

Submission

25 May 2026

Workers Compensation Reform Team
State Insurance Regulatory Authority (SIRA)
Locked Bag 2906
Lisarow NSW 2252

Via email: workerscompensationreform@sira.nsw.gov.au

Dear Sir/Madame,

Re: Workers Compensation Legislation Amendment Regulation 2026 (draft) and the Workers Compensation Guidelines (draft)

The National Insurance Brokers Association (NIBA) welcomes the opportunity to respond to the consultation on the draft *Workers Compensation Legislation Amendment Regulation 2026* and the revised *Workers Compensation Guidelines 2026*.

A strong and sustainable workers' compensation system is fundamental to safeguarding the welfare of injured workers, supporting workforce productivity, and ensuring the long-term commercial viability of NSW businesses. NIBA supports policy and regulatory reform aimed at halting unsustainable premium increases and restoring the long-term fiscal integrity of the scheme — a position NIBA set out in its submission to the Legislative Council's Standing Committee on Law and Justice inquiry into the proposed changes to liability and entitlements for psychological injury.

NIBA's submission focuses on whether the operational detail delivers on the reform intent legislated through the primary legislation, and on one matter the instruments currently overlook: the role of the insurance broker as the employer's representative through a claim. Where that role is not recognised, employers face avoidable delay and friction in claims handling, and the return to work of injured workers can be slowed.

Please find NIBA's submission attached. Should you have any queries or wish to discuss any of the matters raised, please contact Ben Marshan at bmarshan@niba.com.au.

T: +61 2 9964 9400
E: info@niba.com.au

Suite 4.01B, Level 4,
31 Market Street, Sydney
NSW 2000

Yours sincerely,



Richard Klipin

Chief Executive Officer

National Insurance Brokers Association

Executive Summary

NIBA supports the intent of the *Workers Compensation Legislation Amendment Regulation 2026* and the revised *Workers Compensation Guidelines 2026*, which give operational effect to reforms NIBA has publicly supported. Efficient claims handling, clear entitlement rules, and a financially sustainable scheme serve both the employers who fund the scheme and the injured workers who depend on it.

NIBA's central recommendation concerns the Guidelines. They describe the claims and injury management process in detail but make no reference to the insurance broker — who, for a great many NSW employers, is their trusted adviser and primary point of support through a claim. NIBA recommends that the Guidelines formally recognise the broker as a representative of the employer, with defined access (on the employer's behalf and with consent) to claims information.

NIBA also reiterates its established position: these instruments, like the legislation they implement, do not address two of the three cost drivers of the scheme's deteriorating position that NIBA has previously identified — claims management performance and the acceptance of claims with a weak employment nexus. Tighter worker-facing rules alone will not restore sustainability.

Our key recommendations are:

Recommendation 1. The Guidelines should expressly recognise an employer's insurance broker as a representative of the employer, and confirm that a broker may act on the employer's behalf — with the employer's consent — in claims notification, information access, and injury management processes.

Recommendation 2. The initial notification provisions should make explicit that an employer's insurance broker, acting on the employer's behalf, is among the persons who may notify an injury and lodge a claim. The Guidelines already permit notification by "some other person ... acting for or on behalf of the worker or the employer"; naming the broker would remove any doubt that a broker-lodged notification is validly made.

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Recommendation 3. The Guidelines should provide that a broker acting on an employer's behalf, with the employer's consent, may access claim status and liability decisions, independent medical examination reports, treatment approval decisions, and work capacity assessments relevant to that employer's claims.

Recommendation 4. SIRA should monitor the practical impact on small business employers and injured workers of the limits on allied health consultations available without pre-approval and the revised "reasonable and necessary" treatment test, to ensure these settings do not introduce treatment-access delays that prolong claims or impede return to work.

Recommendation 5. In giving effect to the primary psychological injury regime, the evidence and notification requirements should be drafted so that employers and their representatives can practically comply within the 42-day window for insurer liability decisions.

