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Shenton Park WA 6009

7 February 2014

Dear Mr White

**WORKCOVER WA DISCUSSION PAPER: REVIEW OF THE WORKERS
COMPENSATION AND INJURY MANAGEMENT ACT 1981**

The Insurance Council of Australia (ICA) provides the attached submission to WorkCover WA's Review of the *Workers' Compensation and Injury Management Act 1981* (WCIM Act). Following the release of the Discussion Paper in September 2013 the ICA has canvassed the views of our members who are approved insurers in Western Australia.

The submission comprises our discussion of specific proposals where our members wish to provide feedback to WorkCover WA in the order they appear in the Discussion Paper. Also attached is a complete list of all proposals indicating the approved insurers' response to each proposal. These documents should be read together.

The ICA supports the majority of the proposals contained in the Discussion Paper. Of the 182 proposals, we:

- Support 102,
- Support 53 with some provisos,
- Consider 8 require further consideration,
- Not support 17, and
- Provide no comment on 2 of them.

We understand that some of our members may also wish to provide you with their own submissions on the range of proposals made.

We look forward to working with WorkCover WA on the range of proposals contained in the Discussion Paper. If you have any questions or comments in relation to the above please do not hesitate to contact Justine Hall, Senior Policy Advisor on (02) 9253 5122 or on jhall@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO



WorkCover WA Discussion Paper: Review of the Workers Compensation and Injury Management Act 1981

Submission by Insurance Council of Australia

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February 2014

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Introduction

The Insurance Council of Australia (ICA) provides the following submission to WorkCover WA's Review of the *Workers' Compensation and Injury Management Act 1981* (WCIM Act). Following the release of the Discussion Paper in September 2013 the ICA has canvassed the views of our members who are approved insurers in Western Australia.

The ICA strongly believes that an effective workers compensation scheme must be designed with a focus on incentives for injury prevention and appropriate care for injured workers. *Effective* return to work incentives for injured workers must be a central feature of a scheme, as well as a clear focus on treatment and rehabilitation, rather than lump sum compensation.

An effective scheme must also ensure that fair benefits are available to all injured workers, with greater support provided for the most seriously injured.

Our approved insurer members strongly support initiatives that will streamline the settlement process and minimise friction costs. Injured people need timely access to injury management, and compensation targeted at optimal health and return to work outcomes.

The ICA supports the majority of the proposals contained in the Discussion Paper. Attached to this submission is a complete list of all proposals indicating the approved insurers' support of particular proposals which should be read together with this document.

Our submission will comment on specific proposals where our members wish to provide feedback to WorkCover WA in the order they appear in the Discussion Paper. This feedback will range through different responses including where insurers wish to give qualified support.

Of these, the insurance industry has serious concerns in relation to 17 proposals as follows:

- Proposal 6 (discussed on pp 4-5)
- Proposal 10 (discussed on pp 5)
- Proposal 21 (discussed on pp 6)
- Proposal 29 (to be withdrawn)
- Proposal 38 (discussed on pp 7-8)
- Proposal 41 (discussed on p 8)
- Proposal 47 (discussed on pp 8-9)
- Proposal 67 (discussed on p 9)
- Proposal 92 (discussed on p 11)
- Proposal 130 (discussed on p 13)
- Proposal 148 (discussed on pp 16-17)
- Proposal 161 (discussed on p 18)
- Proposal 163 (discussed on p 18)
- Proposal 166 (discussed on p 19)
- Proposal 169 (discussed on p 20)
- Proposal 176 (discussed on p 21)
- Proposal 177 (discussed on p 21)

Finally our members wish to raise with you an issue outside of the list of proposals relating to sections 152 and 154 of WCIM Act, which is discussed at the end of our document.

Part 1 – Preliminary Scope and Application of Act

Proposal 6 - Definition of worker

The approved insurers do not support this proposal.

The ICA understands that the question of who is a worker for the purposes of a workers compensation scheme is often a very complicated and legally complex one. The increase in different employment and sub-contract models such as labour hire firms is an issue which has been explored in most workers compensation jurisdictions in Australia. In addition, there is a wide divergence in the application of the definition of worker in those jurisdictions. Efforts to harmonise definitions are in their infancy and may prove difficult to achieve.¹

While we support such efforts to reduce administrative complexity and improve harmonisation, our members report that the current definition in WA has been working well to date. We submit that the current definition of a worker is well understood by all key stakeholders in the WA market with precedent case law to guide stakeholders. This includes the recent Court of Appeal case of *Ewart v Caruso*² which clearly deals with the issues of payment for work completed, supply of materials and tools and supervision.

The Discussion Paper refers to the proposed “results test” which has been implemented in other jurisdictions including ACT, Northern Territory and Queensland.³ The amendments in ACT and NT are of relatively recent origin and are yet to be formally tested in the courts. The “results test” was implemented in Queensland in 2003; however recent court decisions⁴ have led to further amendments as the definition was interpreted narrowly. In the *Reliable Couriers* decision, the Industrial Court of Queensland held that as the courier drivers were not required to achieve a specified result they were found to be workers for the purposes of the workers compensation legislation.

Following this decision it would appear that unless a clear contract is in place covering the three elements of the results tests more independent contractors will be defined as workers. In our members' experience many SME businesses do not tend to have firm contracts in place particularly for small pieces of work to be completed. We believe that the introduction of this type of test would require a substantial education program to advise employers of what is required around the results test. Further we believe that this type of definition could lead to increased scheme costs as more people will be defined as workers than is currently the case.

We believe that employers will need education on a broad range of issues should the results test be implemented. These include:

- Ways employers can easily identify contractors versus employees -
 - What is the intended definition of “supply”?
 - Is it a proportion, is it related to the level of control that may be exerted through the “supply”, what happens where the supply is a service?
 - What is the intended definition of “defect”?
 - How does the definition apply to a service rather than a product?

¹ The Heads of Workers Compensation Authorities have a Definition of Worker Working Group since 2007. It is also part of Safe Work Australia's National Workers Compensation Action Plan for 2010-2013.

² (2013) WASCA 266

³ WorkCover WA's Review of the *Workers' Compensation and Injury Management Act 1981* Discussion Paper (Discussion Paper), pp46-47

⁴ *Reliable Couriers Pty Ltd v Q-Comp* (C/2005/23)

- Where there are professional indemnity requirements is this an obligation on the contractor in regards to “defect”?
- What will be the effect on current contracts if they have been formed on the basis of the prior definition? Guidance notes will need to be developed on the effect and the resultant actions required from employers.

The ICA supports a clear definition of the worker/employer relationship both in the primary and extended definition. However we submit that harmonisation could also be achieved by modelling the WA provisions on the definitions in place in the larger jurisdictions of NSW, Victoria and South Australia.

The ICA believes that an assessment of the impact on the scheme should be undertaken before this proposal is further considered.

Proposal 10 - Public Company Directors

The approved insurers do not support this proposal.

We believe that there would be several challenges to effectively implement this proposal for the directors of public companies. Such directors often sit across multiple boards and in multiple jurisdictions. This will raise issues concerning:

- The origin and terms of the employment contract ,particularly when across multiple companies
- How a declaration of remuneration associated with each role can be made
- How the causal link between a particular employment and injury is established when multiple directorships are involved? This is particularly the case if the claim does not involve a direct physical injury.

We believe that these issues may be further complicated if “cross border” factors also need to be considered.

In addition, we believe that many public company directors frequently make their own arrangements through other general insurance income products to provide 24 hour cover and choose a level of cover that best suits their activities and needs.

The ICA submits that the current level of cover provided to directors of private companies is sufficient and does not require amendment.

Proposal 15 - Employment connection to this state – Overseas Workers

We support this proposal subject to the proviso below.

The ICA notes that workers compensation policies usually extend for a period of 12 months in line with the reinsurance treaties taken out by the approved insurers. Both are then renewed on an annual basis.

We submit that an approved insurer uses this opportunity to review the risk profile of a particular employer each year. One of the issues to be considered is whether any of overseas locations of workers are excluded by their reinsurance treaty arrangements. In addition insurers are required to assess and price any common law potential involved for an overseas worker.

As a result the ICA supports provisions that provide cover for workers who are overseas for a period of 12 months.

Part 2 – Compensation

Proposal 21 - Medical Certificates

The approved insurers do not support this proposal.

As issues of incapacity and appropriate treatment are fundamental to the optimum running of the workers compensation scheme in WA, we believe that only qualified medical practitioners should have the authority to issue medical certificates. An effective workers compensation scheme requires the monitoring of ongoing claims costs and as such, the rigor imposed by the assessment of qualified medical practitioners enhances this process.

Further we submit that allied health providers do not possess the requisite independence to certify fundamental issues such as causation and ongoing incapacity for work.

The ICA believes that an assessment of the impact on claims costs should be undertaken before this proposal is further considered.

Proposal 28 - Pended Claims

We submit that further consideration of this proposal is required.

We support the early intervention in claims to ensure that appropriate treatment is received as soon as possible after an injury. We believe that this can promote early and sustained return to work rates. However the proposal may have an adverse effect on claims costs.

Under the current legislation 19 days after a claim is made a worker is able to seek an order for provisional payments either by making an application to the Conciliation and Arbitration Service (CAS) or through the Director ordering an employer to make an application to CAS for a determination of liability.

The CAS may make an interim order for payments when the matter is listed for conciliation.

We submit that the following complexities could arise if provisional payments are made on the receipt of a claim by an employer as proposed:

- There is a potential for fraud as workers could lodge claims for non compensable injuries knowing they will still receive payments.
- Where an injury is found not to be compensable there is no requirement for the worker to pay back any payments made including statutory expenses.
- Employers who wish to undertake further inquiries in relation to a claim will have no option but to decline liability at the outset.

