

29/11/2023



Mr Chris White
Chief Executive Officer
Work Cover WA
2 Bedrock Place
Shenton Park WA 6008

Sent via email: chris.white@workcover.wa.gov.au

Dear Mr White,

WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 2023 IMPLEMENTATION CONSULTATION PAPERS

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in Western Australia (WA). CME is funded by member companies responsible for 86 per cent of the State's mineral and energy workforce employment,¹ ranging from mining (mineral and petroleum commodities) to manufacturing (alumina, basic inorganic chemicals and explosives) and supporting services.

CME is funded by member companies responsible for more than 55 per cent of Australia's mining new capital expenditure² and 44 per cent of Australia's corporate income tax receipts by value in 2020-21.³

The value of royalties received from the sector totalled \$12.6 billion in 2022-23, accounting for 29 per cent of general government revenue.⁴

Summary of recommendations

CME appreciates the opportunity to provide feedback towards the *Workers Compensation and Injury Management Act 2023* (WCIMA23) implementation consultation papers (Consultation Paper) for the accompanying regulations (the Proposed Regulations). In preparing this, CME has sought input from member companies to provide an industry perspective on the implementation of the regulatory framework. A summary of recommendations is included below, with further supporting details outlined in the following submission.

- CME believes consideration should be given to the complex nature of presumptive diseases, acknowledging all contributing factors. This may help contribute towards fair and just compensation.
- CME suggests that solely linking bursitis to a prescribed employment, without considering repetitive activities both at work and home, may not accurately identify the cause of the disease. CME recommends that WorkCover WA considers all potential contributing factors attributing to bursitis to ensure fair compensation.
- CME recommends the development of information sheets that outline respectful questions for insurers about prior compensation claims to gather relevant information while respecting the privacy of injured workers.
- CME recommends the definition of employer under s.171 of the WCIMA23 be clarified to ensure that employed medical practitioners and health professionals are not captured in the definition of employer.
- CME recommends that the judicious granting of provisional payments should be aligned with genuine incapacity. CME proposes a time frame of 56 days instead of 28 days to balance expediency and thorough evaluation in this process.
- CME supports the extension proposed in the Proposed Regulations. Increasing the deemed liability acceptance day from 90 to 120 days, addresses concerns previously raised by CME

¹ Government of Western Australia, [2022 Economic indicators resources data](#), full-time equivalents onsite under State legislation, Department of Mines, Industry Regulation and Safety, 21 April 2023.

² Australian Bureau of Statistics, [5625.0 Private New Capital Expenditure and Expected Expenditure Australia](#), December 2022 reference period, tables 1 and 15.

³ Australia-wide operations of companies with direct, equity joint venture or subsidiary interests in WA-based member projects. Commonwealth of Australia, [2020-21 Report of Entity Tax Information](#), Australian Taxation Office, 3 November 2022.

⁴ Includes Commonwealth grants from Northwest Shelf royalties, excise arrangements and iron ore lease rentals. Government of Western Australia, [2022-23 Annual report on State finances](#), Department of Treasury, 28 September 2023, table 2.1.

members and provides insurers with a more comprehensive timeframe for medical and factual investigations.

- CME recommends amendments to Consultation Paper 6 to clarify whether there is an uncapped time limit for retaining a position and whether the submission of Form 15G is mandatory for termination, regardless of the duration of the position being held open.
- CME recommends that the interval for return-to-work case conferences be amended to 2 weeks, as this adjustment may enhance the effectiveness of rehabilitation strategies.
- CME seeks confirmation on whether records from air and health monitoring programs as provided in the WHS Regulations would be considered when a dust-related compensation is submitted.

Consultation papers

The WCIMA23 is a complete rewrite of the workers compensation legislation and is the culmination of an extensive review and consultation process dating back to WorkCover WA's 2009 legislative [review](#). As previously conveyed through consultation towards the WICIMA23, CME welcomes the modernisation of the *Workers' Compensation and Injury Management Act 1981* (the Current Regime), provided it avoids unnecessary prescription and administrative burden.

Following the passage of the WCIMA23 in October 2023, the focus has shifted to the development, publication, communication, and integration of new regulations, administrative instruments, and supporting infrastructure into the systems of WorkCover WA. The high level of consultation from the regulator has been seen favourably by the WA resources industry. CME commends WorkCover WA for its efforts to make this consultation process fair and transparent for all parties.

The following provides specific feedback on 19 of the 27 [Consultation Papers of the Proposed Regulations](#).

