

Matters raised by the WorkCover Independent Review Officer submission to the Law and Justice Committee Review of the Exercise of the Functions of the WorkCover Authority

Matter	Summary	Where and when raised	WorkCover action completed	Further WorkCover action underway
Separation of powers and functions between WorkCover regulator and Nominal Insurer roles	Concern that WorkCover's organisational structure, legislation, delegations, guidelines and manuals provide inadequate distinction between its regulatory and commercial insurance functions.	The WIRO Law and Justice submission February 2014	<p>WorkCover has agreed to review its operating model, instructions and guidelines.</p> <p>Individual provisions and Parts of the Act make the discrete roles of the Nominal Insurer and WorkCover Authority as regulator clear.</p> <p>Legislative change would be a matter for Government and ultimately the Parliament.</p>	<p>WorkCover is reviewing its operating model to better separate the regulatory and insurer functions.</p> <p>WorkCover is reviewing instructions and guidelines to improve clarity of communication about whether instructions and guidelines are regulatory or for the Nominal Insurer</p>
Concern that transition to the new laws for some injured workers was not compliant with legislation	The WorkCover approach to transitioning injured workers who had made a claim but who were not receiving weekly benefits on 1/10/12 may not have been consistent with the legislation	<p>The WIRO Law and Justice submission February 2014</p> <p>WIRO Annual Report provided in confidence to WorkCover December 2013</p> <p>Letters to WorkCover from 24 September 2013</p>	<p>WorkCover has agreed with the WIRO.</p> <p>The WIRO has identified a worker who was disadvantaged as a result of the policy and the impact has been rectified for that claimant.</p> <p>WorkCover has asked the WIRO to advise of any further impacted workers known to the WIRO so WorkCover can rectify impact for those claimants rapidly.</p> <p>On 13 December 2013 WorkCover wrote to the WIRO advising that the policy position was reversed and only those transitioning claims in receipt of weekly payments immediately before 1 October 2012 are now considered as existing recipients of weekly payments.</p> <p>On 20 December 2013 WorkCover instructed Insurers and scheme agents to identify any claimants who fall within the impacted category and address any disadvantage</p> <p>WorkCover has requested information from insurers on the progress of rectification activity</p>	<p>Based on the information received from insurers WorkCover will draft further instructions to insurers as required and provide them to WIRO for comment before issuing.</p> <p>WorkCover will work with the WIRO to address this problem and ensure all impacted workers are identified correctly and any is disadvantage rectified retrospectively.</p> <p>This will include agreeing a method with WIRO and stakeholders to ensure all potentially impacted workers are correctly identified.</p> <p>WorkCover will provide updates to the WIRO on how many injured workers have been inadvertently negatively impacted and how the impact is being addressed.</p>
Zero weekly entitlements	Concern that injured workers receiving zero weekly entitlements were treated as if they were receiving payments for the purposes of determining the period of entitlement.	<p>The WIRO Law and Justice submission February 2014</p> <p>WIRO Annual Report provided in confidence to WorkCover December 2013</p> <p>Letters to WorkCover from 18 October 2013.</p>	<p>WorkCover has agreed with the WIRO.</p> <p>WorkCover will instruct insurers to follow that interpretation of the legislation as soon as possible.</p> <p>WorkCover has notified Scheme agents and self and specialised insurers the intended change in approach and has invited Scheme agents and self and specialised insurers to advise WorkCover on the impacts and how long it will take them to implement the change, including to review existing open weekly claims and make the necessary adjustments if required.</p>	<p>There are expected to be system related costs associated with this change of procedure. This is being assessed and an action plan developed for implementation of the change.</p> <p>An implementation plan and draft instruction will be provided to the WIRO for comment as soon as possible.</p>
Enforcement by WorkCover in relation to injury management, rehabilitation, workers compensation insurance and insurer licensing.	Concerns that the level of enforcement activity by WorkCover under Section 23(1) in relation to injury management, rehabilitation, workers compensation insurance and insurer licensing is lower than required	The WIRO Law and Justice submission February 2014	WorkCover has advised the WIRO that an enhanced compliance and enforcement framework is being developed.	<p>An enhanced, robust compliance and enforcement framework is being developed, especially to ensure the additional regulatory powers provided in the Government's 2012 reforms are properly utilised.</p> <p>The Framework will be aligned to that utilised by WorkCover's Work Health and Safety Division and to better regulation requirements.</p> <p>To manage the risk of service providers exiting the workers compensation system, WorkCover will roll-out an implementation and communication plan to introduce the new framework.</p>

