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Manager, Policy and Legislative Services  
WorkCover WA

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## WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 2023 IMPLEMENTATION REVIEW

To whom it concerns,

The Chamber of Minerals and Energy of WA (CME) is the peak representative body for the resources sector in WA. CME is funded by member companies responsible for 86 per cent of the State's mineral workforce employment.<sup>1</sup>

In 2022-23, the WA resources sector accounted for 47 per cent of WA's economic activity,<sup>2</sup> 91 per cent of goods exports,<sup>3</sup> 47 per cent of investment<sup>4</sup> and 11 per cent of employment (direct).<sup>5</sup> The sector also contributed to 33 per cent of the WA Government's general revenue, enabling the provision of public goods and services such as doctors and nurses, teachers and police.<sup>6</sup>

CME and its members appreciate the opportunity to contribute to the review of the implementation of the *Workers Compensation and Injury Management Act 2023*. CME makes the following recommendations in relation to the 10 proposals for change:

### 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.**

CME supports the proposal to delete the reference to 'future' amounts subject to added clarification that all future amounts are considered in determining the sum of settlements.

There can be a variety of matters (for example, availability of signatories and limitations of IT systems) that impact the timeliness of a settlement agreement being registered and therefore CME recommends adding an additional requirement in the settlement agreement that any compensation entitlement will not cease until the settlement agreement is registered by the Director, and to apply a cap of 28 days to the duration of time for this to occur.

### 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.**

CME supports this proposal subject to clarification regarding what is meant by a "single step" as part of a settlement application, as stated on page 7 of the consultation paper.

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<sup>1</sup> Government of Western Australia, 2022-23 Economic indicators resources data, full-time equivalents onsite under State legislation, DEMIRS, 10 November 2023 release.

<sup>2</sup> As measured by gross value add (GVA). Australian Bureau of Statistics, [5220 Australian National Accounts: State Accounts](#), Table 6.

<sup>3</sup> Department of Energy, Mines, Industry Regulation and Safety (DEMIRS), [2022-23 Economic Indicators Resource Data File](#), 9 January 2024. Australian Bureau of Statistics, [5302 Balance of Payments and International Investment Position](#), Table 21.

<sup>4</sup> Includes Gross Fixed Capital Formation plus minerals and petroleum exploration. Australian Bureau of Statistics, [5220 Australian National Accounts: State Accounts](#), Table 25. Australian Bureau of Statistics, [8412 Mineral and Petroleum Exploration](#), Table 4.

<sup>5</sup> Australian Bureau of Statistics, [6291 Labour Force, Australia, Detailed](#), Table 5.

<sup>6</sup> Includes Commonwealth grants from North West Shelf royalties, iron ore lease rentals, payroll taxes, transfer duties and other payments to government agencies. Government of Western Australia, [2022-23 Annual report on State finances](#), Department of Treasury, 28 September 2023, table 2.1.

CME also recommends that a statement be included allowing for an independent second opinion with an Approved Permanent Impairment Assessor (APIA).

CME would also support the need for legislative change noted on page 8 to allow a pathway to dispute, and possible determination of partial liability where there is disagreement. Whole or partial liability needs to be determined by the APIA or agreed Independent Medical Examiner (IME).

### **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 worker's degree of permanent impairment in APIA1.**

CME supports most of the proposed changes, except the removal of signature blocks for APIA 3, 4 and 5 (4<sup>th</sup> point), as this could cause confusion or be misused. CME also recommends WorkCover allow the use of personal electronic signatures to increase efficiency given delays in processing hard copy documents.

**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 worker's return to work and remuneration with that other employer when providing the notice to the worker.

CME broadly supports this proposal, however would note the following issues and suggested amendments. In relation to dot point 1 there is potential for confusion as the overall wage may vary depending on allowances and penalties and these can be difficult to estimate. Moreover, the 3<sup>rd</sup> bullet point creates reliance on another employer to provide information. There is no requirement for the other employer to reply or respond, which creates opportunity for delay and uncertainty. This may create a significant issue for employers.

We would also recommend the following changes to the Return to Work Plan (RTGWP):

- Add a section under Workers Agreement for the leader to also sign and declare they have read and support the RTWP;
- Clarify in the explanatory guide only one RTWP is required to ensure no doubling up with vocational rehabilitation providers;
- Update Section 3 Workers Agreement to align with the Act and Regulations (example: "I acknowledge I have been given the opportunity to participate in the establishment of this return to work plan and I agree with the contents of the return to work plan.")
- Remove duplicate fields regarding capacity on the return to work plan. There is a work capacity field and RTW restrictions field.
- Add page numbers to the return to work plan template.

**Proposal 5: Repeal WorkCover WA approved form CN6 Custody or imprisonment notice - WorkCover WA now to obtain confirmation of custody arrangements instead of the insurer. WorkCover WA CEO issue a new approved form Custody or imprisonment notice to reflect this change. 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.

CME supports this proposal with the proviso that WorkCover confirmation should not delay cessation of the payments. Suggest applying a time limit of 10 days. If there is no response within that timeframe, Insurer to issue notice of intent.

**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.**

CME supports this proposal.

**Proposal 7: Amend the WorkCover WA approved form CF2 NIHL compensation claim form by inserting the following:**

- A field indicating the date the claim was given to the last employer.
- A field indicating the date the last employer gave the claim to the insurer.

CME supports this proposal.

**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 (age-related hearing loss).

CME supports this proposal.

**Proposal 9: National Insurance Brokers Association and Insurance Council of Australia 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.**

CME suggests there may be more value in employers and brokers having their own separate consent authority on the claim form. There is a lack of understanding on the part of workers about the role of insurance brokers in the process, and it would be advantageous if employers could gain consent from workers to liaise with the insurance broker.

**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.

CME supports this proposal in principle but would note that as settlement is administered by the insurer, the responsibility for penalty should sit with the insurer.

## Conclusion

CME appreciates the opportunity to provide input to the review of the Workers Compensation and Injury Management Act 2023 Implementation. We look forward to ongoing engagement throughout the review process.

CME remains committed to working with WorkCover WA to ensure the optimal functioning of the workers compensation system.

Should you have questions regarding this submission, please contact Jade Nobbs, Policy Advisor via [REDACTED]

Yours sincerely,



**Rebecca Tomkinson**  
Chief Executive Officer