

Transitioning to the new WA Workers Compensation and Injury Management Act 2023

Tuesday 14 May 2024

Webinar

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purposes only. It does not constitute advice.



Presenters



Angela Bertoncin

Head of Workers Compensation

Angela has a wealth of industry experience spanning over 30 years. She has substantial technical experience as an underwriter of long tail lines of business with extensive knowledge of Workers Compensation insurance. Angela has been Head of Workers Compensation for Zurich since 2014.



Alex Freeman

Partner McCabe's

Alex Freeman is an experienced Partner with extensive insurance litigation experience, having worked exclusively in the industry since 1990. He advises and represents workers compensation and general insurers and large corporate self-insurance in personal injury and liability litigation, work related claims and property damage claims. Alex heads McCabes' WA workers compensation teams for multiple national insurers.



Greg Sanders

Technical Principal Workers Compensation

Greg has extensive industry experience in dealing with complex Workers Compensation claims, claims litigation and regulatory requirements in WA.

I'd like to acknowledge the Traditional Custodians of the lands we meet on today and pay my respects to Elders both past and present, as well as future leaders. Many of us are in different locations and on different lands. I am based on the land of the Whadjuk people of the Noongar Nation. If you know the land that you are on, please feel free to post it in the chat box.

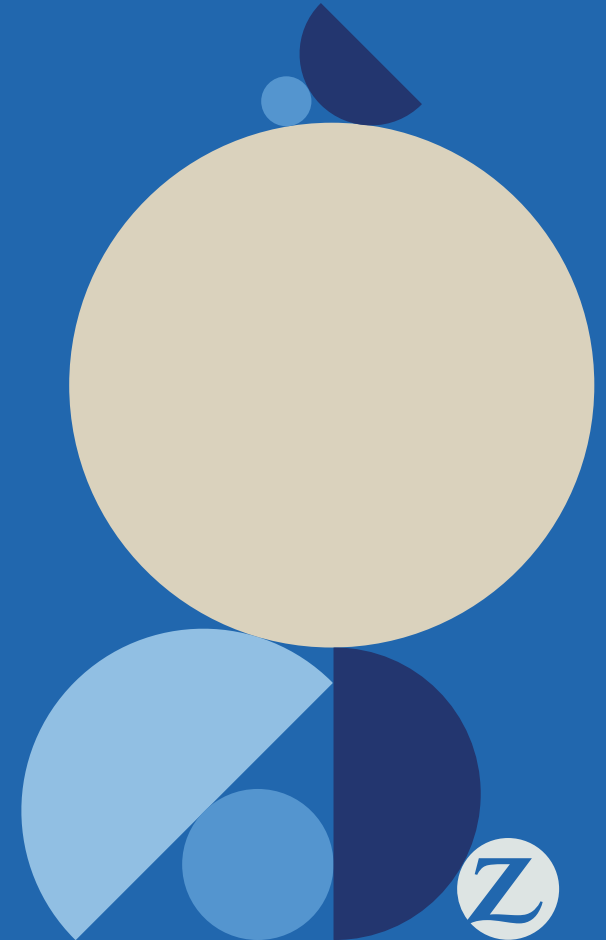


01 Broad overview of changes - WCIMA23 effective 1st July 2024

02 Changes to claims processes and management

03 Changes in Obligations for Brokers and Employers - Important Underwriting Information

04 Questions





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Broad Overview



New Act

- Act has been re-written and re-structured.
- There are new terms e.g. income compensation.
- More power to WorkCover.
- More offences and penalties.

Section 7 – Exclusion of Injury – Reasonable Administrative Action

No liability for psychological or psychiatric injury due to employers' reasonable actions regarding:

- work performance appraisal;
- Suspension action;
- Disciplinary action;
- Demotion, dismissal or retrenchment, or workers' failure to obtain a promotion reclassification transfer or other benefit, or to retain any benefit.

Section 552: Transitional: Section 7

- Section 7 doesn't apply to a claim under the 1981 Act
- Section 5 of the 1981 Act applies to those claims.

s12 New Definition of Worker

- More in line with the Tax Act.
- Workers include:
 - Direct employees;
 - Apprentices;
 - Contractors hired as individual (as opposed to running their own business).

Definition of Employer

- Section 5: Definition - the meaning given in Section 12.
- Section 12: The individual (contract of service), apprentice or contractor (individual not doing work of or incidental to a trade or business regularly carried on by the individual in the individual's own name or under a business or firm name) with whom the employer has entered into a contract to work.

Regulations 12 and 13

- Regulations include some Crown employees/workers (eg Judicial officers) and some officers employed by the Legislative Assembly and Legislative Council as employed workers within the Act.
- Excludes:
 - Police officers (unless they die as a result of an injury)
 - Crew of fishing vessel if remunerated wholly or mainly by way of a share of profits
 - Contracted sporting contestants

Prescribed Diseases

- These are taken to have arisen from the employment.
- Reverses the onus of proof to the employer that they didn't.
- Regulations set out what the diseases are, which is to allow for quicker amendment in pandemic/necessary situations.

Claims process has changed

- Claim form plus certificate of capacity given to employer = a claim.
- Worker can give claim to insurer if the employer fails to do so.

