Insurance Council of Australia

11 January 2024

Mr Chris White
Chief Executive Officer
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

By email: consultation@workcover.wa.gov.au
CC: chris.white@workcover.wa.gov.au

Dear Mr White

Workers Compensation and Injury Management Act 2023 – Implementation Consultation Papers 20 & 24-27

The Insurance Council of Australia (**ICA**), on behalf of its insurer members (**Insurers**) welcomes the opportunity to provide comment on the *Workers Compensation and Injury Management Act 2023* (**WCIMA 2023**) implementation consultation papers 20, 24, 25, 26 and 27 (**Papers**).

As previously expressed, the ICA and Insurers share WorkCover WA's commitment to ensuring that the Workers' Compensation Scheme (the **Scheme**) is implemented to best meet the needs of injured workers, employers, and businesses in Western Australia. The ICA and Insurers consider that ensuring the regulations and administrative instruments proposed to support WCIMA 2023 are optimal, is key to the success of the Scheme.

Please find **attached** a table containing industry feedback on specific aspects of the Papers.

The ICA and its Insurer members are of the view that to best meet the overarching objectives of the Scheme, these aspects of the Papers require further consideration.

In addition to the feedback below, Insurers would like to understand whether there will be changes to any payment types/codes, and if so, whether these would be updated in the National Insurer Data Specifications (**NIDS**) for insurers or other areas of data reporting.

Insurers would also like to clarify whether:

(i) new Gazette rates apply to all 30/6/24 renewals even though the legislation only comes into effect at 12.01am on 1 July 2024; and

(ii) what policy wording insurers should issue for all renewals at 4pm on 30 June 2024 (i.e., the old policy wording or the new policy wording).

Please note we do not propose to make any specific comment in relation to the Papers' application to self-insurers.

We do consider that the effect and application of many of the proposals in the Papers will turn upon the precise wording of the Regulations to WCIMA 2023, noting the Regulations themselves are yet to be distributed or made available for consideration.

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The ICA has therefore not yet provided or attempted to provide finalised feedback on issues or clauses that are subject to the as yet unknown precise wording of the Regulations.

The ICA and Insurers would welcome the opportunity for further consultation once the proposed Regulations have been drafted and we would appreciate WorkCover WA's undertaking to allow for a further review and analysis at that time. We seek a continuation of the consultative approach which has historically been in play in Western Australia.

We also recommend once again that WorkCover WA plan a review of the impact and consequences of the changes to be effected by WCIMA 2023 within three years post-implementation.

We trust that our submission is of assistance to WorkCover WA in implementing the changes in WCIMA 2023. We look forward to working with WorkCover WA into the future regarding these and any other relevant aspects of the Papers.

We are available to discuss our submission and any questions that may arise in more detail at your convenience. Please do not hesitate to contact me or [redacted] if you have any queries.

Yours sincerely,

Andrew Hall
CEO & Executive Director

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Implementation consultation papers 20, 24, 25, 26, 27: ICA submissions*

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission
Paper 20: Noise Induced Hearing Loss	Section 31E of WCIMA 1981 Schedule 7 of WCIMA 1981 Part 3 of 1982 Regulations	ICA refers to the intention expressed in Paper 20 (pages 2-3) of discontinuing the requirement for mandatory initial or baseline hearing testing, paid for by employers, in prescribed workplaces (referred to below for ease of reference as **mandatory testing**). ICA notes for ease of reference that WCIMA 1981 and the 1982 Regulations currently provide (in summary) for a mandatory testing scheme as follows: o 'prescribed workplaces' are defined by reference to specified noise levels a worker is receiving or is likely to receive (clause 19I of the 1982 Regulations); o workers employed in a prescribed workplace must undergo an initial audiometric test no later than 12 months after being employed (WCIMA 1981 schedule 7 clause 2); o persons who can conduct the initial testing include audiometric officers (clause 19B of 1982 Regulations); o the employer is to arrange and pay for the audiometric test (WCIMA 1981 schedule 7 clause 3); o WorkCover is to be provided with and store the test results (WCIMA 1981 schedule 7 clauses 4-5); o if the worker or employer dispute the initial results, WorkCover is to arrange a re-test (schedule 7 clause 7) which is to be performed by an audiologist or approved medical practitioner (not an audiometric officer) (1982 Regulations clause 19H); o the results are prima facie evidence of the worker's level of hearing at the time (ie the results are accepted as correct unless otherwise proven)(schedule 7 clause 8(1)). ICA respectfully submits that the current mandatory testing scheme, providing for baseline testing within 12 months of commencing work in each prescribed workplace, has significantly reduced the need to claim apportionment from prior employers in NIHL claims. So far as ICA is aware, the removal of mandatory testing was <u>not</u> discussed or considered by the legislature in introducing WCIMA 2023.

