

30 April 2018

Ms Loraine Field
Secretariat
Ministerial Review of the State Industrial Relations System

Email: irreviewsecretariat@dmirs.wa.gov.au

Dear Ms Field

MINISTERIAL REVIEW OF THE STATE INDUSTRIAL RELATIONS SYSTEM – RELEASE OF INTERIM REPORT

I refer to the letter from Mr Mark Ritter SC dated 23 March 2018 inviting the Law Society of Western Australia to provide a submission in response to the interim report for the above review.

The Law Society makes the following submissions in relation to the Proposed Recommendations and Requests for Additional Submissions (**Proposed Recommendations**) part of the Interim Report.

1. Costs

In respect of unfair dismissal and denied contractual benefits claims, costs be in accordance with 19(b) of the Proposed Recommendations.

For all other matters, costs be in accordance with 19(c) of the Proposed Recommendations.

2. Lawyers appearing

Parties be entitled in all matters before the WAIRC, however constituted, to be represented by an Australian legal practitioner, as defined in s 5 of the *Legal Profession Act 2008* (WA), subject to a discretion to be exercised by the WAIRC to disallow any or all of the parties from having legal representation in a particular matter, or on a particular occasion or for a particular hearing.

3. Hearing of denied contractual benefits claim

With respect to which WAIRC members can hear denied contractual benefits claims, this remain in accordance with 17(a) of the Proposed Recommendations.

The Law Society notes that the Interim Report does not address the broadening of the WAIRC denied contractual benefits jurisdiction as discussed in the Law Society's 15 December 2017 submission.

4. Appeals

The Interim Report appears to suggest the possible abolition of the Full Bench of the WAIRC.

The Full Bench of the WAIRC has always acted as a suitable “filter” of appeals, ensuring limited cases progress to the Industrial Court of Appeal (as constituted by the Supreme Court).

The Law Society has concerns that appeals direct to a Supreme Court Judge from the WAIRC, as suggested by the Interim Report, may create significant increased case load work for the Supreme Court.

The preference would be to retain an appeal route (or filter) within the WAIRC, whether through a Full Bench, or simply to the Chief Commissioner for unfair dismissal and denied contractual benefit matters.

5. Employment protections

The Law Society notes that the Interim Report does not appear to suggest the introduction of any employment protections comparable to Part 3-1 of the *Fair Work Act 2009* (Cth) relating to general protections (adverse action). For example, employment/IR legislation in Western Australia currently lacks any mechanism to protect parties from victimisation for exercising their workplace rights under legislation.

If you wish to discuss the above further, please do not hesitate to contact Mary Woodford, General Manager Advocacy, on (08) 9324 8646 or at mwoodford@lawsocietywa.asn.au.

Thank you for the opportunity to respond to the interim report in this review.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Hayley Cormann', with a stylized flourish at the end.

Hayley Cormann
President