

27 February 2025

By email: consultation@workcover.wa.gov.au

Dear Sir/Madam,

WorkCover WA - 2023 Act Implementation Review

The Insurance Council of Australia (ICA), on behalf of its WA workers' compensation insurer members (Insurers) welcomes the opportunity to provide comment on the 2023 Act Implementation Review (Review).

The *Workers Compensation and Injury Management Act 2023* (WCIMA23) commenced on 1 July 2024. We understand WorkCover WA is conducting this Review at six months post implementation to consider how key forms and processes are operating and how best to respond to any concerns or issues.

WorkCover WA has identified ten key issues that are the subject of this Review. The ICA's submission addresses Issue 9 (broker access to personal worker information). Insurers will provide individual responses in relation to the other issues in the consultation paper.

Issue 9 - Broker access to personal worker information

On 9 July 2024, WorkCover WA issued a Bulletin clarifying that insurance brokers cannot access a worker's personal information from an insurer without consent given by the worker.

Since the release of WorkCover WA's Bulletin, the ICA and insurers have worked with NIBA to develop a standard consent authority for use by brokers. Anecdotal feedback from insurers suggests that the consent authority has a very high success rate for new claims. There are more challenges obtaining consent for existing claims and the rate of success has been mixed.

The consultation paper states that some brokers have suggested WorkCover WA should assist in:

- Refining the NIBA/ICA consent authority;
- Extending the consent authority in the workers' compensation claim form; or
- Making regulations providing for personal information to be disclosed to brokers to assist them perform insurance and claim functions on behalf of employers.

WorkCover WA has provided the following proposal in relation to broker access to personal worker information.

Proposal 9:

NIBA and ICA continue to cooperate to address any issues in the jointly developed consent authority for use by brokers and workplace risk and injury management consultants.

No change to Regulations or the claim form consent authority to facilitate brokers and workplace risk and injury management consultants accessing workers' personal information.

The ICA and Insurers acknowledge WorkCover WA's position that a separate consent authority is required for personal information to be provided to brokers and workplace risk and injury management consultants. We appreciate WorkCover WA's confirmation in the consultation paper that the NIBA/ICA consent authority is appropriately worded to enable brokers and consultants to perform these non-statutory commercial functions on behalf of employers.

The ICA and insurers are considering options for shortening and simplifying the NIBA/ICA consent authority to ensure it is as user friendly as possible, while retaining the legal requirements for informed consent. We will continue to cooperate and engage with NIBA to address any issues in relation to the authority.

We acknowledge WorkCover WA's position not to change the Regulations or the claim form consent authority on the basis that brokers and workplace risk and injury management consultants do not perform statutory functions and there is no legislative oversight.

In relation to employers, we note WorkCover WA's position not to include employers in the claim form. WorkCover's Supplementary Note dated 17 July 2024 provides that "In terms of collection of personal information, the consent authority is only applicable to the employer's insurer and its appointed service providers for the purposes of assessing and managing claims – it is not applicable to the employer or an agent of the employer such as a broker." We would welcome the opportunity to discuss this further with WorkCover WA, noting employers are listed on claim forms in other jurisdictions.

In relation to the other matters raised in the consultation paper under Issue 9, we provide the following feedback.

Communication expectations & non-personal information

Insurers acknowledge the vital role brokers play in the risk advisory space and the ongoing scheme level challenge the privacy laws present for them in undertaking this role.

Insurers are committed to ensuring there is cooperation and collaboration between scheme participants and acknowledge WorkCover WA's expectations that information will be provided to brokers where appropriate consent is provided, the information is not restricted or limited by the *Privacy Act 1988* or the WCIMA23, or the information is in the public domain or could not reasonably be expected to lead to the identification of any person to whom it relates. We understand insurers are currently providing de-identified information to brokers where consent is not provided.

Broker status in disputes and settlements

We understand from the consultation paper that there have been instances of unauthorised sharing of information to brokers using WorkCover WA Online where a broker's details are entered into WorkCover WA Online in place of an employer. We note WorkCover WA's advice that this practice has since been addressed. Insurers may provide separate feedback in relation to this issue.

We trust our response is useful to WorkCover WA. Please do not hesitate to contact Alice Nichol, Senior Adviser, Insurance Lines, at [REDACTED]

Yours sincerely



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