

Workers Compensation and Injury Management Act 2023

Implementation proposals for regulations and administrative instruments

Implementation Consultation Paper 23: Registered Independent Agents - Transitional Arrangements

January 2024

Public comment on the implementation proposals
should be submitted to:

consultation@workcover.wa.gov.au by **23 February 2024**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

*****Draft proposals only*****

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

Implementation Consultation – Registered Independent Agents

Scope

This document outlines the transitional two-year scheme for the registration of independent agents under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)* and proposed regulations.

Background and Intent

Registered independent agents may provide parties to a disputed workers compensation claim with representation in WorkCover WA's conciliation and arbitration services.

The *WCIMA23* provides that the scheme for registered independent agents will cease after two years of the commencement date of the *WCIMA23*.

The *WCIMA23* is intended to come into operation on 1 July 2024, which would mean the transitional scheme for registered independent agents would end on 30 June 2026. At the end of the two-year period, a person registered as an independent agent will cease to be registered and will be unable to continue to carry out agent services.

The *WCIMA23* and proposed regulations provide continuity of services by registered independent agents during the two-year transitional period.

The *WCIMA23* provides that an independent registered agent under s.277 of the 1981 Act becomes registered as an independent agent under the new Act. No further action is required by independent agents to remain registered at commencement of the *WCIMA23*. No other person may be registered as an independent agent once the *WCIMA23* comes into operation.

It is intended the registration framework that applies to independent registered agents will be substantially the same as regulations under the 1981 Act relating to compliance with conditions and a code of conduct, and the provisions relating to disciplinary actions by WorkCover WA, with minor modifications as outlined below.

WCIMA23 key provisions

s. 578

Overview

Conditions on the registration of independent agents

Consistent with regulations under the 1981 Act it is intended the regulations under the *WCIMA23* will provide that it is a condition of registration that registered independent agents:

- comply with the code of conduct – which is intended to be substantially the same as the code of conduct in regulations under the 1981 Act. The code of conduct sets out matters dealing with duties, integrity and diligence, confidentiality, conflict of interest, proceedings, advertising, withdrawal, fees, records, trust moneys, costs.
- maintain professional indemnity insurance for not less than \$1 million for any one claim
- comply with all requests relating to any compliance audit or investigation by WorkCover WA.

Audits and investigations

It is intended the regulations will empower WorkCover WA to conduct audits and investigations on its own volition (not just on the basis of a complaint as is the case under the 1981 Act) to ensure compliance with the Act, regulations, conditions of registration, conciliation rules and the arbitration rules.

It is intended a registered independent agent must, on request by WorkCover WA, provide information or produce documents to WorkCover WA for the purposes of a compliance audit or investigation.

Where a request made by WorkCover WA for information or documents that includes otherwise confidential information that relates to a client or former client, the registered independent agent will be required to seek a release, or the consent of the client or former client, before providing it to WorkCover WA.

Suspension or cancellation of registration

It is intended the provisions in regulations under the 1981 Act dealing with disciplinary actions will be replicated in substance with the following modification:

- an additional cause for disciplinary action will be that the agent has failed to respond to a compliance audit or investigation, or a request for information from WorkCover WA, within the specified timeframe.

Provisions in regulations under the 1981 Act that afford natural justice in disciplinary matters will be replicated in regulations under the *WCIMA23*.

Applications for review by the State Administrative Tribunal

It is intended the regulations will provide that a registered independent agent may apply to the State Administrative Tribunal for a review of a decision made by WorkCover WA, consistent with the 1981 Act.

Obligations to clients during transitional period

The *WCIMA23* provides that at the end of the transition period (30 June 2026, if the *WCIMA23* commences on 1 July 2024) the scheme for the registration of registered independent agents is terminated and each independent registered agent will cease to be registered.

Given the finite registration period it is intended the regulations will require registered independent agents to notify current and prospective clients of the transition period end date and that the registered independent agent will cease to be registered. The notice will be required to be given at least 6 months before the transition period end date, and at least 3 months before the transition period end date for clients not previously notified (e.g. new clients taken on in the final 6 months).

This is intended to ensure clients of registered independent agents are aware of the consequences of engaging a registered independent agent with a finite registration period and are able to make an informed decision about engaging their services.

It is also intended the regulations will provide that a registered independent must not engage a new client within 3 months of the transition period ceasing. This is intended to protect parties from the risk of engaging agents in disputed matters that may well extend beyond the date of the agent's registration ceasing.

WorkCover WA expectations

WorkCover WA expects registered independent agents to:

- continue to meet obligations under the code of conduct and conditions on their registration, including maintaining professional indemnity insurance
- continue to provide a high level of service and representation to clients throughout the transition period
- comply with any compliance audit or investigation by WorkCover WA conducted during the two-year transition period
- notify clients of the date of the registration scheme ceasing as required
- not take on new clients within 3 months of the agent's registration ceasing.