COMMUNICATIONS KIT

Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024

Queensland Government

About the Act

The *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024* (the Act), implements legislative recommendations from the **2023 Review of the operation of the Queensland workers' compensation scheme** and the **Decision Impact Analysis for workers' compensation entitlements in the gig economy and the taxi and limousine industry in Queensland**.

The changes aim to improve the process for injured workers, improve rehabilitation and return to work outcomes and address emerging scheme trends like the growth of psychological injury claims.

The Act amends the *Workers' Compensation and Rehabilitation Act 2003* and the Workers' Compensation and Rehabilitation Regulation 2014.

About this kit

This communications kit has been created to help employers, insurers and workers to understand the Act and includes:

- changes now in effect
- changes to commence at a future date
- helpful links.

Changes now in effect

Changes aim to improve the process for injured workers, improve rehabilitation and return to work outcomes and address emerging scheme trends like the growth of psychological injury claims.

Employers: what you need to know about the changes

For employers

- You must provide timely wage information to your insurer so they can calculate your worker's weekly compensation entitlement. WorkCover Queensland (WorkCover) will issue a notice telling you to give this information within five business days. Penalties may apply for non-compliance unless you have a reasonable excuse.
- New penalties (up to $16,130) apply for failing to comply with your existing obligation to give an insurer written evidence if you consider it is not practicable to provide your worker with suitable duties. The insurer will form its own view about whether suitable duties are practicable and must give you reasonable opportunity to make submissions and provide further evidence if they disagree with you.
- You cannot
  - interfere or act inconsistently with your worker's rights to choose their own treating medical practitioner
  - be present during your worker's medical treatment without your worker's genuine consent
  - prohibit your worker from seeking advice from a lawyer or their union.
- You have a right to seek advice from a lawyer or a registered industrial organisation about anything related to the scheme.
- You cannot give a worker a benefit (financial or other benefit) or cause detriment to a worker (e.g. threaten to dismiss or disadvantage) to influence them not to apply for compensation.

For host employers

- You must cooperate with the labour hire provider by taking all reasonable steps to support the provider to meet its rehabilitation obligations for an injured labour hire worker.
- In practice, this cooperation could involve discussions and agreement between the parties on planning for return to work or stay at work and identification of available suitable duties.

What are examples of 'reasonable steps'?

Examples of reasonable steps may include things like establishing protocols and the expectation that claims officers:

- have direct communication with the injured worker at claim lodgement and proactively through the claim
- establish early and culturally safe communication with the injured worker and employer to ensure they understand the role they play in the claim and return to work
- ensure claim documentation is in plain English to ensure the needs of people with low literacy skills and culturally and linguistically diverse groups are met and empowering the injured worker to take part in their return to work.

Insurers: what you need to know about the changes

- To support injured workers, where you do not have the wage information necessary to calculate the actual weekly compensation entitlement from an injured worker with an accepted claim, you must
  - immediately issue a notice to the employer requesting the information; and
  - begin making the basic weekly payment to the injured worker five business days after the claim is accepted, or following the expiry of the excess period (whichever is later).
- If an employer states it is not practicable to provide suitable duties, you must consider the evidence provided by the employer and determine whether suitable duties are practicable.
  - If you are not satisfied with the written evidence, you can request further information from the employer.
  - If you consider the provision of suitable duties programs is practicable, you may consider penalising the employer for failing to take reasonable steps to assist or provide rehabilitation.
- You must have a rehabilitation and return to work (RRTW) plan in place for all accepted claims (including medical expense only claims) within 10 business days of acceptance.
  - You must review and modify the plan as further information or developments arise.
  - You must plan with the injured worker, the employer and the worker's treating medical practitioner(s), so far as is reasonably practicable.
- If a worker is dissatisfied with their workplace rehabilitation provider and requests to change provider, you must accommodate this request if practicable to do so and provided it would not be likely to affect the worker's rehabilitation and return to work.
- You cannot interfere with or act inconsistently with a worker's right to choose their own treating medical practitioner. You cannot be present during a worker's medical treatment without the worker's genuine consent.
- You cannot prohibit a worker or employer from seeking advice from a lawyer or registered industrial organisation (e.g. a union) in relation to their claim and their rights and obligations in the scheme.

- From 1 January 2025, you must give information statements to workers and employers about their respective rights and responsibilities in the workers' compensation scheme. These statements must be given to an injured worker and their employer as soon as practicable after a workers' compensation claim is lodged.

Insurers: what you need to know about the changes continued...

