



**HIA Submission**  
***Workers Compensation and Injury***  
***Management Act 2023***  
**Implementation Consultation Papers 20, 24-27**

WorkCover WA  
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## Introduction

Housing Industry Association (HIA) takes this opportunity to provide feedback on the Implementation Consultation Papers 20 and 24 through 27, for the *Workers Compensation and Injury Management Act 2023* (WC Act).

HIA maintains and reiterates the positions set out in its submission on Implementation Consultation Papers 1 through 19 and the Regulations Indicative Structure, dated 1 December 2023 (Submission 1). Many of the positions set out in Submission 1 are also applicable to this submission and the reforms more broadly, including, but not limited to:

- Increases in **premiums** should be kept to a minimum and if proposed should not outweigh the anticipated benefits, including any impacts on **housing affordability**.
- The **residential building industry** is distinct from the commercial construction industry and should be considered separately, including categorisation, reporting, and data collection.
- Appropriate **transitional arrangements** will be necessary to ensure minimal impacts on any work in the pipeline and to allow scheme users time to learn and implement the new requirements within their businesses.

These positions are detailed more particularly in Submission 1 and it is necessary that the submissions are read together.

In addition, we note the following specific to Implementation Consultation Papers 20 and 24 through 27:

- Alignment with existing frameworks outside the workers compensation scheme may be beneficial where it results in genuine simplification and cost reductions.
- A holistic approach must be taken in assessing the impacts of the reforms, including:
  - assessment of additional costs must extend beyond changes that have direct impacts on premiums and must include other costs to businesses such as impacts on cash flow; and
  - the total anticipated premium increase must be properly quantified for stakeholders to fully understand the impact of the proposed changes.
- Any changes to the structure or quantum of established services fees should be the subject of a RIS to avoid unintended consequences.

## Transitional arrangements

Transitional arrangements have been included in many of the Implementation Consultation Papers, focusing largely on providing continuity between the old and new schemes. HIA is supportive of WorkCover WA's steps to allow established systems and services to continue during the transition to minimise the impact of changes on scheme users under the new laws.

In addition, it is important that transitional arrangements are considered that allow businesses and other scheme users to understand and implement the new requirements within their businesses, and to minimise the impact of any changes on work in the pipeline. Businesses in the residential building industry, as well as construction, civil, resources and other sectors that have extended lead times associated with the provision of their goods or services, will experience greater impacts from legislative change than those with shorter lead times.



For example, residential builders are often required to provide a fixed price for a home several years prior to completing the work. This allows for the various preliminary processes such as documentation and approvals to occur preceding the construction period. As a result, the builder must calculate their anticipated overheads well in advance of incurring those costs and determine a fine balance between a profitable and a competitive contract price. The builder typically carries the risk for unforeseeable legislative changes that are not direct project costs.

This example demonstrates that where legislative changes have cost implications for businesses, the length of the legislative transition periods can have real commercial impacts, and shorter transition periods can erode profitability.

Given the significance of the reforms, HIA questions whether a start date of 1 July 2024 provides the necessary time for all scheme users to comply with the changes and ensure they are incorporated within their business.

## **Paper 20 – Noise Induced Hearing Loss**

### **Simplification of testing requirements**

HIA is supportive of simplification and streamlining of the noise induced hearing loss (NIHL) testing regime where it maintains an effective system for assessing and measuring the impacts of NIHL on workers and results in improvements for all scheme users. However, caution must be taken in streamlining processes to the extent that the necessary rigor to appropriately determine the cause and responsibility for compensation for NIHL is undermined. This would be problematic for all stakeholders.

To ensure that an optimal outcome is achieved, industry-specific requirements must be considered. For the residential building industry, this includes the strong reliance on independent contracting arrangements and the project-based nature of the work.

Similar to other occupational diseases or injuries, NIHL can occur and progress gradually as a result of sporadic or extended periods of exposure and may occur during an employee's tenure with various different employers. The transient nature of work in the building industry creates an additional layer of complexity in identifying and determining liability for a progressive injury such as NIHL.

NIHL may also be caused or exacerbated by factors unrelated to work, such as a person's lifestyle choices. When there is a lack of familiarity between an employer and employee, personal factors that contribute to the condition will be less apparent and again, this will be more problematic within a transient workforce. This leaves businesses with greater exposure to fraudulent claims.