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Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission
		In that regard, ICA notes that the Explanatory Memorandum to the *Workers Compensation and Injury Management Bill 2023*, presented to the Legislative Assembly, simply noted (at page 33, in relation to the then-clause 114 that: '*The various elements of the current noise-induced hearing loss scheme are spread across the current Act, regulations, approved procedures, custom and practice. Clause 114 provides for all technical aspects and procedures associated with the noise-induced hearing loss scheme to be prescribed in regulations as a single legislative source. Regulations made under this clause would not affect a worker's eligibility for noise-induced hearing loss compensation, or any amount payable.*' So far as ICA is aware, no reference was made here or elsewhere to any intention to remove the mandatory testing scheme. The strong inference from the explanatory memorandum (as quoted above) was that the regulations to WCIMA 2023 would simply consolidate the current scheme, not remove the mandatory testing scheme altogether. **ICA strongly submits that the requirements for mandatory testing should be retained.** ICA notes the following/ puts forward the following submissions in support of its position: o removal of the mandatory testing scheme is a significant step which should be considered by the legislature, not simply removed by means of regulations; o it is proposed in Paper 20 (page 4) that in place of a mandatory testing scheme, workers will instead be entitled to request an audiological test (to be paid for by the employer) once every two years, provided the worker is employed in a workplace where: *'1) The worker is frequently required by the employer to use personal protective equipment to protect the worker from risk of hearing loss associated with exposure to noise that exceeds the exposure standard set in the WHS Regulations; or* *2) WorkCover WA has issued a determination about the obligation for an employer to test*'; o ICA respectfully submits this places the onus entirely on the individual worker to identify that they are employed in such a workplace, and to request audiological testing; o placing this onus on individual workers carries with it the inherent risk that many workers will not be aware of their rights or entitlements (a risk not posed where mandatory testing is in place);

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Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission
		○ in addition, removal of mandatory testing carries with it the risk that employers will be less mindful of their obligations to workers in respect of the risks of injury posed by noise exposure, whereas retention of mandatory testing would ensure employers remain conscious of, and accountable for, the risks posed by noise levels; ○ section 111(3) of WCIMA 2023 provides that a NIHL assessment is sufficient evidence that the assessed noise induced hearing loss of a worker is due to the employment during the assessment period; ○ without initial or baseline hearing testing this presumption may lead to unreasonable outcomes in instances where workers may have noise induced hearing loss prior to and unrelated to their employment; ○ insofar as it is alleged the current mandatory testing scheme leads to inefficiencies (in terms of false positives generated upon initial testing by audiometric officers), ICA respectfully submits this could simply be addressed by discontinuing testing by audiometric officers, with initial mandatory testing to be conducted by an audiologist (as proposed by Paper 20), **without** discarding mandatory testing in noisy workplaces; ○ moreover, while it is suggested in Paper 20 that a finding on mandatory (baseline) testing that a worker in noisy employment does not meet the 10% threshold to receive compensation constitutes an 'inefficiency' in the scheme, ICA strongly disagrees. Rather, such findings enable the creation of a register of historical data for later reference, and are important given workers in noisy employment may obviously continue in the same or similar employment (with the same or different employers) for many years. This demonstrates mandatory testing working in the intended way, that is, enabling the creation of a database of historical information that can show, for instance, that a worker did not have a rateable hearing loss at a certain point in time, in order to more accurately pinpoint (by means of subsequent testing, either upon a chance in employment or the making of a claim) when NIHL developed and the employment to which it is attributable; ○ ICA sees no reason why a properly managed mandatory testing regime would cause unnecessary stress and confusion to workers (as stated at Paper 20 page 4). Rather, ICA envisages that placing the burden upon an individual worker to request audiological testing is more likely to lead to stress and confusion; ○ ICA further submits that the removal of mandatory testing, with no baseline results therefore available for reference, is likely to significantly increase the number of

disputes associated with claims for apportionment of NIHL claims between insurers and employers, and the increased claims costs associated with management of such claims may render any savings by removal of mandatory testing costs to be fruitless.

