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WorkCover WA
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Via email: consultation@workcover.wa.gov.au

Workers Compensation and Injury Management 2023 Implementation Review.

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide feedback to WorkCover WA's implementation review of the *Workers Compensation and Injury Management Act 2023 (WA)*.

Feedback from NIBA members highlights a consistent call for clearer timeframes and defined procedures, greater consistency and transparency from insurers and streamlined consent and documentation processes that recognise the evolving role of brokers in the WA workers' compensation system.

Employers, brokers, and insurers all play a critical role in ensuring the workers' compensation system operates efficiently and fairly. However, inconsistencies in the application of procedures, delays due to unclear timeframes, and complex, cumbersome documentation requirements have created challenges for businesses managing claims and return to work processes. Addressing these concerns will improve the system's effectiveness and reduce administrative burdens while maintaining essential protections for injured workers.

About NIBA

NIBA is the peak representative body for the general intermediated insurance industry. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, and small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general insurance industry operates with integrity and professionalism. NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy, education, and ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, strengthening trust and confidence in the insurance broking profession.

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NIBA welcomes the opportunity to engage with WorkCover WA on these matters to support a fair and effective workers' compensation framework. Should you have any queries in relation to this submission or wish to discuss any of the matters raised, please do not hesitate to contact Allyssa Hextell, Head of Policy and Advocacy, at ahextell@niba.com.au.

Yours sincerely,



Richard Klipin
Chief Executive Officer
National Insurance Brokers Association

Proposal 1: Amend the WorkCover WA approved form SF1 settlement agreement by:

- deleting the reference to 'future' amounts
- including a statement in the settlement agreement that any compensation entitlement will not cease until the settlement agreement is registered by the Director.

NIBA Response: While NIBA supports the removal of the reference to "future" amounts, members expressed concerns about the blanket requirement to continue compensation payments until registration. In many cases, settlements are reached based on the balance of the General Maximum Amount, which inherently limits the amount payable. Therefore, continuing wage payments beyond the agreed settlement may result in payments that exceed the General Maximum Amount.

Where a worker signs a CN1 form, thereby agreeing that their compensation entitlement will cease on a specified date it appears inequitable to require the continuation of payments until the settlement agreement is registered. This issue is compounded by the fact that the registration process can be delayed due to issues outside the employer's control such as delays in the actioning of agreement documents by workers, their representatives or the insurer. Such delays have already resulted in situations where workers remain on income payments for an extended period beyond the settlement date, significantly increasing claims costs for employers.

To address these concerns, NIBA recommends that the settlement agreement process should include the usage of a CN1 form to ensure a defined cessation date for wage payments as agreed between the worker/their representative and the insurer.

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Proposal 2: Amend the WorkCover WA approved form SF3 Permanent impairment notice by:

- under the 'Agreement' section replacing 'requested' with 'required' (employers/ insurers must indicate agreement or disagreement with the level of impairment)
- where employers indicate agreement/ disagreement with the level of impairment replacing the instruction to 'delete as applicable' with a check box for clarity and ease of use.

NIBA Response: NIBA supports the change to the WorkCover WA approved form SF3, as it removes ambiguity by mandating employers and insurers to indicate whether they agree or disagree with the level of impairment.

Member feedback emphasised the potential benefits of reevaluating the current two-step process for confirming the level of impairment, noting that there may be merit in examining whether the Act should be amended to allow for a single-step process as part of a settlement application. This would reduce the administrative burden and accelerate decision-making, resulting in better outcomes for injured worker, insurers, and employers.

Members also provided feedback that situations involving workers with one or more underlying conditions may require a distinct pathway and that considering factors such as the worker's period of unemployment when assessing permanent impairment may provide a more accurate and tailored assessment of permanent impairment.

Proposal 3: Amend WorkCover WA approved form APIA1 Permanent impairment assessment – report and certificate by adding an additional checkbox for the APIA to confirm that when a special assessment is done the APIA is satisfied the special assessment criteria are met.

Amend the Regulations to require when a special evaluation is sought the requesting party is to provide evidence to the APIA, at least 18 months has elapsed since the claim was made.

Retain the signature block and require a personal APIA signature in WorkCover WA approved forms APIA1, APIA6 and APIA7.

Amend WorkCover WA approved forms APIA3, APIA 4 and APIA5 to remove APIA signature blocks.

Scheme participants note that the effective date of an assessment (when a worker is taken to have been assessed and an assessment conducted) is when an APIA has dated and certified the workers' degree of permanent impairment in APIA1.

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NIBA Response: NIBA supports these amendments and further recommends that a defined timeframe be enforced for APIA assessors to issue their reports following a consultation. This measure would help ensure that assessments are completed promptly, reducing delays and contributing to a more efficient claims process.

