

Workers' Compensation and Injury Management

Information on finalising your claim



About WorkCover WA

WorkCover WA is the government agency responsible for overseeing the workers' compensation and injury management system in Western Australia.

This includes monitoring compliance with the *Workers' Compensation and Injury Management Act 1981*, informing and educating workers, employers and others about workers' compensation and injury management, and providing an independent dispute resolution system.

Disclaimer

This publication is intended to provide general information only. You should not act or omit to act on the basis of anything contained herein. You should seek appropriate legal/professional advice about your particular circumstances.

Workers' Compensation and Injury Management

Information on finalising your claim

The majority of workers who suffer a work related injury return to work and make a full recovery. However, if you have suffered from a more serious injury, you may be eligible to access a range of settlements to help finalise your claim.

This brochure explains:

- the settlement options available under the workers' compensation system, including common law
- who is eligible for financial settlement, and
- how you can access these options.

Throughout this brochure, there are references to negotiations and agreements with your employer's insurer. This is because once your claim reaches the point of settlement or common law, generally all discussions are held directly with the insurer, rather than your employer.

Claim Settlements

If your injury or illness has resulted in a **permanent impairment**, you may be entitled to a lump sum payment to finalise your workers' compensation claim. The two main settlement options within the workers' compensation system are:

- Schedule 2 settlements, and
- Lump sum redemptions (Schedule 1 settlement).

A Schedule 2 settlement is a lump sum amount that compensates a permanent impairment according to a fixed formula. A lump sum redemption (or Schedule 1 settlement) is a negotiated settlement. This amount makes up for your employer's liability for future weekly compensation payments and/or the cost of future medical and other expenses.

There are additional settlement options available if you've suffered from an **industrial disease** or **noise induced hearing loss**. You can get more information about these settlement options from WorkCover WA's Advisory Services staff by phoning 1300 794 744.

Important

Before accepting a settlement, you should speak to your medical practitioner about your future work restrictions. You may also wish to seek legal advice about your settlement options.

The table below outlines the two settlement options.

Schedule 2 Settlement	Lump Sum Redemption (Schedule 1 Settlement)
Provides compensation for...	
Permanent injury/impairment suffered.	Redemption of future weekly compensation payments and/or medical and other expenses.
How is the settlement amount determined?	
Set rate outlined in the legislation by the nature of injury and the degree of impairment. Once the degree of impairment is agreed to, the amount is not negotiable.	Negotiated between you and your employer's insurer or determined by an arbitrator with the consent of you and your employer.

Schedule 2 Settlement	Lump Sum Redemption (Schedule 1 Settlement)
When can I access this option?	
<p>At any stage of your claim, once you have been assessed as having suffered a permanent impairment by a suitably qualified medical practitioner or an Approved Medical Specialist (AMS).</p>	<p>If you have been receiving weekly payments for at least six months for a permanent incapacity resulting from an injury other than mesothelioma.</p>
How do I lodge a settlement?	
<p>Once you and your employer's insurer agree on the assessed percentage of permanent impairment and the type of settlement, in most cases your employer's insurer will prepare the necessary paperwork for your signature. It is then lodged with WorkCover WA. WorkCover WA reviews and records the details of your settlement.</p>	
Does this finalise all my claim and entitlement options?	
<p>While a Schedule 2 settlement finalises your workers' compensation entitlements, you may still seek damages in the courts, if eligible, through a common law claim.</p>	<p>Yes – the terms of a redemption settlement do not allow you to pursue any other compensation, including a common law claim.</p>

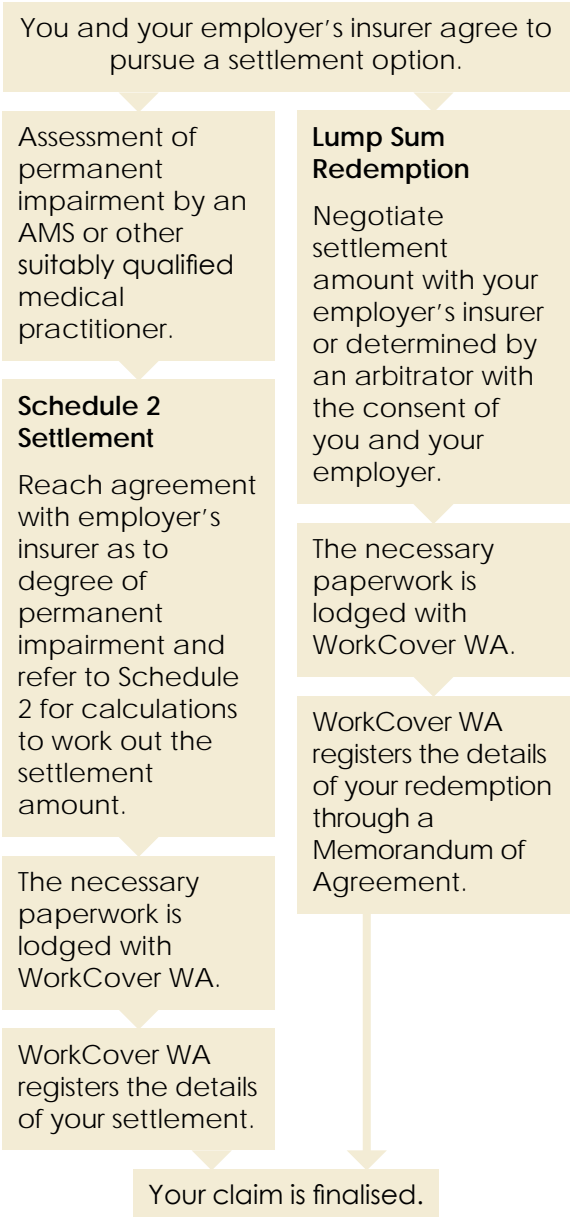
Important

Acceptance of a settlement may affect your entitlement to Centrelink benefits, so it is important to contact Centrelink before making a final decision on accepting a settlement. It may also be advisable to contact the Australian Taxation Office, Medicare and your private health insurance fund to find out if there are other possible implications of accepting a settlement.