ICA maintains overall that mandatory testing is an important and powerful step in the NIHL claims process, not least in promoting workers' knowledge of their entitlements, and in enabling the creation of a register of historical data (held by WorkCover) as to individual workers' levels of NIHL, which provides important relevant evidence which can be relied upon by workers and employers in the event a claim for NIHL eventuates at a later time.

Proposal that liability for NIHL claims is deemed to be accepted if liability decision notices are not issued by deemed liability acceptance date

ICA refers to page 8 of Paper 20 where it is stated that:

> '*The obligation to make provisional payments, that otherwise applies to general claims, does not apply to NIHL claims if a decision is not made within the 28-day period, as the form of compensation for NIHL is limited to a lump sum. However, if a liability decision notice on the claim is not given by the deemed liability acceptance date, liability will be taken to have been accepted and noise induced hearing loss compensation will be payable.*'

However, ICA respectfully submits that WCIMA 2023 does not give delegated power to make Regulations providing for a deemed liability acceptance date, or for liability to be deemed to have been accepted, for NIHL claims, in the proposed form or at all.

ICA notes the following in support of its position:

- Paper 20 states that the obligation to make provisional payments has no application to NIHL claims because the form of compensation for NIHL is limited to a lump sum;
- However this is not the primary reason why the provisions of WCIMA 2023 relating to provisional payments has no application to NIHL claims;
- The primary reason is that Part 2, Division 2 of WCIMA 2023 does not apply to NIHL claims at all: refer the following provisions of WCIMA 2023:

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission

- section 18 providing that compensation takes one or more of the following forms:
  - income compensation;
  - compensation for medical and health expenses;
  - compensation for miscellaneous expenses;
  - compensation for workplace rehabilitation expenses;
  - lump sum compensation for permanent impairment for personal injury by accident;
  - lump sum compensation for noise-induced hearing loss;
  - lump sum compensation for permanent impairment from a dust disease;
  - compensation on the death of a worker;
- section 24, in Part 2 Division 2, which provides that:

'*This Division only applies to a claim for any one or more of the following kinds of compensation:*

- *(a) income compensation;*
- *(b) medical and health expenses compensation;*
- *(c) miscellaneous expenses compensation;*
- *(c) dust disease impairment compensation'*;

- therefore Part 2 Division 2 of WCIMA 2023 has **no** application to a claim for lump sum compensation for noise-induced hearing loss;

- section 29 of WCIMA 2023 (within Part 2, Division 2 of WCIMA 2023) gives delegated power for Regulations to prescribe the deemed liability acceptance day '***for the purposes of this section***' (our emphasis), and section 29(3) goes on to provide (relevantly) that an insurer who does not issue a liability decision notice before the deemed liability acceptance day is taken to have accepted liability;
- however, for the reasons set out above, section 29 has no application to claims for lump sum compensation for noise-induced hearing loss;

- there is no other provision in WCIMA 2023 which gives delegated power to issue Regulations prescribing a deemed liability acceptance day for the purposes of any other section of the Act, including, relevantly, for the purposes of Part 2 Division 8 of WCIMA 2023 (governing NIHL claims);
- section 114 of WCIMA 2023 gives delegated power to make Regulations for or with respect to various matters for the purposes of Part 2, Division 8 of WCIMA 2023, including, at section 114(1)(j):

  'the handling of claims for noise-induced hearing loss compensation, including required timeframes for the making of decisions on claims and the payment of compensation';
- ICA respectfully submits that despite the breadth of section 114, the provision does **not** go as far as delegating power to issue regulations prescribing a deemed liability acceptance day, or deeming an insurer or employer to have accepted liability, in the absence of express provisions in the Act itself to that effect.

ICA respectfully submits that **there is no power to make Regulations governing NIHL claims which provides, as proposed in Paper 20, that**:

> *'if a liability decision notice on the claim is not given by the deemed liability acceptance date, liability will be taken to have been accepted and noise induced hearing loss compensation will be payable'*

and ICA requests this portion of Paper 20 is withdrawn.

