



Insurance Commission
of Western Australia

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Dear Kevin

WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 2023 (WCIMA23) – 2023 ACT IMPLEMENTATION REVIEW – CONSULTATION PAPER

The Insurance Commission of Western Australia (**Insurance Commission**) appreciates the opportunity to make this submission, on the 2023 Act Implementation Review Consultation Paper.

Proposal 1

The Insurance Commission recommends the proposed statement is amended to say that income compensation entitlements will not cease until the settlement agreement is registered by the Director, unless allowable by the Act.

Whilst the Insurance Commission agrees that workers should not be left without income compensation payments for a significant period of time, due to issues with the settlement process, there are circumstances where income compensation payments and other entitlements need to be restricted, including:

1. Workers at risk of exceeding the General Maximum Amount if there is a delay in registration of the settlement agreement.
2. Uncertainty for the Insurer of what to allow for under Future Medical and Health expenses if the worker can continue to have treatment funded between the date of agreement and the date of registration.

Proposal 2

The Insurance Commission supports the proposal to update the SF3 Permanent Impairment Notice, including the addition of check boxes to confirm the employer's agreement/disagreement with the level of impairment.

We recommend the inclusion of a third check box to cover Section 105(3), where the employer does not comply with 105(2) and the level of impairment is agreed by default.

Currently settlements are being rejected where the employer fails to sign the Permanent Impairment Notice due to 105(3) or signs outside of the 28-day timeframe.

The Insurance Commission supports being able to agree the level of impairment as part of the settlement application, rather than the current two-step process. This will reduce the risk of errors and simplify the current settlement process

Proposal 4

The Insurance Commission has the following comments to make regarding the amendments to the CN2 Intention to reduction or discontinue income compensation – return to work:

We recommend inserting a declaration signed by the employer or insurer verifying that the worker has returned to work and is deriving earnings in the position specified, into the notice above the compensation details. The combination of this information will provide workers with clarity.

A statement of the amount of wages/remuneration to be paid in the return to work position should not be included as this will be too confusing due to the variability of remuneration.

We support the inclusion of the following statement:

- if the worker has returned to work with another employer, a requirement for the person issuing the notice to provide confirmation of the worker's return to work and remuneration with that other employer when providing the notice to the worker

Proposal 5

The Insurance Commission is supportive of WorkCover WA taking responsibility for requests to the governing body regarding confirmation of custody or imprisonment. However, in view of the worker being in receipt of income compensation entitlements until confirmation is received, specific timeframes regarding action of the request should be considered.

Proposal 6

The Insurance Commission supports the use of a Return to Work Program approved form. Stakeholders understand what work restrictions an injured worker must adhere to during the period of the program and the suitable duties a worker will and won't be doing. It is clear an employer has consulted with the injured worker and has taken reasonable steps to ensure the injured worker agrees to its content.

Some agency representatives are critical of the length of the approved form and not being able to adapt it to meet their needs. Specifically, not being able to include information about supernumerary arrangements that have been agreed and productivity. On this basis amendments to the IM1 Return to Work Program form has merit.

The Insurance Commission agrees amendment is needed for the explanatory notes specifically regarding staged progressions. We support the insurer injury management advisor group and Australian Rehabilitation Provider Association proposed wording of; 'Staged return to work progressions are allowed. Future stages must be consistent with any restrictions or capacity specified in future certificates of capacity, issued by the treating medical practitioners. A return-to-work program must be amended if a treating medical practitioner amends a certificate of capacity or modifies in writing the restrictions a worker is capable of doing'.

An alternative is the explanatory notes makes no reference to staged progressions because it is simply repeating what the legislation already sets out.

Other Proposals

Under Section 52 of the Act a worker may apply for an additional income compensation entitlement. Currently if this additional sum is awarded by an Arbitrator there is no mechanism to resolve this entitlement by way of a settlement, due to the limitations of Section 157.

The Insurance Commission seeks clarification as to whether there is an intention to resolve this limitation in the future.

If you have any questions about our submission, please contact me on [REDACTED]

Sincerely

KAREN VAN DER HOEVEN
WORKERS COMPENSATION SECTION MANAGER