New claim form

- s496: CEO may approve forms
- s25(4): talks of an approved form
- New WorkCover approved form
- Note different claim forms for:
 - Dust disease
 - Noise induced hearing loss
 - Claims by dependants
- Note the removal of 'Other/Previous Claims'. Workers not required to disclose previous workers' compensation claims
- Consent authority is optional
- No witness signature required
- Gender – new option for 'unspecified'
- Updated information on the claims process to reflect provisional payments and deemed acceptance of liability

Obligation on insurer

- Obligation on insurer to:
 - make a liability decision and issue a liability decision notice within 14 days;
 - decision is to either (1) accept or (2) deny.
- Regulation 147: deemed disputed claims under 1981 Act (i.e. under s57A(3a)) are disputed claims under new Act and s551 does not apply to them.
- Note: s57A(3a) – deemed disputed 10 days after Director notified that a decision as to liability cannot be made.
- s551(5): otherwise disputed claims treated as deferred from 1 July 2023 (i.e. clock starts).
- If liability decision is to defer making a decision:
 - if no decision by day 28, provisional payments start;
 - if no decision by day 120, insurer taken to have accepted the employer is liable.

Obligation on insurer (cont.)

- Transitional provisions.
- s551 New Act will only affect deferred claims made prior to commencement day for new claims that were pended and had not been deemed disputed in accordance with Section 57A(3a) (i.e. claims in June).
- Insurers will need to identify these claims.
- Section 57A(5) claims under old Act – deemed accepted from commencement day.

Provisional payments

- Cap on medical and health benefits – 5% of medical and health expenses general amount.
- Provisional payments of income compensation end:
 - the day on which a certificate of capacity is issued that specifies the worker no longer has any incapacity;
 - the day insurer gives a liability decision notice;
 - if insurer fails to make decision within 120 days and liability is deemed.

Commencement day

- s542, s546 and s555.
- From commencement day:
 - new Act applies to claims made under the 1981 policy;
 - generally speaking, claims are managed under the new Act.

Section 557

- Old extinguished caps under the 1981 Act cannot be revived.
- Unextinguished caps subject to corresponding cap of 2023 Act.

Reducing, suspending and discontinuing

- New regime for reducing, suspending and discontinuing income compensation.
- s63: Return to work.
- s64: Medical evidence.
- s65: Not residing in State – failure to declare.
- s66: Suspension while in custody.

Income compensation

- New method for calculating – 12 month average or such lesser period of employment.
- Pay average weekly earnings for first 26 weeks.
- 15% dropdown thereafter.
- Note: If employed where an industrial agreement applies (effectively award workers) on drop down get the greater of:
 - 85% of average weekly earnings; or
 - the Minimum Conditions of Employment Act; or
 - the calculation of the base award plus regular additional earnings.
- Result – may be no real change in those calculations (perhaps decrease to the extent the allowance isn't related to number or pattern of hours worked).

Section 556

Calculation of income compensation commenced as weekly payments under the former Act.

- If Payments had commenced under the former Act, they will be calculated in the manner provided by the former Act
- If so, no need to recalculate these.

Medical expenses

- Increased initial cap from 30% to 60% i.e. up from approximately \$75,000 to \$150,000.
- Certain medical costs called miscellaneous expenses, not included in medical expenses.
- “Miscellaneous expenses” – these include:
 - emergency transport;
 - wheelchairs;
 - artificial limbs.

Catastrophic Injuries Insurance Scheme (CIIS)

- Injury must occur on or after 2023 Act commencement day.
- Must be a catastrophic injury: brain, spinal cord, amputations, burns and permanent blindness.
- Must be an accepted claim.
- ICWA assess eligibility.
- Doesn't affect right to compensation.
- But employer ceases to be liable for medical and health expenses to extent CIIS applies.
- Settlement – not to allow for medical expenses for which employer has ceased to be liable.
- Can still settle workers' compensation claim and remain on CIIS.
- At common law heads of damages may be limited given CIIS pay for medical expenses.
- Annual levy on all insurers.

New settlement regime

- Section 92(f) gone.
- Do you need to settle up claims before 1 July 2024?
- Only workers' compensation claims can be commuted under Part 2 Division 12 if there is no valid common law claim under the 2023 Act.
- Permanently discharges liability of employer. Section 420: no damages can be awarded if claim was settled under Part 2 Division 12.
- You can't include a common law component in claims that relate solely to compensation.
- Common law claim requires a whole person impairment of greater than 15% and election.
- Note: Director will check for compliance.

Return to work (s160 – s168)

- The employer of an injured worker must ensure that a return to work programme is established if certain criteria are met.
- The insurer must help if asked: s166
- The worker must comply with any reasonable obligations placed on them of the return to work programme.
- Return to workplace conferences can require the worker to attend (but not more than every 4 weeks) but there are things you can and cannot ask: see Regulations 81, 82 and 83.
- Employer's obligations on return to work: s168
 - employer must not during the first 12 months, dismiss worker solely or mainly because the worker is totally or partially incapacitated for work;
 - if employer is dismissing worker within the first 12 months for valid reason, must give a notice of intention to dismiss which gives at least 28 days notice. Notice must be in the approved form.

Insurance

- New policy wording – standardised and mandated in Regulations.
- Despite obligations on the insured to supply specified information, very little scope to deny or reduce liability to indemnify if that information is incorrect.
- Regulations only allow indemnity for damages to be denied in very specific circumstances (which will be very difficult to establish): Regulation 102
- Limited opportunities to decrease liability to the extent the insurer has been prejudiced.

Obligation on employers to keep records

- There is an obligation on employers to keep records of:
 - policies;
 - proposals;
 - applications for insurance, for 7 years.