Apportionment of liability for NIHL claims between insurers

ICA notes that:

- section 34 of WCIMA 2023 provides that an arbitrator may make orders for apportionment of liability not only between one or more employers, but also (at section 36(6) between two or more insurers of the same employer;
- section 34(8)(b) provides, however, that section 34 does not apply to claims for noise-induced hearing loss;
- section 114 of WCIMA 2023 gives delegated power to issue Regulations for or with respect to matters including the apportionment of liability between employers;

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Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission

- Paper 20 fills the gap left by section 34, insofar as apportionment of liability between employers is concerned, by proposing Regulations governing apportionment of liability for NIHL claims between employers;
- however, Paper 20 does not appear to contain any proposal to issue Regulations governing apportionment of liability between insurers of the same employer.

ICA respectfully requests that Regulations are drafted addressing apportionment of liability between insurers, empowering WorkCover WA to make orders for apportionment of liability to indemnify an employer for NIHL claims (on the basis that, as with apportionment between employers, the last insurer at the time of the loss is liable in the first instance, but can seek apportionment of indemnity from earlier insurer(s) upon request to WorkCover.

ICA submits this is particularly important given the nature of claims for lump sum compensation for noise induced hearing loss, which is by its nature a gradual condition which may develop over many years in the same employment, during which period an employer will often hold insurance with two or more licensed insurers for different periods of risk.

Further, Paper 20 (page 9) currently provides as follows:

'*WorkCover WA will be empowered by the regulations to issue a NIHL liability apportionment determination for the claim if liability is to be apportioned between two or more employers (based on the NIHL assessment).*'

ICA respectfully suggests that the Regulations should in fact provide that where WorkCover issues a determination of liability in a claim where NIHL liability is to be apportioned between two or more employers (based on the NIHL assessment), WorkCover WA is empowered to issue, **and must issue**, a NIHL liability apportionment determination for the claim, noting that:

- this will reduce any administrative burden that would otherwise arise from insurers requesting the issue of NIL liability apportionment determinations at a later time;
- this is consistent with the approach taken by WorkCover in the past (before recent changes to the process) which Insurers found to be very helpful in ensuring prompt and efficient operation of the scheme.

In addition, ICA notes the absence in Paper 20 of any specified timeframes for employers (and their insurers) who are served with NIHL liability apportionment determinations to make payment to the lead insurer (ie the insurer of 'last employer' as per Paper 20).

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission

ICA suggests a suitable timeframe of, say, 28 days and submits the Regulations should be amended to provide for this expectation or requirement (whichever is considered most suitable).

Apportionment of liability for NIHL claims: identification of 'last employer'

ICA refers to the stated intention at Paper 20 (page 8) that a claim for NIHL is to be:

> *'made on the employer who last employed the worker in employment to the nature of which the NIHL is or was due, even if there is a question as to which two or more employers are liable to compensate the worker or how liability is to be apportioned.'*

This will give rise to confusion in cases of concurrent employment (ie workers with more than one employer at any one point in time), given the absence of any suggestion in Paper 20 that the proposed Regulations will identify which employer, in a case of concurrent employment with two or more employers, is the 'last employer' for these purposes.

ICA respectfully suggests that in the interests of clarity, and to facilitate the smooth operation of the scheme, the Regulations should provide that in cases of concurrent employment:

- whichever employer the NIHL claim is lodged upon; and
- where the claim is lodged upon more than one employer, the employer upon whom the NIHL claim was **first** lodged;

is deemed to be the 'last employer' for this purpose.

Attachment 1: Audiologist Test Report:

ICA respectfully makes the following submissions with respect to the proposed Attachment 1 to Paper 20:

- the 'clinical history field' contains a suggestion to record details of worker's employment, length of time in noisy workplaces, worker's reported hearing difficulties, brief medical history, family history, and details of any previous claims by the worker;

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission

- ICA submits there ought to be a separate field in the form for each of these items, to ensure relevant information is recorded, and noting a separate field is likely to make this task easier for a busy audiologist;
- At the field for 'assessed % hearing loss', ICA suggests insertion of fields to record the following (to avoid errors and ensure accuracy):
  - left % unilateral hearing loss;
  - right % unilateral hearing loss; and
  - combined % binaural hearing loss.

