Workers Compensation and Injury Management Bill 2021
(Consultation Draft)

Submission Template

Bill Clause	Comments
7	**Exclusion of injury: reasonable administrative action** The proposed legislation omits a number of actions that were previously included under the definition of administrative actions in the *1 (WCIMA)* including; dismissal, retrenchment, demotion, redeployment and (not being) granted a leave of absence. While any or all of these of these actions may be found to be 'administrative actions' under s7(1)(e), the proposed wording does not explicitly state that these actions or a worker's expectation of the same are excluded. This is most concerning as it may leave employers liable for psychological stress claims arising from an employee expecting to be dismissed, retrenched, demoted etc. This is a wide scope of perceived stressors that may no longer be excluded based on the current wording of the proposed Act. The definition of administrative actions should also be expanded to include any actions related to restructuring or organisational change within the business. Many psychological claims arise where a workplace has undergone organisational change or a restructure, for example having to report to a new manager, a change of duties or a change in roster and the employee alleges stress as a result of the changes. Organisational change is part of an evolving workplace, and in many cases is necessary for a business to remain operational and keep workers gainfully employed. Reasonable actions undertaken by employers in relation to organisational change should be included under the definition administrative actions. **Recommendations** - Definition of *administrative actions* to be clearly defined and inclusive of the actions listed under s5(4) of the *WCIMA.* - Definition of *administrative actions* to be expanded to include "changes made to the worker's employment as a result of organisational change or restructure"

Bill Clause	Comments
10	**Prescribed diseases taken to be from certain employment** Specifying prescribed diseases and prescribed employment classes for each disease in the accompanying regulations will provide the Act with the necessary flexibility to respond to occupational diseases if the need arises and facilitate access to the workers compensation scheme. However, NIBA notes that these benefits could place significant upward pressure on premiums, especially if these provisions are applied retrospectively to injuries and employment prior to the assent of the Bill. If applied retrospectively, employers would likely face significant increases in premiums as insurers attempt to collect enough premium to cover potential workplace injuries for every previous employee. In addition, brokers are concerned that in response to the shifting of these costs to the workers compensation scheme, insurers may restrict writing cover for the most-affected employment classes, forcing more business to absorb these risks themselves. For example, increases in claims relating to Covid-19, may result in insurers refusing to write cover for business who employ staff within the healthcare sector. Care needs to be taken in order to balance the rights of injured workers with the need to ensure workers compensation insurance remains available for all employers. **Recommendations:** - Clear links between prescribed diseases and employment classes. - *Prescribed employment* to be clearly defined under s5 of the Act. This definition should also take into account casual employees, seasonal and labour-hire employees. NIBA suggests that due to the sporadic nature of their employment, casual employees should be required to meet a minimum exposure period. - Presumptive claims should be capped at the statutory amounts with no common law exposure. - A cap on death benefits in line with the existing DLSE amounts - Provisions to ensure that the costs of the presumptive entitlements are not borne by employers.
12	**Meaning of "worker" and "employer"** NIBA welcomes the simplification of the definition of a worker for the purposes of workers compensation arrangements. This should provide clarity around who is and is not covered under the Act and ultimately reduce dispute traffic through the Conciliation and Arbitration process. However, NIBA notes that limiting cover to PAYG employees may provide an incentive for businesses to move to a contractor-based employment model to reduce premiums and minimise their workers' compensation exposure.

