



WESTERN AUSTRALIA WORKERS COMPENSATION

A guide for Businesses
Effective 1 July 2024



Aviso WA
Insurance Brokers
An Aviso Group Partner

About Workers Compensation Insurance

In Western Australia (WA), employers are required to maintain an updated Workers Compensation insurance policy from an approved provider to safeguard their employees and business against workplace injuries or illnesses as per the Workers Compensation and Injury Management Act 2023 which comes into effect on 1 July 2024. Aviso WA Insurance Brokers have prepared a summary to help and advise clients on the key legislative changes to be implemented, such as:

- Timeframes for Liability Decision and Provisional Payments
- Liability acceptance deemed within 120 days of receiving a worker's claim by the insurer.
- Enhanced compensation caps for medical and health expenses.
- Revised settlement and common law claim procedures.
- Implementation of a simplified scheme for Noise Induced Hearing Loss.
- Launch of the Catastrophic Injury Support Scheme and Default Insurance Fund

Your Aviso WA Account Manager is available to address any inquiries you might have. For further information, refer to WorkCover WA or seek guidance from a legal expert.

*Workers Compensation is compulsory for all employers in Australia. Please refer to each state or territory regulator for more information or contact your Aviso WA Account Manager for assistance.

* WA Workers Compensation policy is standard wording set by WorkCover WA.

* This document is not intended to be comprehensive and does not constitute legal advice.

Key Change Summary

Below is a summary highlighting key changes and updates for your attention. You can also download a full copy of the Workers Compensation Injury Management Regulations 2024, supporting the Principal Workers Compensation Injury Management Act 2023, via the WorkCover WA website.

Area	Key Changes
Working directors	<ul style="list-style-type: none">• The exclusion that prevented coverage of public company directors is removed.• A company director will not be covered by the workers compensation scheme unless the person is a 'working director' (as defined)• The minimum weekly rate of income compensation payable does not apply to a working director, the rate of income compensation is determined by reference to the statement of the working director's remuneration.
Reasonable administrative action exclusion for psychological injury claims	<ul style="list-style-type: none">• Psychological or psychiatric disorders which result from 'reasonable management action' will not be an injury from employment, unless the action is unreasonable and harsh;• This extends on the existing Act, which excludes stress related claims resulting from reasonable administrative actions undertaken by the employer, such as demotion, dismissal, or retrenchment, unless harsh and unreasonable.
Claiming compensation	<ul style="list-style-type: none">• Workers now have 12 months after the injury occurs to make a claim for compensation.• Employers must submit the claim to the insurer within 7 days of receiving the claim form.• If an insured employer fails to give a worker's claim to their insurer for any reason, the worker may give the claim to the insurer.• Claims made under the 1981 Act will be taken to have been made and continue under the relevant section of this Act.

Area

Key Changes

Broker consent authority

- Employers and insurers should have informed consent from an injured worker to share the workers personal health or financial information with a broker.
- Brokers should ensure a worker's consent has been obtained prior to receiving / accessing the worker's personal health or financial information.
- This includes access to information provided by the employer.
- In the absence of consent by the worker, the broker is not permitted to collect personal information about the workers and nothing that authorised insurers to disclose personal information to brokers.

Responding to a claim for compensation

- Insurers must issue a liability notice within 14 days.
- 'Deferred decision notice' to be issued within 14 days.
- Within 28 days of receiving claim and a deferred decision notice issue, provisional payments are to be paid.
- Deemed liability acceptance day = 120 days from receipt of claim.

Income compensation entitlement

- Income compensation payments will be calculated over a 12-month period.
- A step down to 85% of the worker's pre-injury weekly rate of income will now apply after 26 weeks of payments instead of 13 weeks.

Note: A safety net weekly rate of income will apply to ensure compensation does not go below the base award rate.

Injury Management and return to work

- Employers are required to establish a Return to Work program for partially incapacitated workers.
- Injured workers have an obligation to participate in Return to Work programs.
- Employer must have an Injury Management System in place and must provide at the request of a worker – or face fines up to \$5,000. An Injury Management System - template if required – which can be found on WorkCover WA website.