Attachment 4: Worker Noise Exposure and Employment History

ICA respectfully makes the following submissions with respect to the proposed Attachment 4 to Paper 20:

- ICA submits each field on page 1 of the form ought to give more direction on the information to be provided (rather than simply a blank space to complete). For instance, field for 'lifetime recreational noise exposure history' ought to provide space to insert each of the following details in table format:
  - Approximate date or duration of exposure to noise;
  - Nature of exposure to noise;

  and so on for each field;
- Noting that workers completing the form may have worked in a noisy environment for many decades, ICA submits substantially more room should be allowed for the worker to insert details of their '*lifetime recreational noise exposure history*' (the space presently allowed is likely to be inadequate);
- Given the importance of this document, the signing clause should require the worker to warrant, in signing the form, that the information provided is true and correct to the best of their knowledge and belief, and that they have made reasonable enquiries to ensure the accuracy of the information provided.

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Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission

Attachment 5: NIHL Assessment

ICA respectfully makes the following submissions with respect to the proposed Attachment 5 to Paper 20:

- At the field 'length of time in noisy workplace,' in addition to recording the duration of the exposure in noisy workplace, the field should require the ENT to record the start and end date of the exposure (noting amongst other matters that this is essential to enable an Insurer to determine whether it is or is not the Insurer on risk at the end of the period in question, and therefore the correct Insurer liable for the claim in the first instance);
- Paper 20 states (page 9) that:

  'An insurer or self-insurer may request a NIHL liability apportionment determination from Workcover WA if more than one employer contributed to the NIHL. This will be evident from the NIHL Assessment which will set out which employers the ENT accepts as contributing to NIHL.'

  However this is not at all evident from Attachment 5, which contains no field for an ENT to specify whether more than one employer contributed.
  ICA requests the addition of a specific field (under the field for 'assessed % noise induced hearing loss') for specification of which employment(s) contributed to the NIHL.

Attachment 7: NIHL Claim Form

ICA respectfully makes the following submissions with respect to the proposed Attachment 7 to Paper 20:

- The signing clause should require the worker to warrant, in signing the form, that the information is true and correct to the best of their knowledge and belief;
- The worker employment history table ought to be part of the form itself (not an addendum) so as to be subject to the signing clause;
- As suggested above in relation to Attachment 4, and noting once again that workers completing the form may have worked in a noisy environment for many decades, ICA submits substantially more room should be allowed for the worker to insert relevant details in the 'lifetime employment history';

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission

- While the claim form does indicate the worker should provide these documents, the Regulations proposed by Paper 20 should provide that a claim is **only duly made** if the worker provides the employer with the claim form **and** Attachments 1, 4 and 5 (ie the Audiologist Test Report, Worker Noise Exposure and Employment History, and NIHL Assessment) as an employer and insurer cannot evaluate the claim without this information (noting this will assist to expedite the claims process);
- Rather than providing a field stating '*work status (employee, contractor etc*)' the form should provide options for the worker to select from (to make the process simpler for workers, as open-ended questions are likely to pose more difficulties);
- Workers should be required to declare any concurrent employment or work;
- The form should include a consent authority (in terms equivalent to the authority provided for in section 25(4) of WCIMA 2023) which the worker may opt to sign, providing consent for disclosure and collection of any medical, health and personal information related to the claim for NIHL, and specifically permitting disclosure to and collection of information to/from other employers and their insurers.

  ICA notes in this regard that in the absence of a worker's express consent, , limitations imposed by privacy laws (irrespective of the content of the proposed Regulations, noting that Commonwealth privacy legislation will prevail over State legislation) are likely to result in insurers having significant difficulty evaluating NIHL claims and/or reaching apportionment agreements with other employers and their insurers.

  Inclusion of a suitable consent authority will, in ICA's submission, assist to expedite the claims process and ensure the efficient operation of the scheme as a whole;
- For the reasons stated above, the form should provide notification to the worker completing the form that failure to sign the consent authority may lead to a delay in the claims process and the making of a decision on liability for the NIHL claim.

