

13 September 2021

The Director
WorkCover WA
2 Bedbrook Place
Shenton Park WA 6000

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

Dear Madam

Submissions re *Workers' Compensation Injury Management Bill 2021*

We respectfully request the following submissions be considered:

Non-medical examinations

1. Obtaining evidence in relation to vocational assessments and work capacity are vital for applications to review or discontinue or reduce income payments.
2. Currently and under the proposed Bill, an insurer (including self-insurer) has no ability to compel a worker to attend a non-medical examination and obtain that evidence.
3. This puts the insurer at a disadvantage and does not put the two parties on a level playing field as the worker can, and regularly does, obtain such evidence for the purposes of those applications.
4. It is submitted that the power to compel a worker to attend an examination be extended to defined non-medical examinations, including vocational assessments.

Redemption issues

5. A current problem and a problem that is not remedied by the Bill is the recovery of compensation from negligent third parties.
6. The current Act and s.434 of the Bill provides that only compensation can be recovered (s.434(1)).
7. A redemption (or commutation) of the liability to pay compensation is not compensation of *Gosper v Christopherson* (1986) 160 CLR 423.
8. Accordingly, there is no statutory right to recover any redemption (or commutation) sum. This

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results in a reluctance on the part of a workers' compensation insurer to settle a worker's claim, even though it might be in the best interests of both the worker and the insurer, for fear that the redemption (or commutation) sum cannot be recovered in an action against the third party.

9. That result leaves insurers and workers disadvantaged by not being able to redeem a claim when in all the circumstances, it is appropriate to do so, if the insurer is to seek recovery from a third party.
10. This difficulty is not remedied but is perpetuated by the wording of s.146 of the Bill, because it refers to a commutation of the liability to pay compensation.
11. It is submitted that this issue is easily rectified by adding to the definition of compensation in s.18 of the Bill, a commutation of the liability to pay compensation pursuant to s146.
12. It is also noted that an injury management expense is not compensation and accordingly, will not be recoverable against a third party.

Yours faithfully



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