

Workers Compensation and Injury Management Act 2023

Implementation proposals for regulations and administrative instruments

Implementation Consultation Paper 14: Licencing Framework for Insurers

October 2023

Public comment on the implementation proposals
should be submitted to:

consultation@workcover.wa.gov.au by **1 December 2023**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

*****Draft proposals only*****

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

Implementation Consultation – Licensing Framework for Insurers

Scope

This document outlines proposed regulations, requirements and implementation processes associated with the licensing of insurers under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*.

This document does not address proposed regulations and implementation requirements associated with workers compensation insurance policies issued by licensed insurers (see *Implementation Consultation – Workers Compensation Insurance Policies*).

Background and intent

Under the *WCIMA23*, insurers must obtain a licence from WorkCover WA to insure employers for workplace injury liabilities that arise under the *WCIMA23* or under the common law.

The licensing framework provides for:

- criteria for the grant of an insurer licence
- duration of the licence
- operational conditions
- WorkCover WA regulation and oversight.

The proposed licensing framework for insurers is similar to the approval process under the *Workers' Compensation and Injury Management Act 1981* (the 1981 Act) with respect to the material and financial resources required of insurers and the statutory and operational conditions that must be complied with.

Impact on existing approved insurers

An approved insurer under the 1981 Act is taken to be a licensed insurer under the *WCIMA23* from the commencement date of the *WCIMA23* and will be subject to the *WCIMA23*.

The licence taken to be granted to an approved insurer is also converted by the *WCIMA23* to remain in force indefinitely unless WorkCover WA decides otherwise.

It is WorkCover WA's intention to grant a new insurer licence to existing insurers for an indefinite period. The newly issued licence will clearly reference the criteria and conditions that apply to the licence under the *WCIMA23*.

WCIMA23 key provisions

s. 227, s. 228, s. 229, s. 230, s. 231, s. 232, s. 233, s. 234, s. 235, s. 597.

Licence framework overview

The insurer licensing framework comprises:

- criteria for the grant of a licence
- operational conditions
- performance monitoring and review by WorkCover WA.

These components are provided for in the *WCIMA23*, regulations, and WorkCover WA imposed conditions.

Criteria for grant of licence

It is intended the regulations will specify the criteria that must be satisfied for the grant of a licence to an insurer. The proposed criteria are set out in [Attachment 1 – Licence Criteria for Insurers](#).

Licence criteria are threshold requirements that must be satisfied when applying for a licence, or renewing a licence, and are required to be maintained after a licence is granted.

The criteria are in substance the same requirements that currently apply to approved insurers relating to the material and financial resources and the operational capability of the insurer, capacity to discharge obligations under the *WCIMA23* and meet expected standards of service.

WorkCover WA will issue guidelines relating to the matters that are taken into consideration in determining an application for an insurer licence, and the information required by WorkCover WA to assess whether the licence criteria are met and maintained, along with information about the application and renewal process.

Duration of licence

It is intended WorkCover WA will issue new indefinite licences to currently approved insurers subject to each insurer:

- confirming the criteria for approval are met
- agreeing to general licence conditions as set out below

Insurer licences issued to new applicants will be granted for an initial 3-year period after which time, and subject to WorkCover WA review, a decision to convert to an indefinite licence can be made.

Operational conditions

An insurer licence is subject to conditions including any conditions imposed by the *WCIMA23*, regulations or by WorkCover WA.

There is no intention to include conditions in regulations at this time, however the operational conditions at [Attachment 2 – Operational Conditions for Licensed Insurers](#) will be imposed by WorkCover WA when a licence is granted.

The operational conditions are in substance the same requirements that currently apply to approved insurers relating to:

- Compliance with obligations, requirements and timeframes as a licensed insurer in accordance with the Act and regulations
- Compliance with *WorkCover WA's Insurer and Self-insurer Principles and Standards of Practice*
- Participation in periodic audits or performance reviews as required by WorkCover WA

- Maintaining accurate records and providing information to WorkCover WA upon request to demonstrate compliance with the Act, regulations, licence criteria and operational conditions.

The proposed conditions also include a number of important notifications required to be given to WorkCover WA about any significant corporate changes, solvency issues or major changes in service delivery models.

