

Submission

09 April 2026

Manager, Policy and Legislative Services
WorkCover WA
2 Bedbrook Place
Shenton Park WA 6008

Via email: consultation@workcover.wa.gov.au

Dear Manager,

Re: Proposed Amendments to the Workers Compensation and Injury Management Act 2023 — Consultation Paper (February 2026)

The National Insurance Brokers Association (NIBA) welcomes the opportunity to respond to WorkCover WA's consultation on proposed technical amendments to the *Workers Compensation and Injury Management Act 2023* (the Act).

Insurance brokers play a critical role in helping Western Australian employers navigate their workers' compensation obligations and ensure injured workers receive their entitlements efficiently. NIBA's submission reflects feedback from our Western Australian members who work directly with employers and insurers across the scheme.

NIBA is broadly supportive of the proposed amendments, which we believe will improve the efficiency of claim settlement, reduce unnecessary administrative burden, and deliver better outcomes for employers and injured workers alike. We have also identified four additional technical matters for WorkCover WA's consideration, drawing on the practical experience of our members in administering workers' compensation arrangements since the Act commenced on 1 July 2024.

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Please find NIBA's detailed submission attached. We would welcome the opportunity to discuss any of the matters raised.

Yours sincerely,



Richard Klipin
Chief Executive Officer
National Insurance Brokers Association

Executive Summary

NIBA supports the intent of the consultation paper to address technical implementation issues that have emerged since the Act commenced on 1 July 2024. Efficient settlement processes, clear entitlement rules, and timely dispute resolution serve both employers who purchase workers' compensation insurance and injured workers who depend on the scheme.

NIBA supports 10 of the 13 proposals without reservation and offers conditional support for Proposals 2, 4 and 6, with amendments to ensure procedural requirements do not inadvertently prevent early settlement of claims where parties have reached agreement. NIBA also raises four additional technical matters identified by our Western Australian members.

Our key recommendations are:

1. Amend the SF1 Settlement Agreement form to include remaining balances to statutory limits for each compensation type, reducing calculation errors and improving registration efficiency.
2. Permit parties to agree on additional income compensation without an arbitrator's order where both parties are legally represented and the Director is satisfied both have entered the agreement with full understanding of their legal rights.
3. Provide for settlement registration without a formal APIA report in limited circumstances where there is sufficient medical evidence, and both parties reach an agreement.
4. Ensure a worker is not compelled to obtain a formal APIA assessment as a precondition to settlement, with appropriate safeguards for acknowledgement.
5. Draft Proposals 4 and 6 consistently so that the APIA assessment requirement does not prevent settlement where parties have reached an agreement and liability remains in dispute.

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6. Legislate a 14-day response timeframe for custody confirmation requests, with provision for temporary suspension of income compensation where a response is not received within that timeframe.
7. Include clear provisions regarding the status and enforceability of arbitration orders on state of connection disputes in relation to courts in WA and workers' compensation schemes in other jurisdictions.
8. Amend s 166 to provide an exemption from the 12-month employment obligation period where the worker's employment would not have continued but for the injury.
9. Address the gap in s 64(2) regarding the cessation of income compensation for workers residing overseas.
10. Reintroduce a process for reassessing liability where a worker's capacity changes after a return to pre-injury duties.
11. Amend s 32 to enable the use of the CN1 consent form to pause income compensation pending completion of earnings declarations when a worker commences new employment.

About NIBA

The National Insurance Brokers Association (NIBA) is the peak body for the insurance broking profession in Australia, representing more than 380 member firms and over 14,000 individual brokers across the country. NIBA's membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, and small and medium-sized businesses located in cities and regional areas around Australia.

Insurance brokers are licensed financial services professionals who act on behalf of their clients — not insurers. They assess a client's risks and needs, source appropriate coverage from across the market, negotiate terms and premiums, and advocate for their clients throughout the claims process.

The broking profession operates under the Corporations Act 2001, holds Australian Financial Services Licences regulated by ASIC, maintains professional indemnity insurance as required by ASIC Regulatory Guide 216, and subscribes to the Insurance Brokers Code of Practice — an enforceable, independently monitored code of conduct.

NIBA's advocacy is guided by three strategic pillars: Advocacy, Professionalism, and Community. We advocate for policy and regulatory settings that support the delivery of quality professional advice to Australians, recognising that the broking profession exists to add value to customers through professional advice and support.

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Response to Proposals

Proposal 1 — Transparency of Settlement Amounts

NIBA Position: Support

NIBA supports maintaining itemised settlement amounts on the SF1 Settlement Agreement form. Transparency in settlement composition is essential for employers and their brokers to verify that amounts fall within statutory limits and that the settlement appropriately reflects the worker's entitlements.

