

## Workers Compensation and Injury Management Act 2023

### Implementation proposals for regulations and administrative instruments

## Implementation Consultation Paper 5: Liability Decisions and Provisional Payments

**October 2023**

Public comment on the implementation proposals  
should be submitted to:

[consultation@workcover.wa.gov.au](mailto: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 – Liability Decisions & Provisional Payments

## Scope

This document outlines proposed implementation requirements associated with new liability decision notice requirements and provisional payment provisions of the *Workers Compensation and Injury Management Act 2023 (WCIMA23)* and associated regulations.

## Background and intent

The *WCIMA23* provides for provisional payments of income compensation and medical and health expenses compensation to be made to workers where claim liability decisions are not made within prescribed timeframes. The *WCIMA23* also provides for claims to be ‘taken to have been accepted’ if a liability decision is not made within a prescribed timeframe. The regulations will set out the timeframes that apply. The provisions relating to liability decisions follow a three-step process:

1. Insurers and self-insurers will be required to give a worker either a *liability decision notice* or a *deferred decision notice* in the approved form within **14 days** of receiving a claim. If a *liability decision notice* or a *deferred decision notice* is not given within **14 days** of receiving a claim the insurer or self-insurer is taken to have accepted the employer is liable to compensate the worker (s. 28).
2. The employer will be required to make provisional payments to a worker where a *deferred decision notice* has been given on time but the insurer or self-insurer has not subsequently given a *liability decision notice* within **28 days** of receiving the claim (*provisional payments day*).
3. If a deferred decision notice is given on time but a liability decision notice is not given within **120 days** of receiving the claim (*deemed liability acceptance day*) the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker.

Provisional 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.

Where payable, the entitlement to provisional payments of:

- income compensation begins on the day the worker first has an incapacity for work and ends on the earliest of the following days -
  - (a) the day on which a certificate of 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 which the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker.

- medical and health expenses begins on the day the injury occurred and ends on the earliest of the following days -
  - (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.

Provisional payments of compensation are to be paid at the time and in the way a payment of that kind of compensation would be payable if the worker were entitled to that kind of compensation.

## WCIMA23 key provisions

s. 29, s. 36, s. 37, s. 38, s. 39, s. 40, s. 41, s. 42, s. 43, s. 44, s. 551

## Regulations

It is intended the regulations will establish the following in respect of provisional payments:

<i>Provisional payments day</i>	<b>28 days</b> from the day the insurer or self-insurer received the claim
<i>Deemed liability acceptance day</i>	<b>120 days</b> from the day the insurer or self-insurer received the claim

Statutory timeframes for provisional payments and deemed liability acceptance are important new scheme elements introduced in the legislation aimed at ensuring claim decisions are made by insurers and self-insurers in a timely way and workers receive financial support sooner.

### Provisional payments day - 28 days

The proposed 28-day period for triggering the obligation to make provisional payments was foreshadowed in consultation on the Bill in 2021.

Most claim decisions are made within the current initial 14-day period after receiving a claim. A further 14 days (28 days total) is fair and reasonable for moderately complex matters to be investigated further. Any alternative period less than 28 days may not provide enough time for insurers and self-insurers to make claim decisions and could unintentionally result in some cases being declined unnecessarily. Any alternative period longer than 28 days may unintentionally result in cases that can be decided within 28 days drifting out towards the longer alternative period prescribed.

In most other states and territories the obligation to pay compensation (not a limited form of provisional payments) arises at a similar period, and sometimes sooner, than the proposed 28-day period.

### Deemed liability acceptance day – 120 days

A 90-day, rather than 120-day, period for triggering deemed liability acceptance was foreshadowed in consultation on the Bill in 2021. A proposed 90-day period prompted submissions on the appropriateness of the indicative timeframe with some stakeholders suggesting the timeframe should be long enough to undertake complex medical reviews and investigations.