There is no intention to impose additional specific conditions to any particular insurer, however, WorkCover WA may do so if necessary to ensure performance and service standards are maintained. The operational conditions will apply to all licensed insurers.

Specialised insurer condition

Under the *WCIMA23*, WorkCover WA may grant an insurer licence subject to a condition (a specialised insurer condition) that limits the insurance business carried on pursuant to the licence to a particular industry or class of business or employer.

The Insurance Commission of Western Australia is taken to be a licensed insurer that is subject to a specialised insurer condition that limits insurance to public authorities.

WorkCover WA will consider whether any current approved insurers should be granted a specialised insurer condition in the lead up to the *WCIMA23*.

Unless a specialised insurer condition is granted licensed insurers are required to insure any employer in any industry who requests a workers compensation policy.

Performance monitoring and review of insurers

Under the 1981 Act WorkCover WA monitors the performance of approved insurers in order to provide advice and recommendations to the Minister who has the power to issue or revoke insurer approval.

Under the *WCIMA23*, WorkCover WA will issue insurer licences.

The *WCIMA23* provides for WorkCover WA to monitor and review the workers compensation functions of licensed insurers to determine whether those functions are being carried out effectively, economically and in compliance with the *WCIMA23*, the regulations, and any conditions of the insurer's licence.

WorkCover WA currently evaluates performance of insurers against WorkCover WA's *Insurer and Self-insurer Principles and Standards of Practice*. Before the *WCIMA23* commences operation, the standards framework will be updated to align with new terminology, processes and requirements in the *WCIMA23*, but otherwise there will be no significant changes to the framework. The updated framework will include expectations relevant to the new provisions for dealing with deferred claims and making provisional payments.

Suspension, cancellation or surrender of licence

The *WCIMA23* clarifies the effect of a suspension, cancellation and surrender of an insurer licence, including voluntary surrender of a licence.

In relation to compliance, WorkCover WA's regulatory approach is not prescriptive and varies depending on the nature of the issue, breach or complaint. Actions can range from education, warning notices, improvement notices (under the *WCIMA23*), infringement notices or formal prosecution for offences, suspension and cancellation of a licence.

WorkCover WA does not intend to make any significant change to its regulatory approach and will continue to undertake audits and formal investigations in accordance with principles of procedural fairness and due process.

WorkCover WA expectations

WorkCover WA expects licensed insurers to:

- always satisfy and maintain the licence criteria and comply with the operational conditions
- carry out functions and deliver services in accordance with the *WCIMA23*, regulations, and the WorkCover WA Insurer and Self-insurer Principles and Standards of Practice
- participate in WorkCover WA audit or performance monitoring activities and provide accurate, timely and reliable information.

Evaluation and monitoring

The *WCIMA23* provides for WorkCover WA to conduct performance monitoring and review of licensed insurers to determine compliance with legislation, regulations, licence criteria and operational conditions.

Attachments

1. Licence Criteria for Insurers
2. Operational Conditions for Licensed Insurers

Attachment 1: Licence Criteria for Insurers

It is intended the regulations will specify the following criteria that must be satisfied for the grant of a licence to an insurer, or renewal of a licence, and required to be maintained.

Criteria

An insurer must:

1. At all times be authorised under section 12 of the *Insurance Act 1973* (Cwlth) to carry on business in Australia
2. Be financially and prudentially viable including satisfying Australian Prudential Regulatory Authority standards
3. Have material and financial resources and operational capability and capacity WorkCover WA considers sufficient to enable the insurer to -
 - a) meet current and future claim liabilities for workers compensation policies issued by the insurer
 - b) carry out functions and obligations as a licensed insurer in accordance with the *WCIMA23*, regulations, and licence conditions
 - c) comply with requirements and timeframes as a licensed insurer in accordance with the *WCIMA23*, regulations, and licence conditions
 - d) provide a high standard of claims management to optimise timely decision making
 - e) provide a high standard of injury management to optimise return to work outcomes
 - f) underwrite and administer workers compensation policies effectively
 - g) effectively manage disputes and complaints arising from activities as a licensed insurer
 - h) provide a high standard of service to employers, workers and other scheme participants
 - i) cooperate with, and provide accurate information to, WorkCover WA to assist in performance monitoring and compliance activities
 - j) meet all relevant state, territory and commonwealth legislative requirements in the operations of the business, including for records management, security, privacy and confidentiality.