This transparency is particularly important following the ATO Class Ruling CR 2025/88, which confirmed that income compensation commuted to a lump sum is assessable as ordinary income. Accurate identification of each compensation component is now critical for both tax compliance and settlement integrity.

Recommendation 1: NIBA recommends that the SF1 Settlement Agreement form be amended to include remaining balances to statutory limits for each compensation type. This would reduce calculation errors, particularly in relation to income compensation and permanent impairment compensation, which draw from the same combined limit, and improve the efficiency of the registration process for all parties.

Proposal 2 — Extended Medical and Health Expenses and Income Compensation in Settlements

NIBA Position: Support, with amendment to s 52

Medical and health expenses (ss 77 and 78): NIBA supports the proposed amendments to permit parties to agree on extended medical and health expenses within statutory caps as part of a settlement agreement, without requiring an arbitrator's order. Insurers are well placed to assess these applications, given their direct knowledge of the worker's injury and treatment pathway. This amendment will reduce unnecessary referrals to arbitration and support earlier claim resolution, benefiting both employers and injured workers.

NIBA recommends that, where a worker is legally represented, any agreement on extended medical and health expenses be accompanied by a letter from either party setting out the individual settlement components, with written acknowledgement from the other party.

Income compensation (s 52): NIBA supports the proposed amendments to allow additional income compensation ordered by an arbitrator to be included in settlement agreements and agrees that an arbitrator should be able to order payment as a specified lump sum.

However, there are circumstances in which both parties agree on a worker's permanent total incapacity for work, particularly when both are legally represented. In these cases, requiring an arbitrator's order adds cost and delay without a corresponding benefit to either the worker or the employer.

Recommendation 2: NIBA recommends that WorkCover WA consider permitting parties to agree on additional income compensation without an arbitrator's order where the Director is satisfied both parties have entered the agreement with a full understanding of their legal rights.

Proposal 3 — Discontinuation of PI Notice Process

NIBA Position: Support

NIBA supports the proposed amendments to discontinue the multi-step permanent impairment notice process and to accommodate agreement on the degree of permanent impairment as a single step within the settlement agreement. The current prescriptive sequencing requirements have been a significant contributor to settlement registration errors and delays, to the detriment of both employers and injured workers.

NIBA supports the proposal that APIA assessments may be initiated by the worker, the employer, or the employer's insurer, in line with established practice.

Recommendation 3: NIBA recommends that WorkCover WA consider provision for settlement registration without an APIA report in limited circumstances, such as where the worker is unable to attend an assessment (for example, due to being located overseas or suffering an unrelated debilitating condition) and there is sufficient medical evidence on file to formulate an assessment utilising the Guides, or where the worker wishes to settle before reaching maximum medical improvement and sufficient evidence exists to support an agreed assessment. Where both parties reach an agreement based on such evidence, the ability to do so should not be prevented by a procedural requirement for a formal APIA assessment.

Proposal 4 — Permanent Impairment Compensation and Settlements

NIBA Position: Conditional support

NIBA supports the intent of the proposed amendments to clarify the meaning of “entitled” in s 150, to simplify the Director’s scrutiny function, and to allow rejection and resubmission of settlement applications with PI calculation errors rather than referral to an arbitrator.

NIBA agrees that the Director should not be required to inquire into potential PI entitlements based on medical information, nor to identify errors made by an APIA in an APIA Report. These are appropriate boundaries for the registration scrutiny function.

However, NIBA is concerned that the proposed amendment to s 150, read in conjunction with the forthcoming APIA Principles and Standards (which will prevent an APIA from completing a permanent impairment assessment until the worker has reached maximum medical improvement), may inadvertently prevent early settlement of claims where permanent impairment is likely but not yet formally assessable. This would add unnecessary cost and delay to the scheme and may be contrary to the wishes of workers who, for personal or practical reasons, wish to resolve their claims earlier.

Recommendation 4: NIBA recommends that the amendment be drafted to ensure a worker is not compelled to obtain a formal PI assessment as a precondition to settlement. Where a worker elects to proceed without a PI assessment, the settlement agreement form should include a clear statement confirming the worker understands they are proceeding without an assessment of any potential permanent impairment compensation and accepts the consequences of doing so.

Proposal 5 — Disputes About Permanent Impairment

NIBA Position: Support

NIBA supports the proposed amendment to s 106 to clarify that an arbitrator can determine whether a permanent impairment resulted from an employment injury, in addition to determining the degree of permanent impairment. This addresses a clear gap in the dispute resolution framework and will support more efficient claim management for employers and their insurers.