Proposal 4: Amend WorkCover WA approved form CN2 Intention to reduce or discontinue income compensation – return to work by including:

- a statement of the amount of wages/ remuneration paid/ to be paid in the return to work position
- a declaration signed by the employer or insurer verifying that the worker has returned to work and is deriving earnings in the position specified in the form
- if the worker has returned to work with another employer, a requirement for the person issuing the notice to provide confirmation of the workers' return to work and remuneration with that other employer when providing the notice to the worker.

NIBA Response: NIBA supports the proposed amendments to the WorkCover WA approved form CN2 Intention to Reduce or Discontinue Income Compensation – Return to Work, as they enhance transparency and accountability in the return to work process.

However, members have raised concerns regarding the practical implementation of these changes, particularly where workers fail to report their return to work or provide confirmation of their earnings in a timely manner, thereby preventing the issuance of a CN2.

Members have reported cases where workers, despite securing alternative employment, have delayed providing documentation such as pay slips, resulting in prolonged income compensation payments and financial strain on employers. In some instances, employers were notified by the employee that they had commenced new employment but were advised by their insurer that income compensation payments could not cease without documented proof. This evidence was not provided for an extended period of time, leading to overpayments.

To address this issue, NIBA recommends workers be required to notify insurers of their return to work with a new employer within a reasonable time frame (7-14 days) and provide supporting documentation.

Where a worker fails to meet this obligation, a CN2 should be issued regardless of the absence of this information, with the worker retaining the right to dispute the cessation of compensation through existing internal dispute resolution processes or WorkCover proceedings.

Proposal 5: Repeal WorkCover WA approved form CN6 Custody or imprisonment notice. WorkCover WA CEO issue a new approved form Custody or imprisonment notice.

Amend the Regulations to provide:

- the employer or insurer must request WorkCover WA to obtain the written confirmation of custody or imprisonment from the relevant Government authority by making a request in the proposed new Custody or imprisonment notice
- WorkCover WA is to obtain the confirmation of custody or imprisonment from the relevant Government authority
- the Government authority is to confirm custody or imprisonment by giving the proposed new Custody or imprisonment notice to the WorkCover WA CEO.

NIBA Response: NIBA supports the intent of this proposal and believes it is likely to result in a more efficient process. However, members have expressed concerns about the provision of information relating to incarcerated individuals that are not addressed by the above proposal.

NIBA members have provided feedback that in some instances attempts to verify incarceration status have been met with limited responses due to privacy concerns, with government agencies only providing a confirmation of incarceration status without disclosing further details which impedes the assessment of ongoing claims.

NIBA members also expressed concerns about the length of time taken by government authorities to provide the necessary confirmation, noting that these delays impede the timely resolution of claims.

Additionally, members have reported challenges associated with the unavailability of prison medical records and the difficulty of assessing a worker's treatment and complaint status while incarcerated. The absence of this information complicated decisions regarding the resumption of payments upon release and may result in substantial back payments if the workers' sentence information is unable to be obtained.

NIBA believes there is an opportunity for WorkCover WA to enhance communication with relevant government bodies to ensure that comprehensive and detailed information is provided when a worker is incarcerated, which would facilitate a more efficient claims process.

Proposal 6: No change to the structure and content of WorkCover WA approved form - IM1 Return to work program. Stakeholder feedback to be sought on potential changes to the WorkCover WA explanatory guide to provide for staged progression of return to work.

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NIBA Response: NIBA supports the decision to maintain the current structure and content of the Workcover WA approved form IM1 Return to Work Program.

Regarding stakeholder feedback on potential changes to the WorkCover WA explanatory guide, NIBA acknowledges that a common challenge in the return to work process arises when agreements made during case conferences, particularly those outlining a staged return to work, are not clearly reflected in medical certificates. To improve clarity and alignment, NIBA suggests consideration of a framework whereby GPs can incrementally sign off on stage return to work plans. This would help ensure that all parties have a clear understanding of the agreed plan, provide greater certainty for injured workers, and support a structured and holistic return to work process.

Proposal 8: Amend the WorkCover WA approved form NIHL1 Audiological test report by:

- adding 'recreation history' to the narrative history section
- allowing an 'either/or' approach to completing the air conduction and bone conduction test and the audiogram to avoid unnecessary replication and duplication errors
- including a table setting out hearing threshold levels to calculate binaural percentage hearing loss and binaural percentage hearing loss less presbycusis.

NIBA Response: NIBA supports the proposed amendments to the NIHL1 Audiological test report form and welcomes the inclusion of recreational noise activity, as this has been a long outstanding issue in Western Australia.

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.