A worker where liability is disputed has the option to take accrued leave entitlements under their employment contract and if liability is accepted then those entitlements are reinstated. A worker can also approach Centrelink for payments. We accept however that certain medical expenses may not be met unless the worker has private health cover.

In order to expedite the claims process to capitalise on the benefits of early intervention we submit that the following alternative actions be considered:

- Payments of medical expenses up to 5% of the prescribed amount and rehabilitation expenses up to 15% of the prescribed amount can be made provisionally from the date the worker lodges their claim on the employer. We submit that this will focus costs on treatment and early return to work and may limit the exposure to weekly payments.

- Provisional payments of weekly payments do not commence until 60 days after the worker has lodged the claim on the employer.
- Provisional payments for weekly payments only cease when the employer formally declines liability or an order is made by an Arbitrator.

We submit that this process would not prevent either the worker or employer/insurer from lodging an application to determine liability 19 days after the claim has been made on the employer.

Proposals 34 and 35 - Definition of "Other Expenses" and First Aid and Emergency Expenses

We support these proposals subject to the proviso below.

The ICA submits that some expenses which would fall within the definition of "other expenses" or "first aid and emergency expenses" may be substantial. These include the cost of prosthetics and repatriation of overseas workers as well as emergency evacuation by the Royal Flying Doctor Service. While the number of claims impacted may be small, the actual costs associated with the claims may be substantial.

We believe that such expenses should satisfy the reasonable test under Clause 17. We would also propose that a definition of "emergency" be included in the provision. We also submit that appropriate prescribed monetary limits be applied to these expenses. In these circumstances the legislation could provide that if a worker had exhausted their prescribed amount and their WPI was greater than 15%, they would be able to apply for additional sums under Schedule 1 Clause 18A, subclause 1(c).

We submit that an assessment of the likely impact on scheme costs be undertaken in relation to these proposals.

Proposals 37-38 - Calculation of Weekly Payments

We support **Proposal 37** subject to the suggestions below.

While the ICA supports greater streamlining in the calculation of weekly payments, we believe that the following may ensure equity for different classes of worker:

- Award and Non Award workers weekly wage could be calculated under Amount B using 12 months of earnings prior to the date of injury: if the worker is employed in that occupation over a lesser period then the calculation could be made over that lesser period to fairly reflect their earnings when fully fit. This is to cover the situation where a worker changes employment for whatever reason and their earnings either increase or decrease, so the calculation fairly reflects the intentions of the worker and employer going forward.
- The drop down rate could apply fairly to both Award and Non Award workers at a 15% drop down after 13 weeks. Alternatively, the calculation of an Award worker's minimum weekly wage would be the Award base rate exclusive of any allowances, overtime, bonus's etc.
- All workers minimum weekly wage would be protected by Amount D and Amount E; these should remain as part of the calculation for a workers weekly wage.

We submit that this is a more equitable calculation of the weekly payments for part time, casual and seasonal workers as it will be based on a true reflection of their actual earnings.

We submit that Clause 16 should be retained to reflect any changes in a workers weekly wage. However it should also reflect where a Non Award worker re-negotiates their salary.

This would ensure where a worker did not lose time from work for a considerable period after their accident that any changes to their base salary were included in the calculation covering the period of incapacity.

Further we would submit that Clause 15 be retained. In these circumstances Amount A and Amount Aa could be removed as all workers calculations would fall under Amount B and in particular Amount B (c). In these circumstances, the minimum adult wage would be maintained as a minimum weekly rate.

Finally, when calculating earnings over the previous 12 months if a worker has taken an extended break over any part of that 12 month period, we suggest that the period be excluded from the calculation and the calculation based on the total earnings over the actual weeks worked.

The approved insurers do not support **Proposal 38**.

Our members consider that the date of injury should be the date upon which the calculations are based. In some circumstances a worker's earnings may be affected by the injury without necessarily impacting their ability to work full time. We submit that using the date of accident rather than the date of incapacity reflects a fairer evaluation of the worker's earning capacity whilst they were fully fit for work

We note however, that for Award workers where there has been an increase in the base award rate in the intervening period their weekly compensation rate would need to be adjusted. Similarly, for Non-Award workers who receive an increase in their remuneration before the date of incapacity, their weekly rate would be adjusted.

We look forward to working with WorkCover WA to streamlining the application of these calculations.

Proposal 41 - Compensation for Permanent Impairment

The approved insurers do not support this proposal.

We submit that this proposal may have a significant effect on scheme costs as it may increase the level of outstanding liabilities if claims are required to remain open for a considerable period of time. Our members believe that this could result in deterioration in finalisation rates within the scheme.

Permanent impairment is usually assessed after a worker's condition reaches medical maximum improvement. The assessment would occur when the worker's condition has stabilised and no further (or minimal) medical treatment is required. In our members' experience, the majority of cases the WPI will be less than 15% and the worker will accordingly not be entitled to a common law claim. In these cases, the acceptance of a Schedule Two lump sum would complete the claim and allow the insurer to finalise it.

We submit that Proposal 41 would potentially result in many more claims remaining open. Our members would like to discuss the following issues further with WorkCover WA.

Proposal 47- Compensation for Noise Induced Hearing Loss (NIHL)

The approved insurers do not support this proposal.

As a claim for lump sum compensation which rarely includes a claim for weekly payments, we submit that the proposed timelines are not appropriate for NIHL claims.

These claims, by their latent nature are more complex to deal with than claims arising from injury from frank incidents. These complexities include:

- Whether the employment in question took place in WA.
- Whether the workplace of the named employer was a prescribed workplace for NIHL
- Was the worker actually exposed to noise in that employment?
- Are there any non-work related factors which could cause hearing loss

We submit that, if time limits are applied, that further delay will result from an increase in pending claims.

Proposal 53 - Apportionment of NIHL Liability

We support this proposal subject to the provisos below.

In a scheme where the last liable employer is required to compensate the worker with NIHL, it is appropriate to later seek recovery from other liable employers who may have contributed to the worker's HIHL.

However we would submit that the time period involved should extend to the period of noise inducing employment for 7 years in line with ATO record keeping requirements.

We also submit that certain transitional arrangement would need to be put in place to ensure that the appropriate premium has been collected and potential existing claims are not affected by the proposal. Insurers of liable employer may have been collecting premium for claims where the noise inducing employment has occurred for periods greater than 7 years. Under the proposal, they will now not be called upon to contribute to the cost of the claim.

Such arrangements may include:

- Identifying all potential claims where a baseline test has been undertaken but the worker is yet to make a claim.
- Advising employers with prescribed workplaces to ensure all workers have a baseline assessment before the legislation is introduced.
- Measures to resolve as many of these claims as possible before the proposed changes are introduced including those where the worker is yet to achieve the 10% hearing loss threshold.

Proposals 65-67 Lump Sum Death Benefit

We support **Proposals 65 and 66** subject to the proviso below.

The proposed lump sum benefit is more in line with other jurisdictions⁵ and as such is supported by the approved insurers. However the increased benefit is likely to add to overall scheme costs. In these circumstances we submit that an appropriate adjustment to the premium rating to reflect this.

The approved insurers do not support **Proposal 67**.

The ICA submits that any weekly payments received by the worker prior to their death should be deducted from the lump sum benefit payable to the worker's dependants. This would be

⁵ Discussion Paper, p 94

consistent with the assessment of damages under the *Fatal Accidents Act* where deductions are made for payments previously received.

We submit that an assessment of any impact on scheme costs be undertaken in relation to these proposals.

Proposal 74 – Funeral and Other Expenses

We support this proposal subject to the proviso below.

In line with our comments under Proposals 34 and 35 it is possible that “other expenses’ may be substantial including repatriation expenses. In these circumstances we submit that appropriate reasonable caps be placed on these expenses to ensure that they do not unduly affect scheme costs.

We submit that an assessment of any impact on scheme costs be undertaken in relation to this proposal.

Proposal 79 - Medical Examinations

We support this proposal subject to the proviso below.

We believe that a streamlining of provisions in relation to medical examinations would be of benefit. However we also submit that measures to ensure the worker’s co-operation should be included. These include a suspension of entitlements if the worker unreasonably fails to attend a medical examination or obstructs the medical or rehabilitation process.

Such provisions are utilised in other jurisdictions including the Comcare scheme, NSW, NT, Victoria and ACT.⁶ We submit that such measures promote early return to work rates and contain scheme costs.

Proposals 80-82 - Application to Vary Compensation and General Power to Vary Compensation

We support these proposals subject to the proviso below.

Greater clarity in relation to the circumstances where applications to CAS can be made will, we submit, contain friction costs and focus more of the compensation dollar to the early return to work of injured workers.

However these proposals represent significant change in the operation of the scheme and great care will be needed in their drafting to ensure that there are no unintended consequences which lead to an increase in disputes.

In these circumstances we look forward to working with WorkCover WA when the draft provisions are being developed.

⁶ Comcare (s36 *Safety, Rehabilitation and Compensation Act 1988*), NSW (s119 *Workplace Injury Management and Workers Compensation Act 1998*), NT (s91 *Workers Rehabilitation and Compensation Act*), Victoria (s112 *Accident Compensation Act 1985*) and ACT (s113 *Workers Compensation Act 1951*)

Proposal 87 – Definition of “Medical Practitioner”

The approved insurers do not support part (i) of this proposal.

We refer to our discussion of Proposal 21 and confirm that only appropriately qualified medical practitioners should be authorised to act within the workers compensation scheme in WA. Further we submit that allied health providers do not possess the requisite independence to certify fundamental issues such as causation and ongoing incapacity for work. Accordingly our members do not support the proposal that allied health professionals registered with the Australian Health Practitioner Regulation Agency be included in the definition of medical practitioner under the legislation.