Offences

- There are many more offences in the new Act and many more penalties.

Power

- WorkCover WA have a lot of power over insurers and brokers.

For more information

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Changes to claims processing and management

Greg Sanders

Workers Compensation - Claims Project Lead

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New 'Lingo'

Key examples include:

- Liability Decision Notice (replace Forms 3A and Form 3B)
- Deferred Decision Notice (replaces Form 3C)
- Liability Questions (new phrase relevant to potential liability of other employers / insurers - think current s73/74 issues)
- Deemed Liability Acceptance
- Deemed Liability Acceptance Day
- Provisional Payments
- Provisional Payment Day
- General Maximum Amount ('GMA') (replaces Prescribed Amount)
- Approved Permanent Impairment Assessor (replacing Approved Medical Specialist)



Provision of Claim to Insurer

01 **Once provided with a worker's claim, an employer must give it to their insurer within 7 days.**

No change in the period to provide the claim to the insurer but change in language from '5 full working days' to '7 days'.

02 **Failure to provide the claim within 7 days carries a fine of up to \$5,000.**

Significant increase to the existing fine of \$1,000.

03 **Claims can be given directly to the insurer**

Under the new Act, a worker may give their claim direct to the insurer if the employer fails to give it to the insurer within 7 days.





There is no change in the time frame for an insurer to initially advise on liability. This remains at 14 days following receipt of claim.

Within 14 days insurers must issue a liability decision notice or deferred decision notice.

Fine of \$5,000 if the insurer fails to do so.

Introduction of provisional payments and deemed liability acceptance

When a decision has been made to defer liability on a worker's claim:

- 01 Provisional payments will commence 28 days after receipt of the claim
- 02 Insurers have 120 days after receipt of the claim to issue a liability decision notice.

Insurers will be working to a strict time limit when it comes to making decisions on claims where a decision on liability has been deferred.



Claims advisors will need to diarise and remain mindful of provisional payment and deemed liability acceptance days when a decision on liability is deferred.

When there are concerns around liability, it will be more imperative than ever that employers provide **as much relevant information as possible** when claims are lodged so investigations can commence promptly.

Claims for income compensation

In the case of claims for income compensation (incapacity caused by injury) employers should ensure that at the time of claim lodgement, they provide one of the following:

- 01 A pay history of 1 year ending on the day before the worker was injured
- 02 If the worker was employed in the position for less than a year when the injury occurred, a pay history from the date the worker commenced in the position and ending on the day before the worker was injured.

Insurers and employers need to avoid failure / delay in the processing of provisional payments of income compensation to a worker. Failure to make the payments carries a significant fine of up to \$10,000.

Failure to provide the relevant pay history at the time of claim lodgement can lead to delays.



If a decision is not made within the required time frame after deferring liability on a claim, then the insurer will be deemed to have **accepted liability** for the compensation claimed by the worker.

A failure to issue a liability decision notice prior to the deemed liability acceptance day carries a fine of up to \$5,000.

Claim investigations will need to be promptly undertaken now that we are working to a strict deadline.

Claims investigation

Insurers may not have the current freedom to choose preferred providers (medico-legal / investigators). WorkCover WA expect that other options are considered if preferred providers are not available.

Insurers will need employers to be co-operative with attempts to investigate claims. The opportunity to obtain supplementary reports or undertake supplementary investigations may be limited having regard to the time frame.

Making claims decisions

WorkCover WA has noted an expectation that liability for claims not be denied due to:

- procedural concerns unrelated to the claim or
- to avoid the making of provisional payments.

WorkCover WA intend to monitor this.

Reserving

- ✓ Minimal requirement to review existing reserves solely due to the commencement of the new Act.
- ✓ General Maximum Amount is equivalent to the current Prescribed Amount.
- ✓ Where weekly payments have commenced prior to 1 July 2024, there is no need to review those payments. The 13 week step down will also apply to those payments.
- ✓ Statutory caps for compensation entitlements are not reset to zero. Compensation paid under the current Act becomes compensation paid under the new Act.
- ✓ Increase in allowance for medical and health expenses compensation may impact a minority of claims.



Introduction of provisional payments

The introduction of provisional payments will likely result in a change to the way that claims advisors initially estimate claims when a decision on liability has been deferred.

Minimum reserves might look something like:

- 01 120 days (approx. 17 weeks) for provisional payments of income compensation
- 02 Approx. \$7,500 for medical and health expenses
- 03 Investigation and legal costs.



The new Act will bring changes to the way claims are managed.



Calculating Income Compensation

Calculation of rates of income compensation will be more onerous for claims advisors given the requirement to consider a pay period of 52 weeks rather than 13.



Defending stress claims

The broadening of the stress exclusion to 'reasonable administrative action' may give more scope to defending stress claims where the stress wholly or predominantly arises from such action.



Miscellaneous Compensation

The inclusion of miscellaneous expenses compensation sees an additional 'type' of compensation which has no statutory limit. Miscellaneous compensation includes:

- First aid and emergency transport
- A wheelchair or similar appliance
- A surgical appliance or artificial limb
- Repair or replacement of clothing damaged or destroyed
- Repair or replacement of an artificial aid damaged or destroyed
- Travel
- Assessment of degree of permanent impairment (see ss82 and 83).

The new Act will bring changes to the way claims are managed.

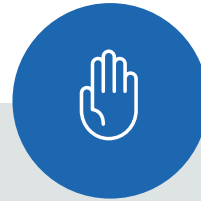


Treating General Practitioner

Workers have an express right to nominate a treating medical practitioner of their choice.

