

CGU WORKERS COMPENSATION

WESTERN AUSTRALIA

Employer Information Pack



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INTRODUCTION

Insurance Australia Limited trading as CGU Workers Compensation Insurance ABN 11 000 016 722 (CGU), is a member of Insurance Australia Group (IAG), one of Australia's leading commercial insurers with operations in Australia, New Zealand and Asia.

CGU is one of Australia's largest regional and rural insurers and is an experienced workers compensation provider. We operate in all states and territories which permit private insurer participation.

CGU delivers workers compensation and health and safety services to over 200,000 employers across Australia. We offer products for small, medium, corporate and government employers, as well as self-insurers.

Whatever size your business, our approach is based on partnership. We'll work with you to manage your claims and drive early return to work outcomes. At the same time we'll ensure you have the information and tools you need to play an active role in managing your workers compensation program and developing a strong safety culture within your organisation.

This Employer Information Pack is a step in that direction. It contains an overview of the local workers compensation environment and services available from us.

The words 'we', 'us' and 'our' in this document refer to CGU, being the licensed insurer.

The words 'you' and 'your' in this document refer to the employer named in the workers compensation policy issued by CGU.

If you would like additional information regarding any of our services, please contact your insurance broker, agent or our CGU office.

Contact details:

CGU Workers Compensation
46 Colin Street
West Perth WA 6005
Tel. 1300 307 952
Fax. 1300 038 395

Email:

Underwriting - WADirectWC@cgu.com.au

Claims - workerscompclaims@iag.com.au

cgu.com.au

SECTION 1

YOUR POLICY

1.1 Why do you need a policy?

Employers are legally required to keep a current policy of insurance and must ensure that the current certificate of currency issued by the insurance company is available for inspection by WorkCover WA.

CGU will provide you with a certificate of currency upon request. Please contact your insurance broker or representative to arrange. Employers insured directly with CGU may contact us on 1300 307 952 or via email at WADirectWC@cgu.com.au.

Under the *Workers Compensation and Injury Management Act 2023* (WA) (the Act), you must have workers compensation insurance for anyone you employ who the legislation defines as a 'worker', including cover for common law liability. The definition of a worker can be found on the WorkCover WA website workcover.wa.gov.au. Apprentices must also be covered. There are also special considerations for the categories mentioned below that you need to be aware of.

1.1.1 Contractors/subcontractors

You are required to declare remuneration for an individual contractor if you engage an individual to do work for your business, and the work performed by the individual is not in the course of or incidental to a trade or business regularly carried out by the individual in their own name or under a business or firm name; and the individual does not sublet the contract; and if the individual employs a worker, the individual performs part of the work personally.

Further information can be obtained from the WorkCover WA website workcover.wa.gov.au.

1.1.2 Workers engaged by contractors and subcontractors

If you're a principal employer with a contractual arrangement with a contractor for work that is directly a part of or process in your trade or business, then both you and the contractor are considered the employers of any workers the contractor may employ.

You are required to declare remuneration for a contractor's workers if:

1. You are a principal contractor with a contract for work that is directly a part of your trade or business; and
2. You are unable to provide records that the contractor who employs the worker holds a workers compensation policy that indemnifies you during the relevant period.

Please note, however, that by obtaining a certificate of currency for such contractors and subcontractors, you do not take away your obligation to declare them on your insurance application. You will only be protected against claims made against you by persons engaged by contractors and subcontractors under a contract of service for legal liability to pay compensation and damages under the Act. No cover is provided for common law liability for damages.

For more comprehensive information regarding contractors, please refer to the technical note on contractors on the WorkCover WA website workcover.wa.gov.au.

1.1.3 Family members

Family members can be workers under the Act, even if they live in the family home.

You will be liable for the cost of a claim if a family member who is a worker suffers a compensable injury in the course of their employment with you. As such, you must have workers compensation insurance covering your liability.

The remuneration of all family members who are employed in your business must be declared and included under the policy as general workers/employees for the purposes of calculating premium.

1.1.4 Working directors

Companies have the option of covering their working directors under section 16 (3) of the Act.

In relation to such companies, a working director means a company director of the company, whether or not the director would be a worker if section 16 did not apply:

- a) who does work for or on behalf of the company; and
- b) whose remuneration, by whatever means, as a company director of the company is in substance for personal manual labour or services.

To obtain cover, a working director(s) must be named on the policy and their aggregate amount of remuneration to be paid or payable to the director over the proposed period of insurance must be declared in the Declaration of Estimated Remuneration form.

The WorkCover WA Remuneration Guidelines set out what constitutes 'remuneration' to assist employers to provide a remuneration declaration with respect to working directors and the significance of the declaration on the amount of income compensation payable if there is a compensation claim.

The WorkCover WA Remuneration Guidelines can be found on the WorkCover WA website workcover.wa.gov.au.

Companies must also provide supporting particulars to verify the aggregate amount paid to their working director(s) with the Declaration of Actual Remuneration form and in the event of a claim.

1.1.5 Obligations of principals to working directors

Principals engaging contractors need to be aware that they will be in breach of the Act if they enter into arrangements that are designed to avoid their liability to a worker under the Act.

This situation is known as an 'avoidance arrangement' under section 222 of the Act.

Principals are advised to seek advice on their contractual arrangements with their contractors to ensure they are not in breach of the Act as penalties apply.

1.1.6 Workers employed across State boundaries

Part 12 of the Act, clarifies the State your worker's employment is connected with.

