



We get it. Being on workers comp isn't where you want to be. You wouldn't wish this experience on anyone. Aside from the pain and suffering you go through, the workers compensation scheme is frustrating, demeaning, and above all, confusing. We're here to help you find your way through it.

In this guide, we're going to answer the first commonly asked questions that injured workers like you have when starting out on the workers compensation journey.

### What should I expect when I make a claim?

Your claim starts when you give a Certificate of Capacity to your employer, who has 7 days to give that certificate to their workers compensation insurer.

Usually, the insurer will be icare Workers Insurance, but depending on who your employer is, could be one of the scheme agents (EML, Allianz, GIO or QBE), a self-insurer (for example, Coles or Woolworths) or a specialised insurer (for example, if you work for a local council, the insurer will be Statecover).

You should then be contacted by a case manager from the insurance company within 7 calendar days. Weekly payments (wages) should start being made to you in that same timeframe, unless the insurer says it has a reasonable excuse not to.

A reasonable excuse could be that the diagnosis that's been provided isn't clear, or the link between your work and the injury isn't clear.

If the insurer applies a reasonable excuse to your claim, you must be given a letter setting out what you need to do to fix it. This could involve, for example, providing a statement to an investigator, submitting to an independent medical <u>examination</u> or completing a workers injury claim form (which you can get online <u>here</u>).

If the insurer doesn't have enough information to make a decision about whether to accept formal liability, the insurer will accept provisional liability.

The insurer will pay up to 12 weeks of wages and up to \$10,000 in medical expenses during the provisional liability period.

You will need to obtain approval from the insurer for any non-urgent medical treatment.

If you're still employed, your weekly payments will be paid to you through your employer, in the same pay period that you would normally be paid your wages. If you aren't employed any more, the insurer will pay your weekly payments into your bank account. You will need to give them your bank account details and complete a tax file declaration form (you can get one online <a href="here">here</a>).

During the provisional liability period, the insurer will gather information to determine whether formal liability for your claim should be accepted. You should receive a letter telling you, their decision.



### Can the insurer cut off my payments?

After you get your claim accepted, you'll be receiving your wage payments (on production of certificates of capacity), and your medical expenses are being paid. It's easy to think that, once the insurer accepts liability, that decision can't be "taken back" later.

Unfortunately, that is not the case. Simply because the insurer has accepted liability for your claim doesn't mean that that decision can't be reversed later.

Throughout your claim, the insurer must make continuing decisions about your capacity for work, and those decisions could result in the reduction of, or ceasing of, your weekly payments. This is called a "Work Capacity Decision".

The insurer can also deny liability for further payments of weekly benefits or medical expenses if they have information that suggests that the insurer may no longer be liable for your claim. This information could be an investigator's factual report, a statement from a witness in relation to your claim, a medico-legal report from a specialist doctor whom the insurer sent you to see (also known as an <a href="IME">IME</a>), a treatment report from one of your doctors or allied health practitioners, or clinical records from your current or previous treating practitioners.

As an example, the information the insurer receives might suggest that your injury was not caused by work, or, that your injury did not happen in the manner that was reported to the insurer.

One of the most common reasons for declining liability after initially accepting it, is that the Insurer gets a medical assessment which says that the effects of your injury have ceased, and that any ongoing problems with your knee relates (for example) to a pre-existing condition such as a previous unrelated injury or "old-age/degenerative arthritis".

Whatever the case may be, if the insurer makes a decision that results in the reduction or ceasing of your benefits or the denial of liability for your claim, that decision must be given to you in the form of a written notice. That notice will either be a section 78 notice, or, a Work Capacity Decision.

If you receive a section 78 notice, or a Work Capacity Decision, you should seek legal advice. If you don't act quickly, the insurer's decision will take effect and you may find yourself in a very difficult situation quite quickly.

You can get free and independent legal advice with a grant from IRO, or if you are an exempt <u>worker</u>, you are still entitled to independent legal advice, and the insurer pays your legal costs.