Recommendation 6. SIRA should pair these reforms with concrete measures addressing the structural drivers NIBA has previously identified — claims-management performance, and the acceptance of claims with a weak employment nexus — without which tighter worker-facing rules alone will not restore the scheme's sustainability.

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, professional 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

The Role of Brokers in the NSW Workers' Compensation Scheme

Insurance brokers play a critical role in supporting employers to navigate the complexities of the NSW workers' compensation system. As trusted advisers, brokers assist businesses in understanding their obligations, implementing effective risk management strategies, and arranging appropriate insurance cover.

Beyond policy placement, brokers provide end-to-end advisory support throughout the policy lifecycle and critical support in the event of a claim, including:

- advising on injury management, rehabilitation, and return-to-work programs;
- liaising with insurers, allied-health professionals, and service providers to facilitate timely outcomes; and
- monitoring premium trends and identifying cost-containment strategies.

The NSW scheme has a distinctive structure. It is a managed-fund scheme in which the Nominal Insurer underwrites the bulk of the market. For most NSW employers, the broker's role is therefore not one of placing cover in a competitive market — it is one of adviser, claims advocate, and representative of the employer in their dealings with the scheme. Through their specialist expertise, brokers meaningfully contribute to the effective operation of the workers' compensation system. This representative role is the lens through which NIBA's recommendations on the Guidelines should be read.

The Need for Reform

NIBA set out its analysis of the scheme's financial position in its submission to the Standing Committee on Law and Justice. That analysis remains current. The scheme deficit has reached \$3.6 billion, having grown by approximately \$1.8 billion in a single financial year, with claims expenditure significantly outstripping premiums. Average premiums have risen by 8% year-on-year over two successive years, with a further 8% rise confirmed — placing increasing strain on employers and diminishing public confidence in the scheme's sustainability.

NIBA identified three interrelated cost drivers underpinning this position:

1. Psychological injury claims — although a minority of total claim volume, these account for a disproportionate share of scheme liabilities owing to their extended duration and complexity.
2. Deficiencies in claims management — delays in decision-making, inconsistent application of the workers' compensation guidelines, and poor case-manager oversight, which prolong claim durations and worsen return-to-work outcomes.
3. Admission of claims with a weak employment nexus — the acceptance of claims into the scheme without a clear causal link to the workplace.

NIBA supported the legislative reforms as a response to the first of these drivers. NIBA's consistent position, however, is that drivers two and three remain unaddressed. The instruments now before SIRA carry the legislation into operation; they do not, of themselves, reach claims-management performance or employment-nexus integrity. NIBA urges SIRA not to treat the implementation of these reforms as the completion of the reform task **(Recommendation 6)**.

Workers Compensation Legislation Amendment Regulation 2026

NIBA supports the draft Regulation giving effect to the *Workers Compensation Legislation Amendment Act 2025* and the *Workers Compensation Legislation Amendment (Reform and Modernisation) Act 2026*. The Regulation is, in the main, concerned with the mechanics of the scheme as between the worker, the insurer, and treatment providers. NIBA's comments are confined to the matters on which the broking profession has a direct and practical perspective.

Primary psychological injury regime. NIBA supports a clearer, more consistent framework for psychological injury claims. The Regulation's new Part 8A sets evidence requirements for a worker's claim and provides that an insurer must decide whether to accept or reject the claim within 42 days of receiving it. This framework will be effective only if employers — and the brokers who support them — can practically gather and supply the required information within that window. The quality and timeliness of an initial notification materially affect the subsequent claim. NIBA recommends that the evidence and notification requirements be drafted with employers' and their representatives' practical compliance capacity in mind **(Recommendation 5)**.

Treatment — "reasonable and necessary." NIBA notes the new Part 4A, which codifies the test for reasonable and necessary treatment and lists the kinds of treatment an employer is not liable to pay for. NIBA supports the objective of containing treatment costs that fall

outside the scheme's proper scope. The practical effect of these settings is addressed under the Guidelines below, where it is most acute.

