



# Blueprint for Liability Decisions and Provisional Payments

# Contents

Blueprint for Liability Decisions and Provisional Payments .....	3
Key Points .....	3
Liability decision timeframes & consequences .....	4
Completing liability decision notices.....	5
Liability decision points & critical timeframes .....	7
Calculating the relevant last day for giving liability notices .....	9
Making provisional payments & paying compensation if liability decision notice not given in time..	11
Transitional arrangements .....	12
WorkCover WA expectations .....	13

## Blueprint for Liability Decisions and Provisional Payments

This blueprint has been developed to provide information to assist insurers and self-insurers involved in the liability decision making process under the *Workers Compensation and Injury Management Act 2023* (the Act).

The blueprint sets out:

- key requirements
- important timeframes
- the making of provisional payments and compensation if liability decision notices are not made in time
- transitional arrangements
- WorkCover WA expectations (including evaluation and monitoring).

## Key Points

The Act requires an insurer or self-insurer to give a worker a liability decision notice or deferred decision notice for the worker's claim within regulated timeframes.

The Act introduces a new obligation on insurers and self-insurers to make provisional payments of income compensation and medical and health expenses compensation if a deferred decision notice was initially given but the insurer or self-insurer has not given a liability decision notice before the provisional payments day.

The Act also provides for claims to be 'taken to have been accepted' if a liability decision notice or deferred decision notice is not given as and when required by the Act.

Where a worker is entitled to provisional payments, the payments are to be made for any income compensation, and medical and health expenses compensation, to which the worker would be entitled had the insurer or self-insurer accepted liability.

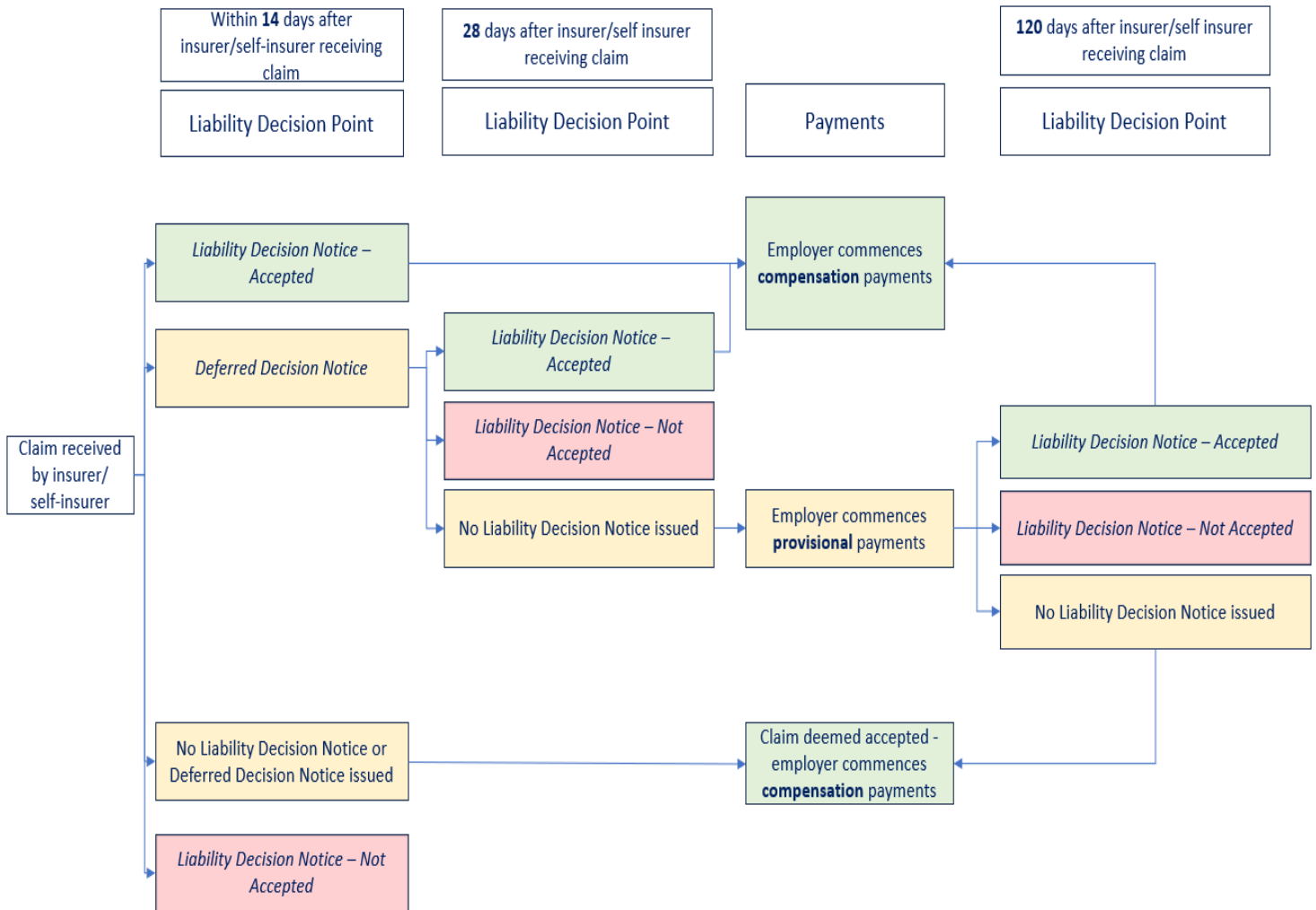
The employer will be required to make provisional payments to a worker.

