

Health & Safety Law

Part 2: Workers Compensation Law & Injury Management

Workers Compensation Law

The Accident Compensation Act 1985; Accident Compensation (WorkCover Insurance) Act 1993; and, Workers Compensation Act 1958, detail an employers' workers compensation and injury management responsibilities.

Workers Compensation Policy

Workers compensation provides injured workers who have suffered a work-related injury or illness, with weekly payments to cover their loss of earning capacity, payment for medical expenses, and other reasonable expenses to assist them to return to work.

If you have employees, you must:

- Take out a WorkCover Workplace Injury Insurance policy with a Victorian WorkCover Authority Agent of your choice (unless your annual financial year payroll is expected to be \$7,500 or less).
- If you employ apprentices or trainees, you must have a WorkCover policy regardless of your annual payroll.
- Check your estimate of your wages bill (plus other payments and benefits i.e. "remuneration") sent to you by your insurer before the calculation of your premium each year.
- Notify your VWA Agent if your wages bill increases above your last estimate.

See the Workers Compensation guidance booklets at the back of this folder for more information.

Note: Incorporated contractors can still be deemed to be your workers irrespective of whether the contractor's company has its own WorkCover Insurance policy.

If you do not have Workplace Injury Insurance when you should, you may be prosecuted and may be liable for the full cost of any claims incurred while you were uninsured. Penalties also apply if you underestimate your wages bill.

If you are not insured, the benefits payable to injured workers are guaranteed by the VWA. However, these claims costs may be recovered from you as the uninsured employer.

To take out a policy, fill in an application form for a WorkCover Insurance policy and send it to the VWA Agent of your choice.

If you are not required to be insured and one of your workers makes a claim report the claim to the VWA, or your VWA Agent, and pay a fee of \$135.

Premiums

Your workers compensation premium rates reflect the risk in your industry. Premium rates are calculated based on the previous claims costs for all employees in your industry classification and the business claims history if employee wages and benefits are more than \$200,000.

Engaging Individuals As Contractors

If you engage individual workers as contractors, they must take out their own workers compensation insurance policy (unless they are sole traders). **However:**

- Because people you engage describe themselves as 'contractor', 'consultant' or 'self-employed' does not necessarily mean you are exempt from WorkCover.
- The fact that someone uses a company or business name or A.B.N or has a Workcover policy does not necessarily exempt you from WorkCover. Rulings/decisions from other regulatory bodies (e.g. Australian Taxation Office) do not necessarily apply to WorkCover.
- If a person works exclusively or predominantly for you, you are most likely liable for WorkCover premium.
- Just because a person works for others, doesn't necessarily mean you're exempt from WorkCover.

Shearing Contractors

Farmers/woolgrowers should ask their shearing contractor for a copy of the shearing contractor's **Certificate of Currency** and a **written statement** that all workers compensation premiums have been paid each year otherwise farmers/woolgrowers may be liable for insurance premiums owing in connection with the work or service performed on their behalf. Certificates of Currency are readily obtainable from the VWA agent.

Incident and Injury Notification

You must notify Workcover about certain injuries and incidents. These include workplace death or serious injury or an incident that could have caused death or serious injury. You must notify Workcover by telephoning 132 360 and written notification of the event must also be sent to WorkCover within 48 hours of the incident.

Claims

In regard to injuries there are certain things you must do:

- The “If you are injured” poster must be displayed in the shed. The poster must be displayed where all workers can read it.
- You have to keep a Register of Injuries to keep track of work-related injuries and illnesses.
- When an injured worker records an injury or illness in the Register of Injuries, you must acknowledge this registration in writing to the worker.
- If you receive a claim for compensation, you must complete the employer section of the Worker's Claim Form and acknowledge receipt of the claim in writing.
- You have to accept a Worker's Claim Form from a worker
- Forward claims to your VWA Agent within the required timeframe.
- Complete an Employer's Claim Report if you receive:
 - A Worker's Claim Form for weekly benefits
 - A Worker's Claim Form for medical and like expenses more than your employer excess
 - A Dependant's Claim for Compensation.

Employer's Claim Reports are available from post offices, your VWA agent or by calling the WorkCover Advisory Service on 1800 136 089 or 03 9641 1444.