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Section 54 Notices	Section 54 Notice required before termination or reduction of weekly benefits, a breach of section 54 attracts a penalty. The WIRO has identified potential breaches of the section by insurers.	<p>The WIRO Law and Justice submission February 2014</p> <p>WIRO Annual Report provided in confidence to WorkCover December 2013</p> <p>Letters to WorkCover dated 27 August 2013 and 29 November 2013</p>	WorkCover has investigated the alleged breach and has worked with the insurer in adopting corrective action to minimise the risk of a breach.	<p>WorkCover will review and clarify how a breach of a Section 54 Notice requirement would be treated in the WorkCover's Compliance and Enforcement Framework.</p> <p>All matters raised by the WIRO will be assessed and the WIRO will be kept informed</p>
Medical specialist non-compliance	The object of the Workers Compensation Fee Orders is to gazette the maximum amounts for which an employer is liable for medical and related costs. WIRO has referred some alleged breaches to WorkCover. The impact would be injured workers paying additional medical costs.	<p>The WIRO Law and Justice submission February 2014</p> <p>Letters dated 22 May 2013, 28 November 2013 and 17 January 2013.</p>	<p>WorkCover has written to the individual medical practitioners to remind them of the relevant Fee Orders.</p> <p>WorkCover is currently developing a risk management and assessment approach to improve WorkCover's ability to identify providers that charge above the scheduled rate.</p> <p>WorkCover has met with the Australian Medical Association and advised there will be an enhanced compliance and enforcement framework to implement the new powers and that WorkCover will consult and roll it out with a communication strategy</p>	<p>WorkCover will review and clarify how a breach of this kind would be treated in the WorkCover's Compliance and Enforcement Framework.</p> <p>The 2012 amendments included a provision allowing WorkCover to make Guidelines to proscribe medical practitioners who fail to comply with the legislation or who inappropriately provide services to injured workers. This will need to be incorporated into the enhanced compliance and enforcement framework.</p> <p>To manage the risk of experienced providers exiting the workers compensation system, WorkCover will roll-out an implementation and communication plan to introduce the new powers to stakeholders.</p> <p>All matters raised by the WIRO will be assessed.</p> <p>Compliance with of medical fee Orders will be strengthened in the next Scheme Agent Deed</p> <p>WorkCover will work to establish an independent Medical Examination panel</p>
Status of guidelines	Concern that WorkCover guidelines have different status – some are delegated legislation and some are simply for guidance and this is not always clear.	The WIRO Law and Justice submission February 2014	WorkCover has commenced a review of current guidelines and instructions to ensure the authority and applicability for each instrument and whether it is for guidance only or mandatory is clarified. The WIRO has been advised of the review and is represented on the review working group.	<p>WorkCover will respond promptly to any issue with guidelines or instructions raised by the WIRO.</p> <p>The review of the work capacity guidelines in collaboration with the WIRO is due to be completed by 31 May for implementation in July 2014.</p>

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Work Capacity Guidelines and the reference to a best practice decision-making guide	The Guidelines outlined a requirement to refer to the "Best Practice Decision-making Guide" that does not exist and has never existed.	<p>The WIRO Law and Justice submission February 2014.</p> <p>WIRO Annual Report provided in confidence to WorkCover December 2013</p> <p>Work capacity decisions reviewed by the WIRO found invalid due to not referring to this particular Guide.</p>	<p>WorkCover has incorporated best practice principles into the new version of the Work Capacity Guidelines.</p> <p>WorkCover and WIRO jointly obtained legal advice that WorkCover not publishing the best practice decision making guide did not invalidate the Work Capacity Guidelines.</p> <p>WorkCover issued an instruction to scheme agents making clear that a notice of cessation of weekly payments sent to a worker by post does not take effect until the expiry of the relevant period, which includes an additional four working days after the notice is posted by the insurer. WorkCover has also advised self and specialised insurers to take into account the postal rule when determining the correct period of notice. The current Work Capacity Guidelines require insurers to allow an additional amount of time in the notice period to take into account time to serve the notice by post. Section 54(3) of the 1987 Act allows the worker to recover compensation not paid where the insurer has failed to give notice or has given less than the required period of notice, which remedies the failure to comply without disturbing the effect of the notice.</p> <p>As the recommendations made by the WIRO are binding on the insurer, insurers are following the WIRO's recommendations and are reinstating a worker's weekly payments as if the original work capacity decision was not made.</p>	Nil required.
