Manager Policy and Legislative Services

WorkCover WA

2 Bedbrook Place

SHENTON PARK WA 6008

2 April 2026

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

Dear Manager Policy and Legislative Services,

***Workers' Compensation and Injury Management Act 2023***
**Proposed Act Amendments**
**Consultation Paper February 2026**

I am writing to you as **President of the WA Branch of the Australian Lawyers Alliance (ALA)**.

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

I refer to the *Workers Compensation and Injury Management Act 2023 ("the Act") 2023 Act Proposed Act Amendments Consultation Paper February 2026* and provide this submission in response to the proposals as follows:

## PROPOSAL 1 – TRANSPARENCY OF SETTLEMENT AMOUNTS

Proposal 1

*The settlement agreement form continues to identify the amount(s) to be paid for each form of compensation, in addition to the total amount settled.*

**Submission: Do Not Support**

The ALA does not support proposal 1 and responds as follows:

*Global Capped Settlement Amounts*

The ALA accepts that the Act clearly establishes that any settlement agreement that provides for damages cannot be registered and the statutory settlement pathway is limited to compensation and compensation limits payable pursuant to the Act.

Any provision for damages must be claimed as part of a common law action in compliance with the election procedures prescribed by the Act.

However, ALA submits that section 157 of the Act should be amended to also allow an additional/alternative settlement pathway to authorise a global lump sum on an uncapped basis or at the very least on a capped amount (including extensions/increases to the general limit for income compensation payments; and medical and health expenses) but with less categorisation of the settlement component parts (income compensation, permanent impairment compensation, medical and health expenses compensation, workplace rehabilitation expenses).

As outlined ALA's previous submissions with respect to the Technical Review of WorkCover WA Permanent Impairment Guidelines Consultation Paper dated January 2026 (Consultation Paper), a worker is now unfairly taxed on the agreed estimated allowance for their second schedule permanent impairment which is an entitlement that is clearly not income.

The capacity to negotiate a global capped lump sum amount in settlement agreements have the following benefits:

- greater flexibility to negotiate a lump sum amount on a commercial basis
- greater flexibility to negotiate a lump sum amount on a commercial basis especially in cases where liability has been declined
- parties should be free to agree on whatever amount is negotiated
- reflects the reality that a lump sum amount is usually reached on a global basis without a breakdown
- avoids having to account for the component amount(s) of a settlement agreement and the errors and delays this causes in the registration process
- avoids having component amount(s) of a settlement agreement having to be mischaracterised as income compensation payments (which will be subject to income tax) where compensation that currently can not be accounted for or allocated to be recorded and will assist the Director in satisfying themselves as to whether the settlement agreement is genuine. Examples of this include:

    - estimated allowances of permanent impairment compensation
    - past prosthetic / equipment hire / aids expense reimbursements
    - past airfare expense reimbursements
    - past royal flying doctor emergency flight expense reimbursements
    - past public or private hospital recovery / expense reimbursements

ALA submits that if the parties seek to use the additional/alternative settlement pathway have a global capped lump sum amount in a settlement agreement, then they will be required to submit submissions to the Director of WorkCover WA in support of the same setting out the basis for the agreement.

If the Director of WorkCover WA cannot be satisfied that the agreement is genuine then, using their current powers, the Registrar can refer the matter to an arbitrator to determine the question of whether registration of the settlement agreement should be granted or refused.

This will allow WorkCover WA to support settlements comprising a global capped lump sum amount as it will have regard to the scheme entitlement caps and limits. It will also allow the Director of WorkCover to have the required scrutiny of settlements.

It also ensures that no settlement pathways outside of the Act are utilised to work around the unintended consequences of the Act such as separate agreements/deeds being entered to by the parties.

Finally, ALA submits that the parties should also still be allowed to use the current settlement pathway of the current format of the SF1 for standard settlement agreements.

**PROPOSAL 2 – INCLUSION OF EXTENDED MEDICAL AND HEALTH EXPENSES AND INCOME COMPENSATION IN SETTLEMENTS**

Proposal 2

*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.*

**Submission: Support.**

ALA supports the above proposed amendments to section 77 and 78 of the Act which will ensure a simplification of the process for reaching agreement on the extension of the medical and health expenses general limit to an amount agreed between the parties 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.*

**Submission: Support.**

ALA supports the proposed amendment to section 52 of the Act to rectify an unintended consequence of the Act to ensure that payment can be made of any total amount of any additional income compensation ordered by an arbitrator on the basis that a dispute proceeds to that extent.