Presumptive Diseases

Section 10 of the WCIMA23 provides for regulations to be made which establish a presumption of injury from employment for prescribed diseases. Consultation Paper 2 provides that presumptive diseases, supported by scientific evidence, will be closely based on [Safe Work Australia's Deemed Diseases](#), with modifications tailored to the WA needs. The inclusion of a presumptive disease list serves to shift the burden of proof where there is a considerable likelihood that the disease has originated from work-related exposures. CME recognises the utility of a presumptive disease list and acknowledges that the process aids workers who have encountered a presumed work-related injury within a specified sector, thereby simplifying the handling of claims.

CME understands the inclusion of presumptive diseases will provide flexibility to update the list to accommodate new potential diseases and job categories. For example, the COVID-19 pandemic prompted quick amendments to the Current Regime in 2020.⁵ CME recognises the benefits of flexibility; however, reiterates concerns previously communicated regarding the governance and oversight required to ensure that items included or removed from the prescribed diseases list are subject to scrutiny and consultation. As such, the provision of a proposed table of prescribed diseases and prescribed employment in Consultation Paper 2 is welcomed.

CME believes consideration should be given to the complex nature of presumptive diseases, acknowledging all contributing factors. This may help contribute towards fair and just compensation.

Of the 51 items included in Consultation Paper 2, CME suggests that further consideration be given to presumptive disease 49 – Bursitis. Consultation Paper 2 provides that bursitis (at the elbow or knee) is a presumptive disease with a prescribed employment based solely on employment for at least six months involving prolonged external friction, pressure, or repetitive motion.

The broadly defined prescribed employment suggests that the complex nature of bursitis development has not been considered. Several factors, including work-related tasks and activities conducted at home, contribute to bursitis. The concern is particularly relevant for the resources sector's workforce, who can spend approximately 30% - 50% of their time at home.

Many employees with repetitive roles on-site often engage in various repetitive activities at home, such as exercise, home renovations or car maintenance. These activities, similar in repetitive nature, might contribute

⁵ Government of Western Australia. [Workers' Compensation and Injury Management Amendment \(COVID-19 Response\) Act 2020](#).

to the development of bursitis. Therefore, attributing bursitis solely to occupational factors without considering the broader context of repetitive activities both at work and at home may not accurately reflect the origins of the disease. CME believes a more comprehensive assessment, considering all potential contributing factors is necessary to ensure fair and just compensation for affected workers.

CME suggests that solely linking bursitis to a prescribed employment, without considering repetitive activities both at work and home, may not accurately identify the cause of the disease. CME recommends that WorkCover WA consider all potential contributing factors attributing to bursitis to ensure fair compensation.

Workers Compensation Claim Form

CME acknowledges that injured workers have the right to seek compensation through an approved claim form. A notable change in the WCIMA23 is that a person cannot, for the purpose of pre-employment, be required to disclose information about their previous workers compensation claims.⁶ While this is understood, CME is concerned that a lack of clarity on this restriction may lead to confusion from insurers in making decisions about claim liability during an injured worker's employment.

It is important to balance the integrity of claims with the rights and privacy of injured workers. CME believes that insurers should be allowed to inquire about previous compensation claims if a claim is submitted by the injured worker, within reasonable bounds. This information can help assess the validity of the claim. To address potential confusion with the application of s.506 of the WCIMA23, CME suggests exploring information sheets that outline potential questions insurers can ask regarding previous compensation claims. These should be designed to gather relevant information when a claim is submitted, while respecting the injured worker's privacy rights. Moreover, this may help establish efficient communication channels between insurers and injured workers, ensuring timely decisions on claim liability without compromising privacy.

CME recommends the development of information sheets that outline respectful questions for insurers about prior compensation claims to gather relevant information while respecting the privacy of injured workers.

Consultation Paper 3 notes that the employer (or insurer or agent) cannot be present when a worker is being physically or clinically examined or treated by the worker's treating medical practitioner.⁷ This is in line with late election promises by the WA Government in the lead up to the 2021 WA election. However, this may require further clarification for situations where the medical practitioners or health professionals and the injured worker have the same employer. For example, due to the remote nature of the resources sector, companies often employ onsite medical practitioners and allied health professionals. They are generally the initial point of contact for conducting examinations to identify the nature of the issue, with the injured worker's consent. If these professionals are unable to be physically present to examine the injured worker as stipulated by the Proposed Regulations, it could pose a significant obstacle to timely and appropriate care. In such scenarios, the injured worker might need to be transported off-site to access medical attention, potentially causing delays and hindering the prompt delivery of treatment. Therefore, CME requests a clear classification of these professionals to ensure obligations under the Proposed Regulations are met and to ensure that workers receive timely and effective care, especially in on-site injury situations.

