

Workers Compensation and injury Management Bill 2021

Government of Western Australia
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EXERCISE & SPORTS SCIENCE AUSTRALIA (ESSA) SUBMISSION

RE: WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2021

WorkCoverWA

To Manager Policy and Legislative Services

Thank you for the opportunity to provide feedback in relation to the Western Australian Government's consultation draft of Workers Compensation and Injury Management Bill 2021.

Exercise & Sports Science Australia (ESSA) is the peak professional association for exercise and sports professionals in Australia, representing more than 8,000 members comprising university qualified Accredited Exercise Physiologists, Accredited Sports Scientists, Accredited High-Performance Managers and Accredited Exercise Scientists.

Exercise physiology is a self-regulated allied health profession that has met the benchmark standards set by the [National Alliance of Self-Regulating Health Professions](#) (NASRHP) for the regulation and accreditation of practitioners within that profession. Other recognised allied health professions like dietetics, audiology and speech pathology are also self-regulated health professions meeting NASRHP standards.

Currently, there is a significant gap in the proposed draft bill as it defaults to the *Health Practitioner Regulation National Law (WA) Act 2010* which provides an incomplete definition of health professionals, excluding all health professionals who are self-regulated health professionals. Health services are also described within the *Health Practitioner Regulation National Law (WA) Act 2010* and whilst some self-regulated health professions are listed by name, exercise physiology is not included. This means that reference to this legislation needs to be expanded to encompass all health professionals that are approved to provide services in the WA workers compensation scheme. In summary, ESSA's recommendations outlined in this submission are that the Western Australian Government:

Recommendation 1: Add a part (c) to the Health Professional definition to recognise health professions regulated by other means, reflecting COAG policy. The following could be added for (c), 'a person regulated through a professional body who is qualified and experienced to deliver approved treatment'.

Recommendation 2: In the first instance, prescribe in the regulations the health services and providers currently referred to as *approved treatment* in the current Act including exercise physiology.

Recommendation 3: Allow employers, insurers, and representatives of insurers to be present during a medical examination when informed consent is provided by the worker.

We welcome the opportunity to provide further. Please contact ESSA Policy & Advocacy Advisor, Judy Powell, at Policy@essa.org.au for further information or questions arising from the following submission.

Yours sincerely

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1.0 ABOUT ACCREDITED EXERCISE PHYSIOLOGISTS

Accredited Exercise Physiologists are four-year university degree qualified allied health professionals. They provide services to people across the full health spectrum, healthy through to those at risk of developing a health condition, and people with health conditions, a disability, and aged related illnesses and conditions, including chronic, complex conditions [1]. Exercise physiology services are recognised by Australian compensable schemes including Medicare, the National Disability Insurance Scheme (NDIS), Department of Veteran Affairs (DVA), workers' compensation schemes and most private health insurers.

2.0 FEEDBACK ON THE PROPOSED BILL

2.1 General

ESSA supports the modernization of the WA Workers Compensation Law to restructure the content and rewrite the Act using plain language and contemporary drafting. We note that since 1981 there have been 25 substantive amendment acts, 39 consequential amendments, a substantial body of case law and legislative anomalies.

2.2 Part 1 - Preliminary, Division 2 – Terms used, 5. Terms used [WCIMA s. 5]

2.2.1. Health professional

The proposed bill defaults to a definition for *health professional* under [the Health Practitioner Regulation National Law \(Western Australia\) Act 2010](#) [2] as below:

- (a) “a person registered under the *Health Practitioner Regulation National Law (Western Australia)* to practice a health professional (other than a student); or
- (b) a person who is not resident in a State but who is recognised as a health professional for the purposes of this Act by WorkCover WA.”