Moreover, the new act provides that an injured worker must not be required to choose or attend a medical practitioner chosen or nominated by the employer or the employer's insurer to perform the functions of a treating medical practitioner under the act.

In circumstances we may well see employers losing a degree of control over management of a worker's injury from the outset and the return to work process.



Suspending, reducing or discontinuing income compensation

The new regime for suspending, reducing, and discontinuing income compensation does require a greater requirement for conferral with workers in certain situations.

Administratively, this will be more onerous for claims handlers and may create delay in the desired outcome.



Labour Hire Hosts

The duties of an employer regarding providing a position to a worker in the 12 months period following incapacity from injury and return to work programs will apply to hosts in a labour hire situation.

Failure by the host to cooperate carries a fine of up to \$5,000.

The new Act will bring changes to the way claims are managed.



Limitations in opportunities for favourable claims settlement

In certain circumstances, employers have been able to leverage a worker not being in receipt of weekly payments to help facilitate a favourable settlement of a claim.

Provisional payments of income compensation on deferred claims, and the right of a worker to commence an application for an extension to the statutory cap for income compensation once they have exhausted 75% of the maximum amount will limit these opportunities to settle on favourable terms. Majority of workers in these situations will not be facing the same amount of financial pressure moving forward.



Settlement and Principals

At first glance, settlement of claims seems generally more straightforward. Significantly, there is no requirement for a worker to have been in receipt of weekly payments for any set period before settling a claim.

Although, ensuring that we 'cover off' on potential common law claims against principals when a principal's extension is attached to the policy of insurance requires consideration.

The new Act will bring changes to the way claims are managed.



Contracting Out – New Fine

The contracting out provision now comes with a significant fine of up to \$15,000.

A common example where this provision will apply is when we see employers requesting a worker to consent to the suspension of weekly payments whilst taking annual leave.

The risk associated with this practice under the new act is a significant fine. You will need to tread carefully now.



Catastrophic Injuries Insurance Scheme

In the case of catastrophic workplace injury, the inclusion of the Catastrophic Injuries Insurance Scheme ('CIIS') will see an employer ceasing to be liable for compensation in respect of:

- medical or health expenses compensation
- miscellaneous expenses compensation, or
- workplace rehabilitation expenses compensation, for catastrophic injuries to the extent that the compensation is for expenses incurred or to be incurred after a worker becomes a participant in the CIIS.

Claims cost

Will we see an overall increase in the cost of claims?

Likely so, but the extent of any increase brought about by changes to the Act alone is difficult to predict.

We will see increases due to wage growth and the increase cost of medical and allied health expenses.

It remains to be seen what impact the calculation of income compensation over a 52 week period will have on rates.

Although workers will receive a higher rate for 26 weeks, it remains to be seen what impact that will have on overall claim cost.

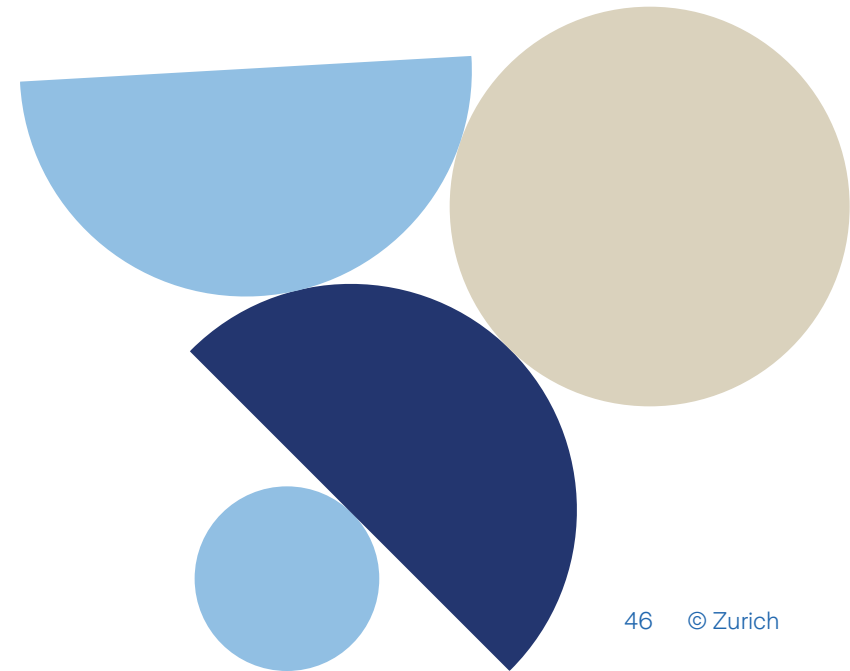
We don't see a significant impact brought about by the increase to medical and health expenses cap. Cases that exhaust the current cap are in the minority.



Claims cost – Provisional Payments

Payment of provisional payments on deferred decisions may bring an increase to claims costs, but we should keep in mind that:

- 01 The majority of pended claims end up being accepted.
- 02 Provisional Payments may facilitate an earlier return to work in cases.
- 03 We may see a reduction in workers seeking early legal advice the moment they are advised that a decision has been deferred.
- 04 A significant portion of pended claims not accepted do end up being settled given the associated risks.