Bill Clause	Comments
	As the new definition excludes contractors, alternate arrangements should be made available for contractors to seek cover for themselves. NIBA has concerns that ambiguity remains where no PAYG requirements are applicable for certain employment types. It is currently unclear whether employees who work in fields such as directly employed disability support, domestic services and temporary workers would satisfy the definition of a worker under the updated definition. If these individuals are employed directly by an employer or household, then provisions should be made within the accompanying regulations to include them under s13. **Recommendations:** - Employment types where no PAYG requirements exist to be addressed in the draft Bill or in the accompanying regulations.
20	**Employer must inform worker of right to claim compensation** The proposed Act lacks necessary information in its current form. In particular, the following aspects require clarification; • Are employers required to retain evidence of providing notice? For how long? • Are employers also required to inform their insurer, and if so, is this information able to be used when determining the premium payable? • When is an employer assumed to have become aware a worker "may" have suffered an injury? • Does 14 days refer to business or calendar days? • What is the process if the worker is a working director? **Recommendations:** - The above issues to be clarified in either the Bill or the accompanying regulations whichever is most appropriate.
27	**Insured employer must give claim to insurer** Under this provision the timeframe within which the employer must provide the claim form and certificate of capacity to their insurer has changed from "5 full working days" to "7 days" however it is not established whether this refers to calendar or business days. NIBA also notes that the penalty for failing to provide a worker's claim to an insurer within the specified timeframe has increased from $1000 to $5000, however no reasoning has been provided for the increase. The new provision also removes the flexibility for an employer to provide the claim to the insurer after the period has lapsed where doing so prior was not reasonably practicable. Given the significant increase in the penalty, this flexibility should be maintained within the Act.

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	Recommendations: - Clarification of 7 calendar or business days. - s27(1) to be amended to require employers to give a workers claim to the insurer with 7 days, or where the making of a claim within that time would not be reasonably practicable, as soon as reasonably practicable thereafter. - Modes of transmission to meet s27(2) obligations to be clarified within the regulations, including guidance as to when each mode is deemed to have been received by the insurer.

34	**Authority for collection and disclosure of information**
	
	Employers are increasingly outsourcing their injury management obligations to external parties who are more qualified to handle such matters. It is important the accompanying regulations acknowledges this.
	
	The list of "likely authorised recipients" provided in the accompanying information sheets excludes parties who would likely require access to relevant information in order to effectively manage the claim, including insurance brokers, the employer and their agents.
	
	Recommendations:
	- *Authorised recipients* to include;
	  o The employer,
	  o An agent of the employer, and
	  o Insurance Brokers

36	**Claiming compensation for certain diseases when more than 1 employer liable** The provisions in the draft Bill do not appear to address what happens when an employee contracts a prescribed disease whilst engaged in relevant employment with multiple employers at the same time. It is not uncommon for a worker to be employed by more than one employer within similar industries, especially tradespeople who may work for multiple employers across different sites. Under the provisions in the draft Bill, if a worker were to contract a prescribed disease whilst engaged by more than one employer, the worker may be delayed in receiving compensation and reimbursement for medical expenses while liability between the insurers is decided. **Recommendations:**

Bill Clause	Comments
	- Bill to be amended to include provisions for employees who contract a prescribed disease whilst employed by more than one relevant employer at the same time.
41	**Provisional payments of medical and health expenses compensation** While NIBA supports the inclusion of provisional payments it should be noted that these payments may still negatively impact employers even where the insurer has denied the claim and the employer is found not to be liable. Provisions should be included to ensure that provisional payments made to a worker prior to the claim being denied do not negatively impact the workers claims history or result in higher premiums at renewal.
44	**Status and effect of provisional payments** NIBA queries whether the intention is for provisional payments to be included in the prescribed amount or if provisional payments are to be treated separately when calculating the total amount of compensation that can be paid to workers. **Recommendations:** - WorkCover WA to provide clarification as to whether provisional payments are included in the prescribed amount if the claim is accepted.
60	**Working directors** NIBA does not support the provision that a Working Director should have their compensation rate determined based upon the declaration they made when their policy was last adjusted/renewed. Pre-injury earnings for working directors should be determined in the same manner as any other worker as to be a working director there must, by definition, be a contract of employment between the individual and the company. **Recommendations:** - Pre-injury earnings for working directors to be determined in the same manner as other employees. - Clarification as to whether Director Fees are considered income for the calculation of pre-injury earnings
62	**Leave while entitled to income compensation** NIBA supports the accrual of leave entitlements whilst receiving workers compensation payments, in line with decisions in other jurisdictions and recent amendments to the Fair Work website.