Provisional payments for income compensation are to be paid for the period beginning when the worker first has an incapacity for work. Provisional payments for medical and health expenses compensation are to be paid for the period beginning on the day the worker's injury occurred.

If liability is accepted or taken to be accepted, provisional payments are taken into account when calculating the total amount of compensation paid to the worker.

Provisional payments are not recoverable from a worker unless the claim involves fraud.

# Liability decision timeframes & consequences



## Completing liability decision notices

The following liability notices are approved forms and must be integrated into systems and used by insurers and self-insurers:

- *Liability Decision Notice – Accepted* (attachment 1)
- *Liability Decision Notice – Accepted (Shared Liability)* (attachment 2)
- *Liability Decision Notice – Not Accepted* (attachment 3)
- *Deferred Decision Notice* (attachment 4).

The notices are not to include any extraneous, deleted, strikethrough or irrelevant content.

It is acceptable to issue the notices with the insurer or self-insurer's company or brand name at the top.

### Accepting liability

The key point to note is an insurer or self-insurer must indicate on a liability decision notice as to whether:

- 1) The insurer or self-insurer **accepts** or **does not accept** the employer is liable for payment of income compensation for incapacity for work resulting from the injury.

Accepting the employer is liable to compensate the worker for the injury to which the claim relates is a decision accepting that an injury from employment has occurred.

Accepting the employer is liable for payment of income compensation is a decision accepting the worker has an incapacity for work resulting from the injury. If the certificate of capacity provided with the claim indicates there is an incapacity for work the claim is an incapacity claim and the insurer or self-insurer must respond to it accordingly.

### Shared liability

If an insurer or self-insurer accepts an employer is or may be liable to compensate the worker for an injury but there are questions as to liability or apportionment between more than one employer, the insurer or self-insurer issues a *Liability Decision Notice – Claim Accepted (Shared Liability)*. The notice indicates compensation payments will be made whilst liability questions are being investigated.

