

Workers Compensation and Injury Management Act 2023

Implementation proposals for regulations and administrative instruments

Implementation Consultation Paper 17: Stopping or Reducing Compensation

October 2023

Public comment on the implementation proposals
should be submitted to:

consultation@workcover.wa.gov.au by **1 December 2023**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

*****Draft proposals only*****

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

Implementation Consultation – Stopping or Reducing Compensation

Scope

This document sets out proposed implementation requirements, and the procedure to be followed by an employer (directly or via their insurer) to review, reduce, suspend or discontinue compensation payments paid to an injured worker under the *Workers Compensation and Injury Management Act 2023* (WCIMA23).

Background and Intent

The WCIMA23 provides that once an entitlement to income compensation is established and payments commence the payments cannot be reduced, suspended or discontinued, except in accordance with the Act. This maintains the general restriction in the current Act preventing the unilateral reduction or cessation of compensation by an employer, insurer or self-insurer.

The WCIMA23 sets out the specific circumstances where an employer, insurer or self-insurer is permitted to reduce, suspend, or discontinue income compensation payments to a worker. The circumstances are:

1. to comply with a relevant provision of the WCIMA23 such as the calculation of income compensation or any limit on compensation
2. to comply with a direction of a conciliator or an order of an arbitrator
3. reducing or discontinuing income compensation payments on the basis of a worker's return to work
4. reducing or discontinuing income compensation payments on the basis of medical evidence
5. suspending income compensation payments when a worker is not residing in WA and fails to provide declarations required by the regulations
6. suspending income compensation payments when a worker is in custody under the law of a state or the Commonwealth
7. with the consent of the worker

This paper sets out the proposed forms to be used and processes to be followed relating to points 3 to 7 above to ensure compliance with the WCIMA23.

WCIMA23 key provisions

s. 62, s. 63, s. 64, s. 65, s. 66, s. 68.

Process overview

Reducing, suspending, or discontinuing income compensation – with consent of the worker, s. 62(d)

Under section 62(d) of the *WCIMA23* an employer must not reduce, suspend, or discontinue income compensation to a worker except with the written consent of the worker given in the approved form. It is proposed the following form will be approved by the WorkCover WA CEO and required to be given to the worker if relying upon a worker's consent to reduce, suspend or discontinue income compensation payments:

- [Attachment 1: - Written consent of worker to reduce, suspend or discontinue income compensation](#)

Reducing or discontinuing income compensation – worker has returned to work, s. 63

Section 63 of the *WCIMA23* requires that an employer must not reduce or discontinue income compensation payments to a worker on the basis of the worker's return to work unless the employer has informed the worker in accordance with the regulations –

- (a) the basis for the reduction or discontinuance with reference to the position to which the worker has returned
- (b) the amount, if any, of income compensation that will be paid to the worker for any partial incapacity for work

It is intended the regulations will require the employer to give notice by providing the following approved form to the worker:

- [Attachment 2: Reducing or discontinuing income compensation: worker's return to work](#)

The proposed notice ensures workers are clearly informed as to whether they are receiving wages only (return to work with full capacity) or a combination of wages and income compensation (return to work with some residual incapacity) with reference to the position to which they have returned.

The definition of 'return to work' has not changed in any material way from the 1981 Act:

return to work, in relation to a worker who has an incapacity for work, means –

- (a) *the worker holding or returning to the position that the worker held immediately before becoming incapacitated if it is reasonably practicable for the employer who employed the worker at the time the incapacity occurred to provide that position to the worker; or*
- (b) *if the position is not available, or if the worker does not have the capacity to work in that position, the worker taking a position, whether with the employer who employed the worker at the time the incapacity occurred or another employer –*
 - (i) *for which the worker is qualified; and*
 - (ii) *that the worker is capable of performing;*

It is usually obvious when the worker has returned to work. It is not about an insurer or self-insurer's belief the worker is *able* to return to work; it is whether the worker *has* returned to the pre-incapacity position or a position for which the worker is qualified and capable of performing. The proposed notice will clearly inform the worker about the basis for changes to their compensation and the evidence the employer or insurer relies upon.

If a worker believes the discontinuation or reduction, or the amount payable for partial incapacity, is wrong, the worker may make an application for conciliation. If the dispute is not resolved at conciliation, an arbitrator may make a determination about whether the worker has in fact returned to work (as defined) and the amount of any income compensation payable.