- You must take all reasonable steps (including providing reasonable services) to minimise the risk of the injured worker developing a secondary psychological injury from an accepted physical injury.

What are examples of 'reasonable steps' and 'reasonable services'?

Examples of reasonable steps may include things like establishing protocols and the expectation that claims officers:

- have direct communication with the injured worker at claim lodgement and proactively through the claim
- establish early and culturally safe communication with the injured worker and employer to ensure they understand the role they play in the claim and return to work
- ensure claim documentation is in plain English to ensure the needs of people with low literacy skills and culturally and linguistically diverse groups are met and empowering the injured worker to take part in their return to work.

Examples of reasonable services may include things like providing adjustment to injury counselling or workplace facilitated discussions.

How will insurers be supported to comply with the new obligation?

Insurers should be guided by relevant best practice and medical literature, including the It Pays to Care policy documents published by the Australasian Faculty of Occupational and Environmental Medicine.

A code of practice will be developed to further support insurers. This will be developed in consultation with key stakeholders and informed by best practice research, including research commissioned by the Workers' Compensation Regulator to identify pathways to secondary psychiatric and psychological injuries in Queensland.

Does this change impact on an insurer's existing rehabilitation obligations?

No. The new obligation applies in addition to an insurer's existing obligation to secure an injured worker's rehabilitation and early return to suitable duties in respect of the accepted physical injury.

Workers: what you need to know about the changes

- If you are unable to work, you must be paid a basic weekly payment (55 per cent of Queensland full-time adult ordinary time earnings (QOTE)) by your insurer if they are unable to calculate your compensation entitlement because they are waiting on wage information from your employer. This payment is to be made after five business days after your claim is accepted, or the expiry of the excess period (whichever is later).
- You can request a copy of your written RRTW plan from your insurer. Your insurer must create a plan for you within 10 business days of your claim being accepted.
- You must be consulted by your insurer in the preparation of your RRTW plan as far as is reasonably practicable. They must also consult with your treating doctor and employer.
- If you are dissatisfied with the workplace rehabilitation provider selected by the insurer, you may request a change to the provider of your choice. The provider you nominate must be an accredited workplace rehabilitation provider.
    - The insurer must accommodate your request where it is practicable to do so and where it would not be likely to adversely affect your rehabilitation and return to work.
    - It may not be practicable to accommodate your request if your chosen provider lacks the relevant skills, experience, industry knowledge or availability to provide effective rehabilitation services.
- You have the right to choose your own treating doctor and not have your employer or insurer present during treatment.
- Your employer must not influence your decision to make a claim or not make a claim for compensation by giving you a benefit (financial or otherwise) or causing you any detriment (like a threat to dismiss or disadvantage you).
- From 1 January 2025, an insurer must give you an information statement about your rights and responsibilities in the workers' compensation scheme if you make a claim for workers' compensation.
- Your insurer must take all reasonable steps (including providing reasonable services like adjustment to injury counselling or workplace facilitated discussions) to support you by minimising the risk of a secondary psychological injury arising from your physical injury.

What are examples of 'reasonable steps' and 'reasonable services'?

Examples of reasonable steps an insurer must take to minimise the risk of a secondary psychological injury arising from your physical injury may include things like establishing protocols and expectations that insurer's claims officers:

- have direct communication with you at claim lodgement and proactively through the claim

Workers: what you need to know about the changes continued...

- establish early and culturally safe communication with you and your employer to ensure all persons understand the role they play in the claim and return to work
- ensure claim documentation is in plain English to ensure the needs of people with low literacy skills and culturally and linguistically diverse groups are met and empowering you to take part in your return to work.

Examples of reasonable services may include things like providing adjustment to injury counselling or workplace facilitated discussions.

What you need to know about...

Preventing secondary psychological injuries

A secondary psychological injury is a psychological injury that arises in consequence of a physical injury. This injury can arise from difficulty coping with a physical injury or where the physical injury was caused by a traumatic event like an assault.

Insurers must take all reasonable steps to minimise the risk of a worker with a physical injury developing a secondary psychological injury. Reasonable steps also include (but are not limited to) providing reasonable services such as medical treatment and other support services.

The new obligation applies from when a claim is accepted until the worker's entitlement to compensation ends. Insurers must also pay necessary and reasonable travelling expenses and any costs for medical treatment or other services provided to the worker.

Why focus on secondary psychological injuries?

Secondary psychological injuries are complex in nature, have longer claim durations, higher claim costs and poorer return to work outcomes than both physical claims and primary psychological injury claims. The early identification of psychosocial risks is important in assisting return to work.

