

## Chapter 3

# The Claims Process

Once the insurer has the injured worker's claim they will begin to assess it, either accepting or denying liability.

This can be a long and taxing process. The insurer has 12 weeks in which to inform the injured worker of their decision\*. During this time the injured worker should be receiving assistance through provisional liability.

\*See provisional liability in chapter 2

Insert insurer logo

**Workers' Compensation Claim Form**

**Workers – tear off and keep this section for your information**

**Who can make a claim?**

You are entitled to make a claim if you sustain an ***injury in the course of your employment and are defined by law as a worker***. The legal definition of a ***worker*** includes full-time, part-time, casual, seasonal, piece and commission workers. Working directors, contractors and sub-contractors may also be defined as workers depending on their working arrangements.

**How to claim:**

Seek **first aid** and **report** the injury to your employer

↓

**See a doctor** of your choice as soon as possible and get a medical certificate. This is known as a ***First Medical Certificate*** in the workers' compensation system.

↓

Fill out the inside pages of **this form** and give it **and** your ***First Medical Certificate*** to your employer.

↓

Your employer must complete their part of the claim form and give it together with the ***First Medical Certificate*** to their insurer **within 5 working days** of receiving the claim form.

↓

The insurer has **14 days** to assess the claim and can:

Accept the claim	Dispute the claim	Pend the claim
Your workers' compensation entitlements commence	No entitlements are paid – you can dispute this decision	No entitlements are paid – the insurer needs more time to make a decision

↓

**What happens if you don't agree with the insurer's decision?**

Your employer's insurer has an internal dispute resolution process. You can approach the insurer to re-examine their decision.

In addition, WorkCover WA provides assistance regarding resolving disputes.

To find out more about having a dispute resolved or for general information about workers' compensation and injury management contact **WorkCover WA's Advisory Services on 1300 794 744**.

**How to make a claim with self-insurers**

Some employers have been approved by WorkCover WA as self-insurers. This means that the employer covers the cost of its workers' compensation claims.

The process for making a workers' compensation claim is the same. However your **employer has 17 days** to assess your claim once they receive your completed claim form and ***First Medical Certificate***.

You can ask your employer if they are a self-insurer. A list of self-insurers is available on the WorkCover WA website at [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au) under Service Providers.

**What happens when my claim is pending?**

An insurer can pend your claim if they need more time or more information to make a decision. They may contact you during this time for more information about your claim.

While your claim is being assessed, consider using any accrued leave (sick leave or annual leave) to provide you with interim financial support. If your claim is accepted, any leave you have used will be reinstated by your employer.

If a decision has not been made within **19 days** of you lodging your claim form and ***First Medical Certificate*** with your employer, you should contact Advisory Services on 1300 794 744 for more information.

WorkCover WA is the government agency responsible for overseeing the *Workers' Compensation and Injury Management Act 1981*.

The Injured Workers Support Network

[www.injuredworkerssupport.org.au](http://www.injuredworkerssupport.org.au)

Page 16

## The Decision Process of the Insurer

The insurer must decide if the injury is work related. The injured worker will be asked to give permission to the insurer to gather certain documents and information.

They will firstly ask for confirmation of the injured workers work status by asking the injured worker or their employer to provide:

- A current pay slip
- Payroll number
- Bank statement that includes regular employer payment entries
- The contract of employment.

They will then obtain information about the injured worker's injury from:

- The treating doctor and/or hospital (after the injured worker give permission for them to contact these)
- The employer or the employer's representative
- The worker or the workers representative.

## The insurer may also gather information by:

### Referring the injured worker to an Independent Medical Examiner (IME)

Referral for an independent medical examination may only happen when information from the treating medical practitioner(s) is inadequate, unavailable or inconsistent and where the insurer is unable to resolve the issues directly with the practitioners. The law has no way of preventing an insurer from referring an injured worker to an Independent Medical Examiner, so in practice insurers tend to use them in nearly every case. If an injured worker receives a notice of referral they should contact their union.

The injured worker should be given a written notice requiring the injured worker to attend an appointment at least 10 working days before any appointment is due.

The injured workers should be given a choice of three (3) IME's to chose from all should be as close to their home address as possible. Unless:

- a. The injured worker has previously seen that IME within the last two years or
- b. There are less than three IME's who can adequately assess their injury.