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	However, NIBA does not support provisions that allow workers to take leave whilst also receiving workers compensation payments as this would result in the worker being unjustly enriched. This would also enable workers with significant leave balances to use their leave entitlements to avoid their return-to-work obligations. Resulting in significant costs to employers from both a workers compensation and staffing perspective. Depending on the timing of the injury, a teacher who is injured at work may not be required to participate in return-to-work activities for over six weeks. During this time, the teacher would receive both weekly income compensation payments and teachers vacation entitlements despite there already being no expectation of work. Income compensation payments should be suspended if an employee wishes to take Annual or Long Service Leave. Similarly, teachers should not receive weekly income compensation payments for any period during which they also receive a "Teacher's Vacation Entitlement". **Recommendations:** - Payments made to employees whilst on Teachers Vacation Entitlement or as a result of taking leave should be treated as earnings and deducted from the calculation of compensation owing for that week.
63	**Restrictions on reduction, suspension or discontinuation of income compensation** The draft Bill appears to remove the current provisions that allow an employer to discontinue or reduce weekly compensation payments if the employer has satisfied an arbitrator that there is a genuine dispute as to the liability to make such payments or the amount of the payments. This action may be caught by s63(b) “to give effect to a direction of a conciliator or an order of an arbitrator” however the aforementioned clause is incredibly broad and may lead to confusion. **Recommendations:** - Draft Bill to be amended to incorporate WCIMA s60(2) provisions.
64	**Reducing or discontinuing income compensation on basis of worker’s return to work** Further clarity is required as to whether a notice must be given when an employee successfully returns to pre-injury duties with the same employer, as doing so would create a significant administrative burden for employers/insurers. **Recommendations:** - Notices to be restricted for when compensation is reduced for reasons other than a return-to-work or clearance for full duties.

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66	**Worker not residing in State: failure to provide declaration** NIBA does not support the changes outlined in this provision. These changes significantly weaken an already rather relaxed requirement on behalf of the employee. Under the new provision, workers who reside outside of the state will have up to 3 months and 28 days within which to provide a medical declaration. BA's view the current obligation under s69 of the WCIMA is not particularly onerous, considering a person who is incapacitated for work is likely to be seeking some form of medical treatment more frequently than once every 16 weeks. **Recommendations:** - Current provisions for workers who reside out of state to be retained.
148	**Restrictions on when application for registration of settlement agreement can be made** NIBA acknowledges that the ultimate aim of the workers' compensation scheme is the eventual return-to-work of injured workers, however this is not always the best course outcome for either party. There are numerous reasons why an injured worker may choose would choose to pursue settlement as opposed to remaining in the workers' compensation system. This includes instances where there has been a complete breakdown of the employer/employee relationship and return-to-work is not possible or desired or the worker simply does not want to participate in the return-to-work process. By forcing injured workers to remain in the workers' compensation system longer necessary, WorkCover risks further exacerbating psychological injuries or causing secondary trauma. This provision is also likely to result in a significant increase in the demand for conciliation and arbitration services and increase in the overall costs to the scheme. When a claim is denied, it is highly likely that the worker will challenge the insurers' decision. Given the high cost of legal fees in comparison to the relatively low value of many claims, a settlement is reached between the insurer and the worker. This process prevents a significant number of claims from being referred to arbitration. Under the new provision, this process cannot take place until 6 months after the injury occurred during which time the insurer remains liable for the workers medical expenses and weekly income compensation. This situation is unlikely to be tolerated by most insurers and so the number of cases brought to arbitration by insurers will rise. The delay in settlement will also result in higher claims costs and therefore higher premiums for employers. **Recommendations:**

