



WORKERS COMPENSATION FREQUENTLY ASKED QUESTIONS



If I am injured at work how do I make a claim?

Notify your employer immediately and record the injury. If your employer has a claim form, complete it and hand it to your employer. Your employer should notify the insurer within 48 hours of your injury. You will then need to see a doctor (this will be your choice of nominated treating doctor). Get the doctor to fill out a State Insurance Regulatory Authority (SIRA) *Certificate of Capacity* and give it to your employer as soon as possible.

Weekly payments should start within 7 days unless additional evidence or information is required. A claim for workers compensation should be made within six months of the date of injury, accident or date of death.

If the failure to make a claim within six months is the result of ignorance, mistake, or absence from the State a claim for workers compensation can still be made if it is made within 3 years from the date of accident.

If a claim is not made within three years but relates to an injury resulting in death or serious permanent impairment of the worker, the claim may still be made. However this may take longer than expected for the claim to be accepted or declined.

You can find the claim form at:

<https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/forms/workers-and-claims/SIRA08684-Workers-InjuryClaim-Form-0119.pdf>

What happens once I put the claim in?

The insurer will contact the worker, employer, and if necessary, the worker's nominated treating doctor, to build your case.

Provisional liability payments will start within 7 days of the insurer receiving notification of the injury. If the insurer has a *reasonable excuse* to not commence provisional liability payments, they will notify the worker within seven days of receiving notification of injury.

Do I have to obtain a Certificate of Capacity to make a Workers Compensation claim?

Yes. All claims for workers compensation must be supported by a SIRA *Certificate of Capacity*. The certificate must be completed by your treating doctor and submitted with the claim form.

If I am a casual or part time worker can I still put in a workers compensation claim?

Yes you can, as long as your injury arose out of, or in the course of your employment where the employment is a substantial contributing factor.

What should I do when I see my Doctor?

Tell your doctor about:

- How and when the injury happened
- Any previous injuries or illnesses you've had
- Any treatment that you have received or are still receiving for the work related injury
- The types of duties and tasks you do at work
- Your normal days and hours of work.

To help your doctor, take a description of your job and the duties that you do (you can get this from your supervisor/employer)

Make sure that you:

- Obtain a certificate of capacity if you need time off work or any treatment for your work-related injury
- Authorise your doctor to provide necessary information to your employer, insurer and other relevant people by signing the certificate of capacity
- Complete the certificate of capacity (worker declaration) and send all sections of your certificate of capacity to your employer

The insurer will assess your work capacity and then make a work capacity decision. This decision will determine if you have the entitlement to weekly payments and at what rate.

Is my department exempt from the current legislation?

If you are a police officer, paramedic, fire-fighter & Rural Fire Service, SES, coal miners or suffer from a dust disease, then you are exempt from any changes that were made by the NSW Government in June 2012. The old system applies to these workers.

What benefits is an injured worker entitled to?

Everyone's situation is different; the answers below may vary depending on the situation.

- Weekly benefits
- A lump sum for your injury
- Medical, hospital, domestic assistance and rehabilitation expenses

How long are my medical costs going to be covered?

There has been a limit placed on the coverage of medical costs.

Any medical or related costs will cease 12 months after your weekly payments cease.

Please note that an insurer is not liable to pay for treatment that they have not pre-approved, except for treatment received within the first 48 hours after the accident. However, those who are classified as seriously injured workers are exempt from the above.

I'm on workers compensation and I am about to reach retirement age, what will happen to my workers compensation payments?

Workers can receive weekly payments up until the one-year anniversary of reaching retiring age.

Workers injured after retiring age are limited to weekly payments for up until 12 months after the date of first incapacity. Medical expenses are paid for a maximum period of 12 months from when an insurer ceases to be liable to pay weekly benefits.

The insurer previously accepted liability for my injury, but they will no longer pay for my medical costs, what should I do?

