

Manager Policy and Legislative Services
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6000

27 February 2025

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

Dear Manager Policy and Legislative Services,

Workers' Compensation and Injury Management Act 2023
2023 Act Implementation Review
Consultation Paper

I am writing to you as **President of the WA Branch of the Australian Lawyers Alliance (ALA)**.

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

I refer to the *Workers Compensation and Injury Management Act 2023 ("the Act") 2023 Act Implementation Review Consultation Paper* and provide this submission in response to the proposals as follows:

1. Settlement agreement approved form

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.*

Submission: Support

The ALA supports proposal 1

ALA also supports that the worker should also be able to agree any specific time period or date in which to cease income compensation prior to the registration. Section 62(d) allows for the worker to agree that their income compensation to be ceased if written consent is given.

Further Submission on Proposal 1

The ALA submits that the settlement agreement approved form should be altered to include another category of “other” compensation. This will allow compensation that currently can not be accounted for or allocated to be recorded. A letter can be provided setting out the basis of the allocations and figures and will assist the Director in satisfying themselves as to whether the settlement agreement is genuine. Examples of this include:

- estimated allowances of permanent impairment compensation
- where the allowance of permanent impairment compensation exceeds the balance of the prescribed amount for the General Maximum Amount/ Income Compensation General Limit
- past prosthetic / equipment hire / aids expense reimbursements
- past airfare expense reimbursements
- past royal flying doctor emergency flight expense reimbursements
- past public or private hospital recovery / expense reimbursements
- agreed extension/additional income payments pursuant to section 52 of the Act

In addition to the above, the ALA supports a review of the workers’ compensation settlement pathway and would suggest a simplification of the process.

With the introduction of the new Act, it was said that there would be minimal barriers to the settlement of statutory claims, however the process has become overly technical, burdensome and ultimately, prejudicial to injured workers.

The ALA also advocates for the introduction of a new settlement form which reflects the terms reached between the parties, including where the agreement involves a global sum (which is common place in the jurisdiction) and where particular terms have been agreed to resolve the statutory claim (ie. resignation, indemnities and the nature of the injury). The form should provide the parties with flexibility, albeit confined to the statutory claim only (and exclude common law).

Further, the scrutinisation of settlements by the Director should be considered from a broader perspective, without technicality, to determine whether the agreement reached between the parties is genuine. We take the view that where both parties are legally represented, there are likely to be very few agreements found not to be “genuine”, and the review process should reflect this.

We welcome the opportunity to discuss our proposal in greater detail.

2. Permanent impairment agreement – PI notice process

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.*

Submission: Support. ALA also supports a simplification of the process for reaching agreement on the level of impairment and the procedures for settlement and submits that the Act should be amended such that agreement on the level of impairment can be accommodated as a single step as part of a settlement application, rather than the two-step process currently required by the Act.

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.

Submission: Support

- 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.

Submission: Do Not Support. ALA raises the issue about the meaning of the term “sought”. Special Evaluation appointments after often sought before 18 months before the claim was made as often APIA have a wait time for appointment. But after the appointment has been sought/requested of the APIA, the date of the appointment for the Special Evaluation is scheduled is at least 18 months since the claim was made.

ALA proposes the following instead to clarify any ambiguity:

Amend the Regulations to require when a special evaluation assessment is scheduled 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.

Submission: Support

- Amend WorkCover WA approved forms APIA3, APIA4 and APIA5 to remove APIA signature blocks.

Submission: Support

- 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 in APIA1.

Submission: Support

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

Submission: Support

- *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*

Submission: Support

- *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.*

Submission: Support

The ALA supports Proposal 4 and considers this to be a crucial step in clarifying the purpose of section 63 of the Act.

Whilst requiring the employer / insurer to provide a "statement" of the amount of wages / remuneration pay in the return to work position and having the employer sign a declaration is a positive step, the ALA submits that the prescribed form should also **require** the employer or insurer to attach actual evidence of the worker's earnings, through payslips or otherwise.

This will ensure that a worker's income compensation payments are only reduced by the actual earnings received in the return to work position (evidenced by their payslips).

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.*
- *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.*

Submission: No Comment

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.*

Submission: No Comment

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.*

Submission: No Comment

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.*

Submission: No Comment

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.*

Submission: Support

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.*

Submission: Support

Thank you for the opportunity to provide a submission to this consultation.

If you have any questions, please direct correspondence to the writer on [REDACTED]
[REDACTED]

Yours sincerely,



Eleanor Scarff

President of the WA Branch

Australian Lawyers Alliance