Production of approved forms	Concern that sections 38 and 44 of the 1987 Act reference "form approved by the Authority" in four sections and WorkCover did not produce the forms required by s44(30(a) which are notices of decisions of the insurer on an internal review and of the WorkCover Authority on a merits review.	<p>The WIRO Law and Justice submission February 2014</p> <p>WIRO Annual Report provided in confidence to WorkCover December 2013</p> <p>Letters to WorkCover from 24 July 2013</p>	WorkCover has gazetted a new version of the Work Capacity Guidelines with required forms attached. The forms have been developed in consultation with the WIRO	
Transparency, consultation and communication	The WIRO reports reluctance by WorkCover to engage with participants in the Workers Compensation Community and gives as an example the apparent disbanding of stakeholder groups such as the legal reference stakeholder group.	The WIRO Law and Justice submission February 2014	It is intended the Legal Reference Group, including the WIRO will continue meeting and has been consulted about the frequency of meetings.	<p>An improved WorkCover stakeholder engagement plan is being developed.</p> <p>Meeting dates for Legal Reference Group for the next year will be set in advance.</p>
WorkCover website	<p>The WIRO reports that the WorkCover website is difficult to navigate and populated with out-dated and incorrect information.</p> <p>Guidelines are not clearly published or easily accessible or clearly identified as current or obsolete.</p>	<p>The WIRO Law and Justice submission February 2014</p> <p>Letter to WorkCover on 4 December 2014.</p>	<p>Requested changes have been made to the following links:</p> <ol style="list-style-type: none"> 1. Permanent impairment claims 2. Can my weekly payments be stopped? 3. Work capacity 4. Weekly payments when suitable employment is not available 5. Work injury damages 6. Disputed claims 7. Injury management disputes 8. Weekly payments when no current work capacity 9. Weekly payments on suitable duties or in suitable employment <p>WorkCover has advised WIRO which suggested changes cannot yet be made given IT platform. Response provided 11 February 2014.</p>	<p>WorkCover is further reviewing all workers compensation content on the WorkCover website to address outstanding concerns raised by the WIRO and to add WIRO links and referral information in all relevant locations. A major project is underway to redevelop the WorkCover website to address the more technical capability issues with the site. WorkCover is also requesting scheme agents and self and specialised insurers also provide information and links on their websites to improve access to the WIRO services. WorkCover is reviewing existing documents and notifications issued by scheme agents to claimants to ensure WIRO details are accurately represented.</p>

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Legal costs regulation 21/12/12 was only published on the Government website	The WIRO reports that there was inadequate consultation and communication about this regulation	The WIRO Law and Justice submission February 2014	The regulation is now available in a link from the WorkCover website at http://www.workcover.nsw.gov.au/lawpolicy/acts-and-regulations/Pages/Workerscompensationacts.aspx	WorkCover is developing a clear protocol for consultation, communication and publication of fact sheets for any revised guidelines and regulations
Medical treatment expense regulation introduced 20/12/13 was issued with only four business days for injured workers to take advantage of the extension	This regulation was relevant to those injured workers who had pre-approved treatment which could not be delivered by medical practitioners by the legislated cut-off date through no fault of their own. It enabled them to have this pre-approved treatment after the cut-off date.	The WIRO Law and Justice submission February 2014	WIRO reported there was no information on the WorkCover website and this has been addressed. The regulation is now available in a link from the WorkCover website at http://www.workcover.nsw.gov.au/lawpolicy/acts-and-regulations/Pages/Workerscompensationacts.aspx	