We support part (ii) of this proposal to align WA with the nationally accepted recognition of overseas doctors.

Proposal 92 - Statutory Settlement Pathways

The approved insurers do not support this proposal.

The ICA supports measures to streamline settlement processes to reduce friction costs and allow a more speedy resolution of claims. Our members are concerned however that this proposal will not assist and may in fact increase settlement timeframes and claims costs.

In relation to the “primary pathway”, we submit that the 6 month restriction may prevent many smaller claims from being resolved before that period. Claims involving “stress/psychological” injuries may not be amenable to the primary pathway and do not appear to fall within the types of claim which would fall under the secondary pathway. In our members’ experience, claims of this nature are usually difficult to manage. The nature of the allegations involved has a significant impact on the relationship between the worker and employer and the return to work options are often limited. Liability on these claims can be difficult to determine and it is arguable the best method of resolution for either party is by way of settlement before the dispute becomes protracted.

The approved insurers report that they have been able to resolve a number of claims under the current mechanism provided by section 92(f) WCIM Act where the question of liability is difficult to determine. We submit that the early resolution of these claims is of benefit to the scheme and workers, insurers and employers alike. These include:

- Minor claims settled at informal conference, requested by legally represented workers
- Settlement following the Internal Review Dispute Resolution Process
- Claims involving multiple injury dates and/or employers
- Claims for visa workers
- Claims where the worker had other health issues and has sought settlement
- Claims settled at Conciliation and the worker was dismissed or had resigned (for reasons unrelated to the claim)
- Medical procedure disputed claims settled with the value of procedure factored into the settlement
- Claims involving a Principal indemnity clause

In relation to the “secondary pathway”, we submit that the proposal may add to disputation rather than reduce it having regard to the additional administrative procedures suggested. We believe that this proposal will potentially increase delays in the CAS process rather than reduce them.

We submit that an assessment of the likely impact on scheme costs be undertaken in relation to this proposal.

Part 3 – Injury Management

Proposal 100 - Medical Certificates and Work Capacity

We support this proposal subject to the proviso below.

The ICA supports the proposal to clarify the extent of the worker's work capacity. However we believe that such certificates should be updated on a monthly basis to ensure there is appropriate medical assessment of the worker's capacity and to support injury management and return to work goals.

Proposal 103 - Return to Work Programs

We fully support this proposal and make the following comments.

We believe that measures to improve effective return to work rates are crucial to ensuring an effective workers compensation scheme. Following on from our comments under proposal 79, we submit that this proposal should be strengthened to promote a greater level of compliance by workers.

The employer has strict obligations under the WCIM Act to provide the worker both with a position and a return to work program under sections 84AA(1) and 155C(1). If the employer does not comply with these provisions they may face penalties of up to \$5,000 and \$2,000 respectively.

We submit that where penalties apply to the employer if they fail to provide suitable work and a return to work program then a penalty should apply to the worker where they do not reasonably participate in a return to work program. We believe where a worker does not participate in a return to work program that their weekly payments should be suspended without an order of a Conciliation Officer or Arbitrator until the worker complies. Once a worker complies then any back payments can be made. Further we submit that in the circumstances where a worker continues to refuse to co-operate, that an application can be made for an order of compliance or reinstatement of payments.

We would also like to take this opportunity to raise an issue with the current legislation which provides that the worker's treating medical practitioner is the only one that can advise in writing that a return to work program should be established or sign a medical certificate that the worker has total or partial incapacity to return to work.

In circumstances where the insurer cannot obtain an opinion or certificate from the treating medical practitioner there appears to be no other recourse. We submit, in these circumstances, that the legislation contain an option for any medical practitioner reviewing the worker (whether treating or consulting) to be able give an opinion that a return to work program ought to be established or that the worker has a capacity.

We suggest that where there is a dispute between the treating medical practitioner and/or a consultant, the parties can refer the dispute to CAS. We believe that this will ensure the focus is on returning the worker to work.

Proposal 113 - Injury Management Case Conferences

We fully support this proposal and make the following comments.

The ICA believes that this proposal, together with Proposals 79 and 103 are essential to improve injury management and return to work rates. As highlighted in the proposals above however, we submit that these provisions should be strengthened to provide that payments are suspended immediately until the worker attends and fully participates in an injury management case conference. Once the worker has attended then their payments can be automatically reinstated and any back payments made.

This would not prevent either the worker or employer from filing an application seeking an order for compliance or the reinstatement of payments. We submit that this is a preferable course of action to an application to CAS as the backlogs cause delay and reduce the opportunity for early return to work through participation in an injury management case conference. If there was a method by which such applications could be fast-tracked this would also assist.

Part 5 – Liability and Insurance

Proposal 130 - Exclusion of war

The approved insurers do not support this proposal.

The approved insurers are not able to obtain reinsurance which covers war and other hostilities as this is specifically excluded by the AAA rated Reinsurance market and treaty Reinsurers. If such claims were included in the legislation they are likely to be excluded in our members' reinsurance contracts.

We believe that will result in approved insurers being exposed to potentially very large losses should such claims occur. This may in turn put considerable pressure on our members' capital requirements imposed by APRA, directives imposed by their own boards to ensure the reliance of reinsurance funds and ultimately their continued participation in the scheme.

The ICA believes that an assessment of the impact on the scheme as a whole should be undertaken before this proposal is further considered. This assessment should also consider the situations where employers knowingly place their workers in a dangerous environment, for example the requirement to travel to or work in war torn regions or countries.

Proposal 131 - Audit of remuneration declarations

We support this proposal subject to the proviso below.

In line with other jurisdictions we submit that the provisions be strengthened to impose penalties if the statements of wages, salaries and other remuneration under section 160(2) and (2b) of the WCIM Act is not provided within a specified period of time in the absence of extenuating circumstances.

We suggest that a new section 160 (3) be added as follows:

*“At the termination of the period referred to in subsection (2), (2a) and (2b) Employer shall furnish the statement of Actual wages, salary and other remuneration paid for the period for which the policy was effected or renewed to the approved insurance office within 90 days of the termination of the period or provide written reason that Work Cover WA considers reasonable for non compliance.
Penalty \$2000*

We believe that the provision of a time period and penalty for non compliance would ensure that correct wages details were supplied to approved insurers promptly. This would then enable more timely and accurate insurer data to be submitted to WorkCover, assisting the scheme actuaries in the setting of appropriate rates for the scheme. The ICA submits that it is also likely to reduce administration costs for insurers and could impact favourably on scheme costs.

As noted above, other jurisdictions insist on the timely return of wages declarations and impose penalties for non compliance. As an example the ACT scheme operates as follows:

- Section 155 of the *Workers Compensation Act 1951* provides that a wages declaration must be provided. Penalty for non compliance \$1100 for an individual \$5500 for a corporation.

- Section 156(3) requires that an employer must provide a statement of the total wages during the policy period within 30 days of the policy renewal. Penalty \$1100 for an individual and \$5500 for a corporation.
- Section 157(2) provides the employer must provide a statement stating the total wages paid during the policy period within 30 days of the policy ending or being cancelled. Penalty \$1100 for an individual \$5500 for a corporation

Finally we submit that Certificate of currencies must be retained for a period of 7 years where an employer has been engaging contractors

Proposal 134 - Remuneration declarations in the contract chain

The approved insurers do not support part (i) of this proposal.

We do not consider that item (i) is necessary as the principal is already entitled to indemnity from the contractor under the provisions of section 175 (2) of the WCIM Act.

We support parts (ii) and (iii) of this proposal to improve the level of insurance amongst contractors and sub-contractors.

Proposals 135-137 Contractual Indemnities

We support these proposals subject to the provisos below.

Our members advise that the insurance and indemnity clauses of the contracts currently in the market typically include both indemnity and waiver of subrogation provisions to be met by the employer and/or the employer's insurer.

As the effect of both the indemnity and waiver of subrogation contractual provisions retain the costs of public liability claims within the Workers Compensation Scheme, we submit that both types of provision be prohibited under the new statute.

In relation to **Proposal 137** specifically we note that other workers compensation schemes, primarily Victoria and NSW preclude any attempts by principals to contract out of their responsibilities to injured workers, recover workers compensation claims costs from negligent third parties and ensure that waivers of subrogation are prohibited.

We submit that these provisions are based on the following concepts:

- Generally principals are larger companies and make indemnities and waivers a condition of contract; generally the contractor is not in a position to negotiate or refuse, for fear of losing the opportunity of engagement. This primarily impacts small to medium employers.
- Broad indemnity of Principals affects scheme performance by increasing costs of claims that should be reduced by contributions of principals who should through public liability insurance cover bear costs appropriate to their potential liabilities.
- The cost of arranging insurance for smaller employers to indemnify principals is generally disproportionate to the risk. Small employers and their representatives do not possess the same resources as larger employers to review and interpret complex contracts and insurance obligations. This creates uncertainty, and generally the risk and cost is knowingly or unknowingly transferred to the smaller company.
- Indemnities allow principals to contract out of their obligations and responsibilities to provide safe workplaces. All parties have a responsibility to provide a duty of care.

We would recommend that WorkCover WA explore the rationale behind the legislative approach of other Workers Compensation Schemes and adopt a similar approach in WA to protect workers' rights and scheme affordability for employers.

With the increasing casualisation of the Workforce and increasing use of out-sourcing arrangements such as labour hire, we believe that it is important that safe work behaviours and practices be encouraged through all parties in a contract chain bearing the appropriate costs of injury.

In the experience of our members this mainly applies to common law claims which are generally of a more serious nature and the normal principles of duty of care should apply to all parties involved in an incident.