Changes in obligations for brokers and employers

How to communicate important information for underwriting changes and process

Angela Bertoncin

Head of Workers Compensation

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Underwriting Blueprint

Key points to note for the up-and-coming 30th June / 1st July transition:

1. Policies issued or renewed prior to July 1, 2024, must be issued under the 1981 Act and are referred to as 'former act policies.' Even if the policy extends beyond July 1, 2024, if it commences before this date, it's considered a former act policy.
2. It's a historical practice that workers' compensation policies are renewed at 4:00 PM on June 30. However, it's not possible to backdate the insurance provisions of the act to this date. Thus, most current policies expiring at 4:00 PM on June 30 and likely to be renewed from 4:00 PM will be considered former act policies.
3. Transitional provisions in the act ensure that a former act policy indemnifies an employer for full liabilities for compensation and damages under either the 1981 Act or the new Act, in respect of employment during the insurance period of the former act.
4. These transitional provisions smooth the transition by not requiring a policy to be renewed or adjusted on July 1 for consistency with the new act and regulated policy wording for the part of the policy extending beyond July 1, 2024.
5. There's no need to issue revised policy wordings for former act policies with periods extending beyond July 1, 2024. These policies will be renewed under the new act upon expiration of the policy under the former act.





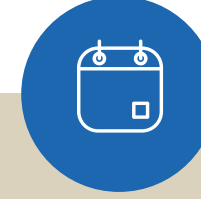
New act effective 1 July 2024

- The new Workers' Compensation and Injury Management Act 2023 (WCIMA23) will come into effect from 1 July 2024.
- Policies issued or renewed starting this date must comply with the new act, its regulated policy wording,
- Remuneration declaration approved form, WorkCover WA Remuneration Guidelines, and recommended premium rates.



Former Act policies

Policies issued or renewed before 1 July 2024, but extending beyond this date, will be governed by the 1981 Act and referred to as 'former Act policies'. These policies will cover employer liabilities for compensation and damages under both the 1981 Act and WCIMA23 for employment during the policy's insurance period.



Transitional Provisions

Transitional provisions in the Act are designed to ensure a seamless transition and do not require policies to be renewed or adjusted on 1 July 2024, for consistency with the WCIMA23

Issuing a Workers Compensation Policy - which Act applies?



Example of policy commencing before 1 July with insurance policy period after 1 July

- A policy is issued with a 12-month policy period commencing 1 May 2024 and ending 30 April 2025.
- The insurer and employer agree to the standard (unregulated) policy terms under the 1981 Act. When the insurance policy commenced in May 2023 the policy wording would have referred to terms such as worker, injury, compensation and damages that are defined with reference to the 1981 Act.
- On 15 July 2024 a worker suffers an injury from employment and makes a claim.
- The WCIMA23 applies to the injury from employment and the employer is liable to pay compensation as defined in the WCIMA23.
- It is the transitional provisions that ensure the former Act policy responds to the WCIMA23 liabilities imposed on the employer, notwithstanding any term of the former Act policy.



WorkCover WA recommended premium rates 2024/2025

The recommended premium rates for 2024/2025 will apply to policies effective **4pm 30 June and 1 July 2024**. This is to align with the commencement of the WCIMA23.

WorkCover WA industry classification order

When publishing the recommended premium rates WorkCover WA will also publish an industry classification order (PRC classes).



Rating above 75% appeal process change

The WCIMA23 provides for the making of an **industry classification order** and the fixing of recommended premium rates by WorkCover WA. This is substantively the same as the 1981 Act.

An industry classification order classifies all industries for the purposes of recommending a premium rate for each industry class.

Insurers are not prohibited from charging a loading of more than 75%

The existing provisions that prohibit an insurer from charging a loading on a recommended premium rate of more than 75%, unless permitted by WorkCover WA, are not replicated in the WCIMA23. However, the provisions for appeal of the premium rate or industry classification of the employer (called review of premium charged) have been retained and clarified.

A premium review can only be undertaken if the premium charged is at least 75% greater than the recommended premium rate.

Provisions for the review process have also been streamlined to ensure parties have made reasonable efforts to resolve the issue.

The premium will be payable in accordance with the terms of the policy of insurance. However, if as a result of a premium review a lesser premium amount is payable than that already paid by the employer, the insurer will be required to repay to the employer the amount of the overpayment.

The employer has 30 days to make the appeal to WorkCover WA once they have the premium rate from Zurich.

An employer's obligation to have an insurance policy

Penalty for not having an insurance policy in place is \$10 000 in respect of each of the employer's workers to whom the offence relates.

- Insurers are required to invite policy renewal at least 30 days prior to policy expiry, and full terms must be provided within 14 days of policy expiry.
- An employer is required to provide underwriting information about their business to Zurich to assist us to issue or renew a workers compensation policy.
- Information to include for a renewal :
 - ✓ Has there been any changes to the legal entity or abn number of the policy holder?
 - ✓ Is this the legal entity that is paying the workers' wages
 - ✓ Has the policy holder ceased employing 'workers', and if so, on what date and for what reason
 - ✓ ascertaining any changes to the policy holder's business activities, and from what date the change occurred
 - ✓ ascertaining and reporting updated policy holder contact details
 - ✓ obtaining and reporting remuneration estimates for the new coverage period
 - ✓ obtaining and reporting remuneration actuals for the expired coverage period.