Commutations and independent financial advice. NIBA notes that the Regulation requires a worker to have received independent financial advice before entering into a commutation agreement for more than \$100,000, with the insurer to meet the cost of that advice up to \$2,000. This is a financial-advice matter that falls outside the remit of the insurance broking profession, and NIBA makes no submission on it.

On the balance of the Regulation's content — principal assessments, indexation, penalty amounts, and dispute-cost scales — NIBA defers to the submissions of insurers and other scheme participants, who are better placed to comment on those mechanisms.

Workers Compensation Guidelines 2026

The revised Guidelines are SIRA's operational instrument for claims handling — initial notification, provisional liability, making a claim, treatment approvals, work capacity assessment, injury management consultants, and independent medical examinations. This is the document that, in practice, determines how a claim is experienced by an employer and an injured worker.

The Guidelines do not recognise the insurance broker. As drafted, they describe the claims process by reference to the worker, the employer, the insurer, the nominated treating doctor, the injury management consultant, and the independent medical examiner — but not the broker, who for a substantial proportion of NSW employers, particularly small and medium businesses without in-house claims or workers' compensation expertise, is the party who actually carries the employer through a claim.

A claims-handling framework that does not acknowledge the broker's representative role creates avoidable friction. The Guidelines provide for initial notification of an injury to be given "by the worker or the employer or by some other person ... acting for or on behalf of the worker or the employer" — language that plainly contemplates a third party acting for the employer, but does not name the broker. On access to claims information, the Guidelines go no further than a signed authority allowing treatment providers to give information to the insurer; there is no provision for an employer's broker to obtain claims information on the employer's behalf. Brokers report inconsistency in whether, and how readily, they can obtain that information — the same information asymmetry NIBA is currently working with the Insurance Council of Australia to resolve through a standardised broker consent authority, and the same issue NIBA has raised in its engagement with WorkCover WA. The NSW Guidelines are the appropriate place to put this beyond doubt.

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E: info@niba.com.au

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NIBA therefore recommends:

- the Guidelines expressly recognise the employer's insurance broker as a representative of the employer, able to act on the employer's behalf with the employer's consent **(Recommendation 1)**;
- the initial notification provisions make explicit that an employer's insurance broker is among the persons who may notify an injury and lodge a claim on the employer's behalf, removing any doubt that a broker-lodged notification is validly made **(Recommendation 2)**; and
- the Guidelines provide that a broker, acting with the employer's consent, may access claim status and liability decisions, independent medical examination reports, treatment approval decisions, and work capacity assessments relevant to that employer's claims **(Recommendation 3)**.

Treatment access. The Guidelines set limits on the allied health consultations a worker may access without insurer pre-approval — up to four consultations where treatment begins within three months of injury, and up to three thereafter — and revise the test for reasonable and necessary treatment. NIBA notes that the terminology change from “reasonably necessary” to “reasonable and necessary” is, per the Guidelines, for consultation only and is expected to take effect in a later version in October 2026. NIBA supports cost discipline, but cautions that the broking profession sees the practical consequences of treatment-access settings before scheme-level data does. Where treatment access is tight, the risk is delayed recovery and prolonged claims — an outcome that serves neither the injured worker nor the employer who funds the scheme. NIBA recommends SIRA actively monitor the impact of these settings on small business employers and injured workers **(Recommendation 4)**.

Psychological injury process. NIBA supports the direction of the psychological injury framework, and notes that the broker channel has a constructive role to play in employer-side early intervention and in the quality of initial notifications. NIBA would welcome the opportunity to support SIRA and insurers in lifting that quality.

Conclusion

NIBA welcomes these reforms and supports the direction SIRA and the NSW Government have taken. Our central point is a constructive one: the Guidelines should reflect how NSW employers actually engage with the scheme, which, for many of them, runs through their insurance broker. Recognising the broker's representative role would improve the quality and timeliness of claims handling, for injured workers and employers alike — though, as set out

above, lasting reform also depends on addressing the claims-management and employment-nexus drivers the legislation leaves untouched.

NIBA would welcome the opportunity to work with SIRA to develop the broker-recognition provisions recommended in this submission and to discuss any matters raised.

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