We also submit that appropriate consideration be given to the issue of how employers who have already signed such contracts would manage their workers compensation obligations

Proposal 145 - Conditions on licensed insurers

We submit that further consideration of this proposal is required.

We seek further clarification from WorkCover WA on the types of circumstances which may trigger the use of this authority to properly understand its intended scope.

We understand that WorkCover WA may need the authority to vary license conditions in certain special circumstances, but would submit that the circumstances where such power is exercised is limited to the issuing or renewal of licenses only, without any capacity for retrospectivity in relation to any endorsements issued.

Proposal 148 - Approved insurer – requirement to quote

The approved insurers do not support this proposal.

We note that under section 160 (3) of the WCIM Act insurers are obliged to provide cover where requested. Our members do not consider that this should extend to an obligation to offer quotes "*without qualification*" as the Insurer must have the right to request information from the employer in order to determine the correct rating. This information needs to provide an accurate summary of the client's business and any risk associated with their business so that the correct rating applies.

Our members report that there are occasions when this information is not readily available and must be obtained from the client / broker. On this basis, we submit that the insurer needs to be able to qualify their quote in case the further information requested substantially changes the risk profile and hence the required premium.

In some instances insurers will need to seek further approval within their organisation (on the basis of a higher rate than quoted) and possibly with reinsurers (in case the risk is under a treaty exclusion or requires sign off by reinsurer). In both these circumstances it would be expected that the underwriter (who does not have the authority to bind cover) would qualify the quote and seek the required approval. To be held to a quote outside an underwriter's authority would lead to a breach and serious internal action.

There will also be some circumstances where insurers may not be able to comply with Section 160 due to insurer's reinsurance arrangements, capabilities to manage specialised claims, moral ethos of the company and insufficient time to review the risk. Some examples would be:-

- The Employer has not provided sufficient information to enable the insurer to make the appropriate Reinsurance arrangements e.g. Underground exposures.
- The Approved Insurer is not able to effect treaty or Facultative Reinsurance in order to mitigate a particular risk or the Reinsurance treaty excludes that exposure.
- The Approved Insurer does not have the resources to be able to provide the expeditious handling of claims which would put them in conflict with Section 161(3)(b). For example small niche Insurers such as Catholic Church or Guild being asked to quote on a risk with many claims per annum.
- The subject matter of the Insurance conflicts with the Insurers Ethics or Code of Conduct e.g. Catholic Church Insurances being required to quote on a massage parlour.
- Sufficient timing to review eg - The application to ask an insurer to quote for insurance comes the day of a renewal and the risk is complex that requires a level of information gathering and relevant approvals.

We would also recommend that the proposal incorporate the employer's obligation not to seek other insurance within a valid policy period. Whilst this is not a legislative requirement at present, Insurers do not encourage the practice of employers seeking quotes while there is a valid policy in place. Insurers should only be obliged to provide a quotation if the business has never had insurance, the business has been newly acquired, or it is prior to a renewal date.

We submit that this supports contract principles as well as avoiding uncertainty around who is on risk, double insurance, credit and administrative burden, as well as data issues for WorkCover WA.

Proposal 150 – Approved Insurer – Requirement to Provide Insurance

We support these proposals subject to the proviso below.

We believe that workers should not be disadvantaged through the omission of the employer in regard to the description of their business classification when the state of connection test was taken into account. However, where an insurer's rights are prejudiced due to the employer's failure to disclose accurately the nature of their business, we submit that insurers should have the right to appropriate remedies through:

- An appeal process with WorkCover WA where the omission is classified as "material" and impacts the ability of the insurer to accommodate the omitted classification. Examples of such a material omission could include the omission of underground or offshore workers classifications where typically insurers are required to arrange special reinsurance coverage, which may not be in place if they had not been made aware of these classifications.
- A premium adjustment. This premium adjustment should also not be prejudiced by any timing factors attached to the application of 75% loading. For example, if the claim occurs and it is found the business description is incorrect or not declared, and this applied to previous policy periods that need to now be re-rated and the rating is now over +75% of the Gazette rate, we submit that the "reasonable time frame" requirement be waived to allow the application to increased the premium in these circumstances.

Proposals 151-156 - Burning Cost Policies

We support **Proposals 151 to 154** subject to the provisos below.

We support the need for the Legislative review to recognise Burning Cost and similar claims rated methods of premium calculation.

We understand from discussions with WorkCover WA that there is no intention to interfere with market competition or to prescribe an entire framework that exists in other jurisdictions. Our members do not support any alteration to the provisions of Burning Cost policies which may limit that competition.

We believe that the ability for the market to continue to offer Burning Cost policies and similar types of claims rated premiums is a recognised and well established strength of the WA Workers Compensation Scheme.

This mechanism provides the market with an ability to develop innovative ways of pricing risk and encouraging safety and injury management practices together with employer ownership. The structure and design of Burning cost policies can vary significantly and attempts to prescribe terms and conditions of burners may have unintended consequences including limiting insurer competition, making them a less attractive and ultimately could also lead to some insurers withdrawing this option.

In relation to **Proposal 155**, we do not support regulation of terms and conditions for the same reasons as we have outlined in our response above. We submit that the regulation of terms and conditions have the potential to restrict the market's capability and limit insurer competition.

In relation to **Proposal 156**, this is supported by the approved insurers but only for policies with a 12 month renewable period of insurance.

In these circumstances we look forward to working with WorkCover WA in relation to the implementation of these proposals.

Proposal 161 - Cancellation of Policies

The approved insurers do not support this proposal.

We submit that the prescribed period should align with credit terms agreed by insurer eg cash up front or 120 days for broker policies 90 days plus 30 days grace period.

We also submit that WorkCover WA collect and analyse data on policies cancelled for non payment to identify companies and individuals that have a history of non payment and consider appropriate action.

Proposal 163 - Regulation of Policy of Insurance

The approved insurers do not support this proposal.

While we accept that Workcover WA has the ability to regulate a "standard policy" wording, we submit that it should not have the ability to approve, limit or modify policy endorsements or extensions by way of regulations where they are not within the "standard policy" wording but are in addition to this.

We are concerned that some matters may require significant changes being made and changes to endorsements will limit the insurer's ability to respond to a customer's needs, which could lead to a stifling of market competition.

Proposal 166 - Mining Employers – Insurance Obligations

The approved insurers do not support this proposal.

We believe that the proposal is likely to make insurer and scheme rates and performance less stable and may lead to significant increases in rates and premiums for employers.

Our specific concerns include:

- Reinsurance Considerations - Asbestosis and other industrial disease claims are excluded from Treaty Reinsurance arrangements. It may prove difficult and expensive to obtain the treaty protection from AAA rated reinsurers. Without adequate reinsurance support Insurers may be exposed to very large net losses. One of the purposes of reinsurance is to ensure that an insurer's results are more predictable by smoothing larger losses and also reducing the amount of capital required to provide coverage.
- Cost – In the event that insurers can obtain such reinsurance, it is very likely to be costly and will therefore put pressure on premium rates.

Part 6 – Dispute Resolution

Proposal 169 - Conciliation Filing Requirement

The approved insurers do not support this proposal.

We submit that the early resolution of claims not only benefits the injured worker but also puts a tighter rein on scheme costs. As such, we believe that the current “conferral” requirement provides an opportunity for parties to resolve the dispute before additional costs are incurred once formal proceedings have commenced. Whilst conferral can delay proceedings being commenced, it has, in our members’ experience on many occasions, allowed the dispute to be resolved more quickly by bringing the matter to the other party’s attention in a direct but informal manner.

Further, the conferral process enables both parties to consider alternate means of resolution; and legal providers are able to obtain instructions prior to the conciliation process, making the conciliation process more effective.

We believe that the proposal could have the unintended consequence of increasing scheme costs and CAS costs related to administration by increasing the total number of conciliation matters and increasing the number of matters that requires further conciliation.

Part 7 – Common Law

Proposals 176-177 - Common Law settlements. Section 92f

The approved insurers do not support these proposals.

Frequently, claims arise in which liability is difficult to determine. We believe that settlements in these circumstances can be of benefit to the scheme and workers, insurers and employers alike, particularly where workers have secured legal counsel.

Whilst we note there are proposed changes to accommodate settlements under Proposal 92 through the primary and secondary pathways, we believe that there is still the need for section 92f settlements particularly in the following cases;

- Settlements involving multiple parties and/or multiple injuries
- Settlements involving contractual indemnities, apportionments/contributions and recoveries.
- Minor claims settled at informal conference, requested by a legally represented worker
- Settlement following IDRPs
- Claims involving multiple employers
- Claims for visa workers
- Claims where the worker had other health issues and sought settlement
- Claims settled at conciliation and the worker was dismissed or had resigned (for reasons unrelated to the claim)
- Medical procedure disputed claims settled with the value of the procedure factored into the settlement
- Claims involving a Principal indemnity clause

Of particular concern is the impact to the resolution of “stress/psychological” claims which may not be included in the secondary pathway “special circumstance” claims. In our members’ experience, claims of this nature are usually difficult to manage, due to the nature of allegations that arise. The relationship between the worker and employer can become untenable, making return to work options limited. Liability for these claims can be difficult to determine and it is arguable the best method of resolution for either party is by way of settlement.

The proposed changes will potentially have a major effect on not only escalating claim costs but also increasing the number of matters escalated to WorkCover WA – Conciliation & Arbitration Services.

Part 8 Scheme Regulation and Administration

Proposals 179-180 - Penalties

We support these proposals subject to the provisos below.