CME recommends the definition of employer under s.171 of the WCIMA23 be clarified to ensure that employed medical practitioners and health professionals are not captured in the definition of employer.

Certificates of Capacity

A certificate of capacity is an official document that describes an injury, illness, capacity to work, and any limitations you have to perform your regular work tasks. CME previously raised concerns through consultation towards the Current Regime regarding the provision of regulations to permit health professionals, other than medical practitioners, to issue a certificate of capacity.^{8,9} Through consultation, WorkCover WA clarified that instances where the regulations would permit broader health professionals to issue a certificate of capacity would be restricted. WorkCover WA noted the purpose of this inclusion is to offer assistance primarily to individuals with minor claims or those situated in remote areas.

⁶ Government of Western Australia. [Workers Compensation and Injury Management Act 2023](#), s.506.

⁷ Government of Western Australia. [Workers Compensation and Injury Management Act 2023](#), s.171.

⁸ The Chamber of Minerals and Energy. [Workers Compensation and Injury Management Bill 2022 \(WA\) Final Bill Submission to WorkCover Western Australia \(WA\)](#), December 2022.

⁹ Government of Western Australia. [Workers Compensation and Injury Management Act 2023](#), s.169.

CME was pleased to see that further information has been provided in Consultation Paper 4 to specify that the Proposed Regulations will delineate the circumstances in which a medical practitioner who is not the worker's treating medical practitioner, can issue a first certificate of capacity. These circumstances include situations where the worker is in a regional or remote area, has been admitted to a hospital, and received treatment from a medical practitioner not responsible for ongoing primary medical treatment or monitoring the worker's condition and treatment. CME appreciates WorkCover WA's receptiveness to previous feedback which has resulted in practical and constructive changes.

Liability Decisions & Provisional Payments

The WCIMA23 allows provisional payments for income and medical expenses when liability decisions are not made within prescribed timeframes. The process outlines that:

- Insurers must provide a liability decision or deferred decision notice within 14 days of incapacity. Failure results in assumed liability acceptance.
- If a deferred or liability decision isn't issued within 28 days, provisional payments are required.
- If a deferred decision notice is given on time, but a liability decision isn't provided within 120 days (deemed liability acceptance day), liability is assumed, and provisional payments cover entitled compensation.

The current provisions under WCIMA23 allow for provisional payments. This serves as a mechanism for ensuring that workers do not face financial strain during periods of incapacity when liability decisions are pending. CME is concerned with the feasibility and potential exploitation of the prescribed timeframes. The timeframe of 28 days before providing provisional payments may be unachievable, particularly in cases where uncertainties exist regarding compensability. CME member companies have noted that in over 90% of cases, claims are promptly accepted, but complexities arise in the remaining <10%, where decisions are deferred for comprehensive investigations. For example, unclear diagnoses, involve a seven-day initial determination, scheduling of an Independent Medical Examination (IME) by day 21, and a subsequent two-week wait for the IME report, culminating in a 35-day period. For more intricate matters, such as psychological claims with a long-standing history, the process may extend beyond two months. CME believes safeguards should be implemented to ensure that provisional payments are granted judiciously and in alignment with genuine incapacity. To address this, CME members believe a reasonable timeframe, is 56 days, which should be considered to strike a balance between expediency and thorough evaluation.

CME recommends that the judicious granting of provisional payments should be aligned with genuine incapacity. CME recommends extending the timeframe from 28 to 56 days to balance expediency and thorough evaluation in this process.

CME previously communicated concerns regarding the lack of certainty on the deemed liability acceptance day, noting that it would be defined in the Proposed Regulations. Assuming claim acceptance when liability is uncertain could burden employers. As communicated through consultation towards the WCIMA23, CME did not support the inclusion of a tight timeframe to thoroughly assess claim validity. CME therefore appreciates the proposed extension in the Proposed Regulations of the deemed liability acceptance day from 90 to 120 days. A 120-day period allows for more extensive medical and factual investigations by insurers.

CME supports the extension proposed in the Proposed Regulations. Increasing the deemed liability acceptance day from 90 to 120 days, addresses concerns raised by CME members and provides insurers with a more comprehensive timeframe for medical and factual investigations.

Injury Management & Return to Work

The WCIMA23 carries over the obligation for employers to maintain injury management systems and create return-to-work plans for injured workers under the Current Regime. Industry recognises the importance of facilitating a smooth return to work for workers that prioritise the worker's health, well-being and recovery. This is achieved through robust and people-centric injury management systems that integrate with broader workplace safety protocols. For example, phased return-to-work plans, allow injured employees to gradually resume their duties as they recover.