### Who is the rehabilitation provider and what are they allowed to do?

When you make a claim for workers compensation, you will be allocated a Case Manager from the insurer. This person is responsible for the day-to-day management of your claim on behalf of the insurer.



Usually, the insurer will appoint a rehabilitation provider who is local to you. There are a number of different rehabilitation providers who work within the NSW workers compensation scheme (some common providers in regional New South Wales include IPAR, Konekt, and Recovre). The rehabilitation provider will appoint their own Case Manager to your claim. This person is the insurer's representative "on the ground". Their job is to:

- Carry out functional and or vocational assessments on behalf of the insurer, to assess your ability to safely perform work, what types of work you can perform, any modifications that might be required to do that work, and, if you can't return to your pre-injury duties, what you might be able to do with your existing skillset and injury related restrictions.
- Work with you and the insurer to ensure that your treatment is progressing well, that you are complying with your obligations as an injured worker and reporting back to the insurer on your rehabilitation goals and outcomes.

It can get a little bit crowded in terms of all of the people involved in your injury. Here are some tips to help you get the most out of the rehabilitation provider and the service they can provide to you:

- Give your rehabilitation provider Case Manager a description of what duties you carried out before
  the injury. Don't just rely on the position description that your Employer gives to them, because it
  may not accurately reflect the physical or psychological requirements of the duties that you were
  actually doing before you were injured.
- 2. Make suggestions for restricted duties that you could do at your usual workplace or provide the rehabilitation provider Case Manager with any return-to-work plans that you and/or your employer have already developed. You are in the best position to understand how your duties could be modified in order to fit your injury related restrictions.
- 3. Make sure that your rehabilitation provider Case Manager has current contact details for you, your Employer, your Employers' return to work coordinator, all of your doctors and other treating health professionals (where appropriate).

Your rehabilitation provider can arrange case conferences but is not entitled to be present at all of your medical appointments, nor to arrange, or change, your medical appointments.

You are entitled to decide which rehabilitation provider is appointed to your case. Sometimes you won't have a good vibe with your rehabilitation provider, and that's ok. You can ask the insurer to appoint you a different one.

### What happens if I can't go back to my job?

Sometimes, an injury can mean that you are not able to return to the job you did before, or even that you aren't able to go back to the same workplace.

If, during your rehabilitation, it becomes clear that this is going to happen to you - don't worry.



The first thing you should do is discuss your concerns with your treatment team (this means your GP, any allied health practitioners (psychologist, physiotherapist) and specialist (psychiatrist, surgeon). Your capacity for work is both a medical decision, and a personal one. If you don't feel comfortable and capable of returning to your pre-injury duties, or the same workplace, your treatment team is the best sounding board for what you are going to do next.

If your team agrees that a return to your pre-injury duties or employer is not on the cards for you, your return-to-work goal will change from "pre-injury employer" to "different employer". Your rehabilitation provider Case Manager will likely then begin looking into retraining and upskilling options to prepare you for a different career than what were doing before. It is a good idea for you to research and present to the rehabilitation provider your thoughts on what a suitable post-injury job for you might be.

The rehabilitation provider will also start looking for work in different industries, so that you can "test the waters" in relation to a new career. In doing so, the rehabilitation provider Case Manager may arrange for you to undertake a Work Trial, which is where you work for a short period of time for a Host Employer, gaining new skills and on the job experience, as well as getting used to being in the workforce again.

During the work trial, you continue to receive payments of weekly benefits from the insurer, and the Host Employer does not pay you a wage. You would not be considered an employee of the Host Employer while you are performing the work trial, so if your injury is worsened by the work you are doing, or you suffer a different injury, the workers compensation insurer remains responsible for you.

#### What next?

The questions we have answered above are just the tip of the iceberg in terms of what you are wondering about with regard to your workers compensation claim. You can stay tuned for part 2 of the *Commonly Asked Questions*: *NSW Workers Compensation Claims*, or even better, you can get in touch with us, and get your own tailored, independent, and free legal advice addressing your specific circumstances. What have you got to lose?