An employer may still seek to obtain baseline or ongoing testing in addition to mandatory requirements under the workers compensation scheme and this may assist them in identifying and managing the issue. However, additional testing would be subject to the employee agreeing and may not be effective in instances where the retrospective data is unavailable.

It is noted that the proposed 2-step process for assessing and measuring NIHL is based on research by WorkCover WA and that WorkCover maintains extensive records of testing results. These measures go some way to alleviating the potential issues related to contracting and project-based work, however clarification on the above matters would be beneficial in addressing remaining unknowns.



## **Alignment with work health and safety requirements**

HIA does not oppose alignment between the workers compensation laws and the work health and safety laws. While the purpose of these laws is different, they intersect in many ways in relation to workplace injuries, including for the detection and monitoring of NIHL. There appears to be merit in aligning parallel processes to minimise impact for workers and businesses by reducing costs, removing unnecessary duplication, and improving clarity. For government, it may result in aligned or streamlined reporting and potential for future refinement.

Again, challenges may arise with this approach given the nature of work in the industry, including the lack of clarity surrounding responsibility for testing across the independent contracting workforce.

## **Papers 24 through 27 – Services Fees Orders**

### **Review of fee structure**

HIA is supportive in principle of improvements that provide businesses with increased clarity in the costs they are required to carry for compliance. Further, HIA is supportive in principle of updates to established systems to ensure they are responsive to present-day requirements. However, this is limited to the extent that such amendments do not compromise the clarity and usability of the scheme or create additional cost or red tape for scheme users.

To this end, HIA is supportive in principle of a review of the structure of the various services fees prescribed under the workers compensation scheme.

### **Review of fee rates**

HIA does not oppose a review of the workers compensation services fees to ensure that WA's fees are not significantly out of alignment with fees in other states and are otherwise reasonable under the scheme. There is no apparent justification why WA's fees would be grossly in excess of those in other states, for example, fees for diagnostic imaging, and this warrants a review.

However, just as it is necessary to be cautious with the increase of fees under the scheme, care must also be taken in any steps to implement a significant reduction in established fees. Steps to reduce fees may result in services providers discontinuing or limiting their involvement in the scheme resulting in a range of adverse impacts on scheme users. These may include a decrease in the range or level or expertise across providers, a decrease in the number of providers available, and increased wait times.

### **Impacts on premiums**

The fee orders collectively propose a range of fee increases and billing changes across the various different services streams. This highlights the potential for a number of small changes to have an unanticipated impact on overall scheme costs when considered together.

It is noted within the papers that the changes in services fees for example, will have an impact on premium costs and will be factored into recommended fee rates for 2023/2024. In isolation, the impacts appear to have been quantified; however, it is not clear whether these premium increases have been considered in aggregate with all other anticipated increases under the reforms, using current rates. If this has been carried out, it is not apparent from the consultation papers what the total anticipated increase in premiums will be.

HIA has concerns that the overall impact of all proposed changes has not been fully quantified for consideration by stakeholders and this may impact the feedback received for the proposed changes. It is



imperative that the commercial impacts of the reforms are clearly and fully communicated to scheme participants as a part of the consultation process.

### **Initial services costs**

Any increases in services fees, while ultimately likely to be covered by the business' workers compensation insurance, will be carried by the employer until such time as the insurer makes a liability decision. This means higher costs to a business where claim assessment is prolonged. In instances where there are significant initial costs, the outcome for a business could include adverse impacts on their cash flow, or additional costs associated with carrying the debt.

### **A holistic approach is necessary**

It is important that any moves towards legislative reform are the subject of a comprehensive RIS, including a cost-benefit analysis. Where there is an obvious cost impact for stakeholders, the need for a RIS is clear. However, where the impact is unknown or the changes appear minimal, a RIS may not be deemed necessary.

HIA considers that while at face value the changes to the fees under Implementation Consultation Papers 24 through 27 may appear minor, there may be unforeseeable consequences when these changes are considered together with the impacts of the reforms overall. In this instance a cost-benefit analysis may be appropriate to ensure that fees are set at the correct level and adverse impacts are minimised.