Information required for New Business

- ✓ Legal entity and ABN that is paying the wages of the Workers
- ✓ nature of employer's business;
- ✓ activities performed by workers;
- ✓ insurance status (any current policy);
- ✓ previously insured or not;
- ✓ if employer has ever held an insurance policy;
- ✓ aggregate annual remuneration for previous 5 years;
- ✓ total of workers' compensation claims in previous 5 years;
- ✓ information regarding employer's work, health and safety management plan;
- ✓ if the employer is a contractor or principal under s215;
- ✓ aggregate remuneration paid to workers for work done under contract;
- ✓ industry classification of the work done under contract;
- ✓ if working director applying, information showing the director is remunerated for providing personal manual labour;
- ✓ information regarding contractual indemnities entered into by the employer or for which indemnity is intended to be provided to the principal.



Workers Compensation Quote Checklist

Providing the right information will help us understand your business and provide you with a fast and comprehensive quote.

The checklist below will assist our underwriters in their initial assessment, including what information they may require for more specialised business or higher risk areas.



Period of Insurance

- **New Business:** Let us know the period of coverage required (Note: to avoid gaps in coverage, it is important to maintain continuity of coverage. So if there is existing insurance in place and you are changing insurance company, the start of the cover should be the expiry date of your current insurance policy)
- **Renewal:** Give us any changes to coverage dates and include reasons why these dates should change. Ensure the wage declaration is provided on renewal of the policy. See Wage History below for more information

Renewals

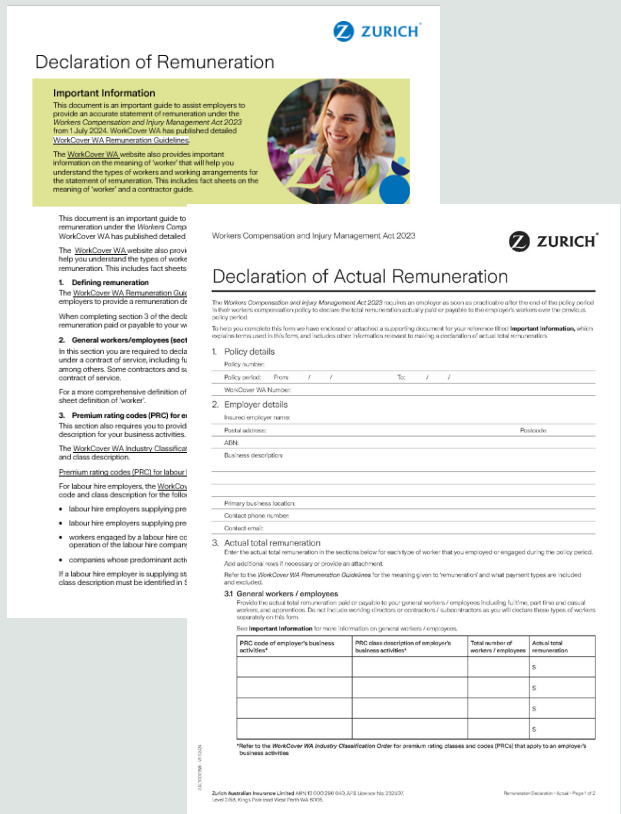
- Details of any significant changes to the business which have happened over the last 12 months or are expected to happen in the next 12 months. Examples would include mergers and acquisitions, changes in employee numbers due to business expansion or new project work, changes to management of the business, relocation of the business or workers in the business, automation of business process etc).

Wage History

- Estimated wages and employee numbers per state and by employee category (i.e. contractors / working

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Employers must be insured for the full amount of their liability to pay workers compensation and penalties apply for being 'under-insured'. Insurers are required to report remuneration estimates and actuals to WorkCover WA.



Approved forms

WorkCover WA will issue an approved form for the declaration of remuneration that employers are required to make for policies commencing or renewing 1 July 2024. **Only approved forms can be accepted** – brokers can no longer have employers complete their own wage declarations.

The obligation to provide the declaration required is provided for in the WCIMA23 and applies in relation to the **Actual and Estimated** remuneration. The approved form for the remuneration declaration has four sections, addressing direct workers, contractors, working directors and labour hire.

There is an **Information Sheet** that will be sent with the Actual and Estimated Remuneration Declaration to assist in completing the form

Remuneration guidelines

WorkCover WA will publish Remuneration Guidelines on the WorkCover WA website **to clarify the status of all remuneration payment types** and whether the payment is included or excluded as remuneration.

The WorkCover WA Remuneration Guidelines give meaning to the term ‘remuneration’ used in the insurance part of the WCIMA23 and have the status of subsidiary legislation.

Remuneration Guidelines are a central source for employer declarations at policy inception and renewal, and any audit or compliance activity undertaken by WorkCover WA or insurers.

Insurance Brokers now recognised in the WCIMA23

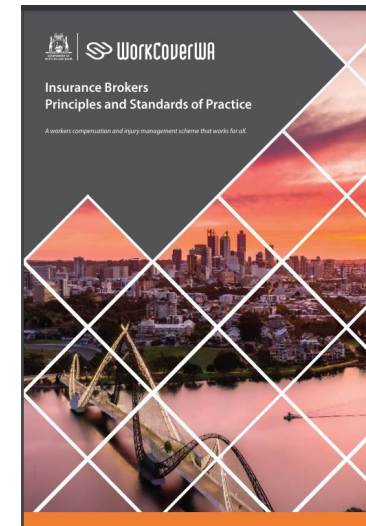
Insurance brokers play an important role as an agent of employers in connection with workers compensation insurance.

Traditionally, this role focused solely on insurance related activities on behalf of their clients but has evolved into other activities such as reviewing claims, injury management and dispute resolution advice.