The proposed increase in the deemed liability acceptance day from 90 to 120 days acknowledges concerns raised by some stakeholders. A 120-day period should be sufficient to conduct complex medical and factual investigations and is unlikely to disadvantage workers who would be receiving provisional payments. A longer period than 120 days is not supported as the cap on provisional medical and health expenses may be reached by that time for some claims. Also, while some stakeholders may prefer a longer period, the outer limit for a liability decision should not be predicated on a worst-case scenario or the availability of preferred medical reviewers.

## Process overview

Within **14 days** of receipt of the claim:

Within **14 days** of receipt of the claim insurers and self-insurers are required to give the worker and insured employer either:

- a *liability decision notice* (see [Attachment 1 – Liability Decision Notice – Claim Accepted](#) and [Attachment 2 - Liability Decision Notice – Claim Not Accepted](#)) or
- a *deferred decision notice* (see [Attachment 3 – Deferred Decision Notice](#)).

If neither a *liability decision notice* nor *deferred decision notice* is given within **14 days**, liability is taken to be accepted.

Within **28 days** of receipt of the claim:

If a worker is given a *deferred decision notice* the insurer or self-insurer should:

- make a decision on liability and give the worker a *liability decision notice* as soon as practicable
- if a *liability decision notice* cannot be given within **28 days** of receiving a claim (*provisional payments day*), the employer is to commence provisional payments.

If provisional payments become payable the insurer or self-insurer should:

- give the worker a *provisional payment notice* (see [Attachment 4 – Provisional Payment Notice](#)) and seek information on any medical or health expenses incurred
- liaise with the employer to:
  - determine pre-injury earnings
  - ensure provisional income compensation payments are paid to the worker

Within **120 days** of receipt of the claim:

If a worker is given a *deferred decision notice* on time but is not given a *liability decision notice* within **120 days** of receipt of the claim (*deemed liability acceptance day*) the insurer or self-insurer is taken to have accepted the claim and the employer must commence payments of compensation. The insurer or self-insurer should also give the worker notice in writing advising of the updated status of the claim.

Without prejudice payments:

An insurer or self-insurer can choose to instruct the employer to commence provisional payments prior to the *provisional payments day*. These payments will be recorded as provisional payments and not as without prejudice payments.

### 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 approved form [Attachment 5 – Liability Decision Notice – Claim Accepted \(Shared Liability\)](#) is to be given.

## WorkCover WA expectations

WorkCover WA expects insurers and self-insurers to ensure that systems and procedures are in place to ensure the following outcomes are achieved from the *WCIMA23* commencement date.

### Process

Systems and procedures are in place from the implementation date to ensure:

- a *liability decision notice* or a *deferred decision notice* in the approved form is given to the worker within **14 days** of receiving a claim
- all liability decisions are made in a timely manner having regard to the complexity of decisions to be 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
- provisional payments are made in every case where a *liability decision notice* is not given by the *provisional payment day* (**28 days** from receipt of claim) 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 a *liability decision notice* is short
- provisional payment notices are issued within 3 days of the provisional payments day
- compensation payments commence in a timely manner where the employer is taken to have accepted liability
- ‘without prejudice’ or other forms of payment 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.

### Data

WorkCover WA expects insurers and self-insurers to implement the new payment code for provisional payments from implementation date (see [Attachment 6 – Coding of Provisional Payments](#)).

## Transition

The liability decision notice requirements and the obligation to make provisional payments also apply to any claim made under the 1981 Act that was not decided under the 1981 Act before the commencement date of the *WCIMA23*.

A claim is only considered to have been decided under the 1981 Act (and not covered by these transitional arrangements) when:

- liability for the weekly compensation claimed was accepted under the 1981 Act by the insurer or employer
- an arbitrator determined under the 1981 Act that the worker is entitled to the weekly compensation claimed
- the worker became entitled under section 57A(5) or 57B(4) of the 1981 Act to the weekly payments claimed (as a result of the failure by the insurer to comply with section 57A(3) or 57B(2) of the 1981 Act).

If a liability decision under the 1981 Act was not decided because it was deferred before the commencement date of the *WCIMA23* (a pended claim), the *WCIMA23* applies to the claim as if a *deferred decision notice* had been given on the commencement date. 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 and 106 days before the claim is deemed to be accepted.

