Community & Public Sector Union
Civil Service Association of WA

Community & Public Sector Union
SPSF Group, WA Branch
Civil Service Association of WA Inc

www.cpsucsa.org

UnionLink: 1300 733 800
Email: help@cpsucsa.org
Reception: 08 9323 3800
Fax: 08 9323 3878

Address: 445 Hay St, Perth WA 6000
Mail: PO Box X2252, Perth WA 6847

ABN: 78 678 313 448

Our Ref: C190857-20

29th November 2021

Chief Executive Officer
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

Sent via: consultation@workcover.wa.gov.au

Dear Mr White

RE: WORKERS COMPENSATION AND INJURY MANAGEMENT BILL

Please find attached our submissions regarding the draft *Workers Compensation and Injury Management Bill*.

The Bill provides for a number of improvements but we have concerns about other proposed changes which will erode workers rights.

We look forward to seeing positive changes in the final draft of the Bill.

Yours sincerely

Rikki Hendon
Branch/General Secretary

Workers Compensation and Injury Management Bill 2021 (Consultation Draft)

CPSU/CSA Submission

Bill Clause	Comments
7	**Exclusions of injury: Reasonable administrative action** The CPSU/CSA does not support this change to the Act as this unreasonably narrows the scope of workers' access to compensation. The current legislation provides reasonable limits to psychological claims and it is unnecessary to extend these exclusions. The purpose of the Act is to compensate workers who suffer injuries from employment. This change makes this impossible for some workers and is not consistent with the purpose of the Act.
10	**Prescribed diseased taken to be from certain employment** The CPSU/CSA seeks to have the regulations extended to a presumption of impairment. It is widely recognised that first responders can often experience severe psychological effects from the trauma they experience at work and as a result of performing their duties. This is frequently the result of an accumulated exposure to traumatic events. Workers' compensation laws have historically placed a high burden on applicants to prove that their Post-Traumatic Stress Disorder (PTSD) was caused by their workplace. By creating a rebuttable presumption of workplace causation for first responders who have received a diagnosis of PTSD, some jurisdictions have begun to recognise and reflect on the cumulative effects of trauma and the inherently stressful nature of the work. An expansion of the categories of workers who are entitled to a presumption of PTSD would allow for a greater recognition of the intense and stressful working conditions of WA's workforce that respond to critical events, emergencies and other crises as they arise. It would also allow for a greater protection of workers from an overly burdensome workers' compensation scheme that risks exacerbating their condition. The following classifications are examples of first responders within the CPSU/CSA's industrial coverage, which should be considered and assessed for inclusion in the categories of presumptive PTSD for workers' compensation matters: • 000 emergency call-takers and emergency coordinators who are employed within the Police Assistance Centre (PAC) division of WA Police; • Incident Controllers and other key roles within the interagency pre-formed management teams who are deployed to critical bushfire incidents and employed by agencies including the Department of Biodiversity, Conservation and Attractions, the Department of Fire and Emergency Services, and the Forest Products Commission;

Bill Clause	Comments
	• First responders to critical road incidents and extreme weather events who are employed by Main Roads WA; • WorkSafe Inspectors who are amongst the first responders to worksite fatalities in Western Australia, employed by the Department of Mines, Industry Regulation and Safety; and • Child Protection Workers and Family Support Officers employed by the Department of Communities who are regularly exposed to traumatic incidents. • Youth Custodial Officers at Banksia Hill Detention Centre, employed by the Department of Justice, who are regularly exposed and required to respond to critical incidents (e.g. riots, assaults, self-harm) in the facility.
12 & 13	**Meaning of "worker" and "employer"** and **Prescribed workers and excluded workers** The CPSU/CSA does not support the proposed change to the definition of worker and employer. The CPSU/CSA prefers the current definition. The current definition is well established and CPSU/CSA has no concerns with this definition. Our concern is the possibility of excluding some workers who are currently covered. The new definition may pose problems for workers who suffer an occupational disease with long times between exposure and symptoms.
34	**Authority for collection and disclosure of information** The CPSU/CSA does not support this provision. The inability of a worker to limit what information is provided and to whom is a concerning loss of confidentiality for the worker. Currently workers have the option to consent to disclosure of information and are advised that if they do not sign the consent this may delay the acceptance of their claim. This is sufficient to encourage most workers to sign the consent authority. However, some workers have concerns about non-essential medical information being disclosed and being used in a bullying or discriminating manner against them in the work place. The CPSU/CSA has previously represented a member who underwent surgery which she was very private about as it involved her gender identity. Whilst there was a relevant cross over with her ability to undertake exercise for her injury, we were able to address this by identifying 'recent gynaecological surgery'. If the proposed clause had been in effect, it would have given the member's employer access to the full details of her operation. The member was facing significant discrimination in other areas of her life due to her surgery and related issues. This created a genuine concern that if her employer became aware of the details of the surgery that she would have faced discrimination or bullying in the workplace too. The ability to control information is paramount to the ability to protect confidentiality.
56	**Amount of income compensation** The CPSU/CSA acknowledges the extension of the step down in weekly payments from 13 to 26 weeks as an improvement; however, the CPSU/CSA seeks that the step downs are removed from the Act entirely. The purpose of the Act is to compensate workers who have suffered injuries at work. If a worker is receiving allowances and penalty rates sufficient to add to their average income over the 12 months preceding the injury, their income is this figure.