[Reducing or discontinuing income compensation: medical evidence, s. 64](#)

The *WCIMA23* sets out the process for reducing or discontinuing income compensation payments to a worker based on medical evidence about capacity for work and is substantively the same as the 1981 Act.

If an employer has medical evidence as to a worker's capacity for work or the extent to which the incapacity is a result of the worker's injury, section 64 of the *WCIMA23* must be complied with before income payments can be reduced or discontinued.

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. It is intended the regulations will require the notice to be in the following approved form:

- [Attachment 3: Reducing or discontinuing income compensation: medical evidence](#)

A copy of the medical evidence relied upon must also be given to the worker.

After receiving the required documents, a worker may within 21 days make an application for conciliation if they do not agree with the proposed reduction or discontinuation of income compensation payments by the employer.

If a worker makes an application for conciliation within 21 days an employer cannot reduce or discontinue income compensation payments until the dispute is finalised.

The *WCIMA23* clarifies that applying for the resolution of the dispute by conciliation is the first step in seeking an order by an arbitrator and also clarifies when the dispute resolution process has been finalised (e.g. the application is not accepted, or is discontinued or dismissed, the dispute is resolved by conciliation, the dispute is not resolved at conciliation and an arbitration application is not made within the timeframe allowed).

If a worker does not make an application for conciliation within 21 days of receiving notification of the employer or insurer's intention to reduce or continue compensation, the employer may proceed to reduce or discontinue income compensation payments.

Suspending income compensation: failure of worker not residing in State to provide declaration s.65

The *WCIMA23* provides that regulations may require a worker who is entitled to income compensation and who does not reside in the State to provide the insurer or self-insurer at specified intervals with declarations from the worker and a medical practitioner as to the worker's capacity for work.

It is intended the regulations will require the following, consistent with the 1981 Act and regulations:

- a worker must make the declaration in the form of [Attachment 4: Worker declaration when not residing in Western Australia](#). The approved form of the declaration includes a part for both the worker and medical practitioner to make the necessary declarations.
- The declaration must be sent by the worker to the insurer or self-insurer:
 - within 3 months after the date on which the worker is no longer residing in the State, and
 - for each subsequent period during which the worker continues to receive income compensation while not residing in the State, within 3 months after the date of the previous declaration.

The medical practitioner providing the declaration as to the worker's incapacity for work must be:

- a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession or
- a person who is not resident in the State of Western Australia but who is recognised as a medical practitioner for the purposes of the *WCIMA23* by WorkCover WA. It is intended WorkCover WA will continue to recognise any person registered in the medical profession under a law or regulatory authority of the jurisdiction in which the person resides.

It is intended the regulations will continue to provide that a declaration is taken to have been sent to an insurer or self-insurer at the time it was:

- delivered personally to the last known business address of the insurer or self-insurer; or
- posted to the last known business address of the insurer or self-insurer; or
- sent by electronic means to the last known email address of the insurer or self-insurer.

Unlike the 1981 Act, a worker's income compensation entitlement will not cease if a worker fails to provide the declaration in time. Instead, the *WCIMA23* sets out a new process by which an insurer or self-insurer may *suspend* income compensation payments.

Before taking any action, the *WCIMA23* requires an insurer or self-insurer to give the worker a written warning notice in the approved form reminding the worker of their obligations to provide the required declaration before the due date. The notice also warns the worker that the payment of income compensation may be suspended from a specified date if the worker fails to provide the declaration. It is intended the approved warning notice will be:

- [Attachment 5: Warning notice – worker declaration when not residing in Western Australia](#)

The *WCIMA23* requires:

- that the warning notice cannot be issued to a worker earlier than 14 days before the last day the worker's declaration was due

- the date specified as the suspension date must be at least 14 days after the warning notice is given to the worker and cannot be earlier than the last day the worker's declaration was due.

Payment of income compensation will be suspended from the specified date until the worker provides the required declaration to the insurer or self-insurer.

The worker's entitlement does not cease by virtue of a failure to provide a declaration and income compensation payments must recommence from the date the worker provides the required declaration.

A worker who believes their income compensation entitlement was unlawfully suspended may apply to have the matter determined as a dispute. An arbitrator can make any order the arbitrator considers appropriate in the circumstances.

Suspending income compensation: worker in custody, s.66

The *WCIMA23* requires that payment of income compensation to a worker must be suspended for any period during which the worker is:

- in custody under a law of the Commonwealth, this State or another State, other than custody of a kind prescribed by the regulations; or
- otherwise serving a term of imprisonment of a kind prescribed by the regulations.