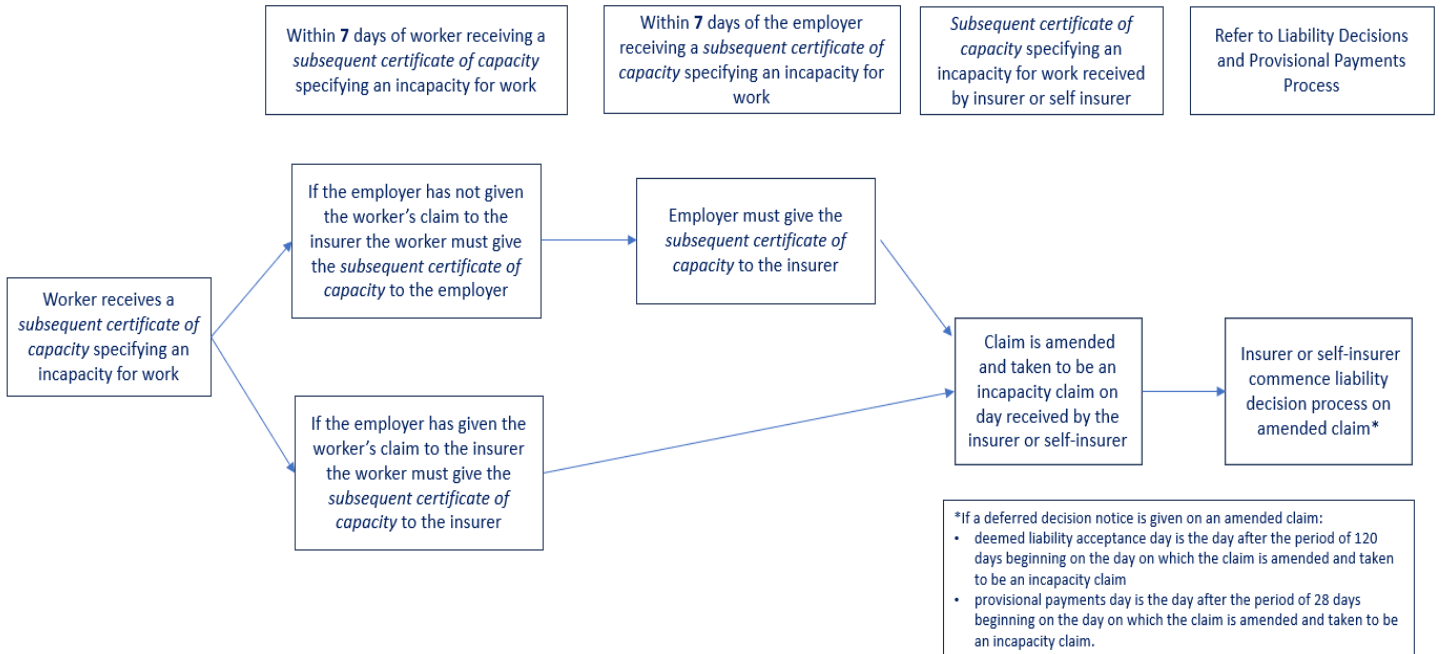
### Deferred decision notice

The deferred decision notice informs the worker that a liability decision for the claim is not able to be made within the time allowed and the decision has been deferred.

The key point to note is an insurer or self-insurer must specify the reason and give details. There are four options. Select whichever option applies and give details in the space provided.

## Incapacity after claim made

Regulations set out insurer and self-insurer obligations and timeframes where a worker's claim for compensation with a certificate of capacity did not specify that the worker had an incapacity for work, but a subsequent certificate specifies that the worker has an incapacity for work. The process is illustrated below.



## Notice to worker about remunerated work

A worker who makes an incapacity claim must give notice to the insurer or employer of any remunerated work that the worker does for any other employer after the claim is made.

An insurer or self-insurer must inform a worker who makes an incapacity claim of the worker's obligation to give notice of remunerated work.

As this is included on the approved acceptance and deferred liability notices, an insurer or self-insurer's obligation will be satisfied.

# Liability decision points & critical timeframes

There are three critical decision points in the liability decision making process.

## 1. Within **14 days** after an insurer or self-insurer receives a claim

Insurers and self-insurers are required to give a worker and employer within 14 days after receiving the worker's claim either a:

- Liability Decision Notice
  - Liability Decision Notice – Accepted (attachment 1)
  - Liability Decision Notice – Accepted (Shared Liability) (attachment 2)
  - Liability Decision Notice – Not Accepted (attachment 3)
- or
- Deferred Decision Notice (attachment 4).

If a liability decision notice or a deferred decision notice is not given within 14 days after receiving a claim, the insurer or self-insurer is taken to have accepted the employer is liable to compensate the worker, and compensation must be paid.

If an insurer or self-insurer accepts the employer is liable for income compensation (i.e an incapacity claim) the employer must make the first payment of income compensation within **14 days** after the liability decision notice is given to the worker and employer.

The first income compensation payment is to include payments that have accrued from the day on which the worker first has an incapacity for work as a result of the injury. Subsequent payments of income compensation to the worker are required to be paid on the usual pay days and in the way the worker normally gets paid.

Compensation for medical and health expenses, or miscellaneous expenses, are payable from when the insurer or self-insurer gives the liability acceptance notice and includes expenses incurred after the worker's injury.

