

Manager Policy and Legislative Services
WorkCover WA
2 Bedbrook Place
Shenton Park, WA, 6008

Dear Manager Policy and Legislative Services,

Coles recognise WorkCover WA's role is to lead a contemporary, sustainable and integrated workers compensation scheme that is fair, accessible and cost effective for all participants. We refer to your email dated 24/1/25 and thank you for the opportunity to provide feedback in relation to the proposed changes to forms and processes following the implementation of the *Workers Compensation and Injury Management Act 2023* ('the Act') on 1 July 2024.

We understand the need for various departments of WorkCover WA to be provided the details of our consultation feedback; however, we do **not** approve any public publishing of the Coles submission.

Our feedback is detailed below for your information.

1. Settlement agreement approved form

Proposal 1:

Amend the WorkCover WA approved form SF1 settlement agreement by:

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

Coles Group Feedback:

- A) Nil
- B) Coles consider it unnecessary to incorporate this statement into the SF1.

Coles acknowledges the provisions of section 156 of the Act.

However, Coles also acknowledges a worker's ability to consent to a discontinuance of their entitlement to income compensation pursuant to section 62(d) of the Act.

Coles are of the view that workers should remain empowered to exercise their own choice to consent (or not as the case may be) to the cancellation of income compensation to suit their own personal circumstances and/or on the advice of their legal representative.

Coles experience is that since the change of legislation from 1 July 2024 there has been a notable delay in the registration of settlements. Prior to the legislative



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change the average was 3-4 weeks and now our experience has shown it is circa 4-5 weeks.

Additionally, a more flexible approach to minor errors in settlement agreements (such as formatting or incorrect spelling) may assist with reducing registration timeframes.

The current delay in registration unnecessarily increases income compensation spend on a claim in the workers compensation scheme, compensation which has often been factored into a settlement figure which would be increasing the schemes costs unnecessarily. It also slows down the resolution for the claimant.

2. Permanent impairment agreement – PI notice process

Proposal 2:

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

- A) under the 'Agreement' section replacing 'requested' with 'required' (employers/ insurers must indicate agreement or disagreement with the level of impairment)
- B) 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

Coles Group Feedback:

Coles supports both parts of the proposal.

Coles also agrees that the issue highlighted at the top of page 8 needs to be addressed. It is unclear what steps WorkCover WA propose to rectify this issue. Coles suggest the permanent impairment notices could be amended so as to allow recognition that a percentage impairment may not be disputed but that liability for same is not agreed.

3. Permanent impairment assessment by APIA

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.

Coles Group Feedback:

Coles acknowledges and accepts the procedure for the assessment of permanent impairment.

Coles understands that some settlements have been rejected when permanent impairment compensation has not been included but WorkCover WA adopt the view it should have been. Respectfully, Coles consider it is a matter for the parties to agree to the types of compensation subject to settlement.

4. Intention to reduce or stop income compensation – return to work

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.

Coles Group Feedback:

Coles does not support this proposal and does not consider it necessary to require a statement, or declaration as proposed.

Coles notes that it could be difficult for insurers, employers, or indeed workers who have returned to work in alternative employment, to obtain this information. Coles also notes insurers have limited, if any, authority to contact any worker's new employer to request pay information. Indeed, Coles considers it would be inappropriate to reach out to any former Team Member's new employer to ask for pay information (which would by necessity disclose the existence of a workers compensation claim and potentially jeopardise any new employment).

That information cannot, or should not, be obtained should not prevent a notice being issued as that is not the intent of section 63 of the Act. The only issue is whether a worker has returned to work not what they earn.

Section 32 of the Act **places the obligation upon a worker** to declare any earnings and therefore we cannot see why the onus should be shifted upon the employer to produce evidence of those earnings, when it is almost impossible for the employer to obtain same.

Coles notes the appeal rights available to a worker should they not agree with a decision to reduce or discontinue income compensation based on a return to work.

Coles is concerned this proposal is overly burdensome for all parties and in many circumstances will be unachievable.

5. Custody or imprisonment notice

Proposal 5:

Repeal WorkCover WA approved form CN6 Custody or imprisonment notice
WorkCover WA CEO issue a new approved form Custody or imprisonment notice
2023 Act Implementation Review: Consultation Paper 16 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.

Coles Group Feedback:

Coles suggests a time limitation be imposed for WorkCover WA to obtain written confirmation of custody or imprisonment so as to avoid a worker receiving compensation when they should not be which will increase costs across the scheme unnecessarily.

6. Return to work program

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.

Coles Group Feedback:

- No concerns

7. Noise induced hearing loss compensation claim form

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.

Coles Group Feedback:

- No concerns

8. Audiological test report

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.

Coles Group Feedback:

- No concerns

9. 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.

Coles Group Feedback:

- No concerns

10. Additional modified penalties

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.

Coles Group Feedback:

- No concerns

11. Additional feedback

Increase in claims costs

Coles has seen a notable increase in claims costs since the implementation of the legislation. While we understand this in some situations, we have outlined above some examples of where this may be unnecessary cost to the scheme.

Systemic withdrawal of consent

Another issue identified is plaintiff solicitors **systemically** advising their clients to withdraw consent. Coles assume this is not the intent of the legislation as it limits our ability to engage proactively and directly with external rehabilitation providers and therefore our ability to support our team members with their recovery and return to work. For example, when our injured team member exercises their right to engage and select an external rehabilitation provider to assist with their recovery and return to work to Coles; we are unable to liaise with the external rehabilitation provider to play an active role in the return to work process. These challenges extend to, when the medical evidence suggests that a return to Coles is not achievable, we have been unable to request/direct a vocational assessment and job

searching to be performed. In Coles view this is not in the best interests of our injured team members as it does not promote co-operation and recovery and return to work.

Liability Notices

Coles is of the view the Liability Notices should include detail relating to the injury and liability status (accepted or not accepted) which is of relevance when finalising permanent impairments and / or settlements and improves clarity and understanding for the claimant.

Kind regards

A handwritten signature in black ink, appearing to read 'Barb', enclosed within a hand-drawn oval shape.

Barb Terreu

State Manager Coles Team Cover WSN