

8 April 2026

Manager Policy and Legislative Services
WorkCover WA

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

Dear Sir/Madam

Proposed Act Amendments Consultation Paper

The Insurance Council of Australia (Insurance Council), on behalf of its licensed workers compensation insurer members in Western Australia (Insurers), welcomes the opportunity to provide feedback on the Proposed Act Amendments Consultation Paper (Consultation Paper).

The Insurance Council and Insurers share WorkCover WA's commitment to ensuring that the Workers Compensation Scheme (the Scheme) operates to best meet the needs of injured workers, employers and businesses in Western Australia. We support WorkCover WA's timely review of the *Workers Compensation and Injury Management Act 2023 (Act)* to identify areas where amendments to the Act would be beneficial to ensure it operates as intended.

Insurers are mostly supportive of WorkCover WA's proposals outlined in the Consultation Paper. However, we provide feedback in relation to Proposals 2 to 8 as outlined below for WorkCover WA's consideration. Insurers note and support Proposals 9 to 12 and provide feedback on other potential technical amendments under Proposal 13. Insurers will provide individual responses in relation to Proposal 1.

Proposal 2 – Inclusion of extended medical and health expenses and income compensation in settlements

Amend sections 77 and 78 to provide for a worker and employer to agree to extend the medical and health expenses general limit (up to the limits for a standard or special increase respectively) and for the agreed extended amount to be included in a settlement agreement, without the need for an order of an arbitrator.

Amend section 52 to provide for a worker and employer to include the total amount of any additional income compensation up to 75% of the income compensation general limit in a settlement agreement if ordered by an arbitrator under section 52.

Insurers support the proposed amendments to sections 77 and 78 which would allow workers and employers to agree to extend the medical and health expenses general limit and to include the agreed extension in a settlement agreement without the need for an arbitrator's order.

We note that prior to the legislative amendments, workers and insurers were able to resolve claims by agreement where medical evidence supported an entitlement to additional income compensation, particularly in circumstances indicating a potential permanent incapacity for work. This approach

frequently avoided unnecessary applications to WorkCover WA and facilitated more timely, cost effective, and less adversarial claim resolution.

In relation to the proposed amendment to section 52, we agree with this being provided in the settlement agreement but provide the following feedback for WorkCover WA's consideration:

- The proposal to require an order by an arbitrator under section 52 is expected to have the unintended effect of prolonging claim durations due to arbitration timeframes and increasing legal costs for all parties. These impacts will be felt most acutely by vulnerable workers, particularly those who are no longer in receipt of income compensation and who have been unable to return to remunerative employment.
- Notwithstanding the additional criteria that must be considered, we submit that an Insurer should still be able to use their discretion to quantify this assessment on the evidence and include this in a settlement agreement without needing to obtain an order from an arbitrator.
- Allowing greater flexibility for these matters to be resolved by agreement (supported by appropriate and robust medical evidence) would significantly reduce delays, lower costs, and better align with the Scheme's objectives of timely, fair and efficient claim resolution. If the requirement for an arbitrator's order is retained, we request that a fast-tracked process be introduced where there is agreement between the worker and employer.
- We further submit that to account for times when Insurers need to pay over the General Maximum Amount (GMA), it would be beneficial for Insurers to have a small leeway to be able to agree to an extra 10 or 20 per cent before an application has to be made to WorkCover WA. This would result in significant savings of time and legal costs.

Proposal 3 – Discontinuance of PI Notice process

Amend section 105 to discontinue the multi-step permanent impairment notice process for reaching agreement on a worker's degree of permanent impairment.

Amend section 105 to simply require the parties to agree the worker's degree of permanent impairment based on an APIA report, or a degree of impairment between two APIA reports, when entering the settlement agreement.

Modify the settlement agreement approved form to include a statement about the agreed percentage permanent impairment between the worker and employer.

Clarify that the APIA report(s) on which agreement on a worker's degree of permanent impairment is reached can be initiated by the worker, employer or employer's insurer.

Insurers support Proposal 3 but recommend that section 105 be amended to also allow the parties to agree on a monetary value for permanent impairment. This approach would address practical difficulties that arise where there are discrepancies between the item numbers requested by the respective parties from an Approved Permanent Impairment Assessor.

