



Insurance Commission
of Western Australia

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Dear Kevin

WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 2023 – IMPLEMENTATION CONSULTATION PAPERS 1-19

The Insurance Commission of Western Australia (**Insurance Commission**) appreciates the opportunity to make this submission on the implementation consultation papers, covering proposed regulations and WorkCover WA administrative instruments supporting the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*.

This submission provides comment on implementation consultation papers 1-19 where the Insurance Commission would like to seek clarification on 15 issues.

Consultation Paper 2 – Presumptive diseases

Issue 1: As the list of presumptive diseases has been expanded there would be benefit in including a table to record employment history and exposure on the relevant claim form.

The proposed list of presumptive diseases has been expanded to additional conditions and classes of employment, and now includes PTSD. Past periods of exposure may apply and a person could have been employed by other prescribed employments prior to diagnosis.

Currently the Insurance Commission's claim form for industrial diseases, a presumptive disease, includes a table to record employment history and exposure as the disease could have been contracted whilst a claimant was employed in prior prescribed employments. Therefore there is the potential for the last employer/insurer on risk to seek recovery/contribution from prior employer(s).

As the current employer/insurer will need to accept liability under the presumptive legislation, the Insurance Commission seeks clarification on whether there will be a specific claim form for all presumptive diseases, including PTSD, and if so, would this form include employment and exposure history?

Consultation Paper 5 – Liability and Provisional Payments

This consultation paper proposes that within 14 days of receipt of the claim, the insurer or self-insurer (the insurer), is required to give the worker and employer a liability decision notice or a deferred decision notice.

Issue 2: Is the Director to be notified that a decision is not able to be made within the time allowed as currently required under section 57B (2)(c) of the 1981 Act.

Notice to the Director is currently satisfied by completing the Liability Notice via WorkCover's On-Line portal. The consultation paper includes the proposed Deferred Decision Notice prescribed form, however neither the consultation paper nor Section 29 of the *WCIMA23* specify that notice must also be given to the Director.

Clarification is required on whether insurers are still required to notify the Director when a deferred decision notice is issued, and if so, the method by which this notice is to be given.

Issue 3: There is no provisional payment code for Other Treatment or Appliance Payment.

Attachment 6 - Provisional Payment Coding caters for the implementation of new payment codes for reporting provisional payments from the implementation date. Under Payment Type Code (C100), there is no provisional payment code outlined for Other Treatment or Appliance Payment. These payments are likely to be related to medical and health expenses and where payable, there may be an entitlement to provisional payments.

Clarification is required on whether it is intended that provisional payments made under the Other Treatment or Appliance Payment category are also reported.

Issue 4: There is no information on commencement of provisional payments for uninsured employers.

The Insurance Commission also manages claims on behalf of WorkCover for uninsured employers. Clarification is sought on the commencement of provisional payments when a claim is made on an uninsured employer, in particular:

1. Does the 28 day timeframe in which the uninsured employer has to make a liability decision commence from:
 - a) the date the claimant makes the claim on the uninsured employer; or
 - b) the date that WorkCover WA exercises the rights of the employer?
2. In either of the above scenarios, where no liability notice has been issued within 28 days, will WorkCover wait 30 days to make provisional payments to the claimant as per section 266(1) of the *WCIMA23*?

Consultation Paper 11 – Settlements

The transitional arrangements under this consultation paper outline that the Director will accept Form 15C Memorandum of Agreements under the 1981 Act which are received but not registered before the commencement date of the *WCIMA23*. Settlements lodged after the commencement date will need to be in the new prescribed form.

Issue 5: Validity of permanent impairment assessment reports carried out prior to the commencement date of the WCIMA23.

The new settlement agreement requires a copy of the Approved Permanent Impairment Assessor (APIA) assessment(s), if the settlement includes provision for permanent impairment compensation. Changes under WCIMA23 now require assessment reports of the degree of permanent impairment to include a certificate as to the worker's degree of permanent impairment. This change means that assessment reports, currently AMS5, will be combined with the assessment certificate, currently AMS6, into a single approved form, APIA5.

For AMS5 and AMS6 reports already issued by an approved medical specialist, any requirement to issue a new APIA5 for settlements lodged after the commencement date would pose a significant cost imposition. It could also increase the duration of claims and delay the payment of entitlements to a worker.

Clarification is sought on the following:

1. Will WorkCover accept AMS5 and AMS6 assessments already issued for settlements lodged after the commencement date, with the item number previously assessed converted to the corresponding item number listed in Section 101 of WCIMA23?
2. Will there be a requirement for new assessments to be undertaken as per Section 101 of the WCIMA23 for permanent disability assessments for injuries pre 14 November 2005?

Issue 6: It is unclear whether the WCIMA23 will continue to provide for finalising orders to resolve a claim.