1.1.7 State of connection

To make it simpler for employers to determine the appropriate State a worker's employment is connected with, and in which to insure workers, section 529 sets out a three-step process:

- (1) A worker's employment is connected with -
 - (a) the State in which the worker usually works in that employment; or
 - (b) if no State or no one State is identified by paragraph (a) - the State in which the worker is usually based for the purposes of that employment; or
 - (c) if no State or no one State is identified by paragraph (a) or (b) - the State in which the employer's principal place of business in Australia is located.
- (2) In the case of a worker working on a ship, if no State or no one State is identified by subsection (1), a worker's employment is, while working on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.
- (3) If no State is identified by subsection (1) or (if applicable) (2), a worker's employment is connected with this State if -
 - (a) the worker is in this State when the injury occurs; and
 - (b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.
- (4) In deciding whether a worker usually works in a State -
 - (a) regard must be had to the worker's work history with the employer over the preceding period of 12 months and the intentions of the worker and employer; and
 - (b) regard must not be had to any temporary arrangement under which the worker works in a State for a period not longer than 6 months.

- (5) Without limiting subsection (4), in deciding whether a worker usually works in a State or is usually based in a State for the purposes of employment, regard must be had to any period during which a worker works in a State or is in a State for the purposes of employment whether or not, under the statutory workers compensation scheme of that State, the person is regarded as a worker, or as working or employed, in that State.

Note for this section:

Section 19(3) provides that there is no liability for compensation in respect of an injury suffered by a worker outside Australia if the worker -

- (a) has never resided in Australia; or
- (b) has been continuously resident outside Australia for more than 24 months when the injury occurs.

1.1.8 Employment must be connected with this State

Under section 19 of the Act, liability for compensation arises only if your worker's employment is connected with Western Australia. No cover is provided if your worker has never resided in Australia or has been continuously resident outside Australia for more than 24 months when the injury occurs.

Your policy does not provide cover for your liability to pay damages in respect of injuries occurring outside Australia nor in respect of any such claim brought against you in any country other than Australia. Please contact us if you require this cover for any of your workers who are working outside Australia.

1.1.9 Overseas workers employed under a temporary work visa

Workers employed pursuant to a temporary work visa are entitled to receive workers compensation benefits if injured during the course of their employment. These workers must be declared under your policy. There are strict obligations for an employer to rehabilitate an injured worker employed under a temporary work visa within their own organisation. A condition of some visas is that a sponsored employee must remain working for the sponsoring employer.

Further information can be obtained from the Department of Home Affairs website at homeaffairs.gov.au.

1.2 How do you take out Workers Compensation Insurance?

When taking out a policy, you will need to submit an application form and Declaration of Estimated Remuneration form for the policy period (usually 12 months) and pay a deposit towards your premium based on the estimated remuneration. The premium is then calculated when you submit your Declaration of Estimated Remuneration form, and adjusted at the end of the period based on the Declaration of Actual Remuneration form you complete.

1.2.1 Cover notes

If you have taken out a cover note (i.e. temporary insurance cover until a policy has been issued), this must be finalised no later than one (1) month after it has been issued or within the terms agreed by us. The application form and Declaration of Estimated Remuneration form must be submitted to us within the time specified. A cover note that has expired leaves you uninsured.

1.3 WorkCover number

Employers are allocated a WorkCover number issued by WorkCover WA and is obtained by their insurer. The number remains the same no matter which insurer the employer uses and must be quoted to the insurer prior to insurance being written.

1.4 Industry classification

Your premium will be based on a Premium Rating Code (PRC) which is determined by the predominant activity at your work location.

Where a company has several separate industries operating from different locations, each industry should be rated separately. Where that company has a head office comprising mainly clerical employees, the remuneration should be allocated to the predominant industry, unless they can be directly linked to the industry that they service.

Where an employer operates more than one industry at the same single location, that employer's predominant industry shall determine the rate that is applied to all their operations at that site. Other employers on the same site are to be rated in accordance with their own predominant industry.

The WorkCover WA Industry Classification Order can guide you in identifying the correct PRC and class description, and can be obtained from the WorkCover WA website workcover.wa.gov.au.

1.5 Premium

Recommended premium rates are fixed and reviewed by WorkCover WA. The rates must be published on the WorkCover WA website workcover.wa.gov.au, and in any other manner WorkCover WA considers appropriate. The premium we determine for your policy is based on the recommended premium rate applicable to your allocated industry classification (PRC), your remuneration declaration and claims experience performance, and any risk factors we consider relevant to the operation of your business. Please be aware that all claim costs incurred under your policy will be included as part of our assessment of the premium we determine.

If you are dissatisfied with the industry classification (PRC) that has been allocated to your policy or the premium we have charged, you may apply to WorkCover WA for a review under the provisions of section 255 of the Act.

A premium review by WorkCover WA is available only if the premium we determine is at least 75% greater than the premium calculated on the basis of the recommended premium rate fixed by WorkCover WA.

1.5.1 Premium calculation

Unless you have an adjustable premium policy, the first premium and every renewal premium payable to us will be calculated on the amount of the remuneration you estimate you will pay or be liable to pay during the year following the issue or renewal of the policy, including all amounts you estimate you will pay contractors.

1.5.2 Adjustment of premium

Within 1 month after the expiry of the policy period you must provide us with a Declaration of Actual Remuneration form containing the aggregate amount of all remuneration paid or payable by you in that year (including remuneration paid to contractors) and, if required, the number of workers and contractors you employed or engaged in that year.

Unless you have an adjustable premium policy, if the amount of the remuneration, the number of workers and contractors or the type of business in which they were engaged differs from the information on which the premium for that year was calculated, the premium will be adjusted and you must pay a further premium to us or we will refund part of the premium to you, subject to our retaining a customary minimum premium.