We submit that, in general terms penalties be:

- set at a level that encourages compliance with the Act. For example, insurers can experience difficulties in obtaining compliance with the renewal process and timely notification of claims. We would seek involvement as a stakeholder group in the review process.
- specified in the Act as to who is responsible to pay the fine
- identified in a separate summary listing of all offences be published for ease of review together with the unit fine applicable. This may be placed on the WorkCover website or in a Schedule to the Act, which all parties may access easily.

Part 9 – Miscellaneous

Proposal 182 – Regulation making Powers

We support these proposals subject to the proviso below.

We understand that the various proposals which seek to introduce a head of power into the legislation are primarily included to allow WorkCover WA to introduce enhancements to the workers compensation scheme without the necessity of going through the legislative amendment process.

Our members' discussions with WorkCover WA have confirmed that a detailed consultation process will take place before any changes are made as follows:

- Consultation with stakeholders affected.
- Scrutiny by central agencies including the Regulatory Gatekeeping Unit and Treasury if there are cost impacts.
- Approval by the Board, Minister, and Governor in Executive Council.
- Enactment and publication in the Government Gazette.
- Scrutiny by the Parliamentary Joint Standing Committee on Delegated Legislation (which ensures regulations are authorised and consistent with the Act. The Committee has power to issue motion to disallow regulations)

Based on the above understanding and undertakings we generally support the introduction of the "heads of power" into various sections of the ACT.

Issues not raised in Discussion Paper

Abolish Section 152 - Loading not to exceed 75% unless permitted by WorkCover

We submit that the current cap under section 152 of a 75% loading on recommended premiums is hampering our members' ability to properly price the risk of some employers who they consider are not taking optimal steps to ensure the safety of their employees. We believe that these employers are able to rely on the capped premium while others within the industry classification are in effect subsidising them. This is due to the timely and costly process in place to seek WorkCover permission to approve premium in excess of the +75% loading under section 152.

For this reason, it is submitted that the 75% loading on recommended premium rates be abolished as premium rating is already regulated within the market through competition and market pressures.

As applies currently, employers will continue to have the opportunity to appeal the loading applied to the recommended premium rating under section 154. Further we submit in order to avoid frivolous premium loading appeals, that a cap on the loading be reached before an employer can make an appeal. We would recommend that this Cap be 100% loading above the recommended premium rate and changes would be included in S154 (a) (1) as follows:-

154. Appeals by employers

(1) An employer who is dissatisfied with —

(a) the type of business or occupation on the basis of which an insurer charges the premium required to insure him under this Act;

(b) the amount of the premium which an insurer assesses as required to insure him under this Act at the time of issue or renewal of the policy is greater than 100% loading the recommended premium rate.,

may appeal against the classification or assessment to WorkCover WA in the manner and within the time provided in subsections (2) and (4).

We submit that the appeal process is robust enough to resolve these matters and that it would be the obligation of the insurer to issue a notice regarding the appeals process on each policy it issues to clearly inform all policy holders of this pathway should they not agree the loading that has been applied.

We would also recommend to ensure a more streamlined and efficient process that, the appeal submissions process would need to include submission from both the insurer and employer for a determination by a body outside the WorkCover board (perhaps within WorkCover).

Review of the Workers' Compensation and Injury Management Act 1981

Discussion Paper- Summary of Proposals

Proposal	Detail of Proposal	Insurance Industry Response
	LEGISLATIVE STRUCTURE AND REWRITE	
	Rewrite of the Act	
P:1	It is proposed the Act be repealed and replaced with a new statute. 40	Supported
P:2	It is proposed the structure of the new statute be based on the outline at Appendix 1 of this discussion paper. 40	Supported
P:3	It is proposed the new statute be redrafted with the objectives of introducing plain language and contemporary drafting conventions.... 40	Supported
P:4	It is proposed the new statute incorporate the amendments proposed in subsequent parts of this report whilst preserving, to the extent possible, the intent of other provisions of the Act. 40	Supported
P:5	It is proposed the new statute include a mandatory review clause to ensure periodic review of its operation. 40	Supported
	PART 1 – PRELIMINARY	
	Definition of worker	
P:6	It is proposed the definition of 'worker' in the new statute be based on the 'results test' to distinguish between workers and independent contractors. 48	Not Supported. Refer to ICA Submission pages 4-5
P:7	It is proposed the new statute include a head of power for regulations to prescribe a worker or class of persons as a worker and the worker's employer. 48	Supported subject to appropriate consultation on to allow feedback on operational aspects and impacts
P:8	It is proposed provisions relating to casuals, police, personal representatives and dependants of deceased workers be structured as separate subsections within the definition of 'worker'..... 48	Supported
	Work for private householders	
P:9	It is proposed a person is not a 'worker' within the meaning of the new statute while the person is engaged in domestic service in a private home unless: i) the person is employed by an employer who is not the owner or occupier of the private home; and ii) the employer provides the owner or occupier with the services of the person..... 49	No Submission

Proposal	Detail of Proposal	Insurance Industry Response
	Public company directors	
P:10	It is proposed the new statute provide access to the scheme for public company directors on the same terms, and subject to the same criteria, as other working directors..... 50	Not Supported. Refer to ICA Submission page 5
	Religious workers	
P:11	It is proposed provisions regarding 'religious workers' be consolidated in the new statute. 53	Supported
P:12	It is proposed religious workers who do not otherwise meet the definition of 'worker' may be deemed a worker via a Ministerial declaration process 53	Supported
	Government workers and references to 'Crown'	
P:13	It is proposed a single term (either 'Crown' or 'State') be used to describe the executive government under which public authorities operate. 54	Supported
P:14	It is proposed a claim for compensation or proceedings against the Crown / State be made on the relevant public authority by whom the worker was employed or engaged at the time of the injury. 54	Supported
	Overseas workers	
P:15	It is proposed the new statute include a provision to deal with overseas workers based on an express period of cover for 24 months..... 56	Supported subject to ICA Submission page 5
P:16	It is proposed the express period of cover for overseas workers may be extended by agreement between the employer and insurer.56	Supported
	PART 2 - COMPENSATION	
	Definition of 'compensation'	
P:17	It is proposed the new statute introduce a broad definition of 'compensation' encompassing all entitlements. 61	Supported
	Making a claim	
P:18	It is proposed the requirements and time limits for making a claim be located in the Compensation Part of the new statute. 62	Supported
	Requirement to give notice	
P:19	It is proposed the requirement for a worker to serve a notice of injury be discontinued...62	Supported
	Consistent claim processes	
P:20	It is proposed the new statute establish a consistent claim process, applicable to both insurers and self insurers. 63	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	Medical certificates	
P:21	It is proposed the new statute introduce a head of power for regulations to prescribe classes of persons, other than medical practitioners, who may issue workers' compensation certificates in prescribed circumstances. 63	Not Supported. Refer to ICA Submission page 6
	Consent authority	
P:22	It is proposed the new statute introduce a consent authority for the release of a worker's medical and personal information relevant to a claim. 64	Supported
P:23	It is proposed a consent authority be mandatory, irrevocable and extend to all relevant medical and other information sources. 64	Supported
	Claim for compensation	
P:24	It is proposed the new statute introduce a single claim process to accommodate both weekly payments for incapacity and/or medical expenses. 66	Supported
	Claim process	
P:25	It is proposed the new statute introduce a head of power for regulations to prescribe the process for making a claim. 66	Supported subject to ICA Submission under Proposal 182 page 20
	Pended claims	
P:26	It is proposed the timeframe and notification requirements related to decisions on liability by insurers be prescribed in regulations. 67	Supported
P:27	It is proposed the new statute discontinue the Director's oversight role of claims where a decision on liability is not made within the prescribed time. 67	Supported
P:28	It is proposed where an insurer is not able to make a decision within the prescribed timeframe the insurer must issue a prescribed notice. The insurer must reissue the notice every 14 days until a decision on liability is made..... 67	Refer to ICA Submission pages 6-7
	Minor claims	
P:29	It is proposed the new statute introduce a minor claim pathway allowing for payments of up to \$750 (indexed annually) by insurers to workers without an admission of liability. 70	Not supported. We understand that this proposal has been withdrawn. We request the opportunity for further submissions if it proceeds
	Recurrence of injury	
P:30	It is proposed the claim form and medical certificate be amended to include a section in relation to a recurrence of injury. 70	Supported
	Definition of 'prescribed amount'	
P:31	It is proposed the new statute: i) locate the definition of the prescribed amount in the Compensation Part; ii) introduce a head of power for regulations to prescribe the annual indexation method; iii) make clear the prescribed amount is exclusive of	Supported subject to ICA Submission under Proposal 182 page 20.