Bill Clause	Comments
	Workers base their expenditure and commitments on their income. Rent, mortgage, food, travel, utilities and other expenses do not stop or reduce after 26 weeks. Expenses do not cease because a worker has been injured. These expenses continue, and in many cases, there are additional expenses that the worker incurs now they are injured, some of which are not covered by the Act. Workers often need additional assistance following injury in matters such as cleaning, gardening, childcare, travel, medication above the 'reasonable' rate and gym membership beyond a rehabilitation program. The Act does not compensate for all costs associated with an illness or injury. It is inequitable that there is a provision to leave a worker with less income than before the injury when they are likely to have more expenses.
73	**Requirement that medical and health expenses be reasonable [WCIMA Sch . 1 cl. 17]** The CPSU/CSA supports the definition of *reasonable* having regard to prevailing market rates and any other relevant circumstances. A worker should not be out of pocket for having suffered a workplace injury or illness. The costs should reflect what the worker actually has to pay and not an idealised amount that the health practitioner might charge. There is concern that fees can be set without reference to the prevailing market rates. We seek that the reference to reasonable is purely with reference to market rates.
74	**Minister may fix maximum amounts for medical and health expenses [WCIMA s. 292(2)]** In the alternative of the CPSU/CSA's recommendation in relation to clause 73, the CPSU/CSA recommends that the power under clause 74 for the Minister to fix a maximum amount should be prescribed as having a minimum of not less than Medicare rates for practitioners or AMA rates.
157	**Terms used** This clause provides that the obligation period towards the worker commences with incapacity. However, there is no obligation on the employer to take action to assist with a return to work until the claim has been accepted given the definition of 'injured worker'. This may lead to a situation where an employer is only obliged for a short period of time to assist a worker to return to suitable employment. This limits how effective any return to work is. The clause should require that an employer is to keep a position open for a minimum of 12 months from the date of the claim being accepted.
158	**Employer must establish injury management system [WCIMA s. 155B]** An ability to challenge the injury management system and the employer failing to take action should be given the worker. This clause is supported by the CPSU/CSA. S 158 (2)
159	**Duty of employer to establish and implement return to work program [WCIMA s. 155C]** The CPSU/CSA represents workers in the public sector. Our members have experienced problems with the employing agency finding a 'durable' return to work (RTW). Many employees are placed in positions they will never be appointed or transferred to during the RTW process. By way of example, a member had suffered a psychological injury from working in a team focusing on high-risk cases. In the RTW program he was placed in a different team with the same job title and