Bill Clause	Comments
	- The draft Act be amended to allow for registration of a settlement agreement prior to the 6-month period elapsing if an application is made to WorkCover by the worker.
162	**Duties of worker** Workers who temporarily leave the state whilst receiving income compensation for a period longer than 7 days should be required to take the time as personal leave. NIBA members have reported a number of instances where workers have left the state for recreational purposes which is not the intent of the worker's compensation scheme. Such behaviour also increases claims costs, which flow through to the employer in the form of premium increases and prevents the worker from meaningfully engaging with the return-to-work process.
164	**Attendance at return to work case conference** NIBA does not support the provision for the regulations to set the maximum frequency of return-to-work case conferences. Limiting the frequency of conferences, prevents either party from addressing issues that may arise in a timely manner. In NIBA's view, both parties should remain flexible in order to ensure the best return-to-work outcome for employees. Prior to the conference, employers should furnish the workers medical practitioner with a list of suitable duties available within the workplace to assist the practitioner in determining any capacity for return-to-work, especially if the practitioner is unfamiliar with the industry. In determining who can attend, consideration must be given to the various arrangements employers have in place with respect to managing workplace injuries and therefore, regulations must include provisions for "*employers representatives*" such as injury management specialist and insurance brokers. Given that workers compensation payments continue through periods of non-compliance, disputes regarding non-compliance with any part of the return-to-work process should be expedited through the Conciliation & Arbitration service **Recommendations:** -Disputes involving non-compliance with the return-to-work process should be determined by an arbitrator at an interlocutory hearing rather that the current conciliation process. -Employers to provide a list of suitable duties available within their business to the medical practitioner at least 5 days prior to any return-to-work case conference.

Bill Clause	Comments
165	**Suitable employment** The proposed changes to the definitions of 'suitable employment' and 'return to work' have serious consequences for the worker's compensation scheme, by significantly increasing the burden on employers during long term claims while reducing the incentive for workers to make a timely return to their pre-injury duties where this remains the return-to-work goal. NIBA is also concerned that these changes appear to be an attempt to undo the *Glenn v Compass Group* decision. Under the proposed wording, workers who are currently involved in a Return-to-Work Program and receiving weekly payments of compensation whilst performing restricted or modified duties will be considered as being engaged in 'suitable employment' and hence, receive wages rather than income compensation. This would see a significant portion of the prescribed amount preserved despite the worker not returning to pre-injury duties. This change fundamentally alters the way the workers compensation scheme handles restricted employees, with the burden transferring from the insurer (or vocational rehabilitation provider) to the employer. Such a change is unlikely to achieve the desired objectives, as employers may be forced to consider whether restricted workers are medically fit for the 'inherent requirements' of their role which may ultimately lead to the termination of the worker. **Recommendations:** - Definition of 'suitable duties' to reflect the decision in *Glenn v Compass Group (Australia) Pty Ltd [2014] WADC 86.*
166	**Employer must make employment available during incapacity** The new provision is more onerous on employers than the current act. In particular, s 166(1)(b) which requires employers provide injured workers with "other suitable employment" if they are unable to return to their previous role due to incapacity. NIBA notes that in some employment situations this provision is not practicable. For example, in the case of a contract miner engaged to work for a principal mining company, given the nature of the work duties including the location; hours of work etc it is not practicable for the contract miner to provide the worker with a modified role which may include reduced hours or significantly reduced duties. **Recommendations:** - Amend s166 (1)(b) to require employers to provide injured workers with "other suitable employment" <u>unless is it not reasonably practicable to do so</u>.
170	**Treating medical practitioner** The provision fails to acknowledge situations where a worker does not have a regular medical practitioner and seeks guidance from their employer or asks the employer to make an appointment on their behalf.