Proposal	Detail of Proposal	Insurance Industry Response
	GST. 72	
	Compensation entitlements	
P:32	It is proposed the new statute consolidate worker entitlements in the Compensation Part and clearly identify provisions applicable to each class of entitlement..... 72	Supported with the proviso that the word “entitlement” with “benefit” to better describe the item
	Definition of ‘medical expenses’	
P:33	It is proposed the new statute define ‘medical expenses’ to include all medical and allied health expenses currently capped at 30% of the prescribed amount. 73	Supported
	Definition of ‘other expenses’	
P:34	It is proposed the new statute define ‘other expenses’ to include current worker entitlements that do not form part of the maximum entitlement for medical expenses..... 73	Supported subject to ICA Submission page 7
	First aid and emergency expenses	
P:35	It is proposed the new statute introduce an entitlement to reasonable expenses associated with ambulance or other service used to transport a worker to hospital or other place for medical treatment (which will not form part of the maximum entitlement for medical expenses).... 73	Supported subject to ICA Submission page 7
	Common law impairment assessment expenses	
P:36	It is proposed the new statute clarify the entitlement for expenses associated with a worker’s first common law impairment assessment includes the cost of referrals to medical practitioners or specialists in order to complete the assessment. 74	Supported
	Calculation of weekly payments	
P:37	It is proposed the new statute simplify the method of calculating weekly payments by basing the calculation for all workers on pre-injury earnings. 76	Supported subject to ICA Submission pages 7- 8
P:38	It is proposed the new statute extend the operation of current Amount Aa to accommodate calculation of earnings for part time award workers. 76	Not supported. Refer to ICA Submission pages 7-8
P:39	It is proposed weekly payments of workers (award and non award) who have entered into concurrent contracts of service be calculated on the basis of pre-injury earnings. 76	Supported
	Entitlement to leave while incapacitated	
P:40	It is proposed the new statute provide: i) a worker may access accrued leave entitlements while incapacitated; ii) a worker may receive leave entitlements and weekly compensation concurrently; iii) leave cannot be paid in replacement of weekly compensation. 77	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	Compensation for permanent impairment	
P:41	It is proposed the new statute provide lump sum compensation for permanent impairment is an independent entitlement and may be obtained without entering into a settlement. 79	Not supported. Refer to ICA Submission page 8
P:42	It is proposed the new statute provide receipt of lump sum compensation for permanent impairment does not impact a worker's entitlement to ongoing compensation or constrain the right to pursue and receive common law damages (unless it forms part of a settlement). .. 79	Supported.
	Audiometric testing	
P:43	It is proposed WorkCover WA no longer approve audiometers or audiometric booths.....82	Supported. Refer to ICA Submission under Proposal 53 pages 9-10.
P:44	It is proposed baseline and subsequent audiometric testing must be undertaken where a worker is required, or should be required, by the employer to use personal hearing protection equipment. 82	Supported. Refer to ICA Submission under Proposal 53 pages 9-10.
P:45	It is proposed the new statute empower WorkCover WA to deem a workplace as one where audiometric testing must occur. 82	Supported. Insurers would like access to the list of prescribed workplaces.
	Compensation for noise induced hearing loss	
P:46	It is proposed the claims process for NIHL be reviewed and prescribed in regulations....83	Supported subject to appropriate consultation on the regulations to allow feedback on operational aspects and impacts.
P:47	It is proposed standard decision making timelines for processing of claims will apply to the insurer of the last liable employer. 83	Not supported. Refer to ICA Submission page 8-9
P:48	It is proposed a subsequent audiometric test (air conduction) indicating 10% or more hearing loss be deemed <i>prima facie</i> evidence of the worker sustaining NIHL. 83	Supported. Refer to ICA Submission under Proposal 53 page 9
	Disputed NIHL tests or assessments	
P:49	It is proposed where a party disputes a test or assessment conducted in relation to a NIHL claim, the disputing party is responsible for the cost of any further testing. 83	Supported. Refer to ICA Submission under Proposal 53 page 9
	No baseline test	
P:50	It is proposed where a worker has an audiometric test which indicates 10% or more loss of hearing but a baseline test was not completed, the worker be required to obtain a full NIHL assessment at their expense unless the current employer was obliged to conduct the baseline test. 84	Supported. Refer to ICA Submission under Proposal 53 page 9
P:51	It is proposed where a baseline test was not completed a full NIHL assessment indicating 10% or more NIHL is <i>prime facie</i> evidence of the worker sustaining	Supported. Refer to ICA Submission under Proposal 53 page 9

Proposal	Detail of Proposal	Insurance Industry Response
	NIHL.....84	
	Full NIHL Assessment	
P: 52	It is proposed the new statute provide for a full NIHL assessment which: i) will determine both the extent and work relatedness of the hearing loss; ii) may be conducted by an audiologist or an otorhinolaryngologist. 84	Supported. Refer to ICA Submission under Proposal 53 page 9
	Apportionment of NIHL liability	
P:53	It is proposed the new statute enable an employer, who is liable to compensate a worker for NIHL, to seek a contribution proportionate to the period of employment from other employers where: i) the worker was employed by the other employer in a workplace to the nature of which NIHL is due; ii) the period of employment was within 5 years prior to the date the claim is accepted or determined. 86	Supported subject to ICA Submission page 9
	Provision of information on NIHL liability	
P:54	It is proposed the new statute empower WorkCover WA to provide information to insurers on the status of insurance coverage of employers. 86	Supported however additional information would also be welcome such as which states the injured person has worked in.
	Compensation for asbestos related diseases	
P:55	It is proposed Schedule 5 of the current Act be repealed and provisions impacting on compensation for asbestos related diseases be located in the Compensation Part of the new statute. .. 87	Supported
	Lump sum compensation for asbestos related diseases	
P:56	It is proposed the new statute define an 'asbestos diseases lump sum'..... 88	Supported
P:57	It is proposed the new statute clarify the asbestos diseases lump sum applies to workers suffering pneumoconiosis, mesothelioma, lung cancer and diffuse pleural fibrosis.88	Supported
P:58	It is proposed the asbestos diseases lump sum amount be 30% of the prescribed amount (the current lump sum is approximately 30% of the prescribed amount). 88	Supported
P:59	It is proposed the supplementary weekly payment for asbestos disease be discontinued..88	Supported
P:60	It is proposed the new statute clarify receipt of the asbestos diseases lump sum finalises statutory payments but does not constrain the right to pursue and receive common law damages. 88	Supported
	Successive lung diseases	
P:61	It is proposed the new statute consolidate the successive lung disease provisions	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	which will include diffuse pleural fibrosis. 89	
	Common law procedural requirements for asbestos diseases	
P:62	It is proposed the new statute align common law procedural requirements relating to asbestos diseases with current practice. ... 91	Supported
	Death and funeral entitlements	
P:63	It is proposed the new statute introduce a new framework for death and funeral entitlements. 92	Supported
	Definition of 'dependant' etc	
P:64	It is proposed the definition of the terms 'dependant', 'member of the family', 'spouse' and 'defacto partner' be consolidated in the new statute and located within the subdivision dealing with death entitlements. 93	Supported
	Lump sum death benefit	
P:65	It is proposed the new statute introduce a new maximum 'lump sum death benefit' for family members totally dependent on the worker's earnings. 95	Supported subject to ICA Submission page 9
P:66	It is proposed the lump sum death benefit be increased from \$283,418 to 2.5 times the prescribed amount (currently \$516,855).. 95	Supported subject to ICA Submission page 9
P:67	It is proposed no deduction is to be made from the lump sum death benefit for prior workers' compensation payments to the deceased worker. 95	Not supported. Refer to ICA Submission page 9
	Lump sum apportionment	
P:68	It is proposed the new statute set out, in table form, the family members eligible for the lump sum death benefit and their proportionate share. 97	Supported
P:69	It is proposed totally dependent children be entitled to a share of the lump sum death benefit in addition to the prescribed children's allowance. 97	Supported
P:70	It is proposed the lump sum payment for a partial dependent be an amount proportionate to the loss of financial support suffered. The lump sum payment is not to exceed the maximum amount for total dependency (or the prescribed maximum for a dependent spouse, defacto partner or child). 97	Supported
P:71	It is proposed the new statute no longer provide for a minimum amount payable as a death benefit to dependents. 97	Supported
	Dependent child allowance	
P:72	It is proposed the prescribed children's allowance of \$54.20 per week (indexed annually) be available to both totally and partially dependent children. 97	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	Dependent child allowance and lump sum	
P:73	It is proposed the requirement for a child to elect between the prescribed children's allowance and lump sum payment be discontinued..... 98	Supported
	Funeral and other expenses	
P:74	It is proposed the new statute consolidate all provisions relating to funeral expenses and medical treatment for a worker who dies..... 98	Supported subject to ICA Submission page 10
	Death benefits – Trust Account	
P:75	It is proposed the new statute provide for payment of the prescribed children's allowance from WorkCover WA's Trust Account either weekly or any other period as specified in an order, but not as an advance payment or commutation. 99	Supported
P:76	It is proposed the new statute provide for the amount of the prescribed children's allowance to be discharged as a liability of the employer/ insurer by payment of a lump sum to WorkCover WA. 99	Supported
	Redemption of death benefit claim in certain circumstances	
P:77	It is proposed the entitlement of a dependent to redeem a claim where a worker dies, but the death is not the result of the compensable injury, be discontinued..... 99	Supported
	Claim management provisions	
P:78	It is proposed the new statute consolidate all provisions relating to the ongoing management of a claim. 100	Supported
	Medical examinations	
P:79	It is proposed the new statute consolidate provisions relating to employer initiated medical examinations. 101	Supported subject to ICA Submission page 10
	Application to vary compensation	
P:80	It is proposed the new statute introduce a single provision enabling a worker, employer or insurer to apply to the Conciliation and Arbitration Services to vary (discontinue, suspend, reduce) a worker's entitlement. 102	Supported subject to ICA Submission page 10
	General power to vary compensation	
P:81	It is proposed the new statute clearly outline the specific circumstances in which an employer can vary (discontinue, suspend or reduce) a worker's entitlement..... 104	Supported subject to ICA Submission page 10
P:82	It is proposed the new statute clarify an employer may discontinue or reduce compensation, without issuing a notice to a worker, where an injured worker has returned to work with the employer. .. 104	Supported subject to ICA Submission page 10