Bill Clause	Comments
	essential skills criteria, but in a work area with less stress. This was work he had previously done, and was able to successfully return to work. However, when the RTW ended the employer wished to return him to his substantive position in the work area with the greater stress, which was against medical advice. The employer refused to transfer our member into the different team with the same job title and inherent job requirements to avoid the specific stress that caused the injury. As the member has successfully undertaken an RTW the insurance company sought to cease weekly payments as he was seen as fit to work. This left the worker in a position of not being able to work and not being deemed unfit to be able to access compensation. Further, we observe a practice whereby employers then seek to have the employee removed from the workplace as under a retirement on the grounds of ill health process under the *Public Sector Management Act 1994* as they are unfit for their position. We see this on a regular basis where a member who is on workers compensation arising from bullying or sexual harassment is unable to return to their substantive position due to proximity to the perpetrator but can do the work in a different team or location. After a RTW program in an alternative team, that placement ends and the worker is deemed fit but unable to work in their substantive position, and the employer will not transfer the worker into the safe workplace either permanently or temporarily. If the worker seeks a transfer to a vacant position, many agencies have advised that the worker needs to apply through the recruitment process open to the rest of the workforce on Jobs WA. These public sector processes defeat the purpose of this section of the Act. Employers should be required to demonstrate that all reasonable attempts have been made to secure a durable return to work that will last beyond the RTW program. The CSA are seeking that there is a focus on the durability of the RTW program and that there are processes to ensure that a worker can challenge a decision not to transfer or second them into a real and durable position. At a minimum, the CSA seeks that the Regulations made under 159(6)(a) require the employer to consider whether transfer to another position is viable and where there has been a request by a worker for a transfer the employer required to provide reasons as to why the transfer has been refused.
160	**Employer may be ordered to establish and implement return to work program [WCIMA s.156B]** This provision is supported by the CPSU/CSA. Our members have reported many instances where they are aware of suitable return to work situations and have been prevented from actioning such a program as the employer is not ready or is unwilling to make minor adjustments to the role during a transition process. This change will allow for a more expeditious return to work and less waste of the worker's compensation entitlements while they wait months for the employer to arrange suitable employment.
165	**Suitable employment [WCIMA s. 5(1) def. return to work]** Related to our comments for cl 159 there needs to be an ability for the worker to challenge what suitable employment is and if a suitable position is not provided.

Bill Clause	Comments
171	**Employer, insurer, agent of insurer must not be present at medical examination** The CPSU/CSA supports this provision with amendments. Currently if this section is breached there is no evident enforcement action that the worker can initiate or penalty applicable to the party that breaches the clause. The CPSU/CSA seeks that the worker can initiate an action to prevent a party from attending a medical examination or seek a penalty if this section is breached. If there is no easy enforcement and penalty provision attached to this clause it will be ignored and ineffective.
172	**Provision of workplace rehabilitation services by approved workplace provider** The change in funding arrangement is not supported by the CPSU/CSA. There is concern that details around when it is necessary to appoint a rehabilitation provider are lacking as this is to be in the regulations. Whilst the Guide to the Consultation Draft indicates that the majority of referrals are made to rehabilitation providers by insurers rather than workers, this is a result of employers and insurers having expertise in the area and having ongoing relationships with rehabilitation providers. Most workers do not have any experience in the workers' compensation system until they are injured. Therefore, they have no relationship or knowledge of rehabilitation providers. The ability to find their own rehabilitation provider can assist a worker to have a greater input into finding a RTW program that will return them to work in a satisfactory position. The worker's input is valuable as they have detailed knowledge of their own skills and the work area. This means that they are often more comfortable with a rehabilitation program they have had more control over than when it is organised by the employer or the employer's chosen rehabilitation provider.
421	**The threshold requirements for commencement of proceedings and award of damages** The threshold of 15% is extremely high and should be reduced. The 15% cap excludes the vast majority of injuries including those where workers have problems returning to the workplace. The CPSU/CSA supports a reduction in the cap to 5%.
505	**Disclosure of claim information for pre-employment screening [New provision]** The CPSU/CSA supports the provisions in s 505. However, a concern of the CPSU/CSA is that at different times the WA Government has acted as the one employer and at others as separate employers for different agencies. In looking at the definition of employer, it is the person who makes the PAYG withholding payment. Sometimes payroll services for government bodies have been centralised so that the WA Government is the employer. Sometimes small agencies have had their administrative functions managed by larger agencies. In settlements with government agencies, sometimes the agency is listed as the employer and other times the WA Government is listed. We seek that s 505 is extended to ensure that this includes not divulging information to other government bodies with different Director Generals, Commissioners or Chief Executive Officers, to maintain the employee's privacy in relation to sensitive medical information. Members report that they do not wish to lodge workers compensation claims for fear of discrimination from future employers. As various government bodies will rarely transfer an injured

Bill Clause	Comments
	worker across to a different authority, this fear and possibility of discrimination is not adequately addressed in this section. Unless government bodies will freely transfer injured and ill workers across differing agencies then this clause should be amended to ensure that employment in other agencies is not impaired by access to information about a workers compensation history. Alternatively, as a review of the *Public Sector Management Act* is imminent, this amendment could be addressed in that Act. If this is not addressed, concerns about discrimination will remain for those employed in the public sector.