NIBA Response: NIBA acknowledges WorkCover WA's position that no changes are proposed to the Regulations or claim form consent authority and notes the ongoing work of NIBA and the Insurance Council of Australia (ICA) to address any issues through the jointly developed consent authority. However, NIBA believes that the current documentation and consent processes do not reflect the reality of the claims and injury management environment, particularly the role of insurance brokers. NIBA continues to advocate for the inclusion of insurance brokers in the claims consent authority to facilitate efficient claims management and allow brokers to continue to support employers, workers, and insurers.

Insurance brokers perform a range of functions in the workers compensation space, including:

- Educating employers & workers on their obligations under workers' compensation insurance;

- Policy placement and the process of obtaining quotations including presenting historic data to insurers;
- Analysing premiums, claims, wage information and injury trends;
- Advising on and supporting risk management initiatives;
- Providing claims lodgement assistance and ongoing claims management; and
- Injury management, including coordinating return to work programmes, liaising with medical providers and insurers, advising employers on compliance, and resolving disputes.

Employers are increasingly outsourcing injury management services to third parties, including insurance broking firms, rehabilitation providers, and independent consultants. This trend reflects challenges such as difficulties attracting and retaining in-house expertise, the cost of maintaining a full-time employee for a limited volume of work, and the growing awareness of the impact of workplace absences on productivity and labour costs.

It is incorrect that the WCIMA does not impose obligations on employers. Employers play a key role in injury management, including developing return to work programs, participating in case conferences, and ensuring compliance with legislative requirements. Insurance brokers frequently act as agents of employers, as recognised under section 213 of the WCIMA, and play a vital role in helping employers meet their obligations.

NIBA notes WorkCover WA's reasoning that insurance brokers are not legislated and therefore should not be included in the claims consent authority. However, this characterisation does not fully reflect the regulatory framework governing insurance brokers in Australia. Insurance brokers operate under a robust regulatory regime established by the *Corporations Act 2001 (Cth)* and overseen by the Australian Securities and Investments Commission (ASIC). Brokers are required to hold an Australian Financial Services Licence (AFSL) and must comply with strict obligations, including those under AFS licensing provision, financial services legislation and the Insurance Brokers Code of Practice.

The current consent form already enables insurers to provide workers' personal information to other professionals such as investigators, legal practitioners, and workplace rehabilitation providers who are not subject to direct legislative oversight. In NIBA's view, it is inconsistent to exclude insurance brokers from access to this information when they perform essential advisory and injury management services that are critical to the workers' compensation process. It is inconsistent to exclude insurance brokers from access to this information when they perform essential advisory and injury management services that are critical to the workers' compensation process.

While NIBA acknowledges that the legal position in respect of the Privacy Act remains unchanged, insurance brokers and insurers have operated within the same privacy framework for many years

without significant privacy breaches, particularly given the sensitive nature of the personal information involved.

NIBA therefore strongly supports the explicit inclusion of insurance brokers and workers' compensation consultants on the WorkCover WA claim form. Recognising their role would reduce administrative burdens, enhance the efficiency of claims and rehabilitation processes, and support employers in fulfilling their statutory responsibilities under the WCIMA., and support employers in fulfilling their statutory responsibilities under the WCIMA.

Proposal 10: Amend the Regulations to insert the following offences and modified penalties in Schedule 4:

- **Failure of employer to make income compensation payment when due [s.47(2)]: modified penalty \$800**
- **Failure of employer to pay the amount of a settlement agreement when required [s.156(2)]: modified penalty \$800**
- **Preventing another person from complying with the Act [(s.527)]: modified penalty \$800.**

NIBA response: NIBA does not object to the proposed amendments to the Regulations to insert the specific offences and modified penalties in Schedule 4. However, we seek clarification on the application of section 527, particularly regarding the circumstances in which a person may be considered to have directly or indirectly prevented another from complying with the Act. Greater clarity on this point will enable NIBA to better assess the risk of an infringement notice being issued under this provision and provide appropriate guidance to our members.

Other issues

While acknowledging they fall outside the scope of the review, the following have been raised by NIBA members as issues that may warrant further consideration by WorkCover WA in future discussions.

The introduction of separate forms for the collection of actual wages for the previous period and estimated wages for the upcoming period has increased administrative complexity for employers without a clear benefit. Previously, a single form was used for both purposes streamlining the reporting process. It is unclear why this change was implemented, and NIBA queries whether the additional administrative burden on employers is necessary.

Changes to the premium loadings process have also been noted. Under the previous system, insurers could apply a maximum 75% loading to the gazetted rate without requiring WorkCover WA's approval to exceed this threshold. The new process reverses this approach, allowing insurers to determine the

loading, with the onus on the employer to lodge an appeal if they believe the increase is excessive. This shift may create challenges for some employers, particularly where they are required to pay the imposed amount up front.

Additionally, NIBA members have requested greater clarity regarding the treatment of contractors and the amount that must be declared. The current approach may create uncertainty for employers when reporting contractor payments, and further guidance would assist in ensuring consistency and compliance.

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