

10 April 2026

Manager Policy and Legislative Services
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

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

Dear Sir / Madam

WORKCOVER WA CONSULTATION – *WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 2023* - PROPOSED ACT AMENDMENTS

I refer to the *Workers Compensation and Injury Management Act 2023* (the Act) - Proposed Act Amendments Consultation Paper dated February 2026. This consultation was considered by the Law Society of Western Australia's Personal Injuries and Workers Compensation Committee.

The Law Society remains concerned about a number of aspects of the Act, including the failures of administration and governance raised during the meeting with Mr Chris White, WorkCover WA Chief Executive Officer, on 4 February 2025. The Law Society continues to support an independent review of the Act, noting that is outside the scope of the current consultation.

The Law Society's submission to this consultation has been informed by feedback received from members in relation to the specific matters set out below.

ATO Class ruling – Tax on settlement amounts

The Law Society reiterates the submissions made to WorkCover WA in our letter dated 27 February 2026 relating to the impact of the 2025 ATO Class Ruling 2025/88 on settlements in the WA workers compensation scheme. The Law Society notes WorkCover WA's position in the current consultation paper that potential cost and administrative impacts as a result of the ATO Class Ruling are currently being considered. The Law Society would welcome an opportunity to contribute to future discussions between WorkCover WA and the Australian Taxation Office on this issue as a matter of priority.

Proposal 1 – Transparency of settlement amounts

The Law Society makes no comment, as no change is proposed to the current settlement agreement form.

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

The Law Society supports the proposal to permit parties to include extended amounts for medical and health expenses in a settlement agreement, as an alternative option to an Arbitrator's order.

The Law Society supports the proposal to amend section 52 of the Act to:

- clarify the total limit of any additional income compensation amount awarded is 75% of the income compensation general limit amount applying on the day on which the order is made, and
- enable an Arbitrator to order payment of a specified lump sum (not only the applicable compensation rate paid periodically for a specified period).

An additional amendment should be made to allow a compromise of an additional amount claimed under section 52 to be allowed for within a settlement agreement where the parties consent and an Arbitrator approves the compromise. Otherwise, section 52 disputes are unable to be resolved without proceeding to an arbitration hearing, causing unnecessary expense and inconvenience to the parties.

Proposal 3 – Discontinuation of PI Notice process

The Law Society supports the proposed changes to simplify this process.

There is an additional issue with section 105 of the Act that ought to be addressed by the proposed amendments. Where a further assessment by an APIA determines that MMI has not been reached, a compromise cannot then be reached between the initial assessment and no assessment. In such circumstances, the Act should make clear that the responding party is not bound by the initial assessment.

Proposal 4 – Permanent impairment compensation and settlements

The Law Society supports the amendments set out in this proposal.

Proposal 5 – Disputes about permanent impairment

The Law Society supports the proposed amendment to section 106 of the Act.

Proposal 6 – Settlements and liability decisions

The Law Society supports the amendments set out in this proposal.

Proposal 7 – Confirmation of custody or imprisonment

The Law Society supports the amendments set out in this proposal.

Proposal 8 – Determination of state of connection disputes

The Law Society makes no comment on this proposal.

Proposal 9 – Responding to uninsured employer claims

The Law Society supports the amendments set out in this proposal.

Proposal 10 – Common law damages where employer uninsured

The Law Society makes no comment on this proposal.

Proposal 11 – ICWA contribution to WorkCover WA General Account

The Law Society makes no comment on this proposal.

Proposal 12 – Appropriate reference to date of injury or incapacity

The Law Society does not support amendments to references from the 'date of injury' to the 'date of incapacity' in Part 2 Division 3 Subdivision 3 of the Act.

Proposal 13 – Other proposals to address implementation bans

Review of WorkCover WA costs determination

The Law Society proposes an additional amendment of the Act requiring a review of the WorkCover WA costs determination every two years. This does not necessarily mean an increase in the scale amounts but rather allows for regular review of the determination. This would bring the Act in line with review of the other costs determinations applicable to courts and tribunals in Western Australia.

The Law Society proposes the adoption of a provision similar to section 137(1) of the *Legal Profession Uniform Law Application Act 2022* which states:

- The Legal Costs Committee must review each costs determination in force —
- (a) at least once in the period of 2 years beginning on the day on which it was made; and
 - (b) at least once in each subsequent 2-year period.

Sections 78 and 79 of the Act

Section 78 allows for a special increase in medical expenses where a worker has exhausted the maximum. A requirement is that a worker has a 15% or greater whole person impairment assessed in accordance with section 79. The Law Society proposes these sections be amended to allow for a special assessment (as defined in the WorkCover WA Guidelines for the Evaluation of Permanent Impairment) to be used in the determination as to whether or not the worker has a 15% whole person impairment. An amendment would allow the most serious cases of injured workers access to ongoing medical treatment without undue delay.

Section 41 of the Act

Section 41 requires provisional payments of income compensation to be paid from the date on which the worker first has incapacity for work as a result of the injury. This can seriously prejudice employers in circumstances where:

- (i) the GP when issuing the First Certificate of Capacity has backdated the period of the incapacity; and/or
- (ii) the worker has delayed submitting the claim after obtaining the First Certificate of Capacity.

The initial backdated provisional payment could involve months or even years' worth of income compensation payable as a lump sum if the above circumstances arise. This burden on employers would be resolved by making the commencement date of provisional payments the date on which the First Certificate of Capacity is issued. This would not prevent the worker

seeking income compensation for an earlier period if liability is accepted or if the matter proceeds to determination by an Arbitrator.

Thank you for the opportunity to provide a submission to this consultation. The Personal Injuries and Workers Compensation Committee welcome the opportunity to meet with WorkCover WA to discuss the issues raised in this letter. If you have any queries, or to arrange a meeting, please contact Ms Susie Moir, Director Advocacy and Professional Development on [REDACTED] or telephone [REDACTED].

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Judy McLean', with a stylized initial 'J'.

Judy McLean
President