Area

Key Changes

Reducing or discontinuing payments

- An employer will no longer have to wait 21 days to reduce or discontinue income compensation payments when a worker has returned to work
- Workers must be informed of the basis for reduction or discontinuation of payments and the amount of compensation payable if not returning to work at full capacity.
- An employer who intends to reduce or discontinue income compensation payments on the basis of medical evidence must give the worker written notice in accordance with the regulations. The medical evidence must be shared with the worker. The worker has 21 days to make a dispute. Payments must not be reduced if a dispute is made.
- The definition of 'return to work' will remain the same.

Common law

- While the worker's degree of permanent impairment must be at least 15% remains the required threshold, it must now apply to both the commencement of proceedings as well as the awarding damages. This means that the writ cannot be issued, or settlement claim effected, without the impairment assessment and election being registered.
- New provisions for conditions which have not stabilised 18 months post-injury.
- There will be special provisions for dust disease claims, including a Dusts Disease Panel, and court proceedings to begin before thresholds have been met for those workers that have been diagnosed with less than 2 years to live.

Policy changes

- Industrial Disease policy which was previously administered by the Insurance Commission of WA for mining employers is no longer required and compensation claims for specific dust diseases are now included in the new Act under Workers Compensation policy.
- WorkCover WA will maintain its role in setting recommended premium rates for workers compensation policies, but a new review process will be implemented where employers seek to challenge the premium charged by insurers.
- Wages Declarations have now been split into two documents. Declaration of Actual Remuneration and Declaration of Estimated Remuneration. Both are required to be signed and returned.

Area

Key Changes

Settlement

- Registration of a settlement agreement will be the only pathway to settle a workers compensation claim via a lump sum and to discharge an employer's liability for the injury.
- There is no requirement under the Act for liability to be accepted or determined or any timeframe prescribed before a settlement can be registered.
- Every settlement will require a statement by the worker in the approved form acknowledging that the worker is aware of the consequences of registering the settlement agreement.

Treatment choices

- Worker's have the right to choose their own medical and allied health practitioners.
- Employers, insurers and agents of insurers are prohibited to attend medical examinations.

Non-compliance

- Penalties for non-compliance will double from fines of up to \$5,000 to up to \$10,000 per employee.

A Guide to Optional Extensions Available for Workers' Compensation Insurance in WA

Workers' Compensation in WA can be extended to offer additional coverage as needed by the business. If your business requires an optional extension and it is requested by you, to us, Aviso WA can negotiate with your insurer and arrange the necessary extensions.

Summary of Available Optional Extensions:

Principal Indemnity Extension – Statutory Benefits and/or at Common Law:

- Covers a named Principal for claims under the Act and/or at Common Law.
- The extension is activated when a contractual obligation exists to the Principal for obtaining employers' indemnity insurance for a worker.

This extension requires explicit request and approval from insurers and should be reviewed in connection with the Waiver of Subrogation extensions.

Waiver of Subrogation – Statutory Benefits and/or at Common Law:

- Waives the insurer's right under the Employer Indemnity Policy to seek recovery from the Principal.
- Applicable with a contractual obligation to the Principal for obtaining employers' indemnity insurance.

This extension is evaluated along with the Principals Indemnity extension.

Increased Common Law Limit:

- Negotiable additional Common Law cover up to a maximum of \$200 million.
- Standard Employers' Indemnity Policy is limited to \$50 million per event, regardless of the number of workers affected.

Overseas Common Law:

- Extends common law to workers for work-related injuries while temporarily overseas (up to 6 months).
- Provides policy benefits as if the workers were in WA.
- Availability may vary based on locations and Australian Government travel advisories.

Contact your Aviso WA Account Manager for alternative options in specific situations.

*All extensions are subject to the Terms, Conditions, Limitations and Exclusions of each of the Policies as issued by the insurer.

How Aviso WA can help

For more information on Workers Compensation, contact your local Aviso WA broker on (08) 6274 0500 or email team@avisowa.com.au.

REFERENCES

- <https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>
- https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147404_currencies.html&view=asmade
- https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147404_subsidary.html

The information provided in this article is of a general nature only and has been prepared without taking into account your individual objectives, financial situation or needs. If you require advice that is tailored to your specific business or individual circumstances, please contact Aviso WA directly.