What are examples of 'reasonable steps' and 'reasonable services'?

Examples of reasonable steps may include things like establishing protocols and the expectation that claims officers:

- have direct communication with the injured worker at claim lodgement and proactively through the claim
- establish early and culturally safe communication with the injured worker and employer to ensure they understand the role they play in the claim and return to work
- ensure claim documentation is in plain English to ensure the needs of people with low literacy skills and culturally and linguistically diverse groups are met and empowering the injured worker to take part in their return to work.

Examples of reasonable services may include things like providing adjustment to injury counselling or workplace facilitated discussions.

What you need to know about...

Rehabilitation and return to work changes

Developing a rehabilitation and return to work (RRTW) plan in collaboration with an injured worker is one of the best ways to support their recovery.

Workers' compensation laws already require an insurer to develop and maintain a RRTW plan for an injured worker. Insurers are now required to ensure a written RRTW plan is in place within 10 business days of a claim being accepted.

The plan must be prepared in consultation with the injured worker, their employer and their treating doctors and health practitioners to the extent reasonably practicable.

Employers are currently required to give an insurer written evidence if it is not practicable to provide an injured worker with suitable duties. New penalties apply for failing to comply with this existing obligation.

Insurers must consider the written evidence and if not satisfied, give the employer the opportunity to respond and provide further evidence on why suitable duties are not available.

Is a RRTW plan required for a medical expense only claim?

Yes. Every injured worker has the right to a RRTW plan. The level of detail required will depend on the nature of the injury. For a medical expense only claim this could be a file note of a conversation or email to the worker with details of current medical treatment, suitable duties arrangements and any future reviews and next steps.

Does the 10 day timeframe risk RRTW planning becoming a 'tick and flick' exercise?

No. A RRTW plan is a living document to be updated as the worker's recovery progresses. While a plan must be in place within 10 business days of accepting a claim, this plan is to be reviewed and updated as new information becomes available.

How must an employer provide evidence of a lack of suitable duties?

The new laws do not state what evidence must be part of the written notice given to insurers. Insurers will work with employers to establish a suitable and reasonable evidentiary standard to satisfy themselves of the practicability of suitable duties.

What if I can't provide suitable duties?

There will be legitimate cases where an employer can't offer suitable duties for safety or practical reasons. The changes do not penalise employers in such situations, and the existing avenues for an insurer to arrange alternative suitable duties (like host employment) are retained so that the injured worker is not disadvantaged.

What you need to know about...

Better rights for injured workers

Injured workers have the right to choose their own treating registered person (e.g. doctor). Injured workers can make this choice at any time even if they have seen a person chosen by their employer initially.

Injured workers have a right to privacy and can decide who sits in their appointment/s for medical treatment.

Injured workers have a right to seek advice and support from a lawyer or registered industrial organisation (e.g. a union) about the scheme or their claim at any time.

Injured workers also have a right to request a different workplace rehabilitation provider if dissatisfied with the provider selected by their insurer.

How do these rights impact employer and insurer practices?

Employers and insurers must not interfere or act inconsistently with a worker's right to choose their treating doctor (or other registered person) and who is present during medical treatment. For example, a worker cannot be required to attend a doctor chosen by their employer or have their employer contact the doctor without their genuine consent.

'Registered persons' providing 'medical treatment' under the WCR Act includes doctors, dentists, physiotherapists, occupational therapists, psychologists, chiropractors, osteopaths, podiatrists, speech pathologists and audiologists.

Can workers still be referred to independent medical examinations?

Yes. Insurers maintain the existing right to have the worker's condition reviewed by an independent medical examiner or the medical assessment tribunal. Failure to attend a legitimate or reasonably requested independent examination can result in the insurer suspending your entitlements.

Will the changes impact on rehabilitation and return to work (RRTW) performance?

No. There are other ways an employer can work with the treating doctor to facilitate return to work without being present in the medical examination. For example, RRTW case conferencing.

What you need to know about...

New basic weekly payment for injured workers

Delays in paying workers' compensation entitlements contribute to poor rehabilitation and return to work outcomes and increase the risk of secondary psychological injury.

Insurers are required to pay a basic weekly compensation payment to an incapacitated worker where the insurer has accepted the worker's claim but does not have information needed to calculate their weekly compensation entitlement. This means workers will have quicker access to income replacement while the insurer is awaiting information necessary to calculate their exact entitlement.