Proposal	Detail of Proposal	Insurance Industry Response
	Returning to remunerated employment	
P:83	It is proposed where a worker fails to provide details of remunerated work with another employer upon request, weekly payments may be suspended (without the order of an arbitrator) until the details are provided. ... 104	Supported
P:84	It is proposed, in relation to commencing remunerated work with another employer, procedural requirements to notify be contained in regulations. 104	Supported
	Suspension of entitlements	
P:85	It is proposed the new statute, where required, state expressly whether a suspension is to all forms of compensation or only a specific form of compensation. 105	Supported
	Workers residing outside the state	
P:86	It is proposed the new statute provide, where an injured worker resides outside the state, all compensation entitlements be suspended unless there is a current certificate of incapacity..... 105	Supported
	Definition of 'medical practitioner'	
P:87	It is proposed the new statute define 'medical practitioner' to include persons who are: i) registered by the Australian Health Practitioner Regulation Agency; ii) appropriately qualified and registered outside the Commonwealth as a medical doctor. 106	Refer to ICA Submission page 11.
	Entitlements of workers in custody	
P:88	It is proposed the new statute provide, where a worker is in custody or serving a term of imprisonment, entitlements may be suspended by an employer without the order of an arbitrator. 107	Supported
	Disputes between insurers	
P:89	It is proposed the new statute clarify the provisions regarding disputes between employers and disputes between insurers, while maintaining the intent of the current provisions. 108	Supported
	Safety net arrangements where employer uninsured	
P:90	It is proposed the new statute require a principal contractor to be made a party to proceedings if WorkCover WA is made aware the principal contractor may have a liability (in accordance with current s175). 109	Supported
P:91	It is proposed the new statute require a principal contractor to pay compensation due to a worker of an uninsured employer (with whom the principal is jointly and severally liable), irrespective of whether an award is made against the direct	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	employer only. 109	
	Statutory settlement pathways	
P:92	It is proposed the new statute introduce a new settlement regime consisting of a: i) primary pathway; ii) secondary pathway available in special circumstances. 113	Not supported. Refer to ICA Submission page 11
P:93	It is proposed a settlement finalises a worker's statutory claim for compensation and ends a worker's right to pursue and receive common law damages. 113	Supported
	PART 3 - INJURY MANAGEMENT	
	Structure of Part	
P:94	It is proposed the Injury Management Part of the new statute: i) be structured with separate divisions for each discrete aspect of injury management; ii) outline the responsibility of participants under the appropriate division or subdivision. 117	Supported
	Definition of 'return to work'	
P:95	It is proposed the definition of 'return to work' be located in the Injury Management Part of the new statute. 117	ICA submits that the general definition section remain located in the front section of the Act.
	Code of Practice (Injury Management)	
P:96	It is proposed the <i>Code of Practice (injury management)</i> be discontinued..... 118	Supported
P:97	It is proposed the key requirements outlined in the <i>Code of Practice (injury management)</i> be included in the operative provisions of the new statute, as appropriate. 118	Supported
P:98	It is proposed the new statute introduce a head of power for regulations to prescribe requirements for injury management systems and return to work programs. 118	Supported subject to ICA Submission under Proposal 182 page 20.
	Role of treating medical practitioner	
P:99	It is proposed the new statute recognise the injury management role of an injured worker's treating medical practitioner. 120	Supported
	Issuing of medical certificates and work capacity	
P:100	It is proposed medical certificates (certificates of capacity) must: i) certify the injured worker's incapacity for work; ii) state whether the worker has a current work capacity or has no current work capacity during the period stated in the certificate; iii) specify the expected duration of the worker's incapacity. 120	Supported subject to ICA Submission page 12
	Medical certificate regulations	
P:101	It is proposed the new statute introduce a head of power for regulations to prescribe requirements or conditions on the issuing and content of medical certificates. 120	Supported subject to ICA Submission under Proposal 182 page 20.

Proposal	Detail of Proposal	Insurance Industry Response
	Form of medical certificates	
P:102	It is proposed the new statute empower the WorkCover WA CEO to approve the form of medical certificates. 120	Supported
	Return to work programs	
P:103	It is proposed the new statute expressly provide a worker must participate in a return to work program (including its establishment) if the employer is required to establish a program. 121	Supported with comments provided in ICA Submission page 12
	Pre-injury position and suitable duties	
P:104	It is proposed the new statute clarify, where a worker attains partial or total capacity for work, the employer is to provide the worker with their pre-injury position. 125	Supported
P:105	It is proposed the new statute clarify, where a worker attains partial or total capacity for work but is unable to perform their pre-injury position, the employer is to provide suitable duties to the worker. .. 125	Supported
P:106	It is proposed the obligation to provide the pre-injury position or suitable duties not apply if: i) it is unreasonable or impracticable for the employer; or ii) the worker has been lawfully dismissed. 125	Supported
P:107	It is proposed the new statute clarify the requirement to provide the pre-injury position or suitable duties continues for 12 months, commencing when the worker is first totally or partially incapacitated from work. 125	Supported
	Dismissal of worker	
P:108	It is proposed the new statute clarify that an employer must not dismiss a worker solely or mainly because the worker is not fit for employment in a position because of the injury. The prohibition is to apply for a period of 12 months after a worker is first totally or partially incapacitated from work. 125	Supported
P:109	It is proposed the new statute require an employer to notify WorkCover WA, within 14 days of notifying the worker of their dismissal. The requirement is to apply for a period of 12 months after a worker is first totally or partially incapacitated from work. 125	Supported
	Injury management case conferences	
P:110	It is proposed a worker be required to attend an injury management case conference if requested by the employer or insurer. 127	Supported
P:111	It is proposed an injury management case conference must be attended by the worker, the worker's treating medical practitioner, and either the employer or the insurer or both. 127	Supported
P:112	It is proposed an injury management case conference must not be utilised for the	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	purpose of obtaining a medical examination or medical report or to determine questions of liability. 127	
P:113	It is proposed if a worker refuses or fails to attend an injury management case conference without reasonable excuse, an order may be sought in the Conciliation and Arbitration Services to compel the worker to attend. If the worker fails to comply with an order, their entitlement to compensation may be suspended. 127	Supported with comments in ICA Submission page 13
	Workplace rehabilitation definition	
P:114	It is proposed the new statute introduce and define the term ‘workplace rehabilitation.’ The use of the term ‘vocational rehabilitation’ will be discontinued. 128	Supported
	Regulation of workplace rehabilitation providers	
P:115	It is proposed WorkCover WA may: i) subject to criteria and conditions, approve a workplace rehabilitation provider for a period not exceeding three years; ii) suspend or revoke an approval; iii) impose conditions on an approval; iv) define services taken to be ‘workplace rehabilitation’. 129	Supported
P:116	It is proposed WorkCover WA may: i) establish performance standards for workplace rehabilitation providers generally or specifically and monitor compliance with those standards; ii) adopt the provisions of other publications for the purpose of setting eligibility criteria for approval, and ongoing conditions and performance standards. 129	Supported
	Specialised retraining programs	
P:117	It is proposed the specialised retraining program regime be discontinued. 130	Supported
	Medical and allied health services	
P:118	It is proposed the new statute introduce a head of power for regulations to prescribe: i) compensable health services; ii) the class of professionals eligible to provide compensable services; iii) any qualifications or experience a person requires to give or provide a treatment or service to an injured worker. 131	Supported subject to ICA Submission under Proposal 182 page 20.
	Medical and allied health fees	
P:119	It is proposed the head of power to fix scales of fees for medical and health services be located in the Injury Management Part of the new statute. 132	Supported subject to ICA Submission under Proposal 182 page 20.
	Health services directions	
P:120	It is proposed the new statute include a head of power for WorkCover WA to issue directions: i) establishing rules to be applied in determining whether a treatment or	Supported subject to ICA Submission under Proposal 182 page 20.

Proposal	Detail of Proposal	Insurance Industry Response
	service is reasonably necessary; ii) limiting the kinds of treatment and service (and related travel expenses) for which an employer is liable; iii) establishing standard treatment plans for the treatment of particular injuries or classes of injury..... 132	
	PART 4 - MEDICAL ASSESSMENT	
	Regulation of Approved Medical Specialists	
P:121	It is proposed the new statute include a head of power for regulations to prescribe a framework for the regulation of Approved Medical Specialists. 135	Supported subject to ICA Submission under Proposal 182 page 20.
P:122	It is proposed Approved Medical Specialists be approved for a 3 year period. 135	Supported
P:123	It is proposed the WorkCover WA CEO be empowered to require an Approved Medical Specialist to produce impairment assessments for inspection and review on request 135	Supported
P:124	It is proposed the new statute include an express power for WorkCover WA to place conditions on the designation of an Approved Medical Specialist, and suspend or revoke a designation for non-compliance with conditions. 135	Supported subject to ICA Submission under Proposal 182 page 20.
	Medical assessment panels	
P:125	It is proposed WorkCover WA approve a medical practitioner for the purposes of the register of medical practitioners eligible to be a member of a panel. 138	Supported provided there are clear guidelines in place outlining the level of training and experience required.
P:126	It is proposed the WorkCover WA CEO convenes and appoints the Chairperson of all medical panels. 138	Supported
P:127	It is proposed separate provisions for Approved Medical Specialist panels be discontinued. 138	Supported
	Medical advisory committee	
P:128	It is proposed the new statute empower WorkCover WA to appoint medical practitioners to the medical advisory committee. 138	Supported
	PART 5 - LIABILITY AND INSURANCE	
	Policy of insurance – terminology	
P:129	It is proposed the new statute refer to ‘policy of insurance’ throughout, rather than ‘contract of insurance.’ 140	Supported
	Exclusion of war	
P:130	It is proposed workers’ compensation insurance policies be required to indemnify	Not supported. Refer to ICA Submission page 14