Under Section 182N of the 1981 Act, a conciliation officer, with the consent of the parties, may issue finalising orders setting out the matters that have been agreed to by the parties. These finalising orders can be used to settle a claim under the current Act.

Clarification is sought on whether the new Act will continue to provide for finalising orders to resolve a claim, without the need for settlement documents to be completed and lodged with the Director. This matter may be addressed in the consultation paper for dispute resolution and the Insurance Commission will provide comment when that paper is available for review.

Consultation Paper 16: Workers' Compensation Policy

This Consultation Paper outlines WorkCover's intention for workers compensation policies issued to employers to contain the provisions and be set out in the form of the standard policy prescribed in the regulations.

Issue 7: The effect of section 235 of the WCIMA23 on the Insurance Commission.

Section 235 of the WCIMA23 sets out special arrangements for the Insurance Commission.

The Insurance Commission understands that the deletion of section 44 of the *Insurance Commission of Western Australia Act 1986* is consequential to the change in status of the Insurance Commission as a licensed insurer under the *WCIMA23* pursuant to section 235 of the *WCIMA23*.

Pursuant to section 235(3)(a) of the *WCIMA23*, public authorities are taken to comply with section 202 of the *WCIMA23*. We understand that to mean it is not intended that the Insurance Commission needs to comply with regulations dealing with matters set out in section 237 or section 289 so as to exclude terrorism cover. Specifically, we understand the effect is that the Insurance Commission will not need to use the prescribed form of workers compensation policy (Prescribed Policy).

The Insurance Commission seeks clarification that our interpretation of *WCIMA23* is correct and that we will not need to issue policies in the form of the Prescribed Policy.

Issue 8: Section 235 of *WCIMA23* does not exempt the Insurance Commission from using the Prescribed Policy.

If section 235 of the *WCIMA23* is not intended to exempt the Insurance Commission from using the Prescribed Policy, the Insurance Commission requires guidance on how it should address certain regulations.

The specific areas that the Insurance Commission seeks clarification on are:

1. The Form of the Insurance Policy

The Insurance Commission provides agencies with Cover Documents that detail the cover provided to them across multiple lines of insurance under the RiskCover Fund self-insurance arrangements.

The style of the language used in the Prescribed Policy does not align with that used in RiskCover's Cover Documents and Fund Guidelines. For example, the Insurance Commission does not use the terms "we", "us", "you", "your" etc. in its Cover Documents. Introducing these new terms will result in an inconsistent style between the respective sections of the RiskCover Cover Document and will require extensive amendments to the Cover Documents.

The Insurance Commission intends to provide the public authorities covered by the RiskCover Fund cover equivalent to, if not better than, that outlined in the Prescribed Policy.

In the event that the Insurance Commission is required to comply with the regulations dealing with matters set out in section 237, the Insurance Commission seeks clarification whether the special arrangements in section 235 allow the Insurance Commission to craft an insurance policy wording that uses language that is consistent with the language used in its Cover Documents.

2. Terrorism Exclusion

The Prescribed Policy excludes liability to pay compensation or damages in respect of a declared act of terrorism in accordance with Section 289 of the *WCIMA23*.

The RiskCover Fund's workers compensation cover provided to public authorities does not exclude loss/liability arising from a terrorist event.

The Insurance Commission has in place specific reinsurance arrangements to cover workers compensation losses arising from a terrorist event. The Insurance Commission does not wish to diminish the coverage provided and intends to continue providing public authorities terrorism cover.

Accordingly the RiskCover workers compensation cover will be inconsistent with the Prescribed Policy. The Insurance Commission seeks clarification on how this inconsistency can be resolved.

3. War Exclusion

It is intended that the Prescribed Policy will exclude any liability to pay compensation or damages in respect of a claim directly or indirectly occasioned by any event happening through or in consequence of war, invasion, acts of foreign enemies etc.

The RiskCover Fund's workers compensation cover provided to public authorities does not exclude loss/liability arising from war, invasion, acts of foreign enemies etc. The Insurance Commission does not wish to diminish the coverage provided and intends to continue providing public authorities cover for war etc.

Accordingly the RiskCover workers compensation cover will be inconsistent with the Prescribed Policy. The Insurance Commission seeks clarification on how this inconsistency can be resolved.

Consultation Paper 17 – Stopping or Reducing Compensation

Issue 9: An employer is now required to give notice to a worker when reducing or discontinuing income compensation on the basis of a worker's return to work.

WA government agencies covered by the Insurance Commission have raised concerns regarding the increased administrative burden of providing these notices under Section 63 of the *WCIMA23*. On some claims multiple notices will be required. Clarification is sought for the following scenarios:

1. Workers on a graduated return to work program, where hours and or duties are increasing on a periodic basis. Can employers issue one notice to the worker outlining the reduction in income compensation based on a return to work program?
2. Workers who are receiving income compensation due to an absence from work for the purpose of attending for treatment. Is a notice required in this scenario?