This payment must be made on the later of the expiry of five business days after the day the insurer accepts the worker's application or the expiry of the excess period.

To complement this, employers are also compelled to comply with requests from WorkCover for this information to prevent ongoing delays to the calculation of weekly compensation. An employer must provide this information within five business days of the insurer's request. Failure to comply without a reasonable excuse is an offence.

How much is the basic weekly payment?

As at 1 July 2024, the basic weekly payment amount is $1014.59.

The basic weekly payment is approximately equal to 55 per cent of the Queensland full-time adult ordinary time earnings (QOTE). It is pro-rated for workers not engaged in full-time work.

QOTE is indexed annually to ensure workers' compensation benefits maintain their relative value over time. This means the basic weekly payment will change in line with annual changes to QOTE.

Why do employers need to provide information to enable weekly compensation entitlements to be calculated?

Weekly compensation entitlements are calculated by reference to a worker's normal weekly earnings or industrial instrument. To calculate these entitlements, insurers require information about the worker's earnings from the worker's employer. Without this information, the payment of weekly compensation to workers may be delayed, leaving them without an income.

How will overpayments be managed?

Where an employer fails to comply with the request to provide information, WorkCover may require them to pay a penalty to recover any overpayment of compensation. An employer may apply to WorkCover to waive or reduce this penalty due to extenuating circumstances. If dissatisfied with WorkCover's decision, an employer may request an independent review by the Workers' Compensation Regulator.

What you need to know about...

Expanding support for firefighters

Workers' compensation laws make it easier for firefighters with specified diseases to access compensation and support by presuming their disease is work-related. To be eligible, a firefighter must have been employed as a firefighter for a minimum number of years (a 'qualifying period').

From 23 August 2024 the existing list of diseases (sections 36B and 36D) is expanded by 11 new diseases to include asbestos related diseases, liver cancer, lung cancer, skin cancer, cervical cancer, ovarian cancer, pancreatic cancer, penile cancer, thyroid cancer, malignant mesothelioma and uterine cancer. This takes the total number of specified diseases from 12 to 23.

The qualifying period for primary site oesophageal cancer has also changed from 25 to 15 years.

Periods of 'day work rotation' will also be included when calculating the qualifying period. This includes exposure when performing station-based duties or work in a non-operational role such as cleaning or maintaining vehicles and equipment used to respond to a fire and undertaking training activities.

Why have these changes been made?

The changes recognise evolving scientific research that occupational exposure in the firefighting profession is carcinogenic to humans. The changes also ensure greater consistency between the Queensland scheme's presumptive rights and other national approaches.

When do the changes start?

The changes apply to firefighter compensation claims made after on or after 23 August 2024 or claims that were lodged but were undecided at the time the changes commenced.

Will firefighters undertaking 'day work rotation' be covered?

The amendments clarify that periods of 'day work rotation' are included in the calculation for determining the years a person is employed as a firefighter.

Can firefighters who aren't eligible for presumptive rights still access compensation?

Yes. A firefighter can still access compensation through the standard claims pathway. They must show their injury or illness was work-related and meet other requirements.

What you need to know about...

New obligations for host employers

Workers' compensation laws require an employer to take all reasonable steps to assist or provide an injured worker with rehabilitation. The employer of a labour hire worker is their labour hire provider.

Host employers have a new obligation to cooperate with labour hire providers by taking all reasonable steps to support them to meet their rehabilitation obligations as an employer for an injured labour hire worker. Penalties exist for non-compliance by host employers.

Who does the new obligation apply to?

The new obligation applies to any entity who is supplied a labour hire worker. A 'labour hire worker' is a person who is party to a contact of service with a labour hire agency or group training organisation that arranges for the person to do work for someone else under an arrangement between the agency or organisation and the other person.

Does the new obligation change the legal relationship between hosts and labour hire workers?

No. The new obligation does not make a host the employer of a labour hire worker or require hosts to discharge employer obligations for labour hire workers. The purpose of the new obligation is to better support labour hire providers to meet their employer obligations for these workers to secure the workers' timely rehabilitation and return to work.

What would genuine cooperation between the host employer and labour hire provider look like?

Here are examples of how you can work together:

- Respond as soon as possible to the labour hire provider's request for assistance and provide a main point of contact at your workplace.
- Provide reasonable access to your workplace to the labour hire provider and other parties involved in the return-to-work process like a rehabilitation provider.
- Be available and part of discussions about providing duties, return-to-work planning and consultation.
- Keep relevant parties updated about the injured worker's return to work progress and their duties.
- Consider what options there are for suitable duties at your workplace, and be flexible.
- Work with the labour hire provider to address any barrier that might prevent a safe return to work.
- Let the labour hire provider know if you cannot provide the injured worker with suitable duties due to legitimate safety reasons.