Absence in Paper 20 of any provision for a settlement agreement signed by both parties

WCIMA 2023 Part 2, Division 12 provides (at eg sections 149 and 150) that a worker and employer may enter into an agreement to commute the employer's liability to pay compensation, in order to permanently discharge the employer's liability.
Clearly, Part 2, Division 12 of WCIMA 2023 applies to claims for NIHL (noting that compensation for noise-induced hearing loss is identified as a form of compensation at

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WCIMA 2023 section 18(f), as per Part 2, Division 1 of the Act, and there is nothing within Part 2, Division 12 to exclude its application to NIHL claims).

WCIMA 2023 section 149 relevantly provides that:

> '*(2) A settlement agreement must be in the approved form.*
>
> *(3) A settlement agreement is of no effect unless and until it is registered under this Division.*
>
> *(4) An agreement (however described) that purports to discharge a liability to pay compensation to a worker in respect of an injury is void unless the agreement is a settlement agreement registered under this Division*.'

For section 149 to be effective, ICA respectfully submits that it is therefore necessary and unavoidable that the Regulations **must** provide an approved form of settlement agreement. for workers and employers (and their insurers) to complete, providing for settlement of a claim for NIHL.

There is a very real risk in the absence of such a form, that the mere issuing of a notice of acceptance of liability (proposed Attachment 8 to Paper 20) will otherwise have limited effect and will not discharge the employer's liability to pay such compensation.

Further, there would be clear benefits to such a form as in ICA's view, many of the issues identified below (insofar as Attachment 8 is concerned), could in fact be overcome by requiring the parties to sign a settlement agreement, confirming the amount to be paid in compensation for NIHL (by means of the forms constituting Attachments 1 to 8 to Implementation Consultation Paper 11: Settlements, modified if necessary to be suitable for use in NIHL claims).

In ICA's respectful submission, the Regulations could and should provide for completion by the parties of settlement agreement forms, following the acceptance of liability by the compensation payer (and in that respect, the Regulations could stipulate that the compensation payer is to send the worker the approved form for their signature and return, when issuing the notice of acceptance of liability), noting that insofar as the issues raised below regarding proposed Attachment 8 to Paper 20 are concerned:

- this would enable the Insurer to provide the worker with the MO022 form to complete when signing the settlement agreement;
- the worker's execution of the settlement agreement would provide certainty that the worker does indeed wish to accept the compensation payment reflected in the notice of acceptance of liability, for the avoidance of any later doubt;

- the approved form could (like Attachment 1 to Paper 11) record the consequences of accepting the compensation payment, by way of notes to the paper, that is, as suggested below, the approved form could provide notification that:
  - compensation for NIHL ceases when the total compensation paid reaches the NIHL maximum compensation amount (as per WCIMA 2023 section 110(2);
  - no damages may be awarded against a worker's employer in respect to a claim for NIHL (WCIMA 2023 section 419);
  - the employer or insurer must pay the settlement amount within 14 days of the registration date or if another law applies to prevent payment (for example where Department of Health, Centrelink or Medicare charges apply to the settlement) within 7 days after payment is permitted;
- WorkCover's obligation to maintain a record of settlement agreements would be entirely consistent with the intention (as expressed in Paper 20) that WorkCover will continue to maintain a register recording certain details of NIHL claims.

Attachment 8: Liability Decision Notice - NIHL Claim Accepted

Overall we maintain the submission outlined above that payment of compensation for NIHL should not follow on merely from the issue of the proposed Attachment 8, but should be the subject of a settlement agreement (to comply with the requirements of Part 2, Division 12 of WCIMA 2023). This may overcome a number of the issues raised below. The points raised below regarding proposed Attachment 8 are made on the basis that they are further to, or in the alternative to, that submission.

If the legislature is of the view that the provisions of the *Health And Other Services (Compensation) Act* 1995 (Cth) (**HOSC Act**), *Social Security Act* 1991 (Cth) (**SS Act**) and/or section 109 of the *National Disability Insurance Scheme Act* 2013 (Cth) (**NDIS Act**) (insofar as repayment to Medicare, Centrelink and other Commonwealth agencies are concerned) have no application to payments of compensation for NIHL, this should be expressly stated in the Regulations in the interests of clarity (noting again however that Commonwealth legislation will prevail in any case in the event of any inconsistency).