Unlike the 1981 Act, which requires an order of an arbitrator, income compensation payments can be suspended under the *WCIMA23* if the employer has written confirmation of the factual circumstances in relation to the worker from either:

- the chief executive officer (prisons) as defined in the *Prisons Act 1981*
- the registrar (MIRT - Mental Impairment Review Tribunal) established by the *Criminal Law (Mental Impairment) Act 2023*
- a relevant government authority principally assisting the Minister responsible for administering the relevant law in the administration of that law.

In accordance with the *WCIMA23* the chief executive officer (prisons) and the registrar (Mental Impairment Review Tribunal) and any other relevant government authority prescribed by the regulations must provide written confirmation that the worker is in custody, or otherwise serving a term of imprisonment, in the circumstances, and in the manner and form, provided for by the regulations.

It is intended the regulations will clarify a 'term of imprisonment' includes a prisoner within the meaning of the *Prisons Act 1981* serving a term of imprisonment until that period has expired and the prisoner is released from custody.

To facilitate the required confirmation and to standardise communications it is intended the regulations will require the following form be utilised by insurers/ self-insurers and the CEO prisons/ registrar MIRT (an approved form):

- [Attachment 6: Confirmation of worker's custody or imprisonment](#)

A worker's entitlement does not cease, and payments will be required to recommence from the date the worker is no longer in custody or serving a term of imprisonment.

There is no intention to make regulations at this time:

- excluding any type of custody from the provisions. They will apply to all custody arrangements in prisons and any location under the *Criminal Law (Mental Impairment) Act 2023*
- prescribing any other government authority to provide confirmation of the factual circumstances.

A worker who believes their income compensation entitlement was unlawfully suspended may apply to have the matter determined as a dispute. An arbitrator can make any order the arbitrator considers appropriate in the circumstances.

Review of income compensation s. 68

Section 68 of the *WCIMA23* provides that an arbitrator may review the payment of income compensation to a worker on the application of the worker or the employer.

Unlike section 62 of the 1981 Act an application to review the payment of income compensation is not constrained by reference to the past or present condition of the worker.

Section 68 is therefore broader than the comparable provision in the 1981 Act and enables an employer or insurer to apply for a review of income compensation payments regardless of the reason. For example, it enables an insurer or self-insurer to apply for a review where the insurer or self-insurer erroneously accepted liability.

Should a dispute arise about any other issue an application can be made in the normal manner (as a dispute under Part 6).

The *WCIMA23* does not provide for an equivalent of section 60 of the 1981 Act or for any alternative or expedited pathway for a worker's income compensation entitlement to be reviewed, suspended or cancelled other than what is provided for in sections 62-68 of the *WCIMA23*.

WorkCover WA expectations

WorkCover WA expects employers, insurers and self-insurers to:

- ensure that compensation payable to workers with an established entitlement is not unilaterally suspended, reduced, or discontinued
- only suspend, reduce or discontinue compensation for workers with established entitlements if permitted by the *WCIMA23* and regulations

Attachments

Proposed approved forms:

1. Consent of worker to reduce, suspend or discontinue income compensation
2. Reducing or discontinuing income compensation: return to work
3. Reducing or discontinuing income compensation: medical evidence
4. Worker declaration when not residing in Western Australia
5. Warning Notice – worker declaration when not residing in Western Australia
6. Confirmation of worker's custody or imprisonment

Attachment 1: Written consent of worker to reduce, suspend or discontinue income compensation

Workers Compensation and Injury Management Act 2023

Section 62(d)

Claim No:
Date of Injury:

To: Name and address of worker Notice is served upon
.....

From:

Your employer seeks your consent to either:

Reduce to: \$x per week
.....

Suspend

Discontinue

your income compensation on the following basis:

Clearly and concisely set out the reason for the reduction, suspension or discontinuation

and the basis upon which the proposed action is being made

from the following date: xx/xx/20xx (or date range where suspended)
.....

Worker's consent

I consent to the proposed action by my employer.

Print & sign By the worker
name:

Date: xx/xx/20xx
.....

Attachment 2: Reducing or discontinuing income compensation: return to work

Workers Compensation and Injury Management Act 2023

Section 63(1)

Claim No:
Date of Injury:

To: Name and address of worker Notice is served upon

 From: _____

TAKE NOTICE that your employer XYZ Pty Ltd
 intends to either: _____

- Reduce to: \$x per week (due to partial incapacity)

- Discontinue

your income compensation due to your return to work on the following basis:

Clearly and concisely set out the basis for the reduction or discontinuation with reference

to the position to which the worker has returned (e.g. worker returned to work in their pre-injury

position for half days, four hours per day, \$1,000/wk compensation reduced to \$500/wk).