Bill Clause	Comments
	Whilst NIBA supports a worker's right to choose their medical practitioner, it is beneficial to the overall operation of the scheme for workers to attend medical practitioners who are familiar with and who are willing to participate in the scheme. Obligations contrary to this will increase costs to the scheme and reduce successful return to work outcomes. In many instances medical practitioners regularly engaged by employers have a unique understanding of the work environment and the physical/psychological requirements of the workplace, which makes them better placed to assess a worker's capacity to return to work. **Recommendations:** - Inclusion of a positive obligation on employers to advise a worker of their right to "choose" a medical practitioner, which may include a medical practitioner recommended by the employer.
183	**Power to require medical examination of worker** The new provision appears to significantly roll back the provisions aimed at preventing 'doctor-shopping' contained within the WCIMA. In particular, the new provision appears to no longer require workers to provide employers and/or insurers with a copy of a medical report by a worker of a medical report where the medical practitioner has been chosen the employee. This is a detrimental change to the scheme for both parties as such a change will encourage 'doctor shopping' as unfavourable reports are not required to be disclosed. In turn such behaviour, or the possibility of such behaviour will erode trust in the validity of medical reports by employee-chosen medical practitioners. **Recommendations:** - The draft Act be amended to include a provision that requires workers to provide employers with a copy of any report provided by a medical practitioner in relation to a workplace injury even where such practitioner has been selected by the employee.
206	**Information to be provided by employer to insurer** The requirement to provide information "other than remuneration" in the regulations must be carefully managed such that it is not used by insurers as an excuse to refuse to quote cover on programs they would prefer not to underwrite. Whilst requesting information such as a claims history, exposure to hazardous chemicals, working at heights etc is entirely appropriate, requesting information on OH&S performance can be more challenging.

Bill Clause	Comments

	Even simple metrics such as Lost Time Injuries (LTI's) are often measured differently between businesses, and so may not provide an accurate risk profile.
	
	The provision references the need to declare remuneration against the "relevant industry classification" however there is no guidance as to who is responsible for determining this.
	
	Industry classification is a key driver or premium pricing and as such a source of dispute between employers and insurers. It is common for insurers to use different ANZSIC codes based on the insurers interpretation of the risk when quoting on the same program.
	
	For example, when seeking a quotation for a petroleum wholesaling business yet, a NIBA member received a quote in which the insurer had classified the business as "road freight transport" as the fuel was delivered via truck.
	
	Recommendations:
	
	- The following to be included within the accompanying regulations;
	  - Clarity as to who will be responsible for determining the relevant industry classification of businesses.
	  - Classifications to be made based on the nature of the employer's activity within the state of Western Australia.
	  - -Given recent requirements that labour hire providers declare wages based on the host employer's activities, provisions should be made for WorkCover WA to publish industry classifications for every registered workers' compensation policy.

216	**Workers compensation insurance brokers** NIBA strongly opposes provisions to further regulate insurance brokers. Financial services providers, such as insurance brokers are already subject to significant regulation at both the state and federal level. In addition, NIBA brokers are also required to adhere to the Insurance Broking Code of Practice. Given the significant compliance burden brokers already face, NIBA questions whether a registration scheme would in fact provide any benefits to the scheme that are not already delivered through other mechanisms. NIBA believes the current self-regulation model and strong engagement with WorkCover WA mitigates many of the risks a registration scheme would address. An example of this is the current joint training initiative between the NIBA and WorkCover WA, which aims to increase broker knowledge across both injury management and claims processing.

