



a new direction

for workers' compensation and
injury management in WA

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Disclaimer

This brochure should be read in conjunction with other brochures for workers, employers, medical practitioners and other service providers, available from WorkCover WA. WorkCover brochures provide general information only. You should not act or omit to act on the basis of anything contained herein. In relation to a particular matter, you should seek appropriate legal/professional advice.

» Introduction

Reform laws

Return to work after injury is a fundamental objective of the Western Australian workers' compensation and injury management system. Changes to workers' compensation laws have been approved by Parliament and will be introduced in two stages. The first changes came into effect on 4 January 2005 with the remaining changes effective from 14 November 2005.

This brochure summarises the provisions in the *Workers' Compensation Reform Act 2004 (the Reform Act)* and outlines the major changes that will apply once the laws come into operation. The changes have been presented in accordance with the timetable of introduction, ie. those reforms introduced on 4 January 2005, followed by those being introduced on 14 November 2005.

To obtain information on all of the changes please contact WorkCover WA Infoline on 1300 794 744 or access <http://www.workcover.wa.gov.au/workerscompchanges>.

What has changed?

Changes have been made in six main areas of the workers' compensation system:

- » Statutory benefits
- » Injury management
- » Common law
- » Dispute resolution
- » Definitions
- » WorkCover WA Authority as governing body

WorkCover WA Authority

WorkCover WA Authority (WorkCover WA) is the statutory authority responsible for administering the workers' compensation and injury management system in Western Australia.

WorkCover WA offers a telephone information service, Infoline (1300 794 744), which provides general information on the workers' compensation and injury management system.



» Statutory benefits

Once an approved insurer/self insurer accepts liability for a workers' compensation claim workers are entitled to certain statutory benefits.

Workers' compensation entitlements are based on the Prescribed Amount, which is indexed annually. The Prescribed Amount is the maximum compensation payable for weekly benefits and lump sum payments.

Entitlements are:

- » Weekly payments – for loss of wages, limited to a maximum of the Prescribed Amount;
- » Medical and related expenses – for reasonable hospital, medical and ancillary expenses, to a maximum of 30 per cent of the Prescribed Amount;
- » Vocational rehabilitation expenses – for approved vocational rehabilitation to help workers back to work, to a maximum of seven per cent of the Prescribed Amount;
- » Travel expenses – for reasonable travel expenses at a prescribed rate per kilometre;
- » Dependants of deceased workers – special entitlements apply;
- » Funeral Expenses – for funeral arrangements for deceased workers;
- » Lump Sum Settlements – are available in certain circumstances and maximums are calculated on the balance of the Prescribed Amount.

The Reform Act increases many of the statutory benefits available to injured workers.

It brings the legislation in line with the Industrial Relations laws by including collective agreements – such as enterprise bargaining agreements or enterprise orders – in the definition of Industrial Awards.

The step down in weekly payments for all workers receiving compensation payments will now apply after 13 weeks.

Workers who are covered by an Industrial Award now have allowances, based on the number/pattern of hours worked and paid on a regular basis, included in the calculations of average weekly payments after the step down applies.

The changes that commenced on 4 January 2005 affect the weekly payments of compensation payable to injured workers currently receiving entitlements, as well as applying to all new claims from 4 January 2005.