## 2. Deferred decision: **28 days** to give liability decision notice

If a deferred decision notice has previously been issued an insurer or self-insurer is required to issue a liability decision notice before the provisional payments day.

If a liability decision notice is not given before the provisional payments day provisional payments of income compensation and reasonable medical and health expenses are required to be paid.

The provisional payments day is the day after the period of **28 days** beginning on the day on which the insurer or self-insurer receives the claim.

The deferred decision notice is required to specify the provisional payments day.

### 3. Deferred decision: **120 days** to give liability decision

If a deferred decision notice has previously been issued an insurer or self-insurer is required to issue a liability decision notice before the deemed liability acceptance day.

If a liability decision notice is not given before the deemed liability acceptance day the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker, and compensation must be paid.

The deemed liability acceptance day is the day after the period of **120 days** beginning on the day on which the insurer or self-insurer receives the claim.

The deferred decision notice is required to specify the deemed liability acceptance day.



## Calculating the relevant last day for giving liability notices

As there are significant consequences for not issuing a liability decision notice or deferred decision notice in time, it is important to correctly calculate the 14 day, 28 day and 120 day periods.

It is also important to correctly calculate the provisional payments day and deemed liability acceptance day, both of which are required to be specified on a deferred decision notice.

Also be aware the *Interpretation Act 1984* may provide for certain days to be excluded when calculating time periods (described below), effectively providing more time to make a liability decision.

Key points to consider:

- 1) An insurer or self-insurer must give a liability decision notice or deferred decision notice within 14 days after receiving a claim
- 2) If a deferred decision notice has been given, the insurer or self-insurer must give a liability decision notice before the provisional payments day (the day after the period of 28 days beginning on the day the claim was received)
- 3) If a deferred decision notice has been given, the insurer or self-insurer must give a liability decision notice before the deemed liability acceptance day (the day after the period of 120 days beginning on the day the claim was received)

### Example 1: Calculating days where deferred decision notice given

An insurer receives a claim on **1 August 2024**

#### 14 days

The calculation of 14 days after receiving the claim on 1 August 2024 indicates a liability decision notice or deferred decision notice must be given before 15 August 2024.

In this example, a deferred decision notice is given on 8 August 2024.

#### 28 days

The calculation indicates the provisional payments day is 29 August 2024. The last day for giving a liability decision notice is 28 August 2024. If no notice is given provisional payments become payable from the provisional payments day on 29 August 2024.

#### 120 days

The calculation indicates the deemed liability acceptance day is 29 November 2024. The last day for giving a liability decision notice is 28 November 2024. If no notice is given liability for the claim will be taken to be accepted on 29 November 2024.

## Excluded days

In calculating the number of days, every day must be counted regardless of whether it is a weekend or public holiday.

However, if the last day for giving a liability decision notice or deferred decision notice lands on an 'excluded day', the notice may be given on the next day that is not an excluded day.

An excluded day means Saturday, Sunday, public service holiday, a bank holiday or public holiday throughout the State or in a part of the State (*Interpretation Act 1984*).

### Example 2: Calculating days where deferred decision notice given: last day for giving notice falls on excluded day

An insurer receives a claim on **5 August 2024**

#### 14 days

An initial calculation of 14 days after receiving the claim on 5 August indicates the liability decision notice or deferred decision notice must be given before Monday 19 August 2024.

As the last day the insurer can issue a liability decision notice is Sunday 18 August 2024, an excluded day, the insurer can send the notice on the next non-excluded day which is Monday 19 August 2024.

In this example, a deferred decision notice is given on 14 August 2024.

#### 28 days

An initial calculation indicates the provisional payments day is Monday 2 September 2024.

As the last day the insurer can issue a liability decision notice is Sunday 1 September 2024, an excluded day, the insurer can send the notice on the next non-excluded day which is Monday 2 September 2024. The provisional payments day to be specified in the deferred decision notice will be 3 September 2024.

#### 120 days

The calculation indicates the deemed liability acceptance day is 3 December 2024. The last day for giving a liability decision notice is 2 December 2024. As 2 December 2024 is a Monday there are no adjustments required. If no notice is given liability for the claim will be taken to be accepted on 3 December 2024.

