

15 December 2023



Kevin Gillingham
Manager Policy and Legislative Services
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

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

Dear Mr Gillingham

Workers Compensation and Injury Management Act 2023 – Implementation Paper Consultation

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia. We are fundamentally committed to using our insights to develop and advocate for public policies that will help realise our vision to make WA the best place to live and do business. This includes maintaining a balance of responsibility and in valuing safe and healthy workplaces.

We appreciate the opportunity to provide feedback into the implementation process for the *Workers Compensation and Injury Management Act 2023 (the Act)*. In this submission, we have provided feedback on specific implementation papers in Attachment 1, and provide general comments in what follows:

- ***Regulations need to emphasise simplicity and clarity:*** In recent times, businesses, particularly small and medium enterprises (SMEs), are having to navigate a plethora of complex State and Commonwealth industrial relations changes. It is imperative the new regulations and any supporting guidance material, including templates for administrative instruments, emphasise simplicity and clarity, and is communicated clearly to the business community in a timely manner.

As an example, the legislation does not define 'day' and whether this factors in public holidays. While set in legislation, it is important that regulations and supporting education material provide the relevant clarity required by business.

To this end, we welcome the intent to provide further support materials and education programs, in addition to the period of review and refinement of system changes. We also encourage working closely with the business community to ensure its successful implementation.

- ***Affordability:*** It is vitally important that any fees set by regulation are affordable. It is for this reason that we remain opposed, in principle, to the concept of provisional payments. These payments can lead to increased insurance premiums for SMEs, who already face considerable cost pressures due to a challenging economic climate.

Should you wish to discuss the content of this letter further, please do not hesitate to contact Aaron Morey, CCIWA's Director of Policy, via email at aaron.morey@cciwa.com.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CR' followed by a horizontal line.

Chris Rodwell
Chief Executive Officer

Attachment 1: Implementation Paper feedback

Paper number, title	Comment
Paper 1 Deemed Workers & Excluded Workers	<p>Paper 1 details that the NDIS support workers engaged directly in a service contract by a self-managed NDIS participant be classified as a 'worker' and the self-managed NDIS person as the 'employer'. There will need to be considerable guidance and information provided to relevant workers/NDIS participants to support these provisions, and regular reviews to identify any unintended consequences.</p> <p>We are particularly concerned that this will put the onus on NDIS participants, who may have complex disabilities, to manage compensation claims while also trying to find temporary replacement support workers.</p> <p>Further complicating matters, the Commonwealth's legislative changes may see more NDIS support workers directly employed by NDIS participants, rather than through a labour hire firm or platform. This would increase the number of potential employers and employees falling under the Act.</p> <p>Given this, we recommend consulting further with the sector, Department of Communities and people with lived experience of disability to identify how the regulations should be designed to reflect the day-to-day operational context.</p>
Paper 3 Workers Compensation Claim Form	<p>Further clarification would be welcome in relation to the following:</p> <ul style="list-style-type: none"> • <i>Completed claim forms</i>: It is not overly clear what constitutes a completed claim form (ie: claim form and the first certificate of capacity). • <i>Employer requirements following an incident</i>: At this stage, it remains unclear whether the employer must or can remain outside the medical consultancy, and whether they can receive a summary of the consultation or discuss the outcomes with the medical practitioner. • While some changes are outlined in the Proposed Changes to Claim Form Information, it is unclear what changes are prescribed by the Act and those that are not.
Paper 5 Liability Decisions & Provisional Payments	<p>As noted earlier, we remain opposed, in principle, to provisional payments. We are concerned that even in cases where liability is rejected, the insurer may still seek to increase premiums for the business, and with no way for businesses to recoup the costs. To this end, we recommend WorkCover consider mechanisms, via regulation, to closely monitor the implementation of provisional payments and undertake regular reviews as to whether this leads to unintended outcomes. These findings should also be made public on the WorkCover website.</p>

<p>Paper 6 Injury Management & Return to Work</p>	<p>Section 165(3)(a) specifies that employers cannot be required to attend a work case conference at any other time other than during usual business hours (8:30am to 5pm).</p> <p>While this timeframe captures the most likely operational hours for businesses across sectors, it does not factor in shift work or businesses that operate exclusively outside these hours as well as insurers based in other jurisdictions, or medical practitioners, which may provide for work case conferences prior to the start of business (for example, 7:30am). We recommend the use of less prescriptive provisions.</p>
<p>Paper 11 Settlements</p>	<p>Under the former Act, section 92(f) provided for a clear course of action relating to settlements by agreement. This has been partially adopted by section 433 (3) under the new Act.</p> <p>Further clarification on the intended future use, regulation and function of Section 433(3) would be welcome. At present, it is unclear from Paper 11 how compliance settlement deeds could be utilised and the course of action if a common law deed is chosen as a path for settlement.</p> <p>Feedback from industry suggests that 92(f) provides the ability to break a deadlock on decision making. Removing the option through lack of clear regulation may have unintended outcomes.</p>
<p>Paper 12 Workplace Rehabilitation Services</p>	<p>Further clarity is required around the role of the Workplace Rehabilitation Person (WRP) as there is a discrepancy between Paper 6 and Paper 12. Paper 6 indicates that a WRP ‘may’ attend and participate in a return-to-work case conference, while paper 12 ‘requires’ a WRP to initiate and/or participate in a return-to-work case conference.</p> <p>As such, we suggest the following change be made:</p> <p><i>“An approved WRP is required to”</i> to be replaced with the following: <i>“An approved WRP may undertake a combination of the following:”</i></p> <p>Further, while there is consideration of <i>Terminating a Workplace Rehabilitation Service</i>, the Paper does not provide for options under a scenario where a claim is misrepresented or is protracted. While there are provisions under s176, it is up to the discretion of WorkCover or the provider themselves to initiate a suspension or cancellation. Allowing a pathway for termination of a workplace rehabilitation service via regulations could be a useful outcome for all parties involved.</p>
<p>Paper 20 Noise Induced Hearing Loss</p>	<p>The paper presents a significant step forward in streamlining how compensation is managed for noise-induced hearing loss. To this end, we encourage WorkCover to release robust education and supporting material, which outlines the new obligations for all parties referenced in the relevant regulations.</p>