Brokers are not recognised in the 1981 Act.

An Insurance Brokers Code of Practice, developed collaboratively by WorkCover WA ,and NIBA provides clear guidelines for insurance brokers operating within the workers compensation system.

The WCIMA23 provides for a scheme for the registration of workers compensation insurance brokers should it be required in the future

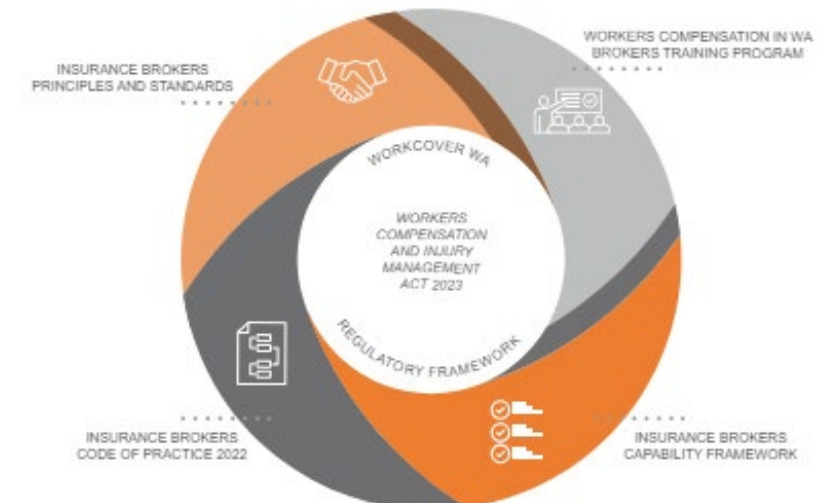


Principles

WorkCover WA's principles are an overarching guide to service delivery expectations. They apply to all service providers operating in the WA scheme, across all service areas.



To understand the role insurance brokers play in the WA scheme, it is important to understand the essential roles of employers and insurers.



What is the status of CIDF policies on 1 July 2024?

01 A policy issued by the Insurance Commission of Western Australia under section 162 of the former Act (commonly known as a CIDF policy) will continue to apply to liabilities arising in respect of employment before 1 July 2024.

02 Workers compensation policies issued by licensed workers compensation insurers will cover liabilities arising in respect of employment after 1 July 2024.

03 Example – CIDF policies: A worker was exposed to silica dust in mining operations in the 1980s. On 1 August 2024 the worker is first diagnosed with silicosis and makes a claim. As the exposure related to employment before 1 July 2024 the CIDF policy issued by the Insurance Commission will respond to the claim.



Workers Compensation and Injury Management Bill 2023
Information Sheet 49

ICWA Industrial Diseases Policy for Mining Employers

The Bill provides for the discontinuation of the special insurance policy mining employers are required to hold with the Insurance Commission of Western Australia for coverage of certain industrial diseases and includes a savings provision for coverage of historical liabilities.

Key Points

Questions & Answers

Bill ref: ct. 595

- The current Act requires mining employers to hold a special insurance policy covering industrial disease compensation claims relating to pneumoconiosis, mesothelioma, lung cancer and diffuse pleural fibrosis arising from exposure in any mine or mining operation.
- The insurance policy is issued by the Insurance Commission of Western Australia (an ID policy) with premium payable by mining employers and payments made from a special Compensation Industrial Diseases Fund (CIDF).
- The Bill discontinues the special insurance arrangement mining employers are required to hold for liabilities arising in respect of employment after commencement of the new Act. The special insurance arrangement will continue to respond only to liabilities arising out of employment before commencement of the new Act.
- Relevant operative provisions in the Insurance Commission of Western Australia Act 1986 are amended to continue the CIDF for liabilities arising in respect of employment before commencement of the new Act.

Q. What is a 'liability arising in respect of employment before or after commencement' referring to? Is it the same thing as the worker's employment when the disease was contracted?

A. The reference to a 'liability arising in respect of employment on or after commencement' is not a reference to the worker's employment when the disease is contracted. Latent onset diseases such as mesothelioma manifest years after exposure to asbestos dust. The disease is caused by exposure to asbestos while working in employment many years before and it is the policy that insured the employer over the relevant period of that employment that exposed the worker or caused the injury that will respond to the claim, irrespective of when the injury occurs.

Q. What is the effect on historical ID policies and current ID policies in force when the new Act commences?

A. Historical ID policies (those for which the period of insurance expired before commencement of the new Act) and current ID policies (those that are in force on commencement of the new Act with a period of insurance expiring after commencement of the new Act) will continue to cover mining dust diseases contracted on or after commencement but only if the disease arises from employment before commencement.

Current ID policies will lapse on commencement in respect of liabilities arising from employment on or after commencement. The coverage that a current ID policy would have provided to a mining employer for employment on or after commencement will instead be provided by the standard workers compensation policy that the employer is required to hold with a licensed insurer.

Modernising WA's Workers Compensation Laws

February 2023



Domestic / Householder Policies

01 All insurance contracts, including domestic/householder policies, should adhere to the regulated policy wording for policies commencing from 1 July 2024. The term 'workers compensation policy' is defined in WCIMA23 and is the only policy providing cover to employers for worker liabilities under this act. No other policy can be issued that restricts the cover required under WCIMA23 or is inconsistent with the regulated policy wording.