STATUTORY BENEFITS	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Weekly payments	<i>Workers' Compensation and Rehabilitation Act 1981</i>	<i>Workers' Compensation and Injury Management Act 1981</i>	4 Jan 2005
	Different methods were used for calculating average weekly earnings of workers covered by industrial awards and workers not covered by industrial awards.	To calculate weekly payments, workers on enterprise bargaining agreements or enterprise orders are included with those on industrial awards.	4 Jan 2005
	Workers received their average weekly pay for 4 weeks and then may have stepped down to a lesser amount.	Workers receive their average weekly pay for 13 weeks . They may then step down to a lesser amount.	4 Jan 2005
	Weekly payments for the first 4 weeks were calculated as follows:- <ul style="list-style-type: none"> » Award workers' weekly payments were averaged over a 13-week period prior to their incapacity, including any over award or service payments paid on a regular basis as part of the worker's earnings, plus overtime and any bonuses and allowances. » Non-award workers' payments were averaged over the 12 months prior to their injury. 	Weekly payments for the first 13 weeks will be calculated as follows:- <ul style="list-style-type: none"> » Award workers' weekly payments are averaged over a 13-week period prior to their incapacity, including any over award or service payments paid on a regular basis plus overtime, bonuses and allowances. » Non-award workers' payments are averaged over the 12 months prior to their injury. 	4 Jan 2005
	From week 5 onwards, a step down applied to weekly payments paid to workers. Award workers' weekly payments were averaged over a 13-week period prior to their incapacity, including award or service payments, minus overtime bonuses and allowances. Non-award workers' weekly payments were calculated at 85 per cent of the average weekly payments, calculated over the 12 months prior to their injury.	From week 14 onwards, a step down applies to weekly payments paid to workers. Award workers' weekly payments will consist of weekly earnings payable under the relevant industrial award or EBA <ul style="list-style-type: none"> » plus any over award or service payment paid on a regular basis as part of the worker's earnings; » plus any allowance paid on a regular basis as part of the worker's earnings and related to the number and pattern of hours worked; » plus any other allowance prescribed by the regulations. The allowances are to be averaged over the period of 13 weeks prior to the incapacity, or part worked thereof. Any other allowances as well as overtime and bonuses are to be excluded. Non-award workers' payments are calculated at 85 per cent of their average weekly payments over the 12 months prior to their injury.	4 Jan 2005

» Statutory benefits (cont)

STATUTORY BENEFITS (continued)	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Weekly payments (continued)	A cap on weekly benefits applied. It was one and one half times Australian Bureau of Statistics (ABS) <i>Average Weekly Earnings</i> .	A cap on weekly benefits will continue to apply. It is now twice the ABS <i>Average Weekly Earnings</i> .	4 Jan 2005
Medical expenses	Payment of medical and other expenses could only be approved <i>after</i> they had been incurred. Problems sometimes occurred when treating medical practitioners would recommend a treatment but the insurer had not yet approved payment.	Payment of medical and other expenses can be approved if they are " <i>likely to be incurred</i> ". Insurers may now be compelled to pay for operations or treatment in advance of the operation or treatment.	4 Jan 2005
	An application for further reasonable medical and related expenses could be made after 75 per cent of the medical and related expenses entitlement had been exhausted.	An application for further reasonable medical expenses may be made after 60 per cent of the medical and related expenses entitlement has been exhausted.	4 Jan 2005
Funeral expenses	Funeral expenses were allowed up to \$4,768 (reviewed annually).	Funeral expenses will be paid to a maximum of \$7,000 (to be reviewed annually).	4 Jan 2005



» Governing body

A new governing body will be formed to administer the *Workers' Compensation and Injury Management Act 1981*. The governing body, known as the WorkCover Western Australia Authority, will include an independent chairperson.

GOVERNING BODY	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
	<p>The Workers' Compensation and Rehabilitation Commission (the Commission) was a 'body corporate' which administered the <i>Workers' Compensation and Rehabilitation Act 1981</i>.</p>	<p>A governing body, the WorkCover Western Australia Authority, will administer the <i>Workers' Compensation and Injury Management Act 1981</i>.</p>	<p>4 Jan 2005</p>
	<p>The position of the Commission was uncertain with regard to its status, immunities and privileges.</p>	<p>The WorkCover WA Authority is an agent of the State, with the status, immunities and privileges of the State.</p>	<p>4 Jan 2005</p>
	<p>The Commission was appointed by the Governor on the recommendation of the Minister, and comprised:</p> <ul style="list-style-type: none"> » Chair (experienced senior public servant); » Person with insurance experience, not SGIC; » Person employed by SGIC; » Person experienced in commerce or industry; » Person experienced in trade union affairs; » Person who is a medical practitioner; and » CEOs of WorkCover and DOCEP. 	<p>The governing body will be appointed by the Governor on the recommendation of the Minister, and will comprise:</p> <ul style="list-style-type: none"> » Independent Chair; » Person with insurance experience; » Person experienced in employee interests; » Person experienced in employer interests; » Person with accounting and financial management experience; » CEOs of WorkCover and DOCEP. 	<p>4 Jan 2005</p>
	<p>The Premium Rates Committee was a separately constituted body for recommending premium rates for industry.</p>	<p>The governing body, WorkCover Western Australia Authority, is to recommend premium rates for industry.</p>	<p>4 Jan 2005</p>