1.6 If you don't have a policy

If one of your workers has a work related injury and you are uninsured, you will be liable for the cost of that claim. You may also be liable for the cost of any damages awarded by a Court.

In addition, WorkCover WA may prosecute any uninsured employer and impose penalties in accordance with the Act.

1.7 Your obligations under the policy

Under the terms of the policy we issue, you have certain policy and claims responsibilities to fulfil. It is important that you take the time to read your policy so that you are aware of these obligations.

The major obligations you have are to:

- provide estimated and actual remuneration declarations for each policy period you are insured with us;
- keep current and accurate remuneration records;
- allow inspection of your remuneration records by a duly authorised representative appointed by us; and
- give notice of any injury as soon as practicable (see Employer Claim Obligations in Section 2).

1.8 Our obligations under the policy

Our obligations under your policy are to indemnify you for any payments that you become legally liable to pay under the Act. We will also meet any reasonable costs and expenses incurred by you (with our written consent) in relation to a claim, subject to any limits and exclusions authorised under the Act and the conditions of your policy.

We also undertake to manage your claims pro-actively and do our best to provide the highest level of service for your injured employee.

SECTION 2 EMPLOYER CLAIM OBLIGATIONS

If a worker has suffered an injury and there may be lost time from work compensable under the Act, the worker must seek medical aid and obtain a certificate issued by a duly qualified registered medical practitioner.

2.1 Injury Management System

The Act requires all employers to have an injury management system and failure to comply with this requirement may attract a fine of \$5,000.

An injury management system is a process setting out the steps to be followed when there is an injury from employment. It must be available to the workers and include:

- a description of a worker's right to claim compensation if they suffer an injury from employment;
- a description of an employer's obligation to comply with the claim and injury management process set out in the Act when a claim is made;
- a description of the steps the employer will take if an injury from employment occurs; and
- information about the person who has day-to-day responsibility for the injury management system and their contact details.

Beyond being required under the Act, the document allows you to commence injury management quickly and properly in case of a workplace injury.

We suggest that your injury management system may also encompass the following:

- return to work guidelines and suitable duties registers designed specifically for the job positions within your organisation, outlining the physical requirements of each position;
- a defined alternative employment policy for injured workers who are unable to return to pre-injury duties;
- establishment of a preferred rehabilitation provider that is aware of your worksite(s), culture and business practices (although we note an Injured worker is also entitled to a rehabilitation provider of their choice); and
- defined staff who coordinate all workers compensation matters.

Should you require assistance in implementing an injury management system, please contact your Claims Consultant or one of our Injury Management Advisors on 1300 307 952. You may also contact WorkCover WA on 1300 794 744 or access their website at workcover.wa.gov.au.

2.2 What to do when an injury occurs

- Encourage your injured worker to seek first aid from a medical practitioner as soon as possible and obtain a first certificate of capacity.
- Ensure the injury is reported to the worker's employer as soon as possible.
- Record the incident in an accident log book or electronic system.
- Provide the worker with a Workers Compensation Claim Form available from us, or online at cgu.com.au.
- Provide CGU with initial Notification of Injury form. The fastest and most convenient way to do this is online at cgu.com.au.
- When the worker gives you the first certificate of capacity and the completed Workers Compensation Claim Form, you are required to complete the Employer Details section and keep a record of the date you received the forms, and the date they are provided to CGU.
- The worker is required to complete all other sections of the Workers Compensation Claim Form. Please ensure that the worker signs and dates the claim form in all two places.
- Detach the Workers Compensation Claim Form and provide the remaining sections to the worker, as it contains information they require about their claim.
- Complete the Workers Compensation Employer's Report Form available from us, or online at cgu.com.au.
- Forward the Workers Compensation Claim Form, first certificate of capacity and any other correspondence (i.e. progress certificates of capacity, accounts and payslips) to us immediately.

The Act requires this to be done within seven (7) days of the Workers Compensation Claim Form being given to you by the worker.

- Other documents should be forwarded to CGU as soon as they are received.
- In the event of the worker's injury arising from a motor vehicle accident, please ensure the worker also completes the relevant Journey Report Form available from us, or online at cgu.com.au.
- Please ensure all questions are answered fully.

If you have concerns about the claim, or there is additional information relevant to the claim, please telephone us in the first instance and follow up in writing (by email or post) when lodging the documents.

Our service standard is to make a decision whether or not to accept liability within five (5) business days. If we are unable to determine liability and need time to investigate the nature and cause of the injury to help us make a decision, then we will notify you within 14 days after the claim is given to us that a decision on liability has been deferred.

2.3 Initial injury notification

We encourage our customers to adopt an 'early reporting culture'. This helps ensure the injured worker is receiving timely and appropriate treatment and enables CGU to move quickly in terms of claim processing and return to work planning.

Providing CGU with initial notification of an injury means we can prioritise complex or high-risk claims and start planning in terms of claim and injury management. Ultimately this will mean we can achieve better return to work outcomes and help you keep your workers compensation premium under control.

The most convenient way to provide initial notification is online via our 'Injury Notification Portal' at cgu.com.au/business/workers-compensation/wa.

Available 24/7, this system takes only a few minutes to complete and delivers a reference number which (upon formal notification) will become the claim number.

You can also provide initial notification via phone, fax or email.

Please note that initial notification does not replace your obligation to provide formal notification by submitting to CGU a Workers Compensation Claim Form and certificate of capacity.

2.4 Submission of claim forms

Time limits and forms required.

A claim for compensation is made when the worker has given to the employer:

- a completed claim form in the approved form; and
- a certificate of capacity for the claim.