You must forward to your VWA Agent:

- All claims for weekly benefits (regardless of the number of days lost) within 10 days of receiving it from the injured worker
- Claims for medical and like services that exceed the first \$531 of your employer excess must be forwarded within 10 days of receiving it from the injured worker
- Claims for medical and like services that not exceed the first \$531 of your employer excess, can be forwarded at 3 month intervals.

You may be penalised if you forward claim/s for time loss outside the required timeframes.

If you accept a claim you are liable for payment of the first 10 days that the injured worker misses from work and also the first \$531 of medical and like services (referred to as the employer excess), unless you have selected the Excess Buyout option.

Once a claim for weekly benefits is accepted you will be advised by your VWA Agent and required to make payments to the worker on their regular pay day.

You can remove the cost of the first ten days of weekly benefits for an injured worker and the first \$531 by taking up the "buy-out option". This involves paying an additional loading of 12.5% on your insurance premium. This means that your claims are managed and paid for by your VWA Agent from day one. This makes it easier for employers, especially small businesses, to manager the early stages of a claim.

The buy-out option is available to all employers. If you intend to take up or remove this option, you must notify your VWA Agent by 31 August.

Injury Management

Injury management is a term that includes all the activities associated with ensuring the proper recovery and early return of an injured worker to the workplace. These activities include early notification, treatment, claims management, rehabilitation and retraining.

When an employee suffers a work-related injury or illness, you are responsible for managing their return to the workplace. You should stay in touch with the injured worker as it can help their recovery if they feel they have not been forgotten.

Return to Work

If you have an annual payroll of \$1 million or more, appoint a return to work co-ordinator and develop return to work program with your workers and display it in your workplace or give each worker a copy.

You should prepare a return to work plan for any injured workers with an incapacity for work no later than 10 days after a claim is accepted.

Occupational Rehabilitation

Workers compensation includes the reasonable cost of occupational rehabilitation services. The occupational rehabilitation service(s) must be reasonable and necessary in the circumstances.

Worker Choice of Occupational Rehabilitation Provider

A worker is entitled to receive the service from an approved occupational rehabilitation provider chosen by the worker from a list of at least three approved providers nominated by the Authority (an agent), employer or self-insurer.

If the Authority, employer or self-insurer does not nominate such a list, a worker is able to choose an approved occupational rehabilitation provider of the worker's choice.

Within 3 months of accepting a claim you must establish and then maintain an occupational rehabilitation program, and put in place a risk management program to reduce the risk of other subsequent injuries.

You must offer pre-injury equivalent or suitable employment to an injured worker within 12 months of the claim being accepted or determined in the worker's favour.

You can be fined if you fail to comply with the return to work and rehabilitation requirements.

It is essential to return an injured person to work as soon as it is healthy for them to do some work. This will minimise the impact on an injured worker and also your workers compensation premium.

Appropriate early return to work will help with the physical rehabilitation of the worker and keep them in contact with the shearing team and the industry.

Appropriate early return to work will also guard against stress and depression and maintain the worker's confidence and motivation.

Part of the injury management program involves keeping records. You should have a Register of Injuries that keeps details of not only the injuries but also the shearing shed (workplace) where the injuries were sustained. Your tally book is a good place for such records.

You should keep correct records of all wages paid to workers for the past 7 years.

Working In Cross Border Areas/Other States

In the past, employers were required to obtain workers' compensation coverage for an individual working in more than one State or Territory.

New rules mean that employers need to obtain workers' compensation insurance to cover a particular worker in only one State or Territory. Under the new provisions, the State or Territory in which workers' compensation premiums relating to a particular worker are payable is referred to as the worker's 'State of connection'. The State of connection of a worker is determined by a series of 'tests', details of which are available from VWA.

The benefits to which an injured worker is entitled are also determined by the 'State of connection'. As not all States and Territories have introduced cross border provisions at this stage, employers with workers working in more than one State are encouraged to check with workers' compensation authorities in those States to ensure that appropriate insurance arrangements are in place.

Please see the Victorian WorkCover Authority's "Guide to Cross Border Worker's Compensation System" included in **Section 7 Additional Information** at the back of this *information pack*.

Please also see Workers Compensation guidance publications in Section 7 Additional Information of this Information Pack.

Please see the other sections in this information pack for information to help you meet your responsibilities and duties under the OHS legislation.