Proposal	Detail of Proposal	Insurance Industry Response
	claims arising out of war and other hostilities.141	
	Audit of remuneration declarations	
P:131	It is proposed the new statute provide in prescribed circumstances audit costs incurred by WorkCover WA or an insurer be recoverable from an employer. 143	Supported subject to ICA Submission pages 14-15
	Remuneration declarations – record keeping	
P:132	It is proposed the new statute require employers to make and maintain correct records of remuneration and the trade or occupation of all ‘workers’ employed by the employer. 143	Supported
P:133	It is proposed the new statute require records of employment be retained for 7 years from the date a worker ceases to be employed by the employer. 143	Supported
	Remuneration declarations in the contract chain	
P:134	It is proposed the new statute not require a principal within the meaning of section 175 of the current Act to estimate and verify remuneration details of contractors’ workers if: i) the relevant contractor’s insurance policy is extended to indemnify the principal for liabilities under section 175; ii) the principal has evidence of the relevant contractor’s valid certificate of currency and principal indemnity extension; iii) the principal verifies this information at commencement and renewal of their own insurance policy. 145	Refer to ICA Submission page 15
	Contractual indemnities	
P:135	It is proposed the new statute void any term of a contract which requires an employer to indemnify a third party in respect of the third party’s liability to pay personal injury damages. 148	Supported subject to ICA Submission pages 15-16
P:136	It is proposed the new statute prohibit a third party from requiring an employer to obtain a policy of insurance extending cover to a third party for its liability to pay personal injury damages. 148	Supported subject to ICA Submission pages 15-16
P:137	It is proposed the prohibition on contractual indemnities will not apply to a principal extending the statutory indemnity under s175(2) to include liability to pay damages to a contractor’s workers. 148	Supported subject to ICA Submission page 15-16
	Self insurance approvals	
P:138	It is proposed the new statute empower WorkCover WA to approve self insurers and to review, cancel or revoke approvals. 149	Supported
	Conditions on self insurance	
P:139	It is proposed the new statute empower WorkCover WA to attach conditions to a self insurance approval at any time during the approval period. 149	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	Requirements for self insurance	
P:140	It is proposed the new statute require each self insurer to: i) provide a bank guarantee against their liabilities; ii) hold common law and catastrophic reinsurance cover (in addition to the bank guarantee) on prescribed terms; iii) provide WorkCover WA with an annual actuarial assessment of outstanding liabilities on prescribed terms. 150	Supported
	Self insurer performance	
P:141	It proposed the new statute provide WorkCover WA with express authority to: i) monitor or audit the performance of a self insurer; ii) require a self insurer to provide WorkCover WA with relevant information on request. 150	Supported
	Use of securities	
P:142	It is proposed the new statute provide WorkCover WA with express authority to: i) draw on securities given by a self insurer where the self insurer cannot meet the cost of payments due under the statute; ii) manage claims of a default self insurer and exercise its powers through an agent. 151	Supported
	Licensing of insurers	
P:143	It is proposed the new statute introduce the term 'licensed insurer' to replace the term 'approved insurer'. 152	Supported
P:144	It is proposed the new statute empower WorkCover WA to license insurers..... 152	Supported
	Conditions on licensed insurers	
P:145	It is proposed the new statute empower WorkCover WA to impose conditions on licensed insurers. 152	Refer to ICA Submission page 16
	Insurer performance monitoring	
P:146	It is proposed the new statute provide WorkCover WA with express authority to monitor whether an insurer complies with licence approval criteria and conditions. 153	Supported
	Insurer to act on behalf of employer	
P:147	It is proposed the new statute clearly establish where a reference to an employer includes a reference to an insurer. 153	Supported
	Approved insurer – requirement to quote	
P:148	It is proposed the new statute oblige insurers to provide a quote on the premium likely to be charged, if requested by an employer. 154	Not supported. Refer to ICA Submission pages 16-17
	Approved insurer – requirement to provide insurance	
P:149	It is proposed an insurance indemnity cover all 'workers' employed or engaged by	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	the employer. 155	
P:150	It is proposed an omission in the request for insurance regarding the description of the employer's business classification cannot be used to refuse to indemnify the employer. . 155	Supported. Refer to ICA Submission pages 17
	Burning cost policies	
P:151	It is proposed the new statute provide for and regulate burning cost policies (i.e. policies with an extended period and alternative methods for calculating premium). 156	Supported subject to ICA Submission page 18
P:152	It is proposed the new statute clarify that burning cost policies are optional and must not be used by insurers as a compulsory form of policy - their use and the amount of premium payable must be negotiated between the employer and insurer..... 156	Supported subject to ICA Submission page 18
P:153	It is proposed the premium appeal mechanism not apply to burning cost policies..... 156	Supported subject to ICA Submission page 18
P:154	It is proposed the standard employer indemnity terms and conditions apply to burning cost policies. 156	Supported subject to ICA Submission page 18
P:155	It is proposed the new statute introduce a head of power for regulations to prescribe specific terms and conditions for burning cost policies. 156	Refer to ICA Submission page 18
P:156	It is proposed the requirement to provide an annual statement of remuneration will apply to all employers including those who negotiate burning cost policies..... 156	Supported subject to ICA Submission page 18
	Lapsing of policies	
P:157	It is proposed the new statute define when a policy has lapsed. 157	Supported
P:158	It is proposed the new statute clarify an insurer is on risk and must indemnify an employer for up to 7 days from the time WorkCover WA receives a lapsed policy notice by the insurer. 157	Supported, however if alternative cover is confirmed prior to this time, then the policy should lapse from the earlier date.
P:159	It is proposed WorkCover WA approve the form and manner in which the lapsed policy notice is to be given. 157	Supported, however insurers would like to ensure there is adequate lead time to comply.
P:160	It is proposed the new statute make clear a policy of insurance is not cancelled by virtue of having lapsed. 157	Supported
	Cancellation of policies	
P:161	It is proposed the new statute enable WorkCover WA to permit an insurer to cancel a policy of insurance for non payment of premium where: i) the insurer has given reasonable notice to the employer about the amount due; ii) the premium has remained unpaid for a prescribed period. 158	Not supported. Refer to ICA Submission page 18
	Regulation of policy of insurance	
P:162	It is proposed all terms and conditions of standard employer indemnity policies be	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	reviewed and prescribed by regulations including the form of the policy. 159	
P:163	It is proposed the new statute enable WorkCover WA to approve, limit or modify policy endorsements or extensions by regulation. ... 159	Not supported. Refer to ICA Submission pages 18-19
	Insurance Commission and public authorities	
P:164	It is proposed section 44 of the <i>Insurance Commission of Western Australia Act 1986</i> , in relation to the self insurance status of public authorities, be repealed..... 160	Supported
P:165	It is proposed the new statute: i) deem ICWA an approved insurer in respect of workers' compensation obligations of public authorities; ii) apply the claims procedure and obligations for insured employers and private insurers to public authorities and ICWA respectively. 160	Supported
	Mining employers – insurance obligations	
P:166	It is proposed the existing insurance regime for workers' compensation liabilities of mining employers be discontinued. 162	Not supported. Refer to ICA Submission page 19
P:167	It is proposed mining employers be required to insure asbestos liabilities with approved workers' compensation insurers under standard insurance policies. ... 162	Supported
P:168	It is proposed the new statute require approved insurers to indemnify mining employers for asbestos diseases from a proclaimed date. . 162	Supported
	PART 6 - DISPUTE RESOLUTION	
	Conciliation filing requirement	
P:169	It is proposed the requirement to negotiate prior to filing an application for conciliation be discontinued. 164	Not supported. Refer to ICA Submission page 20
	Registered agents regime	
P:170	It is proposed the regulatory regime for the registration of agents be discontinued. 168	No Submission
	Appearing in the Conciliation and Arbitration Services	
P:171	It is proposed the new statute specify the classes of persons who may attend on behalf of a party to a dispute. 168	Supported provided there is no restriction placed on representatives employed by insurance companies
	PART 7 - COMMON LAW	
	Abolition of termination day	
P:172	It is proposed the termination day regime be discontinued. 174	Supported
	Election to retain right to seek damages	
P:173	It is proposed a worker can only elect to pursue common law damages if the	Supported

Proposal	Detail of Proposal	Insurance Industry Response
	Director has recorded the worker's whole person impairment, which must be assessed by an Approved Medical Specialist. 174	
P:174	It is proposed a whole person impairment assessment and common law election may be lodged and recorded as a single process..... 174	Supported
	Commencement of proceedings	
P:175	It is proposed the new statute require the common law threshold and procedural requirements be met in relation to an injury prior to the commencement of proceedings for damages. 175	Supported
	Common law settlements - section 92(f)	
P:176	It is proposed the settlement of a claim for damages by agreement is void unless the common law threshold and procedural requirements are met in relation to the injury. 175	Not Supported. Refer to ICA Submission page 21
P:177	It is proposed the new statute require the Director to disapprove a settlement filed under s92(f) if the common law threshold and procedural requirements are not met in relation to the injury. 175	Not Supported. Refer to ICA Submission page 21
	PART 8 - SCHEME REGULATION AND ADMINISTRATION	
	Information management	
P:178	It is proposed the new statute clearly outline: i) requirements for the provision of information to WorkCover WA; ii) the circumstances where release of information held by WorkCover WA can occur. 179	Supported in principle to appropriate consultation on item (i) concerning the ability of insurers to capture information and the cost involved.
	Penalties	
P:179	It is proposed all fines under the current Act be reviewed and incorporated in the new statute. 180	Supported subject to ICA Submission page 22
P:180	It is proposed the new statute introduce a penalty unit system for all offences which includes automatic indexation. 180	Supported subject to ICA Submission page 22
	Infringement notice time frame	
P:181	It is proposed the new statute enable infringement notices to be given within 24 months after the offence is believed to have been committed. 180	Supported
	PART 9 - MISCELLANEOUS	
	Regulation making powers	
P:182	It is proposed, where possible, heads of power for prescribing regulations are located in the relevant Parts of the new statute. 181	Supported subject to ICA Submission page 23