An employer who receives a claim must forward it to their insurer within seven (7) days of receipt.

Failure to do so may result in a fine of \$5,000.

2.5 Accident record book

It is recommended that employers record information relating to a workplace injury in an accident log book or electronic system including:

- the date of accident;
- time;
- nature of injury;
- what caused the incident;
- to whom the injury was reported;
- witnesses; and
- first aid provided.

2.6 Notifiable injuries and dangerous occurrences

It is a requirement of the *Work Health and Safety Act 2020* (WA) that an employer whose employee suffers a notifiable incident must notify WorkSafe WA by telephoning 1800 307 877 or via their website.

A 'notifiable incident' includes the death of a person or an injury:

- requiring hospital admission;
- requiring treatment as listed in the legislation;
- which is the opinion of a medical practitioner is likely to prevent the injured worker to do their normal work for at least 10 days after the day on which the injury or illness occurs.

Further information on notifiable incidents can be obtained from the WorkSafe website at commerce.wa.gov.au/worksafe.

2.7 Return to work program

The Act requires that an employer establish a return to work program (in the approved form) in circumstances such as when:

- the injured worker is certified with a partial incapacity for work;
- the injured worker's treating medical practitioner is supportive of a return to work program; or
- Orders are made by an Arbitrator.

Failure to comply with this requirement may result in a fine of \$5,000.

Various obligations are also listed in regulations 75 to 80 of the *Workers Compensation and Injury Management Regulations 2024* (WA) (Regulations), in respect of the establishment, content and implementation of a return to work program.

Under the Act, you are able to seek assistance or transfer your obligation to establish a return to work program to us. You may request this when submitting a claim or by contacting your Claims Consultant.

In our experience, one of the best ways for an injured employee to make a successful return to work is to gradually increase the physical duties they perform on the job. A worker does not have to be certified fully fit or have finished treatment before they can return to work. Easing back into work by participating in a return to work program may help them recover successfully (subject to their treating medical practitioner's certification).

We need your continued support to return the injured worker to work as soon as safely possible, preferably to their usual place of work, duties and hours. If they remain incapacitated for their pre-injury role, it is important that you identify and make available suitable alternative duties in accordance with the return to work program.

If you have requested our assistance with the establishment of the return to work program, we may appoint a workplace rehabilitation provider to support you and the injured worker, noting that the injured worker can also request a preferred provider.

The return to work program must be in the approved WorkCover form. The document:

- is usually a collaborative process involving the worker, employer, insurer, treating medical practitioner, and workplace rehabilitation provider;
- confirms the hours and duties an injured worker can complete following their injury; and
- may be amended when supported by with the worker's updated certification.

Return to work conferences can also be arranged for the purpose of supporting the worker's recovery and enhancing opportunities for the worker's return to work. A return to work conference may be attended by the worker (with or without a support person), the employer, the insurer, the treating medical practitioner and the approved workplace rehabilitation provider.

Please notify us when your injured worker returns to work in either a full or partial capacity for pre-injury duties and commenced earning pre-injury wages. A return to work notice confirming these wages (in the WorkCover approved form) must be provided to the injured worker when this occurs.

2.8 Worker's position to be available for 12 months

You must, unless it is not reasonably practicable to do so, keep available the injured worker's pre-injury position for the period of 12 months from when they first had an incapacity for work as a result of the injury. This means that if your injured worker attains a partial or total capacity for work within 12 months of becoming entitled to income compensation payments, you must make their previous position available to them. If the position cannot remain available, please contact your Claims Consultant as a matter of priority so we can advise on your options pursuant to the legislation.

You must not dismiss the injured worker due to their work incapacity, during the period of 12 months beginning on the day which the worker first had an incapacity as a result of their injury. If you intend to dismiss your injured worker for any reason during that period, you must provide them with the approved WorkCover form named 'intention to dismiss worker notice' at least 28 days before the dismissal takes effect.

Failure to comply with these requirements may result in a financial penalty on the employer under the Act.

If an injured worker to whom section 166 applies is dismissed, this does not change the obligations of the employer, and rights of a worker, under the Act.

SECTION 3

ENTITLEMENTS TO COMPENSATION

3.1 Definition of a worker

The definition of 'a worker' in the Act is very broad. In summary, it covers:

- an individual who works under a contract of service (whether express, implied, oral or written);
- an individual who works as an apprentice; and
- in some situations, contractors and subcontractors, depending on their working arrangements.

The Act also includes provisions in relation to specific groups and occupations (including but not limited to labour hire employees, jockeys, working directors).

If you are unsure whether a person is considered a worker for the purpose of the Act, please contact your insurance broker, agent or our CGU Workers Compensation office.

3.2 Compensation excluded: serious and wilful misconduct

Compensation will usually be paid to a worker for a work-related injury regardless of whether the injury occurs because of the worker or employer's fault.

There are exceptions to this, such as situations where a worker is found guilty of serious and wilful misconduct. The main reasons why a claim may be disputed under this provision are if the injury is attributable to:

- the worker's failure to wear safety equipment or clothing provided by the employer (without a reasonable excuse);
- the worker being under the influence of alcohol or a drug of addiction; or
- any other kind of serious and wilful misconduct by the worker.

Any compensation claimed in respect of that injury should be disallowed unless the injury has serious and permanent effects or results in the death of the worker.

3.3 Proactive injury management

We recognise the value of working in partnership with our customers in driving injury management. We believe that the best return to work plans are delivered by an integrated approach to injury claims management and that flexibility in service delivery is critical to achieve safe and durable return to work. We are committed to minimising your risk and exposure post-injury and will work with you in restoring injured employees to their pre-injury capacity, while also containing costs; a win-win situation.

