Legislative Assembly which refers to the 2005 New South Wales Court of Appeal decision of *Bi (Contracting) Pty Ltd v Eileen Sylvia Strikwerda and Anor (Strikwerda)*.<sup>1</sup> In that case, the court decided that the widow's damages in proceedings in the Dust Diseases Tribunal should be offset by reason of the fact that as a widow she would receive a financial benefit in the form of a distribution from her husband's estate that included the general damages he had received for his claim for asbestosis.

Although your terms of reference give rise to broader considerations, the Insurance Council would like to make some initial comments concerning claims arising from exposure to asbestos dust and fibre.

The Insurance Council accepts that the particular arrangements put in place for dust related claims are a matter of government policy. These arrangements have been implemented due to the latent onset and serious and often fatal consequences of dust related claims. We submit that the current state of the law represents an appropriate balance of the needs of the unfortunate sufferers of asbestos related diseases and the obligations of businesses and insurers which operate in this area.

Outside the area of dust related claims, the Insurance Council notes that the legislation referred to in your review also impacts on the areas of general public liability, workers compensation and CTP claims. In general terms, the Insurance Council submits that

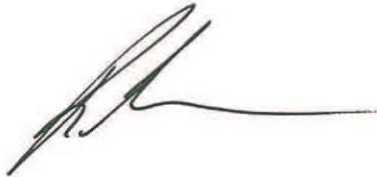
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<sup>1</sup> [2005] NSWCA 288

increases in the benefits payable to plaintiffs in these schemes may add to the variables which are taken into account by insurers when undertaking premium calculations. As this may put upward pressure on premium rates for these claims, we welcome the consideration of potential impacts of any changes to the legislation as part of the review.

If you have any questions or comments in relation to the above please do not hesitate to contact Justine Hall, Senior Policy Advisor on [REDACTED] or [REDACTED].

Yours sincerely



Robert Whelan  
Executive Director & CEO