Process of settling your claim

The following flowchart outlines the claim settlement process.



Important

Once your claim is finalised, the payment for your Schedule 2 settlement or redemption comes from your employer's insurer. WorkCover WA does not pay out settlements or redemptions.

Assessing permanent impairment

An impairment assessment is generally conducted by an AMS who will determine, once your condition has stabilised, if your injury has resulted in a permanent impairment.

Looking for an AMS?

You can find a full list of AMSs, their specialty areas and contact details on the WorkCover WA website at www.workcover.wa.gov.au

How do I prepare for an AMS appointment?

You should provide the AMS with any relevant medical information (including medical reports and records) relating to your injury or illness and attend the scheduled assessment.

The AMS will produce a report. This provides details of the assessment of your impairment and the AMS should provide both you and your employer or their insurer with a copy of the report.

Payment for approved medical specialist services

As the legislation makes no provision for any particular person to pay, it is the responsibility of the person who requests the assessment to pay for the assessment.

Common law claims

In addition to settlements available in the workers' compensation system, you may be eligible to pursue a common law claim against your employer in the courts. Pursuing a common law claim may affect your workers' compensation entitlements, so it is strongly recommended that you seek independent legal advice before making a decision.

Eligibility to access a common law claim is strict. You need to:

- have sustained at least a 15% permanent whole of person impairment, and
- elect to retain the right to pursue damages within a set timeframe from the date you first received weekly compensation payments and have this election registered by WorkCover WA.

It is important to note that generally you need to elect to retain the right to pursue common law damages within one year from the date your

claim for compensation by way of weekly compensation payments was made to your employer. This date is referred to as the **“termination day”**. If your condition has not stabilised enough for an AMS to determine your degree of permanent whole of person impairment and your termination day is approaching, you may apply for an extension from WorkCover WA. In addition to the termination day, there may be other statutory limitation periods that affect the time when legal proceedings need to commence.

Important

You will receive a letter from your employer’s insurer advising you of your termination day six months prior to the date.

WorkCover WA will record your percentage of whole of person impairment and your election to retain the right to pursue damages.

Be aware that common law is a fault-based system, unlike the “no fault” workers’ compensation system. The courts independently determine a common law claim and you must be able to prove the injury has resulted from your employer’s negligence. Therefore, it is recommended that you seek independent legal advice prior to pursuing a common law claim.

Electing to retain the right to seek damages may affect your other workers' compensation entitlements, specifically your weekly compensation payments may reduce or cease.

How do I elect to retain the right to seek damages from my employer?

You must lodge an election in accordance with the legislation. Contact WorkCover WA's Advisory Services for guidance on the correct forms to use.

Court proceedings must commence within 30 days of WorkCover WA giving the worker written notice that the election has been registered.

What happens if I was injured prior to 14 November 2005?

New legislation was introduced on 14 November 2005, which made changes to settlements and common law.

If you do have a claim involving an injury that occurred prior to 14 November 2005, WorkCover WA's Advisory Services can provide you with information that will assist with finalising your claim. You should also consider your option to seek independent legal advice.

Further information

The information provided in this brochure is intended to be a brief overview of options for finalising your claim under the *Workers' Compensation and Injury Management Act 1981*.

Finalising your workers' compensation claim through a settlement or common law can be a complex process. If you have general questions about finalising your workers' compensation claim, you can contact WorkCover WA's Advisory Services. However, WorkCover WA cannot provide you with advice on whether or not you should finalise your workers' compensation claim or accept a settlement. Therefore, you may also wish to seek independent legal advice.

Additional information services and publications can be obtained by telephone, or in person, from:

WorkCover WA

2 Bedbrook Place, Shenton Park 6008

Telephone: (08) 9388 5555

Facsimile: (08) 9388 5550

Advisory Services: 1300 794 744

TTY (hearing impaired): (08) 9388 5537

Website: www.workcover.wa.gov.au

Email:

postmaster@workcover.wa.gov.au

Advisory Services is a telephone information service which provides general information on workers' compensation and injury management.

Information is also available in alternative formats for people with disabilities, including an audio loop available on 48 hours notice for the hearing impaired.

Interpreter services paid for by WorkCover WA can be made available with prior notice.

Information seminars for injured workers are held on a regular basis and are free of charge. More information is available from the WorkCover WA Events Calendar or from Advisory Services on 1300 794 744.

Other useful contacts

For enquiries about how receiving a lump sum payment in the settlement of a workers' compensation claim may affect your Centrelink entitlements, contact Centrelink on 08 9464 2632.

For issues which may affect your personal taxation, contact the Australian Taxation Office on 13 28 61.

For enquiries about how your settlement affects any Medicare benefits, contact 132 011.

Glossary of Terms

Approved Medical Specialist is a medical specialist specifically trained in performing impairment assessments for workers' compensation purposes. They are approved by WorkCover WA.

Impairment is broadly defined in the guides used by medical specialists for assessment purposes as "...a loss or, loss of use or derangement of any body part, organ system or organ function".

Industrial Diseases covered by the workers' compensation system are specified under the legislation.

Noise Induced Hearing Loss occurs when a worker who works in a prescribed 'noisy' workplace shows an increase in overall hearing loss of at least ten percent from the baseline test in any subsequent audiometric test.

Termination Day is the date on which you need to have elected to retain the right to pursue common law damages. This is usually one year from the date your claim compensation by way of weekly payments was made to your employer.



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telephone 08 9388 5555
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