Proposal 6 — Settlements and Liability Decisions

NIBA Position: Conditional support

NIBA supports the proposed amendment to s 149 to confirm that a settlement can be registered at any time after a worker has made a claim, without requiring a liability decision or a liability decision notice. Minimal barriers to settlement of statutory claims serve both employers and injured workers.

NIBA supports modifying the settlement agreement form to accommodate settlements without admission of liability. The current worker acknowledgement statement appears sufficient, and any strengthened statement should be carefully calibrated to inform the worker of risks without creating an unnecessary impediment to settlement, particularly where both parties are represented.

Consistent with NIBA's position on Proposal 4, requiring an APIA assessment as a precondition to settlement creates an inconsistency where liability has not been accepted or remains in dispute. Where parties reach an agreement to settle a deferred liability claim, there should not be a procedural barrier requiring an APIA assessment before the settlement can be registered. Where liability is still in dispute, the worker does not have an established entitlement to permanent impairment compensation, and it is inconsistent to require a formal assessment of an entitlement that has not been accepted.

Recommendation 5: NIBA recommends that Proposals 4 and 6 be drafted consistently to ensure the APIA assessment requirement does not prevent settlement of claims where the parties have reached agreement.

Proposal 7 — Confirmation of Custody or Imprisonment

NIBA Position: Support, with legislated timeframes

NIBA supports centralising the custody confirmation process through the WorkCover WA CEO and extending the definition of "relevant government authority" to include interstate authorities. These are practical improvements that will help employers and insurers manage claims across jurisdictions.

However, the proposal does not include legislated timeframes for the WorkCover WA CEO to respond to requests for custody information. Without a defined timeframe, there is a risk that income compensation continues to be paid erroneously.

Recommendation 6: NIBA recommends that a 14-day response timeframe be legislated. Where a response is not received within the prescribed timeframe, the employer or insurer should be permitted to temporarily suspend income compensation payments until confirmation is received, consistent with the approach in s 65(4).

Proposal 8 — State of Connection Determinations

NIBA Position: Support in principle, with safeguards

NIBA supports, in principle, the proposed amendment that gives arbitrators jurisdiction to determine a worker's state of connection. The current requirement that these disputes be determined by a court, even where the state of connection is one of several issues, compromises the timely resolution of claims. Faster resolution benefits employers who bear the cost and uncertainty of prolonged disputes.

This proposal is consistent with NIBA's broader advocacy for state harmonisation of workers' compensation arrangements, which NIBA identified as a priority issue in its March 2026 submission to the Parliamentary Joint Committee on Small Business Insurance.

The appropriate scope for a WA arbitrator is to determine whether a worker's employment is connected with Western Australia — a straightforward determination under WA law. NIBA acknowledges that arbitrators may not be empowered to make determinations binding in other jurisdictions.

Recommendation 7: NIBA recommends that any amendment include clear provisions regarding the status and enforceability of arbitration orders in relation to courts in WA and workers' compensation schemes in other states and territories, to avoid unintended jurisdictional conflicts.

Proposal 9 — Responding to Uninsured Employer Claims

NIBA Position: Support

NIBA supports the proposed amendments to s 31 and s 272 to ensure WorkCover WA can exercise the rights of an uninsured employer where that employer has failed to respond to a claim and failed to notify WorkCover WA. This protects injured workers from disadvantage caused by employer non-compliance and supports the integrity of the scheme.

Proposal 10 — Common Law Damages Where Employer Uninsured

NIBA Position: Support

NIBA supports the proposed amendment to s 267 to clarify that the Default Insurance Fund is not liable for common law damages where the employer was uninsured for such damages before 1 October 2011. The Fund should not bear liabilities that employers were not required to insure at the relevant time. This is a matter of scheme sustainability and appropriate risk allocation.

Proposal 11 — ICWA Contribution to WorkCover WA General Account

NIBA Position: Support

NIBA supports the correction of this legislative error. As a significant scheme participant, the Insurance Commission of WA should be required to contribute to WorkCover WA's General Account on the same basis as all other licensed insurers and self-insurers. Equitable contribution arrangements are essential to the sustainability of the regulatory framework.

Proposal 12 — Date of Injury vs Date of Incapacity

NIBA Position: Support no change

NIBA supports WorkCover WA's position that the date of injury should remain the reference point for calculating income compensation. Section 55(5) already provides an appropriate mechanism to adjust for changes in the worker's base rate of pay between the date of injury

and the onset of incapacity. The date of injury is a clearer and more established reference point than the date of incapacity, which is more susceptible to factual and legal dispute. Introducing ambiguity in this reference point would increase the risk of calculation errors and disputes, to the detriment of both employers and workers.

