



## **SUBMISSION COVER SHEET**

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### ***This submission:***

Contains NO confidential material.



# Submission

## **Workers' Compensation and Injury Management Act 2023**

### **WAiS submission in response to Implementation Consultation Paper 1: Deemed Workers and Excluded Workers**

#### **Background: WA's Individualised Services (WAiS)**

Western Australia's Individualised Services (WAiS) is a member-based community organisation working in partnership with people, families, service providers and government agencies to promote and advance individualised, self-directed supports and services for people living with disability, including psychosocial disability.

Since our inception in 2010, we have evolved to become thought leaders in this space, providing comprehensive, intentional support with integrity, passion and authenticity at our core. By leveraging our extensive local, state, and international network, we seek to lead, influence, innovate and inform to create meaningful and lasting change, supporting people to build capacity and live their lives on their own terms.

Unlike any other organisation, we partner and work with all sector stakeholders, as well as providing vital links, ensuring that disability services respond to the unique needs of people. We work to ensure that people can access and navigate the services and the sector to achieve their goals.

WAiS is the only organisation that has a specific focus and purview of supporting and developing the capacity of people, families, service providers, Local Co-ordinators and government, specifically in the area of individualised, self-directed supports and services.

A significant and growing area of our work is providing information and support, to people, families, and service providers, in relation to the legal considerations and obligations for people to design, develop and manage individualised support arrangements. This includes people who self-manage their funding directly from the funder and have the option to privately employ their own workers with this funding. It also includes people who share manage, who work in partnership with a service provider whereby an arrangement is negotiated and built upon a partnership between the provider and the person to support the person to privately employ their own workers. WAiS

provides information and supports to both providers and people who self or share manage encompassing areas such as Industrial Relations, Taxation, Superannuation, Workers Compensation and Occupational Health and Safety.

A significant portion of the people WAIIS provide information and support to are people with disability or their family members who have chosen to privately and directly employ their own support workers.

WAIIS membership has a focussed group of people/families and service providers who are committed to individualised supports, and people having choice and control in their life. WAIIS member organisations have over 25 years' experience in supporting people to privately, and successfully employ their staff in their homes.

WAIIS and WAIIS members commitment to quality individualised supports ensures the information provided is clear, current and aligns with the policies of governing authorities and legislation. We work with these governing authorities, lawyers and KPMG in seeking advice that feeds into the information we provide.

Not only does this information build confidence in people and providers to design an individualised service, assists them to be the best employer they can be, but it also reduces the risk of employers finding themselves in non-compliant legal situations.

WAIIS appreciates the opportunity to provide feedback in relation to deemed and excluded workers, particularly in the context of people with disability and/or their families directly hiring their own workers.

## **Introduction**

The definition of 'worker' in the WCIMA23 covers individuals working under a contract of service or apprenticeship (primary definition) and certain contractors (extended definition).

Any person working under a contract of service will continue to be covered as a worker in the workers compensation scheme (employee, in essence).

Coverage of contractors is clarified. Any individual who has contracted with another person for the performance of work will be covered if –

- (i) the work is not work in the course of or incidental to a trade or business regularly carried on by the individual in the individual's own name or under a business or firm name; and
- (ii) the individual does not sublet the contract; and
- (iii) if the individual employs a worker, the individual performs part of the work personally.

Section 13 enables regulations to provide:

- that an individual of a specified class or description, who otherwise would not be, or may not be, a worker is to be considered a worker for the purposes of the WCIMA23

- that an individual of a specified class or description, who otherwise would be, or may be, a worker is not a worker for the purposes of the WCIMA23.

In modernising WA's workers' compensation laws, Workcover is consulting on the implementation of the 2023 Act in relation to proposals for regulations and administrative instruments. Implementation Consultation Paper 1 is in relation to deemed workers and excluded workers.

