

28 February 2025

Manager Policy and Legislative Services
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

By Email: consultation@workcover.wa.gov.au

Dear Manager Policy and Legislative Services

WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 2023 CONSULTATION PAPER

I refer to the *Workers Compensation and Injury Management Act 2023 (the Act) – 2023 Act Implementation Review Consultation Paper January 2025* and provide this submission in response to the proposals therein.

Proposal 1

Amend the Workcover WA approved form SF1 settlement agreement by:

- *Deleting the reference to 'future' amounts*

Submission: Support.

- *Including a statement in the settlement agreement that any compensation entitlement will not cease until the settlement agreement is registered by the Director.*

Submission: Do not support.

The Law Society disagrees that any agreement ceases compensation prior to the registration is contrary to the Act. In fact, section 62(d) allows for the worker to agree that their income compensation to be ceased. Further, the Law Society recognises the importance that the insurer is provided with some certainty as to what they are agreeing to pay at the settlement of the claim.

Further submission on proposal 1

The Law Society also understands that WorkCover has been rejecting settlement agreements given that WorkCover is unsure as to what the miscellaneous expenses amount represents. The Law Society also submits that the settlement agreement approved form should be altered so that under the future miscellaneous expenses compensation section a checklist is provided for the parties to indicate what the miscellaneous expenses represents (i.e. travel expenses, prosthetic expenses etc.).

Proposal 2

Amend the WorkCover WA approved form SF3 Permanent impairment notice by:

- *Under the 'Agreement' section replacing 'requested' with 'required' (employers/ insurers must indicate agreement or disagreement with the level of impairment)*
- *Where employers indicate agreement/ disagreement with the level of impairment replacing the instruction to 'delete as applicable' with a check box for clarity and ease of use.*

Submission: Support.

The Law Society also supports amendment of the Act such that agreement on the level of impairment can be initiated by either the worker or the employer.

Proposal 3

- *Amend WorkCover WA approved form APIA1 Permanent impairment assessment – report and certificate by adding an additional checkbox for the APIA to confirm that when a special assessment is done the APID is satisfied that the special assessment criteria are met.*

Submission: the Law Society does not see that this is an issue for the medical practitioner undertaking the assessment but rather the responsibility of the legal practitioner requesting the impairment assessment.

- *Amend the Regulations to require when a special evaluation is sought the requesting party is to provide evidence to the APIA, at least 18 months has elapsed since the claim was made.*

Submission: Clarification of the meaning of the term 'sought' is required. Often appointments are made in advance of the 18 months and therefore at the time that the appointment is made the 18 months may not have yet elapsed.

- *Retain the signature block and require a personal APIA signature in WorkCover WA approved forms APIA1, APIA6 and APIA7.*

Submission: No comment other than an electronic signature ought also to be accepted.

- *Amend WorkCover WA approved forms APIA3, APIA4 and APIA5 to remove APIA signature blocks.*

Submission: No comment.

- *Scheme participants note that the effective date of an assessment (when a worker is taken to have been assessed and an assessment conducted) is when an APIA has dated and certified the worker's degree of permanent in APIA1.*

Submission: No comment.

Further submission on proposal 3

The Law Society also recommends an amendment to the WorkCover WA guidelines for the evaluation of permanent impairment so that special evaluation can occur 18 months from the date of injury. The current requirements that the special evaluation can only occur 18 months from when the claim was made has caused many cases of injustice where seriously injured people have been denied the opportunity to pursue a negligence action when they have not submitted a claim form immediately after the accident.

Proposal 4

Amend WorkCover WA approved form CN2 Intention to reduce or discontinue income compensation – return to work by including:

- *A statement of the amount of wages/ remuneration paid/ to be paid in the return to work position.*

Submission: Support.

- *A declaration signed by the employer or insurer verifying that the worker has returned to work and is deriving earnings in the position specified in the form.*

Submission: Support.

- *If the worker has returned to work with another employer, a requirement for the person issuing the notice to provide confirmation of the worker's return to work and remuneration with that other employer when providing the notice to the worker.*

Submission: Support.

Proposal 5

- Repeal WorkCover WA approved form CN6 Custody or imprisonment notice.
- WorkCover WA CEO issue a new approved form Custody or imprisonment notice.
- Amend the Regulations to provide:
 - The employer or insurer must request WorkCover WA to obtain the written confirmation of custody or imprisonment from the relevant Government authority by making a request in the proposed new Custody or imprisonment notice
 - WorkCover WA is to obtain the confirmation of custody or imprisonment from the relevant Government authority
 - The Government authority is to confirm custody or imprisonment by giving the proposed new Custody or imprisonment notice to the WorkCover WA CEO.

Submission: This issue arises from the provision in section 66 of the Act that the CEO is defined in the *Prisons Act*. It is recommended that the Act is amended so that a different person within the Department of Justice can hold the relevant authority.

Proposal 6

- No change to the structure and content of WorkCover WA approved form - IM1 Return to work program.
- Stakeholder feedback to be sought on potential changes to the WorkCover WA explanatory guide to provide for staged progression of return to work.

Submission: No comment.

Proposal 7

Amend the WorkCover WA approved form CF2 NIHL compensation claim form by inserting the following:

- A field indicating the date the claim was given to the last employer
- A field indicating the date the last employer gave the claim to the insurer.

Submission: No comment.

Proposal 8

Amend the WorkCover WA approved form NIHL1 Audiological test report by:

- Adding 'recreation history' to the narrative history section
- Allowing an 'either/or' approach to completing the air conduction and bone conduction test and the audiogram to avoid unnecessary replication and duplication errors
- Including a table setting out hearing threshold levels to calculate binaural percentage hearing loss and binaural percentage hearing loss less presbycusis.

Submission: No comment.

Proposal 9

- NIBA and ICA continue to cooperate to address any issues in the jointly developed consent authority for use by brokers and workplace risk and injury management consultants.
- No change to Regulations or the claim form consent authority to facilitate brokers and workplace risk and injury management consultants accessing workers' personal information.

Submission: No comment.

Proposal 10

Amend the Regulations to insert the following offences and modified penalties in Schedule 4:

- Failure of employer to make income compensation payment when due [s.47(2)]: modified penalty \$800
- Failure of employer to pay the amount of a settlement agreement when required [s.156(2)]: modified penalty \$800
- Preventing another person from complying with the Act [(s.527)]: modified penalty \$800.

Submission: No comment.

Additional submissions

Finally, the Law Society is disappointed that the administrative arm of WorkCover does not support a review of the 2023 *Act*. As you will be aware, the Law Society's members were very disappointed as to the consultation process surrounding the 2023 *Act* which has now led to many deficiencies in the current legislation. The Law Society submits that an independent review is desperately needed.

One example of a pressing issue arises with the operation of Regulation 16(4)(a) of the *Workers Compensation and Injury Management Regulations 2024* and its impact on a section 64(2) notice. Currently the regulations prohibit a worker from filing additional evidence after an arbitration application is filed. This results in once the insurer has issued the section 64 notice, the worker or their representatives may have as little as 4 to 5 weeks to gather all the evidence in support of the workers incapacity for work. As WorkCover will be aware it is sometimes difficult to arrange medical reviews and obtain reports within such a short space of time. The previous legislation did not contain this provision, and it is recommended that it be removed.

Thank you for the opportunity to provide a submission to this consultation. If you have any questions, please contact Ms Susie Moir, General Manager Advocacy and Professional Development on smoir@lawsocietywa.asn.au or telephone 9324 8646.

Yours sincerely

A handwritten signature in grey ink, appearing to be 'GM', is positioned below the 'Yours sincerely' text.

Gary Mack
President