Though the injured worker cannot refuse to attend an appointment, if they have a reasonable excuse for not attending a new appointment should be made for the injured worker.

An injured worker may also be referred to an Independent Medical Examiner during a Work Capacity Assessment (discussed later in this chapter).

## Employing a Factual Investigator.

The insurer will sometimes employ an investigator to interview the injured worker and other witnesses regarding their injury before making an decision on liability. This can also include a “private eye” to obtain information about the injured workers life post-injury. This can be very confronting and sometimes very personal. Remember that questions and any information they gather must be relevant to the injured workers claim for workers compensation.

- The injured worker has a right to seek legal advice and have a support person, legal or union representative with them.
- The injured worker has the right NOT to sign any statement or document provided to the injured worker by the investigator.
- The Injured Worker has the right to contact the police if the injured worker believes they are being followed.

A worker is entitled to be notified correctly and treated reasonably when a factual investigator is used. No one is obliged to cooperate with a private investigator (although an insurer may expect an employer to do so). However, if a worker refuses to cooperate it may give the insurer a reason to delay payment of their entitlements or decline the claim.

**Factual investigators must abide by the law they cannot trespass or gather personal files without the injured workers permission.**

## Denial of Liability.

If the injured workers claim is denied the injured worker should contact their union straight away and have a referral to the union’s legal representative. The Injured Workers legal rep will make an application for financial aid to the WorkCover Independent Review Officer (through their ILARS section). This process can be long but it is the only reliable way to have the matter revisited.

**The injured worker should not have to pay for legal representation if the injured worker are disputing the injured workers insurers denial of liability decision.**

## Acceptance of the injured workers claim:

Once the injured worker's claim has been accepted by their insurer a case manager will be assigned. This person will change throughout the life of the injured worker's claim and it is up to the injured worker to ensure they are on top of what is happening.

If the injured worker is classified as a worker with high or highest needs, an injury management plan will be created (see chapter 4 Recovering and Returning to Work). This has to be done in consultation with the injured worker and their nominated treating doctor.

Weekly income replacements will continue (at a reduced rate if it is over 13 weeks) and other entitlements can be accessed (see chapter 5 Available Benefits)

The injured worker will need to produce a new work capacity certificate every 28 days (unless the nominated treating doctor has written to the insurer with reasons why the time period should be greater).

The injured worker will also be put under pressure to return to work, unfortunately this may be while they are still recovering. The health of the injured worker should be of paramount concern to everyone involved. The treating doctor should be the only authority in any matter to do with an injured worker's health.

There is ongoing help available to the injured worker through their union, the Injured Workers Support Network, the State Insurance Regulatory Authority and WIRO. The Injured Workers Support

Network provides independent advice about the workers compensation system.

During the life of a claim there are several points where an insurer can end their responsibility. In particular there are statutory dates (2.5 years, 5 years) and there is the Work Capacity Decision. These are discussed later in this chapter.

**Injured workers should always keep a diary and notes of all telephone calls, meetings, emails, letters or any other conversations the injured worker have with the injured worker's case manager/s as well as any one else the injured worker may deal with during the injured worker's claim.**

## Classifications of Injured Workers:

Injured workers entitlements are dependent on their level of permanent impairment.

There are two main classifications of injured workers:

### Workers with the Highest Needs:

A worker with a total body impairment percentage above 30% is classified as a work with the highest needs.

### Workers with High Needs:

A worker with a total body impairment percentage between 20% and 30% is classified as a worker with high needs.

## Total Body Impairment Percentages.

Total body Impairment percentages are an important part of workers compensation since the 2015 legislation changes.

They are calculated by medical specialists and are a figure which describes the permanent loss of movement or functioning the injured worker has suffered due to their workplace accident/incident.

The total body impairment percentage dictates the degree and length of support the injured worker will receive from the workers compensation system. (see chapter 4 Available Benefits).

If there is a requirement to calculate the percentage it is strongly advisable to obtain support of the union's lawyer as there will inevitably be a disagreement between the injured worker's doctor and the insurer's doctors.

Disputes over Total Body Impairment percentages can be adjudicated by the Workers Compensation Commission.

This will involve arbitration and, more than likely, an appointment with three specialists. One appointed by the insurer, one appointed by the injured workers solicitor and one appointed by the Workers Compensation Commission, the Authorised Medical Examiner.

The Authorised Medical Examiner's opinion will be last one obtained and will be accepted above the other two by the commission.