Failing this, ICA respectfully submits that;

- Attachment 8 should contain a statement placing the worker on notice of the insurer's obligations pursuant to the HOSC Act to:

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission

- notify Medicare Australia of the agreement to pay a fixed amount of compensation (HOSC Act section 23);
- make an advance payment of 10% of the compensation amount to Medicare (if the amount is $5,000 or above) if the insurer and Employer do not have a valid Medicare notice of charge (HOSC Act section 33B); and
- if a valid Medicare notice of charge is available, to pay the amount specified therein to Medicare (HOSC Act section 28);

- Attachment 8 should contain a statement placing the worker on notice of the Insurer's obligations in relation to the compensation payment, should they receive:
  - a preliminary notice issued under section 1182 of the SS Act; and/or
  - a preliminary notice issued under section 109 of the NDIS Act;
- Attachment 8 should also contain statements placing the worker on notice that:
  - compensation for NIHL ceases when the total compensation paid reaches the NIHL maximum compensation amount (as per WCIMA 2023 section 110(2); and
  - no damages may be awarded against a worker's employer in respect to a claim for NIHL (WCIMA 2023 section 419).

Proposed 14 day timeframe for payment of compensation

If (contrary to our submission above) NIHL compensation is to be paid following the issue of the proposed Attachment 8 (with no requirement for completion of a settlement agreement), ICA submits the proposed 14 day timeframe from acceptance of liability to payment of NIHL compensation (as proposed in Paper 20 and Attachment 8) is unrealistic and unduly onerous, noting that:

- a 14 day timeframe does not provide sufficient time to allow for completion of a Medicare Compensation Recovery Notice of Judgment or Settlement Form (**M0022**) pursuant to the HOSC Act and associated regulations;
- a 14 day timeframe does not provide sufficient time to confirm (where required) whether any amount is repayable pursuant to the SS Act or NDIS Act.

ICA respectfully submits that the Regulations should instead be consistent with the payment timeframes stipulated in WCIMA section 156(2) in respect of settlements generally, as

adjusted to meet the circumstances of NIHL claims, that is, the Regulations should provide that the employer must pay the settlement amount:

> '*within 14 days after [the notice of acceptance of liability is issued and the completed MO022 form is received] or, if another law (including a Commonwealth law) prevents payment within that period, within 7 days after payment is permitted under that other law.*'

Other specific comment upon Paper 20

ICA otherwise respectfully submits the following changes/ additions/ clarifications to the Regulations proposed by Paper 20, to ensure the smooth operation of the Scheme for all stakeholders:

- While it is indicated (Paper 20, page 7) that ENTs will be required to provide the NIHL assessment report to the worker, employer and WorkCover WA, the Regulations should require the ENT to also provide Attachment 4 (the worker noise exposure and employment history they relied upon in forming their opinion) to the worker, employer and WorkCover WA together with Attachment 5;
- With reference to the intention expressed in Paper 20 (page 10) that the Regulations will require WorkCover to keep and maintain a register of various documents: this should be expanded to include Attachment 4 (noise exposure and employment histories completed by workers);
- With reference to the expressed intention in Paper 20 (page 10) that the Regulations will authorise WorkCover to disclose various documents, ICA submits that to ensure smooth and efficient operation of the Scheme:
    - the Regulations should require (not merely authorise) WorkCover to disclose these documents;
    - the documents listed should include any noise exposure and employment history completed by a worker and retained on the register; and
    - an employer should be entitled to disclosure of the items irrespective of whether the employer has, or has not, paid for an audiological hearing loss assessment or NIHL assessment (ICA sees no benefit or rationale in disallowing access to those items merely because a worker has paid for an assessment, noting if there is an entitlement to compensation, the worker will be entitled to reimbursement);