A proactive approach to injury management provides benefits to workers, minimises disruption in your workplace, and helps to contain workers compensation costs.

It is your responsibility to work with your injured workers and cooperate in this process, where it is supported by medical evidence.

When you provide CGU with an initial notification of an injury (which you can do online at cgu.com.au) we will screen the notification for an early potential claim identification and risk assessment, and start considering appropriate strategies to overcome any barriers to return to work if a claim is submitted by the injured worker.

3.4 Journey cover

A worker's injury may be compensable if it arises during a 'work journey'.

However, such injury will not be compensable if the injury occurs during a substantial interruption of, or deviation from, the work journey.

A journey to and from the place at which the worker resides, whether or not temporarily, is not considered a work journey under the Act.

3.5 Deciding liability of the claim

Once you give us the claim forms and first certificate of capacity, we will make a decision to accept, not accept or defer liability for the claim within 14 days. At that stage:

- a liability decision notice or a deferred decision notice will be issued to the worker, along with some information on their rights and responsibilities in relation to their claim for compensation; and
- a letter will be sent to you confirming our decision on liability and will include the claim number, the name of the Claims Consultant administering the claim and their direct telephone number.

Where you have concerns or dispute the validity of a claim, you must contact us and give us any information, or documents that will assist in the management, defence or settlement of the claim.

Based on the information provided, we may appoint an external investigator to investigate the circumstances of the claim and take statements from parties related to the claim.

3.5.1 Accepted claims

If the claim is accepted we will send you a copy of the approved notice, with a letter discussing the decision and the calculation of income compensation.

If the claim involves the worker being unfit for work, you must, pursuant to the Act:

- within 14 days of the decision being made, make the first payment of income compensation, for the period from the day on which the injured worker first had an incapacity for work as a result of the injury; and
- make subsequent payments of income compensation to the worker on the usual pay day.

The Act states that penalties apply for non-compliance of these obligations.

If you have any queries about when or how much a worker should be paid, please contact your Claims Consultant to clarify the correct amounts before making any payments.

Income compensation must continue and should not be stopped unless we advise you to do so.

3.5.2 Deferred decision on liability

If we are unable to reach a decision within 14 days of us receiving the claim we will issue a deferred decision notice to the worker.

This notice is approved by WorkCover. It confirms that more time is required to make a decision on liability and provides reason(s) and details. We are then given another 14 days (28 days in total after receiving the claim) to make a decision on liability. If a liability decision cannot be made during that time, the following day is called the 'provisional payments day'.

This means that on day 29:

- the worker becomes entitled to provisional payments and you must make the first provisional payment (a penalty applies for non-compliance);
- we will issue a provisional payments notice to the worker, confirming that payments are commencing in accordance with the Act (and the weekly rate of compensation); and
- the worker also becomes entitled to provisional payment for reasonable medical and health expenses up to an amount prescribed under the Act.

Provisional income compensation payments are to be made from the first date of incapacity as a result of the injury and ends on the earliest of the following days;

- a) the day on which a certificate of capacity is issued that specifies that the worker no longer has any incapacity for work;
- b) the day on which the insurer gives a liability decision notice for the claim to the worker;
- c) the day on which the insurer is taken under section 29(3) to accept that the employer is liable to compensate the worker for the injury.

Liability for a claim must be determined within 120 calendar days, commencing on the day the claim is lodged. If not, the claimed is deemed to be accepted under the Act.

Important note:

Under no circumstance should income compensation payments or provisional payments to the worker be commenced without prior written approval from CGU.

3.5.3 Not accepted claims

If the claim is not accepted, we will send a liability decision notice to the worker.

The notice advises the worker that liability is not accepted, the grounds for the decision, and their rights to refer the decision to deny their claim to our Internal Dispute Resolution Panel or lodge an application for review with WorkCover.

As the employer, you will also receive a copy of the notice.

3.5.4 Recurrence or aggravation of injury

There are circumstances that are described as a recurrence or an aggravation of an injury, for example if a worker:

- seeks medical treatment with respect to a claim they have previously made and it has been some time since the worker last had treatment; and
- had returned to their work after making a claim, but their capacity becomes compromised again later on, with respect to the same injury (and they are issued certificate of capacity specifying that they have an incapacity for work); or
- is receiving medical treatment with respect to a claim but their symptoms worsen over time and their capacity becomes compromised; or
- had made a claim and recovered from the injury, then commenced work with another employer, but their capacity becomes subsequently compromised again.

There are provisions in the Act and Regulations for incapacity arising after a claim has been made.

If a worker gives you a certificate of capacity noting a new incapacity for work you must give us the certificate within 7 days.

At that stage, the claim is considered 'amended' under the Act and liability must be decided again. The process and time constraints referred to previously must again be adhered to.

In cases of aggravation or recurrence of an injury, we request that you also provide us with the following forms available from us, or on at cgu.com.au;

- a Recurrence of Injury claim form; and
- a Witness Statement form(s).

3.6 Income compensation rates

Income compensation rates are based on 'pre-injury rate of income' as defined in section 54 of the Act.

The following notes should assist with the information you need to provide us for the calculation of the income compensation rate.

A pre-injury average weekly rate of earnings is first calculated over the period of 1 year prior to the injury occurring, also considering that:

- if the injured worker was employed less than 1 year, the pre-injury weekly average is calculated over the period worked before the injury occurred;
- if the injured worker concurrently held 2 or more positions (whether with the same or different employers), the earnings must be aggregated when calculating the pre-injury weekly average;
- if the injured worker had taken leave without pay during that period, that leave must be excluded in making the calculation;
- if you provide board and lodging to the worker as payment for work, its monetary value may be required in the calculation of the pre-injury weekly average; and
- the income compensation rates are subject to minimum and maximum rates under the Act.