Bill Clause	Comments
	As stated in the accompanying information sheet, there is currently no need to regulate insurance brokers and no regulation is currently being considered. In light of this, NIBA believes this provision is unnecessary.
240	**Terms of insurance and form of policies** The regulation of policy endorsements is regarded as a positive step as there are a number of inconsistencies between them which are often not understood by employers. NIBA notes that there is a growing trend of Principals requiring their contractors to acquire endorsements to their policies that restrict the liability of the Principal in ways that were not intended by the Current legislation and are arguably not in the spirit of the Scheme. The two most notable examples of this are Principal Indemnity Endorsements that include cover for Common Law liability, and Contractual Waivers of Subrogation that prevent contractors associated with a Principal from exercising recovery rights against any other participants on a project. Whilst arrangements such as this commonplace within many industries NIBA notes that the enforceability of such endorsements is questionable. S.93(1)(a) of the WCIMA allows workers to recover damages or compensation from a non-employer if they are liable under the Act. Meanwhile, s.301 of the WCIMA prohibits any contracting out of said liability. Additionally, smaller employer are often unable to obtain the required policy endorsements, particularly Contractual Waivers of Subrogation, which places them at a competitive disadvantage. **Recommendations:** - s.240 should be expanded to prohibit insurers from issuing policy wordings that are not in a form approved by WorkCover and available to any employer upon request.
241	**Adjustable premium policies** NIBA queries whether this clause is intended to capture policies with Claims Experience Discounts as doing so would increase the scope of the clause dramatically and encompass nearly all policies with premiums greater than $50,000. In the absence of the regulations, it is not clear what aspect of an adjustable premium policy WorkCover intends to regulate however it is noteworthy that many of these policies are issued by the insurer on the basis that the premium arrangement encompasses the employer's aggregated liability under workers' compensation policies across a number of jurisdictions (i.e. "national burners").

Bill Clause	Comments
258	**Review of premium charged** NIBA strongly encourages WorkCover to retain the requirement that insurers seek approval prior to applying a premium loading of more than 75 % Whilst the application process may be an administrative burden for WorkCover, the requirement makes insurers reluctant to pursue loadings where the burden of going through the approval process outweighs the benefit of increasing the premium loading by more than 75% **Recommendations:** - Retain current process for premium loadings of more than 75 %.
505	**Disclosure of claim information for pre-employment screening** NIBA adamantly opposes new provisions that prohibit disclosure of a worker's claim history for pre-employment screening purposes as it prohibits an employers' or Corporate Officers' ability to reduce risk of injury. Under the draft Bill Corporate Officers have a both a positive duty to exercise 'due diligence' and a continuous duty to ensure compliance with Workplace Health and Safety laws. Officers do this by ensuring appropriate process & resources are in place to eliminate and/or minimise risk with an intimate understanding as to the nature of the operations and associated hazards and risks. In order to comply with these duties employers must be able to satisfy themselves that the employee is medically able to perform their required duties without posing an unacceptable risk to the health and safety of themselves or others. The case of *Sills v State of New South Wales [2019]* highlights the damage that can be caused when an undisclosed injury or illness is exacerbated whilst an employee is performing the duties required of their role. The purpose of a pre-employment medical assessment or requesting the disclosure of any pre-existing illnesses or conditions as a part of the recruitment process is so the employer can determine whether or not they will be able to discharge their duties under Workplace Health and Safety law. As is the current practice across most industries, if an employee discloses that they have a pre-existing injury or condition a determination should be reached, based on the required duties and worker capacity as to the likely risk that this may pose. This process enables a medically informed decision to be reached as to the worker's capacity to perform the required duties without risk to the safety of themselves or others.

Bill Clause	Comments
	When making this determination, employers must consider reasonably practicable adjustments, modifications and/or accommodations to the work and/or position to enable the prospective employee to fulfill the inherent requirements of the position. NIBA acknowledges that through this process of disclosure an employer may be required to collect and store sensitive information relating to employees. NIBA believes this should be done with regard to the highest standards of information collection, informed consent and security, with robust privacy and complaints mechanisms in place prior to any data being collected. **Recommendations:** - Current provisions that allow for disclosure of a worker's claim history for pre-employment screening purposes to be retained.
527	**State with which employment connected** Under the current Act, the statutory definition of "State" does not encompass places outside Australia and as such when applying the 'State of connection' test it is ambiguous as to whether time spent outside Australia should be considered. The generally accepted practice is the application of the 'State of connection' test should encompass an assessment of a person's employment outside Australia however, it would be beneficial to take this opportunity to make this explicit in the Bill. Since the current Act was drafted in 1981, the working and living patterns of Western Australians have changed significantly. One such change, is the requirement for workers to travel overseas for the purpose of their employment becoming increasingly common. The requirement to obtain a specific policy exclusion to cover a worker when they travel overseas creates a number of issues. Employers who are predominately based outside of Western Australia but require cover for Western Australian workers are unaware of the need for such an endorsement which results in a gap in cover. Where the need for an endorsement is understood, insurers will often require details of all travel that will be undertaken by employees in the coming year, prior to offering cover. It can be difficult for many companies to accurately predict when an employee will need to travel outside of Australia for the purposes of their employment. Finally, in instances where an insurer does provide overseas common law cover, significant inconsistencies in the scope of cover inclusive of liability limits and further restrictions are being introduced by insurers. Given that overseas travel for work has become more common place, NIBA recommends that the ability for insurers to exclude cover for common law liability be

