

# What you need to know

## Workers' compensation



Understanding workers' compensation entitlements and the claims process can be overwhelming. To help, we've created a guide to the most commonly asked questions about making a claim.

### 1 Who can claim workers' compensation?

Members may be entitled to claim benefits under workers' compensation if they're injured as a result of work or during the course of work over a period of time. This may include injuries sustained during a recess, such as lunchtime or morning and afternoon breaks.

The workers' compensation scheme includes full-time, part-time, casual workers and often can include subcontractors.

Members may have an entitlement to compensation for a permanent injury even if they have returned to work.

**Tip:** If members are not covered by workers' compensation, they may have entitlements under other areas of law. Maurice Blackburn can provide advice about these entitlements.

### 2 What injuries are covered?

All types of injuries are covered by workers' compensation, including:

- physical injuries
- psychological injuries
- 'wear and tear' or repetitive strain injuries sustained over a period of time
- hearing loss, and
- aggravation, exacerbation, deterioration or acceleration of pre-existing conditions.

### 3 What benefits are available?

Benefits may be available to all injured workers regardless of who caused their accident or injuries. These benefits include:

- loss of wages:
  - 1 first 13 weeks — 95% of their usual weekly earnings up to twice the state average weekly earnings<sup>^</sup>
  - 2 between 14–130 weeks — 80% of their usual weekly earnings, and
  - 3 after 130 weeks — varies depending on the severity of the member's injuries.

**Note:** these entitlements vary slightly for claims prior 1 January 2005

- medical, surgical and hospital expenses
- rehabilitation treatment, including prescriptions and over the counter medications, treatment and consultation fees, and rehabilitative aides such as braces and supports
- travel expenses
- return to work support including vocational rehabilitation and assistance (if required), and
- compensation for permanent impairment.

**Note:** Members should never simply accept the advice of the insurer's doctor that they're fit for work. Members should always consult with their own treating doctor.

### 4 Are there time limits?

Yes. Different time limits apply at various stages during the claim process:

- 30 days to report the injury – if an injury has not been reported within 30 days, a claim should still be lodged
- six years for Common Law Damages claims.

In some circumstances, extensions to time limits may be granted. Members should contact Maurice Blackburn for advice.

<sup>^</sup>Depending on date of injury

## 5 How do members claim statutory benefits?

To lodge a claim for statutory benefits, members should:

- report the injury to their employer as soon as possible
- attend their own doctor (not a doctor specified by their employer) to obtain a WorkCover Certificate of Capacity
- lodge a claim form with their employer or WorkSafe. Members can obtain a copy from [worksafe.gov.au](http://worksafe.gov.au), and
- retain all documentation in relation to their injury and their application.

Once the insurer has received the Application for Compensation, they have 28 days to either accept or reject the claim.

**Warning:** It's illegal for an employer to tell you not to make a claim. Members should never accept money from their employer in place of lodging a compensation claim.

**Note:** An insurer may make an offer for an impairment benefit. This is called a Notice of Entitlement (NOE). Members should not accept an NOE without speaking to Maurice Blackburn. Short time frames apply and a member's response can affect their other entitlements.

## 6 Can members bring a lump sum claim?

Where injuries are considered a permanent impairment, members can pursue an impairment benefit claim for lump sum compensation. The claim does not require a determination of fault on the part of the employer or third party. The lump sum awarded will depend on the level of impairment and the date of injury. Maurice Blackburn can bring these claims on behalf of members.

## 7 What if a member's claim is rejected?

If the insurer rejects a claim, or request for benefits, it can be challenged at the Accident Compensation Conciliation Service. Members have 60 days to do this. Members should ensure that they are represented at conciliation by their union and obtain legal advice from Maurice Blackburn.

## 8 Can members claim for Common Law Damages?

If a member's accident was caused by the fault of their employer or a third party they may be able to claim Common Law Damages, even if the member was also partly responsible. A damages claim includes compensation for:

- pain and suffering
- loss of enjoyment of life (past and future), and
- loss of superannuation (past and future).

Strict time limits apply so it is important to get advice early.

<b>Our Victorian offices</b>	<b>Melbourne</b>	03 9605 2700	<b>Mildura</b>	03 5018 4000	<b>Visiting offices</b> Visit our website or call 1800 810 812 to find your nearest office.  We also offer online consultations and in most cases we can come to you.
	<b>Bendigo</b>	03 5444 4969	<b>Reservoir</b>	03 9462 2608	
	<b>Craigieburn</b>	03 8314 1200	<b>Ringwood</b>	03 9876 8555	
	<b>Dandenong</b>	03 9794 0403	<b>Sunshine</b>	03 9310 2966	
	<b>Frankston</b>	03 9784 6100	<b>Traralgon</b>	03 5174 8633	
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