For the first 26 weeks commencing from the date of incapacity, the weekly rate of income is the average weekly rate of earnings.

After 26 weeks, the amount is calculated at 85% of the pre-injury weekly rate of income subject to the minimum weekly rate of income compensation, as prescribed by the Act, which considers:

- the injured worker's industrial instrument; and
- the minimum amount allowed under the *Minimum Conditions of Employment Act 1993*.

Section 57 of the Act also lists some limited circumstances where no minimum weekly rate applies.

3.6.1 Minimum rate for workers on an industrial instrument

Under the Act, an industrial instrument refers to:

- a) an award or order (including an enterprise order or General Order) made by the Western Australian Industrial Relations Commission under the *Industrial Relations Act 1979* (WA); or
- b) an industrial agreement, as defined in the *Industrial Relations Act 1979* (WA) section 7(1); or
- c) a fair work instrument, as defined in the *Fair Work Act 2009* (Cth) section 12; or
- d) an award, order, agreement or other instrument that is of a class prescribed by the regulations.

If the injured worker was on an industrial instrument when the injury occurred, the applicable minimum rate of income compensation under the Act is:

- the 'base award rate component' (base weekly rate of pay, excluding payment for overtime, and any bonus or allowance); and
- the 'regular additional earnings component', if any (which includes but is not limited to allowances, including payment for overtime, paid on a regular basis as part of the worker's earning and related to the number or pattern of hours worked by the worker).

This means that in some circumstances the injured worker may not see a drop in their weekly rate of compensation after 26 weeks.

We will assist you with calculating the appropriate rate of income compensation.

3.6.2 Minimum rate for workers not on an industrial instrument

To calculate the income compensation rate after 26 weeks for a worker who was not employed under an industrial instrument when the injury occurred, the average rate of weekly income is adjusted to 85% of the pre-injury weekly rate, subject to the minimum amount to which the worker would, if the worker had not been injured, have been entitled under the *Minimum Conditions of Employment Act 1993* (WA) to be paid in a week for working.

3.6.3 Compensation for death of worker

Under the Act, compensation may be payable to a dependant or dependants (which may include a partner, child, or extended family) in circumstances where:

- the worker has died as a result of their compensable injury; or

- the worker has died but this was not as a result of their compensable injury (and the worker had been in receipt of income compensation for at least 6 months immediately preceding the worker's death).

Benefits in circumstances where the worker has died as a result of their compensable injury include:

- lump sum entitlement to be divided between the dependants (prescribed under the Act);
- allowance for eligible dependent children;
- medical expenses, up to the medical and health general limit amount; and
- funeral expenses, up to a maximum amount prescribed by the Regulations.

Benefits in circumstances where the worker's death was not resulting from the compensable injury is a lump sum entitlement to be divided between the dependants (equal to the aggregated amount of 1 year of income compensation, using the worker's weekly rate of compensation for total incapacity).

A claim for compensation must be made within 12 months after the date of the worker's death, using the WorkCover approved form.

If you are given a claim for compensation for the death of a worker, you must give us the claim within 7 days. The Act imposes penalty for non-compliance of this obligation.

As soon as reasonably practicable after receiving the claim, we will provide a copy of the claim to WorkCover and confirm our decision on liability.

3.7 Payments authority and processing

Income compensation must not be paid until approved by us in writing and only at the rate we have calculated.

If liable, the Act requires that you commence payment to the injured worker within the following timeframes:

- if liability is accepted: the first income compensation payment must be made within 14 days of acceptance of liability; or
- if a decision on liability is deferred: the first provisional payment must be made on the 'provisional payments day', being the 29th day after the claim is received by us.

The Act states that penalties apply for non-compliance of this obligation.

To ensure consistency of income for your injured worker, payments of income compensation are required in line with your normal pay cycle and continue for as long as the worker remains incapacitated for work or we advise you otherwise.

You can claim reimbursement of income compensation payments made to your injured worker. To enable prompt reimbursement to be paid to you, please complete the form 'Employer Income Compensation Reimbursement Request' confirming the period of incapacity and income compensation paid (at the approved rate). Most employers find it convenient to send this in regularly, in line with their usual pay cycle.

3.8 Certificates of capacity

After a workplace injury has occurred, the worker should seek medical attention from a medical practitioner of their choice and obtain a first certificate of capacity.

If claiming workers compensation, the worker is required to supply progress certificates of capacity regularly.

Certificates of capacity support any ongoing incapacity and need for treatment. Accordingly, they guide payments of income compensation as well as other expenses such as medical and health. All certificates of capacity must specify the worker's capacity for work and include the dates for which the certification applies. The worker's capacity may be listed as:

- no capacity for any work;
- some capacity for work (modified duties or hours); or
- full capacity for work.

When an injured worker is certified with full capacity for work a final certificate of capacity may be issued by their treating medical practitioner.

All certificates of capacity should be sent to us. If the injured worker has not provided you an updated certificate of capacity, please contact us for further advice.

3.9 Medical and health expenses

Medical and health expenses are payable if they are reasonably necessary and incurred as a result of the compensable injury, up to a maximum amount referred to as the 'medical and health expenses general limit amount'.

Please do not pay any accounts for medical and health expenses without our approval. Instead, we request that you forward us any accounts when you receive them. Payment will then be made by CGU to the creditor concerned, in line with WorkCover WA's approved rates.