## Making provisional payments & paying compensation if liability decision notice not given in time

### Obligation to make provisional payments

Provisional payments of income compensation and medical and health expenses compensation must be paid if a deferred decision notice was initially given within 14 days, but the insurer or self-insurer has not given a liability decision notice before the provisional payments day.

Where a worker is entitled to provisional payments, the payments are to be made for any income compensation, and medical and health expenses compensation, to which the worker would be entitled had the insurer or self-insurer accepted liability.

Provisional payments of income compensation are payable from the day the worker first has an incapacity for work and ends on the earliest of:

- (a) the day on which a certificate for capacity is issued that specifies that the worker no longer has any incapacity for work, or
- (b) the day on which the insurer or self-insurer gives a liability decision notice for the claim, or
- (c) the day on the which the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker.

Provisional payments of medical and health expenses are payable from the day the injury occurred and ends on the earliest of:

- (a) the day on which the insurer or self-insurer gives a liability decision notice for the claim, or
- (b) the day on which the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker.

The total amount of provisional payments of medical and health expenses is limited to 5% of the medical and health expenses general limit.

If liability is accepted or deemed to be accepted, provisional payments are taken into account when calculating the total amount of compensation paid to the worker.

Provisional payments are not recoverable from a worker unless the claim involves fraud.

Non-payment of provisional payments as and when required is an offence with a significant penalty.

### Liability to pay compensation

If an insurer or self-insurer fails to give a liability decision notice or deferred decision notice as and when required:

- (a) the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker for the injury to which the claim relates; and
- (b) in the case of an incapacity claim – the insurer or self-insurer to taken to have accepted that the employer is liable to pay income compensation for incapacity for work.

Compensation must be paid as if the insurer or self-insurer had accepted liability.

If compensation is required to be paid for not issuing a liability decision notice in time, any provisional payments made prior to the deemed liability acceptance day are included in calculations of aggregate compensation paid to the worker.

The insurer or self-insurer should also give the worker notice in writing advising of the updated status of the claim.

Non-payment of compensation as and when required is an offence with a significant penalty.

## Transitional arrangements

### Application of liability decision notice requirements to 1981 Act claims

The liability decision notice requirements and the obligation to make provisional payments apply to any claim made under the 1981 Act that was **not decided** under the 1981 Act before 1 July 2024. A claim is only considered to have been decided under the 1981 Act when:

- (a) liability for the weekly compensation claimed was accepted under the 1981 Act by the insurer or employer
- (b) an arbitrator determined under the 1981 Act that the worker is entitled to the weekly compensation claimed
- (c) the worker became entitled under the 1981 Act to the weekly payments claimed (as a result of the failure by the insurer to issue a notice in time under the 1981 Act).

If a liability decision under the 1981 Act was **not decided because it was deferred before 1 July 2024** (a pended claim), the new Act applies to the claim as if a deferred decision notice had been given on 1 July 2024 (unless it was deemed to be disputed - see below).

If this scenario applies, the insurer or self-insurer will have a maximum of 14 additional days to issue a liability decision notice before the obligation to pay provisional payments arises.

### Pended 1981 Act claims that are deemed disputed

In relation to the status of claims under the 1981 Act that were **deemed to be disputed** (no decision notice was given after the insurer or self-insurer initially sent a pended claim notice under the 1981 Act), the Regulations do not require a liability decision notice to be issued under the new Act.

Instead, the Regulations provide the claim may be dealt with as a dispute under the Act. The Regulations therefore preserve the status of the deemed disputed claim under the 1981 Act by enabling a dispute to be dealt with under the new Act:

In this regulation -

*deemed disputed former Act claim* means a claim for weekly payments of compensation made under the former Act that is deemed to be disputed under section 57A(3a) or 57B(2a) of the former Act.

Section 551 of the Act does not apply to or in respect of a deemed disputed former Act claim.

A deemed disputed former Act claim is not required under section 551 to be dealt with under the Act as if made under the Act.

A dispute about a deemed disputed former Act claim must be dealt with under the Act as if the dispute arose under the Act.