However, ALA does **not support** that a worker and employer have to proceed to obtain orders from an arbitrator pursuant to a decision in a disputed arbitration with no ability for the parties to reach an agreement of the extension of the income compensation general limit. This is an unintended consequence of the Act.

The same rationale and logic that has been applied to the basis to amend sections 77 and 78 of the Act to extend the medical and health expenses general limit applies to disputes on entitlement to additional income compensation.

The capacity to negotiate and reach an agreement with respect to the extension of the income compensation general limit has the following benefits:

- greater flexibility to negotiate a lump sum amount on a commercial basis

- greater flexibility to negotiate a lump sum amount on a commercial basis especially in cases where causation issues are raised with respect to total incapacity
- parties should be free to agree on whatever amount is negotiated
- benefit in that time/resources/costs of the arbitration services at WorkCover WA not being wasted with the only way of a resolution of such a dispute having proceed to a disputed arbitration of matters with no ability for parties to engage in pre-arbitration conferences

Further, if WorkCover WA does not allow parties to reach an agreement and effectively forces parties to proceed to a disputed arbitration then ALA submits that this unfairly prejudices the parties; does not allow the parties rights for self determination; is contrary the resolution of disputes in a manner that is fair, just, economical, informal and quick; and is contrary to the purpose of WorkCover WA which is to lead a contemporary, sustainable and integrated workers compensation scheme that is fair, accessible and cost effective for all participants.

Further ALA submits that the Act is intended to provide minimal barriers to settlement of statutory workers compensation claims, other than the Director's scrutiny checks. By not allowing parties to reach agreements to resolve disputes is contrary to the intention of the Act.

ALA submits that the Act be amended to allow an Arbitrator to make orders at or following a pre-arbitration conference and/or prior to an arbitration to include the total amount of any additional income compensation up to 75% of the income compensation general limit in a settlement agreement reached by the parties.

## PROPOSAL 3 – DISCONTINUATION OF PI NOTICE PROCESS

Proposal 3

*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.*

**Submission: Do Not Support**

ALA submits that significant work, resources, costs and time was spent on the new PI Notice process and there is now certainty in industry about this process.

ALA submits that to change this now will only result in further confusion, ambiguity, errors and further delays in the permanent assessment process.

Parties are now aware of their obligations and, whilst there has been some recent confusion and directions given with respect to the requirements of the worker or individual lawyer on behalf of the law firm signing the SF3, this is now a settled process understood by all parties.

Further, by changing the new PI Notice process will be prejudicial to the worker. Too often is a worker unable to progress their claim due to lack of response from an insurer. The new PI Notice process is useful in that making the parties take active steps within appropriate timeframes to assists with the fair, just, economical, informal and quick resolution of claims.

ALA members have encountered matters in which unrepresented workers were directed by insurers to attend permanent impairment assessments arranged at the insurer's initiative. In some of these cases, assessors rejected or significantly downgraded diagnoses such as Complex Regional Pain Syndrome, resulting in a substantial reduction in the assessed level of impairment. The financial consequences of those assessments were profound, with workers facing very significant reductions in permanent impairment compensation. Without legal advice, those workers had limited understanding of the implications of the assessment, the basis for the diagnostic rejection, or the mechanisms available to challenge the outcome.

The current section 105 framework reinforces the principle that the worker must initiate the permanent impairment process. This protects against insurer driven outcomes and encourages workers to obtain legal advice before entering processes that may permanently limit their statutory entitlements. ALA members have observed cases where insurers have completed PI documentation on behalf of unrepresented workers, arranged assessments, and effectively served permanent impairment notices on themselves. This practice undermines the protective intent of section 105 and should not be facilitated by reform.

ALA submits that if it is to be any change to the new PI Notice process that such change be reviewed in line with the five (5) year review process of the Act.

## PROPOSAL 4 – PERMANENT IMPAIRMENT COMPENSATION AND SETTLEMENTS

Proposal 4

*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 agreement to be accompanied with the APIA report(s) on which the agreed percentage permanent impairment is based.*

**Submission: Do Not Support.**

In practice, many statutory workers' compensation settlements are negotiated as a global lump sum.

At present, there is no ability for a worker to obtain a special evaluation of their percentage permanent impairment.

