FREQUENTLY ASKED QUESTIONS

REMOVAL OF AGE LIMITATIONS

Q1. What precisely will be the changes to entitlements for a worker over 64?

A1. While all workers are subject to a number of monetary limits on entitlements, since 1981 injured workers aged 64 years or more have an entitlement to only 12 months of weekly income payments regardless of the amount of payment. In addition, compensation is not payable for noise induced hearing loss incurred after age 65.

The changes mean that these restrictions will be abolished from 1 October 2011 and workers aged 64 years and older will be able to access compensation entitlements on the same terms as all other workers.

Q2. Will the removal of the age limit be retrospective (for someone injured before the amendment comes into effect on 1 October 2011)?

A2. The removal of the age limit will not be retrospective.

Q3. Why were the age limitations removed?

A3. Discrimination on the basis of age has no place in a modern statute, on both equity and economic grounds. The needs of the State are such that older workers must be retained in the workforce to address labour shortages, low unemployment and retention of skill and experience. If workers’ compensation coverage is a barrier to participation of over 65’s change is needed to both protect older workers and encourage their ongoing participation in the workforce.

Q4. Will there be a cost to employers to remove the age limitations?

A4. Employers already pay the cost of workers’ compensation premiums for their older employees. The WA workers’ compensation scheme actuary has advised that there may be a minimal increase in the cost of premiums. Those costs will be outweighed by the benefit to the State of having an experienced and mature workforce.
COMMON LAW

Q5. What is the difference between statutory and common law benefits?

A5. Statutory benefits are those prescribed by Schedule 1 of the Workers Compensation and Injury Management 1981 (WA) and payment of these benefits operates on a ‘no fault basis’. This means that the employer is liable to pay compensation to a worker who has an injury resulting from employment. The benefit is payable irrespective of whether the employer and/or employee through, negligence contributed, to the injury.

Common law damages are awards of compensation determined by a court, in accordance with the common law and certain statutory provisions in the Workers’ Compensation and Injury Management Act 1981 (the Act). Workers who can prove that their workplace injury was caused by negligence or other tort committed by their employer and who meet certain eligibility requirements can pursue a claim for damages outside of the statutory workers’ compensation system. That is, they can sue their employer/s for common law damages in the court system.

Q6. What kind of claim can a worker make if their employer does not have workers’ compensation insurance?

A6. The changes to the Act extend the existing statutory ‘safety net’ arrangements for workers whose employer has unlawfully not taken out insurance, to include any award for common law damages against the uninsured employer. Workers must meet certain conditions to access the common law safety net and it only applies to actions that are brought after 1 October 2011. In these cases WorkCover WA may meet the costs of any damages awarded by the Court, via its General Account, if negligence is proven.
DISPUTE RESOLUTION

Q7. Why is conciliation being introduced – what is wrong with the present system of dispute resolution?

A7. In 2007 an evaluation of reforms implemented in 2005 highlighted stakeholder concern that the amendments to the dispute resolution process (DRD) had not met the intended purpose. The major concerns were:

- the complexity of document preparation to enable an application to be made within DRD (known as “front loading”, where all relevant documentation and prescribed forms are required to be filed and exchanged before formal dispute resolution efforts begin);
- timeliness of the process (for example it can be approximately 6 to 7 weeks following the lodgement of the application before the parties are bought together);
- the exercise of both conciliation and arbitration functions by arbitrators; and
- consistency of processes, for instance despite teleconferences being a clear (although not mandatory) step in the dispute resolution process, they are not convened in all cases.

The new system will be more accessible and less onerous. It will be quicker and provide the opportunity to stream applications to appropriate processes, based upon the need and complexity of each application. It will reduce the front end documentation requirements, making it easier for parties to access conciliation quickly and early in the dispute process.

Timeframes will be specified for the conciliation process providing parties with certainty about the maximum duration they can expect to be involved in conciliation.

There will be a clear separation of conciliation and arbitration functions, providing greater flexibility. For complex matters it will also provide the opportunity to refer these matters directly to arbitration.
Q8. Will conciliation be compulsory?

A8. The objective of the changes to the dispute resolution system is to have early conciliation in all cases, with a view to making all reasonable efforts to bring the parties to agreement. However, in complex cases that appear to have little prospect of resolution at conciliation there will be provision for direct referral to arbitration.

Q9. What proportion of cases is expected to be resolved through conciliation?

A9. As a general rule, in any conciliation or mediation and dispute resolution process, around 80 percent of matters are resolved at conciliation while the remaining 20 percent progress to formal dispute resolution processes, such as arbitration.

Q10. Can cases that are currently in arbitration be transferred into the new conciliation process when it comes into effect?

A10. Appropriate transitional arrangements will be developed to ensure a seamless move from present processes to the new dispute resolution model.

Q11. Will the new dispute resolution process change the roles of lawyers, registered agents or other parties?

A11. Under the new dispute resolution model the roles of lawyers, agents or other parties will remain unchanged.