# WorkCover WA expectations

WorkCover WA expects insurers and self-insurers to have systems and procedures in place from 1 July 2024 to ensure:

- a liability decision notice or a deferred decision notice is given to the worker (and copy to the employer) within **14 days** after receiving a claim
- all liability decisions are made in a timely manner having regard to the complexity of decisions made
- where a deferred decision notice is given, every effort is made to complete medical and factual investigations in a timely manner and, in particular, if a preferred provider is not available other options are considered
- liability is not denied due to procedural concerns unrelated to the claim or to avoid the making of provisional payments e.g. if previously regulated claim form (Form 2B) was given instead of new claim form
- 'without prejudice' or other forms or payments are not used in lieu of provisional payments
- notices do not contain any extraneous, deleted, strikethrough or irrelevant content
- insurers and self-insurers do not lodge inappropriate applications for conciliation for 'disputes' about the requirement to pay provisional payments or deemed acceptance of liability where the dates on which notices were due were missed due to administrative errors.

WorkCover WA expects insurers and self-insurers to actively assist workers and employers to ensure:

- provisional payments are made in every case where a liability decision notice is not given by the provisional payments day even where the notice is not given due to procedural failure or human error, or the period after the provisional payment day and the date of liability decision notice is short
- compensation payments commence in a timely manner where the employer is taken to have accepted liability.

## Data

WorkCover WA expects insurers and self-insurers to implement the payment code for provisional payments from 1 July 2024 (revised NIDS).

## Evaluation and monitoring

WorkCover WA will monitor (for each insurer and self-insurer) the following metrics related to liability decision making and provisional payments.

Provisional payment usage:

- number and proportion of all claims with provisional payments (provisional payments rate)
- average duration of provisional payments.

Insurer and self-insurer decision making:

- number and proportion of claims initially declined (declination rate)

- number and proportion of claims initially declined and ultimately accepted (reconsideration rate)
- number and proportion of all claims with deemed liability acceptance
- number and proportion of lost time claims with deemed liability acceptance
- number of complaints relating to failure to make provisional payments or payments of compensation.

Compliance monitoring:

WorkCover WA will monitor claim data to identify claims where provisional payments appear to be payable and for which no such payments have been made.

## Attachment 1

### Workers Compensation and Injury Management Act 2023

#### LIABILITY DECISION NOTICE – ACCEPTED

#### Worker

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

#### Employer

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABN: \_\_\_\_\_

#### Claim

Insurer: \_\_\_\_\_  
Insurer claim number: \_\_\_\_\_  
Date of injury: \_\_\_\_\_  
Date claim given to insurer: \_\_\_\_\_  
  
Date of notice: \_\_\_\_\_

---

#### LIABILITY DECISION

In relation to the above claim we accept the employer is liable to compensate you for the injury.

We accept / do not accept *[delete as applicable]* the employer is liable for payment of income compensation for incapacity for work resulting from the injury.

#### Compensation

Compensation includes:

- **Reasonable medical and health expenses.** Please provide the claim number above to the health provider or practitioner for these expenses to be paid. Other forms of compensation are subject to eligibility.
- **Income compensation.** If income compensation liability is accepted, income compensation is payable from the date of incapacity. Payments will commence within the next 14 days and thereafter on the next usual pay day with the first payment including payments accrued from the date of incapacity.

## Further Information

If liability for income compensation has been accepted and you commence any remunerated work for another employer, you must give notice to your employer or the insurer (see below for contact details).

Advice or assistance on workers compensation claims and disputes can be provided by WorkCover WA Advisory Services on 1300 794 744 or [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au), trade unions, or legal practitioners.

---

## Notice Details

Notice issued by:

.....

Email address:

.....

Phone number:

.....

Web:

.....



## Attachment 2

Workers Compensation and Injury Management Act 2023

### LIABILITY DECISION NOTICE — ACCEPTED (SHARED LIABILITY)

#### Worker

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

#### Employer

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABN: \_\_\_\_\_

#### Claim

Insurer: \_\_\_\_\_  
Insurer claim number: \_\_\_\_\_  
Date of injury: \_\_\_\_\_  
Date claim given to insurer: \_\_\_\_\_  
  
Date of notice: \_\_\_\_\_

---

#### LIABILITY DECISION

In relation to the above claim we **accept** the employer *is or may be* liable to compensate you for the injury but there are one or more liability questions in relation to this acceptance.

We accept / do not accept [*delete as applicable*] the employer is liable for payment of income compensation for incapacity for work resulting from the injury.