Further, in relation to the proposal to 'Clarify that the APIA report(s) on which agreement on a worker's degree of permanent impairment is reached can be initiated by the worker, employer or employer's insurer', Insurers suggest it would be appropriate to limit this to the worker and the employer's insurer. Consideration should also be given to the fact that some employers are self-insured.

4 – Permanent impairment compensation and settlements

Amend section 150 to clarify that a worker is not entitled to permanent impairment compensation unless the worker has been assessed by a permanent impairment assessor and the parties have agreed the worker's percentage permanent impairment.

Modify the settlement agreement approved form to include a statement about the agreed percentage permanent impairment between the worker and employer.

Amend section 150(b) and regulations made under section 152 to require the settlement agreements to be accompanied with the APIA report(s) on which the agreed percentage impairment is based.

Amend section 154(1)(b)(ii) to clarify the Director is only required to undertake a check of the amount of permanent impairment compensation in a settlement agreement is calculated correctly based on the agreed percentage permanent impairment for the relevant item(s), and the APIA assessed permanent impairment percentage.

Amend the Act to provide settlement agreements that have permanent impairment compensation calculation errors are to be rejected and not referred to an arbitrator in order to allow parties to resubmit corrected settlement applications more quickly.

For the avoidance of doubt, amend the Act to clarify the Director is not required to:

- (i) Check and identify any 'potential' permanent impairment entitlement based on other medical information when a settlement agreement is lodged.
- (ii) Check and identify any errors made by an APIA Report.

Insurers agree that obtaining an APIA report is the preferred and optimal approach to determining permanent impairment. However, there are circumstances where this is not practicable (e.g., where a worker is permanently departing Australia or where other compelling factors prevent an assessment from being obtained within a reasonable timeframe). In such cases, Insurers recommend permitting the inclusion of an estimated permanent impairment within a settlement agreement as this would enable timely resolution of claims, reduce unnecessary delay, and ensure workers are not disadvantaged by circumstances beyond their control.

Proposal 5 – disputes about permanent impairment

Amend section 106 to clarify that in addition to determining any dispute about a worker's degree of permanent impairment, an arbitrator can also determine whether permanent impairment did or did not *result* from an injury from employment that is a personal injury by accident.

Insurers support Proposal 5 but recommend that the clarification explicitly extend to injuries by accident, as well as the contraction, recurrence, aggravation, or acceleration of a disease suffered in the course of employment.

Proposal 6 – Settlements and liability decisions

Amend section 149 to clarify a settlement can be registered at any time after a worker has made a claim in accordance with the Act and can be registered without a decision on liability and without the insurer or self-insurer having issued a liability decision notice or deferred decision notice by the statutory timeframes.

Modify the settlement agreement approved form to accommodate settlements without an admission of liability and with no decision on liability.

Strengthen the statement a worker signs in the settlement agreement so that the worker fully understands the risks and consequences of a settlement, particularly in the early phase of a claim.

Insurers support Proposal 6 but seek further clarification as to whether the statutory timeframes for determining liability cease upon the execution of a settlement agreement. Further clarity is sought regarding the appropriate liability code to be applied in these circumstances and whether any consequential amendments would be required for R3 reporting purposes.

Proposal 7 – Confirmation of custody or imprisonment

Amend section 66 to provide:

- The employer or insurer must make a request to the WorkCover WA CEO in the approved form and provide any information that the WorkCover WA CEO requires to identify the worker and claim status.
- A government authority must confirm custody or imprisonment to the WorkCover WA CEO as soon as practicable after receiving a request. The process and timeframes will therefore be managed within Government.
- The WorkCover WA CEO will forward information about custody arrangements on the advice of the relevant government authority.
- Amend the meaning of 'relevant government authority' to include a government authority in another state or territory principally assisting the Minister responsible for administering the law in that State or territory under which a worker is in custody or serving a term of imprisonment.
- Income compensation payments must be reinstated for any period a worker is no longer in custody, confirmation of which must be obtained by the worker, employer or insurer in the approved form following the process above.

