



WESTERN AUSTRALIA

09 November 2021

WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008
By email to: consultation@workcover.wa.gov.au

Dear Sir/Madam

RESPONSE TO WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2021 (CONSULTATION DRAFT)

The AMA (WA) welcomes the opportunity to respond to the Workers Compensation and Injury Management Bill 2021 (Consultation Draft) (**Bill**). Please find our submissions below.

Prohibition on employers attending medical appointments of injured workers

The AMA (WA) supports the move to prohibit an employer's attendance at a worker's medical examination. In our view, principles of confidentiality far outweigh any desire for an employer to be present at a medical examination. Moreover, allowing employers to attend examinations provides the opportunity for the employer, however inadvertent, to place pressure on both the medical practitioner and the patient in relation to the patient's fitness for work. While we understand that some workers may wish to have a colleague attend their medical appointment as a support person, in our view the risk of undue influence is too great. Alternatively, a colleague could be allowed to attend with the worker, but clear and firm regulations are needed to ensure the worker can make that decision free of influence. Further, it may be useful to provide that the request must be initiated by the worker, when the employer or colleague is not present.

Certificates of capacity

Section 169(2) of the Bill provides that 'a certificate of capacity must be issued by (a) the worker's treating medical practitioner; or (b) another health professional, who is permitted under the regulations to issue the certificate'. Sub-section 3 then makes reference to the parameters of the regulations. The AMA (WA)'s position is that medical practitioners are the only health professionals with the training and expertise to make decisions about a person's capacity for work. If other health professionals are permitted to issue certificates of capacity, there must be clear parameters included in the Act, and not in associated regulations. In our view, the only permissible exceptions to a medical practitioner issuing certificates of capacity are nurses or nurse



practitioners in rural or remote areas, where an immediate certificate is required and there is no reasonable way for the person to access their treating medical practitioner. Further, the certificate should only be issued as a provisional certificate, with a defined time-frame at which point it will be superseded (or retired) based on medical input. We would also point out that since the legislation was enacted, telehealth has become commonplace across the health system and can often reduce barriers for people living in rural or remote areas to access GP services for the purposes of providing certificates.

Pre-employment screening

The AMA (WA) supports the prohibition on information disclosure, including prohibiting disclosure of a worker's claim history for pre-employment screening purposes.

Prescribed (presumptive) diseases

The AMA (WA) supports new prescribed (presumptive) diseases being laid out in regulations rather than legislation, unless the disease is exceptional or significant in some way, in which case its inclusion in regulations should be temporary until such time as it can be inserted into legislation. We support the retention of dust disease and firefighters who contract one of 12 cancers under ss 11 and 113 to remain in legislation.

Mandated attendance at return-to-work conference

The AMA (WA) supports new provisions obligating the worker's attendance at return-to-work case conferences, and the ability of an arbitrator to order the worker to cooperate in a work case conference.

Treating medical practitioner

The AMA (WA) suggests that ss 170 and 171 are rephrased to provide more clarity of their intention. In the Bill, s 170(2) provides that 'an injured worker must not be required to choose or attend a medical practitioner chosen or nominated by the worker's employer or the employer's insurer to perform any of the functions set out in subsection (3). Sub-s (3) then goes on to list a number of medical practitioner's functions. Information Sheet 28, provided by WorkCover WA as part of the consultation, states that 'employers/insurers will continue to have the right to review a worker's condition by a medical practitioner nominated by the employer/insurer (restrictions apply)'. In our view, a literal reading of Information Sheet 28 conflicts with ss 170-171. Our understanding is that provision aims to prohibit the employer/insurer's choosing the medical practitioner in place of, rather than in addition to, the worker's chose practitioner. This section could be reworded to make this clear. As a related matter, the list of functions under s 170(3) may need to be reconsidered, as the list essentially covers the entirety of functions that a medical practitioner would perform whether at an initial assessment or a 'second opinion' appointment, and if the Bill



WESTERN AUSTRALIA

remains as it is, the reviewing practitioner would have no scope to assess, review or diagnose the worker, which is ostensibly the purpose for the review. We would be happy to advise on more appropriate phrasing under this section if required by the Committee.

Fees for medical and health expenses

The AMA (WA)'s recommendation, as is the case in New South Wales, is that the *Australian Medical Association List of Medical Services and Fees (AMA Fees List)* is identified in legislation as the primary reference for fees, service descriptors and billing rules, as changed from time-to-time. This is because the AMA Fees List is indexed annually, including wage indexing and consumer price indexing, and is therefore the most representative of market value of fees and services. In our view, providing an up-to-date reimbursement value is the most appropriate way to reimburse medical practitioners, and will encourage doctors to provide services to workers covered by the Act. Where the AMA Fees List does not cover the worker's circumstances, the Medical Benefits Schedule List of Medical Services (**MBS List**) should be identified as the secondary reference. A Ministerial order should only apply where neither the AMA or MBS lists cover the service provided.

Please feel free to contact us for further discussion.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bennie Ng', with a horizontal line underneath.

Dr Bennie Ng
CHIEF EXECUTIVE OFFICER