

**WorkCover WA Implementation Consultation Papers
Implementation Proposals for Regulations and Administrative Instruments
Department of Justice Submission**

Overview:

As requested, the Department of Justice has provided relevant feedback on the WorkCover WA Implementation Consultation Papers regarding the implementation of the new *Workers Compensation and Injury Management Act 2023* (the Act). The Division which has provided the feedback has been identified against the relevant consultation paper.

Specific Feedback:

Implementation Consultation Paper	Comments
1. Deemed Workers and Excluded Workers	No further comments
2. Presumptive Diseases	No further comments
3. Workers' Compensation Claim Form a. Proposed Changes to Claim Form & Information	<p><i>Corporate Services Division</i></p> <ul style="list-style-type: none"> • The third dot point under employee rights and responsibilities on page 2, does not make sense and needs to be re-worded. • Consent authority (to be signed at the option of the worker) – the employer should be included within the consent authority for the release of information. • Will there be a statutory requirement for a 'recurrence of injury' claim form to be completed?
4. Certificates of Capacity	No further comments

Implementation Consultation Paper	Comments
5. Liability Decisions & Provisional Payments	<p><i>Corporate Services Division</i></p> <ul style="list-style-type: none"> • Clarity to be provided as to whether we are accepting backdated certificates of capacity (whereby a certificate of capacity is issued on X date and incapacity is back dated to Y date) • Clarification that when a worker is issued with a full capacity for work, whether income compensation payments can cease from that date, or whether the worker must complete a pre-injury shift before income compensation can cease. • A worker has resumed full pre-injury duties and hours and is not in receipt of income compensation. If, three months later, the worker experiences an aggravation or exacerbation of the injury (whether this occurred in the workplace or not), do the same parameters to assess liability (such as provisional payments for income compensation and medical and health expenses) kick in again in the same way if this was assessed as a new workers compensation claim?
6. Injury Management & Return to Work	<p><i>Corporate Services Division</i></p> <ul style="list-style-type: none"> • Clarity as to whether return to work case conferences may be used to discuss the findings of Independent Medical Examination reports, regarding the recommendations around return to work that these reports make, and potential influence on goal-setting? • Clarity regarding how much notice is required to be given to the worker for their attendance at return to work case conferences, and/or what is deemed to be ‘reasonable notice’? • Clarity regarding the repercussions/consequences of a worker failing to attend a return to work case conference: <ul style="list-style-type: none"> ○ Who is liable if there is cancellation/missed appointment fee ○ If the worker demonstrates a regular pattern of avoidance of return to work case conferences/unavailability to attend
7. Assessment of Permanent Impairment a. WCWA Guidelines for the Evaluation of Permanent Impairment – Consultation Draft	<p>No further comments</p>

Implementation Consultation Paper	Comments
8. Approval Framework for Permanent Impairment Assessors	No further comments
9. Medical and Health Expenses Compensation	No further comments
10. Dust Disease	No further comments
11. Settlements	No further comments
12. Workplace Rehabilitation Services	No further comments
13. Approval Framework for Workplace Rehabilitation Providers	No further comments
14. Licensing Framework for Insurers	No further comments
15. Licensing Framework for Self-Insurers	No further comments
16. Workers Compensation Insurance Policies	No further comments

Implementation Consultation Paper	Comments
17. Stopping or Reducing Compensation	<p><i>Corporate Services Division</i></p> <ul style="list-style-type: none"> • Will there be a form to complete when a worker is certified fit with a full capacity for work? Can the employer cease income compensation payments from the date that the full capacity is issued, or does the worker need to be notified formally in writing via attachment 2 or attachment 3? • How does the above apply if a worker is absent from the workplace using leave entitlements (such as annual leave for holidays)?
18. Catastrophic Workplace Injuries	<p>No further comments</p>
19. Common Law	<p><i>Courts and Tribunal Services Division</i></p> <p>Her Honour Chief Judge Julie Wager, Chief Judge of the District Court, provided a response on behalf of the District Court concerning Implementation Consultation Paper 19 which refers to common law claims.</p> <p>Chief Judge Wager advised that an action for damages is commenced by writ of summons. A writ is a document that is generally required to be lodged through the court's Electronic Case Management System (ECMS) pursuant to rule 20 of the District Court Rules 2005. Chief Judge Wager advised that the court has no control over the electronic filing of a document and the document is not scrutinised nor checked by any human agency. Thus, a writ could be filed which does not comply with the proposed provisions in s421(1) of the Act.</p> <p>Chief Judge Wager advised that in that event, it would be for the defendant to apply to strike out the writ, or for summary judgment pursuant to order 16 of the Rules of the Supreme Court 1971.</p> <p>Chief Judge Wager expressed concern that this change would potentially lead to an increase in the number of such applications, and a corresponding increase in the workload of registrars who would hear such applications and judges on any subsequent appeal.</p>
20. Noise Induced Hearing Loss	<p>No further comments</p>
21. Dispute Resolution	<p>Document not yet available for public review</p>

Implementation Consultation Paper	Comments
22. Costs Committee Determination	Document not yet available for public review
23. Registered Independent Agents Transitional Arrangements	Document not yet available for public review
24. Fees Order for Medical Services	No further comments
25. Fees Order for Allied Health Services	No further comments
26. Fees Order Workplace Rehabilitation Services	No further comments
27. Fees Order for Permanent Impairment Assessment Services	No further comments