

WA Workers Compensation Legislation Modernisation

Frequently Asked Questions

The *Workers Compensation and Injury Management Act 2023* (WA) and *Workers Compensation and Injury Management Regulations 2024* (WA) come into force 1 July 2024.

This new legislation impacts the workers compensation scheme in Western Australia.

Key legislative changes to be implemented include:

- Prescribed timeframes for a liability decision to be made and commencement of provisional payments for income compensation and medical and health expenses compensation.
- Deemed liability acceptance 120 days of receipt of a worker's claim by the insurer.
- Increases to medical and health expenses compensation caps.
- Changes to processes and procedures for settlements and common law claims.
- New streamlined scheme for Noise Induced Hearing Loss.
- Introduction of the Catastrophic Injury Support Scheme, and Default Insurance Fund.

With these changes to the legislation, operationally, we need to adjust how and what information we capture from employers, how we manage claims and support workers in their return to work.

Why did the change need to happen?

The Act and Regulations have been modernised in a way which provides clarity and certainty for stakeholders within the workers compensation system while preserving fundamental aspects of the scheme.

When does the new legislation apply from?

The Act and Regulations come into force 1 July 2024 and will apply to any policies issued or renewed, or claims received, from 1 July 2024.

Transitional arrangements will apply to claims received prior to 1 July 2024 which will continue to be processed under the new Act and Regulations.

Do you have further questions?

For further enquires on how these changes apply, please contact us through your usual channels or contact details on our website.

What are the key changes?

Below is a table summarising the key information about the changes under the New Act that impact employers, workers and insurers.

	Former Act	Under the New Act		
		Employers	Workers	Insurers
Definition of a worker	The definition of a worker did not address the status certain classes of persons employed or engaged who would not be, or may not be, a worker such as disability support workers and crown workers.	The new Act provides further clarification on who is considered a worker, a deemed worker, such as: <ul style="list-style-type: none">• Crown workers• Religious clergy workers• NDIS support workers• Working directors• Contractors.	Definition clarification allows for the scheme to apply for deemed workers.	All criteria, including classifications for deemed and excluded workers are updated to reflect requirements from 1 July 2024. Up to date list of prescribed diseases that reflect the current and changing nature of work.

	Former Act	Under the New Act		
		Employers	Workers	Insurers
Liability Decisions and Provisional Payments	<p>A timeframe for a pended liability decision is not prescribed.</p> <p>Provisional payments during this time are not regulated.</p>	<p>An employer will be required to make provisional payments to a worker if a deferred decision notice was initially given but the insurer has not given a liability decision notice within the prescribed timeframe.</p>	<p>Workers have clarity around commencement of provisional payments and timing for liability decisions.</p>	<p>New prescribed timeframes for a deferred liability decision will be in place for insurers to respond to a claim for compensation or damages.</p> <p>Provisional payments will apply at day 28 if a liability decision has not been made.</p> <p>Deemed liability acceptance 120 days of receipt of a worker's claim by the insurer.</p>
Income Compensation Entitlement	<p>Weekly income steps down at 13 weeks.</p> <p>Different calculation methods for Award and Non-Award workers.</p> <p>Employers able to cease paying weekly payments to a worker upon a return to pre-injury duties without written notice to the worker.</p>	<p>Employers will be required to notify injured workers when there is a reduction or cessation of income compensation payments upon return to either partial or full pre-injury duties.</p>	<p>Income compensation at the worker's full entitlement will extend a further 13 weeks, before the income compensation step down at 26 weeks.</p>	<p>Income Compensation steps down at 26 weeks.</p> <p>Income compensation payments are calculated using an average of pre-injury earnings over a 1 year period for both Award and Non-Award workers.</p>
Provisional Income Compensation and Medical and Health Compensation Payments	<p>This did not previously exist under the former Act.</p>	<p>If an insurer gives a deferred decision notice for a worker's claim but has not given a liability decision notice prior to 28 days from the insurer's receipt of the claim, the employer is required to make provisional payments for income compensation and medical and health expenses compensation.</p>	<p>Provisional payments for income compensation will continue until the worker is no longer entitled, e.g. if the claim is denied, if the claim is settled or the worker returns to work.</p> <p>If provisional medical and health expenses compensation reach the 5% of the general amount no further provisional medical and health expenses compensation will be paid until liability is determined.</p>	<p>Calculations of a workers weekly rate of provisional income compensation payments is subject to a maximum amount.</p> <p>Provisional medical and health expenses compensation is capped at 5% of the medical and health expenses general limit amount.</p>
Medical and Health Expenses Compensation	<p>Medical and health expenses compensation capped at 30% of the general limit.</p> <p>First aid and emergency transport costs included under medical and health expenses.</p>	<p>The cap for medical and health expenses is increased from 30% to 60% of the general maximum amount, which increases the amount an employer is liable to pay, in the event of a claim.</p> <p>First Aid and emergency transport costs will continue to be covered under the claim, however will now be paid as a miscellaneous expense.</p>	<p>Injured workers will have an increase in medical and health expenses covered under the claim.</p> <p>Expenses covered under this category will directly relate to the treatment of the injury and medical rehabilitation costs.</p>	<p>Medical and health expenses cap will increase to 60% of the general limit.</p> <p>First aid and emergency transport costs will be excluded from medical and health expenses. These costs will be compensated under a different payment category.</p>