What you need to know about...

Coverage of gig workers and employers

The Act introduced provisions that give the Queensland Government flexibility to clarify the status of gig workers under the workers' compensation scheme in the future, by enabling a regulation to prescribe who is a 'worker' and 'employer' in particular circumstances.

Individuals and employers can only be prescribed if they are a 'regulated worker' or 'regulated business' to whom a minimum standards order, minimum standards guideline or collective agreement made under the Fair Work Act 2009 (Cth) (FW Act) applies.

These provisions do not provide any coverage of gig workers under the scheme unless a regulation is made.

When do these provisions commence?

These provisions commenced on 27 September 2024.

Why isn't immediate coverage provided?

Who is legally a regulated worker is a determination of the Fair Work Commission. Immediate or automatic coverage is not provided to allow for full consideration of the impacts of extending the workers' compensation scheme to workers that are determined by the Fair Work Commission to meet this definition.

Is the workers' compensation scheme fit for purpose to cover gig workers?

Yes. The Queensland workers' compensation scheme (the scheme) has existed for over a century and has evolved to keep pace with modern ways of working. It is flexible enough to address matters such as working across multiple apps, journey claims and rehabilitation and return to work for gig workers.

The scheme already covers workers who work sporadically or who are engaged in non-conventional forms of work. Examples of these include casual workers, interns, labour-hire workers, certain contractors, and people who work multiple jobs, are on-call or work from home.

What you need to know about...

Mandatory scheme information sheets

A new requirement to provide workers and employers with an information statement on their rights and responsibilities in the workers' compensation scheme commenced on 1 January 2025.

An insurer must give a worker and employer an information statement as soon as practicable after a workers' compensation claim is lodged.

The information statements will explain workers' compensation rights and responsibilities and clarify common myths (for example, around a workers' choice of treating doctor).

The information statements will be prepared in different formats and languages to support all workers and employers.

When do these provisions commence?

These provisions commenced on 1 January 2025.

When do insurers need to start providing these information statements?

The requirement to provide information statements commenced on 1 January 2025.

Will statements contain information to help employers or just workers?

Insurers will be required to provide information statements to help employers as well as workers.

How are these statements to be provided?

Information statements can be provided in various ways including in person, by mail, by email (including a link to the regulator's website or a web or intranet site of an employer or insurer) or by another method.

Where can the information statements be found?

Find out more and download the insurer-provided information statements for employers and workers.

Will employers be required to provide information statements?

No. The recent changes included an obligation for employers to give information statements to workers before or as soon as practicable after the start of employment from 1 January 2025. This statement has **not** been approved by the Workers' Compensation Regulator, meaning the obligation on employers will not apply.

Changes to commence at a future date to be determined

Check the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024* for future updates.

The next two pages cover the below changes that commence at a future date yet to be determined:

- standards for workplace rehabilitation providers
- guidelines for the Evaluation of Permanent Impairment framework.

Standards for workplace rehabilitation providers

To ensure the quality of workplace rehabilitation services, the Workers' Compensation Regulator can set service delivery, competency and professional standards for workplace rehabilitation providers in a scheme direction.

Insurers must ensure each workplace rehabilitation provider they engage meets the scheme direction. The scheme direction is currently being developed by the Workers' Compensation Regulator for consultation with scheme stakeholders and will generally align with the nationally agreed Principles of Practice for Workplace Rehabilitation Providers.

Guidelines for the Evaluation of Permanent Impairment framework

To ensure appropriate training and ongoing due diligence checks for medical specialists evaluating permanent impairment, a governance framework will prescribe the necessary qualifications, training and experience for medical specialists and how to resolve disputes.

From 23 August 2024, the Guidelines for the Evaluation of Permanent Impairment are taken to be scheme directions, meaning they are enforceable subordinate legislation.

Helpful links

Website content including frequently asked questions:

- *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024* (the Act)
- 2023 Review of the operation of the Queensland workers' compensation scheme
- Decision Impact Analysis for workers' compensation entitlements in the gig economy and the taxi and limousine industry in Queensland

The Act:

- *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024*

The Act amends:

- *Workers' Compensation and Rehabilitation Act 2003*
- Workers' Compensation and Rehabilitation Regulation 2014