WorkCover WA will issue guidelines relating to the matters that are taken into consideration in determining an application for an insurer licence, and the information required by WorkCover WA to assess whether the criteria are met and maintained.

Attachment 2: Operational Conditions for Licensed Insurers

In addition to satisfying the criteria for grant of an insurer licence, or renewal of a licence, the licence will be subject to the following conditions (imposed by WorkCover WA, s. 229(1)(b) of the *WCIMA23*).

A licensed insurer must:

Statutory requirements

- Comply with obligations, requirements and timeframes as a licensed insurer in accordance with the *WCIMA23* and regulations

Principles and standards of practice

- Comply with WorkCover WA's *Insurer and Self-insurer Principles and Standards of Practice* as amended from time to time (the current edition will be updated for consistency with the *WCIMA23*).

Further conditions

- Comply with any further condition or variation of a condition following written notice by WorkCover WA

Performance and review

- Participate in periodic audits or performance reviews as required by WorkCover WA.
- Maintain accurate records and provide information to WorkCover WA upon request to demonstrate compliance with the *WCIMA23*, regulations, licence criteria and operational conditions (including compliance with principles and standards of practice).
- Ensure staff are appropriately trained and provide support to assist them in professional development

Data and interactions with WorkCover WA

- Provide accurate and timely data and information to WorkCover WA to assist WorkCover WA to perform functions under the *WCIMA23*
- Ensure senior staff are available to respond to WorkCover WA and contact details of senior staff are up to date.

Information security

- Comply with laws relating to records management and security of information

Outsourcing/offshore processing

- Not contract out claim management functions, or outsource or offshore any insurer function unless approved by WorkCover WA

Notification about significant changes to service delivery model

- Notify WorkCover WA of any proposal to make significant changes to the manner in which claims, injury management or insurance functions are delivered.

Notification about solvency & APRA requirements

- Notify WorkCover WA within 3 days if APRA:
 - 1) revokes the licensed insurer's authorisation under section 12 of the *Insurance Act 1973 (Cwlth)*
 - 2) takes, or threatens to take, any action in relation to the authorisation

- 3) imposes, or threatens to impose, any conditions, or additional conditions, or varies or revokes any conditions on the authorisation including any change in the licensed insurer's supervisory level
 - 4) commences or conducts any investigation in relation to the licensed insurer, any related body corporate of the licensed insurer, any person who is a prescribed person in relation to the licensed insurer or any related body corporate of the licensed insurer.
- In addition to the obligations imposed above, if a licensed insurer's supervisory level is elevated by APRA, the licensed insurer must, within 7 days of becoming aware of the change in stance:
 - 1) provide WorkCover WA, in writing, a detailed description of the issues identified by APRA
 - 2) provide WorkCover WA, in writing, details of the actions it is taking to comply with any APRA intervention and how such action may impact on Western Australian operations
 - 3) provide WorkCover WA, in writing, advice as to how it proposes to keep WorkCover WA informed in respect to progress.
 - 4) The licensed insurer must agree that WorkCover WA may exchange information regarding its prudential status, including relevant documentation with APRA.

Notification about significant corporate changes

- Notify WorkCover WA within 7 days if any of the following things occur:
 - 1) any change, or any proposal to change, the licensed insurer's name
 - 2) any change to the licensed insurer's status under the Corporations Act, or any proposal to make such a change
 - 3) any change in the directors or secretary of the licensed insurer
 - 4) the licensed insurer becoming a subsidiary (as defined in the Corporations Act) of another body corporate (as defined in the Corporations Act)
 - 5) the licensed insurer ceasing to be a subsidiary of another body corporate
 - 6) any change in the control (as defined in the Corporations Act) of the licensed insurer
 - 7) any change in the personnel responsible for the licensed insurer's Western Australian business operations
 - 8) any other change that may affect the ability of the licensed insurer to perform its obligations as a licensed insurer.