Former Act

Under the New Act

Return to Work Program

Employers have a duty to develop and implement return to work program.

Employers, insurers and insurer representatives can attend medical reviews with injured workers.

Host employers of labour hire workers are not required to participate in return to work programs for workers.

Employers

There are no changes regarding an employer's obligations to establish an injury management system or to develop a return to work program.

Refined and clarified aspects of employer obligation to provide a position to workers during incapacity relating to:

- pre-injury position;
- a suitable position;
- return to work case conferences.

Employers, insurers and insurer representatives are no longer allowed to be present during a physical or clinical examination of a worker.

Host employers are required to participate in return to work programs with the injured labour hire worker and are subject to employer obligations in the rehabilitation of the worker.

Employers can apply for an order from an arbitrator seeking the workers co-operation in the return to work case conference.

Workers

Workers are obligated to attend and participate in return to work case conferences, intended to support rehabilitation and return to work programs, as soon as is appropriate for them.

In providing notice of a return to work case conference, workers will be informed of the date, time and place of the conference as well as confirmation on whether they need to attend in person or by other means.

Failure to comply without a reasonable excuse may result in the reduction, suspension or discontinuation of income compensation.

Insurers

Insurers will continue to manage return to work programs with employers, workplace rehabilitation providers and workers, under the new requirements and guidelines.

Settlements

A complex settlement process requiring an injured worker to sign and submit multiple forms.

Claims are managed via a specific settlement pathway, depending on the nature of the claim.

Permanent impairment Settlements are dependent on the assessment and report provided by Approved Medical Specialist (AMS).

Name change for assessors from Approved Medical Specialist (AMS) to Approved Permanent Impairment Assessor (APIA).

A settlement agreement between the employer and worker, agreeing on the degree of permanent impairment, must be signed and returned to the insurer.

Simplification of settlement process by combining multiple forms into one, reducing the risk of a delayed settlement.

Insurers will have one form to process that will simplify the settlement process.

Former Act

Noise Induced Hearing Loss (NIHL)

Employers require a worker to undertake a mandatory baseline hearing test upon commencement of employment.

WorkCover engages with the insurer when a claim is submitted to them.

WorkCover WA provides an apportionment of liability to the insurer upon lodgement.

Lump sum payments require the completion of multiple documents.

Under the New Act

Employers

Employers cannot mandate baseline hearing tests unless the *Work, Health and Safety Act 2020* (WA) requires them to.

A claim for noise-induced hearing loss compensation to be made in the form approved by WorkCover.

The worker submits the completed claim form to the employer accompanied by an audiological test report by the authorised audiologist and noise-induced hearing loss assessment by the ENT.

After the worker submits their claim for noise-induced hearing loss to the employer, the employer will lodge the claim with their insurer.

Workers

A worker of a “noisy employer” can request an audiological test, to be paid for by their current or past “noisy employer” (some conditions apply), not more than every two years.

Workers must submit their completed claim form for noise-induced hearing loss to the employer accompanied by an audiological test report by the authorised audiologist and noise-induced hearing loss assessment by the ENT.

Insurers

If a NIHL claim is accepted insurers can apply for an apportionment notice from WorkCover WA.

A new NIHL specific form for lump sum settlement payments provided by WorkCover WA.

Former Act

Under the New Act

Remuneration Declarations and Guidelines.

The Former Act requires an employer applying for the issue or renewal of a workers compensation policy to declare the estimated total remuneration to be paid or payable to the employer's workers for the proposed policy period of their workers compensation policy.