As outlined ALA's previous submissions with respect to the Technical Review of WorkCover WA Permanent Impairment Guidelines Consultation Paper dated January 2026 (Consultation Paper), there are many reasons why a worker needs to resolve their claim before their percentage permanent impairment has stabilised including the following:

- There is a practical time limit to be paid permanent impairment compensation given the permanent impairment entitlement must be paid from the general maximum amount/income compensation general limit. If the prescribed amount has been reached, no compensation can be paid to the worker for their second schedule permanent impairment.

- It is very common that worker's wish to resolve their workers' compensation claims and settle their claims when the balance for the general maximum amount/income compensation general limit is close to exhausting.

Accordingly to take into account any estimated percentage permanent impairment entitlement, parties routinely apportion that lump sum across statutory heads of compensation in a manner that allows the settlement to be registered within the framework of the Act. This process necessarily involves judgment calls and approximation, particularly where causation disputes or liability uncertainties exist with respect to impairment.

Against that reality, an over emphasis on agreement about a precise or "correct" level of permanent impairment (which is often inherently subjective and contestable) introduces unnecessary complexity and delay.

ALA does not support the proposed amendment to section 150 to include clarification 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 for the reasons set out above as it will not be possible in many circumstances to do so.

*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.*

**Submission: Support.**

The ALA supports the proposed amendment of section 154(1)(b)(ii) and submits that this approach allows the Director to have the necessary scrutiny which targeted and proportionate.

*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.*

**Submission: Do Not Support**

From time to time, APIA's may make calculation errors in the assessment of permanent impairment calculations. These errors usually do not amount to a significant or material difference in any schedule 2 permanent impairment entitlement.

To amend the Act to require a complete rejection of the settlement and force the parties to obtain amended/supplementary report/s to correct minor errors (noting that many statutory workers' compensation settlements are negotiated as a global lump sum) will create significant delays and prejudice to both parties.

The current process where these matters are referred to an arbitrator to determine the question of whether registration of the settlement agreement should be granted or refused works well and is efficient.

Further, ALA submits that the Act is intended to provide minimal barriers to settlement of statutory workers compensation claims, other than the Director's scrutiny checks. This proposed amendment is contrary to the intent of the Act which ALA does not support for the reasons set out above.

*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 in an APIA Report.*

**Submission: Support**

The ALA supports the proposed amendments and submits that this approach allows the Director to have the necessary scrutiny which targeted and proportionate rather than inquisitorial.

The Director should not be required to go looking for permanent impairment compensation simply because a worker may, in a clinical sense, suffer an impairment;

The absence of a permanent impairment component should not trigger rejection or referral where the settlement is otherwise genuine and compliant;

Scrutiny should be directed to identifying large or obvious discrepancies which may indicate error, misunderstanding, or impropriety.

## PROPOSAL 5 – DISPUTES ABOUT PERMANENT IMPAIRMENT

Proposal 5

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

**Submission: Support**

## PROPOSAL 6 – SETTLEMENTS AND LIABILITY DECISIONS

Proposal 6

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.

**Submission: Support**

## PROPOSAL 7 – CONFIRMATION OF CUSTODY OR IMPRISONMENT

Proposal 7

*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.*

**Submission: No Comment**

**PROPOSAL 8 – DETERMINATION OF STATE OF CONNECTION DISPUTES**

Proposal 8

*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.*

**Submission: Support**

The proposal to confer jurisdiction on arbitrators to determine state of connection disputes is supported. Requiring parties to seek court determination of state of connection fragments proceedings and increases delay and cost, particularly where state of connection is only one aspect of a broader dispute.

ALA members have encountered cases illustrating this inefficiency. In one matter as a case example, a worker based in Tasmania was engaged by a Western Australian mining group. The worker regularly travelled to Perth to receive instructions and staging arrangements, before being deployed to work for the group's Egyptian sub-entity. The worker sustained an injury while working in Egypt. Liability was declined on the basis that Western Australia was not the state of connection.

When proceedings were commenced in the workers' compensation jurisdiction, they were stayed to allow District Court proceedings to be instituted for determination of state of connection under the cascading test contained in the former legislation. Although other issues were suitable for determination at WorkCover, the need to obtain a court ruling caused duplication of proceedings, significant delay and additional expense.

If arbitrators were empowered to determine state of connection, the issue could have been resolved within the workers' compensation proceeding, either as a preliminary issue or alongside the remaining disputes.