Issue 10: The prescribed form wording does not clearly specify the workers return to wages.

The prescribed form specifies that a worker's income compensation is reducing or discontinuing on the basis of a return to work, but does not specify that the worker will now be receiving wages or a combination of wages and income compensation as a result. We anticipate that this will be confusing for workers as it may not be clear they are returning

to wages and result in unnecessary applications for conciliation being commenced. We recommend that the prescribed wording of the form be expanded to provide explanatory information to the worker on the effect of this notice.

Consultation Paper 18 – Catastrophic Workplace Injuries

The Insurance Commission has considered the matters related to catastrophic workplace injuries from the perspective of the workers' compensation insurer and the perspective of its Catastrophic Injuries Support Scheme (CISS) claims management.

Clarification is sought on the following matters raised by the Workers' Compensation insurer:

Issue 11: The worker may not be eligible to receive the same entitlements they do under workers compensation post acceptance as a CISS participant.

Section 4 of the Process Overview notes that once a worker is accepted under the CISS, as an interim, or later, if eligible, a lifetime participant, the employer ceases to be liable for medical or health expenses, miscellaneous or workplace rehabilitation expenses. This is because those same services will be provided to the worker as a participant in the CISS.

Under Section 83 of the *WCIMA23*, the following category of miscellaneous would not be compensable under the CISS:

- (g) assessment of degree of permanent impairment, as provided by Section 91.

Confirmation is sought from WorkCover that there will be no requirement for the Workers' Compensation insurers to fund the assessment of degree of permanent impairment whilst they are a participant in the CISS.

Additionally, clarification is sought on the following matters raised by the CISS team:

Issue 12: Language in the prescribed forms is not consistent with the eligibility assessment process at the Insurance Commission.

The language in the prescribed forms for the notification of a catastrophic injury (Attachment 1 and 2) refers to the insurer noting that a claim from an injured worker '*is, or appears likely to be, a catastrophic injury*'. This may indicate that the workers' compensation insurer makes the determination as opposed to the completion of an independent eligibility assessment. The ambiguity in the notice may give rise to the expectation that the worker will be an eligible participant.

There is significant administrative effort involved in determining eligibility on potential catastrophic injury notifications. Clear wording in the prescribed forms and a more detailed and explicit definition of the eligible catastrophic injury types will minimise the ineligible notifications.

It is recommended that WorkCover:

1. include additional wording for the insurer to request the Insurance Commission to undertake an eligibility assessment on whether the injuries identified meet the prescribed criteria of a catastrophic injury; and
2. include more detailed and explicit definition of the eligible catastrophic injury types.

Issue 13: Participation in the CISS may be suspended for a number of reasons.

Whilst the consultation paper notes suspension as a participant in the CISS while the person is absent from Australia, the Insurance Commission may suspend participation in the CISS for other reasons as outlined under Section 20 of the *Motor Vehicle (Catastrophic Injuries) Regulations 2016*.

The Insurance Commission recommends that all suspension criteria is clearly outlined in the regulations to avoid any disputes around participation in the CISS.

Issue 14: Language or definitions inconsistent with CISS terminology.

The Insurance Commission notes that the following amendments should be made:

1. Ambulance services to be referred to as ambulance transport.
2. Consistent reference to both interim and lifetime participation to avoid inferring that lifetime participation may be applicable at the entry point into the CISS.
3. The third point under functions of ICWA on page 4 to more specifically reference that certain categories of treatment, care and support services are delivered by an approved and registered provider as determined by an assessed need.

Other matters

Issue 15: Prescribed form wording has changed significantly.

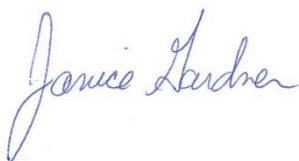
The Insurance Commission notes the wording in the prescribed forms has significantly changed from existing prescribed forms. There is a risk that the language used may not be easily understood by workers for example, as outlined in Issue 8.

The Insurance Commission proposes that a further consultation period be provided for the wording of prescribed forms. Additionally, the prescribed wording may be reviewed once the regulations are drafted. We welcome the opportunity to comment on the draft regulations when they are available.

If you have any questions about our submission, please contact one of the below where relevant:

- Karen Van Der Hoeven, Workers Compensation Section Manager, Government Insurance Division on 0418 948 346;
- Selwyn D'Rozario, Insurance Advisory and Underwriting Manager, Government Insurance Division on 0423 781 338; or
- Fab Zanuttigh, General Manager, Motor Injury Insurance on 0423 020 165

Sincerely



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