The [Health Practitioner Regulation Law \(Western Australia\) Act 2010](#), Part 1 Preliminary s. 5 Terms used, provides the following definition for health profession [2]:

health profession means the following professions, and includes a recognised specialty in any of the following professions —

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) Chinese medicine;
- (c) chiropractic;
- (d) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
- (e) medical;
- (f) medical radiation practice;
- (g) midwifery;
- (ga) nursing;
- (h) occupational therapy;
- (i) optometry;
- (j) osteopathy;
- (ja) paramedicine;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry;
- (n) psychology;

The default to this piece of legislation alone is inconsistent with the Council of Australian Governments' (COAG) Health Council Policy outlined in a [Ministerial Communiqué](#) which outlines the proposal of a National Registration

and Accreditation Scheme (NRAS) and recognises the important contribution to health service delivery by all health professionals, including those regulated under the NRAS, and those that are regulated by other means [3]. The current wording only recognises those professions registered through the Australian Health Practitioner Regulation Agency (Ahpra). This approach is, therefore, misaligned with the objective of the proposed bill to be contemporary.

The definition of *health professional* in the proposed bill with a default to the *Health Practitioner Regulation National Law (Western Australia) Act 2010* has implications which affects the use of *health professional* in the following clauses:

- cl. 169 (2), cl. 169 (3) on page 109 related to issue of certificates of capacity
- cl. 171 on page 110 related to Employer, insurer, agent of insurer presence at a medical examination
- cl. 307 (d), cl. 307 (e) and cl. 307 (f) on page 187 related to relevant documents
- cl. 365 (2) on page 213 related to the provision of information to another party or medical practitioner
- cl. 500 (1) on page 272 related to direction to provide WorkCover WA with information

There are self-regulated, non-Ahpra registered health professions such as exercise physiologists and speech pathologists providing *approved treatment* under the current regulations for the WA workers' compensation scheme. The proposed bill would mean that the clauses above would not apply to these professions because they are not defined as a health professional. This could have unintended consequences for the engagement of these health professions in the operations of the scheme and negative impact injured workers' access to health services, return to work and health outcomes.

Recommendation 1: That the Western Australian Government add a part (c) to the Health Professional definition to recognise health professions regulated by other means, reflecting COAG policy. The following could be added for (c), 'a person regulated through a professional body who is qualified and experienced to deliver approved treatment'.

2.2.2 Approved treatment

Exercise physiology was included in an [amendment](#) to the Workers' Compensation and Injury Management Act regulations in 2008 adding this as an approved treatment [4]. It was noted that exercise physiology was missing from the list of *approved treatment* on the information sheet 15 provided as part of the consultation for the proposed bill. Below is an image of Q&A provided on this information sheet.

Q. What health services will be prescribed in regulations?

A. In the first instance, the intention is to prescribe in regulations the health services and providers currently referred to as 'approved treatment' in the current Act. These are physiotherapy, chiropractic, counselling and clinical psychology, occupational therapy, osteopathy, speech pathology, acupuncture, exercise programs. Regulations provide flexibility to recognise new compensable health services, or to modify the description or criteria that applies to existing health services, if there is a sound basis for doing so in the future.

The term *approved treatment* is also absent from the list of terms in the proposed bill. *Approved treatment*, however, is noted in clause 75, where eligibility to provide compensable medical and health services is outlined and connected with a qualified and experienced person delivering treatment. In other words, a health professional.

Recommendation 2: That the Western Australian Government, in the first instance, prescribe in the regulations the health services and providers currently referred to as *approved treatment* in the current Act including exercise physiology.

2.3 Cl. 170, 171 - Worker's Treating Medical Practitioner & Medical Examinations

ESSA supports the worker's right to choose their treating medical practitioner and prohibit the employer or insurer from being involved in this decision.

ESSA suggests that employers, insurers, and representatives of insurers should only be present during a medical examination when informed consent is provided by the worker.

Recommendation 3: That the Western Australian Government, allow employers, insurers, and representatives of insurers to be present during a medical examination when informed consent is provided by the worker.

3.0 REFERENCES

1. Exercise & Sports Science Australia, *Accredited Exercise Physiologist Scope of Practice*. 2021.
2. Government of Western Australia, *Health Practitioner Regulation National Law (WA) Act 2010*, G.o.W. Australia, Editor. 2010, Department of Justice.
3. Council of Australian Governments Health Council, *Purpose of the National Registration and Accreditation Scheme*. 2018.
4. Western Australian Government, *Gazette: Workers' Compensation and Injury Management Amendment Regulations 2008*, in 217. 2008, John A. Strijk, Government Printer: Perth.