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## **Proposed amendments to the *Workers Compensation and Injury Management Act 2023***

The Housing Industry Association (HIA) welcomes the opportunity to provide feedback on the Consultation Paper on the proposed amendments to the *Workers Compensation and Injury Management Act 2023* (WC Act). HIA has been an active participant throughout the development and implementation of the WC Act, including in our various submissions on the 2021 Bill and subsequent implementation consultation processes.

Since the reforms, we understand the WA workers compensation framework has largely been functioning well and as such, many of the proposed amendments are intended to address relatively minor practical issues, including administrative efficiency and operational clarity. We are supportive of an approach that will streamline processes, minimise complexity, reduce delays and disputation, and assist scheme participants to comply with their obligations more efficiently and cost-effectively.

Workers' compensation premiums are typically the largest single government on-cost for employers. Our primary concern is the potential for increased scheme costs or insurance premiums, whether directly or indirectly. We urge WorkCover WA to consider any change that may have an upward impact on premiums, which will exacerbate cost pressures in a highly inflationary market and further erode housing affordability.

Additionally, HIA seeks to ensure the unique characteristics of the residential building industry, which is dominated by small and medium-sized businesses engaging in multi-tiered independent contracting arrangements, are considered and supported in any proposed amendments.

### **Proposal 1 – Transparency of settlement amounts**

We support Proposal 1, to maintain identification of the amount(s) to be paid for each form of compensation, in addition to the total amount settled.

Settlement negotiations may already occur with a global settlement amount in mind, and it appears this practice can continue within the existing legislative framework. The compensation caps operate as an important check-and-balance mechanism, allowing any global figure to be cross-referenced against statutory limits, providing transparency for employers to understand and manage their maximum liability exposure.

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

HIA does not oppose Proposal 2 in principle, on the basis it reduces unnecessary administrative duplication and facilitates timely resolution of claims, subject to appropriate safeguards to ensure certainty, cost containment and scheme integrity.

However, the proposed s.77 and 78 amendments may require further consideration, including the frequency of applications, related arbitral orders and quantum and value of agreements, to ensure they do not lead to unnecessary or inflated payments. For example, an imbalance of bargaining power or a desire to resolve claims expediently may result in agreement to higher payments than would otherwise be ordered by an arbitrator.

## **Proposal 3 – Discontinuation of permanent impairment notice process**

HIA is supportive of amendments to streamline the permanent impairment notice process, however, further clarity is necessary on the operation of the single-step process in practice. In particular, where there is disagreement about the assessed degree of permanent impairment more information is needed. For example, if the dispute resolution pathway is not clearly prescribed, there is a risk of multiple APIA assessments for solely comparison purposes rather than as a result of a genuine disagreement. Clear guidance is necessary, including when additional APIA assessments may be sought, to ensure improved efficiency without increased cost or administrative burden.

## **Proposal 4 – Permanent impairment compensation and settlements**

Although we do not oppose Proposal 4, further consideration should be given to the outright rejection of settlements with permanent impairment calculation errors. It would be appropriate, particularly in the case of small-to-medium-sized businesses, for the parties to first be given the opportunity to correct the error.

## **Proposal 5 – Disputes about permanent impairment**

It is well recognised that building work can involve variable and sometimes significant physical demands throughout a person's working life, yet workers may still present with unrelated pre-existing conditions or degenerative changes that worsen over time. It is fair and appropriate that an arbitrator is empowered to determine if and by how much a worker's permanent impairment has arisen from employment to minimise the risk of employer liability beyond that attributable to a compensable injury.

Further consideration should be given as to whether a permanent impairment claim is extinguished, or compensation is payable on an apportioned basis as a result of an arbitrator's determination. Clear outcomes will be important to ensure consistency, certainty and fairness for all parties.

## **Proposal 6 – Settlements and liability decisions**

HIA supports employers' ability to make a settlement without admission of liability and agrees with the amendments proposed in Proposal 6.