Also, the Former Act requires an employer as soon as practicable after the end of the policy period in their workers compensation policy to declare the total remuneration actually paid or payable to the employer's workers over the previous policy period.

Penalties apply to employers for providing false or misleading remuneration information.

Employers

The only new requirement is that the declaration of estimated remuneration and actual remuneration paid must be in the approved form.

Employers will be required to complete both Estimate and/or Actual Remuneration Declarations, for new business and renewal policies, on WorkCover WA Approved Forms. **Click here to download the WorkCover WA Remuneration Guidelines**, they provide a clear definition of 'remuneration' to assist employers in completing the remuneration declarations.

Current versions of the Estimated Wages Declaration forms will not be accepted and will require the employer to resubmit on the WorkCover WA Approved Forms.

An employer who fails to provide the remuneration declarations in the Approved Forms or provides information that the employer knows to be false or misleading commits an offence under the Act. A fine of up to \$10,000 in respect of each of the employer's workers to whom the offence relates may apply.

Workers

No impacts.

Insurers

New Estimated and Actual Remuneration Declaration forms will replace other wages declaration forms used in WA.

Insurers will provide an Important Information document which will provide additional information supporting the new remuneration declaration forms.

Current versions of Wages Declaration or Statement of Salaries and Wages forms will not be accepted and will require the employer to resubmit on the WorkCover WA Approved Forms.

Ensure we have received a statement naming the working director and the amount of remuneration payable, for them to be covered under the policy.

ICWA policies for Mining Employers

Mining employers are required to hold an Industrial Disease Policy with Insurance Commission of Western Australia for compensation claims relating to certain industrial diseases arising from exposure in any mine or mining operation.

Common law cover may be provided by insurers by way of an endorsement / extension to the employers Workers Compensation insurance policy.

From 1 July 2024, mining employers will no longer be required to hold an Industrial Disease Policy with Insurance Commission of Western Australia for compensation claims relating to certain industrial diseases arising from exposure in any mine or mining operation.

Compensation claims for specified dust diseases are covered under Part 2 Division 9 of the Act and liability for damages is covered under the policy.

From 1 July 2024, compensation claims for specified dust diseases are covered under Part 2 Division 9 of the Act and liability for damages is covered under the policy.

As from 1 July 2024, new policies and renewals will no longer require an extension / endorsement for common law cover.

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Employer Indemnity	Employer indemnity policy wording not prescribed by the Former Act.	The Regulations prescribes a mandatory workers compensation policy wording setting out the scope of indemnity for an employer’s liability to pay compensation or damages in respect of an injury to a worker for which the employer is liable during the period of insurance.	No impacts	Workers compensation policy wordings will be updated to reflect the new and clarified scope. Terms and conditions updated to reflect new criteria standardised by the Regulations.
Refusal of Indemnity	Indemnity refusal is left to policy terms and conditions (as a matter of contract) and can vary between insurers.	The Regulations prescribe circumstances in which an insurer is permitted to refuse to indemnify an employer against liability to pay compensation or damages in respect of an injury to a worker for which the employer is liable.	No impacts	Standardised policy terms and conditions, and prescribed circumstances in which an insurer can refuse indemnity to an employer for its liability to pay compensation or damages to an injured worker.
Catastrophic Injury Claims	Catastrophic Injuries Support Scheme (CISS) for motor vehicle accidents doesn’t extend to cover catastrophically injured workers who have a compensable workers compensation claim. With the commencement of the new Act, the CISS will be extended to include all catastrophic injuries for workers who are entitled to compensation.	Under the Act, workers may be eligible for interim or lifetime care and support services covered by CISS. Eligibility will be assessed and determined by Insurance Commission of Western Australia (ICWA). After a workers acceptance into the scheme, the employer is no longer liable to pay their medical and health expenses compensation and other costs payable under the claim. Income compensation payments remains payable by the employer.	The CISS covers the following catastrophic injuries: spinal cord injury, traumatic brain injury, amputations, burns and permanent blindness. CISS will provide coverage for medical and health, workplace rehabilitation and miscellaneous expenses.	The cost of an injured worker’s participation in the CISS will be funded by an annual levy contribution by insurers and self-insurers, collected by WorkCover WA and paid to the Insurance Commission of WA. A participant under the Catastrophic Injury Support Scheme, who seeks to settle their claim, will have this taken into consideration when negotiating a settlement.