Insurers support Proposal 7 but note once a worker is released from custody or imprisonment, there may be delays in obtaining confirmation from the WorkCover WA CEO. These delays have the potential to adversely affect an insurer's ability to promptly lodge applications for review of income compensation payments, potentially prolonging uncertainty for both workers and Insurers. Insurers recommend that consideration be given to introducing a mechanism that minimises post-release delays.

Proposal 8 – determination of state of connection disputes

Amend Part 12 to give arbitrators jurisdiction to determine a worker's state of connection either as part of a dispute proceeding or on application by a party to a claim for compensation.

Insurers support Proposal 8 but seek clarification on whether other states in Australia recognise the jurisdiction of WorkCover WA to make such a determination. For example, in the Northern Territory legislation, they refer to a determination of a court. Other states refer to a court or a tribunal.

Proposal 13 – Appropriate reference to date of injury or incapacity

Stakeholder feedback is sought on any other potential technical amendments required to the Act to address implementation issues since commencement of the Act on 1 July 2024.

Insurers recommend the following technical amendments to the Act to address implementation issues:

- Section 61 provides that a worker's entitlements are not affected where the worker takes leave, with specific reference to sick leave (including personal leave or leave of a substantially similar nature), annual leave, and long service leave. Insurers seek further clarification on whether this provision also applies to other forms of leave, including parental leave, to ensure consistent interpretation and application.
- There are circumstances where a worker sustains a non-work-related injury or medical condition while in receipt of income compensation, which prevents them from returning to work. In such cases, workers may utilise sick leave and/or take leave without pay. Where this occurs for extended periods, Insurers recommend allowing the use of the CN6 form to obtain the worker's consent to temporarily cease income compensation while they recover from the non-work-related condition.
- Insurers note there is no procedure in the Act for settlement of claims for people under 18 or with a disability. Insurers seek clarification on whether minors (under 18 years) should sign the Settlement Agreement or their guardian. If the guardian signs, Insurers query whether WorkCover WA requires a letter from the guardian, the minor or both. Similarly for workers with a disability, Insurers seek clarification on whether they require a person with a State Administrative Tribunal (SAT) authority to sign on behalf of the worker with the disability. Insurers further query whether proof of guardianship is required.
- The current drafting of section 63 requires employers and insurers to provide a prescribed notice (CN2) before adjusting compensation, even when a worker has returned to work and is earning wages. This results in unrecoverable overpayments and financial leakage, as payments must continue until the notice is served. Insurers recommend amending section 63 to allow for retrospective recalculation of income compensation entitlements back to the worker's actual return-to-work date, while preserving the requirement for written notice and supporting medical evidence. This approach would: (i) align payments with medical and employment realities; (ii) continue to protect workers and maintain transparency; (iii) prevent Scheme leakage; and (iv) bring Western Australia in line with other jurisdictions (NSW, Vic, Qld and SA), where retrospective adjustments are permitted.
- Currently, the settlement process under section 152 and Regulation 68 requires multiple separate documents (Permanent Impairment (PI) Notice, Settlement Agreement and Application for Registration of Settlement Agreement) which must match perfectly. The repetition of entering similar information across up to three separate forms often leads to clerical errors which cause delays in a settlement being registered. This creates unnecessary stress for workers as well as an administrative burden for workers, Insurers and WorkCover WA. Insurers recommend that, alongside the proposed consolidation of the PI Notice into the Settlement Agreement (Proposal 3), the required Application Responses and Declarations in the Application for Registration of Settlement Agreement also be incorporated directly into the Settlement Agreement. This approach

would: (i) reduce errors and streamline settlement processing; (ii) accelerate access to settlement funds for injured workers; (iii) ease administrative workloads for both Insurers and WorkCover WA; and (iv) remove the need for the Application for Registration of Settlement Agreement as lodgement of the Settlement Agreement itself could stand as the Application for Registration.

We are available to discuss our submission and any questions that may arise in more detail at your convenience. Please do not hesitate to contact Alice Nichol, Senior Adviser, Insurance Lines, on [REDACTED] if you have any questions.

Kind regards,



Alexandra Hordern
General Manager, Regulatory & Consumer Policy