#### **1.4 Deemed worker: NDIS support workers**

WAI S references the following points made by WorkCover WA:

- "WorkCover WA's view is the arrangement that requires clarification and ought to be covered is the one that closely resembles a contract of service. It is intended the regulations will provide that a NDIS support person is a worker if they are an individual who has been engaged directly by a self-managed NDIS participant and is paid with funds under a plan for the provision of 'services and supports' by the individual to the NDIS participant."
- "The regulations will make clear the individual engaged to provide the services to the NDIS participant is deemed to be a worker and the NDIS participant will be taken to be the worker's employer."
- "The regulations are intended to apply to the 'direct' engagement model only, not to support workers supplied by a firm or labour hirer that specialises in supplying support workers, or via a platform (it is likely the firm or labour hirer would be the employer of the support worker in these circumstances)."

WAI S generally supports WorkCover's proposal that individuals engaged to provide services directly to a person with disability should be deemed a worker. This position protects both the worker as well as the person hiring the worker.

However, WAI S has a few concerns with the limitations proposed to this coverage:

- Workers are not necessarily always hired directly by the person with disability themselves, sometimes they are hired by a family member on behalf of the person with disability. WAI S would not like to see an inadvertent exclusion of workers whose employer is a family member as opposed to an "NDIS participant".
- People and/or their families can hire workers not only under when they opt for self-management of their NDIS plan (or part thereof) but also when their plan is plan managed (or part thereof), OR, under agency managed known as 'Shared Management' in WA. WAI S suggests not specifically referencing the NDIS management option under which a person's NDIS plan is being managed.
- Certain platforms, for example Mable, are an arrangement whereby independent support workers (sole trader contractors) can set up an account and use their Mable profile to outline their experience, qualifications, availability, hourly rates to enable people with disability and their families to source them for work. Mable itself is not the employer of these workers, they operate more so as a conduit to connect workers with people with disability.
- The specific focus on people who use NDIS funds to hire their own workers, may unduly exclude people with disability and/or their families who utilise other sources of funding to hire their own support workers. WAI S requests consideration of expansion of scope to

cover these scenarios as well. This could include people who directly employ workers utilising other sources of funding i.e. aged care, ICWA etc.

For any of the NDIS support workers deemed a “worker”, clarification is sought as to the category of workers’ compensation cover that would be applicable. Historically, people have utilised ‘private households employing permanent staff’ (96010)

#### **2.4 Excluded worker: Casual not working for another person’s trade or business.**

WAIIS notes that WorkCover proposes that “It is intended the regulations will preserve the same position as the 1981 Act by excluding an individual whose employment is of a casual nature and is not for the purpose of another’s person’s trade or business”.

A significant portion of people and their families who are employing support workers, employ them under a casual arrangement to provide themselves maximum flexibility with their workers and their work arrangements. How does this exclusion interact with the proposal for NDIS support workers to be deemed workers? WAIIS is concerned that this would then exclude a large number of workers employed casually by people with disability and/or their families.

#### **3.1 Domestic workers – no regulations**

WAIIS notes that WorkCover proposes that domestic workers are workers who perform work in or for a private household, such as cleaning, childcare, or gardening services on behalf of a householder. Workcover outlines that domestic workers may be covered if they meet the definition of worker by being engaged under a contact of service. Domestic workers may be excluded if the person is engaged in any casual arrangement for a homeowner and is not doing work for the homeowner’s trade or business.

This raises a point of clarification in relation to NDIS support workers being deemed workers.

#### **Recommendation**

People with disability and/or their families may utilise NDIS funding (or other sources of individualised care funding) to hire workers for a range of supports and services, this may include a support worker, but may be only for a cleaner, for example. Clarification is required and requested in relation to definition of “NDIS support worker” OR any worker engaged with individualised funding (NDIS, aged care, ICWA etc), and the consequent associated coverage of who will be deemed a ‘worker’ to ensure all workers are covered and supported, regardless of who their employer is.

#### **Concluding Remarks**

WAIIS and its members want to reiterate the critical importance for people and their families to have choice, control and options to employ their workers in ways that are fair, reasonable and flexible for all parties.

If the Review would like any further information or to discuss anything contained in this submission, WAiS Committee and Executive would be more than willing to assist.

On behalf of WAiS and WAiS members,

A handwritten signature in black ink that reads "Pearman". The script is cursive and fluid.

Leanne Pearman  
Chief Executive Officer  
WA's Individualised Services

1<sup>st</sup> December 2023