An insurer is liable to pay for the reasonable and

necessary treatment expenses related to the injury during the period that the worker is receiving weekly payments and up to 12 months from when the insurer ceases to be liable to pay for weekly benefits. If the insurer decides to stop paying for treatment expenses in this period, then call **WIRO** (Workers Compensation Independent Review Office) on **13 94 77** or SafeWork NSW on 13 10 50. If legal assistance is needed contact the PSA, as we have WIRO approved solicitors to assist.

Can I claim Lump sum compensation?

Claims for lump sum compensation for injuries that occurred on and from 1 January 2002 are based on an assessment of your permanent impairment.

If your claim for lump sum compensation was made **on or after 19 June 2012**, then you must have more than 10% permanent impairment for a physical injury or 15% or more for a primary psychological injury to be entitled to receive permanent impairment compensation. No permanent impairment compensation is available for secondary psychological injuries.

Only one claim for permanent impairment compensation can be made in respect of the injury. However, if you made a claim for permanent **impairment before 19 June 2012**, you may be entitled to make one further lump sum compensation claim if your condition has deteriorated.

Assessment of permanent impairment...

The degree of impairment must be assessed by a medical specialist listed on the SIRA website as a trained assessor of permanent impairment.

To undergo an assessment, your injury must have reached maximum medical improvement. This means your condition has stabilised and is unlikely to change substantially in the next year with or without treatment. If you are unsure if you have reached maximum medical improvement, speak with your treating doctor or specialist.

Please refer to the relevant SIRA guidelines.

If I want to dispute my declined claim do I have to pay anything?

If you seek your own solicitor (who is not WIRO approved) to take on your declined claim, yes you need to pay out of your own pocket.

If you are a member of the PSA at the time of your injury, you have the option of being referred to the PSA's solicitors who are WIRO approved. The solicitor can then apply on your behalf to WIRO for an ILARS grant to cover your legal fees.

What is an ILARS grant?

ILARS stands for Independent Legal Assistance and Review Service.

Through WIRO, your Lawyer (who must be recognised as an Approved Legal Service Provider) can apply for an ILARS grant on your behalf.

This will allow your solicitor to investigate and legally challenge any dispute regarding your workers compensation claim.

If I have gone to a lawyer before ringing the PSA, am I able to use the PSA's Lawyer?

If you have just sought advice from another lawyer then you are able use the PSA Lawyer, however, if you have had another lawyer acting on your behalf, then the PSA Lawyer will not take on the case.

The insurance company has accepted liability, they are covering all medical expenses, they are stalling on an operation I need. Is there anything I can do to speed up the process?

You can contact WIRO on 139476.

If there are further problems, call the PSA as you may need to be referred to a solicitor.

What are the stages of workers compensation weekly benefits?

During the first 13 weeks, workers who have no current work capacity will receive up to 95% of their pre-injury average weekly earnings (PIAWE).

From weeks 14 to 130, workers who have no current work capacity will receive up to 80% of their pre-injury average weekly earnings.

If the injured worker is returning to work for 15 hours + per week, they are able to continue on 95%.

After 130 weeks, workers who have no current work capacity will continue to receive up to 80% of their pre-injury average weekly earnings. Weekly payments stop after 5 years of incapacity unless you exceed the 20% whole person impairment threshold.

The insurance company has stopped my weekly payments; does this mean my medical expenses stop also?

Payment of medical expenses stops 12 months after the insurer ceases to be liable to pay weekly benefits.

Am I able to tell my employer, rehabilitation providers or case managers that they are not to come in to my Doctor's appointments?

If so what can I do if they insist on coming?

Yes, you do have the right to inform your employer, case manager or rehab provider that you do not wish to have them come to the doctor with you. They have the right to access the information concerning your workplace injury only. If they want to meet with your doctor they can make their own appointment, but if you choose to be present, you also have that right. There is no legislation that supports their right to force their way in to your appointment.

You can suggest that a case conference is arranged for immediately AFTER you have seen your doctor privately, then invite the Return to work co-ordinator or Rehab provider to come in for that case conference.

I have been injured on my way to work. What counts as the most direct route to/from work?

