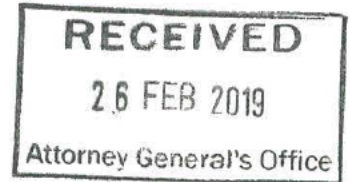




Workers Compensation  
Commission

Office of the President



22 February 2019

The Hon Mark Speakman SC MP  
Attorney General  
GPO Box 5341  
SYDNEY NSW 2001

Dear Attorney General

**Law Reform Commission Review – Court and tribunal information: access, disclosure and publication**

Thank you for your invitation to provide a response in relation to the Law Reform Commission's review of access, disclosure and publication of court and tribunal information.

**Access to information generally**

The Workers Compensation Commission (WCC) is a specialist, statutory tribunal within the justice system of New South Wales. The WCC's primary function is to resolve workers compensation disputes between injured workers and their employers.

The WCC recognises the principles of open justice and access to information, which must be balanced with important considerations of privacy and confidentiality.

One of the distinguishing features of proceedings in the WCC is the requirement for the parties to a dispute to submit all evidence at the outset of proceedings. Therefore, a substantial amount of personal and medical information of injured workers is held in each dispute proceedings file.

Given the substantial amount of personal and sensitive information contained in each proceedings file, the WCC allows access generally to the parties to the proceedings but not to third persons. In limited cases, a worker may not have access to sensitive medical information if there are concerns for the worker's welfare and wellbeing.

The parties may also be given access to documents produced in proceedings by third parties, which largely comprise medical records. Directions for the production of material are subject to the usual subpoena law requirements and access to documents is given by the WCC and restricted to the legal representatives, unless a party is unrepresented.

By legislative provision<sup>1</sup>, the State Insurance Regulatory Authority is entitled to inspect and copy documents held by the WCC for the purposes of exercising its functions.

The WCC's website also publishes the WCC's policies, annual reviews and information regarding the WCC and its dispute resolution processes.

### **Publication of decisions**

The terms of reference make particular reference to the *Court Suppression and Non-Publication Orders Act 2010* (CSNPO Act) and *Court Information Act 2010* (CI Act). These Acts do not apply to the WCC. The CSNPO Act provides for the making of suppression and non-publication orders by courts. The WCC is not a tribunal prescribed by the regulations as a court for the purposes of the Act. The CI Act provides for access to court information across NSW courts. The WCC is not a court as defined under section 4 of the Act.

Section 365 of the *Workplace Injury Management and Workers Compensation Act 1998* provides that the WCC may cause details of its decisions and determinations to be published. The WCC operates under a presumption in favour of publication of all decisions. However, the WCC may, in exceptional circumstances, de-identify or withhold from publication all or part of a decision because of the confidential or sensitive nature of the information in the decision or for any other valid reason.

The WCC's *Policy on Publication of Decisions in the Workers Compensation Commission* sets out the WCC's policy on publishing decisions (see copy enclosed). This policy is publicly available on the WCC's website ([www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au)), in multiple languages. Before a decision is published, the WCC writes to the parties to invite them to make representations if they wish to withhold publication.

If a request to withhold publication of a decision is not received within seven days from the date of receipt of the decision, the decision will be published on the WCC's website. Presidential decisions are published externally, by agreement of the WCC, by AustLII, LexisNexis and JADE on the following websites:

- <http://www.austlii.edu.au/au/cases/nsw/NSWWCCPD/>
- <http://www.lexisnexis.com.au>
- <http://www.jade.barnet.com.au/>

Some WCC decisions are also reported in law reports, including the Dust Diseases & Compensation Reports, and judicial decisions at an appellate level.

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<sup>1</sup> Section 239, *Workplace Injury Management and Workers Compensation Act 1998*

## **Access by third parties**

WCC proceedings are open to the public.

As regards access to WCC files, as a general policy access by non-parties is limited to published judgments and a copy of oral evidence taken (either the sound recording or transcript). A non-party applying for access to WCC records must demonstrate that access should be granted.

In allowing access, the WCC will have regard to relevant NSW legislation, namely:

- *Privacy and Personal Information Protection Act 1998*;
- *Health Records and Information Privacy Act 2002*;
- *Government Information (Public Access) Act 2009*.

### *Privacy and Personal Information Protection Act 1998 (PIIP Act)*

The PIIP Act provides for the protection of personal information and for the protection of the privacy of individuals generally. The principles in this Act apply to the WCC, save for the manner in which the WCC exercises its judicial functions<sup>2</sup>.

### *Health Records and Information Privacy Act 2002 (HRIP Act)*

The HRIP Act provides for the protection of health and personal information. The principles in the Act apply to the WCC, save for the manner in which the WCC exercises its judicial functions<sup>3</sup>.

### *Government Information (Public Access) Act 2009 (GIPA Act)*

The GIPA Act provides for open access to government information. It provides that an agency must make certain government information publicly available, unless there is an overriding public interest against disclosure<sup>4</sup>. The WCC is bound by this Act as a public service agency and a court within the meaning of the Act<sup>5</sup>.

The WCC applies these Acts in relation to the collection, use, and disclosure of personal information.

## **Summary**

The WCC is aware of and understands the legislative prohibitions on the disclosure and publication of the WCC's information, as well as the principles of open access to government information and the need for privacy and confidentiality.

The WCC is of the view that its current arrangements strike the right balance between open justice and access to information and the rights of parties and witnesses with respect to privacy and confidentiality.

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<sup>2</sup> Section 6, PIIP Act

<sup>3</sup> Section 13, HRIP Act

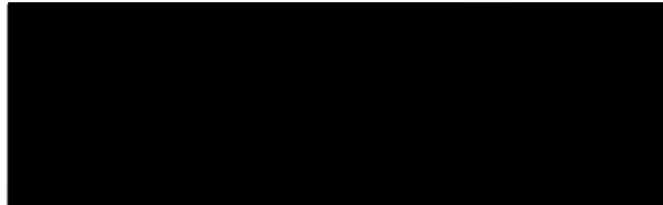
<sup>4</sup> Section 6, GIPA Act

<sup>5</sup> Section 4(1) and clause 1 of Schedule 4, GIPA Act

The WCC appreciates the opportunity to provide feedback on the Law Reform Commission's terms of reference.

Please do not hesitate to contact me should you require any further information.

Yours sincerely



His Hon Judge G Phillips  
**President**