Bill Clause	Comments
	removed. NIBA also notes that major insurers in WA do not have similar restrictions on polices issued in other states where they also underwrite workers compensation risks. **Recommendations:** - Provisions introduced to prevent insurers from excluding cover for common law liability when an employee is injured overseas. - Clarification as to how time spent outside of Australia should be treated for the purposes of the 'State of connection' test.
632(5)(a)	**Motor Vehicle (Catastrophic Injuries) Act 2016 amendments** NIBA supports the extension of the Catastrophic Injuries Support Scheme (CISS) for motor vehicle accidents to cover catastrophically injured workers however, some clarification is needed around the proposed funding model. The following are issues, which in NIBA's view require clarification. • Will any rights of recovery from 3rd parties will be subrogated to ICWA? • If so does ICWA intends to pursue any rights to 3rd party collections. • Does ICWA expect to benefit from any reinsurance arrangements the insurer or self-insurer has in place? • How does ICWA intend to have reinsurance policies modified to enable them to benefit from them? • Has ICWA consulted with reinsurers on the above? Given the intention is to fund the Scheme through a levy on insurers and self-insurers (which will likely be passed on to employers), ICWA should take all available steps to ensure that all available cost-recovery methods are explored thoroughly.
609 **13A(5)(b)**	**Civil Liability Act 2002 amendments** NIBA would like clarification on whether this provision has the intention to limit eligibility under CISS, where a worker is not eligible for the CISS and settles their claims medical expenses and then later becomes eligible. For example, a worker sustains an injury to their arm at work and is awarded Common Law damages. Sometime after settlement the worker develops a secondary condition (sequela) that requires amputation of the arm and this in turn gives rise to eligibility under the CISS. **Recommendations:** - Civil Liability Act 2002 amended to provide clarity on workers who have received Common Law damages but later develop a secondary condition that would make them eligible for the CISS.
Other Issues	**Return to work and health directions**

Bill Clause	Comments
	Under the current Act if a worker has been cleared to return to either modified or full pre-injury duties but cannot return due to non-compliance with vaccine mandates, the employer/insurer is required to continuing paying income compensation payments to the employee. This can have a significant financial impact on employers, in light of the announcement that almost 70% of the Western Australian workforce will be subject to a vaccine mandate. Given the uncertainty around how long the Coronavirus pandemic will continue, and to futureproof the legislation against future pandemics, provisions should be included to prevent worker's from receiving worker's compensation payments where their inability to return is due to a failure to comply with public health directions. **Commencement of Conciliation and Arbitration Services** NIBA believes there is a missed opportunity to place a time limit on the commencement of an application with the Conciliation and Arbitration Service should a claim be declined. Employers (and insurers) are significantly prejudiced by a worker who lodges an application after a considerable period of time has elapsed since the 3B Notice was issued. In line with other jurisdictions such as Northern Territory, NIBA recommends that a worker should have 90 days (unless not reasonably practicable) from the date of the decline notice to lodge their application with the Conciliation and Arbitration Service. This limit will remove the uncertainty around significantly delayed appeals and allow insurers to set premiums accordingly.