Position returning to: Pre-injury position/ modified position, etc

from the following date: xx/xx/20xx

Signed: By or on behalf of the employer

Date: xx/xx/20xx

Your rights and further information

If you disagree with the reduction or discontinuation of your income compensation due to you returning to work, or the amount of income compensation payable for any partial incapacity for work, you can make an application for conciliation in WorkCover WA's Conciliation and Arbitration Services.

Information about WorkCover WA's Conciliation and Arbitration Services can be obtained from WorkCover WA Advice and Assistance on 1300 794 744 or at the WorkCover WA website: <https://www.workcover.wa.gov.au/>.

Attachment 3: Reducing or discontinuing income compensation: medical evidence

Workers Compensation and Injury Management Act 2023

Section 64

To: Name and address of worker Notice is served upon
 From: _____

Claim No:
Date of Injury:

TAKE NOTICE that your employer, XYZ Pty Ltd

intends, 21 days after this notice is given to you, to either:

- Reduce to: \$x per week (due to partial incapacity) _____
- Discontinue

your income compensation on the basis of medical evidence from a medical practitioner as follows:

Clearly and concisely set out the proposed action (reduction or discontinuation) and the evidence upon which the proposed action is being taken (e.g. discontinue income compensation based on the medical report of Dr. X, showing you have full capacity to perform your pre-injury duties).

A copy of the medical evidence relied upon is **attached** to this Notice.

Signed: By or on behalf of the employer
 Date: xx/xx/20xx

Your rights and further information

If you disagree and wish to dispute the proposed action to reduce or discontinue your income compensation you can lodge an application for conciliation in WorkCover WA’s Conciliation and Arbitration Services within 21 days after this Notice is given to you.

Payments cannot be reduced or discontinued until any dispute related to that action has been finalised if you lodge an application for conciliation within 21 days after this Notice is given to you.

If you don't make an application for conciliation within 21 days, your income compensation payments will be reduced or discontinued as set out in this notice. .

Information about WorkCover WA's Conciliation and Arbitration Services can be obtained from WorkCover WA Advice and Assistance on 1300 794 744 or at the WorkCover WA website:

<https://www.workcover.wa.gov.au/>.

Attachment 4: Worker declaration when not residing in Western Australia

Workers Compensation and Injury Management Act 2023

Section 65(1)

Where a worker resides outside of the State, proof of the worker's identity and continuing incapacity is required every three months

PART 1

Personal details of worker

First Name(s)	Unit No. No. Street
.....
Surname	Suburb
.....
Date of Birth	State & Postcode
.....
Occupation	Phone No
.....
Claim number	Email address
.....

Details of employer's insurer/ employer

Insurer/ employer name
.....

Insurer/ employer address
.....

Email
.....

Declaration by worker

I have truthfully answered all the questions I have been asked and have fully cooperated to the best of my ability during the course of the medical examination by the medical practitioner named in PART 2 of this declaration

Worker name	Date of declaration
.....
Worker signature	Date sent
.....

PART 2

Medical practitioner declaration

I declare that I have examined the person named in PART 1 of this declaration and I have confirmed that the person who I examined was that person through the sighting of an official document of the government of the country in which the person resides.

The document used to confirm identification about the person was e.g. a passport

Date of assessment

Date of injury

Medical Management

Clinical findings/ diagnosis

Medication

Imaging

Referral to specialist/ hospital

Approved health treatment

specify type and number of sessions

Work Capacity

Worker's usual duties

I find this worker to have:

<input type="checkbox"/>	Full capacity for work, from: <u>Insert date</u>	<input type="checkbox"/>	Requires further treatment
<input type="checkbox"/>	Some capacity for work, from: <u>Insert date range</u>	Performing:	
<input type="checkbox"/>	Pre-injury duties	<input type="checkbox"/>	Modified or alternative duties
<input type="checkbox"/>	Pre-injury hours	<input type="checkbox"/>	Workplace modifications
<input type="checkbox"/>	No capacity for work, from: <u>Insert date range</u>	Modified hours of <u> </u> Hrs/day, <u> </u> Days/wk	

Specify work restrictions below – where no capacity for work, provide clinical reasoning

.....

.....

.....

Medical practitioner details

First Name(s)	Address
.....
Surname	
.....
Registration No	
.....
Country	Phone No
.....
Medical speciality	Email address
.....
Signature	Date
.....