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission
		○ With reference to the indication in Paper 20 (page 9) that: *'an insurer or self-insurer may request a NIHL liability apportionment determination from WorkCover WA if more than one employer contributed to the NIHL'*; ICA respectfully submits the Regulations should provide that: ○ the other employer and its insurer have an entitlement to challenge the apportionment determination (noting a worker may, even if inadvertently, provide an incorrect employment history, and employers and their insurers should as a matter of natural justice have the right to correct the record as to employment periods and the like, if an apportionment determination is based on incorrect assumptions regarding the identity of an employer, the duration of employment, and whether or not a worker has been exposed to noise in that employment). ○ Noting section 34 of WCIMA 2023 has no application to NIHL claims, to ensure smooth operation of the Scheme, the Regulations ought to contain an equivalent to section 34(7) of WCIMA 2023, that is, the Regulations should expressly provide that: *'the worker must provide to the [employer upon whom an NIHL claim is made] any information in the worker's possession that the employer may reasonably request for the purposes of identifying any employment in which the worker was employed before or after employment with the employer and in which the worker has or may have suffered [exposure to noise resulting in NIHL].'* **General comment** ICA would otherwise welcome the opportunity for further consultation and comment once the proposed Regulations have been drafted.
Paper 24: Fees Order for Medical Services		No comment save that ICA would welcome the opportunity for further consultation and comment once the proposed Regulations have been drafted.

Insurance Council of Australia

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission
Paper 25: Fees Order for Allied Health Services		**Opportunity for future consultation** With reference to Paper 25 as a whole, ICA respectfully requests the opportunity for consultation with, and provision of feedback and comment to, WorkCover on an annual (or alternative appropriate periodic) basis, regarding the issue of any order fixing scales of fees and charges for allied health services (**Allied Health Services Fees Order**). ICA submits this is appropriate given Insurers' knowledge of the scheme and the fees charged, including the ability to observe and monitor trends regarding fees charged by allied health providers, noting Insurers and the employers they insure will be directly affected by any changes to Allied Health Services Fees Orders. **Proposed freeze on fees for exercise program services** Further, with reference to the specific intention expressed in Paper 25 (page 9) to freeze, for an indefinite period, fees for exercise program services, ICA submits this may adversely impact upon the quality of providers of exercise program services who are prepared to work within the confines of the scheme, which would be to the detriment of all stakeholders (and in particular, would be detrimental to the interests of injured workers). ICA respectfully suggests instead that consideration be given to a freeze for a two year period only, with review at the conclusion of this period of the effects of the freeze and consideration of whether to maintain or remove the freeze. **General** ICA would otherwise welcome the opportunity for further consultation and comment once the proposed Regulations have been drafted
Paper 26: Fees Order for Workplace Rehabilitation Services		**Workplace rehabilitation provider travel costs** ICA refers to the intention expressed in Paper 26 (page 4) that a workplace rehabilitation providers (**WRP**) will not be able to charge for the costs of travel, where returning from a service location to the WRP's office location. ICA submits that this restriction on charges for travel: • may adversely and disproportionately impact workers who are regionally located (as WRPs may not be prepared to take on referrals involving regional workers in these circumstances, due to exposure to significant unfunded travel);

Implementation consultation papers	Equivalent provision of WCIMA 1981 & 1982 Regulations (where relevant)	ICA submission
		• may thereby limit workers' choices of suitable WRP; and • may lead WPRs to seek to arrange telephone or virtual meetings, rather than face to face/ in person meetings, to avoid exposure to unfunded travel (which in ICA's view would be detrimental to stakeholders, and particularly to workers without access to or skills in technology, noting ICA's view generally is that in person/ face to face meetings are of more benefit to and more constructive for stakeholders). ICA respectfully suggests this aspect of Paper 26 be withdrawn, and that the Regulations permit WRPs to charge for travel if returning from a service location to their office location. **General** ICA would otherwise welcome the opportunity for further consultation and comment once the proposed Regulations have been drafted
Paper 27: Fees Order for Permanent Impairment Assessment Services		No comment save that ICA would welcome the opportunity for further consultation and comment once the proposed Regulations have been drafted

*References above are to the following:

- WorkCover WA (**WorkCover**)
- *Workers Compensation and Injury Management Act* 1981 WA (**WCIMA 1981**)
- *Workers Compensation and Injury Management Act* 2023 WA (**WCIMA 2023**)
- *Workers Compensation and Injury Management Regulations* 1982 WA (**1982 Regulations**)
- Proposed new Regulations to be made under WCIMA 2023, not yet published (**Regulations**)
- Insurance Council of Australia (**ICA**)
- Insurer members of ICA (**Insurers**)