## Evaluation and monitoring

WorkCover WA will monitor (for each insurer and self-insurer) the following metrics related to 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

### *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.

## Attachments

1. Liability Decision Notice – Claim Accepted
2. Liability Decision Notice – Claim Not Accepted
3. Deferred Decision Notice
4. Provisional Payment Notice
5. Liability Decision Notice – Claim Accepted – Shared Liability
6. Coding of Provisional Payments

## Attachment 1: LIABILITY DECISION NOTICE – CLAIM ACCEPTED

*Workers Compensation and Injury Management Act 2023*

## LIABILITY DECISION NOTICE – CLAIM ACCEPTED

Worker: \_\_\_\_\_

Employer \_\_\_\_\_

Insurer \_\_\_\_\_

Claim Number: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

Date Claim Received by insurer: \_\_\_\_\_

Date of notice: \_\_\_\_\_

*Liability Decision*

In relation to the above claim:

1. We **accept** the employer is liable to compensate you for the injury; and
2. We **accept/ do not accept** *[delete if not applicable]* the employer is liable for payment of income compensation for incapacity for work resulting from the injury.

*Compensation to be paid*

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 *[only if accepted in (2) above. Delete if not applicable]*. Income compensation is payable from the date of incapacity. Payments will commence within the next 14 days on the next usual pay day with the first payment including payments accrued from the date of incapacity.

*Information (TBD)*

- Insurer contact information
- Standard text on access to internal review of this decision
- WorkCover WA website
- How to dispute this decision (needed if the insurer doesn't accept payment liability as shown by 2 above)
- Form not applicable if claim acceptance is qualified due to liability questions involving more than one employer (see Attachment 5 – Claim Accepted – Shared Liability)

*Notice Details*

Insurer issuing officer name and contacts



## Attachment 2: LIABILITY DECISION NOTICE – CLAIM NOT ACCEPTED

*Workers Compensation and Injury Management Act 2023*

## LIABILITY DECISION NOTICE – CLAIM NOT ACCEPTED

Worker: \_\_\_\_\_

Employer: \_\_\_\_\_

Insurer: \_\_\_\_\_

Claim Number: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

Date Claim Received by 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):** [only relevant response to be included – provide details]

Not a worker: \_\_\_\_\_

Not an injury under the Act: \_\_\_\_\_

Not in course of employment: \_\_\_\_\_

Other reason: \_\_\_\_\_

*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.

*Information (TBD)*

- Insurer contact information
- Insurer internal review process
- How to dispute this decision
- Opportunity to obtain information from:
  - WorkCover WA advisory service (1300 XXX XXX) or website
  - Trade union
  - Legal practitioner

*Notice Details*

- Insurer issuing officer name and contacts

## Attachment 3: DEFERRED DECISION NOTICE

### Workers Compensation and Injury Management Act 2023

#### DEFERRED DECISION NOTICE

Worker: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Insurer: \_\_\_\_\_  
 Claim Number: \_\_\_\_\_  
 Date of Injury: \_\_\_\_\_  
 Date Claim Received by 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 has been **deferred**.

#### **Reason(s):** *[only relevant response to be included- provide 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 [state *provisional payments date*], provisional payments of income compensation and reasonable medical and health expenses will be made.

If a liability decision notice on this claim is not given by [state *deemed liability acceptance date*] liability will be taken to have been accepted and compensation payments will be made.