The balance of the reform legislation will be introduced on 14 November 2005. Some of these changes are set out below. Please contact WorkCover WA Infoline on 1300 794 744 or access <http://www.workcover.wa.gov.au/workerscompchanges> for a complete description of all changes.

» Statutory benefits

From 14 November 2005 extensions of the Prescribed Amount and of medical and related benefits will be changed, as will death benefits for dependants of a deceased worker.

The notification timeframe for use of medical and related benefits will also change.

Schedule 2, the table used to calculate lump sum entitlements for permanent loss of function, has been overhauled and is now in two parts. A new Part 2, Schedule 2 will apply for injuries sustained after 14 November 2005. This new table refers to nature of injury or impairment. Part 1, Schedule 2 will continue to apply to injuries sustained prior to 14 November 2005.

STATUTORY BENEFITS	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Acceptance of liability	<p>Insurers are required to notify workers in writing of their decision and reasons for their decisions within specified timeframes.</p> <p>If an insurer refuses to comply with the notification timetable, the injured worker can take the issue to the Conciliation and Review Directorate, who can make an order for up to 10 weekly payments and/or two per cent of medical and related entitlements.</p>	<p>Insurers must advise workers in writing of their decisions and reasons for their decisions within specified timeframes.</p> <p>If an insurer unreasonably refuses to accept liability for an injured worker, an arbitrator from the Dispute Resolution Directorate may issue an interim payment order for weekly benefits up to the first 12 weeks and/or medical and related expenses up to 5 per cent of the Prescribed Amount.</p>	<p>14 Nov 2005</p> <p>14 Nov 2005</p>
Weekly payments	<p>An additional amount of up to \$50,000 may be allowed where a worker suffers permanent total incapacity and his/her social and financial circumstances justify it.</p>	<p>An additional amount of up to 75 per cent of the Prescribed Amount may be allowed where a worker suffers permanent total incapacity and his/her social and financial circumstances justify it.</p>	<p>14 Nov 2005</p>
Medical and related benefits	<p>A worker can apply for an extension of up to \$50,000 for medical and related expenses where their social and financial circumstances justify it.</p>	<p>A worker may still apply for an extension of up to \$50,000 for medical and related expenses where their social and financial circumstances justify it. If a worker meets an exceptional medical circumstances test and has a whole person impairment of not less than 15 per cent, they may apply for additional medical and related expenses, capped at \$250,000. Workers obtaining an exceptional medical expenses extension are excluded from seeking common law damages.</p>	<p>14 Nov 2005</p>