This reform would promote coherent, timely resolution of claims, particularly in matters involving interstate or international employment arrangements. The legislation should clearly provide that an arbitrator's determination of state of connection is binding for the claim, subject to existing review and appeal mechanisms, and address its interaction with court proceedings so as to avoid inconsistent outcomes.

**PROPOSAL 9 – RESPONDING TO UNINSURED EMPLOYER CLAIMS**

Proposal 9

*Amend section 31 to provide that if an uninsured employer fails to give a liability decision notice or deferred decision notice in respect of a claim, as and when required, and/or has also failed to give notice to WorkCover WA:*

1. *WorkCover WA may exercise its powers under section 272 and make a liability decision under section 28 in place of the uninsured employer.*
2. *If WorkCover WA exercises its powers under section 272 in place of the uninsured employer –*

*(i) sections 28(6), 29(3) and 36(1) do not apply in respect to the failure of the uninsured employer to respond to the claim*

*(ii) the requirement to give a liability decision notice or deferred decision as and when required under sections 28, 29 and 36 apply to WorkCover WA*

*(iii) the claim is taken to be given to WorkCover WA on the day WorkCover WA is notified or has become aware that a claim has been made on the uninsured employer.*

*Amend section 272 to clarify WorkCover WA may exercise the rights of an uninsured employer in place of the employer at any time after a claim is made (e.g. before a liability to pay compensation or damages arises so that WorkCover WA can make a liability decision if the circumstances require it).*

**Submission: No Comment**

**PROPOSAL 10 – COMMON LAW DAMAGES WHERE EMPLOYER UNINSURED**

Proposal 10

*Amend section 267 and any related provisions to clarify that damages are not payable from the WorkCover WA Default Insurance Fund with respect to a liability of an uninsured employer to pay*

*damages for any period that employer was uninsured for common law damages before 1 October 2011.*

**Submission: No Comment**

## PROPOSAL 11 – ICWA CONTRIBUTION TO WORKCOVER WA GENERAL ACCOUNT

Proposal 11

Amend section 235(5) by deleting the reference to 'General Account' and requiring ICWA to make a financial contribution to WorkCover WA's general account when required to do so by WorkCover WA, like all other licensed insurers and self-insurers.

**Submission: No Comment**

## PROPOSAL 12 - APPROPRIATE REFERENCE TO DATE OF INJURY OR INCAPACITY

Proposal 12

*Although there is no proposal to amend references from the 'date of injury' to the 'date of incapacity' in Part 2 Division 3 Subdivision 3 of the Act, stakeholder feedback is sought on this matter.*

ALA submits that reference should remain to 'date of injury' rather than 'date of incapacity' with respect to the calculation of a worker's average weekly rate of earnings,

ALA does not support for the reference to the date of injury to be changed to the date of incapacity when calculating income compensation periods.

ALA submits that this would cause uncertainty and ambiguity as it is not always clear when the date of incapacity arises whilst the 'date of injury' is generally clear based on the relevant facts and settled case law. Further, there is greater risk of miscalculations and errors; and potential disputes on rate of pay disputes and average earnings increases significantly.

ALA does not support a change or amendment to current wording of section 55(5) of the Act.

**PROPOSAL 13 – OTHER PROPOSALS TO ADDRESS IMPLEMENTATION ISSUES**

Proposal 13

*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.*

ALA members have experienced persistent and unnecessary delay in the registration of settlement agreements arising from an overly technical approach to scrutiny. Settlements negotiated with the benefit of independent legal advice have been rejected or delayed for reasons unrelated to genuineness or statutory entitlement, including minor typographical discrepancies, formatting issues, objections to electronic or firm signatures, and internal administrative requirements that have no bearing on worker protection. In some instances, settlement hearings have been convened solely so that legal support staff could explain routine administrative practices.

These practices do not enhance the protective purpose of the Act. Instead, they delay payment of agreed compensation to injured workers, prolong insurer exposure to income compensation, and expend scheme resources on issues that are procedural rather than substantive. Reforms should be directed toward ensuring that settlement registration is a practical, facilitative process for parties, rather than a source of technical deterrence to resolution.

Thank you for the opportunity to provide a submission to this consultation.

If you have any questions, please direct correspondence to the writer on [redacted] or at [redacted]

Yours sincerely,

**Eleanor Scarff**
**President of the WA Branch**
**Australian Lawyers Alliance**