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Dear Manager Policy and Legislative Services

Workers Compensation and Injury Management Act 2023 Consultation Paper

We confirm that LGIS Workcare administers workers' compensation claims brought against the vast majority of WA Local Governments in Western Australia.

We refer to the *2023 Act Implementation Review Consultation Paper* ('the Consultation Paper') dated January 2025 and provide this submission in response to the proposals contained therein.

We respectfully submit that the scope of the review is somewhat disappointing and should have instead been focused on improving the efficiency of a workers' compensation system which is now heavily driven by compliance which, as a result, can detract from the key objectives and intentions of the *Workers Compensation and Injury Management Act 2023* ('the Act').

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.***

We support the removal of the term 'future' to accurately reflect the composition of settlements reached which can include past and/or future amounts.

However, we oppose the inclusion of a statement to prevent parties from ceasing compensation entitlements prior to the settlement being registered by the Director. In this regard, we submit as follows:

- (a) such an amendment is contrary to Section 62(d) of the Act which provides that, with written consent, a worker's income compensation can be reduced, suspended or discontinued;
- (b) settlements are negotiated with reference to the allowances remaining under the Act which cannot be exceeded;
- (c) depending upon the time taken for a settlement to be registered, the proposal in practice could result in a worker being compensated in excess of the entitlements remaining under the Act;

- (d) in addition, such an amendment would not serve to encourage workers to return signed settlement documents for registration within a timely manner;
- (e) as an alternative, we respectfully suggest for WorkCover WA to implement more efficient strategies for the reviewing and registration of settlement agreements in order to avoid lengthy delays.

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 both for clarity and ease of use.***

We support these proposals and submit that it would be in the interests of all key stakeholders for a more lenient approach to be taken to any minor errors identified by WorkCover WA in APIA assessments, particularly in circumstances in which the quantum of the settlement reached is not affected.

It is highlighted that support for this approach is contained in Section 191(7) of the Act which provides that an assessment is not to be vitiated because of any informality or want of form.

It is also submitted that the order in which a Permanent Impairment Notice vis-à-vis a Settlement Agreement are signed and dated should not affect the registration of a settlement, particularly when the intent of the parties is clear.

Proposal 3

Amend the WorkCover WA approved form APIA 1 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, APIA 6 and APIA 7.

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 agreement conducted) is when an APIA has dated and certified the worker's degree of permanent impairment in APIA 1.

It is submitted that it is the responsibility of the party requesting the impairment assessment to be satisfied that the special assessment criteria have been met, rather than an APIA.

In addition, it is in the interests of all stakeholders for an e-signature to be sufficient, rather than a wet signature.

Otherwise, we do not have any other comments to make regarding this proposal.

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.***

We support Proposals 4(1) and 4(2).

With reference to Proposal 4(3), a statement or declaration signed by the insurer/self-insurer should be sufficient in circumstances in which the worker has returned to work with another employer.

In this regard, confirmation from a new employer may not be forthcoming if specific evidence is required and may cause unwarranted delays in a CN2 notice being issued. Further, if specific evidence is required from a new employer, it is anticipated that there will be issues as to confidentiality and privacy in such information being provided.

In any event, if a worker is not satisfied with a CN2 notice, the Act provides for the mechanism by which it can be disputed (ie. by filing a WorkCover Application) with additional requirements potentially complicating matters including as to the validity of the notice if subject to proceedings in the Arbitration Service.

In accordance with Section 32 of the Act, the onus falls on a worker to provide information about other employment. Depending upon the evidence required if this proposal were implemented, it is submitted that stricter enforcement of the penalty provision contained in Section 32(1) should be enforced.

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.***

In our experience, obtaining confirmation from the relevant government authority that a worker is incarcerated has proven to be a notoriously difficult and protracted process, in circumstances in which an individual is not entitled to compensation.

We agree with the proposal for WorkCover WA to obtain written confirmation of custody or imprisonment.

However, we propose timeframes to be put in place for the requests to be made by WorkCover WA and for a response to be provided by the relevant government authority, say no longer than 7 days each.

Proposal 6

No change to the structure and content of WorkCover WA approved form – IM1 Return to work program.

Whilst we agree that there should be a prescribed form for a return to work program, we believe that the form requires amendments, rather than the explanatory guide.

In this regard, we consider the current form seems convoluted and significantly impairs its readability and usability as a result of which it complicates the process for users. We do not consider the form assists in achieving the objective of facilitating effective recovery in the workplace.

Furthermore, we do not consider the current form allows the parties to address appropriate safety measures or a structured progression for returning to work and neglects critical principles of behavioural science which are essential for promoting positive outcomes in a return-to-work.

In our experience, this creates uncertainty and a lack of clarity in the absence of an actionable plan for the worker (which we say is vital for workers). In addition, it heightens psychological stressors (such as anxiety), poses a psychological hazard for injured workers and overall hinders rehabilitation efforts.

We recommend for the following changes to be made to the form to align with best practices which support all industry stakeholders and provide for a more holistic approach to a return to work program:

1. **Clear Goal Setting:** the form should incorporate specific, measurable, achievable, relevant and time-bound (SMART) goals for recovery. This approach will help injured workers understand expectations and foster a sense of ownership over their recovery process.

Currently, we do not consider the goals align with the hierarchy endorsed by WorkCover WA and nor do they address recovery-at-work goals for workers with psychological injuries;

2. **Staged Progression Framework:** implementing a staged progression model to provide a clear roadmap for injured workers. Each stage should outline the necessary steps and milestones toward returning to work ensuring that workers can visualise their journey and feel supported throughout the process;
3. **User-Friendly Design:** the form should be redesigned to enhance conciseness, readability and accessibility. This includes the use of clear concise headings, bullet points and visual aids to break down information into manageable sections. A more intuitive layout will facilitate better understanding and engagement from users.

4. **Incorporation of Behavioural Insights:** utilising behavioural insights, such as nudges and prompts, can encourage injured workers to take proactive steps in their recovery. For instance, reminders about upcoming appointments or milestones can help keep workers engaged and motivated. Often this has to be written into the return to work plan which serves to keep all stakeholders informed as to when workers will be away from the workplace due to appointments etc;
5. **Feedback Mechanism:** Including a section for feedback from injured workers can provide valuable insights into their experiences with the form and the return-to-work process. This feedback can be instrumental in continuously improving the form and its effectiveness.

We anticipate that these recommendations will create an effective tool which not only supports the recovery of injured workers but also aligns with contemporary-best practices in behavioural science and return-to-work strategies.

We urge WorkCover WA to consider changes to the Return to Work program form, rather than the explanatory guide.

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.***

We agree with this proposal. We also suggest for the words '(if known)' to be inserted following the proposed fields.

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.***

We support this proposal.

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.

We do not have any submission to make regarding this proposal.

Proposal 10

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

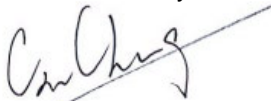
- **Failure of employer to make income compensation payment when due [s.47(2)]: modified penalty \$800**
- **Failure of employer to pay the amount of a settlement agreement when required [s.156(2)]: modified penalty \$800**
- **Preventing another person from complying with the Act [(s.527)]: modified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

We support the proposed penalties in the event of systemic and unreasonable breaches of the applicable provisions of the Act.

We thank you for the opportunity to provide submissions regarding the Consultation Paper.

Please do not hesitate to contact the writer if you wish for us to address matters further.

Yours sincerely



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