Workers Compensation and Injury Management Bill 2021 (Consultation Draft)

Introduction and Summary

The Shop, Distributive and Allied Employees' Association (SDA) is a trade union that represents workers across numerous industries, but predominantly those in retail, fast food, and retail distribution.

The SDA has a proud history of representing its membership in all facets of industrial relations achieving significant beneficial outcomes for its members.

Among the labour movement, the Western Australia Branch of the SDA (SDAWA) is unique in its workers compensation service provision. SDAWA employs a Workers Compensation Officer on a fulltime basis, whose role entails but is not limited to:

- providing advice on filling out claim paperwork,
- explaining to the member the rights and obligations of the member, employer and insurer in the claim process,
- addressing concerns raised by the member regarding claims processes,
- representation and/or advocacy on behalf of the member at a store, insurer, medico-legal, and return to work level,
- referrals to legal and return-to-work assistance,
- emotional and mental health support during the life of the claim.

This mode of engagement with the membership of the SDA provides SDAWA with a unique perspective on workers compensation and therefore with this Consultation Draft.

The major theme that this mode of engagement has illuminated for SDAWA is that the current system of workers' compensation is inherently adversarial. The current system is not one founded upon a meeting of equals. It is not a system where the parties have shared interests. It is not the case that the parties are working towards the same goals. The reality is that the insurers/employers are seeking an avenue by which to deny liability for the claim, and they do not seek ways in which they can accept liability. With this in mind, any changes that come to the system of workers compensation in Western Australia must take this into consideration. Those that exacerbate the adversarial nature must be excluded, and those that are conciliatory or in some other way promote equality between the injured worker and the insurer/employer must be given priority.

Bill Clause	Comments
General (i)	As has been raised with the previous Minister, it is a concern to the Shop, Distributive and Allied Employees' Association (SDA) that there is no clause in this Consultation Draft that deals with support people at medico-legal appointments. SDA officials have been denied access to support members in these appointments by certain medical practices on the grounds that our official is 'not a genuine support person'. We would like to see it in the Act that

	a medical practice cannot arbitrarily deny access to a union official who is attending in a support capacity.
General (ii)	The use of internal injury management schemes by employers is a major concern to the SDA and is not addressed in the Consultation Draft. Firstly, many employers have an 'early intervention', 'minor claims' or similarly named programme specifically designed to divert injured workers from lodging a workers compensation claim. This typically involves encouraging workers to attend a company-preferred physiotherapist (usually before any medical investigation such as x-rays, ultrasounds, MRIs, etc., has been undertaken) with the employer paying for this and any subsequent visits up to a limit of four or six visits. Employers will often then use this time to dissuade injured workers from submitting a claim for workers compensation as they have 'already been seen by a medical professional'. The most significant issue that arises from this is that the injured worker has forgone appropriate and sometimes essential medical investigation that could have led to a speedier recovery, of the prevention of further exacerbation of their injury by a well-meaning, but ill-informed, physiotherapist who was unaware of the severity of the injury he/she was treating. Secondly, some employers have policies set out by internal injury management that do not permit the claim process to proceed as it should. The most common example of this is that when an injured worker submits a First Medical Certificate of Capacity to the store, instead of then providing this worker with a Workers Compensation Claim Form as the current Act requires, store management refer them to the company preferred doctor, or physiotherapist, or internal injury management officer. Many employers do not follow the directive to provide an injured worker with the necessary paperwork to complete the claim. When confronted about this, employers do not admit to obstructing the claim, but rather say they are simply allowing the worker to continue to consider their options and then use this time to tell the worker the difficulty they will, both internally from their own colleagues, and externally should they apply for a job somewhere else.

	Finally, internal injury management will often attempt to push injured workers to return to work with little regard to the medical soundness of them returning. If a worker is not courageous enough to push back on the injury management officer they are often returned to work ahead of when it is in their best interest. For example, a member who was injured at work, went from the worksite to the hospital in an ambulance that the site manager had called, and was in serious back pain was told to come back to work as she 'could just walk slowly, not the usual pace'. This worker could not even drive from her injuries and those who saw her at work when she returned were distressed as simply walking the aisles was too much for her and she could not go more than a few steps without needing to lean on something for support. The fact that she was forced back to work by the management of the site, with them knowing that she was profoundly unfit for work, illustrates the need for better regulation of internal injury management.
Cl. 7 Reasonable Administrative Action Exclusion	UnionsWA has put together a very comprehensive response to this clause and SDAWA supports their submission. From the SDAWA perspective, this clause, when introduced into the CommCare scheme led to an overnight drop in the number of claims approved for stress injuries. Our concern is that the same affect will take place in WA if this clause is included. Getting stress claims accepted for our members is already a difficult task and few are successful. By increasing the exclusions to successful claims we expect even fewer of our members' claims for stress will be accepted. Recommendation: Remove this clause.
Cl. 26-28, 35, 36 Claim Procedure	It appears that this clause will allow for claims to be accepted for medical expenses only, and not for weekly payments. The concern for our members is that the insurers and self-insurers we deal with will do all they can to avoid accepting for wages and will accept for medical expenses only, forcing members to attend work for fear of financial hardship. Many of our members are compelled by the company and insurer to stay at work and not recover appropriately as the company does not wish to record Lost Time Injuries. In