STATUTORY BENEFITS (continued)	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Medical and related benefits (continued)	<p>The insurer or employer is required to notify a worker when 75 per cent of the medical and related expenses entitlement has been exhausted.</p> <p>If or when the medical entitlement is exhausted, the worker is responsible for further costs incurred while the application for further medical expenses is being processed.</p>	<p>The insurer or employer will be required to notify a worker when 60 per cent of the medical and related expenses entitlement has been exhausted.</p> <p>If a worker exhausts the medical entitlement, an additional \$2,000 for medical and related expenses will be available while pursuing an extension of the medical entitlement.</p>	<p>14 Nov 2005</p> <p>14 Nov 2005</p>
Medical assessments	<p>Workers can be referred by an employer or an insurer to any number of medical specialists for the purposes of a medical review.</p> <p>Employers can suspend weekly payments if a worker does not attend a scheduled medical examination for a review.</p>	<p>An insurer will be able to refer a worker to a maximum number of examinations in the one speciality, as prescribed in the regulations.</p> <p>If a worker does not attend a scheduled medical examination for a review, application to suspend weekly payments may be made to an arbitrator.</p>	<p>14 Nov 2005</p> <p>14 Nov 2005</p>
Death benefits	<p>Death benefits, for the dependants of a worker who dies in a work-related incident, are the residual amount of the Prescribed Amount.</p>	<p>Death benefits, for the dependants of a worker who dies in a work-related incident, are increased to \$200,000. This amount is indexed annually.</p>	<p>14 Nov 2005</p>
Lump sum payments for permanent injuries (Schedule 2)	<p>Lump sum payments are available for items listed in Schedule 2, which includes reference to the nature of the injury.</p> <p>A variety of methods are used to determine the percentage of disability for the purposes of Schedule 2.</p>	<p>Lump sum payments will be available in accordance with new Schedule 2 tables, based on impairment.</p> <p>For the purposes of Schedule 2, the percentage of impairment is determined in accordance with <i>The WorkCover WA Guides for the Evaluation of Permanent Impairment</i>. An injured worker and their employer can each arrange independent impairment assessments. If agreement cannot be reached between the parties, the matter may be referred to an approved medical specialist panel.</p>	<p>14 Nov 2005</p> <p>14 Nov 2005</p>
	<p>The maximum percentages of the Prescribed Amount under Schedule 2 for the following permanent injuries are: back 60 per cent; neck 40 per cent; and pelvis 15 per cent.</p>	<p>The maximum percentages of the Prescribed Amount under Schedule 2 for the following permanent injuries will be: back 75 per cent, neck 55 per cent and pelvis 30 per cent.</p>	<p>14 Nov 2005</p>
	<p>AIDS/HIV is not included in Schedule 2.</p>	<p>AIDS will be included in Schedule 2. If the HIV infection progresses to AIDS, compensation will be paid at 100 per cent of the Prescribed Amount.</p>	<p>14 Nov 2005</p>

» Injury management

Injury management involves the injured worker, employer and treating medical practitioner working together to assist a worker to stay at work or return to work following a workplace injury.

The Reform Act provides a legislative basis for injury management. It enables WorkCover WA to publish subsidiary legislation in the form of a code of practice, describing injury management in greater detail.

The Reform Act also introduces new programs for early intervention and for specialised retraining of injured workers who meet the eligibility criteria.

INJURY MANAGEMENT	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Injury management	WorkCover WA promotes a recommended framework for injury management.	Injury management is supported through regulation which will incorporate an <i>Injury Management Code of Practice (the Code)</i> .	14 Nov 2005
		<i>The Code</i> will have the status of subsidiary legislation and will include guidance on developing injury management systems and return to work programs.	14 Nov 2005
		Employers must ensure a return to work program is established in accordance with <i>the Code</i> .	14 Nov 2005
Specialised retraining program		A specialised retraining program is available to workers injured (after date of proclamation) who are unable to return to work and who have a whole person impairment of not less than 10 per cent but less than 15 per cent. These workers will need to meet all the retraining criteria to be eligible.	14 Nov 2005
		An extension of up to 75 per cent of the Prescribed Amount is available to enable eligible workers to undertake formal vocational training or study. Expenses may include a weekly retraining allowance, course fees, books and resource materials and, in certain situations, limited vocational rehabilitation expenses.	14 Nov 2005
Termination notice	Employers are not required to provide notification when terminating the employment of a worker on workers' compensation.	Where an employer seeks to terminate the employment of a worker as mentioned in s84AA, the employer must give 28 days written notice to both the worker and WorkCover WA.	14 Nov 2005
Early intervention		WorkCover WA may conduct a review at 4 weeks to determine whether a return to work program needs to be established for an injured worker, and advise the worker, the employer and the insurer of their obligations.	14 Nov 2005

Common law

For workers with injuries sustained after the date of proclamation of section 15 of the Act, access to a claim for damages at common law is based on the worker's degree of 'whole person impairment' (*WPI*). Agreement may be reached between the employer and worker on the level of impairment. If agreement cannot be reached an *approved medical specialist* will conduct this assessment, using a standard assessment method. The degree of impairment can be disputed only in District Court.