Compensation payments will be made whilst liability questions are being investigated.

## Liability Questions

The liability questions are:

- Whether another employer is wholly or partly liable.
- How liability is to be apportioned between employers.
- Which insurer(s) is liable to indemnify employer.

## Compensation

Compensation includes:

- **Reasonable medical and health expenses.** Please provide the claim number above to the health provider or practitioner for these expenses to be paid. Other forms of compensation are subject to eligibility.
- **Income compensation.** If liability for incapacity is accepted, income compensation is payable from the date of incapacity. Payments will commence within the next 14 days and thereafter on the next usual pay day with the first payment including payments accrued from the date of incapacity.

## Further Information

If you commence any remunerated work for another employer, you must give notice to your employer or the insurer (see below for contact details).

If you wish to dispute an aspect of this decision, the matter can be reconsidered under our internal dispute resolution process. Information on this process is available by contacting the person below.

The decision can also be disputed through WorkCover WA's Conciliation and Arbitration Services.

Advice or assistance on workers compensation claims and disputes can be provided by WorkCover WA Advisory Services on 1300 794 744 or [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au), trade unions, or legal practitioners.

---

## Notice Details

Notice issued by:

.....

Email address:

.....

Phone number:

.....

Web:

.....

**Attachment 3**

*Workers Compensation and Injury Management Act 2023*

**LIABILITY DECISION NOTICE — NOT ACCEPTED**

**Worker**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

**Employer**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABN: \_\_\_\_\_

**Claim**

Insurer: \_\_\_\_\_  
Insurer claim number: \_\_\_\_\_  
Date of injury: \_\_\_\_\_  
Date claim given to insurer: \_\_\_\_\_  
  
Date of notice: \_\_\_\_\_

---

**LIABILITY DECISION**

In relation to the above claim we do not accept the employer is liable to compensate you for the injury.

Reason(s) and details:

- Not a worker: \_\_\_\_\_
- Not an injury under the Act: \_\_\_\_\_
- Not in course of employment: \_\_\_\_\_
- Other reason(s): \_\_\_\_\_

## Provisional Payments

If provisional income compensation payments are being paid, they will cease from the date of this notice. Medical and health expenses incurred after the date of this notice will not be reimbursed.

## Further Information

If you wish to dispute an aspect of this decision, the matter can be reconsidered under our internal dispute resolution process. Information on this process is available by contacting the person below. The decision can also be disputed through WorkCover WA's Conciliation and Arbitration Services. Advice or assistance on workers compensation claims and disputes can be provided by WorkCover WA Advisory Services on 1300 794 744 or [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au), trade unions, or legal practitioners.

## Notice Details

Notice issued by:

.....

Email address:

.....

Phone number:

.....

Web:

.....

## Attachment 4

### Workers Compensation and Injury Management Act 2023

#### DEFERRED DECISION NOTICE

#### Worker

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

#### Employer

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABN: \_\_\_\_\_

#### Claim

Insurer: \_\_\_\_\_  
Insurer claim number: \_\_\_\_\_  
Date of injury: \_\_\_\_\_  
Date claim given to insurer: \_\_\_\_\_  
  
Date of notice: \_\_\_\_\_

---

#### DEFERRED DECISION

In relation to the above claim we are informing you that a decision on whether liability is to be accepted for this claim is not able to be made within the time allowed and the decision has been deferred.

Reason(s) and details:

- Further medical information required: \_\_\_\_\_
- Wage information required: \_\_\_\_\_
- Further investigations required: \_\_\_\_\_
- Other information required: \_\_\_\_\_

## Provisional Payments

If a liability decision notice on this claim is not given by the provisional payments day, provisional payments of income compensation and reasonable medical and health expenses will be made.

Provisional payments day: .....

If a liability decision notice on this claim is not given by the deemed liability acceptance day, liability will be taken to have been accepted and compensation payments will be made.

Deemed liability acceptance day: .....

## Further Information

If you commence any remunerated work for another employer, you must give notice to your employer or the insurer (see below for contact details).

Advice or assistance on workers compensation claims and disputes can be provided by WorkCover WA Advisory Services on 1300 794 744 or [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au), trade unions, or legal practitioners.

---

## Notice Details

Notice issued by: .....

Email address: .....

Phone number: .....

Web: .....