	doing this, they keep our members at work, often doing meaningless 'busy work' and prolonging their recovery. By allowing acceptance of medical expenses only, it opens up the option of declining wages with the intent of forcing injured workers back to the workplace so as to keep arbitrary company policies satisfied, but denying meaningful rest to injured workers. Recommendation: Wages and medical expenses to be kept linked when accepting liability.
Cl. 29, 30 Delayed Liability	This is a very welcome addition. Many of our members have had to wait many months before they have had liability determined and these new clauses will provide for earlier determination of claim liability. We expect this will go a long way to easing the financial and mental health strain that they otherwise face with a protracted claim process.
Cl. 34 Consent Authority	The SDA opposes the addition of his clause in the strongest terms. We do not oppose the collection of consent in order for the claim to proceed. However, that consent cannot be revoked under this new clause. We oppose this as our members will in effect give standing consent to the insurer for access to their medical records for the duration of their ongoing employment. We have observed overreach from self-insured companies already requesting access to medical information and are concerned that this clause will reinforce the practice and in effect, sanction arbitrary and unnecessary collection of irrelevant medical information. A typical 'Workers Compensation Information Pack' given out by self-insured companies contains the WorkCover claim form, as well as consent authorities for the company, not the insurer, to access medical records. As these are all given at the one time, there is never any distinction made between what is necessary for the claim to proceed (First Medical Certificate of Capacity and the WorkCover Claim Form), and what is overreach of the company (all other forms of consent authorities). With regard to the insurers/self-insurers, we also oppose the prevention of revoking as we trust that the legal advice provided to our members, including when it involves revoking authority, is in their best interest. To disallow this appears to be out

	of step with the advice that our members regularly receive and as such, we oppose it. Recommendation: Workers maintain the right to revoke consent authority.
Cl. 63-69 Reducing, Discontinuing, Suspending Income Compensation	The current Act has protections that mean there can be no arbitrary reduction, discontinuance, suspension etc., of weekly payments. These new clauses remove this protection as the 21-day notice period has been removed. Our members find the conciliation/arbitration process onerous and at times overwhelming, and our concern is that allowing insurers to cease income compensation payments more easily will lead to more claims having to pursue this course. Our members often endure financial stress if their payments are reduced or ceased, and we see the value in a notice period for this so as to give them ample opportunity to seek assistance should they need it. Without this protection there, we can foresee many members not being willing to contest the drop in income compensation at conciliation as it will be too arduous or stressful for them. Recommendation: Retain the 21-day notice period before income compensation can be reduced, discontinued, or suspended.
Cl. 70-93 Medical and Health Expenses	The new category of 'miscellaneous expenses' will be an extremely welcome addition to the Act. We look forward to seeing our members make use of this new provision.
Cl. 165 Return to Work and Suitable Employment	Ensuring that any tasks while on return to work are meaningful and suitable is something we strongly endorse. Our membership has brought to our attention instances where they have been made to undertake tasks that they have found unhelpful, meaningless and demeaning. These tasks have included sorting paperclips into their colours and laminating signs that they know will never be displayed. This clause is a significant step forward for our membership.
Cl. 168	We have strong concern about this clause. Currently, there are protections for our membership that mean a job must be held for them for at least 12 months. We often observe a change in attitude from employers after this time as they begin to make it clear to the member they no longer intend on having them in

Dismissal of Worker	the workplace, and begin to move them on. We would expect this to be even more common and earlier in the life of the claim if the protection of 12 months is removed. Recommendation: Retain the 12-month period during which the member's job must be held open for them.
Cl. 170 Worker Choice of Medical Practitioner	This clause will reinforce worker choice of medical practitioner. This is another very welcome addition to the Act.
Cl. 171 Prohibition on Employer Attendance at Medical Examination	This is another very welcome clause for our membership. It will go a long way to having the privacy and dignity of our members respected, ensuring medical appointments for our members are free from intimidation from company representatives (such as managers down playing the safety oversights which led to the injury, or telling the member that their pain is not as significant as they are reporting), and the formulation of return-to-work plans with the best interest of the member at heart, and not with a focus on company productivity loss.
Cl. 172-181 Workplace Rehabilitation	One service we provide to our members is to refer them to non-company or insurer-preferred Registered Workplace Rehabilitation Providers (RWRP). This is particularly helpful for our members who are relying on that RWRP to keep their interests at the centre of their return to work journey. Already, many of our members do not get the opportunity to engage an external RWRP as the self-insurer directs the company injury management specialist to cover the return to work process. This injury management specialist is not held to the same standards as RWRP and their management of the RTW plan is often not in the best interest of the member. In our experience, once a member is referred to an external RWRP, the member reports a higher standard of RTW plan, and a higher standard of biopsychosocial care. It is imperative that our members retain the right to choose their own RWRP for their claim. Recommendation: Workers retain the right to choose their own RWRP for the RTW plan.

Cl. 505 Pre-Employment Screening	This is a particularly helpful addition to the Bill. Many members shy away from pursuing compensation as they are afraid of the stigma attached to workers' compensation should they apply for a new job in the future. This clause will assist members by removing one significant psychological barrier to accessing workers' compensation.