Workers will be able to choose an approved medical specialist from a list provided by WorkCover WA. Approved medical specialists are medical practitioners qualified to assess *WPI*.

Workers will have more time to decide if they wish to pursue a common law damages claim against their employer. New thresholds to access common law claims will apply, based on the worker's *WPI*.

COMMON LAW

Changes to common law entitlements will apply to injuries sustained and industrial diseases diagnosed after the date of proclamation of the common law claims provisions.

	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Access to the common law system	Access to the common law system is based on a determination of a worker's degree of disability, using a variety of methods to determine the degree of disability.	Access to common law is based on the worker's degree of <i>WPI</i> , using a standard and medically accepted method of assessment, which is conducted by approved medical specialists.	14 Nov 2005
	To access the common law system a worker needs a degree of disability of not less than 16 per cent.	The threshold for accessing the common law system is not less than 15 per cent <i>WPI</i> . However, secondary psychological, psychiatric and sexual conditions are excluded.	14 Nov 2005
	Disputes about the level of disability are resolved through the Conciliation and Review Directorate.	Workers can choose their own approved medical specialist for evaluating the degree of permanent impairment and to obtain an impairment assessment certificate. The degree of impairment can be disputed only in the District Court.	14 Nov 2005
Election to pursue a common law claim for damages	Workers with a degree of disability of not less than 16 per cent and less than 30 per cent can elect to pursue a common law claim within 6 months of weekly payments commencing.	Workers with a <i>WPI</i> of not less than 15 per cent and less than 25 per cent must elect to pursue common law within 12 months of the date the claim for weekly payments was made on their employer. A cap on damages applies to these workers.	14 Nov 2005
	Workers with a disability of 30 per cent or greater can pursue a common law claim at any time within the time limits imposed by the statute of limitations. No cap on damages applies to these workers.	Workers with a <i>WPI</i> of 25 per cent or greater must elect to pursue a common law claim within 12 months of the date the claim for weekly payments was made on their employer. No cap on damages applies to these workers.	14 Nov 2005

Common law (cont)

COMMON LAW (continued)	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Election to pursue common law (continued)	If a worker misses the deadline to elect to pursue a claim at common law, and the insurer fails to notify them, access to common law is denied.	Extensions may be granted if the insurer fails to notify the worker of the deadline. Extensions may also be granted in certain circumstances, for example: <ul style="list-style-type: none"> » if the worker's medical condition has not stabilised; » if an assessment certificate has not been given to the worker in the prescribed time; or » if the approved medical specialist requires more time to complete their assessment. 	14 Nov 2005 14 Nov 2005
Damages	If a worker with a disability of not less than 16 per cent and less than 30 per cent elected to pursue a common law claim, all statutory benefit entitlements will cease (except Schedule 2 lump sum benefits). A cap on common law damages applies to these workers. Workers with a disability of 30 per cent or greater who decide to pursue a common law claim are not subject to a cap for damages. They continue to receive statutory benefits to which they are entitled.	Workers with a <i>WPI</i> of at least 15 per cent but less than 25 per cent and who elect to pursue a common law claim are subject to a step down in weekly payments. Their other statutory entitlements cease at the time of election. Common law damages awarded to these workers are subject to a cap. These workers continue to receive the weekly payments to which they are entitled, for up to 6 months after election, as follows: <ul style="list-style-type: none"> » 70 per cent of weekly payments for 3 months; » 50 per cent of weekly payments for the next 3 months; » Weekly payments cease after 6 months. 	14 Nov 2005 14 Nov 2005
Claims against principal	A contractor's worker's access to a common law claim for damages against the principal "deemed" employer, as defined in section 175 of the Act, is restricted.	For common law purposes the deeming effect of section 175 is removed. This enables a contractor's worker to pursue an unrestricted claim at common law against the principal for damages as a result of the principal's negligence or other tort.	14 Nov 2005

» Dispute resolution process

A new Dispute Resolution Directorate will deal with disputes arising between parties in the workers' compensation system. Disputes will be managed by an arbitrator, who will attempt conciliation to bring about a resolution between the disputing parties, prior to arbitration.