## **Proposal 7 – Confirmation of custody or imprisonment**

Centralising processes between government departments has the potential to improve consistency and reduce administrative burden for both employers and insurers. Additionally, consideration should be given to enshrining clear timeframes in legislation, rather than relying solely on inter-governmental processes, which would reduce the chance for delay in the suspension or reinstatement of income compensation payments.

Additionally, an alternative approach to the use of the prescribed form would be for the required information to otherwise be submitted in writing.

### **Proposal 8 – Determination of state of connection disputes**

HIA supports measures that enable disputes under the workers' compensation scheme to be resolved in a timely and economical manner, including state of connection disputes. Consideration should be given to the impact of this additional jurisdiction on the arbitration system and whether additional resourcing will be required.

### **Proposal 9 – Responding to uninsured employer claims**

Operational compliance and red tape burdens on building businesses, particularly small businesses, are particularly onerous. Many business owners are overwhelmed by the volume of regulation and pace of change and as a result may be inadvertently non-compliant or unresponsive despite their best efforts. While we recognise an uninsured employer may be in the wrong, a proportionate response must be taken to facilitating cooperation and compliance before WorkCover utilises its powers under s.272 in relation to an uninsured employer.

### **Proposal 10 – Common law damages where employer uninsured**

HIA supports amendments to clarify the limitations of insurance for common law damages prior to the 2011 changes.

### **Proposal 12 – Appropriate reference to date of injury or incapacity**

We support the retention of the current reference to the date of injury for calculating income compensation. This approach provides a clear, objective and administratively workable reference point, which could be compromised by a pre-incapacity model, and is supported by the s.55(5) mechanism to adjust income compensation for subsequent pay rate changes.

### **Independent contractors**

The residential building industry relies heavily on independent contracting arrangements, which attract a level of uncertainty and unnecessary duplication in coverage under the workers compensation framework. We recognise this was considered during the reforms, yet ambiguity still exists between s.12 and 215 and efforts have since been made by WorkCover WA to support insurers, brokers and businesses in understanding the requirements.

Workers' compensation should be the responsibility of employers, not principal contractors, and an employer's obligation to hold workers' compensation insurance should be unequivocally limited to its employees. Independent contractors should remain responsible for obtaining and maintaining their own workers' compensation insurance or alternative coverage.

Additionally, the labour component of payments to contractors classified as a 'worker' must be declared to insurers. While there is no set approach to wage declarations between insurers, ordinarily businesses are required to provide full details of each payment made to a contractor. This is an exceptionally challenging and administratively burdensome proposition, with around 15-20 trades required to build every home, and almost 24,000 building approvals in the last year alone.

HIA supports an amended definition of 'worker' under s.12 that exempts businesses that satisfy the results test and the Alienation of Personal Services Income (APSI) rules under Commonwealth income tax laws. These tests are critical to preserving genuine contracting independence. Where an individual is properly characterised as an independent contractor, they should be excluded from coverage under an upstream workers' compensation policy.

### **Apprentices and trainees**

An opportunity exists with the review of the WC Act, to support employers to develop the future workforce for the residential building industry, utilising an exemption of apprentice and trainee wages from the calculation of workers compensation premiums. An example of how this may work is in the NSW Apprentice Incentive Scheme, administered by icare. Exemptions also

apply in other jurisdictions including the Queensland, Victoria and SA. We will be writing to Minister McGurk to discuss this proposal, which aligns with two core State Government objectives; to sustainably build workforce capacity and “pull every lever” in the delivery of housing.

We welcome the opportunity to discuss these matters with you further, and any support HIA can provide in informing and educating our industry on the requirements under the WC Act. Please do not hesitate to contact Libby Pracilio, Director – Industry Compliance, by email, [REDACTED] or phone, [REDACTED]

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED

A handwritten signature in black ink, appearing to read "M. McGowan", with a long horizontal line extending to the right.

Michael McGowan  
Executive Director, Western Australia