

Workers Compensation and Injury Management Act 2023

Implementation proposals for regulations and administrative instruments

Implementation Consultation Paper 4: Certificates of Capacity

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 – Certificates of Capacity

Scope

This document outlines the proposed first, progress and final certificates of capacity to be issued by a worker's treating medical practitioner under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*. It also sets out proposed regulations regarding who can issue a first certificate of capacity in specific circumstances.

Background and Intent

Certificates of capacity must be issued by a worker's treating medical practitioner and specify information about:

- the nature of the worker's injury
- incapacity for work and extent of incapacity due to the injury
- the nature of any duties the worker is able to perform and nature of any restrictions
- how long it is estimated any incapacity for work will continue
- any other matter prescribed by the regulations.

There are three certificates of capacity prescribed under the 1981 Act. The first certificate of capacity accompanies a claim for compensation. Progress certificates inform parties of progress with medical management and injury management and changes, if any, in work capacity. Final certificates of capacity are generally issued when the worker has recovered and no longer has an incapacity for work, or the condition has stabilised and the worker is able to return to work without requiring further medical treatment.

Under the *WCIMA23* the CEO of WorkCover WA will approve the form of the certificates of capacity to be used. There is no intention to make any material changes to the certificates of capacity at this time.

It is intended the worker's treating medical practitioner will remain the primary issuer of certificates of capacity, however, proposed regulations will provide for medical practitioners other than the treating medical practitioner to issue a first certificate of capacity in specific and limited circumstances.

WCIMA23 key provisions

s. 25, s. 163, s.169, s. 170

Regulations and Approved Forms

Approved certificates of capacity

The certificates of capacity under the 1981 Act were co-designed with an expert stakeholder reference group. Since their launch in 2014 they have become well embedded in the WA workers compensation scheme and are integrated with medical practice software. The certificates continue to enjoy the strong support of scheme stakeholders and are considered fit for purpose. It is not possible for the certificates of capacity to be fully digitised due to significant technical constraints. No changes are required to medical practice software as existing templates are consistent with the proposed approved forms.

The certificates of capacity intended to be approved and used from the commencement date will be identical in form and substance to those used currently (only form number will change).

It is intended the regulations will specify additional information in the certificates which will simply correspond to the fields that are already in existing certificates relating to medical assessment, injury management plan and review date (for first and progress certificate of capacity) and provide for the consent authority so that the treating medical practitioner is authorised to discuss the worker's condition with the worker's employer, insurer and other medical and health professionals.

No changes are intended to be made to the guidance notes that accompany the certificates of capacity at [Certificates of Capacity - GP Support \(workcover.wa.gov.au\)](https://workcover.wa.gov.au/Certificates-of-Capacity-GP-Support).

Who can issue a certificate of capacity

Unless regulations specify otherwise only a worker's treating medical practitioner can issue a certificate of capacity.

It is intended regulations will be made to specify that a medical practitioner other than the worker's treating medical practitioner can issue a first certificate of capacity *only* in the following circumstances:

- if the worker is in a regional or remote area, or been admitted to hospital and received treatment from a medical practitioner who will not be providing ongoing primary medical treatment to the worker, or monitoring, reviewing and advising on the worker's condition and treatment on an ongoing basis; and
- the worker chooses to use that certificate to accompany their claim for compensation.

Submissions on the legislative review and the 2021 Consultation Bill did not support broadening the class of health professionals authorised to issue certificates, and there is no intention to authorise other classes of health professional to issue certificates of capacity at this stage.

WorkCover WA expectations

WorkCover WA expects:

- certificates of capacity to be fully completed in the approved form
- certificates of capacity to be issued by the treating medical practitioner of the worker's choice
- workers are not required to choose or attend a medical practitioner chosen or nominated by the worker's employer or the employer's insurer for the purpose of obtaining a certificate of capacity
- a worker's employer, the employer's insurer or agent of the insurer is not present while a worker is being physically or clinically examined or treated by the worker's treating medical practitioner.

WorkCover WA expects insurers and self-insurers to accept certificates of capacity in the previously regulated form under the 1981 Act (Forms 3 and 4) for an extended period of transition.