02 It is a WorkCover WA expectation that where a workers compensation policy is issued to a householder (because the householder is an employer of a worker as defined in the Act), **the policy is issued under 96010.**



Workers outside of Western Australia

01 The Act provides coverage for workers who travel to or work temporarily in different jurisdictions, provided it meets the 'state of connection' test. The state of connection test is the same as set out in the 1981 Act, however the Act provides for an exclusion of liability for compensation in respect of injury suffered by a worker outside of Australia if the worker has never resided in Australia or has been continuously resident outside Australia for more than 24 months when an injury occurs.

02 Cover is excluded for common law liability arising in respect of injuries or claims brought outside of Australia.



An employer must keep records

An employer must keep current and accurate remuneration records for 7 years which includes the following information:

- 01 Number of workers insured under the policy
- 02 The industry classification based on which the premium was determined
- 03 The total remuneration paid during the period of insurance

WorkCover WA may require the employer provide the records in the event the records need to be inspected by a person authorised by WorkCover WA.

The insurer may reasonably request to inspect or audit your records, if this audit and inspection is relevant to a claim or the policy.



Lapsing and Cancelling a Policy

Lapsing

If the employer fails to renew their policy, Zurich can lapse the policy **without a grace period** at the end of the period of insurance.

Once the notification of the lapse is accepted by WorkCover WA, Zurich will **no longer be liable** for any claims under the policy, 7 days after they notify WorkCover WA of the policy lapsing.

Even if the policy is lapsing, we will need the following information:

- why the policy has lapsed
- the actual remuneration declaration.

Cancellation

Cancellation process has not changed; however, a policy can now be cancelled under section 242(3) (b) of the Act for non-cancellation of Premium

01

With WorkCover WA's agreement, an insurer can cancel an employer's policy for reasons such as non-payment of premiums.

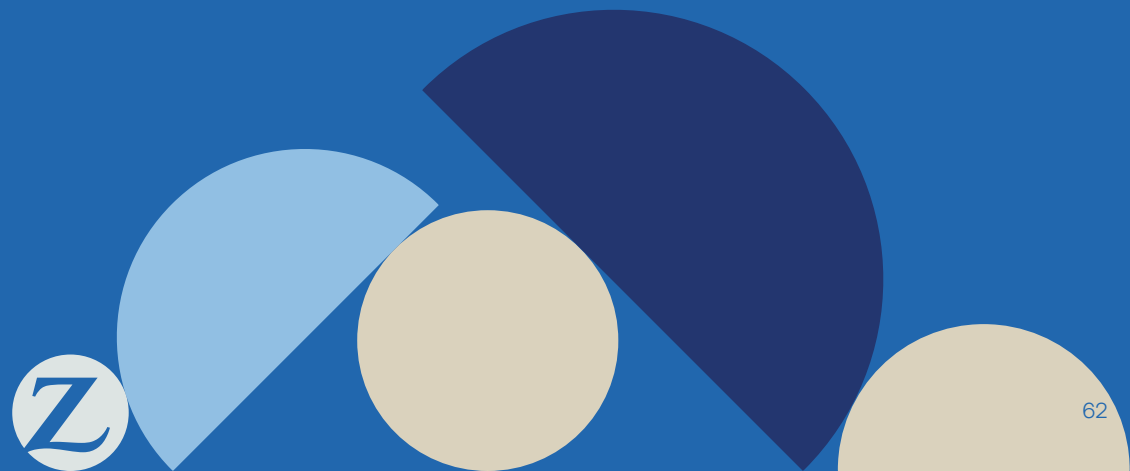
02

Upon cancellation, the employer must submit a report to Zurich detailing the remuneration paid during the policy period up to the cancellation date. Zurich will then adjust and refund any unearned premiums.

03

Zurich must be notified of any payment delays as policies can be cancelled if premiums remain unpaid for a period of 90 days from the start of the policy period.

Thank you and questions



Protecting your clients' greatest asset – their people

Zurich Workers Compensation helps provide customers with protection for their workplace in Western Australia and Tasmania. Through tailored programs we meet the needs of customers from SME to more complex business solutions with access to local, technical underwriting experts with full authority for timely decisions.

Customer-led claims experience

- Experienced staff and a single point of contact for duration of claim
- Multi-faceted claims screening and profiling facilitating early intervention
- Transparent & consultative decision making
- Pro-active return to work support
- Responsive and timely technical expertise

Providing innovation and technical resources

- Z Stream platform - place SME business quickly and efficiently
- Z Track - real time, 24x7 claims enquiry, trend reporting
- Zurich Resilience Solutions for tailored risk management solutions
- Zurich Risk Advisor app for DIY risk assessment and advice
- Mywellbeing hub – wellbeing resources for employers and employees



Preferred Risk Appetite



- Professional, Scientific and Technical Services
- Administration and Support Services
- Trades
- Retail Trade
- Manufacturing
- Accommodation
- Food Services
- Wholesale Trade

Protecting Workers in Western Australia and Tasmania

Workers Compensation Team

With years of expertise in Workers Compensation, our strong relationships and innovative technology help minimise the cost of disruption of workplace injuries and improve claims outcomes for customers

Zurich Resilience Solutions

ZRS draws from experienced risk engineers and consultants to tailor a package of services that can help companies across a wide range of industries manage their risks and become more resilient.

Zurich Risk Advisor App

A valuable digital tool that supports brokers in providing on-site or remote risk assessments and advice to their clients. Free to download in the App Store or Google Play.

Find out more at zurich.com.au/WC