3.10 Travel expenses

Reasonable travel expenses are listed as part of miscellaneous expenses under the Act and may include:

- running costs of the use of the worker's vehicle for approved travel;
- any fare or other cost of approved travel; or
- meals and accommodation reasonably required in connection with approved travel.

If claimed, we request that the worker complete our forms named 'Travel Reimbursement Form' and 'Medical and/or Expenses Form', and forward this to us when practicable.

The Regulations prescribe the rate to be used when reimbursing reasonable travel expenses and we note:

- running car expenses are calculated using an amount per kilometre travelled; and
- meals and accommodation expenses are calculated using a daily rate.

If an injured worker intends to use a taxi, rideshare services, purchase flights or book accommodation in relation to their claim, we request that they first contact us to confirm the expense is a reasonable travel expense.

3.11 Common law

In addition to claiming compensation and damages under the Act, injured workers may also pursue a claim for common law damages against their employers in certain circumstances.

To pursue a claim for common law damages against their employer, an injured worker must:

- be assessed as having a degree of whole of person impairment of not less than 15%;
- elect to retain the right to seek common law damages with WorkCover WA (using the approved form) and be notified in writing by the Director that the election has been registered; and
- commence proceedings in a court within the statutory limitation period.

To succeed in a claim for common law damages a worker must also establish that the injury was caused by the tort of the employer (defined in the Act as negligence or other tort or breach of statutory duty).

When first assessing a workers compensation claim, we will also consider the risk that a worker may also seek common law damages. In some cases, we will need to investigate the circumstances of the accident further and will require your cooperation in that process.

For workers electing to pursue a claim for common law damages with an assessed whole of person impairment of less than 25%, the damages amount is subject to a maximum prescribed by the Regulations.

For workers electing to pursue a claim for common law damages with a whole person impairment of at least 25%, the Act and Regulations do not impose a maximum amount on the damages.

3.12 Centrelink recovery

If CGU is given a notice by Centrelink that they intend to recover an amount from the compensation paid to the injured worker, we must deduct that amount from any compensation payments made to the worker. If applicable, we will advise you of the amount deducted and the balance payable to the worker.

SECTION 4

EMPLOYEE OBLIGATIONS

4.1 Making claim for compensation

A claim for compensation must be made within 12 months after the injury occurs, pursuant to section 25(1) of the Act.

4.2 Other employment

If a worker commences remunerated work with another employer after making a claim for income compensation, the worker is required to inform the employer or us within 7 days of the commencing that work.

The Act states at section 32(1) that a penalty of \$5,000 applies for non-compliance of this obligation.

If your injured worker provides you information about other employment please contact CGU as soon as possible.

4.3 Return to work and workplace rehabilitation

Under section 163 of the Act, a worker has a duty to make reasonable efforts to return to work, which includes actively participating in a return to work program and undertake workplace rehabilitation when required to do so.

If the worker fails to comply with this obligation, an application may be made to WorkCover WA to suspend income compensation in respect of the worker's refusal or failure to comply with their duty.

4.4 Medical examinations

Pursuant to section 180 of the Act an insurer may require a worker who has claimed compensation to undergo examination by a medical practitioner for the purpose of obtaining a written report to the worker's condition. The examination must be arranged and paid for by the insurer.

If a worker fails to attend or obstruct the examination in any way, without reasonable excuse, this may lead to suspension of compensation.

For this to occur, an application must be made to WorkCover WA.

SECTION 5

CUSTOMER SERVICE

5.1 Customer service standards

Our customer service standards detail our commitment of service to you.

Key elements of our service standards include:

- respond to telephone / verbal enquiries within one (1) business day
- respond to written enquiries within two (2) business days
- process wage reimbursement payments within seven (7) business days of receipt of invoice, for eligible claims
- process service provider accounts within twenty (20) business days of receipt.
- reimburse injured person within five (5) business days
- initial contact and risk screening to be completed within five (5) business days of receipt of claim
- coordinate claims reviews if required
- keep you informed of all matters that proceed to WorkCover WA or Court
- changes in Claims Consultant are to be communicated to all clients as soon as practicable.

5.2 Claim reviews

Claims management is not a function performed only by the insurer. Information shared between both the insurer and employer plays a vital role in the administration and ongoing assessment of claims.

To facilitate this, we suggest that claim reviews be conducted on a regular basis. These will provide an excellent forum to discuss the following:

- current status of claims
- future management
- current estimates
- claim trends
- workplace rehabilitation
- occupational safety and health
- cost reduction strategies
- other issues affecting claim costs and premiums.

Claim reviews are coordinated by your Claims Consultants and attended by appropriate CGU representatives as required including our Injury Management Advisors and Team Leaders.

We can also provide advice in regards to occupational safety and health, injury management, claims management and cost reduction strategies.

If you would like a claim review meeting to discuss any of your open claims, please contact us to arrange a suitable time.

5.3 Employer training

5.3.1 Injury management for employers training

This series of free employer training packages is targeted at human resource specialists, line managers, supervisors, small business owners and those with an interest in better understanding and managing workplace accidents and injuries.

Register on imtrainings@cgu.com.au, or contact us on 1300 307 952.

5.3.2 Online Training

CGU offers free online courses to all employers holding our workers compensation cover. CGU, in partnership with Kineo, provides innovative online work, health and safety training solutions. Using a blend of workplace simulations, interactive assessments, audio, images and text, our courses actively engage and involve the user in problem-based learning.

The benefits of online learning include:

- Lower training cost per employee
- Standardised training throughout all business locations
- Reduced administration requirements.

What do I get?