Under the current legislation you are unable to make a workers compensation claim if you are injured to/from work unless there is a real and substantial connection between employment and incident (see Workers Compensation Act 1987 section 10).

However, you may be able to make an insurance policy claim. If you are a financial member, contact the MSC on 1300 772 679 for advice.

What is a Work Capacity Assessment (WCA)?

A WCA is a review done by the insurance company to assess your current capacity for work. This is to determine if the worker can return to work and if so, under what conditions or restrictions (see Workers Comp Act 1987 section 43.1, a-e) (known as a Work Capacity Decision - WCD).

A WCA can involve a medical assessment, however, it can also be simply the insurer reviewing the medical evidence on your file.

When do I have a WCA?

Workers receiving weekly benefits are required to undergo WCAs throughout the life of their claim, unless they have an injury resulting in a whole person impairment (WPI) of greater than 30%. Workers who suffer from a WPI of greater than 30% can ask to be work capacity assessed should they wish to do so, and if it is appropriate to assess them.

What if I disagree with the insurer's Work Capacity Decision (WCD)?

Your work capacity assessment will occur by 130 weeks of incapacity and this will be reviewed at least every two years. If you disagree with the insurer's WCD you can apply for an *Internal Review* by the insurer within 30 days of the decision. If you are still not satisfied with the reviewed decision you can request a *Merit Review* by SIRA, to review the insurer's decision, again, within 30 days of receipt of the internal review decision. You can contact SIRA on **13 10 50**. If you are unsatisfied with SIRA's decision, you can apply to WIRO, within 30 days of receipt of the Merit review decision, for a *Procedural review*. WIRO can assist with this (and the entire) process. WIRO can be contacted on **13 94 76**. If you still want

to review the decision you need to seek legal advice. See WIRO's guide to work capacity decisions...

<https://wiro.nsw.gov.au/sites/default/files/WIR0007>

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[Guide%20to%20Work%20Capacity%20Decisions%20v%202.pdf](#)

Will the changes resulting from my WCA take effect immediately?

There is a 3 month notice period after the WCA where you will continue to receive your regular payments before the changes decided by the WCD come into play.

How do I go about returning to work?

The first step is to obtain a *certificate of capacity* from your nominated treating doctor (the doctor that is treating your injury/managing your treatment) and provide it to your employer and insurer. If you experience difficulty returning to work, then you can ask the insurer to engage an accredited rehabilitation provider to assist. The rehab provider can be recommended to you by your insurer, doctor, or employer or you may pick one yourself. The aim is to develop a return to work plan, which will outline how you go about returning to your previous job. The rehab provider can also assist in finding a new job which suits your new limitations. This is not a service that you are required to pay for. The insurance company is liable for this and you have the right to choose your own rehab provider. All Public Services should have a Return to Work policy that should be provided to you when making a Return To Work plan and accommodate the medical restrictions placed on the injured worker.

If I am unable to return to work, how does medical retirement occur?

Your doctor's advice or an independent medical assessment may inform an organisation about a worker's fitness to continue working in their role. The organisation is able to use this advice to determine whether or not the person should be medically retired, as medical retirement is the responsibility of the organisation. If the organisation decides that a worker is to be medically retired they should be informed and may have to cease duty immediately.

Workers who are facing medical retirement should contact their Superannuation fund, financial advisor and their PSA Industrial Officer if they wish to challenge it.

Please seek advice if you are facing medical retirement.

For more information on workplace injury visit the State Insurance
Regulatory Authority (SIRA) website

<https://www.sira.nsw.gov.au/theres-been-an-injury>

**Useful Phone numbers when claiming for a workers
compensation injury:**

**WIRO (Workers Compensation Independent Review
Office) - 13 94 76**

SafeWork NSW - 13 10 50

Mental Health Helpline - 1800 011 511

Lifeline - 13 11 14

Beyond Blue Information line - 1300 224 636

**Please direct any workers compensation enquiries to
the PSA on: 1300 772 679**