#### *Information (TBD)*

- Insurer contact information
- Opportunity to obtain information from:
  - WorkCover WA advisory service (1300 XXX XXX) or website
  - Trade union
  - Legal practitioner
- WorkCover WA dispute resolution options
- WorkCover WA website

#### *Notice Details*

- Insurer issuing officer name and contacts

## Attachment 4: PROVISIONAL PAYMENT NOTICE

### *Workers Compensation and Injury Management Act 2023*

#### PROVISIONAL PAYMENT NOTICE

Worker: \_\_\_\_\_  
 Employer \_\_\_\_\_  
 Insurer \_\_\_\_\_  
 Claim Number: \_\_\_\_\_  
 Date of Injury: \_\_\_\_\_  
 Date Claim Received by insurer: \_\_\_\_\_  
 Date of notice: \_\_\_\_\_

#### *Notice*

A decision on whether liability is to be accepted for this claim is not able to be made within the time allowed and provisional payments will now be paid until a decision on liability is made. If the claim is accepted compensation payments will continue uninterrupted, if the claim is not accepted provisional payments will cease when a decision is made.

#### *Provisional payments to be paid*

The following provisional payments will be made:

[Conditional – only if certificate of capacity specifies incapacity for work]

- Provisional income compensation payments will commence on the next usual pay day with the first payment including payments accrued from the date of incapacity.

[end]

Reasonable medical and health expenses up to a cap of \$X [5% of relevant *medical expenses general limit amount*]. Please provide the claim number above to the health provider or practitioner for these expenses to be paid.

#### *Information*

- Opportunity to obtain information from:
  - WorkCover WA advisory service (1300 XXX XXX) or website
  - Trade union
  - Legal practitioner
- WorkCover WA dispute resolution options
- WorkCover WA website

#### *Notice Details*

- Insurer issuing officer name and contacts

## Attachment 5: LIABILITY DECISION NOTICE–CLAIM ACCEPTED (SHARED LIABILITY)

*Workers Compensation and Injury Management Act 2023*

LIABILITY DECISION NOTICE – CLAIM ACCEPTED (SECTION 34)

Worker: \_\_\_\_\_

Employer \_\_\_\_\_

Insurer \_\_\_\_\_

Claim Number: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

Date Claim Received by insurer: \_\_\_\_\_

Date of notice: \_\_\_\_\_

### *Liability Decision*

In relation to the above claim:

1. The claim is made on the employer named above who last employed you in employment in which it is alleged the injury was suffered.
2. 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.
3. The liability questions are:
  - o *[describe liability questions being investigated further - s34(2)]*

### *Compensation to be paid*

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 *[only if certificate of capacity specifies incapacity for work]*. Income compensation is payable from the date of incapacity. Payments will commence within the next 14 days on the next usual pay day with the first payment including payments accrued from the date of incapacity.

### *Information (TBD)*

- Explanation of claim process and resolution of liability questions. Last employer must deal with claim and make compensation payments whilst liability questions are being investigated.
- Insurer contact information
- Standard text on access to internal review of this decision
- WorkCover WA website

### *Notice Details*

- Insurer issuing officer name and contacts

## Attachment 6: PROVISIONAL PAYMENTS CODING

### Claim Status Code (C062)

Valid codes for C062 from 1 July 2024 will be:

- 00 **Claim received**
- 01 Accepted
- 02 ~~Pending~~ Decision deferred
- 03 Rejected
- 04 Withdrawn
- 05 Invalid Claim
- ~~06 Paid Without Prejudice – WA Only – to be used, when relevant, instead of codes ‘01’ and ‘03’.~~

### Payment Type Code (C100)

Valid codes for C100 Payment Type Code from 1 July 2024 will be:

- 01 ~~Weekly~~ **Income Compensation** Payment
- XX Provisional Income Compensation Payment**
- 02 Fatal Weekly Payment
- 03 Fatal Lump Sum Payment
- 04 Fatal Other Payment
- 05 Medical Practitioner or Specialist Payment
- XX Provisional Medical Practitioner or Specialist Payment**
- 06 Hospital Expense Payment
- XX Provisional Hospital Expense Payment**
- 07 Other Treatment or Appliance Payment
- 08 Vocational Rehabilitation Payment
- 09 Allied Health Payment
- XX Provisional Allied Health Payment**
- 10 Common Law Payment
- 11 Permanent Impairment Payment
- 12 Redemption Payment
- 13 Negotiated Settlement Payment
- 14 Worker Legal Expense Payment
- 15 Insurer Legal Expense Payment