- Free or discounted online training
- An opportunity to trial online learning in your organisation at no cost
- Discounts on future online learning courses.

What courses can I choose?

As a CGU customer you will have access to over 120 modules in work health and safety, injury management and industrial relations.

How do I access this offer?

Please email safetyrisk@cgu.com.au to register your interest and they will create a Kineo profile. Alternatively, contact your Customer Relationship Specialist.

5.4 Legal, investigation and workplace rehabilitation providers

5.4.1 Service providers

We will work with you in establishing a network of service providers. We have established provider panels in the areas of legal, investigation and workplace rehabilitation providers.

Our providers all have specific arrangements concerning cost and service delivery. A comprehensive objective and subjective performance measurement model overlays our provider network allowing us to monitor performance from the perspective of quality and timeliness.

In the event that we are not satisfied with the performance of a provider or a conflict arises, then we will seek a meeting with all parties involved to resolve the conflict.

5.4.2 Injury Management Advisors

We have a dedicated team of health professionals who provide support to our claims staff in strategically managing injury management activities. This support is provided in terms of streamlining our systems and processes around the utilisation of workplace rehabilitation providers and specific review of individual performance and return to work strategies required on claims.

Our Injury Management Advisors are all qualified health professionals specialising in a diverse range of areas, namely Occupational Therapy, Nursing, Rehabilitation and Physiotherapy.

We need to understand your business to ensure we deliver timely injury management services. Our Injury Management Advisors will assist you in developing an employer profile that details your rehabilitation policy, preferred network, suitable duties registers and so on.

5.4.3 Workplace rehabilitation

We consider the referral to external service providers to be an extension of our business. The link between you, workplace rehabilitation service providers and us is essential to ensure that a timely and durable return to work is achieved.

Please note an injured worker is entitled to a workplace rehabilitation provider of their own choice.

That said, we also have established preferred provider arrangements with external workplace rehabilitation providers. Our preferred rehabilitation and return to work providers have been selected from a detailed tender process and have been selected under strict performance criteria surrounding their abilities in the following areas:

- cost efficiency
- return to work outcome performance
- timeliness of undertaking instructions and activities
- reporting requirements
- areas of expertise.

Once a preferred workplace rehabilitation provider has been selected, the Provider Management Specialist is responsible for this relationship. Their role is to manage the relationship with that service provider to:

- monitor service provision
- review provider performance
- identify any areas of business improvement between us and that service provider; and
- review and feedback.

We also produce a six monthly scorecard for workplace rehabilitation providers. This scorecard tracks claims data and is used as a means to manage a provider's performance. The report looks at, amongst other data, date of referral by duration band, cost, outcome, comparison to all providers, open cases and so on.

5.5 Managing the medico legal process

We will make available to you, subject to the privacy law requirements, all medico-legal reports as soon as practicable, either by way of full copies of the report or provision of a summary report.

5.6 Internal Dispute Resolution

In case of a disagreement, we have developed a process to handle disputes internally first, aiming to avoid legal proceedings when possible.

We refer to the internal dispute resolution process in various correspondence we send to parties, and the information is also available via our website cgu.com.au.

Upon receipt of an internal dispute by a party, a Technical Advisor promptly reviews the matter and advise if the original decision is maintained or not.

5.7 Disputes lodged with WorkCover WA

A formal dispute arising between parties in the workers compensation system is dealt with by WorkCover WA, encompassing the conciliation service and the arbitration service.

Under section 311 of the Act, a party to a dispute may make an application for a resolution of the dispute by conciliation. In doing so, the parties must file the documents they intend to rely upon to support their argument. If the matter cannot be resolved by conciliation, the matter may then be referred for determination by arbitration, pursuant to section 331 of the Act.

Strict timeframes apply to applications for conciliation and arbitration. If you receive an application from a worker or their representatives, we request that you contact us as a matter of priority.

As an employer, you must give us any information, documents and assistance we request and otherwise cooperate with us in the management, defence or settlement of any claim. Please contact your Claims Consultant if you have any concerns or believe a claim or entitlement should be disputed, so that we can assess the matter on the information available.

5.8 Legislative updates

We aim to keep you informed of workers compensation, rehabilitation and occupational safety and health legislative changes. This is done in a variety of ways including:

- information and training seminars
- email – information is provided of legislative changes via email to our designated contacts.

SECTION 6

SUMMARY

In order to achieve a successful outcome, the injury management and return to work process requires a team effort with ongoing communication between you, your injured worker, medical practitioner and CGU.

We trust you have found this Pack informative and of benefit. We would appreciate any feedback on our services at any time to ensure we continue to partner with you to reduce workplace injuries and achieve positive return to work outcomes.

Remember our staff are available to assist you. Connect with your Claims Consultant directly or get in touch with us. You can find all the relevant contact details on our dedicated contact page.

You will also find all the information and forms you need to manage a claim at our website cgu.com.au.

Alternatively, you can contact WorkCover WA with any queries you may have in relation to workers compensation matters.

CONTACT DETAILS

CGU WORKERS COMPENSATION

46 COLIN ST WEST PERTH WA 6005

PO BOX 77 WELSHPOOL DC WA 6986

PHONE 1300 307 952

FAX 1300 038 395

EMAIL

UNDERWRITING – WADIRECTWC@CGU.COM.AU

CLAIMS – WORKERSCOMPCLAIMS@IAG.COM.AU

WORKCOVER

PHONE (08) 9388 5555

1300 794 744

WEB WWW.WORKCOVER.WA.GOV.AU

WORKSAFE

PHONE 1300 307 877

WEB WWW.DMIRS.WA.GOV.AU/WORKSAFE



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