Attachment 5: Warning notice – worker declaration when not residing in Western Australia

Workers Compensation and Injury Management Act 2023

Section 65(3)

To: _____
 Name and address of worker notice is served upon

From: _____

Claim No:
Date of Injury:

As you are entitled to income compensation but do not reside in Western Australia you are required to provide a declaration to us [specify insurer or self-insurer name] at 3 monthly intervals.

The required declaration confirms your identity, location and includes a declaration from a medical practitioner as to your capacity for work. A copy is attached for your information and use.

The declaration must be sent to us:

- (a) within 3 months after the date on which you were no longer residing in Western Australia and
- (b) for each subsequent interval during which you continue to receive income compensation while not residing in Western Australia, within 3 months after the date of the previous declaration made by you.

We have assessed your claim and calculate the required declaration is due by **xx/xx/20xx**. [specify date based on either (a) or (b) above].

In order to continue to receive income compensation payments ensure you and a medical practitioner complete the attached declaration and provide it to us by **xx/xx/20xx**

You may send the notice by email or post to us at: (specify postal address and email).

If you fail to provide the declaration before **xx/xx/20xx** your income compensation may be suspended from the following date: **xx/xx/20xx**.

[the suspension date must be at least 14 days after this warning notice is given and not earlier than the end of the interval at which the declaration is required].

Any suspension of income compensation payments will be from the suspension date specified above until you provide the required declaration.

Signed: Name and signature of insurer or self-insurer
representative

Date: xx/xx/20xx (cannot be earlier than 14 days before end of
interval at which declaration is required)

Your rights and further information

The medical practitioner providing the declaration as to your capacity for work must be:

- a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession or
- a person registered in the medical profession under a law or regulatory authority of the jurisdiction in which the person resides.

If you wish to discuss this notice or believe the obligation to provide the declaration does not apply to you or that the date of the required declaration that we have assessed is incorrect please contact us immediately.

If we suspend income compensation and you believe the suspension is unlawful you may wish to dispute the suspension by making an application for conciliation in WorkCover WA's Conciliation and Arbitration Services.

Information about WorkCover WA's Conciliation and Arbitration Services can be obtained from WorkCover WA Advice and Assistance on 1300 794 744 or at the WorkCover WA website: <https://www.workcover.wa.gov.au/>.

Attachment 6: Confirmation of worker’s custody or imprisonment

Workers Compensation and Injury Management Act 2023

Section 66(3)

Claim No:
Date of Injury:

PART 1: INSURER/ SELF-INSURER TO COMPLETE

To: Chief executive officer (Prisons) or Registrar (MIRT)
.....

The *Workers Compensation and Injury Management Act 2023* requires that payment of income compensation must be suspended for the period a worker is in custody or otherwise serving a term of imprisonment, and that the Chief Executive Officer (Prisons) or Registrar (MIRT) must provide written confirmation of the worker’s custody or imprisonment status in the manner required by this form.

We seek written confirmation that: Name of worker, DOB and address
.....

is currently in custody under a law of the Commonwealth, this State or another State, or is otherwise serving a term of imprisonment.

We, [insert insurer/ self-insurer name] are responsible for managing the worker’s compensation claim on behalf of [insert employer name] and seek confirmation in order to suspend income compensation for the period the worker is in custody or serving a term of imprisonment.

See attached evidence to support this request and our contact details for the written confirmation.

List attached evidence: List and attach information to show the worker in question is in receipt
.....
of income compensation (e.g. liability decision notice, evidence of
.....
income compensation payments).
.....

Signed: By the insurer or self-insurer representative
.....

Date: xx/xx/20xx
.....

PART 2: GOVERNMENT AUTHORITY TO COMPLETE

I: Name of Chief executive officer (Prisons) or Registrar (MIRT)

confirm: Name of worker, DOB, of address

Is / is not (delete as appropriate) currently in custody under a law of the Commonwealth, this State or another State, or is otherwise serving a term of imprisonment as detailed below:

Provide brief details as to whether the worker is in custody or imprisoned, the sentence and

location, and the law under which the worker is detained.

If unable to confirm please provide reasons:

For example, the insurer has not provided sufficient information to identify the worker

or that the person cannot be identified as being in custody or serving a term of imprisonment.

Date from which worker was in custody or imprisoned: xx/xx/20xx

Signed: By the CEO (Prisons) or Registrar (MIRT)

Date: xx/xx/20xx