Proposal 13 — Other Technical Amendments

NIBA Position: Four additional matters for consideration

NIBA's Western Australian members have identified the following additional technical matters that warrant consideration as part of this consultation.

Section 166 — Employment obligation period for short-term engagements

The obligation to provide a position during the 12-month employment obligation period is impractical for employers who engage workers on fixed-term contracts or casual engagements, where the employment was not going to continue for a further 12 months beyond the injury. This affects offshore workers on fixed-term contracts, casual workers engaged for short-term projects, and other employment arrangements in which no alternative position exists within the employer's operations upon the engagement's conclusion.

Recommendation 8: NIBA recommends that s 166(1) and (2) be amended to provide an exemption where the worker's employment would not have continued for the duration of the employment obligation period but for the injury, while maintaining the employer's obligation to continue income compensation payments under s 47. NIBA acknowledges that any amendment in this area will need to be carefully drafted to ensure it does not diminish employer obligations to support return to work, and is willing to work with WorkCover WA on appropriate safeguards.

Section 64(2) — Cessation of income compensation where the worker resides overseas

Members have identified practical difficulties in issuing cessation notices where a worker has returned to work but subsequently moves or travels overseas without providing the required medical certification. The interaction between the notice requirements under s 64(2) and the practical inability to serve notices on workers who have left Australia creates a gap where income compensation obligations may remain open-ended despite the worker having returned to pre-injury duties.

Recommendation 9: NIBA recommends that WorkCover WA consider an amendment to address this gap. NIBA is happy to provide specific examples from members to assist in developing an appropriate solution.

Reaggravation of injury

Under current arrangements, a worker may downgrade their capacity without a formal reassessment of whether the change is related to the original compensable injury, triggering reinstatement of income compensation.

Recommendation 10: NIBA recommends that WorkCover WA consider reintroducing a process for reassessing liability where a worker's capacity changes after a period of return to pre-injury duties.

Section 32 — Worker to provide information about other employment

The current framework for managing erroneous payments of income compensation when a worker commences remunerated work with another employer is inefficient and imposes unnecessary costs on employers. Under s 32, a worker must notify the employer or insurer of any new remunerated work within 7 days. In practice, workers frequently breach this requirement, and often have not received their first payment from the new employer at the time of notification, making it impossible to complete the earnings declaration accurately. In the interim, the employer continues to make income compensation payments, potentially resulting in several weeks of overpayment. Recovery of these erroneous payments under s 146 requires an application to an arbitrator, adding further cost and delay.

Recommendation 11: NIBA recommends that s 32 be amended to enable the use of the CN1 consent form (used under s 62(d)) in circumstances where a worker advises of commencing new employment but is unable to complete the required declaration as to earnings. This would allow income compensation payments to be paused by consent pending completion of the declaration, preventing the accumulation of erroneous payments that must subsequently be recovered through arbitration.

Conclusion

NIBA welcomes the opportunity to contribute to this consultation. The proposed amendments represent practical and necessary refinements to the Act, and NIBA is broadly supportive of the direction WorkCover WA has taken.

Our key concern is to ensure that procedural requirements — particularly those related to APIA assessments and permanent impairment — do not inadvertently create barriers to early settlement when parties have reached agreement. The scheme works best when it facilitates efficient resolution of claims for both employers and injured workers.

NIBA is willing to provide further information or participate in any follow-up consultation process. We would welcome the opportunity to discuss any of the matters raised in this submission.

Acknowledgements

This submission was shaped by feedback from the following NIBA member brokers in Western Australia, including their practical insights and dedication to enhancing the operation of the Western Australian workers' compensation scheme.

- Caroline Jackman Regional Executive West, PSC Insurance Brokers and Vice Chair NIBA WA Divisional Committee
- Craig Stewart Claims Consultant, RTC
- Luke Westall Team Leader, Injury Management, EBM Insurance & Risk
- Julian Lane National Manager, Injury Management, EBM Insurance & Risk
- Maria Kozak Managing Principal, Workforce Strategies, Mercer Marsh Benefits and NIBA WA Divisional Committee
- Kevin Burston Workers Compensation Claims Consultant, Nexus Advisernet
- Christina Italiano National Manager, Claims & Injury Management, Lockton Australia
- Brett Piggott Executive Director, Willis Temby Insurance Brokers and NIBA Director (WA Representative)