Lack of consultation and communication with WIRO and service providers	The WIRO reports not being invited to participate in the revision of regulations and guidelines despite having 14 principal lawyers specialising in workers compensation and not being aware of consultation with lawyers, medical professionals and unions in relation to changes to regulations and guidelines.	The WIRO Law and Justice submission February 2014	WorkCover implemented an extensive stakeholder engagement program during the implementation of the workers compensation reforms, including drafting of guidelines. WorkCover has agreed ongoing consultation with will be re-established	WorkCover is developing a new stakeholder engagement strategy
Very little information about the WIRO and its functions on WorkCover's website or fact sheets		The WIRO Law and Justice submission February 2014	Information about the WIRO has now been added in many places throughout the WorkCover website. In particular, WorkCover has added a link to the WIRO website and a banner promoting the WIRO to the front page of the WorkCover website.	WorkCover is thoroughly reviewing all workers compensation content on the WorkCover website to address any outstanding concerns raised by the WIRO and to add WIRO links and referral information in all relevant locations.
Sharing of statistical information on the workers compensation system	Concerns the function of collecting, analysing and publishing statistical data has not been maintained. The last WorkCover statistical bulletin was published in 2010	The WIRO Law and Justice submission February 2014	CEO has written to the WIRO advising that WorkCover will work with the WIRO to improve sharing of statistical information.	WorkCover produce statistical publications later this year covering the period since the last statistical bulletin up to the latest available data.
Sharing of statistical information on the performance of the Workers Compensation Nominal Insurer Scheme	The last Nominal Insurer Scheme Agent claims performance report was published in December 2012 Concern that WIRO does not have access to information and advice from the independent scheme actuary (PwC) for the Workers Compensation Nominal Insurer Scheme	The WIRO Law and Justice submission February 2014 and correspondence	The June 2013 Nominal Insurer Scheme Agent report is on the WorkCover website at : http://www.workcover.nsw.gov.au/formspublications/publications/Pages/scheme-agent-report-june-2013.aspx WorkCover has provided the WIRO with the full version of the most recent scheme valuation report CEO has written to the WIRO advising that WorkCover will work with the WIRO to improve sharing of statistical information. WIRO and WorkCover are meeting to establish an improved approach to information sharing.	WorkCover will maintain up to date publication of six-monthly Scheme Agent reports

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Opportunities to reduce high cost aspects of the workers compensation system	<p>Concern that more disputes could be resolved through negotiation rather than arbitral dispute resolution</p> <p>Disputes about the quantity of lump sum compensation to be awarded may cost more to resolve than the amount in dispute</p> <p>Disputes in which the injured worker alleges the employer was negligent may need to go to both the Workers Compensation Commission and the District or Supreme Court.</p>	The WIRO Law and Justice submission February 2014	WorkCover is supportive of scheme agents negotiating to a commercial outcome and is communicating this to scheme agents.	<p>Regarding matters where there is an allegation of negligence by the employer and this means the matter may need to go to both the Workers Compensation Commission and the District or Supreme Court, this issue results from the dispute resolution processes introduced in 2001.</p> <p>WorkCover will consider this issue in more detail in consultation with the WIRO.</p>
Delays in the Merit Review Service	WIRO concern that the Merit Review Service has not complied with the Work Capacity Guidelines by writing to the worker and insurer within 30 days of receiving an application advising specific details of the outcome of the Merit review.	<p>WIRO Annual Report provided in confidence to WorkCover December 2013</p> <p>Letter to WorkCover 20 December 2013</p>	<p>WorkCover is recruiting to 6 additional full time equivalent staff to clear delays.</p> <p>WorkCover agrees the delays are not acceptable and is working to minimise disadvantage to injured workers</p>	WorkCover will undertake an operational review of the Merit Review Service and will introduce ongoing transparent reporting of Merit Review Service completion times