Industry aims to establish frameworks that not only aligns with legal requirements but also ensures a fair and just approach to managing the employment status of injured workers. Therefore, CME seeks clarity on the dismissal process for injured workers as per WCIMA23. Under the Current Regime, employers are required to keep a worker's position open for 12 months, after which termination can occur without the need for Form

15G which is the [notice of intention to dismiss worker](#).¹⁰ To better understand the potential implications and obligations beyond this timeframe, clarity is sought on whether there is an uncapped time limit for retaining a position and whether the submission of Form 15G is mandatory for termination, regardless of the duration of the position being held open.

CME recommends amendments to Consultation Paper 6 to clarify whether there is an uncapped time limit for retaining a position and whether the submission of Form 15G is mandatory for termination, regardless of the duration of the position being held open.

Consultation Paper 6 provides that the Proposed Regulations will stipulate that a worker cannot be obligated to attend a return-to-work case conference more than once every 4 weeks, unless specifically requested by the treating medical practitioner. While we understand this timeframe is intended to balance worker engagement with the need for periodic assessments, CME is concerned regarding its practicality and potential impact when applied to broader worker arrangements. For example, in situations where a worker follows 2 weeks on 1 week off fly-in-fly-out (FIFO) roster, a 2-week interval would align more closely with the nature of these work arrangements. As rehabilitation progresses, the frequency of case conferences can be adjusted to longer intervals, ensuring that the support remains but reduces as the worker advances in their return-to-work journey. However, in the early stages of rehabilitation, CME consider reducing the interval to 2 weeks may be more conducive to effective return-to-work strategies.

CME recommends that the interval for return-to-work case conferences be amended to 2 weeks, as this adjustment may enhance the effectiveness of rehabilitation strategies.

Dust Disease

CME acknowledges that WorkCover WA aims to streamline the legislative and administrative procedures related to workers compensation claims for dust diseases under WCIMA23. Consultation Paper 10 provides that the Proposed Regulations will include a presumption when a worker has been exposed to dust and subsequently develops a dust disease. The responsibility then falls on the employer to demonstrate that the disease did not occur during employment.

The WA resources sector is committed to the health and safety of its workforce and aims to eliminate dust disease. As with all health and safety hazards, industry adopts a risk-based approach to the management of occupational health hazards. Dust is a common recognised hazard and CME member companies actively implement dust suppressant strategies and monitoring programs to prevent over-exposure to dust. For example, controls to manage exposure to dust include wet spray systems and personal protective equipment, which provide a level of protection to workers

Further, mine operators must conduct air and health monitoring to ensure compliance with the Work Health and Safety (Mines) Regulations 2022 (WHS Regulations). Air monitoring determines the concentration of a substance or mixture in the air, as specified by the workplace exposure standard (WES).¹¹ Health monitoring detects any changes in the health status arising from potential exposure to airborne substances. The WHS Regulations specify what requires health monitoring in table 14.1 of Schedule 14.¹² Both air and health monitoring results must be recorded and retained for 30 years.¹³ In addition to complying with these requirements the industry is committed to prioritising the health of workers to prevent the occurrence of dust-related illnesses.

Records from monitoring programs provide data on the levels of dust and silica exposure within workplaces. These records serve as vital evidence in evaluating the extent of occupational exposure, helping to establish a factual basis for addressing allegations of dust/silica-related illnesses. Therefore, CME seeks confirmation on whether records from these monitoring programs as stipulated in the WHS Regulations would be considered when a compensation claim from a dust-related illnesses is submitted. Considering such records facilitates a fair and informed decision-making process in response to health-related concerns.

CME seeks confirmation on whether records from air and health monitoring programs as provided in the WHS Regulations would be considered when a dust-related compensation is submitted.

Conclusion

¹⁰ Government of Western Australia. [Workers' Compensation and Injury Management Act 1981](#) S. 84AB.

¹¹ Government of Western Australia. [Work Health and Safety \(Mines\) Regulations 2022](#) r. 5.

¹² Government of Western Australia. [Work Health and Safety \(Mines\) Regulations 2022 \(WA\)](#) Schedule 14.

¹³ Government of Western Australia. [Work Health and Safety \(Mines\) Regulations 2022](#) r. 50.

CME welcomes WorkCover WA's open and transparent consultation and looks forward to ongoing engagement through the other Consultation Papers. For further information or should you have questions regarding this letter, please contact Naomi Plummer, Policy Advisor - Health, Safety and People, on 0439 843 968 or via email at n.plummer@cmewa.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca Tomkinson', written over a faint circular stamp.

Rebecca Tomkinson
Chief Executive Officer

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