Arbitrators must be qualified legal practitioners.

DISPUTE RESOLUTION	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
	The Conciliation and Review Directorate was established to deal with all workers' compensation disputes.	A Dispute Resolution Directorate will deal with all workers' compensation disputes.	14 Nov 2005
	Conciliation Officers aim to assist parties in reaching an agreement and can make limited orders or refer a matter to a Review Officer. Review Officers hear evidence from disputing parties and make orders. Parties can appeal to the Compensation Magistrate's Court where a question of law is involved.	Arbitrators will undertake both conciliation and arbitration. A Commissioner will hear appeals against decisions of arbitrators on matters of law.	14 Nov 2005
	Lawyers can not appear at conciliation and review unless agreed to by parties to the dispute.	Injured workers who have a dispute may have legal representation in proceedings at the Dispute Resolution Directorate. Maximum legal fee structures will be set to protect workers and expedite proceedings.	14 Nov 2005

Significant changes apply to the legislation regarding dispute resolution, and interested parties are directed to contact WorkCover WA Infoline on 1300 794 744 or access <http://www.workcover.wa.gov.au/workerscompchanges> for more detail.

» Definitions

The Reform Act introduces important changes in the definitions in certain areas of the legislation. The aim is to provide clarity and to bring the legislation in line with changes in community standards.

Previous references to 'disability' are removed and reference is now made to 'injury', in accordance with national and international conventions.

~~The definition of a "working director" is clarified and the Act clearly states working directors are not considered "workers" for their own companies by the definition in the legislation.~~

DEFINITIONS	Workers' Compensation and Injury Management System before reforms proclaimed	Workers' Compensation and Injury Management System after reforms proclaimed	Commencement date
Injury	'Disability' is the term used to cover both an injury by accident and disease.	'Injury' will be the term used to cover both an injury by accident or disease.	14 Nov 2005
Injury management	WorkCover WA promoted a recommended framework for injury management.	Injury management will become the legal framework required and it refers to the management of workers' injuries in a manner that is directed at enabling them to return to work.	14 Nov 2005





Where Can I Go for More Information?

WorkCover WA
2 Bedbrook Place
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Infoline: 1300 794 744
Facsimile: (08) 9388 5550
Hearing Impaired: TTY (08) 9388 5537
Website: www.workcover.wa.gov.au
Email: postmaster@workcover.wa.gov.au

Infoline is a telephone information service that provides general information on workers' compensation and injury management.

Information is available in alternative formats for people with disabilities, including an audio loop for the hearing impaired, which is available on 48 hours notice.

Interpreter services paid for by WorkCover can be made available, subject to prior notice.

WorkCover publications

The following publications are available by contacting the Infoline or accessing our website on www.workcover.wa.gov.au:

- » *Workers' Compensation and Injury Management – a guide for workers;*
- » *Workers' Compensation and Injury Management – a guide for employers;*
- » *A Guide to Resolving Disputes;*
- » *Injury Management Review Unit;*
- » *A Guide to Noise Induced Hearing Loss Legislation.*

Other information sources

For more information about the **legislative reform**, access the Minister's Workers' Compensation Reform Website on www.workerscomp.wa.gov.au

Specific enquiries about **injury management or vocational rehabilitation** may be directed to the Injury Management Review Unit, telephone 9388 5555.

For information on **wage rates and award conditions**, contact the Department of Consumer and Employment Protection "Wageline", telephone 1300 655 266.

For **social security** enquiries, contact Centrelink, telephone 9238 9493.

For enquiries about **work safety and health** issues, contact WorkSafe Information Line, telephone 1300 307 877.

For **emergency counselling services**, contact Crisis Care, telephone 9223 1111.



WorkCover Western Australia

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